

1. This second submission to the Joint Committee on Human Rights inquiry into Business and Human Rights addresses the human rights implications of the Government's Draft Bribery Bill May 2009¹ and the Industry and Exports (Financial Support) Bill 2009² for which the Committee requested additional evidence as relevant to its inquiry.

Draft Bribery Bill

2. The Corner House³ welcomes the Joint Committee's inclusion of the Draft Bribery Bill in its Business and Human Rights inquiry. Acts of bribery often infringe upon a wide range of human rights, both directly and indirectly. The Draft Bribery Bill could have a potentially positive impact on human rights if it deters businesses from bribing.
3. There have long been significant gaps in the UK's domestic legislation to prevent and deter bribery. Jack Straw MP, Lord Chancellor, Secretary of State for Justice and "anti-corruption champion", has identified the Bill's aims to:
 - consolidate, remove inconsistencies and fill gaps in the existing criminal law of bribery;
 - reform and modernise the legislation so as to bring transparency and accountability to the UK's international business transactions;
 - make anti-bribery legislation easier for the public to understand and for prosecutors and the courts to apply.

Since December 1999, the OECD Working Group on Bribery has repeatedly urged the UK to enact appropriate anti-bribery legislation as a matter of priority. If the Bill achieves these aims, it could have a positive impact on deterring bribery and thus on human rights.

4. Most large-scale bribery is committed for the benefit and on behalf of businesses. The Draft Bribery Bill (Clause 5) introduces criminal sanctions against corporations that have negligently failed to prevent bribery within their organisations. This could have a positive impact on human rights as long as the sanction is effective. This new offence should not be turned into a civil or regulatory regime for imposing fines on companies but should remain a criminal offence as currently drafted.

5. The offences in the Draft Bribery Bill apply not only to actions taking place in the UK but also to those that take place abroad if they are carried out by a British national, a British resident, a national of a British overseas territory or a body incorporated in the United Kingdom (Clause 7). This extraterritoriality in scope is welcome and could set a precedent for other legislation and public policy (*see* first Corner House submission to this inquiry).
6. Despite these potential positive impacts on human rights, however, the Draft Bribery Bill could also have significant negative impacts on human rights. Major gaps in the legislation could result in well-founded allegations of bribery offences not being investigated properly or prosecuted. If these gaps are not filled, the law may not be applied equally across the board to all, and may even encourage large scale cross-border bribery rather than deter it.

Additional clauses need to be included to ensure that those investigating and prosecuting the bribery of foreign public officials are not influenced by considerations of national economic interest or the potential effect upon relations with another state or the identity of the natural or legal persons involved.

These potential positive and negative impacts are outlined in more detail below.

Bribery and corruption infringe upon a wide range of human rights

7. Bribery and corruption are not victimless crimes. As the UK Secretary of State for International Development said in 2006 on the occasion of the G8 Summit:

“The problem is that corruption, like temptation, exists everywhere, but in poor countries it can kill. Money meant for drugs for a sick child, or to build a hospital, can be siphoned off into overseas bank accounts or to build a luxury house. And poor people fare worse. They have to pay bribes to get healthcare, bribes to get their children a decent education.”⁴

8. For multinationals, bribery enables companies to gain public sector contracts (particularly for public works and military equipment) or concessions that they would not otherwise have won, or to do so on more favourable terms. Such grand corruption diverts public spending away from less lucrative sectors such as health care, education and the maintenance of existing infrastructure towards high kickback areas such as new construction contracts and military supplies.
9. The foreword to the UN Convention Against Corruption (which the United Kingdom signed on 9 December 2003 and ratified on 9 February 2006) states that when funds intended for development are diverted into other areas because of the incentive of bribes and other corrupt practices, a government’s ability to provide basic services is undermined and the whole process feeds inequality and injustice.

