



OSSERVATORIO SULLA CORTE INTERNAZIONALE DI GIUSTIZIA N. 2/2026

1. BETWEEN ABSORPTION AND DISJUNCTION: UNVEILING THE COURT REASONING IN THE AZERBAIJAN V. ARMENIA 2024 PRELIMINARY OBJECTIONS JUDGMENT

[Application of the International Convention on the Elimination of All Forms of Racial Discrimination \(Azerbaijan v. Armenia\) Judgment of 12 November 2024](#)

1. Introduction

The International Court of Justice (ICJ) rendered its preliminary objection judgment on the Azerbaijan v. Armenia case on 12 November 2024 (hereinafter, 2024 Preliminary Objections Judgment). Proceedings were instituted by Azerbaijan on 23 September 2024 and concern Armenia's alleged policy of ethnic cleansing committed against Azerbaijanis in violation of the 1965 Convention on the Elimination of All Racial Discrimination (CERD).

Azerbaijan's claims cover a significant time period, including the First Karabakh War (1988–1994), which ended with the de-facto independence of the contested Nagorno (or Daghlygh) Karabakh region, an area within Azerbaijan's territory inhabited by an Armenian minority. Against this backdrop, the Court had to determine if the compromissory clause provided by Article 22 CERD could be retroactively interpreted in order to base the Court's jurisdiction over alleged CERD violations committed in the period between its entry into force for Armenia (23 July 1993) and for Azerbaijan (15 September 1996). Ultimately, the Court accepted the first preliminary objection raised by Armenia concerning the temporal limits of its jurisdiction and concluded it had no jurisdiction *ratione temporis* over the 1993–1996 period.

Among the several issues raised by the judgment (see, for instance, V. BOTTICELLI, *Greening CERD? The ICJ's (Over)Cautious Stance on Environmental Harm as Racial Discrimination in Azerbaijan v. Armenia*, in *EJIL Talk!*, 2024, <https://www.ejiltalk.org/greening-cerd-the-icjs-overcautious-stance-on-environmental-harm-as-racial-discrimination-in-azerbaijan-v-armenia/>), the Court has settled doubts concerning the degree of flexibility it affords to the temporal limits of its jurisdiction, consolidating a restrictive approach. In this regard, the judgment has sparked debate among dissenting judges and commentators as to whether Armenia's objection should have been characterised as a question of admissibility rather than jurisdiction, and as to the relevance of the collective character of the obligations enshrined in the CERD.

This contribution addresses these issues by examining the Court's reasoning in light of its broader jurisprudence on the temporal limits of its jurisdiction. It does so by contrasting two distinct approaches. The first conceives the consent-based structure of jurisdiction as

absorbing procedural and substantive concerns. It is argued that this approach reflects the ICJ's classical and restrictive conception of jurisdiction, which the judgment under discussion ultimately reaffirms. The second treats consent, jurisdiction, admissibility, standing, and the collective nature of CERD obligations as analytically separate issues, an approach advocated by dissenting judges and parts of the doctrine.

2. *Absorption and disjunction in light of the parties' submissions and the Court's conclusions*

The absorption approach is understood here as the classical method employed by the Court when addressing procedural issues. Under this approach, the Court treats the principle of consent as structural of both its judicial function and of the international legal order (see, on this point, P. PICONE, M. I. PAPA, *Giurisdizione della Corte internazionale di giustizia e obblighi erga omnes*, in P. PICONE (ed), *Comunità internazionale ed obblighi "erga omnes"*, Jovene, 2013, p. 692). This entails that the assessment of the parties' consent to confer jurisdiction upon the Court subsumes other legal issues, including the nature and effects of distinct procedural and substantive categories. A classic illustration of this reasoning is the Court's repeated affirmation that the rule of consent and the preemptory or collective character of certain norms of international law are conceptually distinct, and that the latter has no bearing on the existence of the Court's jurisdiction (see, inter alia, *East Timor*, Judgment, 1995, para 29; *Armed Activities on the Territory of the Congo [New Application: 2002]*, Judgment, 2006, para 64). By contrast, an approach by disjunction requires a decentralisation of the assessment of consent. This approach, challenges the coherence of the absorption model and argues that greater weight should be given, for instance, to the operationalisation of jus cogens norms, which should prevail over limitations derived from the rule of consent (see, inter alia, A. ORAKHELASHVILI, *Preemptory Norms in International Law*, Oxford University Press, 2008, p. 492; A. VERMEER-KÜNZLI, *A Matter of Interest: Diplomatic Protection and State Responsibility Erga Omnes*, in *The International and Comparative Law Quarterly*, 2007, p. 570; C. CHINKIN, *Third Parties in International Law*, Oxford University Press, 1993, pp. 215–6).

