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*CR 2026/6*

**International Court  
of Justice**

**Cour internationale  
de Justice**

**THE HAGUE**

**LA HAYE**

**YEAR 2026**

*Public sitting*

*held on Thursday 15 January 2026, at 10 a.m., at the Peace Palace,*

*President Iwasawa presiding,*

*in the case concerning Application of the Convention on the Prevention and Punishment  
of the Crime of Genocide (The Gambia v. Myanmar: 11 States intervening)*

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**VERBATIM RECORD**

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**ANNÉE 2026**

*Audience publique*

*tenue le jeudi 15 janvier 2026, à 10 heures, au Palais de la Paix,*

*sous la présidence de M. Iwasawa, président,*

*en l'affaire relative à l'Application de la convention pour la prévention et la répression  
du crime de génocide (Gambie c. Myanmar ; 11 États intervenants)*

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**COMPTE RENDU**

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*Present:*      President Iwasawa  
                 Vice-President Sebutinde  
                 Judges Tomka  
                         Abraham  
                         Nolte  
                         Charlesworth  
                         Brant  
                         Gómez Robledo  
                         Cleveland  
                         Aurescu  
                         Tladi  
                         Hmoud  
Judges *ad hoc* Pillay  
                         Kress  
  
                 Registrar Gautier

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*Présents* : M. Iwasawa, président  
M<sup>me</sup> Sebutinde, vice-présidente  
MM. Tomka  
Abraham  
Nolte  
M<sup>me</sup> Charlesworth  
MM. Brant  
Gómez Robledo  
M<sup>me</sup> Cleveland  
MM. Aurescu  
Tladi  
Hmoud, juges  
M<sup>me</sup> Pillay  
M. Kress, juges *ad hoc*  
  
M. Gautier, greffier

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***The Government of the Republic of The Gambia is represented by:***

HE Mr Dawda Jallow, Attorney General and Minister of Justice, Republic of The Gambia,

*as Agent;*

Ms Yasmin Al Ameen, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Mr Pierre d'Argent, Full Professor, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

Ms Diem Huong Ho, Attorney at Law, Foley Hoag LLP, member of the Bars of England and Wales and the State of New York,

Ms Jessica Jones, Barrister at Law, Matrix Chambers, London, member of the Bar of England and Wales,

Mr Andrew Loewenstein, Attorney at Law, Foley Hoag LLP, member of the Bar of the Commonwealth of Massachusetts,

Mr Chalis Combeh Njai, Principal State Counsel, Attorney General's Chambers, Ministry of Justice, Republic of The Gambia,

Ms Mariama Ngum, State Counsel, Attorney General's Chambers, Ministry of Justice, Republic of The Gambia,

Ms Tafadzwa Pasipanodya, Attorney at Law, Foley Hoag LLP, member of the Bars of the State of New York and the District of Columbia,

Mr Paul S. Reichler, Attorney at Law, 11 King's Bench Walk Chambers, member of the Bars of the Supreme Court of the United States and the District of Columbia,

Mr Philippe Sands, KC, Professor of International Law, University College London, Barrister at Law, 11 King's Bench Walk Chambers,

Mr M. Arsalan Suleman, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

*as Counsel and Advocates;*

Ms Alejandra Torres Camprubí, Partner at Torres Iuris, member of the Madrid and Paris Bars, Adjunct Professor of International Environmental Law, IE University,

Ms Sun Young Hwang, Attorney at Law, Foley Hoag LLP,

*as Counsel;*

HE Mr Pa Musa Jobarteh, Ambassador of the Republic of The Gambia to the Kingdom of Belgium and Permanent Mission to the European Union,

HE Mr Habib T. Jarra, Chargé d'affaires, Embassy of the Republic of The Gambia in the Kingdom of Saudi Arabia and Acting Permanent Representative of the Republic of The Gambia to the Organisation of Islamic Cooperation,

***Le Gouvernement de la République de Gambie est représenté par :***

S. Exc. M. Dawda Jallow, *Attorney General* et ministre de la justice de la République de Gambie,

*comme agent ;*

M<sup>me</sup> Yasmin Al Ameen, avocate au cabinet Foley Hoag LLP, membre du barreau de l'État de New York,

M. Pierre d'Argent, professeur ordinaire à l'Université catholique de Louvain, membre de l'Institut de droit international, cabinet Foley Hoag LLP, membre du barreau de Bruxelles,

M<sup>me</sup> Diem Huong Ho, avocate au cabinet Foley Hoag LLP, membre du barreau d'Angleterre et du pays de Galles, et du barreau de l'État de New York,

M<sup>me</sup> Jessica Jones, avocate, Matrix Chambers (Londres), membre du barreau d'Angleterre et du pays de Galles,

M. Andrew Loewenstein, avocat au cabinet Foley Hoag LLP, membre du barreau du Commonwealth du Massachusetts,

M. Chalis Combeh Njai, *Principal State Counsel*, cabinet de l'*Attorney General*, ministère de la justice de la République de Gambie,

M<sup>me</sup> Mariama Ngum, *State Counsel*, cabinet de l'*Attorney General*, ministère de la justice de la République de Gambie,

M<sup>me</sup> Tafadzwa Pasipanodya, avocate au cabinet Foley Hoag LLP, membre des barreaux de New York et du district de Columbia,

M. Paul S. Reichler, avocat au cabinet 11 King's Bench Walk, membre des barreaux de la Cour suprême des États-Unis d'Amérique et du district de Columbia,

M. Philippe Sands, KC, professeur de droit international au University College London, avocat au cabinet 11 King's Bench Walk (Londres),

M. M. Arsalan Suleman, avocat au cabinet Foley Hoag LLP, membre des barreaux du district de Columbia et de l'État de New York,

*comme conseils et avocats ;*

M<sup>me</sup> Alejandra Torres Camprubí, associée au cabinet Torres Iuris, membre des barreaux de Madrid et de Paris, professeure associée en droit international de l'environnement à l'IE University,

M<sup>me</sup> Sun Young Hwang, avocate au cabinet Foley Hoag LLP,

*comme conseils ;*

S. Exc. M. Pa Musa Jobarteh, ambassadeur de la République de Gambie auprès du Royaume de Belgique et chef de la mission permanente auprès de l'Union européenne,

S. Exc. M. Habib T. Jarra, chargé d'affaires de l'ambassade de la République de Gambie au Royaume d'Arabie saoudite et représentant permanent par intérim de la République de Gambie auprès de l'Organisation de la coopération islamique,

Mr Kalifa Singhateh, First Secretary, Embassy of the Republic of The Gambia in the Kingdom of Belgium,

Mr Yousuf Ali,

Ms Noor Begum,

Mr Mohammed Eliyas,

Ms Fatema Fatema,

Mr Nay San Lwin, Free Rohingya Coalition,

Mr Sayedul Karim, Rohingya Justice Initiative,

Mr Maung Tun Khin, Burmese Rohingya Organisation UK,

Mr Matthew Smith, Fortify Rights,

*as Members of the Delegation;*

Mr Khairul Amin, Interpreter,

Ms Amina Chaudary,

Ms Maisha Farzana, Interpreter,

Ms Rahima Khatun, Interpreter,

Ms Nancy Lopez, Foley Hoag LLP,

Mr Himel Biswas Manna, Interpreter,

Mr Jonathan Mercer,

Ms Jennifer Schoppmann, Foley Hoag LLP,

*as Assistants.*

***The Government of the Republic of the Union of Myanmar is represented by:***

HE Mr Ko Ko Hlaing, Union Minister for the Ministry (2) of the President's Office of the Republic of the Union of Myanmar,

*as Agent;*

HE Ms Thi Da Oo, Union Minister for Legal Affairs and Attorney General of the Republic of the Union of Myanmar,

*as Alternate Agent;*

Mr Christopher Staker, 39 Essex Chambers, member of the Bar of England and Wales,

*as Lead Counsel and Advocate;*

M. Kalifa Singhateh, premier secrétaire, ambassade de la République de Gambie au Royaume de Belgique,

M. Yousuf Ali,

M<sup>me</sup> Noor Begum,

M. Mohammed Eliyas,

M<sup>me</sup> Fatema Fatema,

M. Nay San Lwin, Free Rohingya Coalition,

M. Sayedul Karim, Rohingya Justice Initiative,

M. Maung Tun Khin, Burmese Rohingya Organization UK,

M. Matthew Smith, Fortify Rights,

*comme membres de la délégation ;*

M. Khairul Amin, interprète,

M<sup>me</sup> Amina Chaudary,

M<sup>me</sup> Maisha Farzana, interprète,

M<sup>me</sup> Rahima Khatun, interprète,

M<sup>me</sup> Nancy Lopez, cabinet Foley Hoag LLP,

M. Himel Biswas Manna, interprète,

M. Jonathan Mercer,

M<sup>me</sup> Jennifer Schoppmann, cabinet Foley Hoag LLP,

*comme assistants.*

***Le Gouvernement de la République de l'Union du Myanmar est représenté par :***

S. Exc. M. Ko Ko Hlaing, ministre de l'Union pour le ministère 2 auprès du bureau du président de la République de l'Union du Myanmar,

*comme agent ;*

S. Exc. M<sup>me</sup> Thi Da Oo, ministre des affaires juridiques et *Attorney General* de la République de l'Union du Myanmar,

*comme agent suppléant ;*

M. Christopher Staker, 39 Essex Chambers, membre du barreau d'Angleterre et du pays de Galles,

*comme conseil principal et avocat ;*

Mr Sam Blom-Cooper, 25 Bedford Row Chambers, member of the Bar of England and Wales,

Ms Leigh Lawrie, KC, Advocate, Faculty of Advocates, Edinburgh,

Mr Stefan Talmon, Professor of International Law, University of Bonn, Twenty Essex Chambers, member of the Bar of England and Wales,

Ms Alina Miron, Professor of International Law, member of the Paris Bar, Founding Partner of FAR Avocats,

Mr David Hooper, KC, 25 Bedford Row Chambers, member of the Bar of England and Wales,

Ms Chiara Cordone, 39 Essex Chambers, member of the Bar of England and Wales,

*as Counsel and Advocates;*

Ms Khin Thidar Aye, Chargée d'affaires a.i./Head of Mission, Embassy of the Republic of the Union of Myanmar in Brussels,

Ms Khin Oo Hlaing, Legal Co-ordinator, Member of the Advisory Board to the Acting President, Chairman of the State Security and Peace Commission of the Republic of the Union of Myanmar,

Mr Myo Win Aung, Deputy Judge Advocate General, Ministry of Defence, Republic of the Union of Myanmar,

Mr Tun Tun Win, Head of the Law and Regulation Department, Ministry of Defence, Republic of the Union of Myanmar,

Mr Than Htwe, Director-General, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Mr Zaw Zaw Htwe, Deputy Director-General, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Mr Kyaw Thu Hein, Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms Saw Yu Nwe, Director, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Mr Ngwe Zaw Aung, Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Mr Thant Sin Oo, Minister Counsellor, Embassy of the Republic of the Union of Myanmar in Brussels,

Mr Myat Nyi Nyi Win, Deputy Director, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Ms Cho Nge Nge Thein, Deputy Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms May Myat Noe Naing, Deputy Director, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

M. Sam Blom-Cooper, 25 Bedford Row Chambers, membre du barreau d'Angleterre et du pays de Galles

M<sup>me</sup> Leigh Lawrie, KC, avocate, *Faculty of Advocates*, Édimbourg,

M. Stefan Talmon, professeur de droit international à l'Université de Bonn, Twenty Essex Chambers, membre du barreau d'Angleterre et du pays de Galles,

M<sup>me</sup> Alina Miron, professeure de droit international, membre du barreau de Paris, associée fondatrice du cabinet FAR Avocats,

M. David Hooper, KC, 25 Bedford Row Chambers, membre du barreau d'Angleterre et du pays de Galles,

M<sup>me</sup> Chiara Cordone, 39 Essex Chambers, membre du barreau d'Angleterre et du pays de Galles,

*comme conseils et avocats ;*

M<sup>me</sup> Khin Thidar Aye, chargée d'affaires par intérim/cheffe de mission, ambassade de la République de l'Union du Myanmar à Bruxelles,

M<sup>me</sup> Khin Oo Hlaing, coordonnatrice juridique, membre du comité consultatif auprès du président par intérim, présidente de la commission d'État de sécurité et de paix de la République de l'Union du Myanmar,

M. Myo Win Aung, juge-avocat général adjoint, ministère de la défense, République de l'Union du Myanmar,

M. Tun Tun Win, chef du département des affaires juridiques et réglementaires, ministère de la défense, République de l'Union du Myanmar,

M. Than Htwe, directeur général, ministère des affaires étrangères, République de l'Union du Myanmar,

M. Zaw Zaw Htwe, directeur général adjoint, ministère des affaires juridiques, République de l'Union du Myanmar,

M. Kyaw Thu Hein, directeur, ministère des affaires juridiques, République de l'Union du Myanmar,

M<sup>me</sup> Saw Yu Nwe, directrice, ministère des affaires étrangères, République de l'Union du Myanmar,

M. Ngwe Zaw Aung, directeur, ministère des affaires juridiques, République de l'Union du Myanmar,

M. Thant Sin Oo, ministre-conseiller, ambassade de la République de l'Union du Myanmar à Bruxelles,

M. Myat Nyi Nyi Win, directeur adjoint, ministère des affaires étrangères, République de l'Union du Myanmar,

M<sup>me</sup> Cho Nge Nge Thein, directrice adjointe, ministère des affaires juridiques, République de l'Union du Myanmar,

M<sup>me</sup> May Myat Noe Naing, directrice adjointe, ministère des affaires étrangères, République de l'Union du Myanmar,

Mr Yan Naing Khant, Counsellor, Embassy of the Republic of the Union of Myanmar in Brussels,

Mr Nyein Chan Maung, Staff Officer (Grade 2), Office of the Adjutant General, Ministry of Defence,  
Republic of the Union of Myanmar,

Mr Biak Chan, Assistant Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms M Ja Dim, Assistant Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms Hsu Ma Ma Hein, First Secretary, Embassy of the Republic of the Union of Myanmar in Brussels,

Ms May Oo Kyinnar Naing, First Secretary, Embassy of the Republic of the Union of Myanmar in  
Brussels,

