

Investigating Judges Named in Malaysia Submarine Graft Case
Asia Sentinel
March 18, 2012
By Celine Boileau and John Berthelsen

French case draws closer to Malaysian officials

Two magistrates have been nominated in Paris to investigate the politically explosive 2002 purchase of Scorpene submarines by the Malaysian Ministry of Defense when Najib Tun Razak was Defense Minister.

The case focuses on a 1.2 billion euro contract called a "programme soumalais" with the state-owned French defense giant DCNS, formerly known as DCN. The contract was later transferred to Armaris, a joint venture between DCNS and the French company Thales. In questioning in the Dewan Rakyat, the Malaysian Parliament, it transpired that a €114 million (US\$150 million at current exchange rates) commission had been paid to a newly-minted company called Perimekar Sdn Bhd, nominally owned by the wife of one of Najib's best friends, Abdul Razak Baginda, then the head of a Malaysian think-tank.

It is likely to take several years before the case comes to fruition. In the meantime Najib, now Malaysia's prime minister and head of the United Malays National Organization, the country's biggest political party, is preparing for snap elections, possibly in May or June, according to political observers in Kuala Lumpur.

At the heart of the story are allegations of a massive scandal involving not only Malaysian officials but top French politicians and arms purchases in Pakistan, Taiwan, India, Chile, Argentina, Saudi Arabia and other countries as DCNS geared up to sell naval equipment across the planet. The allegations include blackmail, kickbacks, a string of murders in Pakistan, Taiwan and Malaysia and involvement of such top figures as former French Prime Minister Edouard Balladur and others.

Other magistrates are handling different aspects of the affair. One, called "l'affaire Karachi," has raised suspicions of the involvement of the current French President Nicholas Sarkozy, who faces a difficult re-election campaign. Sarkozy has angrily denied any involvement. In that case, the deaths of 11 French engineers who were blown up in Karachi was first laid to a bomb set by Al Qaeda. However the bomb was later believed to have been set off by Pakistani military officials angered because the French had reneged on bribes promised by Balladur but cancelled by Jacques Chirac after he defeated Balladur for the presidency.

Judges investigating the affair have been probing whether Balladur received "retro commissions" or kickbacks for the contract. Balladur has given no credible explanation for 10 million French francs (€1.5 million) which found their way into his campaign coffers. Sarkozy was his campaign finance minister at the time.

In accordance with the French legal system, the Malaysia case has first been the subject of a preliminary survey from the financial division of the legal police. So the appointment of the two investigating judges, Serge Tournaire and Roger Le Loire, follows more than two years of investigation. The two are known for previous investigations on national and international corruption matters. They have broader powers to investigate independently and can call witnesses and conduct international surveys.

According to financial statements, the cost of the program was divided into four contracts:

- The contrat Scorpene, about €670 million, for two Scorpene submarines, built in France and Spain, and delivered in July 2009 and July 2010 ;
- The contrat Formation, signed in 2003, to train 156 submariners over four years.
- The contrat Ouessant for the rehabilitation of an Agosta-type submarine which has never seen service and is now a museum in Malaysia. The two together amount to 313 million euros/
- The contrat Malsout, provided logistics for the installation of Malaysian navy personnel, over 200 people located in Brest and Cherbourg, from December 2002.

The payment of bribes -- called commissions in this case -- to foreign public officials as part of international contracts has been illegal in France since the ratification of the Organization for Economic Cooperation and Development Convention on bribery of September 2000.

Since the beginning of the probe, bribes amounting to €32.5 million have been investigated, authorities say.

In other cases involving DCNS, particularly the Karachi one, Nicholas Bazire, 54, the best man at Sarkozy's wedding to supermodel Carla Bruni, was arrested and charged with misuse of public funds in Balladur's 1995 presidential campaign. Another friend, Thierry Gaubert, Sarkozy's cabinet chief when he was budget and communication minister, was arrested earlier.

Sarkozy is seeking avoid the appointment of an instruction judge in other aspects of the DCN case.. But the political knives may be out, especially if Sarkozy loses the presidential election. Having been named in the press in the Karachi case, observers in Paris say he could use the Malaysian case as a weapon against the Socialists. Currently his Socialist opponent, Francois* Hollande, leads him by 10 percentage points. The first round of voting is to be held in May.

The case also holds obvious political implications for Najib. A former DCN financial director, questioned in another case, alleged that the Malaysian case violated the OECD bribery convention. The Malaysian end of the episode has received widespread publicity, not just because of the €114 million commission paid to Razak Baginda's company, but because of the gruesome murder of Altantuya Shaariibuu, a Mongolian translator and party girl, who was killed in 2006 by two of Najib's bodyguards and whose body was blown up with military explosives in a patch of jungle outside Shah Alam.

Razak Baginda's jilted lover, Altantuya was believed to have served as a translator in at least some of the negotiations over the submarines and is believed to have accompanied Razak Baginda and Najib to France. In a note found after her death, she said she was attempting to blackmail Razak Baginda for US\$500,000. Najib has sworn on the Quran that he never met the woman.

The two bodyguards were found guilty of murder and sentenced to hang. Although Razak Baginda was arrested along with the two, he was freed without having to put on a defense and immediately left the country for England. The appeal of the two bodyguards has droned on for more than two years and has been delayed again until August, after

expected

elections.

The French judges face many difficulties. During a police search of the DCNS offices few files were allowed to be opened. Most remain closed on the pretext that they contain military secrets.

Moreover, no DCNS cases have yet been completed. Unlike in the United States, no plea bargaining is allowed. The judges are almost certain to face industry opposition, particularly in this case, which made Malaysia DCNS's first export customer.

The judges may also face political opposition despite their independence. The Scorpene contracts spanned a long series of governments – prepared with the approval of the government of the Socialist Party, signed under the conservative Union pour UN Mouvement Populaire government of then-Prime Minister Jean-Pierre Raffarin. Jacques Chirac was the president of both governments. Suspicions of illegal kickbacks -- "retrocommissions" – will complicate the problems.

The investigation, however, should finally allow investigators to confront the complexity of the financial circuits used by companies. Since the ratification of the OECD Convention, companies have thought twice about diverting commission payments directly to foreign public officials, steering payments through foreign subsidiaries (Armaris had a subsidiary in Kuala Lumpur) or through intermediaries.. However, the 2007 law made it clear that none of these remedies would allow companies to bypass justice.

According to the 2007 French law, conviction for bribery is subject to up to 10 years in prison and a fine of 150,000 euros.

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