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THE HAGUE

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YEAR 2026

Public sitting

held on Monday 26 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)

VERBATIM RECORD

ANNÉE 2026

Audience publique

tenue le lundi 26 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)*

COMPTE RENDU

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

 Registrar Gautier

Présents : M. Iwasawa, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
M^{me} Xue
M. Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi
Hmoud, juges
M^{me} Pillay
M. Kress, juges *ad hoc*

M. Gautier, greffier

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The PRESIDENT: Please be seated. The sitting is open.

The Court meets this morning to hear the second round of oral argument of The Gambia on the merits 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)*. I recall that the second round of oral argument will begin today and conclude on Thursday 29 January. Each Party will have three sessions of three hours to present its reply.

I now give the floor to Professor Philippe Sands. You have the floor, Sir.

Mr SANDS:

I. The Genocide Convention and the role of the Court

1. Mr President, Members of the Court, you have now heard the first round of both Parties in this case, and the witnesses and the expert. In these submissions, which introduce the second round of The Gambia's oral arguments, I am going to address some of the bigger picture issues that are in dispute. I will focus on the Genocide Convention, and the role of this Court, as the principal judicial organ of the United Nations.

1. The hearings thus far

2. First, The Gambia maintains the totality of its arguments. Nothing we have heard from Myanmar causes any change in our position. Quite the contrary. It is clear that Myanmar offers no real challenge to the essential facts, namely that huge numbers of Rohingya have been subjected to the most terrible atrocities — killings, rapes, brutalization, beatings, destruction of homes and villages, destitution, being driven from their lands and across the border into Bangladesh. Those of us in this Great Hall who attended the hearings in the Bosnia and Croatia cases are bound to recognize that the nature and scale of the acts in this case are notably different. The fact of wrongdoing, and the criminality on an industrial scale, is not in issue. What *is* in issue is the characterization of those facts in law.

3. Second, against the background of such terrible facts, Myanmar's options for argument are limited. We all heard Mr Hooper acknowledge to Witness MS that atrocities have been committed. Myanmar's strategy is therefore plain for everyone to see: *one*, challenge the probative value of the

body of evidence before you — the manner of its collection, form, reliability; and *two*, argue for an unattainably high bar for “proof of intent to destroy the group in whole or in part”.

4. And as predicted, the approach of Myanmar truly was Dickensian, attacking The Gambia’s arguments with a thousand cuts, salami-slicing away, taking you deep, deep, deep into minutiae — in the hope that those who are listening will no longer be able see the wood for the trees. It is indeed *Bleak House*: did you not at times feel, as we were taken village by village by village, that you were being “ground to bits in a slow mill” and then “roasted at a slow fire” — not once, not twice, but three times and more, for no more than grains and drops of dispute, they argued. As I listened to their counsel, it struck me as striking how they failed to address the bigger picture. There was no attempt to explain the pattern of conduct in relation to the crimes. No attempt to explain why villages were bulldozed after they were burned to the ground. No attempt to tell you why fleeing children were shot dead. No attempt — literally nothing at all, silence — to respond to the expert reports — two of them — of a retired, decorated US Army Lieutenant Colonel, who on the basis of those reports told you — in the very plainest of terms — that what you have before you is not ethnic cleansing or war crimes; and that Myanmar’s conduct can only be explained as the expression of an intention to destroy a part of the Rohingya group. Professor Newton’s testimony is completely unchallenged.

5. Which brings me to a third point: beyond the Parties’ arguments on law and fact, you have now heard from witnesses, you have had a chance to question them, to assess for yourselves their credibility and the reliability of the first-hand accounts of what befell them. And that evidence shows that the “particular circumstances” of the village from which they came was genocide.

6. Witness MS offered a harrowing account, one that included the murder of his wife, five of his six children, and 56 close relatives, in the village of Min Gyi. His account of the facts was not challenged. And you saw for yourselves in this courtroom the continuing consequences — the “serious . . . mental harm” caused to one member of the Rohingya group, within the meaning of Article II (*b*) of the Convention. Imagine his testimony repeated tens of thousands of times more.

7. Witness NJ offered no less devastating an account. You heard from her directly of the deaths of her husband and her father-in-law, how one of her children was taken from her arms and murdered, by being stabbed and then thrown into a fire before her very eyes. And you then heard how she was gang raped. You heard too from her of the discriminations to which she has been subjected — no

freedom of movement, no education, a mass of restrictions and humiliations, no citizenship card, all imposed by the Myanmar authorities — and then confirmed and elaborated, in response to the questions put by Judge Sebutinde. Cross-examination by counsel for Myanmar made no dent whatsoever.

8. And Witness MN's account was equally horrifying. You heard directly how this man, a teacher, was part of a large group of men — 87 in number, he said — separated from their families in the village of Maung Nu, taken to another place and executed. He was the only survivor. And for this reason, as I listened to his account, what came to my mind was another account of a mass killing, also told by a teacher, one that was written about 80 years ago. His name was Gerszon Taffet, and he wrote of a massacre in a small town called Zolkiew, then in Poland, today in Ukraine. And like Witness MN, Gerszon Taffet was the only survivor of a genocidal act that took the lives of the uncle and many family members of a man whose portrait hangs in the Judges' Reading Room in this Court's New Wing: Judge Hersch Lauterpacht¹. I mention this because that act of killing — evocative of what we have heard from Witness MN — was precisely of the kind that inspired the drafting of the 1948 Convention on the Prevention and Punishment of Genocide. Contrary to what counsel for Myanmar told you, there is a direct line that connects then and now, and that feeds in to the role and responsibilities of this Court today.

9. After the witnesses you heard from Professor Newton, an independent expert — that is not an issue — who has provided reports and an affidavit for the Court, and whose testimony is unchallenged. Under cross-examination by counsel for Myanmar, you will have seen for yourself the care and diligence with which he carried out his tasks, and the clarity and the authority of his conclusions. He made crystal clear, not least in response to some of your questions, that any suggestion that the atrocities described by the three witnesses — and acknowledged by Mr Hooper — cannot possibly be explained as an excess in legitimate counter-insurgency exercise, or an exercise in ethnic cleansing. The argument is a “sham”, he said of the counter-insurgency claim, and he made very clear why.

10. I can do no better than remind you of Professor Newton's words:

¹ P. Sands, *East West Street: On the Origins of “Genocide” and “Crimes Against Humanity”* (2016), p. 351 *et seq.*

“And I’ll give you the *modus operandi* again, which . . . is absolutely indicative of an intentional, co-ordinated series of attacks directed against that portion of the population, surprise attacks . . . no notice . . . no warning . . . often from multiple angles. Indiscriminate shooting . . . no effort whatsoever to determine an ARSA location, or an ARSA house, or a safehouse or an IED factory . . . No . . . cordon and search [operation] . . . Followed by segregations and executions . . . followed by mass extermination . . . the same pattern over and over and over . . . extermination, shooting at refugees . . . mass rapes, orchestrated . . . Followed by the burnings . . . and the bulldozings.”

11. Counter-insurgency? I do not think so.

12. Ethnic cleansing? Try explaining that in your judgment.

13. The witness and expert testimony you have heard is “fully conclusive” of the facts on pattern of conduct to which they attest. It is “fully conclusive”², and let us use the French language because it is slightly different: “*ayant pleine force probante*”. This characterized what happened in the “particular circumstances”³ and what happened in scores of villages as genocide: these were not killings like *My Lai* or *Haditha*, one-off war crimes. Nor were they, as Professor Newton made clear, ethnic cleansing, which is a crime against humanity. “It is not ethnic cleansing”, Professor Newton told you⁴, because ethnic cleansing does not involve “mass rapes”, with “ethnic slurs”; or babies killed and thrown into burning houses, wells and rivers; or the killing of the children of a particular group; or the slaughter of men; or “shooting at fleeing refugees”, or sinking boats.

14. “[T]his is not just ethnic cleansing”, retired Lieutenant Colonel Newton of the U.S. Army told you. It is “fully conclusive” of the existence of a pattern of conduct, one that gives rise to the “only reasonable inference”, conduct intended to destroy the Rohingya community in parts of northern Rakhine State.

2. The Genocide Convention

15. I turn to the Genocide Convention, first a few general comments, and then some specific ones, on burden and standard of proof.

16. Contrary to what counsel for Myanmar said, the genesis of the 1948 Convention is important, and it is relevant to the treaty’s interpretation and application in this case. After Nuremberg, when the judgment failed to mention the word “genocide”, Raphael Lemkin almost

² *Croatia Genocide, 2015 Judgment*, p. 74, para. 178.

³ *Ibid.*, p. 66, para. 145.

⁴ CR 2026/16, p. 33 (Newton).

singlehandedly procured resolution 96 (1), at the UN General Assembly's first ever session⁵. The resolution affirmed that "genocide is a crime under international law", and the resolution requested the United Nations Economic and Social Council to draw up a convention. That convention was concluded in December 1948 in the session held at the Palais de Chaillot in Paris, just as Jean Cocteau's film *Les Parents terribles* opened in the local cinemas. The UN General Assembly is the decent parent of the 1948 Convention.

17. To be sure, the Convention does not include everything that Lemkin wanted, like the protection of social groups or culture⁶. But to all intents and purposes, it is fully a reflection of the ideas he set forth in Chapter IX of *Axis Rule*. For the rest of his life — 11 years — Lemkin devoted himself to lobbying countries to ratify the Convention. Three years before he died, in relation to Myanmar, he succeeded.

18. The writ of the Convention was limited until the mid-1990s, and then came the terrible events in the former Yugoslavia and Rwanda. The United Nations addressed those moments by creating two international criminal tribunals. Their work provided a jurisprudence upon which this Court could rely, in the *Bosnia and Croatia* cases.

19. In this case you do not have the jurisprudence of an ICTY to turn to — or any other judicial body that has gathered and tested the evidence. But *Do Not Say We Have Nothing*, to evoke the title of Madeleine Thiem's prize-winning novel. In fact, you have a great deal and it is highly significant and it is probative, for the UN General Assembly and related UN bodies have actively and effectively fulfilled their mandates in responding to the allegations of atrocities in Myanmar once they began to filter through. By resolution 34/22, on 24 March 2017, the UN Human Rights Council responded by creating an independent international Fact-Finding Mission — the FFM — to establish "the facts and circumstances" of what was going on, the horrors⁷. The resolution was adopted by consensus. Three individuals were appointed to the FFM — highly experienced lawyers each of them, from Sri Lanka, from Australia, from Indonesia, led by the former Attorney General of that last-mentioned country.

⁵ UN General Assembly, *Resolution 96 (1). The Crime of Genocide* (11 December 1946), available at <https://documents.un.org/doc/resolution/gen/nr0/033/47/img/nr003347.pdf?OpenElement>.

⁶ CR 2026/7, p. 60, para. 68 (Miron).

⁷ UN Human Rights Council, *Resolution adopted by the Human Rights Council on 24 March 2017, Situation of human rights in Myanmar*, UN doc. A/HRC/RES/34/22 (3 April 2017), available at <https://documents.un.org/doc/undoc/gen/g17/081/98/pdf/g1708198.pdf>, para. 11.

They spent 15 months, assisted by a highly professional team. They gathered evidence, including 875 witness testimonies, and they wrote a first 440-page report. Published on 12 September 2018, it concluded that the crimes in Rakhine State were perpetrated with “genocidal intent”, having regard to “the jurisprudence of international tribunals regarding the reasonable inference of such intent”. All other possible inferences regarding intent were discounted by the FFM as unreasonable⁸.

20. The UN FFM would go on to produce a second report, in September 2019. Another 419 witness statements. Its conclusion, that the remaining Rohingya lived under a continuing threat of genocide, and Myanmar was “failing in its obligation to prevent genocide, to investigate genocide and to enact effective legislation criminalizing and punishing genocide”⁹.

21. In the meantime, the United Nations Human Rights Council adopted resolution 39/2, to establish an Independent Investigative Mechanism for Myanmar, the IIMM. This would gather evidence of the most serious international crimes and violations of international law committed in that country since 2011¹⁰. It has gone on to collect still more witness evidence, some of which is before the Court.

22. In January 2019, the UN General Assembly adopted resolution 73/264. It expressed *grave concern* at the findings of the FFM, “that there is sufficient information to warrant investigation and prosecution so that a competent court may determine liability for genocide in relation to the situation in Rakhine State”¹¹.

23. These resolutions, and their fruits, and the work of the IIMM, are what in turn catalysed The Gambia into bringing this case to “a competent court”. That court is you, offering you the duty and the responsibility to assess and take forward what has been done by a raft of UN bodies: the General Assembly, the Human Rights Council, the FFM, the IIMM. The Gambia has relied on the work of the United Nations to bring this case to the principal judicial organ of the United Nations.

⁸ OHCHR, *Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military in Rakhine, Kachin and Shan States* (18 September 2018), available at <https://www.ohchr.org/en/press-releases/2018/09/myanmar-un-fact-finding-mission-releases-its-full-account-massive-violations>.

⁹ OHCHR, *Myanmar’s Rohingya Persecuted, Living under Threat of Genocide, UN Experts Say* (16 September 2019), available at <https://www.ohchr.org/en/press-releases/2019/09/myanmars-rohingya-persecuted-living-under-threat-genocide-un-experts-say>.

¹⁰ UN Human Rights Council, *Resolution adopted by the Human Rights Council on 27 September 2018*, UN doc. A/HRC/RES/39/2 (3 October 2018), available at <https://docs.un.org/en/A/HRC/RES/39/2>, para. 11.

¹¹ UN General Assembly, *Resolution adopted by the General Assembly on 22 December 2018, Situation of human rights in Myanmar*, UN doc. A/RES/73/264 (22 January 2019), available at <https://docs.un.org/en/A/RES/73/264>, para. 1.

24. And after The Gambia brought the case to this Court, the UN Human Rights Council acted again: by resolution 43/26 it welcomed this Court’s provisional measures Order and called for the IIMM to co-operate in a close and timely way with this Court¹². The IIMM has so co-operated: it has provided 42 witness statements to the Parties, 31 of which are formally submitted in these proceedings. And the Head of the IIMM — a lawyer with first-hand experience in the work and prosecutions of international criminal tribunals; he knows what he is talking about — has submitted an affidavit to this Court.

