

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

Thursday, 19 March 2026
The Hague, The Netherlands

AGREED FINAL

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Ambassador Lambert, Dushimimana, Ambassador of
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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:

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Ms Naomi Hart

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and

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1 THE CHAIRMAN: Good morning. Please be
2 seated.

3 This sitting is open. We meet this
4 morning to give opportunity to Respondent, United
5 Kingdom, to present opening statements. My 09:31
6 understanding is that counsel will open. So
7 I give the floor to Dr Juratowitch. You have the
8 floor.

9 OPENING ON BEHALF OF THE UNITED KINGDOM OF
10 GREAT BRITAIN AND NORTHERN IRELAND 09:31

11 MR JURATOWITCH: Thank you very much.
12 President of the Tribunal, members of the
13 Tribunal, good morning.

14 The key issue for you to decide is
15 whether the parties agreed, with legally binding 09:31
16 effect, to amend the June 2024 Finance Agreement
17 such that the United Kingdom was no longer obliged
18 to make annual payments into what the parties had
19 called the Economic Transformation and Integration
20 Fund, ETIF. 09:32

21 The United Kingdom submission is this:
22 In its Note Verbale of 13 November 2024, the text
23 of which had been agreed with Rwanda in advance of
24 the UK sending it, the United Kingdom proposed
25 that no further ETIF payments be made and that the 09:32

1 previous agreement be amended accordingly.

2 The United Kingdom further proposed that
3 if its proposals were acceptable to Rwanda, then
4 Rwanda's reply to that effect would place on
5 record the understanding of the two governments, 09:32
6 which would come into effect on the date of that
7 reply.

8 Rwanda duly replied by Note Verbale the
9 next day that the proposed arrangements were
10 acceptable to it. That was all that was needed to 09:32
11 conclude a legally binding agreement on the
12 proposals contained in the United Kingdom's Note,
13 and the obligations in the June 2024 finance
14 agreement to make ETIF payments were thus
15 terminated. That is, in summary, the United 09:33
16 Kingdom's case.

17 Rwanda's case in the Statement of Claim
18 included that the United Kingdom's proposal to
19 terminate the ETIF payment obligation was part of
20 a package deal. That package was to be found in 09:33
21 the Technical Annex of the United Kingdom's Note
22 Verbale. It was also to involve negotiating
23 further financial arrangements relating to
24 termination of the Asylum Partnership Agreement.

25 That case was then difficult to discern 09:33

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1 in Rwanda's Reply but it was present again
2 yesterday. In the Reply, and yesterday, Rwanda's
3 case introduced the idea that it was responding to
4 the cover Note Verbale but not the Technical Annex
5 in which the package deal from its Statement of
6 Claim had previously been said to reside. 09:34

7 The purpose of that new bifurcation was
8 then to say that the cover Note Verbale was merely
9 a political document, not a legal one. That
10 supposed bifurcation was not part of the claim in 09:34
11 the pre-arbitration exchanges, the Notice of
12 Arbitration, or the Statement of Claim.

13 It was seized upon in the reply after the
14 United Kingdom submitted with its defence an email
15 to Rwanda from the United Kingdom describing a 09:34
16 draft of the cover note as a short political NV.
17 I will deal with that, of course, fully in due
18 course but the short answer is that, as was
19 perfectly clear from the attachments to that
20 email, what was being described as a "short 09:35
21 political NV" was intended by both parties to be
22 part of one coherent whole, with the Technical
23 Annex supporting it, and that this single
24 agreement was intended by both parties to generate
25 legal obligations. 09:35

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1 Another new development in Rwanda's reply
2 was the argument that Rwanda withheld consent to
3 any agreement because arrangements concerning the
4 extension of diplomatic visa arrangements to
5 Rwanda had not been made. 09:35

6 Although diplomatic visa arrangements
7 were raised early in the negotiations, this was
8 always on the basis that the UK would not be in a
9 position to extend such arrangements until the
10 spring of 2025, and that the termination of ETIF 09:36
11 payment obligations would be agreed independently
12 of any such extension.

13 Not a single draft of the November Notes
14 Verbales produced by either side said anything
15 about diplomatic visa arrangements. Neither did 09:36
16 Rwanda's pre-arbitration correspondence, its
17 Notice of Arbitration or its Statement of Claim,
18 even when arrangements were being made about a
19 package.

20 One argument on which Rwanda has been 09:36
21 consistent is that although it replied that the
22 United Kingdom's proposals were acceptable, it did
23 not reply in terms that this meant that the
24 agreement would come into effect and therefore,
25 Rwanda says, it did not come into effect. 09:37

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1 The answer to that is that one of the
2 United Kingdom's proposals was that upon Rwanda
3 indicating that the proposals were acceptable,
4 they would come into effect, and so when Rwanda
5 replied that those proposals were acceptable, they 09:37
6 did come into effect. That, members of the
7 Tribunal, is the essence of the case.

8 I am now going to deal in detail with the
9 dispute concerning the financial arrangements, and
10 Ms Hart will then, at some stage after the break, 09:37
11 deal with Rwanda's claim that the United Kingdom
12 breached Article 19 of the Asylum Partnership
13 Agreement. We will address the Tribunal's
14 questions thus far when we come to the relevant
15 subject matter but, of course, if any additional 09:38
16 questions occur to any member of the Tribunal as
17 we go, we would, of course, be very happy to be
18 stopped at any point.

19 Some time was spent by Rwanda yesterday
20 on the law, and so I will begin with the law. 09:38

21 So far as the financial arrangements are
22 concerned, there is, in principle, little to say
23 on it, but it may assist the Tribunal if I just
24 highlight the relevant pages of the most recent
25 judgment of the International Court of Justice on 09:38

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1 determining whether an instrument constitutes a
2 treaty. The United Kingdom has prepared some
3 demonstrative slides, and they should now be on
4 your screens, and you have hard copies.

5 It is *Gabon/Equatorial Guinea* from May 09:39
6 last year. Brief mention was made of it
7 yesterday. The key paragraphs are 73 and 74. The
8 third line of 73 refers to the terms of the
9 instrument and the particular circumstances in
10 which it was drawn up as where to look to 09:39
11 determine whether the parties intended to be
12 legally bound. That is the well-known position
13 from *Aegean Sea* and the other cases cited in the
14 first half of that paragraph.

15 The significance of *Gabon/Equatorial* 09:39
16 *Guinea* is that in the second paragraph of 73, it
17 approves the proposition that the conduct of the
18 parties subsequent to the instrument may also be
19 relevant to determining if, by that instrument,
20 they had intended to become bound. 09:40

21 74 then summarises the law as it now
22 stands.

23 "... indications of parties' intentions
24 to be bound may be identified in the terms of the
25 instrument and the particular circumstances in 09:40

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1 which it was drawn up, as well as the subsequent
2 conduct of the parties. The weight to be accorded
3 to any particular indication will turn on the
4 circumstances of each case. The presence of
5 concordant indications can be more decisive than 09:40
6 any decision taken individually".

7 If Rwanda was submitting yesterday that
8 circumstances of conclusion and subsequent conduct
9 do not matter, and that all you need to look at is
10 the text of the two Notes Verbales from November, 09:40
11 then that would have been an incorrect statement
12 of the law.

13 Rwanda has tried, nonetheless, to add
14 complexity and specificity to what is a very
15 general applicable legal test. Then Rwanda seeks 09:41
16 to say that the facts in this case do not meet
17 some more complex and specific test.

18 Rwanda says that various textbooks and
19 handbooks suggest that there are particular
20 requirements for the conclusion of binding Notes 09:41
21 Verbales. There are three problems with that.

22 The first is that those books are
23 attempts to generalise practice and, obviously,
24 they all proceed on the basis that everything
25 depends on determining the common intention 09:41

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1 through the particular words and circumstances,
2 and they are just too general to assist the
3 Tribunal with the specific task before it.

4 The second, is that some of the things
5 that were said about them are incorrect. Perhaps 09:42
6 the most egregious was the statement that Aust at
7 CLA-21, page 343, regards particular language by
8 way of reply as essential. That is wrong.

9 The third is you were not shown a number
10 of general statements that did not suit Rwanda's 09:42
11 case from the legal authorities on which it
12 relies. In particular, the books are clear that
13 the use of the word "proposals" and "acceptable"
14 are perfectly common in binding exchanges of
15 notes. That is Aust pages 441 and 442, the 09:42
16 Barrett extracts at CLA-20 and CLA-8, and the
17 commentary by Van Asch at CLA-7 at 279.

18 The Tribunal will have had that point
19 well in mind when Rwanda was yesterday seeking to
20 advance and maintain the submission that 09:43
21 acceptable means only capable of being accepted.
22 And putting it even more absolutely, when Rwanda's
23 counsel said that you can't accept something by
24 saying that's acceptable.

25 Rwanda also spent a surprising amount of 09:43

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1 time on the *Bolivia v Chile* obligation to
2 negotiate case. Of course in *Bolivia v Chile*, the
3 problem with the 1950 exchange of notes was that
4 Bolivia asked for one thing and Chile wrote back
5 proposing something else. That is entirely 09:44
6 different to this case where the United Kingdom
7 proposed the text of something which it had
8 already agreed with Rwanda, and Rwanda simply
9 replied that the UK's proposals were acceptable to
10 it. 09:44

11 Rwanda's argument that any particular
12 factors are essential for an exchange of notes to
13 be binding finds no support in *Bolivia v Chile*,
14 and it is anathema to the principle that
15 international law does not insist on matters of 09:44
16 form which vary between jurisdictions but is,
17 instead, interested in matters of substance. That
18 is also the reason why it makes little sense for
19 Rwanda to be arguing that because Rwanda's
20 responsive note is said not to have complied with 09:45
21 guidelines for binding Notes Verbales in a British
22 handbook, that the United Kingdom must have
23 realised that Rwanda intended not to be bound.

24 That, members of the Tribunal, unless
25 I can assist you further, is all we were proposing 09:45

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1 to say on the applicable legal principles.

2 We are not proposing to have a dedicated
3 section on the facts, as Rwanda did yesterday and
4 as we did in our Statement of Defence. Because of
5 that, instead of beginning with the text of 09:45
6 the November notes, to which, of course, I'll
7 come, it may give more assistance to the Tribunal
8 and match better Rwanda's submissions if I begin
9 instead with the circumstances in which those
10 Notes were drawn up. Then proceeding 09:45
11 chronologically, that will bring us to the text of
12 the November Notes and, finally, to the conduct of
13 the Parties subsequent to them.

14 We'll be looking at a number of documents
15 to which Rwanda referred yesterday and, to some 09:46
16 extent, that will mean, together with the slides,
17 that we can move more quickly, but we will also
18 need to look carefully at a number of passages to
19 which you were not taken yesterday.

20 On circumstances in which the instruments 09:46
21 were drawn up, I start, members of the Tribunal
22 with C-19, which is at slide 4. That is an
23 extract from the Asylum Partnership Agreement
24 putting the Partnership on the foundation of a
25 legally binding treaty. 09:46

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1 Page 20 at Article 18, the financial
2 arrangements to be made were in support of the
3 relocation of individuals under this agreement.

4 On Slide 5, the Tribunal sees the
5 signatures of the United Kingdom Home Secretary 09:47
6 and The Minister of Foreign Affairs of Rwanda.
7 The Tribunal will note that the Annexes then
8 follow the signatures. There is no suggestion by
9 anyone that because the Annexes follow the
10 signatures they are not somehow part of the 09:47
11 treaty. Indeed, as we see on Slide 6, agreement
12 is defined as meaning The Agreement and the
13 Annexes.

14 The Tribunal will have well in mind that
15 Article 31(2) of the Vienna Convention in relation 09:47
16 to the subject of treaty interpretation opens with
17 the words:

18 "The context for the purpose of the
19 interpretation of a treaty shall comprise, in
20 addition to the text, including its preamble and 09:48
21 annexes".

22 It is, of course, perfectly routine for
23 Annexes to be an integral part of the text of a
24 treaty. That is so in general and it is so in the
25 specific circumstances in which the November 2024 09:48

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1 Notes Verbales were drawn up.

2 Slide 8 has C-22, the initiating note in
3 the 2024 finance agreement from June of that year,
4 made pursuant to Article 18 of the Asylum
5 Partnership Agreement. The first page of that 09:48
6 note is introductory and general, and concludes by
7 proposing "the following financial arrangements".

8 The next five pages of that note, which
9 is at C-22, are a sort of insert in different and
10 smaller font and contain the detail of the 09:49
11 proposal in numbered paragraphs.

12 At Slide 9 among those pages, I'd pause
13 at 1.3 to see that the purpose of the funding is
14 to create a mechanism for the transfer of
15 Relocated Individuals to Rwanda. That, of course, 09:49
16 matches Article 18 of the Asylum Partnership
17 Agreement.

18 The key substantive provisions for our
19 purposes are at 2.31 and 2.32 which concern the
20 ETIF payments, and the Tribunal is familiar with 09:49
21 those.

22 The seventh and final page then reverts
23 to the same style as the first, and says in the
24 first line:

25 "If the arrangements set out above are 09:50

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1 acceptable to the Government of Rwanda, the High
2 Commissioner has the honour to propose that this
3 Note...", and "the Ministry's reply to that effect
4 will place on record the understanding of our two
5 Governments in this matter, which will come into 09:50
6 effect on the date of your reply".

7 Then there is a salutation and an
8 electronic signature.

9 C-23 is Rwanda's reply, bringing into
10 effect what both states accept was a legally 09:50
11 binding agreement on the terms of the UK's Note.

12 The first paragraph refers, in general
13 terms, to the financial arrangements that had been
14 proposed in the UK's note. It does not reproduce
15 what those arrangements were with respect to ETIF 09:50
16 payments or anything else. All the arrangements
17 are picked up by the general reference to
18 financial arrangements.

19 In the second paragraph in the second
20 line, Rwanda confirms that the above arrangements 09:51
21 are acceptable to it. It adds that:

22 "The High Commission's note" and Rwanda's
23 reply "will place on record the understanding of
24 our two Governments on the matter and which will
25 come into effect today." 09:51

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1 The Tribunal will note that the key words
2 "arrangements are acceptable" are equivalent to
3 the United Kingdom's originating note. Those are
4 the words the parties used to manifest their
5 consent. Of course the same words were then used 09:51
6 in the November 2024 Notes. The differences on
7 which Rwanda relies to seek to distinguish this
8 exchange from the November exchange five months
9 later are two.

10 First, that here the detail precedes the 09:52
11 signature in the initiating Note. Secondly, that
12 here the responsive note replicated the text from
13 the initiating note concerning the coming into
14 effect of the understanding. I'll say more in due
15 course about why those differences are of no 09:52
16 consequence.

17 There is a similarity in the
18 circumstances in which the June and November notes
19 were drawn up which is causing a difficulty for
20 Rwanda. In its Statement of Claim, it was at 09:52
21 pains to establish that this June exchange was
22 legally binding. One of the indicators that it
23 relied on was, as you saw yesterday, that the
24 United Kingdom had initially proposed that it not
25 be legally binding. 09:53

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1 What matters is that Rwanda suggested the
2 removal of that clause because this agreement was
3 now in the context of a binding treaty as opposed
4 to the earlier nonbinding Memorandum of
5 Understanding, and Rwanda would need to be able to 09:53
6 enforce it. Rwanda referred specifically to ETIF
7 funding in that connection. You also saw the
8 comment on the dispute resolution clause at 6.1
9 yesterday.

10 As you know, at C-37 the United Kingdom 09:53
11 accepted that deletion. Both states agree that
12 those circumstances are an indicator pointing
13 towards the June 2024 finance agreement being
14 legally binding.

15 Both states also agree that the fact that 09:54
16 the binding Asylum Partnership Agreement provided
17 the context in which the June 2024 Finance
18 Agreement was agreed is a similar indicator.

19 That brings us to Judge Donoghue's
20 question to both parties. 09:54

21 There are, of course, factors in the June
22 notes at C-22 and C-23, taken alone, that point to
23 a conclusion that the intention was not to create
24 binding obligations. The Tribunal will have
25 noticed the use of the word "will" rather than 09:54

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1 "shall" in 1.6 and 2.3, and the use of "intended
2 to be" in 2.3.1.

