

Return to an Address of the
Honourable the House of Commons dated
27th July 1998 for the

**REPORT OF THE
SIERRA LEONE ARMS INVESTIGATION**

**Sir Thomas Legg KCB QC
Sir Robin Ibbs KBE**

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REPORT OF THE SIERRA LEONE ARMS INVESTIGATION

CONTENTS

	<u>Page</u>
Introduction	1
<u>Chapter</u>	
1. Summary	3
2. The investigation	7
3. The arms embargo	13
4. The Sandline contract	23
5. The High Commissioner	32
6. The FCO in London	47
7. The Ministry of Defence	69
8. Other Departments	77
9. Ministers and Parliament	82
10. Findings	105
11. Lessons	114
<u>Annexes</u>	
A - The Berwin letter	119
B - Chronology	123
C - Witnesses	133
D - Key documents	139
E - Telegrams	147
<u>Reference</u>	
List of key players	
Glossary of terms	

INTRODUCTION

**To the Right Honourable Robin Cook, MP,
Secretary of State for Foreign and Commonwealth Affairs:-**

Early in 1996, democratic elections were held in the Republic of Sierra Leone, after some years of military rule. Mr Tejan Kabbah took office as President. However, in May 1997, his government was ousted by a coup. Power was taken over by a junta of military officers and other rebel forces, and President Kabbah went into exile. The international community joined in condemnation of the junta. The following October, the United Nations Security Council passed a Resolution imposing an arms embargo on Sierra Leone. In November, the Resolution was implemented for the United Kingdom by an Order in Council making it a criminal offence for any British citizen to supply arms, without a Government licence, to anyone in or connected with Sierra Leone.

In December 1997, Mr Tim Spicer of Sandline International, a private military company, made a contract with President Kabbah to provide him with help, including military equipment, to support his return to power. In pursuance of this contract, Sandline sent a shipment of arms and ammunition into Sierra Leone in late February 1998. Mr Spicer is a British citizen and had not applied for a licence under the Order in Council. The arms arrived soon after ECOMOG, a Nigerian-led West African force, had begun hostilities which led to the junta's downfall and President Kabbah's restoration. The arms were received by ECOMOG and most of them remained in store at Lungi airport. They played little or no part in the removal of the junta.

Around this time, HM Customs and Excise, acting at the request of officials of the Foreign and Commonwealth Office, began an investigation of Sandline's activities. On 24 April, Mr Spicer's solicitors, S. J. Berwin & Co., wrote to you protesting against the Customs investigation on the ground that Sandline's plans had been known and approved by Government officials. Their letter is set out in full at [Annex A](#).

On 18 May 1998, Customs announced that the Attorney-General had confirmed their decision that no criminal proceedings should follow their investigation. This was because, although offences might have been committed, any prosecution might well fail and in any event would not be in the public interest. On the same day, you announced that you had requested us to conduct an independent investigation into what Government officials and Ministers knew about breaches of the arms embargo, and whether they gave such breaches any encouragement or approval.

We have made our investigation and submit the following report.

24 July 1998

CHAPTER 1: SUMMARY

Our main findings, and the lessons that we believe can be drawn from them, can be summarised as follows.

- 1.1 No Minister gave encouragement or approval to Sandline's plan to send a shipment of arms into Sierra Leone, and none had effective knowledge of it. Some officials became aware, or had notice, of the plan. The High Commissioner gave it a degree of approval, which he had no authority to do, but he did not know that such a shipment would be illegal. No other official gave any encouragement or approval. All concerned were working to fulfil Government policy, and there was no attempt to hide information from Ministers. However, officials in London should have acted sooner and more decisively than they did on the mounting evidence of an impending breach of the arms embargo, and they should have told Ministers earlier and more effectively. As a result, Ministers were given no, or only inadequate, notice of the matter until the Berwin letter arrived. The failures at official level were caused mainly by management and cultural factors, but partly by human error, largely due to overload.
- 1.2 The High Commissioner, Mr Penfold, was told of Sandline's plans, in mid-December 1997 by President Kabbah, and later that month by Mr Spicer, and gave them a degree of approval.
- 1.3 However, the full effect of the arms embargo had not been properly explained, and Mr Penfold and others were not aware that the unlicensed supply of arms to the elected government of Sierra Leone was illegal.
- 1.4 Mr Penfold should have done more to inform himself about the arms embargo, and should have reported his contacts with President Kabbah and Mr Spicer back to the Foreign and Commonwealth Office more promptly and effectively.

- 1.5 At the beginning of February 1998, the head and several officials in the Africa Command of the Foreign and Commonwealth Office received definite written notice from Mr Penfold that Sandline's plans included the supply of arms. They did not immediately appreciate the full significance of the information, and they did not act on it.
- 1.6 As a result, when they subsequently referred the matter to Customs, they did so only on the basis of newspaper allegations drawn to their attention by Lord Avebury. They did not give Customs the more definite evidence by then available to them from Mr Penfold.
- 1.7 The British military liaison officer in Conakry was told, also in February, that a shipment of arms was expected, and subsequently that it had arrived, and later what was being done with it. He reported back on all three occasions to the Ministry of Defence, but none of the reports effectively got through to the right officials in the FCO.
- 1.8 Because FCO officials at working and middle-management levels did not appreciate the importance and sensitivity of the matter, they did not bring it promptly or prominently to the attention of Ministers. And when top management received some, though inadequate, notice in early April, they sought more information before warning Ministers. By the time it was available, the Berwin letter had arrived.
- 1.9 The Parliamentary Under Secretary of State, Baroness Symons, was not fully or effectively informed, in the briefing that she received for Lord Avebury's question in the House of Lords on 10 March 1998, of the allegations about Sandline and the Customs investigation.
- 1.10 Nor was the Minister of State, Mr Tony Lloyd, fully or effectively informed of the allegations and the investigation in the briefing that he received for the adjournment debate in the House of Commons on 12 March 1998.

- 1.11 Customs notified the Financial Secretary to the Treasury, Ms Dawn Primarolo, on 2 April, of the investigation and impending searches of Sandline's offices. This was for information and it was not for her to take action.
- 1.12 In mid-April, Mr Lloyd saw copies of papers relating to the Customs investigation and the alleged involvement of FCO officials. These papers, which were misleading in one respect, were sent to him for information and led him to believe that the matter was in hand in the FCO.
- 1.13 The Foreign Secretary, Mr Cook, had no involvement in the matter. He had neither notice nor knowledge until he was shown the Berwin letter on 28 April 1998.
- 1.14 Apart from those already mentioned, no other Minister was involved in the matter, or had notice or had knowledge, until after the arrival of the Berwin letter.
- 1.15 No Minister gave encouragement or approval.
- 1.16 Much of the trouble was caused by ignorance of the fact that the arms embargo, as implemented by the Order in Council, prohibited the supply of arms to all parties in or connected with Sierra Leone, including President Kabbah's government, and not just to the illegal junta. This ignorance arose from repeated, and partly systemic, failures of communication.
- 1.17 These failures of communication were exacerbated by:
- lack of understanding of the significance of domestic British legislation (in this case, the Order in Council);
 - lack of sufficient understanding of the caution with which officials should deal with private military firms;
 - lack of understanding of domestic political sensitivities; and

- lack of understanding of the need to give Ministers full and early warning of developments which could affect those sensitivities, however unimportant they might seem on the international plane.

1.18 These management and cultural factors were the main cause of what went wrong. Human error also played a part. But the officials concerned were working hard and conscientiously, and should not be judged too harshly.

CHAPTER 2: THE INVESTIGATION

Terms of reference

- 2.1 Our full terms of reference, as announced by yourself on 18 May, were as follows:-
In the light of recent allegations about Government involvement with the supply of arms to Sierra Leone by UK citizens or firms, and with the concurrence of the Defence Secretary, the President of the Board of Trade and the Prime Minister, I have asked Sir Thomas Legg KCB QC to conduct an investigation. Sir Thomas will be assisted by Sir Robin Ibbes KBE.

The investigation will look into these allegations with a view to establishing:

- what was known by government officials (including military personnel) and Ministers about plans to supply arms to Sierra Leone after 8 October 1997;
- whether any official encouragement or approval was given to such plans or such supply; and,
- if so, on what authority;

and will report to me.

The investigation will be entirely independent. Sir Thomas Legg will establish whatever arrangements he thinks necessary for the conduct of his investigation, including the protection of the rights of individuals. He will be supported by a small dedicated unit. He will have access to all Government files, papers and records relevant to the investigation, including those of UK Diplomatic Missions abroad. HM Customs and Excise will co-operate with his investigation, consistent with their function as an independent prosecuting authority. He will have access to officials and Ministers, who will be expected to give him their full co-operation.

I intend to publish the report of the investigation.

- 2.2 The period we have investigated thus began on 8 October 1997. However, we have found it necessary to include some passages about events before this period began, in order to explain what happened thereafter. We have taken our period as ending with the arrival of the Berwin letter on 24 April, except for the purpose of tracing when the Ministers concerned saw that letter or learned of its contents.

Focus of the investigation

- 2.3 Throughout our investigation, we have concentrated on the questions posed by our terms of reference. We have tried to avoid going into wider fields, except to the extent necessary to answer those questions. This is not the story of British foreign policy on Sierra Leone, nor is it an analysis of the organisation and working methods of the Foreign and Commonwealth Office. This report is concerned only with matters that relate directly to the questions how far British officials and Ministers knew of the allegations about the supply of arms to Sierra Leone, and how far they gave encouragement and approval, and with what authority. We have followed the paths to answering those questions, and have not taken others.

Form of the report

- 2.4 Even on this basis, the story of the events we have investigated is tangled, and it seems to us that the best way to tell it is by describing in separate chapters how each main player, or group of players, was involved. This yields an account which is broadly but not entirely chronological, and requires occasional references forward and back. For reference we set out a chronological summary at **Annex B**. For further reference, we have also appended, inside the back cover of this report, an alphabetical list of the key players, and a glossary of acronyms and other terms. All underlinings in this report have been added by us, for emphasis. We set out our findings in Chapter 10, and some lessons in Chapter 11.

Tone of the report

- 2.5 Our task has been to uncover the facts and report them as objectively as we can. But we have become aware that the events we have investigated impacted with force on the lives of some of the individual officials concerned. This has caused them anxiety and distress. We have taken account of this in a finding at the end of Chapter 10.

Evidence received

- 2.6 We have interviewed the seven Ministers and two advisers, and (in some cases more than once) the 49 officials listed at **Annex C.** In most cases, the officials interviewed had provided us in advance with summary statements of their involvement with the matter. We also received statements from three other Ministers and six other officials whom we did not interview. These Ministers and officials are also listed in **Annex C.**
- 2.7 We received evidence from certain witnesses from outside the public service. Mr Tim Spicer, Mr Michael Grunberg and Mr Jeremy Stampa Orwin, all of or connected with Sandline International, allowed us, through their solicitors, to see full transcripts of their interviews with Customs, together with the relevant documents. We interviewed Mr Spicer and Mr Grunberg. In addition, we interviewed Mr Rupert Bowen of Branch Energy, who also gave us a written statement.
- 2.8 Lord Avebury, who has a long-standing interest in West Africa, and who took part in the proceedings in the House of Lords about this matter on 10 March, gave us background written material and came to a meeting with us. Mr Michael Howard QC MP, the shadow Foreign Secretary, also sent us a memorandum listing questions he envisaged that our investigation should answer. Some of these questions went beyond our terms of reference, which would have needed substantial extension if they were to be addressed. President Kabbah sent us a letter about his contract with Mr Spicer to which we refer in Chapter 5.
- 2.9 All the statements we received, and the notes of our interviews, are submitted with this report. The notes were all agreed with all the individuals concerned. (The only exception is the note of our interview with Mr Sheinwald, which failed to reach him. He has told us that he is content for the unagreed note to form part of our records.) It will be for others to decide, but our advice is that, in the interests of candid evidence to any future investigations on other subjects, these notes are best treated in confidence.

2.10 We have endeavoured throughout our investigation to be fair to all the individuals concerned. When our findings were beginning to emerge, we showed all those who might be taken as criticised the draft passages concerning them, and gave them an opportunity to make representations to us before we settled our final report. We carefully reviewed our draft report in the light of all the representations we received, and made a considerable number of changes.

Public advertisement

2.11 On 6 and 7 June, we published an advertisement in five national newspapers, and on the Internet, inviting contributions to our investigation from the public. We received 35 responses, all of which are submitted with this report.

Documents

2.12 We have also read and considered the official documents relevant to the matter. The responsible heads of the Departments and agencies concerned have certified that, to the best of their knowledge and belief, all relevant documents and records have been produced to us or drawn to our attention. These undertakings have been important in determining the scope of our investigation. In addition, a member of our secretariat made a random check on relevant files in the FCO. Nothing additional was found that should have been included. In **Annex D**, we have listed and numbered 123 key documents which seem to us to be particularly important. A file of copies of them is submitted with this report. We refer to these documents hereafter by reference to their numbers in the list at **Annex D**.

Telegrams

2.13 We have separately listed at **Annex E** the 185 telegrams which passed between the FCO and the High Commission in (or in exile from) Sierra Leone, and between the High Commissioner and Abuja on the subject of Sierra Leone, during the period 8 October 1997 to 30 April 1998. The vast majority of these telegrams have little or no bearing on the Sandline affair. We have also seen other telegrams between the FCO and other posts abroad about Sierra Leone, most of which seem to us to have even less bearing. All

telegrams of any kind which we consider directly relevant are separately listed among the key documents at **Annex D**.

Intelligence reports and assessments

- 2.14 Intelligence reports and assessments are produced for the Foreign and Commonwealth Office, and other Government Departments who need them, by the Government Communications Headquarters (GCHQ), the Secret Intelligence Service (SIS) and the Defence Intelligence Staff (DIS). The Cabinet Office's Joint Intelligence Committee (JIC) uses the reports to make and issue intelligence assessments, which are also received by the FCO.
- 2.15 All the intelligence reports and assessments from these sources which might be relevant to our investigation have been made available to us. The responsible head of each Department and agency concerned has certified that, to the best of his knowledge and belief, all such reports have been so produced.
- 2.16 We have seen 102 intelligence reports and assessments on Sierra Leone during the period May 1997 to May 1998. They comprise 47 GCHQ reports, 5 SIS reports, 44 DIS reports and assessments, mostly extracts from weekly summaries, and 6 JIC assessments drawn from the foregoing. We have also seen 21 reports from the British military liaison officer, and 47 reports from HMS Cornwall. The GCHQ and SIS reports were copied to the FCO, as were most of the DIS reports. All the JIC assessments were copied to the FCO and other Departments.
- 2.17 These reports are secret and highly classified, and we cannot reproduce or specify them. However, we are satisfied that, with only one exception, they contain nothing which bears significantly on our investigation and which is not also available from other official and less highly classified sources. The exception is the report mentioned in paragraph 6.53.

Time and cost of investigation

- 2.18 Our investigation has taken us 68 days and its direct costs will amount to approximately £112,500.

Acknowledgements

- 2.19 We wish to thank all who contributed to our investigation, whether by giving evidence or in any other way. We are particularly grateful to Mr John Martin CMG and Mr Robert Macaire, who have acted as the FCO's Sierra Leone Unit, and have formed the link between us and the FCO. Above all, we pay grateful tribute to our secretaries, Mr Victor Clayton and Ms Liz Hutchinson, and to our supporting staff, Mr Steve Lusted, Miss Arti Kika, Mrs Arlene Henry and Miss Rachel Butler. Their commitment and their performance have been outstanding. We offer them our official and our personal thanks.

CHAPTER 3: THE ARMS EMBARGO

3.1 The military coup in Sierra Leone of May 1997 affronted world opinion, and the international community determined to dislodge the illegal junta from power. To this end, neighbouring African states and the United Nations imposed sanctions, including embargoes on the supply of arms and military equipment. The story of the arms embargo has to be recounted in detail, because misunderstanding and ignorance about its meaning and effect lay at the root of the trouble later. In this chapter, we trace the origins of this misunderstanding.

The ECOWAS embargo

- 3.2 Sierra Leone is part of the Economic Community of West African States (ECOWAS), of which the largest member is Nigeria. ECOWAS has a Nigerian-led military monitoring group (ECOMOG), which maintained a presence in Sierra Leone throughout the short-lived regime of the junta, and which ultimately overthrew it in February 1998.
- 3.3 On 26 June 1997, a meeting of ECOWAS Ministers in Conakry called for the restoration of the democratically-elected government of Sierra Leone. To that end, they proposed a three-pronged policy of dialogue with the junta, imposition of sanctions and, if necessary, the use of force.
- 3.4 In pursuance of this policy, a further meeting at Abuja decided, on 29 August 1997, upon a ‘general and total embargo’ on supplies of oil and arms to Sierra Leone (**doc. 15**), and this was embodied in a joint decision formally made that day. It required Member States to prohibit the supply of arms ‘to any person or legal entity, for the purpose of any business carried out in or operated from the Republic of Sierra Leone, or any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply.’ However, the coverage of this embargo was qualified by an exception, which provided that ‘the embargo imposed by this decision shall not apply to arms, military equipment and military assistance meant for the exclusive use of the sub-regional forces

which shall be responsible for applying the measures contained in the Final Communiqué of the meeting of ECOWAS Ministers of Foreign Affairs issued on 26 June, 1997.’ At this time there were also, and still remain, Commonwealth and European Union embargoes on the supply of arms to Nigeria.

Policy of the United Kingdom

- 3.5 After the coup in May 1997, Her Majesty’s Government (HMG) announced that their policy was to give all support to the peaceful restoration of President Kabbah’s democratically-elected government. Although this country does not normally accord formal recognition to governments as such, HMG at all times regarded, and proclaimed, President Kabbah’s government as the government of Sierra Leone, even when it was in exile.
- 3.6 Sierra Leone has been an independent member of the Commonwealth since 1961, and has long-standing links of friendship with the United Kingdom. The British Government contributed £2m. to fund the election which put President Kabbah in office. Since then, the United Kingdom has continued to support projects to nourish democracy and the rule of law in Sierra Leone, and to give humanitarian aid to what is one of the poorest countries in the world. The United Kingdom was therefore recognised as having a major role to play in helping Sierra Leone through the crisis precipitated by the coup.
- 3.7 The United Kingdom accordingly took the lead in promoting a Resolution of the United Nations Security Council to strike further at the illegal junta.

The British part in the UN Resolution

- 3.8 Following the ECOWAS call for sanctions, the United Nations Department (UND) of the FCO convened a meeting in London on 14 July 1997 at which representatives of all the Whitehall interests concerned discussed the case for proposing UN sanctions. The meeting was chaired by Mr Nat Dawbarn, then Head of the Political and Sanctions Section of UND. It was attended by representatives of other FCO departments, including Mr John Everard, the Deputy Head (West Africa) of the Africa Department (Equatorial)

(AD(E)). Representatives of the Department of Trade and Industry and of HM Customs and Excise were also present. The note of the meeting (doc. 6) records Mr Everard as saying that the objectives of any sanctions should be to reduce the military capability of the rebels, bring about their quick removal, and secure the return of the legitimate government. Mr Dawbarn concluded that, in the case of Sierra Leone, UN sanctions might be enforceable and achieve their objective relatively quickly. The consensus of the meeting was that, at that stage, an arms embargo and visa restrictions were the only sanctions that the UK could support.

3.9 It fell to UND, in co-operation with AD(E), to formulate policy on the UN Resolution and to instruct the UK Mission in New York (UKMIS) to carry it out. AD(E)'s first thought was for sanctions against the illegal regime alone. However, their colleagues in UND explained that such a targeted approach would be neither so straightforward nor so practicable as the more normal method of a blanket ban on Sierra Leone as a country. This meant that the proposed ban on arms would apply, within Sierra Leone, to all parties, including President Kabbah's government and ECOMOG, although the extent to which it would apply to ECOMOG later became controversial. AD(E) did not explore alternative possibilities any further, and accepted this approach, which became the basis of British policy on the UN Resolution. It was understood as such by all the officials concerned in AD(E) and UND and the FCO's Legal Advisers. Mr Cook, the Foreign Secretary, and Mr Lloyd, the Minister of State, have confirmed to us that they shared and approved the goal of drying up arms supplies to all parties in Sierra Leone. However, this aspect of the policy was not published abroad. This was partly because of sensitivities about the possible role of ECOWAS which, unlike HMG, had explicitly contemplated the use of force, and about the role of Nigeria within ECOWAS and ECOMOG.

3.10 On 13 August, UKMIS sent the FCO a first draft of the UN Resolution (doc. 12), incorporating an embargo on the sale or supply of 'arms and related material of all types to the territory of Sierra Leone'.

3.11 In spite of the clear policy of a blanket ban, officials' grasp of its implications seems from the first to have been uncertain. For example, the minutes of a meeting of interested departments, held at the Cabinet Office on 22 September 1997, after the blanket ban approach had been accepted (doc. 21), record as one of the points made in discussion that:-

'It would be possible to provide arms and ammunition to Sierra Leone forces but this incurred the risk that the arms and ammunition would reach the Kamajors forces which could possibly lead to an escalation of violence in the countryside and make civil war a greater possibility...'

(The Kamajors are traditional hunters, used by the Kabbah government as irregular fighters under the title of the Civil Defence Militia or Civil Defence Units.)

3.12 On 10 September 1997, Mr Simon Elvy, acting Head of the West Africa section of AD(E), sent forward a submission to the office of Mr Lloyd, the Minister of State, through Mr Everard (doc. 17). This submission was copied to the office of Sir John Coles (then Permanent Under Secretary), to Mr Richard Dales (the Head of Africa Command), and to the heads of UND and News Department. The submission set out the background, proposed a policy including an arms embargo on the lines mentioned in paragraph 3.10 above (but not resolving any doubt about its scope), and attached a draft telegram of instructions to UKMIS in New York.

3.13 Mr Lloyd agreed the proposed course of action and, on the same day, 10 September, the ensuing telegram (doc. 18) was accordingly sent to UKMIS. The telegram stated that 'Ministers have now agreed that the UK should table a draft resolution in the Security Council proposing arms and oil embargoes on Sierra Leone and travel restrictions on members of the junta.'

3.14 Still on 10 September, UKMIS sent the FCO a further draft of the UN Resolution (doc. 19). It contained the following provision imposing an arms embargo, namely that the Security Council:

‘6. Decides that all States shall prevent the sale or supply to Sierra Leone by their nationals or from their territories, or using their flag vessels or aircraft, of petroleum or petroleum products or arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, whether or not originating in their territory.’

3.15 This provision stood unamended, in the terms quoted above, in the final form of the UN Resolution. It will be seen that it was similar to the embargo imposed by ECOWAS, but potentially went beyond it in applying to ‘Sierra Leone’ without qualification. And there was no exception for ‘sub-regional forces’ as in the ECOWAS embargo. However, an exception was added later to allow the supply of petroleum products, on application, to ‘the democratically-elected government of Sierra Leone’ and certain others. No such exception was added for arms.

3.16 Government procedures require proposals for British participation in international arms embargoes to be cleared through the Cabinet Office Sub-Committee on Security Export Controls. This sub-committee, ESO(C), is chaired by a Cabinet Office official and consists of representatives from the Treasury, FCO, Ministry of Defence, the Department of Trade and Industry, Customs, the Home Office and the intelligence agencies. Its terms of reference task ESO(C) to consider what controls are required on the export of sensitive goods, including arms, in the interests of the UK’s international commitments, and to supervise arrangements for briefing British delegations and representatives on international bodies on issues arising from those commitments. A minute from UND (doc. 26) recording the imminent adoption of the UN Resolution on Sierra Leone was circulated for information by the ESO(C) secretariat on 8 October 1997, inviting any member to advise the secretary immediately if he wished a meeting to be convened to

enable the matter to be discussed. No such meeting was called for, and the matter was regarded as having been cleared by ESO(C).

- 3.17 On the same day, 8 October 1997, the UN Security Council adopted the Resolution as UNSCR 1132 (doc. 28).

