



**THE REPUBLIC** **OF THE GAMBIA**  
**Attorney General's Chambers**  
**Ministry of Justice**  
**Marina Parade**  
**Banjul**

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AG /C/370/01 PART 1 (53)

26 March 2024

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

**DELIVERED BY EMAIL**

Excellency,

I have the honour to refer to the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), and your letter No. 161222 dated 24 January 2024, which set 26 March 2024 as the time-limit for the submission of observations in writing on the admissibility of the Declaration of Intervention of the Republic of Maldives 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 “Declarations”).

The Gambia hereby submits its Observations on the admissibility of the Declarations.

The Gambia considers that these Declarations satisfy the requirements of the Court’s Statute and Rules and are therefore admissible.

The Gambia has reviewed the objections to admissibility noted by Myanmar and considers that none of these objections has merit.

As discussed below, the Declarations meet the admissibility criteria as established in the Court’s Statute and its Rules (I), the Declarations are admissible in their entirety (II), the Declarations may invoke relevant rules of international law beyond the Genocide Convention itself (III), and the content of the Declarations relate to the proper construction of relevant provisions of the Genocide Convention (IV).

**I. The Declarations Meet the Admissibility Criteria**

Article 63 of the Statute confers a “right to intervene in the proceedings” to States Parties to the Genocide Convention. Article 82 of the Rules of Court sets forth the conditions for the admissibility of such interventions.

As The Gambia noted in its Observations of 15 January 2024, both Declarations have been duly filed pursuant to Article 63 of the Statute of the Court and in accordance with the conditions set forth in Article 82 of the Rules of Court. The Declarations have been filed in a timely manner, well before the close of the written proceedings and the opening of the oral proceedings on the merits of the case, and they have been filed in accordance with the requirements of Article 38 of the Rules of Court. The Declarations appropriately: (a) contain information demonstrating that the declarant States are Parties to the Genocide Convention, (b) identify the provisions of the Convention which the States consider to be in question, (c) provide a statement of the construction of those provisions, and (d) provide a list of documents in support of the Declarations.

Myanmar incorrectly asserts that Article II of the Genocide Convention is not in dispute in these proceedings. The scope of Article II, and the means and standards for demonstrating a violation of Article II, are certainly in dispute. As such, submissions by the intervening States regarding the proper construction of Article II are directly relevant to this case and are admissible as part of the Declarations.

Regarding the technical elements of the Declaration of The Maldives, The Gambia understands that the requirements of Article 38 of the Rules were met since 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. The Gambia notes that even if there were a technical deficiency on this basis, it would not be grounds for finding the Declaration inadmissible. In any event, The Maldives has provided additional certification that confirms that it has met the requirements of Article 38 of the Rules.

## **II. The Declarations are Admissible in Their Entirety**

Myanmar has identified selected paragraphs and sentences within the Declarations that it suggests are not admissible for interventions under Article 63 of the Statute. The Gambia understands those paragraphs and sentences to provide relevant context for the Declarations, including content that explains why the intervening States have decided to exercise their right to intervene, which will assist the Court in fully understanding the Declarations. Furthermore, The Gambia does not find any criteria in the Statute or the Rules of Court that would allow for the exclusion of this content from the Declarations. Myanmar's concerns regarding the equality of the Parties are unfounded and are, regardless, not relevant to the issue of the admissibility of the Declarations.

## **III. The Declarations May Invoke Relevant Rules of International Law**

Myanmar asserts that the Declarations may not refer to other rules and principles of international law outside of the Genocide Convention. The Gambia disagrees. Since the declarant States are offering their views on the proper construction of the Genocide Convention, they must be allowed to refer to relevant rules and principles of international law outside the Genocide Convention if those references assist in determining the proper construction of the Convention's provisions, in accordance with the customary rules of interpretation reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

## **IV. The Contents of the Declarations Relate to the Proper Construction of Relevant Provisions of the Genocide Convention**

The Gambia confirms that all of the provisions of the Genocide Convention invoked in the Declarations are in question in this case, including Article II, as noted above. The Gambia agrees with the declarant States that they may offer their views on the construction of the provisions that they consider to be in question, including in terms of the establishment of a breach. The interpretation of provisions as they relate to the establishment of a breach includes matters related to the standard of proof and evidence, and discreet elements of a breach, including the matter of genocidal intent. Such matters are central to the proper construction of the Genocide Convention.

Furthermore, contrary to Myanmar's assertion, the declarant States are not limited only to raising points of interpretation raised by the Parties in the dispute. As intervening States, they would be allowed to include any points of interpretation regarding the provisions of the

Convention that they consider to be in question, even if such a point of interpretation was not previously raised by one of the Parties. The possibility that an intervening State may raise a novel point of interpretation is one of the very reasons why such interventions are allowed in the first place—such contributions enhance the Court’s ability to carry out its judicial function and ensure that the Court’s construction of the Convention takes into account all pertinent views of the construction of the relevant provisions of the Convention.

Thus, it is appropriate to deem admissible all of the arguments and content referred to in the Declarations on all aspects of the construction of the provisions of the Convention identified in the Declarations.

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For the reasons set forth above, The Gambia considers that the Court should find that these Declarations are admissible in their entirety.

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

Sincerely,



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H.E. Mr. Dawda Jallow  
Agent  
Attorney General and Minister of Justice  
The Republic of The Gambia