

**Before the
INTERNATIONAL COURT OF JUSTICE**

DECLARATION OF INTERVENTION OF THE REPUBLIC OF MALDIVES

Intervention pursuant to Article 63 of the Statute of the International Court of Justice

In the case of

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE**

(THE GAMBIA v. MYANMAR)

10 November 2023

To the Registrar, International Court of Justice (the “Court”), the undersigned being duly authorised by the Government of the Republic of Maldives:

1. On behalf of the Government of the Republic of Maldives, I have the honour of submitting to the Court a declaration of intervention pursuant to Article 63(2) of the Statute of the Court in the case of the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*.
2. Article 82(2) of the Rules of the Court provides that a declaration of a State’s desire to avail itself of the right of intervention conferred upon it by Article 63(2) of the Statute of the Court 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 documents in support, which documents shall be attached.
3. This Declaration will address each of these requirements in turn, following preliminary observations on the proceedings.

I. PRELIMINARY OBSERVATIONS

a. The Republic of Maldives' intervention

4. The Republic of The Gambia (“The Gambia”) has instituted proceedings against the Republic of the Union of Myanmar (“Myanmar”).¹ The Gambia alleges that acts committed by Myanmar’s military and other security forces against members of the Rohingya group in Myanmar’s Rakhine State from 2016 onwards violated the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the “Genocide Convention”).²
5. By filing this Declaration, the Republic of Maldives avails itself of the right under Article 63(2) of the Statute of the Court to intervene as a party to the Genocide Convention.
6. The Maldives does so because of its deep concern “over the continued ... human rights violations and barbarous assaults against the Rohingya Muslims”, a position it made clear long before the start of these proceedings.³ It called on the international community to “stop the bloodshed” in September 2017,⁴ noting in a statement to members of the Organisation of Islamic Cooperation (“OIC”) that “millions of rohingya Muslims are fleeing the ongoing military operation in Rakhine state”.⁵ The Republic of Maldives also supported The Gambia’s proposed case before the Court at the OIC.⁶ And it declared its intention to intervene “in support of the Rohingya people” three months after the case was launched,⁷ becoming the first State to do so.

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Application instituting proceedings and request for provisional measures, 11 November 2019.

² *ibid.*, paras. 2, 6.

³ Ministry of Foreign Affairs, Maldives, *Statement by the Maldives at the OIC Contact Group Meeting on Rohingya Muslims* (19 September 2017), available at <http://maldivesmission.com/statements/statement-by-the-maldives-at-the-oic-contact-group-meeting-on-rohingya-muslims-19-september-2017>.

⁴ President’s Office, Maldives, “Maldives condemns atrocities committed against Rohingya Muslims; will cease all trade ties with Myanmar” (3 September 2017) available at <https://presidency.gov.mv/Press/Article/18174>.

⁵ Ministry of Foreign Affairs, Maldives, *Statement by the Maldives at the OIC Contact Group Meeting on Rohingya Muslims* (19 September 2017) available at <http://maldivesmission.com/statements/statement-by-the-maldives-at-the-oic-contact-group-meeting-on-rohingya-muslims-19-september-2017>.

⁶ Organisation of Islamic Cooperation, *Final Communiqué of the 14th Islamic Summit Conference*, OIC Doc. OIC/SUM-14/2019/FC/FINAL (31 May 2019), para. 47 available at <https://www.oic-oci.org/docdown/?docID=4496&refID=1251>. See also Organisation of Islamic Cooperation, *Resolutions on Muslim Communities and Muslim Minorities in the Non-OIC Member States adopted by the 46th Session of the Council of Foreign Ministers*, OIC Doc. OIC/CFM-46/2019/MM/RES/FINAL (1–2 March 2019), pp. 14-25 available at <https://www.oic-oci.org/docdown/?docID=4447&refID=1250>.

⁷ Ministry of Foreign Affairs, Maldives, *Statement by His Excellency Abdulla Shahid, Minister of Foreign Affairs of the Republic of Maldives at the High Level Segment of the 43rd Session of the United Nations Human Rights Council* (25 February 2020) available at <https://www.gov.mv/en/news-and-communications/statement-by-his-excellency-abdulla-shahid-minister-of-foreign-affairs-of-the-republic-of-maldives>.

7. This case raises important issues concerning the Genocide Convention. As this Court has recognised, the prohibition of genocide is a *jus cogens* norm in international law.⁸ The Court has confirmed in these proceedings that the Convention imposes *erga omnes partes* obligations “in the sense that each State party has an interest in compliance with them in any given case”.⁹ And in considering the object of the Convention, the Court has confirmed that:

“The Convention was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention, the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention.”¹⁰
8. The Republic of Maldives recognises the need for international co-operation in the quest to prevent and punish genocide¹¹ and seeks to facilitate the work of the Court, along with other intervening States – Canada, Germany, The Netherlands, the United Kingdom, France, and Denmark – in these proceedings.
9. Article 82(1) of the Rules of the Court requires that declarations be filed “as soon as possible, and not later than the date fixed for the opening of the oral proceedings”. The Republic of Maldives confirms that it has filed this Declaration at the earliest reasonably available opportunity, after confirmation of the Court’s jurisdiction, the filing of the parties’ memorial and counter-memorial and coordination with other intervening States.
10. The Republic of Maldives recognises and accepts that even though it does not seek to become a party to the case, by availing itself of the right to intervene under Article 63(2) of the Statute of the Court, the construction of the Genocide Convention given by the judgment in this case will be equally binding upon it.

⁸ See, e.g., *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, at pp. 110-111, paras. 161-162.

