

CR 2026/19

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

held on Monday 26 January 2026, at 3 p.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 15 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*

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

The Court meets this afternoon to resume hearing the second round of oral argument of The Gambia.

I now give the floor to Ms Tafadzwa Pasipanodya. You have the floor, Madam.

Ms PASIPANODYA:

I. MYANMAR'S DISCRIMINATORY LAWS AND POLICIES AS AN INDICATOR OF GENOCIDAL INTENT

1. Introduction

1. Good afternoon, Mr President, distinguished Members of the Court. Myanmar's core submissions in response to the discriminatory laws and policies targeting the Rohingya are that they are immaterial to genocidal intent¹; that the 1982 Citizenship Law is not materially different from the 1948 framework²; that restrictions on marriage, births and legal identity were limited and non-suppressive³; and that segregation, confinement and movement limitations cannot evidence genocidal intent⁴.

2. The record, including Witness NJ's testimony, shows otherwise. The Court heard Witness NJ explain that, although born in Rakhine State to parents, grandparents and great-grandparents who lived in Burma, she had no citizenship, no birth certificates for her children and was pressured to accept a national verification card branding her a foreigner⁵. When she refused, authorities denied her schooling and movement beyond her village. Officials compelled her and her husband to pay a bribe to be able to marry and made them pledge not to have more than two children⁶. In August 2017, soldiers came to her house, beat and killed her husband and father-in-law, stabbed

¹ CR 2026/10, p. 40, para. 11 (Staker).

² CR 2026/10, p. 44, para. 35 (Staker).

³ CR 2026/10, pp. 54-56, paras. 79-84 (Staker).

⁴ CR 2026/10, p. 59, para. 96 (Staker).

⁵ CR 2026/14, pp. 20-23 (Witness NJ); Witness Statement of NJ (November 2025), paras. 7-37.

⁶ CR 2026/14, pp. 20-23 (Witness NJ); Witness Statement of NJ (November 2025), paras. 7-37.

and killed her two-year-old son, gang raped her and burned her home and village⁷. She fled to Bangladesh and has never returned⁸.

3. The acts suffered by Witness NJ are the foreseeable result of a State system designed and enforced to destroy the Rohingya in whole or in part. Under this Court's jurisprudence, intent may be inferred when the cumulative pattern admits no other reasonable explanation⁹. Moreover, tribunals have held that prohibiting marriages and preventing births are genocidal measures¹⁰ and that deliberately imposed living conditions that "ultimately seek[] the death" of the group — deprivation of food, medical care, shelter and movement — also constitute genocidal acts under Article II (c) and (d) of the Convention¹¹. History confirms the relevance of genocidal discriminatory laws and policies: from Nazi legal denationalization and segregation to Rwanda's identity-card régimes, such laws and policies were found to be paradigmatic measures that pave the way to physical destruction¹².

2. The exclusion and denationalization of the Rohingya following the 1982 Citizenship Law

4. Mr President, Myanmar's counsel conceded that the Rohingya constitute a group protected by the Convention¹³. The Rohingya have a long and documented history in Rakhine State¹⁴. Moreover, Myanmar's counsel did not dispute that in the decades following independence, the Rohingya belonged to Myanmar's polity — that the highest Government officials publicly recognized the Rohingya by name and as "one of the ethnic races of Burma", that Rohingya served

⁷ CR 2026/14, pp. 13-16 (Witness NJ); Witness Statement of NJ (November 2025), paras. 38-66.

⁸ CR 2026/14, p. 13 (Witness NJ); Witness Statement of NJ (November 2025), paras. 68-73.

⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), pp. 196-197, para. 373; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I), pp. 67, 121, paras. 148, 413.

¹⁰ *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), paras. 507-508.

¹¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I), p. 70, para. 161.

¹² Law Reports of Trials of War Criminals, *Selected and prepared by the United Nations War Crimes Commission* (London, 1949), available at https://tile.loc.gov/storage-services/service/l1/lmlp/Law-Reports_Vol-13/Law-Reports_Vol-13.pdf, p. 41 (Trial of Ulrich Greifelt and others); *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), paras. 523-524.

¹³ CR 2026/7, p. 33, para. 66 (Staker).

¹⁴ CR 2026/1, pp. 60-64, para. 3-20 (Suleman). See also Bangladesh Ministry of Foreign Affairs, *Press Release, Gambia vs. Myanmar case on the Rohingya genocide at the ICJ* (23 January 2026), available at <https://mofa.gov.bd/pages/press-releases/gambia-vs-myanmar-case-on-the-rohingya-genocide-at-the-icj-2ti92y-69743c9efca97e52ef0ea9d9>.

in public office and that the Rohingya language was used in public broadcasting¹⁵. This matters because what followed was a deliberate re-engineering of the polity to exclude and erase the Rohingya¹⁶. Myanmar's counsel contests this by asserting that the 1982 Citizenship Law is not "materially different" from the 1948 one because the latter also referred to certain ethnic groups¹⁷. But the laws themselves show a decisive legal pivot.

5. The 1948 Act referred to "indigenous races" only to define the term's use in the Constitution, expressly extending the concept to any other racial group that had settled in Burma before 1823¹⁸. More importantly, the 1948 framework established broad, race-neutral routes to citizenship for "any person" whose ancestors for two generations made the Union their permanent home and whose parents and self were born there¹⁹. By contrast, the 1982 law fundamentally reoriented citizenship around "[n]ational races" and a strict *jus sanguinis* régime, designating members of "national races" as citizens by birth, relegating others to downgraded "associate" or "naturalized" categories and authorizing the State to determine which ethnic groups are "national"²⁰. Myanmar has not disputed that the "national races" defined in the 1982 law were later subdivided by military instruction into 135 groups, from which the Rohingya were excluded²¹.

6. Counsel for Myanmar's suggestion that associate and naturalized citizenship are not inferior is incorrect²². The 1982 law subjects these categories to rights which may be curtailed "from time to

¹⁵ Francis Wade, "IIMM Rohingya Report" (January 2022), p. 5. RG, Vol. II, Annex 4; 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. 491. MG, Vol. II, Annex 40; CR 2026/2, pp. 32-33, paras. 4-11 (Pasipanodya).

¹⁶ General Ne Win, "Speech at Meeting Held in the Central Meeting Hall" (President House, Ahlone Road, 8 October 1982), p. 4 (emphasis added). MG, Vol. VI, Annex 144. See also, N. Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya" (15 March 2017) 47(3) *Journal of Contemporary Asia* 461, p. 465. RG, Vol. III, Annex 32. See also, Fortify Rights, *"Tools of Genocide": National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar* (September 2019), pp. 35-39. MG, Vol. V, Annex 126; CR 2026/2, pp. 33-34, paras. 12-13 (Pasipanodya).

¹⁷ CR 2026/10, p. 44, para. 35 (Staker).

¹⁸ Republic of the Union of Myanmar, *The Union Citizenship Act* (1948), Section 3 (1). MG, Vol. VI, Annex 172.

¹⁹ *Ibid.*, Section 4 (2).

²⁰ Republic of the Union of Myanmar, *Citizenship Law* (15 October 1982) (original and translation), Sections 2-5. MG, Vol. VI, Annex 174.

²¹ MG, para. 6.16; RG, paras. 5.10-5.14; Republic of the Union of Myanmar, *Citizenship Law* (15 October 1982) (original and translation), Section 3. MG, Vol. VI, Annex 174; 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. 85. MG, Vol. II, Annex 40.

²² CR 2026/10, pp. 44-45, para. 39 (Staker).

time”²³; imposes onerous, discretionary entry criteria²⁴; and does not provide for the automatic transmission of citizenship by birth to their holders’ children²⁵, among other differences. These provisions, combined with the 1982 law’s authorization that authorities need not “give any reasons in matters carried out under this Law”, enabled systematic exclusion²⁶. The resulting statelessness of the Rohingya — which Myanmar does not dispute to be on an unprecedented scale — is the predictable effect of the 1982 law’s structure and implementation²⁷.

7. Nor has counsel for Myanmar denied that hundreds of thousands of Rohingya were forced to flee to Bangladesh following an operation for “scrutiny of illegal immigrants” in 1991 and 1992²⁸. Myanmar’s counsel simply dismisses reports by UN institutions and NGOs of military violence, without providing any evidence, and invokes later repatriations as inconsistent with genocidal intent²⁹. But repatriation under international pressure does not negate intent. It sits alongside evidence that the State repeatedly deployed force to destroy the Rohingya of northern Rakhine State and repeatedly re-engineered law and documentation to deprive and erase those who remained³⁰.

Myanmar’s counsel also argues that NVCs are a neutral step in verification . . .

Mr PRESIDENT: Counsel, could you slow down a little bit? The interpreters are having a problem.

Ms PASIPANODYA: Thank you, Mr President.

²³ Republic of the Union of Myanmar, *Citizenship Law* (15 October 1982) (original and translation), Sections 30 (c) and 53 (c). MG, Vol. VI, Annex 174.

²⁴ *Ibid.*, Sections 42 and 45.

²⁵ *Ibid.*, Section 7.

²⁶ *Ibid.*, Section 71. See also 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. 479. MG, Vol. II, Annex 40 (citing Republic of the Union of Myanmar, *Citizenship Law* (15 October 1982) (original and translation), Article 71. MG, Vol. VI, Annex 174); N. Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya” (15 March 2017) 47 (3) *Journal of Contemporary Asia* 461, p. 472. RG, Vol. III, Annex 32.

²⁷ 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. 491. MG, Vol. II, Annex 40; UN Security Council, *Briefing by Security Council Mission to Bangladesh and Myanmar (28 April to 2 May 2018)*, UN doc. S/PV.8255 (14 May 2018), p. 11. MG, Vol. II, Annex 34.

²⁸ CR 2026/10, p. 48, para. 52 (Staker).

²⁹ CR 2026/10, p. 49, paras. 55-56 (Staker).

³⁰ See Bangladesh Ministry of Foreign Affairs, *Press Release, Gambia vs. Myanmar case on the Rohingya genocide at the ICJ* (23 January 2026), available at <https://mofa.gov.bd/pages/press-releases/gambia-vs-myanmar-case-on-the-rohingya-genocide-at-the-icj-2ti92y-69743c9efca97e52ef0ea9d9>; 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. 491. MG, Vol. II, Annex 40.

8. Myanmar's counsel also argues that NVCs are a neutral step in verification and that difficulties claimed by Rohingya are speculative or self-inflicted through refusal to apply³¹. But Myanmar's counsel accepts that NVCs do not evidence citizenship and in fact confirm foreign status, that applicants cannot record "Rohingya" identity and must accept the label "Bengali" and that those without NVCs face movement barriers³². The UN Fact-Finding Mission explains that on the ground, the citizenship process for those belonging to the "national races" was expedited, while the Rohingya were shunted into a protracted and coercive track³³. One of the State pamphlets circulated to the Rohingya is on the screen. "If you want to do fishing, apply [for the] NV card first"; "[f]or social and economic activities, hold the NV card"; "[t]o have guarantee of life, keep NV card together with you"³⁴.

9. As Witness NJ explained, she refused to accept an NVC that branded her a foreigner in her country of her birth: "that card says we are not nationals of this country, that's why we didn't accept it"³⁵. Witness NJ also explained the deprivation and risk that resulted from the decision not to take the NVC: "We were not allowed to go outside anywhere else within our township . . . if we went, if it was found out, then we were beaten, we were tortured"³⁶. Contrary to counsel for Myanmar's assertion that Rohingya could attend school without an NVC, she testified: "Myanmar military didn't allow us to attend any school"³⁷. The insistence on erasing a group's very name, while conditioning survival on accepting foreign identity, is an indicator of genocidal intent recognized by the UN Fact-Finding Mission³⁸.

³¹ CR 2026/10, pp. 51-52, paras. 64, 66, 70, 71 (Staker).

³² CR 2026/10, pp. 50-52, paras. 61-62, 67-69 (Staker).

³³ 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. 491-492. MG, Vol. II, Annex 40; RG, paras. 5.25-5.29.

³⁴ Republic of the Union of Myanmar, Ministry of Labour, Immigration and Population Department, "National Verification Card Relevant Facts" (undated) (emphasis added). MG, Vol. VI, Annex 170. Fortify Rights, *"Tools of Genocide": National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar* (September 2019), p. 59. MG, Vol. V, Annex 126; Republic of the Union of Myanmar, Ministry of Livestock, Fisheries, and Rural Development, Ministry of Transport, and the Immigration Department, *Announcement about Fishing, Fishing Vessels, and Boats* (undated) (original and translation). MG, Vol. VI, Annex 169; MG, para. 6.28.

³⁵ CR 2026/14, p. 22 (Witness NJ).

³⁶ CR 2026/14, p. 23 (Witness NJ).

³⁷ CR 2026/14, p. 29 (Witness NJ).

³⁸ 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. 1415-1427. MG, Vol. II, Annex 40.

3. Suppression of family life: marriage permits, two-child limits and denial of birth certification

10. I turn now to the suppression of family life and births. Counsel for Myanmar concedes that Regional Order 1/2005 — adopted for the express purposes of “controlling [the] Bengali Population” “for the good of the region and the race”³⁹ — was in force between 2005 and 2018⁴⁰. He says, however, that the Regional Order was neutral, did not state a specific limit on the number of children and that there is no evidence a two-child limit was ever strictly enforced or effective⁴¹. Members of the Court, Witness NJ’s experience is the lived imprint of that Regional Order. In response to questions from the Court, she explained that she was forced to pay a bribe to get married, sign a paper not to have more than two children — and even had to hide one of her twin children from inspections or risk fines and imprisonment⁴². Myanmar’s counsel’s denial of the existence of a two-child limit for the Rohingya is also belied by Myanmar’s own spokesperson, who acknowledged the limit in 2013⁴³.

11. Myanmar’s counsel also asserts that there is “no evidence of weight” that these orders suppressed births or led to abortions⁴⁴. Its effort to discount the UN Fact-Finding Mission’s reports and an extensive reproductive survey across nine village tracts conducted by Médecins Sans Frontières, while offering no independent evidence of its own, is unpersuasive⁴⁵.

12. Myanmar’s counsel did confirm, however, that Myanmar generally failed to provide Rohingya newborns with birth certificates from 2012 to at least 2017, and only intermittently since

³⁹ Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 February 2008) (original and translation), PDF pp. 3-5, para. 2. MG, Vol. VI, Annex 177. See also Addendum on “Requirements for Bengalis who apply for Permission to Marry”, PDF p. 9, paras. (a)-(k).

⁴⁰ CR 2026/10, pp. 53-54, para. 77 (Staker).

⁴¹ CR 2026/10, pp. 54-56, paras. 79-84 (Staker).

⁴² CR 2026/14, p. 29 (Witness NJ). See also Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, Addendum on “Requirements for Bengalis who apply for Permission to Marry”, in *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 February 2008) (original and translation), PDF p. 9. MG, Vol. VI, Annex 177. See also MG, para. 6.44; UN Human Rights Council, *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN doc. A/HRC/13/48 (10 March 2010), para. 89. MG, Vol. II, Annex 23.

⁴³ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), paras. 597-598. MG, Vol. II, Annex 40.

⁴⁴ CR 2026/10, p. 55, paras. 81-83 (Staker).

⁴⁵ CR 2026/10, p. 55, para. 83 (Staker). Cf. 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. 599. MG, Vol. II, Annex 40; Médecins Sans Frontières, *Fatal Policy: How the Rohingya Suffer the Consequences of Statelessness* (1 October 2011), p. 3, Vol. IV, Annex 89; UN Human Rights Council, *Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts*, UN doc. A/HRC/42/CRP.4 (22 August 2019), para. 60.

then, although The Gambia's position is that this practice dates back to the 1990s⁴⁶. Myanmar's counsel's attempt to justify this failure invoking riots over a decade ago, the COVID pandemic or the Rohingya's alleged lack of awareness about registering births is not convincing⁴⁷. There is no evidence that the provision of birth certificates to newborns of any other ethnic group, who would be equally impacted by those factors, has been similarly affected. Witness NJ explained that in her experience, the Rohingya are never given the opportunity to obtain birth certificates for their children⁴⁸. Consequently, there is no official record that her two-year-old son whom the military threw into a burning house was ever born, let alone that the military killed him. The same can be said of the children of Witness MS and the multitude of other Rohingya children who were killed in the clearance operations but whose birth has never been recorded by Myanmar.

13. The UN Mission summarizes the consequences: denial of birth certificates “deprives Rohingya children of a permanent record of existence and legal identity” and “negatively impacts their access to health, education and other services”⁴⁹. Taken together, these measures are calculated to suppress Rohingya family formation and births and to erase legal personhood, precisely the sort of conduct tribunals recognize as probative of genocidal intent⁵⁰. They are genocidal.

4. The discriminatory legal architecture reflects a genocidal intent and contributed to the genocidal acts that followed

14. The discriminatory laws and policies targeting the Rohingya culminated in the clearance operations and have continued since. Myanmar's counsel did not refute that, following the clearance operations, Myanmar pursued demographic replacement in Rohingya areas: establishing Buddhist

⁴⁶ See CR 2026/10, p. 38, para. 5 (Staker). 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. 494. MG, Vol. II, Annex 40; UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN doc. A/76/314 (2 September 2021), Annex 1 – Additional Human Rights Concerns Observed by the Special Rapporteur, available at <https://www.ohchr.org/Documents/Countries/MM/GA76report-annex-SR-Myanmar.pdf>, para. 17 (cited in The Gambia's Observations to Myanmar's Fourth Implementation Report (23 November 2021), para. 12); UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights: Situation on human rights in Myanmar since 1 February 2022*, UN doc. A/HRC/52/21 (2 March 2023), available at <https://docs.un.org/en/a/hrc/52/21>, para. 39 (cited in The Gambia's Observations to Myanmar's Seventh Implementation Report (23 May 2023), para. 9).

⁴⁷ CR 2026/10, pp. 38, 53, paras. 5, 75 (Staker).

⁴⁸ CR 2026/14, p. 21 (Witness NJ).

⁴⁹ 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. 494. MG, Vol. II, Annex 40.

⁵⁰ *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), paras. 507-508; *Prosecutor v. Kayishema & Ruzindana*, ICTR-95-1-T, Trial Judgment (21 May 1999), paras. 116-117.

“model villages” on Rohingya land⁵¹; announcing that the Rohingya would not return to their original villages⁵²; and encouraging, facilitating with documentation and sponsoring with living stipends, the settlement of Buddhists from Bangladesh into Rohingya-majority areas⁵³.

