

TO: ALL MEMBERS OF THE LEADER'S CONSULTATIVE COMMITTEE

I enclose a background paper by the Research Department on The Bingham Report which will be discussed at the meeting of the Shadow Cabinet on Wednesday, 4th October 1978.

A paper on Rhodesia by Mr. John Davies will be circulated by the Leader's Office.

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THE BINGHAM REPORT1. Introduction

Mr. T.H. Bingham, Q.C., was appointed by Dr. Owen on 10th May, 1977 to conduct an investigation with the objects:

" (a) of establishing the facts concerning the operations whereby supplies of petroleum and petroleum products have reached Rhodesia since 17th December 1965; (b) of establishing the extent, if any, to which persons and companies within the scope of the Sanctions Orders have played any part in such operations; (c) of obtaining evidence and information for the purpose of securing compliance with or detecting evasion of the Southern Rhodesia (United Nations Sanctions) (No.2) Order 1968, and (d) of obtaining evidence of the commission of any offence against the Sanctions Order which may be disclosed."

2. Summary of conclusions relevant to the records of the Labour and Conservative Governments

From about May 1966, when the scale of the supply of oil to Rhodesia became known, the Labour Government sought ways of stopping it. But by 1967, it came to believe that without the co-operation of South Africa and Portugal, the supply to Rhodesia could not (without an embargo on supplies to South Africa and Mozambique to which the British Government was strongly opposed) be stopped altogether. Attention was then concentrated on achieving a position in which it could truly be said that British companies were not engaged in supplying Rhodesia and that no British oil was reaching Rhodesia. In February 1968, the swap arrangement between Shell South Africa and Total South Africa started, whereby Shell oil suspected of going to Rhodesia was replaced by Total oil in exchange for an equivalent quantity of Shell oil supplied to Total elsewhere.

The Labour Government was told of this arrangement during 1968 and "considered that this was the best arrangement which could be made in the circumstances but realised that it would not of itself prevent or reduce the quantity of oil reaching Rhodesia" (p.393). This arrangement continued until the end of 1971, after which oil was again delivered directly by Shell. However, Shell South Africa did not tell either Shell in London or the British (Conservative) Government about the resumption of deliveries by Shell.

There does not appear to have been any contact between the British Government and Shell and BP concerning the enforcement of sanctions between 1969 and 1976.

"Both HMG and the top management of the (BP and Shell) Groups, save for limited periods... were ignorant of facts which should have been the subject certainly of consideration and possibly of action. This ignorance led HMG and the top management of the Groups unwittingly to make statements and give assurances which they would not have done with full knowledge of the facts" (p. 409).

3. The Record of the Labour Government

As already stated in section 2, the Report indicates that the Labour Government of 1966 to 1970 knew that the oil was getting through to Rhodesia with the connivance of British oil companies. But it did not feel that it could do more because as Mr. Michael Stewart, Foreign Secretary in 1968, has said "we were doing everything possible to avoid confrontation with South Africa" (Daily Telegraph, 22nd September 1976).

Considerable controversy has surrounded the question of whether Sir Harold Wilson was informed that British companies had been supplying oil to Rhodesia up to 1968 and about the swap arrangement in that year. He at first denied this, leading Lord Thomson, Commonwealth Secretary in 1968, to state that Cabinet papers showed that he "conveyed in writing to the Prime Minister and other Ministers most directly concerned a full account of all that passed at my meetings with the oil companies" (Guardian, 7th September 1978). Sir Harold Wilson then issued a partial retraction of his denial. It is clear from the records of the meetings between Lord Thomson and representatives of the oil companies on 21st February 1968 and 6th February 1965 (pages 41 and 54 of Annex II) that Shell and BP informed Lord Thomson in detail of the situation.

As for the record of the Labour Government from 1974 to 1976, when Mr. Callaghan was Foreign Secretary, nothing appears to have been done by the British Government to end the direct supply of British oil by Shell Mozambique through Lourenco Marques, which had resumed when the swap arrangement ended in 1971. There is no evidence that the Labour Government knew about this any more than the Conservative Government had earlier. The question did not arise from 1976 onwards, because the Mozambique/Rhodesia border was closed after the Portuguese collapse and a new rail link was established between Rhodesia and South Africa.

4. The Record of the Conservative Government

Mr. Healey is reported to have said that criticism of Britain's handling of oil sanctions applies more to the Conservative Government than to the Labour Governments. He is not reported to have explained what he meant by this and there is no basis in the published evidence to support this assertion. The Bingham Report contains nothing directly discreditable to the Conservative Party. There are no records of any meetings between the oil companies and ministers from 1970 to 1974. The Bingham Report clearly states that Shell South Africa did not tell the British Government or Shell in London that the swap arrangement had ended and that the more discreditable situation of a direct supply of oil through Lourenco Marques had begun again.

In the light of known facts, the Conservative Government could only be criticised on the dubious grounds that it had failed to investigate the situation closely enough, although it might also be asserted that the Conservative Government allowed an impression to arise that it was less interested in sanctions enforcement than the Labour Government had been.