The meaning of the UN Resolution

- 3.18 The question arose later whether the arms embargo in the Resolution was in fact comprehensive, or whether there was an implied exception for ECOMOG. Different views were expressed from various quarters, and an amending Resolution (UNSCR 1171) has since been passed on 5 June 1998 which expressly incorporates exceptions for the (restored) Government of Sierra Leone and ECOMOG. At the time, however, the British framers of the October 1997 Resolution intended no such exception for ECOMOG or anybody else, and did not doubt that the arms embargo imposed by the Resolution was comprehensive in its coverage.
- 3.19 However, British officials and Ministers continued to play this aspect down, partly because of the sensitivities mentioned in paragraph 3.9 above and partly because they genuinely saw the embargo as primarily aimed at the junta. For these reasons, and for simplicity, a number of British or British-influenced announcements about the Resolution described it as imposing an arms embargo on the junta. Thus, the FCO press line announcing the adoption of the Resolution on 8 October (doc. 29), which was prepared by AD(E), stated that it introduced ‘an international ban on supply of arms and petroleum products to the junta ...’ Soon after, on 27 October, the communiqué of the Commonwealth Heads of Government Meeting (CHOGM) at Edinburgh ‘welcomed UN Security Council Resolution 1132 (1997) imposing petroleum, weapons and travel sanctions on the military junta in Sierra Leone ...’ And in the Adjournment Debate in the House of Commons on 12 March 1998, Mr Tony Lloyd, speaking from his FCO brief (doc. 81), stated that ‘we [the UK] were instrumental in drawing up the UN Security Council Resolution 1132, which imposed sanctions on the military junta’ (Col. 841).

3.20 These statements were strictly correct, but incomplete. The UN Resolution did impose an arms embargo on the illegal junta. But anyone not told to the contrary might well take such statements, reasonably but incorrectly, as confirming that the embargo was confined to the junta, and did not apply to the legitimate, though exiled, government of President Kabbah. This was the more so since observers familiar with the West African scene were aware that the ECOWAS arms embargo did not apply to ECOMOG, President Kabbah's supporter.

Promulgation of the UN Resolution

3.21 There are no standard procedures within the FCO for the promulgation of UN Resolutions and of any explanatory material they may require. Circumstances vary, but it is understood to be the function of UKMIS to inform all posts concerned of the adoption of UN resolutions.

3.22 In this case, on 8 October, the day the UN Resolution was adopted, UKMIS sent out a telegram (doc. 28) setting out its full text to the FCO and other British departments, to African posts concerned, as well as to posts in Security Council and EU Member States. The UN Resolution was thus given a wide circulation, but it was not accompanied by any explanation to make it clear that the arms embargo applied across the board and not just to the junta. Nor do any other steps to that end seem to have been taken. As mentioned above, the press line prepared by the FCO at the same time described the embargo as preventing the supply of arms to the junta.

The Order in Council

3.23 The UN Resolution created an obligation in international law which it was the responsibility of Member States to implement in their own domestic legal systems. In the United Kingdom, this is normally done by Orders in Council, promoted by the FCO, under the United Nations Act 1946. The initial responsibility for this stage fell to the FCO Legal Advisers, with UND as their 'clients'. Accordingly, early in October, Ms Elizabeth Wilmshurst, an FCO Legal Counsellor, prepared a draft Order. Her instructions took the form of a minute of 7 October from Mr Dawbarn of UND, the one

which was circulated to ESO(C) the following day (**doc.** 26 – see paragraph 3.16 above). This minute made no special mention of the scope of the arms embargo, though it attached the 1993 Angola sanctions orders. Ms Wilmshurst accordingly framed the draft Order on standard lines, following previous precedents. The draft was passed to UND on 8 October, the day the UN Resolution was adopted. Following usual practice, UND in turn consulted other parts of the FCO and other Government Representatives and authorities concerned. However, also following usual practice, AD(E) as the ‘geographical’ department concerned was not consulted.

3.24 On 16 October, Mr Kevin Chamberlain, the FCO Deputy Legal Adviser, made a submission (**doc.** 33) to Mr Lloyd as the responsible Minister of State, inviting him to approve the draft Order in Council, together with another covering the UK’s dependent territories. The submission was copied in draft to AD(E), where it was filed in the registry without being circulated. The submission referred to the UN Resolution as having ‘imposed a ban on the export of oil and of arms to Sierra Leone’, explained that the draft Orders incorporated that ban into domestic law, that they followed ‘a standard form’, and that it was necessary to make them as soon as possible. Mr Lloyd approved both Orders and they were returned to the Legal Advisers on 21 October. They were formally made at a meeting of the Privy Council on 30 October, laid before Parliament the following day and came into force on 1 November. Similar Orders were promoted by the Home Office for the Crown Dependencies.

3.25 The main Order thus made was the Sierra Leone (United Nations Sanctions) Order 1997 (S.I.No. 2592) (**doc.** 35). Expressed to be made in pursuance of the UN Resolution, articles 3 and 6 of the Order provide that, except under the authority of a licence granted by the Secretary of State, no person within the United Kingdom, or British citizen or British company outside it, shall supply or deliver, or agree to supply or deliver, or do any act calculated to promote the supply or delivery of, certain goods ‘to or to the order of any person connected with Sierra Leone’. Any person who contravenes this prohibition is made guilty of an offence under the Order, punishable on conviction on indictment by imprisonment for up to seven years or a fine or both. It is made a defence

to prove that the person accused did not know, and had no reason to suppose, that the goods in question were to be supplied or delivered to a person connected with Sierra Leone. The prohibited goods are defined later in the Order as all those specified in Part III of Schedule 1 to the Export of Goods (Controls) Order 1994. These comprise a lengthy list of weapons and military equipment, including arms and ammunition.

3.26 Article 2 of the Order defines the expression ‘person connected with Sierra Leone’ as meaning ‘(a) the Government of Sierra Leone; (b) any other person, or resident in, Sierra Leone; (etc.)’.

3.27 The British Government repeatedly proclaimed that President Kabbah continued to head the Government of Sierra Leone. On its face, the Order therefore had to be taken as making the unauthorised supply of arms to President Kabbah’s government a criminal offence. Unless and until the Order was successfully challenged in legal proceedings, it had to be obeyed as the law of the land. It embodied the intended policy and understood effect of the UN Resolution. However, as explained above, this policy and effect was not widely understood, even within Government circles. It was at variance with what seemed to many to be the common sense and justice of the situation, and the series of official statements mentioned above served further to obscure the true position.

Promulgation of the Order in Council

3.28 The FCO has no adequate procedures for promulgating an Order in Council of this kind, or any explanatory material it may require. The Order was seen as a technical and domestic measure of relatively little significance and no general public announcement about it was made. It does not appear to have been effectively drawn to the attention of responsible officials in AD(E) or of the British High Commissioner to Sierra Leone. Most of the main players in the events which followed have affirmed that they had either no, or only a vague and very general, awareness of the existence of the Order, and still less of the fact that it expressly prohibited the supply of arms, without a licence, to or to the order of President Kabbah.

3.29 We do not consider that they can be blamed for their ignorance. Nobody in the FCO had a clear responsibility to ensure that all officials involved had a clear understanding of the law, made under the authority of Parliament, which now bound all British citizens, including of course themselves, and nobody actually did so. No doubt all concerned should have ascertained the law for themselves, with the help of legal advice as necessary. But Government has a responsibility to give citizens, and its own officials, reasonable publicity and explanation of the laws it makes under delegated powers, especially laws creating serious criminal offences. That was not done in this case.

CHAPTER 4: THE SANDLINE CONTRACT

4.1 In this chapter, we set out the course of events from Sandline's point of view, on the basis of the evidence we were given by Mr Spicer, Mr Grunberg and Mr Bowen.

Sandline and its associates

4.2 Sandline International is a private military company. We understand that it was created in 1996 and is registered in the Bahamas. It has working and personal links with other companies operating in the fields of military and security services, and mineral extraction. In the former category, these include Executive Outcomes and Lifeguard and, in the latter, DiamondWorks and Branch Energy. All these companies have been active or had interests in Sierra Leone for some time. We have found that Sandline is often referred to by outsiders as Executive Outcomes. Strictly this is incorrect, but the confusion is widespread.

4.3 Sandline's senior employee is Mr Tim Spicer OBE, a professional soldier who retired from the Army in 1995 as a lieutenant-colonel in the Scots Guards.

4.4 Sandline's UK base was, until recently, at 535 Kings Road, London SW10. The premises, and the office staff, equipment and facilities, were provided under contract by Plaza 107 Ltd. One of Plaza's directors was Mr Michael Grunberg, who is a chartered accountant and management consultant. Mr Grunberg also acts on occasion as Sandline's financial and business adviser.

4.5 Other associates of Mr Spicer in this context include Mr Rupert Bowen, formerly of the FCO and now of Branch Energy, and Brigadier Bert Sachse, formerly of the South African Defence Force and now of Lifeguard, which provides security services for various commercial enterprises, including diamond mines in Sierra Leone. Mr Spicer told us that Mr Tony Buckingham, an international businessman with a major shareholding in DiamondWorks, acted as patron to Sandline, although he had no involvement with its ownership or operation.

Their relations with Government officials

- 4.6 The operations of these companies and individuals overlapped to some extent, or could be perceived as doing so. For example, during the period we are concerned with, Government officials did not always see a clear distinction between Executive Outcomes, which was already well known in Africa, and Sandline, which at that stage was not. But all the people concerned had, to some degree, interests and a presence in Sierra Leone. As a result, they had continuing involvement and contacts in the country, even during times and in places where there was disorder and breakdown. They therefore possessed information about personalities, events and trends in Sierra Leone which was otherwise hard to come by. This information could be valuable to the FCO and other Government agencies and their representatives in Sierra Leone.
- 4.7 It is Sandline's announced policy not to work against the interests of any key Western Government. Mr Spicer has said that, in his operations in Sierra Leone, he wished at all times to work in co-operation with the British authorities, and to maintain full compliance with British law. He was reinforced in this view by difficulties which Sandline had encountered in Papua New Guinea in 1997.
- 4.8 Sandline and its associates therefore made a practice of keeping in touch with FCO and Ministry of Defence officials and officers, and invited them to the company offices in Kings Road or to other meetings, for briefings and discussions. Because the information so obtained was often useful to their Departments, the officials concerned took part in such contacts. For example, before Mr Penfold took up his appointment as High Commissioner to Sierra Leone in March 1997, he went on the FCO's advice to the Kings Road office to visit Branch Energy, as one of the leading British companies in Sierra Leone. There he met Mr Buckingham, Mr Grunberg and Mr Bowen. Mr Spicer says that he was also present.

4.9 At the time of the coup in May 1997, Mr Spicer was already known to President Kabbah, and he re-established that contact thereafter. He also kept in touch with officials in AD(E), mainly by telephoning Mr Everard from time to time.

Mr Saxena's approach to Sandline

4.10 On 11 July 1997, Mr Grunberg was contacted by Mr Rakesh Saxena, a Thai businessman then operating from Vancouver. Mr Saxena indicated that he represented a group of investors with mining interests in Sierra Leone. This group had been approached by President Kabbah's government in exile in Conakry with a request for assistance, especially with developing the Kamajors into a fighting force. In the first instance, Mr Saxena proposed a feasibility study on the ground, depending on which he implied that the group he represented might be willing to finance further action. It later became clear that, in return for this financial assistance, he envisaged the grant of diamond and other mineral concessions from President Kabbah.

Sandline's proposal to the Kabbah Government

4.11 Mr Grunberg passed the matter to Mr Spicer, who went to Conakry later in July and had discussions with some of President Kabbah's Ministers. Mr Spicer then drew up a detailed plan for Sandline to give military assistance to President Kabbah's government with the intention of restoring it to power in Sierra Leone. Mr Spicer communicated his plan to President Kabbah during August. However, the President took no action about the plan for the time being.

The meeting at the FCO on 10 December

4.12 The coup of May 1997 caused concern to companies with business interests in Sierra Leone, and this concern deepened as the junta remained in power. On 23 October 1997, the junta leaders were induced to enter an agreement at Conakry to hand back the reins of power to President Kabbah in April 1998. However, they showed few signs of being ready to honour this agreement, and the view of informed observers was that the peace plan had stalled, and that the junta would only be ejected by force of arms.

4.13 Against this background, Mr Tony Buckingham and Mr Rupert Bowen, representing Branch Energy, visited the FCO on 10 December 1997. Mr Spicer, who was not present, says that his understanding was that Mr Buckingham raised the question of military assistance to Kabbah, and that this seemed to find favour with the FCO, who made no mention that such support might be illegal. What passed at the meeting will be examined in more detail in paragraphs 6.17-6.19.

Mr Spicer's understanding of the arms embargo

4.14 Mr Spicer has told us that he was aware that there was a UN Resolution, which he took to impose an embargo on the supply of arms to the illegal junta. He was not aware of the Order in Council, and had never even heard of its existence until he was told about it by Customs investigators months later. It did not occur to him that the embargo might also apply to the elected government when the whole purpose of all concerned was to reinstate that government. He says that not one of the many officials in the UK, and also in the United States, with whom he had contacts over the months suggested to him that supplying arms to President Kabbah might be illegal. Those who mentioned the embargo to him did so because of the administrative problems it created for the transport of any goods into Sierra Leone. Mr Spicer says that he therefore never had any reason to suppose that his contract with President Kabbah was not entirely lawful.

The making of the Sandline contract

4.15 On 23 December, after further contacts earlier that month, President Kabbah phoned from Conakry to Mr Spicer in London. As a result, and following further exchanges by fax, the President entered into two linked but separate contracts later that same day.

4.16 The first contract was expressed to be a memorandum of understanding between President Kabbah, on behalf of the Republic of Sierra Leone, and Mr Rakesh Saxena, on behalf of the Blackstone Capital Corporation of Belize. Under this memorandum, President Kabbah granted certain mining concessions in Sierra Leone in return for economic and other assistance to the value of US \$10m. to assist in the reconstruction of Sierra Leone. This was the Blackstone contract. The second contract was a

supplementary memorandum of understanding, entitled 'Military Annex', and was between President Kabbah and Mr Spicer on behalf of Sandline International. This was the Sandline contract.

- 4.17 The Sandline contract recited that President Kabbah's government was in exile in Conakry, that the government wished to return to Sierra Leone as soon as possible, and for this purpose wanted to co-ordinate the forces of ECOMOG and the CDU (Kamajors). It further recited that Sandline was in a position to mobilise and provide 'adequately well-equipped forces' to ensure the Kabbah government's reinstatement as soon as possible, and that Sandline had 'agreed to assist the said Government in any way it directs'. The contract then provided that, on receipt of funds of up to US \$10m., Sandline agreed 'to support the said Government's military programmes by the provision of technical know-how, military logistics and equipment to a corresponding value'. Further provisions envisaged that, upon receipt of funds, Sandline would produce a detailed plan of operations and 'undertake all preliminary recruitment of all necessary personnel and procurement of any equipment required to ensure' the execution of the plan. It further provided that Sandline would, at the direction of the President, among other things, 'procure such equipment as is required within the budget available'.

The end-user certificate

- 4.18 In pursuance of the Sandline contract, President Kabbah later signed an end-user certificate for arms and ammunition. Dated 15 January 1998, this certified that the goods it listed had been ordered by the Government of Sierra Leone and were solely for its own use within Sierra Leone. The listed goods were stated to consist of 2,500 assault rifles, 180 rocket launchers, 50 machine guns and quantities of ammunition and spare magazines.

The lunch with Mr Penfold on 23 December 1997

- 4.19 On the same day that the Sandline contract was signed, 23 December 1997, Mr Buckingham and Mr Spicer had lunch in London with the High Commissioner, Mr Peter Penfold, who had just left Conakry to go on leave. Mr Spicer says that he told Mr

Penfold about the Sandline contract and gave him a copy of it. According to Mr Spicer, Mr Penfold welcomed the news of the contract, indicated that he had himself advised President Kabbah to retain Sandline, and said he had showed the President a recent newspaper article about Sandline. What happened at the lunch will be examined in more detail in Chapter 5.

The meeting at the FCO on 19 January 1998

- 4.20 On 19 January 1998, Mr Spicer went to the FCO for a meeting with Mr Craig Murray, the new Deputy Head of AD(E), and Mr Tim Andrews. There is a conflict of evidence about what passed at the meeting. This will be described further in Chapter 6. Mr Spicer says that he gave Mr Murray and Mr Andrews a general briefing on what Sandline were doing. He was sure they understood that it included the supply of arms. He says that the UN Resolution was mentioned, but only in the context of arms for the illegal junta, and that nobody suggested that there was any ban to supplying arms to the elected government.

Mr Penfold's visit to Sandline on 28 January 1998

- 4.21 On 28 January 1998, Mr Penfold went to see Mr Spicer at Sandline's office in the Kings Road. This meeting will be described further in Chapter 5. Mr Spicer says that he gave Mr Penfold a full briefing about Sandline's current activities in Sierra Leone, and gave him a copy of a short paper on their strategy, which he had named 'Project Python', for assisting President Kabbah. This meeting is described further in Chapter 5.

The financing of the Sandline contract

- 4.22 Mr Saxena had undertaken to provide finance for the Sandline contract up to a value of US \$10m. However, no money had arrived by mid-January, so Mr Grunberg flew to Vancouver to press Mr Saxena for payment. All that he could secure was US \$1.5m with a possible prospect of another US \$3.5m. This prospect was never realised. On 24 January Mr Grunberg learned that Mr Saxena had been arrested in connection with an

extradition claim from Thailand, and was in custody. In spite of further attempts, no more funds were received and Mr Spicer had to scale down Project Python to keep within the much-reduced budget of US \$1.5 million.

The restoration of President Kabbah

- 4.23 Back in Sierra Leone, on 5 February 1998, Nigerian-led ECOMOG forces launched hostilities which, after heavy fighting, defeated and removed the illegal junta. Forces of the RUF (see glossary) remained active in the back country but, on 12 February, ECOMOG secured Freetown, the capital of Sierra Leone, and on 10 March, President Kabbah returned there in triumph, accompanied by President Abacha of Nigeria.

The fulfilment of the Sandline contract

- 4.24 On 23 February 1998, Sandline's shipment, comprising about 35 tonnes of weapons and ammunition, was flown into Lungi Airport near Freetown. Its cost, including transport, was about US \$760,000, out of a total expenditure of US \$1.35 million for the Sandline operation. At Lungi, the weapons were received by ECOMOG forces and put in store. The Nigerian commander of ECOMOG later gave a few of the rifles and some of the ammunition to the Kamajors.

Other Sandline activity in Sierra Leone

- 4.25 As part of its planned operations, Sandline also provided President Kabbah's Government with food, office and communications equipment, medical supplies, and advice. Its operations were organised by a team of 15 at Lungi. It also provided a helicopter, which carried troops, weapons and ammunition, fuel and food for ECOMOG. This helicopter was repaired by technicians from HMS Cornwall, in circumstances which will be recounted in Chapter 7.

Contacts with the military liaison officer

- 4.26 During February, Mr Rupert Bowen, who was helping Sandline at the time, had contacts in Conakry with the British military liaison officer, Major (acting Lieutenant-Colonel)

Peter Hicks. Later, back in London, Mr Spicer had lunch with Major Hicks on 23 March. These contacts will also be mentioned further in Chapter 7.

Further contact with Mr Penfold

- 4.27 On 28 February, Mr Spicer telephoned Mr Penfold in Conakry, and gave him further information about Lifeguard, ECOMOG and other matters of interest to the High Commissioner. In the course of this conversation, Mr Spicer says that he confirmed what Mr Bowen had already told Mr Penfold, that equipment, including weapons, had arrived at Lungi.

Mr Spicer's letter to President Kabbah of 2 March

- 4.28 On 2 March, Mr Spicer wrote a letter to President Kabbah (**doc. 69**) referring to Sandline's achievement in providing his government with important services which had helped his cause. This was in spite of being seriously hampered by the inability of the government's financial backers to provide the full agreed funding. In listing Sandline's services, Mr Spicer began by stating that 'on Monday 23 February 1998 Sandline delivered 35 tonnes of military equipment to your government'. Copies of this letter were sent to Mr Penfold and the US Ambassador to Sierra Leone.

The Observer article of 8 March

- 4.29 On Sunday 8 March, an article appeared in *The Observer* entitled 'Britain holds talks with hired killers' (**doc 73**). The article alleged that Mr Penfold had held secret talks with Sandline 'at a time when they were allegedly plotting to overthrow the country's military junta'. The following Tuesday, 10 March, Mr Spicer rang Mr Tim Andrews at the FCO in London expressing concern (according to Mr Andrews) that so much information had appeared in the public domain, and saying that he would take a bland line in answer to journalists' questions.

The Customs investigation

- 4.30 On 27 March, Customs officers, acting in pursuance of their investigation, visited Sandline's offices. In Mr Spicer's absence, they met Mr Grunberg. He stated that

Sandline had flown 'light weaponry' into Sierra Leone about a month previously, and that it had been done with the prior approval of FCO officials, notably Mr Penfold. The same day, Mr Spicer telephoned Mr Murray at AD(E) to protest against the Customs investigation on the ground that Sandline had been acting with official approval. On 3 April, Customs officers raided Sandline's offices and Mr Spicer's home, and removed files and documents about Sandline's activities in Sierra Leone. Mr Spicer telephoned Mr Penfold, who had now returned to Freetown, to protest about the Customs investigation on the grounds that he had had approval for the supply of arms to President Kabbah. Mr Penfold replied that he himself had had no authority to give approval, and referred Mr Spicer back to AD(E). Mr Spicer then spoke further with Mr Andrews, and entered the same protest. Over the Easter weekend, 11-12 April, Mr Spicer went out to Freetown, where he later spoke further with Mr Penfold (see paragraph 5.43 below).

The Berwin letter

- 4.31 On 24 April, S. J. Berwin and Co., acting for Mr Spicer and Mr Grunberg, sent the Foreign Secretary the letter which is set out in full in **Annex A** and which led to this investigation.

CHAPTER 5: THE HIGH COMMISSIONER

5.1 This chapter recounts the story as it concerned Mr Penfold, the High Commissioner to Sierra Leone.

Background

5.2 Mr Penfold took up his appointment as High Commissioner in March 1997. He was then 53, and had been in the Foreign Service for 34 years, serving mainly in Africa and the Caribbean. He was made an OBE in 1986 for services in Uganda, and awarded the CMG in 1995 following service as Governor of the British Virgin Islands.

5.3 Only a few weeks after Mr Penfold took up his appointment in Sierra Leone, the government to which he was accredited was overthrown by the coup on 25 May 1997. In Freetown there was disorder, with widespread looting and killing. Mr Penfold almost persuaded the newly-formed Armed Forces Revolutionary Council to return to their allegiance to President Kabbah. However, the RUF frustrated this, and the breakdown of law and order, and of basic utilities, accelerated.

5.4 Mr Penfold took an active part in organising the ensuing evacuation of about 5,000 expatriates from Sierra Leone. His action in threatening the rebel forces that, unless they stopped shelling the Mammy Yoko hotel, he would call for armed intervention by nearby American naval units, led to a cease-fire which saved 800 civilians who had taken refuge in the hotel. For this, and for his other work in the evacuation of British nationals, Mr Penfold received personal letters of commendation from the Prime Minister and the Foreign Secretary. Letters of thanks were also received from other governments.

The transfer to Conakry

5.5 The British High Commission in Freetown was the last diplomatic mission to close. Mr Penfold then transferred to Conakry, the capital of neighbouring Guinea, where he made his base at the Camayenne Hotel. HMG sent Mr Penfold to Guinea for three reasons.

First, it plainly demonstrated HMG's continued recognition of President Kabbah's government. Secondly, it helped Mr Penfold to keep in touch with the many locally engaged staff of the High Commission in Freetown, and to help them to protect the UK's sizeable interests there. Thirdly, it enabled Mr Penfold to continue to monitor the security situation in Sierra Leone.

