



### OSSERVATORIO SULLA CORTE INTERNAZIONALE DI GIUSTIZIA N. 4/2025

#### 1. THE NON RECOGNITION OF PRIMA FACIE JURISDICTION AND REMOVAL FROM THE LIST IN THE SUDAN v. UAE CASE: A DECISION REACHED WITH UNDUE HASTE?

##### 1. *Overview of the Case*

On 5 May 2025, the International Court of Justice (hereinafter “ICJ” or “the Court”) rendered its [Order in the case of Sudan v. United Arab Emirates](#), arising from the Application filed by Sudan on 5 March 2025. In this Application, Sudan instituted proceedings against the United Arab Emirates for alleged breaches of the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”), specifically because of the (mainly military) support provided to the RSF in the commission of acts against the Masalit group in Sudan allegedly amounting to genocide.

By a 14 to 2 majority, the Court dismissed Sudan’s request for provisional measures. In addition, by a narrower 9 to 7 majority, it removed the case from its General List, concluding that it manifestly lacked jurisdiction to entertain Sudan’s claims.

The Court rejected Sudan’s allegation that the UAE’s reservation to Article IX of the Genocide Convention was ambiguous or only partially excluded jurisdiction, clarifying that the omission of certain phrases did not introduce any uncertainty as to its effect. The majority held that the reservation’s reference to the «interpretation, application and fulfilment» of the Convention covered State responsibility (para. 29, *Order of 5 May 2025, Request for the Indication of Provisional Measures*; “Order”) and therefore excluded the Court’s jurisdiction over any dispute under Article IX to which the UAE might be a party (Order, para. 33).

##### 2. *Content of the Order: The Court’s rejection of Sudan’s request for provisional measures and its decision to remove the case from the General List*

In *Sudan v. United Arab Emirates*, Sudan sought to establish the jurisdiction of the International Court of Justice pursuant to Article 36(1) of the Statute of the Court and Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”). Article IX provided that «disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other

acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute». Although both Sudan (accession in 2003) and the United Arab Emirates (accession in 2005) were Contracting Parties to the Convention, the UAE, upon accession, had entered a reservation to Article IX. The reservation read as follows: «The Government of the State of the United Arab Emirates, [...] 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, to the International Court of Justice, at the request of any of the parties to the dispute».

In Sudan's view, in reality this reservation did not exclude the jurisdiction of the Court over disputes under Article IX. Although the UAE had explicitly declined to accept the Court's competence in such matters, Article IX could nonetheless, *prima facie*, still serve as a valid basis for the Court's jurisdiction. To this end, Sudan advanced two principal arguments. First, it argued that the UAE's reservation was vague and insufficiently precise, and therefore susceptible to an interpretation that did not entirely preclude the Court's jurisdiction. In particular, Sudan highlighted: a) the omission from the reservation's text of the language found in Article IX referring to disputes «including those relating to the responsibility of a State for genocide» (para. 24, *Order*), suggesting that such omission might reflect an intention to exclude only certain categories of disputes; and b) even assuming the reservation effectively excluded the Court's jurisdiction, it was nonetheless *prima facie* invalid as contrary to the object and purpose of the Genocide Convention (para. 30, *Order*). Emphasizing the centrality of the ICJ to the Convention's enforcement system—particularly in respect of its preventive and protective dimensions—Sudan argued that a reservation excluding the Court's jurisdiction over inter-State disputes fundamentally undermined the Convention's essential aims. Furthermore, Sudan maintained that its failure to object to the UAE's reservation at the time of accession was irrelevant for the purposes of assessing the reservation's compatibility with the Convention's object and purpose.

