

**INTERNATIONAL COURT OF JUSTICE**

**DECLARATION OF INTERVENTION UNDER ARTICLE 63  
OF THE REPUBLIC OF SLOVENIA**

In the case of

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

22 November 2024

1. The Government of the Republic of Slovenia has the honour to request permission of the Court 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 present Declaration of intervention is made pursuant to Article 63, paragraph 2, of the Court's Statute.

## **I. Introductory Remarks**

### **A. Procedural history**

2. In its application submitted on 11 November 2019, The Gambia instituted proceedings against Myanmar concerning violations of the Genocide Convention.
3. The Gambia notably states that,

“from around October 2016 the Myanmar military (the ‘Tatmadaw’) and other Myanmar security forces began widespread and systematic ‘clearance operations’ – the term that Myanmar itself uses – against the Rohingya group. The genocidal acts committed during these operations were intended to destroy the Rohingya as a group, in whole or in part, by the use of mass murder, rape and other forms of sexual violence, as well as the systematic destruction by fire of their villages, often with inhabitants locked inside burning houses. From August 2017 onwards, such genocidal acts continued with Myanmar’s resumption of ‘clearance operations’ on a more massive and wider geographical scale.”<sup>1</sup>
4. In particular, The Gambia contends that Myanmar has breached its obligations under the Genocide Convention, notably, but not limited to, by “committing genocide in violation of Article III(a); conspiracy to commit genocide in violation of Article III(b); direct and public incitement to commit genocide in violation of Article III(c); attempting to commit genocide in violation of Article III(d); complicity in genocide in violation of Article III(e); failing to prevent genocide in violation of Article I; 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.”<sup>2</sup>

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<sup>1</sup> Application, pp. 2-3, para. 6.

<sup>2</sup> Application, p. 37, para. 111.

5. Because of the risk of irreparable prejudice and the urgency of the situation, The Gambia submitted a request for the indication of provisional measures together with its Application dated 11 November 2019. After having concluded that the conditions required by its Statute for indicating provisional measure were met, the Court unanimously indicated, in its Order dated 23 January 2020, the following provisional measures:

“(1) [...] The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- (d) imposing measures intended to prevent births within the group;

(2) [...] The Republic of the Union of Myanmar shall, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide;

(3) [...] The Republic of the Union of Myanmar shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;

(4) [...] The Republic of the Union of Myanmar shall submit a report to the Court on all measures taken to give effect to this Order within four months, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court.”<sup>3</sup>

On the same day, the Court fixed the time-limits for the filing of the Memorial of The Gambia and Counter-Memorial of Myanmar<sup>4</sup>, which were later extended to 23 October 2020 and 23 July 2021 respectively.<sup>5</sup>

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<sup>3</sup> ICJ, order, 23 January 2020, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Request for the indication of provisional measures, *Rep. 2020*, pp. 30-31, para. 86.

<sup>4</sup> See ICJ, Order, 23 January 2020 fixing the time-limits for the filing of the Memorial of The Gambia and Counter-Memorial of Myanmar to 23 July 2020 and 25 January 2021.

<sup>5</sup> See ICJ, Order, 18 May 2020.

6. On 20 January 2021, Myanmar raised preliminary objections concerning the jurisdiction of the Court and the admissibility of the Application. By an Order of 28 January 2021, the Court, noting that the proceedings on the merits were then suspended, fixed 20 May 2021 as the time-limit within which The Gambia could present a written statement of its observations and submissions on the preliminary objections raised by Myanmar. The Gambia filed its written statement on 20 April 2021, within the time limit thus fixed.
7. By letters dated 6 October 2021 and considering the COVID-19 pandemic, the Parties were informed that the Court had decided to postpone the hearings to the week of 21 February 2022, and a revised schedule of the hearings was communicated to them.
8. Following public hearings on the preliminary objections raised by Myanmar on 21, 23, 25 and 28 February 2022, the Court delivered a quasi-unanimous Judgment finding “that it has jurisdiction, on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, to entertain the Application filed by the Republic of Gambia on 11 November 2019, and that the said Application is admissible”.<sup>6</sup>
9. By an Order dated 22 July 2022, the Court set 24 April 2023 as the deadline for Myanmar to submit its Counter-Memorial. At the Respondent’s request, the Court issued further Orders on 6 April 2023 and 12 May 2023, extending the deadline first to 24 May 2023 and then to 24 August 2023. Myanmar’s Counter-Memorial was submitted within the extended time limit.
10. By an Order of 16 October 2023, the Court permitted the submission of a Reply by Gambia and a Rejoinder by Myanmar, setting 16 May 2024 and 16 December 2024 as the respective deadlines for these written submissions.

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<sup>6</sup> ICJ, Judgment, 22 July 2022, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary objections, *Rep. 2022*, p. 518, para. 115(5) – Vice-President Xue appended a dissenting opinion.

11. On 15 November 2023, the Republic of the Maldives submitted a declaration of intervention in the case within Article 63 of the Statute of the Court. On the same day, a joint declaration of intervention was submitted by Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to individually as “Canada”, “Denmark”, “France”, “Germany”, “the Netherlands”, and “the United Kingdom” and collectively as the “Joint Declarants”), also invoking Article 63 of the Statute. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately forwarded certified copies of the Maldives’ declaration and the Joint Declarants’ declaration to Gambia and Myanmar, notifying them that 15 January 2024 had been set as the deadline for submitting written observations on these declarations. Myanmar and Gambia both filed their observations within the allotted time frame.
12. In letters dated 24 January 2024, the Registrar informed the Parties, the Maldives, and the Joint Declarants that, given Myanmar’s objection to the admissibility of the intervention declarations, the Court was required, under Article 84, paragraph 2, of its Rules, to hear arguments from both the States seeking to intervene and the Parties regarding the admissibility of the declarations. The Court opted to conduct this through a written procedure, and the Registrar further stated that the Court had set 26 February 2024 as the deadline for the States seeking to intervene to submit their written observations on the admissibility of their declarations, and 26 March 2024 as the deadline for the Parties to submit their responses.
13. By letters dated 24 January 2024, the Registrar informed the Parties, the Maldives and the Joint Declarants that, in light of Myanmar objection to the admissibility of the declarations of intervention, the Court was required, pursuant to Article 84, paragraph 2, of its Rules, to hear the States seeking to intervene and the Parties on the admissibility of the declarations of intervention, and had decided to do so by means of a written procedure. The Registrar further stated that the Court had fixed 26 February 2024 as the time-limit within which the States seeking to intervene could furnish their written observations on the admissibility of their declarations and 26 March 2024 as the time-limit within which the Parties could furnish their written observations in response.

