

Consequences of Trump's decision to recognize Morocco's sovereignty over the occupied territories of Western Sahara

Political consequences

With the Trump administration's decision to recognize Moroccan sovereignty over the occupied territories of Western Sahara, the US radically modifies its position on the conflict. Until now, as Robert B. Zoellick expressly stated in 2004, the existing free trade agreement between the US and Morocco was not applicable in Western Sahara, because the US did not recognize Morocco's sovereignty over the territory.

Despite the gravity and the uproar caused by this aberrant decision of the, fortunately, now former US president, its consequences are very limited. It is pure logic that Israel and Morocco, two states which, with light and stenographers, are the protagonists of the military occupation of foreign territories, unscrupulously violating international law, should ally to defend such a position. In fact, they have been allies for more than six decades. Although the Alawite regime has tried to hide it, the Israeli collaboration in the construction of the wall that divides Western Sahara in two since the eighties of the last century and the cooperation of the secret services of the two countries is well known.

Morocco has tried to conceal this evidence from its public opinion and from international public opinion, because it has officially claimed to be the main defender of the rights of the Palestinian people. The establishment of official

diplomatic relations between these two states, “in exchange” for the recognition of Moroccan sovereignty over the occupied territories, reveals the true role that the Alawite monarchy has played and is willing to play in “defending” the rights of the Palestinian people.

In fact, the pretended image of Morocco as the main defender of the Palestinian people in the Arab world has been the reason why the Palestinian and Saharawi national liberation movements have not understood each other and have not united to make a common front against an almost identical violation of international law. Legally, Morocco’s situation in Western Sahara is the same as that of Israel in the occupied Palestinian territories.

Curiously, for years, Israel has been complaining to the European Union about the unequal treatment given by the Organization to the Israeli and Moroccan military occupations. Indeed, although timidly, the European Union is putting pressure on Israel to respect the rights of the Palestinian population. Thus, for example, Israel has complained that for products produced in the colonial settlements in Palestine to be marketed in the territory of the European Union, they must be labeled as “products produced in an Israeli settlement in the occupied Palestinian territories”, while products from the occupied Sahara enter freely into the European Union. And he is right: the European Union does not measure violations of international law in Palestine and Western Sahara with the same yardstick, even though they are legally identical.

Morocco’s decision has a clear consequence: from now on it will no longer be considered as a state that supports the Palestinian cause. It is portrayed for what it is: a state that, like the US, supports the occupation. Although the monolithic Moroccan press tries to prevent it, the social networks reflect these days the rejection of this decision by broad sectors of Moroccan society. The Moroccan government has tried to play down this change of position in the Palestinian

conflict, resorting to the hackneyed language, empty of content, used by the Spanish government to justify its support for the Moroccan occupation of the Saharawi territory: "This State (Morocco, Spain...) supports the efforts of the United Nations to reach a politically viable agreement...".

Legal consequences

Trump's decision has no legal consequences whatsoever, for the simple reason that it violates the right of self-determination of the Saharawi people, affirmed time and again by the principal organs of the United Nations: the General Assembly, the Security Council and the International Court of Justice. It is a norm of peremptory law, so that, in accordance with Article 53 of the 1969 Vienna Convention on the Law of Treaties, its violation renders null and void any agreement that involves its violation. In other words, such agreements have no legal effect. Undoubtedly, the fact that it is the USA that claims that the annexation of the territories effected by force is legal has a certain political weight; but the power of this State does not go so far as to make legal what is not.

Moreover, the passage of time is not a circumstance contemplated by international law to consolidate a situation when it arises from a serious violation of the Charter of the United Nations. Despite the dramatic situation of the Palestinians in their own land, after more than a century of occupation, the UN continues to defend their right to self-determination and the return of refugees. It is a different matter if the veto of a permanent member of the Security Council prevents the conflict from being resolved in accordance with international law. But the legal basis is very clear.

It is worth recalling what in 2018 the Advocate General of the Court of Justice of the European Union stated in his conclusions regarding the legality of the fisheries agreements concluded by Morocco and the European Union to exploit the

natural resources of the Sahrawi people: "the negotiation and conclusion with the Kingdom of Morocco of an international agreement applicable to Western Sahara and the adjacent waters constitute in themselves a de jure recognition of integration". For this reason, given that "the affirmation of Moroccan sovereignty in Western Sahara results from a violation of the right of the people of that territory to self-determination, the European Union has failed in its obligation not to recognize the illegal situation resulting from the violation of the right of the people of Western Sahara to self-determination by the Kingdom of Morocco, as well as not to provide aid or assistance for the maintenance of the situation." This argument is applicable mutatis mutandi to the U.S. recognition of Moroccan sovereignty over the occupied Saharawi territories.

