

TEAM: IL-31

**6TH SURANA & SURANA AND RGNUL INTERNATIONAL LAW MOOT COURT
COMPETITION, 2023**

BEFORE THE INTERNATIONAL CRIMINAL COURT
The Hague, Netherlands

IN THE MATTER OF

PROSECUTOR

V.

THE POLICE CHIEF

-WRITTEN SUBMISSION ON THE BEHALF OF DEFENCE-

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

Date:

APPEALS CHAMBER

CASE BEFORE THE INTERNATIONAL CRIMINAL COURT

PROSECUTOR V THE POLICE CHIEF

**The Defence Counsel's Submission in the Appeal from the Trial
Chamber's Decision against Defendant the Police Chief of
Bangtangnagar**

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ABBREVIATIONS	FULL FORM
¶	Paragraph
AC	Appeals Chamber
Art(s).	Article(s)
CAH	Crime against Humanity
CIL	Customary International Law
ECtHR	European Court of Human Rights
EOC	Elements of Crime
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILC	International Law Commission
No.	Number
OTP	Office of Prosecutor
p.	Page
PTC	Pre-Trial Chamber
RS	Rome Statute
SCSL	Special Court for Sierra Leone
TC	Trial Chamber
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VCLT	Vienna Convention on Law of Treaties
Vol.	Volume

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- *Situation on the Registered Vessels of the Union of the Comoros, The Hellenic Republic and the Kingdom of Cambodia Public* (Decision on the Application for Judicial Review by the Government of the Comoros), Pre-Trial Chamber I, ICC-01/13 (16 September 2020) ["**Comoros et al. (2) PTC**"]35
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- *Prosecutor v Bosco Ntaganda* (Decision Concerning the Organisation of Common Legal Representation of Victims), Pre-Trial Chamber II, ICC-01/04-02/06 (2 December 2013) [**“Ntaganda 2013 PTC”**].....35
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- *Situation in the Democratic Republic of the Congo* (Decision on the applications for participation in the proceedings of VPRS 1, VPRS2, VPRS3, VPRS 4, VPRS 5 and VPRS 6), Pre-Trial Chamber I, ICC-01/04 (17 January 2006) [**“Situation in the Democratic Republic of the Congo PTC”**]37
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- *Prosecutor v Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić, also known as 'Vlado'* (Judgement) IT-95-16-T, Trial Chamber (14 January 2000) ["**Kupreškić et al. Judgement**"]40
- *Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze* (Judgement) ICTR-99-52-A, Appeal Chamber (28 November 2020) ["**Nahimana et al. Appeal**"]36
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- *Prosecutor v André Rwamakuba* (Judgement) ICTR-98-44C-T, Trial Chamber (20 September 2006) ["**Rwamaukba**"]30
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- *S.S. Lotus (Fr. v. Turk.)*, Judgment, P.C.I.J. (ser. A) No. 10 (7 September 1927) ["**Lotus Case**"].....24

MISCELLANEOUS CASES

- *Case C-115/05 Commission v. Federal Republic of Germany* [2007]32
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- *Case C-499/99 Commission v. Kingdom of Spain* [2002]32
- *Myrna Mack Chang v. Guatemala* [2003] Inter-Am Ct. H.R. (Ser. C) No. 10131
- *Paniagua Morales et al.* [1998] Inter-Am Ct. H.R. (Ser. C) No. 37.....31

ICC OFFICIAL DOCUMENTS

- Bureau Discussion Paper, United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court Part 2, Vol. III, UN Doc. A/CONF.183/C.1/L.53 (6 July 1998) [**Bureau Discussion Paper**]23
- Bureau: proposal regarding part 2, Doc. A/CONF.183/C.1/L.59, 10 July 1998 (Vol. III, 212) [**Bureau proposal (10 July 1998)**].24
- ICC-OTP, "Response to Communication Received Concerning Iraq" (9 February 2006).33
- ICC-OTP, "Draft Policy Paper on Preliminary Examinations," (4 October 2010).....32
- International Law Commission, Draft Statute for an International Criminal Court with commentaries (1994), Yearbook of the International Law Commission, Vol. II, Part Two, A/CN.4/SER.A/1994/Add.1 [**ILC Draft (1994)**].....24
- Luis Moreno-Ocampo, "Statement at the Informal Meeting of Legal Advisors of Ministries of Foreign Affairs," (Oct. 24, 2005).....33
- Report of the Preparatory Committee on the Establishment of an International Criminal Court, Doc. A/CONF.183/2, 14 April 1998 [**Preparatory Committee on the Establishment of an ICC (14 April 1998)**].23
- Report of the Preparatory Committee on the Establishment of an International Criminal Court (14 February 1997), United Nations General Assembly Official Records, A/AC.249/1997/WG.1/CRP.1 (14 February 1997) [**Preparatory Committee on the Establishment of an ICC (1997)**]23
- Preparatory Committee on the Establishment of an International Criminal Court (16 March – 3 April 1998), A/AC.249/1998/CRP.9, 1 April 1998, Text of the Draft Statute for the International Criminal Court – Part. 3 General Principles of Criminal Law [**Preparatory Committee on the Establishment of an ICC (1 April 1998)**]......30

6TH SURANA & SURANA AND RGNUL INTERNATIONAL LAW MOOT COURT COMPETITION, 2023

- Preparatory Committee on the Establishment of an International Criminal Court (16 March – 3 April 1998), Report of the Inter-Sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands, A/AC.249/1998/L.13, 4 February 1998 [**Preparatory Committee on the Establishment of an ICC (4 February 1998)**].....25
- Report of the International Law Commission on the Work of its 48th session, 6 May – 26 July 1996, Official Records of the General Assembly, 51st session, Supp. No. 10, Yearbook of the International Law Commission, Vol. II, Part Two, A/51/10 Vol. II, Part Two (1996) [**ILC Report (1996)**].23
- Christopher Keith Hall, ‘Suggestions Concerning International Criminal Court Prosecutorial Policy and Strategy and External Relations’ (2003) 2136

BOOKS

- Andrew Ashworth, *Principles of Criminal Law* (OCP 1991)..... 19
- Antonio Cassese, Paola Gaeta and John Jones, *The Rome Statute of the International Criminal Court: A Commentary*, vol. 1B (OUP 2002) [**"Cassese"**]20
- Cedric Ryngaert, *Jurisdiction in International Law* (2d edn, OUP 2008) [**"Ryngaert"**] ..24
- Cherif Bassiouni, *Introduction to International Criminal Law* (2nd edn., Martinus Nijhoff 2012) [**"Bassiouni"**].....20
- Darryl Robinson, *An Introduction to International Criminal Law and Procedure* (4th edn, CUP 2019) [**"Robinson"**]40
- Gilbert Bitti, *Article 21 of the Statute of the International Criminal Court and the treatment of sources of law in the Jurisprudence of the ICC*, in Carsten Stahn and Göran Sluiter, *The Emerging Practice of the International Criminal Court* (Leiden, 2009)28
- James Crawford and Ian Brownlie, *Brownlie's Principles of Public International Law*, (9th OUP 2019) [**"Brownlie's"**]24

6TH SURANA & SURANA AND RGNUL INTERNATIONAL LAW MOOT COURT COMPETITION, 2023

- Kai Ambos, *Forging a Convention for Crime against Humanity* (CUP 2011) ["**Kai Ambos**"].....41
- Kai Ambos, *Treatise on International Criminal Law*, Vol 2 (OUP 2014) ["**Kai Ambos**"]39
- Michail Vagias, *The Territorial Jurisdiction of the International Criminal Court* (CUP 2014) ["**Vagias**"]20
- Mohamed El Zeidy, *The Principle of Complementarity in International Criminal Law Origin, Development and Practice* (Brill 2008)29
- Oliver Dörr and Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties; A Commentary* (2nd edn, S pringer 2018).....28
- Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary on the Rome Statute* (3rd edn., C.H. Beck, Hart, Nomos 2008) ["**Triffterer**"]20,41
- Stegmiller, *The Pre-Investigation Stage of the ICC: Criteria for Situation Selection* (Duncker Humblot GmbH, 2011)33
- Susan Lamb, *the Rome Statute of the International Criminal Court* (OUP 2002) ["**Susan**"] 19
- William Schabas, *International Criminal Court: A Commentary on the Rome Statute* (OUP, 2nd Edn, 2016) ["**Schabas**"].....24

