

Malaysia/Philippines, Conflict over the Sultanate of Sulu

Case prepared by Ms. Danielle Breitenbücher, Master student at the Faculties of Law of the Universities of Geneva and Basel (Switzerland), under the supervision of Professor Marco Sassòli and Ms. Gaetane Cornet, research assistant, at the University of Geneva.

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.

A. Philippine Leader Urges Rebellious Group to Leave Borneo

[Source: Philippine Leader Urges Rebellious Group to Leave Borneo, by Floyd Whaley, New York Times online, 26 February 2013; available on <http://www.nytimes.com>]

MANILA — President Benigno S. Aquino III on Tuesday ordered a group of armed Filipinos holed up in Malaysian Borneo to return home and said their leader could be criminally charged for inciting war.

The group, which is seeking to revive a historical claim to part of Borneo, arrived by boat Feb. 12 from the southern Philippines in the remote area of Lahad Datu in the northeastern Malaysian state of Sabah. The group is led by a religious leader who claims to be an heir to the sultanate of Sulu, which ruled the area for centuries.

“This incident involves approximately 180 people, 20 to 30 of whom are armed,” Mr. Aquino said in a nationally televised address. “Having an armed group in Lahad Datu presents a challenge that the Malaysian authorities cannot ignore.”

The Philippines on Monday sent a navy vessel to the area with medical and diplomatic personnel to pick up the group or escort them back to the Philippines, hoping to resolve a situation that has complicated its relations with Malaysia.

Mr. Aquino said his government had sent emissaries to the group's leader in Manila, identified as Prince Rajah Mudah Agbimuddin Kiram, seeking to resolve the issue.

[...]

The Philippines has been coordinating with the Malaysian government to resolve the issue peacefully, but police officials in the area where the standoff is taking place have suggested that they are prepared to use force if necessary.

"We don't care where they come from, including the sultanate of Sulu," Police Commissioner Datuk Hamza Taib told reporters on Monday, according to the Malaysian state news agency Bernama. "They are foreigners who intruded our country and violated our laws and sovereignty."

"When the time comes, there will be no more negotiations," he added later.

Malaysian police and military forces have surrounded the group and restricted its access to food and water to try to force its members to return to the Philippines. The police have set a series of deadlines for the group to leave, but each has passed without incident or a departure.

Abraham Idjirani, one of the leaders of the group, said on Tuesday after Mr. Aquino's statement that the Filipinos in Sabah would remain in place until Malaysia agrees to address the claims of the Sulu sultanate.

"Whatever happens, the sultanate is ready to face the consequences," Mr. Idjirani, who is based in the Philippines, told reporters.

The group's claims are not clear. Those who arrived on Feb. 12 originally requested the right to stay in Sabah, saying the area was property of the Sulu sultanate. But leaders of the group in the Philippines have since indicated that they have broader goals related to reviving their historic claim to the area.

The Malaysian state of Sabah lies a few hours by speedboat from the restive southern Philippines, where several armed militant groups operate. Despite the unrest in the southern Philippines, there have been efforts in recent years to expand trade and tourism between the two areas.

Partially as a result of such efforts, hundreds of thousands of Filipinos — according to government estimates — live and work in Sabah. Thousands of others are involved in cross-border trade with the Malaysian area, which has been peaceful and more prosperous than the southern Philippines.

"The action of these people purporting to be your followers endangers more than just their own lives," Mr. Aquino said Tuesday in his statement to the group's leader. "They also put at risk our countrymen peacefully engaged in their livelihood in Sabah."

B. Malaysian Incursion by Filipinos Ends in a Deadly Clash

[Source: Malaysian Incursion by Filipinos Ends in a Deadly Clash, by Floyd Whaley, New York Times online, 28 February 2013; available on <http://www.nytimes.com>]

MANILA — An obscure, centuries-old territorial dispute between Malaysia and the Philippines erupted in violence on Friday, leaving at least 13 people dead and straining relations between the close Southeast Asian neighbors.

