

**Security Council**

Distr.: General
• 12 February 2002

Original: English

Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council

1. In a letter addressed to me on 13 November 2001, the President of the Security Council requested, on behalf of the members of the Council, my opinion on "the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara".
2. At my request, the Government of Morocco provided information with respect to two contracts, concluded in October 2001, for oil-reconnaissance and evaluation activities in areas offshore Western Sahara, one between the Moroccan Office National de Recherches et d'Exploitations Pétrolières (ONAREP) and the United States oil company Kerr McGee du Maroc Ltd., and the other between ONAREP and the French oil company TotalFinaElf E&P Maroc. Concluded for an initial period of 12 months, both contracts contain standard options for the relinquishment of the rights under the contract or its continuation, including an option for future oil contracts in the respective areas or parts thereof.
3. The question of the legality of the contracts concluded by Morocco offshore Western Sahara requires an analysis of the status of the Territory of Western Sahara, and the status of Morocco in relation to the Territory. As will be seen, it also requires an analysis of the principles of international law governing mineral resource activities in Non-Self-Governing Territories.
4. The law applicable to the determination of these questions is contained in the Charter of the United Nations, in General Assembly resolutions pertaining to decolonization, in general, and economic activities in Non-Self-Governing Territories, in particular, and in agreements concerning the status of Western Sahara. The analysis of the applicable law must also reflect the changes and developments which have occurred as international law has been progressively codified and developed, as well as the jurisprudence of the International Court of Justice and the practice of States in matters of natural resource activities in Non-Self-Governing Territories.



A. The status of Western Sahara under Moroccan administration

5. A Spanish protectorate since 1884, Spanish Sahara was included in 1963 in the list of Non-Self-Governing Territories under Chapter XI of the Charter (A/5514, annex III). Beginning in 1962, Spain as administering Power transmitted technical and statistical information on the Territory under Article 73 *e* of the Charter of the United Nations. This information was examined by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples ("the Special Committee"). In a series of General Assembly resolutions on the question of Spanish/Western Sahara, the applicability to the Territory of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) was reaffirmed.

6. On 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania ("the Madrid Agreement"), whereby the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration. The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara as a Non-Self-Governing Territory.

7. On 26 February 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory, thus leaving it in fact under the administration of both Morocco and Mauritania in their respective controlled areas. Following the withdrawal of Mauritania from the Territory in 1979, upon the conclusion of the Mauritano-Sahraoui agreement of 19 August 1979 (S/13503, annex I), Morocco has administered the Territory of Western Sahara alone. Morocco, however, is not listed as the administering Power of the Territory in the United Nations list of Non-Self-Governing Territories, and has, therefore, not transmitted information on the Territory in accordance with Article 73 *e* of the Charter of the United Nations.

8. Notwithstanding the foregoing, and given the status of Western Sahara as a Non-Self-Governing Territory, it would be appropriate for the purposes of the present analysis to have regard to the principles applicable to the powers and responsibilities of an administering Power in matters of mineral resource activities in such a Territory.

B. The law applicable to mineral resource activities in Non-Self-Governing Territories

9. Article 73 of the Charter of the United Nations lays down the fundamental principles applicable to Non-Self-Governing Territories. Members of the United Nations who assumed responsibilities for the administration of these Territories have thereby recognized the principle that the interests of the inhabitants of these Territories are paramount, and have accepted as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these Territories. Under Article 73 *e* of the Charter, they are required to transmit regularly to the Secretary-

General for information purposes statistical and other information of a technical nature relating to economic, social, and educational conditions in the Territories under their administration.

10. The legal regime applicable to Non-Self-Governing Territories was further developed in the practice of the United Nations and, more specifically, in the Special Committee and the General Assembly. Resolutions of the General Assembly adopted under the agenda item entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration did not adversely affect the interests of the peoples of such Territories, but were instead directed towards assisting them in the exercise of their right to self-determination. The Assembly also consistently urged the administering Powers to safeguard and guarantee the inalienable rights of the peoples of those Territories to their natural resources, and to establish and maintain control over the future development of those resources (resolutions 35/118 of 11 December 1980, 52/78 of 10 December 1997, 54/91 of 6 December 1999, 55/147 of 8 December 2000 and 56/74 of 10 December 2001).

11. In the resolutions adopted under the agenda item entitled "Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination", the General Assembly reiterated that "the exploitation and plundering of the marine and other natural resources of colonial and Non-Self-Governing Territories by foreign economic interests, in violation of the relevant resolutions of the United Nations, is a threat to the integrity and prosperity of those Territories", and that "any administering Power that deprives the colonial peoples of Non-Self-Governing Territories of the exercise of their legitimate rights over their natural resources ... violates the solemn obligations it has assumed under the Charter of the United Nations" (resolutions 48/46 of 10 December 1992 and 49/40 of 9 December 1994).

12. In an important evolution of this doctrine, the General Assembly, in its resolution 50/33 of 6 December 1995, drew a distinction between economic activities that are detrimental to the peoples of these Territories and those directed to benefit them. In paragraph 2 of that resolution, the General Assembly affirmed "the value of foreign economic investment undertaken in collaboration with the peoples of the Non-Self-Governing Territories and in accordance with their wishes in order to make a valid contribution to the socio-economic development of the Territories". This position has been affirmed by the General Assembly in later resolutions (resolutions 52/72 of 10 December 1997, 53/61 of 3 December 1998, 54/84 of 6 December 1999, 55/138 of 8 December 2000 and 56/66 of 10 December 2001).

13. The question of Western Sahara has been dealt with both by the General Assembly, as a question of decolonization, and by the Security Council, as a question of peace and security. The Council was first seized of the matter in 1975, and in its resolutions 377 (1975) of 22 October 1975 and 379 (1975) of 2 November 1975 it requested the Secretary-General to enter into consultations with the parties. Since 1988, in particular, when Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y del Río de Oro (Frente POLISARIO) agreed, in principle, to the settlement proposals of the Secretary-General and the Chairman of the Organization of African Unity, the political process aiming at a peaceful settlement

of the question of Western Sahara has been under the purview of the Council. For the purposes of the present analysis, however, the body of Security Council resolutions pertaining to the political process is not relevant to the legal regime applicable to mineral resource activities in Non-Self-Governing Territories and for this reason is not dealt with in detail in the present letter.

14. The principle of "permanent sovereignty over natural resources" as the right of peoples and nations to use and dispose of the natural resources in their territories in the interest of their national development and well-being was established by the General Assembly in its resolution 1803 (XVII) of 14 December 1962. It has since been reaffirmed in the 1966 International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, as well as in subsequent General Assembly resolutions, most notably, resolution 3201 (S-VI) of 1 May 1974, entitled "Declaration on the Establishment of a New International Economic Order", and resolution 3281 (XXIX) of 12 December 1974, containing the Charter of Economic Rights and Duties of States. While the legal nature of the core principle of "permanent sovereignty over natural resources", as a corollary to the principle of territorial sovereignty or the right of self-determination, is indisputably part of customary international law, its exact legal scope and implications are still debatable. In the present context, the question is whether the principle of "permanent sovereignty" prohibits *any* activities related to natural resources undertaken by an administering Power (cf. para. 8 above) in a Non-Self-Governing Territory, or only those which are undertaken in disregard of the needs, interests and benefits of the people of that Territory.

C. The case law of the International Court of Justice

15. The question of natural resource exploitation by administering Powers in Non-Self-Governing Territories was brought before the International Court of Justice in the case of *East Timor (Portugal v. Australia)* and the case concerning *Certain Phosphate Lands in Nauru (Nauru v. Australia)*. In neither case, however, was the question of the legality of resource exploitation activities in Non-Self-Governing Territories conclusively determined.

16. In the case of *East Timor*, Portugal argued that in negotiating with Indonesia an agreement on the exploration and exploitation of the continental shelf in the area of the Timor Gap, Australia had failed to respect the right of the people of East Timor to permanent sovereignty over its natural wealth and resources, and the powers and rights of Portugal as the administering Power of East Timor. In the absence of Indonesia's participation in the proceedings, the International Court of Justice concluded that it lacked jurisdiction.

17. In the *Nauru Phosphate* case, Nauru claimed the rehabilitation of certain phosphate lands worked out before independence in the period of the trusteeship administration by Australia, New Zealand and the United Kingdom of Great Britain and Northern Ireland. Nauru argued that the principle of permanent sovereignty over natural resources was breached in circumstances in which a major resource was depleted on grossly inequitable terms and its extraction involved the physical reduction of the land. Following the judgment on the Preliminary Objections, the parties reached a settlement and a judgment on the merits was no longer required.

D. The Practice of States

18. In the recent practice of States, cases of resource exploitation in Non-Self-Governing Territories have, for obvious reasons, been few and far apart. In 1975, the United Nations Visiting Mission to Spanish Sahara reported that at the time of the visit, four companies held prospecting concessions in offshore Spanish Sahara. In discussing the exploitation of phosphate deposits in the region of Bu Craa with Spanish officials, the Mission was told that the revenues expected to accrue would be used for the benefit of the Territory, that Spain recognized the sovereignty of the Saharan population over the Territory's natural resources and that, apart from the return of its investment, Spain laid no claim to benefit from the proceeds (A/10023/Rev.1, p. 52).

19. The exploitation of uranium and other natural resources in Namibia by South Africa and a number of Western multinational corporations was considered illegal under Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted in 1974 by the United Nations Council for Namibia, and was condemned by the General Assembly (resolutions 36/51 of 24 November 1981 and 39/42 of 5 December 1984). The case of Namibia, however, must be seen in the light of Security Council resolution 276 (1970) of 30 January 1970, in which the Council declared that the continued presence of South Africa in Namibia was illegal and that consequently all acts taken by the Government of South Africa were illegal and invalid.

20. The case of East Timor under the United Nations Transitional Administration in East Timor (UNTAET) is unique in that, while UNTAET is not an administering Power within the meaning of Article 73 of the Charter of the United Nations, East Timor is still technically listed as a Non-Self-Governing Territory. By the time UNTAET was established in October 1999, the Timor Gap Treaty was fully operational and concessions had been granted in the Zone of Cooperation by Indonesia and Australia, respectively. In order to ensure the continuity of the practical arrangements under the Timor Gap Treaty, UNTAET, acting on behalf of East Timor, concluded on 10 February 2000 an Exchange of Letters with Australia for the continued operation of the terms of the Treaty. Two years later, in anticipation of independence, UNTAET, acting on behalf of East Timor, negotiated with Australia a draft "Timor Sea Arrangement" which will replace the Timor Gap Treaty upon the independence of East Timor. In concluding the agreement for the exploration and exploitation of oil and natural gas deposits in the continental shelf of East Timor, UNTAET, on both occasions, consulted fully with representatives of the East Timorese people, who participated actively in the negotiations.

E. Conclusions

21. The question addressed to me by the Security Council, namely, "the legality ... of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara", has been analysed by analogy as part of the more general question of whether mineral resource activities in a Non-Self-Governing Territory by an administering Power are illegal, as such, or only if conducted in disregard of the needs and interests of the people of that Territory. An analysis of the relevant provisions of the Charter of the United Nations, General Assembly resolutions, the

case law of the International Court of Justice and the practice of States supports the latter conclusion.

22. The principle that the interests of the peoples of Non-Self-Governing Territories are paramount, and their well-being and development is the "sacred trust" of their respective administering Powers, was established in the Charter of the United Nations and further developed in General Assembly resolutions on the question of decolonization and economic activities in Non-Self-Governing Territories. In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources in their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources. The Assembly recognized, however, the value of economic activities which are undertaken in accordance with the wishes of the peoples of those Territories, and their contribution to the development of such Territories.

23. In the cases of *East Timor* and *Nauru*, the International Court of Justice did not pronounce itself on the question of the legality of economic activities in Non-Self-Governing Territories. It should be noted, however, that in neither case was it alleged that mineral resource exploitation in such Territories was illegal per se. In the case of *East Timor*, the conclusion of an oil exploitation agreement was allegedly illegal because it had not been concluded with the administering Power (Portugal); in the *Nauru* case, the illegality allegedly arose because the mineral resource exploitation depleted unnecessarily or inequitably the overlaying lands.

24. The recent State practice, though limited, is illustrative of an opinio juris on the part of both administering Powers and third States: where resource exploitation activities are conducted in Non-Self-Governing Territories for the benefit of the peoples of those Territories, on their behalf or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power and in conformity with the General Assembly resolutions and the principle of "permanent sovereignty over natural resources" enshrined therein.

25. The foregoing legal principles established in the practice of States and the United Nations pertain to economic activities in Non-Self-Governing Territories, in general, and mineral resource exploitation, in particular. It must be recognized, however, that in the present case, the contracts for oil reconnaissance and evaluation do not entail exploitation or the physical removal of the mineral resources, and no benefits have as of yet accrued. The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council's request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.

(Signed) Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel

S22(1)

**WESTERN SAHARA: IMPORT OF PHOSPHATE
LEAD AGENCY: DFAT (MAB and LGB)**

Talking Points

- Western Sahara is classified by the UN as a Non-Self-Governing Territory, under the de facto administration of Morocco
 - the Australian Government supports the UN-endorsed process for an early and durable political settlement to the Western Sahara dispute
 - including the earliest possible holding of a referendum to allow Western Sahara to exercise its right to self-determination.
- There are no United Nations sanctions in place against Western Sahara or Morocco
 - Australia does not maintain independent bilateral trade sanctions against Western Sahara or Morocco.

If asked: Is DFAT aware of the legal opinion of Hans Corell, UN Under-Secretary General for Legal Affairs, on the exploitation of Western Sahara's natural resources?

- The import of natural resources sourced from Western Sahara does raises some questions at international law
 - a recent legal opinion of Hans Corell, UN Under-Secretary General for Legal Affairs, advises that the exploitation of natural resources of a Non-Self-Governing Territory should be for the benefit of the peoples of that territory
 - no clear directions have come from the United Nations on how to deal with the import of natural resources sourced in Western Sahara.

If pressed

- The legal opinion of Hans Corell does not impose a definitive obligation on Australia to prohibit the import of natural resources sourced from Western Sahara.
- The status of Western Sahara and associated concerns are being considered by the United Nations
 - we consider the United Nations the appropriate forum to deal with these concerns
- Should the United Nations Security Council impose sanctions on Western Sahara or Morocco, Australia will of course apply such sanctions domestically, in accordance with our obligations as a UN member state.

S22(1)

If asked: Has DFAT provided advice to companies on the legality of importing resources from Western Sahara?

- DFAT does not provide legal advice to companies.
- DFAT has been approached by companies on the legality of importing natural resources from Western Sahara
 - we have advised that such imports raise questions at international law and have drawn attention to Hans Corell's legal opinion and applicable international instruments
 - we advise companies to seek independent legal advice on this matter
 - an alert has been placed on the DFAT website in relation to importing material sourced from Western Sahara.

If asked: Has DFAT condoned a breach of international law by allowing ^{47 G(1)(a)} to import phosphate from Western Sahara?

- Aware that ^{47 G(1)(a)} has been importing phosphate sourced from Western Sahara
 - the import is not in breach of any United Nations sanctions regime or any domestic legislation dealing with prohibited imports
 - international law does not provide a clear answer as to how to deal with the import of natural resources from Western Sahara.
- DFAT has drawn relevant international law concerns to ^{47 G(1)(a)} attention and recommended that ^{47 G(1)(a)} seek independent legal advice.

Background

^{S42(1)} The UN Security Council has not imposed sanctions in relation to Western Sahara or Morocco, as de facto Administering Power, and Australia maintains no independent bilateral sanctions in regards to these territories.

^{S42(1)}

S22(1)

We understand that an Australian company 47 G(1)(a) has contracted with a Moroccan company to import phosphate sourced from Western Sahara. Following media reports and a letter from the Australian Western Sahara Association claiming this import to be a breach of international law, [REDACTED]

47 G(1)(a)

S42(1)

REDACTED

S42(1)

REDACTED

REDACTED

S42(1)

REDACTED

S22(1), S47G(1)(a)

REDACTED

S22(1), S47G(1)(a)

REDACTED

S47G(1)(a)

REDACTED

REDACTED

UNCLASSIFIED



S22(1)
People/DFATL
22/01/2007 11:24 AM

To S47G(1)(a)
cc
bcc
Subject RE: Morocco - Projects [SEC=UNCLASSIFIED]
Topic
TRIM File Ref

S47G(1)

Thanks. will do. Talk to you on Wed.

S22(1)
Première Secrétaire
Ambassade d'Australie
Paris

S22(1)



S47G(1)(a)
22/01/2007 10:35 AM

To S22(1)@dfat.gov.au>
cc
Subject RE: Morocco - Projects [SEC=UNCLASSIFIED]
Topic
TRIM File Ref

S22(1)

London is 8 hrs behind. You will see from your email it arrived here at 6.31pm

Let's try 24th, tomorrow and call me 10.30 am your time =6.30 Perth

Regards,

S47G(1)(a)

may be contained herein. If you are not the intended recipient you may not copy, rely on, use or distribute the information contained herein and you should delete the message and advise the sender by return email.

From: S22(1) [redacted]@dfat.gov.au [mailto:S22(1) [redacted]@dfat.gov.au]
Sent: Monday, 22 January 2007 6:31 PM
To: S47G(1)(a)
Subject: RE: Morocco- Projects [SEC=UNCLASSIFIED]

S47G(1)(a) (and thank you for your email response.

I had tried calling the office several times over the xmas period and suspected that you may have been closed. I think a phone conversation would be really useful. I am not exactly sure of the time difference between Paris and Perth but we can try and work out something that suits. For example, on 23/1, I am available between 2-6pm. On 24/1 I'm available after 10.30am.

Cheers,

S22(1) [redacted]
Première Secrétaire
Ambassade d'Australie
Paris

S22(1) [redacted]

S47G(1)(a)

22/01/2007 07:59 AM

To: S22(1) [redacted]@dfat.gov.au>

cc

Subject: RE: Morocco- Projects
[SEC=IN-CONFIDENCE.COMMERCIAL]

Topic

TRIM File Ref

S22(1)

A Happy New Year and thank you for the informative note on your role in North Africa.

I have just returned from holidays.

Being a lousy "typer", I would rather have a phone discussion where I would be happy to answer any questions you may have on our projects in Morocco and Malta (where I talk to your colleague S22(1))

Please advise me when that would be convenient.

Regards,

S47G(1)(a)

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From: S22(1)@dfat.gov.au [mailto:S22(1)@dfat.gov.au]
Sent: Wednesday, 3 January 2007 8:56 PM
To: S47G(1)(a)
Subject: Morocco- Projects [SEC=IN-CONFIDENCE:COMMERCIAL]

Dear S47G(1)(a)

For your information, the Australian Embassy in Paris has reporting responsibility for a small number of North African countries, notably Morocco, Algeria, Mauritania and the territory of Western Sahara. I am the desk officer for both Morocco and Western Sahara and hence a contact point at the Embassy. My colleague, S22(1) Counsellor, is responsible for Mauritania and Algeria.

I am preparing a report for Canberra (Department of Foreign Affairs and Trade) which outlines the nature and size of any Australian mining projects/interests in our countries of accreditation. I understand that your company is active in Morocco (and perhaps Western Sahara?) and some limited information about this can be found on the Moroccan section of your website.

Would it be possible to either talk to you and also receive some additional information on the project/s so that we are aware and understand better the scale of your activities. Are there any other Australian companies working in Morocco/Western Sahara that we should be aware of? I note that S47G(1)(a) is working on your project in the first term of the RL. Would you also be able to provide some information about this?

From time to time, Embassy officials, including the Ambassador, may have the opportunity to visit Morocco and it is important for us to be aware of and support the types of commercial activities that Australian companies are conducting in Morocco - particularly when we are talking to the Ministry for Energy and Mines. I recently visited Morocco in September and I noted particularly the enthusiasm by the Moroccan Government to encourage foreign investment from Australia from the mining sector.

On another related matter, the Australian Embassy in Paris also provides consular assistance to our countries of accreditation in North Africa, including updates on travel advisories for this region and hence we encourage all Australians to register with our consular services (with which I liaise very closely). It would be useful for us to have an indication of the number of Australians who work for your company that are either based in Morocco or visit from time to time. A contact with whom we could liaise on consular matters would be very helpful.

And finally, my door is open if you or any members of your company are passing through Paris and wish to meet us in person. And of course, we welcome, at any time, any updates/developments on your projects. I assure you that all information will be treated as Commercial-In-Confidence and handled by us appropriately.

With best wishes for the new year.

Regards

S22(1)

Première Secrétaire
Ambassade d'Australie
Paris

S22(1)

UNCLASSIFIED



S22(1)

To S22(1)

cc

07/02/2007 04:23 AM

bcc

Subject FW: Pancontinental Oil & Gas NL

Topic

TRIM File Ref

S22(1)

Below are media articles and weblinks relevant to Pancontinental sent from our Info Centre in Sydney There is a fair bit here but most relevant article (including re the disputed territory) appears to be the one I've extracted below. You should be able to access the AGM presentation I referred to from the website below.

OIL & GAS**Origin Takes Woodside's Place****11 January 2006****Africa Energy Intelligence**

Present since early in the decade on three concessions in Kenya (L-6, L-8 and L-9), Australia's Pancontinental Oil & Gas has long been seeking a partner with the financial muscle to bankroll work on the acreage. Pancontinental itself is owned by mining entrepreneur Henry David Kennedy (Dragon Mining, Sub-Sahara Resources, Alkane Exploration and the like). Australia's Woodside bought into the three licenses in 2003, only to pull out less than a year later. Last week Pancontinental's quest for a partner ended when it offered 50% of blocks L-8 and L-9 to the Australian trading and retail firm Origin Energy. In return, Origin agreed to put up \$4 million to finance a seismic survey of the two blocks. Origin has no experience of Africa, operating exclusively up to now in Australia and New Zealand. But it wasn't the first time Pancontinental sought out a company active only in Australia to help it develop its African acreage.

In 2004, the group teamed up with another Australian firm, Cooper Energy, to acquire the Mediterranean Haute Mer license in Morocco's offshore. Shortly after the concession was awarded, however, Spain said the acreage encroached on its territorial waters, specially around the enclave of Melilla, the Chaffarinas archipelago and the Alboran islands. Madrid's protests resulted in the award being suspended.

All the best

S22(1)

State Manager

Western Australia

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From: S22(1)
Sent: Wednesday, 7 February 2007 12:02 PM
To: S22(1)
Cc:
Subject: Pancontinental Oil & Gas NL

Dear S22(1)

Please find attached some links that have information on Pancontinental (Annual Reports, ASX announcements, etc.) and also some press articles from the past few years. I've concentrated on articles involving activities in Morocco, which cease around late 2005/early 2006, so I've also included some recent information

<<Pancontinental.doc>>

Pancontinental Oil & Gas NL - website
<http://www.pancon.com.au/>

Pancontinental Oil & Gas NL - ASX information
<http://www.asx.com.au/asx/research/CompanyInfoSearchResults.jsp?searchBy=asxCode&allinfo=&asxCode=PCL&companyName=&principalActivity=&industryGroup=NO>

There are many more press articles available on the company. I won't be in the office for the rest of the day, so if you need any additional information before tomorrow, please contact S22(1)

Best regards

S22(1)

Manager, Research & Information Centre
Client Services Group
Exporter Services

Australian Trade Commission (Austrade)
Level 23, Aon Tower, 201 Kent St, Sydney NSW 2000

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Please send your research requests to S22(1)
at Info Centre (Sydney).

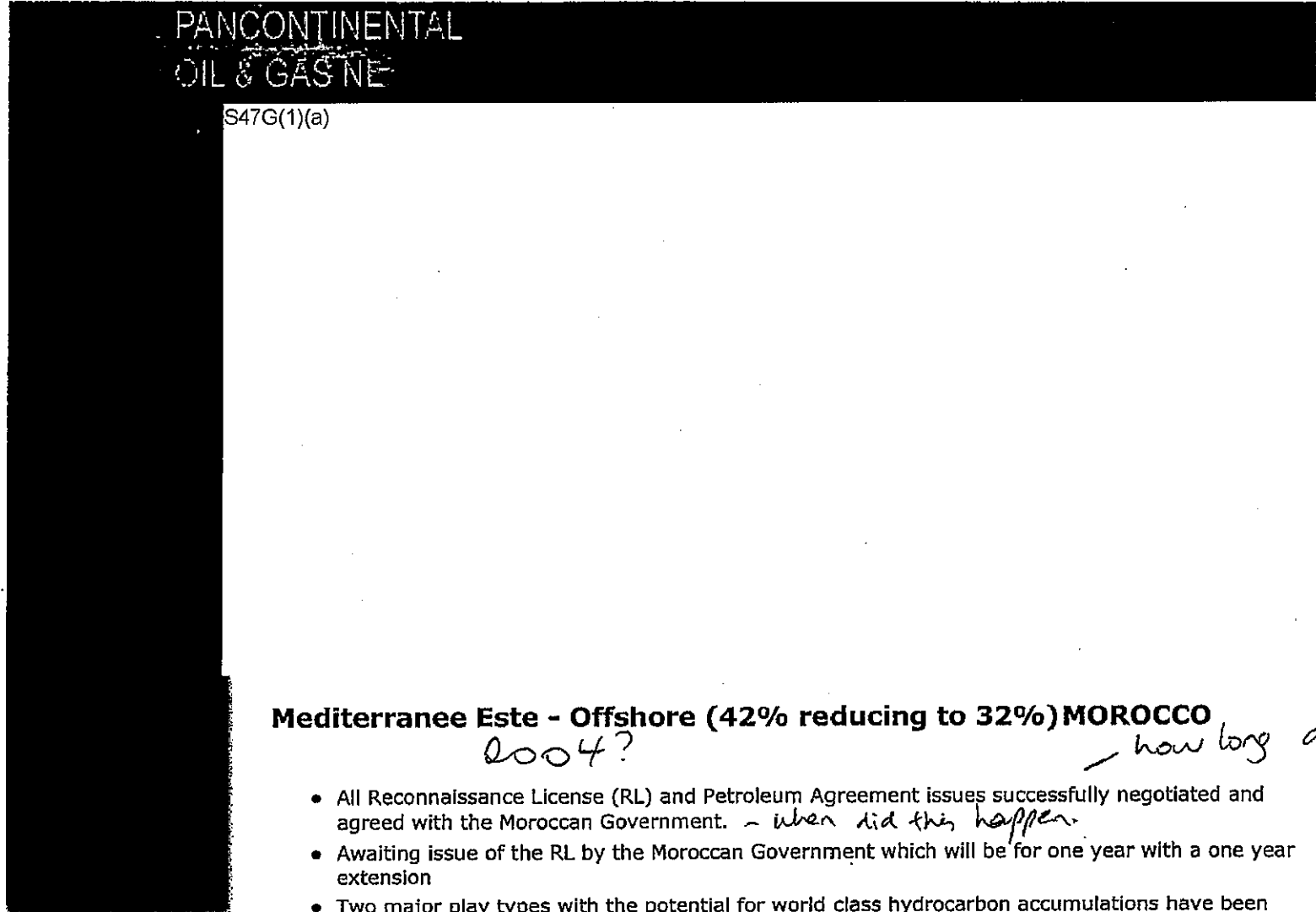
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- Pancontinental.doc

PANCONTINENTAL
OIL & GAS NL

S47G(1)(a)



Mediterranean Este - Offshore (42% reducing to 32%) MOROCCO

2004?

— how long did this take

- All Reconnaissance License (RL) and Petroleum Agreement issues successfully negotiated and agreed with the Moroccan Government. — when did this happen.
- Awaiting issue of the RL by the Moroccan Government which will be for one year with a one year extension
- Two major play types with the potential for world class hydrocarbon accumulations have been identified in this large frontier area.
- Intensive technical work in preparation for a 500km seismic survey in Year 1 will commence once data is released by the Government, on granting of the RL.
- Cooper Energy NL have farmed in and will partly meet the costs of the seismic survey (to US\$175,000) in the first term of the RL

What data?

4/1/14

**PANCONTINENTAL
OIL & GAS NL**

Corporate Profile

Directory

DIRECTORS

H D Kennedy (Chairman)
A K Svalbe (Chief Executive Officer)
P L Munachen
I R Cornelius
R B Rushworth (New Ventures)
L A Colless (Alternate for Mr Munachen and Mr Cornelius)

SECRETARY

E A Myers

EXPLORATION MANAGER

M A Battrick

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Email: svalbe@pancon.com.au
Web: <http://www.pancon.com.au/>





S22(1)

To

S22(1)

07/02/2007 03:41 AM

bcc

Subject RE: Morocco enquiry
 [SEC=IN-CONFIDENCE:COMMERCIAL]

Topic

TRIM File Ref

Hi S22(1)

To answer your query - Austrade Perth is aware of the company Pancontinental Oil and Gas NL. They were entered into our database in 2001 and since then we have had one or two dealings with them. The most recent was in May 2006 [S47G(1)(a)] They are reasonably well know around town as a junior explorer in the oil and gas sector -and certainly in the current boom climate there are a few of these on the scene. Shares are currently trading at 0.67 cents -they have a market capitilisation of around aud 27 million.

They have a good website www.pancon.com.au with media releases and a section on reports which contains the CEO's presentation to the AGM in November 2006. This has some good background information on the company and their offshore ventures including in Kenya and Morocco. I'm trying to send you the link - but having trouble at the moment!

S47G(1)(a)

Hope this helps.

S22(1)

State Manager
 Western Australia

 Austrade
 PO Box 7400
 Cloisters Square
 Perth WA 6850 Australia
 (: +61 8 9261 7901
 7: +61 8 9261 7955
 E: 0438 670 411
 For further information on Austrade's services
 visit: <http://www.austrade.gov.au>

Need export finance? Export Market Development Grants (EMDG) provide partial reimbursement of export promotion expenses, visit www.austrade.gov.au/exportgrants Find out more about working capital for SME exporters at www.efic.gov.au/headway

I check my email 2-3 times per day, so if the matter is urgent please call me.

This email and any attachments with it are confidential, may be subject to copyright and are intended solely for the use of the addressee. If you are not the intended recipient, you must not copy, retain or distribute it or take any action in reliance on it. If you have received this email in error, please notify us and destroy the original transmission.

