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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2022

Public sitting

held on Monday 28 February 2022, at 3 p.m., at the Peace Palace,

President Donoghue presiding,

in the case concerning **Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia *v.* Myanmar)**

VERBATIM RECORD

ANNÉE 2022

Audience publique

tenue le lundi 28 février 2022, à 15 heures, au Palais de la Paix,

sous la présidence de Mme Donoghue, présidente,

en l'affaire relative à l' **Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar)**

COMPTE RENDU

Present:	President	Donoghue
	Vice-President	Gevorgian
	Judges	Tomka
		Abraham
		Bennouna
		Yusuf
		Xue
		Sebutinde
		Bhandari
		Robinson
		Salam
		Iwasawa
		Nolte
		Charlesworth
	Judges *ad hoc*	Pillay
		Kress
	Registrar	Gautier

Présents : Mme Donoghue, présidente
M. Gevorgian, vice-président
MM. Tomka
Abraham
Bennouna
Yusuf
Mmes Xue
Sebutinde
MM. Bhandari
Robinson
Salam
Iwasawa
Nolte
Mme Charlesworth, juges
Mme Pillay
M. Kress, juges *ad hoc*

M. Gautier, greffier

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Mr. Hussein Thomasi, Solicitor General, Ministry of Justice, Republic of The Gambia,

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comme membres de la délégation.

The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear The Gambia's second round of oral argument. I invite Mr. Paul Reichler to address the Court. You have the floor.

Mr. REICHLER:

NONE OF MYANMAR'S PRELIMINARY OBJECTIONS HAS MERIT

1. Madam President, Members of the Court, I am again honoured to appear before you in these proceedings.

2. I will present The Gambia's response to the arguments you heard from Myanmar on Friday, followed by the Agent, who will deliver The Gambia's formal submissions.

3. My remarks can be brief, because, frankly speaking, there is not much to respond to. Although Myanmar took up the entire 90 minutes allotted to it by the Court, it did little more than repeat the same arguments it made in the first round, to which The Gambia fully responded last Wednesday.

4. I begin with preliminary objection number 1. Madam President, one of the most moving moments I have ever experienced in this Great Hall of Justice, since my first argument here in 1984, occurred on 12 December 2019, as I was about to begin The Gambia's second round in the oral hearings on provisional measures. As I was waiting at the podium for the hallowed cry, "La Cour", a member of our team tapped me on the shoulder and insisted on showing me a video that had just arrived on his mobile phone. It was of a remarkable event that occurred that very morning, in the overcrowded refugee camps of Bangladesh. Thousands upon thousands of Rohingya had gathered in an open field. They were chanting rhythmically: Gam-bi-a! Gam-bi-a! Gam-bi-a[1]!

5. Madam President, the Rohingya are continuing to follow this case very closely, and they have no doubt who the Applicant is, or about which party is seeking to hold Myanmar accountable for its genocidal acts against them. And neither should the Members of this Court. It is *Gam-bi-a*, and no one else. The video is publicly available, and you can find the link in a footnote to this speech.

6. It is entirely irresponsible, and offensive, for Myanmar to continue to argue that someone other than The Gambia is the real applicant here. On Friday, Mr. Staker acknowledged what the

[1] Video "Rohingya refugees chanting Gambia, Gambia", available at: https://www.youtube.com/watch?v=kAd98KzoA8E.

evidence already indisputably shows: that the decision to bring this case was made by the Cabinet of The Gambia in July 2019, upon the proposal of The Gambia's Attorney General[2]. It was announced publicly by the Vice-President of The Gambia before the United Nations General Assembly in September 2019[3]. These were sovereign acts by a sovereign State, taken at the highest level, after the most careful consideration. Myanmar would treat The Gambia as though it were a child, incapable of making decisions for itself, but only under the influence of a parent international organization.

