INTERNATIONAL COURT OF JUSTICE

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

Written observations of the Republic of the Union of Myanmar pursuant to Article 83, paragraph 1, of the Rules of Court on the declaration of intervention of the Kingdom of Belgium

12 February 2025

A. Introduction

1. On 12 December 2024, the Government of the Kingdom of Belgium ("**Belgium**"), referring to Article 63 of the Statute of the Court, filed in the Registry a declaration of intervention in this case. In accordance with Article 83, paragraph 1, of the Rules of Court, the Republic of the Union of Myanmar ("**Myanmar**") files the present written observations on that declaration of intervention, within the time-limit notified in the letter of the Registrar dated 12 December 2024.

2. The declaration of intervention of Belgium states that it is made pursuant to Article 63 of the Statute of the Court. It does not purport to be made pursuant to, or purport in any way to rely upon, Article 62 of the Statute. It follows that the declaration of intervention falls to be considered exclusively from the perspective of Article 63 of the Statute and the relevant provisions of the Rules of Court relating to Article 63 of the Statute.

3. In its Order in the present case dated 3 July 2024 concerning the admissibility of two earlier declarations of intervention (the "**3 July 2024 Order**"),[1] the Court affirmed that although intervention under Article 63 of the Statute involves the exercise of a right, "[w]hen 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 Court".[2] This has also consistently been made clear in earlier case law of the Court.[3]

4. The position of Myanmar is that the declaration of intervention of Belgium does not meet the requirements set forth in Article 82 of the Rules of Court, and that it is therefore inadmissible.

---

1 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 3 July 2024, https://www.icj-cij.org/sites/default/files/case-related/178/178-20240703-ord-01-00-en.pdf.

2 *Ibid.*, paras. 20 and 22.

3 *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Admissibility of the Declarations of Intervention, Order of 5 June 2023, I.C.J. Reports 2023*, p. 362, para. 28; *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013*, pp. 5-6, para. 8; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Declaration of Intervention, Order of 4 October 1984, I.C.J. Reports 1984*, p. 216; *Haya de la Torre (Colombia v. Peru), Judgment, I.C.J. Reports 1951*, pp. 76-77.

B. Relevant provisions of the Statute and Rules of Court

5. Article 63 of the Statute provides that:

> 1. Whenever the construction of a convention to which States other than those concerned in the case are parties is in question, the Registrar shall notify all such States forthwith.
>
> 2. Every State so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

6. Article 82 of the Rules of Court relevantly provides that:

> 1. 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. Such a declaration shall be filed as soon as possible, and no later than the date fixed for the filing of the Counter Memorial.
>
> 2. If the Court has authorized further written pleadings ... under Article 45, paragraph 2 ... of these Rules, a declaration of intervention shall be filed as soon as possible, and not later than the date fixed for the filing of the last written pleading.
>
> ...
>
> 4. In exceptional circumstances a declaration submitted later may however be admitted.

C. Belgium's declaration of intervention is inadmissible because it was not filed "as soon as possible" as required by Article 82, paragraph 2, of the Rules of Court

7. In an order of 16 October 2023, pursuant to Article 45, paragraph 2, of the Rules of Court, the Court authorised the filing of a second round of written pleadings in this case.[4] The relevant time-limit for the filing of any declaration of intervention by Belgium was therefore the time-limit found in Article 82, paragraph 2, of the Rules of Court.

8. The time-limit in Article 82, paragraph 2, of the Rules of Court consists of two separate requirements. First, it requires that any declaration of intervention must be filed "as soon as possible". Secondly, it requires that any declaration of intervention must in any event be filed "not later than the date fixed for the filing of the last written pleading".

9. The position of Myanmar is that a declaration of intervention must satisfy both of these requirements in order to comply with Article 82, paragraph 2, of the Rules of Court. Thus, even where a declaration of intervention is filed before the date fixed for the filing

---

[4] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 16 October 2023, https://www.icj-cij.org/sites/default/files/case-related/178/178-20231016-ord-01-00-en.pdf.

of the last written pleading, it will not comply with Article 82, paragraph 2, of the Rules of Court if it was not filed "as soon as possible".