The Court rejected Sudan's position. It held that Sudan's reliance on Article IX of the Genocide Convention was precluded by the UAE's reservation entered upon accession. Contrary to Sudan's interpretation, and along the lines of the arguments advanced by the Emirates, the Court found that the reservation had been clearly and unequivocally formulated and expressly excluded its jurisdiction over “all disputes” arising under Article IX to which the UAE might be a party. In addition, the reservation was not incompatible with the object and purpose of the Convention, as it did not derogate from the substantive obligations imposed by the Treaty, but merely limited the Court's contentious jurisdiction. In support of its reasoning, the Court referred to its prior jurisprudence—including *Legality of Use of Force (Yugoslavia v. Spain; Yugoslavia v. United States)*, *DRC v. Rwanda*, and *Ukraine v. Russia*—in which comparable reservations to Article IX had been upheld. At the same time, the Court emphasized that the absence of its jurisdiction did not affect the binding character of the UAE's obligations under the Genocide Convention. Recalling its findings in *DRC v. Rwanda*, the Court reaffirmed that the UAE remained internationally responsible for any acts attributable to it that constituted a breach of those obligations (para.31, *Order*).

In the operative part of its Order, the Court thus decided to remove the case from the General List, having determined that it manifestly lacked jurisdiction to entertain Sudan's Application. While expressing concern for the humanitarian situation in Sudan, the Court underscored that its jurisdiction was confined to the legal basis invoked in the proceeding.

### 3. Distinguishing *Prima Facie* and Merits Jurisdiction: Reflections on Judge Yusuf's Dissenting Opinion

*Prima facie* jurisdiction constitutes a procedural threshold that the Court must assess prior to entertaining a request for the indication of provisional measures under Article 41 of its Statute. At this preliminary stage, the Court does not determine definitively whether it has jurisdiction over the merits. Rather, it examines whether the jurisdictional basis invoked by the applicant appears, on its face, to be legally tenable and capable—provisionally—of grounding the Court's competence to act ([Zimmermann et al., 2019](#)).

This threshold serves a dual function within the procedural economy of the Court. First, it prevents the exceptional mechanism of provisional measures from being employed in manifest absence of jurisdiction, thus upholding the principle of State consent. Second, it enables the Court to act expeditiously where there exists a credible risk of irreparable prejudice to rights that are plausibly protected under international law, and where a link exists between the requested measures and such rights ([Tams and Tzanakopoulos, 2021](#)).

The jurisprudence of the Court progressively delineates the contours of this threshold. In *The Gambia v. Myanmar* ([Provisional Measures, Order of 23 January 2020](#)), the Court reiterated that, at a preliminary stage, it must determine whether the dispute appears, at least plausibly, to fall within the scope of a treaty containing a compromissory clause capable of conferring jurisdiction. This approach is reaffirmed in *Ukraine v. Russian Federation* ([Provisional Measures, Order of 16 March 2022](#)), where the Court confirms that a plausible interpretation of the jurisdictional clause suffices to allow proceedings to continue, even where questions of jurisdiction and admissibility remain contested. Earlier jurisprudence, including *Bosnia and Herzegovina v. Serbia and Montenegro* ([Provisional Measures, Order of 8 April 1993](#)), had already made clear that the indication of provisional measures does not entail a conclusive finding on jurisdiction, but requires only that jurisdiction cannot be excluded at the provisional stage. This legal framework reflects a balance between procedural restraint and judicial responsiveness. The Court is mandated to act swiftly in order to prevent irreparable harm, particularly in cases concerning allegations of violations of peremptory norms such as the prohibition of genocide ([Duffy and Pinzauti, 2025](#)). Simultaneously, it must respect the consensual basis of its jurisdiction by refraining from intervention where the legal foundation relied upon is manifestly implausible or devoid of merit. By definition, provisional measures are non-prejudicial and inherently interim. Their function is not to anticipate the merits, but to preserve the rights of the parties and safeguard the integrity of the judicial process pending the Court's final adjudication ([Rosenne, 2005](#)).