The parties' submissions are a clear illustration of these two contrasting approaches. The respondent State structured both its written and oral pleadings around the principle of consent, relying on the interplay between the principles of non-retroactivity, reciprocity, and equality of States. Armenia's first preliminary objection argued that the Court lacked jurisdiction *ratione temporis* over claims concerning events that occurred before CERD entered into force between the parties on 15 September 1996, or that such claims were inadmissible. It maintained that Article 22 CERD must be interpreted in light of the principle of non-retroactivity of treaties, as reflected in Article 28 Vienna Convention on the Law of Treaties (VCLT), and of reciprocity, which—together with the equality of States—constitutes a fundamental element of State consent to the Court's jurisdiction. The absorption dynamic is further reflected in Armenia's acknowledgment of the collective character of CERD obligations, which it reconciled with the recalled principles. By distinguishing between obligations *erga omnes* under customary law and obligations *erga omnes partes*, Armenia argued that the latter are owed only once the treaty is binding upon all relevant parties, that is, from the moment of its entry into force between them.

By contrast, Azerbaijan advocated an approach by disjunction, separating the issue of consent from the principles of non-retroactivity and reciprocity, the collective nature of CERD obligations, and standing. It argued that substantive obligations depend on the date on which the respondent State became party to the CERD, whereas the possibility to invoke

alleged violations of those obligations starts from the moment when the applicant becomes a party. On this basis, Azerbaijan contended that the relevant date for the Court's jurisdiction was 23 July 1993, since Article 28 VCLT would only bar claims predating the entry into force of CERD for Armenia, not those relating to the period between its entry into force for Armenia and Azerbaijan. This position was justified by the collective character of CERD obligations, which, as Azerbaijan submitted, are engaged for each party from the date the treaty enters into force for that party.

The Court largely endorsed Armenia's position, adopting an absorption-based approach. First of all, it characterised Armenia's preliminary objection as raising an issue of jurisdiction rather than admissibility (2024 Preliminary Objection Judgment, para 29). This characterisation enabled it to reiterate its recalled position that its jurisdiction is founded on consent, and that the nature of substantive obligations does not affect procedural rules governing jurisdiction (2024 Preliminary Objection Judgment, para 48). Framing the objection as jurisdictional further allowed the Court to narrow the issue to two questions: first, whether the principle of non-retroactivity of treaties 'has an effect on the Court's jurisdiction under Article 22 CERD'; and second, whether the *erga omnes partes* character of certain CERD obligations may affect the temporal scope of the Court's jurisdiction. With respect to the first question, the Court held that «the temporal scope of the Court's jurisdiction under a compromissory clause is determined by the scope of the temporal application of the substantive provisions of a treaty between the parties concerned» (2024 Preliminary Objections Judgment, para 45). It followed that the temporal scope of a compromissory clause is linked to the date on which the relevant conventional obligations became binding between all the parties to the dispute. The Court further reaffirmed that the scope of its jurisdiction is not influenced by the substantive nature of the obligations at issue, recalling that «the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things» (2024 Preliminary Objection Judgment, para 48). On this basis, it concluded that the «conferral of jurisdiction on the Court by the States parties [...] is governed by the principle of consent and the principles of reciprocity and equality of States» (2024 Preliminary Objection Judgment, para 50). Since no exception to these principles may be «admitted unless it were very clearly expressed» (Continental Shelf, Application to Intervene, Judgment, 1984, para 35), and since Article 22 CERD contains no express temporal limitation, the absorption approach leads to the conclusion that the temporal scope of the compromissory clause must be determined through a strict application of the requirement of consent and its corollaries.

Accordingly, consent—together with the principles of non-retroactivity and reciprocity—absorbed other legal issues relating to the collective character of CERD obligations and to standing. The opposing approach, namely that of disjunction will now be examined and subsequently assessed in light of the Court's case law.

