

**Before the
INTERNATIONAL COURT OF JUSTICE**

**OBSERVATIONS IN WRITING OF THE REPUBLIC OF MALDIVES
On the Admissibility of Its Declaration of Intervention
Submitted Pursuant to Article 63 of the Statute of the International Court of Justice**

In the case of

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE**

(THE GAMBIA v. MYANMAR)

12 February 2024

I. INTRODUCTION

1. The Republic of Maldives (the “Maldives”) has exercised its right under Article 63 of the Statute of the International Court of Justice (the “Statute”) to intervene in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*.¹
2. The Republic of The Gambia (“The Gambia”) has confirmed that it considers the Maldives’ Declaration of intervention to be admissible.² The Republic of the Union of Myanmar (“Myanmar”) objects to the Maldives’ intervention and requests the Court to declare it inadmissible on the ground that the Maldives’ Declaration does not satisfy the requirements of Article 63 of the Statute and “the relevant provisions of the Rules of the Court”.³
3. Myanmar’s objections are without merit. These observations consider each of them in turn. Section I outlines the requirements for admissibility of an intervention made pursuant to Article 63 of the Statute and the relevant procedural history. Section II addresses Myanmar’s objections based on the Maldives’ alleged failure to meet the “formal requirements” for admissibility and Section III addresses the Maldives’ alleged failure to satisfy the “substantive requirements” of admissibility.⁴

a. Requirements for admissibility under Article 63: intervention as of right

4. Myanmar contends that the Maldives’ Declaration of intervention was made pursuant to Article 63 and not pursuant to Article 62 of the Statute and therefore “falls to be considered exclusively from the perspective of Article 63 of the Statute”.⁵ The Maldives agrees.
5. When describing the requirements for the admissibility of declarations of intervention under Article 63, the Court has frequently emphasised the distinction with interventions under Article 62.
6. Article 62 of the Statute provides that any State that considers “that it has an interest of a legal nature which may be affected by the decision in the case” may “submit a request to the Court to be permitted to intervene” and that “[i]t shall be for the Court to decide upon this request”. In contrast, pursuant to Article 63 of the Statute, States “other than

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Declaration of Intervention of the Republic of Maldives (Intervention pursuant to Article 63 of the Statute of the International Court of Justice), 15 November 2023 (“Maldives’ Declaration”).

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Letter from H.E. Mr Dawda Jallow, Attorney General and Minister of Justice of the Republic of The Gambia, to the Registrar of the Court, 16 January 2024 (“The Gambia’s Written Observations”), p. 2.

³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Letter from Mr Ko Ko Hlaing, Agent of the Republic of the Union of Myanmar, to the Registrar of the Court, 15 January 2024 (“Myanmar’s Written Observations”), paras. 3, 30.

⁴ *Ibid.*, paras. 4–5 (formal requirements), paras. 6–25 (substantive requirements).

⁵ *Ibid.*, para. 3.

those concerned in the case” that are parties to a convention have “the *right to intervene*” in the proceedings “[w]henever the construction of [the] convention ... is in question”.⁶

7. The Court and its judges have elaborated on this distinction. For example, in *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, the Court admitted New Zealand’s declaration of intervention under Article 63 and emphasised the Court’s limited role in the determination of admissibility. It stated that:

“[w]hereas intervention based on Article 63 of the Statute is an incidental proceeding that constitutes the exercise of a right ... [and] such right to intervene exists only when the declaration concerned falls within the provisions of Article 63; ... therefore, the Court must ensure that such is the case before accepting a declaration of intervention as admissible ... [and] verify that the conditions set forth in Article 82 of the Rules of the Court are met”.⁷

8. In the same case, Judge Cançado Trindade contrasted “discretionary intervention” under Article 62 of the Statute with “intervention *as of right*” under Article 63.⁸
9. In its Declaration, the Maldives submits that, as required for an intervention under Article 63 of the Statute, this case raises questions concerning the construction of the Convention on the Prevention and Punishment of Genocide (the “Genocide Convention”) and that the Maldives is a party to the Genocide Convention.⁹ Myanmar does not contest either of these submissions.¹⁰ It follows that, provided that its Declaration meets the requirements of Article 82 of the Rules of Court (the “Rules”), the Maldives may intervene as of right in these proceedings pursuant to Article 63 of the Statute.

⁶ Emphasis added. See also Article 84(1) of the Rules of Court (providing that the “Court shall decide whether an application for permission to intervene under Article 62 of the Statute should be granted, and whether an intervention under Article 63 of the Statute is admissible”).

