

Note: This translation has been prepared by the Registry for internal purposes and has no official character

**WRITTEN OBSERVATIONS OF THE KINGDOM OF BELGIUM ON THE ADMISSIBILITY OF ITS
DECLARATION OF INTERVENTION UNDER ARTICLE 63 OF THE STATUTE OF THE
INTERNATIONAL COURT OF JUSTICE**

[Translation]

To the Registrar of the International Court of Justice (hereinafter the “Court”), the undersigned being duly authorized by the Government of the Kingdom of Belgium (hereinafter “Belgium”):

1. With reference to the Registrar’s letters No. 163802 of 12 February 2025 and No. 153958 of 4 March 2025, I have the honour to submit to the Court, on behalf of Belgium, written observations on the admissibility of the Declaration of intervention submitted by Belgium to the Court on 12 December 2024 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*¹.

2. Belgium submitted the said Declaration of intervention pursuant to Article 63, paragraph 2, of the Statute of the Court (hereinafter the “Statute”).

3. On 12 February 2025, the Republic of the Gambia (hereinafter “The Gambia”) submitted its written observations on the Declaration of intervention². The Gambia begins by noting that the Declaration was filed within the prescribed time-limits — i.e. within the time-limit fixed for the filing of the Rejoinder of the Republic of the Union of Myanmar (hereinafter “Myanmar”) — and in accordance with the procedure laid down in Article 82 of the Rules of Court (hereinafter the “Rules”). It goes on to note that, as required by Article 82 of the Rules, the Declaration of intervention: (a) contains information demonstrating that Belgium is a party to the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention”); (b) identifies the provisions of the Genocide Convention the construction of which Belgium considers to be in question; and (c) provides a statement of the construction of those provisions for which Belgium contends. Finally, The Gambia observes that two documents are annexed to the Declaration of intervention. The first is a letter of 24 January 2020 from the Registrar of the Court notifying Belgium that The Gambia had filed an Application instituting proceedings against Myanmar on 11 November 2019. The second is an excerpt from the United Nations Treaty Series showing that Belgium deposited its instrument of ratification of the Genocide Convention with the Secretary-General of the United Nations on 5 September 1951. The Gambia concludes on the basis of these facts that the Declaration of intervention is admissible.

4. On 12 February 2025, Myanmar submitted its written observations in which it contends that the Declaration of intervention is inadmissible³. It raises two main objections in those observations. First, it claims that the Declaration of intervention was not filed “as soon as possible” in accordance with the admissibility requirement which, in its view, is provided for in Article 82, paragraph 2, of the Rules. Second, it contends that the Declaration of intervention goes beyond the scope of

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Declaration of intervention of the Kingdom of Belgium under Article 63 of the Statute of the International Court of Justice, 11 Dec. 2024.

² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, written observations of The Gambia on the declaration of intervention filed by Belgium, 12 Feb. 2025.

³ *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 Feb. 2025.

Article 63, paragraph 1, of the Statute, which stipulates that the Declaration must be confined to points of interpretation of the Genocide Convention.

5. Belgium's observations respond to those submitted to the Court by Myanmar. They will address Myanmar's objections in the order in which they were raised. Belgium will show that the Declaration of intervention is admissible since it was filed in accordance with the requirements of Article 82 of the Rules (I) and falls within the permitted scope of intervention established by Article 63 of the Statute (II).

I. Belgium's Declaration of intervention was filed within the prescribed time-limits

6. Myanmar's first objection concerns the observance of the time-limits fixed for the filing of the Declaration of intervention.

