

PCA Case No. 2025-45

IN THE MATTER OF AN ARBITRATION PURSUANT TO THE
AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
RWANDA AND THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND FOR THE PROVISION
OF AN ASYLUM PARTNERSHIP TO STRENGTHEN SHARED
INTERNATIONAL COMMITMENTS ON THE PROTECTION OF
REFUGEES AND MIGRANTS

- and -

THE PCA ARBITRATION RULES 2012

- b e t w e e n -

THE REPUBLIC OF RWANDA

and

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND

THE ARBITRAL TRIBUNAL

H.E. JUDGE PETER TOMKA - CHAIRMAN
PROF. DR. MOHAMED ABDEL WAHAB - CO-ARBITRATOR
JUDGE JOAN DONOGHUE - CO-ARBITRATOR

Wednesday, 18 March 2026
The Hague, The Netherlands

AGREED FINAL

APPEARANCES

THE ARBITRAL TRIBUNAL

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ON BEHALF OF RWANDA:

BY: Lord Verdirame KC
Ms Belinda McRae

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ALSO PRESENT:

Dr Emmanuel Ugirashebuja, Agent
Ministry of Justice
P.O. Box 160
Kigali, Rwanda

Dr Doris Picard Uwicyeza, Chief Executive Officer
of the Rwanda Governance Board

Ambassador Lambert, Dushimimana, Ambassador of
the Republic of Rwanda to the Kingdom of the
Netherlands

Mr Jean Hugues Mukama, Embassy of the Republic
of Rwanda in the Kingdom of the Netherlands

Mr Emile Ntwari, Principal State Attorney and
Head of the Legal Services Department, Ministry
of Justice.

Mr Michael Butera, Chief Technical Adviser to the
Minister of Justice and Attorney General to the
Republic of Rwanda.

ON BEHALF OF THE UNITED KINGDOM OF GREAT BRITAIN and
NORTHERN IRELAND:

BY: Mr Ben Juratowitch KC
Ms Naomi Hart

Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG
United Kingdom

and

BY: Ms Alma Mozetic

Twenty Essex
20 Essex Street
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ALSO PRESENT:

Dr Tamsin Stubbing, Agent

Deputy Director, Resettlement & International
Strategy, Home Office Legal Advisers, Government
Legal Department
Peel Building
2 Marsham Street
London SW1P 4DF
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Mr Christopher McCann, Lawyer, Resettlement &
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Mr James Woodhouse, Policy Lead, Illegal
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PERMANENT COURT OF ARBITRATION:

Ms Ashwita Ambast, Senior Legal Counsel
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1 THE CHAIRMAN: Good morning. Please be
2 seated.

3 Good morning to everybody. I declare
4 open the hearing in arbitral proceedings under
5 Article 22 of The Agreement between the Government 09:31
6 of the Republic of Rwanda and the Government of
7 the United Kingdom of Great Britain and Northern
8 Ireland for the provision of an Asylum Partnership
9 to strengthen shared international commitments on
10 the protection of refugees and migrants. 09:31

11 These proceedings were instituted by
12 Rwanda when it filed a Notice of Arbitration on
13 24 November 2025. In that Notice of Arbitration,
14 Rwanda appointed Prof. Dr Mohamed Abdel Wahab as
15 arbitrator. He is sitting to my right. 09:32

16 The United Kingdom submitted its response
17 to the Notice of Arbitration on 12 December 2025
18 and appointed Judge Joan Donoghue as arbitrator.
19 She is sitting to the left from me.

20 The parties agreed on the appointment 09:32
21 procedure, which resulted in my appointment on
22 6 January, 2026. In this way, the Tribunal was
23 constituted and proceedings started.

24 We adopted a procedural order, having
25 consulted the parties, on 19 January 2026. The 09:32

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1 parties, in accordance with the timetable, filed
2 their written submissions. We are now meeting for
3 oral arguments in accordance with Procedural Order
4 No. 2 adopted by the Tribunal following the
5 pre-hearing conference with the parties. This 09:33
6 order was adopted on 11 March 2026.

7 You know the time is allocated to each
8 party to present properly its case.

9 Before I give the floor to agent and
10 counsel for the applicant, Rwanda, may I invite 09:33
11 both parties, one after the other, most likely
12 agents, to introduce the members of the team
13 representing each party in these proceedings, just
14 for the record.

15 So I know the Agent of the Republic of 09:34
16 Rwanda, His Excellency Dr -- I apologise, it's not
17 easy to pronounce -- Dr Emmanuel Ugirashebuja,
18 Minister of Justice, Attorney General.

19 You have the floor, sir.

20 DR UGIRASHEBUJA: Thank you very much, 09:34
21 Mr President, members of the Tribunal. I'm happy
22 to introduce the team that is with me today.

23 Standing before you is Emmanuel
24 Ugirashebuja. Congratulations for pronouncing my
25 name very well. 09:34

1 Together with me is counsel,
2 Lord Verdirame KC, Ms Belinda McRae.

3 For the party representatives, we have
4 Dr Doris Picard Uwicyeza; Ambassador Lambert
5 Dushimimana; now he is the Ambassador of the 09:35
6 Republic of Rwanda to the Kingdom of the
7 Netherlands. Mr Jean Hugues Mukama, from the
8 Embassy of the Republic of Rwanda in the Kingdom
9 of the Netherlands. Then we have Mr Emile Ntwari,
10 who is the Principal State Attorney and Head of 09:35
11 the Legal Services Department, Ministry
12 of Justice. Mr Michael Butera, who is the Chief
13 Technical Adviser to the Minister of Justice and
14 Attorney General to the Republic of Rwanda.

15 Thank you very much, Mr President, 09:35
16 members of the Tribunal.

17 THE CHAIRMAN: Thank you, sir.

18 May I now invite the agent for the
19 Government of the United Kingdom, Dr Tamsin
20 Stubbing, to introduce the members of the team 09:36
21 representing the Respondent.

22 You have the floor, madam.

23 DR STUBBING: Thank you.

24 Members of the Tribunal, my name is
25 Dr Tamsin Stubbing. It is an honour for me to be 09:36

1 here today as agent for the United Kingdom.

2 Allow me to introduce the other members
3 of the United Kingdom delegation. Counsel sit to
4 my right: Mr Ben Juratowitch, King's Counsel;
5 Naomi Hart, and Ms Alma Mozetic. 09:36

6 For the United Kingdom Home Office
7 officials, Mr Christopher McCann sits behind me,
8 and Mr James Woodhouse.

9 Thank you, members of the Tribunal.

10 THE CHAIRMAN: Thank you very much. Duly 09:36
11 noted. I do hope we do not have any procedural
12 issues to resolve, that we can go straight into
13 the pleadings.

14 May I now invite agent or counsel for the
15 applicant, the Republic of Rwanda, to start the 09:37
16 opening presentation by the applicant.

17 According to the timetable, we expect to
18 sit until one o'clock. In case of need, we can
19 slightly exceed, in view of the opening
20 presentations, introduction by the Tribunal and 09:37
21 the parties, but hopefully that will not be
22 necessary. Sometime around 11.10, 11.15, 11.20,
23 when it is appropriate, I invite counsel to
24 indicate when we can take a coffee break. I don't
25 wish to interrupt your flow of the argument. 09:37

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1 So I give the floor to the agent of the
2 Republic of Rwanda.

3 Your Excellency, you have the floor.

4 OPENING SUBMISSIONS ON BEHALF OF RWANDA

5 DR UGIRASHEBUJA: Good morning once 09:38
6 again, Mr President, and the esteemed members of
7 the Tribunal. It is an honour to appear before
8 you on behalf of the Republic of Rwanda.

9 Let me begin by saying that Rwanda has a
10 deep connection to the plight of those seeking 09:38
11 safety and security in a new land. Many Rwandans
12 have experienced what it means to be displaced.

13 It is this collective experience which has shaped
14 the Rwandan Government policy on migration and
15 asylum. Rwanda is proud to host a significant 09:38
16 refugee population.

17 The UNHCR has over 130,000 refugees and
18 asylum seekers registered with it in Rwanda.

19 Rwanda has a strong record of welcoming and
20 hosting refugees and asylum seekers from around 09:39

21 the world, from neighbouring countries such as the
22 Democratic Republic of Congo, Burundi, and to
23 countries even further away from Rwanda, such as
24 Afghanistan, Libya, and Sudan.

25 /// 09:39

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1 Let me give you an example, Mr President,
2 members of the Tribunal. As recently as last
3 month, Rwanda received a further 164 asylum
4 seekers from Libya on the basis of an agreement
5 Rwanda has with the UNHCR to alleviate the plight 09:39
6 of asylum seekers in that country.

7 Rwanda has long been ambitious with its
8 refugee policies. Rwanda firmly believes that
9 refugees make social, cultural, and economic
10 contributions to the societies in which they 09:40
11 integrate, if they are allowed to do so.

12 In May 2021 the UNHCR and Rwanda adopted
13 a joint strategy on the economic inclusion of
14 refugees in host communities in Rwanda. The
15 philosophy underpinning this strategy is that the 09:40
16 presence of refugees can be used as a catalyst for
17 the economic development of both the refugees and
18 the host communities. This is in contrast to the
19 usual approach of warehousing refugees, which
20 marginalises them from their host communities and 09:40
21 leaves them almost entirely dependent on
22 humanitarian assistance for their livelihood.

23 In September 2021, Rwanda agreed a plan
24 with the International Organization For Migration,
25 IOM, to resettle Afghan girls from Afghanistan who 09:41

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1 had been excluded from secondary school by the
2 Taliban regime. The School of Leadership
3 Afghanistan was established in Kigali, and
4 continues to operate successfully, accepting
5 applications from Afghan refugee girls all over
6 the world. 09:41

7 In August 2023, Rwanda again offered
8 assistance to a group of students. In particular,
9 over 200 Sudanese medical students from the
10 University of Medical Science and Technology in
11 Khartoum were welcomed in Rwanda. They had been
12 stranded and unable to complete their studies due
13 to the civil war and closure of universities in
14 Sudan. 09:41

15 So, when the United Kingdom sought a
16 partner to develop a bold new approach to
17 immigration, Rwanda was an obvious choice. 09:42

18 Both parties described this partnership
19 as the Migration and Economic Development
20 Partnership, which I will abbreviate as MEDP. As
21 the name suggests, the MEDP sought to do two
22 things. It was aimed at deterring the dangerous
23 migration journeys which are causing untold
24 suffering. At the same time, it also sought to
25 address the global imbalance of economic 09:42

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1 opportunity, which is one of the underlying causes
2 of mass irregular migration. It reflected
3 Rwanda's commitment to protect vulnerable people,
4 and built on Rwanda's track record of welcoming
5 and hosting refugees from around the world. 09:43

6 This partnership was one of mutual
7 benefit. Rwanda assisted the United Kingdom in
8 securing the policy objective of stopping illegal
9 migration across the Channel, and the United
10 Kingdom assisted Rwanda in improving its capacity 09:43
11 to host and integrate refugees in Rwanda.

12 By tying migration to economic
13 development, as its title suggested, the MEDP
14 would support Rwanda's migration strategies,
15 which, as I have explained, focused on creating 09:43
16 opportunities for both hosts and refugee
17 communities in Rwanda.

18 Once the Partnership in April 2022 was
19 announced, Rwanda proceeded to implement its
20 commitments at pace. By way of illustration, 09:43
21 Rwanda embarked upon significant constitutional,
22 legislative, and administrative reforms to enable
23 the implementation of the MEDP. It passed
24 legislation. It created an appeals tribunal to
25 hear asylum appeals under Rwandan law, which still 09:44

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1 exist today. It created at least 12 ministerial
2 and administrative structures to deal with the
3 MEDP.

4 Rwanda also prepared reception
5 facilitates for the incoming refugees, and 09:44
6 incurred significant costs in doing so.

7 As part of the partnership, the parties
8 established a programme which is the Economic
9 Transformation and Integration Fund, or the ETIF
10 as I will abbreviate it going forward. The funds 09:44
11 committed under its auspices were intended to
12 support -- and I quote here:

13 "Sustainable and inclusive economic
14 growth within Rwanda."

15 Another objective was, I quote again: 09:45

16 "To improve the conditions of the
17 existing refugee population and host communities."

18 So these were existing refugees already
19 in Rwanda. I end the quote.

20 They were originally paid under a 09:45
21 non-binding April 2022 exchange of notes. Once
22 the MOU establishing the MEDP was upgraded to a
23 binding treaty, a binding exchange of notes
24 followed in June 2024. It was this exchange that
25 gave rise to what Rwanda has described as the 2024 09:45

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1 financial note under which the United Kingdom
2 undertook to pay £50 million in the ETIF funds in
3 April 2025 and a further £50 million in
4 April 2026.

5 Shortly after the 2024 financial note was 09:46
6 agreed, however, there was a change of government
7 in the United Kingdom. The new prime minister
8 declared the "Rwanda scheme" to be "dead and
9 buried" on his first full day in office. The
10 United Kingdom did not do Rwanda the courtesy of 09:46
11 informing it in advance. Instead, Rwanda was left
12 to read about these developments in the media.

13 The United Kingdom then sought to walk
14 away from its legal obligations. One of those was
15 the United Kingdom's obligation to pay ETIF funds 09:46
16 to Rwanda. This led to several exchanges between
17 the parties, including the key November Notes
18 Verbales which this Tribunal will be called upon
19 to construe. But the simple fact remains that the
20 United Kingdom did not give notice to terminate 09:47
21 the treaty until December 2025. Actually, the
22 termination took effect only two days ago, on
23 Monday.

24 The MEDP was in force for just two months
25 under the previous British Government, and the 09:47

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1 finance note for just over two weeks. Both of
2 these binding legal instruments have been in force
3 for over 18 months under the British Government
4 that won the elections in July 2024. Whatever
5 assessment that British Government made of its 09:47
6 policy interests, the obligations by which they
7 have chosen to remain bound must be honoured.

8 Rwanda's case is straightforward. The
9 United Kingdom may well have wished Rwanda to
10 forgo significant sums of money, the parties may 09:48
11 well have had discussions on this matter, but
12 Rwanda ultimately chose not to provide its consent
13 to the United Kingdom's proposal. It did so in
14 very clear terms: by refusing to accept the
15 language of agreement in the UK's draft initiating 09:48
16 note, and by omitting any language from the reply
17 note that could have indicated consent to be
18 bound.

19 The position would have been clear to the
20 United Kingdom as it was clear to Rwanda. 09:48

21 The payment of the ETIF fund is not the
22 only obligation that the United Kingdom has sought
23 to avoid at its change of government. The United
24 Kingdom has also sought to avoid the resettlement
25 of vulnerable refugees from Rwanda and Article 19 09:49

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1 of the MEDP.

2 In March 2025, Rwanda invited the joint
3 committee comprised of Rwanda and British
4 representatives to urgently finalise arrangements
5 for the resettlement of refugees in the United
6 Kingdom, noting that the United Kingdom had failed
7 to take action to fulfil its obligations. 09:49

8 As the Tribunal will see, the United
9 Kingdom's response was to refer to its intended
10 termination of the agreement, making it clear that 09:49
11 it was going to take no steps to perform any of
12 its obligations in view of its intentions. This,
13 Rwanda submits, was a clear refusal to take steps
14 to negotiate the resettlement of refugees under
15 the Agreement. It could not have been anything 09:50
16 else, we believe.

17 Rwanda seeks a modest sum in compensation
18 for the breach of Article 19, which will be less
19 than 10 percent of the UNHCR's budget for Rwanda
20 for one year alone, or, alternatively, an apology 09:50
21 for the United Kingdom's blatant disregard of this
22 obligation.

23 Rwanda regrets that it has been necessary
24 to commence this arbitration. At all times Rwanda
25 has sought to perform its obligations under the 09:50

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1 MEDP in good faith in the spirit of the
2 Partnership that had always characterised the
3 parties' cooperation on the issue of illegal
4 migration. However, the United Kingdom's
5 intransigence on the two issues that I have
6 outlined has left Rwanda with no other choice to
7 vindicate its rights and secure the substantial
8 sums of money of which Rwanda has been deprived.

09:50

9 Rwanda has enormous faith in this
10 Tribunal to reach the right legal result.
11 Whatever the outcome, Rwanda remains committed to
12 finding solutions to the global migration crisis,
13 including providing safety, dignity, and
14 opportunity to refugees and migrants who come to
15 our country.

09:51

09:51

16 Mr President, members of the Tribunal,
17 this concludes my remarks. I now invite you to
18 give the floor to Lord Verdirame to continue the
19 remarks.

20 Thank you very much.

09:51

21 THE CHAIRMAN: I thank the agent of the
22 Republic of Rwanda for his opening statement.

23 I now invite Lord Verdirame, counsel for
24 the Republic of Rwanda, to address the Tribunal.
25 You have the floor, sir.

09:52

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1 ///

2 LORD VERDIRAME: Thank you.

3 Mr President, members of the Tribunal, good
4 morning. It is a great honour and a privilege to
5 appear before you on behalf of the Republic
6 of Rwanda. 09:52

7 Our opening submissions will be arranged
8 as follows. First, I will begin with some
9 introductory remarks on the nature of this
10 dispute. Second, I will set out the relevant 09:52
11 facts and take you through the main documents.
12 Third, I will deal with Rwanda's case on the
13 breach of the finance note and Article 18.
14 Fourth, I will briefly respond to the United
15 Kingdom's arguments on preclusion. 09:52

16 At that point, I will ask you to give the
17 floor to Ms McRae, who will deal with the final
18 two sections in our opening submissions, the
19 breach of Article 19, and remedies.

20 Mr President, members of the Arbitral 09:52
21 Tribunal, there are three introductory
22 observations I would like to make.

23 First, the Rwanda-United Kingdom
24 partnership has been the object of a lot of
25 attention in the media. The focus of this 09:53

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1 attention has been almost exclusively on the
2 perspective of the United Kingdom. Everyone knows
3 why the United Kingdom chose to enter this
4 partnership. The previous British Government
5 believed that the partnership with Rwanda would 09:53
6 assist in addressing an urgent social and
7 political challenge -- illegal migration --
8 especially the crossings through the Channel.