⁹ *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, at pp. 515-516, para. 107. See also *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, at pp. 46-47, para. 87; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6, at pp. 31-32, para. 64.

¹⁰ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15, at p. 23. The Court reiterated this view in these proceedings: see *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, at p. 515, para. 106.

¹¹ See Convention on the Prevention and Punishment of the Crime of Genocide of 1948, Preamble: “Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required”.

b. Procedural history

11. On 11 November 2019, The Gambia instituted proceedings against Myanmar, alleging violations of the Genocide Convention.¹² On the same day, the Registrar notified the Republic of Maldives as one of the parties to the Genocide Convention of the filing of The Gambia's application.¹³
12. Together with its application, The Gambia submitted a request for the indication of provisional measures.¹⁴ The Court issued an order indicating provisional measures on 23 January 2020, including that Myanmar "take all measures within its power" to prevent the commission of genocide "in relation to the members of the Rohingya group in its territory".¹⁵
13. The following day, the Registrar, on the instruction of the Court, notified the Republic of Maldives that The Gambia sought to "found the Court's jurisdiction on ... Article IX of the ... Genocide Convention", that The Gambia alleged that Myanmar had "violated Articles I, III, IV, V and VI of the Convention", and that it "therefore appear[ed] that the construction of this instrument w[ould] be in question in the case".¹⁶
14. The Gambia filed its memorial by 23 October 2020.¹⁷
15. On 20 January 2021, Myanmar raised preliminary objections to the Court's jurisdiction and The Gambia submitted its response on 20 April 2021.¹⁸ The Court issued a judgment on 22 July 2022 finding that it had jurisdiction under Article XI of the Convention and that The Gambia's application was admissible.¹⁹
16. Myanmar submitted its counter-memorial to the Court by 24 August 2023.²⁰

¹² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Application instituting proceedings and request for provisional measures, 11 November 2019, para. 2.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Letter from the Registrar of the Court to H.E. the Ambassador of the Republic of Maldives to the Kingdom of the Netherlands No. 152867, 11 November 2019.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Application instituting proceedings and request for provisional measures, 11 November 2019, paras. 113–134.

¹⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports, p.3, at pp. 30-31, para. 86.

¹⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Letter from the Registrar to H.E. the Ambassador of the Republic of Maldives to the Kingdom of the Netherlands No. 153168, 24 January 2020.

¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 28 January 2021, I.C.J. Reports 2021, p. 6.

¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary objections of the Republic of the Union of Myanmar, 20 January 2021; *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 preliminary objections raised by Myanmar, 20 April 2021.

¹⁹ *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, at p. 518, para. 115.

²⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order of 16 October 2023 (ICJ).

II. CASE AND CONVENTION TO WHICH THIS DECLARATION RELATES

17. The Republic of Maldives files this Declaration to intervene in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. The case raises questions of construction of the Genocide Convention. The Republic of Maldives, as a party to the Convention, has a direct interest in the construction which the Court may place upon its provisions, and this Declaration relates to questions of construction arising in this case.

III. BASIS UPON WHICH THE REPUBLIC OF MALDIVES CONSIDERS ITSELF A PARTY TO THE CONVENTION

18. On 24 April 1984, the Republic of Maldives deposited its instrument of accession to the Genocide Convention with the Secretary-General of the United Nations, in accordance with Article XI of the Convention, and its accession took effect on 23 July 1984.²¹ The Republic of Maldives has not filed any reservations, declarations, or objections to the Convention and remains a party to the Convention as of the date this Declaration was filed.

IV. PROVISIONS OF THE CONVENTION THE CONSTRUCTION OF WHICH THE REPUBLIC OF MALDIVES CONSIDERS TO BE IN QUESTION

19. This case raises fundamental questions concerning the construction of multiple provisions of the Genocide Convention.
20. The Republic of Maldives focuses its intervention on the proper construction of the provisions concerning the duty to punish genocide in Articles I, IV, V and VI of the Genocide Convention.
21. The Gambia's claims include that Myanmar has violated the Genocide Convention by "failing to punish genocide in violation of Articles I, IV and VI" and "failing to enact the necessary legislation to give effect to the provisions of the Genocide Convention and to provide effective penalties for persons guilty of genocide or of any of the acts enumerated in Article III, in violation of Article V".²²

²¹ See Annex B to this Declaration (instrument of accession of the Republic of the Maldives, 12 April 1984); United Nations depositary confirmation of the Republic of the Maldives' accession (deposited and registered on 24 April 1984, with effect from 23 July 1984) 1355 UNTS 322. See also Genocide Convention, Art. XIII.

²² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Application instituting proceedings and request for provisional measures, 11 November 2019, para. 111.

22. Myanmar has denied violating the provisions of the Genocide Convention, including the duty to punish.²³ The proper construction of Articles I, IV, V and VI is therefore in question in the case and is the subject of this Declaration.
23. The Republic of Maldives reserves the right to supplement or amend the present Declaration and the scope of its observations, including in relation to the construction of Article II of the Genocide Convention, to the extent additional matters of construction arise as the case progresses or as it becomes aware of them upon receipt of the parties' pleadings and documents annexed to them, in accordance with Article 86(1) of the Rules of the Court.