10. The declaration of intervention of Belgium meets the second of these requirements. At the time that the declaration of intervention was filed, the date fixed for the filing of the last written pleading was 30 December 2024.[5] The declaration of intervention of Belgium was filed before that date, on 12 December 2024.

11. However, the declaration of intervention of Belgium does not meet the first of these requirements. It was not filed as soon as possible.

12. The Court's judgment on the preliminary objections in this case was delivered on 22 July 2022.[6] There is no apparent reason why the declaration of intervention of Belgium could not have been filed at any time after that date. Indeed, a declaration of intervention of the Maldives, and a joint declaration of intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom, were both filed in this case on 15 November 2023, over a year before Belgium filed its declaration of intervention. Ultimately, the declaration of intervention of Belgium was filed over *two years and four months* after the judgment of the Court on the preliminary objections, and less than *three weeks* before the date fixed for the filing of the last written pleading in the case. Although Belgium's declaration of intervention makes a bare statement to the effect that it has been filed as soon as possible,[7] no substantive explanation is given as to why it could not have been filed very much earlier than it was. Based on the information before the Court, the inevitable conclusion is that the declaration of intervention of Belgium was not filed "as soon as possible".

13. The delay of Belgium in filing its declaration of intervention will lead to delays in these proceedings that would have been avoided if the declaration of intervention had been filed earlier. On 30 December 2024, the very day that the last written pleading in this case was filed, the pleadings in this case were transmitted to the seven States whose declarations of intervention have already been found admissible, and these seven States were informed that the President of the Court has fixed 3 March 2025 as the time-limit for the filing of their written observations on the subject-matter of their intervention. If the declaration of Belgium were now to be found to be admissible, a later date would need to be fixed for the filing by Belgium of its written observations on the subject-matter of its intervention. On the other hand, if the declaration of intervention of Belgium had been filed earlier, and if it had been found to be admissible, the intervention of Belgium could have been subject to the same schedule as the interventions of the seven other States whose declarations of intervention have already been found to be admissible.

14. Belgium should have been aware in November 2023 of the previous declarations of intervention filed in this case, as they were at the time made accessible to the public on the Court's website. Belgium should furthermore have been aware in July 2024 that these previous declarations of intervention were found by the Court to be admissible, since the

---

5 See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 21 November 2024, https://www.icj-cij.org/sites/default/files/case-related/178/178-20241121-ord-01-00-en.pdf.

6 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022*, p. 477, https://www.icj-cij.org/sites/default/files/case-related/178/178-20220722-jud-01-00-en.pdf.

7 Belgium's declaration of intervention, para. 12: "La Belgique souhaite assurer la Cour que [l'intervention a été déposée a la date la plus proche raisonnablement possible pour elle, conformément au paragraphe 2 de l'article 82 du Règlement" ("Belgium wishes to assure the Court that the intervention was lodged on the earliest date reasonably possible for it, in accordance with Article 82, paragraph 2, of the Regulation ").

3 July 2024 Order was also made accessible to the public on the Court's website at that time. Belgium should therefore also have been aware that its own declaration of intervention would cause delays in the proceedings if it was not filed in time for any objections to its admissibility to be dealt with before the date fixed for the filing of the last written pleading.

15. In *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, the Court said, in relation to an application by the Philippines for permission to intervene under Article 62 of the Statute:

> Given these circumstances, the time chosen for the filing of the Application by the Philippines can hardly be seen as meeting the requirement that it be filed "as soon as possible" as contemplated in Article 81, paragraph 1, of the Rules of Court. This requirement which, although when taken on its own might be regarded as not sufficiently specific, is nevertheless essential for an orderly and expeditious progress of the procedure before the Court. In view of the incidental character of intervention proceedings, it emphasizes the need to intervene before the principal proceedings have reached too advanced a stage. In one of the recent cases, dealing with another type of incidental proceeding the Court observed that: "the sound administration of justice requires that a request for the indication of provisional measures ... be submitted in good time" (*LaGrand (Germany v. United States of America), Provisional Measures, Order of 3 March 1999, I.C.J. Reports 1999) (I)*, p. 14, para. 19). The same applies to an application for permission to intervene, and indeed even more so, given that an express provision to that effect is included in Article 81, paragraph 1, of the Rules of Court.[8]