15. In conclusion, counsel for Myanmar indicated that not all discriminatory acts are genocidal⁵⁴. But that is not the issue. The Court must determine whether genocidal intent is the only reasonable inference from the acts considered together⁵⁵. The discriminatory acts and architecture I have described reflect a genocidal intent and contributed to the genocidal acts that followed.

16. Mr President, Members of the Court, thank you for your kind attention. I respectfully invite you to call Mr Suleman to the podium.

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

Mr SULEMAN:

II. MYANMAR’S ANTI-ROHINGYA HATE SPEECH AND PROPAGANDA REVEAL ITS GENOCIDAL INTENT

Introduction

1. Mr President, Members of the Court, good afternoon. I will focus on why Myanmar’s anti-Rohingya hate speech and propaganda, and the hateful utterances of the perpetrators of Myanmar’s genocidal acts as they were committing them, reveal Myanmar’s genocidal intent. I will also respond to Myanmar’s attempts to dismiss this significant evidence.

2. Myanmar did not have much to say last week about the content of the hate speech, propaganda and hateful utterances that I outlined in my presentation in the first round. The evidence

⁵¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en>, paras. 974, 1216, 1230, 1425.

⁵² “Pandemic Adds New Threat for Rohingyas in Myanmar”, *Human Rights Watch* (29 May 2020), available at <https://www.hrw.org/news/2020/05/29/pandemic-adds-new-threat-rohingyas-myanmar#>.

⁵³ UN Independent Investigative Mechanism for Myanmar, *Analysis of the Myanmar’s Government Encouragement Resettlement by Buddhists from Bangladesh to Rakhine State* (22 March 2024), paras. 5, 15. RG, Vol. II, Annex 7; CR 2026/2, pp. 42–43, paras. 33–34(Pasipanodya).

⁵⁴ CR 2026/10, p. 40, para. 11 (Staker).

⁵⁵ *Bosnia Genocide, 2007 Judgment*, pp. 196–197, para. 373; *Croatia Genocide, 2015 Judgment*, p. 67, para. 148 and p. 121, para. 413; RG, paras. 3.35–3.41. See also *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), paras. 523–524.

is essentially unchallenged. Instead, it focused on why, in its view, hate speech and propaganda are not indicators of genocidal intent, and why such content cannot be attributed to the State. Myanmar is wrong.

3. I will address Myanmar's arguments by focusing first on the question of genocidal intent (A), then on the matter of attribution (B) and finally on the content of the hate speech, propaganda and utterances by soldiers as evidence of genocidal intent (C).

A. Indicators of genocidal intent

4. Counsel for Myanmar argued that there is no direct inference of genocidal intent from hate speech or propaganda and that such an inference can only be drawn from a pattern of conduct⁵⁶. The Gambia disagrees. While of course hate speech may form part of a pattern of conduct — an issue to which I will return in a moment — it may also support a direct inference of genocidal intent.

5. As Professor Sands explained two weeks ago, the Court in *Bosnia* clearly stated — and then affirmed in *Croatia* — that the specific intent must be “convincingly shown by reference to particular circumstances, unless a general plan to that end can be convincingly demonstrated to exist”⁵⁷. Evidence of a “pattern of conduct” is one way to show that a general plan exists, but it is not the only way⁵⁸.

6. The Gambia submits that the evidence of Myanmar's anti-Rohingya hate speech and propaganda — especially that which was expressed by Senior General Min Aung Hlaing directly, and that which was disseminated by the Tatmadaw on Facebook — offers convincing evidence of Myanmar's genocidal intent. It demonstrates the existence of a genocidal plan or policy⁵⁹.

7. Counsel for Myanmar notes that in *Croatia*, the Court did not use speech factors in assessing the existence of a pattern of conduct and the inference to be drawn therefrom⁶⁰. This case, however, is different. First, *Croatia* was essentially a case about territory. Second, The Gambia is not solely

⁵⁶ CR 2026/11, p. 14, para. 10 (Talmon).

⁵⁷ *Bosnia Genocide, 2007 Judgment*, pp. 196-197, para 373; *Croatia Genocide, 2015 Judgment*, p. 66, para. 145.

⁵⁸ See Written Observations of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland (3 March 2025), paras. 41-44.

⁵⁹ MG, Chap. 7 (I).

⁶⁰ CR 2026/11, p. 15, para. 16 (Talmon).

arguing for inference of genocidal intent based on a pattern of conduct — which is how Croatia pled its case⁶¹. The Gambia is arguing that, in addition to a well-established pattern of conduct, as found by the UN FFM, particular circumstances in certain villages convincingly show genocidal intent. Alongside this, The Gambia is arguing that anti-Rohingya hate speech and propaganda, and the hateful utterances of Myanmar soldiers, provide convincing evidence of a genocidal plan or policy. This is outside the framework of a pattern of conduct analysis.

8. Further, in this case, the anti-Rohingya hate speech and propaganda and the hateful utterances of soldiers are also relevant to drawing an inference from Myanmar's pattern of conduct. In *Croatia*, the Court did not say that speech factors are “irrelevant” to a pattern of conduct analysis⁶²; rather, it identified the factors that it found to be the “most important” in that case⁶³. In this case, the Court should find these indicators to be part of the pattern of conduct, and important. As detailed in the IIMM hate speech report, the content that the Tatmadaw disseminated on Facebook was done before, during, and after the “clearance operations” — the speech was intertwined with the “clearance operations” taking place on the ground. And some of that content disseminated offers direct evidence on how the clearance operations were conducted and how the military incited genocide.

9. Counsel for Myanmar asserted that The Gambia had not even attempted to link hate speech to genocidal intent, with reference to particular circumstances⁶⁴. This is wrong. As articulated in our first round, The Gambia is arguing that the particular circumstances of the “clearance operations” — especially in the main villages — convincingly show Myanmar's genocidal intent. In Maung Nu⁶⁵ and Chut Pyin, there is evidence of hateful utterances by soldiers, offering proof of the specific targeting of the Rohingya. Witness NJ, for example, testified in her witness statement that such hateful language was used by soldiers during their attack on Chut Pyin⁶⁶. This is direct evidence.

⁶¹ *Croatia Genocide, 2015 Judgment*, pp. 119-120, para. 408.

⁶² CR 2026/11, p. 15, para. 17 (Talmon).

⁶³ *Croatia Genocide, 2015 Judgment*, p. 122, para. 413.

⁶⁴ CR 2026/11, p. 15, para. 18 (Talmon).

⁶⁵ CR 2026/3, p. 60, para. 12 (Ngum).

⁶⁶ Witness Statement of Witness NJ (10 November 2025), para. 44.

10. Finally, Myanmar has not contested the ICTR case law cited by The Gambia on hate speech and anti-group propaganda⁶⁷. Nor has it contested the ICTY and ICTR case law on utterances of perpetrators as indicators of genocidal intent⁶⁸.

B. Attribution of content to Myanmar

11. I now address the issue of attribution.

12. First, it is uncontested that the speeches of Senior General Min Aung Hlaing and the content disseminated by the Tatmadaw and Myanmar's Ministries and Embassies are attributable to Myanmar.

13. Second, regarding the Facebook content disseminated surreptitiously by the Tatmadaw, counsel for Myanmar asserts that the evidence for this is not fully conclusive, citing Myanmar's Rejoinder, paragraph 11.37 — the very same paragraph that I displayed for you in my slide number 12 from the first round. With that Myanmar acknowledged that government employees or members of the Tatmadaw or the police force "created fake Facebook accounts", but then suggested without evidence that they acted "outside the scope of their employment, on their own initiative"⁶⁹.

14. There is no evidence for this highly implausible assertion, and what evidence you do have supports the contrary view. Meta, which runs Facebook, investigated and found these accounts were linked to and controlled by the Myanmar military. Nathaniel Gleicher, Head of Security Policy at Meta, testified to this fact in an affidavit⁷⁰.

⁶⁷ See e.g. *Prosecutor v. Muhimana*, ICTR-95-1B-T, Trial Judgment (28 April 2005), para. 496; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Judgment (21 May 1999), para. 93 (cited in CR 2026/2, p. 45, note 132 (Suleman)).

⁶⁸ *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), para. 728; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgment (1 June 2001), para. 148; *Prosecutor v. Jelacic*, IT-95-10-T, Judgment (14 December 1999), para. 75; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgment (7 June 2001), para. 63; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (17 June 2004), para. 259 (cited in CR 2026/2, p. 45, note 133 (Suleman)).

⁶⁹ RM, para. 11.37.

⁷⁰ Affidavit by Nathaniel Gleicher (Head of Security Policy at Meta Platforms, Inc.) (2 November 2022), paras. 3-11. RG, Vol. IV, Annex 52.

15. The IIMM investigated and confirmed that accounts taken down by Meta formed an interconnected military network — Myanmar’s military network⁷¹. These findings are corroborated by independent investigative reporting by *The New York Times*, in October 2018⁷².

16. Moreover, Myanmar has tried to reconstitute these networks and Facebook has taken further accounts and pages down on several occasions to thwart those efforts⁷³.

17. The evidence that these accounts were controlled by the Tatmadaw is fully convincing. The content of these accounts, as detailed in the IIMM Hate Speech report, are directly attributable to Myanmar.

18. Third, the statements of political parties may not be directly attributable to the State, but they clearly show the State’s tolerance for genocidal rhetoric. The Rakhine Nationalities Development Party held the majority in the Rakhine State legislature in 2012 when it called for a genocidal policy. The Chair of the Peace and Diversity Party’s explicit call for genocidal violence went unpunished. Just a few days ago, in a video posted online, with over 500,000 views already, the now former Chair of that political party reiterated his call for genocidal violence and said of the Rohingya, “If you don’t want to be wiped out, don’t come” and “If you come, we will do it”⁷⁴. His party is aligned with the military’s Union Solidarity and Development Party in the current election.

19. Fourth, counsel for Myanmar says that the views of Buddhist monks are not attributable to the State. He is wrong. They are attributable because the State endorses and disseminates them, which is the case at least for the content from Sitagu Sayadaw and Ashin Wirathu. Sitagu’s sermon absolved a ruler for mass genocidal murder because the 500,000 people killed were deemed to be like animals — that sermon was given to troops in October 2017 and then disseminated by the Tatmadaw on Facebook. The State’s official message of absolution for genocidal acts could not be more clear. Myanmar does not deny that the military facilitated Wirathu’s travel throughout northern

⁷¹ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), paras. 89, 177. RG, Vol. II, Annex 5.

⁷² “A Genocide Incited on Facebook, With Posts From Myanmar’s Military”, *The New York Times* (15 October 2018). MG, Vol. IX, Annex 299.

⁷³ CR 2026/6, pp. 23-33, paras. 1-36 (Suleman).

⁷⁴ “Myanmar nationalist stands by calls to kill Rohingya during genocide hearings”, *Myanmar Now* (19 January 2026), available at <https://myanmar-now.org/en/news/myanmar-nationalist-stands-by-calls-to-kill-rohingya-during-genocide-hearings/>. Video available at: Myanmar Now, *Facebook* <https://www.facebook.com/reel/864213089712173>.

Rakhine State after the 2016 “clearance operations” and before the 2017 operations. That is an overt act of endorsement.

20. Fifth, Myanmar argues that the genocidal intent of individuals, like soldiers, cannot be attributable to the State⁷⁵. But the State’s failure to prevent their genocidal acts is a direct violation of its obligations under Article I of the Convention. The genocidal intent of soldiers is also evidence of a State’s genocidal plan or policy.

C. Content of the hate speech and propaganda and utterances

21. Finally, Myanmar argues that The Gambia has not shown that hate speech and propaganda reflect a genocidal intent. The Gambia disagrees.

22. I have already provided historical context from other genocides to show how hate speech and propaganda indicate genocidal intent, and led to actual genocide. I focused on messages of dehumanization, “accusations in a mirror” and threats to group purity. Those themes are present in Myanmar’s anti-Rohingya hate speech and propaganda, as confirmed by the IIMM’s Hate Speech report.

23. Counsel for Myanmar argues that Senior General Min Aung Hlaing’s “unfinished job” speech was taken out of context⁷⁶. The Gambia disagrees. The paragraph about “cooperative efforts” and “local people” returning home does not refer to the Rohingya. If Myanmar wanted them to return, they could have repatriated them quickly, as they did with Witness M1 and other members of her Hindu community. The Rohingya still languish in refugee camps over eight years later. And we know, through the IIMM’s report on this issue, that Myanmar was actually engaged in a demographic replacement effort to bring more Buddhists into northern Rakhine State⁷⁷.

24. Other content in that speech confirms that The Gambia’s interpretation of it — which is consistent with the UN FFM’s interpretation — is correct. In that very same speech, General Hlaing said of the Rohingya, “we openly declare that ‘absolutely, our country has no Rohingya race’”⁷⁸.

⁷⁵ CR 2026/11, pp. 20-21, para. 41 (Talmon).

⁷⁶ CR 2026/11, p. 17, para. 26 (Talmon).

⁷⁷ UN Independent Investigation Mechanism for Myanmar, *The Destruction and Dispossession of Rohingya Land and Property During the 2017 Clearance Operations* (29 September 2025), available at <https://iimm.un.org/en/myanmar-mechanism-report-identifies-entities-benefitting-destruction-and-dispossession-rohingya>, Section IV, para. 55.

⁷⁸ Senior-General Min Aung Hlaing, “Entire government institutions and people must defend the country with strong patriotism” (2 September 2017). MG, Vol. VI, Annex 150.

25. Furthermore, in that speech, the so-called 1942 Alethankyaw crisis was mentioned three times. I will show you two of them:

- “Rakhine ethnics lost their land in the Alethankyaw crisis that broke out in Rakhine State in 1942 in which Bengalis attacked, murdered and coerced them into leaving their homes. We will never let such a terrible occurrence happen again.”
- “During the Alethankyaw crisis in 1942, over 20,000 ethnic Rakhine people were slaughtered. Bengalis after murdering ethnic Rakhine people seized their land and villages and lived there.”⁷⁹

26. The message is clear — the Rohingya pose a genocidal threat and must be dealt with. That is the “unfinished job” he was referring to, one that has lingered since 1942. As I mentioned in the first round, other Tatmadaw messaging on Facebook repeated their incendiary references to 1942.

27. Myanmar argues that General Hlaing’s speech of 20 September 2017 is also taken out of context, and that General Hlaing was talking about immigration matters⁸⁰. In that same speech he said:

“this area was a British colony over 100 years ago, we are facing the consequences of their reckless acts till now. At that time Bengalis from Bengal region were conveyed into the country without any restrictions. Later the Bengali population exploded and the aliens tried to seize the land of local ethnics. The 1942 Aletha[n]kyaw crisis is the worst in history.”⁸¹

28. When General Hlaing later in his speech states that “[r]ace cannot be swallowed by the ground but only by another race”, he is clearly referring to the Rohingya. There is a sentence right before the passage that Professor Talmon showed in his speech, wherein General Hlaing said “collective efforts must be made to protect the minorities of Buthidaung/Maungdaw region such as Mro, Khamee, Thet and Daingnet”⁸². By excluding the Rohingya from those who need protection, it is obvious that he is inciting those other groups against the Rohingya, who otherwise would swallow them up.

⁷⁹ *Ibid.*

⁸⁰ CR 2026/11, pp. 17-18, para. 28 (Talmon).

⁸¹ Senior-General Min Aung Hlaing, “Gallant Efforts to Defend the HQ Against Terrorist Attacks and Brilliant Efforts to Restore Regional Peace, Security are Honoured” (20 September 2017). MG, Vol. VI, Annex 152.

⁸² *Ibid.*

29. Myanmar passes without comment on the other speech of General Hlaing from December 2017. He said that the “Tatmadaw must fully protect the ethnic minorities in Rakhine region not to have the genocide”⁸³ — yet another example of accusations in a mirror.

30. Myanmar further states that there is a difference between hate speech and incitement⁸⁴. We agree. Ms Jones covered that matter in the first round when addressing “other breaches of the . . . Convention”⁸⁵. I do not need to repeat the distinction that she drew.

31. Regarding the post disseminated by the Tatmadaw in July and again in December 2017 entitled “Why did Hitler kill the Jews?”, Professor Talmon says that the “Rohingya” and “Muslims” are not mentioned in this post⁸⁶. But he does not explain why it was posted or challenge my explanation that the message implicitly draws a parallel between the false Nazi propaganda of the 1939 Danzig massacres and the 1942 Alethanyaw crisis that General Hlaing consistently refers to.

32. Finally, regarding the utterances of soldiers, Myanmar points out that the Reuters “Hatebook” article does not indicate that those messages are from soldiers⁸⁷. I take the point. But Myanmar has not addressed the other evidence of hateful utterances by soldiers, including those listed in slide 27 of my first-round presentation on this topic. The UN FFM has reported on such utterances in many contexts, including during perpetration of sexual violence⁸⁸. Myanmar also passes in silence on the testimony of Witness P5513, who indicated that the Tatmadaw soldiers’ views of the Rohingya were shaped by the military’s propaganda⁸⁹.

33. So, too, does it pass in silence on the many fabrications and other forms of anti-Rohingya propaganda disseminated by the Tatmadaw and taught to its soldiers, who ended up committing the genocidal acts. Those were cited in footnotes at pages 50-51 of the transcript for the afternoon session of 12 January.

⁸³ Senior-General Min Aung Hlaing, “Try to be good officers who are reliable for higher officials, given respect by lower ranks, be trustworthy of the populace” (2 December 2017) (emphasis added). MG, Vol. VI, Annex 156.

⁸⁴ CR 2026/11, pp. 18-19, para. 33 (Talmon).

⁸⁵ CR 2026/6, pp. 20-22, paras. 22-31 (Jones).

⁸⁶ CR 2026/11, p. 19, para. 34 (Talmon).

⁸⁷ CR2026/11, p. 12, para. 3 (Talmon).

⁸⁸ 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. 932, 1378, 1422. MG, Vol. II, Annex 40.

⁸⁹ UN Nations Independent Investigative Mechanism for Myanmar, *Screening of Mechanism Person Code No. P5513* (September 2025), para. 37.

34. In conclusion, The Gambia submits that Myanmar's anti-Rohingya hate speech and propaganda, and the hateful utterances of Myanmar soldiers during the "clearance operations", are powerful indicators of genocidal intent — both of Myanmar's leadership and of its soldiers committing the acts of genocide.

35. Thank you, Mr President, Members of the Court, for your kind attention. Mr President, I kindly request that you call Ms Ho to the podium.

The PRESIDENT: I thank Mr Suleman for his statement. I now invite Ms Diem Huong Ho to address the Court. You have the floor, Madam.

