



Second Report
from the
Foreign Affairs Committee

Session 1998-99

Sierra Leone

Response of the Secretary of State for
Foreign and Commonwealth Affairs

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 1999*

**SECOND REPORT FROM
THE FOREIGN AFFAIRS COMMITTEE**

SESSION 1998-99

SIERRA LEONE

**RESPONSE OF THE SECRETARY OF STATE FOR FOREIGN AND
COMMONWEALTH AFFAIRS**

1. The Government has studied the Foreign Affairs Committee's Second Report on Sierra Leone HC 116 (1998-99) and taken careful note of its conclusions.

2. The Government recalls the conclusions of the earlier independent investigation by Sir Thomas Legg and Sir Robin Ibbs: that no Minister gave encouragement or approval to Sandline's plan to send a shipment of arms to Sierra Leone in contravention of the UN arms embargo and that none had effective knowledge of it; and that no official working in the Foreign and Commonwealth Office (FCO) gave any encouragement or approval. The Government welcomes the fact that, having conducted its own inquiry, the Foreign Affairs Committee Report does not challenge these conclusions.

3. The Government has nevertheless acknowledged that mistakes were made over the Sandline affair. The Legg investigation identified these and made recommendations intended to avoid any repetition. The Government accepted all of Sir Thomas Legg's and Sir Robin Ibbs' conclusions (the Foreign Secretary's statement to the House on 27 July 1998) and has implemented their recommendations. It follows that where the Foreign Affairs Committee Report repeats these criticisms and conclusions, the Government has already acted on them.

4. Sir Thomas Legg and Sir Robin Ibbs found that all the officials concerned were loyal and conscientious, and they expressed the hope that their Report would close the chapter as far as officials were concerned. The Foreign Secretary fully agrees. He has noted in particular that they referred the allegations of criminal activity to the proper authorities, and gave them the fullest access to officials and papers; and that the Permanent Secretary was scrupulous in ensuring that there was no cover up, while initiating the appropriate internal investigation.

5. The Foreign Affairs Committee made a series of conclusions and recommendations for the future. The Government has already acted on many of these, following the Legg Report. Thus there are already in place new procedures to improve communications inside the FCO; new FCO guidelines for contacts with private military companies; new arrangements for the handling of intelligence; new measures targeted at the rigorous enforcement of sanctions; new guidelines on briefing Ministers, including for appearances before Parliament; and a wider programme of FCO modernisation involving sixty separate initiatives.

6. The Foreign Affairs Committee has made a series of specific Conclusions and Recommendations. The Government's views on these are as follows (the paragraphs referred to are those in the Summary of Conclusions and Recommendations):

Paragraph 1. The UK Mission to the UN always does its utmost to ensure clarity of drafting of Security Council resolutions and to minimise the risk of misinterpretation. However, Security Council resolutions are necessarily the product of negotiation and compromise and from time to time it may be necessary to support a text which may be imperfect in its drafting but in line with Government policy.

Paragraph 2. The FCO has already acted to improve the communication to all relevant posts of the full extent of any arms embargo.

Paragraph 3. The Government is willing to keep the working of the United Nations Act 1946 under review and to report Orders under it to the Foreign Affairs Committee as soon as they have been made by Her Majesty in Council. It draws attention however to the fact that the legislative intention behind the Act is that Security Council resolutions of the kind in question are binding in law and must be implemented by Member States, and that the timing of implementation can often be vital (as with the sanctions imposed on Iraq on its invasion of Kuwait). Application of affirmative procedure to sanctions Orders would put the United Kingdom in breach of its international obligations if an Order is not approved.

Paragraph 4. The FCO has already acted on this recommendation following the Legg Report.

Paragraph 5. The Government already informs Parliament of all changes in arms embargo policy. Since March 1997 the FCO has placed in both Libraries of the House a list of the UK's commitments regarding the application of strategic export controls, including arms embargoes. This has been updated on a regular basis. It will shortly be replaced with a more detailed list of all sanctions, including arms embargoes, observed by the UK. The new list will include references to all implementing legislation and will be deposited in both Libraries of the House and made available on the FCO web-site. It will be regularly updated.