7. Myanmar begins by contending that Article 82, paragraph 2, of the Rules — the provision relevant to the filing of a declaration of intervention⁴ — provides for two cumulative admissibility requirements: first, the declaration must be filed "as soon as possible" and, second, it must be filed "not later than the date fixed for the filing of the last written pleading"⁵. According to Myanmar, these two requirements are strict obligations that must be complied with by any State seeking to intervene in proceedings in accordance with Article 63 of the Statute, failing which its declaration of intervention will be inadmissible. Myanmar maintains in particular that the requirement under Article 82, paragraph 2, of the Rules to file a declaration of intervention "as soon as possible" cannot be stripped of its substance⁶. In this regard, it draws attention to the use of the verb "shall" in the English version of this provision, which signals its mandatory character⁷. Moreover, Myanmar recalls that the Court itself noted in its Judgment of 23 October 2001⁸ that observance of the requirement that a declaration be filed "as soon as possible", as provided for in Article 81, paragraph 1, of the Rules, was essential to ensure the orderly and expeditious progress of the procedure⁹.

8. Myanmar then disputes Belgium's compliance with the requirement to file the declaration "as soon as possible" pursuant to Article 82, paragraph 2, of the Rules. It argues that although the Declaration of intervention was filed before the date fixed for the filing of the last written pleading¹⁰ — i.e. 30 December 2024¹¹ — it was not filed "as soon as possible"¹². In particular, it

⁴ *Ibid.*, para. 7.

⁵ *Ibid.*, paras. 8 and 9.

⁶ *Ibid.*, para. 18.

⁷ *Ibid.*

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 *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 Feb. 2025, para. 18.

¹⁰ *Ibid.*, para. 10.

¹¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order of 21 November 2024*.

¹² *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 Feb. 2025, para. 11.

notes that further to the delivery of the Court’s Judgment on the preliminary objections on 22 July 2022¹³, the Maldives filed its Declaration of intervention¹⁴ — which was followed on the same day by the Joint Declaration of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom¹⁵ — on 15 November 2023, i.e. more than a year before Belgium filed its own Declaration¹⁶. According to Myanmar, however, Belgium had been aware of the filing of these declarations since November 2023 and of the Court’s ruling that they were admissible since July 2024, as both the declarations and the Court’s Order finding them admissible were made accessible to the public¹⁷. Consequently, Myanmar reproaches Belgium for failing to anticipate that the late filing of its Declaration of intervention might hinder the smooth conduct of the proceedings¹⁸. It also reproaches Belgium for not providing any justification for this delay¹⁹ or invoking any exceptional circumstances that would permit a later filing under Article 82, paragraph 4, of the Rules²⁰. Finally, Myanmar states that the requirement to file a declaration “as soon as possible”, provided for in Article 82, paragraph 2, of the Rules, should be assessed more strictly than the equivalent requirement contained in Article 79*bis*, paragraph 1, of the Rules relating to the filing by a party to the dispute of any objection in respect of jurisdiction or admissibility²¹. In Myanmar’s view, although the terms of these two provisions are similar, the requirement under Article 82, paragraph 2, unlike that under Article 79*bis*, does not allow filing to take place at the very end of the fixed period provided for in the two provisions²².

9. In conclusion, Myanmar contends that since the Declaration of intervention was not filed “as soon as possible”, it contravenes one of the temporal requirements of admissibility set out in Article 82, paragraph 2, of the Rules. It is therefore of the view that the Declaration of intervention should be declared inadmissible²³.

10. Belgium firmly rejects Myanmar’s reasoning, which it considers unfounded. Indeed, Belgium considers that the Declaration of intervention submitted to the Court on 12 December 2024 fully meets the admissibility requirements.

11. With regard to the nature of the temporal requirements provided for in Article 82, paragraph 2, of the Rules, Belgium, like Myanmar, recognizes that the requirement for a declaration

¹³ *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 (II)*, p. 477.

¹⁴ *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 Nov. 2023.

¹⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, 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, pursuant to Article 63 of the Statute of the International Court of Justice, 15 Nov. 2023.

¹⁶ *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 Feb. 2025, para. 1[4].

¹⁷ *Ibid.*

¹⁸ *Ibid.*, [para. 13].

¹⁹ *Ibid.*, para. 12.

²⁰ *Ibid.*, para. 24.

