INTERNATIONAL COURT OF JUSTICE

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)*

WRITTEN OBSERVATIONS OF THE REPUBLIC OF SLOVENIA

23 September 2025

INTRODUCTION

1. In accordance with the Court's Order of 25 July 2025 in relation to the intervention of the Republic of Slovenia ("Slovenia"), pursuant to Article 63 of the Statute of the Court, in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Slovenia submits hereafter its Written Observations.

2. Slovenia has requested to intervene as a Party to the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"). These Written Observations state Slovenia's interpretation of some of the provisions of the Genocide Convention which are at stake in the dispute before the Court. In conformity with Article 63 of the Statute and the Court's reminder in its Order of 25 July 2025,[1] Slovenia will limit itself to presenting its own views concerning "the construction of provisions of the Convention on the Prevention and Punishment of the Crime of Genocide" without taking a position on the merits of the dispute submitted to the Court by The Gambia and Myanmar.

3. As noted in Section B of Slovenia's Declaration of intervention, "[t]he interpretation of virtually all the substantial provisions of the Convention is in question in the present case", "in particular Articles I, III, IV, V and VI." In paragraphs 40 to 63 of its Declaration of intervention, Slovenia has already explained the main elements of its interpretation of these provisions and will refrain from burdening the Court by repeating them *verbatim*. It maintains its views in their entirety and will only complement them in view of the new elements that have come to its knowledge since then. It will focus on the very definition of genocide as stated in Article II of the 1948 Convention, first addressing the *dolus specialis* **(I.)** and then the *actus reus* **(II)**.

[1] Order, p. 13, para. 64(1); see also p. 13, para. 61.

I. THE *MENS REA* OF GENOCIDE – ARTICLE II OF THE CONVENTION (*chapeau*)

A. Definition of the *dolus specialis* – "...with intent to destroy..."

1. The so-called 'only reasonable inference' test

4. As provided by Article II of the Genocide Convention, "genocide" means one of the acts mentioned in the said article of the Convention "with intent to destroy" a particular group of persons. This specific intent, often referred to as *dolus specialis*, refers to the particular purpose of the acts committed by the perpetrator of a genocide. As noted by the Court and acknowledged by both The Gambia and the Republic of the Union of Myanmar (thereafter: "Myanmar"),[2] the *dolus specialis* "will seldom be expressly stated" by the perpetrator State and "may be established by indirect evidence, i.e., deduced or inferred from certain types of conduct."[3]

5. According to the Court,

> "The *dolus specialis*, the specific intent to destroy the group in whole or in part, has to be convincingly shown by reference to particular circumstances, unless a general plan to that end can be convincingly demonstrated to exist; and for a pattern of conduct to be accepted as evidence of its existence, it would have to be such that it could only point to the existence of such intent."[4]

6. Then, the Court further explained in the *Croatia Genocide* case that

> "to state that, 'for a pattern of conduct to be accepted as evidence of ... existence [of genocidal intent], it [must] be such that it could only point to the existence of such intent' amounts to saying that, in order to infer the existence of *dolus specialis* from a pattern of conduct, it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question."[5]

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[2] Memorial of The Gambia (thereafter: "GM"), p. 83, para. 4.46; Rejoinder of the Republic of the Union of Myanmar (thereafter: "MR") p. 91, para. 4.33.

[3] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *ICJ Reports 2015*, p. 65, para. 143. See also *Prosecutor V. Zdravka Tolimir* (Case No. IT-05-88/2-T), Trial Chamber Judgment, 12 December 2012, pp. 328-329, para. 785.

[4] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *ICJ Reports 2007*, pp. 196-197, para. 373.

[5] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *ICJ Reports 2015*, p .67, para. 148.

Moreover, as Myanmar notes,[6] in the *Croatia Genocide* case, "[t]he Court found 'that there was 'a pattern of conduct that consisted, from August 1991, in widespread attacks by the JNA and Serb forces on localities with Croat populations in various regions of Croatia, according to a generally similar *modus operandi*'"[7] and, despite this, the Court concluded that Croatia had not established that the only reasonable inference that could be drawn from the pattern of conduct it relied upon was the intent to destroy, in whole or in part, the Croat group."[8]

7. According to Myanmar, it follows that, in order to deduce the existence of the *dolus specialis* from certain types of conduct, "[i]t is not sufficient that a factual proposition is a reasonable conclusion available from that evidence; it must be the *only* reasonable conclusion that can be inferred from the evidence."[9] Myanmar then added in its Rejoinder that "[a]s a matter of law, it may well be possible for an individual or a State to act with a genocidal intent (intent A), while simultaneously seeking to achieve an ulterior purpose that has nothing to do with genocide (intent or motive B)."[10] Myanmar further alleges that "[a]s long as the third inference [which means the possibility that a State is acting with a different intent than a genocidal intent] is one of the possible inferences that could reasonably be drawn from the evidence as a whole, then the existence of a genocidal intent will not be the only reasonable inference that can be drawn."[11]

8. As emphasized above,[12] generally speaking, neither States nor individuals, expressly assert that they are acting with genocidal intent. The fact that a State maintains that it is acting with an intent other than genocidal intent cannot serve as a shield against any possible demonstration of genocidal intent. This would, for example, be the case of a State acting in the context of an armed conflict and invoking it as an excuse to kill indiscriminately civilians or combatants; it would also be the case of a State claiming to act in the framework of an anti-terrorist operation but assimilating a group, or a

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[6] See MR, p. 96, para. 4.49.
[7] *Ibid.*, fn 426: "[*Croatia Genocide* case], p. 122, paras. 415-416."
[8] *Ibid.*
[9] Counter-Memorial of the Republic of the Union of Myanmar (thereafter: "MCM"), p. 135, para. 4.35. Italics in the original.
[10] MR, p. 95, para. 4.44.
[11] *Ibid.*, para. 4.46.
[12] See *supra*, para. 4.

substantial part thereof, to the so-called terrorists. In such instances, rather than mutually exclusive, the intentions – either to kill indistinctively combatants and civilians or a group assimilated to terrorists – would demonstrate the existence of *dolus specialis*.