ACADEMICS ARTICLES

- David Luban, 'A Theory of Crimes Against Humanity' (2004) 29 Yale Journal of International Law 8532
- Donald Donovan and Anthea Roberts, 'The Emerging Recognition of Universal Civil Jurisdiction' (2006) 100(1) AJIL23

6TH SURANA & SURANA AND RGNUL INTERNATIONAL LAW MOOT COURT COMPETITION, 2023

- H Köchler, ‘Justice and Realpolitik: Predicament of the International Criminal Court’ (2017) 16, Chinese Journal of International Law 1627
- Jay Alan Sekulow & Robert Weston Ash, ‘The Issue of ICC Jurisdiction over Nationals of Non-Consenting, Non-Party States to the RS: Refuting Professor Dapo Akande’s Arguments’ (2019) 16 South Carolina Journal of International Law and Business 127
- Jean-Baptiste Maillart, ‘Article 12(2)(a) Rome Statute: The Missing Piece of the Jurisdictional Puzzle’ (2014) EJIL22
- John-Mark Iyi, ‘Re-thinking the Authority of the UN Security Council to Refer Nationals of Non-party States to the ICC’ (2019) 66 Netherlands International Law Review 391 ...27
- Kenneth C. Randall, ‘Universal Jurisdiction Under International Law’ (1988) 66 Texas Law Review 77823
- M.A. Newton, ‘Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court’ (2001) 167 Military Law Review30
- M.M. El Zeidy, ‘The Gravity Threshold under the Statute of the International Criminal Court,’ (2008) 19 Criminal Law Forum 3534
- Michael Akehurst, ‘Jurisdiction in International Law’ (1972–1973) 46 British Yearbook of International Law24
- Mireille Delmas-Marty, ‘Interactions between National and International Criminal Law in the Preliminary Phase of Trial at the ICC’ (2006) 4 Journal of International Criminal Justice30
- Olympia Bekou and Robert Cryer, ‘The International Criminal Court and Universal Jurisdiction: A Close Encounter?’ (2007) 56(1) ICLQ 4923
- Richard Vernon, ‘What is Crime Against Humanity?’ (2002) 10 The Journal of Political Philosophy 23132

6TH SURANA & SURANA AND RGNUL INTERNATIONAL LAW MOOT COURT COMPETITION, 2023

- S. SáCouto and K.A. Cleary. ‘The Gravity Threshold of the International Criminal Court.’
(2005) 23 American University International Law Review 807 32,34
- Stewart Manley, ‘Referencing Patterns at the International Criminal Court’ (2016) 27 EJIL
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- Yuval Shany, ‘The Law Applicable to Non-Occupied Gaza: A Comment on Bassiouni v.
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- Rome Statute (1998) 2178 UNTS 9018 [“RS”]. 19
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- Vienna Convention on Law of Treaties (1969) UN Doc 1155 UNTS 331, Article 3431

STATEMENT OF JURISDICTION

It is humbly submitted that the case to the Appeals Chamber of the International Criminal Court under Article 82 of the Rome Statute read with Article 12 of the Rome Statute.

“Article 82 of the Rome Statute of the International Criminal Court

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(a) A decision with respect to jurisdiction or admissibility;

Article 12 of the Rome Statute of the International Criminal Court

1. ...

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;”

All of which is most respectfully submitted.

STATEMENT OF FACTS

THE INCEPTION OF CHAOS

Near the north-west border of a country called Burmanyar, there lived for two centuries, a community called Sholingilar. After a military coup in Burmanyar in 2013, the new leadership began clamping down at the borders of the country to prevent people from fleeing the country.

LIFE IN BANGTANGNAGAR

The community, which numbered over 1 million persons, became desperate. More and more persons began to find innovative ways to cross the border and flee into Bangtangnagar illegally. Bangtangnagar was also a Theocratic State and followed a jus soli policy of citizenship. After 2 years, by 2020, over half a million Sholingilar persons were now residing in Bangtangnagar. The young people began to commit suicide and take to drugs.

ANOTHER MOVE OF DESPERATION

The Sholingilars decided to move. This time they were luckier as they moved to the more prosperous and more democratic country of Finlandia. They were not stopped from leaving. The name of the Police Chief in Bangtangnagar was now public. They were named as deliberately organizing witch-hunts and other crimes against humanity of Sholingilar people.

ICC'S PROCEEDINGS

The Finlandia civil society activists, along with Sholingilar people, raised the issue of the victimization of the Sholingilar people at the International Criminal Court. The Police Chief was defended at the ICC by his Government lawyers. Subsequent to the Trial decision, criminal charges of slavery and police torture were laid in Bangtangnagar against the Police Chief, and the matter is scheduled for trial there.

STATEMENT OF ISSUES

WHETHER OR NOT

ISSUE I

WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT THE APPEAL, AS BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE, AND OTHER GROUNDS?

ISSUE II

WHETHER THE POLICE CHIEF'S PROSECUTION IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

ISSUE III

WHETHER THE DISMISSAL OF THE CHARGE OF "DEPORTATION AS A CRIME AGAINST HUMANITY" IS VALID?

SUMMARY OF ARGUMENTS

ISSUE I: WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT THE APPEAL, AS BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE, AND OTHER GROUNDS?

It is humbly submitted by the Defence that the ICC does not have jurisdiction over the matter at the appeal, as Bangtanganagar is not a state party to the Rome Statute. The same would be substantiated in a five-fold argument. **Firstly**, Article 12(2)(a) of the Rome Statute requires the “Conduct in Question” to occur in the territory of a State Party. **Secondly**, the *Travaux Préparatoires* of the Rome Statute indicates a restrictive interpretation of the term “Conduct.” **Thirdly**, the Effect Doctrine cannot be applied under the ambit of Article 12(2)(a). **Fourthly**, the Principle of *Pacta Tertiis Nec Nocent Nec Prosunt* restricts the applicability of the Rome Statute only to the State Parties. **Fifthly**, the extension of the Objective Territoriality Principle in Myanmar-Bangladesh case does not apply in the present case.

ISSUE II: WHETHER THE POLICE CHIEF’S PROSECUTION IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

It is humbly submitted by that, the Police Chief’s prosecution is not admissible, as defined in the Articles of the Rome Statute. The same would be substantiated in a two-fold argument. **Firstly**, the case is inadmissible in view of Complementarity Principle as provided under Article 17. As the case is inadmissible as there was no unjustified delay or unwillingness on the part of the state to complete the investigation process. Therefore, the case is inadmissible as the ongoing investigation is genuine in nature.

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Secondly, the gravity threshold under Article 17 (1)(d) is not met. As there are no sufficient number of victims to satisfy the gravity of threshold. Therefore, nature, impact, and manner of commission of the alleged crime on the victims does not indicate the gravity of the offence.

ISSUE III: WHETHER THE DISMISSAL OF THE CHARGE OF “DEPORTATION AS A CRIME AGAINST HUMANITY” IS VALID?

It is humbly submitted that, the charges of Deportation as a Crime Against Humanity is valid. The same would be substantiated in a two-fold argument. *Firstly*, the conduct was not committed as a part of a widespread or systematic attack directed against civilian population. *Secondly*, the Police Chief did not have any intention or knowledge.

ARGUMENTS ADVANCED

[ISSUE I] WHETHER THE ICC HAS JURISDICTION OVER THE MATTER AT THE APPEAL, AS BANGTANGNAGAR IS NOT A STATE PARTY TO THE ROME STATUTE, AND OTHER GROUNDS?