7. It is entirely irrelevant that the OIC offered support to The Gambia in its decision to bring this case. What matters is that the decision to bring it was The Gambia's own, regardless of who recommended it. The Gambia was not pressured, coerced or induced into bringing a case in which it had no interest of its own, as a mere stand-in for another entity. The evidence is all to the contrary. It was The Gambia that first introduced the idea to the OIC that the Rohingya were victims of genocide, that they had to be protected from destruction as a group, and that Myanmar had to be held to its treaty obligations under the Genocide Convention. This is what led the OIC to name The Gambia as Chair of its Ad Hoc Committee on the Rohingya. It was the "stench of genocide", not the OIC, that motivated The Gambia to come to this Court, in circumstances eloquently explained by the former Agent at the provisional measures phase[4]. Is it so hard to believe that The Gambia could care so deeply about the destruction of the Rohingya that it would take up their cause as its own?

8. Madam President, it is telling — and deeply disturbing — that Myanmar spent four and a half hours addressing the Court in these hearings but was unable to speak the word "Rohingya", not even once. As we pointed out last Wednesday, for Myanmar they simply do not exist, and should not exist. Even their counsel, it seems, have been banned from using the word.

9. A word that Myanmar's counsel do use, with great enthusiasm, is "proxy", as an epithet that they apply to The Gambia[5]. But what exactly is it that makes The Gambia, or any sovereign State, a

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[2] CR 2022/3, p. 13, para. 15 (Staker).

[3] United Nations General Assembly (hereinafter "UNGA"), 74th Session, 8th Plenary Meeting, "Address by Mrs. Isatou Touray, Vice-President of the Republic of The Gambia", doc. A/74/PV.8, 26 Sept. 2019, p. 31 (MG, Vol. III, Ann. 51).

[4] CR 2019/18, p. 17, para. 6 (Tambadou).

[5] CR 2022/1, pp. 22, 24-26 (Staker).

"proxy" for another entity? Myanmar offers no standards for distinguishing when a State acts for itself, and when it offers itself as a vehicle for another entity, solely to pursue the other entity's objectives rather than its own. As my colleague, Mr. Loewenstein, pointed out on Wednesday, Myanmar offers no precedent for such an approach. Not a single international court or tribunal has ever held that an applicant State could not pursue its claims because it was a mere "proxy" for someone else. Neither the facts nor the law justify such a departure from precedent, such an affront to State sovereignty, or such an insult to The Gambia.

10. Madam President, Myanmar's second preliminary objection is no more plausible. Friday's presentation was largely a restatement of what was offered last Monday. It did not improve upon repetition. It may have been louder on Friday than it was the first time around, but the increase in volume did not make it any more attractive. In fact, its obvious defects were even more apparent. Counsel's continued invocation of the Articles on State Responsibility is entirely misplaced and misconceived. This is a case that arises from a treaty obligation under the Genocide Convention, not one whose cause of action engages State responsibility under general international law. The issue of standing under the Convention is based on the Convention itself, not the customary law rules on State responsibility. As the Court made clear in 1997, in the *Gabčikovo-Nagymaros* case, "those two branches of international law obviously have a scope that is distinct"[6].

11. This makes it even more evident that those rules are of no help to Myanmar here. As Professor d'Argent pointed out last Wednesday, both Article 44 *(a)* and the Commentary on the ILC Articles make clear by their express terms that nationality of claims is not a rule to be applied in all instances, but to be invoked only in circumstances where it is considered applicable[7]. This, of course, begs the question rather than answers it. Whether it is applicable in a treaty case like this one necessarily depends on the treaty, here the Genocide Convention.

12. This is a Convention that the Court has already described as imposing *erga omnes partes* obligations on all State parties, and in which the interests of those parties are not individual or particular but common. So, the question here is whether, under such a Convention, an applicant State must demonstrate that it has an individual or particular interest — in the form of injury to its own

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[6] *Gabčikovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 38, para. 47.

[7] CR 2022/2, p. 31, para. 12 (d'Argent).

nationals — in order to have standing under Article IX. That question answers itself. Where the obligations are *erga omnes partes* and the interests of the parties are common rather than individual, then each party necessarily has standing to enforce its provisions, regardless of whose nationals are injured, because each of them has a right under the treaty to see that its obligations are respected by the other parties in relation to all protected groups.

13. And this is critical. The obligation under Article II of the Convention is to refrain from acts of genocide which reflect both an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such"[8]. The obligation is expressly in relation to "a" group, and is not limited to a group comprised of nationals of another party.

