

# Encounters with Energy Security: Connections with Financial and Foreign Policy

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presentation at  
“Unravelling the Carbon Web”  
event organised by Platform<sup>1</sup>  
24 September 2008

## Introduction

My name is Sarah Sexton, and I work with The Corner House, an environmental and social justice group.<sup>2</sup> Six months ago, I probably wasn't that troubled by the term “energy security”, whereas now, I think it's highly problematic, insidious, even dangerous, and affects a far wider range of movements and groups than those concerned primarily with energy or climate change issues. This afternoon, I will briefly outline my encounters with ‘security’ over the past six months that brought me, belatedly, to this realisation.

These encounters come out of several areas of work in which The Corner House has been involved over the past few years, but three in particular:

- the “credit crunch” and financial crisis that is now exploding around us;<sup>3</sup>
- carbon trading;<sup>4</sup> and
- the BAE-Saudi-corruption judicial review brought by The Corner House and Campaign Against Arms Trade.<sup>5</sup>

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1. <http://www.carbonweb.org/>

2. <http://www.thecornerhouse.org.uk>

3. *See*, for example:

—Kavaljit Singh, “Taking it Private: Consequences of the Global Growth of Private Equity”, Corner House Briefing 37, September 2008,  
<http://www.thecornerhouse.org.uk/summary.shtml?x=562660>

—Kavaljit Singh, “Sovereign Wealth Funds: Some Frequently Asked Questions”, Corner House Briefing 38, October 2008,  
<http://www.thecornerhouse.org.uk/summary.shtml?x=562749>

—Nicholas Hildyard, “A (Crumbling) Wall of Money: Financial Bricolage, Derivatives and Power”, Corner House Briefing 39, October 2008,  
<http://www.thecornerhouse.org.uk/summary.shtml?x=562658>

4. <http://www.thecornerhouse.org.uk/subject/climate/>

5. <http://www.caat.org>

### **BAE-Saudi-corruption judicial review**

Back in 2004, the UK's Serious Fraud Office (SFO, the government department charged with investigating and prosecuting serious and complex fraud, which is a criminal offence) started an investigation into alleged bribery and false accounting by BAE Systems, the UK's largest arms manufacturer, in relation to the Al Yamamah deals to supply Saudi Arabia with Tornado fighter and ground attack aircraft together with associated products and support services.

In December 2006, the Director of the Serious Fraud Office stopped the investigation because of a danger to the UK's national security; Saudi Arabia had threatened to withdraw diplomatic and intelligence cooperation with the UK if the investigation continued.

A few days later, Campaign Against Arms Trade and The Corner House started the judicial review process to challenge this decision through the UK's legal system.<sup>6</sup> The high point of this process was undoubtedly April 2008 when the High Court ruled that the Serious Fraud Office decision was unlawful.<sup>7</sup> The judges described the SFO Director's termination of the investigation following threats from Saudi Arabia as a "successful attempt by a foreign government to pervert the course of justice in the United Kingdom". They stated that:

"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 [the Director of the Serious Fraud Office] to bear that essential principle in mind that justifies the intervention of this court."<sup>8</sup>

The judges were scathing about the SFO's arguments for ending the investigation:

"It is obvious . . . that the decision to halt the investigation suited the objectives of the executive. Stopping the investigation avoided uncomfortable consequences, both commercial and diplomatic."<sup>9</sup>

A *Financial Times* article, meanwhile, noted that:

"The BAE court ruling has brought to the boil a simmering controversy over the government's attempts to give itself a wide-ranging power to stop investigations and prosecutions on national security grounds."<sup>10</sup>

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6. For an outline of the judicial review and links to key documents, see: <http://www.controlbae.org>

7. <http://www.controlbae.org/jr/jrruling.php>

8. <http://www.controlbae.org/background/JR-Judgement.pdf>, para. 171

9. <http://www.controlbae.org/background/JR-Judgement.pdf>, para. 101

10. Michael Peel, "Row over national security claim", *Financial Times*, 11 April 2008. [http://www.ft.com/cms/s/0/4a614258-0760-11dd-b41e-0000779fd2ac.html?nclick\\_check=1](http://www.ft.com/cms/s/0/4a614258-0760-11dd-b41e-0000779fd2ac.html?nclick_check=1)

