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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2025

Public sitting

held on Thursday 10 April 2025, at 4 p.m., at the Peace Palace,

President Iwasawa presiding,

***in the case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan *v.* United Arab Emirates)**

VERBATIM RECORD

ANNÉE 2025

Audience publique

tenue le jeudi 10 avril 2025, à 16 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

***en l'affaire relative à l'*Application de la convention pour la prévention et la répression du crime de génocide au Soudan (Soudan c. Émirats arabes unis)**

COMPTE RENDU

Present:	President	Iwasawa
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Judges *ad hoc*	Simma
		Couvreur
	Registrar	Gautier

Présents : M. Iwasawa, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^me^ Xue
MM. Bhandari
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu,
Tladi, juges
MM. Simma
Couvreur, juges *ad hoc*

M. Gautier, greffier

The Government of the Republic of the Sudan is represented by:

HE Mr Muawia Osman Mohamed Khair, Acting Minister of Justice,

as Agent;

Ms Omaima M.A. Alsharief, Ambassador, chargé d'affaires a.i., Embassy of the Republic of the Sudan in the Kingdom of the Netherlands,

as Co-Agent;

Mr Samuel Wordsworth, KC, Essex Court Chambers, member of the Bar of England and Wales, member of the Paris Bar,

Mr Eirik Bjorge, Professor of Law, University of Bristol,

Mr Sean Aughey, Essex Court Chambers, member of the Bar of England and Wales,

Mr Paolo Palchetti, Professor of Public Law, Paris 1 Panthéon-Sorbonne University,

Mr Ali Khidir Ali Eltom, Advocate General of the Republic of the Sudan,

Mr Alam Eldin Hamid Abdelatif Taha, Legal Adviser,

Mr Moatassim Mohammed Ahmed Sanosi, Legal Adviser,

HE Mr Sirajuddin Hamid Yousuf, Ambassador, Legal Adviser,

Mr Mohamed Elzain Mohamed, Legal Adviser,

Ms Safya Ahmed Elobaid Wagiaalla, Legal Adviser,

as Counsel and Advocates;

Mr Marwan A.M. Khier, Embassy of the Republic of the Sudan in the Kingdom of the Netherlands,

Ms Rasha B.A. Yousif, Embassy of the Republic of the Sudan in the Kingdom of the Netherlands,

Ms Lubna A.M. Hussein, Embassy of the Republic of the Sudan in the Kingdom of the Netherlands,

as Counsel;

Mr Grégoire Brière, LLM, PhD student in International Law, Paris 1 Panthéon-Sorbonne University,

Mr Jawad Khaled Musallam Alkasasbeh,

as Assistants.

Le Gouvernement de la République du Soudan est représenté par :

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comme agent ;

M^me^ Omaima M.A. Alsharief, ambassadrice, chargée d'affaires par intérim, ambassade de la République du Soudan au Royaume des Pays-Bas,

comme coagente ;

M. Samuel Wordsworth, KC, Essex Court Chambers, membre du barreau d'Angleterre et du Pays de Galles et du barreau de Paris,

M. Eirik Bjorge, professeur de droit, Université de Bristol,

M. Sean Aughey, Essex Court Chambers, membre du barreau d'Angleterre et du Pays de Galles,

M. Paolo Palchetti, professeur de droit public, Université Paris 1 Panthéon-Sorbonne,

M. Ali Khidir Ali Eltom, avocat général de la République du Soudan,

M. Alam Eldin Hamid Abdelatif Taha, conseiller juridique,

M. Moatassim Mohammed Ahmed Sanosi, conseiller juridique,

S. Exc. M. Sirajuddin Hamid Yousuf, ambassadeur, conseiller juridique,

M. Mohamed Elzain Mohamed, conseiller juridique,

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M. Marwan A.M. Khier, ambassade de la République du Soudan au Royaume des Pays-Bas,

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M^me^ Lubna A.M. Hussein, ambassade de la République du Soudan au Royaume des Pays-Bas,

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M. Jawad Khaled Musallam Alkasasbeh,

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The Government of the United Arab Emirates is represented by:

HE Ms Ameirah Al Hefeiti, Ambassador of the United Arab Emirates to the Kingdom of the Netherlands,

as Agent;

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as Co-Agent;

Mr Mathias Forteau, Professor, University Paris Nanterre, member of the International Law Commission,

Ms Alison Macdonald, KC, Essex Court Chambers, London, member of the Bar of England and Wales,

Sir Michael Wood, KCMG, KC, Twenty Essex, London, member of the Bar of England and Wales,

as Counsel and Advocates;

HE Mr Abdalla Hamdan AlNaqbi, Director of the Bilateral Agreements Department, Ministry of Foreign Affairs, Director of the Office of International Legal Affairs of the Presidential Court of the United Arab Emirates, Head of Delegation,

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Mr Abdulla Mustafa AlJasmi, Deputy Director of the International Law Department, Ministry of Foreign Affairs,

Ms Majd Abdalla, Second Secretary, Embassy of the United Arab Emirates in the Kingdom of the Netherlands,

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as Special Advisers;

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Mr Varindarjit Singh, Senior Legal Adviser, International Law Department, Ministry of Foreign Affairs, Barrister and Solicitor, Supreme Court of South Australia,

Mr Brian Abrams, Legal Adviser, International Law Department, Ministry of Foreign Affairs,

Ms Ruba Ghandour, Legal Adviser, International Law Department, Ministry of Foreign Affairs, member of the Bar of the State of New York,

Ms Patricia Jimenez Kwast, Legal Adviser to the Office of International Legal Affairs of the Presidential Court of the United Arab Emirates,

Le Gouvernement des Émirats arabes unis est représenté par :

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M^me^ Reem Ketait, conseillère, ministère des affaires étrangères,

comme coagente ;

M. Mathias Forteau, professeur à l'Université Paris Nanterre, membre de la Commission du droit international,

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Sir Michael Wood, KCMG, KC, cabinet Twenty Essex (Londres), membre du barreau d'Angleterre et du pays de Galles,

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M. Brian Abrams, conseiller juridique, département de droit international, ministère des affaires étrangères,

M^me^ Ruba Ghandour, conseillère juridique, département de droit international, ministère des affaires étrangères, membre du barreau de l'État de New York,

M^me^ Patricia Jimenez Kwast, conseillère juridique auprès du bureau des affaires juridiques internationales de la Cour présidentielle des Émirats arabes unis,

Mr Kevin Lee, Legal Adviser to the Office of International Legal Affairs of the Presidential Court of the United Arab Emirates, Barrister, Twenty Essex Chambers, Advocate and Solicitor of the Supreme Court of Singapore, member of the Bar of England and Wales,

Ms Tanishtha Vaid, Legal Adviser to the Office of International Legal Affairs of the Presidential Court of the United Arab Emirates, member of the Bars of India and the State of New York,

as Counsel.

M. Kevin Lee, conseiller juridique auprès du bureau des affaires juridiques internationales de la Cour présidentielle des Émirats arabes unis, *barrister*, Twenty Essex Chambers, avocat et *solicitor* près la Cour suprême de Singapour, membre du barreau d'Angleterre et du pays de Galles,

M[me] Tanishtha Vaid, conseillère juridique auprès du bureau des affaires juridiques internationales de la Cour présidentielle des Émirats arabes unis, membre des barreaux de l'Inde et de l'État de New York,

comme conseils.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this afternoon to hear the single round of oral argument of the United Arab Emirates on the Request for the indication of provisional measures submitted by the Republic of the Sudan in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan*.

I now give the floor to the Co-Agent of the United Arab Emirates, Her Excellency Ms Reem Ketait. You have the floor, Madam.

Ms KETAIT:

1. OPENING STATEMENT

1. Mr President, Members of the Court, it is an honour to appear before you to represent the United Arab Emirates.

2. I begin by expressing the UAE's solidarity with the Sudanese people and our deep concern over the two years of devastation and displacement that has been inflicted upon them. The destruction in Sudan is truly heartbreaking. The unrelenting violence, attacks on civilians and horrific acts of sexual and gender-based violence must stop, and their perpetrators must be held responsible.

3. But that is not what today's proceeding is about. It is not about our obligations under the Genocide Convention. The Applicant has not brought this case before the Court to ease the suffering of the Masalit people. The real motive and sole objective of the Applicant, who is one of the warring parties, is to misuse the Court to make their false accusations against my country, and to deflect from their own responsibility for this war and their violations of international law.

4. Mr President, we should not be here today. There is clearly no basis for the Court's jurisdiction in this case. The UAE's reservation to Article IX of the Genocide Convention is a legitimate exercise of State sovereignty. This case is an attempt to circumvent State consent, which is a bedrock of our international legal order — its very foundation, not a mere formality. It would be a significant threat to the integrity of that order if jurisdiction is exercised, and provisional measures are granted, in a case where there clearly is no such State consent.

5. The UAE participates today out of respect for the Court and the principles of international law and justice, even as we firmly maintain our position on jurisdiction. I affirm my country's deep commitment to the international rule of law. That includes the UAE's unwavering commitment to its obligations under the Genocide Convention.

6. Mr President, since its foundation in 1971, the United Arab Emirates has been a partner and a friend of the Sudanese people and the Republic of Sudan. The UAE's historic relationship with Sudan has been rooted in a commitment to support Sudan's prosperity and stability. Prior to the outbreak of armed conflict in April 2023, the UAE invested more than US$4 billion to support the Sudanese people, strengthen Sudan's institutions and progress its transition to a civilian-led government.

7. Of particular relevance to the claims you heard today is our support for Sudan's stability under the framework of a military co-operation agreement signed in July 2020. Notably, official requests for assistance from the UAE came from General al-Burhan himself, in his capacity as President of the Transitional Sovereignty Council of the Republic of the Sudan.

8. But this stopped in April 2023, when General al-Burhan and his then Deputy Mohamed Hamdan Dagalo turned their factional power struggle into open warfare, plunging the country into a brutal and entirely avoidable conflict. Since the start of the war, the UAE has not provided any arms or related materiel to either of the warring parties[1].

9. Rather, since the very beginning of this conflict, the UAE has worked tirelessly to alleviate suffering. The UAE has engaged with partners, including the United Nations[2], to deliver over US$600 million of assistance[3], to support all of those in need throughout Sudan and neighbouring

[1] United Nations, Security Council, S/2024/510, Letter dated 26 June 2024 from the Chargée d'affaires a.i. of the Permanent Mission of the United Arab Emirates to the United Nations addressed to the President of the Security Council, 27 June 2024; United Arab Emirates, Ministry of Foreign Affairs, Statement on allegation regarding the UAE supplying arms and ammunition to any of the warring parties in Sudan, 13 August 2023, available at: https://www.mofa.gov.ae/en/mediahub/news/2023/8/13/13-8-2023-uae-sudanwar; United Nations, Security Council, S/2024/988, Letter dated 28 December 2024 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council, 30 December 2024.

[2] United Arab Emirates, Ministry of Foreign Affairs, UAE allocates 70% of USD 100 million pledge to United Nations and its humanitarian agencies in Sudan, 17 June 2024, available at: https://www.mofa.gov.ae/en/mediahub/news/2024/6/17/17-6-2024-uae-un; World Health Organization, UAE and WHO deliver air lift of critical medical supplies to Sudan, 5 May 2023, available at: https://www.who.int/news/item/05-05-2023-uae-and-who-deliver-air-lift-of-critical-medical-supplies-to-sudan.

[3] UAE AID, UAE's Humanitarian Response in Sudan, last updated April 2025, available at: https://www.uaeaid.ae/aidhighlights/sudan-2025; United Arab Emirates, Ministry of Foreign Affairs, UAE, Ethiopia, AU and IGAD Hold

States, without discrimination. It has established field hospitals in Chad[4] and South Sudan[5] to assist those fleeing the fighting, including Masalit refugees. Our medical teams are treating all of those in need, regardless of ethnicity, religion, gender or political affiliation. In acknowledgment of this, the International Federation of Red Cross and Red Crescent Societies has expressed appreciation for the critical role the UAE plays in advancing global humanitarian efforts[6].

10. The UAE has been clear and consistent in its position on Sudan. There is no military solution to this conflict. The UAE has called for an unconditional ceasefire; for humanitarian pauses to facilitate the delivery of aid; and for accountability for violations of international law by the two warring factions, the Sudanese Armed Forces and the Rapid Support Forces. The UAE has repeatedly called for a political process to transition to civilian rule, and it supported and engaged in regional and international mediation efforts to bring an end to the fighting, from Jeddah, to Manama, to US-led mediation efforts last year in Switzerland. Through the US-led mediation effort, for example, we succeeded in getting aid to Zamzam displacement camp[7]. With our partners, we have pushed the warring parties, both the Sudanese Armed Forces and the Rapid Support Forces, to meet their obligations under international law, to protect civilians, and to facilitate unimpeded delivery of humanitarian assistance[8]. Most recently, in February 2025, just weeks before the Applicant filed this case, the UAE co-hosted with the African Union and others a High-Level Humanitarian Conference for the People of Sudan, with the participation of the United Nations Secretary-General.

