DISSENTING OPINION OF JUDGE YUSUF

*Lack of prima facie jurisdiction in no way prejudges jurisdiction on the merits — Fundamental difference between prima facie jurisdiction and jurisdiction on the merits — Prima facie jurisdiction is part of requirements for exercise of discretion to indicate provisional measures under Article 41 of the Statute — The determination of jurisdiction on the merits falls under Article 36, paragraph 6, of the Statute — The so-called "manifest lack of jurisdiction" does not differentiate between the two and constitutes a decision on the overall jurisdiction of the Court — It has no basis in the Statute or the Rules of Court — Decision on the overall jurisdiction of the Court is inappropriate and legally flawed at the provisional measures stage — Decision on jurisdiction must be taken in the form of judgment not through an order — Failure to adjudicate a clear dispute on jurisdiction — Parties deprived of their right to be heard on a jurisdictional dispute as provided in Articles 79, 79*bis *and 79*ter *of the Rules of Court — Unjustified removal of the case from the General List — The concept of "sound administration of justice" cannot override the provisions of the Statute or the Rules of Court — No justification given for setting aside Article 36, paragraph 6, of the Statute and Articles 79, 79*bis *and 79*ter *of Rules of Court.*

I. Introductory remarks

1. I voted against the decision of the Court in the operative paragraphs of the Order. It is a deeply flawed decision. It is a decision which gives short shrift to a dispute between the Parties on the jurisdiction of the Court on such consequential legal issues as reservations to the Genocide Convention, and denies them an opportunity to be heard on their dispute. It is a decision which mistakenly conflates "prima facie jurisdiction" with jurisdiction on the merits. It is a decision which flies in the face of provisions of the Statute and of the Rules of Court. It is a decision which ignores the Rules of Court on the removal of cases from the General List and discontinuance of proceedings and defies the past practice of the Court on these matters. I, therefore, dissent. The reasons for my dissent are further elaborated below.

II. The fundamental difference between prima facie jurisdiction and jurisdiction on the merits

2. The manner in which the Court deals with what has come to be known as its "prima facie jurisdiction" or the jurisdictional issues arising from the exercise of its discretion under Article 41 of the Statute to indicate provisional measures, has evolved through the case law of the Court, but is not provided in the Statute or in the Rules of Court; while the determination of the Court's jurisdiction on the merits is based on Article 36, paragraph 6, of the Statute and is regulated by Articles 79, 79*bis* and 79*ter* of the Rules of Court. This difference in statutory bases was noted by the Court in *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran)* in the context of its consideration of the preliminary objections filed by Iran, and after recalling its statement in the Order on provisional measures that "the indication of such measures in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case". The Court observed that:

> "While the Court derived its power to indicate these provisional measures from the special provisions contained in Article 41 of the Statute, it must now derive its jurisdiction to deal with the merits of the case from the general rules laid down in Article 36 of the Statute. These general rules, which are entirely different from the special provisions of Article 41, are based on the principle that the jurisdiction of the Court to deal with and decide a case on the merits depends on the will of the Parties. Unless the Parties have conferred jurisdiction on the Court in accordance with Article 36, the Court lacks such jurisdiction" (*Preliminary Objection, Judgment, I.C.J. Reports 1952*, pp. 102-103).

3. In an order on provisional measures, the Court must verify whether it has prima facie jurisdiction to exercise its discretionary power under Article 41 of the Statute, but is not expected to, nor should it, determine, at this stage of the proceedings, its jurisdiction on the merits of the case under Article 36, paragraph 6, of the Statute. This distinction was clearly articulated also in the Order on provisional measures issued by the Court in the *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran)* in 1951. In that Order, the Court stated, regarding "prima facie jurisdiction", that it could entertain the request for such provisional measures because "it cannot be accepted *a priori* that a claim based on such a complaint falls completely outside the scope of international jurisdiction" (*Interim Protection, Order of 5 July 1951, I.C.J. Reports 1951*, p. 93). At the same time, the Court noted that the indication of such measures "*in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction*" (*ibid.*; emphasis added).