9 That was the policy objective of the
10 United Kingdom, which Rwanda understood and 09:53
11 respected. But the United Kingdom did not get
12 into the United Kingdom migration partnership.
13 The partnership was, as we've heard, the Migration
14 and Economic Development Partnership. Rwanda had
15 its own policy interests and objectives, which 09:53
16 deserve equal recognition and respect.

17 As you've just heard from Rwanda's agent,
18 Dr Ugirashebuja, Rwanda's objective was to
19 integrate refugees into its economic development
20 plan. That plan is set out in a document called 09:54
21 "Vision 2050", which is mentioned several times
22 across the partnership.

23 As part of that development plan, Rwanda
24 wants to break with the traditional model of
25 refugee protection and refugee assistance in much 09:54

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1 of the Global South. A model that too often, as
2 we heard, leaves refugees confined in camps,
3 marginalised from the host society, and entirely
4 dependent on humanitarian assistance. Instead,
5 Rwanda wanted to emulate the best practice of 09:54
6 successful advanced economies at times of great
7 economic growth, such as Rwanda is experiencing
8 now. That practice is to integrate refugees in
9 the social and economic fabric of the country,
10 allowing their human capital to contribute to 09:55
11 national development. This required, among other
12 things, the upgrading of the asylum adjudication
13 system.

14 Rwanda's refugee policy was grounded in
15 extensive work undertaken over many years by 09:55
16 international organisations, economists,
17 anthropologists, and even lawyers who have been
18 advocating for the kind of policies that Rwanda
19 adopted.

20 By the way, Rwanda did not need the 09:55
21 United Kingdom to be prompted into action on these
22 matters. The May 21 joint UNHCR strategy with
23 Rwanda was published almost a year before the
24 April 22 Memorandum of Understanding between the
25 United Kingdom and Rwanda. Anyone familiar with 09:55

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1 the complexity of international refugee protection
2 will recognise that the '21 Rwanda-UNHCR joint
3 strategy is one of the most ambitious, thoughtful,
4 and progressive statements of refugee policy in
5 the world today. 09:55

6 That was the strategy with Vision 2050
7 that Rwanda wanted to advance through the
8 partnership. It is no surprise that having
9 invested so much time and effort in this
10 partnership, and having so much at stake in it, 09:56
11 Rwanda was deeply disappointed when the day after
12 the British election in July '24, the new British
13 prime minister declared that the Rwanda scheme was
14 "dead and buried". When he said that, he would
15 have had British immigration policy in mind, but 09:56
16 he was speaking as the new head of government.

17 Rwanda did not appreciate that tone. A
18 few days later, it sent a Note Verbale to the
19 British High Commission in Kigali. Rwanda said,
20 "We are a country, not the name of a scheme". 09:56

21 This takes me to the second introductory
22 observation. Rwanda is not going to be drawn into
23 an unnecessarily confrontational tone, but after
24 all the time that was spent into this Partnership,
25 including by the various officials who worked on 09:57

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1 it, the United Kingdom's complete failure to
2 comprehend Rwanda's perspective in this
3 partnership is a matter of genuine regret.

4 Rwanda understands that from the United
5 Kingdom's perspective, the partnership was about 09:57
6 British immigration policy. In fact, this dossier
7 was managed through the British Home Office and,
8 even today, aside from counsel, the delegation of
9 the United Kingdom consists exclusively of
10 officials from the Home Office. But the United 09:57
11 Kingdom cannot look at this treaty that creates a
12 partnership just through the prism of its own
13 domestic politics, with Rwanda being little more
14 than an instrument for delivering British policy
15 objectives. 09:57

16 It is, if I may, this rather
17 inward-looking approach that explains the United
18 Kingdom's rather tone deaf response to Rwanda's
19 case on Article 19 of the agreement. Article 19
20 obliges the parties to make arrangements for the 09:58
21 resettlement of a portion of Rwanda's vulnerable
22 refugees in the United Kingdom.

23 As this tribunal will know, many
24 countries run refugee resettlement programmes.
25 Rwanda agreed to receive some of the United 09:58

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1 Kingdom's asylum seekers, but, among other things,
2 it expected that in return the United Kingdom
3 would honour its obligation to resettle a portion
4 of Rwanda's vulnerable refugees.

5 Yet, once the United Kingdom changed its 09:58
6 domestic migration policy and decided it no longer
7 wanted to relocate refugees from the United
8 Kingdom to Rwanda, it appears to have assumed that
9 it could simply disregard the obligation under
10 Article 19 while it was still in force. 09:58

11 Rwanda has taken a deliberately measured
12 and reasonable approach in its request for relief
13 under Article 19. We could have asked for more.
14 We will hear what the United Kingdom has to say in
15 response, but we respectfully submit that in the 09:59
16 context of a treaty between an affluent state and
17 a developing state, where the former also
18 undertook binding commitments concerning
19 vulnerable refugees in the latter, a response by
20 the affluent state marked by a completely 09:59
21 unconvincing and somewhat disdainful formalism
22 warrants the strongest reproach by an
23 international tribunal.

24 The third introductory remark,
25 Mr President, members of the Arbitral Tribunal, is 09:59

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1 that quite surprisingly, given what I've just
2 said, we have detected a degree of manufactured
3 outrage on the United Kingdom's part. We saw this
4 in the Statement of Defence and we heard some of
5 it in the brief procedural hearing we had, when 09:59
6 the United Kingdom complained that Rwanda had
7 changed its case in the Reply. The United Kingdom
8 submitted that the fact of Rwanda having changed
9 its case was a specific reason why its proposed
10 approach to the timetable had to be preferred. 10:00
11 Yet, just a few hours after making that
12 submission, the United Kingdom informed the
13 Tribunal and Rwanda that it was not going to file
14 a Rejoinder. Declining the opportunity to address
15 Rwanda's allegedly new case in writing was an 10:00
16 unusual step to take in the circumstances. It
17 undermines the suggestion that there was any
18 significant change, let alone one to be so
19 outraged about.

20 Incidentally, Rwanda has not changed its 10:00
21 case. Rwanda's case was and remains that if you
22 look at the two Notes Verbales from November 2024,
23 you do not see a binding agreement. That's the
24 case. That has always been the case.

25 We now have further context for that 10:00

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1 position as a result of the United Kingdom's
2 disclosure of the documents in the lead-up to
3 the November exchange and as a result of the
4 documents that we produced with our Reply. There
5 has been no Rejoinder, so, as far as context goes, 10:01
6 this is where we are, the documents that the
7 parties have produced so far.

8 As we will see in the course of my
9 submissions, that context does not detract from
10 Rwanda's main case. On the contrary, it confirms 10:01
11 it and it supports it.

12 Mr President, members of the Tribunal,
13 with these introductory observations in mind, what
14 I would like to do next is to set out the facts by
15 going through some of the main documents. 10:01

16 The Partnership, as we know, was signed
17 on 13 April 2022. We do not need to turn up that
18 document but the reference is Exhibit C-9.

19 The Memorandum of Understanding from
20 April 2022 was followed by a non-binding finance 10:02
21 note, which was concluded on the same day through
22 an exchange of Notes Verbales. The non-binding
23 finance note from 2022 is in three different
24 places, actually. You have it at C-10, that's the
25 finance note from April. But later on in July, 10:02

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1 there was a further exchange on the '22 finance
2 note because the United Kingdom spotted a
3 typographical error in the previous version. They
4 went through an entire new exchange to correct the
5 typographical error, which is quite interesting. 10:02
6 It illustrates the importance of precision in
7 identifying what parties have agreed.

8 So the corrected exchange on the Nov 2022
9 finance note is at C-15 and C-16. That's Exhibit
10 C-15. And we could take a quick look at these two 10:03
11 exhibits.

12 C-15 is the United Kingdom initiating
13 Note Verbale. The arrangements are set out in an
14 enclosed annex. The enclosed annex is identified
15 clearly in the second paragraph of C-15, where the 10:03
16 United Kingdom refers to the:

17 "Financial arrangements for the migration
18 and asylum processing partnership [...] (enclosed
19 at Annex 1 to this note)".

20 The Annex 1 financial notes then follow. 10:03
21 The Rwandan reply is at C-16. And Rwanda's reply
22 also refers to Annex 1 to this note in
23 paragraph 2. It identifies the initiating Note
24 Verbale from the United Kingdom. Both the one
25 from April, which is the one that had the typo, 10:04

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1 and the subsequent one that corrects the typo, and
2 then refers to the financial arrangements enclosed
3 at Annex 1.

4 In other words, it is completely clear,
5 looking at this exchange in July '22 what the 10:04
6 parties are referring to, the text being that in
7 Annex 1 enclosed to this note.

8 The parties also have, in the paragraph
9 just before the courtesy paragraph, the language
10 that is relevant to the November exchange, namely, 10:04
11 the proposal to place on the record the joint
12 understanding of the two countries as recorded in
13 the two notes and the joint understanding taking
14 effect on the date of the reply. The United
15 Kingdom invites Rwanda to agree to that, and 10:05
16 Rwanda agrees by repeating that language.

17 So that's the non-binding exchange of
18 Notes Verbales on the finance note.

19 The other point I would make about the
20 actual financial arrangements is that, at 10:05
21 paragraph 1.4 -- so you have this at Exhibit C-15,
22 and if you go to the annex, you see paragraph 1.4,
23 which introduces the Economic Transformation and
24 Integration Fund. That's what the parties have
25 abbreviated as the ETIF. It says that the ETIF 10:05

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1 was targeted at supporting Rwanda to achieve two
2 national initiatives: Vision 2050 and the
3 National Strategy For Transformation. So this was
4 the economic development pillar of the
5 partnership, which is very much in sight and 10:06
6 central, indeed, to the partnership, even when it
7 existed in non-binding form.

8 So we are in July '22 with the exchange
9 of the corrected notes on the partnership. Work
10 begins on implementation, as we've heard. 10:06

11 Proceedings also begin in British courts,
12 challenging the legality under English law of the
13 relocation of asylum seekers to Rwanda. Those
14 proceedings reach the Supreme Court of the United
15 Kingdom. That Supreme Court delivers a judgment 10:06
16 on 15 November '23, when it declares the policy
17 unlawful.

18 To address the legal problems identified
19 by the Supreme Court, the government, the British
20 government, asked Rwanda to inscribe the 10:06
21 partnership in a binding international agreement.
22 Rwanda responded to that request promptly. Within
23 only three weeks, the parties signed the
24 Rwanda-United Kingdom Migration and Economic
25 Development Partnership on 5 December 2023. And 10:07

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1 the text of the treaty is at Exhibit C-19.

2 We also have the exchange of Notes
3 Verbales that records the entry into force of the
4 treaty. The references are exhibits R-8 and R-9.
5 The treaty entered into force on 25 April '24. 10:07

6 On April 26, so just the day after the
7 entry into force of the treaty, the United Kingdom
8 sent four Notes Verbales to Rwanda which detailed
9 various arrangements under the treaty, and Rwanda
10 sent its Reply Note Verbale to each of these notes 10:08
11 on the following day. These exchanges are at
12 Exhibits C-47 to C-54. We don't need to go
13 through them because they're not issues relevant
14 to the dispute, but it may be worth turning just
15 to one exchange to see how arrangements under this 10:08
16 treaty were put in place by the parties --
17 arrangements under different provisions of the
18 treaty.

19 So if I could please ask you to turn to
20 C-47, Exhibit C-47. So this is where the United 10:08
21 Kingdom proposes arrangements under Article 4 to 7
22 of the agreement. Articles 4 to 7 deal with the
23 relocation of asylum seekers from the United
24 Kingdom to Rwanda. As you can see, the United
25 Kingdom 's initiating Note Verbale proceeds as 10:08

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1 follows:

2 "United Kingdom proposes the following
3 arrangements for the purpose of confirming our
4 joint understanding of the meaning of Article 4 to
5 7 of the agreement." 10:09

6 And the arrangements are then set out in
7 the following pages.

8 And following on from the arrangement, in
9 this initiating Note Verbale, the United Kingdom
10 proposes two things: First, that this note and 10:09
11 Rwanda's reply to that effect will place on the
12 record the joint understanding of the two
13 governments; and, second, that the understanding
14 will come into effect on the date of Rwanda's
15 reply. 10:09

16 And then we have the courtesy paragraph,
17 the signature and the stamp.

18 Again, the arrangements are very clearly
19 identifiable. The final paragraphs define them as
20 "the arrangements set out above". The paragraph 10:09
21 that precedes the arrangement in the actual text
22 of the Note Verbale, which is the second paragraph
23 of the Note Verbale, says "I have the honour to
24 propose the following arrangements". There can be
25 no doubt, looking at this document, what the 10:10

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1 arrangements are.

2 The Rwandan reply is at C-48. Rwanda's
3 reply proceeds as follows: "Rwanda acknowledges
4 receipt of the Note Verbale", which it identifies
5 clearly. Rwanda repeats in the first paragraph of 10:10
6 its Reply the purpose of the Note Verbale in terms
7 that are identical to those of the United Kingdom.
8 It says the arrangements set out the joint
9 understanding of the meaning of Article 4 to 7 of
10 the agreement. 10:10

11 Then, in the second paragraph:

12 "Rwanda confirms that the above
13 arrangements are acceptable, and that this note
14 and Your Excellency's note place on the record the
15 joint understanding which comes into effect 10:11
16 today."

17 So even a reader who is unfamiliar with
18 the formalities of how states reach binding
19 agreements through this process of exchange of
20 Notes Verbales, looking at this exchange would 10:11
21 immediately know what is going on. That's what
22 they are reaching a joint understanding on. There
23 is the question is it binding, is it not binding,
24 but for the time being I'm just looking at how the
25 two states were, in practice, managing their 10:11

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1 treaty relations and making arrangements under
2 this agreement. It's all fairly standard. There
3 is nothing really unusual in this.

4 We now come to May 2024. This is when
5 the parties exchange drafts on what became the '24 10:11
6 finance note, which the parties agree is binding.

7 We have two documents on the record which
8 show the parties' comments on drafts of the
9 finance note. If you could please turn up
10 Exhibit C-36. This is a draft that has comments 10:12
11 from Rwanda.

12 At paragraph 1.8, Rwanda requests that a
13 clause that had featured in previous exchanges
14 that describes the arrangements as non-binding is
15 removed. The comment by the Rwandan official is: 10:12

16 "We need to be able to enforce certain
17 provisions for instance as it relates to the ETIF
18 Funding schedule."

19 The second comment to which I would like
20 to draw your attention is at paragraph 6.1. There 10:13
21 is no page number but it is the comment next to
22 paragraph 6.1.

23 Here, Rwanda is insisting on binding
24 dispute settlement under the '24 finance note,
25 unlike its non-binding predecessor, the '22 10:13

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1 finance note, which did not make provision for
2 binding dispute settlement.

3 The comment by the Rwandan official
4 specifically refers to two possible disputes that
5 could arise. It says "Rwanda not providing a 10:13
6 refund in the event of termination", and the
7 "United Kingdom refusing to issue further ETIF
8 payment without formally terminating the treaty."

9 So both of these changes to which these
10 comments refer were agreed and implemented by the 10:13
11 United Kingdom. There is no dispute as to the
12 content of the finance note and its effect, but
13 I'm drawing these comments to your attention
14 because they indicate that Rwanda was not only
15 making it clear from the time when the finance 10:14
16 note was being put together that it wanted to be
17 able to enforce the rights under the ETIF, but
18 also that suspending ETIF payments without
19 termination could give rise to a dispute. They
20 put it there in the document very early on. 10:14

21 The Notes Verbales on the actual finance
22 note as agreed are at C-22 and C-23. I would like
23 to make a few observations on the finance note.
24 If we look at C-22 and the first page, we have a
25 cover Note Verbale from the United Kingdom. Then 10:15

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1 in the following pages, we have the financial
2 arrangements.

3 Paragraph 1.1 of the arrangements says:

4 "The terms used in this Note have the
5 same meaning as in the Agreement." 10:15

6 A point on which we rely on the question
7 of the meaning of the term "year", to which I will
8 come back in due course.

9 Paragraph 1.5 replicates the language of
10 the '22 finance note about the ETIF funding 10:15
11 stream. Again you see the reference to Vision
12 2050 and the national strategy transformation.

13 At paragraph 2.3(i) we have the payment
14 schedule and the payment obligations for three
15 years with the dates when those payments are due 10:15
16 to be made.

17 If we then turn the page, at
18 paragraph 3.1 we have the provision on amendments,
19 which specifies that amendments may only be made
20 by written agreement. On the next page you have 10:16
21 the provision on termination at paragraph 5.
22 We rely, again for the question of the third year,
23 on the second sentence of paragraph 5.2. I'm just
24 flagging that for the moment; the dispute that the
25 parties have on the termination provision centres 10:16

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1 on that sentence.