"High-Level Humanitarian Conference for the People of Sudan" in Addis Ababa, 14 February 2025, available at: https://www.mofa.gov.ae/en/mediahub/news/2025/2/14/14-2-2025-uae-sudan#:~:text=The%20conference%20aimed%20to%20mobilize,an%20end%20to%20the%20war.

[4] The National (UAE), UAE's field hospital in Chad treats 18,854 refugees, 5 March 2024, available at: https://www.thenationalnews.com/uae/2024/03/05/uaes-field-hospital-in-chad-treats-18854-refugees/?utm_medium=Social&utm_source=Twitter#Echobox=1709654429.

[5] United Arab Emirates, Ministry of Foreign Affairs, Following directives of His Highness UAE President, UAE Inaugurates Madhol Field Hospital in South Sudan, 8 March 2025, available at: https://www.mofa.gov.ae/en/mediahub/news/2025/3/8/8-3-2025-uae-south-sudan.

[6] Emirates News Agency, Statement from the Emirates Red Crescent, 28 September 2024, available at: https://www.wam.ae/en/article/1453d23-statement-from-emirates-red-crescent; Emirates News Agency, Ministry of Foreign Affairs, "IFRC strengthen humanitarian partnership", 9 April 2025, available at: https://www.wam.ae/en/article/bj3b571-ministry-foreign-affairs-ifrc-strengthen.

[7] United States of America, U.S. Mission Geneva, Joint Statement by the Alps Group Regarding Talks in Switzerland & Progress in Addressing the Crisis In Sudan, 23 August 2024, available at: https://geneva.usmission.gov/2024/08/23/joint-statement-from-the-alps-group-regarding-talks-in-switzerland-and-progress-in-addressing-the-crisis-in-sudan/.

[8] United Arab Emirates, Ministry of Foreign Affairs, Joint Statement from the Alps Group on Progress in Addressing the Crisis in Sudan, 15 September 2024, available at: https://www.mofa.gov.ae/en/mediahub/news/2024/9/14/14-9-2024-uae-alps.

11. In stark contrast, the Applicant has single-mindedly pursued a military victory at the expense of a peaceful resolution to this conflict. They rejected the UAE's offer to establish a field hospital in Port Sudan to alleviate the suffering. They rejected calls to return to talks in Jeddah[9]. They walked away from discussions in Manama[10]. They refused to attend the US-led mediation in Switzerland[11]. So when the Applicant suggested this morning that it had no choice but to file this case — that is just not true. The Applicant rushes to this podium in The Hague, but for two years it has left its seat at the negotiation table empty.

12. Mr President, against this context, the idea that the UAE is somehow the driver of this reprehensible conflict in Sudan could not be further from the truth. This case is the most recent iteration of the Applicant's misuse of our international institutions as a stage from which to attack the UAE. At every occasion, including here today, the Applicant has levelled allegations that are at best misleading, and at worst pure fabrications. Allegations which the UAE has conclusively rebutted, including as documented in our letters addressed to the President of the Security Council.

13. This reflects an irresponsible pattern of behaviour. Rather than working for peace and ensuring that humanitarian assistance reaches people in need throughout Sudan, the Applicant has consistently sought to distract attention from their own culpability by blaming others. The Applicant would rather come to this Court than take basic steps to support the Masalit people. They have refused to allow the United Nations to establish a permanent international humanitarian presence anywhere in Darfur. The Applicant must cease its deliberate[12] and indiscriminate[13] attacks on civilians.

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[9] The National, "Sudan peace talks in doubt as army chief rejects any deal with rival paramilitary", 9 May 2024, available at: https://www.thenationalnews.com/news/mena/2024/05/09/sudan-burhan-rsf-jeddah/; "Sudan's army rejects US call to return to peace talks", Reuters, 29 May 2024, available at: https://www.reuters.com/world/africa/sudans-army-rejects-us-call-return-peace-talks-2024-05-29/.

[10] The Sudan Times, "Manama talks collapse as Sudanese army abandons peace process", 14 February 2024, available at: https://thesudantimes.com/sudan/manama-talks-collapse-as-sudanese-army-abandons-peace-process/.

[11] Reuters, "Progress at talks on Sudan's war limited by army's no-show, mediators say", 23 August 2024, available at: https://www.reuters.com/world/africa/progress-talks-sudans-war-limited-by-armys-no-show-mediators-say-2024-08-23/.

[12] United Nations, Office of the High Commissioner for Human Rights, Sudan: UN Human Rights Chief appalled by widespread extrajudicial killings in Khartoum, 3 April 2025, available at: https://www.ohchr.org/en/press-releases/2025/04/sudan-un-human-rights-chief-appalled-widespread-extrajudicial-killings; United Nations, Office of the High Commissioner for Human Rights, Sudan: UN Human Rights Chief alarmed by summary executions in Khartoum North, 31 January 2025, available at: https://www.ohchr.org/en/press-releases/2025/01/sudan-un-human-rights-chief-alarmed-summary-executions-khartoum-north.

[13] United Nations, Office of the High Commissioner for Human Rights, Comment by UN High Commissioner for Human Rights Volker Türk on Sudanese Armed Forces airstrikes in Tora, North Darfur, 26 March 2025, available at: https://www.ohchr.org/en/press-releases/2025/03/comment-un-high-commissioner-human-rights-volker-turk-sudanese-armed-forces.

This obstruction of humanitarian access[14] and its other violations of international law must stop[15].

14. Mr President, Members of the Court, following these opening remarks, counsel for the United Arab Emirates will now address you in the following order.

15. First, Professor Mathias Forteau will show that the Court manifestly does not have jurisdiction in this case. The sole basis of jurisdiction invoked by the Applicant is Article IX of the Genocide Convention. It is clear, including from the case law, that provision cannot confer jurisdiction upon the Court, given the United Arab Emirates' reservation.

16. Professor Forteau will be followed by Sir Michael Wood, who will respond to what the Applicant has said by way of legal argument to claim that the Court has jurisdiction in this case. It is clear beyond doubt that there is no jurisdiction. We therefore call upon the Court to remove the case from the General List.

17. Lastly, Ms Alison Macdonald will show that, even if the Court had jurisdiction, which undoubtedly is not the case, the Applicant has not begun to establish that the other criteria for the indication of provisional measures have been met. In particular, the claims made by the Applicant lack all plausibility. The Applicant has not produced a shred of evidence to support its outrageous assertions.

18. Our Agent, Ambassador Ameirah Al Hefeiti, will then make concluding remarks; and read out our final submissions.

19. I thank you, Mr President. I now request that you invite Professor Forteau to the podium.

The PRESIDENT: I thank the Co-Agent of the United Arab Emirates for her statement. I now invite Professor Mathias Forteau to address the Court. You have the floor, Sir.

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[14] United Nations, Office of the High Commissioner for Human Rights, Sudan faces one of the worst famines in decades, warn UN experts, 17 October 2024, available at: https://www.ohchr.org/en/press-releases/2024/10/sudan-faces-one-worst-famines-decades-warn-un-experts; US Treasury Department, Press Releases "Treasury Sanctions Leader of Sudanese Armed Forces and Weapons Supplier", 16 January 2025, available at: https://home.treasury.gov/news/press-releases/jy2789.

[15] United Nations, Human Rights Council, Statement of the Independent International Fact-Finding Mission for Sudan at the 57th Session of the Human Rights Council 10 September 2024, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/ffm-sudan/oral-update-10-september.pdf; Statement to the 108th Session of the Executive Council of the Organisation for the Prohibition of Chemical Weapons by Her Excellency Joanna Roper, Permanent Representative of the United Kingdom of Great Britain and Northern Ireland, 4 March 2025, available at: https://www.gov.uk/government/speeches/statement-to-the-108th-session-of-the-executive-council-of-the-opcw.

M. FORTEAU : Je vous remercie, Monsieur le président.

2. L'ABSENCE MANIFESTE DE COMPÉTENCE DE LA COUR ET LA RADIATION DU RÔLE (PREMIÈRE PARTIE)

1. Monsieur le président, Mesdames et Messieurs les juges, c'est un privilège de prendre la parole devant vous cet après-midi au nom des Émirats arabes unis.

I. Introduction

2. À l'heure où la Cour est de plus en plus sollicitée, il importe d'être économe de votre temps et d'aller directement à l'essentiel. L'essentiel se résume en termes simples dans la présente affaire. Au regard des principes qui gouvernent votre compétence, il n'existe manifestement aucune base de compétence dans la présente affaire et, par conséquent, cette affaire doit être rayée du rôle de la Cour dès ce stade de l'instance.

3. Selon une jurisprudence bien établie, en effet, « la Cour *n'*a de juridiction à l'égard des États *que* dans la mesure où ceux-ci y ont consenti » ; « [l]orsque sa compétence est prévue dans une clause compromissoire contenue dans un traité, cette compétence *n'*existe *qu'*à l'égard des parties au traité *qui sont liées par ladite clause* »[16].

4. Or, dans la présente instance, il est manifeste que la clause compromissoire invoquée par le demandeur ne lie pas les Parties entre elles. En effet, au moment d'adhérer à la convention sur le génocide en novembre 2005, les Émirats arabes unis ont formulé une réserve à la clause compromissoire que constitue l'article IX de la convention[17]. Il en résulte que cet article n'est pas en vigueur entre les Parties à la présente affaire et qu'il ne peut donc manifestement pas fonder la compétence de la Cour.

5. Cette absence manifeste de compétence ressort d'ailleurs des termes mêmes de la requête introductive d'instance dans laquelle le demandeur invoque l'article IX de la convention sur le génocide comme seule base de compétence[18], mais indique par ailleurs que les Émirats arabes unis

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[16] *Activités armées sur le territoire du Congo (nouvelle requête : 2002) (République démocratique du Congo c. Rwanda), compétence et recevabilité, arrêt, C.I.J. Recueil 2006*, p. 32, par. 65 (les italiques sont de nous).

[17] Voir convention pour la prévention et la répression du crime de génocide, Paris, 9 décembre 1948, Nations Unies, *Recueil des traités (RTNU)*, vol. 78, p. 277.

[18] Requête, par. 14.

ont formulé une réserve à cet article IX[19]. La requête reconnaît ainsi, implicitement, mais nécessairement, que la Cour n'est pas compétente.

6. Monsieur le président, à vrai dire, je pourrais m'arrêter là car ce qui précède se suffit à lui-même. Mais puisque, contre toute raison, le demandeur a maintenu ce matin qu'il aurait été en droit de saisir unilatéralement la Cour, il importe d'expliciter les raisons pour lesquelles il est manifeste que vous n'avez pas compétence en la présente affaire (II). J'en tirerai ensuite les conséquences quant à la décision qu'il vous appartient de prendre dès ce stade de l'instance (III) avant de formuler quelques remarques conclusives (IV).

II. La Cour n'a manifestement pas compétence dans la présente affaire

7. Sur le terrain de la compétence et quoi qu'en aient dit ce matin les avocats du demandeur, les données de la présente affaire sont d'une extrême simplicité. Elles pointent toutes dans une seule direction : votre absence manifeste de compétence — et donc, *a fortiori*, votre absence de compétence *prima facie*.

8. M[e] Wordsworth a très artificiellement coupé les cheveux en quatre ce matin pour laisser croire que la question de la compétence serait complexe en la présente affaire. Le but évident de sa présentation était d'esquiver votre jurisprudence fermement établie en la matière — jurisprudence, je le souligne, qui, parce qu'elle porte sur la question objective de votre compétence, n'est pas tributaire des moyens soulevés par les Parties, contrairement à ce qu'il a suggéré[20]. Votre jurisprudence est parfaitement claire quant au fait que la Cour n'a pas compétence en cas de réserve à l'article IX de la convention sur le génocide. Comme je le développerai dans quelques instants, vous en avez jugé ainsi en 1999 dans l'affaire relative à la *Licéité de l'emploi de la force*, puis de nouveau dans les années 2000 dans l'affaire *République démocratique du Congo c. Rwanda*, et vous avez encore confirmé tout récemment cette jurisprudence en 2023 dans l'affaire relative à des *Allégations de génocide*. Il vous suffit simplement aujourd'hui d'appliquer cette jurisprudence fermement établie, laquelle reflète l'équilibre atteint depuis de nombreuses années en droit des traités.

