JOINT PARTLY DISSENTING OPINION OF JUDGES BHANDARI, CHARLESWORTH, GÓMEZ ROBLEDO, CLEVELAND, TLADI AND JUDGE *AD HOC* SIMMA

The Court's erroneous decision to remove the case from the General List — Nature and purpose of provisional measures proceedings — Dispute over the scope and interpretation of the UAE's reservation to Article IX of the Genocide Convention — Standard for distinguishing between prima facie jurisdiction and manifest lack of jurisdiction — Early dismissal of a case hinders the evolution of the Court's jurisprudence — A State's right to be fully heard.

1. We have voted against the Court's decision to remove this case from the General List on the basis of a manifest lack of jurisdiction. Although we have differing views regarding the strength of Sudan's jurisdictional arguments at this early stage, we agree that Sudan should have been granted an opportunity to present its jurisdictional arguments fully. We are concerned about the Court's rush to judgment on this issue, which effectively punishes Sudan for seeking the indication of provisional measures.

I. The nature and purpose of provisional measures proceedings

2. Provisional measures proceedings serve a distinct function: to allow the Court to determine whether there are grounds for acting promptly to protect the rights of the parties from urgent and irreparable harm during the course of the proceedings. They are not designed to give the Court a threshold peek at jurisdiction to determine whether to summarily dismiss a case.

3. For this reason, provisional measures proceedings "have priority over all other cases"; the Court is convened "forthwith"; the requests are generally decided based on an oral hearing without written submissions from the parties (two hours of oral pleadings were allowed to each Party in the present case), and the Court deliberates and renders a decision "as a matter of urgency"[1].

4. In this time-pressured process, the Court must assess the presence of all the factors required for the indication of provisional measures — prima facie jurisdiction, plausibility of the rights claimed, linkage between the rights claimed and measures requested, a threat of irreparable harm, and urgency[2].

5. With respect to the first factor, the Court "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 *need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case*"[3]. For this reason, the Court's orders on provisional measures consistently emphasize that

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[1] Rules of Court, Article 74, paragraphs 1 and 2.

[2] See *Embassy of Mexico in Quito (Mexico* v. *Ecuador), Provisional Measures, Order of 23 May 2024,* para. 28; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 367, para. 15, p. 375, para. 44, p. 385, paras. 69-70.

[3] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024*, p. 11, para. 15 (emphasis added); accord *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan)*, *Provisional Measures, Order of 7 December 2021, I.C.J. Reports 2021*, p. 368, para. 16.

> "the decision given in the present proceedings in no way prejudges 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 to the merits themselves. It leaves unaffected the right of the [parties] to submit arguments in respect of those questions"[4].

Indeed, in several cases where it has found that it has prima facie jurisdiction, the Court, after full written and oral argument, has reconsidered this conclusion[5].

II. The Parties' dispute regarding jurisdiction

6. In the present case, there is a sharp dispute between the Parties regarding the Court's jurisdiction. The United Arab Emirates (UAE) contends that its reservation to Article IX of the Genocide Convention definitively bars the Court's jurisdiction, while Sudan contests the scope and interpretation, as well as the validity, of that reservation.

7. With respect to scope, Sudan claims that the text of the UAE's reservation differs from every reservation that has been entered with respect to the entirety of Article IX. Sudan observes that a reservation may either modify the operation of a treaty provision or exclude it entirely. It contends that all other reservations seeking to exclude Article IX have stated this unambiguously. This includes each reservation at issue in the Court's prior cases on the question[6].

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[4] E.g., *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua* v. *Germany), Provisional Measures, Order of 30 April 2024*, para. 25; *Embassy of Mexico in Quito (Mexico* v. *Ecuador), Provisional Measures, Order of 23 May 2024*, para. 38; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, p. 30, para. 84. This formulation has been used by the Court, with some variations, since its first Order on provisional measures in *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran), Interim Protection, Order of 5 July 1951, I.C.J. Reports 1951*, p. 93.