14. According to Myanmar's interpretation of the Convention, the State party may intentionally set out to destroy all of its Muslims, or Christians, or Hindus, or Asians, or Africans, or ethnic Germans or Japanese and, as long as those it targets are its own nationals, no other party to the Convention, not even Germany or Japan, can come to this Court under Article IX to hold it to account for this most blatant breach of its treaty obligations, in order to bring the genocidal conduct to an end.

15. Myanmar's interpretation is not only wrong. It is dangerous. As Professor Sands said last Wednesday, if this were accepted, and the Court were precluded from hearing a case where the applicant State is not complaining about genocide against its own nationals, the Convention would become a "dead letter"[9]. By making this argument, Myanmar not only seeks to escape judgment in this case, but to decapitate the Convention itself. And it invites the Court to wield the executioner's axe.

16. Madam President, Hannah Arendt did not participate in the drafting of the Genocide Convention. But she eloquently captured part of its object and purpose, in her 1951 classic on *The Origins of Totalitarianism*: "[T]he right of every individual to belong to humanity[] should be guaranteed by humanity itself."[10] The Convention was drafted so that the rights of groups — ethnic, racial, religious, and national — to belong to humanity, to avoid destruction at the hands of a State,

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[8] The Genocide Convention (1951).

[9] See CR 2022/2, p. 61, para. 14 (Sands).

[10] Hannah Arendt, *The Origins of Totalitarianism* (New York, Harcourt, Brace and Co., 1951, reissued in 1979), pp. 297-298.

would be guaranteed by humanity itself, as represented by every other State party to the Convention, regardless of whether their own nationals were the targets of destruction.

17. This was indeed the tenor of the Court's Order on provisional measures, in which it said: "[T]here is a correlation between the rights of members of groups protected under the Genocide Convention, the obligations incumbent on States parties thereto, and the *right* of any State party to seek compliance therewith by another State party."[11] The Gambia, as a State party to the Convention, indisputably has, as the Court put it, a "legal right or interest regarding the subject-matter"[12]. Even Myanmar concedes this. As the Court observed in its provisional measures Order: "Myanmar accepts that, because of the *erga omnes partes* character of some obligations under the Convention, The Gambia has an interest in Myanmar's compliance with such obligations."[13] Myanmar acknowledged on Friday that the "Court . . . uses the terms 'standing' and 'legal interest' interchangeably"[14]. This leads to only one conclusion. Because it has a legal interest in Myanmar's compliance with its obligations under the Convention, The Gambia necessarily has standing to bring its claims.

18. Myanmar contends that its argument to the contrary is supported by the *travaux préparatoires*. But its counsel avoided recitation of anything from the *travaux*. There was a very good reason for this. The *travaux* tell a completely different story — that the intention of the parties was *not* to limit its protections to nationals of third States, but quite the opposite: to prevent a State from committing acts of genocide against its *own* nationals. Here are just two examples:

19. According to the representative of Greece, Mr. Spiropoulos:

> "Genocide could be committed against the nationals of the State itself, or against aliens. If a State ordered the destruction of a minority group which included aliens, the convention was superfluous, because the principles of international law would in any case have been violated. The nationals of the State itself needed protection, not the aliens."[15]

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[11] Provisional measures Order, p. 20, para. 52, emphasis added.

[12] *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Second Phase, Judgment, I.C.J. Reports 1966*, p. 18, para. 4.

[13] Provisional measures Order, p. 16, para. 39.

[14] CR 2022/3, p. 24, para. 32 (Talmon).

[15] UNGA, Sixth Committee, Third Session, 104th Meeting, A/C.6/SR.104, 13 Nov. 1948, reproduced in Abtahi & Webb, *The Genocide Convention: The Travaux Préparatoires* (Leiden, Martinus Nijhoff 2008), p. 1781 (Spiropoulos) (WOG, Ann. 11).