25. Why do I refer back to this history? Because it is relevant to the role of the Court, and to your role as judges. The preamble to the 1948 Convention called for “international co-operation” to liberate the world from the “odious scourge” of genocide. This case is a consequence of that co-operation. This Court is at the end of a pipeline that connects the parties to the 1948 Convention, the United Nations General Assembly and the Human Rights Council, as well as the FFM and the IIMM, and finally we arrive at the Court. In the case of the Rohingya, the Court may not have an ICTY to turn to, but it has evidence collected by UN processes, established as part and parcel of a deep and long-standing United Nations effort at accountability, one that was directly sanctioned by the General Assembly.

26. Is this Court going to say that the United Nations has given you nothing? Or that what it has given you is somehow inadequate? No, you have a mass of evidence, and it emanates from UN sources that are independent and authoritative. That is what gives it a particular weight, which Mr Reichler is going to come back to in due course, because the Court is the United Nations’ principal judicial organ. Myanmar’s argument that you should reject that evidence would demolish the system of investigation and accountability set up by the United Nations. We adopt the view expressed by the six interveners, including France, Germany, Canada, Belgium and Denmark, and the United Kingdom:

“[R]eports generated by the United Nations, such as reports produced by fact finding missions, commissions of inquiry, and reports that the Secretary-General of the United Nations may prepare for the United Nations Security Council or General Assembly, can have special importance. Indeed, such reports can be particularly

¹² UN Human Rights Council, *Resolution adopted by the Human Rights Council on 22 June 2020, Situation of human rights in Myanmar*, UN doc. A/HRC/RES/43/26 (3 July 2020), available at <https://docs.un.org/en/A/HRC/RES/43/26>, p. 2.

credible because they emanate from a ‘disinterested witness,’ namely ‘one who is not a party to the proceedings and stands to gain or lose nothing from its outcome.’”¹³

27. “Special importance”, “particularly credible”. Let us hear what Myanmar has to say about that. There is perhaps another aspect that is relevant. In its provisional measures Order of 23 January 2020, the Court did refer to General Assembly resolution 73/264, and it did place reliance on the detailed reports of the UN FFM. In another case before this Court, one of the judges addressed the FFM reports and explained how they were relied upon in these proceedings — in this case — how the Court “examines at length — and eventually declares plausible — the existence of genocidal intent”¹⁴. That judge proceeds to explain how “based on these findings regarding genocidal intent” — I am referring there to the findings of the FFM — “the Court considered the rights under the Genocide Convention to be plausible”¹⁵.

28. In other words, this Court has already determined — by a unanimous decision — that evidence of genocidal intent in this case has crossed the threshold of plausibility. What remains is whether, now that the Court has studied the extensive written pleadings and heard the oral arguments, whether the Court is “fully convinced” that genocide has been committed.

29. What all of this means in effect is that this is not just a case of *The Gambia v. Myanmar*, it is actually a case of *Myanmar v. The United Nations* — for the purpose of Myanmar’s counsel last week was to attack all the work done by every single one of these UN bodies. And, of course, those counsel know — they well know — that, if this Court accepts that work and relies upon it, then they lose. That is their fear. That is why they devoted a huge amount of effort to attacking the reliability and authority of the work of the FFM and the IIMM, which will no doubt continue in the second round. In dulcet tones, and in Dickensian style, they seek to persuade you, item by item, grain by grain, that the entire UN exercise is premised on a single, fundamental flaw: it does not meet the standards of international criminal justice. That is what they say.

¹³ Joint Declaration of intervention 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 (15 November 2023), para. 76.

¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024 (I)*, declaration of Judge Nolte, p. 59, para. 12.

¹⁵ *Ibid.*

30. The argument is completely misconceived, as you well know, because this Court has been very clear in referring to what it calls the “duality of responsibility” with criminal tribunals¹⁶. The ICJ “has no criminal jurisdiction”, one of the judges of the Court has rightly noted: it is, to use his words, “a judicial organ for the adjudication of inter-State disputes” and it fulfils a “role in the field of State responsibility for genocide” — State responsibility, not criminal justice — over which international criminal tribunals have no jurisdiction. As “the principal judicial organ” of the United Nations, this Court contributes, in its respective field, the judge notes, to a common objective shared with the criminal tribunals, namely the objective of international justice¹⁷. And it does so on the basis of its own methods and approaches. As the Court put it in the *Pulp Mills* case — a case I know well — mindful of what it called “the volume and complexity of the factual information submitted to it”, the Court “will make its own determination of the facts, on the basis of the evidence presented to it, and then it will apply the relevant rules of international law to those facts which it has found to have existed”¹⁸.

31. The Court has a well-established practice on evidence. I have lived through it — with it — for 35 years. It “will prefer contemporaneous evidence from persons with direct knowledge”, and it will “give weight to evidence that has not, even before [a] litigation, been challenged by impartial persons for the correctness of what it contains”¹⁹. Mr President, Members of the Court, that describes the UN FFM reports: they are not specially prepared, they do not emanate from a single source, they are contemporaneous, from persons with direct knowledge, and they are unchallenged by impartial persons for their correctness. Myanmar is alone — only Myanmar, in the world, challenges the findings of the FFM and the IIMM. Myanmar is alone in arguing that the witness statements are untested by cross-examination. None of the interveners supported that argument, and Myanmar has not found a single State that is willing to intervene in support of its version of what should be done. None, not one. Mr President, I have lived through cases that deal with the use of force, environmental

¹⁶ *Bosnia Genocide, 2007 Judgment*, p. 116, para. 173.

¹⁷ *Ibid.*, separate opinion of Judge Tomka, pp. 343-344, para. 60 and p. 351, para. 73.

¹⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010 (I)*, pp. 72-73, para. 168.

¹⁹ *Armed Activities (Reparations), 2022 Judgment*, p. 55, para. 121 (citing *Nicaragua v. United States, 1986 Judgment*, p. 41, para. 64 and *Armed Activities, 2005 Judgment*, p. 201, para. 61).

harms, human rights violations and so much more, and never before have I heard it said that in order to place reliance on evidence it has to be tested in that way.

32. All of this does come back to the history of the 1948 Convention, which entrusted to each of you, as judges, a role as guardians of the Convention. It falls to you as the judges — not to some international criminal tribunal that has not yet been established and will never be established — to ensure that the Convention’s obligations — not to commit genocide — are fully respected. That is your role.

33. I turn to the question of the burden and standard of proof.

34. As regards the burden of proof, there really is not much of a difference between the Parties. The Gambia has the burden of proving the facts to establish breaches of the Convention by Myanmar. We have to prove that the Rohingya are a group, and we have done so. In fact, Mr Staker has stated that “it is accepted that acts aimed at the destruction of the [Rohingya] population in northern Rakhine State as such would fall within the scope of the Convention, irrespective of whether that population is a part of a protected group or a protected group in its own right”²⁰.

35. Next, we have to prove that one or more of the acts set out in Article II (a) to (d) of the Convention have occurred, and we have proved that. The facts described in our witnesses’ testimony were basically unchallenged. So that is surely not in dispute, as Ms Jones will tell you in due course.

36. Next, we have to prove that those acts are connected to an intention on the part of Myanmar to destroy the Rohingya group in whole or in part. We say we have done that, and we are going to return to this important point.

37. What did Myanmar say in response? They said, “well, The Gambia has sought to shift the burden of proof”²¹. We have done nothing of the sort. Nor have we sought to argue, as their counsel claims, and probably for some sort of a “presumption” in favour of genocide²². No, what we have done is note is that in the face of the FFM reports and the mountains of evidence in support of the proposition that Myanmar intended to destroy the Rohingya group, Myanmar has sought to persuade the Court that its actions were motivated by other intentions or motives. The only other motive it has

²⁰ CR 2026/7, p. 33, para. 66 (Staker).

²¹ CR 2026/7, p. 28, para. 48 (Staker).

²² CR 2026/8, p. 13, para. 7 (Talmon).

put forward is that it was acting in exercise of counter-insurgency. Professor Talmon told you that if that “intention” was established, then the intention to destroy could not be established as the “only reasonable intention”. But he was contradicted by his own colleague, by Mr Staker, who said to you — these are important words, very important words — “Myanmar also accepts that genocide can be committed during a counter-terrorism or counter-insurgency operation”²³. Professor Talmon is wrong; Mr Staker is right. Myanmar can simultaneously be engaged in a counter-insurgency operation against the Rohingya — as Professor Newton told you it was — and also have the intention to destroy the Rohingya group in whole or in part — as Professor Newton told you it did. The mere fact that Myanmar was engaged in counter-insurgency does not prevent the evidence from pointing to an intention to destroy as “the only reasonable inference” from the conduct.

38. What other intentions or motives has Myanmar sought to persuade you of? None. We have not found any. It has not argued that it intended forcibly to remove the population. It has not argued that it intended to engage in ethnic cleansing. All it has argued is that it was engaged in counter-insurgency, and its counsel, on behalf of Myanmar, have accepted that this purpose can co-exist with the intention to destroy.

39. Mr President, this is a moment to address your question, Judge Gómez Robledo, which was put to Myanmar: please forgive if we also say something about it. You cited paragraph 163 of the Court’s Judgment in the *Pulp Mills* case, which mentions the expectation that an Applicant in a case will submit the relevant evidence to substantiate its claims (as The Gambia has done). The Court continues: “This does not, however, mean that the Respondent should not co-operate in the provision of such evidence as may be in its possession that could assist the Court in resolving the dispute submitted to it.”²⁴ You then asked, Judge Gómez Robledo:

“Quelles conséquences la Cour devrait-elle tirer du refus de coopérer de la part des autorités du Myanmar avec les organes chargés par les Nations Unies d’enquêter sur les faits qui servent de base aux allégations de la Gambie, y compris au regard de la valeur probante et des inférences qui découleraient des preuves fournies par le demandeur ?”²⁵

²³ CR 2026/7, p. 33, para. 67 (Staker).

²⁴ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 71, para. 163.

²⁵ CR 2026/12, p. 46 (Gómez Robledo).

40. We say that is a pertinent and important question; what consequences are to be drawn from a State's failure to co-operate? This question highlights the role of United Nations bodies in the issues before the Court, in this case, in their fact-finding role. This question illuminates for us a truth: that by its failure to co-operate at all with these bodies — by its failure for example, to allow those UN bodies to carry out site visits or investigations — Myanmar has undermined its ability to challenge the probative value of the evidence generated by the FFM and other bodies. And it has also undermined its ability to challenge the inferences that those UN bodies have drawn from the facts that it has found, from the evidence it has collected, including the conclusion of the 2019 FFM report, namely that “there is no reasonable conclusion to draw, other than the inference of genocidal intent, from the State's pattern of conduct”²⁶. Do not co-operate; it is pretty tough to challenge those words.

41. Mr President, I turn to the standard of proof. The standard of proof we have relied upon is precisely the one that the Court has told us to rely on in other cases under the 1948 Convention: the proof of the facts has to be “fully convincing”. You have to be fully convinced that the Rohingya are a group. I have no doubt that, by now, you are.

42. You have to be fully convinced that members of the group have been killed, subjected to serious bodily or mental harm, subjected to conditions of life calculated to bring about its physical destruction in whole or in part, or subjected to measures intended to prevent births within the group. It would be odd if, by now, you are not fully conclusive on that issue. You saw and heard three witnesses for yourselves.

43. And you have to be fully convinced that the only reasonable inference to be drawn from the evidence and the conduct it discloses is that Myanmar intended to destroy a part of the Rohingya group. The UN bodies are so convinced. Professor Newton is so convinced, as you heard.

44. So that raises the question, no doubt, in your minds: what does “fully convinced” mean? It means “fully convinced”. It does not mean — and the Court has never said it means — “beyond a reasonable doubt”. That latter standard is a common law standard, and it is a criminal standard, and this is not a common law court, and it is not a criminal court. This Court applies international law, and the international standard to be applied is “fully convincing”: *ayant pleine force probante*.

²⁶ 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. 225. MG, Vol. III, Annex 49.

45. This is the moment to address a question put by Judge Hmoud. Sir, you have noted an apparent contradiction in the position adopted by Myanmar: on the one hand, it recognizes that the régimes for individual responsibility and State responsibility are “distinct”; on the other hand, it goes on to say that there is no distinction between a criminal standard of proof and a civil, State responsibility standard of proof. That is a contradiction. They are wrong. There is a distinction.

46. First, this Court’s standard of “fully conclusive”, as I said, is not the same as “beyond reasonable doubt”. Myanmar says they are “comparable”. What does “comparable” mean? And I checked the *Oxford English Dictionary*: “comparable” means “able to be compared”²⁷. So, sure, you can compare the two different standards, but it does not mean — the word “comparable” — that they are “the same”. They are not the same. In assessing the circumstantial evidence that establishes the genocidal intent as the only reasonable inference, this Court asks itself whether the evidence is “fully conclusive”.

47. A second difference, Sir, in relation to your question: this Court is not deciding whether any individual is guilty of the crime of genocide, and whether they should be deprived of their liberty for that reason. That necessarily means that the degree of scrutiny will not be the same, will not be as acute. The consequences will not be as dramatic; no one is going to jail because of the Judgment you give.

48. Third difference, and relatedly, this Court is not asked to form a view as to whether any particular individual had, at a particular moment of time, a genocidal intent. No, that is not what you are doing. You have to form a view as to whether a state of mind (a genocidal intent) may be attributed to a State by reference to the actions of its organs, in this case its military forces. The intent of an individual is not the same thing as the intent of a State.

49. And fourth, and again, related to this last point, it is not a precondition of State responsibility for genocide that there should be a finding that any person acting on behalf of the State should have committed the crime of genocide (according to a “beyond reasonable doubt” standard, as Myanmar says, or indeed any other standard). Your case law adopts a very different approach. By way of example, this Court can determine that a State has been engaged in an illegal use of force

²⁷ *Oxford English Dictionary*, “comparable”, available at https://www.oed.com/dictionary/comparable_adj?tab=meaning_and_use.

without determining that an individual crime of aggression has occurred. That is what you did in *Democratic Republic of the Congo v. Uganda*²⁸. Relatedly, in the *Corfu Channel* case, the Court found that the laying of a minefield “could not have been accomplished without the knowledge of the Albanian Government”²⁹. In other words, the Court formed a view as to “the knowledge” of Albania — it examined the state of mind of a State, an incorporeal entity — and it did so explicitly by means of “indirect evidence”, proof “drawn from inferences of fact”. The Court went through this exercise without having established or even being informed about a view on the role or state of mind of any individual or the criminal liability of any person³⁰. In short, in its practice, the Court has accepted that assessing the state of mind of an individual — whether its knowledge or intent — is a distinct exercise from assessing the mind of a State. If this Court can determine that a State is responsible for the consequences of laying a minefield, it can determine that a State is responsible for the consequences of acts by its armed forces that amount to genocide.