Ms HO:

III. THE "CLEARANCE OPERATIONS" IN MIN GYI, CHUT PYIN AND MAUNG NU

1. Mr President, distinguished Members of the Court, this part of The Gambia's submissions returns to the "clearance operations". I will respond to Myanmar's arguments on the three villages of Min Gyi, Chut Pyin and Maung Nu. Mr Loewenstein will then respond Myanmar's arguments in respect to the Tatmadaw's pattern of conduct in northern Rakhine State.

2. Since we last addressed you, you have heard from The Gambia's three witnesses, each from one of the three villages. They have told you what they personally went through and saw. Their every word corroborates the determinations of the UN Fact-Finding Mission report and other independent reports. What is Myanmar's answer? To say that these facts are not "established"⁹⁰ and to invoke, yet again, counter-terrorism.

3. Nothing in what Myanmar presented last week can challenge The Gambia's evidence in respect of the unspeakable atrocities in Min Gyi, Chut Pyin and Maung Nu. Not its familiar nit-picking exercise. And certainly not its refrain of counter-terrorism.

1. Min Gyi

4. Starting with Min Gyi — or Tula Toli in Rohingya — Myanmar claims that none of the facts presented by The Gambia are "established"⁹¹. The Court will recall that these facts are derived

⁹⁰ CR 2026/9, p. 14, para. 13 (Blom-Cooper).

⁹¹ *Ibid.*

from the determinations of the UN Fact-Finding Mission — corroborated by independent reports from Amnesty International⁹², the Holocaust Memorial Museum⁹³, Human Rights Watch⁹⁴, independent journalists⁹⁵, three witness statements from the IIMM, and 21 signed witness statements from Legal Action Worldwide⁹⁶. Myanmar has put no evidence before the Court to refute those facts.

5. Instead it has levelled two challenges against The Gambia’s evidence in Min Gyi. First, it says “not a single word” is said about ARSA by any of The Gambia’s witnesses, and therefore these witnesses are unreliable⁹⁷. Second, many of The Gambia’s witness statements are anonymous and therefore without probative weight⁹⁸. Myanmar is wrong on both counts.

6. The Court will recall the harrowing account of Witness MS from Min Gyi. He gave a statement to Legal Action Worldwide in 2020 from which his name and identifying information were redacted, and it does not mention ARSA. Yet, Myanmar did not and could not challenge his testimony last week. Its criticisms of anonymization and of untested and unreliable evidence collapse in the face of the evidence he gave before you in person. Not just because of what Myanmar admitted was an “atrocity” that he “lived through”⁹⁹. But also because his account aligns in every detail with the determinations of the UN Fact-Finding Mission and other independent evidence, as well as the testimony of other Rohingya witnesses just like him.

⁹² Amnesty International, *“We Will Destroy Everything”: Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar* (June 2018). MG, Vol. IV, Annex 112.

⁹³ United States Holocaust Memorial Museum, *“They tried to kill us all”: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar* (November 2017). MG, Vol. VII, Annex 192.

⁹⁴ Human Rights Watch, *Massacre by the River: Burmese Army Crime Against Humanity in Tula Toli* (19 December 2017). MG, Vol. IV, Annex 107.

⁹⁵ See Poppy McPherson, “Witness to a massacre: the former Myanmar soldier who saw his village burn”, *The Guardian* (5 February 2018). MG, Vol. IX, Annex 278; BBC, Newsnight, “Rohingya crisis: The Tula Toli massacre” (14 November 2017), available at <https://www.youtube.com/watch?v=HRp0o0fzB2I>; “Accounts of rape, burning children and murder: How a Rohingya massacre unfolded at Tula Toli,” *CNN* (3 December 2017), available at <https://edition.cnn.com/2017/11/12/asia/myanmar-rohingya-tula-toli-massacre-testimony>; Annette Ekin, “Rohingya refugees share stories of sexual violence,” *Al-Jazeera* (29 September 2017), available at <https://www.aljazeera.com/features/2017/9/29/rohingya-refugees-share-stories-of-sexual-violence>; Jeffrey Gettleman, “Rohingya Recount Atrocities: ‘They Threw My Baby Into a Fire’,” *New York Times* (11 October 2017), available at <https://www.nytimes.com/2017/10/11/world/asia/rohingya-myanmar-atrocities.html>.

⁹⁶ CR 2026/9, p. 14, para. 13 (Blom-Cooper).

⁹⁷ CR 2026/9, p. 19, para. 32 (Blom-Cooper).

⁹⁸ CR 2026/9, pp. 20-21, paras. 37-38 (Blom-Cooper).

⁹⁹ CR 2026/15, p. 19 (Hooper).

7. He described “military everywhere surrounding . . . the village from all sides, and the other side was only river”¹⁰⁰. He described children being thrown into the fires or into the river¹⁰¹. He also told you that “women were separated from the men” and taken into houses which were then set on fire¹⁰². They included his wife and children who he never saw again¹⁰³. He further told you that his daughter was shot while attempting to escape across the river. Witness MS lost six members of his immediate family and 50 more of his extended family.

8. Witness MS is only one of the 21 witnesses who provided a signed statement to Legal Action Worldwide. Those witnesses, too, described the *modus operandi* of the Tatmadaw in Min Gyi: surrounding villages, indiscriminate shooting, systematically executing men and boys, massacring children, raping and gang raping women, and burning everything to the ground. If the Court considers the testimony of Witness MS to be compelling and gives it substantial weight, it should do the same for the remaining 20 witnesses from LAW whose statements were given in the same way.

9. Myanmar asserts that the lack of contemporaneous mention of ARSA by these survivors and witnesses, including Witness MS, is “[c]ontrived” and “intended to mislead and to deceive”¹⁰⁴. Mr President, did Witness MS appear deceitful or misleading to you? Or can his account be somehow explained or justified by the presence of ARSA in Min Gyi? The answer is no.

10. The Gambia has also put on the record three IIMM witness statements for Min Gyi. Those statements mention ARSA¹⁰⁵ and they also corroborate the *modus operandi* employed by the Tatmadaw in Min Gyi. For example, Witness P1477 recalled

“villagers fleeing . . . towards [the riverbank]” and “military soldiers were . . . pursuing them and . . . shooting at them”; “males raised their arms above their heads [to]

¹⁰⁰ CR 2026/15, p. 14 (Witness MS).

¹⁰¹ CR 2026/15, pp. 15-16 (Witness MS).

¹⁰² CR 2026/15, p. 16 (Witness MS).

¹⁰³ *Ibid.*

¹⁰⁴ CR 2026/9, p. 19, paras. 32-33 (Blom-Cooper).

¹⁰⁵ See UN Independent Investigative Mechanism for Myanmar, Witness Statement No. IIMM0019629206 (16 October 2022), paras. 60-72. RG, Vol. IV, Annex 50; UN Independent Investigative Mechanism for Myanmar, Witness Statement No. IIMM0027992990 (25 October 2022), paras. 194-196. RG, Vol. IV, Annex 51; UN Independent Investigative Mechanism for Myanmar, Witness Statement No. IMM0027993001 (13 March 2023), para. 77. RG, Vol. IV, Annex 56.

surrender” but the military “came close to them and shot them immediately”; and all the houses “where the military took the women . . . set on fire”¹⁰⁶.

11. Witness P1301 recounted: “I witnessed children, who were scattered everywhere . . . being killed with knives and machetes”¹⁰⁷ and “snatched . . . from their mothers and [thrown] into [the fires]”¹⁰⁸.

12. Myanmar claims an IIMM witness “had lied in his earlier [LAW] statement” about his knowledge and fear of ARSA¹⁰⁹; yet his later IIMM statement is fully consistent with his earlier statement in respect of the Tatmadaw’s *modus operandi* in Min Gyi.

13. Survivors focused on the atrocities that they observed. That is natural, and Myanmar’s attempt to draw adverse inferences from their silence on ARSA is, frankly, irrelevant.

14. Myanmar devoted much time to a description of alleged ARSA activities “in and around Min Gyi”¹¹⁰. “Around”, more than “in”, perhaps, because its claims of “heavy ARSA presence” pointed to a place 10 km from Min Gyi. The presence of ARSA there and in other villages, none of which were Min Gyi, in the “days and weeks prior to 8 a.m. on 30 August 2017”¹¹¹ does not somehow render the Tatmadaw’s attack on Min Gyi “responsive”¹¹². The UN Fact-Finding Mission identified just two ARSA attacks in other villages in the vicinity of Min Gyi, but these were several days earlier and in response, the Tatmadaw had already conducted two separate “clearance operations”¹¹³. The Mission recorded no armed engagement with ARSA on the day of the “clearance operations” in Min Gyi¹¹⁴.

15. Myanmar says otherwise, claiming that there were “repeated clashes involving groups of hundreds of Bengalis” in Min Gyi¹¹⁵. What is the evidence to support this? Myanmar only has its

¹⁰⁶ UN Independent Investigative Mechanism for Myanmar, Witness Statement No. IIMM0019629206 (16 October 2022), paras. 138-145, 156. RG, Vol. IV, Annex 50.

¹⁰⁷ UN Independent Investigative Mechanism for Myanmar, Witness Statement No. IMM0027993001 (13 March 2023), para. 137. RG, Vol. IV, Annex 56.

¹⁰⁸ *Ibid.*, paras. 158, 161.

¹⁰⁹ CR 2026/9, pp. 20-21, para. 37 (Blom-Cooper).

¹¹⁰ CR 2026/9, pp. 17-20, paras. 23-32 (Blom-Cooper).

¹¹¹ CR 2026/9, p. 16, paras. 22-23 (Blom-Cooper).

¹¹² CR 2026/9, p. 33, para. 97 (Blom-Cooper).

¹¹³ CR 2026/3, p. 40, para. 29, fn. 178 (Pasipanodya), citing 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. 757, 761, 776-778. MG, Vol. II, Annex 40.

¹¹⁴ CR 2026/3, p. 40, para. 29 (Pasipanodya), fn. 178.

¹¹⁵ CR 2026/9, p. 19, para. 31 (Blom-Cooper).

own operational reports and statements from its own military officers¹¹⁶. Professor Newton told you that military reporting of this kind is inherently unreliable and has no probative value unless it is corroborated by independent external examinations¹¹⁷. Myanmar has no independent corroboration here.

2. Chut Pyin

16. Mr President, Members of the Court, I now turn to Chut Pyin or, as the Rohingya know it, Shuap Parung.

17. Myanmar again says that the facts presented by The Gambia are not “established”¹¹⁸, despite being grounded in the UN Fact-Finding Mission’s report, independent reports from Amnesty International, Physicians for Human Rights, Fortify Rights, the International State Crime Initiative, as well as more than 20 witness accounts from LAW and four signed witness statements from the IIMM¹¹⁹. Again, Myanmar has offered no evidence to contradict these facts.

18. Myanmar resorts to its usual attack on the so-called “contrived silence” on ARSA in the LAW witness accounts as well as their anonymization¹²⁰. One such witness account is that of Witness NJ, from whom the Court heard directly last Wednesday. Every detail of her testimony corroborates the determinations of the UN Fact-Finding Mission and other evidence from Chut Pyin, in respect of the *modus operandi* employed by the Tatmadaw in Chut Pyin.

19. She told you that the military tortured and took away her husband and father-in-law, whom she never saw again¹²¹. She told you that a soldier grabbed her infant son from her arms, stabbed him with a knife and threw him into a fire¹²². She told you she was gang raped¹²³. She told you she felt

¹¹⁶ See Witness Statement of Captain Hein XXX, company commander, Frontline Light Infantry Regiment, 4 September 2017, pp. 1-2, CMM, Vol. V, Annex 157; Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. 243/2017, 31 August 2017; Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. 244/2017, 1 September 2017, pp. 4-6, para. B (2), CMM, Vol. IV, Annex 127; Witness Statement of Captain Zwe, 5 September 2017, pp. 1-3, RM, Vol. III, Annex 83.

¹¹⁷ CR 2026/16, pp. 34-35 (Newton).

¹¹⁸ CR 2026/9, p. 14, para. 13 (Blom-Cooper).

¹¹⁹ CR 2026/3, p. 54, para. 48 (Ho).

¹²⁰ CR 2026/9, pp. 25-26, paras. 60-65 (Blom-Cooper).

¹²¹ CR 2026/14, pp. 13-14 (Witness NJ).

¹²² CR 2026/14, p. 14 (Witness NJ).

¹²³ CR 2026/14, p. 15 (Witness NJ).

“they wanted to . . . destroy . . . as a whole [the] Rohingya community”¹²⁴. She also told you that the military burned “the whole village”¹²⁵.

20. Witness NJ is one of more than 20 witnesses from Chut Pyin whose experience was captured in a summarized account by LAW, which Myanmar criticized as “unsigned”, “anonymous” and should be given “no [probative] weight”¹²⁶. You have heard her live testimony. It shows that the LAW’s interview notes with her preserve the substance and detail of the underlying evidence. The Court therefore can rely on those interview notes.

21. Myanmar asked Witness NJ during cross-examination about ARSA. She said she “had no idea about any of these names” and therefore “didn’t talk about it”¹²⁷. Was there anything deceitful about Witness NJ, a mother who never left her village¹²⁸, who spent her days caring for her children, to not know about ARSA? You heard her say her fear was not ARSA, but the reach of the Myanmar Government: “Bangladesh camps [are] very close to the Myanmar border, so I had the fear that [the Government] might reach and come and kill my family members”¹²⁹.

22. Counsel for Myanmar surprisingly claims that The Gambia “avoids the IIMM witness testimony from Chut Pyin” because it “reveals a quite different picture of the military’s conduct”¹³⁰, even while acknowledging that The Gambia submitted four IIMM witness statements for Chut Pyin. Mr President, in reality, the picture is not that different. Every IIMM statement in evidence, including the two introduced by Myanmar, describes the same *modus operandi* employed by the Tatmadaw in Chut Pyin, as documented by the UN Fact-Finding Mission and other independent investigations.

23. Mr Reichler took you to these statements earlier. But he has not read you this passage from witness P1235 — the witness that Myanmar trumpeted for saying that the military “don’t attack ladies” and let people go to Bangladesh¹³¹:

¹²⁴ CR 2026/14, p. 16 (Witness NJ).

¹²⁵ CR 2026/14, p. 32 (Witness NJ).

¹²⁶ CR 2026/9, p. 25, para. 60 (Blom-Cooper); CR 2026/9, pp. 44-45, paras. 35-36 (Staker).

¹²⁷ CR 2026/14, p. 26 (Witness NJ).

¹²⁸ CR 2026/14, p. 23 (Witness NJ).

¹²⁹ CR 2026/14, p. 19 (Witness NJ).

¹³⁰ CR 2026/9, p. 27, para. 66 (Blom-Cooper).

¹³¹ *Ibid.*

“I saw a lady whose breast was cut and who died instantly . . . I saw that she was taken by militaries . . . When she tried to resist, I saw that a mogh man came, held one of her breasts and chopped it off. She started bleeding a lot and screaming, and the militaries shot her from a distance.”¹³²

24. Hardly an account that exonerates the Tatmadaw.

25. In a now familiar pattern, Myanmar turns to “counter-terrorism” as its mantra for justifying the atrocities in Chut Pyin¹³³. What Myanmar never explains is why the events it relies on — occurring in locations some “10 kilometres from Chut Pyin”¹³⁴ or otherwise outside of the village — could provide justification for what happened in Chut Pyin itself.

26. The only incident that Myanmar locates in Chut Pyin is the attack on the Chut Pyin police by “a member of ARSA from Chut Pyin (Bengali) village” with homemade bombs¹³⁵. The Fact-Finding Mission “was unable to verify this attack”¹³⁶. Myanmar’s answer is simply: trust our own military operational reports, our own military witnesses and statements from detainees in our own custody¹³⁷. You heard from Professor Newton about the reliability of such evidence: absolutely unreliable and has no evidentiary weight¹³⁸.

27. Even if it is assumed that the attack on Chut Pyin police by ARSA did occur, Myanmar has no answer to the conclusion of the UN Fact-Finding Mission that “plans for a ‘clearance operation’ in Chut Pyin appear to have been made prior to this [incident]”¹³⁹, nor for the way in which it was conducted — a *modus operandi* that speaks not of counter-terrorism but of genocide.

3. Maung Nu

28. Mr President, I finally address the village of Maung Nu — or Monu Para in Rohingya.

29. As with the other two villages, Myanmar has produced no evidence to contradict the determinations of the UN Fact-Finding Mission¹⁴⁰, corroborated by multiple sources, including

¹³² IIMM, Witness Statement No. IIMM0019925304, para. 161. RM, Vol. IV, Annex 127 (full version).

¹³³ CR 2026/9, p. 22, para. 44 (Blom-Cooper).

¹³⁴ CMM, para. 8.73 (4).

¹³⁵ CMM, para. 8.73 (6).

¹³⁶ 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. 781. MG, Vol. II, Annex 40.

¹³⁷ CR 2026/9, pp. 24-25, paras. 56-58 (Blom-Cooper).

¹³⁸ CR 2026/16, pp. 34-35 (Newton).

¹³⁹ 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. 781. MG, Vol. II, Annex 40.

¹⁴⁰ *Ibid.*, paras. 804-816.

Amnesty International¹⁴¹, the International State Crime Initiative¹⁴², the United States Holocaust Memorial Museum¹⁴³ and signed witness statements from the IIMM¹⁴⁴, Fortify Rights¹⁴⁵ and LAW¹⁴⁶. Counsel for Myanmar simply says these facts are not “established”, complaining once more about The Gambia’s reliance on “anonymous summary hearsay notes”¹⁴⁷.

30. Yet you have heard from Witness MN, who was once such an anonymous witness. He stood before you and described how soldiers opened fire in Maung Nu¹⁴⁸ and separated him from his wife and children at gunpoint¹⁴⁹. He recounted being rounded up with other men and having his hands tied¹⁵⁰. He told you how soldiers kicked him in the back and neck, forcing him to lie face down on the ground¹⁵¹. From there, he heard the voices of other men crying out to God. Then came the gunshots¹⁵².

31. Witness MN then recounted the scene that haunts him to this day: piles of bodies, more than 60 men and boys, stacked together in death — among them lay his elderly father and his eight-year-old nephew¹⁵³. In answering Judge Tladi’s question on whether any of the 87 men with whom he was captured survived, he said: “None of them.”¹⁵⁴ That testimony is consistent with the Fact-Finding Mission’s indication that “up to 100 people, mostly men and boys were executed in

¹⁴¹ Amnesty International, *“We Will Destroy Everything”* (2018), pp. 69-70, 161. MG, Vol. IV, Annex 112.