14. The Maldives filed its written observations on the admissibility of its declaration of intervention on 21 February 2024, and the Joint Declarants filed theirs on 26 February 2024. The Parties subsequently submitted their responses on 26 March 2024.

15. By an Order of 3 July 2024, the Court

(1) Unanimously,

*Decides* that the declaration of intervention under Article 63 of the Statute submitted by the Republic of the Maldives is admissible in so far as it concerns the construction of provisions of the Convention on the Prevention and Punishment of the Crime of Genocide;

(2) Unanimously,

*Decides* that the declaration of intervention under Article 63 of the Statute submitted jointly by 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 is admissible in so far as it concerns the construction of provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

## **B. The factual context of the case**

16. The facts underlying the dispute object of the present case have been duly documented. Despite Myanmar's lack of cooperation,<sup>7</sup> investigation efforts have been conducted and a number of reports produced under the auspices of the United Nations.

17. For decades, Myanmar has denied the Rohingyas their human rights. Already in 1993, the UN General Assembly expressed its concerns regarding the human rights situation of the Rohingyas in Myanmar.<sup>8</sup> In 2017, confronted with the deterioration of the situation of the Rohingya minority, especially in the Rakhine State, the United Nations Human Rights Council decided to create "urgently an independent international fact-finding mission [...] to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual violence, extrajudicial, summary or

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<sup>7</sup> See General Assembly Resolutions 73/264, 22 December 2018; 74/246, 27 December 2019; 75/287, 18 June 2021; 77/227, 15 December 2022; 78/219, 19 December 2023.

<sup>8</sup> Resolution 47/144, 1 March 1993, paras. 5-6.

arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property”.<sup>9</sup>

18. In its first report, dated 12 September 2018, the UN Fact-Finding Mission found that “[o]n the basis of the body of information collected, the mission has reasonable grounds to conclude that serious crimes under international law have been committed”,<sup>10</sup> and added that, “[t]he crimes in Rakhine State, and the manner in which they were perpetrated, are similar in nature, gravity and scope to those that have allowed genocidal intent to be established in other contexts. Factors pointing to such intent include the broader oppressive context and hate rhetoric; specific utterances of commanders and direct perpetrators; exclusionary policies, including to alter the demographic composition of Rakhine State; the level of organization indicating a plan for destruction; and the extreme scale and brutality of the violence committed.”<sup>11</sup>
19. One year later, in its last Report, the Mission found that “the evidence that infers genocidal intent on the part of the State [...] has strengthened, that there is a serious risk that genocidal actions may occur or recur, and that Myanmar is failing in its obligation to prevent genocide, to investigate genocide and to enact effective legislation criminalizing and punishing genocide.”<sup>12</sup> It affirmed that it “has reasonable grounds to conclude that there is a strong inference of continuing genocidal intent on the part of the State, that there is a serious risk of genocidal actions recurring, and that Myanmar is failing in its obligation to prevent genocide, to investigate genocide and to enact effective legislation criminalizing and punishing genocide.”<sup>13</sup> And the Mission firmly concluded that “Myanmar incurs State responsibility for committing genocide”.<sup>14</sup>
20. In 2024, pursuant to its resolution 52/31, the United Nations Human Rights Council (UNHRC) requested “all United Nations mandate holders and human rights mechanisms and international and regional courts, tribunals and human rights bodies to

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<sup>9</sup> UNHRC, Resolution A/HRC/RES/34/22, 24 March 2017, para. 11.

<sup>10</sup> Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar - A/HRC/39/CRP.2, 18 September 2018, para. 83.

<sup>11</sup> *Ibid.*, para. 85.

<sup>12</sup> “Detailed findings of the Independent International Fact-Finding Mission on Myanmar”, 16 September 2009, A/HRC/42/CRP.5, para. 667.

<sup>13</sup> *Ibid.*, para. 667.

<sup>14</sup> *Ibid.*, para. 213.

independently monitor the situation of human rights” and international humanitarian law violations in Myanmar. The Report highlights massive violations of international law since April 2023 including regarding conscription, as well as killings, arbitrary arrests, and displacement, primarily due to military violence against civilians.<sup>15</sup> The Report also stresses that members of the Rohingya group are systematically targeted by the army of Myanmar, which deliberately burns down the buildings in which they take refuge and shoots at them.<sup>16</sup>

21. The United Nations General Assembly has echoed the findings of the various experts bodies and the serious concerns of the international community of States regarding the situation of the Rohingyas in Myanmar:

- Following the first report of the UN Fact-Finding Mission on Myanmar,<sup>17</sup> and “the outbreak of violence in Rakhine State in August 2017 that has caused hundreds of thousands of Rohingya civilians to flee”,<sup>18</sup> the General Assembly adopted Resolution 72/248 denouncing the “the unlawful use of force by non-State actors and the excessive use of force by the military and security forces, including extrajudicial killings, rape and other forms of sexual violence, arbitrary detention and the unexplained disappearance of Rohingya civilians in Rakhine State, and by reports of large-scale destruction of homes and systematic evictions in northern Rakhine State, including the use of arson and violence”.<sup>19</sup>
- In its Resolution 73/264 adopted on 22 December 2018, the General Assembly expressed “grave concern at the findings of the independent international fact-finding mission on Myanmar that there is sufficient information to warrant investigation and prosecution so that a competent court may determine liability for genocide in relation to the situation in Rakhine State, that crimes against humanity and war crimes have been committed in Kachin, Rakhine and Shan States, including murder, imprisonment, enforced disappearance, torture, rape, sexual slavery and other forms of sexual violence, persecution and enslavement,

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<sup>15</sup> HRC, *Situation of human rights in Myanmar, Report of the UNHCHR, A/HRC/57/56*, distrib. 4 September 2024, para. 8.

<sup>16</sup> *Ibid.*, paras. 19-20.

<sup>17</sup> See above para. 18.

<sup>18</sup> Resolution 72/248, 24 December 2017, preamble, para. 6.

