

DECLARATION OF JUDGE BHANDARI

Timing of Declarations of intervention — Article 63 of the Statute of the Court and Article 82 of Rules of Court — No distinction between stages of proceedings — Significance of words “as soon as possible” — Practical and procedural considerations.

1. I agree with the Court’s Order and reasoning. I make this declaration only to add an additional point concerning the timing and practical effects of interventions in a case such as this one.

2. Article 63 (2) of the Statute of the Court provides that “[e]very State so notified [in accordance with Article 63 (1)] 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”. This paragraph refers to “the proceedings” without distinction as to any stage of the proceedings.

3. As to when this right should be exercised, Article 82 of the Rules of Court requires that a declaration of intervention under Article 63 “shall be filed as soon as possible, and not later than the date fixed for the opening of the oral proceedings”. Like Article 63, this provision makes no distinction regarding the stage of the proceedings.

4. The Court refers to the timing requirements under Article 82 (see Order, paragraph 34), but it could have placed greater emphasis on the implications of the words “as soon as possible”, which are a central feature of that provision.

5. Practical considerations speak in favour of interpreting the words “as soon as possible” relatively strictly. That is particularly evident in the present case, where an unprecedented 33 States have submitted Declarations of intervention. If the words “as soon as possible”, which, again, form a key requirement under Article 82 of the Rules of Court, are given insufficient weight, the ongoing submission of Declarations of intervention could place great strain on the Court’s time and resources, not to mention the procedure in a case.

(Signed) Dalveer BHANDARI.
