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When Recognition Violates the Obligation of Non-Recognition: A Legal Criticism of the U.S. Proclamation of Recognition of the "Sovereignty" of Morocco over the Western Sahara

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Abstract. The purpose of this study is to examine the legality of the U.S. proclamation of recognition of Moroccan "sovereignty" over the territory of Western Sahara in light of the legal status of this territory and the evolution of contemporary international law, particularly with regard to the obligation of nonrecognition of a situation created by a serious violation of peremptory norms.

Keywords. Western Sahara, Non-Self-Governing Territory, Occupied Territory, Consular Representation, Jus Cogens

Introduction

On December 4, 2020, shortly before the end of his presidential term, outgoing U.S. President Donald Trump signed a proclamation under which "the United States recognizes Moroccan sovereignty over the entire Western Sahara territory".[1]

The proclamation also provides that "the United States will encourage economic and social development with Morocco, including in the Western Sahara territory and, to that end, will open a consulate in the Western Sahara territory, in Dakhla, to promote economic and business opportunities for the region".[2]

The future opening of an American consulate was announced at a time when consular representations have been established in Western Sahara by a number of countries as of the end of 2019, such as the Union of the Comoros, Gambia, Gabon, Sao Tome and Principe, the Central African Republic, Guinea, Côte d'Ivoire, Burundi, Djibouti, Liberia, Burkina Faso, Guinea Bissau, Equatorial Guinea, Eswatini, Zambia, Haiti, the United Arab Emirates, Bahrain and Jordan[3].

Nevertheless, the opening of diplomatic or consular representations in a territory subject to foreign occupation has always been a controversial since this diplomatic action constitutes a form of recognition of the status imposed by the foreign power on the territory concerned.

The present study aims to examine the lawfulness of the proclamation of the United States in light of the legal status of Western Sahara and the evolution of contemporary international law, particularly with regard to the application, in the case of Western Sahara, of

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the obligation of nonrecognition of a situation created by a serious violation of peremptory norms.

Affirmation of the obligation of non-recognition in contemporary international law

The obligation of nonrecognition of a situation created by a serious breach of peremptory norms, enshrined in customary international law, is recalled in article 41.2 of the draft articles on the responsibility of states for internationally wrongful acts, which provides that "No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation".[4]

In its commentary on the draft articles on state responsibility, the International Law Commission (ILC) noted that "The existence of an obligation of non-recognition in response to serious breaches of obligations arising under peremptory norms already finds support in international practice and in decisions of ICJ".[5]

Indeed, the principle of nonrecognition has been applied in a number of practical ways, particularly after the Second World War, as illustrated below.

Following the unilateral declaration of independence of Southern Rhodesia in 1965, considered contrary to the right of peoples to self-determination, the UN General Assembly recommended that states not recognize this proclamation.[6] The best known example of the application of the principle of nonrecognition occurred five years later with regard to South Africa's continued presence in Namibia. Indeed, the UN Security Council requested, in its Resolution 276 of January 30, 1970, "all states, particularly those which have economic and other interests in Namibia, to refrain from any dealings with the Government of South Africa".[7] In its advisory opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia, the ICJ recognized the principle of nonrecognition by pointing out that "States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia".[8] Indeed, although Resolution 276 was passed by the Security Council under Chapter VI, the ICJ clarified that states have an obligation, not an option, to recognize the illegality of South Africa's presence in Namibia.

The principle of nonrecognition was also applied by third states in connection with the creation of certain autonomous regions in South Africa reserved for Blacks, known as "Bantustans",[9] which was considered to be a practice of racial discrimination.

In addition to situations created by a violation of the right of peoples to self-determination or by the practice of racial discrimination, nonrecognition has also been applied to situations created by a violation of the principle of nonuse of force. The first application of the principle of nonrecognition concerning the nonuse of force occurred in connection with the proclamation, on 15 November 1983, of the "Turkish Republic of Northern Cyprus", nine years after the military occupation of the northern part of the island by Turkey.

