
NAVIGATING THE FORTHCOMING ICJ JUDGMENT IN *THE GAMBIA V. MYANMAR*: A Roadmap for Member States

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Legal Action Worldwide (LAW) is an independent, non-profit organisation comprised of human rights lawyers and jurists working in fragile and conflict-affected areas in the Middle East, Africa, Europe, and Asia. LAW works to bring justice to individuals and communities that have experienced grave human rights violations and abuses, with a particular focus on gender equality and gender-based violence. Since 2018, LAW's Rohingya Crisis programme based in Cox's Bazar is working to advance survivor-centred international justice and accountability for the serious international crimes committed against the Rohingya in Myanmar.

The Special Advisory Council for Myanmar (SAC-M) is an independent group of international experts working to support the peoples of Myanmar in their fight for human rights, peace, democracy, justice and accountability.

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Acronyms

AA	Arakan Army	ILO	International Labour Organization
ARSA	Arakan Rohingya Salvation Army	INGOs	International Non-Governmental Organisations
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts	MEC	Myanmar Economic Corporation
ASEAN	Association of Southeast Asian Nations	MEHL	Myanmar Economic Holdings Limited
CSDDD	Corporate Sustainability Due Diligence Directive (EU)	MFTB	Myanmar Foreign Trade Bank
DCTS	Developing Countries Trading Scheme (UK)	MOGE	Myanmar Oil and Gas Enterprise
EROs	Ethnic Resistance Organisations	NUG	National Unity Government
EU	European Union	OECD	Organisation for Economic Co-operation and Development
GHRSR	Global Human Rights Sanctions Regime (EU)	OHCHR	Office of the United Nations High Commissioner for Human Rights
GSP	Generalised Scheme of Preferences (EU)	OIC	Organization of Islamic Cooperation
HRC	Human Rights Council	RRRC	Refugee Relief and Repatriation Commissioner
ICC	International Criminal Court	SCEF	Steering Council for the Emergence of a Federal Democratic Union
ICJ	International Court of Justice	UN	United Nations
ICTY	International Criminal Tribunal for the former Yugoslavia	UNGA	United Nations General Assembly
IHL	International Humanitarian Law	UNHCR	United Nations High Commissioner for Refugees
IIMM	Independent Investigative Mechanism for Myanmar	UNSC	United Nations Security Council
ILC	International Law Commission		

Executive Summary

For almost nine years, Rohingya survivors have carried the weight of a truth that the world has too often been slow to confront – that the brutal acts of violence inflicted on them were the culmination of decades of exclusion, persecution, dehumanisation, and organised destruction. For many of the victims and survivors with whom Legal Action Worldwide (LAW) has worked, justice has meant being heard, being believed, and seeing those responsible held to account. In January 2026, when Rohingya witnesses travelled to The Hague and, in an exceptional moment for an inter-state case, gave evidence before the International Court of Justice (ICJ), that long struggle entered a new phase. LAW was honoured to represent and support the survivors' participation and The Gambia's legal team in those historic merits hearings.

The forthcoming judgment in *The Gambia v. Myanmar* will therefore be much more than a legal milestone. It will shape the next phase of the Rohingya community's fight for justice, the international response to Myanmar's on-going crisis, and the credibility of the Genocide Convention itself. The judgment may find that Myanmar is responsible for the commission of genocide. It may instead find breaches of the duties to prevent, punish, legislate against, or refrain from complicity in genocide. It may find violations of the Court's 2020 provisional measures order. It may also deliver a mixed or disappointing result. Each outcome carries different legal, diplomatic and operational consequences. The central message of this paper is that states must prepare now. A passive "wait and see" approach, followed by expressions of concern after the judgment, would fail the Rohingya and squander one of the most important accountability openings in recent years.

This paper sets out a roadmap for Member States, ASEAN, Bangladesh, supportive states, civil society, and Myanmar's pro-democracy movement. It explains what the ICJ can and cannot order; identifies plausible judgment scenarios; assesses the consequences for Myanmar and third states; and proposes practical steps before, during, and after the judgment. The Gambia has asked the Court not only for a finding that Myanmar committed genocide, but also for remedies centred on Rohingya victims, including safe and dignified return, restoration of property and communal sites, family reunification, rehabilitation, compensation, citizenship-related guarantees of non-repetition, and consequences for breach of provisional measures.

The paper is realistic about the Court's likely caution. The ICJ's judgment in *Bosnia v. Serbia* remains the most important warning – even where the Court found breaches of the Genocide Convention, it was restrained on remedies. A robust reparations programme, detailed citizenship-related guarantees, or compensation for Rohingya victims would mark a significant advance in the Court's practice. That should not deter states from preparing for such outcomes. It means they must be legally and politically ready to translate even a cautious judgment into meaningful action.

A positive or partially positive judgment would engage duties for states beyond Myanmar. Where serious breaches are found, third states must not recognise as lawful the situation created by the breach; must not aid or assist in maintaining that situation; and must cooperate through lawful means to bring the breach to an end. These duties have practical consequences. They affect arms transfers, jet fuel supply, surveillance technology, banking links, military-linked revenues, diplomatic engagement, forced or premature repatriation, and economic cooperation that helps normalise or sustain the junta's control.

For Myanmar, an adverse judgment would carry legal, diplomatic, and reputational consequences of the highest order. It would require cessation of on-going wrongful acts, prevention of further violations, investigation and punishment of those individuals responsible, and reparations to victims. It would also complicate Myanmar's efforts to normalise relations within ASEAN and beyond. At the same time, we must recognise that the judgment will land in a complex political landscape: the military junta remains contested internationally, the National Unity Government (NUG) and other pro-democracy actors are seeking recognition, and the Arakan Army (AA) now controls much of Rakhine State. Any serious implementation strategy must account for these realities without allowing them to dilute Myanmar's responsibility under international law.

The judgment may also strengthen universal jurisdiction proceedings in national courts. A finding that Myanmar committed genocide would not determine the guilt of individual officials or commanders in such proceedings but could become an authoritative reference point for domestic courts, especially on the general crime base. Depending on national rules of evidence, courts may take judicial notice of aspects of the ICJ's findings, treat them as highly persuasive authority, or use them as part of the evidentiary record. The practical result could be a shrinking world for Myanmar officials implicated in atrocity crimes, as more jurisdictions open investigations, issue arrest warrants, and restrict safe travel.

This roadmap is therefore a call for immediate preparation.

It also addresses the possibility of a negative outcome. A finding that the Court is not fully convinced that genocide has been legally established must not be treated as vindication of Myanmar. It would not erase the crimes committed against the Rohingya, nor would it remove the legal basis for sanctions, arms restrictions, support to the International Criminal Court (ICC), universal jurisdiction proceedings, Independent Investigative Mechanism for Myanmar (IMM) cooperation, civil claims, or continued political pressure. Supportive states must have messaging ready in advance so that disappointment does not become abandonment.

The judgment in *The Gambia v. Myanmar* will be a decisive moment, but it will not by itself deliver justice for the victims and survivors. Courts can recognise violations, impose obligations, and clarify the law. Implementation, however, will depend on states, regional organisations, donors, civil society, and the Rohingya community itself. The task now is to ensure that when the Court speaks, the international response is immediate, coordinated, and grounded in the rights of Rohingya victims and survivors.

This is the moment to move from solidarity to preparation, and from preparation to action.



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I. Overview



The forthcoming decision by the International Court of Justice (ICJ or the Court) in *The Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* will have profound implications on the Rohingya community's fight for justice.

The period before the judgment is delivered is an important window for Member States and the international community to prepare strategically and practically. These preparations should address both the consequences of the brutal violence against the Rohingya and the wider, on-going crisis in Myanmar.

Given that a range of judicial outcomes is plausible, each requires a distinct operational plan. The international response cannot be designed around a single assumed outcome. A “wait-and-see” approach, followed by general statements of welcome, risks leaving both the Rohingya community and supportive states unprepared.

This position paper sets out: (i) what the judgment can and cannot deliver; (ii) the plausible outcome scenarios and their respective legal and diplomatic implications for Myanmar and third-state parties; and (iii) the concrete actions, individual and collective, including through the United Nations (UN) Security Council (UNSC) and the General Assembly (UNGA), that states — particularly supportive ones, members of the Association of Southeast Asian Nations (ASEAN), and the host state of Bangladesh — should be preparing for now, and not after delivery.

II. Background

In 2019, The Gambia filed a case against Myanmar for alleged violations of the 1948 Genocide Convention arising from Myanmar's 2016-2017 "clearance operations" against the Rohingya living in Rakhine State.

In January 2020, the ICJ indicated provisional measures, requiring Myanmar to take all measures within its power to prevent genocidal acts and to preserve evidence, and to report periodically to the Court. In July 2022, the ICJ rejected Myanmar's preliminary objections,¹ finding that the Court had jurisdiction under Article IX of the Genocide Convention and that The Gambia had standing to bring the case.

Public oral hearings on the merits were held in January 2026,² and the Court is now deliberating; a final judgment is anticipated in the second half of 2026 or early 2027. The final merits judgment will determine: (i) whether genocidal acts were committed *with the intent to destroy* the Rohingya group in whole or in part as such, and (ii) whether the commission of genocide can be attributed to the State of Myanmar.

Eleven states intervened under Article 63 of the ICJ Statute to make submissions on the interpretation of the Genocide Convention, reflecting broader interest in the legal questions at issue. The intervening states are Canada, Denmark, France, Germany, the Netherlands, and the United Kingdom (UK) (joint intervention), Belgium, the Democratic Republic of the Congo (DRC), Ireland, the Maldives and Slovenia. No state intervened in support of Myanmar in these proceedings.

¹ The first, third and fourth unanimously, and the second by 15 votes to 1, with Judge Xue dissenting.

² See Annex 1 for an overview of the key arguments advanced by the parties.

