

Ex Parte Status Conference

(Closed Session)

ICC-RoC46(3)-01/18

1 International Criminal Court

2 Pre-Trial Chamber I

3 Matter under Regulation 46(3) of the Regulations of the Court - ICC-RoC46(3)-01/18

4 Presiding Judge Péter Kovács, Judge Marc Perrin de Brichambaut and

5 Judge Reine Adélaïde Sophie Alapini-Gansou

6 Ex Parte Status Conference (OTP) - Courtroom 3

7 Wednesday, 20 June 2018

8 (The hearing starts in closed session at 9.35 a.m.) *Reclassified as Open session

9 THE COURT USHER: [9:35:11] All rise.

10 The International Criminal Court is now in session.

11 Please be seated.

12 PRESIDING JUDGE KOVÁCS: [9:35:50] Good morning to everyone. This status

13 conference is now in session. I welcome the team of the Prosecutor who is here in

14 the courtroom.

15 Court officer, would you please call the matter which is before the Chamber in

16 accordance with Regulation 46(3) of the Regulation of the Court.

17 THE COURT OFFICER: [9:36:18] Thank you, Mr President.

18 Matter referred to the Chamber under Regulation 46(3), ICC reference

19 RoC46(3)-01/18.

20 And we are in closed session.

21 PRESIDING JUDGE KOVÁCS: [9:36:31] Thank you very much.

22 Mr Deputy Prosecutor, can you please identify the members of your team who are

23 participating in the status conference. Mr Stewart, please, of course.

24 MR STEWART: [9:36:42] Yes, thank you and good morning, Mr President. Just

25 for the record my name is James Stewart, Deputy Prosecutor, and I'm appearing with

1 Appeals Counsel Reinhold Gallmetzer, Matteo Costi and Matthew Cross.

2 PRESIDING JUDGE KOVÁCS: [9:36:58] Thank you.

3 And lastly, I have to present the Bench for the record.

4 I am Péter Kovács, Presiding Judge of Pre-Trial Chamber I, and I am joined by Judge

5 Marc Perrin de Brichambaut and Judge Reine Adélaïde Sophie Alapini-Gansou.

6 As you know, the purpose of today's status conference is to discuss a series of issues

7 arising from the request made by the Prosecutor the 9 April 2018 pursuant to

8 Regulation 46(3) of the Regulation of the Court, and Article 19(3) of the Rome Statute,

9 concerning the alleged deportation of the Rohingya people from Myanmar to

10 Bangladesh.

11 Before we start I would like to ask on behalf of the interpreters and the court officers

12 that everyone, including myself, speaks slowly and makes a pause before answering

13 any question.

14 And I would like to emphasise that neither the calling of this status conference, nor

15 any of the questions formulated, could be understood that the Chamber has already

16 passed a decision in merito on the Prosecutor's request. The question is still open,

17 and in the questions we are speaking on hypothesis.

18 And we will start by listening to the Prosecutor's reply to the questions set out by the

19 Chamber and annexed to its order convening this status conference issued on

20 11 May 2018, and the document is the ICC-RoC-46(3)-01/18-4-Conf-Exp-Anx.

21 The Prosecutor may also address any other issues in connection with her request that

22 you deem appropriate in accordance with paragraph 4 of the Chamber's decision of

23 11 May 2018. And thereafter the Chamber will put forward a number of additional

24 questions to the team of the Prosecutor.

25 Mr Stewart, Mr Deputy Prosecutor, the floor is yours.

1 MR STEWART: [9:39:20] Thank you, Mr President. Good morning, your
2 Honours.

3 The focus of our submissions will be upon the seven questions that you have put to us,
4 but before I begin there are a few housekeeping matters I would like to raise.

5 First, as your Honours will be aware, last night we filed some documents with you
6 and I just wanted to reassure you again - this is filing number 27 - that you didn't
7 need to read through those documents for today, they are just background material,
8 source material for some of what we will be showing you a little bit later in the
9 submissions. So they're provided for your further reference.

10 Secondly, during our submissions we will make use of a small number of slides and
11 these will come up on your screens as they arise. We'll be happy to provide a
12 courtesy copy of the slides after the hearing. Mr Cross will be controlling the slides
13 and we will try to co-ordinate that as well as we can.

14 Thirdly, and finally, we note the five amicus briefs that you have received with your
15 leave, filings 20 to 24, as well as certain submissions by victims seeking participation,
16 filings number 9 and 26. And we are studying these briefs of course with interest
17 and we hope that the Pre-Trial Chamber will afford us an opportunity to respond to
18 the observations to the extent necessary.