In this regard, the Security Council called upon all States "not to recognize any Cypriot State other than the Republic of Cyprus".[10] The nonrecognition of the TRNC was confirmed by the European Court of Human Rights in the case of *Loizidou v. Turkey*.[11]

The second application of this principle was made following the invasion of Kuwait by Iraqi forces on 2 August 1990. In this context, the Security Council stated that "the annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity and is considered null and void," calling on "all States, international organizations and specialized agencies not to recognize this annexation and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation."[12]

In its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the ICJ also applied the principle of nonrecognition to situations

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created by the violation of certain norms of international humanitarian law, including rules prohibiting colonization using settlements.[13]

In light of the preceding, the assertion of the obligation of nonrecognition in contemporary international law is indisputable. In most cases, the principle has been applied by states in the absence of any Security Council resolution. In other cases, states have respected the principle without considering that General Assembly or Security Council resolutions were obligatory or that the language used was peremptory.[14]

According to Professor Theodore Christakis, the obligation of nonrecognition not only imposes symbolic conduct on states but also imposes a real obligation of isolation, both of the new regimes put in place as a result of the wrongful act (examples of Rhodesia, the "Turkish Republic of Northern Cyprus" or the Bantustans) and of the authority illegally exercised by a pre-existing regime in a territory (example of Namibia, Kuwait, or any annexation).[15]

Morocco's annexation of Western Sahara: a situation created by the breach of the right to self-determination

A Spanish protectorate since November 1884,[16] Western Sahara was included by the General Assembly of the United Nations (UN) on the list of Non-Self-Governing Territories in 1963.[17] In August 1974, Spain accepted the principle of self-determination for the Saharawi people.[18]

In its advisory opinion delivered on 16 October 1975, the ICJ stated that “the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus, the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory”.[19]

The Madrid Agreement, concluded on November 14, 1975, by Spain, Morocco and Mauritania, which provided for the establishment of a temporary administration in the territory to replace the Spanish administration, which had to be definitively terminated before February 28, 1976,[20] “did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred”. [21] The transfer of administrative authority over the territory to Morocco and Mauritania in 1975 did not therefore affect the international status of Western Sahara as a non-self-governing territory.[22]

A large part of Western Sahara has been occupied by Moroccan and Mauritanian troops since November 27, 1975, following violent clashes against the Frente POLISARIO.[23] The part of the territory of Western Sahara evacuated by the Mauritanian forces, following the peace agreement concluded with the Frente POLISARIO on 9 August 1979, was immediately occupied by Morocco, and this act was strongly condemned by the General Assembly in its resolution 34/37 of 21 November 1979, which also recommended that the Frente POLISARIO, as the "representative of the people of Western Sahara", should participate fully in any search for a just, lasting and definitive political solution to the question of Western Sahara.[24]

After negotiations under the Organization of African Unity (OAU) and the UN, Morocco and the Frente POLISARIO accepted, on August 30, 1988, a settlement plan, which provided for the establishment of a cease-fire and the organization by the UN of a referendum on self-determination for the Saharawi people.[25]

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However, the determination of the electorate was severely hampered, and the identification commission was not able to complete its work until January 17, 2000, registering 86,386 eligible voters out of 198,469 applicants interviewed. Dissatisfied with these results, Morocco has filed 131,038 appeals since February 11, 2000[26] and subsequently decided not to proceed further with the implementation of the Settlement Plan on the basis that it was "inapplicable".[27] As a result, the settlement plan has since been "put on hold".[28]

As the Saharawi people have -- to date -- not been able to exercise its right to self-determination, Western Sahara is still considered by the United Nations to be a Non-Self-Governing Territory. This status of Non-Self-Governing Territory has also been reaffirmed by the Court of Justice of the European Union, which emphasized the "separate and distinct" status that derives from it to demonstrate the nonapplicability of the economic agreements concluded between Morocco and the European Union to the territory of Western Sahara.[29]

Moreover, although Spain considers itself, since 26 February 1976, discharged from any responsibility of an international character relating to the administration of Western Sahara, it still retains, under international law, its status as the administering power of the territory. This status of administering power *de jure* is recognized both by the United Nations[30] and by the Spanish courts.[31]