[¶1] It is humbly submitted that, the ICC does not have jurisdiction over the matter at the Appeal, as Bangtanganagar is not a State Party to the Rome Statute. This will be substantiated in a five- fold argument. ***Firstly***, Article 12(2)(a) of the Rome Statute requires the “Conduct in Question” to occur in the territory of a State Party. ***Secondly***, the *Travaux Préparatoires* of the Rome Statute indicate a restrictive interpretation of the term “Conduct.” ***Thirdly***, the Effect Doctrine cannot be applied under the ambit of Article 12(2)(a). ***Fourthly***, the principle of *Pacta Tertiis Nec Nocent Nec Prosunt* restricts the applicability of the Rome Statute only to the State Parties. ***Fifthly***, the extension of the Objective Territoriality principle in Myanmar-Bangladesh case does not apply in the present case.

[A] ARTICLE 12(2)(A) OF THE ROME STATUTE REQUIRES THE “CONDUCT IN QUESTION” TO OCCUR IN THE TERRITORY OF A STATE PARTY

[¶2] It is submitted that, Article 12(2)(a)¹ requires the “Conduct in Question” to occur in the territory of a State Party.² Article 12(2)(a) interpreted in light of the text of the Rome Statute and the Elements of Crimes³ indicates that each crime within the jurisdiction of the Court is comprised of two distinct components, the conduct and the consequences.⁴ The same will be substantiated by a two-fold argument. ***Firstly***, the Rome Statute distinguishes between the

¹ Rome Statute (1998) 2178 UNTS 9018 , Article 12(2)(a).

² Andrew Ashworth, *Principles of Criminal Law* (Oxford Clarendon Press 1991) 67.

³ Vienna Convention on Law of Treaties (1969) 1155 UNTS 331, Article 31; *Lubanga* 2007 PTC [277] - [285].

⁴ Susan Lamb, *the Rome Statute of the International Criminal Court* (Oxford Publications 2002) 105-107.

crime and its components [A.1]. ***Secondly***, the Elements of Crime distinguish between the crimes and its components [A.2].

[A.1] ***The Rome Statute distinguishes between the Crime and its Components***

[¶3] It is submitted that, Article 30(2)⁵ distinguishes between "Conduct," "Consequence" and "Circumstance" as material elements that must be committed with intent and knowledge.⁶ Moreover, Article 31⁷ distinguishes 'the time in which the crime was conducted' and 'the time in which the result of the crime was manifested.'⁸ Both the provisions indicate the distinction between the conduct and its resulting consequences.⁹

[¶4] The intentional use of different terms is corroborated by Art. 12(2)(a) itself because, it distinguishes between "conduct" occurring on territory and "crime" being committed on board a vessel or aircraft.¹⁰ Furthermore, under Article 20(1),¹¹ a person acquitted or convicted by the Court could be tried for the same conduct or action on account of other criminal charges at the national level.¹² It can be inferred that that the same actions could lead to multiple crimes. Hence, it demonstrates that 'Conduct' is not synonymous to 'Crime.'

⁵ Rome Statute (1998) 2178 UNTS 9018, Article 30(2).

⁶ Michail Vagias, *The Territorial Jurisdiction of the International Criminal Court* (Cambridge University Press 2014) 91-92.

⁷ Rome Statute (1998) 2178 UNTS 9018, Article 31.

⁸ Otto Triffterer and Kai Ambos, *The Rome Statute of the International Criminal Court: A Commentary on the Rome Statute* (3rd edn., C.H. Beck, Hart, Nomos 2008) 872.

⁹ Antonio Cassese, Paola Gaeta and John Jones, *The Rome Statute of the International Criminal Court: A Commentary*, vol. 1B (OUP 2002), 1028–1029.

¹⁰ Cherif Bassiouni, *Introduction to International Criminal Law* (2nd edn., Martinus Nijhoff 2012) 56.

¹¹ Rome Statute (1998) 2178 UNTS 9018 ("RS"), Article 20(1).

¹² Triffterer (2008) 686-687; Cassese (2002) 723-724.

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[¶5] Therefore, this Court must find that the term ‘Conduct’ in Article 12(2)(a) must be defined narrowly to include only the underlying acts taken to effectuate the crime, to the exclusion of the consequences of such act(s).

[A.2] *The Elements of Crime distinguish between the crimes and its components*

[¶6] It is submitted that, the Elements of Crime also make it clear that ‘Conduct’ and ‘Consequence’ are subcomponents of the overarching notion of ‘Crime.’¹³ The General Introduction of EOC addresses the “conduct, consequences and circumstances associated with each crime.”¹⁴ It further states that “a particular conduct may constitute to one or more crimes.”¹⁵

[¶7] A reading of Article 12(2)(a) in light of the distinction drawn in the Statute and in the Elements between the crime and its components, the conduct and the consequences, leads to the conclusion that ‘conduct’ refers to a particular behaviour alone, to the exclusion of the consequences of such behaviour.

[¶8] In the present case, the ‘Consequences’ felt in Finlandia are not a part of ‘Conduct’¹⁶ happening in Bangtangnagar as the Rome Statute coupled with the EOC clearly establish that both are separate and are distinct. Therefore, using an extensive interpretation of the term "conduct" is against the systematic and teleological interpretation of the Rome Statute and EOC.¹⁷

¹³ Vagias (2014), 91–92.

¹⁴ Elements of crimes, General introduction [7].

¹⁵ Triffterer (2008) 872; Cassese (2002) 1028-1029.

¹⁶ Moot Proposition ¶ 13.

¹⁷ *Myanmar* authorisation decision [46].

[B] THE *TRAVAUX PRÉPARATOIRES* OF THE ROME STATUTE INDICATES A RESTRICTIVE INTERPRETATION OF THE TERM “CONDUCT”

[¶9] It is submitted that, as per Article 31 (1) of Vienna Convention on the Law of Treaties, a provision of a treaty must be interpreted in light of its object and purpose¹⁸ determined with reference to its *Travaux Préparatoires*.¹⁹ In the first version, draft Article 21(1)(b)(ii), referred to the ‘State on the territory of which the act or omission in question occurred’ and not to ‘the State on the territory of which the crime was committed.’²⁰

[¶10] Throughout the preparatory documents from 1997 to 1998, the same language is used in the draft provisions relating to the territorial jurisdiction of the Court, it is triggered when the ‘Act or Omission’ occurred on a State Party’s territory.²¹ In the final adopted version of the Statute, the term ‘Conduct’ replaced the expression ‘Act or Omission.’ The only reason for this change lies in the fact that the parties could not come to an agreement on the role of ‘omissions’ in the Elements of Crimes.²²

[¶11] This indicates that ICC's territorial jurisdiction was always intended to be subjective (conduct understood as an act and/or possibly an omission) and not only objective (conduct understood as crime, which would also encompass the result). Additionally, ILC members expressed that ICC should not exercise jurisdiction unless States Parties gave their express

¹⁸ Vienna Convention on Law of Treaties (1969) 1155 UNTS 331, Article 31(1).

¹⁹ *The Vienna Convention on the Law of the Treaties: A Commentary*, Vol. 2 (Olivier Corten, Pierre Klein, 2nd edn, Oxford University Press 2011).

²⁰ Article 21(1)(b)(ii) ILC Draft 1994; Jean-Baptiste Maillart, ‘Article 12(2)(a) Rome Statute: The Missing Piece of the Jurisdictional Puzzle’ (2014) EJIL: Talk.

²¹ Preparatory Committee on the Establishment of an ICC (14 August 1997) Draft Article 21 and Draft Article 25; Preparatory Committee on the Establishment of an ICC (14 April 1998) 23, Draft Article 7 (option 2) and 26, further options for Articles 6, 7, 10 and 11, Draft Article 7; Bureau proposal (10 July 1998) Draft Article 7.

²² Vagias (2014) 92; Jean-Baptiste Maillart, ‘Article 12(2)(a) Rome Statute: The Missing Piece of the Jurisdictional Puzzle’ (2014) EJIL: Talk; Saland, *The International Criminal Court: The Making of The Rome Statute: Issues, Negotiations, Results* (Kluwer Law International 1999) 205.

