SEPARATE OPINION OF JUDGE PETRÉN

[Translation]

Although I found it unnecessary, hence inappropriate, for the Court to reply to Question I, I voted on this question like my colleagues, since abstention is not allowed. As for Question II, I find myself in agreement with what I regard as the essential content of the answer given in the Advisory Opinion, though unable to subscribe to certain parts of that answer. Accordingly, while I was thus able to vote with the majority on Question II, I append this statement of my separate opinion to the Court's decision.

*

Like contentious proceedings, advisory proceedings may raise preliminary questions which it is the duty of the Court to settle before giving its decision on matters of substance. With regard to contentious cases, preliminary questions concerning the Court's competence or the admissibility of applications were subjected to particular attention at the time of the revision of the Rules effected in 1972. Under Article 67, paragraph 3, of the revised Rules, the effect of an objection is to suspend the proceedings on the merits, which are not to continue until after the Court has pronounced on the objection. However, paragraph 7 of the same Article permits the Court, instead of upholding or rejecting the objection, to declare that "the objection does not possess, in the circumstances of the case, an exclusively preliminary character". This latter provision replaces the former paragraph 5 of Article 62, which authorized the Court simply to join preliminary objections to the merits. The Court has thus shown its intention henceforth not to postpone the definitive settlement of objections except in cases covered by the new formula.

The preliminary questions which may arise in advisory proceedings are not entirely of the same nature as those in contentious proceedings. Of course, questions concerning the competence of the Court may also arise, since Article 65, paragraph 1, of the Statute permits the Court to give an advisory opinion only if the request emanates from a body authorized to make such a request and relates to a legal question. The Statute does not however impose on the Court an absolute obligation to give an opinion in all cases in which it is competent to do so. Article 65, paragraph 1, leaves it free to refuse if it considers that it is not proper to proceed. The question of the propriety of giving an advisory opinion may thus play a part analogous to that of admissibility in contentious proceedings. Finally, in advisory proceedings the practice of the Court recognizes a third category of preliminary questions: if

it considers that the question on which its opinion is asked does not, as formulated, lend itself to being answered by the Court, the Court regards itself as free to reformulate the question.

The provisions of the Rules of Court concerning advisory proceedings are very summary; the preliminary questions just referred to are not mentioned. Article 87, paragraph 1, contains the following provision:

> "In proceedings in regard to advisory opinions, the Court shall, in addition to the provisions of Article 96 of the Charter and Chapter IV of the Statute, apply the provisions of the Articles which follow. It shall also be guided by the provisions of these Rules which apply in contentious cases to the extent to which it recognizes them to be applicable; for this purpose it shall above all consider whether the request for the advisory opinion relates to a legal question actually pending between two or more States."

In proceedings in regard to advisory opinions, it appears no less desirable than in contentious proceedings that preliminary questions should be settled before any proceedings on the substantive issues. There would otherwise be a risk that a reply to a preliminary question would cause the time and money devoted to the proceedings on the substance to be wasted. That is why the spirit and the letter of Article 87, paragraph 1, in my view require that the provisions of the Rules concerning preliminary objections in contentious cases should also be applied so far as possible in advisory proceedings.

In the present case, preliminary questions have been raised concerning both the Court's competence and the propriety of its exercise, and the possible reframing of the questions submitted to the Court.

Before the opening of the oral proceedings on the substantive issues, the Court indirectly touched on one of these questions, that of its competence, when by its Order of 22 May 1975 it ruled on the applications by the Moroccan and Mauritanian Governments for the appointment of judges *ad hoc*. When accepting the Moroccan Government's application, the Court gave the following reason for its decision:

> "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'."

Since the competence of the Court depends on the questions which are put to it being legal ones, it goes without saying that the Court is competent to entertain a request for advisory opinion on a legal question pending between

two or more States. The Order of 22 May 1975 therefore implies that the Court regarded itself as competent, but only on a provisional basis. It stated that, when General Assembly resolution 3292 (XXIX) was adopted, there *appeared* to be a legal dispute between Morocco and Spain regarding the territory of Western Sahara, and it concluded, with the same absence of certainty, that the advisory opinion *appeared* to have been requested upon a legal question pending between two States. This was thus a sort of side-stepping of the point, which imposed on the Court the duty to commit itself on a preliminary question at a later stage.

