

CR 2025/1

International Court  
of Justice

THE HAGUE

Cour internationale  
de Justice

LA HAYE

YEAR 2025

*Public sitting*

*held on Thursday 10 April 2025, at 10 a.m., at the Peace Palace,*

*President Iwasawa presiding,*

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

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VERBATIM RECORD

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ANNÉE 2025

*Audience publique*

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

*sous la présidence de M. Iwasawa, président,*

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

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COMPTE RENDU

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

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

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

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

*as Agent;*

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

*as Co-Agent;*

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

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

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

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

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

Mr Alam Eldin Hamid Abdelatif Taha, Legal Adviser,

Mr Moatassim Mohammed Ahmed Sanosi, Legal Adviser,

HE Mr Sirajuddin Hamid Yousuf, Ambassador, Legal Adviser,

Mr Mohamed Elzain Mohamed, Legal Adviser,

Ms Safya Ahmed Elobaid Wagiaalla, Legal Adviser,

*as Counsel and Advocates;*

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***Le Gouvernement de la République du Soudan est représenté par :***

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

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

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

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M. Alam Eldin Hamid Abdelatif Taha, conseiller juridique,

M. Moatassim Mohammed Ahmed Sanosi, conseiller juridique,

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

M. Mohamed Elzain Mohamed, conseiller juridique,

M<sup>me</sup> Safya Ahmed Elobaid Wagiaalla, conseillère juridique,

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M<sup>me</sup> Rasha B.A. Yousif, ambassade de la République du Soudan au Royaume des Pays-Bas,

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

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

Mr Rashed Jamal Azzam, Senior Legal Researcher for International Relations, International Law Department, Ministry of Foreign Affairs,

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

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S. Exc. M<sup>me</sup> Ameirah Al Hefeiti, ambassadrice des Émirats arabes unis auprès du Royaume des Pays-Bas,

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

*as Counsel.*



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

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*comme conseils.*

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

Before we start our judicial proceedings today, I would first like to pay solemn tribute to the memory of Judge *ad hoc* Sreenivasa Rao, who sadly passed away on 17 March 2025. Judge Sreenivasa Rao sat as judge *ad hoc* in the case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*. During his long and illustrious career, Judge Sreenivasa Rao served the Indian Government at the highest level, heading the Legal and Treaties Division of the Ministry of External Affairs, and acting as chief legal adviser on international law from 1985 to 2002, as well as representing his country at various international legal conferences. He was a member of the International Law Commission from 1987 to 2006 and was elected as its chairman in 1995. He also acted as arbitrator in the *Bay of Bengal Maritime Boundary Arbitration* between India and Bangladesh between 2010 and 2014. That same decade he served as First Vice-President and President of the Institut de droit international. He was also invited to lecture on law as a visiting professor at various prestigious universities. These are just some of his many professional achievements in a life dedicated to upholding the value of international law, as a practitioner, an advocate, a judge and an academic. As a judge *ad hoc* at this Court, Judge Sreenivasa Rao is remembered with much fondness by his former colleagues, who admired his ability to combine sharp independent thought with a marked sense of collegiality. Judge Sreenivasa Rao was a leading international jurist and a man of great integrity. He will be missed.

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On behalf of the Members of the Court and myself, may I offer our sincere condolences to the family of Judge *ad hoc* Sreenivasa Rao. I invite you now to stand and observe a minute of silence in his memory.

*[The Court to observe a minute of silence]*

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Thank you very much. Please be seated. I shall now turn to the judicial proceedings before the Court today. The Court meets this morning, under Article 74, paragraph 3, of the Rules of Court, to hear the single round of oral argument of the Republic of the Sudan on its Request for the indication of provisional measures submitted in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan v. United Arab Emirates)*.

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The Court included upon the Bench no judge of the nationality of either Party. Accordingly, both Parties availed themselves of the right under Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. Sudan chose Mr Bruno Simma, and the United Arab Emirates, Mr Philippe Couvreur.

Article 20 of the Statute provides that “[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously”. Pursuant to Article 31, paragraph 6, of the Statute, the same provision applies to judges *ad hoc*, who have to make a new solemn declaration in each case where they participate, as stated in Article 8, paragraph 3, of the Rules of Court.

In accordance with the Court’s practice, I shall first say a few words about the career and qualifications of Judge Simma and Judge Couvreur before inviting each of them to make their solemn declarations.

Judge Bruno Simma, of German nationality, served as a Member of the Court from 2003 to 2012, and was appointed as judge *ad hoc* in the joined cases concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)* and in the case concerning the *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*. Judge Simma studied law at the University of Innsbruck, where he obtained a doctorate degree in 1966. In 1973, he became Professor of International Law and European Community Law at the University of Munich, where he went on to serve as Dean of the Faculty of Law between 1995 and 1997. Judge Simma also has a long-standing academic career at the University of Michigan Law School, where he began teaching

in 1986, was appointed Professor of Law in 1987 and where a Chair was created in his name in 2009. He has twice been the Director of Studies of the Hague Academy of International Law, and in 2009 he delivered the prestigious general course in public international law. His publications in international law are numerous and well known. Judge Simma was a member of the International Law Commission from 1996 to 2003. He has appeared as advocate in various cases before the Court and has sat as arbitrator in numerous arbitral tribunals. Since 1 December 2012, he has been an arbitrator at the Iran-United States Claims Tribunal. Judge Simma is the recipient of numerous awards, including honorary doctorate degrees.

Judge Couvreur, of Belgian nationality, served as the Registrar of the Court from 2000 to 2019, having previously held various positions in the Court's Registry since 1982, including that of Principal Legal Secretary. Judge Couvreur studied law and philosophy at the University of Namur and the Catholic University of Louvain, before completing his postgraduate studies in international and European law at King's College London and the Complutense University of Madrid. In parallel with his illustrious career at the Court, Judge Couvreur has taught law as a visiting professor and guest lecturer at various universities. Judge Couvreur has also given courses at both the Hague Academy of International Law and the Xiamen Academy of International Law.

Since stepping down from his functions as Registrar, Mr Couvreur was appointed as judge *ad hoc* in the case concerning *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)* and in the case concerning the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, both currently pending before the Court. He is also a judge *ad hoc* at the International Tribunal for the Law of the Sea and serves as an arbitrator in investor-State proceedings.

Judge Couvreur is an associate member of the Institut de droit international, as well as a member of numerous learned societies. Throughout his outstanding career, he has authored many articles, monographs and papers in French, English and Spanish on a wide range of topics of international law, and with a particular focus on the Court.

In accordance with the order of precedence fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Judge Simma to make the solemn declaration prescribed by the Statute, and I would request all those present to rise. Judge Simma, you have the floor.

Judge *ad hoc* SIMMA: Thank you, Mr President.

“I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.”

The PRESIDENT: I thank you, Judge Simma. I now invite Judge Couvreur to make the solemn declaration prescribed by the Statute. Judge Couvreur, you have the floor.

M. le juge *ad hoc* COUVREUR : Merci, Monsieur le président.

« Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience. »

The PRESIDENT: I thank you, Judge Couvreur. Please be seated. I take note of the solemn declaration made by Judge *ad hoc* Simma and Judge *ad hoc* Couvreur and declare them duly installed as judges *ad hoc* in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan (Sudan v. United Arab Emirates)*.

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I shall now recall the principal steps of the procedure in the present case.

On 5 March 2025, the Government of Sudan filed in the Registry of the Court an Application instituting proceedings against the United Arab Emirates with regard to a dispute concerning alleged violations by the latter of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide in Sudan, most notably in West Darfur. I shall refer to this Convention as the “Genocide Convention”. To found the jurisdiction of the Court, the Applicant invokes Article 36, paragraph 1, of the Statute of the Court and Article IX of the Genocide Convention. Together with its Application, Sudan submitted a Request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court.

The Registrar will now read out the passage from the Request specifying the provisional measures which the Government of Sudan is asking the Court to indicate, pending a final judgment in the case. You have the floor, Mr Registrar.

The REGISTRAR: Thank you, Mr President. I quote:

“(1) The United Arab Emirates shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Masalit in the Republic of the Sudan, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and

(d) imposing measures intended to prevent births within the group.

(2) The United Arab Emirates shall, in relation to the members of the Masalit group, ensure that any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempts to commit genocide, or of complicity in genocide.”

The PRESIDENT: I thank the Registrar. Immediately after the Application and the Request for the indication of provisional measures were filed, the Registrar transmitted an original copy thereof to the Government of the United Arab Emirates. He also notified the Secretary-General of the United Nations.

According to Article 74, paragraph 1, of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Paragraph 2 of the same Article states that the Court shall proceed to a decision on the request as a matter of urgency. This imperative must be, however, balanced with the need to fix the date of the oral proceedings in such a way as to afford the parties an opportunity of being represented at the hearings. The Court decided that these oral proceedings would be held today, on 10 April 2025.

By letter dated 3 April 2025, the Agent of Sudan informed the Court that his Government wanted to amend the measures requested in paragraph 22 of its Request for the indication of provisional measures dated 5 March 2025. The Registrar will now read out the amended measures. You have the floor, Mr Registrar.

The REGISTRAR: Thank you, Mr President. I quote:

“(1) The United Arab Emirates shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Masalit group in the Republic of the Sudan, take all measures within its power

to prevent the commission of all acts within the scope of Article II of this Convention, in particular,

- (a) killing members of the group;
  - (b) causing serious bodily or mental harm to the members of the group;
  - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
  - (d) imposing measures intended to prevent births within the group.
- (2) The United Arab Emirates shall, in accordance with its obligations under the Genocide Convention, in relation to the members of the Masalit group, refrain from any conduct amounting to complicity in the commission of any of the acts described in point (1) above by any irregular armed units, or by any organization or persons.
- (3) The United Arab Emirates shall submit a report to the Court on all measures taken to give effect to this Order within one month, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court.”

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The PRESIDENT: I would now like to welcome the delegations of the Parties. I note the presence of the Agents and counsel of Sudan and the United Arab Emirates. This morning, the Court will hear the single round of oral argument of Sudan, which has submitted the Request for the indication of provisional measures. It will hear the single round of oral argument of the United Arab Emirates this afternoon, at 4 p.m. Both Parties have a maximum allotted time of two hours each for their respective oral presentations.

At today’s sitting, Sudan may, if required, avail itself of a short extension beyond 12 noon, in view of the time taken up by these introductory remarks.

Before giving the floor to the Agent of Sudan, I wish to draw the attention of the Parties to Practice Direction XI, which states as follows:

“In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose.”

I now give the floor to the Agent of Sudan, His Excellency Dr Muawia Osman Mohamed Khair. You have the floor, Sir.

Mr KHAIR:

### INTRODUCTION

1. Mr President, Madam Vice-President, Members of the Court, it is an honour to appear before you as the Agent of the Republic of the Sudan.

2. A genocide is being committed against the ethnic group the Masalit in the west of our country. The Masalit are a non-Arab African ethnic group. The genocide against the Masalit is being carried out by the Rapid Support Forces (RSF), predominantly Arabs from Darfur, with the support and complicity of the United Arab Emirates (UAE).

3. It was recognized during the drafting of the Genocide Convention that the commission of genocide will “nearly always involve the complicity of a State”<sup>1</sup>. That is so in the large-scale extermination of the Masalit in the present case. The ongoing genocide would not have been possible without the complicity of the UAE, including through its continued sponsorship and shipments of arms to the RSF.

4. The UAE continues to supply the RSF with increasingly heavy arms through cargo flights to Amdjarass airport in neighbouring Chad. Last year, 10,000-15,000 persons were killed in the RSF’s massacre of the Masalit population of El Geneina in West Darfur. With increased firepower and support from the UAE, the RSF has now laid siege to El Fasher in North Darfur. El Fasher contains large camps of 10,000 internally displaced persons from the Masalit tribe. The genocidal violence that will ensue if El Fasher now falls, and the RSF takes it, does not bear thinking. There is an immediate risk of a repeat of the extermination of the Masalit at El Geneina. The direct logistic and other support that the UAE has provided and continues to provide to the RSF and their affiliated militia has been and continues to be the primary driving force behind genocide now taking place including through killing, rape, forced displacement, looting and the restriction of public and private properties.

