

Ending Impunity – ICJ's Role in Safeguarding Human Rights in the Gambia v. Myanmar

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INTRODUCTION

The International Court of Justice (*Hereinafter referred as ICJ*) handed down its much-awaited ruling on the Request for Provisional Measures in the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*The Gambia v Myanmar*)¹ last year.

In a not so common unanimous verdict, the ICJ took a humanistic approach, breaking away from a stagnant State voluntarist thought. The Court upheld four out of six provisional measures sought by The Gambia, creating a strong precedent for international prevention of genocide and reinforcing States' responsibility to prevent and punish genocide under international law.² This ruling directly aids in alleviating violence against the remaining 600,000 Rohingya in the State of Rakhine,³ creating a binding assurance of their protection. It reaffirms, with the highest international judicial statement, the protected nature of the Rohingya under the Genocide Convention⁴ and confirms their separate identity.

The ICJ ruling is remarkable on two counts. To begin with, it is the first time that the ICJ has addressed a case of genocide brought by a non-warring and non-contiguous state against an accused State, broadening the role of *erga omnes* partes in international law. Secondly, it is the first time in ICJ history that the Court examined genocide allegations on its own, based only on UN investigators' reports. This case note explores the content and meaning of the ICJ's groundbreaking strategy in humanizing its jurisprudence regarding the legal requirements for the issue of provisional measures. It ends by confirming the suitability of provisional measures as a true jurisdictional assurance with a preventive nature, which can

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¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Order, 2020 I.C.J. 178, ¶ 132 (Jan. 23).

² Id. ¶ 86.

³ U.N. Human Rights Council, Detailed Findings of the Independent International Fact-Finding Mission on Myanmar, U.N. Doc. A/HRC/42/CRP.5 (Sept. 16, 2019).

⁴ Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

ensure the rights of the most vulnerable communities.

I. THE CASE – GAMBIA V. MYANMAR

A. The Context

The Rohingya, a Muslim ethnic minority that is internationally accepted as the "*most persecuted minority in the world*."⁵ The Rohingya live primarily in Myanmar's Rakhine State⁶. Observing a Sufi-derived variant of Sunni Islam, they possess a distinct cultural identity separate from Myanmar's preponderant Buddhist majority on the grounds of religion, language, and ethnicity. The Rohingya in Rakhine State numbered 1 million in 2017⁷ but have since reduced to 600,000⁸ owing to a history of oppression and war. Scholars often compare the legal status of the Rohingya in Myanmar to apartheid since policies by the state of discrimination have led to the Rohingya being denied citizenship, general healthcare, education, and work opportunities.⁹

In August 2017, the Arakan Rohingya Salvation Army (*Hereinafter referred as ARSA*) attacked police and military outposts in Rakhine State.¹⁰ Myanmar insisted in designating ARSA as a terrorist organization and in unleashing massive military operations,¹¹ so-called clearance operations in the form of social media in propagating hate speech that amounted to inciting attacks on the general Rohingya populace.¹² Reports show that hundreds of thousands of Rohingya¹³ were forced to seek refuge in Bangladesh, and around 10,000 were killed due to Tatmadaw's clearance operations. Myanmar justified its actions as a matter of self-defence against Rohingya insurgents' attacks. But in 2018, UN enforcers threatened genocide, reporting crimes like gang rape and mass murder¹⁴ committed by the Tatmadaw as part of

⁵ Press Release, U.N. Off. of the High Comm'r for Hum. Rts., Human Rights Council Opens Special Session on the Situation of Human Rights of the Rohingya and Other Minorities in Rakhine State in Myanmar (Dec. 5, 2017).

⁶ Elizabeth Albert & Lindsay Maizland, The Rohingya Crisis, COUNCIL ON FOREIGN RELS. (Jan. 23, 2020), [<https://www.cfr.org/background/rohingya-crisis>.]

⁷ U.N. Human Rights Council, *supra* note 3.

⁸ Press Release, Amnesty Int'l, Myanmar: Rohingya Trapped in Dehumanising Apartheid Regime (Nov. 21, 2017).

⁹ Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 37th Session of the Human Rights Council (Mar. 12, 2018).

¹⁰ Albert & Maizland, *supra* note 6.

¹¹ *Id.*

¹² *Id.*

¹³ Paul Mozur, A Genocide on Facebook, With Posts from Myanmar's Military, N.Y. TIMES, Oct. 15, 2018, at A1.