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consent.²³ Strong reservations were expressed with regard to references to UNSC and the view was also expressed that ICC should not exercise jurisdiction unless States Parties gave their express consent.²⁴

[¶12] During the drafting negotiations, Germany proposed to include the ground of Universal Jurisdiction,²⁵ which enable states to prosecute perpetrators of heinous crimes, regardless of where they occurred or the accused’s nationality.²⁶ However, this proposal was strongly opposed²⁷ and was ultimately excluded from Article 12 due to the collective fear that this would give the Court an overly expansive jurisdiction.²⁸

[¶13] Therefore, in the present case, considering the *Travaux Préparatoires* of the Rome Statute, the consequences in Finlandia should not attract the jurisdiction of the Court as conduct and consequences are distinct and consequence alone is not a crime per se.

**[C] THE ‘EFFECT DOCTRINE’ CANNOT BE APPLIED UNDER THE AMBIT OF
ARTICLE 12(2)(a)**

[¶14] It is submitted that, as per the “Effects Doctrine,” a Court will assume jurisdiction of the matter that has effects in its territory, even if the conduct of the crime was carried out outside

²³ Report of the International Law Commission on the Work of its 48th session, 6 May – 26 July 1996, Official Records of the General Assembly, 51st session, Supp. No. 10, Yearbook of the International Law Commission, Vol. II, Part Two, A/51/10 Vol. II, Part Two (1996).

²⁴ *ibid.*

²⁵ Bureau Discussion Paper, *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court* Part 2, Vol. III, UN Doc. A/CONF.183/C.1/L.53 (6 July 1998).

²⁶ Kenneth C. Randall, ‘Universal Jurisdiction Under International Law’ (1988) 66 *Texas Law Review* 778; Donald Donavan and Anthea Roberts, ‘The Emerging Recognition of Universal Civil Jurisdiction’ (2006) 100(1) *AJIL* 142, 142–144.

²⁷ Preparatory Committee on the Establishment of an ICC (20 February 1997) Chairman’s Text, Draft Article H. See also Preparatory Committee on the Establishment of an ICC (4 February 1998) Draft Article 23(H), 59; Preparatory Committee on the Establishment of an ICC (1 April 1998) Draft Article 23(H), 9.

²⁸ Olympia Bekou and Robert Cryer, ‘The International Criminal Court and Universal Jurisdiction: A Close Encounter?’ (2007) 56(1) *ICLQ* 49, 51.

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its territory.²⁹ While this court may consider rules of International Law in its interpretation of the Rome Statute,³⁰ the Effects jurisdiction is not recognised under CIL, given its insufficient widespread state practice and *opinio juris*.³¹ Furthermore, the UN General Assembly disapproved of the Effects jurisdiction for undermining the sovereign equality of States.

[¶15] Had the drafters intended the ICC to have effects jurisdiction,³² they would have included it in the Statute.³³ Application of “Effects Doctrine” will manifest a contrary intention of the drafters³⁴ and negotiators³⁵ who rejected the application of universality in the Rome Statute³⁶ by not including it in the first place.³⁷

[¶16] It is further submitted that, the Prosecution might seek to broaden Article 12(2)(a) through a liberal use of the “Effects” doctrine in CIL.³⁸ However, CIL is applied “in the second place” under Article 21 of the Statute, only where there is a lacuna in the ICC’s internal law, and the lacuna cannot be filled by the VCLT and “Internationally recognised Human Rights”

²⁹ Cedric Ryngaert, *Jurisdiction in International Law* (2d edn, Oxford University Press 2008) 76.

³⁰ Vienna Convention on Law of Treaties (1969) 1155 UNTS 331, Article 31(3)(c).

³¹ James Crawford and Ian Brownlie, *Brownlie’s Principles of Public International Law*, (9th OUP 2019).

³² Bureau: proposal regarding part 2, Doc. A/CONF.183/C.1/L.59, 10 July 1998 (Vol. III, 212).

³³ International Law Commission, Draft Statute for an International Criminal Court with commentaries (1994) Yearbook of the International Law Commission, Vol. II, Part Two, A/CN.4/SER.A/1994/Add.1.

³⁴ Bureau: proposal regarding part 2, Doc. A/CONF.183/C.1/L.59, 10 July 1998 (Vol. III, 212) [Bureau proposal (10 July 1998)].

³⁵ Michael Akehurst, ‘Jurisdiction in International Law’ (1972–1973) 46 *British Yearbook of International Law*, 145, 154

³⁶ Vagias (2014) 168.

³⁷ William Schabas, *International Criminal Court: A Commentary on the Rome Statute* (OUP, 2nd Edn, 2016), 278-283.

³⁸ *Lotus Case* ICJ [23].

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under Article 21(3) of the Statute.³⁹ Therefore, justifying that “Effect” doctrine is flawed as the Rome Statute coupled with EOC provides with the clear answer.

[¶17] As demonstrated above, the interpretation of ‘conduct’ as ‘act(s) underlying the crime’ directly flows from the contextual interpretation of the Statute and from its drafting history. Such interpretation takes precedence in this case over conclusions reached by this Court in another case, facing different facts and law.

[¶18] Although the Effects jurisdiction is not as far-reaching as Universal Jurisdiction, it has been criticised as a “slippery slope which leads away from the territorial principle towards Universal Jurisdiction.”⁴⁰ A restrictive interpretation of Article 12(2)(a) would, therefore, be consistent with the State Parties’ clear intentions to prevent jurisdictional overreach.⁴¹

[¶19] The International Court of Justice found that Turkey could assert domestic jurisdiction over a French national for a crime that occurred on the open seas, because it affected Turkey (damaging a Turkish ship and harming Turkish nationals). The Lotus case arose under Turkish domestic law rather than an International Treaty or Statute, and came to stand for the concept that sovereign States may exercise jurisdiction in any manner not explicitly prohibited by international law.⁴² The situation in Finlandia, however, does not arise under domestic law, rather, it is before the ICC, and the ICC’s governing statute does not permit jurisdiction on the basis of effects.

³⁹ *Omar Al Bashir* PTC, [44] *Ruto et al.* PTC [289].

⁴⁰ Michail Vaigas, *The Territorial Jurisdiction of the International Criminal Court* (CUP 2014).

⁴¹ Preparatory Committee on the Establishment of an International Criminal Court (16 March – 3 April 1998), Report of the Inter-Sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands, A/AC.249/1998/L.13, 4 February 1998 [Preparatory Committee on the Establishment of an ICC (4 February 1998)].

⁴² *S. S. Lotus* ICJ [[5] [13]].

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[¶20] *In arguendo*, the Court finds the putative “Effects” doctrine to be applicable in Article 12(2)(a), the Defence submits that, the correct application of the doctrine requires the Effects to be substantial, direct, and foreseeable.⁴³ It is also reinforced in another context by this Court in *Mbarushimana*.⁴⁴

[¶21] Lacking substantial and foreseeable grounds, the ‘Effects Doctrine’ would be a disguise for Universal jurisdiction, thereby running contrary to the intention of the Statute negotiators where such a model was emphatically rejected.⁴⁵ In the present case, neither the Police chief’s conduct was widespread so as to come under the ambit of “Substantial” nor he could “Foresee” that his conduct will lead to Deportation of Sholingilars.

[D] THE PRINCIPLE OF *PACTA TERTIIS NEC NOCENT NEC PROSUNT* RESTRICTS THE APPLICABILITY OF THE ROME STATUTES ONLY TO THE STATE PARTIES

[¶22] It is humbly submitted that, the Article 34⁴⁶ is derived from the principle of *Pacta Tertiiis Nec Nocent Nec Prosunt*, which is elucidated as a CIL. The maxim provides that ‘a treaty does not create either obligations or rights for a third State without its consent.’⁴⁷

[¶23] There is no such principle in International Criminal Law that permits one State to modify or waive the sovereign rights of another State with respect to consenting to or rejecting a

⁴³ Vagias (2014) 106.