V. STATEMENT OF THE CONSTRUCTION OF ARTICLES I, IV, V and VI OF THE CONVENTION

24. The provisions of the Genocide Convention should be construed in accordance with Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (the "Vienna Convention"), which the Court has confirmed represent customary international law.²⁴ Article 31(1) provides that:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."
25. Article 31(3) makes clear that, together with the context, the interpretation of a treaty must take account of the subsequent practice of the parties to the treaty to the extent that this establishes the agreement of the parties regarding the treaty's interpretation, as well as any relevant rules of international law applicable in the relations between the parties to the treaty. According to Article 32 of the Vienna Convention, recourse may also be had to supplementary means of interpretation, including the *travaux préparatoires* of the treaty.
26. In accordance with the Vienna Convention, the Republic of Maldives will refer to other rules of international law applicable between the parties to the Genocide Convention, including relevant treaties and customary international law, to support the construction of the Genocide Convention for which it contends, and will refer to the Convention's *travaux préparatoires* to supplement its interpretation. Pursuant to Article 38(1)(d) of the Statute of the Court, the Republic of Maldives will also refer to "judicial decisions" of courts and tribunals and academic writing "as subsidiary means for the determination of rules of law".²⁵

²³ See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Verbatim record 2019/19, ICJ, 11 December 2019, pp. 16, 70.

²⁴ *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, at pp.109-110, para. 160.

²⁵ See Statute of the Court, Art. 38(1) for a list of sources of international law.

a. The construction of Article I: the duty to punish as an absolute and independent obligation under the Convention

27. Article I of the Genocide Convention reads as follows:

“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. ...”

28. Article I establishes States’ obligation to “prevent and punish” genocide. The obligations to prevent genocide and to punish genocide are “two distinct yet connected obligations.”²⁶ They are central to the Convention, are owed *erga omnes partes*, and also form part of customary international law.²⁷

29. The Court has confirmed that the punishment of genocide is one of the underlying objects of the Convention, stating that:

“The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations.”²⁸

30. In becoming party to the Convention, States make an undertaking to punish genocide.²⁹ This obligation to punish is an “absolute duty”.³⁰ As with all obligations under the Convention, States cannot rely on internal laws to justify a failure to punish perpetrators of genocide,³¹ and they are required to perform the duty to punish in good faith.³² Failure to punish genocide is an internationally wrongful act, which can be asserted against a State as a basis for international responsibility.³³

²⁶ *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, at p. 219, para. 425.

²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Preliminary Objections, Judgment, I.C.J. Reports 1996, p. 595, at pp. 615-616, para. 31; *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15, at p. 23.

²⁸ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15, at para. 23 (citations omitted).

²⁹ Genocide Convention, Art. I.

³⁰ *Prosecutors v. Nuon Chea et al.*, 002-19-09-2007/ECCC/TC, Decision on Ieng Sary’s Rule 89 Preliminary Objection (*Ne bis in idem* and Amnesty and Pardon), 3 November 2001, para. 38.

³¹ *ibid*, paras. 38-39 (citing to the Vienna Convention on the Law of Treaties (1969) (“Vienna Convention”), Art. 27).

³² Vienna Convention, Art. 26.

³³ *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, at p. 201, para. 383.

31. Although elements of the duty to punish are elaborated upon in other Articles of the Convention (including Articles IV, V and VI), the Court has acknowledged that “Article I [of the Genocide Convention] does impose distinct obligations over and above those imposed by other Articles of the Convention.”³⁴ As the Court has stated:

“The ordinary meaning of the word “undertake” is to give a formal promise, to bind or engage oneself, to give a pledge or promise, to agree, to accept an obligation. ... It is not merely hortatory or purposive. The undertaking is unqualified ...; and it is not to be read merely as an introduction to later express references to legislation, prosecution and extradition.”³⁵

32. The *travaux préparatoires* confirm this interpretation. The drafters intended the duty to punish to be a standalone obligation under the Convention. As initially drafted, the duty to prevent and punish acts of genocide was contained in the preamble to the Convention.³⁶ However, upon the suggestion of Belgium, the undertaking to prevent and punish was moved to the operative clauses.³⁷ Language proposing that the States undertake to prevent and punish “in accordance with the following articles” was also deleted,³⁸ demonstrating the drafters’ intention that the undertaking in Article I was not limited by the remaining Articles but rather that these supplement the duty to punish under Article I.³⁹

b. The construction of Article IV: perpetrators must be punished regardless of their official capacity

33. Article IV of the Convention reads as follows:

“Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”

34. Article IV provides that States have a duty to punish persons who commit genocide or any of the acts in Article III, regardless of their title or rank. It should be read alongside Article V, which requires States to enact effective penalties, and Article VI, which sets

³⁴ *ibid*, at p. 113, para. 165.

³⁵ *ibid*, at p. 111, para. 162.

³⁶ UNGA, *Belgium: Amendments to the Draft Convention, Genocide: Draft Convention (E/794) and Report of the Economic and Social Council*, U.N. Doc. A/C.6/217 (5 October 1948).

³⁷ *ibid*.

³⁸ UNGA, *Netherlands: Proposed text for Article 1 of the draft Convention (E/794), Draft Convention (E/794) and Report of the Economic and Social Council*, U.N. Doc. A/C.6/220 (5 October 1948); UNGA, *Official Records of the 3rd Session of the General Assembly, Sixth Committee, 68th Meeting*, U.N. Doc. A/C.6/SR.61-140 (6 October 1948), pp. 45, 49-50.