3 On the other hand, 2.3.2 says that the
4 payments will be due. The notes also state that
5 they are agreed pursuant to the Asylum Partnership 09:55
6 Agreement, for example on the introductory page in
7 the final paragraph and in 1.2.

8 In 3.1, the Note provides that amendments
9 may only be made by written agreement.

10 As Rwanda pointed out yesterday, they 09:55
11 contain a dispute settlement clause at 6.1
12 providing that disputes that may arise as to the
13 interpretation or application of them will be
14 settled by reference to the dispute resolution
15 clause in the Asylum Partnership Agreement. 09:55

16 For the main claim before this Tribunal,
17 it is that provision in 6.1 which confers
18 jurisdiction on the Tribunal, it is not Article 22
19 of the treaty considered alone. A binding award
20 on a nonbinding instrument would be an odd 09:56
21 creature.

22 Taking into account those factors in the
23 round, together with the other relevant indicators
24 explained in *Gabon/Equatorial Guinea*, the United
25 Kingdom does not, in this case, contest the aspect 09:56

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1 of Rwanda's claim that the June Notes conferred
2 payment obligations on the United Kingdom.

3 The crucial point arising from all of
4 that is that Rwanda is quite wrong to seek to
5 apply a higher standard to the November Notes when 09:56
6 they were concluded in the context of, and in
7 order to amend, the June notes.

8 That takes us, members of the Tribunal,
9 back to the chronology, unless I can assist
10 further on that topic. 09:57

11 At Slide 18, we find C-26. After the
12 change in government in the United Kingdom
13 in July 2024, Rwanda explicitly recognised in a
14 Note to the United Kingdom that either party may
15 terminate the Asylum Partnership Agreement. Of 09:57
16 course, the 2024 Finance Agreement provided that
17 it would terminate at the same time as the Asylum
18 Partnership Agreement. That's paragraph 5.1.

19 The Government of Rwanda made the same
20 acknowledgement publicly in a press release on the 09:57
21 same day. That's C-27.

22 Also, on that same day, it's 8 July 2024,
23 the United Kingdom informed Rwanda by Note Verbale
24 that no future removals of individuals to Rwanda
25 under the MEDP are scheduled or intended to be 09:58

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1 scheduled, and that the United Kingdom would be
2 considering the issue of formal termination in due
3 course.

4 So at this point in the chronology,
5 8 July 2024, I just pause to consider five
6 factors. 09:58

7 The first is that by this point, Rwanda
8 had already received payment of £270 million in
9 ETIF payments from the United Kingdom. That total
10 amount was paid in parts in April of 2022, 2023,
11 and 2024. Receipt of that £270 million is common
12 ground. That's the Statement of Claim at 26, and
13 you see C-13 on your screen. 09:58

14 The second factor is that only four
15 individuals had been relocated from the United
16 Kingdom to Rwanda pursuant to the Asylum
17 Partnership Agreement. 09:59

18 The third factor is that the new
19 government of the United Kingdom was clear that
20 there would be no future relocations under the
21 Asylum Partnership Agreement from the United
22 Kingdom to Rwanda. 09:59

23 The fourth is that both states had a
24 unilateral right to terminate the Asylum
25 Partnership Agreement and, thus, the June 2024 09:59

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1 Finance Agreement, and Rwanda had specifically
2 recognised that unilateral right.

3 The fifth factor is that in April of
4 2025, a further £50 million would fall due, and in
5 April 2026, the same again. 10:00

6 With those five factors in mind, it is
7 simple common sense that either by way of
8 unilateral termination or some other agreement,
9 those further payments were not going to be
10 falling due. 10:00

11 The June 2024 Finance Agreement concerned
12 financial arrangements for the relocation of
13 individuals to Rwanda. We saw it is paragraph 1.3
14 specifically on its purpose.

15 From 8 July 2024, it was clear that there 10:01
16 were going to be no further relocations from the
17 United Kingdom to Rwanda, and so it was entirely
18 logical that obligations to make further ETIF
19 payments would be terminated.

20 That brings us, members of the Tribunal, 10:01
21 to the content of paragraph 60 of Rwanda's
22 Statement of Claim.

23 In paragraph 59, Rwanda finished the
24 preceding section discussing the events of 8 July
25 2024, which we have just been considering. 10:01

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1 Paragraph 60 then contained only one sentence. It
2 said nothing was heard from the UK for several
3 months. Paragraph 61 deals with the 13 November
4 2024 initiating Note Verbale from the United
5 Kingdom. It starts with the word "Then", 10:02
6 suggesting that was the next thing that happened.

7 Rwanda was affirmatively representing to
8 the Tribunal in its Statement of Claim in these
9 paragraphs that from 8 July 2024 to 13 November
10 2024, it had heard nothing from the United 10:02
11 Kingdom. That mattered because Rwanda's case
12 appeared to be that when Rwanda read the UK's Note
13 of 13 November, it was receiving the UK's proposal
14 for the first time and replied that it was
15 acceptable in principle but not actually accepted. 10:02
16 Rwanda has now apologised. I propose now, members
17 of the Tribunal, to concentrate on the detail of
18 what actually happened in that period on which
19 both states are now relying.

20 At Slide 25 we see the Note Verbale 10:03
21 announcing the visit of a UK delegation to discuss
22 logistics and timelines for UK withdrawal. That
23 same message was conveyed in the Note Verbale at
24 R-14 the next month, when the members of the UK
25 delegation were identified. 10:03

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1 R-15 is the 3 October 2024 UK internal
2 note of the first discussion between the states of
3 which there is evidence. The Tribunal might look
4 again at the heading concerning the 2025 ETIF
5 payment, DVAs and Airside Transit Visa Waiver. 10:04
6 Under that heading it says these issues appear
7 inextricably interlinked. You were taken to that
8 yesterday. But that does not mean, of course,
9 that any legal obligations that might be altered
10 or created were so linked, and it doesn't mean 10:04
11 that even as a matter of discussion they stayed
12 linked.

13 It was already clear at this stage that
14 the UK would, in one way or the other, terminate
15 the ETIF payment obligations. 10:04

16 The first way that could be done would be
17 by terminating the Asylum Partnership Agreement.
18 As the United Kingdom explained in this document,
19 the UK considered that for it, that would involve
20 first passing domestic legislation to repeal the 10:04
21 Safety of Rwanda Act.

22 The second way to achieve the same
23 objective would be by reaching a separate
24 agreement with Rwanda terminating the obligation
25 to make ETIF payments. 10:05

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1 Rwanda was quite wrong to suggest
2 yesterday that this was only a matter internal to
3 the UK to which Rwanda listened but which did not
4 affect it. This was the United Kingdom telling
5 Rwanda that one of these two routes needed to be 10:05
6 followed and that if Rwanda did not consent, then
7 the UK would need to take steps to terminate
8 unilaterally. So, it was a choice for Rwanda as
9 well as a choice for the United Kingdom.

10 The Note refers to what, if anything, the 10:05
11 Home Secretary would like to offer in exchange for
12 the £50 million NV, and it ends with "once we have
13 a clear position". That indicates that there was
14 not, at this stage, a clear position concerning
15 DVAs or any other offer. All that was certain was 10:06
16 that the ETIF payments would be termed.

17 C-43 is Rwanda's internal note of an
18 8 October follow-up between the Rwandan Director
19 General and the United Kingdom High Commissioner.
20 It does say Diplomatic Visa Arrangements, and in 10:06
21 return no further payments under the MEDP, giving
22 the United Kingdom more time for its domestic
23 process. But it is also very clear that without
24 such an agreement, the legal process in the United
25 Kingdom Parliament would need to occur, followed 10:06

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1 by a formal termination notification to Rwanda.

2 The next day, on 9 October, there is a
3 further internal Rwandan email, it is C-44,
4 submitted with the Reply, that says "in exchange".
5 But it is also clear that what was under 10:07
6 discussion was the treaty termination time frame,
7 not whether it would be terminated.

8 There was, evidently, an
9 inter-ministerial on the subject meeting on Rwanda
10 the following day but we have no evidence 10:07
11 concerning what was said at that meeting.

12 We do have C-45, which is titled "DVA
13 offer to the Government of Rwanda". This is from
14 the United Kingdom to Rwanda. It refers back to
15 the 3 October meeting between the Home Office and 10:08
16 the Government of Rwanda. It says in the second
17 line.

18 "...the UK looks forward to exploring the
19 details of a new UK-Rwanda diplomatic visa
20 agreement." 10:08

21 It then sets out what it terms "offer
22 details". In the final bullet point on the page,
23 it says:

24 "Changes to implement the Rwanda offer
25 will require amendments to the published UK 10:08

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1 immigration rules...."

2 And that, in a passage to which you were
3 not taken yesterday, it was unlikely this would be
4 feasible until spring 2025.

5 Still on 10 October but now at R-16. 10:08

6 After that email, and in the evening of the day of
7 the Rwandan inter-ministerial meeting, there was a
8 call between the UK Home Secretary and the Rwanda
9 Foreign Minister. The United Kingdom has provided
10 its internal note of the call, which says "it was 10:09
11 agreed that" Rwanda would sign an NV that removes
12 the obligation to pay any further sums under the
13 ETIF, and a short time frame was being envisaged.

14 The next bullet point is about DVAs, and
15 they were to be extended in the spring, so some 10:09
16 five months hence.

17 The note finishes by indicating that once
18 the Notes are agreed and signed, the Home Office
19 would inform parliamentary authorities that it
20 would no longer need to bring forward the repeal 10:09
21 of the Safety of Rwanda Act which was seen as the
22 domestic prerequisite to terminating the treaty on
23 the international plane.

24 At C-42 Rwanda has now provided its own
25 internal note of that same call, so the Tribunal 10:10

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1 can helpfully see the internal records of each
2 state of the same conversation between ministers,
3 and Rwanda relied on parts of that note yesterday.

4 Paragraph 3 refers to the legislative
5 process to repeal the domestic statute in the UK 10:10
6 and notes that because of the time that could
7 take, the UK requested a commitment of Rwanda to
8 not seek the payment of the £50 million due in
9 April 2025. The word Rwanda recorded for its
10 internal purposes was "commitment". 10:10

11 Paragraph 4 records the Rwandan Foreign
12 Minister ensuring that Rwanda will, in principle,
13 not pursue that payment provided that the UK
14 follows the right legal procedures. This is on
15 Slide 33. 10:11

16 THE CHAIRMAN: Maybe you can wait for a
17 minute. I think we have some technical issue,
18 we do not see on the screen any more documents you
19 wish to refer to.

20 Now it works, please continue. 10:11

21 MR JURATOWITCH: It is always a joy when
22 the problem is hardware rather than software.

23 Paragraph 4 records the Rwandan Foreign
24 Minister will, in principle, not pursue that
25 payment provided that the UK follows the right 10:11

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1 legal procedure. Rwanda in its Reply and
2 yesterday focused on this part and says it is far
3 more nuanced than the UK's use of the word
4 "agreed".

5 Let's just assess that by looking at the 10:12
6 remainder of the document.

7 The foreign minister then asked what
8 legal documentation the UK would provide.

9 Paragraph 5 records that the Home Secretary wished
10 for there to be a Note Verbale from the United 10:12
11 Kingdom requesting Rwanda to forego the
12 £50 million payment to which Rwanda would respond
13 by a Note Verbale accepting it. She said that the
14 United Kingdom would send a draft the next day.

15 Paragraph 5 then says that the Home 10:12
16 Secretary added that to show the strong
17 partnership, the UK is willing to facilitate visa
18 waivers for up to 100 diplomatic passports per
19 year.

20 Paragraph 6 records the Rwandan Foreign 10:13
21 Minister emphasising the length and breadth of the
22 relationship which goes beyond the Asylum
23 Partnership. The note records that he said he
24 appreciated progress on DVAs but expressed
25 interest on doing more on further matters 10:13

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1 including transit visas, judicial cooperation,
2 military training, and trade and investment.

3 Paragraph 7 records the Home Secretary
4 assuring the foreign minister that the UK was open
5 to further discussions in all of those areas, 10:13
6 except transit visas, and she said why.

7 Paragraph 8 then covers next steps.

8 "The UK will share for review a draft NV
9 on ceasing financial arguments, which, once
10 approved from our side, would be legally binding 10:14
11 for both parties."

12 Any mention of that part of the note was
13 avoided yesterday. This Rwandan note that the
14 Note Verbale would be legally binding is
15 consistent with the terms of the United Kingdom's 10:14
16 internal note which speaks of it being agreed that
17 the notes would remove the obligation to pay.

18 Rwanda then records its intention to
19 consult its Ministry of Justice, and records that
20 the UK hopes to sign this week. I emphasise, 10:14
21 members of the Tribunal, that Rwanda had used the
22 language of the UK requesting Rwanda to forego
23 future ETIF payments to record the terms of an
24 agreement which it understood would be a
25 commitment and would be legally binding for both 10:15

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1 parties. Of course, that language of the request
2 to forego payments is what was ultimately used in
3 the final covering note.

4 Yesterday you heard an attempt to say
5 that October 2024 involved merely exchanges 10:15
6 between officials that were jettisoned by the
7 politicians in November. That is quite difficult
8 to reconcile with this Rwandan note, created
9 entirely for its own purposes, recording a
10 discussion on 10 October between its foreign 10:15
11 minister and the British Home Secretary using
12 terms equivalent to those used in the final
13 exchange in November appearing in the covering
14 note.

15 Paragraph 9 of this note then refers to 10:16
16 the ministers from both states anticipating
17 closing this chapter and moving towards addressing
18 other important matters of mutual interest. It
19 was paragraph 6 that had indicated what those
20 were. 10:16

21 The morning after the ministerial call,
22 the United Kingdom Home Office emailed the United
23 Kingdom Cabinet Office. It repeated what the
24 United Kingdom's internal note of that meeting had
25 said about agreement on Notes Verbales to remove 10:16

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1 the obligation to pay any further sums under the
2 ETIF.

3 Then in the last paragraph, it said that
4 given this:

5 "...the Home Office anticipated that 10:16
6 we will no longer need to bring forward the Safety
7 of Rwanda Act next week subject to signing the
8 Notes Verbales."

9 The same day, the United Kingdom's High
10 Commission in Kigali sent a draft Note Verbale to 10:17
11 the Permanent Secretary and Director General of
12 the Rwanda Foreign Ministry.

13 That takes us to R-21 and to the email at
14 the foot of the chain dated 11 October 2024 at
15 1203. 10:17

16 I fear our hardware problem has
17 re-emerged.

18 THE CHAIRMAN: But technical assistance
19 is coming soon.

20 MR JURATOWITCH: It's slide 40 in the 10:17
21 hard copies, if that assists the Tribunal.

22 THE CHAIRMAN: You can continue.

23 MR JURATOWITCH: This was described as
24 "Building on the call between our Home Secretary
25 and your Foreign Minister last night". 10:18

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1 The United Kingdom invited Rwanda to
2 provide any comments or concerns on that draft so
3 the UK could address them. There was a reference
4 to the previous Note Verbale, and it is clear that
5 was referring to the 2024 Finance Note Verbale 10:18
6 from June.

7 R-19 is the attachment to that email,
8 which received material criticism yesterday.
9 Page 2 of the attachment, paragraph 1.6, says it
10 was proposed that this new NV would amend and 10:18
11 replace the June 2024 Finance Note.

12 At 1.9 we see that, inconsistently with
13 what the Home Secretary and the Rwandan foreign
14 minister had agreed the night before, the draft
15 included a clause stating that this would not be 10:19
16 legally binding.

17 The financial arrangements begin at the
18 foot of the same page and also take up all of the
19 next page. They concern four individuals who had
20 relocated to Rwanda voluntarily. 3.1 recorded 10:19
21 that an advance of £20 million had been paid and
22 for what purposes it could be spent.

23 3.2 provided that once those sums had
24 been agreed and a satisfactory report as to their
25 spend provided, that any excess would be returned 10:19

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1 to the United Kingdom. This was proposed as a
2 wholesale replacement of the June 2024 finance
3 note; it was not an amendment to it. There were,
4 therefore, aspects of that note that were simply
5 copy pasted into this October draft. 10:20

6 That takes us back to R-21, now looking
7 at the penultimate email, that was 41 minutes
8 later at 12.44 on 11 October. The Rwandan
9 Director General very reasonably asks for the
10 changes that had been made to the June Finance 10:20
11 Note to be highlighted, possibly in track changes.
12 The first email on the page is the substantive
13 response to that from the Home Office.