However there would be no basis for the latter assertion. While Conservative ministers deeply regretted the need for sanctions, they emphasised the need for them to be enforced. Thus Lord Home stated on 9th May 1973 that "the United Kingdom has an exemplary record for sanctions enforcement. Eighteen British firms and individuals have been convicted and fines totalling over £200,000 have been imposed by the courts" (Hansard, col. 465).

Lord Home has recently said that the issue of oil sanctions "did not come our way in the Conservative Government from 1970 to 1974". He added: "it was never discussed, I think for the obvious reason that once Mr. Wilson decided that it was policy to exempt South Africa from sanctions, clearly international companies were going to trade with South Africa and so everyone accepted there was a gap there "Daily Telegraph, 20th September 1978).

Mr. Davies replied to Mr. Healey's accusation (see above) in a letter to the Daily Telegraph on 27th September 1978. He pointed out that "an incoming government has no access to the records of its politically adverse predecessors. This did not prevent us knowing that oil was getting through South Africa to Rhodesia: that was public knowledge. But it did effectively preclude us being made aware of the subterfuge to which the Labour Government had lent itself... I was not apprised of this rather discreditable episode and had certainly no reason to suppose that such an arrangement had been put forward by the oil industry as a device to save appearances and had been apparently eagerly seized upon by the Labour administration".

5. The Beira Patrol

From 1966 to 1975, the Mozambique port of Beira was blockaded by ships of The Royal Navy. This blockade achieved its narrow object of preventing crude oil from being landed at Beira and sent direct to the Rhodesian oil refinery at Umtali. However, in view of the substantial amounts of oil reaching Rhodesia unhindered via Lourenco Marques and South Africa, Dr. Owen's view, expressed on 11th February 1971, that the Beira patrol was "one of the most successful naval blockades in history" (Hansard, col. 765) seems somewhat eccentric.

Conservative ministers made little secret of their belief that the Beira Patrol, while fulfilling its appointed task, was ineffective in the wider context. Thus Lord Carrington said "I do not think it is the view of the Government that the Beira patrol has been successful in preventing oil from reaching Rhodesia" (Hansard, 11th March 1971, col. 174). However the Conservative Government accepted that it was necessary to carry on with the patrol as part of our sanctions policy and to comply with a mandatory UN resolution.

Although it has been stated in the press that the Beira patrol cost over £100 million (Daily Telegraph, 6th September 1978), this does not tally with statements made by Conservative ministers at the time. Thus Lord Home said that the blockade cost £400,000 a year on 20th July 1970 (Hansard, col. 9) and that it had cost a total of just over £2 million up to 22nd March 1971 (Hansard, col. 13).

6. Future Action

When the Bingham Report was published, the Foreign Secretary confined himself to saying that the Government intended "to face up to the implications of the Bingham Report in the light of the most recent developments in the region" (Daily Telegraph, 21st September 1978).

The Government's first priority was to assuage President Kaunda's anger, which Mr. Callaghan appears to have done in the Kano talks, although no details were disclosed. (Dr. Kaunda has said that successive British Prime Ministers "had all the facts at their fingertips. They lied all the way along the line (Daily Telegraph, 19th September 1978)).

The Government is now considering whether any further enquiry is needed. The Liberal Party has called for a full-scale tribunal of enquiry, while Mr. Davies has said that "on so complex a matter it would be unwise to make premature and ill-considered judgements. But it is evident that such an important matter cannot be swept under the carpet" (Statement, 19th September 1978).

There appear to be three alternative courses of action:

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- (a) to have no further enquiry and to leave the Director of Public Prosecutions to take whatever action he considers necessary on the criminal aspects;
 - (b) to hold a public enquiry under the Tribunals of Enquiry (Evidence) Act of 1921 of the sort which is at present investigating the Crown Agents affair. This has the disadvantage of being extremely lengthy. Another relevant factor is that witnesses at such enquiries receive immunity from prosecution;
 - (c) to set up a Select Committee of the House of Commons or a Joint Committee of both Houses. This could presumably sit in public if it thought fit. It has been argued (Times, 21st September 1978) that as the issues raised by the Bingham Report are essentially political, it would be appropriate for them to be examined by a political rather than a judicial enquiry. However, the fact that the present Parliament could be dissolved at any time in the next few months could lead to an awkward gap in the work of a Select Committee. Another relevant factor is that a Select Committee might encourage party political dispute on the issue, which might or might not be desirable.

Another course of action which has been suggested (e.g. by Mr. Eric Heffer, Daily Telegraph, 23rd September 1978) and which is not incompatible with any of the alternatives listed above, is to publish all the relevant Cabinet and other official papers for the whole period.

The Government announced on 28th September 1978 that there would be debates in both Houses of Parliament as soon as possible and that the debate in the House of Commons will last two days and will probably take place directly after the Queen's Speech debate at the beginning of November. No decision will be taken by the Government to initiate any further enquiry until after these debates. In the meantime, the Government will be under considerable pressure from its Left Wing and the National Executive, both at the Labour Party Conference and thereafter to ensure the fullest possible exposure of the whole subject.