<sup>19</sup> *Ibid.*, preamble, para. 11.



that children were subjected to and witnessed serious human rights violations, including killing, maiming and sexual violence, that there are reasonable grounds to conclude that serious crimes under international law have been committed that warrant criminal investigation and prosecution and that the military has consistently failed to respect international human rights law and international humanitarian law” and “[s]trongly condemn[ed] all violations and abuses of human rights in Myanmar, as set out in the report of the fact-finding mission, including the widespread, systematic and gross human rights violations and abuses committed in Rakhine State, including the presence of elements of extermination and deportation and the systematic oppression and discrimination that that the fact-finding mission concluded may amount to persecution and to the crime of apartheid”.<sup>20</sup>

- In its Resolution 78/219 of 19 December 2023, the General Assembly once again reiterates its grave concerns regarding the massive use of force by the Myanmar army and the massive violations of the rights of the Rohingya people, takes note of the order of the International Court of Justice of 23 January 2020 indicating provisional measures and urges Myanmar, in accordance with the Court’s order in relation to members of the Rohingya in its territory, to take all measures within its power to prevent the commission of all acts within the scope of article 2 of the Convention.<sup>21</sup>

### **C. Motives of the Republic of Slovenia’s Intervention**

22. Although an intervention under Article 63 of the Statute is as of right, the Republic of Slovenia deems it appropriate to explain the reasons that prompted it to intervene in the present case. They reflect its attachment to the integrity of the Genocide Convention, to which it gives particular importance, both as a member of the international community of States, all of which are concerned with the prevention and punishment of genocide, and for more specific reasons of its own.

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<sup>20</sup> Resolution 73/264, 22 December 2018, paras. 1-2.

<sup>21</sup> Resolution, 78/219, 19 December 2023, para. 11.

(i) *All members of the international community of States are concerned by safeguarding the integrity of the Convention*

23. In the above-cited resolutions, the General Assembly of the United Nations encouraged and welcomed the assistance and support of the “international community” in the crisis.<sup>22</sup> In this regard, the well-known *dictum* of the Court in *Barcelona Traction* must be kept in mind:

“In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.”<sup>23</sup>

24. The obligations enshrined in the Genocide Convention undoubtedly have an *erga omnes* character.<sup>24</sup>

25. Slovenia, as a member of the international community of States as a whole, as a Member State of the United Nations that voted for the resolutions mentioned above, and as a party to the Genocide Convention, has an interest in the correct interpretation, application and fulfilment of the Genocide Convention, both in respect of Myanmar’s obligations and of its own rights and obligations.

26. The Court has made clear that the Genocide Convention contains obligations *erga omnes*, and that the prohibition of genocide has the character of a peremptory norm (*jus cogens*).<sup>25</sup>

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<sup>22</sup> See General Assembly Resolutions 72/248, 24 December 2017, paras. 23 and 26; 73/264, 22 December 2018, paras. 8, 12-13, 15 and 17; 74/246, 27 December 2019, paras. 5-6; 77/227, 15 December 2022, para. 19; 78/219, 19 December 2023, para. 19.

<sup>23</sup> ICJ, Judgment, 5 February 1970, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962)*, Second Phase, *Rep. 1970*, p. 32, para. 33.

<sup>24</sup> See below para. 27.

<sup>25</sup> ICJ, Judgment, 3 February 2006, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction of the Court and Admissibility of the Application, *Rep. 2006*, pp. 31-32, para. 64; ICJ, Judgment, 3 February 2015, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Merits, *Rep. 2015*, p. 47, para. 87.

27. In its Order dated 23 January 2020,<sup>26</sup> the Court recalled that in its Advisory Opinion on *Reservations to the Genocide Convention*, it observed that:

“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 aide the *raison d’être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.”<sup>27</sup>

The Court added that:

“In view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention. In its Judgment in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, the Court observed that the relevant provisions in the Convention against Torture were “similar” to those in the Genocide Convention. The Court held that these provisions generated “obligations [which] may be defined as ‘obligations *erga omnes partes*’ in the sense that each State party has an interest in compliance with them in any given case” (Judgment, *I.C.J. Reports* 2012 (II), p. 449, para. 68). It follows that any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.”<sup>28</sup>

28. By accepting the Genocide Convention, the Contracting Parties have committed themselves to prevent genocide doing “their best to ensure that such acts [referred to in Article III of the Convention] do not occur”<sup>29</sup> and “that, if they occur, their authors do not enjoy impunity.”<sup>30</sup> These obligations imply “that the obligations in question are owed by any State party to all the other States parties to the Convention”.<sup>31</sup> They of course bear upon Myanmar as well as Slovenia and all other Parties to the Convention.

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<sup>26</sup> ICJ, Order, 23 January 2020, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Request for the indication of provisional measures, *Rep. 2020*, para. 41.

<sup>27</sup> *Ibid.*, para. 41 quoting ICJ, Advisory Opinion, 28 May 1951, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, *Rep. 1951*, p. 23.

<sup>28</sup> *Ibid.*

<sup>29</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *Rep. 2007*, p. 223, para. 432.

<sup>30</sup> ICJ, Order, 23 January 2020, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Request for the indication of provisional measures, *Rep. 2020*, para. 41.

<sup>31</sup> *Ibid.*

29. It is with an awareness of these rights and obligations that Slovenia wishes to intervene in the case brought by The Gambia against Myanmar in order to be able to present its views on the interpretation of the Convention.

(ii) *Slovenia's specific interest in the present case*

30. In addition to these general considerations, which also inspired the joint intervention of six States and that of the Maldives, there are more specific reasons why Slovenia wishes to intervene in this case.

31. Slovenia has long expressed its concern about the fate of the Rohingya people:

- (i) Slovenia has repeatedly issued statements at high governmental levels condemning the mistreatment and suffering inflicted on the Rohingya people;<sup>32</sup> thus,
- (ii) Slovenia has sponsored and approved a number of resolutions of international bodies, including the UN General Assembly, concerning the Rohingya people;<sup>33</sup>
- (iii) It has co-shaped a number of initiatives for the well-being of the Rohingya population at the European or international levels;<sup>34</sup>
- (iv) It has approved and implemented the EU sanctions following the abuses of the Myanmar military against the Rohingyas in 2018;<sup>35</sup> and, more generally,

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<sup>32</sup> See e.g.: Statement by the Republic of Slovenia at the 39<sup>th</sup> Session of the UN Human Rights Council, Geneva, 18 September 2018, available at: [https://www.gov.si/assets/predstavnistva/Zeneva/Dokumenti/izjave/SCP-39-SLO/20180918\\_Mjanmar.pdf](https://www.gov.si/assets/predstavnistva/Zeneva/Dokumenti/izjave/SCP-39-SLO/20180918_Mjanmar.pdf); Statement by the Republic of Slovenia at the 37<sup>th</sup> Session of the UPR Working Group – Review of Myanmar, Geneva, 25 January 2021, available at: [https://www.gov.si/assets/predstavnistva/Zeneva/Dokumenti/izjave/UPR-37-ENG/23015\\_48\\_UPR37-Statement-by-Slovenia-Myan.pdf](https://www.gov.si/assets/predstavnistva/Zeneva/Dokumenti/izjave/UPR-37-ENG/23015_48_UPR37-Statement-by-Slovenia-Myan.pdf); Statement by the Republic of Slovenia at the UN Security Council briefing on the situation in Myanmar, New York, 4 April 2024, available at: <https://buildingtrust.si/statement/statement-on-the-situation-in-myanmar/>; Statement by the Republic of Slovenia at the Arria-formula meeting on Myanmar, New York, 29 May, 2024, available at: <https://buildingtrust.si/statement/statement-on-the-situation-in-myanmar-2/>.