5.6 Mr Penfold became a one-man mission. His only office was his hotel room, and communications were difficult. In particular, he could not send classified telegrams, and could only receive them by way of Bonn, through the assistance of the German Embassy in Conakry, a lengthy and cumbersome process which could not be used too frequently. There was no confidential bag service and postal services were unreliable. Telephone and fax communication with London was possible and frequent, but was on open and insecure lines. Nevertheless, Mr Penfold made frequent reports to the FCO in London. The telegrams which passed between the High Commission and London from October 1997 to April 1998 are listed in **Annex E**.

Mr Penfold's movements

5.7 During the months which followed, Mr Penfold went back and forth between Conakry and London. In addition to shorter visits, he was in London for much of July 1997, and for most of September and October to help prepare for and attend a workshop and conference on Sierra Leone, and to attend CHOGM (see paragraphs 9.6-9.11). He came back to London again on 21 December, and went on leave from 29 December to 8 February 1998. The first part of this leave was spent in Canada and the United States, but was interrupted by three days' official business in New York on 14-16 January. During the last fortnight he returned to the UK and did some official business in London. The rest of the time he was in Conakry, until 5 March 1998, when he returned to Freetown after the restoration of President Kabbah's government in Sierra Leone. While Mr Penfold was away from Guinea and Sierra Leone, his place was taken by Mr Colin Glass, the Deputy High Commissioner.

Mr Penfold's relations with President Kabbah

- 5.8 While he was in Conakry, Mr Penfold kept in close touch with President Kabbah and his government. He saw the President two or three times a week and enjoyed his confidence. In late October, Mr Penfold travelled with President Kabbah to London, where both took part in the conference on 'Restoring Sierra Leone to Democracy'. Mr Penfold then accompanied President Kabbah to CHOGM in Edinburgh.
- 5.9 As already mentioned, HMG's policy was to support President Kabbah as the head of the continuing elected government of Sierra Leone, and to work for his restoration by all peaceful means. The possible use of force as a last resort was not ruled out, but would require a further UN mandate. Mr Penfold supported and pursued HMG's policy, as was his duty. However, he was not alone in believing that this policy was only credible as long as the threat of force remained real.

Mr Penfold's lack of information about the legal position

- 5.10 Mr Penfold was consulted about some aspects of the UN Resolution. However he was not involved in the discussion or decision on the scope of the arms embargo. He was in London in early October, at the time the Resolution was adopted, and he was given a copy of the press line about it that had been prepared by AD(E) and approved by the Minister of State (**doc.** 29). This stated that the Resolution introduced an 'international ban on supply of arms and petroleum products to the junta'. Nobody explained to Mr Penfold that, in banning the supply of arms to Sierra Leone, the resulting embargo covered not only the junta, but also all other parties including President Kabbah. On 9 October, Mr Penfold was sent the full text of the Resolution. He perused it but, taking his lead from the press line, he was not disturbed in his assumption that the UN arms embargo applied only to the junta. President Kabbah headed the elected government of Sierra Leone and British policy was to help him back to power. The sanctions had been stated to be aimed at the junta. Unless told otherwise, which he was not, it was

understandable that Mr Penfold did not suppose that they were also aimed at President Kabbah. President Kabbah himself, a lawyer with long experience of the United Nations, shared (and indeed still shares) the view that the sanctions did not apply to his government.

- 5.11 Still less was Mr Penfold given any information about the Order in Council which, as explained above, explicitly made it an offence to supply arms to ‘the Government of Sierra Leone’ – i.e., to President Kabbah. Mr Penfold was neither consulted about the preparation of the Order nor told of its making. He was not sent a copy of the Order, and never saw its full text until his solicitors showed it to him on 30 April. Thus, although he was generally aware that the UN Resolution would have to be implemented in British law, he was not aware that the supply of arms to President Kabbah had been outlawed. The first time that he realised that there might be even a possible problem about this was in March.
- 5.12 As High Commissioner, Mr Penfold was expected to inform himself on all major developments affecting HMG’s relations with Sierra Leone. But his circumstances were difficult, and the measures in questions had a legal character. Officials in FCO headquarters therefore had a particular duty to ensure that Mr Penfold was aware of the scope of the arms embargo. They did not do so. But they did not themselves appreciate the full significance of the combination of the Resolution and the Order in Council, and they did not see any need to tell a busy High Commissioner in exile about an Order which looked to them a technical, and largely domestic, legal instrument.
- 5.13 Whether Mr Penfold knew the full scope of the UN Resolution has been a major issue in our investigation. Several witnesses have suggested to us that he must have known. We have therefore given careful consideration to the credibility of his insistence that he did not know that President Kabbah was included. Apart from the fact that he appears never to have received a proper explanation of the scope of the Resolution, it seems to us that, if he was going along with a plan to supply arms knowing that it was illegal, it is very unlikely that he would have incriminated himself by referring specifically to arms in his

minute of 2 February (paragraph 5.34). He had no need to do so. This adds weight to the likelihood that he truly did not know the scope of the arms embargo.

Extent of his previous knowledge of Sandline

- 5.14 Mr Penfold was aware of Branch Energy, Executive Outcomes and Lifeguard and their presence and operations in Sierra Leone. As mentioned in paragraph 4.8, before taking up his appointment, he had visited Branch Energy in London. However, although Mr Spicer says he was also present on that occasion, Mr Penfold does not recall meeting him. Mr Penfold says that he only became aware of the existence of Sandline and Mr Spicer in October, as a result of the publicity about their activities in Papua New Guinea, and that it was not until December that he learned that they were linked to Branch Energy and Executive Outcomes.
- 5.15 On 17 November, when Mr Penfold was back in Conakry, he was visited at the Camayenne Hotel by Mr Rupert Bowen and Brigadier Sachse as representatives of Branch Energy and Lifeguard. The discussion was mostly about the situation in the diamond mining area of Kono and the purchase of arms by the junta. Mr Penfold says that there was no mention of Sandline, and that he reported this meeting back to the FCO by fax the next day. Mr Penfold recalls another meeting with Mr Bowen and Brigadier Sachse around mid-December, when the latter reported that the junta had flown military equipment from the Ukraine into the north of Sierra Leone by way of Burkino Faso. This information was valuable, and Mr Penfold says that he reported it back to London, though no record of this has survived.
- 5.16 Mr Penfold was in London during the first week of December, and Mr Everard took the opportunity to convene a meeting with him and other FCO and Whitehall colleagues on 3 December. This is mentioned further in paragraph 6.16.

The meeting with President Kabbah on 19 December

- 5.17 In December, the FCO agreed that Mr Penfold needed a break, and should have six weeks' leave over Christmas and the New Year. On 19 December, Mr Penfold paid

President Kabbah a valedictory visit at his villa in Conakry, and they met alone for a talk. The President showed him, in confidence, a draft of what became the Blackstone and Sandline contracts. He asked whether HMG were likely to give him similar assistance to remove the junta. Mr Penfold answered that HMG was firmly committed to the restoration of his government, but preferred to see it achieved by peaceful means. He saw no likelihood of HMG providing weapons. The President asked Mr Penfold for his advice on whether he should sign the contract. Mr Penfold said that he had had no official guidance on the use of private military firms, and the sensitivity of the matter prevented him from discussing it with the FCO in London over open lines. Mr Penfold says that he advised President Kabbah that the decision must be for him. After further discussion of the wider implications of the contract, and its possible advantages and drawbacks for Sierra Leone, President Kabbah told Mr Penfold that he had decided to sign the contract. He did not mention the extent of his previous contacts with Mr Spicer, but said that he would ask Mr Spicer to get in touch with Mr Penfold when the latter was back in the UK.

- 5.18 Although the contract did not expressly mention arms or weapons, Mr Penfold says that he immediately assumed that it included them, because of the size of the sum involved. But he did not suppose there was anything wrong about Sandline's plans in this respect, because he assumed, as did President Kabbah, that the arms embargo was targeted on the junta. He did not doubt that the contract was legal, nor did he believe that it was contrary to HMG's policy, the goal of which was to restore President Kabbah.
- 5.19 Mr Penfold has told us that he believes that President Kabbah had already made up his mind to sign the contract before showing it to him, and was only trying to ensure that doing so would not affect the support of the British Government. Mr Penfold says that he neither encouraged nor discouraged the President in the course that he made clear that he had decided to take.

- 5.20 Mr Penfold did not make a written record or report of this conversation with President Kabbah. He says that this was because he was returning to London the following day, and intended to report it then.
- 5.21 The Berwin letter states that President Kabbah entered the Sandline contract at the suggestion of Mr Penfold, and that Mr Penfold confirmed to Mr Spicer that he had initiated the approach and encouraged Sandline's involvement. Mr Penfold says that the first time he heard of the proposed contract was at his meeting with President Kabbah on 19 December. He acknowledges that the fact that he did not discourage the President could possibly have been taken as encouraging him to enter into an agreement with Sandline, but it went no further than that. We accept this.
- 5.22 President Kabbah himself has written us a letter (of 29 June 1998, **doc.** 123) in which he denies the allegation in the Berwin letter that Mr Penfold initiated the President's approach to Sandline and encouraged their involvement. In his letter, the President states that 'this allegation is totally untrue. The initiative to discuss a contract with Tim Spicer for the supply of military assistance to my Government was taken independently by me and my advisers in Conakry'.

Mr Penfold's return to the UK

- 5.23 Mr Penfold arrived back in the UK on Sunday 21 December. That evening, Mr Spicer telephoned him at home and asked if they could meet in London before Christmas. They agreed to have lunch on Tuesday 23 December. This conversation was, according to Mr Penfold, the first occasion on which he talked with Mr Spicer.
- 5.24 On that Tuesday, Mr Penfold came up to London. He went first to the FCO and looked in on AD(E), where he saw Mr Andrews and/or Ms St Cooke; he cannot recall which or if it was both. Mr Penfold says that he reported on his meeting with President Kabbah, and mentioned that he would be seeing Mr Spicer. He believes that it was at this meeting that he learned that there had been contact between Mr Spicer and AD(E). Mr Penfold does not recall specifically mentioning arms to them, but says he assumed that they

would draw the same inference that he had, namely that the size of the contract meant that arms must be involved. Mr Andrews cannot recall this conversation at all. Ms St Cooke has only a vague recollection of seeing Mr Penfold before Christmas and does not recall any particular conversation. Mr Penfold says that he then went on to a short meeting with Mr Dales, the head of Africa Command, at which the discussion was mainly about the recent decision to appoint Mr John Flynn as the Secretary of State's Special Representative for Sierra Leone (see paragraphs 6.7-6.9).

The lunch with Sandline on 23 December

- 5.25 Mr Penfold then went to join Mr Spicer for lunch at a restaurant in the Brompton Road, where Mr Buckingham (already mentioned in paragraphs 4.5 and 4.13) was also present. Mr Penfold arrived late, so that their time together was only about an hour.
- 5.26 Mr Spicer's and Mr Penfold's accounts of the discussion differ at some points, but there is considerable common ground. That morning, Mr Spicer had been finalising the Sandline contract with President Kabbah, and he told Mr Penfold about it. Mr Spicer says that Mr Penfold welcomed the news of the contract with enthusiasm, and made it clear that he, Mr Penfold, had moved President Kabbah to enter into it with a view to breaking the deadlock and taking action to remove the junta. Mr Spicer's recollection is that he gave Mr Penfold a copy of the contract, which Mr Penfold folded up and put in his pocket.
- 5.27 Mr Penfold, as already mentioned, denies that he took any part in initiating or promoting the Sandline contract. He regards it as an exaggeration to describe his welcome for the contract at the lunch as enthusiastic, but accepts that he indicated his agreement with the need for a credible threat of force against the junta, and that Mr Spicer could have taken that as support for what he was doing. Mr Penfold says that he is not sure whether Mr Spicer showed him the contract at the lunch, but is sure that he does not recall taking a copy away with him. He accepts, however, that they discussed the contract, and that it concerned in part the supply of arms. Mr Spicer could reasonably claim that Mr Penfold was aware of this. Although he maintains that he neither encouraged nor discouraged the

transaction, Mr Penfold agrees that Mr Spicer and Mr Buckingham could have left the restaurant with a reasonable belief that he supported the Sandline project.

The letter of 30 December

- 5.28 Mr Penfold was then away over Christmas. He recalls that Mr Spicer rang him, he thinks on Boxing Day, to say that President Kabbah had signed the Sandline contract. Mr Penfold now prepared to go on leave with his wife in North America for the whole of January. On 30 December, just before he left, he sent a short hand-written letter from his home to Ms Ann Grant at the FCO. This letter (doc. 42) contained the following paragraph:

‘I have been in touch with Tim Spicer over the holidays. Kabbah has signed the deal with Blackstone for EO/Sandline to provide US \$10 million of equipment and training for the civil defence militia. This will begin to flow in January. At my suggestion they will station someone in Conakry to stay alongside Kabbah. I have asked them to keep Colin Glass [the Deputy High Commissioner] fully briefed. As you know, it has always been my view that only a serious threat of force will persuade the junta to stand down, therefore I welcome this development, not least because it means that Sierra Leoneans will be more directly involved in getting their legitimate government back.’

We note in passing that this paragraph in his letter brings out Mr Penfold’s supportive attitude to the Sandline contract.

- 5.29 Mr Penfold says he recalls posting this letter, of which he kept a copy. However, in spite of searches there, it cannot be traced at the FCO, and seems never to have arrived. Mr Penfold took no steps to ensure that the FCO knew that the letter was in the post, or to check that it had arrived. We consider that, rather than relying on such a letter, written a week after his meeting with Mr Spicer, Mr Penfold should have made certain, before he went away for Christmas, that AD(E) had a proper record of his conversations with President Kabbah and with Mr Spicer. In our view, he showed a lack of caution in his

dealings with Mr Spicer, and he should have recorded the conversations reasonably fully and promptly. Not to have done so seems to us unwise, and to suggest that Mr Penfold was not sufficiently conscious of public and political unease about mercenaries.

Mr Penfold's visit to New York

5.30 Mr Penfold and his wife then went on a holiday in Canada and the United States until towards the end of January. However, during this time, he broke his leave at the FCO's request to spend three days in New York with Mr Flynn, the Foreign Secretary's Special Representative on Sierra Leone. On 14 and 15 January, they attended meetings together with UN delegates, including the Chairman of the UN Sanctions Committee. It does not appear that the arms embargo, or the supply of arms by UK firms to President Kabbah, surfaced in those discussions. While Mr Penfold was in New York, he telephoned Mr Spicer to ask whether he had any up-to-date information on the security situation. He believes it was during this call that, at Mr Spicer's suggestion, they agreed to meet in London on 28 January.

Mr Penfold's visit to Sandline on 28 January

5.31 On the afternoon of Wednesday 28 January, Mr Penfold went to Sandline's offices in the Kings Road for his meeting with Mr Spicer. Mr Jeremy Stampa Orwin, Mr Spicer's associate, was also present. The meeting lasted for about an hour. Mr Spicer went through Sandline's military plan with Mr Penfold. Mr Spicer gave Mr Penfold a copy of his strategy paper (**doc.** 49) outlining Project Python. He also described to Mr Penfold the logistical and other problems that Sandline was experiencing in providing equipment and weapons. These included difficulties in arranging cargo flights because of the UN sanctions. (Mr Penfold referred to this point later, in a telegram of 1 April to the FCO: (**doc.** 90.)) Both Mr Spicer and Mr Penfold have told us that, at the time, they took it for granted that the sanctions did not apply to President Kabbah, but had the effect of deterring legitimate imports into Sierra Leone generally. Mr Penfold explained that he could not help with this, meaning that he was not at that time operating a fully-functioning High Commission. Although Mr Spicer's strategy paper does not mention arms explicitly, Mr Penfold confirms that he understood that, at this meeting as at the

lunch on 23 December, what they were talking about was Sandline delivering arms and ammunition in support of President Kabbah.

Meetings with the FCO, 29-30 January

5.32 The following day, 29 January, Mr Penfold returned to the FCO. He was now preparing to return to Conakry, and was in touch with various departments of the FCO with a view to his future work there. In AD(E), he saw Mr Andrews, gave him the Sandline strategy paper, and told him of his meeting with Mr Spicer the previous day. Mr Penfold says that no mention was made of sanctions.

5.33 Mr Penfold then met Mr Craig Murray, the new Deputy Head of AD(E), for the first time. His encounter with Mr Murray led Ms Grant to invite Mr Penfold to a meeting with her the following morning, Friday 30 January. Both these events and their consequences are further recounted in paragraphs 6.37-6.40 below. Mr Murray was also present at the meeting with Ms Grant. She asked Mr Penfold to brief her on his meeting with President Kabbah on 19 December. Mr Penfold described that meeting to her, and also his meetings with Mr Spicer on 23 December and 28 January. He did not mention his letter of 30 December. He also told her that he had handed the Sandline strategy document to Mr Andrews the previous day. Mr Penfold's impression was that Ms Grant's main concern was whether his dealings with President Kabbah, and his subsequent meetings with Mr Spicer, could be interpreted as support for the use of force. There was no mention of arms supplies, but Ms Grant asked Mr Penfold to record his dealings with Sandline in writing.

Mr Penfold's minute of 2 February

5.34 Accordingly, over the ensuing weekend Mr Penfold prepared, and on Monday 2 February submitted, a minute to Ms Grant. He delivered the minute to the FCO by hand. This minute (**doc. 50**) is a crucial document in our investigation, and we shall return to it in Chapter 6. It is classified Confidential, and headed 'Sandline Assistance to President Kabbah's Government'. Paragraphs 3 and 5 in particular read as follows:-

'3. Kabbah showed me in confidence the copy of the contract with

Blackstone, which in return for diamond mining concessions, they would make available to Sandline up to US \$10 million for the purchase of arms and equipment and the provision of training. He specifically asked whether HMG would provide a similar package.

[Paragraph 4 set out Mr Penfold's discussion of the contracts with President Kabbah.]

5. I briefed the department on the contract when I looked in before Christmas, and I confirmed it in my letter to you dated 30 December before I left for Canada. Spicer also told me that he was fully briefing the department. He gave me a copy of the details of Sandline's proposed assistance which I passed to the department.'

Mr Penfold's return to Conakry

5.35 Mr Penfold spent the rest of that week on leave, and on 10 February he returned to Conakry. Meanwhile, ECOMOG had begun hostilities against the junta, and by 12 February they had secured Freetown. In Conakry, Mr Penfold was contacted again by Mr Bowen and Brigadier Sachse, who briefed him on the activities of ECOMOG. On 28 February, in a conversation around the bar of the Hotel Camayenne, Mr Bowen told Mr Penfold that 'some equipment' had arrived at Lungi. He also mentioned that President Kabbah 'was being difficult because the equipment had arrived too late'. On the same day, Mr Spicer telephoned Mr Penfold at the hotel and confirmed the information which Mr Bowen had given him.

Mr Penfold's return to Freetown

5.36 On 1 March, HMS Cornwall arrived at Freetown, and on 5 March its helicopter picked up Mr Penfold from Conakry and took him on board. HMS Cornwall returned him to Freetown that day, together with the Sierra Leone Foreign Minister. Major Hicks, who was the new British military liaison officer, and two members of the Royal Military Police protection team, also travelled with them. Mr Glass, the Deputy High Commissioner, had gone back some days before, to prepare the High Commission for reopening. On 10 March, President Kabbah entered Freetown to a jubilant welcome, accompanied by President Abacha of Nigeria.

5.37 In the days and weeks that followed, Mr Penfold and his staff were heavily involved in providing humanitarian aid and relief to the people of Sierra Leone, and support for President Kabbah's government.

Further contacts with Sandline

5.38 Mr Penfold says that, sometime between 11 and 13 March, Mr Bowen and Brigadier Sachse stopped by at the Residence for a drink. Mr Bowen gave Mr Penfold a copy of Mr Spicer's letter to President Kabbah of 2 March (doc. 69). As mentioned in paragraph 4.28, this letter stated that Sandline had delivered '35 tonnes of military equipment' to President Kabbah. Mr Penfold says that he gave the letter to Major Hicks, who had secure communication equipment, to pass back to the MOD in London.

5.39 The FCO sent Mr Penfold copies of the official reports of the Parliamentary proceedings about Sierra Leone on 10 and 12 March. He says he was also told by Mr Andrews that there could be a problem about the Sandline contract and the UK Order in Council. Mr Penfold passed this information on to President Kabbah, who was puzzled, and re-affirmed his view that his contract with Sandline could not be in breach of the UN Resolution. Mr Penfold reported this conversation back to the FCO.

5.40 On 11 March, Mr Penfold gave the BBC an interview. Mr Andrews sent him a telegram (doc. 83) requesting information about it. On 13 March, Mr Penfold replied with a telegram (doc. 84) reviewing his contacts with Sandline and its associated companies.

The Customs investigation

5.41 HM Customs and Excise had been informed in mid-February of allegations that Sandline had breached the arms embargo (see further in paragraphs 6.57-6.58). By a telegram on 30 March (doc. 85), the FCO informed Mr Penfold for the first time that Customs

were carrying out an investigation, and requested him to give full details of his dealings with Sandline and affiliates. Mr Penfold replied the same day (doc. 86) that he had already provided this information on 13 March.

5.42 On 3 April, as related in paragraph 4.30, Mr Spicer telephoned Mr Penfold because Customs had searched his home and offices. Mr Penfold advised Mr Spicer to talk to Mr Murray, and reported the conversation to Ms Grant in a short telegram that day (doc. 94). Mr Penfold ended this telegram by saying ‘I am concerned at the way this is being handled in London and I would like to be reassured that I have the confidence and the full backing of the office on what is becoming a very messy affair’.

5.43 Mr Spicer was in Freetown during the week after Easter. He telephoned Mr Penfold at the Residence on 15 April and sought a meeting. Mr Penfold said that, in view of developments in London, a meeting would not be appropriate. Mr Penfold relates that Mr Spicer telephoned again the same day, before he left, to tell Mr Penfold that he had had meetings with President Kabbah and Mr Jonah, his Minister of Finance. They had assured Mr Spicer that, as far as they were concerned, there had been no breach of UN sanctions, because the sanctions were aimed at the junta and not at the elected government. They were prepared to state this publicly, though they preferred not to issue a statement to this effect now, because they did not believe that the British Government would allow the matter to go to court. Mr Spicer further said to Mr Penfold that ‘Sandline had now engaged very senior QCs to deal with this matter.’ He claimed that Sandline had details of conversations with officials in the FCO clearly indicating that the FCO was briefed on what they were doing. Mr Spicer said that the FCO had even indicated how best to obtain an export licence for military equipment. Sandline had also been in touch with the Americans, who could not understand, Mr Spicer claimed, why action by Customs was being contemplated.

5.44 Mr Penfold made a file note of this conversation on the same day, 15 April (doc. 102). He classified it Confidential and marked it as copied to AD(E). As he was temporarily without facilities for secure communications, he brought a copy

back to AD(E) with him when he returned to London on 26 April. Mr Penfold says that this telephone conversation was the last contact that he had with Mr Spicer.

5.45 Mr Bowen told us that on 23 April he went with a senior mining executive to see Mr Penfold. Mr Bowen's recollection is that, at the end of the meeting, he referred to the Customs investigation and asked Mr Penfold at what level FCO clearance had been obtained for Sandline's activities. Mr Penfold's reply was that it had been 'at least at head of department level'. Mr Penfold does not recall the conversation in these terms. At most, he says, he might have told Mr Bowen that the people in London had been aware of the operation.