4. The precise formulation of the concept of "prima facie jurisdiction" and its distinction from jurisdiction on the merits further evolved over the years, although it remains in substance the same; while the "no prejudice formula" contained in the above Order of 1951 is still reproduced almost verbatim in all orders on provisional measures issued by the Court. The current formulation of the concept of "prima facie jurisdiction" goes back to the cases on *Nuclear Tests (Australia* v. *France)* and *Nuclear Tests (New Zealand* v. *France)*, where the Court stated the following in its Orders on provisional measures:

> "Whereas on a request for provisional measures the Court need not, before indicating them, finally satisfy itself that it has jurisdiction on the merits of the case, and yet ought not to indicate such measures unless the provisions invoked by the Applicant appear, prima facie, to afford a basis on which the jurisdiction of the Court might be founded" (*Nuclear Tests (Australia* v. *France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*, p. 101, para. 13; *Nuclear Tests (New Zealand* v. *France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*, p. 137, para. 14).

5. This was recently reiterated in clearer terms in the case on *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel),* where the Court stated that it may indicate provisional measures "only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded", but it "*need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case*" (emphasis added) (*Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024 (I)*, p. 11, para. 15. See also, for example, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation)*, *Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022 (I)*, pp. 217-218, para. 24; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 413, para. 14; *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 236, para. 15).

6. It is remarkable that in the present Order, the Court employs the same formula (paragraph 18) that is usually used to emphasize such distinction, namely "it need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case"; but then pronounces itself in a definitive manner on its jurisdiction with regard to the merits of the case and concludes that it "manifestly lacks jurisdiction to entertain Sudan's Application" (paragraph 35). If there is something "manifest" here, it is the contradiction between paragraph 18 of the Order and the conclusion of the Court on its overall jurisdiction in this case.

7. How did the Court come to such a definitive conclusion on jurisdiction when it affirmed that it did not need to do that? Where is the justification for such incongruity in the Order?

8. The qualification always attached by the Court to its formulation of the concept of "prima facie jurisdiction" in its orders on provisional measures in the sense that it need not, in an order on provisional measures, "satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case" is very important in the fundamental distinction between "prima facie jurisdiction" and jurisdiction on the merits of a case. It is not, however, the only clarification inserted in almost all orders on provisional measures issued by the Court to emphasize the difference between the two. As pointed out above, the Court also always inserts in its orders the following "no prejudice" paragraph which was first included in the 1951 Order in *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran)*, according to which "the indication of such measures in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case" (*Interim Protection, Order of 5 July 1951, I.C.J. Reports 1951*, p. 93).

9. Notwithstanding this clear difference which continues to be emphasized in the case law of the Court regarding provisional measures, the majority in the present Order decided to conflate "prima facie jurisdiction" with jurisdiction on the merits by ruling on the latter in an order on provisional measures contrary to the provisions of Article 36, paragraph 6, of the Statute and Articles 79, 79*bis*, and 79*ter* of the Rules of Court. This erroneous conflation is further illustrated by the departure from the well-established practice of the Court to proceed to the examination of its jurisdiction on the merits despite its finding in some cases that it had no "prima facie jurisdiction" at the provisional measures stage of proceedings. A finding by the Court that it has no "prima facie jurisdiction" to indicate provisional measures, as requested by a party, does not preclude it, as shown below, from determining later its jurisdiction on the merits in case of dispute between the parties on such jurisdiction.

III. An erroneous conflation of prima facie jurisdiction with the jurisdiction on the merits

10. Instead of limiting itself to a decision on "prima facie jurisdiction", the Court in the present Order decides in an arbitrary and rushed manner on its jurisdiction on the merits. To justify this legally flawed decision, it resorts to a fictitious notion of "manifest lack of jurisdiction" which is not borne by the facts nor based on the Statute or Rules of Court. This so-called "manifest lack of jurisdiction" does not differentiate between lack of "prima facie jurisdiction" and lack of jurisdiction on the merits. It simply refers to jurisdiction *tout court*, which clearly shows that it does not fit into an order on provisional measures that is not supposed to decide on the overall jurisdiction of the Court. Article 79*ter*, paragraph 5, of the Rules of Court provides that on matters relating to its jurisdiction which are disputed by the parties, "the Court shall give its decision in the form of a judgment".

11. It is legally erroneous for the Court to decide on its overall jurisdiction at the provisional measures stage without having given the parties an opportunity to submit pleadings on jurisdiction and to be heard on the law and facts pertaining to it (Article 79*bis* of the Rules of Court). In so far as the jurisdiction of the Court is concerned, it does not actually matter at the provisional measures stage whether the Court finds that it has or has no "prima facie jurisdiction". Neither of those findings precludes it from determining at a later stage its jurisdiction on the merits of the case. There are indeed several instances in the case law of the Court where the Court declared that it had "prima facie jurisdiction" for the purposes of indicating provisional measures, but ultimately found that it had no jurisdiction on the merits of the case. Examples include *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran)*, *Application of the International Convention on the Elimination of All*

Forms of Racial Discrimination (Georgia v. *Russian Federation)* and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates)*.

