

CR 2026/21

International Court
of Justice

Cour internationale
de Justice

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

held on Wednesday 28 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 mercredi 28 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 hear the second round of oral argument of Myanmar. I shall now give the floor to Mr Christopher Staker. You have the floor, Sir.

Mr STAKER:

I. INTRODUCTION

1. General matters

1. Mr President, Madam Vice-President, Members of the Court, having heard the testimony of the witnesses called by both Parties and the expert called by The Gambia, as well as the second round of oral arguments of The Gambia, I can confirm that the position of Myanmar remains unchanged.

2. In this second round, counsel for Myanmar will respond to the questions posed to the Parties by the Court at the end of the first round, and will give a concluding overview of certain points that divide the Parties, avoiding repetition of what has been said in the first round. We will not descend into detail in the second round. However, that does not mean the details are not important. They are critical. In my introduction to the first round, I noted that The Gambia is keen that you not look at details¹. In the second round, The Gambia again expressed the same keenness, with renewed vigour. On Monday, in his effort to persuade you not to look at the details, Professor Sands referred to the same novel by Charles Dickens that he quoted in the first round², and Mr Reichler spoke again of “micro-nits”³. The Gambia’s case is that there is nothing for the Court to decide. Everything, says The Gambia, has already been decided by the FFM, and by The Gambia’s expert witness, Professor Newton. According to The Gambia, the Court need only adopt the conclusions of the FFM and Professor Newton. Professor Newton, says The Gambia, has told the Court “in the plainest of terms” that “Myanmar’s conduct can only be explained as the expression of an intention to destroy a part of the Rohingya group”⁴, and, according to The Gambia, there is no need for challenging, probing and testing the evidence. In the words of The Gambia, “no Myanmar-style audit is

¹ CR 2026/7, p. 18, para. 6 (Staker).

² CR 2026/18, pp. 13 and 19, paras. 4 and 29 (Sands).

³ CR 2026/18, p. 38, para. 27 (Reichler).

⁴ CR 2026/18, p. 13, para. 4 (Sands). See also CR 2026/18, pp. 14-15, para. 10 (Sands); CR 2026/20, p. 28, para. 29 (Sands).

necessary”⁵. To question the findings of the FFM, says The Gambia, would “demolish the system of investigation and accountability set up by the United Nations”⁶.

3. If all this were true, it would of course make the Court’s task much simpler. However, it is not true. In these proceedings, the Court is the finder of facts. In order to find the relevant facts, it must consider the evidential weight of all of the evidence and must consider the details of the contents of the evidence. The Gambia acknowledged that the Court is “a bastion for the rule of law”⁷. Obviously, no court observing the rule of law ignores the details of the evidence on the ground, that this is something redolent of Victorian England. It is astounding that The Gambia makes this argument.

4. The reason why The Gambia makes this argument is nevertheless clear. It is because the weaknesses of The Gambia’s case become apparent once it is looked at in detail. Thus, I renew my plea for the Court to look carefully at all of the written pleadings and the annexes thereto. It is in the written pleadings that Myanmar has expended exhaustive efforts to set out its case.

5. It will not be possible to address orally every point made by The Gambia in its second round with which Myanmar disagrees. If The Gambia says, incorrectly, that Myanmar has not disputed something, or that there is no evidence of something, Myanmar will not take the Court again to where it has been disputed or take the Court again to the evidence in question. The absence of direct contradiction by Myanmar to anything said by The Gambia in the second round does not mean that what is said by The Gambia is undisputed or accepted. For instance, it is not the case that Myanmar does not challenge Professor Newton’s evidence⁸, or the evidence of The Gambia’s witnesses⁹. It is not the case that Myanmar accepts that Bengalis in northern Rakhine State are stateless “on an unprecedented scale”¹⁰, or that there are no facts in dispute about food aid¹¹ or about the security measures taken by Myanmar following the 2016 ARSA attacks¹², or about The Gambia’s allegations

⁵ CR 2026/19, p. 39, para. 4 (Loewenstein).

⁶ CR 2026/18, p. 18, para. 26 (Sands).

⁷ CR 2026/1, p. 19, para. 5 (Jallow).

⁸ CR 2026/18, pp. 13, 14, paras. 4, 9 (Sands); CR 2026/19, p. 35, para. 32 (Ho); CR 2026/19, p. 40, para. 8 (Loewenstein).

⁹ CR 2026/18, p. 21, para. 35 (Sands); CR 2026/19, pp. 28, 35, paras. 6, 32 (Ho).

¹⁰ CR 2026/19, p. 15, para. 6 (Pasipanodya).

¹¹ CR 2026/19, pp. 41-42, para. 12 (Loewenstein).

¹² CR 2026/19, pp. 41-42, paras. 9, 12 (Loewenstein).

of hate speech¹³, or about the number of casualties during the operations in 2016 and 2017¹⁴, or about the official use of the name Rohingya for a brief period and the significance thereof¹⁵. It is not accepted that The Gambia has established the *actus reus* of genocide¹⁶. Moreover, Myanmar does not accept that The Gambia is entitled to make assumptions merely because there is no evidence to the contrary. For instance, it cannot be assumed that FFM staff had certain qualifications or correctly followed certain guidelines, merely because there is no evidence to the contrary¹⁷. Nor is The Gambia entitled to make assertions without evidence, such as the suggestion that Myanmar is responsible for the conditions in the camps in Bangladesh¹⁸. Again, Myanmar relies on the written pleadings for the full details of its case.

2. The rule of law must be observed

6. Mr President, Members of the Court, one of the themes of The Gambia's arguments appears to be that Myanmar is not to be trusted, while the documents relied on by The Gambia and the witnesses called by it are not to be questioned.

7. Any documents that emanate from the Government or military of Myanmar are summarily dismissed by The Gambia as "self-serving" and lacking any evidential weight¹⁹. On the other hand, The Gambia proclaims that the documents on which it relies are "authoritative". The Gambia argues that the victim of ARSA who was called as a witness by Myanmar is to be treated with caution²⁰, but when Myanmar notes that witnesses called by The Gambia cannot be considered impartial, this is denounced by The Gambia as "the most unkindest cut of all"²¹. Furthermore, when Myanmar questions the impartiality and neutrality of the IIMM²², The Gambia claims that this is an

¹³ CR 2026/19, pp. 19-20, 26, paras. 2, 31 (Suleman).

¹⁴ CR 2026/19, pp. 46-47, para. 26 (Loewenstein).

¹⁵ CR 2026/19, pp. 13-14, para. 3 (Pasipanodya).

¹⁶ CR 2026/20, p. 12, para. 2 (Jones).

¹⁷ CR 2026/18, pp. 30-31, 33, 40, paras. 5-6, 13, 31 (Reichler).

¹⁸ CR 2026/20, p. 16, para. 13 footnotes 21 and 22 and accompanying text (Jones).

¹⁹ CR 2026/3, p. 41, para. 34 (Pasipanodya); CR 2026/3, p. 65, para. 32 (Ngum); CR 2026/4, p. 73, para. 54 (Suleman); CR 2026/16, pp. 34, 35 (Newton); CR 2026/18, pp. 39, 41, 60, paras. 29, 33, 97-98, (Reichler); CR 2026/19, pp. 36-37, para. 40 (Ho); CR 2026/19, p. 60, para. 31 (Suleman).

²⁰ CR 2026/19, pp. 62-63, paras. 43-45 (Suleman).

²¹ CR 2026/18, p. 41, para. 34 (Reichler).

²² CR 2026/9, pp. 48-49, paras. 46-51 (Staker).

“unfortunate and unbecoming assertion” and calls upon counsel for Myanmar to retract it²³. The Gambia has also expressed the “hope” that counsel for Myanmar would not present a certain argument²⁴, even when that argument is in fact based directly on the precedent of the *Croatia* case²⁵. The apparent suggestion is that it is morally wrong for Myanmar to present arguments that contradict The Gambia’s case.

8. On Monday, counsel for The Gambia even went so far as to claim that the two counsel for Myanmar were “willing . . . to concoct a sham defence for their client”²⁶. If The Gambia is thereby suggesting that counsel for Myanmar are engaging in unethical conduct, I voice my protest at the making of such an unfounded allegation, which clearly has no basis. We, on this side of the Bar, take most seriously our responsibilities as counsel, and abide by the professional codes of ethics that apply to us. And this is yet another example of The Gambia seeking to portray any disagreement with its position as immoral.

9. In fact, the rule of law requires the Court to remain impartial and open-minded until it gives judgment. Myanmar is a sovereign State, a Member of the United Nations, a party to the Statute of this Court and a party to the Genocide Convention. Its good faith is to be presumed. That presumption does not cease to apply merely because Myanmar disagrees with arguments of The Gambia or requires The Gambia to prove what it alleges²⁷.

3. Inferences are not facts to be proved

10. Mr President, Members of the Court, one point of difference between the Parties is this. This is a case where the applicant asks the Court to infer genocidal intent from the circumstances. In order to draw such an inference, the Court must be satisfied that it is the only inference that can reasonably be drawn.

11. The Gambia appears to assume that the question whether there is only one reasonable inference is a question of fact, and that it can be proved by evidence.

²³ CR 2026/18, p. 46, para. 48 (Reichler).

²⁴ CR 2026/20, p. 24, para. 22 (Sands).

²⁵ *Croatia Genocide, 2015 Judgment*, pp. 126-127, paras. 431-437.

²⁶ CR 2026/19, p. 57, para. 22 (Suleman).

²⁷ Compare CR 2026/19, p. 70, para. 24 (d’Argent).

12. Thus, in the first round of oral argument, The Gambia referred to paragraph 225 of the 2019 FFM Detailed Findings. In this passage, the FFM said that “[c]ollectively [these indicators] demonstrate a pattern of conduct that infers genocidal intent . . . there is no reasonable conclusion to draw, other than the inference of genocidal intent”²⁸.

13. Yet, even if this were a fact that could be proved by evidence, it would be necessary to read this paragraph together with paragraph 220 of the same document, in which the FFM made clear that it reached this conclusion only “on reasonable grounds”²⁹.

14. That reasonable grounds standard is of course much lower than the standard of proof that the Court is required to apply in this case. Thus, even if it were possible to prove by evidence that there is only one reasonable inference to be drawn, this FFM report would for that reason alone not establish this to the standard of proof applicable in this case.

15. Perhaps because of this, The Gambia seeks to rely also on the expert opinion of Professor Newton, emphasizing that he also has determined that a genocidal intent is established³⁰.

16. However, the question whether the existence of a genocidal intent is the only reasonable inference is *not* a question of fact that can be proved by evidence. What The Gambia must prove, to the requisite standard of proof, are the *circumstances* from which it asks the Court to draw the inference of a genocidal intent. It is then a matter of decision for the Court whether or not the existence of a genocidal intent is the only reasonable inference that can be drawn from those circumstances. The Gambia cannot simply point to a conclusion reached by a third person or organization that there is only one reasonable inference to be drawn from the facts.

17. In any event, Professor Newton has made clear that his expert opinion is based firmly on the findings of fact in the FFM reports and that he had no fact-finding abilities of his own³¹. It follows that Professor Newton’s opinion can have no higher weight than the FFM reports on which it is based.

²⁸ CR 2026/1, p. 53, para. 48 (Reichler); CR 2026/18, p. 30, para. 3 (Reichler); UN GA, Human Rights Council, Detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN doc. A/HRC/42/CRP.5, 16 September 2019 (the “2019 FFM Detailed Findings”), para. 225, MG, Vol. III, Annex 49.

²⁹ 2019 FFM Detailed Findings, para. 220, MG, Vol. III, Annex 49.

³⁰ CR 2026/18, pp. 13, 14-15, paras. 4, 10 (Sands); CR 2026/20, p. 28, para. 29 (Sands).

³¹ CR 2026/16, p. 17 (Newton).

4. The Gambia is seeking to lower the standard of proof

18. Mr President, Members of the Court, a second point that clearly still divides the Parties is the question of the standard of proof. Professor Talmon will address this issue again in due course.

19. The Gambia suggests that Myanmar “argues for an unattainably high bar” for proof³². That is not so. Myanmar asks the Court to apply the standard of proof in its settled jurisprudence for cases of this kind, namely the standard in the *Bosnia* and *Croatia* cases. It is not an unattainably high bar. It is akin to the standard of proof applied by criminal courts at international and domestic levels. It is, on the contrary, The Gambia that seeks to set the bar at a level that is nonchalantly low. It is good enough, says The Gambia, that a United Nations fact-finding mission has concluded that genocide was committed, even if the fact-finding mission made that finding in accordance with a lower standard of proof than that applicable in these proceedings. By definition, that amounts to a lowering of the standard of proof.

20. The Gambia seeks to dispute that it is asking the Court merely to rubber-stamp the FFM reports³³, but it cannot escape the fact that this is precisely what it asks the Court to do. The Gambia asks the Court not only to rubber-stamp findings of primary facts in the FFM reports, but also to rubber-stamp mere conclusions and opinions expressed in those reports, including the FFM’s opinion that a genocidal intent is the only reasonable inference³⁴.

21. The reports of the FFM and NGOs on which The Gambia relies would not be accepted by municipal courts in criminal proceedings or in high-stakes civil proceedings as capable of establishing the core facts of a case to the standard of proof applicable in this case. Nor would an international criminal tribunal. The Gambia does not suggest otherwise.

22. Nevertheless, The Gambia maintains that reports such as these should be sufficient in a case of this kind before this Court on the ground that no one will be deprived of their liberty or property as a result of the Court’s judgment³⁵. However, dispute settlement between sovereign States cannot be characterized as some less significant form of proceedings than proceedings before a

³² CR 2026/18, p. 13, para. 3 (Sands).

³³ CR 2026/18, p. 42, para. 35 (Reichler).

³⁴ CR 2026/1, p. 53, para. 48 (Reichler); 2019 FFM Detailed Findings, paras. 220, 225, MG, Vol. III, Annex 49.

³⁵ CR 2026/2, p. 24, para. 33 (Reichler).

municipal court or an international criminal court. As long ago as 1949, in the *Corfu Channel* case, Judge Ečer said that:

“I would recall the wise advice given to international judges by Sandiffer, *Evidence before International Tribunals*, Chicago, 1939, page 3. He emphasizes the peculiar character of international procedure and the grave consequences which may follow from a judicial error, and he concludes: ‘The vital interests of States, directly concerning the welfare of thousands of people, may be adversely affected by a decision based upon a misconception of facts.’ And because the illegal act of October 22nd, 1946, was in reality a criminal act, it is useful to quote *per analogiam* another wise piece of advice, on this occasion given by a British jurist.

Taylor writes in his *Treatise on the Law of Evidence as administered in England and Ireland*, 1920, page 115: ‘But to affix on any person a stigma of crime requires a higher degree of assurance, and juries will not be justified in taking such a step, except on evidence which excludes from their mind all reasonable doubts.’ This advice is all the more cogent in the case of States.”³⁶

23. The Gambia seeks to advance an *in terrorem* argument that cases such as the present would require hearings lasting months or years before this Court if it applied the same standard of proof as in the *Bosnia and Croatia* cases, in circumstances where there have been no prior findings by an international criminal tribunal such as the ICTY³⁷. However, as I have said, there are means within the Statute and the Rules of Court to address the challenges of such litigation. A court does not lower its standards of justice for administrative convenience³⁸.

24. There is thus a very important principle in this case concerning the evaluation of evidence by the Court. The Gambia does not suggest that it could prove its case without relying on the FFM reports. The question is whether this Court can find genocide to be established on the basis of reports of a fact-finding mission, especially one that makes findings of fact according to a standard of proof lower than that required to be applied by the Court and, furthermore, whether the Court can make findings on the basis of mere expressions of opinion in such reports. Myanmar submits that the answer is obvious. With apologies for repetition of what has been said in the first round, to do so would amount to an abnegation by the Court of its judicial fact-finding function, and a retrospective outsourcing by the Court of its fact-finding function to the FFM.