The OECD points out that “the diversion of funds through corrupt practices undermines attempts by citizens to achieve higher levels of economic, social and environmental welfare.”⁵

10. Corruption also has profound implications for national security, acknowledged by the leaders of the G8 countries in their final communiqué from the 2006 St Petersburg Summit:

“We recognize that corrupt practices contribute to the spread of organized crime and terrorism, undermine public trust in government, and destabilize economies.”⁶

The Home Office’s 2004 strategy document on combating organised crime notes that:

“Bribery overseas can be a factor which supports corrupt governments, with widespread destabilising consequences.”⁷

11. Corruption is a major feature of “failed states”, contributing to and feeding off the lack of accountable government. Saudi Arabia, for example, was ranked 73rd out of 146 in the 2006 ‘Failed States Index’; corruption has been specifically singled out as contributing to this ranking:

“Although there have been increasing pressures for political reform . . . Saudi Arabia remains an absolute monarchy with little transparency or accountability. In addition to continuing with these reforms, the government needs to address the issue of corruption within the royal family, and work to improve its human rights record.”⁸

Corruption in Saudi Arabia and arms purchases by the Saudi government have prompted some Saudis to embrace a radical interpretation of Islam.⁹

12. In many countries, the work and lives of those who challenge, investigate or report corrupt practices are often endangered.
13. This brief overview indicates that the struggle against bribery and corruption is central to the struggle for human rights. Corruption encourages discrimination, deprives vulnerable people of income, and prevents people from fulfilling their political, civil, social, cultural and economic rights. When bribery and corruption are widespread, people do not have access to justice, are not secure and cannot protect their livelihoods.

Several UN treaty bodies and UN special procedures have concluded that, where corruption is widespread, states cannot comply with their human rights obligations.¹⁰

14. The Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises has included corruption among the abuses of human rights committed by transnational corporations.¹¹

Bribery is a major part of corruption (even though the human rights impacts of corruption extend far wider). Commenting on the bribery behaviour of multinational companies headquartered in OECD countries, the World Bank notes that when they are operating abroad but within the OECD, their behaviour is “very similar to that of their domestic counterparts in the OECD home country”. But when they are operating in non-OECD countries, they “exhibit much lower (often illegal) corporate ethics standards.”¹² The World Bank concludes:

“This speaks to the need not only for tightening the monitoring and enforcement of the OECD Anti-Bribery Convention, but also for implementing complementary measures to change the incentives for bribery abroad.”¹³

The Asian Development Bank similarly identifies the “supply-side” of corruption as a major problem:

“. . . an ‘unholy alliance’ often exists between corrupt officials and corrupt foreign firms, many of whom are based in donor countries. Our policy requires the Bank to address both those who would give bribes and those who would take them.”¹⁴

A first step towards holding to account those who bribe and towards stopping human rights abuses is to criminalise bribery and to make corporations – the major beneficiaries of grand corruption – criminally liable for bribery. The Draft Bribery Bill does this (although there is scope for improvement) and thus could have a positive impact on human rights.

Consolidating, modernising and filling gaps in UK anti-bribery legislation

15. In addition to signing and ratifying the UN Convention against Corruption (UNCAC), the UK also signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“the OECD Anti-Bribery Convention”) on 17 December 1997, for which it deposited its instrument of ratification on 14 December 1998. The essence of the OECD Anti-Bribery Convention is to require an effective domestic remedy against foreign bribery by means of prosecution and enforcement by competent national authorities in accordance with the standards set out in the Convention.
16. Under UNCAC and the OECD Anti-Bribery Convention, the UK committed itself to:
 - criminalising bribery overseas;
 - ensuring effective investigation, prosecution and sanction of bribery and corruption;
 - establishing specialised anti-corruption authorities with sufficient resources and appropriate training to investigate such offences;
 - ensuring that domestic money-laundering and accounting legislation is in place to prevent and detect such offences; and

- providing prompt and full international cooperation.

Given the international nature of many business transactions today, most states agree that international cooperation is needed to create a level playing field for all.