12. Conversely, there are other cases in which the Court found that it had no "prima facie jurisdiction", but proceeded to examine its jurisdiction on the merits. Examples include *Legality of Use of Force (Serbia and Montenegro* v. *Belgium)*, *Legality of Use of Force (Serbia and Montenegro* v. *Canada)*, *Legality of Use of Force (Serbia and Montenegro* v. *France)*, *Legality of Use of Force (Serbia and Montenegro* v. *Germany)*, *Legality of Use of Force (Serbia and Montenegro* v. *Italy)*, *Legality of Use of Force (Serbia and Montenegro* v. *Netherlands)*, *Legality of Use of Force (Serbia and Montenegro* v. *Portugal)*, *Legality of Use of Force (Serbia and Montenegro* v. *United Kingdom)*, and *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)*.

13. Thus, in the case on *Legality of Use of Force (Serbia and Montenegro* v. *Belgium),* Yugoslavia invoked mainly, as jurisdictional bases, Article 36, paragraph 2, of the Statute of the Court and Article IX of the Genocide Convention. In the Order of 2 June 1999, the Court first examined the limit *ratione temporis* in the declaration of Yugoslavia. After finding that the dispute "arose" before 25 April 1999, the Court decided that the declarations of the parties "do not constitute a basis on which the jurisdiction of the Court could prima facie be founded in this case" (*Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 135, para. 30). The Court then considered "prima facie jurisdiction" *ratione materiae* under the Genocide Convention. Having observed that it is "not in a position to find, at this stage of the proceedings, that the acts imputed by Yugoslavia to the Respondent are capable of coming within the provisions of the Genocide Convention", the Court stated that Article IX cannot constitute "a basis on which the jurisdiction of the Court could prima facie be founded in this case" (*ibid.*, p. 138, para. 41). In the end, while the Court concluded that "it had no prima facie jurisdiction to entertain Yugoslavia's Application", it nevertheless confirmed that the findings in the present proceedings "in no way prejudge the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application, or relating to the merits themselves" (*ibid.*, pp. 139-140, paras. 45-46).

14. By contrast, the sole basis invoked by the majority in the present Order to justify its deviation from the statutory requirements and the well-established practice of the Court is the decision made in the Orders on provisional measures in two isolated cases, i.e. *Legality of Use of Force (Yugoslavia* v. *Spain)* and *Legality of Use of Force (Yugoslavia* v. *United States of America).* When considering the request for provisional measures in the two cases, the Court found:

> "Whereas it follows from what has been said above that the Court manifestly lacks jurisdiction to entertain Yugoslavia's Application; whereas it cannot therefore indicate any provisional measure whatsoever in order to protect the rights invoked therein; and whereas, within a system of consensual jurisdiction, to maintain on the General List a case upon which it appears certain that the Court will not be able to adjudicate on the merits would most assuredly not contribute to the sound administration of justice" (*Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 773, para. 35; *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. 925, para. 29).

15. It is true that in those two Orders the Court stated that it "manifestly lacks jurisdiction" and that it conflated "prima facie jurisdiction" and "jurisdiction" in both cases. This was, in my view, an erroneous approach, and I disagree with the conclusions adopted in those two Orders (see below,

paragraph 25) and the arbitrary use of the nebulous notion of "manifestly lacks jurisdiction"; yet it must be emphasized that the Court did so for reasons quite different from those in the present Order. In both of those two Orders, the Court noted that "Yugoslavia disputed [Spain's/the United States'] interpretation of the Genocide Convention but submitted no argument concerning the [Spain's/the United States'] reservation to Article IX of the Convention" (*Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 772, para. 31; *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. 23). This is not the case here, where both Parties submitted concrete arguments on the contested Article IX reservation of the United Arab Emirates. In particular, the arguments put forward by Sudan on the scope of the reservation and on the compatibility of the United Arab Emirates' reservation with the object and purpose of the Genocide Convention clearly shows that there is a very substantive and significant dispute between the Parties regarding the jurisdiction of the Court on the merits. This was, of course, not the case in *Legality of Use of Force (Yugoslavia* v. *Spain)* and *Legality of Use of Force (Yugoslavia* v. *United States of America)*.