³⁶ *Corfu Channel (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949*, dissenting opinion of Judge *ad hoc* Ečer, pp. 118-119.

³⁷ CR 2026/18, p. 25, para. 50 (Sands).

³⁸ CR 2026/7, p. 30, para. 54 (Staker).

5. The Gambia has the burden of proof throughout

25. Mr President, Members of the Court, a third point that apparently divides the Parties is whether The Gambia has the burden of proof throughout.

26. Superficially, there is no dispute. In its second round of oral argument, The Gambia denied that it has “sought to argue . . . for some sort of a ‘presumption’ in favour of genocide” and has denied that it was seeking to shift the burden of proof³⁹. Therefore, both Parties agree that there is no burden of proof on Myanmar. It is The Gambia that bears the burden of proving all legal elements of the claimed breaches of the Convention, to the applicable high standard of proof.

27. However, despite this, The Gambia does seek to shift the burden of proof. It does this by suggesting that the Court is faced with a binary choice of finding either that the operations conducted in northern Rakhine State were legitimate counter-terrorism operations, or alternatively that they were genocide⁴⁰. The Gambia thus refers to what it calls Myanmar’s “counter-terrorism defence”, or its “counter-terrorism justification”⁴¹. The Gambia thereby seems to suggest that, if it can prove that atrocities were committed and if it alleges that they were genocide, then the burden somehow falls on Myanmar to plead and prove that they were something other than genocide.

28. However, as I said in the first round, a State accused of genocide is not required to proffer or prove some alternative explanation for the alleged events⁴². Nor is it required to incriminate itself by pleading war crimes, crimes against humanity or ethnic cleansing, as counsel for The Gambia implies⁴³. If, on the evidence, a reasonable inference not involving genocide could be drawn, then genocide will not be the only reasonable inference — whether or not the alternative inference was proffered or pleaded by the respondent State and, indeed, whether or not the alternative inference was positively denied by the respondent State. The burden is simply on the applicant throughout to prove that the legal elements of genocide are satisfied, and to persuade the Court that there is no reasonable inference other than a genocidal intent.

³⁹ CR 2026/18, p. 21, para. 37 (Sands). See also CR 2026/20, p. 29, para. 31 (Sands).

⁴⁰ CR 2026/20, pp. 35 and 39, paras. 10 and 22 (Reichler).

⁴¹ CR 2026/19, p. 52, heading above para. 1 and para. 2 (Suleman).

⁴² CR 2026/7, p. 30, para. 57 (Staker).

⁴³ *Inter alia*, CR 2026/20, p. 35, paras. 11, 12 (Reichler).

29. Myanmar accepts that genocide can be committed during counter-terrorism operations. However, The Gambia has not established that, during these operations, any violations of human rights and humanitarian law that might have occurred are violations of the Genocide Convention. The fact that genocide can be committed during counter-terrorism operations does not mean that every wrongdoing committed in the course of counter-terrorism operations, even if it can be proved, amounts to genocide unless those conducting the operations prove otherwise. Furthermore, the fact that genocide can be committed during counter-terrorism operations does not mean that the existence of a terrorist threat and the response thereto is irrelevant to determining whether or not there was a genocidal intent⁴⁴.

30. Thus, even if it could be shown that wrongdoing during counter-terrorism operations violates “every core principle of a counter-terrorism doctrine that is universally accepted”, to use the words of Professor Newton, that does not mean that it was necessarily genocide⁴⁵. If The Gambia alleges that it is, then it is for The Gambia to prove that this is the case.

6. The Gambia must prove facts that satisfy the legal elements of genocide

31. Mr President, Members of the Court, a fourth point that apparently divides the Parties is the question of precisely what matters The Gambia must prove in order to establish all of the legal elements of a breach of the Genocide Convention.

32. It is true that there are indications that certain crimes may have been committed during the operations of 2016 and 2017. Such indications include those found in the report of the Independent Commission of Enquiry or “ICOE”, a body established by the Government to investigate alleged human rights violations during the events in northern Rakhine State in 2016 and 2017, for the purposes of prosecutions if the evidence is sufficient⁴⁶. The work of the ICOE did not contain final findings. It was a basis for further investigations. Conclusions of the ICOE are preliminary non-established facts.

33. However, even if it were ultimately to be proved that atrocities were committed in a number of different locations, that still would not allow simplistic or generic conclusions to be

⁴⁴ CR 2026/20, pp. 32, 33, paras. 3, 6 (Reichler).

⁴⁵ CR 2026/20, p. 34, paras. 8-9 (Reichler).

⁴⁶ CMM, paras. 2.89, 12.103-12.110. RM, paras. 12.25, 12.94-12.106.

drawn — such as that atrocities were committed in “many” locations, or “throughout northern Rakhine State”. Furthermore, not all large-scale atrocities, even if proven, amount to genocide. Even the most heinous acts are not necessarily acts of genocide. In order to establish all the legal elements of genocide, something more than this is required.

34. First, in order to establish the *actus reus* of genocide, it is necessary to establish that the requisite scale of the acts is satisfied. The Gambia argues that there is no “numeric threshold” for the *actus reus* of genocide⁴⁷. The Gambia thereby appears to take the position that a single instance of killing, or at least a very small number of instances of killings, could satisfy the *actus reus* of Article II (a) of the Convention, and that the *actus reus* of other paragraphs of Article II could similarly be satisfied by acts committed against a small number of persons⁴⁸. The Gambia goes on to argue that domestic German case law demonstrates that the destruction of just two people could be an act of genocide⁴⁹. Myanmar says that this argument is incorrect as a matter of law, for reasons that have been given in the written pleadings of Myanmar⁵⁰ and by Professor Miron⁵¹.

35. Second, in order to infer the existence of a genocidal intent from the circumstances, it is necessary to prove the facts from which the inference is to be drawn to the requisite level of detail. A certain level of detail is needed before it is possible to be satisfied that a genocidal intent is the only reasonable inference. The Gambia has suggested that a genocidal intent can be inferred from a “consistent pattern of conduct”. Self-evidently, it cannot be determined whether there was a consistent pattern of conduct without first establishing what actually happened in each of the different locations, and then comparing the results from each location, in order to see whether the events in each location followed a consistent pattern. It is illogical and unscientific to say that it is only necessary to look at what happened in a few locations, and to say that it is then possible to extrapolate that the same things must have happened in the same way in every other location. The Gambia says that a pattern of conduct extended to at least 54 of the 509 towns and villages inhabited by Bengalis

⁴⁷ CR 2026/20, p. 14, para. 7 (Jones).

⁴⁸ CR 2026/20, p. 17, para. 17 (Jones).

⁴⁹ CR 2026/20, pp. 26-27, para. 27 (Sands).

⁵⁰ CMM, paras. 4.54-4.62, 4.64-4.66, 4.68-4.71, 4.72-4.78; RM, paras. 4.72-4.85, 4.87-4.88, 4.89-4.94, 4.95-4.102.

⁵¹ CR 2026/20, pp. 45-48, paras. 18-30 (Miron).

in northern Rakhine State⁵². However, it cannot be possible to know that this is the case without knowing exactly what happened in each of those 54 locations.

36. Despite this, as I have said, The Gambia avoids looking at details. Its presentations have focused mainly on trying to demonstrate the existence of atrocities in a small number of locations. It has called on one witness from each of the three main locations, openly suggesting that this means that all witness statements relating to each of those locations, and even from locations beyond, should thereafter be considered entirely reliable. It then seems to ask the Court either to assume that what happened in the main locations must have happened in every other relevant location, or to find that it is irrelevant whether or not events in other locations were the same. However, such an approach does not prove all the necessary facts, nor explain how the legal elements of genocide are satisfied.

37. For instance, in oral evidence, Professor Newton said that the operations of the Myanmar security forces followed a consistent *modus operandi*, which was said to involve the surrounding of specifically Bengali villages, co-ordinated pre-planned attacks on the village by different units attacking from different angles, indiscriminate shooting with no effort to target specific houses or specific individuals, the segregation of men and the boys who were killed, mass rape, the setting of fire to houses, and the throwing of babies into burning houses⁵³.

38. Myanmar does not admit that this is what occurred. However, even if The Gambia could prove that there was such a consistent *modus operandi*, this is not in and of itself a *modus operandi* of genocide. Professor Newton himself described it as a campaign of extermination⁵⁴. There is of course a distinction between the crime against humanity of extermination and the crime of genocide. Professor Newton himself also says in his affidavit, twice, that the inference to be drawn is that the intent was “to *punish or* destroy the civilian population”⁵⁵. He himself therefore offers an alternative inference not involving the destruction of the population. The *Croatia* case itself provides an example of acts found by the Court not to be genocide on the ground that they had the intent of punishing a population, rather than of destroying it⁵⁶.

⁵² CR 2026/20, p. 28, para. 30 (Sands).

⁵³ CR 2026/16, pp. 28-30 (Newton).

⁵⁴ CR 2026/16, p. 29, second full paragraph, first sentence (Newton).

⁵⁵ Affidavit of Professor Newton, 18 November 2025, paras. 3 and 6 (emphasis added).

⁵⁶ *Croatia Genocide, 2015 Judgment*, pp. 125-126, paras. 429-430.

39. Myanmar has pointed to the fact that hundreds of thousands of Bengalis from northern Rakhine State made their way to Bangladesh, where they still live today, and to the evidence that they passed members of the security forces on the way who made no attempt to harm them⁵⁷. Myanmar also points to the fact that hundreds of thousands of other Bengalis living in towns and villages in northern Rakhine State did not leave for Bangladesh and continue to live in northern Rakhine State today, and that 120,000 Bengali inhabitants of IDP camps remained unharmed. The evidence does not show that either the hundreds of thousands living in Rakhine State today, nor the hundreds of thousands in camps in Bangladesh, are facing physical or biological destruction. This is inconsistent with the commission of genocide, or the existence of a genocidal intent. The failure of the government and security forces to avail themselves of “opportunities to physically destroy” members of the protected group is obviously relevant to the question of the existence of a genocidal intent. The Court expressly so found in *Croatia*⁵⁸. The Gambia does not engage sufficiently with all of this.

40. Rather than seeking to prove the details of events, The Gambia confines itself to generic accusations. It says for instance that there has been “No attempt to explain why villages were bulldozed after they were burned to the ground. No attempt to tell you why fleeing children were shot dead”⁵⁹. However, without examining the evidence of what happened in each specific location, The Gambia does not establish even to what extent this occurred, let alone that it occurred in such a way that the legal elements of genocide are satisfied. It is not sufficient for The Gambia to make generalizations such as that the acts were “repeated tens of thousands of times more”⁶⁰. Rather, The Gambia must establish what occurred in the various locations where such acts are said to have occurred. It is no answer for The Gambia to say that this is unnecessary, because in a case of genocide, “there will be locations where the available evidence may show greater or lesser levels of” the relevant acts⁶¹. That may be true, but in order to be able to determine if the *actus reus* and *mens*

⁵⁷ RM, paras. 13, 144-13, 145.

⁵⁸ *Croatia Genocide, 2015 Judgment*, pp. 122, 126-127, paras. 418, 431-437; CMM, paras. 13.142-13.154; RM, paras. 13.136-13.145.

⁵⁹ CR 2026/18, p. 13, para. 4 (Sands).

⁶⁰ CR 2026/18, p. 13, para. 6 (Sands).

⁶¹ CR 2026/19, p. 39, para. 6 (Loewenstein).

rea specifically of genocide is established, it is still necessary to have a sufficient understanding of the course of events, and the scale and distribution of the different kinds of relevant acts. The burden is on the applicant to establish this.

41. For the reasons Myanmar has given in its written pleadings and in the first round, The Gambia does not establish this. The Gambia for its part appears to consider that it is not required to establish this, and indeed, it positively asks the Court to avoid looking at details. It is therefore still very much in dispute between the Parties as to what The Gambia is required to prove.

7. The *mens rea* of genocide

42. Mr President, Members of the Court, a fifth matter that apparently divides the Parties concerns the *mens rea* or *dolus specialis* of genocide. When presenting arguments about whether the *mens rea* is satisfied in this case, counsel for The Gambia refers to a criterion of “substantiality” in a way that is unclear⁶².

43. The concept of genocide concerns the destruction of human groups, and not the destruction or targeting of individuals on the ground that they belong to a human group. A widespread or systematic attack against a protected group, or against members of a protected group, might for instance be a crime against humanity, but it would not be genocide unless there is an intent to *destroy* the group as such, rather than to *attack* the group or individual members of the group.

44. The *chapeau* to Article II indicates that genocide may be committed against an entire protected group, or against a “part” of a protected group. Where genocide is committed against the entire protected group, the intent must be to destroy the group as such. Where genocide is committed against a part of a protected group, then the intent must be to destroy that part of the protected group as such.

45. This raises the question of how to determine whether a collection of members of a protected group are a “part” of a protected group for purposes of Article II. For instance, if each individual member of a protected group was considered individually to be a “part” of the protected group, then destroying a single member of a protected group, with intent to destroy only that one individual, would be genocide. However, that is not the case. Because genocide is about the destruction of groups

⁶² CR 2026/20, pp. 18-25, paras. 3-24 (Sands).

as such, the Court has held that could “distort the definition of genocide” if too small a section of the protected group is considered to be a “part” of the group for purposes of Article II⁶³.

46. The Court has therefore held that a collection of members of a protected group are a “part” of the protected group for Article II only if it is a sufficiently substantial part of the overall protected group. Thus, in the *Bosnia* case, the Court decided that the Bosnian Muslims of Srebrenica were a part of the protected group of Bosnian Muslims for purposes of Article II, because they were a sufficiently substantial part of the overall protected group⁶⁴. This is the “substantiality” requirement⁶⁵.

47. However, once it is established that a collection of members is a sufficiently substantial part of the overall protected group to qualify as a “part” for purposes of Article II, the substantiality criterion has no further role to play. Thereafter, the question is not whether acts were committed with intent to destroy *a substantial number of members of the part* of the protected group. Rather, the question is whether acts were committed with intent to destroy *that part of the protected group as such*.

48. In the present case, Myanmar has accepted that the Bengali or the Bengali Muslim population in northern Rakhine State is at least a “part” of a protected group⁶⁶. Therefore, if there is evidence that acts amounting to the *actus reus* would be aimed at the destruction of that population, this would fall within the scope of the Convention.

49. The question in this case is therefore whether The Gambia has established the existence of an intent physically or biologically to destroy the Bengali or the Bengali Muslim population in northern Rakhine State as such. It must be an intent to destroy that population, as such.

50. Myanmar says that there are undisputed facts that are inconsistent with any such intention to destroy that population as such. I have already referred to these: the fact that hundreds of thousands of members of this population are still living in towns and villages in northern Rakhine State; the fact that hundreds of thousands are living in camps in Bangladesh; the fact that some 120,000 living

⁶³ *Bosnia Genocide, 2007 Judgment*, pp. 126-127, para. 199 and p. 166, para. 296; *Croatia Genocide, 2015 Judgment*, p. 65, para. 142.

⁶⁴ CMM, paras. 4.25-4.29; RM, paras. 4.20-4.30, 16.10-16.11; CR 2026/7, p. 31, para. 58 (Staker).

⁶⁵ CR 2026/7, pp. 47-50, paras. 24-34 (Miron).

⁶⁶ CR 2026/7, pp. 31, 33, paras. 58, 66 (Staker), read with CR 2026/7, p. 14, para. 11 (Hlaing).

in IDP camps were unharmed; and the failure of the Government and the security forces to avail themselves of opportunities for destruction.

51. The Gambia seems to argue, erroneously, that proof of the *mens rea* requires only proof of an intent to attack or harm a substantial number of members of the protected group. It speaks of a substantial percentage of villages being destroyed⁶⁷, of a substantial number of members of the targeted group fleeing⁶⁸, of substantial numbers of members of the targeted group being killed⁶⁹. It also faintly attempts to argue that the entire population was targeted⁷⁰.

