

Transcript: Aung San Suu Kyi's speech at the ICJ in full

Retrieved from <https://www.aljazeera.com/news/2019/12/12/transcript-aung-san-suu-kyis-speech-at-the-icj-in-full>

"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.

"In the present case, Mr President, the Court has been asked to apply 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 wholeheartedly signed as early as December 30, 1949, and ratified on March 14, 1956. Genocide is the crime that the International Criminal Tribunal for Rwanda applied in response to the mass-killing of perhaps 70 percent 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 legal classifications because the requisite specific intent to physically destroy the targeted group in whole or in part was not present.

"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. 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.

"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. 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 Defence 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 checkpoints – are in place at present in the conflict zone and affect the situation of civilians there, regardless of their background.

41 “Mr President, on October 9, 2016, approximately 400 fighters of the Arakan Rohingya Salvation
 42 Army – known as ARSA – launched simultaneous attacks on three police posts in Maungdaw
 43 and Rathedaung townships in northern Rakhine, near the border with Bangladesh. ARSA
 44 claimed responsibility for these attacks, which led to the death of nine police officers, more than
 45 100 dead or missing civilians, and the theft of 68 guns and more than 10,000 rounds of
 46 ammunition.

47 “This was the start of an internal armed conflict between ARSA and Myanmar’s Defence
 48 Services which lasted until late 2017. The selective factual propositions contained in The
 49 Gambia’s Application actually concern this conflict.

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

55 “In the early morning of August 25, 2017, several thousand ARSA fighters launched coordinated
 56 attacks on more than 30 police posts and villages, and an army base in northern Rakhine. Most
 57 of the attacks took place on the narrow Maungdaw plain, which is framed by densely forested
 58 hills to the east, and the border with Bangladesh to the west. Indications are that ARSA’s
 59 objective was to seize Maungdaw township.

60 “It may aid the Court to briefly consider the historical significance of Maungdaw. When Britain
 61 made Burma a colonial entity separate from British India in 1937, the border between Burma
 62 and India was drawn along the river Naf, where we find today’s border between Bangladesh and
 63 Myanmar. The historical Kingdom of Arakan had extended much further to the north than the
 64 river Naf, including most of what is today Chittagong District in Bangladesh.

65 “Members of some Rakhine communities, therefore, felt that the border drawn by the British was
 66 too far south; others, that it was too far north. Myanmar has never challenged this border since
 67 independence in 1948.

68 “Britain did not lose control over what is today Maungdaw township during World War II. From
 69 September 1942, a number of local Muslim families offered fighters to the British irregular V-
 70 Force set up to collect intelligence and to initially absorb any Japanese advance. Many Muslims
 71 gave their lives in combat against the Japanese in Rakhine.

72 “The sacrifices made by Muslim fighters motivated a call for the creation of an autonomous
 73 Muslim space in northern Rakhine, centred on Maungdaw. Whether or not this was encouraged
 74 by British officers, Britain rejected this call as soon as it had reoccupied Burma, before
 75 independence in 1948. The Muslim-Buddhist intercommunal violence of 1942 recurred in 1948
 76 and several times after that. This cycle of violence has negatively affected life in northern
 77 Rakhine, making it the second poorest state in Myanmar.

78 “Mr President and members of the court, may I go back to the situation in Rakhine on the
 79 morning of August 25, 2017. More than thirty police stations and villages, and one military base,
 80 had been attacked before sunrise in a highly coordinated fashion, by an organised armed group
 81 operating along a densely forested hill-range that provides ample opportunity to hide. Many of

82 the ARSA fighters had been recruited from local villages in the weeks and months preceding the
83 attack.

84 “Myanmar’s Defence Services responded to the attacks of ARSA fighters by the use of ground
85 forces. There were armed incidents in more than 60 locations. The main clashes occurred in 12
86 places: In Min Gyi (Tola Toli) village, Chut Pyin village, Maung Nu village, Gutar Pyin village,
87 Alai Than Kyaw village, Myin Lut village, Inn Din village, Chein Kharli (Koetan Kauk) village,
88 Myo Thugyi ward, Kyauk Pandu village, wards of Maungdaw Town, and southern Maungdaw.

89 “Mr President, allow me to clarify the use of the term ‘clearance operation’ – ‘nae myay shin lin
90 yeh’ in Myanmar [language]. Its meaning has been distorted. As early as the 1950s, this term
91 has been used during military operations against the Burma Communist Party in Bago Range.
92 Since then, the military has used this expression in counter-insurgency and counter-terrorism
93 operations after attacks by insurgents or terrorists. In the Myanmar language, ‘nae myay shin lin
94 yeh’ – literally ‘clearing of locality’ – simply means to clear an area of insurgents or terrorists.

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

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

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

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

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

123 “On November 26, 2019, this Commission announced that it had taken about 1500 witness
 124 statements from all affected groups in Rakhine and that it has interviewed 29 military personnel
 125 who were deployed to the affected townships in northern Rakhine during the military operations
 126 from August 25, 2017, to September 5, 2017, as well as 20 police personnel who were stationed
 127 at the police posts that were attacked on August 25, 2017. There is currently no other fact-
 128 finding body in the world that has garnered relevant first-hand information on what occurred in
 129 Rakhine in 2017 to the same extent as the Independent Commission of Enquiry and the Office
 130 of the Judge Advocate General in Myanmar.