Paragraphs 6 and 7. We note the Committee's views, which are consistent with the information available to the FCO.

Paragraph 8. The Government accepts the recommendation. For reasons of consistency the Government believes that the requirement for written licences should be included in all relevant Orders in Council under the United Nations Act 1946, not only in those dealing with arms embargoes. The requirement will also be made to the Export of Goods (Control) Order 1994 and the Dual-Use and Related (Export Control) Regulations 1996.

Paragraphs 9 and 10. The FCO accepts the recommendation in paragraph 10. Mr Penfold was accredited to a state whose legitimate government had gone into exile. He was in the unique position of being based in the same location as that government, where there was no permanent UK mission. One of the lessons of this case is that it may be unwise to repeat that precedent.

Paragraph 11. The FCO accepts this recommendation and it is already in effect.

Paragraphs 12, 13 and 14. These matters were fully addressed in Sir Thomas Legg's and Sir Robin Ibbs' Report. The Report concluded that Mr Penfold gave the Sandline project a degree of approval, and that he had no authority to do so. The Foreign Secretary has accepted the conclusions of the Report in their entirety.

Paragraphs 15 and 20, first section. We do not believe that there is any general problem in this regard. Nevertheless, we shall take every appropriate opportunity to recall to the Service their responsibility to Ministers and through them to Parliament and to impress on them that scrupulous observance of these responsibilities is expected of all its members.

Paragraphs 16, 17 and 24. These matters were also fully addressed in Sir Thomas Legg's and Sir Robin Ibbs' Report. The Report concluded that Africa Department (Equatorial) officials consistently sought to fulfil the Government's policy of seeking the return of President Kabbah's government by peaceful means. At no time did they advocate or authorise actions in breach of the law, or seek to conceal information from Ministers. The Foreign Secretary rejects any suggestion that officials failed in their duty to Ministers.

Paragraph 18. As the Foreign Affairs Committee knows, the FCO has already acted to improve the quality of briefing for Ministers following the Legg Report. All Government Departments are conscious of the need to support their Ministers to meet their requirements under the Resolution of the House carried on 19 March 1997.

Paragraph 19. The Foreign Secretary has full confidence in the Permanent Secretary. As Sir Thomas Legg and Sir Robin Ibbs point out (paragraphs 6.65, 6.66), the allegations against officials by Sandline International were reported immediately and simultaneously to

Ministerial and senior management level, including the Permanent Secretary, on 3 April 1998. The Permanent Secretary discussed the allegations that same day with the FCO Legal Adviser and Chief Clerk, and arranged for an immediate scrutiny of the relevant files to begin. The preliminary results of that scrutiny were produced on 16 April; further questions were asked by the FCO Legal Adviser; and the results were submitted to Ministerial offices on 24 April, the day that the Berwin letter arrived. In initiating this thorough internal scrutiny, the Permanent Secretary was concerned to ensure that Ministers should have a full and accurate picture of the situation, while avoiding the risk of cutting across HM Customs and Excise enquiries. The Foreign Secretary rejects any suggestion that, in taking the time to establish the full facts before submitting, the Permanent Secretary failed in his duty to Ministers. Indeed, as the Foreign Secretary told the Committee on 16 December, it was “entirely proper and methodical” and “logical and sensible” for the Permanent Secretary to have proceeded in this way.

Paragraph 20, second section. Agreed. Guidance has been issued that any investigation by UK authorities of alleged offences committed by an officer in the exercise of his or her duties should be reported to Ministers and senior management. The only exception is in the case of minor offences more appropriately handled through established disciplinary procedures.

Paragraph 21. The methods by which intelligence provided by the agencies is assessed within the FCO are kept under regular review. The arrangements for liaison with the agencies and distribution of their material are currently being modernised.