3. *Dissent and Disjunction*

The Court's approach has been criticised by several judges and commentators precisely because of the overlap it draws between consent as the basis of jurisdiction, standing, and the collective character of the obligations embodied in CERD. In particular, dissenting judges have argued that the «real crux of the matter» (2024 Preliminary Objections Judgment, Separate Opinion of Judge Tomka, para 25) was whether Azerbaijan was entitled to claim violations of CERD obligations that allegedly occurred before it became a party to the CERD. According to this view, the Court conflated issues of jurisdiction and standing in a manner

that carries broader implications for the legal nature of obligations erga omnes partes. By relying on the principle of reciprocity to restrict the temporal scope of Article 22 CERD, the Court was criticised for effectively excluding any relevance of the collective character of the substantive obligations enshrined in the Convention. More fundamentally, proponents of a disjunctive approach disagree with the Court's statement that «[w]hen a State seeks to invoke the responsibility of another State, it must show that the responsible State owes the obligation allegedly breached to the claimant State» (2024 Preliminary Objections, para 52). That would be because, such a conclusion would limit obligations erga omnes partes to the mere protection of common interests of the parties to a treaty rather than establishing a sui generis «modalities for ensuring compliance with obligations under general international law» (M. I. PAPA, *Litigating Collective Obligations before the International Court of Justice: Progress, Challenges and Prospects*, in *The Law and Practice of International Courts and Tribunals*, 2024, p. 40). As noted by Judge Cleveland, the invocation of responsibility for breaches of obligations erga omnes partes is not based «on the existence of an inter partes reciprocal relationship between States parties with respect to those obligations» (2024 Preliminary Objections Judgment, Dissenting Opinion of Judge Cleveland, para 27).

Elements of a disjunctive approach have also been identified in limited case law relied upon by dissenting judges. In particular, reference has been made to the CERD Committee's decision in *Palestine v. Israel* (CERD Committee, CERD/C/100/3, 2021) and to the European Commission of Human Rights' decision in *Austria v. Italy* (European Commission of Human Rights, *Austria v. Italy, Decision on Admissibility*, 1961). In the former, the CERD Committee considered whether Article 11 CERD allowed it to examine acts committed by Israel before it became a party to the Convention. While the Committee first reaffirmed that it could examine violations occurring after Israel's accession in 1979, it added that «the Convention contains obligations erga omnes, and accepting that a State party could only invoke violations committed after it became a contracting party would undercut such obligations» (CERD Committee, CERD/C/100/3, para 14). Compared to the Court's reasoning, the Committee's approach avoids subsuming the invocation of responsibility and the effects of erga omnes obligations within the issue of consent. However, this divergence may be explained by the fundamentally different nature of the Committee's competence under Article 11 CERD, which is not comparable to the ICJ's jurisdiction under Article 22 CERD. The Court itself dismissed the relevance of the Committee's findings, noting that the Committee's role is to monitor compliance by States parties with their obligations under the Convention, whereas recourse to the ICJ aims at the judicial settlement of disputes between States that have accepted obligations vis-à-vis each other, potentially resulting in the engagement of international responsibility (2024 Preliminary Objections Judgment, para 54). A similar disjunctive logic is also reflected in the 1961 decision on admissibility of the European Commission of Human Rights in *Austria v. Italy*. There, the Commission rejected Italy's *ratione temporis* objection, holding that Austria's date of accession merely determined when it acquired the right to refer alleged breaches to the Commission, rather than limiting the temporal scope of the complaint. The Commission emphasised the objective character of the ECHR obligations, noting that the Convention was not intended to establish reciprocal rights and obligations in pursuit of individual national interests (European Commission of Human Rights, *Austria v. Italy, Decision on Admissibility*, 1961, p. 18). On this basis, the absence of treaty obligations owed by Italy to Austria at the relevant time did not preclude Austria from alleging a breach.

While some commentators have interpreted the Court's judgment as a form of "gatekeeping" (J. A. HOFBAUER, P. JANIG, *Azerbaijan v Armenia: Reciprocity and the Temporal Scope of Jurisdictional Clauses in Erga Omnes Partes Proceedings?*, in *EJIL Talk!*, 2024, <https://www.ejiltalk.org/azerbaijan-v-armenia-reciprocity-and-the-temporal-scope-of-jurisdictional-clauses-in-erga-omnes-partes-proceedings/>) or even as a response to Azerbaijan's ambiguous posture as both an injured and a non-injured State (A. GATTINI, *Il nuovo revirement della Corte Internazionale di Giustizia sull'accertamento della sua giurisdizione ratione temporis nell'affare sulle discriminazioni razziali fra l'Azerbaijan e l'Armenia*, in *Rivista di Diritto Internazionale*, n. 1, 2025, p. 156), it is argued here that such readings overstate the marginal significance granted by the Court to these considerations. Rather, the Court was not concerned with redefining the nature of obligations erga omnes partes, as it only consolidated its established jurisprudence on jurisdiction clarifying unresolved aspects of the temporal scope of its consent-based jurisdiction.