In disputes implicating *jus cogens* norms—such as genocide—the equilibrium between judicial efficacy and procedural discipline becomes particularly complex. The prohibition of genocide, as a peremptory norm of international law, imposes *erga omnes* obligations on States. When the Court is seized of such cases, the threshold for *prima facie* jurisdiction acquires a functional role: it must be sufficiently flexible to allow the Court to fulfil its protective function, without compromising the procedural integrity necessary for a definitive jurisdictional determination at the merits phase ([Corrales R.F., 2023](#)).

The proceedings in *Sudan v. United Arab Emirates* illustrate this tension. As reflected in the separate and dissenting opinions, particularly that of [Judge Yusuf](#), the Court was called upon to reconcile the gravity of the allegations with the foundational principle of consensual jurisdiction. The dissenting opinion highlights the concern that dismissing the case too early—based on a jurisdictional assessment usually made at a later stage—could jeopardize access to justice in cases involving serious violations of international law ([Thomas, 2025](#)).

According to the dissenting opinion of Judge Yusuf, the Court improperly conflated the limited procedural threshold of *prima facie* jurisdiction, which is required solely for the purpose of considering a request for provisional measures, with a definitive determination on jurisdiction on the merits – a matter governed by Article 36(6) of the Statute and Articles 79 to 79ter of the Rules of Court. Article 36 (6) of the Statute provides that, in a dispute as to whether the Court has jurisdiction or not, the matter shall be settled by the decision of the Court. Article 79 of the Rules lays down the provisions for filing preliminary objections (para. 2 and 9, Dissenting Opinion of Judge Yusuf).

In Judge Yusuf's view, the majority's reliance on the vague and extra-statutory concept of «manifest lack of jurisdiction» (para. 10, D.O. Judge Yusuf) was both procedurally improper and legally unfounded. This formulation, which had no clear basis in either the Statute or the Court's jurisprudence, served to circumvent key procedural safeguards—particularly the submission of written pleadings and the holding of a hearing on jurisdictional objections, as required under Article 79bis of the Rules of Court. For Judge Yusuf, such a conclusion—one effectively amounting to a final determination on jurisdiction—ought to have been made only at the merits stage, through a formal judgment following full adversarial proceedings.

Judge Yusuf further emphasized that previous practice of the Court demonstrated that a lack of *prima facie* jurisdiction at the provisional stage did not preclude the Court from subsequently examining its jurisdiction on the merits. Conversely, the Court had on numerous occasions found *prima facie* jurisdiction for the purposes of provisional measures yet later dismissed the case for lack of jurisdiction at the merits stage. Examples cited included *Georgia v. Russian Federation*, *Qatar v. United Arab Emirates*, and various cases in the *Legality of Use of Force* series.

In his assessment, the *Sudan v. United Arab Emirates* case involved a genuine legal dispute over the validity and scope of the UAE's reservation to Article IX of the Genocide Convention. This set it apart from earlier cases, such as *Yugoslavia v. Spain* and *Yugoslavia v. United States*, where no substantive jurisdictional arguments were presented. In contrast, both Sudan and the UAE had submitted detailed legal positions, thereby evidencing the existence of a concrete jurisdictional controversy that merited full consideration through preliminary objections proceedings (*idem*, para. 13-16).

Nonetheless, Judge Yusuf observed that the Court, in its Order, contradicted its own established practice. Although the Order restated that the Court is not required to definitively decide on jurisdiction at the provisional measures stage, it nonetheless concluded that it “manifestly lacks jurisdiction,” effectively making a final determination on jurisdiction at a preliminary phase. This, according to Yusuf, amounted to a conceptual conflation of two distinct legal thresholds and a departure from the procedural architecture mandated by Article 36(6) of the Statute.

Moreover, he argued that even a finding of no *prima facie* jurisdiction ought not to have barred future examination of jurisdiction on the merits, particularly where jurisdiction was contested and unresolved. The majority's reasoning in *Sudan v. UAE*, in his view, departed from the Court's settled jurisprudence and function of provisional measures in legal contexts involving serious and evolving international obligations. Judge Yusuf concluded that by issuing what amounted to a final determination on jurisdiction at the provisional measures stage, the Court compromised its own procedural integrity and set a troubling precedent that might undermine access to justice in future cases implicating serious breaches of international law, including violations of peremptory norms (*idem*, para. 11 and 18).