2 Then after the arrangements are completed
3 on the final page of the Note Verbale, we have the
4 usual language:

5 "If the arrangements set out above are 10:16
6 acceptable, the United Kingdom proposes that this
7 note and the Ministry's reply to that effect will
8 place on the record the understanding of the two
9 governments which will come into effect on the
10 date of your reply." 10:17

11 Rwanda's reply to this Note Verbale is
12 entirely standard in terms of the features of what
13 one would expect. We see the references to the
14 initiating Note Verbale, the subject matter being
15 the financial arguments; and we see Rwanda 10:17
16 confirming that the arrangements are acceptable
17 and then expressing its consent, that the two
18 Notes Verbales together place on the record the
19 understanding -- joint understanding on the matter
20 and confirming that the agreement is in force. 10:17

21 Again, no one can have any doubt, looking
22 at this exchange, at what is going on between
23 these two parties.

24 We now move to July '24. And
25 I mentioned, and the agent Dr Ugirashebuja also 10:18

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1 referred to the Note Verbale -- to the comment by
2 the British Prime Minister describing the Rwanda
3 plan as "dead and buried". I refer to the Note
4 Verbale that Rwanda sent in response. You have it
5 at C-26. Rwanda says -- this Note Verbale is sent 10:18
6 in response to the public statements made by the
7 United Kingdom Prime Minister and the Home
8 Secretary. Rwanda notes that no formal
9 communications on termination have been received.
10 It refers to baseless insinuations about its use 10:18
11 of funds, and it politely, but firmly, asks the
12 United Kingdom that the tone and substance of the
13 interactions should reflect the State-to-State
14 agreement that had been concluded and approved by
15 both parliaments. 10:19

16 And there are two things that are clear
17 from Rwanda's first Note Verbale to the new
18 British government. First, there had already been
19 an erosion of trust between the parties. Rwanda
20 clearly felt quite aggrieved. Second, Rwanda had 10:19
21 no intention to be submissive. It would defend
22 its interests firmly, and it could be expected and
23 should be expected, to assert its rights.

24 On the same day, the United Kingdom sends
25 a Note Verbale to Rwanda. You have it at 10:19

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1 Exhibit C-28. In a rather roundabout way, the
2 United Kingdom informs Rwanda that no further
3 removals of individuals to Rwanda under the MEDP
4 are scheduled or intended to be scheduled. I say
5 "roundabout" because the Note Verbale says that it 10:20
6 is informing Rwanda that the "[United Kingdom]
7 Government has today informed the High Court
8 [...]".

9 On termination, this Note Verbale says:

10 "The UK Government will be considering 10:20
11 the issue of formal termination of the treaty
12 under Article 23 in due course."

13 So the message from the United Kingdom at
14 this point is: This was our policy before the
15 election. We're no longer interested in that 10:20
16 policy. We've changed our mind. We informed our
17 courts. We're informing you, Rwanda, that
18 we informed the courts. And as for the
19 termination of the treaty, we'll just think about
20 it in due course. 10:20

21 Any party at the receiving end of this
22 kind of communication, in contractual or treaty
23 relations, will just do one thing, which is wait
24 and see what they're going to do next. But there
25 isn't really anything in this Note Verbale that 10:21

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1 could have given Rwanda cause to feel any less
2 aggrieved or certainly to take any step.

3 Now, the next chapter in the story is one
4 where I need to spend a bit of time. These are
5 the documents on which the United Kingdom's case 10:21
6 appears to rest. As I said at the outset, and
7 I will be repeating this point, I'm afraid,
8 because it is quite key, our case doesn't need
9 these documents. All you need to decide this
10 case, respectfully, is the two Notes Verbales from 10:21
11 November. They offer complete support to Rwanda's
12 case. But we have these documents on the record,
13 the United Kingdom has made a lot of them, so it
14 is important to go through this context.

15 I will also say that we have apologised 10:21
16 in our Reply for the fact that in our Statement of
17 Claim we moved from the July Note Verbale to
18 the November Note Verbale and omitted to mention,
19 in particular, two Notes Verbales in September
20 and October as well as the communications that 10:22
21 took place in that period. There was
22 communication between the parties in the period
23 that preceded the November '24 exchange.
24 We wrongly suggested otherwise, because clearly
25 not all the documents had been located at our end 10:22

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1 at the time when we drafted the Statement of
2 Claim. Rwanda and counsel repeat that apology.

3 But the documents have now been located,
4 and nothing else has come with the rejoinder, so
5 the Tribunal has all the documents that the 10:22
6 parties, to the best of their knowledge, consider
7 to be relevant to this dispute.

8 So, with that in mind, let us take a
9 closer look at the September, October period.

10 Let's begin with the Notes Verbales that 10:22
11 we had omitted from our initial account. These
12 are at exhibits R-13 and R-14. These are Notes
13 Verbales sent by the United Kingdom to Rwanda,
14 asking for meetings, for a visit of the British
15 officials, a delegation of Home Office officials, 10:23
16 to Kigali. The purpose of the visit is described
17 as:

18 "[...] to discuss the logistics and
19 timelines for the subsequent formal withdrawal of
20 the United Kingdom [...] from the Migration and 10:23
21 Economic Development Partnership."

22 The other topics on which the British
23 Government wanted to have discussions are set out
24 in the fourth paragraph of the Note Verbale at
25 R-13, which says: 10:24

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1 "In parallel, we propose to convene a
2 series of meetings to talk through and agree the
3 ongoing provisions and support, including
4 monitoring arrangements and relevant financial
5 remuneration for the four individuals who accepted 10:24
6 voluntary relocation to the Republic of Rwanda.
7 We also welcome the opportunity to hold further
8 discussions regarding the longer term future of
9 those migrants from the British Indian Ocean
10 territory to whom the Republic of Rwanda 10:24
11 generously provided emergency medical treatment
12 and who currently remain in Rwanda".

13 That is what the British Government says
14 it wants to discuss.

15 The next Note Verbale at R-14 is sent 10:24
16 shortly before the visit and essentially repeats
17 those points, in particular the topics for the
18 discussion.

19 Next, we have an interesting document,
20 one that has been produced by the United Kingdom. 10:25
21 This is R-15. R-15 is a read-out of the meetings
22 that took place on 3 October 2024 after the two
23 Notes Verbales that I've just referred to.

24 If you look at R-15, this is obviously an
25 internal document, it is a read-out sent by one 10:25

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1 official to other officials in the Home Office.

2 The read-out begins by saying that we had a really
3 positive morning of negotiations with the
4 Government of Rwanda. The paragraph under
5 "Voluntarily Relocated Individuals" says: 10:25

6 "The Government of Rwanda confirmed that
7 their intent was to continue building the asylum
8 system, including the appeals body required by the
9 treaty."

10 The read-out continues: 10:26

11 "This means that all four voluntarily
12 relocated individuals will remain in Rwanda under
13 the terms of the treaty, which is the best case
14 outcome", obviously from the British point of
15 view. "This matter is therefore closed." 10:26

16 These are British officials telling other
17 British officials we have solved it, we have
18 solved this problem.

19 So it is clear that Rwanda was not
20 playing any games. It made its position entirely 10:26
21 clear. Its policy aspirations had not changed.
22 It remained committed to developing and
23 strengthening its asylum system as part of its
24 broader refugee policy, and so the individuals who
25 had relocated to Rwanda could be assured that 10:26

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1 Rwanda would honour the partnership.

2 Rwanda's continued implementation of the
3 treaty therefore ensured that the four individuals
4 were still protected under the terms of the
5 treaty, as the read-out makes it clear. By 10:27
6 confirming that those commitments would be
7 maintained, Rwanda enabled the United Kingdom to
8 regard the matter closed.

9 The concern that the United Kingdom had
10 was that if the treaty had somehow fallen away, if 10:27
11 Rwanda had not offered those assurances, the four
12 individuals might have argued that the basis for
13 their relocation to Rwanda no longer existed, and
14 they might have sought return to the United
15 Kingdom on the basis that they had relocated to 10:27
16 Rwanda on a false premise. That's why this was an
17 important issue, one that was identified in the
18 Note Verbale and referred to in the read-out.

19 The problem is not the number, as I'm
20 sure the Tribunal realises, it is not about the 10:27
21 four individuals, the problem is the headlines.
22 They just want to make sure that they are not
23 going to get a headline about four individuals who
24 had been sent to Rwanda by the previous government
25 now coming back to the United Kingdom because 10:28

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1 something had gone wrong.

2 That's why they had to make sure this
3 issue was resolved. The problem is the headlines.
4 There's a lot of the politics around this
5 agreement, headlines are the primary concern. 10:28

6 At the bottom of this email, you then see
7 the reference to the ETIF payment. Contrary to
8 the United Kingdom's characterisation in the
9 Statement of Defence, we can immediately tell from
10 the internal read-out that the United Kingdom 10:28
11 officials understood that Rwanda was just in a
12 listening mode at that point. There are a number
13 of other things that are really quite clear from
14 how those exchanges between the officials are
15 relayed internally within the British system. 10:28

16 First of all, we have that subject
17 heading at the bottom of the email at R-15. It is
18 described as "50m ETIF Payment due in April 2025/
19 Diplomatic Visa Arrangements/Airside Transit Visa
20 Waivers". It is just one item. 10:29

21 Then we have that first sentence. "As
22 expected, these issues appear inextricably
23 interlinked."

24 We talked the Government of Rwanda
25 through the timeline for revoking the safety of 10:29

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1 Rwanda Act in order to bring the treaty to an end
2 and the reasons for needing to do so in the way
3 set out. We then made the case that our desire is
4 not to do so, and highlighted the risk of further
5 negative media coverage of Rwanda that we wish to 10:29
6 avoid.

7 Let me pause here for a second. Rwanda
8 was being told -- the United Kingdom, to terminate
9 the treaty, has to do some legislative tidying up.
10 If we do it in a stand-alone bill, dealing only 10:30
11 with the treaty, it will attract negative
12 publicity for Rwanda. But if we drop this point
13 in our big new bill on migration, which will take
14 some time to put together, people are less likely
15 to notice, and that is going to be better for 10:30
16 Rwanda. With the greatest respect, Rwanda was
17 unlikely to regard this argument as compelling,
18 given what was at stake, but they listened to it,
19 and the United Kingdom made its case.

20 The note then says: 10:30

21 "[Government of Rwanda] appeared open to
22 agreeing a Notes Verbales confirming that all
23 parties agree that no further ETIF payments are
24 due, however they are clear they would like to be
25 added to the DVA list in Spring. Specifically 10:30

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1 they would like this to allow diplomats and those
2 with a service passport [...] business to transit
3 landside."

4 Then in the next page, it says:

5 "They" -- the Rwandans -- "further asked 10:31
6 to be added to the list of countries eligible for
7 Airside Transit Visa Waivers. At present Rwanda
8 is listed in Schedule 1 of the Immigration
9 (Passenger Transit Visa) [...]. [This] means
10 nationals of Rwanda are required to hold a visa to 10:31
11 transit airside."

12 So that's the very preliminary
13 discussions they have. The Rwandans are listening
14 to what the UK has to say, and other items are of
15 this cast. 10:31

16 All that this read out tells us --
17 actually, before I sort of summarise on R-16, the
18 concluding two paragraphs are also quite
19 important, because the official says:

20 "I think we therefore need a few things 10:31
21 urgently in order to be able to ask the Home
22 Secretary to make a decision."

23 And the official then lists three items
24 on which they needed some instruction from the
25 British system or from the political level. 10:32

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1 "[Can] those travelling on the 'service
2 passport' be included in the DVA as requested? Or
3 is it limited to diplomatic passports?"

4 "Are there any issues with agreeing
5 Airside Transit visa waivers?"

10:32

6 And third:

7 "Could we set out the rationale for why
8 some African countries are allowed to have Airside
9 Transit Visa Waivers? This is a particular point
10 of contention for the [Government of Rwanda]
11 [...]".

10:32

12 And the final paragraph says:

13 "Once we have a clear position we can
14 formalise our position and seek to get certainty
15 on whether it is agreeable to the [Government of
16 Rwanda], or whether we will need to introduce the
17 [Safety of Rwanda] repeal in the next two weeks."

10:32

18 That's the stand-alone bill.

19 So at this stage, all we know is that
20 there was an exploratory meeting. Rwanda was in
21 listening mode. Rwanda raises a number of other
22 issues that are of interest to it. The United
23 Kingdom had yet to decide what to offer Rwanda.
24 They had not reached the stage, on October 3, of
25 having really decided what to offer. And that's

10:33

10:33

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1 why the official presses the system to tell him:
2 What offer can I make to the Rwandans, because
3 until we get to that stage, we simply cannot get
4 certainty on whether it is agreeable to the
5 Government of Rwanda. So this is all very early, 10:33
6 early days.

7 The United Kingdom understood that they
8 couldn't simply expect Rwanda to give up its
9 rights under the treaty while the treaty was in
10 force and happily agree not to be paid 50 or 10:33
11 100 million. Why would Rwanda do that? Why would
12 the United Kingdom ever think that that could be a
13 sensible proposition? Well, the answer is
14 they didn't. They were trying to see what offer
15 they could make to see whether something might be 10:34
16 perhaps agreeable by the Rwandans. That's what
17 the October 3 read-out tells us. The United
18 Kingdom still had to reach, as they put it, a
19 position on what we are offering, a position on
20 what we are offering. 10:34

21 Now, the next document is C-43. Now,
22 this is an internal Rwanda document. This is an
23 email sent five days after the meeting to which
24 the previous document referred. And it is an
25 email sent from a director general in the Rwandan 10:34

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1 Ministry reporting on her meeting with the British
2 High Commissioner.

3 And we see from the second sentence:

4 "The High Commissioner informed me that
5 after consulting London, the UK Home Secretary 10:35
6 wishes to negotiate a diplomatic visa waiver
7 agreement with Rwanda. In return, Rwanda would
8 not seek any further payments under the MEDP."

9 So that seems to be the kind of offer
10 that the United Kingdom was contemplating. 10:35

11 And the official says, at paragraph 3:

12 "I asked for further details about the
13 proposed visa waiver, and she clarified that it
14 would apply only to diplomatic passport holders."

15 It would be biometric-free, etcetera. 10:35

16 And then the final paragraph, the
17 official says:

18 "On the subject of transit visas, the
19 High Commissioner confirmed that there would be no
20 waiver, except for existing exemptions, covering 10:35
21 passengers transiting through the UK en route to
22 the US, Canada, New Zealand, or Australia. She
23 stressed that a broader transit visa waiver is not
24 possible at this time due to an ongoing global
25 review of the UK's visa system." 10:36

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1 So on 3 October, when they have this
2 high-level discussion, they hear from the Rwandans
3 that's something that matters to them. The
4 British officials record that as an important
5 point for Rwanda, and already by 8 October, the 10:36
6 answer is you're not getting the transit visa. So
7 this is C-43.

8 The next document is from the following
9 day. This is an email from the foreign minister,
10 the Rwandan foreign Minister, Ambassador 10:36
11 Nduhungirehe, to other colleagues in the
12 government, including the Minister of Justice,
13 here next to me, to set up a meeting to discuss a
14 request from the United Kingdom that we do not
15 pursue the third 50 million payment in exchange 10:37
16 for a diplomatic visa waiver agreement with
17 Rwanda. That's what they understood the United
18 Kingdom was essentially tentatively putting on the
19 table, that kind of discussion.

20 Now following on from this, on 10 October 10:37
21 there is a call between the British Home Secretary
22 and the Rwandan Foreign Minister. We have both
23 the United Kingdom and a Rwandan contemporaneous
24 internal account of this call. The accounts are
25 not entirely consistent, in essence because the 10:37

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1 United Kingdom account appears to suggest that
2 more progress had been made than the Rwandan
3 account.

4 The read-out on the British side is at
5 R-16. This is a read-out that is shared between, 10:37
6 as far as I can see, officials, so not something
7 for the political level, I think. It suggests
8 that the United Kingdom had understood that Rwanda
9 might sign a Note Verbale removing the obligation
10 to pay the ETIF funds. 10:38

11 There are two further things that are
12 clear even from this internal UK account. First,
13 this was at best progress in a discussion which
14 was still very much in the early stages. Indeed,
15 the final paragraph confirms that no text had even 10:38
16 been proposed at this stage. So they are just
17 still trying to discuss some framework possible
18 for the framing of the negotiations.

19 Second, the email, the read-out, again
20 notes that the step of the Note Verbale, that this 10:38
21 step in the discussions had been reached alongside
22 the United Kingdom making some offer on diplomatic
23 visa arrangements. There's two bullet points
24 where the internal note says it was agreed that
25 "Government of Rwanda would sign a Note Verbale", 10:39

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1 the first bullet point, and the second one, "We
2 would extend Diplomatic Visa Arrangements".

3 That's how the United Kingdom sees those
4 discussions as of 10 October. On the next day
5 we have another internal email between officials 10:39
6 that the United Kingdom has chosen to disclose.
7 This is an email from one Home Office official to
8 another which summarises the official's
9 understanding of the progress that had been made
10 as follows: 10:40

11 "... we anticipate that we will no longer
12 need to bring forward the Bill repealing the
13 [Safety of Rwanda Act] next week, subject to
14 signing the Notes Verbales."

15 That's how they summarise the position 10:40
16 internally on 10 October.

17 The officials understood, of course, that
18 unless what they thought might hopefully be signed
19 was actually signed, there was nothing. We do
20 know, by the way, that the following week nothing 10:40
21 was signed, because we're still on 10 October. So
22 the United Kingdom, having reached that decision
23 point referred to in this email, chose not to go
24 forward with its domestic legislation, it is the
25 United Kingdom's choice, it is their risk, it is 10:40

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1 not a matter for Rwanda.

2 I said there was a Rwandan account that
3 slightly differs. We have it at C-42. If we
4 could turn to C-42 now.

5 The difference between the two documents 10:40
6 is that R-16 is an email between officials who are
7 updating other officials on the dossier, whereas
8 Exhibit C-52 is an official note of the call that
9 is taken by a Rwandan civil servant. It says
10 this. This is a note of the call with the British 10:41
11 Home Secretary. This was the second call they
12 had; it refers to a previous call on 10 July,
13 which doesn't seem relevant to the dispute because
14 we don't have a read-out of that.

15 At paragraph 4 we can see that the 10:41
16 Rwandan minister was predictably noncommittal. He
17 refers to saying that "...Rwanda will, in
18 principle, not pursue that payment, provided that
19 the UK follows the right legal procedure".

20 So all the necessary caveats are there. 10:42

21 This note also records that a draft would
22 be sent by the United Kingdom the next morning to
23 Rwanda. So they're still discussing at a fairly
24 high level.