Indeed, the *Ministerio Fiscal* (Spanish Public Prosecutor's Office) and the *Audiencia Nacional* (Spanish Central Court) affirmed in 2014 that Spain remains the administering power of Western Sahara, which as such obtains until the end of the decolonization period, the obligations arising from Articles 73 and 74 of the UN Charter, which include the protection, including jurisdictional protection, of its citizens against any abuse.[32]

It should be noted that the right of people to self-determination has been affirmed in the Charter of the United Nations. The second purpose of the UN, enshrined in Article 1 of the Charter, is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace”. Moreover, in Article 55, respect for the principle of equal rights of peoples and their right to self-determination is mentioned as the basis for peaceful and friendly relations among nations. In its advisory opinion on Western Sahara, the ICJ highlighted that “Those provisions have direct and particular relevance for non-self-governing territories, which are dealt with in Chapter XI of the Charter”.[33] In its advisory opinion of 21 June 1971 on South West Africa, the Court also specified that "the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to al1 of them".[34]

The principle of the right of people to self-determination has been centralized for the benefit of decolonization through several relevant General Assembly resolutions. Among these resolutions, it is worth underscoring Resolution 1514 (XV) of December 14, 1960, entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples"; Resolution 1541 of December 15, 1960, which established the modalities for the exercise of the right of peoples to self-determination; and Resolution 2625 (XXV) of October 24, 1970, entitled "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations". These resolutions undoubtedly have an inescapable character because they have been almost unanimously applauded as archetypal texts, the adoption of which had both legal and political significance, revealed and confirmed by subsequent practice expressly based on their provisions.[35]

The adherence of the right to self-determination to jus cogens is affirmed by the majority doctrine. Some authors consider that the right of peoples to self-determination is not only a peremptory norm but also that it is a principle that largely contributed to the inclusion of the

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concept of jus cogens in the Vienna Convention on the Law of Treaties.[36] According to Professor Mohammed Bedjaoui, "selfdetermination has, in the course of time, become 'a primary principle from which other principles governing international society follow'. It is part of jus cogens".[37]

For its part, the International Law Commission has repeatedly affirmed in its work the peremptory nature of the right to self-determination.[38] Concerning the jurisprudence of the ICJ, the peremptory nature of the right of peoples to self-determination has been cited by several judges in their separate and dissenting opinions.[39] In his separate opinion attached to the Barcelona Traction judgment, Judge Ammoun said that "the principle of equality and that of non-discrimination on racial grounds which follows therefrom, both of which principles, like the right of self-determination, are imperative rules of law".[40]

Similarly, the ICJ has implicitly recognized in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory the peremptory nature of the right of peoples to self-determination.[41] The court had applied the regime relating to the special consequences of a serious breach of an obligation arising under peremptory norms, enshrined in article 41 of the draft articles on responsibility of States for internationally wrongful acts, to the violation by Israel of the Palestinian people's right to self-determination.[42]

The annexation of Western Sahara by Morocco is therefore a situation created by the breach of the peremptory norm of international law relating to the right of peoples to self-determination. Consequently, the American proclamation of recognition of Moroccan "sovereignty" over the territory of Western Sahara constitutes a violation of the obligation of nonrecognition of a situation created by a serious breach of peremptory norms.

The annexation of Western Sahara by Morocco: a situation created by the breach of the principle of nonuse of force

The use of armed force by Morocco and Mauritania from 27 November 1975 to occupy Western Sahara is in breach of Article 2.4 of the UN Charter, which prohibits states "from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations". It is prohibited because one of the main purposes of the United Nations is to develop friendly relationships based on "respect for the principle of equal rights and self-determination of peoples".[43] It happened, however, that the use of force by Morocco and Mauritania prevented the people of Western Sahara from exercising its right to self-determination.

According to Professor André N'kolombua, a combined reading of Articles 2.4 and 1.2 of the Charter of the United Nations shows that states must refrain from the threat or use of force against any people claiming the exercise of its right of self-determination.[44]

This affirmation finds a complementary basis in the "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations" of October 24, 1970, which is universally recognized as reflecting customary law in this matter. This declaration states that "Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence".[45] The declaration also affirms that "No territorial acquisition resulting from the threat or use of force shall be recognized as legal".[46] This last provision is important in our context since Morocco considers Western Sahara part of its own territory.