Finally, the Judge challenged the Court's invocation of the «sound administration of justice» as a justification for removing the case from the General List. While acknowledging that this concept might serve to guide the Court's discretion in procedural matters where the Statute or Rules were silent, he insisted that it could not lawfully override or contradict explicit procedural guarantees. In particular, denying a party the opportunity to be heard on jurisdictional issues—under the pretext of administrative efficiency—was, in his view, incompatible with the fundamental procedural guarantees (*idem*, para. 25 and 26).

#### 4. *A Missed Opportunity to address the Heart(s) of the Problem?*

The radical approach adopted by the Court in removing the case from the General List resulted in an immediate determination of lack of jurisdiction, because, in light of the reservation formulated by the United Arab Emirates to Article IX of the Genocide Convention, that provision could not constitute—even *prima facie*—a jurisdictional basis in the present case. Consequently, the Court concluded that, lacking jurisdiction to entertain Sudan's application, it could not indicate the provisional measures requested for the protection of the rights invoked (para. 33 of the Order).

It may be argued that such a conclusion went too far. Indeed, Judges Bhandari, Charlesworth, Gómez Robledo, Cleveland, Tladi and Judge ad hoc Simma, in their [Joint Partly Dissenting Opinion](#), stressed that although the Emirati reservation might preclude a finding of *prima facie* jurisdiction for the purpose of provisional measures, the Court's consistent jurisprudence has always distinguished such an outcome from a finding of “manifest lack of jurisdiction.” Both Sudan and the dissenting judges emphasized that the case would have benefited from additional time—both to allow the Applicant fully to articulate its arguments and to enable the Court to carry out a more considered assessment of the scope of the reservation to Article IX of the Convention.

Against this background, a parallel may be drawn with the [DRC v. Rwanda case](#). In that case, the Court held at the provisional measures stage that it lacked *prima facie* jurisdiction because of Rwanda's reservation to Article IX, but at the same time clarified that only a manifest absence of jurisdiction could justify striking the case from the General List. The DRC was nevertheless allowed to develop its arguments on the validity of the reservation before the Court reached a definitive decision on jurisdiction. Subsequently, the Court reiterated that, given the urgency inherent in requests for provisional measures, it was not its practice to adopt final determinations on jurisdiction at that stage, unless the total absence of a jurisdictional basis is evident from the outset. By contrast, in the proceedings instituted by Sudan, the Court did not reserve the possibility of further examination of jurisdiction but instead adopted a final decision already at the provisional measures stage, removing the case from the General List. It is evident that, in doing so, the Court penalized the Applicant for having sought urgent relief, depriving it of the opportunity to develop fully its arguments concerning the scope and validity of the Emirati reservation, while simultaneously denying the Respondent the possibility to reply. By resorting to the formula that it was “certain” that the Court could not entertain the case (para. 35 of the Order), the Court in fact dismissed the case for lack of jurisdiction, yet without affording the parties the full adversarial process envisaged under Article 79 of the Rules, including written pleadings, annexed documentation, and oral hearings.

It should further be recalled that, in the past, removal from the General List was reserved to situations of manifest and unequivocal lack of jurisdiction, where no further

procedural step was possible. Historical practice confirms the exceptional nature of striking a case from the General List for manifest lack of jurisdiction: this occurred only twice, in the cases brought by Yugoslavia in 1999 against Spain and the United States (*Legality of the Use of Force*), where the reservations excluding Article IX were drafted in unequivocal terms and Yugoslavia had advanced no arguments on the point. In that context removal appeared justified, also because parallel proceedings were pending against eight other States on the basis of the Genocide Convention.