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<sup>1</sup> Ninety-Eighth Meeting, 47. Continuation of the consideration of the draft convention on genocide: report of the Economic and Social Council, *Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, Summary Records of Meetings*, 1948, p. 375.



5. Professor Bjorge will set out the facts. Mr Wordsworth, KC, will address the Court's prima facie jurisdiction. Mr Aughey will deal with plausibility. Then Professor Palchetti will deal with the risk of irreparable prejudice and the provisional measures requested by the Sudan.

6. Mr President, I thank you and ask that you now invite Professor Bjorge to the podium.

The PRESIDENT: I thank the Agent of Sudan for his statement. I now invite Professor Eirik Bjorge to address the Court. You have the floor, Sir.

Mr BJORGE:

### THE FACTS

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Sudan to address the facts. As I will explain, including by reference to UN sources, there can be no doubt that the Masalit people is currently being subjected to genocide, and that there is serious evidence that the UAE is failing to prevent this and is complicit. I will also deal very briefly with the existence of the dispute in case the UAE seeks to raise this as a point.

2. It is notorious that, since November 2023, the Masalit non-Arab ethnic group in the Sudan has been targeted and subjected to acts of genocide and other prohibited acts, which continue to this day. The perpetrators of these acts are members of the Rapid Support Forces (RSF), a militia comprised of Arab Darfuris, led by a former commander of the Janjaweed militia, General Mohammed Hamdan Dagalo<sup>2</sup>.

3. The situation was accurately summarized as follows by the current US Secretary of State, the honourable Marco Rubio, during his confirmation hearing before the US Congress in January of this year:

“By its very definition, *this is a real genocide*. This is the ethnic targeting of specific groups for extermination, for elimination, by groups, by the way, that are being funded by nations that we have alliances and partnerships with in other parts of the world, and we should express that clearly. I think — and part of our engagement with *the UAE*, and it will have to be a pragmatic engagement — I mean, they are important players in what we hope to resolve in the Middle East, and I think as part of that

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<sup>2</sup> D. Walsh, “Often Rumored Dead, Sudanese General Takes a Victory Tour”, *The New York Times*, 19 January 2024.

engagement we also need to raise the fact that they *are openly supporting an entity that is carrying out a genocide*<sup>3</sup>.

4. Against this backdrop — and in circumstances where the UAE’s open support for the RSF continues notwithstanding the fact that the RSF’s ongoing siege of El Fasher is increasingly at serious risk of culminating in further acts of genocide, and the RSF’s attacks against other gathering places in West and North Darfur for members of the Masalit people who have been displaced by the conflict have also escalated over the past month — the Sudan had no choice but to approach the Court for urgent interim relief.

5. It is important to understand why the current US Secretary of State felt able to express the situation in the forthright terms he used.

6. In the spring of 2023, the RSF was increasingly capturing territory in Darfur. During clashes in El Geneina in West Darfur in May-June 2023, the RSF and militias aligned with it carried out “large-scale attacks on civilians, the Masalit population in particular”<sup>4</sup>. They conducted a systematic campaign to extirpate the city’s Masalit community<sup>5</sup>. The massacre by the RSF has been described as “a deluge of atrocities”<sup>6</sup> and a “killing frenzy”<sup>7</sup>. Between 10,000 and 15,000 persons were killed<sup>8</sup>. In this and other atrocities, the RSF has targeted gathering sites for internally displaced persons (IDPs)<sup>9</sup>, which have been systematically attacked, burned, and destroyed<sup>10</sup>.

7. In November 2023, the United Nations Special Adviser on the Prevention of Genocide, Alice Wairimu Nderitu, described the events in West Darfur in the following terms:

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<sup>3</sup> The Nomination of Hon. Marco Rubio to the US Secretary of State, Hearing before the Committee on Foreign Relations, United States Senate, One Hundred Nineteenth Congress, First Session, 15 January 2025, pp. 51-52, emphasis added, available at: [https://www.foreign.senate.gov/imo/media/doc/6df93f4b-a83c-89ac-0fac-9b586715afd8/011525\\_Transcript\\_Nomination%20of%20Marco%20Rubio%20to%20be%20Secretary%20of%20State.pdf](https://www.foreign.senate.gov/imo/media/doc/6df93f4b-a83c-89ac-0fac-9b586715afd8/011525_Transcript_Nomination%20of%20Marco%20Rubio%20to%20be%20Secretary%20of%20State.pdf); judges’ folder, tab 2.

<sup>4</sup> Letter dated 15 January 2024 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024, para. 4; see also Security Council, 9632nd meeting, 21 May 2024, S/PV.9632, p. 4 (Ms Alice Wairimu Nderitu, Special Adviser to the Secretary-General on the Prevention of Genocide).

<sup>5</sup> United Nations Security Council, 9822nd meeting, 19 December 2024, S/PV.96822, pp. 5-6 (Bahr Al-Din).

<sup>6</sup> Human Rights Watch, “*The Massalit Will Not Come Home*”, *Ethnic Cleansing and Crimes Against Humanity in El Geneina, West Darfur, Sudan* (2024), p. 1.

<sup>7</sup> “The Slaughter of El Geneina: How Arab fighters carried out a rolling ethnic massacre in Sudan”, *Reuters*, 22 September 2023, available at: <https://www.reuters.com/investigates/special-report/sudan-politics-darfur/>.

<sup>8</sup> Letter dated 15 January 2024 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024, para. 54.

<sup>9</sup> See Statement by Ms Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the renewed escalation of violence in Darfur, Sudan, 14 November 2023, available at: [https://www.un.org/en/genocideprevention/documents/UN\\_Special\\_Adviser\\_statement\\_Sudan\\_14\\_Nov\\_2023.pdf](https://www.un.org/en/genocideprevention/documents/UN_Special_Adviser_statement_Sudan_14_Nov_2023.pdf).

<sup>10</sup> Letter dated 15 January 2024 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024, para. 88.

“rape and other forms of sexual and gender-based violence, including sexual slavery, have been rampantly perpetrated as a weapon of war; entire villages have been burnt, often with the plan to attack announced in advance; derogatory and dehumanizing language — such as ‘slaves’ — has been persistently used as an element of incitement to violence; conditions of life have been deprived, with medical facilities and transportation destroyed; and access to water and electricity deliberately obstructed. This all points to risk factors for genocide”<sup>11</sup>.

8. Instrumental to the RSF’s prosecution of its campaign of genocide since June 2023 was its securing of new supply routes for weapons, equipment, and logistics for use in the conflict. As a result, the RSF was now able to use several types of heavy and sophisticated weapons and these played a major role in its capture of El Geneina<sup>12</sup>.

9. In January 2024, the UN Security Council’s Panel of Experts on the Sudan, whose members had been appointed by a composition of the Security Council which included the UAE itself, reported that the RSF’s main supply route for arms is through eastern Chad, which borders West Darfur.

10. The Panel assessed allegations that “a heavy rotation of cargo planes coming from Abu Dhabi International Airport to Am Djarass airport in eastern Chad . . . transporting weapons, ammunition and medical equipment for [the] RSF”<sup>13</sup>, as well as the UAE’s denial and assertions that its cargo planes had a purely humanitarian purpose<sup>14</sup>. The Panel concluded that the allegations against the UAE were “credible”:

*“According to information gathered by the Panel from sources in Chad and Darfur, the allegations were credible. Several sources in eastern Chad and Darfur, including among local native and administrative leaders and armed groups operating in those areas, reported to the Panel that, several times per week, weapons and ammunition shipments were unloaded from cargo planes arriving at Am Djarass airport, then loaded on trucks.”*<sup>15</sup>

11. Continuing to seek to operate under the cloak of humanitarianism, the UAE in September 2024 built a field hospital emblazoned with the banner of the Red Crescent next to the

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<sup>11</sup> Statement by Ms Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the renewed escalation of violence in Darfur, Sudan, 14 November 2023, available at: [https://www.un.org/en/genocideprevention/documents/UN\\_Special\\_Adviser\\_statement\\_Sudan\\_14\\_Nov\\_2023.pdf](https://www.un.org/en/genocideprevention/documents/UN_Special_Adviser_statement_Sudan_14_Nov_2023.pdf); judges’ folder, tab 3.

<sup>12</sup> Letter dated 15 January 2024 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024, paras. 39-40.

<sup>13</sup> *Ibid.*, para. 41, citing D. Walsh, C. Koettl and E. Schmitt, “Talking peace in Sudan, the U.A.E. secretly fuels the fight”, *The New York Times*, 29 September 2023 and N. Bariyo and B. Faucon, “A U.S. ally promised to send aid to Sudan. It sent weapons instead”, *The Wall Street Journal*, 10 August 2023.

<sup>14</sup> Letter dated 15 January 2024 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024, para. 41 and Annex 5.

<sup>15</sup> *Ibid.*, para. 42; judges’ folder, tab 4.

Amdjarass airfield. But tellingly, when the Red Cross sought to visit in order to understand what the UAE operation was doing under its protected banner, the officials were turned away for “security reasons”<sup>16</sup>. The assessment of the Sudan’s General Intelligence Service was that

“[t]he unnatural expansion of activity in the Amdjarass Airport facilities, the flights to the airport, and the heavy presence of combat vehicles and military camps are not consistent with the argument that this was for the purpose of providing the needs of the field hospital”<sup>17</sup>.

12. An adviser in the American NGO the Sudan Conflict Observatory, Justin Lynch, put it this way: “[t]here’s no other plausible explanation for these airlifts except for weapons support to the RSF”; “[n]o one is fooled”<sup>18</sup>. Likewise, the Sudanese General Intelligence Service has concluded that the UAE’s field hospital at Amdjarass airport “is the primary supply and support hub for the enemy”<sup>19</sup>. It has also determined that the UAE is continuing to use N’Djamena airport, in western Chad, for the same purpose<sup>20</sup>.

13. The UAE, for its part, has sought to characterize such conclusions as nothing more than “a duplicitous media disinformation campaign”<sup>21</sup>.

14. Meanwhile, on 22 January 2024, the European Union designated Al Junaid Multi Activities Co. under its Sudan sanctions régime. This Sudanese holding company, which had already been designated under the United Kingdom’s sanctions régime<sup>22</sup>, is owned by Abdul Rahim Dagalo, the brother of General Hamdan, and his two sons. The reasons given by the European Union for the designation included a finding that

“[t]he RSF is also using Al Junaid’s gold production and exports to secure military support from the United Arab Emirates (UAE), to which most of Sudan’s gold production is smuggled, . . . including the provision of weapons used by the RSF in the conflict in Sudan”<sup>23</sup>.

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<sup>16</sup> D. Walsh and C. Koettl, “How a U.S. Ally Uses Aid as a Cover in War”, *The New York Times*, 21 September 2024.

<sup>17</sup> Intelligence report, General Intelligence Service (Sudan), October 2024, para. 21, Factual bundle, p. 30.

<sup>18</sup> K. Houreld and H. Haroun, “Sudan’s civil war fueled by secret arms shipments from UAE and Iran”, *Washington Post*, 15 October 2024, available at: <https://www.washingtonpost.com/world/2024/10/15/sudan-war-weapons-uae-iran/>.

<sup>19</sup> Intelligence report, General Intelligence Service (Sudan), October 2024, para. 2, Factual bundle, p. 28.

<sup>20</sup> Intelligence report, General Intelligence Service (Sudan), March 2025, para. 19, Factual bundle, p. 71.