9. As affirmed by Judge Cançado Trindade in one of his individual opinions:

> "One cannot characterize a situation as one of armed conflict, so as to discard genocide. The two do not exclude each other. In this connection, it has been pertinently warned that perpetrators of genocide will almost always allege that they were in an armed conflict, and their actions were taken 'pursuant to an ongoing military conflict'; yet, 'genocide may be a means for achieving military objectives just as readily as military conflict may be a means for instigating a genocidal plan.'"[13]

10. It must also be observed that the Convention is not merely devoted to the *punishment* of the crime of genocide but also to its *prevention*: it cannot be expected that one should wait for the completion of a proven genocide as a condition for invoking the Convention. In the same spirit, as provided in Article III.d) "*Attempt* to commit genocide" shall be punishable." Therefore, the existence of "intentions," "motives," or "motivations" other than a genocidal intent does not, as such, preclude the existence of *dolus specialis*. The existence of such other "intentions," "motives," or "motivations" cannot constitute a distraction preventing the demonstration of a genocidal intent.

2. Evidence of genocide based on a pattern of conduct

11. When courts and tribunals are called to determine the existence of a genocidal intent, they can infer it from the cumulative impact of various acts and policies, including those that might, in isolation, appear to serve other purposes.[14] It is of utmost importance to keep in mind that, as The Gambia suggests, "a genocidal intent can be inferred not only from the number of persons killed, but also from other features such as a common *modus operandi*."[15] This is the only possible interpretation of Article II

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[13] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *ICJ Reports 2015*, Dissenting Opinion of Judge Cançado Trindade, 3 February 2015, p. 254, para. 144 quoting "R. Park, 'Proving Genocidal Intent: International Precedent and the ECCC Case 002', 63 *Rutgers Law Review* (2010), pp. 169-170, and cf. pp. 150-152". See also in the same case, Separate Opinion of Judge Bhandari, pp. 441-442, para. 50 and in the present case *the* Declaration of intervention of Ireland, para. 36.

[14] On all these aspects, Slovenia joins the position of the Democratic Republic of Congo as exposed in its In Declaration of intervention, notably at p. 2, para. 7, p. 4, para. 13, pp. 14-15, para. 53 and p. 19, paras. 68 *et seq.*

[15] MR, p. 96, para. 4.49 cross-referring to G.R, pp. 29-30, para. 3.20.

which defines genocide as constituted by five different acts when committed with the intent to destroy a protected group.

12. As rightly observed in the Joint declaration of intervention by six States in the present case, "the Court stated that the 'only reasonable inference' test should be used with respect to drawing an inference of specific intent from a 'pattern' of conduct only. This cannot be the threshold of the test when other methods of inference are also present, such as when examining the scope and severity of a perpetrator's conduct to evidence specific intent."[16]

13. More generally speaking, even when the evidence of a pattern of conduct is at stake, Slovenia respectfully suggests that, if interpreted in the very restrictive interpretation of the Court's previous case-law adopted by Myanmar, the criterion of "only reasonable inference" is not appropriate. Such an interpretation would make it impossible, in practice, to prove the existence of genocide. In this respect, Slovenia shares the view expressed by the six jointly intervening States according to which

> "because direct evidence of genocidal intent will often be rare, it is crucial for the Court to adopt a balanced approach that recognizes the special gravity of the crime of genocide, without rendering the threshold for inferring genocidal intent so difficult to meet so as to make findings of genocide near-impossible."[17]

14. As has been noted, "to say that the standard of proof 'may depend on the gravity of the acts alleged' necessarily requires the standard of proof to be determined in relation to the nature and content of those particular rights and obligations."[18] Often rightly defined as "the crime of crimes", genocide is the ultimate crime, described in the Preamble of the 1948 Convention as being "contrary to the spirit and aims of the United Nations and condemned by the civilized world". In its celebrated 1951 Advisory Opinion the Court considered that the international crime of genocide involves "a denial of the right of existence of entire human groups, a denial which shocks the conscience

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[16] ICJ, *Application of Convention on Prevention and Punishment of Crime of Genocide (The Gambia v. Myanmar)*, Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom, 15 November 2023, p. 13, para. 53.
[17] *Ibid.*, p. 12, para. 51.
[18] *Ibid.*, Order, Admissibility of the Declarations of Intervention, Declaration of Judge Cleveland, p. 2, para. 6. See also the abundant case-law cited in footnote 6 therein.

of mankind and results in great losses to humanity".[19] This being the case, it is difficult to argue that a presumption of "non-commitment" could prevail if a clearly established pattern of conduct reasonably leads to the conclusion that genocidal acts mentioned in Article II are committed, or, as provided for in Article III, attempted or incited to be committed.

15. In other words, prioritizing the elimination of every other conceivable inference over a global understanding of the perpetrator's behaviour, would fundamentally undermine the Convention's object and purpose to prevent and punish genocide. To accept that, in cases of doubt (even minor doubt) about whether an act constitutes genocide, the negative presumption prevails, would be to run the risk of failing to punish an abhorrent crime.

16. At this point, Slovenia, as a State that emerged from the dissolution of the former Yugoslavia, wishes to make a specific remark. Slovenia understands the Court's hesitation to recognize the existence of a genocidal project targeting the Bosnian people as a whole, based on the evidence then presented. However, in light of both the new evidence now available and the evolution of the case law, Slovenia considers that, retrospectively, the Court's approach was overly cautious. According to Slovenia, when establishing the existence of genocide – both in terms of the *actus reus* and the *dolus specialis* – the key factor is not a quantitative measure but a pattern of conduct driven by the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, regardless of the extent to which such a plan was carried out. Slovenia recalls that it has consistently issued warnings about atrocities committed during the armed conflict surrounding the dissolution of the former Yugoslavia, including genocide. Furthermore, political statements made by leaders of Republika Srpska at the time clearly indicated an intention to render certain geographic areas ethnically 'clean'. In Slovenia's view, such declarations should be regarded as a strong indication of the *mens rea* of the crime, specifically the *dolus specialis* required for genocide.

