

INTERNATIONAL COURT OF JUSTICE

**Application of the Convention on the Prevention and Punishment of the
Crime of Genocide**

(The Gambia v. Myanmar)

**OBSERVATIONS BY IRELAND ON THE ADMISSIBILITY OF ITS
DECLARATION OF INTERVENTION**

19 March 2025

Observations of Ireland on the Admissibility of its Declaration of Intervention

1. On 20 December 2024, the Government of Ireland filed its Declaration of Intervention at the International Court of Justice (*'the Court'*) under Article 63 of the Court's Statute (*'the Statute'*) in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. In its Declaration of Intervention, Ireland, as a Contracting Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (*'the Convention'*), sets out the construction of Articles I, II and III of the Convention for which it contends.
2. Ireland notes that both the Republic of The Gambia (*'The Gambia'*) and the Republic of the Union of Myanmar (*'Myanmar'*) have filed observations on Ireland's Declaration and that in its Observations the Government of The Gambia expresses its view that the Declaration is admissible.¹
3. In its Observations² Myanmar has filed objections to the admissibility of Ireland's Declaration of Intervention. By letter dated 4 March 2025, the Registrar of the Court (*'the Registrar'*) informed Ireland that pursuant to Article 84, paragraph 2, of the Rules of Court (*'the Rules'*), the Court shall hear from Ireland and the Parties to the case by way of written procedure before determining the question of the admissibility of Ireland's Declaration. Ireland further notes that the Court has fixed 19 March 2025 as the time-limit for submission of Ireland's written observations on the admissibility of its Declaration.
4. Accordingly, Ireland submits herewith the following written observations on the admissibility of its Declaration of Intervention and on the objections of Myanmar to the admissibility of the said Declaration.

¹ Observations of The Gambia, 20 February 2025.

² Written Observations on Admissibility of the Declaration of Intervention of Ireland, 20 February 2025 (*'Observations of Myanmar'*)

Observations on the Admissibility of Ireland's Declaration of Intervention

5. In its case law the Court has established that a declaration of intervention under Article 63 of the Statute shall be admissible only when the Court has ensured that the declaration concerned falls within the provisions of Article 63 and has then verified that the conditions set out in Article 82 of the Rules have also been met³.

6. 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.'

7. By letter dated 24 January 2020 to the Ambassador of Ireland to the Kingdom of the Netherlands, the Registrar duly notified the Government of Ireland, as a Contracting Party to the Convention, that by The Gambia's Application of 11 November 2019 instituting proceedings against Myanmar *'the applicant seeks to found the Court's jurisdiction on the compromissory clause contained in Article IX of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide ... and alleges that the Respondent has violated Articles I, III, IV, V and VI of the Convention. It therefore appears that the construction of this instrument will be in question in this case.'*

8. Article 82, paragraphs 1 and 2 of the Rules , as amended, 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

³ *cf.* 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, paras. 7–8.

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 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.’

9. Ireland recalls that, by Order dated 16 October 2023, the Court authorised the submission of a Reply by The Gambia and a Rejoinder by Myanmar, and fixed 16 May 2024 for the filing of the former and 16 December 2024 for the filing of the latter⁴; and that by its further Order dated 21 November 2024, the Court extended to 30 December 2024 the time-limit for the filing of the Rejoinder of Myanmar.⁵ Desiring to avail itself of the right of intervention in this case, Ireland filed its Declaration of Intervention on 20 December 2024, in advance of the date fixed for the filing of the last written pleading in this case.

10. Article 82, paragraph 5, of the Rules provides that:

‘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.’

⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order of 16 October 2023, I.C.J. Reports 2023, p. 579

⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Order of 21 November 2024.

11. Ireland recalls that in its Declaration of 20 December 2024 the name of the undersigned was stated to be its Co-Agent in these proceedings and that the said Declaration specified the present case and the Convention as those to which it relates. Ireland further recalls that the said Declaration contained:

- (a) particulars of the basis on which Ireland considers itself a Contracting Party to the Convention, namely that it acceded to the Convention on 22 June 1976 and that, in accordance with Article XIII of the Convention, the accession of Ireland became effective on 20 September 1976;
- (b) the identification of the particular provisions of the Convention the construction of which Ireland considers to be in question, namely Articles I, II, III, IV, V and VI;
- (c) a statement of the construction of Articles I, II and III for which Ireland contends; and
- (d) a list of the documents in support of its Declaration, which documents were attached to it, namely a copy of the above referenced letter of the Registrar to the Ambassador of Ireland at The Hague, dated 20 January 2020, and a copy of the Notification by the Director of the General Legal Division of the Office of Legal Affairs, United Nations Secretariat, of the Accession by Ireland to the Convention, dated 9 July 1976.