Ms Yu Za Na Khin Zaw, First Secretary, Embassy of the Republic of the Union of Myanmar in  
Brussels,

Mr Wai Yan Min Myint, Assistant Director, Ministry of Foreign Affairs, Republic of the Union of  
Myanmar,

Mr Myo Myint Aung, Staff Officer, General Administration Department, Ministry of Home Affairs,  
Republic of the Union of Myanmar,

Ms Mary Lobo, Legal Assistant,

Ms Capucine Hamon, *avocate à la Cour*, member of the Paris Bar, Associate, FAR Avocats,

*as Members of the Delegation.*

---

- M. Yan Naing Khant, conseiller, ambassade de la République de l'Union du Myanmar à Bruxelles,
- M. Nyein Chan Maung, officier d'état-major G2, bureau de l'adjudant général, ministère de la défense, République de l'Union du Myanmar,
- M. Biak Chan, sous-directeur, ministère des affaires juridiques, République de l'Union du Myanmar,
- M<sup>me</sup> M Ja Dim, sous-directrice, ministère des affaires juridiques, République de l'Union du Myanmar,
- M<sup>me</sup> Hsu Ma Ma Hein, première secrétaire, ambassade de la République de l'Union du Myanmar à Bruxelles,
- M<sup>me</sup> May Oo Kyinnar Naing, première secrétaire, ambassade de la République de l'Union du Myanmar à Bruxelles,
- M<sup>me</sup> Yu Za Na Khin Zaw, première secrétaire, ambassade de la République de l'Union du Myanmar à Bruxelles,
- M. Wai Yan Min Myint, sous-directeur, ministère des affaires étrangères, République de l'Union du Myanmar,
- M. Myo Myint Aung, officier d'état-major, département de l'administration générale, ministère de l'intérieur, République de l'Union du Myanmar,
- M<sup>me</sup> Mary Lobo, assistante juridique,
- M<sup>me</sup> Capucine Hamon, avocate à la Cour, membre du barreau de Paris, collaboratrice, cabinet FAR Avocats,

*comme membres de la délégation.*

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The PRESIDENT: Please be seated. The sitting is open. The Court meets this morning to hear the remainder of the first round of oral argument of The Gambia.

I now call on Ms Jessica Jones to address the Court. You have the floor, Madam.

Ms JONES:

### **I. OTHER BREACHES OF THE GENOCIDE CONVENTION**

1. Mr President, distinguished Members of the Court. It is an honour to appear before you today to continue The Gambia's presentation. You have heard over the last three days the evidence and legal submissions underpinning The Gambia's case that Myanmar committed genocide against the Rohingya. I will address you this morning on the other breaches of the Genocide Convention which Myanmar committed in the course of its genocidal campaign. My focus will be on its violations of the duties to prevent and punish genocide, and on its responsibility for other punishable acts in Article III.

2. Mr President, the suite of obligations contained in the Genocide Convention are together intended to ensure the effective protection of groups against genocide. Each of the codified duties is important in ensuring that the framework created by the Convention is robust; each of the duties constitutes recognition by the contracting parties that, for the Convention to be effective, it needs also to target acts ancillary to genocide, and it needs also to require that States create effective domestic frameworks and take protective steps against genocide. Thus, by Article I of the Convention, States parties "undertake to prevent and to punish" genocide, obligations which, the Court confirmed in the *Bosnia Judgment*<sup>1</sup>, also place States under an implied duty not to commit genocide themselves.

3. Article III then sets out punishable acts under the Convention. These include, in subparagraph (a), genocide, and also, in subparagraphs (b)-(e), "[c]onspiracy to commit genocide", "[d]irect and public incitement to commit genocide", "[a]ttempt to commit genocide" and "[c]omplicity in genocide". Next, Article IV contains a duty to punish the perpetrators of genocide irrespective of their status as "constitutionally responsible rulers, public officials or private

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<sup>1</sup> *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 (I), p. 113, para. 166.

individuals”, a provision which supplements the overarching duty to punish in Article I. And by Article V, contracting parties “undertake to enact . . . the necessary legislation to give effect to the provisions of the . . . Convention” and to “provide effective penalties” for its breach. Article VI then completes the set of obligations relied on by The Gambia, by imposing a duty to try perpetrators of genocide, either in the domestic courts or through a relevant international tribunal.

4. Each of these additional obligations is central to the Convention, to its achievement of its purpose and its function as a whole, and they are also central to this Application before you. Their importance has been underscored by many of the interveners, in particular, by the six joint interveners, by Ireland and by the Maldives. The evidence in this case shows that, alongside its commission of genocide, Myanmar committed material breaches of these other provisions of the Convention, too.

5. In particular, the evidence shows that Myanmar is internationally responsible for violations of the duties to prevent and punish genocide; that it conspired to commit genocide; and that it directly and publicly incited genocide.

6. I will address each of these breaches in turn, beginning with the duties to prevent and punish genocide, as contained in particular in Article I.

### **1. The duties to prevent and punish genocide**

7. Mr President, the Court’s *Bosnia* Judgment makes clear that Article I creates its own substantive obligations — distinct from those which follow in the remainder of the Convention<sup>2</sup> — and its two facets, to prevent and to punish, are “distinct yet connected” and “must be considered in turn” rather than in composite<sup>3</sup>. I follow this guidance by turning first to the substance of the duty to prevent, which I can take shortly.

#### **A. The duty to prevent**

8. As the Court observed in the *Bosnia* Judgment, “logic dictates that a State cannot have satisfied an obligation to prevent genocide in which it actively participated”<sup>4</sup>. That is what happened

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<sup>2</sup> *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 (I), p. 113, para. 165.

<sup>3</sup> *Ibid.*, p. 219, para. 425.

<sup>4</sup> *Ibid.*, p. 201, para. 382.

here. Because Myanmar committed genocide, it obviously failed to prevent genocide. Because genocide was committed by its own State organs, it obviously had the capacity to influence their conduct, it had knowledge that genocide was going to be committed and, far from taking any reasonable steps to prevent genocide, it deliberately endorsed and perpetrated it. Myanmar also had relevant knowledge of the commission of genocidal acts by ethnic Rakhine civilians, and yet, far from taking steps to prevent them, Myanmar incited them to join its genocidal campaign. There has been a flagrant breach of the duty to prevent.

## **B. The duty to punish**

9. Alongside and subsequent to that violation, Myanmar has also violated the duty to punish genocide, as contained in Article I, and supplemented by the content of Articles IV, V and VI of the Convention. This collection of obligations together places on States parties clear duties to respond in the face of genocidal acts, by way of prevention and punishment, and to create domestic frameworks that inhibit and deter the commission of genocide.

10. The duty to punish arises notwithstanding that Myanmar was itself the perpetrator of genocide; it nevertheless had and has a free-standing obligation to punish the individual perpetrators, including its highest military commanders, who conspired to commit genocide and who ordered and orchestrated its implementation.

11. The Court explained this in the *Bosnia* Judgment, saying that:

“It is perfectly possible for a State to incur responsibility at once for an act of genocide . . . , and for the breach by the State of its obligation to punish the perpetrator of the act: these are two distinct internationally wrongful acts . . . and both can be asserted . . . as bases for [the State’s] international responsibility.”<sup>5</sup>

12. That is precisely The Gambia’s case: that Myanmar is internationally responsible for genocide and, simultaneously, for breaches of the duty to punish genocide.

13. The question that arises, therefore, is what is a State required to do in order to discharge the duty to punish? This question is answered in detail by the joint interveners, and The Gambia agrees with their position: the duty to punish must be “interpreted as an obligation to investigate and

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<sup>5</sup> *Ibid.*, p. 201, para. 383.

prosecute [people] accused of genocide, and to punish persons found to be guilty of genocide”<sup>6</sup>. The duty imposes an investigatory obligation because this is a necessary step to imposing lawful punishments. As with all provisions of the Convention, the content of the duty to punish must be interpreted consistently with the rules of international law, so that fair trial guarantees are implicit in it, and independent investigations are thus required to provide a proper basis for genuine and impartial trials capable of imposing lawful punishments<sup>7</sup>. As the Court explained in the *Belgium v. Senegal* case, there in the context there of the obligation to inquire about acts of torture: while the choice of means for conducting a criminal inquiry remains in the hands of the State concerned, the State is obligated to proceed effectively with adequate investigations<sup>8</sup>. An equivalent requirement is imposed by the duty to punish in the Genocide Convention.

14. Myanmar suggests in its Counter-Memorial<sup>9</sup> that the duty to punish is an obligation of conduct, and not of result. The intervention of the Maldives helpfully explains why Myanmar is wrong about this<sup>10</sup>, and The Gambia fully agrees with their analysis. A respondent State cannot avoid responsibility for breach of the duty to punish by claiming that such failure arises from external factors which have impeded its ability to punish perpetrators. If the evidence shows it has in fact failed to punish them, either for genocide or for the other genocidal acts described in Article III, it has breached its obligation to punish, irrespective of the reasons it may give for that failure. This may, however, be an arid debate in the circumstances of this case: because although Myanmar asserts that the duty to punish is an obligation of conduct and not result, it does not point to any steps that it says it took to discharge this obligation; the essence of its case is simply that no genocide occurred and that therefore no duty to punish arises.

15. Members of the Court, The Gambia agrees that the duty to punish only arises if genocide has been committed, but the duty to *investigate*, which forms an essential part of the duty to punish,

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<sup>6</sup> Written Observations of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (3 March 2025), para. 67.

<sup>7</sup> *Ibid.*, para. 69.

<sup>8</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), p. 454, para. 86.

<sup>9</sup> CMM, para. 16.40 (2).

<sup>10</sup> Written Observations of the Republic of Maldives (28 February 2025), para. 30.

arises as soon as there are reasonable grounds to believe that genocidal acts have been committed on a State's territory<sup>11</sup>. The Gambia and the interveners which address this topic<sup>12</sup> agree that this is the relevant trigger for engagement of the duty to punish in its investigatory modality<sup>13</sup>. Myanmar posits an alternative, higher threshold: that the duty to punish only arises when the authorities have already obtained sufficient evidence to satisfy the evidential threshold under municipal law<sup>14</sup>. There is no basis for importing that position into the Convention, and it would be wrong to do so, for obvious reasons. The introduction of such a requirement would incentivize a respondent State to turn a blind eye to evidence, or refuse to take reasonable steps to obtain it, so that it never held sufficient evidence to satisfy its municipal threshold and thus trigger the duty to punish; and it would incentivize a respondent State to set the municipal evidential threshold so high that it could not be met, so that the State could evade coming under a duty to punish. Such an approach would undermine the effectiveness, and the very purpose, of the Convention. The Gambia invites the Court to reject Myanmar's position on the applicable threshold.

16. I turn then to the evidence on failure to punish. My colleagues have taken you through it, particularly in Professor d'Argent's speech yesterday, and I need not repeat what they have said. It is clear from the record that Myanmar would have been aware contemporaneously that there was a widespread belief that genocidal acts took place during the "clearance operations" — there were certainly reasonable grounds for believing that to be the case — and therefore the duty to punish — at the very least by carrying out effective investigations in good faith — has been triggered. Myanmar is certainly aware of that now. But it has taken no meaningful action to investigate, much less prosecute or punish the perpetrators of genocidal acts against the Rohingya. Professor d'Argent addressed you yesterday on impunity as an indicator of genocidal intent, and the evidence that the UN Fact-Finding Mission collected and presented in respect of that indicator also supports The Gambia's case that Myanmar has violated its duty to punish. Isolated examples of prosecutions — none of which were for genocide — do not alter this position, not least because the

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<sup>11</sup> *Prosecutor v. Hadzihasanovic & Kubura*, IT-01-47-A, Appeals Chamber Judgment (22 April 2008), paras. 260, 273-274. See also Christian Tams, Lars Berster & Björn Schiffbauer, *Convention on the Prevention and Punishment of the Crime of Genocide: Article-by-Article Commentary* (Beck/Hart/Nomos, 2nd ed., 2024), p. 259.

<sup>12</sup> In particular Written Observations of the Republic of Maldives (28 February 2025), paras. 84-89.

<sup>13</sup> See e.g. Declaration of intervention of the Republic of Maldives (10 November 2023), paras. 83-84.

<sup>14</sup> CMM, paras. 12.24, 12.31, 12.44.

few examples that exist are deeply flawed for the reasons Professor d'Argent explained. As the UN Mission noted, the “default approach” taken by Myanmar has been “to deny Tatmadaw responsibility, . . . and only when these approaches fail to deflect attention, to undertake some form of investigation which generally does not comply with international investigative standards”<sup>15</sup>. The few examples that exist therefore do not assist Myanmar in showing adherence with the duty to punish. The UN Fact-Finding Mission concluded that “the State has not undertaken an effective investigation into genocide”<sup>16</sup> — even though such investigations are, as I have said, the critical first stage to discharging the requirements of Articles I, IV and VI of the Convention. Nor have there been adequate prosecutions or other means of punishing the perpetrators. In totality, both in respect of genocide itself, and in respect of the other genocidal acts to which I will turn later in my speech, there has been a clear violation of the duty to punish.

17. There has also been a clear and ongoing violation of the duty to enact legislation under Article V, which is itself a facet of the duties to prevent and punish. The UN FFM explained in its 2019 report that Myanmar’s “Penal Code has no provisions on the crime of genocide”<sup>17</sup>, an omission that is underscored by Myanmar’s belated amendment to its Penal Code, in 2021, to introduce an offence of genocide. The Gambia welcomes this development of Myanmar’s municipal law, but the 2021 amendment still fails to give effect to the Convention, in particular because it does not apply to members of the Tatmadaw who are subject to a separate military criminal code, which still fails to criminalize genocide; and who, therefore, despite being the predominant perpetrators of the genocide against the Rohingya, remain fully insulated from investigation or punishment for their genocidal acts<sup>18</sup>. The new law also provides a carve-out for existing laws, meaning that measures introduced to restrict births in the Rohingya community, under pre-existing laws that authorize such measures, are insulated from prosecution under the Criminal Code<sup>19</sup>, despite their genocidal character. The

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<sup>15</sup> 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), available at <https://digitallibrary.un.org/record/1643079?ln=en>, para. 402.

<sup>16</sup> UN Human Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/CRP.5 (16 September 2019), para. 227. MG, Vol. III, Annex 49.