Even earlier, in the 1950s, before the adoption of Article 38(5) of the Rules of Court, the Court had on occasion struck cases *ex officio* from the List where the Application indicated no jurisdictional basis whatsoever, limiting itself to inviting the Respondent to accept the Court's jurisdiction. By contrast, in the present case a genuine dispute existed as to the interpretation and compatibility of the Emirati reservation with the Convention; the Court's decision to terminate the proceedings prevented not only Sudan from fully pursuing its claims, but also the Court itself from further developing its jurisprudence on a crucial and unresolved question, namely the validity of reservations to Article IX of the Genocide Convention.

The question of the reservation is therefore central and directly connected to Sudan's inability to present all of its evidence and observations during the full preliminary objections phase ([Pezzano, 2025](#)). In this respect, the *Joint Partly Dissenting Opinion* of Judges Bhandari, Charlesworth, Gómez Robledo, Cleveland, Tladi and Judge ad hoc Simma thus represents the most significant attempt, after *DRC v. Rwanda*, to revisit the Court's jurisprudence on reservations, building upon the arguments already advanced in the Joint Separate Opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma in the *Rwanda* case. At the heart of both positions lies the conviction that Article IX of the Genocide Convention is not a mere procedural clause, but rather the cornerstone of the entire inter-State enforcement mechanism of the Convention. In the absence of monitoring bodies or alternative procedures, Article IX remains the sole instrument available to States to implement the *erga omnes partes* obligations enshrined in the Convention, and the corresponding *erga omnes* obligations deriving therefrom. A reservation to that provision thus does not merely restrict access to justice but undermines the structural coherence of the Convention and frustrates its object and purpose ([Diamond, 2025](#)).

This critique finds support also in contemporary treaty law, as reflected in the International Law Commission's [Guide to Practice on Reservations to Treaties](#). In particular, the Commentary to Guideline 3.1.5.7 emphasizes that reservations to dispute settlement clauses, where such clauses are indispensable for the effective functioning of a treaty, affect the very "core" of the agreement and undermine its overall effectiveness (Commentary, p. 442). The Genocide Convention is particularly illustrative in this regard: unlike other United Nations human rights treaties, such as CERD, which establishes mandatory inter-State procedures (Arts. 11–13) and expressly prohibits reservations that would compromise its institutional architecture, the Genocide Convention relies exclusively on Article IX. It follows that a reservation to this provision cannot be regarded as a marginal defect, but rather as a flaw that strikes at the integrity of the conventional regime itself.

Although expressed in general terms, the ILC's approach reflects a broader evolution: from a voluntarist paradigm centred on State consent to an axiological model oriented towards the protection of fundamental values. It is precisely along this trajectory that the analysis of the dissenting judges is situated, insofar as they acknowledge that the object and purpose of a treaty encompass not only substantive obligations, but also the procedural mechanisms ensuring their effectiveness ([Botticelli, 2025](#)). The primary aim of the

Convention—to prevent and punish genocide—cannot be dissociated from the mechanism securing its implementation; accordingly, Article IX must be regarded not merely as a procedural provision, but also as one of substantive character. This reasoning had already been anticipated in [the Joint Dissenting Opinion annexed to the 1951 Advisory Opinion](#) observing that the object and purpose of the Convention extend beyond the mere suppression of genocide *stricto sensu*, to include the provisions ensuring its implementation, which form an integral part thereof. This approach was later reinforced by [Dissenting Opinion of Judge Gómez Robledo](#) and by the [Declaration of Judge ad hoc Simma](#), both of whom advocated for a more dynamic and contextual reassessment of the Court’s doctrine on reservations.

These positions highlight the tension between a traditional voluntarist interpretation, grounded in State consent, and the imperative of safeguarding fundamental rights. It is difficult to deny that the Court’s prevailing formalism risks overlooking the transformative nature of the Genocide Convention, which would lose much of its significance if States were permitted unilaterally to exclude the only available jurisdictional forum. In such a scenario, the *erga omnes partes* obligations of the Convention might be perceived as less effective, or at least their concrete implementation could raise uncertainties.