[5] See *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 110, para. 115 (*contra*. *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. 417, para. 28); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 140, para. 187 (*contra. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 388, para. 117); *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran), Preliminary Objection, Judgment*, *I.C.J. Reports 1952*, p. 115 (*contra. Anglo-Iranian Oil Co. (United Kingdom* v. *Iran), Interim Protection, Order of 5 July 1951, I.C.J. Reports 1951*, p. 93).

[6] Spain's reservation was made "in respect of the whole of Article IX" (*Legality of Use of Force (Yugoslavia* v. *Spain), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 772, para. 29) (hereinafter "*Yugoslavia* v. *Spain 1999*"). The United States' reservation provided that

> "with reference to Article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this Article, the specific consent of the United States is required in each case" (*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. 923, para. 21) (hereinafter "*Yugoslavia* v. *United States 1999*)*.*

Rwanda's reservation provided: "The Rwandese Republic does not consider itself as bound by article IX of the Convention" (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Provisional Measures, Order of 10 July 2002, I.C.J. Reports 2002*, p. 245, para. 69) (hereinafter "*DRC* v. *Rwanda 2002*").

8. Sudan notes that, unlike those reservations, the UAE reservation simply "makes a reservation with respect to article 9", without explaining the scope, and then continues to reflect the wording of Article IX, but omits the phrase "including . . . the responsibility of a State for genocide or for any of the other acts enumerated in article III"[7]. Sudan argues that this omission is significant, since the Court in the *Bosnian Genocide* case singled out this precise phrase — "including those relating to the responsibility of a State for genocide" — as an "unusual feature of the wording of Article IX"[8]. Sudan maintains that "[n]o other State has entered such a vague and non-specific reservation . . . which, moreover, omits this key wording".

9. Invoking the International Law Commission's Guide to Practice on Reservations to Treaties[9], Sudan maintains that the scope of the UAE's reservation must be interpreted in light of the unique object and purpose of the Genocide Convention to "safeguard the very existence of certain human groups"[10]. Sudan emphasizes the pivotal role that Article IX bestows on the Court in realizing that purpose. It urges that, against this backdrop, "the Court must consider whether the UAE's notably elliptical reservation is intended to exclude jurisdiction over its own State responsibility for genocide, despite the very careful exclusion of those very words". Sudan concludes that the UAE's reservation is capable of being interpreted so as not to preclude claims of State responsibility, and thus as not depriving the Court of jurisdiction.

10. With respect to validity, Sudan invites the Court to re-examine its brief 2006 holding in *DRC* v. *Rwanda*[11]. Sudan emphasizes that, *inter alia*, Rwanda's reservation to Article IX at issue in that case was unambiguous, and the question of its validity was not thoroughly examined since a total of 11 grounds for jurisdiction were before the Court. According to Sudan, the Court's portrayal in that case of Article IX as jurisdictional rather than substantive, while true from one perspective, did not examine whether exclusion of jurisdiction is incompatible with the Convention's object and purpose, given that Article IX is the provision recognizing State responsibility for genocide and establishes the Court as the sole judicial forum for considering such claims against States. Sudan notes that in the joint separate opinion devoted to this question, Judges Higgins, Kooijmans, Elaraby, Owada and Simma contended that it is "not self-evident that a reservation to Article IX could not be regarded as incompatible with the object and purpose", and that "this is a matter that the Court should revisit for further consideration"[12]. As this Court has since observed, "there is a correlation between the rights of members of groups protected under the Genocide Convention, the obligations incumbent

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[7] The relevant text of the UAE reservation is: "makes a reservation with respect to article 9 thereof concerning the submission of disputes arising between the Contracting Parties relating to the interpretation, application or fulfilment of this Convention".

[8] *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.

[9] ILC Guide to Practice on Reservations to Treaties (2011), 4.2.6 Interpretation of reservations ("A reservation is to be interpreted in good faith, taking into account the intention of its author as reflected primarily in the text of the reservation, as well as the object and purpose of the treaty and the circumstances in which the reservation was formulated.").