<sup>17</sup> *Ibid.*, para. 234.

<sup>18</sup> RG, para. 9.106.

<sup>19</sup> RG, para. 9.105.

2021 amendment therefore fails to meet the requirements of Article V of the Convention. The Gambia thus invites the Court to determine that, alongside its commission of genocide and its associated failure to prevent genocide, Myanmar has also violated the duty to punish genocide, including the duty to punish other acts prohibited under Article III and by failing to put in place a domestic framework giving effect to the Convention.

## **2. Other prohibited acts**

18. Mr President, Members of the Court, I turn now to the other prohibited acts for which The Gambia says Myanmar bears international responsibility. Our Memorial addresses each of the acts contained in the five subparagraphs of Article III, and we maintain what is said there about them<sup>20</sup>. For the purposes of today, however, I will only address you on two of them: conspiracy to commit genocide in Article III (b) of the Convention, and direct and public incitement in Article III (c). This is because the other violations which may be committed under Article III have been recognized by this Court to be either absorbed by, or logically inconsistent with, a finding that a respondent State has committed genocide<sup>21</sup>. Since the core of The Gambia's Application is that Myanmar committed genocide, and since, on The Gambia's case, the evidence presented to you this week convincingly establishes that it did, it is unnecessary for me to address you or invite that you make specific findings in respect of other acts which are encompassed by or would be inconsistent with that primary determination.

19. The position is different for conspiracy and for direct and public incitement. While, in certain factual situations, a court may consider that a finding of conspiracy or direct and public incitement is subsumed by a finding of the commission of genocide, these may in other cases be analytically distinct and they may be worthy of distinct findings. The Gambia says that that is the case here. It is perfectly possible for a State to conspire to commit genocide, and go on to commit genocide, as Myanmar did. So too is it possible for a State to incite others to commit genocide, and also commit genocide itself, and The Gambia submits that that is precisely what happened here.

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<sup>20</sup> MG, Chapter 12.II.

<sup>21</sup> *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 (I), p. 200, para. 380.

These additional violations of the Convention, in the circumstances of this case, justify their own distinct findings by the Court.

### **A. Conspiracy**

20. On conspiracy, I can be brief. A conspiracy to commit genocide arises when organs of the State enter into an agreement to commit genocide. A conspiracy may arise whether or not genocide is ultimately committed, and if genocide *is* committed, that does not displace the existence of the prior conspiracy to do so.

21. On the evidence in this case, of course, The Gambia invites the Court to conclude that a genocide did take place. But before that, Myanmar entered a conspiracy to commit it, because there was an agreement to act as it did between its highest leaders and military authorities. That agreement can be inferred from the highly co-ordinated nature of the “clearance operations”, and from the dissemination of the Facebook posts and other materials indicating the existence of a plan, which necessarily required agreement among its organizers. Agents of the Myanmar State were party to the agreement, including senior members of the Tatmadaw’s officer corps: the Commander-in-Chief; members of the Tatmadaw’s general staff; and the commanders of the Tatmadaw units that carried out the “clearance operations”. The people who held these roles have been named by the UN Fact-Finding Mission in its reports, which concluded that each of them should be investigated and prosecuted for genocide<sup>22</sup>. Arrest warrants for some of them, including the Commander-in-Chief and the Deputy Commander-in-Chief of the Tatmadaw, have been issued by Argentina, in the exercise of universal jurisdiction for the crime of genocide<sup>23</sup>, but Myanmar has taken no steps of its own to investigate or punish the conspirators. Indeed, given their role as senior commanders of Myanmar’s armed forces and government, their conspiracy was Myanmar’s conspiracy. Alongside a finding that Myanmar committed genocide, The Gambia invites the Court to hold that it also conspired to do so — and that it has failed in its duty to punish the individual conspirators.

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<sup>22</sup> 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), para. 1555. MG, Vol. II, Annex 40.

<sup>23</sup> “Argentina court issues arrest warrants for Myanmar military officials over Rohingya genocide”, *Jurist News* (15 February 2025), available at <https://www.jurist.org/news/2025/02/argentina-court-issues-arrest-warrants-for-myanmar-military-officials-over-rohingya-genocide/>.

## **B. Direct and public incitement**

22. Finally, on direct and public incitement to genocide, a State will be responsible for this punishable act when a State organ speaks, publishes or displays in public words that incite — which is to say, encourage or provoke — the commission of genocidal acts. In its *Radio Mille Collines* judgment, the ICTR Appeals Chamber made clear that, to determine whether speech constitutes incitement to genocide, it “must be considered in its context when reviewing its potential impact”<sup>24</sup>. The Court must consider how the words would be understood by their “intended audience”<sup>25</sup>, so that it is open to a Court to conclude that a speech which contains “no explicit appeal to commit genocide, or which appeared ambiguous, still constituted direct incitement to commit genocide in a particular context”<sup>26</sup>.

23. The ICTR Appeals Chamber in that judgment also endorsed and applied what was said on the correct approach to direct incitement in the *Akayesu* judgment, namely that:

“the direct element of incitement should be viewed in the light of its cultural and linguistic content. Indeed, a particular speech may be perceived as ‘direct’ in one country, and not so in another, depending on the audience. The Chamber further recalls that incitement may be direct, and nonetheless implicit.”<sup>27</sup>

24. A similar finding was made by the Supreme Court of Canada in the *Mugesera* case<sup>28</sup>: that the direct element of incitement should be viewed in the light of its historical, cultural and linguistic context.

25. And so, the history and context of discrimination and the long-standing denigration of the Rohingya that Ms Pasipanodya addressed you on at the start of the week are thus directly relevant to the proper interpretation of the statements made by Myanmar officials, and to the Court’s assessment of whether they constitute direct incitement to genocide. So too is the evidence of hate speech on which Mr Suleman addressed you.

26. The Gambia accepts that there is a difference between hate speech and direct and public incitement to genocide, in that incitement always involves the additional requirement that the speech

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<sup>24</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Judgment (28 November 2007), para. 694.

<sup>25</sup> *Ibid.*, para. 700.

<sup>26</sup> *Ibid.*, para. 703.

<sup>27</sup> *Ibid.*, para. 698. See also *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), para. 557.

<sup>28</sup> *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, 2005 SCC 40, paras. 87, 94.

is understood by its intended audience as a call to violence or action against the derided group. Hate speech *may* also include calls to violence, and the definitions referred to by the UN Fact-Finding Mission, including the 2017 Rabat Plan of Action, do address hate speech including that which incites violence. The UN FFM also noted that Myanmar’s hate speech against the Rohingya includes incitement to violence<sup>29</sup>. And so, while they are distinct, there may, as in this case, be considerable overlap between hate speech and incitement. The *Mille Collines* Appeals Chamber judgment recognized this relationship, saying that, “[i]n most cases, direct and public incitement to commit genocide can be preceded or accompanied by hate speech”<sup>30</sup>, as, indeed, it was in the case of the Rohingya. Hate speech also contributes to the relevant context, affecting how statements are likely to be received. The UN FFM recorded that it “has no doubt that the prevalence of hate speech in Myanmar significantly contributed to . . . a climate in which individuals and groups may become more receptive to incitement and calls for violence”<sup>31</sup>. That certainly seems to have been true for the ethnic Rakhine civilians who were ripe for incitement to genocide, and who joined the Tatmadaw’s genocidal efforts, for example in Chut Pyin and Inn Din, as you were told earlier in the week.

27. The fact that the commission of genocide did in fact follow is a factor that, as the ICTR Appeals Chamber observed, will assist the Court’s interpretation of the words in question, casting light on the fact that, in their particular context, “the speech was understood to be an incitement to commit genocide and that this was indeed the intent of the author of the speech”<sup>32</sup>.

28. On Monday, Mr Suleman took you to potent examples of Myanmar’s hate speech, several of which also constitute incitement. I am thinking, for example, of Senior General Hlaing’s September 2017 speech<sup>33</sup>, making inflammatory allusions to the Rohingya and calling for all to be loyal to the State, right while the “clearance operations” were ongoing, and loyalty to the State would be understood as loyalty to and assistance of their genocidal campaign. There are further examples

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<sup>29</sup> 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), para. 1310. MG, Vol. II, Annex 40.

<sup>30</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Judgment (28 November 2007), para. 692.

<sup>31</sup> 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), para. 1354. MG, Vol. II, Annex 40.

<sup>32</sup> *Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze v. The Prosecutor*, Case No. ICTR-99-52-A, Judgment (28 November 2007), para. 709.

<sup>33</sup> CR 2026/2, pp. 48-49, paras. 24-26 (Suleman).

on the evidential record, which also satisfy the legal test that, in the relevant context, they would be understood by their intended audience as a call to genocidal violence. For now, I draw your attention to just two examples, drawn from the Facebook evidence which Mr Suleman addressed on Monday. First, a video posted on military pages on Facebook, in August 2017, as the second wave of “clearance operations” were in their early stages. The video, reported on by the UN IIMM in its analysis of the material provided by Facebook, shows a soldier inciting ethnic Rakhine civilians to genocide. He told them:

“we will clear the villages where those animals live . . . We have guns, we have bullets. That’s what we came with. With ammunition and the spirit to attack the animals, we have come here . . . if you can carry a sword, then carry a sword, if you can carry a stick, then carry a stick. Carry whatever you can and bravely face these animals”<sup>34</sup>.

In its context, this was a clear encouragement of genocidal violence against the Rohingya, and it falls within Article III (c).

29. Days later, in early September 2017, as the “clearance operations” continued, Tatmadaw Facebook pages posted a message calling on ethnic Rakhine to “sharpen even the knives at home that you do not use”<sup>35</sup>. The post also alluded to historic violence allegedly committed by Muslims against Buddhists. In the context that existed in August 2017 in Myanmar, a post referring to Rohingyas and telling Rakhine to sharpen their knives would be well understood by its intended audience as incitement to genocidal violence against the Rohingya.

30. The evidence shows that they were indeed understood as such. Mr Suleman took you to some of the responses posted under other similar Tatmadaw Facebook posts, comments which said “don’t leave any of these ‘Muslim dogs’ alive” and “make them extinct”<sup>36</sup>.

31. These and other examples on the record demonstrate convincingly that senior Tatmadaw officers openly exhorted soldiers and ethnic Rakhine civilians to commit genocide against the Rohingya. In the context of the long-standing vilification of the Rohingya by the Myanmar Government, there could be no mistaking the genocidal appeal being made, and the evidence to

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<sup>34</sup> United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at [https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report\\_EN.pdf](https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf), paras. 320-322.

<sup>35</sup> *Ibid.*, paras. 360-362.

<sup>36</sup> United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), paras. 64-65. RG, Vol. II, Annex 5.

which the Court has been taken shows that the appeal was heeded. The Gambia thus invites the Court to find that Myanmar, alongside its other breaches of the Genocide Convention, is also internationally responsible for direct and public incitement to genocide.

32. Mr President, Members of the Court, these, therefore, are the key substantive violations of the Convention which The Gambia pursues through this Application: *first*, that Myanmar committed genocide; *second*, that it violated the duty to prevent genocide; *third*, that it violated the duty to punish, including the associated duties to try and to have in place domestic legislation giving effect to the Convention; *fourth*, that it entered a conspiracy to commit genocide; and *fifth*, that it directly and publicly incited genocide. It is also part of The Gambia's case that Myanmar has breached the Court's provisional measures Order, a topic that Mr Suleman will address you on next. I thank you for your close attention this morning and, Mr President, I ask that you now invite Mr Suleman to the podium to continue The Gambia's presentation.

The PRESIDENT: I thank Ms Jones for her statement. I now invite Mr Arsalan Suleman to address the Court. You have the floor, Sir.

Mr SULEMAN:

## **II. MYANMAR'S VIOLATIONS OF THE COURT'S PROVISIONAL MEASURES ORDER OF 23 JANUARY 2020**

### **1. Introduction**

1. Mr President, Members of the Court, good morning. I will focus on Myanmar's violations of the Court's unanimous Order on provisional measures dated 23 January 2020.

2. As the Court recalled in that Order, "'orders on provisional measures under Article 41 [of the Statute] have binding effect' . . . and thus create international legal obligations for any party to whom the provisional measures are addressed"<sup>37</sup>, which, in this case, of course, is Myanmar.

3. I will discuss Myanmar's violations of the first three provisional measures. The Gambia does not argue that Myanmar has violated the Court's fourth provisional measure, which relates to the filing of reports on the implementation of the provisional measures Order.

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<sup>37</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 29, para. 84.

4. On that point, however, I do note that Myanmar's reports have tended to include much information that is irrelevant to the implementation of the Order itself. To help assist the Court, The Gambia will focus here only on information relevant to the violation of the measures themselves.

## **2. First provisional measure: preventing genocide**

5. The first provisional measure relates to the prevention of genocide. Myanmar must:

“in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of the Convention, in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to the members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group”<sup>38</sup>.

6. Myanmar, thus, has been under an obligation since 23 January 2020 to take all measures within its powers to prevent the commission of all of the *actus reus* of genocide listed in Article II of the Convention, particularly sections (a)-(d). Myanmar has failed to comply with this provisional measure.

### **A. Article II (a) and (b): killings and causing serious bodily or mental harm**

7. In relation to Article II (a) and (b) — killings and causing serious bodily or mental harm — members of the Rohingya group have been killed or injured as a result of the military's activities in Rakhine State after the Court's Order.

8. For example, according to the UN Special Rapporteur on the situation of human rights in Myanmar:

“From 23 January 2020 to 22 January 2021, at least 33 Rohingya civilians were killed as a result of the conflict, with at least 39 others injured . . . in the year following the ICJ's Provisional Measures Order, 19 Rohingya men, women and children were killed as a result of targeted or indiscriminate attacks by the Myanmar military; one was killed in a targeted kill[ing] by police; ten were killed as a result of landmines or unexploded ordnance; and two were killed in targeted killings by other unidentified armed groups. The 33 killed included 15 children and three women . . .

In addition to the killings of Rohingya by the Myanmar military, scores more were injured as a result of incidents similar to those described above and Rohingya are among the thousands of people who have been internally displaced by the conflict.”<sup>39</sup>

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<sup>38</sup> *Ibid.*, pp. 28, 30, paras. 79, 86.