³⁹ See *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, at p. 113, para. 165.

out the process for trying alleged perpetrators. Article IV makes clear that States must in fact punish those who are found guilty at trial.⁴⁰

35. Article IV mandates that States “shall” punish any “[p]ersons committing genocide or any of the acts enumerated in article III” and the Convention makes clear that an official position cannot shield a perpetrator from punishment. Instead, punishment is required “whether [the persons] are constitutionally responsible rulers, public officials or private individuals.” States cannot create exceptions to criminal liability based on the perpetrators’ official capacity.⁴¹
36. States must comply with their obligation to punish perpetrators of genocide in good faith.⁴² As the Court has previously held, the principle of good faith “obliges the Parties to apply [a treaty] in a reasonable way and in such manner that its purpose can be realized.”⁴³ It would be inconsistent with this principle and the “civilizing purpose” of the Convention for a State to seek to discharge its obligations under Article IV by punishing only a small number of perpetrators, while allowing many of those responsible to go unpunished, or to prosecute solely low-ranking perpetrators, while allowing impunity for leaders most responsible for the genocide.
37. A State may not invoke provisions of its internal laws – such as domestic rules on immunity or other laws shielding military or government officials from prosecution for official acts – to justify a failure to perform its treaty obligations.⁴⁴ Nor are States permitted to issue amnesties or pardons to allow persons committing genocide to evade punishment.⁴⁵ Accordingly, national law may not be employed to shield perpetrators from prosecution by courts in their own countries.
38. The *travaux* confirm this interpretation of Article IV, which reflects the ordinary meaning of the language of the treaty in the light of its object and purpose. The final wording of Article IV is near identical to that contained in the initial draft Convention (which stated that “[t]hose committing genocide shall be punished, be they rulers, public officials or private individuals”⁴⁶), making it clear even at that early stage that States intended to ensure that any person who committed genocide would be punished.

⁴⁰ See Christian J. Tams et al., *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (C.H. Beck / Hart Publishing / Nomos 2014) (“C. Tams”), pp. 194, 197.

⁴¹ See William A. Schabas, *Genocide in International Law* (2nd ed., CUP 2009) (“W.A. Schabas”), p. 83.

⁴² Vienna Convention, Art. 26.

⁴³ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, at p. 79, para. 142.

⁴⁴ See Vienna Convention, Art. 27. See also *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, at p. 460, para. 113. C. Tams, p. 203; Paola Gaeta, “Immunities and Genocide” in Paola Gaeta (ed.), *The UN Genocide Convention: A Commentary* (OUP 2009) (“P. Gaeta”), pp. 320-321.

⁴⁵ See, e.g., *Prosecutor v Saif Al-Islam Gaddafi*, ICC-01/11-01/11-662, Decision on the ‘Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute’, 5 April 2019, paras. 61-77 (reviewing the jurisprudence of regional human rights courts and bodies and international criminal tribunals and noting a “strong, growing, universal tendency that grave and systematic human rights violations – which may amount to crimes against humanity by their very nature – are not subject to amnesties or pardons under international law”).

⁴⁶ U.N. Secretary-General, Draft Convention on the Crime of Genocide, U.N. Doc. E/447 (26 June 1947).

c. The construction of Article V: the duty to enact legislation and provide effective penalties

39. Article V of the Convention reads as follows:

“The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.”

i. The duty to enact the necessary legislation to give effect to the provisions of the Genocide Convention

40. The Court has explained that Article V, “requiring legislation, in particular providing effective penalties for persons guilty of genocide and the other acts enumerated in Article III”, is “plainly” among the Convention’s provisions that “impose obligations on States in respect of which they may, in the event of breach, incur responsibility”.⁴⁷

41. The *travaux préparatoires* confirm that the scope of the legislation contemplated by Article V is broad, in line with the ordinary meaning of the terms of that provision. In considering the purpose of the legislation to be enacted pursuant to Article V, the Ad Hoc Committee on Genocide – comprising the representatives of eight States tasked with drafting the Convention pursuant to a United National General Assembly Resolution – noted that “it was debated whether the text should [require States to enact legislation] ‘for the prevention and repression of genocide’ or ‘to give effect to the provisions of the Convention.’”⁴⁸ The Committee observed that “[t]he second wording was deemed preferable because it dealt with all the obligations of the States under the Convention and not merely with penal measures”.⁴⁹

42. The requirement in Article V that States enact legislation “in accordance with their respective Constitutions” is reflective of the drafters’ acknowledgment of the differences in domestic legislative procedures. This is clear from the ordinary meaning of the terms of Article V, which is confirmed by the *travaux*. The United States had argued that “a reservation regarding respect of the constitutional provisions of each

⁴⁷ *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, at p. 109, para. 159.

⁴⁸ U.N. Ad Hoc Committee on Genocide, *Commentary on Articles adopted by the Committee: Article 5*, U.N. Doc. E/AC.25/W.1/Add.2 (28 April 1948), p. 2. See also UNGA, *Resolution 180(II): Draft convention on genocide*, U.N. Doc. A/RES/180(II) (21 November 1947); U.N. Economic and Social Council, *Resolution 117(VI) Genocide*, U.N. Doc. E/734 (3 March 1948); U.N. Ad Hoc Committee on Genocide, *Draft Convention on Prevention and Punishment of the Crime of Genocide*, U.N. Doc. E/AC.25/12 (19 May 1948); U.N. Ad Hoc Committee on Genocide, *Report of the Committee and Draft Convention drawn up by the Committee*, U.N. Doc. E/794 (24 May 1948).

⁴⁹ U.N. Ad Hoc Committee on Genocide, *Commentary on Articles adopted by the Committee: Article 5*, U.N. Doc. E/AC.25/W.1/Add.2 (28 April 1948), p. 2.