[10] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

[11] *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. 32, para. 67 (hereinafter "*DRC* v. *Rwanda 2006*").

[12] *DRC* v. *Rwanda 2006*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, p. 72, para. 29.

on States parties thereto, and the right of any State party to seek compliance therewith by another State party"[13].

11. Sudan further argues that both the Convention's *travaux préparatoires* and State practice support the view that Article IX forms part of the raison d'être of the treaty, but that neither was presented to or considered by the Court in 2006. With respect to State practice, it notes that 12 States have withdrawn their reservations to Article IX and a number of other States have objected to such reservations. Sudan finally maintains that the failure of a State to object to a reservation has no impact on the validity of the reservation[14].

12. In short, Sudan contends that the 2006 Judgment "does not provide the answer to the issue before" the Court today, and that, even if the UAE's reservation can only be interpreted as barring jurisdiction, it nevertheless is capable of being held invalid as incompatible with the object and purpose of the Convention.

13. The UAE, for its part, maintains that the intent of its reservation is clearly to preclude being bound by Article IX and that the Court has determined that reservations excluding the Court's jurisdiction are not contrary to the Convention's object and purpose. Accordingly, in the UAE's view, there is no basis on which the case can proceed.

14. Thus, unlike all prior cases in which the Court has considered reservations to Article IX of the Genocide Convention, the Court is now presented with a dispute over the interpretation of the relevant reservation[15]. It also is presented with objections to the applicability here of its 2006 holding, which drew the pointed concerns of six members of the Court[16].

15. In our view, provisional measures proceedings, with two hours of oral hearings allocated per party to address all the factors for provisional measures, are not — and should not be — the appropriate stage to conduct a thorough and final determination of such arguments.

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[13] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, pp. 19-20, para. 43, *citing 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*, p. 20, para. 52.

[14] ILC Guide to Practice on Reservations to Treaties (2011), para. 4.5.2 ("The nullity of an invalid reservation does not depend on the objection or the acceptance by a contracting State"); Vienna Convention on the Law of Treaties 1969, Art. 19.

[15] *Yugoslavia* v. *Spain 1999*, p. 772, para. 32; *Yugoslavia* v. *United States 1999*, p. 924, para. 24; *DRC* v. *Rwanda 2002*, pp. 245-246, para. 72; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Admissibility of the Declaration of Intervention, Order of 5 June 2023, I.C.J. Reports 2023*, p. 376, para. 94.

[16] See *DRC* v. *Rwanda 2006*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma; *DRC* v. *Rwanda 2006*, dissenting opinion of Judge Koroma.

III. The Court's practice regarding manifest lack of jurisdiction

16. Although the UAE's reservation may foreclose a finding of prima facie jurisdiction for purposes of provisional measures, this Court has recognized a distinction between the lack of prima facie jurisdiction and a *manifest* lack of jurisdiction. In *DRC* v. *Rwanda*, the Court found at the provisional measures stage both that it lacked prima facie jurisdiction — including as a result of Rwanda's reservation to Article IX — *and* that "in the absence of a manifest lack of jurisdiction, the Court cannot grant Rwanda's request that the case be removed from the List"[17]. The Court thus provided the DRC with the opportunity to present its arguments fully regarding, *inter alia*, the validity of Rwanda's reservation to Article IX of the Genocide Convention, before ruling on jurisdiction. Indeed, in its Judgment, the Court explicitly noted that

> "given the urgency which, *ex hypothesi*, characterizes the consideration of requests for the indication of provisional measures, it does not normally at that stage take a definitive decision on its jurisdiction. It does so only if it is apparent from the outset that there is no basis on which jurisdiction could lie, and that it therefore cannot entertain the case . . . The fact that in its Order of 10 July 2002 the Court did not conclude that it manifestly lacked jurisdiction cannot therefore amount to an acknowledgment that it has jurisdiction . . . *In declining Rwanda's request to remove the case from the List, the Court simply reserved the right fully to examine further the issue of its jurisdiction at a later stage*"[18].