But the UK has been slow to introduce key provisions of the OECD Anti-Bribery Convention into UK law. If the Draft Bribery Bill was to enact in domestic legislation the commitments the UK made internationally over a decade ago, it could have a significant positive impact on deterring bribery and thus on human rights.

Negligently failing to prevent bribery within a commercial organisation should be a criminal offence

17. Clause 5 of the Draft Bribery Bill creates an offence of negligently failing to prevent bribery committed in connection with a commercial organisation's business. This Clause should be a criminal offence, as currently drafted, and should not be turned into a civil or regulatory regime for imposing fines on companies. Its positive human rights implication would be lessened if it was weakened in this way. Moreover, to repeat: bribery is not a victimless crime; it kills.
18. Bribes are invariably paid by an employee or individual for company benefit and advantage, if not with company facilitation and knowledge, rather than solely for the employee's or individual's personal gain. As the Serious Fraud Office has noted:

“... it is in the pursuit of corporate objectives that individual employees use bribes. Individuals do the bribing, corporations benefit. Thus to sideline the key player/offender is to ignore the essence of the problem. This is not a case of an offence which sometimes corporations also commit, such as for example fraud or even manslaughter. The mischief at which the bribery offences are directed is almost entirely confined within business activity . . . ”¹⁵

As such, it is the company that should face criminal liabilities for the criminal offence of bribery.

Imposing a civil or regulatory scheme of fines would send a message that bribing and its attendant fines are simply the cost of doing business abroad. It might also encourage companies based in those countries that do have corporate criminal liability to channel their bribes through their UK-registered subsidiaries and affiliates.

19. It would be preferable for corporate criminal liability to be introduced across the board for all criminal offences. But it is unclear when the Law Commission's ongoing review of corporate criminal liability for criminal offences will be completed and its recommendations followed up by Government.¹⁶

The OECD Working Group on Bribery recommended in October 2008 that “the UK adopt appropriate [anti-bribery] legislation on a high priority basis *irrespective of any broader reform efforts on corporate liability*”.¹⁷

Given that the UK has not introduced an effective regime against corporate bribery with dissuasive sanctions despite signing and ratifying the OECD Anti-Bribery Convention more than ten years ago, The Corner House does not believe that corporate criminal liability for bribery should be left any longer.

When the Law Commission’s review is completed, however (and depending on its conclusions, recommendations and Government follow-up), there should be scope to improve the Clause 5 offence of corporate failure to prevent bribery and bring it into line with overall corporate criminal liability.

The extraterritorial scope of the Draft Bribery Bill could set a precedent for other UK legislation and public policy

20. Clause 7 of the Draft Bribery Bill concerns the territorial application of the various bribery offences created in the Bill. Its effect is to give UK courts jurisdiction to prosecute acts of bribery committed abroad by British nationals, British residents, nationals of a British overseas territory or a legal body incorporated in the United Kingdom. For the purposes of the offence of failure of a commercial organisation to prevent bribery, it is immaterial where the conduct element of the offence occurs.
21. The extraterritoriality aspect of bribery had already been introduced by means of Part 12 of the Anti-Terrorism, Crime and Security Act 2001, which gave UK courts jurisdiction over crimes committed abroad by UK nationals and UK companies under the existing law governing domestic bribery. Clause 7 extends these provisions to persons ordinarily resident in the UK, irrespective of their nationality. But UK corporate subsidiaries or affiliates not incorporated in the UK are still not included within the draft legislation.
22. Despite this loophole, the application of UK law to offences committed outside abroad by UK nationals, residents and companies is a welcome step forward. As Jack Straw stresses in his Foreword to the Draft Bribery Bill:

“As . . . all economies become increasingly more inter-reliant, we must ensure that the law provides our courts and prosecutors with the tools they need to tackle bribery effectively, *whether it occurs at home or abroad*”.¹⁸ (emphasis added)

Similarly, the Home Office’s 2004 strategy document on combating organised crime stated that:

“Bribery overseas can be a factor which supports corrupt governments, with widespread destabilising consequences. We are duty-bound to promote high standards of fairness and integrity and *to ensure that UK*

citizens do not contribute to corruption either at home or abroad."¹⁹
(emphasis added)

23. As noted in The Corner House's first submission to the Joint Committee's Business and Human Rights inquiry, the extraterritorial dimension of the State's duty to protect human rights is unsettled in international law. States are not prohibited from regulating the extraterritorial activities of businesses incorporated in their jurisdiction – but they are not required to do so either.