The Order of 22 May 1975 raises a question of interpretation of Article 89 of the Rules which cannot be passed over. That Article provides that the provisions of the Statute concerning the appointment of judges *ad hoc* apply "if the advisory opinion is requested upon a legal question actually pending between two or more States". But what happens if the dispute contemplated in the request for advisory opinion has ceased to exist at the time when the Court takes its decision on the request for the appointment of a judge *ad hoc*? The Order is confined to the situation existing on 13 December 1974, when the resolution seeking the opinion of the Court was adopted by the General Assembly. The Order was adopted, according to its text, in view of the "material submitted to the Court". This includes the written statements filed by Spain, Morocco and Mauritania, and the statements made by the representatives of those States and of Algeria during the public hearings (12 to 16 May 1975) devoted to the possible appointment of judges *ad hoc*. From its examination of this material, the Court drew solely the conclusion that they indicated "that, when resolution 3292 (XXIX) was adopted, there appeared to be a legal dispute between Morocco and Spain regarding the Territory of Western Sahara". It did not seek to ascertain whether these statements did not also reveal that the dispute which had perhaps existed on 13 December 1974 had disappeared. It would in such case have been necessary to consider whether Article 89 of the Rules nevertheless required the appointment of a judge *ad hoc*, which for my part I do not think it did. By not considering the possible development of the situation between 13 December 1974, and 22 May 1975, the Order therefore contains a lacuna. In particular, the question should have been examined whether in May 1975 there really was a legal dispute between Morocco and Spain as to the categorization of Western Sahara as *terra nullius* at the time of its colonization by Spain.

Further, it should be observed that Article 89 of the Rules only calls for application of Article 31 of the Statute if a legal question pending between two or more States is a matter of current reality. It does not refer to a dispute which *appears* to exist. The Court did of course say, in its Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, that the question of judges *ad hoc* had to be settled before any argument on the preliminary objections, and that the decision

taken did not prejudge the competence of the Court if it were claimed, for example, that there was no dispute (*I.C.J. Reports 1971*, pp. 25 f.). I am not prepared to follow this reasoning. The appointment of a judge *ad hoc* is definitive, and operates for the whole of the proceedings. To accept such an appointment on the supposition that a dispute exists, but to leave in suspense any definitive decision as to the existence of that dispute, involves serious risks. First of all, if the ultimate decision is negative, and contrary to the provisional assessment made by the Court, this will imply that there should not have been any judge *ad hoc*. In addition, the judge *ad hoc* will be permitted to take part in the final vote on the question upon which the Court has made the legality of his presence on the Bench depend; it could even happen that his own vote tipped the scale on the point.

In my opinion, the time has come for the Court to abandon a practice which is capable of giving rise to such procedural anomalies. It would have all the more reason to do so inasmuch as one of the principal objects of the revision of the Rules adopted in 1972 was to avoid the replies to preliminary questions being postponed to the end of the proceedings. At the hearings of May 1975 the Court had before it the representatives of Mauritania and Morocco, as also of Spain, and was in possession not only of the records of the General Assembly concerning the question of the decolonization of Western Sahara but also of the written statements in the proceedings together with their annexes. I venture to believe that, in such favourable circumstances, the Court, by putting the appropriate questions to the representatives of the three States concerned, could have obtained all the information necessary to ascertain whether there existed any legal dispute or disputes between them concerning Western Sahara. It would not then have needed to postpone its reply to this question until the end of the proceedings on the issues of substance.

It is furthermore my opinion that the Court should have defined the subject of the questions put by the General Assembly in May 1975, when the Members of the Court had already had time to familiarize themselves with the contents of the General Assembly records. To what better source could the Court have turned in order to appreciate the meaning of the questions? To have defined their subject-matter would have enabled the Court to consider whether they were of a legal nature or not, and whether there was any occasion to reframe them. Thus all the preliminary issues could have been disposed of before the opening of the oral proceedings on matters of substance, which would have made it possible to focus those hearings on precise and carefully limited subjects. This would have resulted in shorter proceedings. The Court having chosen another course, it is only now, at the final stage of the case, that the preliminary questions have been decided.

*

The most salient characteristic of the questions upon which the United Nations General Assembly has sought the advisory opinion of the Court is

that they concern the legal categorization of situations which belong to a time now long past.