State” should be included, as in the United States, for instance the “punishment of crime [primarily] came under the jurisdiction of each State and not under federal jurisdiction”.⁵⁰ But while States’ constitutions may envisage distinct legislative processes, they cannot serve as a justification for limiting the substance of the legislation to be enacted pursuant to Article V.⁵¹

ii. The duty to provide effective penalties for persons guilty of genocide or related acts

43. The duty to “provide effective penalties for persons guilty of genocide” or related acts in Article III set out in Article V of the Genocide Convention exists alongside the more general duty to “enact ... the necessary legislation to give effect to” the Genocide Convention’s provisions set out in the same Article. And it is a pre-requisite to the requirement in Article IV that “[p]ersons committing genocide” or related acts “shall be punished”.⁵² It is clear from the ordinary meaning of the term “effective” that penalties must be sufficiently rigorous. And this is confirmed in the *travaux*. Specifically, the explanatory comments accompanying an earlier version of Article V forming part of the United Nations Secretariat’s draft of the Genocide Convention provided that it was “essential that the Parties to the Convention should introduce into their criminal law provisions for the punishment of the acts of genocide” and that “the penalties should be sufficiently rigorous to make punishment effective”.⁵³
44. While the penalties imposed for genocide differ amongst States,⁵⁴ they are not afforded discretion as to whether or not to impose criminal penalties at all, or to impose penalties that are too lenient. Nor can penalties be circumvented through the grant of amnesties or pardons based on official capacity or other grounds.⁵⁵
45. The severity of the penalties imposed must reflect the gravity of the offence of genocide, which “is a crime under international law ... condemned by the civilized world”.⁵⁶ And effective penalties should be designed to deter potential perpetrators. The Court has endorsed the deterrent effect of penalties imposed pursuant to the Genocide Convention, listing it as an example of the way in which the duties to prevent and punish in Article I are “connected,”⁵⁷ and finding that “one of the most effective ways of

⁵⁰ U.N. Ad Hoc Committee on Genocide, *Summary Record of the Nineteenth Meeting*, U.N. Doc. E/AC.25/SR.19 (27 April 1948), 3-4; U.N. Ad Hoc Committee on Genocide, *Corrigendum to the Summary Record of the Nineteenth Meeting*, U.N. Doc. E/AC.25/SR.19/Corr.1 (14 May 1948).

⁵¹ See also Vienna Convention, Art. 27.

⁵² See the discussion of the *travaux* at para. 38 above.

⁵³ U.N. Secretary-General, *Draft Convention on the Crime of Genocide*, U.N. Doc. E/447 (26 June 1947) (commentary on then draft article VI, which – similarly to Article V in its final wording – required States to “make provision in their municipal law for acts of genocide ... and for their effective punishment”).

⁵⁴ See B. Saul, ‘The Implementation of the Genocide Convention at the National Level’ in P. Gaeta, p. 73.

⁵⁵ See para. 37 above.

⁵⁶ Genocide Convention, Preamble (referring to UNGA resolution 96(I) dated 11 December 1946).

⁵⁷ *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, at p. 219, para. 425.

preventing criminal acts ... is to provide penalties for persons committing such acts, and to impose those penalties effectively on those who commit the acts one is trying to prevent”.⁵⁸

46. In relation to a similar treaty obligation (concerning “effective penal sanctions” for persons committing grave breaches of the Geneva Conventions), leading international law jurists have stated that the legislation which States must enact should “specify the nature and extent of the penalty ... taking into account the principle of due proportion between the severity of the punishment and the gravity of the offence”.⁵⁹ The same approach should be adopted in construing Article V of the Genocide Convention.

d. The construction of Article VI: the duty to try perpetrators of genocide

47. Article VI of the Convention reads as follows:

“Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”

48. The duty to punish perpetrators of genocide and related acts in Articles III applies to all parties to the Convention.⁶⁰ Article VI of the Convention requires that “[p]ersons charged with genocide ... shall be tried by a competent tribunal” in States with a territorial nexus to the alleged acts, “or by such international penal tribunal as may have jurisdiction”. The Court has confirmed that Article VI “obliges the Contracting Parties to institute and exercise territorial criminal jurisdiction” in their national courts.⁶¹ Given that these proceedings concern the obligations of “the State in the territory of which the [alleged genocide] was committed”,⁶² the Republic of Maldives does not intend to address the construction of Article VI insofar as other States’ obligations are concerned. But it reserves the right to do so should these become an issue of construction in the case.

⁵⁸ *ibid*, at p. 219, para. 426.

⁵⁹ Andrew Clapham et al., *The 1949 Geneva Conventions: A Commentary* (OUP 2015), p. 624 (citing Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949: Volume I* (ICRC 1949), at p. 363). On the proportionality of sentences, see also Amal Clooney and Philippa Webb, *The Right to a Fair Trial in International Law* (OUP 2020) (“A. Clooney and P. Webb”), pp. 31-32.

⁶⁰ Genocide Convention, Arts. I and IV.

⁶¹ *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, at pp. 226-227, para. 442 (adding that “...while it certainly does not prohibit States, with respect to genocide, from conferring jurisdiction on their criminal courts based on criteria other than where the crime was committed which are compatible with international law, in particular the nationality of the accused, it does not oblige them to do so”).