It is important to note that, throughout the judicial review process, the courts did not assess the likelihood that the Saudi threat to withdraw intelligence cooperation would have been carried out; nor whether, if so, it would have endangered the UK's national security or made any other difference to the UK. One of the judges, Lord Justice Moses, repeatedly emphasised that the courts are very reluctant to step on the toes of the executive (the government), which (under the separation of powers in this country between the executive, the courts and parliament) is assumed to have responsibility for foreign policy and national security. In their High Court ruling, the judges stated:

“The separation of power between the executive and the courts requires the courts not to trespass on . . . a decision affecting foreign policy. In a case touching foreign relations and national security, the duty of decision on the merits is assigned to the elected arm of government. Even when the court ensures that the Government complies with formal requirements and acts rationally, the law accords to the executive an especially wide margin of discretion.”<sup>11</sup>

But the courts did assess whether the Director of the Serious Fraud Office had done all he could not to give in to this threat from Saudi Arabia that was described as risking “British lives on British streets”. They concluded that he hadn't.

The High Court ruled that national security has to be defined and understood narrowly to prevent abuse – the threat to national security has to be direct and imminent creating a “situation of necessity” (a concept enshrined in international law) – and that there have to be domestic checks and balances available through the judiciary and through Parliament.

The UK government appealed against this High Court ruling; and in July 2008, five law lords overturned the High Court's assessment when they ruled that the Serious Fraud Office Director's decision to stop the BAE-Saudi corruption investigation was not unlawful but was in fact perfectly reasonable.<sup>12</sup>

What this means is that, under UK law, the government can make any decision or take any action in the name of national security, irrespective of whether national security is really involved, and the courts will not, cannot and should not challenge that decision or action.

The Corner House and Campaign Against Arms Trade issued a joint statement in July 2008:

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11. <http://www.controlbae.org/background/JR-Judgement.pdf>, para 56.

Modern democracies consider that the best way of protecting people's rights from the arbitrary exercise of power is to have a clear separation of powers between the Executive (government), the Legislature (Parliament) and the Judiciary. The Executive (government) is responsible for the day-to-day management of the state; the Legislature (Parliament) creates, amends and ratifies laws; and the Judiciary (the courts) applies, interprets and upholds the law impartially on a case-by-case basis.

12. <http://www.controlbae.org/background/JR-Judgement.pdf>

“The law lords have done what was asked of them. They have clarified the law, ruling that national security always trumps the rule of law. The implications are clear: under UK law, a supposedly independent prosecutor can do nothing to resist a threat made by someone abroad if the UK government asserts that the threat endangers national security. The unscrupulous with friends in high places overseas who are willing to make such threats now have a legally valid 'Get Out of Jail Free' card. With the law as it is, a government can simply invoke 'national security' to drive a coach and horses through international anti-bribery legislation, as the UK has done in this instance, to stop corruption investigations. The dangers of abuse are obvious.”<sup>13</sup>

From all the documents, memos and letters that the Serious Fraud Office released during the judicial review proceedings, including those from BAE to government departments, from Prime Minister Tony Blair to the Attorney General (who “superintends” the Serious Fraud Office), it’s quite clear that ‘national security’ was the final trump card employed by a nexus of BAE, the UK government and Saudi Arabia after all the other cards had failed to halt the investigation from the moment it had begun in March 2004: other cards played had included a potential loss of UK jobs; a potential loss of further contracts with Saudi Arabia; the possibility that the evidence against BAE wouldn’t stand up in court; and the possibility that the UK’s anti-bribery laws are so antiquated that a conviction was unlikely.

One can imagine a late night session behind some closed doors: “What else can we do to stop all this? I know: National security!” One can imagine a collective sigh of relief in the corridors of Whitehall and Downing Street, and in the warrens of BAE when Saudi Arabia delivered its threat.