[19] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 28 May 1951, *ICJ Reports 1951*, p. 23.

B. The concept of 'group' as a subject of genocide – "... in whole or in part, a national, ethnical, racial or religious group, as such..."

1. "A group"

17. According to Article II of the Genocide Convention, one of the acts listed in the same article has to be committed with intent to destroy, "in whole or in part, a national, ethnical, racial, or religious group" to establish the existence of a genocide.

18. Despite Myanmar's assertions,[20] in determining the existence of a protected group under the Genocide Convention, the possibility to retain either an objective or a subjective approach is generally agreed.[21] The objective evidence of the existence of a "group" includes the demonstration of common characteristics, notably nationality, language, religion, or shared hereditary traits. The demonstration of the existence of a group through subjective elements, on the other hand, includes self-identification by individuals as belonging to a group, or the perception by third parties, notably the perpetrators of the genocide, that individuals belong to a group.

19. Various objective factors attest the existence of the Rohingya as a group within the meaning of the Genocide Convention. According to Myanmar and regarding the demonstration of an ethnical group, it is not established "that the 'Rohingya' have a language and a culture that is distinct from any other language or culture in the world."[22] However, a linguistic or cultural particularity, distinct from those of all other ethnic groups, is not necessary to establish the existence of a particular ethnic group: it suffices to demonstrate that its members "share a common language or culture"[23]. In this regard, it appears of little relevance to deconstruct a language or a culture in order to infer similarities that would serve to deny the specificities of that language or culture. French, just like Italian, Romanian or Spanish, are languages with Latin roots – yet this does not make them one and the same language. Likewise, certain aspects of one culture may be found in other cultures. What defines the specificity of a culture, and thus of an ethnic

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[20] See below, para. 17.

[21] See GM, pp. 45-46, fn. 122.

[22] MCM, p. 543, para. 13.9. This is contrary to a preceding statement made by Myanmar, see GM, p. 52, para. 3.13, mentioning in footnote 150: "Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020, para. 35."

[23] *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), para. 513.

group, is the combination of distinct cultural elements – some of which may be partially present in other groups – within a single culture shared by a group of individuals.

20. The Rohingya provide a relevant example of the convergence of such elements. Thus:

- The Rohingya speak a common and distinct language;[24]

- They also share a common culture; thus, for example, poems and songs, "'tarana' and 'hawla' play a significant role in preserving the Rohingya collective memory and identity';[25] and

- The great majority of the Rohingya are Muslim.[26]

21. The subjective approach is also widely accepted for establishing the existence of a "group". While the ICJ did not have to address this question in the 2007 *Genocide* case,[27] different international courts and tribunals have used this method to identify a "group" within the meaning of the Genocide Convention.[28] In its Counter-Memorial and in its Rejoinder, Myanmar professes that "[t]hese cases are concerned with the definition of genocide in the Statutes of the ICTY and ICTR respectively, and are not reliable guides to the interpretation of the Genocide Convention."[29] The fact that these interpretations were given in connection with those instruments is not a basis for

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[24] GM, pp. 48-49, paras. 3.6-3.7 ; Translators Without Borders, The Language Lesson: What We've Learned About Communicating With Rohingya Refugees (November 2018), available at https://translatorswithoutborders.oGR/wpcontent/uploads/2018/12/TWB_Bangladesh_Comprehension_Study_Nov2018.pdf, p. 10.

[25] Reply of The Gambia (thereafter: "GR"), p. 12, para. 2.8.

[26] *Ibid.*, p. 15, para. 2.12.

[27] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *ICJ Reports 2007*, p. 124, para. 191: "the Parties also discussed the choice between subjective and objective approaches to the definition. The Parties essentially agree that international jurisprudence accepts a combined subjective-objective approach. The issue is not in any event significant on the facts of this case and the Court takes it no further."

[28] GM, fn 122: "*Bosnia v. Serbia*, Judgment (2007), p. 124, para. 191. This is consistent with the jurisprudence of the ICTY and the ICTR. In *Prosecutor v. GeoGRes Anderson Nderubumwe Rutaganda*, the ICTR held that membership in a protected group is essentially 'a subjective rather than an objective concept', but the subjective perspective must necessarily interact with the objective approach, where relevant evidence and the specific social and cultural context are scrutinized in a case-by-case analysis. *Prosecutor v. GeoGRes Anderson Nderubumwe Rutaganda*, ICTR-96-3-T, Trial Judgment (6 December 1999), paras. 56-58. Since *Rutaganda*, the combined approach, also defined as a 'hybrid formulation', has been consistently followed by the ICTR and ICTY. See *Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-T, Trial Judgment (7 June 2001), para. 65; *Prosecutor v. Juvénal Kajelijeli*, ICTR-98-44A-T, Trial Judgment and Sentence (1 December 2003), para. 811; *Prosecutor v. Sylvestre Gacumbitsi*, ICTR-2001-64-T, Trial Judgment (17 June 2004), para. 254; *Prosecutor v. Radislav Krstić*, IT-98-33-T, Trial Judgment (2 August 2001), paras. 556 557."

