



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928

[Website](#) [X](#) [YouTube](#) [LinkedIn](#)

Summary

Unofficial

Summary 2025/2

5 May 2025

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

Request for the indication of provisional measures

The Court begins by recalling that, on 5 March 2025, 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 (hereinafter the “Genocide Convention”) in Sudan, most notably in West Darfur. Together with its Application, Sudan submitted a Request for the indication of provisional measures with reference to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court.

At the public hearings held on 10 April 2025, Sudan requested at the end of its oral observations that, pending final judgment, the Court indicate the following provisional measures:

- “(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.”

*

I. INTRODUCTION (PARAS. 16-17)

In the Order, the Court recalls that the present case came before it in the context of an ongoing conflict in Sudan that broke out in April 2023 between the Sudanese Armed Forces and a paramilitary organization known as the “Rapid Support Forces” and respective armed groups aligned with them. The Court observes that the Request filed by Sudan on 5 March 2025 refers, more specifically, to armed attacks targeting members of the Masalit group, a people primarily resident in the Sudanese region of West Darfur. In this regard, Sudan alleges, *inter alia*, that the Rapid Support Forces have engaged in extrajudicial killing, ethnic cleansing, forced displacement of civilians, rape and burning of villages, and that they have systematically murdered men and boys on an ethnic basis, and deliberately targeted women and girls from certain ethnic groups for rape and other forms of sexual violence.

The Court notes that it is deeply concerned about the unfolding human tragedy in Sudan that forms the backdrop to the present dispute. The violent conflict has a devastating effect, resulting in untold loss of life and suffering, in particular in West Darfur. The scope of the case before the Court is, however, necessarily circumscribed by the basis of jurisdiction invoked in the Application.

The Court then turns to the conditions that need to be fulfilled in order for it to indicate provisional measures.

II. PRIMA FACIE JURISDICTION (PARAS. 18-34)

With respect to the question of prima facie jurisdiction, the Court observes that it may indicate provisional measures only if the provisions relied on by the applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but it need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case.

In the present case, Sudan seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention. The Court must therefore first determine whether those provisions prima facie confer upon it jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

Article IX of Genocide Convention provides:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

Both Sudan and the UAE are parties to the Genocide Convention, Sudan having acceded to the Convention on 13 October 2003 and the UAE on 11 November 2005. The UAE, when acceding to the Convention, formulated a reservation to Article IX which reads as follows:

“The Government of the State of the United Arab Emirates, having considered the aforementioned Convention and approved the contents thereof, formally declares its accession to the Convention and 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.”

The Court notes that no State objected to the reservation of the UAE, including Sudan.

The Court recalls that it has jurisdiction in respect of States only to the extent that they have consented thereto. When a compromissory clause in a treaty provides for the Court’s jurisdiction, that jurisdiction exists only in respect of the parties to the treaty who are bound by that clause and within the limits set out in the clause.

The Court considers that the reservation made by the UAE to Article IX of the Genocide Convention is formulated in clear terms in so far as it concerns “the submission of disputes . . . relating to the interpretation, application and fulfilment of [the] Convention, to the International Court of Justice”. In the Court’s view, the omission in the text of the reservation of the phrase “including those relating to the responsibility of a State for genocide”, considered by Sudan to be “key wording”, does not result in any uncertainty as to the effects of that reservation. This is because the reference in the reservation to the “interpretation, application and fulfilment” of the Genocide Convention encompasses the responsibility of a State, which is made clear by the use of the term “including” in Article IX. Consequently, the reservation by the UAE can only be interpreted as seeking to exclude the jurisdiction of the Court over all disputes, under Article IX of the Genocide Convention, to which the UAE may be a party.

The Court recalls that it has already found in the past that reservations are not prohibited under the Genocide Convention. However, a reservation under the Genocide Convention would not be permissible if such a reservation is incompatible with the object and purpose of the Convention.

The Court notes that the reservation of the UAE 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. In the circumstances of the present case, the Court cannot conclude that the reservation 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 incompatible with the object and purpose of the Convention. In fact, the Court has in the past given effect to reservations to Article IX.

