

The Conflict in Western Sahara

A. Human Rights Watch Report, October 1995

[Source: Human Rights Watch Report, *Keeping it Secret. The United Nations Operation in the Western Sahara*, October 1995 Vol. 7 No. 7, available on <http://www.hrw.org/reports/1995/Wsahara.htm>. To facilitate reading, the chapter “History of the Conflict” has been moved to the beginning of the document.]

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.

Keeping it secret

The United Nations operation in the Western Sahara [...]

HISTORY OF THE CONFLICT

The Western Sahara, or former Spanish Sahara, is an expanse of desert measuring over 260,000 square kilometers, bordered by Morocco, Algeria and Mauritania. The territory, which traditionally had a tribal, nomadic population, was under Spanish occupation from 1904 until 1975. Following the second world war, the rise of nationalist sentiment had a destabilizing effect on the European colonial powers. The United Nations eventually responded to the growing demands for self-determination by adopting a resolution on decolonization in 1960. [19] [...] However, Spain did not take any action towards organization of a referendum and, on May 10, 1973, the Popular Front for the Liberation of Saguia el Hamra and Rio de Oro, known as the Polisario Front, was formed to fight for Sahrawi independence from Spain. After two years of guerrilla warfare, Spain agreed to undertake a U.N.-sponsored referendum, scheduled to be held in the territory in 1975. In preparation for the process, Spain conducted a census in 1974 of the population present in the territory.

In the meantime, Morocco had put forth its own claims to sovereignty over the Western Sahara. [...] On December 13, 1974, the United Nations General Assembly asked the International Court of Justice (ICJ) to provide an advisory opinion on whether the Western Sahara was, at the time of colonization by Spain, a *terra nullius* (no man's land) and, if not, what the legal ties were between this territory and the Kingdom of Morocco and Mauritania. The court's opinion, issued on October 16, 1975, found that there was no evidence "of any tie of territorial sovereignty" between the Western Sahara and either Morocco or Mauritania, but that there were "indications of a legal tie of allegiance between the [Moroccan] sultan and some, although only some, of the tribes in the territory." In addition, the court found "the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity ... and the territory of the Western Sahara." However, the court concluded that it "has not found legal ties of such a nature as might affect the application of [General Assembly] resolution 1514 (XV) in the decolonization of the Western Sahara and, in particular, of the principle of self-determination...."

Despite the ICJ's support for the principle of self-determination, King Hassan II of Morocco chose to interpret the opinion as an affirmation of Morocco's claims to the territory. Thus, King Hassan launched what has come to be known as the "Green March," during which an estimated 350,000 Moroccan citizens marched across the border into the Western Sahara; at the same time, the government began to build up its troops on the territory. The United Nations Security Council and General Assembly passed resolutions denouncing the Green March and calling for the withdrawal of all the participants in the march. [23] However, on October 31, 1975, additional Moroccan forces entered the Western Sahara and armed conflict broke out between the Polisario Front and the Moroccan Royal Armed Forces. [...]

On November 14, 1975, Spain, Morocco and Mauritania concluded the secret "Madrid Accords," pursuant to which Spain agreed to cede administrative control of the territory to Morocco and Mauritania upon the official expiration of its mandate over the Western Sahara on February 27, 1976. The day after the Spanish withdrawal, Polisario proclaimed an independent Western Saharan state: the Sahrawi Arab Democratic Republic (SADR), with Polisario as its political wing. [...]

The military conflict between Polisario, Morocco and Mauritania continued until July 10, 1978, when the Mauritanian government was overthrown in a military coup. Polisario immediately declared a cease-fire and on August 5, 1979, signed a peace treaty with Mauritania, ending the latter's involvement in the conflict. Soon thereafter, however, Morocco occupied most of the Western Saharan territory relinquished by Mauritania, and the armed struggle between Morocco and Polisario continued. From 1980 until 1987, Morocco constructed a series of long defensive sand walls (the "berm"), which were heavily mined and fortified with barbed wire, observation posts and sophisticated early warning systems. At the same time, these walls served to enclose all of the major population centers of the Western Sahara and the territory's rich phosphate deposits.

Beginning in 1979, the Organization of African Unity (OAU) sought a resolution of the Western Sahara conflict and called for a cease-fire and a referendum to provide the right of self-determination. However, when the Sahrawi Arab Democratic Republic was admitted to the OAU in 1984, Morocco withdrew from the organization. [26] [...] In September 1988, following the adoption of a series of resolutions related to the conflict, the U.N. proposed a settlement plan (the "Settlement Plan") for the region, which provided for a cease-fire, the organization and conducting of a referendum, the repatriation of refugees and the exchange of prisoners of war. Both parties eventually accepted the Settlement Plan and a cease-fire formally took effect in September 1991, with Morocco controlling the vast majority of the territory and Polisario controlling a sliver along the eastern and southern borders. [...]