<sup>39</sup> UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews* (4 March 2021), available at [https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_56.pdf](https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf), paras. 31, 34.

9. According to reports of the UN Special Rapporteur in 2024 and 2025, Rohingya civilians have been killed and displaced by Myanmar military shelling and attacks in the context of its armed conflict with the Arakan Army<sup>40</sup>.

10. Additionally, in the context of that same conflict with the Arakan Army, the Myanmar military has forcibly conscripted Rohingya into military service, exposing them directly to killing in the conflict. According to a September 2025 report of the UN Office of the High Commissioner for Human Rights:

“Throughout the ground offensives in 2024, the military relied heavily on Rohingya forced recruits. Scores, possibly hundreds, of those men and boys recruited by the military remain unaccounted for, with many feared killed on the battlefield. Since the military announced the initiation of a conscription process in February 2024, over 5,000 Rohingya are reported to have been conscripted in the period up to June 2025, with this practice continuing into July 2025 in Sittwe IDP camps and villages and Kyaukphyu, prompting many to flee Rakhine. Information received indicated that only those who could pay military and camp leaders could avoid recruitment. Rohingya men who resisted recruitment risk being arrested, beaten, threatened, extorted, and detained. Conscripted Rohingya continued to be deployed at military bases and checkpoints with the military extorting money from Rohingya families in Sittwe camps to support families of the recruits, exacerbating their already dire financial conditions. Credible reports indicated that many forcibly recruited Rohingya men from Sittwe camps in June and July were sent to fight the Arakan Army in the ongoing battles in Kyaukphyu, and families have lost contact with them, with their whereabouts unknown. Hundreds of Rohingya youths have fled camps and villages to avoid conscription.”<sup>41</sup>

11. The UN Special Rapporteur reported that these conscripts were forced to serve as “human shields”<sup>42</sup>. The reports of forced conscription were confirmed by the UN High Commissioner<sup>43</sup>,

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<sup>40</sup> UN General Assembly, *Situation of human rights in Myanmar, Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews* (20 March 2024), available at <https://docs.un.org/A/HRC/55/65>, para. 41. See also Human Rights Watch, *Myanmar: Rohingya at Risk in Rakhine Fighting* (9 February 2024), available at <https://www.hrw.org/news/2024/02/09/myanmar-rohingya-risk-rakhine-fighting>; UN Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights*, UN doc. A/HRC/60/20 (29 August 2025), para. 36; UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN doc. A/80/490 (20 October 2025), para. 52.

<sup>41</sup> OHCHR, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar: update* (26 September 2025), available at <https://www.ohchr.org/sites/default/files/documents/form/crp-ny-high-level-conference-myanmar.pdf>, para. 13.

<sup>42</sup> UN General Assembly, *Situation of human rights in Myanmar, Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews* (20 March 2024), available at <https://docs.un.org/A/HRC/55/65>, para. 41.

<sup>43</sup> Volker Türk, UN High Commissioner for Human Rights, Interactive Dialogue on Myanmar, 55th Session of the Human Rights Council, *Myanmar: human rights situation has “morphed into a never-ending nightmare,” says Turk* (1 March 2024), available at <https://www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare>.

Human Rights Watch<sup>44</sup> and independent media<sup>45</sup>. The International Crisis Group reported that thousands of Rohingya are likely forcibly serving in the Myanmar military as “cannon fodder”:

“Desperate to hold on to power, the military regime has sought to foment inter-communal tensions, rallying some Rohingya to its side through a mix of coercion and inducements . . . Although authorities in Myanmar have long persecuted the Rohingya, including by denying citizenship to the vast majority of them and constraining their freedom of movement, the military has no qualms about using them as cannon fodder against the Arakan Army. Facing the prospect of further defeats in Rakhine, the regime has conscripted Rohingya men from villages across the state’s north, where the Rohingya still make up most of the population, and from internment camps near Sittwe, where some 130,000 continue to live after being forcibly displaced following the 2012 violence . . . thousands of Rohingya are now likely serving in the Myanmar military as militia members.”<sup>46</sup>

12. The UN Special Rapporteur and independent media investigations also reported that the Myanmar military forced Rohingya to protest against the Arakan Army, in Sittwe and elsewhere in Rakhine State, further inflaming communal tensions and placing Rohingya in danger of physical harm<sup>47</sup>. The International Crisis Group corroborated that reporting, and further reported that Myanmar has collaborated with ARSA to further inflame tensions:

“In an effort to stoke inter-communal tensions to destabilise its opponent, the regime has also coerced Rohingya into staging demonstrations against the Arakan Army and collaborated with Rohingya armed groups, particularly the Arakan Rohingya

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<sup>44</sup> Human Rights Watch, *Myanmar: Military Forcibly Recruiting Rohingya*, (9 April 2024), available at <https://www.hrw.org/news/2024/04/10/myanmar-military-forcibly-recruiting-rohingya>.

<sup>45</sup> See e.g. Radio Free Asia, *Myanmar junta threatens to block food aid for Rohingyas who refuse military training* (29 May 2024), available at <https://www.rfa.org/english/news/myanmar/junta-block-food-aid-rohingya-recruitment-05292024163347.html>; Radio Free Asia, *Rohingya ordered by Myanmar officer to “fight for our faith”* (9 April 2024), available at <https://www.rfa.org/english/news/myanmar/rohingya-conscription-04092024152737.html>.

<sup>46</sup> International Crisis Group, *War in Western Myanmar: Avoiding a Rakhine-Rohingya Conflict* (10 May 2024), available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/war-western-myanmar-avoidingrakhine-rohingya-conflict>.

<sup>47</sup> UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN doc. No. A/80/490 (20 October 2025), paras. 39, 44; Rajeev Bhattacharyya, The Diplomat, *Investigation: What Happened at Buthidaung Town in Myanmar’s Rakhine State* (8 October 2024), available at <https://thediplomat.com/2024/10/investigation-what-happened-at-buthidaung-town-in-myanmars-rakhine-state/>. See also Nathan Ruser, Australian Strategic Policy Institute, *They left a trail of ash: decoding the Arakan Army’s arson attacks in the Rohingya heartland* (13 June 2024), available at <https://www.aspistrategist.org.au/they-left-a-trail-of-ash-decoding-the-arakan-armys-arson-attacks-in-the-rohingya-heartland/>.

Salvation Army, the outfit whose attacks provided the pretext for the 2017 crackdown and which the military has long designated a ‘terrorist organisation’.”<sup>48</sup>

13. As intended, Myanmar’s forced conscription practices have inflamed intercommunal tensions between Rohingya and Rakhine communities. According to an October 2025 report of the UN Special Rapporteur:

“Junta forces have forcibly recruited thousands of Rohingya men and boys, many of whom have been deployed to the frontlines of the fight against the Arakan Army or used as human shields. Rohingya recruits have also been ordered to attack Rakhine civilian populations and destroy Rakhine property, escalating tensions between Rakhine and Rohingya populations.”<sup>49</sup>

14. Because of the military’s intentionally provocative actions, the Arakan Army retaliated with attacks that have caused killings of Rohingya civilians and destruction of some of their villages in Buthidaung Township, displacing thousands<sup>50</sup>.

15. Clearly, rather than taking all measures within its powers to prevent killings and serious bodily or mental harm to member of the Rohingya group, Myanmar has been doing the opposite, in violation of the Court’s provisional measures Order.

#### **B. Article II (c): inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part**

16. Pursuant to the Court’s Order, Myanmar should have taken also all measures within its powers to prevent the deliberate infliction on the group of conditions of life calculated to bring about its physical destruction. That has not happened.

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<sup>48</sup> “War in Western Myanmar: Avoiding a Rakhine-Rohingya Conflict”, *International Crisis Group* (10 May 2024), available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/war-western-myanmar-avoiding-rakhine-rohingya-conflict>. See also UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN doc. No. A/80/490 (20 Oct. 2025), paras. 39, 44; Rajeev Bhattacharyya, *The Diplomat*, *Investigation: What Happened at Buthidaung Town in Myanmar’s Rakhine State* (8 October 2024), available at <https://thediplomat.com/2024/10/investigation-what-happened-at-buthidaung-town-in-myanmars-rakhine-state/>. See also Nathan Ruser, Australian Strategic Policy Institute, *They left a trail of ash: decoding the Arakan Army’s arson attacks in the Rohingya heartland* (13 June 2024), available at <https://www.aspistrategist.org.au/they-left-a-trail-of-ash-decoding-the-arakan-armys-arson-attacks-in-the-rohingya-heartland/>. See also Radio Free Asia, *Junta forces Rohingyas to protest ethnic rebels in Myanmar’s Rakhine state* (22 April 2024), available at <https://www.rfa.org/english/news/myanmar/protest-04222024154413.html>.

<sup>49</sup> UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN doc. No. A/80/490 (20 October 2025), para. 54.

<sup>50</sup> UN General Assembly, *Situation of Human Rights in Myanmar, Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN doc. A/79/550 (25 October 2024), available at <https://docs.un.org/en/A/79/550>, paras. 45-47, 49; Liz Throssell, Spokesperson for the UN High Commissioner for Human Rights, Press Briefing Notes, *Myanmar: Growing human rights crisis in Rakhine state* (24 May 2024), available at <https://www.ohchr.org/en/press-briefing-notes/2024/05/myanmar-growing-human-rights-crisis-rakhine-state>. See also Nathan Ruser, Australian Strategic Policy Institute, *They left a trail of ash: decoding the Arakan Army’s arson attacks in the Rohingya heartland* (13 June 2024), available at <https://www.aspistrategist.org.au/they-left-a-trail-of-ash-decoding-the-arakan-armys-arson-attacks-in-the-rohingya-heartland/>.

17. The UN Special Rapporteur on the situation of human rights in Myanmar detailed the systematic nature of the discrimination that Rohingya continue to experience in Myanmar in his report of 1 July 2024:

“The estimated 600,000 Rohingya who remain in Myanmar suffer under an apartheid regime enforced by the military. They face rigid segregation, severe restrictions on movement and access to education, healthcare, and employment, arbitrary arrest and detention, confinement to squalid IDP camps, and vulnerability to violence from armed actors and civilians. Since the coup, the already repressive environment for Rohingya in Myanmar has worsened. The SAC [which stands for State Administrative Council] has imposed new movement restrictions on Rohingya in Rakhine State and systematically blocked humanitarian aid deliveries and organizational access, cutting off Rohingya communities from life-saving aid. Rohingya also face a rapidly deteriorating security situation, as they are increasingly caught in the crossfire of fighting between the SAC and Arakan Army. Since May 2024, thousands of Rohingya living in northern Rakhine State have been displaced from their homes with serious concerns about their safety, security, and access to food and shelter.”<sup>51</sup>

18. In his report to the UN Human Rights Council on 13 June 2022, the UN Special Rapporteur on the Situation of Human Rights in Myanmar explained how the cascading layers of discriminatory policies lead to preventable deaths for Rohingya:

“The roughly 600,000 Rohingya in Rakhine State continue to have their human rights systematically violated. More than 130,000 remain confined to IDP camps and even those living in villages are denied the right to move freely. Most villagers need to apply for permission to travel between localities in Rakhine State, a system that is enforced at checkpoints manned by security forces throughout the region. Since the coup, Rohingya have faced renewed arrest for undocumented travel . . . Travel restrictions and nighttime curfews can have life-and-death consequences, especially for those seeking treatment for acute medical conditions. An outbreak of diarrhea in Rohingya IDP camps that began in January 2022 has led to deaths that could have been prevented by timely medical treatment.”<sup>52</sup>

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<sup>51</sup> UN Human Rights Council, *Courage amid crisis: gendered impacts of the coup and the pursuit of gender equality in Myanmar*, UN doc. A/HRC/56/CRP.8 (1 July 2024), para. 164.

<sup>52</sup> UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN doc. A/HRC/49/76 (13 June 2022), available at <https://docs.un.org/en/A/HRC/49/76>, para. 85.

19. Year after year hundreds of Rohingya are arrested and imprisoned for “unauthorized travel” within Myanmar<sup>53</sup>. The dire conditions in Rakhine State have led thousands of Rohingya to attempt to flee these conditions by sea, resulting in tragic deaths every year<sup>54</sup>. Hundreds of them.

20. The Myanmar military has also restricted food supplies, and the resulting food scarcity situation has reached emergency levels and is contributing to health emergencies as well. According to the UN High Commissioner for Human Rights:

“Food scarcity across Rakhine has reached emergency levels, with deaths, disease, and malnutrition reported throughout the state. In northern Rakhine, the situation is acute with most Rohingya surviving on a single meal a day. Internally displaced persons in those areas have been living in makeshift shelters or the homes of other Rohingya families, unable to access food, water and sanitation. . . . In central Rakhine, where as many as 70% of Rohingya IDPs in certain camps may be at risk of starvation . . . Reports of suicides and attempted suicides due to hunger were also received. In these desperate humanitarian conditions, disease is rampant, with cases of acute watery diarrhoea, scabies, hepat[it]is, malaria, and dengue fever reported.”<sup>55</sup>

21. Rather than allow food aid in, the Myanmar military burned a World Food Programme warehouse, according to the UN Special Rapporteur: “In June 2024, junta soldiers looted and set fire to a World Food Programme warehouse holding 1,175 metric tons of food aid, an amount that could have fed more than 60,000 people for a month.”<sup>56</sup>

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<sup>53</sup> UN General Assembly, *Situation of human rights in Myanmar, Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews* (20 March 2024), available at <https://docs.un.org/A/HRC/55/65>, para. 83. Special Rapporteur October 2023 Report, para. 85. “Over 300 Arrested Rohingya Sentenced to Prison Terms others were shot dead by the Junta”, *BNI* (19 July 2023), available at <https://www.bnionline.net/en/news/over-300-arrested-rohingya-sentenced-prison-terms-others-were-shot-dead-junta>. RFA Burmese, “Junta forces arrest 31 Rohingya in Myanmar’s Ayeyarwady region”, *Radio Free Asia* (19 September 2022), available at <https://www.rfa.org/english/news/myanmar/junta-forces-arrest-31-rohingya-09192022044636.html>. UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN doc. A/HRC/49/76, available at <https://docs.un.org/en/A/HRC/49/76> Special Rapporteur September 2021 Report, paras. 22-23.