From: S22(1)
Sent: Wednesday, 7 February 2007 2:00 AM
To: S22(1)
Cc: S22(1)@dfat.gov.au
Subject: Morocco enquiry [SEC=IN-CONFIDENCE:COMMERCIAL]

Hi

We've just had confirmation that the Ambassador is to present her credentials in Morocco on Thursday- she will first thing leave Thursday am

S47G(1)(a)

regards

S22(1)

—

S22(1)

REDACTED

S22(1)

31

REDACTED

§22(1)

REDACTED

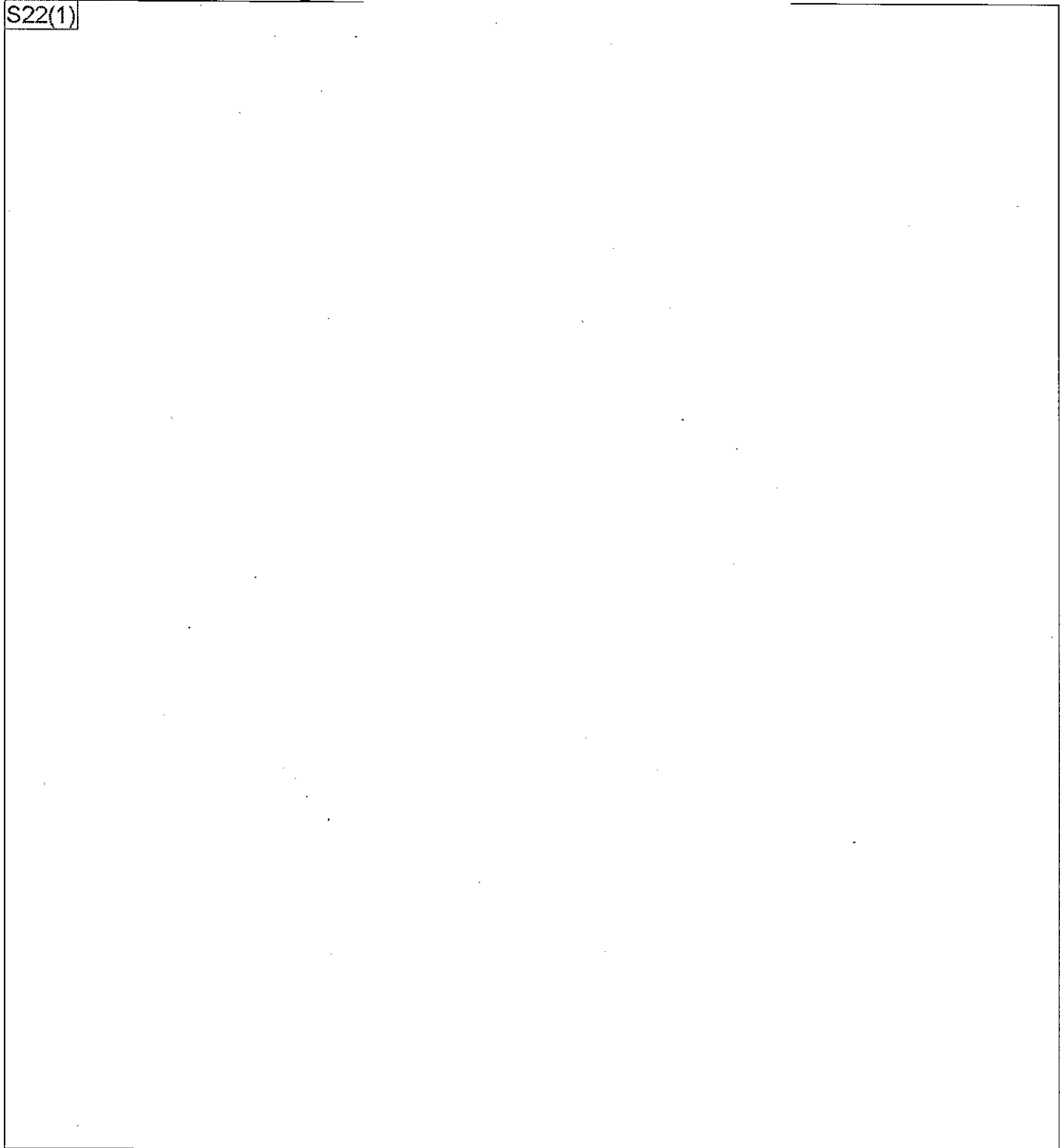
Tuesday 20 February 2007

Travel time Taxi - 10 minutes to first appointment

09:00-09:45 Pancontinental Oil & Gas NL
288 Stirling St, Perth
Contact: S47G(1)(a)

Meeting with S47G(1)(a)

S22(1)



REDACTED

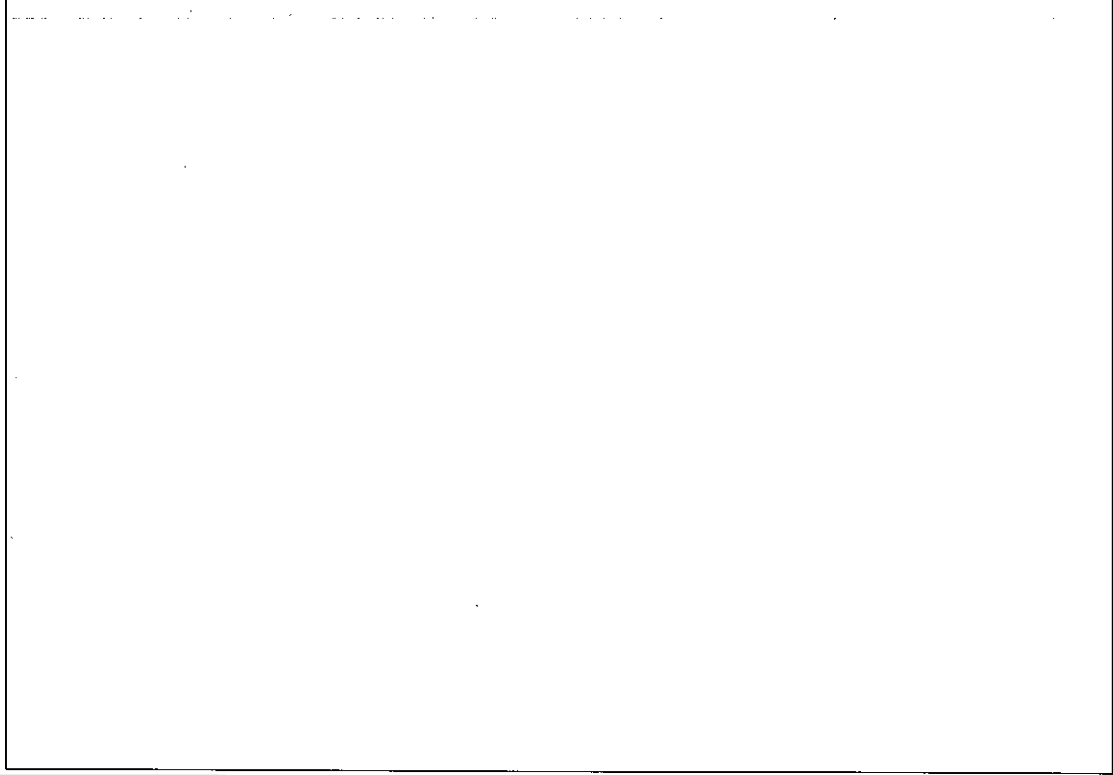
§22(1)

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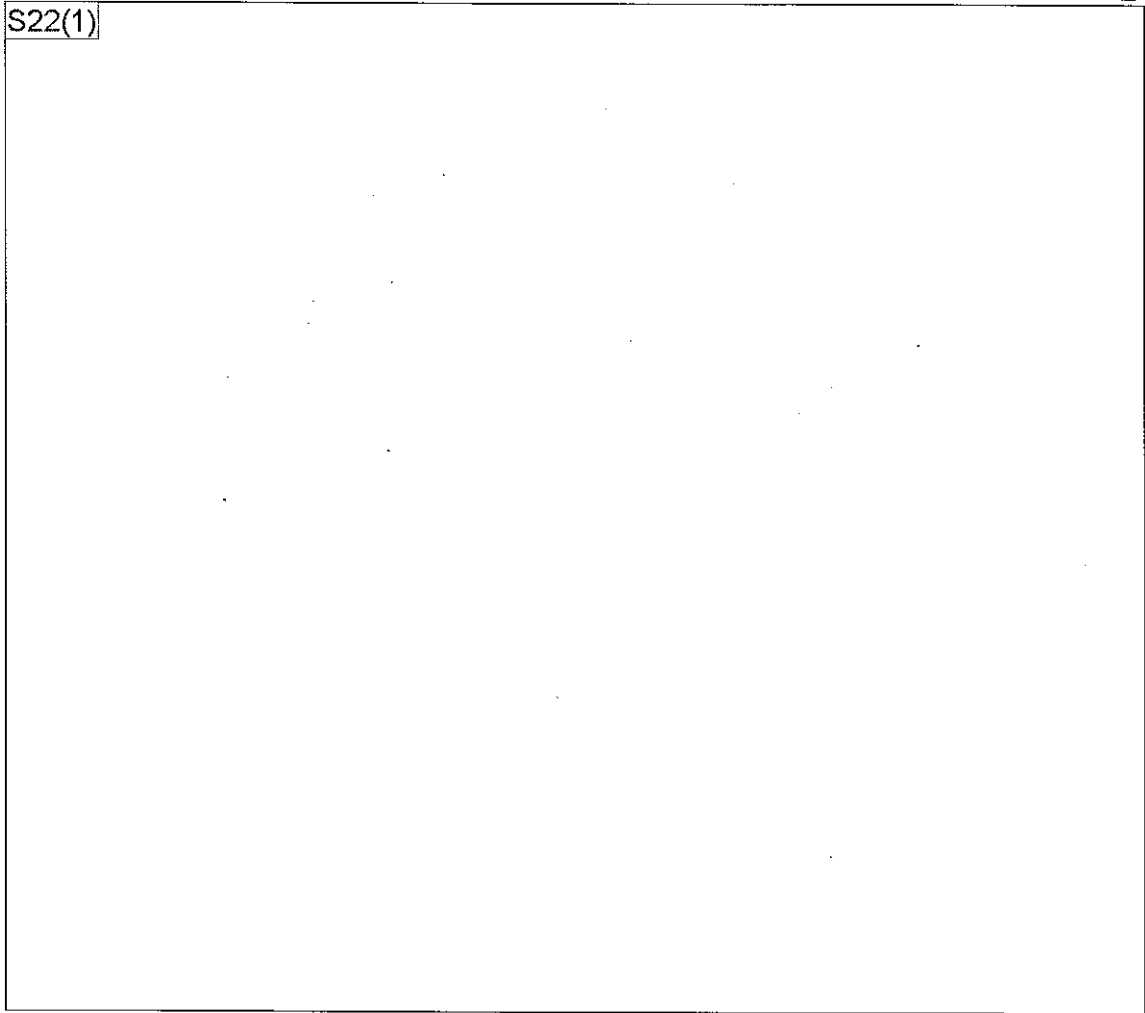
S33(a)(iii), S33(b)

REDACTED

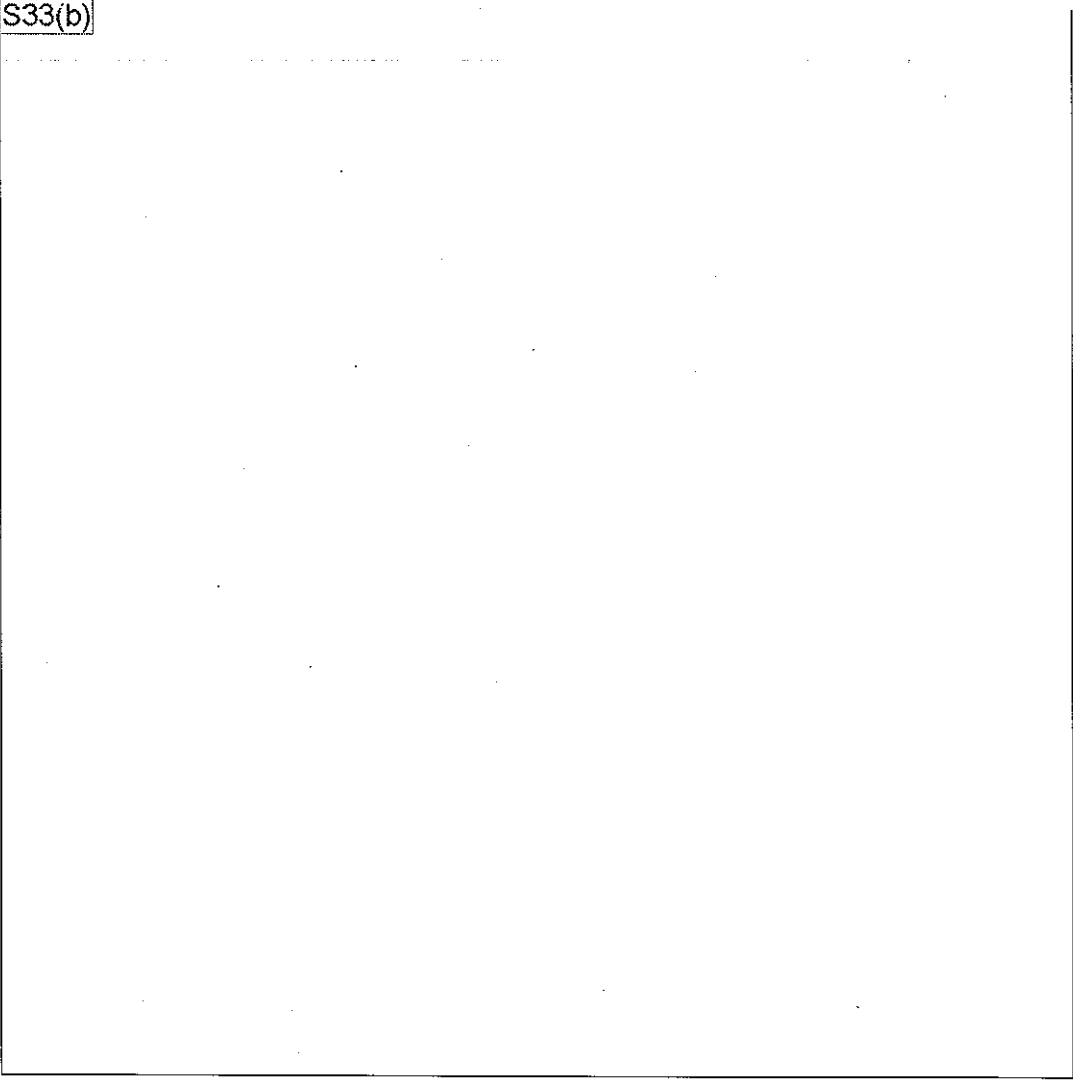
S33(a)(iii), S33(b)



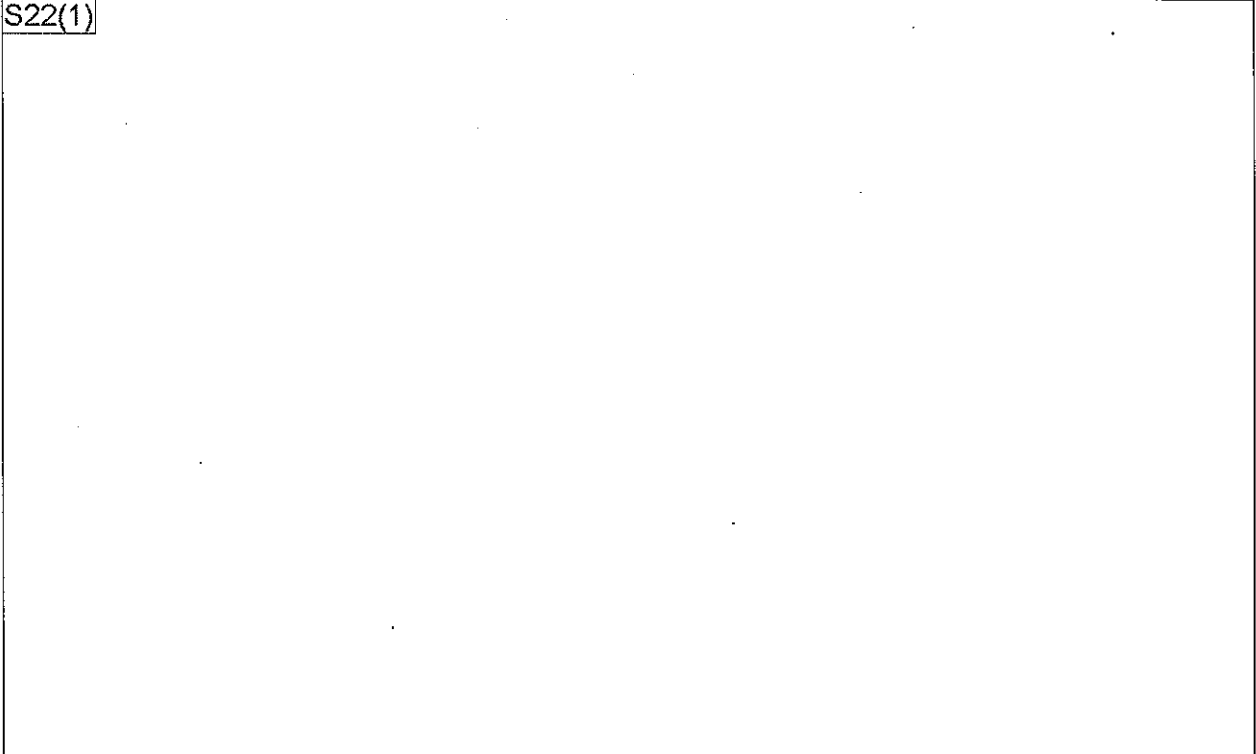
S22(1)



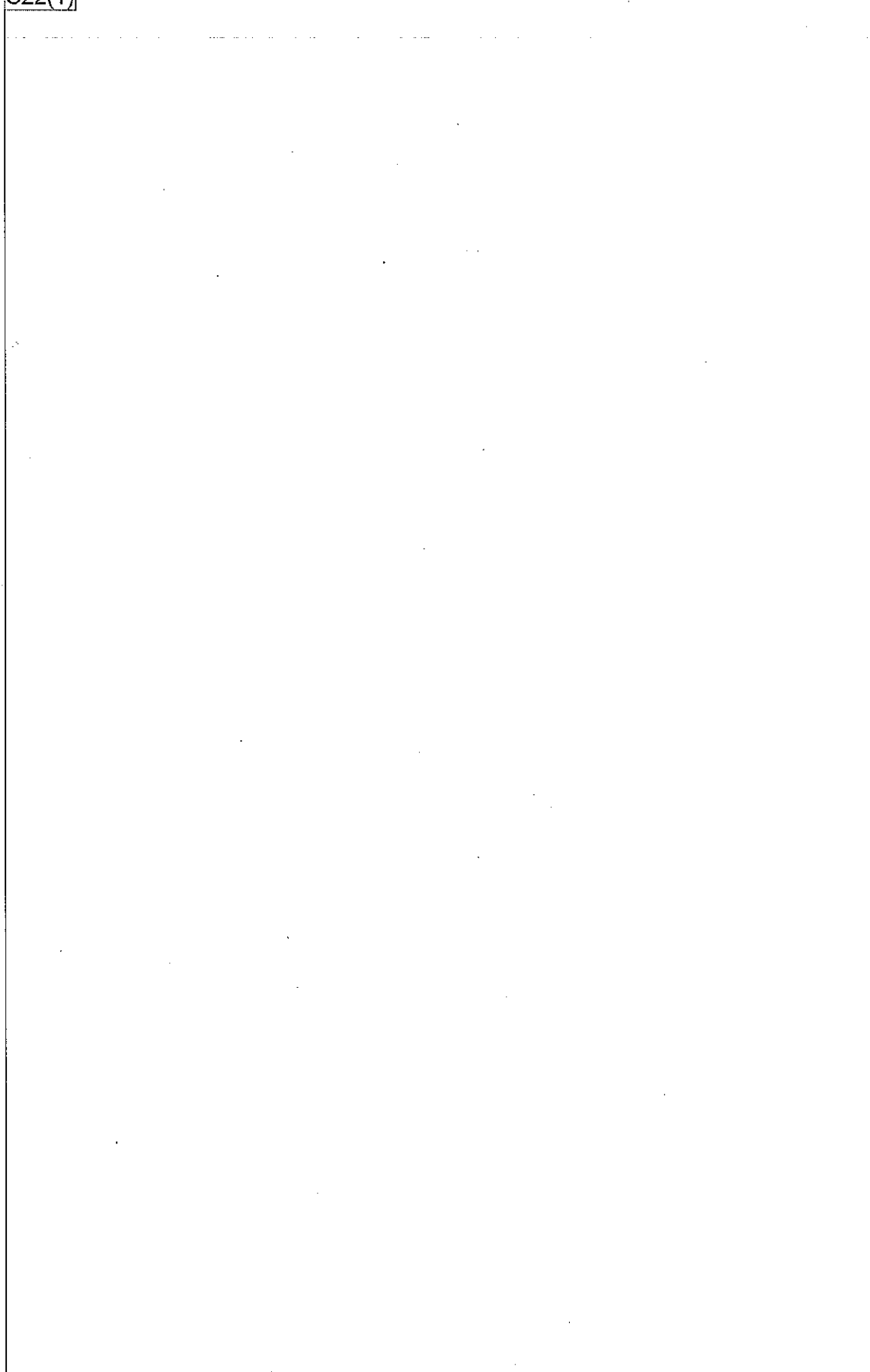
S33(b)



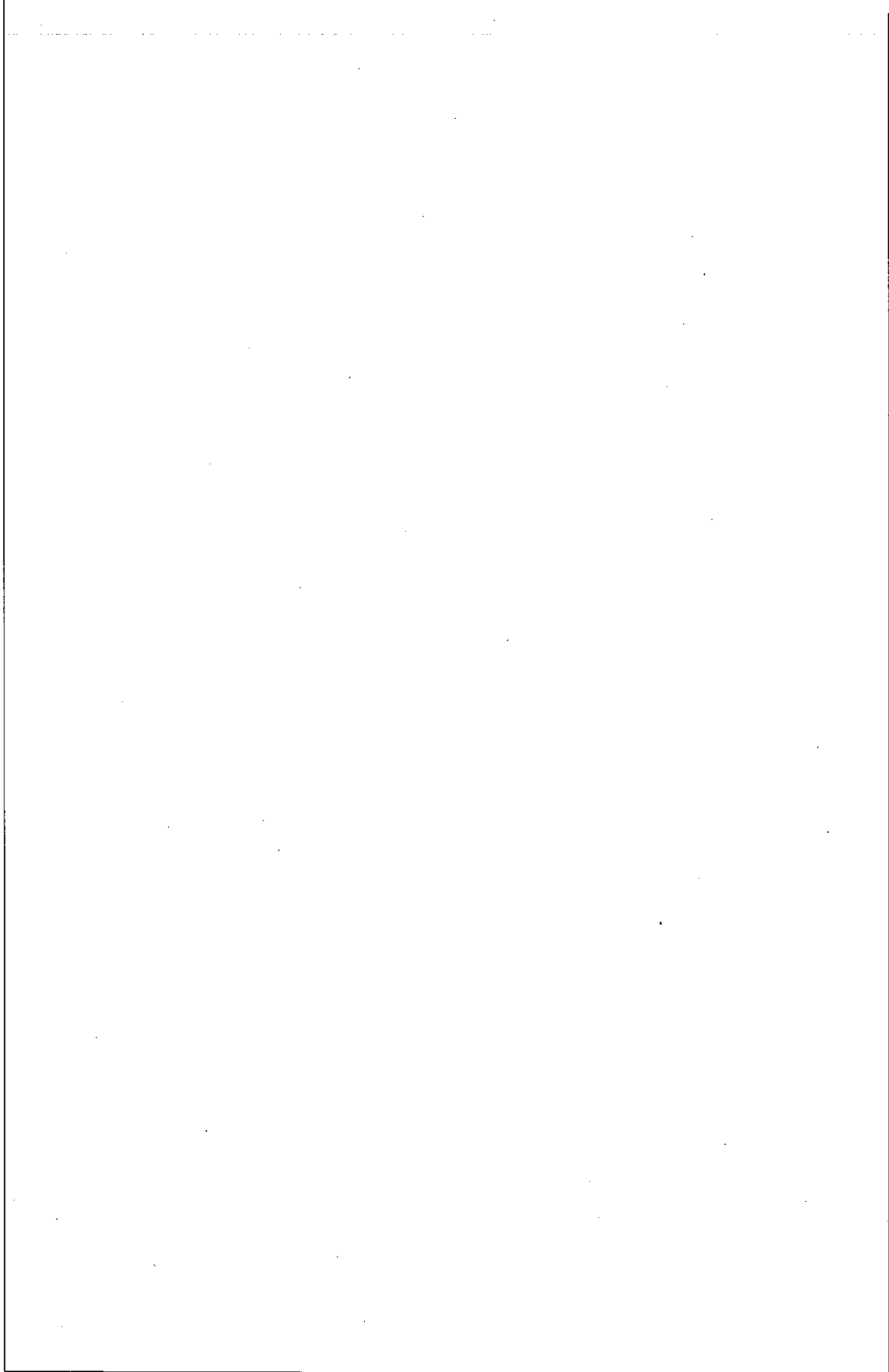
S22(1)



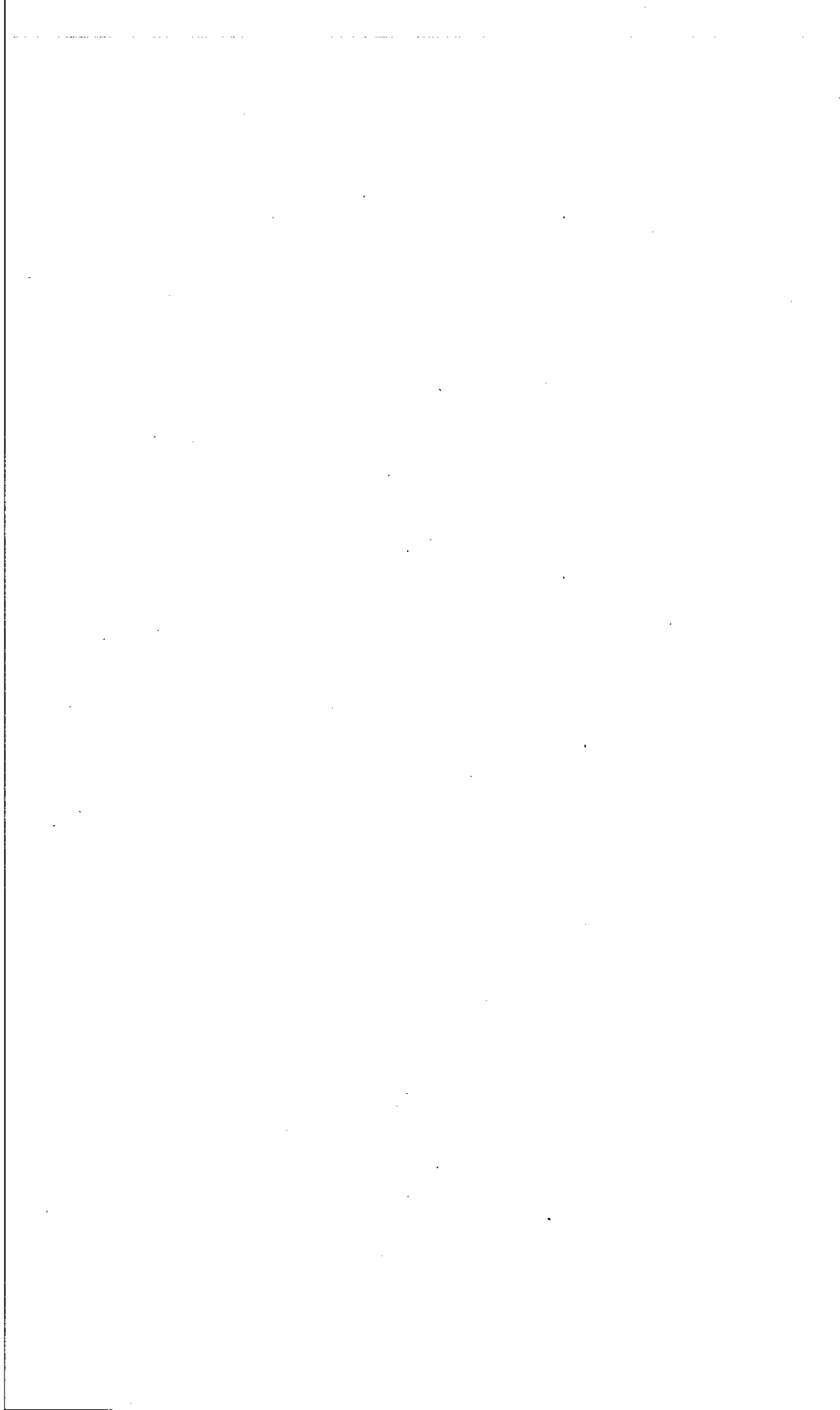
S22(1)



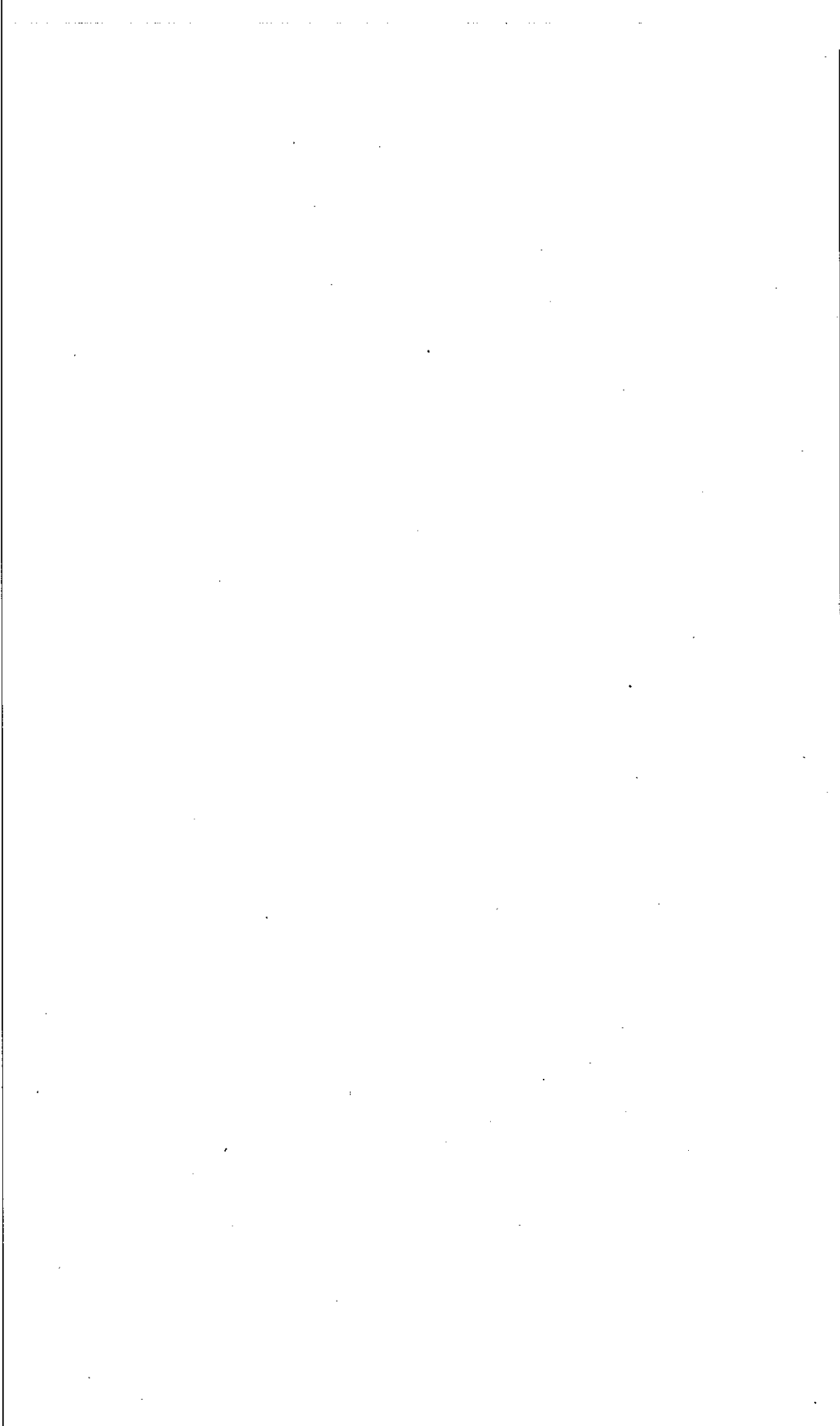
S22(1)



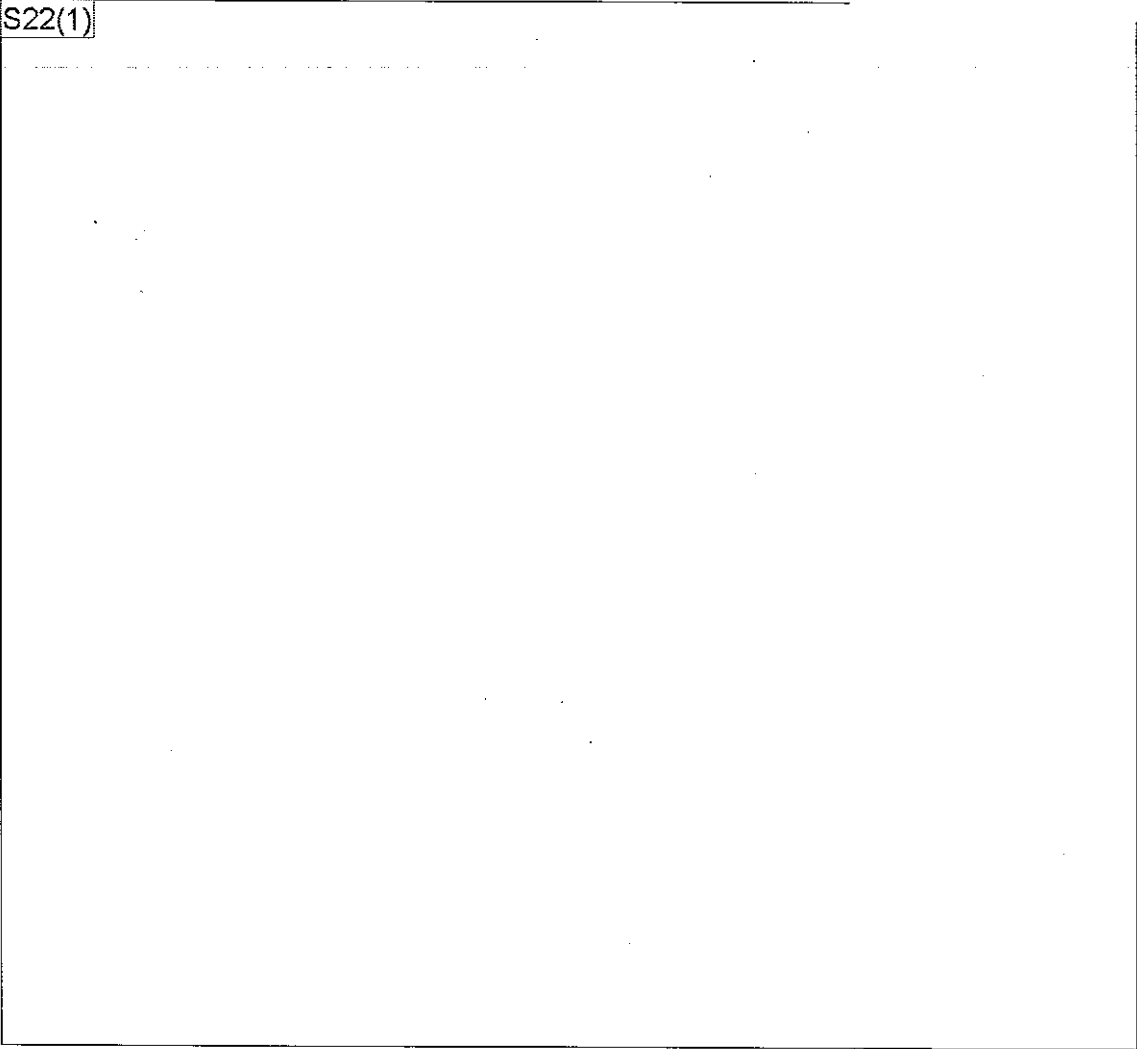
S22(1)



S22(1)



S22(1)





S22(1)
13/03/2007 07:40 AM

To S22(1)
cc

bcc
Subject Fw: OECD/UNHCR Documents on Transnational Corporations [SEC=IN-CONFIDENCE:LEGAL]

Topic
TRIM File Ref

S22(1)

That's a good idea - let'd make that the standard practice.

S22(1)

Director
International Law and Transnational Crime Section
International Legal Branch
Department of Foreign Affairs and Trade

S22(1)

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----- Forwarded by S22(1) People/DFATL on 13/03/2007 07:37 AM -----



S22(1)
12/03/2007 11:16 PM

To S22(1)
cc

Subject Re: Fw: OECD/UNHCR Documents on Transnational Corporations [SEC=IN-CONFIDENCE:LEGAL]

Topic
TRIM File Ref

S22(1)

My thoughts are, rather than providing them with specific information, we direct them to the internet site of the *Australian National Contact Point for the OECD Guidelines for Multinational Enterprises*.

This dedicated site is maintained by Treasury and has a range of other information to assist companies implement the Guidelines. It also has an area on dispute settlement. It also has the agreed text of the Guidelines.

Australian National Contact Point for the OECD Guidelines for Multinational Enterprises www.ausncp.gov.au

As well as the web address I would provide

The Australian National Contact Point
c/- Foreign Investment Review Board
The Treasury
Langton Crescent
CANBERRA ACT 2600
T: 02 6263 3795
F: 02 6263 2940
E: ancp@treasury.gov.au

In relation to *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights* (UNHCR). I'll give you a call on this in the morning.