14 It stated that "the changes between the
15 two Note Verbale are quite significant" and it 10:20
16 goes on to say that "we have entirely removed the
17 ETIF elements". The magnitude of the changes was
18 said to make track changes difficult. The June
19 Finance Note was attached for reference.

20 R-24, in the middle of the three emails 10:20
21 in that chain, was four days later, the Rwandan
22 Director General responding. She said:

23 "The UK's proposal introduced significant
24 changes that raised concerns for us and diverge
25 considerably from our prior understandings." 10:21

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1 She further added that Rwanda would
2 propose amendments agreeing to halt the ETIF
3 payment schedule, and clarifying the continuation
4 of responsibilities in anticipation of the UK's
5 formal termination notice. She said that
6 introducing any new elements that hadn't
7 previously been discussed would be problematic.

10:21

8 The key discussion was evidently the one
9 between the Rwandan Foreign Minister and the UK
10 Home Secretary on the evening of 10 October,
11 concerning which the Tribunal has the internal
12 notes of both sides.

10:21

13 Having referred to those previous
14 discussions, the Director General then attached a
15 new draft. It is at R-23. It left the June 2024
16 Finance Agreement in place, and made amendments to
17 it pending termination of the Asylum Partnership
18 Agreement. So whereas the UK's draft had simply
19 not mentioned ETIF payments, Rwanda's draft dealt
20 with them very explicitly indeed. It was the
21 first substantive matter addressed. The heading
22 is 2.3, and it was using the numbering from
23 the June 2024 Finance Note.

10:22

10:22

24 2.3.1 says:

25 "The payment schedule for the economic

10:22

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1 transformation and integration fund is halted
2 pending formal notification of termination of the
3 Agreement. The United Kingdom will not make any
4 further payments to the economic transformation
5 and integration fund." 10:23

6 2.3.2 then says:

7 "All provisions under paragraph 2.3 of
8 the Arrangement are hereby replaced by
9 paragraph 2.3.1 above."

10 Rwanda is yet to explain how, if it was 10:23
11 the party to introduce these terms, it then
12 supposedly refused to accept them when equivalent
13 terms appeared in the Technical Annex.

14 It is also yet to explain how its new
15 theme of November politicians jettisoning the work 10:23
16 of October officials takes into account
17 this October 15 draft which first proposed the
18 terms that, in substance, ended up in the November
19 Notes Verbales Technical Annex.

20 Rwanda said yesterday that the approach 10:24
21 in this draft was completely abandoned. Let's
22 assess that by comparing it to the Technical Annex
23 to the final United Kingdom Note Verbale
24 in November. The equivalence to which I was
25 referring is between 2.3.1.and 2.3.2 of the 10:24

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1 Rwandan proposal of 15 October, which is on the
2 left-hand side, and numbered paragraph 1 read as
3 part of the United Kingdom's final initiating Note
4 Verbale of November. It is, in the United
5 Kingdom's respectful submission, hardly a complete 10:25
6 abandonment.

7 Doubtless conscious of this problem,
8 Rwanda said yesterday that this was Rwanda just
9 trying to progress things technically and just
10 trying to produce a draft that might work. Let's 10:25
11 test that by reference to what Rwanda said at the
12 time, and that takes us back to the previous
13 exhibit with the cover email at R-24.

14 Having criticised the United Kingdom's
15 draft, Rwanda says that "Rwanda will propose 10:25
16 amendments to the Financial NV". The last
17 substantive line of the email then says that "The
18 attached draft more accurately reflects our
19 perspective". So there is, members of the
20 Tribunal, no getting around this having been 10:25
21 Rwanda's proposal.

22 If we then go back to R-23, Rwanda's
23 proposal then dealt under 2.4 with the £20 million
24 for asylum processing costs and, under 4, with
25 reporting. There was notably no sign of the 10:26

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1 United Kingdom's draft clause that it not be
2 legally binding.

3 Given that the Foreign Minister and Home
4 Secretary had discussed on 10 October that it
5 would be legally binding, it appears likely that 10:26
6 one of the matters that the Rwandan Director
7 General had in mind in her cover email when she
8 referred to the United Kingdom's proposal
9 involving changes that diverged from Rwanda's
10 previous understandings was the issue of whether 10:26
11 the new arrangement would be legally binding.

12 In its reply, Rwanda acknowledges it
13 removed the language about the Note not being
14 legally binding. It seeks to explain that away on
15 the basis that this was to be in exchange for a 10:27
16 binding diplomatic visa arrangement. The Tribunal
17 will notice that in this Rwandan proposal, there
18 is no mention at all of any diplomatic visa
19 arrangement. There was no mention of any DVA in
20 any draft at any stage. It had been clear since 10:27
21 an earlier stage that the UK could not offer them
22 until the spring of 2025.

23 It was equally clear that the Rwandan
24 Foreign Minister was any way more interested in a
25 broader suite of cooperative endeavours. That, 10:28

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1 members of the Tribunal, was 15 October.

2 We're now, at least in your hard copies,
3 at Slide 52.

4 We are now back at R-54. The email above
5 is from the UK High Commission the next day, 10:28
6 saying the UK was "happy to agree to the proposal
7 being framed in the way you most helpfully set
8 out". The UK proposed some further changes
9 designed primarily to meet certain audit and
10 scrutiny requirements, and the UK's suggested 10:28
11 amendments are at R-25. There is no need to turn
12 to it because the points arising from it are that
13 the UK suggested no changes at all to the ETIF
14 provision, and did not suggest adding back in that
15 it would not be legally binding. 10:29

16 So by this point in time, 16 October
17 2004, both states are proceeding in concrete
18 drafted form, in tandem, on the basis there will
19 be no further ETIF payments, and that
20 the June 2024 Finance Agreement will be amended 10:29
21 accordingly. There are track changes on other
22 points but that fundamental point is settled.

23 That brings us to R-26 on page 53 of the
24 binder that you have. We're now at 22 October
25 2024. This is an email from the British High 10:30

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1 Commissioner to the Rwandan Director General
2 referring to a discussion they had had the day
3 before. The High Commissioner sent a revised
4 track changes draft where many of the proposals
5 made by the Home Office on Rwanda's draft were 10:30
6 withdrawn and a limited number were kept, as had
7 been discussed between the High Commissioner and
8 the Director General the day before.

9 The High Commissioner asked about timing
10 to get this signed. That further revised version 10:30
11 is at R-27. There is again no need to go to it
12 because the only changes concerned the use,
13 reimbursement, and reporting on the various parts
14 of the £20 million that had been paid in
15 connection with the four individuals who had been 10:30
16 relocated.

17 The explicit amendment of the ETIF
18 payments in the June 2024 Finance Note to specify
19 that no further ETIF payments would be made
20 remained untouched. 10:31

21 That brings us to R-28, which is the
22 email running over on to the second page of
23 Exhibit R-28. It is dated 30 October and is from
24 the relevant Home Office Director to the Rwandan
25 Permanent Secretary. He refers to the meeting 10:31

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1 nine days earlier between the High Commissioner
2 and the Director General. He refers to the Home
3 Secretary being very keen to get this agreed as
4 soon as possible, and explains that this is due to
5 "legislative pressures here in the UK". That is, 10:31
6 of course, a reference to the United Kingdom's
7 perceived need to repeal the Safety of Rwanda Act
8 before unilateral terms.

9 A meeting then took place on 6 November
10 between the Rwandan Foreign Minister and the 10:32
11 British High Commissioner. R-34 is the internal
12 UK report of that meeting. It is not on a slide.
13 It takes the form of an email from the Deputy High
14 Commissioner to the High Commissioner. It
15 records, at numbered paragraph 1 in R-34, that the 10:32
16 High Commissioner shared the latest draft of a
17 Note Verbale.

18 Then picking up in the second line of
19 that paragraph, it is confirming that the UK would
20 not be obliged to make any further payments. 10:33

21 It continues:

22 "You emphasised the critical importance
23 of this being signed for the UK legislative
24 timetable, and FM Nduhungirehe promised very quick
25 feedback." 10:33

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1 It is R-34, first numbered paragraph.

2 It records that the Foreign Minister said
3 there was the complete clarity from the Rwandan
4 side that the MEDP was over following the UK
5 election, and that it was just a question of
6 getting the right language in the NV. 10:33

7 In the final paragraph of the report,
8 there is a comment from the Deputy High
9 Commissioner in the second sentence that says:

10 "Whilst the Minister was a little 10:33
11 non-committal on exactly what he wants to see from
12 the Migration Partnership NV, our sense is that
13 the challenge has been getting the Minister's time
14 on the issue (rather than a major issue of
15 substance)". 10:34

16 Rwanda has not provided any note of that
17 meeting, but R-29 on Slide 56 is an email on that
18 same day following the meeting from the Deputy
19 High Commissioner to two Rwandan officials,
20 including the Director General. It referred to 10:34
21 the meeting and provided two new proposed
22 documents. These were described as a short
23 political NV -- that is the expression that Rwanda
24 has since its reply been quite keen on -- and the
25 second was a Technical Annex to the NV, it being 10:34

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1 added that the High Commissioner had explained
2 that this "...covers the things we need covered
3 for our legislative process". The urgency is
4 reiterated.

5 The first attachment is at R-30. In the 10:35
6 one substantive paragraph in the middle beginning
7 at the end of the second line, it says:

8 "...it is hereby agreed that no further
9 payments will be made under the Economic
10 Transformation and Integration Fund." 10:35

11 The case developed yesterday was that
12 this draft marked the jettisoning of everything
13 that had gone before and the adoption of an
14 entirely new approach. That is very difficult to
15 understand because this was stating in clear terms 10:35
16 what had been understood and agreed since the
17 process started.

18 The draft then adds that:

19 "This diplomatic agreement is underpinned
20 by the annexed technical Note Verbale." 10:36

21 Rwanda's emphasis on the expression
22 "short political NV" in the cover email obviously
23 needs to be read with its attachment, which stated
24 that it was "hereby agreed that no further
25 payments will be made and that this was 10:36

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1 underpinned by the Technical Annex".

2 What was new was the agreement being set
3 out in two draft documents, the first in general
4 terms and the second more specific. But the
5 substance did not change, and the Foreign
6 Minister, in the meeting of that day, had just
7 said that it was a matter of getting the language
8 right, and had not been seeking any change of
9 substance.

10:36

10 R-31 is the draft Technical Annex.

10:37

11 Numbered paragraph 1 covers what had long been
12 agreed - no more ETIF payments will be made, and
13 the June 2024 finance note would be accordingly
14 amended. The Tribunal will again note the
15 continuity with the first proposal made by Rwanda
16 on 15 October.

10:37

17 In its Statement of Claim, Rwanda had a
18 great deal to say about the final text of the
19 13 November of Technical Annex that came from this
20 numbered paragraph 1 in the draft.

10:37

21 I'm sorry. In its Statement of Claim and
22 yesterday, Rwanda was making submissions about
23 this numbered paragraph 2, both in the Technical
24 Annex and in this draft. The Tribunal will recall
25 Rwanda's case about it agreeing to a package, and

10:38

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1 that paragraph 1 was conditional on the matters in
2 paragraph 2 being agreed subsequent to the
3 executed version of this note. But looked at in
4 the context of the chronology, what was really
5 happening in this paragraph 2 is that the two 10:38
6 states were agreeing to leave in abeyance the
7 issues concerning the £20 million that had already
8 been paid in respect of the relocated individuals.
9 What it had and would be spent on, what the
10 reporting obligations would be, and what, if 10:38
11 anything, would be reimbursed to the United
12 Kingdom; those are the issues on which the drafts
13 had not settled.

14 R-32 is next, focusing on the email at
15 the top of the first page. It is the Deputy High 10:39
16 Commissioner following up with the Rwandan Foreign
17 Ministry the next day. That's on 7 November.

18 She says, starting halfway along the
19 third line:

20 "... there is a lot of pressure on our 10:39
21 side due to UK legislative timetable. So keen to
22 do anything we can to come to an NV that works for
23 both parties."

24 R-33 has, at the foot of the chain, the
25 6 November email by which the UK sent the two-part 10:39

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1 proposal. Then the next email moving up is on the
2 slide.

3 On 12 November the Director General
4 responds on the substance, and says:

5 "After review and considering the 10:39
6 discussion with the Foreign Minister, please find
7 herewith attached a slightly revised NV for your
8 consideration."

9 She adds:

10 "Thank you again, and we look forward to 10:40
11 finalizing this as soon as possible".

12 So Rwanda considered its revisions to be
13 slight and the goal to be finalising, not leaving
14 anything open.

15 R-36 is the revised cover note proposed 10:40
16 by Rwanda. Picking up in the second paragraph of
17 the note, it refers to the UK having notified
18 Rwanda that, at the beginning of the third line:

19 "...no future removals of individuals to
20 Rwanda ... are scheduled", and, running on to the 10:40
21 end of that line, the UK "intends to formally
22 terminating the ... Treaty".

23 There's then a reference to
24 "anticipation" of formal termination, so no
25 question of anything being conditional on 10:40

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1 termination being effected. Then it goes on to
2 introduce the words familiar to the Tribunal
3 whereby "the UK requests that Rwanda forgo any
4 additional payments under the Economic
5 Transformation and Integration fund." 10:41

6 It then says in this Rwandan draft that
7 this is supported by the annexed technical Note
8 Verbale.

9 Rwanda argues that these amendments by
10 Rwanda somehow meant that the cover note was 10:41
11 reduced to or confirmed as being not legally
12 binding. Actually, Rwanda was, in this draft,
13 using the words it had recorded in its note of the
14 ministerial call on 10 October, just more than a
15 month earlier. That Rwandan note was clear, that 10:41
16 a legally binding agreement was to be produced.
17 There was no change in position by Rwanda on ETIF
18 payments or on the binding character of the
19 removal of the obligation to pay them. Rwanda
20 was, in its own draft, referring to the Technical 10:42
21 Annex. That is what Rwanda proposed to the United
22 Kingdom on 12 November.

23 This middle paragraph on the screen is
24 identical in substance to that in the final
25 initiating note signed and sent by the United 10:42

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1 Kingdom the very next day. The only change was an
2 inconsequential convention correction to some of
3 the grammar.

4 ARBITRATOR WAHAB: Are you moving away
5 from R-36? 10:42

6 MR JURATOWITCH: I am, yes.

7 ARBITRATOR WAHAB: Just a clarification.
8 It is borne out of your kind invitation to ask a
9 question if something arises.

10 What do you have to say to what we heard 10:43
11 yesterday, transcript page 69, lines 6 to 14,
12 where Rwanda has said that the change of the words
13 from "it is agreed" to "respectfully requests"
14 marks a departure from the earlier language, which
15 is a change. Now, it's put in a different word 10:43
16 but I think the emphasis on "respectfully
17 requests" rather than "it is agreed"?

18 MR JURATOWITCH: Thank you very much for
19 the question.

20 The only significance of that change is 10:43
21 it is consistent with it being a note from the UK
22 to Rwanda making the request. The question is
23 just then did Rwanda accept that request.

24 That then takes us to R-33, if I may, and
25 going up to the email that straddles the second 10:43

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1 and third pages. This is 37 minutes later, the
2 British Deputy High Commissioner responding to the
3 Rwandan Director General, thanking her and saying:

4 "And just to be sure I go back to my Home
5 Office colleagues with the right changes - you 10:44
6 were content with the technical annex? No
7 suggested changes there?"

8 The next email up is from and to the same
9 people later the same day at 3.50 in the
10 afternoon. The Deputy high Commissioner reports 10:44
11 to the Director General that the Home Office is
12 happy with Rwanda's revision to the Notes
13 Verbales, so no further edits needed. She comes
14 back to the point she had raised that morning and
15 to which she had not yet received a reply, adding: 10:44

16 "...Did you have any edits/comments on
17 the technical annex?" She concludes, "If not,
18 we will get them signed and issued asap".

19 The next email up, later on the same day,
20 5.36 in the afternoon, is the reply from the 10:45
21 Rwandan Director General. She says "Thank you for
22 the confirmation". That is the confirmation that
23 the UK accepts Rwanda's proposal for the cover
24 note. She adds:

25 "On the technical annex and we have no 10:45

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1 further edits or comments."