50. And finally, Sir, in relation to your important question which I found very helpful, there is a difference of process in determining whether the applicable standard is met. In the criminal context, there will be weeks, months, years of witness testimony. This Court applies its own approach, and it does not follow that approach, and consequences must flow from that.

51. What does “fully convinced” mean? What does “*ayant pleine force probante*” mean? I appreciate that we, me, people like me who are trained in the common law, sometimes have real difficulty in grappling with civil law or other standards. I sit on the Court of Arbitration for Sport. There the applicable standard of proof is derived from a Swiss law standard, and for an English barrister it is pretty odd. It is a standard of “*conviction intime*”, sometimes translated — not perfectly — as “comfortable satisfaction”. The first time I encountered this standard, about 13 years ago, I must confess I had some difficulty because I had not encountered it — I am trained in the common law, so my brain is totally malformed by these common law conceptions. Then a Swiss lawyer helpfully explained “*conviction intime*” to me as follows: if you wake up in the morning and

²⁸ See *Armed Activities, 2005 Judgment*.

²⁹ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

³⁰ *Ibid.*, pp. 18, 22.

you are still worrying about whether the standard of “*conviction intime*” has been met, then it has not been met. When it is met, you do not worry about it.

52. The “fully convinced” standard is not what makes you comfortable when you wake up in the morning, but neither is it susceptible to a mechanical approach. It is for each of you, individually, guardians of the Genocide Convention, to form a view as to whether you personally, in exercise of your judicial function and intellectual capacities, are “fully convinced” by the evidence in relation to a particular factual matter. It means more than “partly convinced” and it means less than “totally certain”. It is a matter of individual appreciation. Each of you, individually, will form a view as to whether you are “fully convinced” that the “only reasonable inference” from the “pattern of conduct”, which we say is irrefutably established, is that Myanmar intended to destroy the Rohingya group. And then your individual views will be totted up, added up, and a collective view will emerge. And that is a numbers game.

53. Let me here address Judge Charlesworth’s first question, which was for The Gambia. You noted, Judge, that the FFM applied a “reasonable grounds” standard of proof in making its factual determinations, back in 2018 and in 2019, and that the Mission described this as “lower than that required in criminal proceedings”. You have asked now about the consequence of the application of that standard, as compared to the Court’s “fully convinced” standard “for how the Court should approach the FFM’s evidence”. Another pertinent question.

54. First off, in any case — it goes without saying but it needs to be said — it is always going to be for the Court as a collective to decide whether it is “fully convinced” by the relevant evidence. Even if the FFM had explicitly applied the “fully convinced” standard, we would expect the Court to go through its own assessment and reach its own conclusions. You are not bound as such by factual findings of the FFM, whatever standard it applies, and however credible and authoritative it is (and we say it is both). The standard it applied was that to which it was directed in its terms of reference, in accordance with the practice of UN fact-finding bodies³¹.

55. Accordingly the difference of standard is, in practical terms, of no real consequence with regard to the exercise you are going to have to go through. That is because you are going to have to

³¹ 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. 10. MG, Vol. II, Annex 40.

go through your own assessment of the facts that were found by the FFM. And doing so, you will form your own view as to how much reliance you feel able to place on the FFM reports. No doubt, you will have regard to the fact that the FFM is an independent body, that it is acting pursuant to a mandate given to it by the United Nations, that it is led by individuals with strong credentials, and that it has applied the stringent UN fact-finding standards that have been in place since 2015. No doubt you will have regard to the fact that the FFM's mandate did not prevent it from concluding that the evidence reached a higher standard, the Court's standard, when it concluded that "there is no reasonable conclusion to draw, other than the inference of genocidal intent, from the State's pattern of conduct"³².

56. You might also have regard to the fact that the factual findings of the FFM have been reached and then acted upon by the High Commissioner for Human Rights, by the Human Rights Council and by the UN General Assembly. You might also have regard to the additional evidence that has been put before you, gathered and put before you, which confirms and corroborates the totality of the FFM's findings of facts and its conclusions. You might have regard to the consequences — including for future work by UN bodies — of this Court concluding that the work of the FFM somehow falls short of the Court's standards. You might have regard to the fact that neither the work nor the conclusions have been challenged by any other State, except for Myanmar, and have been received as authoritative across the world. Mr Reichler will say more about this.

57. Beyond this, you have also been provided with a means to assist in forming your view as to the weight to be given to the FFM's factual findings. Three witnesses appeared before you, to tell their stories and answer their questions, including your questions. As you listened to what they said in this Great Hall of Justice, did you hear anything — anything — that would allow even a shadow of doubt to form in your mind, Judge Charlesworth, as to the conclusions of the FFM reports, on the experiences they went through and on the matters they addressed and told you about? Were you or were you not "fully convinced" by Witness MN's account of mass execution? Were you or were you not "fully convinced" by Witness NJ's account of having her child torn from her and thrown into a fire before her own eyes? Were you or were you not fully convinced by her testimony about being

³² 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. 225. MG, Vol. III, Annex 49.

gang raped? Were you or were you not fully convinced of Witness MS's account of his daughter being shot dead as she crossed a river seeking to escape? Did you see or hear any disconnect between these three accounts and the facts reported by the FFM? Did you see or hear any disconnect between these accounts and the explanation given by Professor Newton as to why such acts can never be characterized as counter-insurgency, and why they are not ethnic cleansing alone? Having all of that evidence, and having heard the witnesses, can you say that you are not "fully convinced" that the acts they described can only be explained as reflecting the intention of the Tatmadaw and Myanmar to destroy them because they happen to be part of a group that has been persecuted and vilified for their race and their religion, for decades.

3. Conclusions

58. Mr President, Members of the Court, I turn to the conclusions. By Article IX the drafters of the 1948 Convention explicitly gave to this Court the mandate to resolve disputes relating to the responsibility of a State for genocide. That is what the text says.

59. That direction — that mandate imposes a burden on all of us in this Great Hall of Justice, as we discharge the obligations that fall upon us in relation to the matters of fact and law that arise with this case. And all of us, surely, will have been deeply affected by all the accounts we heard of the witnesses who have spoken in this Great Hall of Justice.

60. But none of us — none of us — will wish to shirk those responsibilities. At a time when the idea of a rules-based international system faces acute challenge, the weight of those responsibilities may feel very great, or perhaps even insurmountable. And that is what makes at this moment in time the 1948 Convention so very important. The system that emerged around the Convention has been catalysed in this case, in a way that did not happen in the *Bosnia* or *Croatia* cases, which did not have the benefit of a deep, deep dive, a UN exercise into establishing the facts — including thousands of witness statements — generated by an effective, timely and — it has to be said — well-functioning United Nations system. That system may not have prevented the genocide, but it has offered a means to secure accountability for it, and the International Court of Justice, as the principal judicial organ of the United Nations, has been given the central role in securing such accountability.

61. To sum up, the real issue in this case is intent. Myanmar says the intent is counter-insurgency. The Gambia says the intent is the destruction of a group in whole or in part. And so does everyone else who has looked at these issues and facts. The eyes of the world are upon you. Blink, and the 1948 Convention is dead.

62. Mr President, Members of the Court, I thank you for your attention, and I invite you to call Mr Reichler to the bar.

The PRESIDENT: I thank Professor Sands for his statement. I now invite Mr Paul Reichler to address the Court. You have the floor, Sir.

Mr REICHLER:

II. THE TRUSTWORTHINESS AND PROBATIVE VALUE OF THE EVIDENCE RELIED ON BY THE GAMBIA (PART I)

1. Mr President, Members of the Court, good morning! I will confirm the probative value and the weight of the evidence submitted by The Gambia, which Myanmar has challenged. I will do so in two parts. In the first part, I will respond to Myanmar and reassure you of the credibility, reliability and trustworthiness of the two voluminous reports produced by the United Nations FFM, and the reports and witness statements produced by the UN Independent Investigative Mechanism for Myanmar. In the second part, I will respond on the reliability and weight of the other evidence submitted by The Gambia, including investigative reports by authoritative NGOs, signed witness statements and the testimony of the witnesses and expert who appeared before you last week. I will also provide our responses to questions asked by Judge Tomka and Judge Cleveland. Mr President, I anticipate that the length of this speech will carry beyond the time that is normally reserved for the coffee break. We are in your hands, of course, but if the Court would find it convenient, I would suggest that an appropriate time for the break would be after paragraph 35 of my speech. But, of course, we will break whenever you, Mr President, so decide.

2. Myanmar puts much effort into challenging the reliability and weight of the reports of the FFM. This was a necessity for them, because, as we explained in the first round, those reports constitute convincing and compelling and conclusive proof that Myanmar acted with genocidal intent

in carrying out its “clearance operations” in the Rohingya villages of northern Rakhine State in 2016 and 2017.

3. As you will recall, after interviewing more than 1,200 witnesses and victims, and reviewing thousands of documents, photographs, videos and satellite images, as well as public statements and social media posts by senior Myanmar officials, Tatmadaw military officers and soldiers, and voluminous other evidence specified in the two reports, the FFM concluded, as Professor Sands told you: “[T]here is no reasonable conclusion to draw, other than the inference of genocidal intent, from the State’s pattern of conduct.”³³

4. In this presentation, I will respond to Myanmar’s criticisms of the FFM reports and findings, and the reports and witness statements from the IIMM. None of their criticisms withstand scrutiny. The arguments of Myanmar are contrived, misleading, erroneous, as well as nit-picking, and, whether they are considered individually or collectively, they fail to diminish the reliability of these reports or statements, or the great evidentiary weight to which they are entitled.

5. Myanmar’s criticisms begin with a challenge to the competence of the FFM’s members and staff, “none of whom”, according to Mr Staker, “appear to have had qualifications in forensic investigations or litigations”³⁴. He provided no citation to the evidentiary record for this supposed lack of qualifications. In fact, it cannot be disputed that, as reported on page 7 of the 2018 Report, the Mission was composed in accordance with the Guidance and Practice for Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, published in 2015 by the UN High Commissioner for Human Rights, which you will find at tab 14 of your judges’ folders³⁵. In regard to “Qualifications” for members and staff, these guidelines require:

“Recognized competence and proven substantial knowledge and experience in international human rights law, including women’s rights and gender issues, international humanitarian law, and/or international criminal law, as relevant.

³³ 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. 225. MG, Vol. III, Annex 49.

³⁴ CR 2026/8, p. 34, para. 8 (Staker).

³⁵ UN Human Rights Office of the High Commissioner, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice* (2015), available at https://www.ohchr.org/sites/default/files/Documents/Publications/CoI_Guidance_and_Practice.pdf, p. 19.

Substantial knowledge of human rights fact-finding and investigations principles, standards and methodology, and proven experience in this field.”³⁶

6. There is no reason to doubt that the FFM members and staff fulfilled these requirements. There is certainly no evidence that they did not. The three FFM members — Marzuki Darusman of Indonesia, Radhika Coomaraswamy of Sri Lanka and Christopher Sidoti of Australia — are highly distinguished, knowledgeable and experienced international personages of significant renown, as reflected in the biographies published by the United Nations, at tab 15 of your judges’ folders. The Chair, Mr Darusman, a former Attorney General of Indonesia, had chaired two previous UN fact-finding missions³⁷. Biographies are not available for staff, because it is standard practice not to disclose their identities, for their own protection and to ensure the integrity of the investigation process.

7. However, in this case, the Parties have been able to identify one of the staff members. Mr Staker identified her last week as Ms Antonia Mulvey³⁸. Her biography is at tab 16. As you will see there, at the time she served on the FFM she had extensive, relevant experience in forensic human rights investigation. In 2016, she was appointed by the Human Rights Council to conduct an investigation of alleged human rights violations in Myanmar. She was the United Kingdom Foreign, Commonwealth and Development Office’s expert on sexual and gender-based violence. When the FFM was constituted in March 2017, she was chosen as the Mission’s expert on sexual and gender violence. She performed this role between June 2017 and September 2018, interviewing witnesses and victims in the refugee camps at Cox’s Bazar³⁹. She was eminently qualified to perform this task. This is the same Antonia Mulvey who later became Executive Director of Legal Action Worldwide.

8. Myanmar argues, over and over again, that the FFM and its staff were not qualified to produce evidence “suitable for use in judicial proceedings”⁴⁰, and it claims that this is reflected in

³⁶ *Ibid.*

³⁷ UN Human Rights Council, *Biographies of the members of the Fact-Finding Mission on Myanmar*, available at <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/members>.

³⁸ CR 2026/9, p. 46, para. 42 (Staker) (citing to Witness Statement of Antonia Mulvey, para. 4. MG, Vol. XI, Annex 373).

³⁹ Curriculum vitae of Antonia Mulvey (January 2026), available at https://legalactionworldwide.org/wp-content/uploads/Antonia_Mulvey_CV_Jan_2026_FINAL.pdf. See also Legal Action Worldwide, Biography of Antonia Mulvey, available at <https://legalactionworldwide.org/about-us/our-team/>.

⁴⁰ CR 2026/7, p. 27, para. 44 (Staker); CR 2026/8, p. 35, para. 10 (Staker); CR 2026/8, p. 40, para. 27 (Staker).

the Mission's mandate from the Human Rights Council⁴¹. But Myanmar does not take us to that mandate or even provide a citation to it. For good reason. Resolution 34/22 mandated the Mission

“to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and other forms of sexual violence, extrajudicial, summary or arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims”⁴².

9. To “establish the facts and circumstances . . . with a view to ensuring full accountability for perpetrators and justice for victims”. The objective of producing reports suitable for use in judicial proceedings is explicit.