19 We suggest that we do so on a consolidated basis, in other words in a single written
20 filing, and would be grateful for an order setting an appropriate timetable. Given
21 the length of these briefs, more than 200 pages, we would propose a date three weeks
22 from today to file our response, that is by July 11 at 4 o'clock in the afternoon.

23 In the same spirit, we would request an extension of pages from the standard 20-page
24 limit, to a maximum of 40 pages, for our response. And we'll deal with all of the
25 amicus briefs in that response.

1 Mr President, your Honours, I'm appearing today on behalf of the Prosecutor
2 Fatou Bensouda because she's in New York, she has to be in New York to brief the
3 UN Security Council on the situation in Libya. And she did not wish to seek a
4 postponement of the schedule your Honours had set, and she authorised me to
5 represent her before you. Her absence should not be taken as any sign that she
6 attaches less importance to this hearing. On the contrary, she has carefully reviewed
7 our intended submissions and wishes she could be here herself to impress upon you
8 our position herself. So I'll do the best I can to answer the questions that you have
9 identified and, together with my colleagues, answer any additional questions that you
10 may have.

11 Our request for a ruling on jurisdiction relates to the situation of the alleged
12 deportation of the Rohingya people from Myanmar to Bangladesh, and before I
13 address your questions I would like to offer the Chamber reassurance, reassurance on
14 three points:

15 First, the Prosecutor will assume full responsibility for any decision she must take in
16 relation to the situation affecting the Rohingya. But she does not wish to announce a
17 preliminary examination, create expectations, and invest her limited resources unless
18 she is confident that she is on solid jurisdictional ground. And that is why we have
19 taken the unusual step of seeking from you a ruling on jurisdiction in this unique
20 situation.

21 Secondly, the ruling relates to a narrow jurisdictional issue, namely, objective
22 territorial jurisdiction. Given that a necessary legal element of the crime against
23 humanity of deportation has allegedly been completed on the territory of a State Party
24 to the Rome Statute, does this confer jurisdiction upon the Court? We are not
25 seeking to expand the Court's jurisdiction in any radical way, but simply to settle a

1 narrow but important jurisdictional issue before taking further action.

2 Thirdly, the Chamber will not have to make any factual findings at this early stage on
3 the merits of the allegation that the crime of deportation has been committed. If the
4 allegations are taken as true, for the sake of this request, would the Court have
5 jurisdiction on the basis of territory? No definitive factual findings are necessary to
6 answer that legal question.

7 So those are the three matters I wanted to offer you some reassurance on.

8 Mr President, your Honours, the crimes allegedly committed against the Rohingya
9 people stand out for their sheer scale, but also for the ongoing humanitarian crisis
10 they have precipitated. In the circumstances, the Prosecutor feels that she must
11 make appropriate use of all her powers, while remaining respectful of the limits of
12 this institution's mandate. She sees this as her independent duty.

13 It is for these reasons that we have resorted to Article 19(3) of the Statute for a ruling
14 on jurisdiction, on the basis that this provision was created to deal with just such a
15 situation. If the Prosecutor did not have such a power, if you will, to look before we
16 leap, this would not only impede the execution of our mandate but also neglect the
17 valuable recourse which a ruling by the Court can represent.

18 Now, does this mean that the Prosecutor will be making such requests routinely?

19 No, it does not. We do not ordinarily hesitate to proceed based on our own
20 assessment of jurisdictional matters. For example, we have sought to open an
21 investigation in Afghanistan, and declined to open preliminary examinations
22 concerning ISIS. Rather, it is the exceptional combination of circumstances that
23 makes this situation unique and so, on this occasion, we have chosen a different
24 approach. Thus, although a ruling will clarify the law as a general matter, we do not
25 see that a ruling would have practical implications for any other situation currently

1 under preliminary examination or that we might anticipate.

2 This ruling is an important one for its own sake, since it should settle whether the
3 framers of the Rome Statute endowed the Court with jurisdiction in the circumstances
4 presented in Bangladesh, to whose territory hundreds of thousands of people have
5 allegedly been deported.

6 Clarifying this matter will not only guide the Prosecutor in her own determinations
7 and use of resources, which are limited and must be employed responsibly, but will
8 also help calibrate the legitimate expectations of the international community.

9 It would appear that a number of States and UN bodies are making efforts to establish
10 some form of accountability for the alleged crimes against the Rohingya, but they do
11 so without a clear sense of where the Court's jurisdiction exactly stands in this
12 context.

13 At the moment we can see almost no likelihood of a UN Security Council referral in
14 the present climate. Neither is there a realistic possibility that Myanmar will accept
15 the Court's exercise of jurisdiction under Article 12(3) of the Statute.

