

NEW YORK CITY BAR

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H.E. Ban Ki-moon
United Nations Secretary General
Executive Office of the Secretary General
United Nations Headquarters
1st Avenue and 44th Street
New York, New York

Dear Secretary General Ki-Moon:

I write to you on behalf of the Association of the Bar of the City of New York to urge the United Nations Security Council to include in the mandate of the United Nations Mission for the Referendum in Western Sahara (MINURSO) a requirement to monitor and report on human rights violations when the Security Council considers the renewal of MINURSO's mandate next month.

The Association is an independent non-governmental organization with more than 23,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights and the adoption of policies to implement the United Nations Charter, notably through its United Nations and International Human Rights Committees. It also regularly follows developments in Africa through its Committee on African Affairs. All three of these committees have identified this situation as warranting concern.

MINURSO was established in 1991 as a peacekeeping mission charged with monitoring the ceasefire agreement which ended over fifteen years of armed conflict between Morocco and the Polisario over the territory of Western Sahara, and conducting a referendum whereby the people of Western Sahara could determine their future. Throughout the 19 years since the establishment of MINURSO there have been consistent reports of human rights violations in the territory controlled by Morocco, including the arrest, torture and detention of Sahrawis for peacefully advocating self-determination.¹ There have also been allegations of abuses in the refugee camps controlled by the Polisario in Tindouf, including restraints on travel and free speech.² In its 2006 Country Report on Human Rights Practices in Western Sahara, the

¹ See Human Rights Watch reports *Keeping it Secret: The UN Operation in The Western Sahara* (1995), *Morocco/Western Sahara: Freedom of Assembly on Trial* (2001), and *Human Rights in Western Sahara and in the Tindouf Refugee Camps* (2008), and Amnesty International reports, *Continuing Arrests, 'Disappearances' and Restrictions on Freedom of Expression and Movement in Western Sahara* (1993), and *Breaking the Wall of Silence: The Disappeared in Morocco* (1993), and *Morocco and Western Sahara Reports (2008 and 2009)*.

² The claim of the Moroccan government that the Polisario has detained 45,000 to 50,000 Sahrawi refugees against their will has been reported in the 2006 Country Report on Western Sahara prepared by the U.S. State Department's Bureau of Democracy, Human Rights and Labor.

United States Department of State acknowledged a number of allegations of human rights abuses in the territory as well as the fact that “[t]he Moroccan government restricted freedom of expression, assembly and association.”³ In 2006 a mission of the United Nations High Commissioner for Human Rights also issued a report in which it concluded that “[o]verall, the human rights situation is of serious concern, particularly in the Moroccan-administered territory of Western Sahara” and identified a range of human rights abuses that included denial of the rights of the Sahrawis “to express their views about the issue [of self determination], to create associations defending their right to self determination and to hold assemblies to make their views known.”⁴

Despite these reports of human rights abuses occurring in the region, MINURSO personnel have been unable to take steps to monitor and report on their existence, because their mandate contains no provisions relating to human rights.⁵ This is particularly unfortunate because the United Nations Department of Peacekeeping Operations considers international human rights law to be “an integral part of the normative framework for United Nations peacekeeping operations.”⁶ Consistent with this view, the majority of UN peacekeeping missions currently in operation have been given a role in monitoring human rights conditions (and, in many cases, acting to protect the victims of such abuses). Indeed, as best we can tell, all of those missions initiated within the past decade have included such provisions,⁷ including the UN Mission in Central African Republic and Chad (MINURCAT), the UN Mission in the Sudan (UNMIS), the UN Operation in Code d’Ivoire (UNOCI), and the UN Mission in Liberia (UNMIL), each of which has specific provisions allowing for the promotion, protection, investigation, and/or monitoring of human rights.⁸

The Association has not conducted an independent investigation of the existence of human rights abuses in Western Sahara or in the Polisario camps. Accordingly, we take no position on the existence of or the parties responsible for any such violations. Similarly, we take no position on the issue of independence for the Western Sahara region. However, we believe that the consistent and serious allegations by reputable human rights organizations, as well as by the United Nations itself, warrant attention and concern. We also believe that it is well within the prerogatives of the United Nations Security Council to authorize United Nations personnel under its supervision to provide it with an

³ Country Report on Human Rights in Western Sahara, U.S. State Department, Bureau of Democracy, Human Rights and Labor (2006), *supra*. The 2009 Country Report issued by the State Department in March, 2010 does not indicate that the situation has substantially improved.