10. Equally misleading is Myanmar's invocation of the affidavit of Assistant Secretary-General Nicholas Koumjian, Head of the IIMM, in support of its argument that the FFM's reports are unsuitable for use in “judicial” proceedings. Mr Staker told you that “[t]he Head of the IIMM himself recognizes that the work . . . of the FFM was not suitable for use in judicial proceedings.”⁴³ This is totally false. The Assistant Secretary-General said nothing of the sort. Even the selective quotation read aloud by Mr Staker does not support this assertion. Here is what Mr Koumjian actually said about the FFM:

“The Mechanism has extensively utilised the information received from the FFM. From the commencement of the Mechanism's activities, it used the FFM archives as a starting point for incident identification and prioritisation, as well as preliminary crime pattern analysis . . . The Mechanism also used FFM witness interviews as one means of identifying potentially relevant witnesses for further engagement with the Mechanism. Contemporaneous documentation collected by the FFM has also been incorporated into the Mechanism's analytical products. The FFM was on the ground and collecting information in Bangladesh while the crimes were occurring. The FFM interviewed hundreds of refugees soon after their arrival in Bangladesh. Given the limited timeframe of its operations [from 2017 to 2019], the focus and methodology of the FFM was necessarily different in nature from that of the Mechanism. The Mechanism has a very distinct mandate from that of a fact-finding mission and a different methodology. Rather than having a mandate to issue public reports and make recommendations to Member States, the Mechanism's mandate is to collect, preserve and analyse evidence so as to facilitate criminal prosecutions.”⁴⁴

⁴¹ CR 2026/8, p. 40, paras. 27-29 (Staker).

⁴² UN Human Rights Council, Resolution 34/22 on the Situation of human rights in Myanmar, adopted 24 March 2017, UN doc. A/HRC/RES/34/22 (3 April 2017), para. 11.

⁴³ CR 2026/8, p. 40, para. 27 (Staker).

⁴⁴ Affidavit of Nicholas Koumjian (15 November 2025), para. 53.

11. This is an *endorsement* of the FFM’s fact-finding work, not a *criticism* of it. Yet, Mr Staker and his colleagues, in reliance on this statement, told you repeatedly that the FFM’s reports, according to the Assistant Secretary-General of the United Nations, are “not . . . suitable for use in judicial proceedings”⁴⁵. As you have seen, Mr Koumjian said nothing of the sort: his testimony is to the contrary; he attests that the IIMM considers the evidence gathered by the FFM to be sufficiently reliable so as to be of use to the IIMM even in the facilitation of *criminal* proceedings.

12. Mr President, you will recall that Myanmar also invokes the writings of Professor Cherif Bassiouni to discredit the reports of fact-finding missions. However, what they do not tell you is that Professor Bassiouni’s words were written in 2001, a quarter-century ago, when FFM’s were in their infancy. Between then and 2015, when the High Commissioner published his guidelines for fact-finding missions, there were 36 missions; much experience was accumulated and many lessons were learned, and these were incorporated into the 2015 guidelines as international best practice⁴⁶. In fact, it appears that Professor Bassiouni, himself, changed his views when he agreed to serve as Chair of the International Commission of Inquiry on Libya, in 2011⁴⁷.

13. If I may, I would like to take you back to the High Commissioner’s Guidelines for fact-finding missions at tab 14, this time in regard to the FFM’s methodology. I do so because Myanmar has criticized this methodology, particularly in regard to the FFM’s interviews of witnesses. You will see here, in the Guidelines, the “[p]rinciples of human rights and international humanitarian law fact-finding and investigations”, which the 2018 report says, without contradiction in its record, that the Mission meticulously followed⁴⁸. There is no evidence to the contrary. The first of these principles is “do no harm”:

⁴⁵ CR 2026/7, p. 27, para. 44 (Staker); CR 2026/8, p. 35, para. 10 (Staker); CR 2026/8, p. 40, para. 27 (Staker).

⁴⁶ UN OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice* (2015), available at https://www.ohchr.org/sites/default/files/Documents/Publications/CoI_Guidance_and_Practice.pdf, foreword.

⁴⁷ See OHCHR, *International Commission of Inquiry to investigate human rights violations in Libya releases its report* (1 June 2011), available at <https://www.ohchr.org/en/press-releases/2011/06/international-commission-inquiry-investigate-human-rights-violations-libya>.

⁴⁸ 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. 8. MG, Vol. II, Annex 40. UN Human Rights Office of the High Commissioner, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice* (2015), available at https://www.ohchr.org/sites/default/files/Documents/Publications/CoI_Guidance_and_Practice.pdf, pp. 33-35.

“While the commission/mission is unable to guarantee the safety of the persons it comes in contact with, it should ensure that its actions or inaction do not jeopardize the safety of such persons, its staff, its information or its work.”⁴⁹

14. On the very next page, you will find the principle of “confidentiality”.

“The commission/mission is required to respect the confidentiality of persons who cooperate with it and the information it gathers. In addition to the protection it affords, confidentiality enhances the credibility of the commission/mission, the integrity of its information-gathering activities and the effectiveness of its work.”⁵⁰

15. Mr President, these are the reasons the FFM interviewed witnesses and victims under conditions of confidentiality, and provided them with anonymity, and thus safety, by recording their evidence in notes of interviews. Myanmar criticizes the evidence gathered in this manner as second-hand, suggesting that signed witness statements would have been better. In the abstract, perhaps. But in the circumstances that existed in the refugee camps in Bangladesh, so close to the border with Myanmar, and the trauma and fear that many witnesses and victims felt, anonymity was essential for their own peace of mind and protection. Myanmar prattles on — and on — about the witnesses’ alleged vulnerability to and fear of ARSA⁵¹. The FFM considered this, and, to be sure, the evidence shows that some witnesses were reluctant to identify ARSA members or those who participated in ARSA’s attacks by name. But the FFM, and the IIMM, both found that the witnesses in the camps in Bangladesh were mainly, and by an overwhelming margin, far more fearful of reprisal by Myanmar and the Tatmadaw against them personally, or against family members who were still in the country⁵². I will return to this point later.

16. In regard to methodology, according to the UN High Commission for Human Rights, which announced publication of the first FFM report on 12 September 2018:

“The victims’ testimonies and the other information sources were verified and corroborated. Credible secondary information was also used to corroborate the Mission’s information, such as reports from intergovernmental and non-governmental organizations, individual researchers, and others.

.....

⁴⁹ UN OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice* (2015), available at https://www.ohchr.org/sites/default/files/Documents/Publications/CoI_Guidance_and_Practice.pdf, p. 33.

⁵⁰ *Ibid.*, p. 34.

⁵¹ CR 2026/8, pp. 61-64, 67-68, paras. 54, 60-61, 64, 79, 83 (5) (Lawrie); CR 2026/9, pp. 20-21, paras. 35, 37 (Blom-Cooper); CR 2026/9, pp. 36-37, para. 9 (Staker).

⁵² Affidavit of Nicholas Koumjian (15 November 2025), para. 47.

When the Mission heard accounts of major incidents specific to a certain time and location, it would seek out others from the same area and corroborate those accounts. When the Mission amassed a certain volume of information, it became possible to discern patterns of violations. The picture that formed was of the Tatmadaw using the same tactics, though with varying levels of intensity, wherever it operated.

.....

Painstaking research and analysis were conducted, not only on the actions that unfolded on the ground, but also on the proliferation of hate speech and incitement to violence, particularly on social media, on who holds the power to stop it, and on how these compare with the legal definitions of specific human rights violations and crimes under international law.”⁵³

17. Mr President, second-hand evidence, obtained by professional investigators in this deliberate and careful and corroborated manner, from hundreds and hundreds of witnesses and victims, is evidence. In some cases, it will be very reliable, in others perhaps less so. It depends on the circumstances, particularly on the reliability and trustworthiness of the source, and this is for the Court to determine. Counsel for Myanmar refer to “hearsay” as if it were a dirty word. But hearsay evidence is often admitted and given substantial weight by national and international courts, depending on the court’s assessment of its reliability. That is why, in common law jurisdictions, the so-called “hearsay rule” is riddled with exceptions. Most important, this Court has often allowed and relied on hearsay evidence⁵⁴. This includes, especially, reports by independent and authoritative UN bodies. As we discussed in our first round, the Court has regularly given weight to evidence in investigative reports by UN bodies, including in its two prior genocide cases⁵⁵.

18. So has the International Criminal Court. I refer to its decision of 6 October 2025 in *The Prosecutor v. Muhammad Ali Abdul Rahman*:

“Under Article 69 of the Statute, indirect evidence (also known as hearsay), is admissible. Moreover, the fact that evidence is indirect does not necessarily deprive it of probative value. The indirect evidence in this case primarily falls into three separate categories: (i) witness evidence recounting what the witness had been told, rather than what they saw or heard themselves; (ii) evidence contained in reports, e.g., from UN agencies, the G[overnment] o[f] S[udan]; and (iii) circumstantial evidence.”⁵⁶

⁵³ OHCHR, “*The truth can be recovered*” — *the methodology behind fact-finding in Myanmar* (12 September 2018), available at <https://www.ohchr.org/en/stories/2018/09/truth-can-be-recovered-methodology-behind-fact-finding-myanmar>.

⁵⁴ See *Bosnia Genocide, 2007 Judgment*, p. 135, para. 226.

⁵⁵ See *ibid.*, pp.135-137, paras. 227-230; *Croatia Genocide, 2015 Judgment*, pp. 76, 133, 144, paras. 190-191, 459-460, 492-493.

⁵⁶ *The Prosecutor v. Al Muhammad Ali Abd-Al-Rahman*, ICC Case No. ICC-02/05/01/20, Trial Judgment (6 October 2025), available at <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180cb3b4e.pdf>, para. 170.

19. The ICC went on to explain that the weight given to evidence from such secondary sources will depend on the “circumstances which surround it”⁵⁷.

20. Mr President, whether the evidence is direct or indirect, the Court will assess, and make its own determination, of the reliability of the source. Assuming the Court finds the source of the evidence trustworthy, the weight to be given to it depends on three factors, as spelled out by the Court in the *Bosnia* case, among several others: (1) the care taken in preparing a report; (2) the comprehensiveness of its sources; and (3) the independence of those responsible for preparing it⁵⁸. There can be no doubt — no doubt whatsoever — that all three of these factors are present here, for each of the two FFM reports.

21. Even Myanmar has not disputed the comprehensiveness of the FFM’s sources, or the independence of those responsible for preparing it. How *could* they? But Myanmar *does* challenge the care taken in the preparation of the reports, specifically in their reliance on evidence provided by witnesses and victims recorded in interview notes. On 16 January, they displayed one of these notes — the only one that is before the Court — and they held it up as if it were a “smoking gun” — purportedly demonstrating the inadequacy of this form of evidence collection by the Mission.

22. But what does this document actually tell us? If this is the best they can come up with, then this time, they have shot their gun directly at themselves. First, as Myanmar agrees, it is an interview with an ARSA member; and the evidence he provides relates to ARSA’s origin, organization, structure and activities, from its inception through its attacks in August 2017⁵⁹. This witness provides no information about Myanmar’s “clearance operations”, or any of the conduct that the FFM considered evidence of genocide or genocidal intent. It was not, in fact, relied on by the FFM for that purpose.

23. Second, the note tells us that the FFM investigation was not limited to the activities of Myanmar and the Tatmadaw; it also covered ARSA and its activities. In fact, as counsel for Myanmar have acknowledged, fully 57 paragraphs of the FFM’s 2018 report are devoted specifically to ARSA

⁵⁷ *Ibid.*, available at <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902cbd180cb3b4e.pdf>, para. 171.

⁵⁸ *Bosnia Genocide, 2007 Judgment*, p. 137, para. 230.

⁵⁹ CR 2026/8, pp. 38-39, para. 23 (Staker).

and its activities, demonstrating that the FFM definitely took ARSA's attacks and Myanmar's responses into account in reaching its detailed factual findings and its conclusions.

24. Third, the interview note tells us that the FFM staff member who conducted the interview did not take the witness's testimony at face value. Instead, as an experienced investigator should, he or she exercised considerable discernment in evaluating this testimony, including by recording doubts about the witness's credibility: "It's at times difficult to tell whether witnesses like him are good or well-rehearsed. I cannot discount that the witness may be well-rehearsed . . . I believe he gave us what was decided he could give us re: ARSA and nothing more."⁶⁰ The interviewer concludes by stating that: "A second interview may make him more open to discuss things he was evasive about this time."⁶¹

25. Myanmar criticizes the note for what they consider its brevity. Apparently, they could not resist exaggerating this by presenting it on their slide in a very reduced font size. But it appears that whatever its length, the interviewer believed he or she obtained all the information they could from the witness, given that the witness was evasive about some issues. Myanmar extrapolates from this one note that all the other notes of interviews, all 1,293 of them, are of similar length and quality and effect. Mr Staker says: "There is no reason to think that this document is *atypical* of *all* the other interviews conducted by the FFM."⁶² Really? We say, there is no reason to think it is *typical* of them! There is *nothing* that can be concluded about the other 1,200 plus notes of interviews based on a review of only a *single one* of them. How can they ask *this* Court, or *any* court, to draw a conclusion about the quality of 1,200 interview notes, each with a different witness, created by a variety of interviewers, from just one note? It is a ridiculous argument.

26. Myanmar tells you that this note is "remarkably" cited 22 times in the FFM's 2018 report. This, too, is misleading. There is nothing about the note, or the witness himself, in the text of the report. It is cited only in footnotes, in all but one case in a string citation to multiple witnesses and sources. It is cited *only* in reference to conditions in Myanmar leading to the formation of ARSA in 2014, and ARSA's activities thereafter. It is *not* cited or relied on by the Mission in connection with

⁶⁰ UN Fact-Finding Mission, Interview Note. XI-008 (5 March 2018) (filed 8 September 2025, submitted to record 22 September 2025), PDF, p. 4.

⁶¹ *Ibid.*, p. 5.

⁶² CR 2026/8, p. 37, para. 20 (Staker) (emphasis added).

any activities attributed to Myanmar or the Tatmadaw. It does not in any way diminish the reliability or credibility of the FFM's reports, or its methodology, and certainly not in respect of its determination that the only reasonable conclusion that could be drawn from Myanmar's pattern of conduct is an intent to destroy the Rohingya as a group⁶³.