Malaysian security forces battled on Friday morning with about 180 Filipinos, some of whom were armed, in an effort to remove them from a remote coastal village they had occupied for two weeks in the northeastern Malaysian state of Sabah.

The Malaysian state news agency Bernama reported that 10 to 12 Filipinos died in the clash and two Malaysian police commandos were killed in a mortar attack.

[...]

There were different accounts of how the violence started.

Ricky Carandang, a Philippine presidential spokesman, said it appeared to have begun when the Filipinos tried to breach the perimeter established by Malaysian police. "They apparently tried to leave the area and were stopped," Mr. Carandang said by telephone."

The Malaysian home minister, Hishammuddin Hussein, said on his Twitter account that "the situation is fully under control."

"I confirm that our security forces have not taken a single shot, but were shot at at 10 a.m. this morning," he wrote on Friday, adding that the group at that point was still surrounded by the Malaysian police.

But the Filipinos said they did not start the confrontation. Abraham Idjirani, a spokesman in Manila for the armed group, said Friday that at about 6 a.m. Friday the Malaysian police began approaching the perimeter and shots were fired. The police then retreated, he said.

He said that 10 Filipinos had been killed and that four were injured in the assault. "The first shot came from the Malaysian authorities," the spokesman said.

C. Malaysia Attacks Filipino Rebels With Jets and Mortars

[Source: Malaysia Attacks Filipino Rebels With Jets and Mortars , by Floyd Whaley, New York Times online, 5 March 2013; available on <http://www.nytimes.com>]

MANILA — Malaysia used airstrikes and mobilized thousands of troops on Tuesday to try to put an end to a monthlong quixotic incursion by a band of gunmen from the Philippines seeking to reclaim part of Borneo Island for a defunct sultanate.

Three F-18 fighter jets and five Hawk ground-attack aircraft bombed and strafed the estimated 200 Filipino gunmen holed up near the small northeastern Malaysian village of Kampung Tadu, Defense Minister Ahmad Zahid of Malaysia said on Tuesday.

The airstrikes were followed by a ground assault that killed an undetermined number of the Filipino gunmen but caused no Malaysian casualties, the defense minister said.

“The armed forces’ operation to defend the nation’s sovereignty has been fruitful,” he told reporters, without providing details on whether all of the gunmen had been captured or killed.

Reports on Malaysia’s state-run news agency, Bernama, showed armored personnel carriers moving through the streets of Sabah State while military helicopters flew overhead. Military roadblocks have been set up around the area to stop the spread of the fighting, and villagers reported that in at least one case they had to remove the corpses of Filipino fighters from the streets of their village.

The assault came after weeks of pleas by the Philippine and Malaysian governments for the gunmen to return to the southern Philippines. Malaysian forces tried repeatedly to dislodge the gunmen by force with at least 27 killed in fighting before Tuesday’s major offensive. The current death toll is unclear.

[...]

In the last few days, Philippine officials have frantically shuttled between Kuala Lumpur and Manila seeking to smooth relations with their Southeast Asian neighbor and protect the more than 800,000 Filipinos living and working in Sabah State. [...]

[...]

The violence in Sabah, which has escalated into one of the most serious security emergencies in recent Malaysia history, has strained relations between the two Southeast Asian allies.

Both countries have tried to stop the violence from spreading. Malaysian and Philippine navy ships are patrolling the countries’ narrow sea border to try to stop Filipino fighters sympathetic to the group in Borneo from coming over as reinforcements.

D. Malaysians Kill 13 Filipino Fighters Amid Fears of Wider Conflict

[Source: Malaysians Kill 13 Filipino Fighters Amid Fears of Wider Conflict, by Floyd Whaley, New York Times online, 6 March 2013; available on <http://www.nytimes.com>]

MANILA — An air and ground assault by Malaysian forces killed at least 13 of the nearly 200 militants seeking to reclaim part of Borneo Island for a Filipino sultan, Malaysian police officials said Wednesday.