¹⁴ U.N. Human Rights Council, Rep. of the Special Rapporteur on the Situation of Human Rights in Myanmar, U.N. Doc. A/HRC/34/67 (Mar. 14, 2017).

systematic clearance operations¹⁵ to eliminate the Rohingya as a group.¹⁶ As per the *UN Fact Finding Mission Report, 2019* – their history of oppression and rights violation prompted 740,000 Rohingya¹⁷ to leave the nation, and the other 600,000 were at grave risk of further genocidal acts.¹⁸ The Rohingya community was exposed to the threat of both their physical well-being and cultural lives.

B. The Request for Provisional Measures

The Gambia, which referred to itself as a "*small country with a big voice on human rights*,"¹⁹ filed a case²⁰ against Myanmar, alleging the *Genocide Convention in breach of Articles 36(1) and 40 of the Statute of the Court*²¹ and *Article 38 of the Rules of the Court*.²² At the core of the legal proceedings was The Gambia's Request for the indication of provisional measures,²³ a crucial test for international law, seeking to halt atrocities against the Rohingya and preserve evidence for future accountability.²⁴

The Gambia submitted its Request for provisional measures in accordance with *Article 41*²⁵ *of the Statute of the Court and Articles 73, 74, and 75 of the Rules of the Court*.²⁶ The application portrayed a brutal campaign characterized by decades of gradual marginalization and erosion of rights, resulting in a state-sanctioned and institutionalized system of oppression affecting Rohingya lives from birth to death.²⁷ Given the ongoing severe and irreparable harm suffered by the Rohingya, The Gambia asserted that the situation in Myanmar not only requires but compels the indication of provisional measures

¹⁵ U.N. Human Rights Council, Rep. of the Independent International Fact-Finding Mission on Myanmar, ¶ 36, U.N. Doc. A/HRC/39/64 (Aug. 27, 2018); see also MÉDECINS SANS FRONTIÈRES, "NO ONE WAS LEFT": DEATH AND VIOLENCE AGAINST THE ROHINGYA IN RAKHINE STATE, MYANMAR (Mar. 2018).

¹⁶ Wa Lone et al., Massacre in Myanmar, REUTERS, Feb. 8, 2018.

¹⁷ Poppy Elena McPherson & Ruma Paul, Myanmar Army Chief Must Be Prosecuted for Rohingya Genocide: UN Rights Envoy, REUTERS, Jan. 25, 2019.

¹⁸ U.N. Human Rights Council, *supra* note 3.

¹⁹ Owen Bowcott, Gambia Files Rohingya Genocide Case Against Myanmar at UN Court, THE GUARDIAN, Nov. 11, 2019.

²⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Application Instituting Proceedings and Request for Provisional Measures, 2020 I.C.J. 178.

²¹ Statute of the International Court of Justice arts. 36(1), 40, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993.

²² Rules of the International Court of Justice art. 38 (adopted Apr. 14, 1978).

²³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), *supra* note 20, at ¶ 132.

²⁴ *Id.*

²⁵ Statute of the International Court of Justice, *supra* note 21, art. 41.

²⁶ Rules of the International Court of Justice, *supra* note 22, arts. 73-75.

²⁷ U.N. Human Rights Council, *supra* note 15, at ¶ 20.

as a matter of extreme urgency²⁸ under Article 41(1) of the Statute of the Court. The Gambia²⁹ emphasized to the Court that acts of genocide form a continuum, as recognized by Raphaël Lemkin, and intervention does not have to wait until the final moment.³⁰ Provisional measures, akin to injunctions in domestic cases,³¹ are sought to safeguard relevant, plausible rights at risk of extinguishment before the Court determines the case's merits. In this context, the Court was not tasked with establishing the existence of breaches imputable to a party but with determining the plausible threat of genocide to the Rohingya.³² The Gambia's filing asked for six provisional measures in respect of genocide activities, the first two of which required Myanmar to immediately take measures to avoid further genocide. The third sought to secure evidence for the Court's proceeding,³³ and the fourth and fifth called on Myanmar to make regular reports on taking measures.³⁴ The sixth requested Myanmar to assist UN agencies in prevention and reporting of genocide.³⁵

II. THE ORDER

The Genocide Convention,³⁶ regarded by many as the first post-World War II modern treaty protecting human rights,³⁷ was adopted on 9 December 1948 following the Holocaust. The ICJ is the final custodian of the Genocide Convention, which is responsible for preventing and punishing the crime of genocide. The ICJ has asserted that genocide "shocks the conscience of mankind" and results in "*great losses to mankind*."³⁸ Nevertheless,

²⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), supra note 20, at ¶ 113.

²⁹ RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR RE-ESS (2ND EDN, THE LAWBOOK EXCHANGE 2005) 79-94

³⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Verbatim Record, 2019 I.C.J. 178, at 62, ¶ 28 (Dec. 10, 2019).