¹⁴² International State Crime Initiative, *Genocide Achieved, Genocide Continues: Myanmar’s Annihilation of the Rohingya* (2018), p. 53. MG, Vol. IV, Annex 109.

¹⁴³ United States Holocaust Memorial Museum, “They tried to kill us all”: Atrocity Crimes against Rohingya Muslims in Rakhine State, Myanmar (November 2017), p. 9. MG, Vol. VII, Annex 192.

¹⁴⁴ UN Independent Investigative Mechanism for Myanmar, Witness Statement No. IIMM0019915116 (23 November 2022). RG, Vol. IV, Annex 54.

¹⁴⁵ Fortify Rights, Witness Statement of Mohammadul Hassan (23 February 2018). MG, Vol. X, Annex 337. See also Fortify Rights, *They Gave Them Long Swords* (2018), p. 64. MG, Vol. IV, Annex 114.

¹⁴⁶ Witness Statement No. 002, signed on 2 July 2020. MG, Vol. X, Annex 339; Witness Statement No. 003, signed on 13 July 2020. MG, Vol. X, Annex 340; Witness Statement No. 004, signed on 15 July 2020. MG, Vol. X, Annex 341; Witness Statement No. 006, signed on 29 July 2020. MG, Vol. X, Annex 343; Witness Statement No. 023, signed on 5 October 2020. MG, Vol. XI, Annex 361.

¹⁴⁷ CR 2026/9, p. 28, para. 73 (Blom-Cooper).

¹⁴⁸ CR 2026/13, pp. 17-19 (Witness MN).

¹⁴⁹ CR 2026/13, p. 21 (Witness MN).

¹⁵⁰ CR 2026/13, p. 23 (Witness MN).

¹⁵¹ *Ibid.*

¹⁵² CR 2026/13, p. 47 (Witness MN).

¹⁵³ CR 2026/13, p. 43 (Witness MN).

¹⁵⁴ CR 2026/13, p. 48 (Witness MN).

Maung Nu”¹⁵⁵. Professor Newton told you, the *modus operandi* of segregating and executing men and boys reminded him of Srebrenica¹⁵⁶.

32. None of this testimony has been challenged or disproven by Myanmar’s counsel. Equally false is Myanmar’s assertion that the IIMM witness statements concerning Maung Nu contradict The Gambia’s evidence¹⁵⁷. On the contrary, they confirm it.

33. For instance, the statement by witness P1493 — introduced by Myanmar — recounts how “the ground was wet with blood” in Zahid Hussein’s compound¹⁵⁸. The witness described seeing the “dead body of a child, aged about 2 years old” with “[o]ne part of [his] head . . . missing”¹⁵⁹. A different statement — also introduced by Myanmar — describes the killing of “another boy, adolescent, maybe between 14 and 16” who was shot in the head by a soldier that “[h]alf of his head and brains were blown out”¹⁶⁰.

34. Last week, Myanmar argued for the first time that the “clearance operation” in Maung Nu was a targeted strike on “ARSA cell leader, Zahid Hussein, and his home address”¹⁶¹. That, of course, is a significant claim. Myanmar’s *single* source of evidence is a statement from the IIMM¹⁶² — the very body whose materials Myanmar dismisses elsewhere as having no evidentiary weight¹⁶³.

35. Be that as it may, Myanmar’s new argument changes nothing. The evidence plainly shows that the “clearance operation” in Maung Nu was *not* “targeted”. If the objective was to eliminate an ARSA leader and his affiliates, one would expect the operation to end with arrest and detention of select individuals, and with the separation and protection of civilian population. What transpired instead was an indiscriminate mass execution, including of children and the elderly.

¹⁵⁵ 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. 815. MG, Vol. II, Annex 40.

¹⁵⁶ CR 2026/16, p. 29 (Newton).

¹⁵⁷ CR 2026/9, p. 28, para. 72 (Blom-Cooper).

¹⁵⁸ IIMM, Witness Statement No. IIMM0027992947, para. 130. RM, Vol. IV, Annex 152 (full version).

¹⁵⁹ *Ibid.*, para. 131.

¹⁶⁰ IIMM, Witness Statement No. IIMM0027992867, p. 23, para. 76. RM, Vol. IV, Annex 136 (full version).

¹⁶¹ CR 2026/9, p. 30, para. 82 (Blom-Cooper).

¹⁶² CR 2026/9, p. 30, para. 82 (Blom-Cooper); RM, para. 8.161 (citing IIMM, Witness Statement No. IIMM0019628625, paras. 80-81, RM, Vol. IV, Annex 131).

¹⁶³ CR 2026/8, p. 25, para. 18 (Cordone).

36. Myanmar counsel asserts that “ARSA militants began to assemble in Maung Nu itself, throughout 26 August”, but it offers no citation in support¹⁶⁴. It is not disputed that there was *no* documented ARSA attack in Maung Nu on 27 August before the security forces arrived. What prompted the Tatmadaw to descend upon Maung Nu was not an attack on the village itself, but an uncorroborated suspicion that ARSA members from nearby village Hpaung Taw Pyin *could be* “hiding around” Maung Nu¹⁶⁵.

37. In its opening presentation, Myanmar alleged additional ARSA activity in the *surrounds* of Maung Nu¹⁶⁶. It is telling that, just as with Min Gyi and Chut Pyin, Myanmar must resort to peripheral events taking place somewhere at some distance to justify what transpired in Maung Nu¹⁶⁷.

38. In reality, the Tatmadaw’s arrival in Maung Nu was not related to any ARSA attack. It was part of a rolling wave of “clearance operations” across Rohingya villages. The Tatmadaw terrorized one Rohingya village, driving its residents to flee to another village. It then used that displacement as a pretext to launch additional “clearance operations” in those surrounding locations, on the ostensible basis that fleeing civilians included ARSA terrorists¹⁶⁸. This self-generating logic — attack, displace, and attack again — reveals the true nature of the “operation”: not to neutralize any security threat, but to destroy an entire community.

39. Mr President, Members of the Court, I conclude by responding to six points raised by Myanmar’s counsel in its opening presentation on the three villages.

40. *First*, Myanmar claims that “the use of force by Myanmar defence services . . . was directly responsive” to ARSA-led violence in northern Rakhine State¹⁶⁹. As we have demonstrated, Myanmar has offered nothing but its military documents to prove this in respect of the “clearance operations” in Min Gyi, Chut Pyin and Maung Nu. Counsel for Myanmar asks, rather ironically, “one wonders how then The Gambia envisages any State might defend itself in proceedings such as these” if it

¹⁶⁴ CR 2026/8, p. 29, para. 78 (Blom-Cooper).

¹⁶⁵ Myanmar Defence Services, No. 15 Mobile Operation Command Headquarters, Zwe Mhann Hone Operation, Daily operation report No. 240/2017 (27 August 2017), p. 4, para. 14. CMM, Vol. IV, Annex 118; CMM, para. 8.101.

¹⁶⁶ CR 2026/8, pp. 28-30, paras. 75-80 (Blom-Cooper).

¹⁶⁷ CR 2026/9, p. 56, para. 13 (Lawrie).

¹⁶⁸ See e.g. CMM, paras. 8.100-8.101, 9.54.

¹⁶⁹ CR 2026/9, p. 33, paras. 97-98 (Blom-Cooper).

could not rely on such self-serving and unreliable evidence¹⁷⁰. Professor Newton already answered this: corroborate your military reports with independent and external examinations¹⁷¹.

41. Even if we were to accept Myanmar's "clearance operation" in the three villages were somehow "responsive" to ARSA attacks, what was its response? A *modus operandi* of encircling villagers, indiscriminate shooting, segregating and executing men and boys, massacring children, raping and gang raping women and girls, comprehensive burning of Rohingya settlements while leaving the nearby Rakhine areas intact. This, as Professor Newton has now testified, cannot simply be described as disproportionate uses of force by the Tatmadaw; it was part of an extermination campaign to destroy the Rohingya group¹⁷².

42. *Second*, Myanmar trumpets its rules of engagement which it claims were distributed to security services before the "clearance operations"¹⁷³. But as Professor Newton observed, the Tatmadaw

"published rules of engagement, they disseminated them to troops . . . Then, with respect to this portion of the population, they engaged in that sustained *modus operandi*, from start to finish, which not only was not compliant with those rules of engagement on an aberrational basis — it simply ignored that they existed."¹⁷⁴

43. *Third*, as Mr Reichler demonstrated, The Gambia's evidence in respect of the "clearance operations", including in the three main villages, is independent, reliable and compelling. The three witnesses who spoke before the Court last week confirmed this beyond any doubt.

44. *Fourth*, Myanmar attacks The Gambia's fatality figures in the three villages because they "do not accurately reflect the evidence"¹⁷⁵. While the figures The Gambia put forward are necessarily estimates, they represent the best available numbers in light of the nature of the "clearance operations", during which the Fact-Finding Mission found that "people were killed without witnesses, and their bodies were subsequently systematically disposed of"¹⁷⁶.

¹⁷⁰ CR 2026/9, p. 27, para. 68 (Blom-Cooper).

¹⁷¹ CR 2026/16, pp. 34-35 (Newton).

¹⁷² CR 2026/16, p. 29 (Newton).

¹⁷³ CR 2026/9, p. 34, para. 99 (Blom-Cooper).

¹⁷⁴ CR 2026/16, p. 32 (Newton).

¹⁷⁵ CR 2026/9, p. 34, para. 101 (Blom-Cooper).

¹⁷⁶ 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. 1005. MG, Vol. II, Annex 40.

45. *Finally*, Myanmar is wrong to claim that the events in Min Gyi, Chut Pyin, and Maung Nu were not typical of events during the “clearance operations” in northern Rakhine State. The UN Fact-Finding Mission found “the same *modus operandi*” in “a total of 54 separate locations”, with evidence extending to at least 20 more¹⁷⁷. Mr Loewenstein will address you on that next.

46. Mr President, Members of the Court, I thank you for your kind attention. May I ask that you call Mr Loewenstein to the podium?

The PRESIDENT: I thank Ms Ho. The Court will observe a break here for 15 minutes before the Court gives the floor to Mr Loewenstein. The sitting is suspended.

The Court adjourned from 4 p.m. to 4.15 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now give the floor to Mr Andrew Loewenstein. You have the floor, Sir.

Mr LOEWENSTEIN:

IV. MYANMAR’S PATTERN OF CONDUCT

1. Mr President, Members of the Court, good afternoon. I will respond to Myanmar’s attempt to challenge the determination by the UN Fact-Finding Mission — corroborated by many others — that Myanmar exhibited a pattern of conduct that can only be understood to reflect its intention to destroy the Rohingya as a group in northern Rakhine State. In so doing, I will take stock of the evidence and arguments, including the witness evidence, that go to the question of Myanmar’s pattern of conduct.

2. I begin with the requirements. As the Court held in *Croatia v. Serbia*, a pattern of conduct simply requires “a consistent series of acts carried out over a specific period of time”¹⁷⁸. A pattern of conduct can thus be established, for instance, where “widespread attacks” are carried out “according to a generally similar *modus operandi*”¹⁷⁹. In the *Croatia* case, such a pattern was found to exist because there was evidence that “widespread attacks by the JNA and Serb forces on localities with

¹⁷⁷ *Ibid.*, para. 880.

¹⁷⁸ *Croatia Genocide, 2015 Judgment*, p. 151, para. 510.

¹⁷⁹ *Ibid.*, p. 122, para. 416.

Croat populations in various regions of Croatia” were carried out “according to a generally similar *modus operandi*”¹⁸⁰.

3. Myanmar has sought to argue that establishing a pattern of conduct requires the Court to engage in a minute examination of every instance where Myanmar is alleged to have committed an act that forms part of the general pattern, and that in each place precisely the same order and types of events need to be established. You heard this during Ms Lawrie’s presentation in which she went village-by-village, which tried to call into question the evidence obtained by the Fact-Finding Mission and others in regard to those villages. Mr Reichler has already shown why the evidence is reliable, credible and trustworthy.

4. But Myanmar’s approach is misconceived for an even more fundamental reason. As the Court explained in the *Bosnia* case, it need only “consider the facts alleged in the light of the question whether there is persuasive and consistent evidence for a pattern of atrocities . . . which would constitute evidence of *dolus specialis*”¹⁸¹. And, “[f]or this purpose it is *not* necessary to examine every single incident reported by the Applicant, nor is it necessary to make an exhaustive list of the allegations”¹⁸². In other words, no Myanmar-style audit is necessary. Instead, it is “sufficient [for the Court] to examine those facts that would illuminate the question of intent, or illustrate the claim by the Applicant of a pattern of acts committed against members of the group, such as to lead to an inference from such pattern of the existence of a specific intent”¹⁸³.

5. Myanmar’s attempt to suggest that any variation somehow negates the pattern is equally flawed. It does not square with the Court’s jurisprudence that a “generally similar *modus operandi*” is sufficient¹⁸⁴.

6. The Court’s approach is plainly correct; and Myanmar presents no cogent reason to depart from it. Inevitably, there will be locations where the available evidence may show greater or lesser levels of killings, sexual violence or other forms of abuse. All the more so in circumstances where,

¹⁸⁰ *Ibid.*

¹⁸¹ *Bosnia Genocide, 2007 Judgment*, p. 143, para. 242.

¹⁸² *Ibid.*, p. 143, para. 242 (emphasis added).

¹⁸³ *Ibid.*

¹⁸⁴ *Croatia Genocide, 2015 Judgment*, p. 122, para. 416.

as is the case here, the available evidence has been affected by efforts to destroy the evidence¹⁸⁵ and independent investigators are refused access¹⁸⁶.

7. And of course, inevitably, there will be variation over time and location in how the perpetrators conduct themselves. A pattern of conduct does not require undeviating, identical conduct in all locations and at all times — it simply requires sufficient similarity in the perpetrators’ *modus operandi* to show a broadly common and consistent approach across place and time.

8. Here, there is certainly broad commonality. The totality of the evidence, including Professor Newton’s unchallenged expert testimony, corroborates the Mission’s finding, confirming that the evidence is “consistent” in showing that Myanmar carried out “widespread attacks . . . according to a generally similar *modus operandi*”, and that this *modus operandi* includes “persuasive and consistent evidence for a pattern of atrocities”. Specifically, the Mission verified the common *modus operandi* of the “clearance operations” to exist with respect to at least 54 villages and received first-hand accounts of additional an additional “clearance operations” conducted in a further 22 locations¹⁸⁷. It is to the particularities of that pattern to which I turn now.

9. I begin with Myanmar’s preparatory actions. As the first round made clear, much of the evidence is undisputed. Myanmar concedes it deployed Tatmadaw units to northern Rakhine State prior to the wave of “clearance operations” that began on 25 August 2017. Ms Lawrie said so expressly¹⁸⁸. Those deployments included highly trained units, including the 33rd and 99th Light Infantry Divisions, or LIDs, which Myanmar airlifted to northern Rakhine State upon the command of the Army’s Commander-in-Chief, which soon thereafter carried out many of the “clearance

¹⁸⁵ MG, paras. 11.24, 11.48.

¹⁸⁶ UN OHCHR, *Myanmar refuses access to UN Special Rapporteur* (20 December 2017). MG, Vol. III, Annex 67; UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN doc. A/74/342 (30 August 2019), para. 2. MG, Vol. III, Annex 77; 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. 1618. MG, Vol. II, Annex 40; UN Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, UN doc. A/HRC/42/50 (8 August 2019), para. 4. MG, Vol. III, Annex 47.

¹⁸⁷ 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. 880. MG, Vol. II, Annex 40.

¹⁸⁸ CR 2026/8, p. 55, para. 34 (Lawrie).

operations”¹⁸⁹. Nor does Myanmar challenge the fact that the Tatmadaw deployed its units to strategic locations in close proximity to Rohingya villages¹⁹⁰. These are highly significant, undisputed facts.

10. The underlying facts with respect to Myanmar’s other preparatory acts are likewise conceded. In the first round, Myanmar accepted that it had ordered the removal of fences in Rohingya villages; confiscated the Rohingya’s sharp implements and agricultural tools; and imposed draconian curfews and restrictions on movement¹⁹¹. The most Myanmar could do was try to suggest these were anti-terrorism measures that were not directed at the Rohingya as a group but applied in a non-discriminatory manner¹⁹², a point unsupported by — and in fact, directly contradicted by — the evidence before the Court¹⁹³.

11. Again, Professor Newton’s testimony is instructive. As he explained, bona fide anti-terrorism measures would be selectively targeted against suspected terrorists; they would not be imposed indiscriminately against the group as a whole¹⁹⁴.

12. With respect to Myanmar’s termination of humanitarian assistance in the weeks prior to, and at the height of both the 2016 and 2017 “clearance operations”. Myanmar did not dispute *any* of the relevant facts. Not its refusal to allow the World Food Programme to distribute food aid. Not its termination other vital food assistance programmes. Not the fact that these actions occurred against the backdrop of the World Food Programme’s warning that much of the Rohingya population faced imminent starvation. Not Myanmar’s refusal to allow health care organizations to continue providing

¹⁸⁹ UN Human Rights Council, *Report of the independent international fact-finding Mission of Myanmar*, UN doc. A/HRC/39/64 (12 September 2018), para. 48. MG, Vol. II, Annex 39; Amnesty International, “*We Will Destroy Everything*” (2018), pp. 162-163, available at <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>; 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. 1553-1555. MG, Vol. II, Annex 40.

¹⁹⁰ CR 2026/3, pp. 19-20, paras. 27-28 (Loewenstein).

¹⁹¹ CR 2026/8, pp. 55-56, paras. 35-37 (Lawrie); CR 2026/11, p. 59, paras. 67-68 (Blom-Cooper).

¹⁹² CR 2026/8, pp. 55-56, paras. 35-37 (Lawrie).

¹⁹³ Fortify Rights, *They Gave Them Long Swords* (2018), pp. 41-43. MG, Vol. IV, Annex 114; PILPG, *Documenting Atrocity Crimes Committed Against the Rohingya* (2018), p. 26. MG, Vol. IV, Annex 121; Fortify Rights, “Firsthand Testimonies from August-September ‘Clearance Operations’ in Myanmar”, Statement #9. MG, Vol. X, Annex 338; 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. 1115, 1118, 1124-1126. MG, Vol. II, Annex 40; International State Crime Initiative, *Genocide Achieved, Genocide Continues: Myanmar’s Annihilation of the Rohingya* (2018), pp. 35-36, 44-46. MG, Vol. IV, Annex 109; Kadalán Press Network, *Refugee testimonies contradict Burmese government version of the August 25 “terrorist attacks”*: An Investigative Analysis by Kadalán Press Network (31 October 2017). MG, Vol. X, Annex 330.