16 This means that, if we have no jurisdiction under Article 12(2)(a) based on
17 Bangladesh's status as a State Party to the Statute, the ICC has nothing to offer. It
18 that is the case, it is the Court's duty to signal this as soon as possible, so that States
19 can explore other potential mechanisms.

20 Mr President, your Honours, the position we've taken in our request is clear. The
21 crime against humanity of deportation requires the victims to have been deported
22 across an international border, without grounds permitted under international law,
23 by expulsion or other coercive acts.

24 In this case, the expulsion or other coercive acts are alleged to have occurred on the
25 territory of Myanmar, which is not a State Party to the Rome Statute. However, it is

1 alleged that the expulsion and other coercive acts were intended to drive the victims,
2 the Rohingya people, out of Myanmar across the border into Bangladesh, which is a
3 State Party to the Statute.

4 Deportation as a crime in contrast to forcible transfer, which is also a crime against
5 humanity under Article 7(1)(d), requires the forcible displacement of a population
6 across a border.

7 So the crime of deportation was allegedly only complete when the victims fled across
8 the border from Myanmar into Bangladesh. Thus, although the coercion that caused
9 the victims to cross the border occurred on the territory of a non-State Party, one of
10 the legal elements of the crime of deportation was completed on the territory of a
11 State Party.

12 So in our submission, this suffices to confer jurisdiction upon the Court. There are
13 contrary arguments, however, and the situation is unique. So in the circumstances,
14 the Prosecutor decided to use Article 19(3) of the Statute for the first time to clarify the
15 matter of jurisdiction before going any further.

16 Mr President, your Honours, I'll now address the Chamber on the issues identified in
17 your scheduling order, and my colleagues and I will address any additional questions
18 that you may have.

19 So question 1:

20 Your Honours' first question asks, besides the question of territorial jurisdiction, what
21 the potential implications of the Chamber's ruling are at this time respecting any
22 future investigation concerning the alleged deportation of members of the Rohingya
23 people from Myanmar into Bangladesh.

24 The ruling should have no implications for further proceedings of the Court, apart
25 from clearing the way for the Prosecutor to act if the Court has jurisdiction.

1 Our request is not the equivalent of an Article 15(3) application. We are not asking
2 the Chamber to advise for or against an investigation. The Prosecution has not yet
3 conducted its own preliminary examination under Article 53(1). In the
4 circumstances, we are not requesting the Chamber to make any factual findings at all
5 at this stage.

6 I think we come to the first slide. We're coming to the first slide, Mr President, your
7 Honours.

8 THE COURT OFFICER: [9:51:58] Evidence channel 2, the presentation is being
9 displayed by the OTP.

10 MR STEWART: [9:52:22] In that first slide, your Honours can see an illustration of
11 this point on your screens. As you likely know, the Prosecution undertakes
12 preliminary examinations in four phases. The first of these phases, phase 1, is to
13 determine matters such as whether an allegation is manifestly outside the Court's
14 jurisdiction. This is the context of our current request and for your Honours'
15 decision.

16 By contrast, the Prosecution's assessment of the remaining factors listed under
17 Article 53(1)(a) to (c) will proceed or not depending on how this threshold matter is
18 resolved.

19 A subsequent analysis under Article 53(1)(a) through (c) would form the basis of any
20 Article 15 decision that your Honours may be called upon to make. The two matters
21 are distinct. Thus the request is confined to a pure question of law, the jurisdictional
22 question, and hence the Chamber's ruling will only have a narrow legal effect in
23 determining whether the Prosecution may proceed with its further analysis or not.

24 We situated our request in the context of public allegations of the deportation of the
25 Rohingya from Myanmar to Bangladesh in order to show that we were not raising a

1 purely abstract or hypothetical question. This does not mean, however, that the
2 Chamber should rule on the merits of those factual allegations at this time.
3 We're not asking this Chamber to make any findings of fact at this stage, but, rather,
4 to assume that the facts alleged are true for the purposes of making a purely legal
5 determination on the discrete question we posed.
6 All the ruling will do is determine whether the Prosecutor would have a sound legal
7 basis to proceed to phases 2 to 4 of a preliminary examination with regard to these
8 allegations, based on a sufficient assurance that she will not be acting beyond her
9 powers and mandate.
10 If the Court authoritatively rules that Article 12(2)(a) precludes jurisdiction in
11 circumstances like the present, then the Prosecutor will take no further action
12 concerning the Rohingya. That is, unless there is a UN Security Council referral or
13 Myanmar accepts the Court's jurisdiction.
14 However, if the Court agrees with our view of the Court's jurisdiction, then the
15 Prosecutor will be able to continue her factual analysis and decide how to proceed.
16 It will be the exclusive responsibility of the Prosecutor to decide whether to seek
17 authorisation to open an investigation. Only then will this Court apply the
18 procedure under Article 15(4). Specifically, it will assess the supporting material the
19 Prosecutor will provide to decide whether there is a reasonable basis to proceed with
20 an investigation under Article 53(1).
21 For similar reasons, your Honours, a ruling under Article 19(3) and Regulation 46(3)
22 does not limit or prejudice any subsequent challenge to the Court's jurisdiction under
23 Article 19(2). A suspect or accused person or state with the required standing must
24 be able to exercise their rights fully. However, this does not mean that the Court can
25 never consider a legal question just because someone might challenge it later on. To