⁷ *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at pp. 5–6, paras. 7–8. See also *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Admissibility of the Declarations of Intervention, Order of 5 June 2023, paras. 26–28.

⁸ *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at pp. 5–6, Separate Opinion of Judge Cançado Trindade, at p. 28, para. 38 (emphasis in original). See also *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Application to Intervene, Judgment of 21 March 1984, Separate Opinion of Judge Jiménez de Aréchega, I.C.J. Reports 1984, p. 3, at p. 58, para. 9 (the judgment concerned an application by Italy to intervene under Article 62) and Dissenting Opinion of Judge Schwebel, I.C.J. Reports 1984, p. 3, at p. 144, paras. 31–32; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Declaration of Intervention, Order of 4 October 1984, Separate Opinion of Judges Ruda, Mosler, Ago, Sir Robert Jennings and de Lacharrière, I.C.J. Reports 1984, p. 215, at p. 219, para. 1.

⁹ Maldives’ Declaration, paras.17–23.

¹⁰ Myanmar’s Written Observations, paras. 20–23 (referring to “points of interpretation of the Genocide Convention”).

b. Procedural history

10. On 15 November 2023, the Maldives exercised its right under Article 63 of the Statute to intervene in *The Gambia v. Myanmar* and submitted a Declaration of intervention.¹¹ On the same date, Canada, the French Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland also filed a Joint Declaration of intervention pursuant to Article 63 of the Statute.¹² That same day, the International Court of Justice invited The Gambia and Myanmar to make written observations on the admissibility of the Declarations.¹³
11. On 15 January 2024, Myanmar filed written observations contending that both the Maldives' Declaration and the Joint Declaration are inadmissible.¹⁴ The Gambia also filed written observations, arguing that both Declarations are admissible.¹⁵
12. On 24 January 2024, the Registry of the Court notified the Maldives that the Court had fixed 26 February 2024 as the time-limit for the Maldives to submit observations in writing on the admissibility of its Declaration, in accordance with Article 84(2) of the Rules.¹⁶
13. The Maldives agrees with The Gambia's position that both Declarations are admissible. However, these observations address the objections raised in Myanmar's written observations only insofar as they relate to the Maldives' Declaration.

II. MYANMAR'S OBJECTIONS BASED ON "FORMAL REQUIREMENTS" OF ADMISSIBILITY

14. Myanmar asserts that the Maldives' Declaration of intervention does not "satisfy the formal requirements of admissibility under Article 63 of the Statute and Article 82 of the Rules".¹⁷ Myanmar argues that the Maldives' Agent was not the "diplomatic representative of the Maldives in the country where the Court has its seat" and that the Agent's signature requires authentication "by that diplomatic representative or by the competent authority of the foreign ministry of the Maldives" as required pursuant to Article 82(1) of the Rules, first sentence, read with Article 38(3) of the Rules.¹⁸ It states

¹¹ Maldives' Declaration.

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Joint declaration of intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom, 15 November 2023.

¹³ See Myanmar's Written Observations, para. 1; The Gambia's Written Observations, p. 1.

¹⁴ Myanmar's Written Observations, p. 6, para. 30.

¹⁵ The Gambia's Written Observations, p. 2.

¹⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Letter from the Registrar of the Court to H.E. Mr Ibrahim Riffath, Agent of the Republic of Maldives, 24 January 2024.

¹⁷ Myanmar's Written Observations, para. 6.

¹⁸ *Ibid.*, para. 5.

that “[f]rom the papers transmitted to Myanmar, it is not apparent that this requirement has been met”.¹⁹

15. This requirement has been met, and, in any event, Myanmar’s objection cannot render the Maldives’ Declaration inadmissible.

16. Article 82(1), first sentence, of the Rules provides that:

“[a] State which desires to avail itself of the right of intervention conferred upon it by Article 63 of the Statute shall file a declaration to that effect, signed in the manner provided for in Article 38, paragraph 3, of these Rules.”

17. Article 38(3) of the Rules deals with “the evidence of authority required ... to establish that a person may act as agent for a State before [the Court]”.²⁰ It provides that:

“[t]he original of the application shall be signed either by the agent of the party submitting it, or by the diplomatic representative of that party in the country in which the Court has its seat, or by some other duly authorized person. If the application bears the signature of someone other than such diplomatic representative, the signature must be authenticated by the latter or by the competent authority of the applicant’s foreign ministry.”

