

INTERNATIONAL COURT OF JUSTICE

WRITTEN OBSERVATIONS OF THE ADMISSIBILITY OF THE
DECLARATION OF INTERVENTION UNDER ARTICLE 63
OF THE REPUBLIC OF SLOVENIA

In the case of

*APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT
OF THE CRIME OF GENOCIDE
(THE GAMBIA v. MYANMAR)*

18 March 2025

1. The Republic of Slovenia submitted a declaration of intervention in this case on 29 November 2024 pursuant to Article 63 of the Statute of the Court. By letter number 163705 dated 29 January 2025, the Registrar of the Court communicated to Slovenia the written observations of The Gambia and Myanmar on Slovenia's Declaration, submitted in accordance with Article 83(1) of the Rules of Court.
2. The Gambia considers that "[Slovenia's] Declaration has been duly filed pursuant to Article 63 of the Statute and in accordance with the conditions set forth in Article 82 of the Rules. The Declaration has been filed in a timely manner, well before the opening of the oral proceedings on the merits of the case, and has been filed in accordance with the requirements of Article 38 of the Rules".¹ Myanmar, for its part, challenges the admissibility of all or part of Slovenia's declaration of intervention.
3. Myanmar relies on two arguments to assert the inadmissibility of Slovenia's declaration of intervention. It considers that Slovenia's declaration does not comply with Article 82(2) of the Rules of Court (**I.**) and that it exceeds the scope of intervention permitted by Article 63 of the Court's Statute (**II.**). In these brief written observations, Slovenia will address these two aspects and demonstrate that its declaration of intervention is admissible.

I. Slovenia's declaration of intervention was submitted in accordance with Article 82(2) of the Rules of the Court

4. In its written observations, Myanmar objects to the admissibility of Slovenia's declaration of intervention on the grounds that it was not submitted "as soon as possible," as required by Article 82(2) of the Rules of Court which is the relevant provision in the present procedure as accepted by both Myanmar and Slovenia. It reads as follows

"2. If the Court has authorized further written pleadings either under Article 45, paragraph 2, or under Article 46, paragraph 2, or if a counter claim has been made in accordance with Article 80, 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."

¹ The Republic of the Gambia, AG/C/370/01 PART 1 (53), 28 January 2025.

5. According to Myanmar, this provision establishes two distinct requirements for the admissibility of a statement of intervention that the Slovenia's declaration would not respect. Firstly, Article 82(2) "requires that any declaration of intervention must be filed 'as soon as possible'" and, secondly, "any declaration must in any event be filed 'not later than the date fixed for the filing of the last written pleading'".² Since, by an Order of 16 October 2023 the Court has authorised The Gambia and Myanmar to submit further written pleadings in accordance with Article 45 of the Court's Statute, Myanmar asserts that Slovenia's request to intervene does not respect what it alleges to be the "first" condition required by Article 82(2) of the Rules since it would not have been filed "as soon as possible". Slovenia fully disagrees with Myanmar's interpretation of Article 82(2) of the Rules.

6. Interpreted Article 82(2) of the Court's Rules, Myanmar wrongly claims that failing to consider the requirement to submit a request for intervention "as soon as possible" would "deprive() the words [...] of any practical effect."³ Only the opposite is true. If this phrase were understood as imposing an autonomous obligation, the mention according to which a declaration of intervention should be submitted "not later than the date fixed for the filing of the last written pleading" would indeed be rendered without any *effet utile*. In reality, both expressions in Article 82(2) of the Court's Rules are complementary. A State intervening under Article 63 of the Court's Statute must submit its declaration of intervention "as soon as possible" that is, at least, "not later than the date fixed for the filing of the last written pleading."

7. In a contradictory way, Myanmar itself appears to recognise this interpretation, acknowledging that "[i]t 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."⁴ Imprecise and general as it might be, the expression 'as soon as possible' is

² Written observations of the Republic of the union of Myanmar pursuant to Article 83, paragraph 1, of the Rules of the Court on the declaration of intervention of the Republic of Slovenia (thereafter: "Written observations of the Republic of the Union of Myanmar"), 29 January 2025, para. 8.