III. What the ICJ Can Order



A. Legal Basis

Remedies in a contentious dispute before the ICJ flow from its inherent judicial function and from the customary law of state responsibility codified in the International Law Commission's (ILC) Articles on State Responsibility (**ARSIWA**), 2001, particularly Articles 30, 31, 34–37 and 41.³

The Court can, in principle, make binding orders:

- **Declaratory findings** of breach of Articles I, III, IV, V and/or VI of the Genocide Convention. A declaratory finding is the minimum if any breach is found.
- **Cessation of the internationally wrongful acts and assurances of non-repetition** (ARSIWA Art. 30).
- **Restitution** where materially possible (ARSIWA Art. 35).
- **Compensation** where restitution is impossible or insufficient (ARSIWA Art. 36).
- **Satisfaction** — declaration, formal acknowledgement, apology (ARSIWA Art. 37).
- **Orders relating to the punishment of perpetrators** including transfer of suspects to competent jurisdictions and cooperation with international tribunals (a remedy adopted in *Bosnia v. Serbia*, 2007).

³ Available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf.

B. Remedies Sought by The Gambia

In addition to the declaratory finding that Myanmar has committed genocide against the Rohingya, and that it failed to take any steps to prevent and to punish those acts, The Gambia has sought the following orders from the Court:

- **Preventative, cessation, and punishment measures.** The Gambia has requested that Myanmar be ordered to take steps to prevent genocide-related conduct. These include suppressing and preventing direct and public incitement to commit genocide, adopting specific domestic legislation criminalising genocide, and ensuring accountability by submitting suspects to trial before an independent and impartial tribunal, including, where appropriate, an international penal tribunal.⁴
- **Victim-centred reparations.**
 - **Restitution:** Beyond cessation and punishment, The Gambia has called for measures framed primarily in terms of **restitution** closely aligned with the on-going circumstances of the Rohingya. These include **safe and dignified return** of the Rohingya, whether displaced within Myanmar or abroad; **restoration or replacement of property** and communal sites; **family reunification**; and **rehabilitation for physical and psychological harm**. Additional elements include the search for disappeared persons and the dignified handling and reburial of remains, alongside guarantees of protection from discrimination and persecution. The Gambia further emphasises **recognition of the right to self-identify** as Rohingya, **freedom of movement**, and equal **access to livelihoods**.⁵
 - **Compensation:** The Gambia has sought financial compensation for any harm, loss, or injury suffered by Rohingya victims that is not capable of being adequately repaired through restitution-based measures alone.⁶
 - **Guarantees of Non-Repetition:** The Gambia seeks recognition of “**full and equal citizenship**” for all Rohingya currently in Myanmar or displaced as a result of the relevant events, framing this as essential to ensuring non-repetition of violations.⁷ Operationally, this implicates the 1982 Citizenship Law and its associated procedures (including the National Verification Card scheme), which institutionalise the Rohingya’s exclusion from full citizenship.⁸
- **Remedies for breach of provisional measures.** The Gambia also requests relief in relation to Myanmar’s alleged failure to comply with the Court’s provisional measures order. This includes restitution and compensation for harm resulting from violations of specific provisions of that order.⁹

⁴ See CR 2026/20, pp. 57–58, available at <https://www.icj-cij.org/sites/default/files/case-related/178/178-20260127-ora-01-00-bic.pdf>.

⁵ CR 2026/20, p. 58.

⁶ CR 2026/20, p. 58.

⁷ CR 2026/20, p. 59.

⁸ The 1982 Citizenship Law puts the Rohingya’s statutory exclusion into effect by tying citizenship to membership in recognised ‘national races’ (taingyintha), which excludes the Rohingya. Any meaningful guarantee of non-repetition tied to citizenship requires reform or repeal of this law and its associated procedures (including the National Verification Card scheme).

⁹ CR 2026/20, p. 59.

An order relating to financial compensation would require a subsequent phase of proceedings should the parties be unable to agree on the quantum of compensation, as has been acknowledged by The Gambia itself.

C. Temperature Check: What Will Shape the Court's Remedies

The key question for *The Gambia v. Myanmar* is not only whether a breach is found (see Plausible Outcomes under Part IV.A, below), but how far the Court is willing to go on remedies.

The Court's merits judgment in *Bosnia v. Serbia* remains a cautionary benchmark. There, the Court found a breach of the duty to prevent and punish genocide but declined to award compensation, citing insufficient causal linkage, and treated declaratory findings and a direction to Serbia to cooperate with the International Criminal Tribunal for the former Yugoslavia (ICTY) as sufficient satisfaction.¹⁰

Anything more ambitious — a structured reparations programme,¹¹ citizenship-related guarantees, or compensation — would therefore be a significant jurisprudential advance in the Court's past practice. The Gambia has clearly invited the Court to move in that direction, drawing in part on the more reparations-forward tone of the 2024 Palestine advisory opinion.¹² Whether the Court accepts or scales back that approach will turn on at least the following factors:

1. **Structural remedies vs. judicial restraint.** The guarantees of non-repetition, particularly the request for “full and equal citizenship” for the Rohingya, sit at the heart of the genocidal allegations: exclusion from citizenship is central to the Rohingya's vulnerability and the risk of recurrence. The Court has however historically preferred flexible formulations over specific domestic legal reforms leaving the choice of means of implementation to the state.¹³ Given this tension, the Court may opt for broadly framed guarantees of non-repetition rather than endorsing structural remedies such as reform or repeal of the 1982 Citizenship Law.
2. **Scope of order regarding punishment.** Another factor is how far the Court considers it can prescribe specific forms of accountability. The Gambia has asked for measures that go beyond general obligations, including requiring Myanmar to submit suspects to trial, potentially before an international tribunal, and notes specific individual perpetrators. Yet the Court has been cautious

¹⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, ICJ Reports 2007, p. 43.

¹¹ The jurisprudence of regional human rights courts is notable in this regard. For instance, in the case of the massacre of the inhabitants of an indigenous village in Guatemala, the State was required to provide not only medical treatment including free medicines and a health clinic, but also education in Mayan culture, bilingual teachers, housing assistance, and infrastructure investment in roads, sewers, and drinking water, *Plan de Sánchez Massacre v Guatemala*, 2004, 125.7–9.

¹² Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, ICJ, 19 July 2024 para 270. (“Restitution includes Israel's obligation to return the land and other immovable property... assets seized from any natural or legal person since its occupation started in 1967... including archives and documents. It also requires the evacuation of all settlers from existing settlements and the dismantling of the parts of the wall constructed by Israel that are situated in the Occupied Palestinian Territory, as well as allowing all Palestinians displaced during the occupation to return to their original place of residence”).

¹³ LaGrand (*Germany v. United States of America*), ICJ (2 March 1999) para 125. Cf. Veronika Fikfak, ‘Structural Remedies: Human Rights Law’ in Hélène Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law* (OUP 2022). Regional human rights courts, particularly the European Court of Human Rights and the Inter-American Court of Human Rights, have demonstrated a progressive remedial practice, issuing detailed and context-specific non-monetary orders and mandating or encouraging reforms to domestic legal and institutional frameworks in response to systemic violations.

about prescribing how institutions should be designed or how criminal enforcement should be carried out.¹⁴ It is possible that the Court reaffirms the obligation to punish under the Genocide Convention but avoids prescribing the precise forum or mechanism. If so, this would signal a preference for general obligations over detailed, operational directives.

3. **Consequences of breaching provisional measures.** A third question is whether the Court will attach consequences to Myanmar's alleged non-compliance with its 23 January 2020 provisional measures order. The Gambia has distinctly requested restitution and compensation linked to Myanmar's breach of the provisional order to prevent acts of genocide against the Rohingya, including the forced recruitment of Rohingya for use as "human shields" in its conflict with the Arakan Army (AA). This puts a systemic question to the Court: if provisional measures are legally binding, should their breach trigger independent remedial consequences? Doing so here would signal a strong enforcement approach.
4. **Bench composition and judicial-tactical considerations.** Voting patterns and individual judges' willingness to write strong separate or dissenting opinions will shape the operative paragraphs and their advocacy utility. Even where the majority is conservative on remedies, robust separate opinions can supply interpretive material that subsequent UN resolutions, sanctions designations and domestic prosecutions can draw on. A fractured bench, conversely, can confine to a lowest common denominator core. Advocacy planning should therefore not assume the operative paragraphs alone will carry the judgment's weight.
5. **Question of ordering reparations to a non-injured state party for benefit of victims that are not its nationals.** The ICJ has never awarded reparations directly to victims so far in any case, though it indicated in its reparations judgment in *DRC v. Uganda* (2022) that the 325 million USD compensation awarded to DRC should be fairly and effectively distributed to victims, under the supervision of civil society organisations with participation from victim representatives and international experts, and should be used to fund measures for the benefit of the affected communities.¹⁵ While this serves as an important precedent for acknowledging victims as beneficiaries, the Court is faced with a novel question in *The Gambia v. Myanmar* in that the victims are not nationals of the State that has brought the case. This case is therefore a vital moment for the jurisprudence on reparations, especially considering the increasing reliance on the Court as a forum to litigate human rights in mass atrocity contexts based on *erga omnes partes* principle.

Bottom line. Although the legal framework supports "full reparation,"¹⁶ the Court's practice has often been more **restrained**. A cautious outcome — declarations plus general punishment-related obligations — is the most likely path. The more ambitious order The Gambia has proposed would require the Court to advance from its established pattern and engage with more forward-looking forms of repair.

¹⁴ See <https://verfassungsblog.de/remedies-as-the-real-test-in-the-gambia-v-myanmar>.

¹⁵ The Court's "global sum" approach in the *DRC v. Uganda*, and the lack of clarity and reasoning in the methodology used for valuation of the loss of life and injuries to persons has been critiqued. The "global sum approach" refers to ICJ's method of awarding a single lump sum amount of compensation where precise quantification of damages is not feasible. See *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Reparations)* ICJ (9 February 2022); Jaber S, 'Case Note: The International Court of Justice's 2022 Reparations Judgment in *DRC v Uganda*' (June 2025) *International Review of the Red Cross* No 928.

¹⁶ *Factory at Chorzów (Germany v. Poland)*, 1927, P.C.I.J., Series A, No. 9 (July 26), p. 21; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Res. 60/147 (16 December 2005).