Regards

S22(1)

OECD Policy Unit
Department of Foreign Affairs and Trade

S22(1)

www.dfat.gov.au | www.oecd.org

S22(1)

----- Forwarded by S22(1) People/DFATL on 12/03/2007 10:06 AM -----

S22(1)

09/03/2007 04:59 PM

To S22(1)
cc

Subject OECD/UNHCR Documents on Transnational Corporations [SEC=IN-CONFIDENCE:LEGAL]

Topic

TRIM File Ref

S22(1)

As discussed with S22(1) we want to canvass your views on the appropriateness of providing the following documents to Australian companies inquiring about undertaking commercial activities in Western Sahara (you may be aware that there are a number of issues surrounding the status of Western Sahara as a Non-Self-Governing Territory). The relevant documents are:

(i) the OECD *Guidelines for Multinational Enterprises* (<http://www.oecd.org/dataoecd/56/36/1922428.pdf>); and

(ii) the UNHCR's *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights* (<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/64155e7e8141b38cc1256d63002c55e8?Opendocument>).

As you would be aware, we can't provide legal advice to individual companies concerning their

activities in Western Sahara, but thought that it would be useful to draw the above documents to their attention on the grounds that they contain references to general principles regarding respect for international law and national sovereignty.

Grateful for confirmation that it is appropriate for us to draw these documents to the attention of Australian companies making such inquiries. Many thanks.

Regards,

S22(1)

Desk Officer
International Law and Transnational Crime Section
Department of Foreign Affairs and Trade

S22(1)

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DFAT – DECLASSIFIED
CASE: 1202-F90
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S47C(1)

REDACTED

REDACTED

S47C(1)

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S47C(1)

REDACTED

S47C(1), S33(a)(iii), S33(b), S22(1)

REDACTED

S22(1), S47C(1), S33~~(b)~~⁽²⁾, S33(a)(iii)

REDACTED

S47C(1), S33(a)(iii), S33(b)

REDACTED

REDACTED

S47C(1), S33(a)(iii), S33(b)

REDACTED

S47C(1), S33(a)(iii), S33(b)⁵⁶

REDACTED

REDACTED

Printed by S22(1) 05:00 PM Friday, 30 March 2007

S22(1)

Title: Western Sahara: S47G(1)(a) Mining Interests

MRN: S22(1) 30/03/2007 04:54:58 PM ZE10

To: S22(1)

Cc:

From: Canberra (CHCH/DFAT/ILD/ILB)

From File: S22(1)

References:

The cable has the following attachment/s -
Hans Corell Legal Opinion on Western Sahara.pdf

Response: Routine, Information Only

CONFIDENTIAL

Summary

Australia acknowledges the status of Western Sahara as a Non-Self-Governing Territory. We are not able to provide legal advice to individual companies who make inquiries in relation to commercial activities in Western Sahara, but do draw relevant information to their attention and recommend that companies obtain independent legal advice before making commercial decisions. Cable contains relevant information that Post may provide to S47G(1)(a)

Thanks reftel providing information regarding S47G(1)(a) possible mining activities in Western Sahara.

2. As you are aware, Australia acknowledges the status of Western Sahara as a Non-Self-Governing Territory and supports an early and durable political settlement to the dispute that is acceptable to all directly interested parties. Australia supports the efforts of the United Nations to find a solution.

3. We appreciate the steps you have taken to refer S47G(1)(a) to the information on DFAT's website. While we are not able to provide legal advice to individual companies who make inquiries in relation to commercial activities in Western Sahara, we do draw relevant information to their attention and recommend that companies obtain independent legal advice before making commercial decisions. Grateful Post provide S47G(1)(a) and any other companies making these inquiries in the future, with a copy of the legal opinion issued by the former United Nations Under-Secretary General for Legal Affairs on commercial activities involving the exploitation of the natural resources of Western Sahara (copy attached). Grateful Post also recommend that Australian companies considering commercial activity in Western Sahara consult the website of the *Australian National Contact Point for the OECD Guidelines for Multinational Enterprises* (www.ausncp.gov.au) which is maintained by Treasury. Queries in relation to these Guidelines should be directed to:

The Australian National Contact Point
c/- Foreign Investment Review Board
The Treasury
Langton Crescent
Canberra, ACT, 2600

S22(1)

T: (02) 6263 3795
F: (02) 6263 2940
E: ancp@treasury.gov.au.

4. TDD and MAB were consulted in the preparation of this cable.

text ends

Sent by: S22(1)
Prepared by: S22(1)
Approved by: Adam McCarthy, AS ILB
Topics: POLITICAL-ECONOMIC/Foreign Investment, POLITICAL-ECONOMIC/General
Economic, TRADE/Policy General

S22(1)

Printed by S22(1) 05:00 PM Friday, 30 March 2007

S22(1)

TREASURY Treasurer, Secretary, Officers

Australia Western Sahara Association (Victoria)

inc A0047692T

26. September 2007.

The Hon Alexander Downer MP
Minister for Foreign Affairs
Parliament House
Canberra, ACT 2600

Putting Australia's phosphate importations from Western Sahara on hold until the referendum of self-determination

Dear Mr Downer

The accompanying petition was signed at a peaceful community assembly outside the Melbourne headquarters of Incitec Pivot Pty Ltd last Friday, 21 September, the largest Australian importer of phosphate from Morocco sourced in Western Sahara.

The speakers were Gavan O'Connor MP, (Labor), Senator Lyn Allison (Australian Democrats), and Greens Senate candidate, Richard di Natale. All three spoke very well on Western Sahara and each took a different angle on the issue.

- Gavan O'Connor spoke of human rights issues and said that our farmers would be shocked if they knew the story behind their superphosphate fertilizer.
- Lyn Allison reminded us of the very long UN process leading to a referendum of self-determination which deserves a speedy resolution
- Richard di Natale spoke about the importance of respecting the rights of Indigenous people and of protecting their natural resources. They all emphasized:
 - the importance of raising awareness among Australians
 - the serious injustice being done to the Saharawi people
 - The fact that Australia is supporting a brutal regime by allowing companies to trade with Morocco.

Australia is the fourth largest importer of phosphate from Bou Craa in Western Sahara. Despite being made aware of the illegality of the trade under international law, and being encouraged by the Australian government to seek legal advice, the companies say they will not stop unless it is actually banned by the government.

We therefore urge the Australian Government to declare a hold on further importations of phosphate sourced in Western Sahara, until the sovereignty of the country is determined.

Yours sincerely,

Cate Lewis
Cate Lewis

Secretary, AWSA (Victoria)
P O Box 164, Clifton Hill 3068.

RECEIVED
16 OCT 2007
MCU

MINISTER FOR FOREIGN AFFAIRS
AusAD
16 OCT 2007

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 ADVISOR/UNIT MANAGER
 ADVISOR/UNIT MANAGER
 INFORMATION ONLY
 REDIRECT OTHER
 ADVISOR

PSIAM

working for justice for the Saharawi people

Australia Western Sahara Association (Victoria)Inc no: A0047692T, <http://www.awsa.org.au/>

We, the undersigned, call upon the Australian government to refuse importation of phosphate rock from Moroccan occupied Western Sahara, until a referendum of self-determination is held on the country's future.

Until its sovereignty is decided, under international law, Western Sahara's natural resources belong to the indigenous people of the territory, the Saharawis, and cannot be exploited unless they consent to and benefit economically from the trade.

S47F(1)

working for justice for the Saharawi people

Australia Western Sahara Association (Victoria)

inc no: A0047692T, <http://www.awsa.org.au/>

We, the undersigned, call upon the Australian government to refuse importation of phosphate rock from Moroccan occupied Western Sahara, until a referendum of self-determination is held on the country's future.

Until its sovereignty is decided, under international law, Western Sahara's natural resources belong to the indigenous people of the territory, the Saharawis, and cannot be exploited unless they consent to and benefit economically from the trade.

S47F(1)

working for justice for the Saharawi people



Australian Government
Department of Foreign Affairs and Trade

Ms Cate Lewis
Secretary
Australia Western Sahara Association (Melbourne)
PO Box 164
CLIFTON HILL VIC 3068

Dear Ms Lewis

Thank you for your letter dated 26 September 2007 concerning Australian phosphate imports from Western Sahara.

Australia has long supported a negotiated solution to the situation in Western Sahara that is acceptable to all directly interested parties. We fully support the efforts of the international community, through the United Nations, to achieving this end. Australia was very pleased to note that a consensus resolution was achieved on Western Sahara at the UN Fourth Committee at UNGA 62 on 15 October 2007.

We note your concerns with regards to importing mineral rock mined in Western Sahara. There are no United Nations Security Council sanctions or Australian bilateral sanctions prohibiting imports from Western Sahara or Morocco. As you are aware, the Department of Foreign Affairs and Trade has published a notice on its website which draws attention to the international law considerations of importing natural resources sourced from Western Sahara, given its status as a Non-Self-Governing Territory, and recommends that companies seek independent legal advice on the issue.

Thank you for bringing your views to our attention.

Yours sincerely

S22(1)

Director
Middle East Section

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Media Statement

6 December 2007

Import of Western Sahara phosphate rock

CSBP Limited manufactures superphosphate fertiliser at its Kwinana operation using phosphate rock from the Boucraa region of Western Sahara.

Boucraa rock is currently the only available source of rock that allows CSBP to continue manufacturing single superphosphate and meet its rigorous environmental and quality standards.

CSBP's Managing Director, Ian Hansen, said that investigations are continuing into possible technology changes to modify the production process and allow the company to access raw material from other sources currently unsuitable for technical or environmental reasons.

"Laboratory scale tests have demonstrated the potential of this technology and engineering studies are under way to determine the feasibility and costs of introducing this on a scale suitable for the manufacturing plant," said Mr Hansen.

"When this work is complete CSBP will consider its broader social responsibilities to its employees and the farming community as part of any decision."

Ceasing imports from the Western Sahara immediately would severely impact supply and price to Western Australian farmers and place further pressure on the sustainability of locally manufactured fertilisers.

No trading restrictions with the Western Sahara have been imposed by the Australian Government, and CSBP has obtained both internal and external legal opinions and is satisfied that it is not in breach of international law.

"We have listened and responded to all enquiries regarding this issue, and we will continue to monitor the situation closely," said Mr Hansen.

Locally manufactured single superphosphate has been the backbone of Western Australian farming for a number of decades, and is used to boost pasture growth to improve productivity in beef, sheep and dairy farming.

***** ENDS*****

Media contact: Jean Burton
Corporate Communications
Telephone: 9411 8144 / 0400 99 5673

S47G(1)(a)

-----Forwarded by S47G(1)(a) on 12/04/2007 05:45PM -----

To: press release phos <lewisch@alphalink.com.au>
 From: Catherine Lewis <lewisch@alphalink.com.au>
 Date: 12/04/2007 03:37PM
 Subject: Wesfarmers blacklisted for trade in stolen phosphate

Australia Western Sahara Association (Victoria)

Press release 04 December 2007 ? for immediate release

NORWEGIAN COMPANY DISINVESTS FROM WESFARMERS WHILE SHIP DOCKS IN GEELONG TODAY.

Norwegian insurance company, Kommunal Landspensjonskasse Mutual Insurance Company (KLP) has blacklisted Wesfarmers on account of its trade with Morocco in phosphate pillaged from Western Sahara.

In an interview with the Australian Financial Review in December 2005 the then Opposition foreign affairs spokesman and current Australian Prime Minister Mr. Kevin Rudd said that "he saw parallels between the federal government's handling of the AWB scandal and the Western Sahara shipment."

And added "I would be dumbfounded if the Australian government had allowed commercial relationships between another Australian company and Morocco, in breach of international law."

?KLP excludes the fertiliser producer Wesfarmers as a result of illegal import of phosphate from Western Sahara. The area is occupied by Morocco, and in 2002 the UN declared all extraction of natural resources in West Sahara as illegal?, an article states in the Norwegian business daily, Dagens Naringsliv on 3 December. It gives KLP's new blacklist of unethical companies no longer in its investment portfolio.

KLP's ethical guidelines require it to disinvest from Wesfarmers because its subsidiary fertiliser company, CSBP imports phosphate from Morocco sourced in Western Sahara. Under UN guidelines and international law, the natural resources of a ?non-self-governing country?, waiting to be decolonized, belong to the indigenous people of the territory, in this case

the Saharawi people. ?Wesfarmers (is) excluded due to violations of KLP's ethical guidelines and because they have not rectified criticisable conditions or in other way signalled a way to solve their problem? says Mari Thjømøe, president for economy and finance, according to a press release (in Norwegian)

<
http://www.klp.no/web/klpno.nsf/pages/OmKLP?PressePressemeldinger.html?open&disp_key=5FFD63935E2C25D6C12573A6002F219D>

?Wesfarmers CSBP based in Fremantle is one of three Australian companies engaging in this trade. One might expect the others to become blacklisted too?, comments Cate Lewis of the Australian Western Sahara Association. They are Incitec Pivot based in Melbourne and Impact Fertilisers based in Tasmania.

Phosphate rock used its super phosphate product called SuPerfect. Today (4 December), indeed, she continued, a ship called Sparrow (of US Eagle Bulk Shipping) is due to dock in Geelong with yet another shipment of the illegal cargo.

Ms. Lewis said: We call on the new Federal Government to put an end to this illegal, immoral and unethical behaviour of the Australian companies. The stealing of Western Sahara phosphate must end now.

For further information please contact:

Cate Lewis
Secretary
Australia Western Sahara Association (Vic)
Tel: +613 9489 4007
Mobile: 0407 288 358
email: awsamel@alphalink.com.au
web: <http://www.awsa.org.au/>

PS

Please note American Professor and expert on Middle East and North Africa, Stephen Zunes will launch a book that has just been published on Western Sahara titled International Law and the Question of Western Sahara edited by Karin Arts and Pedro Pinto Leite. The launch will take place at the prestigious Institute of International Law and Humanities (IILAH) in the Melbourne Law School.

TIME AND LOCATION:

Date : Friday, 7 December 2007
Time : 5.30pm for a 6.00pm start
(6.00 - 7.00pm)
Location : Room 920, Level 9
Melbourne Law School
185 Pelham Street, Carlton
Institute for International
Law and the Humanities

REDACTED



Subject: **Phosphate imports from Morocco/ Western Sahara**

Date: 10 December 2007, version 1

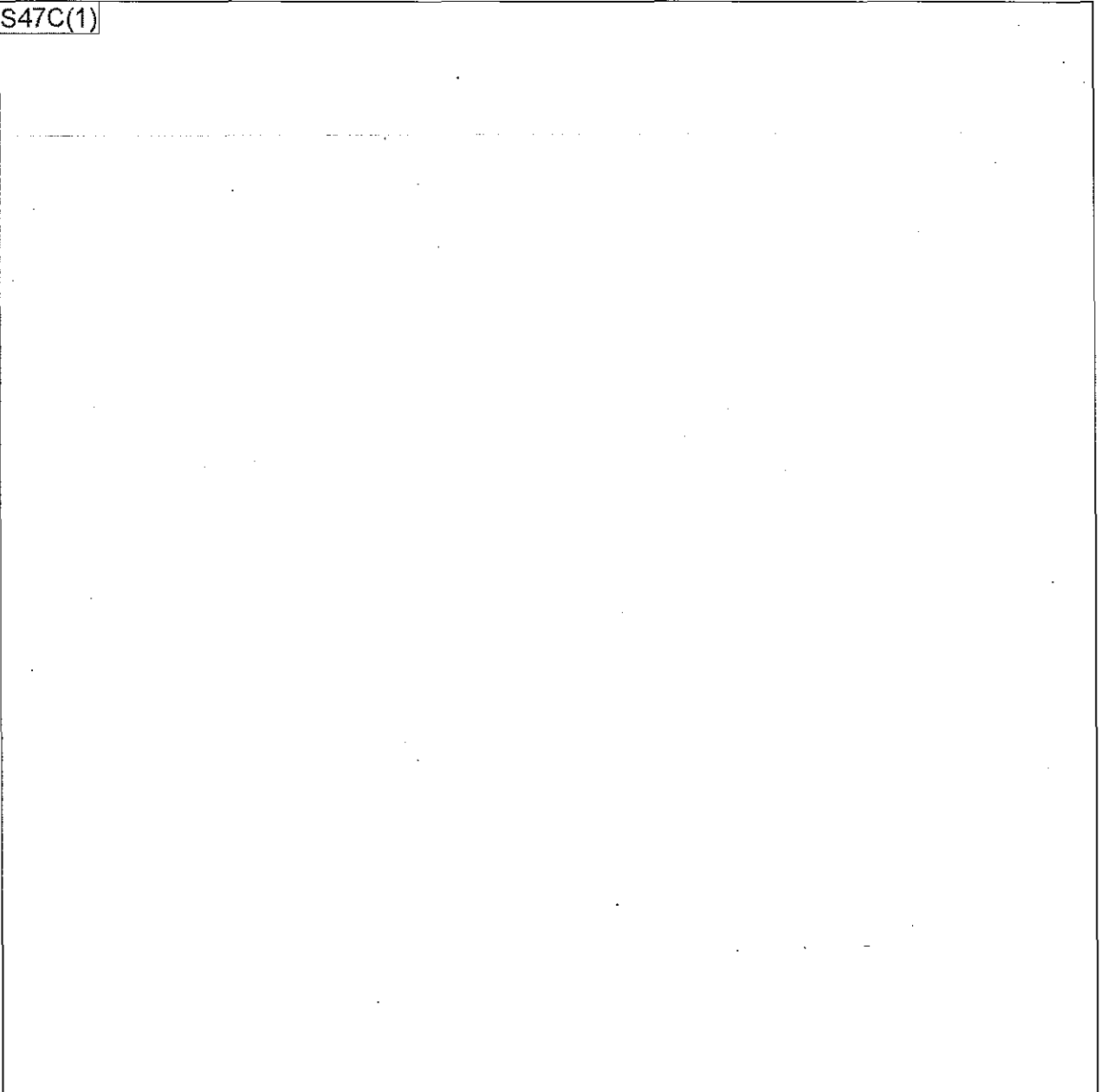
Talking Points

- Australia supports an **early and durable political settlement** to the question of Western Sahara. It supports the efforts of the United Nations to find a solution to the dispute.
- The Department of Foreign Affairs and Trade **notes on its website** and in response to any queries that given the status of Western Sahara as a Non-Self-Governing Territory, there are **international law considerations** with importing natural resources sourced from the Western Sahara
 - we **recommend that companies seek legal advice** before importing such material.
- The Department of Foreign Affairs and Trade is aware of the legal commentary of the former Under Secretary-General for Legal Affairs, the Legal Counsel, Hans Correll, on 29 January 2002 on commercial activities involving the exploitation of resources of the Western Sahara
 - Mr Correll's opinion is not legally binding and does not set out measures to be taken by states to prohibit imports from Western Sahara.
- There are **no United Nations Security Council sanctions prohibiting imports** from Western Sahara or Morocco.

S47C(1)

S22(1)

S47C(1)



Media Interest

Ben Cubby from the Sydney Morning Herald is writing a story on the issue

Approval

Author	S22(1)
Cleared by	
Consultation	ILD

ONCE CLEARED TPS SHOULD BE EMAILED TO RELEVANT MEDIA AND POLICY ADVISERS IN THE MINISTERS' OFFICES AND TO THE MEDIA LIAISON SECTION (-M-MLS-Talking_Points)



F I F A

FERTILIZER INDUSTRY FEDERATION OF AUSTRALIA

Incorporated in Victoria
Registration No. A0025290C ABN 71 395 757 876 ARBN 106 743 015

Phosphate Rock Imports from the Western Sahara

The Role of the Fertilizer Industry Federation of Australia (FIFA)

FIFA is an industry association primarily involved in public policy development and implementation on behalf of its member companies. FIFA works with all levels of Government in Australia on issues such as food safety, environment, quarantine and security where fertilizers can have an impact. As such FIFA does not have any direct involvement in commercial issues to do with sourcing of fertilizer products.

Our member companies are responsible for more than 95% of the fertilizer manufactured, imported and sold in Australia.

Background

Single super phosphate has been an important part of productive pasture production in Australia for many years. It contains a balance of phosphorus and sulphur that is well suited to the nutritional requirements of legume based pastures that are the core of our essential livestock industries. Super phosphate is an important contributor to sustainable productive agriculture and is a major contributing factor to productivity and profitability of grazing systems.

Other fertilizers are available for the pasture market that provide a range of phosphorous and sulphur contents and forms. This provides farmers with useful options for managing production and environmental outcomes.

In the last five years Australian super phosphate sales have averaged 1.2 million tonnes per annum with 95% of those tonnes manufactured in Australia from imported rock phosphate. Across the globe, the quality of rock phosphate is variable and the number of suitable deposits is limited. The rising demand for food, fibre, and now bio-fuels has increased global demand for all types of fertilizers putting further pressure on available supplies of suitable quality rock phosphate.

Recently, there has been some concern raised about imports of phosphate rock through Moroccan based suppliers from Western Saharan deposits. The Western Sahara is defined as a non self governing territory by the United Nations and Morocco has de-facto control of the region.

Concerns have also been raised about quality issues, and particularly the levels of cadmium, in phosphate rock sourced from the Western Sahara.

Western Saharan Phosphate Rock Quality

There are three Australian manufacturers of super phosphate: Incitec Pivot Ltd; Impact Fertilisers; and CSBP. All of these companies use Western Saharan phosphate rock, in addition to other sources, because of its good manufacturing quality and relatively low cadmium levels. In all cases, the fertilizer product manufactured from Western Saharan rock meets Australia's strict standard for maximum permissible concentration (MPC) of cadmium.

The MPC has been set at 300mg of cadmium per Kg of elemental P as the result of extensive scientific evaluation by the CSIRO and Food Standards Australia New Zealand (FSANZ). In addition to meeting the MPC for cadmium in fertilizer sold in Australia, the fertilizer industry, through FIFA, has been an active participant in a national program to minimize the impact of cadmium on the food chain. Details of the Australian Cadmium Minimisation Strategy can be found at www.cadmium-management.org.au.

Legal and Ethical Questions

Each of the Australian companies involved in importing Western Saharan phosphate rock from their Moroccan suppliers has satisfied themselves that this does not breach international law. It is also relevant to note that the Australian Government has not prohibited the importing of resources from the region.

The resolution of the long-running dispute is, and should be, in the hands of the international community, not individuals or companies.

Whilst FIFA is not in a position to judge the relative merits of either case, the member companies involved have noted the following in reaching their decision to continue to source this important raw material from the Western Sahara.

- That the sovereignty of the territory of Western Sahara is under dispute.
- That whatever the eventual outcome, Morocco is the current administrative power.
- That the U.N. has principles under which an administrative power of a non self governing territory should act to ensure that the local population benefits from any economic and development activity.
- That there has been significant development of civic infrastructure in the Western Sahara as a direct result of the economic activity of Morocco.
- The Moroccan Government has put forward a proposal for autonomy of the Western Sahara within the Kingdom of Morocco.
- This is noted in UN Security Council Resolution S2007/238 ..."Taking note of the Moroccan proposal presented on 11 April 2007 to the Secretary-General and welcoming serious and credible Moroccan efforts to move the process forward towards resolution; also taking note of the Polisario Front proposal presented on 10 April 2007 to the Secretary-General,..."
- The European Union signed a fisheries partnership agreement with Morocco that includes access to Western Saharan waters in February 2007.
- In a statement on the EU Fisheries Agreement with Morocco UK fisheries Minister, Ben Bradshaw said: "We are content with this agreement on fisheries and conservation grounds but we were concerned not to affect the difficult talks

taking place on the status of the Western Sahara. Our legal advice is that nothing in this Agreement does that, but we expect the Committee set up to monitor the Agreement to ensure that Morocco's obligations under international law, are observed and that the benefits of it accrue to all the people of the region, including the people of the Western Sahara."

Removing access to Western Saharan rock phosphate would have a significant impact on supplies of single super phosphate to Australian farmers and subsequent effects on sustainable productivity. The effect on local manufacturing would be significant and could lead to plant closures and subsequent economic effects including job losses.

About FIFA

The Fertilizer Industry Federation of Australia is a not for profit organisation. Its members represent more than 95% of the fertilizer sold in Australia and represents importers, manufacturers, suppliers and distributors. A full list of members is available from our web site.

The FIFA mission statement is:

To maintain public consent for the responsible contribution of our industry to the growth of Australian agriculture for the benefit of the Australian fertilizer industry and its customers.

The main activities are in development and implementation of public policy in the areas of environment and food safety, quarantine, product security and regulation.

FIFA runs a national product stewardship training and accreditation program, Fertcare, and is active in a number of Federal and State programs to manage environment and food safety issues relating to fertilizers.

Further information on FIFA and its activities is available from the FIFA web site, www.fifa.asn.au.

REDACTED



REDACTED

Western Sahara: UN Resolution
Lead agency: DFAT (MAB and ILB)

Talking Points

If asked: Why did Australia abstain from the UN Fourth Committee resolution on Western Sahara?

- The Australian Government abstained from the UN resolution in profound regret that the parties were unable to reach agreement on the resolution concerning the question of Western Sahara
 - this position was shared by a number of other countries including the US, Canada, Japan, ROK and a number of EU countries
 - a total of 72 countries abstained from the vote
 - we call on both parties to the resolution, Algeria and Morocco, to resume efforts to achieve a consensus text in the future.
- The Australian Government supports the UN-endorsed process for an early and durable political settlement to the Western Sahara dispute.

If asked: What is Australia's response to claims that its abstention demonstrates a lack of support for the self-determination of Western Sahara ?

- The abstention does not mean we do not support self-determination.
- The Australian Government would have preferred a consensus resolution as is traditional on Fourth Committee decolonisation issues.
- Nothing more should be read into the abstention by any parties to the dispute.

If asked: What is the current legal status of Western Sahara?

- Western Sahara is classified by the United Nations as a Non-Self-Governing Territory and is under the de facto administration of Morocco.

If asked: Is Australia aware of the legal commentary of Under Secretary-General for Legal Affairs, the Legal Counsel, Hans Correll on 29 January 2002 on commercial activities involving the exploitation of resources of the Western Sahara?

- Yes. Mr Corell's opinion is not legally binding and does not set out measures to be taken by states to prohibit imports from Western Sahara
 - there are no United Nations Security Council sanctions or Australian bilateral sanctions prohibiting imports from Western Sahara or Morocco.

If asked: Has DFAT provided advice to companies on the legality of importing resources such as phosphate from Western Sahara?

- DFAT does not provide legal advice to companies.
- DFAT draws attention to the international law considerations of importing resources from Western Sahara on its website and suggests companies seek independent legal advice on the issue
 - aware of reports that a shipment of phosphate sourced from Western Sahara was imported into Australia in November 2005 by an Australian company.

If asked: Are there any sanctions in place in respect of Western Sahara?

- No, Australia has no bilateral trade sanctions in place, nor are there any UN sanctions in place.

Background

Western Sahara

The Polisario Front and the Moroccan Government dispute sovereignty of the former Spanish colony of Western Sahara, which Morocco annexed in 1975 and largely controls. In 1988, the parties to the conflict agreed in principle to UN settlement proposals to facilitate a ceasefire and conduct a referendum to enable the people of Western Sahara to choose between independence and integration into Morocco. The UN-administered cease-fire has remained in effect since September 1991, but attempts to hold a referendum have failed. Australia contributed defence force personnel to the UN Mission for the Referendum in the Western Sahara (MINURSO) from September 1991 to May 1994.

The Secretary General's report to the UN Security Council on Western Sahara (April 2006) recommended that a recourse to direct negotiations under the auspices of the UN be implemented to break the current deadlock. The Polisario Front believed this was a backward step and that negotiations would undermine 15 years of UN efforts and agreements. The Moroccan Government reiterated their rejection of a referendum with the option of independence but has advocated negotiations for a political solution on the autonomy of Western Sahara.

Australia considers Polisario Front to be representative of an important body of Western Sahara opinion but does not regard it as the sole representative. It is in this context that Polisario administers an information office in Sydney. Australia does not recognise the Sahrawi Arab Democratic Republic (SADR), the political body of Polisario proclaimed in Algeria in 1976. There are currently no United Nations Security Council sanctions or bilateral sanctions prohibiting imports from Western Sahara.

UN Fourth Committee resolution

On 13 October 2006, the UN Fourth Committee adopted the Western Sahara resolution on decolonisation (76-0-72 abstentions). Australia abstained in good company with the US, Canada, Japan, ROK and a handful of EU countries led by France and Spain. The majority of the EU, with some G77, supported Algeria's text. This deeply divisive vote, which split comprehensively even the most solid UN voting bloc, was regretted by delegations with strong calls for both parties to return to the usual consensus resolution. Morocco's claim that an abstention amounted to support for their position was rejected outright.

Importation of Phosphate

The importation of phosphate sourced from Western Sahara to Australia was initially brought to public attention by media coverage in the Weekend Australian of 5-6 November of the death of two stowaways aboard the ship, Furness Karumba, carrying the phosphate. The shipment was being imported by S47G(1)(a) [redacted] S47G(1)(a) [redacted] which said it had purchased the shipment from a Moroccan company with product sourced from a site in the Western Sahara.

S47G(1)(a) [redacted]

S47G(1)(a) [redacted] There is no indication that DFAT was contacted by the importer on this issue prior to this point.

In response to a request of 7 November 2005 seeking advice on the Australian Government's position on Western Sahara, DFAT [redacted] S42(1), S47G(1)(a)

S42(1), S47G(1)(a) [redacted]

If asked: Is Australia aware of human rights violations in Western Sahara?

- Australia is aware of reports of human rights violations in this territory.
- Australia would like to see all parties uphold international human rights standards.

Background

The Polisario Front and the Moroccan Government dispute sovereignty of the former Spanish colony of Western Sahara, which Morocco annexed in 1975 and largely controls. In 1988, the parties to the conflict agreed in principle to UN settlement proposals to facilitate a ceasefire and conduct a referendum to enable the people of Western Sahara to choose between independence and integration into Morocco. The UN-administered cease-fire has remained in effect since September 1991, but attempts to hold a referendum have failed. Australia contributed defence force personnel to the UN Mission for the Referendum in the Western Sahara (MINURSO) from September 1991 to May 1994.

Moroccan Autonomy Plan and UNSCR 1754

On 11 April 2007, Morocco transmitted their "Initiative for negotiating an Autonomy Statute for the Sahara Region" to the Secretary General of the United Nations, proposing autonomy for Western Sahara under the sovereignty of Morocco. Under the proposal, Morocco would retain control over national symbols, external security, external relations and further authorities of the King. The region would have legislative, executive and judicial bodies and the necessary financial resources for development. The Polisario also presented to the Secretary-General a "Proposal for a Mutually Acceptable Political Solution that Provides for the Self-Determination of the People of Western Sahara" on 10 April 2007.

The United Nations Security Council adopted UNSC Resolution 1754 on 30 April calling upon the parties to enter into negotiations without preconditions and in good faith with "a view to achieving a just, lasting and mutually acceptable political solution." The resolution also took note of the Moroccan and Polisario proposals and welcomed "serious and credible Moroccan efforts to move the process forward towards resolution". MINURSO's mandate was extended to 30 October 2007.

The Moroccan Government and Polisario Front subsequently met for negotiations in June 2007, at a two-day meeting in Manhasset, New York. The talks were at the invitation of UNSG Ban and moderated by UNSG's Personal Envoy for Western Sahara, Peter van Walsum. In a communiqué released after the talks, Mr van Walsum said parties had 'broken the ice': it was agreed that negotiations would continue in Manhasset in the second week of August. UNSG Ban will report to the Security Council shortly on the status and progress of negotiations.

Human Rights Situation

In his statement of 13 April 2007, the UN Secretary General noted reports of incidents where the rights to freedom of expression, association and assembly "appear to have been compromised". Several Sahrawi demonstrators were allegedly arrested by

Moroccan security forces during protests. Prisoners at Laayoune's "Carcel Negra" prison went on a hunger strike in protest over conditions of detention from January to March 2007. SG Ban reported having received letters from Moroccan and Polisario representatives regarding human rights allegations in the Saharan refugee camps near Tindouf, Algeria. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continues to follow the human rights situation in Western Sahara. Although MINURSO does not have the mandate or resources to address this issue, SC Ban reiterated that the UN remains committed to upholding international human rights standards.

Polisario Front

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S47G(1)(a)

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In response to a request of 7 November 2005 seeking advice on the Australian Government's position on Western Sahara, S47G(1)(a)

S47G(1)(a)

REDACTED

S22(1)
People/DFAT
12/12/2007 11:21 AM

To S47G(1)(a)
cc
bcc
Subject S47G(1)(a) Meeting [SEC=UNCLASSIFIED]

S47G(1)(a)

S47F(1)
Just to reconfirm the meeting will be held at 2.30pm at DFAT, John McEwen Cres. Barton. My mobile is [redacted] if you have any problems. I will meet you at reception.