18. In *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, the Court considered whether declarations of intervention complied with Article 82 of the Rules and took a pragmatic approach with respect to the requirement in Article 82(2)(d) that the declaration must contain “a list of the documents in support, which documents shall be attached”. The Court found all declarations in compliance with this requirement even though “the declaration filed by Austria d[id] not contain a ‘list of documents in support’” and the declaration filed by the Republic of Lithuania made reference to “readily available documents” without attaching them.²¹ The Maldives submits that the same approach should be adopted here.

19. In its Declaration of intervention, the Maldives notified the Court that it had appointed H.E. Mr Ibrahim Riffath, Attorney General of the Maldives, as its Agent.²² Attorney General Riffath signed the Declaration as the Agent.²³ It was filed with the Court on behalf of Mr Riffath on 15 November 2023 by a diplomatic representative of the Maldives, Mr Mohamed Shaffau Ibrahim, the First Secretary at the Embassy of the

¹⁹ Ibid.

²⁰ S. Yee, ‘Part Three: Statute of the International Court of Justice, Ch. III Procedure, Article 40’, in A. Zimmermann et al. (eds), *The Statute of the International Court of Justice: A Commentary* (3rd ed., OUP 2019), pp. 1062–1063.

²¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Admissibility of the Declarations of Intervention, Order of 5 June 2023, para. 39.

²² Maldives’ Declaration, para. 62.

²³ Ibid., pp. 1 and 10.

Maldives headed by H.E. the Ambassador of the Maldives to the Kingdom of the Netherlands, in Brussels, Belgium. Mr Ibrahim's position was identified to the Registry of the Court in advance of the filing.²⁴

20. The Declaration was signed by the declarant State's duly appointed Agent and filed on behalf of the Agent by a diplomatic representative of the embassy for the country in which the Court has its seat. According to Article 38(3) of the Rules, it is not clear that any further authentication was required.²⁵ Nonetheless, in order to avoid any doubt, H.E. Mr Moosa Zameer, Foreign Minister of the Maldives, has certified that the signature on the Maldives' Declaration was that of the appointed Agent, Attorney General Riffath, and this certification is attached.²⁶ The Maldives therefore submits that the requirement of Article 82(1) in conjunction with Article 38(3) of the Rules is satisfied and its Declaration should not be declared inadmissible on the basis of any alleged failure to comply with these provisions.

III. MYANMAR'S OBJECTIONS BASED ON "SUBSTANTIVE REQUIREMENTS" OF ADMISSIBILITY

21. Myanmar contends that, in addition to "formal requirements of admissibility under Article 63 of the Statute and Article 82 of the Rules", there are "substantive requirements of admissibility" which the Maldives has not met.²⁷ Specifically, Myanmar argues that the Maldives' Declaration contains statements which go "beyond" the limits of the "scope of an intervention under Article 63"²⁸ and that the Declaration should be declared inadmissible because publication of these statements attracts media attention and jeopardizes the "equality of the parties and good administration of justice".²⁹ Myanmar argues in the alternative that the Maldives' Declaration should be admitted only "to the extent" that it concerns "points of interpretation of the Genocide Convention ... in issue in the proceedings".³⁰
22. Myanmar's assertion that "interventions under Article 63 of the Statute must be confined to a presentation of observations on the construction of the convention in

²⁴ See Annexes A–C.

²⁵ Article 38(3) of the Rules provides that the application can be signed "either by the agent of the party submitting it, or by the diplomatic representative of that party in the country in which the Court has its seat, or by some other duly authorized person" and requires authentication only if the application "bears the signature of someone *other than such diplomatic representative*" (emphasis added).

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Letter from H.E. Mr Moosa Zameer, Foreign Minister of the Republic of Maldives, to the Registrar of the Court dated 11 February 2024.

²⁷ Myanmar's Written Observations, paras. 4, 6.

²⁸ *Ibid.*, paras. 8–11.

²⁹ *Ibid.*, para. 19.

³⁰ *Ibid.*, para. 20.

question” is uncontroversial.³¹ But Myanmar fails to identify how the Maldives’ Declaration of intervention exceeds this limit.