2 That is, of course, entirely unsurprising
3 since the key terms concerning the removal of the
4 ETIF obligation reflected the proposal that had
5 originally been made by Rwanda on 15 October. She 10:45
6 concludes with "Please feel free to proceed with
7 signing". That invitation obviously relates just
8 as much to the Technical Annex as it does to the
9 cover note.

10 Now, although Rwanda yesterday spent a 10:45
11 long time on the documents from this period, it
12 did not address at all this confirmation that
13 Rwanda had no further edits or comments on the
14 Technical Annex and invited the UK to proceed with
15 signing. It is not clear at all how Rwanda's new 10:46
16 case that it did not like the Technical Annex and
17 was agreeing only to the cover note is in any way
18 consistent with this email from one of its senior
19 officials on the very last draft the day before
20 the UK issued the final initiating note. 10:46

21 The most recent email in the chain, at
22 the top of the first page, is the reply from the
23 UK to Rwanda saying that Rwanda should receive the
24 final signed NV tomorrow. True to their word, the
25 UK sent the final note the next day on 10:46

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1 13 November, and Rwanda replied the day after that
2 on 14 November.

3 That, members of the Tribunal, is the
4 evidence of the circumstances in which the two
5 Notes Verbales of November 2024 were drawn up. 10:47

6 Rwanda's case in its Statement of Claim
7 is that those circumstances simply did not exist
8 and that the two notes somehow sprouted from
9 nowhere, unannounced and unconsidered, and, in
10 particular, that Rwanda had not had advance sight 10:47
11 of the text of the UK's initiating note. It is
12 painfully clear that there was a great deal
13 happening that constitutes relevant circumstances
14 in which the two notes were drawn up.

15 Without in any way wishing to detract 10:47
16 from the detail, I will just make eight brief
17 submissions as to the key points that the United
18 Kingdom says the Tribunal should take from those
19 circumstances.

20 The first is that both states were 10:48
21 proceeding on the firm basis that the ETIF
22 obligations would be terminated before the next
23 one fell due in 2025. The question was simply in
24 which of two ways that would be done. I've
25 explained what those two ways could have been. It 10:48

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1 is simply not realistic that the two states did
2 not bring the first option to fruition, but the
3 UK, nonetheless, left the second option
4 un-implemented.

5 The second is that consistently with 10:48
6 that, the states agreed at an early stage that the
7 ETIF payment obligations would be terminated, and
8 that was not questioned at any stage throughout
9 their negotiations.

10 The third is that Rwanda removed a draft 10:49
11 provision that the agreement not be legally
12 binding, and the UK accepted that removal. That
13 issue was not reopened at any stage.

14 Fourth, it was Rwanda that proposed terms
15 that made it explicit that there would be no 10:49
16 further ETIF payments and that the 2024 Finance
17 Note would be amended accordingly.

18 Fifth, such terms were included in the
19 Technical Annex ultimately proposed by the United
20 Kingdom, and Rwanda, when explicitly asked, twice, 10:50
21 confirmed that it had no further edits or comments
22 on the Technical Annex.

23 Sixth, the UK had been seeking greater
24 detail and certainty on the fate of and reporting
25 on the £20 million related to individuals already 10:50

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1 relocated. Rwanda had been resisting such
2 proposals, and Rwanda prevailed. That did not
3 create a package deal with some aspects left to be
4 agreed; it just created a limited agreement.

5 Seventh, there is no reference to 10:50
6 diplomatic visa arrangements in evidence in any of
7 the negotiations between 10 October and the
8 execution of the notes in mid November. They were
9 a different issue to be addressed separately, and
10 subsequently, together with a broad range of other 10:51
11 issues that the Rwandan Foreign Minister wished to
12 pursue. They were not mentioned in any draft
13 generated by either party of what was to be
14 agreed.

15 Eighth, and finally, the two states were 10:51
16 exchanging drafts of and agreed on the initiating
17 Note without any negotiation or advance sight by
18 the UK of a draft of the responsive Note. In
19 circumstances where the text of the initiating
20 note was agreed, the text of the responsive Note 10:51
21 was evidently being regarded as a formality.

22 Members of the Tribunal, if I can assist
23 you further on the circumstances, I'm of course at
24 your disposal. Otherwise, I propose to arrive at
25 the topic that I know you're eager to reach, which 10:52

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1 is the text.

2 THE CHAIRMAN: Thank you very much.

3 I give the floor to Judge Donoghue to put
4 a question. You have the floor.

5 ARBITRATOR DONOGHUE: Thank you, 10:52
6 Mr Chairman.

7 This is a sort of technical question. If
8 I could take you back, please, it's your Slide 40
9 showing an excerpt from R-21. That excerpt
10 contains a reference which you have highlighted. 10:52
11 It says "the previous NV". My understanding of
12 what you said was that that's a reference to
13 the June Notes.

14 I see you nodding so I assume I'm right
15 about that. Good. 10:53

16 I believe I also heard you say that there
17 were notes attached to R-21. If that would be
18 true, from what you said, those would have been,
19 therefore, the June notes.

20 When I went to the case file, as 10:53
21 I understand it electronically, I didn't see
22 anything attached to R-21 and couldn't find a
23 reference somewhere to what might have been
24 attached. No need to respond immediately but if
25 that could be clarified. The previous NV, what is 10:53

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1 your understanding of what that is, how the
2 Tribunal can find it. You don't need to do it
3 immediately unless you can.

4 Mr Chairman, I have a brief comment for
5 Rwanda, something I would ask them to look at 10:54
6 tomorrow, if I could address that while I have the
7 floor, please.

8 THE CHAIRMAN: Yes. You can ask that on
9 the Tribunal's time, not the UK's time. Please
10 proceed. 10:54

11 ARBITRATOR DONOGHUE: It is, I think, a
12 pretty straightforward question just for the sake
13 for Rwanda.

14 At the very beginning of the presentation
15 by Respondent today, there was a reference to the 10:54
16 most recent relevant judgment of the International
17 Court of Justice, which is at RLA-34. The
18 Respondent referred the Tribunal to paragraph 74
19 of that judgment and stated that in Respondent's
20 view, that was -- I don't want to put words in 10:54
21 their mouth but essentially the law as Respondent
22 understood it. I'm just interested to know
23 tomorrow whether Rwanda shares that view.

24 That's all I have for now. Thank you,
25 Mr Chairman. 10:54

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1 THE CHAIRMAN: Thank you.

2 I think now we can proceed with further
3 argument by the United Kingdom.

4 MR JURATOWITCH: Thank you very much,
5 Mr President. 10:55

6 Judge Donoghue, the answer to the first
7 part of your question, although I nodded, I should
8 say for the transcript, yes, the reference to the
9 previous NV is the previous initiating United
10 Kingdom Note from June that, together with 10:55
11 Rwanda's reply, formed the June agreement.

12 As to the attachment, it may be that the
13 issue is that some emails appear in multiple
14 chains, in multiple exhibits. I can confirm that
15 the attachment is the previous NV but I can't 10:55
16 confirm with certainty now precisely where it
17 exists in the record. I'll do that once I'm
18 certain of the answer.

19 Thank you very much, indeed.

20 The text, members of the Tribunal. 10:55
21 I will have some slides but the Tribunal might
22 wish to bring up C-29 which is, of course, the
23 United Kingdom's initiating Note Verbale. It's on
24 Slide 67, which is legible in the paper version
25 but not on the screen. 10:56

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1 of the Asylum Partnership Agreement.

2 Then it outlines the UK's request. It is
3 that Rwanda forego any additional payments under
4 the Economic Transformation and Integration Fund.
5 That, as the Arbitral Tribunal is aware, is the 10:58
6 language that Rwanda had proposed the day before,
7 which was consistent with the 10 October
8 ministerial call.

9 The note immediately adds that this
10 request is supported by the annexed Technical 10:58
11 Notes Verbales.

12 The Tribunal will observe that the word
13 "proposal" is not used in this cover note. The
14 specific proposals were in the supporting
15 Technical Annex to which the covering note 10:59
16 cross-referred. That's at Slide 68. It bears, if
17 you're looking at the full version, the same
18 number as the covering note; that's Note Verbale
19 182 of 2024. One sees that on C-29 but not on the
20 slide. 10:59

21 The first paragraph recalls the Asylum
22 Partnership Agreement. The second recalls
23 the June 2024 Finance Agreement. The third, which
24 is on the slide, again refers to the 8 July Note
25 Verbale from the UK notifying Rwanda that there 10:59

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1 would be no further removals to Rwanda under the
2 Asylum Partnership Agreement.

3 Then it says "... the High Commission
4 proposes the following". The word "proposes" is,
5 of course, important. The proposals then follow. 11:00

6 The first is that Rwanda acknowledges and
7 agrees that the Economic Transformation and
8 Integration Fund of £50 million, due in April 2025
9 and April 2026 in accordance with paragraphs 2.3.1
10 and 2.3.2 of the Finance Note, will not be paid, 11:00
11 and that the finance note is accordingly amended.
12 The meaning of the proposal is very clear. It was
13 that the 2024 Finance Agreement would be amended
14 such that the UK would no longer be obliged to
15 make the remaining ETIF payments. 11:01

16 The terms of the June 2024 Finance Note
17 were legally binding, and this was a proposal to
18 amend those terms. Those terms from June could
19 obviously only be amended by another binding
20 instrument. That is a key factor indicating that 11:01
21 these terms in November were to be legally
22 binding. That is consistent with the words used -
23 "agrees", "will not be paid", "accordingly
24 amended".

25 The second proposal is in numbered 11:01

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1 paragraph 2. The Tribunal has it before them.
2 That concerned the £20 million advance that was
3 not part of the ETIF. It was a separate proposal
4 from the first one and there was no
5 interdependency or conditionality between them. 11:02

6 The termination of the ETIF payment
7 obligation was said to take place immediately, and
8 it said "accordingly amended". It was not, as
9 Rwanda suggests, some sort of package also to
10 involve a subsequent agreement as envisaged in the 11:02
11 second proposal.

12 Paragraph 3 proposed simply that this
13 note does not constitute a termination of the
14 agreement nor should it be construed as a
15 notification of termination. 11:03

16 So the parties had proceeded on the
17 express basis that this amendment agreement was an
18 alternative to the United Kingdom immediately
19 giving notification of termination of Asylum
20 Partnership Agreement. 11:03

21 On the third and last page is a single
22 paragraph indicating how the agreement was to come
23 into effect.

24 "If the proposals set out above are
25 acceptable to the Government of Rwanda, I have the 11:03

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1 honour to propose that this Note and your reply to
2 that effect will place on record the understanding
3 of our two Governments in this matter, which will
4 come into effect on the date of your reply."

5 This last paragraph referred to the 11:03
6 numbered three proposals made immediately above
7 and, if acceptable to Rwanda, made a further
8 proposal concerning their coming into effect.

9 That last proposal was that Rwanda's reply to the
10 effect that the proposals set out above are 11:04
11 acceptable to the Government of Rwanda would bring
12 the common understanding into effect.

13 That brings us to Rwanda's responsive
14 note, which is at C-30.

15 The first paragraph in the fourth line 11:04
16 refers to the UK's Note Verbale number 182/2024.
17 That is the number borne by the Note Verbale at
18 which we had just been looking from the day
19 before, the same number in both its covering note
20 and its Technical Annex. The reference to 8 July 11:05
21 immediately following is, therefore, accepted by
22 both sides simply to be an error.

23 The paragraph ends, picking up its
24 penultimate line, recalling that the United
25 Kingdom was requesting the Government of Rwanda to 11:05

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1 forego any additional payments under the ETIF.

2 The next paragraph says:

3 "Rwanda has the honour to confirm that
4 the proposed arrangements are acceptable to it."

5 The question highlighted by Professor 11:05
6 Abdel Wahab yesterday is what and where were those
7 proposed arrangements? They were the proposals in
8 the Technical Annex. It is correct that the term
9 "arrangements" was used only in paragraph 2 of the
10 Technical Annex, as you heard from Rwanda 11:06
11 yesterday when it said that it was plausible that
12 Rwanda was agreeing only to that second numbered
13 paragraph in the Technical Annex. That, with
14 respect, is not credible. "Arrangements" was not
15 a term of art. The proposed arrangements were all 11:06
16 the proposals.

17 What is significant about Rwanda's
18 response is not its attempt to pick and choose
19 from the paragraphs in the Technical Annex, as it
20 does now. It is that the proposed arrangements 11:06
21 Rwanda accepts in that part of its answer were in
22 the Technical Annex somewhere. The covering note
23 made the general request that Rwanda forego any
24 additional ETIF payments but then immediately
25 referred to the Technical Annex in support. In 11:07

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1 referring to "the proposed arrangements", plural,
2 Rwanda was necessarily referring to the Technical
3 Annex, which is now at least in part accepted in
4 its answer to the question yesterday.

5 Now, once it is clear that the proposed 11:07
6 arrangements were in the Technical Annex, it
7 follows ineluctably that Rwanda was agreeing to
8 amend the June 2024 Finance Agreement to remove
9 the obligation to make any further ETIF payments.

10 Now, of course it was also in the 11:07
11 Technical Annex that the United Kingdom had
12 invited Rwanda to confirm that the United
13 Kingdom's proposals were acceptable to it, and
14 further to propose that by doing so, Rwanda would
15 bring their common understanding into effect. 11:08

16 Rwanda then used precisely the word that in the
17 Technical Annex the United Kingdom had invited it
18 to, "acceptable", and that was all that was needed
19 to manifest Rwanda's consent to the substantive
20 proposals and to the proposal that the 11:08
21 understanding would come into effect on the date
22 of Rwanda's reply.

23 That, members of the Tribunal, is the
24 straightforward reading of the two notes. Other
25 than the one canvassed fleetingly in response to 11:09

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1 Professor Abdel Wahab's question, Rwanda has
2 advanced four other different arguments as to why
3 its responsive note did not manifest its consent
4 to be bound by the terms of the United Kingdom's
5 note.

11:09

6 First, that the use of the word
7 "acceptable" meant only that the UK's proposals
8 were capable of being accepted rather than
9 actually accepted.

10 Now, textbooks aside, the real difficulty
11 with that in this case is that the United
12 Kingdom's note of 13 November explicitly invited
13 Rwanda to indicate whether the proposals were
14 acceptable to it as a means of expressing consent.

11:09

15 Rwanda adopted precisely the same term, thereby
16 expressing its consent.

11:10

17 That is even clearer in light of
18 the June 2024 Finance Agreement where both states
19 used the same word and both states agree that
20 the June notes produced an agreement binding on
21 them.

11:10

22 Rwanda's second argument is that it did
23 not repeat the words about the agreement coming
24 into effect. It says that it deliberately used a
25 shortened form of words. The difficulty with this

11:10

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1 is that on the terms of the United Kingdom's note,
2 what would cause the agreement to come into effect
3 was Rwanda indicating that the proposals were
4 acceptable to it. That is what Rwanda did and so
5 the agreement came into effect. The proposal as 11:11
6 to what would bring the agreement into effect was
7 one of the proposals that Rwanda indicated was
8 acceptable to it.

9 Now, this is in circumstances where the
10 initiating note from the United Kingdom had been 11:11
11 negotiated and agreed with Rwanda in advance.

12 Rwanda is now positing that after the
13 series of exchanges we have looked at together in
14 which Rwanda made proposals and the UK accepted
15 them, and Rwanda confirmed that it was content 11:11
16 with the text of the initiating note and invited
17 the UK to proceed with signing, Rwanda then
18 deliberately truncated its response so as not to
19 provide its consent after all.

20 Now, Rwanda did not fail to reply. 11:12
21 Rwanda did not reply saying it did not agree or
22 that it had had a last-minute change of heart
23 caused by a change in political decision making.
24 It did not reply with a different proposal, as in
25 *Bolivia v Chile*. It replied saying that the 11:12

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1 proposed arrangements were acceptable. And Rwanda
2 now says that this was its chosen form for
3 refusing to consent to the language of agreement.

4 What that amounts to, members of the
5 Tribunal, is Rwanda now imputing to itself back 11:13
6 then rather underhanded conduct. The Tribunal
7 should not assume such underhanded conduct
8 because, of course, there was none. The reality
9 is that Rwanda was being entirely straightforward
10 and acting in good faith in October 11:13
11 and November 2024, and it agreed to forego the
12 remaining ETIF payments and amend the ETIF
13 payments accordingly. That's the second argument.