The Court thus considers that the UAE’s reservation has the effect of excluding Article IX from the provisions of the Genocide Convention in force between the Parties.

The Court concludes from the foregoing that, having regard to the UAE’s reservation to Article IX of the Genocide Convention, this Article cannot constitute, *prima facie*, a basis for the jurisdiction of the Court in the present case. It follows that the Court, lacking *prima facie* jurisdiction to entertain Sudan’s Application, cannot indicate the provisional measures requested in order to protect the rights invoked in the Application submitted by Sudan.

Consequently, there is no need for the Court to address whether other conditions for the indication of provisional measures have been met in the present case.

III. REMOVAL OF THE CASE FROM THE GENERAL LIST (PARA. 35)

The Court further considers that, in light of the reservation made by the UAE to the compromissory clause contained in Article IX of the Genocide Convention and in the absence of any

other basis of jurisdiction, the Court manifestly lacks jurisdiction to entertain Sudan's Application. In a system of consensual jurisdiction, to maintain on the General List a case upon which it appears certain that the Court will not be able to adjudicate on the merits would not contribute to the sound administration of justice. The present case will therefore be removed from the General List.

*

* *

Having come to the conclusion that it manifestly lacks jurisdiction, the Court is precluded by its Statute from taking any position on the merits of the claims made by Sudan. However, as the Court has stated on numerous previous occasions, there is a fundamental distinction between the question of acceptance by States of the Court's jurisdiction and the conformity of their acts with international law. Whether or not States have accepted the jurisdiction of the Court pursuant to Article IX of the Genocide Convention, they are required to comply with their obligations under that instrument, and they remain responsible for acts attributable to them which are contrary to their international obligations.

OPERATIVE CLAUSE (PARA. 37)

The full text of the operative clause of the Order reads as follows:

“For these reasons,

THE COURT,

(1) By fourteen votes to two,

Rejects the Request for the indication of provisional measures submitted by the Republic of the Sudan on 5 March 2025;

IN FAVOUR: *President* IWASAWA; *Vice-President* SEBUTINDE; *Judges* TOMKA, ABRAHAM, XUE, BHANDARI, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLED, CLEVELAND, AURESCU, TLADI; *Judge ad hoc* COUVREUR;

AGAINST: *Judge* YUSUF; *Judge ad hoc* SIMMA;

(2) By nine votes to seven,

Orders that the case be removed from the General List.

IN FAVOUR: *President* IWASAWA; *Vice-President* SEBUTINDE; *Judges* TOMKA, ABRAHAM, XUE, NOLTE, BRANT, AURESCU; *Judge ad hoc* COUVREUR;

AGAINST: *Judges* YUSUF, BHANDARI, CHARLESWORTH, GÓMEZ ROBLED, CLEVELAND, TLADI; *Judge ad hoc* SIMMA.”

*

Judge YUSUF appends a dissenting opinion to the Order of the Court; Judges BHANDARI, CHARLESWORTH, GÓMEZ ROBLEDO, CLEVELAND, TLADI and Judge *ad hoc* SIMMA append a joint partly dissenting opinion to the Order of the Court; Judge GÓMEZ ROBLEDO appends a dissenting opinion to the Order of the Court, Judge *ad hoc* SIMMA appends a declaration to the Order of the Court.

Dissenting opinion of Judge Yusuf

1. Judge Yusuf explains in his dissenting opinion the reasons for his disagreement with the decision of the Court in the operative paragraphs of the Order.

2. According to him, the Order prejudices the Court's jurisdiction on the merits without having afforded an opportunity to the Parties to be heard on their dispute regarding complex and delicate issues relating to reservations to the Genocide Convention. He considers that the Order ignores the fundamental difference, reflected in the well-established case law of the Court, between *prima facie* jurisdiction and jurisdiction on the merits. He is of the view that a decision regarding the jurisdiction of the Court on the merits of the case cannot and should not have been taken in an order on provisional measures. Such a decision can only be taken in accordance with Article 36, paragraph 6, of the Statute and Articles 79, 79*bis* and 79*ter* of the Rules of Court.