20. The representative of the United States, Mr. Maktos, expressed the same view:

> "The importance of the new convention lies in the fact that it established a new legal relationship between individuals and their governments, which, when the convention would come into force, would no longer be able to deal with their nationals as they pleased, but would be answerable for their actions under international law."[16]

21. On Friday, we heard the extraordinary argument, said to be drawn from the Nuremberg proceedings, that the 1948 Convention which followed is not aimed at holding States accountable, but only at "individual criminal responsibility for acts of genocide"[17]. Really? That proposition cannot be squared with the text of Article IX itself, which refers to "the responsibility of a State for genocide or for any of the other acts enumerated in article III"[18]. After the Court's Judgment on the merits in the *Bosnia* case[19], Myanmar's claim is even more hopeless. The nationality of claims simply has no role to play when assessing standing under the Genocide Convention.

22. Madam President, for the sake of completeness concerning Myanmar's second preliminary objection, I will address one final point. Last Monday, counsel for Myanmar questioned the standing of The Gambia to request that Myanmar make reparation to the victims of its genocidal acts[20]. That argument, sensibly, was not pursued on Friday. In any event, it has no merit, and can only arise, if at all, when the issue of liability for a violation of the 1948 Convention comes into play. It is not an issue that may be said to "possess an exclusively preliminary character"[21].

23. Madam President, Myanmar did nothing on Friday to improve its case on the third preliminary objection, either.

24. We have three comments on counsel's argument. First, Professor Kolb reaffirmed what he wrote in the 2009 OUP Commentary on the Genocide Convention. Since this is now a matter of agreement between the Parties, we will display it again:

> "*Article IX allows a unilateral seizing of the ICJ by any party to a dispute.* Moreover, it must be noticed that the compromissory clause in Article IX of the

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[16] ECOSOC, Ad hoc Committee on Genocide, Summary Record of the Twenty-Fourth Meeting on 28 April 1948, E/AC.25/SR.24 (12 May 1948), reproduced in Abtahi & Webb, *The Genocide Convention: The Travaux Préparatoires* (Leiden, Martinus Nijhoff 2008), p. 1026 (Maktos).

[17] CR 2022/3, p. 21, para. 14 (Talmon).

[18] Genocide Convention (1951), art. IX.

[19] *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. 113, para. 166.

[20] CR 2022/1, pp. 38-39, paras. 58-59 (Talmon).

[21] Rules of Court, Art. 79ter, para. 4.

> Genocide Convention contains no further limitations, e.g. as to previous negotiations. Such restrictive conditions may prompt delicate problems — all of which are avoided in the Genocide Convention. *Article IX of the Convention is in this respect a model of clarity and simplicity, opening the seizing of the Court as largely as possible*."[22]

25. To this, we simply add: QED, *quod erat demonstrandum*.

26. Professor Kolb apparently feels less of a sense of ownership over what he said about the *travaux préparatoires* in relation to Articles VIII and IX. This is our second comment. On Monday, he told the Court that the *travaux* "confirm" that Article VIII covers all principal United Nations organs, including the Court[23]. This statement was thoroughly refuted by my colleague, Ms Pasipanodya, on Wednesday, who showed you in some detail that the *travaux* fully demonstrated that Article VIII was expressly intended to apply only to the political organs of the United Nations, and not to the Court, whose jurisdiction and seisin were governed exclusively by Article IX[24], just as Professor Kolb wrote in his treatise, and just as the Court concluded in its provisional measures Order.

27. What was Professor Kolb's response to Ms Pasipanodya on Friday? "The *travaux* are just an ancillary source."[25] This is an old, but seldom successful, legal strategy: when your argument is exposed as fallacious, abandon it and claim it does not matter.

28. Our third comment relates to the one new argument that Professor Kolb made in the second round, a bold claim that is, in his words: "what I would like you to bear in mind above all from my two speeches to you"[26]. And what was this? That the Court must *not concern itself* with the "objectively correct" interpretation of Article VIII but, instead, it must ensure that it gives *effet utile* to Myanmar's reservation to Article VIII[27]. Here, he treats the text of Article VIII the same way as its *travaux*: he tells the Court it does not matter what the Article says, or what the drafters of the Article intended. The only thing that matters is what Myanmar intended by its reservation.