¹⁹⁴ CR 2026/16, pp. 28, 44 (Newton).

urgently needed medical assistance¹⁹⁵. Ms Lawrie could not even bring herself to claim these were anti-terrorism measures. All we heard was unsupported hand-waving about security. But the aid organizations themselves had no concerns about the lack of security preventing their operations, a fact confirmed by Mr Riley’s witness statement.

13. Mr President, the reality is that the “clearance operations” were pre-planned. The steps taken to weaken the Rohingya population and put in place Tatmadaw units to attack them on a command formed part of a consistent pattern across northern Rakhine State.

14. Crucially, the evidence also establishes that when Myanmar launched the clearance operations, their *modus operandi* involved indiscriminate targeting of the entire Rohingya population. Despite overwhelming evidence to the contrary, Myanmar nonetheless still insists — with the sole exception of the massacre at Inn Din (for which there is irrefutable photo-documentation) — the Tatmadaw engaged in no extrajudicial killings. As Ms Lawrie put it, “[i]n relation to the alleged killing of the male, save for [— in her words —] the incident at Inn Din . . . , Myanmar denies that soldiers engaged in extrajudicial killings”¹⁹⁶. We will see if Myanmar maintains that position in view of Mr Hooper’s acknowledgment of the “atrocities” at Min Gyi¹⁹⁷.

15. Last week, Myanmar tried to suggest that The Gambia lacks evidence for the indiscriminate killing of Rohingya civilians during the 2016 wave¹⁹⁸. Not true. The OHCHR discussed by Mr Reichler concluded that “the security forces . . . deliberately targeted the entire Rohingya population in the area”¹⁹⁹. Those are the words of the report. This fully aligns with the FFFM’s own conclusion, namely that the 2016 operations were “characterised by serious human rights violations, including torture, rape and sexual assault, killings, and the destruction of homes and mosques”. These, the Mission found, involved the “same tactics and violations [that] were seen . . . later in 2017”²⁰⁰. And it accords with the findings of the very Amnesty International report

¹⁹⁵ See MG, paras. 10.49-10.52; RG, paras. 5.63-5.69; CR 2026/2, p. 41, para. 31 (Pasipanodya); CR 2026/3, pp. 14-16, paras. 9-15 (Loewenstein).

¹⁹⁶ CR 2026/8, p. 65, para. 73 (Lawrie).

¹⁹⁷ CR 2026/15, p. 19 (Hooper).

¹⁹⁸ CR 2026/8, p. 59, para. 47 (Lawrie).

¹⁹⁹ UN OHCHR, *Report of OHCHR mission to Bangladesh: Interviews with Rohingyas fleeing from Myanmar since 9 October 2016: FLASH REPORT* (3 February 2017), pp. 3-4, 41-42. CMM, Vol. VI, Annex 230.

²⁰⁰ 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. 1070. MG, Vol. II, Annex 40.

upon which Myanmar places reliance. It reported “eyewitnesses” who recounted how in 2016 “military personnel . . . attacked Rohingya villagers at random, leading to deaths and injuries” and how “soldiers entered their villages” and “fired randomly at . . . men, women and children — often while they were fleeing in fear”²⁰¹.

16. Myanmar’s employment of the same *modus operandi* during the second wave is fully documented, not least by the Fact-Finding Mission²⁰² and the three witnesses who testified last week. Multiple witnesses also reported that “the military was shooting madly” “on everyone they saw” and “in every direction”²⁰³.

17. The *modus operandi* included killing civilians while fleeing. The evidence is clear. It happened to Witness MS’s daughter²⁰⁴. Just as it happened to the daughter of a survivor from Kyein Chaung, who recalled that, “[a]s people were running, they were shooting at them. That is how my daughter died. She was hit fleeing.”²⁰⁵ Medical reports referred to by the Fact-Finding Mission confirm “that many patients, including women, children and the elderly, had bullet entry points from behind, consistent with being shot while fleeing”²⁰⁶. The record includes examples from many places²⁰⁷.

18. Significantly, the shooting of Rohingya refugees who were fleeing was common across different Tatmadaw units, including the 33rd and 99th Light Infantry Divisions (LIDs) that were moved to Rakhine State in the weeks leading to the “clearance operations”. This happened at Min Gyi, where the “clearance operation” was carried out by the 99th LID. The FFM reported that:

“The soldiers . . . opened fire directly at the large number of people fleeing towards the shore. Many people were shot. One man reported: . . . *I think that everybody*

²⁰¹ Amnesty International, “*We Are At Breaking Point*”: *Rohingya: Persecuted in Myanmar, Neglected in Bangladesh* (19 December 2016), p. 17. MG, Vol. IV, Annex 97.

²⁰² UN Fact-Finding Mission, *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. 884. MG, Vol. II, Annex 40.

²⁰³ Legal Action Worldwide, Collated Information from Victims/Witnesses, Statement CK0352. MG, Vol. X, Annex 336; Amnesty International, “*We Are At Breaking Point*” (2016), p. 20. MG, Vol. IV, Annex 97; PILPG, *Documenting Atrocity Crimes Committed Against the Rohingya* (2018), p. 41. MG, Vol. IV, Annex 121.

²⁰⁴ CR 2026/15, p. 16 (Witness MS).

²⁰⁵ 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. 888. MG, Vol. II, Annex 40.

²⁰⁶ *Ibid.*, para. 918.

²⁰⁷ See e.g. MG, paras. 8.14, 8.15, 8.17, 8.18, 8.23, 8.39, 8.52, 8.53, 8.54, 8.56, 8.57, 8.64, 8.70, 8.72, 8.82, 8.92, 8.116, 9.23, 9.24, 9.62, 9.63, 10.53, 10.59, 10.61; RG, paras. 7.51, 7.60, 7.61, 7.70, 7.80, 7.87, 7.100, 7.101, 7.111, 7.115, 7.120, 7.124, 7.142, 9.61.

*from my village was running towards the shore. While I was running, there was a lot of shooting and I saw many people hit and falling down.”*²⁰⁸

And the 99th did so as well in Kyauk Pan Du. There, the Mission determined that it carried out a “clearance operation” . . .

The PRESIDENT: Mr Loewenstein, please slow down a bit. The interpreters are having a problem.

Mr LOEWENSTEIN: There, the Mission determined that it carried out a “clearance operation” in which “[f]leeing people were shot, injured or killed”²⁰⁹.

19. A different unit, the 33rd LID, engaged in a similar pattern of behaviour in Chut Pyin. The FFM reported that the soldiers conducting the operation there “opened fire, shooting at villagers, including those who were fleeing”²¹⁰. Much the same occurred in Koe Tan Kauk, where the Mission found that the 33rd “led the operation, shooting into the village and towards people fleeing”²¹¹.

20. This brings me to sexual violence, another part of the *modus operandi*. Myanmar does not appear to contest that a pattern of sexual violence is indicative of genocidal intent. It expressly accepted that sexual violence can never form part of a legitimate counter-terrorism operation²¹². Its only response was to question whether the evidence of sexual violence is sufficient.

21. In that connection, Myanmar sought to argue last week that, as Mr Blom-Cooper put it, the “allegations” of sexual violence “arise predominantly” in just two villages, Min Gyi and Chut Pyin, and that, in his words, there is “no reliable evidence of their widespread character”²¹³. Mr Blom-Cooper appeared to take umbrage at even the suggestion that the Tatmadaw could have committed sexual violence. Taking on the role of Tatmadaw character witness, he assured you that even “isolated incidents” of sexual violence would, in his words, “run counter to the ethos of the Myanmar defence services”²¹⁴. That is not even argument; that is just propaganda.

²⁰⁸ 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. 761. MG, Vol. II, Annex 40.

²⁰⁹ *Ibid.*, para. 848.

²¹⁰ *Ibid.*, paras. 782-783.

²¹¹ *Ibid.*, paras. 839, 844.

²¹² CR 2026/9, p. 14, para. 12 (Blom-Cooper).

²¹³ *Ibid.*

²¹⁴ CR 2026/9, p. 30, para. 83 (Blom-Cooper).

22. I turn now to Judge Charlesworth's question, which asked: "Is The Gambia able to identify the locations where what it calls the '[h]undreds' of instances of sexual violence are alleged to have occurred?"²¹⁵ In answering, I make clear, as the question recognizes, that there were hundreds of *instances* of sexual violence, not that they necessarily took place in hundreds of *locations*. But they certainly occurred in a great *many* locations, far more than the two that Myanmar accepts. Professor Sands' reference to sexual violence as being "*widespread*" is a direct quote from the Fact-Finding Mission²¹⁶. The locations of many instances of mass sexual violence can be pinpointed, but we do not claim to have a comprehensive list. So, we say, on the basis of the FFM evidence, that sexual violence including gang rape and sexual mutilation took place in at least ten village tracts, across the three townships of northern Rakhine State, during the 2017 clearance operations alone²¹⁷. These ten separate places were Kha Maung Seik, Min Gyi, Kyein Chaung, Kyauk Pan Du, Ba Da Kar, Nga Yant Chaung, Taung Bazar, Chin Tha Mar, Gu Dar Pyin, Maung Gyi Taung and Chut Pyin. The FFM also noted that, alongside these ten primary locations where this pattern of conduct undoubtedly occurred, "[t]he Mission received further credible reports of mass gang rapes in a number of other locations"²¹⁸. Some of these other locations are mentioned in Chapter 9 of our Memorial and Section IIIA of Chapter 7 of our Reply.

23. The widespread nature of this pattern is confirmed by the US State Department survey that Mr Reichler described this morning. No fewer than *45 per cent* of the more than one thousand randomly interviewed respondents had *personally witnessed rape or evidence of rape*²¹⁹. Indeed, the survey showed that

"the military and police did not appear to try to hide the rapes from their peers or from those above them in their chain of command. Rather, rapes were largely public in nature, with many assaults either taking place in public view, or with perpetrators leaving evidence of such assaults — including the victims' corpses which clearly portrayed marks of rape — in public view."²²⁰

²¹⁵ CR 2026/12, p. 44 (Judge Charlesworth).

²¹⁶ 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. 941. MG, Vol. II, Annex 40.

²¹⁷ *Ibid.*, para. 921.

²¹⁸ *Ibid.*

²¹⁹ US State Department, *Documentation of Atrocities in Northern Rakhine State* (August 2018), p. 14. MG, Vol. VII, Annex 194.

²²⁰ *Ibid.*

Such evidence of sexual violence perpetrated in full view of superior officers is compelling evidence that it was part of a *modus operandi*. Moreover, as the State Department's chart on your screens indicates, such levels of sexual violence occurred throughout northern Rakhine State.

24. Although the precise numbers are unknowable, we know that there were *at least hundreds* of victims. The FFM cites a figure of 1,834²²¹. Médecins Sans Frontières reported having treated 230²²². That is just *one* aid organization. That does not include those who received treatment from other organizations. It does not include those who received no treatment at all. And it does not include the women and girls who the Tatmadaw killed or who succumbed to injuries while making their way to Bangladesh. The Physicians for Human Rights survey that Mr Reichler mentioned noted that healthcare providers reported "higher numbers of pregnant women during months that corresponded to the patients having conceived . . . in and around August 2017"²²³. In the words of one physician, "nine months after August of 2017 . . . there was a huge increase" in the birthrate²²⁴. The implications are obvious.

25. I turn now to another part of the *modus operandi*: the intentional killing of children. I addressed its legal significance in the first round. Myanmar left it unrebutted. Instead, Myanmar's response was limited to Ms Lawrie's statement that the reference to "children" in the Counter-Memorial reflected the fact that, as she put it, Rohingya "youths" included those who in "most societies would be counted as children" but are nonetheless found "in the rank and file of those confronting the military, thereby putting themselves in the way of harm and being indistinguishable from older persons"²²⁵.

26. Mr President, in the first round, I observed that Médecins Sans Frontières estimates between 734 and 2,109 children *under the age of five* died during the "clearance operations" or were

²²¹ 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. 1006. MG, Vol. II, Annex 40.

²²² Médecins Sans Frontières, "*We don't have anywhere else to go*" (March 2018), available at <https://www.msf.org/bangladesh-%E2%80%9Cwe-don%E2%80%99t-have-anywhere-else-go%E2%80%9D>. See also Amnesty International, "*We Will Destroy Everything*": *Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar* (June 2018), p. 89. MG, Vol. IV, Annex 112.

²²³ Physicians for Human Rights, *Sexual Violence, Trauma, and Neglect: Observations of Healthcare Providers Treating Rohingya Survivors in Refugee Camps in Bangladesh* (October 2020), p. 11. MG, Vol. V, Annex 133.

²²⁴ *Ibid.*

²²⁵ CR 2026/8, p. 50, para. 11 (Lawrie).

killed during the flight to Bangladesh²²⁶. Myanmar made no attempt to challenge those statistics. Not a single one of those deaths can be said to reflect an adolescent who chose to put him or herself in harm's way.

27. Nor can the testimony of the witnesses you heard last week. MN described the death of his eight-year-old nephew. NJ, the murder of her two-year-old son. MS, the slaughter of five of his children. They were 14, 11, 9, 7 and 3. These murders — of children, of innocents, not those lining up to fight Government forces — were conducted by separate units of the Tatmadaw, specifically the 33rd LID in Chut Pyin, the 99th LID in Min Gyi and the 564th Light Infantry Battalion in Maung Nu²²⁷.

28. The reality, Mr President, is that the record is full of reliable evidence that the killing of young children, including toddlers, infants, even the unborn, formed part of the Tatmadaw's *modus operandi* in both waves of "clearance operations"²²⁸.

29. In that connection, I underscore that the evidence from 2016 is consistent with that from 2017. In other words, they both followed the same *modus operandi*. That is not surprising. They were closely connected episodes in a broader genocidal programme in which the killing of children was central. The PILPG survey included "[d]ozens of respondents [who] recounted brutal attacks against children, including the abduction and disappearances of children, the execution of dozens of children in a single attack, and children being stabbed, slaughtered, dismembered and beheaded"²²⁹. Respondents "recounted babies being smashed against floors and walls, thrown out of windows,

²²⁶ Médecins Sans Frontières, "No one was left": Death and Violence Against the Rohingya in Rakhine State, Myanmar (2018), p. 5, n. 6. MG, Vol. IV, Annex 110. See also CR 2026/4, p. 30, para. 14 (Loewenstein).

²²⁷ 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), para. 39. MG, Vol. II, Annex 37.

²²⁸ See e.g. 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), pp. 33-34, 74. MG, Vol. IV, Annex 121; UN OHCHR, *Flash Report* (2017), pp. 18, 26-27. MG, Vol. II, Annex 30; MSF, "No one was left" (2018), pp. 5, 10. MG, Vol. IV, Annex 110; Amnesty International, "We Will Destroy Everything" (2018), p. 60, note 361. MG, Vol. IV, Annex 112; 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. 825, 837, 894-895, 910-911, 944-946. MG, Vol. II, Annex 40; Fortify Rights, *They Gave Them Long Swords* (2018), pp. 60, 67, 145-146, 148-149. MG, Vol. IV, Annex 114; Legal Action Worldwide, *Collated Information from Victims/Witnesses*, Statement CK0557. MG, Vol. X, Annex 336; Physicians for Human Rights, *Shot While Fleeing: Rohingya Disabled by Myanmar Authorities' Targeted Violence* (June 2019), p. 4. MG, Vol. V, Annex 123.

²²⁹ 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), pp. 33-34. MG, Vol. IV, Annex 121.

thrown into fires, thrown into rivers, thrown up in the air and caught on a sword, or thrown into wells”²³⁰.

30. Many new witness statements include accounts of the intentional killing of young children²³¹. And many such accounts were obtained by the Fact-Finding Mission. To cite but a very few examples, a survivor from Kyet Yoe Pyin described to the Mission seeing the Tatmadaw kill two young children who were searching for their mother. The older of the two, a six-year-old boy, had his throat cut; the younger, just four years old, was “stamped to death, before the body was thrown into a nearby burning house”²³². Similarly, a 14-year-old boy told the Mission how, in Kyauk Pan Du, he witnessed the Tatmadaw push ten Rohingya, mainly children, into a house and set it on fire²³³. He believes everyone was killed. The boy recounted: “One of the children was stabbed when the group tried to leave the house.”²³⁴

31. As you heard last week, Professor Newton has no doubt that each of these features of the “clearance operations” — the targeting of civilians, including those fleeing, the sexual violence and the killing of children — was part of the Tatmadaw’s *modus operandi*²³⁵. None is remotely reconcilable with counter-terrorism²³⁶.

32. Mr President, this brings me to the next part of the *modus operandi*: the systematic destruction, often through burning, of Rohingya villages. The numbers are effectively undisputed. As I noted during the first round, UNOSAT determined that as of 18 October 2018, at least 178 Rohingya villages had been totally destroyed by fire, with an additional 214 partially

²³⁰ 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), pp. 33-34. MG, Vol. IV, Annex 121.

²³¹ See e.g. Legal Action Worldwide, Witness Statement No. 040 (21 April 2024), paras. 61, 81. RG, Vol. IV, Annex 64; Legal Action Worldwide, Witness Statement No. 041 (24 April 2024), para. 43. RG, Vol. IV, Annex 65; Legal Action Worldwide, Witness Statement No. 006 (29 July 2020), para. 33. MG, Vol. X, Annex 343; Legal Action Worldwide, Witness Statement No. 008 (30 August 2020), para. 37. MG, Vol. X, Annex 345; Legal Action Worldwide, Witness Statement No. 009 (13 September 2020), para. 40. MG, Vol. X, Annex 346; Legal Action Worldwide, Witness Statement No. 011 (14 September 2020), para. 23. MG, Vol. X, Annex 348; Legal Action Worldwide, Witness Statement No. 012 (14 September 2020), para. 17. MG, Vol. X, Annex 349; Legal Action Worldwide, Witness Statement No. 013 (23 September 2020), para. 24. MG, Vol. X, Annex 350.

²³² 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. 945. MG, Vol. II, Annex 40.

²³³ *Ibid.*, para. 946.

²³⁴ *Ibid.*

²³⁵ CR 2026/16, pp. 28-29, 32 (Newton).

²³⁶ CR 2026/16, p. 22 (Newton).

destroyed²³⁷. Did Myanmar present expert testimony showing that UNOSAT was wrong? No, although Mr Blom-Cooper did opine that he might have identified a few structures that, he thinks, may have survived.