27. Moreover and in fact, the IIMM found the interview note sufficiently informative to seek and obtain a witness statement from the same witness, as Myanmar's counsel showed you⁶⁴. The witness statement confirms the reliability of the interview note. While the interview note is inevitably shorter and less detailed, everything in it is confirmed in the witness statement. In the footnote to this speech, you will see references to the specific points in the interview note that are confirmed in the witness statement⁶⁵. There is an inconsistency in regard to the time of the explosion that set off ARSA's attacks on 25 August 2017. The interview note puts it at 9 p.m.; the witness statement, taken seven years later, says 11 p.m.⁶⁶ On the basis of nits, micro-nits like this one, they want to disqualify, they ask you to disqualify, the entire FFM report — both of them. To the contrary, the witness statement, which Myanmar put into evidence to criticize the approach of the FFM, very obviously confirms the reliability of the FFM's interview note and its methodology.

28. First, Mr President, excuse me, I know that it is 11:30, with your permission, I think it would be convenient if I could continue for a few more minutes until paragraph 35, if that is acceptable to you.

The PRESIDENT: Go ahead.

⁶³ 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), paras. 941, 1404, 1422, 1500.

⁶⁴ CR 2026/8, pp. 38-39, paras. 23-25 (Staker).

⁶⁵ IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), paras. 81, 88; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), p. 1. IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), paras. 99, 105; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), p. 2. IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), paras. 154-158; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), p. 3. IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), para. 177; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), p. 3; IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), paras. 174-175; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), p. 3; IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), paras. 39, 48; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), p. 1. IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), para. 202; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), pp. 3-4.

⁶⁶ IIMM, Witness Statement IIMM0028674762 (1 June 2025) (admitted to case file 22 September 2025), para. 206; FFM Interview Note, No. XI-008 (24 April 2018) (admitted to case file 22 September 2025), p. 3.

Mr REICHLER:

29. Mr President, you have heard Myanmar's catch-all phrase to describe the witness evidence obtained by the FFM. It has been repeated *ad nauseam*: "untested, anonymous, hearsay summaries"⁶⁷. You heard it from Mr Blom-Cooper in respect of the Tatmadaw's actions in three villages, and from Ms Lawrie in relation to another 46 villages. Their presentations were notable for their detailed descriptions of ARSA's alleged activities in those villages — almost all of which were based on the Tatmadaw's own self-serving field reports, which cannot be regarded as independent or unbiased. Professor Newton confirmed this in response to a question about these field reports:

"Sir, in my extensive experience — and I can give you some concrete examples from around the world — military reporting that comes up within a chain of command is both unreliable — absolutely unreliable: I attach no evidentiary weight to such self-reporting through a chain of command — and self-serving. I say 'unreliable' because I have never seen a military report that says the following: 'We just ignored the rules of engagement and did the following things. We just committed war crimes and did the following things.' People from subordinate ranks don't self-report.

Furthermore, in my professional opinion, they don't want to hear that at the superior level. So that's the system. They're totally unreliable, especially with regard to numbers, and that's the self-serving part: 'I inflicted X amount of damage.'"⁶⁸

30. Most strikingly, like the Tatmadaw's field reports, Myanmar's counsel told you nothing about what the Tatmadaw did to Rohingya civilians in those villages, consistent with Professor Newton's testimony. Of course, it is not their burden to do so. But what is most notable is that they dealt with the enormous volume of evidence of indiscriminate killing, extreme brutality, sexual violence, killing of children and burning of homes and villages simply by shrugging it off as "untested, anonymous, hearsay summaries"⁶⁹. They do not place into evidence any documentary or testimonial proof that these atrocities were not perpetrated. "No evidential weight" remains the sum and substance of their defence in this case.

31. They should not be allowed to get away that easily. We are not dealing here with a small handful of anonymous sources quoted in a newspaper article, or testimony from witnesses collected

⁶⁷ CR 2026/9, pp. 67-68, paras. 77, 84 (Lawrie). See also CR 2026/9, p. 30, para. 83 (Blom-Cooper); CR 2026/9, pp. 61-62, 69-70, paras. 41, 48, 95, 101 (Lawrie); CR 2026/10, pp. 12-13, 17, 19, 24-25, 30, 31, paras. 105, 130, 145, 179, 183, 185, 215-216, 222 (Lawrie).

⁶⁸ CR 2026/16, pp. 34-35 (Newton).

⁶⁹ CR 2026/9, pp. 67-68, paras. 77, 84 (Lawrie). See also CR 2026/9, p. 30, para. 83 (Blom-Cooper); CR 2026/9, pp. 61-62, 69-70, paras. 41, 48, 95, 101 (Lawrie); CR 2026/10, pp. 12-13, 17, 19, 24-25, 30, 31, paras. 105, 130, 145, 179, 183, 185, 215-216, 222 (Lawrie).

by untrained amateurs. This is the United Nations! This is a United Nations Fact-Finding Mission chartered by the Human Rights Council whose reports were welcomed by the General Assembly! This is a Mission whose members were experienced, knowledgeable, independent and objective. It is a Mission whose staff was composed of experienced forensic investigators, including experts on sexual violence, military activities, and the law. It is a Mission that scrupulously followed the High Commissioner's guidelines for best practices for fact-finding missions, including, to quote the guidelines, the principles of Do No Harm, Independence, Impartiality, Transparency, Objectivity, Confidentiality, Credibility, Visibility, Integrity, Professionalism and Consistency⁷⁰. None of this can reasonably be disputed. There is no evidence to suggest otherwise. There is no evidence to suggest that the Mission, its members and its staff failed to achieve the highest standard of care in the preparation of their two reports. The immense care taken in their preparation is manifest in the reports themselves, from every page and every paragraph. It is undeniable.

32. Mr President, counsel for Myanmar have invoked the so-called "best evidence rule", and told you that the FFM reports are not the "best evidence", because that would consist of the underlying interview notes or statements from the witnesses themselves. Their characterization of this rule, which appertains in some common law countries, including my own, is very misleading. The rule, which to my knowledge has no place in international law or practice, does not require the use of the best evidence *imaginable*, but the best evidence *available*, provided it is demonstrated to be reliable. Thus, where an original document is available, in common law countries the rule would require *its* use rather than a photocopy; but where no original can be found, a photocopy will be admitted subject to the Court's confidence in its accuracy. If this rule were applied here — and there is no reason it should be — the FFM reports would plainly satisfy it, because they are the best evidence available; there are no available notes of interviews, save one, and the FFM did not obtain signed statements from its more than 1,200 witnesses, for the reasons I addressed earlier.

33. Another shibboleth promoted by Myanmar's counsel is that you cannot trust any of the evidence provided by these 1,294 witnesses, including the many hundreds who were eyewitnesses to, or victims of, the Tatmadaw's "clearance operations" — and therefore you cannot rely on the

⁷⁰ UN OHCHR, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law, Guidance and Practice* (2015), available at https://www.ohchr.org/sites/default/files/Documents/Publications/CoI_Guidance_and_Practice.pdf.

FFM reports — because, according to Myanmar’s counsel, all these witnesses are inherently biased. Mr Blom-Cooper feigned incredulity that most eyewitnesses and victims of the Tatmadaw’s atrocities did not provide evidence on ARSA’s alleged activities in their villages. To Mr Blom-Cooper, this means they have been systematically manipulated⁷¹. By whom? By the UN investigators who took their evidence in confidence and gave them protection? What is the basis for such an unseemly accusation? The answer is: there is none. He finds it incredible that the victims and witnesses would not have described ARSA’s activities when they were providing their evidence to the FFM. This is nothing but empty rhetoric, which has no evidentiary basis. In the first place, the FFM cited numerous Rohingya witnesses for evidence about ARSA. It devoted 57 paragraphs to ARSA. Why is it hard to believe that many victims and witnesses would focus their statements on the extreme brutality or gang rape that they suffered, or the killing of their infant children by the Tatmadaw, rather than discuss ARSA, assuming they observed or had any knowledge of its activities, which is a big assumption? An assumption which is not proven except by the Tatmadaw’s own self-serving reports. Are Myanmar’s counsel suggesting that the presence of ARSA in their villages would justify the horrors the Tatmadaw inflicted on these entirely innocent Rohingya civilians?

34. Mr Staker claims that every single Rohingya witness and victim is biased, and therefore none of their evidence can be considered by the Court⁷². To borrow not from Dickens, but from Shakespeare, this may be “the most unkindest cut of all”⁷³. After all these people have suffered! Countless unspeakable atrocities, as you have read in the FFM’s reports and heard directly from victims. Tens of thousands — if not hundreds of thousands — of victims. Yes, of course the witnesses who appeared before you have an interest in the outcome of this case. Yes, they want justice — because, after they have been deprived of everything, it is the only thing left that they can hope for. And yes, the Court can take that into account when it evaluates their evidence. But no, they cannot be deprived of their voices. They might have been silenced and erased by Myanmar. But we are confident they will not be disregarded by the International Court of Justice. Myanmar’s argument,

⁷¹ CR 2025/9, pp. 19-20, paras. 33-35 (Blom-Cooper). See also CR 2026/8, pp. 63-64, 66, paras. 64, 75 (Lawrie).

⁷² CR 2026/9, p. 38, para. 11 (Staker). See also CR 2026/8, p. 30, paras. 32-33 (Cordone).

⁷³ W. Shakespeare, *Julius Caesar* (1599), available at <https://www.folger.edu/explore/shakespeares-works/julius-caesar/read/3/2/>, Act 3, scene 2.

through the mouths of its counsel, that their evidence — the Rohingya’s evidence, all their evidence — must be disregarded, is shameful.

35. Finally, Mr President, Myanmar’s counsel put forward the “straw man” argument that The Gambia simply wants you to rubber stamp the FFM reports. Just do that, and we can all go home, their counsel said cynically⁷⁴. Mr President, Members of the Court, we are certain you know that is not our position. You have heard from Professor Sands on this point. On the first day of the hearings, we emphasized that the Court’s role in evaluating the evidence is an active one, not a passive one, and that it is for the Court to determine, on the basis of the well-settled criteria it has established in its jurisprudence, how much weight to give to the evidence, including the evidence contained in the reports of UN fact-finding missions and other UN bodies. We are confident that you will find, after you deliberate on all that you have read and heard in this case, that the two FFM reports satisfy these criteria and are entitled to great weight, in light of the great diligence and care with which they were prepared; the comprehensiveness of their sources; and the independence of those who produced them.

36. We believe this conclusion is justified not only based on the FFM reports themselves, but on the overwhelming body of evidence that confirms and corroborates their reliability, their trustworthiness and their credibility.

Thank you, Mr President, for allowing me to proceed until this point in my speech. If the Court so desires, we are prepared to break here for the coffee break.

The PRESIDENT: I thank Mr Reichler. Indeed, the Court will observe a break of 15 minutes at this point. The sitting is suspended.

The Court adjourned from 11.45 a.m. to 12.05 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now give the floor back to Mr Reichler to continue with his presentation. You have the floor, Sir.

⁷⁴ CR 2026/7, p. 27, para. 46 (Staker); CR 2026/8, p. 24, para. 8 (Cordone).

Mr REICHLER:

37. Thank you, Mr President. I had said just before the break that the overwhelming body of evidence, all of it, confirms and corroborates the reliability, trustworthiness and credibility of the FFM's fact-finding reports. This includes the witness statements obtained by the IIMM. As you have been told, the IIMM provided 42 signed witness statements to the Parties, with the names redacted. The Gambia attached 12 of them to its Reply, and Myanmar annexed 19 to its Rejoinder. Their counsel claim that we submitted only 12 because the others do not support our claims⁷⁵. That is just nonsense. Let us examine what those witness statements actually say, starting with those submitted by Myanmar. I think you will find that these witness statements not only support The Gambia's claims, but they confirm and corroborate the findings of the FFM and attest to the reliability and credibility of its two reports. You will find excerpts from nine of Myanmar's IIMM witness statements at tab 17 of your folders. I will show you some of them.

38. First is witness P1235, a man from Chut Pyin, one of the three villages where we have shown that the particular circumstances establish Myanmar's genocidal intent. He describes the scene when the Tatmadaw first arrived at the village on 27 August 2017:

"After the Azan for Zohor prayer time, soldiers, police, [Rakhine] people, everyone started coming in the village. . . . I came out of the tea stall and looked towards my house. I could see hundreds of soldiers coming in from the north side of the village, running like a big herd of cows towards us. It looked like darkness was coming. They were all wearing the same color, the regular scarfs around their neck, red color, with rifles in their hands. Some had helmets and some had hats. . . ." ⁷⁶

"I took shelter inside [redacted's] house with approximately 60 other people. Military personnel surrounded us and started shouting "You [epithet only in footnote] Bengali come out. Not the women, only the men come out. . . ." ⁷⁷

"Because no one was going out, the soldiers started talking to their seniors through wireless devices with an antenna. We could hear them and understand what they were saying: the house we were hiding in was a bamboo house, with walls made of bamboo and leaves as roofs, so you can hear and even see from the inside. Militaries were everywhere, we could hear and feel that they kept coming inside the village. They were saying 'we told the people to come out but no one has come out, what should we do now?' We heard pretty loud from the radio '*Ain-Go-Mee-Sho*' which means 'set fire to every house'. . . . As soon as this was said, they started shooting and setting fire from the west side of where we were. We could hear noise of firing and when we tried to

⁷⁵ CR 2026/7, pp. 26-27, paras. 41-44 (Staker).

⁷⁶ IIMM, Witness Statement No. IIMM0019925304 (1 October 2022), para. 103. RM, Vol. IV, Annex 127 (full version).