Look forward to meeting your members

regards

S22(1)

S47G(1)(a)



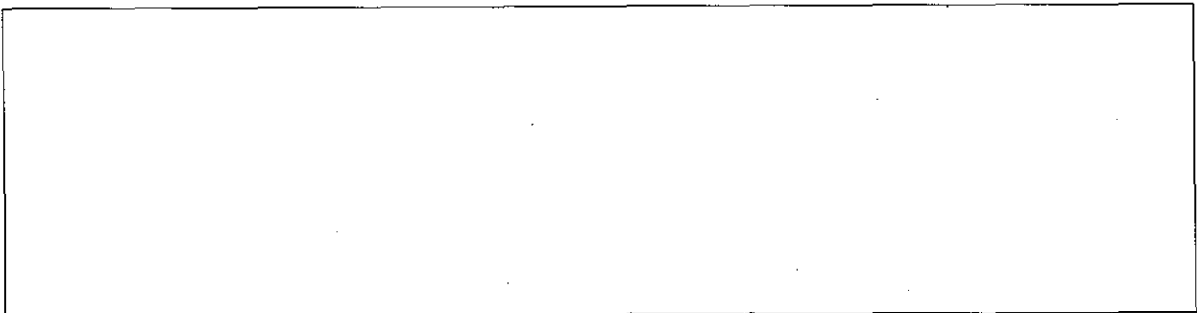
S47G(1)(a)

12/12/2007 09:51 AM

To S22(1) @dfat.gov.au
cc S47G(1)(a)
Subject [SEC=UNCLASSIFIED]

S22(1)

Many thanks for your prompt assistance and I am sure the meeting will be mutually beneficial. Attending will be:

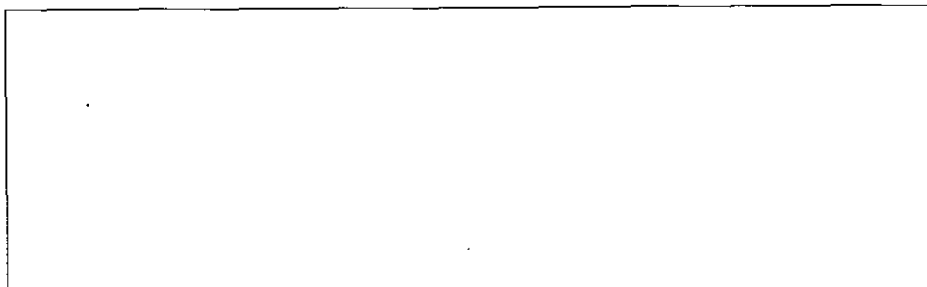


FIFA is a not for profit incorporated association representing manufacturers, importers and distributors of fertilizer in Australia. Our members are responsible for more than 95% of the fertilizer sold in Australia and all Australian manufacturers and bulk fertilizer importers are members. A full current membership list is at http://www.fifa.asn.au/default.asp?V_DOC_ID=813

FIFA works primarily in the public policy area, in particular on environment and food safety, quarantine, and security. We have, in most cases, worked closely with Government agencies in a positive and cooperative approach to managing these genuine issues. FIFA is represented on the Fertilizer Working Group convened under the Product Safety and Integrity Committee, has just received the NSW regional Quarantine Award and has had significant

funding from the Natural Heritage Trust and National Landcare Program. S47G(1)(a)
the industry consultative committee to the Department of Prime Minister and Cabinet
addressing chemicals of security concern.

S47G(1)(a)



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S47G(1)(a)

UNCLASSIFIED

S22(1) People/DFATHIG

14/12/2007 06:16 PM

To S22(1) /People/DFATHIGH@DFATHIGH, S22(1)
/People/DFATHIGH@DFATHIGH
cc S22(1) People/DFATHIGH@DFATHIGH, Paul
Foley/People/DFATHIGH@DFATHIGH

bcc

Subject Western Sahara [SEC=CONFIDENTIAL]

S22(1)

grateful ILD comments of the attached draft minsub (currently in word doc form). Am undecided on how many of the attachments (separate document). should actually go in or whether more are needed: work in progress. eg Do we need an attachment on the Correll advice? *Yes*.

This is all a propos of the fact that Western Sahara was mentioned in the election campaign and is in the ALP platform: FAS SMD keen we get an early sub to the Minister to clarify policy. So far has gone as far as Paul Foley.

thanks

S22(1)



071213 WS Minsub draft 2.doc



071214 Western Sahara sub Attachment.doc



S47G(1)(a)

17/12/2007 12:54 PM

To <paul.foley@dfat.gov.au>
cc [redacted]@dfat.gov.au,
[redacted]@dfat.gov.au
bcc [redacted]

S47G(1)(a) Western Sahara Boucraa Rock Information
[SEC=UNCLASSIFIED]

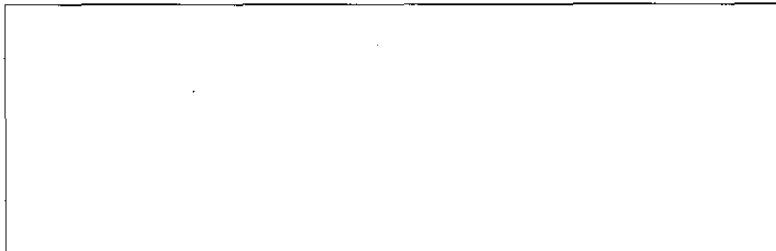
Dear Paul,

As requested we have quickly pulled together some information on Boucraa phosphate rock and it's importance to the Australian Industry. As discussed and agreed this material is commercial in confidence.

S47G(1)(a)


Please do not hesitate to contact me if you require anything further.

Regards



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 - Foley Boucraa Effect on Australian Industry.pdf
Phosphate Rock.pdf

 - S47G(1)(a)

- Western Sahara

UNCLASSIFIED

S47G(1)(a)

REDACTED

S47G(1)(a)

REDACTED



S47G(1)(a)

18/12/2007 09:35 AM

To: [S22(1)]@dfat.gov.au>, <paul.foley@dfat.gov.au>, [S22(1)]@dfat.gov.au>
cc: S47G(1)(a)
bcc:

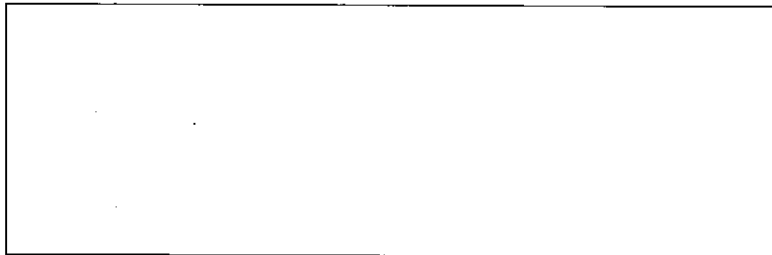
S47G(1)(a) Statistics on phosphate rock imports
[SEC=UNCLASSIFIED]

Dear Paul,

Further to the details provided yesterday, attached is an extract from ABARE Commodity Statistics 2006 which indicates that 62% of phosphate rock imports in 2006 were from Morocco S47G(1)(a)

I hope that this is helpful.

Regards



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- Fertilizer Raw Material Imports Australian Commodity Statistics 2006.pdf

UNCLASSIFIED

farm inputs

101

Volume of Australian imports of raw materials for fertiliser production, by source

	Sulphur		Phosphate rock						Total kt
	Canada kt	Other kt	Christmas Island kt	China kt	Morocco kt	Nauru kt	Togo kt	Other kt	
1971-72	212	65	503	na	0	na	na	na	1 654
1972-73	396	10	684	na	0	na	na	na	2 282
1973-74	381	23	955	na	0	na	na	na	3 104
1974-75	502	78	1 002	na	0	na	na	na	2 639
1975-76	180	26	503	na	0	na	na	na	1 461
1976-77	381	26	567	na	0	na	na	na	1 319
1977-78	470	26	487	na	0	na	na	na	1 610
1978-79	337	99	543	na	0	na	na	na	1 756
1979-80	627	60	674	na	0	na	na	na	1 936
1980-81	552	4	624	na	0	na	na	na	2 232
1981-82	459	0	780	na	25	na	na	na	2 360
1982-83	371	21	699	na	0	na	na	na	2 111
1983-84	470	0	456	na	25	na	na	na	1 688
1984-85	420	1	533	na	111	na	na	na	1 762
1985-86	458	0	506	na	103	na	na	na	1 921
1986-87	329	1	370	na	66	na	na	na	1 459
1987-88	462	11	240	na	256	na	na	na	1 808
1988-89	506	13	0	0	310	1 203	162	562	2 237
1989-90	382	13	0	0	236	768	171	256	1 430
1990-91	108	9	0	0	93	224	25	134	476
1991-92	38	6	0	0	0	257	0	218	474
1992-93	79	20	0	0	62	355	31	401	849
1993-94	71	0	13	0	144	203	33	383	776
1994-95	122	22	22	0	182	178	177	508	1 067
1995-96	114	31	47	32	136	191	0	505	911
1996-97	113	32	66	50	104	167	0	519	906
1997-98	126	5	126	79	238	153	0	464	1 060
1998-99	231	94	146	44	273	88	0	332	884
1999-00	255	7	50	107	151	106	0	342	756
2000-01	435	46	0	293	145	119	0	266	823
2001-02	539	4	0	266	94	27	243	303	933
2002-03	559	36	0	200	48	16	244	202	711
2003-04	660	24	44	179	198	0	253	49	723
2004-05	568	24	38	210	381	0	163	5	797
2005-06	543	7	101	86	405	0	48	15	655

na Not available.

Sources: ABS, *International Trade, Australia*, cat. no. 5465.0, Canberra; Department of Primary Industry, *Chemical Fertilisers in Australia*, AGPS, Canberra.

S22(1)

People/DFATHIGH

18/12/2007 02:17 PM

To S22(1) People/DFATHIGH@DFATHIGH

cc S22(1) People/DFATHIGH@DFATHIGH, Paul

Foley/People/DFATHIGH@DFATHIGH, S22(1)

bcc S22(1) People/DFATHIGH@DFATHIGH, Adam

Subject Western Sahara [SEC=CONFIDENTIAL]

ODIN Topic: LEGAL

TRIM File Ref:

S22(1)

S47C(1)

Kind regards,

S22(1)



071218 Minsub Western Sahara - INT commentsv1.doc

S22(1)

People/DFATHIGH

S22(1)

People/DFATHIGH

IGH

14/12/2007 06:16 PM

To S22(1) People/DFATHIGH@DFATHIGH, [redacted]

S22(1) People/DFATHIGH@DFATHIGH

cc S22(1) People/DFATHIGH@DFATHIGH, Paul

Foley/People/DFATHIGH@DFATHIGH

Subject Western Sahara [SEC=CONFIDENTIAL]

S22(1)

S47C(1)

S22(1)

S22(1) [People/DFATHIGH]

CONFIDENTIAL

S47C(1)

DFAT - DECLASSIFIED
CASE: 1202-F90
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CASE: 1202-F90
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Act 1982



SECRET

DFAT – DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982

S47C(1)

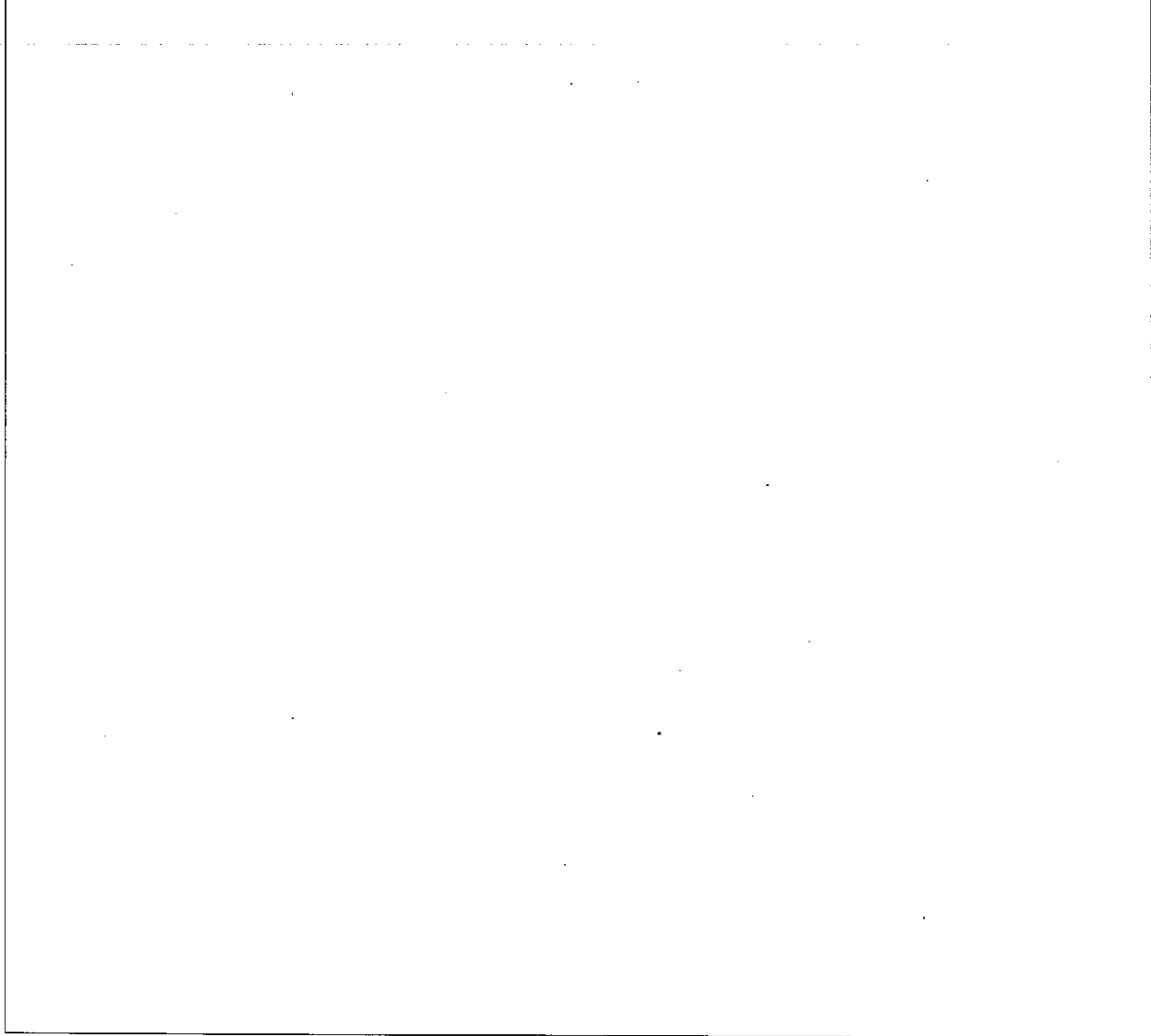


DFAT - DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982

S47C(1)

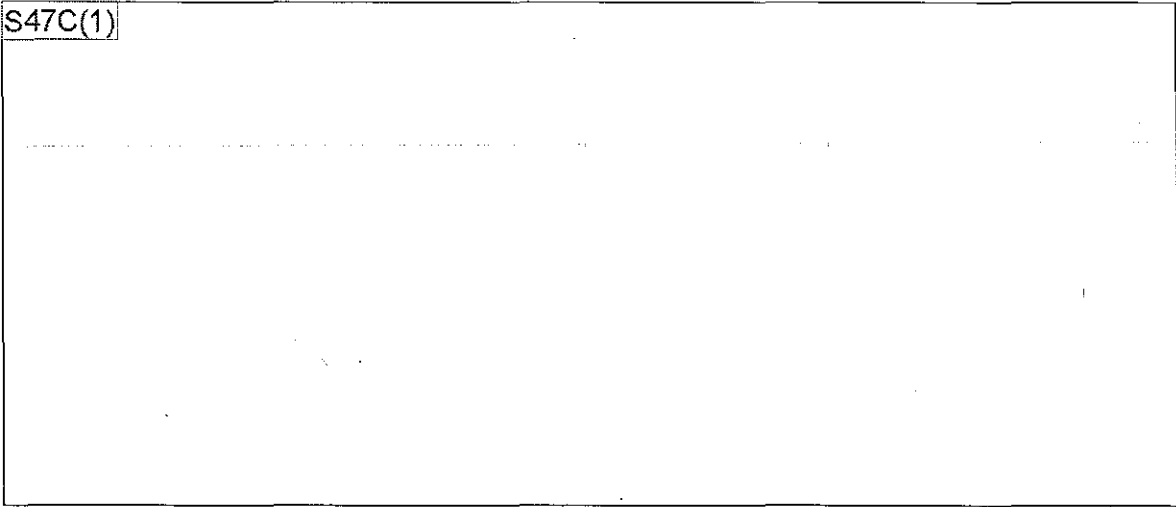
S47C(1)

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S47C(1)

ER FOI Act



S47C(1), S33(a)(iii), S33(b), S22(1)

REDACTED

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S47C(1), S33(a)(iii), S33(6)

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S22(1), S33(a)(iii), S33(b)

S22(1)

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S47C(1), S33(a)(iii), S33(b), S22(1)

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S47C(1), S33(a)(ii), S33(b)

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S47C(1), S33(a)(iii), S33(b)

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S33(b), S33(a)(iii)

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§47C(1), §22(1), §33(a)(iii), §23(b)

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S47C(1), S33¹²⁷(a)(iii), S33(b)

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S476(1), S33(a)(iii), S33(b), S22(1)

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S33(a)(iii), S33(b), S22(1)

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S47C(1)

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Importation of Phosphate

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S47G(1)(a) [redacted]

[redacted] Norwegian insurance company KPA and Swedish investment fund Ohman Funds have recently divested holdings in S47G(1)(a) [redacted] due to its imports of phosphate rock from Western Sahara.

Western Sahara Questions on Notice

Senator Allison: How has Australia voted in the UN when Western Sahara's resources have come up for discussion?

UN General Assembly resolutions on Western Sahara have generally been adopted by consensus in recent times. Since 1997, two UN General Assembly resolutions have been put to a vote, in 2004 and 2006. Australia abstained on these resolutions.

Senator Allison: Can you confirm that Norway has imposed a trade embargo?

Norway has not imposed a trade embargo on imports from Western Sahara.

Senator Allison: What progress has been made on providing assistance to the 160,000 refugees living outside the Western Sahara in camps?

Western Saharan refugees receive assistance through United Nations programs such as the World Food Program (WFP) and the Office of the United Nations High Commissioner for Refugees (UNHCR). While Australia provides funding to the WFP and UNHCR, this has not been specifically earmarked to assist Western Saharan refugees.

5 October 2008

Joint Standing Committee on Foreign Affairs, Defence and Trade - Human Rights
Sub-Committee

Briefing on Western Sahara (at the request of the sub-committee on 24/9/08)

Present: Andrea Faulkner, Justin Whyatt, Adam McCarthy, Sue Robertson (DFAT)

Ms K. Rea (Chair); P. Ruddock (Dept Chair); Ms A. Ellis MP; Ms M. Parke MP -
apologies received from the rest of the sub-committee.

Rough notes

- Chair indicated the sub-committee had recently received a briefing from the Western Sahara Association regarding concerns about human rights abuses perpetrated against the WS by the Moroccan authorities. The Committee was seeking to meet with the Moroccan ambassador on the issue.

- Ms Faulkner gave brief overview of history of the dispute and Australia's position as per the brief

- Ms Parke asked about the ICJ opinion- how Australia viewed it – was it now overtaken by events.

JW provided overview as per the brief

AMcC gave summary of Correll advice findings. Indicated advice was not legally binding and that Correll did not apply the principles to the facts of Western Sahara

- Ms Faulkner continued with human rights overview- noting allegations of abuses made by both WS against Moroccans and the Polisario in running the refugee camps
- JW - On issue of exports of phosphates- no sanctions applied by the UN; no country restricted trade that we knew of; if UN applied sanctions we would abide by them/ website information outlined
- Ms Parke asked if there was any efforts or suggestion to companies should pay some dividend to the local people – in light of the Correll advice
- DFAT indicated that had not occurred
- Mr Ruddock queried how the issue would actually be raised in any kind of international litigation. He commented that companies exporting from Morocco presumably assume that the Moroccan counterparts they deal with are acting within the relevant law. He asked about Australia's relationship with Morocco- what were our bi-lateral interests? How would Australia elevating the WS issue impact our relationship?

- Ms Faulker outlined Australia's relationship with Morocco
- Mr Ruddock asked about whether transmigration was occurring from Morocco to WS
- DFAT indicated it was not aware of this
- Mr Ruddock asked whether UNHCR had any views on the durable solutions for the refugees in the Algerian camps
- Mr Whyatt replied that the camps were run the Polisario who have particular political views on right of refugees to return - UNHCR's role was more humanitarian in nature

**WESTERN SAHARA: SELF-DETERMINATION; NATURAL RESOURCE
EXPORTS****Talking Points***Self-determination*

- . Western Sahara is classified by the United Nations as a Non-Self-Governing Territory and is under the *de facto* administration of Morocco.
- . The Australian Government supports a negotiated solution to the situation in Western Sahara that is acceptable to all directly interested parties.
- . Australia fully supports the efforts of the international community, through the United Nations (UN), to assist in achieving this end.
- . Australia notes the adoption by the Security Council of Resolution 1813 (of 30 April 2008) which
 - acknowledged the recent Moroccan and Polisario proposals on the future of Western Sahara,
 - welcomed “serious and credible Moroccan efforts to move the process forward towards resolution”, and
 - extended the mandate of the UN Mission for the Referendum in the Western Sahara (MINURSO) for a further 12 months (until 30 April 2009).

Natural Resource Exports

- . The import of natural resources sourced from Western Sahara gives rise to international law considerations.
- . A 2002 legal opinion of Mr Hans Corell, then UN Under-Secretary General for Legal Affairs, advised that the exploitation of natural resources of a Non-Self-Governing Territory should be for the benefit of the peoples of that territory
 - but no clear directions have come from the United Nations on how to deal with the import of natural resources sourced in Western Sahara.
- . (*If pressed*) The legal opinion of Hans Corell does not impose a definitive obligation on Australia to prohibit the import of natural resources sourced from Western Sahara.
- . DFAT is aware that Australian companies are interested in commercial exploitation of natural resources in Western Sahara.
- . DFAT does not provide legal advice to companies
 - but DFAT recommends all companies interested in doing business in Western Sahara seek independent legal advice, noting there are international law considerations with importing natural resources sourced from the Western Sahara, and has placed information to that effect on the DFAT website.

Sanctions

- Australia has not implemented autonomous sanctions in relation to Western Sahara, and there are no UN sanctions in place.
- If the UN Security Council were to impose sanctions, Australia would of course implement such sanctions domestically, in accordance with our obligations as a UN member state.

Background (not for release)

Self-determination

Western Sahara is classified by the United Nations as a Non-Self-Governing Territory and is under the *de facto* administration of Morocco. The Polisario Front and the Moroccan Government dispute sovereignty of Western Sahara, which Morocco annexed in 1975. In 1988, the parties to the conflict agreed in principle to UN settlement proposals for a ceasefire and a referendum to enable the people of Western Sahara to choose between independence and integration into Morocco. The UN-administered cease-fire has remained in effect since September 1991, but attempts to hold the referendum have failed.

The UN Secretary General in April 2006 recommended direct negotiations under UN auspices to break the ongoing deadlock. In April 2007, Morocco sent the Secretary General of the UN a proposal for autonomy for Western Sahara under the sovereignty of Morocco, and Polisario also presented a proposal. In April 2007, the Security Council adopted UNSCR 1754 calling upon the parties to enter into negotiations without preconditions and in good faith. Morocco and the Polisario Front held two rounds of direct negotiations in New York in 2007 under the auspices of the UN. The Security Council adopted UNSCR 1783 on 31 October 2007 which called upon the parties to continue negotiations taking into account the efforts made since 2006, requested the Secretary-General to report on these talks by the end of January 2008, and extended the mandate of the UN Mission for the Referendum in the Western Sahara (MINURSO) for six months. On 25 January 2008, the Secretary-General's report on the third round of negotiations (which took place from 7 to 9 January) said that the parties remained far apart and that "there was hardly any exchange that could be characterized as negotiations." On 17 and 18 March, Morocco and the Polisario held the fourth round of talks in Manhasset in search of a mutually acceptable solution to the situation in Western Sahara. Representatives of Algeria and Mauritania were consulted separately during the meeting. Peter van Walsum, the UN Secretary-General's Personal Envoy for Western Sahara, facilitated the discussions.

The Security Council adopted UNSCR 1813 on 30 April 2008 which took note of Morocco's and the Polisario Front's proposals to the UN in mid-April, welcomed serious and credible Moroccan efforts to move the process forward towards resolution, continued to call for ongoing negotiations without preconditions, and decided to extend the mandate of MINURSO for 12 months until 30 April 2009.

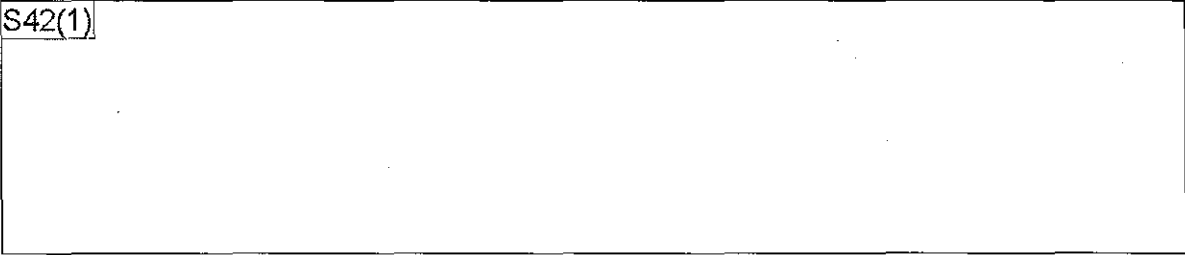
Natural Resource Exports


Mineral and energy resources in Western Sahara have attracted commercial interest, including from Australian companies. Morocco exports phosphate, used across Australia for pasture

improvement and crop growth. Phosphate sourced in Western Sahara is sold domestically by S47G(1)(a) Australia and New Zealand import approximately 50 per cent of Western Sahara's phosphate production.

DFAT recommends that all companies interested in doing business in Western Sahara seek independent legal advice on the issue, noting that international law considerations arise from importing natural resources sourced from Western Sahara, and has placed information to that effect on the DFAT website.

S42(1)




S22(1)
03/07/2008 05:03 PM

To S22(1)
cc
bcc
Subject Fw: Western Sahara - DFAT letter to DAF 22/12/07
[SEC=IN-CONFIDENCE:LEGAL]

----- Forwarded by S22(1) on 03/07/2008 05:03 PM -----


S22(1)
02/07/2008 05:38 PM

To S22(1)
cc
Subject Western Sahara - DFAT letter to DAF 22/12/07
[SEC=IN-CONFIDENCE:LEGAL]

Justin

Attached is the signed letter from Chris Morraitis to DAF . The other letter on file is to S42(1) from Penny Richards in exactly the same terms.

In terms of law, I don't think anything has really changed. The law involves difficult factual judgments around whether Morocco has discharged its obligation to protect the interests of the people of WS. It is unclear as to how this would be assessed or by who.

The question then is more whether as a matter of policy we might want to change our position. For example, 

S33(a)(iii)

See you on Friday

S22(1)

S22(1)

Please note I am not in the office on Thursdays



Letter to DAFF on Western Sahara - 22 December 2005.tif



Australian Government
Department of Foreign Affairs and Trade

22 December 2005

Paul Morris
Executive Manager, International Division
Department of Agriculture, Fisheries and Forestry
Edmund Barton Building
Blackall Street
Barton ACT 2601

Dear Mr Morris

I refer to recent communication between officials from DAFF, DFAT and AQIS in relation to the import into Australia of phosphate sourced from Western Sahara.

Western Sahara is currently listed by the United Nations as a non-self-governing territory with no recognised Administering Power. Morocco has acted as the de facto Administering Power for Western Sahara since the withdrawal of Mauritania in 1979. S42(1)

S42(1)

S42(1)

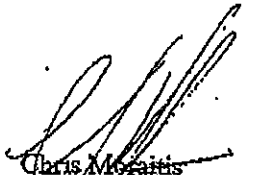
S42(1)

DFAT has placed an advisory notice on importing material from the Western Sahara on our website under the Morocco entry. I note that DFAT does not provide legal advice to companies or other private entities and reaffirm that any concerned private entities should be advised to seek independent legal advice.

S42(1)

DFAT will inform you should any further considerations arise in relation to imports from Western Sahara.

Yours sincerely



Chris Moraitis
Senior Legal Adviser



S22(1)

To S22(1)

cc

bcc

03/07/2008 09:47 AM

Subject RE: Western Sahara: Assistance to Australian companies
[SEC=IN-CONFIDENCE:COMMERCIAL]

thanks S22(1)

Will ask around - they may be involved in regional fishing agreements or similar, and we have had recent discussions with S47G(1)(a)

S22(1)

S22(1)

Middle East & Africa
Trade & Market Access Division

S22(1)

From: S22(1)

Sent: Wednesday, 2 July 2008 5:41 PM

To: S22(1)

Subject: Western Sahara: Assistance to Australian companies
[SEC=IN-CONFIDENCE:COMMERCIAL]

Hi Lino and S22(1)

We are currently looking at the Government's policy on the Western Sahara, including in the area of trade. Grateful your advice on whether Austrade and DAFF provide/ have provided assistance to Australian companies engaged with trade in Western Sahara, and if so, what the nature of that assistance was?

S22(1) grateful you forward this to the appropriate person within DAFF- unless of course, it is yourself!

We are looking at possibly drafting this info into a minsub, so would appreciate your response by next Wed 9 July, if humanely possible.

Many thanks

S22(1)

Middle East Section
MAB SMD

S22(1)

-----IMPORTANT - This message has been issued by The Department of Agriculture, Fisheries and Forestry (DAFF). The information transmitted is for the use of the intended recipient only and may contain sensitive and/or legally privileged material. It is your responsibility to check any attachments for viruses and defects before opening or sending them on. Any reproduction, publication, communication, re-transmission, disclosure, dissemination or other use of the information contained in this e-mail by persons or entities other than the intended recipient is prohibited. The taking of any action in reliance upon this

REDACTED

S33(a)(iii), S33(b)

REDACTED

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REDACTED

Trade in Phosphate from Western Sahara

Polisario supporters lobby against Australian imports of phosphate sourced from Western Sahara and the trade has generated media interest. S42(1)

S42(1)

S42(1)

The Department of Foreign Affairs and Trade does not provide legal advice to companies but notes on its website, and when approached, that there are international law considerations with importing natural resources sourced from Western Sahara. DFAT recommends that companies involved in trade with Western Sahara seek independent legal advice on the issue.

S42(1)

Attachment B

Australian trade interests in Western Sahara: phosphate rock imports

S47G(1)(a)

Australian producers source phosphate rock from Western Sahara due to its high reactivity, low odour and low cadmium content, which allow it to blend easily with rock sourced from Togo, Nauru and Christmas Island. Mines in Western Sahara produce over 3.5 million tonnes a year, and trade with Australia and New Zealand absorbs up to 50 percent of this production. S47G(1)(a)

S47G(1)(a)

S47G(1)(a)

S22(1), S33(a)(iii),
S33(b)

REDACTED

S33(a)(iii), S33(b)

REDACTED

S33(a)(iii), S33(b)

REDACTED

S33(a)(iii), S33(b)

REDACTED

S33(a)(iii), S33(b)

REDACTED

S33(a)(iii), S33(b)

REDACTED

Western Sahara
DFAT Briefing of the Human Rights Sub-committee
of the Joint Standing Committee on Foreign Affairs, Defence and Trade

Thursday 16 October at 1000

Introduction

- . Thank you for the opportunity to brief the Committee today about the human rights situation of Western Saharans
 - and the Government's position on issues relating to Western Sahara.
- . Begin by providing a brief history of the dispute and outlining recent developments
 - then can address the Government's position on the issue
 - including the question of phosphate exports.
- . Will discuss the human rights situation in Moroccan-administered Western Sahara, and the refugee camps in Algeria, which are run by the Polisario.
- . Would be pleased to take any questions Committee members may have.

Brief History

- . As Committee members may be aware, the present dispute began when Spain withdrew from the territory in 1975
 - Morocco and Mauritania claimed parts of the territory, based on historical ties
 - following Mauritania's withdrawal in 1979, Morocco extended its control further.
- . Moroccan and Polisario Front forces fought intermittently from 1975 until the 1991 ceasefire
 - and deployment to the area of a UN peacekeeping contingent MINURSO (which stands for the UN Mission for a Referendum in Western Sahara).
- . Western Sahara is classified by the United Nations as a Non-Self-Governing Territory
 - and is for practical purposes, under the de facto administration of Morocco.
- . There have been a number of UN efforts to negotiate a resolution of the issue, but none have been successful

- in 1998, the UN / OAC settlement proposal, calling for a referendum, was accepted by both sides but no agreement could be reached on specific terms for the referendum (including voter eligibility)
- the UN Secretary-General's Special Envoy, James Baker, put forward a "Framework Agreement" proposal in 2001, which envisaged autonomy within Morocco but substantial devolution of authority to local government
 - : this was accepted by Morocco but rejected by the Polisario Front and Algeria.
- in 2003, Baker put forward an alternative plan, which envisaged self-government for five (5) years followed by a referendum, which included an option of independence
 - : Morocco ultimately rejected the plan (voter eligibility was again an issue), and it was accepted by the Polisario Front and Algeria.

UN efforts have now moved beyond the question of a referendum on independence

- in 2006, the UN Secretary General called for the parties to come back to the table and negotiate "without preconditions"
- this call was endorsed by the UN Security Council in resolution 1754

Four rounds of negotiations have been held

- both parties have put proposals on the table:
 - : Morocco's proposal involves 'enhanced autonomy'
 - : the Polisario's proposal involves a referendum on independence.

UNSCR 1754 (of 30 April 2007) acknowledged the recent Moroccan and Polisario proposals on the future of Western Sahara and welcomed "serious and credible Moroccan efforts to move the process forward towards resolution".

However, the last two rounds of negotiations have not produced tangible results, because the parties have been unwilling to budge from these two irreconcilable positions.

The UN Security Council, in its latest resolution (UNSCR 1813 of 30 April 2008), called for 'realism' and a 'spirit of compromise'.

Australian Government position

- Government supports an early and durable political settlement to the question of Western Sahara that is acceptable to all directly interested parties
 - we fully support the efforts of the international community, through the United Nations, towards achieving this end.
- Government welcomed the most recent Security Council resolution (UNSCR 1813)
 - we believe the dispute can only be resolved by negotiations between the directly interested parties (Morocco, the Polisario, Algeria).
- Government has not taken sides in the dispute
 - for many years – the UN was focused on the terms of a referendum, which would include the option of independence
 - : and Australia supported efforts to achieve this
 - UN efforts have now moved beyond this, to encouraging talks “without preconditions”
- the Government does not support one proposal over another (note: France and US support autonomy; UK and Canada have not taken sides)
- Should emphasise that the Government would support a referendum on independence if that was agreed to by the parties.