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[19] Requête, par. 12, note 2.

[20] *Appel concernant la compétence du Conseil de l'OACI (Inde c. Pakistan), arrêt, C.I.J. Recueil 1972*, p. 52, par. 13.

Le demandeur invoque une seule base de compétence

9. Avant d'en venir à l'effet de la réserve des Émirats arabes unis, permettez-moi de rappeler tout d'abord que le Soudan invoque dans sa requête une seule base de compétence, l'article IX de la convention sur le génocide. Il en résulte que, si cet article ne s'applique pas, la Cour est nécessairement privée de toute compétence. Seul le consentement du défendeur pourrait fonder la compétence de la Cour, en application de l'article 38, paragraphe 5, du Règlement, mais comme les Émirats arabes unis l'ont exprimé clairement, y compris dans leur lettre à la Cour du 11 mars dernier[21], ils n'ont émis aucun consentement de ce type, et ils n'entendent pas le faire.

La seule base de compétence invoquée par le demandeur fait l'objet d'une réserve

10. La seule base de compétence invoquée par le Soudan dans sa requête, l'article IX de la convention sur le génocide, je l'ai dit, a fait l'objet d'une réserve par le défendeur au moment d'adhérer à cette convention. L'effet de cette réserve est évident : en vertu des règles bien établies du droit des traités, la réserve rend l'article IX inapplicable aux Émirats arabes unis et cet article ne peut donc pas fonder la compétence de la Cour à l'égard de cet État.

La réserve des Émirats arabes unis est claire quant à son objet et son effet

11. Le texte de la réserve et l'intention qui la sous-tend sont parfaitement clairs à cet égard[22].

12. Comme vous le constaterez notamment dans le document n° 3 du dossier des juges, le texte de la réserve contient quatre éléments qui suffisent à disposer de la question.

13. Premièrement, les Émirats arabes unis indiquent expressément qu'ils formulent *une réserve*, comme cela ressort du terme arabe utilisé dans la version originale de la réserve et comme cela ressort aussi des traductions établies par les Nations Unies[23]. Cette précision, qui fait spécifiquement recours à la terminologie du droit des traités[24], est décisive. L'intention déclarée est

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[21] Lettre datée du 11 mars 2025 adressée au greffier de la Cour internationale de Justice par l'agent des Émirats arabes unis (dossier des juges, onglet n° 4).

[22] Voir la lettre n° 557/2005 datée du 10 novembre 2005 adressée au Secrétariat général des Nations Unies par la mission permanente des Émirats arabes unis auprès des Nations Unies (dossier des juges, onglet n° 1) et la notification dépositaire des Émirats arabes unis relative à la convention pour la prévention et la répression du crime de génocide, C.N.1214.2005.TREATIES-2, 6 décembre 2005 (dossier des juges, onglet n° 3).

[23] En arabe : « مع التحفظ على » ; en anglais : « makes a reservation ».

[24] Convention de Vienne sur le droit des traités, Vienne, 2 mai 1969, *RTNU*, vol. 1155, p. 331, art. 2, par. 1, al. *d)*, et art. 19-23 ; Commission du droit international, Guide de la pratique sur les réserves aux traités, *Annuaire de la Commission du droit international 2011*, vol. II, troisième partie, p. 279-284, accessible à l'adresse suivante : https://legal.un.org/ilc/texts/1_8.shtml, notamment directive 1.1 (« définition des réserves »).

clairement de ne pas être lié par une partie de la convention. Il ne s'agit pas d'une déclaration interprétative, ou d'un commentaire, ou de quoi que ce soit d'autre : il s'agit d'une *réserve* au sens juridique du terme.

14. Deuxièmement, cette réserve est formulée avec précision : elle vise une disposition spécifique de la convention, l'article IX. Il est donc impossible de se méprendre sur l'objet de la réserve : celle-ci vise spécifiquement la compétence de la Cour prévue par l'article IX.

15. Troisièmement, la structure du texte de la réserve est claire : elle indique tout d'abord que les Émirats arabes unis formulent une réserve à l'article IX, et elle rappelle ensuite le contenu de cet article. Cela signifie évidemment que la réserve exclut l'application de l'ensemble de l'article IX — y compris ce que l'article IX lui-même indique comme étant inclus dans cet article lorsqu'il utilise la formule « y compris ».

16. Quatrièmement, la réserve rappelle expressément que l'article IX de la convention permet la soumission à la Cour de différends relatifs à la convention *à la requête d'une seule partie au différend*[25]. En opérant ce rappel explicite, la réserve indique qu'elle a clairement pour objet et pour effet d'exclure la saisine unilatérale de la Cour sans le consentement des deux parties.

17. Cette précision est importante au regard des allégations du Soudan. Tant dans sa requête que dans sa demande en mesures conservatoires, le demandeur invoque comme base de compétence « [t]he possibility of submission *by one of the parties* of a dispute to the Court »[26]. Or, c'est précisément ce qui est exclu par la réserve des Émirats arabes unis. Comme l'indique le texte de la réserve, les Émirats arabes unis ont formulé une réserve en ce qui concerne l'article IX de la convention qui porte sur la soumission à la Cour de différends « à la requête d'une partie au différend ». Du fait de cette réserve, le Soudan ne peut tout simplement pas saisir unilatéralement la Cour.

18. La requête, la demande en mesures conservatoires et même la lettre du Soudan du 28 mars dernier montrent d'ailleurs que l'État demandeur avait jusqu'à ce matin parfaitement compris l'effet produit par la réserve, à savoir l'exclusion de la compétence de la Cour, puisque c'est précisément

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[25] En arabe : « بناء على طلب أي من الأطراف المتنازعة » ; en anglais : « at the request of any of the parties to the dispute ».

[26] Requête, par. 17 ; Demande en mesures conservatoires, par. 7 (les italiques sont de nous).

pour contrecarrer cet effet que, dans ces documents, il contestait *uniquement* jusqu'à ce matin la *validité* de la réserve, point sur lequel Sir Michael Wood reviendra tout à l'heure.

19. Dans ce contexte, nous devons avouer ne pas avoir compris l'intérêt des longs passages consacrés par M^e^ Wordsworth ce matin aux différentes manières de rédiger une réserve à un traité. Que d'autres réserves ne soient pas formulées comme celle des Émirats arabes unis, personne ne le conteste. Mais, tout d'abord, l'inverse est tout aussi vrai : il existe des réserves rédigées comme celle des Émirats arabes unis dont personne n'a mis en doute la signification. C'est le cas, par exemple, de la réserve de l'Espagne à laquelle la Cour a donné plein effet en 1999 ; c'est aussi le cas, entre autres exemples, de réserves à la clause compromissoire du protocole de 1967 à la convention sur le statut des réfugiés ou de réserves à la clause compromissoire de la convention de Vienne sur le droit des traités[27]. Le Soudan lui-même utilise à l'occasion une formulation similaire à celle des Émirats arabes unis pour ses propres réserves, comme il l'a fait à propos de l'article 26 de la convention sur le statut des réfugiés de 1951[28], et je doute que le Soudan accepterait que sa réserve soit privée d'effet.

20. Ensuite, et en tout état de cause, la seule chose qui importe est de savoir si la réserve des Émirats arabes unis est formulée d'une manière telle que le lecteur en comprend l'objet et l'effet. Tel est évidemment le cas. La réserve dit ce qu'elle dit et l'intention qu'elle manifeste ne souffre aucune ambiguïté. Par contraste, les spéculations prétendument interprétatives développées par M^e^ Wordsworth ce matin ne trouvent strictement aucun fondement dans le texte de la réserve.

21. En vertu de votre jurisprudence constante que M^e^ Wordsworth a totalement perdue de vue, la réserve à l'article IX doit se voir donner plein effet. Comme la Cour l'a affirmé, « [i]l appartient à chaque État … de décider des limites qu'il assigne à son acceptation de la juridiction de la Cour » car « la juridiction [de la Cour] n'existe que dans les termes où elle a été acceptée » ; selon votre jurisprudence toujours, « [l]es conditions ou réserves, de par leur libellé, n'ont donc pas pour effet de déroger à une acceptation de caractère plus large déjà donnée. Elles servent plutôt à déterminer

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[27] Voir, par exemple, les réserves formulées par la Chine à ces deux conventions : Déclarations et réserves au protocole relatif au statut des réfugiés, New York, 31 janvier 1957, *RTNU*, vol. 606, p. 267, accessible à l'adresse suivante : https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&clang=_fr#EndDec ; Déclarations et réserves à la convention de Vienne sur le droit des traités, Vienne, 23 mai 1969, *RTNU*, vol. 1155, p. 331, accessible à l'adresse suivante : https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_fr#EndDec.

[28] Déclarations et réserves à la convention relative au statut des réfugiés, Genève, 28 juillet 1951, *RTNU*, vol. 189, p. 137, accessible à l'adresse suivante : https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_fr#EndDec.

l'étendue de l'acceptation par l'État de la juridiction obligatoire de la Cour » ; selon votre Cour toujours, « il n'existe donc aucune raison d'en donner une interprétation restrictive »[29]. Par ailleurs et toujours selon votre jurisprudence, lorsqu'un texte pose des limites à votre compétence, « [i]l doit être donné effet à ces termes »[30]. En l'occurrence, il est manifeste que la réserve des Émirats arabes unis vise à exclure votre compétence sur le fondement de l'article IX. Si tel n'était pas son effet juridique, on se demande bien à quoi d'autre cette réserve pourrait servir.

La réserve a été dûment notifiée et enregistrée et n'a fait l'objet d'aucune objection

22. Je remarquerai encore que cette réserve a été formulée en novembre 2005, soit à une époque à laquelle la Cour avait eu l'occasion quelques années seulement plus tôt, j'y reviendrai, de s'estimer manifestement incompétente en cas de réserve à l'article IX[31]. Nul ne pouvait par conséquent se méprendre sur l'objet et l'effet de la réserve des Émirats arabes unis, qui a été formulée en connaissance de cause.

23. Cette réserve a été dûment notifiée aux Nations Unies et elle est expressément présentée comme constituant une « réserve » (« *a reservation* ») sur le site officiel du dépositaire de la convention[32].

24. C'est sur cette base que la « notification dépositaire » du 6 décembre 2005, qui se trouve à l'onglet n° 3 de votre dossier, a été communiquée à tous les États Membres des Nations Unies en application de l'article XVII de la convention[33]. Cette notification est parfaitement claire : elle indique expressément que les Émirats arabes unis ont adhéré à la convention avec une réserve relative à l'article IX.

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[29] *Compétence en matière de pêcheries (Espagne c. Canada), compétence de la Cour, arrêt, C.I.J. Recueil 1998*, p. 453, par. 44.

[30] *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Géorgie c. Fédération de Russie), exceptions préliminaires, arrêt, C.I.J. Recueil 2011 (I)*, p. 125-126, par. 132-133.

[31] Voir *Licéité de l'emploi de la force (Yougoslavie c. Espagne), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 772-774, par. 32, 33 et 40 (dispositif), point 2 ; et *Licéité de l'emploi de la force (Yougoslavie c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 924-926, par. 24, 25, 29 et 34 (dispositif), point 2 ; voir également *Activités armées sur le territoire du Congo (nouvelle requête : 2002) (République démocratique du Congo c. Rwanda), mesures conservatoires, ordonnance du 10 juillet 2002, C.I.J. Recueil 2002*, p. 245-246, par. 69-72.

[32] Voir déclarations et réserves à la convention pour la prévention et la répression du crime de génocide, Paris, 9 décembre 1948, *RTNU*, vol. 78, p. 277, accessible à l'adresse suivante : https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=_en#EndDec.

[33] Notification dépositaire des Émirats arabes unis relative à la convention pour la prévention et la répression du crime de génocide, C.N.1214.2005.TREATIES-2, 6 décembre 2005 (dossier des juges, onglet n° 3).

25. À la suite de la « notification dépositaire » communiquée par le Secrétariat à tous les États Membres des Nations Unies, le Soudan n'a formulé aucune objection à la réserve et, plus largement, aucun État n'y a objecté, comme M[e] Wordsworth lui-même l'a remarqué ce matin.

26. En application du droit des traités[34], l'absence d'objection signifie que cette réserve a été *acceptée* par le Soudan. L'article IX ne s'applique donc pas dans les relations entre le Soudan et les Émirats arabes unis et ne peut donc fonder la compétence de la Cour.