IV. Outcome Scenarios and Implications

A. Plausible Outcomes and Meaning

Scenario	Outcome	Description	Meaning (for advocacy and planning)
Positive	A. Full attribution (conduct attributable to the State of Myanmar)	Court finds that Myanmar is directly responsible for committing genocide under Article III(a) of the Genocide Convention, alongside breaches of related obligations under Articles I, IV, V and VI of the Convention.	Strongest outcome. Fully engages Article 41 ARSIWA obligations (see Part IV.B, below). Provides the clearest legal basis for remedies (including return and property restoration) and strengthens claims for structural guarantees such as citizenship reform, although the Court's cautious practice means highly prescriptive orders may still be avoided. Detailed reparations — particularly compensation — will most likely be deferred to a subsequent phase.
Partially Positive	B. Partial attribution	Failure to prevent (Art. I), failure to punish (Arts. IV, VI), failure to enact (Art. V), and/or breaches of Art. III(b)–(e) — incitement, complicity, conspiracy, attempt — without state-commission finding.	Closest to the <i>Bosnia v. Serbia</i> (2007) decision. Still triggers Art. 41 consequences for the conduct found to be a serious breach. If the Court finds only failure to prevent/punish, however, without attributing genocide to the State of Myanmar through incitement/conspiracy/complicity, it is debatable whether Art. 41 consequences fully engage. Reparations more likely confined to declaratory satisfaction.

Scenario	Outcome	Description	Meaning (for advocacy and planning)
			Citizenship and return remain on the table as guarantees of non-repetition, though they will be harder to argue.
	C. Breach of provisional-measures order	Even where genocidal intent is not established to the requisite standard, Court finds Myanmar breached the 23 January 2020 Order, plus declaratory relief on prevention/punishment.	Legally narrower but still significant. Provides a concrete basis for follow-up under Article 94 of the UN Charter and reinforces the binding nature of ICJ orders. While it opens the possibility of restitution or compensation linked to non-compliance, the Court may avoid attaching robust remedial consequences.
	D. Mixed / split judgment	The Court delivers a divided judgment with no clear majority on key elements such as genocidal intent or attribution, accompanied by strong separate and dissenting opinions.	Closer to <i>Croatia v. Serbia</i> (2015). Legally ambiguous; in advocacy terms the dissent matters as much as the majority. Will require careful framing in resolutions and statements for effective use. Divergent reasoning may constrain ambitious orders and push the Court toward a cautious, lowest-common denominator approach (declaratory findings and general obligations).
Negative	E. Dismissal on the merits	Court is not “fully convinced” that the evidentiary threshold for establishing genocide or related breaches has been met.	Significant political and community-level damage. Must be planned for explicitly: pre-positioned messaging (so as not to equate dismissal with vindication of Myanmar) and enhanced support to parallel accountability tracks (see Part VII, below).

B. Implications for Third States

A finding under Scenarios A or B engages obligations binding on **every state**, not only Myanmar. The Court has confirmed (*DRC v. Rwanda* 2006; *Bosnia v. Serbia* 2007) that the prohibition of genocide is a *jus cogens* norm and that obligations under the Convention are *erga omnes partes*. A serious breach therefore engages Article 41 of the ARSIWA.

Under ARSIWA Article 41, states have the following duties, and are generally considered on notice of the risks since the ICJ's 2020 provisional measures order (and on-going UN reporting).

- **Duty of non-recognition.** No state may recognise as lawful any situation created by the serious breach. In practice: the legal effects of forced displacement, expropriated Rohingya land and property, and citizenship-stripping cannot be treated as internally valid by third states.
- **Duty of non-assistance.** No state may render aid or assistance in maintaining the situation, including after the fact of the breach. This requires states to refrain from contributing to the continuation, consolidation, or normalisation of the unlawful situation — placing constraints on arms transfers, jet-fuel supply, surveillance technology and dual-use exports, banking and correspondent-banking links to junta-controlled financial entities (notably Myanma Oil and Gas Enterprise (MOGE) and Myanma Foreign Trade Bank (MFTB)), and any state-to-state cooperation that effectively underwrites the military junta.¹⁷

In practice, third states may violate this obligation by providing **military or security cooperation** (arms, training) to Myanmar armed forces; **economic or financial support** to military-linked entities (granting loans, investments, or trade preferences specifically benefiting Myanmar's military conglomerates, e.g., Myanma Economic Holdings Limited (MEHL) and Myanma Economic Corporation (MEC) – the two major, military-run conglomerates that control significant segments of the Myanmar economy, or to **Rakhine projects** that facilitate land seizures, exclusion of Rohingya, or infrastructure supporting security forces; **diplomatic or political legitimization that reduces accountability pressure**; or by **forcing or strongly incentivising unsafe, premature repatriation** of refugees.

- **Duty to cooperate to bring the breach to an end by lawful means.** This duty will give the subsequent European Union (EU)/ Organisation of Islamic Cooperation (OIC)-led UNGA and Human Rights Council (HRC) resolutions, the sanctions regimes, and a possible Article 94 UN Charter referral their legal — not merely political — foundation.¹⁸

Note: Most recommendations in Parts VI to VIII, below, centre on these Article 41 duties. Supportive states' legal ministries should have a pre-positioned operational plan ready ahead of the judgment, reflecting each state's view of what would count as prohibited aid or assistance to Myanmar in a fully or partially positive judgment.

Under Article 48 of the ARSIWA, any state party to the Genocide Convention may invoke responsibility for breaches of *erga omnes partes* obligations. Action by states beyond The Gambia therefore becomes

¹⁷ "... [T]here must be a causal relationship between the aid rendered and the maintenance of the situation caused by the breach of a peremptory norm." Advisory Committee on Public International Law, 'Legal consequences of a serious breach of a peremptory norm: the international rights and duties of states in relation to a breach of the prohibition of aggression', Advisory Report 41, 17 November 2022.

¹⁸ Even undermining of measures taken by other states may amount to failure to cooperate, though this is subject to specific circumstances. Ordinarily it is the failure to cooperate with UN measures, rather than unilateral measures, that would amount to breach of the duty to cooperate.

legally available. The judgment will not displace state immunity in third-state courts (per *Jurisdictional Immunities*, 2012), but it strengthens civil claims against individuals and corporates.

ARSIWA Article 54 also preserves the position of states other than the injured State to take “lawful measures” to ensure cessation and reparation. The precise legal status of third-state countermeasures is contested, but in practice coordinated restrictive measures and asset-related action by groups of states have drawn on this provision, and it will be relevant to the post-judgment sanctions framework.

C. Implications for Myanmar

An adverse or partially adverse judgment (Scenarios A, B, C or D above) would be a formal determination of Myanmar’s state responsibility under the Genocide Convention — whether for direct commission, complicity, or failure to prevent and punish, or for breach of its provisional measures to prevent genocidal acts.

Such a finding would carry serious legal, diplomatic, and reputational consequences. Myanmar’s Agent, Mr. Ko Ko Hlaing, underscored this during the merits hearings, stating that “a finding of genocide **would place an indelible stain on my country . . . [its] reputation and future**,”¹⁹ and that it bears the potential to “**impact vital interests and people for many generations** to come.”²⁰

1. **Reputationally**, State responsibility for genocide in any form would be a lasting judicial finding **associating Myanmar’s military junta with one of the most serious violations of international law**. This “indelible” quality, as Myanmar’s Agent put it, reflects the exceptional gravity of a genocide finding, which will endure in diplomatic relations and public memory.

Domestically, the post-2021 coup context has already prompted some reassessment of previously negative public attitudes toward the Rohingya. A judicial finding may further reinforce recognition of the scale of atrocities against the Rohingya and counter entrenched junta narratives.

If the Court also rejects the counterinsurgency logic advanced by Myanmar, this would be important recognition for other ethnic communities, against whom similar counterinsurgency logic has been used by the junta to justify the targeting of civilians, the destruction of livelihoods, and the obstruction of humanitarian assistance as a means of control and punishment.²¹ It should also be borne in mind that the military junta would seek to weaponise an adverse or partially adverse judgment to fray inter-ethnic solidarity and stoke pro-military Bamar-nationalist sentiment within the country.

2. **Legally**, Myanmar will be required to cease on-going wrongful acts, prevent further violations (such as public incitement), investigate and prosecute responsible individuals, and provide reparations to victims. The scope of reparations may include orders to facilitate safe and dignified returns of

¹⁹ CR 2026/7, para. 2.

²⁰ CR 2026/23, para. 3; see also *Myanmar Begins Defence in Landmark Genocide Case at UN World Court*, U.N. News (Jan. 16, 2026), <https://news.un.org/en/story/2026/01/1166782>.

²¹ Special Advisory Council for Myanmar (SAC-M) and Asian Network for Free Elections (ANFREL), ‘Old Generals, New Clothes: The Myanmar Junta’s Illegitimate 2025–26 Elections and the Way Forward’ (10 April 2026), p. 56, available at <https://specialadvisorycouncil.org/2026/04/old-generals-new-clothes-the-myanmar-juntas-illegitimate-2025-26-elections-and-the-way-forward>.

displaced Rohingya, citizenship and rights reforms, and compensation, subject to what the Court considers appropriate (as discussed in Part III, above).

Non-compliance could in principle prompt action by the UN Security Council under Article 94 of the UN Charter, though more likely Myanmar will face stronger calls for compliance from the UN General Assembly (see Part VII below).

Note: Since late 2023, the Rohingya have faced serious abuses and crimes in the **on-going armed conflict between the AA and the Myanmar military**, at the hands of both parties, which has resulted in a new wave of displacement of over 150,000 Rohingya into Bangladesh. Two points are worth noting. First, this conflict **does not provide any defence or justification** for Myanmar's violations and crimes against the Rohingya, particularly those committed during 2023-2024 arguably in breach of its provisional measures obligation. Second, if the ICJ orders Myanmar to allow safe and dignified repatriation of the Rohingya, **the AA — as the dominant de facto authority controlling over 80 per cent of Rakhine State as of 2026 — would become an important player**. Myanmar would be under an international legal obligation to create conducive conditions for return. Any potential negotiations between the AA and the junta would need to take the ICJ order into account; ignoring the order could undermine the AA's international engagement.