14 The third is that Rwanda did not repeat
15 in its note some of the key words from the 11:13
16 Technical Annex, such as "acknowledge", "agree",
17 or "amended". Now, this is of no consequence at
18 all because all the words that Rwanda says are
19 important were part of the United Kingdom's
20 proposals, and Rwanda accepted those proposals. 11:14
21 There was no need for it to reproduce each of
22 those proposals, let alone to reproduce each of
23 the precise words used in each of those proposals.

24 The same parties on the same subject
25 matter had used that technique to bring into 11:14

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1 effect the terms of the 2024 Finance Note
2 from June.

3 The fourth argument was introduced only
4 in the Reply. It is that Rwanda was responding
5 only to the cover note, not to the Technical 11:14
6 Annex, and that the cover note was only political
7 and therefore not legally binding. What was the
8 central submission in the Reply did not feature in
9 the pre-arbitration correspondence, the Notice of
10 Arbitration, or the Statement of Claim. It was 11:15
11 only when Rwanda was reminded of the email the
12 United Kingdom sent to it at R-29, referring to an
13 attached draft of the covering note as a short
14 political NV, that Rwanda conceived of this new
15 argument. 11:15

16 The Tribunal already has our submission
17 that this needs to be considered in light of the
18 terms of the attachments to the email, and that in
19 that context the cover note was being proposed as
20 part of a single unitary instrument with the 11:15
21 Technical Annex which, taken together, would give
22 rise to legally binding obligations. The covering
23 note did contain diplomatic formalities and
24 descriptions of the request being made by the
25 United Kingdom. It was, in that sense, political, 11:16

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1 but being political did not disqualify it from
2 also being legal, any more than the inclusion of a
3 preamble in a treaty disqualifies the treaty from
4 being legal.

5 The Tribunal equally has the point that 11:16
6 the reference in the first paragraph of Rwanda's
7 responsive note to the United Kingdom's Note
8 Verbale 182/2024 is to the whole of that Note
9 Verbale, not just to its covering note, in
10 circumstances where the Technical Annex bore the 11:16
11 same number.

12 Mr President, I'm conscious of the time
13 but I am equally conscious that it might be of
14 more assistance to the Tribunal if I ran on just
15 for a couple more minutes and finished before 11:17
16 11.20 and in that way had text finished, otherwise
17 I would be breaking my submissions on text.

18 THE CHAIRMAN: Okay. If it is just for a
19 couple of minutes, continue.

20 MR JURATOWITCH: Thank you very much 11:17
21 indeed, sir.

22 The Tribunal is also conscious that the
23 cover note set out the request for Rwanda to
24 forego any additional ETIF payments, and
25 immediately added that this request was supported 11:17

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1 by the Annex. It would be entirely unnatural to
2 seek to agree to the covering note but not to the
3 Annex supporting it. Indeed, no such offer had
4 been made.

5 Rwanda's responsive note refers to 11:18
6 "proposed arrangements". They were not contained
7 in the UK's cover note, they were contained in the
8 Technical Annex. So when Rwanda's note referred
9 to the proposed arrangements, it was responding to
10 the Technical Annex as well as to the cover note. 11:18

11 This late argument, and this is my last
12 point, members of the Tribunal, before we break,
13 this late argument entirely fails to take into
14 account the important circumstance of the email
15 exchange between the two governments the previous 11:18
16 day in which the United Kingdom specifically
17 checked if Rwanda had any further comments on the
18 Technical Annex and Rwanda confirmed that it did
19 not, inviting the United Kingdom to proceed with
20 signing. The idea that its formal response the 11:19
21 next day did then not extend to the Technical
22 Annex is another unfortunate example of Rwanda
23 today imputing to itself underhanded conduct
24 in November 2024.

25 The reality is, again, that Rwanda was 11:19

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1 straightforwardly accepting the entire Note
2 Verbale, both its covering note and its Technical
3 Annex, just as it had done in the email the
4 previous day.

5 Members of the Tribunal, those are the 11:19
6 submissions of the United Kingdom on the topic of
7 the text of the November 2024 agreement. Unless
8 I can assist the Tribunal further on that point,
9 after the break I would propose to move to the
10 conduct of the parties subsequent to the 11:19
11 agreement.

12 THE CHAIRMAN: Thank you very much.

13 We will take a break for some 15 minutes.
14 We will resume at 11.35. Thank you.

15 The sitting is suspended. 11:20

16 (Short adjournment - 11.20 a.m. to 11.41 a.m.)

17 THE CHAIRMAN: Please be seated.

18 I give the floor to counsel for the
19 United Kingdom. You can continue, sir.

20 MR JURATOWITCH: Thank you, President of 11:41
21 the Tribunal.

22 If I could begin by completing and
23 correcting the answer I gave to Judge Donoghue's
24 technical question about the exhibit R-21.

25 The attachment did not make its way on to 11:41

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1 the record. Thank you for pointing that out.

2 I can say that the attachment is the text of the
3 Note Verbale, but it's not on the record.

4 I come, members of the Tribunal, to the
5 conduct of the parties subsequent to 11:41
6 the November 2024 amendment agreement.

7 Rwanda's case is it did not consent to be
8 bound by those notes, and that this was, Rwanda's
9 words, "entirely clear" to the United Kingdom.
10 That was the Reply at paragraph 11. 11:42

11 Now, if it had been entirely clear to the
12 United Kingdom that Rwanda had not consented to a
13 binding agreement to amend the 2024 Finance Note,
14 it is obvious from the context that we have looked
15 at this morning that the United Kingdom would have 11:42
16 either continued pressing for such an agreement or
17 urgently undertaken the legislative process it had
18 described to Rwanda leading to unilateral
19 termination of the treaty and therefore the
20 Finance Note. 11:42

21 The United Kingdom did neither of those
22 two things. That alone tells the Tribunal that at
23 least so far as the United Kingdom is concerned,
24 it considered that a binding amendment agreement
25 had already been reached. 11:43

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1 Rwanda has also argued that ETIF payment
2 obligations were not terminated in the November
3 notes because discussion of those obligations was
4 inextricably linked with the discussion of other
5 topics. 11:43

6 Now, if that were correct, whether it was
7 with respect to financial arrangements or DVAs,
8 when the parties had further exchanges on those
9 other topics, ETIF payment obligations would also
10 have featured, and that did not happen either. 11:43

11 The parties continued to discuss the
12 other topics but none of their discussions after
13 the November notes involved any further issue
14 concerning the ETIF payments. That is, of course,
15 because both states were proceeding on the common 11:43
16 basis that they had already definitively disposed
17 of that topic in 2024.

18 Rwanda yesterday was very dismissive of
19 much of the evidence of subsequent conduct and
20 appeared not to have grasped that its greater 11:44
21 significance is what is not mentioned in it.
22 That is so for R-39, it's so for R-46, and it's
23 also the case for R-40, for R-41, for R-42.

24 I won't take you to the detail of those
25 documents, Counsel for Rwanda took you to a number 11:45

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1 of them yesterday and it won't assist you if
2 I take you to documents simply to show you what
3 they don't say.

4 Two weeks after the last of those
5 documents in that run of subsequent conduct in the 11:45
6 exhibits I listed, two weeks after the last of
7 those, on 25 February 2025 the United Kingdom
8 imposed diplomatic measures on Rwanda in relation
9 to the conflict in the Democratic Republic of
10 Congo. The evidence of those measures is at R-43, 11:45
11 although there's no need to turn to that now.

12 On the same day Rwanda published a press
13 release. It is at R-44. It was titled "Rwanda
14 regrets measures by the UK", and it described
15 those measures as punitive and regrettable. 11:46

16 At C-31, and it certainly is relevant to
17 look at C-31 and you may wish to take it up, in
18 particular because of what Rwanda had to say
19 yesterday about it; this is the purported
20 rescission letter. Rwanda underestimated the 11:46
21 breadth of its significance.

22 The first paragraph of that letter at
23 C-31 refers to Rwanda's own responsive Note
24 Verbale of 14 November 2024. It recalls that it
25 conveyed that the proposed arrangements from the 11:46

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1 Government of the United Kingdom to forego any
2 additional payments under the Economic
3 Transformation and Integration Fund were
4 acceptable to Rwanda. Then the next paragraph of
5 the note is explicit about where those proposed 11:47
6 arrangements were to be found. That's on your
7 screen. It refers, picking up in the second line,
8 halfway along, to the proposed arrangements as
9 outlined in the Technical Annex to Note Verbale
10 182/2024. 11:47

11 Now, that is an answer to Professor Abdel
12 Wahab's question of yesterday which was not
13 referred to by the counsel of Rwanda when he took
14 the Tribunal to this document, concentrating only
15 on the word "rescinded". 11:47

16 It is the natural reading of the United
17 Kingdom's Note Verbale that the proposed
18 arrangements are to be found in the Technical
19 Annex, and that is confirmed by this subsequent
20 practice of the Government of Rwanda. The case 11:48
21 that Rwanda now urges on the Tribunal is flatly
22 contradicted by this letter. It confirms
23 unambiguously that Rwanda considered that when it
24 accepted the proposed arrangements, it accepted
25 the proposed arrangements in the Technical Annex, 11:48

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1 notably to amend the Finance Agreement.

2 Now, it was those proposed arrangements
3 that were then said no longer to be acceptable to
4 Rwanda. Rwanda sought to withdraw its consent
5 using the same word that it had used on 11:48
6 14 November to express that consent, preceded by
7 the word "not".

8 Now it was said in the letter, as a
9 result of this, that the previous arrangements
10 from November 2024 are hereby rescinded. Now, of 11:49
11 course, if those arrangements had not been legally
12 binding, there would have been no need to rescind
13 anything. In the face of that, Rwanda has been
14 making valiant efforts to say that "rescind" does
15 not necessarily connote that it is a legal 11:49
16 obligation that is being rescinded. I suppose
17 that logically that might be correct but it is
18 hardly cocktail party language.

19 The Tribunal is looking for what the
20 parties actually meant, not what they might 11:49
21 conceivably have meant on a strained
22 interpretation. It is very clear from this letter
23 that Rwanda considered itself to have been legally
24 bound and was purporting to unbind itself.

25 This, members of the Tribunal, is very 11:50

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1 clear subsequent conduct confirming two things.

2 First, that the proposed arrangements
3 that Rwanda's note of 14 November had accepted
4 were the proposed arrangements contained in the
5 Technical Annex. The Tribunal will have well in 11:50
6 mind the terms of the first numbered paragraph of
7 that Technical Annex.

8 The second thing is that Rwanda regarded
9 that acceptance as legally binding.

10 Now, of course, because the Amendment 11:50
11 Agreement was a legally binding agreement, that
12 did not provide for a right of unilateral
13 termination, this purported rescission made on
14 25 February 2005 in the context of what was
15 occurring at that time was of no legal effect. 11:51
16 Its significance is how Rwanda perceived what it
17 had already accepted three months earlier
18 in November 2024, and how different that is to
19 what is now being said by Rwanda in this
20 arbitration. 11:51

21 The UK's note of 6 March 2025 in response
22 to this purported rescission was entirely
23 consistent with the amendment agreement having
24 binding effect. It's at C-22 but there's no need
25 to go to it. It just confirms that the two Notes 11:51

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1 Verbales constituting the November agreement had
2 amended the June Finance Agreement to remove the
3 UK's obligation to make further ETIF payments.

4 Consistently with that, the UK then did
5 not make the April 2025 ETIF payment. 11:52

6 That, members of the Tribunal, is the
7 subsequent conduct. The text of the Notes
8 Verbales, the circumstances in which they were
9 drawn up, and the subsequent conduct of the
10 parties to them all indicate, each of them alone 11:52
11 and even more so when taken together, that both
12 Rwanda and the United Kingdom regarded those notes
13 as constituting a legally binding agreement that
14 terminated the obligation to make ETIF payments.

15 If that's correct, then it follows 11:53
16 straightforwardly that no further ETIF payments
17 are due or could be ordered from the United
18 Kingdom to Rwanda.

19 If the Tribunal were to find that the UK
20 is wrong about the November 2024 Notes Verbales 11:53
21 constituting a legally binding agreement
22 terminating the ETIF obligations, then, but only
23 then, the Tribunal would need to consider the
24 alternative argument based on preclusion. I'll
25 deal with that now. 11:53

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1 If the Arbitral Tribunal were to find as
2 I have just described, the United Kingdom submits
3 that Rwanda would nonetheless be precluded from
4 insisting on any right it may have to any further
5 ETIF payment. Rwanda has, again, been very 11:54
6 dismissive of this, saying if there was no legally
7 binding agreement, then there could be no
8 preclusion. It added to this yesterday that there
9 can be no estoppel against a treaty right.

10 I will, therefore, spend a few minutes on 11:54
11 the alternative case, and it is this: Rwanda
12 represented that it would forego further ETIF
13 payments. That representation was made by Rwanda
14 when, on 12 November, in R-36, it proposed the
15 terms for the United Kingdom's cover note and then 11:54
16 formally confirmed in its own executed note on
17 14 November that this proposal was acceptable to
18 it. That representation was also made in the
19 series of discussions and exchanges leading up to
20 the final notes and, in particular, in the 11:55
21 discussion between the Rwandan Foreign Minister
22 and the United Kingdom Home Secretary on
23 10 October 2024, of which the Tribunal has the
24 internal notes of both states.

25 On the alternative case, that 11:55

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1 representation would not alone have been legally
2 binding, even with the Reply Note. The question
3 would be whether it was nonetheless a
4 representation on which the United Kingdom was
5 reasonably entitled to rely. That question arises 11:55
6 in circumstances where the United Kingdom had a
7 unilateral right to terminate the Asylum
8 Partnership Agreement, and with it the Finance
9 Agreement containing the obligations to pay.

10 The United Kingdom made clear that if it 11:56
11 would otherwise have been obliged to make any
12 further ETIF payment, it would exercise that
13 unilateral right in sufficient time to terminate
14 the obligation before the year 2 payment under the
15 Finance Agreement fell due. 11:56

16 Against that background, the two states
17 embarked on a process of good faith negotiations
18 of the originating Note Verbale in which both
19 states regarded it as settled that no further ETIF
20 payment would be made. The chronology that 11:56
21 we have already traversed would be just as
22 relevant on this point. That process then led to
23 the November Notes. Even if those Notes were not
24 legally binding or otherwise did not amend the
25 Finance Agreement, the representation made by 11:57

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1 Rwanda through them, and through the discussions
2 and exchanges by which they were negotiated, meant
3 that the United Kingdom could reasonably rely on
4 that representation. For these purposes, just the
5 cover note and Rwanda's acceptance of it would be 11:57
6 enough.

7 The United Kingdom then did rely on
8 Rwanda's representation that it would forego the
9 remaining ETIF payments by itself foregoing the
10 opportunity to give unilateral notice of 11:57
11 termination of the Asylum Partnership Agreement in
12 sufficient time for the treaty to terminate before
13 the next ETIF payment fell due. That reliance
14 included deciding not to accelerate domestic
15 legislation, which it considered necessary as a 11:58
16 precursor to termination on the international
17 plane. The Tribunal has seen specific evidence of
18 that, of that reliance, at R-16, 17, 28, 29 and
19 32.