Will Biden dare to reverse this decision to recognize Morocco's annexation of Western Sahara?

It is very difficult for him to do so. To be president of the United States, the support of the very powerful American Jewish lobby is indispensable. It is worth remembering that practically the only support President Obama gave to the Palestinian people came only two weeks before he left office. Only then did he dare to do so. At that time, for the first time in relation to the Palestinian conflict, the US abstained from voting on a key resolution in the Security Council. Although by that time the International Court of Justice had already stated emphatically that the establishment of Israeli settlements in the occupied Palestinian territories constituted a serious violation of international law, the Obama administration's abstention allowed the Security Council to endorse the Hague Court's decision, settling the issue. But in the previous years of his term, Obama was unable to lift a finger in defense of the Palestinian people, contributing by his silence to the occupation.

It must be stressed that the establishment of Moroccan

settlers in the occupied Saharawi territories constitutes a grave breach of the Fourth Geneva Convention of 1949, which states in Article 49 that “The Occupying Power shall not proceed with the evacuation or transfer of parts of its own civilian population into the territory occupied by it”. This situation is legally identical to that of the Israeli settlements in the occupied Palestinian territories.

What is the status of the part of Western Sahara not occupied by Morocco?

It should be noted that the TJUE itself recalled in its 2015 judgment that Western Sahara is not limited to the part militarily occupied by Morocco. Trump’s decision could imply that the US equally recognizes Moroccan sovereignty over the part of the territory that escapes military occupation, and is under the control of its owners, the Saharawis. In such a case, the recognition would obviously have no legal effect; but neither would it have any political effect, since Morocco does not exercise any control over it. This is a question of the utmost importance for RASD, which has always been aware that controlling part of its territory guarantees its existence as a state. Today, it is unthinkable that Morocco would use force to occupy this part of the Saharawi territory as well. Should it be tempted to do so, Algeria has already given sufficient proof that it would not allow it.

What is the status of Western Sahara’s airspace and territorial waters?

This is another question of great importance, since Spain, as administering power, remains today in control of Saharawi airspace, from its control center in the Canary Islands, through ENAIRE, the Regional Directorate of Canary Islands Air Navigation, which manages the air traffic services in the Canary Islands archipelago and in Western Sahara. The US decision further complicates Spain’s situation, since, as pointed out by Jared Kushner, Trump’s son-in-law and advisor,

one of the objectives of the agreement is to allow Israeli airlines to use the Saharawi airspace, establishing direct flights between Morocco and the occupied Sahara on the one hand, and Israel, on the other. We will have to wait to see how Spain reacts to this situation, but for Morocco to be able to control the territory's airspace would require the International Civil Aviation Organization (ICAO) to recognize Morocco's sovereignty over the territory, which it obviously cannot do, as it would incur international responsibility. Moreover, Spain controls the entire airspace of Western Sahara: the one under Moroccan occupation, but also the one under the control of the POLISARIO Front.

Moreover, after 45 years since its departure from the territory, and given the legal status of Western Sahara as a non-self-governing territory, i.e. pending decolonization, Spain has not been able to delimit its maritime borders with Morocco and Western Sahara, which, moreover, it will not be able to do until the Saharawi people exercise their right to self-determination. Trump's decision in no way affects this situation, which prevents something as basic as the establishment of defined state borders. At some point this issue will have to be settled once and for all, as it greatly hinders Spanish foreign action.

By way of conclusion: law versus politics

While it is true that, on the political level, the U.S. recognition of Moroccan sovereignty over Western Sahara is an important factor in the consolidation of the illegal occupation and annexation of the territory, on the legal level nothing changes. International law is clearly on the side of the Saharawi people. That is why, far from abandoning the judicial activism that began in 2014, the POLISARIO Front must persevere in it and multiply its actions. It is clear that the main obstacle Morocco has to consolidate the annexation of the territory, an insurmountable obstacle moreover, is the law.

The return to war, provoked by thousands violations of the peace plan by Morocco, the first and most important of which was its withdrawal from it and the rejection of the referendum of self-determination, is the only way out left to the Saharawi people. The right to self-determination was created by the United Nations so that the subjugated peoples could carry out their decolonization. To achieve this objective, the right of these peoples to resort to the use of armed force was established. In 1991, the Saharawi people decided to exchange arms for the ballot box, confident that this would be the way to achieve decolonization. Once Morocco has burned the ballot boxes, and in the face of the passivity of the international community and the complicity of our country, it has no choice but to take up arms again. International law supports it.