16. This dispute on jurisdiction should have been treated in the same way as the Court did when it dealt with the reservation of the United States of America in *Interhandel (Switzerland* v. *United States of America)* to its Declaration of acceptance of the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute. At the time, the United States of America invoked, against the request for the indication of provisional measures, "the reservation by which it excluded from its Declaration matters essentially within its domestic jurisdiction as determined by the United States". The Co-Agent of the Swiss Government challenged this argument and stated that "in its examination of a request for the indication of interim measures of protection, the Court would not wish to adjudicate 'upon so complex and delicate a question as the validity of the American reservation'" (*Interim Protection*, *Order of 24 October 1957, I.C.J. Reports 1957*, pp. 110-111). As a consequence, the Court reframed from ruling on its jurisdiction on the merits. In the present case, the Court is faced with a similar, if not identical situation. However, instead of ruling as it did in *Interhandel (Switzerland* v. *United States of America)*, it decided to prejudge the question of its jurisdiction on the merits of the case in an Order on provisional measures.

17. I consider it instructive to recall here, despite the Court's decision in the present Order, the reasoning of the Court in *Interhandel (Switzerland* v. *United States of America)* after quoting the statement by the Swiss Co-Agent, clearly distinguished between "prima facie jurisdiction" and jurisdiction on the merits of the case:

> "Whereas the procedure applicable to requests for the indication of interim measures of protection is dealt with in the Rules of Court by provisions which are laid down in Article 61 and which appear, along with other procedures, in the section entitled: 'Occasional Rules';
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> Whereas the examination of the contention of the Government of the United States requires the application of a different procedure, the procedure laid down in Article 62 of the Rules of Court, and whereas, if this contention is maintained, it will fall to be dealt with by the Court in due course in accordance with that procedure;
>
> Whereas the request for the indication of interim measures of protection must accordingly be examined in conformity with the procedure laid down in Article 61;
>
> Whereas, finally, the decision given under this procedure in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction" (*Interim Protection*, *Order of 24 October 1957, I.C.J. Reports 1957*, p. 111).

IV. Failure to adjudicate a clear dispute on the Court's jurisdiction

18. It is neither appropriate for the Court to adjudicate upon complex questions relating to its jurisdiction at the provisional measures phase nor to deny the parties to a dispute regarding its jurisdiction an opportunity to be properly heard. There is clearly a dispute between the Parties in the present case on whether the Court has jurisdiction. The United Arab Emirates, instead of making arguments on "prima facie jurisdiction", focused in its presentation during the hearing on a "manifest lack of jurisdiction" by the Court in light of its reservation to Article IX of the Genocide Convention (CR 2025/2, pp. 28-38, paras. 2-40 (Wood), p. 39, para. 1 (Macdonald)). On the other hand, Sudan raised at least two arguments which required careful consideration by the Court regarding its jurisdiction. First, it contended that the scope of the United Arab Emirates' reservation needs to be interpreted since it is not clear from its wording that it intended to "exclude jurisdiction over its own State responsibility for Genocide" (CR 2025/1, p. 31, para. 20 (Wordsworth)). Secondly, it invited the Court to examine whether the exclusion of the Court's jurisdiction through the reservation is compatible with the object and purpose of the Genocide Convention. This is a matter that was extensively debated and discussed in the case on *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. 56-69).

19. Following the Court's Judgment on jurisdiction in that case, five judges wrote a joint separate opinion on reservations to the Genocide Convention, and raised serious questions which they thought should be revisited by the Court. They concluded that:

> "It is thus not self-evident that a reservation to Article IX could not be regarded as incompatible with the object and purpose of the Convention and we believe that this is a matter that the Court should revisit for further consideration" (*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 by Judges Higgins, Kooijmans, Elaraby, Owada and Simma, p. 72, para. 29).

This case was an excellent opportunity for the Court to do so, but the majority decided to ignore entirely the dispute between the Parties on the jurisdiction of the Court and not to hear the weighty arguments raised by them.

20. The dispute between the two Parties in the present case is *not* a dispute on which the Court could make a final decision after very brief hearings on a request for provisional measures. It is a dispute on complex and delicate questions of law which should be resolved in accordance with Article 36, paragraph 6, of the Statute. Such a dispute should be settled by the Court after the Parties had been given an opportunity to submit their arguments and to set out in full the facts and the law on which such arguments are based, as provided in Articles 79, 79*bis* and 79*ter* of the Rules of Court. The denial of such an opportunity to the Parties in dispute regarding the jurisdiction of the Court flies in the face of both Article 36, paragraph 6, of the Statute and Articles 79, 79*bis* and 79*ter* of the Rules of Court.