[29] MR, p. 450, para. 13.35. See also MCM, p. 126-127, paras. 4.6-4.7.

dismissing their relevance. Significantly, Myanmar itself does refer to the decisions of international criminal tribunals in support of its interpretation of the Convention.[30]

22. The definition of genocide set out in these instruments is identical to that contained in Article II of the Genocide Convention. Moreover, the Court has taken into account the interpretation adopted by these jurisdictions. Confronted with the same argument made by Serbia, it stated that

> "[it] will nonetheless take account, where appropriate, of the decisions of international criminal courts or tribunals, in particular those of the ICTY, as it did in 2007, in examining the constituent elements of genocide in the present case. If it is established that genocide has been committed, the Court will then seek to determine the responsibility of the State, on the basis of the rules of general international law governing the responsibility of States for internationally wrongful acts."[31]

23. In the present case, the case-law of the ICTR and the ICTY is directly relevant to determine whether a group, according to the meaning of the Genocide Convention, can be identified using subjective elements. Self-identification by individuals as belonging to a group must then be considered in determining the existence of a group within the meaning of the Genocide Convention. Moreover, when the perpetrator of a genocide deliberately targets individuals because of their membership in a group, even without naming it, or because of characteristics shared by these individuals, this is sufficient to establish the existence of a group within the meaning of Article II of the Genocide Convention.[32]

24. Both hypotheses are present in the case of the Rohingya. On the one hand, the Rohingya identify themselves as such.[33] And, on the other hand, Myanmar does not recognize the Rohingya as a group and denies them any legal status within the country.[34]

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[30] See e.g. *ibid.*, pp. 127-128, paras. 5.37-5.39 or pp. 213-214, para. 7.116.

[31] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *ICJ Reports 2015*, p. 61, para. 129.

[32] See ICTY, Judgment, 14 December 1999, *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10, pp. 22-23, pars. 70-71; ICTR, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Judgment, No. ICTR-95-1-T, 21 May 1999, pp. 44-45, para. 98.

[33] GR, pp. 12 and 13, para. 2.10. See also GM, pp. 50-51, para. 3.10 mentioning in footnote 148: "Republic of the Union of Myanmar, Final Report of Inquiry Commission on Sectarian Violence in Rakhine State (8 July 2013), p. 55. GM, Vol. VI, Annex 161."

[34] UN Human Rights Council, Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2 (17 September 2018), pp. 25-26, para. 85 and p. 100, para. 406, note 906.

Paradoxically, however, this very treatment, along with the systematic oppression and persecution specifically targeting them,[35] shows that the Rohingya are in fact regarded by Myanmar as a distinct group[36] and there is no doubt who were members of the targeted group. As noted by the ICTY and fully transposable in the present case, "the stigmatisation of a group as a distinct national, ethnical or racial unit by the community [...] allows it to be determined [as a] targeted population [which] constitutes a national, ethnical or racial group in the eyes of the alleged perpetrators."[37]

2. "In whole or in part"

25. According to Myanmar, "[a]n intent *merely* to destroy a substantial number of members of a protected group (as opposed to an intent to destroy the protected group, as such) will therefore not satisfy the *dolus specialis* of genocide [...T]he commission of acts within Article II of the Convention with intent to destroy *only* a substantial number of members of the protected group is not genocide within the meaning of the Convention."[38] Besides the cynicism of such an assertion, this view is not tenable. Indeed, "when part of the group is targeted, that part must be significant enough for its destruction to have an impact on the group as a whole."[39] In the 2007 Judgment on the *Bosnian Genocide* case the Court had no hesitation to endorse the ICTY Appeals Chamber Judgment in the *Krstic* case[40] according to which "'the destruction of such a sizeable number of men, one fifth of the overall Srebrenica community, would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica'").[41] To be noted: the "Srebrenica community" was only (40,000 individuals) a very small part of the more global community of Bosnian Muslims (or "Bosniaks") (1.4 million people at the time).[42]

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[35] *Ibid.*, pp. 111-149, pars. 458-623.
[36] *Ibid.*, p. 353, paras. 1391. See also GM, Vol. II, Annex 40.
[37] ICTY, Judgment, 14 December 1999, *The Prosecutor v. Goran Jelisić*, Case No. IT-95-10, pp. 22, par. 70. See also ICTR, *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Judgment, No. ICTR-95-1-T, 21 May 1999, pp. 44-45, para. 98.
[38] MR, pp. 59-60, para. 4.26 – italics added.
[39] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *ICJ Reports 2007*, p. 125, para. 193.
[40] *Prosecutor v. Radislav Krstić*, IT-98-33-A, Appeals Chamber Judgment, 19 April 2004, pp. 10-11, paras. 28-33.
[41] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *ICJ Reports 2007*, p. 125, para. 193.
[42] See below paras. 38-39.

26. *Mutatis mutandis*, this reasoning is transposable to the present case: "9,425 and 13,759 Rohingya lost their lives in Myanmar between 25 August and 24 September 2017, of whom between 6,759 and 9,867 died from violence. At least 730 of these were Rohingya children under the age of five"[43] and "detailed casualty lists, compiling information directly from family members [...] 2,157 people in detention and up to 1,834 victims of rape."[44] And, even more telling, according to reliable sources: between 25 August and 27 October 2017, nearly 600,000 Rohingya fled Myanmar to seek refuge in Bangladesh (as more than 200,000 thousand had previously done.[45] As of 31 August, this figure stood, according to Bangladeshi data used by HCR, at approximatively 1,156,000 Rohingya refugees.[46] Such a pattern of genocidal acts clearly demonstrates that the *dolus specialis* characterizes a general intent directed to the Rohingya whole group.

