



Summary of the Advisory Opinion of 16 October 1975

Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice

WESTERN SAHARA

Advisory Opinion of 16 October 1975

In its Advisory Opinion which the General Assembly of the United Nations had requested on two questions concerning Western Sahara, the Court,

With regard to Question I: "Was the territory of Western Sahara, at the time of colonization by the United Nations, a territory belonging to no one (terra nullius)?",

the Court first recalls that the General Assembly of the United Nations, in its resolution 1514 (XV) of 14 December 1960, adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples, in which it affirmed the principle that all peoples have the right to self-determination.

Oro and Sakiet El Hamra) at the time of colonization by the United Nations decided to submit two questions for the Court's advisory opinion by resolution 3292 (XXIX) of 20 December 1974.

The Court's advisory opinion was adopted on 16 October 1975 by a vote of 13 to 3, with 2 abstentions.

The Court decided by 13 votes to 3 to comply with the request for an advisory opinion and adopted on 16 October 1975 the following conclusions:

13 December 1974 and received in the Registry
an advisory opinion; on 21 December. It traces the subsequent steps in the proceedings, including the transmission of a dossier of documents - was unanimously of opinion that Western Sahara (Rechtsangelegenheiten des Generals der Vereinten Nationen) (Statute of Spain) was not a territory belonging to no one (terra nullius). Article 65, paragraph 2, and the presentation of written observations, including Algeria, Mauritania, Morocco, Spain and Zaïre, etc.
With regard to Question 11, "What were the legal ties (Statute, Art. 66) between this territory and the Kingdom of Morocco and the Mauritanian entity?", the Court. Mauritania and Morocco each asked to be authorized to
- decided by 14 votes to 2 to comply with the request for choice of a judge ad hoc to sit in the proceedings. By an Order
an advisory opinion; of 22 May 1975 (I.C.J. Reports 1975, p. 6), the Court found
- was of opinion, by 14 votes to 2, that there were legal ties between the territory and the Kingdom of Morocco under Article 89 of the Rules of Court to choose a per-e
ties between the territory and the Kingdom of Morocco of such a nature as to justify the conditions for the application of those Articles had not
satisfactory opinion; been satisfied. At the same time the Court stated that those
- was of opinion, by 14 votes to 2, that there were legal ties between this territory and the Kingdom of Morocco of such a nature as to justify the questions referred to it or any other question which might fall
kinds indicated in the penultimate paragraph of the Advisory Opinion to be decided, including those of its competence to give
Opinion. an advisory opinion and the propriety of exercising that
The penultimate paragraph of the Advisory Opinion was competence.
to the effect that:
The materials and information presented to the Court Competence of the Court show the existence, at the time of Spanish colonization, of legal ties (paras. 14-22 of Advisory Opinion)
legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. Under Article 65, paragraph 1, of the Statute, the Court
They equally show the existence of rights, including some of a doubtful character, which are claimed by the Kingdom of Morocco and the Mauritanian entity. The legal question at the heart of the dispute is whether the rights relating to the land, which consist of legal ties between the Kingdom of Morocco and the Mauritanian entity, as understood by the General Assembly of the United Nations, is suitably authorized by the Charter of the United Nations between the Kingdom of Morocco and the Mauritanian entity, as understood by the General Assembly of the United Nations, and that the Kingdom of Morocco and the Mauritanian entity have a right to self-determination.
COW, and the territory of Western Sahara. On the other two questions submitted are framed in terms of law and raise
hand, the conclusion is that the materials and problems of international law. They are in principle ques-
information to do not establish any legal tie of territoriality of a legal character, even if they also embody questions

the territory, hence the legal position of Spain could not be questioned. "What were the legalities of this territory compromised by the Court's answer to the questions submitted with the Kingdom of Morocco and the Mauritania?"

(b) that those questions do not call upon the Court to adjudicate on existing territorial rights; (c) that it has been (paras. 84-161 of Advisory Opinion) placed in possession of sufficient information and evidence.

Spain suggested in the second place that the questions submitted. The meaning of the words "legalities" has to be sought in the questions submitted to the Court were academic and devoid of purpose or the object and purpose of resolution 3292 (XXIX) of the General Assembly of the United Nations. It appears to the Court that the method to be followed for the decolonization of Western Sahara is that they must be understood as referring to such legalities as the consultation of the indigenous population may affect the policy to be followed in the decolonization of Western Sahara. The Court cannot accept the view that the United Nations resolutions in question could be limited to ties established directly adopted by the General Assembly on the subject, from the territory and without reference to the people who were in the territory. At the time of its colonization, the territory was sparsely populated. The granting of independence to colonial countries and peoples, to resolution 3292 (XXIX) on Western Sahara, embodied the members of which traversed the desert on regular routes, sometimes reaching as far as the south of Morocco or regions of present-day Mauritania, is one which will respect the right of the population of Western Sahara to determine their future political status by their freely expressed will. This right to self-determination, Morocco (paragraphs 90-129 of the Advisory Opinion) which is not affected by the request for advisory opinion and presented its claim to legal ties with Western Sahara as a basic assumption of the claim to ties of sovereignty on the ground of an alleged continuous possession of the territory and an uninterrupted exercise of authority. In the view of the Court, however, it must be of decisive importance in determining its legal character relevant to that further answer to