52. However, this is not the definition of the *mens rea* of genocide. This remains defined as the intent physically or biologically to destroy that population *as such*. Myanmar disputes that The Gambia has demonstrated such an intent.

53. For completeness I note that The Gambia seeks to argue that the targeted “part” of the population is to be defined as those Bengalis or Bengali Muslims living in Maungdaw, Buthidaung, and Rathedaung Townships, and as excluding those living in IDP camps in Sittwe Township⁷¹. It is not clear on what basis The Gambia seeks to make this distinction. It cannot be geographical, since Sittwe Township is immediately contiguous to the other townships and is also in the northerly part of Rakhine State. Furthermore, the inhabitants of the camps are from the three northernmost townships and not distinguishable from others living there.

54. However, even if one were to define the “part” of the protected group in the way that The Gambia proposes, the fact that no harm was inflicted on those in IDP camps still suggests that there was no intent to destroy those living in the three townships of Maungdaw, Buthidaung and Rathedaung, in the absence of any reason why the authorities would want to destroy the latter but not the former.

55. In any event, even if one were to define the “part” of the protected group in the way that The Gambia proposes, for the reasons I have given, it has not established an intent to destroy that population, as such.

⁶⁷ CR 2026/20, p. 21, paras. 13-16 (Sands).

⁶⁸ CR 2026/20, p. 22, para. 17 (Sands).

⁶⁹ CR 2026/20, p. 22, paras. 18-19 (Sands).

⁷⁰ CR 2026/20, pp. 22-23, paras. 20-21 (Sands).

⁷¹ CR 2026/20, pp. 19-20, 24, paras. 6-8, 22 (Sands).

8. Conclusion

56. Mr President, Members of the Court, that concludes my introduction to the second round of oral argument. I thank the Court for your careful attention. Mr President, may I now invite you to call on Mr Hooper, who will address the witness evidence that has been heard.

The PRESIDENT: I thank Mr Staker for his statement. I now invite Mr David Hooper to address the Court. You have the floor, Sir.

Mr HOOPER:

II. REVIEW OF ORAL WITNESS TESTIMONY

1. Introduction

1. Mr President, Members of the Court, I address you for the first time, and may I say, albeit belatedly, that it is a great honour and privilege to do so.

2. My speech is in respect of all five of the oral witnesses in this case, and I will conclude with submissions in respect of the evidence of Professor Newton.

3. This was not a court contrived/designed to have witness-heavy cases, let alone oral witnesses, and the Court is necessarily limited in capacity to hear or examine witnesses compared with other adversarial criminal courts and tribunals. I know the Court will bear in mind such limitations.

4. In respect to The Gambia's witnesses — obviously three witnesses do not make a case; they are not some magic ingredient to make other material gel into something more solid. That said, oral witnesses give the Court an opportunity to see and certainly feel more than may appear on the page. Certainly, all four of the oral witnesses carried with them into this Court great individual suffering and hurt.

5. For all that, questions arise about aspects of that oral evidence, which we will address — more generally, me in this speech, and more specifically in following speeches.

6. May I make it clear at the outset, it is no part of my role here to instruct you, the judges, how you view the witnesses; that is a matter for you. I hope to make submissions that are reasonable — after all, if they are not reasonable, if they are unreasonable, you will reject them.

2. Witness MN

7. I will take the witnesses in order. I will start with The Gambia's witness, known by the pseudonym of "MN".

8. The main incident took place at Maung Nu, also known as Monu Para or Monu Fara, on Sunday 27 August 2017, two days after the ARSA insurgency kicked off over the course of the Thursday night into the early morning of Friday 25th.

9. He told us: "The military used to come often to the village and we welcomed and respected them and gave them water and tea but on 27 August, I don't know what information they had, but they came and started firing"⁷².

10. He was asked if he had any idea why they came. He said that he had "a simple idea" — they were going through the road that passes the village⁷³.

11. He was asked about the attacks in and around Maung Nu — there were several, as you have heard⁷⁴. These ARSA attacks are set out in detail in the written pleadings⁷⁵ and speeches⁷⁶ and the reports of the FFM⁷⁷, Amnesty International⁷⁸, witness statements from the IIMM⁷⁹, etc., and will doubtless be referred to further.

12. One of those witnesses, IIMM Witness P1244, was also a resident, and he had no difficulty hearing the shootings. He said:

"At around 1 am, I heard shooting. There were sounds coming from different directions. The shooting sounds were coming from the north, in the direction of the Na Sa Ka sub-camp at Fundu Parang. There were other sounds coming from the north, the direction of the No. 551 military base in Phir Kha Li. Until the morning, I heard continuous shooting from these directions . . . Every once in a while, I also heard a boom sound, but I could not tell from what direction it came."⁸⁰

13. MN makes no mention of any of this in his statement.

⁷² Witness Statement No. 003, para. 14, MG, Vol. X, Annex 340.

⁷³ CR 2026/13, p. 28 (Witness MN).

⁷⁴ CR 2026/9, pp. 28-30, paras. 75-81 (Blom-Cooper).

⁷⁵ CMM, para. 8.91.

⁷⁶ CR 2026/9, pp. 28-30, paras. 75-81 (Blom-Cooper).

⁷⁷ 2018 FFM Detailed Findings, para. 802, MG, Vol. II, Annex 40.

⁷⁸ Amnesty International, *Destroy Everything*, pp. 38-40, CMM, Vol. VI, Annex 269.

⁷⁹ E.g. IIMM, Witness Statement No. IIMM0019915116, para. 73, RG, Vol. IV, Annex 54.

⁸⁰ IIMM, Witness Statement No. IIMM0019915116, para. 73, RG, Vol. IV, Annex 54.

14. As for the attack on 25 August on the nearby BGP subcamp in Hpaung Taw Pyin, just a kilometre away and where two police were killed, he said he had heard “some shootings” but he did not know the camp had been attacked, nor that the two policemen there had had their throats cut⁸¹, nor heard about it in the eight years since he had been in the camp in Bangladesh⁸².

15. Asked if he had made any inquiries the next day, particularly as people had come into the village, he said, “I didn’t ask anyone because I was so afraid.”⁸³ But then he said, “They didn’t know”⁸⁴.

16. How could MN not know of and about that attack, and the ones that followed over the next two days?

17. Based on information contained in another IIMM statement provided by another resident, P1496, about ARSA and ARSA’s activities in the village⁸⁵, Witness MN was asked whether three named men were in charge of ARSA in the village; whether youths were trained in the mosque after prayers; whether they patrolled the village at night dressed in all black clothes; whether two suspected informants had been paraded through the village by ARSA members so everybody could see; and whether one of those was then “executed” by having his throat cut⁸⁶.

18. Essentially, he said he knew the men but he did not know anything about it⁸⁷.

19. Again, on the basis of information in the IIMM statement of P1496⁸⁸, he was asked about Zahid Hussein, an ARSA supporter, who shared a house with his brother, Doza, also known as Bodo⁸⁹. He was also asked about Doza’s son-in-law, “Mojia”, said to be the ARSA leader of the entire village tract; and whether Mojia had been constructing IEDs the day before in the courtyard of that house⁹⁰.

⁸¹ CR 2026/13, p. 30 (Witness MN).

⁸² CR 2026/13, p. 31 (Witness MN).

⁸³ CR 2026/13, p. 32 (Witness MN).

⁸⁴ CR 2026/13, p. 33 (Witness MN).

⁸⁵ IIMM, Witness Statement No. IIMM0019628625, para. 53, RM, Vol. IV, Annex 131.

⁸⁶ CR 2026/13, pp. 28-29 (Hooper).

⁸⁷ CR 2026/13, pp. 29-30 (Witness MN).

⁸⁸ IIMM, Witness Statement No. IIMM0019628625, para. 80, RM, Vol. IV, Annex 131.

⁸⁹ CR 2026/13, p. 33 (Hooper).

⁹⁰ CR 2026/13, pp. 33-34 (Hooper).

20. He knew them all, he said, but he did not know Mojia was a leader. He knew nothing, really⁹¹.

21. What did MN know about ARSA?

22. He said he had heard of ARSA many times, but did not know who was leading it. He had not seen it in his village; he did not know if it was present in his village⁹².

23. He said he had heard of kidnappings in the camp in Bangladesh, but had never met any ARSA and had not been threatened by them⁹³. Later, he conceded that, “I heard in the camps people have been killed. Also some people said they are killed by ARSA.”⁹⁴ But he was not worried about going back to the camp⁹⁵.

24. It was the combination of the widespread attacks on military and security posts in the immediate vicinity of Maung Nu and ARSA activity there that caused the military to arrive there on 27 August and we submit that MN knows that — knew that to be the case. He wanted to advance, or had complied with advancing, a narrative that gives a false impression of the chain of events.

25. He does so in the company of all 40 Legal Action Worldwide witnesses in this case.

26. The only reasonable conclusion to draw is that that was done in order to disguise the truth — which is that the military were wholly justified in arriving there that day.

27. And when the military do arrive, they go straight to Zahid Hussein’s house and they call Zahid Hussein and Doza to come out⁹⁶.

28. After the men found in Zahid Hussein’s house are tied up, MN hears an officer on the phone saying, “I have arrested 87 people, 87 of them. What can I do with them?”⁹⁷

29. Why would the officer bother to ask that question if there was already a plan to go and kill them?

⁹¹ CR 2026/13, p. 34 (Witness MN).

⁹² *Ibid.*

⁹³ CR 2026/13, p. 35 (Witness MN).

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

⁹⁶ Witness Statement No. 003, paras. 17, 21, MG, Vol. X, Annex 340.

⁹⁷ CR 2026/13, p. 22 (Witness MN).

30. MN's account of what happened next, we submit, is an unreliable account for reasons that probably struck you all, and doubtless provoked a question from Judge Aurescu.

31. MN says that he was tied up and prostrate, lying there for three or four hours while people were taken away in groups of five or so⁹⁸. Come his turn, he is taken 20 paces — an estimate, but clearly a short distance⁹⁹ — and there he says he sees his father and others that he recognizes in a pile, he estimates, of 65 bodies¹⁰⁰.

32. Asked by Judge Aurescu, “While you were waiting with your face down and your hands tied behind your back, did you hear anything like gunfire or people begging for their lives in your proximity?”, he answered, “Yes, I heard gunfire. There was rampant gunfire.”¹⁰¹

33. Then he was asked, “Did you also hear people crying for help or begging for their lives?”

34. Answer: “People just called ‘God’, ‘Allah’ . . . I heard people calling ‘God’.”¹⁰²

35. Well, I suggest that witness just fell in with those questions. He had never mentioned “rampant gunfire” or any gunfire in any of his statements, nor mentioned anything about people calling out in extremis.

36. And is it something he would forget to mention? Imagine lying there for hours, your father taken away, others too — all you have is your sense of hearing as to what is going on around you and to them. It would have had an indelible effect on you if you had heard shooting and screaming — but there is no mention of it in his statement, and no addition relating to it in his affidavit.

37. And a few moments earlier, before those questions were put, he had been asked by the Vice-President of this Court: “Now, the question from me is, how do you know that they killed all the 87 people if you could not see from where you were?” And he replied: “I got to know they were killed when I was also brought to that place. Before, I didn't know they were killed or they were taken to another place.”¹⁰³

⁹⁸ CR 2026/13, p. 23 (Witness MN).

⁹⁹ CR 2026/13, p. 37 (Witness MN).

¹⁰⁰ CR 2026/13, p. 24 (Witness MN).

¹⁰¹ CR 2026/13, p. 47 (Witness MN).

¹⁰² *Ibid.*

¹⁰³ CR 2026/13, p. 42 (Witness MN).

38. Mr Blom-Cooper will be addressing you further on aspects of this witness's evidence in the context of this case.

39. But one feature is that, MN told you, little or no harm befell the women and children.

40. His wife and children, together with "at least 100 women and children"¹⁰⁴ had been taken and put in a house and were eventually released after the soldiers had gone, safe and sound. He was reunited with his wife and four children and they made their way to the Kutupalong camp, apparently with no further mishap.

41. He also told you that "[w]e knew that the military did this to force us out of the country"¹⁰⁵.

3. Witness NJ

42. Members of the Court, I now turn to the second witness you heard from, Witness NJ.

43. She was limited in what she could say. She said she had married young, had five children in as many years¹⁰⁶ and occupied herself with her family and home duties¹⁰⁷. She had never left the village¹⁰⁸; had not gone to school though she could read the Koran¹⁰⁹. It appears to have been a very restricted or restrictive life.

44. She was not able to help the Court with any of the surrounding circumstances. She said she knew nothing of terrorists, of ARSA. She knew nothing of the ARSA attacks, even those that were close by; she knew nothing at all about the influence of groups in the camps in Bangladesh, despite living there for many years¹¹⁰. So — again — a witness who appears to have distanced herself from reference to ARSA and the circumstances that brought the military into her village.

45. She saw little of what was going on outside her house on 27 August 2017, as she was indoors, inside her house from beginning to end.

46. As to what happened to her and her child in that room, I did not ask any questions — if what she says happened in that room is true, then it is beyond words. Unhappily, it is not the first

¹⁰⁴ Witness Statement No. 003, para. 31, MG, Vol. X, Annex 340.

¹⁰⁵ CR 2026/13, p. 39 (Hooper), citing Witness Statement No. 003, para. 32, MG, Vol. X, Annex 340.

¹⁰⁶ CR 2026/14, p. 14 (Witness NJ).

¹⁰⁷ CR 2026/14, p. 12 (Witness NJ).

¹⁰⁸ CR 2026/14, p. 23 (Witness NJ).

¹⁰⁹ CR 2026/14, p. 20 (Witness NJ).

¹¹⁰ CR 2026/14, p. 19 (Witness NJ).

time a court has had to listen to such gruelling details. That is not in any way to be dismissive of what she says — it is an ugly reality.

47. I have no instructions as to what happened in that room to contradict or to confirm what she says — what happened was out of sight.

48. The witness's statement to LAW in 2019¹¹¹ was two pages. In November last year she provided her affidavit with a 20-page statement attached¹¹². There are significant discrepancies between the two that merit further investigation.

49. In particular, there is no record or evidence as to the existence of the child who she described was killed. The name of the child recorded in the original LAW document is different to the one found in the final statement¹¹³. In her later statement, she explains that she had had twins¹¹⁴ — not mentioned in the first account. The original LAW statement states that she had four children¹¹⁵, when at the time she would have had five if there had been twins. In her first statement, she says her sister-in-law left with her, that is NJ's, baby and she makes no mention of the surviving twin being taken¹¹⁶. In the second, she says her sister-in-law left with both her baby and with the surviving twin¹¹⁷.

50. She said in her second statement, at first, that the soldier had a knife and used it to stab the child¹¹⁸. She later corrected that to say that the village chairman had given him the knife, which was

¹¹¹ Legal Action Worldwide, Collated Information from Victims/Witnesses, pp. 8-10, MG, Vol. X, Annex 336.

¹¹² Witness Statement of NJ, ■ November 2025, annexed to the letter of the Agent of The Gambia dated 18 November 2025.

¹¹³ Legal Action Worldwide, Collated Information from Victims/Witnesses, p. 10, MG, Vol. X, Annex 336; Witness Statement of Witness NJ, ■ November 2025 para. 51, annexed to the letter of the Agent of The Gambia dated 18 November 2025.

¹¹⁴ Witness Statement of Witness NJ, ■ November 2025, para. 11, annexed to the letter of the Agent of The Gambia dated 18 November 2025.

¹¹⁵ Legal Action Worldwide, Collated Information from Victims/Witnesses, p. 9, MG, Vol. X, Annex 336.

¹¹⁶ *Ibid.*, p. 10.

