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Written statement* submitted by Maloca Internationale, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* Issued as received, in the language of submission only.



Morocco Targeting Civilians With Drones In Western Sahara Is A War Crime¹

Introduction

In adopting resolution 1514 (XVIII) in December 1963, the UN General Assembly (UNGA) listed Western Sahara as a Non-Self-Governing Territory (NSGT), pending decolonisation in conformity with UNGA resolution 1514-XV (Declaration on the granting of independence to colonial peoples and countries).

In 1966, the UNGA requested the administering Power (Spain) to determine the procedures for the holding of a referendum with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination.

In October 1975, the International Court of Justice released its Advisory opinion replying to the questions raised by the UN General Assembly. The ICJ concluded that determined that "The inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are in accord in not providing indications of the existence... of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State." Moreover, the Court stated that it "has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara..."

Spain left the Territory in February 1976 without fulfilling its mandate, while the Moroccan Royal Army already entered the Non-Self-Governing Territory in November 1975.

Since then, International Humanitarian Law applies in the Non-Self-Governing Territory of Western Sahara and Saharawi people have to be considered as "protected persons" in conformity with Art. 4 of the Fourth Geneva Convention.

The UN Security Council (res. 380 – 06.11.1975) and the UN General Assembly (res. 34/37 – 21.11.1979 and res. 35/19 – 11.11.1980) have condemned the invasion and requested the immediate withdrawal of the Moroccan troops.

The armed conflict lasted until the acceptance by the two belligerents of the Settlement Plan submitted by the UN Secretary General and the President of the Organisation of the African Unity and the creation by the UN Security Council (res. 690 – 29.04.1991) of the UN Mission for the referendum in Western Sahara (MINURSO).

MINURSO was deployed on 1st September 1991 and the referendum should have been held within the next six months, i.e. by the end of February 1992 at the latest. But Morocco has done everything possible to obstruct the holding of the referendum.

The Resuming Of The Armed Conflict In Western Sahara

For the last 30 years the UN Security Council has been unable to enforce its resolution 690.

Following the intervention of the Moroccan Royal Army in the demilitarized buffer zone of Guerguerat (south-east of Western Sahara) in the purpose of dispersing a peaceful demonstration of a few dozen Sahrawis, the 1991 cease-fire was broken and the armed conflict resumed in November 2020 along the 2700 km long wall built by the occupying Power in the eighties, which separates Western Sahara from north to south.

The signature by the Moroccan government of the Abraham agreement with Israel on 10 December 2020 has led to increased cooperation between the two occupying Powers in the field of intelligence and the supply of military equipment, including drones. Morocco has also bought drones from Türkiye.

The Use Of Drones In International Law

In its presentation at the 27th Human Rights Council's session Panel discussion on "Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law", the ICRC's representative stressed that "A basic principle of IHL is that the parties to an armed conflict must at all times distinguish between civilians and civilian objects on the one hand, and combatants and military objectives on the other, and that attacks may only be directed against combatants and military objectives."

The representative also emphasized that "IHL rules governing accountability for grave breaches of the Geneva Conventions and Additional Protocol I in international armed conflict and for war crimes committed in non-international armed conflict fully apply to drone strikes carried out in a situation of armed conflict. States therefore have a duty to investigate and prosecute individuals suspected of having committed or having ordered to be committed grave breaches, regardless of where the offence was committed and the nationality of the perpetrators or the victims."

In his 2013 report to the UN Security Council (S/2013/689), the UN Secretary-General already underscored that casualties resulting from armed drone attacks raise questions over compliance with international human rights law and with the international humanitarian law rules of distinction, proportionality and precaution, in addition to the obligation to investigate grave violations resulting from drone attacks.

The Killing Of Civilians With Drones By The Moroccan Royal Army

The Moroccan Royal Army has launched about 30 attacks with drones in the Non-Self-Governing Territory of Western Sahara, east of the separation wall, or near the border with Mauritania.

Over 60% of the deceased victims are Sahrawi, 14.5% are Mauritanian, 8.5% are Algerian and 17% belong to as yet unidentified nationalities. Some of the victims are in a state of decomposition and others have suffered burns. As for the wounded, 78.5% were Saharawi, 21.42% were Mauritanian, while the remaining percentage was of nationalities not yet identify.

53% of attacks targeted travellers, 38% gold prospectors and 9% people carrying out other activities, such as development projects, water exploitation and others.

The Moroccan Royal Army also targeted the herds of camels and other livestock, which belong to the Saharawi civilians and constitute a source of livelihood for them.

Here below follows some exemples:

05/01/2021: Saharawi civilian gold prospectors were attacked with heavy weapons on the outskirts of the Bir Mugrein area, the attack resulted in the destruction of a four-wheel drive vehicle.

18/08/2021: a civilian truck loaded with goods and food, owned by Saharawi traders, was hit by several shells in the Mghaider Laryam area, causing no casualties.

August 2021: heavy weapons attack on a truck owned by Algerian civilian transporting goods in the Dala'at Ladmia area just across the tri-border between Western Sahara, Algeria and Mauritania, resulting in the partial destruction of the truck.

19/10/2021: a vehicle with Saharawi civilians on board was attacked by UAVs in the Sfeya area, near a place known as Arghewa west of the town of Mheiriz; the car was destroyed, and the Saharawi civilians suffered injuries of varying severity.

01/11/2021: a commercial convoy was attacked with two missiles on the Mauritania-Western Sahara border, resulting in the death of 3 Algerian civilians and the burning of two truck trailers carrying construction materials bound to Nouakchott (Mauritania).

04/11/2021: two Mauritanian civilian traditional gold prospectors were targeted inside Western Saharan; both were seriously injured.

05/11/2021: a Moroccan drone attack on Saharawi civilians in the area of Gleibat Al-Fula, as a result two of them were injured with varying degrees of severity.

13/11/2021: a Moroccan drone launched two missiles that hit two private vehicles in the area of Gleibat Al Fula in the region of Mijek, killing one Saharawi citizen and injuring others.

14/11/2021: a Moroccan bombing killed 11 Saharawi civilians; another group of civilians were rescued by members of the Polisario Front, with the presence of military personnel from the UN Mission for the Referendum in Western Sahara (MINURSO).

24/11/2022: young Deidih Mahmud Hueibita was killed when he was hit by a rocket from a drone in the region of Ahfir, at the border with Mauritania.

Conclusion And Recommendations

Maloca International echoes the appeal launched by the Human Rights Council and calls upon the UN High Commissioner for Human Rights and relevant Special Procedures of the Human Rights Council and the human rights treaty bodies to pay attention, within the framework of their mandates, to violations of international law as a result of the use of armed drones by the Moroccan Royal Army in Western Sahara .

Maloca International also calls upon the Human Rights Council:

a) to implement OP 5 of UN General Assembly resolution entitled “Universal realisation of the right of peoples to self-determination” (A/RES/77/207) and to give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression and occupation of the Non-Self-Governing Territory of Western Sahara ;

b) to create a mandate of Special rapporteur on the situation of human rights in the occupied Western Sahara.

¹ The present document benefited from the contribution of the Saharawi Mine Action Coordination Office (SMACO).