23. Myanmar’s attempt to show that the Declaration is inadmissible appears to be based on two points.

24. **First**, Myanmar asserts, relying on the Court’s findings in *Ukraine v. Russia*, that the Maldives has violated Article 63 on the basis that intervening States are “not entitled to address or to refer to the merits of the case”, including “matters such as the evidence, the facts, or the application of the convention”.³²

25. In *Ukraine v. Russia*, the Court held that:

“the declarations of intervention at issue generally concern the construction of the provisions of the Genocide Convention. However, to the extent that some declarations also address other matters, such as the existence of a dispute between the Parties, the evidence, the facts or the application of the Convention in the present case, the Court will not consider them.”³³

26. Myanmar contends that the Maldives’ Declaration exceeds proper limits because in two paragraphs of its application it makes “statements about claimed events in Myanmar, about diplomatic statements ... concerning those claimed events, and about the motives of the States filing the declarations of intervention” which go “beyond the permissible limits of an intervention under Article 63”.³⁴ As a result, Myanmar argues that these statements “should not be considered by the Court”.³⁵

27. In the two paragraphs cited by Myanmar, the Maldives notes three press releases by the Ministry of Foreign Affairs and the President’s Office and two statements by the Organisation of Islamic Cooperation, all issued prior to the start of the present case, as well as an announcement of the Maldives’ intention to intervene “in support of the Rohingya people” three months after the case was launched.³⁶ The Maldives also notes that it recognises the need for “international co-operation” referred to in the preamble to the Genocide Convention and that it “seeks to facilitate the work of the Court, along with other intervening States ... in these proceedings”.³⁷ But as the Court stated in *Ukraine v. Russia*, “the question of a State’s motivation when filing a declaration of

³¹ Ibid., para. 9.

³² Ibid., para. 10.

³³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Admissibility of the Declarations of Intervention, Order of 5 June 2023, para. 84

³⁴ Myanmar’s Written Observations, para. 11.

³⁵ Ibid., citing Maldives’ Declaration, paras. 6 and 8.

³⁶ Maldives’ Declaration, para. 6.

³⁷ Ibid., para. 8.

intervention is not relevant for the purposes of the admissibility of that declaration”.³⁸ Nor is there any other basis to conclude that the Maldives’ comments breach the requirements of Article 63 or render the Declaration inadmissible.

28. **Second**, Myanmar argues that the Maldives has overstepped acceptable limits on the basis that “points of interpretation are in issue in the proceedings” only “if they are in dispute between the parties in the case” and that “the mere fact that a party has raised a point of interpretation on a particular provision of a convention does not mean that interveners under Article 63 can raise new and different points of interpretation”.³⁹ This argument also misconstrues the scope and purpose of interventions before the Court.
29. A declarant State can raise “new and different points of interpretation” to those put forward by the parties provided that the requirements of Article 63 of the Statute and Article 82 of the Rules are met.⁴⁰ As the Court observed in *Ukraine v. Russia*, “under the Rules of Court, each State may identify the provisions of the convention the construction of which it considers to be in question and set out its position thereon”.⁴¹ And as outlined by Judge Mbaye in *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, furnishing the Court with “a wider range of information pertinent to the problem submitted to it” is indeed one of the key rationales for rights of intervention (see further paragraph 33 below).⁴²
30. In any event, as Myanmar itself concedes, the declarant States have not yet been provided with the pleadings and “will be able to see from these what points of interpretation are and are not in issue in the case” once admitted.⁴³
31. Myanmar also argues that a press release issued after the Maldives filed its Declaration of intervention went “beyond the permissible scope of an intervention” because it contained an “allegation of human rights violations by Myanmar”, which was “of a factual nature” and “not ... confined to the Genocide Convention”.⁴⁴ However, this argument does not refer to the Maldives’ Declaration and Myanmar does not suggest that it should be declared inadmissible because of the issuance of a press release. There is in any event no reason for doing so.

³⁸ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Admissibility of the Declarations of Intervention, Order of 5 June 2023, para. 44.

³⁹ Myanmar’s Written Observations, para. 23.

⁴⁰ Cf. *ibid.*

⁴¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Admissibility of the Declarations of Intervention, Order of 5 June 2023, para. 45.

⁴² *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Application to Intervene, Judgment, Separate Opinion of Judge Mbaye, I.C.J. Reports 1984, p. 3 at p. 43 (discussing the role of interventions generally in the context of a declaration under Article 62 of the Statute).

⁴³ Myanmar’s Written Observations, para. 23.

⁴⁴ Myanmar’s Written Observations, para. 25.