12. Accordingly, having regard to the particulars set out above, it is submitted that Ireland's Declaration of Intervention clearly falls within the provisions of Article 63 of the Statute and meets the conditions set out in Article 82 of the Rules.

Observations on the Objections raised by the Myanmar

13. By its Written Observations on Admissibility of the Declaration of Intervention submitted by Ireland, dated 20 February 2025 (the '*Observations of Myanmar*'), Myanmar has filed objections to the admissibility of Ireland's Declaration of Intervention. These objections may be briefly summarised as follows:

- (a) that Ireland's Declaration is inadmissible because it was not filed '*as soon as possible*' as required by Article 82, paragraph 2, of the Rules;

- (b) that Ireland's Declaration of Intervention goes beyond the permitted scope of an intervention made under Article 63 of the Statute ; and
- (c) that, alternatively, Ireland's intervention must to be confined to the points of construction set out in its Declaration of Intervention.

14. Having considered the objections of Myanmar, Ireland offers the following observations.

(a) That Ireland's Declaration is inadmissible because it was not filed 'as soon as possible', as required by Article 82, paragraph 2, of the Rules

15. Article 82, paragraph 2, of the Rules provides:

'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.'

16. By Order of 21 November 2024, the Court extended to 30 December the time-limit for the filing of the Rejoinder of Myanmar in these proceedings. In its Observations, Myanmar contends that the filing of a Declaration of Intervention must meet two separate requirements, namely that it be done both '*as soon as possible*' and '*not later than the date fixed for the filing of the last written pleading*.'⁶

17. Ireland submits that the formulation '*as soon as possible*' is intended to assist in the efficient management of proceedings, but that in any event, in order to be admissible, the filing of a Declaration of Intervention must be made '*not later than the date fixed for the filing of the last written pleading*.' In its consideration of analogous language in Article 81 of the Rules, the Court characterised the requirement to file '*as soon as possible*' as a '*stipulation of a general character*.' It nevertheless found that a State seeking to intervene '*... cannot be held to be in violation of the requirement of the same*

⁶ Observations of Myanmar, para. 9

*Article, which establishes a specific deadline for an application for permission to intervene, namely 'not later than the closure of the written proceedings.'*⁷

18. In Ireland's submission, the same construction must be placed on the terms of Article 82, paragraph 2. The direction to file a declaration 'as soon as possible' is a stipulation of a general character, while the requirement to do so '*not later than the date fixed for the filing of the last written pleading*' establishes a '*specific deadline*' that Ireland has met in this case.
19. Such a construction is further supported by the provision, in Article 82, paragraph 4, of the Rules of a procedure by which a State may seek permission to file beyond this time-limit, in exceptional circumstances. This allows that a State may not always be in a position to file by the time-limit, much less '*as soon as possible.*' In the present case, however, Ireland's Declaration was filed before the time-limit fixed for the filing of Myanmar's Rejoinder and, it is submitted, the Declaration therefore satisfies the provisions of Article 82, paragraph 2, and is thus admissible.
20. Ireland recalls, moreover, that the Court noted in its Order concerning the admissibility of two earlier Declarations of Intervention (the '*Order of 3 July 2024*') that '*the two declarations were filed in a timely manner, before the date fixed for the opening of the oral proceedings.*'⁸ In Ireland's case its Declaration, although filed close to the time-limit fixed for the filing of the last written pleading, was nevertheless filed as soon as it was possible for Ireland to do so, given competing pressures on resources and the necessity of managing other priorities. It was nevertheless no less 'timely', having been filed before the time-limit fixed by the Court.
21. Finally, Ireland recalls the Court's consistent view '*that intervention under Article 63 of the Statute, which is an incidental proceeding, involves the exercise of a right by a State party to a convention the construction of which is in question before the Court.*'⁹ In Ireland's view, the exercise of such a right should not be lightly frustrated and

⁷ *Sovereignty over Pulau Litigan and Pulau Sipadan (Indonesia v. Malaysia)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 2001, p. 585, §. 23.