The Madrid Agreement could not provide a legal basis for the use of force by Morocco because Spain's status as the administering power of Western Sahara did not allow it to

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authorize, either expressly or implicitly, another country to control the territory through the use of force to prevent its people from exercising its right to self-determination. In addition, according to the predominant doctrine and the position of the majority of states, including Morocco, "'no territorial acquisition resulting from the threat or use of force shall be recognized as legitimate' irrespective of 'whether the territory is acquired as a result of an act of aggression or in self-defence'".[47]

It should be noted that the International Law Commission has claimed since 1966 that "the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of jus cogens".[48] The ILC reaffirmed its position during work on the 1986 Vienna Convention,[49] as well as in its report on the draft articles on state responsibility.[50] Similarly, the peremptory nature of the nonuse of force is cited in the ICJ judgment on military and paramilitary activities in Nicaragua,[51] as well as in the separate and dissenting opinions of some judges in other cases.[52]

Morocco's annexation of Western Sahara is therefore a situation created by the breach of two peremptory norms of international law: the nonuse of force and the right of peoples to self-determination. Consequently, the American proclamation of recognition of Moroccan "sovereignty" over the territory of Western Sahara constitutes a breach of the obligation of nonrecognition of a situation created by a serious violation of peremptory norms.

Western Sahara: a great colony of settlement

Western Sahara is considered, under *jus in bello*, an occupied territory. Article 1.4 of Additional Protocol I to the Geneva Conventions, relating to the Protection of Victims of International Armed Conflicts, considers international conflicts "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination". Similarly, Article 96.3 stipulates that "the authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary".

If Morocco were a High Contracting Party to Additional Protocol I at the time of the armed conflict that led to the control of Western Sahara, the Frente POLISARIO could also have become a High Contracting Party to the Conventions and the Protocol in accordance with Article 96.3 mentioned above. However, Morocco did not ratify Additional Protocol I until June 3, 2011, thus opening the possibility for the Frente POLISARIO to proceed, as of six months later, with the unilateral declaration provided for in Article 96.3. The Frente POLISARIO finally addressed a declaration to the depositary on 21 June 2015, in which it undertook to apply the Geneva Conventions and Additional Protocol I.

Furthermore, according to the ICRC, the progressive recognition in international law of the international nature of armed conflicts conducted to exercise the right to self-determination has meant that, prior to Protocol I, common Article 2.3 of the Geneva Conventions provides a possibility for acceptance of the Conventions that are also open to national liberation movements.[53] For example, the Provisional Government of the Algerian Republic (GPRA) ratified the Geneva Conventions on June 20, 1960, two years before the country's independence.

In this regard, it should be recalled that Morocco and Mauritania acceded the Geneva Conventions on July 26, 1956, and October 30, 1962, respectively, and that the Frente POLISARIO pledged in 1975 to apply these Conventions during the armed conflict with these two countries.[54] Consequently, it is fair to state that the Geneva Conventions of 1949 were *de jure* applicable to the armed conflict between the Frente POLISARIO and Mauritania until the

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conclusion of the peace agreement of 9 August 1979 and to Morocco until the ceasefire of 6 September 1991; thus, they remain applicable to the occupation of most of the territory of Western Sahara by Morocco.

The Geneva Conventions were also applicable to the Western Sahara war under customary international law, as were the Hague Regulations of 1907, since it was an international armed conflict. Already in 1952, the ICRC specified in its commentary that "according to the spirit of the four Conventions, the Contracting States shall apply them, in so far as possible, as being the codification of rules which are generally recognized".[55] Similarly, the ICJ has repeatedly reaffirmed that the fundamental rules expressed in "the Hague Convention IV and the Geneva Conventions ... constitute intransgressible principles of international customary law".[56]

In this respect, Article 42 of the Hague Regulations can be applied to the Western Sahara conflict, stipulating that "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised". It follows that the part of Western Sahara under Moroccan control is considered under *jus in bello* as an occupied territory and that Morocco therefore has the status of an occupying power vis-à-vis the territory of Western Sahara.