President Kabbah's tribute

5.46 On 11 May, President Kabbah wrote to the Prime Minister, Mr Blair, to express his concern about the controversy in the UK about the Sandline contract, and to state his government's view that the UN Resolution was not directed against the elected Government of Sierra Leone (doc.122). In the course of this letter, President Kabbah paid the following tribute to Mr Penfold:

'I regret that your High Commissioner to Sierra Leone, Mr Peter Penfold, has unjustifiably become the subject of a vilification campaign orchestrated by those mentioned earlier. Apart from translating British diplomatic support for my Government in Conakry, Guinea, Mr Penfold in diverse ways encouraged my Government and other Sierra Leoneans in the Republic of Guinea to remain committed to the ideals of democracy and not to lose hope. Quite frankly, Mr Peter Penfold was a source of moral strength not only to me personally but to all patriotic Sierra Leoneans. We can appreciate why during these difficult times Mr Penfold is widely perceived by many Sierra Leoneans as not only a hero but a victim of the very forces that conspired but failed to destroy our country.'

CHAPTER 6: THE FCO IN LONDON

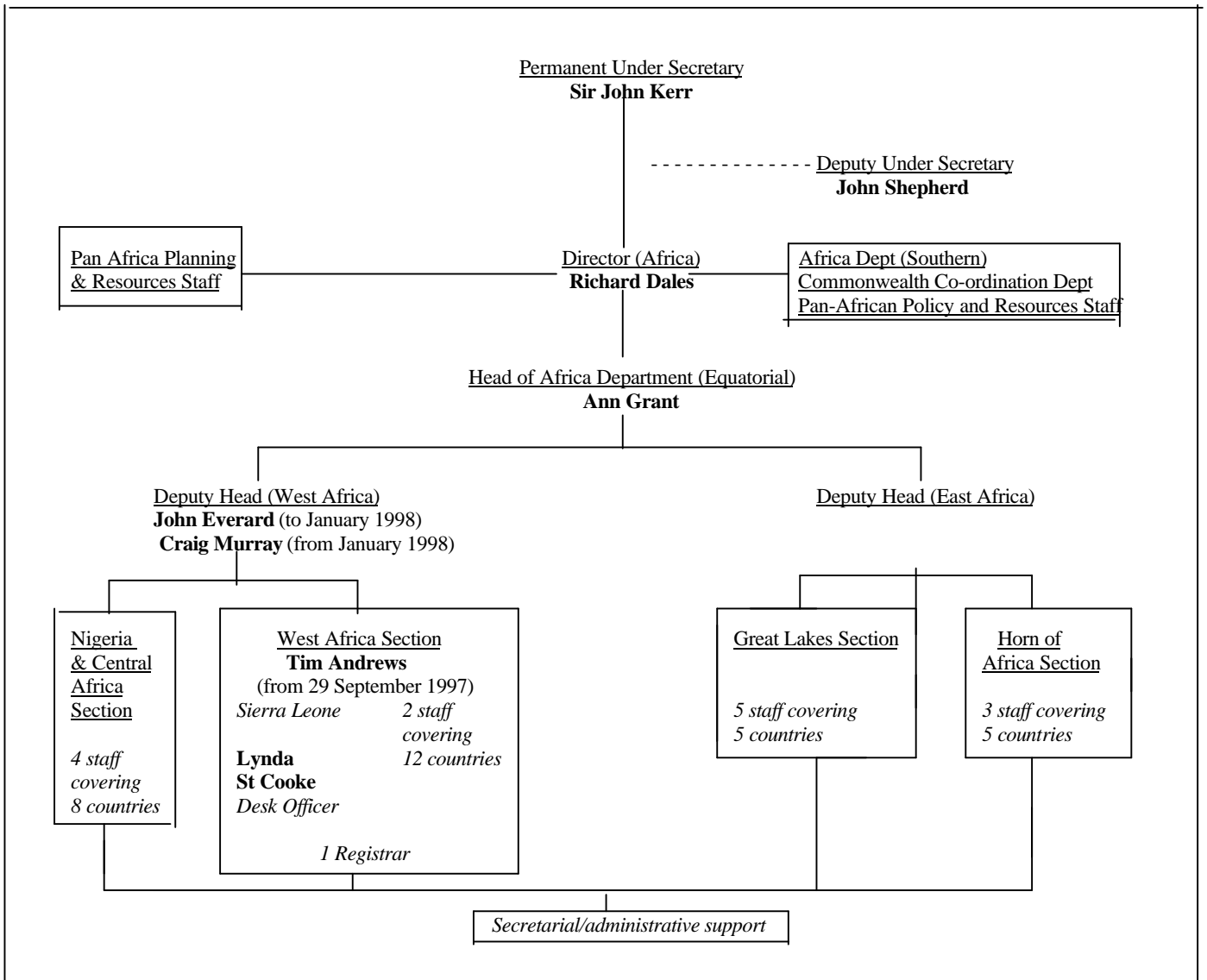
6.1 We now examine the story as it involved officials of the Foreign and Commonwealth Office in London.

Background

6.2 The main policy work of the FCO is divided, mostly by geographic area, into groups called Commands. The Africa and Commonwealth Command was headed during this period by Mr Richard Dales. Part of the Command is the Africa Department (Equatorial). This Department, AD(E), was run by Ms Ann Grant. AD(E) is organised and staffed as shown in the organogram overleaf.

6.3 Within AD(E), those whose responsibilities included Sierra Leone worked in the West Africa Section. Since September 1997, this Section has been headed by Mr Tim Andrews. The Deputy Head of Department supervising the Section was Mr John Everard, until January 1998, when Mr Craig Murray took over. Both reported to Ms Grant. Ms Lynda St Cooke, who works to Mr Andrews, has worked full-time on Sierra Leone since shortly after the coup. She is the Sierra Leone desk officer.

6.4 Above Mr Dales in the hierarchy is Mr John Shepherd. He is one of the FCO's six Deputy Under Secretaries and was Mr Dales' manager. He has a roving brief, overseeing strategy and key tactics rather than involvement in day-to day management. This role gave him only a peripheral part in the events we are investigating.



6.5 AD(E) is a busy Department. Ms Grant was responsible for 31 countries. Under her, Mr Murray is responsible for 21 and, under him, Mr Andrews is responsible for 13. AD(E)'s work used to be spread between two separate Departments. Its responsibilities are wide-ranging and its resources stretched. Its staff have to juggle copious demands, their hours are long and their working conditions stressful. Apart from Sierra Leone, many major issues had to be handled during the period concerned, including, for example, relations with Nigeria.

6.6 Events in Sierra Leone generated considerable activity for AD(E). The coup, and later the counter-coup, necessitated fast-moving redevelopment of policy. The regular work, such as dealing with letters from members of both Houses of Parliament and from the public, continued to require attention. Anxious callers with families or business interests in Sierra Leone had to be promptly given whatever information was available about the situation there. It was against this background that the events with which we are concerned took place.

The Special Representative for Sierra Leone

6.7 On 9 January 1998, the Foreign Secretary appointed Mr John Flynn, a recently retired diplomat with African experience, as his Special Representative for Sierra Leone. His mission as Special Representative was to work with all the key players in the region, and to bolster efforts at the UN to restore President Kabbah's government. After speaking to a number of the Permanent Representatives at the UN, all of whom confirmed their support for President Kabbah, Mr Flynn planned to visit the ECOWAS region to encourage rejection of the junta. However, though he managed one visit to the region, Mr Flynn's further plans were thwarted by ECOMOG's military operations which began on 5 February.

6.8 On his appointment, Mr Flynn had contact with Mr Dales and Ms Grant about the policy guidelines he would be following. There was general agreement about the restoration of President Kabbah by peaceful means. The first that Mr Flynn heard of Sandline was during his initial briefing in January by other AD(E) staff. He had been aware of

Executive Outcomes during his earlier work in Angola and Southern Africa. During his briefing, he was advised by AD(E) staff to avoid contact with Sandline. Mr Flynn assured us that he had no contact with Sandline either before his appointment or since. He had no specific briefing on the UN Resolution, but saw mention of the sanctions in the telegrams he was given to read. He understood them to apply to the supply of arms generally, not just the junta. He was not sure whether he saw the Order in Council. His contacts with AD(E), and later with Mr Penfold, were not such as to give him any knowledge of the Sandline contract or their allegations.

- 6.9 Mr Flynn briefly met Mr Lloyd at the Commonwealth Ministers Action Group (CMAG) in early March, and it was agreed that they should meet again later that month. At that further meeting, which took place on 19 March, there was no reference to Sandline.

Early contacts with Mr Spicer

- 6.10 As mentioned in paragraph 4.9, Mr Spicer made contact with AD(E) regularly throughout 1997. He first rang Mr Everard on 27 May (**doc.** 1) to offer assistance with the evacuation from Sierra Leone of UK citizens and to provide information on the situation there. Mr Spicer called again on 4 June to tell Mr Everard he was proposing to consult General Abacha of Nigeria about the possibility of involving what Mr Everard took to be Executive Outcomes in a military restoration of President Kabbah. Mr Everard recorded (**doc.** 3) that he declined Mr Spicer's request for help in securing an interview with General Abacha, and would not be drawn on Mr Spicer's speculation that Executive Outcomes' involvement would only work in conjunction with other African forces. This was some time before the UN Resolution was adopted, or even initiated, and Mr Everard's response accorded with the emerging government policy that President Kabbah's government should be restored by peaceful means.
- 6.11 These and subsequent telephone conversations were initiated by Mr Spicer. He spoke to Mr Everard on 26 August, 9 September, 6 and 13 October, 7 November, 17 December and 5 January 1998 (**docs.** 13, 16, 25, 32, 36, 41, 44). In all but the last of these calls, Mr Spicer provided the FCO with information about events in Sierra Leone which does not

directly bear on the allegations with which we are concerned. However, the information was helpful to AD(E), a fact which Mr Everard regarded as justifying the Department's continued contacts with Mr Spicer.

An early warning

- 6.12 On 1 August 1997, the *Toronto Globe and Mail* published an article (**doc.** 8) alleging that British mercenaries were involved in plans to overthrow the junta. It claimed that a member of President Kabbah's Government was seeking a deal with Mr Spicer, of Sandline International, to be backed by a Canadian-based company headed by Rakesh Saxena, a Thai businessman. As Chapter 4 shows, this article had a basis of truth. Some months later, the article was placed on the Internet.
- 6.13 On 5 August 1997, the British High Commission in Ottawa sent the *Toronto Globe and Mail* article to AD(E), asking (**doc.** 8) for a line to take in case of press interest. On 7 August, AD(E) replied (**doc.** 9), providing a press line which included the statement that: 'we deplore the recruitment of mercenaries. If any evidence came to light that British citizens recruited as mercenaries were themselves engaged in illegal activities, that evidence would be referred to the prosecuting authorities'. The papers were then filed by AD(E).
- 6.14 At this time, the UN Resolution had not yet been adopted and the provision of arms to Sierra Leone had not been made illegal. Those concerned in the FCO were contemplating an embargo only on the junta, and had not yet been advised that it would need to be applied more widely.

The UN Resolution and the Order in Council

- 6.15 As described in Chapter 3, some members of AD(E) took part in the framing of the UN Resolution, though none in that of the Order in Council.

First suggestion about arms after the UN Resolution

- 6.16 On 3 December, Mr Everard took advantage of Mr Penfold's presence in London to include him in a general discussion of the position in Sierra Leone. Mr Andrews and Ms St Cooke also took part, as well as the relevant desk officer from the Defence Intelligence Staff of the MoD and other Foreign Office and Whitehall colleagues (**doc.** 38). The discussion was wide-ranging and a number of ideas were considered. The DIS desk officer reported that Executive Outcomes were said to be arming and supplying the Kamajors. Mr Everard has told us that he did not forward this information because he did not believe it was accurate; he had seen no supporting information from other sources.

Meeting with Branch Energy on 10 December

- 6.17 Early in December 1997, Mr Rupert Bowen of Branch Energy got in touch with Mr Everard and asked for a meeting. Because of Branch Energy's perceived association with Executive Outcomes, Mr Everard was uneasy and discussed the request with the West Africa Section. He discovered that his predecessor had held such a meeting and, reassured that he would not be setting a precedent, he agreed to Mr Bowen's request. As mentioned in paragraph 4.13, the meeting was held on 10 December, when Mr Tony Buckingham and Mr Bowen came to the FCO and saw Mr Everard, Mr Andrews and Ms St Cooke.
- 6.18 Notes of the meeting were separately written by both Mr Bowen (**doc.** 39) and Ms St Cooke (**doc.** 40). Both notes record that the situation in Sierra Leone was discussed in broad terms. Both agree that Mr Buckingham canvassed the idea of seeking a meeting with General Abacha. Mr Bowen's note states that Mr Everard said he would have no problem about this, but warned that Branch Energy should not expect any public endorsement by the FCO of any initiative that Branch Energy might undertake with the Nigerians. Ms St Cooke's note states that 'Mr Everard refused to be drawn on [the possibility of Branch Energy doing a deal with General Abacha]. We had no objection in principle to UK companies speaking to Abacha.' Since Mr Buckingham and Mr Bowen

were both close associates of Mr Spicer, Sandline's plans might have been raised at this meeting. However, neither note suggests that arms, or Sandline's plans, were mentioned.

6.19 Mr Penfold returned to London from Conakry on 21 December, and went to the Foreign Office on 23 December, just before his lunch with Mr Spicer. Paragraph 5.24 recounts his recollection of his meetings at the FCO that morning.

Further information from Mr Spicer

6.20 On 5 January 1998, Mr Spicer rang Mr Everard and told him that he had signed an agreement with President Kabbah to give support worth US \$10m for President Kabbah's followers and for the Kamajors. Mr Everard's note of the conversation (doc. 44) records that Mr Spicer said his organisation was prepared to help in a forthcoming operation by the Kamajors with communications and medical supplies, but not in any higher-profile way. Mr Everard says that he did not consider that arms might be involved. He has also told us that, although his written statement to our investigation uses the term 'non-lethal', Mr Spicer did not in fact use that phrase. Mr Everard sent his note of the conversation to Mr Andrews and Ms Grant.

6.21 The staff of AD(E) felt uncomfortable in their dealings with Mr Spicer, and in their more limited contact with Mr Bowen and Mr Buckingham. On the one hand, these were businessmen associated with British companies with legitimate interests in Sierra Leone. As such, it would have been difficult to decline to speak to them. In addition, they were a valuable source of information on conditions inside Sierra Leone. On the other hand, AD(E) were aware that they needed to tread carefully. Mr Everard told us that he was instinctively wary because of the possible risk of allegations of dealing with mercenaries.

6.22 Because of this unease, Ms Grant asked Mr Everard, before he left his post in AD(E), to set out the record of his dealings with Mr Spicer. He did this in a minute to Ms Grant, dated 5 January (doc. 43) which set out the ground rules Mr Everard had followed in these contacts. These included:

- not taking the initiative in making contact;

- limiting contact to telephone conversations;
- avoiding any comment which might suggest approval or disapproval of Executive Outcomes' activities; and
- noting information provided by Mr Spicer, but not directly soliciting it.

6.23 Mr Everard continued, quoting Ms Grant, that 'it is important that our contacts with Mr Spicer are not used by his organisation to claim that HMG has legitimised any activity by him and his associates in Sierra Leone... I do not think that I have said anything which could reasonably be construed in this sense.'

6.24 Mr Everard began to hand over his responsibilities to Mr Murray on 5 January, and left AD(E) on 9 January. We have found no evidence that Mr Everard was ever informed of Sandline's intention to send arms to President Kabbah. Mr Spicer has stated that, while Mr Everard was generally aware of Sandline's plans to help President Kabbah, he was not told the details.

The meeting with Mr Spicer on 19 January

6.25 Within days of his arrival in AD(E), and while he was still settling in, Mr Craig Murray was telephoned by Mr Spicer, who asked for a meeting. Mr Murray agreed. He then found Mr Everard's minute of 5 January setting out his ground rules, and considered cancelling the meeting. He did not do so, because (as he put it) he saw no moral difference between telephone conversations and meetings, and because he felt it would enable him to weigh up Mr Spicer and decide if AD(E) should continue talking to him. Mr Murray asked Mr Andrews to attend the meeting and make a note, because he thought they should be on their guard.

6.26 As mentioned in paragraph 4.20 above, this meeting took place at the FCO on 19 January, and lasted about 40 minutes. It forms the main basis of Mr Spicer's claim that Sandline's plans were known and approved by the FCO in London, as distinct from Mr Penfold. Mr Spicer, Mr Murray and Mr Andrews all agree that reference was made during the meeting to Sandline's work for President Kabbah. Mr Andrews attached

sufficient importance to this to single it out for record as the key fact to emerge from the meeting. However, there is a complete difference of recollection between Mr Spicer on the one hand, and Mr Murray and Mr Andrews on the other, about various aspects of the discussion and about two key points in particular. The first point is whether, as he claims but they deny, Mr Spicer made it clear that his contract with President Kabbah included the supply of arms. The second point is whether, as they claim but he denies, Mr Spicer was informed that the arms embargo applied to all parties in Sierra Leone, and thus to President Kabbah.

- 6.27 Mr Andrews did not take notes during the meeting. However, he has told us that he wrote his note of it (doc. 46) within half an hour of its end. The full text of the part of that note which deals with the contract reads: ‘Mr Spicer explained that his company was working on behalf of unnamed Canadian business interests who wished to see President Kabbah restored to office. Following discussion with President Kabbah, he had been asked to provide logistic and other non-lethal support to the Kamajors and to assist the liaison between the Kamajors and ECOMOG. Mr Spicer estimated that he would need between six and eight weeks to carry out the operation.’
- 6.28 Mr Murray and Mr Andrews consistently maintain that Mr Spicer used the phrase ‘non-lethal’ several times to describe the equipment he was going to supply to President Kabbah. They maintain that there was no mention of weapons in this context, and that nothing was said at the meeting from which they could have inferred that Sandline was supplying arms to President Kabbah. Mr Murray suggested to us that the term ‘non-lethal’ is not in common use in the FCO and that Mr Andrews would not have recorded it in his note unless it had been used by Mr Spicer. However, Mr Dales told us that the term ‘non-lethal’ equipment is very commonly used in the FCO and MOD as referring to items such as boots and uniforms rather than guns. Be that as it may, both Mr Murray and Mr Andrews maintain that there was no mention of weapons.
- 6.29 For his part, Mr Spicer consistently maintains that he left Mr Murray and Mr Andrews in no doubt that Sandline’s contract included the supply of arms. He did not write a note of

the meeting and does not recall his precise choice of words. However, he says he is sure that, at minimum, he used some such phrase as ‘military equipment’, but that it is more likely that he said ‘weapons’ or ‘weapons systems’. Mr Spicer denies that he ever used the expression ‘non-lethal’, and has told us that to him, as a professional soldier, this expression would have been inappropriate, because it means weapons designed to incapacitate but not to kill. Mr Spicer maintains that, in fact, particular lethal weapons were discussed, including a multi-barrelled gun for a helicopter. Since the prospective supplier was a UK firm, he knew that he would have needed a licence if it was to be supplied from the UK. (Arms exports from the UK always require a licence.)

6.30 Mr Murray and Mr Andrews say that Mr Spicer referred to possible arms supplies from Eastern Europe to the junta. At that point, Mr Andrews fetched a copy of the UN Resolution from his office, and he and Mr Murray tell us that Article 6 was read out to Mr Spicer. They maintain that Mr Spicer asked whether the Article applied to all parties in Sierra Leone, and that they replied that it did. However, Mr Andrews’ note of the meeting makes no reference to the UN Resolution or to the arms embargo, or to any provision of information about it to Mr Spicer. Mr Murray’s explanation of this was that discussion of the UN Resolution occupied only about three minutes out of a 40-minute meeting. Mr Andrews said that, at the time, it seemed extraneous to AD(E)’s main concerns.

6.31 Mr Spicer maintains that it was clear to Mr Murray and Mr Andrews that Sandline was going to supply weapons to President Kabbah and that they did not warn him against this. He says that the UN Resolution was mentioned in general terms, but only in the context of the supply of arms to the illegal junta, and that he was not taken through it line by line. He maintains that at no stage did Mr Murray or Mr Andrews say that the embargo applied to anyone other than the junta, or that it applied to President Kabbah, or that Sandline would be doing anything wrong by supplying arms to President Kabbah. Both sides agree that the Order in Council was never mentioned.

- 6.32 After the meeting Mr Murray, who thought some of Mr Spicer's answers to his questions evasive, concluded that it would be better not to continue contacts with Mr Spicer.
- 6.33 Mr Murray had been in his job only a matter of days when Mr Spicer requested the meeting. But his decision to go ahead with it after seeing Mr Everard's ground rules seems unwise. This was compounded by failure to ensure that Mr Andrews took notes during the meeting and wrote a full record afterwards. The note he did write has to be regarded as inadequate. An additional safeguard would have been for Mr Murray to write to Mr Spicer recording the main points made at the meeting. This course was not taken either.
- 6.34 The conflict of evidence about these crucial passages of the meeting of 19 January is diametric that there now seems no way to resolve it. After carefully considering Mr Andrews' note of the meeting, the differing accounts provided to us by the two AD(E) officials and by Mr Spicer, their respective knowledge, attitudes and possible interests, and the representations they have made to us, we think the only safe conclusion is that the failure of communication was mutual. Mr Murray and Mr Andrews probably left the meeting unaware that Sandline was supplying arms to President Kabbah. We have found no reason why they should have chosen to give Sandline encouragement or approval. We do not find that they did so. We also conclude that Mr Spicer could have left the same meeting unaware that supplying arms to President Kabbah would be contrary to the UN Resolution and would be a breach of the arms embargo. Thus he may have assumed that he had been given tacit approval.
- 6.35 Mr Spicer has drawn our attention to records which show the length of his telephone conversations with Mr Murray and Mr Andrews on 27 March and 3 April, on the two occasions when the Customs investigators visited Sandline (see paragraphs 4.30 above and 6.59 and 9.50 below). These records demonstrate that the two conversations lasted six and seven minutes respectively. Mr Spicer says that in the course of these conversations, he made lengthy and vigorous requests to intercede with Customs on behalf of Sandline. Mr Spicer contends that it is inconceivable that he would have done

this if he had not had reason to believe that Mr Murray and Mr Andrews had understood and approved the Sandline project, and therefore that his version of what happened on 19 January must be correct. We have considered this contention, together with the other evidence available to us. However, we do not think that in this instance the length of a telephone call is necessarily proof of its content, or that only one conclusion can be drawn from it.

- 6.36 Some support for Mr Murray's version of events is contained in his minute of 30 March (doc. 87) recording the substance of the telephone conversation on 27 March to which Mr Spicer refers above. Mr Murray records that Mr Spicer asked me if I thought this [Mr Murray speaking to Customs] would lead Customs to close the book on the matter. I replied I did not know. It would presumably depend on whether or not Executive Outcomes had undertaken activities which went beyond those of which he had informed us'. This seems to indicate that Mr Murray believed that the information given during his own contacts with Mr Spicer did not include anything about action which Mr Murray would have regarded as illegal. Mr Murray has been very concerned about the view we take of the meeting on 19 January, but he has not drawn our attention to this record. This increases our belief that it is reliable evidence and that it was not written to provide self-protection. In reaching our conclusion in 6.34 above we have therefore taken note of it.

Information from Mr Penfold

- 6.37 As already mentioned in paragraphs 5.30-5.31, on his return from his holiday abroad, Mr Penfold went to AD(E)'s office in the FCO at the end of January, prior to returning to Conakry. His first visit was on 28 January, before he went to see Mr Spicer and Mr Orwin. Mr Penfold's recollection is that his discussions with AD(E) centred around the meetings he had attended in New York with Mr Flynn.
- 6.38 The next day, 29 January, Mr Penfold went to the FCO again and passed Mr Andrews the Sandline strategy paper which Mr Spicer had given him the previous day. The words 'weapons' or 'arms' do not appear in this paper, but it includes references to procurement and supplies. Mr Andrews did not understand the document, so he copied it to the

Cabinet Office and to the Defence Intelligence Staff with a request for an assessment. The DIS desk officer later telephoned Mr Andrews to discuss it, but the latter does not recall anything significant being said and he did not pursue the matter further.