SUMMARY

[...] Human Rights Watch has determined that Morocco, which is the stronger of the two parties both militarily and diplomatically, has regularly engaged in conduct that has obstructed and compromised the fairness of the referendum process. In addition, a lack of U.N. control over the process has seriously jeopardized its fairness. The U.N. has already been present in the Western Sahara for four years without being able to exercise the "sole and exclusive responsibility" over the referendum that it was to have assumed under the Settlement Plan. The Settlement Plan contemplated a "transitional period," which was supposed to start immediately after the cease-fire took effect in September 1991. The transitional period included, among other provisions, a timetable for the reduction of Moroccan troops in the territory, the exchange of prisoners of war by the parties and repatriation of refugees. [...] [3] [...]

Opportunities for independent outsiders to observe and analyze the identification process are strictly limited. [...] MINURSO [United Nations Mission for the organization of a referendum in Western Sahara] staff members, including military observers, are subjected to constant surveillance by Morocco. This, and internal pressure from MINURSO, made them reluctant, even frightened, to speak to our organization, except on the explicit condition of anonymity. [...] Moroccan authorities' harassment of Human Rights Watch, as well as their strict surveillance of its activities, impeded the organization's ability to conduct a thorough investigation of human rights abuses in the Moroccan-controlled Western Sahara. [...]

CREATING FACTS ON THE GROUND

Both Morocco and Polisario have formally agreed to accept the results of the referendum. Nevertheless, pending the referendum, Morocco seems to be entrenching itself more firmly in the Western Sahara with each passing day, taking steps that have dramatically altered the demography and other aspects of the territory. [...]

Morocco, which was estimated to have [deployed] over 120,000 troops in its Saharan military campaign, [accrued] military expenditures amounting to about \$250 million a year for the period 1976 to 1986 alone.

The Moroccan government, which is in administrative control of most of the Western Sahara, has also carried

out a variety of infrastructure projects, ranging from construction of roads, ports and administration buildings to the supplying of water, and provided social services, including housing, schools and hospitals.

Civilian expenditures in the four provinces of the Western Sahara totalled about US\$2.5 billion between 1976 and 1989, or about \$180 million a year.... Most of the total was allocated to Laayoune province, where nearly two-thirds of the population lives. The primary objective of these expenditures was to win the hearts and minds of the resident Sahrawi population. Over the longer term, the Moroccan government hopes to recoup its investment from profits from Saharan fisheries and phosphates.

MINURSO personnel also point to lucrative financial incentives provided to Moroccans who move to the Western Sahara, including tax-free salaries and subsidized food. These incentives succeeded in increasing the population of the Western Sahara from the 74,000 figure of the 1974 Spanish census to 162,000 in 1981, according to a Moroccan census. [...]

The most visible examples of Moroccan attempts to populate the region with its supporters are the "tent cities" that were created near the major Western Saharan cities in September and October of 1991. These encampments house 40,000 people who were transported to the Western Sahara in order to vote in the referendum. According to Moroccan authorities, these individuals are of Sahrawi origin, but had left the territory for a variety of reasons. [...]

Shortly after the population transfer in 1991, Johannes Manz, the secretary-general's special representative for the Western Sahara resigned his post, informing the secretary-general that:

Concerning the non-military violations, the movement of unidentified persons into the Territory, the so-called 'Second Green March,' constitutes, in my view, a breach of the spirit, if not the letter of the peace plan. [...]

In fact, the population transfer clearly violated the letter of the Settlement Plan, specifically paragraphs 72 and 73, which only permit Western Saharans resident outside of the territory to return to the Western Sahara after their eligibility to vote has been established by the Identification Commission. [120] [...]

It is commonly alleged that the tent people are not Sahrawi at all but were brought in, and are being kept in the region, by force, in order to increase Moroccan votes in the referendum. Human Rights Watch was unable to investigate this issue, since our representative was detained by Moroccan security forces when she attempted to enter a tent city in Laayoune. Indeed, the area is strictly off limits to foreigners, except during visits conducted in the presence of government authorities. Jarat Chopra, who visited the region as part of an American bi-partisan delegation visiting the region in July 1993, remarked:

The rows of white tents bear black symbols of the Moroccan royal family. This is not a spontaneous movement of people but appears an orchestrated effort... [...]