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[22] Robert Kolb, "The Compromissory Clause of the Convention" in Paola Gaeta (ed), *The UN Genocide Convention: A Commentary* (Oxford, OUP 2009), p. 420, emphasis added (WOG, Ann. 21).

[23] CR 2022/1, pp. 40-41, paras. 7-8 (Kolb).

[24] *Ibid.*, pp. 43-46, paras. 17-24 (Pasipanodya).

[25] CR 2022/3, p. 30, para. 19 (Kolb).

[26] *Ibid.*, p. 32, para. 26 (Kolb).

[27] *Ibid.*

29. Madam President, this is a remarkable argument to be made by a professor of international law: that the proper interpretation of Article VIII, and whether the Court is included within its scope, depends on how Burma understood the Article at the time it made its reservation. We had to reread the *compte rendu* several times to make sure that this was what Professor Kolb actually said, and it was. He really did argue that if Burma intended to remove itself from accountability to the Court, as well as the political organs of the United Nations, by means of its reservation to Article VIII, then this understanding must prevail, with the consequence that no State party may seise the Court with any claim against Myanmar under Article IX.

30. For Professor Kolb, what matters is the reserving State's understanding of the article to which it is making a reservation, rather than the meaning of that article itself, based on an ordinary reading of its text in light of its object and purpose. As a matter of law, such an argument, to be polite, is dubious. But it is also, in the circumstances presented here, entirely unsupported by the facts. There is absolutely no evidence that Burma contemporaneously understood itself to be including the Court in its reservation to Article VIII.

31. The only contemporaneous statement by Burma on its reservations to Article VII and Article VIII makes no mention of the Court[28]. Instead, as pointed out by Ms Pasipanodya, the contemporaneous statement records Burma's express support for "all the other" articles to which it did not enter reservations, which of course, includes Article IX[29]. Very conspicuously, Professor Kolb was completely silent about this.

32. Instead, he repeatedly implored the Court to ensure that Myanmar's reservation to Article VIII must not be without *effet utile*[30]. However, as Ms Pasipanodya showed you last Wednesday, and as more fully laid out in The Gambia's written submissions[31], the reservation has an effect without Professor Kolb's unsustainable interpretation. Burma's reservation to Article VIII limits the ability of the Security Council and other United Nations political organs to interfere with

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[28] United Nations, "Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide: Ratification with Reservations by Burma", doc. C.N.25.1956.Treaties, 29 Mar. 1956 (MG, Vol. II, Ann. 5).

[29] Myanmar, Pyithu Hluttaw, Motion for the Union Government to ratify, with two reservations, the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations in 1948, 2 Sept. 1955 (original and unofficial translation) (POM, Ann. 127, p. 873).

[30] CR 2022/3, pp. 26-28 and 32 (Kolb).

[31] CR 2022/2, p. 43, para. 15 (Pasipanodya); WOG, paras. 4.20-4.22.

the exercise of its domestic jurisdiction in relation to acts prohibited by the Convention. In addition, Burma's reservation to Article VIII was intended at the time to prevent those States, who were members of the Convention, but not Members of the United Nations, from being able to call upon competent United Nations organs to address acts of genocide related to Burma even in the absence of their United Nations membership. The Court's rejection of Myanmar's second preliminary objection would not in any way deprive the reservation of these effects.

33. On Friday, Professor Kolb completely ignored both our oral and written submissions on these points. His argument on *effet utile* is groundless both on the law and the facts.

34. Turning to Myanmar's fourth preliminary objection, we heard absolutely nothing new on Friday. There is very little else to say today. Can it seriously be . . .

[Technical issue]

The PRESIDENT: Mr. Reichler, we have lost your audio feed.

Now we hear you. . . . We have lost you again.

Mr. Reichler, why don't we take a five-minute break and we will see whether you and your colleagues can sort out the issue with our technical people.

The Court adjourned from 3.30 p.m. to 3.45 p.m.

The PRESIDENT: Please be seated. Mr. Reichler, may I suggest that you begin at paragraph 34 of your remarks?

Mr. REICHLER: Yes of course, Madam President. Thank you very much and this is where I begin my discussion of the fourth preliminary objection. And I will begin anew at that paragraph.