This raises the question whether the General Assembly's request meets the requirements of Article 65, paragraph 1, of the Statute, according to which the Court *may* give advisory opinions on legal questions. Does this mean that even questions concerning the legal assessment of situations which have ceased to exist may be submitted to it? It seems clear from the terms of the present Advisory Opinion, in particular from paragraph 19 thereof, that that is the view of the Court. I myself am unable to subscribe to this view. The Court is the principal judicial organ of the United Nations; it is not an historical research institute. There are numerous problems of the history of law to which no definitive answer has yet been given. Yet no one would think of submitting to the Court the question, for example, of the authenticity of the will of the Emperor Trajan, or whether the invasion of Britain by William the Conqueror was justified. These examples, extreme as they are, indicate the impossibility of interpreting Article 65 of the Statute to mean that there is no need to require that the questions submitted to the Court call for answers which are such as will contribute to the clarification of present-day legal problems. The Court would not otherwise be called upon to fulfil a judicial function, a function which should also be furthered by its advisory opinions.

In my view, a request for an advisory opinion cannot be regarded as admissible unless the question which it submits to the Court relates either to the existence or the content of rights or obligations of international law, or to the conditions which, if fulfilled, would result in the coming into existence, the modification or the termination of such a right or obligation. Is that so with regard to the present request for an advisory opinion?

The ninth paragraph of the preamble of resolution 3292 (XXIX) adopted by the General Assembly on 13 December 1974, as communicated to the Court by the Secretary-General of the United Nations in a correct version in August 1975, would suggest that this was so. It is there stated that a legal controversy arose during the discussion on the status of the territory of Western Sahara at the time of its colonization by Spain. Thus it is suggested that it is upon that controversy that the opinion of the Court has been sought. But who then are parties to this controversy, and to what precisely is it said to relate? The reply to this question was hinted at by the Court when it made its Order of 22 May 1975, by which it granted to Morocco, but refused to Mauritania, the appointment of a judge *ad hoc*. As I have mentioned above, the Court stated in that Order that there appeared to have existed on 13 December 1974 between Morocco and Spain, but not between Mauritania and Spain, a legal dispute regarding the territory of Western Sahara, and that the questions contained in the request for advisory opinion might be considered to be connected with that dispute. The legal controversy alluded to in General Assembly resolution 3292 (XXIX) is thus, it is suggested, a legal dispute between Morocco and Spain regarding the territory of Western Sahara.

The terms in which the Court expressed itself in the Order are such as to suggest that it supposed that the present case related to a territorial claim formulated by Morocco against Spain, and disputed by the latter. In paragraph 34 of the Advisory Opinion one finds traces of the dispute which is presented in the Order as appearing to have existed on 13 December 1974. Paragraph 34 of the Advisory Opinion states, without making any reference to the Order, that *there is in this case* a legal controversy, but one which arose during the proceedings of the General Assembly and in relation to matters with which it was dealing. The legal dispute between Morocco and Spain which was taken by the Order of May 1975 to have existed on 13 December 1974 is thus transformed, in the Advisory Opinion, into a legal controversy still existing in October 1975 but defined by reference to the proceedings of the General Assembly. The rest of paragraph 34 of the Advisory Opinion, and paragraphs 35 and 36, are devoted to a more detailed definition of this controversy. It goes back to 1958, and originated from a claim by Morocco to Western Sahara as being an integral part of its national territory, a claim opposed by Spain. According to paragraph 36, the controversy which thus arose in the General Assembly with regard to Western Sahara continued to subsist.

Whatever may have been the position at the time of the discussions in the General Assembly, the statements made by Morocco and Spain from the very outset of the proceedings before the Court have made it clear that in the present case there is no legal question pending between these two States with regard to Western Sahara. Morocco does not dispute the present sovereignty of Spain over the territory, and both Morocco and Spain accept, for its decolonization, the application of the resolutions of the General Assembly. In other words, the Court is not faced with a legal claim of right made by Morocco against Spain, and disputed by Spain, which would have constituted a legal dispute between the two States. The point on which their opinions have differed since the discussions in the General Assembly is that of the procedures still to be decided for the implementation of the decolonization. For States taking part in discussions in the General Assembly to express divergent views on the questions under discussion cannot be regarded as constituting legal disputes between them. In my opinion, the appointment in the present case of a judge *ad hoc* by Morocco by virtue of Article 89 of the Rules was not warranted. Had I taken a different view of the situation, I would have been of the opinion that Mauritania also was entitled to choose a judge *ad hoc*. For those reasons, I voted against the Order of 22 May 1975 as a whole.