⁷⁷ *Ibid.*, paras. 106-107. RM, Vol. IV, Annex 127 (full version). Epithet in original: "motherfucker".

watch, we could see that they were coming towards us as well as setting fire in front of us. They started firing launchers.”⁷⁸

39. This is from their evidence, annexed to their written pleadings⁷⁹. IIMM witness P1239 is another man from Chut Pyin, which the Rohingya call Shuap Praung, who went to help his neighbours recover the bodies of loved ones after the Tatmadaw attacked that village:

“The bodies had bullet wounds and scars from knives. I saw the body of one pregnant lady who had been cut open with a knife and the baby had come out of the body. . . . I also found two of her sons, dead. Including the unborn child, the mother and three children were killed. The older child was a 4-year-old, and the younger one was a 2-year-old, then there was the one who came out of the womb. They were sprayed with bullets.”⁸⁰

40. The same witness described what happened to the women of the village of Chut Pyin:

“The harassing and rape of women happened when they started burning the settlement of people from So Farang and during the attack on Shuap Praung. Women didn’t tell me this directly — but they told other women, and that’s how I found out. Even if houses were burned and people were injured, Rohingya people would have stayed, but when the women started talking about this rape and mistreatment, that was the thing that made the community decide to leave our homeland. These women would not make something like this up; no one would want such dishonor.”⁸¹

41. This, too, is their evidence. And so is this. From witness P1622, a man from Inn Din, who described events when the Tatmadaw arrived on 29 August 2017, a time when there was no claimed ARSA attack or presence, and the soldiers began shooting indiscriminately:

“I was at home and the situation was terrible. When things were in motion, I felt like it was the judgement day. . . . I was so terrified I didn’t even notice where my wife or children were. When I remember those days I lose control. They treated us like ants. We walk on them without even realizing, we don’t care about their lives, if they die. They were treating us like ants, killing us like ants, like animals, as if we are not human.”⁸²

42. The same witness described this scene:

“The militaries and the [Rakhine] started mistreating the women. They teared their clothes off and burned them; the girls were completely naked. They started grabbing them by their breasts, pulling them by the hair, pushing them to the ground

⁷⁸ *Ibid.*, paras. 108-109. RM, Vol. IV, Annex 127 (full version).

⁷⁹ *Ibid.* RM, Vol. IV, Annex 127 (full version).

⁸⁰ IIMM, Witness Statement No. IIMM0028059653 (14 October 2023), para. 157. RM, Vol. IV, Annex 139 (full version).

⁸¹ *Ibid.*, para. 160. RM, Vol. IV, Annex 139 (full version).

⁸² IIMM, Witness Statement No. IIMM0019922078 (20 October 2022), para. 53. RM, Vol. IV, Annex 133 (full version).

and kicking them badly. They took whatever they had on them. They did not rape them. They called the girls ‘Ma Aye Loo’ [English version of epithet only in footnote]”⁸³.

43. I will skip paragraph 43 in the interest of time, but it is testimony from IIMM witness P1547, a woman from Gu Dar Pyin, which is in the record and available to you, another of the witness statements put into the record by Myanmar⁸⁴.

44. IIMM witness P2892 is a woman from Maung Nu, another of the villages we addressed in detail in the first round. Because our time is limited, I will end with this one, but I could go on reading from all of Myanmar’s 19 IIMM witness statements, not to mention the 12 submitted by The Gambia. This woman states:

“The soldiers came quickly to take my two sons [names redacted] who were about 9 and 12 years old, respectively, at the time. The soldiers also grabbed my sister’s three-year-old child from [name redacted]’s arms and threw the child onto the muddy ground. . . . My sons were holding on to me tightly, screaming and kissing me on the cheeks. The soldiers then snatched them away, taking the scarf off my head and using it to bind the hands of my son [name redacted] behind his back. . . . I last saw my two sons when they were made to lie face-down on the ground in a row with the other men. The soldiers led us women away towards another house and I never saw my two sons again.”⁸⁵

45. Mr President, it is worth re-emphasizing that these are excerpts from the witness statements introduced by Myanmar. It is *their* evidence. Of course, we invite you to read all 31 statements in their entirety. We are confident you will find that this IIMM evidence fully supports, confirms and corroborates the findings of the FFM, and provides further justification for treating those findings as trustworthy, reliable, credible and conclusive.

46. So, too, for the IIMM’s analytical report on *The Destruction and Dispossession of Rohingya Land and Property during the 2017 Clearance Operations*⁸⁶. Myanmar made considerable effort to keep this document out of the record. We can understand why. But as a readily available public document, they had no basis for excluding it. You will find it at tab 7. At paragraph 6 of this report, the Mechanism provides its analysis of seven Rohingya villages: “The Mechanism selected

⁸³ *Ibid.*, para. 59. RM, Vol. IV, Annex 133 (full version) (translation from Burmese: “Motherfuckers”).

⁸⁴ IIMM, Witness Statement No. IIMM0019629302 (7 November 2022), para. 32, 35. RM, Vol. IV, Annex 134 (full version).

⁸⁵ IIMM, Witness Statement No. IIMM0028048879 (28 October 2023), para. 50. RM, Vol. V. Annex 141 (full version).

⁸⁶ 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>.

these locations because they demonstrate a systematic pattern whereby villages and farmland were destroyed and razed between late 2017 and early 2018 and were rapidly supplanted by BGP Battalion bases.”⁸⁷ Remember, they told you in their first round that the clearance operations only lasted a few days. According to the FFM and IIMM, these clearance operations in 2017 and 2018 lasted for months.

47. In his affidavit, Assistant Secretary-General Koumjian attests that the Mechanism “has collected 111 witness statements which have information broadly relevant to the 2016 or 2017 ‘clearance operations’ and/or the broader situation in Rakhine State, or relevant structures of the Myanmar military and other security forces”⁸⁸. Of these, he states: “97 statements have been of Rohingya witnesses”⁸⁹. The complete affidavit of Mr Koumjian is at tab 18. Last Monday, Mr Staker showed you this excerpt from Mr Koumjian’s affidavit, in respect of the 12 IIMM witness statements submitted by The Gambia, and we thank him for doing so:

“While these represent a small proportion [that is, the 12 witness statements submitted by The Gambia from the IIMM] of the Mechanism’s relevant evidence — and a small proportion of the evidence that the Mechanism has shared with both parties to these proceedings — I am satisfied that they are broadly consistent and representative of the Mechanism’s other evidence, from witnesses and other sources, pertaining to these incidents.”⁹⁰

48. Mr Staker’s response was to attack all the evidence from the IIMM, including the 19 witness statements that his own client submitted, on the grounds that the Assistant Secretary-General is biased in favour of The Gambia⁹¹. In support of this unfortunate and unbecoming assertion — which I invite him to retract — he pointed to the affidavit itself, which he claimed was submitted in support of The Gambia. This is another misleading statement. As the Court will recall, The Gambia included Mr Koumjian on its witness list so that he could inform the Court about the work of the IIMM. The Court required an affidavit from him, in case he were to testify. Mr Koumjian complied. But then the Office of Legal Affairs decided that he should not testify to

⁸⁷ *Ibid.*, para. 6.

⁸⁸ Affidavit of Nicholas Koumjian (15 November 2025), para. 41.

⁸⁹ *Ibid.*, para. 41.

⁹⁰ *Ibid.*, para. 42.

⁹¹ CR 2026/9, pp. 48-49, paras. 47-51 (Staker).

avoid any doubt about his impartiality. Mr President, there is no reason to question Mr Koumjian's independence or his integrity.

49. His background and his experience is described in his affidavit⁹² which is in the record and is included in our judges' folder. I will skip the paragraph in which I go through that in the interest of time. There is no basis for questioning his credibility or his expertise, or his deep experience in proving international crimes before international criminal tribunals.

50. Nor is there any reason to doubt Mr Koumjian's testimony about why the Rohingya express fear about giving their statements or having their identities revealed:

“Almost across the board, witnesses who raised concerns about the sharing of their information tied these concerns to their cooperation with judicial proceedings being made known to the governmental or military authorities of Myanmar, the same authorities they believe have persecuted and subjected them to serious international crimes in Myanmar. These concerns have not ameliorated over time, as the violence and commission of serious international crimes have continued to escalate in Myanmar, including in Rakhine State.”⁹³

51. There is absolutely no reason — no reason whatsoever — to give any credence to the argument by Myanmar's counsel that evidence provided by Rohingya witnesses was unduly influenced by a fear of ARSA, and should therefore be given no evidentiary weight. To the contrary, it took great courage on their part, as well as the protection offered to them by the FFM and IIMM, to overcome their fear of the Tatmadaw and tell their stories to the world, in the hope that the world would listen, and that some measure of justice would be provided to them.

52. Mr President, Members of the Court, the IIMM witness statements and analytical reports, and the affidavit of the Head of the IIMM, fully confirm and corroborate the findings of the FFM, and provide further justification for the Court's reliance on the 2018 and 2019 reports. And that is not all. In the next part of my presentation, I will show how the reports of prominent, authoritative and independent NGOs, signed witness statements and the compelling witness and expert testimony you heard last week all further confirm and corroborate the findings of the United Nations FFM. They constitute powerful and persuasive additional support for the reliability and authority of the FFM's comprehensive reports.

⁹² Affidavit of Nicholas Koumjian (15 November 2025), paras. 6-7.

⁹³ *Ibid.*, para. 46.

III. THE TRUSTWORTHINESS AND PROBATIVE VALUE OF THE EVIDENCE RELIED ON BY THE GAMBIA (PART II)

53. In so doing, I will expose the failure of Myanmar's attempts to discredit this evidence too. I will do more than *describe* the evidence for you. I will *show* it to you.

54. I begin with the investigation conducted by the Public International Law & Policy Group (PILPG) at the behest, and with the support, of the United States Department of State. The investigation included interviews in Bangladesh, in February 2018, with 1,024 Rohingya witnesses and victims, almost as many as the 1,294 interviewed by the FFM. The report, published in December 2018, describes the investigation's methodology and I will go through it as quickly as I can with you so that you can see the seriousness and the probity of this investigation:

“In February 2018, PILPG assembled an investigation team of 18 highly experienced and trained international investigators from 11 countries to conduct its investigation mission. This investigation team included former prosecutors and investigators from a range of countries and international criminal tribunals, former investigators from Darfur and South Sudan investigation missions, military and security experts, and international criminal accountability experts.”⁹⁴

“Drawing from previous large-scale missions that investigated violence and crimes in Darfur and South Sudan, PILPG designed an investigation mission focused on systematically collecting first-hand accounts from a random and representative sample of refugees living in camps in Bangladesh. From March to April 2018, PILPG's investigators collected 1,024 interviews from Rohingya refugees in 34 refugee camps in Eastern Bangladesh.”⁹⁵

55. According to the report, the methodology of the investigation included seven “key elements”:

- “(1) the assembly of a highly experienced team of international investigators and trained interpreters to conduct the mission;
- (2) the random selection of respondents throughout all the refugee camps and settlement areas;
- (3) interviewing only persons above the age of 18;
- (4) interviewing only respondents who had fled Myanmar since October 2016;
- (5) collecting only first-hand accounts of human rights violations suffered or witnessed (i.e., not documenting hearsay);
- (6) a standardized interview format and approach to information collection; and

⁹⁴ The Public International Law & Policy Group, *Documenting Atrocity Crimes Committed Against the Rohingya in Myanmar's Rakhine State: Factual Findings & Legal Analysis Report* (December 2018), p. iv. CMM, Vol. VII, Annex 312.

⁹⁵ *Ibid.*

(7) interview coding according to alleged perpetrator, crime, and location.”⁹⁶

56. The qualifications of the investigators and the sophisticated methodology employed gave assurances of the PILPG’s independence, competence and reliability.

57. The investigation led to the following conclusions:

“The unanimous finding of all 18 investigators who took part in the mission was that the major attacks on the Rohingya leading directly to their displacement involved a premeditated and well-coordinated operation.”⁹⁷

“The mass killings and accompanying brutality, including against children, women, pregnant women, the elderly, and those crossing the border to Bangladesh further suggest, however, that, at least in the minds of some perpetrators, the goal was not only to expel, but also to exterminate the Rohingya. As one investigator concluded:

While one can debate whether Burma’s goal was to exterminate the Rohingya or ‘merely’ push them out of the country, there were striking examples that indicate a possible desire to go far beyond pushing the population into Bangladesh. I was struck by the mass murder of Rohingya even once they were about to enter Bangladesh. I heard several reports of hundreds or thousands of people being killed with bombs and guns while waiting on the river bank to cross into Bangladesh. I also heard reports of military speedboats purposefully running into canoes full of refugees, which would then tip over and everyone would drown. In both of these examples, the Burmese had basically achieved their desire to force the Rohingya into Bangladesh, yet that wasn’t sufficient — instead, they preferred the Rohingya dead.”⁹⁸

58. As Mr Suleman told you, the PILPG report considered whether the “clearance operations” could have been an authentic counter-insurgency response: “The pretense of a ‘clearing operation’ to protect the state from a Rohingya terrorist insurgency threat rings hollow in the face of so much of this data.”⁹⁹

59. The US State Department published its own analysis of the evidence collected by the PILPG. It illustrated this in a series of charts, two of which I will display for you. On this one, you will see the percentage of respondents who reported specific destructive acts: 82 per cent reported

⁹⁶ *The Public International Law & Policy Group, Documenting Atrocity Crimes Committed Against the Rohingya in Myanmar’s Rakhine State: Factual Findings & Legal Analysis Report (December 2018)*, p. 9. CMM, Vol. VII, Annex 312.

⁹⁷ *Ibid.*, available in full at <https://www.publicinternationallawandpolicygroup.org/rohingya-report>, p. 50.

⁹⁸ *Ibid.*, available in full at <https://www.publicinternationallawandpolicygroup.org/rohingya-report>, p. 51.

⁹⁹ *Ibid.*, available in full at <https://www.publicinternationallawandpolicygroup.org/rohingya-report>, p. 50.

witnessing “hut and village destruction”; the same percentage reported witnessing killing; you will see that 51 per cent reported witnessing sexual violence¹⁰⁰.

60. The second chart is a map showing rape and gang rape witnessed *across* northern Rakhine State during the “clearance operations” and who the perpetrators were¹⁰¹. As you can see, rape and gang rape were perpetrated across a broad geographic region, almost the entirety of northern Rakhine State. The vertical bar on the left shows that 81 per cent of these rapes and gang rapes were perpetrated by the Tatmadaw and almost all the rest by other Myanmar security forces¹⁰². This is a partial response to a question from Judge Charlesworth about the locations where sexual violence occurred. A fuller response will be given by Mr Loewenstein.