Here’s another excerpt from our joint statement at the time of Law Lords ruling:

“The Corner House and CAAT accept that the government has a duty to protect the public from threats to national security. It is critical that the public has absolute confidence and trust that the government is not abusing national security arguments in order to avoid embarrassment (in this instance, offending Saudi Arabia) or to pursue the commercial interests of favoured companies, such as BAE, or to get out of its obligations under international law. Such confidence and trust is especially important at a time of heightened concern about international terrorism.”<sup>14</sup>

### **Constitutional Renewal – or Constitutional Retreat?**

What really began to trouble me, however, was some seemingly arcane and archaic-sounding legislation that the government had proposed in March 2008 – *before* the High Court had ruled on our judicial review. Constitutional renewal has been

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13. “Statement from The Corner House and Campaign Against Arms Trade in response to Law Lords’ judgments in BAE-Saudi appeal”, 30 July 2008, <http://www.thecornerhouse.org.uk/item.shtml?x=562186>

14. Ibid.

chugging along for several years now, culminating in a draft Constitutional Renewal Bill.<sup>15</sup>

One section in this draft Bill seems to have been hastily inserted in response to our judicial review with the intention of ensuring such a judicial review could not be taken again. The draft Bill proposes to create a new statutory power (Clause 12) for the Attorney General (the government's chief legal adviser appointed by the Prime Minister who is also a member of the government) to enable him/her to stop a corruption investigation or any criminal prosecution on the grounds of 'national security'.

Additional clauses in the draft Bill would ensure that no meaningful explanation or accountability need to be given to Parliament, the Courts or international bodies were the Government to invoke these new powers. Clause 13 states that if the necessity of the decision is questioned, a certificate signed by a government minister certifying that the direction to stop was necessary would be considered as conclusive evidence of that fact – or a document “*purporting*” to be such a certificate. This certificate effectively makes scrutiny by the courts impossible – no judicial review.

As if making up for the lack of legal accountability, however, the Bill seems to provide for some compensating political accountability in that the Attorney General does have to report to Parliament on the giving (or withdrawal) of a direction to stop an investigation or prosecution. But Clause 14 also allows the Attorney General to exclude information from the report that could prejudice national security or international relations.

The draft Bill does not define national security, but “prejudice to international relations” is defined widely (Clause 17) as including:

- relations between the UK and another other state, or international organization or court;
- the interests of the UK abroad;
- the promotion or protection by the UK of its interests abroad.

“The interests of the UK” are not defined, but a top UK constitutional lawyer, who considers the draft Bill to be unconstitutional, has said that this could encompass Britain's image abroad.

If this Bill becomes law as it stands, “national security” could simply be invoked by a politician (the Attorney General) to stop any fraud investigation or criminal prosecution perceived as undesirable, irrespective of whether the national security or UK interests were involved. Lawyers acting for The Corner House and CAAT spelled out the potential dangers of this draft Bill:

“There is always the risk when national security is relied upon by politicians that it will be elided with the interests of the government, especially where there is no democratic or legal scrutiny of the relevant decision . . .

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15. <http://webarchive.nationalarchives.gov.uk/+http://www.justice.gov.uk/docs/draft-constitutional-renewal-bill.pdf>

“There is a serious risk that the opaque and unaccountable decision making process envisaged under the draft Bill could lead to breaches by the UK of its international law obligations, which would be extremely difficult to detect or challenge because the relevant information would never be made public, or available to the Courts [or] Parliament . . .”<sup>16</sup>

In sum, the draft Constitutional Renewal Bill would significantly increase and concentrate the powers that the government can exercise over the judiciary (the Courts) and Parliament. It would set down these powers clearly in the statute books rather than following “common law”, an eccentric British practice of following what’s always been done and understood but not written down. Bear in mind, too, that legislation can always be used in future in other circumstances, scenarios or contexts than those for which it was originally intended (in this case, other than in stopping an embarrassing corruption investigation).<sup>17</sup> Once on the statute books, legislation can also be used as reference point or a precedent for further unrelated legislation.