- 6.39 While in the Foreign Office that day, Mr Penfold met Mr Craig Murray and told him about his meeting with President Kabbah on 19 December. They discussed HMG's policy on Sierra Leone and each was dismayed by the other's attitude. Mr Penfold thought Mr Murray seemed to be preparing to advise that the policy should be changed from supporting President Kabbah's democratically-elected Government. Mr Murray was concerned that Mr Penfold seemed to intend to push for a military solution, in face of HMG's support for a peaceful restoration of President Kabbah's government. He was also concerned that Mr Penfold appeared to have advised President Kabbah to hire mercenaries. He immediately reported this conversation to Ms Grant and Mr Dales.
- 6.40 Mr Penfold came to the office again on 30 January to meet Ms Grant, which she had requested. This meeting was also attended by Mr Murray. Ms Grant wanted to know about Mr Penfold's meeting with President Kabbah on 19 December, which Mr Murray had mentioned to her. The recollection of Ms Grant and Mr Murray is that Mr Penfold told them that he had advised President Kabbah to sign the contract with Sandline. Mr Penfold denies this. Ms Grant and Mr Murray are adamant that Ms Grant spoke strongly to Mr Penfold to the effect that he must not act as a personal adviser to President Kabbah and that, as High Commissioner, he was not free to express to President Kabbah views that were merely his own. Mr Penfold says he does not recall this. During the meeting, Mr Penfold made no mention of arms supplies. Ms Grant emphasised that Mr Penfold was to keep within HMG's policy that President Kabbah should, if possible, be restored by peaceful means. If force were the only way, it should be exercised legitimately under a UN mandate. Ms Grant then asked Mr Penfold to record his dealings with Sandline in writing. As related in paragraph 5.34, Mr Penfold did this on 2 February and personally delivered the resulting minute to the Foreign Office. He addressed it to Ms Grant, who was away from 4 February and did not see it until her return on 9 February.

- 6.41 Mr Penfold's discussion with Mr Murray led him to write a paper, dated 29 January, on the way forward on Sierra Leone (doc. 47). This paper argued for a cease-fire enforced by ECOMOG under a UN umbrella, and the creation of an interim authority in Freetown. Mr Penfold stressed his view that President Kabbah should not be abandoned in favour of the junta. For his part, Mr Murray sent a minute (doc. 51) to Ms Grant and Mr Dales, making a series of policy points and stating his belief that the result of Mr Flynn's appointment, and of Mr Penfold's situation in Conakry, was duplication of effort and confusion of policy. He also recorded his concern that Mr Penfold might be pushing for a military solution without UN authorisation. He recommended that Mr Penfold be recalled.
- 6.42 Mr Dales responded on 4 February, in a hand-written note on Mr Murray's minute, that there was no dichotomy. The policy was as cited at the beginning of Mr Murray's minute, namely that the Conakry peace accord should be implemented by ECOMOG, under the cover of a UN Security Council Resolution, monitored and assisted by UN advisers/observers, and using limited necessary force or the threat of force to ensure compliance by the junta. Mr Dales went on to say that events did not yet justify reconsidering Mr Penfold's role. This response apparently affected Mr Murray's actions later.

The allegations sent by Lord Avebury

- 6.43 On 9 February, Ms Grant returned to the office from Brussels, and found waiting for her a letter dated 5 February from Lord Avebury (doc. 53). Lord Avebury had long taken a special interest in Sierra Leone. His consequent flow of letters and Parliamentary Questions to Ministers, and his telephone conversations with AD(E) staff, generated a fair amount of work for the Department. As a result, Ms Grant had earlier invited Lord Avebury to a meeting with her on 23 January, so that she could fully explain the Government's policy on Sierra Leone. The meeting was amicable, although Lord Avebury continued to disagree with HMG's policy. It was as a result of this meeting that Lord Avebury wrote to Ms Grant on 5 February rather than to Mr Lloyd, the Minister of State. Lord Avebury's letter drew Ms Grant's attention to a recently-published article

in the *US News and World Report*. The article claimed, accurately, that Sandline had received US \$1.5m for the supply of equipment, explicitly including arms, to President Kabbah. Lord Avebury's letter also drew attention to the allegations made the previous August in the *Toronto Globe and Mail*, which had recently appeared on the Sierra Leone website.

6.44 Ms Grant sent Lord Avebury's letter to Mr Andrews on 9 February with a request for a draft reply. She also sent a copy to Mr Paul Hare, Head of the FCO's Non-Proliferation Department. This Department, among its other responsibilities, has two representatives on the Restricted Enforcement Unit, an inter-departmental Whitehall body which considers allegations of breaches of arms embargoes. (Its membership is listed in the glossary.) Mr Andrews, in consultation with Mr Murray, produced a draft reply to Lord Avebury that day, 9 February (doc. 55), and sent it to an FCO legal adviser for approval. Mr Murray told Mr Andrews that the allegations should be passed to Customs. The history of that reference, and of Ms Grant's eventual reply to Lord Avebury, is continued below in paragraphs 6.57-6.58.

Mr Penfold's minute of 2 February

6.45 In the meantime, Ms Grant's in-tray on 9 February also contained Mr Penfold's minute of 2 February, which she had requested from him at their meeting on 30 January. This crucial minute, to which we have already referred in paragraph 5.34, sets out in full Mr Penfold's account of his discussion with President Kabbah about the Sandline contract. It bears quoting again in this context. The key part of it, so far as AD(E) is concerned, is paragraph 3, which reads: 'Kabbah showed me in confidence the copy of the contract with Blackstone, which in return for diamond mining concessions, they would make available to Sandline up to US \$10 million for the purchase of arms and equipment and the provision of training. He specifically asked whether HMG would provide a similar package.' Paragraph 4 sets out Mr Penfold's discussion of the contract with President Kabbah. Paragraph 5 reads: 'I briefed the department on the contract when I looked in before Christmas, and I confirmed it in my letter to you dated 30 December before I left for Canada....' Mr Penfold's minute therefore clearly informed all who read it that

Sandline had been engaged to supply arms. It provided immediate and concrete evidence to confirm the allegations passed on by Lord Avebury that the arms embargo had been breached.

6.46 Ms Grant registered that Mr Penfold's minute was clear evidence of a breach of the embargo. Her immediate reaction was to send the minute to Mr Andrews, with a request for him to find the letter of 30 December to which Mr Penfold had referred. Mr Andrews, after a thorough search, returned the minute to Ms Grant the following day, explaining that the letter could not be found and that no one remembered having seen it.

6.47 Mr Andrews cannot recall in which order the two documents, Lord Avebury's letter and Mr Penfold's minute, reached him. He did not make the connection between them, and did not notice the reference to arms in Mr Penfold's minute. This was largely because his attention had been focused by Ms Grant on the need to track down Mr Penfold's letter of 30 December. It was also because Mr Andrews was extremely busy with other work, as a result of events that week in Freetown, where ECOMOG had launched military action to unseat the junta.

6.48 Ms Grant has told us that she regrets that she took no additional action on Mr Penfold's minute. At the time she believed that action had already been set in train on the allegations sent by Lord Avebury by her referral of them to the Non-Proliferation Department. She thought that Mr Penfold's position would be clarified by the outcome of Customs' enquiries and she did not think it was necessary to inform Ministers at this stage.

6.49 Mr Penfold's minute was then passed to Mr Dales, who told us that he has no recollection of reading it or of noting its reference to arms.

6.50 The next member of AD(E) to see Mr Penfold's minute was Mr Murray, who did not receive it until 23 February. He found it alarming but he too took no action. Mr Murray has told us that he realised Mr Penfold might have put himself at risk of the criminal law.

He was uncertain how to proceed and did not wish to pass Mr Penfold's minute to Customs (whom he believed to be already seized of the allegations sent by Lord Avebury) without knowing what action his senior managers thought appropriate. But he did not raise the matter with his senior managers, whom he understood to have already seen Mr Penfold's minute, because they had not accepted his earlier recommendation that Mr Penfold be recalled from Conakry. He therefore let the matter rest. Like his colleagues, Mr Murray had become very busy as a result of ECOMOG's military offensive in Sierra Leone.

6.51 Ms St Cooke, the desk officer, told us that she also saw Mr Penfold's minute at some stage, she believes earlier rather than later in February. It was never formally drawn to her attention.

6.52 So far as we have been able to establish, Mr Penfold was never sent any reply to his minute of 2 February or received any other reaction.

The intelligence report

6.53 On or about 19 February, AD(E) received a copy of an intelligence report suggesting that President Kabbah had engaged Executive Outcomes/Sandline to prepare and lead a military force from bases in Liberia to oust the junta. Sandline was described as heavily involved in the plan, which was said to include the supply and training of troops, and the provision of military helicopters and supplies. This report was marked for passing to Ms Grant. She does not recall whether she saw it herself. She had instructed her staff to be selective in the intelligence reports they showed her. However, this particular report was seen by Mr Murray. FCO officials have to make judgements about intelligence reports. Mr Murray discounted this one because, as he told us, it referred to arms and Kamajor camps in the unlikely location of Liberia.

The Observer article of 8 March

6.54 On Friday 6 March, the Foreign Office News Department was telephoned by a journalist on *The Observer* who was working on a story for that Sunday's edition about contacts

between Mr Penfold and Sandline. Mr Peter Bean (who has since died) and Mr Nev Johnson of the FCO News Department discussed the journalist's claims with Ms Grant and Mr Murray, and by phone with Mr Penfold. It seemed likely that the article would allege that Mr Penfold, President Kabbah and a representative of Sandline had held a joint meeting. This was put to Mr Penfold, who gave an assurance that such a three-way meeting had never occurred. Between them they agreed the line that 'Our High Commissioner has confirmed that he did not attend any such meetings' (doc. 71). It is worth noting that we have seen no evidence to suggest that such a meeting occurred, nor has Sandline claimed it did.

6.55 The remainder of the press line includes a confirmation that Mr Penfold had met Sandline representatives in the normal course of his duties. It adds that the FCO was 'aware of reporting of deal in the offing for payment to be made by President Kabbah for Sandline Services as military advisers.' Mr Murray has told us that he said at the time that the denial of any three-way meeting was disingenuous, since the substance of the anticipated story was true. Ms Grant has told us that, while the press line was being discussed, she did not have in mind Mr Penfold's minute of 2 February, with its statement that Sandline was supplying arms. This goes some way to explaining the deficiencies of the press line, and why Ministers were not immediately informed. The press line was, however, copied to the private offices of Mr Cook, Mr Lloyd and Sir John Kerr. It was shown later to Mr Lloyd but, so far as we can establish, not to Mr Cook or Sir John Kerr.

6.56 The press line appears to have been effective, since *The Observer* article as published on 8 March (doc. 73) did not include any allegation of a three-way meeting.

The referral of the allegations to HM Customs and Excise

6.57 FCO formally referred Lord Avebury's allegations to Customs on 10 March. But this was not the first that Customs had heard of them. As mentioned in paragraph 6.44, when Ms Grant read Lord Avebury's letter on 9 February she sent a copy of it (doc. 56) that day to the FCO's Non-Proliferation Department. On 13 February, that copy reached Mr

Brian Conley, one of the FCO's two representatives on the inter-departmental Restricted Enforcement Unit (REU), (see glossary). The REU, on which Customs is also represented, meets fortnightly and considers what action, if any, should be taken on alleged breaches of a wide range of restrictions, including arms embargoes. Mr Conley was unaware of any of the background to the allegations and had not seen Mr Penfold's minute of 2 February. He therefore saw nothing in Lord Avebury's letter so urgent that it could not await the next meeting of the REU on 18 February. He raised the allegation at that meeting. The minutes (doc. 63) record, under the heading of 'any other business', that 'NPD circulated copies of a letter from Lord Avebury to FCO about the activities of SANDLINE INTERNATIONAL in Sierra Leone. This company is run by TIM SPICER. C&E have liaised with FCO about this; Tim Andrews in FCO's African Department is dealing with this.' The Customs representative in REU, Mr Bob Jackson, later informed us that the minutes (which were subsequently corrected) are mistaken in recording that Customs had already got in touch with Mr Andrews, though they had done so by the time the minutes were written, some days after the meeting. Wednesday 18 February therefore marks the first referral of the allegations to Customs.

6.58 Mr Andrews, meanwhile, had been awaiting the FCO Legal Advisers' comments on his draft reply to Lord Avebury. An allegation of arms supplies to the junta (as distinct from President Kabbah), which Mr Penfold had passed to AD(E) in December 1997, had been referred direct to Customs by AD(E) in early January. AD(E) having thus established their own link with Customs, Mr Andrews intended to send Lord Avebury's allegations direct to them. However, he did not do so until he received the legal advice on Lord Avebury's letter. The draft as revised by FCO Legal Advisers was received on 26 February. Ms Grant sent her reply to Lord Avebury that same day (doc.65). AD(E)'s referral of the correspondence to Customs was then further delayed until 10 March by staff sickness. Mr Andrews knew that Mr Conley had passed the Avebury allegations to the REU. Mr Andrews has told us that, with hindsight, he sees no reason why he should have awaited advice on the draft reply before sending the allegations direct to Customs. On 10 March, the same day that AD(E) made its second, and more formal, request to Customs, Baroness Symons answered a starred question about Sierra Leone, put down in

the House of Lords by Lord Avebury. The handling of her briefing for this question is dealt with in Chapter 9.

Action by Customs

- 6.59 On 27 March, Mr Spicer rang Mr Murray to protest at the interest that Customs was displaying in Sandline's activities. This was followed on 30 March by Mr Murray receiving information from Customs officials that they considered there was prima facie evidence of a breach of the embargo, and were pursuing an active investigation. The extent to which this information was passed to Ministers is dealt with in Chapter 9 below. Customs officials visited AD(E) on 2 April and examined their files. Amongst the papers they removed was a copy of Mr Penfold's minute of 2 February. They asked AD(E) to obtain a copy of Mr Penfold's letter to Ms Grant of 30 December 1997, in which Mr Penfold had referred to the Sandline contract. Although AD(E) had asked Mr Penfold for this at least once previously, he had not yet provided a copy of his letter. They finally obtained one from Freetown on 6 April. Its salient part, already quoted in paragraph 5.28, stated that: 'I have been in touch with Tim Spicer over the holidays. Kabbah has signed the deal with Blackstone for EO/Sandline to provide dollars ten million of equipment and training for the civil defence militia. This will begin to flow in January. At my suggestion they will station someone in Conakry to stay alongside Kabbah. I have asked them to keep Colin Glass fully briefed. As you know, it has always been my view that only a serious threat of force will persuade the junta to stand down, therefore I welcome this development, not least because it means that Sierra Leoneans will be more directly involved in getting their legitimate government back.'
- 6.60 It is not easy to explain the non-arrival of Mr Penfold's original letter, the delay in receiving a copy, and AD(E)'s lack of urgency in tracing one. The letter does not explicitly refer to arms. Given AD(E)'s lack of reaction to Mr Penfold's minute of 2 February, which was much more specific, it might have made little difference to the course of events had AD(E) been able to read Mr Penfold's letter early in the new year.

Top Management Response

- 6.61 Sir John Kerr became Permanent Under-Secretary, the FCO's most senior official, in November 1997. The first document sent to his office that was pertinent to our investigation was the press line of 6 March on *The Observer* article. Sir John's Private Secretary at the time, Mr Julian King, does not recall seeing the press line, but does not believe he would have shown it to Sir John. Given the limited information in the press line, it would not be surprising if he saw no reason to show it to the PUS.
- 6.62 On 30 March, Mr Murray sent Mr Dales a minute reporting on the information from Customs (**doc.** 88). Mr Murray copied his minute to Mr Lloyd's office. It stated that Customs had obtained prima facie evidence of a breach of the embargo, and that Sandline had said they were acting with the full knowledge of HMG. After explaining that AD(E) had been aware of Sandline's activities in supporting the Kamjors with training and logistics, Mr Murray continued: 'We were not aware of any shipment of arms. We had been concerned that Sandline were deliberately cultivating contacts with officials to shield themselves from prosecution. Any breach of the arms embargo should of course be prosecuted.' Mr Dales forwarded a copy of this minute to Sir John Kerr. Sir John has told us that he understood this to mean that no shipment of arms had in fact taken place, and that the allegations of connivance by FCO officials could be dismissed. He therefore replied on the minute: 'Thank you. Please tell Mr Murray that on the basis of these papers he has nothing to worry about.'
- 6.63 A copy of a letter of Customs' letter of 30 March to Mr Murray was sent to Sir John's office (**doc.** 89). That letter made it unequivocally plain that arms had indeed been supplied and that Sandline was intent on claiming prior approval by officials. Sir John Kerr does not recall having seen that letter, neither does his Private Secretary. We understand that, at this point, the FCO Legal Adviser, Sir Franklin Berman, had been told that there was a problem. At his suggestion, Mr King requested a report from Mr Dales, and Mr King thinks it is possible that he would have put the Customs letter to one side while waiting for the report. Mr Dales reported to Sir John on 3 April. His minute

(doc. 95) briefly set out the history of Sandline's contacts with the FCO in London. It contained the phrase 'The Department were not aware of any shipment of arms.' Again, Sir John understood this to mean that no shipment of arms had occurred. Nonetheless, he told us that he took swift action, as described in paragraph 6.66 below.

- 6.64 We believe that Mr Dales and Mr Murray used the phrase 'The Department were not aware of any shipment of arms' because their attention was concentrated on the issue of whether officials in the FCO in London had connived at Sandline's alleged breach of the arms embargo. As a result, they failed to take due account of the fact that, through Mr Penfold's minute of 2 February, they were already on notice that an arms shipment was in prospect.
- 6.65 The Customs' letter of 30 March had also been copied to Mr Shepherd, who saw it on 2 April. Alive to its implications, he sent a suggestion to Mr Dales that he should provide Sir John Kerr with a full report. However, returning from Brussels on 3 April, Mr Dales saw the Custom's letter to Mr Murray and immediately sent a report on it to the PUS with a copy to Mr Lloyd's private secretary.
- 6.66 On 3 April, Sir John discussed Mr Dales' report with Sir Franklin Berman and Mr Rob Young, the Chief Clerk and Deputy Under -Secretary, whose responsibilities include personnel. Sir John also discussed with Dame Valerie Strachan, the Chairman of the Board of Customs and Excise, the limits on his own management action if he was to avoid compromising the Customs investigation. Following those discussions, Sir John decided that normal policy work on Sierra Leone should be separated from investigation of the allegations, that no one should speak to the media, that someone on the personnel side should keep an eye on AD(E) staff, and that he personally should recuse himself from involvement in the investigations, because of the possible implications for his role as disciplinary authority for all Foreign Office staff.
- 6.67 These arrangements were well-intentioned. However, in practice they went beyond what was required by the advice of the Legal Adviser and Customs' need to prevent their

investigation being compromised. The limits of these requirements seem to have been insufficiently explored. We have not found evidence of an explicit instruction. However, FCO officials, including the most senior, came to believe that the officials involved with Sierra Leone should neither talk about the matter among themselves, nor communicate with the rest of the FCO. As a result, an unnecessarily severe isolation was imposed. This cut off the flow of oral information, which in turn made it difficult to give adequate briefing to Ministers and Sir John Kerr. It also resulted in a loss of morale and sense of injustice in AD(E).

- 6.68 Sir John Kerr told us that he did not think it right to inform Ministers of the allegations without having a clear idea of their weight. As a result of the action initiated by Sir John, Mr Dales made arrangements for an FCO official, in Africa Command but wholly unconnected with the allegations, to examine the papers. The results of that official's work (doc.103) reached Sir John on 24 April, under cover of a minute from Mr Dales to Mr Lloyd, the Minister of State (doc. 109). On the same day, the Berwin letter arrived, and the opportunity for Sir John to inform Ministers in advance was overtaken by events.

CHAPTER 7: THE MINISTRY OF DEFENCE

- 7.1 This chapter deals with the involvement of the Ministry of Defence (MOD). The Berwin letter stated that Sandline had briefed MOD personnel about their plans, including Major Peter Hicks (who had the rank of lieutenant-colonel when serving abroad) and Colonel Andrew Gale. It also stated that Sandline staff had contacts with HMS Cornwall at Freetown, where they provided tactical and operational advice, and that engineers from the ship assisted in the repair of a helicopter operated by Sandline.
- 7.2 Major Hicks was a military liaison officer who was attached temporarily to the British High Commission for Sierra Leone. Colonel Gale was the Defence Adviser in Accra, Ghana until 31 January 1998. Since 20 February, he has been serving as the Military Adviser to the UN Special Envoy to Sierra Leone. We have interviewed Major Hicks and Colonel Gale. We have also interviewed Captain Anthony Dymock RN, then the captain of HMS Cornwall.

The military liaison officer

- 7.3 Since November 1994, Major Hicks has been working for the MOD in a military liaison role. His responsibilities at the time included providing military advice to the High Commissioner to Sierra Leone, and providing military reporting to the MOD. On 12 February 1998, Major Hicks was warned that he was to be deployed to Conakry, Guinea in preparation for possible service in Sierra Leone, should the democratically-elected government be restored in the near future.
- 7.4 His briefing made Major Hicks generally aware that there was an arms embargo on Sierra Leone. Nothing was specifically mentioned about Sandline, but Major Hicks was well aware of Executive Outcomes' activities and its associated companies.
- 7.5 Major Hicks travelled to Conakry on 14 February. On the day of his arrival, he was introduced to Mr Rupert Bowen, who spoke to him for about 20 minutes. Mr Bowen left Conakry later that day. The following day, 15 February, Major Hicks sent a report back

to the MOD recording the conversation (doc. 59). In it, Major Hicks reported that '[Mr Bowen] ... said that they were expecting a shipment of small arms in the next few days, which was for onward delivery to the Kamajors.'

- 7.6 This report was received by and circulated in MOD. It was not passed to the FCO. Major Hicks, who had arrived in Conakry that day, had asked that it should not be sent to FCO, because he had not yet had time to clear with Mr Penfold that such reporting should be passed by MOD to the FCO. From 19 February, a standard distribution which included the FCO was set up.
- 7.7 On Saturday 28 February, Major Hicks was with Mr Penfold when the latter received a telephone call from Mr Spicer. Major Hicks reported this conversation on the same day, stating that '[Mr Spicer] ... reported that Kabbah had cancelled his contract with his firm ten days ago over non-delivery of an arms consignment. However the arms and ammunition, some 35 tonnes, had now been delivered...' Mr Spicer has explained that it was not in fact the Sandline contract that had been cancelled, but the Blackstone contract with Mr Saxena (doc. 66).
- 7.8 Major Hicks' report was duly received by MOD, and forwarded during the same weekend to the FCO Communications Centre (COMCEN), where it was copied to the Resident Clerk for action. The Resident Clerk telephoned a member of AD(E) to describe the contents of the report. He believes that he spoke to Mr Murray. However, Mr Murray tells us that he is certain that he did not have any conversation with any Resident Clerk involving Sandline, Mr Spicer or arms. The AD(E) member's advice to the Resident Clerk was that no urgent action needed to be taken and that the report need not be retained. The Clerk accordingly put the report in the disposal tray where it was later destroyed. Shortly afterwards, COMCEN contacted the Clerk to ask what they should do with their copy of Major Hick's report. The Clerk had to make another telephone call later that weekend to the same AD(E) official about another (non-related) Sierra Leone matter, and took the opportunity of asking him what should be done with the COMCEN copy. The AD(E) official apparently advised him that there was no need

to retain that copy either, and that it too could be destroyed. In the circumstances, this was unfortunate. The report would have been useful further evidence for AD(E) to have passed to Customs to assist them in their enquiries into the allegations already received from Lord Avebury.

