Statement by H.E. Daw Aung San Suu Kyi, State Counsellor and Union Minister for Foreign Affairs of the Republic of the Union of Myanmar
As Agent Before the International Court of Justice
The Hague, 11 December, 2019

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

2. In the present case, Mr. President, the Court has been asked to ap-ply the 1948 Genocide Convention, one of the most fundamental multilateral treaties of our time. Invoking the 1948 Genocide Convention is a matter of utmost gravity. This is the treaty that we made following the systematic killing of more than six million European Jews, and that my country whole-heartedly signed as early as 30 December 1949 and ratified on 14 March 1956. Genocide is the crime that the International Criminal Tribunal for Rwanda applied in response to the mass-killing of perhaps 70% of the Tutsis in Rwanda. It is the crime that was not applied by the Tribunal for the former Yugoslavia to the displacement of approximately one million residents of Kosovo in 1999. Neither was it applied by that Tribunal nor by this Court when deciding upon the exodus of the Serb population from Croatia in 1995. In both situations international justice resisted the temptation to use this strongest of le-gal classifications because the requisite specific intent to physically de-stroy the targeted group in whole or in part was not present.

3. Regrettably, The Gambia has placed before the Court an incomplete and misleading factual picture of the situation in Rakhine State in Myanmar. Yet, it is of the utmost importance that the Court assess the situation obtaining on the ground in Rakhine dispassionately and accurately.
4. The situation in Rakhine is complex and not easy to fathom. But one thing surely touches all of us equally: the sufferings of the many innocent people whose lives were torn apart as a consequence of the armed conflicts of 2016 and 2017, in particular those who have had to flee their homes and are now living in camps in Cox's Bazar.

5. Mr. President and Members of the Court, the troubles of Rakhine State and its population, whatever their background, go back into past centuries and have been particularly severe over the last few years. [Please project Slide 1.] Currently, an internal armed conflict is going on there – between the Arakan Army, an organised Buddhist armed group with more than 5,000 fighters, and the regular Myanmar De-fence Services. None of the speakers yesterday made any reference to this. The Arakan Army seeks autonomy or independence for Rakhine – or Arakan as it was called – finding inspiration in the memory of the historic Kingdom of Arakan. This conflict has led to the displacement of thousands of civilians in Rakhine. Standard security restrictions – such as curfew and check-points – are in place at present in the conflict zone and affect the situation of civilians there, regardless of their background. [Please remove Slide 1.]

6. Mr. President, on 9 October 2016, approximately 400 fighters of the Arakan Rohingya Salvation Army – known as ARSA – launched simultaneous attacks on three police posts in Maungdaw and Rathedaung Townships in northern Rakhine, near the border with Bangladesh. ARSA claimed responsibility for these attacks, which led to the death of nine police officers, more than 100 dead or missing civilians, and the theft of 68 guns and more than 10,000 rounds of am-munition. This was the start of an internal armed conflict between ARSA and Myanmar's Defence Services which lasted until late 2017. The selective factual propositions contained in The Gambia's Application actually concern this conflict.

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

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

9. It may aid the Court to briefly consider the historical significance of Maungdaw. When Britain made Burma a colonial entity separate from British India in 1937, the border between Burma and India was drawn along the river Naf, where we find today's border between Bangladesh and Myanmar. The historical Kingdom of Arakan had extended much further to the north than the river Naf, including most of what is today Chittagong District in Bangladesh. Members of some Rakhine communities therefore felt that the border drawn by the British was too far south; others, that it was too far north. Myanmar has never challenged this border since independence in 1948. [Please re-move Slide 2.]

10. Britain did not lose control over what is today Maungdaw Town-ship during World War II. From September 1942, a number of local Muslim families offered fighters to the British irregular V-Force set up to collect intelligence and to initially absorb any Japanese advance. Many Muslims gave their lives in combat against the Japanese in Rakhine. The sacrifices made by Muslim fighters motivated a call for the creation of an autonomous Muslim space in northern Rakhine, centred on Maungdaw. Whether or not this was encouraged by British officers, Britain rejected this call as soon as it had reoccupied Burma, be-fore independence in 1948. The Muslim-Buddhist inter-communal violence of 1942 recurred in 1948 and several times after that. This cycle of violence has negatively affected life in northern Rakhine, making it the second poorest state in Myanmar.