The determination of the legal status of Western Sahara must be based on all applicable branches of international law, namely decolonization law, *jus ad bellum* and *jus in bello*. Therefore, it can be concluded that Western Sahara is at the same time a non-self-governing territory and a territory occupied by Morocco as a result of the illegal use of force.

Although the UN focuses much more in its consideration of the question of Western Sahara on its status as a non-self-governing territory, the term "occupation" has sometimes been used to refer to the Moroccan presence. The General Assembly thus deplored, in resolution 34/37 of November 21, 1979, "the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of this occupation to the territory recently evacuated by Mauritania".

More recently, during a visit in March 2016 to the Frente POLISARIO-controlled part of Western Sahara and the Sahrawi refugee camps in Tindouf, Ban Ki-moon -- then UN Secretary-General -- used the term "occupation" to describe the Moroccan presence in the territory of Western Sahara.[57] Similarly, the Advocate General of the Court of Justice of the European Union, in his opinion presented on January 10, 2018, pointed out that "the existence of a Moroccan occupation in Western Sahara is widely recognised".[58]

In the case of Western Sahara, the rights of people to self-determination and international humanitarian law are closely linked to the degree that any breach of one has repercussions on the other. This fact is illustrated by the case of the transfer of Moroccan citizens to Western Sahara.

Indeed, Morocco has proceeded since 1976 to a policy of settlement colonization in Western Sahara. This policy was accentuated in 1991, in anticipation of the organization of the referendum on self-determination, when approximately 170,000 Moroccan citizens[59] were incentivized to come to Western Sahara to change the demographic structure of the territory.[60] According to Professor Eugene Kontorovich, the Moroccan government has spent approximately US$2.4 billion over three decades on basic infrastructure in Western Sahara while granting colossal benefits to Moroccan settlers: salaries doubled compared to their fellow citizens residing in Morocco, employment priority, majority ownership in fishing companies, free or low-cost housing, commodity subsidies (food and fuel) and tax exemptions.[61]

Professor Kontorovich considers that, although it has been only rarely accused by third states and international organizations of breaching Article 49.6 of the Fourth Geneva

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Convention, Morocco has in fact engaged in one of the largest settlement colonization projects in the world.[62] This policy, which constitutes a serious breach of a peremptory norm of international humanitarian law, has led to the failure of the UN settlement plan and has therefore hindered the exercise by the people of Western Sahara of its right to self-determination. Already in December 1991, Johannes Manz, UN Special Representative in Western Sahara, emphasized that the transfer of unidentified persons within the territory, called the 'second green march', constitutes a breach of the spirit of the peace plan.[63]

Moreover, it should be noted that the prohibition of settlement colonization has been reinforced by the advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territory. Indeed, this opinion implicitly recognized[64] the peremptory character of certain norms of international humanitarian law violated by Israel, including the prohibition of settlement, by applying to them the regime relating to the special consequences of a serious breach of an obligation arising under peremptory norms enshrined in article 41 of the draft articles on responsibility of States for internationally wrongful acts.[65]

It is thus confirmed that the annexation and occupation of Western Sahara by Morocco therefore constitute a situation created by a serious breach of three peremptory norms of international law, namely the nonuse of force, the right of peoples to self-determination and the *jus in bello* norm prohibiting the colonization of settlements.

Therefore, the U.S. proclamation of recognition of Moroccan "sovereignty" over the territory of Western Sahara constitutes a violation of the obligation of nonrecognition of a situation created by a serious breach of three peremptory norms.

The opening of a consular representation in Western Sahara: additional breach of the obligation of non-recognition

In addition to the flagrant breach of the obligation of nonrecognition through the recognition of Morocco's "sovereignty" over the territory, the possible opening of a consular representation in Western Sahara will constitute a further violation by the United States of the obligation of nonrecognition.

According to the jurisprudence of the ICJ, the obligation of nonrecognition generates first a subsidiary obligation not to establish treaty relations. In the 1971 Advisory Opinion, the Court noted that "member States are under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia".[66] Indeed, third states must exclude occupied territories and/or non-self-governing territories from the application of conventions concluded with the occupying state.