[43] UN Human Rights Council, Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2 (17 September 2018), p. 242, para. 1007. These figures are very conservative as made clear in clear in the same Report, pp. 242-243, paras. 1007-1008.
[44] *Ibid.*, p. 242, para. 1006.
[45] IOM, Two Months on from Outbreak of Violence, Number of Rohingya Refugees in Bangladesh Reaches 817,000, 27 October 2017, available at: https://www.iom.int/news/two-months-outbreak-violence-number-rohingya-refugees-bangladesh-reaches-817000?utm_source=chatgpt.com.
[46] HCR, Operational Data Portal, Bangladesh, last updated 31 August 2025, available at: https://data.unhcr.org/en/country/bgd

II. THE *ACTUS REUS* OF GENOCIDE – ARTICLE II OF THE CONVENTION, (paras. (a) to (e))

27. The text of Article II leaves no room for ambiguity: each of the five genocidal acts listed in that provision is part of the general category "genocide" whether considered together or in isolation. Slovenia will not discuss paragraph (e) since it does not seem to be at stake in the present case. It examines below the four other acts listed in paragraphs (a) to (d) which define more precisely the use of the word "genocide" in the Convention. However, paragraphs (b) and (c) will be discussed jointly since the elements of both crimes are hardly distinguishable.

A. Article II(a): "killing members of the group;"

1. Deaths in armed conflicts

28. In accordance with Article II, "killing members of the group" constitutes a material act that may allow the qualification of genocide, regardless of the context in which it takes place. As the Court has clarified, in addition to the *dolus specialis*, each of the material acts must be carried out with "mental elements."[47] The acts must therefore be carried out intentionally, or, as the ILC stated and the Court reiterated, must by their "nature [be] conscious, intentional or volitional acts".[48]

29. In the 2015 *Croatia Genocide* Judgment, the Court clarified the qualification of "killing" as a genocidal act in situations of armed conflict:

> "There can be no doubt that, as a general rule, a particular act may be perfectly lawful under one body of legal rules and unlawful under another. Thus it cannot be excluded in principle that an act carried out during an armed conflict and lawful under international humanitarian law can at the same time constitute a violation by the State in question of some other international obligation incumbent upon it.

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[47] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *ICJ Reports 2007*, p. 121, para. 186.

[48] *Ibid.*, referencing to "Commentary on Article 17 of the 1996 Draft Code of Crimes against the Peace and Security of Mankind, ILC Report 1996, *Yearbook of the International Law Commission*, 1996, Vol. II, Part Two, p. 44, para. 5".

> However, it is not the task of the Court in the context of the counter- claim to rule on the relationship between international humanitarian law and the Genocide Convention.[49]

30. The Court went on to note, however, that

> "if one takes the view that the attacks were exclusively directed at military targets, and that the civilian casualties were not caused deliberately, one cannot consider those attacks, inasmuch as they caused civilian deaths, as falling within the scope of Article II (a) of the Genocide Convention"[50]

Myanmar infers from this quote that

> "the [Genocide] Convention does not apply to the legitimate killing of insurgents or terrorists in battle in an armed conflict or in a law enforcement operation, and does not extend to civilian deaths caused by such operations, if they are exclusively directed at legitimate targets, and the civilian casualties are not caused deliberately."[51]

31. This reading unnecessarily broadens the Court's rationale. Indeed, the Court acknowledged that not all deaths in armed conflicts qualify as 'killing' under Article II(a) of the Genocide Convention, but it did not rule out the possibility that acts carried out during hostilities could still be considered genocidal acts when accompanied by the necessary intent. Likewise, activities carried out against those whom the State considers to be terrorists, and even if they are indeed proven to be terrorists, do not preclude such acts from being regarded as genocidal. The Court's explanation cannot be interpreted as granting States a broad exemption from the application of the Convention in situations involving armed conflict or law enforcement against terrorist activities because it was limited to the particulars of the counterclaim that was brought before it.

32. In the present case – which does not concern a counterclaim but a core issue of the substantive case – Myanmar notably justifies its use of force on the ground as a counter-terrorist operation. In its Counter-Memorial, Myanmar asserts, *inter alia*, that it "carried out counter-terrorism operations in northern Rakhine State in order to neutralise ARSA terrorists and its supporters, and not in order to destroy the Bengali population."[52]

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[49] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *ICJ Reports 2015*, p. 138, para. 474.
[50] *Ibid.*.
[51] MR, p. 579, para. 16.19.
[52] MCM, p. 269, para. 8.2.

33. As a reminder, international humanitarian law (IHL) applies to the use of force in a context of armed conflict, whether international or non-international. Under IHL, belligerents are bound by the principles of distinction, proportionality, and precaution.[53] According to the principle of the distinction, "[t]he parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians."[54] The principle of proportionality provides that "[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited."[55] The principle of precaution means that "[i]n the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects."[56] During the hostilities, all States remain bound by the obligation to protect the civilian populations and particularly minority and protected groups. Failure to observe these provisions is clearly a war crime. But it can be much more and amount to genocide.

34. If a State has deliberately committed one of the acts set out in Article II of the Genocide Convention in violation of these basic principles of customary international law, such acts — constituting war crimes — may also amount to *actus rei* within the meaning of the Genocide Convention. The voluntary omission of these principles, by killing indiscriminately combatants and civilians for example, could also reveal the hidden objective of these acts, which might then be the *mens rea* qualifying them as

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[53] ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports 1996*, p. 257, para. 78.
[54] Regarding the customary nature of this principle, see ICRC, *Practice relating to Rule 1., The Principle of Distinction between Civilians and Combatants*, available at: https://ihl-databases.icrc.org/en/customary-ihl/v2/rule1. See also *Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, of 8 June 1977, Article 13(2): The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
[55] *Ibid., Practice relating to Rule 14., Proportionality in Attack*, available at: https://ihl-databases.icrc.org/en/customary-ihl/v2/rule14.
[56] *Ibid., Rule 15. Principle of Precautions in Attack*, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15. See also *Practice relating to Rule 15.*, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule15.

genocidal acts. The omission to respect basic principles of IHL may contribute to establishing the genocidal intent of the authors of these crimes.