<sup>54</sup> See e.g. OHCHR, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar: update* (26 Sept. 2025), para. 9, available at <https://www.ohchr.org/sites/default/files/documents/form/crp-ny-high-level-conference-myanmar.pdf>; Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 52nd Session of the Human Rights Council, *Myanmar: High Commissioner details severe violations amid shocking violence* (6 March 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/03/myanmar-high-commissioner-details-severe-violations-amid-shocking>; UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar* (20 October 2025), available at <http://ohchr.org/sites/default/files/documents/countries/myanmar/a-80-490-auv-en.pdf>, para. 43; Michelle Bachelet, UN High Commissioner for Human Rights, *Oral update on Myanmar*, UN Human Rights Council, *50th Session* (14 June 2022), available at <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar>.

<sup>55</sup> OHCHR, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar: update* (26 September 2025), available at <https://www.ohchr.org/sites/default/files/documents/form/crp-ny-high-level-conference-myanmar.pdf>, para. 20.

<sup>56</sup> UN General Assembly, *Situation of Human Rights in Myanmar, Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN doc. A/79/550 (25 October 2024), available at <https://docs.un.org/en/A/79/550>, para. 38.

22. Access to adequate healthcare in northern Rakhine State continues to deteriorate, leading to preventable deaths. According to the UN High Commissioner for Human Rights: “The availability and accessibility of healthcare services continued to decline, with numerous reports received of preventable deaths of children and displaced persons due to the absence of basic services and assistance.”<sup>57</sup> Due to the restrictive environment imposed by the military, Médecins Sans Frontières — the only healthcare provider for Rohingya in many parts of Rakhine State — suspended its operations there in June 2024<sup>58</sup>.

23. Rather than taking all measures within its powers to prevent the deliberate infliction on the Rohingya group of conditions of life calculated to bring about its physical destruction, Myanmar has made the situation worse.

### **3. Second provisional measure: armed forces not committing genocide**

24. The second provisional measure, which relates to the non-commission of acts of genocide, requires that Myanmar:

“in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit acts of genocide, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide”<sup>59</sup>.

25. Myanmar has failed to comply with this provisional measure as well. The evidence indicates that Myanmar’s military continues to engage in various anti-Rohingya propaganda efforts that could amount to conspiracy or incitement to commit genocide.

26. For example, on 8 October 2020 — several months after the provisional measures order — Facebook announced the removal of 38 Facebook accounts, 15 pages and six Instagram accounts that it determined were linked “to members of the Myanmar military” who had “attempted to conceal

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<sup>57</sup> UN Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights*, UN doc. A/HRC/60/20 (29 Aug. 2025), para. 37.

<sup>58</sup> UN General Assembly, *Situation of Human Rights in Myanmar, Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN doc. A/79/550 (25 October 2024), available at <https://docs.un.org/en/A/79/550>, para. 70.

<sup>59</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, pp. 28-29, 30, paras. 80, 86.

their identities and coordination”<sup>60</sup>. Those accounts, which spread anti-Rohingya messages, reached approximately 480,000 other Facebook users<sup>61</sup>. Similarly, in April 2020, Facebook was compelled to remove three pages, 18 accounts and one group, all of which it found were linked to “members of the Myanmar Police Force” who had “attempted to conceal their identities and coordination”<sup>62</sup>. The pages reached approximately 19,000 other Facebook users and included what Facebook characterized as “anti-Rohingya content”<sup>63</sup>. These accounts that I am just mentioning are separate from the accounts that were taken down by Facebook that I had discussed on Monday afternoon.

27. In July 2021, Facebook “removed 79 Facebook accounts, 13 Pages, eight Groups and 19 Instagram accounts in Myanmar that targeted domestic audiences and were linked to individuals associated with the Myanmar military”<sup>64</sup>. Facebook found that this operation was linked to the Tatmadaw and its anti-Rohingya operations from 2018:

“Our investigation revealed some links between this operation and the activity we removed in 2018. Although the people behind it attempted to conceal their identities and coordination, our investigation found links to individuals associated with the Myanmar military.”<sup>65</sup>

28. On 24 February 2021, the Tatmadaw and military-controlled State and media entities were banned from Facebook and Instagram due in part to “[o]ngoing violations by the military and military-linked accounts and Pages since the February 1 coup, including efforts to reconstitute networks of Coordinated Inauthentic Behavior that we previously removed, and content that violates our violence and incitement and coordinating harm policies”<sup>66</sup>.

29. The Myanmar military also used other means of spreading anti-Rohingya propaganda. According to an investigative report by *Frontier Myanmar*, the military dropped pamphlets from the air in Sagaing in 2022 to “leverage offline distribution methods to spread hate speech, disinformation

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<sup>60</sup> Facebook, *October 2020 Coordinated Inauthentic Behavior Report* (October 2020), available at <https://about.fb.com/wp-content/uploads/2020/11/October-2020-CIB-Report.pdf>, Chapter 12, PDF p. 40.

<sup>61</sup> *Ibid.*

<sup>62</sup> Facebook, *April 2020 Coordinated Inauthentic Behavior Report* (April 2020), available at <https://about.fb.com/wp-content/uploads/2020/05/April-2020-CIB-Report.pdf>, Chapter 6, PDF p. 21.

<sup>63</sup> *Ibid.*

<sup>64</sup> Facebook, *July 2021 Coordinated Inauthentic Behavior Report* (July 2021), available at <https://about.fb.com/wp-content/uploads/2021/08/July-2021-CIB-Report.pdf>, p. 3.

<sup>65</sup> *Ibid.*, p. 4.

<sup>66</sup> Rafael Frankel, “An Update on the Situation in Myanmar”, *Facebook* (14 April 2021), available at <https://about.fb.com/news/2021/02/an-update-on-myanmar/>.

and propaganda, much of it aimed at inflaming religious tensions”<sup>67</sup>. Another report, by *Myanmar Witness*, concluded:

“This rhetoric encourages discontent with Muslims and anti-military groups, as seen in the 2017 Rakhine clearance operations, which target[ed] the Rohingya, a minority Muslim group. The narratives and patterns of behaviour identified in this investigation and by the UN’s probe, could not only support claims that the military are dropping these pamphlets but also, worryingly, indicate the repeat of behaviours which occurred in the lead up to the clearance operations in the Rakhine State.”<sup>68</sup>

30. As documented in a December 2021 report by the United States Institute of Peace, the Tatmadaw spread hate propaganda seeking to link the anti-coup movement to Islam and Muslims, and its military spokesperson falsely claimed that the Organisation of Islamic Cooperation (OIC) is arming the opposition to the junta<sup>69</sup>. Independent media reports in December 2021 and January 2022 confirm the Tatmadaw’s dissemination of anti-Muslim hate pamphlets falsely claiming that “[t]he OIC is propagandising against the Buddhist people so they will turn on each other, insult the sacred religion of Buddhism, and kill monks”<sup>70</sup>.

31. Some of these anti-Rohingya operations are migrating to other online platforms, like Telegram, where they can spread with less visibility because of the private nature of the Telegram platform<sup>71</sup>.

32. Because the military continues to engage in various anti-Rohingya propaganda efforts that could amount to conspiracy or incitement to commit genocide, Myanmar has also violated the second provisional measure.

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<sup>67</sup> Andrew Nachemson, “Military disinformation moves offline amid internet restrictions”, *Frontier Myanmar* (28 January 2022), available at <https://www.frontiermyanmar.net/en/military-disinformation-moves-offline-amid-internet-restrictions/>.

<sup>68</sup> Myanmar Witness, “Report: Using Pamphlets for Propaganda, Misinformation, Intimidation, and Division” (12 July 2022), available at [https://www.myanmarwitness.org/\\_files/ugd/06ca64\\_373fab80e7ad4560b483bf271a56a5b7.pdf](https://www.myanmarwitness.org/_files/ugd/06ca64_373fab80e7ad4560b483bf271a56a5b7.pdf), p. 27.

<sup>69</sup> Billy Ford and Zarchi Oo, “Myanmar Coup: Military Regime Seeks to Weaponize Religion”, *U.S. Institute of Peace* (16 December 2021), available at <https://www.usip.org/publications/2021/12/myanmar-coup-military-regime-seeks-weaponize-religion>.

<sup>70</sup> Zaw Ye Thwe, “Propaganda flyers become latest weapon in junta’s arsenal”, *Myanmar NOW* (7 January 2022), available at <https://www.myanmar-now.org/en/news/propaganda-flyers-become-latest-weapon-in-juntas-arsenal> (brackets in original). See also Chris Barrett, “Divide and rule: Myanmar junta ‘weaponising’ racial tensions”, *The Sydney Morning Herald* (4 December 2021), available at [https://www.smh.com.au/world/asia/divide-and-rule-myanmar-junta-weaponising-racial-tensions-20211203-p59eid.html?fbclid=IwAR3YhrwX6-QmR0BLNt9T46EVeXKgCuzJhRMf-DbZ\\_8mO925PKmvoIWLZGuc](https://www.smh.com.au/world/asia/divide-and-rule-myanmar-junta-weaponising-racial-tensions-20211203-p59eid.html?fbclid=IwAR3YhrwX6-QmR0BLNt9T46EVeXKgCuzJhRMf-DbZ_8mO925PKmvoIWLZGuc).

<sup>71</sup> Andrew Nachemson, “Channelling hate and disinformation: Myanmar’s bad actors move to Telegram”, *Frontier Myanmar* (15 September 2021), available at <https://www.frontiermyanmar.net/en/channelling-hate-and-disinformation-myanmar-bad-actors-move-to-telegram/>.

#### **4. Third provisional measure: preserve evidence of genocide**

33. The third provisional measure requires Myanmar to “take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of Article II of the Genocide Convention”<sup>72</sup>.

34. Myanmar has manifestly failed to comply with this provisional measure. As discussed by Ms Al Ameen yesterday<sup>73</sup>, since the Court’s Order, Myanmar has engaged in acts of village destruction and the confiscation of land, accompanied by the building of Border Guard Police facilities on top of those lands. The IIMM’s report on this issue concluded that such actions “destroyed or permanently concealed much evidence of what occurred during the 2017 clearance operations”<sup>74</sup>.

#### **5. Conclusion**

35. Mr President, Members of the Court. For all of the reasons just discussed, Myanmar has violated the Court’s provisional measures Order of 23 January 2020. It must be held accountable for these breaches in addition to its breaches of the Genocide Convention.

36. Thank you for your kind attention; this concludes my presentation. I now ask, Mr President, that you call Professor Pierre d’Argent to the podium to address the issue of the remedies and legal consequences of Myanmar’s breaches.

The PRESIDENT: I thank Mr Suleman for his statement. Je donne maintenant la parole au professeur Pierre d’Argent. Vous avez la parole, Monsieur.

M. D’ARGENT : Merci, Monsieur le président.

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<sup>72</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, pp. 29, 30, paras. 81, 86.

<sup>73</sup> CR 2026/4, p. 39, para. 24 (Al Ameen).

<sup>74</sup> United Nations Independent Investigative Mechanism for Myanmar, *The Destruction and Dispossession of Rohingya Land and Property During the 2017 Clearance Operations — Public Summary* (29 September 2025), available at <https://iimm.un.org/sites/default/files/2025/09/Land%20Report%20Public%20Summary%20EN.pdf>, para. 59.

### III. CONSÉQUENCES JURIDIQUES ET REMÈDES

1. Monsieur le président, Mesdames et Messieurs les juges : j'aborderai la question des conséquences juridiques des violations de la convention dont le Myanmar est responsable, et des remèdes sollicités par la Gambie.

2. Et permettez-moi d'énoncer de manière télégraphique les cinq points que je vais aborder : 1) déclarations de violations et de responsabilité ; 2) cessation ; 3) réparation ; 4) assurances et garanties de non-répétition ; en enfin 5) remèdes pour les violations des mesures conservatoires.

#### **1. La Cour doit constater les violations de la convention commises par le Myanmar et le déclarer responsable d'actes de génocide à l'encontre du groupe des Rohingyas**

3. Monsieur le président, j'aborde donc en premier lieu les déclarations de violations et de responsabilité sollicitées par la Gambie.

4. Mesdames et Messieurs les juges, comme vous le savez, l'article IX de la convention donne compétence à la Cour pour statuer sur les différends « relatifs à la responsabilité d'un État en matière de génocide ou de l'un quelconque des autres actes énumérés à l'article III ».

5. Il s'agit d'une fonction essentielle de la Cour au titre de la convention, ses auteurs vous ayant confié l'ultime pouvoir de dire, en droit et pour l'histoire, si un génocide a été commis par un État partie — l'ultime autorité de dire qu'un génocide a été commis. Cette fonction, cette responsabilité, vous revient. Vous êtes les gardiens de la convention.

6. Le 22 juillet 2022, en déclarant la Cour compétente et la requête de la Gambie recevable, vous avez pleinement accepté cette responsabilité. Et nous mesurons tous, dans cette salle, la charge qui pèse sur vos épaules — individuellement pour chacune et chacun d'entre vous, et collectivement pour la Cour en tant qu'organe judiciaire principal des Nations Unies.

7. Monsieur le président, il n'est pas douteux — et le Myanmar n'en disconvient pas — qu'en statuant sur la responsabilité d'un État, le constat de violation est inhérent au travail judiciaire et les dispositifs des arrêts de la Cour contiennent d'ailleurs régulièrement des déclarations de violations<sup>75</sup>. Par ailleurs, votre arrêt du 22 juillet 2022 a clairement établi que la Gambie était en droit de demander

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<sup>75</sup> Voir notamment récemment *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, arrêt, C.I.J. Recueil 2024 (I), p. 211, par. 404.

à la Cour de constater les manquements du Myanmar aux obligations que lui impose la convention<sup>76</sup>, c'est-à-dire de déclarer le Myanmar responsable d'avoir commis un génocide.