Paragraph 22, first section. We are investigating the best way in which the Resident Clerk can record contacts made in carrying out his or her duties. But in dealing with emergencies or fast-moving situations, we require to keep paperwork to a minimum.

Paragraph 22, second section. Current practice within the FCO is that every official who sees an intelligence report is required to tick, initial and date the cover sheet to show that they have seen the report. A central record is also kept in every department of who has seen the intelligence reports. The FCO arrangements for handling intelligence are in the process of being updated.

Paragraph 23. A Sanctions Enforcement Unit (now called the Sanctions Unit) was established in July 1998. It had a wide mandate, acting as the central point of contact within the FCO on UN sanctions issues, including policy, implementation and enforcement. That mandate was expanded in December 1998 to cover all other sanctions, in particular European Union (EU) and national measures. The Unit’s responsibilities include ensuring that officials in the FCO and overseas are aware of the details of new sanctions regimes. It is being further upgraded by the appointment of a head at DS5 level.

Paragraph 25. Agreed. Guidance has been issued that any member of staff who has reason to suspect that a criminal offence may have been committed by another member of staff or anyone else, should report the matter immediately to their line management at a sufficiently senior level to ensure that proper consideration is given to referring the matter to the UK prosecuting authority. If the prosecuting authority launches an investigation, all staff must cooperate fully with it, as the FCO did in this case.

Paragraph 26. Agreed. Guidance has been issued that staff must be scrupulous in avoiding taking any action which might prejudice a criminal investigation conducted by UK authorities. They should consult Legal Advisers and Personnel Department before communicating, other than in a consular capacity, with persons they know to be subject to an investigation by UK authorities, about matters germane to the investigation.

Paragraph 27. The FCO is currently carrying through a wide-ranging modernisation of management and procedures, using external consultants where appropriate. One objective of the current modernisation programme is to increase professionalism, including by the appointment to administrative posts of candidates with appropriate specialist qualifications.

Paragraph 28. Agreed. This point has been reflected in the more detailed guidance to FCO and Ministry of Defence officials, which has been placed in the Library of the House.

Paragraphs 29 and 31(a). We note the Committee's views. We shall issue, within 18 months, a Green Paper on mercenary activity, taking account of discussions with our partners in the UN, the EU and other international fora. The paper will address both the international and the UK context.

Paragraph 30. EU Member States are already discussing possible harmonisation of national controls on trafficking and brokering. The Government's proposals for extending national controls on trafficking and brokering to cover the supply of controlled goods to all destinations subject to UN, EU, Organisation for Security and Cooperation in Europe (OSCE) and national arms embargoes are set out in the White Paper on Strategic Export Controls published in July 1998 (Cm 3989); these are being reviewed in the light of responses to the White Paper.

Paragraph 31(b). The Government is committed to introducing legislation to implement the proposals in the White Paper on Strategic Export Controls as soon as there is time available in the legislative programme. Decisions on the legislative programme in future sessions have not yet been taken. The Committee's support for the introduction of legislation to extend controls on brokering and trafficking is welcome.

Paragraph 32. We are glad the Committee welcomed the unprecedented access which they were given to official documents.

Paragraph 33. The Government tries to be as helpful as possible in providing information to Select Committees of the House of Commons. Questions of timing arise however when, as in this case, an independent investigation had been established to look into the same matters.

Paragraph 34. The Intelligence and Security Committee, set up by Parliament in the Intelligence Services Act 1994, is the appropriate forum for oversight of the agencies by Parliamentarians.

7. Lastly, the Government agrees with the Foreign Affairs Committee on the importance of an effective Select Committee system and proper Parliamentary scrutiny. In the case of Sierra Leone, the Foreign Affairs Committee acknowledged in their Report that they had had unprecedented access to the key official documents. The Government remains committed to cooperating fully with Parliament and the Select Committees in the performance of their duties and it will continue, as it has done in this case, to learn from the findings of Select Committees.



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