35. Although Myanmar defends itself from targeting the 'Bengali population',[57] the use of the term 'supporters' alongside with 'terrorists' throughout Myanmar's submissions highlights a broad and indiscriminate use of force against the Rohingya. The term 'supporters' appears 102 times in Myanmar's Counter-Memorial and 73 times in its Rejoinder. Yet, Myanmar does not define who these 'supporters' are. At times, according to Myanmar, these supporters resort to force alongside the 'terrorists'.[58] Other times, these supporters are merely 'supporters', and Myanmar does not mention any involvement in hostilities on their part.[59] They are however indiscriminately targeted by Myanmar's operations, without it being mentioned that they take part in hostilities. For example, Myanmar concedes, referring to casualty numbers in Min Gya, that "the number of those killed in these locations numbered only 'scores', and this figure presumably would also include ARSA *combatants* and supporters"[60] making thus itself a distinction between the combatants, who are legitimate targets during hostilities, and "supporters" who are not. Rather than targeting "terrorists", these operations appear to be used as a means to kill Rohingya.[61] It is then apparent that the alleged counter-terrorist operation conducted by Myanmar constitutes both a violation of IHL and international human rights law, thereby reinforcing the conclusion that they qualify as genocidal acts.

2. Numeric threshold – The scale of killings

36. According to Myanmar, "killings of members of a protected group will not satisfy the *actus reus* of genocide under Article II (a) unless the killings are part of a wider campaign that is capable of bringing about the destruction of the protected group as such."[62]

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[57] Myanmar does not use the term 'Rohingya' in view of its obstinate refusal to recognize the Rohingya as an ethnic minority.
[58] MR, p. 47, para. 3.19 or p. 243, para. 8.54.
[59] See for example, MCM, p. 324, paras. 9.76-9.77.
[60] MCM, p. 292, para. 8.68. Italics added.
[61] GR, pp. 170-173, paras. 7.19-7.22. See also See also Second Expert Report of Michael A. Newton (May 2024), paras. 11-18. GR, Vol. IV, Annex 67.
[62] MR, p. 105, para. 4.72.

37. In support of its position, Myanmar relies on the 2015 Judgment in the *Croatia Genocide* case. In that case, the Court interpreted paragraph (b) of Article II of the Genocide Convention, which provides that acts "[c]ausing serious bodily or mental harm to members of the group" can constitute an *actus reus* within the meaning of the Convention. In this respect, "Croatia argue[d] that there is no need to show that the harm itself contributed to the destruction of the group [and] Serbia, on the other hand, contend[ed] that the harm must be so serious that it threatens the group with destruction".[63] The Court decided that "the ordinary meaning of 'serious' [as used in Article II(b)] is that the bodily or mental harm referred to in subparagraph (b) of that Article must be such as to contribute to the physical or biological destruction of the group, in whole or in part". It is to be noted that the Court did not refer to the word 'killing' in sub-paragraph (a) of the same article since, by definition, killing is likely to cause or contribute to the destruction of the group.

38. As noted by Myanmar, for reaching this interpretation, the Court relied on the statement of the representative of the United Kingdom during the negotiations of the Convention, stating that "grievous" harms would not constitute an *actus reus* under the Genocide Convention[64]. In his statement, the representative of the United Kingdom stated that "[i]t would not be appropriate to include, in the list of acts of genocide, acts which were of little importance in themselves and were not likely to lead to the physical destruction of the group" but he was specifically referring to the mention of 'grievous harms' and this assertion was confined to subparagraph (b) of the current Article II of the Convention.[65] In the remainder of his statement, the representative of the United Kingdom went on to observe that "the word 'killing' [mentioned in a distinct subparagraph (a) of the Genocide Convention] had a much wider meaning than the word 'murder'. If, for example, a Government destroyed a group, that might not be 'murder'

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[63] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *ICJ Reports 2015*, p. 69, para. 157.

[64] MR, pp. 105-106, para. 4.72 referring in fn. 468 to: "*Croatia Genocide* case, pp. 69-70, para. 157".

[65] United Nations, Official Documents of the General Assembly, Part I, Third Session, Sixth Committee, Minutes of the Eighty-First Meeting, UN doc. A/C.6/SR.81, p. 175: "Mr. FITZMATJRICE (United Kingdom) explained that his delegation, feeling that the wording of sub-paragraphs 2 and 3 was rather vague, proposed that sub-paragraph 2 should be replaced by the following text: 'causing grievous bodily harm to members of the group', and that at the end of sub-paragraph 3 the words "'intended and likely to cause' should be substituted for the words 'aimed at causing' [*AJC.6/222*]. It would not be appropriate to include, in the list of acts of genocide, acts which were of little importance in themselves and were not likely to lead to the physical destruction of the group."

according to some national laws, but it would be 'killing'" – without ever suggesting that a 'killing' or a 'murder' would be of too little importance to contribute to the destruction of a group.

39. Still in support of its position, Myanmar upholds that "[u]nder the Elements of Crimes of the ICC, the *actus reus* for all types of genocidal acts requires that '[t]he conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction'".[66] Again, Myanmar's quotation of the ICC Elements of Crimes concerns Article 6(b) which deals specifically with "Genocide by causing serious bodily or mental harm" and not by killing. These are two distinct categories of acts that are liable to constitute genocide. Moreover, Article 6(a) of the ICC Elements of crimes, which provides elements regarding "Genocide by killing", runs counter to Myanmar's argument that there is a numerical threshold of killings required to establish the existence of genocide, since it clearly stipulates that if "[t]he perpetrator killed[67] one or more persons", such an act may qualify as genocide.