16. It is acknowledged that, in that judgment, the Court ultimately rejected the objection based on the alleged untimely filing of the Philippines application.[9] It is furthermore accepted that the Court could be understood as having stated in that judgment that the words "as soon as possible" do not impose an additional and separate requirement of admissibility, since the Court said that:

> … despite the filing of the Application at a late stage in the proceedings, which does not accord with the stipulation of a general character contained in Article 81, paragraph 1, of the Rules requiring that "[a]n application for permission to intervene ... shall be filed as soon as possible", the Philippines cannot be held to be in violation of the requirement of the same Article, which establishes a specific deadline for an application for permission to intervene, namely "not later than the closure of the written proceedings".[10]

17. However, this statement by the Court was an *obiter dictum*, given that the application by the Philippines for permission to intervene was in any event rejected on other grounds.

---

8 *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 585, para. 21.

9 *Ibid.*, p. 586, para. 26.

10 *Ibid.*, pp. 585-586, para. 23.

There has in fact never been a previous case before the Court in which the Court has granted an application for permission to intervene under Article 62 of the Statute, or has found a declaration of intervention under Article 63 of the Statute to be admissible, in circumstances where one of the parties to the case has objected that the application or declaration was not filed "as soon as possible". The question whether a declaration of intervention will be inadmissible in circumstances where it was not filed "as soon as possible" has therefore never before been directly decided by the Court.

18. Article 82, paragraph 2, of the Rules of Court should not be interpreted in a way that deprives the words "as soon as possible" of any practical effect. The English version of the Rules of Court is expressed in mandatory language: a declaration of intervention "*shall*" be filed as soon as possible. The Court has recognised that observance of this requirement is "essential for an orderly and expeditious progress of the procedure before the Court" (see paragraph 15 above).

19. It is accepted that the words "as soon as possible" are imprecise, and it is not suggested that a declaration of intervention would be inadmissible by reason alone of the fact that, theoretically, it might have been filed somewhat earlier than it was. For instance, Article 79*bis*, paragraph 1, of the Rules of Court provides that a party shall file any preliminary objections "as soon as possible, and not later than three months after the delivery of the Memorial". Given that a respondent cannot be expected to decide whether to file preliminary objections before the applicant's memorial has first been filed, and given that three months is a relatively short period of time thereafter in which to prepare preliminary objections once that decision is taken, it would be difficult to imagine a situation where it could ever be concluded that preliminary objections were not filed "as soon as possible", even when filed on the last day of the three month period provided for in Article 79*bis*, paragraph 1, of the Rules of Court.[11]

20. However, the position is different in a case such as the present.

21. First, this is not a case where no more can be said than that, theoretically, the relevant document might have been filed somewhat earlier than it was. On the contrary, this is a case where it is *clear* that the document could and should have been filed *very much earlier* than it was (see paragraph 12 above).

22. Secondly, the present case involves the observance of a time-limit by an intervener, rather than by a party. An intervener under Article 63 of the Statute does not become a party to the case.[12] Nor is such an intervener a party to the dispute that the Court is called upon to settle. Nor will such an intervener normally even have an interest of a legal nature which may be affected by the decision of the Court. Such an intervener is a stranger to the litigation, and typically a stranger to the facts of the case and to the dispute. Even stricter compliance with the requirements of the Statute and Rules of Court must be expected of such a stranger to the litigation than would be expected of a party in the case.

---

[11] See K. Mačák, "Article 43", in A. Zimmermann and C. Tams, *Commentary on the Statute of the International Court of Justice* (3rd edition, 2019), p. 1293, margin no. 187: "A respondent who wishes to submit preliminary objections is entitled before doing so to be informed as to the precise nature of the claim by the submission of a memorial by the applicant".

[12] *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013*, p. 9, para. 18: "[I]ntervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court".

23. In circumstances where there is no apparent reason why the declaration could not have been filed very much earlier than it was, and in which it should have been apparent to the declarant State that it would cause delay in the proceedings by not filing its declaration of intervention sooner, it must be open to the Court to find that the declaration of intervention is inadmissible on the ground that it was not filed "as soon as possible". The present case is such a case.

