

1. Thank you, Mr. President and Members of the Court. It is an honour to appear before the Court on behalf of the Republic of the Union of Myanmar in these proceedings, in my capacity as Union Minister for Foreign Affairs. For materially less resourceful countries like Myanmar, the World Court is a refuge of international justice. We look to the Court to establish conditions conducive to the fulfilment of obligations arising from treaties and other sources of international law, one of the primary objectives of the United Nations Charter.

2. In the present case, Mr. President, the Court has been asked to apply the Convention, one of the most fundamental multilateral treaties of our time. The Genocide Convention is a matter of utmost gravity. This is the treaty that we made in response to the systematic killing of more than six million European Jews, and that my country signed as early as 30 December 1949 and ratified on 14 March 1956. Genocide was the crime that the International Criminal Tribunal for Rwanda applied in response to the mass-killing of 70% of the Tutsis in Rwanda. It is the crime that was not applied by the Tribunal in Yugoslavia to the displacement of approximately one million residents of Kosovo. Neither was it applied by that Tribunal nor by this Court when deciding upon the expulsion of the Serb population from Croatia in 1995. In both situations international justice was tempted to use this strongest of legal classifications because the requisite to physically destroy the targeted group in whole or in part was not present.

3. Regrettably, The Gambia has placed before the Court an incomplete and misleading picture of the situation in Rakhine State in Myanmar. Yet, it is of the utmost importance for the Court to assess the situation obtaining on the ground in Rakhine State dispassionately and

4. The situation in Rakhine is complex and not easy to fathom. But one thing sure us equally: the sufferings of the many innocent people whose lives were ~~consequence of the armed conflicts of 2016 and 2017, in particular those who~~ their homes and are now living in camps in Cox's Bazar.

6. Mr. President, on 9 October 2016, approximately 400 fighters of the ARSA – known as ARSA – launched simultaneous attacks on three townships in northern Rakhine, near the border with Bangladesh. ARSA claimed responsibility for these attacks, which led to the death of nine people, more than 100 dead or missing civilians, and the theft of 68 guns and more than 100 kg of am-munition. This was the start of an internal armed conflict between ARSA and the Government of Bangladesh Defence Services which lasted until late 2017. The selective factual propositions of Gambia's Application actually concern this conflict.

7. In the months following the 9 October 2016 attacks, ARSA grew in strength in Buthidaung and Rathedaung Townships in northern Rakhine. It resorted to intimidation against local villagers in order to gain support and allegiance, executed informers. According to, among others, the International Crisis Group, ARSA received arms and explosives-training from Afghan and Pakistani militants.

8. In the early morning of 25 August 2017, several thousand ARSA fighters launched attacks on more than 30 police posts and villages, and an army base in northern [redacted] project Slide 2.] Most of the attacks took place on the narrow Maungdaw plain, [redacted] by densely forested hills to the east, and the border with Bangladesh to the west [redacted] that ARSA's objective was to seize Maungdaw Township.

9. It may aid the Court to briefly consider the historical significance of Maungda made Burma a colonial entity separate from British India in 1937, the border between India was drawn along the river Naf, where we find today's border between Myanmar. The historical Kingdom of Arakan had extended much further to the river Naf, including most of what is today Chittagong District in Bangladesh. Many Rakhine communities therefore felt that the border drawn by the British was too far north that it was too far north. Myanmar has never challenged this border since independence. [Please re-move Slide 2.]

10. Britain did not lose control over what is today Maungdaw Town-ship during the Japanese occupation. From September 1942, a number of local Muslim families offered fighters to the V-Force set up to collect intelligence and to initially absorb any Japanese advance. Many of these fighters gave their lives in combat against the Japanese in Rakhine. The sacrifices made by these fighters motivated a call for the creation of an autonomous Muslim space in north-eastern ^{3/10} centred on Maungdaw. Whether or not this was encouraged by British officers, the call was made as soon as it had reoccupied Burma, before independence in 1948. The M

25. The emerging system of international criminal justice rests on the principle of complementarity. Accountability through domestic criminal justice is the norm. Only when domestic accountability fails, may international justice come into play. It would be in violation of the principle of complementarity to require that domestic criminal justice should proceed merely as a precondition for international criminal justice. A rush to externalise accountability may undermine the effectiveness of domestic criminal justice agencies. What does the appearance of competition between domestic and international accountability do to the public's trust in the intentions of international actors?

