

STATE DIPLOMATIC AND CONSULAR RELATIONS

United States Recognizes Morocco's Sovereignty Over Western Sahara

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On December 10, 2020, President Donald J. Trump reversed decades of U.S. policy by announcing that the United States would recognize Moroccan sovereignty over Western Sahara as part of a deal in which Morocco would normalize relations with Israel. Despite a 1991 UN truce and continued calls by the UN Security Council for Morocco and the Polisario Front to reach a mutually agreeable solution, neither side has relinquished its claim of sovereignty over Western Sahara. Trump's announcement ended nearly thirty years of U.S. support for UN-led negotiations and places the United States at odds with the majority of the international community, which swiftly criticized the U.S. action as a violation of the right to self-determination.

The roots of the Western Sahara dispute can be traced back to the territory's decolonization. In the mid-1970s, Spain began to decolonize Western Sahara,¹ and both Morocco and Mauritania claimed sovereign control over the territory.² To address the territorial dispute, the UN General Assembly referred the issue to the International Court of Justice (ICJ), which issued an advisory opinion in 1975 stating that Morocco did not have a valid claim for sovereignty over Western Sahara.³ Less than a month after the ICJ's opinion, 350,000 Moroccan civilians marched into Western Sahara in an effort to claim the territory.⁴ Shortly afterward, Spain withdrew from Western Sahara and transferred joint control to Morocco and Mauritania.⁵ The Polisario Front, which was established in 1973 as a socialist guerrilla movement, disputed Morocco and Mauritania's claims over Western Sahara.⁶ Instead, it declared the Sahrawi Arab Democratic Republic (SADR) and received recognition from Algeria and the African Union.⁷ In 1979, Mauritania signed a peace treaty with the Polisario Front and abandoned its sovereignty claims over Western Sahara.⁸ Following Mauritania's withdrawal, Morocco consolidated control over 85 percent of Western Sahara.⁹ Due to the conflict, the majority of the indigenous people of Western Sahara, the Sahrawis, fled to refugee camps in Algeria and Mauritania.¹⁰

For over a decade, Morocco and the Polisario Front fought a prolonged war over control of Western Sahara, which ended only after the United Nations mediated a ceasefire in 1991.¹¹

¹ ALEXIS ARIEFF, CONG. RES. SERV., WESTERN SAHARA 1 (2014).

² *Id.*

³ Western Sahara, Advisory Opinion, 1975 ICJ Rep. 101, 101–02 (Oct. 16) (“[T]he Court finds that neither the internal nor the international acts relied upon by Morocco indicate the existence at the relevant period of either the existence or the international recognition of legal ties of territorial sovereignty between Western Sahara and the Moroccan State.”).

⁴ ARIEFF, *supra* note 1.

⁵ *Id.*

⁶ Abdi Latif Dahir, *Western Sahara Independence Group Ends Truce with Morocco*, N.Y. TIMES (Nov. 14, 2020), at <https://www.nytimes.com/2020/11/14/world/middleeast/western-sahara-morocco-polisario.html>.

⁷ *Id.*; ARIEFF, *supra* note 1.

⁸ ARIEFF, *supra* note 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Under UN Security Council Resolution (UNSCR) 690, the UN established the Mission for the Organization of a Referendum in the Western Sahara (MINURSO) and called for a referendum.¹² Despite the UN call, Morocco and the Polisario Front could not reach an agreement over who should be allowed to vote in the referendum.¹³ Recognizing that the two sides might be unable to reach a solution by themselves, the UN began searching for alternative solutions.