¹¹⁷ Witness Statement of Witness NJ, ■ November 2025, para. 50, annexed to the letter of the Agent of The Gambia dated 18 November 2025.

¹¹⁸ *Ibid.*, para. 51.

consistent, may I say, with her first statement¹¹⁹. She said in her first statement that the village headman was there throughout the ordeal, from beginning to end¹²⁰. In the second that he was not¹²¹.

51. Now, if her current account is correct, then plainly that original LAW account is very deficient.

4. Witness MS

52. Mr President, Members of the Court, I move now onto the third witness, the third of The Gambia's oral witnesses. He lived in Min Gyi, also known as Tula Toli¹²². Multiple toponyms are a complicating feature of this case. In this location, there are also four named sub-villages, to which we will come in a moment.

53. This witness gave a harrowing account, suffering the loss — you will recall — of his wife and five of his six children. You may recall that I said to him, “you have lived through an atrocity”¹²³, and so, by his account he had. I hope the Court gives my extempore comment the weight it deserves. As you well know, Myanmar does not accept The Gambia's narrative of events at Min Gyi or elsewhere.

54. There are two general matters on which I address you and which go to the reliability of his account — and I say reliability, not credibility.

A. ARSA denial

55. The first is his evidence as to his then knowledge of ARSA. It was succinct. In evidence-in-chief, he was asked and replied, “I have heard that there is a name called al-Yaqin, but I have no idea about what they do or who they are in detail”¹²⁴. And as for influence on the contents of his statement: “There is nothing, no influence from any side.”¹²⁵

¹¹⁹ *Ibid.*, para. 64.

¹²⁰ Legal Action Worldwide, Collated Information from Victims/Witnesses, p. 10, MG, Vol. X, Annex 336.

¹²¹ Witness Statement of Witness NJ, para. 64, annexed to the letter of the Agent of The Gambia dated 18 November 2025.

¹²² CR 2026/15, p. 12 (Witness MS).

¹²³ CR 2026/15, p. 19 (Hooper).

¹²⁴ CR 2026/15, p. 12 (Witness MS).

¹²⁵ *Ibid.*

56. His statement speaks of events, again, from just a few days before 30 August. As with the two other witnesses, his account has the military arrive for no apparent reason. There is no explanation as to why the military was there. He said: “I don’t know the reason behind, but I have seen military came and killed people in our village.”¹²⁶

57. There is no mention of the several attacks both in and around Min Gyi. We know those attacks occurred, and we know they were ARSA-led.

58. Those attacks must have been a striking event for those living in the village. You would think they would naturally form part of the narrative, the history of events. MS speaks of the burning of nearby villages in the previous days¹²⁷ — but nothing of the extensive shooting that occurred¹²⁸, for instance at Sadulla Sor, Net Chaung, the Min Gyi police outpost, Done Paik, Kyein Chaung, Laung Don or Wet Kyein¹²⁹; or the attacks on ethnic Rakhine and Mro at Khu Daing and Pa Da Khar Ywar Thit¹³⁰.

59. Nor is there mention of ARSA in the village, whereas there is abundant evidence that it was there, and it was unlikely that others did not know about it. You may think that in these villages, with their extended families, there is not much that goes on that escapes attention.

60. The role of ARSA is important for this case for reasons that are apparent — it is why the military were there at all.

61. Similarly, in the camps in Bangladesh; we know about ARSA’s extensive influence from other sources independent of Myanmar¹³¹. But this witness just says, in effect, “I’ve heard about it, but I don’t know anything about it.”

¹²⁶ CR 2026/15, p. 13 (Witness MS).

¹²⁷ Witness Statement No. 13, para. 7, MG, Vol. X, Annex 350.

¹²⁸ IIMM, Witness Statement No. IIMM0019925094, p. 13, RM, Vol. IV, Annex 135.

¹²⁹ Ministry of Defence, Table of the Clash, p. 1, Items 3, 7, p. 8, Items 5, 6, CMM, Vol. IV, Annex 149; 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, p. 3, para. (A) under the heading “Command of No. (992) Tactical Operation Command”, CMM, Vol. IV, Annex 127; 2018 FFM Detailed Findings, para. 757, MG, Vol. II, Annex 40.

¹³⁰ Amnesty International, *Destroy Everything*, p. 47, CMM, Vol. VI, Annex 269; Myanmar News Agency, “Seven more civilians killed in Rakhine”, *The Global New Light of Myanmar*, 31 August 2017, pp. 1 and 9, CMM, Vol. VIII, Annex 398.

¹³¹ E.g. International Crisis Group, Building a Better Future for Rohingya Refugees in Bangladesh, Asia Report No. 155, 25 April 2019, p. 4, CMM, Vol. VII, Annex 298; Amnesty International, New Evidence Reveals, p. 11, CMM, Vol. VI, Annex 268; N. Conrad, S. Czimmek and A. Islam, “Rohingya militants active in Bangladeshi refugee camps”, Deutsche Welle, 24 September 2019, CMM, Vol. IX, Annex 434.

62. Omitting or evading the role of ARSA is important when considering a particular witness's reliability — why would a witness deny what is established by other material, unless it is to help maintain a false narrative?

B. Circumstances of evidence

63. The second matter that goes to this witness's reliability as a witness is also important. It is: how reliable is his evidence as to what he witnessed that day?

64. These were matters that I would have put to him, but I did not cross-examine him — and you know why or saw why. It is not unusual, at least in the jurisdiction in which I practice, for vulnerable witnesses not to be cross-examined when matters that would otherwise be put to them can be addressed in other ways. Had we exercised our opportunity to question him, I would have made the same points that I make now.

65. There are two aspects: firstly, his opportunity to see what he claims he saw; and secondly, his capacity to observe and recall the events, given his state of mind. They are both aspects that arise on the face of his evidence itself.

66. Firstly, as to opportunity of view. The Court can see the map of Min Gyi and one can see on that map that part of Min Gyi where the witness lived — it is Sor Para¹³². It is right in the middle with a helpful arrow to show it. You can also see at the top the scale of that map. Sor Para is in the middle of three settlements — North Para, Sor Para and South Village. The Rakhine village is there on its left, as you look.

67. MS says that on hearing the shooting he and his family went to the beach area and describes it as being “about a mile” from his home¹³³.

68. He is later fired upon and “jumps” into the water. He says: “So I was trying to flee from that area, and I was swimming and escaped from that towards the [REDACTED]”. It is [REDACTED]: there is [REDACTED]¹³⁴.

¹³² Witness Statement No. 13, para. 1, MG, Vol. X, Annex 350.

¹³³ *Ibid.*, para. 12, MG.

¹³⁴ CR 2026/15, p. 14 (Witness MS).

69. He says, “It took around three minutes for me to cross”¹³⁵, but that may be unlikely given that it was the monsoon season and the river was in flood¹³⁶.

70. Having crossed over to [REDACTED], MS is a considerable distance away, as you can see from the scale of the map.

71. The second matter to consider is his state of mind and its effect on his capacity to provide a reliable history. His own evidence, both before the Court and in his 2020 statement strongly suggests, unsurprisingly, that he was in a state of profound shock. He said “I was very confused and I was out of my mind, like: what is going on? I couldn’t even cry and I was not able to feel all the things because so many things [were] happening at the same time, which is unexpected. They were killing people.”¹³⁷

72. It would appear from this own account that he was understandably in a state of shock from the time he arrived, the morning, until the afternoon at 4 p.m., when he states he “became alert again”¹³⁸ but appears to have needed help and was “handed over to the villagers at [REDACTED]”¹³⁹.

73. Mr President, Members of the Court, considering this state of mind, and the distance, is it credible that he would have seen and recalled in detail the events he describes, as set out in the transcript pages, from pages 15-16 of that transcript, and to a much greater extent in his statement in 2020?¹⁴⁰ He spoke about some of these details in evidence, including such details as that baby trying to suckle¹⁴¹, or being able to see his wife and four of his children taken into the house¹⁴² — houses that were at least a kilometre to a mile away, as can be seen by the scale of the map.

74. It is submitted that it is possible that the witness has adopted what he may have heard others say — it is a genuine risk in these cases. Mr Koumjian, in his affidavit, speaks of “the risk of

¹³⁵ *Ibid.*

¹³⁶ 2018 FFM Detailed Findings, para. 948, MG, Vol. II, Annex 40.

¹³⁷ CR 2026/15, p. 15 (Witness MS).

¹³⁸ Witness Statement No. 13, para. 31, MG, Vol. X, Annex 350.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*, paras. 22-30.

¹⁴¹ CR 2026/15, p. 15 (Witness MS).

¹⁴² CR 2026/15, p. 16 (Witness MS).

‘community narratives’¹⁴³. And I submit that there may well be those among you who have had experience of criminal tribunals who may well recognize that phenomenon.

C. “Reach”

75. I move on to a more general comment about the witness statements and affidavits of The Gambia’s three witnesses. Legal Action Worldwide took each of the three witness statements in 2020.

76. That organization also managed the taking of the affidavits for each of the three witnesses in November last year. Each of them states that they had not consented to their identities being revealed when asked to do so in March 2023, but now did consent despite a concern for their security, which they each express in the same way.

77. MN’s affidavit is dated [REDACTED] November 2025 and was made in Kutupalong camp. It states at paragraph 4, as you can see:

“I am concerned about the security risks to which my family and I will be exposed as a result of our identities being disclosed to the other Party [i.e. Myanmar], *given the reach of the Myanmar government within the camps in Bangladesh through operatives/informers who may threaten or harm us*”¹⁴⁴.

78. MS’s affidavit, another witness, dated [REDACTED] November 2025 and made while in Kutupalong refugee camp, states at paragraph 4, you see it, much the same complaint: “*given the reach of the Myanmar government within the camps in Bangladesh through operatives/informers who may threaten or harm us*”¹⁴⁵.

79. And NJ, the lady witness, in her statement, says in her paragraph 4:

“I am concerned for the safety of my family . . . , who still remain in the Bangladesh refugee camps *because I believe that Myanmar government has reach within the camps and may retaliate against [us]*.”¹⁴⁶

¹⁴³ Affidavit of Nicholas Koumjian, 17 November 2025, para. 33 (filed with the letter of the Agent of The Gambia dated 18 November 2025, maintained in the case file by decision of the Court communicated to the Parties on 15 December 2025).

¹⁴⁴ Affidavit of Witness MN, [REDACTED] November 2025, para. 4 annexed to the letter of the Agent of the Gambia dated 18 November 2025.

¹⁴⁵ Affidavit of Witness MS, [REDACTED] November 2025, para. 5, annexed to the letter of the Agent of The Gambia dated 18 November 2025.

¹⁴⁶ Affidavit of Witness NJ, [REDACTED] November 2025, para. 4, annexed to the letter of the Agent of The Gambia dated 18 November 2025.

80. So, not just similar but to a certain extent you can see identical wording. First, it is untrue and not accepted that Myanmar has reach within the camps through so called “operatives/informers”. There is no objective evidence produced by The Gambia to that effect in any of the material produced to this Court.

81. There is, however, abundant evidence in the material that ARSA does have “reach”. It has killed and intimidated and driven a false narrative¹⁴⁷, as you will recall from other evidence, including that of Mr Koumjian¹⁴⁸.

82. These three witnesses all walk in step in providing statements and evidence that suppress the role of ARSA and the attacks on the military in their areas and do so to avoid legitimizing the military presence in their villages. And they are still in step in making this false allegation against Myanmar — because they are giving evidence here and ARSA is still influencing that narrative.

83. Mr President, before I begin my next section, in which I will address the witness called for Myanmar, and then the expert, might I suggest that now might be a convenient moment for the afternoon break?

The PRESIDENT: Indeed Mr Hooper, this may be a good time to have a break. The Court will observe a break of 15 minutes. The sitting is suspended.

The Court adjourned from 4.25 p.m. to 4.45 p.m.

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

Mr HOOPER: Thank you. Before the afternoon break, I omitted to remind you of a small but telling piece of evidence from the first of the witnesses I dealt with, “MN” from Maung Nu. You

¹⁴⁷ See e.g. CMM, paras. 3.125-3.145; RM, paras. 3.103-3.119.

¹⁴⁸ Affidavit of Nicholas Koumjian, 17 November 2025, para. 48 (filed with the letter of the Agent of The Gambia dated 18 November 2025, maintained in the case file by decision of the Court communicated to the Parties on 15 December 2025).

may recall he said that he still had [REDACTED]

[REDACTED]. That is it.

5. Witness M1

84. I have addressed the matter of The Gambia's witnesses. I now turn to the witness for Myanmar, known by the pseudonym of "M1". You will recall that there were, to put it mildly, "functional" difficulties with the interpretation of her evidence. The fault lies entirely with us, not the witness, and I apologize.

85. However, despite the interpretation difficulties, her core evidence should pose little difficulty, I submit, as it is so well supported and corroborated by the video evidence.

86. That core evidence is:

- (a) firstly, that she and others were the victims of an atrocity committed by ARSA members and its supporters; and
- (b) secondly, that she and others were later forced to provide false evidence under duress as to who had been responsible, by having to blame Myanmar forces and Rakhine.

87. Those are two core facts on which we rely and the reason, of course, why she was called as a witness; and those facts are corroborated and supported by unchallenged evidence that she and her Hindu neighbours were murdered and that it was Bengalis that did it; and the video evidence that she had and others were made to give, under duress, a false account.

88. Her oral narrative, while essentially complete, was somewhat fragmented, to say the least, which led the Court, understandably, to seek clarifications. I must stress that in addition to those helpful clarifications, you can see, when you compare her oral evidence with her statement evidence — it fits. It is the same history, and this afternoon I present a composite account but firmly based only on that material — the statement and the oral testimony.

89. On 25 August, M1's Hindu community was attacked by "around 300 to 400 Bengali people who came into our village holding the weapons"¹⁴⁹. Some 20 or 30 of them came into her house and bound the hands of her and her family¹⁵⁰. Before she was blindfolded, she recognized

¹⁴⁹ CR 2026/17, p. 14 (Witness M1).

¹⁵⁰ Affidavit of Witness M1, 8 February 2023, p. 1, annexed to the letter of the Agent of Myanmar dated 18 November 2025.

some of them as neighbours¹⁵¹. You may recall with that she broke down — it was her neighbours who were doing this. She said that *some* among them wore masks¹⁵² and that “some men, who appeared to have come from the other side of the border, were dressed in black and carried firearms. We could not understand the language they spoke”¹⁵³.

90. M1 and others from her community were told, “[y]ou must not live in this country. Neither your ethnic people, nor the military, nor the Hindu community may remain here.”¹⁵⁴

91. Then men, women and children were made to walk to a place called Bawtala Creek near Bawtala village, about 5 miles away¹⁵⁵. As it was difficult to walk blindfolded with children, en route the women were allowed to remove their blindfolds¹⁵⁶. The men, however, remained blindfolded and were escorted on both sides¹⁵⁷.

92. At the creek, eight of the women were selected and made to sit near a cow-shed. The eight women were asked: “Would you like to convert to Islam and would you like to marry us? Otherwise we will kill you.” They agreed to convert and marry. Their abductors then “took the men and other people to the betel leaf farm and killed them”¹⁵⁸. All the other women and children were taken into the forest and killed¹⁵⁹.

93. M1 told you: “we not only heard the cries of those men, but we also saw with our eyes what they show us. They showed us the knives stained with blood. So they also told that they . . . could not do the *Qurbani*, or halal cutting throat, for three years. Now we could do that.”¹⁶⁰

¹⁵¹ CR 2026/17, pp. 36-37 (Witness M1); Affidavit of Witness M1, 8 February 2023, pp. 1-2, annexed to the letter of the Agent of Myanmar dated 18 November 2025.

¹⁵² Affidavit of Witness M1, 8 February 2023, p. 1, annexed to the letter of the Agent of Myanmar dated 18 November 2025.