24. Although Article 82, paragraph 4, of the Rules of Court provides that "In exceptional circumstances a declaration submitted later may however be admitted", no exceptional circumstances have been established by Belgium.

25. The Court should therefore find that the declaration of intervention of Belgium is inadmissible because it was not filed as soon as possible, and therefore does not comply with Article 82, paragraph 2, of the Rules of Court.

D. Belgium's declaration of intervention goes beyond the permitted scope of an intervention under Article 63 of the Statute

26. It is the settled case law of the Court that an intervention under Article 63 of the Statute is strictly limited to the construction of the convention in question, and cannot extend to any other matters.

27. In *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, the Court said that "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".[13]

28. In *Whaling in the Antarctic (Australia v. Japan)*, the Court reaffirmed that:

> "in accordance with the terms of Article 63 of the Statute, 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*",[14]

and that:

> intervention under Article 63 of the Statute is limited to submitting observations on the construction of the convention in question and does not allow the intervenor, which does not become a party to the proceedings, to deal with any other aspect of the case before the Court.[15]

---

[13] *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, Judgment of June 13th, 1951, I.C.J. Reports 1951*, pp. 74, 76-77.

[14] *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 (emphasis added).

[15] *Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013*, p. 9, para. 18. See also at p. 5, para. 7: "... in accordance with the terms of Article 63 of the Statute, 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".

29. In *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, the Court reiterated that:

(1) "[t]he object of the intervention under Article 63 of the Statute is limited to the construction of the convention concerned";[16]

(2) "intervention under Article 63 of the Statute allows a third State not party to the proceedings, but which is party to a convention the construction of which is in question in those proceedings, to present to the Court its observations on the construction of that convention";[17]

(3) "intervention under Article 63 of the Statute has a limited scope, since the intervening State can only submit observations on the construction of the convention in question and does not become a party to the proceedings";[18] and

(4) "intervention under Article 63 of the Statute is limited to the construction of the provisions in question at the relevant stage of the proceedings".[19]

30. The Court added in that case that:

> ... 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. Further, while some of the Declarations also refer to other rules and principles of international law outside the Genocide Convention, such references will only be considered by the Court in so far as they concern the construction of the Convention's provisions, in accordance with the customary rule of interpretation reflected in Article 31, paragraph 3 *(c)*, of the Vienna Convention on the Law of Treaties.[20]

31. In its 3 July 2024 Order in the present case, the Court affirmed yet again that:

> The object of the intervention under Article 63 of the Statute is limited to the construction of the convention concerned ... [T]he 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 ...
>
> 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.

---

16 *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Admissibility of the Declarations of Intervention, Order of 5 June 2023, I.C.J. Reports 2023*, p. 362, para. 27.

17 *Ibid.*, p. 365, para. 44.

18 *Ibid.*, p. 366, para. 49.

19 *Ibid.*, p. 374, para. 84.

20 *Ibid.*

> 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)*. ...
>
> The Court will not have regard to any parts of the observations going beyond the scope thus fixed.[21]

32. It was thus pellucidly clear to Belgium at the time that it filed its declaration of intervention that it was not permitted to deal in it with anything other than the construction of the Genocide Convention, and in particular, that it was required to refrain from addressing in it matters such as the evidence, the facts, the application of the Genocide Convention in the present case, or the evidentiary value of certain categories of documents.

33. Despite this, a substantial part of the declaration of intervention of Belgium is devoted to matters that go beyond the permitted scope of an intervention under Article 63 of the Statute.

    (1) In large part, the declaration of Belgium is concerned with the question of when the existence of a genocidal intent may be inferred from the circumstances of a particular case, and the standard of proof to be applied when drawing any such inference from the circumstances. It is concerned particularly with the question of the weight to be given to the fact that the acts in question occurred in the context of an armed conflict, in cases where this is so.[22] In other words, it is concerned with the evidentiary value of particular types of circumstances.