33. Myanmar also tries to argue that the destruction of these villages somehow does not count. Why? Because some destruction may have occurred after 5 September 2017, when Myanmar claims to have ceased carrying out anti-terrorism operations. But the truth is Myanmar did not stop then. Here is what the Fact-Finding Mission had to say about the matter: “While the Government [has] claimed that ‘clearance operations’ had ended on 5 September”, in fact “military engagement continued well into October”²³⁸.

34. This included its efforts to systematically and comprehensively destroy huge swaths of Rohingya villages, as the IIMM documented in its September 2025 report²³⁹. I reviewed that report with you in detail in the first round²⁴⁰. Myanmar had next to nothing to say in response. The most it could muster was to seek to cast doubt as to who is responsible for the programme of burning²⁴¹. But the answer is clear and provided in the IIMM report itself, as Mr Reichler showed you this morning²⁴². So, too, is it found in the December 2017 International Crisis Group report that Mr Reichler also discussed.

35. Let us be perfectly clear about what the wholesale burning of hundreds of Rohingya villages meant for the Rohingya who had lived in those villages. It was described by the FFM in the following terms:

“The ‘clearance operations’ forced hundreds of thousands of Rohingya to flee and walk for days, or even weeks, through forests and over mountains, to reach

²³⁷ CR 2026/3, pp. 24-25, para. 48 (Loewenstein); United Nations Institute for Training and Research (UNITAR), *Affected settlements in Buthidaung, Maungdaw and Rathedaung Townships of Rakhine State in Myanmar* (18 October 2018), MG, Vol. III, Annex 70.

²³⁸ UN Human Rights Council, *Report of the independent international fact-finding Mission on Myanmar*, UN doc. A/HRC/39/64 (12 September 2018), para. 49. MG Vol. II, Annex 39.

²³⁹ UN Independent Investigative Mechanism for Myanmar, *The Destruction and Dispossession of Rohingya Land and Property During the 2017 Clearance Operations* (29 September 2025), available at <https://iimm.un.org/sites/default/files/2025/09/Land%20Report%20Public%20Summary%20EN.pdf>, paras. 5, 6, 36, 43, 44, 48.

²⁴⁰ CR 2026/3, pp. 26-28, paras. 51-61 (Loewenstein).

²⁴¹ See e.g. CR 2026/10, p. 14, para. 113 (Lawrie); p. 18, para. 140 (Lawrie); p. 22, para. 161 (Lawrie); p. 29, para. 209 (Lawrie).

²⁴² UN Independent Investigative Mechanism for Myanmar, *The Destruction and Dispossession of Rohingya Land and Property During the 2017 Clearance Operations* (29 Sept. 2025), available at <https://iimm.un.org/sites/default/files/2025/09/Land%20Report%20Public%20Summary%20EN.pdf>, para. 61.

Bangladesh. On this journey, many more died or were killed or injured. There was minimum shelter, with people having to sleep in the open, and little food or water.”²⁴³

36. This directly impacted Rohingya mortality. The Mission determined: “The appalling conditions of the journey . . . contributed to the high number of casualties. Hundreds of thousands of Rohingya fled with little or no notice and few, if any, possessions. Many had sustained injuries and needed urgent medical care.”²⁴⁴

37. Mr President, those appalling conditions are vividly described in the witness statement of Alex Crawford and Neville Lazarus, television journalists with Sky News who managed to visit northern Rakhine State in November 2017. You can find it at Annex 374 of the Memorial. The video that they made of their visit, cited in their statement, can be watched through the link included in the footnote in the compte rendu²⁴⁵.

38. The Rohingya facing such conditions had no illusions that they had any prospect of receiving assistance from the same Tatmadaw who had committed horrific atrocities against them. The Fact-Finding Mission found that

“[c]ontinuing ‘clearance operations’ and the presence of large numbers of Tatmadaw soldiers and other security forces made it dangerous to travel on main roads or seek shelter or provisions in other villages. Instead, . . . villagers walked for days or weeks in forest and mountain areas, sleeping in makeshift shelters or in the open, during heavy monsoon rains, and without sufficient food or water.”²⁴⁶

These dire conditions, the Mission found, “disproportionately affected the most vulnerable, including children and the elderly. Many persons died and were buried in makeshift graves”²⁴⁷.

39. Here is how one woman described the situation, an account the Mission concluded was “typical of many”:

“It took nine days to reach Bangladesh. On the way, I saw four or five decapitated heads by the side of the [road]. One of our group died on the journey, a small boy. One

²⁴³ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 984.

²⁴⁴ *Ibid.*, para. 989.

²⁴⁵ Witness Statement of Alex Crawford and Neville Lazarus (12 October 2020). MG, Vol. XI, Annex 374 (citing Alex Crawford, “*Rohingya babies dumped and left to die in Myanmar crisis*”); video, available at <https://news.sky.com/story/rohingya-babies-dumped-and-left-to-die-in-myanmar-crisis-11123366>.

²⁴⁶ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 989.

²⁴⁷ *Ibid.*

woman gave birth. I had a packet of biscuits with me, but nothing else. It was raining heavily. Everything was burning around us.”²⁴⁸

40. Mr President, the Tatmadaw’s *modus operandi* included the specific targeting of Rohingya attempting to traverse this hellscape. The scale is indicated by data collected by Médecins Sans Frontières indicating that fully “13.4 per cent of violent deaths occurred during the period between displacement from their village and arrival in Bangladesh”²⁴⁹.

41. To be clear, these were *not* killings that occurred in the context of village-specific “clearance operations”. Instead, the Fact-Finding Mission determined that “Tatmadaw soldiers shot at groups of Rohingya who were *en route*”. This included “attacks” “in villages that [had] already [been] burned, where fleeing Rohingya were seeking refuge on their journey”, as well as “attacks” “in forested areas or when Rohingya were forced into the open, for example when crossing rivers”²⁵⁰.

42. The Mission’s report is replete with evidence that confirms the ever-present danger that Rohingya faced from the Tatmadaw. A woman from Buthidaung Township described to the Mission how, “after walking for two days, she and her group were near a river crossing when soldiers opened fire at people as they were crossing. She saw two people shot.”²⁵¹ Another survivor recounted how “he and his family were awaiting a boat to carry them across [the] river” when “[a] group of soldiers and police opened fire at a boat carrying people across, killing four of the passengers”²⁵². And here is what still another survivor told the Mission:

“My grandson, who was three years old, died when my daughter-in-law jumped into [a] river, while crossing the canal. The military started shooting at people who were about to cross the river. She was afraid and jumped into the river with her son. The child drowned and we found his body later on.”²⁵³

43. Mr President, I take this opportunity to present The Gambia’s observations in regard to Judge Charlesworth’s question that asked Myanmar for its views regarding who is responsible for the 178 Rohingya villages that had been totally destroyed by fire by 18 October 2017, and the additional villages that had been partially destroyed by that date, including whether Myanmar

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*, para. 988.

²⁵⁰ *Ibid.*, para. 985.

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ *Ibid.*, para. 995.

considers those villages to have been destroyed by ARSA and, if so, the evidence supporting that contention²⁵⁴.

44. In considering Myanmar's forthcoming answer, The Gambia respectfully suggests that the Court take into account the witness statement of Jonathan Head, the BBC's South-East Asia Correspondent. As recounted in his witness statement, he was present in northern Rakhine State in September 2017. Mr Head provides a detailed account of Myanmar's efforts to falsely portray the Rohingya as having burned their own homes. This was done through the staging of photographs and the enlistment of members of the Hindu community to pose as Rohingya in an attempt to con the journalists into reporting that the Rohingya themselves were responsible. Mr Head and his fellow journalists saw through this sham. The Court can find his statement at Annex 375 of the Memorial. The relevant paragraphs are 15 to 19.

45. Mr President, this concludes my presentation. Thank you for your kind attention. I ask that you invite Mr Suleman to the podium.

The PRESIDENT: I thank Mr Loewenstein for his statement. I now give the floor to Mr Arsalan Suleman. You have the floor, sir.

Mr SULEMAN:

V. MYANMAR'S COUNTER-TERRORISM DEFENCE IS UNTENABLE

1. Introduction

1. Thank you, Mr President, Members of the Court, good afternoon again. I will respond to Myanmar's attempt to persuade you that, in attacking Rohingya civilians indiscriminately, engaging in mass murder, killing children and infants, raping and gang raping women and girls, burning homes and villages, and shooting and killing fleeing refugees, the Tatmadaw were engaging in authentic counter-terrorism operations.

2. There is no counter-terrorism justification for the sickening genocidal acts committed during Myanmar's "clearance operations". This conclusion is confirmed by the convincing testimony of the victim witnesses from the three main villages, who fully corroborate the findings of the UN FFM.

²⁵⁴ CR 2026/12, p. 44 (Judge Charlesworth).

And that conclusion is also supported by the authoritative and conclusive expert testimony provided by Professor Michael Newton.

3. I will respond to Myanmar's arguments and the questions from judges in relation to ARSA's capabilities (2) and why Myanmar's "clearance operations" were not authentic counter-terrorism exercises (3). I will then comment upon Myanmar's unreliable evidence (4).

4. Before I do so, I raise two points. First, as my colleagues have mentioned, Mr Staker has conceded that genocide can be committed during counter-terrorism operations²⁵⁵. That means that counter-terrorism is mere context and not a viable alternative intent to genocide. Second, throughout the entirety of Myanmar's first round, not a single mention was made of the Arakan Army or any other ethnic armed organization. Not a single mention. That is quite remarkable and revealing, especially after the comparison I drew in the first round between the acts committed against the Rohingya community in purported reaction to ARSA and the treatment of the Rakhine and other ethnic communities in the context of the Tatmadaw's ongoing conflict against the Arakan Army and other ethnic armed organizations²⁵⁶. Recall that the rules of engagement for ARSA and the Arakan Army are the exact same. Myanmar has provided no explanation for the difference in treatment of the Rohingya and Rakhine communities. The only reasonable explanation for the differential treatment is Myanmar's genocidal intent for the Rohingya.

2. ARSA's capabilities and the question of Judge Brant (also on behalf of Judges Charlesworth and Cleveland)

5. Now turning to ARSA and its capabilities. Judge Brant, also on behalf of Judge Charlesworth and Judge Cleveland, asked for the Parties' characterizations of ARSA's representativeness within the civilian population, its strength, estimated size, organization and hierarchical structure, and military and weapons capabilities.

6. On this matter, The Gambia relies primarily on the reporting of the UN FFM and the IIMM, both of which provide independent and objective information on the capabilities of ARSA that included official information released publicly by Myanmar. Paragraphs 1009-1067 of the 2018 detailed FFM report are particularly helpful on this question.

²⁵⁵ CR 2026/7, p. 33, para. 67 (Staker).

²⁵⁶ CR 2026/4 (Suleman), AS-9, AS-10.

A. Representativeness within the civilian population and estimated size

7. Regarding ARSA's representativeness and estimated size, the FFM reported that:

“Total numbers of members and supporters are difficult to ascertain. The actual membership seems to have been small but the support base was certainly in the hundreds. This includes the ‘last minute’ mobilization of many Rohingya, with many of those who participated in the 25 August 2017 attacks mobilized only shortly before that day or on the day itself. However, overall membership and support for ARSA represented a minority of the total population.”²⁵⁷

8. According to the FFM, “[s]upporters claim to be motivated by the need to fight long-standing discrimination against the Rohingya and the denial of human rights. Some had personally suffered oppression and abuse by the Tatmadaw or other security forces.”²⁵⁸

9. In any event, Myanmar's rules of engagement are still fully applicable regardless of ARSA's size, as confirmed by the testimony of Professor Newton²⁵⁹.

B. Strength and military and weapons capabilities

10. Regarding ARSA's strength and military and weapons capabilities, the UN FFM reported that:

“ARSA is commonly regarded as a poorly armed and poorly trained group, with a small number of partly trained members but principally relying on untrained villagers to conduct attacks with sticks and knives. In comparison with the long-standing and well-armed non-State armed groups active in northern Myanmar, ARSA's level of organization and military capacity appears more limited.”²⁶⁰

11. In terms of training, the FFM reported that “[a] core group of ARSA members received some military training, including in weaponry. Some who had received weapons training then replicated it for others, although often without weapons, by using hand gestures and wooden models.”²⁶¹ Those who were “mobilised shortly prior to the 2017 attacks had no training and little information about the group”²⁶².

²⁵⁷ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 1022.

²⁵⁸ *Ibid.*, para. 1023.

²⁵⁹ CR 2026/16, p. 41 (Newton).

²⁶⁰ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 55.

²⁶¹ *Ibid.*, para. 1029.

²⁶² *Ibid.*, para. 1030.

12. As to weaponry, the FFM reports for “the 2017 attacks, most ARSA members were without firearms, but equipped with homemade weapons such as sticks, knives, swords and slings-shots and some homemade explosives”²⁶³. One ARSA member told the FFM that “all they did was give us a stick and said that we should pretend that it is a weapon. We never got any training or weapons”²⁶⁴.

13. The IIMM similarly found that at the time of the August 2017 attacks, ARSA only had a “modest arsenal of around 40-70 firearms”; the “majority of ARSA members” used “bladed weapons, sticks, and a small number of locally produced (artisanal) firearms”²⁶⁵. Imagine how outgunned and outmanned they were by the thousands of heavily armed Tatmadaw who were awaiting them, having been pre-deployed across northern Rakhine State, with automated weapons, mortars and other heavy equipment. Does Myanmar really expect us to believe that ARSA intended to capture and control all of northern Rakhine State?²⁶⁶ In fact, they were quickly routed by the Tatmadaw and forced to abandon the field in less than three days, according to an IIMM witness statement submitted by Myanmar²⁶⁷.

14. Counsel for Myanmar mentioned IEDs — or improvised explosive devices — over ten times in their first round. This is what the FFM found regarding IED use:

“ARSA did have some capacity to produce some crude IEDs but that capacity is questionable, both in terms of production and execution. As one ARSA member elaborated, ‘The IEDs were made locally by members and are not particularly strong. We use them just to scare the military.’ In the attack in which he participated, the explosive was not directed at the checkpoint as intended, and no military casualties were reported. While the Myanmar Government’s list of ARSA attacks mentions the use of IEDs by ARSA, none of the casualties sustained by the Myanmar security forces were reported as having been caused by an IED.”²⁶⁸

15. The FFM also noted that

“[t]he Government reported that, during the 2017 ‘clearance operations’, it confiscated ‘15 assorted arms and 97 ammunitions’ and ‘67 home-made IEDs’. These figures

²⁶³ *Ibid.*, para. 1032.

²⁶⁴ *Ibid.*, para. 1033.

²⁶⁵ United Nations Independent Investigative Mechanism for Myanmar, *Evidence of ARSA Weapons Possession and Use* (29 April 2024), para. 3. RG, Vol. II, Annex 9.

²⁶⁶ CR 2026/8, p. 52, para. 21 (Lawrie); CR 2026/11, p. 55, para. 54 (Blom-Cooper).

²⁶⁷ IIMM witness statement No. P4715, para. 218 (attached to letter dated 8 September 2025 from IIMM to the Court).

²⁶⁸ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 1034.

demonstrate ARSA's weaponry capacity at the time, in particular when juxtaposed against the military capacity of the Tatmadaw."²⁶⁹

16. As to nature of ARSA's attacks, the FFM reported that

"ARSA was able to carry out multiple, coordinated attacks in a highly controlled and militarised environment, but with little military capability. The attacks employed 'hit and run' tactics with predominantly untrained civilians, mostly wielding sticks and knives. The ARSA attacks caused minimal Tatmadaw casualties compared to their own losses."²⁷⁰

17. An ARSA participant in the 2017 attacks told the FFM of those attacks: "It was not really like a military attack by us, it was a protest or uprising, claiming our rights."²⁷¹

C. Organization and hierarchical structure

18. Regarding ARSA's organization, the FFM reported that "[i]n its early stages, the organization did not have a name or clearly defined goals. It was loosely organized around the principle of seeking justice for the Rohingya Muslim community."²⁷² ARSA's forces are organized hierarchically under a commander-in-chief²⁷³, who is currently under arrest pending prosecution in Bangladesh²⁷⁴. Myanmar did not even declare ARSA a terrorist organization until 25 August 2017²⁷⁵, which gives an indication of its own assessment of its capabilities up to that point.

19. Both Mr Blom-Cooper and Ms Lawrie stated that ARSA's objective was to obtain "complete control' over northern Rakhine State"²⁷⁶. Their citation to Myanmar's Counter-Memorial does not support such a claim. Curiously, they also cited to the FFM report. The paragraphs that they cited in that report also do not support their claim, and the very next paragraph in the FFM report directly disputes their position. According to the UN FFM, "[w]hile high-level Myanmar officials

²⁶⁹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 1035.

²⁷⁰ *Ibid.*, para. 1046.

²⁷¹ *Ibid.*, para. 1049.

²⁷² *Ibid.*, para. 1010.

²⁷³ *Ibid.*, paras. 1015-16.

²⁷⁴ "EXPLAINED: Arrested ARSA leader blamed for violence against Rohingya refugees", *rfa* (23 March 2025), available at <https://www.rfa.org/english/asia/2025/03/23/bangladesh-rohingya-refugee-arsa-violence/>.

²⁷⁵ CR 2026/8, p. 47, para. 1 (Lawrie).

²⁷⁶ CR 2026/8, p. 52, para. 21 (Lawrie); CR 2026/11, p. 55, para. 54 (Blom-Cooper).

imply that ARSA seeks an independent state, homeland or caliphate, the Mission has not seen such statements from ARSA”²⁷⁷.

20. Ms Lawrie stressed ARSA’s use of WhatsApp to co-ordinate activities as a sign of its sophistication²⁷⁸. Frankly, that just shows the opposite. ARSA, by the way, also had a Twitter account that it opened in March 2017, which is controlled by a political group made up of five people living outside of Myanmar²⁷⁹.

21. Both Ms Lawrie and Mr Blom-Cooper cited a call by ARSA’s leader to burn down villages as part of the attacks²⁸⁰. And both of them ignored the evidence that The Gambia cited to show that the call was not heeded. Recall that according to Myanmar’s own source, Amnesty International:

“While Amnesty International has confirmed that some Rohingya villagers participated in ARSA attacks, the overwhelming majority of Rohingya did not. Even in the specific villages where attacks occurred, there is no question that most villagers did not take part in ARSA attacks.”²⁸¹

22. Similarly, the International Crisis Group concluded that the ARSA commander’s call to burn down Rakhine Buddhist villages “does not appear to have been widely acted upon as only three non-Rohingya villages are known to have been attacked or burned down by Rohingya”²⁸². The fact that this call was not heeded shows the lack of support for ARSA among the Rohingya. The fact that two counsel for Myanmar ignored this reality shows the extent they are willing to go to concoct a sham defence for their client.