¹⁵³ *Ibid.*, p. 2.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ CR 2026/17, p. 32 (Witness M1); Affidavit of Witness M1, 8 February 2023, p. 2, annexed to the letter of the Agent of Myanmar dated 18 November 2025.

¹⁵⁷ Affidavit of Witness M1, 8 February 2023, p. 2, annexed to the letter of the Agent of Myanmar dated 18 November 2025.

¹⁵⁸ CR 2026/17, p. 17 (Witness M1).

¹⁵⁹ *Ibid.*

¹⁶⁰ CR 2026/17, p. 18 (Witness M1).

94. She also told you: “There were about 55 people from our village and about 45 people from another village named Ye Baw Kya” who were killed¹⁶¹. This included her husband, her nephew, her younger brother, her uncle, her aunt — nine relatives in all¹⁶². Later on, when the bodies had been exhumed, M1 identified her husband among others¹⁶³.

95. The eight women with their children were then taken to Raulfi’s house in Bawtala village, where they had to change into Muslim dress. The clothes came from this house¹⁶⁴. That is her evidence. They were in or near that house for two days and then made the journey to Kutupalong camp in Bangladesh, arriving there on the 28/29 August¹⁶⁵.

96. Members of the Court, M1 told you she knew the people who attacked were ARSA¹⁶⁶. She knew that people from her village collaborated with ARSA and committed crimes¹⁶⁷. In her own words: “I know some of them; one of the collaborators . . . Nurolock . . . is the leader of that incident.”¹⁶⁸ Other people, she said, in her village also knew those men were ARSA members and told her¹⁶⁹.

97. She said, “I heard with our ears clearly about their saying they will attack the military bases and police post. Not only that; they will also kill other ethnic people like Rakhine.”¹⁷⁰ The men told them directly of their intention to attack security posts and the reason for what they did or were intending to do — and she saw they did so¹⁷¹.

98. She arrived in Kutupalong at the end of August, 28/29 August, where the eight women were told by Mawlawi leaders they had to give a video interview, in which they were instructed to give a false account and to blame Myanmar and the Rakhine for the killings. You may recall she said

¹⁶¹ CR 2026/17, p. 18 (Witness M1).

¹⁶² Affidavit of Witness M1, 8 February 2023, p. 3, annexed to the letter of the Agent of Myanmar dated 18 November 2025.

¹⁶³ *Ibid.*, p. 5.

¹⁶⁴ CR 2026/17, pp. 34-35 (Witness M1).

¹⁶⁵ CR 2026/17, pp. 18, 34 (Witness M1).

¹⁶⁶ CR 2026/17, p. 32 (Witness M1).

¹⁶⁷ CR 2026/17, p. 17 (Witness M1).

¹⁶⁸ CR 2026/17, p. 27 (Witness M1).

¹⁶⁹ CR 2026/17, p. 32 (Witness M1).

¹⁷⁰ CR 2026/17, p. 21 (Witness M1).

¹⁷¹ CR 2026/17, pp. 32-33 (Witness M1).

this was about 3 p.m., and she mentioned, “they were about to give us a beef curry”. They gave the false account, under duress¹⁷². She said: “We were closely watched by the terrorists, who were armed with guns and knives, and we were threatened with death, should we fail to comply”¹⁷³.

99. You have seen the video. You have the transcript — it is solid evidence indeed. No suggestion of fabrication, surely — it speaks for itself. She does not speak on the video — from the little we see of her she is clearly, as you would expect, looking exhausted, distracted and nervous.

100. I was surprised to hear Mr Suleman had raised some speculative challenges to whether she appears in it¹⁷⁴. It was not suggested to her when she was here in court. Mr Suleman suggested on Monday that I was unable to identify her¹⁷⁵, even though I had just shown the Court a screenshot — it was surely best that she identify herself¹⁷⁶.

101. She now lives far from Rakhine State and its Bengali population — not, as before, on the border with Bangladesh and its camps. It is understandable that after all that befell her and her family — with nine family members killed, including her husband and her brother — that she may have no desire to return to a Muslim Bengali community in northern Rakhine.

102. So the facts are clear enough, we say, corroborated by the video.

103. But in addition you have the notarized affidavit of M2, who was, as it were, standing in the wings here in case M1 was unable through illness or indisposed. She, too, was one of the eight women and she appears on the video — you may remember the very young woman — a girl, really — in pink. In her affidavit, she gives a full account of the attack on 25 August in that village, the killings, the abduction, and the making of the video under duress. And you have, in addition to that, the witness statements of two other of the eight women who give detailed accounts in similar vein¹⁷⁷. Until a day or two ago, none of this had ever been challenged in any pleading from The Gambia.

¹⁷² CR 2026/17, p. 19 (Witness M1).

¹⁷³ Affidavit of Witness M1, 8 February 2023, p. 4, annexed to the letter of the Agent of Myanmar dated 18 November 2025.

¹⁷⁴ CR 2026/20, p. 63, para. 44 (Suleman).

¹⁷⁵ *Ibid.*

¹⁷⁶ CR 2026/17, pp. 27-28 (Hooper).

¹⁷⁷ Witness Statement of Ma Phaw Mi Lar, 1 November 2017, RM, Vol. III, Annex 97; Witness statement of Ma Pu Jar, 1 November 2017, RM, Vol. III, Annex 98.

104. Amnesty International refers at some length to the Kha Maung Seik massacre in this publication¹⁷⁸, with this image — the woman, cadavers behind. The lengthy details in there are consistent with everything M1 said. It was first published in May 2018, long before the statement made by the witnesses in Myanmar. The date of the publication is in the document.

105. We can therefore surely safely conclude:

- Firstly, there were Bengali terrorist groups, using local villagers in large numbers;
- Secondly, there were ARSA members among these men — some with masks — and they were “from elsewhere”, she said, armed with guns, who may have been perhaps the core terrorist group;
- Thirdly, they committed a terrible atrocity with over 100 men, women and children — larger than what has been alleged for all but two or three or so of The Gambia’s “crime scenes”.
- Fourthly, it demonstrates a clear, early example of pressure brought to bear within the Muslim camps to present false evidence against Myanmar.

6. Professor Newton

106. Finally, I come to Professor Newton. Mr President, Members of the Court, Professor Newton — highly experienced in military matters, clearly competent to be The Gambia’s expert on such matters. I will address his evidence broadly, and other counsel will address you on military matters.

107. The process of his being asked to provide an expert report is unclear, lost in time.

108. He could not recall the circumstances of his being instructed. He could not provide an indication of when he was first requested to provide a report or when that was in relation to the submission of The Gambia’s Memorial¹⁷⁹. All we know, and it seems all that he can recall, is that his first report is dated “October 2020”¹⁸⁰, the same month as the Memorial, submitted on 23 October 2020.

¹⁷⁸ Amnesty International, *New Information Reveals*, CMM, Vol. VI, Annex 268.

¹⁷⁹ CR 2026/16, p. 16 (Newton).

¹⁸⁰ First Expert Report of Michael A. Newton (October 2020), MG, Vol. XI, Annex 359.

109. Most unusually, we submit, there were no terms of reference setting out the parameters for the opinion¹⁸¹. It all seems to have been a very informal arrangement, and appears to have continued like that over the next years — phone calls and the like¹⁸² — an informality even more unusual contrasted with the formality of this present process.

110. He agreed that as an expert, his primary duty is to the Court, not to any party; his function was to furnish the Court with information likely to be outside the Court’s experience and knowledge and to do so objectively and without bias¹⁸³.

111. His status as an expert is unique, as it permits him to express an opinion so long as that opinion is a matter that falls within his area of expertise. Opinion that falls outside an expert’s expertise is not admissible. These basic principles he understood and agreed¹⁸⁴.

112. Unhappily, we must submit that Professor Newton in this case has stepped way beyond the confines of his expertise by expressing opinions that are beyond that expertise. Such opinions must therefore be rejected by the Court.

A. The basis of the reports

113. We lack terms of reference — there were none as such. It seems to have been, rather, “have a look at this and what do you think?”; “this” being essentially the FFM’s 2018 report.

114. What we do have is the introduction to his first report of October 2020 which appears to have been, absent terms of reference or any similar document, self-composed by Professor Newton.

115. There he states:

“I identify the well-established characteristics, or indicia, of authentic counterinsurgency operations. I then present my views on whether the ‘clearance operations’ conducted by Myanmar’s armed forces in Rakhine State from 2016 to 2018 can be described as bona fide counterinsurgency operations.”¹⁸⁵

116. There is no mention in that paragraph of his being requested to give his opinion as to “is this genocide”, and it would be surprising if it did form part of his terms of reference, however

¹⁸¹ CR 2026/16, p. 36 (Newton).

¹⁸² CR 2026/16, pp. 17, 36 (Newton).

¹⁸³ CR 2026/16, p. 15 (Newton).

¹⁸⁴ *Ibid.*

¹⁸⁵ First Expert Report of Michael A. Newton (October 2020), para. 1, MG, Vol. XI, Annex 359.

informal those instructions were. His brief — it can be seen from that document, that excerpt — was whether the “clearance operations” could be described as “bona fide counterinsurgency operations”.

B. COIN doctrine

117. “COIN” is an amalgam of “Counter” and “Insurgency”¹⁸⁶. It is a military concept, a military doctrine — it is not applicable elsewhere. It is not a legal concept.

118. Professor Newton confirmed that “clearance operation” is a legitimate military phrase used by countries including the United Kingdom, the United States of America, NATO and other forces¹⁸⁷.

119. The first report sets out at length what is meant by the doctrine of COIN in modern military parlance¹⁸⁸. It states:

“Authentic counterinsurgency (COIN) requires comprehensive efforts to reassert the sovereign authority of the state, with the overall objective of establishing stable and secure peace that protects the civilian population. . . . The civilian population *per se* cannot constitute a lawful military target of COIN.”¹⁸⁹

120. Well, COIN, as set out by Professor Newton, is in sum a best practice, as to how to achieve a successful counter-insurgency. It includes not only confronting the insurgents militarily, with kinetic force, as it says in the report, but ensuring that they do not re-establish themselves and that that is best done by respecting, protecting and helping the local population¹⁹⁰.

121. It all seems very impressive wrapped up as a doctrine, and doubtless useful in training military and civil authorities — in fact it really seems to be common sense.

122. If the civilian population had been subjected to the treatment — i.e. in Rakhine State — if that civilian population had been subjected to the treatment described in the FFM reports, then Myanmar’s forces acted in a manner not compliant with this COIN doctrine. We accept that it must logically follow, and to that extent we obviously accept his opinion. And that is not a contentious issue in this case.

¹⁸⁶ *Ibid.*, para. 8; CR 2026/16, p. 18 (Newton).

¹⁸⁷ CR 2026/16, p. 18 (Newton).

¹⁸⁸ First Expert Report of Michael A. Newton (October 2020), paras. 8-20, MG, Vol. XI, Annex 359.

¹⁸⁹ *Ibid.*, para. 8.

¹⁹⁰ Second Expert Report of Michael A. Newton (May 2024), para. 8, RG, Vol. IV, Annex 67.

123. However, Professor Newton agreed that counter-insurgency operations do not cease to be counter-insurgency simply because they do not conform with COIN doctrine¹⁹¹.

C. The first report

124. Professor Newton's first report is based on the FFM's findings. As he said: "my basis of the facts — I had no independent fact-finding ability — was on the entirety of the FFM work"¹⁹².

125. His conclusion, having dedicated nearly all of the report to describing COIN — the doctrine and what it is — is that Myanmar's "clearance operations" were not COIN doctrine compliant — and then he makes the leap. He said:

"The only plausible conclusion from the available evidence is that the 'clearance operations' were conceived, coordinated, and conducted with the intention of destroying the Rohingya population on the basis of their ethnic and religious identity."¹⁹³

126. I will return to the leap in a moment.

D. ARSA

127. Professor Newton reaches this precipitous conclusion with no mention of ARSA at all¹⁹⁴. Not a breath of it in that first report.

128. He assures us that he was aware of ARSA — or at least to the extent of the FFM report. So, it is all the more extraordinary that this first report makes no mention of ARSA at all — nothing about the nature of the insurgency, the role of ARSA, the attacks in 2016, the attacks in 2017, its capacities, etc. — and this in a report dealing with this specific counter-insurgency. Of course, we know that The Gambia was also ignoring the role of ARSA — even to the extent of annexing FFM reports filleted of ARSA-related content¹⁹⁵.

129. It is only in his second report, four years later — May 2024 — after seeing the Counter-Memorial — as you know it contains a lot about ARSA — that Professor Newton mentions

¹⁹¹ CR 2026/16, p. 20 (Newton).

¹⁹² CR 2026/16, p. 21 (Newton).

¹⁹³ First Expert Report of Michael A. Newton (October 2020), para. 29, MG, Vol. XI, Annex 359.

¹⁹⁴ CR 2026/16, p. 21 (Newton).

¹⁹⁵ CMM, para. 3.8.

ARSA, and concedes that there was a counterinsurgency “for sure”, as he said, but it seems a rather begrudging concession¹⁹⁶.

130. Now he has gone further in his oral testimony before you, stating:

“It was very clear after 25 August 2017 in the analysis of the FFM that the group met all the requisite requirements to become an armed force in the context of an armed conflict not of an international character, which meant there was an active insurgency, which meant that everything the Government did subsequent to that, and during that prior period as well, after the October 2016 attacks, was counter-insurgency.”¹⁹⁷

131. As to ARSA growing in size and capacity, he said: “That was clearly demonstrated by the attacks of 25 August.” “They were an active insurgency that was attacking police posts and other places, so that’s a serious insurgency, it’s definitely an insurgency”¹⁹⁸ and that: “Myanmar had an absolute sovereign right to conduct military operations directed against the counter-insurgents.”¹⁹⁹

E. The leap to genocide

132. I return to the leap. The leap in the first report goes from this was “not COIN doctrine compliant” to this is “genocide”. It is a huge leap. I encourage you to go back and remind yourselves again of those closing paragraphs of his first report — how very general it is, and unsupported by reference to specific acts. He refers to “attacks intentionally directed at the civilian population”²⁰⁰, a background of discrimination²⁰¹, a failure by commanders to restrain their military or to provide safe zones for civilians²⁰².

133. But there it is — and that opinion, fully-formed, I stress, from 2020, is carried into the second report, where it is repeated *ad infinitum*, appearing as a conclusion to 13 of his paragraphs in that second report. I went through them briefly; they are set out briefly in the transcript at pages 27 and 28²⁰³. Thirteen paragraphs he states repeatedly that particular behaviours can *only* have been done to destroy the Rohingya people in whole or in part.

¹⁹⁶ Second Expert Report of Michael A. Newton (May 2024), para. 10, RG, Vol. IV, Annex 67.

¹⁹⁷ CR 2026/16, p. 23 (Newton).

¹⁹⁸ CR 2026/16, pp. 23-24 (Newton).

¹⁹⁹ CR 2026/16, p. 25 (Newton).

²⁰⁰ First Expert Report of Michael A. Newton (October 2020), para. 29, MG, Vol. XI, Annex 359.

²⁰¹ *Ibid.*, para. 27.

²⁰² *Ibid.*, para. 24.

²⁰³ CR 2026/16, pp. 27-28 (Hooper).

134. He does not address any plausible alternatives, or alternatives, with one exception, which will be addressed by Mr Blom-Cooper in his speech to you. He does not mention ethnic cleansing even, does not address it in any of his reports — does not mention it until his oral testimony²⁰⁴.

135. Now, our submission is that in expressing the concluding opinion that the various behaviours he itemizes were done with “the intention of destroying the Rohingya population on the basis of their ethnic and religious identity”, and to the exclusion of other alternatives, Professor Newton has made a quantum leap and has taken himself out of his military expertise to a place where his opinion has no currency. It is an opinion beyond his expertise as a military expert. In fact, he has effectively sought to instruct the Court on the very issue this Court has to decide. That is not the function of an expert.