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16. <http://www.thecornerhouse.org.uk/pdf/document/ConstRenBilloECD.pdf>

17. The following are some examples illustrating how legislation designed for one set of circumstances has easily been used for another:

i) Section 44 (2) of the Terrorism Act 2000 provides the power to stop and search pedestrians within a designated area for items that could be used in connection with terrorism without first forming a reasonable suspicion. In October 2005, Sally Cameron was arrested under the Act for walking along a cycle path in the harbour area of Dundee in Scotland and held for four hours. The port and harbour area had been designated a secure area by the government in which people are forbidden from walking – but not cycling. (David Lister, “Two wheels: good. Two legs: terrorist suspect”, *The Times*, 17 October 2005, <http://www.timesonline.co.uk/tol/news/uk/article579334.ece>)

ii) In October 2005, Walter Wolfgang was forcibly removed from the Labour Party’s annual conference and his conference accreditation revoked. When he later tried to go back into the conference to get his personal possessions, he was detained because he was attempting to gain access to a restricted area without accreditation. The police officer used powers under Section 44 of the Terrorism Act to confirm Mr Wolfgang’s details.

iii) The Regulation of Investigatory Powers Act 2000 was passed to allow police and other security agencies carry out surveillance on serious organised crime and terrorists. In April 2008, Poole borough council in the south west of England admitted that it had legitimately used the Act to monitor for two weeks the movements of a family of two adults and three children. It did so in order to establish whether or not the family had given a false address within the catchment area of a much sought-after local primary school so as to secure a place for their three-year-old at the school.

iv) The Extradition Act 2003 was designed to modernise and speed up the UK’s extradition to other countries of those suspected of cross-border offences such as terrorism and organised crime. It enshrined in UK domestic law a treaty drawn up by the US and the UK. The law was used in 2006 to extradite to the US three British “NatWest” bankers on charges linked to fraud at bankrupt energy trader Enron.

v) The Anti-Terrorism Crime and Security Act 2001 created a new power enabling the UK Treasury to freeze the assets of “overseas governments or residents who have taken, or are likely to take, action to the detriment of the UK’s economy or action constituting a threat to the life or property of a national or resident of the UK”. Its aim was to “cut off terrorist funding”.

On 8 October 2008, the British government invoked the Act to freeze the estimated £7 billion of assets held in the UK by a collapsed Icelandic bank, Landsbanki, which had been

### **The UK's National Security Strategy**

This all seemed bad enough, but I became still more troubled a couple of months later, in May 2008, when the Cabinet Office<sup>18</sup> issued *The national security strategy of the United Kingdom: security in an interdependent world*.<sup>19</sup>

This document picks up on an ongoing trend within academia, within security studies, to argue that “national security” is an outdated and irrelevant concept. Since the Berlin Wall came down in 1989, and the threat of nuclear war with the Soviet Union receded (supposedly), several organisations and individuals have been redefining “security”.

The Institute for Public Policy Research (IPPR), for example, has set up an independent Commission on National Security in the 21<sup>st</sup> Century,<sup>20</sup> co-chaired by Paddy Ashdown<sup>21</sup> and George Robertson.<sup>22</sup> A February 2008 report reflecting on the Commission's initial discussions stated that there has been:

“much debate in scholarly and policy circles in recent years about the need to rethink the concept of security. Since the 1980s, in fact, academics have sought a more elastic definition of security that could encompass environmental, economic, human rights and other factors.”<sup>23</sup>

For many, if not most, people, security threats other than those directed at “national security” – the security of the national territory – are indeed what matters to them: lack of food, shelter, water, livelihood, healthcare, for example. Several commentators propose that the concept of “human security” should replace that of “national security” to encompass this reality.

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nationalised by the Icelandic government. Many UK individuals and organisations had invested in Landsbanki's internet bank, Icesave.

See also “Licence to claim blackmail” for an example of the Executive's use of “national security” to avoid potentially embarrassing information being released, <http://www.controlbae.org/jr/afterjr.php#licence>

18. The Cabinet Office “sits at the very centre of government”. Together with the Treasury, it provides the “head office” of the government. One of its core functions is to support the Prime Minister and the Cabinet, and define and deliver the government's objectives.  
See: [http://www.cabinetoffice.gov.uk/about\\_the\\_cabinet\\_office.aspx](http://www.cabinetoffice.gov.uk/about_the_cabinet_office.aspx)

19. [http://interactive.cabinetoffice.gov.uk/documents/security/national\\_security\\_strategy.pdf](http://interactive.cabinetoffice.gov.uk/documents/security/national_security_strategy.pdf)

20. <http://www.ippr.org/security/>

21. Paddy Ashdown is a former leader of the Liberal Democratic Party in the UK and former High Representative for Bosnia.