<sup>33</sup> See e.g.: Statement by the Republic of Slovenia at the 39<sup>th</sup> Session of the UN Human Rights, Geneva, 18 September 2018; Statement by the Republic of Slovenia at the 41<sup>st</sup> Session of the UN Human Rights Council, Geneva, 3 July 2019, available at: [https://www.gov.si/assets/predstavnistva/Zeneva/Dokumenti/izjave/SCP-41-ENG/Item\\_4\\_Final.pdf](https://www.gov.si/assets/predstavnistva/Zeneva/Dokumenti/izjave/SCP-41-ENG/Item_4_Final.pdf). See also Resolutions A/C.3/73/L.51, 31 October 2018 and A/C.3/75/L.34, 30 October 2020, sponsored by Slovenia; Statement by the Republic of Slovenia at the UN Security Council briefing on the situation in Myanmar, 4 April 2024.

<sup>34</sup> The European Union humanitarian assistance to Myanmar has amounted to €414 million since 1994, helping to provide notably food and healthcare (See: European Commission, European Civil Protection and Humanitarian Aid Operations, Myanmar/Burma, available at: [https://civil-protection-humanitarian-aid.ec.europa.eu/where/asia-and-pacific/myanmarburma\\_en?prefLang=en](https://civil-protection-humanitarian-aid.ec.europa.eu/where/asia-and-pacific/myanmarburma_en?prefLang=en)).

<sup>35</sup> See e.g. Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma and Decision 2013/184/CFSP concerning restrictive measures against Myanmar/Burma.

- (v) Slovenia is committed to preventing and punishing acts of genocide, regardless of where it occurs or who is responsible.

32. There are also two more specific reasons, not directly related to the Rohingya case, which justify the particular interest of Slovenia to request permission to intervene in this case:

- *Firstly*, Slovenia, informed by its experience as a former Yugoslav republic in a region scarred by the Srebrenica genocide, the first genocide recognized by the Court in its Judgment of 11 July 1996, can hardly remain indifferent to *The Gambia v. Myanmar* case;

- *Secondly*, Slovenia is deeply committed to the effective sanctioning of international crimes. This commitment is clearly demonstrated by Slovenia's instrumental role in the negotiation and conclusion of the Convention on international cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity, war crimes and other international crimes. This landmark Convention, signed in Ljubljana on 26 May 2023, represents a significant step towards achieving the same objective of accountability that drives Slovenia's request for permission to intervene in the case concerning *The Gambia v. Myanmar*.

## II. Object and Purpose of the Republic of Slovenia's Intervention

33. Article 63 of the Court's Statute reads as follows:

"1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it."

Slovenia was informed by the Court's Registrar on 24 January 2020 about the filing of an Application by The Gambia to institute proceedings against Myanmar.<sup>36</sup> This notification was made because The Gambia's Application is based on the Genocide Convention, to which

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<sup>36</sup> Letter of 24 January 2020 from the Registrar of the Court sent to the Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands pursuant to Article 63(1) of the Court's Statute (Annex 1)

Slovenia is a party, and whose all the substantial provisions are subject to construction in the present case.

#### **A. The Republic of Slovenia is a Party to the Genocide Convention**

34. The Socialist Federal Republic of Yugoslavia had signed and ratified the Convention on 11 December 1948 and 29 August 1950, respectively. Slovenia has succeeded the former Socialist Federal Republic of Yugoslavia as of 25 June 1991 as a Party to the Genocide Convention.

35. The act of notification of succession in respect of United Nations Conventions is published in the *Official Gazette* of Slovenia - M P, n. 35/92. The declaration on the succession of the UN conventions was deposited in the UN Secretariat on 6 July 1992. The UN Secretary-General confirmed the succession of Slovenia in a note dated 22 October 1992, with the effect of the declaration as of 25 June 1991.<sup>37</sup>

36. As a State Party to the Convention, in accordance with Article 63, paragraph 1, of the Statute of the Court, the Government of Slovenia has been duly notified by a letter from the Registrar dated 11 November 2019, that “the construction of Articles I, III, IV, V and VI may be in question in the case”.

37. By this Declaration, Slovenia avails itself of its right to intervene under Article 63 of the Statute prior to the filing of its Rejoinder by Myanmar.

#### **B. The interpretation of virtually all the substantial provisions of the Convention is in question in the present case**

38. Article 82 of the Rules of Court provides the procedural framework for applications to intervene under Article 63 of the Statute of the Court:

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

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<sup>37</sup> See The declaration on the succession of the UN Conventions by the Government of the Republic of Slovenia (Annex 2).

declaration shall be filed as soon as possible, and no later than the date fixed for the filing of the Counter Memorial.

2. If the Court has authorized further written pleadings 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.

39. In accordance with Article 82, paragraph 5, of the Rules of Court, Slovenia identifies hereafter “the particular provisions” of the Genocide Convention “which it considers to be in question” and specifies the “provisions for which it contends”.

(i) *The particular provisions of the Genocide Convention in question*

40. The Gambia’s Application focuses on Articles I, III, IV, V and VI of the Genocide Convention.<sup>38</sup> In the written proceedings on the merits, The Gambia redesigned its submissions including by claiming

“(1) That the Republic of the Union of Myanmar is responsible for violations of the Convention on the Prevention and Punishment of the Crime of Genocide:

(a) in that members of its armed forces, police and other security forces, and also persons for whose conduct it is responsible, committed genocide against members of the Rohingya group on its territory by:

[...]

(iv) imposing measures intended to prevent births within the group; with the intent to destroy that group in whole or in part, contrary to Article II of the Convention”.<sup>39</sup>

41. As confirmed by the Court, “Articles I, II, IV, V and VI of the Genocide Convention (...) are in question at the merits stage of the proceedings. In particular, and contrary to Myanmar’s contention,<sup>40</sup> the construction of Article II is concerned at the current stage. Article II is a key provision of the Convention, since it defines the acts and specific intent constituting genocide and informs several other provisions of the

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<sup>38</sup> ICJ, Application instituting proceedings and Request for the indication of provisional measures, 11 November 2019, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, pp. 56-57, paras. 111 and 112.

<sup>39</sup> ICJ, Judgment, 22 July 2022, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary objections, *Rep. 2022*, pp. 487-489, para. 24.