    (2) However, this is not a question of construction of the Genocide Convention. The Convention does not itself prescribe any rules of procedure or evidence to be applied by domestic or international courts when determining whether there have been any breaches of the Convention. Any international or domestic court dealing with claimed violations of the Genocide Convention will apply its own rules of procedure and evidence, including in relation to the question of the standard of proof. Thus, in the *Bosnia Genocide* case[23] and the *Croatia Genocide* case,[24] the

---

21 3 July 2024 Order, paras. 21, 42, 45-46.

22 Belgium's declaration of intervention, para. 21: "Dans ce cadre, la Belgique souhaite exposer sa position quant a l'interprétation de la notion d'intention génocidaire, telle qu'énoncée à l'article II de la Convention, lorsque les actes incriminés sont commis dans le contexte particulier d'un conflit armé. Plus particulièrement, elle s'efforcera de déterminer si l'existence d'un conflit armé peut affecter la détermination de l'intention génocidaire. A cet effet, elle examinera d'abord la question de l'allégation par 'es belligérants de la poursuite d'un objectif militaire (A) avant d'aborder l'invocation d'autres considérations à caractère militaire (B)". ("In this context, Belgium wishes to set out its position on the interpretation of the concept of genocidal intent, as set out in Article II of the Convention, when the acts in question are committed in the specific context of an armed conflict. In particular, it will seek to determine whether the existence of an armed conflict may affect the determination of genocidal intent. To that end, it will first examine the question of the belligerents' allegation of the pursuit of a military objective (A) before turning to the invocation of other considerations of a military nature (B).")

23 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 4 (the "***Bosnia Genocide* case").

24 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 5 (the "***Croatia Genocide* case").

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".[25] In both of those cases, the Court indicated that the leading case for this principle was the *Corfu Channel* case, which had nothing to do with the Genocide Convention.[26] In the *Croatia Genocide* case, the Court also made clear that the rules it applied concerning the burden of proof, standard of proof, and methods of proof were derived from its general jurisprudence, comprising earlier judgments of the Court that have nothing to do with the Genocide Convention.[27]

(3) Abstract statements by Belgium to the effect that "intent" is distinguishable from motive,[28] or that an act may be an act of genocide within the meaning of the Convention even if it is simultaneously also a violation of the law of armed conflict,[29] might be said to involve, or include, a particular construction of the Convention. However, statements by Belgium such as that a military objective should not be used to rule out a genocidal intention in certain circumstances,[30] or that aggressive statements made against a protected group in the context of an armed conflict "tend to reveal the existence of a hostile intent which goes beyond mere military intent",[31] are not statements of construction of provisions of the Genocide Convention for which Belgium contends, but rather, are statements concerning the evaluation of evidence, inferences to be drawn from particular types of circumstances, and the standard of proof.

(4) Indeed, Belgium itself argues that "genocidal intent can be inferred from a set of factual circumstances that reveal the course of conduct adopted by the perpetrator",[32] and that "In practice, it [a genocidal intent] is generally deduced from a series of concrete items of evidence, the exhaustive list of which cannot be drawn up for the purposes of this statement, given the many and varied nature of the issues involved".[33] Even Belgium itself does not suggest that the question whether or not such an inference can be drawn in a particular case can be answered through the construction of the Genocide Convention.

(5) Belgium states for instance, and erroneously, that "No court or international body has questioned the existence of [a genocidal] ... intent on the grounds that the perpetrator of the acts in question 'perceived' or 'designated' the non-combatant members of the protected group as enemies maintaining a bond of allegiance with

---

25 *Bosnia Genocide* case, p. 129, para. 209; *Croatia Genocide* case, p. 74, para. 178.

26 *Ibid.*

27 *Croatia Genocide* case, pp. 73-79, paras. 170-199.

28 Belgium's declaration of intervention, para. 27 first dash point.

29 Belgium's declaration of intervention, para. 27 third dash point.

30 Belgium's declaration of intervention, para. 25: "un objectif militaire ne saurait pas aboutir à écarter cette intention dans les circonstances suivantes".

31 Belgium's declaration of intervention, para. 29: "... l'existence d'un conflit armé est parfois mise en avant, notamment lorsque des propos agressifs sont tenus à l'encontre d'un groupe protégé. En effet, de telles déclarations, prononcées dans ce contexte, tendent à révéler l'existence d'une intention hostile qui dépasse la seule intention militaire dans la mesure où elle vise non seulement les forces armées ennemies, mais également, et surtout, le groupe protégé".