22. George Robertson is a former UK Secretary of State for Defence and a former Secretary General of NATO.

23. Ian Kearns and Ken Gude, *The New Front Line: Security in a changing world*, IPPR Commission on National Security, Working Paper No. 1, February 2008, p.28.

I'd go along with that – but what happens when the national security apparatus decides to appropriate the language and ideas of human security? You get something like the Cabinet Office's National Security Strategy, which has the backing of the state's resources and powers. This Strategy broadens the understanding of national security to encompass a wide range of threats and risks well beyond those made by another state to the UK's territory. Such threats and risks include some obvious ones – state-led threats to the United Kingdom; terrorism; nuclear weapons and other weapons of mass destruction; transnational organised crime; global instability and conflict, and failed and fragile states; civil emergencies – and some less obvious ones – infectious diseases (particularly influenza); extreme weather and coastal flooding; man-made emergencies; climate change; competition for energy; poverty, inequality, and poor governance; and migration and demographic changes. On this last threat, for instance, the National Security Strategy states that “the largest-ever generation of teenagers . . . present risks of increased political instability, disorder, violent conflict and extremism.”<sup>24</sup>

China and India are mentioned often, China because it can “dump dollars”, India because of “its massive and young population” (too many Slum Dogs or too many [better] financial whiz kids?). Both countries are highlighted for being greenhouse gas emitters.

Nowhere in this National Security Strategy is mention of the UK's role in *creating* these threats and risks to human security: in creating insecurity, for instance, through its operations in Iraq and Afghanistan; its “light touch” regulation of the financial system; or its support of carbon trading to tackle climate change. Indeed, the Cabinet Office's National Security Strategy, while mostly full of analysis of security threats, proposes some of these failings as actual solutions – for example, carbon trading, the main plank of the Kyoto Protocol.

As my colleague Larry Lohmann and others have pointed out, carbon trading is not helping to phase out the use of fossil fuels – rather the reverse – and is little more than a licence for big polluters to carry on business as usual. Carbon trading is not therefore helping to tackle climate change – rather the reverse.<sup>25</sup> But if carbon trading

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24. [http://interactive.cabinetoffice.gov.uk/documents/security/national\\_security\\_strategy.pdf](http://interactive.cabinetoffice.gov.uk/documents/security/national_security_strategy.pdf), p.22

25. The more carbon dioxide pours into the air, the less stable the climate becomes and the more urgent it becomes to leave remaining fossil fuels in the ground. Yet the dominant approach to the crisis – carbon trading – is slowing social and technological change; dispossessing ordinary people in the South of their lands and futures; undermining already-existing positive approaches; and prolonging industrialised societies' dependence on fossil fuels. For more information, *see*:

–Larry Lohmann (editor), *Carbon Trading: A Critical Conversation on Climate Change, Privatisation and Power*, published by Dag Hammarskjold Foundation, Durban Group for Climate Justice and The Corner House, October 2006, <http://www.thecornerhouse.org.uk/summary.shtml?x=544225>;

–<http://www.thecornerhouse.org.uk/subject/climate/>



is part of a national security strategy, does critiquing it become a national security threat?

The Lords' ruling in the BAE-Saudi corruption case; the draft Constitutional Renewal Bill; the Cabinet Office's National Security Strategy: put them all together and the executive can make any decision or take any action citing "national security" with impunity. A broader understanding of what constitutes national security combined with opportunistic use of whatever legislation is at hand could mean that any or all of us could be considered as threats to the UK's national security.

Prime Minister Gordon Brown said in the summer of 2007:

"I have said for some time that the long term and continuing security obligation upon us requires us to coordinate military, policing, intelligence and diplomatic action."

He said this when announcing a variety of measures for . . . constitutional reform.