3. **Diplomatic and trade-related.** Myanmar's efforts to normalise its position within ASEAN would face further constraints. ASEAN collectively, supplemented by positions expressed by a number of individual Member States — including Indonesia, Malaysia, the Philippines and Singapore — has already withheld endorsement of junta-led electoral processes. A genocide-related finding would increase the political cost of unqualified engagement and further deepen Myanmar's isolation within the regional bloc.

International pressure on Myanmar would likely intensify, including through arms restrictions, sanctions, and closer scrutiny of bilateral engagement. Trade-related consequences, including potential withdrawal of preferential access by Western partners, may follow, further impacting the willingness of foreign companies to invest or do business in Myanmar. Regional powers such as China²² and India, however, are likely to adopt more limited assessments, shaped by strategic considerations including protection of investment projects, and in light of potentially narrower interpretations of prohibited “non-assistance.” Even so, precedents show the Court's capacity to shape state behaviour indirectly through heightened global awareness and diplomatic alignment.²³

Representation of Myanmar at International Fora

Compliance also intersects with the unresolved question of who speaks for Myanmar internationally. Since the 2021 coup, the UNGA Credentials Committee has repeatedly deferred a decision on the competing claims of the National Unity Government (NUG) and the military junta, with the pre-coup Permanent Representative remaining seated. The judgment will land in this contested representational landscape.

²² Notably, China, having officially announced its support to South Africa in *South Africa v. Israel* earlier this year, may be likely to recalibrate its high-risk conduct vis-à-vis Myanmar.

²³ Notably, the ICJ's *Chagos Islands Advisory Opinion* (2019) led to a UNGA resolution (voted for by 116 member states) demanding that the UK withdraw its colonial administration. This in turn paved the way for an agreement between the UK and Mauritius, including resettlement provisions and a multimillion-dollar trust fund. As of December 2025, the Committee on the Elimination of Racial Discrimination has indicated concern that the UK-Mauritius agreement insufficiently centres the Chagossian people as right-holders.

Supportive states should anticipate — and where possible coordinate — the credentialing implications of post-judgment engagement, including in the GA, HRC, and other UN forums.

Compensation and the Enforcement Question

If the Court awards compensation (whether in the merits judgment or in a later phase), the key question for supportive states is how an order can be enforced against a junta that refuses to comply. Three pathways will merit advance preparation:

- **Frozen and military-linked assets.** Coordinated mapping of MOGE, MFTB, MEHL/MEC, and related assets in third-state jurisdictions, including the legal routes (and their limits) for repurposing such assets toward reparations. Comparative debates in the context of Russian sovereign and military-linked assets are instructive.²⁴
- **Trust fund seeded by sanctions enforcement and voluntary contributions.** As detailed in Part VII.C below, a victims' reparations trust fund can absorb voluntary state and private contributions, proceeds from sanctions-violation enforcement, and court-ordered penalties without prejudicing Myanmar's primary duty as the responsible state.
- **Pre-positioned domestic civil claims.** Civil proceedings against individuals and companies implicated in the underlying conduct, including under universal jurisdiction and corporate due diligence statutes, can run in parallel and feed into the reparative framework.

Bottom line. An adverse or partially adverse judgment would impose clear legal obligations on Myanmar while raising diplomatic and reputational costs. Compliance would offer a structured pathway toward remedying breaches and reducing long-term isolation.

What a genocide finding does not automatically trigger: Suspension of Myanmar's UN membership; invalidation of Myanmar's other treaty commitments; automatic UN Security Council sanctions (the China/Russia veto remains); or any obligation binding the AA or other non-state armed actors. The AA and other armed groups nevertheless remain subject to applicable international humanitarian law (IHL) and relevant customary international law obligations, which exist independently of any genocide determination.

²⁴ On the use of frozen sovereign and military-linked assets to finance reparations, see ongoing debates in the context of the Russian Federation's aggression against Ukraine. Comparable proposals in the Myanmar context would need to engage with sovereign immunity, due process, and the specific corporate structures of MOGE, MFTB, and military-linked conglomerates (MEHL/MEC).

V. Potential Implications for Universal Jurisdiction Proceedings

A merits judgment by the ICJ that finds Myanmar responsible for the commission of genocide would not, of itself, determine the criminal responsibility of any individual official, commander, or perpetrator. The ICJ would be adjudicating Myanmar's responsibility under the Genocide Convention, whereas universal jurisdiction proceedings before national courts would concern the individual criminal responsibility of particular suspects. Those proceedings would still require proof of the accused's own conduct, mental element, mode of liability, and connection to the underlying crimes. As regards implications for universal jurisdiction proceedings, the significance of an ICJ judgment would therefore lie less in automatic legal transposition than in its evidentiary and practical force.

The case of *Bosnia v. Serbia* illustrates the cross-forum significance of findings on genocide, although the evidentiary flow there ran in the opposite direction. In *Bosnia v. Serbia*, the ICJ drew on the factual and legal findings of the ICTY in assessing whether genocide had occurred and whether Serbia had incurred responsibility under the Genocide Convention,²⁵ though it did so selectively – accepting the finding of genocide at Srebrenica while declining to find genocide elsewhere.²⁶ The ICJ has expressly accepted that it may make a finding of genocide by a state even in the absence of a prior individual conviction,²⁷ but the Bosnia judgment shows how findings from one international forum may materially assist another in establishing the historical and legal character of the underlying conduct.

If the ICJ were to find that Myanmar committed genocide against the Rohingya, that finding can and would likely become a major reference point for national prosecutors and courts pursuing universal jurisdiction cases. Depending on the applicable domestic rules of evidence and criminal procedure, courts exercising universal jurisdiction may be able to take judicial notice of aspects of the ICJ's findings, treat them as highly persuasive authority, or rely on them as part of the evidentiary record concerning the existence of a genocidal campaign. International criminal procedure offers a useful analogy; under ICTY Rule 94, a chamber could take judicial notice of facts of common knowledge without hearing the parties, and could, after hearing the parties, take judicial notice of adjudicated facts from other proceedings.²⁸ The Rome Statute provides more narrowly that the ICC shall not require proof of facts of common knowledge and

²⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v Serbia and Montenegro*), Judgment, ICJ Reports 2007. The Court drew extensively on the findings of the ICTY, in particular in relation to the events at Srebrenica.

²⁶ *Id.* The Court found that genocide had been committed at Srebrenica in July 1995 but declined to find that acts committed elsewhere during the conflict were carried out with the specific intent (*dolus specialis*) required for genocide.

²⁷ *Id.*, paras 180-181, confirming that the responsibility of a State for genocide under the Convention is not conditional upon the prior conviction of an individual by a competent court.

²⁸ ICTY Rules of Procedure and Evidence, Rule 94. Rule 94(A) provides that a Trial Chamber shall take judicial notice of facts of common knowledge. Rule 94(B) provides that, at the request of a party or *proprio motu*, a Chamber may, after hearing the parties, take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal.

may take judicial notice of them, though it contains no equivalent mechanism for adjudicated facts, so the closer parallel is with the ICTY.²⁹

That said, the effect would be jurisdiction dependent. A national court cannot simply treat an ICJ judgment as proof beyond reasonable doubt of an individual accused's guilt, particularly because the accused would not necessarily have been a party to the ICJ proceedings and because the ICJ applies its own evidentiary standard in inter-state proceedings. An ICJ finding could nonetheless create something closer to a practical or evidentiary presumption that genocide has been established at the general crime-base level, subject to the forum's rules and the accused's fair trial rights. How far that presumption operates would depend heavily on the procedural tradition of the forum.

A civil law system, in which the court evaluates the evidence freely according to its inner conviction and is not bound by rigid admissibility rules, may readily incorporate an ICJ finding into the body of material it weighs, giving it substantial persuasive weight as an authoritative judicial determination of the crime base. A common law system, by contrast, applies structured rules of admissibility and is generally reluctant to treat findings made in proceedings to which the accused was not a party as binding against that accused, so the finding would more likely operate as one strand of evidence to be tested rather than as a quasi-formal presumption.

The content of the applicable universal jurisdiction statute matters as well, since national frameworks differ in how they define the relevant crimes, allocate the burden of proof, and permit reliance on the findings of international courts.³⁰ The remaining litigation would then be likely to focus more intensely on individual linkage evidence, e.g., whether the suspect participated in the relevant acts, possessed genocidal intent, contributed to a common plan or policy, ordered, aided and abetted, or otherwise incurred responsibility under the applicable domestic and international law.

The broader consequence is strategic. An ICJ finding of genocide would not merely shape the legal record in *The Gambia v. Myanmar*,³¹ but would likely strengthen the framework of accountability in national jurisdictions. As more states open investigations, issue arrest warrants, or pursue universal jurisdiction cases, the freedom of movement of Myanmar officials and commanders implicated in the crimes will be increasingly constrained. The result could be a widening map of accountability in which the ICJ judgment functions as an authoritative foundation for the general characterisation of the violence, while national courts address the criminal responsibility of particular individuals.

²⁹ Rome Statute, Art. 69(6): the Court shall not require proof of facts of common knowledge but may take judicial notice of them. The Rome Statute contains no equivalent to ICTY Rule 94(B) concerning adjudicated facts from other proceedings.

³⁰ The contrast is most pronounced between civil law systems, in which the trier of fact generally evaluates evidence freely according to intine conviction without rigid admissibility rules, and common-law systems, which apply structured rules on admissibility, hearsay, and the use of prior judicial findings. Domestic universal jurisdiction statutes also vary: see, e.g., Germany's Code of Crimes Against International Law (Volkerstrafgesetzbuch), under which the Higher Regional Court of Koblenz convicted former Syrian officials in the Al-Khatib proceedings (2021-2022).

³¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v Myanmar*), pending before the ICJ. The Court delivered its judgment on preliminary objections on 22 July 2022, rejecting Myanmar's objections and confirming its jurisdiction and the admissibility of the application.