23. Evidence placed into the record by Myanmar after the close of the written pleadings shows that Myanmar closely surveilled ARSA, knew about many of its members and yet did not take action to dismantle the organization. According to the testimony of IIMM witness P4715:

²⁷⁷ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 1014.

²⁷⁸ CR 2026/8, p. 52, para. 20 (Lawrie).

²⁷⁹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, paras. 1012, 1019.

²⁸⁰ CR 2026/8, p. 58, para. 43 (Lawrie); CR 2026/9, p. 18, para. 29 (Blom-Cooper).

²⁸¹ Amnesty International, *Myanmar: New Evidence Reveals Rohingya Armed Group Massacred Scores in Rakhine State* (22 May 2018), p. 8. CMM, Vol. VI, Annex 268.

²⁸² International Crisis Group, *Myanmar’s Rohingya Crisis Enters a Dangerous New Phase*, Asia Report No. 292 (7 December 2017), pp. 6, 7. CMM, Vol. VII, Annex 297.

“it was well known that the authorities were surveilling ARSA and knew about its members. They found out about ARSA members from informants . . .

Although the authorities received information about ARSA from informants, they never tried to dismantle ARSA. This has always puzzled me. I believe they allowed ARSA to exist because what they really wanted was to attack our villages and empty them . . . All of these factors combined have led me to believe that Myanmar government allowed ARSA to exist as a justification to keep persecuting us, until we were gone.”²⁸³

24. This is from Myanmar’s own evidence. It was Myanmar that put this witness statement into the record, and they have to live with it. It is also noteworthy that Myanmar passed in silence on the undisputed evidence cited in the first round regarding the Tatmadaw’s recent collaboration with ARSA to fight the Arakan Army²⁸⁴. Myanmar’s efforts to trump up the threat posed by ARSA is undermined by its own manipulation of and collaboration with them.

25. By all measures, ARSA was not of the same calibre of organization as the Arakan Army or other ethnic armed groups in Myanmar. It was a fledgling group, never a match for the Tatmadaw, more of a pawn, and was used as the pretext for Myanmar’s genocidal “clearance operations”.

26. Regarding the second and the last part of Judge Brant’s question, I note that the FFM reported on Myanmar’s public accounting of its own and ARSA’s casualties from the 2017 “clearance operations”. According to the Myanmar Government’s own reporting in November 2017, “376 ‘ARSA Bengali Terrorists’ killed, 131 ‘ethnic/Hindu/Bengali people’ and 13 ‘members of security force’” killed²⁸⁵. And according to Ms Lawrie, “[i]n terms of casualties from the 2016 attacks, the Government estimated at the time that 69 ARSA terrorists, seven Tatmadaw soldiers and 10 police officers were killed”²⁸⁶.

²⁸³ IIMM witness statement No. P4715, paras. 202, 204 (attached to letter dated 8 September 2025 from IIMM to the Court).

²⁸⁴ CR 2026/6, pp. 26-27, para. 12 (Suleman).

²⁸⁵ 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. 1005, note 2262. MG, Vol. II, Annex 40; UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 1041.

²⁸⁶ CR 2026/8, p. 54, para. 29 (Lawrie).

3. The “clearance operations” were not legitimate counter-terrorism or counter-insurgency operations, and Judge *ad hoc* Pillay’s question

27. I move now to the “clearance operations” and why the evidence elicited at these hearings confirms the FFM’s conclusion that they were not legitimate counter-terrorism operations.

28. First, Myanmar has not shown that it made even the slightest effort to distinguish between alleged ARSA terrorists and Rohingya civilians. Ms Lawrie asserted without evidence that Myanmar’s references to “supporters” was to “local villagers who, though not formal ARSA members, joined in ARSA’s violence when called to do so” — “active, adult participants”, she asserted²⁸⁷. But how does she explain the killings in Tula Toli that Witness MS testified about? How does she explain the burning to death of Witness NJ’s infant in Chut Pyin, or the gang rape that she endured? How does she explain the execution of over 80 men and boys in Maung Nu, as testified by Witness MN, the sole survivor? How does she explain the evidence from Amnesty International, and the International Crisis Group, and the UN FFM that all civilians were targeted without distinction, and that very few Rohingya answered the call of ARSA’s leader?²⁸⁸ Perhaps the Court will hear more assertions without evidence on Wednesday and Thursday, but there is certainly no evidence that the Tatmadaw made any effort to distinguish between civilians and ARSA, as called for by Myanmar’s rules of engagement. To the contrary, they purposefully directed their attacks and atrocities against *all* Rohingya.

29. Regarding Myanmar’s position that ARSA supporters comprised men, women, and children, Ms Lawrie asserts that children means “‘youths’ . . . in the rank and file of those confronting the military”²⁸⁹. Again, no evidence. Mr Loewenstein has just fully addressed this point.

30. Second, Myanmar has not shown that it provided protection to Rohingya civilians. Ms Lawrie excuses Myanmar’s inciting and arming of ethnic Rakhine and encouraging them to join in the Tatmadaw’s attack on the Rohingya population as an “initiative to recruit non-Bengali citizens to a new ‘regional’ force”²⁹⁰. Incredible! Why didn’t they recruit Rohingya into such a localized

²⁸⁷ CR 2026/8, p. 49, para. 11 (Lawrie).

²⁸⁸ CR 2026/4, pp. 61-64, paras. 7-20 (Suleman); Amnesty International, *Myanmar: New Evidence Reveals Rohingya Armed Group Massacred Scores in Rakhine State* (22 May 2018), p. 8. CMM, Vol. VI, Annex 268; International Crisis Group, *Myanmar’s Rohingya Crisis Enters a Dangerous New Phase*, Asia Report No. 292 (7 Dec. 2017), pp. 6, 7. CMM, Vol. VII, Annex 297; 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 Sept. 2018), para. 1364. MG, Vol. II, Annex 40.

²⁸⁹ CR 2026/8, pp. 49-50, para. 11 (Lawrie).

²⁹⁰ CR 2026/8, p. 55, para. 34 (Lawrie).

police force? Why were the Rohingya excluded? The answer is obvious: they were always the target for those new militias. That was shown clearly in the video of the Tatmadaw soldier explaining the clearance operations to the ethnic Rakhine, calling on them to arm themselves with swords to bravely face the “animal Rohingya”²⁹¹.

31. Judge *ad hoc* Pillay asked if counsel for Myanmar could provide examples of how, when and where the Myanmar military protected the people²⁹². I will take the liberty of sharing The Gambia’s answer. They attacked the Rohingya people; the exact opposite of protecting them. If some Tatmadaw units ignored some Rohingya as they fled the killing and the burning of their villages — they were the exception rather than the rule. You would have to believe the Tatmadaw’s self-serving and unreliable daily operation reports and letters to find any claims that the “clearance operations” were undertaken to protect “ethnic residents” or to rescue the “local ethnics”/“local natives” in danger²⁹³. Of course, the Rohingya were never considered as local ethnics, and there is no reason to believe the Tatmadaw’s propaganda in any event.

32. Third, Myanmar has not shown that it adhered to its own rules of engagement.

33. Professor Michael Newton provided authoritative testimony last Thursday as to why he concluded that Myanmar acted with genocidal intent based on Myanmar not following its own rules of engagement. I will not read all of his testimony back to the Court, as I am sure the Court recalls it very clearly; but he said specifically, as part of this quote on your screen:

“I learned in the Counter-Memorial that there were rules of engagement. They were not only not followed, they were completely ignored, which is the substantive basis for those statements, Sir.”²⁹⁴

34. Myanmar also asserts that its “clearance operations” were conducted only in places where ARSA was active²⁹⁵. The insinuation is that the operations were in hot pursuit, immediately after

²⁹¹ CR 2026/2, p. 58, para. 57 (Suleman); United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf, paras. 320-322.

²⁹² CR 2026/12, p. 48 (Judge *ad hoc* Pillay).

²⁹³ See e.g. Myanmar Defence Services, No. 15 Mobile Operation Command Headquarters, Zwe Man Hone Operation, Daily Operation Report No. 238/2017, 25 August 2017, p. 2, CMM, Vol. IV, Annex 114; Rakhine State Government, Letter No. 887 3/6-1 to Office of the Union Government, Report on the urgent rescue, 25 August 2017, CMM, Vol. IV, Annex 109.

²⁹⁴ CR 2026/16, pp. 29-30 (Newton).

²⁹⁵ CR 2026/9, p. 15, para. 19 (Blom-Cooper).

ARSA attacks following the ARSA attackers. But that is not at all how they played out. As explained by the UN FFM:

“The security forces’ response was immediate, within hours, brutal and grossly disproportionate. Ostensibly to eliminate the ‘terrorist threat’ posed by ARSA, in the days and weeks that followed it encompassed hundreds of villages across Maungdaw, Buthidaung and Rathedaung Townships. The operations targeted and terrorised the entire Rohingya population; the authorities called them ‘clearance operations’. They continued for more than two months, and for a considerable period after the Government claimed their completion on 5 September 2017. During the course of the operation more than 40 per cent of all villages in northern Rakhine State were partially or totally destroyed. The most intense phase was the first three weeks when more than 80 per cent of the destruction was perpetrated.”²⁹⁶

35. In the first round I showed you Reply Figure 1.2, which shows that Myanmar wholly or partially destroyed at least 188 out of 329 villages where, according to Myanmar, there was no ARSA presence and so no pretence of “clearance operations”. Myanmar gave no response to that. It is evident that the “clearance operations” were not limited to areas of actual ARSA activity but targeted the Rohingya all across northern Rakhine State.

36. As Professor Newton testified, what happened during the “clearance operations” was not occasional lapses in soldiers following the rules of engagement — it was a wholesale disregard, a completely different intent and plan — a genocidal plan²⁹⁷.

37. This was the same conclusion reached by the Public International Law & Policy Group, which concluded:

“The investigators also highlighted the likelihood that the military operation could not have been merely a response to the ARSA attacks, debunking the military’s narrative of a legitimate counter-insurgency response. The scale, timing, and consistency of the attacks across such a large territory could not have been planned and coordinated in such a short period of time (within a few days of the last ARSA attack) . . . 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.”²⁹⁸

²⁹⁶ 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 Sept. 2018), para. 751. MG, Vol. II, Annex 40.

²⁹⁷ CR 2026/16, p. 43 (Newton).

²⁹⁸ PILPG, *Documenting Atrocity Crimes Committed Against the Rohingya* (2018), available at <https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/5c058268c2241b5f71a0535e/1543864941782/PILPG+-+ROHINGYA+REPORT+-+Factual+Findings+and+Legal+Analysis+-+3+Dec+2018+%281%29.pdf>, p. 50.

4. Myanmar's evidence is unreliable

38. I come now to my last topic, which is Myanmar's evidence. Myanmar did not produce any military officers or experts for oral examination. They initially included a few of them on their witness list, but then withdrew their names before these hearings. Most of Myanmar's factual claims regarding the "clearance operations" are based primarily, or sometimes solely, on Myanmar's own military reports or testimony from officers or testimony of individuals taken by the military.

39. These sources of evidence are not reliable or independent²⁹⁹. The Myanmar military's overriding interest to protect itself taints the credibility of these sources of evidence. As Professor Newton testified, this is true of other militaries across the world. Military reports are, in his words, "absolutely unreliable"³⁰⁰.

40. There is testimony in the record of Myanmar military reports being fabricated, to which Myanmar has not responded. The IIMM screening note for P5513 details such a fabricated report³⁰¹.

41. In fact, Myanmar has not responded to several fabrications of evidence by the Tatmadaw. There were the fabrications of images seeking to depict Rohingya as aggressors and illegal immigrant invaders in the Tatmadaw's post-clearance operations publication³⁰². There is the fabrication of images purporting to depict Rohingya burning their own villages, which was in fact members of the Hindu community, as Mr Loewenstein just discussed. First-hand testimony confirming this has been provided by BBC journalist Jonathan Head³⁰³.

42. In his affidavit, he also recollects how — during a government-approved trip to Maungdaw after the "clearance operations" — the military forced an individual from the Hindu community to falsely report that Muslims, rather than the military, had attacked their village³⁰⁴.

43. Which brings us now to Witness M1 and the Kha Maung Seik incident: the primary example on which Myanmar relies, as an example of attacks by ARSA requiring a substantive

²⁹⁹ CR 2026/4, pp. 72-74, paras. 52-58 (Suleman).

³⁰⁰ CR 2026/16, p. 34 (Newton).

³⁰¹ United Nations Independent Investigative Mechanism for Myanmar, *Screening of Mechanism Person Code No. P5513* (September 2025), para. 31.

³⁰² CR 2026/2, p. 51, paras. 33-34 (Suleman); CR 2026/2, p. 58, para. 59 (Suleman).

³⁰³ Witness Statement of Jonathan Head, signed on 14 October 2020. MG, Vol. XI, Annex 375. See also Jonathan Head, "Rohingya crisis: Seeing through the official story in Myanmar", *BBC*, available at <https://www.bbc.com/news/world-asia-41222210>.

³⁰⁴ Witness Statement of Jonathan Head, signed on 14 October 2020. MG, Vol. XI, Annex 375.

counter-terrorism response. You heard from Witness M1 on Friday that around 99 Hindu villagers from two adjacent villages were killed there on 25 August 2017. Her statement was not obtained by an independent source, but by Myanmar itself.

44. It is unclear to The Gambia whether Witness M1 actually appears in the video that Myanmar played twice last Friday. In response to questions from the President, counsel for Myanmar was unable to specifically identify Witness M1 in the video or in the transcript.

45. Today, by letter from Myanmar's Agent, we learned that Witness M1 did not speak in the video even though her affidavit seems to indicate that she did. It is notable that the first accounts of this tragic incident that survivors gave were that the military and/or ethnic Rakhine had attacked the village — a village which, the witness said, was predominantly Rohingya. It was the Myanmar authorities who first attributed the attack to ARSA, announcing so in early September 2017³⁰⁵; they then repatriated from Bangladesh the Hindu survivors back to Myanmar³⁰⁶, including witness M1, housed them at a Tatmadaw military base³⁰⁷, and publicized the accounts that the survivors *then* gave, that it was ARSA terrorists who were responsible for the attack. Given Myanmar's history of using the Hindu community in Rakhine State to support the military's false narratives, due caution is warranted with regards to Witness M1.

46. In these circumstances it is not surprising that the UN FFM considered itself unable to draw any conclusions about what happened at Kha Maung Seik. In its 2018 detailed report it said:

“The Mission interviewed seven Hindus from Au Nauk Kha Maung Seik (Shab Bazar) and nearby villages who witnessed these events or were victims of abuses in September 2017. The Mission has verified that a large number of Hindu victims were killed on 25 August 2017 in Au Nauk Kha Maung Seik. However, the information received was contradictory, including regarding the language spoken by the perpetrators, which, according to the accounts taken, was a key identifying feature since the perpetrators reportedly had their faces covered. The Mission's information is insufficient to make any determinations on reasonable grounds regarding the identity of the perpetrators.”³⁰⁸

³⁰⁵ International Crisis Group, *Myanmar's Rohingya Crisis Enters a Dangerous New Phase*, Asia Report No. 292, 7 December 2017, p. 7, CMM, Vol. VII, Annex 297.

³⁰⁶ CR 2026/17, p. 24. See also Shaikh Azizur Rahman, “Mystery surrounds deaths of Hindu villagers in Myanmar mass graves”, *The Guardian*, available at <https://www.theguardian.com/global-development/2017/oct/12/myanmar-mass-graves-mystery-surrounds-deaths-of-hindu-villagers-dirty-tricks-rohingya>.

³⁰⁷ CR 2026/17, pp. 25-26.

³⁰⁸ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, para. 1060.

47. In the end, even if ARSA were responsible for this massacre, this would have no bearing on The Gambia's case. The perpetrators of the Kha Maung Seik massacre should be brought to justice, just as Myanmar itself must be held accountable for its genocide of the Rohingya.

48. In conclusion, Myanmar's "clearance operations" violated all of the fundamental tenets of legitimate counter-terrorism operations, including Myanmar's own. They were not authentic counter-terrorism operations. The ARSA attacks were, in fact, a pretext for Myanmar's genocidal attacks on the Rohingya.

49. Mr President, Members of the Court, thank you for your kind attention. Mr President, I request that you call Professor d'Argent to the podium to conclude The Gambia's presentations for today.

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

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

VI. DESTRUCTION DES PREUVES ET IMPUNITÉ

1. Monsieur le président, Mesdames et Messieurs les juges, ma plaidoirie est consacrée à la destruction des preuves et à l'impunité.

2. La plaidoirie de M^{me} Miron sur ces questions fut longue et touffue, remplie d'accusations d'incohérences ou d'erreurs juridiques au sujet de choses, ma foi, relativement simples³⁰⁹. Permettez-moi dès lors de mettre les choses au point une dernière fois.

3. Comme vous le savez, nous disons deux choses distinctes à ce sujet — deux choses distinctes mais complémentaires.

4. L'impunité et la destruction des preuves sont, d'une part et avant tout, des indices d'intention génocidaire. Pourquoi ? Parce qu'elles sont l'une et l'autre le fait de l'État et participent à la manifestation d'une « politique de l'État », laquelle est au cœur de la notion de *dolus specialis* lorsque la responsabilité pour génocide qui est mise en cause est celle d'un État³¹⁰.

³⁰⁹ CR 2026/11, p. 22 et suiv. (Miron).

³¹⁰ *Génocide en Croatie, arrêt 2015*, p. 65, par. 143.

5. Le Myanmar soutient que, dans l'affaire croate, la Cour a « exclu »³¹¹ l'impunité comme indice d'intention génocidaire, et il a présenté le premier jour de ses plaidoiries un tableau avec des flèches de couleur — vous vous en souviendrez peut-être — pour appuyer cette affirmation³¹². Cela est inexact : la Cour n'a rien dit à ce sujet, limitant son examen aux critères qu'elle jugea « les plus importants »³¹³ dans cette affaire ainsi que M^e Suleman l'a rappelé tout à l'heure. Et la Cour conclut son raisonnement sur l'intention génocidaire en faisant référence à « la série des 17 critères invoqués par la Croatie »³¹⁴ sans en avoir exclu aucun par principe dans son raisonnement.