The UN Security Council has repeatedly addressed the Western Sahara situation. In 2000, UNSCR 1301 asked Morocco and the Polisario Front to consider alternatives to a referendum.¹⁴ In 2003, the UN secretary-general's personal envoy, former U.S. Secretary of State James Baker, proposed the Baker Peace Plan, under which the UN would organize a referendum for voters to choose integration with Morocco, autonomy, or independence.¹⁵ Morocco, however, objected to the plan and declared it would not accept independence as a solution.¹⁶ In 2004, UNSCR 1541 appeared to signal support for a mutually acceptable political solution, implicitly abandoning the Baker Peace Plan; the resolution reaffirmed "support for the Peace Plan for Self-Determination of the People of Western Sahara as an optimum political solution" and also reiterated support for the secretary-general's efforts to "achieve a just, lasting and mutually acceptable political solution."¹⁷ In 2007, UNSCR 1754 called on Morocco and the Polisario Front to negotiate toward a political solution that would allow for the Western Saharan people to determine their form of government.¹⁸ Negotiations continued between Morocco and Western Sahara for another decade but largely ceased in 2019 after the resignation of the most recent UN envoy for Western Sahara, Horst Köhler.¹⁹ On November 13, 2020, tensions escalated between Morocco and the Polisario Front after the two sides exchanged fire over a Moroccan government security cordon.²⁰ On November 14, 2020, the leader of the Polisario Front, Brahim Ghali, declared the "resumption of armed struggle in defense of the legitimate rights of our people."²¹

The Western Sahara dispute centers on the right of the Sahrawis to self-determination. In 1960, UN General Assembly Resolution 1514 called for the end of colonialism and declared that "[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."²² In 1974, General Assembly Resolution 3292 applied the right to self-determination to the people of Western Sahara specifically, "reaffirming the right of the population of the Spanish Sahara to self-determination."²³ Based on Resolutions 1514 and 3292, the ICJ concluded in its 1975 advisory opinion on Western Sahara "that the decolonization process

¹² *Id.*

¹³ Dahir, *supra* note 6.

¹⁴ ARIEFF, *supra* note 1.

¹⁵ *Id.* at 3.

¹⁶ *Id.*

¹⁷ *Id.*; SC Res. 1541, paras. 1–2 (Apr. 29, 2004).

¹⁸ ARIEFF, *supra* note 1, at 4; SC Res. 1754 (Apr. 30, 2007).

¹⁹ Dahir, *supra* note 6.

²⁰ *Id.*

²¹ *Id.*; *The President of the Republic, the Supreme Commander of the Armed Forces, Officially Declares the End of the Ceasefire Commitment*, SAHARA PRESS SERV. (Nov. 14, 2020), at <https://spsrasd.info/news/ar/articles/2020/11/14/28488.html>.

²² GA Res. 1514 (XV) (Dec. 14, 1960).

²³ GA Res. 3292 (XXIX), at 103 (Dec. 13, 1974).

envisaged by the General Assembly is one which will respect the right of the population of Western Sahara to determine their future political status by their own freely expressed will.”²⁴ Since 1963, Western Sahara has been listed as a non-self-governing territory pursuant to the UN Special Committee on Decolonization.²⁵ Article 73 of the UN Charter obliges member states that administer non-self-governing territories to “recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories,” including through “develop[ing] self-government” and “tak[ing] due account of the political aspirations of the peoples.”²⁶ Western Sahara, however, does not have an administering power; instead, the UN General Assembly considers the status of Western Sahara to be “a question of decolonization which remained to be completed by the people of Western Sahara.”²⁷

Historically, the United States has joined the majority of states in maintaining a neutral position on the status of Western Sahara.²⁸ Recent administrations had shown an increased willingness to engage with Morocco on the Western Sahara dispute, but prior to Trump’s decision, the United States had neither recognized Moroccan sovereignty over Western Sahara nor recognized the self-declared SADR.²⁹ Successive administrations also prohibited bilateral aid to Morocco from being used in Western Sahara in order to avoid the appearance of endorsing Moroccan sovereignty over the area.³⁰

On December 10, 2020, the Trump administration announced that Morocco, after three years of negotiation, would join the Abraham Accords and begin to normalize relations with Israel.³¹ The Moroccan government agreed to “resume diplomatic relations as soon as possible” and to reopen liaison offices with Israel that were closed in 2000 during the Second Intifada, a five-year-long Palestinian uprising against Israel.³² At the same time, Trump announced that the United States would recognize Moroccan sovereignty over Western Sahara.³³ President Trump’s proclamation recognizing Morocco’s sovereignty over Western Sahara stated, in part:

²⁴ *Western Sahara*, *supra* note 3, at 101.