34. Turning to Myanmar's fourth preliminary objection, we heard absolutely nothing new on Friday. And there is thus very little else to say today. Can it seriously be doubted that a dispute existed between the applicant State and the respondent State at the time the Application was filed? Plainly, it cannot. On the facts, The Gambia directly accused Myanmar of acts of genocide against the Rohingya during the clearance operations of 2016-2018, relying explicitly on the two voluminous reports of the United Nations Fact-Finding Mission, as well as other compelling evidence. As well

as on other occasions, these accusations were made at the United Nations General Assembly and in a Note Verbale addressed directly to Myanmar[32]. Myanmar rejected these accusations publicly, and it denounced the two Fact-Finding Reports and their contents as false[33]. It is simply unarguable that there was no dispute between The Gambia and Myanmar over the facts.

35. On the law, The Gambia expressly accused Myanmar of violating its obligations under the Genocide Convention in carrying out genocidal acts, prohibited by the Convention, against the Rohingya. Myanmar publicly denied its responsibility for genocide. What else is required to show a dispute on the law?

36. On Friday, counsel for Myanmar again argued that 30 days was insufficient time for Myanmar to respond to The Gambia's Note Verbale accusing it of violating the Convention[34]. This is another untenable argument, especially in the context of a treaty that seeks to prevent the gravest of harms to human persons. Myanmar had previously, at the United Nations, rejected these same legal arguments in the face of accusations by The Gambia and others[35]. The existence of a bilateral dispute over whether Myanmar was in violation of the Convention was already clear even before The Gambia sent its Note.

37. Mr. Staker chose to ignore a very significant point that my colleague Mr. Suleman made last Wednesday: that Myanmar has admitted that it knew, at least a month in advance of The Gambia's Application, that it was coming[36]. This means that Myanmar was well aware that a legal dispute existed at the time it received the Note, if not even earlier, and it chose not to respond to it. Mr. Staker's refusal to engage with this fact is especially glaring, because the same point was

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[32] See UNGA, 73rd Session, 7th Plenary Meeting, "Address by Mr. Adama Barrow, President of the Republic of The Gambia", doc. A/73/PV.7, 25 Sept. 2018, p. 6 (MG, Vol. III, Ann.41); UNGA, 74th Session, 8th Plenary Meeting, "Address by Mrs. Isatou Touray, Vice President of the Republic of The Gambia", doc. A/74/PV.8, 26 Sept. 2019), p. 31 (MG, Vol. III, Ann. 51); Note Verbale from the Permanent Mission of the Republic of The Gambia to the United Nations to the Permanent Mission of the Republic of the Union of Myanmar to the United Nations, No. GPM/NV241/Vol. 1(LY), 11 Oct. 2019 (OG of 2 Dec. 2019, Ann. 1).

[33] Republic of the Union of Myanmar: State Counsellor Office. "Statement by H.E. U Kyaw Tint Swe, Union Minister for the Office of the State Counsellor and Chairman of the Delegation of the Union of Myanmar at the General Debate of the 73rd Session of the United Nations General Assembly, 28 Sept. 2018, p. 4 (WOG, Ann. 4).

[34] CR 2022/3, p. 17, para. 33 (Staker).

[35] UNGA, 74th Session, 12th Plenary Meeting, "Address by Mr. Kyaw Tint Swe, Union Minister for the Office of the State Counsellor of Myanmar", doc. A/74/PV.12, 28 Sept.2019, p. 24 (MG, Vol. III, Ann. 52).

[36] CR 2022/2, p. 55, para. 36 (Suleman).

made by The Gambia at the hearing on provisional measures[37], in its Memorial[38], and in its observations on preliminary objections[39]. Again, Myanmar goes absolutely silent when the evidence goes in a direction that undermines its arguments.

38. Madam President, there is no legal or factual basis for any of these preliminary objections. Every one of them is a sham. Professor Sands said on Wednesday that they were "concocted"[40], and at the risk of being called his "proxy", he was absolutely right. Myanmar is not the first respondent State, and will inevitably not be the last, to put forward groundless objections, not in the expectation that the Court will sustain any of them, but to extend the proceedings and delay the final judgment for as long as possible.