61. The next investigation was conducted jointly by the United States Holocaust Memorial Museum and Fortify Rights. Referring to the “clearance operations” in October 2016 and August 2017, the report states that investigators

“traveled to Rakhine State [that is, they went into Myanmar] and areas along the Bangladesh/Myanmar border before and during both rounds of military-led attacks on civilians. Fortify Rights visited locations along the Naf River — which separates Myanmar and Bangladesh — refugee camps in Bangladesh, forested enclaves on the border, and villages where Rohingya survivors sought refuge. This report is based on more than 200 in-depth, in-person interviews — documented primarily by Fortify Rights — with Rohingya survivors and eyewitnesses of atrocity crimes, including more than 100 Rohingya women, as well as aid workers.”¹⁰³

62. The report included these findings:

“Over the past year, Fortify Rights and the Simon-Skjoldt Center [of the US Holocaust Memorial Museum] documented how the Myanmar Army, Air Force, Police Force, and armed civilians carried out an unprecedented, widespread, and systematic attack on Rohingya civilians throughout northern Rakhine State with brutal efficiency. Eyewitness testimony documented in this report reveals how Myanmar state security forces and civilian perpetrators committed mass killings. State security forces opened fire on Rohingya civilians from the land and sky. Soldiers and knife-wielding civilians hacked to death and slit the throats of Rohingya men, women, and children, and Rohingya civilians were burned alive. Soldiers raped and gang-raped Rohingya women and girls and arbitrarily arrested men and boys en masse.”¹⁰⁴

¹⁰⁰ US Department of State, *Documentation of Atrocities in Northern Rakhine State* (August 2018), Figure 1, p. 1. MG, Vol. VII, Annex 194.

¹⁰¹ *Ibid.*, Map 3, p. 15. MG, Vol. VII, Annex 194.

¹⁰² *Ibid.*, Map 3, p. 15. MG, Vol. VII, Annex 194.

¹⁰³ United States Holocaust Memorial Museum and Fortify Rights, *“They tried to kill us all”: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar* (November 2017), pp. 1-2. MG, Vol. VII, Annex 192.

¹⁰⁴ *Ibid.*, p. 1. MG, Vol. VII, Annex 192.

63. The report continued: “Satellite imagery corroborates eyewitness testimony describing how Myanmar authorities and others razed Rohingya-owned homes and properties throughout northern Rakhine State, destroying hundreds of villages and entire village tracts.”¹⁰⁵

64. The report concluded: “There is mounting evidence to suggest these acts represent a genocide of the Rohingya population.”¹⁰⁶

65. Fortify Rights also conducted a separate investigation,

“based primarily on 254 interviews . . . with eyewitnesses and survivors of human rights violations as well as with Myanmar military and police sources, Myanmar military analysts, members of ARSA, Bangladesh military and government officials, a Rakhine Buddhist monk, and international and local humanitarian aid workers . . . Fortify Rights also reviewed visual evidence, including films and photographs from northern Rakhine State, acquired from original sources as well as open-source media. Information that could not be adequately corroborated or triangulated was not included in this report.”¹⁰⁷

66. The report found:

“The Myanmar authorities’ preparations for mass atrocities culminated in horrific, coordinated, and systematic attacks against Rohingya civilians throughout the three townships of northern Rakhine State . . . For several weeks, the Myanmar Army, Police, and non-Rohingya civilians raided hundreds of Rohingya villages, committing massacres of men, women, and children, systematic rape of women and girls, mass arbitrary arrest of men and boys, and widespread and systematic arson attacks.”¹⁰⁸

“Conservative estimates suggest that in the span of a few weeks, soldiers and police with the support of armed non-Rohingya civilian-perpetrators killed at least several thousand Rohingya civilians — if not tens of thousands — from hundreds of villages throughout the three townships of northern Rakhine State.”¹⁰⁹

67. This may sound repetitive to you, Mr President, Members of the Court, but it is necessary to show that all of these investigations reached the same findings and conclusions as the FFM. Physicians for Human Rights (PHR), another authoritative and highly esteemed NGO, published several reports on the events in northern Rakhine State. One of them addressed sexual violence against Rohingya women and girls. For this study,

“[p]hysicians for human rights (PHR) conducted one-on-one semi-structured interviews with 26 health care workers, working for a variety of humanitarian organizations, who

¹⁰⁵ *Ibid.*, p. 1. MG, Vol. VII, Annex 192.

¹⁰⁶ *Ibid.*, p. 1. MG, Vol. VII, Annex 192.

¹⁰⁷ Fortify Rights, *They Gave Them Long Swords: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar* (July 2018), available at <https://www.fortifyrights.org/mly-inv-rep-2018-07-19/>, p. 29. CMM, Vol. VII, Annex 279.

¹⁰⁸ *Ibid.*, pp. 17-20.

¹⁰⁹ *Ibid.*, p. 20.

provided direct services to Rohingya refugees in Bangladesh for some period between August 2017 and August 2020. The research team included American and Bangladeshi social scientists and physicians who have experience documenting or responding to sexual and gender-based violence.”¹¹⁰

68. The study concluded:

“Sexual violence against the Rohingya in Myanmar was widespread and followed common patterns, according to accounts by health care workers who cared for Rohingya refugees who fled to Bangladesh following the violence in Myanmar in 2017. These health professionals’ narratives help corroborate and attest to patterns of perpetration of sexual violence by members of the Myanmar military and those in uniform, consistent with many other reports.”¹¹¹

69. Another report by PHR was based on three field investigations in various refugee camps in Bangladesh, involving witness interviews and examination of forensic evidence. The report focused on Chut Pyin, one of the particular villages we have highlighted, where genocide occurred. As stated in PHR’s conclusion:

“This report focuses on the events that occurred in the village of Chut Pyin as an example of what happened in dozens of villages in Rakhine state: the Rohingya villagers faced a host of human rights violations, including killings; detentions and disappearances; physical assault involving beatings, stabbings, and mutilations; rape and other forms of sexual violence; and forced displacement in the form of looting and burning of homes.”¹¹²

70. The next report is by the UN High Commissioner for Human Rights. The interview team gathered testimony in Bangladesh from 220 persons who had fled northern Rakhine State in the aftermath of the 2016 “clearance operations”, as well as audiovisual material and satellite imagery from UNOSAT. The High Commissioner concluded:

“The testimonies gathered by the team — the killing of babies, toddlers, children, women and elderly; opening fire at people fleeing; burning of entire villages; massive detention; massive and systematic rape and sexual violence; deliberate destruction of food and sources of food — speak volumes of the apparent disregard by Tatmadaw and BGP officers that operate in the lockdown zone for international human rights law, in particular the total disdain for the right to life of Rohingyas.”¹¹³

71. Mr President, I could show you at least 40 more reports from reputable, independent, UN and NGO sources that support The Gambia’s claims of genocide. They are all part of the evidence

¹¹⁰ Physicians for Human Rights, *Sexual Violence, Trauma, and Neglect: Observations of Healthcare Providers Treating Rohingya Survivors in Refugee Camps in Bangladesh* (October 2020), p. 5. MG, Vol. V, Annex 133.

¹¹¹ *Ibid.*, p. 22. MG, Vol. V, Annex 133.

¹¹² Physicians for Human Rights, “*Please Tell the World What They Have Done to Us*”: *The Chut Pyin Massacre: Forensic Evidence of Violence against the Rohingya in Myanmar* (July 2018), p. 3. CMM, Vol. VII, Annex 310.

¹¹³ UN Office of the High Commissioner for Human Rights, *Report of OHCHR mission to Bangladesh: Interviews with Rohingyas fleeing from Myanmar since 9 October 2016: FLASH REPORT* (3 February 2017), p. 41. CMM, Vol. VI, Annex 230.

in this case. I refer you in particular to the reports of the UN Special Rapporteur, Amnesty International, Human Rights Watch and Save the Children, cited in footnote¹¹⁴. But perhaps of particular interest, and worth showing you here, are the reports cited and relied on by Myanmar in its oral and written pleadings. As Judge Cleveland has pointed out, Myanmar cites these third-party reports in support of its own case, while claiming that the reports relied on by the Gambia — including from the very same sources — are entitled to no evidentiary weight. Here are some examples from the reports on which *they* rely. Again, please keep in mind that these excerpts are from *their own* evidence.

72. The first of these is a report from the International Crisis Group published in December 2016¹¹⁵. Myanmar cited it 52 times in their written pleadings¹¹⁶. Ms Lawrie and Mr Blom-Cooper cited it 25 times in their oral pleadings¹¹⁷. Despite their heavy concentration on this report, they passed in silence over these findings, concerning the 2016 “clearance operations”, the first wave:

“After the 9 October attacks, there were multiple reports of suspects [being] shot on sight, burning of many houses, looting of property and seizure or destruction of food stocks — as well as of women and girls raped. Humanitarian agencies have been denied access to some 30,000 people in the sealed-off area . . . as well as 130,000 previously receiving life-saving aid, with few exceptions.”¹¹⁸

73. In the same report, the International Crisis Group rejected Myanmar’s denial of responsibility for these atrocities:

“[B]lanket denials, even of factual claims based on satellite imagery or international media reports from the ground of flight to Bangladesh, are not plausible and undermine the credibility of its other claims. Some counter-narratives clash with satellite data, for example that local Muslim villagers are torching their own homes to get international sympathy or that it is [ARSA’s] arson. Analysis of that data shows destruction of at least 1,500 buildings. [This is in 2016.] Some villages were systematically destroyed over days, rather than isolated, geographically dispersed

¹¹⁴ See UN General Assembly, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN doc. A/73/332 (20 August 2018). MG, Vol. II, Annex 37; Amnesty International, *Destroy Everything*. MG, Vol. IV, Annex 112; Human Rights Watch, *Massacre by the River: Burmese Army Crime Against Humanity in Tula Toli* (19 December 2017). MG, Vol. IV, Annex 107; Save the Children, “*Horrors I will never forget*”: *The stories of Rohingya children* (2017). MG, Vol. IV, Annex 100.

¹¹⁵ International Crisis Group, *New Muslim Insurgency*. CMM, Vol. VII, Annex 296. Full version available at <https://www.crisisgroup.org/rpt/asia-pacific/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>.

¹¹⁶ See CMM, paras. 2.75, 3.6, 3.9, 3.18, 3.19, 3.24, 3.25, 3.26, 3.28, 3.29, 3.31, 3.32, 3.33, 3.35, 3.36, 3.37, 3.38, 3.40, 3.41, 3.100, 3.122, 9.44, 9.95, 9.100, 9.129, 9.142, 9.153, 9.155, 9.185, 13.101, 13.111, 13.112, 13.171, 13.222; RM, paras. 3.23, 3.62, 13.153, 16.2 (*ibids.* included).

¹¹⁷ CR 2026/8, pp. 48-49, paras. 9-10, p. 52, para. 20, pp. 53-54, paras. 26-28, p. 54, para. 30 (Lawrie); CR 2026/9, p. 65, para. 62, p. 66, para. 70, p. 67, para. 83, p. 68, para. 84, p. 68, para. 88, p. 70, para. 100 (Lawrie); CR 2026/11, p. 55, para. 54, p. 56, para. 58, p. 57, para. 59, p. 58, para. 66, p. 66, para. 96 (Blom-Cooper).

¹¹⁸ International Crisis Group, *New Muslim Insurgency*, pp. 7-8. CMM, Vol. VII, Annex 296.

events as would be expected from individuals or small-group hit-and-run attacks. Moreover, much arson took place during military operations when many troops were present — not only at the time of attacks, but also over subsequent days.”¹¹⁹

74. The ICG, on which they rely, also said this:

“Potentially even more serious is that the repeated blanket government denials, widely disseminated via the state media in English and Burmese, reinforce a climate of impunity for troops that is particularly dangerous in a context of widespread negative sentiments toward the Muslim population at all levels of the military and in society as a whole. The state media has published disturbing opinion pieces, for example one that referred to the Rakhine State situation as caused by ‘detestable human fleas’ that ‘we greatly loathe for their stench.’”¹²⁰

75. The International Crisis Group published another report in December 2017, following the second wave of the “clearance operations” in October 2017¹²¹. Myanmar cited it 35 times in its written pleadings¹²² and seven times at these hearings¹²³. But they did not tell you what the report concluded:

“A brutal military response that failed to discriminate between militants and the general population, followed by continued insecurity and restrictions that have imperilled livelihoods, has driven more than 624,000 Rohingya into Bangladesh. This is one of the fastest refugee exoduses in modern times and has created the largest refugee camp in the world. A large proportion of Rohingya villages in the area have been systematically reduced to ashes by both troops and local Rakhine vigilante groups that were equipped and supported by the military following the 25 August ARSA attacks.”¹²⁴

This is their evidence.

76. Myanmar also relies heavily on an Amnesty International report of May 2018¹²⁵. It was cited 12 times in their written pleadings¹²⁶ and five times by Ms Lawrie, Mr Blom-Cooper and Mr Staker¹²⁷:

¹¹⁹ International Crisis Group, *New Muslim Insurgency*, available at <https://www.crisisgroup.org/rpt/asia-pacific/myanmar/283-myanmar-new-muslim-insurgency-rakhine-state>, pp. 8-9.

¹²⁰ *Ibid.*, p. 9. CMM, Vol. VII, Annex 296.

¹²¹ International Crisis Group, *Dangerous New Phase*. CMM, Vol. VII, Annex 297. Full version available at <https://www.crisisgroup.org/sites/default/files/292-myanmar-s-rohingya-crisis-enters-a-dangerous-new-phase.pdf>.

¹²² CMM, paras. 3.6, 3.28, 3.35, 3.42, 3.52, 3.53, 3.55, 3.56, 3.57, 3.59, 3.61, 3.62, 3.66, 3.70, 3.71, 3.75, 3.76, 3.77, 3.79, 3.110, 3.111, 8.3, 8.21, 8.33, 8.87, 9.232, 13.92, 13.112; RM, paras. 3.24, 3.35, 3.38, 13.95.

¹²³ CR 2026/8, p. 49, para. 10, p. 51, para. 18, p. 53, para. 26, p. 55, para. 34, p. 58, para. 43, p. 63, para. 64 (Lawrie); CR 2026/11, p. 55, para. 53 (Blom-Cooper).

¹²⁴ International Crisis Group, *Dangerous New Phase*, p. 7. CMM, Vol. VII, Annex 297.

¹²⁵ Amnesty International, *Myanmar: New Evidence Reveals Rohingya Armed Group Massacred Scores in Rakhine State* (22 May 2018). CMM, Vol. VI, Annex 268.

¹²⁶ CMM, paras. 1.13, 3.6, 3.11, 3.74, 3.108, 3.115, 3.117, 3.118, 3.127, 8.24.

¹²⁷ CR 2026/8, p. 63, para. 64, p. 64, para. 69, p. 66, para. 75 (Lawrie); CR 2026/9, p. 16, para. 23 (Blom-Cooper), pp. 36-37, para. 9 (Staker).