²⁵ UN, The United Nations and Decolonization, Non-Self-Governing Territories, at <https://www.un.org/dppa/decolonization/en/nsgrt>.

²⁶ UN Charter, Art. 73.

²⁷ The United Nations and Decolonization, *supra* note 25, at n. ii.

²⁸ ARIEFF, *supra* note 1.

²⁹ ALEXIS ARIEFF, CONG. RES. SERV., MOROCCO: BACKGROUND AND U.S. RELATIONS 12 (2020).

³⁰ *Id.*

³¹ Lara Jakes, Isabel Kershner, Aida Alami & David M. Halbfinger, *Morocco Joins List of Arab Nations to Begin Normalizing Relations With Israel*, N.Y. TIMES (Dec. 10, 2020), at <https://www.nytimes.com/2020/12/10/world/middleeast/israel-morocco-trump.html>; Kristen Eichensehr, *Contemporary Practice of the United States*, 115 AJIL 119 (2021).

³² Jakes, Kershner, Alami & Halbfinger, *supra* note 31; Lazar Berman, *Israeli Envoy Reopens Morocco Liaison Office after 20 Years*, TIMES OF ISRAEL (Jan. 26, 2021), at <https://www.timesofisrael.com/israeli-envoy-reopens-morocco-liaison-office-20-years-later/>; Daniel L. Byman, *The Oslo Accords at 25, the Second Intifada at 18: Will There Be a Third Intifada?*, BROOKINGS (Sept. 12, 2018), at <https://www.brookings.edu/blog/order-from-chaos/2018/09/12/the-oslo-accords-at-25-the-second-intifada-at-18>.

³³ White House Press Release, *Proclamation on Recognizing the Sovereignty of the Kingdom of Morocco Over the Western Sahara* (Dec. 10, 2020), at <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-recognizing-sovereignty-kingdom-morocco-western-sahara> [<https://perma.cc/EP9Y-9MLG>].

[A]s of today, the United States recognizes Moroccan sovereignty over the entire Western Sahara territory and reaffirms its support for Morocco's serious, credible, and realistic autonomy proposal as the only basis for a just and lasting solution to the dispute over the Western Sahara territory. The United States believes that an independent Sahrawi State is not a realistic option for resolving the conflict and that genuine autonomy under Moroccan sovereignty is the only feasible solution.³⁴

While the United States did not expressly address how its recognition is consistent with international law on self-determination, the White House clarified in a subsequent statement that that U.S. recognition of Moroccan sovereignty still “leaves room for a negotiated solution and the United States remains committed to working with Morocco, the Polisario, and all involved regional and international actors to support the necessary work ahead and create a more peaceful and prosperous region.”³⁵ Furthermore, it emphasized that “President Trump urges all parties to constructively engage with the United Nations and consider creative and genuine ways to move the peace process forward.”³⁶ On December 24, the State Department announced that it had begun the process of establishing a U.S. consulate in Western Sahara that would be managed by the U.S. Embassy in Rabat, Morocco.³⁷ Until a physical consulate can be established, the United States will host a “virtual presence post” on the U.S. Embassy’s website to provide “announcements and information about new programs that promote economic and business opportunities for the region.”³⁸

Trump’s announcement prompted criticism from current and former U.S. officials. Republican Senator James Inhofe criticized the decision as one where “rights of the Western Saharan people have been traded away.”³⁹ Inhofe and a bipartisan group of twenty-six U.S. senators sent a letter to President Biden in February asking him to reverse the recognition decision. The letter stated, in part:

We respectfully urge you to reverse this misguided decision and recommit the United States to the pursuit of a referendum on self-determination for the Sahrawi people of Western Sahara. . . .