11. Mr. President and Members of the Court, may I go back to the situation in Rakhine on the morning of 25 August 2017. More than thirty police stations and villages, and one military base, had been at-tacked before sunrise in a highly coordinated fashion, by an organised armed group operating along a densely forested hill-range that provides ample opportunity to hide. Many of the ARSA fighters had been recruited from local villages in the weeks and months preceding the attack. Myanmar's Defence Services responded to the attacks of AR-SA fighters by the use of ground forces. There were armed incidents in more than 60 locations. The main clashes occurred in 12

places: In Min Gyi (Tola Toli) village, Chut Pyin village, Maung Nu village, Gutar Pyin village, Alai Than Kyaw village, Myin Lut village, Inn Din village, Chein Kharli (Koetan Kauk) village, Myo Thugyi ward, Kyauk Pandu village, wards of Maungdaw Town, and southern Maungdaw.

12. Mr. President, allow me to clarify the use of the term 'clearance operation', nae myay shin lin yeh in Myanmar. Its meaning has been distorted. As early as the 1950s, this term has been used during military operations against the Burma Communist Party in Bago Range. Since then, the military has used this expression in counter-insurgency and counter-terrorism operations after attacks by insurgents or terror-ists. In the Myanmar language, nae myay shin lin yeh – literally 'clear-ing of locality' – simply means to clear an area of insurgents or terrorists.

13. It is still not easy to establish clear patterns of events in these 12 locations. Many ARSA fighters died. There may have been several hundred casualties in some of the 12 locations. There was some inter-communal violence. Buddhist and Hindu minority communities also feared for their security after the original ARSA attacks and many fled from their homes.

14. It may be worth noting that the use of air power in military operations was avoided as far as possible to minimise the risk of collateral damage. However, in one incident, in order to be able to extract a unit surrounded by hundreds of ARSA fighters, the use of a helicopter was required. There was shooting from the helicopter which resulted in fatalities, which may have included non-combatants.

15. Mr. President, it cannot be ruled out that disproportionate force was used by members of the Defence Services in some cases in disregard of international humanitarian law, or that they did not distinguish clearly enough between ARSA fighters and civilians. There may also have been failures to prevent civilians from looting or destroying property after fighting or in abandoned villages. But these are determinations to be made in the due course of the criminal justice process, not by any individual in the Myanmar Government.

16. Please bear in mind this complex situation and the challenge to sovereignty and security in our country when you are assessing the intent of those who attempted to deal with the rebellion. Surely, under the circumstances, genocidal intent cannot be the only hypothesis.

17. Under its 2008 Constitution, Myanmar has a military justice system. Criminal cases against soldiers or officers for possible war crimes committed in Rakhine must be investigated and prosecuted by that system. On 25 November 2019, the Office of the Judge Advocate General announced the start of a court-martial for allegations linked to the Gutar Pyin village incident, one of the 12 main incidents referred to earlier. The Office also let it be known that there will be additional courts-martial if further incriminating evidence is brought by the Independent Commission of Enquiry. The ICOE is an independent special investigation procedure established for Rakhine allegations by the President of Myanmar, chaired by a former Deputy Foreign Minister from the Philippines, with three other members, including a former Under-Secretary-General of the United Nations from Japan.

18. On 26 November 2019, this Commission announced that it had taken about 1,500 witness statements from all affected groups in Rakhine, and that it has interviewed 29 military personnel who were deployed to the affected townships in northern Rakhine during the military operations from 25 August 2017 to 5 September 2017, as well as 20 police personnel who were stationed at

the police posts that were attacked on 25 August 2017. There is currently no other fact-finding body in the world that has garnered relevant first-hand information on what occurred in Rakhine in 2017 to the same extent as the Independent Commission of Enquiry and the Office of the Judge Advocate General in Myanmar.

19. This fact reinforces my sense that I should refrain from any action or statement that could undermine the integrity of these ongoing criminal justice processes in Myanmar. They must be allowed to run their course. It is never easy for armed forces to recognise self-interest in accountability for their members, and to implement a will to accountability through actual investigations and prosecutions. I respectfully invite the Members of the Court to consider for a moment the record of other countries. This is a common challenge, even in resource-rich countries.