VI. Recommendations to ASEAN

A positive or partially positive ruling in favour of The Gambia would also strengthen the legal and political basis for collective regional action on the long-running Rohingya “polycrisis” as a shared responsibility.

A. Refrain from Forced Returns and Coordinate Maritime Response and Protection

- After a positive or partially positive ruling, any forced or premature returns of Rohingya to Myanmar risk maintaining the internationally wrongful situation identified by the ICJ.
- Set up a coordinated regional framework for boat movements across the Bay of Bengal and the Andaman Sea, including complementary search-and-rescue efforts, safe disembarkation arrangements, and minimum protection standards. A finding of breach under the Genocide Convention reinforces both the legal and humanitarian imperative for such coordination.³²

B. Expand Regular Pathways and Regional Burden-Sharing

Scale safe and regulated pathways for Rohingya, including higher-education and skills-mobility schemes. Efforts such as scholarship programmes, student pathways, labour-mobility arrangements, and other complementary admission routes—including initiatives undertaken by the Philippines—should be adapted and expanded across the region to increase protection opportunities and support fairer burden-sharing.

C. Reassess Diplomatic and Economic Relations with Myanmar

- Pending the ICJ judgment, avoid steps that confer legitimacy on junta-organised post-election processes. Following a positive or partially positive ruling, review diplomatic, political, and economic engagement with Myanmar to ensure alignment with the Court’s findings.
- Adopt and expand targeted measures to restrict Myanmar’s access to arms and revenue enablers such as national banking systems and stock exchanges. (Model approach: Singapore’s prohibition of arms and dual-use transfers while applying enhanced due diligence on financial flows and high-risk sectors.³³) Coordinate regionally to close circumvention routes, including third-country rerouting.
- ASEAN states (along with, *e.g.*, Bangladesh, China, and Japan) should put diplomatic pressure on the Arakan Army to cooperate in the implementation of the ICJ’s order. Engagement with a non-

³² Such cooperation may be explored by the regional states under the Bali Process.

³³ Banking on the Death Trade: How Banks and Governments Enable the Military Junta in Myanmar, Report of the Special Rapporteur on the situation of human rights in Myanmar, 26 June 2024.

state armed actor is legally complex, but that itself is not a reason for inaction. At the same time, ASEAN should expand engagement with legitimate pro-democracy actors and strengthen humanitarian and development support.

D. Link Compliance with Regional Incentives

The junta sees ASEAN as its gateway to international acceptance which is a lever ASEAN should use (see Part IV.C.3, above). ASEAN must expand the ban on junta representatives at ASEAN summits/meetings to include working-level junta officials and starve the junta of the legitimacy it needs to survive.³⁴ Comparative practice shows reputational and material incentives can be effective: following *Bosnia v. Serbia*, the EU linked Serbia's accession process to cooperation with the ICTY, contributing to the eventual arrest and transfer of indictees.³⁵ ASEAN, within its frameworks, should raise the costs of non-compliance for Myanmar while preserving channels for dialogue.³⁶

E. Reinforce Regional Norms of Compliance with International Adjudication

ASEAN Members should build on regional practice that values compliance with international dispute resolution. Indonesia's acceptance of the ICJ ruling in the *Sipadan-Ligitan* case was framed as setting a constructive precedent for Southeast Asia,³⁷ strengthening expectations of compliance and enhancing regional credibility. A coordinated ASEAN response to the ICJ judgment would reinforce similar norms in the present context.

Tensions to Manage

Several recommendations in this section pull against one another and need explicit political handling beyond rhetorical reconciliation. ASEAN Members favouring “constructive engagement” will need to reconcile diplomatic dialogue with the duty of non-assistance under ARSIWA Article 41: dialogue that effectively underwrites the regime's continuation in unlawful conduct will not satisfy that duty. OIC-member ASEAN Members (notably Indonesia and Malaysia) play a significant bridging role between ASEAN positions and OIC-led action at the HRC and UNGA. Supportive states should resource that bridging function rather than duplicate it.

³⁴ See <https://specialadvisorycouncil.org/2026/05/philippines-must-deliver-strong-asean-leadership-on-myanmar-after-five-years-of-dismal-failure>.

³⁵ See Heather L. Jones, ‘Why Comply? An Analysis of Trends in Compliance with Judgments of the International Court of Justice Since Nicaragua’ (2012) 12 Chi.-Kent J. Int’l & Comp. L. 57, 66.

³⁶ At the 48th ASEAN Summit held in Cebu, Philippines, in May 2026, Myanmar was represented only by its Permanent Secretary of the Ministry of Foreign Affairs. This marked Myanmar as the sole exception to the heads-of-state and government-level representation by all other ASEAN members — a restriction consistently applied to the country's military leadership since the 2021 coup. While the ASEAN Chair (Philippines) expressed concern over the ongoing situation and the minimal progress on the Five-Point Consensus, and reiterated support for the ASEAN Envoy's mandate, these steps remain limited and will need to be significantly strengthened to exert meaningful pressure on the junta. See <https://asean.org/wp-content/uploads/2026/05/FINAL-Chairs-Statement-of-the-48th-ASEAN-Summit-as-of-09-May-2026-1200H.pdf>.

³⁷ Press Release, Minister of Foreign Affairs of the Republic of Indonesia, Following the Decision by the International Court of Justice on the Sipadan-Ligitan Case (17 December 2002).

VII. Recommendations to Supportive States



A. UN Security Council (United Kingdom as Penholder)

- **Pre-position a draft resolution under Article 94(2)** calling on Myanmar to comply with the judgment and that formally places Myanmar on the Council's agenda through a mechanism that requires the UN Secretary-General to report on the implementation of the resolution within 60 days and every 60 days thereafter. Even if a Chinese or Russian veto is expected, the vote forces public position-taking and creates the record. (Model approach: the recurring Syria humanitarian access resolutions tabled despite predictable vetoes.)
- Before delivery, table at least one **open briefing** on the implementation of the 23 January 2020 provisional measures.
- Reinvigorate the case for a **UNSC referral of Myanmar to the ICC** under Article 13(b) of the Rome Statute. The judgment provides renewed substantive grounding even if the vote fails.

B. UNGA and HRC Resolutions

- The UNGA should pass a new plenary resolution on the situation in Myanmar. The last such resolution was 75/287, adopted in June 2021. The new resolution should incorporate the Court's findings into operative language, including through: explicit reference to the judgment; recognition of states' Article 41 ARSIWA duties; a call on states to refrain from providing assistance to the junta and to cooperate to end the breach; and expressing support for The Gambia's enforcement role. In lieu of or in supplement to a UNSC resolution on Myanmar, the new plenary text should also:
 - Call for a UNSC referral of the situation in Myanmar to the ICC. In the absence of such progress, the UNGA should consider establishing an ad hoc tribunal on Myanmar.
 - Set out a register of damages and establish a trust fund for Rohingya reparations (see Recommendation C below for more detail).³⁸ The legal basis for including reparative measures exists regardless of the judgment, but a positive finding makes them materially easier to negotiate.
 - Call on all business enterprises, including transnational corporations operating in Myanmar, to responsibly divest from economic dealings with Myanmar military-owned businesses, in line with the UN Guiding Principles on Business and Human Rights and the recommendations made by the Independent International Fact-Finding Mission on Myanmar in its report on the economic interests of the Myanmar military.³⁹
 - Push for a UNGA high-level plenary or thematic dialogue on implementation in the months following the judgment.
- The annual HRC resolutions on the situation of human rights (EU, March) and on the Rohingya and other minorities (OIC, June) and the UNGA's EU/OIC Third Committee resolution on the Rohingya and other minorities should reflect these same elements.

C. Promote Reparations

- **Establish a trust fund for victims.** Where the responsible state is unable or unwilling to compensate the victims,⁴⁰ complementary funds may be set up to support reparative measures financially, without diluting the responsibility of the primary duty-bearer.⁴¹

A trust fund can be financed in different ways, including voluntary contributions from states and the private sector; proceeds from enforcement of sanctions violations, including freezing, seizure,

³⁸ Cf. UNGA Resolution on Furtherance of Remedy and Reparation for Aggression Against Ukraine, A/ES-11/5 (November 2022), paras. 3, 4; UNGA Resolution on the Advisory Opinion of the International Court of Justice on the Legal Consequences arising from Israel's policies and practices in the Occupied Palestinian Territory, including East Jerusalem, A/RES/ES-10/24 (September 2024), para. 10.

³⁹ HRC res. 58/20 (2025) at operative paragraph 52.

⁴⁰ Domestic legal avenues within Myanmar have not pursued accountability adequately, let alone reparations, for violations against the Rohingya. Equally, the current international reparative mechanism, namely the ICC Trust Fund for Victims, is tied to the more limited scope of cross-border crimes over which the ICC has jurisdiction. An independent mechanism could more comprehensively address the needs of the Rohingya victims.

⁴¹ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli — Financing of reparation for victims of serious violations of human rights and humanitarian law, A/78/181 (14 July 2023), paras. 95, 96, 99, 103. See also, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res. 40/34 (29 November 1985), arts. 12 and 13.

confiscation and re-purposing of illicit assets; and court-ordered penalties imposed on non-state entities or legal settlements.

- **Create a Register of Damages.** Support setting up a mechanism that works alongside existing evidence-gathering bodies to record damage, injury, and loss. (Modelled approach: the Register of Damage for Ukraine.⁴²) A Register of Damages can be useful in negotiating reparations if Myanmar is found fully responsible for genocide against the Rohingya and ordered to provide reparative measures. It is also a building block for a comprehensive victims' trust fund.

D. Trade and Sanctions

Before the Judgment

Signal corporate due-diligence expectations to companies through national export-credit agencies, sovereign wealth funds, and central banks (under the EU Corporate Sustainability Due Diligence Directive (CSDDD), Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, and the UN Guiding Principles on Business and Human Rights as applicable). States should strengthen oversight and enforcement mechanisms to ensure that entities under their jurisdiction, including companies, comply with sanctions and do not aid or assist the Myanmar military in maintaining the unlawful situation. In relation to social media companies in particular, states must mandate transparency, data sharing and independent audits with enforcement mechanisms.⁴³ An ICJ finding effectively forecloses any “we didn’t know” defence for entities with Myanmar exposure.