25 At paragraph 5 we have the points that 10:42

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1 Rwanda raises, or rather the points that the
2 United Kingdom hopes might persuade Rwanda into a
3 binding exchange. We have a reference again to
4 the visa waiver, diplomatic visa waiver. The
5 British Home Secretary says:

10:42

6 "... the UK is willing to facilitate visa
7 waivers for up to 100 diplomatic passports per
8 year."

9 On the next page at paragraph 6, we can
10 see that the Rwandan Ministry is not that
11 impressed with what he's heard in terms of the
12 United Kingdom offer. He appreciates the progress
13 on diplomatic visa arrangements but expressed
14 interest in doing more and making further progress
15 on broader cooperation and longstanding matters.
16 The minister also noted that the United Kingdom is
17 the only country in Europe that has yet to
18 prosecute or extradite genocide fugitives.

10:43

10:43

19 The next step was going to be the sending
20 of this draft by the United Kingdom.

10:43

21 I should have said before, paragraph 7,
22 the Home Secretary, British Home Secretary, says:

23 "... the UK is open to further
24 discussions in all these areas, except on transit
25 visa."

10:43

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1 So, they closed the door to transit visa
2 which had come up as a possible element in the
3 package on 3 October, by 10 October they drop it,
4 but they still say they are open to further
5 discussions on other matters to try to get the 10:44
6 Rwandans to agree to the position that the United
7 Kingdom would wish them to agree on.

8 What follows the ministerial call on
9 10 October are exchanges between officials
10 throughout October. The United Kingdom places 10:44
11 great reliance on these exchanges, and I've
12 already explained why they are really not in any
13 way determinative. What they show, and I'll go
14 through some of them, is that everyone on the
15 British side fully understood after 10 October, as 10:44
16 well as before, that different steps had to be
17 completed.

18 First, officials had to discuss and
19 finalise some text. Second, that text had to be
20 taken to the political level for approval. Third, 10:44
21 the text had to be properly exchanged and signed.

22 The fact is in spite of the United
23 Kingdom investing a lot of time in trying to
24 persuade the Rwandans, what becomes clear by the
25 end of October is that the parties cannot even 10:45

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1 complete the first stage in the process; they
2 cannot even finalise a text between officials.
3 That's how far they get to through these October
4 discussions.

5 So, unsurprisingly, what happens later, 10:45
6 in November, is that the texts on which the
7 officials had been working throughout October are
8 just jettisoned, they are abandoned, and a new
9 approach is started. I'll come to that new
10 approach because as far as we need to look at the 10:45
11 preparatory works of these two Notes Verbales, it
12 is actually what happened in November that is more
13 important than what happened in October, because
14 in October they were discussing drafts that were
15 just abandoned. 10:45

16 Let's take a look briefly to set out the
17 facts in full, the exchanges in October. The
18 first document here is C-45. This is an email
19 sent on the same day as the call between the
20 Rwandan Foreign Minister and the British Home 10:46
21 Secretary by an official at the Home Office to a
22 director general at Rwanda's Ministry of Foreign
23 Affairs.

24 The official says:

25 "Please see attached a formal note from 10:46

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1 the Home Office with more details about the DVA
2 that Ali and I discussed with you on Tuesday.
3 Apologies for sending so late, but hopefully still
4 helpful ahead of the call. It may be worth
5 caveating that these are details of the offer that 10:46
6 could be agreed subject to the outcome of
7 discussions between our ministers tonight."

8 They use interestingly similar language
9 to that the Rwandan minister appears to use,
10 "could be agreed subject to". They are just 10:47
11 discussing something.

12 The DVA offer follows in that same
13 Exhibit C-45. This is a document that was
14 attached to the email. It is described as DVA
15 offer to the government of Rwanda. It refers to a 10:47
16 new UK-Rwanda diplomatic visa agreement. It
17 mentions at bullet point 1 that Rwanda would be
18 offered access to a new UK diplomatic visa product
19 which is currently open to only five countries -
20 China, Türkiye, South Africa, Indonesia, and 10:47
21 Vietnam. So the United Kingdom is saying you will
22 join this exclusive club; it is one of the things
23 we would like you to consider as we try to make
24 progress on the Notes Verbales. Here they are
25 trying to come up with a proposal that is a little 10:47

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1 bit more granular.

2 Now, what -- so this is the DVA offer on
3 10 October. Let's now go back to the attempt to
4 get some text on these Notes Verbales, because
5 that starts on 10 October, after the ministerial
6 call. 10:48

7 And we need to go to R-18. So
8 on October 11, which was a Friday, the United
9 Kingdom sends a draft Note Verbale with this
10 accompanying note: 10:48

11 "[The] changes are relatively minor, we
12 would aim to sign it today [...]"

13 So that's their follow-up: Please sign
14 today, here's the Note Verbale. Well, the
15 Rwandans don't sign that document on that day. 10:48
16 What follows from the Rwandans is actually an
17 email on Friday, which you have at R-20, where the
18 director general of the Ministry of Foreign
19 affairs says:

20 "Could you please highlight the changes 10:49
21 that were made, possibly in track changes mode."

22 She wants to obviously see what is being
23 proposed.

24 Now, if you look at the draft the United
25 Kingdom sent, asking for it to be signed pretty 10:49

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1 much immediately, you have it at R-19. It is
2 clear, from a quick look at this first draft that
3 the United Kingdom signs in the vain hope -- sends
4 in the hope it would be signed immediately, but
5 from a purely technical point of view this is the 10:49
6 wrong draft.

7 If you look at R-19, paragraph 1.3, for
8 example, it says:

9 "[The] Note confirms the Parties' joint
10 understanding of the commitments in prospect of 10:49
11 formal termination of the Agreement, including
12 financial arrangements [...]".

13 It just isn't quite clear or in line,
14 even, with what had been, at a very high level,
15 discussed on the call. 10:50

16 At paragraph 1.6, this first British
17 draft says that the note would amend and replace
18 in entirety the Note -- the '24 finance note.

19 Then at paragraph 1.9, the note was not
20 going to be binding. Then in paragraph 2.1, under 10:50
21 this draft, the United Kingdom was giving "formal
22 notice to Rwanda that the Memorandum of
23 Understanding will be terminated".

24 The Memorandum of Understanding wasn't
25 the document they were discussing. So there was 10:50

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1 complete confusion on the Rwandan side when they
2 received this document. From a purely technical
3 point of view, the official that looked at
4 it didn't quite understand where it went. And so
5 she asks for a track-changed version immediately. 10:50

6 We then have, at R-21, a rather
7 apologetic email from another British official who
8 apologises because the whole thing about the
9 "changes being minor, please sign today", was a
10 bit of a mischaracterisation, as it was accepted. 10:51

11 The official now admits:

12 "[...] my email to [another Home Office
13 official], [...], was incorrect as the changes
14 between the two Notes Verbale were quite
15 significant [and] we have entirely removed the 10:51
16 ETIF [payment] [...] it is very important to us
17 that you are happy [...]".

18 So the tone changes a bit because they
19 realise that approach of just "please sign today"
20 on huge changes wasn't going to work. 10:51

21 But let's say that things did not get off
22 to an easy start from this very first attempt to
23 discuss some drafts.

24 Now at Exhibit 22, the Rwandan official
25 who had asked for a track change version of the 10:51

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1 document replies and says the Note Verbale:

2 "Introduces significant changes that
3 raise[s] concerns for us and diverge considerably
4 from our [previous] [understanding]."

5 Now, the United Kingdom makes a lot of 10:52
6 the draft that the Rwandan official sent and
7 attached to this email on 15 October. And there
8 are a few points I would make to just explain why
9 that reliance by the United Kingdom is completely
10 misplaced. 10:52

11 First, this approach to the drafting of
12 the Note Verbale was completely abandoned. It's
13 not what tells us what went into the final text.

14 Second, as we saw, the director general
15 who replies to this message had received the draft 10:52
16 that made no sense technically. She is not
17 expressing approval or agreement to anything. She
18 is just trying to produce a draft that, in a
19 technical sense, might work. None of these
20 officials, of course, was in a position to provide 10:53
21 final agreement on behalf of the State. As we saw
22 before, the British official who sends the
23 diplomatic visa waiver agreement which could be
24 agreed, subject to the conversation, wasn't in a
25 position to agree on behalf of the United Kingdom 10:53

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1 to that diplomatic visa waiver agreement or even
2 the principles behind it.

3 I also note that, when the draft is sent
4 on 15 October, it's still only five days after the
5 call with this DVA offer still in space somewhere, 10:53
6 put on the table by the United Kingdom.

7 So that's an attempt by the Rwandan
8 official to progress things technically.

9 What we have next is another redrafting
10 exercise by the United Kingdom officials on the 10:53
11 basis of the Rwandan draft, and you have it at
12 R-25. It's another draft -- I don't need to go
13 through these drafts because, as I said, they're
14 not really relevant. But you can see through the
15 tracked changes all the various things that have 10:54
16 been amended in the text that had been the draft
17 that had been sent by the Rwandan official before.

18 Now, things are not obviously making
19 progress. And so on October 22, the British High
20 Commission writes to the same Rwandan official, 10:54
21 and we have that email at R-26. And the British
22 High Commissioner refers to some discussion that
23 they had had before and which had led the United
24 Kingdom to remove most of the changes that
25 appeared in that previous message. And the High 10:55

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1 Commissioner fully understood -- this is
2 22 October -- that officials had not even reached
3 the stage of a provisional text ready to be taken
4 to the political level. They were not even there
5 yet. So the High Commissioner says in this email: 10:55

6 "I appreciate you will now want to share
7 with your colleagues and discuss further. [But
8 can I have] a sense of [...] timeline?"

9 And then, moving on with the chronology,
10 on October 30, we have an email from the British 10:55
11 Home Office to the permanent secretary at the
12 Ministry in Rwanda, which is at R-28, but it's on
13 the second page of R-28. So it's the email at the
14 bottom of the chain.

15 And this email is sent on 30 October, and 10:56
16 it says:

17 "[...] our Home Secretary is very keen to
18 get this agreed as soon as possible due to
19 legislative [pressure] here in the [United
20 Kingdom]." 10:56

21 So this shows, as late as October 30, the
22 United Kingdom realised that nothing had been
23 agreed. Moreover, what is also clear from
24 the October discussions is that they -- as they
25 move along, is that at one point, from the second 10:56

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1 half of October, all that United Kingdom seems to
2 be doing is to put pressure on Rwanda. The
3 reference to the offer that had to be discussed
4 with Rwanda which the British officials at that
5 first meeting on 3 October had quite wisely 10:56
6 identified as key to unlocking any chance of
7 reaching agreement -- that reference disappears
8 from the second half of October, even though it
9 had been seen as inextricably linked at the
10 beginning of this process. 10:57

11 The United Kingdom understood at the
12 beginning that this process was going to be
13 transactional, that there had to be some offer,
14 some *quid quo pro*, and then maybe, maybe, there
15 could be some new agreement. 10:57

16 But a few weeks into these discussions
17 between officials, the United Kingdom decides to
18 just apply pressure to get it over the line. The
19 strategy at this point, frankly, seems to be a bit
20 like the strategy of a salesman who, having 10:57
21 realised he's not going to get the deal that he
22 wanted, just starts saying: Please, please sign
23 on the dotted line. Rwanda doesn't sign. There's
24 not even a document to sign because they can't
25 finalise a text that could be readied for 10:57

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1 signature.

2 So all of this anxiety from the British
3 system to get this over the line is noted in their
4 internal documents; but, ultimately, it doesn't
5 produce any agreement or even anything that could 10:58
6 have been the subject of an agreement. So we're
7 now on 30 October and things really haven't moved
8 in a helpful direction for the United Kingdom.

9 We then come to November '24, and this is
10 where we have the change of approach. There was a 10:58
11 meeting on 6 November between the Rwandan foreign
12 minister and the British High Commissioner. And
13 as a result of that meeting, the United Kingdom
14 decides it will change the approach. And this is
15 how the United Kingdom describes the new approach 10:58
16 to Rwanda on 6 November.

17 If we go to R-29, this is an email from
18 the Deputy High Commissioner to Director General
19 at the Rwandan Foreign Ministry. It says:

20 "[...] please see attached copies of the 10:58
21 two new proposed documents from our UK Home Office
22 colleagues:

23 "A short political [Note Verbale]"; and

24 "A technical annex to the [Note Verbale]

25 (which as Ali explained covers the things we need 10:59

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1 covered for our legislative process)".

2 That's how the new approach is described
3 by the United Kingdom: "A short political N[ote]
4 V[erbale]" and "a technical annex" that we, United
5 Kingdom, need. 10:59

6 This is, of course, a complete change
7 from what we saw before. The previous drafts,
8 which never got to the stage where they could be
9 sent to the political level for consideration,
10 were abandoned. Those previous drafts had tried 10:59
11 to do more legal things with the text. And,
12 second, this new approach is described as a short
13 political Note Verbale; whereas, the previous
14 discussions were about legal amendments. What
15 must have happened is that the United Kingdom 10:59
16 realises there is no prospect of agreeing on the
17 legal amendments, and so it suggests a political
18 approach.

19 The United Kingdom on 6 November says
20 that it will produce a draft based on the new 11:00
21 approach. And we have the draft produced by the
22 United Kingdom at R-34. So this is what the
23 United Kingdom would like under this political --
24 sorry, it's at R-30, I think. Yes, it's R-30,
25 Exhibit R-30. 11:00

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1 The text that the United Kingdom proposes
2 says:

3 "[...] it is hereby agreed that no
4 further payments will be made under the Economic
5 Transformation and Development Partnership 11:00
6 agreement. [The] diplomatic agreement is
7 underpinned by the annexed technical [notes]."

8 So that's the text that they put on the
9 table for discussion.

10 There is then a meeting on 7 November 11:01
11 between the British High Commissioner and the
12 Rwandan foreign minister to discuss a range of
13 issues. We have an internal United Kingdom
14 document which is a read-out prepared by an
15 official. 11:01

16 In the final page of this document, the
17 comment by the official is:

18 "The minister was a little non-committal
19 on exactly what he wants to see from the Migration
20 Partnership N[ote] V[erbale]", although the 11:01
21 British sense was the challenge had been getting
22 his attention.

23 The key thing is that even internally
24 they realised on 7 November, they hadn't got
25 anything in the bag yet. The minister was being 11:01

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1 non-committal.

2 Then on 12 November, Rwanda sends a
3 revised text. The revised text is the one that
4 you find at R-36 and which is then the basis for
5 the exchange. The key features of the revised 11:02
6 text sent by the Rwandans are these. The language
7 of "It is hereby agreed" and "diplomatic
8 agreement" which the United Kingdom had put in its
9 draft on 7 November, even though it had
10 characterised the Note Verbale as political, that 11:02
11 language is gone from the Rwandan draft. It is,
12 instead, replaced with the language that we have
13 in the November exchange, "the United Kingdom
14 respectfully requests".

15 As we noted in our Reply in the Statement 11:02
16 of Defence, the United Kingdom says throughout
17 "formally requests" but it is "respectfully
18 requests".

19 The technical annex which the United
20 Kingdom had said was needed for United Kingdom 11:02
21 purposes no longer underpins an agreement, which
22 was the United Kingdom's language. It now
23 supports a respectful request. So, a big change
24 in what the Rwandans send to the United Kingdom
25 and what is eventually in the text of the Note 11:03

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1 Verbale. These changes suggested by the Rwandans
2 are entirely consistent with the fact this was now
3 a political Note Verbale and they were not going
4 to go for anything more. It could not have been
5 clearer from the exchanges that had taken place. 11:03

6 Now, the November Notes Verbales -- and
7 it took a while to get to those but we had to deal
8 with all this history that the United Kingdom says
9 is relevant -- are at C-29 and C-30.

10 This text is the one that has the 11:03
11 language that you will be familiar with, that
12 we've seen before, "The Government of the United
13 Kingdom respectfully requests that the Government
14 of Rwanda forgo any additional payments. This
15 request is supported by the annexed technical Note 11:04
16 Verbale".

17 The annex was not an integral part of
18 this Note Verbale. The signature and the stamp of
19 the British High Commission are at the bottom of
20 the Note Verbale here. The entire approach 11:04
21 suggests a political approach and, at most, a
22 technical annex that could have been the subject
23 of some further discussions, but not something
24 that even the initiating Note Verbale was putting
25 on the table for agreement there. 11:04

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1 So even before we look at Rwanda's reply,
2 we can already tell from the initiating Note
3 Verbale that this is not the kind of initiating
4 Note Verbale that can lead to a binding agreement.

5 I'll come back to this text later but 11:05
6 just on the Rwandan reply, we have it at C-30.
7 Rwanda refers to the United Kingdom's Note
8 Verbale. The date is wrong but nothing turns on
9 that error. It refers to the request to forgo the
10 payments, to forgo the ETIF payments. No 11:05
11 reference is made to the technical annex. The
12 United Kingdom request is noted but, unlike
13 previous exchanges, there is no reference in the
14 initial paragraph to any joint understanding.
15 We see no language of amendment, acknowledgment, 11:05
16 or agreement in the Rwandan reply. There is a
17 reference to proposed arrangements that are
18 described as acceptable, i.e. capable of being
19 accepted.

20 Then the key thing, on which I will make 11:06
21 legal submissions, is the absence of any language
22 that expresses consent to be bound by the two
23 Notes Verbales taken together, together with any
24 language that expresses agreement to the exchange
25 coming into force or into effect. 11:06

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1 So, the Rwandan reply is in sharp
2 contrast with anything we have seen before and
3 anything one would usually see in the practice of
4 states on the matter of concluding agreements or
5 Memorandum of Understanding that are not binding 11:06
6 through this process.

7 Now, before coming back to the Notes
8 Verbales and making the legal submissions, I'll
9 say a few words about the subsequent conduct just
10 to complete the facts, because the United Kingdom 11:06
11 places great reliance on subsequent conduct.