Following a trip to the region in 1992, Chopra testified before the U.S. Senate Foreign Relations Committee that, "If any [of the inhabitants of the tent cities] have come to vote and keep the Sahara Moroccan there is no evidence that they will stay. These are temporary camps, not settlements, where civilians can do nothing but wait. One year later, many are trying to leave but are threatened with arrest if they do."

OTHER HUMAN RIGHTS ISSUES RELATED TO THE WESTERN SAHARA CONFLICT

Freedom of Expression and Assembly in the Moroccan-Controlled Western Sahara [...]

Hundreds of cases of individuals who reportedly "disappeared" up to two decades ago also remain unresolved. In June 1991, the Moroccan government released over two hundred individuals, most of whom "disappeared" because they or their family members had challenged the government's claims to the Western Sahara. [130] The victims were usually held in secret detention centers and subjected to torture, some for almost two decades. [...] [131]

Based on testimony from family members and from the former "disappeared," AFAPREDESA [Association of Families of Prisoners and Disappeared Sahrawis] reports that at least 526 Sahrawis are still "disappeared" and may be detained in Morocco or in the Moroccan-controlled Western Sahara.

The Refugee Camps in Tindouf

The armed conflict in the Western Sahara caused the displacement of tens of thousands of Sahrawis to the eastern border of the territory. In January 1976, the Moroccan bombardment of camps that had been set up outside the Western Saharan cities caused thousands of casualties and forced tens of thousands of Sahrawi to flee once again, this time taking refuge in southwestern Algeria. Twenty years later, [the camps] are home to 165,000 refugees [...].

Prisoners-of-War Camps

Over 2,400 prisoners of war (POWs), both Moroccan and Sahrawi, captured in the course of the armed conflict, have been held in difficult conditions for up to twenty years. Morocco states that it holds only seventy-two POWs [...]. [146] Polisario refutes this figure, asserting that Morocco actually holds 200 -300 prisoners.

The International Committee of the Red Cross (ICRC) registered eighteen Polisario prisoners held by Morocco in April 1978 but, following that visit, Morocco denied access to the ICRC until May 1993. Since that date, the ICRC has made four additional visits to Sahrawi prisoners in the southern Moroccan city of Agadir; to date, it has registered a total of seventy-two prisoners. Polisario permitted the ICRC access to Moroccan prisoners it was holding during the first two years of the conflict. Then, from 1976 until 1984, Polisario suspended ICRC visits, presumably in protest of continued denial of access to the ICRC by Morocco. Since

1984, the ICRC has attempted to make regular visits to the Moroccan prisoners held by the Polisario. [...]

Some [Moroccan prisoners] complained about their physical treatment at the hands of prison guards, while others emphasized that this had improved since 1986 or 1987. [...] Indeed, conditions in the camps appear to have fluctuated over the past twenty years, in accordance with the political tide, and the most marked improvement seems to have occurred since 1987.

Everyone complained about medical problems, particularly the lack of medication. [...]

It is compulsory for prisoners to work outside of the camps, in Polisario-administered locations, doing work ranging from construction to mechanics to tailoring. They are not paid for their labor, in violation of international standards. [151] The climatic conditions in which the prisoners work, as well as their long working hours, also fall short of international standards. [...] [153] Since 1993, [...], prisoners have been able to send and receive messages, mail and even packages on a regular basis, principally through the ICRC. [...]

Released Prisoners of War

Perhaps most tragic, however, is the plight of 184 elderly, ill and disabled Moroccan POWs who were released by Polisario for humanitarian reasons on May 8, 1989, prior to the signing of the Settlement Plan. In an astonishing move, Morocco has refused to take these prisoners back because it believes that this act would constitute a recognition of Polisario and be exploited by Polisario for public relations purposes. Instead, Morocco has insisted that it will not take back any prisoners until all POWs are released. This violates the right to enter one's country, guaranteed in Article 12 of the International Covenant on Civil and Political Rights, ratified by Morocco on August 3, 1979. [...]

[T]he ICRC has been involved in this issue from the outset and has made countless demarches to the Moroccan government, but to no avail. [...]

B. The Issue of the “Disappeared”

[Source: Amnesty International, Day of the “Disappeared” – families still await truth and justice; AI INDEX: MDE 29/003/2002, 30 August 2002 Press release 148/02; **available on** <http://www.amnesty.org/>]

Morocco/Western Sahara: Day of the “Disappeared” – families still await truth and justice

AI INDEX: MDE 29/003/2002
30 August 2002

As the world observes the Day of the “Disappeared” 2002 today, Amnesty International is calling on the

Moroccan authorities to finally end the suffering of hundreds of Moroccans and Sahrawis still awaiting news of relatives who “disappeared” at the hands of the Moroccan security services in previous decades.