32 Belgium's declaration of intervention, para. 24: "l'intention génocidaire peut se déduire d'un ensemble de circonstances de fait qui révèlent la ligne de conduite adoptée par son auteur").

33 Belgium's declaration of intervention, para. 28: "En pratique, elle est généralement déduite d'un ensemble d'éléments de preuve concrets, dont la liste exhaustive ne peut être dressée dans le cadre de cette déclaration tant ils sont nombreux et variés".

the opposing belligerent".[34] That is in fact incorrect. In the *Croatia Genocide* case, the Court quoted from the judgment of the ICTY Trial Chamber in *Mrkšić et al.*, in which it was said that "the overall effect of the evidence is to demonstrate that the city and civilian population of and around Vukovar were being punished, and terribly so, as an example to those who did not accept the Serb-controlled Federal Government in Belgrade".[35] The Court said that it followed from this that "the existence of intent to physically destroy the Croatian population is not the only reasonable conclusion that can be drawn from the illegal attack on Vukovar".[36] This demonstrates that the question whether a genocidal intent can be inferred from the circumstances is a question of the evaluation of the evidence and the circumstances as a whole. This is not a question that can be answered through the *construction of the Genocide Convention.*

(6) Belgium also argues for instance that the existence of a military objective will not exclude the possibility of a genocidal intent unless the military objective is the "only explanation" of the conduct "on the basis of the evidence available".[37] This is in fact an argument concerning the burden and standard of proof, which, for the reasons above, does not involve the construction of the Genocide Convention. (It is noted also that this argument appears to be directly at odds with what the Court held in the *Bosnia Genocide* case and the *Croatia Genocide* case.[38])

(7) Paragraphs 10 and 11 of the declaration of intervention also deal with what Belgium claims is its interest in this case, based on the *erga omnes partes* character of obligations under the Genocide Convention. However, this claimed interest is not relevant to any construction of the Convention contended for by Belgium. The mere fact that Belgium is a party to the Genocide Convention gives it the right to intervene under Article 63 of the Statute.[39] Any additional interest that Belgium may claim to have in relation to compliance by States with the Genocide Convention is irrelevant to its right to intervene, as well as irrelevant to the any construction of the Convention that Belgium arguably seeks to contend for. Any statement by an intervener under Article 63 of the Statute as to its motives for intervening or its interest in the factual subject-matter of the proceedings goes beyond the permitted scope of such an intervention.

---

34 Belgium's declaration of intervention, para. 27, second dash point: "En effet, aucune juridiction ni aucune instance internationale n'a remis en question l'existence d'une telle intention au motif que l'auteur des actes incriminés « percevait » ou « désignait » les membres non-combattants du groupe protégé comme des ennemis entretenant un lien d'allégeance avec le belligérant adverse".

35 *Croatia Genocide* case, p. 125, para. 429.

36 *Ibid.*

37 Belgium's declaration of intervention, paragraph 25, third dash point: "Autrement dit, pour exclure l'intention génocidaire, l'objectif militaire allégué ne peut être simplement l'une des explications possibles parmi d'autres du comportement dudit belligérant, coexistant avec celle de détruire, en tout ou en partie, un groupe protégé, comme tel. Il doit constituer la seule explication de ce comportement sur la base des éléments de preuve disponibles." ("In other words, in order to exclude genocidal intent, the alleged military objective cannot simply be one of several possible explanations for the belligerent's conduct, coexisting with that of destroying, in whole or in part, a protected group as such. It must be the only explanation of that conduct on the basis of the evidence available.")

38 See *Croatia Genocide* case, p. 67, para. 148, explaining *Bosnia Genocide* case, pp. 196-197, para. 373. In those previous cases, the Court determined that in order to infer the existence of a genocidal intent from surrounding circumstances, this must be *the only inference that could reasonably be drawn from the acts in question*. Belgium apparently seeks to argue the exact opposite, namely that a genocidal intent will be presumed unless the absence of a genocidal intent is the only reasonable inference.