12 There are five documents that matter
13 here, really, for subsequent conduct. The first
14 one is an email at R-39. There are five documents
15 on which the UK relies in its subsequent conduct 11:07
16 case. So, R-39 is a Home Office official writing
17 to the Permanent Secretary of the Rwandan
18 Ministry, where he says "Thank you ... we now have
19 the Note Verbale agreed and signed. This is an
20 email from a British official which receives no 11:07
21 response saying to another one thank you, then
22 saying the Note Verbale had been signed. It has
23 absolutely no weight as subsequent state practice.
24 It cannot be said to be the evidence of mutual
25 understandings in relation to the exchange. 11:07

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1 We then also have some WhatsApp messages
2 that the United Kingdom has included as part of
3 its case on subsequent conduct. You have those at
4 R-40 and R-41. These are WhatsApp messages
5 between the British Deputy High Commissioner and 11:08
6 the Director General at the Rwandan Foreign
7 Ministry who has been involved in quite a lot of
8 this correspondence, Ms Grace Nyinawumuntu.

9 The WhatsApp messages are mainly messages
10 initiated by the Deputy High Commissioner who says 11:08
11 that she wants to check in on two quick things.
12 She sets out what she wants to check in on. One
13 of the things is the 20 million payment which was
14 connected with the relocation. Then she refers to
15 the Home Office colleagues visiting Rwanda, and 11:08
16 again raises the question of the four volunteers,
17 and asks who should we meet on the Rwandan side to
18 discuss these matters?

19 At R-41 you have the second page of the
20 WhatsApp message. That's where you have the reply 11:09
21 from the Rwandan official. She sends four brief
22 messages between 9.19 a.m. and 9.22 a.m. on 20
23 January 2025 saying "Hi, I'll just confirm on the
24 question of who the meeting should be with",
25 essentially, and then she confirms the three 11:09

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1 departments that should be involved in those
2 meetings.

3 So that's the WhatsApp messages on
4 subsequent conduct, allegedly.

5 The next document we have is at R-42. 11:09
6 Again, this is another email from the Deputy High
7 Commissioner to someone in the Rwandan Ministry
8 of Foreign Affairs. The United Kingdom says there
9 is no mention of the ETIF payment. It is an email
10 from one official to another, and Britain doesn't 11:10
11 mention the ETIF payment, it goes nowhere as
12 subsequent practice.

13 Finally we have the fifth document, which
14 is the Note Verbale sent by Rwanda on 25 February
15 2025. You find this at C-31. It is a document 11:10
16 that we had already identified as relevant.

17 Now, this is the Note Verbale where
18 Rwanda says, C-31, second paragraph:

19 "The Ministry of Foreign Affairs now has
20 the honour to inform the High Commission that the 11:10
21 proposed arrangements, as outlined in the
22 Technical Annex to Note Verbale 182/2024, are not
23 acceptable to the Government of the Republic of
24 Rwanda. As a result, the previous arrangements in
25 the aforementioned Note Verbale [...] are hereby 11:10

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1 rescinded."

2 The United Kingdom's case centres on the
3 use of one word in this document, "rescind".

4 That's their case on this document. The United
5 Kingdom says that this proves that Rwanda knew 11:11
6 that the exchange was binding. However, the use
7 of the word "rescind" proves nothing of the kind.
8 In fact, if anything it proves the opposite.

9 If, as the United Kingdom contends,
10 the November Notes Verbales were a legally binding 11:11
11 amendment of the '24 finance note, then Rwanda
12 would have known that the only way to amend what
13 had been agreed was another agreed amendment. Of
14 course Rwanda would have known that if it wanted
15 to change an agreed amendment, it had to have 11:11
16 another agreed amendment. It wouldn't have
17 proceeded on the basis that it could just rescind,
18 so to speak, the amendment.

19 In fact, it is entirely consistent with
20 the political nature of the November Note Verbale, 11:12
21 as stated by the United Kingdom at the time, that
22 in February '25 Rwanda says what may have been
23 acceptable in November in a political sense is no
24 longer acceptable; we take that back; it is
25 rescinded, withdrawn, revoked. There are a number 11:12

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1 of words that one could use to describe what
2 Rwanda was telling the United Kingdom at this
3 point, but the use of the language of rescission
4 does not have any particular significance. One
5 can rescind a non-binding instrument. There's no 11:12
6 reason why that word could not be used in
7 connection with a non-binding instrument.

8 So, the practice and subsequent conduct
9 includes this one Note Verbale from Rwanda where
10 all the focus is on the word "rescind". Then 11:13
11 there's four WhatsApp messages from the Rwandan
12 officials between 9.19 a.m. and 9.22 a.m. That's
13 the Rwandan conduct that the United Kingdom's case
14 on subsequent conduct in this case rests upon.
15 The other documents on which they rely are emails 11:13
16 from British officials saying things in one way or
17 another.

18 Now, just to complete on the facts and
19 then perhaps it might be an appropriate time for
20 the break. In December '24, so just taking a step 11:13
21 back, the United Kingdom sent a Note Verbale on
22 its visa arrangements to Rwanda. We have it in
23 C-46. This is sent after the November Notes
24 Verbales. And the -- it is clear, from a quick
25 look at this Note Verbale, that it is setting out, 11:14

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1 in rather general terms, various processes for
2 visa services in the United Kingdom, but it is not
3 really setting out the DVA offer from October 10.
4 So whatever offer that British official on
5 3 October had in mind as necessary to unlock this 11:14
6 discussion never really went anywhere. So that is
7 the context that explains why we have the exchange
8 that we have and on which -- to which I will
9 return and make legal submissions after the break,
10 if that's a convenient moment. 11:14

11 THE CHAIRMAN: I thank you for your
12 presentation. Before suspending the hearing,
13 I would like to give the floor to Judge Donoghue,
14 she has a question. I give her the floor.

15 ARBITRATOR DONOGHUE: Thank you, Judge 11:15
16 Tomka.

17 I asked to take the floor because I have
18 a question I wanted to pose to both parties, and
19 I thought that if I pose the question before the
20 break, then Rwanda might be in a position to 11:15
21 consider the answer and respond after the break,
22 and then tomorrow I would like a response from the
23 UK.

24 So the parties devote considerable
25 attention to comparisons among three exchanges of 11:15

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1 notes. The first is the notes from 2022, and
2 there both parties consider those to be
3 non-binding. But then we have the notes
4 from June 2024, the ones that are found at C-22
5 and C-23. And there both of the parties consider 11:15
6 those to be binding, and so a treaty, for the
7 purposes of the Vienna Convention. And then, of
8 course, we have the notes from November 2024,
9 where the parties disagree as to whether those are
10 binding or not. 11:15

11 I know that factors other than the text
12 of an exchange of notes are relevant to
13 determining whether it has a binding character,
14 and we've heard quite a bit about that from the
15 parties. But I'm asking here specifically only 11:16
16 about the text of the exchanges of notes because
17 the parties also address those repeatedly.

18 My practice is often to just sit down
19 with a set of documents and read through them
20 without looking simultaneously at what parties 11:16
21 say. And when I look at the June 2024 notes, C-22
22 and C-23, I see elements of those notes which the
23 parties say are binding. I see elements that
24 point away from a binding character. And then
25 I noticed that Rwanda submitted as CLA-19 a 11:16

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1 guidance document from the Foreign Office which,
2 at pages 18 to 20 in particular, sets out some
3 formulations and specific words that should be
4 used to indicate that that arrangement is not a
5 treaty, so not binding. 11:17

6 I'm interested in these, of course,
7 because of the comparisons that the parties make
8 among these various exchanges of notes.

9 So what I would like to understand from
10 each party is, for each party, why it understands, 11:17
11 looking at the text of the June 2024 exchanges of
12 notes, why it doesn't reach the conclusion that
13 the exchange of notes is a treaty and that
14 paragraphs 1.6 and 2.3 impose legally binding
15 obligations? 11:17

16 Thank you, Judge Tomka.

17 THE CHAIRMAN: Thank you very much.

18 I give the floor to Prof. Mohamed Abdel
19 Wahab, arbitrator, to ask a question as well.

20 ARBITRATOR WAHAB: Yes. Thank you so 11:17
21 much for these submissions. Again, the question
22 is posed to both parties. And in addition to what
23 Judge Donoghue has mentioned, I also note that
24 there has been references in C-29 and C-30 -- so
25 looking at specifically the November 13 11:18

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1 and November 14 Note Verbale by Claimant and
2 Respondent.

3 So the reference has been, specifically
4 in C-30, to the words "the proposed arrangements
5 are acceptable". And I take note of both parties' 11:18
6 positions regarding what the word "acceptable"
7 means. But I'm actually concerned as well about
8 the proposed arrangements. Now, they are not
9 used, of course, in capitalized words. I say that
10 because the word "arrangements" seems to appear 11:18
11 twice in the numbered paragraph 2. That's the
12 second numbered paragraph in C-29. That's the
13 Note Verbale from Respondent on 13 November,
14 referring to "continue to discuss arrangements for
15 formal termination of the Agreement [...]". 11:19

16 And so I wonder whether and to what
17 extent the word "arrangements" refers, from each
18 party's perspective -- perhaps from the
19 Respondent's perspective -- to the totality of the
20 Note Verbale, and what it means from Claimant's 11:19
21 perspective in that respect.

22 Thank you very much.

23 THE CHAIRMAN: Thank you very much.

24 Now I think we can take a 15-minute
25 break, and we will resume at 11.40. 11:19

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1 (Short adjournment - 11.19 a.m. to 11.44 a.m.)

2 THE CHAIRMAN: Please be seated.

3 The sitting is resumed, and I invite
4 counsel for the Republic of Rwanda to continue in
5 his argument. You have the floor. 11:44

6 LORD VERDIRAME: Thank you, Mr President.

7 So I will begin with the two questions
8 posed just before the break and give headline
9 answers because some of the points will then be
10 developed in the course of the submissions that 11:44
11 I was going to make.

12 So beginning with the question from
13 Judge Donoghue, I would make the following points:

14 First, the parties agree that the '24
15 finance note is binding, and that's where we are. 11:45

16 In our Statement of Claim, we identified
17 a number of features that the '24 finance note as
18 as compared with the '22 finance note and also is
19 compared with the November exchange, which
20 indicate its binding nature. And I will note in 11:45
21 particular two of those features. One is the
22 removal of the non-binding clause, which the '22
23 finance note had. The Rwandans requested it be
24 removed, and it is removed from the '24 note.

25 And the second feature is provision for 11:45

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1 binding dispute settlement, which is quite
2 unusual, I think, in an instrument that is not
3 designed to be binding. At that point, with those
4 two decisions taken by parties, it would have been
5 clear they wanted the finance note to operate on 11:46
6 the international legal plane.

7 Now, the Tribunal does not have the same
8 detail in terms of the history of the discussions
9 between the parties that led to the finance note
10 as it has on the November notes, and the reason is 11:46
11 obviously that the parties don't see it as an
12 issue in dispute, so there was no need to
13 overwhelm the Tribunal with further materials. I
14 am sure, if the United Kingdom had found anything
15 in its record that undermined the suggestion that 11:46
16 the finance note could be viewed as binding, it
17 would be before you.

18 You do have just those two internal
19 drafts to which I took you in the introduction.
20 That's all we have on the history of the '24 11:46
21 finance note.

22 And the final point is that here the
23 subsequent conduct is actually quite revealing,
24 because the United Kingdom consistently proceeded
25 on the basis that it had to make these payments, 11:47

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1 that it was a legal duty to make the payments
2 under the '24 finance note. That is the reason
3 why they thought, unless there was some package
4 that Rwanda could be persuaded to accept, Rwanda
5 was not simply going to give up that to which it 11:47
6 was entitled as a matter of treaty rights.

7 So that's the analysis of the '24 finance
8 notes. Then Judge Donoghue mentioned that UK
9 document on the drafting guidance, which is,
10 indeed, very interesting, and that's why 11:47
11 we've added it on the record.

12 And what I would say on that document is
13 that, first, it reflects British practice on how
14 to draft these documents. Rwanda may well view
15 them differently. 11:47

16 And the second point, which really is the
17 key one here, is that it is completely clear, from
18 the British guidance and also from the various
19 textbooks authored by British -- former British
20 Foreign Office lawyers, that the Reply Note 11:48
21 Verbale must include the language that Rwanda
22 omitted, whether the exchange is intended to be
23 binding or not. So the clear British guidance is,
24 even if you're getting into a non-binding
25 Memorandum of Understanding, the initiating Note 11:48

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1 Verbale and the Reply Note Verbale need to contain
2 that language of saying "your excellency's note
3 and this note in reply, taken together, will
4 constitute a joint understanding and come into
5 effect". If the language is not there, you 11:48
6 haven't got the other side on board with whatever
7 that exchange is meant to achieve.

8 So we simply don't see how the United
9 Kingdom, based on its own guidance, can contend
10 that a Reply Note Verbale that would be considered 11:48
11 insufficient for a non-binding exchange created a
12 non-binding exchange in the eyes of the United
13 Kingdom.

14 For the rest, it is true that there are
15 some other terminological suggestions that the UK 11:49
16 guide contains on speaking of articles rather than
17 paragraphs in a binding instrument, etcetera,
18 which were not used consistently in the '24
19 finance note. But for all these reasons, it is
20 clear to us, and of course not in dispute, that 11:49
21 the '24 finance note is binding and that
22 the November exchange, even when put in the
23 context of other exchanges by the parties under
24 this treaty, cannot simply be viewed as a binding
25 exchange, whatever perspective the parties were 11:49

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1 adopting on the practice of concluding a binding
2 agreement through an exchange of notes or letters.

3 If I may now move to the question from
4 Prof. Wahab. And I make two points on that.

5 The first one is: it is not clear from 11:50
6 that exchange that the parties had in November
7 what arrangements are really being referred to.
8 And the fact that it is not clear is a very key
9 factor, in fact, on its own, already a decisive
10 factor, against the binding nature of the 11:50
11 exchange, because if we cannot identify the
12 concurrence of wills, we cannot really identify
13 what could have, even in theory, have been agreed.

14 The second point that I would make is
15 that, as Prof. Wahab noted, in the initiating Note 11:50
16 Verbale by the United Kingdom, the term
17 "arrangements" appears in paragraph 2 of the
18 technical annex -- perhaps we can just show it.
19 It is C-29. It's paragraph 2 of the technical
20 annex -- where the United Kingdom refers to: 11:50

21 "That Rwanda and the United Kingdom
22 continue to discuss arrangements for formal
23 termination of the Agreement including financial
24 arrangements related to termination [...]".

25 So it is a perfectly proper reading of 11:51

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1 Rwanda's non-binding answer that all it was
2 indicating was a political intention to discuss
3 those arrangements, those in paragraph 2 of the
4 technical annex, because that's where the
5 initiating Note Verbale makes reference to 11:51
6 arrangements. That's a perfectly plausible
7 interpretation of these two texts on their face.

8 But the first point is the one we have
9 made throughout, which is there is a complete
10 confusion, even if one wanted to try to construe 11:51
11 it as some kind of agreement to identify what the
12 content of this agreement was.

13 With that in mind, I will move on to the
14 legal submissions on the breach of the finance
15 note, which effectively I've already begun with 11:52
16 the answers I've given.

17 There are three issues for the tribunal
18 to decide. The first issue is the one on which
19 the parties have spent most time, did the November
20 exchange amend with binding effect the '24 finance 11:52
21 note. If the answer to that question is no, then
22 I believe it is common ground that Rwanda is
23 entitled to receive the payment for year 2 of
24 £50 million.

25 A second question would arise on the year 11:52

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1 3 payment. So, if Rwanda is right on the first
2 question, the second issue for you to determine is
3 whether the failure to make payment for year 3 is
4 also a breach of the finance note.

5 The third issue arises in the 11:52
6 alternative, if Rwanda is wrong on the first
7 question. If the Tribunal finds, contrary to our
8 case, that the November exchange amended with
9 binding effect the finance note of 2024, was there
10 still a breach of the finance note as amended 11:53
11 and/or of the amendment agreement if such a thing
12 existed. That's the third issue that arises.
13 I will take these two questions in turn.

14 Starting with the first question, did the
15 November Note Verbale amend the note with binding 11:53
16 effect? I make a few points.

17 The first one is just to refer to the
18 point I made before, that our case has not
19 changed. Our case has been, throughout, that the
20 two Notes Verbales taken on their own are amply 11:53
21 sufficient to provide our case with decisive
22 support. They do not constitute a binding
23 agreement.

24 The second point is that a state may
25 enter into a binding agreement through an exchange 11:53

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1 of instruments in the circumstances that are set
2 out in Article 13 of the Vienna Convention on the
3 Law of Treaties. There was a little digression in
4 the Statement of Defence by the United Kingdom on
5 the effect of Article 39, but even taking that 11:54
6 into account, we go back to Article 13 to
7 understand whether certain conditions have been
8 met. I believe that is also agreed.

9 Now, under Article 13(a) of the VCLT, the
10 first circumstance is where the instruments 11:54
11 provided that their exchange shall have that
12 effect. Sometimes in the literature this is
13 described as the intrinsic proof route because the
14 proof of consent is found in the text.

15 Now, it may be useful just to pull up the 11:54
16 '25 VCLT commentary briefly, which we have at
17 CLA-7. The references that are discussed in our
18 submissions are at pages 279 to 281 of the VCLT
19 commentary. It is settled law; we say the
20 Tribunal will be very familiar with it. At 11:55
21 page 279, the commentary says:

22 "It is required that the instruments
23 exchanged record an agreement, i.e. a concurrence
24 of wills, between the parties and demonstrate an
25 intention of the parties to be bound legally. It 11:55

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1 is customary to provide expressly in the
2 instruments that the exchange of notes or letters
3 shall constitute an agreement between the two
4 governments".

5 Then it describes the practice that is 11:55
6 usually adopted, which some countries regard as
7 the best practice, which is that ideally the Reply
8 Note Verbale should reproduce the text that was
9 sent with the initiating Note Verbale. But the
10 commentary, and the International Court of Justice 11:56
11 also in *Bolivia v Chile* noted that that practice
12 isn't consistently followed, that is the
13 reproducing of the entire text that is being
14 agreed. But the thing that is absolutely
15 necessary is the recording of an expression of 11:56
16 consent to be bound plus the indication of the
17 agreement coming into effect.