La jurisprudence de la Cour est clairement établie en ce qui concerne l'effet des réserves à l'article IX de la convention sur le génocide

27. Ce qui est vrai sur le terrain du droit des traités est confirmé par votre jurisprudence.

28. Selon un principe cardinal de votre jurisprudence que M[e] Wordsworth a soigneusement esquivé ce matin, « [l]a compétence de la Cour est fondée sur le consentement des États dans les conditions fixées par ceux-ci » et « [l]'acceptation permettant à la Cour d'asseoir sa compétence doit être avérée »[35]. Comme la Cour l'a constamment rappelé, y compris tout récemment, « [l]a Cour doit … s'assurer qu'il existe une manifestation non équivoque de la volonté des parties au différend d'accepter de manière volontaire et indiscutable sa compétence »[36]. En présence d'une réserve à la clause compromissoire, il est manifeste, pour reprendre la formule habituelle de votre jurisprudence, qu'il n'existe pas de « manifestation non équivoque … d'accepter de manière volontaire et indiscutable [l]a compétence » de la Cour.

29. En ce qui concerne le cas spécifique de la convention sur le génocide, votre jurisprudence constante est fermement établie sur ce point et ne laisse aucun doute quant à la solution à adopter en la présente affaire : lorsque l'article IX fait l'objet d'une réserve, la Cour n'a pas compétence.

a) Dès l'avis consultatif de 1951 sur les réserves à la convention sur le génocide, votre Cour a relevé que l'invocation de l'article IX de la convention était dépendante des réserves et objections

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[34] Convention de Vienne sur le droit des traités, Vienne, 23 mai 1969, *RTNU*, vol. 1155, p. 331, art. 21 5) ; Commission du droit international, Guide de la pratique sur les réserves aux traités, *Annuaire de la Commission du droit international 2011*, vol. II, troisième partie, directive 4.2.4.

[35] *Certaines questions concernant l'entraide judiciaire en matière pénale (Djibouti c. France), arrêt, C.I.J. Recueil 2008*, p. 203, par. 60, et p. 204, par. 62.

[36] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), compétence de la Cour, arrêt, C.I.J. Recueil 2020*, p. 487, par. 113 ; *Certaines questions concernant l'entraide judiciaire en matière pénale (Djibouti c. France), arrêt, C.I.J. Recueil 2008*, p. 204, par. 62 ; voir aussi *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Azerbaïdjan c. Arménie), exceptions préliminaires, arrêt du 12 novembre 2024*, par. 50.

formulées[37] et elle a par ailleurs reconnu la possibilité de formuler des réserves à la convention[38] dans un contexte où elle avait été dûment informée que l'article IX avait déjà fait l'objet de réserves par plusieurs États[39].

b) En 1999, dans les affaires relatives à la *Licéité de l'emploi de la force* entre la Yougoslavie et l'Espagne et entre la Yougoslavie et les États-Unis d'Amérique, la Cour a expressément constaté son absence de compétence en présence de réserves à l'article IX[40].

c) En 2006, dans l'affaire des *Activités armées*, la Cour est parvenue de nouveau à la même conclusion : elle a d'abord rappelé sa jurisprudence consistant à « donner effet à de telles réserves à l'article IX de la convention » avant de conclure à son incompétence « eu égard à » une telle réserve[41].

d) Je note en passant que, dans cette même affaire, la Cour a refusé de considérer que la réserve aurait été retirée par l'État réservataire, en posant des critères stricts pour qu'on puisse conclure au retrait d'une réserve à l'article IX[42]. Ce qui confirme que les réserves à l'article IX se voient donner un plein effet par la Cour.

e) Dans ces trois affaires de 1999 et 2006, la Cour a en particulier relevé à l'appui de sa décision d'incompétence que, « s'agissant du droit des traités », le demandeur n'avait pas objecté à la réserve du défendeur[43]. La situation est exactement la même dans la présente instance. Comme

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[37] *Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif, C.I.J. Recueil 1951*, p. 20.

[38] *Ibid.*, p. 29-30.

[39] *Ibid.*, opinion dissidente des juges Guerrero, McNair, Read et Hsu Mo, p. 31 ; *Activités armées sur le territoire du Congo (nouvelle requête : 2002) (République démocratique du Congo c. Rwanda), compétence et recevabilité, arrêt, C.I.J. Recueil 2006*, opinion individuelle commune de la juge Higgins et des juges Kooijmans, Elaraby, Owada et Simma, p. 71, par. 26.

[40] Voir *Licéité de l'emploi de la force (Yougoslavie c. Espagne), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 772-774, par. 32, 33, 35 et 40 (dispositif), point 2 ; et *Licéité de l'emploi de la force (Yougoslavie c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 924-926, par. 24, 25, 29 et 34 (dispositif), point 2.

[41] *Activités armées sur le territoire du Congo (nouvelle requête : 2002) (République démocratique du Congo c. Rwanda), compétence et recevabilité, arrêt, C.I.J. Recueil 2006*, p. 32-33, par. 68 et 70.

[42] *Ibid.*, p. 28-29, par. 49-54.

[43] *Licéité de l'emploi de la force (Yougoslavie c. Espagne), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 772, par. 32 ; *Licéité de l'emploi de la force (Yougoslavie c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 924, par. 24 ; *Activités armées sur le territoire du Congo (nouvelle requête : 2002) (République démocratique du Congo c. Rwanda), compétence et recevabilité, arrêt, C.I.J. Recueil 2006*, p. 33, par. 68.

je l'ai indiqué tout à l'heure, le Soudan n'a jamais objecté à la réserve des Émirats arabes unis et l'article IX est donc exclu des dispositions conventionnelles en vigueur entre les deux Parties.

f) Je noterai que, plus récemment encore, en juin 2023, vous avez donné de nouveau plein effet à une réserve à l'article IX de la convention dans votre ordonnance sur les déclarations d'intervention dans l'affaire relative à des *Allégations de génocide*[44]. Vous avez confirmé expressément, à cette occasion, votre jurisprudence de 1999[45] et vous avez par ailleurs rappelé qu'une réserve à l'article IX « exclut l'effet juridique de cet article à l['']égard » de l'État qui formule la réserve et que, dans un tel cas, l'article IX de la convention « n'entraîne donc aucune obligation à l['']égard [de cet État] »[46] — je note en passant que cette solution vaut donc y compris, comme c'était le cas dans cette affaire, lorsque l'application de la réserve joue au détriment de l'État réservataire. Vous avez en effet jugé qu'une réserve à l'article IX empêche l'État réservataire d'« intervenir dans le cadre de l'interprétation de l'article IX »[47]. Cela montre une fois de plus que vous appliquez avec rigueur et sans aucune exception votre jurisprudence relative aux effets des réserves à l'article IX.

g) En définitive, la Cour n'a jamais refusé de donner son plein effet à une réserve à l'article IX, et il n'existe strictement aucune raison de procéder différemment aujourd'hui. Il est par conséquent manifeste que la Cour est incompétente dans la présente affaire.

III. L'affaire doit être rayée du rôle de la Cour dès ce stade de l'instance

30. J'en viens, Monsieur le président, aux conséquences à tirer à ce stade de l'instance de ce que je viens d'indiquer.

La nécessité de ne pas maintenir au rôle de la Cour une affaire à l'égard de laquelle la Cour n'a manifestement pas compétence

31. Si, au stade des mesures conservatoires, la Cour n'a, en général, pas besoin de s'assurer de manière définitive qu'elle a compétence quant au fond de l'affaire et peut seulement s'interroger sur

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[44] *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), recevabilité des déclarations d'intervention, ordonnance du 5 juin 2023, C.I.J. Recueil 2023 (II)*, p. 375-377, par. 90-98.

[45] *Ibid.*

[46] *Ibid.*, p. 376-377, par. 95.

[47] *Ibid.*

sa compétence *prima facie*[48], il y a des situations, cependant, dans lesquelles non seulement la Cour peut, mais la Cour doit trancher définitivement la question de sa compétence au stade des mesures conservatoires.

32. Tout récemment, la Cour a rappelé qu'elle peut rayer une affaire de son rôle au stade des mesures conservatoires[49]. En l'absence manifeste de compétence, telle est de manière évidente la décision qu'il vous appartient de prendre. La Cour a souligné, en 1999, de manière parfaitement limpide et justifiée que « dans un système de juridiction consensuelle, maintenir au rôle général une affaire sur laquelle il apparaît certain que la Cour ne pourra se prononcer au fond ne participerait assurément pas d'une bonne administration de la justice »[50].

33. Plus largement, et comme le juge Lachs l'avait indiqué il y a de nombreuses années, la confiance que les États placent dans la Cour dépend du plein respect du consentement à la juridiction[51]. Ce rappel plein de sagesse n'a jamais été aussi vrai qu'aujourd'hui. La Cour ne peut agir et maintenir une affaire à son rôle que si les deux États concernés ont consenti à sa compétence. Or, je le redis, tel n'est manifestement pas le cas en l'espèce.

34. La Cour n'est pas une tribune médiatique ou politique. Maintenir l'affaire au rôle de la Cour alors que l'incompétence est manifeste constituerait une incitation à instrumentaliser les demandes de mesures conservatoires comme cheval de Troie pour créer de toutes pièces une affaire devant la Cour sans aucune base de compétence. Cela reviendrait, ni plus ni moins, à contourner le principe du consentement à la juridiction, principe dont vous avez maintes fois rappelé toute l'importance.

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[48] Voir, par exemple, *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022, C.I.J. Recueil 2022 (I)*, p. 217-218, par. 24 ; ou *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 19 avril 2017, C.I.J. Recueil 2017*, p. 114, par. 17.

[49] *Manquements allégués à certaines obligations internationales relativement au Territoire palestinien occupé (Nicaragua c. Allemagne), mesures conservatoires, ordonnance du 30 avril 2024*, par. 21.

[50] *Licéité de l'emploi de la force (Yougoslavie c. Espagne), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 773, par. 35 ; *Licéité de l'emploi de la force (Yougoslavie c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 925, par. 29.

[51] *Plateau continental de la mer Égée (Grèce c. Turquie), arrêt, C.I.J. Recueil 1978*, opinion individuelle du juge Lachs, p. 52.

La radiation de l'affaire du rôle de la Cour est en tout point conforme à la jurisprudence de la Cour

35. La radiation de l'affaire du rôle de la Cour dès le présent stade de l'instance sera en tout point conforme à votre jurisprudence. Je note en ce sens que :

a) en 1995, dans la deuxième affaire des *Essais nucléaires*, la Cour a examiné sa compétence *avant même* d'examiner la demande en mesures conservatoires qui avait été déposée ; elle a estimé qu'elle devait d'abord trancher « *in limine* » la question de sa compétence ; et, ayant conclu qu'elle n'avait pas compétence, la Cour a procédé à la radiation de l'affaire du rôle, sans même tenir d'audiences sur les mesures conservatoires[52] ;

b) de manière plus directement pertinente pour la présente affaire, la Cour a décidé, en 1999, dans les affaires *Yougoslavie c. Espagne* et *Yougoslavie c. États-Unis d'Amérique* que j'ai déjà évoquées, qu'en raison d'une réserve émise par chacun des deux États défendeurs à l'article IX de la convention sur le génocide,

i) « cette réserve a eu pour effet d'exclure cet article des dispositions de la convention en vigueur entre les Parties »,

ii) « l'article IX de la convention sur le génocide ne saurait en conséquence fonder la compétence de la Cour »,

iii) il en résulte que « cette disposition ne constitue manifestement pas une base de compétence dans la présente affaire, même *prima facie* »,

iv) en conséquence, la Cour ne peut « indiquer quelque mesure conservatoire que ce soit » et l'affaire doit être rayée du rôle de la Cour[53].

v) Il en va exactement de même ici.

36. Je tiens à préciser que l'absence de compétence est d'autant plus manifeste en cas de réserve à l'article IX et impose d'autant plus de procéder à la radiation de l'affaire que ce qui est en jeu ici est une *pure question de compétence*, dont l'examen est *totalement indépendant* des allégations et des réclamations du demandeur. Peu importe en effet la nature ou l'objet de ces

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[52] *Demande d'examen de la situation au titre du paragraphe 63 de l'arrêt rendu par la Cour le 20 décembre 1974 dans l'affaire des* Essais nucléaires (Nouvelle-Zélande c. France) *(Nouvelle-Zélande c. France), ordonnance du 22 septembre 1995, C.I.J. Recueil 1995*, p. 302, par. 46 et p. 306, par. 66.

