

ISRMUN 2021



**International
Court of Justice**

Committee: International Court of Justice (ICJ)

Case: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)

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I. Committee Information

A. What is the ICJ?

The International Court of Justice (ICJ) is the main judicial organ of the United Nations (UN). Its primary purpose is to settle disputes between UN member states and provide advisory opinions on international legal issues. Its findings and rulings help form the basis of international law. The court was formed in 1945 and is based in The Hague. Its formation was largely based on its predecessor, the Permanent Court of International Justice (PCIJ), which was established by the League of Nations in 1920. All of the court's proceedings are governed by the Statute of the International Court of Justice. This document is part of the UN Charter and outlines key procedures that all cases and decisions issued by the court must follow. The ICJ is comprised of 15 judges elected by the General Assembly and Security Council every nine years (The Court, ICJ, 2020).

B. How does the committee work?

The ICJ differs greatly from traditional MUN committees; it follows a different protocol and participants are provided with information related to the case through witnesses and different types of evidence. Typically, the ICJ consists of 25 participants

and is led by two Chairs who are responsible for monitoring the flow of the debate. During ISRMUN, participants in the ICJ are referred to as judges. The case is presented by one representative of each country, called an advocate. The advocates explain their country's arguments through speeches, witnesses and evidence.

The ICJ is divided into three types of sessions: case presentation, moderated caucus and unmoderated caucus. The case is introduced and built upon during the case presentation. Judges have the opportunity to view and question witnesses and evidence during this time. This section of the committee is moderated by the Chair and judges must raise their placards to speak. Similarly, during a moderated caucus, judges can share their opinions about the case through a debate moderated by the Chair. The final judgment and legal opinions are decided upon during the unmoderated caucus. This section of the debate is timed but allows judges to speak freely amongst themselves in order to reach a fair judgment for the countries involved in the conflict.

II. Overview of the Case

The Rohingya people are a Muslim Indo-Aryan ethnic minority in Buddhist majority Myanmar. The persecution of Rohingya people in Myanmar dates back to the 1970s. In late 2016, Myanmar's armed forces and police started a major crackdown on the Rohingya people in Rakhine State which is located in the country's northwestern region (BBC News, 2020). Evidence gathered by the United Nations, journalists, officials from the International Criminal Court and human rights groups show widespread human rights violations, including extrajudicial killings, summary executions, gang rapes, arson of Rohingya villages, businesses, and schools, and infanticides. The Myanmar government dismissed these allegations as "exaggerations"

(Al Jazeera, 2018). The United Nations estimates that the military and local Rakhine population killed at least 24,000 Rohingya people and perpetrated gang rapes and other forms of sexual violence against 18,000 Rohingya women and girls. Moreover, it is estimated that 116,000 Rohingya were beaten, and 36,000 were thrown into fires. Around one million Rohingya people have been forced to flee to neighbouring countries such as Bangladesh, causing a massive humanitarian crisis (OHCHR, 2019).

The Rohingya people have been described as "one of the world's most persecuted minorities" by the UN. The Rohingya are deprived of the right to move freely and to receive higher education. They have also been denied Myanmar citizenship since 1982 when the Myanmar nationality law was enacted. The Rohingya maintain they are indigenous to western Myanmar with a heritage spanning more than a millennium that includes influence from the Arabs, Mughals and Portuguese. The community claims it is descended from people in precolonial Arakan and colonial Arakan; historically, the region was an independent kingdom between Southeast Asia and the Indian subcontinent (Al Jazeera, 2018). The Myanmar government considers the Rohingya as colonial and postcolonial migrants from Chittagong and East Bengal, neighbouring states located in Bangladesh. It argues that a distinct precolonial Muslim population is recognized as Kaman and that the Rohingya conflate their history with the history of Arakan Muslims in order to advance a separatist agenda. In addition, Myanmar's government does not recognize the term "Rohingya" and prefers to refer to the community as "Bangali". Rohingya human rights groups such as the Arakan Rohingya National Organization demand the right to "self-determination within Myanmar" (BBC News, 2020).