⁴⁴ *Mbarushimana* PTC [142]- [144].

⁴⁵ Bureau: Proposal regarding part 2, Doc. A/CONF.183/C.1/L.59, 10 July 1998 (Vol. III, 212) [Bureau proposal (10 July 1998)]. See also Yuval Shany, ‘The Law Applicable to Non-Occupied Gaza: A Comment on Bassiouni v. Prime Minister of Israel’ (2009) 42 *Israel Law Review*, 101, 111–112.

⁴⁶ Vienna Convention on Law of Treaties (1969) 1155 UNTS 331, Article 34.

⁴⁷ *ibid.*

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treaty.⁴⁸ Moreover, if no State is permitted to do so, no non-sovereign, subordinate creation of foreign States can be allowed to do so.⁴⁹

[¶24] It is a fundamental legal norm of the International Legal order that a State does not incur obligations or rights under a treaty without its consent.⁵⁰ Furthermore, State consent is a legal norm and an attribute of State sovereignty remains the basis of a legal obligation in International Law.⁵¹

[¶25] It is submitted that, by declining to be a signatory to the Rome Statute, Bangtangnagar, negates all authority of entities like the ICC.⁵² Therefore, the ICC should observe the principle of *Pacta Tertiis Nec Nocent Nec Prosunt* and restrict its jurisdiction to only State Parties.

**[E] THAT THE EXTENSION OF THE OBJECTIVE TERRITORIALITY PRINCIPLE
IN MYANMAR-BANGLADESH CASE DOES NOT APPLY IN THE PRESENT CASE**

[¶26] It is submitted that; the Prosecution might rely on the PTC's findings in the Bangladesh/Myanmar Jurisdiction Ruling and Investigation Decision. However, the Appeals Chamber is evidently not bound by this decision and should engage in its own evaluation of Article 12(2)(a) from first principles. Nor are these decisions persuasive.

⁴⁸ Jay Alan Sekulow & Robert Weston Ash, 'The Issue of ICC Jurisdiction over Nationals of Non-Consenting, Non-Party States to the RS: Refuting Professor Dapo Akande's Arguments' (2019) 16 South Carolina Journal of International Law and Business 1.

⁴⁹ *Bemba et al.* TC [93].

⁵⁰ John-Mark Iyi, 'Re-thinking the Authority of the UN Security Council to Refer Nationals of Non-party States to the ICC' (2019) 66 Netherlands International Law Review 391, 402-410.

⁵¹ H Köchler, 'Justice and Realpolitik: Predicament of the International Criminal Court' (2017) 16, Chinese Journal of International Law 1, 7-9.

⁵² *ibid.*

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[¶27] According to the hierarchy established in Article 21 of the Statute, precedent of the Court has no compulsory effect.⁵³ Accordingly, case law only intervenes as a subsidiary means of interpretation,⁵⁴ when the Statute and the Elements do not provide satisfactory guidance.⁵⁵

[¶28] As demonstrated above, the interpretation of ‘conduct’ as ‘act(s) underlying the crime’ directly flows from the contextual interpretation of the Statute and from its drafting history. Such interpretation takes precedence in this case over conclusions reached by this Court in another case, facing different facts and law.

[¶29] The PTC referred to CIL without proper analysis of the Court’s internal laws and the textual constraints imposed on its jurisdiction.⁵⁶ Furthermore, most of the National Laws reviewed explicitly states that the Country will have jurisdiction over a crime if the conduct (i.e. act) of the crime occurs on their territory.⁵⁷ As explained above, these statutory formulations differ markedly from the one which the Court is required to interpret, pertaining to “conduct in question.”

[¶30] Applying the conclusion reached in Myanmar that ‘conduct’ means ‘crime’ for the purpose of Article 12(2)(a) beyond inherent transboundary crimes would lead to problematic results. It would grant jurisdiction to the Court over any situation that has some ramification on the territory of a State Party, regardless of whether or not the principal actions that effectuated the alleged crime took place on a State Party’s territory. These risks awarding

⁵³ Stewart Manley, ‘Referencing Patterns at the International Criminal Court’ (2016) 27 EJIL 196; Gilbert Bitti, ‘Article 21 of the Statute of the International Criminal Court and the treatment of sources of law in the Jurisprudence of the ICC’, in Carsten Stahn and Göran Sluiter, *The Emerging Practice of the International Criminal Court* (Leiden, 2009), 292.

⁵⁴ Cassese Commentary (2002) 1062.

⁵⁵ *Omar Al Bashir* 2009 PTC [44]; *Ruto et al.* PTC [289].

⁵⁶ *Myanmar* decision on jurisdiction [65].

⁵⁷ Oliver Dörr and Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties; A Commentary* (2nd edn, Springer 2018).

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universal jurisdiction to the Court, which the States Parties rejected during the negotiations of the Statute.⁵⁸

[ISSUE 2] WHETHER THE MATTER IS ADMISSIBLE, AS DEFINED IN THE ARTICLES OF THE ROME STATUTE?

[¶31] It is humbly submitted that, the present matter is inadmissible, as defined in the articles of the Rome Statute. The same would be substantiated in a two-fold manner. ***Firstly***, the case is inadmissible in view of Complementarity Principle as provided under Article 17. ***Secondly***, the case is not of sufficient gravity.

[A] THE CASE IS INADMISSIBLE IN VIEW OF COMPLEMENTARITY PRINCIPLE AS PROVIDED UNDER ARTICLE 17

[¶32] It is submitted that, the Principle of Complementarity specifies that the State's jurisdiction shall prevail over the jurisdiction of the ICC.⁵⁹ The International body shall not proceed with a case unless a Petitioner exhaust domestic remedies. The ICC shall intervene only in those circumstances wherein the national courts are 'unable or unwilling' to perform their tasks.⁶⁰ Moreover, Complementarity marks in essence the primacy of domestic proceedings and the goal to 'put an end to impunity.'⁶¹

[¶33] Therefore, Complementarity confers a right on States to investigate and prosecute International Crimes which, unless waived or rescinded, a case is inadmissible before the ICC.⁶² This is substantiated through a two-fold argument, ***Firstly***, the case is inadmissible as

⁵⁸ Vagias (2012) 59; Bassiouni (2012) 659.

⁵⁹ Mohamed El Zeidy, *The Principle of Complementarity in International Criminal Law Origin, Development and Practice* (Brill 2008) 162.

⁶⁰ Rome Statute (1998) 2178 UNTS 9018, Article 17.

⁶¹ *Katanga* AC [85].

⁶² *Kenyatta* PTC [79].

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there was no ‘unjustified delay or unwillingness’ on the part of the State to complete the investigation process. [A.1]. ***Secondly***, the case is inadmissible as the ongoing investigation is genuine in nature [A.2].

[A.1] *The Case is inadmissible as there was no ‘unjustified delay or unwillingness’ on the part of the State to complete the investigation process*

[¶34] It is humbly submitted that the ICC is only meant to supplement national criminal justice systems.⁶³ The preparatory committee opined that, providing the Court with the power to judge States’ “capacity” would impinge on State sovereignty.⁶⁴ The willingness of the state to investigate requires more than the mere opening of an investigation but it should in fact be directed toward the persons truly responsible.⁶⁵ Moreover, the Appeals Chamber defined the ongoing investigation of a case as the taking of steps directed at ascertaining whether this individual is responsible for that conduct.⁶⁶

[¶35] An unjustified delay cannot be translated into a fixed number of days, months or years as held by the TC III.⁶⁷ Moreover, a period of less than 18 months between the commencement of the investigation and the referral of the case to the Chamber cannot be considered to constitute an unjustified delay inconsistent with an intent to bring the person concerned to justice.⁶⁸

⁶³ M.A. Newton, ‘Comparative Complementarity: Domestic Jurisdiction Consistent with the Rome Statute of the International Criminal Court’ (2001) 167 Military Law Review 20, 26.