²¹ *Ibid.*, paras. 19-22.

²² *Ibid.*, para. 19.

²³ *Ibid.*, para. 25.

of intervention to be filed before the time-limit fixed for the filing of the last written pleading constitutes an admissibility requirement. However, the requirement to file a declaration “as soon as possible”, which is also set forth in that provision, does not have the same mandatory character, contrary to what Myanmar contends. Indeed, that requirement can be understood only as an invitation to act diligently and expeditiously in order to ensure the smooth conduct of the proceedings. It cannot be equated with an obligation, with which failure to comply would automatically render a declaration of intervention inadmissible. This position is based on several grounds.

12. First, Article 63, paragraph 2, of the Statute recognizes that States parties to a convention have a “right to intervene in the proceedings” in order to set out their interpretation of the provisions concerned. Belgium maintains that to guarantee the effectiveness of that right, Article 82, paragraph 2, of the Rules — which must be interpreted and applied in conformity with the Statute — cannot be construed in such a way as to arbitrarily deprive a State of that possibility.

13. Moreover, the Court’s jurisprudence concerning the admissibility of applications for permission to intervene filed under Article 62 of the Statute confirms that the requirement that such applications “shall” be filed “as soon as possible”, in accordance with Article 81 of the [Rules], is not regarded by the Court as a formal admissibility requirement, unlike the fixed time-limit also provided for in that Article.

14. Thus, in the Judgment of 23 October 2001, cited by Myanmar, concerning the admissibility of the Philippines’ Application for permission to intervene in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*²⁴, 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’”²⁵.

The Court therefore concluded on that basis “that the Philippine Application was not filed out of time”²⁶.

15. Further, in its Judgment of 21 March 1984 on the admissibility of Italy’s Application for permission to intervene in the *Continental Shelf (Libyan Arab Jamahiriya/Malta)* case²⁷, the Court noted that the application in question had been filed only two days before the expiry of the prescribed time-limit, which in that instance was the time-limit fixed “for the filing of the Parties’ Counter-Memorials”²⁸. Although the Libyan Arab Jamahiriya contended that “Italy’s legal or procedural position ha[d] been affected by delay”²⁹, the Court held that “the Application [had been]

²⁴ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 575.

²⁵ *Ibid.*, pp. 585-586, para. 23.

²⁶ *Ibid.*, p. 587, para. 30.

²⁷ *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 3.

²⁸ *Ibid.*, p. 8, para. 10.

²⁹ *Ibid.*

filed before the expiry of the time-limit fixed by Article 81, paragraph 1, of the Rules”³⁰. It thus found, as regards the formal admissibility of Italy’s Application, that it was “not out of time and ha[d] no formal defect which would render it inadmissible”³¹.

16. In the two above-mentioned cases, the Applications for permission to intervene were declared inadmissible because they failed to meet other requirements³². Nonetheless, the Court’s findings as to the nature of the temporal requirements for the filing of the applications laid down in Article 81 of the Rules clearly reflect its legal position on this point: the requirement that an application be filed “as soon as possible” is not one of admissibility, unlike the requirement that it be filed within the prescribed time-limit. This issue was in fact specifically examined by the Court when responding to the objections expressly raised in this respect by one or more of the parties to the proceedings in question³³.

17. Moreover, this interpretation, which is based on the aforementioned jurisprudence, is confirmed by the Order issued by the Court on 4 July 2011 on the question of the admissibility of Greece’s Application for permission to intervene in the case concerning *Jurisdictional Immunities of the State (Germany v. Italy)*³⁴. Although that Application was filed only one day before the expiry of the time-limit fixed and provided for in Article 81 of the Rules — i.e. the date of closure of the written proceedings — the Court did not comment on the matter.