4. *Unveiling the Court's reasoning*

The Court began its reasoning by assessing whether the principle of non-retroactivity affects the temporal scope of its jurisdiction under Article 22 of CERD. It answered this question in the affirmative, holding that «the temporal scope of the Court's jurisdiction under a compromissory clause is determined by the scope of the temporal application of the substantive provisions of a treaty between the parties concerned» (2024 Preliminary Objections Judgment, para 45). In this context, the principle of non-retroactivity set out in Article 28 VCLT plays a crucial role, as it «specifies from which point in time the responsibility of a State party may be engaged for conduct that is not in conformity with its obligations under the treaty» (2024 Preliminary Objections Judgment, para 43). This clarification is significant, as it shows how the Court interprets the principle of non-retroactivity as ancillary to the principle of consent, which forms the basis of its jurisdiction. In light of the Court's reasoning, it follows that the principle of consent is fully respected only from the moment when CERD obligations are reciprocally binding upon both States. This approach clarifies earlier case law, in which an "absorption" approach to the temporal scope of compromissory clauses had been suggested but never fully articulated.

The relevance of the principle of non-retroactivity to the establishment of the Court's jurisdiction was clarified in the *Ambatielos* judgment of 1952. In that case, Greece exercised diplomatic protection on behalf of Nicolas Ambatielos, who alleged breaches of a ship-purchase contract by the United Kingdom, subsequent financial losses, and misconduct in judicial proceedings amounting to a denial of justice. In seeking to compel the United Kingdom to initiate arbitration under the 1886 Protocol, which had been replaced at the time of the proceedings by the 1926 Treaty of Commerce and Navigation, Greece relied on the Court's jurisdiction under the compromissory clause contained in the latter treaty. In particular, Greece advanced a "similar clauses" theory, according to which Article 29 of the 1926 Treaty conferred jurisdiction over claims based on provisions common to both treaties, even where the alleged breach had occurred prior to the entry into force of the 1926 Treaty. The Court rejected this argument, holding that it «would mean giving retroactive effect to Article 29 of the Treaty of 1926, whereas Article 32 of this Treaty states that the Treaty, which must mean all the provisions of the Treaty, shall come into force immediately upon ratification» (*Ambatielos*; Judgment, 1952, p 40). In this way, the Court clarified that the temporal scope of a compromissory clause lacking an explicit temporal limitation is

determined by the temporal application of the treaty itself. As the treaty is non-retroactive, in accordance with Article 28 VCLT, the Court's jurisdiction cannot extend to disputes arising before its entry into force. Nonetheless, an absorption-based approach to the temporal scope of compromissory clauses had already been hinted at in the *Mavrommatis* judgment of the Permanent Court of International Justice (PCIJ) in 1924. In that case, the Court stated that a compromissory clause «must be applicable to the dispute not merely *ratione materiae*, but also *ratione temporis* (The *Mavromantis Palestine Concession*, Judgment, 1924, p. 35). It further explained that, «in cases of doubt, jurisdiction based on an international agreement embraces all disputes referred to it after its establishment», and that the «reservation made in many arbitration treaties regarding disputes arising out of events prior to the conclusion of the treaty seems to prove the necessity for an explicit limitation of jurisdiction» (The *Mavromantis Palestine Concession*, Judgment, 1924, p. 35). These statements may be seen as an early articulation of the absorption approach, linking the absence of explicit temporal limitations in a compromissory clause to the presumption of jurisdiction *ratione temporis* over disputes arising after the treaty's entry into force. Indeed, where a State's consent to temporal limitations on jurisdiction is clearly expressed, the Court is bound to those limits.

