



# INTERNATIONAL COURT OF JUSTICE

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Summary

Unofficial

Summary 2024/7

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**Application of the Convention on the Prevention and Punishment  
of the Crime of Genocide (The Gambia v. Myanmar)**

**Admissibility of the declarations of intervention**

**History of the proceedings (paras. 1-18)**

The Court begins by recalling that, on 11 November 2019, the Republic of The Gambia (hereinafter “The Gambia”) filed in the Registry of the Court an Application instituting proceedings against the Republic of the Union of Myanmar (hereinafter “Myanmar”) concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 (hereinafter the “Genocide Convention” or the “Convention”). In its Application, The Gambia sought to base the Court’s jurisdiction on Article IX of the Genocide Convention, in conjunction with Article 36, paragraph 1, of the Statute of the Court.

The Application contained a Request for the indication of provisional measures. By an Order dated 23 January 2020, the Court indicated certain provisional measures.

On 20 January 2021, Myanmar raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. By a Judgment of 22 July 2022, the Court found that it had jurisdiction under Article IX of the Genocide Convention to entertain the Application filed by The Gambia on 11 November 2019, and that the said Application was admissible.

On 15 November 2023, the Republic of the Maldives (hereinafter “the Maldives”) filed a declaration of intervention in the case, with reference to Article 63 of the Statute of the Court. On the same date, a joint declaration of intervention was filed, pursuant to the same provision, by 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 (hereinafter the “Joint Declarants”). Myanmar objected to the admissibility of the declarations of intervention.

**I. INTRODUCTION (PARAS. 19-26)**

The Court recalls that intervention under Article 63 of the Statute involves the exercise of a right by a State party to a convention the construction of which is in question before the Court. The object of the intervention is limited to the construction of the convention concerned. The Court

is not required to ascertain whether the State seeking to intervene has “an interest of a legal nature” which “may be affected by the decision [of the Court]” in the main proceedings, as it is obliged to do when it is seised of an application for permission to intervene under Article 62 of the Statute. The legal interest of the declarant State in the construction of the convention is presumed by virtue of its status as a party thereto. When a declaration of intervention is filed, the Court must ensure that it falls within the provisions of Article 63 of the Statute and that it meets the requirements set forth in Article 82 of the Rules of the Court.

## **II. CONFORMITY OF THE DECLARATIONS OF INTERVENTION WITH THE REQUIREMENTS SET OUT IN ARTICLE 82 OF THE RULES OF COURT (PARAS. 27-36)**

The Court first examines whether the declarations of intervention comply with the requirements of Article 82 of its Rules, and concludes that such is the case. In particular, the Court rejects Myanmar’s argument that the declarations fail to comply with Article 82, paragraph 2 (c), of the Rules of Court because they do not clearly articulate the construction of the provisions of the Genocide Convention for which they contend, but are limited to very general propositions. In this regard, the Court recalls that Article 63 of its Statute provides for a right of intervention whenever the construction of a convention is in question. Paragraphs 2 (b) and 2 (c) of Article 82 of the Rules require the States seeking to intervene to indicate the provisions they consider to be in question and to state the construction of these provisions for which they contend. These paragraphs do not require States seeking to intervene to show in addition that they address interpretive points that are in dispute in the proceedings between the parties, as contended by Myanmar. Furthermore, and contrary to what Myanmar appears to suggest, paragraph 2 (c) does not contain the requirement that a proposition for a construction of the convention in question must meet a particular standard of specificity.

## **III. WHETHER THE DECLARATIONS OF INTERVENTION GO BEYOND THE PERMITTED SCOPE OF INTERVENTION UNDER ARTICLE 63 OF THE STATUTE (PARAS. 37-45)**

According to Myanmar, the declarations of intervention at issue go beyond what is permissible under Article 63 of the Statute in so far as they are not confined to a presentation of observations on the construction of provisions of the Genocide Convention. Myanmar also maintains that the joint declaration of intervention cannot address the construction of Article II of the Genocide Convention because that construction is not in question in the case, since the Application of The Gambia does not refer to that provision. In Myanmar’s view, it is not sufficient for the Court merely to disregard the parts of the declarations that go beyond the permitted scope of intervention under Article 63 of the Statute. Where significant portions of a declaration of intervention contain impermissible matters, as Myanmar submits is the case here, the Court should find the entire declaration inadmissible. At the very least, the Court should admit the declaration only to the extent that it concerns points of interpretation that are in dispute between the parties in the proceedings.

The Court recalls that the right of intervention under Article 63 of its Statute is limited to the construction of a convention’s provisions in question at the relevant stage of the proceedings. Under Article 82, paragraph 2 (b) and (c), of the Rules of Court, a State seeking to intervene shall indicate the provisions of the convention the construction of which it considers to be in question and set out its position thereon. The Court is of the view that the declarations of intervention at issue mainly concern the construction of Articles I, II, IV, V and VI of the Genocide Convention, which are in question at the merits stage of the proceedings. In particular, and contrary to Myanmar’s contention, the construction of Article II is in question at the current stage. Article II is a key provision of the Convention, since it defines the acts and specific intent constituting genocide and informs several other provisions of the Convention, such as Articles I, III, IV, V and VI, the violation of which is alleged in the Application.

Contrary to Myanmar's contention, the Court does not consider that intervention under Article 63 is only permitted in relation to points of interpretation that are in dispute between the parties. There is no such limitation in Article 63 of the Statute or Article 82 of the Rules. Ultimately, it will be for the Court to assess the relevance of the construction of the provisions of the Genocide Convention.

The Court observes that the declarations at issue, in some instances, address matters other than the construction of provisions of the Genocide Convention, such as facts and the evidentiary value of a certain category of documents. To that extent, the Court will not consider such issues and expects the interveners to refrain from addressing them any further. Moreover, references to other rules and principles of international law outside the Genocide Convention will only be taken into account by the Court in so far as they may be relevant for the construction of the Convention's provisions, in accordance with the customary rules of treaty interpretation reflected in the Vienna Convention on the Law of Treaties, in particular Article 31, paragraph 3 (c).

#### **IV. CONCLUSION (PARAS. 46-48)**

The Court concludes that the declarations of intervention filed by the Maldives and the Joint Declarants are admissible in so far as they concern the construction of the provisions of the Genocide Convention. The Court will not have regard to any parts of the observations going beyond the scope thus fixed.

The Court recalls the content of Article 86 of its Rules, as amended on 1 February 2024, which amendment entered into force on 1 June 2024. The Court explains that, in accordance with this provision, the declarant States will be furnished with copies of the written pleadings of the Parties. Once all the written pleadings have been filed, the Court will fix a time-limit for the declarant States to submit their written observations on the subject-matter of their intervention. In accordance with Article 86, paragraph 2, of the Rules, the Court will determine at a later date whether the declarant States should be authorized to make observations in the course of the oral proceedings.

#### **V. OPERATIVE CLAUSE (PARA. 49)**

For these reasons,

THE COURT,

(1) Unanimously,

*Decides* that the declaration of intervention under Article 63 of the Statute submitted by the Republic of the Maldives is admissible in so far as it concerns the construction of provisions of the Convention on the Prevention and Punishment of the Crime of Genocide;

(2) Unanimously,

*Decides* that the declaration of intervention under Article 63 of the Statute submitted jointly by 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 is admissible in so far as it concerns the construction of provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

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