⁶² Genocide Convention, Art. VI.

i. Territorial States have an obligation to conduct prompt, thorough, independent and impartial investigations

49. Territorial States' obligation to investigate allegations of genocide stems from Article VI of the Genocide Convention, which provides that "[p]ersons charged with genocide" or related acts "shall be tried". As commentators have pointed out, "[t]his does not mean, however, that Article VI only becomes applicable once a charge has been brought."⁶³ Rather, the obligation "requires states to conduct investigations with a view to assessing *whether* a charge is to be brought".⁶⁴ The Court has confirmed that Article VI "obliges the Contracting Parties to institute and exercise territorial criminal jurisdiction".⁶⁵ A duty to investigate therefore "arises from the Convention itself".⁶⁶
50. When considering the duty to investigate under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Convention against Torture"), the Court has confirmed that it is "not sufficient ... for a State party ... to have adopted all the legislative measures required" for the implementation of the treaty.⁶⁷ A State must also "exercise its jurisdiction ..., starting by establishing the facts ... as soon as the suspect is identified in [its] territory".⁶⁸
51. In addition, there is a duty on States to investigate and punish serious international crimes as a matter of customary international law. Regional courts have held, in the context of certain crimes against humanity that have acquired the status of *jus cogens*, that the "corresponding duty to investigate and punish those responsible" for those crimes has also acquired *jus cogens* status.⁶⁹ Given that the prohibition of genocide is also *jus cogens*, a similar duty to investigate applies to it and must be taken into account as a "relevant rule ... of international law applicable in the relations between the parties" when interpreting Article VI of the Genocide Convention.⁷⁰
52. The Commission on Human Rights, the United Nation's first principal mechanism and international forum for the promotion and protection of human rights,⁷¹ confirmed that in order to satisfy their obligation to investigate genocide, States must ensure that

⁶³ C. Tams, p. 239.

⁶⁴ *ibid.*

⁶⁵ *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, at pp. 226-227, para. 442.

⁶⁶ Guénaél Mettraux, *International Crimes: Law and Practice: Volume I: Genocide* (OUP 2019) ("G. Mettraux"), p. 103.

⁶⁷ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, at p. 453, para. 85.

⁶⁸ *ibid.*, at pp. 453-454, paras. 85-86.

⁶⁹ See, e.g., *La Cantuta v. Peru*, Series C, no. 162 (IACtHR), Judgment on Merits, Reparations, and Costs, 29 November 2006, para. 157 (finding that the "prohibition against the forced disappearance of people and the corresponding duty to investigate and punish those responsible has become *jus cogens*").

⁷⁰ Vienna Convention, Art. 31(3)(c). See also G. Mettraux, p. 101.

⁷¹ In 2006, the Commission on Human Rights was replaced by the Human Rights Council: see UNGA, *Resolution 60/251: Human Rights Council*, U.N. Doc. A/RES/60/251 (15 March 2006), para. 1.

investigations are prompt, thorough, independent and impartial.⁷² When considering States' parallel duties under the Convention against Torture, the Court has found that inquiries should be "carried out by the competent authorities" and should be intended "to corroborate or not the suspicions regarding the person in question"⁷³, including through witness interviews.⁷⁴ The same starting point should be adopted when interpreting the duty to investigate under Article VI of the Genocide Convention.

ii. States must prosecute alleged perpetrators without unnecessary delay

53. While Article VI of the Convention mandates that territorial States try "[p]ersons charged with genocide or any of the acts enumerated in article III," it does not specify in terms the time period in which perpetrators must be charged.
54. It is clear that any discretion that States have with regard to timing must be exercised in good faith and in a manner consistent with the object and purpose of the Genocide Convention to "liberate mankind from [the] odious scourge" of genocide.⁷⁵ Article VI must also be read in the context of the other provisions of the Genocide Convention, including Article IV which mandates that perpetrators of genocide *shall* be punished.⁷⁶ This suggests that Article VI imposes an obligation on territorial States to issue charges without delay whenever and as soon as an independent and impartial investigation uncovers credible evidence that a person has committed genocide or related acts set out in Article III.⁷⁷
55. In interpreting the duty to punish serious international crimes under customary international law, international courts have also held that both investigations and

⁷² U.N. Commission on Human Rights, *Report of the independent expert to update the Set of principles to combat impunity*, Diane Orentlicher, *Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, U.N. Doc. E/CN.4/2005/102/Add.1 (8 February 2005), p. 12. See also UNSC Resolution 2150 (2014) (U.N. Doc. S/RES/2150), p. 2; Rome Statute of the International Criminal Court (1998) ("Rome Statute"), Art. 17((2)(c) (providing that States should be deemed unwilling to carry out an investigation or prosecution if "[the] proceedings were not or are not being conducted independently and impartially, and ... in a manner ... inconsistent with an intent to bring the person concerned to justice").

⁷³ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, at p. 453, para 83.

⁷⁴ See, e.g., *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi* (ICC-01/11-01/11-344) Decision on the admissibility of the case against Saif Al-Islam Gaddafi, 31 May 2013, paras. 209–210, 216 (where Libya was found "unable genuinely to carry out the investigation or prosecution" against the defendant because it suffered from a "lack of capacity" to secure testimony during the investigative process).

⁷⁵ Genocide Convention, Preamble. See also the Court's reasoning in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, at p. 460, paras. 114-115 (considering the obligation to prosecute under the Convention against Torture). See further paras. 50 and 52 above.

⁷⁶ See Vienna Convention, Art. 31(1).

