

Submarines and sex sink Najib
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It is worthy of a spy novel and has all the elements of a crime thriller - sex, scandal, sabotage involving models, fast cars, Swiss bank accounts and clandestine dealings from Paris to Putrajaya, Chile to Cherbourg and Mazagon to Macao.

suaram french submarine case 280410 lawyer joseph breham 03The only difference is that the talk by the French lawyer Joseph Breham (left) in London last Friday, Sept 30, was not a work of fiction but was centred around the Malaysian government and its dealings with French politicians over the sale of submarines and weapons.

Allegations of corruption to secure a sale and the cover-up of the corruption have serious implications for the citizens and governments of both nations.

Although details of the case are mired in secrecy for the time being, the reaction of the Malaysian government has veered from mild indifference, when it refused to order an investigation into the irregular dealings surrounding the submarine sales, to abject panic, when the French lawyer William Bourdon, who was also handling the complaint on behalf of the Malaysian NGO Suaram, was deported from Malaysia last July.

Breham who is a part of the Solicitors International Human Rights Group (SIHRG), together with Suaram's director, Cynthia Gabriel, presented the latest findings on the high-profile investigation into kickbacks allegedly paid by the French state-owned shipbuilder, DCN, to Malaysian officials, including Prime Minister Najib Abdul Razak.

The talk was poorly attended, despite the importance of this chapter of Malaysian history. A group of 50 people turned up and Najib might take comfort from this, and think that no one really cares about the outcome of the Scorpene trials.

Najib made the fall guy?

NONEIt is possible that Najib might be relieved. On the other hand, he might be saddled with the thought that the trial, which might only happen in the next two to five years, is reason enough for the chief puppeteer, former Prime Minister Dr Mahathir Mohamed, to make him the fall-guy, for sake of party unity, before GE-13.

Suaram had requested French lawyers to file a complaint against DCN in Paris in December 2009 and again in February 2010.

During the talk, Breham presented the developments in the corruption case whilst Gabriel provided the setting of the case in the wider context of corruption involving Malaysian government officials.

Breham said that the Scorpene-class of diesel submarines sold by DCN to India, Pakistan, Chile and Malaysia were all mired in controversy. There have been several deaths in Taiwan and Pakistan.

A Taiwanese naval officer who was about to divulge secrets about the deal, died in mysterious circumstances. In Karachi, several French engineers died in what was initially thought to be an Al-Qaeda plot but was later believed to be the work of the Pakistan military brass, in retaliation for their kick-backs being withheld.

Braham explained that DCN often use eight to 12 percent of its total receipts as "commission" - another word for corruption. However, in this particular sale, Malaysia paid around US\$1.5 billion to buy two Scorpenes and one declassified submarine for training.

Another US\$114 million had been paid to Perimekar for "supporting the contract", another euphemism for unexplained costs, and also for "housing the crew" of the submarine, in France.

Braham expressed incredulity that such a vast sum of money could be paid to Perimekar, a company with close links to the then defence minister, who is now the PM, Najib Abdul Razak.

Around 30 percent of the shares in Perimekar are held by KS Ombak Laut Sdn Bhd, a company that was set-up just before the payout of US\$114 million and has done little since.

abdul razak baginda altantuya murder 141108 Perimekar's main shareholder is a woman, whose husband is Razak Baginda, Najib's confidante. Razak was charged with and acquitted of the murder of translator Altantuya Shaaribuu.

Braham likened the US\$114 million obtained by Ombak Laut with the total amount of money paid by France to all of its primary school teachers for one year.

He also revealed that the former finance director of DCN had written memos, in which he alleged that US\$31 million out of the US\$114 million had been used for "commercial engineering", a term Braham acknowledged held no meaning.

Braham said that in France, before 2002, any money used to bribe foreign officials was tax deductible. When the former finance director of DCN made a claim for the US\$31 million used to bribe the Malaysians for the purchase of the Scorpenes, the Minister of Budget questioned such a large bribe, although he did eventually authorise the tax break.

The French lawyer then mentioned a possible third commission, which arose because of the different mechanisms with which submarines dived in hot and cold water.

The Malaysian submarines had to be modified to operate in tropical waters and this meant altering the technical specifications. A variation order was made which incurred a further US\$2.5 million.

military malaysia navy french built submarine scorpene class Braham concluded that the only doubt about the US\$114 million payment, which is reflected in Perimekar's financial statements, was whether the payment was for valid reasons or unethical ones.

However, when the Organisation for Economic Cooperation and Development (OECD) convention was signed, it became a crime to bribe foreign public officials in international business transactions. Therefore, the alleged bribery by a French company of Malaysian officials became an offence under French law.

Suaram had approached the French lawyers with evidence from the French Hansard. The French lawyers approached the French judges with this.

The French legal system is different from Britain's or Malaysia's. There has to be a preliminary enquiry run by the prosecutor. The prosecutor in France is under the control of the Minister of Justice. As long as the case is under preliminary enquiry, no one has access to the files, so that any information the police have obtained cannot be shared.

Criminal and civil trials to be held

In April 2010, Suaram filed a 'plainte avec constitution de partie civile' complaint, which is a criminal prosecution with a concurrent independent action for civil damages.

The result of this, is that there will be two trials: One is a criminal trial and the second is a civil trial for compensation.

This has two great advantages. First, an independent instruction judge is appointed for the civil case. Second, Suaram becomes a party to the case and it can then have access to all the files about the case and can ask questions of the instruction judge and request that he investigates on its behalf.

There is a huge struggle in France between the prosecution and the instruction judge. President Sarkozy is also under question from "Karachigate" and he wants to avoid the appointment of an instruction judge, in this case. The political power in France wants to erase the instruction judge so that it can keep these huge cases under control.

Nevertheless, both Breham and Suaram are confident that an instruction judge will be appointed before the end of this month.

Breham says that unlike a prosecutor, this independent judge has investigative powers to subpoena officials from DCN, and access documents in the DCN offices to obtain evidence of commissions. The judge can also request "mutual criminal assistance" from the Malaysian authorities for purposes of information and cooperation.

The instruction judge could make inquiries about plane tickets and immigration details and could investigate the politicians with whom Altantuya travelled to Macau.

He could also ask why Malaysian officials forgot about the maintenance contract for the submarines.

He could question why the Malaysians omitted to buy weapons for the submarines, one of which one cannot dive.

The Malaysian government may not comply with the requests of the instruction judge, but the Malaysian government is not the only possible source of information.