20. Recent cases in the news headlines illustrate that even when military justice works, there can be reversals. This can also happen in Myanmar. As part of the overall efforts of the Myanmar Government to provide justice, a court-martial found that ten Muslim men had been summarily executed in Inn Din village, one of the 12 locations of serious incidents referred to earlier. It sentenced four officers and three soldiers each to ten years in prison with hard labour. After serving a part of their sentences, they were given a military pardon. Many of us in Myanmar were unhappy with this pardon.

21. Other cases are undertaken without controversy. In the Mansi case, for example, a court-martial sat close to the location in Kachin State where three internally displaced civilians were killed. It sentenced six soldiers, each to ten years in prison, in January 2018. Relatives of the victims and local civil society representatives were invited to the sentencing.

22. The Office of the Judge Advocate General in Myanmar is by our standards well-resourced, with more than 90 staff and a presence in all regional commands throughout the country. I am encouraged by the Gutar Pyin court-martial, and I expect the Office to continue its investigations and prosecutions based on reliable evidence collected in Rakhine and from persons who witnessed what happened there.

23. Can there be genocidal intent on the part of a state that actively investigates, prosecutes and punishes soldiers and officers who are accused of wrongdoing? Although the focus here is on members of the military, I can assure you that appropriate action will also be taken against civilian offenders, in line with due process. There will be no tolerance of human rights violations in the Rakhine, or elsewhere in Myanmar.

24. Mr. President, there are those who wish to externalise accountability for alleged war crimes committed in Rakhine, almost automatically, without proper reflection. Some of the United Nations human rights mandates relied upon in the Application presented by The Gambia have even suggested that there cannot be accountability through Myanmar's military justice system. This not only contradicts Article 20(b) of the Constitution of Myanmar, it undercuts painstaking domestic efforts relevant to the establishing of co-operation between the military and the civilian government in Myanmar, in the context of a Constitution that needs to be amended to complete the process of democratization. That process is now underway at the Pyidaungsu Hluttaw, the Union Parliament.

25. The emerging system of international criminal justice rests on the principle of complementarity. Accountability through domestic criminal justice is the norm. Only if domestic accountability fails,

may international justice come into play. It would be inconsistent with complementarity to require that domestic criminal justice should proceed much faster than international criminal justice. A rush to externalise accountability may undermine professionals in domestic criminal jus-tice agencies. What does the appearance of competition between domestic and international accountability do to the public's trust in the intentions of impatient international actors?

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

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

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

29. Mr. President, allow me to share one further reflection in this Great Hall of Justice. International law may well be our only global value system, and international justice a practice that affirms our common values. Leaders of States and relevant inter-governmental and non-governmental organisations should also be cognizant of their responsibility to express and affirm fundamental values. Feeding the flames of an extreme polarisation in the context of Rakhine, for exam-ple, can harm the values of peace and harmony in Myanmar. Aggravating the wounds of conflict can undermine unity in Rakhine. Hate narratives are not simply confined to hate speech – language that contributes to extreme polarisation also amounts to hate narratives.

30. Several international actors face a challenge here. But Myanmar could also have done more since the 1980s to emphasize the shared heritage and deeper layers of unity among the diverse peoples of our country. Cycles of inter-communal violence in Rakhine going back to the 1940s should be countered not just by practical measures aimed at sustainable development and rule of law, but also by nourishing a spiritual mindset of unity. It is a moral responsibility of leaders to guard the aspirations of people for harmony and peace.

31. U Thant, the third United Nations Secretary-General, had under-stood this. He wrote in his memoirs *View From the UN* published in 1974: "I even believe that the mark of the truly educated

and imaginative person facing the twenty-first century is that he feels himself to be a planetary citizen" (p. 454). Encouraging this added layer of identity – a sense of planetary citizenship – is of fundamental importance for peaceful relations between nations as well as ethnic and religious groups.

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

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

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

35. Since Myanmar gained independence in 1948, our people have not known the security of sustainable development that is the fruit of peace and prosperity. Our greatest challenge is to address the roots of distrust and fear, prejudice and hate, that undermine the foundations of our Union. We shall adhere steadfastly to our commitment to non-violence, human rights, national reconciliation and rule of law, as we go forward to build the Democratic Federal Union to which our people have aspired for generations past. We look to justice as a champion of the reconciliation and harmony that will assure the security and rights of all peoples.

36. Mr. President and Members of the Court, I thank you for your kind attention and ask that you now call upon Professor William Schabas to continue the Myanmar submissions.

Ministry of Foreign Affairs
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