⁷⁷ See, e.g., G. Mettraux, p. 98 (observing that "an international tribunal finding that such acts have been committed" or "a commission of inquiry's determinations to the same effect ... would put the state on sufficient notice of its obligations to act"). See also para. 50 above.

prosecutions must be conducted promptly.⁷⁸ This is a relevant rule of international law applicable between the parties that must be taken into account when interpreting the duties to investigate and prosecute under the Genocide Convention.⁷⁹ Territorial States cannot merely pay lip service to this obligation, for instance by asserting that investigations are ongoing while turning a blind eye to credible evidence that is reasonably accessible, has already been amassed or is lying in plain sight.

iii. Territorial States must conduct independent, impartial and genuine prosecutions in line with international fair trial standards, or ensure prosecution by an international penal tribunal

56. The Genocide Convention requires that individuals who are charged with genocide or related crimes in Article III should “be tried by a competent tribunal” of the territorial State or by an “international penal tribunal” with jurisdiction.
57. Territorial States must comply with their obligation to try perpetrators in good faith.⁸⁰ As such, the duty to prosecute in Article VI cannot be discharged through sham prosecutions, including before military tribunals.⁸¹ Domestic proceedings must be genuine, independent and impartial⁸² and meet internationally recognised fair trial standards, in line with customary international law.⁸³ which must be taken into account

⁷⁸ See e.g., *Abdülsamet Yaman v. Turkey* (App. No. 32446/96, ECtHR), 2 November 2004, paras. 54, 59-60; *La Cantuta v. Peru*, Series C, no. 162 (IACtHR), Judgment on Merits, Reparations, and Costs, 19 November 2006, para. 149. See also Rome Statute, Art. 17(2)(b) (providing that States should be deemed unwilling to carry out proceedings if there was “an unjustified delay in the proceedings ... inconsistent with an intent to bring the person concerned to justice”).

⁷⁹ Vienna Convention, Art. 31(3)(c).

⁸⁰ Genocide Convention, Art. VI; Vienna Convention, Art. 26. See also para. 36 above.

⁸¹ See U.N. Commission on Human Rights, *Report of the independent expert to update the Set of principles to combat impunity*, Diane Orentlicher, *Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, U.N. Doc. E/CN.4/2005/102/Add.1 (8 February 2005), Principle 29; Fionnuala Ní Aoláin, “Principle 29. Restrictions on the Jurisdiction of Military Courts”, in Frank Haldemann and Thomas Unger (eds), *The United Nations Principles to Combat Impunity* (OUP 2018), p. 322 .

⁸² See, e.g., U.N. Human Rights Committee, *General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, U.N. Doc. CCPR/C/GC/32 (2007), paras. 19, 22 (noting that the “requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception” and that “the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned”); *Prosecutors v. Nuon Chea et al.*, 002-19-09-2007/ECCC/TC, Decision on Ieng Sary’s Rule 89 Preliminary Objection (Ne bis in idem and Amnesty and Pardon), 3 November 2011 para. 30 (noting the lack of impartiality or independence of domestic proceedings and stating that “the deficiencies affecting these proceedings were so significant that the decision resulting from this trial cannot be characterized as a genuine judicial decision. It is therefore incapable of producing valid legal effect”). Rome Statute, Art. 17(2) – 17(3) (providing that a State should be deemed unwilling to carry out proceedings if they were “undertaken ... for the purposes of shielding the person concerned from criminal responsibility”, or there was an “unjustified delay” or a failure to “conduct proceedings independently or impartially ... inconsistent with an intent to bring the person concerned to justice” and the State should be deemed “unable” if it could not “obtain the accused or the necessary evidence and testimony or [was] otherwise unable to carry out its proceedings”). See also paras. 52 and 55 above.

⁸³ See *Prosecutor v. Aleksovski* (IT-95-14/1-A), Judgment, 24 March 2000, para. 104 (“The right to a fair trial is, of course, a requirement of customary international law.”). See further A. Clooney and P. Webb, pp. 13-25.

as a relevant rule of international law applicable between the parties.⁸⁴ Interpreting Article VI in this way is consistent with the “civilizing” purpose of the convention, and reflects the Convention’s object of “endors[ing] the most elementary principles of morality”⁸⁵ – including that perpetrators of genocide will not enjoy impunity.

58. This interpretation is confirmed by the *travaux*, which reflect a concern on the part of the drafters that territorial States can be participants or complicit in genocide and may therefore seek to shield perpetrators from prosecution. For example, the delegate from the Philippines commented that because “genocide was a collective crime of such proportions that it could rarely be committed except with the participation or the tolerance of the State; it would be paradoxical to leave to that same State the duty of punishing the guilty”.⁸⁶ It was for this reason that the drafters sought to include provision for trials by international tribunals, with the delegate for the Philippines going on to observe that “if the convention were not to remain a dead letter, it was necessary to establish an international criminal court to ensure the punishment on an international level of those who might escape with impunity either because their national courts were not competent to deal with them owing to particular constitutional laws, or because they received favourable treatment thanks to the connivance or indifference of national courts.”⁸⁷
59. Article VI thus contains an alternative to prosecution of alleged perpetrators in domestic courts of the territorial State, providing that persons charged with genocide can also be prosecuted by an international penal tribunal with jurisdiction. The Court has held that, even for non-territorial States, once they have accepted the jurisdiction of an international penal tribunal, “Article VI obliges the Contracting Parties ... to co-operate with it, which implies that they will arrest persons accused of genocide who are in their territory... and, failing prosecution of them in the parties’ own courts, that they will hand them over for trial by the competent international tribunal.”⁸⁸

⁸⁴ Vienna Convention, Art. 31(3)(c).

⁸⁵ *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, at p. 515, para. 106 (referring to *Reservations to the Convention on Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 15, at p. 23).

⁸⁶ See, e.g., UNGA, 97th Meeting of the Sixth Committee, *Continuation of the consideration of the draft convention on genocide (E/794): report of the Economic and Social Council (A/633)*, U.N. Doc. A/C.6/SR.97 (9 November 1948). See also UNGA, 98th Meeting of the Sixth Committee, *Continuation of the consideration of the draft convention on genocide (E/794): report of the Economic and Social Council (A/633)*, U.N. Doc. A/C.6/SR.98 (10 November 1948), 381 (Mr. Feaver, Canada: “Everyone was aware that serious cases of genocide were committed by Governments with which domestic courts were not competent to deal”).

