



*Union Minister for Ministry 1 at Office of Chairman of the  
State Administration Council  
Republic of the Union of Myanmar*

No. **1** /665-200/MOUG(2)(2024)

Dated : **15** January 2024

Mr. Philippe Gautier  
Registrar  
International Court of Justice  
Peace Palace  
Carnegieplein 2  
2517 KJ The Hague  
The Netherlands

**BY E-MAIL ONLY**

Excellency,

1. With reference to the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, I have the honour to refer to your letters numbers 160712 and 160716, both dated 15 November 2023, in which you transmitted to Myanmar, respectively, the declaration of intervention of the Republic of the Maldives (the “**Maldives Declaration**”), and the joint declaration of intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (the “**Joint Declaration**”), and in which you informed Myanmar that 15 January 2024 has been fixed as the time-limit within which the parties may furnish their written observations on those declarations of intervention.
2. Myanmar now provides the following observations on the Maldives Declaration and the Joint Declaration.
3. Both the Maldives Declaration and the Joint Declaration state that they are made pursuant to Article 63 of the Statute of the Court. Neither declaration of intervention purports to be made pursuant to, or purports in any way to rely upon, Article 62 of the Statute. It follows that the Maldives Declaration and the Joint Declaration both fall to be considered exclusively from the perspective of Article 63 of the Statute, and of the relevant provisions of the Rules of Court relating to Article 63 of the Statute. Myanmar objects to the admissibility of both the Maldives Declaration and the Joint Declaration on the ground that they do not satisfy the requirements of these provisions.
4. Each of the declarations of intervention, in order to be admissible, must first satisfy the formal requirements of Article 63 of the Statute and Article 82 of the Rules of Court.

5. The person signing the Maldives Declaration as the Agent of the Maldives is not the diplomatic representative of the Maldives in the country where the Court has its seat. Article 82, paragraph 1 first sentence, of the Rules of Court, read with Article 38, paragraph 3, therefore requires that the signature of the Agent be authenticated by that diplomatic representative or by the competent authority of the foreign ministry of the Maldives. From the papers transmitted to Myanmar, it is not apparent that this requirement has been met. The Maldives Declaration therefore does not satisfy the formal requirements of admissibility.
6. The Court will examine *ex officio* whether the formal requirements are otherwise met. However, even if the Court should find that the Maldives Declaration and/or the Joint Declaration satisfy the formal requirements of admissibility under Article 63 of the Statute and Article 82 of the Rules of Court, Myanmar's position is that the substantive requirements of admissibility are not met.
7. As is expressly acknowledged in paragraph 8 of the Joint Declaration, "the right to intervene under Article 63 is confined to the point of interpretation which is in issue in the proceedings, and does not extend to general intervention in the case" (*Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application to Intervene, Judgment, I.C.J. Reports 1981*, p. 15, para. 26, referring to *Haya de la Torre case, I.C.J. Reports 1951*, pp. 74, 76-77).
8. The scope of an intervention under Article 63 of the Statute is therefore subject to a number of specific limitations.
9. First, interventions under Article 63 of the Statute must be confined to a presentation of observations on the construction of the convention in question (see Rules of Court, Article 82, paragraph 2 (c)). The Court has affirmed that "the limited object of the intervention is to allow a third State not party to the proceedings, but party to a convention whose construction is in question in those proceedings, to present to the Court its observations on the construction of that convention" (*Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013*, p. 5, para. 7).
10. This means in particular that a State intervening in a case under Article 63 of the Statute is not entitled to address or to refer to the merits of the case. An intervening State is thus for instance *not* permitted to address matters such as the evidence, the facts, or the application of the convention in the case (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order, 5 June 2023 (the "Ukraine v. Russia Order")*, para. 84).
11. Statements going beyond the permissible limits of an intervention under Article 63 in this respect are found in paragraphs 6 and 8 of the Maldives Declaration, which make statements about claimed events in Myanmar, about diplomatic statements of the Maldives concerning those claimed events, and about the motives of the States filing the declarations of intervention. These paragraphs of the Maldives Declaration must

not be considered by the Court (*Ukraine v. Russia* Order, para. 84). Similarly, paragraphs 9, 10 and 14 (first sentence) of the Joint Declaration contain references to the common interest of parties to the Genocide Convention, which are irrelevant to an intervention pursuant to Article 63 of the Statute.

12. Paragraph 27 of the Joint Declaration also impermissibly contains an assertion of fact that “Sexual violence is often a cornerstone of genocidal campaigns because ...”. It may be within the permissible scope of an intervention under Article 63 of the Statute to argue that a certain kind of act can as a matter of law fall within the scope of a particular provision of the convention in question. However, it goes beyond the permissible scope of such an intervention to contend as a fact that a particular type of act occurs frequently in practice.
13. Second, interventions pursuant Article 63 of the Statute, being confined to the construction of the convention in question, may not address the interpretation or application of other norms of conventional or customary international law, or issues such as the rules of procedure and evidence to be applied by the Court when determining the merits of the case.
14. Statements going beyond the permissible limits of an intervention under Article 63 in this respect are found in the Joint Declaration, to the extent that it presents arguments as to the standard of proof to be applied by the Court in this case, and as to the kinds of matters that can be regarded as evidence of acts of genocide or of a genocidal intent.
15. The Genocide Convention does not prescribe any rules of procedure or evidence to be applied by domestic or international courts. Any international or domestic court dealing with an issue arising under the Genocide Convention will apply its own rules of procedure and evidence. In the *Bosnia Genocide* case and the *Croatia Genocide* case, the Court determined the standard of proof that it would apply in accordance with the general principle in its established jurisprudence that “claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive” (*Bosnia Genocide* case, p. 129, para. 209; *Croatia Genocide* case, p. 74, para. 178). In both of those cases, the Court indicated (*ibid.*) that the leading case for this principle was the *Corfu Channel* case, which had nothing to do with the Genocide Convention. In the *Croatia Genocide* case, the Court also made clear that the rules it applied concerning the burden and onus of proof were derived from its general jurisprudence, as found in particular in the case of *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), which also had nothing to do with the Genocide Convention. In the *Croatia Genocide* case, the Court similarly made clear that its assessment of the weight to be given to particular items of evidence followed the practice in its own earlier jurisprudence in cases unrelated to the Genocide Convention (*Croatia Genocide* case, p. 130, para. 213).
16. The parts of the Joint Declaration which go beyond the permissible limits of an intervention under Article 63 in this respect include essentially the whole of its