8. En l'occurrence — vous l'avez entendu de la bouche de M<sup>e</sup> Jones —, la Gambie demande tout d'abord à la Cour de déclarer que le Myanmar a violé les articles premier, II *a*) à *d*) et III *a*) de la convention en commettant un génocide à l'encontre du groupe des Rohingya à l'occasion des « opérations de nettoyage ». Comme l'a expliqué M<sup>e</sup> Jones, le Myanmar a, à cette occasion, nécessairement et également manqué à son obligation de prévenir le génocide au regard de l'article premier de la convention et il s'est rendu coupable d'une entente en vue de commettre le génocide, en violation de l'article III *b*). La Gambie demande ensuite que la Cour déclare que le Myanmar a violé l'article III *c*) de la convention en incitant directement et publiquement à commettre ce génocide et, enfin, de déclarer qu'il a violé et continue de violer les articles premier, IV, V et VI de la convention en ne punissant pas les exécutants et les commanditaires de ce génocide pour les actes visés à l'article III de la convention.

9. Mesdames et Messieurs les juges, ces différents constats de violation, de manquements, prenant dans votre dispositif la forme de déclarations de violations, sont essentiels pour le rétablissement de la légalité internationale. Les constats de violation sollicités par la Gambie participent aussi à la réparation des préjudices subis par les victimes du génocide, question sur laquelle je vais revenir dans un instant.

10. Le génocide étant un fait composite au sens de l'article 15 des articles de la Commission du droit international (ci-après, la « CDI »), la responsabilité internationale du Myanmar qui sera constatée par la Cour remontera à « la première des actions ... de la série »<sup>77</sup>, c'est-à-dire, à tout le moins, aux premières attaques de la première vague des opérations de nettoyage.

11. Enfin, comme l'a rappelé M<sup>e</sup> Jones et M<sup>e</sup> Suleman, la Gambie vous demande également bien sûr de constater que le Myanmar a violé votre ordonnance indiquant des mesures conservatoires et qu'il est internationalement responsable à ce titre — et j'y reviendrai.

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<sup>76</sup> *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires, arrêt, C.I.J. Recueil 2022 (II)*, p. 517, par. 112.

<sup>77</sup> UN General Assembly, *Resolution adopted by the General Assembly*, UN doc. A/RES/56/83 (28 janvier 2002), Article 15 ; *Projet d'articles sur la responsabilité de l'État pour fait internationalement illicite et commentaires y relatifs, Annuaire de la Commission du droit international, 2001*, vol. II, deuxième partie, commentaire de l'article 15, p. 155, par. 3.

## **2. Le Myanmar doit cesser les violations continues de la convention**

12. Monsieur le président, Mesdames et Messieurs les juges : si vous constatez le manquement du Myanmar à son obligation de punir le génocide, vous devrez nécessairement constater que cette violation est continue et, en conséquence, que le Myanmar doit mettre fin à la situation d'impunité qu'il a créée et qui persiste jusqu'à ce jour.

13. Ainsi, la Gambie invite la Cour à dire pour droit que le Myanmar doit mettre fin à ces violations en complétant et corrigeant sa législation pénale et en prenant immédiatement des mesures efficaces pour traduire devant un tribunal indépendant et impartial, ou une juridiction pénale internationale, les membres de ses forces armées, y compris les plus hauts gradés, les membres de sa police et d'autres forces de sécurité, ainsi que toute autre personne relevant de sa juridiction, ayant commis des actes prohibés par la convention, et veiller à ce que ces personnes soient dûment punies à raison de leurs crimes si elles sont déclarées coupables.

14. De même, le Myanmar doit mettre fin à tout discours public haineux envers les Rohingya entrant dans le champ de l'article III *c*) et prendre les mesures nécessaires pour que de tels discours ne se reproduisent pas. Il doit encore abolir et mettre fin à l'ensemble des mesures discriminatoires visant à la destruction du groupe des Rohingya, en particulier les restrictions maritales et des naissances. Il doit aussi mettre fin au confinement et à la ségrégation des Rohingya dans les camps et arrêter de les soumettre à des conditions d'existence, y compris par des privations médicales ou alimentaires, visant à les détruire.

## **3. Réparations dues aux victimes du génocide**

15. Monsieur le président, j'en viens à la question des réparations. À cet égard, la Gambie demande à la Cour de déclarer qu'en conséquence des violations de la convention dont il est responsable, le Myanmar doit satisfaire à son obligation de réparation dans l'intérêt des victimes d'actes de génocide appartenant au groupe des Rohingya.

16. Le Myanmar s'oppose à cette demande. Il considère, d'une part, que le droit de la responsabilité internationale est exclusivement interétatique et n'impose aucune obligation de réparer au bénéfice des victimes d'actes de génocide lorsqu'ils n'ont pas la nationalité de l'État demandeur. Par ailleurs, le Myanmar soutient que la Gambie n'a aucune qualité pour formuler la demande dont je viens de vous rappeler les termes. Et enfin, le Myanmar prétend que l'article IX de la convention

limite votre compétence à cet égard, de telle manière à ne pas permettre à la Cour de se prononcer sur l'obligation de l'État défendeur de réparer si ce n'est à la demande de l'État dont les ressortissants ont été victimes d'actes de génocide.

17. Monsieur le président, Mesdames et Messieurs les juges, aucune des objections soulevées par le Myanmar ne résiste à l'examen. Après les avoir examinées, je me pencherai sur les formes que devrait prendre l'obligation de réparer pesant sur le Myanmar.

#### **A. L'obligation de réparer au profit des victimes d'actes de génocide**

18. Je commence donc par la question de savoir si l'État responsable d'actes de génocide est obligé de réparer les préjudices qui en découlent au bénéfice des victimes de ces actes, quelle que soit leur nationalité.

19. Comme le montrent les écritures de la Gambie, le droit international contemporain reconnaît le droit pour les victimes d'actes de génocide d'obtenir réparation de leurs préjudices. En effet, les temps ne sont plus où le droit de la responsabilité internationale ne créait de rapports juridiques qu'entre États ; cette évolution du droit international est incontestable, elle vient du droit international des droits de l'homme dont la convention fait partie, elle a été pleinement acceptée par l'Assemblée générale<sup>78</sup>, et elle a été définitivement consacrée par la jurisprudence de la Cour dans l'avis consultatif sur le *Mur*<sup>79</sup>, lequel fut confirmé sur ce point par votre avis consultatif de juillet 2024<sup>80</sup>. Le Myanmar continue néanmoins de soutenir dans sa duplique que « la responsabilité de l'État est tout aussi interétatique aujourd'hui qu'elle l'était en 1948 »<sup>81</sup>. Les Parties sont clairement en désaccord sur ce point de droit, mais la Cour tranchera facilement cette question à la lumière de sa jurisprudence et peut-être trouvera-t-elle à cet égard quelque intérêt aux écritures de la Gambie, auxquelles je me permets de vous renvoyer<sup>82</sup>.

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<sup>78</sup> UN General Assembly, *Resolution adopted by the General Assembly – Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN doc. A/RES/60/147. MG, vol. II, annexe 22.

<sup>79</sup> *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, p. 198, par. 152-153, et p. 201, par. 163.

<sup>80</sup> *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif du 19 juillet 2024*, par. 269 et 285.

<sup>81</sup> RG, par. 15.35.

<sup>82</sup> MG, par. 13.19 et suiv. ; RG, par. 10.13.

20. Mesdames et Messieurs de la Cour, je voudrais toutefois souligner que, derrière la façade théorique des objections du Myanmar, se prolongent en réalité la discrimination et la déshumanisation de ses victimes dont s'est nourri son génocide. En substance, le Myanmar soutient en effet que s'il avait massacré les ressortissants d'un État étranger, il ne contesterait pas devoir réparer les préjudices engendrés par ses crimes en cas de réclamation de l'État de nationalité des victimes. Mais parce que les victimes de son génocide sont, pour reprendre les termes du Myanmar, « des *éléments* de sa propre population »<sup>83</sup> — « éléments » auxquels il refuse le statut de citoyen à part entière —, il n'aurait à leur égard aucune obligation de réparation en droit international. Pour le Myanmar, les Rohingya n'existent pas pleinement en droit birman et ils ne peuvent pas exister non plus pleinement comme sujets du droit international, titulaires d'un élémentaire droit à obtenir réparation : pas de personnalité interne, pas de personnalité internationale.

21. Je n'en dis pas plus ; la Cour tranchera, et la Gambie est confiante dans le fait que vous rejetterez cet argument qui veut faire régresser le droit de la responsabilité internationale qui, contrairement à ce que soutient le Myanmar, a bel et bien évolué en 80 ans.

#### **B. La Gambie est en droit d'exiger l'exécution de l'obligation de réparation dans l'intérêt des victimes du génocide**

22. Le Myanmar soutient également que la Gambie n'a pas qualité pour exiger qu'il exécute son obligation de réparation dans l'intérêt des bénéficiaires des obligations violées, c'est-à-dire dans l'intérêt des victimes rohingya. Là encore, le défendeur déploie une argumentation juridique rétrograde qui fait complètement fi de l'évolution du droit international reflétée dans la jurisprudence de la Cour.

23. Comme la Cour le sait, cette question a été débattue au sein de la CDI lors de l'identification des droits des États autres que l'État lésé. La formule finalement retenue par l'article 48, paragraphe 2 *b*) des articles sur la responsabilité des États pour fait internationalement illicite a été pensée en ayant précisément à l'esprit le « cas d'un génocide impliquant uniquement les

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<sup>83</sup> CMM, par. 15.24 (les italiques sont de nous).

ressortissants de l'État responsable »<sup>84</sup> — ce que les Rohingya ne sont même pas en droit birman. Lors de l'adoption de l'article 48, le président du comité de rédaction de la CDI souligna que le principe selon lequel l'État non lésé par la violation d'une obligation collective « peut exiger de l'État responsable ... l'exécution de l'obligation de réparation ... dans l'intérêt de l'État lésé ou des bénéficiaires de l'obligation violée »<sup>85</sup>. Le président du comité de rédaction de la CDI souligna qu'il s'agissait d'un « principe judicieux et utile, digne d'être retenu »<sup>86</sup>.

24. Vingt-cinq années plus tard, ce principe a effectivement été retenu par la Cour à l'occasion de l'identification des obligations des États en matière de changement climatique. Se penchant sur le droit de chaque État non lésé d'« tenter une action contre un État qui manque à une obligation collective », la Cour a souligné qu'un tel État ne pouvait pas « demander réparation pour lui-même », mais qu'il pouvait toutefois demander « l'exécution de l'obligation de réparation dans l'intérêt de l'État lésé ou des bénéficiaires de l'obligation violée »<sup>87</sup>. Ne réclamant aucune réparation pour elle-même, la Gambie vous demande exactement cela et sa demande est donc parfaitement conforme à votre jurisprudence — jurisprudence qui, bien entendu, en cela confirme à nouveau l'existence d'une obligation de réparer à charge de l'État responsable d'une violation d'une obligation collective au bénéfice des victimes de ce fait illicite.

25. Ayant précédé l'avis consultatif de juillet 2025 de plus d'une demi-année, la duplique du Myanmar n'a bien sûr pas pu en tenir compte. La Gambie invite toutefois le défendeur à prendre acte du droit international tel qu'énoncé par la Cour.

### **C. Compétence de la Cour pour condamner le Myanmar à réparer**

26. Sachant que la Gambie est en droit de demander, dans l'intérêt des victimes des obligations violées, l'exécution par le Myanmar de son obligation de réparation en faveur des Rohingya

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<sup>84</sup> MG, par. 13.24, note 1848 : CDI, compte rendu analytique de la 2671<sup>e</sup> séance, extrait de l'*Annuaire de la Commission du droit international*, 2001, vol. I, doc. A/CN.4/SR.2671, par. 6 (M. Gaja). MG, vol. II, annexe 13 ; voir aussi Giorgio Gaja, « States Having an Interest in Compliance with the Obligation Breached », in Crawford, Pellet, Olleson & Parlett (eds), *The Law of International Responsibility* (Oxford Commentaries on International Law, Oxford University Press 2010), chap. 64, p. 961. vol. VIII, annexe 222.

<sup>85</sup> Responsibility of States for Internationally Wrongful Acts (ci-après, « ARSIWA »), article 48, paragraphe 2, alinéa b).

<sup>86</sup> MG, par. 13.24, note 1849 : CDI, compte rendu analytique de la 2682<sup>e</sup> séance, extrait de l'*Annuaire de la Commission du droit international*, vol. I, doc. A/CN.4/SR.2682, par. 46 (M. Tomka) (vol. II, annexe 14).

<sup>87</sup> *Obligations des États en matière de changement climatique, avis consultatif du 23 juillet 2025*, par. 443.

persécutés, la Cour est-elle compétente, au regard de l'article IX de la convention, pour condamner le Myanmar à assurer cette réparation ?

27. Prenant appui sur certains extraits des travaux préparatoires de la convention, le Myanmar le conteste. Son argument à cet égard rejoint celui, erroné, selon lequel il ne pourrait pas y avoir de responsabilité internationale d'un État envers des individus : puisqu'en 1948, la seule « responsabilité d'un État en matière de génocide » envisagée par l'article IX aurait été une responsabilité interétatique, la Cour aurait besoin, selon le Myanmar, d'une autre base de compétence pour statuer sur sa responsabilité internationale envers les victimes de son génocide.

28. La Gambie ne partage pas du tout cette compréhension de l'article IX de la convention.

29. Tout d'abord, votre arrêt du 22 juillet 2022 a affirmé la compétence de la Cour pour « connaître de la requête introduite par la République de Gambie »<sup>88</sup>, requête qui concerne un différend survenu entre la Gambie et le Myanmar au sujet de la responsabilité du Myanmar pour manquement aux obligations de la convention contre le génocide. La question de la réparation des dommages causés par le fait illicite est inhérente à toute invocation de responsabilité car, comme la Cour permanente l'a souligné il y a près d'un siècle déjà, la « réparation est ... le complément indispensable d'un manquement à l'application d'une convention »<sup>89</sup>. Et d'ailleurs, la requête de la Gambie, dont la Cour a accepté de connaître, contenait la demande de réparation dans l'intérêt des victimes rohingya. Bien entendu, il s'agit d'une question de fond, comme l'établissement de la responsabilité elle-même, mais la compétence de la Cour pour connaître des allégations de responsabilité internationale formulées par la Gambie contre le Myanmar doit « par implication logique »<sup>90</sup> s'entendre comme incluant sa compétence pour connaître de l'obligation de réparer puisque cette obligation de réparer est automatiquement déclenchée si la responsabilité pour fait internationalement illicite est établie et que ce fait a causé préjudice.