20 Whatever the position and processes under 11:58
21 domestic law, it was clear to both states that the
22 United Kingdom was relying on Rwanda's
23 representation by not unilaterally terminating the
24 agreement on the international plane in time for
25 the year 2 payment not to fall due. 11:58

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1 Preclusion is, of course, based on the
2 elemental principle of good faith. The November
3 Notes and the negotiations leading to them were
4 all plainly conducted and achieved in good faith
5 on both sides. 11:59

6 On a number of occasions yesterday,
7 Rwanda's counsel dismissed certain matters as
8 being the UK's problem or the UK's issue, not
9 Rwanda's. But in October and November of 2024, on
10 the other hand, the Government of Rwanda was 11:59
11 engaging in good faith with the issues that
12 confronted both states, and solutions were found
13 to those issues together. Once the United Kingdom
14 legitimately relied on the conclusion that those
15 negotiations had reached, as Rwanda knew it was 11:59
16 doing and allowed it to do, good faith requires
17 Rwanda to be precluded from departing from its
18 representation that it would forego any further
19 ETIF payments, and it would fall to the Tribunal
20 to enforce that preclusion. 12:00

21 There would be no impediment to that
22 arising from the fact that it would be preclusion
23 against the enforcement of a treaty right. Rwanda
24 has cited no authority for the proposition that
25 there can be no estoppel against a treaty right, 12:00

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1 and there's no support for such a limitation in
2 the opinion of Judge Fitzmaurice in the *Temple*
3 case, which is so often cited on estoppel in
4 international law, and no reason of principle why
5 preclusion shouldn't operate in such a
6 circumstance. 12:00

7 That, members of the Tribunal, is the
8 United Kingdom's alternative case.

9 Unless I can assist the Tribunal with
10 that, I propose to deal with what the Tribunal 12:00
11 might recognise as the year 3 argument. This
12 arises if the obligation persisted up until the
13 time that the treaty terminated earlier this week.
14 In that circumstance, there is an additional
15 reason, even if everything I've said until now is 12:01
16 wrong, why, for the year 3 payment -- so
17 originally due in April 2026 -- that would not
18 fall due in any event. That is that the agreement
19 terminated on 16 March 2026, and the Finance
20 Agreement terminated on the same date, and that is 12:01
21 before the year 3 ETIF payment would have fallen
22 due absent the amendment agreement, that's 23
23 April 2026.

24 Rwanda's submission yesterday was this.
25 It said that paragraph 5.2 of the Finance Note 12:01

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1 says that payments for subsequent years shall not
2 fall due. It says that the term "year" is defined
3 as a full calendar year, and because of that, even
4 if in the context of other provisions of the
5 Finance Note, year means a year long period 12:02
6 starting on 13 April, here it means the year
7 starting on 1 January of each year. And thus,
8 Rwanda's argument goes, because we're in the year
9 2026 already, it is only payments for 2027
10 onwards, if there were any, which would not fall 12:02
11 due following termination in March 2026.

12 Now, there are multiple problems with
13 that but I will limit myself to two.

14 First, it rests on an incorrect
15 interpretation of the term "year". The concept of 12:02
16 ETIF payments being referable to years is
17 addressed in 2.3.1 and 2.3.2 of the Finance Note,
18 which the Tribunal knows well. In that context,
19 each year commences on 13 April. That date is
20 expressly referred to in 2.3.2. 12:03

21 Payments due within 10 days of 13 April.
22 It doesn't say 23 April, it uses 13 April as the
23 reference point for the relevant year and makes
24 payment due within 10 days of that reference
25 point. 12:03

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1 Now, the reason to choose 13 April is
2 very clear indeed. It was the date that the MoU
3 and the 2022 finance arrangement came into effect,
4 and it was the date on which, five years later,
5 both of those instruments would have terminated by 12:04
6 default.

7 It was also the date on which, at the end
8 of the five-year period from the entry into force
9 of the MoU, the Asylum Partnership Agreement and
10 thus the 2024 Finance Agreement would terminate. 12:04

11 Rwanda's submission yesterday did not
12 appear to contest that in the context of these
13 paragraphs, the year starts on 13 April. Instead
14 its submission appeared to be that it was
15 perfectly possible that the word "year" in 5.2 of 12:04
16 the same document meant something different. It
17 is, of course, elementary that one would expect
18 the same meaning to appear in both places dealing
19 with the same subject matter. They were all
20 provisions concerning ETIF payments and they would 12:04
21 all be payable with reference to certain years.

22 The suggestion, then, was that full
23 calendar year must always mean a year starting on
24 1 January. Now, that's not correct and it's
25 equally capable, in the context of this treaty, of 12:05

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1 meaning a period starting on a given date and
2 ending one year later. There are other provisions
3 in the treaty where that is clearly the correct
4 reading. It's not just 2.3 where it doesn't mean
5 starting on 1 January. It's also Annex A to the 12:05
6 agreement at 9.3.1 where Rwanda undertakes to
7 ensure that each relocated individual is offered
8 support until the end of the period of five
9 continuous years from the date of their arrival in
10 Rwanda. That five-year period would obviously be 12:05
11 measured from the date of their arrival, not from
12 1 January of that year or the next year.

13 The second difficulty is that even if
14 "year" does mean a calendar year in the sense of 1
15 January to 31 December -- so even if what I just 12:06
16 said is wrong -- under Article 71(a) of the Vienna
17 Convention, the termination of the 2024 Finance
18 Agreement will release the parties from any
19 obligation further to perform that treaty unless
20 the agreement provides otherwise. That, of 12:06
21 course, would include making a year 3 payment in
22 April 2026 where termination occurred in
23 March 2026.

24 Paragraph 5.2 is certainly not a
25 departure from that rule. It says two things. It 12:07

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1 says:

2 "If cessation is initiated by the United
3 Kingdom and takes place after the Economic
4 Transformation and Integration Fund has been paid
5 for that year, no monies in respect of that year's 12:07
6 payment would be recoverable".

7 That has no application here; there's no
8 attempted recovery. Then, in the final sentence,
9 it says after cessation, no payments will be
10 payable for subsequent years. But 5.2 doesn't 12:07
11 deal with, on Rwanda's case, the current year, if
12 that year is January to December. We say it's not
13 January to December but even if it was, 5.2
14 doesn't deal with that situation.

15 Of course, the reason it doesn't deal 12:08
16 with it is because it's actually using an
17 April-to-April year. If I'm wrong about that,
18 Rwanda can't find, in 5.2, enough to get around
19 the problem arising from Article 70 of the Vienna
20 Convention. 12:08

21 Judge Tomka raised a hypothetical
22 question yesterday about the calculation on a pro
23 rata payment, and I accordingly respond equally
24 hypothetically only to say that the United Kingdom
25 does not make any objection to the calculation of 12:08

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1 Rwanda.

2 I'll deal very briefly, members of the
3 Tribunal, with Article 18 of the Asylum
4 Partnership Agreement. Rwanda's case on this has
5 changed in material ways at each step of the 12:08
6 procedure. I propose simply to deal with the
7 latest iteration, conscious that the Tribunal will
8 have well in mind what the United Kingdom has
9 already said in the Statement of Defence.

10 The latest iteration is that the breach 12:09
11 of Article 18 would be -- I'm quoting from 44 of
12 the Reply and you heard it yesterday -- would be a
13 live issue only in the event of the Tribunal
14 concluding that the obligation to pay in the
15 Finance Note was extinguished with binding effect 12:09
16 in November 2024. So this has now become only an
17 alternative argument.

18 Rwanda is not saying that Article 18 was
19 breached in any circumstance other than if it's
20 wrong on the Finance Agreement's ETIF payment 12:09
21 obligations no longer being in force.

22 It says that Article 18 conferred a
23 continuing obligation to engage in constructive
24 negotiations concerning financial arrangements.
25 It says that if, in November, the June agreement 12:10

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1 Note was amended, the UK then needed to negotiate
2 in order to avoid a situation in which the only
3 arrangements in place were minor procedural
4 obligations.

5 The United Kingdom did not do so, and 12:10
6 Rwanda says that the United Kingdom has averred
7 that no negotiations on financial arrangements
8 took place after November 2024. I will make three
9 points about that.

10 The first is that it's wrong to say that 12:10
11 because ETIF payments were terminated, there were
12 no financial arrangements persisting under
13 Article 18, or any at all. Some of them had
14 already been performed in full, and that included
15 payment by the United Kingdom of the year 1 ETIF 12:11
16 payment under the Finance Agreement, the
17 additional £20 million advance, and payments
18 related to the relocation of four individuals.

19 After November 2024, the ETIF payment
20 obligations were removed but the rest of the 12:11
21 Finance Agreement remained in effect, including
22 with respect to the obligations concerning the
23 £20 million advance. None of those can properly
24 be characterised as minor procedural obligations.

25 The second point is that even in these 12:11

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1 circumstances, there's no reason why the United
2 Kingdom would have been under an obligation to
3 negotiate any further. The obligation was to make
4 financial arrangements. The parties did that and
5 thus discharged that obligation. 12:12

6 The third point is that even if the
7 United Kingdom was required to negotiate further,
8 Rwanda has come not close to establishing a breach
9 of that obligation, if there were to be one
10 persisting. Rwanda's new point on this appears to 12:12
11 be what was said yesterday to be paragraph 111 of
12 the Statement of Defence, which has nothing to do
13 with this topic. Rwanda's Reply on this point
14 referred to 152(b) of the Statement of Defence.

15 What that paragraph ended with in the relevant 12:12
16 part was that there was no suggestion that the
17 parties sought to progress a termination package
18 that would include removing any persisting
19 obligation for the United Kingdom to make further
20 ETIF payments. Now, that's an entirely different 12:13
21 and more specific point.

22 The Tribunal has already seen other
23 financial arrangements that were discussed by the
24 parties after November 2024, including with
25 respect to the relocated individuals and the 12:13

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1 £20 million advance.

2 Members of the Tribunal, that is all on
3 the Article 18 case and concludes the United
4 Kingdom's submissions on the financial
5 arrangements. 12:13

6 Unless I can assist the Tribunal further
7 on those topics, I would respectfully ask the
8 President of the Tribunal to call on Ms Hart.

9 THE CHAIRMAN: I thank you, sir, for your
10 presentation. I give the floor to Ms Naomi Hart 12:14
11 to continue the United Kingdom's opening
12 submission.

13 You have been the floor, madam.

14 MS HART: Members of the Tribunal, Rwanda
15 alleges that the UK breached its obligations under 12:14
16 Article 19 of the Asylum Partnership Agreement.
17 It confirms that its case on this breach rests on
18 two documents, and the crux of its case is as
19 follows.

20 In a single note in March 2024, Rwanda 12:14
21 sought to engage in meaningful negotiations
22 concerning arrangements under Article 19. One
23 week later, the UK issued a letter which Rwanda
24 says signaled an unequivocal refusal to take any
25 steps under Article 19. That text is from 12:15

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1 paragraph 59 of its Reply.

2 The critical point in my submissions
3 today is that the United Kingdom's communication
4 did not convey a refusal to enter into
5 negotiations under Article 19. To the contrary, 12:15
6 the passages in that letter to which Rwanda refers
7 were not even about the duty to make arrangements
8 under Article 19.

9 What's more, there's a further passage in
10 the United Kingdom's letter which Rwanda has 12:15
11 ignored in which the United Kingdom willingly
12 agreed to attend a meeting to discuss the very
13 matters which Rwanda had raised, and that meeting
14 was held very shortly afterwards. Rwanda has
15 never suggested that in that meeting the United 12:16
16 Kingdom failed to participate in good faith.

17 As to the structure of my submissions
18 today, first I will spend some time on the content
19 of the obligation under Article 19. Second,
20 I will address the alleged breach of Article 19 12:16
21 advanced by Rwanda. Thirdly, I will address
22 Rwanda's claim for relief, although, of course,
23 that will be relevant only if, contrary to the
24 United Kingdom's submissions, a breach is found to
25 have occurred. 12:16

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1 Turning first to the content of the
2 Article 19 obligation. The text is on the screen.
3 I wish to draw your attention to seven aspects of
4 Article 19 which are relevant.

5 First, the obligation in Article 19 is 12:16
6 imposed on the parties jointly. Yesterday, Rwanda
7 positively averred that both parties were equally
8 obliged to negotiate under Article 1. You have
9 the transcript reference on the screen.

10 Second, there is no time limit within 12:17
11 which the parties are required to make
12 arrangements concerning resettlement. Again,
13 Rwanda agreed that point, both in its Reply and in
14 its opening submissions yesterday.

15 The third point arises from Rwanda's 12:17
16 opening submissions yesterday. It multiple times
17 criticised the United Kingdom for having taken no
18 steps whatsoever to operationalise Article 19.
19 This, it said, amounted to the United Kingdom
20 shirking the so-called burden, to use Rwanda's 12:17
21 word, of resettlement which Article 19
22 contemplated would fall on the United Kingdom.

23 In my submission, this is a rather
24 curious suggestion. Article 19 conferred a duty
25 to make arrangements. That, the parties agree, is 12:18

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1 an obligation borne equally by the parties. Until
2 arrangements for resettlement were made, the
3 United Kingdom had no obligation actually to
4 resettle anyone, that is to operationalise
5 anything. That specific point is something that 12:18
6 Rwanda also explicitly accepted yesterday. It did
7 so in terms which could not have been clearer. It
8 said:

9 "Rwanda accepts that the United Kingdom
10 was only obliged to perform the arrangements once 12:18
11 they had actually been agreed."

12 As I just explained, Rwanda has also
13 multiple times accepted that there was no time
14 limit for the arrangements to be made under
15 Article 19 and, thus, necessarily there could be 12:19
16 no time limit within which the United Kingdom
17 would need to operationalise any such
18 arrangements.

19 So precisely what Rwanda is complaining
20 about regarding a failure to operationalise, or 12:19
21 what it could have been complaining about in
22 March 2025, is entirely obscure. Importantly, and
23 perhaps because of that, Rwanda does not actually
24 advance a case that this failure to operationalise
25 was a breach of Article 19. Instead, its case is 12:19

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1 about the United Kingdom refusing to negotiate
2 when Rwanda invited it to do so.

3 My fourth point. The obligation in
4 Article 19 did not create an obligation to reach
5 agreement on arrangements relating to 12:20
6 resettlement. In both its Statement of Claim and
7 its Reply, Rwanda averred that Article 19
8 conferred an obligation to negotiate in good faith
9 with a view to reaching agreement. The United
10 Kingdom agrees. This Tribunal will be well 12:20
11 familiar with the numerous authorities which
12 support the proposition that a duty to negotiate
13 is not a duty to reach agreement. At footnote
14 318, the Statement of Defence cited no fewer than
15 nine such authorities. 12:20

16 Today I will draw attention to just two
17 particularly clear examples.

18 The first is the ICJ's judgment in
19 *Application of the Interim Accord* of 13 September
20 1995. Article 5 of the relevant agreement, now on 12:21
21 the slide, said:

22 "The parties agreed to continue
23 negotiations with a view to reaching agreement on
24 the difference described in two particular
25 Security Council resolutions." 12:21

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1 Now, both parties had accused the other
2 of intransigence in negotiations. What the court
3 said at paragraph 134 is as follows:

4 "The Court observes that the failure of
5 the Parties to reach agreement, 16 years after the 12:21
6 conclusion of the Interim Accord, does not itself
7 establish that either Party has breached its
8 obligation to negotiate in good faith. Whether
9 the obligation has been undertaken in good faith
10 cannot be measured by the result obtained. 12:21
11 Rather, the Court must consider whether the
12 Parties conducted themselves in such a way that
13 negotiations may be meaningful."

14 The same point came out clearly in the
15 arbitration concerning the *Tacna-Arica* question. 12:22
16 Following a period of conflict between Peru and
17 Chile, those two states concluded a peace treaty
18 known as the treaty of Ancón. Article 3 states
19 that the territory of the two provinces of Tacna
20 and Arica: 12:22

21 "Shall continue in the possession of
22 Chile for a period of 10 years."

23 And this is the important part. It went
24 on to say:

25 "After the expiration of that term a 12:22

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1 plebiscite will decide by popular vote whether the
2 territory" -- and I'm abbreviating here -- "is to
3 remain definitely under the dominion and
4 sovereignty of Chile or is to continue to
5 constitute a part of Peru." 12:22

6 Next it said:

7 "A special protocol, which shall be
8 considered an integral part of the present treaty,
9 will prescribe the manner in which the plebiscite
10 is to be carried out." 12:23

11 The Tribunal painted in stark terms why
12 an agreement may not be reached between the
13 parties. It said:

14 "As the parties agreed to enter into a
15 special protocol, but it did not fix its terms, 12:23
16 their undertaking was in substance to negotiate in
17 good faith to that end."

18 A little further on, it said:

19 "But, as the Parties did not in the
20 treaty prescribe the conditions of the plebiscite 12:23
21 and left these to be the subject of a further
22 agreement, it is manifest that with respect to the
23 negotiations looking to such an agreement they
24 retained the rights of sovereign States acting in
25 good faith." 12:23

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1 counter-factual, that an agreement to resettle
2 Rwandan refugees would have been reached; the only
3 question is how many refugees would have been
4 resettled."