“Early in the morning of 25 August 2017, the Arakan Rohingya Salvation Army (ARSA), a Rohingya armed group, attacked around 30 security force outposts in northern Rakhine State . . . The Myanmar security forces, and in particular the military, responded to the attacks and subsequent clashes with an unlawful and grossly disproportionate campaign of violence marked by killings, rape and other sexual violence, torture, village burning, forced starvation tactics, and other human rights violations and crimes under international law, all of which has been well documented by Amnesty International and others.”¹²⁸

77. For Amnesty International, the military attacks “targeted the entire Rohingya population” and were “both widespread and systematic”¹²⁹.

78. Mr President, each of these investigations, by PILPG and the US Department of State, by Fortify Rights and the US Holocaust Memorial Museum, by PHR, by the United Nations Office of the High Commissioner for Human Rights and by Myanmar’s own sources, the International Crisis Group and Amnesty International — and by many other equally independent and authoritative international and non-governmental organizations — have made similar findings and reached the same conclusions. This is not by accident or coincidence. It is the result of highly professional fact-finding investigations by the most experienced, reputable and credible investigative bodies.

79. As you will have discerned, and is, in fact, most obvious, these reports, individually and collectively, confirm and corroborate the findings and conclusions of the FFM in its comprehensive reports of 2018 and 2019, as well as the evidence from the IIMM. We say, these reports, in themselves, are fully convincing and conclusive evidence of Myanmar’s genocidal acts, and Myanmar’s genocidal intent. But for anyone who might question whether the FFM reports, in themselves, satisfy the high standard of proof established by the Court to hold a State accountable for genocide under the 1948 Convention, we ask you to consider the fact — and it is now an established fact — that all of these highly credible, and reliable and trustworthy organizations have, independently, made the same findings and reached the same conclusions as the FFM. Thus, the FFM reports do not stand alone. Their findings and conclusions are fully — *fully* — confirmed and corroborated by the investigations and reports of these independent and authoritative organizations.

80. Significantly, there are *no* independent investigations or reports that have been submitted by *either* party that contain contrary findings or contrary conclusions. Not even Myanmar can deny

¹²⁸ Amnesty International, *Myanmar: New Evidence Reveals Rohingya Armed Group Massacred Scores in Rakhine State* (22 May 2018), pp. 7-8. CMM, Vol. VI, Annex 268. Full version available at <https://www.amnesty.org/en/latest/news/2018/05/myanmar-new-evidencereveals-rohingya-armed-group-massacred-scores-in-rakhine-state/>.

¹²⁹ *Ibid.*

this. Their only defence is that our evidence is insufficient to prove the facts. That is plainly and demonstrably wrong. The evidence all points in the same direction, to only one point on the compass. We say, the FFM reports themselves do reach the high evidentiary bar the Court has set in its prior cases under the Convention. But, in any event, the many independent and authoritative investigative reports that confirm and corroborate the FFM reports combine to lift it high over that bar.

81. As does the witness testimony. As we said in the first round, The Gambia submitted signed witness statements from 48 victims and eyewitnesses. In 30 of them, the names were redacted because the witnesses feared retaliation by Myanmar. We submit that these are all fully credible, first-hand accounts of the widespread atrocities committed by the Tatmadaw against innocent civilians who were targeted because they were Rohingya. In the limited time available, I would have liked to show you the testimony of four of these witnesses, including some who had the courage to reveal their names. Their testimonies are consistent with those of all 48 witnesses and with the findings and conclusions of all the investigative reports you have received — including, above all, the two comprehensive reports by the FFM.

82. Because time is limited, and I want to answer the questions posed by Judge Tomka and Judge Cleveland, I will give you their names and the references to the record. Rushon Ali, a teacher from Min Gyi, another of the particular villages we have brought to your attention, recounted the scene on the riverbank on which hundreds of Rohingya were trapped while trying to flee the mass murder that the Tatmadaw were perpetrating. He saw the murder of these helpless people trapped on the riverbank, including children. The citation will be in the record¹³⁰.

83. Another witness from Min Gyi gave further testimony about the killing of Rohingyas on the riverbank attempting to flee to safety across the river:

“They were firing very much, shooting at everyone. In about three minutes only, everyone had fell down. Some appeared to have been hit by five bullets. I estimated there were about seven hundred to eight hundred people who were killed at that time on the beach.”¹³¹

¹³⁰ Legal Action Worldwide, Witness Statement No. 009, signed on 13 September 2020, para. 40. MG, Vol. X, Annex 346.

¹³¹ Legal Action Worldwide, Witness Statement No. 008, signed on 30 August 2020, para. 29. MG, Vol. X, Annex 345.

84. He saw about ten to twelve children, between three and four years old, barely walking, wandering around the beach: “I saw them kicking the children, and after they had fell down, the military killed them by hitting them very violently with knives in their belly or by slitting their throats.”¹³²

85. The IIMM provided one witness statement with the witness’s name, Karim Ullah, from Chut Pyin. He testified: “I heard the military soldiers saying, ‘*Mee Shoet Lite*’ (set fire) and they started to set the houses in Shuap Praung [Chut Pyin] on fire. They were also shooting in all directions. There were so many bullets, they were like drops of rain.”¹³³

“Amongst all the shooting and burning, people started fleeing from Shuap Praung towards the west, crossing the rice fields, because they couldn’t flee to other directions because of the military. Villagers got shot while they were running away from the village; I saw the bodies of those people later that day . . . I was still hiding because if they saw any man they would shoot.”¹³⁴

86. Last week, Mr President, you and the Members of the Court heard live testimony, subject to cross-examination, from three Rohingya victims and eyewitnesses, who testified about the indiscriminate killing in their villages by the Tatmadaw — men, women, children, infants, the elderly — the extreme brutality inflicted on them, the rape and gang rape of women and girls, the burning of their homes and fields, the burning of entire Rohingya villages and the killing of fleeing refugees, including children, trying desperately to get to Bangladesh.

87. Mr President, we could have brought hundreds, if not thousands, of Rohingya witnesses to give similar testimony, but that is not the way the Court operates, and enough is enough. The point is — the irrefutable point is — that Myanmar, through its military forces, targeted the Rohingya group because they were Rohingyas and they did whatever they could to destroy them. You also heard from Professor Michael Newton, an expert on counter-insurgency. As you will certainly recall, he testified that the Tatmadaw violated every principle of counter-insurgency, including their own rules of engagement, systematically, in a widespread *modus operandi* consisting of attacking and killing Rohingya civilians indiscriminately, and the rest. He testified this can only be explained by a

¹³² *Ibid.*, para. 33. MG, Vol. X, Annex 345.

¹³³ UN Independent Investigative Mechanism for Myanmar, Witness Statement No. IIMM0027971404 (20 February 2023), RG, Vol. IV, Annex 55, para. 99.

¹³⁴ *Ibid.*, para. 103.

pre-planned operation that targeted Rohingya civilians with the intention of destroying them as a group. Myanmar, as Professor Sands has told you, has not offered any expert testimony in rebuttal.

88. Mr Suleman will speak more about this in the afternoon session and demonstrate, again, that Myanmar's actions against the Rohingya civilian population cannot possibly be considered counter-terrorism, as they claim. Professor Sands and I will return tomorrow to demonstrate that Myanmar's actions manifestly reflect an intention to destroy the Rohingya as a group, in whole or in part, and that this is the only reasonable inference — the only reasonable conclusion that can be drawn from the evidence — the totality of the evidence.

89. Mr President, I will conclude by giving The Gambia's responses to the question from Judge Tomka, and the first question from Judge Cleveland.

90. Judge Tomka asked The Gambia to (i) outline the methodology it employed to verify witness evidence it received from other entities (including whether The Gambia has access to the identities and personal information of witnesses whose statements were supplied by third parties); and (ii) explain what safeguards were in place to ensure that multiple statements relied on as corroborative did not in fact originate from the same source¹³⁵.

91. The Gambia received 44 of its witness statements from Legal Action Worldwide, one from Fortify Rights and three from journalists based on their personal observations. It also received 42 witness statements from the IIMM, 12 of which it placed into the record. The Gambia verified the witness statements received from Legal Action Worldwide and Fortify Rights by satisfying itself as to the methodology used by those entities to obtain the statements, including assurances that the statements reflected the true and honest testimony of the witnesses, who fully understood the contents and willingly signed the statements. The witnesses were not anonymous. The Gambia was aware of their names and other personal information. It is just that the names were redacted from the versions submitted to the Court in 30 of these cases, at the witnesses' request, for reasons of protection that I have already given. The statements of the journalists were obtained directly by The Gambia. The statements received from the IIMM were also signed by the witnesses, but the IIMM redacted their names for the witnesses' protection, save in one case, as I have mentioned.

¹³⁵ CR 2026/12, p. 43 (Judge Tomka).

92. In terms of safeguarding against multiple statements from the same witness, because The Gambia had the names of all the witnesses whose statements were submitted to the Court, except for the IIMM witnesses, it checked each of the statements to make sure it was from a different witness. We made one error, submitting the same witness statement in both our Memorial and Reply — not two statements from the same witness, but two copies of the same statement — and when we confirmed this, we notified the Court and withdrew the second statement from the record.

93. After receiving the 42 witness statements from the IIMM, we looked for matches between those statements and the statements from the other sources that we submitted. Since the names were redacted from the IIMM statements, and we received them a very short time before we filed the Reply, this was challenging. It turned out that there were two matches between the 12 IIMM statements that we annexed to the Reply and those we obtained from LAW and attached to the Memorial. After submitting the Reply, we asked LAW whether any of the witnesses whose statements we submitted with the Memorial had been interviewed by the IIMM, and we were informed that only these two had met with the IIMM. We then wrote to the Court on 1 July 2024 to inform it of these two instances and sought to make corrections to the Reply under Article 52, paragraph 3, of the Rules to make clear that, in two of the paragraphs of the Reply, we were referring to a single witness's testimony rather than two different witnesses.

94. Finally, in one instance in which we received a signed witness statement from LAW, the same witness's account was included in a collection of interview notes provided by LAW. The Gambia relied only on the signed witness statement in its written proceedings and did not rely on or cite to the interview notes. Accordingly, in none of the four instances mentioned by Myanmar — nor in any other — did we rely on a second statement from any witness, as confirmation or corroboration of other statements, or for any other purpose.

95. Myanmar's counsel argue that, in the two instances in which there are witness statements from the same individual, there are contradictions. This is an exaggeration. To be sure, the statements given to the IIMM are longer and more detailed, especially in regard to ARSA. There are also some minor differences in the details provided about the Tatmadaw's attacks on their villages, as would be expected when a witness gives statements three years apart, as happened here. But there are no significant inconsistencies in these statements concerning the Tatmadaw's activities in their villages.

There is no cause to doubt either of the two witnesses' credibility and certainly no cause to doubt the credibility of the other 42 witness statements obtained by LAW.

96. Mr President, I turn to Judge Cleveland's first question, which was addressed primarily to Myanmar, but both Parties were invited to respond. Judge Cleveland pointed out that Myanmar, as I said earlier, relied on evidence from the FFM reports, NGO reports and media articles to support its assertions about ARSA, while at the same time objecting to The Gambia's reliance on the same or similar sources to prove its claims. In The Gambia's view, this is indeed a glaring contradiction, if not an exercise in hypocrisy, and this undermines Myanmar's objection to the credibility and weight of the evidence relied on by The Gambia from the same sources — especially the FFM and NGO reports.

97. However, in addition to these independent sources of evidence, Myanmar relies — and places its primary and almost all of its reliance on matters pertaining to ARSA — on the Tatmadaw's own reports of alleged engagements with ARSA. It relies on these reports almost entirely for the alleged locations of ARSA attacks — which it numbers at figures much, much higher than reported by the FFM: the number of ARSA combatants, the weapons used, the number of "terrorists" killed, all dependent on the Tatmadaw's own internal reports. In its oral pleadings, it relied almost exclusively on these internal Tatmadaw reports during Mr Blom-Cooper's discussion of seven Rohingya villages that we highlighted in the first round, citing these Tatmadaw reports 34 times; and Ms Lawrie's speech on the 46 other Rohingya villages cited these Tatmadaw reports —and relied on them almost entirely — 35 times¹³⁶. They also relied, repeatedly, on self-serving statements by the Myanmar Government and articles from the government-controlled media.

98. In the first place, none of these sources can be regarded as independent. They are statements by a party made in its own interest. In the second place, as Professor Newton explained, military engagement reports are notoriously unreliable and self-serving — not only in Myanmar but around the world. Field officers do not report their war crimes or other violations of the rules of engagement and superior officers do not want to hear about them. Sizes of the attacking force, and

¹³⁶ CR 2026/9, pp. 17-19, 22, 24-25, 27-30, 32, notes 22, 24, 30, 37, 41, 42, 59, 70, 71, 72, 75, 76, 77, 78, 95, 100, 102, 103, 107, 110, 124 (Blom-Cooper); CR 2026/9, pp. 57, 59-61, 63, notes 239, 240, 242, 259, 260, 266, 267, 276, 289, 290, 291 (Lawrie); CR 2026/11, pp. 16-20, 25-27, 29, 31-32, notes 26-27, 34, 41, 43, 51, 84, 92, 97, 104, 106, 119, 127 (Lawrie).

numbers of them killed, are also notoriously unreliable, as is whether engagement with the enemy actually took place. Professor Newton testified that this notorious unreliability is attributable to the reporting officer's self-interest in inflating his unit's achievements by inflating the number of attackers, the weapons they carried and the number killed. As examples, he cited the horrific attack by US Marines on civilians at Haditha, in Iraq, and the infamous and grossly inflated body counts reported by US forces during the Viet Nam war.

99. We therefore urge the Court to treat any evidence presented by Myanmar that is sourced in the Tatmadaw's own reports, or in witness statements taken from its own officers, or in the accounts provided by Myanmar's State-controlled media, with extreme caution, if it decides to treat with them at all.

100. Thank you, Mr President, Members of the Court. This completes my presentation. I am deeply, deeply grateful for your kind courtesy and patient attention to this long presentation. And this concludes The Gambia's submissions for this morning's session.

The PRESIDENT: I thank Mr Reichler, whose statement brings this sitting to a close. The oral proceedings in the case will resume this afternoon at 3 p.m., when The Gambia will continue its second round of oral argument.

The sitting is closed.

The Court rose at 1.05 p.m.