18. While the jurisprudence referred to above concerns the interpretation of Article 81, paragraph 1, of the Rules relating to the filing of applications for permission to intervene under Article 62 of the Statute, Belgium considers that that interpretation also extends to the temporal requirements set out in Article 82, paragraphs 1 and 2, of the Rules, which govern the filing of declarations of intervention under Article 63 of the Statute. Indeed, those paragraphs, like Article 81, paragraph 1, of the Rules, require the declaration to be filed “as soon as possible” within a fixed time-limit. However, as the Court noted in the aforementioned cases, and contrary to Myanmar’s contentions, only failure to comply with the prescribed time-limit can render a declaration of intervention inadmissible. Belgium therefore concludes that the requirement that a declaration of intervention be filed “as soon as possible” — whether based on Article 62 or Article 63 of the Statute — constitutes an invitation to act with diligence, but cannot be equated with an autonomous formal requirement of admissibility.

19. On the question of Belgium’s compliance with the requirement that a declaration of intervention be filed “as soon as possible” pursuant to Article 82, paragraph 2, of the Rules, Belgium would reiterate what it has already stated in its Declaration of intervention³⁵, namely that it has done everything in its power to meet that requirement. Ultimately, and as the Court has recalled, it is for

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 607, para. 95; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, p. 28, para. 47.

³³ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, pp. 583-586, paras 19-26; *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application for Permission to Intervene, Judgment, I.C.J. Reports 1984*, pp. 7-8, para. 10.

³⁴ *Jurisdictional Immunities of the State (Germany v. Italy), Application for Permission to Intervene, Order of 4 July 2011, I.C.J. Reports 2011 (II)*, p. 494.

³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Declaration of intervention of the Kingdom of Belgium under Article 63 of the Statute of the International Court of Justice, 11 Dec. 2024, para. 12.

the Court to organize the proceedings in such a way as to guarantee the equality of the parties and the good administration of justice³⁶.

20. Belgium likewise notes that, contrary to what Myanmar is suggesting³⁷, Article 82 of the Rules does not require the intervening State to disclose the circumstances demonstrating that its declaration was indeed filed “as soon as possible”. Nor is it required to provide the reasons for choosing to file its declaration on a certain date, whatever that date may be, as long as the filing takes place before the expiry of the prescribed time-limit. The obligation to justify the late filing of a declaration exists only under Article 82, paragraph 4, of the Rules, which applies when an intervening State intends to submit its declaration “later”, i.e. after the prescribed time-limit. In this respect, Belgium firmly rejects Myanmar’s criticism that it should have established exceptional circumstances as required by Article 82, paragraph 4, of the Rules. That argument is unfounded since that provision is not relevant in this instance and Belgium has complied with the time-limit fixed for the filing of its Declaration of intervention, a point that Myanmar has in fact expressly acknowledged³⁸.

21. Belgium therefore refutes Myanmar’s conclusion that the Declaration of intervention should be deemed inadmissible on the ground that it was not filed “as soon as possible”. In Belgium’s view, the requirement that a declaration of intervention under Article 63 of the Statute be filed “as soon as possible”, in accordance with Article 82, paragraphs 1 or 2, of the Rules, does not in itself constitute a requirement for the admissibility of such a declaration. Belgium contends that the Declaration of intervention was in any event filed “as soon as possible” and that it therefore meets that requirement. The Declaration of intervention should therefore be declared admissible under Article 82, paragraph 2, of the Rules.

II. Belgium’s Declaration of intervention falls within the scope of Article 63 of the Statute

22. Myanmar’s second objection to the admissibility of the Declaration of intervention, namely that the latter goes beyond the permitted scope of intervention laid down in Article 63 of the Statute, is based on a two-stage reasoning.

23. In the first stage, Myanmar sets out the now well-established jurisprudence of the Court concerning the limited scope of a declaration of intervention under Article 63 of the Statute³⁹. It recalls the principle, which has been repeatedly reaffirmed by the Court, that a declaration of intervention under that Article must be strictly limited to the construction of the convention in question, in this instance the Genocide Convention⁴⁰. Myanmar also refers to certain specific considerations set out by the Court in two Orders relating to the admissibility of declarations of intervention under Article 63 of the Statute⁴¹. In those Orders, the Court clarified, first, that it would

³⁶ *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 (II), pp. 366[-367], para. 52.