⁶⁴ Preparatory Committee on the Establishment of an International Criminal Court (16 March – 3 April 1998), A/AC.249/1998/CRP.9, 1 April 1998, Text of the Draft Statute for the International Criminal Court – Part. 3 General Principles of Criminal Law [Preparatory Committee on the Establishment of an ICC (1 April 1998)].

⁶⁵ Mireille Delmas-Marty, ‘Interactions between National and International Criminal Law in the Preliminary Phase of Trial at the ICC’ (2006) 4 Journal of International Criminal Justice 2, 4 -5.

⁶⁶ *Kenyatta* PTC [14].

⁶⁷ *Rwamakuba* [26].

⁶⁸ *Gaddafi Admissibility Appeal* PTC [227] - [229].

[¶36] In the present case, it is to be noted that the national jurisdiction has taken cognizance of the matter and has also begun an investigation against the Police Chief by levelling charges against him.⁶⁹ Furthermore, the matter is scheduled to be held at the national level⁷⁰ which clearly demonstrates the willingness of the state to prosecute the person concerned and bring him to justice. Hence, looking at the active steps taken by the state it can be safely said that the case is inadmissible as there was no unjustified delay or unwillingness on the part of the state to complete the investigation process.

[A.2] *The Case is inadmissible as the ongoing investigation is genuine in Nature*

[¶37] It is humbly submitted that, a “genuine investigation” requires the State to use “all the legal means at its disposal” in the conduct of a serious criminal process that identifies the suspects involved and leads to actual trial and appropriate punishment if necessary.⁷¹ The term finds its mention in Article 17 (1)(a),⁷² which reads that, a State has to genuinely carry out investigation against the person accused. Moreover, the Principle of Complementarity is designed to protect the sovereign right of States to exercise their jurisdiction in good faith when they wish to do so.⁷³

⁶⁹ Moot Proposition ¶ 20.

⁷⁰ *ibid.*

⁷¹ *Paniagua Morales et al.*, Judgment of 8/03/ 1998, Inter-Am Ct. H.R. (Ser. C) No. 37 (1998), 94; *Myrna Mack Chang v. Guatemala*, Judgment of 25/11/ 2003, Inter-Am Ct. H.R. (Ser. C) No. 101 (2003) 13.

⁷² Rome Statute (1998) 2178 UNTS 9018, Article 17 (1) (a).

⁷³ *Katanga* 7 March TC [78].

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[¶38] The terms ‘genuine’ and ‘good faith’ can be used interchangeably since both lead to the same meaning.⁷⁴ In the present case, both the investigation and charges are laid⁷⁵ in good faith with an aim to conduct a fair and genuine proceeding against the person truly responsible.⁷⁶

[¶39] Therefore, the Principle of Complementarity should prevail and primacy should be granted to the national proceedings, and the sovereign rights of the State must not be overlooked by this Hon’ble Court. Hence, the case is inadmissible as the ongoing investigation is genuine in nature.

[B] THE GRAVITY THRESHOLD UNDER ARTICLE 17 (1) (D) IS NOT MET

[¶40] It is humbly submitted that, Rome Statute requires the judges to deem inadmissible cases within the Court’s jurisdiction that are not of sufficient gravity to justify further action by the Court.⁷⁷ Gravity of crimes should be assessed according to both qualitative as well as quantitative factors.⁷⁸ The quantitative element refers to the number of victims while the qualitative element refers to nature, manner and impact of the crimes.⁷⁹ As per the ILC, the Court should have discretion to decline jurisdiction in cases that lacked sufficient gravity, which ensures that the Court limits its focus only to the most serious crimes.⁸⁰

⁷⁴ Case C-499/99 *Commission v. Kingdom of Spain* [2002] ECR I-6031 24; Case C-105/02 *Commission v. Federal Republic of Germany* [2006] 93 - 94; Case C-275/04 *Commission v. Kingdom of Belgium* [2006], 82 – 83.

⁷⁵ Moot Proposition ¶ 20.

⁷⁶ Mireille Delmas-Marty, ‘Interactions between National and International Criminal Law in the Preliminary Phase of Trial at the ICC’ (2006) 4 *Journal of International Criminal Justice* 2, 4-5.

⁷⁷ Rome Statute (1998) 2178 UNTS 9018 (“RS”), Article 17 (1) (d).

⁷⁸ *Abu Garda* PTC [31].

⁷⁹ ICC-OTP, Draft Policy Paper on Preliminary Examinations, (Oct. 4, 2010), 7; David Luban, ‘A Theory of Crimes Against Humanity’ (2004) 29 *Yale Journal of International Law* 85, 108; Richard Vernon, ‘What is Crime Against Humanity?’ (2002) 10 *The Journal of Political Philosophy* 231, 246.

⁸⁰ S. SáCouto and K.A. Cleary, ‘The Gravity Threshold of the International Criminal Court.’ (2005) 23 *American University International Law Review* 807, 809.

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[¶41] The concept of gravity is necessary so that the Court only deals with cases in the circumstances outlined in the preamble⁸¹, where it is really desirable to do so.⁸² This is substantiated through a two-fold argument. ***Firstly***, there are no sufficient number of victims to satisfy the gravity of threshold [B.1]. ***Secondly***, Nature, Manner and Impact of commission of the alleged crime on the victims does not indicate the gravity of the offence [B.2].

[B.1] There are no sufficient number of victims to satisfy the gravity of threshold

[¶42] It is humbly submitted that, Article 17(1) (d) provides that a Court will determine that a case is inadmissible where it is not considered sufficiently grave to justify ‘further action’ by the Court.⁸³ While determining the gravity of a case the ICC jurisprudence demonstrates that the number of victims is a ‘key consideration’⁸⁴ that has to be assessed.⁸⁵ It is essential to look at the number of victims affected in order to verify how grave a situation is.⁸⁶

[¶43] When nine passengers were killed, 55 injured and many others mistreated while the ships were in international waters, the Appeals Chamber concluded that the potential cases has no sufficient gravity.⁸⁷ Moreover, several of wilful killings and a number of people being affected by inhuman treatment, "did not appear to meet the required threshold of the Statute" as mentioned by the OTP while assessing the situation at Iraq.⁸⁸ This is done so to avoid excessive

⁸¹ Stegmiller, *The Pre-Investigation Stage of the ICC: Criteria for Situation Selection* (Duncker Humblot GmbH, 2011), 354.

⁸² Report of the International Law Commission on the Work of its 48th session, 6 May – 26 July 1996, Official Records of the General Assembly, 51st session, Supp. No. 10, Yearbook of the International Law Commission, Vol. II, Part Two, A/51/10 Vol. II, Part Two (1996).

⁸³ *Al Mahdi* 2016 PTC [43]; *Situation on the Registered Vessels of the Union of the Comoros* PTC [25] - [26].

⁸⁴ ICC-OTP Iraq, Response to Communication Received Concerning Iraq (9 February 2006).

⁸⁵ *Aleksovski* [15].

⁸⁶ *Luis Moreno-Ocampo*, Statement at the Informal Meeting of Legal Advisors of Ministries of Foreign Affairs (Oct. 24, 2005) 6.

⁸⁷ *Situation on the Registered Vessels of the Union of the Comoros* PTC [150].

⁸⁸ *Luis Moreno-Ocampo* (n 87).

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and disproportionate workload⁸⁹ by the ICC since, if it has to address every crime that falls under its jurisdiction, including crimes of lesser gravity, the ICC would be flooded with cases.⁹⁰

[¶44] In the present case, it is to be noted that, no number has been specified as to how many people actually went through any suffering caused by the Police Chief. It was only the youth that were arrested on charges of drugs dealing and related crimes.⁹¹ Neither it is specified as to how many people actually traversed to Finlandia, moreover, even situations where around a dozen people were killed, instances of inhuman treatment existed, the OTP stated that they did not meet the required threshold of the Statute.⁹² Since, no number in relation to the “victims” is specified, therefore, it is humbly submitted that there are no sufficient number of victims to satisfy the gravity of threshold.