32. In *Whaling in the Antarctic*, Japan drew the Court’s attention to “certain serious anomalies that would arise from the admission of New Zealand as an intervenor” and “the need to ensure the equality of the Parties before the Court in light of [a] Joint Media Release ... of the Foreign Ministers of Australia and New Zealand”.⁴⁵ However, neither the Court nor the respondent State, Japan, considered that this affected the admissibility of New Zealand’s declaration of intervention. Indeed, the Court found that “the concerns expressed by Japan relate[d] to certain procedural issues regarding the equality of the Parties to the dispute, rather than to the conditions for admissibility of the Declaration of Intervention, as set out in Article 63 of the Statute and Article 82 of the Rules of Court” and that since “intervention under Article 63 ... is limited to submitting observations on the construction of the convention in question and does not allow the intervenor ... to deal with any other aspect of the case before the Court ... such an intervention cannot affect the equality of the Parties to the dispute”.⁴⁶ The Court reached a similar conclusion in the *Ukraine v. Russia* case.⁴⁷
33. Myanmar’s conclusion that the Maldives’ Declaration runs counter to “the equality of the parties or the good administration of justice” is therefore without merit.⁴⁸ Indeed, the Court has previously noted that third party interventions contribute to the sound administration of justice. In *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judge Mbaye noted in his Separate Opinion that:
- “intervention is, above all, a rule deriving from the sound administration of justice. It is part of the policy of throwing the maximum light on the circumstances surrounding a case brought before the Court. ... It enables the Court to have a wider range of information pertinent to the problem submitted to it, to reach its decision in the light of the fullest possible information”.⁴⁹
34. Finally, the Maldives rejects Myanmar’s alternative argument that the Court should admit the Maldives’ Declaration subject to an express finding that it is admitted only “to the extent that [it] concern[s] points of interpretation of the Genocide Convention which are in issue in the proceedings”.⁵⁰ Such a finding is unnecessary and, in the absence of any argument as to which statements should be declared inadmissible, it would also be unduly vague.

⁴⁵ *Whaling in the Antarctic (Australia v. Japan)*, Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3, at p. 8, para. 17.

⁴⁶ *Ibid.*, para. 18.

⁴⁷ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, Admissibility of the Declarations of Intervention, Order of 5 June 2023, paras. 49–53.

⁴⁸ Myanmar’s Written Observations, paras. 19, 24.

⁴⁹ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Application to Intervene, Judgment, Separate Opinion of Judge Mbaye, I.C.J. Reports 1984, p. 3 at p. 43 (discussing the role of interventions generally in the context of a declaration under Article 62 of the Statute).

⁵⁰ Myanmar’s Written Observations, para. 20.

35. The Maldives continues to reserve the right to supplement or amend the Declaration of intervention and the scope of its observations, including in relation to Article II of the Genocide Convention, to the extent that additional matters of construction arise as the case progresses or as it becomes aware of them upon receipt of the Parties' pleadings and documents annexed to them, in accordance with Article 86(1) of the Rules.⁵¹

IV. APPOINTMENT OF NEW AGENT

36. The Maldives confirms that it has appointed the undersigned, H.E. Mr Ahmed Usham, Attorney General of the Maldives, as its new Agent for the purposes of this case.⁵²

V. LIST OF ANNEXES

37. The Maldives submits the following documents as annexes in support of its observations:

- (a) Annex A: email from Ms Faena Fayyaz, Senior State Counsel, Attorney General's Office, Maldives, to the Registrar dated 8 November 2023;
- (b) Annex B: email from Ms Fayyaz to the Registrar dated 13 November 2023;
- (c) Annex C: email from Mr Coley Stone, Office of the Registrar, to Ms Fayyaz dated 13 November 2023.

VI. SUBMISSIONS

38. In light of the foregoing and for the reasons given in its Declaration of intervention, the Maldives respectfully requests that the Court recognise the admissibility of its Declaration of intervention and that the Maldives is availing itself of its right under Article 63(2) of the Statute to intervene in these proceedings.



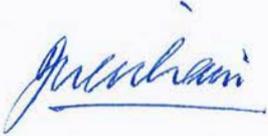
Attorney General Ahmed Usham (Agent)

⁵¹ Maldives' Declaration, para. 23.

⁵² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Letter from H.E. Mr Moosa Zameer, Foreign Minister of the Republic of Maldives, to the Registrar of the Court dated 11 February 2024.

CERTIFICATION

I certify that the documents attached as Annexes to these observations are true copies of the originals thereof.

A handwritten signature in blue ink, appearing to read 'Ahmed Usham', is written above a horizontal line.

Attorney General Ahmed Usham (Agent)