<sup>21</sup> Letter dated 26 June 2024 from the Chargée d’affaires a.i. of the Permanent Mission of the United Arab Emirates to the United Nations addressed to the President of the Security Council, 27 June 2024, S/2024/510, p. 4.

<sup>22</sup> <https://assets.publishing.service.gov.uk/media/67321b030d90eee304badb5b/sanctionsconlist.pdf> (entity 1).

<sup>23</sup> European Union, Council Implementing Regulation (EU) 2024/384, Annex 1, p. 6, available here: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202400384;judges%20folder,tab%207](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400384;judges%20folder,tab%207).

15. On 21 May 2024, the United Nations Special Adviser on the Prevention of Genocide briefed the Security Council in a meeting where the UAE was invited to participate. She took the occasion at this meeting

“to raise the alarm, clearly and unequivocally, about the ongoing situation in the Sudan, which bears all the marks of a risk of genocide, including strong allegations that the crime has already been committed. Civilians are far from being protected, and civilian populations are being targeted based on their identity. In Darfur and El Fasher, civilians are being attacked and killed because of the colour of their skin, their ethnicity and who they are”<sup>24</sup>.

16. The Special Adviser expressed “extreme concern about the attacks on the ethnic Masalit community in West Darfur, allegedly perpetrated with an explicit intent to destroy”<sup>25</sup> and emphasized that

“[t]he human rights and humanitarian catastrophe unfolding in the Sudan contravenes the very essence of the international obligations to prevent and punish the crime of crimes, as enshrined by the Genocide Convention . . . The risk of genocide exists in the Sudan. It is real, and it is growing every single day”<sup>26</sup>.

17. On 5 June 2024, the Special Adviser observed in connection with El Fasher that it was “unquestionable that risk factors and indicators for genocide and related crimes are present, and the risks are increasing”<sup>27</sup>. And, on 20 September 2024, she expressed grave concern over reports that the RSF had breached the third defensive line around El Fasher, with one of El Fasher’s IDP camps, Abu Shouk, “teetering on the edge of disaster”<sup>28</sup>.

18. Further clear evidence of the UAE’s complicity emerged in the aftermath of the battle of Jebel Moya in October 2024. The defeated RSF forces left behind arms that can only have been provided by the UAE, including ammunition crates marked “United Arab Emirates, GHQ Armed Forces, Joint Logistics Command, PO Box. No. 2805, Abu Dhabi, UAE”<sup>29</sup>.

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<sup>24</sup> Security Council, 9632nd meeting, 21 May 2024, S/PV.9632, p. 3 (Ms Alice Wairimu Nderitu, Special Adviser to the Secretary-General on the Prevention of Genocide); judges’ folder, tab 8.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> United Nations Press Release, Statement by Ms Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the situation in El Fasher, North Darfur, 5 June 2024, available at: [https://www.un.org/en/genocideprevention/documents/240605\\_Special\\_Adviser\\_Nderitu\\_Statement\\_Sudan.pdf](https://www.un.org/en/genocideprevention/documents/240605_Special_Adviser_Nderitu_Statement_Sudan.pdf); judges’ folder, tab 9.

<sup>28</sup> United Nations Press Release, Statement by Ms Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the escalation of the situation in El Fasher, North Darfur, 20 September 2024, available at: [https://www.un.org/sites/un2.un.org/files/usg\\_nderitu\\_statement\\_el\\_fasher\\_200924.pdf](https://www.un.org/sites/un2.un.org/files/usg_nderitu_statement_el_fasher_200924.pdf); judges’ folder, tab 10.

<sup>29</sup> *Ibid.*, pp. 15, 17; Intelligence report, General Intelligence Service (Sudan), March 2025, Figure 6, Factual bundle, p. 84.

19. Notwithstanding its evident knowledge of the ongoing genocide, the UAE continued to supply heavy weaponry through Amdjarass airport. This included the provision of sophisticated drones that were increasingly flown out of Amdjarass and into the Sudan<sup>30</sup>.

20. Moreover, the UAE has also assisted and aided the RSF in the recruitment of mercenaries to support the attack against El Fasher. On 20 November 2024, a joint military force was engaged in an operation near to where North Darfur borders Libya. After a firefight, the mission was able to collect the passports of certain of the foreign mercenaries. Among them were Colombian nationals whose passports contained entry visas from the UAE from the previous month<sup>31</sup>. As *The Wall Street Journal* reported, the Colombian mercenaries “were hired . . . by an Abu Dhabi-based company called Global Security Services Group”, which has “presented itself as acting on behalf of the Emirati government”<sup>32</sup>. North African officials interviewed by *The Wall Street Journal* put the number of Colombian mercenaries who have been sent to the Sudan at approximately 160<sup>33</sup>; a detailed Colombian investigation put it at 300<sup>34</sup>.

21. On 7 January 2025, “after careful review of the facts and a comprehensive legal analysis”<sup>35</sup>, the United States Secretary of State correctly determined that a genocide was being committed in the Sudan<sup>36</sup>, stating that

“[t]he RSF and RSF-aligned militias have continued to direct attacks against civilians. The RSF and allied militias have systematically murdered men and boys — even infants — on an ethnic basis, and deliberately targeted women and girls from certain ethnic groups for rape and other forms of brutal sexual violence. Those same militias

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<sup>30</sup> D. Walsh and C. Koettl, “How a U.S. Ally Uses Aid as a Cover in War”, *The New York Times*, 21 September 2024.

<sup>31</sup> Excerpts from *Evidence of Certain Countries’ Support for the Rebel Rapid Support Forces (RSF) Militia*, Factual bundle, p. 87.

<sup>32</sup> B. Faucon, G. Steinhauser, K. Vyas and S. Said, “The Global War Machine Supplying Colombian Mercenaries to Fight in Sudan”, *The Wall Street Journal*, 11 December 2024.

<sup>33</sup> *Ibid.*; Press Release, The Republic of the Sudan, Ministry of Foreign Affairs, Office of the Spokesperson and Media Directorate, 2 December 2024, available here: <https://suna-sd.net/posts/foreign-minister-receives-phone-call-from-his-colombian-counterpart-apologizing-for-some-of-his-countrys-citizens-participation-in-the-war-alongside-rsf-militia-against-sudan>.

<sup>34</sup> S. R. Álvarez, “Lobos del desierto: así operan los mercenarios colombianos en Sudán”, *La Silla Vacía*, 2 March 2025, available at: <https://www.lasillavacia.com/silla-nacional/lobos-del-desierto-asi-operan-los-mercenarios-colombianos-en-sudan/>.

<sup>35</sup> “Statement by Ambassador Linda Thomas-Greenfield on the Determination of Genocide in Sudan”, 7 January 2025, available at: <https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-the-determination-of-genocide-in-sudan/>.

<sup>36</sup> US Mission to International Organizations in Geneva, “Genocide Determination in Sudan and Imposing Accountability Measures, Press Statement, Antony J. Blinken, Secretary of State”, 7 January 2025, available at: <https://geneva.usmission.gov/2025/01/07/genocide-determination-in-sudan/>.

have targeted fleeing civilians, murdering innocent people escaping conflict, and prevented remaining civilians from accessing lifesaving supplies. Based on this information, I have now concluded that members of the RSF and allied militias have committed genocide in Sudan”<sup>37</sup>.

22. On the basis of this determination, the United States sanctioned the RSF’s commander General Hamdan “for his role in systematic atrocities”<sup>38</sup>. It also sanctioned seven companies owned by the RSF, as well as one individual, for their role in procuring weapons for the militia; they were, all of them, based in the UAE<sup>39</sup>.

23. The UAE Ministry of Justice waited for around four months before it responded, on 4 April 2025, only *after* the Sudan had submitted this dispute to the Court. And even then the UAE used notably circumspect language, asserting that: “[n]one of the seven entities hold an *active* business license in the UAE, nor are they *currently* operating in the UAE”<sup>40</sup>.

24. Against this backdrop, as you have seen, the current United States Secretary of State felt compelled, in January 2025, not only to recognize the existence of the ongoing genocide, but also to call out the UAE for its open support of the entity that is carrying out that genocide.

25. Since that date, the plight of the surviving members of the Masalit group in North and West Darfur has only become more desperate. There are thousands of Masalit in North Darfur, particularly in El Fasher and in Zamzam camp, many of them internally displaced.

26. The RSF is currently mobilizing even greater forces, and intensifying its attacks, with the aim of breaking the siege of El Fasher, which has been ongoing since May 2024<sup>41</sup>. So important is the taking of El Fasher to the RSF and its sponsor that the UAE is reported, in recent months, to have intensified its efforts of support in order to ensure that El Fasher falls<sup>42</sup>. If that happens, everything points to a repeat of the atrocities of El Geneina.

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<sup>37</sup> *Ibid.*; judges’ folder, tab 12.

<sup>38</sup> US Mission to International Organizations in Geneva, “Genocide Determination in Sudan and Imposing Accountability Measures, Press Statement, Antony J. Blinken, Secretary of State”, 7 January 2025.

<sup>39</sup> *Ibid.*; judges’ folder, tab 8.

<sup>40</sup> See *e.g.* <https://www.dubaieye1038.com/news/local/uae-says-companies-under-us-sanctions-not-operating-in-country/>; judges’ folder, tab 9.

<sup>41</sup> See *e.g.* Sudan Tribune, “Shelling kills three at Darfur IDP camp; RSF assault on El Fasher feared”, 7 April 2025, available at: <https://sudantribune.com/article299461/>; Global Centre for the Responsibility to Protect, “Atrocity Alert No. 432”, 26 March 2025, available at: <https://www.globalr2p.org/publications/atrocity-alert-no-432/>; Atrocity Alert No. 431”, 19 March 2025, available at: <https://www.globalr2p.org/publications/atrocity-alert-no-431/>; UN News, “Sudan: Access to stricken Zamzam camp ‘is nearly impossible’”, 6 March 2025, available at: <https://news.un.org/en/story/2025/03/1160831>.

<sup>42</sup> B. Roger, “Le Tchad, acteur et victime de la guerre au Soudan”, *Le Monde*, 11 March 2025.

27. At the same time, the RSF has been attacking gathering sites where there are internally displaced members of the Masalit group, including at Zamzam camp. Between 9 and 13 February 2025, following heavy artillery shelling, the RSF launched a ground assault against the camp and razed its main market in arson attacks<sup>43</sup>. The Humanitarian Research Lab of the Yale School of Public Health confirmed on 13 December 2024 the “large-scale displacement of an unknown number of civilians from Zamzam IDP camp following repeated heavy artillery bombardment over 12 days” by the RSF<sup>44</sup>.

28. It also identified and located four heavy artillery pieces consistent with a type of Chinese-produced 155 mm Howitzer artillery gun — which it considered were engaged in the bombardment of Zamzam. Yale’s Humanitarian Research Lab noted, on the basis of publicly available sources, that the UAE was “the only country” known to have purchased this type of Howitzer<sup>45</sup>. Notably, the Security Council’s Panel of Experts had reported earlier that the increasingly heavy weaponry provided by the UAE included Howitzers and that these had been observed in El Fasher<sup>46</sup>. The assessment of the Sudan is that the Howitzers in question — of which there were 11 in total — arrived by UAE aircraft which landed at Amdjarass airport on 1 October 2024 and were transported onwards by truck into Darfur before they were put to use by the RSF<sup>47</sup>.

29. And yet, the nightly weapons and ammunitions flights from the UAE into, *inter alia*, Amdjarass airfield continue to arrive<sup>48</sup>. Sudan’s own intelligence assessment in March 2025 is that the flights to Chadian airports transporting military aid to the RSF “have continued to the present”<sup>49</sup>.

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<sup>43</sup> Yale School of Public Health Humanitarian Research Lab, *Special Report: RSF Ground Assault on Zamzam IDP Camp*, 13 February 2025, available at: <https://files-profile.medicine.yale.edu/documents/53cd618c-4b63-44ec-addc-ec91a5b5c442>.