39. This might not be calamitous in a territorial or maritime boundary dispute where there is no threat of armed conflict between the two neighbouring States. But that is not what this case is about. As we pointed out on Wednesday, the United Nations Special Rapporteur has recently warned that the 600,000 Rohingya who remain in Myanmar "face [an] existential threat[]" and "remain at grave risk of mass atrocity crimes"[41]. The longer this case takes, the more extended and the graver the risks to their existence as a group will be.

40. The Gambia therefore urges the Court, after due deliberation, to issue its judgment on jurisdiction and admissibility as expeditiously as possible, and to set as early a date as practicable, consistent with the Court's rules and the fair administration of justice, for the submission of Myanmar's Counter-Memorial on the merits.

41. Madam President, Members of the Court, I thank you again for your kind courtesy and patient attention, and I ask that you call the Agent of The Gambia to the podium for The Gambia's concluding remarks and final submissions.

The PRESIDENT: I thank Mr. Reichler, and I shall now give the floor to the Agent of The Gambia, H.E. Mr. Dawda Jallow. You have the floor, Your Excellency.

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[37] CR 2019/20, p. 27, para. 24 (d'Argent).

[38] MG, para. 2.18.

[39] WOG, para. 5.27.

[40] CR 2022/2, p. 62, para. 16 (Sands).

[41] UN Special Rapporteur September 2021 Report, Ann. 1, paras. 16 and 20.

Mr. JALLOW:

AGENT'S CLOSING STATEMENT

1. Madam President, honourable judges, it is an honour to address you again as the Agent of the Republic of The Gambia.

2. As a State party to the Genocide Convention, The Gambia came to this Court to protect its rights under the Convention to ensure that the *erga omnes partes* obligations undertaken by Myanmar under the Convention are fulfilled. Those obligations — not to commit genocide, to prevent genocide, and to punish genocide — are owed to The Gambia and all other States parties to the Genocide Convention.

3. It was The Gambia alone that filed the Application before this Court. The Gambia has been open about its dispute with Myanmar. We openly raised this dispute at the United Nations General Assembly. We sent a Note Verbale to Myanmar to clearly confirm the nature of this dispute and put Myanmar on notice. Myanmar officials publicly confirmed that they were indeed on notice and expected the case a month before it was filed. We have openly welcomed support for this effort from other States and international organizations.

4. Madame President, honourable judges, Myanmar has no reservation to Article IX of the Convention, which governs your seisin and jurisdiction. Having consented to that provision of the Convention upon ratification, Myanmar cannot escape it now.

5. The Gambia urges this Court, as the guardian of our moral and legal compass under the Genocide Convention, to reject all of Myanmar's preliminary objections, and to advance this case to the merits phase.

6. Madam President, I shall now read out The Gambia's final submissions:

> "In accordance with Article 60 of the Rules of Court, for the reasons explained in our Written Observations of 20 April 2021 and during these hearings, the Republic of The Gambia respectfully asks the Court to:
>
> (a) Reject the Preliminary Objections presented by the Republic of the Union of Myanmar;
>
> (b) Hold that it has jurisdiction to hear the claims presented by The Gambia as set out in its Application and Memorial, and that those claims are admissible; and
>
> (c) Proceed to hear those claims on the merits."

7. Madam President, honourable judges, I thank you for your kind attention. I would like also to take this opportunity to thank all members of the Registry, Court staff and security, and the interpreters for their dedicated work throughout the hearings. Thank you.

The PRESIDENT: I thank the Agent of The Gambia. The Court takes note of your final submissions that you have just read on behalf of The Gambia.

This brings us to the end of the hearings on the preliminary objections raised by the Respondent in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar)*. I thank the representatives of the Parties for the assistance they have given to the Court by their presentations in the course of these hearings. In accordance with practice, I shall request the Agents of the Parties to remain at the Court's disposal to provide any additional information the Court may require.

The Court will now retire for deliberation. The Agents of the Parties will be notified in due course as to the date on which the Court will deliver its Judgment. Since the Court has no other business before it today, the sitting is now closed.

The Court rose at 3.55 p.m.

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