³ *Ibid.*, para. 18.

⁴ *Ibid.*, para. 19.

clarified in the same sentence by the mention of the submission of a declaration of intervention “not later than the date fixed for the filing of the last written pleading”.

8. It is worth noting that Slovenia’s interpretation and application of Article 82(2) is shared by other States including one Party to the present case, The Gambia,⁵ and by other intervening States, since the Democratic Republic of the Congo, Belgium and Ireland communicated their declaration of intervention respectively on 11, 12 and 20 December 2024 which means before the end of the written proceedings.

9. Moreover, this is the interpretation that the Court applied to Article 81(1) of the Court’s Rules as drafted in 2001⁶, which was very similar to actual Article 82(2), in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, which is quoted by Myanmar.⁷ Addressing the admissibility of the Philippines’ declaration of intervention, the Court held that “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’”.⁸ The Court nevertheless took care to note that this statement applied only to part of the provision which “when taken on its own might be regarded as not sufficiently specific”.⁹ Still examining the admissibility of the Philippines’ declaration of intervention under Article 81(1), the Court held

“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

Then the Court decided that “the filing of the Philippine Application on 13 March 2001 cannot be viewed as made after the closure of the written proceedings and remained within the specific time-limit prescribed by Article 81, paragraph 1, of the Rules of

⁵ The Republic of The Gambia, AG/C/370/01 PART I (53), 28 January 2025.

⁶ In 2001, Article 81(1) read as follows: “An application for permission to intervene under the terms of Article 62 of the Statute, ... shall be filed as soon as possible, and not later than the closure of the written proceedings. In exceptional circumstances, an application submitted at a later stage may however be admitted.”

⁷ Written observations of the Republic of the Union of Myanmar, paras. 15 and 16.

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

⁹ *Ibid.*

¹⁰ *Ibid.*, pp. 585-586, para. 23.

Court.” and “conclude[d] that it cannot uphold the objection raised by Indonesia and Malaysia based on the alleged untimely filing of the Philippine Application.”¹¹

10. In the present case and as highlighted by Myanmar, “[a]t the time that the declaration of intervention was filed, the date fixed for the filing of the last written pleading was 30 December 2024¹². The declaration of intervention of Slovenia was filed *before that date*, on 29 November 2024.”¹³ Submitted before the end of the written proceedings, the Slovenian declaration of intervention is admissible under Rule 82(2) of the Rules of Court.

11. In its written observations, Myanmar further asserts that only exceptional circumstances would justify the admissibility of Slovenia’s declaration of intervention and relies on Article 82(4) of the Court’s Rules to support its argument.¹⁴ However, this provision would only be relevant in the present case if Slovenia had not submitted its declaration of intervention within the time limits set out in Article 82(2) of the Court’s Rules. This is not the case as shown above.¹⁵ It is noticeable that, in its 2001 decision in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)* mentioned above,¹⁶ the Court held that the Philippines had not demonstrated any exceptional circumstances justifying the alleged late submission of its declaration of intervention.¹⁷ Nevertheless, since the Philippines had submitted its declaration of intervention before the end of the written proceedings, the Court considered that the Philippines’ intervention could not be deemed inadmissible under Article 81(1) of the Court’s Rules, even in the absence of exceptional circumstances.¹⁸ The fact that “this statement by the Court was an *obiter dictum*”,¹⁹ only reinforces its persuasiveness.

¹¹ *Ibid.*, p. 586, para. 26.

¹² Written observations of the Republic of the Union of Myanmar, footnote 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>.”

¹³ *Ibid.*, para. 10.

¹⁴ *Ibid.*, para. 24.

¹⁵ See above, para. 10.

¹⁶ See above, para. 9..

¹⁷ *Ibid.*, p. 585, para. 22.

¹⁸ *Ibid.*, p. 586, para. 25.

¹⁹ Written observations of the Republic of the Union of Myanmar, para. 17.