³¹ LaGrand (Ger. v. U.S.), Judgment, 2001 I.C.J. 466, ¶ 102 (June 27).

³² Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), supra note 1, at ¶¶ 43-44.

³³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), supra note 30, at 63, ¶ 32.

³⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Separate Opinion of Judge Lauterpacht, 1993 I.C.J. 433, ¶ 73; see also Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), supra note 30, at 66, ¶ 6.

³⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), supra note 30, at 66-72.

³⁶ Convention on the Prevention and Punishment of the Crime of Genocide, supra note 4.

³⁷ U.N. Off. on Genocide Prevention and Responsibility to Protect, The Convention on Prevention and Punishment of the Crime of Genocide, [<https://www.un.org/en/genocideprevention/genocide-convention.shtml>] (last visited Aug. 2, 2024).

³⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Order, 1993 I.C.J. 325, ¶ 51 (Sept. 13).

establishing genocide as a crime has been difficult because of the stringent requirements of evidence to prove genocidal intent. In its history, the ICJ has granted orders for provisional measures sparingly and has only once found a state guilty of genocide, in the case of *Bosnia and Herzegovina v Serbia and Montenegro*.³⁹

The standard of proof in proving genocidal intent is very high, involving definitive evidence that can take years to produce and prove beyond reasonable doubt.⁴⁰ Therefore, until the final determination of a case, interim measures frequently stand as the determinative protection between life and death for persecuted minorities. In a historic ruling, the ICJ recognized the critical role played by interim measures of protection to prevent genocide by ordering a state to suspend all genocidal activities until the ultimate determination of the case.

The ICJ, getting over earlier reluctance, not only ordered provisional measures but also humanized the legal requirements and relaxed the legal hurdles for their indication. In a daring interpretation of the judgement, the ICJ's 15-judge bench, headed by *Judge Yusuf Abdulgawi*, asserted that "*the Rohingya in Myanmar are still highly vulnerable to genocidal acts*."⁴¹ The Court sanctioned four out of the six provisional measures sought by The Gambia.⁴² The first two granted orders simply restate State responsibility under the Genocide Convention, requiring Myanmar to take all steps necessary to prevent actions within the ambit of the convention, including killing, causing serious bodily or mental harm, and deliberately inflicting conditions of life likely to result in the group's destruction.⁴³ The Court further went on to order Myanmar to make sure that all irregular armed forces or organisations that are under its command do not conspire to commit or incite genocide.⁴⁴ The third action needs Myanmar to maintain evidence in connection with allegations under the Genocide Convention, and the fourth needs Myanmar to submit regular reports regarding implementation measures.⁴⁵

III. ANALYSIS

³⁹ Id.

⁴⁰ Andrew Gattini, Evidentiary Issues in the ICJ's Genocide Judgment, 5 J. INT'L CRIM. JUST. 889 (2007).

⁴¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), supra note 1, at ¶ 72.

⁴² Id. ¶ 86.

⁴³ Id.

⁴⁴ Id.

⁴⁵ Id.

A. Prima Facie Jurisdiction Over the Dispute and the Question of the Gambia's Standing

Three legal preconditions underlie the evaluation of a request for provisional measures: (1) *prima facie jurisdiction of the Court over the dispute, including the question of standing on the part of the Applicant*; (2) *the plausible character⁴⁶ of the rights claimed for protection, showing at least some likelihood that the Court will eventually determine a violation on the merits, and a causal connection between these rights and the requested measures*; and (3) *a demonstration of risk of irreparable prejudice prior to the delivery of the Court's final decision, underscoring the imperiling nature of the situation.*⁴⁷ A review of the ICJ's position on these legal requirements in this case demonstrates an active and adaptive approach to enforcing State responsibility in light of atrocity crimes. The ICJ is able to indicate interim measures only if the acts on consideration are *prima facie* susceptible of falling within the terms of the Genocide Convention, securing the jurisdiction *ratione materiae* of the Court.⁴⁸ In order to acquire *prima facie* jurisdiction, determining the presence of a dispute within the Genocide Convention and the Statute of the Court comes first.⁴⁹

The Gambia and Myanmar, as UN Member States and signatories to the Genocide Convention, are subject to the ICJ's jurisdiction. The ICJ employed a novel formula for determining the existence of a dispute, considering various documents and statements exchanged in international fora, such as the UN General Assembly and the Organisation of Islamic Cooperation. This approach relaxed the threshold, allowing the ICJ to infer the existence of divergent views. The ICJ took into account the statements made in international fora and attached significance to the author, intended or actual addressee, and content of the documents. The failure to respond to the *Note Verbale*⁵⁰ by The Gambia was considered an indication of the existence of a dispute by the ICJ. Here, a non-victim State, The Gambia, instituted a case for genocide against Myanmar on the basis of their common values as a

⁴⁶ See Immunities and Criminal Proceedings (Eq. Guinea v. Fr.), Provisional Measures, Order, 2016 I.C.J. 1165, ¶ 71 (Dec. 7).