<sup>44</sup> Yale School of Public Health Humanitarian Research Lab, *Special Report: RSF Heavy Artillery in Range of Zamzam IDP Camp as Civilians Flee*, 13 December 2024, available at: <https://files-profile.medicine.yale.edu/documents/1e51d86e-8d5b-4243-8f39-df76159db6b8>.

<sup>45</sup> *Ibid.*; see US Army, “AH-4 Chinese 155mm Towed Howitzer”, OE Data Integration Network, available at: <https://odin.tradoc.army.mil/Search/All/AH4>; see also Christopher F. Foss, “UAE confirms Chinese 155 mm AH4 gun-howitzer acquisition”, *Janes*, <https://www.janes.com/osint-insights/defence-news/uaeconfirms-chinese-155-mm-ah4-gun-howitzer-acquisition>, archived at <https://perma.cc/JW7L-QMSX>.

<sup>46</sup> Letter dated 15 January 2024 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024, para. 39.

<sup>47</sup> Letter dated 28 March 2024 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council, 4 April 2024, S/2024/276, Annex, pp. 9-10.

<sup>48</sup> B. Roger, “Le Tchad, acteur et victime de la guerre au Soudan”, *Le Monde*, 11 March 2025.

<sup>49</sup> Intelligence report, General Intelligence Service (Sudan), March 2025, para. 19, Factual bundle, p. 71.



30. To conclude, there can for present purposes be no question that there is sufficient evidence that the UAE is not only failing to prevent genocide, but is also complicit in genocide. This will, of course, be the subject of full argument at the merits stage, although direct proof will to a large extent continue to rest in the hands of the UAE itself. For present purposes, it is relevant to recall the Court's observation in *Corfu Channel* that, in such a situation, "the other State, the victim of a breach of international law", in this case the Sudan, "should be allowed a more liberal recourse to inferences of fact and circumstantial evidence"<sup>50</sup>. Here, the Sudan has presented "a series of facts linked together and leading logically to a single conclusion"<sup>51</sup>.

31. Finally, it cannot seriously be argued that the UAE was unaware of the existence of this dispute prior to the filing of the Sudan's Application. I can be brief.

- (a) First, in a letter to the President of the Security Council dated 26 April 2024, the Sudan stated that "the support of the United Arab Emirates for the criminal Rapid Support Forces militia, which has waged war against the State and citizens, makes the United Arab Emirates a partner in all the crimes and atrocities that this militia has committed"<sup>52</sup>. The Sudan demanded that the UAE be held responsible for crimes including "crimes amounting to genocide"<sup>53</sup>.
- (b) Second, during the Security Council meeting held on 18 June 2024, the Sudan stated that "[t]he Security Council must . . . identify by name the State sponsoring that plague, which is subjecting the people of the Sudan to gradual genocide"<sup>54</sup>. The Sudan concluded: "The United Arab Emirates is a country that is sponsoring systematic and ethnically based terrorism in the Sudan"<sup>55</sup>; "[t]he Rapid Support Forces . . . are supported, sponsored and incited by the United Arab

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<sup>50</sup> *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 18; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment of 31 January 2024, para. 169.

<sup>51</sup> *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 18.

<sup>52</sup> Letter dated 26 April 2024 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council, 30 April 2024, S/2024/345; judges' folder, tab 14.

<sup>53</sup> *Ibid.*

<sup>54</sup> United Nations Security Council, 9659th meeting, 18 June 2024, S/PV.9659, p. 18; judges' folder, tab 15.

<sup>55</sup> *Ibid.*, p. 22.

*Emirates to fight in the Sudan and perpetrate crimes and rapes*”<sup>56</sup>. In the same meeting, the UAE denied all of this as “false”<sup>57</sup>.

(c) Third, during the Security Council meeting held on 11 September 2024, the Sudan stated that the “United Arab Emirates . . . fuels the war and supports the militia that has committed the crime of genocide”<sup>58</sup>.

(d) Fourth, in a press release dated 12 February 2025, the Sudan stated that the RSF, “backed by its regional sponsor, is escalating its campaign of genocide against the majority of Darfur’s population. The terrorist militia has been waging a brutal, ongoing attack on the Zamzam camp for internally displaced persons”<sup>59</sup>. It further stated that the RSF targeted internally displaced persons “on an ethnic basis”<sup>60</sup>. The press release concluded that “[t]he militia’s regional sponsor bears direct responsibility for the ongoing genocide”<sup>61</sup>.

32. That, Mr President, Members of the Court, concludes my presentation. I ask that you invite Mr Wordsworth, KC, to the podium to address prima facie jurisdiction.

The PRESIDENT: I thank Professor Bjorge for his statement. I now call Mr Samuel Wordsworth to the podium. Sir.

Mr WORDSWORTH:

## THE COURT HAS PRIMA FACIE JURISDICTION

### A. Introduction

1. Mr President, Members of the Court, it is a privilege to appear before you and to have been asked by Sudan to address the issue of the Court’s prima facie jurisdiction.

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<sup>56</sup> *Ibid.*, p. 23.

<sup>57</sup> *Ibid.*

<sup>58</sup> United Nations Security Council, 9721th meeting, 11 September 2024, S/PV.9721, p. 5, judges’ folder, tab 16; see also Letter dated 11 December 2024 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council, 11 December 2024, S/2024/904, pp. 1-2.

<sup>59</sup> Ministry of Foreign Affairs, Office of the Spokesperson and Media Directorate, Press Statement, 12 February 2025, available here: <https://www.suna-sd.net/posts/mfa-condemns-escalation-of-rsf-militias-criminal-aggression-against-idps-camps>, judges’ folder, tab 17; see also “Sudan accuses RSF of genocide in Darfur, slams international silence”, *Sudan Tribune*, 12 February 2025, available at: <https://sudantribune.com/article297288/>.

<sup>60</sup> Ministry of Foreign Affairs, Office of the Spokesperson and Media Directorate, Press Statement, 12 February 2025.

<sup>61</sup> *Ibid.*

2. The question is whether Article IX of the Genocide Convention, which is of course well known to the Court and is now on the screen, “appears, *prima facie*, to afford a basis on which its jurisdiction *could* be founded”<sup>62</sup>.

3. Both Sudan and the UAE are parties to the Convention. Sudan acceded on 13 October 2003 without entering any reservation. The UAE acceded on 11 November 2005 subject, as the Court will be aware, to a reservation with respect to Article IX.

4. Where an applicant invokes a compromissory clause such as Article IX, the Court must ascertain whether the acts complained of by the applicant are *prima facie* capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court could have jurisdiction *ratione materiae* to entertain<sup>63</sup>. As to this, the acts of which Sudan complains plainly are capable of falling within the scope of the substantive provisions of the Genocide Convention, and there is a dispute as to the UAE’s compliance with the Convention, as just outlined by Professor Bjorge.

5. Turning to the reservation, the UAE’s instrument of accession to the Genocide Convention states in relevant part that it

“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”.

6. Where at a provisional measures phase a respondent invokes a reservation entered in relation to the compromissory clause, two separate questions arise.

(a) First, the Court must examine the reservation and assess whether it is capable, *prima facie*, of being correctly interpreted so as *not* to deprive the Court of jurisdiction. That is a question of interpretation.

(b) The second question arises, if (and only if), the Court decides that the reservation can *only* be interpreted so as to exclude jurisdiction. This second question of course goes to validity: is the reservation capable, *prima facie*, of being found to be invalid, that is at the appropriate later stage in the proceedings and after hearing full argument?

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<sup>62</sup> *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, *Provisional Measures, Order of 7 December 2016*, I.C.J. Reports 2016 (II), p. 1155, para. 31, emphasis added.

<sup>63</sup> See e.g. *AV PMO*, §30; *G v. M PMO*, §20.

7. I deal with these two separate questions in turn. However, as to both, it is useful to recall the observation of Judge Greenwood in his separate opinion in the *Georgia v. Russia* case:

“Requests for the indication of provisional measures of protection are considered as a matter of urgency . . . without the opportunity for the consideration of extensive evidence or the detailed analysis of legal issues which can be undertaken in later phases of the proceedings. *The jurisdictional threshold which the applicant has to cross is, accordingly, set quite low* and any ruling — whether as to law or fact — which the Court makes at the provisional measures stage of a case is necessarily provisional.”<sup>64</sup>

8. Consistent with the “quite low” threshold that is applied in light of the urgency and the inability to hear full argument, the Court has generally refrained from determining *disputed* questions of interpretation at the provisional measures stage, reserving these to the appropriate later stage<sup>65</sup>.

9. Of particular relevance so far as concerns reservations, at the provisional measures stage of the *Nuclear Tests* case, France argued that the dispute fell within the exclusion from its acceptance of compulsory jurisdiction of “disputes concerning activities connected with national defence”<sup>66</sup>. New Zealand contested this and maintained that “the validity, interpretation and effect in the present situation of the reservation attached to the French declaration . . . are issues which can be the subject of debate”, that is at a later stage, with there being various arguments in favour of the Court’s jurisdiction<sup>67</sup>. In these circumstances, the Court refrained from making any pronouncement on the interpretation or validity of the reservation and concluded that “at the present stage of the proceedings, . . . the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded”<sup>68</sup>. The Court then went on to indicate provisional measures<sup>69</sup>.

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<sup>64</sup> *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. 323, para. 2, emphasis added.

<sup>65</sup> See e.g. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, para. 31.

<sup>66</sup> *Nuclear Tests (New Zealand v. France), Interim Protection, Order of 22 June 1973, I.C.J. Reports 1973*, p. 138, para. 16.

<sup>67</sup> *Ibid.*, para. 17.

<sup>68</sup> *Ibid.*, para. 18.

<sup>69</sup> *Ibid.*, p. 142, para. 36.

**B. The UAE reservation is at least capable, prima facie, of being interpreted so as *not* to exclude jurisdiction**

10. Turning then to the first question, that is the interpretation of the UAE's reservation, this is capable — and, *a fortiori*, capable prima facie — of being interpreted so as not to deprive the Court of jurisdiction under Article XI.

11. The principles governing the interpretation of reservations are unlikely to be in issue today. In its Guide to Reservations, the ILC stated that: “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”<sup>70</sup>. Of course, any State making a reservation can be expected to have given very careful consideration to the specific formulation of the words it chooses to use. In this respect, unlike in the context of treaty drafting, there is no question of compromise or negotiation with other parties.

12. Focusing then on the text of the UAE reservation, this is notably vague and non-specific. It merely “makes a reservation with respect to article 9”, with no wording of any kind specifying the content and nature of that reservation.

- (a) The rest of the reservation then reflects the wording of Article IX, what it concerns, and “l'article IX, selon lequel” in the French text. Notably, however, what follows omits the key wording on “the responsibility of a State for genocide”. As the Court recognized in the *Bosnia Genocide* case, the fact that Article IX confers jurisdiction over disputes “including those relating to the responsibility of a State for genocide” is an “unusual feature of the wording of Article IX”<sup>71</sup>.
- (b) Equally to the point, it is precisely the “responsibility of a State for genocide” in respect of which the Court's jurisdiction is engaged in the current case, including as to the State's complicity in genocide.

13. No other State has entered such a vague and non-specific reservation to the Genocide Convention which, moreover, omits this key wording.

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<sup>70</sup> ILC, Guide to Reservations, para. 4.2.6.

<sup>71</sup> *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. See also joint separate opinion by Judges Higgins, Kooijmans, Elaraby, Owada and Simma, *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. 72, para. 28.

14. Compare, for example, the US reservation of 27 November 1988 which this Court considered in its Order of 5 June 2023 in *Ukraine v. Russia*:

“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*” (emphasis added).