⁸ *Order of 3 July 2024*, para 28

⁹ *Order of 3 July 2024*, para 20. See also *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Declarations of Intervention*, *Order of 5 June 2023*, para 26; *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; *Haya de la Torre (Colombia v. Peru)*, Judgment, I.C.J. Reports 1951, p. 76; S.S. 'Wimbledon', Judgment, 1923, P.C.I.J., Series A, No. 1, p. 12).

accordingly, in circumstances where its Declaration was filed in advance of the applicable time-limit, it is submitted that the Declaration should be deemed admissible on this ground also.

(b) That Ireland's Declaration of Intervention goes beyond the permitted scope of an intervention made under Article 63 of the Statute

22. In its observations, Myanmar asks the Court to deem Ireland's Declaration of Intervention inadmissible because, in its view, the Declaration '*contains substantial amounts of material going beyond the permitted scope of such an intervention.*'¹⁰ In particular, it asserts that Ireland is '*required to refrain from addressing in (its intervention) matters such as evidence, the facts, the application of the Genocide Convention in the present case, or the evidentiary value of certain categories of documents.*'¹¹

23. Ireland submits that this assertion misunderstands its Declaration of Intervention. In the first place, Ireland, citing the celebrated dictum of the Court on the matter, expressly acknowledged, at paragraph 10 of its Declaration, that its intervention is '*limited to submitting observations on the construction of the convention in question*' and that it was not permitted '*to deal with any other aspect of the case before the Court...*'¹²

24. Secondly, Ireland notes that Myanmar objects to the observations set out in the Declaration of Intervention concerning the Court's '*only reasonable inference*' test and related matters, and argues that these observations '*do not deal with the construction of the Convention.*'¹³ On the contrary, in Ireland's view these observations relate to matters that are directly relevant to the construction of the Convention. Ireland recalls that the Convention obliges Contracting Parties not just to punish the crime of genocide but also to prevent it.¹⁴ In order to prevent it they must be able to apprehend it. The question of specific intent (or *dolus specialis*) is a central consideration in assessing the

¹⁰ Observations of Myanmar, paras 35-36

¹¹ *Ibid.*, para 32.

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. 3, at p. 9, §. 18

¹³ Observations of Myanmar, para. 33.

¹⁴ Article I of the Convention – 'The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.'

risk of genocide. How such an intent is to be established – whether within legal proceedings or otherwise – is therefore a vital matter for all Contracting Parties in correctly construing (and thus properly implementing) their obligation to prevent the crime of genocide. The Court has been clear:

‘... a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (dolus specialis), it is under a duty to make such use of these means as the circumstances permit.’¹⁵

25. What constitutes specific intent for the purposes of the definition of genocide is central to the construction of the Convention, not just for the purposes of interstate legal proceedings but for implementation and application of the Convention by all Contracting Parties. If it is possible reasonably to infer more than one explanation for the commission or preparation of any of the acts described in Article II of the Convention, this may serve to limit the extent of the obligation on Contracting Parties to act to prevent genocide. What – and how many – inferences may be drawn from the commission of acts described in Article II will therefore be highly germane to the construction not just of that provision but of Articles I and III also. It is this question in particular which is addressed by Ireland’s Declaration of Intervention.

26. Accordingly, Ireland submits that it is entitled to advance legal argument pertinent to the construction of the Convention, including the construction of the *actus reus* and *dolus specialis* defined by Article II of the Convention, which in turn inform the construction of several other provisions of the Convention.

¹⁵ *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. 43, para 431.

(c) That alternatively, Ireland's intervention must to be confined to the points of construction set out in its Declaration of Intervention

27. Myanmar further contends that *'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.'*¹⁶ As set out in the foregoing, Ireland has not advanced any contention that extends beyond the construction of the Convention. In its Declaration of Intervention, Ireland does not seek to adduce any evidence in these proceedings nor has it contended for the application of the Convention to alleged facts in any specific way. Its sole purpose in intervening is to present its construction of relevant provisions of the Convention. As the Court has noted in its Order of 3 July 2024, where declarations of intervention *'...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... the Court will not consider such issues and expects the interveners to refrain from addressing them any further.'*¹⁷ Ireland is confident that its Declaration of Intervention has not addressed such matters but, to the extent that it may be determined that it has, the Court has demonstrated that it will not consider them.

Conclusion

28. For the reasons set out above, Ireland submits that its Declaration of Intervention clearly falls within the provisions of Article 63 of the Statute and meets the conditions set out in Article 82 of the Rules. Accordingly, Ireland requests the Court to dismiss the objections of Myanmar and determine that its Declaration of Intervention is admissible.



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¹⁶ Observations of Myanmar, para. 38

¹⁷ Order of 3 July 2024, para. 45