In this regard, a distinction between declarations accepting the compulsory jurisdiction of the Court under Article 36(2) ICJ Statute and compromissory clauses helps to further clarify this point. As also noted by Judge Iwasawa, it has been generally observed that declarations recognizing the Court's compulsory jurisdiction typically contain specific formulas limiting the Court's temporal jurisdiction under Article 36(2), as illustrated by the so-called Belgian formula (2024 Preliminary Objections Judgment, Separate Opinion of Judge Iwasawa, para 3). By contrast, compromissory clauses have not been subject to similar treatment, since their temporal reach is inherently limited by the principle of non-retroactivity applicable to the treaties of which they form part. Indeed, no State has entered comparable temporal reservations to Article 22 CERD. This distinction proved particularly relevant in the *Certain Properties Preliminary Objections Judgment* of 2005. In that case, the Court concluded that it lacked jurisdiction under Article 27(a) of the European Convention for the Peaceful Settlement of Disputes (ECPSD), which provides that the Convention does not apply to «disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute». Notably, the Court analysed this provision in light of its case law concerning declarations made under Article 36(2) ICJ Statute that limit the temporal scope of jurisdiction (for an analysis of this case law, see R. HIGGINS, *Time and the Law: International Perspectives on an Old Problem*, in *The International and Comparative Law Quarterly*, 1997, pp. 501-52; and, more recently, G. GAJA, *Jurisdiction Ratione Temporis of the International Court of Justice*, in A. GATTINI, M. DIMETTO, *Time and International Adjudication. The Temporal Factor in Proceedings before International Courts and Tribunals*, Brill Nijhoff, 2025, pp. 51-58), on the ground that the clause «does not differ in substance from the temporal jurisdiction limitations dealt with in those cases» (*Certain Property*, Judgment, 2005, para 43). Accordingly, what ultimately mattered for the Court was whether the dispute had its «source or real cause» in facts that did not predate the critical date, namely the date on which the Convention entered into force between the parties to the dispute» (*Certain Property*, Judgment, 2005, para 49). It follows that, in *Certain Property*, the Court determined the critical date through a combined application of the principles of non-retroactivity and of reciprocity, even though this was not made explicit in its reasoning.

It is precisely this interplay between non-retroactivity and reciprocity that has attracted dissent due to inconsistencies with the 1996 Preliminary Objections judgment of the *Bosnia*

and Herzegovina v. Serbia and Montenegro case. Here, the Court examined a preliminary objection raised by Yugoslavia, which contended that the Court could only deal with events occurring after the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) had become applicable between the parties. The Court noted that Article IX Genocide Convention—similarly to Article 22 CERD—contains no clause limiting its jurisdiction *ratione temporis*, and that no relevant reservations was made. It therefore concluded that it had jurisdiction «with regard to the relevant facts which have occurred since the beginning of the conflict which took place in Bosnia and Herzegovina». The Court further added, in a rather unclear manner, that this conclusion was “in accordance” with the object and purpose of the Genocide Convention, referring explicitly to paragraph 31, where it recalled the *erga omnes* character of the obligations enshrined in the Convention (Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Judgment, 1996, para 34). On this basis, it has been argued that the application of the principles of non-retroactivity and reciprocity in the 2024 Preliminary Objection Judgment would amount to a revirement from the Court’s conclusion in paragraph 34 of the 1996 Genocide case judgment and that the Court’s attempt to distinguish the two recalled judgements by reference to succession is unconvincing (A. GATTINI, *Il nuovo revirement*, cit., p. 150). Nonetheless, the distinction drawn by the Court is correct. In 1996, the Court was not merely required to determine whether the Genocide Convention was applicable between the parties at the time the relevant events occurred. Rather, the issue was intrinsically linked to the succession of Bosnia and Herzegovina to the Convention. As the Court explained in paragraph 24 of the 1996 Genocide case judgment, Yugoslavia had also raised a preliminary objection based on the prematurity of Bosnia’s Application, which had been filed nine days before the Convention entered into force for Bosnia and Herzegovina pursuant to Article XIII Genocide Convention. The Court held that the procedural defect was irrelevant, since Bosnia and Herzegovina could have remedied it by filing a new application in the intervening period. Accordingly, the Court’s reasoning in 1996 was not grounded in the collective nature of the obligations under the Genocide Convention, but rather in the specific context of Bosnia and Herzegovina’s succession to the treaty (2024 Preliminary Objections Judgment, para 49). While it has been argued that the Court misread its own 1996 judgment (2024 Preliminary Objections Judgment, Declaration of Judge Yusuf, paras 7-9), Judge Tladi has persuasively observed that the relevant passages of the 1996 Judgment are obscure, insofar as they neither clarifies how the special character of the Genocide Convention affects the principles of reciprocity and non-retroactivity, nor clearly identify the critical date for establishing the Court’s jurisdiction *ratione temporis* (2024 Preliminary Objections Judgment, Dissenting Opinion of Judge Tladi, para 15). As a result, the Court never endorsed an approach by disjunction, a conclusion that is confirmed by subsequent case law. In particular, in the 2012 Belgium v. Senegal judgment, the Court held that the obligation to prosecute under Article 7(1) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment did not apply to Senegal with respect to acts committed before the Convention entered into force for that State. The Court further considered whether Belgium could invoke Senegal’s responsibility for acts committed after the Convention entered into force for Senegal but before its entry into force for Belgium, concluding that «Belgium has been entitled, with effect from 25 July 1999, the date when it became party to the Convention, to request the Court to rule on Senegal’s compliance with its obligation under Article 7, paragraph 1» (Questions relating to the Obligation to Prosecute or Extradite, Judgment, 2012, para 104). The Court did not rely on the *erga omnes partes* character of the obligation to prosecute when