1 the contrary, a Statute plainly provides for a variety of jurisdictional rulings to be
2 made on an ex parte basis before it allows for a jurisdictional challenge under
3 Article 19(2).

4 Decisions under Article 15(4) are a good example of this. There's no reason why the
5 requested Article 19(3) decision would be any different especially given its limited
6 scope.

7 For these reasons, if we proceed to an investigation and prosecution of this situation,
8 an Article 19(2) challenge could still be made. A prior Article 19(3) decision would,
9 of course, be relevant context for that challenge, but it would not preclude further
10 legal and factual discussion of the relevant issues inter partes within the framework
11 of Article 19(2).

12 A relevant precedent in this context is the Mbarushimana case where the
13 Pre-Trial Chamber examined jurisdiction under Article 19(1) at the arrest warrant
14 stage and then the Defence later challenged the jurisdiction of the Court under
15 Article 19(2). Mbarushimana -- Mbarushimana case, Kinyarwanda is sometimes
16 difficult. I should know better.

17 In sum, the ruling should have no implications for further proceedings of the Court,
18 apart from clearing the way for the Prosecutor to act if the Court has jurisdiction.
19 That was our treatment of the first question, Mr President.

20 Question 2:

21 Your Honours' second question asks why the Prosecutor made the request at this
22 stage under Article 19(3) and Regulation 46(3) instead of requesting authorisation to
23 investigate pursuant to Article 15(3) of the Statute.

24 The answer is simple, we understand that Article 19(3) and Regulation 46(3) give the
25 Prosecutor the power at her discretion to request a ruling on jurisdiction. We are not

1 in a position at this time to make a full Article 15 application given the processes that
2 need to be completed, as I mentioned earlier.

3 In the present circumstances, the Prosecutor sees the request as the most effective way
4 to resolve the basic jurisdictional question that lies at the heart of our competence to
5 proceed.

6 The Prosecutor is acting responsibly with respect to a legal issue that goes to the heart
7 of her mandate and in the light of the principle of judicial economy, which applies
8 equally to her as an elected public official and steward of the limited resources of her
9 office.

10 In short, not only we but also the international community need clarity about the
11 jurisdictional question as soon as possible so we can act accordingly. We do not
12 want to embark on a process that might later prove to be futile.

13 Here is some more background on these points, and we're coming to a slide, I believe.

14 First, the need for a prompt response. As stated in our request, we have received
15 dozens of individual communications under Article 15 relating to crimes allegedly
16 committed against the Rohingya and this has escalated dramatically since August of
17 last year, consistent with widespread reports of a massive increase in the flow of
18 refugees driven over the border by alleged violence.

19 Even without analysis, it is abundantly clear that the allegations, if true, are
20 particularly serious and the alleged events are ongoing. The reports consistently
21 place the number of victims deported at more than 670,000. These reports describe
22 coercion through killings, rape, torture and the destruction and looting of hundreds
23 of villages.

24 As we have noted in the request, the UN High Commissioner for Human Rights has
25 described the Rohingya crisis as a textbook example of ethnic cleansing. And,

1 according to the UN Special Envoy for human rights in Myanmar, it potentially bears
2 the hallmarks of a genocide.

3 If this situation is one that does fall within the Court's jurisdiction, then the very
4 purpose of this Court is to ensure that such allegations do not go without
5 investigation and, if appropriate, prosecution. If the Prosecutor has a relevant power
6 under the Statute and in her independent discretion thinks it is right to act, then she
7 should act.

8 It is also important for the international community to see that the Prosecutor will
9 take the necessary steps when called for, even though she demonstrates her clear
10 respect for the limits of the Court's jurisdiction. The Court's deterrence function
11 depends heavily on public confidence that action will be taken when the
12 circumstances demand within the proper ambit of the Court's competence.