6. Le Myanmar soutient encore que le comportement qui *suit* des actes génocidaires ne peut pas « éclairer rétrospectivement »³¹⁵ la nature des actes qui l'ont précédé. Cela aussi est erroné. En effet, la Cour a souligné dans la même affaire que le comportement étatique « avant, pendant et après l'opération »³¹⁶ militaire en cause était pertinent pour juger du *dolus specialis* de l'État. La manière dont le Myanmar a agi après ses opérations de nettoyage met spectaculairement en lumière son intention génocidaire car l'impunité subséquente aux exactions bénéficie directement à ceux qui les ont perpétrées. À cet égard, la qualification juridique des faits poursuivis est sans importance : il suffit de constater en fait qu'il n'y a pas eu d'enquêtes, de poursuites et de peines à la mesure de l'ampleur des faits, sous quelque qualification pénale que ce soit.

7. Par ailleurs, si la Cour conclut qu'un génocide a effectivement été commis, nous disons, de manière distincte mais complémentaire, que la destruction des preuves et l'impunité constituent des violations de l'obligation de punir prévue par l'article premier de la convention. M^{me} Miron a dit que cela était « circulaire »³¹⁷. Cela n'a rien de « circulaire », Mesdames et Messieurs les juges. C'est simplement tirer la conclusion juridique qui s'impose. En effet, la bonne exécution des obligations de l'article premier, à savoir l'obligation de prévenir et l'obligation de punir le génocide, suppose le contraire de l'intention génocidaire.

³¹¹ CR 2026/7, p. 55, par. 51 (Miron).

³¹² Dossier de plaidoiries de la République de l'Union du Myanmar, premier tour, onglet n° 3, AM-16.

³¹³ *Génocide en Croatie, arrêt 2015*, p. 121, par. 413.

³¹⁴ *Ibid.*, p. 128, par. 439.

³¹⁵ CR 2026/11, p. 22, par. 2 (Miron).

³¹⁶ *Génocide en Croatie, arrêt 2015*, p. 151, par. 511.

³¹⁷ CR 2026/11, p. 23, par. 3 (Miron).

8. Cela étant rappelé, j'en viens à la destruction des preuves et à l'impunité comme indices surabondants, confirmatoires³¹⁸, de l'intention génocidaire du Myanmar et de ses militaires bénéficiant de l'impunité.

1. Destruction des preuves et impunité comme indices génocidaires

A. Destruction des preuves

9. Sur les faits relatifs à la destruction des preuves, M^{me} Miron n'a pratiquement rien dit.

10. La Cour a confirmé³¹⁹ que le rapport très étayé de septembre 2025 du Mécanisme indépendant joint sous l'onglet n° 7 de votre dossier d'audience avait été valablement versé au dossier en tant que « publication facilement accessible »³²⁰. Le Myanmar a choisi de ne rien en dire³²¹.

11. S'agissant de la destruction des cadavres par incinération ou acide, le Myanmar nous reproche de nous être « fi[és] aveuglément »³²² à un article d'*Associated Press*. « [F]i[és] aveuglément », vraiment ? Faut-il rappeler le témoignage de M^{me} NJ, dont le nourrisson a été arraché de ses bras, poignardé et jeté dans un brasier ? Ou encore celui de M. MS, qui a vu des grandes fosses creusées dans le sable, dans lesquelles des cadavres ont été jetés, recouverts de feuillage sec, aspergés d'un liquide inflammable et incinérés, ce qui confirme les faits établis par la FFM ? Le Myanmar n'a pas contesté « la possibilité de [l']existence » de corps calcinés dans des fosses communes, mais il a tenté d'expliquer cette pratique par le « contexte local », y compris les conditions météorologiques et de prétendues nécessités sanitaires visant à éviter la contamination des sources d'eau³²³. M^{me} Miron s'est référée à la déclaration du témoin P5513 que nous avons jointe sous l'onglet n° 8 de votre dossier d'audience. Ce témoin y rapporte l'existence de restes humains dans des bassins d'eau, rendant celle-ci impropre à la consommation³²⁴. Le Myanmar ignore tout le reste de ce témoignage,

³¹⁸ CR 2026/4, p. 46, par. 5 (d'Argent).

³¹⁹ Lettre n° 165670 datée du 19 janvier 2026 de S. Exc. Philippe Gautier, greffier.

³²⁰ Article 56, par. 4, Règlement de la Cour.

³²¹ CR 2026/11, p. 38, par. 57 (Miron).

³²² CR 2026/11, p. 38, par. 58 (Miron).

³²³ CR 2026/11, p. 39, par. 59 (Miron).

³²⁴ United Nations Independent Investigative Mechanism for Myanmar, Screening of Mechanism Person Code No. P5513 (septembre 2025), par. 40, dossier d'audience Gambie, premier tour, onglet n° 8.

mais il soutient qu'il serait justifié sur cette base à incinérer les victimes de ses crimes. La Cour appréciera, mais la vérité est bien plus simple et tout le monde la comprend : des cadavres ensevelis dans une fosse commune peuvent encore être déterrés des années plus tard, tandis que des corps incinérés disparaissent en fumée à jamais.

12. S'agissant de la destruction par incendie des villages et de leur rasage au bulldozer, M^{me} Miron soutint que de nombreux villages détruits sur les images satellitaires n'avaient pas été le lieu d'affrontements et elle s'interrogea : « Quels crimes aurait-on cachés dans des localités où il n'y a aucune allégation d'actes génocidaires ? »³²⁵ La réponse tombe sous le sens : aucun autre crime que le fait de détruire ces villages sans aucune nécessité militaire afin de détruire le groupe.

B. Impunité

13. Au sujet de l'impunité comme indice d'intention génocidaire, M^{me} Miron s'est réfugiée derrière « l'autonomie constitutionnelle des États »³²⁶ et elle croit que la Gambie se plaint du fait que « les poursuites devant les tribunaux militaires s[eraient] par principe insuffisantes parce qu'elles ne seraient pas soumises à un contrôle civil »³²⁷. Non, non, nous ne disons pas cela. Nous disons que puisque la Tatmadaw n'a de comptes à rendre qu'à elle-même alors qu'elle a commis d'épouvantables atrocités, son impunité lui est immédiatement accessible, sans aucun obstacle juridique, sans aucun contrôle juridique, rendant l'intention génocidaire d'autant plus manifeste. Il ne s'agit pas d'une question théorique : la réalité est qu'aucune poursuite n'a été engagée contre les hauts gradés ayant planifié et ordonné les opérations de 2016 et 2017, et qu'il n'y a pas plus eu en vérité de poursuites contre ceux qui ont obéi, ce qui prouve bien l'inefficacité de ce système, sauf pour couvrir les crimes.

14. Ma collègue croit également que nous nous plaignons des peines insuffisantes³²⁸. Alors, si elle fait référence au retrait de quelques années d'ancienneté pour le calcul de la pension, elle a évidemment raison : c'est une sanction absolument dérisoire et risible. Si ma collègue fait référence à la peine de réclusion de dix années pour le massacre d'Inn Din, elle se trompe : ce n'est pas la peine

³²⁵ CR 2026/11, p. 40, par. 61 (Miron).

³²⁶ CR 2026/11, p. 33, par. 40 (Miron).

³²⁷ CR 2026/11, p. 36, par. 52 (Miron).

³²⁸ CR 2026/11, p. 37, par. 54 (Miron).

que nous critiquons, mais la grâce présidentielle après sept mois de détention accordée aux militaires finalement poursuivis au prix de la liberté des journalistes de l'agence *Reuters* et après un premier déni complet du moindre incident dans cette localité par la justice militaire birmane.

15. Alors, M^{me} Miron a cru défendre le Myanmar en mettant en avant le pouvoir d'appréciation des autorités nationales d'enquête et de poursuite³²⁹. Nous ne nions pas que, dans une certaine mesure, ce pouvoir existe. Mais, Mesdames et Messieurs les juges, en admettant même qu'un certain pouvoir d'appréciation dans les poursuites subsistait en l'espèce, la conclusion inévitable de l'argument présenté par ma collègue est que le Myanmar a bel et bien *choisi* l'impunité. Cette impunité fait donc bien partie d'une politique d'État récompensant les exécutants pour avoir pleinement embrassé et exécuté le projet génocidaire des plus hautes autorités de l'État.

16. Par ailleurs, Monsieur le président, une chose est de ne rien faire, une autre chose est de tout faire pour faire croire que l'on fait quelque chose. Et c'est précisément ce que le Myanmar a fait : il a fait semblant d'enquêter, il a mis en place pour le show³³⁰ commission d'enquête bidon après commission d'enquête bidon. Qu'en a dit M^{me} Miron ? Elle n'a pas contesté les faits que je vous ai rapportés, ni leur enchaînement temporel, qui nous semble particulièrement pertinent.

17. Elle a brandi la « commission sur Maungdaw » et la « commission d'enquête indépendante » dont je vous avais également rapporté les prétendus efforts d'enquête. Ce qu'elle en a dit met-il à mal la preuve de l'existence d'un système d'impunité délibérément organisé par le Myanmar, bénéficiant aux exécutants de ses basses œuvres et confirmant en cela son intention génocidaire ? Absolument pas.

18. Les conclusions finales de la commission d'enquête sur Maungdaw auxquelles ma collègue a renvoyé parlent d'elles-mêmes³³¹ et elles n'ont débouché sur aucune poursuite ou sanction. Bien au contraire, elles ont débouché sur une enquête bâclée de la Tatmadaw ayant déclaré que les accusations onusiennes de l'époque étaient — vous vous en souvenez — « totally wrong » et « untrue »³³².

³²⁹ CR 2026/11, p. 35, par. 49 (Miron).

³³⁰ CR 2026/4, p. 54, par. 30 (d'Argent) renvoyant à MG, par. 11.63, note 1484 : Shibani Mahtani et Wai Moe, « A year after the assault on the Rohingya, Myanmar's generals are unapologetic », *The Washington Post* (21 août 2018). Vol. IX, annexe 290.

³³¹ CR 2026/4, p. 50, par. 18 (d'Argent).

³³² CR 2026/4, p. 50-51, par. 19-21 (d'Argent).

19. Ma collègue a encore mentionné très brièvement la prétendue commission d'enquête indépendante créée en juillet 2018. Comme je vous l'ai montré lors du premier tour de plaidoiries, cette commission est vraiment la montagne qui accouche d'une souris³³³. M^{me} Miron n'a pas contesté l'exactitude du décompte, figé depuis plusieurs années, dont j'ai fait état à propos des prétendues enquêtes et poursuites contre les policiers et les militaires³³⁴ ; et j'ai fait ce décompte sur la base des rapports semestriels du Myanmar.

2. Destruction des preuves et impunité comme violation de l'obligation de punir

20. Monsieur le président, j'en arrive à la destruction des preuves et à l'impunité comme violation de l'obligation de punir prévue par la convention. Je peux être bref à cet égard, tout en rappelant d'abord que cette obligation est purement territoriale³³⁵ et que, sous réserve de l'article VII de la convention relatif aux demandes d'extradition, la convention n'est pas un instrument de coopération pénale interétatique. Je relève que le Myanmar accepte que l'obligation de punir inclut une obligation d'enquêter et une obligation de poursuivre³³⁶.

21. Le Myanmar soutient que l'obligation de punir est une obligation de comportement et non de résultat. Alors, je laisse la Cour trancher ce débat théorique si besoin est, sans rien concéder toutefois. Je peux concevoir que certaines circonstances doivent être rencontrées pour que l'obligation de punir soit déclenchée, mais lorsqu'elle est déclenchée, le résultat est requis.

22. Quoi qu'il en soit, il n'est pas sérieux de soutenir que le Myanmar aurait fait ses meilleurs efforts pour poursuivre et punir les crimes commis sur son territoire par son armée. Donc, le débat théorique sur la nature de l'obligation de punir ne mène à rien si ce n'est au fait que, s'il est responsable de génocide, alors le Myanmar a aussi, et à l'évidence, manqué à l'obligation de punir les commanditaires et les exécutants de ce génocide pour l'un quelconque des actes visés à l'article III. Et en détruisant les preuves de ses actes, le Myanmar ne s'est certainement pas conduit avec la diligence requise qui, selon M^{me} Miron, gouvernerait l'obligation de punir.

³³³ CR 2026/4, p. 56, par. 34-35 (d'Argent).

³³⁴ CR 2026/4, p. 57 et suiv., par. 37 et suiv. (d'Argent).

³³⁵ *Génocide en Bosnie, arrêt 2007*, p. 120, par. 184 ; p. 226-227, par. 442.

³³⁶ CR 2026/11, p. 30, par. 29 (Miron).

23. Le Myanmar soutient encore que l'obligation de punir n'a pas été déclenchée car la Gambie n'aurait pas « démontr[é] qu'un génocide a vraisemblablement été commis » faute d'avoir suffisamment précisé la localisation géographique des faits et l'identité des « individus présumés avoir perpétré les actes de génocide allégués »³³⁷.

24. Monsieur le président, Mesdames et Messieurs les juges : faut-il vraiment répondre à cet argument ? L'obligation de punir est territoriale et c'est le Myanmar qui a le contrôle sur son territoire. Il n'est en rien nécessaire qu'un tiers l'informe de ce qui s'est passé chez lui ou lui fournisse des renseignements à cet égard. Des violences connues du monde entier, documentées avec un professionnalisme extrême par les Nations Unies, ont été perpétrées au Myanmar et il serait dans l'impossibilité d'enquêter et de poursuivre faute d'identification plus précise de la localisation des faits ou de l'identité des individus ?! Mais c'est le Myanmar qui connaît l'identité de ses soldats, c'est le Myanmar qui a mené des opérations militaires dans les villages qu'il nomme devant vous à l'audience ! Mesdames et Messieurs les juges, j'avais indiqué lors du premier tour de plaidoiries que la Gambie ne demandait pas à la Cour d'instituer une présomption de mauvaise foi à l'encontre du Myanmar³³⁸. Après avoir entendu cette défense de la part du Myanmar, vous avez sans doute pensé que j'avais été trop généreux et vous aurez raison.

25. Soutenir par ailleurs que l'obligation de punir ne serait pas applicable aux commandants militaires en vertu de la convention³³⁹ est une autre proposition juridique particulièrement étonnante. Faut-il donner lecture de l'article IV de la convention qui vise les « gouvernants » et tous les « fonctionnaires », ou rappeler que l'article III exige de punir l'entente et la complicité dans le génocide, et non seulement la perpétration personnelle des actes visés à l'article II *a*) et II *b*) ? Et que dire des actes visés à l'article II *c*) et II *d*) ? Est-il possible de soumettre un groupe à des conditions d'existence destructrices ou d'entraver les naissances au sein d'un groupe sans une forme d'organisation des exécutants entre eux, et donc de décisions hiérarchiques ? Les auteurs de la convention ont, bien sûr, fait entrer dans celle-ci les supérieurs hiérarchiques. En fait, on a

³³⁷ CR 2026/11, p. 27, par. 19 (Miron).

³³⁸ CR 2026/6, p. 46, par. 47 (d'Argent).

³³⁹ CR 2026/11, p. 28, par. 22 et suiv. (Miron).

l'impression que le Myanmar cherche à obtenir de la Cour un *obiter dictum* exonérant le chef de la junte et ses complices de toute responsabilité au titre de la convention.

26. Monsieur le président, la défense du Myanmar à cet égard est désespérée, juridiquement erronée et je dirais même, indigne.

27. Alors, je n'ai malheureusement guère le temps de discuter de l'obligation de prendre des mesures législatives conformément aux exigences de l'article V, et je me permets de vous renvoyer à nos écritures³⁴⁰ ainsi qu'à la plaidoirie de M^{me} Jones sur ce point³⁴¹. M^{me} Miron a soutenu à cet égard toutefois que la Gambie demanderait à la Cour « de s'ériger en juge de la conventionnalité du droit interne du Myanmar », ce qui outrepasserait « la nature de votre fonction judiciaire ». Elle a invoqué « l'autonomie constitutionnelle » des États et les « différences juridiques et culturelles entre les États parties »³⁴². En vous demandant de constater que le Myanmar ne s'est pas conformé aux exigences de l'article V, la Gambie ne nie bien sûr en rien ces différences que les auteurs de la convention avaient manifestement à l'esprit en rédigeant l'article V. Mais il existe entre Parties, sur ce point également, un différend relatif à l'interprétation, l'application et l'exécution de cette disposition. Et la Cour a certainement le pouvoir de constater qu'un État partie y a manqué si c'est le cas.

3. Destruction des preuves comme violation de l'ordonnance

28. Monsieur le président, afin d'être complet, je termine en rappelant que les destructions de preuves postérieures au 23 janvier 2020 — c'est-à-dire à votre ordonnance en indication de mesures conservatoires — rapportées par M^{me} Al Ameen³⁴³, lors du premier tour, constituent des faits internationalement illicites indifféremment de l'existence ou non d'un génocide, étant contraires à la troisième mesure conservatoire ordonnée par la Cour³⁴⁴.

³⁴⁰ MG, par. 12.137-12.142 ; RG, par. 9.102-9.106.

³⁴¹ CR 2026/6, p. 17, par. 17 (Jones).

³⁴² CR 2026/12, p. 24, par. 44 et 45 (Miron).

³⁴³ CR 2026/4, p. 39 et suiv., par. 24 et suiv. (Al Ameen).

³⁴⁴ *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020, p. 30, par. 86, point 3.*

29. Le Myanmar affirme que nos « allégations ... reposent entièrement sur un compte rendu oral de la haute-commissaire aux droits de l'homme »³⁴⁵. C'est faux. Nous avons d'autres éléments de preuves à cet égard, dont un rapport de septembre 2020 du rapporteur spécial des Nations Unies sur la situation des droits de l'homme au Myanmar et le rapport de septembre 2025 du Mécanisme d'enquête indépendant auquel le défendeur refuse, à ses dépens, de répondre. M^{me} Al Ameen a déjà répondu aux dénégations du Myanmar prétendument fondées sur des images satellitaires de la NASA³⁴⁶. J'ajoute que ces images n'ont jamais été soumises à la Cour ou au débat contradictoire et que, comme M^{me} Miron l'a reconnu, ces images couvraient seulement le canton de Buthidaung jusqu'au mois de juillet 2020 et pas au-delà. Mesdames et Messieurs les juges, n'est-ce pas étrange ?

30. Je remercie la Cour pour sa bienveillante attention.

The PRESIDENT: I thank Professor d'Argent, whose statement brings this sitting to a close. The oral proceedings in the case will resume tomorrow, Tuesday 27 January 2026 at 10 a.m., when The Gambia will continue its second round of oral argument.

The sitting is closed.

The Court rose at 5.40 p.m.

³⁴⁵ CR 2026/11, p. 41, par. 64 (Miron).

³⁴⁶ CR 2026/4, p. 39 et suiv., par. 24 et suiv. (Al Ameen).