18 We have examples here on the commentary
19 in that page of the initiating Note Verbale with
20 the standard formula, and the Reply Note Verbale 11:56
21 with the standard formula.

22 I'm having to spend time on this. It's a
23 fairly obvious ground, but the United Kingdom has
24 made the rather stark suggestion that the language
25 that is omitted from Rwanda's Note Verbale is 11:56

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1 superfluous, so I have to address that.

2 The Vienna commentary also says,
3 page 280, if the content of the reply note or
4 letter diverges from the content of the initial
5 note or letter constituting the offer, there will 11:57
6 be no agreement and there's no treaty concluded,
7 as there simply will be no full acceptance of the
8 offer formulated in the initial instrument.

9 That's a point that goes to Professor
10 Wahab's question on what is the content of the 11:57
11 word arrangements; what are the parties referring
12 to? We need to be able to identify the content
13 from the exchange through an objective reading of
14 the exchange, and if we can't do it, there is no
15 concurrence of wills and no agreement. 11:57

16 That's the first route. We say clearly
17 the November exchange does not satisfy the
18 conditions set out in Article 13.

19 Now on Article 13(b), the Convention says
20 this applies where "it is otherwise established 11:57
21 that those States were agreed that the exchange of
22 instruments should have that effect". There's
23 quite a lot of history behind 13(b) and quite a
24 lot of discussion that went into it, but it is
25 there. 11:58

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1 The commentary of the VCLT notes, and the
2 reference is page 303:

3 "A careful examination will be necessary,
4 among other things, of the context of any later
5 agreement, of any subsequent applicative and 11:58
6 interpretive practice of the preparatory work of
7 the treaty as well as the circumstances relating
8 to its conclusion".

9 The bar for Article 13(b) is
10 unquestionably very high. Being able to discern, 11:58
11 establish, agreement from this kind of context,
12 from extrinsic proof, is very arduous for the
13 party that is seeking to do that.

14 Now, my third point is about the main
15 authorities. This is the commentary, this is the 11:59
16 text of the Vienna Convention; Rwanda's case is
17 completely consistent with the main authorities of
18 the court on this matter.

19 If I could indulge your patience by going
20 through a few passages in *Bolivia v Chile* that are 11:59
21 relevant in identifying the legal test. You have
22 that authority at CLA-4. You will be familiar
23 with it.

24 The Notes Verbales in that case, there
25 was an issue about the translation, as you will 11:59

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1 recall. It is all set out in the judgment of the
2 court at paragraphs 52 and 53. The key passages
3 here are the paragraphs 117, 118, and 119 of the
4 court's judgment.

5 At paragraph 117, the court refers to the 11:59
6 practice that states usually follow and describes
7 it in these terms. It says:

8 "According to that practice, a state
9 proposes in a note to another state that an
10 agreement be concluded following a certain text, 12:00
11 and the latter state answers with a note that
12 reproduces an identical text and indicates its
13 acceptance of that text. Other forms of exchange
14 of instruments may also be used to conclude an
15 international agreement". 12:00

16 So even if the text that is being agreed
17 is not reproduced, you may still have an agreement
18 as long as you can identify the text of the
19 agreement.

20 Then the court says: 12:00

21 "However, the notes exchanged between
22 Bolivia and Chile in June 1950 do not contain the
23 same wording nor do they reflect an identical
24 position".

25 The identical position test is key here. 12:00

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1 It is simply not possible, looking at the November
2 exchange, to distill an identical position
3 objectively from the words that were used by the
4 parties in that exchange.

5 Then the next point at paragraph 118, it 12:01
6 says:

7 "Chile's note, whichever translation
8 given by the parties is used, conveys Chile's
9 willingness to enter into direct negotiations but
10 one cannot infer from it Chile's acceptance of an 12:01
11 obligation to negotiate".

12 I don't think I need to trouble the
13 Tribunal with the language of those exchanges.
14 I've given the references in paragraphs 52, 53.
15 The court decided that those exchanges, the reply 12:01
16 that Chile gave, gave rise to a political
17 indication on the matter but not an acceptance of
18 an obligation because Chile had not conveyed its
19 willingness. We say Rwanda has not conveyed its
20 willingness to be bound by the United Kingdom Note 12:02
21 Verbale, whatever its contents might be.

22 We then have paragraph 119; this is about
23 subsequent practice. It says:

24 "By repeating certain statements made in
25 the note of 20 June 1950, this memorandum does not 12:02

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1 create or reaffirm any obligation to renegotiate
2 Bolivia's southern access to the Pacific Ocean."

3 I draw your attention to that simply to
4 say all those emails by British officials that
5 repeat certain things that are produced in support 12:02
6 of a subsequent conduct case really go nowhere in
7 terms of the proper assessment.

8 Now, the other point is on 13(b) and why
9 this case -- it's my fourth point -- does not
10 reach the high bar required for Article 13(b). 12:03
11 That's where we say the context here provides
12 evidence to the contrary. It shows that Rwanda
13 was not willing to agree to be bound in legal
14 terms to accept what the United Kingdom wanted in
15 binding terms. We have seen that the parties 12:03
16 ceased to negotiate a more detailed text -- what
17 would have been a more detailed text of amendments
18 based on the finance note. We also saw the United
19 Kingdom understood, given the binding nature of
20 its obligation, that it was going to Rwanda with a 12:03
21 fairly big ask, and that's why it initially
22 thought there had to be some package, some offer,
23 to Rwanda.

24 The context shows that no progress was
25 made on any of those other discussions that the 12:04

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1 Rwandans may have found or may not have found
2 persuasive.

3 A further key element of the context is
4 that the exchange as proposed by the United
5 Kingdom is characterised as political. Finally, 12:04
6 the language even within the political exchange of
7 "it is hereby agreed an agreement" is rejected by
8 Rwanda. They take a look at it, they change it
9 completely.

10 So, we simply don't see how any of these 12:04
11 materials, which I've taken you through in detail,
12 could support the case for 13(b). They do the
13 exact opposite. They show that our case is
14 entirely consistent with what happened before.

15 Now, I've made the point on the 12:04
16 subsequent conduct. I think the reference perhaps
17 that I should also add here is to the court's
18 recent judgment in *Gabon/Equatorial Guinea* where
19 subsequent conduct was the object of quite
20 detailed consideration by the court. I think 12:05
21 there are two tests that are important from the
22 court's judgment.

23 First, the subsequent conduct has to be
24 clear and consistent over a sustained period of
25 time for it to be really reliable as an indication 12:05

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1 of the binding nature of an agreement achieved
2 before.

3 Secondly, it has to reveal a clear and
4 mutually consistent intention to be bound. In
5 other words, you need subsequent conduct that is 12:05
6 clear and consistent, and it has to be mutual. It
7 can't just be the conduct of one party.

8 The highest case that the United Kingdom
9 can make on subsequent conduct is the word
10 "rescind". Beyond that, there's absolutely 12:05
11 nothing. And I've dealt with that case and
12 explained why that word cannot really -- the use
13 of that word -- be taken as subsequent conduct
14 evidence of Rwanda's intention to be bound,
15 notwithstanding the clear terms of the November 12:06
16 exchange.

17 Now, I think, finally -- and this is a
18 point on which I've touched in my answer to the
19 questions, the United Kingdom -- the omission of
20 that language doesn't matter. That language, as 12:06
21 they put it, is superfluous. This is really quite
22 surprising and quite unmeritorious. As you know,
23 it is two expressions that are missing from
24 Rwanda's Reply Note Verbale. Rwanda doesn't say
25 the two notes taken together place on the record 12:06

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1 the joint understanding or shall constitute an
2 agreement, etcetera, and Rwanda doesn't say it
3 comes into effect.

4 Now, we know from the practice of States
5 in this area that there are various formulations 12:06
6 with which a State can give that indication.

7 "Place on the record the joint understanding" is
8 one way; "shall constitute an agreement" is

9 another. Another way in practice is where the
10 second part of the Reply Note Verbale says the two 12:07
11 notes shall be registered in accordance with

12 Article 102. So that was the Note Verbale you may
13 remember in the Anglo-Icelandic Fisheries case,

14 the British Note Verbale, the Reply Note Verbale,
15 said "acceptable"; the bit with "acceptable", and 12:07

16 then "and shall be registered in accordance with
17 Article 102". But Rwanda's Note Verbale stops at
18 "acceptable". Nothing else after it. That

19 language that is so key to understand the nature
20 of this exchange is simply not there. 12:07

21 I mean, I have to say, I'm not sure if
22 the United Kingdom has reflected on the
23 implications of the position that it has taken for
24 its own treaty practice, because I'm sure there
25 are quite a lot of exchanges where the 12:07

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1 United Kingdom would have described certain ideas,
2 proposals, solutions, as agreeable, acceptable,
3 and not agreed to them. Does that mean that
4 there are all these treaties that the United
5 Kingdom has concluded on the basis of these 12:08
6 indications? Because it would be quite
7 interesting to work out all of the agreements
8 that, based on this apparently novel approach that
9 the United Kingdom has taken, all the other
10 agreements that may exist. 12:08

11 As I mentioned in response to the
12 question from Judge Donoghue, the position that
13 the United Kingdom has taken is completely at odds
14 with its own practice and with the writing of
15 British scholars, including former foreign office 12:08
16 legal advisers, on this point.

17 And if I could take you briefly to two
18 documents. One is the "Handbook of Good Treaty
19 Practice", which is written by Dr Jill Barrett,
20 who used to work at the foreign office as a treaty 12:08
21 law expert. We have it in two places, at CLA-8
22 and CLA-20. At CLA-8, page 258, she says, "How to
23 Prepare a Reply Note". And she says:

24 "The reply note needs to state that the
25 proposal is accepted and that the two notes 12:09

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1 together constitute an agreement."

2 And later on:

3 "It is not acceptable to add any
4 additional text or to paraphrase the terms of the
5 agreement in your reply note, as then the notes 12:09
6 will not record an agreement".

7 So that's her clear position. And at
8 CLA-20, with various examples from practice that
9 she attaches in the annex and said -- at CLA-20,
10 page 324, we have an example of the exchange of 12:10
11 notes constituting a treaty where the language
12 that is in the initiating Note Verbale and in the
13 Reply Note Verbale is the clearest language
14 possible, which is that of agreement.

15 In the second example, at page 426, 12:10
16 we have an exchange of letters rather than a Note
17 Verbale, but, again, the Reply Note Verbale has
18 the language "your letter and this letter will
19 constitute an agreement between our two
20 governments, which will come into effect" -- in 12:10
21 that case, it was 60 days from the date. We have
22 no way of knowing whether the so-called "amended
23 agreement" ever came into effect, because Rwanda
24 did not say it is coming into effect.

25 And then the third example Dr Jill 12:10

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1 Barrett attaches as an exchange -- another
2 exchange of letters, where the Reply Note Verbale
3 is at page 431, and it says:

4 "Should the foregoing be agreeable to the
5 Governor of New Zealand, I have the honour to 12:11
6 propose that this note and the note from Your
7 Excellency giving consent shall constitute an
8 agreement which shall enter into force on the date
9 of receipt".

10 This was actually the initiating Note 12:11
11 Verbale. In that example, the Reply Note Verbale
12 is at the end of Annex 4, page 435, and it says:

13 "I am pleased to confirm that the
14 proposed changes are acceptable and that your note
15 together with this note shall constitute an 12:11
16 agreement amending the agreement which shall enter
17 into force on the date of receipt of the last
18 notice".

19 So this last example is for an amendment
20 agreement. And both the initiating Note Verbale 12:11
21 here and the Reply Note Verbale, in the first
22 part, use adjectives like "acceptable" or
23 "agreeable" in the Note Verbale. The fact that a
24 party says something is agreeable or acceptable
25 doesn't mean they've agreed to it or accepted it 12:12

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1 yet. They need to say more than that. You can't
2 accept something by saying, That's acceptable.
3 That would be the same even in any contractual
4 discussion. If your insurer proposes a premium as
5 part of a discussion for a new insurance contract 12:12
6 and you write back and say, well, the premium is
7 acceptable, it doesn't mean you have a contract.
8 It is just a discussion, and you're identifying
9 things you might be content with, but you haven't
10 agreed. With respect, we say really the same 12:12
11 approach clearly and consistently applies in
12 international law and in treaty practice.

13 The other document authority to which
14 I would refer you is Aust's "Modern Treaty Law and
15 Practice". The last edition was prepared by 12:12
16 Jeremy Hill, who is also a former foreign office
17 legal adviser. It's at CLA-21, and all I need to
18 do is to give you the reference, which is
19 page 443, for the exchange of letters, examples
20 that he gives, and then in the annex that follows, 12:13
21 you have examples from both exchange of notes and
22 exchange of letters. And that language in the
23 reply note is regarded by him as essential.

24 And I've already mentioned in response to
25 the question from Judge Donoghue, the internal UK 12:13

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1 document that regards that language in the reply
2 note as essential, whether it's a binding or a
3 non-binding instrument.

4 My next point refers to something I had
5 anticipated when going through the facts, is that 12:13
6 the -- even before we look at the Reply Note
7 Verbale there is a problem with the initiating
8 Note Verbale. It just isn't the kind of
9 initiating Note Verbale that one would expect to
10 be giving rise to a properly formed agreement. 12:13
11 And we saw that the agreement language was removed
12 from it, and this was a respectful request by the
13 United Kingdom, and the content of that request is
14 not necessarily easy to ascertain even before
15 we look at the reply. 12:14

16 So those are my main submissions on the
17 first question, which is whether the November
18 exchange can be said, in light of the, in our
19 submission, settled law in this area to have
20 affected a binding agreement of the 2024 finance 12:14
21 note.

22 I was then going to move to the question
23 of the Year 3 payments, which arises, if we're
24 right, on the first question, and that's a
25 question of treaty interpretation. And I will 12:14

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1 make three points on this question.

2 The first point is that the term "year"
3 is defined in the treaty as calender year. The
4 parties have to accept it because it is in the
5 treaty. I can give the reference. It is 12:15
6 Article 2. It is Article 1, actually. The
7 defined terms are in Article 1. "'Year' means
8 full calendar year". That's how the term "Year" is
9 defined at letter o of the agreement.

10 Paragraph 5.2 of the finance note is, 12:15
11 we submit, the key provision here. And if we can
12 go to it, this is at C-29. I meant C-22, C-22.

13 So the termination clause in the finance
14 note dealt in some detail with the effect of
15 termination on the obligation to pay. And 12:16
16 paragraph 5.2 identifies rules that would apply if
17 the United Kingdom had terminated the treaty.
18 Paragraph 5.3 deals with the reverse situation of
19 the rules that would apply if Rwanda had
20 terminated the treaty. So we are in the 5.2 12:16
21 situation.

22 The relevant rule here is that last
23 sentence:

24 "After cessation of the agreement, no
25 payments of Economic Transformation and 12:16

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1 Integration Fund will be payable for subsequent
2 years."

3 Our case is that "years", here, can only
4 be given the defined meaning that it has in the
5 treaty, calendar year. So the rule the parties 12:17
6 agreed on United Kingdom termination was that,
7 after the cessation of the agreement, payments for
8 the current year would still be payable; payments
9 for the subsequent year would not be payable.

10 The termination took effect in 2026. 12:17
11 Payments for 2026 remain payable. Payments for
12 2027, had there been any, would not have been
13 payable. The parties decided not to extend the
14 agreement, and as a result, that does not arise.
15 But that's the clear rule, that the parties 12:17
16 agreed, if the term "year" is given the meaning
17 that it has under the treaty.

18 Now, our position is that -- and this is
19 my second point -- this reading of the key
20 provision, which is paragraph 5.2, last sentence, 12:18
21 is consistent with paragraph 2.3.1, which is where
22 you have the payment schedule in the finance note.

23 Now, the payment schedule is set out as
24 Year 1, 50 million; Year 2, 50 million; Year 3,
25 50 million. And the question may arise as to 12:18

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1 whether Year 1, Year 2, Year 3 in that paragraph
2 refer to calendar years, as per the treaty
3 definition of the term, or refers to the period
4 between 13 April and 12 April of the following
5 year. The 13 April being the date when the first 12:18
6 Memorandum of Understanding began.

7 So there is that question. It's a
8 question that doesn't change the answer in terms
9 of the provision on termination. So whether the
10 parties in Year 1 were referring to the first 12 12:18
11 months of the partnership or whether they were
12 referring to the first current year of the
13 partnership does not make a difference to how
14 paragraph 5.2 should be properly read. And there
15 is no rational reason as to why they couldn't -- 12:19
16 they could have intended Year 1 to be the first 12
17 months of the partnership but in the termination
18 rules to properly refer to "year" in the treaty
19 sense of the term.

20 Now, my third point is that, although our 12:19
21 case turns on the rule in the final sentence of
22 paragraph 5.2, the reading of the word "year" as
23 calendar year, as required under the treaty,
24 results in a perfectly workable provision. So all
25 of the various rules that paragraphs 5.2 and 5.3 12:20

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1 identify in respect of the two different scenarios
2 are perfectly workable. If you translate "year"
3 to "calendar year", those are the rules the
4 parties have agreed, and they were agreed by
5 reference to "calendar year". They were different 12:20
6 because, of course, the United Kingdom as the
7 party making the payment, would have wanted to
8 reserve the right to receive certain
9 reimbursements, but you can look at that provision
10 and think of "year" as meaning "calendar year", 12:20
11 and it's perfectly workable.

12 In these circumstances, we respectfully
13 submit there is no basis for giving the word
14 "year" any meaning different from the meaning that
15 the parties agreed had to be given to the term 12:20
16 "year" across the treaty and across the finance
17 note. Had, for some reason, this resulted in a
18 completely unworkable or absurd provision, then
19 perhaps one might have considered what did they
20 really mean. But the provision works. 12:21

21 So, we say the clear application of the
22 final sentence of paragraph 5.2 means that
23 payments for 2026, the year of termination of this
24 agreement, remain payable by the United Kingdom.
25 Failure to do so within 10 days of 13 April is a 12:21

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1 breach of the treaty.