15. Although the UAE reservation came many years later than this, the clear US wording to the effect that specific consent is needed to establish jurisdiction was not adopted. And it was by virtue of this clear wording that the Court was able to find in *Ukraine v. Russia* that “the United States is not bound by Article IX of the Convention”<sup>72</sup> although, to note, this was in a context where — unlike here — there was no issue as to whether the reservation was capable of any other interpretation.

16. Compare, as a second example, the 1975 reservation of Rwanda under consideration in the *DRC v. Rwanda* case in 2002: “The Rwandese Republic *does not consider itself as bound by* article IX of the Genocide Convention”<sup>73</sup>.

17. Again, the UAE elected not to adopt this seemingly clear wording, although that wording was well known to have been the subject of an Order of the Court at the time that the UAE was formulating its reservation. And, note in passing — again, unlike here — the DRC made no submission at the provisional measures phase, or indeed subsequently, that Rwanda’s reservation was capable of being interpreted other than as excluding the Court’s jurisdiction under Article IX. Instead, it challenged the validity of the reservation<sup>74</sup>, i.e. an entirely separate matter that I will be returning to a little later.

18. So, looking just at the text, it is quite unclear what the intent of the UAE’s reservation is. In what respect does it seek to exclude or perhaps modify the effects of Article IX? It might be to require a further consent; it might be to require some preconditions to the seisin of the Court such as negotiation; it might be intended as a statement that the UAE does not consider itself bound by

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<sup>72</sup> *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Admissibility of the Declarations of Intervention, Order of 5 June 2023, I.C.J. Reports 2023 (II)*, p. 376, paras. 94-96.

<sup>73</sup> *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; emphasis added.

<sup>74</sup> *Ibid.*, para. 70.

Article IX save for when its own State responsibility is directly in issue. And, taking into account the circumstances in which the reservation was formulated as per the ILC Guide, the obvious point is that the UAE appears to have elected *not* to have adopted well-known examples of text through which other States have sought in unambiguous terms to reject compulsory jurisdiction under Article IX.

19. The text must also be interpreted taking into account the object and purpose of the treaty, and this is a crucial point. In considering the object and purpose of the Genocide Convention, the Court said in its 1951 Advisory Opinion:

“The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention.”<sup>75</sup>

20. Of course, the Court was then considering the question of whether reservations would be *incompatible* with the object and purpose of the Convention, the issue it again considered in the *Democratic Republic of the Congo v. Rwanda* case in relation to Rwanda’s unambiguous reservation. But, at this stage of Sudan’s argument, the issue is only as to what may be a *prima facie* correct *interpretation* of the specific UAE reservation.

- (a) The relevant backdrop, then, is that the Convention aims “to safeguard the very existence of certain human groups” and “to confirm and endorse the most elementary principles of morality”, while the UAE has unquestionably an interest in “the accomplishment of those high purposes”. 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 apparently careful omission of those very words from its reservation.
- (b) Sudan says this cannot be the case or, more to the point, for current purposes, that at least *prima facie* the UAE’s reservation *is capable* of being interpreted other than as a statement that the UAE does not consider itself bound by Article IX with respect to the issues of State responsibility that are now before you.

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<sup>75</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

(c) The Court should not, and indeed cannot, at this very early stage conclude on the elliptical wording of the UAE's reservation that — to borrow the words of the joint separate opinion of the five judges in the *Democratic Republic of the Congo v. Rwanda* case, when they were considering object and purpose — the UAE wished to “be in a position to shield from international judicial scrutiny any claim that might be made against it concerning genocide”, and likewise wished to “show[] the world scant confidence that it would never, ever, commit genocide, one of the greatest crimes known”<sup>76</sup>.

21. The UAE's reservation is plainly capable of being interpreted other than as a display of such “scant confidence”. For example, it can be interpreted as a declaration that, in general terms it does not consider itself bound, but subject always to a claim where its own responsibility for genocide, including its own complicity, is directly at issue.

22. In short, there is a notable absence of the clear and unambiguous language that might require the Court to conclude at this stage that the reservation is incapable, at least *prima facie*, of being interpreted other than as an exclusion of the Court's jurisdiction.

23. And please note, the current case is very different from that before the Court in the two *Legality of Use of Force* cases brought by Yugoslavia against Spain and the United States. In its Orders of 2 June 1999, very exceptionally, the Court did conclusively interpret reservations made by the respondents. It concluded that there was a lack of *prima facie* jurisdiction and, in addition, a manifest absence of jurisdiction such that it was appropriate to strike those cases from the General List<sup>77</sup>. However, those were very different cases. Three points:

(a) First, as the Court expressly recorded in both Orders, “Yugoslavia disputed [the] interpretation of the Genocide Convention, but submitted *no argument* concerning the . . . reservation to

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<sup>76</sup> *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. 71, para. 25.

<sup>77</sup> *Legality of Use of Force (Yugoslavia v. Spain)*, *Provisional Measures, Order of 2 June 1999*, I.C.J. Reports 1999 (II), p. 761; *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. 916. Cf. *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. 249, paras. 89-91.



Article IX of the Convention”<sup>78</sup>. Thus, these are not examples of how the Court has dealt with the *disputed* interpretation of a reservation at the provisional measures stage.

- (b) Second, the absence of any argument as to interpretation is understandable because both of the reservations then at issue could be taken as unambiguously excluding the Court’s compulsory jurisdiction under Article IX. You have already seen the United States’ reservation. Spain’s reservation, which was withdrawn in 2009, was stated to be “in respect of the whole of Article IX (Jurisdiction of the International Court of Justice)”<sup>79</sup>. That is, with no notably incomplete description of the provision then following.
- (c) Third, the Court was faced with factual allegations concerning NATO’s aerial military operations that were in no way, even *prima facie*, capable of constituting acts of genocide. This was a very natural case for rejecting jurisdiction under the Convention, wherever feasible.

24. The UAE’s reservation to the Convention is not just very differently worded to that of the United States and Rwanda, and the one-time reservation of Spain, it is materially different to that of *any* other State, as you can see in due course from the texts of the other reservations which are in your judges’ folder at tab 21.

25. And to recall, when the UAE formulated its reservation in 2005, it was well aware that, over the previous decades, many other States had adopted clear and unambiguous wording, and yet it elected not to follow such models.

26. Nonetheless, the UAE will presumably now ask the Court to approach its uniquely worded reservation as if it were incapable, even *prima facie*, of being interpreted other than as excluding jurisdiction under Article IX. But that would be nothing more than an attempt to rewrite the terms of the reservation some 20 years after the event.

27. Stepping back, it is recalled that the object of the Convention is “to safeguard the very existence of certain human groups”. Through Article IX, this Court plays a pivotal role in giving practical effect to the realization of that object. That role is all the more important where, at a

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<sup>78</sup> *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, emphasis added; *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, emphasis added.

<sup>79</sup> *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.

provisional measures phase, there is strong evidence of State responsibility in relation to an ongoing genocide, and the Court is called upon to act in safeguarding the very existence of a protected group that, in an exercise of its *prima facie* jurisdiction, the Court may consider to be at real and immediate risk of genocide. Surely that critical role could not be defeated by an ambiguously worded reservation such as now before you, that is capable of being interpreted, at least *prima facie*, in a way consistent with the exercise by this Court of its jurisdiction under Article IX.

**C. The UAE reservation is at least capable, *prima facie*, of being incompatible with the object and purpose of the Genocide Convention**

28. I turn to the second question, which concerns the validity of the UAE's reservation, and which is only engaged if the Court does not accept that the reservation is *prima facie* capable of interpretation along the lines I have just outlined.

29. In those circumstances, the Court will still have jurisdiction *prima facie* if it is satisfied that the reservation is capable, *prima facie*, of being held to be incompatible with the object and purpose of the Convention and hence invalid<sup>80</sup>.

30. In its Guide to Practice on Reservations, the ILC has reflected the distinction between “the essential clauses of a treaty” in respect of which reservations cannot be admitted and “the less important clauses” in respect of which reservations may be admitted<sup>81</sup>. As then President Owada suggested in his 2010 Remarks to United Nations Member State Legal Advisers: “Arguably, Article IX of the Genocide Convention provides an example of a dispute settlement clause which might be considered to constitute part of the ‘*raison d’être* of the treaty’”<sup>82</sup>. Sudan considers that Article IX does provide such an example, and not merely as a matter of what would be reasonably arguable, which would however be sufficient for the present purposes of jurisdiction *prima facie*.

31. Sudan of course recognizes that, approaching 20 years ago, in its 2006 Judgment in *Democratic Republic of the Congo v. Rwanda*, the Court stated that:

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<sup>80</sup> Article 19 (c), Vienna Convention on the Law of Treaties 1969, done at Vienna on 23 May 1969, entered into force on 27 January 1980, *UNTS*, Vol. 1155, p. 331.

<sup>81</sup> Yearbook of the International Law Commission, 2011, Vol. II, Part Three, A/CN.4/SER.A/2011/Add.1 (Part 3), Guide to Practice on Reservations to Treaties, p. 214, para. 11, citing Yearbook of the International Law Commission 1962, Vol. I, 651st meeting, 25 May 1962, p. 141, para. 35 (Ago).

<sup>82</sup> Speech by H.E. Judge Hishashi Owada, President of the International Court of Justice, to the Legal Advisers of the United Nations Member States, Introductory Remarks at the Seminar on the Contentious Jurisdiction of the International Court of Justice, 26 October 2010, p. 5.

*“In the circumstances of the present case, the Court cannot conclude that the reservation of Rwanda in question, which is meant to exclude a particular method of settling a dispute relating to the interpretation, application or fulfilment of the Convention, is to be regarded as being incompatible with the object and purpose of the Convention”*<sup>83</sup>.

32. As the careful language makes clear, the Court was concerned with the specific reservation and case before it. As emphasized in the joint separate opinion of five judges, the Court made “no more generalized finding”<sup>84</sup>.

33. I wish to look first at the Court’s Judgment, then turn to look further at the joint separate opinion, and finally to say a few words on the absence of any objection by Sudan to the UAE reservation, in case something is made of that fact later today.

34. In the 2006 Judgment, the Court gave just three brief reasons for its conclusion<sup>85</sup>, and it is to be recalled that the Court was faced with a scattergun claim in which the Democratic Republic of the Congo invoked some eleven sources of jurisdiction.

35. First, the Court observed that “Rwanda’s reservation to Article IX of the Genocide Convention bears on the jurisdiction of the Court, and does not affect substantive obligations relating to acts of genocide themselves under that Convention”.

(a) This is true from one perspective, but it does not answer the key question of whether the exclusion of jurisdiction is incompatible with object and purpose, in particular given that the Court’s jurisdiction is vital to the enforcement of the Convention’s substantive obligations.

(b) After all, the Genocide Convention is unique among the human rights conventions in allowing for — and depending upon — immediate direct access to the Court as the sole available international judicial forum in circumstances where there is no treaty body for the supervision of performance by States parties<sup>86</sup>.

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<sup>83</sup> *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; emphasis added.

<sup>84</sup> *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. 70, para. 20.

<sup>85</sup> *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, paras. 66-68.

<sup>86</sup> General Assembly, 6th Committee, 103rd meeting, 12 November 1948, A/C.6/SR.103, p. 437 (India).

36. Second, the Court recalled that it had previously given effect to the reservations at issue in the *Legality of Use of Force* cases<sup>87</sup>. However, as you have already seen, Yugoslavia submitted no argument on the reservations then at issue, whether as to their invalidity or otherwise.

37. Third, as in *Legality of Use of Force*, the Court noted that Congo had not objected to Rwanda's reservation. I will be returning to that issue shortly, but the point for now is that plainly, and unsurprisingly the Court did not see this as providing some form of definitive answer on invalidity. Had it been otherwise, the Court could readily have just accepted the point on no objection and not troubled itself with the broader issues on invalidity.