3. For Judge Yusuf, the conflation of "prima facie jurisdiction" and the jurisdiction of the Court on the merits of the case in an order on provisional measures is contrary to those provisions of the Statute and of the Rules of Court.

4. Judge Yusuf considers that, when deciding on a request for provisional measures, the Court can neither make its final determination on its jurisdiction on the merits nor order the removal of the case from the Court's General List. This is particularly the case when there is an important dispute between the Parties on legally complex and consequential matters such as the validity of reservations to the Genocide Convention.

5. In the view of Judge Yusuf, the Court should have followed in this case its decision on provisional measures in the *Interhandel* case, in which it was faced with similar legal issues, and where the Court reserved the examination of its jurisdiction on the merits to the phase of preliminary objections in the proceedings.

6. Judge Yusuf also contests the removal of the case from the General List, which he finds unjustified and inconsistent with the Rules of Court regarding discontinuance and removal of cases from the General List.

Joint partly dissenting opinion of Judges Bhandari, Charlesworth, Gómez Robledo, Cleveland, Tladi and Judge *ad hoc* Simma

In their joint partly dissenting opinion, Judges Bhandari, Charlesworth, Gómez Robledo, Cleveland, Tladi and Judge *ad hoc* Simma explain that although they hold differing views regarding the strength of Sudan's jurisdictional arguments, they are united in voting against the Court's decision to remove the case from the General List on the basis of a manifest lack of jurisdiction.

In their view, Sudan should have been granted an opportunity to present its jurisdictional arguments fully. They also express their concern about the Court's rush to judgment on this issue, which effectively punishes Sudan for seeking the indication of provisional measures.

The dissenting judges note that the Court has recognized a distinction between a lack of *prima facie* jurisdiction and a *manifest* lack of jurisdiction, and that in the vast majority of cases where the Court found a lack of *prima facie* jurisdiction at the provisional measures stage, it did not consider that the case should be removed from the General List. The Court has removed a case from the

General List for manifest lack of jurisdiction in only two instances: Yugoslavia's cases against Spain and the United States in *Legality of Use of Force* in 1999, where the States' reservations excluding Article IX of the Genocide Convention were unambiguous, and there was no dispute before the Court regarding jurisdiction. However, in the present case, not only did Sudan raise arguments regarding the alleged invalidity of the United Arab Emirates' reservation, but it also questioned the scope and interpretation of the reservation.

The judges observe that by removing the case from the General List, the Court has barred Sudan from having any opportunity to further develop its factual and legal arguments regarding jurisdiction and has barred the United Arab Emirates from responding to those arguments.

In their view, the appropriate approach in this case would have been for the Court to address any threshold jurisdictional concerns through Article 79 of the Rules of Court, which allows the Court to bifurcate the proceedings and decide that questions concerning jurisdiction shall be determined first.

They note that while stability in the Court's jurisprudence is important for the expectation of States and the international legal system, the Court must nevertheless take into account new facts and circumstances. For them, the dismissal of a case at such an early stage prevents the evolution of the Court's jurisprudence, even though there have been important developments in legal doctrine and State practice since the *Democratic Republic of the Congo v. Rwanda* Judgment. Thus, in the interest of the sound administration of justice and the right of a State to be heard fully, Sudan's Application should not be removed from the General List.

Declaration of Judge *ad hoc* Simma

In his declaration, Judge *ad hoc* Simma explains that he voted against the Order and therefore joined six other judges in the joint partly dissenting opinion. However, he considers it necessary to provide certain additional explanations for his dissent.

In his view, the question of reservations to Article IX requires the careful attention it deserves. This necessitates a full jurisdictional phase of the proceedings, during which all relevant arguments can be properly heard — particularly in the context of human rights treaties, which have evolved significantly. This should also be considered in light of the Court's expanding jurisprudence on obligations *erga omnes (partes)* and peremptory norms of general international law (*jus cogens*).

He further notes that the mere fact that six Members of the Court in 2006, and seven judges today, hold the view that the Court should have reached a different conclusion, underscores that it cannot be said that it is "apparent" that there is a *manifest* lack of jurisdiction in this case.