- 7.9 Major Hicks sent a further report two days later, on Monday 2 March (doc. 67). This related a conversation he had had that day with Brigadier Sachse of Lifeguard. In this report, Major Hicks stated that he had been told that ‘the 37 tonnes of weapons and ammunition brought in by EO in the last week are under the control of the Nigerian troops at Lungi. Khobe, the Nigerian Task Force Commander of ECOMOG, has issued a small quantity, 250 rifles, 10 machine guns and 100,000 rounds of ammunition to Hinga Norman for use by the Kamajors.’ The MOD faxed this report to the Resident Clerk at the FCO early on the morning of 2 March, but the Resident Clerk does not recall receiving it, and no record of the matter now exists.
- 7.10 At that time, officials from MOD and the Department for International Development (DFID) were attending daily meetings with the FCO. Among those attending was the DIS desk officer for the region. He has told us that he received all Major Hicks’ reports and was in daily communication with him by telephone and was aware that the import of arms into Sierra Leone by Sandline would have been a breach of the embargo. However, at the time he was concentrating on military issues which were of greater significance to the MOD, and was not conscious that Major Hicks’ reports indicated such a breach.
- 7.11 Major Hicks has told us that he regarded the Sandline representatives as one source of useful information, though not his main source. He believed that Sandline wished to be regarded as a helpful organisation, passing on accurate information. Major Hicks rejects any suggestion that the informal conversations he had with the Sandline representatives could be described as briefings, although he included in his reports the information he received from them.

7.12 Major Hicks left Freetown on 16 March. Just before his departure, he was given a copy of Mr Spicer's letter of 2 March to President Kabbah (doc. 69 – see paragraph 4.28 above). Major Hicks passed this letter to the DIS desk officer who filed it away. Three days later, Major Hicks had lunch with Mr Spicer in London. Mr Spicer told him that the Sandline contract had been drawn up between President Kabbah personally and Sandline. Major Hicks made no written note of this meeting, although he reported it orally to his line manager in the MOD. No further action was taken.

The Defence Adviser

7.13 During his earlier time as Defence Adviser, Colonel Andrew Gale was based in Ghana but was accredited to Sierra Leone. He visited Sierra Leone on average four times a year, each visit lasting about 10 days. His duties included advising the High Commissioner on military matters, including the security situation, and reporting information back to the MOD. Colonel Gale, like Major Hicks, regarded firms operating in West Africa, including Executive Outcomes and Sandline, as legitimate and useful sources of information.

7.14 Colonel Gale was aware of the UN Resolution but, like the international community based in Conakry at the time, he understood the embargo to be directed solely against the junta. He had not seen or received a copy of the Order in Council.

7.15 On 19 February, the day before flying to Sierra Leone to take up his new post as Military Adviser to the UN Special Envoy, Colonel Gale was contacted by Mr Bowen and invited to visit the Sandline offices in the Kings Road. There, Colonel Gale met Mr Spicer, who briefed him on Sandline's activities in Sierra Leone. However, Mr Spicer told us that Colonel Gale was 'not a party to the project or part of giving approval'. Colonel Gale recalls that he orally briefed Mr Andrews and Ms St. Cooke at AD(E) after the meeting with Mr Spicer, but he did not have time to produce a written note before his flight to Sierra Leone. Neither Mr Andrews nor Ms St Cooke recall being briefed by him.

Operation Resilient and HMS Cornwall

- 7.16 The Ministry of Defence sent two frigates in turn to Sierra Leone, first HMS Monmouth and then HMS Cornwall. Operation Resilient was the name given to the operations of these two ships between 13 February and 20 March 1998. The aim of this operation was to provide immediate humanitarian assistance to the people of Sierra Leone, to support HMG's diplomatic efforts for the country, and to assist in the return of the British High Commissioner following the restoration of President Kabbah's Government.
- 7.17 HMS Monmouth was dispatched to the coast of West Africa on 13 February, to be replaced ten days later by HMS Cornwall. On 27 February, HMS Cornwall was instructed to enter Freetown on 1 March to commence administering relief. Her stay at Freetown lasted from 1 to 20 March. During that time, the crew of HMS Cornwall were fully engaged in providing a wide range of humanitarian assistance to the people of Sierra Leone.
- 7.18 HMS Cornwall was commanded by Captain Anthony Dymock RN. He explained to us that, before her deployment, he was briefed on the impending operation by, among others, Mr Penfold and Major Hicks. Given the nature of Operation Resilient, Captain Dymock's briefing was wide-ranging, covering the background and current affairs of Sierra Leone as a whole. No formal briefing took place in Conakry itself, although there were informal discussions with Mr Penfold and others. While Captain Dymock was made generally aware of the arms embargo and HMG's general policy towards the junta, he was not told the exact terms of the UN Resolution, or that it extended beyond the junta alone. Nor was he told about the Order in Council.

Co-operation with the Sandline helicopter

- 7.19 Soon after his arrival at Freetown, Captain Dymock realised that the humanitarian crisis arising from the conflict was far worse than he had thought at first. While the situation in Freetown was difficult, food was available, albeit at high prices. However, in other towns and villages inland the situation was much more serious. HMS Cornwall's Sea

King helicopter proved very valuable in ferrying supplies to these inland areas. But it was operating at the edge of its range, and flying over potentially, and occasionally actually, hostile territory.

- 7.20 At this period, Sandline were using another helicopter themselves, on behalf of ECOMOG. They were also operating such rudimentary air traffic control as there was at Lungi airport, also for ECOMOG, and were able to organise some degree of safe passage further afield. There was no other civil air activity at the time. The hazards of flying helicopter missions to the interior meant, in Captain Dymock's view, that any available help had to be used. This gave rise to informal co-operation between HMS Cornwall's helicopter and the operators of the Sandline helicopter and air traffic controllers. Had the Sea King suffered damage or attack far from the ship, and gone down and been stranded, the Sandline helicopter might have been able to help. Captain Dymock made clear to us that there was no formal or contractual relationship with Sandline, but an informal understanding of mutual support.

Repair of the Sandline helicopter

- 7.21 Captain Dymock told us that on 6 March the Sandline helicopter landed on the jetty nearby his ship and asked for help with emergency repairs. The Sandline helicopter had suffered a birdstrike, which damaged its exterior panels. There had also been overheating of the gearbox oil cooler, caused by the dusty and hot atmosphere. For about 90 minutes, five technical members of HMS Cornwall's crew gave what assistance they could by cleaning the oil cooler and repairing the panels. A week later, on 13 March, the helicopter again landed and sought assistance with its brakes and a tyre. Two of HMS Cornwall's technical crew inflated the tyre, but they were unable to repair the brakes because of a lack of spare parts.

Contacts with Sandline personnel

- 7.22 Captain Dymock believed that the Sandline helicopter was used for conveying people involved with President Kabbah's government from Lungi airport to Freetown, and for carrying ECOMOG personnel and cargo between the front line and rear areas. He was not aware of it being used in any offensive or fighting capacity.
- 7.23 Captain Dymock said that, at the time, he was not aware of meeting any Sandline personnel himself. From time to time he noticed the Sandline helicopter pilot, because Colonel Khobe used the heliport alongside the ship when he was preparing for President Kabbah's return. On one occasion, Captain Dymock met Brigadier Sachse, who he understood to be a military adviser to ECOMOG. At no time did any of these people, or anybody else, give Captain Dymock or, as far as he knows, any of the crew of HMS Cornwall, any reason to believe that Sandline had shipped arms to President Kabbah's government. Even if they had, he was not aware that such a shipment would be illegal.

Departure of HMS Cornwall

- 7.24 Operation Resilient was ended on 20 March and, on that date, HMS Cornwall sailed from Freetown for other duties. The day before departing, the ship held a lunch on board for President Kabbah and an evening reception to mark the completion of her mission. As the reception was ending, twelve people employed by, or associated with, Sandline arrived at the ship and were invited into the wardroom for drinks. Captain Dymock has confirmed to us that to the best of his knowledge, this concluded the whole of his contacts with Sandline.

CHAPTER 8: OTHER DEPARTMENTS

8.1 Although the FCO and the MOD were the main Government Departments concerned, various other bodies had some degree of involvement. We have taken evidence from, or consulted, the Cabinet Office and No.10 Downing Street, the Department of Trade and Industry (DTI), the Department for International Development (DFID), HM Treasury, and Customs. This chapter deals with these bodies, and also mentions the American connection which was cited in the Berwin letter.

Cabinet Office and No.10

8.2 We interviewed Ms Jan Polley, the Private Secretary to the Cabinet Secretary, Sir Richard Wilson; and Mr John Holmes, the Prime Minister's Principal Private Secretary and Mr Philip Barton, one of his Private Secretaries. We also consulted Mr Michael Pakenham, Chairman of the Joint Intelligence Committee (JIC) and Head of the Defence and Overseas Secretariat (ODSec); Mr David Fisher, the Deputy Head; and Mr Richard Gozney, the Chief of Assessments Staff, in the Cabinet Office.

8.3 During the period concerned, Mr Fisher, as Deputy Head of ODSec, chaired meetings to review the situation in Sierra Leone on 22 September, 2 October, 7 November and 18 December 1997, and 11 February and 3 March 1998. Representatives attended these meetings from the FCO, DFID, MOD and, in the case of the last meeting only, the Treasury. From the minutes, it is clear that at none of these meetings was either Sandline or Executive Outcomes discussed, nor was the use or presence of mercenaries in the country. Nor did anybody raise the question of supplying arms to President Kabbah.

8.4 On 11 February 1998, Mr Fisher sent a minute (doc. 57) to the Prime Minister's office reporting on the general situation in Sierra Leone in the light of ECOMOG's operations. There was no mention of Sandline or mercenary activity. The Prime Minister's Private Secretary responded (doc. 58), recording the Prime Minister's view that the restoration of constitutional government under President Kabbah should be supported, and confirming approval of the five initiatives set out in the minute. These consisted of a Security

Council Presidential statement, the re-establishment of the UN office in Sierra Leone and other UN activity, a broadening of the ECOWAS forces, the 90-Day Action Plan drawn up at the conference in October 1997, and the return of the British High Commissioner to Freetown.

- 8.5 On 15 April 1998, Mr Dales, as Head of FCO's Africa Command, chaired a meeting with representatives from Cabinet Office, MOD, FCO and DFID. Among the issues mentioned was the allegation that Sandline had broken UN sanctions, with the alleged approval of FCO officials. The Cabinet Office representative, Commander David Morris, immediately reported this to Mr Pakenham, who in turn reported it to Sir Richard Wilson on 17 April (doc.105). Sir Richard Wilson saw this report on 20 April and his manuscript comment at the time was 'I should like to be kept up-to-date with developments. This could be very serious.' Dame Valerie Strachan wrote to Sir Richard Wilson on 28 April (doc. 111) informing him of the Customs investigation. On 30 April, Sir Richard Wilson sent a minute reporting this to the Prime Minister (doc. 119).

Department for International Development

- 8.6 The Berwin letter was not sent to DFID. However, we have interviewed Ms Clare Short MP, the Secretary of State, and also Mr Anthony Smith, her Private Secretary, and Mr Simon Ray, the Head of DFID's West and North Africa Department.
- 8.7 Mr Ray has made available all DFID's papers bearing on Sierra Leone for the period with which we are concerned. DFID works closely with the FCO, and Mr Ray's team co-operates particularly closely with AD(E). DFID were involved in discussions about the use of HMS Cornwall's helicopter for humanitarian assistance. We are satisfied that no one in DFID had any knowledge of Sandline or of its activities before the matter became public knowledge.

Department of Trade and Industry

- 8.8 We interviewed two DTI officials, Mr Andrew Mantle, the Director of the Export Control Organisation (ECO), who also chairs meetings of the Restricted Enforcement Unit

(REU), and Mr Nick Mitchell, who also works in the ECO and serves as Secretary to the REU. (We have referred in paragraph 6.57 to the meeting of the REU on 18 February when the allegations sent by Lord Avebury were first raised with Customs.) In addition, we received papers from the private offices of DTI Ministers.

- 8.9 It is the responsibility of the DTI to decide on applications for the grant of licenses required because of sanctions, for example for the shipment of controlled goods by UK nationals or companies to a destination subject to a UN arms embargo. The ECO carries out this function, and circulates applications for individual licences to all other Government Departments with an interest. These typically include the FCO, the MOD and DFID. Where the export of the goods concerned is controlled because of UN sanctions, other Departments may also be involved.
- 8.10 As we have explained in Chapter 3, the Sierra Leone (United Nations Sanctions) Order 1997 requires a licence to supply (inter alia) any of the goods listed in Part III of Schedule 1 to the Export of Goods (Control) Order 1994 to any person in or connected with Sierra Leone. These goods include weapons. The President of the Board of Trade, as Secretary of State, is the licensing authority. The DTI accepts that the word `licence` in Article 3 of the Order means permission to supply or deliver the specified goods, and does not necessarily have to be embodied in a document or piece of paper. The Order in Council does not specify a particular Secretary of State as being able to grant a licence, so in principle any Secretary of State could validly do so. However, applications for licences should be made to the DTI and, within Government, they would always be directed to that Department.
- 8.11 On 17 April, Mr Mantle received a letter dated 6 April from Customs informing him about the Sandline investigation and asking for any information DTI might have about the case. His enquiries confirmed that Sandline had not applied to the DTI for any licence to supply arms to Sierra Leone.

- 8.12 On 23 April, Mr Mitchell spoke to Customs on the telephone and learned of Sandline's claims that Government officials had been aware of their plans. He circulated an internal minute to other officials reporting the substance of this conversation. The following day, the Berwin letter was sent. The President of the Board of Trade was sent a copy of that letter. The arrival of the Berwin letter was the first time that DTI Ministers were made aware of the Customs investigation and the Sandline allegations.
- 8.13 Mr Mitchell sent forward a submission to the President on 29 April proposing a draft reply to the Berwin letter. This reply was not sent, following agreement by the offices of all the copy recipients that Sir John Kerr would send a single reply on behalf of all of them. That reply was sent on 1 May (doc. 120).

HM Treasury

- 8.14 We interviewed Ms Dawn Primarolo MP, the Financial Secretary to the Treasury, and her Private Secretaries, Ms Philippa Murray and Mr Ola Solaja. Ms Primarolo's part is described in paragraphs 9.66-9.69 below. The Treasury has no policy responsibility for arms sanctions generally, unless there are significant financial or economic aspects. Although there was Treasury involvement in the October discussions about the scope of the UN sanctions package, no papers on Sandline or the alleged involvement of officials were initiated by the Treasury. Nobody at the Treasury had either knowledge or notice of the Sandline matter before April.

Customs and Excise

- 8.15 At the start of our investigation, we met representatives of Customs. By then, of course, they had decided not to prosecute. They did not feel able to provide us with their papers or their views on what had happened in the case. We accept this, because of the confidentiality which attaches to a criminal investigation. However, we interviewed two of the Customs intelligence team who explained in general terms the process they follow after a reference to Customs at the REU. Given Customs' role as an independent prosecuting authority, we do not consider that there was any further help that they could give us, nor did we find that we needed any.

The American connection

- 8.16 The Berwin letter said that Sandline had kept a number of United States officials informed of their plans, and indicated that one of those officials had discussed them with Mr Philip Parham, a Counsellor at the British Embassy in Washington.
- 8.17 Any relations Sandline may have had with US officials are outside the scope of a British investigation. But we note that the US State Department has stated publicly that Sandline did not inform them of plans to ship arms to Sierra Leone; and that, at a Congressional hearing on 11 June, Mr Bernie McCabe, Sandline's US representative, said that Sandline had never sought US Government permission for its activities, but had informed the State Department 'after the fact'.
- 8.18 We have interviewed Mr Parham. He told us he did not speak to any representatives of Sandline or Executive Outcomes. We asked him whether any US official had informed him, as alleged in the Berwin letter, of Sandline's plans to ship arms to Sierra Leone, or of the US Government's full support for Sandline International's involvement. Mr Parham told us that none had done so. In a telephone conversation on 9 February, Mr Michael Thomas, the State Department's desk officer for Sierra Leone, mentioned to Mr Parham that the Kamajors seemed to have become a lot more effective since concluding their contract with Sandline. Mr Thomas did not expand on this point. Mr Parham took him to have referred to training and the provision of military advice. Mr Parham reported this conversation to the FCO on the same day (Washington telegram 227, **doc.** 54).

CHAPTER 9: MINISTERS AND PARLIAMENT

9.1 This chapter deals with the extent to which Ministers, in the FCO and other Departments, were involved in the matters we are investigating. This includes Ministers' private offices and special advisers. In particular, we have felt it necessary to examine in detail what Baroness Symons and Mr Lloyd were told, and knew, at the time of the Parliamentary debates on 10 and 12 March, and this is dealt with in paragraphs 9.13-9.36.

The Foreign Office Ministers

9.2 The relevant Foreign Office Ministers are Mr Cook, Mr Lloyd, and Baroness Symons. As Foreign Secretary, Mr Cook is responsible for British foreign policy throughout the world. Mr Lloyd's responsibilities as Minister of State include Southern and Equatorial African issues. He is responsible for 15 FCO departments and 72 countries. Baroness Symons is the Parliamentary Under-Secretary of State. Her responsibilities include acting as the FCO's spokesman in the House of Lords, and it was in this capacity that she became involved.

9.3 The only conversation that Mr Cook had with Mr Penfold took place early in June 1997. Mr Cook telephoned Mr Penfold before the latter left Freetown for Conakry, commending his courage during the coup and inquiring about the safety of British citizens.

The Toronto Globe and Mail article

9.4 Chapter 6 has explained that AD(E) did not inform Ministers of Sandline's plans, or of its allegations, until late in the day. AD(E)'s telegram of 7 August to the British High Commission in Ottawa (**doc. 9**) was copied to Mr Cook's office and perhaps also to Mr Lloyd's; the telegram distribution list is unclear. This telegram responded to the article about Sandline which appeared in the *Toronto Globe and Mail* on 1 August, and which

the High Commission had sent to AD(E). At that time, the UN embargo had not yet been introduced. Ms Fiona Mylchreest, Mr Cook's then Private Secretary, told us that she was virtually certain that Mr Cook did not see it and indeed, given the then state of the law, there seems no reason why he should have done so. Mr Cook himself has no recollection of having seen it. Neither Mr Lloyd nor his then Private Secretary recall having seen it at the time. Again, we do not find this surprising.

The approval of the Order in Council

- 9.5 As recounted in paragraph 3.24, Mr Lloyd approved the draft Order in Council, and its counterpart for the Dependent Territories, on or just before 21 October 1997. He did so on the basis of a submission which stated that the UN Resolution imposed 'a ban on the export of oil and of arms to Sierra Leone' and that the draft Orders incorporated that ban into domestic law. There was nothing to bring out the fact that the Order applied this arms embargo to President Kabbah.

The Conferences on Sierra Leone

- 9.6 The Department of International Development sponsored a workshop, during the week 5 – 12 October 1997, to help President Kabbah's government to prepare for its return to power in Sierra Leone. The conference was attended by Sierra Leone ministers, officials (including Mr Penfold), MPs and representatives of civil society, and it produced a 90-day programme of action for President Kabbah's government on its restoration.
- 9.7 The DFID conference was followed by a one-day conference in London entitled 'Restoring Democracy in Sierra Leone.' This was attended by President Kabbah, to whom the 90-day programme was presented, and by Mr Lloyd, as well as Mr Penfold. Those present included individuals from non-Governmental organisations and from businesses. One of these was Mr Rupert Bowen of Branch Energy. He has confirmed to us that he did not speak to either Mr Lloyd or President Kabbah.

Commonwealth Heads of Government Meeting

- 9.8 The Commonwealth Heads of Government held their annual meeting (known as CHOGM) in Edinburgh from 24 – 27 October 1997. As a mark of HMG's support for the elected Government of Sierra Leone, Mr Blair issued a personal invitation to President Kabbah.
- 9.9 The Prime Minister, whose briefing contained no reference to Sandline, did not meet President Kabbah, other than socially, at CHOGM. Arms supplies were not discussed. The Foreign Secretary does not recall meeting President Kabbah during CHOGM. Mr Lloyd, who was also present, had a bilateral meeting with President Kabbah, also attended by Mr Foulkes, Minister of State at DfID, and others. The main topic of conversation was the Conakry communiqué issued on 23 October. Mercenary forces were not discussed. During CHOGM, President Kabbah asked Mr Lloyd whether there might be any possibility of the British Government helping with arms supplies. Mr Lloyd replied that, while the Government would give all diplomatic support, it would not supply weapons. This reply is clearly reflected in the letter which President Kabbah sent Mr Blair on 11 May 1998 (**doc.** 122).
- 9.10 Mr Penfold also attended CHOGM. During it, he had a couple of conversations with Mr Lloyd, but arms shipments were not discussed.
- 9.11 As mentioned in paragraph 3.19, CHOGM issued a communiqué, which included a condemnation of the coup and a welcome for the UN Resolution, describing the arms embargo as being against the junta.
- 9.12 On 20 February 1998 Mr Lloyd telephoned President Kabbah. The conversation concerned the President's plans for returning to Sierra Leone following the counter-coup, and the UK's continued support for his country. Neither Sandline nor arms supplies were mentioned.

Press line prepared on 6 March for Observer article

- 9.13 As described in paragraphs 6.54-6.56, AD(E) and the News Department, having been alerted to a story to be published in *The Observer* on 8 March, provided a press line on 6 March (**doc.** 71). That press line was copied to the Private Secretaries to Mr Cook and Mr Lloyd. Mr Peter Bean of the News Department discussed the press line in draft with Mr John Grant, Mr Cook's Principal Private Secretary. In the absence of any background information, Mr Grant had no reason to disagree with its content. Nothing in the press line would have alerted Mr Grant to the real nature of the problem, and he cannot be described as informed of the allegations at that point. As a result, Mr Cook himself did not see the press line, nor did he read the article in *The Observer* on 8 March.
- 9.14 Mr Lloyd did not see the press line before *The Observer* article was published. He did, however, read the article when it was published that Sunday and, on Monday 9 March, he asked Ms Pat Phillips, his Private Secretary, to find out what was going on. She then showed him the press line, the influence of which he found easy to trace in the article. Mr Lloyd was concerned by the negative tone of the article. He was also concerned to learn that officials had had contact, of any kind, with private military companies. Mr Lloyd met Ms Ann Grant on 10 March to discuss these concerns, in the light of his forthcoming adjournment debate on 12 March. That meeting is described further below.
- 9.15 Baroness Symons also read *The Observer* article. The press line had not been copied to her office.

Baroness Symons' answer on 10 March

- 9.16 On 10 or 11 February, Lord Avebury put down a starred question in the House of Lords asking the Government: 'What steps are they taking to help restore lasting peace in Sierra Leone.' A starred question is a form of Parliamentary debate, lasting about 5-10 minutes, on a question to the Government notified in advance in writing by a member of the House of Lords. Lord Avebury's question was due for oral answer by Baroness Symons on 10 March. She needed briefing to answer the question, and to be prepared to answer

whatever supplementary questions might be asked by Lord Avebury or other Peers. Baroness Symons' remarks in the House on this occasion have received a good deal of attention. The state of her knowledge at the time depended on the briefing she received, and it is necessary to go into some detail about this.

9.17 Such briefs follow a fairly set format in the FCO. Key components are a draft answer to the question, a note explaining the background to the topic, a list of 'bull points' to be worked in by the Minister if the opportunity arises, and a list of draft answers to possible supplementary questions on the same broad theme. Lord Avebury's question provided an opportunity to put across HMG's policy on Sierra Leone, and this was an important aspect of Baroness Symons' briefing.

9.18 The briefing was prepared by Mr Tim Andrews in AD(E). Three batches of briefing were provided, amounting altogether to some 59 pages. The first batch was provided on 6 March (doc.72). Because of Lord Avebury's letter of 5 February to Ms Grant about Sandline, Mr Andrews thought it possible that Lord Avebury might ask supplementary questions about Sandline's activities. He included in the briefing a two-part draft answer to such supplementaries, as follows:

- '- HMG were aware that a deal was in the offing for payment to be made for Sandline's services as military advisers through the acquisition of mineral rights.
- we will refer any allegation that the company were involved in illegal activities to the appropriate authorities who will examine the evidence and assess whether any crime has been committed.'