38. I turn to the joint separate opinion. Given the number and identity of the judges, and the force of the reasoning, the 2006 Judgment must be considered alongside this important opinion and its conclusion that:

“It is . . . 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”<sup>88</sup>.

39. In this respect, the Opinion noted:

- (a) That in its 1951 Advisory Opinion, the Court was not asked to pronounce on the compatibility of particular reservations to the Genocide Convention with its object and purpose<sup>89</sup> and nor did the Court “foreclose legal developments in respect of hitherto uncharted waters in the future”<sup>90</sup>.
- (b) It was also noted by the five judges, and the Court already has this point, that in *Legality of Use of Force*, Yugoslavia had not made any argument that the reservations were contrary to the object and purpose of the Convention, so the Court did not pronounce on that issue<sup>91</sup>.

40. The joint separate opinion also raised specific elements of concern about three matters *absent* from the Court's reasoning.

41. First, it was emphasized that the Court, although not a monitoring body,

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<sup>87</sup> *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. 246, para. 72; cf. *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. 70, paras. 19-21.

<sup>88</sup> *Ibid.*, p. 72, para. 29.

<sup>89</sup> *Ibid.*, p. 68, para. 12.

<sup>90</sup> *Ibid.*, p. 68, para. 13.

<sup>91</sup> *Ibid.*, p. 70, para. 18.

“does have an important role under the Genocide Convention. Under that Convention it is States who are the monitors of each other’s compliance with prohibition on genocide. Article IX then gives a State who believes another State is committing genocide the chance to come to the Court”<sup>92</sup>.

42. Second, it was noted that “Article IX speaks not only of disputes over the interpretation and application of the Convention, but over the ‘fulfilment of the Convention’”<sup>93</sup>. Indeed, the inclusion of this term is another unique feature of Article IX among compromissory clauses in conventions concerning human rights.

43. Then, as a third and final element: “Further, the disputes that may be referred to the Court under Article IX ‘includ[e] those relating to the responsibility of a State for genocide’”<sup>94</sup>. Though, of course, the UAE does not include this “unusual feature” in its reservation<sup>95</sup>.

44. Looking at these three elements of concern, Sudan agrees with South Africa’s recent submission before the Court that

“[t]he role of the Court which, unusually, extends not only to the interpretation and application of the Convention, but also to its *fulfilment*, is pivotal. In addition to their substantive obligations under the Convention it is vitally important that States respect the Court and their procedural obligations”<sup>96</sup>.

And the recent jurisprudence of the Court, both in *The Gambia v. Myanmar* and now in the Order of 26 January 2024 in *South Africa v. Israel*, contains some recognition of this in finding that:

“there is a correlation between the rights of members of groups protected under the Genocide Convention, the obligations incumbent on States parties thereto, and the right of any State party to seek compliance therewith by another State party”<sup>97</sup>.

45. That must be correct, and the recognition of that correlation supports the view that Article IX, which is the key tool in seeking compliance, should be considered to constitute part of the “*raison d’être* of the treaty”. That position is also supported by the *travaux* to the Convention,

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<sup>92</sup> *Ibid.*, p. 72, para. 28.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*

<sup>95</sup> *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.

<sup>96</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, CR 2024/1, p. 82, para. 39 (Lowe), citing Sir Hartley Shawcross, counsel for the United Kingdom, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, Pleadings, Oral Arguments, Documents*, Part II, Oral Statements, p. 380.

<sup>97</sup> *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 (I), p. 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.

which again did not feature in the argument in 2006 and which the Court's Judgment did not consider. The *travaux* showed that it was well understood that the Court would play an important role in connection specifically with *prevention* of genocide,

“for it alone was competent to decide whether or not a State was guilty of violating the terms of the convention and to determine the necessary legal redress. The Court could in fact contribute in no mean degree [in the French: *dans une large mesure*] to the prevention of genocide”<sup>98</sup>.

46. The Court should also be aware of relevant State practice, which again was not before the Court in 2006 and did not feature in the 2006 Judgment. Of course there is no time for a detailed consideration at this stage, but 12 States had withdrawn their reservations excluding jurisdiction under Article IX<sup>99</sup> and a number of other States had objected to such reservations<sup>100</sup>. This included the Netherlands, Croatia, Norway, Brazil and Mexico, which had expressly characterized such reservations as incompatible with the object and purpose of the Convention.

47. Finally then, a few words on the legal relevance of the fact that Sudan did not lodge an objection to the UAE's reservation. And the short answer, for the purposes of these proceedings, is that it has no legal relevance.

48. The absence of objection, did not in 2006<sup>101</sup> — and does not now — preclude the Court from considering whether a reservation is (or, *prima facie*, could be) incompatible with the object and purpose of the Convention, as is required by Article 19 (c) of the Vienna Convention on the Law of Treaties. Nor does it impact on Sudan's ability to contest the validity of the reservation before you. The rule on making an objection to a reservation within one year, which is to be found at Article 20 (5) of the Vienna Convention, has nothing to do with the substantive validity of the reservation, which is the subject matter of Article 19 of the Vienna Convention, and it would be bizarre if it were otherwise. Read in context, Article 20 (5) can only be concerned with objections to reservations to the extent they are valid.

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<sup>98</sup> Ninety-Eighth Meeting, 47. Continuation of the consideration of the draft convention on genocide: report of the Economic and Social Council, *Official Records of the Third Session of the General Assembly, Part I, Sixth Committee, Summary Records of Meetings*, 1948, p. 375.

<sup>99</sup> See Multilateral Treaties Deposited with the Secretary-General, Status as at 1 April 2009, Volume I, Part I, Chapters I to VII, ST/LEG/SER.E/26, Sales No. E.09.V.3 (2009), p. 155 (Albania, the USSR, Byelorussia, Czechoslovakia, Ukraine, Bulgaria, Hungary, Mongolia, Poland, Romania, Rwanda and Spain).

<sup>100</sup> *Ibid.*, pp. 149-152, 154-155 (Australia, Belgium, Brazil, Croatia, Ecuador, Greece, Mexico, the Netherlands, Norway, Sri Lanka and the United Kingdom).

<sup>101</sup> See ILC, Guide to Reservations, para. 4.5.2, Commentary para. 4 at p. 305.

49. The point can be seen clearly from paragraph 4.5.2 of the ILC Guide, and the related Commentary. This states:

“The nullity of an invalid reservation does not depend on the objection or the acceptance by a contracting State or a contracting organization.

Nevertheless, a State or an international organization which considers that the reservation is invalid should, if it deems it appropriate, formulate a reasoned objection as soon as possible.”

50. As the Commentary then explains:

“(7) As established above, the Vienna Conventions do not contain any rule concerning the effects of reservations that do not meet the conditions of permissibility set out in article 19, or — as a logical consequence thereof — concerning the potential reactions of States to such reservations. Under the Vienna regime, an objection is not an instrument by which contracting States or organizations assess the validity of a reservation; rather, it renders the reservation inapplicable as against the author of the objection. The acceptances and objections mentioned in article 20 concern only valid reservations. The mere fact that these same instruments are used in State practice to react to invalid reservations does not mean that these reactions produce the same effects or that they are subject to the same conditions as objections to valid reservations.”<sup>102</sup>

51. If the UAE seeks to rely on the absence of objection by Sudan, this is a non-point. In any event, because the UAE’s reservation was capable of being interpreted as *not* excluding jurisdiction, it did not call out for objection. Notably, the United Kingdom, which had a longstanding policy of objecting to clear and unambiguous reservations excluding jurisdiction, did *not* object to the UAE’s reservation. And nor did any of the other ten States which have made such objections, namely Australia, Belgium, Brazil, Croatia, Ecuador, Greece, Mexico, the Netherlands, Norway and Sri Lanka.

52. As to the 2006 Judgment more generally, when it comes to validity, although this of course commands considerable respect from Sudan, it does not provide the answer to the issue before you today. The various elements of concern raised in the joint separate opinion, alongside the other matters Sudan has raised, demonstrate that if the UAE’s reservation could only be interpreted so as to bar jurisdiction — which as you have seen is not the case — it is capable, at least *prima facie*, of being held to be incompatible with the object and purpose of the Convention and hence invalid<sup>103</sup>.

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<sup>102</sup> See ILC, Guide to Reservations, para. 4.5.2, and Commentary para. 7 at p. 305.

<sup>103</sup> Article 19 (c), Vienna Convention on the Law of Treaties 1969, done at Vienna on 23 May 1969, entered into force on 27 January 1980, *UNTS*, Vol. 1155, p. 331.

53. I thank you for your attention and ask you, Mr President, to hand the floor to Mr Aughey, who will be addressing you on the plausible rights of Sudan.

The PRESIDENT: I thank Mr Wordsworth for his statement. I now invite Mr Sean Aughey to address the Court. You have the floor, Sir.

Mr AUGHEY:

## **SUDAN'S RIGHTS ARE AT LEAST PLAUSIBLE**

### **A. Introduction**

1. Mr President, Members of the Court, it is a privilege to appear before you and to have been asked by Sudan to address the issue of plausibility.

2. At this stage of the proceedings, the Court is of course not required to “determine definitively whether the rights which [Sudan] wishes to see protected exist”<sup>104</sup>. Rather, the Court need only be satisfied that the rights claimed by Sudan, and for which it is seeking protection, are plausible. The right claimed must be merely “grounded in a possible interpretation” of the Convention<sup>105</sup>.

3. Plainly, the rights Sudan is seeking to protect are at least plausible. They are not merely grounded in a possible interpretation of the Genocide Convention, but in an interpretation that reflects the Court’s own previous findings.

4. Sudan is requesting provisional measures to protect its rights to seek the UAE’s compliance with its obligations to take actions to prevent breaches of the Genocide Convention occurring on Sudan’s territory, and to refrain from complicity in such breaches. The UAE freely undertook such obligations when it acceded to the Genocide Convention.

5. In its Application, Sudan also claims that the UAE is responsible for acts of genocide committed by irregular armed units over which the UAE exercises direction and control. This will

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<sup>104</sup> *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. 18, para. 43.

<sup>105</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009, p. 152, para. 60.



be an important issue for full argument at the merits stage but it is not one that arises for consideration today.

6. In its 1951 Advisory Opinion, referring to the “special characteristics of the Genocide Convention”, the Court emphasized that “it was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the right of existence of entire human groups”<sup>106</sup>.

7. The rights of the Masalit human group to be protected from acts of genocide and related prohibited acts under Article III are beyond doubt. The Masalit are a distinct African non-Arab ethnic group, and hence a protected group within the meaning of Article II of the Convention, which is on the screen.

#### **B. Sudan’s right to seek the UAE’s compliance with its obligation of prevention**

8. I start then with Sudan’s right to seek the UAE’s compliance with its obligation of prevention under Article I of the Convention.

9. In the *Bosnia Genocide* case, the Court held that States parties are under a due diligence obligation to “employ all means reasonably available to them, so as to prevent genocide so far as possible”<sup>107</sup>. The Court explained:

“[A] State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.”<sup>108</sup>

10. Here, the UAE’s obligation of prevention was undoubtedly engaged at least as early as November 2023. By that time, as you have heard, UN sources were already sounding a clear alarm about the risk of genocide<sup>109</sup>; by May 2024 the Special Adviser was informing the Security Council

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<sup>106</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23.

<sup>107</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, p. 221, para. 430.

<sup>108</sup> *Ibid.*, p. 222, para. 431.

<sup>109</sup> Statement by Ms Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the renewed escalation of violence in Darfur, Sudan, 14 November 2023, available at: [https://www.un.org/en/genocideprevention/documents/UN\\_Special\\_Adviser\\_statement\\_Sudan\\_14\\_Nov\\_2023.pdf](https://www.un.org/en/genocideprevention/documents/UN_Special_Adviser_statement_Sudan_14_Nov_2023.pdf).

that “the ongoing situation in the Sudan . . . bears all the marks of a risk of genocide, including strong allegations that the crime has already been committed”<sup>110</sup>; and in June 2024 she specifically identified the increasing risk of genocide in El Fasher<sup>111</sup>.