³⁷ *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 Feb. 2025, para. 12.

³⁸ *Ibid.*, para. 10.

³⁹ *Ibid.*, paras. 26-32.

⁴⁰ *Ibid.*, paras. 27-29.

⁴¹ *Ibid.*, paras. 30-31.

not take account of matters that go beyond the scope provided for in that Article — such as “the existence of a dispute between the Parties, the evidence, the facts or the application of the Convention in the . . . case”⁴² or “facts and the evidentiary value of a certain category of documents”⁴³ — and, second, that

“references to other rules and principles of international law outside the Genocide Convention [would] 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)”⁴⁴.

24. In the second stage, Myanmar contends that the Declaration of intervention goes well beyond the scope that is strictly defined in Article 63 of the Statute in terms of the issues it addresses. It refers in this respect to a series of considerations contained in the Declaration of intervention⁴⁵.

25. According to Myanmar, most of these considerations concern the question of when the existence of genocidal intent may be inferred from the specific circumstances of the case, as well as the standard of proof to be applied in the matter⁴⁶. Myanmar observes in this regard that the Genocide Convention does not prescribe any rules of procedure or evidence to be applied in the event of its breach, leaving this responsibility entirely to the competent courts and tribunals⁴⁷. It recalls that the Court itself has determined the standard of proof required in this area, relying on general principles established in cases with no direct link to the application of the Genocide Convention or deriving from more general jurisprudence governing rules of evidence⁴⁸.

26. In general, Myanmar makes the point that the Declaration of intervention frequently refers to evidentiary issues. By way of example, it cites Belgium’s statement that “to rule out genocidal intent, the alleged military objective cannot merely be one of several possible explanations for the belligerent’s conduct, coexisting with the intent to destroy, in whole or in part, a protected group as such”, but that “[i]t must be the sole explanation for this conduct, based on the evidence available”⁴⁹.

27. Other considerations in the Declaration of intervention which, in Myanmar’s view, go beyond the strict scope of Article 63 of the Statute include Belgium’s argument that the *erga omnes* character of the obligations set out in the Genocide Convention justifies its interest in intervening

⁴² *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 (II), p. 374, para. 84.*

⁴³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Admissibility of the Declarations of Intervention, Order of 3 July 2024, para. 45.*

⁴⁴ *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 (II), p. 374, para. 84; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Admissibility of the Declarations of Intervention, Order of 3 July 2024, para. 45.*

⁴⁵ *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 Feb. 2025, para. 33.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, para. 33 (2).

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, para. 33 (6).

and in ensuring compliance with the Convention⁵⁰. According to Myanmar, that argument is completely irrelevant to Belgium's right to intervene in the proceedings and to questions of interpretation of the said Convention. It contends that any observations in respect of Belgium's motives for participating in the proceedings go beyond what is permissible under Article 63 of the Statute, as the Court has repeatedly recalled⁵¹.

28. Myanmar concludes its reasoning by expressing the view that the Declaration of intervention must be declared inadmissible since it addresses a series of issues that go beyond the scope strictly defined in Article 63 of the Statute. It contends that, in the alternative, should the Declaration of intervention nevertheless be deemed admissible, any matters addressed in that Declaration which go beyond what is permissible should be disregarded⁵².

29. Belgium considers that Myanmar's conclusion is unfounded and that the Declaration of intervention falls within the scope defined in Article 63 of the Statute.