In contrast, the two major international anti-bribery agreements – the UN Convention Against Corruption and the OECD Anti-Bribery Convention – both require signatory states to criminalise bribery in their jurisdictions even when the act took place outside their jurisdictions.

24. Without this extraterritorial dimension, many businesses would remain unpenalised for bribery offences in which they are implicated. The Corner House believes that the precedent set by the UK's willingness to accept extraterritoriality in relation to the crime of bribery offers an opportunity to strengthen domestic human rights legislation.

Well-founded allegations of foreign bribery offences may not be investigated properly or prosecuted unless the Draft Bribery Bill contains additional clauses

25. Cross-border corruption is notoriously difficult to tackle. This is particularly so if the bribed foreign public official is senior in status and is in a position to blackmail or otherwise threaten adverse consequences if his/her conduct is exposed through an investigation or prosecution or to protect the interests of the company or individual that bribed.

Tackling cross-border corruption is particularly difficult if the bribing company, or individual acting on a company's behalf, is able to exert undue or improper influence over those investigating and prosecuting bribery, or is able to persuade others to exert such influence, such as other public officials, whether domestic or foreign. Larger companies are more likely to be in a position to exert such influence than are small and medium enterprises (SMEs).

Investigators, prosecutors and the Courts need to have legislative, Parliamentary and Executive support and backing to resist such threats, blackmail or other undue or improper influence. Without such backing, the demands of *realpolitik* often mean that bribery investigations and prosecutions do not take place or are terminated. If investigators, prosecutors and the courts capitulate to such threats, blackmail or influence, the end result is that bribery flourishes.

In its 2009 report, *Corruption and Human Rights: Making the Connection*, the International Council on Human Rights Policy and Transparency International stresses that:

“Political interference in the judicial system occurs when those in political power use their influence (including threat, intimidation or bribery) to force or induce a judge (or other court official) to act and rule according to their interests and not in accordance with the application of the law.”²⁰

26. The current legal situation in the UK is that bribery investigators and prosecutors can legally abandon an investigation into or prosecution of the criminal offence of bribery overseas allegedly instigated by a UK corporate body or individual if they perceive that the investigation or prosecution might affect the UK’s national economic interest, or the UK’s relations with another country, or because the person or company being investigated has a high profile or position of influence. Article 5 of the OECD Anti-Bribery Convention states that bribery investigators and prosecutors must not take into account these considerations.²¹ The Draft Bribery Bill does not change or address this situation.

This legal status was made clear as a result of the House of Lords ruling in the Appeal of the Director of the Serious Fraud Office against the High Court judgment of the judicial review application brought by The Corner House and Campaign Against Arms Trade of the Director’s decision to stop the investigation into BAE System’s alleged corruption in arms deals with Saudi Arabia.²²

27. As a result, all foreign states and officials know that they can dispose of an embarrassing or awkward bribery prosecution in the UK and protect the interests of the company that purchased their cooperation through the bribe if they can construct a credible threat to the UK’s economic interest or diplomatic relations.

The more ruthless and powerful the recipient of the bribe, the less likely that the bribe payer will ever be prosecuted. As larger companies are more likely than small and medium enterprises to have “friends in high places” who can bring sufficient pressure to bear, the notion of equality before the law is turned on its head.