On November 11th, 2019, The Gambia brought a case against Myanmar in the International Court of Justice. The Gambia is alleging that Myanmar has committed mass murder, rape and the destruction of communities against the Rohingya group in Rakhine state since October 2016 and that these actions violate the United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Myanmar committed to the Genocide Convention in 1956. The Convention contains rules on the prevention and punishment of genocide. One of its clauses (Article 9) states that the ICJ will settle disputes related to it. In bringing a case against Myanmar, The Gambia is arguing that a dispute exists between it and Myanmar relating to commitments under the treaty and that Myanmar has consented to the ICJ settling this dispute (HRW, 2019).

Moreover, The Gambia states that it has a “legal right or interest” in the case because as a member of the Genocide Convention its obligations may be defined as “obligations erga omnes partes”. This means that while The Gambia has not been “injured” by Myanmar’s treatment of the Rohingya within Myanmar territory, the country must do all it can to protect those being persecuted. The Gambia is also arguing that like the United Nations Convention against Torture, all States committed to the Genocide Convention have an interest in the fulfilment of its obligations, regardless of whether they are directly impacted or not. Additionally, the ICJ previously confirmed that all member states of the Genocide Convention have a duty to prevent and punish genocide (Pillai, *Opinio Juris*, 2019).

III. Preparation

Formal position papers are not required of ICJ participants. However, in order to prepare for the simulation, judges are encouraged to research the following topics:

- The Rohingya people
- The Rohingya genocide
- The Convention on the Prevention and Punishment of the Crime of Genocide
- Myanmar's political structure
- Statute of the International Court of Justice

IV. Quorum

- Abdul G. Koroma
- Abdulqawi Ahmed Yusuf
- Antônio Augusto Cançado Trindade
- Awn Al-Khasawneh
- Bernardo Sepúlveda Amor
- Bruno Simma
- Christopher Greenwood
- Dalveer Bhandari
- Giorgio Gaja
- Gonzalo Parra-Aranguren
- James Crawford
- Joan E. Donoghue
- Julia Sebutinde

- Kenneth Keith
- Kirill Gevorgian
- Mohamed Bennouna
- Nabil El Araby
- Nawaf Salam
- Patrick Lipton Robinson
- Peter Tomka
- Philippe Gautier
- Pieter Kooijmans
- Ronny Abraham
- Yuji Iwasawa
- Xue Hanqin

IV. Resources

"The Court." International Court of Justice (ICJ). United Nations, 2020. Web. 20 Feb. 2020. <<https://www.icj-cij.org/en/court>>.

"Myanmar Rohingya: What you need to know about the crisis." BBC News. British Broadcasting Corporation, 2020. Web. 03 Mar. 2021. <<https://www.bbc.com/news/world-asia-41566561>>.

Pillai, Priya. "The Gambia v Myanmar at the International Court of Justice: Points of Interest in the Application." *Opinio Juris*. International Commission of Jurists, 2019. Web. 03 Mar. 2021. <<http://opiniojuris.org/2019/11/13/the-gambia-v-myanmar-at-the-international-court-of-justice-points-of-interest-in-the-application/>>.

"Questions and Answers on Gambia's Genocide Case Against Myanmar before the International Court of Justice." Human Rights Watch (HRW). Human Rights Watch, 2019. Web. 03 Mar. 2021. <<https://www.hrw.org/news/2019/12/05/questions-and-answers-gambias-genocide-case-against-myanmar-international-court>>.

"Who are the Rohingya?" Al Jazeera. Al Jazeera Media Network, 2018. Web. 03 Mar. 2021. <<https://www.aljazeera.com/features/2018/4/18/who-are-the-rohingya>
<https://ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24907&LangID=E>>.