<sup>40</sup> ICJ, Order, 22 July 2022, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Admissibility of the declarations of intervention, *Rep. 2022*, p. 8, para. 37.

Convention, such as Articles I, III, IV, V and VI, the violation of which is alleged in the Application.

(ii) *Statement of the relevant provisions for which Slovenia contends*

42. Slovenia states below its interpretation of Articles I, II, III, and IV to VI of the Genocide Convention. This statement is made in accordance with Article 31 of the Vienna Convention on the Law of Treaties, “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” considering also pertinent subsequent international law agreements or practice. The preparatory work for the Genocide Convention will also be taken into account, in accordance with Article 32 of the Vienna Convention. Slovenia reserves its right to develop and complement the proposed interpretation in subsequent phases of the proceedings.

**Article I**

43. Article I of the Convention on Genocide provides that “[t]he 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.”

44. This is undoubtedly one of the most basic provisions of the Convention. It introduces the fundamental idea that genocide is a crime under international law and that there is a general prohibition to commit genocide. As affirmed by the Court “taking into account the established purpose of the Convention, the effect of Article I is to prohibit States from themselves committing genocide”.<sup>41</sup> This requires States not to commit genocide through the acts mentioned at Article III of the Convention.

45. Fundamentally, Article I must be read bearing in mind that the prohibition of the crime of genocide has acquired the status of a norm of *jus cogens* in international law.<sup>42</sup>

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<sup>41</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 113, para. 166.

<sup>42</sup> ICJ, Judgment, 3 February 2006, *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction of the Court and Admissibility of the Application, Rep. 2006, p. 32, para. 64; ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 111,



46. Moreover, Article I sets out two other distinct obligations arising from the prohibition on committing genocide: States also undertake to prevent and to punish the crime of genocide.

47. States have an obligation to prevent genocide under Article I of the Convention.<sup>43</sup> As the Court has pointed out, the obligation to prevent “arises 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.”<sup>44</sup> The State in which the genocide is taking place is in the best position to be aware of the existence of a risk of genocide. Contextual elements such as reports from international organisations highlighting a risk of genocide are also likely to alert it to the existence of a crime of genocide.

48. The risk existing,<sup>45</sup> States have “to employ all means reasonably available to them, so as to prevent genocide so far as possible”.<sup>46</sup> States have to take measures which are “within [their] power”.<sup>47</sup> Again, it should be kept in mind that the State which has jurisdiction over the territory where genocide is committed is the best placed to prevent genocide. The commission of genocide by agents of the State as well as public incitement to commit genocide by these agents is sufficient in itself to constitute a breach of the obligation to prevent the commission of genocide or genocidal acts.

49. Article I also establishes the obligation to punish genocide. This obligation is developed elsewhere in Articles IV and VI of the Convention and requires at least the State to incorporate into its domestic law the prohibition of genocide as a crime.

## Article II

50. Article II of the Genocide Convention reads as follows:

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para. 161. See also *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*, Article 23 and Annex, A/77/10, p. 16.

<sup>43</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 113, para. 165.

<sup>44</sup> *Ibid.*, p. 222, para. 431.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, para. 430.

<sup>47</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 221, para. 430.

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

This provision is fully applicable in the present case.

51. As defined by Article II genocide implies the intention (i) to destroy, in whole or in part, a group of individuals (ii) by carrying out acts, which must be understood broadly (iii).

- *The “intent” to destroy*

52. Realisation of a genocide or of genocidal acts necessitates the determination of a specific intent (“*dolus specialis*”). This intent aims the destruction of a protected group.<sup>48</sup>

53. While the existence of genocidal intent is necessary to demonstrate the existence of genocide, this intent must be assessed in the light of the definition of genocide set out in Article I.<sup>49</sup> As provided in Resolution 96(1) of the General Assembly of 11 December 1946, expressly mentioned in the Preamble of the Genocide Convention, genocide is “a denial of the right to existence of entire human groups”. Still in the Preamble, genocide is prohibited to avoid “great losses on humanity”. It was also acknowledged by the Court that the object of the Convention is to safeguard “the very existence of certain human groups”.<sup>50</sup> As affirmed by the Court, when treaties are interpreted, “[it] must be given

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<sup>48</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 113, para. 166 and p. 121, para. 187. See also ICJ, Advisory opinion, 8 July 1996, *Legality of the Threat or Use of Nuclear Weapons*, Rep. 1996, p. 240, para. 26; ICTY, Judgment, 2 August 2001, *Krstić*, para. 571.

<sup>49</sup> See above, para 43.

<sup>50</sup> ICJ, Judgment, 3 February 2015, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Merits, Rep. 2015, p. 64, para. 139 mentioning “Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, Rep. 1951, p. 23, and Application

their maximum effect in order to ensure the achievement of their underlying purposes”.<sup>51</sup> Too narrow an apprehension of genocidal intent would not allow the Genocide Convention to achieve its purpose.

54. Moreover, the genocidal intention cannot be envisaged then as a requirement that an official or an institution of the State, or an individual or a group of individuals, carrying out genocide state it *expressis verbis*. Such an interpretation would turn the Convention into an empty shell, as those responsible for genocide and genocidal acts typically conceal their true intentions. The existence of this intentional element – “to destroy, in whole or in part” a group –, without being assimilated to the material acts, can be deduced from them.<sup>52</sup> It is therefore possible to consider all the acts together to demonstrate the existence of genocidal intent.<sup>53</sup> For example, a large-scale operation to kill members of a group, within the meaning of Article II, is often the most obvious manifestation of the intention to destroy that group.<sup>54</sup>

- *A group, in whole or in part*

55. Regarding the definition of the protected group aimed, it should be defined according to both objective and subjective criteria. The recognition of the existence of a group in the domestic law of the State responsible for genocide is an element which indisputably establishes the existence of a group in the sense of Article II.
56. A protected group does not have to be exterminated or subject as a whole to an intention of extermination for the existence of genocide to be established. It is sufficient

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*of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, Rep. 2007 (I), p. 125, para. 194”.*

<sup>51</sup> ICJ, Judgment, 18 July 1966, *South West Africa (Ethiopia v. South Africa)*, Rep. 1966, p. 48, para. 91.

<sup>52</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 122, para. 189; ICTY, Judgment, 12 December 2012, *Tolimir*, para. 745.

<sup>53</sup> ICTY, Judgment, 12 December 2012, *Tolimir*, para. 745 mentioning ICTY, Appeal Judgment, 22 March 2006, *Stakić* Appeal Judgement, para. 55. See also ICTR, Appeal Judgment, 8 May 2012, *Hategekimana*, para. 133; ICTR, Appeal Judgment, 28 September 2011, *Munyakazi* Appeal Judgement, para. 142 (holding that an accused’s intent to participate in a crime may be inferred from circumstantial evidence).