11. Although a breach of the obligation of prevention can result from omission alone, the breach is all the more evident here because the UAE has been positively supporting the actors committing genocide by supplying them with funds, equipment and weapons to be used in the conflict. As you have heard from Professor Bjorge, UN sources have assessed that there are at least “credible” allegations of this<sup>112</sup>, and the European Union has gone further still in designating a Sudanese gold company that is owned and controlled by General Hamdan and his family on the ground that it is used “to secure military support from the [UAE] . . . including the provision of weapons used by the RSF in the conflict in Sudan”<sup>113</sup>.

12. Moreover, the UAE is not only a geographically close State with strategic interests in Sudan, but one that has very close links with the senior leadership of the RSF and a real capacity to influence their conduct<sup>114</sup>. Three illustrative examples of such links:

(a) First, in December 2023, General Hamdan was photographed at Entebbe airport disembarking from an aircraft belonging to Royal Jet, a UAE charter airline run by an adviser to the President of the UAE, and flight records show that that aircraft had flown from Abu Dhabi<sup>115</sup>.

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<sup>110</sup> Security Council, 9632nd meeting, 21 May 2024, S/PV.9632, p. 3 (Ms Alice Wairimu Nderitu, Special Adviser to the Secretary-General on the Prevention of Genocide).

<sup>111</sup> United Nations Press Release, Statement by Ms Alice Wairimu Nderitu, United Nations Special Adviser on the Prevention of Genocide, on the situation in El Fasher, North Darfur, 5 June 2024, available at: [https://www.un.org/en/genocideprevention/documents/240605\\_Special\\_Adviser\\_Nderitu\\_Statement\\_Sudan.pdf](https://www.un.org/en/genocideprevention/documents/240605_Special_Adviser_Nderitu_Statement_Sudan.pdf).

<sup>112</sup> Letter dated 15 January 2024 from the Panel of Experts on the Sudan addressed to the President of the Security Council, S/2024/65, 15 January 2024, para. 42.

<sup>113</sup> Council Implementing Regulation (EU) 2024/384 of 22 January 2024 implementing Regulation (EU) 2023/2147 concerning restrictive measures in view of activities undermining the stability and political transition of Sudan, Annex 1, p. 6, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202400384](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400384).

<sup>114</sup> Cf *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 221, para. 430.

<sup>115</sup> D. Walsh, “Often Rumored Dead, Sudanese General Takes a Victory Tour”, *The New York Times*, 19 January 2024; Reuters, “Sudan RSF leader visits Ethiopia in first public wartime tour”, 28 December 2023, available at: <https://www.reuters.com/world/africa/sudan-rsf-leader-visits-ethiopia-first-public-wartime-tour-2023-12-28/>; Ministry of Foreign Affairs of Ethiopia, 28 December 2023, available at: <https://x.com/mfaethiopia/status/1740298358710030610?t=IxcIwghU7V7syO0odCDQsA&s=09>; [https://x.com/\\_hudsonc/status/1740081758484455919/photo/1](https://x.com/_hudsonc/status/1740081758484455919/photo/1).

- (b) Second, General Hamdan's youngest brother has lived in Dubai since 2014<sup>116</sup>, where he established companies to manage the family interest in marketing gold sourced from Sudan<sup>117</sup>.
- (c) Third, as you have already heard from Professor Bjorge, the United States has sanctioned one individual and seven entities located in the UAE for their support to the RSF.

13. In light of all this, there is every reason to view as at least plausible press reports stating that General Hamdan has very recently travelled to the UAE to meet with senior UAE officials and to discuss the potential reorganization of the RSF following the Government's liberation of Khartoum<sup>118</sup>.

### **C. Sudan's right to seek the UAE's compliance with its obligation to refrain from complicity in genocide**

14. I turn now to Sudan's right to seek compliance from the UAE in refraining from complicity in genocide.

15. In its 2007 Judgment in *Bosnia Genocide*, the Court held that "there is no doubt that 'complicity', in the sense of Article III, paragraph (e), of the Convention, includes the provision of means to enable or facilitate the commission of the crime"<sup>119</sup>. The Court explained:

"[A]lthough 'complicity', as such, is not a notion which exists in the current terminology of the law of international responsibility, it is similar to a category found among the customary rules constituting the law of State responsibility, that of the 'aid or assistance' furnished by one State for the commission of a wrongful act by another State."<sup>120</sup>

16. The Court also recognized that: "In this connection, reference should be made to Article 16 of the ILC's Articles on State Responsibility, reflecting a customary rule"<sup>121</sup>. This states as follows:

"A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

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<sup>116</sup> D. Walsh and C. Koettl, "How a U.S. Ally Uses Aid as a Cover in War", *The New York Times*, 21 September 2024.

<sup>117</sup> D. Walsh, C. Koettl and E. Schmitt, "Talking Peace in Sudan, the U.A.E. Secretly Fuels the Fight", *The New York Times*, 29 September 2023.

<sup>118</sup> Washington Center for Human Rights, "Hemedti's secret UAE visit exposes plot to reorganize RSF", 7 April 2025, available at: <https://www.washingtoncentre.org/hemedtis-secret-uae-visit-exposes-plot-to-reorganize-rsf/>.

<sup>119</sup> *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. 217, para. 419.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*, para. 420.

(a) that State does so with the knowledge of the circumstances of the internationally wrongful act; and

(b) that act would be internationally wrongful if committed by that State.”

17. The Court found that it could see “no reason to make any distinction of substance between ‘complicity in genocide’, within the meaning of Article III, paragraph (e), of the Convention, and the ‘aid or assistance’ of a State in the commission of a wrongful act by another State within the meaning of . . . Article 16”<sup>122</sup>.

18. Plainly, there is at least a plausible case that Sudan has rights under Article 16. I have already addressed the question of the UAE’s knowledge of the genocide from November 2023 and there can, of course, be no dispute that those heinous acts would be internationally wrongful if committed by the UAE itself.

19. Notwithstanding its knowledge that the RSF was committing acts of genocide, the UAE continued — and, indeed, continues still — to lend aid and assistance to the RSF, including through the provision of weapons and equipment to be used in the conflict. Some of those weapons have no doubt already been, and very likely will be, used to commit atrocities against the surviving Masalit group in North and West Darfur, including the tens of thousands currently under siege in El Fasher and in other gathering places such as the Zamzam camp.

20. I thank you for your attention. Mr President, I ask you to call to the podium Professor Palchetti, who will address urgency and irreparable harm.

The PRESIDENT: I thank Mr Aughey for his statement. I now invite Professor Paolo Palchetti to the podium. Sir.

M. PALCHETTI :

**L’EXISTENCE D’UN RISQUE RÉEL ET IMMINENT DE PRÉJUDICE IRRÉPARABLE ET  
LES MESURES CONSERVATOIRES DEMANDÉES PAR LE SOUDAN**

1. Monsieur le président, Mesdames et Messieurs les juges, c’est un honneur pour moi de représenter la République du Soudan devant vous.

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<sup>122</sup> *Ibid.*

2. Il me revient, tout d'abord, de vous montrer que les conditions de l'urgence et du risque de préjudice irréparable sont remplies dans le cas d'espèce. Je vous présenterai ensuite les mesures demandées par le Soudan.

### **I. Urgence et risque de préjudice irréparable**

3. Quand une affaire porte sur la violation de la convention sur le génocide, il devient inutile de s'attarder sur le caractère irréparable du préjudice qui peut être causé aux droits en litige. Votre jurisprudence est claire sur ce point : comme vous l'avez indiqué, les droits d'un groupe d'être protégé contre les actes de génocide « sont de nature telle que le préjudice qui leur serait porté pourrait être irréparable »<sup>123</sup> ; et cela « [à] la lumière des valeurs fondamentales que la convention sur le génocide entend protéger ».

4. Les droits en litige dans notre affaire ne sont pas seulement menacés d'un risque de préjudice irréparable. Ce risque est « réel et imminent ». La condition de l'urgence est donc également remplie.

5. La communauté Massalit au Soudan est toujours exposée à une situation d'extrême vulnérabilité. Son droit d'être protégée contre les actes de génocide risque de subir un préjudice irréparable « à tout moment »<sup>124</sup>.

6. Ce risque réel et imminent auquel est exposé le groupe Massalit n'est pas seulement imputable aux Forces d'appui rapide et aux milices alliées. Par leur comportement, les Émirats arabes unis ont largement contribué à rendre cette situation possible. Ils continuent de le faire. Dans la mesure où les Émirats n'ont pas cessé de fournir un soutien actif aux forces rebelles qui sont responsables de cette situation, en violation flagrante de leurs obligations de prévenir un génocide et de ne pas porter aide et assistance à la commission d'un génocide, le risque réel et imminent qui pèse sur la communauté Massalit est également imputable aux Émirats. Il est urgent qu'ils suspendent toute forme de soutien. Il est urgent qu'ils utilisent tous les moyens dont ils disposent pour faire cesser le génocide.

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<sup>123</sup> *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), mesures conservatoires, ordonnance du 26 janvier 2024, C.I.J. Recueil 2024, p. 26, par. 66.*

<sup>124</sup> « La condition d'urgence est remplie dès lors que les actes susceptibles de causer un préjudice irréparable peuvent “intervenir à tout moment” avant que la Cour ne se prononce de manière définitive en l'affaire » (*Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022, C.I.J. Recueil 2022 (I), p. 226-227, par. 66.*)

7. Les collègues qui m'ont précédé vous ont déjà présenté la pluralité de sources qui attestent des actes de génocide commis contre le groupe Massalit et de l'aide apportée par les Émirats arabes unis aux forces responsables de ces actes. Si je reviens sur ces deux aspects, c'est pour insister sur l'urgence de prendre des mesures conservatoires face à une situation où de nouveaux actes de génocide peuvent être commis à tout moment.

8. Monsieur le président, l'existence d'un risque de génocide est connue depuis la fin 2023. Déjà en novembre 2023, le haut-représentant de l'Union européenne condamnait le massacre de plus de 1 000 membres de la communauté Massalit et demandait à la communauté internationale de ne pas permettre qu'un autre génocide se produise au Darfour.

9. La situation n'a pas changé en 2024. L'existence d'un risque de génocide a continué à être dénoncée, y compris par le conseiller spécial des Nations Unies pour la prévention du génocide.

10. Le 19 décembre 2024, la conseillère principale auprès de l'organisation Preventing and Ending Mass Atrocities, M<sup>me</sup> Shayna Lewis, a clairement dénoncé au Conseil de sécurité la situation existant au Soudan. Il vaut la peine de relire ce qu'elle disait devant le Conseil de sécurité, il y a seulement quelques mois :

« [L]es atrocités commises par les Forces d'appui rapide s'étendent à l'ensemble du pays. Ces forces, soutenues par les Émirats arabes unis, commettent un génocide au Darfour, d'Ardamata à Geneina et de Koutoum à El-Fasher, et aujourd'hui, elles se livrent à un nettoyage ethnique à Zamzam, le plus grand camp de déplacés du Soudan, qui est en proie à la famine. Les Forces d'appui rapide tentent d'achever le génocide qui a débuté il y a plus de 20 ans, et elles sont en train d'y parvenir. »<sup>125</sup>

11. Début 2025, c'est au tour des États-Unis de reconnaître que « members of the RSF and allied militias have committed genocide in Sudan »<sup>126</sup>.