“If my relative is dead, I want to receive the body or remains for burial and begin the grieving process that would allow me to come to terms with the loss. If my loved one is alive, I want the chance to see him for what little time he may have left.” Amnesty International has heard the same message from dozens of families of the “disappeared” in Morocco/ Western Sahara, from Morocco’s economic capital, Casablanca, to the desert town of Smara in Western Sahara.

“It is cruel and inhuman that a woman whose husband was arrested in front of her during the 1960s or 1970s should still be trying to obtain an answer from the authorities on whether he continues to be held in secret detention or was tortured to death,” the organization said, adding “It is high time those answers were given.”

Amnesty International has publicly welcomed the series of positive initiatives undertaken by the Moroccan authorities in recent years to improve the human rights situation, including the establishment by King Mohamed VI in July 2000 of an arbitration commission to decide on compensation for material and psychological damage suffered by victims of “disappearance” and their families. Compensation has so far been awarded in several hundred cases. *“However, there can be no substitute for truth and justice,”* Amnesty International said.

On this day, Amnesty International adds its voice to those families of “disappeared” and calls on the Moroccan authorities to conduct prompt, thorough, independent and impartial investigations into each individual case of “disappearance” and to bring those responsible to justice.

Background

The issue of “disappearances” has marked the history of Morocco/Western Sahara in the past four decades and remains one of the most painful unresolved human rights problems. More than a thousand people, the majority of them Sahrawis, “disappeared” between the mid-1960s and the early 1990s at the hands of Moroccan security services.

Several hundred Sahrawis and Moroccans were released in the 1980s and 1990s after spending up to 18 years completely cut off from the world in secret detention centres. Dozens more “disappeared” are reported to have died in secret detention. However, the fate of hundreds of others remains unknown. [...]

C. The Issue of Prisoners of War

[Source: ICRC Press Release, 03/10, 26 February 2003; available on <http://www.icrc.org>.]

Morocco/Western Sahara: 100 Moroccan prisoners repatriated

Geneva (ICRC) – On 26 February, the International Committee of the Red Cross (ICRC) repatriated 100 Moroccan prisoners released by the Polisario Front. Accompanied by an ICRC team, the prisoners left Tindouf, Algeria, aboard an aircraft chartered by the organization and were handed over to the Moroccan authorities at the Inezgane military base, near Agadir. Before the operation, ICRC delegates had interviewed the prisoners individually to make sure that they were being repatriated of their own free will. All the prisoners were allowed to take their personal effects with them.

The ICRC welcomes the release of the prisoners, most of whom are elderly and sick. The organization nevertheless remains concerned about the plight of the 1,160 Moroccans still being held captive and reiterates its call for their release, in conformity with the provisions of international humanitarian law. The matter is all the more pressing given the age and poor health of the remaining prisoners, some of whom have been deprived of their freedom for more than 20 years. On 7 July 2002, 101 Moroccan prisoners were released under ICRC auspices.

ICRC delegates visit prisoners held by the Polisario Front twice a year. Their most recent visit took place in December 2002. The delegates provide the prisoners with medical aid in particular and enable them to exchange news with their families by means of Red Cross messages.

[**N.B.:** In August 2005, the Polisario had released all the Moroccan prisoners in its custody. **See** ICRC Press Release 05/44, 18 August 2005, online: <http://www.icrc.org>.]

Footnotes

- [19] United Nations General Assembly, “Declaration on the Granting of Independence to Colonial Countries and Peoples,” (New York: United Nations, 1960), A/15/1514 [**available on** <http://www.ohchr.org>].
- [23] United Nations Security Council, “Situation Concerning Western Sahara,” (New York: United Nations, 1975), S/RES/380 [**available on** <http://www.un.org>]. and United Nations General Assembly, “Question of Spanish Sahara,” (New York: United Nations, 1995), A/30/3458. [**available on** <http://www.arso.org/06-4-0.htm>]
- [26] To date, no country has recognized Moroccan sovereignty over the Western Sahara. The SADR, for its part, has diplomatic relations with seventy-six countries, primarily from Africa, Latin America and Asia. Human Rights Watch interview with Boukhari Ahmed, Polisario representative to the United Nations, September 19, 1995.
- [3] United Nations Security Council, “The Situation Concerning Western Sahara: Report of the Secretary-General,” (New York: United Nations Publications, 1990), S/21360, [**available on** <http://www.arso.org/06-6-0.htm>] paras 47 and 71.
- [120] U.N. Doc. S/21360 [**available on** <http://www.arso.org/06-6-0.htm>], paras 72 and 73.
- [130] However, a July 8, 1994 general amnesty, pursuant to which 424 Moroccan political prisoners were released, explicitly excluded those who had advocated independence for the Western Sahara.