39 3 July 2024 Order, para. 21: "The legal interest of the declarant State in the construction of the convention is presumed by virtue of its status as a party thereto".

34. In successive cases, the Court has stated increasingly clearly, in increasingly stronger terms, that interventions under Article 63 of the Statute must not be used by interveners as a platform for making statements going beyond the permitted scope of such an intervention.

(1) Initially, the Court stated very clearly the general principle that "intervention under Article 63 of the Statute 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" (*Whaling in the Antarctic (Australia v. Japan)*: see paragraph 28 above).

(2) Subsequently, the Court stated more strongly that it "will not consider" observations of an intervener that go beyond the construction of the Convention's provisions (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*: see paragraphs 29-30 above).

(3) Finally, in this very case, the Court stated more forcefully still that it "expects the interveners to refrain from addressing [matters other than the construction of the Convention] any further" (3 July 2024 Order: see paragraph 31 above).

Yet, despite this clear and mandatory language in the case law of the Court, a very substantial part of Belgium's declaration of intervention is devoted to matters other than the construction of the Genocide Convention. This is a direct affront to, and tends to undermine, the authority of the Court.

35. Given that the clear and increasingly stronger admonitions from the Court have not deterred interveners from continuing to seek to use the right of intervention under Article 63 of the Statute as a platform for making statements going beyond the permitted scope of such an intervention, the stage has now been reached at which the Court should take stronger action to ensure compliance with the Rules of Court in this respect. Any declaration of intervention that contains substantial amounts of material going beyond the permitted scope of such an intervention should be found by the Court to be inadmissible.

36. The declaration of intervention of Belgium should be found to be inadmissible for this reason.

E. Alternatively, Belgium's intervention must be confined to the points of construction set out in its declaration of intervention

37. For the reasons given above, Belgium's declaration of intervention should be found to be inadmissible. However, in any event, Myanmar contends that any intervention under Article 63 of the Statute must be confined to the specific points of construction of the Convention set out in the declaration of intervention itself.

38. Consistently with the case law of the Court set out in paragraphs 26-31 above, the Court should not consider any matter in an intervention under Article 63 of the Statute that goes beyond the construction of provisions of the Genocide Convention.

39. Furthermore, the intervener's substantive written observations on the subject-matter of the intervention (Article 86, paragraph 1, of the Rules of Court), and any observations in the oral proceedings with respect to the subject-matter of the intervention (Article 86, paragraph 2, of the Rules of Court) must be strictly confined to arguments in support of the specific construction of the convention that was previously articulated in the prior declaration of intervention which the Court found to be admissible. An intervener cannot, in its substantive written and oral observations under Article 86 of the Rules of Court, contend for new or different constructions of provisions of the convention, that were not originally set out in its declaration of intervention under Article 82 of the Rules of Court. It is the statement of construction of provisions of the convention contained in the declaration of intervention, pursuant to Article 82, paragraph 5 *(c)* of the Rules of Court, that defines the "subject-matter of the intervention" for purposes of Article 86 of the Rules of Court. That statement pursuant to Article 82, paragraph 5 *(c)* of the Rules of Court is, according to the express wording of that provision, "*the* construction … for which [the intervener] contends" (emphasis added). The observations of the intervening State under Article 86 of the Rules of Court must be confined to that subject-matter.

F. Conclusion

40. In the 3 July 2024 Order in this case, the Court recalled that it "cannot allow itself to be hampered by a mere defect of form, the removal of which depends solely on the Party concerned".[40] However, the matters above do not relate to mere defects of form. The fact that a document is filed outside the applicable time-limit, or deals with matters with which it is not permitted to deal, is a defect of substance, not a defect of form.

41. It must be recognised that interventions under Article 63 of the Statute have significant effects on the parties. Such interventions will increase the amount of time that will be required before a case is finally concluded. Such interventions will furthermore impose additional costs and burdens on the parties, including by diverting resources that would otherwise be available to each party to address the arguments presented by the other party. Interventions under Article 63 of the Statute may also impose challenges for the Court itself. About a half of the contentious cases presently pending before the Court involve alleged violations of multilateral treaties to which very large numbers of States are parties.[41] There is an obvious risk that the work of the Court could become

---

40 3 July 2024 Order, para. 31, quoting *Certain German Interests in Polish Upper Silesia, Jurisdiction, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6*, p. 14.