⁴ OHCHR, *Report of the OHCHR Mission to Western Sahara and the Refugee Camps in Tindouf, Algeria, 15/23 May and 19 June 2006* (Geneva, 8 September 2006).

⁵ According to the description of its mandate at www.un.org/en/peacekeeping, MINURSO has been mandated by Security Council Resolution 690 (1991) to: (1) monitor the ceasefire, (2) verify the reduction of Moroccan troops in the Territory; (3) monitor the confinement of Moroccan and Polisario troops to designated locations; (4) take steps with the parties to ensure the release of all Western Sahara political prisoners or detainees; (5) oversee the exchange of prisoners of war; (6) implement the repatriation program; (7) identify and register qualified voters; and (8) organize and ensure a free and fair referendum and proclaim the results.

⁶ The “United Nations Peacekeeping Operations: Principles and Guidelines (2008)” published by the UN Department of Peacekeeping Operations, Department of Field Support, p. 14. The Guidelines go on to state: “United Nations peacekeeping operations should . . . seek to advance human rights through the implementation of their mandates.” (p. 14) and “All United Nations entities have a responsibility to ensure that human rights are promoted and protected by and within their field of operation. Most United Nations multi-dimensional peacekeeping operations are therefore mandated to promote and protect human rights by monitoring and helping to investigate human rights violations and/or developing the capacity of national actors and institutions to do so on their own.” (p. 27).

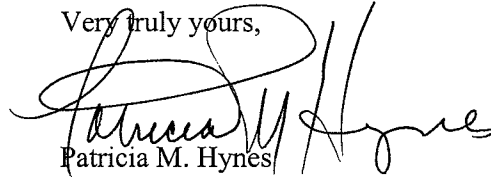
⁷ According to information on the official UN Peacekeeping internet site, www.un.org/en/peacekeeping.

⁸ See, UN Resolutions 1778 (2007), 1590 (2005), 1739 (2007), and 1509 (2003), respectively.

assessment of human rights abuses within the territories and states where they operate.⁹ We believe that an expansion of MINURSO's mandate to do so is both warranted by the circumstances, and conducive to achieving the aims of the Charter and a just and lasting solution to this conflict.

We call upon you to take appropriate measures to ensure that if and when MINURSO's mandate is extended next month, it includes the directive to monitor and report on human rights violations both in the territory of Western Sahara and in the refugee camps in Tindouf.

Very truly yours,



Patricia M. Hynes

cc: B. Lynn Pascoe, Undersecretary General for Political Affairs
 Alain le Roy, Undersecretary General for Peacekeeping Operations
 Permanent Representative of the Kingdom of Morocco to the United Nations S.E.M. El
 Mostafa Sahel
 Representative of the Polisario to the United Nations Ahmed Boukhari

⁹ We note that quite apart from any specific powers conferred upon the United Nations Security Council under Chapters 6 and 7 of the United Nations Charter, the Security Council, under its general mandate under the Charter to maintain international peace and security, enjoys the implicit power to authorize fact finding missions to report to it on a wide variety of issues. Authorizing MINURSO personnel located in the territory of Western Sahara and the Polisario controlled areas of Algeria to report on human rights abuses within these areas would be well within the scope of powers conferred on such missions. We also suggest that such authorization is implicit in the power of the Security Council to establish peacekeeping operations under both Chapters 6 and 7 of the Charter, and in the ceasefire agreement of Morocco and the Polisario under whose authority MINURSO was established. With regard to the ceasefire agreement, we note that in paragraph 20 of the Report of the Secretary General S/21360 (June 18, 1990) in which he outlined the terms of the Settlement Agreement between the parties, the Secretary General referred to the deployment of a group of UN observers, the function of which would conform to "the principles generally applicable to UN peacekeeping operations," and that in paragraph 56 of his report S/22464 (April 19, 1991) he indicated that he would keep the Security Council informed of "all matters that might affect the nature of the mission or its continued effectiveness."