In other cases, the Court's finding of lack of prima facie jurisdiction at the provisional measures stage also did not result in the removal of a case from the General List[19].

17. Only two cases have ever been removed from the General List for manifest lack of jurisdiction, and the Court has not exercised this power for over 25 years. The two were Yugoslavia's cases against Spain and the United States in *Legality of the Use of Force* in 1999, where the States' reservations excluding Article IX were unambiguous[20], and the Court observed that Yugoslavia "submitted *no argument* concerning" those reservations[21]. Thus, there was no dispute before the Court regarding jurisdiction when it concluded that it manifestly lacked jurisdiction. Moreover, Yugoslavia's claims against eight other States under the Genocide Convention remained in place. In a related practice, in a handful of cases in the mid-1950s, prior to the adoption of Article 38, paragraph 5, of the Rules of Court, the Court removed cases from the list "*ex officio*" where the

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[17] *DRC* v. *Rwanda 2002*, p. 219, para. 91.

[18] *DRC* v. *Rwanda 2006*, pp. 20-21, para. 25 (emphasis added).

[19] See, e.g., *Legality of Use of Force (Yugoslavia* v. *Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 124; *Legality of Use of Force (Yugoslavia* v. *Canada), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 259; *Legality of Use of Force (Yugoslavia* v. *France), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 363; *Legality of Use of Force (Yugoslavia* v. *Germany), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 422; *Legality of Use of Force (Yugoslavia* v. *Italy), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 481; *Legality of Use of Force (Yugoslavia* v. *Netherlands), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, p. 542; *Legality of Use of Force (Yugoslavia* v. *Portugal), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 656; *Legality of Use of Force (Yugoslavia* v. *United Kingdom), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, p. 826.

[20] See note 6, *supra*.

[21] *Yugoslavia* v. *Spain 1999*, p. 772, para. 31 (emphasis added); accord *Yugoslavia* v. *United States 1999*, p. 924, para. 23 (emphasis added).

Application identified *no basis* for jurisdiction, but merely invited the Respondent State to accept the Court's jurisdiction[22].

18. The above examples make clear that the situations in the past where the Court has summarily removed a case from the General List "were cases of manifest and patent lack of jurisdiction where it was not possible for the Court to take any procedural steps"[23]. All were cases where the Court was presented with *no* argument regarding its jurisdiction. This is not the situation here.

19. Nowhere in the Statute or Rules of Court is it contemplated that the Court may or should remove a case from its General List due to the determination of a manifest lack of jurisdiction at the provisional measures stage. Nor has the Court ever articulated any test for determining a "manifest lack of jurisdiction". The practice is rather based on the premise that "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"[24].

20. The Court's Rules also provide no mechanism for removing a disputed case from the General List in the absence of a request for provisional measures. In other words, if Sudan had not sought provisional measures, the Court would not have removed the case from the General List without any serious consideration of the jurisdictional questions.

21. Following a request for the indication of provisional measures, the Court must determine whether it has prima facie jurisdiction. It is inappropriate, however, for the Court to rule definitively on its lack of jurisdiction — particularly when the Court is presented with a dispute on jurisdiction — simply because the urgency and seriousness of a situation compel an applicant to make a request for the indication of provisional measures. Doing so in effect punishes Sudan for seeking provisional measures.

22. The approach provided for in the Court's Rules, and the appropriate approach instead in this case, would have been for the Court to address any threshold jurisdictional concerns through Article 79 of the Rules of Court. That Rule allows the Court to bifurcate the proceedings and decide

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[22] *Legality of Use of Force (Serbia and Montenegro* v. *Belgium), Preliminary Objections, Judgment, I.C.J. Reports 2004 (I)*, p. 294, para. 33. The Court did not find a "manifest lack of jurisdiction" in these Orders. The United States instituted five separate proceedings without claiming that the Respondent States had given any consent to the Court's jurisdiction. In each of these cases, the States refused to submit to the Court's jurisdiction. Under these circumstances, where "the application disclosed *no subsisting title of jurisdiction*, but merely an *invitation* to the State named as respondent to accept jurisdiction for the purposes of the case, the Court removed the cases from the List", *ibid.* (emphasis added).