Self Determination

- Should also say a few words about self-determination.
- Australia supports the ongoing UN process which is attempting to assist the parties to achieve a lasting and mutually acceptable political solution and provide for the self determination of the peoples of Western Sahara
 - a right which is not in doubt.
- But at the heart of this dispute is disagreement on how to enable the people of Western Sahara to exercise their right to self determination
 - how this right is best exercised is precisely what the UN-sponsored process, with the support of the international community, is trying to achieve.

If asked: self determination can take a number of forms

- it can be “internal”, where minority rights are accommodated through greater political autonomy and devolution of decision making power; or

- it can be “external”, and involve secession or the creation of a new state.

Ultimately, it is up to the parties themselves – assisted by the UN - to resolve these questions in the context of a just and lasting political settlement.

Phosphates

- Turning to the issue of phosphates.
- Australia does not ban the importation of phosphates from Western Sahara
 - the UN has not imposed restrictions on the trade (ie UNSC sanctions)
 - and we are not aware of any country which maintains autonomous sanctions against the trade
 - if the UN were to impose sanctions, then obviously Australia would implement them.
- However, we are conscious of the status of Western Sahara as a non-self governing territory
 - and we therefore take appropriate action to draw companies’ attention to the international law considerations involved in importing natural resources sourced from the Western Sahara.
 - and recommend that companies seek legal advice before importing such material.

Human Rights Situation

- Government is aware of allegations of human rights abuses in the Moroccan administered territory of Western Sahara
 - as well as in the refugee camps run by the Polisario in Algeria, where there are probably about 100,000 people (exact figures not possible; S33(a)(iii), S33(b))
- Australia would like to see all parties uphold international human rights standards.
- Should note that Australia does not have an embassy in either Morocco or Algeria
 - we are accredited from Paris (last visit was in April by former Ambassador Wensely –S33(a)(iii), S33(b)).

Would note Algeria's position is that it is not responsible for what happens in the camps (this is not accepted by the UN)

- it claims that this is responsibility of Polisario / SADR.

Human Rights - Australian Government representations

- . Government takes human rights issues very seriously
- . We pay careful attention to human rights reports
 - and have been speaking with a number of countries about the human rights situation in Western Sahara.
- . We will consider our approach to human rights representations in light of these discussions.

If pressed: we are not aware of human rights representations in recent years.

We therefore rely – in a day to day sense - on reporting from UN bodies and international organisations, as well as discussions with other countries.

Morocco – Human Rights

In recent years, there have been some improvements in Morocco observance of human rights

- the Human Rights Watch 2007 World Report noted Morocco has made “great strides in addressing past abuses and allowed considerable space for public dissent and protest in recent years”.

However, international human rights organisations report that problems remain. These include:

- alleged harassment and arrest of Western Saharan human rights and political activists;
- limits on rights of freedom of expression, association and assembly; and
- judicial processes which fell short of international standards regarding human rights activists or supporters of independence

A number of complaints are associated with the 2005 riots/protests in Western Sahara and their aftermath.

Welcome convictions of two Moroccan policemen in June 2007 for their involvement in the death of a 24 year old Western Saharan.

There has also been some positive movement on Western-Saharan refugee issues between Morocco and the Polisario

- UNHCR-sponsored family visits have helped unite approximately 6000 people, and increased use of telephone hook-ups to allow families to communicate.

Human Rights - Polisario

The major concerns which have been highlighted, connected to the Polisario-run camps in Algeria, are:

- allegations that refugees are pressured by the Polisario to remain the camps (eg keeping one family member back to guarantee others returned, for those taking part in the UNHCR-supervised reunion visits)
- suggestions that refugees have been forced to work without pay (ref UN report)

IF ASKED QUESTIONS**If asked: What is the current legal status of Western Sahara?**

- . Western Sahara is classified by the United Nations as a Non-Self-Governing Territory
 - and is for practical purposes, under the de facto administration of Morocco.

If asked: What is the status of negotiations on Western Sahara's future?

- . The parties (Morocco and Polisario) have held four rounds of talks, with the most recent round held from 16 to 18 March 2008
 - little progress has been made in the last two rounds of negotiations
 - : the dates for the next round of negotiations have not yet been set.

If asked: does the Government support a referendum on independence in Western Sahara?

- . Both Morocco and the Polisario have put forward proposals to resolve the status of Western Sahara
 - these proposals are being discussed under UN auspices
 - will ultimately be a matter for the directly interested parties to determine.
- . The Government would support a referendum if it was agreed to by the parties.

Nb. The ALP policy platform supports the right of the Saharawi people to self-determination, including

- supporting UN efforts towards a free and fair referendum on independence in Western Sahara; and
- implementation of all UN resolutions with regards to the decolonisation process in Western Sahara.

If asked: Why shouldn't Australia take sides, and support independence?

- . Our focus is on supporting UN efforts to bring the parties together to find a mutually acceptable solution.

. Best way to achieve a lasting, durable and just resolution is through a negotiated settlement.

If asked: does the Government recognise the Polisario Front as the legitimate representative of the people of Western Sahara?

. The Polisario Front participates in the UN negotiations
– and as such is clearly an important representative body for Western Saharan people.

S22(1)

If asked: What is Australia's position on the Moroccan Initiative for negotiating an Autonomy Statute for the Sahara Region?

. Australia welcomes contributions such as the Moroccan autonomy proposal to assist efforts towards a just and lasting negotiated settlement.

If asked: What was the purpose of the visit to Australia by the Secretary-General of the Moroccan Foreign Affairs Ministry Mr Omar Hilale in February?

. Mr Hilale visited Australia from 13 to 15 February 2008
– his visit was a working visit organised by the Moroccan Embassy.
. Mr Hilale met with the Secretary of DFAT, his counterpart, and passed over a letter from the Moroccan Minister of Foreign Affairs.

If asked: What were the contents of the letter?

. It is not Government practice to reveal the contents of communications between governments.

If asked: Are there any sanctions in place in respect of Western Sahara?

. No, there are no UN sanctions in place against Western Sahara or Morocco
– and Australia does not impose autonomous sanctions.

If asked: Is Australia aware of the legal commentary of UN Under Secretary-General for Legal Affairs, the Legal Counsel, Hans Correll on 29 January 2002 on commercial activities involving the exploitation of resources of the Western Sahara?

- . Yes. The opinion sets out in general terms the international law principles related to non-self governing territories.
- . Note that Mr Correll's opinion is not legally binding and does not set out measures to be taken by states regarding imports from Western Sahara
 - there are no United Nations Security Council sanctions or Australian bilateral sanctions prohibiting imports from Western Sahara or Morocco.

If asked: The Correll opinion states that mining of natural resources of a Non-Self Governing Territory should be undertaken for the benefit of the peoples of that territory. How can the Australian Government be sure that its phosphate imports are benefiting the people of Western Sahara?

- . Whether resource exportation benefits the people of Western Sahara cannot be separated from broader questions regarding the future governance of Western Sahara.
- . Ultimately it is up to the parties themselves to resolve these questions in the context of a lasting political settlement with assistance of the UN.
- . The UN has not imposed restrictions on the trade. If the UN were to impose sanctions then obviously Australia would implement them.

If asked: Has DFAT provided advice to companies on the legality of importing resources such as phosphate from Western Sahara?

- . DFAT does not provide legal advice to companies.
- . DFAT draws attention to the international law considerations of importing resources from Western Sahara on its website and suggests companies seek independent legal advice on the issue.

If asked: How much phosphate rock is imported from Western Sahara?

- . DFAT has no official records of imports of phosphate rock from Western Sahara in 2006-07
 - however, we are aware that Australian companies import phosphate from Western Sahara.
- . Goods recorded as being shipped from Laayoune, designated under the United Nations Code for Trade and Transport Locations as a Moroccan port, are recorded as imports from Morocco

- questions on customs classifications should be referred to Customs.

If asked: Australian Trade with Morocco

- . In 2007, Australian exports to Morocco were worth \$18.3 million (meat, crude vegetable materials and sugar, molasses and honey) and imports were worth \$46 million (crude fertiliser, circuits and prepared seafood).

If asked: Doesn't the 1975 ICJ advisory opinion on Western Sahara mean that Western Saharans are entitled to independence?

- . No.
- . The court addressed two questions – first, was the territory, at the time it was colonised by Spain, terra nullius (ie belonging to no one) - and second: what were the legal ties between the territory and Morocco and Mauritania.
- . On the first point, the Court found that the territory was not terra nullius.
- . On the second point, the Court found that there were legal ties between Morocco and the territory and between Mauritania and the territory
 - in the case of Morocco, these legal ties demonstrated that some of the nomadic tribes in Western Sahara had pledged allegiance to the Moroccan sultan
 - but that this was insufficient to establish that Morocco had ties which would establish sovereignty over the territory
 - and therefore the peoples were still entitled to self-determination through the free and genuine expression of the will of the peoples of the territory.
- . Both sides in the dispute have focused on different aspects of the opinion – Morocco the first, and Algeria and the Polisario, the second.

Background

Western Sahara is classified by the United Nations as a Non-Self-Governing Territory and is, for practical purposes, under the de facto administration of Morocco. The Polisario Front and the Moroccan Government dispute sovereignty of Western Sahara, which Morocco annexed in 1975. In 1988, the parties to the conflict agreed in principle to UN settlement proposals for a ceasefire and a referendum to enable the people of Western Sahara to choose between independence and integration into Morocco. The UN-administered cease-fire has remained in effect since September 1991, but attempts to hold the referendum have failed. Australia contributed defence force personnel to the UN Mission for the Referendum in the Western Sahara (MINURSO) from September 1991 to May 1994.

The UN Secretary General in April 2006 recommended direct negotiations under UN auspices to break the ongoing deadlock. Morocco and the Polisario Front have held four rounds of direct negotiations under the auspices of the UN to break the ongoing deadlock, with the most recent held from 16 to 18 March 2008. Little real progress has been made in the last two rounds of negotiations and the dates for the next round of negotiations have not yet been set. The UNSG noted in his April 2008 Report on the Western Sahara that there was a need for to find a way out of the current political impasse. Separate to this report, the Secretary General's Special Envoy Peter van Walsum also gave a highly political and frank presentation in which he said an independent Western Sahara was 'not a realistic proposition'.

Australia's policy on Western Sahara

The ALP's policy platform on Western Sahara (as indicated in the ALP National Platform and Constitution Chapter 14) is that it "supports the right of the Saharawi people to self-determination". Specifically, Labor states it "will support UN efforts to organise a free and fair referendum on independence in Western Sahara and... to press Morocco to implement all UN resolutions with regards to the decolonisation process in Western Sahara, the last non-self-governing African territory on the UN decolonisation list." Labor also believes in "maintaining appropriate dialogue with the Polisario Front", S22(1)

A statement concerning Western Sahara by Kevin Rudd MP as Shadow Minister for Foreign Affairs is attached (July 2002).

The previous Australian Government supported a negotiated solution to the situation in Western Sahara that was acceptable to all directly interested parties. To date, Australia has not recognised the Sahrawi Arab Democratic Republic (SADR), a state proclaimed by the Polisario in Algeria in 1976 which claims sovereignty over the entire territory of Western Sahara.

Moroccan Autonomy Plan

In April 2007, Morocco sent the UN Secretary General a proposal for autonomy for Western Sahara under the sovereignty of Morocco ('Initiative for negotiating an Autonomy Statute for the Sahara Region'). Polisario also presented a proposal. The

Moroccan proposal for autonomy has been supported by both France and the United States as the preferred solution to the conflict.

On 13 February 2008, the Secretary-General of the Moroccan Ministry of Foreign Affairs and Cooperation, Mr Omar Hilale, delivered a letter to the Secretary from his Minister seeking Australia's support for Morocco's proposal. We have yet to reply to this proposal as we are currently awaiting a response from Minister Smith to our recommended approach.

UNSCR 1754 and UNSCR 1813

In April 2007 the Security Council adopted UNSCR 1754 calling upon the parties to enter into negotiations without preconditions and in good faith. The resolution welcomed "serious and credible Moroccan efforts to move the process forward towards resolution". On 30 April 2008, the Security Council adopted UNSCR 1813 extending the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) for one year. The resolution also recommended 'realism and a spirit of compromise... to maintain the momentum of the process of negotiations'.

S33(a)(iii), S33(b)

Refugees

A large number of Saharawi refugees live in camps in Tindouf province in Algeria. The Australian Government has no way of confirming exact numbers in the camps. The Algerian Government and Polisario claim there are 165,000 people in the camps, while Morocco contends the number is much lower at between 15,000 and 50,000. The UN has recorded 20,000 refugees in neighbouring Mauritania. The adoption of UNSCR 1813 on 30 April 2008 urged increased contact between separated refugee family members, including the exploration of establishing family visits by land, as well as by air.

There has been some media interest in the issue of human rights in the Western Sahara. Film magazine Screen Hub approached the Australian Government in April 2008 claiming they had documentary evidence of the use of slavery by the Polisario Front in refugee camps within Algeria. This has not been viewed by the Department. The Australian Government is concerned about any credible allegations of slavery but is not aware of specific facts in this case. Australia is a Party to both the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery since the 1950s.

Importation of Phosphate

Morocco exports phosphate, used across Australia for pasture improvement and crop growth. Phosphate sourced in Western Sahara is sold domestically S47G(1)(a)
S47G(1)(a)

import approximately 50 per cent of Western Sahara's phosphate production. Goods recorded as being shipped to Australia from the port of Laayoune are recorded as imports from Morocco.

The legal opinion of Hans Corell, UN Under-Secretary General for Legal Affairs, advises that as the inhabitants of Western Sahara are entitled to but have not as yet exercised their right to self-determination, the exploitation of natural resources from Western Sahara should only be undertaken for the benefit of the inhabitants of the territory. The opinion is not specifically directed at importing countries. However, no clear directions have come from the UN on how to deal with the import of natural resources from Western Sahara. There are no UN or bilateral sanctions in place against Western Sahara or Morocco.

The importation of phosphate sourced from Western Sahara to Australia was initially brought to public attention by media coverage in November 2005 of the death of two stowaways aboard the ship, Furness Karumba, carrying the phosphate. The shipment was being imported by Australian company S47G(1)(a) which said it had purchased the shipment from a Moroccan company with product sourced from a site in the Western Sahara.

Wesfarmers contacted DFAT for advice on the Government's position on Western Sahara on 7 November 2005, having received a letter from the Australian Western Sahara Association (AWSA) which claimed the imports were illegal under international law. There is no indication that DFAT was contacted by the importer on this issue prior to this point.

In response to a request of 7 November 2005 seeking advice on the Australian Government's position on Western Sahara, DFAT advised Wesfarmers that Australia does not provide legal advice to companies. It drew Wesfarmer's attention to legal commentary recently provided by the former UN Under-Secretary General for Legal Affairs on commercial activities involving the exploitation of natural resources of the Western Sahara, to the UN Human Rights Commission's Norms on the Responsibilities of Transnational Corporations, and the OECD's Guidelines for the Multinational Enterprises. DFAT also recommended that Wesfarmers seek independent legal advice on the issues. Norwegian insurance company KPA and Swedish investment fund Ohman Funds have recently divested holdings in Wesfarmers due to its imports of phosphate rock from Western Sahara.

DFAT currently recommends that all companies interested in doing business in Western Sahara seek independent legal advice on the issue, noting there are international law considerations with importing natural resources sourced from the Western Sahara, and has placed information to that effect on the DFAT website.

BACKGROUND DOCUMENTS*I. UN Office of the UN High Commissioner for Human Rights (OHCHR): 2006 Report of the OHCHR Mission to Western Sahara and the Refugee Camps in Tindouf*Background to report:

The mission took place following Sahrawi riots in May 2005 which were sparked by the transfer of Sahrawi prisoners. It continued and became violent in some cases. Hundreds of protestors were arrested. There were allegations of Moroccan human rights abuses (excessive use of force etc) in response to riots, including allegations of mistreatment and torture. Morocco claimed the demonstrations were illegal. The mission noted they received a very good level of cooperation from the parties. The report was not a public report (it was for the parties only) but was leaked to the media.

Conclusions:

- almost all violations of human rights examined stemmed from non-realisation of right to self-determination (both in Moroccan-administered territory and in Polisario-run camps);
- human rights were of concern, particularly in Morocco-administered Western Sahara: the Sahrawi people are denied the right to self-determination, as well as severe restrictions on other rights such as freedom of expression, association and assembly;
- Algeria has a responsibility for the approx 90,000 refugees (at the time) present in its territory.

The report made the following **three recommendations**:

- right to self-determination should be ensured without further delay;
- continuing international support for efforts of UN to achieve a solution consistent with right to self-determination, but also urgent measures taken by the parties to protect human rights and that HR be implemented in a less politicised manner;
- closer monitoring in Morocco and Algeria.

Background

Right to life, liberty and security: There were allegations of Moroccan human rights abuses (excessive use of force etc) in response to the riots, including allegations of mistreatment and torture. Moroccans claimed the demonstrations were illegal. Mission heard reports that Morocco wouldn't grant permission for protests. Questions were raised over whether Morocco had sufficiently investigated allegations of police mistreatment. Morocco said three police officers were under investigation, one of whom was charged (nfi). Report found *couldn't verify claims*, but recommend urgent measures to insure full application of ICCPR and CAT.

2. US Department of State 2007 Country Report on Human Rights – Western Sahara

A. Human Rights Issues – Morocco

- *political rights* for residents remained circumscribed, and citizens did not have the right to peacefully change their government
- *mistreatment*: human rights groups and Sahrawi activities maintained Polisario supports and pro-independence people were subjected to surveillance, arbitrary arrest, prolonged detention, and in many cases, torture
- *elections*: inhabitants of some provinces participated in Moroccan national and regional elections; Sahrawis with pro-Morocco political views filled all the parliamentary seats; none opposed to sovereignty were candidates in the elections.
- *disappearances*: in 2004, Morocco claimed to have released all information on disappearance cases (112) between 1975 and the early 1990s. However, international human rights groups estimated the number at between 1000 and 1500. Morocco has been paying reparations to family members who disappeared or had been detained. In 2007, the UN Human Rights Council's Working Group on Forced and Involuntary Disappearances dropped its demand to visit in light of Moroccan cooperation in resolving outstanding cases (decreasing from 249 in 1994 to 58 in November 07)
- *issues of impunity*: claims of beatings and torture etc against police officers not properly investigated.
- *lack of fair trial*: claims of coerced confessions, convictions based on flimsy evidence etc
- *excessive force* used to disperse demonstrations, and activists convicted of involvement.
- *Movement*: anti-government activists generally able to travel internationally; but sometimes faced intimidation.

B. Human Rights Issues - Polisario/Algeria:

- in 2005, released POWs from the righting, some of whom reportedly suffered serious physical and psychological health problems due to prolonged detention, abuse, and forced labour
- Morocco claims Polisario detained 45-50,000 Sahrawi refugees against their will in refugee camps. Polisario and Algeria said numbers much higher, and denied holding them against their will
- Moroccan Sahrawis claim some were taught weapons handling against will and sent to Cuba for military training.

Background Info in State Department Report

Morocco claims the Western Sahara territory, with a population of approximately 383,000; according to recent UN estimates, and administers Moroccan law and regulations in the estimated 85 percent of the territory it controls; however, Morocco and the Polisario (Popular Front for the Liberation of the Saguia el Hamra and Rio de Oro), an organization seeking independence for the region, dispute its sovereignty. Since 1973 the Polisario has challenged the claims of Spain, Mauritania, and Morocco to the territory.

Right to fair trial: conviction of 14 persons allegedly involved in riots. Received sentences of between 6 months and 3 years. Some were later pardoned by the King (in March and April 06). Claims that they had not received a fair trial and that written confessions had been extracted through beatings. Mission concerned “serious deficiencies” in the process but not in a position to assess the substance of the allegations.

Freedom of expression, assembly and association:

Expression: claims Sahrawi activists were targeted and harassed because of their advocacy on self-determination or referendum on independence. that Morocco prevents its sovereignty over Western Sahara from being questioned (eg allegations that internet sites are blocked etc. Morocco confirmed that assaults against territorial integrity of Morocco are banned by law.

Association: claims associations to do with self-determination, or highlighting Moroccan human rights abuses are banned or dissolved by Morocco. Confirmation by Morocco that they would not permit associations if their aims are to question the territorial integrity of Morocco.

Movement: allegations that Morocco had confiscated some passports not allowing Sahrawi people to travel.

Conditions in Refugee Camps in Algeria (run by the Polisario / SADR)

Nb/ Algeria claims SADR is responsible for camps in Algeria (as the government in exile). UN does not agree – says Algeria is responsible for conditions in its territory.

Polisario is the only party in the camps. While the Constitution of SADR contains a multi-party principle, this doesn't exist in practice. Polisario claims that this is only temporary, until full independence. The Polisario asserts itself as “the one and only legitimate representative of the Sahrawi people”.

Freedom of association: all associations met were linked to the Polisario. Therefore not able to assess the extent to which this right existed.

Freedom of assembly: all gatherings witnessed were organised by the Polisario or its mass organisations. Did not receive any allegations that there were restrictions; but unable to independently verify it. Referred to fact there was near total unemployment, but also that work was compulsory and unpaid.

Freedom of movement: there were allegations that refugees weren't able to leave the camps without Polisario permission, but couldn't verify this.

Economic, social and cultural rights: very little access to basic housing and healthcare.

The Moroccan government sent troops and settlers into the northern two-thirds of the territory after Spain withdrew in 1975 and extended its administration over the southern province of Oued Ed-Dahab after Mauritania renounced its claim in 1979. Moroccan and Polisario forces fought intermittently from 1975 until the 1991 ceasefire and deployment to the area of a UN peacekeeping contingent, known by its French initials, MINURSO (the UN Mission for a Referendum in Western Sahara).

In 1975 the International Court of Justice advised that during the period of Spanish colonization, legal ties of allegiance existed between Morocco and some of the Western Saharan tribes, but the court also found that there were no ties indicating "territorial sovereignty" by Morocco. The court added that it did not find "legal ties" that might affect UN General Assembly Resolution 1514 regarding the decolonization of the territory and in particular the principle of self-determination for its persons.

Sahrawis, as the persons from the territory are called, live in the area controlled by Morocco, and live as refugees in Algeria near the border with Morocco, and to a lesser extent in Mauritania. A Moroccan-constructed sand wall, known as the "berm," separates most Moroccan-controlled territory from Polisario-controlled territory.

In 1988 Morocco and the Polisario accepted the joint Organization of African Unity/UN settlement proposals for a referendum allowing the Sahrawis to decide between integration with Morocco or independence for the territory. Disagreements over voter eligibility were not resolved, however, and a referendum has not taken place.

In 1997 then UN secretary-general Kofi Annan appointed James Baker as his personal envoy to explore options for a peaceful settlement. Baker visited the territory, consulted with the parties, offered proposals to resolve the problem, and in 2001 presented a "framework agreement," which Morocco accepted but the Polisario and Algeria rejected. In 2003 Baker proposed a peace plan, which the UN Security Council endorsed. The plan proposed that a referendum consider integration with Morocco or independence and addressed other questions agreed to by the parties, such as self-government or autonomy. Morocco ultimately rejected the plan, while the Polisario accepted it.

In 2005 Kofi Annan appointed Peter van Walsum, a former Dutch ambassador to the UN, as his personal envoy to oversee the political process.

On October 31, the Security Council adopted Resolution 1783, extending MINURSO and its 227-member military staff until April 31, 2008. In the secretary-general's October report to the Security Council, he renewed a call for all parties to engage in dialogue with the UN High Commissioner for Human Rights to ensure adequate human rights protection for all. The resolution called on Morocco and the Polisario to continue negotiations and requested that the secretary-general facilitate the talks. The first round of discussion occurred in June and the second in August. Neither session produced breakthroughs, but the parties agreed to continue meeting. Resolution 1783 also called on member states to consider voluntary contributions to the Confidence Building Measures that allow increased contact between family members separated by

the dispute. The UN High Commission for Refugees (UNHCR) maintained a separate office in Laâyoune to coordinate these measures.

3. Human Rights Watch – World Report 2007

Nb- apparently HRW visited Tindouf camps in Algeria in May 2008 but report is not yet out.

- Morocco a 'mixed picture' on human rights. "Great strides" in addressing past abuses and allowed considerable space for public dissent and protest in recent years. But authorities, aided by complaisant courts, continue to use repressive legislation and police use excessive force to break up demonstrations. Controls are particularly tight in Western Sahara – pattern of excessive force in responding to demonstrations, some of which were violent.
- Morocco enacted a new law on torture (in February 2007), which provides prison terms for state agents guilty of torturing or ill-treating persons in custody
- Courts not independent in 'political cases' eg seven Sahrawis involved in 2005 protests. But notes all have been released.
- Generally tolerate work of human rights organisations, but controls tighter in Western Sahara.
- Restrictions on foreign travel of Sahrawi activists continued but decreased in recent years.
- Press freedom: media criticism "quite blunt" but there is a law providing prison terms for expressions "critical of Islam, the institution of the monarchy, or territorial integrity". Includes blocking access to Polisario sites.
- Acknowledging past abuses: Morocco's Equity and Reconciliation Commission (ERC) issued its report into grave human rights violations committed between 1956 and 1999 – including official acknowledgement of repression.
- Noted US and EU public comments on Morocco's human rights record are rare.

4. Amnesty International Report 2007

- Moroccan response to demonstrations in 2005: hundreds of arrests – though most freed. Eight were imprisoned in 2005 but released following royal pardons in 2006. At least 10 of those arrested claim to have been tortured or ill-treated in police custody.
- On Polisario, it noted the UN report's recommendation for closer human rights monitoring. It said those responsible for human rights abuses in camps in previous years continued to enjoy impunity, and that the Polisario Front took no steps to address this legacy.

Western Sahara: Question on Notice

Senator FAULKNER (New South Wales—Special Minister of State and Cabinet Secretary) (3.03 pm)—I seek leave to incorporate some information in response to a question that I was asked yesterday, also as the Minister representing the Minister for Foreign Affairs, by Senator Hanson-Young regarding Western Sahara. Leave granted.

The speech read as follows—

Would the Minister outline the government's position on the question of Western Sahara, specifically on the right of the people of Western Sahara to self-determination, given that back in 2002 as shadow foreign minister the Prime Minister stated that the people of Western Sahara must have a fair opportunity to determine their own future? Just to remind the Minister, I will read from a press release from Mr Rudd dated 30 July 2002: "It is time the UN acted and gave the Saharawis a fair opportunity to determine their own future."

[Supplementary question] It was my understanding that this was actually Labor Party policy. Could I have it clarified whether the Labor Party have changed their policy position on Western Sahara? In asking the Minister for details in terms of what the government are doing in relation to Western Sahara, could we have an explanation as to whether the government have made representations to the Moroccan government regarding the systematic violations of human rights in the occupied areas of Western Sahara, as well as asking for cooperation with the United Nations in its efforts to organise a referendum of self determination for the Saharawi people in accordance with UN resolutions and the verdict of the International Court of Justice?.

Response

The Australian Government's policy reflects its strong support for the efforts of the United Nations, and of the relevant parties—the Government of Morocco, and the Polisario Front—to press ahead to find an enduring settlement in relation to Western Sahara.

The Government believes that the people of Western Sahara must have a fair opportunity to determine their own future. The UN process currently underway provides that opportunity.

I take the opportunity to update the Chamber on recent UN efforts on this important question. In his report of 14 April 2008 on Western Sahara, the UN Secretary-General welcomed the parties' commitment to continuing negotiations commenced in 2007.

For many years, the UN focused on achieving agreement between the parties on the terms of a referendum on independence in the Western Sahara. Efforts are now focused on negotiations.

This new phase of international efforts to resolve the conflict began with the presentation of proposals by both parties—the Government of Morocco, and the Polisario Front—to the UN Secretary-General in April 2007. That same month, UN Security Council Resolution 1754 took note of the proposals, and called upon the parties to enter into negotiations 'without preconditions and in good faith' and stated

the clear objective of such negotiations was to achieve 'a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara'.

UNSCR 1813 of 30 April 2008 again welcomed the progress made by the parties to enter into direct negotiations.

The Australian Government endorses the spirit and the substance of these resolutions. It supports the efforts of the UN Secretary-General and the UN to improve the security and humanitarian situation of the people of Western Sahara.

The Government is aware of allegations of human rights violations with respect to Western Sahara and Western Saharans, which have been raised by both relevant parties. The Government gives a high priority to the protection of human rights, and calls on both parties to uphold international human rights standards. We are in active consultation with other countries concerning human rights in Western Sahara.

There is no doubt that the peace negotiations are still very difficult. The Government affirms its strong support for UN efforts to find a durable solution to the Western Sahara conflict acceptable to both parties.

Western Sahara: Policy

Lead agency: DFAT (MAB and ILB)

If asked: What is the Government's policy on Western Sahara?

- . The Government's policy reflects its strong support for the efforts of the United Nations, and of the relevant parties – the Government of Morocco, and the Polisario Front – to find an enduring settlement in relation to Western Sahara.
- . The Government believes that the people of Western Sahara must have a fair opportunity to determine their own future
 - this is the purpose of the UN process currently underway.
- . The UN has recently been active on the question.
- . In his report of 14 April 2008 on Western Sahara, the UN Secretary-General welcomed the parties' commitment to continuing negotiations commenced in 2007.
- . For many years, the UN focused on achieving agreement between the parties on the terms of a referendum on independence in the Western Sahara.
- . Efforts are now focused on negotiations.
- . This new phase of international efforts to resolve the conflict began with the presentation of proposals by both parties – the Government of Morocco, and the Polisario Front – to the UN Secretary-General in April 2007.
- . That same month, UN Security Council Resolution 1754 took note of the proposals, and called upon the parties to enter into negotiations 'without preconditions and in good faith'
 - and stated the clear objective of such negotiations: to achieve 'a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara'.
- . UNSCR 1783 of 31 October 2007 supported the negotiations.
- . Four rounds have now been held, most recently from 16 to 18 March this year.
- . UNSCR 1813 of 30 April 2008 again welcomed the progress made by the parties to enter into direct negotiations, and called upon the parties 'to continue to show political will and work in an atmosphere propitious for dialogue in order to enter into a more intensive and substantive phase of negotiations'.
 - it endorsed the view of the UN Secretary General, that 'realism and a spirit of compromise by the parties are essential to maintaining the momentum of the process of negotiations'
 - it noted the 'role and responsibilities of the parties' in achieving a solution.
- . The Government has endorsed the spirit and the substance of these resolutions. It supports the efforts of the UN Secretary-General and the UN to improve the security and humanitarian situation of the people of Western Sahara.

The Government strongly supports UN efforts to find a durable solution to the Western Sahara conflict acceptable to both parties.

If asked: Is this the same as the ALP Policy Platform?

Not for me to address questions of ALP policy.

If asked: Does the Government support a referendum on independence?

- The Government supports UN efforts to find a political settlement
 - for many years, the UN was focused on the terms of a referendum, which would include the option of independence
 - and Australia supported efforts to achieve this.
- UN efforts are now focused on negotiations “without preconditions”.
- Both Morocco and the Polisario have put forward proposals to resolve the status of Western Sahara
 - these proposals are being discussed under UN auspices
 - will ultimately be a matter for the directly interested parties to determine (note: France and US support autonomy; UK and Canada have not taken sides)
 - the Government would support a referendum on independence if that was agreed to by the parties.

S22(1)

Does the Government support the right of the people of Western Sahara to self-determination?

- Yes. The Government supports the ongoing UN process which is attempting to assist the parties to achieve a lasting and mutually acceptable political solution and provide for the self determination of the people of Western Sahara.

- Note that UN Security Council Resolution 1754 of April 2007 called upon the

parties to enter into negotiations 'without preconditions and in good faith' and stated the clear objective of such negotiations: to achieve 'a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara'.

There is disagreement on how the people of Western Sahara are to exercise their right to self determination

- which is what the UN-sponsored process, with the support of the international community, is trying to resolve.

If pressed: self determination can take a number of forms

- it can be "internal", where minority rights are accommodated through greater political autonomy and devolution of decision making power; or
- it can be "external", and involve secession or the creation of a new state.

Ultimately, it is up to the parties themselves – assisted by the UN - to resolve these questions in the context of a just and lasting political settlement.

If asked: Doesn't the 1975 ICJ advisory opinion on Western Sahara mean that Western Saharans are entitled to independence?

No.

The court addressed two questions – first, was the territory, at the time it was colonised by Spain, terra nullius (ie belonging to no one) - and second: what were the legal ties between the territory and Morocco and Mauritania.

On the first point, the Court found that the territory was not terra nullius.

On the second point, the Court found that there were legal ties between Morocco and the territory and between Mauritania and the territory

- in the case of Morocco, these legal ties demonstrated that some of the nomadic tribes in Western Sahara had pledged allegiance to the Moroccan sultan
- but that this was insufficient to establish that Morocco had ties which would establish sovereignty over the territory
- and therefore the peoples were still entitled to self-determination through the free and genuine expression of the will of the peoples of the territory.

Both sides in the dispute have focused on different aspects of the opinion – Morocco the first, and Algeria and the Polisario, the second.

What is the Government's position on UN General Assembly resolutions on Western Sahara?

UNGA considers a resolution on “The Question of Western Sahara” each year

– it has usually been adopted by consensus in recent years.

Since 1997, the resolution has have been put to a vote on two occasions, at UNGA 59 (2004) and UNGA 61 (2006).

Australia abstained on these resolutions at UNGA 59 and UNGA 61, along with many other states

– we were disappointed that the parties could not agree on a consensus text.

If asked: which other states abstained? At UNGA 61, 91 states abstained (70 supported), including US, Canada, France, Japan and Denmark.

If asked: Why won't the Government ban the importation of phosphate sourced from Western Sahara? Didn't a UN legal opinion confirm this was illegal?

The Government does not ban the importation of phosphates from Western Sahara

- the UN has not imposed restrictions on the trade (UNSC sanctions)
- and we are not aware of any country which maintains autonomous sanctions against the trade
- if the UN were to impose sanctions, then obviously Australia would implement them.

However, we are conscious of the status of Western Sahara as a non-self governing territory

- and we therefore draw companies' attention to the international law considerations involved in importing natural resources sourced from the Western Sahara.
 - : and recommend that companies seek legal advice before importing such material.