9.19 The background note concentrated on the situation in Sierra Leone, then beginning to return to normality, with the return of President Kabbah expected (as indeed occurred) for 10 March, the day the question was to be answered. It did not refer to the Customs investigation.

- 9.20 However, the allegations had been referred to Customs, through the REU, on 18 February, though AD(E) had not yet referred them direct. That occurred on 10 March, again the day on which Lord Avebury's question was answered.
- 9.21 Baroness Symons read the briefing on Sunday 8 March or in the early morning of Monday 9 March.
- 9.22 On 8 March, *The Observer* article appeared. Headed 'Britain holds talks with hired killers', and continuing in equally colourful language, its central allegation was in its first paragraph: 'Britain's ambassador to a war-torn African state held secret talks with a notorious firm of London-based mercenaries last year, at a time when they were allegedly plotting to overthrow the country's military junta.'
- 9.23 On the Monday morning, 9 March, Ms Grant and Mr Andrews attended a briefing meeting with Baroness Symons. She had read *The Observer* article the day before, and asked for supplementaries on it, in case it was raised, and on other subjects. Apart from that, Sandline was barely touched on at the meeting, if at all.
- 9.24 As a result of that meeting, Mr Andrews sent a second batch of briefing to Baroness Symons' office later that day (doc. 76). It contained a much wider range of supplementaries, including three more about Sandline. These were as follows:

'7. Allegations in Observer article of 8 March

- Our High Commissioner has confirmed that he did not attend any meetings as alleged in the article;
- The British High Commissioner and his staff, together with all international organisations, were relocated to Conakry with President Kabbah's Government in exile;
- Obviously Mr Penfold worked closely during that time with President Kabbah and other representatives of the government in exile.

8. Has Penfold ever met Spicer or representatives of Sandline Services?

- in the course of his duties, Mr Penfold came into contact with representatives of Sandline Services and their affiliates.

9. Would this be normal for a High Commissioner?

- Mr Penfold naturally met a wide range of contacts who helped him obtain information about the security situation in the country, particularly in relation to British nationals and interests.'

The supplementary question and answer which had been provided earlier (paragraph 9.18 above) were then repeated. None of the other additional papers contained references to the Sandline allegations.

9.25 During the course of 9 March, Lord Avebury rang Baroness Symons's private office about a separate question she was answering that day in the House of Lords, about UN sanctions generally. Lord Avebury gave notice of a supplementary question he wanted to ask about Sierra Leone, unrelated to Sandline. That question, and the answer given by Baroness Symons that afternoon, were added to the briefing.

9.26 On the evening of 9 March, Lord Avebury faxed a letter (doc. 74) to Baroness Symons informing her of the supplementary questions he was likely to ask the following day, including one about Sandline. His letter was again based on the two foreign newspaper reports (see paragraph 6.43), and mentioned that the Sandline contract included the supply of weapons. It also mentioned that 'Ann Grant said the FCO would investigate...the allegation'. Lord Avebury added that Mr Penfold should have been aware of the article which appeared in the *Toronto Globe and Mail* on 1 August 1997.

9.27 Mr Andrews then provided a further and final batch of briefing on Lord Avebury's latest letter (doc. 77). He delivered it by about noon on 10 March. It contained one further supplementary about Sandline:

‘25. Why didn’t the High Commissioner try to dissuade President Kabbah from using Sandline?’

- we do not discuss diplomatic exchanges.’

Mr Andrews also included an additional background note. Part of this dealt with Sandline, as follows:

‘Mr Penfold was operating out of a hotel bedroom in Conakry without the benefit of an Internet connection. It is a little harsh of Lord Avebury to expect him to have been aware of a court case in Canada under such circumstances. Lord Avebury’s allegations have been referred to the appropriate authorities for them to investigate whether any offence has been committed.’

- 9.28 There were no further references to Sandline in Baroness Symons’ completed briefing. Nowhere was there any reference to Customs and Excise. However, the full briefing did include a copy of the exchange of correspondence about Sandline between Lord Avebury and Ms Grant (doc. 53) and (doc. 65). Lord Avebury’s allegations had referred specifically to the ‘supply of guns’. Ms Grant’s reply, dated 26 February, had said ‘We have referred the allegation to the appropriate authorities.’
- 9.29 In this report we have described the pertinent parts of the briefing all together. For Baroness Symons, they were scattered over the 59 pages of her brief and were received over three days, to deal with an evolving situation. The briefing was inaccurate, incomplete and indigestible.
- 9.30 There are two main defects in the briefing. First, of the four mentions it contains of the referral of the allegations to ‘the appropriate authorities’, two are in the past tense and two in the future tense. The supplementary answer which used the future tense appeared twice. The supplementary answers are the most prominent part of the briefing. Baroness Symons has told us that, when she looked at the briefing on 10 March, she understood it to mean that no allegations had been referred. We think that was a reasonable

understanding. It is clear to us that, at time, she was concentrating on how best to put across HMG's policy on Sierra Leone.

- 9.31 The second defect is that the first part of the suggested answer to the 7th suggested supplementary question is misleading. The suggested answer was: 'Our High Commissioner has confirmed that he did not attend any meetings as alleged in the article.' As paragraph 6.54 has explained, it had been anticipated that *The Observer* article would allege that a joint three-way meeting had occurred between President Kabbah, Mr Penfold and Sandline, and Mr Penfold had denied that any such meeting as that had taken place. It is clear that the press line developed at the time was imported almost wholesale into the briefing for Baroness Symons on 9 March, and that neither Mr Andrews, who prepared the briefing, nor Ms Grant, who approved it, checked whether *The Observer* had in the event made that allegation. It had not. Stripped of its cloak-and-dagger language, it had alleged only that Mr Penfold had met representatives of Sandline. That allegation was true. The fact was indeed referred to in the 8th suggested supplementary answer, in conflict with the answer suggested for the supplementary question. The suggested answer to the 7th supplementary was seriously defective because, had Baroness Symons used it, she would have misled the House of Lords.
- 9.32 In all this briefing, Baroness Symons was never told of or shown information about the true state of affairs in regard to the allegation about arms or the reference to Customs, or Mr Penfold's minute of 2 February, which had informed AD(E) that the embargo was being breached with the knowledge of the High Commissioner.
- 9.33 Some of the defects of the briefing were well-intentioned. Mr Andrews has said he was concerned that a reference in the House to the Customs investigation might have disclosed its existence to Sandline. However, he did not mention this to Baroness Symons.
- 9.34 Mr Andrews was extremely hard-worked at this time. Tuesday 10 March was the day when President Kabbah returned to Freetown, and Mr Andrews' attention was focussed

on this. The person who should normally have prepared Baroness Symons' briefing was away from the office, and Mr Andrews was undertaking it on top of his own work. We have much sympathy for the pressures under which he and Ms Grant were working. But the briefing they provided was seriously deficient.

9.35 We conclude that Baroness Symons could not be expected to understand from the briefing that Lord Avebury had sent allegations which had been referred to Customs. She has told us that she did not in fact understand it, and we accept this.

9.36 When Baroness Symons came to answer Lord Avebury's question in the House of Lords, the relevant supplementary exchange was as follows:

Lord Avebury: My Lords, does the Minister agree that it is important that the diamond resources, which are the main source of foreign exchange for the country, are exploited for the benefit of the people there? Will she investigate reports which appeared in *The Observer*, *US News and World Report* and other places that the future diamond resources of the country have been mortgaged in an illegal arms transaction in which a British company, Sandline International, was involved?

Baroness Symons: My Lords, I am aware of the newspaper article to which the noble Lord refers. That article was in several respects not entirely accurate, or at least not on all fours with the reports that Her Majesty's Government are receiving. As to the noble Lord's main point regarding the natural resources of Sierra Leone being exploited for the benefit of the whole country, I hope that the whole House will agree with him ...” (Hansard 10 March 1998 col 100 – 101).

9.37 We have looked at Baroness Symons' answers in the House of Lords on 11 May and 15 June in case they cast any light on the state of her knowledge in mid-March of the Sandline allegations. We have found nothing in what she said on those occasions that changes our conclusion set out above.

9.38 Our further conclusion is that Baroness Symons cannot be said to have known of the supply of arms by Sandline at the time of Lord Avebury's question. Still less can she be said to have authorised or encouraged that supply, which had already taken place.

9.39 Baroness Symons received no further information about the allegations until she saw the letter of 24 April from Berwins, at a meeting with Mr Cook and Mr Lloyd in early May.

Mr Lloyd's adjournment debate on 12 March

9.40 Mr Lloyd had not been told about the referral to Customs of the allegations sent by Lord Avebury. As mentioned above, Mr Lloyd reacted strongly to *The Observer* article of 8 March. As a result, and in preparation for the adjournment debate due on 12 March, he had a meeting with Ms Grant on 10 March. *The Observer* article was discussed. When reading it, Mr Lloyd had been disturbed that British officials might be consorting at all with representatives of private military companies. He discussed this with Ms Grant, who explained to him the range of contacts which a Head of Mission like Mr Penfold might encounter, and that what mattered was the content of the exchanges when he met them.

9.41 Mr Lloyd was keen to know what lay behind *The Observer's* insinuations. Ms Grant explained her concerns that Mr Penfold might be too close to President Kabbah and was perhaps too involved with Sandline. She satisfied him that she was looking into the matter. Mr Lloyd had been concerned that Mr Penfold might have been acting as an intermediary with President Kabbah for Sandline. He and Ms Grant agreed the form of words that he later used in the debate denying that three-way meetings had occurred. Ms Grant told Mr Lloyd that she was concerned that there might be more to the allegations than met the eye. Mr Lloyd's recollection is that Ms Grant showed him a copy of the

second page of Mr Penfold's minute of 2 February (which referred to his missing letter of 30 December), though not of the first page, which contained the reference to arms. She does not recall showing the minute to Mr Lloyd at all. She advised Mr Lloyd against being too categorical in dismissing *The Observer* article, in case the missing letter, when it was obtained, proved to contain damaging information. She did not mention to Mr Lloyd that arms supplies were referred to in Mr Penfold's minute, nor that the allegations sent by Lord Avebury had been referred to Customs. While these omissions were regrettable, we are satisfied that she did not deliberately withhold information from Mr Lloyd.

9.42 Later on 10 March, Mr Andrews sent briefing for the adjournment debate to Mr Lloyd's private office. This consisted of draft passages for Mr Lloyd's speech, which would come at the end of the debate. It concentrated on the more optimistic prospects now opening before Sierra Leone, and did not refer to the Sandline allegations. However, Mr Andrews also provided some supplementary answers on points that might arise in debate. These were in all material respects identical to those provided for Baroness Symons. In particular, they contained the answer that 'Our High Commissioner has confirmed that he did not attend any meetings as alleged in the article' and, in relation to Sandline, that 'We will refer any detailed allegations that the company were involved in illegal activities to the appropriate authorities....'

9.43 The briefing for Mr Lloyd did not provide copies of the background note prepared for Baroness Symons which referred to Sandline, or the correspondence between Lord Avebury and Ms Grant, or the letter of 9 March from Lord Avebury to Baroness Symons. It is FCO practice that briefing for a Lords Minister is copied automatically to the Commons Minister responsible for the relevant policy area. Baroness Symons' briefing was accordingly copied to Mr Lloyd's office. His Private Secretary did not show it to him. As she reasonably pointed out, the briefing provided for Baroness Symons had been prepared with the fact in mind that it was Lord Avebury who was asking the question. She, and Mr Lloyd, were entitled to assume that his briefing was a self-contained document appropriate for the debate he had to deal with. Mr Andrews had expected to

need to revise Mr Lloyd's briefing in the light of Lord Avebury's questions to Baroness Symons on 10 March. However he did not do so, because Lord Avebury did not press any of the further questions in Baroness Symons' brief.

9.44 Between the briefing meeting and the adjournment debate, Mr Lloyd undertook an arduous trip to the Balkans. He returned on the afternoon of 12 March, and saw the briefing thereafter. Ms Grant spoke to Mr Lloyd by phone during the evening of 12 March, but again did not mention that allegations against Sandline had been referred to Customs.

9.45 Mr Lloyd had approved Mr Penfold's actions at the time of the coup as brave and meritorious. *The Observer* article's language obscured the fact that Mr Penfold's meetings with Sandline could have been innocent. Mr Lloyd considered that it would have been unfair to Mr Penfold to leave *The Observer*'s implicit accusations hanging over him. On the other hand, he had to be wary in what he said in case it turned out that Mr Penfold had indeed behaved improperly. Hence the line that he carefully agreed with Ms Grant.

9.46 The end result was that Mr Lloyd's state of knowledge of the allegations when he took part in the adjournment debate was incomplete. He had no way of knowing that more facts were available to his officials than had been made available to him.

9.47 In the event, no other member who spoke in the adjournment debate referred to *The Observer* article. Mr Lloyd therefore raised it himself:-

I wish to defend the Government and one of Britain's representatives against an ill-informed and scurrilous article that appeared in *The Observer* on Sunday. Indeed I am slightly surprised that no one has referred to it. It talked about Britain's talks with hired killers, and about the Foreign Office admitting our ambassador's link to notorious mercenaries plotting against the Sierra Leone Government. Ironically,

that was wrong, because the Sierra Leone Government referred to was the illegal junta. That is a bizarre situation for *The Observer*, but perhaps accuracy was not its main intention.

The suggestion that Britain was conspiring with hired killers is wrong and I wish to make that clear on behalf of the Government. As a result of the article, the High Commissioner, Mr Penfold, has confirmed that on no occasion did he attend any meetings at which Sandline – the company mentioned – and President Kabbah were present together. I reject the insinuations in the article except in one regard – the High Commissioner and President Kabbah became close to each other when they were in exile together in Conakry.

We do not regard the fact that the High Commissioner did his job and offered tangible and practical support to President Kabbah as something for which he should be criticised. The opposite is true, because we believe that he played an important role, and President Kabbah agrees. We reject the nonsense in that article, and it is a pity that the journalist did not take the trouble to talk to me directly. (Hansard 12 March 1998 Cols. 844-845).

Extent of Mr Lloyd's later knowledge

- 9.48 Mr Lloyd believed he had left Ms Grant with the clear impression that he expected to be kept informed of developments. The adjournment debate was not followed by a fuller explanation to Mr Lloyd of the state of affairs. Nothing further reached his office on the subject until the Customs investigation began to impinge on AD(E).
- 9.49 At the end of March, Mr Lloyd visited Sierra Leone as a member of the Commonwealth Ministers Action Group. His briefing for this visit contained nothing on Sandline. He was accompanied by Mr Andrews and his Private Secretary, Ms Pat Philips. Mr Lloyd met no one from Sandline. Nor did he have any discussions with Mr Penfold or anyone else, on the subject of Sandline while he was in Sierra Leone.

9.50 Early in April, Ms Phillips received copies of Mr Murray's two minutes of 30 March (doc. 87) and (doc. 88) and a copy of the letter from Mr Andrew of Customs (doc. 89). Mr Dales also copied to Mr Lloyd his minute of 3 April to Sir John Kerr (doc. 95). The precise date on which these papers reached Mr Lloyd's private office is not clear. The range of his responsibilities, and the practical necessity for frequent absences on foreign trips, means that there is always a large quantity of paperwork awaiting Mr Lloyd's attention, and early April was no exception. Ms Phillips considered that the content of the various papers on the Sandline allegations was important. However, she inferred from Mr Dales' minute that the appropriate action was in hand, so she did not consider the matter of sufficient importance to take priority over other papers requiring urgent decisions. Mr Lloyd had not seen the Sandline papers before he left the office on 10 April for the Easter Recess. This, taken with Ministerial visits to the Falklands and to Paris, meant he was away until 28 April. The Sandline papers were amongst those he took away with him. Neither Mr Lloyd nor Ms Phillips can recall exactly when Mr Lloyd read these papers. We accept their 'best guess' of mid-April.

9.51 Mr Murray's first minute of 30 March (doc. 87) recounted his telephone conversation with Mr Spicer on 27 March. He records that Mr Spicer asked if he could give Mr Murray's number to Customs, to which he agreed, and that Mr Spicer asked him if the minutes AD(E) had made of their contacts would lead Customs to close the book on the investigation. Mr Murray replied that that would depend on whether the company had undertaken any activities which went beyond those of which they had informed AD(E). In this minute, Mr Murray also referred to the meeting of 19 January, and attached a copy of Mr Andrews' minute of that meeting.

9.52 Mr Murray's second minute of 30 March (doc. 88) recounted his conversation with Mr Cedric Andrew of Customs. Mr Andrew told Mr Murray that Customs had prima facie evidence of a breach of the embargo. Mr Murray went on that Mr Andrew had said that:

‘Sandline had said they were acting with full knowledge of HMG, and given my telephone number.’ After mentioning AD(E)’s awareness of Sandline’s training and logistic activities, Mr Murray said: ‘We were not aware of any shipment of arms.’ Mr Murray records that Mr Andrew said ‘he understood the sensitivities, having worked on the Matrix Churchill case...’

9.53 Mr Andrew’s letter to Mr Murray of the same date, 30 March, gave a summary of the history from Customs’ point of view. It said that ‘...Grunberg stated that Sandline had flown ‘light weaponry’ into Sierra Leone.... My officers took note of Grunberg’s claims of prior approval having been granted by officials of the FCO’. The letter also noted Mr Murray’s understanding that no prior approval had in fact been given.

9.54 Mr Dales’ minute to Sir John Kerr of 3 April summarised the history behind the investigation, but did not mention the information contained in Mr Penfold’s minute of 2 February. It also said that ‘The Department... were not aware of any shipment of arms.’

9.55 Taken together, the documents contained enough information to make it clear that the allegations were sensitive and potentially troublesome. However, they were also misleading, since they appeared to be saying that the FCO had no prior knowledge of any shipment of arms. In the absence of reference to the full facts in AD(E)’s possession, they were substantially incomplete.

9.56 Mr Lloyd told us that, when he saw the papers, he was pleased to learn that Sandline were being investigated. The papers showed that it had been FCO officials who had referred Lord Avebury’s allegations, and the Customs letter of 30 March noted that Mr Murray had said that Sandline had been specifically warned about the embargo by officials. The fact that Customs, the proper authority, were investigating the allegations satisfied Mr Lloyd that the proper course of action was being followed. The papers having been sent to him for note, he asked his Private Secretary if there were any action

points for him. She advised him there were not. Mr Lloyd took no further action. He commented to us that at that time he had been under considerable pressure of work, and his attention had been focussed on issues of greater international consequence.

9.57 On 24 April, Mr Dales sent a further report to Mr Lloyd, but this was the date the Berwin letter arrived, and the report was overtaken by events.

9.58 Mr Lloyd heard nothing more about the Sandline affair until Mr Hood telephoned him on 29 or 30 April. He read the Berwin letter on 1 May.

Mr Henderson

9.59 Mr Menzies Campbell tabled a Parliamentary Question for written answer on 17 March about contacts between Mr Penfold and Sandline. The question was answered by Mr Doug Henderson, FCO Minister of State, on Mr Lloyd's behalf. The answer duly appeared on 17 March (Col. 556), but merely reiterated the line taken by Mr Lloyd during the Adjournment Debate six days earlier. His briefing gave Mr Henderson no greater knowledge about Mr Penfold's relations with President Kabbah and Mr Spicer than did Mr Lloyd's on 12 March. The briefing contained nothing on arms supply or the Customs investigation. We judge Mr Henderson's involvement in the matters we are investigating to be insignificant. We mention it no further.

Mr Cook and the arrival of the Berwin letter

9.60 On Friday 24 April, S.J. Berwin and Co wrote to Mr Cook on behalf of their clients Mr Spicer and Mr Grunberg, to alert him to the Customs investigation. They stated that Sandline's activities had been undertaken with the full knowledge and approval of HMG, and asked the Foreign Secretary to investigate so that he might reach the conclusion that the Customs investigation should be brought to an immediate end (**doc.108 and Annex A**).

9.61 The Berwin letter reached Mr Cook's private office by fax during the afternoon of 24 April. It was dealt with by Mr Andrew Patrick, one of Mr Cook's Private Secretaries. He

sent it to Ms Ann Grant for urgent advice, and copies went to the private offices of Mr Lloyd and Sir John Kerr, and to Mr Shepherd, Mr Dales, the News Department, the Legal Department, the Special Advisers, and other relevant Foreign Office departments. It is not clear whether the copies reached these recipients on 24 April or did not arrive in their offices until Monday 27 April.

9.62 Mr Cook was in Brussels and Flanders that weekend. In his absence, the letter was discussed on 27 April by Mr Andrew Hood, one of his Special Advisers, with Dr David Mathieson, his political adviser, who is based in the Foreign Office. Neither had been closely involved in Sierra Leone policy, or had more than a general awareness that an embargo was in place. Both nonetheless appreciated the political implications of the Berwin letter. They agreed that Mr Cook should see it immediately on his return the following day. In the meantime, Mr Hood sent a minute to Ms Grant (**doc.** 110) seeking further information on Mr Penfold's role and the extent of HMG's knowledge of, and support for, Sandline's activities. In Ms Grant's absence, Mr Hood discussed this with Mr Murray. Mr Murray gave him copies of Mr Penfold's minute of 2 February and other documents, and drew his attention to Mr Lloyd's adjournment debate of 12 March. This information increased Mr Hood's concerns.

9.63 Mr Cook returned to London on the evening of Tuesday 28 April. Mr Hood and Dr Mathieson immediately showed him the Berwin letter. The following morning, Mr Cook sent a minute to Sir John Kerr (**doc.** 113) recording that this was the first time that Mr Cook had heard of any contact between officials and Executive Outcomes (sic), or of the current Customs investigation. He requested further information, particularly about Mr Penfold's role, stressed his belief that the FCO must be as open as possible, and made some initial points on handling. Sir John replied the same day (**doc.** 118), attaching a draft reply which had been agreed with Customs, and which he proposed to send to Berwins, on behalf of all the recipients of Berwin's letter. Sir John underlined the need to avoid doing anything which might, or might be seen to, jeopardise the Customs investigation, and made various suggestions about handling.

9.64 On 2 May, in response to enquiries in the *Sunday Times*, the FCO issued a press notice about the allegations (doc. 121).

Mr Lloyd and the arrival of the Berwin letter

9.65 Mr Lloyd's copy of the Berwin letter reached his office while he was overseas. It went to him on 29 or 30 April, together with Mr Dales' minute of 24 April and the various minutes written since Mr Cook saw the Berwin letter. Mr Hood rang Mr Lloyd on 29 April to alert him to the letter. In a short conversation, Mr Lloyd asked whether there was any immediate action he needed to take. Mr Hood said there was not, because Mr Cook himself was now taking matters forward. On Friday 1 May, Ms Phillips, Mr Lloyd's Private Secretary, telephoned to warn him that the *Sunday Times* had got hold of the story and that he would be mentioned. Mr Lloyd read the Berwins letter that day.

Baroness Symons and the arrival of the Berwin letter

9.66 Berwins did not send a copy of their letter to Baroness Symons. She first learned that there was a Customs investigation underway, and that it was alleged that British officials had been complicit in a breach of the embargo, when Mr Lloyd appeared before the Foreign Affairs Committee on 5 May. She saw the Berwins letter for the first time at a meeting of the Foreign Office Ministerial team that week, probably also on 5 May.

The Financial Secretary to the Treasury

9.67 Ms Dawn Primarolo, the Financial Secretary to the Treasury, includes amongst her responsibilities overall supervision of the management of HM Customs and Excise. Operational control is for the Chairman of the Board, Dame Valerie Strachan. Ms Primarolo thus has no involvement in, or direct responsibility for, individual Customs investigations. However, Customs normally notify her of investigations which have potential for a high media or Parliamentary profile. Other Treasury Ministers are sent copies of some notifications.