However, the legal character which Article 65, paragraph 1, of the Statute requires of a question, if it is to be the subject of an advisory opinion, does not depend on the existence of a legal dispute between two or more States. I must thus pursue my examination of the legal character of the questions put to the Court in the present request for an advisory opinion.

The context in which those questions have been formulated is that of the

decolonization of Western Sahara under Spanish administration. There is no need to recall the place of decolonization, under the aegis of the United Nations, in the present evolution of international law. Inspired by a series of resolutions of the General Assembly, in particular resolution 1514 (XV), a veritable law of decolonization is in the course of taking shape. It derives essentially from the principle of self-determination of peoples proclaimed in the Charter of the United Nations and confirmed by a large number of resolutions of the General Assembly. But, in certain specific cases, one must equally take into account the principle of the national unity and integrity of States, a principle which has also been the subject of resolutions of the General Assembly. It is thus by a combination of different elements of international law evolving under the inspiration of the United Nations that the process of decolonization is being pursued. The decolonization of a territory may raise the question of the balance which has to be struck between the right of its population to self-determination and the territorial integrity of one or even of several States. The question may be raised, for example, whether the fact that the territory belonged, at the time of its colonization, to a State which still exists today justifies that State in claiming it on the basis of its territorial integrity. That argument has been put forward, and has been contested. The question of its validity in general and the question of its applicability to Western Sahara are undeniably of a legal character.

It seems however that questions of this kind are not yet considered ripe for submission to the Court. The reason is doubtless the fact that the wide variety of geographical and other data which must be taken into account in questions of decolonization have not yet allowed of the establishment of a sufficiently developed body of rules and practice to cover all the situations which may give rise to problems. In other words, although its guiding principles have emerged, the law of decolonization does not yet constitute a complete body of doctrine and practice. It is thus natural that political forces should be constantly at work rendering more precise and complete the content of that law in specific cases like that of Western Sahara. Thus the General Assembly has reserved to itself the task of determining the methods to be adopted for the decolonization of the territory in accordance with the principles of resolution 1514 (XV). But, before discharging that task, it felt the need to obtain an advisory opinion of the Court on two questions which were regarded as preliminary to the decisions to be taken.

The questions on which an advisory opinion of the Court is requested relate to the status of Western Sahara at a period in the past, defined as the time of its colonization by Spain. The Court is asked to answer first the question whether, at that time, Western Sahara was a territory belonging to no-one *(terra nullius)*. In the event of its answer to that first question being in the negative, it is asked to answer a second question, namely what the legal ties were between the said territory and the Kingdom of Morocco and the Mauritanian entity. Taken literally, those two questions only asked the Court to define the legal status of Western Sahara in an already distant past. The Court is not called upon to lift its eyes to the present, still less to the future. It

is not asked to draw from its historical research any legal conclusion relating to the Western Sahara of today or of tomorrow.

It follows from what I have said above that, if such were the meaning of the questions put to the Court, I would not find they had the legal character required by Article 65, paragraph 1, of the Statute, for they would not call for any answer bearing on the solution of a legal problem of the present time. In the present Advisory Opinion, however, the Court defines the two questions in such a way as to create such a link with the present time. This is to be found in *inter alia* paragraphs 85 and 161 of the Advisory Opinion. The Court explains there that in answering the request of the General Assembly it must indicate whether at the time of its colonization, Western Sahara had, with the Kingdom of Morocco and the Mauritanian entity, such legal ties as may affect the policy to be followed in its decolonization. Then the Court fulfils that task, not in the operative part of its Advisory Opinion, but in paragraph 162, to which the operative part expressly refers. There the Court states that it has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory. It is that approach in the present Advisory Opinion which confers on it in my view the character of an answer to a legal question within the meaning of Article 65, paragraph 1, of the Statute. But is this really in harmony with the request of the General Assembly?