30. Belgium shares Myanmar's view that, in accordance with the Court's jurisprudence, a declaration of intervention under Article 63 of the Statute must be "limited to the construction of the provisions in question at the relevant stage of the proceedings"⁵³, which requires the intervening State not to address issues that go beyond that limited scope — such as those expressly mentioned in the Court's jurisprudence⁵⁴ — and only to refer to sources of law other than the provisions whose construction is in question in so far as they serve to clarify those provisions⁵⁵. In this respect, Belgium therefore considers that it can legitimately draw on or refer to sources of international law besides the Genocide Convention where this proves necessary to interpret Article II of that Convention. It was in applying this principle of interpretation to the question of genocidal intent, for example, that Belgium referred to the law of armed conflict⁵⁶. In other words, Belgium relied on the law of armed conflict solely to determine whether an act could be perpetrated with genocidal intent, even when the act was otherwise in conformity with that law.

31. However, Belgium disputes Myanmar's position that it has overstepped the limits fixed by Article 63 of the Statute in addressing the question of when the existence of genocidal intent may be inferred from the specific circumstances of the case, as well as the standard of proof to be applied in the matter. Belgium notes that it shares the opinion of several intervening States in the present case — whose declarations have been found admissible by the Court⁵⁷ — that Article 63 of the Statute does not preclude intervening States from "present[ing] their views on issues of construction pertaining to the establishment of breaches of the Convention, including on matters related to the standard of proof

⁵⁰ *Ibid.*, para. 33 (7).

⁵¹ *Ibid.*

⁵² *Ibid.*, para. 35.

⁵³ *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 (II), p. 374, para. 84.*

⁵⁴ *Ibid.*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Admissibility of the Declarations of Intervention, Order of 3 July 2024, para. 45.*

⁵⁵ *Ibid.*

⁵⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Declaration of intervention of the Kingdom of Belgium under Article 63 of the Statute of the International Court of Justice, 11 Dec. 2024, para. 27.*

⁵⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Admissibility of the Declarations of Intervention, Order of 3 July 2024, para. 49.*

and evidence to establish genocidal intent, which are inherently questions of construction of the Convention”⁵⁸.

32. Contrary to Myanmar’s allegations, the standard of proof to establish genocidal intent and the evidence required to demonstrate the existence of such intent in the context of an armed conflict do not in themselves constitute factual matters that must be excluded from the scope of a declaration of intervention. The standard of proof and evidence must be approached from a strictly legal perspective, with the sole aim of interpreting the concept of genocidal intent. In determining the standard of proof to establish genocidal intent and the evidence required to demonstrate the existence of such intent in the context of an armed conflict, Belgium does not at any point become a party to the proceedings through its intervention. It does not give an assessment of the facts of the case, nor does it attribute probative value to concrete evidence relating to the matter at hand.

33. In keeping with the foregoing considerations, Belgium notes that nowhere in its Declaration of intervention does it refer to the specific facts of the case, to the application of the Genocide Convention to those facts, or to concrete evidence. It does not comment in any way on the circumstances of the case or on the existence of possible violations of the Genocide Convention. Belgium confines itself strictly to shedding light on a single question of construction: that of the concept of genocidal intent as set out in Article II of the Genocide Convention⁵⁹. More specifically, it considers only the way in which that intention must be construed from a purely legal perspective when the acts prohibited by the Genocide Convention are committed in the specific context of an armed conflict⁶⁰.

34. Although certain parts of the Declaration of intervention refer to concepts linked to the evidence or the factual circumstances⁶¹ from which genocidal intent may be inferred, they keep strictly to the limits imposed by the above-mentioned jurisprudence of the Court. Indeed, these passages make no mention whatsoever of the probative value of the concrete evidence in the case or the facts at issue. These concepts are addressed in an abstract manner, in isolation from the specific circumstances of the case, with the sole aim of clarifying the construction of Article II of the Genocide Convention. Belgium notes in this respect that international jurisprudence also relies on such or similar concepts when dealing with general considerations relating to the scope of the concept of genocidal intent within the meaning of the Genocide Convention⁶².