After the Judgment

Activate trade levers. For example:

- A positive finding (Scenarios A or B) is a strong basis for triggering the Article 19 withdrawal procedure under the EU Generalised Scheme of Preferences, including Everything But Arms and GSP+.⁴⁴ Article 19 permits temporary withdrawal for “serious and systematic violation of the principles” set out in 15 listed UN/ILO conventions — the Genocide Convention is named explicitly. Such withdrawal should be sequenced with a support package for affected workers, drawing on prior Myanmar-specific approaches (Model approach: the Myan-Ku displacement support package for affected workers in the garment industry).
- Similarly, the UK may review Myanmar’s eligibility under the UK Developing Countries Trading Scheme (DCTS), which carries human-rights-related conditionality, and suspend Myanmar’s preferential trade status.⁴⁵

⁴² Resolution CM/Res(2023)3 establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine.

⁴³ More specifically, relevant states must create an exception to the immunity for third party content enjoyed by companies such as Meta in relation to their role in amplifying hate speech linked to genocidal violence. Where necessary, states must assume jurisdiction over Meta’s operations and its transnational human rights impact.

⁴⁴ Regulation (EU) No 978/2012 as extended through 2027 (EU EBA / GSP+). On 1 December 2025, the EU Council Presidency and European Parliament reached a provisional agreement on a new GSP regulation that will apply from 1 January 2027. Article 19 will exist in the new regulation, and the Genocide Convention reference is preserved.

⁴⁵ UK Government, ‘Developing Countries Trading Scheme (DCTS): New Policy Report’, Annex 4 (‘List of Conventions related to suspension under DCTS’), which lists the Genocide Convention.

- **Coordinate new designations targeting military-linked entities.** The judgment expands the evidentiary and reputational basis for new Magnitsky-type designations, including against MOGE, MFTB, jet-fuel suppliers, and arms brokers (UK Global Human Rights Sanctions, EU GHRSR, US, Canada, Australia).
- **Strengthen enforcement of existing sanctions.** Address gaps in existing sanctions to ensure coverage of jet-fuel supply and third-country circumvention pathways (notably via Thailand), as flagged by the Special Rapporteur on the situation of human rights in Myanmar.⁴⁶

E. Support Parallel Accountability Tracks

Irrespective of the ICJ decision, Member States should support accountability for crimes against humanity and war crimes in Myanmar.

- **International Criminal Court (ICC).** Member States can use the ICJ decision to reinvigorate the case for the UNSC to refer Myanmar to the ICC for investigation. States should also support and advocate for the Office of the Prosecutor to accept the NUG's Article 12(3) declaration. Further, states should enforce all arrest warrants, once issued, for alleged perpetrators of international crimes committed in Myanmar, including against perpetrators residing in or travelling through their domestic territories.
- **Domestic structural investigations.** Where possible, states should initiate structural investigations in their domestic jurisdictions to prosecute crimes by the Myanmar security forces, or corporations that aid and abet such crimes, including under the principle of universal or extraterritorial jurisdiction. Where necessary, states should amend or enact national legislation allowing the prosecution of international crimes.
- **Ad hoc tribunal on Myanmar.** The UNGA should explore the establishment of an ad hoc tribunal on Myanmar in the absence of progress via the ICC.

Universal Jurisdiction Filings/Investigations in Domestic Courts

- **Argentina.** Sustain technical and operational support for the Buenos Aires proceedings; facilitate the processing of Interpol Red Notices to enforce the existing arrest warrants.
- **Indonesia, Philippines.** If the pending complaints⁴⁷ are taken forward, the investigations will require substantial technical and operational support.
- **Timor-Leste.** Confirm support for the appointment by Timor-Leste of a prosecutor to explore potential proceedings against Min Aung Hlaing and other junta members for alleged war crimes and crimes against humanity.
- **Australia.** Sustain coordination with national authorities who have received complaints, including as filed by Legal Action Worldwide (LAW).

⁴⁶ Tom Andrews, *Banking on the Death Trade* (n. 33).

⁴⁷ See <https://www.reuters.com/world/asia-pacific/myanmars-new-president-min-aung-hlaing-faces-genocide-complaint-indonesia-2026-04-06/>; <https://thediplomat.com/2023/10/victims-of-myanmar-junta-file-war-crimes-charges-in-philippine-court/>

- **Independent Investigative Mechanism for Myanmar (IIMM).** Renew and adequately fund the IIMM's mandate; ensure that information sharing protocols with Argentine and other national prosecutors are effective.
- **Monitoring in Rakhine State.** Recent waves of displacement linked to alleged violations and abuses by the AA further underscore the need to ensure protection in line with the duty to prevent, especially where multiple actors contribute to insecurity. Bangladesh and its partners should invest in on-going documentation of conditions in Rakhine State and the impact of new arrivals on camp dynamics, including in coordination with the UN Office of the High Commissioner for Human Rights (OHCHR). This could include the granting of access to OHCHR monitors and IIMM investigators, as well as visits by UN experts, including the Special Rapporteur on Myanmar. While the ICJ's findings address state responsibility, accountability for non-state actors, including the AA, remains a parallel track requiring sustained attention and resourcing.

F. Peacebuilding

If the judgment is positive or partially positive and recognises Myanmar's obligation to allow safe and dignified return of the Rohingya, meaningful implementation will require serious investment in long-term peacebuilding and community-centred actions:

- **Inter- and intra-community dialogue.** Invest in dialogue between Rohingya and other affected communities to counter hate speech, misinformation and disinformation, and to lay the groundwork for a future repatriation framework grounded in restored rights.
- **Support to NGOs and civil-society organisations,** including victim/survivor-led groups inside Myanmar and in the diaspora, to create inclusive platforms for reconciliation and transnational dialogue that can support accountability and long-term social cohesion.
- **Support and provide technical assistance to emerging systems of governance** that are building court systems in liberated areas, reforming legal codes in line with international standards, and training judges and lawyers for the future accountability processes.⁴⁸

Broadening the Supportive Coalition

The post-judgment coalition should be broadened beyond the 11 Article 63 interveners and the EU and like-minded states. Specific targets should include: OIC Member States beyond The Gambia (with the Bangladesh–Maldives–Saudi Arabia–Turkey–Indonesia–Malaysia alignment offering the most actionable convening capacity); African states (building on the DRC's intervention, and on OIC overlap); and Latin American states with strong universal jurisdiction frameworks (notably Argentina, given the Buenos Aires proceedings). The aim is to reduce the coalition's reliance on a narrow Western base, both for the optics of compliance pressure and to reflect the universal nature of the obligations involved.

⁴⁸ Tom Andrews, From Impunity to Justice, Report of the Special Rapporteur on the situation of human rights in Myanmar (April 2026), p. 5.

VIII. Recommendations to Bangladesh



For Bangladesh, the ICJ judgment carries massive political and humanitarian significance, as the state bears a disproportionate burden of the deportation and mass displacement crisis that Myanmar's conduct has created. Bangladesh's engagement with the Court's decision will shape how the consequences of the violence are addressed going forward.

A. Anchor Repatriation in Compliance with the ICJ judgment

Repatriation efforts have so far been mediated mostly by China and marked by limited, largely symbolic engagement from Myanmar, which has used such processes to deflect findings of genocidal intent. If the finding is positive or partially positive, particularly where restitution-type remedies are recognised, Bangladesh will be in a stronger position to call on Myanmar to create conditions conducive to return.

Any coercive or premature repatriation arrangement could invoke a breach of obligations under the law of state responsibility — not to aid or assist Myanmar in maintaining an unlawful situation — and of *non-refoulement* obligations. Bilateral engagements on Rohingya repatriation would therefore need to be based on the principle of “safe, voluntary, and dignified return,”⁴⁹ with Bangladesh aligning its engagement with the Court’s findings, reasoning, and any remedial obligations imposed, including guarantees of non-repetition, protection, and restoration of rights.

Bangladesh must frame repatriation as contingent on Myanmar’s compliance, requiring independently verifiable benchmarks for conducive conditions in Rakhine State, such as meaningful implementation of anti-hate speech directives, repeal or reform of discriminatory legal frameworks (notably the 1982 Citizenship Law), restoration of nationality, freedom of movement, family unity, and access to livelihoods for Rohingya,⁵⁰ alongside effective international monitoring on the ground.

The neighbourhood diplomacy must be explored by Bangladesh as a new track. Bangladesh should bring together states with strong diplomatic and economic relations with the junta namely China, India, Thailand, to use their leverage to put pressure on the junta and AA to cooperate or not obstruct ICJ’s order implementation.

Tensions to Manage

It is important to acknowledge that respect for the principle of *non-refoulement* co-exists with deteriorating humanitarian situation in the camps in Cox’s Bazar and increasing fiscal pressure. This position paper proceeds on the basis that the legal exposure premature returns would create is real and material. Supportive states should therefore: (a) sequence donor commitments and development-oriented solutions for the host community so as to visibly reduce the cost of holding the line on conditional returns; (b) engage Bangladeshi counterparts at the Foreign Ministry, the Office of the Refugee, Relief and Repatriation Commissioner (RRRC), and the Ministry of Home Affairs in a coordinated manner; and (c) provide explicit legal advisory support on the post-judgment Article 41 ARSIWA obligations.

B. Sustain Accountability Cooperation and Protection

Bangladesh should continue to cooperate with international investigative mechanisms and civil society actors supporting accountability processes. This includes facilitating access for witnesses and ensuring adequate protection measures, including safe houses outside camp settings for individuals participating in justice processes and facing heightened personal risk. Bangladesh should also prepare, in coordination with The Gambia, the UN and ASEAN Envoys on Myanmar, and supportive states, to convene a high-level conference following the judgment to assess its implications and coordinate next steps.

⁴⁹ UNHCR, Handbook — Voluntary Repatriation: International Protection (1996).