addressing its jurisdiction *ratione temporis*, confining that qualification instead to the issue of Belgium's standing. On the contrary, the decisive factor was the relevant conduct occurred after the Convention had entered into force for both States (see also M. I. PAPA, *Litigating Collective Obligations before the International Court of Justice: Progress, Challenges and Prospects*, in *The Law and Practice of International Courts and Tribunals*, 2024, p. 47). This position was subsequently confirmed by the Court in its 2015 judgment in *Croatia v. Serbia*, where it held that Article IX of the Genocide Convention «is not a general provision for the settlement of disputes» and that its temporal scope is «necessarily linked to the temporal scope of the other provisions of the Genocide Convention» (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Judgment, 2015, para 93). In this respect, the 2024 Preliminary Objection judgment further clarifies that this temporal scope extends only from the date on which the parties to a dispute are reciprocally bound by the substantive obligations of the convention. Indeed, extending the Court's temporal jurisdiction to acts occurring prior to the entry into force of a treaty between the parties would be difficult to reconcile even with treaties embodying obligations *erga omnes partes* (G. GAJA, *The Protection of General Interests in the International Community*, in *Recueil des Cours*, 2011, p. 105).

5. Conclusions

According to the aforementioned analysis, the Court reaffirmed an absorption-based approach, whereby the temporal limits of its jurisdiction are determined through a combination of the principles of non-retroactivity and reciprocity, thus consolidating its earlier jurisprudence in *Ambatielos* and *Certain Properties*. The 2024 Preliminary Objection Judgment showcases continuity rather than novelty, as the overall tendency of the Court to employ a strict formalism in assessing procedural matters demonstrates. The Court's rigor in ascertaining whether the conditions laid down in compromissory clauses have been fulfilled is a clear example of this leitmotiv (M. I. PAPA, *Litigating Collective Obligations*, cit., p. 46). Most recently, in the 2025 Order on Provisional Measures in the *Sudan v. United Arab Emirates* case, the Court rejected Sudan's argument that the UAE's reservation to Article IX of the Genocide Convention could be interpreted in a manner that did not exclude the Court's jurisdiction. Consequently, the Court removed the case from the General List on account of a "manifest" lack of jurisdiction, emphasizing that «[i]n 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 not contribute to the sound administration of justice» (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan*, Order on Provisional Measures, 2025, para 35). What is particularly significant is the weight accorded to State consent, which is evident from the very first step in the Court's reasoning concerning the interpretation of the UAE's reservation. As the Court recalled, «it has jurisdiction in respect of States only to the extent that they have consented thereto» (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan*, Order on Provisional Measures, 2025, para 28). This position is deeply rooted in the Court's jurisprudence. Already in its 1927 judgment in *Factory at Chorzów*, the Permanent Court of International Justice stated that «[w]hen considering whether it has jurisdiction or not, the Court's aim is always to ascertain whether an intention on the part of the Parties exists to confer jurisdiction upon it» (*Factory at Chorzów*, Judgment, 1927, p 32). This assertion underscores that consent is the decisive element in the Court's jurisdictional analysis, to which

an apparent hierarchical value is granted and around which other procedural issues revolve and may ultimately be absorbed.

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