12. As a codicil to its more legal objections, Myanmar puts forward a purportedly practical argument: “if the declaration of intervention of Slovenia had been filed earlier, and if it had been found to be admissible, the intervention of Slovenia 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.”²⁰ Besides the fact that this argument has no bearing on the admissibility of Slovenia’s intervention, it is fully unconvincing: had Slovenia’s declaration been made earlier, the Court would nevertheless have had to examine it specifically. Moreover, it will certainly not fail to rule on Slovenia’s declaration while keeping in mind its findings regarding previous requests for intervention.

II. Slovenia’s declaration of intervention does not go beyond the permitted scope of an intervention under Article 63 of the Statute

13. In its written observation on Slovenia’s declaration of intervention, Myanmar alleges that Slovenia’s intervention is inadmissible because it would go beyond the scope of Article 63 of Court’s Statute. Article 63 reads as follows

“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.”

14. As Myanmar rightly notes, Slovenia’s declaration “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.”²¹ Slovenia agrees.

²⁰ *Ibid.*, para. 13.

²¹ *Ibid.*, para. 2.

15. In paragraphs 27 to 31 of its Observations, Myanmar invokes various precedents in which the Court dealt with the scope of the intervention permitted under Article 63 of the Statute of the Court. For example, Myanmar mentions the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case in which the Court considered 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”.²² Myanmar also quotes the Court’s order of 5 June 2024 in the case relating to *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* in which the Court stated “that 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”.²³
16. Slovenia fully concurs with these precedents, which give a clear picture of the scope of the intervention permitted under Article 63 of the Court’s Statute. However, Slovenia disagrees with Myanmar’s abusively wide interpretation of this provision in the present case: Myanmar extensively asserts that the Slovenia’s declaration “contains substantial amounts of material going beyond the permitted scope”²⁴ of an intervention permitted under Article 63 of the Court’s Statute, namely paragraphs 2 to 32, 47 to 50, and paragraph 54 of Slovenia’s Declaration of intervention deal with issues out of the scope of an intervention permitted under Article 63. These accusations are unfounded.
17. Thus, Myanmar considers that Slovenia, in intervening under Article 63 of the Statute of the Court, cannot state in paragraph 2 of its declaration of intervention that “[i]n its application submitted on 11 November 2019, The Gambia instituted proceedings against Myanmar concerning violations of the Genocide Convention.” This is stating the obvious: this assertion is not disputed by the Parties and constitutes the necessary starting point for Slovenia’s declaration of intervention since an intervention is always an incidental proceeding to the main case. Similarly, in paragraph 7 of the same declaration noting that “[b]y letters dated 6 October 2021 and considering the

²² *Ibid.*, para. 27, mentioning in footnote 12: “*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.”

²³ *Ibid.*, para. 29(3), referring to *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, ICJ Reports 2023, p. 366, para. 49.

²⁴ Written observations of the Republic of the Union of Myanmar, para. 35.

COVID-19 pandemic, the Parties were informed that the Court had decided to postpone the hearings to the week of 21 February 2022, and a revised schedule of the hearings was communicated to them.” This purely procedural aspect is not in any way disputed by the Parties and constitutes a useful point of explanation of the chronology of the proceedings leading to the determination that Slovenia filed its statement of intervention within the time-limit laid down in Article 82(2) of the Rules of Court. Moreover, paragraph 2, paragraph 7, and other paragraphs of the Slovenian declaration of intervention²⁵ set out contextual elements of the main proceedings which usually appear in the introduction to any written pleading submitted to the Court.

18. Moreover, Slovenia’s Declaration of intervention to be admissible, must only meet the conditions set out in Article 63 of the Court’s Statute and Article 82 of its Rules. In accordance with paragraph 5 of this provision:

“5. The declaration shall state the name of an agent. It shall specify the case and the convention to which it relates and shall contain:

- (a) particulars of the basis on which the declarant State considers itself a party to the convention;
- (b) identification of the particular provisions of the convention the construction of which it considers to be in question;
- (c) a statement of the construction of those provisions for which it contends;
- (d) a list of the documents in support, which documents shall be attached.”