⁴⁷ See Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Order, 2011 I.C.J. 6 (Mar. 8).

⁴⁸ Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.), Provisional Measures, Order, 2018 I.C.J. 623, ¶ 30 (Oct. 3).

⁴⁹ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Geor. v. Russ.), Judgment, 2011 I.C.J. 70, ¶ 30 (Apr. 1).

⁵⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), *supra* note 1, at ¶ 28.

State party to the Genocide Convention.⁵¹ This novel situation questioned the standing of The Gambia before the Court. The ICJ invoked *Belgium v. Senegal*,⁵² as far as admissibility of claims based on the *erga omnes* nature of obligations as in the Genocide Convention is concerned.⁵³ The ICJ disrupted and pushed the limits of international principles of law, setting a new path in enforcing State responsibility against atrocity crimes.

The ICJ elucidated that The Gambia initiated proceedings in its name, as required by the Court Statute.⁵⁴ The Court considered that Myanmar's objections concerning circumvention of *Article*

34. The Gambia, in its sovereign capacity, cannot be prevented from asking other States or international organizations for assistance with the prosecution without violating *Article 34*. Moreover, it was highlighted by the ICJ that Myanmar's reservation to *Article VIII* of the Genocide Convention⁵⁵ does not deprive the Court of its jurisdiction under *Article IX* of the Convention.⁵⁶ The Court positively interpreted the words "competent organs of the United Nations" under *Article VIII* as meaning that the words did not include the ICJ in their ambit. In answering these questions of law, the ICJ rendered a reasoned judgment in respect of *prima facie* jurisdiction and assisted in the evolution of an independent legal regime for provisional measures.

B. Plausibility of Rights and Link to Requested Provisional Measures

The ICJ orders for provisional measures have a restorative function in "*humanizing the law of nations in the dehumanized world of our days*,"⁵⁷ and in this regard, the Court is not asked to finally determine the existence of fundamental rights. It is enough that the said rights are plausible, based on a possible interpretation of the Genocide Convention.⁵⁸ The plausibility of rights is evaluated by linking the rights asserted by the Applicant to the rights in issue

⁵¹ Int'l Law Comm'n, Articles on Responsibility of States for Internationally Wrongful Acts, art. 48, U.N. Doc. A/56/10 (2001).

⁵² Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Provisional Measures, Order, 2009 I.C.J. 449, ¶ 68 (May 28).

⁵³ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Separate Opinion of Vice-President Xue, 2020 I.C.J. 178, ¶ 5.

⁵⁴ Statute of the International Court of Justice, *supra* note 21, art. 34.

⁵⁵ Convention on the Prevention and Punishment of the Crime of Genocide, *supra* note 4, art. VIII.

⁵⁶ *Id.* art. IX.

⁵⁷ Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. U.A.E.), Provisional Measures, Order, 2018 I.C.J. 406, ¶ 28 (July 23).

⁵⁸ Questions Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Provisional Measures, Order, 2009 I.C.J. 139, ¶ 60 (May 28).

before the judge.⁵⁹ The Gambia aimed to protect the rights of the entire members of the Rohingya group in Myanmar, which asserted particular genocidal intent from systematic oppression and persecution, which included denial of legal status, citizenship, and incitement of hatred on racial or religious grounds.⁶⁰

The plausibility of rights is closely tied to the issue of standing. The Gambia's characterization of rights seeks to invoke the *erga omnes* nature of the provisions of the Genocide Convention,⁶¹ and the ICJ acknowledged this. In the case of *Bosnia and Herzegovina v. Serbia and Montenegro*,⁶² the ICJ acknowledged the ban on genocide as a peremptory international law norm (*jus cogens*), giving prominence to the *erga omnes*⁶³ partes rights and duties contained in the Genocide Convention. Vice-President Xue expressed reservations about the supposedly low standard of plausibility applied by the Court,⁶⁴ echoing Myanmar's argument that the evidence presented points to a protracted problem of ill-treatment of ethnic minorities rather than genocide. Judge ad hoc Kress, on the other hand, concluded that The Gambia's materials were sufficient to meet the plausibility test regarding genocidal intent.

