

UN, The Situation Concerning Western Sahara

[Source: UN Doc. S/25170 (January 26, 1993).]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

THE SITUATION CONCERNING WESTERN SAHARA Report by the Secretary-General

[...]

III. THE SITUATION IN MISSION AREA

[...]

24. On October 16, 1992, municipal elections were held in Morocco and in the Territory of Western Sahara.
[...]

25. Subsequently, in various communications addressed to me, my Special Representative and the Force Commander of MINURSO, the Frente POLISARIO reported grave incidents allegedly involving violence and arrests throughout the Territory. While confirming the occurrence of public demonstrations in the Territory related to the electoral campaign, Morocco denied these allegations. It is pertinent to recall that while MINURSO's current military mandate is strictly limited to the monitoring and verification of the cease-fire, MINURSO, as a United Nations mission, could not be a silent witness to conduct that might infringe the human rights of the civilian population. Hence MINURSO patrols were alerted to possible unrest. Their reports did not corroborate the allegations made by the Frente POLISARIO. [...]

Discussion

1. What is MINURSO's mandate? Why could MINURSO, as a UN mission, not "be a silent witness to conduct that might infringe the human rights of the civilian population" (para. 25)? Because the UN has an

obligation to ensure respect for those rights? Or because the member States constituting MINURSO have that obligation?

2. Is MINURSO only concerned with human rights violations and not IHL, although similar acts constitute IHL violations as well? Could the term "human rights" mentioned in the Report by the Secretary-General and other UN documents be understood as "human rights in armed conflict" and thus as referring to IHL? If so, does such a statement indicate that the UN, which is not party to the Conventions, is under an obligation to enforce IHL? And is also bound by IHL? Would such an obligation be directly binding on the UN itself, or via the member States constituting MINURSO because they are party to the Conventions?

3. Does para. 25 of this Report describe an obligation that is always binding on UN forces? Is it an unwritten obligation in every UN mandate? Did it occur, for example, in the conflict in the former Yugoslavia? [See Case Study, Armed Conflicts in the former Yugoslavia, particularly paras 14 and 20] Does para. 25 clearly state the extent of the obligations and mandatory actions of UN forces? Does such a statement not require further clarification? Is it possible for UN forces, considering their resources and their expanding role throughout the world, to be one of the most effective tools for implementing IHL? Why or why not?

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