- [131] Amnesty International, “Breaking the Wall of Silence: The Disappeared in Morocco.
- [146] Human Rights Watch takes no position on whether the armed conflict between Morocco and the Polisario Front was of an internal or an international character, as defined in the Geneva Conventions of August 12, 1949. However, we refer to the combatants captured during the armed conflict as “prisoners of war,” in order to be consistent with the terminology used in the United Nations Settlement Plan for the Western Sahara, as well as by the secretary-general and the Security Council.
- [151] Article 62 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War requires that “prisoners of war be paid a fair working rate.” [...] It should also be noted that, due to its lack of monetary resources, Polisario does not pay Sahrawi refugees either [...].
- [153] See, e.g., Articles 51 and 53 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War which, even if were not binding, would serve as a guideline for detention conditions.

<https://casebook.icrc.org/case-study/conflict-western-sahara>

Discussion

1.
 - a. How do you categorize the conflict between Morocco and the Polisario Front? Is it a non-international or an international armed conflict? Because the Polisario Front, which is fighting for the independence of the Saharawi Arab Democratic Republic (SADR), is supported by Algeria? Because the SADR is internationally recognized as a State by some 50 countries and is a member State of the African Union? Or because the Polisario Front is a national liberation movement fighting for the right of self-determination of the Saharawi people? Does the fact that Western Sahara is considered by the UN to be a “non-self-governing territory” affect the conflict’s classification? Does the fact that Morocco is not party to Protocol I affect the conflict’s classification? (GC I-IV, Art. 2; P I, Art. 1(4))
 - b. As a ceasefire has been in effect since 1991, can the situation still be categorized as an armed conflict? If not, is IHL applicable? When does the applicability of IHL begin and end? What provisions of IHL remain applicable? All provisions protecting those detained in connection with the conflict? All provisions protecting the population of an occupied territory? (GC I-IV, Art. 2(2); GC III, Art. 5(1); GC IV, Art. 6; P I, Arts 1(4) and 3)
2. Is Western Sahara an occupied territory? (HR, Art. 42) Is Western Sahara “under de facto control of enemy forces”? Which provisions of Convention IV cease to be applicable “one year after the general close of military operations” and which provisions are applicable throughout the period of occupation? (GC IV, Art. 6(3)) Does Protocol I have a broader scope inasmuch as it ceases to be applicable “on the termination of the occupation”? (P I, Art. 3(b)) From what moment is it determined that there is no longer an “occupation” – from “the liberation of the territory or [...] its incorporation in one or more States in accordance with the right of the people or peoples of that territory to self-determination”? (Commentary, P I, Art. 3(b), <http://www.icrc.org/ihl>) What if the referendum on self-determination, which the UN has been attempting to organize for 15 years, never takes place? What would the consequences be, in terms of IHL, of the various possible outcomes of this conflict?
3.
 - a. Which of the applicable provisions of IHL are in your opinion being violated by the parties to the

conflict? Those concerning occupied territory? Those concerning protected persons? Protected civilians? Prisoners of war? (GC I-IV, Art. 3; GC III, Arts 109, 110 and 118; GC IV, Arts 31, 32, 33(1), 33(3), 49(6), 52(2), 53, 71(1), 76 and 143; P I, Arts 32, 33 and 75) Are these violations war crimes? (GC III, Art. 130; GC IV, Art. 147; P I, Art. 85)

- b. Does Morocco's transfer of part of its own civilian population into Saharawi territory constitute a violation of IHL? (GC IV, Art. 49(6)) A war crime? Do torture and arbitrary arrest and sentencing constitute violations of IHL? War crimes? Only if committed against Saharawis, or equally if committed against any civilian? Do the practice of enforced disappearance and the failure to provide information on missing persons constitute violations of IHL? War crimes? (GC IV, Art. 147; P I, Art. 85; See also ICC Statute, Art. 7(2)(i) for a definition of "enforced disappearance"; **See** The International Criminal Court) Did the Polisario's failure to release the Moroccan prisoners of war it was holding constitute a violation of IHL? A war crime? Did exacting compulsory labour from them constitute a violation of IHL? A war crime? (GC III, Arts 62 and 130; P I, Art. 85(4)(b))