40. Myanmar also quotes the 2007 *Genocide* Judgment[68] where the Court explained that it

> "did not find that the intent was to destroy the protected group of 1.4 million Bosnian Muslims as a whole. Rather, the Court found that the intent was to destroy a 'part' of that protected group. The relevant 'part' consisted of 'the Bosnian Muslims of Srebrenica, or the Bosnian Muslims of Eastern Bosnia'.[69] That part of the protected group consisted of only some 40,000 people.[70] The 7,000 killings thus constituted about a fifth of the part of the protected group that was intended to be destroyed."[71]

Myanmar deduces from this paragraph that:

> "The *Bosnia Genocide* case is thus consistent with the proposition that killings of members of a protected group (or part of a protected group) will not satisfy the *actus reus* of genocide under Article II (a) unless the killings are of themselves capable, or are part of a wider campaign that is

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[66] MCM, p. 142, para. 4.58 referring in fn. 533 to: "International Criminal Court, Elements of Crimes, MCM, Vol. VI, Annex 258."
[67] Footnote 2: "The term 'killed' is interchangeable with the term 'caused death'."
[68] MR, p. 107, para. 4.76.
[69] Footnote 474: "*Bosnia Genocide* case, p. 166, para. 296."
[70] Footnote 475: "*Ibid.*"
[71] Footnote 476: "*Ibid.*, p. 164, para. 293: '... one fifth of the overall Srebrenica community ...'".

capable, of bringing about the destruction of the protected group (or part of the protected group) as such."[72]

41. This is a misreading of the 2007 *Genocide* Judgment. In the passage referred to by Myanmar, the Court was verifying the existence of a *dolus specialis*. While Myanmar expressly refers itself to paragraphs 293 and 296 of that decision, it conspicuously omits to mention paragraph 295 in which the Court concluded that "the necessary intent was not established until after the change in the military objective and after the takeover of Srebrenica, on about 12 or 13 July."[73] Myanmar also overlooks paragraph 297 which concludes from the observations made in paragraph 296 that "the acts committed at Srebrenica falling within Article II (a) and (b) of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide".[74] Similarly, as early as 2003, the ICTR considered that, "there is no numeric threshold of victims necessary to establish genocide."[75]

42. Apart from being morally distasteful, this discussion about the number of deaths required to constitute genocide is all the more inappropriate that the killing of members of the protected group is only one among four acts that may constitute genocide, as listed in Article II of the 1948 Convention.

B. Article II (b): "Causing serious bodily or mental harm to members of the group" and (c): "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part"

43. Slovenia observes that The Gambia and Myanmar appear to be in broad agreement on the interpretation of paragraphs (b) and (c) of Article II of the Convention. In particular, the *dolus specialis* being established, they agree that:

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[72] MR, p. 107, para. 4.77.
[73] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *ICJ Reports 2007*, p. 165, para. 295.
[74] *Ibid.*, p. 166, para. 297.
[75] ICTR, Judgment, 15 May 2003, *The Prosecutor v. Laurent Semanza*, No. ICTR-97-20-T, p. 94, para. 316. See also ICTR, Judgment, 17 June 2004, *The Prosecutor v. Sylvestre Gacumbitsi*, No. ICTR-2001-64-T, p. 61, para. 253; ICTR, Judgment, 28 April 2005, *Prosecutor v. Mikaeli Muhimana,* ICTR-95-1B-T, p. 92, para. 498; ICJ, *Application of Convention on Prevention and Punishment of Crime of Genocide (Gambia v. Myanmar),* Joint Declaration of Intervention of Canada, Denmark, France, Germany, the Netherlands and the United Kingdom, 15 November 2023, p. 14, para. 60.

- Genocide encompasses the deliberate infliction of serious bodily or mental harm on civilians, even in the context of alleged counter-insurgency or armed conflict;[76]

- Genocide encompasses the deliberate infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part;[77]

- Genocide encompasses the imposition of measures intended to prevent births, even when they do not target all members of the protected group;[78]

- Measures intended to prevent births encompass both a physical and a mental elements.[79]

Slovenia also agrees on these four points.

44. However, Slovenia notes that, even though Myanmar's Rejoinder addresses these paragraphs (b) and (c) only superficially, it partially contradicts The Gambia's interpretation and leaves certain aspects unclear. Notably, concerning these two provisions, Myanmar sticks to its general theory that the *dolus specialis* of genocide would be satisfied only when the intent to destroy the protected group, as such, is established.[80] It maintains that "a 'part' of protected group within the meaning of the chapeau to Article II of the Convention must be an identifiable part of the overall protected group"[81] and that the *actus reus* of such crimes "cannot be satisfied by acts which are *incapable of bringing about the destruction of the group as such*, and which do not contribute to such destruction."[82] "The infliction of 'conditions of life' on certain members of the group only would therefore not fall within" paragraph. (c) of Article II of the Convention.[83] For reasons already exposed, Slovenia cannot subscribe to such limitations.

45. First, like all the acts enumerated in Article II, those mentioned under (b) and (c) are characterized as genocide when they are committed with the intent to destroy, in whole or in part the members of a protected group. This is true whether the victims are the group itself, part of it or an individual. This is particularly flagrant concerning

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[76] GR, p. 30, para. 3.21; MR, p. 110, para. 4.86.
[77] *Ibid.*, p. 31, para. 3.22; MR, p. 111, para. 4.91.
[78] *Ibid.*, pp. 31-32, para. 3.24; MR, p. 112, para. 4.96.
[79] *Ibid.*, p. 32, para. 3.24; MR, pp. 112-113, para. 4.97
[80] See above, para. 25.
[81] MR, p. 111, para. 4.89.
[82] MCM, p. 141, para. 4.57 – italics added; see also p. 142, para. 4.60.
[83] *Ibid.*, p. 144, para.4.68; see also, e.g., para. 4.77.

paragraph (b) which expressly concerns acts "causing serious bodily or mental harm to *members of the group*", but, as shown above, it is also true for all other acts mentioned in Article II.[84]

46. Second, when mentioning paragraphs (b) and (c) as well as paragraph (d) and the *chapeau* of Article II, Myanmar deliberately misquotes the text of the Convention. Instead of citing the actual texts of these provisions, ("acts committed *with intent* to destroy", "*calculated to bring about* its physical destruction" or "intended to prevent", Myanmar conveniently uses a much more demanding expressions: "acts *such as to contribute to* the physical or biological destruction of the group..."[85], "capable of bringing about its physical destruction"[86] According to the text of the treaty provisions, the question is not whether the incriminated measures are such as being effectively "contributing to" or "capable of"... but whether they were *intended to do so*. There is more than just a slight difference here.