If asked: Doesn't Norway prohibit the trade?

No.

If asked: But doesn't the 2002 legal opinion of the former UN Under Secretary-General for Legal Affairs, Hans Correll mean that trade in phosphates from Western Sahara is illegal?

- . No.
- . The opinion sets out in general terms the international law principles related to non-self governing territories
 - and in particular the principle that the taking of natural resources by an administering power from a non-self governing territory should only be undertaken for the benefit of the inhabitants of the territory
 - it does not form a view on whether the trade of natural resources from Western Sahara is contrary to this principle.
- . Mr Correll's opinion is not legally binding and does not set out measures to be taken by states regarding imports from Western Sahara
 - there are no United Nations Security Council sanctions or Australian bilateral sanctions prohibiting imports from Western Sahara or Morocco.

If asked: What steps has DFAT undertaken to ensure that the benefits of the phosphate trade go to the Western Saharan people?

- . The Government is not in a position to independently verify whether Morocco's de facto administration of Western Sahara is for the benefit of the Western Saharan people
 - we support the UN process, which is aimed at achieving a negotiated outcome on the question of how the Western Saharan people are to exercise their right to self-determination.

If asked: Has DFAT provided advice to companies on the legality of importing resources such as phosphate from Western Sahara?

- . DFAT does not provide legal advice to companies.
- . DFAT draws attention to the international law considerations of importing resources from Western Sahara on its website and suggests companies seek independent legal advice on the issue.

If asked: How much phosphate rock is imported from Western Sahara?

- . DFAT has no official records of imports of phosphate rock from Western Sahara in 2006-07
 - however, we are aware that Australian companies import phosphate from Western Sahara.
- . Goods recorded as being shipped from Laayoune, designated under the United Nations Code for Trade and Transport Locations as a Moroccan port, are recorded as imports from Morocco
 - questions on customs classifications should be referred to Customs.

If asked: Australian Trade with Morocco

- . In 2007, Australian exports to Morocco were worth \$18.3 million (meat, crude vegetable materials and sugar, molasses and honey) and imports were worth \$46 million (crude fertiliser, circuits and prepared seafood).

If asked: What is the current legal status of Western Sahara?

- . Western Sahara is classified by the United Nations as a Non-Self-Governing Territory
 - and is for practical purposes, under the de facto administration of Morocco.

If asked: What is the status of negotiations on Western Sahara's future?

- . The parties (Morocco and Polisario) have held four rounds of talks, with the most recent round held from 16 to 18 March 2008
 - little progress has been made in the last two rounds of negotiations
 - : the dates for the next round of negotiations have not yet been set.

If asked: does the Government recognise the Polisario Front as the legitimate representative of the people of Western Sahara?

- . The Polisario Front participates in the UN negotiations
 - and as such is clearly an important representative body for Western Saharan people.

If pressed: But is it the only representative?

- . Would be hard to preclude the emergence of other Western Sahara voices as the situation evolves.

S22(1)

If asked: What is the Government's position on the Moroccan Initiative for negotiating an Autonomy Statute for the Sahara Region?

- . Government welcomes contributions such as the Moroccan autonomy proposal to assist efforts towards a just and lasting negotiated settlement.

If asked: Is Australia aware of human rights violations in Western Sahara?

- . The Government is aware of allegations of human rights violations with respect to Western Sahara, which have been raised by both sides.
 - in the Moroccan administered territory of Western Sahara
 - as well as in the refugee camps run by the Polisario in Algeria.
- . The Government gives a high priority to the protection of human rights, and calls on all parties to uphold international human rights standards.
- . We are in active consultation with other countries concerning human rights in Western Sahara.

Human Rights - Morocco

- . In recent years, there have been some improvements in Morocco observance of human rights
 - the Human Rights Watch 2007 World Report noted Morocco has made “great strides in addressing past abuses and allowed considerable space for public dissent and protest in recent years”.
- . Welcome convictions of two Moroccan policemen in June 2007 for their

involvement in the death of a 24 year old Western Saharan.

However, international human rights organisations report that problems remain.

These include:

- alleged harassment and arrest of Western Saharan human rights and political activists
- limits on rights of freedom of expression, association and assembly
- judicial processes which fell short of international standards regarding human rights activists or supporters of independence

A number of complaints are associated with the 2005 riots/protests in Western Sahara and their aftermath.

There has also been some positive movement on Western-Saharan refugee issues between Morocco and the Polisario

- UNHCR-sponsored family visits have helped unite approximately 6000 people, and increased use of telephone hook-ups to allow families to communicate.

Human Rights - Polisario

The major concerns which have been highlighted, connected to the Polisario-run camps in Algeria, are:

- allegations that refugees are pressured by the Polisario to remain the camps, and
- suggestions that refugees have been forced to work without pay

Would note Algeria's position is that it is not responsible for what happens in the camps

- it claims that this is responsibility of the Polisario.

If asked: Has the Australian Government made representations to Morocco about its human rights abuses?

Government takes human rights issues very seriously

We pay careful attention to human rights reports

- and have been speaking with a number of countries about the human rights situation in Western Sahara.

We will consider our approach to human rights representations in light of these discussions.

If pressed: we are not aware of human rights representations in recent years.

If asked: Is Australia aware of allegations of slavery in Western Sahara refugee camps within Algeria?

We would be concerned about any credible allegations of slavery

- not aware of specific facts in this case.

Background

Senator Faulkner answered a Question on Notice on Western Sahara on 16 October (attached).

Western Sahara is classified by the United Nations as a Non-Self-Governing Territory and is, for practical purposes, under the de facto administration of Morocco. The Polisario Front and the Moroccan Government dispute sovereignty of Western Sahara, which Morocco annexed in 1975. In 1988, the parties to the conflict agreed in principle to UN settlement proposals for a ceasefire and a referendum to enable the people of Western Sahara to choose between independence and integration into Morocco. The UN-administered cease-fire has remained in effect since September 1991, but attempts to hold the referendum have failed. Australia contributed defence force personnel to the UN Mission for the Referendum in the Western Sahara (MINURSO) from September 1991 to May 1994.

The UN Secretary General in April 2006 recommended direct negotiations under UN auspices to break the ongoing deadlock. Morocco and the Polisario Front have held four rounds of direct negotiations under the auspices of the UN to break the ongoing deadlock, with the most recent held from 16 to 18 March 2008. Little real progress has been made in the last two rounds of negotiations and the dates for the next round of negotiations have not yet been set. The UNSG noted in his April 2008 Report on the Western Sahara that there was a need for to find a way out of the current political impasse. Separate to this report, the Secretary General's Special Envoy Peter van Walsum also gave a highly political and frank presentation in which he said an independent Western Sahara was 'not a realistic proposition'.

ALP policy on Western Sahara

The ALP's policy platform on Western Sahara (as indicated in the ALP National Platform and Constitution Chapter 14) is that it "supports the right of the Saharawi people to self-determination". Specifically, Labor states it "will support UN efforts to organise a free and fair referendum on independence in Western Sahara and... to press Morocco to implement all UN resolutions with regards to the decolonisation process in Western Sahara, the last non-self-governing African territory on the UN decolonisation list." Labor also believes in "maintaining appropriate dialogue with the Polisario Front", who it recognises as the "legitimate representative of the people of Western Sahara".

A statement concerning Western Sahara by Kevin Rudd MP as Shadow Minister for Foreign Affairs is attached (July 2002).

Moroccan Autonomy Plan

In April 2007, Morocco sent the UN Secretary General a proposal for autonomy for Western Sahara under the sovereignty of Morocco ('Initiative for negotiating an Autonomy Statute for the Sahara Region'). Polisario also presented a proposal. The Moroccan proposal for autonomy has been supported by both France and the United States as the preferred solution to the conflict.

On 13 February 2008, the Secretary-General of the Moroccan Ministry of Foreign Affairs and Cooperation, Mr Omar Hilale, delivered a letter to the Secretary from his Minister seeking Australia's support for Morocco's proposal.

UNSCR 1754 and UNSCR 1813

In April 2007 the Security Council adopted UNSCR 1754 calling upon the parties to enter into negotiations without preconditions and in good faith. The resolution welcomed "serious and credible Moroccan efforts to move the process forward towards resolution". On 30 April 2008, the Security Council adopted UNSCR 1813 extending the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) for one year. The resolution also recommended 'realism and a spirit of compromise... to maintain the momentum of the process of negotiations'.

S33(a)(ii), S33(b)

Refugees

A large number of Saharawi refugees live in camps in Tindouf province in Algeria. The Australian Government has no way of confirming exact numbers in the camps.

The Algerian Government and Polisario claim there are 165,000 people in the camps, while Morocco contends the number is much lower at between 15,000 and 50,000. The UN has recorded 20,000 refugees in neighbouring Mauritania. The adoption of UNSCR 1813 on 30 April 2008 urged increased contact between separated refugee family members, including the exploration of establishing family visits by land, as well as by air.

Importation of Phosphate

Morocco exports phosphate, used across Australia for pasture improvement and crop growth. Phosphate sourced in Western Sahara is sold domestically S47G(1)(a)
S47G(1)(a) Australia and New Zealand import approximately 50 per cent of Western Sahara's phosphate production. Goods recorded as being shipped to Australia from the port of Laayoune are recorded as imports from Morocco. S22(1)

S42(1)

There are no UN or bilateral sanctions in place against Western Sahara or Morocco.

The importation of phosphate sourced from Western Sahara to Australia was initially brought to public attention by media coverage in November 2005 of the death of two stowaways aboard the ship, Furness Karumba, carrying the phosphate. The shipment was being imported by Australian company S47G(1)(a) which said it had purchased the shipment from a Moroccan company with product sourced from a site in the Western Sahara.

S42(1), S47G(1)(a)

S42(1), S47G(1)(a)

S42(1), S47G(1)(a)

DFAT currently recommends that all companies interested in doing business in Western Sahara seek independent legal advice on the issue, noting there are international law considerations with importing natural resources sourced from the Western Sahara, and has placed information to that effect on the DFAT website.

Prepared by:
S22(1)

Cleared by:
Andrea Faulkner AS MAB x 3085

UNCLASSIFIED



S22(1) People/DFATL
26/11/2008 02:54 PM

To S22(1) People/DFATL@DFATL
cc
bcc

Subject S47G(1)(a)Western Sahara [SEC=UNCLASSIFIED]

fyi, remind me we need to get back to this person.

S22(1)
Director, Middle East Section
Department of Foreign Affairs & Trade
Tel: 61-2 6261 9015 || Fax: 61-2 6160 9015

S22(1)

Paul Foley/People/DFATL
17/11/2008 03:18 PM

To S22(1) People/DFATL@DFATL, S22(1)
cc S22(1) People/DFATL@DFATL

Subject S47G(1)(a)Western Sahara [SEC=UNCLASSIFIED]

S22(1)

This is from S47G(1)(a) who as you know are major stakeholders in the WS issue in the Australian context. They have plants in a number of states incl WA

Paul Foley
Assistant Secretary
Counter Terrorism Branch
Department of Foreign Affairs and Trade
BARTON ACT 0221
Phone (02) 6261 2180

— Forwarded by Paul Foley/People/DFATL on 17/11/2008 03:15 PM —



S47G(1)(a)
17/11/2008 02:28 PM

To S22(1)
<Paul.Foley@dfat.gov.au>
cc S47G(1)(a)
S47G(1)(a) Western Sahara [SEC=UNCLASSIFIED]

Dear S22(1) Paul,

I was in a meeting last week on phosphorus sustainability and Polisario Front representative to Australia, Kamal Fadel was also involved. Whilst the meeting was not specifically about the Western

Sahara and Morocco the issue was discussed.

It reminded me that I should probably follow up with you to check whether there have been any changes in the Governments position or approach since we talked in December last year.

Many thanks in anticipation.

Regards

S47G(1)(a)

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S47G(1)(a)

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S22(1) [redacted]
People/DFATL
30/03/2009 09:30 PM

To: S22(1) [redacted] People/DFATL@DFATL
cc: S22(1) [redacted] /People/DFATL@DFATL
bcc: [redacted]
Subject: S47G(1)(a)Western Sahara [SEC=UNCLASSIFIED]

grateful if you could respond. happy to discuss.

--- Forwarded by S22(1) [redacted] People/DFATL on 30/03/2009 09:29 PM ---



S47G(1)(a)
30/03/2009 03:10 PM

To: S22(1) [redacted] @dfat.gov.au>
cc:
Subject: S47G(1)(a)Western Sahara [SEC=UNCLASSIFIED]

Dear S22(1) [redacted]

I received the below reply from Paul Foley in November last year. I would appreciate it if you could supply a quick update on the Government's position on the Western Sahara, in particular as it might relate to phosphate rock purchases.

S47G(1)(a)

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S47G(1)(a)

From: Paul.Foley@dfat.gov.au [mailto:Paul.Foley@dfat.gov.au]
Sent: Monday, 17 November 2008 3:16 PM
To: S47G(1)(a)
Cc: s22(1)
Subject: S47G(1)(a) Western Sahara [SEC=UNCLASSIFIED]

Dear S47G(1)(a)

Thanks for your email, both s22(1) and myself have changed jobs. I have forwarded your email to my successor in the Middle East and Africa Branch, Ms Andrea Faulkner for a response.

with best regards

Paul Foley
Assistant Secretary
Counter Terrorism Branch
Department of Foreign Affairs and Trade
BARTON ACT 0221
Phone (02) 6261 2180

S47G(1)(a)

To S22(1)@dfat.gov.au>,
<Paul.Foley@dfat.gov.au>

17/11/2008 02:28 PM

cc S47G(1)(a)

S47G(1)(a) - Western Sahara
[SEC=UNCLASSIFIED]

Dear S22(1) and Paul,

I was in a meeting last week on phosphorus sustainability and Polisario Front representative to Australia, Kamal Fadel was also involved. Whilst the meeting was not specifically about the Western Sahara and Morocco the issue was discussed.

It reminded me that I should probably follow up with you to check whether there have been any changes in the Governments position or approach since we talked in December last year.

Many thanks in anticipation.

Regards

S47G(1)(a)

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S47G(1)(a)

S47G(1)(a)

UNCLASSIFIED

DFAT - DECLASSIFIED

CASE: 1202-F90

COPY ISSUED UNDER FOI Act 1982

Exported by S22(1) - 02:59 PM Wednesday, 6 July 2011

S22(1)

Title: Morocco: foreign policy overview

MRN: S22(1)

To:

Cc:

From: Paris EMB

From File:

References:

Response: Routine, Information Only

RESTRICTED

S33(b)

DFAT - DECLASSIFIED

CASE: 1202-F90

COPY ISSUED UNDER FOI Act
1982

Page 1 of 7

REDACTED

REDACTED

S22(1)

[Redacted]

S33(b)

text ends

Sent by:

S22(1)

Prepared by:

Approved by:

Topics:

INTERNATIONAL SECURITY/Terrorism, POLITICAL-ECONOMIC/Domestic Political,
POLITICAL-ECONOMIC/General Economic, POLITICAL-ECONOMIC/International Political

Canberra distribution

S22(1)

[Redacted]

S22(1)

REDACTED

S22(1)

REDACTED

S22(1)

REDACTED

S47G(1)(a)

REDACTED

Exported by S22(1) 02:51 PM Wednesday, 6 July 2011

S22(1)

Title: UNGA 64: Fourth Committee: Western Sahara**MRN:** S22(1)**To:****Cc:****From:** UN New York**From File:** S22(1)**References:****Response:** Routine, Information Only**UNCLASSIFIED****Summary**

The UNGA Fourth Committee has continued to hear statements from the numerous "petitioners" on Western Sahara along usual lines. On 8 October, Cate Lewis from the Australia Western Sahara Association spoke, criticising Wesfarmers and Incitec for importing phosphate from Western Sahara. Earlier in the day, a representative of "Together Foundation" criticised two Australian documentary makers for their film alleging slavery in Saharawi camps.

Summaries of Fourth Committee's proceedings are available at www.un.org/ga/fourth/pr.shtml.

text ends

Sent by:**Prepared by:****Approved by:****Topics:**

UN & COMMONWEALTH/UN Discussions

Canberra distribution

S22(1)

S22(1)

REDACTED

S22(1)

REDACTED

UNCLASSIFIED

S22(1)

To S22(1)

cc

28/01/2010 07:00 PM

bcc

Subject Fw: Western Sahara [SEC=UNCLASSIFIED]

Hi S22(1) just heard the second round of informal negotiations likely to take place between 9-11 February.

Best

Lisa

Ambassade d'Australie

S22(1)

— Forwarded by Lisa Mittelman/People/DFATL on 28/01/2010 06:59 PM —

S22(1)

28/01/2010 06:05 PM

To S22(1)

cc

Subject Re: Western Sahara [SEC=UNCLASSIFIED]

Hi S22(1)

A few comments on your draft senate estimates brief:

- I would take out the "most recently" in front of UNSCR 1871 was adopted.....

You might want to add that the resolution was adopted unanimously and also extended the mandate of the UN mission in Western Sahara (MINSURSO) until April 2010.

Re: the last line on the first page, as far as I understand the fifth round of negotiations has not yet taken place (see article attached below). In August 2009 the first round of informal talks were held in Vienna to prepare for a possible fifth round of negotiations. In December 2009 Morocco and the Polisario Front both expressed their willingness to participate in a fifth round of negotiations. A second round of informal talks to prepare for the fifth round of negotiations is expected to take place in early 2010. (please note you mention the fifth round of negotiations at several points in the brief).

With regard to the UNGA resolution - S22(1) suggests 4th committee passed a resolution on western sahara without vote (AC/4/64/L.7). See also S22(1) for some issues which arose in relation to phosphate exports from western sahara.

The line on seeking legal advice on phosphate exports from Polisario seems to be inline with website as you suggest.

S33(b)

Although we have not seen this advice, so can't verify.

According to latest figures from Austrade : Australia's exports to Morocco in 2008-2009 were valued at \$37 million. Major exports were meat (\$8m), butter (\$7m), machinery (\$2m) and plastic parts (\$2m). Our imports totalled \$237 million, \$177 million of which was phosphate;

Hope that's helpful

Best regards

S22(1)

Ambassade d'Australie

S22(1)

Morocco, Polisario amenable to new Western Sahara talks

2009-12-28

Amidst support from the UN, Spain and the United States, both Morocco and the Polisario are offering to return to the negotiating table.

By Naoufel Chirkaoui from Rabat for Magharebia — 28/12/09

Morocco and the Polisario Front are prepared to participate in a new round of UN-brokered talks on the fate of the Western Sahara.

"Morocco reiterates its willingness to co-operate with [UN Secretary General Ban Ki-moon] and [UN Western Sahara Envoy Christopher Ross] in implementing the relevant Security Council resolutions pertaining to ... intensive and substantive negotiations on the basis of reality and agreement", Moroccan Foreign Minister Taieb Fassi-Fihri said at a December 23rd parliamentary session.

That same day, Polisario leader Mohamed Abdelaziz told wakteldjazair.com, "We are prepared to take part in the negotiations proposed by the UN, the framework of which has been clearly set; that is, direct negotiations, with no preset conditions, aimed at finding a just solution that ensures the right of self-determination to the Saharan people."

Martin Nesirky, the spokesperson for the UN secretary-general, said in a December 22nd press conference in New York that Ross was planning a second meeting for informal negotiations early next year.

Both Morocco and the Polisario outlined their concerns about the proposed talks.

Fassi-Fihri told Moroccan parliamentarians that the talks must "take into consideration the efforts exerted by our country, after submitting our proposal, which is a milestone on the road of the UN handling of our legitimate cause, in order to arrive at a final political solution, that agrees with our constant principles and pillars of sovereignty".

The minister said that he and Ban Ki-moon had spoken on December 10th about how to launch the new round of talks. The negotiations would "underscore Morocco's commitment to the option of political negotiations as the best means of resolving the conflict, as well as the need for the UN to act to push negotiations out of their stalemate and create the right atmosphere for the fifth series [of talks]", Fassi-Fihri added.

Meanwhile, Abdelaziz said a "free, just and transparent referendum is the only democratic solution that enables the people of the Sahara to make a choice".

"That is the core of the Sahara proposal submitted in 2007, which is aligned with international laws and legitimacy, on the one hand, and the strategic, economic and security interests of Morocco, on the other hand, should the Saharan people opt for independence," the Polisario leader added.

Moreover, he said, while the Polisario "has repeatedly announced that it is willing to pursue direct negotiations, and stressed the need to create the right conditions for that", Morocco was "not willing to realize those conditions, since it is persisting in its grave violations of human rights in the Western Sahara and the south of Morocco".

Fassi-Fihri denied Abdelaziz' accusations that Morocco has been cracking down on the Saharan people, saying, "As the official diplomatic moves of the enemies of Morocco's territorial integrity have run out of steam within the UJN and elsewhere, and as demands for recognising that illusory existence have died out, the strategy of the enemies is now focused on cheap exploitation of what they call violations of human rights in the southern territories."

Yet even as the diplomatic sparring between the two sides continues, other countries are adding their voice to the calls for renewed talks.

US Secretary of State Hillary Clinton said on December 18th that she seconded Ban Ki-moon's call for a fifth round of direct negotiations as soon as possible, and that she supports Ross' efforts to resolve the Western Sahara issue.

In a statement released on December 17th, Spanish Prime Minister Jose Luis Rodriguez Zapatero said his country hoped to see all parties back at the table as soon as possible so as to find an "acceptable, just and final political solution to the problem".

The Spanish government shares the concerns of the international community concerning meeting all the conditions for holding new rounds of talks, Zapatero added.

Last August, an informal meeting was held in Austria to prepare for the fifth round of negotiations. The meeting included Algeria and Mauritania, as well as representatives of Morocco and the Polisario Front.

S22(1)



S22(1)

28/01/2010 08:36 AM

To S22(1)

cc

Subject Western Sahara [SEC=UNCLASSIFIED]

S22(1)

As you may be aware we are frantically preparing for estimates (our section alone has 18 briefs due tomorrow). We're again putting together a brief on Western Sahara.

I've gone through last year's effort and highlighted bits that may require an update, which I'm busily doing. Just wondering if you could confirm as to whether any further talks have occurred since August 2009 (my understanding is that there have not been any)? I've had a look through the cable system but have not seen any reporting suggesting major developments have occurred.

Any insights you might provide overnight would be most welcome.

{attachment "101120 DRAFT Senate Estimates Brief - Morocco Western Sahara.doc" deleted by S22(1)
S22(1)}

Thanks and regards,

S22(1)

UNCLASSIFIED

REDACTED

REDACTED

REDACTED

S47C(1)

219

REDACTED

REDACTED

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S47C(1)

REDACTED

REDACTED

S47C(1)

REDACTED

REDACTED

REDACTED

S47C(1)

REDACTED

UNCLASSIFIED

S22(1)

24/08/2010 05:13 PM

To S22(1)

cc

bcc

Subject Re: Fw: Western Sahara investment enquiry
[SEC=UNCLASSIFIED]

ODIN Topic: LEGAL
TRIM File Ref:

S22(1)

S22(1) will be back in INT on Thursday and I will ask her to contact you regarding this issue then.
Apologies for the delay in responding to you.

Kind regards,

S22(1)

International Law Section
Department of Foreign Affairs and Trade

S22(1)

Please note, I am not in the office on Wednesdays.

This email and any attachments are confidential and may contain legally privileged information. This is not a national security classification.

S22(1)



S22(1)

18/08/2010 03:24 PM

To S22(1)

cc

Subject Fw: Western Sahara investment enquiry
[SEC=UNCLASSIFIED]

Hi S22(1)

Wondering if we can have a chat when you get a chance re: responding to the below query from

S47G(1)(b)

S47G(1)(b) Given

we advise companies to seek independent legal advice on the international law implications of trade/investment in Western Sahara, I presume we couldn't ask a government minister to write a letter in support of an Australian company bidding for a tender in that area.

Look forward to discussing when convenient.

Best regards

S22(1)

Middle East and North Africa Section
Department of Foreign Affairs and Trade

S22(1)

----- Forwarded by S22(1) on 05/08/2010 11:14 AM.-----

S22(1)
To: Justin Hayhurst/People/DFATL@DFATL
eople/DFATL
20/07/2010 02:49 PM
cc: "Sharma, Dave" <Dave.Sharma@pmc.gov.au>
S22(1)
Subject: Re: Western Sahara investment enquiry [SEC=UNCLASSIFIED]

Thanks Dave, we will follow up. Regards S22(1)
Justin Hayhurst/People/DFATL

Justin Hayhurst/People/DFATL
20/07/2010 02:02 PM
To: "Sharma, Dave" <Dave.Sharma@pmc.gov.au> S22(1)
cc: S22(1)
Subject: Re: Western Sahara investment enquiry [SEC=UNCLASSIFIED]

Western Sahara is S22(1) (I've copied her to this message).

Somebody from her branch should get back in touch (there are legal issues that companies need to be aware of).

JH

Justin Hayhurst
Assistant Secretary
Africa Branch
Department of Foreign Affairs and Trade
Ph: +61-2-62613085

"Sharma, Dave" <Dave.Sharma@pmc.gov.au>



"Sharma, Dave"
<Dave.Sharma@pmc.gov.au>
20/07/2010 01:52 PM

To: "Justin.Hayhurst@dfat.gov.au"
<Justin.Hayhurst@dfat.gov.au>
cc: S22(1)
Subject: Western Sahara investment enquiry [SEC=UNCLASSIFIED]

Justin,

S22(1) S47G(1)(a)
S47G(1)(a)

slow. Not sure why Austrade was directing this company to get in touch with the PMO, but there you go.

2 questions:

- Is Western Sahara your patch?
- Can I ask that someone from your Branch get back in touch with [S47G(1)(a)] to follow up, even if it's to say we can do nothing to help?

Dave

From: Kym-Hewett (Dubai) [mailto:Kym.Hewett@austrade.gov.au]
Sent: Saturday, 15 May 2010 7:42 PM
To: [S47G(1)(a)]
Subject: RE: Green Contact not deliverable

David,

Try these two and let me know how you go:

Philip.Green@dfat.gov.au;

[S47F(1)]

Kym Hewett

Consul General & Senior Trade Commissioner

Australian Consulate General, Dubai

Tel: +971 4 508 7100

Fax: +971 4 355 1547

[S47F(1)]

Email: kym.hewett@austrade.gov.au

REDACTED

REDACTED

S47F(1)

12 June 2010

Dear Mr Crean,

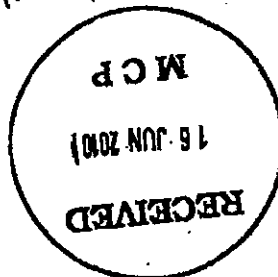
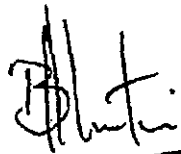
Subject: Import of phosphates from Western Sahara

I wish to bring to your attention the fact that a number of Australian companies are importing phosphate rock from the Bou Craa region of Western Sahara, despite this country being under the military occupation of Morocco since 1975. The official status of Western Sahara is as "a non-self-governing territory" by the United Nations, and the government in exile, the Sahrawi Arab Democratic Republic, disputes Morocco's control of the territory. By trading in resources from a territory under a military occupation repeatedly criticised for its actions by international human rights organisations such as Amnesty International, Human Rights Watch, and the World Organization Against Torture, Australia is supporting that occupation and depriving a future independent Western Saharan state of its major natural resource.

I urge you to contact the appropriate companies - Incitec Pivot Limited in Victoria, Impact Fertiliser in Tasmania, and Wesfarmers in Western Australia - and insist that they develop alternative sources for phosphate fertiliser such as biosolids, or halt the trade until the Sahrawi people have majority control of the resource.

If Australia can halt this pernicious trade then Morocco will have a real incentive to resolve the dispute in Western Sahara.

Yours Sincerely,



Office of the
MINISTER FOR TRADE
DFAT AUSTRALIA AUSAID ACIAR MO

Adviser: RECEIVED *MC*
17 JUN 2010

Reply within one ~~two~~ weeks
 Reply for signature of Minister
 Reply for signature of:
 Senior Adviser
 Adviser

Departmental reply
 Acknowledgement
 For Information
 For Advice
 Required to: *[Signature]*

Comments:

UNCLASSIFIED

S22(1)

30/08/2010 05:43 PM

To S22(1)

cc

bcc

Subject Re: Fw: Western Sahara investment enquiry
[SEC=UNCLASSIFIED]

ODIN Topic: LEGAL

TRIM File Ref:

S22(1)

Thanks for your message and please accept our apologies for the delay in responding to your email.

You have asked whether the Australian Government could write in support of an Australian bid for an exploration tender in the Western Sahara.

International law considerations

As you have noted, DFAT advises companies that there are international law considerations associated with importing natural resources sourced from the Western Sahara and recommends companies seek independent legal advice about the exploitation of the natural resources of the Western Sahara. This information is provided on DFAT's website. Please let us know if you would like further information about this point.

Assisting Australian business overseas

We also note Administrative Circular P0874, which is about assisting Australian business overseas. Paragraph 8 provides that the Government may make government to government representations on behalf of the business or industry where:

- a broader Australian interest is served; and/or
- government barriers to trade exist; and or
- representations could assist in ensuring the integrity and transparency of government tender and selection processes.

The administrative circular outlines at paragraph 14 that letters of support would be consistent with the Department's role where:

- Australian Government support would be helpful and appropriate;
- the flow-on to Australian business would be substantial;
- HOM/HOPs are able to satisfy themselves that the business is a bona fide Australian business; and
- the provision of the letter of support will not damage Australia's trading reputation or bring Australia, the Australian Government or the Department into disrepute.

The Trade Liaison Section provides further advice about the application of this administrative circular. I have copied S22(1) from TLS into this message.

Please let us know if you have any queries about any aspect of this email.

regards,

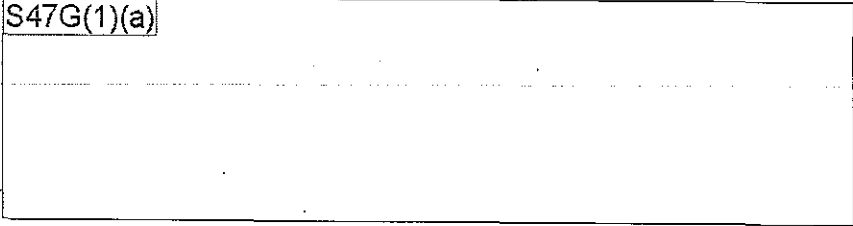
S22(1)

International Law Section
Department of Foreign Affairs

S22(1)

REDACTED

S47G(1)(a)



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UNCLASSIFIED

Title: Western Sahara: Response to request by

S47G(1)(a)

S22(1)

From: Canberra (CHCH/DFAT/SMD/MEB)

From File:

References:

Response: Routine, Requires Action

COMMERCIAL IN CONFIDENCE

Comments:

S22(1)

Many thanks for your advice to date on the Western Sahara question raised by S47G(1)(a) [redacted]. As discussed, please find below an initial draft tasking cable to Perth. Grateful any comments/views. We will also look to consult Austrade and RET separately.

Thanks and best regards

S22(1)

Summary

Cable seeks Western Australia State Office's assistance in responding to a request by

S47G(1)(b)

S47G(1)(a)

2. As the Western Australian State Office (WASO) will be aware, the provision of assistance to Australian business overseas is governed by Administrative Circular P0874. In this case it is unclear whether we would be in a position to assist S47G(1)(a) although appearing to satisfy two conditions of Australian government intervention, namely that (Moroccan) government barriers to trade may exist, and that representations could assist in ensuring the integrity and transparency of government tender and selection processes, the provision of a letter of support may prejudice Australia's position on the conflict, which strongly recognises the UN-mediated process and advises companies of the international law considerations of operating in the region. The Department provides information on

its website regarding these considerations, and recommends companies seek independent legal advice about the exploitation of natural resources in the Western Sahara.

3. We are aware that S47G(1) remains a good contact of WASO and as such would be grateful WASO's assistance in liaising with them on their query. In the first instance, we suggest WASO draw S47G(1)(a) attention to the advice on DFAT's website and counsel them to seek, if they have not done so already, independent legal advice. Secondly, while managing S47G(1)(a) expectations of any future Australian government assistance, we suggest WASO inquire further into the details of the project, including the barriers presented by the Moroccan government (which may cover Moroccan consultations with the UAE).

4. ILD, TED, Austrade and RET were consulted in the preparation of this cable.

text ends

Sent by:

Prepared by:

Approved by:

Topics:

S22(1)

POLITICAL-ECONOMIC/International Political TRADE/Policy General

REDACTED

REDACTED

S47C(1)

REDACTED



REDACTED

S22(1)

Title: Western Sahara: Response to request by S47G(1)(b)

S22(1)

From: Canberra (CHCH/DFAT/SMD/MEB)

From File:

References:

Response: Routine, Information Only

COMMERCIAL-IN-CONFIDENCE

Summary

Cable seeks Western Australia State Office's assistance in responding to a request by

S47G(1)(a)

S47G(1)(a)

2. Administrative Circular P0874 *Assisting Australian Business Overseas* provides guiding principles on the circumstances where providing letters of support for Australian businesses overseas would be consistent with the Department's role. Conditions necessary for Australian Government intervention include where:

- a broader Australian interest is served;
- possible government barriers to trade exist; and
- representations could assist in ensuring the integrity and transparency of government tender and selection processes.

3. Given the status of Western Sahara, we do not consider it appropriate for the Australian Government to assist S47G(1)(a) Western Sahara is currently listed by the United Nations as a non-self governing territory with no recognised Administering Power. As such, the population of Western Sahara has a recognised, and as yet unrealised, right to self-determination. Morocco acts as the de facto Administering Power. Australia supports UN efforts to negotiate a political solution that provides for the self-determination of the people of Western Sahara. Advice on DFAT's website states 'DFAT notes that given Western Sahara is a non-self governing territory, there are international law considerations with importing natural resources from Western Sahara'. Any representations which might be made based on possible trade barriers imposed by Morocco could be interpreted as Australian recognition of Moroccan sovereignty over Western Sahara.