I have just observed that, taken literally, the questions asked do not call on the Court to define a current legal situation. Throughout the proceedings, Morocco and Mauritania have asserted that the Court was not asked to pronounce on the effect its findings might have on the procedures for the decolonization of Western Sahara. According to those two States, which played an important part in the formulation and adoption of resolution 3292 (XXIX), the effect which the Court's conclusions might possibly have as regards determination of the procedures for the decolonization of Western Sahara is entirely a matter for the decisions of a political nature which the General Assembly has reserved for itself. That being so, one may wonder whether the interpretation which the Court has decided to give to the questions put is in fact in accordance with the intentions of the General Assembly, and whether it does not, rather, represent a new formulation of those questions.

However that may be, I think that this approach by the Advisory Opinion should have been the subject of a deliberation and a decision at the beginning and not right at the end of the proceedings. To me it is a further example of a preliminary question which may arise in advisory proceedings and which should, in my view, be treated as such and dealt with before the definitive opening of any proceedings on the merits. It seems to me that in the present case to have organized the proceedings in that way would have been

particularly advisable out of consideration for the States represented before the Court, which have unceasingly repeated that the General Assembly had by no means asked the Court to state its view concerning the possible effect its findings might have on the decolonization procedure. In not revealing that it contemplated doing so, the Court failed to convey to the States concerned the importance for them of stating their views on the subject.

The question of the extent to which, and under what conditions, past legal ties may influence the decolonization of a territory seems to me to fall within an as yet inadequately explored area of contemporary international law. That is why I find that the Court should not have approached those questions without first examining both their theoretical and their practical aspects. I am bound to say that paragraph 162 of the Advisory Opinion bears no signs of any such analysis.

*

The participation of the interested States had conferred on the present proceedings a wholly unusual character tending to obscure the difference in principle between contentious and advisory proceedings. Whereas in contentious proceedings the Court has before it parties who plead their cause and must, where necessary, produce evidence in support of their contentions, in advisory proceedings it is assumed that the Court will itself obtain the information it needs, should the States not have supplied it. In contentious proceedings, if a party does not succeed in producing good grounds for a claim, the Court has only to dismiss it, whereas in advisory proceedings the Court's task is not confined to assessing the probative force of the information supplied by States, but consists in trying to arrive at an opinion with the help of all the elements of information available to it.

In the present case, the General Assembly, in formulating its request for an advisory opinion, expressly called upon Spain, Morocco and Mauritania to submit to the Court all such information and documents as might be needed to clarify the questions posed. In response to that call, those three States, who were joined by Algeria, continued before the Court the discussion over Western Sahara on which they had embarked in the General Assembly. As a result the proceedings assumed an aspect which was much more contentious than advisory. Thus we had the three States submitting to the Court abundant historical and cartographical documentation the significance of which was the subject of much dispute. The same events, the same treaties, the same legislative and administrative acts, and the same religious, cultural and linguistic phenomena were represented and interpreted in a variety of ways, which were often contradictory. On many a point the Court was invited to choose between differing contentions.

Although those differences of view between the interested States did not culminate in the claiming of rights, the proceedings developed as though that had been so. Action by the Court to obtain other elements of information than those made available to it by the interested States were thereby

diminished. The Court did not feel the need to seek other information than that submitted to it by the interested States. It did not arrange for experts in Islamic law or in the history of northern Africa to sit with it as assessors, as its Statute would have allowed. It is common knowledge that its internal practice does not provide for the appointment of *juges-rapporteurs*. It is true that each judge has had to struggle – as far as his knowledge of languages would allow – through the immense literature existing on the questions of African history to which reference was made, and has been able to inform his colleagues of the fruit of his reading. It is nevertheless striking that the Advisory Opinion should be based almost exclusively on the documents and arguments submitted by the interested States, which are accepted or dismissed in the light of an examination of the evidence adduced. One does not find here the margin of uncertainty in which an advisory opinion ought to leave the facts which have neither been proved nor disproved.

*

What has just been expounded does not affect the competence of the Court to give an advisory opinion on questions defined by it in the way in which it has defined those put to it by the General Assembly. There remains the question of the propriety of the Court's answering them. The need to go into that question is, in my view, particularly acute as regards the first of the two questions put to the Court, namely whether Western Sahara was, at the time of colonization by Spain, a territory belonging to no-one *(terra nullius)*.