2 Now, the third issue on which I can be
3 quite brief that arises, arises only if we are
4 wrong on the main case and there has been a
5 binding amendment of the finance note. Now, if 12:21
6 Rwanda is wrong on that main case, the question is
7 whether there still is a breach by the United
8 Kingdom. I can be quite brief here.

9 Assuming that Rwanda did undertake some
10 binding commitment in November '24, that binding 12:22
11 obligation could have only been at the very best
12 an obligation to negotiate on the basis of a
13 package that had been outlined by the United
14 Kingdom. That package comprised those two
15 elements. The first element in paragraph 1 of the 12:22
16 Technical Annex was the forgoing of the payments.
17 The second element was the alternative financial
18 arrangements about termination, which is the place
19 where the word "arrangements" is used by the
20 United Kingdom in the initiating note, as we saw 12:22
21 before.

22 The United Kingdom refused to discuss an
23 alternative financial package related to
24 termination. It went ahead and terminated the
25 treaty before even offering any such package. In 12:22

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1 these circumstances, Rwanda cannot be said to have
2 breached any obligation arising from an amendment
3 of the finance note through the November Note
4 Verbale. If it has not breached an obligation to
5 negotiate that might have arisen from the November 12:23
6 exchange, the underlying or the prior obligations
7 in the finance note itself remain applicable in
8 full.

9 If, however, it is argued that Rwanda did
10 more than agree to negotiate or discuss but agreed 12:23
11 with binding effect to remove the financial
12 obligations in the November Note Verbale, a
13 reading which, with respect, Rwanda considers is
14 simply not tenable on the face of the text, then
15 the UK would be in breach of paragraph 2 of the 12:23
16 Technical Annex because those discussions on
17 alternative financial arrangements never took
18 place.

19 That's the position on the finance note
20 and these three issues. Well, there are two 12:23
21 issues that arise for determination, whether it is
22 the first one for sure, and then either the second
23 or third, depending on your answer to the first.

24 Given the common ground between the
25 parties on the finance note, the breach of 12:24

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1 Article 18 case arises really only as a sort of
2 "further in the alternative" scenario. That is,
3 if Rwanda is wrong on issue 1 and I suppose also
4 on issue 3, otherwise we don't need to dwell on
5 Article 18. 12:24

6 The parties disagree on the content of
7 the obligation under Article 18. I will make a
8 few points on that obligation, some of which also
9 apply to Article 19. Ms McRae will be dealing
10 with Article 19 in more detail. 12:24

11 The first point is that the United
12 Kingdom accepts that Article 18 created an
13 obligation to at least negotiate but it
14 equivocates, we believe, on the question of
15 whether the obligation to make arrangements, make 12:25
16 financial arrangements, is an obligation of
17 result.

18 Both Article 18 and Article 19 identify
19 the arrangements as the outcome that has to be
20 delivered by the parties. They identify that 12:25
21 outcome differently. In Article 18, all we are
22 told about the arrangements is that they have to
23 be financial. However, the result in Article 19
24 Rwanda submits, is still specific by reference to
25 the prior history of the partnership, particularly 12:25

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1 in circumstances where the Memorandum of
2 Understanding, which predated the treaty, had
3 already clearly identified the ETIF financial
4 arrangements as a key part of the partnership. So
5 by the time the parties decide to put that on a 12:25
6 treaty footing, financial arrangements meant also
7 payments to the ETIF; that's what had to be
8 produced. The burden of Article 18 would have
9 been falling on the United Kingdom being the party
10 who had to make those payments. 12:26

11 Article 19 identifies the result on its
12 face in more precise terms, because it says the
13 purpose of the arrangement is for the United
14 Kingdom to resettle a portion of Rwanda's
15 vulnerable refugees. We have the purpose in the 12:26
16 treaty. But Ms McRae will say more on that.

17 The second point is that even if, as the
18 United Kingdom argues, the financial arrangements
19 were somehow removed by effect of the November
20 Note Verbale, the United Kingdom remained under an 12:26
21 obligation to establish financial arrangements by
22 engaging in constructive negotiations. We say
23 there was a continuing obligation under
24 Article 18.

25 In this case, if the Technical Annex is 12:26

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1 to be given the weight the United Kingdom contends
2 for, the provision in paragraph 2 of the Technical
3 Annex requiring the parties to continue
4 discussions and reach agreement as soon as
5 possible on financial arrangements is quite 12:26
6 important.

7 The United Kingdom, I note, accepts --
8 this is paragraph 111 of its Statement of
9 Defence -- there were no financial discussions in
10 the months following the alleged termination of 12:27
11 the arrangements in November 2024. We say that
12 would give rise to an Article 18 breach, if
13 necessary to consider that issue.

14 Third, it is not Rwanda's case that there
15 was an obligation to maintain the same 12:27
16 arrangements in place. Obviously, the parties do
17 genuinely agree to change those arrangements, and
18 the arrangements have changed by consent. It is
19 also clear that some essential content must remain
20 in place such that financial arrangements can be 12:27
21 said to exist, and maintaining just minor
22 procedural obligations does not suffice.

23 That's our case on Article 18. I can now
24 deal briefly at this stage -- but of course I will
25 hear what the United Kingdom has to say -- on 12:27

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1 preclusion, which was dealt with in the Statement
2 of Defence briefly.

3 Rwanda's case is that the United
4 Kingdom's arguments on preclusion are
5 unmeritorious. I will make five brief points. 12:28

6 First, preclusion requires clear and
7 consistent acceptance, that's the *Gulf of Main*
8 language, or clear and unequivocal representation.
9 That's the language of Judge Spender in the *Temple*
10 *of Preah Vihear* case. Also, it requires the other 12:28
11 state to be able to demonstrate reliance. That's
12 the first point on the test.

13 The second point is that the parties'
14 legal relations here were governed by a treaty
15 that imposed binding obligations. If Rwanda's 12:28
16 language of acceptability was too ambiguous to
17 give rise to an amendment of the underlying treaty
18 obligation, there is no basis on which it can
19 possibly give rise to an estoppel. A party that
20 is subject to a clear treaty obligation cannot 12:28
21 escape that obligation simply on the basis that
22 the other party indicated in discussions that a
23 change to the treaty might be acceptable. That is
24 not a proper way for the doctrine of estoppel in
25 this context to operate. 12:29

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1 Third, the discussions between the
2 parties to which the UK has drawn attention showed
3 that there was no clear and unequivocal
4 representation from Rwanda. This is obviously a
5 high bar which the United Kingdom has no prospect 12:29
6 of clearing. This is not simply because the term
7 "acceptable" does not mean acceptance, or at the
8 very least is on its face very equivocal, but also
9 because the UK's proposed language of "agreement"
10 and "agreed" was rejected, as we saw. 12:29

11 Fourth, the context for the discussion in
12 which any such representations may have been made
13 also matters. Where officials are discussing a
14 text to be taken to the political level, whatever
15 expression of preliminary approval may emerge from 12:30
16 those discussions at the official level cannot be
17 taken as amounting to a clear and unequivocal
18 representation on behalf of the state. If that
19 approach were taken, negotiations between states
20 would become really quite difficult, because 12:30
21 everyone would be so guarded in expressing any
22 sense of the direction that could be taken that
23 things would just not progress.

24 Fifth, whatever the United Kingdom chose
25 to do in response to the Note Verbale does not 12:30

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1 show reliance. The United Kingdom appreciated
2 that an offer had to be made to Rwanda, and it
3 understood that it did not make any such offer.
4 The United Kingdom would also have been aware of
5 the failure of its repeated attempts to get Rwanda 12:30
6 to agree to its proposed approach, of its repeated
7 attempts to get Rwanda to sign and not having
8 anything close to signature.

9 So, whatever the United Kingdom chose to
10 do in terms of its parliamentary procedures, and 12:31
11 whatever headlines it was trying to avoid, is not
12 a problem or a matter of concern for Rwanda. The
13 United Kingdom chose to do that because of its own
14 assessment of its internal political needs, but
15 that cannot change the legal position. 12:31

16 So to conclude on preclusion, again the
17 bar is very high. The approach by international
18 courts and tribunals is rightly very restrictive,
19 particularly where there is a treaty that occupies
20 the ground and defines the relations. As this 12:31
21 Tribunal will know, where the stringent conditions
22 for estoppel were met, for example in the Chagos
23 arbitration in 2015, the facts were really starkly
24 different from the facts here. Again, we're
25 nowhere near the bar for preclusion. 12:31

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1 Mr President, members of the Tribunal,
2 this is all I was going to say on preclusion.
3 Next in the order of topics for our opening
4 submissions is Article 19, which Ms McRae will
5 address. Unless I can be of further assistance at 12:32
6 this stage, I would ask you to give her the floor.

7 THE CHAIRMAN: Thank you, Lord Verdirame,
8 for your submissions. I invite Ms McRae to
9 address the Tribunal.

10 MS McRAE: That brings me to the entirely 12:32
11 different subject of the United Kingdom's
12 resettlement of refugees from Rwanda. My
13 submissions on this subject will proceed in three
14 stages.

15 First, I'll make some short remarks about 12:32
16 the legal framework. Second, I will address
17 Rwanda's case on breach of the relevant
18 obligations. Third, I will address reparation.
19 I will then make a few brief remarks about
20 reparation in respect of the breaches of Article 12:33
21 18 and the finance note.

22 Let me then start with the legal
23 framework. The parties' obligations were recorded
24 in Article 19 of the agreement. Members of the
25 Tribunal, I invite you to turn to that agreement, 12:33

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1 which is at Exhibit C-19, and to turn to
2 Article 19 in particular. It is entitled
3 "Resettlement of Vulnerable Refugees".

4 In similar terms to Article 18,
5 Article 19 provides that "the parties shall make 12:33
6 arrangements". However, in Article 19 the parties
7 had something more specific in mind. The
8 arrangements are for the United Kingdom to
9 resettle a portion of Rwanda's most vulnerable
10 refugees in the United Kingdom, recognising both 12:33
11 parties' commitment towards providing better
12 international protection for refugees.

13 Rwanda's claim is focused on the duty to
14 negotiate to make resettlement arrangements in
15 Article 19. As we record in paragraph 51 of the 12:34
16 Reply, there is a great deal of common ground
17 between the parties both as to the existence and
18 the content of this obligation. There are two
19 points that are of particular relevance to
20 Rwanda's claim. 12:34

21 First, the parties agree that they are
22 obliged to negotiate in good faith with a view to
23 reaching agreement on the relative arrangements.
24 The United Kingdom's agreement with that
25 proposition is recorded at paragraph 178 of the 12:34

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1 Statement of Defence.

2 Second, the parties agree they will
3 discharge this obligation if they are proved to
4 have made genuine efforts to advance discussions
5 on the arrangements. This is agreed at 12:34
6 paragraph 181 of the Statement of Defence.

7 Mr President, members of the Tribunal,
8 there are two points that deserve emphasis. Not
9 all obligations to negotiate are the same. Rwanda
10 says there is a spectrum. At the one end, there 12:35
11 is an obligation to negotiate without anything
12 more. At the other end of the spectrum, there is
13 an obligation to negotiate to achieve a precise
14 result. For example, to negotiate on a specific
15 agreement or on a specific subject matter. 12:35

16 Article 19, we say, is at the latter end
17 of that spectrum. The arrangements that the
18 parties had a duty to make were for the
19 United Kingdom to resettle a portion of Rwanda's
20 most vulnerable refugees in the United Kingdom. 12:35
21 That language makes the essential content of the
22 parties' intended agreement very clear. The
23 United Kingdom was to take a portion of a
24 particular category of Rwandan refugees.

25 Now, this can be contrasted with 12:36

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1 Article 18, where the only description of the
2 party's objective is that the arrangements had to
3 be financial in nature, without any more granular
4 description of which party would pay and for what
5 purpose. 12:36

6 That brings me then to my second point.
7 While both parties were equally obliged to
8 negotiate towards this result, it was clear in the
9 end that the result was one that placed a burden
10 on one party alone. Under this provision, it was 12:36
11 the United Kingdom that was to take refugees, not
12 Rwanda. That result was agreed. The burden was
13 thus squarely placed on the United Kingdom. But
14 as I will come on to explain shortly, the United
15 Kingdom shirked that burden. It took no steps 12:36
16 whatsoever to operationalise Article 19.

17 Rwanda's claim, as I've said, focuses on
18 the negotiation obligation in Article 19. Rwanda's
19 claim is that the United Kingdom breached its duty
20 to negotiate by failing to engage in any 12:37
21 meaningful discussions about resettlement
22 arrangements, which had the effect of precluding
23 the achievement of the result prescribed under
24 Article 19.

25 I will now turn to that breach. Rwanda's 12:37

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1 case rests on two pieces of correspondence
2 exchanged between the parties. The first is a
3 letter from Rwanda to the United Kingdom,
4 dated 24 March 2025. The second is a responsive
5 letter from the United Kingdom to Rwanda, 12:37
6 dated 1 April 2025. This correspondence
7 establishes two things: First, that Rwanda sought
8 to negotiate the arrangements for resettling
9 refugees with the United Kingdom under the
10 auspices of the joint committee. Second, that the 12:37
11 United Kingdom refused to take any steps under
12 Article 19, whether to negotiate arrangements or
13 otherwise.

14 I'd like to invite the Tribunal to turn
15 to the first of those pieces of correspondence 12:38
16 which can be found at Exhibit C-33.

17 Members of the Tribunal, you will see
18 from the first page of the exhibit that this is a
19 letter dated 24 March 2025 from the Rwandan
20 Ministry of Foreign Affairs and International 12:38
21 Cooperation to the United Kingdom's representative
22 as co-chair of the joint committee. Now the joint
23 committee was not established under Article 19 but
24 Article 16 of the parties' agreement. It was
25 composed of representatives of both parties. Its 12:38

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1 role was set out in Article 16.2 of the agreement.
2 That role included monitoring and reviewing the
3 application and implementation of the agreement.
4 It also provided a forum for the parties to
5 exchange information and to resolve issues of a 12:38
6 technical or administrative character.

7 If I could then invite the Tribunal to
8 turn the page. The Tribunal will see a heading,
9 "Resettlement of vulnerable refugees by Rwanda to
10 the UK". The letter commences by observing that 12:39
11 Rwanda currently host over 130,000 refugees.
12 Members of the Tribunal, if you could then pick up
13 that letter at the bottom of the page, with the
14 final paragraph commencing "Under Article 23 of
15 the Agreement". That, I should say, is clearly 12:39
16 intended to be a reference to Article 19 of the
17 agreement.

18 If I could ask the Tribunal to read that
19 paragraph and the next paragraph over the page,
20 I would be most grateful. Mr President, members 12:39
21 of the Tribunal, allow me to highlight the
22 features of these paragraphs.

23 The first feature is Rwanda begins by
24 referring to the United Kingdom's ultimate
25 obligation to resettle a portion of at-risk 12:40

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1 refugees from Rwanda. This is clear.

2 Resettlement, after all, is the object of the
3 arrangements which the parties had agreed to
4 negotiate.

5 The second point is that Rwanda then 12:40
6 observes, in the final sentence of that paragraph,
7 that the United Kingdom has failed to take any
8 concrete action to fulfil its obligations under
9 the agreement. As the United Kingdom accepts, its
10 obligation at that stage was the obligation to 12:40
11 negotiate with a view to making the resettlement
12 arrangements. Rwanda was criticising the United
13 Kingdom's failure to take any steps under
14 Article 19. That included the negotiation of the
15 arrangements which necessarily predated those 12:40
16 arrangements being made.

17 The third point is, against that
18 background, Rwanda then demanded that the joint
19 committee urgently finalise arrangements for the
20 resettlement of these refugees. Rwanda, we say, 12:41
21 thereby recognised there was a process to be
22 undertaken. That process obviously included
23 bilateral discussions without which the
24 arrangements could not be finalised.

25 The fourth point is that Rwanda 12:41

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1 specifically invited the United Kingdom to comply
2 with its international responsibilities. Rwanda
3 was not simply asking the joint committee to act,
4 but the United Kingdom itself.

5 The fifth feature that I would identify 12:41
6 is that Rwanda then invited the United Kingdom to
7 attend the joint committee meeting with officials
8 who were involved in the negotiation and drafting
9 of the agreement, as they had the necessary
10 expertise to resolve the matter. This gives 12:41
11 further support to the idea that Rwanda had
12 negotiations in mind.

13 Taking those points together, Rwanda says
14 that it is obvious that it was demanding the
15 United Kingdom to participate in the activity that 12:42
16 was necessary for the arrangements to be
17 finalised, namely, discussions as to the specific
18 content of the arrangements.

19 The United Kingdom's position is that
20 Rwanda's request in its 24 March letter was not a 12:42
21 genuine attempt to negotiate. We see this in the
22 Statement of Defence at paragraph 193. It says
23 this for two articulated reasons.

24 The first is that Rwanda was making an
25 accusation that the United Kingdom had breached 12:42

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1 Article 19 in the context of commencing the
2 dispute settlement procedure under Article 22 of
3 the agreement, not the context of an attempt to
4 negotiate.

5 Now, it is, of course, right that Rwanda 12:42
6 was seeking to raise the issue of the United
7 Kingdom's conduct in respect of Article 19 with
8 the joint committee for the purposes of
9 Article 22. As Rwanda saw it, the United Kingdom
10 had failed to take any steps in the three years 12:43
11 that obligation was extant to meet its obligations
12 under Article 19. But we say that context does
13 not matter. This is because the relevant
14 paragraphs in the letter were more than a
15 complaint about the United Kingdom's conduct. 12:43
16 They also contained an express demand that the
17 joint committee finalise arrangements and that the
18 United Kingdom comply with its legal
19 responsibilities.