paragraphs 49-76, which deal with the kinds of circumstances from which it might be open to the Court to draw an inference of the existence of a genocidal intent. These paragraphs also impermissibly address more specifically issues of the standard of proof (in particular at paragraphs 50-54), and the weight to be given to particular types of evidence (in particular at paragraph 76). Similarly impermissible are the words “or evidences” in the last sentence of paragraph 28, and the words “and can constitute evidence of specific intent ...” in the last sentence of paragraph 44.

17. The Court has affirmed that “It is incumbent on the Court to organize the proceedings in a manner which ensures the equality of the parties and the good administration of justice” (*Ukraine v. Russia* Order, para. 52).
18. In this respect, Myanmar draws attention to the fact that neither the Application instituting proceedings of The Gambia, nor your letter number 163158 dated 24 January 2020 giving notice to the proposed interveners of this case pursuant to Article 63, paragraph 1 of the Statute, contains any reference to Article II of the Genocide Convention. Despite this, the Joint Declaration states at paragraph 19 that “the proper construction of Articles ... II ... of the Genocide Convention is in question in the case”. It is unclear on what basis the proposed interveners have reached the conclusion that the construction of Article II of the Convention is in issue in the proceedings.
19. Intervenors under Article 63 of the Statute are not parties to cases, and it is important to the equality of the parties and the good administration of justice that their interventions be kept strictly within their proper limit. In the *Ukraine v. Russia* Order, at para. 84, the Court said that it will not consider declarations of intervention to the extent that they go beyond the permissible scope of an intervention. However, such declarations will nonetheless be made public on the Court’s website, and will attract media attention. Myanmar respectfully requests the Court to find that a purported declaration of intervention under Article 63 of the Statute fails to meet the substantive requirements of admissibility if it contains statements which exceed the permissible scope of an such an intervention. As both the Maldives Declaration and the Joint Declaration contain statements that exceed the permissible scope of such an intervention, they should be found not to satisfy the substantive requirements of admissibility.
20. However, should the Court nonetheless decide to admit either or both of the interventions, Myanmar respectfully requests the Court to find expressly that they are admitted only “to the extent that they concern points of interpretation of the Genocide Convention which are in issue in the proceedings” (see paragraph 7 above).
21. As to the requirement that an intervention under Article 63 of the Statute must be “confined to the point of interpretation which is in issue in the proceedings” (see paragraph 7 above), Myanmar notes the following.
22. First, points of interpretation of the Genocide Convention are in issue in the proceedings if they are in dispute between the parties to the case. Points of

interpretation of the Genocide Convention that are not disputed between the parties are not within the scope of an intervention under Article 63.

23. Second, because interventions pursuant to Article 63 of the Statute are confined to “the point of interpretation which is in issue in the proceedings”, interveners are not entitled to present observations on points of interpretation of the convention which are not in issue in the proceedings. If the Court were to admit the interventions, the interveners will be provided with copies of the pleadings, and will be able to see from these what points of interpretation are and are not in issue in this case. Interventions under Article 63 cannot be permitted to expand the scope of a case by adding new issues that have not been raised by either of the parties. The mere fact that a party has raised a point of interpretation of a particular provision of a convention does not mean that interveners under Article 63 can raise new and different points of interpretation regarding the same provision or different provisions of the convention.
24. Thirdly, it would be contrary to the equality of the parties and the good administration of justice for interveners to use the Article 63 procedure for purposes other than those for which that procedure is provided, for instance, by seeking to make statements before the Court which go beyond the permissible limits of such an intervention, or by seeking to obtain decisions by the Court on issues that have not been raised by the parties in the case, or by seeking publicity for themselves or for unrelated issues.
25. It is noted in this respect that on 15 November 2023, before the Court had even issued its press release No 2023/68 announcing the filing of the declarations of intervention in this case, the Maldives issued its own press release about its declaration of intervention (see the Annex to this letter). This press release contained an allegation of human rights violations by Myanmar. This allegation is of a factual nature, is not even confined to the Genocide Convention, and goes beyond the permissible scope of an intervention.
26. Finally, Myanmar makes the following concluding observations.
27. First, Myanmar does not concede that any of the arguments concerning the Genocide Convention contained within either declaration of intervention will be relevant to the Court’s decision in this particular case.
28. Second, Myanmar does not consider itself called upon at this stage, before any decision has been taken as to the admissibility of the declarations of intervention, to respond to any substantive arguments that they make. Myanmar fully reserves its right to so respond at the appropriate time, should the Court find the declarations of intervention to be admissible.
29. I hereby certify that the annex to this letter, downloaded from the website of the Attorney-General’s Office of the Republic of Maldives (<http://agoffice.gov.mv:8003/downloadfile/664>), is a true copy of the original document reproduced therein.

30. For the above reasons, Myanmar objects to the interventions and requests the Court to declare them inadmissible.

Please accept, Excellency, the assurances of my highest consideration.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'KO KO HLAING', written over a horizontal line.

Ko Ko Hlaing  
Agent