This question originated in a debate at the beginning of which the validity of Spain's titles to various parts of Western Sahara had been contested. It is understandable that the term *terra nullius* should have made its appearance in that debate, since that technical term has been used by legal writers, to define the legality of certain ways in which colonial Powers acquired territory. But that phase of the debate on Western Sahara is now over. The request for an advisory opinion does not ask the Court to state its view as to the lawfulness of the acquisition by Spain of sovereignty over Western Sahara. The question of whether the territory was *terra nullius* at the time of colonization is thus without object in the context of the present case. What the General Assembly felt the need to be informed about by the Court was the validity of the claims of Morocco and Mauritania, of which one claimed that it had sovereignty over Western Sahara at the time of colonization, whereas the other asserted that at that time the territory belonged in co-sovereignty to an assemblage of emirates and tribal confederations called the Mauritanian entity. In its answer to the first of the questions put by the General Assembly, the Advisory Opinion sidesteps that object of the request. Paragraphs 81 and 82 of the Opinion evade the question of sovereignty when they state that Western Sahara was not *terra nullius* since there were in that territory nomadic tribes having a social and political organization. This latter fact has never been disputed by Spain and will hardly be news to the General Assembly.

In view of the foregoing, I find it pointless and consequently inappropriate for the Court to answer the first of the two questions put.

As regards the second question, the circumstances are different. Relating as it does to the legal ties which may have existed between Western Sahara and Morocco or the Mauritanian entity, it covers the problem of sovereignty. In my view, it is essentially on that point that the General Assembly needs enlightenment. That is why I find it proper to answer the second question.

The answer of the Court to that question is given in paragraph 162 of the Advisory Opinion. The essential part of that paragraph is the Court's conclusion that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco and the Mauritanian entity. I do not believe it possible to arrive at any other conclusion on the basis of the information available to the Court. I am therefore also in agreement with the last sentence of paragraph 162, according to which the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the territory. I feel it is as well to point out that this sentence does not indicate what would have been the effect on the decolonization of Western Sahara of a pronouncement by the Court establishing the existence of former ties of sovereignty between that territory and Morocco or the Mauritanian entity.

In my view, the findings stated in the last two sentences of paragraph 162 suffice to answer the General Assembly's question, which only relates to the existence of legal ties which belong to the past but which are such as to allow Morocco or Mauritania now to make claims concerning the decolonization of Western Sahara. The beginning of paragraph 162, however, contains two statements to which I cannot subscribe, for in my view they are superfluous and go beyond the purpose of the request for an advisory opinion. The Court states that the materials and information presented to it show the existence of legal ties of allegiance between the Sultan of Morocco and some of the nomadic tribes found in the territory of Western Sahara, together with the existence of rights, including certain rights relating to the land, which constitute legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. For my part, I doubt whether the information available to the Court allows it to make such a categorical assertion. The effect of the first statement depends in any case on an analysis of the real significance of the allegiance mentioned, and on an exact identification of the tribes acknowledging it and of the parts of Western Sahara inhabited by them. No such analysis or identification are to be found in the Advisory Opinion.

Furthermore, the ties which existed between the territory of Western Sahara and the Mauritanian entity were certainly numerous and important, but one could not regard them as legal ties between them. Mauritania's

contribution to the proceedings, in particular, showed the existence, at the period referred to by the request for an advisory opinion, of a way of life and a rich cultural heritage common to a large number of tribes leading a nomadic existence in vast territories of north-west Africa included today in Western Sahara and in the neighbouring States, Mauritania in particular. The fact that distinct tribes have the same religion, the same language, the same social and political structure, the same mode of life and the same literary, musical and artistic traditions does not mean that they are welded together in a State entity. It is true that non-legal ties of that kind could give rise to the establishment of legal ties amounting to the creation of such an entity, but no such development took place with regard to the Bilad Shinguitti, the traditional appellation of the territories where the said tribes were to be found. That does not mean that the General Assembly may not find it appropriate to take into account the non-legal factors mentioned above when it is determining the procedures to be followed in the decolonization of Western Sahara, but its decision in that connection will be of a purely political character. It is thus not for the Court to pronounce thereon.

That is why I find that the first part of paragraph 162 of the Advisory Opinion should not have been included, particularly as the request for an advisory opinion did not ask the Court for any finding on the existence of ties between the territory of Western Sahara and Morocco or the Mauritanian entity other than such legal ties as might affect the future application of resolution 1514 (XV) in the decolonization of the territory.

(Signed) S. PETRÉN.