S22(1)

4. We note also that the lack of effective governance in Western Sahara would make it unlikely that uranium extraction of any kind or uranium export would be carried out under international safeguards supervision. S33(a)(iii)
S33(a)(iii)

5. We would be grateful for State Office's assistance in liaising with S47G(1)(a). You should note the current status of Western Sahara (para 3), including the international law considerations, which are noted on DFAT's website. You should note that, given the status of Western Sahara, the Australian Government is not in a position to write a letter of support for S47G(1)(a). If they have not done so already, you may wish to suggest S47G(1)(a) obtain independent legal advice. We note DFAT does not provide legal advice to companies or other private entities. You may also wish to consult with Austrade's Perth office before contacting S47G(1)(a) including canvassing the possibility of undertaking the call jointly.

6. ILD, TED, ISD, ASNO and RET were consulted in the preparation of this cable.

text ends

Sent by:

S22(1)

Prepared by:

Approved by:

Topics:

POLITICAL-ECONOMIC/International Political, TRADE/Policy General

S22(1)

S22(1)

REDACTED

REDACTED

REDACTED

REDACTED

S33(b)

REDACTED

S33(b)

REDACTED

REDACTED

S33(b)

REDACTED

REDACTED

Attachment C - Background on Western Sahara

UN efforts to find a political settlement

The former Spanish colony of Western Sahara is classified by the UN as a Non-Self-Governing Territory and the UN has recognised the population's right, although as yet unrealised, to self-determination (UNSCR 621(1988) supports a self-determination referendum and this continues to be the formal position). The Polisario Front (Popular Front for the Liberation of Saguia el Hamra and Rio de Oro) and the Moroccan government dispute the sovereignty of Western Sahara, which Morocco and Mauritania annexed in 1975. Morocco has acted as the de facto administering power for most of Western Sahara since 1979 when Mauritania renounced its claims over Western Sahara. The Polisario Front controls a small portion of Western Sahara which borders Algeria and Mauritania and is known as the 'Free Zone'. In 1988, the parties to the conflict agreed in principle to UN proposals to facilitate a ceasefire and conduct a referendum to enable the people of Western Sahara to choose between independence and integration into Morocco. The ceasefire administered by the UN Mission for the Referendum in Western Sahara (MINURSO) has remained in effect since September 1991, but attempts to hold a referendum have failed largely because of a dispute between Morocco and the Polisario Front over who should be eligible to take part in a referendum.

2. MINURSO was established in 1991 by the Security Council under UNSCR 690 to observe the ceasefire and implement the referendum. The Security Council considers the Western Sahara conflict annually and in April 2011 adopted UNSCR 1979 which extended MINURSO's mandate for a further 12 months. Australia contributed ADF personnel to MINURSO from September 1991 to May 1994. One Australian soldier died in a fatal air crash in 1993 while serving in MINURSO.

3. In 2003, the first Personal Envoy to Western Sahara, former US Secretary of State James Baker, presented a compromise peace plan which provided for autonomy for the Saharawis under Moroccan sovereignty, a referendum after a four-year transition period, and voting rights for Moroccan settlers resident in Western Sahara for over a year (Baker Plan). The plan was accepted by the Polisario Front but was rejected by Morocco. In 2007 the UNSC recommended direct negotiations under UN auspices between Morocco and the Polisario Front to break the ongoing deadlock between the parties (UNSCR 1754). Commencement of UN mediated negotiations in 2007 marked an important step in efforts to find an enduring political settlement. Four rounds of formal negotiations under UN auspices (the most recent held from 16 to 18 March 2008) have been held between Morocco and the Polisario Front. The parties have not been willing to agree to formal negotiations since March 2008 due to entrenched positions.

4. In January 2009, UN Secretary General Ban appointed a new Personal Envoy for Western Sahara, Mr Christopher Ross, in an effort to break the stalemate (Ross is the third Personal Envoy for Western Sahara). Mr Ross has hosted seven rounds of informal talks in accordance with UNSCR 1871 (2009), which endorsed his suggestion to hold informal talks between the parties to break the deadlock. The seventh round was held in June 2011 in New York. While there was little substantive

movement, the parties commenced discussion on ways to address natural resources and demining in Western Sahara.

5. In April 2011, the Security Council unanimously adopted UNSCR 1979. Although negotiations were reported to have been smooth, adoption of UNSCR 1979 has not moved the parties any closer to resolving the core issues surrounding how to give effect to self-determination for the people of Western Sahara. Neither party has taken steps towards a mutually acceptable compromise and there is disagreement over implementing a human rights monitoring mechanism in the territory both within the Security Council and between the parties (Morocco opposes its inclusion).

Moroccan autonomy plan vs. self-determination

6. Both parties have submitted their own proposals for resolving the dispute. In April 2007, Morocco sent the UN Secretary General a proposal for autonomy for Western Sahara under the sovereignty of Morocco ('Initiative for negotiating an Autonomy Statute for the Sahara Region'). Under the proposal, Morocco would retain control over national symbols, external security, external relations and further authorities of the King. The region would have legislative, executive and judicial bodies and the necessary financial resources for development. Morocco's proposal would allow for a referendum, but only as to whether the Western Saharan people accepted Morocco's autonomy proposal. The Polisario Front also presented a proposal to the Secretary-General in April 2007 ('Proposal for a Mutually Acceptable Political Solution that Provides for the Self-Determination of the People of Western Sahara'). The Polisario Front's proposal argues that the only method to reach a final solution would be to hold a referendum with options, including independence. To date, Australia has not supported one proposal over another.

Recognition of SADR as a sovereign state

7. In 1976 the Polisario Front declared a government-in-exile, the Saharawi Arab Democratic Republic (SADR), from its base in Algeria. SADR operates out of the Saharawi refugee camps in Tindouf Province, Western Sahara, and is recognised by a number of mainly African states. The Polisario Front claims that SADR is recognised by 81 states^{S33(a)(iii)} Morocco claims that two-thirds of African states have withdrawn recognition and 'no state in Europe, Asia, Oceania or the Arab World' recognises SADR (see Attachment B). The Organisation of African Unity, the precursor to the African Union, granted full membership to SADR in 1984. Morocco left in protest of SADR's membership and remains an observer to this day.

8. Australia, along with other likemindeds such as the UK and US, does not recognise SADR, but does recognise the Polisario Front as a representative of the people of Western Sahara. This reflects the Government's broad policy of recognising states and not governments, rather than an approach specific to Western Sahara.

Human rights

9. Human rights violations have been reported by both sides of the conflict. There was an increase in international attention on human rights issues following the riots at

Gdim Izik protest camp in Western Sahara in late 2010. The riots erupted when Moroccan authorities dismantled a camp established by Saharawi protestors, resulting in casualties and property damage. The UN could not verify the number of casualties and the parties have provided conflicting figures (Morocco claims 134 civilians were wounded while the Polisario Front claims 700 were wounded). The general situation in Western Sahara has remained tense since the events at Gdim Iznik. As MINURSO's mandate does not include human rights (it is the only UN peacekeeping mission without a human rights mechanism), it does not have the capacity to conduct human rights monitoring in the territory. The Office of the UN High Commissioner for Human Rights does not have a presence in the territory.

10. Recent UNSCRs renewing MINURSO's mandate are evidence of a S33(a)(iii) S33(a)(iii) The preambles for UNSCRs 1920(2010) and 1871(2009) S33(a)(iii) S33(a)(iii) UNSCR 1979(2011) went further by explicitly stressing the 'importance of improving the human rights situation in Western Sahara and the Tindouf camps' and welcomed the 'establishment of a National Council on Human Rights in Morocco and the proposed component regarding Western Sahara'. It also welcomed Morocco's commitment to ensure unqualified access to the Special Procedures of the UN Human Rights Council. Resolution 1979 did not, however, go so far as to expand MINURSO's mandate to include a human rights monitoring mechanism. [REDACTED]

S33(a)(iii)

11. The UN Secretary-General's April 2011 report on Western Sahara notes that new challenges to stability and security in Western Sahara have arisen as a result of the popular uprisings in the region and have 'the potential to alter the conflict's status quo'. In response to the popular uprisings in the region, the King of Morocco pledged in a public address on 9 March 2011 that he would introduce substantial constitutional and democratisation reforms, and declared that Western Sahara would be the first region to benefit from the changes. The newly established National Council on Human Rights is an outcome of this pledge.

Allegations of slavery

12. Reports have been made by reputable human rights organisations such as Human Rights Watch (2008 report) that slavery persists in Western Sahara and in Polisario Front refugee camps. Dark skinned Saharawis have been allegedly subjected to forms of slavery, including being prohibited from marrying without consent from their 'owner'. This is a sensitive topic for Morocco and the Polisario Front (and in other parts of North Africa) and demonstrates a fault line between Arab and African communities. The issue continues and was raised at the UNGA Fourth Committee

discussions on Western Sahara in 2010. The Polisario Front has publicly denounced the practice of slavery.

13. The 2009 Australian-made documentary 'Stolen' (which was partially funded by the Australian Government) highlighted the practice and alleged that slavery was not uncommon in Polisario Front refugee camps in Algeria. The film generated controversy and was criticised by the Polisario Front.

Trade in phosphate from Western Sahara

14. The Polisario Front opposes the sale of phosphates mined in Western Sahara. Morocco controls two-thirds of the world's phosphate reserves, including deposits in Western Sahara. Australia and New Zealand have in recent years accounted for around 50 per cent of Western Sahara's phosphate exports, which is commonly used in fertiliser. Phosphate sourced in Western Sahara is sold domestically by three companies; S47G(1)(a) There are no autonomous Australian sanctions or UN Security Council sanctions against imports sourced from Western Sahara. DFAT is not aware of any country which has autonomous sanctions against the trade. Trade in phosphates sourced from Western Sahara continues to generate interest from the media and parliamentarians.

15. DFAT is aware of possible international law considerations involved in importing natural resources sources from Western Sahara. S42(1)

S42(1)

S42(1) However DFAT recommends on its website that companies seek legal advice before importing natural resources from Western Sahara. Members of the governments of Norway, Sweden and most recently Ireland have made announcements in parliament encouraging domestic companies not to import phosphate from Western Sahara. These announcements do not amount to sanctions or formal policy positions.

16. DFAT is aware that phosphates extracted from Western Sahara are exported via the port of Laayoune. The port of Laayoune is designated under the UN Code for Trade and Transport Locations as a Moroccan port. Goods recorded as being shipped from Laayoune are recorded as imports from Morocco. DFAT does not provide legal advice to companies but notes on its website, and when approached, that there are

international law considerations with importing natural resources sourced from Western Sahara and that companies involved in trade with Western Sahara seek independent legal advice on the issue.

ATTACHMENT D - Position of key players

Australia

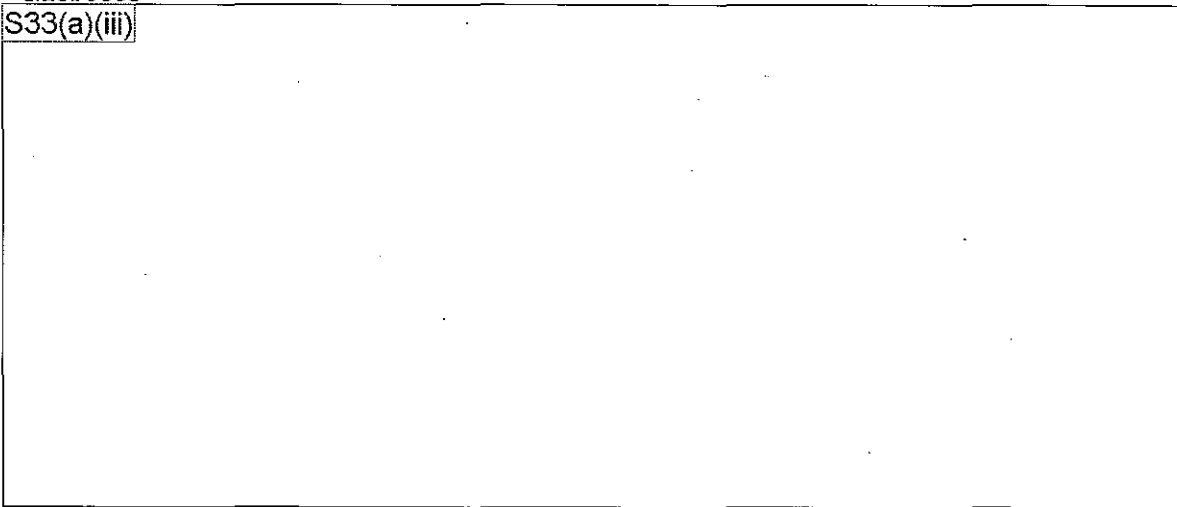
The Australian Government's consistent position has been that the people of Western Sahara have a right to self-determination (this is consistent with numerous UNSC resolutions). The Government supports UN efforts to find an enduring and mutually acceptable settlement to the Western Sahara issue. In 2008, DFAT recommended that Australia continue to support UN efforts to find a political settlement to the dispute in Western Sahara, recognising that a referendum may not be central to a political settlement. DFAT also recommended that the Polisario Front be recognised as a legitimate, but not sole, representative of the people of Western Sahara. We also recommended not to restrict trade in phosphates from Western Sahara in the absence of UN sanctions. The Government agreed to this policy, which was established through a letter to the then Foreign Minister to the then Prime Minister. Australia has welcomed Morocco's autonomy proposal as constructive, but has not favoured this proposal over the Polisario Front's proposal.

The Government is aware of allegations of human rights violations from both sides and has called on both parties to uphold international human rights standards. Australia has not taken an official position on the inclusion of a human rights monitoring mechanism in MINURSO's mandate.

There is ongoing political interest on Western Sahara. At Senate Estimates in June 2011, Senator Ludlam asked whether DFAT had given legal advice to companies in relation to Western Sahara. Senator Ludlam has made an FOI request to the same effect. At Senate Estimates in February 2011, Senator Bob Brown raised Western Sahara and sought information on whether DFAT supported extending MINURSO's mandate and on DFAT's position in relation to phosphate mining in Western Sahara. The Hon Julie Bishop MP also wrote to you on 21 March 2011 seeking information on Australia's position on Western Sahara.

Morocco

S33(a)(iii)



Polisario Front

The Polisario Front seeks an independent Western Sahara. It is recognised by the United Nations as a legitimate representative of the people of Western Sahara.

Australia considers the Polisario Front to be an important body of West Saharan opinion but does not regard it as the sole representative of the population. In 1976 the Polisario Front declared a government-in-exile, SADR, from its base in Algeria. The Polisario Front has an information office in Sydney, which has no official status, and makes representations to DFAT and MPs. It works closely with the Australia Western Sahara Association.

Algeria

S33(b)

The Polisario Front runs a government-in-exile from refugee camps in Tindouf in Algeria. The border between Algeria and Morocco has been closed since 1994 (due to a dispute not related to the Western Sahara issue). There have been unconfirmed media reports that the border may reopen this year. Despite their differences, both countries maintain full diplomatic relations. Algeria, along with Mauritania, has attended informal talks led by UNSG Special Envoy Ross as an observer.

France

S33(a)(iii)

Spain

As the former colonial power, Spain attempts to maintain a neutral position on the Western Sahara issue.

S33(a)(iii)

The Group of Friends of Western Sahara

The UN member states most engaged in the dispute are France, Spain and the US. Together with Russia and the UK, these states form the Group of Friends and have a leading role in driving action in the Security Council.

S33(a)(iii)

African Union and members

The Organisation of African Unity, the precursor to the African Union (AU), granted full membership to the SADR in 1984. SADR is now a full member of the AU. Members of the AU such as South Africa, Ghana and Nigeria have recognised SADR independently of the AU (South African and Nigeria were sympathetic to the right to self-determination of the people of Western Sahara during UNSC debate about resolution 1979). A number of African states which previously recognised SADR have subsequently ended recognition and it remains unclear how many African states formally recognise SADR currently.

REDACTED

S47G(1)(a)

REDACTED



THE HON STEPHEN SMITH MP

MINISTER FOR FOREIGN AFFAIRS AND TRADE
PARLIAMENT HOUSE
CANBERRA ACT 2600

S47F(1)

19 AUG 2010

S47F(1)

Dear

Thank you for your letter of 12 June 2010 to the former Minister for Trade, the Hon Simon Crean MP, in relation to the import of phosphates from Western Sahara. I am replying as the Minister for Foreign Affairs and Trade, following my appointment on 28 June 2010. I regret the delay in my response.

The Australian Government is conscious of the status of Western Sahara as a non-self governing territory. The Department of Foreign Affairs and Trade (DFAT) draws attention to this issue on its website, including noting that companies should seek legal advice in relation to the importation of such materials from Western Sahara. DFAT has also met with a number of Australian companies and advised them to seek independent legal advice on this matter. The UN has not imposed restrictions on the trade (UNSC sanctions), nor is the Australian Government aware of any country which maintains autonomous sanctions against the trade.

The Australian Government is aware of allegations of human rights violations with respect to Western Sahara which have been raised by both parties, both in the Moroccan administered territory of Western Sahara, as well as in the refugee camps run by the Polisario in Algeria. Australia accords a high priority to the protection of human rights, and calls on all parties to uphold international human rights standards. The Government notes the UN Secretary-General's recommendation in his 12 April report that parties to the dispute 'remain engaged in continuous and constructive dialogue with the Office of the United Nations High Commissioner for Human Rights, with a view to ensuring respect for the human rights of the people of Western Sahara in the Territory and in the refugee camps.'

The Australian Government strongly supports the efforts of the United Nations to find an enduring settlement in relation to Western Sahara. Australia welcomed the unanimous adoption of UNSC Resolution 1871 on 30 April 2009, which endorsed direct negotiations between the parties 'without preconditions' and 'in good faith' to achieve 'a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara.' The Australian Government was pleased that parties agreed at informal talks in New York in February 2010 to commence negotiations soon. The Government believes the people of Western Sahara must have a fair opportunity to determine their own future, as provided by the UN process currently underway.

Thank you for bringing your concerns to the attention of the Government and I trust this information is of assistance.

Yours sincerely

Best Wishes



Stephen Smith

UNCLASSIFIED

S22(1)
People/DFATL
31/08/2010 04:21 PM

To [redacted] People/DFATL@DFATL
cc [redacted] S22(1) People/DFATL@DFATL, [redacted] S22(1) People/DFATL@DFATL
bcc

Subject Fw: Western Sahara investment enquiry [SEC=UNCLASSIFIED]

S22(1)

As discussed, in the past, when responding to company enquiries about Western Sahara, the following text has been used:

“The Department of Foreign Affairs and Trade does not provide legal advice to companies. However, we note that in 2002 the then United Nations Under-Secretary General for Legal Affairs, Hans Corell, provided legal commentary on commercial activities involving the exploitation of the natural resources of the Western Sahara. We have attached this document for your consideration. We also draw [insert company name] attention to the United Nations Human Rights Commission's *Human Rights Translated: A Business Reference Guide* and the *OECD Guidelines for Multinational Enterprises*. We recommend that [insert company name] seek independent legal advice on this matter.”

The legal commentary is attached below.

Happy to discuss further.

S22(1)

International Law Section
Department of Foreign Affairs

S22(1)

Note: this email and any attachments may contain legally privileged information. You should not re-transmit or distribute this material without gaining prior authorisation from the author.



UN legal opinion on Western Sahara - Hans Corell.pdf

Forwarded by [redacted] S22(1) People/DFATL on 31/08/2010 03:18 PM

[redacted] People/DFATL
30/08/2010 05:43 PM

To [redacted] S22(1) People/DFATL@DFATL
cc [redacted] S22(1) People/DFATL@DFATL, [redacted] S22(1) People/DFATL@DFATL, [redacted] S22(1) People/DFATL@DFATL, [redacted] S22(1) People/DFATL@DFATL
Subject Re: Fw: Western Sahara investment enquiry [SEC=UNCLASSIFIED]

AUSTRALIA'S TRADE WITH WESTERN SAHARA

A\$'000	2006	2007	2008
Total exports	0	0	136
Total imports	0	0	0
Balance of merchandise trade	0	0	136
Principal exports (a)			
741 Heating & cooling equipment & parts	0	0	136
Other	0	0	0

(a) Commodity groups do not include any items classified as confidential.

*Denotes \"Remainder of category\"

REDACTED

S22(1)

REDACTED

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S22(1)

REDACTED

S22(1)

REDACTED

S22(1)

S22(1)

REDACTED

UNCLASSIFIED

S22(1)

people/DFAT

To S22(1)

cc

06/09/2010 01:53 PM

bcc

Subject Cable to WASO re S47G(1)(a) [SEC=UNCLASSIFIED]

History: This message has been forwarded.

S22(1)

Thank you for the opportunity to comment on the cable for WASO regarding the S47G(1)(a) matter. The cable incorporates suggested changes from both TED and ILD.

ILD have requested that you should clear the cable with ASNO and ISD to consider the question of whether there may be safeguard concerns about uranium mining in a non-administered territory.



Clean copy of cable incorporating TED and ILD comments.doc

If you have any questions, please don't hesitate to call me.

Regards

S22(1)

UNCLASSIFIED

Title: **Western Sahara: Response to request by** [S47G(1)(a)]

[S22(1)]

COMMERCIAL-IN-CONFIDENCE

Comments:

To: CHCH/DFAT/ILD/[S22(1)] CHCH/DFAT/TED/CAB/[S22(1)]

Cc: CHCH/DFAT/SMD/MEB/[S22(1)]

--- Forwarded by CHCH/DFAT/SMD/MEB/[S22(1)]

1/09/2010 05:42 PM [S22(1)]

Hi [S22(1)]

Many thanks for your advice to date on the Western Sahara question raised by [S47G(1)(a)] [S47G(1)(a)]. As discussed, please find below an initial draft tasking cable to Perth. Grateful any comments/views. We will also look to consult Austrade and RET separately.

Thanks and best regards

[S22(1)]

ext 9356

Summary

Cable seeks Western Australia State Office's assistance in responding to a request [S47G(1)(a)]

[S47G(1)(a)]

2. By way of background, Western Sahara is currently listed by the United Nations as a non-self governing territory with no recognised Administering Power. As such, the population of Western Sahara has a recognised and as yet unrealised right to self-determination. Morocco acts as the de facto Administering Power for Western Sahara, however control over Western Sahara has been disputed for many years. Australia supports UN efforts to negotiate a political solution that provides for the self-determination of the people of Western Sahara. Any activity in Western Sahara should consider the wishes of the people of Western Sahara. [Desk could add further statement's about Australia's position on Western Sahara.]

3. Administrative Circular P0874 *Assisting Australian Business Overseas* provides guiding principles on letters of support stating that statements of support is consistent with the Department's role in particular circumstances. The conditions for Australian government intervention are: a broader Australian interest is

served; possible government barriers to trade; and representations that could assist in ensuring the integrity and transparency of government tender and selection processes.

S47G(1)(a), S33(a)(iii)

5. We would be grateful for WASO's assistance in liaising with S47G(1)(a) firstly to acknowledge their correspondence with the Australian Government and secondly to seek further information about their interests in Western Sahara. WASO should consult with Austrade's Perth office before consulting with S47G(1)(a). We suggest WASO draw S47G(1)(a) attention to the advice on DFAT's website, which states "DFAT notes that given Western Sahara is a non-self governing territory, there are international law considerations with importing natural resources sourced from Western Sahara". If they have not done so already, you may wish to suggest S47G(1)(a) obtain independent legal advice about this matter. We note DFAT does not provide legal advice to companies or other private entities.

6. ILLD, TED, and RET were consulted in the preparation of this cable.

text ends

Sent by:

Prepared by:

Approved by:

Topics:

S22(1)

POLITICAL-ECONOMIC/International Political, TRADE/Policy General

DFAT – DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982

S22(1)

to S22(1)

cc

bcc

15/09/2010 02:49 PM

Subject Western Sahara: S47G(1)(a)

[SEC=IN-CONFIDENCE:COMMERCIAL]

Dear S22(1)

Good to speak to you just now. As discussed, please find attached a draft cable asking our State Office to respond to a query from S47G(1)(a) [redacted] re: a tender in Western Sahara (a non-self governing territory under the de-facto administration of Morocco).

We would be most grateful your comments in due course.

Thanks and best regards

S22(1)

Middle East and North Africa Section
Department of Foreign Affairs and Trade

S22(1)



100915 Revised Western Sahara Investment Enquiry Cable DRAFT for comment.doc 100727 Email from S47G(1)(a)

DFAT – DECLASSIFIED
CASE: 1202-F90
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DFAT – DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982



S22(1)

To S22(1)

cc

15/09/2010 03:21 PM

bcc

Subject RE: Western Sahara S47G(1)(a) query [SEC=IN-CONFIDENCE:COMMERCIAL]

Thanks S22(1)

As we have recently undertaken an internal re-structure I have forwarded your email to your RET counterpart S22(1) as she is Manager of the Pacific, Africa, Middle East, Europe and South America Section. I have also asked S22(1) to reply to you directly with any comments on your cable she may have. FYI S22(1)

FYI further details of the re-structure undertaken to better reflect current responsibilities within the Branch is outlined in refel S22(1)

Having advised the new contacts, please feel free to call me if you need further information/advice on responsibilities etc

Regards
S22(1)

From: S22(1)

Sent: Wednesday, 15 September 2010 2:49 PM

To: S22(1)

Subject: Western Sahara: S47G(1)(a) query [SEC=IN-CONFIDENCE:COMMERCIAL]

Dear S22(1)

Good to speak to you just now. As discussed, please find attached a draft cable asking our State Office to respond to a query from S47G(1)(a) re: a tender in Western Sahara (a non-self governing territory under the de-facto administration of Morocco).

We would be most grateful your comments in due course.

Thanks and best regards

S22(1)

Middle East and North Africa Section
Department of Foreign Affairs and Trade

S22(1)

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S22(1),
S47G(1)(a)

COMMERCIAL-IN-CONFIDENCE

Comments:

S22(1)

Have now incorporated comments from all line areas (ASNO, ILD, ISD, TED) and Departments (RET) on the below. Did you want to have one last look before I put up to Jenny?

S22(1)

Summary

Cable seeks Western Australia State Office's assistance in responding to a request
S47G(1)(a)

S47G(1)(a)

2. Administrative Circular P0874 *Assisting Australian Business Overseas* provides guiding principles on the circumstances where providing letters of support for Australian businesses overseas would be consistent with the Department's role. Conditions necessary for Australian Government intervention include where:

- a broader Australian interest is served;
- possible government barriers to trade exist; and
- representations could assist in ensuring the integrity and transparency of government tender and selection processes.

3. ~~But~~ given the status of Western Sahara, it is unclear whether the Australian Government would be in a position to assist S47G(1)(a) Western Sahara is currently listed by the United Nations as a non-self governing

S22(1)

territory with no recognised Administering Power. As such, the population of Western Sahara has a recognised, and as yet unrealised, right to self-determination. Morocco acts as the de facto Administering Power. Australia supports UN efforts to negotiate a political solution that provides for the self-determination of the people of Western Sahara. S33(a)(iii)

S33(a)(iii), S33(b)

5. We would be grateful for WASO's assistance in liaising with S47G(1)(a) firstly to acknowledge their correspondence with the Australian Government and secondly to seek further information about their interests in Western Sahara. We suggest WASO draw S47G(1)(a) attention to the advice on DFAT's website, which states "DFAT notes that given Western Sahara is a non-self governing territory, there are international law considerations with importing natural resources sourced from Western Sahara". If they have not done so already, you may wish to suggest S47G(1)(a) obtain independent legal advice. We note DFAT does not provide legal advice to companies or other private entities. WASO may also wish to consult with Austrade's Perth office before contacting S47G(1)(a)]

6. ILD, TED, ISD, ASNO and RET were consulted in the preparation of this cable.

text ends

Sent by:

Prepared by:

S22(1)

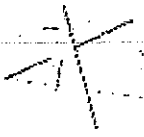
Approved by:

Topics:

POLITICAL-ECONOMIC/International Political, TRADE/Policy General

WD
to clear
STC

DFAT – DECLASSIFIED
CASE: 1202-F90
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S22(1)

To S22(1)

15/09/2010 03:49 PM

cc

Subject Re: Fw: Western Sahara S47G(1)(a) safeguards issues [SEC=IN-COI]

Thanks S22(1)

We suggest rewording the first sentence of the fourth para to read:

4. [Redacted]

S33(a)(iii), S33(b)

With this minor change, ACB is happy with the cable.

Regards

S22(1)

Arms Control Section
Department of Foreign Affairs and Trade

S22(1)

S22(1)

S22(1)
15/09/2010 02:41 PM

To S22(1)
cc

Subject Re: Fw: Western Sahara: S47G(1)(a) safeguards issues [SEC=IN-CONFIDENCE:COMMERCIAL]

Many thanks, S22(1) for the prompt response.

We've added some words to that effect in a revised version of the cable (attached) in para 4. We would be grateful ACS' comment/review.

[attachment "100915 Revised Western Sahara Investment Enquiry Cable DRAFT for comment.doc" deleted by S22(1)]

Regards

S22(1)

Middle East and North Africa Section
Department of Foreign Affairs and Trade

S22(1)

DFAT - DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982



S22(1)

To S22(1)

cc S22(1)

15/09/2010 06:05 PM

bcc

Subject Western Sahara S47G(1)(a) [SEC=IN-CONFIDENCE:COMMERCIAL]

Dear S22(1)

Thank you for seeking our comments on the draft cable referred below. After consulting with the relevant line area, I can confirm that RET is fine with your approach.

Regards

S22(1)

S22(1)

From: [Redacted]

Sent: Wednesday, 15 September 2010 2:49 PM

To: S22(1)

Subject: western Sahara: S47G(1)(b) [SEC=IN-CONFIDENCE:COMMERCIAL]

Dear S22(1)

Good to speak to you just now. As discussed, please find attached a draft cable asking our State Office to respond to a query from S47G(1)(a) [Redacted] re: a tender in Western Sahara (a non-self governing territory under the de-facto administration of Morocco).

We would be most grateful your comments in due course.

Thanks and best regards

S22(1)

Middle East and North Africa Section
Department of Foreign Affairs and Trade

S22(1)

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DFAT - DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982

S22(1), S47G(1)(a)

COMMERCIAL-IN-CONFIDENCE

Comments:

To: [redacted]

S22(1)

Dear S22(1)

Cable on Western Sahara for your final approval. Consultation: ASNO, ILD, ISD, TED and RET.

Regards

S22(1)

Summary

Cable seeks Western Australia State Office's assistance in responding to a request by S47G(1)(a) for Australian Government support in a Western Sahara based tender.

S47G(1)(a)

In May, [redacted] approached the Prime Minister's office to seek Australian Government support for a tender application in the Western Sahara region of Morocco (email attached). S47G(1)(a) is seeking an exploration permit for what they describe as a 'potentially world class multi-commodity (uranium, rare earths, tantalum and iron) project'. [redacted] In his approach to the Prime Minister's office, [redacted] due to its location in the disputed Western Sahara region. He asked that an Australian Government Minister write a letter of support for S47G(1)(a) bid. PM&C has asked that we respond.

S47G(1)(a)

2. Administrative Circular P0874 *Assisting Australian Business Overseas* provides guiding principles on the circumstances where providing letters of support for Australian businesses overseas would be consistent with the Department's role. Conditions necessary for Australian Government intervention include where:

- a broader Australian interest is served;
- possible government barriers to trade exist; and
- representations could assist in ensuring the integrity and transparency of government tender and selection processes.

3. Given the status of Western Sahara, it is unclear whether the Australian Government would be in a position to assist S47G(1)(a) Western Sahara is currently listed by the United Nations as a non-self governing territory with no recognised Administering Power. As such, the population of Western Sahara has a recognised, and as yet unrealised, right to self-determination. Morocco acts as the de facto Administering Power. Australia supports UN efforts to negotiate a political solution that provides for the self-determination of the people of Western Sahara.

S33(a)(iii)

S33(a)(iii)

5. We would be grateful for WASO's assistance in liaising with S47G(1)(a) firstly to acknowledge their correspondence with the Australian Government and secondly to seek further information about their interests in Western Sahara. We suggest WASO draw S47G(1)(a) attention to the advice on DFAT's website, which states "DFAT notes that given Western Sahara is a non-self governing territory, there are international law considerations with importing natural resources sourced from Western Sahara". If they have not done so already, you may wish to suggest S47G(1)(a) obtain independent legal advice. We note DFAT does not provide legal advice to companies or other private entities. WASO may also wish to consult with Austrade's Perth office before contacting S47G(1)(a)

6. ILD, TED, ISD, ASNO and RET were consulted in the preparation of this cable.

text ends

Sent by:

Prepared by:

S22(1)

Approved by:

Topics:

POLITICAL-ECONOMIC/International Political, TRADE/Policy General

DFAT 289 DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982

S22(1)

To S22(1)

cc

21/09/2010 02:34 PM

bcc

Subject Western Sahara cable [SEC=RESTRICTED]

S22(1)

thanks for this, given that so much time has elapsed perhaps S22(1) you could discuss this informally first with the WA office, and ask that they contact the company to ascertain the nature of their interests and the kind of support being sought. We could then formalise this by cable. We should also seek ISD/ASNO comments on the uranium extraction para, as well as post views.

Thanks very much, S22(1)

DFAT - DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act
1982

P10/ 378 975

E-mail Message

From: S22(1) [redacted] OU=People/O=DFATL1
 To: [redacted]
 Cc: S22(1) [redacted]

Sent: 29/09/2010 at 5:31 PM
 Received: 29/09/2010 at 5:31 PM
 Subject: Re: Western Sahara: Response to S47G(1)(a) [redacted] Investment Query
 [SEC=IN-CONFIDENCE:COMMERCIAL]

Attachments: 100727 Email from S47G(1)(a) [redacted].pdf

S22(1) - as per our telephone discussion, we wish to advise you that we don't have a relationship with S47G(1)(a) [redacted] But as discussed we would be happy to deliver a letter and/or speak to a set of TPs. We could also undertake the call jointly with Austrade Perth if you consider this useful.
 Thanks S22(1) [redacted]

S22(1) [redacted]
 Deputy Director - Western Australia State Office
 Department of Foreign Affairs and Trade
 S22(1)

Level 17 Exchange Plaza
 Sherwood Crt, Perth WA, 6000

S22(1) [redacted]
 29/09/2010 02:36 PM

To
 S22(1) [redacted]

S22(1) [redacted]
 Subject
 Western Sahara: Response to S47G(1)(a) [redacted] Investment Query
 [SEC=IN-CONFIDENCE:COMMERCIAL]

Dear S22(1) [redacted]

In late July we were approached by PM&C to respond to a request by S47G(1)(a) [redacted] S47G(1)(a) (see attached email) which had sought Australian Government support for a tender application in the non-self governing territory of Western Sahara.