<sup>54</sup> ICJ, Judgment, 3 February 2015, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Merits, Rep. 2015, p. 64, para. 139; ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 125, para. 194.

for a substantial part of the group to be affected.<sup>55</sup> The substantial part of the group does not mean that a large part or a majority of the group must be targeted. As highlighted by the preparatory work, the acts must be aimed at more than a small number of individuals.<sup>56</sup> Moreover, determining whether a group is substantial always depends on the circumstances of the case.<sup>57</sup> In short, the acts suffered, even by only substantial part of the group, must be intended to harm the group as a whole.<sup>58</sup>

- *The list of material acts mentioned in Article II should be interpreted broadly*

57. Article II sets out a list of material acts that may constitute acts of genocide. In light of the horrific acts still committed nowadays, Slovenia considers that subparagraph (c) should be interpreted broadly. Considering the object and purpose of the Convention and the *chapeau* of Article II, any act that embodies an intent to destroy, in whole or in part, a protected group can constitute the material element of genocide. This includes, among other things, but not limited to, forced and repeated displacements of populations and/or the deprivation and/or destruction of essential goods in such a way as to put an end to life-sustaining conditions. The latter have to be envisaged with regard to fundamental human rights, as defined by the rest of the body of international law.

### **Article III**

58. Article III provides that

“The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;

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<sup>55</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 126, para. 198; ICTY, Judgment, 19 April 2004, *Krstić*, para. 12; ICC, Pre-trial Chamber I, Judgment, 4 March 2009, *Al Bashir*, para. 146.

<sup>56</sup> UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, *Report of the Preparatory Committee on the Establishment of an International Criminal Court*, 14 April 1998, A/CONF.183/2/Add.1, 11, fn 1.

<sup>57</sup> ICTY, Judgment, 19 April 2004, *Krstić*, paras. 12-14. See also ICTY, Judgment, 11 July 2013, *Karadzic*, paras. 66-68.

<sup>58</sup> ICJ, Judgment, 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Rep. 2007, p. 121, para. 187.

(e) Complicity in genocide.

59. This article lists some of the punishable acts related to preparing, aiding, and permitting the commission of the crime of genocide. Considering these acts as punishable offenses linked to genocide reinforces the obligation to prevent genocide, as provided in Articles I and IV to VI of the Genocide Convention. The list mentioned in Article III shows that the Genocide Convention addresses situations more broadly than the direct commission of genocide.<sup>59</sup> Excluding subparagraph (a), the other acts mentioned in Article III can be established and punished regardless of whether genocide was actually committed.<sup>60</sup>

#### Articles IV to VI

60. Articles IV to VI of the Genocide Convention provide that

##### Article IV

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.

##### Article V

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.

##### Article VI

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.

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<sup>59</sup> C.J. TAMS, L. BERSTER et B. SCHIFFBAUER, *Convention on the Prevention and Punishment of the Crime of Genocide, A Commentary*, London, Beck/Hart, 2014, Article III, p. 159, para. 3 mentioning in fn 9: “UN Doc. E/AC.25/SR.87, 254”..

<sup>60</sup> See for example UN Economic and Social Council, Ad hoc *committee on Genocide*, Summary Record of the Sixteenth Meeting, 22 April 1948, UN Doc. E/AC.25/SR.16, p. 3; see also Eighty-Fourth Meeting, Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [A/633], UN Doc. A/C.6/SR.84, p. 214 and Eighty-Five Meeting, Continuation of the consideration of the draft convention on genocide [E/794], UN Doc. A/C.6/SR.85, p. 222.

61. These provisions echo Article I, which sets out the obligation to punish the crime of genocide. They organise the procedures to ensure that public and private persons responsible for the crime of genocide or genocidal acts are effectively punished: regardless of the individual's position, they must be prosecuted for 'crime of genocide' and face penalties consistent with such a qualification before the competent jurisdictions.
62. The obligation to prosecute those responsible for the crime of genocide applies to all persons. This article must be interpreted in the light of developments in international law, in particular the provisions of other international agreements. Notably, the existence of immunities, including for heads of State, does not preclude prosecutions when conducted by either the State of nationality of the person or international jurisdictions.<sup>61</sup>
63. The prohibition and punishment of genocide must be formally introduced into the national legislation of States. This obligation is not a superficial or formal one. Its purpose must be "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." (Article V) Accordingly, punishing the acts referred to in Article III without taking account of the fact that they are aimed at genocide would be insufficient to satisfy the obligation contained in Article V of the Convention.

### III. Conclusion

64. By the present Request, Slovenia respectfully requests the Court to permit its intervention, by virtue of Article 63 of the Statute, in the proceedings brought by Gambia against Myanmar concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*. Slovenia reserves the right to present supplementary argument and observations in writing and orally as and when the procedure ordered by the Court offers it the occasion to do so.

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<sup>61</sup> ICTY Statute, Article 7(2); ICTR Statute, Article 6(2); Rome Statute, Article 27. See also ICJ, Judgment, 14 February 2002, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Questions of jurisdiction and/or admissibility, *Rep. 2002*, pp. 25-26, para. 61.

65. The Government of the Republic of Slovenia has appointed the undersigned as Agent for the purposes of this Declaration, together with Mr. Helmut Hartman and Ms. Barbara Granda, as Co-Agents for the Republic of Slovenia. The Registrar of the Court may channel all communication through them at the following address:

Embassy of the Republic of Slovenia in The Hague  
Anna Paulownastraat 11  
2518 BA The Hague  
The Netherlands

Respectfully,



Dr Marko Rakovec  
Agent of the Government of the Republic of Slovenia

#### **IV. Annexes**

The following documents are attached in support of this Declaration:

1. Letter of 24 January 2020 from the Registrar of the Court sent to the Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands pursuant to Article 63(1) of the Court's Statute;
2. Declaration of 1 July 1992 on the succession of the UN Conventions by the Government of the Republic of Slovenia.







153168

24 January 2020

VELEPOSLANIŠTVO REPUBLIKE SLOVENIJE  
HAAG*Excellency,*

PREJETO: 28 JAN. 2020

Sig. znak:

Vredn:

Priloge: 31

V vednosti: *Nath*

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](http://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

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H.E. the Ambassador  
of the Republic of Slovenia  
to the Kingdom of the Netherlands  
Embassy of the Republic of Slovenia  
The Hague

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', written in a cursive style.

Philippe Gautier  
Registrar



REPUBLIC OF SLOVENIA  
Ministry for Foreign Affairs

Ljubljana, 1 July 1992

Your Excellency,

I have the honour to inform you on the position of the Republic of Slovenia concerning international treaties concluded by SFR Yugoslavia.