⁸⁷ UNGA, 97th Meeting of the Sixth Committee, *Continuation of the consideration of the draft convention on genocide (E/794): report of the Economic and Social Council (A/633)*, U.N. Doc. A/C.6/SR.97 (9 November 1948) p. 365 (Mr. Inglés, Philippines).

⁸⁸ *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, at pp. 227-228, para. 443. See also G. Mettraux, p. 101. In addition to the provisions of Art. VI related to prosecution in the territorial State and cooperation with international penal tribunals, States in which alleged perpetrators are present and which do not prosecute them may also have the option to extradite them to other States whose courts have jurisdiction to prosecute under the principle of *aut dedere aut judicare*, which can be implied in the Genocide Convention and also exists as a matter of customary international law: see G. Mettraux, pp. 110-114. See further International

60. Article VI therefore requires that territorial States that fail to conduct a genuine, independent and impartial trial of those charged with genocide in line with international fair trial standards must ensure a trial by an international penal tribunal by accepting its jurisdiction, surrendering those charged, and cooperating with the tribunal as required.⁸⁹ Failure to do will result in breach of the Convention.

VI. DOCUMENTS ATTACHED IN SUPPORT OF THIS DECLARATION

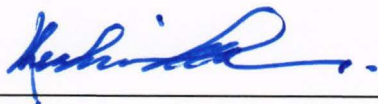
61. The Republic of Maldives submits the following documents in support of this Declaration:
- a. Annex A: letter from the Registrar sent pursuant to Article 63(1) of the Statute of the Court; and
 - b. Annex B: instrument of accession of the Republic of Maldives to the Genocide Convention.

VII. CONCLUSION

62. For the reasons set out in this Declaration, the Republic of Maldives avails itself of its right under Article 63(2) of the Statute of the Court to intervene in these proceedings and respectfully requests the Court to recognise the admissibility of this Declaration.
63. The Republic of Maldives has appointed the undersigned as Agent for the purposes of the present Declaration.

The address for service to which all communications concerning this case should be sent is:

H.E. the Ambassador of the Republic of Maldives to the Kingdom of the Netherlands
Embassy of the Republic of Maldives
Rue des Colonies 56
B-1000 Brussels
Belgium.



Attorney General Ibrahim Riffath (Agent)

Law Commission, *Final Report of the Working Group on the obligation to extradite or prosecute (aut dedere aut judicare)*, U.N. Doc. A/CN.4/L.844 (5 June 2014), p. 17; Genocide Convention, Art. VII.

⁸⁹ See, e.g., *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, Dissenting Opinion of Judge Xue, I.C.J. Reports 2012, p. 571, at p. 582, para. 42 (referring to the Extraordinary African Chambers to be established by Senegal and the African Union to prosecute international crimes committed in Chad and observing that Senegal's surrender of a former Chadian dictator this "specialist tribunal" would "fulfil the object and purpose" of the Convention against Torture).

CERTIFICATION

I certify that the documents attached by way of Annexes to this Declaration are true copies of the originals thereof.



Attorney General Ibrahim Riffath (Agent)



153168

COPY

24 January 2020

Excellency,

I have the honour to refer to my letter (No. 152867) dated 11 November 2019 informing your Government that the Republic of The Gambia filed in the Registry of the Court an Application instituting proceedings against the Republic of the Union of Myanmar in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar). A copy of the Application was appended to that letter. The text of the Application is also available on the website of the Court (www.icj-cij.org).

Article 63, paragraph 1, of the Statute of the Court provides that:

[w]henever 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”.

Further, under Article 43, paragraph 1, of the Rules of Court:

“Whenever the construction of a convention to which States other than those concerned in the case are parties may be in question within the meaning of Article 63, paragraph 1, of the Statute, the Court shall consider what directions shall be given to the Registrar in the matter.”

On the instructions of the Court, given in accordance with the said provision of the Rules of Court, I have the honour to notify your Government of the following.

In the above-mentioned Application, 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 (hereinafter the “Genocide Convention”) 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 the case

./.

H.E. the Ambassador
of the Republic of Maldives
to the Kingdom of the Netherlands
Embassy of the Republic of Maldives
Brussels
Belgium

Your country is included in the list of parties to the Genocide Convention. The present letter should accordingly be regarded as the notification contemplated by Article 63, paragraph 1, of the Statute. I would add that this notification in no way prejudices any question of the possible application of Article 63, paragraph 2, of the Statute, which the Court may later be called upon to determine in this case.

Accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'P. Gautier', with a long horizontal stroke extending to the right.

Philippe Gautier
Registrar

24/11/84



THE MINISTER OF FOREIGN AFFAIRS

(14-2)

MALE,
REPUBLIC OF MALDIVES.

WHEREAS the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly of the United Nations on 9 December, 1948; and;

WHEREAS Article XI of the said Convention provides that any State which has not signed the Convention may accede to it;

NOW, THEREFORE, BE IT KNOWN, that the Government of the Republic of Maldives, having seen and considered the said Convention do hereby accede to the same.

IN WITNESS WHEREOF, I FATHULLA JAMEEL, Minister of Foreign Affairs of the Republic of Maldives, have hereunto set my hand and affixed my seal.

DATED this Twelfth day of April, 1984.



Fathulla Jameel
FATHULLA JAMEEL

Secretary-General,
United Nations,
New York.