The Gambia stressed that plausibility is not a zero-sum and that the fact that there may be a long-standing problem of ill-treatment does not preclude genocide. In its Order, the ICJ justified the suitability of the provisional measures by relying on examples of oppression reported in UNFFM reports. These cases included gross violence against the Rohingya, denial of any legal status, identity, and citizenship, and inciting hatred on ethnic, racial, and religious grounds.⁶⁵ The Court emphasized that Myanmar was not taking responsibility; public condemnation was being avoided; and evidence was being wilfully destroyed, thus justifying the indication of the majority of requested provisional measures.⁶⁶

C. Risk of Irreparable Prejudice and Urgency

⁵⁹ See *Aegean Sea Continental Shelf (Greece v. Turk.)*, Provisional Measures, Order, 1976 I.C.J. 3, ¶ 25 (Sept. 11).

⁶⁰ U.N. Human Rights Council, *supra* note 15.

⁶¹ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.)*, Judgment, 2015 I.C.J. 3, ¶ 87 (Feb. 3).

⁶² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro)*, Judgment, 2007 I.C.J. 43, ¶ 161 (Feb. 26).

⁶³ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.)*, *supra* note 61.

⁶⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.)*, Separate Opinion of Vice-President Xue, 2020 I.C.J. 178, ¶ 2.

⁶⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.)*, *supra* note 1, at ¶ 55.

⁶⁶ U.N. Human Rights Council, *supra* note 15, at ¶¶ 1000-1003.

The ICJ has the power to indicate provisional measures *"if there is an urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused,"* before final disposal of the case. The urgency requirement is fulfilled when the actions liable to cause irreparable prejudice may take place at any time before the Court delivers a final decision. The burden to prove the risk of irreparable prejudice and urgency lies on the Applicant.

The Gambia relied so much on UN reports, such as those by the UN Special Rapporteur on the human rights situation in Myanmar, UN Special Advisor on the Prevention of Genocide, and the Independent International FFM on Myanmar. This dependence, along with the lack of previous international criminal determinations, presented a new test to the ICJ regarding its legal standard for ascertaining the credibility of reports, particularly since Myanmar challenged the impartiality and credibility of said reports. The ICJ has generally demonstrated more willingness to accord significance to findings derived from court-like, adversarial environments when basing itself on third-party findings of fact. Nevertheless, there have been exceptions, and in the present instance, the ICJ broke from its purist legal standard, heavily depending on UN reports quoted by The Gambia.

The Court highlighted the measures showing Myanmar's *"continuing intention to destroy the Rohingya as a group, including internment camps, stringent limits on movement, forced starvation, withholdings of healthcare and education, all intended to render life impossible for the surviving Rohingya."*⁶⁷

The reports of the UNFFM played a significant role in emphasizing verifiable patterns of violence, including widespread sexual violence as a constitutive element of genocide,⁶⁸ a progressive step by the ICJ. The Court cited as a qualifying requirement the human vulnerability factor, as propounded by *Judge Cangado Trindade* in his separate opinion. This human vulnerability consideration, focused on extending protection to fundamental rights in situations of extreme vulnerability, is aligned with the core principles of the Genocide Convention.⁶⁹ The ICJ's decision, sans pre-judgment of the case on its merits, marks a mature way of perceiving genocide as a continuum and not as an aberrational

⁶⁷ Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 37th Session of the Human Rights Council (Mar. 12, 2018).

⁶⁸ U.N. Human Rights Council, *supra* note 3, at ¶ 238.

⁶⁹ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Sept. 2, 1998).

occurrence. Such mature perception is anticipated to have considerable and long-lasting impacts on the ICJ's existing jurisprudence and future decisions.

IV. CONCLUSION

The action of The Gambia and the ICJ's reaction thereto represent a major milestone towards eradicating impunity. Although Myanmar refused to accept the term "*Rohingya*" throughout the proceedings, an issue likely to remain unsolved, it is significant that Myanmar's previous denials of misconduct in the "*clearance operations*" had matured into selective confessions of having used excessive force. Whereas orders on interim measures pursuant to *Article 41*⁷⁰ are binding upon Myanmar under *Article 94 of the UN Charter*⁷¹ and the *LaGrand*⁷² case, the Rohingya's fate is in the hands of the cooperation of states and a nuanced UN response based on the ICJ's decision.

⁷⁰ Statute of the International Court of Justice, *supra* note 21, art. 41.

⁷¹ U.N. Charter art. 94.

⁷² *LaGrand* (Ger. v. U.S.), Judgment, 2001 I.C.J. 506, ¶ 109 (June 27).