5 But that is inconsistent with the 12:25
6 previous proposition I have just addressed, the
7 fact that the duty is to negotiate rather than to
8 reach agreement; the fact that the parties retain
9 the right to refuse to enter an agreement which is
10 unacceptable to them, and the fact that that may 12:25
11 occur even when both parties are engaging in
12 negotiations in good faith.

13 In its written pleadings, Rwanda's
14 obligation of result argument was based entirely
15 on one paragraph of an advisory opinion rendered 12:25
16 30 years ago in a very specific context. Of
17 course, that's the nuclear weapons advisory
18 opinion.

19 That opinion was concerned, in this
20 section, with Article VI of the Treaty on the 12:26
21 Non-Proliferation of Nuclear Weapons. That says,
22 as is on the screen now:

23 "Each of the Parties to the Treaty
24 undertakes to pursue negotiations in good faith on
25 effective measures relating to cessation of the 12:26

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1 nuclear arms race at an early date and to nuclear
2 disarmament, and on a treaty on general and
3 complete disarmament under strict and effective
4 international control".

5 The court, having quoted that provision, 12:26
6 proceeded to state as follows.

7 "The legal import of that obligation goes
8 beyond that of a mere obligation of conduct; the
9 obligation involved here is an obligation to
10 achieve a precise result - nuclear disarmament in 12:27
11 all its aspects - by adopting a particular course
12 of conduct, namely, the pursuit of negotiations on
13 the matter in good faith."

14 Article 6 specified not only negotiations
15 were to occur concerning a specific subject 12:27
16 matter, it also prescribed what the precise
17 outcome needed to be, that is a treaty on general
18 and complete disarmament. Thus, as the court
19 said, the result of nuclear disarmament in all its
20 aspects was expressly mandated as the ultimate 12:27
21 outcome of negotiations.

22 Yesterday, Rwanda did not go back to
23 nuclear weapons. Instead, it correctly recognised
24 that not all obligations to negotiate are the
25 same. Indeed, in other contexts, duties to 12:28

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1 negotiate, even ones which are highly prescriptive
2 about the future agreement which the parties
3 should seek to reach, have not been characterised
4 as obligations of result.

5 I've already shown the Tribunal the 12:28
6 relevant obligation to negotiate in the
7 *Tacna-Arica* arbitration. The relevant provision
8 stated a plebiscite will decide the future of the
9 disputed territory and that a special protocol
10 will prescribe the manner in which the plebiscite 12:28
11 is to be carried out. So to use Rwanda's
12 terminology of yesterday, the essential content of
13 the future agreement was clear. But even then,
14 the Tribunal did not characterise the duty as an
15 obligation of result. To the contrary, it 12:28
16 expressly recognised that the parties may not
17 reach agreement.

18 The court's judgment in *Bolivia v Chile*
19 is particularly helpful in this context because it
20 actually considers the nuclear weapons advisory 12:29
21 opinion, so I'll turn to that now.

22 The assertion by Bolivia was that Chile
23 has the obligation to negotiate with Bolivia in
24 order to reach an agreement granting Bolivia a
25 fully sovereign access to the Pacific Ocean. In 12:29

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1 considering the nature of that asserted
2 obligation, the court said the following:

3 "Negotiations between States may lead to
4 an agreement that settles their dispute, but,
5 generally [...] an obligation to negotiate does 12:29
6 not imply an obligation to reach an agreement.

7 "When setting forth an obligation to
8 negotiate, the parties may, as they did for
9 instance in Article VI of the Treaty on the
10 Non-Proliferation of Nuclear Weapons, establish an 12:29
11 "obligation to achieve a precise result", at which
12 point it cites the advisory opinion. "Bolivia's
13 submissions could be understood as referring to an
14 obligation with a similar character."

15 Pausing there, the court made that 12:30
16 observation because on one view the asserted
17 obligation, asserted by Bolivia, was precise as to
18 the target of negotiations. It said that Chile
19 must negotiate with a view specifically to reach
20 an agreement by which Bolivia would have a fully 12:30
21 sovereign access to the coast. But despite that,
22 the court did not adopt the obligation of result
23 characterisation.

24 At paragraph 89 it recalled that the
25 dispute concerned whether Chile was obliged to 12:30

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1 negotiate in good faith, and that this alleged
2 obligation does not include a commitment to reach
3 an agreement on the subject matter of the dispute.

4 That brings me back to Article 19. It
5 confers an obligation to make arrangements 12:31
6 concerning particular subject matter -- that is,
7 the resettlement in the UK of a portion of
8 Rwanda's most vulnerable refugees. That means it
9 is akin to the negotiation obligations at issue in
10 *Tacna-Arica* and *Bolivia v Chile*. It is not like 12:31
11 Article VI of the non-proliferation agreement
12 concerning disarmament because the parties did not
13 commit in advance to what the specific outcome of
14 their agreement needed to be.

15 That brings me to my sixth point. In 12:31
16 light of the fact that I've said that the duty is
17 not one to reach agreement, and it is not one of
18 result, I turn to the question of what can
19 constitute a breach of the obligation to negotiate
20 in Article 19. 12:32

21 At paragraph 180 of the Statement of
22 Defence, again the United Kingdom cited numerous
23 cases with which the Tribunal will be closely
24 familiar. I won't go through all of them, I will
25 just pick out some highlights. 12:32

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1 In the *North Sea* case, the court said
2 famously that a state cannot insist upon its own
3 position without contemplating any modification of
4 it.

5 In the *Tacna-Arica* award, once again it 12:32
6 said there must be something more than the failure
7 of particular negotiations; that there must be a
8 wilful refusal of either party to negotiate in
9 good faith; that there must be an intent to
10 frustrate negotiations, and that one state must 12:32
11 have the purpose to prevent any reasonable
12 agreement for, in that case, a plebiscite.

13 It also made important comments about the
14 standard of evidence which is required. It said:

15 "Such a purpose should not lightly be 12:33
16 imputed. It is not enough to have disputable
17 inferences, and instead requires clear and
18 convincing evidence which compels such a
19 conclusion", that is a conclusion that a state was
20 not willing to negotiate. 12:33

21 In the *Interim Accord* judgment which I've
22 already shown you, the court spoke about a state
23 obstructing negotiations. In *Barbados v Trinidad*
24 *and Tobago*, comments were made that an obligation
25 to negotiate will be breached if there is an 12:33

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1 unjustified breaking off of the discussions,
2 abnormal delays, disregard of the agreed
3 procedures, systemic refusal to take into
4 consideration adverse proposals or interests.

5 Finally, my seventh point on 12:33
6 interpretation, which is about the relevance of
7 the conduct of the party which is advancing the
8 allegation of breach by the other party.

9 Because in these proceedings Rwanda's
10 case is based on the United Kingdom having 12:34
11 obstructed an attempt by Rwanda to negotiate, it
12 is necessary for the Tribunal to look at Rwanda's
13 originating communication and whether it was a
14 genuine attempt to negotiate, because that will
15 affect how the United Kingdom's response is 12:34
16 interpreted.

17 In examining this issue, the Tribunal
18 should have in mind the established principle,
19 which Rwanda has never disputed, that for
20 negotiations to occur, more must happen than that 12:34
21 one party raises a dispute with the other. The
22 ICJ has held that negotiations are distinct from
23 mere protests or disputations, and it has
24 repeatedly affirmed that negotiations entail more
25 than the plain opposition of legal view or 12:34

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1 interests between two parties, or the existence of
2 a series of accusations or rebuttals or even the
3 exchange of claims.

4 That brings me to the breach alleged in
5 this case. As I've said, and as Rwanda affirmed 12:35
6 yesterday, Rwanda's entire case on Article 19 is
7 based on just two documents sent a week apart in
8 2025.

9 As I will show, what these two documents
10 prove is that Rwanda did not genuinely seek to 12:35
11 engage in negotiations concerning resettlement
12 pursuant to Article 19. In any event, the United
13 Kingdom's response comes nowhere near, as the
14 Tribunal in *Tacna-Arica* said, clear and convincing
15 evidence which compels a conclusion that the 12:35
16 United Kingdom refused to negotiate. To the
17 contrary, the United Kingdom expressly agreed to
18 negotiate.

19 Allow me to take the Tribunal first to
20 Rwanda's letter of 24 March 2025, which is C-33. 12:36
21 There are two points to draw to the Tribunal's
22 attention. The first is what Rwanda says about
23 the United Kingdom's conduct so far. This is
24 found in the final paragraph on the third page of
25 this document. 12:36

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1 Under Article 23 of the agreement, and
2 we agree with Rwanda, of course, that this is
3 clearly meant to be Article 19, the UK is legally
4 bound to resettle a portion of the most at-risk
5 refugees from Rwanda in recognition of the shared 12:36
6 responsibility to provide international
7 protection. Yet, the UK has failed to take any
8 concrete action to fulfil its obligations under
9 the agreement.

10 The following points arise from that 12:36
11 text. The allegation is that the United Kingdom
12 is bound to resettle a portion of refugees. That,
13 of course, is incorrect, as I have already
14 explained, and Rwanda expressly conceded
15 yesterday, in the clear terms which I already 12:37
16 referred to.

17 As to the final passage, namely the
18 accusation of a failure to take action to fulfil
19 the United Kingdom's obligations, my submission is
20 that read in the context of the paragraph as a 12:37
21 whole, Rwanda's accusation that the United Kingdom
22 failed to take concrete action is an accusation
23 that it had breached the agreement because it had
24 not actually resettled any refugees, what
25 yesterday it called a failure to operationalise 12:37

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1 Article 19.

2 Rwanda said yesterday that this
3 accusation in the final sentence of this paragraph
4 meant something different and that it was, in
5 fact, a criticism of the United Kingdom's failure 12:38
6 to take any steps under Article 19. So perhaps
7 not only a failure to operationalise but, for
8 example, also a failure to put forward concrete
9 proposals.

10 But the problem with that argument is, 12:38
11 first of all, it's not what it says but, second of
12 all, Rwanda has admitted that the obligation to
13 negotiate was borne equally by the parties, and
14 that the obligations to enter into, let alone
15 conclude negotiations was not time limited. So if 12:38
16 that was its complaint, there was no valid
17 criticism on this front either.

18 We will see how the United Kingdom
19 responded to this paragraph in just a moment.
20 Sticking with this document, the second point to 12:38
21 show you is what action Rwanda sought. That is
22 shown on the top of the fourth page, where it
23 says:

24 "Rwanda therefore demands that the Joint
25 Committee urgently finalise arrangements for the 12:39

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1 resettlement of these refugees in the UK."

2 The paragraph continues:

3 "The UK must cease its obstructionist
4 approach and comply with its duties under
5 international law." 12:39

6 That is a further accusation that the
7 United Kingdom had not been complying to date.

8 Then, still continuing with what action
9 Rwanda sought, there is a subheading 3 which reads
10 "request for a joint committee meeting". 12:39

11 Underneath that, it says:

12 "Rwanda formally submits that, in light
13 of the clear evidence of an existing dispute, the
14 Joint Committee is obliged to convene within 14
15 days of receipt of this communication, as per the 12:39
16 provisions of this Agreement."

17 Reading these statements in the context
18 of the document as a whole, and particularly in
19 light of Rwanda's multiple allegations that the
20 United Kingdom had breached international law, 12:40
21 these statements do not, in my submission,
22 constitute a genuine attempt to engage in
23 substantive negotiations for the purposes of
24 Article 19. They form part of a protest, a
25 disputation or an accusation that, based on the 12:40

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1 jurisprudence I've shown the Tribunal, does not
2 amount to a genuine attempt to negotiate.

3 Specifically in response to Judge Tomka's
4 question of yesterday, although it was posed to
5 Rwanda, Rwanda did not in this letter, or indeed 12:40
6 anywhere on the record, put forward any concrete
7 proposals. Rwanda was seeking simultaneously in
8 this letter to allege and generate a breach
9 without actually seeking to or ever having sought
10 to engage in negotiations. 12:40

11 Rwanda has said that the Joint Committee
12 has general powers to monitor implementation of
13 the agreement and can be a forum for negotiations.
14 However, Rwanda also accepted that the statements
15 in the parties' letters need to be looked at in 12:41
16 context.

17 When a dispute is notified by one party
18 to the other, the Asylum Partnership Agreement is
19 explicit about what the purpose of a meeting of
20 the Joint Committee is in that context. 12:41
21 Article 22(1) of the treaty says:

22 "Where a dispute is referred, the Joint
23 Committee shall meet to discuss and seek
24 resolution of the dispute by consultation."

25 Thus, when one party seeks a meeting 12:41

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1 under Article 22(1) of the agreement, it is not
2 for the purposes of seeking to make arrangements
3 in accordance with the substantive terms of the
4 agreement, it is for the purposes of seeking to
5 resolve a dispute that has been raised. 12:42

6 Looking at Rwanda's demand in context, it
7 was not a genuine attempt to negotiate under
8 Article 19.

9 In its Reply and yesterday, Rwanda has
10 been pressing the line that it was seeking to 12:42
11 invoke the Joint Committee's general function as a
12 forum for discussion between the parties. Now,
13 even taking Rwanda's case at its highest on this
14 front, Rwanda still cannot establish that the UK
15 breached Article 19 because of how the UK 12:42
16 responded.

17 Let's turn to the United Kingdom's
18 response now, which of course is at C-34.

19 For the purposes of Article 19, there are
20 three key passages. The first is the one at the 12:42
21 base of page 1, where the United Kingdom said:

22 "With regard to Article 19 of the
23 Agreement [...] the UK's position is that this
24 does not place a binding legal obligation on the
25 UK to resettle refugees from Rwanda to the UK as 12:42

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1 such arrangements have not been made."

2 This cannot even arguably support the
3 allegation that the United Kingdom refused to
4 negotiate. It is a direct response to the
5 allegation of breach which had just been levelled 12:43
6 against the United Kingdom in Rwanda's letter,
7 which I have shown to the Tribunal. What's more,
8 it's also plainly a correct statement of the legal
9 position, which Rwanda accepted in those clear
10 terms yesterday. 12:43

11 In its Reply at paragraph 59(a), Rwanda
12 said this statement overlooks the binding
13 obligation that the UK did have under Article 19,
14 and, because the United Kingdom did not mention
15 the obligation to make arrangements, by its 12:43
16 silence, the United Kingdom appear to deny that it
17 was subject to any binding obligation under
18 Article 19. It repeated that submission almost
19 verbatim yesterday.

20 In my submission, that is not a 12:44
21 meritorious point. The United Kingdom was simply
22 and straightforwardly responding directly to what
23 Rwanda had accused it of. It was not making a
24 statement, either by what it said or by what
25 it didn't say, about what obligations it did bear 12:44

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1 under Article 19.

2 The second important passage in this
3 letter on which Rwanda has placed great reliance
4 is the following sentence in the same paragraph,
5 which goes over the page if you're looking at the 12:44
6 hard copy.

7 It says:

8 "I refer to the Note dated 8 July 2024
9 which notified Rwanda that no future removals of
10 individuals to Rwanda under the MEDP are scheduled 12:44
11 and that the UK intends to formally terminate the
12 Agreement. Steps are still being taken to
13 terminate the agreement and no further individuals
14 will be relocated under the Partnership."

15 Rwanda says that this is an unequivocal 12:45
16 refusal to take any steps at all under Article 19.
17 Yesterday the way it put the submission was this
18 passage showed that the United Kingdom's view was
19 that Article 19 was switched off because of the
20 intended termination. In reality this sentence is 12:45
21 not even about Article 19. It is about the
22 relocation of individuals from the United Kingdom
23 to Rwanda. That the UK intended to terminate the
24 agreement and not to relocate any other
25 individuals to Rwanda were facts which the UK 12:45

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1 routinely recalled in its correspondence with
2 Rwanda. I'll show the Tribunal just one example
3 of that, which is C-32.

4 This is the United Kingdom's Note Verbale
5 of 6 March 2025 in response to what I might call 12:45
6 Rwanda's rescission Note of 25 February 2025. As
7 you can see, this Note Verbale contains almost
8 identical text to what was also included in C-34.
9 What's more, after recalling the fact that the UK
10 intends formally to terminate the treaty, that 12:46
11 steps are still being taken to terminate the
12 agreement, it goes on to say:

13 "And no further payment of the Economic
14 Development Partnership funds will be paid under
15 the Finance Note." 12:46

16 Back in C-34, there is no such statement
17 in relation to Article 19. The UK did not go on
18 to say, for example, "and therefore we will not be
19 settling any vulnerable refugees from Rwanda".