[53] *Licéité de l'emploi de la force (Yougoslavie c. Espagne), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 772-774, par. 32, 33, 35 et 40 (dispositif), point 2 ; et *Licéité de l'emploi de la force (Yougoslavie c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II)*, p. 924-926, par. 24, 25, 29 et 34 (dispositif), point 2.

allégations et réclamations — ceci n'est pas la question. Lorsque la seule clause compromissoire invoquée par le demandeur ne s'applique pas dans les relations conventionnelles avec le défendeur, comme c'est assurément le cas en l'espèce, la Cour n'a manifestement pas compétence, un point c'est tout.

37. Il s'agit là d'une question à trancher *in limine litis*. Votre pratique est parfaitement claire en la matière. Lorsque la seule base de compétence invoquée est une clause compromissoire d'un traité, vous commencez toujours l'examen de votre compétence par deux points préliminaires, avant même de chercher à identifier l'objet du différend et l'objet des demandes ou à vous interroger sur l'étendue de votre compétence : vous vérifiez toujours *d'abord* si la convention est en vigueur entre les parties *et* si celles-ci ont émis des réserves ; et vous procédez à cette vérification *préliminaire* en particulier en ce qui concerne la clause compromissoire. Il s'agit là de prérequis indispensables à tout examen de l'affaire, même *prima facie*.

38. C'est ce que vous avez fait par exemple dans la première ordonnance en mesures conservatoires dans l'affaire *Afrique du Sud c. Israël* : vous avez commencé par spécifier, à titre d'« observations liminaires » sur la compétence, que ces deux pays « sont parties à la convention sur le génocide » et que « [a]ucun des deux États n'a formulé de réserve à l'article IX ou à une quelconque autre disposition de la convention »[54], et ce n'est qu'après avoir opéré ces constats préliminaires que vous avez examiné l'étendue de votre compétence *prima facie*. Vous aviez fait de même auparavant, parmi de nombreux exemples, dans l'affaire *Gambie c. Myanmar*[55] ou dans l'affaire pendante entre l'Ukraine et la Russie[56].

39. Cette pratique confirme que la question de savoir si l'article IX de la convention sur le génocide est applicable ou non dans les relations entre les parties est une question de nature purement préliminaire. Lorsque l'examen de cette question révèle l'absence manifeste de compétence de la Cour, cette question doit être tranchée au plus tôt et, pour ce faire, et contrairement à ce que vous

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[54] *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), mesures conservatoires, ordonnance du 26 janvier 2024, C.I.J. Recueil 2024*, p. 11, par. 18.

[55] *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020*, p. 9-10, par. 19.

[56] *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022, C.I.J. Recueil 2022 (I)*, p. 218, par. 27.

avez entendu ce matin, vous n'avez besoin d'aucun document complémentaire, ni d'aucune information additionnelle. Vous avez tous les éléments en main pour en décider dès ce stade de l'instance.

40. C'est exactement de cette manière que vous avez procédé dans les ordonnances rendues en 1999 dans les affaires relatives à la *Licéité de l'emploi de la force* introduites par la Yougoslavie.

41. Je le rappelais il y a quelques instants, dans les deux affaires dans lesquelles une réserve paralysait l'application de l'article IX (les affaires contre l'Espagne et les États-Unis), la Cour a radié l'affaire du rôle, sans autre examen, dès le stade des mesures conservatoires.

42. Dans les autres affaires, la Cour a déclaré ce qui suit :

> « [I]l n'est pas contesté que tant la Yougoslavie que l['État défendeur] sont parties à la convention sur le génocide, *sans réserves* ; et que l'article IX de la convention semble *ainsi* constituer une base sur laquelle la compétence de la Cour *pourrait* être fondée, *pour autant que* l'objet du différend ait trait à "l'interprétation, l'application ou l'exécution" de la convention »[57].

43. Cet extrait ne laisse aucun doute : il ne peut y avoir *possibilité même* de compétence *que s'il n'existe pas de réserve* à l'article IX. Ce n'est que lorsque les États acceptent la convention « sans réserves » que l'article IX « pourrait » constituer, potentiellement, une base de compétence. En revanche, en présence d'une réserve à l'article IX, il n'y a pas lieu de se demander si la convention « pourrait » constituer une base de compétence. La question ne se pose tout simplement pas ; la Cour est manifestement incompétente dans ce cas et l'affaire doit être radiée du rôle.

IV. Remarques conclusives

44. Monsieur le président, il est temps de conclure ma présentation. Permettez-moi de récapituler les points clés :

1) La présente affaire est d'une grande simplicité s'agissant de la question de la compétence.

2) Une seule base de compétence est invoquée, à l'égard de laquelle une réserve a été formulée.

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[57] *Licéité de l'emploi de la force (Yougoslavie c. Allemagne), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (I),* p. 430-431, par. 24 ; *Licéité de l'emploi de la force (Yougoslavie c. Belgique), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (I),* p. 137, par. 37 ; *Licéité de l'emploi de la force (Yougoslavie c. Canada), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (I),* p. 272, par. 36 ; *Licéité de l'emploi de la force (Yougoslavie c. France), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (I),* p. 372, par. 24 ; *Licéité de l'emploi de la force (Yougoslavie c. Italie), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (I),* p. 490, par. 24 ; *Licéité de l'emploi de la force (Yougoslavie c. Pays-Bas), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (I),* p. 555, par. 37 ; *Licéité de l'emploi de la force (Yougoslavie c. Royaume-Uni), mesures conservatoires, ordonnance du 2 juin 1999, C.I.J. Recueil 1999 (II),* p. 838, par. 32 (les italiques sont de nous).

3) Cette réserve est parfaitement claire quant à son objet et son effet : elle exclut l'application de l'article IX de la convention sur le génocide.
4) Cette réserve a été dûment notifiée et le Soudan n'a jamais objecté à cette réserve ; il était donc, au moment de saisir la Cour, réputé y avoir consenti.
5) L'article IX ne fait donc pas partie des dispositions conventionnelles en vigueur entre le demandeur et le défendeur.
6) Votre jurisprudence est clairement établie en ce sens et a été confirmée encore tout récemment : une réserve à l'article IX de la convention sur le génocide rend cette disposition inapplicable devant la Cour.
7) Il en résulte que votre Cour est manifestement incompétente, et en application de votre jurisprudence, l'affaire doit donc être rayée dès ce stade de l'instance du rôle de la Cour.
8) En présence d'une réserve à l'article IX, maintenir l'affaire au rôle de la Cour serait contraire à la bonne administration de la justice et remettrait gravement en cause le principe du consentement à la juridiction.

45. Mesdames et Messieurs les juges, je vous remercie sincèrement et très vivement de votre attention. Je vous serais reconnaissant, Monsieur le président, de bien vouloir appeler maintenant à cette barre Sir Michael Wood.

The PRESIDENT: I thank Professor Forteau for his statement. I now call Sir Michael Wood to the podium. You have the floor, Sir.

Sir Michael WOOD:

3. MANIFEST LACK OF JURISDICTION AND REMOVAL FROM THE GENERAL LIST (PART II)

1. Mr President, Members of the Court, it is a privilege to appear before you, and it is a particular privilege to do so on behalf of the United Arab Emirates.

I. Introduction

2. As our Co-Agent and Professor Forteau have explained, the absence of jurisdiction in the present case is manifest; the case should therefore be removed from the General List.

3. As Professor Forteau has just shown, our opponents have not begun to make a case for the jurisdiction of the Court. As Professor Forteau has also stressed, it is fundamental that this Court's jurisdiction depends upon consent. We heard nothing this morning from our opponents about that principle. The sole basis invoked by the Applicant is Article IX of the Genocide Convention. The UAE has in place a reservation to Article IX. The UAE has not consented to the Court's jurisdiction. That is the end of the matter.

4. I propose, nevertheless, to look at two points concerning the Applicant's claim that, despite the UAE's reservation to Article IX, the Court has jurisdiction. We find that assertion, with very little by way of argument, in the Application, in the Request and in the Agent's letter to the Registrar of 28 March[58].

5. I shall first look at the claim that the reservation is somehow invalid.

6. Second, I shall point to the Applicant's acceptance of the UAE's reservation for the last 20 years — that is, until 5 March 2025, when it commenced the present proceedings.

7. Third, I shall turn to the *DRC* v. *Rwanda* case, where the arguments now raised again by the Applicant were carefully considered and firmly rejected.

8. I shall then make some concluding remarks, and emphasize why in our submission the case should be removed from the List without delay.

II. The Applicant's assertion that the reservation is invalid

9. I shall, first, consider the Applicant's claim that the UAE's reservation is invalid.

10. As Professor Forteau has explained, the Applicant does not contest that the UAE made the reservation to Article IX when it acceded to the Convention on 11 November 2005. And it does not claim, and it has never claimed, over the next 20 years, to have objected to the reservation or to have claimed that the reservation was invalid. Only now, for the first time, in these proceedings, does the Applicant seek to challenge the reservation. I note in passing that, in doing so, the Applicant appears to assume that, if the reservation were invalid, Article IX would be in force as between the UAE and Sudan. That, of course, is not necessarily the case.

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[58] Letter from the Applicant's Agent to the Registrar, enclosed with the Embassy's Note Verbale no. S/54/NV/ICJ/Session 56, 28 March 2025.

11. Given the UAE's clear intention not to accept Article IX, even if Sudan were right about the reservation's invalidity (*quod non*, as some would say before you), the Convention would simply not be in force for the UAE without the benefit of the reservation[59]. I recall in this connection that guideline 4.5.3 of the International Law Commission's 2011 *Guide to Practice on Reservations to Treaties* proposed *de lege ferenda* "a middle solution" to this dilemma to soften that outcome[60], but that proposal was regrettably, in my view, not taken up by States.

12. In any event, as I shall explain, it is plain, including from your well-established case law, your *jurisprudence constante*, that the UAE reservation is not invalid.

13. Mr President, Members of the Court, as you will have seen, there was very little in the documents instituting proceedings and requesting provisional measures to sustain the Applicant's position on jurisdiction. We heard a little more this morning, but what we did hear did not strengthen the Applicant's case; to the contrary, old arguments were resurrected that have already been authoritatively rejected by this Court, by the International Law Commission and by States. The Applicant's arguments this morning were not new. They were raised and overwhelmingly rejected by this Court in the *DRC* v. *Rwanda* case[61].

14. One thing is clear. The only title of jurisdiction that has been raised by the Applicant is Article IX of the Convention. In the Application, immediately after quoting Article IX, the Applicant stated, baldly, "[t]herefore, the Court has exclusive jurisdiction on the merits of this proceeding"[62]. The Request for provisional measures asserted that the UAE's reservation was "incompatible with the object and purpose of the treaty". In a letter transmitted to the Registrar on 28 March 2025, which is at tab 5 of our judges' folders, the Applicant cited Article I of the Convention and then asserted "ICJ is the only institution entrusted with fulfilling this purpose with authority to examine State's compliance with the Genocide Convention". The letter continued along the same lines by saying, "Article IX is the Portal though which the Practical implementation of all provisions of the Genocide

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[59] *Reservations to the Convention on the Prevention and Punishment of the crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 29.

[60] International Law Commission, *Guide to Practice on Reservations to Treaties*, guideline 4.5.3, *Yearbook of the International Law Commission 2011*, Volume II, Part Three, pp. 306-316 at Commentary, para. (1).

[61] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 6.

[62] Application, para. 14.

Convention depends. Without ICJ jurisdiction the Genocide Convention will have no enforcement mechanism, the Genocide Convention would have no purpose". That is what the Applicants have said.

15. We heard similar arguments from Mr Wordsworth this morning, but this is a distortion of the Genocide Convention. It ignores its various provisions concerning implementation, including Articles VI, VII and VIII. It ignores the fact that over the years no less than 30 States have reserved to Article IX, presumably without accepting that to do so would make the Convention ineffective, which clearly it does not. It ignores the fact that, as the Court has frequently had occasion to point out, the absence of the Court's jurisdiction does not relieve States of their international obligations, which they must perform in good faith.

16. The letter of 28 March sought to bolster Sudan's argument by claiming that a statement that the UAE had apparently made during last year's *Occupied Palestinian Territory* advisory proceedings "affirming the UAE's recognition of the importance of the Court advisory function" somehow "constitutes a tacit acceptance of jurisdiction". Obviously, any such statement did no such thing. I note that that point was not repeated this morning.

III. The Applicant's untenable case on jurisdiction

17. Until this morning, we had seen no argument, just assertion; no reference to the extensive and consistent case law of the Court (to which Professor Forteau has taken you), which clearly shows that reservations to Article IX are permissible and have repeatedly been given effect by the Court (including as recently as 2023); there was no reference to the work of the International Law Commission on reservations to treaties; no reference to the ILC's work on *jus cogens*. Counsel for the Applicant, Mr Wordsworth, sought to remedy this morning what had been lacking in the documents instituting proceedings, but I fear he did not succeed.