Our response took some time to formulate given that input was required from a range of line areas (ASNO, ILD, ISD, TED and RET) in order to cover S33(1)(iii) S33(a)(iii)

[redacted]

S33(a)(iii)

S22(1)

30/03/2011

TED considered that your office might be best placed to deliver our response to/liaise with S47G(1)(a) given your good working relationship with them.

Grateful your advice whether you would be comfortable with this approach. If so, we will send a tasking cable outlining the issues and suggested response.

Thanks and regards

S22(1)

Middle East and North Africa Section
Department of Foreign Affairs and Trade

S22(1)

DFAT - DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982

S22(1) /People/DFATL
05/10/2010 03:19 PM

To S22(1)
cc
S22(1)

Subject Fw: Western Sahara: Response to S47G(1)(a)
Investment Query [SEC=IN-CONFIDENCE:COMMERCIAL]

S22(1) - further to our telephone discussion the background messages on this S47G(1)(a) issue is attached below. It appears from the messages that S22(1) suggested the company contact Phillip Green (when he was International Adviser to PM Rudd) to seek a letter of endorsement (which as we discussed the Government cannot do).

I have also attached the instructions from Canberra for the meeting with S47G(1)(a) S47G(1)(a). As discussed I would be grateful if you could accompany me to the meeting. I will be sending an email to [redacted] to seek a suitable time tomorrow afternoon to meet.

S47G(1)(a) Happy to discuss anything further - Many thanks S22(1)

ATTACHMENT = CABLE
Western Sahara.doc [redacted] S22(1)

S22(1)
Deputy Director - Western Australia State Office
Department of Foreign Affairs and Trade
S22(1)

Level 17 Exchange Plaza
Sherwood Crt, Perth WA, 6000

Forwarded by S22(1) /People/DFATL on 05/10/2010 03:10 PM

S22(1)
29/09/2010 02:36 PM

To S22(1) /People/DFATL@DFATL
cc S22(1)

Subject Western Sahara: Response to S47G(1)(a)
Investment Query [SEC=IN-CONFIDENCE:COMMERCIAL]

Dear S22(1)

In late July we were approached by PM&C to respond to a request by S47G(1)(a) (see attached email) which had sought Australian Government support for a tender application in the non-self governing territory of Western Sahara.

Our response took some time to formulate given that input was required from a range of line areas (ASNO, ILD, ISD, TED and RET) in order to cover S33(a)(iii)

S33(a)(iii)

TED considered that your office might be best placed to deliver our response to/liaise with S47G(1)(a) given your good working relationship with them.

Grateful your advice whether you would be comfortable with this approach. If so, we will send a tasking cable outlining the issues and suggested response.



100727 Email from S47G(1)(a)

Thanks and regards

S22(1)

Middle East and North Africa Section
Department of Foreign Affairs and Trade

S22(1)

DFAT - DECLASSIFIED
CASE: 1202-F90
COPY ISSUED UNDER FOI Act 1982

S22(1)

S22(1)

Response: Routine, Requires Action by 19/10/2010

COMMERCIAL-IN-CONFIDENCE

Summary

Cable seeks Western Australia State Office's assistance in responding to a request by S47G(1)(a) for Australian Government support in a Western Sahara based tender.

S47G(1)(a)

2. Administrative Circular P0874 *Assisting Australian Business Overseas* provides guiding principles on the circumstances where providing letters of support for Australian businesses overseas would be consistent with the Department's role. Conditions necessary for Australian Government intervention include where:

- a broader Australian interest is served;
- possible government barriers to trade exist; and
- representations could assist in ensuring the integrity and transparency of government tender and selection processes.

3. Given the status of Western Sahara, we do not consider it appropriate for the Australian Government to assist S47G(1)(a) Western Sahara is currently listed by the United Nations as a non-self governing territory with no recognised Administering Power. As such, the population of Western Sahara has a recognised, and as yet unrealised, right to self-determination. Morocco acts as the de facto Administering Power. Australia supports UN efforts to negotiate a political solution that provides for the self-determination of the people of Western Sahara. Advice on DFAT's website states 'DFAT notes that given Western Sahara is a non-self governing territory, there are international law considerations with importing natural resources from Western Sahara'. S33(a)(iii)

S22(1)

4. We note also that the lack of effective governance in Western Sahara would make it unlikely that uranium extraction of any kind or uranium export would be carried out under international safeguards supervision. S33(a)(iii)

5. We would be grateful for State Office's assistance in liaising with S47G(1)(a) You should note the current status of Western Sahara (para 3), including the international law considerations, which are noted on DFAT's website. You should note that, given the status of Western Sahara, the Australian Government is not in a position to write a letter of support for S47G(1)(a) If they have not done so already, you may wish to suggest S47G(1)(a) obtain independent legal advice. We note DFAT does not provide legal advice to companies or other private entities. You may also wish to consult with Austrade's Perth office before contacting S47G(1)(a) including canvassing the possibility of undertaking the call jointly.

6. ILD, TED, ISD, ASNO and RET were consulted in the preparation of this cable.

text ends

Sent by:

S22(1)

Prepared by:

Approved by:

Topics:

POLITICAL-ECONOMIC/International Political, TRADE/Policy General

S22(1)

S22(1)

REDACTED

UNCLASSIFIED

S47G(1)(a)

S22(1) People/DFATL
06/10/2010 12:49 PM

To [redacted]
cc S22(1) [redacted]
bcc S22(1) [redacted] S47G(1)(a) [redacted]

S47G(1)(a)

Subject RE: Meeting to respond to request re Western Sahara
[SEC=UNCLASSIFIED] [redacted]
S22(1)

Thanks for the suggested meeting time [redacted] and I are available at 10am on Monday.
We will come up to the 36th floor to meet with you. Thanks S22(1)

S22(1) [redacted]
Deputy Director - Western Australia State Office
Department of Foreign Affairs and Trade
S22(1)

Level 17 Exchange Plaza
Sherwood Crt, Perth WA, 6000

S47G(1)(a) [redacted]



S47G(1)(a) [redacted]
06/10/2010 12:25 PM

To S22(1) [redacted] S47G(1)(a) [redacted]
cc [redacted]
Subject RE: Meeting to respond to request re Western Sahara
[SEC=UNCLASSIFIED]

S22(1)

Thanks for feedback.
Next week on Monday 11 October at 10am would suit me if you S22(1) are available then.

Regards

S47G(1)(a) [redacted]

From: S22(1) [redacted]
Sent: Wednesday, 6 October 2010 9:53 AM
To: [redacted] S47G(1)(a) [redacted]
Cc: S22(1)
Subject: Meeting to respond to request re Western Sahara [SEC=UNCLASSIFIED] [faked-from]

S47G(1)(a)

[redacted] thanks for your call yesterday. As discussed we have received advice from Canberra in
response to your request for assistance.
Please let me know when you are available to discuss this issue and [redacted] and I will come up and meet
with you. S22(1)
Thanks S22(1)

S22(1) [redacted]

Deputy Director - Western Australia State Office
Department of Foreign Affairs and Trade
S22(1)

Level 17 Exchange Plaza
Sherwood Crt, Perth WA, 6000

UNCLASSIFIED

S22(1)

S22(1)

Response: Routine, Requires Action

COMMERCIAL-IN-CONFIDENCE

Summary

WA State Office and Austrade met with [S47G(1)(a)] to convey the Australian Government's position on the status of Western Sahara and our policy on providing letters of support for Australian businesses overseas. We advised that given the status of Western Sahara we were not in a position to provide a letter of support for a tender application for a project in this region. [S47G(1)(a)] noted this but is now seeking a similar letter of support from the Australian Government for other tender opportunities in Morocco (outside of the Western Sahara area). Grateful advice on suggested response.

As requested in reftel, WA State Office S22(1) accompanied by Austrade S22(1) S22(1) Senior Export Adviser Mining, WA Office) met with [S47G(1)(a)] [S47G(1)(a)] We advised, as per paragraph 3 of reftel, that given the status of Western Sahara we were not in a position to provide a letter of support for [S47G(1)(a)]

2. [S47G(1)(a)] noted our advice on the international status of Western Sahara and the possible need for [S47G(1)(a)] to seek independent legal advice and undertake appropriate due diligence if they wished to proceed with a tender application for a project in this region. [S47G(1)(a)] was not just uranium focussed but was an excellent multi-resource investment opportunity. The company would continue to remain in contact with the Moroccan National Bureau of Petroleum and Mines (ONHYM) as it had an ongoing interest in this project. [S47G(1)(a)] acknowledged the need to proceed with caution given the current international status of Western Sahara.

3. [S47G(1)(a)] sought advice on the circumstances under which the Australian Government would consider issuing a letter of support for Australian companies, especially given their ongoing interest in doing business in a challenging market such as Morocco. We advised [S47G(1)(a)] of the three conditions under which we would consider such support as contained in Administrative Circular PO874 (see reftel) [S47G(1)(a)] requested a letter of support from the Australian Government for [S47G(1)(a)] to pursue other commercial opportunities in Morocco (not including Western Sahara). [S47G(1)(a)]

Such a letter would assist [S47G(1)(a)] participate in tender processes for project developments in Morocco. [S47G(1)(a)] [S47G(1)(a)]

S22(1)

S47G(1)(a)

4. [redacted] cited two examples where ONHYM advised S47G(1)(a) that a project would be developed through an open tender process. S47G(1)(a) The first tender was poorly advertised but when it was discovered it was clear that only a select group of companies were eligible to tender. The second case resulted in ONHYM signing an MOU which gave a specific company a short period to develop its proposal to the exclusion of all other companies. [redacted] believed a broader Australian interest was served by the Australia - Morocco bilateral relationship developing through stronger commercial links in a range of sectors involving reputable Australian firms (as outlined in his earlier e-mail).

S47G(1)(a)

5. Grateful advice on appropriate response to S47G(1)(a) revised request for a letter of support from the Australian Government to assist with future tender opportunities processes in Morocco (excluding Western Sahara).

text ends

Sent by:

S22(1)

Prepared by:

Approved by:

Topics:

POLITICAL-ECONOMIC/International Political, TRADE/Policy General

S22(1)

S22(1)

REDACTED

UNCLASSIFIED

S22(1)

06/04/2011 04:52 PM

To S22(1)

cc

bcc

Subject Fw: QoN 33 - Brown - Western Sahara
[SEC=UNCLASSIFIED]

And final email by way of b'ground.

S22(1)

Director
International Law Section

Ph: S22(1)

Forwarded by S22(1) on 06/04/2011 04:52 PM



S22(1)

le/DFATL

25/03/2011
04:43 PM

To S22(1)

cc

Subject Fw: QoN 33 - Brown - Western Sahara [SEC=UNCLASSIFIED]

Hi S22(1)

As just discussed, please find attached below our proposed response to a Question in Writing, due today.



QoN 33 - Brown - Western Sahara.docx

In our response to question C, we note "there is no definitive legal advice on the legality of Moroccan commercial activity in Western Sahara." This is summarised from information in our Senate Estimates Brief on Western Sahara, which I understand has previously been cleared by your area. I have attached the SEB below. The relevant part states:

. The 2002 legal opinion of the former UN Under Secretary-General for Legal Affairs, Hans Correll, sets out in general terms the international law principles related to non-self governing territories.

. Mr Correll's opinion is not legally binding and does not set out measures to be taken by states regarding imports from Western Sahara.



100217 Senate Estimates Brief - Western Sahara.docx

I apologise for the urgent timeframe.

S22(1)
Department of Foreign Affairs and Trade
Tel: S22(1)

UNCLASSIFIED

Senate Standing Committee on Foreign Affairs, Defence and Trade
Additional Estimates 24 February 2011

Question No. 33**Program: 1.1****Topic: Western Sahara****Question in Writing****Senator Brown**

- A. Has the department raised human rights abuses in Western Sahara with the Moroccan Government?
- B. Does the department support extending the mandate of the UN mission in Western Sahara (MINURSO) to include human rights monitoring?
- C. Does the department have any information about Morocco mining illegally in Western Sahara?
- D. Is the department aware of any Australian companies importing phosphate from Western Sahara through Morocco?

Answer

- A. The Department has raised concerns about the human rights situation in Western Sahara with Morocco, Algeria and the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (the Polisario).
- B. The mandate of MINURSO is established by the United Nations Security Council (UNSC). The United Nations Secretary General's report on 6 April 2010 urged both parties 'to remain engaged in continuous and constructive dialogue with the Office of the United Nations High Commissioner for Human Rights with a view to ensuring respect for the human rights of the people of Western Sahara in the Territory and in the refugee camps.' The Department fully supports the efforts of the UN to promote human rights and to find an enduring settlement in relation to Western Sahara.
- C. The Department is aware that phosphates extracted from Western Sahara are exported through Morocco. The United Nations has not imposed any restrictions on the importation of phosphate from Western Sahara and we are not aware of any country which has autonomous sanctions against the trade. Given the status of Western Sahara as a non-self-governing territory according to the UN, the Department draws companies' attention to the possible international law considerations involved in importing natural resources sourced from Western Sahara and recommends companies seek independent legal advice before importing such material.
- D. We are aware that some Australian companies import phosphate via the port of Laayoune. The port of Laayoune is designated under the United Nations Code for Trade and Transport Locations as a Moroccan port. Goods recorded as being shipped from Laayoune are recorded as imports from Morocco.



PARLIAMENT OF AUSTRALIA

Joint Standing Committee on Foreign Affairs, Defence and Trade

3 March 2011

Mr Dennis Richardson
 Secretary
 Department of Foreign Affairs and Trade
 RG Casey Building
 John McEwen Crescent
 BARTON ACT 0221

Dear Mr Richardson

Australia's relationship with the countries of Africa

As you know, the Joint Standing Committee on Foreign Affairs, Defence and Trade is conducting an inquiry into Australia's relationship with the countries of Africa.

It has been some time since your Department provided its initial submission and supplementary submission to the inquiry, so the Committee seeks an update on some of the evidence provided as well as the Department's view on some issues that have arisen in evidence.

Specifically, the Committee would like an update on:

1. The numbers of Australian resource companies active in Africa as well as an estimation of the value of their investment. (Original information was at p. 25 of the 17 March 2010 submission.)
2. Ministerial visits to Africa. (Original information was at p. 33 of the 17 March 2010 submission.)
3. The filling of the Honorary Consul positions in African countries. (Original information was at p. 1 of the supplementary submission received on 15 November 2010.)

In addition, the Committee seeks the following information:

4. What are the approximate costs of opening an embassy in an African country (capital costs and staffing costs)?

5. Would you comment on the suggestion by Mr Gebre-Selassie that an Australian-Africa Forum be established in Addis Ababa (see transcript, 5 May 2010, p. 41)?

Mr Gebre-Selassie—Thank you, again, for this question because I have two other things to comment on. One is that while I was in Addis Ababa I held a meeting with the head of UNECA, Economic Commission for Africa, I met His Excellency Mr Abdoulie Janneh, and also one of the directors of the Economic and NEPAD Section of UNECA, Professor Emmanuel Nnadozie. I asked them a question: how would you like to engage with Australia? I put it the other way around. Both of them said to me, 'Why doesn't Australia establish an Africa-Australia forum in Addis Ababa?' Many countries, including China, India, Pakistan and many European countries, have already established such forums to engage with all the African diplomats in Addis Ababa as well as all the other diplomatic missions and UN peak bodies to engage with business, primarily, to talk about trade, climate issues, international development, capacity building and leadership related issues. They are talking about these kind of forums which will help Australia to engage with all of these delegates. That is one important point I just want to make.

6. Would you comment on Submission No. 104 from the Australia Western Sahara Association and the response from the Moroccan Ambassador. (Submission No. 108)? I have attached both submissions.

Responses, in the form of a public supplementary submission should be provided by cob Friday, 15 April 2011.

If you have any questions about this request I can be contacted on (02) 6277 4306.

Yours sincerely



Dr John Carter
Africa Inquiry Secretary



The Hon Julie Bishop MP
Federal Member for Curtin
Deputy Leader of the Opposition
Shadow Minister for Foreign Affairs and Trade

The Hon Kevin Rudd MP
Minister for Foreign Affairs
Parliament House
Canberra ACT 2600

21 March 2011

Dear *Kevin* Minister

I have received correspondence concerning Australia's position on the Western Sahara.

I note that an independence referendum in Western Sahara, originally scheduled to take place in January 1992, has not yet taken place.

Can you please advise me on the Australian Government's position on the following matters:

- i) The status of the Western Sahara and the proposed referendum; and
- ii) Reports of alleged human rights abuses in Western Sahara.

Can you also please advise me of the legal position of Australian-registered companies operating in Western Sahara.

Yours sincerely

Julie Bishop
JULIE BISHOP

RECEIVED
23 MAR 2011
MCP

MINISTER FOR FOREIGN AFFAIRS
Adviser: RECEIVED RB

DFAT 23 MAR 2011 ASAD

- REPLY - MINISTER
- REPLY - COFS
- REPLY - ADMSR
- REPLY - DEPARTMENT
- ACKNOWLEDGEMENT LETTER
- COPY HELD FOR MINISTER TO SEE
- INFORMATION ONLY
- DIARY
- REDIRECT / OTHER
- COMMENTS

Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Australia's Relationship with the Countries of Africa

- Q. Would you comment on Submission No.104 from the Australian Western Sahara Association and the response from the Moroccan Ambassador (Submission No.108)?
- A. Submission No.104 from the Australian Western Sahara Association and Submission No.108 from the Moroccan Ambassador raise issues regarding: the status of Western Sahara; the status of negotiations between Morocco and the Pópular Front for the Liberation of Saguia el-Hamra and Rio de Oro (the Polisario) concerning the disputed sovereignty of Western Sahara; and the legality of importing phosphate from Western Sahara.

Status of Western Sahara

Western Sahara is classified by the United Nations (UN) as a Non-Self-Governing Territory. The Moroccan Government and the Polisario dispute sovereignty of Western Sahara.

Status of negotiations between Morocco and the Polisario

For many years the UN was focused on the terms of a referendum. The referendum did not take place because of disagreement between the parties as to who should be eligible to vote in a referendum. In April 2007, Morocco and the Polisario both submitted proposals to resolve the status of Western Sahara and UN efforts are now focused on negotiations to discuss these two proposals 'in good faith' and 'without preconditions' (as recommended by the UN Secretary General's report of 6 April 2010).

Morocco and the Polisario have held four rounds of formal negotiations under UN auspices, with the most recent held from 16 to 18 March 2008. In January 2009, UN Secretary General Ban appointed a Personal Envoy for Western Sahara, Mr Christopher Ross. Mr Ross has hosted six rounds of informal talks (the latest round was held in early March 2011), with the aim of restarting a fifth round of formal UN-mediated negotiations.

The Australia Government strongly supports the efforts of the UN to find an enduring settlement in relation to Western Sahara.

Importation of phosphate from Western Sahara

The UN has not imposed any sanctions on the importation of phosphate from Western Sahara and the Department is not aware of any country which has autonomous sanctions against the trade (including Norway, Sweden and Ireland).

The 2002 legal opinion of the former UN Under Secretary-General for Legal Affairs, Hans Correll, sets out in general terms the international law principles related to non-self governing territories. Mr Correll's opinion is not legally binding and does not set out measures to be taken by states regarding imports from Western Sahara.

Given the status of Western Sahara as a Non-Self-Governing Territory, the Department draws companies' attention to the possible international law considerations involved in importing natural resources sourced from Western Sahara and recommends companies seek independent legal advice before importing such material. The Department's website contains information to this effect.

The Hon Julie Bishop MP
Deputy Leader of the Opposition
Federal Member for Curtin

Parliament House
CANBERRA ACT 2600

Dear Ms Bishop

I refer to your letter of 21 March 2011 regarding correspondence received concerning Australia's position on Western Sahara.

The Australian Government strongly supports the efforts of the United Nations (UN) to find an enduring settlement in relation to Western Sahara. Western Sahara is classified by the United Nations as a Non-Self-Governing Territory. The Moroccan Government and the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (the Polisario) dispute sovereignty of Western Sahara. The Government believes that the people of Western Sahara must have a fair opportunity to determine their own future, as provided by the UN process currently underway.

For many years the UN was focused on the terms of a referendum, which would include the option of independence. Australia supported efforts to achieve this. In April 2007, Morocco and the Polisario both submitted proposals to the UN regarding self-determination for the people of Western Sahara. UN efforts are now focused on negotiations to discuss these two proposals 'in good faith' and 'without preconditions' (as recommended by the UN Secretary General's report of 6 April 2010).

Morocco and the Polisario have held four rounds of formal negotiations under UN auspices, with the most recent held from 16 to 18 March 2008. In January 2009, UN Secretary General Ban appointed a Special Envoy for Western Sahara, Mr Christopher Ross. Mr Ross has hosted six rounds of informal talks (the latest round was held in early March 2011), with the aim of restarting a fifth round of formal UN-mediated negotiations. The Government strongly supports Mr Ross' efforts. The nature of any enduring settlement will ultimately be a matter for the directly interested parties to determine. The Government would support a referendum if that was agreed to by the parties.

The Government is aware of allegations of human rights violations with respect to Western Sahara, which have been raised by both parties to the dispute. The Government accords a high priority to the protection of human rights and calls on both parties to uphold international human rights standards. The Government notes that the UN Secretary General's report on 6 April 2010 urged both parties 'to remain engaged in continuous and constructive dialogue with the Office of the United Nations High Commissioner for Human Rights with a view to ensuring respect for the human rights of the people of Western Sahara in the Territory and in the refugee camps'.

The Government is aware that phosphates extracted from Western Sahara are exported through Morocco. The Department of Foreign Affairs and Trade (DFAT) is not aware of any Australian-registered companies operating in Western Sahara. DFAT is aware that some Australian companies

import phosphate via the port of Laayoune, which is designated under the UN Code for Trade and Transport Locations as a Moroccan port. The UN has not imposed any restrictions on the importation of phosphate from Western Sahara and DFAT is not aware of any country which has autonomous sanctions against the trade. Given the status of Western Sahara as a Non-Self-Governing Territory, DFAT draws companies' attention to the possible international law considerations involved in importing natural resources sourced from Western Sahara and recommends companies seek independent legal advice before importing such material.

Thank you for bringing this correspondence to my attention. I trust that this information is of assistance.

Yours sincerely

Kevin Rudd

UNCLASSIFIED

S22(1)
06/04/2011 04:50 PM

To: S22(1)
cc:
bcc:

Subject: Fw: Africa Inquiry--additional information sought
[SEC=UNCLASSIFIED]

S22(1)

Could you please have a look at this email and let me know if we should have any concerns with the draft response on Friday.

I will forward to you separately the latest estimates brief on this issue, as well as the min corr referred to in the email below.

S22(1)

I have copied [redacted] in because if my memory serves me correctly, S22(1) and might have some corporate memory to tap into.

Regards

S22(1)

S22(1)
Director
International Law Section
Ph: S22(1)

Forwarded by S22(1) on 06/04/2011 04:48 PM

S22(1)
To: S22(1)
le/DFATL
cc Deborah Stokes/People/DFATL@DFATL, S22(1)
05/04/2011 03:27 PM
Subject: Fw: Africa Inquiry--additional information sought [SEC=UNCLASSIFIED]

S22(1)

MEB has been asked to provide a response to the Joint Standing Committee on Foreign Affairs, Defence and Trade's request for additional information regarding its Inquiry into Australia's Relationship with the Countries of Africa. Our response is due with Africa Branch by Monday 11 April.

The Committee's request is that the Department "comment on Submission No.104 from the Australian Western Sahara Association and the response from the Moroccan Ambassador (Submission No.108)".

Submission No. 104 can be accessed at
<http://www.aph.gov.au/house/committee/jfad/africa%2009/subs/Sub%20104.pdf>

Submission No. 108 can be access at
<http://www.aph.gov.au/house/committee/jfad/africa%2009/subs/Sub%20108.pdf>

Please find attached the draft response we have prepared:



110405 - JSC on Foreign Affairs - Africa Inquiry - additional info sought re Western Sahara.docx

Our response is largely drawn from recently cleared wording (for responding to ministerial correspondence). References to Hans Correll's legal opinion are drawn from previously cleared wording (for Senate Estimates briefs).

S22(1) [redacted] - submission No.104 states that "Governments such as in Norway, Sweden and most recently, Ireland, have taken a stand making clear they expect their companies to act in accordance with international law and the rights of the people of Western Sahara." By way of support, they attach a copy of parliamentary questions on the matter raised in the Irish Parliament, and a reply by Ireland's acting Minister of Foreign Affairs. It is our understanding that no country (including Norway, Sweden and Ireland) has imposed autonomous sanctions against the importation of phosphate from Western Sahara and we propose to make this explicit in our response. Grateful if you could please confirm that this is the case.

Kind regards,

S22(1) [redacted]

----- Forwarded by S22(1) [redacted] on 05/04/2011 03:05 PM -----



S22(1) [redacted]
17/03/2011
11:29 AM

To Jon Philp/People/DFATL@DFATL, Chris Moraitis/People/DFATL@DFATL,
David Stuart/People/DFATL@DFATL

cc S22(1) [redacted]

Subject Fw: Africa Inquiry--additional information sought [SEC=UNCLASSIFIED]

Chris/Jon/David

The Secretary has received some supplementary questions from the JSC Inquiry into Africa (below).

Africa Branch can pull together answers on most questions but needs your Divisions' input on the following:

CMD:

What are the approximate costs of opening an embassy in an African country (capital costs and staffing costs)?

CPD:

Update on filling of the Honorary Consul positions in African countries (original information was at p1 of the supplementary submission received on 15 November 2010 - available from PMB)

SMD:

Would you comment on Submission No 104 from the Australian Western Sahara Association and the response from the Moroccan Ambassador (Submission 108) - attached to letter

Grateful for a response to S22(1) in EWA by 11 April.

FYI: members of the JSC will be travelling to Africa (South Africa, Ethiopia, Zimbabwe and Ghana) from 3-16 April as part of the inquiry supported by AFB and our African posts.

Thank you

Karen Lanyon
Assistant Secretary
Africa Branch

Department of Foreign Affairs and Trade

S22(1)

Forwarded by S22(1) on 17/03/2011 11:15 AM ----



S22(1)

To S22(1)

cc

Subject Africa Inquiry--additional information sought [SEC=UNCLASSIFIED]

13/03/2011
04:17 PM

Dear S22(1)

Please find attached a letter to Mr Richardson requesting answers to a number of questions.

In addition would you provide information on the officials visits program (my understanding is that under the program officials from other countries are sponsored to visit Australia). Does this program cover officials from African countries?

Regards

S22(1)



Africa Inquiry Secretary DFAT March 2011.pdf

UNCLASSIFIED

S22(1)

From: S22(1)
Sent: Friday, 8 July 2011 8:18 PM
To: S22(1)
Cc:
Subject: FW: Fw: Seminar by Aicha Dahane 'Politics in Western Sahara' on May 20,2011 [SEC=UNCLASSIFIED]

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UNCLASSIFIED

UNCLASSIFIED

FYI

UNCLASSIFIED

UNCLASSIFIED

From: S22(1)
Sent: Thursday, 19 May 2011 7:44 AM
To: S22(1)
Cc:
Subject: Re: Fw: Seminar by Aicha Dahane 'Politics in Western Sahara' on May 20,2011 [SEC=UNCLASSIFIED]

Classification: UNCLASSIFIED

Thanks S22(1) is the company S47G(1)(b)

S47G(1)(b)
Kind regards

S22(1)
WA State Director
Department of Foreign Affairs and Trade

S22(1)

f: (08) 9221 2827
e: S22(1)

314

DFAT - DECLASSIFIED
CASE: 1202-F90
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1982

Western Australian State Office
Level 17 Exchange Plaza
Sherwood Crt Perth WA 6000

----- Original Message -----

From: S22(1)
Sent: 19/05/2011 07:51 AM ZE10
To: David MacLennan
Cc: S22(1)
Subject: Re: Fw: Seminar by Aicha Dahane 'Politics in Western Sahara' on May 20, 2011 [SEC=UNCLASSIFIED]

Thanks for forwarding this S22(1) We met with S47F last week. The Moroccan Embassy are also aware of her visit S33(a)(iii)

We understand she is also going to meet with one of the WA companies which imports phosphate from Western Sahara.

Cheers

S22(1)

Director
Middle East and Northern Africa Section
Department of Foreign Affairs and Trade

S22(1)

S22(1)

To S22(1)
cc

18/05/2011 09:14 PM Subject Fw: Seminar by Aicha Dahane 'Politics in Western Sahara' on May 20, 2011 [SEC=

FYI only.

Kind regards

S22(1)

WA State Director
Department of Foreign Affairs and Trade

----- Forwarded by S22(1)

People/DFATL on 18/05/2011 07:13 PM -----

Centre for
Muslim States
and Societies
<cmss@cyllene.
uwa.edu.au>

To
cc S47F(1)

18/05/2011 03:36
PM

Subject Seminar by Aicha Dahane 'Politics in Western Sahara' on May 20, 2011 [SEC=

Dear Friends

315

Aicha Dahane, International Officer and Western Saharan Human Rights Activist, is coming to Perth to give a seminar on the politics of self-determination in Western Sahara.

The details for the event are as follows:

Date: Friday 20 May 2011

Time: 11-12.15pm

Venue: Political Science Conference Room, Social Sciences Building, Rm 2.63, UWA Crawley Campus

Please find attached a flyer for the event.

Please note that seatings are limited so RSVP for confirmation of attendance.

Regards,

S47F(1)

Administrative Assistant

Centre for Muslim States and Societies

Ph: 6488 4554

Email: cmss@uwa.edu.au

[attachment "110520-Aicha-Dahane.pdf" deleted by S22(1)]

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CASE: 1202-F90
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S22(1)

To S22(1)
cc

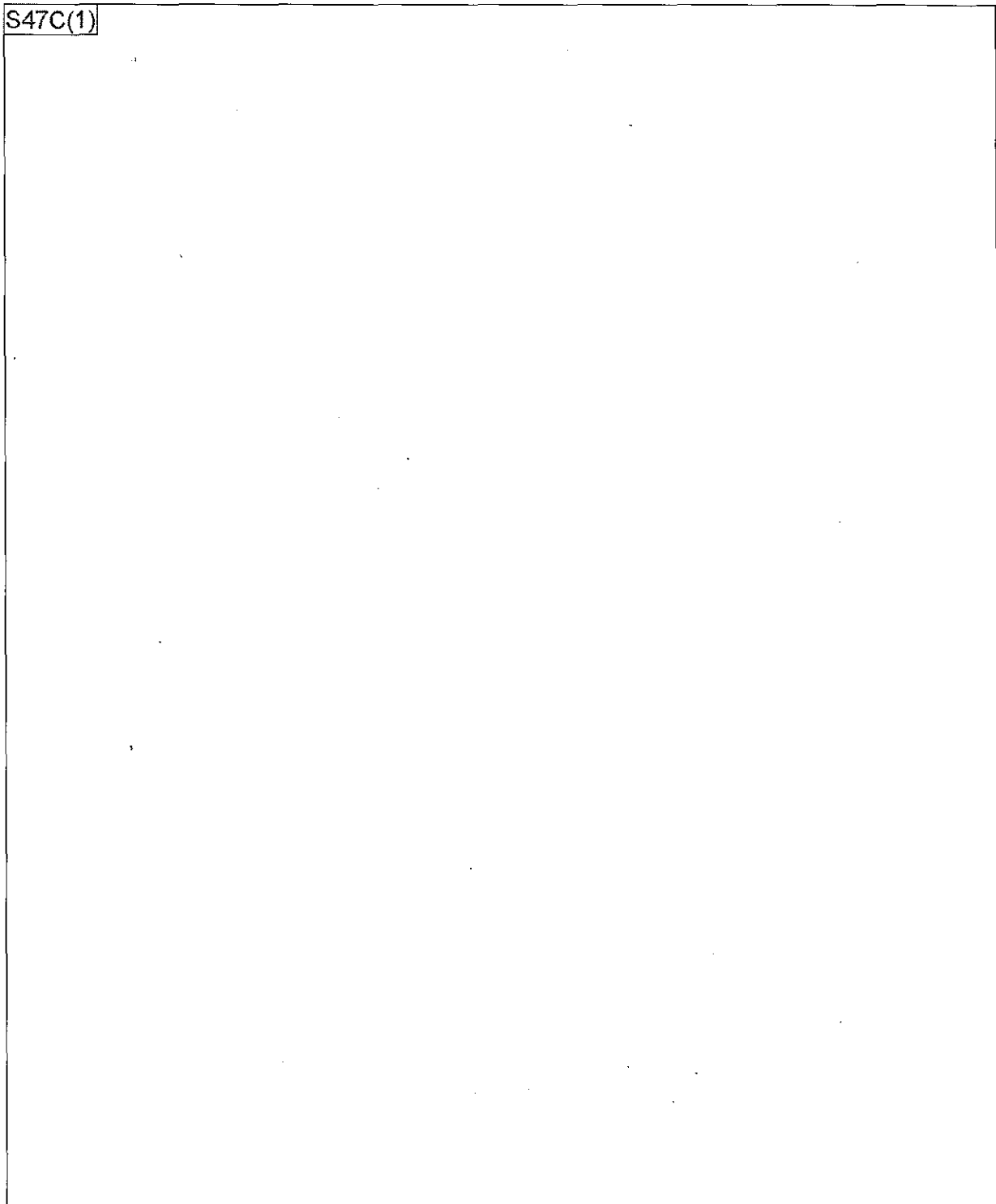
15/06/2011 03:51 PM

bcc

Subject Fw: Western Sahara: MEB submission [SEC=CONFIDENTIAL]

Hi S22(1)

S47C(1)



S47C(1)

REDACTED

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