28. As UK companies become aware that investigations into bribing a foreign public official can be scotched in the UK if they might be construed as jeopardising relationships with another country or the UK’s interests, some companies may believe that they can bribe with impunity. In the current economic recession and resulting higher unemployment, arguments about potential job losses, or loss of orders and contracts may be more persuasive and readily accepted as reasons not to investigate or prosecute.
29. Knowing that an investigation or prosecution of a foreign bribery allegation can be scuppered in the UK may also encourage foreign public officials to demand bribes from UK companies, UK nationals and UK residents. It may also encourage companies based in countries that do investigate and prosecute bribery more thoroughly to channel their bribes through the UK.

30. It could therefore be said that, unless additional clauses are included in the draft Bribery Bill, the proposed legislation could have the bizarre effect of encouraging bribery of foreign public officials rather than having a preventive effect.
31. The new Bribery law needs to lead to both effective enforcement and to have a preventative effect. The Corner House believes that additional clauses must be included in the draft Bill requiring that considerations of national economic interest, relations with other states or the identity of the persons at issue shall not influence decisions to investigate or prosecute the new criminal offence of bribery of foreign public officials. Such clauses would directly and expressly implement Article 5 of the OECD Anti-Bribery Convention into UK law.
32. Without such additions, the new law will not lead to effective enforcement or have a preventative effect – rather the reverse. There is a high risk that it will not in practice be applied to those for whose benefit and on whose behalf most large-scale bribery and corruption crime is committed: companies.

Without these additional clauses, the inclusion of the new offence in the draft Bribery Bill will, at best, amount to little more than a box-ticking exercise encompassing just a part of the OECD Anti-Bribery Convention and will make little practical difference to tackling large-scale bribery; at worst, it will allow bribery in international business transactions to flourish.

If this regulatory gap is not plugged, grand corruption carried out by businesses will continue to have a detrimental impact on human rights.

Industry and Exports (Financial Support) Bill

33. The Industry and Exports (Financial Support) Bill amends section 1(1) of the Export and Investment Guarantees Act 1991, the founding Act of Parliament of the Export Credits Guarantee Department (ECGD). It does so in a manner that The Corner House considers to be entirely negative.

Under the Bill, the Export Credits Guarantee Department (ECGD) is permitted to approve support for exporters retrospectively.²³ Where an exporter has already supplied parts for, say, an oil pipeline, the ECGD is permitted to approve support for these parts even though they have already been supplied. Before this Bill, ECGD could grant support only when the goods and services had not been exported and thus where it was “facilitating” the export.

34. The Government has given an undertaking that any retrospective financing by ECGD will be subject to the Department’s social and environmental safeguard policies (as outlined in The Corner House’s first submission to the Joint Committee’s Business and Human Rights inquiry) – albeit after the event.

But retrospective financing would render the ECGD’s (already weak) human rights policies and procedures toothless. Such procedures are all that currently stands in the way of ECGD backing projects that have a potential negative impact on human rights and the environment.

Social and Environmental Impact Assessment is a pro-active tool intended to identify potential harm *before* any damage is done. Retroactive assessment defeats its very purpose.

Indeed, the World Bank, to whose safeguard policies ECGD-backed projects are expected to conform, explicitly requires assessments to be completed prior to financing being agreed. Retrospective financing therefore places ECGD in breach of its own stated standards and international undertakings.

35. With the ECGD under pressure to “get money out of the door” to ease exporters’ difficulties because of the “credit crisis”, there is a danger that projects will be rubber stamped without difficult questions being asked if retrospective financing is permitted.
36. When ECGD tried to apply procedures retrospectively in 2000 in order to finance the controversial Ilisu Dam in south-east Turkey, which would forcibly displace up to 78,000 ethnic minority Kurds, Parliament’s International Development Committee was scathing:

“There is good reason for the expectation that relevant international criteria should be met *before* a proposal is agreed and cover sought – it is a sign of political will, institutional capacity, developmental commitment and good faith.”²⁴

The Corner House
30 June 2009

Endnotes

1. <http://www.justice.gov.uk/publications/docs/draft-bribery-bill-tagged.pdf>

2. <http://www.publications.parliament.uk/pa/cm200809/cmbills/070/09070.i-i.html>