Sporadic fighting continued on Wednesday in remote coastal areas of the eastern Malaysian state of Sabah as the police and soldiers scoured rugged territory, searching house to house to find Filipino rebels who escaped the large assault on Tuesday. At least 40 people have died so far in the fighting.

The Malaysian state news agency, Bernama, said the police warned on Wednesday that some of the rebels were “impersonating as members of the public.”

“The mopping and searching will cover a wider area given there are signs the intruders moved to another location,” Chief Ismail Omar of the Royal Malaysia Police told reporters on Wednesday, without providing more details.

[...]

Nur Misuari, the leader of the southern Philippine militant group Moro National Liberation Front, said after Tuesday’s assault that some of the battle-hardened fighters from his group were taking part in the fighting in Malaysia.

In a sign of potential widening of the conflict, the rebel leader said that more of his fighters were planning to go to Borneo on their own to reinforce the Filipino combatants there, even though he did not support the incursion into Sabah.

To halt further incursions, Malaysian and Filipino naval ships have set up a blockade between the southern Philippines and Sabah, a distance that can be traveled by speedboat in about an hour.

[...]

Prime Minister Najib Razak of Malaysia and President Benigno S. Aquino III of the Philippines have tried repeatedly to convince the group from the southern Philippines to return before violence broke out. Both leaders are facing elections, and the fighting is being used by opposition candidates to criticize government efforts.

[...]

Malaysian authorities [...] are incensed by the incursion into Sabah and have labeled the Filipino fighters as “terrorists.” Mr. Aquino’s government has rejected the term but noted that if the bodies of Malaysian soldiers were desecrated, as reported by authorities, those would be considered “terroristic” acts.

E. Malaysia Detains 79 in Fight Against Filipinos

[Source: Malaysia Detains 79 in Fight Against Filipinos, by Floyd Whaley, New York Times online, 9 March 2013; available on: <http://www.nytimes.com>]

MANILA — Malaysian authorities announced Saturday that they had detained 79 people they suspected of being sympathizers of Filipino fighters who recently landed on Borneo in an attempt to re-establish a historic claim to part of the island.

The government also raised the death toll in recent fighting between Malaysian forces and the militants to 61. Malaysian authorities said eight of the dead were police officers and the rest were militants. It is difficult to know if any were civilians because the government has restricted journalists’ access to the area.

[...]

[...] There are an estimated 800,000 Filipinos in Sabah, according to Philippine government estimates. Many are undocumented workers and some claim to have been mistreated by employers and local Malaysian authorities. Many Filipinos support Sabah being returned to their country, though they want their government to pursue that through nonviolent, legal means.

The announcement of the detentions on Saturday raised concerns among human rights activists.

Human Rights Watch called on the Malaysian government to either charge those detained with a criminal offense or release them. The group also asked the Malaysian government to be more forthcoming with information about its operations in Sabah.

The Malaysian forces are continuing to scour the remote eastern coast of Sabah to try to find the remaining rebels.

The Malaysian national police chief, Tan Sri Ismail Omar, told reporters on Saturday that those who were detained were being questioned regarding the incursion. “They were held on suspicion of having links with the armed militants,” he said.

F. Conflict in Northern Borneo Seems Poised to Escalate

[Source: Conflict in Northern Borneo Seems Poised to Escalate, by Floyd Whaley, New York Times online, 12 March 2013; available on <http://www.nytimes.com>]

[...] [T]he government has detained 85 Filipinos living in the region under its internal security law based on suspicion of their having links to the Filipino group, the Malaysian state news agency Bernama reported.