12. Dans les dernières semaines, la situation s'est encore détériorée. Dans un rapport présenté au Conseil de sécurité fin février 2025, le Secrétaire général des Nations Unies a indiqué que les violences contre les civils se sont intensifiées, en particulier dans le camp de déplacés de Zamzam. Le professeur Bjorge vous a parlé du siège auquel la ville d'El-Fasher est soumise depuis plusieurs mois. Le 1<sup>er</sup> avril, le bureau du porte-parole du Secrétaire général des Nations Unies faisait état de la

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<sup>125</sup> Nations Unies, Conseil de sécurité, rapport du Secrétaire général sur le Soudan et le Soudan du Sud, 9822<sup>e</sup> séance, 19 décembre 2024, doc. S/PV.9822, p. 4.

<sup>126</sup> US Department of State, « Genocide Determination in Sudan and Imposing Accountability Measures », 7 janvier 2025, accessible à l'adresse suivante : <https://2021-2025.state.gov/genocide-determination-in-sudan-and-imposing-accountability-measures/>.

catastrophe humanitaire qui s'abat sur la ville : « We are gravely alarmed by reports of intensified hostilities in and around El Fasher in North Darfur State, including attacks in the past two days that resulted in civilian casualties. » La presse la plus réputée parle désormais d'une détérioration catastrophique sans précédent dans la ville d'El-Fasher. La ville d'El-Fasher et le camp de Zamzam accueillent des milliers de personnes appartenant à la communauté Massalit. L'urgence qui caractérise actuellement la situation au Darfour ne peut faire aucun doute.

13. Un génocide est en train d'être commis. De nouveaux actes de génocide peuvent intervenir à chaque instant.

14. Et, toutefois, en dépit des cris d'alarme lancés par la communauté internationale, un État continue à armer les milices qui commettent ce génocide, un État qui, par ses actes et omissions, a rendu possible et continue à rendre possible cette situation.

15. Vous avez déjà été informés des avions-cargos en provenance des Émirats arabes unis et transportant armes et munitions. Le Soudan a fourni à la Cour un rapport de renseignement, qui décrit en détail, avec l'indication du jour et de l'heure d'arrivée, comment ces vols assurent l'approvisionnement en armes des Forces de soutien rapide.

16. Cet après-midi, les Émirats arabes unis ne manqueront probablement pas de protester contre les allégations du Soudan. Ils vous diront que, oui, il y a des vols fréquents entre les Émirats arabes unis et le Tchad, mais que ces vols transportent seulement des aides humanitaires.

17. Il faudra alors se rappeler que, déjà en janvier 2024, le groupe d'experts sur le Soudan établi par le Conseil de sécurité avait conclu que les allégations du Soudan « sont crédibles ».

18. Des rapports d'organisations non gouvernementales et les informations puisées dans la presse confirment le bien-fondé des allégations du Soudan. Ils confirment également que la livraison d'armes n'a jamais cessé. Et je note, en passant, que l'utilité de ces sources ne peut pas être contestée : elles satisfont pleinement l'« exigence de cohérence et de concordance » que vous demandez pour pouvoir fonder la preuve sur ce type de documents<sup>127</sup>.

19. Dans un rapport de novembre 2024, l'International Crisis Group — un « institut non gouvernemental indépendant dont les rapports sont établis à partir d'informations et d'évaluations

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<sup>127</sup> *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, arrêt, C.I.J. Recueil 2005, p. 204, par. 68.

recueillies sur le terrain »<sup>128</sup>, pour utiliser les mots de la Cour — atteste que les livraisons d'armes ont continué sans interruption. Les modalités sont les mêmes que celles décrites dans le rapport des Nations Unies :

« [D]es avions-cargos émiratis ont pourtant atterri régulièrement au Tchad, d'abord à Amdjarass (province de l'Ennedi Est), au nord-est du pays, puis à N'Djamena, après avoir coupé leur transpondeur pour ne pas être tracés. Les armes sont ensuite acheminées au Darfour par la route »<sup>129</sup>.

20. Le rapport de renseignement présenté par le Soudan indique que des armes sont toujours livrées. Les informations puisées dans la presse attestent même d'une intensification des arrivées des avions-cargos à l'aéroport de N'Djamena. « Sept avions le 7 février 2025, puis cinq le 11 février et trois le 12. » Une situation qui a été décrite comme un « ballet nocturne incessant »<sup>130</sup>.

21. Monsieur le président, la livraison d'armes n'est qu'une des modalités par lesquelles les Émirats arabes unis facilitent le génocide contre la communauté Massalit. Elle est pourtant suffisante pour vous montrer à quel point le comportement actuel des Émirats contribue à la situation d'extrême vulnérabilité de cette communauté. Il est urgent qu'ils cessent d'aider et d'assister les auteurs du génocide au Soudan. C'est ce qui justifie les mesures conservatoires demandées par le Soudan, que je m'apprete maintenant à vous présenter.

## **II. Les mesures conservatoires demandées par le Soudan**

22. Comme M<sup>e</sup> Aughey vous l'a indiqué, les droits que le Soudan souhaite voir protégés sont les droits qui découlent des obligations incombant aux Émirats arabes unis au titre des articles premier et III de la convention sur le génocide, à savoir l'obligation de prévenir le génocide et l'obligation de ne pas commettre des actes qui constituent une complicité dans le génocide.

23. Les première et deuxième mesures conservatoires demandées par le Soudan visent à préserver ces deux droits. Elles satisfont pleinement la condition selon laquelle il doit exister un lien entre les droits revendiqués et les mesures sollicitées.

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<sup>128</sup> *Activités armées sur le territoire du Congo (République démocratique du Congo c. Ouganda)*, arrêt, C.I.J. Recueil 2005, p. 205, par. 73.

<sup>129</sup> International Crisis Group, Tchad : limiter l'impact de la guerre au Soudan dans le Ouaddaï, 14 novembre 2024, accessible à l'adresse suivante : <https://www.crisisgroup.org/fr/africa/central-africa/chad-sudan/b202-tchad-limiter-limpact-de-la-guerre-au-soudan-dans-le-ouaddai>.

<sup>130</sup> « Le Tchad, acteur et victime de la guerre au Soudan », *Le Monde*, 11 mars 2025.



24. La première mesure concerne l'obligation qui incombe aux Émirats de prévenir le génocide. Comme la Cour l'a indiqué, l'obligation de prévenir un génocide est une obligation de « *due diligence* » qui impose aux États parties à la convention « de mettre en œuvre tous les moyens qui sont raisonnablement à leur disposition en vue d'empêcher, dans la mesure du possible, le génocide »<sup>131</sup>.

25. La deuxième mesure concerne l'obligation de ne pas commettre des actes de complicité dans le génocide, ce qui, comme vous l'avez dit, « englobe sans nul doute la fourniture de moyens destinés à permettre ou à faciliter la commission du crime »<sup>132</sup>.

26. Les deux mesures demandées ont une portée générale : elles couvrent l'ensemble des comportements des Émirats qui contribuent à créer un risque de préjudice irréparable aux droits plausibles revendiqués par le Soudan. Elles visent à assurer que les Émirats cessent tout comportement qui puisse constituer une forme d'aide ou d'assistance aux forces rebelles dans la commission du génocide. Elles visent également à assurer qu'ils utilisent tous les moyens dont ils disposent pour empêcher que de nouveaux actes de génocide soient commis.

27. Cela implique, en particulier :

- De mettre fin à la livraison d'armes, de munitions, et d'autres formes d'assistance militaire ou logistique aux Forces d'appui rapide et aux autres milices qui sont responsables des actes de génocide contre la communauté Massalit.
- Cela implique aussi de mettre fin à toute forme de financement qui puisse être destinée à aider ou assister les Forces d'appui rapide et les autres milices dans la commission d'actes de génocide.
- Cela implique enfin de prendre toutes les mesures nécessaires pour assurer que des personnes, sociétés ou organisations qui sont soumises à sa juridiction ou à son pouvoir d'influence ne fournissent aucune aide ou assistance aux Forces d'appui rapide et aux autres milices qui participent à la commission d'actes de génocide.

28. La troisième mesure demandée par le Soudan est de nature procédurale. Elle vise à obtenir que les Émirats soumettent à la Cour un rapport sur l'ensemble des mesures qu'ils auront prises en

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<sup>131</sup> *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), p. 221, par. 430.

<sup>132</sup> *Ibid.*, p. 217, par. 419.

exécution de la décision de la Cour. Dans notre affaire, une telle mesure est d'autant plus justifiée, car les Émirats ont toujours nié avoir aidé ou assisté les Forces d'appui rapide, en particulier par la fourniture d'armes. Un contrôle sur la mise en œuvre des mesures indiquées par la Cour paraît donc nécessaire.

### III. Conclusions

29. Monsieur le président, un génocide est en train d'être commis au Soudan. Ce génocide est alimenté par un État — les Émirats arabes unis — qui, en violation de ses obligations internationales, y compris celles découlant des résolutions du Conseil de sécurité<sup>133</sup>, a continué à fournir des armes et d'autres formes d'aide aux milices qui ont la responsabilité directe de ce génocide.

30. Le Conseil de sécurité des Nations Unies<sup>134</sup>, le Conseil de paix et de sécurité de l'Union africaine<sup>135</sup> et plusieurs États<sup>136</sup> ont condamné les ingérences extérieures qui alimentent le conflit soudanais. Ils ont demandé aux États qui facilitent les transferts d'armes et de matériel militaire au Darfour de respecter leurs obligations internationales. Cette demande est restée lettre morte jusqu'à présent.

31. Face à cette situation, le rôle de la Cour, en tant que gardienne ultime du respect de la convention sur le génocide, prend une importance capitale. Ce que le Soudan demande à la Cour est d'exercer pleinement le rôle que lui assigne la convention.

32. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie de votre attention et je vous prie, Monsieur le président, de bien vouloir donner la parole à l'agent du Soudan.

The PRESIDENT: I thank Professor Palchetti for his statement. I now give the floor back to the Agent of Sudan, His Excellency Dr Muawia Osman Mohamed Khair. You have the floor, Sir.

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<sup>133</sup> Nations Unies, résolution 1556 du Conseil de sécurité, 5015<sup>e</sup> séance, 30 juillet 2004, doc. S/RES/1556 (2004) ; Nations Unies, résolution 2725 du Conseil de sécurité, 9569<sup>e</sup> séance, 8 mars 2024, doc. S/RES/2725 (2024).

<sup>134</sup> Nations Unies, résolution 2725 du Conseil de sécurité, 9569<sup>e</sup> séance, 8 mars 2024, doc. S/RES/2725 (2024).

<sup>135</sup> 1261<sup>st</sup> meeting (at heads of state level), 14 February 2025.

<sup>136</sup> France, États-Unis d'Amérique.

Mr KHAIR:

### **SUBMISSIONS**

1. Mr President, Members of the Court, that concludes the oral argument of the Republic of Sudan. All that remains is for me to repeat Sudan's submissions as set out in its letter to the Court dated 3 April 2025.

"The Republic of the Sudan respectfully requests that, pending final judgment in this case, the Court indicate that:

(1) The United Arab Emirates shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the Masalit group in the Republic of the Sudan, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:

(a) killing members of the group;

(b) causing serious bodily or mental harm to the members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and

(d) imposing measures intended to prevent births within the group.

(2) The United Arab Emirates shall, in accordance with its obligations under the Genocide Convention, in relation to the members of the Masalit group, refrain from any conduct amounting to complicity in the commission of any of the acts described in point (1) above by any irregular armed units, or by any organization or persons.

(3) The United Arab Emirates shall submit a report to the Court on all measures taken to give effect to this Order within one month, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court."

2. Mr President, Members of the Court, my country and the Masalit people thank you for your kind attention at this desperate time. I also thank the interpreters and the Court staff for their invaluable assistance. Thank you.

The PRESIDENT: I thank the Agent of Sudan, whose statement brings to an end the single round of oral argument of his Government, as well as this morning's sitting. The Court will meet again this afternoon, at 4 p.m., to hear the United Arab Emirates present its single round of oral argument.

The sitting is adjourned.

*The Court rose at 12.10 p.m.*

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