136. The Gambia, yesterday and elsewhere²⁰⁵, says that Myanmar has not produced an expert of its own. But is it seriously contended that this Court would approve, or find assistance in, someone coming to this Court to tell you, “this is not genocide”. What kind of expert would that be — a genocide expert? Is not that a finding uniquely for you, the judges?

F. Professor Newton’s independence

137. Professor Newton was asked about his association with various groups²⁰⁶. We repeat: however laudable it may be to be active or associated with such groups, it does give an appearance of bias. Any reasonable, disinterested onlooker, observer, may consider it does not show him to be a disinterested person, that he is not providing an objective and unbiased opinion as his role as an expert dictates he must. And that view may be further confirmed by the nature and structure of his reports — those 13 paragraphs — and the manner in which he gave his evidence, particularly towards the close of his questioning in cross-examination, which assumed perhaps more the posture of an advocate than that of an expert presenting an unbiased opinion.

²⁰⁴ CR 2026/16, p. 33 (Newton).

²⁰⁵ CR 2026/20, p. 28, para. 29 (Sands); CR 2026/19, p. 62, para. 38 (Suleman).

²⁰⁶ CR 2026/16, pp. 30-31.

G. “*Modus operandi*”

138. The Court will appreciate 40 minutes is not a very long time to question an expert in respect of two reports and a statement, particularly when for the first time in the course of all testimony before you he introduces a new concept — “*modus operandi*” — a term not previously mentioned in his reports or affidavit and first said on Thursday²⁰⁷. It seems to have been inadequately thought through and examined without any real care. Upon analysis it takes the value of his expertise no further, indeed, it goes perhaps the opposite way. In any event, that concept will be addressed more fully and adequately in following speeches.

139. I think I too will end on a literary flourish. We probably all know the famous investigator Sherlock Holmes. In his book *A Study in Scarlet*, he cautions: “it is a capital [a big] mistake to theorize before you have all the evidence. It biases the judgement.”

7. Conclusion

140. Mr President, Members of the Court, that concludes my submissions to you on the testimony of the oral witnesses called by the Parties in this case. It leaves me only to thank you for your attentiveness and courtesy.

141. Mr President, I invite you to call on Ms Lawrie to address you on the questions posed by Judge Brant and Judge Pillay.

The PRESIDENT: I thank Mr Hooper for his statement. I now call Ms Leigh Lawrie to the podium. You have the floor, Madam.

Ms LAWRIE:

**III. QUESTIONS CONCERNING THE ARAKAN ROHINGYA SALVATION ARMY (ARSA)
(JUDGES BRANT, CHARLESWORTH AND CLEVELAND) AND
PROTECTING CIVILIANS (JUDGE *AD HOC* PILLAY)**

Introduction

1. Mr President, Madam Vice-President, Members of the Court, good afternoon. My presentation this afternoon will respond in the first place to the four questions mainly concerning ARSA put to Myanmar by Judge Brant. Those questions were also put on behalf of Judge

²⁰⁷ CR 2026/16, p. 21 (Newton).

Charlesworth and Judge Cleveland. I will then answer the question put by Judge *ad hoc* Pillay about instances where the Myanmar Military protected people.

1. Questions put to both Parties by Judge Brant (also on behalf of Judges Charlesworth and Cleveland)

Question 1

2. Turning to the questions on ARSA. Question 1 is in two parts. The first part asks, in essence, about ARSA's strength, size, organizational structure and military capabilities.

3. I am conscious that my first-round presentation dealing with ARSA addresses some of these issues. Therefore, my response this afternoon will seek to expand on that presentation rather than repeat those submissions.

4. In relation to the questions posed, the time frame of relevance to an assessment of ARSA is 9 October 2016 to the end of August 2017. Given where we ended with the witness last week, I will begin at the end of this period.

5. According to The Gambia's own expert witness, Professor Newton, by August 2017, ARSA was involved in "an active insurgency"²⁰⁸. He noted that the group had attacked police posts and other places²⁰⁹. He described the situation as "a serious insurgency"²¹⁰.

6. Professor Newton's comments correspond with Myanmar's assessment. Throughout this case, Myanmar has underlined the importance of ARSA in terms of having a proper understanding of the responsive actions taken by Myanmar's security forces in northern Rakhine State in 2016 and 2017²¹¹. It has also repeatedly underlined the significant threat the organization posed by 25 August 2017.

7. In contrast, The Gambia has sought to paint ARSA as a "small, poorly organized militia"²¹². According to The Gambia's presentation on Monday this week, it appears that it maintains this view, notwithstanding the *oral* evidence of its own expert²¹³. I stress *oral* evidence because, of course,

²⁰⁸ CR 2026/16, page 24 (Newton).

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ E.g. CMM, Chap. 3; RM, para. 3.

²¹² RG, para. 7.16.

²¹³ CR 2026/19, p. 54-55, paras. 10-17 (Suleman).

Professor Newton's position has changed. After ignoring ARSA completely in his first report, in his second, he described the organization as "a relatively modest and poorly-armed insurgency". Given his evidence on Friday, I suggest it appears he no longer holds that view²¹⁴.

8. The threat posed by the group which would become ARSA first manifested on 9 October 2016 when it launched its co-ordinated attacks on the three government targets I mentioned in the first round. Two of these attacks were in Maungdaw Township²¹⁵, and the other was in Rathedaung²¹⁶. There is evidence available that the three attacks were carried out by a total of around 180 armed attackers and that they used a variety of weapons including guns and machetes²¹⁷. They also used the weapons and ammunition they captured during these initial attacks to carry out further attacks²¹⁸. The fact that the group was able to launch such co-ordinated attacks in different, geographically widespread locations is testament to its relative strength and sophistication, even at this early stage in its existence.

9. In the days that followed, the Myanmar authorities reported that the October attacks were carried out by "the Aqa Mul Mujahidin organisation" led by Hafiz Tohar, the individual otherwise known as Ata Ullah²¹⁹. In terms of overall strength, at this point Myanmar described the group as a "small armed organisation" and as having around 400 members²²⁰. Following interrogation of individuals involved in the October attacks, Myanmar learned that, in the months leading up to the

²¹⁴ RG, para. 9.41; Second Expert Report of Michael A. Newton, May 2024, para. 10, RG, Vol. IV, Annex 67.

²¹⁵ Office of the President, "Press release regarding the attacks on the Border Guard Police posts in Maungdaw Township--14 October 2016", *The Global New Light of Myanmar*, 15 October 2016, page 1, para. 1, CMM, Vol. III, Annex 98; Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), para. 3, CMM, Vol. VI, Annex 162; 2018 FFM Detailed Findings, paras. 1031, 1036, CMM, Vol. VI, Annex 239.

²¹⁶ Office of the President, "Press release regarding the attacks on the Border Guard Police posts in Maungdaw Township--14 October 2016", *The Global New Light of Myanmar*, 15 October 2016, page 1, para. 1, CMM, Vol. III, Annex 98; Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), para. 3, CMM, Vol. VI, Annex 162; 2018 FFM Detailed Findings, para. 1036, CMM, Vol. VI, Annex 239; International Crisis Group, *New Muslim Insurgency*, p. 6, CMM, Vol. VII, Annex 296; International Crisis Group, *Dangerous New Phase*, pp. 8-9, CMM, Vol. VII, Annex 297.

²¹⁷ Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), para. 3, MG, Vol. VI, Annex 162.

²¹⁸ Office of the President, "Press release regarding the attacks on the Border Guard Police posts in Maungdaw Township--14 October 2016", *The Global New Light of Myanmar*, 15 October 2016, page 1, para. 1, CMM, Vol. III, Annex 98.

²¹⁹ *Ibid.*, page 1, para. 5; International Crisis Group, *New Muslim Insurgency*, p. 12, CMM, Vol. VII, Annex 296.

²²⁰ Office of the President, "Press release regarding the attacks on the Border Guard Police posts in Maungdaw Township--14 October 2016", *The Global New Light of Myanmar*, 15 October 2016, page 3, para. 10, CMM, Vol. III, Annex 98.

incidents, the group had been conducting armed training in Maungdaw for youths mobilized by Ata Ullah²²¹. The group was also receiving significant funding from individuals in the Middle East²²².

10. As a result of the 9 October attacks, the evidence shows that the group captured arms and ammunition including between 48 and 52 weapons of various types; 6,624 rounds of assorted ammunition; 47 bayonets; and 164 magazines, albeit that a small amount of ammunition and a homemade gun, were later recovered by the authorities²²³.

11. As I mentioned in my first presentation, further clashes occurred between Myanmar security forces and ARSA on 10 and 12 October 2016 around Myo Thu Gyi and Taung Paing Nyar villages in Maungdaw Township²²⁴, and again on 12 and 13 November 2016, when the military clashed with ARSA near the villages of Pwint Hpyu Chaung, Yae Khat Chaung Gwa Son and Wa Peik²²⁵. There is evidence available that the 12 November incident involved attackers armed with guns, machetes and spears²²⁶.

12. Between the two waves of ARSA violence in late 2016 and 25 August 2017, ARSA grew considerably in size, strength and capability. This is borne out by the simple undisputed fact that it launched simultaneous attacks on some 30 border guard police posts and one military headquarters in northern Rakhine State on 25 August 2017 alone²²⁷. This was a significant feat. Further attacks followed, mostly in the last week of August and in the first days of September 2017. Details of these

²²¹ *Ibid.*, page 3, para. 5.

²²² *Ibid.*, page 1, para. 4. See also International Crisis Group, *New Muslim Insurgency*, p. 17, CMM, Vol. VII, Annex 296.

²²³ Office of the President, "Press release regarding the attacks on the Border Guard Police posts in Maungdaw Township-14 October 2016", *The Global New Light of Myanmar*, 15 October 2016, p. 1, para. 1, CMM, Vol. III, Annex 98; Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), para. 3, MG, Vol. VI, Annex 162.

²²⁴ Myanmar News Agency, "Troops fight back violent armed attackers, kill four", *The Global New Light of Myanmar*, 11 October 2016, CMM, Vol. VIII, Annex 367; *Myawady*, "Tatmadaw attacked by 300 armed men, four soldiers killed", *The Global New Light of Myanmar*, 12 October 2016, CMM, Vol. VIII, Annex 368.

²²⁵ *Myawady*, "One officer, one soldier dead, several injured in fighting continuously erupts in Rakhine", *The Global New Light of Myanmar*, 13 November 2016, CMM, Vol. VIII, Annex 371; Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), paras. 4-5, MG, Vol. VI, Annex 162; International Crisis Group, *New Muslim Insurgency*, pp. 9-10, CMM, Vol. VII, Annex 296.

²²⁶ Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), para. 4, MG, Vol. VI, Annex 162.

²²⁷ Ministry of Defence, Table of the Clash of the Police Outposts, the Military Columns and the Bengali Terrorists in Buthidaung-Maungdaw Region, 26 June 2020, pp. 1-5, Items 1-31, CMM, Vol. IV, Annex 149; 2018 FFM Detailed Findings, para. 1038, CMM, Vol. VI, Annex 239; Myanmar News Agency, "Extremist terrorists attack on police outposts in N-Rakhine", *The Global New Light of Myanmar*, 26 August 2017, pp. 1 and 3, CMM, Vol. VIII, Annex 392.

subsequent attacks and ARSA's engagements with the security forces are set out in my two first round presentations and I will not repeat them here²²⁸.

13. Such a significant escalation in violence raises the very questions posed by Judges Brant, Charlesworth and Cleveland, namely what was ARSA's organizational and hierarchical structure at this point? And what was its size, strength and military capabilities?

14. Again, ARSA's organizational and hierarchical structure has already been mentioned in my first presentation, including the existence of a "*Shura* group" and its reliance on village-level cells led by local leaders and imams²²⁹. However, given The Gambia's almost total reliance on the FFM report, and also the interest in what is meant by ARSA "supporters", you may be interested in the following extract from the FFM report which states:

"ARSA members at the military leadership level were responsible for clusters of villagers, below which were village-level groups, referred to as 'cells'. Individual members had responsibilities at each level, receiving instructions and communications along the chain through Internet-based messaging applications. Village leaders then communicated those orders to supporters [— the FFM's word, not Myanmar's —] inside the villages."²³⁰

15. The FFM's research also showed that ARSA members had different roles according to assignments and expertise which included recruitment and training, the production of explosives, intelligence activities and sentry duties in the villages²³¹.

16. The group's sophisticated organization is perhaps obvious given the sheer number of attacks it was able to perpetrate in one day alone across three different townships. In the face of this undisputed fact, any argument that ARSA was not highly organized and disciplined and, thus, posed a real threat to the safety and stability of the region, is not tenable.

17. The fact that ARSA was enmeshed in villages throughout northern Rakhine State is relevant to an assessment of its size in numbers in August 2017 and also to its capabilities.

18. As mentioned in my first presentation, data from the Ministry of Home Affairs estimated that around 17,600 terrorists were involved in the attacks conducted by ARSA between 25 August

²²⁸ CR 2026/8, p. 57, para. 41 (Lawrie). *See also* CR 2026/7 (Lawrie) and CR 2026/8 (Lawrie).

²²⁹ CR 2026/8, p. 49, para. 10 (Lawrie).

²³⁰ 2018 FFM Detailed Findings, paras. 1015 and 1017, CMM, Vol. VI, Annex 239.

²³¹ *Ibid.*, para. 1018, CMM, Vol. VI, Annex 239.

and 8 September 2017²³². It is not the case that all were formal members. Rather, this figure includes those who can be described as “supporters” — a term I will discuss in more detail shortly — meaning those who were either mobilized from the local community shortly before the attacks or who spontaneously participated in the violence as it occurred.

19. As mentioned in my first presentation, Myanmar’s figures are supported by The Gambia’s own sources such as Amnesty International and a Fortify Rights witness²³³. The preliminary domestic investigations conducted by the Independent Commission of Inquiry (which I will shorten to “ICOE”) — albeit I should underline that these investigations remain incomplete — also reached similar figures, noting that it was estimated that “over 14,000 ARSA-fighters, collaborators and mobs” were involved in the August and September 2017 attacks²³⁴. It would appear that the frontline security personnel deployed to the area, which measured between 3,000 and 3,500, were thus greatly outnumbered²³⁵.

20. Which brings me to ARSA’s military and weapons capabilities. ARSA’s strength and, thus, its capability in terms of being able to perpetrate the 25 August attacks and those that followed came primarily from its sheer numbers. Much has been made by The Gambia that ARSA used mostly sticks and knives to perpetrate its attacks, the implication being that it was not a real threat²³⁶. However, the evidence shows that the 2017 attacks involved significant numbers of attackers, generally measured in the hundreds²³⁷ — a fact not contradicted by The Gambia’s own witness, P5513, who described a group of between 300 and 500 attackers armed with farming tools at Sin Oe

²³² Ministry of Home Affairs, Conditions of ARSA terrorists and their fellows’ attacks on Police Outposts and casualties of members of Myanmar Police Force in Maungdaw Region, CMM, Vol. IV, Annex 150. See also Ministry of Defence, Table of the Clash of the Police Outposts, the Military Columns and the Bengali Terrorists in Buthidaung-Maungdaw Region, 26 June 2020, CMM, Vol. IV, Annex 149.

²³³ CR 2026/8, pp. 51-52, para. 19.

²³⁴ Republic of the Union of Myanmar, *Independent Commission of Enquiry, Executive Summary* (21 January 2020), p. 3, MG, Vol. VI, Annex 167.

²³⁵ *Ibid.*, pp. 3-4.

²³⁶ RG, para. 9.41.