This affirmation is in line with the recent jurisprudence of the Court of Justice of the European Union regarding the nonapplicability of the economic agreements concluded between Morocco and the European Union to the territory of Western Sahara. Indeed, the Court noted that "the Liberalisation Agreement must, however, be interpreted, in accordance with the relevant rules of international law applicable to relations between the European Union and the Kingdom of Morocco, as meaning that it does not apply to the territory of Western Sahara" [67] and that the waters adjacent to the territory are not covered by the territorial application of the fisheries partnership agreement.[68]

Therefore, the opening of a consular representation in Western Sahara will constitute a breach by the United States of the subsidiary obligation not to establish conventional relations of such a nature as to recognize as lawful the Moroccan occupation, given that the installation of this consular post will come within the framework of an extraterritorial and illegal application of the Vienna Convention on Consular Relations to the territory of Western Sahara.

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The second subsidiary obligation deriving from the obligation of nonrecognition consists of not accrediting diplomatic and consular missions. In fact, in the same 1971 opinion, the ICJ noted that "Member States … are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia".[69]

Consequently, third states are required to abstain from opening consular posts in Western Sahara, given, as already mentioned, that the Moroccan occupation constitutes a situation created by a serious breach of three peremptory norms of international law, namely the nonuse of force, the right of peoples to self-determination and the *jus in bello* norm prohibiting the colonization of settlements.

The third subsidiary obligation is not to maintain economic relations with the illegal authority. In this regard, the ICJ noted that "The restraints which are implicit in the nonrecognition of South Africa's presence in Namibia … impose upon member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory".[70]

Thus, any opening of consular representations in Western Sahara would be in breach of the third subsidiary obligation not to maintain economic relations with the occupying power, given that consular functions consist, in accordance with Article 5. b) of the Vienna Convention on Consular Relations, of "furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State".

Moreover, the U.S. proclamation of December 4, 2020, expressly states that the "United States…will open a consulate in the Western Sahara territory, in Dakhla, to promote economic and business opportunities for the region".

Conclusion

The occupation and annexation of Western Sahara by Morocco constitute a situation created by a serious breach of three peremptory norms of international law, namely the nonuse of force, the right of peoples to self-determination and the *jus in bello* norms prohibiting the colonization of settlements.

Therefore, the U.S. proclamation of recognition of Moroccan "sovereignty" over the territory of Western Sahara constitutes a flagrant violation of the obligation of nonrecognition of a situation created by a serious breach of three peremptory norms.

The opening of a consular representation in Western Sahara will constitute another breach by the United States of the obligation of nonrecognition. The establishment of such consular posts is, in fact, in contravention of the three subsidiary obligations that derive from the principal obligation of nonrecognition of a situation created by a serious breach of peremptory norms, namely the obligation not to accredit diplomatic and consular missions, the obligation not to establish treaty relations, and the obligation not to maintain economic relations.

If the opening of consular representations in Western Sahara by some African countries can be the subject of several remedies to the mechanisms provided by the African Charter on Human and Peoples' Rights (African Commission on Human and Peoples' Rights and African Court of Human and Peoples' Rights),[71] the means of action should be explored at the universal

level (international organizations and courts), as well as at the internal American level (U.S. courts), to demonstrate the illegality of the U.S. proclamation recognizing Moroccan "sovereignty" over the territory of Western Sahara.

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[2] *Id.*

[3] For more details on the legality of the establishment of consular representations in Western Sahara see:
Hamza Hadj Cherif, « L'ouverture de représentations consulaires au Sahara Occidental : une violation flagrante de l'obligation de non-reconnaissance », L'Ouest saharien, Vol.12, 2020.
Hamza Hadj Cherif, « L'illégale Ouverture De Représentations Consulaires Au Sahara Occidental : Quels Remèdes Peut Offrir La Charte Africaine Des Droits De L'homme Et Des Peuples ? », Revue Internationale de Recherche Juridique et Politique, Vol.4, 2020, pp. 227-251.

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[9] General Assembly Resolution 31/6 A of 26 October 1976.

[10] Security Council Resolution 541 of 18 November 1983, § 7.

[11] Loizidou v. Turkey, App. No. 15318/89, para. 42 (Dec. 18, 1996), http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-58007&filename=001-58007.pdf.

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