governments involved in other ongoing cases regarding genocide.
Ukraine brought a case before the ICJ in 2022, asking the Court to confirm that it had not committed genocide against Russian-speakers on its territory — a central claim made by Russia to justify its full-scale attack on Ukraine that year.
In another case, the DRC is alleging that Rwanda is involved in genocide conducted on its territory. In a further action, Nicaragua is alleging that Germany shares responsibility for the genocide in Gaza due to its supply of arms to Israel.
The Court's Myanmar judgement may impact these cases. But international attention is mainly focused on the case's implications for South Africa's genocide case against Israel.
In an initial, provisional phase of the case, the Court found that there may be a plausible case of genocide in relation to Israel's military campaign in Gaza.
Counsel for Israel and South Africa, along with the over 20 others states that have intervened in that case, will now assess the Court's finding and ask: what would the outcome be if the matrix of factors applied by the ICJ in the Myanmar case were applied to Israel's armed campaign in Gaza? Would this exercise demonstrate that the intent to commit genocide is the only reasonable explanation for the character of that campaign?
The key clauses in the Myanmar judgement were adopted by an unusually divided Court, by a majority of 9 to 6. The ICJ decides according to the applicable law, not the politics involved in a given situation. But its decision will probably be criticized by some as having lowered the threshold for the identification of genocide, perhaps with a view to confirming the relevance of the Court and of the international rule of law. International law has been largely disregarded in many recent conflicts — especially its humanitarian provisions.
On the other hand, those opposing the Court's finding might be accused of trying to prevent a precedent being established when it comes to evaluating the Gaza case.
In addition to political controversy, the case raises another important issue: A third state, The Gambia — which is not involved in Myanmar's conflict — managed to obtain a ruling in favour of a dispossessed and internationally disenfranchised minority group located a continent away.
The Gambia brought the action with the support of the Organization of the Islamic Conference and senior international lawyers, adopting a kind of international public service role in defence of the international public order. It confirmed that all states have a firm legal interest in compliance with that rule by all other states, and that parties to the Genocide Convention can bring a case to the Court in defence of the prohibition of genocide.
The Court even considered that in this case between The Gambia and Myanmar, it has the authority to rule on the entitlement of the Rohingya as the ultimate beneficiaries of the obligation to prevent genocide to restitution and compensation from their own government. In this way, it has reasserted and indeed extended its role of guardian of the international rule of law at a time of challenge to global order.

The article was first published by Chatham House.

Relationship between IHL, genocide in Gambia v. Myanmar case



By Kevin Jon Heller
Former special adviser to the ICC prosecutor on war crimes

OPINION

Much has already been written on the ICJ's landmark judgment in The Gambia v. Myanmar case (GvM), and much more will no doubt be written in the coming days. In this post, I want to focus on how the Court dealt with a specific — and admittedly narrow — issue I recently addressed in an article in the Journal of International Criminal Justice: whether genocide can be committed through acts that comply with IHL, such as killing a combatant who is a member of a protected group.
Neither of the ICJ's two previous genocide decisions, Bosnia v. Serbia and Croatia v. Serbia, specifically resolved that issue. They did, however, suggest that genocide could potentially be committed through IHL-compliant acts. In the Bosnia case, the Court rejected Serbia's argument that it could not be found responsible for genocide because its deportation of the Bosniaks complied with IHL, noting in para. 334 that "no such justification could be accepted in the face of proof of specific intent."
In the Croatia case, the Court did not address the genocide issue directly, but acknowledged in para. 474 that because "a particular act may be perfectly lawful under one body of legal rules and unlawful under another… it cannot be excluded in principle that an act carried out during an armed conflict and lawful under international humanitarian law can at the same time constitute a violation by the State in question of some other international obligation incumbent upon it."
There is no equivocation in GvM. On the contrary, the majority explicitly rejected the idea that that genocide cannot be committed through acts that comply with IHL:
"305. Accordingly, the Court concludes that although compliance with another body of international law, including international humanitarian law, may inform the identification of intent with respect to the actus reus of genocide, as well as genocidal intent, such compliance does not exclude conduct from the scope of the Genocide Convention."
The majority's analysis is extremely brief — barely two paragraphs. The first paragraph (303) simply notes, with regard to the actus reus of genocide, that "[t]he text of Article II of the Convention does not require that the acts enumerated therein be unlawful pursuant to a distinct body of international law." The second paragraph (304), which addresses genocide's mens rea, is a bit more substantive, pointing out that although compliance with IHL is relevant to the existence of specific intent, IHL-compliance and specific intent can nevertheless coexist in the same act:



Myanmar's representative Ko Ko Hlaing sits in the courtroom as hearings for the genocide case begin in The Hague, Netherlands, on January 12, 2026.
PIROSCHKA VAN DE WOUW/REUTERS

"With respect to genocidal intent, the Court likewise has considered that compliance or non-compliance with international humanitarian law, including whether attacks 'caused casualties and damage far in excess of what was justified by military necessity,' may be relevant in inferring the presence or absence of the specific intent to commit genocide. On the other hand, the fact that members of a protected group could be lawfully targeted or incidentally harmed under international humanitarian law does not exclude the possibility that they may be killed or harmed with genocidal intent (citation omitted)."
None of the other opinions and declarations in the case conclude either that an IHL-compliant act cannot satisfy the actus reus of genocide or question the idea that an IHL-compliant act could be committed with specific intent. Indeed, in his partly concurring and partly dissenting separate opinion, Judge ad hoc Kress provided a useful scenario that demonstrates why it would make little sense to exclude IHL-compliant acts from the scope of the Genocide Convention:
"Imagine a case where a State has formed genocidal intent and has begun to realize it through acts of killings against members of the targeted protected group. Now, imagine that members of that group organize themselves militarily and fight back in defence of the group in such a manner that the threshold of a non-international armed conflict is reached. I would find it difficult to accept that, in such a case, the killings of fighters of the newly formed military wing of the protected group cease to qualify as acts within the meaning of Article II (a) of the Genocide Convention merely because these acts do not violate the targeting rules applicable under the law of non-international armed conflict. For this would mean that the State concerned could — to that extent — carry out its genocidal plan without thereby committing genocide, simply because the targeted group succeeded in organizing itself militarily in its defence."
The scenario assumes, of course, that we know the state in question specifically intends to destroy the protected group. There will obviously be situations in which it is unclear whether a state using violence against members of a protected group intends to destroy the group or is acting pursuant to non-genocidal motivations. When that is the case, it may be difficult — perhaps impossible — to infer specific intent from acts that comply with IHL. Indeed, it may even be difficult to infer specific intent from acts that violate IHL. Sometimes a war crime is just a war crime.
The basic point, however, remains: when the specific intent to destroy a group can be proven, there is no reason to consider acts of violence against members of that group to be non-genocidal simply because they complied with IHL. On that point, the majority in GvM and Judge ad hoc Kress are absolutely right.

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Rohingya migrant girl Halima Khatun (6), who arrived in Bangladesh in October, holds a whistle and a razor blade that she uses as toys at the Shamlapur refugee camp in Cox's Bazar, on December 1, 2017.
ED JONES/AFP

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