Discussion

I. Classification of the situation

1.
 1. (Documents A, C and D) How would you classify the situation between Malaysia and the Philippines? Is it an international armed conflict? What conditions have to be met for the Philippines to be a party to the conflict? Does the Philippines exercise the necessary degree of control over the rebel group? (Documents C and D) Did the Philippines violate the sovereignty of Malaysia? How would you take account of the Philippines' activities in support of the Malaysian government, in particular that it set up a sea blockade between southern Philippines and Sabah? If you qualify the situation as an international armed conflict, does Protocol I apply? (GC I-IV, common Art. 2; P I, Art. 1(4))
 2. How would you classify the situation between Malaysia and the Filipino rebel group? Is there sufficient information given to classify the situation? Does the fact that the rebel group operates from Filipino territory matter for the purpose of classifying the conflict? Can there be a non-international armed conflict between a state and a non-state armed group operating from a different state? Does Protocol II apply in the present case? (GC I-IV, common Art. 3; P II, Art. 1)
2. (Document A) When did the armed conflict start? When the rebel group arrived in the Malaysian state of Sabah and stayed there? (Document B) When violence broke out between the group and Malaysian security forces? (Document C) With Malaysia's major offensive? (Document B) Does it matter which party fired the first shot for the qualification of the conflict? For the determination of the rules of IHL that will have to be respected by each party?
3. (Documents C and D) Is the Moro National Liberation Front a party to this conflict? Is it relevant that its leader does not support the incursion into Sabah?

II. Interrelation between IHL and international human rights law

1.
 1. If there is no armed conflict in Malaysia, which are the applicable rules? What are the consequences for the Malaysian police and military? Did they act in accordance with their obligations?
 2. (Documents A and B) If there is an armed conflict in Malaysia, is human rights law still applicable?
 3. If the Malaysian authorities fired the first shot, is this compatible with their international human rights obligations? What elements can you find in the text to support your answer?

III. Status of the persons involved

1. What is the status of the arrested Filipino nationals if the conflict was international? Under what

circumstances are the members of the armed group that landed combatants and prisoners of war? (GC IV, Art. 4; P I, Art. 43)

IV. Conduct of hostilities

1. (Document A) Are the Filipino rebels a legitimate target under IHL? If they are taking a direct part in hostilities? If they are not armed? (GC III, Art. 4; P I, Arts 43 and 51; CIHL, Rules 1 and 6; see Document , ICRC, Interpretive Guidance on the Notion of Direct Participation in Hostilities)
2.
 1. (Documents A and C) Which principles of IHL do the Malaysian authorities have to respect when attacking the Filipino rebel group? Are the Malaysian airstrikes over Kampung Taduo and the subsequent ground assault consistent with Malaysia's obligations under IHL? Is Malaysia violating the principle of proportionality by using airstrikes and thousands of troops against the 200 rebels, of which only some are armed? (P I, Art 48; CIHL, Rules 1-24)
 2. (Documents A, C and D) Do the Filipino rebels violate IHL by "impersonating as members of the public", mingling with the local Filipino migrants and hiding in villages? Does this behaviour constitute perfidy? (P I, Arts 37, 48 and 58; CIHL, Rules 1, 22-24 and 65)
3. (Document D) Is the desecration of dead bodies prohibited under IHL of non-international armed conflicts? (CIHL, Rules 113 and 115)

V. Detention of Filipinos

1. (Document E) May the Malaysian authorities detain members of the Filipino rebel group? On which legal basis? Do they have to charge them with a criminal offence? According to the law of non-international armed conflicts? Does IHL of non-international armed conflicts provide an answer to these questions?
2. (Document F)
 1. May the Malaysian authorities detain Filipinos living in Sabah on "suspicion of having links with the armed militants" under the IHL of international armed conflicts? Do the detained persons have a right to have their detention reviewed? Under IHL or international human rights law, do they have a right to be released if they are not charged with a criminal offence? (GC IV, Arts 41-43)
 2. How would you answer (a) if the situation were governed by the law of non-international armed conflicts? Do detained persons have a right to have the legality of their detention reviewed? (GC I-IV, common Art. 3)
1. When do detained persons have to be released at the latest? Does IHL protect them even after the hostilities have ended? (P II, Art. 2(2); CIHL, Rule 128(C))