When declaring independence on 25 June, 1991 the Parliament of the Republic of Slovenia determined that international treaties which had been concluded by the SFRY and which related to the Republic of Slovenia remained effective on its territory (Article 3 of the Constitutional Law on the implementation of the Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia - Official Gazette of the R.S. No.1/91). This decision was taken in consideration of customary international law and of the fact that the Republic of Slovenia, as a former constituent part of the Yugoslav Federation, had granted its agreement to the ratification of the international treaties in accordance with the then valid constitutional provisions.

The Republic of Slovenia therefore in principle acknowledges the continuity of treaty rights and obligations under the international treaties concluded by the SFRY before 25 June, 1991, but since it is likely that certain treaties may have lapsed by the date of independence of Slovenia or may be outdated, it seems essential that each treaty be subjected to legal examination.

The Government of the Republic of Slovenia has examined 55 multilateral treaties for which Your Excellency has assumed the depositary functions. I have the honour to inform you that the Republic of Slovenia considers to be bound by these treaties by virtue of succession to the SFR Yugoslavia in respect of the territory of the Republic of Slovenia. Please find a list of these treaties attached to this letter.

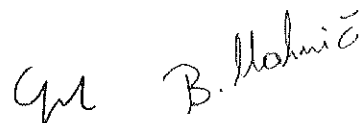
Other treaties, for which the Secretary-General of the United Nations is the depositary and which had been ratified by the SFRY, have not yet been examined by the competent authorities of the Republic of Slovenia. We will inform you on our position concerning these treaties in due course.

Please accept, Your Excellency, the assurances of my highest consideration.



Dr. Dimitrij Rupel  
M i n i s t e r

His Excellency  
Mr. Boutros Boutros-Ghali  
Secretary-General of  
the United Nations  
New York



ADDENDUM

Ljubljana, 1 July 1992

LIST OF MULTILATERAL TREATIES REFERRED TO IN THE LETTER  
DATED 1 JULY 1992

1. Convention on the Privileges and Immunities of the United Nations of 13 February 1946;
2. Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947;  
The Republic of Slovenia will apply the Convention to ILO, FAO, UNESCO, IMF, IBRD, WHO, UPU, ITU, WMO, IFAD and WIPO.
3. Vienna Convention on Diplomatic Relations of 18 April 1961;
4. Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes of 18 April 1961;
5. Vienna Convention on Consular Relations of 24 April 1963;
6. Convention on Special Missions of 8 December 1969;
7. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 14 December 1973;
8. Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975;
9. Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;
10. Convention for the Suppression of the Traffic Persons and of the Exploitation of the Prostitution of Others of 21 March 1950;
11. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1956;
12. International Convention on the Elimination of All Forms

of Racial Discrimination of 7 March 1966;

13. International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
14. International Covenant on Civil and Political Rights of 16 December 1966;  
The Parliament of the Republic of Slovenia adopted the following Declaration: "Republic of Slovenia, in accordance with Article 41 of the said Covenant, recognizes the competence of the Human Rights Committee to receive and consider communications submitted by another State Party to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant."
15. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968;
16. International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973;
17. Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979;
18. Convention on the Political Rights of Women of 31 March 1953;
19. Convention on the Nationality of Married Women of 20 February 1957;
20. Convention on the Rights of the Child of 20 November 1989;  
The Republic of Slovenia reserves the right not to apply paragraph 1 of Article 9 of the Convention since the internal legislation of the Republic of Slovenia provides for the right of competent authorities (centres for social work) to determine on separation of a child from his/her parents without a previous judicial review.
21. Convention relating to the Status of Refugees of 28 July 1951;
22. Convention relating to the Status of Stateless Persons of 28 September 1954;
23. Protocol relating to the Status of Refugees of 31 January 1967;
24. Vienna Convention on the Law of Treaties of 23 May 1969;

25. Vienna Convention on Succession of States in respect of Treaties of 23 August 1978;
26. International Convention Against the Taking of Hostages of 17 December 1979;
27. Convention on Long-Range Transboundary Air Pollution of 13 November 1979;
28. Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Long-Term Financing of the Co-Operative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (EMEP) of 28 September 1984;
29. Vienna Convention for the Protection of the Ozone Layer of 25 March 1985;
30. Montreal Protocol on Substances that deplete the Ozone Layer of 16 September 1987;
31. Convention on Psychotropic Substances of 21 February 1971;
32. Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961 of 8 August 1975;
33. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;  
The Ministry for Health, Family and Social Security of the Republic of Slovenia is authorised to issue certificates for traffic with narcotic drugs.
34. Convention on the Recovery Abroad of Maintenance of 20 June 1956;  
The Government of the Republic of Slovenia designates the Ministry for Health, Family and Social Security as a competent authority for the purposes envisaged in Article 2 of the Convention.
35. Convention concerning Custom Facilities For Touring of 4 June 1954;
36. Customs Convention on the Temporary Importation of Private Road Vehicles of 4 June 1954;
37. Customs Convention on the International Transport of Goods under Cover of TIR carnets (TIR Convention) of 14 November 1975;
38. Convention and Statute on Freedom of Transit of 20 April 1921;

39. Declaration on the Construction of Main International Traffic Arteries of 16 September 1950;
40. Agreement on Signs for Road Works of 16 December 1955;
41. Convention on the Contract for the International Carriage of Goods by Road (CMR) of 19 May 1956;
42. European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) of 30 September 1957;  
a) Protocol to the Convention on the Contract for the International Carriage of Goods by Road of 21 August 1975;
43. Convention on Road Traffic of 8 November 1968;  
In accordance with paragraph 4 of Article 45 the Government of the Republic of Slovenia has the honour to inform that the distinguishing sign of vehicles registered in the Republic of Slovenia in international traffic is "SLO".
44. European Agreement supplementing the Convention on Road Traffic opened for signature at Vienna on 8 November 1968. Concluded at Geneva on 1 May 1971;
45. European Agreement on Main International Traffic Arteries (AGR) of 15 November 1975;
46. European Agreement on Main International Railway Lines of 31 May 1985;
47. International Convention on the Harmonization of Frontier Control of Goods of 21 October 1982;
48. Agreement on the Importation of Educational, Scientific and Cultural Materials of 22 November 1950;
49. Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials of 22 November 1950. Concluded at Nairobi on 26 November 1976;
50. Convention on the Territorial Sea and Contiguous Zone of 29 April 1958;
51. Convention on the High Seas of 29 April 1958;
52. Convention on Prohibitions or Restrictions on the Use of certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects of 10 October 1980;
53. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958;



In accordance with paragraph 3 of article 1 the Republic of Slovenia will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of only those awards made in the territory of another Contracting State. The Republic of Slovenia will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the Republic of Slovenia.