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

138 “Recent cases in the news headlines illustrate that even when military justice works, there can
 139 be reversals. This can also happen in Myanmar. As part of the overall efforts of the Myanmar
 140 Government to provide justice, a court-martial found that 10 Muslim men had been summarily
 141 executed in Inn Din village, one of the 12 locations of serious incidents referred to earlier. It
 142 sentenced four officers and three soldiers each to ten years in prison with hard labour. After
 143 serving a part of their sentences, they were given a military pardon. Many of us in Myanmar
 144 were unhappy with this pardon.

145 “Other cases are undertaken without controversy. In the Mansi case, for example, a court-
 146 martial sat close to the location in Kachin State where three internally displaced civilians were
 147 killed. It sentenced six soldiers, each to 10 years in prison, in January 2018. Relatives of the
 148 victims and local civil society representatives were invited to the sentencing.

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

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

159 “Mr President, there are those who wish to externalise accountability for alleged war crimes
 160 committed in Rakhine, almost automatically, without proper reflection. Some of the United
 161 Nations human rights mandates relied upon in the Application presented by The Gambia have
 162 even suggested that there cannot be accountability through Myanmar’s military justice system.
 163 This not only contradicts Article 20(b) of the Constitution of Myanmar, it undercuts painstaking
 164 domestic efforts relevant to the establishing of cooperation between the military and the civilian
 165 government in Myanmar, in the context of a Constitution that needs to be amended to complete

166 the process of democratisation. That process is now underway at the Pyidaungsu Hluttaw, the
167 Union Parliament.

168 “The emerging system of international criminal justice rests on the principle of complementarity.
169 Accountability through domestic criminal justice is the norm. Only if domestic accountability fails,
170 may international justice come into play. It would be inconsistent with complementarity to
171 require that domestic criminal justice should proceed much faster than international criminal
172 justice. A rush to externalise accountability may undermine professionals in domestic criminal
173 justice agencies. What does the appearance of competition between domestic and international
174 accountability do to the public’s trust in the intentions of impatient international actors?

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

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

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

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

206 “Several international actors face a challenge here. But Myanmar could also have done more
207 since the 1980s to emphasise the shared heritage and deeper layers of unity among the diverse
208 peoples of our country. Cycles of inter-communal violence in Rakhine going back to the 1940s
209 should be countered not just by practical measures aimed at sustainable development and rule

210 of law, but also by nourishing a spiritual mindset of unity. It is a moral responsibility of leaders to
 211 guard the aspirations of people for harmony and peace.

212 “U Thant, the third United Nations Secretary-General, had understood this. He wrote in his
 213 memoirs *View From the UN* published in 1974: ‘I even believe that the mark of the truly
 214 educated and imaginative person facing the twenty-first century is that he feels himself to be a
 215 planetary citizen’ (p. 454). Encouraging this added layer of identity – a sense of planetary
 216 citizenship – is of fundamental importance for peaceful relations between nations as well as
 217 ethnic and religious groups.

218 “A commitment to broadening the mindset must go hand in hand with practical steps to improve
 219 lives. Even before the events of 2016-2017, Muslim, Buddhist and other communities in
 220 Rakhine faced what the Kofi Annan Advisory Commission described as complex challenges of
 221 low development and poverty rooted in enduring social conflict between the communities. The
 222 Myanmar government is committed to addressing these challenges. Together with our partners,
 223 we are now striving to ensure that all communities enjoy the same fundamental rights. To
 224 expedite citizenship verification and application, a mobile team is already in operation.

225 “All children born in Rakhine, regardless of religious background, are issued with birth
 226 certificates. Arrangements have been made to enable more Muslim youth to attend classes at
 227 universities across Myanmar. With the support of international and local partners, scholarships
 228 will also be made available to students from all communities living in Rakhine. The government
 229 has started a social cohesion model project in Maungdaw township, to promote social harmony
 230 among all communities. Inter-faith fora have been encouraged.

231 “These are some of the steps taken to improve livelihoods, security, access to education and
 232 health, citizenship, and social cohesion for all communities in Rakhine. Three IDP camps have
 233 already been closed, and an IDP-camp closure strategy has been adopted. Myanmar is also
 234 committed to voluntary, safe and dignified repatriation of displaced persons from Rakhine under
 235 the framework agreement reached between Bangladesh and Myanmar.

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

238 “To conclude, Mr President and members of the court, Rakhine today suffers an internal armed
 239 conflict between the Buddhist Arakan Army and Myanmar’s Defence Services. Muslims are not
 240 a party to this conflict, but may, like other civilians in the conflict area, be affected by security
 241 measures that are in place. We pray the Court to refrain from taking any action that might
 242 aggravate the ongoing armed conflict and peace and security in Rakhine. Right now, in northern
 243 Rakhine, an army base near Paletwa is under attack by a group of more than 400 Arakan Army
 244 fighters, and some 200 insurgents have surrounded a military column near Ann City in Rakhine.

245 “Since Myanmar gained independence in 1948, our people have not known the security of
 246 sustainable development that is the fruit of peace and prosperity. Our greatest challenge is to
 247 address the roots of distrust and fear, prejudice and hate, that undermine the foundations of our
 248 Union. We shall adhere steadfastly to our commitment to non-violence, human rights, national
 249 reconciliation and rule of law, as we go forward to build the Democratic Federal Union to which
 250 our people have aspired for generations past.

251 “We look to justice as a champion of the reconciliation and harmony that will assure the security
252 and rights of all peoples.

253 “Mr President and members of the court, I thank you for your kind attention and ask that you
254 now call upon Professor William Schabas to continue the Myanmar submissions.”