<http://services.parliament.uk/bills/2008-09/industryandexportsfinancialsupportbill.html>

3. The Corner House has a track record of detailed policy research and analysis on overseas corruption and on corporate accountability. See: <http://www.thecornerhouse.org/uk/corruption>

It has also brought two judicial reviews on corruption-related decisions by public bodies: one, by the Export Credits Guarantee Department to weaken in November 2004 its rules aimed at reducing corruption; the other by the Director of the Serious Fraud Office (SFO) in December 2006 to terminate the SFO investigation into alleged bribery and false accounting by BAE Systems in relation to the Al Yamamah deals with Saudi Arabia.

See:

– “Corner House Double Victory on UK Government Department’s Anti-Bribery Rules and Public Interest Litigation”, 25 January 2005, <http://www.thecornerhouse.org.uk/item.shtml?x=107362>.

– <http://www.controlbae.org>.

4. Hilary Benn, Secretary of State for International Development, Holyrood, Edinburgh, 22 June 2006, ‘Governance and Development’,

<http://www.dfid.gov.uk/news/files/Speeches/governance-development.asp>

5. OECD Directorate for Financial, Fiscal and Enterprise Affairs, 'The OECD Guidelines for Multinational Enterprises: Text, Commentary and Clarifications', DAF/IME/WPG(2001)15/Final, [http://www.oilis.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/d1bada1e70ca5d90c1256af6005ddad5/\\$FILE/JT00115758.PDF](http://www.oilis.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/d1bada1e70ca5d90c1256af6005ddad5/$FILE/JT00115758.PDF).

6. G8, 'Fighting High Level Corruption', July 2006, available at <http://en.g8russia.ru/docs/14.html>

7. Home Office, 'One Step Ahead: a 21st Century Strategy to Defeat Organised Crime', March 2004, available at <http://www.archive2.official-documents.co.uk/document/cm61/6167/6167.pdf>.

8. Fund for Peace, 'Saudi Arabia', http://www.fundforpeace.org/publications/profiles/cp_saudi_arabia.pdf.

9. A *fatwa* issued by Osama bin Laden in 1996, entitled "Declaration of War against the Americans Occupying the Land of the Two Holy Places", cites corruption in Saudi Arabia and arms purchases by the Saudi government as major justifications for his call for a Jihad not only against the United States but also against the Saudi Royal family.

See: Online News Hour, 'Bin Laden's Fatwa', August 1996, http://www.pbs.org/newshour/terrorism/international/fatwa_1996.html.

Authoritative accounts of the genesis of Al Qaeda underline the role that corruption played in motivating key figures in the network. For example, Jason Burke in his book *Al Qaeda: The True Story of Radical Islam* cites the "obvious corruption and ostentation on the part of the elite and government officials" as two of the underlying "root causes of the appeal of the Islamic radicals" in Egypt following the 1981 assassination of President Sadat.

See: Jason Burke, *Al Qaeda: The True Story of Radical Islam*, Penguin, 2004, p.153.

10. "States face serious problems of corruption, which have negative effects on the full exercise of rights covered by the Covenant [ICESCR]"
Committee on Economic, Social and Cultural Rights, E/C.12/1/ADD.91, 2003, para. 12.

The Committee on the Rights of the Child "remains concerned at the negative impact corruption may have on the allocation of already limited resources to effectively improve the promotion and protection of children's rights, including their right to education and health."
CRC/C/COG/CO/1, para 14.

Statement by the UN Special Rapporteur on independence of judges and lawyers,
E/CN.4/2006/52/Add.4. para 96.