Question 1 must be evidence directly relating to
 discussion of the problem t.r) high resolution 3292 (XXIX)
 effective display of authority in Western Sahara at the time of
 alludes. its colonization by Spain and in the period immediately pre-
 Consequently the Court finds no compelling reason for
 ceding. Morocco requests that the Court should take account
 refusing to give a reply to the two questions submitted to it in
 of the special structure of the Moroccan State. That State was
 the request for advisory opinion. founded on the common religious bond of Islam
 and on the
 allegiance of various tribes to the Sultan, through their caids
 Question 1: "Was Western Sahara (Rfo de Oro and Sakiet El or sheikhs,
 rather than on the notion of territory. It consisted
 Hamra) at the time of colonization by Spain a Territory partly of what
 was called the Bled Makhzen, areas actually
 Belonging to No One (terra nullius)?" subject to the Sultan, and partly of what
 was called the Bled
 (paras. 75-83 of Advisory Opinion) Siba, areas in which the tribes were
 not submissive to him; at
 the relevant time, the areas immediately to the north of
 For the purposes of the Advisory Opinion, the "time of Western Sahara lay
 within the Bled Siba.
 colonization by Spain was; maybe as the period as evidence of its display of
 sovereignty in Western
 beginning in 1884, when Spain proclaimed its protectorate
 Sahara, Morocco invoked alleged acts of internal display of
 over the Rfo de Oro . It is therefore by reference to the law in
 Morocco an authority, consisting principally of evidence said
 force at that period that the legal concept of terra nullius must
 to show the allegiance of Saharan caids to the Sultan, includ-
 be interpreted. In law, "occupation" was a means of peace-
 ing dahir and other documents concerning the appointment
 ably acquiring sovereignty over territory (<) the wisethan by of aids, the
 alleged imposition of Koranic and other taxes,
 cession or succession; it was a cardinal condition of a valid and acts of
 military resistance to foreign penetration of the
 "occupation with that the territory should be terra nullius. Morocco also
 relied on certain international acts
 According to the State practice of that time, territories sought over the whole or
 part of Western Sahara, including er-
 inhabited by tribes or peoples having a social and political (a) certain treaties
 concluded with Spain, the United States
 organizations were not terra nullius: in their case ad
 sovereignty was not generally considered as effected through
 actions of which dealt internally with the safety of persons and ship
 occupation, but through arrangements concluded with local wrecked on
 the coast of Wad Noun or its vicinity; (6) certain
 matters. The information furnished the court shows (a) that bilateral treaties of the
 late nineteenth and early twentieth
 at the time of colonization western Saharawas inhabited by

centuries where by Great Britain, Spain, France and German peoples which, if nomadic, were socially and politically organized in tribes and under chiefs competent to represent them; (b) that Spain did not proceed upon the basis that it was the de establishing its sovereignty over terra nullius: thus in his Order of 26 December 1884 the King of Spain proclaimed Having considered this evidence and the observation of that the wastaking the Rio de Oro under his protection on the the other States which took part in the proceedings, the Court 101 finds that neither the internal nor the international acts relied to one another; they had no common institutions or organs. upon by Morocco indicate the existence at the relevant period The Mauritanian entity therefore did not have the character of either the existence or the international recognition of a personality or corporate entity distinct from these several legal ties of territorial sovereignty between Western Sahara emirates or tribes which comprised it. The Court concludes and the Moroccan State. Even taking account of the specific that at the time of colonization by Spain there did not exist structure of that State, they do not show that Morocco is between the territory of Western Sahara and the Mauritanian played any effective and exclusive State activity in Western entity any tie of sovereignty, or of allegiance of tribe or of Sahara. They do, however, provide indications that a legal simple inclusion in the same legal entity. Nevertheless, the tie of allegiance existed at the relevant period between the General Assembly does not appear to have so framed Questions and some, but only some, of the nomadic peoples of the I as to confine the question exclusively to those legal the territory, through Tekna, of the Noun region, and ties which imply territorial sovereignty, which would be to they show that the Sultan displayed, and was recognized by disregard the possible relevance of other legal ties to the other States to possess, some authority or influence with decolonization process. The Court considers that in, therefore, respect to those tribes. relevant period, the nomadic peoples of the Shinguitti country The term "Mauritanian entity" (paragraphs 130-152 of possessed rights, including some rights relating to the lands the Advisory Opinion) was first employed during the session through which they migrated. These rights constituted legal of the General Assembly in 1974 at which resolution 3292 ties between Western Sahara and the Mauritanian entity. (XXIX), requesting an advisory opinion of the Court, was They were ties which known of frontier between the territories adopted. It denotes the cultural, geographical and social and were vital to the very maintenance of life in the region. entity within which the Islamic Republic of Mauritania was Morocco and Mauritania both laid claim on the overlap

to be created. According to Mauritania, that entity, at the relevant period, was the Bilad Shinguitt or S'hinguitt country, Western Sahara to have had with them at the time of colonialization a distinct human unit, characterized by a common language, way of life, religion and system of laws, featuring two types. Although their views appeared to have evolved considerably of political authority: emirates and tribal groups. In that respect, the two States both stated at the end of the proceedings that there was an overlap pertaining to Morocco and Mauritania suggested that the concepts of a south pertaining to Mauritania without any geographical of "nation" and of "people" would be the most appropriate void in between, but with some overlapping as a result of the to explain the position of the Shinguitt people at the time of intersection of nomadic routes. The Court confines itself to colonization. At that period, according to Mauritania, the noting that this geographical overlapping indicated the difficulty of disentangling the various relationships existing between the territory at present under Spanish administration and the present territory of the Islamic Republic of Mauritania together constituted indissociable parts of a single entity and had legal ties with one another. The information before the Court discloses that, while there existed among them many ties of a racial, linguistic, For these reasons, the Court (paragraphs 162 and 163 of religious, cultural and economic nature, the emirates and the Advisory Opinion) gives the replies indicated on pages 1 many of the tribes in the entity were independent in relation and 2 above.

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