



**CLARIFICATION NOTE ON THE DECLARATION OF THE ACTING PRESIDENT  
FUNCTIONS OF THE UNITED STATES OF NORTH AMERICA REGARDING  
SOVEREIGNTY OF WESTERN SAHARA**

No one can alter the legal nature of a Non- Self-Governing Territory subject to decolonization, as is the case of Western Sahara. The right to self - determination of the Peoples subjected to colonial domination is inalienable and obliges all States due to its *erga omne* character and because it is covered by rules of *jus cogens* .

The Kingdom of Morocco has repeatedly tried, without success, to assert its status as sovereign over Western Sahara. Thus, on October 16th, 1975, the International Court of Justice in The Hague ruled that, even considering the special characteristics of that State, none of the national and international acts, nor the other evidence provided and studied, proved the existence of sovereign ties between Western Sahara and Morocco.

Among the characteristics of the right to self-determination of Peoples in the context of decolonization, it is worth highlighting its character as a fundamental human right; to be respected is a precondition for the existence and enjoyment of the rest of the fundamental rights of the person. Within the United Nations there is a notorious tendency to identify the phenomenon of colonialism with that of *apartheid* , as constituting a “threat to international peace and security and a crime against humanity”.

Precisely on December 10th, International Human Rights Day, the acting President of the USA, Donald Trump, intends to settle the Question of Western Sahara by directly recognizing the sovereignty in favor of Morocco, supplanting the will of the People of Western Sahara.

As is well known, this has no legal effect in international law.

This acting President seems to be unaware that Western Sahara is a Non-Self- Governing Territory with unfinished decolonization. As starting point, therefore, Western Sahara has a different legal-political status from the metropolis which administers it (Spain), or that occupies it (Morocco). This is confirmed by the UN Charter itself and the pronouncements of different international organizations.



The United Nations Department of Legal Affairs, in response to the request of the Security Council, in January 2002 confirmed and ratified the verdict of the International Court of Justice of 1975 on the question of Western Sahara. He reiterated that the nature of the Western Sahara problem is a matter of decolonization, clearly establishing that Morocco is not listed as an administering Power of the territory in the list of Non- Self-Governing Territories of the United Nations and, therefore, **MOROCCO DOES NOT HAVE SOVEREIGNTY** over Western Sahara. Morocco appears as a simple **OCCUPANT POWER** and, therefore, its constant presence in Western Sahara is illegal. In short, it is impossible to transmit the sovereignty of a Non- Self-Governing Territory without the acquiescence of its People. This argument is the fundamental basis for considering that the Madrid Tripartite Agreements are radically null, and that Spain continues to be the Administering Power of the territory.

Consequently, the outgoing President, Mr. Trump, lacks the competence to proclaim Morocco sovereign of Western Sahara. This measure is contrary to international law, which expressly prohibits states to recognize as legal any territorial acquisition resulting from the threat or use of force, also forgetting that, in case of occupation, sovereignty is not transmitted to the occupant, but that People of Western Sahara continues to be the legitimate owner of it.

The legal-political position of Morocco in Western Sahara is exactly the one of occupying power, a situation linked to the law of war, for violation of the principle of prohibition of the use of armed force, and in application of the Geneva Conventions of 1949, in specifically the Fourth Convention and Protocol I.

The IV Geneva Convention regulates situations of military occupation, which in no case imply a transfer of the title of sovereignty, nor does it change the status of the territory; it remains international, not owned or under the sovereignty of the occupying power. Ultimately, the legal nature of a territory cannot be changed unilaterally: the qualification responds to the international legal system and this indicates that the right to self-determination corresponds to the population of this territory. In the case of Western Sahara to its People, not to the Moroccans.

It is impossible that the declaration of Mr. Trump can make a clean sweep of the entire international order regarding Non-Self-Governing Territories.

The acting President of the United States also ignores that there is a negative legal duty in charge of all States to refrain from taking any measure that deprives the peoples of the exercise of their right to self-determination; and there is a positive legal duty in charge of them to respect,



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promote and assist the peoples in the exercise of such right. This help from the States can include anything, like the delivery of war material so that these peoples can maintain the armed struggle, or any kind of political support, economic, or any other kind.

Mr. Trump also forgets that there is a compatibility between the general principle of the prohibition of the use of force, with the legitimacy of its use by peoples subjected to colonial rule.

The consequence of the prohibition of the use of force when the physical occupation of the territory of a people subjected to colonial domination occurs, consists of the denial of any legal effect from it. And that prohibition includes the statement of the Acting President, Mr. Trump.

With the adoption of measures contrary to international law such as that taken by Mr. Trump, which seeks to prevent the People of Western Sahara from accessing their inalienable rights to self-determination and independence, rights recognized in more than a dozen resolutions of the UN General Assembly, this People is led to a single solution, to rebel against tyranny and oppression, as stated in the Preamble of the Universal Declaration of Human Rights.

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