20 The second reason that the United Kingdom 12:43
21 gives as to why this is not a genuine attempt to
22 negotiate is that the joint committee did not have
23 the power to finalise arrangements. Again, we say
24 this is beside the point. The obligation was on
25 the parties to the agreement, Rwanda and 12:43

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1 United Kingdom, to agree resettlement
2 arrangements, not the joint committee. Rwanda's
3 reference to the joint committee was simply a
4 reference to the forum in which its request was
5 being raised. As we explained in our Reply, it 12:44
6 was the right and appropriate forum. The
7 joint committee, as I've explained, was the body
8 that monitored and reviewed the implementation of
9 the agreement, and it was comprised of
10 representatives of both the United Kingdom and 12:44
11 Rwanda. Therefore, neither of United Kingdom's
12 reasons as to why Rwanda's demand was not a
13 genuine request to negotiate holds good.

14 That brings me to the United Kingdom's
15 response to Rwanda's letter. It is on this 12:44
16 letter, we say, that the Tribunal should
17 principally focus. Members of the Arbitral
18 Tribunal, I invite you to turn to that letter,
19 which you can find at C-34.

20 You will see this is a letter from the UK 12:44
21 Home Office, in particular from the
22 United Kingdom's co-chair of the joint committee.
23 It was addressed to the Rwandan Permanent
24 Secretary, who is the Rwandan co-chair of the
25 joint committee. It is dated 1 April 2025. 12:45

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1 The third paragraph of that letter is
2 relevant to Rwanda's claim in relation to
3 Article 19, commencing with the words "With regard
4 to Article 19 of the Agreement". Again, I would
5 be very grateful if the Tribunal could read that 12:45
6 paragraph in full, continuing over the page.

7 The parties differ as to whether or not
8 this letter establishes a refusal on the
9 United Kingdom's part to take steps under
10 Article 19. Rwanda's position is that it clearly 12:45
11 did.

12 Mr President, members of the Tribunal,
13 allow me to emphasise three points.

14 The first is to recall the context for
15 this paragraph and this letter more generally. It 12:45
16 is responding to Rwanda's letter of 24 March, in
17 which Rwanda criticised the United Kingdom for
18 failing to take steps under Article 19, demanded
19 the joint committee to finalise resettlement
20 arrangements, and urged the United Kingdom to 12:46
21 comply with its legal responsibilities.

22 The second point is the United Kingdom
23 asserted it was under no binding obligation to
24 resettle refugees from Rwanda as no arrangements
25 had been made. 12:46

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1 Now, Rwanda accepts that the
2 United Kingdom was only obliged to perform the
3 arrangements once they had actually been agreed.
4 However, it must be borne in mind that the
5 United Kingdom had already accepted that it would 12:46
6 resettle a portion of Rwanda's most vulnerable
7 refugees in the United Kingdom. This, as I've
8 explained, was a specific result to which the
9 parties' arrangements were directed. This passage
10 of the letter overlooks the binding obligation the 12:46
11 United Kingdom did have, which was to negotiate
12 and conclude resettlement arrangements. This
13 obligation, as the United Kingdom has positively
14 averred, was not time limited. It remained in
15 existence even though Rwanda had initiated the 12:47
16 dispute settlement procedures under Article 22.
17 Indeed, it was to subsist for another 12 months
18 after this letter was written.

19 But in this letter the United Kingdom
20 says nothing about this obligation. By its 12:47
21 silence, the United Kingdom appears to deny that
22 it was subject to any relevant obligation at that
23 stage under Article 19.

24 The third and most important feature of
25 this paragraph is that the United Kingdom referred 12:47

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1 to its Note Verbale dated 8 July 2024. It
2 notified Rwanda that no removals were scheduled
3 and that the United Kingdom intended to terminate
4 the agreement. The United Kingdom then went on to
5 confirm that steps were being taken to terminate 12:47
6 and no further individuals would be relocated.

7 Members of the Tribunal, these were very
8 well-known facts. The only reason to draw them to
9 Rwanda's attention in this context was to signal
10 that the United Kingdom did not wish to progress 12:48
11 matters under Article 19 in circumstances where
12 the MEDP was being brought to an end.

13 As noted by Lord Verdirame before, the
14 United Kingdom was so focused on its own interests
15 that it seemed to assume that its disinterest in 12:48
16 relocating individuals to the UK simply switched
17 off Article 19. This is obviously an untenable
18 interpretation of the agreement. The obligation
19 was still very much in force.

20 Rwanda says it is clear from this passage 12:48
21 that the United Kingdom intended to take no step
22 whatsoever under Article 19 because it considered
23 that there was a connection between its decision
24 to terminate and no longer relocate individuals to
25 Rwanda and Article 19. 12:48

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1 Members of the Tribunal, for those
2 reasons, Rwanda says that by this letter the
3 United Kingdom breached its obligations to
4 negotiate resettlement arrangements as was
5 required by Article 19. 12:49

6 That then brings me to my third topic
7 under the heading of Article 19, which is
8 reparation.

9 As with Article 18 and the finance note,
10 Rwanda seeks declaratory relief in respect of 12:49
11 Article 19. If the Tribunal finds a breach of
12 Article 19, this remedy is not understood to be
13 controversial. What is controversial is Rwanda's
14 further request for compensation, alternatively an
15 apology. I'll address each in turn. 12:49

16 First to compensation. The parties are
17 largely agreed on the relevant legal principles.
18 As a starting point, it is common ground that the
19 purpose of reparation is to wipe out the
20 consequences of the illegal act, and to 12:49
21 reestablish the situation that would in all
22 probability have existed had the act not been
23 committed.

24 It is common ground that Rwanda must
25 prove a causal nexus between the wrongful act and 12:50

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1 the injury. It is also common ground that the
2 precise scale of the damage may be approximated
3 when there is uncertainty. Rwanda's approach in
4 this case is to identify the number of individuals
5 that would have been resettled under Article 19 12:50
6 had the United Kingdom complied with its
7 obligations, and to identify the basic cost to
8 Rwanda of those individuals remaining in the
9 country, at least in the first instance.

10 The United Kingdom does not appear to 12:50
11 take issue with the logic of that approach.
12 Instead, it criticises the precise figures that
13 Rwanda has used. So let's turn to have a look at
14 those.

15 Rwanda seeks compensation in the very 12:50
16 modest sum of £6 million. To put this in context,
17 this is seven percent of the UNHCR's budget for
18 Rwanda for 2025 alone. This sum is the product of
19 an estimated 300 resettled individuals multiplied
20 by a cost to Rwanda of £25,000 per individual. 12:51
21 These are derived from the 2024 finance note
22 itself. As Lord Verdirame highlighted earlier,
23 £20,000 is the sum the United Kingdom agreed to
24 pay for each relocated individual transferred to
25 Rwanda under the agreement. We see this at 12:51

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1 paragraph 2.3.4. On this basis, Rwanda says it is
2 a reasonable proxy for the basic initial cost of
3 housing each individual in Rwanda. Indeed, in all
4 likelihood it severely underestimates that cost.

5 Then 300. That is the number of refugees 12:51
6 intended to be transferred in year 1 of the
7 parties' arrangement. This is clear from
8 paragraph 2.3.2 of the 2022 finance note at
9 Exhibit C-15. In Rwanda's submission, it is
10 reasonable to assume that the parties would have 12:51
11 proceeded on a reciprocal basis and resettled the
12 same number in the United Kingdom over the
13 lifetime of the partnership.

14 In its Statement of Defence, the United
15 Kingdom was dismissive of Rwanda's numbers. It 12:52
16 criticised Rwanda's approach as based on pure
17 speculation. It offered the criticisms without
18 even attempting to identify alternative figures or
19 an alternative methodology.

20 The key points in response are these. 12:52
21 Let me start with the number of 300 refugees. The
22 first point is: Article 19 refers to a "portion"
23 of Rwanda's refugees being resettled. The use of
24 the word "portion" shows that this was a
25 substantial commitment. It indicates that what 12:52

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1 the parties had contemplated was a proper
2 percentage rather than a small, merely symbolic,
3 number. This is consistent with the ordinary
4 meaning of the word "portion".

5 The second point is that the figure of 12:52
6 300 is generous to the United Kingdom. It is a
7 very small number compared to the overall
8 population of 130,000 refugees that Rwanda has.

9 Indeed, it is less than one percent. It is also a

10 small number when compared with the number of 12:53

11 Rwandan refugees that were resettled in third
12 countries in the relevant period. In 2024, for

13 example, the United States resettled over 3,300

14 Rwandan refugees, whereas Canada resettled over

15 600. We see these in the Rwandan Government's 12:53

16 figures at Exhibit C-39.

17 The United Kingdom itself has resettled
18 nearly 3,800 refugees under the UK resettlement
19 scheme since March 2021, as Exhibit C-40 makes
20 clear. 12:53

21 The third point is: the fact that the
22 United Kingdom only relocated four individuals
23 under the MEDP does not matter. Between
24 April 2022 and March 2026, the United Kingdom was
25 committed to resettling a portion of Rwanda's 12:53

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1 vulnerable refugees. That commitment was
2 initially non-binding in the Memorandum of
3 Understanding for the first two years, and then in
4 a binding treaty for 23 months.

5 Rwanda showed enormous goodwill towards 12:54
6 the United Kingdom throughout this partnership.
7 The fact that, because of court processes first
8 and a political change of direction later, the
9 United Kingdom has not relocated more individuals
10 to Rwanda is simply a matter for the United 12:54
11 Kingdom. What matters for Article 19 is that for
12 four years under successive British governments,
13 the United Kingdom said it would accept vulnerable
14 refugees from Rwanda. What has the United Kingdom
15 done to honour these commitments? Nothing. How 12:54
16 many has it resettled? None at all. In these
17 circumstances, for the United Kingdom to reject
18 the fair proxy figure of 300 relocated refugees
19 without even proposing an alternative is a matter
20 of genuine surprise and regret. 12:54

21 That brings me to the figure of £20,000.
22 The United Kingdom's only point on this is that
23 the figure is not a reasonable proxy for Rwanda's
24 expenses because this is an amount payable under
25 the ETIF scheme. If the United Kingdom prefers, 12:55

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1 the Tribunal could deploy the figures under the
2 asylum processing and operational cost funding
3 stream of the finance note. Under
4 paragraph 2.4.4, the United Kingdom agreed to pay
5 up to a maximum of £150,874 per refugee over a 12:55
6 five-year period. Rwanda selected the figure of
7 £20,000 because it represented a more modest and
8 more accurate representation of the initial
9 expenses to which Rwanda would be put for each
10 refugee, but it is happy to rely upon the higher 12:55
11 figure if the United Kingdom would prefer.

12 Absent any other indication from the
13 United Kingdom on either the number of refugees or
14 the costs associated with them, we respectfully
15 invite the Tribunal to proceed on the basis of 12:55
16 Rwanda's assessments.

17 Alternatively, as we indicated in
18 paragraph 63 of the Reply, it is open to the
19 Tribunal to order the parties to negotiate
20 arrangements for compensation commensurate with 12:56
21 any breach of Article 19 established by the
22 Tribunal.

23 It may be useful to recall that in the
24 Notice of Arbitration, Rwanda initially sought an
25 order that the United Kingdom be directed to 12:56

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1 commence the good faith negotiation of the
2 arrangements set out in Article 19. The United
3 Kingdom then having filed its notice of
4 termination, Rwanda recognised that negotiations
5 under Article 19 would no longer be appropriate, 12:56
6 and for that reason it sought compensation,
7 alternatively an apology. But given the United
8 Kingdom has dismissed both of Rwanda's claims for
9 relief in its Statement of Defence. Rwanda
10 included this alternative provision in 12:56
11 paragraph 63 of its Reply. This was a
12 specification of Rwanda's relief in paragraph
13 111(i) of its Statement of Claim.

14 Rwanda, for its part, is open to
15 negotiate with the United Kingdom on the 12:57
16 appropriate modalities for compensation. What is
17 important to Rwanda is that this serious breach of
18 the United Kingdom's obligations sounds in more
19 than declaratory relief.

20 Mr President, members of the Tribunal, 12:57
21 that is the basis for Rwanda's compensation claim.
22 Let me then turn to the alternative claim for an
23 apology.

24 As this Tribunal will appreciate, this is
25 a recognised form of satisfaction. The United 12:57

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1 Kingdom's only real point in response is that it
2 is rarely ordered. The real question, we say, is
3 whether it is appropriate in this case. Rwanda
4 submits that it is. Article 19 was a key part of
5 the bargain concluded between the parties. It was 12:57
6 part of the benefit conferred on Rwanda for its
7 agreement to resettle a significant population of
8 refugees from the United Kingdom.

9 Rwanda firmly considers that it was wrong
10 of the United Kingdom to renounce that obligation 12:57
11 while the agreement remained fully in force, and
12 would remain so for another 12 months, simply
13 because its own domestic assessment of the
14 agreement's political convenience had changed.
15 Rwanda is rightly aggrieved by the United 12:58
16 Kingdom's conduct and seeks an apology.

17 This case is unlike other cases referred
18 to by the United Kingdom where the International
19 Court of Justice did not order an apology. The
20 underlying principles of Article 19, humanitarian 12:58
21 assistance to refugees and burden-sharing between
22 developed and developing states, are fundamental
23 for the proper and fair functioning of
24 international law and the international refugee
25 system. The United Kingdom's dismissive disregard 12:58

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1 for these principles, which is evidenced in their
2 position in these proceedings, warrants an
3 apology.

4 Rwanda also invites the United Kingdom to
5 make a special contribution to the UNHCR's 12:58
6 programme in Rwanda. This is in recognition of
7 Rwanda's continued commitment to hosting a
8 significant refugee population, despite the United
9 Kingdom having unilaterally brought their
10 partnership to an end. That is not a remedy 12:59
11 requested from the Tribunal but rather an
12 appropriate political gesture that Rwanda would
13 appreciate.

14 Mr President, members of the Tribunal,
15 that is Rwanda's case in opening on Article 19. I 12:59
16 just have a very few brief remarks on remedies in
17 respect of Article 18 and the finance note, which
18 shouldn't take more than a few minutes.

19 THE CHAIRMAN: You can still proceed. As
20 I announced at the opening that in case of need, 12:59
21 you may slightly exceed one o'clock.

22 MS McRAE: Thank you very much, Mr
23 President.

24 THE CHAIRMAN: Also, the coffee break was
25 a little bit longer. 12:59

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1 MS MCRAE: Let me then turn to make a few
2 very brief remarks about the relief that Rwanda
3 seeks from the United Kingdom's breach of Article
4 18 and the finance note. Rwanda claims three
5 things. 12:59

6 First, a declaration of the United
7 Kingdom's indebtedness to Rwanda in respect of
8 both of year 2 and year 3 payments that are due or
9 would shortly be due.

10 Second, a declaration as to the United 13:00
11 Kingdom's breach of Article 18.

12 Third, an order that United Kingdom pay
13 all outstanding sums due to Rwanda.

14 The United Kingdom takes the view that
15 these declarations and this order should not be 13:00
16 granted. We see that at paragraphs 201 to 202 of
17 their Statement of Defence. This is because the
18 United Kingdom says it has not breached either
19 Article 18 or the 2024 finance note. As a result,
20 it says no remedy should be granted. 13:00

21 The United Kingdom, however, does not
22 take any issue with the suitability of those
23 remedies in the event that Rwanda succeeds in its
24 case on breach, either under the 2024 finance note
25 or under Article 18. 13:00

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1 For the reasons Lord Verdirame has
2 explained, the United Kingdom has breached both of
3 those provisions; Rwanda is thus entitled to the
4 order it seeks.

5 With that, Mr President, members of the 13:00
6 Tribunal, Rwanda concludes its submissions in
7 opening. I thank the Tribunal very much for its
8 kind attention.

9 THE CHAIRMAN: Thank you very much.

10 This brings to the end the opening 13:01
11 submissions of the applicant, the Republic
12 of Rwanda. I wonder whether my colleagues have
13 some questions or not?

14 If not, I may have two brief questions,
15 one for each party. 13:01

16 First, I wish to ask Rwanda -- and Rwanda
17 may reply Friday morning during the second
18 round -- whether Rwanda has submitted to the
19 United Kingdom any concrete proposal for
20 arrangements envisioned in Article 19 of the 13:01
21 agreement?

22 And the question for the delegation of
23 the United Kingdom, and I may invite them to
24 perhaps express the position during opening
25 statements tomorrow, is as follows, and it is kind 13:02

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1 of a hypothetical situation. The Tribunal has not
2 deliberated, but I refer to the alternative claim
3 for compensation presented by Rwanda in the
4 Statement of Claim, and reconfirmed in the Reply,
5 as far as compensation for the final year is 13:02
6 concerned, in case that the Tribunal comes to the
7 conclusion that obligation continued under the
8 finance note of 2024, and the agreement was
9 terminated and note as well on 16 March, that
10 Rwanda is entitled to pro rata compensation. 13:03

11 I understand well the principal position
12 of United Kingdom that, according to the United
13 Kingdom, Rwanda is not entitled to any financial
14 compensation. My question only concerns the
15 figure put forward by Rwanda for pro rata, that it 13:03
16 would be, if my recollection is correct,
17 10.4 million.

18 So it is a factual question whether the
19 United Kingdom would have any issue as far as the
20 correctness of that calculation. As I said, 13:03
21 I understand the position of the United Kingdom,
22 that Rwanda is not entitled to any compensation,
23 but in case the Tribunal comes to a different
24 conclusion, then whether that figure, in view of
25 the United Kingdom, is the correct one. 13:04

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1 This brings us to the end today's
2 sitting. I thank both parties. We will resume
3 tomorrow morning at 9.30, when the United Kingdom
4 will have opportunity to make the opening
5 submissions.

13:04

6 Thank you very much. The sitting is
7 adjourned.

8 (The hearing rose at 1305, to resume on
9 Thursday, 19 March 2026, at 0930)

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