[B.2] *Nature, Impact and Manner of Commission of the alleged Crime on the Victims does not indicate the gravity of the offence*

[¶45] Gravity must be assessed from the qualitative viewpoint as well which includes factors such as the nature, and manner of commission of the alleged crimes, as well as their impact on victims, are indicators of the gravity of a given case.⁹³ The very first dimension of the qualitative factor includes; firstly, the nature of the crime.⁹⁴

⁸⁹ M.M. El Zeidy, ‘The Gravity Threshold under the Statute of the International Criminal Court,’ (2008) 19 Criminal Law Forum 35, 36-37.

⁹⁰ S. SáCouto and K.A. Cleary. ‘The Gravity Threshold of the International Criminal Court.’ (2008) 23 American Journal of International Law, No. 5 (2008) 807, 809-812.

⁹¹ Moot Proposition ¶ 11.

⁹² ICC-OTP, Response to Communications Received Concerning Iraq, (9 Feb. 2006).

⁹³ *Abu Garda* PTC [31]; *Comoros et al.* (2) PTC [21].

⁹⁴ *Ntaganda* 2013 PTC [9].

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[¶46] Nature of the attack refers to the characteristics as well situation in which that attack was committed.⁹⁵ It is submitted that, all cases within the Court’s jurisdiction are inherently serious.⁹⁶ The OTP did not consider the flotilla incident grave enough in nature, where the number of deaths and injured rose to a dramatic 150 people.⁹⁷ Yet, the Sholingilars raise the issue of victimization,⁹⁸ while it were only those people who were put into plantations that disturbed the public order of Bangtangnagar by engaging into drugs and other related crimes.⁹⁹

[¶47] Impact of the alleged acts is not sufficiently grave. The impact considers inter alia the sufferings endured by victims, the terror subsequently instilled, and the damage inflicted on affected communities.¹⁰⁰

[¶48] In the present case, in comparison with Finlandia, Bangtangnagar had limited resources. It can be substantiated when Sholingilars moved to Finlandia as it was a more “prosperous” and democratic country.¹⁰¹ To accommodate over half a million people¹⁰² in a country which is not as prosperous as that of Finlandia requires people to work to maintain the balance between limited resources. When prosecution term “suffering of victims and terror instilled in them” is a past traumatic events and their vulnerability that they carried on from the events of Burmanyar.¹⁰³

⁹⁵ *Comoros et al.* (2) PTC [20].

⁹⁶ Rome Statute of the International Criminal Court (1998) 2187 UNTS 90, Preamble; *Congo* ICJ [72].

⁹⁷ *Situation on the Registered Vessels of the Union of the Comoros* 2014, [25] – [26].

⁹⁸ Moot Proposition ¶ 16.

⁹⁹ Moot Proposition ¶ 11.

¹⁰⁰ ICC-OTP, “Policy Paper on Preliminary Examinations” (November 2013) 65.

¹⁰¹ Moot Proposition ¶ 13.

¹⁰² Moot Proposition ¶ 10.

¹⁰³ Moot Proposition ¶12

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[¶49] Manner refers to the way that attack was committed.¹⁰⁴ Relevant factors include means employed to execute the crime,¹⁰⁵ the extent to which the crimes were systematic or large-scale.¹⁰⁶ The term "gravity" is synonymous with the terms, "systematic" or "large-scale."¹⁰⁷ Moreover, the manner of the conduct must be either systematic or large-scale,¹⁰⁸ and must cause 'social alarm' in the international community.¹⁰⁹

[¶50] In the present case, the manner of the crime is not sufficient to meet the gravity threshold as the acts conducted by the Police Chief are not systematic in nature. The course of conduct did not indicate a series or a flow of events as opposed to a mere aggregate of random acts.¹¹⁰ The instances did not even occur in pursuance of a policy¹¹¹ that were directed against the Sholingilar people, since evidence of planning, organisation or direction by a State or organisation may be relevant to prove both the policy and the systematic nature of the attack.¹¹²

[¶51] It is submitted that, there was no systematic manner in the acts of police chief since, there are only two instances where the police chief himself laid down orders¹¹³ which do not constitute a policy. The facts show no evidence of any direction by the state or an organization thus establishing that the concerned acts were not systematic in manner.¹¹⁴ Moreover, the

¹⁰⁴ *Kayishema* [132].

¹⁰⁵ *Situation in the Republic of Kenya* PTC, [56].

¹⁰⁶ *Afghanistan Authorisation* [23]; *Lubanga* 2006 PTC [46].

¹⁰⁷ Christopher Keith Hall, 'Suggestions Concerning International Criminal Court Prosecutorial Policy and Strategy and External Relations' (2003) 21, 28.

¹⁰⁸ *Nahimana et al.* Appeal [1021].

¹⁰⁹ *Lubanga* 2006 PTC [46]; *Ntaganda* Appeal, [56].

¹¹⁰ *Gbagbo* 2013 PTC [209].

¹¹¹ *Katanga* 23 May TC [65].

¹¹² *Gbagbo* 2013 PTC [29].

¹¹³ Moot Proposition ¶ 11.

¹¹⁴ *Gbagbo* 2012 PTC [49].

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alleged act being devoid of any policy or plan can be deemed to be an isolated act and thus doesn't come within the ambit of systematic.¹¹⁵

[¶52] Furthermore, it is to be noted that social alarm is not a consideration that is required for the admissibility of a case.¹¹⁶ Since the manner of acts are isolated in nature and merely constitute of two instances thus, it creates no social alarm in the international community thereby, rendering the case inadmissible as the manner the alleged crime on the victims does not indicate the gravity of the offence.¹¹⁷

[ISSUE III] WHETHER THE DISMISSAL OF THE CHARGE OF “DEPORTATION AS A CRIME AGAINST HUMANITY” IS VALID?

[¶53] It is humbly submitted that the dismissal of the charge of Deportation as Crime Against Humanity is valid. This will be substantiated by a two-fold argument. ***Firstly***, the conduct was not committed as a part of a ‘widespread or systematic attack’¹¹⁸ directed against civilian population. ***Secondly***, the Police Chief did not have any intention or knowledge.

[A] THE CONDUCT WAS NOT COMMITTED AS A PART OF A WIDESPREAD OR SYSTEMATIC ATTACK DIRECTED AGAINST CIVILIAN POPULATION

[¶54] It is humbly submitted that the conduct was not committed as a part of a widespread or systematic attack directed against civilian population. This is substantiated by two-fold arguments. ***Firstly***, the alleged attack was not widespread [C.1]. ***Secondly***, the alleged attack was not systematic [C.2].

¹¹⁵ *Kayishema* [123].

¹¹⁶ *Situation in the Democratic Republic of the Congo* PTC [72].

¹¹⁷ *Furundžija* [235].

¹¹⁸ *Charles Taylor* [403].

[A.1] The alleged Attack was not Widespread

[¶55] It is submitted that, the term ‘widespread’ has been construed by the PTC II as encompassing ‘the large-scale nature of the attack,¹¹⁹ which should be massive,¹²⁰ frequent,¹²¹ carried out collectively with considerable seriousness and directed against a multiplicity of victims.¹²² Moreover, the ICC jurisprudence in the Bemba¹²³ and Ngudjolo cases¹²⁴ also concluded that a widespread attack entailed to ‘both the large-scale nature of the attack and the number of resultant victims.¹²⁵

[¶56] In the present case, there has not been any substantive evidence with regards to the number of resultant victims and the scale of the attack. Moreover, there were instances in the country where Sholingilars were mistreated but all of those were not attributed to the Police Chief. Under his order youth were arrested on charge of drug dealing and related crime.¹²⁶ It was correct on his part to order the arrest because he was maintaining the peace and harmony in the country. Furthermore, a single conduct of the accused cannot be termed as widespread.