41 **(1)** *Glas Espinel (Ecuador v. Mexico)* (various multilateral treaties); **(2)** *Embassy of Mexico in Quito (Mexico v. Ecuador)* (various multilateral treaties); **(3)** *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)* (Genocide Convention); **(4)** *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* (Genocide Convention); **(5)** *Aerial Incident of 8 January 2020 (Canada, Sweden, Ukraine and United Kingdom v. Islamic Republic of Iran)* (Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation); **(6)** *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic)* (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); **(7)** *Request relating to the Return of Property Confiscated in Criminal Proceedings (Equatorial Guinea v. France)* (United Nations Convention against Corruption); **(8)** *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (Genocide Convention); **(9)** *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)* (International Convention on the Elimination of All Forms of Racial Discrimination); **(10)** *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)* (International Convention on the Elimination of All Forms of Racial Discrimination);

unmanageable if significant numbers of cases were to have significant numbers of such interveners. There are presently over 150 Contracting Parties to the Genocide Convention, and, as *Ukraine v. Russia* has demonstrated, the prospect of very large numbers of those States intervening under Article 63 in a single case is not unrealistic.

42. In the century from 1922 to 2021, declarations of intervention under Article 63 of the Statute of this Court and the corresponding provision of the Statute of its predecessor were filed in only five cases (an average of one case every 20 years),[42] and the interventions were admitted in only three of those cases (an intervention by a single State in a case on average once every 33 years).[43] The *Bosnia Genocide* case[44] and the *Croatia Genocide* case[45] were both decided in this period, and it is noteworthy that there were no interventions under either Article 62 or Article 63 of the Statute in either of those cases. However, since July 2022, there has been a dramatic change in the use of Article 63 of the Statute. In the space of approximately two and a half years, there have now been declarations of intervention under Article 63 by 33 States in *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, by 11 States in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, as well as by 11 States in the present case. Together, that is an average in the last two and a half years of declarations of intervention under Article 63 by over 21 States per year. This cannot be assumed to be a temporary anomaly.

43. In order to ensure the good administration of justice, to respect the rights and the equality of both parties to contentious cases, and to preserve the judicial character of the Court in its contentious jurisdiction, it is necessary that the provisions of the Statute and Rules of Court relating to intervention be applied with rigour.

44. Myanmar requests the Court to find that the declaration of intervention of Belgium is inadmissible, for the reasons given in paragraphs 7-36 above.

45. Pending a decision of the Court on the admissibility of the declaration of intervention, Myanmar does not consider itself called upon to respond to any substantive arguments that it makes. Myanmar fully reserves its rights in this respect. In particular, Myanmar does not concede at this stage that any of the arguments contained within the declaration of intervention would be relevant to the Court's decision in this particular case.

---

(11)*Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)* (Vienna Convention on Diplomatic Relations).

42 There was only ever one declaration of intervention under the materially identical Article 63 of the Statute of the Permanent Court of International Justice: *S.S. "Wimbledon", Judgments, 1923, P.C.I.J., Series A, No. 1*, pp. 11-14 (Question of Intervention by Poland, Judgment of 28 June 1923). Declarations of intervention under Article 63 of the Statute of this Court were filed in four cases prior to 2022: *Haya de la Torre Case, Judgment of June 13th, 1951, I.C.J. Reports 1951*, p. 71 (see at pp. 76-77); *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Declaration of Intervention, Order of 4 October 1984, I.C.J. Reports 1984*, p. 215; *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case, I.C.J. Reports 1995*, p. 288; and *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.

43 The interventions were admitted in *S.S. "Wimbledon"*, *Haya de la Torre Case*, and *Whaling in the Antarctic*.

44 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 4.

45 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 3.

G. Submission

46. For the reasons set out above, the Republic of the Union of Myanmar requests the Court to decide that the declaration of intervention of the Kingdom of Belgium is inadmissible.

H.E. U Ko Ko Hlaing

Union Minister for Ministry 2 at Office of the Chairman of the State Administration Council of the Republic of the Union of Myanmar

Agent of Myanmar