9.68 On 2 April, Mr R H Sanbrook, the head of Customs' Export Licensing and Sanctions team, sent Ms Primarolo a minute (doc. 92) alerting her, in confidence, to the Sandline

investigation, of which she had no prior knowledge. The minute gave a very brief summary of the allegations. It noted that Sandline was known to have had contacts with FCO officials and had claimed that any supplies were made with FCO approval. It added that the FCO had denied the claim. The minute provided a bland line that would be taken in the event of the investigation becoming public knowledge. It was sent to Ms Primarolo purely for information, in case Foreign Office Ministers mentioned it to her. Ms Primarolo read the minute on 4 April, and noted the information it contained.

9.69 The minute was copied to the private offices of the Chancellor of the Exchequer and the Chief Secretary to the Treasury. Neither private office showed it to their Minister. It would have been quite exceptional for them to do so.

9.70 We have explained why we do not regard the briefing material provided to Baroness Symons and Mr Lloyd on 10 and 12 March as having adequately informed them of the allegations. By contrast, the minute to Ms Primarolo was clear and specific. She learnt of Sandline's supply of arms when she read that minute on 4 April. She was therefore the first Minister to know. But her knowledge came in circumstances in which it was reasonable for her to assume that FCO Ministers had been properly informed by their own Department.

The Secretary of State for Defence

9.71 Mr George Robertson MP, the Secretary of State for Defence, has told us that he had no knowledge of a shipment of arms to Sierra Leone before the receipt of the Berwin letter. He saw the Berwin letter after Dr Reid, the Minister for the Armed Forces. It was first passed to Dr Reid's office because the subject fell within his area of responsibilities. A copy of Dame Valerie Strachan's letter of 28 April to Sir Richard Wilson (**doc 111**), together with the Berwin letter, were placed together in Mr Robertson's box on the evening of 29 April. Mr Robertson recalls seeing the letter early the following morning.

9.72 Mr Robertson does not recall seeing the terms of the UN Resolution, and his private office have no record of it having been sent to them. It is possible that the FCO telegram

(doc. 28) giving the text of the Resolution may have been received in the private office but such telegrams are not routinely kept in private offices. Nor had Mr Robertson any knowledge of the Order in Council. He did not know that the embargo applied to President Kabbah.

Minister of State for the Armed Forces

9.73 Dr Reid was also unaware of the full scope of the arms embargo. He first became aware of a British firm supplying arms to Sierra Leone on the weekend of 25-26 April, when he read the Berwin letter. Dr Reid's Private Secretary had put it to him to see, stating that it had been sent to the relevant MoD officials for advice. Dr Reid noted this and marked his papers with the words 'as soon as possible'. Advice was received a few days later, by which time the matter had taken on a higher public profile. Before he saw the Berwin letter, Dr Reid had no notice of the possible breach of sanctions.

9.74 None of the correspondence received by MOD Ministers and their Private Offices stated or implied that the arms embargo applied to President Kabbah. In most of the documents, sanctions were referred to explicitly as being against the junta. There is no record that the private offices ever saw the Order in Council, either in draft or final form.

Secretary of State for International Development

9.75 Ms Clare Short MP, the Secretary of State for International Development, believes she may have seen *The Observer's* article of 8 March at the time, but she is not certain. In any case, the first she heard of Sandline, or of any suggestion of arms supplies to Sierra Leone, was from press reports. Ms Short commented to her Private Secretary at the time that the press did not seem to realise that the junta had thrown out a democratically-elected Government. She had no other awareness of the Sandline affair until reading the press reports about it in early May, while at a Ministerial conference in Barbados from 6 – 9 May. Ms Short then asked her Private Secretary to ensure that her Department

checked through all papers relevant to Sierra Leone to see if anyone had ever met people from Sandline. Her Private Secretary asked Mr Vereker, the Permanent Secretary, to set this in hand. Mr Vereker later confirmed that no such contact had occurred.

- 9.76 Like Mr Robertson and Dr Reid, Ms Short had not appreciated that the embargo applied to President Kabbah. She had never seen the Order in Council.

President of the Board of Trade

- 9.77 Mrs Margaret Beckett MP, the President of the Board of Trade, has stated that she did not hear about Sandline or the supply of arms to Sierra Leone before the arrival of the Berwin letter of 24 April. She first saw this letter on 12 May. Mrs Beckett does not recall seeing *The Observer* article on Sandline. Apart from signifying to the Foreign Secretary in October 1997 that she had no objection to the imposition of the arms embargo on Sierra Leone, Mrs Beckett had no specific knowledge of either that embargo or the Order in Council. No issue requiring her attention had been raised.

Minister for Trade

- 9.78 Lord Clinton-Davis, the Minister for Trade, has stated that he had not heard about Sandline or the supply of arms to Sierra Leone before the arrival of the Berwin letter of 24 April. He does not recall seeing *The Observer* article on 8 March. He first saw the Berwin letter on 8 May. On 10 September 1997, Lord Clinton-Davis had indicated that he had no objection to the imposition of an arms embargo on Sierra Leone but, apart from this, he had no involvement in issues relating to either the embargo or the Order in Council.

PUSS for Small Firms, Trade and Industry

- 9.79 Mrs Barbara Roche MP, the Parliamentary Under Secretary of State for Small Firms, Trade and Industry, has confirmed to us that she had not heard about Sandline or the supply of arms to Sierra Leone before the arrival of the Berwin letter of 24 April. She

did not see *The Observer* article. She was not aware of the scope of the arms embargo or the Order in Council, since neither of these formed any part of her Ministerial responsibilities.

The Prime Minister

- 9.80 The Prime Minister was briefed on the situation in Sierra Leone at the time of the coup in May and early June 1997, and of the counter-coup in February 1998. Sandline was not mentioned. Two Joint Intelligence Committee reports sent to the Prime Minister's office on 28 January and 25 February 1998 contained references to Executive Outcomes and Sandline, but neither mentioned arms supplies.
- 9.81 Berwins did not send the Prime Minister a copy of their letter of 24 April. On 28 April, Dame Valerie Strachan wrote to Sir Richard Wilson (**doc.111**) informing him about the Sandline investigation and the allegation of involvement by officials. On 30 April, Sir Richard sent a minute (**doc. 119**) passing on this information to the Prime Minister, who noted it on 1 May. That minute was copied to Mr Mandelson, who received it on 30 April and noted its contents.

CHAPTER 10: FINDINGS

In this chapter we record the findings of our investigation.

Chapter 3: The arms embargo

- 10.1 The FCO should have explained the arms embargo imposed by the UN Resolution more effectively within Government and to the public, and especially its application to President Kabbah's government.
- 10.2 AD(E) should have been more effectively consulted on the draft Order in Council.
- 10.3 The Order in Council should have been more widely and effectively promulgated by the FCO, within Government and to the public, with an explanation of its meaning. The failure to do so created a hazard for all affected by the Order.
- 10.4 As a result of these shortcomings in communications, officials and Ministers outside the FCO in London could not be expected to realise that to supply arms to President Kabbah's government without a license would be a breach of the arms embargo and a criminal offence.

Chapter 5: The High Commissioner

- 10.5 Mr Penfold's conduct at the time of the coup saved lives and received official commendation. He enjoys President Kabbah's confidence and is a popular figure in Sierra Leone.
- 10.6 Mr Penfold was given no warning of the scope of the arms embargo, and he did not realise that the supply of arms to President Kabbah's government was illegal.
- 10.7 Mr Penfold should have taken steps to inform himself about this more fully. However, the conditions in Conakry, and his need to travel to and from London, also put a duty on

the FCO to ensure that he was aware of the critical point about the scope of the arms embargo.

- 10.8 Mr Penfold learned from President Kabbah on 19 December that the President was going to purchase arms from Sandline, and did nothing to discourage him or take other action to prevent it. However, the decision was President Kabbah's alone.
- 10.9 On his return to the FCO on 23 December, Mr Penfold failed to make an effective report to AD(E) of what he had learned from President Kabbah about the Sandline contract.
- 10.10 At their lunch together on 23 December, Mr Penfold knew that Mr Spicer's project included supplying arms to President Kabbah, and he left Mr Spicer with a reasonable belief that he supported the project. To this extent, Mr Penfold gave it a degree of approval. He had no authority to do so.
- 10.11 Given the importance of his letter of 30 December to Ms Grant, Mr Penfold should have made more efforts than he did to ensure that its message was received. We consider that Mr Penfold showed a lack of caution in his dealings with Mr Spicer, and that he should have recorded the conversations reasonably fully and promptly. Not to have done so was unwise.
- 10.12 Mr Penfold's visit to the Sandline offices on 28 January further confirmed to Mr Spicer that Mr Penfold accepted the plan to supply arms to President Kabbah.
- 10.13 In his minute of 2 February, which Ms Grant had instructed him to write, Mr Penfold gave clear notice that Sandline had agreed to supply arms to President Kabbah (and see paragraph 10.21 below).

Chapter 6: The FCO in London

- 10.14 Our findings must be understood in their context, and this applies particularly to the FCO in London. The breach of a United Nations arms embargo is a serious matter, and it has

had considerable political repercussions. But the events concerned must be kept in proportion. They involved only a small fraction of the work of the FCO, centred on one part of one of its 18 main commands. What went wrong can only be fairly judged in the context of much other work done by the staff immediately concerned, and also against the wider canvas of the achievements of the FCO as a whole during the period in question.

10.15 However, the FCO officials concerned were not as alert to the importance of sanctions enforcement as they should have been (and see paragraph 10.27 below).

10.16 AD(E) officials were conscious of the need for a degree of care in dealing with private military companies, and Mr Everard recognised that in the ground rules on which he conducted his conversations with Mr Spicer.

10.17 Mr Everard had no detailed knowledge or notice of Sandline's plans, and did not give them encouragement or approval.

10.18 It was unwise of Mr Murray to have a meeting with Mr Spicer on 19 January without ensuring that a full official record was kept.

10.19 There is a conflict of evidence about what happened at that meeting which cannot now be fully resolved. Our conclusion is that Mr Murray and Mr Andrews probably left the meeting unaware that Sandline was supplying arms to President Kabbah. We have found no reason why they should have chosen to give Sandline encouragement or approval. We do not find that they did so.

10.20 We also conclude that Mr Spicer could have left the meeting unaware that supplying arms to President Kabbah would be a breach of the arms embargo. Thus he may have assumed that he had been given tacit approval.

- 10.21 The arrival of Mr Penfold's minute of 2 February to Ms Grant fixed those who saw it with clear notice of Sandline's intended supply of arms to Sierra Leone, and called for action. No other officials had such notice. Ms Grant, who had called for the minute and was in the first instance responsible for taking action on it, did not ensure that it was sent immediately to Customs with Lord Avebury's allegations. Nor did she warn Ministers. She did send the minute to Mr Dales but he does not remember reading, or even seeing it. Mr Murray, who did read the minute two weeks later, appreciated its significance but took no action, either to refer it to Customs or to discuss his concerns with senior colleagues, whom he understood to have seen it already. Mr Dales, Ms Grant and Mr Murray must bear the responsibility for not acting on Mr Penfold's minute. We do not consider that more junior staff concerned with Sierra Leone should be held responsible.
- 10.22 The failure to act on Mr Penfold's minute had unfortunate consequences. However, at that time ECOMOG was moving against the junta in Sierra Leone, which generated large amounts of work for AD(E). In particular, the officials concerned had to give top priority to making urgent plans for helping to cope with the humanitarian crisis brought about by the hostilities.
- 10.23 Lord Avebury sent AD(E) two newspaper reports alleging that Sandline were going to supply arms to Sierra Leone. AD(E) saw these allegations on 9 February and were right to refer them to Customs.
- 10.24 Customs first had notice of the allegations at the REU meeting on 18 February, and received formal notice direct from AD(E) on 10 March. AD(E) should have directly referred those allegations more swiftly, and should have sent with them the evidence of Mr Penfold's minute of 2 February.
- 10.25 AD(E)'s successive failures to recognise and act on the mounting evidence of an intended breach of the arms embargo might look consistent with tacit approval. However, we are satisfied that those failures arose from concern with other matters and lack of

appreciation of the importance of this one. We conclude that AD(E) officials neither encouraged nor approved the Sandline contract.

10.26 Moreover, our view is that the destruction of the military liaison officer's report (and see paragraph 10.34 below), the discounting of an intelligence report (6.53) and the statement that 'we were not aware of any shipment of arms' (6.62, 6.64) were a series of unfortunate misjudgements rather than a deliberate attempt to suppress information.

10.27 We also conclude that AD(E) officials consistently sought to fulfil HMG'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.

10.28 We take account of the other pressing claims on the time of Mr Dales and Ms Grant, but we think that they were not giving sanctions enforcement a sufficiently high priority.

10.29 They and Mr Murray also failed sufficiently to realise the domestic political sensitivity of the Sandline contract and, as a result, failed to take the initiative in warning Ministers or top management about it.

10.30 It was actions by Customs in the course of their investigation that caused top management in the FCO to become aware of Sandline's allegations that officials had been involved in a breach of the arms embargo. They had no notice of the matter before that.

10.31 Mr Murray was aware of the allegations sent by Lord Avebury, and recognised the significance of the reference to arms in Mr Penfold's minute of 2 February. Mr Murray's statement that 'we were not aware of any shipment of arms' in his minute of 30 March, subsequently quoted by Mr Dales, gave top management a false sense of reassurance.

10.32 Top management in the FCO received some notice of the allegations in early April. They delayed giving Ministers warning until more information had been collected. By the time the information was received, the Berwin letter arrived.

10.33 The restrictions which were imposed upon AD(E) officials from mid-April appear to have gone further than was needed and had the effect of unduly limiting the flow of information to top management and Ministers.

Chapter 7: The Ministry of Defence

10.34 Major Hicks was told of the arms shipment once shortly before, and twice shortly after, it arrived in Sierra Leone. On all three occasions he sent back reports immediately to the Ministry of Defence.

10.35 The first of these reports was held in the MOD because Major Hicks had been unable to contact the High Commissioner to get his approval for sending it to the FCO. There was a convention that this was necessary. The other two reports were passed by the MOD to the FCO. One was destroyed, apparently on the advice of a member of AD(E). We have been unable to trace what happened to the other.

10.36 Colonel Gale met Mr Spicer in February, but he had no knowledge of, or involvement in, the Sandline contract.

10.37 We consider that HMS Cornwall's relationship with Sandline, including the emergency repairs she gave their helicopter, was not improper and was sensible in the circumstances. It helped HMS Cornwall to carry out its humanitarian mission.

10.38 Captain Dymock had no knowledge of the impending arms shipment. In any event, he had no reason to suppose that such a shipment might be illegal.

10.39 We have no fault to find with the way Major Hicks, Colonel Gale and HMS Cornwall handled their contacts with Sandline.

10.40 The desk officer at DIS knew of the embargo but was not sufficiently conscious of it to notice evidence of a breach.

Chapter 8: Other Departments

10.41 Apart from those concerned with the referral to Customs, including those represented on the Restricted Enforcement Unit, no other Department had knowledge or notice of the Sandline contract before April. Thereafter, the circle of officials who were informed began to widen.

Chapter 9: Ministers and Parliament

10.42 We are satisfied that officials did not intend to hide information from Ministers. However, there were misjudgements about when it would be timely to tell them (see Paragraphs 10.29 and 10.32 above).

10.43 The briefing provided to Baroness Symons for Lord Avebury's question in the House of Lords on 10 March was seriously deficient, and in one respect factually inaccurate. Some of the defects were well-intentioned. But the relevant points on the arms allegations and the Customs investigation should have been drawn to Baroness Symons' attention.

10.44 Baroness Symons could not be expected to understand from the briefing, and we accept that she did not in fact understand, that Lord Avebury had sent allegations which had been referred to Customs.

10.45 Baroness Symons was not given proper or effective notice of the Sandline contract until the arrival of the Berwin letter.

- 10.46 The briefing that Mr Lloyd received for the adjournment debate in the House of Commons on 12 March was also deficient. In particular, a specific question he raised about the background to *The Observer* article was not properly answered.
- 10.47 Mr Lloyd knew that Mr Penfold had met Sandline, and that Ms Grant had concerns about Mr Penfold. However, his briefing for the adjournment debate did not refer to the allegations sent by Lord Avebury, or to the fact that they had been referred to Customs. Nor did Mr Lloyd become aware of the Sandline contract in his discussion with Ms Grant when Mr Penfold's minute of 2 February was mentioned.
- 10.48 Mr Lloyd was given further information about the Sandline allegations in mid-April. However, this information was still substantially incomplete. It showed that there was cause for concern about Sandline's contacts with the FCO, but indicated that this was being dealt with by officials. It told him that the FCO was not aware of a shipment of arms. He saw no need to take action.
- 10.49 Mr Henderson, who answered a written Parliamentary question on behalf of Mr Lloyd on 17 March, had no information about arms supply or the Customs investigation.
- 10.50 As the Minister with overall responsibility for Customs, Ms Dawn Primarolo received notice of the Sandline allegations on 4 April. This notification was given to Ms Primarolo in confidence and for information only, in her capacity as the Minister responsible for the administration of Customs. She could assume that FCO Ministers would be aware of it.
- 10.51 Neither Mr Robertson nor Dr Reid knew anything of Sandline's plans or allegations before the arrival of the Berwin letter.
- 10.52 Neither Mr Cook, nor his special or political advisers, knew anything of the matter before the arrival of the Berwin letter.

10.53 Ms Short did not know anything of the matter before early May, when she read the press reports.

10.54 Mrs Beckett, Lord Clinton-Davis and Mrs Roche did not know anything of the matter before they saw the Berwin letter.

10.55 Neither the Prime Minister nor, to our knowledge, any other Minister not already referred to knew anything of the matter before the arrival of the Berwin letter.

Workload of FCO officials and Ministers

10.56 The demands made on some FCO officials and Ministers mean that they have to work at or beyond the limits of their capacity. This was a contributory cause of what went wrong in this instance, and we are concerned that it could lead to further mistakes and misjudgements in future. The UK Presidency of the European Union added to the workload in the first half of this year. But even without this, significant overload seems likely to continue. If additional resources are not available, attention needs to be given to simplifying and streamlining the work, or reducing the span that is attempted.

Context of criticisms of officials

10.57 We wish to put our criticisms of officials into context. There were individual failures and misjudgements. But most of the trouble originated from systemic and cultural factors. We consider that the officials involved are loyal and conscientious. They were very busy during the period we have investigated and they worked to good effect in other respects. They have already endured an anxious period of criticism and uncertainty. We hope that this report will help the FCO to close the chapter as far as they are concerned. If any disciplinary proceedings are judged necessary, we hope they will take place soon.

Chapter 11: LESSONS

11.1 In this final chapter, we attempt to draw out what we see as some wider lessons of this episode, with a view to avoiding any repetition. We suggest the following for consideration by the Foreign and Commonwealth Office.

Communications

11.2 The first lesson is the importance of communications, especially in a large, busy and complex Department of State. The FCO is well aware of the general issue, so we need not enlarge on it, save to repeat that much of what went wrong in this case stemmed from a cumulative succession of failures of communication.

11.3 There also appears to be a need to look at the FCO's arrangements for receiving and distributing reports from the Ministry of Defence. The fate of Major Hicks's reports gives cause for concern.

11.4 We received the impression that one of the obstacles to informing Ministers and top management was a reluctance or perceived difficulty about communicating with them when they were abroad. This suggests possible scope for further use of modern technology.

11.5 The 'side-copy' habit needs attention. (This is not only an FCO problem.) In a busy Department where Ministers and senior officials have to handle large quantities of information, sending a side-copy is not necessarily a sufficient discharge of the sender's responsibility. If it is necessary or very desirable to draw something to the attention of a Minister or senior official, he or she should be made a primary recipient, and/or other steps should be taken to ensure that his private office know that he needs to be informed of it.

11.6 Those compiling and approving press lines should bear in mind that their readers will tend to assume that their line tells the full story. If it does not, they need consciously to try to avoid it being used inappropriately.

Domestic British legislation

11.7 The second lesson is the need to realise the importance of domestic British legislation, not as a technical matter for experts but as capable of significantly affecting policy and operations. Lack of appreciation of the impact of the Sierra Leone Order in Council, coupled with failure to explain it to all concerned, was one of the causes of the trouble in this instance. In any foreign ministry, international law must always claim special attention. But where, as here, international legal instruments are implemented by domestic measures creating serious criminal offences, all officials need to have the fact well within their consciousness. The need for this is reinforced by the ever-increasing role of the law and the courts in public administration.

Private military companies

11.8 Taken together, the points about communications and legislation suggest a need to review the systems for ensuring that all officials concerned, whether in the FCO or posts abroad, are effectively informed about the practical significance of both national and international legal measures.

11.9 We believe there is a third lesson to be learned, about dealings with private military companies. These companies are on the scene and look likely to stay on it. They will continue to seek contacts with Government Departments, especially the FCO and MOD. Private military companies are entitled to carry on their business within the law and, for that purpose, to have the access and support which Departments are there to provide to British citizens and companies. And information derived from such contacts can be useful in the public interest. However, private military companies are in a business which can have direct and sensitive impact on Government policy and international relations, and on Parliamentary and public opinion. We think there is a case for giving officials more explicit guidance on how to manage relations with these companies. Such

guidance should include a clear recommendation to make full records of all dealings with such companies.

- 11.10 More widely, there may also be a need for similar guidance to officials on dealing with any meetings or correspondence where there is reason to suppose that the outcome may be challenged. In these cases, it is important that a full record be made as soon as possible, and preferable that a note of key points should also be sent to the other party.

Domestic political sensitivities

- 11.11 A fourth lesson is the need to be aware of domestic political sensitivities. Because their main concern is international issues, FCO officials may be at special risk here. Officials in FCO, as elsewhere, nowadays need to have a constant and streetwise instinct about matters that may attract attention and criticism from Parliament and the media, even if they may not look important on the international plane. These may include operational matters as well as policy issues.

Keeping Ministers informed

- 11.12 Officials therefore need to be alert for developments which could trigger political sensitivities, and a fifth lesson is the need to give Ministers early and effective warning, however informal, of such developments.

Embargoes

- 11.13 A sixth lesson is the need for what has been called a ‘neighbourhood watch scheme’ attitude to embargoes. Embargoes, especially on strategic commodities like arms and oil, have obvious potential for domestic political sensitivity, and may need more attention in this respect than they already receive. There is an accompanying need for officials at all levels, within practicable limits, to be alert to signs of impending breaches of such embargoes and, if the signs are clear, to move swiftly in reporting information which could prevent a breach or lead to prosecution. Where that information justifies it, the prosecuting authority (normally Customs and Excise) should be promptly seized of the matter, by communications which are on the record.

Parliamentary briefings

- 11.14 A seventh lesson is that the quality of Parliamentary briefings, for at least some FCO Ministers, needs serious attention.

Legal and other specialist advice

- 11.15 An eighth lesson is that there may be a need for more discretion in using legal and other specialist advice to the best effect, and not allowing it unnecessarily to rule out other considerations. In this case, legal services appear to have been sought without adequate briefing, and legal advice to have been followed without adequate exploration of the possibilities it left open.

Management

- 11.16 There can be few hard and fast rules about the management of a large and complex organisation like the FCO. However, we put forward three observations.
- 11.17 First, we were impressed by the extent to which important work was delegated to junior levels, and by the way junior officials tackled it. Such delegation is to be encouraged, but it is necessary to ensure that its recipients get adequate guidance and training.
- 11.18 Secondly, when difficult and exceptional situations arise, and affect the degree of involvement of the person at the top of the chain of command, it can be useful to give another person clear and undivided responsibility for taking the lead in ensuring that the handling arrangements are appropriate, used to best effect and not unduly disruptive. It is also important to ensure, as far as possible, that events like those we have investigated are not managed in a way that cuts off the upward flow of information or causes loss of morale.

11.19 Finally, the style of modern management is towards fewer layers in the hierarchy and greater informality, and these are conducive to effective communication and common effort. Despite the formal nature of some of its business, and the inconvenience of its main building, the FCO has clearly travelled a considerable way in that direction. However, we believe there is room for further movement.