⁵⁰ Sadat et al., ‘Rohingya Repatriation: The Booklet Diplomacy’, Centre for Peace and Justice, 9 June 2023.

Rohingya Response in Cox's Bazar

Community Preparedness and Managing Expectations.

Whatever the Court ultimately rules, the judgment is likely to be misunderstood in the camps and within the wider Rohingya and Myanmar public. The risk of politicisation, division and disillusionment, particularly in a worsening humanitarian environment, is high. Furthermore, the military junta would seek to weaponise an adverse or partially adverse judgment to fray inter-ethnic solidarity and stoke pro-military Bamar-nationalist sentiment within the country. To mitigate these risks, Bangladesh and donor states should:

- Sustain core funding to survivor and legal information networks through the pre- and post-judgment window. Their role in framing and translating the judgment for communities is at least as important as their earlier role in supporting evidence collection.
- Resource camp-based legal-information campaigns and trainings ahead of delivery, with materials adaptable to each plausible outcome, taking extreme care over how potential negative findings are framed for communities.
- Coordinate diplomatic messaging with Rohingya-led organisations so that the international reaction mirrors community framing rather than overrides it.

Addressing Infantilisation of the Rohingya Response.

Current restrictions on livelihoods and financial inclusion risk undermining longer-term solutions, including conditions necessary for dignified return. Bangladesh should permit, and donors should support, expanded programming on livelihoods and financial inclusion within the camps. At the same time, institutions such as the World Bank and the Asian Development Bank should intensify policy engagement on the economic costs borne by Bangladesh as a host State due to prolonged aid dependency, while advancing more cohesive development-oriented solutions for both Rohingya and host communities, including promoting skills mobility and regular migration pathways for Bangladesh nationals.



Recommendations for Coordinated Civil Society Action

The Rohingya, Burmese and international civil society are encouraged to pursue the following areas of coordinated advocacy ahead of the judgment and in the immediate post judgment window, aligning with the key suggestions made to Member States in this paper:

A. Denying Legitimacy to the Junta

- Pursue coordinated advocacy to secure legitimate Myanmar representation (NUG-aligned) in UN credentials decisions.
- Use the judgment as an advocacy tool to advocate with ASEAN to expand restrictions on junta representation at all levels of ASEAN meetings and summits, avoid steps that confer legitimacy on junta, and press for compliance with the ICJ judgment intensifying the calls for democracy, fair elections, release of political detainees and accountability.

B. Review of Economic, Financial Relations with Junta and Targeted Measures

- Urge states to review and restrict economic and financial relations with the junta, including targeted measures to restrict arms flows and all military-related supplies, military revenue streams, and circumvention routes, and to implement coordinated trade measures (including suspension of preferential trade schemes while ensuring workers' protection).
- Call for corporate due diligence obligations on companies and financial institutions with Myanmar exposure.
- Advocate for coordinated regulatory frameworks for digital platforms to enforce stricter rules on algorithmic design and content moderation that amplifies harmful content.

C. Advancing Reparations for Victims

- Advocate for the enforcement of the victims' right to reparations through calling upon international community to establish a reparations trust fund and a Register of Damages.
- Support efforts to map, freeze, and repurpose military-linked assets, alongside calling upon strengthened sanctions enforcement.

D. Strengthening Accountability Mechanisms

- Continue backing the international and domestic accountability efforts, including the IIMM, ICC investigation, and ongoing universal jurisdiction cases and filings in Argentina, Indonesia, the Philippines, Timor-Leste, Australia, and elsewhere. Explore the potential establishment of an ad hoc tribunal on Myanmar through the UNGA. Urge states to provide technical, operational, and financial support to these processes and to enforce arrest warrants and to enact/amend laws to allow domestic investigations into international crimes.
- Continue robust documentation of the situation in Rakhine to maintain pressure on the Arakan Army for its alleged crimes against humanity and war crimes.

E. Peacebuilding, Social Cohesion and Countering Hate Speech

- Explore initiatives in a risk-managed and strategic manner to leverage the forthcoming judgment to counter hate speech, promote social cohesion in Rakhine State, and create inclusive platforms for reconciliation and transnational dialogue.

F. Supporting Conditional Repatriation and Protection of Rohingya in displacement

- Support the wishes of the Rohingya community⁵¹ by advocating for safe, voluntary, and dignified returns anchored as appropriate in the ICJ judgment. Contribute to policy dialogue that outlines clear definition of independent, verifiable benchmarks for conducive conditions in Rakhine State (including citizenship restoration, implementation of anti-hate speech directives, freedom of movement and livelihood).
- Push for enhanced and cohesive development-oriented solutions and international support to ease domestic pressures on Bangladesh and reduce incentives for premature returns.
- Call for coordinated maritime response for protection of the Rohingya forced to undertake dangerous sea journeys as well as initiatives for regular migration pathways for the Rohingya (skills or higher education mobility).

Additionally, civil society stands to play a critical role in ensuring accurate legal information reaches Rohingya community as well as planning for a negative outcome, which will have grave implications for the Rohingya refugees including security-related in the camps due to disillusionment, loss of confidence in international community's efforts, and political divisions over the way forward. (See more under Part XI)

⁵¹ See <https://bangladesh.un.org/en/302020-report-rohingya-perspectives-pathways-safe-dignified-and-peaceful-future>; <https://legalactionworldwide.org/wp-content/uploads/What-Kind-of-Court-Is-This.pdf>

IX. Recommendations to the Spring Revolution Movement



Pro-democracy revolutionary actors, including the NUG, the Steering Council for the Emergence of a Federal Democratic Union (SCEF), and Ethnic Resistance Organisations (EROs) have crucial roles in the pre-judgment, judgment, and post-judgment windows.

Among other actions, these organisations and groups should:

- Develop clear and coordinated communications strategies in advance of the judgment, noting that the junta would seek to weaponise an adverse or partially adverse judgment to fray inter-ethnic solidarity and stoke pro-military Bamar-nationalist sentiment.
- Endorse and operationalise the ICJ's judgment.
- Support the voluntary, informed, safe and dignified repatriation of the Rohingya to Myanmar, and work to create conditions to enable this, with independently verifiable benchmarks.
- Support and strengthen domestic accountability mechanisms in supplement to international efforts and, where appropriate, secure the transfer of Myanmar nationals charged with alleged crimes to international (ICC) and other jurisdictions as appropriate to advance prosecutions.
- Implement peacebuilding, social cohesion, anti-hate speech and public education programmes and directives, and repeal or reform discriminatory legal frameworks notably the 1982 Citizenship Law.
- Restore nationality, freedom of movement, family unity, and access to livelihoods for Rohingya, alongside effective international monitoring on the ground including by granting access to OHCHR monitors, IIMM investigators and UN independent experts including the Special Rapporteur on Myanmar.
- Advance the rights of Rohingya, including through the development of inclusive political frameworks.

X. Sequencing and Critical Path

The recommendations in Parts VI to VIII are time sensitive. The table below sets out the main decision points and forums in the pre-judgment, judgment, and post-judgment windows. It is indicative and should be revised as the date of judgment firms up. Ministries should map their own internal clearance timelines against it.

Period	Lead actors	Action and forum
Pre-judgment (Q2-Q3 2026)	Supportive states; ASEAN; OIC	Finalise pre-positioned communications plans for each scenario (A-E); circulate model resolution language for HRC, UNGA and UNGA Third Committee; complete legal-advisory mapping of Article 41 exposure by jurisdiction; signal corporate due-diligence expectations to companies.
Pre-judgment (Q2-Q3 2026)	UK (UNSC penholder)	Table at least one open briefing on implementation of the 23 January 2020 provisional measures; pre-position draft Article 94(2) resolution and ICC referral language.
HRC (June/July and Sept/Oct 2026)	OIC; EU	Operative resolution language referencing forthcoming judgment; explicit recognition of Article 41 ARSIWA duties; build in trust fund and Register of Damages as building blocks.
Judgment window (H2 2026 / early 2027)	All	Activate scenario-specific communications; convene high-level coordination meeting (proposed venue: Bangladesh, in coordination with The Gambia and supportive states); coordinate ASEAN, OIC and EU statements within 24-72 hours.
UNSC resolution (post-judgment)	UK (penholder)	Introduce a new text (in follow-up to UNSC res. 2669 (2022)) that endorses the judgment, refers the situation in Myanmar to the ICC and formally places Myanmar on the Council's agenda through a mechanism that requires the UN Secretary-General to report on the implementation of the resolution within 60 days and every 60 days thereafter.
UNGA plenary resolution (post-judgment)	EU and likeminded States	Introduce a new plenary resolution on Myanmar (in follow-up to 75/287) in lieu of or in supplement to a new UNSC resolution that: operationalises the judgment; calls for a UNSC referral of the situation in Myanmar to the ICC; considers the establishment of an ad hoc tribunal on Myanmar; sets out a register of damages and establishes a trust fund for Rohingya reparations; and pushes for a UNGA high-level plenary or thematic dialogue on implementation in the months following the judgment.

Period	Lead actors	Action and forum
UNGA Third Committee (Oct/Nov 2026 or 2027)	EU and OIC (joint penholders)	Operationalise judgment: explicit reference to operative paragraphs; states' Article 41 duties; establishment language for Register of Damages and Rohingya trust fund.
Post-judgment (0–6 months)	Supportive states	Trigger GSP Article 19 review and UK DCTS review (Scenarios A/B); coordinate new Magnitsky-type designations; publish updated due-diligence guidance for jurisdictions with significant Myanmar exposure.
Post-judgment (6–18 months)	All	Compensation phase preparation (asset mapping, trust fund seeding); UNGA high-level plenary on implementation; sustained accountability cooperation with IIMM and universal-jurisdiction proceedings.