30. Lors de ses plaidoiries de 2022, et ainsi que votre arrêt l'a noté, le Myanmar soutenait que ne pas faire droit à ses exceptions préliminaires « soulèverait des questions quant au droit des États

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<sup>88</sup> *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires, arrêt, C.I.J. Recueil 2022 (II), p. 518, par. 115, point 5.*

<sup>89</sup> *Usine de Chorzów, compétence, arrêt n° 8, 1927, C.P.J.I. série A n° 9, p. 21.*

<sup>90</sup> *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I), p. 95, par. 126 ; Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), exception préliminaire, arrêt, C.I.J. Recueil 2023 (I), p. 282, par. 69.*

“non lésés” de demander réparation au nom de victimes présumées qui ne seraient pas leurs ressortissants »<sup>91</sup> — fin de citation de votre arrêt reprenant les arguments du Myanmar. Sachant cela, la Cour a néanmoins rejeté les exceptions préliminaires du Myanmar ; elle a affirmé sa compétence pour connaître de la requête et elle a reconnu la qualité de la Gambie pour invoquer la responsabilité internationale du Myanmar. L’autorité de la chose jugée de votre arrêt de 2022 n’est donc pas, nous semble-t-il, limitée à la compétence de la Cour pour connaître des demandes de constatation de manquement et de cessation, points alors expressément et positivement tranchés par la Cour<sup>92</sup>.

31. En toute hypothèse, Mesdames et Messieurs les juges, l’article IX de la convention n’exclut en rien votre compétence pour connaître de la demande gambienne en matière de réparation.

32. Tout d’abord, votre compétence s’étend aux différends, je cite encore l’article IX, « relatifs à l’interprétation, l’application ou l’exécution de la ... Convention »<sup>93</sup>. Il est de jurisprudence constante, comme la Cour l’a souligné dans l’affaire *LaGrand*, qu’« un différend portant sur les voies de droit à mettre en œuvre au titre d’une violation de [l’instrument contenant la base de compétence] est un différend concernant [son ]interprétation ou [son ]application ... et qui de ce fait relève de la compétence de la Cour », de telle manière qu’« elle n’a pas besoin d’une base de compétence distincte pour examiner les remèdes demandés par une partie pour la violation en cause »<sup>94</sup>.

33. Le Myanmar soutient toutefois qu’il en va autrement, non pas parce que l’article IX contiendrait une limitation expresse à cet égard, mais parce qu’il comporte la précision selon laquelle la compétence de la Cour s’étend en outre aux différends « relatifs à la responsabilité d’un État en matière de génocide ». Selon le Myanmar, loin d’apporter une précision inclusive aux mots introductifs de l’article IX, cet ajout interdirait à la Cour de connaître des différends de responsabilité portant sur la réparation au bénéfice des victimes individuelles à raison d’actes de génocide. La raison de cette exclusion tiendrait au fait que, lorsque la convention a été négociée en 1948, la responsabilité internationale était, selon le Myanmar, exclusivement interétatique, ce que les travaux préparatoires de la convention confirmeraient.

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<sup>91</sup> *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires, arrêt, C.I.J. Recueil 2022 (II)*, p. 513, par. 99.

<sup>92</sup> *Ibid.*, p. 517, par. 112.

<sup>93</sup> Convention pour la prévention et la répression du crime de génocide, art. IX.

<sup>94</sup> *LaGrand (Allemagne c. États-Unis d’Amérique), arrêt, C.I.J. Recueil 2001*, p. 485, par. 48.

34. Monsieur le président, Mesdames et Messieurs les juges, si vous êtes convaincus que le droit international de la responsabilité a évolué depuis 1948, il n'y a aucune raison de figer dans le temps le sens des mots « responsabilité d'un État » qui apparaissent dans l'article IX de la convention. Il s'agit en effet d'une expression consacrée (« a term of art »). Or, comme vous l'avez récemment rappelé dans l'affaire *Gabon/Guinée équatoriale*, « [l']orsqu'une expression juridique est employée dans un traité, il y a lieu, en règle générale, de présumer que les parties entendaient lui conférer l'acception qu'elle a habituellement en droit international »<sup>95</sup>.

35. Par ailleurs, le terme « responsabilité » est assurément un terme générique. Et, comme la Cour l'a souligné dans l'affaire *Costa Rica c. Nicaragua*,

« lorsque les parties ont employé dans un traité certains termes de nature générique, dont elles ne pouvaient pas ignorer que le sens était susceptible d'évoluer avec le temps, et que le traité en cause a été conclu pour une très longue période ou “sans limite de durée”, les parties doivent être présumées, en règle générale, avoir eu l'intention de conférer aux termes en cause un sens évolutif »<sup>96</sup>.

36. Les travaux préparatoires parcellaires invoqués par le Myanmar n'indiquent en rien que les États ayant négocié la convention eurent la moindre intention de figer dans le temps le sens du mot « responsabilité » qu'ils ont inclus dans l'article IX, tandis que la convention, à l'évidence, a effectivement été conclue sans limite de durée. Ainsi, il n'y a aucune raison de renverser la présomption de sens évolutif de ce terme générique.

37. Enfin, comme la Cour l'a souligné dans l'affaire *Bosnie c. Serbie* à propos de l'article IX, le régime de responsabilité internationale que la Cour est appelée à mettre en œuvre pour « déterminer les conséquences juridiques » des violations des obligations de la convention relève des « règles du droit international général qui régissent ... la responsabilité de l'État pour fait internationalement illicite »<sup>97</sup> : la convention ne contient pas de règles de responsabilité internationale spécifiques et, en visant la « responsabilité d[e l']État », son article IX renvoie simplement aux règles du droit international général applicable sans aucunement les limiter.

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<sup>95</sup> *Délimitation terrestre et maritime et souveraineté sur des îles (Gabon/Guinée équatoriale)*, arrêt du 19 mai 2025, par. 43.

<sup>96</sup> *Différend relatif à des droits de navigation et des droits connexes (Costa Rica c. Nicaragua)*, arrêt, C.I.J. Recueil 2009, p. 243, par. 66.

<sup>97</sup> *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), p. 105, par. 149.

38. Monsieur le président, Mesdames et Messieurs les juges, je conclus sur ces trois questions juridiques : la Cour est compétente pour statuer sur la demande de la Gambie de condamner le Myanmar à réparer les préjudices subis par les victimes des actes de génocide dont il est responsable.

#### **D. Formes de réparation**

39. J'en viens, dès lors, aux formes de réparation qui, selon la Gambie, s'imposent en l'espèce. Outre les déclarations de violations de la convention et de responsabilité pour génocide que la Gambie vous invite à prononcer, la réparation des préjudices subis par les victimes rohingya devrait revêtir deux formes principales : restitution et indemnisation.

40. En droit international général<sup>98</sup> et en droit international des droits de l'homme<sup>99</sup>, la restitution est la première forme de réparation ; elle permet — vous le savez — le rétablissement du *statu quo ante*<sup>100</sup>. En l'espèce, l'obligation de réparer sous la forme de restitution impose au Myanmar l'ensemble des mesures visées au paragraphe 13.29 du mémoire de la Gambie, ces mesures étant reprises au paragraphe 2 b) i) des conclusions de la réplique — et vous les voyez à l'écran. Je ne vais pas vous en donner lecture, mais je voudrais insister sur le fait que chacune de ces mesures de restitution, centrées — vous le verrez — sur les victimes, centrées sur leur dignité humaine inaltérable, est indispensable pour tenter de réparer effectivement l'immense traumatisme subi individuellement et collectivement par les Rohingya survivants.

41. Je ne vais pas vous donner lecture de ces demandes de restitution mais je me permettrai d'insister sur deux d'entre elles :

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<sup>98</sup> MG, par. 13.27, note 1850 : *Usine de Chorzów, fond, arrêt n° 13, 1928, C.P.J.I. série A n° 17* ; voir aussi *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)* ; CDI, « Troisième rapport sur la responsabilité des États, établi par M. James Crawford, Rapporteur spécial », doc. A/CN.4/507 et Add.1-4 (15 mars 2000) (vol. II, annexe 11).

<sup>99</sup> MG, par. 13.28, note 1853 : Nations Unies, résolution adoptée par l'Assemblée générale le 16 décembre 2005 sur les principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international des droits de l'homme et de violations graves du droit international humanitaire, doc. A/RES/60/147 (21 mars 2006), p. 7, par. 19 (vol. II, annexe 22) ; voir aussi Assemblée générale, soixantième session, 64<sup>e</sup> séance plénière, rapports de la Troisième Commission, doc. A/60/PV.64 (16 décembre 2005), p. 10 (vol. II, annexe 21). Voir Haut-Commissariat des Nations Unies aux droits de l'homme, principes fondamentaux et directives concernant le droit à un recours et à réparation des victimes de violations flagrantes du droit international relatif aux droits de l'homme et de violations graves du droit international humanitaire doc. E/CN.4/RES/2005/35 (vol. II, annexe 19).

<sup>100</sup> CDI, articles sur la responsabilité des États (2001), art. 35. (vol. II, annexe 15).

1. *Permettre le retour sur leur lieu de résidence, en toute sécurité et dans la dignité, des membres du groupe des Rohingya déplacés à l'intérieur du Myanmar ou à l'étranger* : cette mesure est véritablement essentielle — et je suis sûr que vous le comprenez sans peine ;
2. *Restituer aux Rohingya leurs biens personnels et collectifs, y compris leurs terres, maisons, lieux de culte et de vie en communauté, champs, bétails et produits agricoles, ou les remplacer en nature* : cette mesure de restitution est tout autant essentielle que la première et elle en est le complément indispensable car, comme M<sup>e</sup> Al Ameen l'a rappelé<sup>101</sup>, le Myanmar a rasé les villages rohingya attaqués et incendiés, et a construit de nombreuses bases de sa police des frontières sur leurs ruines et sur les terres qui permettaient au groupe de survivre. Ce phénomène a été particulièrement documenté par le Mécanisme d'enquête indépendant pour le Myanmar dans le rapport qui est à l'onglet n° 7 de votre dossier d'audience<sup>102</sup>. Cette question mérite, me semble-t-il, une attention particulière de la part de la Cour, sachant que des restitutions immobilières ont été par exemple prononcées par la Commission des réclamations Éthiopie-Érythrée<sup>103</sup>.

42. Bien entendu, l'ensemble des dommages, pertes et préjudices subis par les Rohingya ne sera pas — nous le savons tous — intégralement réparé par ces mesures de restitution. Il a donc lieu de constater que le Myanmar est également débiteur de réparations sous la forme d'indemnisation.

43. Alors, conformément à la pratique habituelle de la Cour, la Gambie demande que, à défaut d'accord entre les Parties sur le montant de l'indemnisation due par le Myanmar aux victimes rohingya, la question soit tranchée par la Cour lors d'une phase ultérieure de la procédure en l'affaire. Mais la Gambie n'aurait évidemment aucune objection à ce que la Cour procède quelque peu différemment, en enjoignant par exemple le Myanmar de lui communiquer dans un délai raisonnable le détail des mesures de restitution et d'indemnisation qu'il entend prendre ou qu'il aurait déjà prises, afin d'assurer, lors d'une phase ultérieure de la procédure, que son obligation de réparation en faveur des victimes des actes de génocide dont il aura été reconnu responsable soit intégralement exécutée.

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<sup>101</sup> CR 2026/4, p. 37 et suiv. (Al Ameen).

<sup>102</sup> The Destruction and Dispossession of Rohingya Land and Property During the 2017 Clearance Operations — Public Summary 29 September 2025, disponible à l'adresse suivante : <https://iimm.un.org/sites/default/files/2025/09/Land%20Report%20Public%20Summary%20EN.pdf>.

<sup>103</sup> Eritrea-Ethiopia Claims Commission, Final Award: Eritrea Damages Claim, *Reports of International Arbitral Awards*, vol. 26, 17 août 2009, p. 629-630.

La Gambie estime en effet, Mesdames et Messieurs les juges, que la responsabilité institutionnelle de la Cour de mettre fin au différend dont elle est saisie requiert plus que la simple affirmation de l'existence, à charge du Myanmar, de l'obligation de réparer intégralement les préjudices subis par les victimes de ses actes de génocide, de telle manière qu'une étroite surveillance de l'État défendeur dans l'exécution de cette obligation est nécessaire puisque la réparation — dans cette affaire très particulière — des préjudices est due aux victimes du génocide elles-mêmes.

#### **4. Assurances et garanties de non-répétition**

44. Monsieur le président, Mesdames et Messieurs les juges, le remède suivant demandé par la Gambie concerne les assurances et garanties de non-répétition que doit offrir le Myanmar, compte tenu des circonstances très spéciales de la présente affaire.

45. Alors, sans surprise, le Myanmar conteste à nouveau la qualité de la Gambie pour formuler une telle demande. Pourtant, cette qualité découle naturellement du caractère *erga omnes partes* des obligations de la convention et du fait qu'en conséquence de ce caractère, et ainsi que la Cour l'a affirmé dans l'arrêt de juillet 2022, tout État partie à la convention a un intérêt juridique à veiller à leur respect, quelle que soit l'affaire. C'est la raison pour laquelle la Gambie peut aussi exiger de l'État responsable des assurances et garanties de non-répétition si les circonstances l'exigent, ainsi que le prévoit l'article 48, paragraphe 2 a), des articles sur la responsabilité des États. L'avis consultatif de 2025 sur les *Obligations des États en matière de changement climatique* a confirmé le bien-fondé des conclusions de la CDI sur ce point, la Cour ayant dit pour droit que l'État non lésé par la violation d'une obligation collective « peut ... demander la cessation du fait illicite et des assurances et garanties de non-répétition » — de même que, comme je l'ai déjà rappelé il y a un instant, « l'exécution de l'obligation de réparation dans l'intérêt ... des bénéficiaires de l'obligation violée »<sup>104</sup>.

46. Ce point étant acquis, les circonstances de la présente affaire, telles qu'elles se présentent à vous, exigent selon la Gambie des assurances et garanties de non-répétition de la part du Myanmar.