The United States owes it to the Sahrawi people to honor our commitment, to help ensure the Moroccans live up to theirs, and to see this referendum through. The Sahrawi people deserve the right to freely choose their own destiny.⁴⁰

³⁴ White House Press Release, *supra* note 33.

³⁵ White House Press Release, President Donald J. Trump Has Brokered Peace Between Israel and the Kingdom of Morocco (Dec. 11, 2020), at <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-brokered-peace-israel-kingdom-morocco> [<https://perma.cc/W8Z6-Z76J>].

³⁶ *Id.*

³⁷ U.S. Dep’t of State Press Release, Announcement of New Virtual Presence Post for Western Sahara (Dec. 24, 2020), at <https://2017-2021.state.gov/announcement-of-new-virtual-presence-post-for-western-sahara/index.html> [<https://perma.cc/VUF2-KS9S>].

³⁸ U.S. Dep’t of State Press Release, Virtual Presence Post for Western Sahara, at <https://ma.usembassy.gov/embassy-consulate/vpp-western-sahara>.

³⁹ Jakes, Kershner, Alami & Halbfinger, *supra* note 31.

⁴⁰ Office of Senator James Inhofe Press Release, Inhofe, Leahy Lead 25 Colleagues to Urge Biden to Reverse Misguided Western Sahara Decision (Feb. 17, 2021), at <https://www.inhofe.senate.gov/newsroom/press-releases/inhofe-leahy-lead-25-colleagues-to-urge-biden-to-reverse-misguided-western-sahara-decision> [<https://perma.cc/L479-2WGN>].

Former U.S. Secretary of State James Baker III, who later served as the UN special envoy for Western Sahara, published an op-ed criticizing the decision as contrary to international law and diplomacy.⁴¹ Calling the decision a “major and unfortunate change in long-standing U.S. policy under both Democrat and Republican administrations,” he argued that the Abraham Accords should not “come at the price of abandoning the United States’ commitment to self-determination, the bedrock principle on which our country was founded and to which it should remain faithful.”⁴² Baker also expressed concerns over the effect of Trump’s decision on U.S. relations with Algeria, an ally of the Polisario Front, stating:

Al-Qaeda in the Islamic Maghreb and other groups could exploit the growing tensions in the region. And the all-but-certain deterioration of our relations with Algeria, the principal supporter of Western Sahara’s right to self-determination, could also result in damage to the growth of our commercial relations, our anti-terrorist cooperation and our efforts to deepen military relations.⁴³

Trump’s announcement also led international organizations to reaffirm their commitment to UN-mediated negotiations on Western Sahara’s sovereignty. UN Spokesperson Stephane Dujarric reaffirmed that the UN position on Western Sahara had not changed, stating that “[t]here are no major operational changes from our part” and that the UN believes a “solution can be found through dialogue based on the relevant Security Council resolutions.”⁴⁴ Likewise, a spokesperson for the European Union said that the EU’s position regarding Western Sahara would be unaffected by U.S. recognition of Moroccan sovereignty, noting:

The EU regards Western Sahara as a non-self-governing territory in the sense of the U.N., for which a dedicated U.N. process is ongoing to determine its final status and which the EU supports The position of the EU on the Western Sahara dispute remains fully aligned with that of the U.N. Security Council and its resolutions on Western Sahara.⁴⁵

Others were more pointed in their criticism. Sidi Omar, the Polisario Front’s UN representative, tweeted:

US outgoing President has made a proclamation involving Western Sahara whose legal status is determined by international law and #UN resolutions. Yet the move shows that #Morocco’s regime is willing to sell its soul to maintain its illegal occupation of parts of #WesternSahara.⁴⁶

⁴¹ James A. Baker III, *Opinion: Trump’s Recognition of Western Sahara Is a Serious Blow to Diplomacy and International Law*, WASH. POST (Dec. 17, 2020), at <https://www.washingtonpost.com/opinions/2020/12/17/james-baker-trump-morocco-western-sahara-abraham-accords>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Michelle Nichols, *U.N. Security Council Talks Western Sahara After Trump Policy Switch*, REUTERS (Dec. 21, 2020), at <https://www.reuters.com/article/us-israel-usa-morocco-un/u-n-security-council-talks-western-sahara-after-trump-policy-switch-idUSKBN28W01B>.

