

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

SAHARA OCCIDENTAL

(REQUÊTE POUR AVIS CONSULTATIF)

ORDONNANCE DU 22 MAI 1975

1975

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

WESTERN SAHARA

(REQUEST FOR ADVISORY OPINION)

ORDER OF 22 MAY 1975

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WESTERN SAHARA

(REQUEST FOR ADVISORY OPINION)

ORDER

Present: President LACHS; Vice-President AMMOUN; Judges FORSTER, GROS, BENGZON, PETRÉN, ONYEAMA, DILLARD, IGNACIO-PINTO, DE CASTRO, MOROZOV, JIMÉNEZ DE ARÉCHAGA, Sir Humphrey WALDOCK, NAGENDRA SINGH, RUDA; Registrar AQUARONE.

THE COURT,

Composed as above,

After deliberation,

Having regard to Articles 31 and 68 of the Statute of the Court, and to Articles 3, 87 and 89 of the Rules of Court,

Having regard to resolution 3292 (XXIX) of the General Assembly of the United Nations dated 13 December 1974 requesting the International Court of Justice to give an advisory opinion on the following questions:

“I. Was Western Sahara (Río de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (*terra nullius*)?”

If the answer to the first question is in the negative,

II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?”

Makes the following Order:

Whereas by a letter from the Permanent Representative of Morocco to the United Nations dated 25 March 1975, the Government of the Kingdom of Morocco alleged that there is "a legal question actually pending" between the administering Power of Western Sahara, namely Spain, and the Kingdom of Morocco, as well as other States which are directly interested; and, basing its request on Article 89 of the Rules of Court, requested the appointment of a person to sit in the present proceedings as judge *ad hoc* under Article 31 of the Statute;

Whereas, by a letter from the Chargé d'affaires *ad interim* of the Mauritanian Embassy to the Netherlands dated 26 March 1975, the Government of the Islamic Republic of Mauritania, relying upon Article 31 of the Statute of the Court and Articles 87 and 89 of the Rules of Court, referred to the recognition of its interest in the question of the Sahara under Spanish administration by the General Assembly in resolution 3292 (XXIX), and informed the Court of its intention to choose a person to sit as judge *ad hoc* in the present proceedings;

Whereas the Court includes upon the Bench a judge of the nationality of Spain, the administering Power of Western Sahara;

Whereas, by a letter from the Ambassador of Spain to the Netherlands dated 9 April 1975, the Government of the Spanish State informed the Court that it was convinced that the circumstances which would render applicable Article 89 of the Rules of Court, in relation to Article 31 of the Statute, had not arisen in the present case;

Whereas, by a letter from the Ambassador of Algeria to France dated 21 April 1975, the Government of the Democratic and Popular Republic of Algeria reserved its rights to take part in the oral proceedings; and with reference to the letters referred to in the foregoing recitals, stated that Algeria reserved its rights on a basis of equality;

Having regard to the communications or written statements under Article 66, paragraph 2, of the Statute of the Court, filed by the Governments of Chile, Costa Rica, Dominican Republic, Ecuador, France, Guatemala, Mauritania, Morocco, Nicaragua, Panama and Spain;

Having regard to the dossier of documents transmitted to the Court, in two instalments, by the Secretary-General of the United Nations, pursuant to Article 65, paragraph 2, of the Statute, as likely to throw light upon the questions;

Having heard the respective observations of Morocco, Mauritania, Algeria and Spain at public hearings held between 12 and 16 May 1975;

Whereas, for the purpose of the present preliminary issue of the composition of the Court in the proceedings, the material submitted to the Court indicates that, when resolution 3292 (XXIX) was adopted, there appeared to be a legal dispute between Morocco and Spain regarding the Territory of Western Sahara; that the questions contained in the request for an opinion may be considered to be connected with that dispute; and

that, in consequence, for purposes of application of Article 89 of the Rules of Court, the advisory opinion requested in that resolution appears to be one “upon a legal question actually pending between two or more States”;

Whereas the material submitted to the Court shows that when resolution 3292 (XXIX) was adopted, Mauritania had previously adduced a series of considerations in support of its particular interest in the territory of Western Sahara; whereas however, for the purpose of the present preliminary issue of the composition of the Court in the proceedings, that material indicates that, when resolution 3292 (XXIX) was adopted, there appeared to be no legal dispute between Mauritania and Spain regarding the Territory of Western Sahara; and that, in consequence, for purposes of application of Article 89 of the Rules of Court, the advisory opinion requested in that resolution appears not to be one “upon a legal question actually pending” between those States;

Whereas the conclusions stated above in no way prejudice the *locus standi* of any interested State in regard to matters raised in the present case, nor do they prejudice the views of the Court with regard to the questions referred to it in the above-mentioned resolution 3292 (XXIX), or any other question which may fall to be decided in the further proceedings on the present request for an advisory opinion, including the question of the Court’s competence and the propriety of its exercise;

THE COURT,

by 10 votes to 5,

- (1) finds that the Kingdom of Morocco is entitled under Articles 31 and 68 of the Statute of the Court and Article 89 of the Rules of Court to choose a person to sit as judge *ad hoc* in the present proceedings;

by 8 votes to 7,

- (2) finds that, in the case of the Islamic Republic of Mauritania, the conditions for the application of Articles 31 and 68 of the Statute of the Court and Article 89 of the Rules of Court are not satisfied in the present proceedings.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-second day of May, one thousand nine hundred and seventy-five, in six copies, of which one will be placed in the archives of the Court, one will be transmitted to the Secretary-General of the United Nations, and the others will be transmitted to the Governments of the following States: Algeria, Mauritania, Morocco and Spain.

(Signed) Manfred LACHS,
President.

(Signed) S. AQUARONE,
Registrar.

President LACHS makes the following declaration:

[Traduction]

Il se peut que la Cour veuille commenter de façon plus approfondie la question de la désignation de juges *ad hoc* en la présente affaire quand elle se prononcera sur la demande d'avis consultatif. Il va de soi que les membres de la Cour pourront également exprimer leurs vues sur la question à ce moment-là, dans l'exercice du droit que leur confère l'article 57 du Statut.

Judge MOROZOV appends a dissenting opinion to the Order of the Court.

(Initialed) M.L.

(Initialed) S.A.