18. The ILC's 2011 *Guide to Practice on Reservations to Treaties* is clear. Guideline 3.1.5.7, to which Mr Wordsworth did not, I think, take you, provides that "[a] reservation to a treaty provision concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty", unless certain strict conditions are met[63].

[63] International Law Commission, *Guide to Practice on Reservations to Treaties*, guideline 3.1.5.7, Commentary (2), *Yearbook of the International Law Commission 2011*, Volume II, Part Three, p. 231.

The Commission based this conclusion on its recognition of the Court's jurisprudence on Article IX reservations. It will further be noted that guideline 3.1.5.7 refers to two categories of provisions, those concerning dispute settlement, such as Article IX of the Genocide Convention, and those concerning monitoring of the implementation of a treaty, such as are found in many human rights treaties.

19. As regards the work of the ILC on *jus cogens*, it is worth noting that the Special Rapporteur on *jus cogens*, in his third report in 2018, referred to *Democratic Republic of the Congo* v. *Rwanda*, and concluded in no uncertain terms that "the fact that a dispute involves a peremptory norm of general international law (*jus cogens*) is not sufficient to establish the jurisdiction of the Court without the necessary consent to jurisdiction in accordance with international law"[64]. That conclusion was not challenged by the Commission, or by the Sixth Committee, when it debated the *jus cogens* topic.

20. The argument that the *jus cogens* or *erga omnes* character of the substantive obligations under the Genocide Convention affects the possibility of reserving to the dispute settlement clause was already raised, considered and rejected, overwhelmingly rejected, by the Court in *Democratic Republic of the Congo* v. *Rwanda*[65]. States, and the Court, have acted on the basis of the validity of reservations to Article IX, at least since 1999 and indeed well before, and have not returned to the argument that was rejected in 2006. Sudan has not put forward any "compelling reason"[66] why the Court should depart from its settled jurisprudence on the matter. I note in passing that in 2011, in its *Guide to Practice on Reservations to Treaties*, the ILC also said that in its 1999 Orders the Court "clearly recognized the validity of the reservations made . . . to article IX of [the Genocide Convention]"[67].

21. Legal certainty requires that this established practice not be overthrown. I hardly need say that the importance of legal certainty is greater than ever today.

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[64] International Law Commission, *Third report on peremptory norms of general international law* (jus cogens) *by Dire Tladi, Special Rapporteur*, 12 February 2018, UN doc. A/CN.4/714, paras. 133-136, at para. 136.

[65] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, pp. 29-33, paras. 56-70.

[66] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*, p. 117, para. 389.

[67] International Law Commission, *Guide to Practice on Reservations to Treaties*, Guideline 3.1.5.7, Commentary (1), *Yearbook of the International Law Commission*, 2011, Vol. II, Part Three, p. 231.

IV. The 2006 *Democratic Republic of the Congo* v. *Rwanda* case

22. Mr President, Members of the Court, the 2006 *Democratic Republic of the Congo* v. *Rwanda* Judgment, dealt expressly and conclusively with the arguments that Sudan sought to make in its letter to the Registrar of 28 March and again this morning. From the relevant parts of the 2006 Judgment one sees the remarkable similarity between the arguments raised in that case and again in this one[68]. Allow me to read a short passage.

> "The Court observes . . ., as it has already had occasion to emphasize, that 'the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things' . . ., and that the mere fact that rights and obligations *erga omnes* may be at issue in a dispute would not give the Court jurisdiction to entertain that dispute.
>
> The same applies to the relationship between peremptory norms of general international law (*jus cogens*) and the establishment of the Court's jurisdiction: the fact that a dispute relates to compliance with a norm having such a character, which is assuredly the case with regard to the prohibition of genocide, cannot of itself provide a basis for the jurisdiction of the Court to entertain that dispute. Under the Court's Statute that jurisdiction is always based on the consent of the parties."[69]

23. Mr Wordsworth sought to downplay this Judgment by mentioning certain "concerns". But he was not in any way convincing. They were all matters considered in the past, especially in light of the joint separate opinion in that case, to which I will come.

24. The passage I have just quoted from the 2006 Judgment was recently reaffirmed by this Court, in November 2024, in the *Azerbaijan* v. *Armenia* case[70]. After citing the passage in question, the Court then said "[t]hat position has been consistently upheld by the Court with regard to the question of jurisdiction".

25. The position is thus crystal clear, as the ILC also found in its 2011 *Guide to Practice*[71].

26. Mr President, Members of the Court, this morning counsel invoked the joint separate opinion in the *Democratic Republic of the Congo* v. *Rwanda* case[72]. That joint separate opinion makes an important and thoughtful contribution to the question of jurisdiction under human rights

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[68] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, especially pp. 31-33, paras. 64-70.

[69] *Ibid*., p. 32, para. 64.

[70] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Preliminary Objections, Judgment of 12 November 2024*, para. 48.

[71] International Law Commission, *Guide to Practice on Reservations to Treaties*, Guideline 3.1.5.7, Commentary (2), *Yearbook of the International Law Commission*, 2011, Vol. II, Part Three, p. 231.

[72] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, p. 65.

treaties; but it does not assist the Applicant as regards the Genocide Convention. I will make four points. Firstly, the joint separate opinion is just that: it is a separate opinion. The five judges did not dissent from the Court's conclusion that Rwanda's reservation to Article IX was valid. In fact, only two of the 17 judges did so: Judge Koroma and Judge *ad hoc* Mavungu. Judge Koroma's dissenting opinion shows conclusively that the arguments put before you today[73] were before the judges in 2006 and they were rejected by no less than 15 judges. Second point, in their joint separate opinion the five judges acknowledged "the Court's repeated finding that a reservation to Article IX of the Genocide Convention is not contrary to the object and purpose of that treaty"[74]. Third, the main point that the five judges were making was that, in their view, the distinction between substantive and procedural provisions might not be applicable in all cases and suggested by way of example that "the treaty bodies set up under certain United Nations conventions may well be central to the whole efficacy of those instruments"[75]. But they did not suggest that this was the case with Article IX of the Genocide Convention. On that, as I said, they voted with the overwhelming majority of the Court in finding the absence of consent to jurisdiction and thus the absence of jurisdiction. One of the five judges, Judge Elaraby, was explicit in his individual declaration: he "accept[ed] the findings and conclusions [in the Court's Judgment] as consistent with the Statute and hence sound in law"[76].

27. In the same case, Judge *ad hoc* Dugard put the position very cogently in his separate opinion. After welcoming — strongly, I think — welcoming the Court's express recognition of the concept of *jus cogens*, Judge Dugard said that the Court

> "has, correctly in my judgment, rejected the DRC's submissions in holding that the fact that a dispute relates to compliance with a peremptory norm, such as genocide, cannot of itself provide a basis for the Court's jurisdiction; and that a reservation to the Court's jurisdiction cannot be held to be invalid on the ground that it violates a norm of *jus cogens*. In so finding the Court has emphasized that its jurisdiction is based on

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[73] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, dissenting opinion of Judge Koroma, p. 55. *Ibid*., pp. 57-59, paras. 11-16.

[74] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, p. 65, para. 3.

[75] *Ibid*., p. 70, para. 21.

[76] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, I.C.J. Reports 2006*, declaration of Judge Elaraby, p. 82, para. 1.

> consent and that no peremptory norm requires States to consent to jurisdiction where the compliance with a peremptory norm is the issue before the Court."[77]

Judge *ad hoc* Dugard put it very simply: "there are limits to be placed on the role of *jus cogens*. The request to overthrow the principle of consent as the basis for its jurisdiction goes beyond these limits."[78]

28. This morning, Mr Wordsworth referred briefly to "remarks" made by Judge Owada at an informal meeting of legal advisers in New York in 2010. These remarks were made, as Judge Owada himself said, "in a personal capacity". Judge Owada was of course one of the five judges who joined in the joint separate opinion. He, like each of the five judges, voted with the majority in 2006, to give full effect to Rwanda's reservation. Much has happened since Judge Owada made his remarks in 2010. The debate he called for has in effect happened. In 2011, the International Law Commission revised and completed its *Guide to Practice*. And the Court has unequivocally reaffirmed its earlier case law, including as recently as November 2024. With all due respect, Judge Owada's personal remarks, interesting though they are, in 2010, add nothing to the present discussion.

29. Mr President, Members of the Court, the requirement of State consent to jurisdiction lies at the heart of dispute settlement under international law, and is a central element in your case law. Yet our opponents would have you ignore this core principle.

V. Certain further points responding to what the Applicant has said on incompatibility

30. Mr President, I shall now deal briefly with a couple of further points in response to what the Applicant has said on compatibility. Our opponents initially seemed to rely on what Sir Hartley Shawcross said some 75 years ago when acting as counsel in the 1951 advisory proceedings. He was of course speaking by way of argument, as Attorney General, on behalf of the United Kingdom. The United Kingdom was even then something of an outlier on reservations. For many years, the United Kingdom had a practice of objecting to reservations to Article IX, though as Mr Wordsworth noted this morning even they had stopped doing so by the time the United Arab Emirates acceded to the

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[77] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, separate opinion of Judge *ad hoc* Dugard, p. 87, para. 3.

[78] *Ibid*., p. 91, para. 14.

Convention in 2005. Indeed, *no* State objected to the UAE's reservation. Neither the United Kingdom, nor Sudan, nor any other State.

31. Mr Wordsworth briefly alluded to the inclusion in Article IX of the word "fulfilment" together with the more standard "interpretation or application" language. Yet already in 2007, the Court found in the *Bosnia* v. *Serbia* case that "the addition of the word 'fulfilment' to the provision conferring on the Court jurisdiction over disputes as to the 'interpretation and application' of the Convention [did] not appear to be significant"[79]. Nor was it significant in the 2024 *Ukraine* v. *Russian Federation* Judgment[80], despite having been raised by Ukraine[81].

32. In fact "interpretation", "application" and "fulfilment" are overlapping terms. By inserting all three in Article IX, the drafters apparently sought to ensure a comprehensive coverage for the compromissory clause, which it had in any event. It is notable that States have not considered it useful to add the word in later compromissory clauses.

33. While we are on the *travaux*, Mr Wordsworth tried to make something of one statement by one delegate in the Sixth Committee in 1948. If you look at the record of what he is referring to, that delegate was arguing in support of its own amendment to another amendment. It is quite a complicated set of events, but that statement would hardly count as helpful *travaux préparatoires* for the purposes of interpretation of this treaty. On another point that Mr Wordsworth mentioned this morning, he said Sudan itself had never objected to the UAE's reservation, correct? Either at the time it was made, or at any time thereafter. Sudan likewise has never contacted the depositary to indicate that it objects or that it considers the reservation invalid. It is of course far too late for it to do so now. It is necessary for legal certainty that there is a time-limit for objections to reservations. Twelve months is the period in the Vienna Convention[82].

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[79] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 114, para. 168.

[80] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation: 32 States intervening), Preliminary Objections, Judgment of 2 February 2024.*

[81] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation: 32 States intervening)*, CR 2023/19, pp. 36-37, para. 9 (Koh).

[82] Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, *UNTS*, Vol. 1155, p. 331, Article 20 (5).

34. Sudan could have objected at any time between December 2005 (when the UAE's reservation was notified by the Secretariat to all Member States) and December 2006 (if we adopt the one-year period specified in the Vienna Convention). It did not do so. Yet it was precisely during this period, in February 2006, that the Court issued the *Democratic Republic of the Congo* v. *Rwanda* Judgment. Sudan could have expressed disagreement with that ruling of the Court by objecting to the UAE's reservation between February and November 2006. It did not do so. When the UN General Assembly debated on 26 October 2006 the annual report of the Court covering the February 2006 Judgment, the representative of Sudan took the floor and made a statement, but said absolutely nothing about the reservation matter, and did not challenge the Court's decision that reservations to Article IX of the Genocide Convention were permissible and were to be given full effect[83].

VI. Concluding remarks

35. Before concluding, Mr President, Members of the Court, let me reaffirm the importance that the UAE attaches to the Court deciding now to discontinue the present proceedings and remove the case from the General List. This is a case where, to adopt the Court's language from the 1999 Orders, Article IX "manifestly does not constitute a basis of jurisdiction in the present case, even prima facie"[84].