As rightly noted by The Gambia in its letter to the Registrar of 29 January 2024, the Declaration of intervention of Slovenia contains each of these specifications.

19. Slovenia introduced itself as a Party to the Genocide Convention in accordance with Article 82(5)(a) of the Rules of the Court (paragraphs 34 to 37). Slovenia also identified Articles I to VI of the Genocide Convention (paragraphs 40 to 63) as the provisions of the Genocide Convention the construction of which it considers to be in question – in accordance with Article 82(5)(b) of the Rules of the Court – in a subsection specifically dedicated to “(i) The particular provisions of the Genocide Convention in question” (paragraphs 40-41). As provided for in Article 82(5)(c) of the Rules of the Court, Slovenia briefly described its proper construction of Article I (paragraphs 43-49),

²⁵ See e.g. Declaration of Intervention under Article 63 of the Republic of Slovenia, paras. 2-14.

Article II (paragraphs 51-57), Article III (paragraph 59) and Article IV to VI (paragraphs 61-63) of the Genocide Convention.

20. It is apparent from its declaration of intervention that Slovenia considers Article I of the Genocide Convention as a fundamental provision of the Convention, encompassing both the obligation to prevent the commission of genocide and the obligation to punish it.²⁶ In order to demonstrate the existence and commission of genocide, Article II is interpreted as requiring proof of a ‘*dolus specialis*’ which can be inferred from the overall behaviour of the perpetrator of one of the material acts listed in the same article.²⁷ Slovenia interprets Article III as covering situations beyond the direct commission of genocide.²⁸ Finally, Articles IV to VI are interpreted by Slovenia as allowing the prosecution and conviction of any individual, regardless of their position or status, and as requiring the Parties to the Convention to incorporate into their domestic law the prohibition of acts covered by the Convention.²⁹

21. Even if the Court were to consider that certain elements of the declaration of intervention would have exceeded the scope permitted by Article 63 of the Court’s Statute (*quod non*), this would not call into question Slovenia’s right to intervene under Article 63 of the Statute and in accordance with Article 82 of the Rules of Court. As affirmed by the Court in a passage of its Order of 3 July 2024 quoted by Myanmar in its written observations, when declarations of intervention have exceeded the permitted scope of such an intervention, this would have no incidence on the admissibility of the intervention as a whole. In that decision, the Court stated that “[i]t will not consider such issues” outside the permitted scope of the intervention but it accepted such declarations of intervention as admissible.³⁰ Similarly, in *Ukraine v. Russia*, the Court recalled that it

“has already stated that intervention under Article 63 of the Statute is limited to the construction of the provisions in question at the relevant stage of the proceedings. The Court is of the view that the Declarations of intervention at

²⁶ *Ibid.*, paras. 44 and 46.

²⁷ *Ibid.*, paras. 52 and 54.

²⁸ *Ibid.*, para. 59.

²⁹ *Ibid.*, paras. 62 and 63.

³⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 7 States intervening)*, Admissibility of the declarations of intervention, Order of 3 July 2024, para. 45.

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.³¹

If the Court were to consider that Slovenia's request to intervene addresses matters beyond the scope of Article 63, this is indeed what it could decide. As shown above,³² this is not the case. But, in any event, this would not render the whole of Slovenia's statement of intervention inadmissible.

Conclusion

22. As Slovenia has shown above, it has scrupulously complied with the relevant provisions of the Statute and the Rules of Procedure and its request to intervene is fully admissible, notwithstanding the very artificial objections made by the Union of Myanmar.

23. It goes without saying that "an intervener [under Article 63 of the Statute] is a stranger to the litigation, and typically a stranger to the facts of the case and to the dispute".³³ Not claiming to be concerned in the case to which The Gambia and Myanmar are parties, Slovenia fully accepts, in accordance of Article 63, paragraph 2 of the Statute, that the construction given by the Court's judgment will be equally binding upon it.

³¹ *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, *ICJ Reports 2023*, p. 374, paras. 84.

³² See above, paras. 17-20.

³³ Written observations of the Republic of the Union of Myanmar, para. 22.