²³⁷ Ministry of Home Affairs, Conditions of ARSA terrorists and their fellows’ attacks on Police Outposts and casualties of members of Myanmar Police Force in Maungdaw Region, CMM, Vol. IV, Annex 150. See also Ministry of Defence, Table of the Clash of the Police Outposts, the Military Columns and the Bengali Terrorists in Buthidaung-Maungdaw Region, 26 June 2020, CMM, Vol. IV, Annex 149.

Pyin²³⁸. It was sheer force of numbers which allowed the attackers to seize the advantage and to overwhelm and outnumber the security forces.

21. This conclusion is supported by the contemporary documents provided by Myanmar in which the Rakhine State Government contacted the Union Government in the capital to request, in the case of Kha Maung Seik, “rescue urgently”²³⁹, and, in the case of Kyauk Pan Du, “the quick evacuation of Kyaut Pan Du villagers” and for reinforcements²⁴⁰.

22. In addition to being able to count on numbers, most of the attackers were armed — a fact detailed in Myanmar’s own records and corroborated by The Gambia’s evidence²⁴¹. That same evidence also shows that a variety of weapons were used, including guns, machetes, knives and swords²⁴². Guns were stolen by ARSA from the security targets it hit during the 2016 attacks and also during the 2017 attacks²⁴³. ARSA was also proficient in explosives with many of the attacks involving bombs and/or IEDs, again a fact demonstrated by The Gambia’s own evidence²⁴⁴.

23. Part two of question 1 asks: “[C]an Myanmar indicate the number and nature of the casualties and the extent of the material damage that it attributes to ARSA during the relevant periods, as an element informing its assessment of ARSA’s operational and military capacity?”

²³⁸ IIMM, Screening Note of P5513 (IIMM0028728637), para. 23 (filed under cover of the letter of the Agent of The Gambia dated 6 December 2025, added to the case file by decision of the Court communicated to the Parties on 17 December 2025).

²³⁹ 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.

²⁴⁰ Rakhine State Government, Letter No. (889) 3/6-1/ (Lone Chone)/ AhPhaYa (Rakhine) to Office of the Union Government, Report on security concerns, 25 August 2017, CMM, Vol. IV, Annex 110.

²⁴¹ IIMM, Screening Note of P5513 (IIMM0028728637), paras. 23, 24, 31 (filed under cover of the letter of the Agent of The Gambia dated 6 December 2025, added to the case file by decision of the Court communicated to the Parties on 17 December 2025); Fortify Rights Document, #18, p. 25; #19, p. 27; #20, p. 30; #24, p. 38; #25, p. 42; #27, p. 48; #43, p. 81, RG, Vol. III, Annex 43; IIMM, Witness Statement No. IIMM0028503937, paras. 48, 49, 102, RM, Vol. IV, Annex 149.

²⁴² IIMM, Witness Statement No. IIMM0028503937, paras. 48, 49, 102, RM, Vol. IV, Annex 149; IIMM, Screening Note of P5513 (IIMM0028728637), paras. 24, 31 (filed under cover of the letter of the Agent of The Gambia dated 6 December 2025, added to the case file by decision of the Court communicated to the Parties on 17 December 2025).

²⁴³ Office of the President, “Press release regarding the attacks on the Border Guard Police posts in Maungdaw Township-14 October 2016”, *The Global New Light of Myanmar*, 15 October 2016, p. 1, para. 4, CMM, Vol. III, Annex 98; Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), para. 4, MG, Vol. VI, Annex 162; Ministry of Home Affairs, Conditions of ARSA terrorists and their fellows’ attacks on Police Outposts and casualties of members of Myanmar Police Force in Maungdaw Region, CMM, Vol. IV, Annex 150.

²⁴⁴ Fortify Rights Document, #18, p. 25; #19, p. 27; #20, p. 30; #24, p. 38; #25, p. 42; #27, p. 48; #43, p. 81, RG, Vol. III, Annex 43; IIMM, Screening Note of P5513 (IIMM0028728637), para. 31 (filed under cover of the letter of the Agent of The Gambia dated 6 December 2025, added to the case file by decision of the Court communicated to the Parties on 17 December 2025).

24. To answer this question, I will divide it into three parts. The first will deal with casualties and damage arising from the 2016 attacks. The second will deal with the period between the 2016 attacks and the August 2017 attacks. The third part will address casualties and damage arising from the attacks commencing on 25 August.

25. For the 2016 attacks, the Government estimated at the time that 69 ARSA terrorists, seven Tatmadaw soldiers and ten police officers were killed. It also estimated that five Tatmadaw soldiers and six police officers were injured. Two hundred and thirty-four Bengalis were arrested²⁴⁵. These figures originate from an official government source and it is these figures which Myanmar would invite the Court to prefer. However, it is acknowledged that there is evidence in the case file that 11 security forces personnel were killed, 5 security personnel were injured and 39 ARSA fighters were killed²⁴⁶.

26. In terms of material damage arising from the 2016 attacks, while this cannot be determined with accuracy due to the circumstances prevailing at the time, the following are drawn to the Court's attention:

- (1) During the fighting around Pwint Hpyu Chaung on 12 November 2016, an unknown number of houses were found on fire by the security forces, the implication being that they were set on fire by ARSA²⁴⁷.
- (2) Myanmar security forces found about 50 houses burned in the village of Yae Khat Chaung Gwa Son on 13 November 2016, again the implication being that they were set on fire by ARSA²⁴⁸.
- (3) On 13 November 2016, ARSA destroyed some 80 houses in Wa Peik²⁴⁹.
- (4) On 13 November 2016, about 60 houses were torched by ARSA in Dar Gyi Zar²⁵⁰.

²⁴⁵ 2018 FFM Detailed Findings, para. 1037, CMM, Vol. VI, Annex 239 citing to "Information released by the Office of the Commander-in-Chief (Facebook post, now defunct), on file with Mission". See also *Myawady*, "Clashes continue in the northern Rakhine, 25 violent attackers dead", *The Global New Light of Myanmar*, 14 November 2016, CMM, Vol. VIII, Annex 373; *Myawady*, "14 violent attackers, 17 terrorist trainees arrested in Maungdaw", *The Global New Light of Myanmar*, 15 November 2016, CMM, Vol. VIII, Annex 374.

²⁴⁶ *The Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), President Office, MG, Vol. VI, Annex 162.

²⁴⁷ Republic of the Union of Myanmar, President Office, *Interim Report of the Investigation Commission on Maungdaw* (3 January 2017), para. 4, MG, Vol. VI, Annex 162.

²⁴⁸ *Ibid.*, para. 5.

²⁴⁹ *Myawady Daily Newspaper*, "The Terrorist Raiders Set Fire to the Houses in Wa Peik Village", 14 November 2016, pp. 14 and 32, CMM, Vol. VIII, Annex 372.

²⁵⁰ "Violent attackers set fire to 60 homes", *The Global New Light of Myanmar*, 15 November 2016, CMM, Vol. VIII, Annex 374.

27. During the period between the two waves of ARSA attacks, there is evidence that the group killed non-Muslim civilians.

- (1) On 24 June 2017, four Rakhine Buddhist villagers came across bomb-making materials in Kyun Pauk Pyu Su village tract in northern Maungdaw Township. ARSA members shot two of them dead²⁵¹.
- (2) ARSA was also suspected of being responsible for an attack in late August 2017 on 20 Daingnet villagers, reportedly from Ran Khar Zay Di village, in northern Maungdaw Township, five of whom were killed²⁵².

28. The evidence on which The Gambia asks the court to rely also shows that ARSA killed Bengalis suspected of being informants and other non-Muslim civilians:

- (1) According to Amnesty International, from late 2016, ARSA abducted or unlawfully killed Rohingya men who were suspected to be providing information about the group to the Myanmar authorities. Amnesty International documented 11 such incidents. In nearly all instances, the victim was a Rohingya village leader known to be close to the authorities²⁵³.
- (2) The FFM reported that, collectively, allegations suggested that more than 50 “informants” may have been killed by ARSA between October 2016 and June 2017²⁵⁴.
- (3) The FFM also reported on the killing of seven Mro near Kine Gyi in August 2017 which was reasonably believed to have been perpetrated by ARSA. This was followed by ARSA’s killing of five Daingnet in Kar Lar Day Hpet²⁵⁵.

29. These examples are not intended to be an exhaustive list but to demonstrate the types of abuses which the group perpetrated and which created fear among the civilian population of northern Rakhine State.

²⁵¹ Myanmar News Agency, “Terrorist training camps, guns uncovered in Mayu Mountains”, *The Global New Light of Myanmar*, 22 June 2017, CMM, Vol. VIII, Annex 386; International Crisis Group, *Dangerous New Phase*, pp. 3-4, CMM, Vol. VII, Annex 297.

²⁵² Myanmar News Agency, “Extremists attack, kill five Daingnet ethnic villagers”, *The Global New Light of Myanmar*, 29 August 2017, pp. 1 and 6, CMM, Vol. VIII, Annex 396.

²⁵³ Amnesty International, *Destroy Everything*, p. 10, CMM, Vol. VI, Annex 269. See also Fortify Rights Document, #44, pp. 84-85, 1 September 2017, CMM, Vol. VII, Annex 278.

²⁵⁴ 2018 FFM Detailed Findings, para. 1053, CMM, Vol. VI, Annex 239.

²⁵⁵ *Ibid.*, paras. 1057-1058.

30. In relation to the violence perpetrated by ARSA in 2017, the Tatmadaw's Investigation Team found that 131 "ethnic/Hindu/Bengali people" and 13 "members of [the] security force" were killed during the confrontations²⁵⁶.

31. Myanmar has not made a thorough assessment of the material damage it attributes to ARSA during the 2017 violence. Such an estimation would be extremely difficult because the damage occurred during fighting and in villages where buildings were made of flammable materials such as bamboo. However, of note is that the preliminary investigation conducted by ICOE found that ARSA "destroyed eight bridges on important public transport routes"²⁵⁷. Again, I issue the caveat that the ICOE investigations remain incomplete. Myanmar's records also detail the various police outposts and other properties which were damaged and/or destroyed by ARSA during the violence on 25 August 2017 and thereafter. For the purposes of time and efficiency, Myanmar directs the Court to the relevant records specified in the footnotes²⁵⁸.

Question 2

32. I turn now to the second question. This question asks: "Can Myanmar explain, with specificity, how it defined a 'supporter' of ARSA for purposes of its military operations?"

33. As I explained in the first round²⁵⁹, at no time did Myanmar equate all Bengali villagers as ARSA supporters and then by extension as terrorists who could be legitimately attacked and killed, as was argued by The Gambia during the first round²⁶⁰. Rather, when Myanmar refers to "supporters", Myanmar is referring to local villagers who, though not formal ARSA members, participated in ARSA's violence when called to do so.

34. The same word "supporters" was used by The Gambia's own sources, including the FFM. The International Crisis Group also mentioned that villagers have actively, and sometimes

²⁵⁶ *Ibid.*, para. 1005 and footnote 2262.

²⁵⁷ Republic of the Union of Myanmar, *Independent Commission of Enquiry, Executive Summary* (21 January 2020), p. 3, MG, Vol. VI, Annex 167.

²⁵⁸ Ministry of Home Affairs, *Terrorists Attacks, Executions and Arson Attacks on Border Guard Police Outposts and People of Other Religions and Villages Committed by ARSA Terrorists Group during 2016 and 2017*, CMM, Vol. IV, Annex 148; Ministry of Home Affairs, *Conditions of ARSA terrorists and their fellows' attacks on Police Outposts and casualties of members of Myanmar Police Force in Maungdaw Region*, CMM, Vol. IV, Annex 150.

²⁵⁹ CR 2026/8, p. 49, para. 11 (Lawrie).

²⁶⁰ CR 2026/4, p. 63, paras. 13-15 (Suleman).

spontaneously, joined in violence initiated by ARSA members. For example, in relation to the ARSA attack on 12 November 2016, the International Crisis Group reports that “[w]hen troops approached the village of [Gwa Sone], the armed group shot at them. Several hundred villagers, armed with whatever they had to hand (knives and farming implements), supported the attackers, seemingly spontaneously”²⁶¹.

35. Therefore, when Myanmar uses the word “supporters”, it does not mean those who merely sympathized with ARSA or who simply agreed with its aims.

Question 3

36. Moving now to the third question which asks: “What specific criteria were used by soldiers on the ground during the military operations to identify persons considered to be lawful military targets, and how were [they] distinguished from civilians?”

37. The counter-terrorism operations were directly responsive to the threat posed by ARSA and its supporters, and operational instructions and rules of engagement were disseminated to ensure the protection of civilians and the proportionate use of force²⁶².

38. More specifically, at 9 a.m. on 25 August 2017, the Office of the Commander-in-Chief issued rules of engagement to the Western Command whose forces would be involved in conducting counter-terrorism operations in response to the ARSA attacks launched earlier that day²⁶³. This was followed on 26 August 2017 by the Tactical Operation Command based in Buthidaung directing the relevant forces that operational instructions for counter-terrorism operations were to be implemented.

²⁶¹ International Crisis Group, *New Muslim Insurgency*, pp. 9-10, CMM, Vol. VII, Annex 296.

²⁶² Office of the Commander-in-Chief (Army), Telegram Letter to Western Command, 25 August 2017, CMM, Vol. IV, Annex 113; Tactical Operation Command (Based) Buthidaung, Letter No. 1 / 10 / 20 / G1 to No. (233) Light Infantry Regiment, No. (234) Light Infantry Regiment, No. (263) Light Infantry Regiment, No. (378) Artillery Battalion, No. (6) Army Hospital, Implementation of operational instructions, 26 August 2017, CMM, Vol. IV, Annex 116; Office of Commander-in-Chief (Army), Letter No. 8 / 145 / 2 (b) 11/ G 1 to Western Command, Compliance with legal provisions in response to terrorist attacks by extremist Bengali terrorists, 2 September 2017, CMM, Vol. IV, Annex 128; Distribution of Rules of Engagement (ROE) cards, CMM, Vol. V, Annex 151; Rules of Engagement for Counter-terrorism Operations against AA and ARSA, CMM, Vol. V, Annex 152; Rules of Engagement for Counter-insurgency Operation in the Western Command Headquarters, CMM, Vol. V, Annex 153; Rules of Engagement for Counter-Terrorism and Counter-Insurgency Operations to Restore Normalcy, CMM, Vol. V, Annex 154; Rules of Engagement for Counter-terrorism Operations to restore normalcy, CMM, Vol. V, Annex 155.

²⁶³ Office of the Commander-in-Chief (Army), Telegram Letter to Western Command, 25 August 2017, CMM, Vol. IV, Annex 113.

Points were expressly raised about the law of armed conflict, rules of engagement and the need to ensure the safety of Bengalis who wished to live in peace²⁶⁴.

39. Complementing the dissemination of operational instructions, rules of engagement pocket cards were distributed in their thousands to members of the Myanmar defence forces²⁶⁵. These included rules of engagement specifically relating to counter-terrorism operations against ARSA²⁶⁶.

40. Extracts of the rules of engagement specifically relating to counter-terrorism operations against ARSA are shown on the screen. Of note are:

“Rules for Self-Defence for all military personnels

6. You shall use deadly force in the following situations:

- (a) When you are fired or about to be fired with a weapon
- (b) When armed persons or crowds or riot instigators are threatening lives, private or public properties
- (c) When you and members of your unit are in a location where attack is imminent

.....

Engagement

11. Response and attack for self-defence are allowed against people and organisations armed with illegal weapons and ammunition.

.....

15. In all military operations on territory with civilian presence, the following rules of armed conflict shall be applied:

- (a) Distinguish between civilians and combatants”.

41. The rules, therefore, specifically address the principle of distinction. They also specifically address the more complex and confusing situations in which that rule must be applied — those are situations where there is violent civil disorder which result in a civilian becoming a legitimate target for the use of proportionate force. This arises when the person is armed and threatening other people’s lives or property.