54. European Convention on International Commercial Arbitration of 21 April 1961;
55. International Agreement for the Establishment of the University for Peace of 5 December 1980;



UNITED NATIONS  NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017  
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE: LA 41 TR/221/1 (3-1) (3-2) (3-3) (3-5), etc.

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of the Republic of Slovenia to the United Nations and has the honour to confirm the deposit, on 6 July 1992, of the notification of succession by the Government of Slovenia to the following treaties:

- 1- Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946;
- 2- Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947, in respect of ILO, FAO, UNESCO, IMF, IBRD, WHO, UPU, ITU, WMO, IFC, IDA, WIPO and IFAD;
- 3- Vienna Convention on Diplomatic Relations, done at Vienna on 18 April 1961;
- 4- Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputas, done at Vienna on 18 April 1961;
- 5- Vienna Convention on Consular Relations, done at Vienna on 24 April 1963;
- 6- Convention on Special Missions, adopted by the General Assembly of the United Nations on 8 December 1969;
- 7- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;

UNITED NATIONS  NATIONS UNIES

- 2 -

- 8- Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, concluded at Vienna on 14 March 1975;
- 9- Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948;
- 10- International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature at New York on 7 March 1966;
- 11- International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16 December 1966;
- 12- International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966: Due note has been taken of the declaration made by Slovenia to the effect that it recognizes the competence of the Human Rights Committee under article 41;
- 13- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the General Assembly of the United Nations on 26 November 1968;
- 14- International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly of the United Nations on 30 November 1973;
- 15- Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations on 18 December 1979;
- 16- Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989: Due note has been taken of the reservation to article 9 (1);
- 17- Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951;

UNITED NATIONS  NATIONS UNIES

- 3 -

- 18- Convention relating to the Status of Stateless Persons, done at New York on 28 September 1954;
- 19- Protocol relating to the Status of Refugees, done at New York on 31 January 1967;
- 20- Convention on Psychotropic Substances, concluded at Vienna on 21 February 1971;
- 21- Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs, 1961, done at New York on 8 August 1975;
- 22- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded at Vienna on 20 December 1988: Due note has been taken of the declaration concerning the designation of authority pursuant to article 17 (7);
- 23- Convention for the Suppression of the Traffic in Persons and of the exploitation of the Prostitution of Others, opened for signature at Lake Success, New York, on 21 March 1950;
- 24- Convention concerning Customs Facilities for Touring, done at New York on 4 June 1954;
- 25- Customs Convention on the Temporary Importation of Private Road Vehicles, done at New York on 4 June 1954;
- 26- Customs Convention on the International Transport of Goods under Cover of TIR carnets (TIR Convention), concluded at Geneva on 14 November 1975;
- 27- International Convention on the Harmonization of Frontier Control of Goods, concluded at Geneva on 21 October 1982;
- 28- Declaration on the Construction of Main International Traffic Arteries, signed at Geneva on 16 September 1953;

UNITED NATIONS  NATIONS UNIES

- 4 -

- 29- Agreement on Signs for Road Works, amending the European Agreement of 16 September 1950 supplementing the 1949 Convention on Road Traffic and the 1949 Protocol on Road Signs and Signals, concluded at Geneva on 16 December 1955;
- 30- Convention on the Contract for the International Carriage of Goods by Road (CMR), done at Geneva on 19 May 1956;
- 31- European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), done at Geneva on 30 September 1957;
- 32- Protocol amending article 14(3) of the European Agreement on 30 September 1957 concerning the International Carriage of Dangerous Goods by Road (ADR), concluded at New York on 21 August 1975;
- 33- Convention on Road Traffic, concluded at Vienna on 8 November 1968: Due note has been taken of the distinguishing sign selected by Slovenia under article 45 (4);
- 34- European Agreement supplementing the Convention on Road Traffic opened for signature at Vienna on 8 November 1968, concluded at Geneva on 1 May 1971;
- 35- European Agreement on Main International Traffic Arteries (AGR), concluded at Geneva on 15 November 1975;
- 36- European Agreement on Main International Railway Lines (AGC), concluded at Geneva on 31 May 1985;
- 37- Agreement on the Importation of Educational, Scientific and Cultural Materials, opened for signature at Lake Success, New York, on 22 November 1950;
- 38- Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials of 22 November 1950, concluded at Nairobi on 26 November 1976;
- 39- International Agreement for the Establishment of the University for Peace, adopted by the General Assembly of the United Nations on 5 December 1980;

UNITED NATIONS  NATIONS UNIES

- 5 -

- 40- Convention on the Political Rights of Women, opened for signature at New York on 31 March 1953;
- 41- Convention on the Nationality of Married Women, done at New York on 20 February 1957;
- 42- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at the European Office of the United Nations at Geneva on 7 September 1956;
- 43- International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
- 44- Convention on the Recovery Abroad of Maintenance, done at New York on 20 June 1956: Due note has been taken of the designation of authority in accordance with article 2;
- 45- Convention on the Territorial Sea and the Contiguous Zone, done at Geneva on 29 April 1958;
- 46- Convention on the High Seas, done at Geneva on 29 April 1958;
- 47- Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958: Due note has been taken of the declaration made in accordance with article I (3);
- 48- European Convention on International Commercial Arbitration, done at Geneva on 21 April 1961;
- 49- Vienna Convention on the Law of Treaties, concluded at Vienna on 23 May 1969;
- 50- Vienna Convention on Succession of States in respect of Treaties, concluded at Vienna on 23 August 1978;
- 51- Convention on Prohibitions or Restrictions on the Use of certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects (and Protocols I, II and III), concluded at Geneva on 10 October 1980;

UNITED NATIONS  NATIONS UNIES

- 6 -

- 52- Convention on Long-Range Transboundary Air Pollution, concluded at Geneva on 13 November 1979;
- 53- Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Long-Term Financing of the Co-operative Programme for Monitoring and Evaluation of the Long-Range Transmission of Air Pollutants in Europe (EMEP), concluded at Geneva on 28 September 1984;
- 54- Vienna Convention for the Protection of the Ozone Layer, concluded at Vienna on 22 March 1985;
- 55- Montreal Protocol on Substances that Deplete the Ozone Layer, concluded at Montreal on 16 September 1987; and
- 56- Convention and Statute on Freedom of Transit, Barcelona, 20 April 1921.

The said successions took effect as of 25 June 1991. the date on which Slovenia assumed responsibility for its international relations.

All States concerned are being informed accordingly.

22 October 1992 *df.*