XI. Contingency: Planning for a Negative Outcome

- **Align diplomatic messaging.** Supportive states must align diplomatic messaging to avoid any framing that treats the judgment as having vindicated Myanmar; the *erga omnes partes* obligations under the Convention are not displaced by a finding that the evidentiary threshold for genocide *stricto sensu* was not met. Member States retain every existing legal basis for sanctions, embargoes, and supporting parallel accountability tracks.
- **Address disillusionment.** A negative outcome risks camp-level disinformation and disillusionment, which must be addressed through trained community networks and legal-information centres.
- **Intensify support to parallel accountability avenues.** Bangladesh and supportive Member States should intensify support for alternative accountability pathways. This includes sustained engagement with the ICC,⁵² the IIMM,⁵³ a potential ad hoc tribunal on Myanmar, and coordinated action through the OIC at the HRC and UNGA to ensure continued political and legal pressure. A pre-positioned negative outcome communications and operational plan should be in place in every supportive ministry ahead of the judgment.

⁵² Including cooperation in the enforcement of any arrest warrants and supporting the expansion of jurisdiction at the ICC beyond the 2016–17 clearance operations.

⁵³ Including ensuring adequate funding for the IIMM and renewal of its mandate.

XII. Conclusion



The ICJ's forthcoming judgment in *The Gambia v. Myanmar* is a landmark opportunity to advance justice, accountability, and protection for the Rohingya and, more broadly, to address the on-going crisis in Myanmar. It will also shape state responsibility litigation on genocide in other current and future cases of immense political and humanitarian significance.

From the 2019 application and 2020 provisional measures through to the 2026 merits hearings, the case has already set important legal precedents under the Genocide Convention. The Court's decision — whether a strong finding of state responsibility for genocide, partial attribution, a breach of provisional measures, a mixed outcome, or dismissal — will carry far-reaching implications for Myanmar and third states.

For ASEAN members, the ruling provides a platform to develop coordinated protection frameworks, expand safe pathways, and apply targeted economic and diplomatic pressure on the junta while preserving constructive dialogue. Supportive states, meanwhile, have a clear roadmap for putting Article 41 (of the ILC's Articles on State Responsibility for Internationally Wrongful Acts, 2001) duties into action: decisive moves at the UN Security Council and General Assembly, setting up reparations mechanisms such as a victims' trust fund and Register of Damages, stronger sanctions enforcement, and sustained support for parallel accountability processes.

Bangladesh, bearing the heaviest burden, can use the judgment to insist that Myanmar and the Arakan Army create conditions for safe, voluntary, and dignified returns anchored in verifiable improvements on the ground.

Myanmar's pro-democracy revolutionary movement, including the National Unity Government (NUG), Steering Council for the Emergence of a Federal Democratic Union (SCEF) and Ethnic Resistance Organisations (EROs) and civil society, should coordinate in their endorsement and operationalisation of the ICJ's judgment. Related steps should see: independently verifiable benchmarks to create conditions conducive to the voluntary, informed, safe and dignified repatriation of the Rohingya to Myanmar; strengthened domestic accountability mechanisms and cooperation with other jurisdictions to advance prosecutions; implementation of peacebuilding, social cohesion, anti-hate speech and public education programmes and directives; the repeal or reform of discriminatory legal frameworks, notably the 1982 Citizenship Law; the granting of access to OHCHR monitors, Independent Investigative Mechanism for Myanmar's (IIMM) investigators and UN independent experts including the Special Rapporteur on Myanmar; and advancing the rights of Rohingya, including through the development of inclusive political frameworks.

For the refugees themselves and civil society, the judgment will be essential to reinforce the principle of *non-refoulement* in the region and to advocate for legal and social protection for a community recognised as genocide survivors, and as a historic milestone in their fight for justice. In the event of a narrower or negative outcome, pre-positioned messaging and intensified support for alternative mechanisms will remain essential to counter disillusionment and maintain momentum.

Ultimately, the impact of the ICJ judgment will not be determined by the Court alone. It lies in the hands of Member States — ASEAN, supportive governments, and Bangladesh — to translate legal findings into concrete diplomatic, political, economic, and humanitarian action. Through proactive preparation, coordinated implementation of Article 41 obligations to cooperate to end the breach and its continued effects on the Rohingya, and sustained commitment to reparations and peacebuilding, states have the power to turn this ruling into tangible progress toward justice, dignity, and a durable solution for the Rohingya. The moment calls for ambition that matches the scale of this “polycrisis,” not hesitation in a wait-and-see approach.

Annex I: Summary of Parties' Arguments

Gambia's case. The Gambia has alleged before the International Court of Justice that Myanmar, through its military and security forces, committed genocidal acts against the Rohingya *with* the requisite intent to destroy the group in whole or in part.

Genocidal acts. The Gambia has argued that Myanmar has committed four of the five prohibited acts under the Genocide Convention against the Rohingya population: (a) mass killings; (b) causing serious bodily and mental harm; (c) deliberately inflicting conditions of life calculated to bring about the group's physical destruction; and (d) imposing measures intended to prevent births. These acts were alleged to have occurred as part of the 2016–2017 “clearance operations,” which The Gambia characterised as large-scale and systematic military campaigns targeting Rohingya civilians. Serious bodily and mental harm was said to arise from widespread patterns of torture, particularly sexual and gender-based violence that has resulted in lasting trauma. It was argued that the burning of villages, destruction of livelihoods, blocking of humanitarian aid, and the forced displacement of nearly a million Rohingya, leaving them in conditions incompatible with survival amounted to conditions intended to bring about a group's destruction. Measures intended to prevent births were linked both to sexual violence and to the State policies restricting marriage, childbirth, and family life among the Rohingya population.

Evidence relied upon. The Gambia relied on multiple categories of evidence for its claims. Central among these was the report of the United Nations Fact-Finding Mission, alongside reports by INGOs and materials produced by the Independent Investigative Mechanism for Myanmar. The case also drew extensively on witness statements, 44 of which were submitted by Legal Action Worldwide (LAW) and three of whom gave oral evidence to the ICJ at the hearing in January 2026.

Genocidal intent. The Gambia sought to demonstrate the genocidal intent on the part of Myanmar through several indicators. It pointed to the scale, systematic nature, and exceptional brutality of the operations carried out by the Myanmar military, as well as hate speech dehumanising the Rohingya, including statements by senior military leadership. Historical patterns of persecution, including longstanding discriminatory laws and the denial of Rohingya identity, were also presented as contextual evidence supporting intent. Particular emphasis was placed on the nature of sexual and gender-based violence, especially where such acts were carried out publicly, in conjunction with the killing of family members, and accompanied by acts intended to humiliate and terrorize victims.

In addressing the legal threshold for establishing genocidal intent, The Gambia maintained that such intent can be convincingly demonstrated from the factual circumstances. Specific massacres in at least seven key villages were cited as illustrative of the scale and nature of destruction. It argued that these incidents indicate **a broader and consistent pattern of conduct across numerous locations, from which genocidal intent emerges as the only reasonable inference.**

Importantly, The Gambia did not seek to alter the Court's established legal standards but rather urged their application in a practical and context-sensitive manner, including recognition that genocidal intent may coexist with other motives and is not negated by the presence of armed conflict. Overall, it framed the violence as targeting the Rohingya not for what they did or what they might do but for “who they are.”

Myanmar's case. Myanmar rejected the allegation that the events constituted genocide, arguing that the military operations were a counter-terrorism operation in response to attacks by the Arakan Rohingya Salvation Army (ARSA). Myanmar further contended that any proven wrongdoing was a result of isolated acts of misconduct and not state policy. It emphasized that the Court must apply **beyond a reasonable doubt** standard of proof—and argued that The Gambia failed to meet this threshold. It challenged the reliability of The Gambia's evidence, asserting that it was hearsay and secondary.

Witnesses. During the hearings, both parties were permitted to present in-person testimony before the Court. The Gambia's three Rohingya witnesses supported by LAW and from three villages – Chut Pyin, Maung Nu, and Tula Toli provided detailed personal accounts of what they directly experienced and witnessed. The witnesses included a survivor of mass execution of Rohingya men and boys, a survivor of gang-rape whose infant was taken away from her and murdered and a survivor who lost five of his six family members during mass killings including his daughter who was shot in the back while trying to escape. Their testimonies recounted the coordinated nature of the attacks, systematic use of sexual violence and targeting of particularly vulnerable individuals, including children. These accounts were presented by The Gambia as mutually corroborative and reflective of the modus operandi, reinforcing The Gambia's argument that the acts were not isolated but formed part of a wider campaign directed at the Rohingya as a group.

Myanmar relied on one witness to emphasise the presence and activities of ARSA, supporting Myanmar's broader narrative that the events in Rakhine reflected internal insurgency dynamics. Myanmar's witnesses also sought to point out that ARSA had coerced Hindu women to falsely implicate Myanmar in international media.

The Gambia's expert witness, Professor Michael Newton, provided a military analysis of the "clearance operations" in light of the counterinsurgency (COIN) doctrine. He testified that authentic counter-insurgency operations require the protection of civilians while reasserting sovereign authority, whereas Myanmar's operations were not credible as legitimate COIN because they targeted Rohingya as a whole. He identified a consistent modus operandi across locations—including surrounding of villages, indiscriminate shooting, segregation, executions, mass rape, and systematic destruction through burnings—indicating coordinated planning at a high level. He concluded that the scale, organisation, and nature of the operations could not be explained as legitimate military conduct.

Concluding arguments. During the concluding arguments, The Gambia responded to Myanmar's allegations regarding weight of its evidence, highlighting the care taken in preparation of reports it has relied on, their independent nature and comprehensive sources. Arguments were also made in relation to co-existence of military motives alongside an intent to destroy and that one does not preclude the other as well as in relation to the applicable standard of proof in proving State responsibility as distinct from individual responsibility. Myanmar in turn devoted most time and effort emphasising the limits of the reliability and weight of The Gambia's evidence arguing that it is simply asking the Court to "rubberstamp" the UN Fact Finding Mission report, and that witness statements that have not been tested in a criminal tribunal cannot hold sufficient weight. Myanmar insisted that the criminal standard of beyond reasonable doubt is the appropriate one to determine State responsibility and it maintained that genocidal intent had not been established in light of the counterinsurgency motive, or in the alternative considering other explanations such as the intent to punish the population or even the crime against humanity of extermination that stands distinct from genocide.

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