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FILE TITLE: <i>RELATIONS</i>		SERIES
		<i>MOROCCO</i>
		PART: <i>2</i>
PART BEGINS:	PART ENDS:	CAB ONE:
<i>3 JANUARY 2001</i>	<i>7 JUNE 2001</i>	

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Part closed

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PART

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7 JUNE 2001

Series : MOROCCO

File Title : Relations

Part : 2

Date	From	To	Subject	Class	Secret
27/02/2001	FCO	MOD	Western Sahara	R	0

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Foreign &
Commonwealth
Office

London SW1A 2AH

27 February 2001

Dear Nicky,

Western Sahara

You are no doubt aware of the recent Parliamentary and public interest in the decision by HMG to issue an export licence for the refurbishment of 30 Moroccan guns in Western Sahara. The Foreign Secretary gave evidence on this case to the Quadripartite Committee on 30 January and intends to supplement that evidence with the enclosed Memorandum.

The Memorandum has been cleared with officials in your Department, but I should be grateful for confirmation that you have no objections to this being submitted to the Committee on Wednesday 28 February.

I am also writing to Bernadette Kelly (DTI) and copying this Memorandum to John Sawers (No 10).

Yours ever,
Patrick(Patrick Davies)
Private SecretaryLt Col Nicky Moffat
PS/Secretary of State for Defence

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SUPPLEMENTARY MEMORANDUM

On 30 January 2001, I gave evidence to the Quadripartite Committee about the FCO's recommendation to approve an export licence application (ELA) for the refurbishment of Moroccan guns in Western Sahara.

In making his decision to recommend refusal of the export licence application (ELA) in August 1998, Derek Fatchett, then Minister of State with responsibility for the Middle East and North Africa, judged the application against the UK's export licensing criteria and the EU Code of Conduct. He judged that on balance the application for the supply of six new guns and for the refurbishment of 30 existing guns did not meet Criterion 4 of the EU Code of Conduct. He was concerned that there was a clear risk that the equipment could be used to assert by force a territorial claim. As a result, the FCO recommended to the DTI that the ELA be refused. The DTI accepted this recommendation and subsequently informed the company of HMG's refusal of the ELA on 28 August 1998.

The company appealed against this refusal in September 1998. The appeals process allows HMG to review the case for and against issuing an ELA, and consider whether there are grounds for changing its decision. The DTI passed the papers to the FCO and MOD for consideration. In its letter of appeal of 8 September 1998, the company asserted that the contract for refurbishment of the existing guns "would not add to the number of artillery pieces deployed in the forward areas particularly given the controls that have been put in place by MINURSO. Moreover, and with specific regard to refurbishment as distinct to new supply, MINURSO already has procedures in place which cater for the repair and refurbishment of existing equipments [sic] deployed in the area". The company wrote to the FCO in October 1998 and explained it believed that

refurbishment would not breach the cease-fire and MINURSO would monitor any refurbishment work.

Communication between the company and HMG officials - representing the FCO and MOD - continued in London and through the British Embassy in Rabat. FCO officials were also in communication with United Nations officials. In light of those discussions, FCO officials came to the preliminary view in late 1998 that, if the Moroccan guns were refurbished, this would not violate the terms of the UN-sponsored cease-fire between Morocco and the Polisario Front which had been in place since 1991. FCO officials also believed that the Military Agreement signed between MINURSO and the two parties, would allow MINURSO to play a role in monitoring the process of refurbishing the guns.

In October 1998, FCO officials consulted Derek Fatchett on the appeal. He maintained the view that the ELA should be refused. The company continued to pursue its appeal. In December 1998, Derek Fatchett accepted the view that Morocco was permitted, by the UN, to refurbish their arms in Western Sahara; that if the Force Commander of MINURSO gave his approval Morocco would be allowed to withdraw items, refurbish them and return them to their original positions; and that such refurbishment would be carried out under the monitoring of MINURSO. Nevertheless, he maintained his opinion that the application should be refused. In February 1999, Derek Fatchett agreed to reconsider the position if new information became available. He also agreed that the UN in New York should be consulted. The FCO did not therefore at this stage transmit to the DTI its formal recommendation to uphold the refusal.

Subsequently, the UN told us that refurbishment of the guns could be considered as neutral. In June 1999, the United Nations Department of Peace Keeping Operations in New York

confirmed that refurbishment of the guns would not be in breach of the existing military arrangements between MINURSO and the two parties; and that, in accordance with these arrangements, MINURSO would be in a position to monitor the procedure of the refurbishment of the Moroccan guns on the ground. (This is set out in the Military Agreement of 1997 between MINURSO and the two parties.)

In view of the confirmation from the UN, FCO officials consulted the relevant Minister, then Geoff Hoon, about the company's on-going appeal against the refusal. Geoff Hoon decided to recommend to the DTI that an ELA be issued for the refurbishment of the guns only. He upheld the recommendation that the part of the ELA referring to the proposed sale of six new guns to Morocco be refused. This recommendation was agreed by the MOD and accepted by the DTI. DTI informed the company of the decision on 12 July 1999.

Both Derek Fatchett and Geoff Hoon judged the application against the EU Code of Conduct. However, Geoff Hoon considered the sale of six new guns and the refurbishment of the existing guns could be considered separately. He decided that refurbishment of the existing guns did not contravene Criterion 4 of the EU Code of Conduct, and that recommendation was passed to the DTI. He maintained Mr Fatchett's view that the application for new guns should be refused.

The Government takes very seriously its responsibilities for exercising effective export controls. Ministers carefully weigh up all the relevant considerations, in the light of the circumstances at the time, in judging whether an application or an appeal should be refused or approved.

The appeals procedure was put in place precisely to allow appellants to ask the Government to review its decision to refuse an export licence application. This is a

procedure which I know the Quadripartite Committee supports. The Committee recommended in its report, published in July 2000, that the Government ensure appellant companies were able to participate in the appeal procedure and given more detailed information on the reasons for the original refusal and the decision on an appeal. It would be difficult to have a meaningful appeals process if the Government refuses to take account of the arguments put forward at appeal; or refuses to review carefully its original decision.

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