[23] *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (*New Zealand* v. *France*) *Case, I.C.J. Reports 1995*, dissenting opinion of Judge Weeramantry, p. 324.

[24] *Yugoslavia* v. *Spain 1999*, p. 773, para. 35.

that questions concerning jurisdiction shall be determined first. In numerous prior cases[25], the Court accordingly has directed parties to address jurisdiction or admissibility without waiting for a respondent to raise preliminary objections to jurisdiction following the applicant's submissions on the merits. Under this Rule, both parties submit full pleadings setting forth their observations, submissions, and evidence relating to jurisdiction or admissibility, together with annexes of supporting documents, in the order determined by the Court. They are then heard orally by the Court according to its ordinary procedures. This is, in fact, what the Court did to address the jurisdictional questions in *DRC* v. *Rwanda* in 2006.

23. By removing the case from the General List, however, the Court has barred Sudan from having any opportunity to further develop its factual and legal claims on the scope and interpretation of its reservation as well as the validity of that reservation, and for the UAE to respond to those arguments. On the grounds that it "appears certain" that the Court will not be able to adjudicate (Order, para. 35), the Court has effectively issued a preliminary objection ruling at the provisional measures phase, without affording either Party the opportunity to be heard in full through written and oral proceedings.

24. Although the Court's judgments are binding only on the parties to a particular case[26], stability in the Court's jurisprudence is important for the expectations of States and the international legal system. Jurisprudence, however, must take into account new facts and circumstances. Dismissal of a case at such an early stage prevents the evolution of the Court's jurisprudence on reservations to Article IX of the Genocide Convention.

25. Nearly twenty years have passed since the Court's ruling in *DRC* v. *Rwanda* and there have been important developments in legal doctrine and State practice in that time. In light of this, the Court should have been able to determine whether the facts and circumstances of this case warranted a different outcome.

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[25] See *Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom of Great Britain and Northern Ireland, and United States of America), Preliminary Question, Judgment, I.C.J. Reports 1954*, pp. 22-23; *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, p. 5, para. 5; *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973*, pp. 50-51, para. 5; *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 255, para. 6; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 459, para. 6; *Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 5, para. 6; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 395, para. 4; *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 71, para. 4; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1994*, p. 114, para. 5; *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, pp. 435-436, para. 4; *Aerial Incident of 10 August 1999 (Pakistan* v. *India), Jurisdiction of the Court, Judgment, I.C.J. Reports 2000*, p. 16, para. 4; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, p. 6, para. 5; *DRC* v. *Rwanda 2006*, p. 13, para. 6; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I)*, pp. 259-260, para. 5; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *Pakistan), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (II)*, p. 556, para. 5; *Arbitral Award of 3 October 1899 (Guyana* v. *Venezuela), Jurisdiction of the Court, Judgment, I.C.J. Reports 2020*, pp. 460-461, para. 6.

[26] Statute of the Court, Article 59 ("The decision of the Court has no binding force except between the parties and in respect of that particular case").

IV. Conclusion

26. There has been growing recognition of the importance of State responsibility for genocide — not simply individual responsibility. Indeed, the Court's only substantive jurisprudence relating to State responsibility under the Convention has come since the *DRC* v. *Rwanda* Judgment[27].

27. In our view, in the interest of the sound administration of justice, Sudan's Application should not be removed from the General List, and Sudan should be allowed to contest the scope and validity of the UAE's reservation to Article IX of the Genocide Convention. This reflects a fundamental aspect of a State's "right to be heard" fully.

(Signed) Dalveer BHANDARI.

(Signed) Hilary CHARLESWORTH.

(Signed) Juan Manuel GÓMEZ ROBLEDO.

(Signed) Sarah H. CLEVELAND.

(Signed) Dire TLADI.

(Signed) Bruno SIMMA.

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[27] See *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)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment, I.C.J. Reports 2015 (I)*.