35. As for the considerations contained in the Declaration of intervention which, according to Myanmar, go beyond the limits imposed by Article 63 of the Statute in so far as they address the nature of the obligations provided for in the Genocide Convention, Belgium would first note that it shares Myanmar’s view that the mere fact of being a party to the Genocide Convention gives it the right to intervene under Article 63 of the Statute. If Belgium draws attention to the *erga omnes* character of the obligations under the Convention, it is not in order to justify a legal interest, but rather to emphasize the importance of the intervention procedure provided for in Article 63 of the

⁵⁸ *Ibid.*, para. 41.

⁵⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Declaration of intervention of the Kingdom of Belgium under Article 63 of the Statute of the International Court of Justice, 11 Dec. 2024, para. 22.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, paras. 25 and 27-29.

⁶² See e.g. ICTY, *Prosecutor v. Tolimir* (IT-05-88/2-T), Judgment, 12 Dec. 2012, para. 745; ICTY, *Prosecutor v. Popović et al.* (IT-05-88-T), Judgment, 10 June 2010, paras. 820 and 823; ICTR, *The Prosecutor v. Akayesu* (ICTR-96-4-T), Judgment, 2 Sept. 1998, para. 523; ICTR, *The Prosecutor v. Rutaganda* (ICTR-96-3-T), Judgment and Sentence, 6 Dec. 1999, para. 63; ECCC (Case No. 002/19-09-2007-ECCC/SC), Judgment, 16 Nov. 2018, para. 803.

Statute when the convention in question sets out *erga omnes* obligations. Article 63 of the Statute is in fact an instrument indispensable for the good administration of justice⁶³. It aims to promote unity in the understanding of multilateral conventions and to prevent disputes between States about the interpretation and application of such conventions⁶⁴. This aspect is of even greater importance when the legal questions at issue concern *erga omnes* obligations⁶⁵.

36. Consequently, Belgium is of the view that the Declaration of intervention remains within the scope of intervention circumscribed by Article 63 of the Statute and that it is admissible under that Article.

[III]. Conclusion

37. In conclusion, Belgium requests the Court to declare its Declaration of intervention admissible. Indeed, it contends that, contrary to Myanmar's allegations, the Declaration of intervention was filed in compliance with all the requirements for its admissibility under Article 82 of the Rules and falls within the scope established by Article 63 of the Statute in so far as its content is confined solely to questions concerning the construction of the Genocide Convention, and in particular Article II thereof.

The Hague, 18 March 2025.

Respectfully,

(Signed) Olivier BELLE,

Co-Agent of the Government, Ambassador,
Permanent Representative of the Kingdom of Belgium
to the International Organizations in The Hague.

⁶³ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Application by Costa Rica for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II), joint dissenting opinion of Judges Cançado Trindade and Yusuf, p. [407], para. 6, [p. 413], para. 28; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1984, dissenting opinion of Vice-President Sette-Camara, p. 8[8], para. 85.

⁶⁴ G.N. Barrie, "Third-party state intervention in disputes before the International Court of Justice: a reassessment of Articles 62 and 63 of the ICJ Statute", *The Comparative and International Law Journal of Southern Africa*, 2020, Vol. 53 (1), p. 12: "The object of Article 63 is to promote unity in the understanding of multilateral conventions and to prevent disputes between states about the interpretation and application of such conventions".

⁶⁵ J. McIntyre, "Procedural values in the intervention procedure at the International Court of Justice", *Ukrainian Law Review*, 2022, Vol. 1, p. 48; M. Kawano, "The role of judicial procedures in the process of the pacific settlement of international disputes", *Collected Courses*, 2011, Vol. 346 (9), p. 61; M. Longobardo, "States' mouthpieces or independent practitioners? The role of counsel before the ICJ from the perspective of the legal value of their oral pleadings", *The Law & Practice of International Courts and Tribunals*, 2021, Vol. 20, p. 72; M. Benzing, "Community interests in the procedure of international courts and tribunals", *The Law & Practice of International Courts and Tribunals*, 2006, Vol. 5, p. 38; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 2001, separate opinion of Judge *ad hoc* Weeramantry, pp. 635-643.