²⁶⁴ Tactical Operation Command (Based) Buthidaung, Letter No. 1 / 10 / 20 / G 1, to No. (233) Light Infantry Regiment, No. (234) Light Infantry Regiment, No. (263) Light Infantry Regiment, No. (378) Artillery Battalion, No. (6) Army Hospital, Implementation of operational instructions, 26 August 2017, CMM, Vol. IV, Annex 116; *The Global New Light of Myanmar*, “‘Maximum restraint’ in countering terrorism: NSA”, 30 August 2017, pp. 1 and 3, CMM, Vol. VIII, Annex 397.

²⁶⁵ Distribution of Rules of Engagement (ROE) cards, CMM, Vol. V, Annex 151.

²⁶⁶ Rules of Engagement for Counter-terrorism Operations against AA and ARSA, CMM, Vol. V, Annex 152.

Question 4

42. The fourth question asks: “How many of the casualties in the various villages, according to Myanmar’s own records, were (using Myanmar’s characterizations), members of ‘ARSA or its supporters’, how many were ‘collateral casualties of the fighting’ and how many of them were ‘innocent civilians?’”

43. Myanmar understands that this question is not asking about casualties suffered by the Myanmar security services. It also understands that “collateral casualties of the fighting” and “innocent civilians” are a single category, namely persons who were not participating in hostilities.

44. In relation to the ARSA attacks in October and November 2016, as already mentioned, it is not possible to ascertain the exact figures of these casualties even based on Myanmar’s own records. However, according to Myanmar’s military reports, 69 ARSA fighters were killed during the 2016 counter-terrorism operations²⁶⁷. In relation to the 2017 operations, these military reports account for 376 ARSA fighters killed²⁶⁸.

45. The military reports do not, however, provide for an estimation of the casualties among civilians not taking part in hostilities²⁶⁹.

46. That said, according to the ICOE, “many civilians were killed by members of Myanmar’s security forces, directly or collaterally during the security operations”²⁷⁰. However, the ICOE insisted that “this must be further investigated, verified, and thereafter prosecuted by Myanmar’s national legal processes, in particular its military justice system”²⁷¹. Myanmar has considered that the ICOE report provides a preliminary basis for the conduct of further investigations including into the allegations of killings of civilians by members of Myanmar’s security forces. This issue, including the limits on Myanmar’s ability to conduct these further investigations given the current security

²⁶⁷ 2018 FFM Detailed Findings, para. 1037, CMM, Vol. VI, Annex 239, referring to Information released by the Office of the Commander-in-Chief (Facebook post, now defunct), on file with Mission. See also *Myawady*, “Clashes continue in the northern Rakhine”, *The Global New Light of Myanmar*, 14 November 2016, CMM, Vol. VIII, Annex 373; *Myawady*, “14 violent attackers, 17 terrorist trainees arrested in Maungdaw”, *The Global New Light of Myanmar*, 15 November 2016, CMM, Vol. VIII, Annex 374.

²⁶⁸ 2018 FFM Detailed Findings, para. 1005, CMM, Vol. VI, Annex 239 referring to *Myawady*, “Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungtau region, Rakhine State”, *The Global New Light of Myanmar*, 14 November 2017.

²⁶⁹ *Ibid.*

²⁷⁰ Republic of the Union of Myanmar, *Independent Commission of Enquiry, Executive Summary* (21 January 2020), p. 10, MG, Vol. VI, Annex 167.

²⁷¹ *Ibid.*, p. 9.

situation in northern Rakhine State, will be addressed further in the presentation to be given by Professor Miron.

2. Question put to Myanmar by Judge *ad hoc* Pillay

47. Mr President, Members of the Court, I turn now to Judge *ad hoc* Pillay's question regarding instances of how, when and where Myanmar's military protected the people. Information to answer this question comes mainly from Myanmar's Ministries of Defence and Home Affairs. These documents are corroborated by a range of other sources, including the NGO reports on which The Gambia relies. I should also make clear that to answer this question Myanmar has used the publicly available witness evidence collected during the preliminary, albeit incomplete, ICOE investigation. References to where this material can be found are provided in the footnotes to this presentation. It is understood that The Gambia is aware of this material and indeed a section is annexed to its own Memorial.

48. You are now, I am sure, very aware of the two waves of ARSA attacks in 2016 and 2017, as well as the group's size and capabilities. The potential threat posed to the civilian population at the time, therefore, is, I hope, clear.

49. In relation to that first wave, in the two weeks following the 9 October 2016 attacks, around 3,000 ethnic Rakhine people were displaced and were housed at monasteries, schools and camps in Maungdaw, Buthidaung and Sittwe towns. In a number of cases, the military facilitated their evacuation to areas of safety by helicopter²⁷².

50. The ARSA activities I have just outlined to you earlier in my presentation — in particular, the killing of informants and non-Muslim civilians — contributed to rising community tensions. This meant that, in the weeks leading up to the 2017 attacks, Myanmar's security services took steps to protect civilians in both Rakhine and Bengali communities alike. At Chut Pyin, for instance, an armed stand-off between groups was defused by Myanmar security services. The military and Border Guard Police intervened and worked together to control and to de-escalate the situation²⁷³.

²⁷² Amnesty International, *Breaking Point*, p. 32, CMM, Vol. VI, Annex 265.

²⁷³ 2018 FFM Detailed Findings, para. 1163, CMM, Vol. VI, Annex 239.

51. In 2017, ARSA also directly attacked villages in northern Rakhine State. These villages were predominantly home to non-Bengali, including ethnic Mro, Daingnet and Rakhine people. Homes were burnt, and multiple killings were carried out²⁷⁴.

Civilian requests for help

52. Mr President, Members of the Court, you have already heard about the attacks, which occurred in Kha Maung Seik village tract on 25 August 2017²⁷⁵. While The Gambia on Monday — for the first time — tried to raise doubts as to who was responsible for the massacre of around 100 Hindu civilians²⁷⁶, all the evidence I pointed to during my first presentation²⁷⁷ agrees that the attack was perpetrated by ARSA. This massacre coincided with attacks on the police outpost and a nearby Rakhine village, which led to the letter from the Rakhine State Government requesting urgent rescue that I just mentioned²⁷⁸.

53. ARSA attacked multiple other villages that same day. One, you will recall, was Kyauk Pan Du, a Rakhine village in southern Maungdaw. As I mentioned earlier, an official request was sent to Nay Pyi Taw for military assistance in evacuating besieged villagers²⁷⁹. Another was Taung Bazar in Buthidaung Township, where the No. 552 Frontline Light Infantry Battalion — having fought off

²⁷⁴ CMM, para. 3.77; Amnesty International, *Destroy Everything*, p. 47, CMM, Vol. VI, Annex 269; Myanmar News Agency, “Seven more civilians killed in Rakhine”, *The Global New Light of Myanmar*, 31 August 2017, pp. 1 and 9, CMM, Vol. VIII, Annex 398; 2018 FFM Detailed Findings, paras. 54, 1062-1064.

²⁷⁵ CR 2026/8, pp. 63-65, paras. 63-70 (Lawrie); CR 2026/17.

²⁷⁶ CR 2026/19, pp. 62-63, paras. 43-46 (Suleman).

²⁷⁷ Witness Statement of Ma Phaw Mi Lar, 1 November 2017, RM, Vol. III, Annex 97; Witness Statement of Ma Pu Jar, 1 November 2017, RM, Vol. III, Annex 98; Affidavit of Witness M1, 8 February 2023, annexed to the letter of the Agent of Myanmar dated 18 November 2025, CR 2026/17; 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; Myanmar News Agency, “Remains of Hindus found: Dead bodies found in the north-west Yebawkyia village, Maungdaw Township, Northern Rakhine State”, *The Global New Light of Myanmar*, 25 September 2017, CMM, Vol. VIII, Annex 407; Myanmar News Agency, “17 more bodies of Hindu found in N. Rakhine State”, *The Global New Light of Myanmar*, 26 September 2017, CMM, Vol. VIII, Annex 408; The Global New Light of Myanmar and Reuters, “Slaughtered Hindu testament to brutality of ARSA terrorists”, *The Global New Light of Myanmar*, 28 September 2017, CMM, Vol. VIII, Annex 409; Amnesty International, *New Evidence Reveals*, p. 6, CMM, Vol. VI, Annex 268; Amnesty International, *Destroy Everything*, pp. 50-56, CMM, Vol. VI, Annex 269.

²⁷⁸ 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.

²⁷⁹ Rakhine State Government, Letter No. (889) 3/6-1/ (Lone Chone)/AhPhaYa (Rakhine) to Office of the Union Government, Report on security concerns, 25 August 2017, para. 2, CMM, Vol. IV, Annex 110; Annex 25 to the Final Report of the Independent Commission of Enquiry — Incident 10 — Kyauk Pan Du village, p. 3, available at <https://www.legal-tools.org/doc/nw3ekv/>.

an ARSA assault on its base nearby during the night²⁸⁰ — arrived to rescue civilians from an attack²⁸¹.

54. Other villages that similarly sought protection or assistance from the Myanmar security services in the face of ARSA attacks in late August 2017 include: Kyauk Sar Taing²⁸², Myawaddy²⁸³, La Thar²⁸⁴, Thar Yar Kone (Thayagon)²⁸⁵, Ah Htet Pyu Ma²⁸⁶, Taung Pyo²⁸⁷ and Ta Man Thar²⁸⁸. Other witness evidence of individuals being provided with protection includes a Hindu woman from Myin Hlut whose family was escorted to Kyaung Taung by border guard police²⁸⁹ and an ethnic Rakhine village administrator from southern Maungdaw who led his villagers to take refuge in first a school and then the local border guard headquarters²⁹⁰.

The Myanmar military's response

55. In all these locations, the Myanmar security services protected the civilian population by launching counter-terrorism operations against ARSA and/or carrying out evacuations. In Taung Pyo, for instance, 370 students taking shelter in a school facility were evacuated²⁹¹, while 300 Hindus

²⁸⁰ Myanmar Defence Services, No. (15) Mobile Operation Command Headquarters, Zwe Man Hone Operation, Daily operation report No. (238/2017), 25 August 2017, p. 5 (13), CMM, Vol. IV, Annex 114.

²⁸¹ Rakhine State Government, Letter No. (892) 3/6-1/ (Lone Chone)/AhPhaYa (Rakhine) to Office of the Union Government, Report on the situation of the security concerns for the residents and employees in the areas being blocked and attacked in violence in Maungdaw region, 25 August 2017, para. 3, CMM, Vol. IV, Annex 111.

²⁸² Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. (241/2017), 29 August 2017, pp. 8-9, CMM, Vol. IV, Annex 123; Annex 19 to the Final Report of the Independent Commission of Enquiry — Incident 4 — Gu Dar Pyin Village, Buthidaung Township, pp. 5-6, 8, available at <https://www.legal-tools.org/doc/l7ewsm/>.

²⁸³ Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. 243/2017, 31 August 2017, pp. 3-4, CMM, Vol. IV, Annex 127.

²⁸⁴ Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. 244/2017, 1 September 2017, p. 18, CMM, Vol. IV, Annex 127.

²⁸⁵ State Counsellor Office Information Committee, "Terrorists trying to destroy Maungdaw", *The Global New Light of Myanmar*, 28 August 2017, p. 6, CMM, Vol. VII, Annex 395; Annex 28 to the Final Report of the Independent Commission of Enquiry — Incident 13 — Northern Maungdaw, p. 17, available at <https://www.legal-tools.org/doc/qlsogi/>.

²⁸⁶ Annex 28 to the Final Report of the Independent Commission of Enquiry — Incident 13 — Northern Maungdaw, pp. 53-54, available at <https://www.legal-tools.org/doc/qlsogi/>.

²⁸⁷ Ministry of Home Affairs, Terrorists Attacks, para. 9 (iv), CMM, Vol. IV, Annex 148.

²⁸⁸ Annex 28 to the Final Report of the Independent Commission of Enquiry — Incident 13 — Northern Maungdaw, pp. 63-65, 67-6, available at <https://www.legal-tools.org/doc/qlsogi/>.

²⁸⁹ Annex 21 to the Final Report of the Independent Commission of Enquiry — Incident 21 — Myin Hlut, p. 2, available at <https://www.legal-tools.org/doc/ob3ta7/>.

²⁹⁰ Annex 27 to the Final Report of the Independent Commission of Enquiry — Incident 12 — Southern Maungdaw, p. 10, available at <https://www.legal-tools.org/doc/yeuemk/>.

²⁹¹ Ministry of Home Affairs, Terrorists Attacks, para. 9 (iv), CMM, Vol. IV, Annex 148; Myanmar News Agency, "Extreme Terrorism on the rise!", *The Global New Light of Myanmar*, p. 6, 28 August 2017, CMM, Vol. VII, Annex 395.

were evacuated from La Thar²⁹². To protect the nearly 400 villagers of Kyauk Sar Taing²⁹³, who fled to a monastery following threats of an imminent attack by ARSA, counter-terrorism operations were carried out in nearby Gu Dar Pyin and Seint Nyin Pyar, where the responsible ARSA militants were believed to be active²⁹⁴. In Ah Htet Pyu Ma, the border guard police sent motorboats to evacuate Rakhine villagers as ARSA attacked with weapons including IEDs²⁹⁵. You will recall that at Ah Htet Pyu Ma, both the Rakhine and Bengali parts, was ultimately razed by ARSA²⁹⁶.

56. More broadly, the counter-terrorism operations protected civilians by deterring future attacks. It is notable that, where 25 August 2017 saw more than 30 attacks in one night, over the following six days ARSA carried out further attacks against the security services²⁹⁷. Whilst the residents of northern Rakhine State — including the hundreds of thousands of Bengalis who did not leave in 2017²⁹⁸ — still faced threats from other armed groups, the threat from ARSA was reduced.

Conclusion

57. Mr President, Members of the Court, that concludes my presentation and Myanmar's presentations for the day.

58. I will finish with some brief comments. We have been likened to bees at this side of the Bar. But bees are synonymous with hard work. In Scotland, where I come from, in heraldry we often pair bees with a thistle to underline our national commitment to industry. It is my hope that you find our hard work — our rigorous analysis of the evidence, our questioning of the claims made by The Gambia — useful as you embark on what I believe everyone in this room considers to be a weighty and an important task.

²⁹² Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. 244/2017, 1 September 2017, p. 18 (3), Vol. IV, Annex 127.

²⁹³ Myanmar, Ministry of Immigration and Population, List of Population, p. A21, Item 268, CMM, Vol. IX, Annex 465.

²⁹⁴ Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. 241/2017, 29 August 2017, pp. 8-9, CMM, Vol. IV, Annex 123; Annex 19 to the Final Report of the Independent Commission of Enquiry — Incident 4 — Gu Dar Pyin Village, Buthidaung Township, pp. 5-6, 8, available at <https://www.legal-tools.org/doc/l7ewsm/>.

²⁹⁵ Annex 28 to the Final Report of the Independent Commission of Enquiry — Incident 13 — Northern Maungdaw, pp. 53-54, available at <https://www.legal-tools.org/doc/qlsogi/>.

²⁹⁶ CR 2026/9, p. 18, para. 29 (Blom-Cooper); 2018 FFM Detailed Findings, paras. 1062-1063.

²⁹⁷ Amnesty International, *Destroy Everything*, p. 39, CMM, Vol. VI, Annex 269.

²⁹⁸ United Nations and Partners, "Humanitarian Response Plan, January-December 2019", December 2018, MG, Vol. III, Annex 43, p. 10.

59. With that, Mr President, please allow me to extend my thanks to you and to all Members of the Court for your kind attention this afternoon and through all my presentations. It has been a considerable honour to appear before this Court.

The PRESIDENT: I thank Ms Lawrie, whose statement brings this sitting to a close. The oral proceedings in the case will resume tomorrow, Thursday 29 January 2026 at 10 a.m., when Myanmar will continue its second round of argument.

The sitting is closed.

The Court rose at 6 p.m.