⁴⁵ Jacopo Barigazzi, *EU Stresses UN Peace Process After US U-Turn on Western Sahara*, POLITICO (Dec. 10, 2020), at <https://www.politico.eu/article/eu-stresses-un-peace-process-after-us-u-turn-on-western-sahara>.

⁴⁶ Sidi Omar (@SidiOmarNY), TWITTER (Dec. 10, 2020, 1:36 PM), at <https://twitter.com/SidiOmarNY/status/1337103925149921281>.

South Africa's governing African National Congress party criticized the decision and stated that "[t]he unalienable rights of the people of Western Sahara and Palestine to self-determination and freedom shall not be derailed by Trump's 'deal.'"⁴⁷

The Biden administration has yet to definitively comment or act on the Trump administration's recognition of Moroccan sovereignty over Western Sahara. When asked, a State Department spokesperson stated that he had "[n]o update," and explained:

I think what we have said broadly still applies. We welcome the new steps Morocco is taking to improve relations with Israel. The Morocco-Israel relationship will have long-term benefits for both countries. We will continue to support the UN process to implement a just and lasting solution to this longstanding dispute, the dispute in Morocco. We'll also support the work of the mission of the United Nations for the referendum in Western Sahara . . . to monitor the ceasefire and to prevent violence in the area.⁴⁸

Mouloud Said, the Polisario Front's representative in the United States, expressed hope that the Biden administration will reverse Trump's decision, stating, "[s]omeone with the background of President Biden cannot ignore international law, and we are confident that he will not endorse the illegal transaction done by former President Trump."⁴⁹

INTERNATIONAL ORGANIZATIONS

Biden Administration Reengages with International Institutions and Agreements
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The newly inaugurated administration of President Joseph R. Biden, Jr. took immediate steps to reengage with a variety of international institutions and agreements from which the Trump administration had withdrawn. On January 20, 2021, the administration deposited with the United Nations a new instrument of acceptance of the Paris Agreement on climate change, and it halted U.S. withdrawal from the World Health Organization (WHO). On January 21, the United States announced that it would participate in the COVID-19 Vaccines Global Access (COVAX) Facility, an international vaccine distribution scheme. The Biden administration also announced that it would reengage with and seek election to the UN Human Rights Council, and it quickly reached agreement with Russia for a five-year extension of the New Strategic Arms Reduction Treaty (New START), the last remaining arms control agreement between the two countries. These early moves are consistent with the foreign policy strategy President Biden previewed during the campaign when he promised

⁴⁷ Anita Powell, *US Proclamation Giving Morocco Sovereignty Over Disputed Region Draws Backlash in Africa*, VOA NEWS (Dec. 11, 2020), at <https://www.voanews.com/usa/us-proclamation-giving-morocco-sovereignty-over-disputed-region-draws-backlash-africa>.

⁴⁸ U.S. Dep't of State Press Release, Department Press Briefing (Feb. 22, 2021), at <https://www.state.gov/briefings/department-press-briefing-february-22-2021> [<https://perma.cc/ZY8E-BMYB>].

⁴⁹ Nicolas Niarchos, *How Biden Can Ease Tensions That Trump Stoked in the Western Sahara*, NEW YORKER (Feb. 10, 2021), at <https://www.newyorker.com/news/daily-comment/how-biden-can-ease-tensions-that-trump-stoked-in-the-western-sahara>.