[¶57] According to the absence of any facts that confirm repetition,¹²⁷ regularity, frequency or large geographical area measures, the Defence has failed to prove the widespread characteristic

¹¹⁹ *Akayesu* [502]

¹²⁰ *Akayesu* [12] - [24]; *Tadić* Judgement [729]

¹²¹ *Bemba* 2009 PTC [83]; *Akayesu* [580].

¹²² *Katanga* 2008 PTC, [395].

¹²³ *Bemba* (n 116); *Akayesu* (n 116).

¹²⁴ *Katanga* (n 117).

¹²⁵ *Situation in the Republic of Kenya* PTC [95]; *Harun & Kushayb* PTC [62]; *Blaškić* , [206].

¹²⁶ Moot Proposition ¶11.

¹²⁷ *Kordić* Judgement [17]; *Bemba* (n 116); *Akayesu* [580].

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of the attack beyond any reasonable doubt.¹²⁸ In the present case, large number of populations have crossed Bangtangnagar's border due to fear of threat to their lives.¹²⁹ But the fear is not created by the state and the act of the Police Chief is an isolated occurrence.

[¶58] The ICTR and ICTY practice has generally considered a high threshold for the number of victims in the Crime Against Humanity, in order for the act to be considered "widespread."¹³⁰ Evidently in this case, the number of victims does not realize the required threshold. As mentioned above, for a conduct to be "widespread," there should be a series of regular and frequent conducts targeting a civilian population.¹³¹ Therefore, the acts of Police Chief are not sufficient for a regularity or frequency to be conceived.

[A.2] The alleged Attack was not Systematic

[¶59] It is submitted that, a systematic attack requires the existence of a 'pattern or methodical plan.'¹³² The attack is systematic if it is based on a policy or plan.¹³³ The reason that Crimes Against Humanity so shock the conscience of mankind and warrant intervention by the international community is because they are not isolated,¹³⁴ random acts¹³⁵ of individuals but rather result from a deliberate attempt to target a civilian population.¹³⁶

¹²⁸ *Katanga* 2009 TC [395].

¹²⁹ Moot Proposition ¶ 13.

¹³⁰ *Tadić* Judgement [648]; *Blaškić* [206]; *Akayesu* (n 122); *Kunarac et al.* [428].

¹³¹ *Blaškić* [603].

¹³² *Tadić* (n 126).

¹³³ Kai Ambos, *Treatise on International Criminal Law*, Vol 2 (OUP 2014) 151.

¹³⁴ *Popović et al.* AC, [26]; *Kayishema* TC, [123].

¹³⁵ *Kunarac* 2002 AC, [100]; *Kupreškić et al*

¹³⁶ *Tadić* [653].

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[¶60] Attacks often involve a large number of acts, and complex and multi-layered forms of organisation and conduct.¹³⁷ As established in ICC jurisprudence, for such a policy to be proven, it is necessary that the prosecutor demonstrates that the state or organization has “actively promoted or encouraged” the attack against civilian population.¹³⁸

[¶61] An attack was held to be systematic when it lasted beyond five years and the acts of violence followed a similar pattern to a considerable extent.¹³⁹ In the given instance, the alleged act being devoid of any policy, plan or a systematic pattern and not lasting beyond a period of five years can be deemed as an isolated act and thus does not come within the ambit of systematic.¹⁴⁰

[¶62] To show there existed an, “attack”¹⁴¹ one must show that there exists a, “policy.”¹⁴² To establish a, “policy” a certain level of planning of the attack needs to be present.¹⁴³ The same is not provided in the present case as there was no set plan in place, the Police Chief’s act was isolated and random.¹⁴⁴ Therefore, these acts cannot amount to Crime Against Humanity under Article 7 of the Rome Statute.

¹³⁷ *Bemba* [83]; *Akayesu* (n 116); *Rutaganda* [69].

¹³⁸ *Jelusic* [53].

¹³⁹ *Omar al Bashir* PTC [8]; *Katanga* PTC [394]–[397].

¹⁴⁰ *Omar al Bashir* (n 138); *Katanga* (n 138).

¹⁴¹ Darryl Robinson, *An Introduction to International Criminal Law and Procedure* (4th edn, CUP 2019) 17.

¹⁴² *Gbagbo* 2013 PTC, [17].

¹⁴³ *ibid.*

¹⁴⁴ Moot Proposition ¶ 11.

[B] THE POLICE CHIEF DID NOT HAVE ANY INTENTION OR KNOWLEDGE

[¶63] It is humbly submitted that, Article 7 of the Rome Statute explicitly requires that the accused be aware of the attack of which his individual act forms part.¹⁴⁵ This implies a twofold test: firstly, the perpetrator must know of the existence of the larger attack.¹⁴⁶ Secondly, he must know that his individual act forms part of this attack.¹⁴⁷ Article 7 of Rome Statue specifies that an accused shall not be held liable for a crime if the act's material elements are conducted without proper intent and knowledge.¹⁴⁸ A certain degree of awareness is considered necessary to hold the accused liable for international crime.¹⁴⁹

[¶64] The knowledge requirement provides the necessary connection between the perpetrator's individual acts and the overall attack by means of the perpetrator's mindset,¹⁵⁰ and ensures that single, isolated acts, which only happen to have been carried out contemporaneously with an overall attack – so-called 'opportunistic' acts¹⁵¹ – do not qualify as crimes against humanity and, therefore, cannot be prosecuted under Article 7 of the Rome Statute.¹⁵² Furthermore, there exists no liability under customary international law for failing to acquire knowledge.¹⁵³

¹⁴⁵ *Popović et al.* Appeal [900]; *krstić* [344], [352] – [353].

¹⁴⁶ *Kordić* Judgement [187]; *Tadić* Judgement [[248] [255]]; *Kupreškić et al* Judgement [556]; *Krajišnik* Trial [706]; *Bisengimana* [57].

¹⁴⁷ Rodney Dixon, 'Art. 7 Crimes against humanity' in Otto Triffterer (edn), *Commentary on the Rome Statute of the International Criminal Court* (2nd edn, C.H. Beck 2008), 175; Kai Ambos, *Forging a Convention for Crime against humanity* (CUP 2011) 281.

¹⁴⁸ Rome Statute (1998) 2178 UNTS 9018, Article 30(1).

¹⁴⁹ *Tadić* Judgement [255]– [270].

¹⁵⁰ *Lubanga* 2006 PTC [38].

¹⁵¹ Darryl Robinson, 'Crime Against Humanity of Deportation and the International Criminal Court' in Roy S. Lee (eds), *Forging a Convention for Crimes against Humanity* (CUP, 2001) 88.

¹⁵² Triffterer (2008) 682-688.

¹⁵³ *Gbagbo* 2013 TC [312].

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[¶65] It has been previously established that there was no systematic and widespread attack against the civilian population on part of the police chief. In continuation of the above, since there was no systematic attack planned, the question of knowledge, intent and the conduct cannot be raised at all.

[¶66] The perpetrator must knowingly commit Crimes Against Humanity by which that the attack must be understood in the overall context of his act.¹⁵⁴ There is no evidence that the Police Chief was aware that the underlying acts will result in deportation.¹⁵⁵ Therefore, it is clear that he had no knowledge with regards to the leaving of the citizens from Bangtagnagar to Finlandia. Hence, the dismissal of the charge of deportation as a crime against humanity is valid.

¹⁵⁴ *Kupreškić et al.* Judgement [544].

¹⁵⁵ *Kordić* Judgement [28], [30].

PRAYER

Wherefore, in light of the facts stated, issues raised, arguments advanced and authorities cited, it is most humbly and respectfully requesting this court to adjudge and;

- i. **DECLARE** that the International Criminal Court does not have jurisdiction over this matter, as Bangtangnagar is not a State Party to the Rome Statute, and other grounds;
- ii. **DECLARE** that the Police Chief's Prosecution is inadmissible, as defined in the Articles of Rome Statute; and
- iii. **DECLARE** that the dismissal of the charge of "Deportation as a Crime against Humanity" is valid.

All of which is respectfully submitted

On the behalf of the defence

COUNSEL FOR THE DEFENCE