36. Especially where the sole basis of jurisdiction is a compromissory clause, and you are able to conclude that that clause manifestly does not apply, as in our submission is the case here, it must surely be in the interests of the good administration of justice to discontinue the proceedings and remove the case from the General List. No purpose would be served by reverting to old arguments when the Court's case law has been long settled and accepted by States. Many States have become bound, and remain bound, by the Genocide Convention in reliance on this settled case law. If doubt were to be cast on it, the consequences could be serious.

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[83] United Nations, General Assembly, Sixty-First Session, *41st* Plenary Meeting, 26 October 2003, UN doc. A/61/PV.41, p. 5 (Judge Higgins, President of the Court) and pp. 12-13 (Sudan).

[84] *Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 772, para. 33; *Legality of Use of Force (Yugoslavia* v. *United States of America), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 924, para. 25.

37. Mr President, Members of the Court, as the Court acknowledged in its 1951 Advisory Opinion,

> "[t]he object and purpose of the Genocide Convention imply that it was the intention of the General Assembly and of the States which adopted it that as many States as possible should participate"[85].

38. It is worth recalling that this objective has only partially been achieved. As of today, 153 States are parties to the Convention; some 40 Members of the United Nations are not. Nothing will be gained by making it more difficult for States to become, or indeed remain, parties to this very important convention.

39. The UN General Assembly, when in 2013 it endorsed the ILC's *Guide to Practice on Reservations to Treaties*:

> "*Recogniz[ed]* the role that reservations to treaties may play in achieving a satisfactory balance between the objectives of safeguarding the integrity of multilateral treaties and facilitating wide participation therein"[86].

40. Mr President, Members of the Court, one final point. The fact that the Court has no jurisdiction in the present case in no way detracts from the clear commitment of the States parties, including the UAE, to uphold the substantive provisions of the Convention. As one Member of the Court rightly stated quite recently, "[t]hose States which have made a reservation to Article IX are equally committed to the *raison d'être* of the Genocide Convention"[87]. The UAE is fully committed to performing in good faith all the obligations under this central text of the international legal order.

41. Mr President, Members of the Court, that concludes my statement. I thank you for your attention, and request that you now invite Ms Alison Macdonald to the podium. I thank you, Mr President.

The PRESIDENT: I thank Sir Michael Wood for his statement. I now invite Ms Alison Macdonald to the podium. You have the floor.

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[85] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 24.

[86] United Nations, General Assembly, resolution 68/111 on reservations to treaties adopted on 16 December 2013, UN doc. A/RES/68/11, Sixth preambular para.

[87] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, separate opinion of Vice-President Xue, p. 34, para. 6.

Ms MACDONALD:

4. NON-JURISDICTIONAL CRITERIA FOR THE INDICATION OF PROVISIONAL MEASURES

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the United Arab Emirates. As you have heard, there is a manifest lack of jurisdiction and, *a fortiori*, no prima facie jurisdiction in this case. My task is to show the Court that, in any event, the remaining criteria for the indication of provisional measures are not met.

I. The test for plausibility

2. I begin with the question of plausibility. The Court has made it clear in its decisions on provisional measures that this has two aspects.

3. *Firstly*, the applicant State must establish that its claims are plausible as a matter of law[88]. And *secondly*, the Court has to consider the *evidence* in order to decide whether there is a plausible case. This is not an evidential review such as the Court would carry out at a merits stage, but the Court must still be satisfied that there is sufficient evidence going to the key elements of the alleged breaches. So for example in its 2017 Order in the *Financing of Terrorism* case, the Court held that certain rights invoked by Ukraine were not plausible because of the lack of sufficient evidence as to whether Russia had the necessary mental element for the offence of terrorist financing[89]. And in its 2021 Order in *Azerbaijan* v. *Armenia*, the Court held that in relation to landmines, not only was it *legally* implausible that Azerbaijan held the rights which it claimed, but that on the *facts*, Azerbaijan had failed to provide evidence that Armenia's alleged conduct with respect to landmines had a discriminatory purpose or effect[90]. Counsel for Sudan argued this morning that in the present case, evidence lies out of its hands, and so you should apply a lesser evidential standard. Now the UAE would not accept the accuracy of Sudan's argument here as a matter of fact, but focusing on the legal

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[88] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009*, p. 151, para. 57; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Provisional Measures, Order of 8 March 2011, I.C.J. Reports 2011*, p. 18, para. 53; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 426, para. 53.

[89] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 132, para. 75.

[90] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 426, para. 53.

principle, the same might have been said by both Ukraine and Azerbaijan in the cases which I just cited. But this did not prevent the Court from requiring, at provisional measures stage, sufficient evidence in support of each applicant State's case.

4. And through the plausibility test as applied in these and other recent cases, the Court has struck a balance between, on the one hand, the need not to prejudge the facts at provisional measures stage, and on the other hand, the injustice that would be caused by granting provisional measures based on unsubstantiated or untested assertions by the applicant State.

5. Looking at Sudan's claims, the Application and the Request cast the net wide. Sudan claims that the UAE

> "has violated its obligations under Article I of the Genocide Convention, as well as having violated other fundamental obligations under the Genocide Convention, including by attempting to commit genocide; conspiring to commit genocide, inciting genocide; complicity in genocide; failing to prevent and punish genocide"[91].

II. No plausible case on attribution

6. This afternoon, I will address what appears to be the real focus of Sudan's case. The first line of argument, at least in the Application and the Request, was that the conduct of the RSF and its allied militias should be *attributed* to the UAE, thus making the UAE itself a perpetrator of genocide for the purposes of Article I of the Convention[92].

7. Perhaps recognizing the hopelessness of its case, by letter to the Registrar last week, Sudan modified the second measure which it seeks, swapping attribution for complicity. But despite this, Sudan's letter expressly stated that it "maintain[s] all allegations set out in its Application and Request"[93]. And counsel this morning told you that "this will be an important issue" at the merits stage. So we are now in an extraordinary situation. Sudan maintains a case that the UAE is committing genocide on its territory through a *de facto* State organ[94]. And yet it does *not* ask the Court to order the UAE to stop. It may be that Sudan simply seeks to avoid the Court's analysis of the plausibility of this allegation, for obvious reasons.

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[91] Application, para. 6.

[92] Request for the indication of provisional measures, para. 13.

[93] Letter from the Agent of the Republic of the Sudan to the Registrar, enclosed with the Embassy's Note Verbale no. S/54/NV/ICJ/Session57, 3 April 2025.

[94] Application, para. 10; Request for the indication of provisional measures, para. 13.

III. No plausible case on complicity

8. Turning then to the issue of complicity, which is now the express basis for the second measure sought, the key elements were set out by the Court in the *Bosnia Genocide* case[95]. So Sudan needs to assert clearly, and to show sufficient evidence:

(a) firstly, that the UAE has in fact supplied aid to the RSF;

(b) secondly, that it supplied aid at a point when genocide was in fact "about to be committed or was under way";

(c) thirdly, that aid was provided with "full knowledge of the facts", including of genocidal intent on the part of the RSF; and

(d) fourthly, that such aid "enabled or facilitated the commission of the acts", that is, that it "contributed significantly" to the commission of those acts[96].

9. Starting with the necessary mental element, Sudan has put forward no evidence at all that the UAE provided the alleged support with the necessary knowledge of the conduct and intent on the part of the RSF. So Sudan's case would fail the plausibility test on the mental element alone, before even considering any allegations about the provision of aid.

10. As to those allegations, the Court will have noted that the Application and the Request were almost entirely devoid of evidential support. They refer to three short documents: a statement by the United Nations Special Adviser on the Prevention of Genocide; a statement by the former United States Secretary of State; and a statement by the former United States Ambassador to the United Nations.

11. Two observations on these documents:

(a) First, they refer to the conduct of the RSF, rather than any acts of the UAE. The only mention of the UAE refers to sanctions imposed by the United States on *private* companies said to be based in the UAE and used by the RSF. Pausing on that point, this is a matter which the UAE has fully investigated, including seeking further information from the United States. This morning you were shown the statement of the UAE's Ministry of Justice, where it made clear that none of those entities have active business licences in the UAE, and that they are not currently operating

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[95] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I),* p. 223, para. 432.

[96] *Ibid.*, p. 222, para. 432.

there[97]. Counsel for Sudan disparaged this document as "circumspect", but it simply demonstrates, we say, that when questions were raised about the activities of private actors, the competent authorities investigated quickly in co-operation with the United States.

(b) And my *second* observation on these three documents is that — in passages *not* shown on screen this morning — they express the view that the Sudanese Armed Forces themselves are responsible for war crimes, air and artillery attacks against civilians, and the obstruction of humanitarian aid.

12. Then this morning, Sudan made a range of further allegations. It is neither practical nor appropriate for the UAE to respond in detail. But I make three points.

13. *Firstly*, and crucially, these new factual allegations do not cure the problems I noted before, as to the necessary mental element and the actual contribution that such alleged aid made to the commission of any genocidal acts.

14. *Second*, the idea that the UAE is complicit in genocide is difficult to reconcile with the leadership role which it plays in the international community's response to the situation in Sudan, as already outlined by the UAE's Co-Agent.

15. *Third*, there are a number of serious deficiencies in the materials which were put before you this morning. As a starting point, the Court will note that, unlike in some other provisional measures applications which it has recently considered, there is a striking lack of impartial United Nations materials, the probative value of which the Court has emphasized[98], to support the allegations which Sudan makes. Much was made by counsel this morning of last year's Report by the UN Panel of Experts[99]. Now those submissions conveniently omitted to mention the Panel's most recent report, which had been approved for release by the Security Council and is expected to be published in the coming days. The UAE understands that that report, which represents the Panel's most up-to-date findings, provides absolutely no support for the Applicant's allegations. And the

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[97] Emirates News Agency-Wam, Ministry of Justice: Seven companies sanctioned by US over Sudan do not own valid business licences or operate in UAE, 4 April 2025, available at: https://www.wam.ae/en/article/bj0byzv-ministry-justice-seven-companies-sanctioned-over.

[98] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 239, para. 205.

[99] Letter dated 15 January 2024, Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024.

UAE notes that this follows its provision to the Panel of Experts, in late 2024, of information about flights to the UAE's field hospital in Amdjarass, including specific information about the tens of thousands of kilograms of aid that they have transported.

16. Instead of authoritative reports from impartial United Nations bodies, Sudan relies on a fragmented selection of materials, including documents which it submitted on Tuesday. These documents consist of two items said to be reports by the General Intelligence Service of Sudan, and one item which is described as an extract, but from what, we do not know.

17. To state the obvious, documents created by the applicant State are quite the opposite of impartial materials. In any event, from even a cursory glance at these documents, to the extent that we understand them, it is clear that they recycle allegations which Sudan has made in other venues, notably the Security Council. The same goes for a number of the statements that you were shown on the screen, in particular Sudan's slides 11-14, all of which reproduce Sudan's own allegations made in the Security Council and by way of press statement by its Ministry of Foreign Affairs. So in terms of evidential value, these must be categorized as materials which are entirely self-serving.

18. Now the UAE has comprehensively addressed those allegations in a number of detailed communications to the Security Council, to which you will find links in the footnotes[100].

19. To take one example of the type of allegation which Sudan makes, it has frequently pointed to disparate items, lacking individual markings and information about when and where they ended up in Sudan, rendering in most cases identification of the items and possible attribution impossible. It also points to materials which certainly *were* supplied by the UAE to the Government of Sudan, before April 2023 — and a good example is the ammunition crate which counsel for Sudan mentioned this morning. And in this regard it is important to recall the military assistance which the UAE supplied to the Government of Sudan before the outbreak of the current conflict, including at

[100] United Nations, Security Council, Letter dated 26 June 2024 from the Chargé d'affaires a.i. of the Permanent Mission of the United Arab Emirates to the United Nations addressed to the President of the Security Council, 27 June 2024, UN doc. S/2024/510, available at: https://digitallibrary.un.org/record/4053577?ln=fr&v=pdf; United Nations, Security Council, 9822nd meeting, Statement of the United Arab Emirates, 19 December 2024, UN doc. S/PV.9822, pp. 24-25, available at: https://digitallibrary.un.org/record/4071149?ln=fr&v=pdf; Letter dated 20 November 2024 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council, UN doc. S/2024/843, available at: https://digitallibrary.un.org/record/4067727?ln=fr&v=pdf; Letter dated 21 September 2024 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council, UN doc. S/2024/690, available at: https://digitallibrary.un.org/record/4062553?ln=fr&v=pdf; Letter dated 25 April 2024 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council, UN doc. S/2024/336, available at: https://digitallibrary.un.org/record/4046224?ln=fr&v=pdf.

