

DISSENTING OPINION OF JUDGE RUDA

I have voted in favour of the decision of the Court to comply with the request for an advisory opinion, in favour of the reply given to Question I, and in favour of the reply given to Question II in so far as it concerns the legal ties between the Mauritanian entity and the territory of Western Sahara, but unfortunately I cannot go along with the conclusions of the majority of the Court concerning the legal ties between the Kingdom of Morocco and this territory, as indicated in the penultimate paragraph of the Opinion.

My interpretation of the request in General Assembly resolution 3292 (XXIX) is that in Question II it refers only to legal ties of a territorial character, which could have been affected by the process of colonization at the end of the nineteenth century. Such interpretation is based on the actual text of Question II and on the debates in the General Assembly in 1974.

In other words, the purpose of the request as a whole, and of Question II in particular was simply to find out from the Court what were the rights, if any, of Morocco and the Mauritanian entity over the territory of Western Sahara, at the time of Spanish colonization. Of course, the rights of a political entity over a territory mean the exercise of jurisdiction over persons and things, and those rights are therefore established in relation to people, but, to my mind, the General Assembly was only interested in those legal ties the existence of which could throw light on the question whether Western Sahara belonged to Morocco and the Mauritanian entity.

It appears to me that the legal ties of allegiance and authority, as described in the penultimate paragraph and other paragraphs of the Opinion, are not legal ties between the territory of Western Sahara and the Kingdom of Morocco, but merely personal ties. If the Court had found that the existence of such legal ties of allegiance and authority had created a territorial right, the legal inference of such a finding would normally have been that the Sultan of Morocco was the sovereign of the territories where these tribes lived; but this is a proposition that the Court has not accepted.

I, therefore, conclude that the reply of the Court does not correspond to what has been requested by the General Assembly.

It seems to me, therefore, that the correct reply to Question II as far as the Kingdom of Morocco is concerned would have been that there were no legal ties between the territory of Western Sahara and the Kingdom of Morocco, whereas the Court has found that there were legal ties of allegiance.

Moreover, I have not been convinced that the letters and documents mentioned in the Advisory Opinion, or any other information submitted to

the Court, afford clear indication of permanent, real and manifested acceptance either of allegiance, or of the Sultan's political authority over tribes in Western Sahara. Sporadic manifestations of allegiance and authority, even if established, are not sufficient to declare the existence of legal ties, whether of a territorial or personal character. I do however recognize the religious, moral and political influence of the Sultan, but I remain unconvinced that such influence has created legal ties of any nature.

For these reasons I have been unable to concur with the majority of the Court on this point.

On the other hand, I have voted in favour of the existence of legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara, because the ties indicated in the penultimate paragraph of the Opinion were, in my view, legal ties of a territorial character. It has not been contested that the various tribes living in the territories of the Bilad Shinguitti, to use the formula employed by the Court to convey its understanding of the concept of the Mauritanian entity, were independent political units which possessed rights, *inter alia*, to pastures, water-holes and burial grounds, which were reciprocally acknowledged among the tribes. The normal migratory areas were the territory of each tribe, although often certain tribes traversed the territories of other groups. Each tribe, therefore, enjoyed rights of a territorial character in the zones of Western Sahara through which their nomadic routes ran at the time of Spanish colonization. However, the independence of these tribes deprived the Bilad Shinguitti itself of the character of a political unity, juridically capable, *per se*, of being the subject of territorial rights.

The confirmation that the legal ties referred to above were affected by the process of colonization is the 1934 administrative agreement between Spain and France, which recognized the traditional freedom of nomads to migrate across frontiers.

I cannot refrain from pointing out, moreover, although this does not establish legal ties between the Kingdom of Morocco and the territory, that the independent nomadic Tekna septs whose routes of migration are established as traversing the Sakiet El Hamra and the Southern part of Morocco possessed territorial rights within their migratory zones similar to those recognized in the Advisory Opinion as belonging to the tribes living within the territories of the Bilad Shinguitti.

(Signed) J. M. RUDA.