26. No stone should be left unturned to make domestic accountability work. It is not helpful for the international legal order if the impression takes hold that only rich countries can conduct adequate domestic investigations and prosecutions, and that the justice of countries still striving to cope with the burden of un-happy legacies and past challenges is not good enough. The Gambia will also understand this challenge well, as too are confront-ed.

27. Mr. President and Members of the Court, these reflections are relevant to the case because the Applicant has brought a case based on the Genocide Convention. We are dealing with an internal armed conflict, started by coordinated and comprehensive military operations of the Arakan Rohingya Salvation Army (ARSA), to which Myanmar's Defence Services have responded. Tragically, this armed conflict led to the exodus of several hundred thousand Muslims from the three northernmost townships of Rakhine into Bangladesh – just as the armed conflict in the Balkans with which the Court had to deal led to the massive exodus of, first, ethnic Croats and then, Serbs.

28. As I have already stated, if war crimes have been committed by members of the Defence Services, they will be prosecuted through our military justice system, in accordance with Myanmar's Constitution. It is a matter for the competent criminal justice authorities to determine whether, for example, there has been inadequate distinction between civilians and combatants, disproportionate use of force, violations of human rights, failure to prevent plunder, wanton destruction, or acts of forcible displacement of civilians. Such conduct, if prohibited and relevant under international humanitarian law or human rights conventions, but not under the 1948 Genocide Convention for reasons Professor William Schabas will elaborate in his presentation, 6/10

peoples of our country. Cycles of inter-communal violence in Rakhine going back decades should be countered not just by practical measures aimed at sustainable development and rule of law, but also by nourishing a spiritual mindset of unity. It is a moral responsibility of the State to guard the aspirations of people for harmony and peace.

31. U Thant, the third United Nations Secretary-General, had understood this. In his memoirs *View From the UN* published in 1974: "I even believe that the mark of the modern and imaginative person facing the twenty-first century is that he feels himself to be a global citizen" (p. 454). Encouraging this added layer of identity – a sense of planetary citizenship – has a fundamental importance for peaceful relations between nations as well as ethnic groups.

32. A commitment to broadening the mindset must go hand in hand with practical steps to improve lives. Even before the events of 2016-2017, Muslim, Buddhist and other communities in Rakhine faced what the Kofi Annan Advisory Commission described as complex challenges of low development and poverty rooted in enduring social conflict between the communities. The Myanmar government is committed to addressing these challenges. Together with international partners, we are now striving to ensure that all communities enjoy the same fundamental rights. To expedite citizenship verification and application, a mobile team is already in Rakhine. Birth certificates for children born in Rakhine, regardless of religious background, are issued with birth certificates. Arrangements have been made to enable more Muslim youth to attend classes in other parts of Myanmar. With the support of international and local partners, scholarships are now made available to students from all communities living in Rakhine. The government is also implementing a social cohesion model project in Maungdaw Township, to promote social harmony between different communities. Inter-faith fora have been encouraged. These are some of the steps to address the challenges of livelihoods, security, access to education and health, citizenship, and social cohesion for all communities in Rakhine. Three IDP-camps have already been closed, and an IDP management strategy has been adopted. Myanmar is also committed to voluntary, safe and dignified repatriation of displaced persons from Rakhine under the framework agreement between Bangladesh and Myanmar.

33. Mr. President, how can there be an ongoing genocide or genocidal intent when steps are being taken in Rakhine?

34. To conclude, Mr. President and Members of the Court, Rakhine today suffers from armed conflict between the Buddhist Arakan Army and Myanmar's Defence Services. We are not a party to this conflict, but may, like other civilians in the conflict area, be affected by security measures that are in place. We pray the Court to refrain from taking any action that may aggravate the ongoing armed conflict and peace and security in Rakhine. Right now, in Rakhine an army base near Paletwa is under attack by a group of more than 400 fighters, and some 200 insurgents have surrounded a military column near Ann Chay.

35. Since Myanmar gained independence in 1948, our people have not known sustainable development that is the fruit of peace and prosperity. Our greatest