General al-Burhan's specific request[101]. As the Co-Agent indicated this afternoon, the UAE ceased all such assistance when the conflict broke out in April 2023. But the provision of military equipment before that date means that the presence in Sudan of items shipped from the UAE tells one nothing.

20. You also heard allegations relating to the gold trade. In this regard, it is important to note the UAE's rigorous implementation of responsible sourcing regulations in the precious metals and stones sector. Contrary to what Sudan tried to suggest this morning, the UAE has put in place due diligence requirements on the sourcing of gold in line with international best practices[102].

21. So Mr President, without delving into a level of detail which would not be appropriate, one can see that the factual claims made by Sudan this morning lack any sufficient evidence to make a plausible case on the serious allegation that the UAE is complicit in genocide. This, along with the legal flaws to which I referred, means that Sudan's case on complicity falls far short of the plausibility standard.

IV. No plausible case on a breach of the duty to prevent genocide

22. The third legal obligation which Sudan invokes is the duty to prevent genocide, stemming from Article I of the Convention. The legal elements of this duty, or particularized allegations of breach, are not specifically set out in Sudan's Application and Request, but this duty forms the legal basis for Sudan's first requested measure, and you heard submissions about it this morning.

23. So on this issue, Sudan must set out a plausible case, backed with sufficient evidence, that the UAE, as the Court put it in the *Bosnian Genocide* case:

(a) Firstly, "manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide"[103].

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[101] United Nations, Security Council, Letter dated 26 June 2024 from the chargée d'affaires a.i. of the Permanent Mission of the United Arab Emirates to the United Nations addressed to the President of the Security Council, 27 June 2024, UN doc. S/2024/510, available at: https://digitallibrary.un.org/record/4053577?ln=fr&v=pdf.

[102] United Arab Emirates Ministry of Economy, Due Diligence Regulations for Responsible Sourcing of Gold, August 2022, available at: https://www.moec.gov.ae/documents/20121/296716/MOE_Due+Diligince+Regulations +V9_EN.pdf; United Arab Emirates Ministry of Economy, Ministerial Decree No. (68) of 2024 Regarding Gold Refineries' adherence to the Policy of Due Diligence Regulations for Responsible Source of Gold, 29 March 2024, available at: https://www.moec.gov.ae/documents/20121/376320/Ministerial+Decree+No.+%2868%29+of+2024.pdf/b349cc52-534c-cffc-8c71-ad55d5c9c334?t=1717189374321.

[103] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I),* p. 221, para. 430.

(b) Secondly, was "aware, or . . . should normally have been aware, of the serious risk that acts of genocide would have been committed"[104].

24. Now at the heart of Sudan's case on the duty to prevent, as you heard it set out this morning, are the factual allegations which Sudan also makes in the context of complicity. I have already addressed you on the insufficiency and unreliability of Sudan's evidence in that regard, and all the flaws remain when the evidence is viewed through the lens of the duty to prevent.

25. Given that the duty to prevent may also involve an obligation to take positive steps, it is also important for the Court to understand the steps which the UAE has taken, and continues to take, in relation to the conflict. Here, I would make three points:

(a) Firstly, as the Co-Agent has explained, the UAE vigorously promotes diplomatic efforts, including those by the African Union and IGAD, to end the fighting and to bring about a transition to civilian rule.

(b) Secondly, as you have also heard, the UAE is one of the largest contributors in the world to humanitarian efforts for the people of Sudan, both in financial terms[105] and in terms of practical, multilateral action to get aid through to those who need it.

(c) Thirdly, the UAE has consistently condemned reports of violations of international law and has called for accountability for all concerned[106]. This includes, most recently, urging the Security Council to include conflict-related sexual violence as a stand-alone designation criterion in the sanctions régime[107].

26. So drawing the threads together, Mr President, for all those reasons, there is no plausible case on a violation of the duty to prevent genocide, just as there is no plausible case on attribution or complicity. If Sudan's Application did not face an insuperable jurisdictional obstacle, it would have

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[104] *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua* v. *Germany), Order of 30 April 2024*, para. 23; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 223, para. 432.

[105] UAE AID, UAE's Humanitarian Response in Sudan, last updated April 2025, available at: https://www.uaeaid.ae/aidhighlights/sudan-2025.

[106] United Nations, Security Council, 9822nd meeting, Statement of the United Arab Emirates, 19 December 2024, UN doc. S/PV.9822, pp. 24-25, available at: https://digitallibrary.un.org/record/4071149?ln=fr&v=pdf.

[107] United Nations, Security Council, Briefing on Sudan, 13 March 2025, Statement of the United Arab Emirates, available at: https://uaeun.org/statement/uaeun-sudan-13march/.

to fail on the issue of plausibility alone. In those circumstances, my observations on the remaining criteria for the indication of provisional measures will be brief.

V. The remaining criteria for the indication of provisional measures

27. Considering the question of a real and imminent risk of irreparable harm, this is of course not something which can be considered in the abstract. On the contrary, the question is whether the *measures actually sought* are necessary in order to protect against such a risk, in all the circumstances of the case.

28. For the reasons I have addressed, Sudan does not present a plausible case which requires protection by the measures sought. And the flaws in Sudan's case on plausibility also come into play at this further stage. So to begin with the second measure sought, this asks the Court to order the UAE to "refrain from conduct amounting to complicity in the commission of" the acts set out in Article II of the Convention. To order such a broad-brush measure, the Court would expect to see, for a start, sufficient evidence that the UAE *is* in fact complicit in such acts, within the meaning of the Court's case law. But as I have indicated, such evidence is conspicuously lacking. And without that, Sudan can show no link between the measure which it requests and the protection of the rights which it claims.

29. Turning to the first measure requested, this relates to the duty to prevent. I have already addressed the relevant evidence under the heading of plausibility, including recalling the Agent's remarks on the extensive steps which the UAE is taking to urge all parties to the conflict to agree to an immediate ceasefire, and on the vast amounts of humanitarian aid which it is providing to all affected communities. To grant the first measure sought, again the Court would expect to see sufficient evidence that the UAE is not complying with the duty to prevent, and as I have addressed you on the conspicuous lack of such evidence in our submission, there simply is no link between the measure sought and the protection of the rights which Sudan invokes.

30. And given the lack of any basis to order the first and second measures, it follows that the third — the requirement to report — falls away.

VI. Concluding observations

31. In conclusion, Mr President, Members of the Court, nobody sitting in this courtroom could fail to be appalled by the situation facing the people of Sudan. But this case manifestly falls outside the scope of the Court's jurisdiction, and we invite the Court to say so decisively at this stage. Regrettably, returning to the question of plausibility, this is also a case where grave allegations have been made against a State without reliable evidence to support them. And so, for all the reasons which the UAE has developed in its submissions this afternoon, this is not a case in which the Court can or should indicate provisional measures.

32. Mr President, Members of the Court, that concludes my submissions. I thank you for your attention, and ask you to invite the Agent for the United Arab Emirates, Her Excellency Ms Ameirah Al Hefeiti, to take the floor.

The PRESIDENT: I thank Ms Macdonald for her statement. I now give the floor to the Agent of the United Arab Emirates, Her Excellency Ms Ameirah Al Hefeiti. You have the floor, Madam.

Ms AL HEFEITI:

5. CLOSING STATEMENT AND FINAL SUBMISSIONS

1. Mr President, Members of the Court, it is an honour to appear before you today and to close the submissions on behalf of the United Arab Emirates. I shall now make the concluding statement on behalf of my country.

2. Let us be clear — the actors responsible for the devastation and the atrocities being perpetrated in Sudan are the warring parties. The allegations levelled against my country by the Applicant find no basis in fact; they are divorced from reality. The reality, Mr President, is that the United Arab Emirates worked tirelessly with the United Nations, regional organizations, neighbouring countries and other stakeholders to deliver humanitarian assistance and find a political solution to this tragic war. By its words and by its actions, the United Arab Emirates has only ever sought to work within the international system to bring an end to the conflict and to support Sudan to transition to civilian rule.

3. The Applicant, on the other hand, has persisted in starving its population, in bombardment and in unrelenting violence against civilians in Sudan. Rather than engaging in any serious efforts

for a transition to peace, the Applicant has chosen instead to mount a public relations campaign before this Court, to distract attention away from its unlawful conduct. We have seen similar tactics used by the Applicant in other fora, including the United Nations Security Council, as a tool for propaganda.

4. The United Arab Emirates believes in the critical work of the Court in the promotion of the rule of international law, within the limits of the jurisdiction conferred on it by States. In this context, it is unacceptable that the Applicant is abusing the function of the Court — the principal judicial organ of the United Nations — solely for political gain, and without regard to the Court's jurisdiction. I therefore urge you, Members of the Court, to carefully examine the Parties' submissions on the law.

5. The members of our legal team have shown, conclusively, that the Court manifestly does not have jurisdiction in this case. The sole basis of jurisdiction invoked by the Applicant is Article IX of the Genocide Convention. That provision obviously does not confer jurisdiction upon the Court because of the United Arab Emirates' reservation to Article IX that we made upon accession in 2005.

6. We therefore call upon the Court to reject the request for provisional measures and to remove the case from the General List. To do so would be in accordance both with your well-established jurisprudence and with the sound administration of justice.

7. Mr President, I shall now read the United Arab Emirates' concluding submissions:

> "The United Arab Emirates requests the Court:
>
> (1) to reject the request for the indication of provisional measures submitted by the Republic of the Sudan; and
>
> (2) to remove from the General List the case introduced by the Republic of the Sudan on 5 March 2025."

8. Mr President, Members of the Court, that brings to an end the United Arab Emirates' presentation. On behalf of our delegation, I thank you for your careful attention.

9. I would also like to express my gratitude to the Registrar and all of his staff, and to the interpreters, for their work during the present proceedings.

10. Mr President, Members of the Court, I thank you for your kind attention.

The PRESIDENT: I thank the Agent of the United Arab Emirates for her statement. Before the end of this sitting, I would like to give the floor to Judges Tomka and Simma, who wish to put questions to the United Arab Emirates. Judge Tomka, you have the floor.

Judge TOMKA: Thank you, Mr President. I have a question for the Respondent.

It concerns the translation into English of the reservation to Article IX made by the United Arab Emirates.

The instrument of accession which contains that reservation, signed by the Deputy Prime Minister and Minister of State for Foreign Affairs, is in Arabic. The copy of that instrument of accession in Arabic is contained in tab 2 of the judges' folder provided by the Respondent. The depositary notification of the United Nations Secretary-General contains the translation of the reservation to Article IX in these terms, in English (the document is contained in tab 3):

> "the Government of the United Arab Emirates . . . makes a reservation with respect to article IX thereof concerning the submission of disputes arising between the Contracting Parties relating to the interpretation, application or fulfilment of this Convention, to the International Court of Justice, at the request of any of the parties to the dispute".

In the "unofficial translation" (not certified) of the instrument of accession (provided by the Respondent and contained in tab 2 of the judges' folder), the reservation is translated as follows:

> "with a reservation to the contents of Article IX of the Convention, which pertains to the referral of disputes arising between the Contracting Parties concerning the interpretation, application, or fulfilment of the Convention to the International Court of Justice at the request of any of the disputing parties".

The question for the Respondent is as follows:

> "Which version of the English translation of the reservation does the Respondent rely on?"

Thank you, Mr President.

The PRESIDENT: I thank Judge Tomka. Judge Simma, you now have the floor.

Judge *ad hoc* SIMMA: Thank you, Mr President. I have a very simple question, which also goes to the Respondent. The question is as follows:

> "What are the reasons that made the United Arab Emirates enter its reservation to Article IX of the Genocide Convention?"

The PRESIDENT: I thank Judge Simma and Judge Tomka. The written text of these questions will be communicated to the United Arab Emirates as soon as possible. The United Arab Emirates is invited to provide its written replies to the questions later. The Court will inform the United Arab Emirates of the deadline later. I would also add that any comments Sudan may wish to make in accordance with Article 72 of the Rules of Court on the replies by the United Arab Emirates must be submitted later, and the Court will inform Sudan of the deadline later.

This brings to an end the single round of oral argument of the Government of the United Arab Emirates, as well as today's set of sittings. I would like to thank the Agents, counsel and advocates of the two Parties for their statements. In accordance with the usual practice, I shall ask both Agents to remain at the Court's disposal to provide any additional information the Court may require. The Court will render its Order on the Request for the indication of provisional measures filed by Sudan as soon as possible. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver its Order at a public sitting.

Since the Court has no other business before it today, the sitting is declared closed.

The Court rose at 5.45 p.m.

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