21. Moreover, it is rather odd that the Court should borrow for an order on provisional measures the language used in a judgment on jurisdiction in the case on *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)* (paragraph 30). However, the language lifted from that Judgment in that case was used in the context of preliminary objections after the Court had carefully examined written pleadings by the parties on its jurisdiction. The Court had also heard the parties on the reasons underlying their objections both in law and in fact and was consequently able to take a decision in the form of a well-reasoned and

fully elaborated judgment in conformity with Article 36, paragraph 6, of the Statute, and Article 79*ter*, paragraph 5, of the Rules of Court.

22. The reproduction, without any reasoning, of the language used in the Judgment on jurisdiction in *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)* has given rise, for example, to the use of the expression "[i]n the circumstances of the present case" in paragraph 31 of the Order. The circumstances of a case must be based on facts or events that particularly characterize it and distinguish it from others. When and where did the Court examine or analyze the particular circumstances of this case? On what facts and which particular circumstances relating to this case is such a statement based?

23. In light of the above considerations, the Court should have heard the dispute regarding its jurisdiction as it did in other cases where it did not find "prima facie jurisdiction" (see paragraph 12 above) and should not have swept the complex dispute on its jurisdiction under the rug on flimsy grounds.

V. Unjustified removal of the case from the General List of the Court

24. The problem of making a final decision on jurisdiction and removing a case when deciding a request for provisional measures was correctly pinpointed by Judge Parra-Aranguren in his separate opinions in the Orders on provisional measures in the two cases (*Legality of Use of Force (Yugoslavia* v. *Spain)* and *Legality of Use of Force (Yugoslavia* v. *United States of America)* 26 years ago. Judge Parra-Aranguren was of the view:

> "The Court has no discretionary powers to depart from the Rules established by Article 79. The present proceedings have not yet reached the stage of preliminary objections. Therefore, when deciding upon a request for provisional measures, in my opinion the Court can neither make its final determination on jurisdiction nor order the removal of the case from the Court's List" (*Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, separate opinion of Judge Parra-Aranguren, p. 808, para. 4; *Legality of Use of Force (Yugoslavia* v. *United States of America), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, separate opinion of Judge Parra-Aranguren, p. 950, para. 4).

25. This was the only occasion where the Court decided to discontinue the entire proceedings when considering the parties' request for provisional measures and remove the cases from the General List. However, the question arises whether the removal was in conformity with the provisions of the Rules of Court on discontinuance of cases? By ordering discontinuance and removing the cases from the General List in this way, the parties were deprived of their right to be heard on jurisdiction, which is expressly guaranteed by Articles 79, 79*bis* and 79*ter* of the Rules of Court (Article 79 at the time of the decisions). The removal was wrongly justified in part on Article 38, paragraph 5, of the Rules of Court in the case on *Legality of Use of Force (Yugoslavia* v. *Spain)*. Article 38, paragraph 5, does not and cannot apply unless "the applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made". Yugoslavia did not do so in its Application in that case. As regards the "sound administration of justice" which is invoked in this Order to justify the removal of the case from the General List, this is a concept that is usually used by the Court to fill a gap when the rules are silent or to justify the exercise of a discretionary power; but it cannot be used by the Court to override or to contradict the provisions of the Statute or Rules of Court. In any case, it is not

"sound administration of justice" to deny a hearing to parties before the Court regarding their dispute on the Court's jurisdiction.

26. Moreover, the power of the Court with regard to entering or removing a case from the General List and the discontinuance of a case is dealt with in Article 38, paragraph 5, as well as Articles 88 and 89 of the Rules of Court. None of these provisions addresses discontinuance and removal from the General List during the provisional measures phase of proceedings. By contrast, procedural guarantees for the parties to be heard "[i]n the event of a dispute as whether the Court has jurisdiction" are contained in Article 36, paragraph 6, of the Statute as well as Articles 79, 79*bis* and 79*ter* of the Rules of Court. Under the circumstances, the question arises whether the Court would decide to discontinue the proceedings and remove this case from the General List if there was no request for provisional measures by Sudan? The answer is "No". In such a case, the Court would have to hear the Parties on jurisdiction and take a decision in accordance with Article 36, paragraph 6, of the Statute. A request for provisional measures, whether accepted or rejected by the Court, cannot serve as a basis for the discontinuance of a case and its removal from the General List. There is no legal basis for such an operation either in the Statute or in the Rules of Court. It would not be sound administration of justice, but a very unsound and incorrect application of the Statute and the Rules of Court.

(Signed) Abdulqawi Ahmed YUSUF.

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