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Prime Minister. Rhodesia B5



This minute reports that the Government have told Shell and BP's solicitors, on a preliminary basis and without commitment, that we are ready to support them in their attempt to resist demands by Lonhro that they should produce certain documents supplied to the Bingham Inquiry. The Attorney-General and the FCO will now have to consider, in the light of a full study of the documents, whether to confer with Lonhro on a preliminary basis. Content to let matters proceed? JAH

1 agree with the L.P.S. preliminary view. JAH

Prime Minister

PROCEEDINGS BY LONHRO AGAINST BP AND SHELL preliminary view. Content to let matters proceed?

I enclose a copy of a letter to me from the Attorney General and of a draft letter from the Treasury Solicitor to the lawyers acting for BP and Shell. The matter at issue concerns the production of certain documents supplied to Mr Bingham during his investigations. The Attorney General has recommended that I authorise the Treasury Solicitor to send the letter, which has to be lodged with the companies' lawyers by this weekend. It falls to a FCO Minister to authorise the letter as it was the previous government's Foreign and Commonwealth Secretary who commissioned and received the Bingham Report. I have therefore accepted the Attorney General's advice and authorised the Treasury Solicitor to send the letter.

17.1.80.

The Attorney General can no doubt give his colleagues a fuller description of the legal considerations if this is required. In essence, the Government is informing BP and Shell that its preliminary view is that the production in the arbitration proceedings between Lonhro on the one hand and BP and Shell on the other of certain documents would be injurious to the public interest. These documents contain the transcripts of evidence of company witnesses before Mr Bingham, correspondence between Mr Bingham and the companies during his investigation, and submissions made by the companies to Mr Bingham at his request.

The Treasury Solicitor has now given BP and Shell's lawyer authority to use his letter if necessary when the arbitrators meet this weekend to consider Lonhro's application for the production of these documents. I am advised that the chances

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are evens that BP and Shell will not succeed in their claim of public interest immunity for these documents. If so, the matter could be appealed up to the House of Lords, and the Attorney General might himself have to intervene.

Whether we win or lose, I agree with the Attorney General that we should support the companies in their claim for public interest immunity. Under the terms of the 1968 Sanctions Order, under which Mr Bingham's enquiry was established, he had powers to compel witnesses to give evidence, but the same Order also required the government not to disclose evidence arising out of enquiries such as Mr Bingham's except in a few limited and defined circumstances. The companies and their employees cooperated fully. The transcripts of witnesses' evidence to Mr Bingham only came into existence because of his investigation. If we now allowed the confidentiality of such evidence to be breached, by not contesting Lonhro's demand for its production, we would risk irreparable damage to the principle of confidentiality and the probability that witnesses would be reluctant to cooperate should a similar enquiry be set up in future. Moreover, some of the witnesses were not UK citizens, and could be put in a difficult situation in their countries of nationality were their evidence to be disclosed.

We can expect criticism in Parliament and possibly in one or two countries overseas. The timing is certainly awkward. But, I accept the advice of the Attorney General, that an important principle is at stake, and that it is right for us to intervene in the arbitration proceedings.

I am copying this minute to the Attorney General, the Leader of the House of Commons and the Secretary of State for Energy.

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