

SEPARATE OPINION OF JUDGE BONI

[Translation]

I have voted without reservation in favour of the Advisory Opinion delivered by the International Court of Justice.

The Court has decided that Western Sahara (Río de Oro and Sakiet El Hamra) was not a *terra nullius*. Its population, although consisting mainly of nomads, was organized in independent tribes under the authority of democratically elected sheikhs.

The Court has found that legal ties of allegiance existed between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara.

It has also found that there existed many ties of a racial, linguistic, religious, cultural and economic nature between the tribes who dwelt in the Sahara region which today is comprised within the Sahara under Spanish domination and the Islamic Republic of Mauritania.

On the other hand it has categorically affirmed that these ties were not ties of territorial sovereignty between the territory of Western Sahara on the one hand and Morocco and the Mauritanian entity on the other hand.

In adopting this latter solution, the Court has not taken sufficient account of the local context. As regards Morocco, insufficient emphasis has been placed on the religious ties linking the Sultan and certain tribes of the Sakiet El Hamra. For these tribes, the Sultan was Commander of the Faithful, that is to say, the Steward of God on earth for all matters, whether religious or not. He was thus regarded not only as religious leader but as director of their temporal affairs. The legal ties between them were thus not only religious – which no one denies – but also political, and had the character of territorial sovereignty.

In strict logic, I should have voted “no” to the second question of the Advisory Opinion. I did not do so for the following reasons:

The Court has denied that the ties between Western Sahara and Morocco were in any way ties of territorial sovereignty. It has urged the General Assembly to consult the population of those regions on their future in conformity with General Assembly resolution 1514 (XV). Can one reasonably reproach the Court for having adopted such an attitude, which is consistent with its role in the present case, viz. to enlighten the General Assembly?

The solution which I advocate, and which confers a character of territorial sovereignty on the ties that existed between Morocco and Western Sahara, leads to the same conclusion: obligatory consultation of the inhabitants of

Western Sahara on their future, in pursuance of General Assembly resolution 1514 (XV).

The General Assembly has, it is true, decided on occasion that there was no need to consult the populations of territories that were to be decolonized. But it has stated its reasons, namely:

The populations in question were not peoples and did not therefore qualify for self-determination.

Consultations were unnecessary because of special circumstances, of which the General Assembly is the sole judge.

Such reasons could not be held to apply in the present case. If the General Assembly had had before it an advisory opinion of the Court declaring that there were ties of sovereignty between Morocco and certain areas of Western Sahara, it would have been obliged to consult the inhabitants of the region on the different options provided for in resolution 1514 (XV).

(Signed) A. BONI.