20 Especially in light of the jurisprudence 12:46
21 against relying on inferences, which I've already
22 inference the Tribunal, the Tribunal should not
23 draw the interference which Rwanda invites it to
24 in relation to that text in C-34.

25 Going back to C-34, the third important 12:47

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1 passage, and perhaps the most important one is the
2 final paragraph. Yesterday, Rwanda conspicuously
3 stopped short of showing the Tribunal this
4 passage.

5 As you have just seen from Rwanda's 12:47
6 originating letter, Rwanda had demanded that a
7 Joint Committee meeting be arranged, on its case,
8 so that resettlement could be discussed under
9 Article 19. This was the UK's response:

10 "We would like to formally offer the date 12:47
11 of 11 April to convene a virtual meeting of the
12 Joint Committee to discuss the issues raised in
13 your letter."

14 In this passage, there is no
15 discrimination as to which issues in Rwanda's 12:47
16 letter could be discussed. Any and all issues
17 raised in the letter, the UK was willing to meet
18 to discuss. So the Tribunal may well be left
19 asking: Where is the obstruction? Where is the
20 evidence of a wilful refusal to negotiate, an 12:48
21 intent to frustrate negotiations, a disregard of
22 agreed procedures, a systemic refusal to engage?
23 The answer is: nowhere.

24 The Joint Committee did meet, not on
25 11 April but the 16th. Let me show you what 12:48

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1 Rwanda has said about that meeting.

2 At paragraph 30 of its Notice of
3 Arbitration, it said:

4 "On 16 April 2025, the Joint Committee
5 met but was unable to resolve the parties' 12:48
6 dispute."

7 There was no allegation that the UK
8 failed to act in good faith at that meeting.

9 On 30 April, Rwanda wrote again to the
10 United Kingdom, at R-45. It says: 12:48

11 "Despite extensive discussions, the Joint
12 Committee was unable to reach a mutually
13 acceptable resolution on these matters", having
14 already referred to Article 19 as one of the
15 matters that was discussed. Here as well there is 12:49
16 no suggestion that the United Kingdom failed to
17 engage in good faith or that it sought to
18 frustrate the negotiations. Instead, what is said
19 is that both parties engaged in extensive
20 discussions. We know that the mere fact 12:49
21 they didn't reach agreement is not evidence of a
22 breach by either of them of the obligation to
23 negotiate.

24 The United Kingdom's submission,
25 therefore, is that the evidence relied on by 12:49

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1 Rwanda simply does not establish that the United
2 Kingdom refused to engage in negotiations pursuant
3 to Article 19.

4 Unless I can assist any further on the
5 question of either interpretation or breach of 12:49
6 Article 19, I will proceed to the third part of my
7 submissions, which concerns Rwanda's claim for
8 relief.

9 Of course, if the Tribunal has accepted
10 the United Kingdom's submissions up to now that 12:50
11 there was no breach, then we don't get to the
12 question of relief. But for completeness, I will
13 address in turn the two forms of reparations which
14 Rwanda seeks.

15 The first is compensation. Rwanda seeks 12:50
16 £6 million on the basis of what it calls a
17 "reasonable proxy". It invites the Tribunal to
18 assume that the parties would have reached
19 agreement, and more specifically that they would
20 have agreed that 300 vulnerable refugees would be 12:50
21 resettled in the United Kingdom, each of which
22 costs Rwanda £20,000 to continue accommodating.
23 That approach is both wrong in principle and
24 indefensible on the evidence.

25 As to principle, Rwanda said yesterday 12:50

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1 that it didn't understand the United Kingdom to
2 take issue with the logic of its approach. Allow
3 me to put beyond any doubt that consistently with
4 the United Kingdom's position in the Statement of
5 Defence, the United Kingdom does take issue with 12:51
6 Rwanda's logic.

7 Rwanda relied in its Statement of Claim
8 on ICJ decisions which allow for an approximation
9 of an applicant state's losses in certain
10 circumstances. But, as the United Kingdom pointed 12:51
11 out in paragraph 207 of its Statement of Defence,
12 the ICJ has held consistently that compensation
13 can only ever be awarded where there is a
14 sufficiently direct and certain causal nexus
15 between the wrongful act and the injury suffered 12:51
16 by the applicant. That particular formulation was
17 expressed in the *Costa Rica v Nicaragua* judgment.

18 Yesterday, Rwanda expressly accepted that
19 causation is an essential element before
20 compensation can be awarded. 12:51

21 Specifically, in the key reparations
22 judgment on which Rwanda relied, the *Armed*
23 *Activities* case, the court stated that the
24 approximation technique, that is the technique of
25 approximating the applicant state's losses, can be 12:52

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1 employed "where the evidence leaves no doubt that
2 an internationally wrongful act has caused a
3 substantiated injury but does not allow a precise
4 evaluation of an extent or scale of such injury."
5 So, both causation and substantiation of injury 12:52
6 are preconditions to recourse to the approximation
7 technique.

8 Where the alleged breach concerns a duty
9 to negotiate, no assumption can be made that even
10 with both parties engaging in good faith, any 12:52
11 particular terms would have been agreed, or even
12 that an agreement would have been reached at all.
13 It is quite possible that it wouldn't, such as if
14 the parties were simply irreconcilably far apart
15 on the number of refugees to be resettled. This 12:53
16 means that there is uncertainty not just in the
17 precise scale of the loss, it means that the
18 fundamental causation requirement is absent
19 altogether and that no injury can be
20 substantiated. 12:53

21 This is the point that the UK made in
22 paragraphs 208-210 of its Statement of Defence,
23 including specifically with reference to
24 jurisprudence concerning a duty to negotiate.

25 Rwanda has not had a real response. All 12:53

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1 it could say in its Reply at paragraph 61, the
2 passage I showed you earlier, is that Article 19
3 creates an obligation of result. I already
4 explained why that is not correct.

5 Yesterday all it said about this issue is 12:53
6 there was no dispute as to the requirement of
7 causation, without addressing the fact that this
8 is fatal to its claim for compensation.

9 As to the evidence in this case, Rwanda
10 says 300 refugees at £20,000 each. Neither 12:54
11 so-called proxy is reasonable for the reasons
12 which have already been presented at paragraph 211
13 of the Statement of Defence. Today I will just
14 focus on the number of 300 refugees. There is
15 simply no basis at all for suggesting that the 12:54
16 United Kingdom would agree to settle that number
17 of vulnerable refugees. It had already publicly
18 stated that only a small number of vulnerable
19 refugees would be relocated, potentially in the
20 tens. 12:54

21 Rwanda appeals to the so-called principle
22 of reciprocity and the fact that the 2024 Finance
23 Note refers to the possibility of 300 people being
24 relocated from the United Kingdom to Rwanda in the
25 first year of the agreement. Putting aside the 12:55

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1 fact that the real numbers never came even
2 remotely close to this, the reciprocity for
3 relocations from the UK to Rwanda was achieved in
4 other ways.

5 It was achieved in payments of £20,000 12:55
6 under the ETIF, and higher sums under
7 paragraph 2.4, per individual relocated, paid by
8 the United Kingdom to Rwanda. It was also
9 achieved in the United Kingdom being obliged to
10 pay the annual ETIF amounts, with which the 12:55
11 Tribunal is familiar, to contribute to Rwanda's
12 economic development. It was achieved by the
13 United Kingdom paying Rwanda a £20 million
14 operational advance. The idea that due to a vague
15 appeal to reciprocity, Rwanda would receive all of 12:55
16 these financial benefits and also be granted a
17 one-to-one ratio of refugees transferred from each
18 state to the other, simply has no basis.

19 When it comes to the question of
20 compensation, Rwanda in its Reply and again 12:56
21 yesterday criticised the United Kingdom for being
22 intransigent and for not proposing an alternative
23 methodology or quantum.

24 The United Kingdom's position, to be
25 clear, is that Rwanda cannot establish causation 12:56

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1 as a matter of principle. The fact that Rwanda's
2 figures are patently speculative and unrealistic
3 typify the problem which exists in principle. If
4 Rwanda has not discharged its burden to prove
5 losses caused by the United Kingdom's alleged 12:56
6 breach, or even that any loss at all was caused,
7 the United Kingdom is under no obligation to
8 explain how Rwanda could have argued its case
9 differently.

10 As for Rwanda's proposal that if the 12:57
11 Tribunal is not convinced by its compensation
12 claim, it should order the parties to go away and
13 negotiate on compensation, that may be appropriate
14 in cases where causation of a substantiated injury
15 is established and what remains is a 12:57
16 quantification of the precise reparations owed, as
17 was the case in *Armed Activities*. It is not
18 appropriate in a case where a causal nexus has not
19 been established at all and no injury has been
20 substantiated. 12:57

21 Second, Rwanda asks the Tribunal to order
22 the UK to make an apology. It has pointed out
23 that an apology is an established form of
24 satisfaction. The UK does not dispute that but it
25 does not follow that it is appropriate for an 12:57

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1 international court or tribunal to order a state
2 to apologise. An apology is an inherently
3 political act. Rwanda submitted yesterday that it
4 would be appropriate in this case because Rwanda
5 is aggrieved at the breach and the obligation in 12:58
6 question pursues humanitarian aims.

7 At paragraph 213 of its Statement of
8 Defence, the United Kingdom identified six cases
9 in which international courts or tribunals have
10 found that a declaration of wrongdoing constituted 12:58
11 sufficient satisfaction and therefore expressly
12 declined to order additional forms of
13 satisfaction, including apologies sought by
14 applicant states. Rwanda has not commented on any
15 of those cases. Yet in all of those cases, the 12:58
16 wronged states were aggrieved, including in cases
17 with serious humanitarian consequences, such as
18 the Arctic Sunrise arbitration in which Greenpeace
19 protestors had been detained for a period of
20 several months and had not been permitted to leave 12:59
21 Russia, even after it was ordered as a provisional
22 measure that Russia allow them to do so.

23 Rwanda has not cited a single judicial or
24 arbitral case in which an international court or
25 tribunal ordered a state to make an apology, and 12:59

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1 has simply not shown why this case should be
2 considered so distinctive that this Tribunal
3 should depart from the well-established
4 jurisprudence on this question.

5 Unless I can assist the Tribunal any 12:59
6 further by answering any questions?

7 THE CHAIRMAN: I give the floor to
8 Professor Wahab.

9 ARBITRATOR WAHAB: Thank you so much.
10 I have a couple of questions actually for both 12:59
11 parties but may be pertinent for the United
12 Kingdom.

13 Let me start from the last one, which is
14 Article 19. I think, if we can put it on screen,
15 it's at Slide 95, if it is easier for you. 12:59

16 Just to better understand the parties'
17 positions, I think the parties' submissions have
18 been focused on whether there is an obligation to
19 negotiate in good faith and whether that has been
20 fulfilled with all the elements, leaving aside 13:00
21 causation and the relief, all points noted.

22 My question is as follows to both
23 parties. Looking at that provision which says the
24 parties shall make arrangements for the United
25 Kingdom to resettle a portion of Rwanda's most 13:00

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1 vulnerable refugees in the United Kingdom,
2 recognising both parties' commitment towards
3 providing better international protection for
4 refugees, what I want to understand, perhaps, from
5 both parties -- and it can be for tomorrow, you 13:00
6 don't have to give me an answer now -- is whether
7 that provision encapsulates an obligation to
8 achieve a certain result which is making
9 arrangements to resettle a portion and that
10 negotiations in good faith is a means to that end. 13:01
11 And perhaps that explains why the parties are
12 centred on the obligation to negotiate in good
13 faith to put that into effect. And that also
14 explains the sensible submissions made by counsel
15 in that sense, if it's an obligation to negotiate 13:01
16 in good faith, there is no guaranteed outcome in
17 that sense.

18 So my question is whether that provision
19 in itself captures an obligation to negotiate in
20 good faith or whether the negotiation in good 13:01
21 faith is a means to achieve an end which relates
22 to a different obligation that is making
23 arrangements to resettle a portion.

24 It might not be relevant or it could be,
25 but just to understand the position whether the 13:01

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1 Tribunal is to focus simply on the obligation to
2 negotiate in good faith or is there an overarching
3 obligation beyond that. That is my first
4 question.

5 The other one relates, actually, to 13:02
6 estoppel or preclusion. It is a simple factual
7 chronology aspect.

8 You'll recall in the record there is C-25
9 which is the 6 July 2024 announcement by the UK
10 Prime Minister that the agreement will not go 13:02
11 forward and will be terminated; that was on 6 July
12 2024. Then C-35, which is the 16 December 2025
13 actual Note Verbale on termination. So it's
14 about, give or take, 18 or 17 months between the
15 announcement and taking that position to notify 13:02
16 under the agreement; that was the Note Verbale.

17 I just wondered why it took such a long
18 time for the UK. Is it a question that the
19 legislative process or the steps that have been
20 referred to required that longer time, so that is 13:03
21 the reason for taking such a long period, or is
22 there another reason?

23 Thank you.

24 MS HART: Thank you. If it's all right,
25 I will take you up on your invitation that the 13:03

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1 United Kingdom will answer those questions
2 tomorrow.

3 THE CHAIRMAN: Thank you very much.

4 This completes today's sitting. We will
5 resume tomorrow morning at 9.30. 13:03

6 Mr Verdirame?

7 LORD VERDIRAME: Thank you, Mr President.

8 If I may, there is one issue that I would
9 like to just raise today. It is in response to
10 the question that you put to us yesterday. And 13:03
11 the question was whether Rwanda had submitted any
12 concrete proposals for arrangements envisaged by
13 Article 19; that's transcript day 1, page 138.

14 In order to respond to the question,
15 Rwandan officials have done a further search and 13:04
16 there are three documents that, with leave of the
17 Tribunal, we would like to add to the record. At
18 this stage we make an application. We sent the
19 documents to the United Kingdom yesterday, and
20 I understand they are waiting for instructions, 13:04
21 but we will make the application to have those
22 documents added.

23 One of the documents is the Rwandan
24 minute of the meeting of 16 April that has been
25 referred to, in fact, just in submissions now as 13:04

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1 well and was mentioned in the Notice of
2 Arbitration. We believe that is responsive to the
3 President's question. And counsel for the United
4 Kingdom has mentioned specifically that meeting.

5 The other two documents are Rwandan 13:04
6 documents that we say are also responsive because
7 they set out certain proposals.

8 So there are three documents. I'm not
9 going to describe them any further for obvious
10 reasons. But we have made the application orally 13:04
11 and we can follow with a written application, but
12 obviously it would be useful to know where
13 we stand before I reply and see whether I can
14 refer to them.

15 THE CHAIRMAN: Thank you. 13:05

16 I don't know whether the United Kingdom
17 would like to reply immediately orally or wait for
18 the written application and then comment on it?

19 MR JURATOWITCH: Unless the Tribunal
20 would find it of assistance to hear from me now, 13:05
21 in which case I'm perfectly happy to say what I'm
22 able to at this stage, it might be more helpful
23 for everybody to see the written application.

24 THE CHAIRMAN: Okay. Thank you.

25 So I invite the delegation of Rwanda to 13:05

1 make an application, if they wish, to put before
2 the Tribunal these documents. And of course the
3 United Kingdom will have opportunity to present
4 comments, if any, in writing, well, in a
5 reasonable time after receiving that application. 13:06
6 Still today, yes? So when Rwanda may be in a
7 position to send the application?

8 LORD VERDIRAME: We'll send it shortly
9 after the hearing. It will just be a short
10 letter. It will repeat what I've said and what 13:06
11 the United Kingdom saw last night.

12 THE CHAIRMAN: If you submit that by
13 2 o'clock this afternoon --

14 LORD VERDIRAME: Yes.

15 THE CHAIRMAN: -- we'll give the United 13:06
16 Kingdom until 6 o'clock Hague time to comment to
17 present any observations on the application.

18 MR JURATOWITCH: Thank you, sir.

19 THE CHAIRMAN: Thank you very much.

20 So the sitting is adjourned. 13:06

21 (The hearing rose at 1306, to resume

22 Friday, 20 March 2025 at 0930)

23

24

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