11. UN. Doc. E/CN.4/2006/97, paras. 25-27.

12. Kaufman, D., "Corruption, Governance and Security: the challenges for the Rich countries and the world", in World Economic Forum, Global Competitiveness Report, September 2004, chapter 2, p.92, http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Kaufmann_GCR_101904_B.pdf

13. Ibid., p.98.

14. Asian Development Bank, "ADB/OECD Conference on Combating Corruption in Asian and Pacific Economies", <http://www.adb.org/documents/speeches/1999/ms1999012.asp>

15. Serious Fraud Office, written response to the Law Commission's consultation on anti-bribery legislation, quoted in para 75, OECD Working Group on Bribery, *United Kingdom: Phase 2bis, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 16 October 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.

16. <http://www.lawcom.gov.uk/1150.htm>

17. After para 92, page 25, OECD Working Group on Bribery, *United Kingdom: Phase 2bis, Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions*, 16 October 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.

18. Jack Straw MP, Lord Chancellor and Secretary of State for Justice, “Foreword”, *Bribery: Draft Legislation*, Ministry of Justice, 25 March 2009, p.4, <http://www.justice.gov.uk/publications/docs/draft-bribery-bill-tagged.pdf>.

19. Home Office, ‘One Step Ahead: a 21st Century Strategy to Defeat Organised Crime’, March 2004, available at <http://www.archive2.official-documents.co.uk/document/cm61/6167/6167.pdf>.

20. International Council on Human Rights Policy and Transparency International, *Corruption and Human Rights: Making the Connection*, Geneva, Switzerland, 2009, p. 37, http://www.ichrp.org/files/reports/40/131_web.pdf

21. Article 5 of the OECD Anti-Bribery Convention is intended to remove barriers to the investigation and prosecution of international bribery and corruption:

“Investigation and prosecution of the bribery of a foreign public official . . . shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.”

Signatories to the OECD Convention agree not to accede to diplomatic threats and other forms of blackmail commonly used to frustrate embarrassing international bribery prosecutions in exchange for a similar promise by other states. If all signatory countries maintain the same common high standard of refusing to abandon bribery investigations and prosecutions on the basis of diplomatic and economic threats (real or bluffed), all states ultimately benefit. Each country agrees to limit its freedom of action in individual cases in order to secure long-term benefits for all. To do so, uniformity of interpretation of the Convention and of enforcement is essential.

22. “R (Corner House Research & Campaign Against Arms Trade) v Director of the Serious Fraud Office [2008] 3 WLR 568”, *Opinions of the Lords of Appeal* by Lord Bingham, Lord Hoffmann, Lord Rodger, Baroness Hale and Lord Brown, 30 July 2008, <http://www.thecornerhouse.org.uk/pdf/document/Lords-Judgment.pdf>.

For background to the judicial review and other key legal documents, see: <http://www.controlbae.org>

In October 2008, the OECD Working Group on Bribery highlighted the “inadequate status of Article 5 in the domestic legal order”(p.95) governing both investigations and prosecutions of alleged foreign bribery. It concluded that:

“ . . . Article 5 must be equally applicable in all member states of the Working Group. Because the Article addresses investigation and prosecution decisions taken in the domestic legal order, it must apply with full force and effect in that sphere, both as a practical and legal matter, in order for its purposes to be achieved.

“ . . . The lead examiners accordingly recommend that the UK take all necessary measures to ensure that Article 5 applies to all investigation and prosecution decisions in foreign bribery cases.”

(After paragraph 108, *OECD United Kingdom: Phase 2bis Report*, 16 October 2008, <http://www.oecd.org/dataoecd/23/20/41515077.pdf>.)

23. Industry and Exports (Financial Support) Bill 2009, Clause 2: Assistance in connection with exports of goods or services:

(1A) “Arrangements under subsection (1) may be made in connection with goods or services supplied before the arrangements are made . . . ”

<http://www.publications.parliament.uk/pa/ld200809/ldbills/039/09039.i-i.html>

24. International Development Committee, Sixth Report, *ECGD, Developmental Issues and the Ilisu Dam*, House of Commons, The Stationery Office, 6 July 2000, p.vii.

The UK consortium seeking ECGD support for the proposed Ilisu Dam eventually withdrew its application, admitting that the Dam did not meet international standards.