47. Ces circonstances, Mesdames et Messieurs les juges, tiennent en effet à l'extrême gravité des faits illicites commis et à leurs effets préjudiciables prolongés, au déni complet des faits et de sa

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<sup>104</sup> *Obligations des États en matière de changement climatique, avis consultatif du 23 juillet 2025*, par. 443.

responsabilité pour ceux-ci dans lequel le Myanmar se complaît, à son refus persistant d'appeler les Rohingya par leur nom, à la défiance dont il continue de faire preuve envers le Conseil des droits de l'homme en rejetant toute coopération avec les mécanismes d'enquête que ce dernier a institués, à la violation des mesures conservatoires ordonnées par la Cour, et enfin au renversement, en cours d'instance, de l'ordre constitutionnel par la junte militaire responsable des opérations de nettoyage. Toutes ces circonstances, d'une gravité inégalée, font craindre que les projets génocidaires du Myanmar restent d'actualité, de telle manière à devoir écarter la présomption de bonne foi que la Cour a, dans d'autres circonstances, accordée à l'État défendeur dans un contexte de contentieux frontalier<sup>105</sup>. Maintenir en l'espèce une telle présomption relèverait, selon la Gambie, d'un aveuglement voire d'une naïveté dont la Cour n'est pas coutumière. La Gambie ne vous demande pas d'instituer une présomption de mauvaise foi à l'encontre du Myanmar ; elle vous invite simplement à regarder les faits pour ce qu'ils sont et, en fonction d'eux, de constater que des assurances et des garanties de non-répétition sont, en l'espèce, nécessaires.

48. Monsieur le président, la réaction du Myanmar à la mesure sollicitée par la Gambie devrait suffire à convaincre la Cour. La garantie de non-répétition que la Gambie demande d'ordonner est assez élémentaire : elle consiste à ce que le Myanmar octroie une citoyenneté pleine et entière à tous les membres du groupe des Rohingya présents au Myanmar ou déplacés à la suite des *clearance operations* génocidaires. En d'autres termes, la Gambie vous demande de faire en sorte que le Myanmar traite les membres du groupe des Rohingya comme ses citoyens à part entière, à égalité avec ses autres citoyens. Cela n'a rien d'extraordinaire, me semble-t-il, dans le premier quart du XXI<sup>e</sup> siècle, et cela correspond d'ailleurs à la situation d'avant le coup d'État militaire de 1962, ainsi que cela a été rappelé lundi<sup>106</sup>.

49. Pourtant, Mesdames et Messieurs les juges, face à cette élémentaire demande, le Myanmar répond ceci au paragraphe 15.84 de son contre-mémoire : « La Cour ne saurait, en prescrivant des garanties de non-répétition, imposer de nouveaux citoyens au Myanmar et intervenir dans la

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<sup>105</sup> *Certaines activités menées par le Nicaragua dans la région frontalière (Costa Rica c. Nicaragua)* et *Construction d'une route au Costa Rica le long du fleuve San Juan (Nicaragua c. Costa Rica)*, arrêt, C.I.J. Recueil 2015 (II), p. 717, par. 141 (citant l'arrêt rendu en l'affaire du *Différend relatif à des droits de navigation et des droits connexes (Costa Rica c. Nicaragua)*, arrêt, C.I.J. Recueil 2009, p. 267, par. 150).

<sup>106</sup> CR 2026/1, p. 64, par. 20 (Suleman) ; CR 2026/2, p. 32 (Pasipanodya).

composition démographique du pays. » En réagissant ainsi à la demande élémentaire que la Gambie vous soumet, le Myanmar indique clairement qu'il entend continuer de traiter les Rohingya comme un corps étranger ne pouvant entrer en ligne de compte dans sa composition démographique. Leur ségrégation et leur persécution relèvent donc d'une politique d'État identitaire, fondée sur la discrimination ethnique, raciale et religieuse, une politique parfaitement assumée devant la Cour et dont la prolongation est revendiquée au nom de la souveraineté et des sacro-saintes affaires intérieures. La persécution et la destruction continues des Rohingya sont ainsi programmées. Par ailleurs, en se prévalant de la jurisprudence *Nottebohm* à l'appui du rejet de toute « interférence » dans la composition démographique du Myanmar, l'État défendeur aggrave son cas plutôt qu'il ne donne à la Cour des raisons d'être rassurée.

50. Monsieur le président, Mesdames et Messieurs les juges, outre la demande qu'elle sollicite, la Gambie accueillera bien sûr toute autre assurance et garantie de non-répétition que la Cour considérera adaptées aux circonstances de l'espèce pour prévenir toute résurgence des crimes génocidaires du Myanmar à l'encontre du groupe des Rohingya. Et à cet égard, il me semble que le principe dispositif n'est pas de stricte application dans la mesure où les droits en cause ne sont pas seulement ceux de l'État demandeur, mais ceux de toutes les parties à la convention, et que la Cour est la gardienne de la convention.

### **5. Remèdes pour violation des mesures conservatoires**

51. Monsieur le président, les derniers remèdes sollicités par la Gambie concernent la violation des mesures conservatoires ordonnées par la Cour dont mon collègue M. Suleman vient de vous entretenir.

52. Il n'est pas douteux que la violation des obligations nouvelles créées par votre ordonnance du 23 janvier 2020 est une cause de responsabilité internationale du Myanmar envers la Gambie et que, en vertu de l'article 41 du Statut, la Cour a compétence pour statuer sur les demandes formulées par la Gambie à ce titre.

53. En particulier, la Gambie est en droit d'obtenir de la Cour qu'elle constate la violation des mesures conservatoires ordonnées au Myanmar, cette constatation constituant une réparation adéquate, sous la forme de satisfaction, du préjudice non matériel de la Gambie. Le Myanmar ne

conteste pas ce point, même s'il soutient, à tort, s'être parfaitement conformé aux mesures conservatoires<sup>107</sup>.

54. Par ailleurs, le Myanmar doit également assurer la réparation des préjudices causés aux Rohingya par sa violation des mesures conservatoires.

55. Dans la mesure où ces préjudices ne sont pas déjà réparés par les mesures de restitution et d'indemnisation dues par le Myanmar en conséquence de sa violation des obligations de la convention, l'État défendeur devra séparément en assurer la réparation, à nouveau sous la forme de restitution et d'indemnisation. À cet égard également, et selon les violations des mesures conservatoires constatées par la Cour, il y aura lieu de réserver à une phase ultérieure de la procédure la liquidation précise de la réparation à laquelle le Myanmar est tenu.

56. Je remercie à nouveau la Cour pour sa bienveillante attention. Puis-je vous demander, Monsieur le président, de bien vouloir appeler à la barre M. Philippe Sands pour quelques remarques conclusives au terme de ce premier tour de plaidoiries de la Gambie ?

Le PRÉSIDENT : Je remercie M. d'Argent pour sa déclaration. I now call Professor Philippe Sands to the podium. You have the floor, Sir.

Mr SANDS:

#### IV. CONCLUDING REMARKS

1. Mr President, Members of the Court, you have had a full week, so these concluding remarks will be brief. The facts are clear, they speak for themselves. I have just a very few points to make.

2. First, you have now heard the totality of the submissions of The Gambia, on matters of evidence and of law. And we can summarize those submissions rather simply: whether you focus on the "particular circumstances" of what passed in the specific villages to which The Gambia has drawn your attention or on the "pattern of conduct" across time and place, and whether you apply a standard of proof that requires evidence to be "convincing", or a standard that requires the "only reasonable inference", it is, we say, manifest that the acts of the Tatmadaw and of Myanmar — killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about

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<sup>107</sup> CMM, par. 14.44.

physical destruction and imposing measures intended to prevent births — these acts “were committed with intent to destroy, in whole or in part, [the Rohingya] group, as such”. Myanmar has not met its obligations under the 1948 Convention. Myanmar has committed genocide. So, too, has it conspired and incited genocide. So, too, has it failed to prevent and punish genocide. So, too, has it failed to comply with the provisional measures Order of this Court.

3. Now, my second point, against that background, is that you have not yet heard from The Gambia’s witnesses or expert. That will be for next week, after Myanmar has concluded its first round. No doubt, in the course of its submissions, counsel for Myanmar will seek to convince you that the 1948 Convention is somehow not engaged, because the facts you have heard this week are invented, or exaggerated, or depart from the truth, and that Myanmar in fact only ever acted by way of legitimate “counter-terrorism”, or because the standard for proving intent has not been met, or because the evidence before you cannot be relied upon — because of the manner in which it was collected, its probative value, its veracity, its weight, its weaknesses. And so on, and so on. To read the pleadings of Myanmar, as we have all done, is to be reminded of Victorian Britain — of Charles Dickens’ warnings about the horrors of appearing before London’s Chancery courts. Chapter 5 of *Bleak House*: [I]t’s being ground to bits in a slow mill; it’s being roasted at a slow fire; it’s being stung to death by single bees; it’s being drowned by drops; it’s going mad by grains.”

4. Well, you will have a chance to assess the evidence and the testimony for yourselves next week, when The Gambia’s three eyewitnesses will appear in this Great Hall. They have of course travelled a very great distance to be with us. And they are here for a reason — for, in truth, this is really their case, and it would not be right for them not to have an opportunity to tell you, the judges, exactly what happened to them: and for you to hear the voice of the Rohingya directly, and for them to be able to say that you have heard them directly. You have their written statements, and we trust you have read them. You can read their first-hand accounts: three civilians, ordinary folk, people with aspirations, like anyone else, targeted not because of anything they ever did, but simply because they happened to be members of the wrong group, at the wrong time in the wrong place. Imagine, as you listen to them, what it means, for that reason, to lose your wife and five of your six children simply because you happen to be a member of the wrong group in the wrong place at the wrong time.

5. In their statements and in their words you will read about the particular individualized acts of rape and abuse to which they were personally subjected; the killing of spouses, of parents, of children — all personally witnessed; the burning of homes, the destruction of villages, the sight of infants being disposed of by fire or water. The accounts are, each and collectively, and by any reasonable standard, deeply harrowing. They are also fully credible, consistent with and supported by *hundreds* of other testimonies that you have. You will hear the witnesses and if you wish you will have the opportunity to put any questions you want to them.

6. You will also hear from The Gambia’s expert, Professor Newton. He is independent and he is authoritative. What does he say about the evidences and the testimonies that are before you, and the arguments you will hear in the coming days from Myanmar that it was merely engaged in rather modest acts of local counter-terrorism, reasonable reactions to real threats? That is what you will hear in the coming days. Well, Professor Newton is blunt and he is clear and he does not mince his words. No, he says, “Myanmar’s ‘clearance operations’ demonstrated none of the characteristics or indicia associated with counter-insurgency”. No, he says, the Tatmadaw operations “were not random acts of spontaneous and uncoordinated violence conducted by renegade commanders of undisciplined outliers”. Yes, he says, the “clearance operations” were planned and executed based on “explicit command guidance and pursuant to orders”. Yes, he says, the “clearance operations” were “focused on annihilation of the civilian population” and yes, he says, they were accompanied by all the telltale signs of “operational intent”<sup>108</sup>. These are his words. I can do no better than put on the screen more of his words:

“Any argument that the Tatmadaw’s ‘clearance operations’ against the Rohingya represented authentic or appropriate counterinsurgency is not credible. The “clearance operations” violated a wide variety of legal and moral constraints. There is no conceivable basis for such operations under modern military doctrine or developed state practice. The attacks were intentionally directed against the civilian population. They were juxtaposed against decades of oppression and human rights violations directed against the Rohingya on the basis of their ethnic and religious identity. The only plausible conclusion from the available evidence is that the ‘clearance operations’ were conceived, coordinated, and conducted with the intention of destroying the Rohingya population on the basis of their ethnic and religious identity.”

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<sup>108</sup> Expert report of Professor Michael A. Newton (October 2020), para. 29. MG, Vol. XI, Annex 359.

7. That is an expert opinion. And as with the witnesses, you will hear him, and you will have the opportunity to put any questions you want to him to test that evidence that he has given. Myanmar had an opportunity to put in counter-expertise. They have not done so.

8. Mr President, Members of the Court, in this Great Hall of Justice, as has already been mentioned, each of us bears the burden and responsibility of approaching with the very highest standards of independence, integrity and professionalism the question of accountability for the heinous and terrible acts that you are called upon to address in this case.

9. You address these issues at a particular moment in time. There are some who now say that we live in a post-rules world, that there is no international law, that there is no need for any international law; all that these people say really matters is the morality of one or two leaders. This is one of the great elephants in this Great Hall of Justice, but it is not the only one.

10. The fact that we are gathered here — and have been for a few days and will be for a few more days — is testament to the enduring reality of a world of rules and of law. Myanmar might like to wish that there was no such thing as a Genocide Convention, but there is, and it is emblematic of a commitment — a legally binding commitment — to a rules-based system. Its meaningful interpretation and application offer the possibility of a riposte to those who say they have a right to proceed as though there are no rules and no constraints on their actions, that they can maim and rape and murder in the name of “counter-terrorism” or national interest, or that they can commit acts of genocide and other abuses with total impunity and with no accountability whatsoever. To accede to the arguments of Myanmar is to say, in effect, that it can act as it wishes at will, not in a lawless world but in a world with no laws.

11. Mr President, Members of the Court, as we all know, the eyes of the Rohingya community are upon you and us, as are the eyes of the world. The Gambia has the very fullest confidence in this Court, to do that which is required by this foundational international Convention, to protect the rights of the Rohingya community in Myanmar, the rights of The Gambia and the rights all parties to the Convention.

12. We also have the fullest confidence that the Court will faithfully fulfil its mission as the principal guardian of this Convention, to ensure its continuing utility and effectiveness in a tough world. We trust, too, that you will not allow Myanmar to discredit and undermine, as it seeks to do,

the meticulous, independent and authoritative work of the United Nations and the reports of its Fact-Finding Mission, and the Independent Investigative Mission for Myanmar, work that has been done over many years and at a very great cost and at personal risk to many, many people.

13. Mr President, Members of the Court, with these words, The Gambia concludes its first round of oral submissions. On behalf of the team, I thank you for your very kind attention throughout, and that concludes our submissions. Thank you.

The PRESIDENT: I thank Professor Sands, whose statement brings to an end the first round of oral argument of The Gambia. The Court will meet tomorrow, Friday 16 January 2026, at 10 a.m., to begin hearing the first round of oral argument of Myanmar.

The sitting is closed.

*The Court rose at 12 noon.*

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