C. Article II (d): "Imposing measures intended to prevent births"

47. Article II(d) of the Genocide Convention provides that acts "[i]mposing measures intended to prevent births within the group" can constitute an *actus reus* within the Convention. This includes sexual violence, whether rape or forced sterilisation.

48. For sexual violence to constitute an *actus reus* within the meaning of the Convention, "it is necessary that the circumstances of the commission of those acts, and their consequences, are such that the capacity of members of the group to procreate is affected."[87] Sexual violence can hinder future births both because of its physical consequences on the victims' bodies and their capacity to procreate and because of the impact it has on the way the victims are perceived within their own group with, in both cases, the consequences this may have on the psyche of the victims who no longer wish to have children. As noted by the ICTY, "rape can be a measure intended to prevent

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[84] See above, paras. 25-26.
[85] See e.g.: MCM, para. 4.57, 13.39, 13.45, 13.46, 13.47; MR, paras. 1.11, 1.13, 4.87,13.66 or 16.19.
[86] See e.g.: MCM, paras. 4.55, 4.57, 4.60, 4.62, 4.77, 13.39, 13.45, 13.49, 13.54 or 13.57: MR, paras.1.11, 1.13, 4.22, 4.73, 4.77, 4.101, 13.79, 16.19 or 16.20 and note 396. These systematic distortions can hardly be considered to be the result of coincidence.
[87] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, *ICJ Reports 2015*, p. 69, para. 157.

births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate."[88] Moreover, these acts must be "perpetrated in order to prevent births within the group."[89]

49. According to Myanmar, "Article II (d) will not apply if the acts or measures in question do not result in a lowering of the birth rate to such an extent that the population of the protected group will decline at a rate that threatens the very existence of the group."[90] Still according to Myanmar,

> "this requirement necessarily follows from the very nature of genocide itself, which involves the destruction of a human group, as such. If a measure has the effect of reducing the rate by which a group grows, but still leaves the group with a positive rate of growth, then the measure is inherently incapable of leading to the destruction of the group, as such."[91]

50. No jurisdiction has ever considered that the absence of such a demographic decline would preclude the application of Article II(d) of the Convention. Such an interpretation of Article II(d) would be contrary to the letter of this very Article, which mentions "[i]mposing measures intended to prevent births within the group" – but does not mention the 'total extinction' of the births within the group. Furthermore, a policy of reducing births can be pursued in the long term without necessarily leading immediately to a decline in births within a protected group. This, coupled with the intention to destroy that group in whole or in part, such a conduct should be qualified as a genocide, even if the population of the protected group does not decline. Here again, what must prevail is the intent.

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[88] *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), para. 508.
[89] *Ibid.*, p. 117, para. 399.
[90] MR, p. 113, para. 4.99. See also MCM, p. 147, para. 4.77.
[91] *Ibid.*, p. 113, para. 4.100

CONCLUSION

51. There is no doubt that *dolus specialis* is the hallmark of genocide, distinguishing it from other crimes under international law: once the intention to destroy, in whole or in part, a group protected by the 1948 Convention, as defined in the chapeau of Article II, is established or can be inferred from a pattern of conduct by the State accused of it, genocide has occurred. This qualification applies to each of the acts listed in Article II. This is obviously all the truer when several of these acts are committed with such intent. This characterization also applies to the various punishable acts listed in Article III to the extent that inasmuch the conspirator in genocide, the inciter or the accomplice "cannot be treated as [such] unless at the least that organ or person acted knowingly, that is to say, in particular, was aware of the specific intent (*dolus specialis*) of the principal perpetrator."[92]

52. There is no doubt that defining the *dolus specialis* required to classify a given act as genocide is difficult and that, in each individual case, careful consideration must be given to the facts of the case, their context, and their pattern. To do so, it is essential to avoid the inflation of words, to which politicians and the media too often succumb, and to preserve the specificity of this "crime of crimes." At the same time, it is essential not to confine genocide and its various manifestations, as listed in Article II of the 1948 Convention, to such a narrow definition that it would render this legal category useless in practice.

53. For the reasons briefly outlined in paragraph 16 above, Slovenia is particularly committed to maintaining a sound approach that strikes a balance between the laxity of politically and ideologically inspired classifications and the danger of an overly restrictive interpretation. In particular, crimes against humanity, which differ from genocide essentially in terms of their *mens rea*, should be given their rightful place. But genocide must also have its proper place and qualify extreme – but unfortunately very real -situations that correspond to the definition given in Article II of the Convention.

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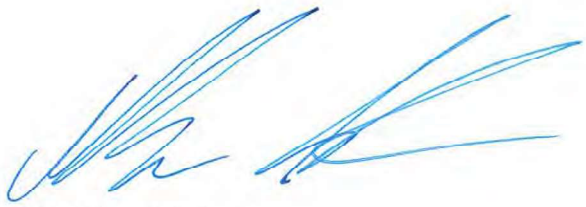
[92] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *ICJ Reports 2007*, p. 218, para 421.

54. When it was negotiated, its drafters had in mind primarily the absolute horror of the Shoah. But the definition of genocide cannot be limited to this horrific precedent: that would condemn it to being nothing more than a retrospective exercise in definition – it is to be hoped that such a tragedy will never happen again even if, unfortunately, this cannot be completely ruled out.

55. The case brought before the Court by The Gambia should provide an opportunity for the principal judicial organ of the United Nations to provide these essential clarifications. This is particularly necessary today, as situations that could be classified as genocide are multiplying.

The Hague, 23 September 2025



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