While not revolutionizing the law of reservations, *Sudan v. UAE* could nevertheless mark a turning point: the majority reaffirmed the validity of reservations to Article IX, but the dissenting opinions raised fundamental normative questions regarding their compatibility with the object and purpose of the Convention. This demonstrates that what might appear to be procedural issues may in fact profoundly affect the substance of international law. Although treaty reservations are not destined to disappear in the immediate future, their unconditional acceptance appears increasingly difficult to reconcile with situations in which collective interests and fundamental values are at stake. In this respect, the recognition of procedural guarantees emerges as a crucial factor for ensuring that reservations are framed and applied in a way that does not undermine the Convention’s effective operation.

The implications extend well beyond the present case: with numerous proceedings pending concerning genocide—including those instituted against Myanmar and Israel—the sustainability of reservations to Article IX will inevitably come under greater scrutiny ([Diamond, 2025](#)). Whether the teleological and purposive approach of the dissenting judges will gain broader support remains to be seen, but it must be recognized that the debate on reservations, consent, and collective enforcement has now moved to the very centre of contemporary international legal discourse.

## 5. Conclusions

The procedural rigidity described above may be understood within the broader, multifaceted, and indispensable role of the International Court of Justice in addressing matters of significant international concern ([Lang, 2013](#)). It must nonetheless be recalled that the procedural constraints reaffirmed by the Court do not diminish the substantive obligations incumbent upon States under the Genocide Convention and customary international law. Indeed, the Court’s function extends far beyond the mere settlement of disputes: it serves to clarify legal obligations, to reaffirm the applicability of *jus cogens* and *erga omnes* obligations, and to contribute to the filling of normative gaps in situations of conflict ([Pezzano, 2025](#)). The determination of the existence of a dispute constitutes a fundamental prerequisite for the exercise of the Court’s contentious jurisdiction ([Bonafè, 2017](#)). As a

judicial organ entrusted with adjudicating legal disputes between States, the Court must first ascertain whether a genuine dispute exists before it can proceed. This threshold requirement lies at the very heart of its judicial mandate. In the present case, there appeared to be such a dispute, and although judicial efficiency and procedural economy remain important considerations, they must be balanced against the necessity of a thorough jurisdictional examination, particularly in light of the emerging consensus among States that reservations to Article IX are incompatible with the Convention.

It is against this background that the premature dismissal of *Sudan v. United Arab Emirates* must be understood. That decision risked limiting the Court's capacity to exercise its judicial function, revealing the persistent tension between procedural formalism and substantive justice in international adjudication. As Judge Yusuf incisively observed, had Sudan not requested provisional measures, the Court would have been required to hear the Parties fully on jurisdiction under Article 36(6) of the Statute and could not lawfully have removed the case from its General List.

While acknowledging the difficulty for the Court in addressing the merits in light of the reservation entered by the United Arab Emirates to Article IX, it is nevertheless significant that such a restrictive approach prevented the Court—twenty years after *DRC v. Rwanda*—from engaging directly with the validity of a reservation to Article IX of the Genocide Convention and from pronouncing upon the possible consolidation of new customary rules in this area. This missed opportunity is particularly noteworthy given the evolution of customary international law and the *erga omnes* nature of the obligations imposed by the Convention. In this sense, the Court's choice to emphasize procedural considerations may have had the effect of limiting its ability to engage with the substantive dimension of the case; indeed, the approach of the Court may end up freezing existing rules and avoiding the debate on their possible evolution, thereby highlighting the delicate balance between formal requirements and the need to address fundamental issues raised by the Convention.

With several genocide-related cases pending, including those against Myanmar, Russia, and Israel, the validity of reservations to Article IX will inevitably be subjected to closer scrutiny. What is certain, however, is that the debate on reservations, *erga omnes* obligations, and the formation of new customary norms in this field has now assumed a central and unavoidable place in contemporary international law debate.

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