Thus when I now hear terms such as "energy security" or "food security", terms that I myself have used in the past, alarm bells sound.

### **To be continued . . .**

Energy has long been perceived as a "national security" issue – in the old sense of national security involving defending various nations' territories, and has long had geopolitical implications. Iraq's oil is an obvious example of this today. Russian soldiers entering Georgia in August 2008 prompted Jason Trennert, the chief investment strategist of Strategas Research Partners in New York, to declare that:

"energy will be seen even more as a national security issue, providing a boost for the alternative energy movement . . ." <sup>26</sup>

Energy has also long been a financial issue. Indeed, the causes of the present financial crisis are deeply intertwined with energy issues. US energy trader Enron was one of the first institutions to go bankrupt back in 2001 because of its off balance sheet gambling.<sup>27</sup> As Trennert also states:

"A more bellicose Russia and the growing political and military power of the world's 'petro-states' have important implications for investors . . . Events in the Caucasus have broadened concerns about the growing power of petro-states beyond national security wonks to the man on the street in the US who, until recently, viewed the high price of crude through the practical prism of his

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26. Jason Trennert, "Latest conflict reinforces need to keep an eye on defensives", *Financial Times*, 2 September 2008, [http://www.ft.com/cms/s/0/32005d16-7885-11dd-acc3-0000779fd18c.html?nclick\\_check=1](http://www.ft.com/cms/s/0/32005d16-7885-11dd-acc3-0000779fd18c.html?nclick_check=1)

27. *See:*

—McLean, B. and Elkind, P., *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron*, Penguin, 2004;

—Partnoy, F., *Infectious Greed: How deceit and risk corrupted the Financial Markets*, Profile Books, 2004, pp.308-319.

discretionary spending. Greater hostilities between the west and oil rich nations will only serve to harden the political will to make broad-based investments in alternative energy sources.”

Trennert goes on to make comments about global defence spending, which he assumes will rise around the world, resulting in less state spending on healthcare (which he states is good because it will reduce the crowding out of private companies by public spending on health . . .)

His conclusion, as an energy investment expert, is to invest in arms companies if you're interested in energy security:

“defence stocks might now be a cheaper and less volatile way to play the energy complex.”<sup>28</sup>

The US military, meanwhile, already has the financial world in its sights:

“Few industries at first glance appear more disconnected from the national security of the United States than does financial services. In reality, financial services are the foundation upon which all other economic functions and industries are built and rely . . . The financial services industry provides the underlying mechanisms that remove the nation's wealth from under its figurative mattresses and allocates it across the breadth of the economic landscape to create growth . . . For the US, national wealth underwrites the nation's ability to project power.”<sup>29</sup>

Would using a different term than “security” make any difference? Would it lessen the association or perception of energy issues with authoritarianism, violence and militarism? Can the concepts that food and land activists use help at all, such as food sovereignty or food self-sufficiency? Yes and no. Words do have power and can alter discussions, debates and decisions. Exploring what they might mean and what they define can also prove fruitful. But we should bear in mind, too, that Shakespeare's Juliet thought “a rose by any other name would smell as sweet”.

In addition to linguistic gymnastics, it might be more productive to pose some other questions to ensure that everyone has safe access to the energy they need. For example, Who has access to energy now and who not? How is energy obtained? What are the consequences of its extraction and use for different groups of people? What is energy used for? What are the alternatives to existing sources of energy? And who will decide and how? How might different forms of social organising impact upon these various issues?

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28. “To a surprising degree, swings in defence stocks have been highly correlated with swings in energy stocks throughout history. The strength of this relationship leads us to believe that defence stocks might now be a cheaper and less volatile way to play the energy complex.”

29. *Industrial College of the Armed Forces, National Defense University, USA, 2007.*  
Industrial College of the Armed Forces, Financial Services Industry – Final Report, US National Defense University, 2007,  
[http://www.ndu.edu/ICAF/Industry/reports/2007/pdf/2007\\_FINANCIAL.pdf](http://www.ndu.edu/ICAF/Industry/reports/2007/pdf/2007_FINANCIAL.pdf)