13 Secondly, the legal dilemma. As our policy paper on preliminary examinations
14 explains at paragraph 75, Article 15 communications do not automatically lead to the
15 formal announcement of a preliminary examination. We first make an initial
16 assessment known as phase 1 in which we consider matters such as whether the
17 alleged conduct is manifestly outside the Court's jurisdiction.

18 This time we face an unusual challenge. Whether the alleged deportation of
19 Rohingya from Myanmar to Bangladesh falls within the jurisdiction of the Court
20 depends on the answer to two legal questions described in our request, and these two
21 legal questions are as follows:

22 First, what the legal elements of the crime against humanity of deportation are and
23 specifically whether a cross-border requirement distinguishes it from the crime
24 against humanity of forcible transfer.

25 And secondly, the meaning of conduct on the territory of a state for the purposes of

1 Article 12(2)(a). Specifically, whether it is sufficient that one element of the crime
2 occurs on the State's territory.

3 This last question, moreover, goes to the heart of the Court's mandate and is likely to
4 be of considerable interest and significance to States. Thus, while we could, and did,
5 form a view within the Office of the correct answers to these two legal questions, we
6 did not feel in this situation that this was sufficient assurance of the soundness of the
7 jurisdictional basis for proceeding.

8 By making the request, we do not seek to avoid our responsibility as prosecutors. To
9 the contrary, the request publicly states the position of the Prosecutor and her Office,
10 and we stand ready to defend it. However, in these particular circumstances, the
11 risk of adverse consequences if we were to proceed directly to phase 2, and publicly
12 announce the opening of a preliminary examination, was simply too great, should we
13 subsequently discover in an Article 15 decision that the Court never had jurisdiction
14 to begin with. While this might not be the right outcome, we acknowledge it is a
15 possible one.

16 There was also the risk that the international community would in the meantime have
17 lessened or even halted its diplomatic campaign for accountability based simply on
18 our view that the Court has the necessary jurisdiction even without an Article 12(3)
19 declaration or Security Council referral. It would be unfortunate if we were wrong.
20 In short, we did not want inadvertently to delay or prevent the very justice we are
21 seeking to achieve.

22 We were also mindful that, for the credibility of the Court and the Rome Statute
23 system as a whole, it is important to show that our procedures equip us to address
24 questions of jurisdiction, such as this one, responsibly, transparently and effectively.
25 In other words, that the Prosecutor can use her Article 19(3) power in appropriate

1 circumstances. Furthermore, in the particular circumstance of this situation, States
2 and other actors might well have a legitimate interest in the legal questions we
3 identified. In our view, this again favours addressing the issue of jurisdiction in a
4 judicial forum with the greatest possible transparency, including an opportunity for
5 States, or others, to request leave under Rule 103 to file an amicus brief if they wish to
6 do so. Indeed, we note that the Chamber invited the competent authorities of
7 Bangladesh to submit observations, which they did on June 11, and the Chamber has
8 also received observations from five amici curiae, as well as two additional
9 submissions from victims seeking participation.

10 We are still, within the terms of our own policy, within phase 1 of the analysis.
11 While we have formed the opinion this Court does have the required jurisdiction, the
12 novel nature of the legal issue at the heart of the situation deserves, in our submission,
13 judicial guidance to ensure that we do no harm despite our good intentions. This is
14 what we hope to achieve through a ruling by this Chamber.

15 Thirdly, and finally, there is the question of resources. With limited resources we
16 must handle an expanding workload. Article 42(2) vests full authority in the
17 Prosecutor over the management of her Office and its resources. The Prosecutor
18 must ensure that her Office is not only effective but efficient. In addition, the
19 Assembly of States Parties invited the Prosecutor and the Court as a whole to find
20 appropriate ways to preserve the Court's long-term ability to deliver on its mandate
21 effectively and efficiently, while being mindful of the financial constraints of States
22 Parties. Indeed, efficiency of proceedings has been a key theme for the ASP and the
23 Court as a whole.

24 At a time when the Prosecutor has 10 preliminary examinations open and a number
25 of situations under active investigation, resourcing one situation necessarily means

1 taking resources away from another. This cannot be justified in circumstances where
2 there is a cognisable risk that the Court may later conclude that the preconditions for
3 the exercise of jurisdiction are not met, even if the Prosecutor considers this would be
4 wrong in principle. Such concerns are one major reason why phase 1 of the
5 preliminary examination process is distinct from phases 2 to 4 in the first place.
6 For all these reasons, Mr President, your Honours, the Prosecutor considers that it is
7 not appropriate to submit an application to the Chamber under Article 15(3) at the
8 present time, since her preliminary examination has not yet passed even out of
9 phase 1. She does not wish to proceed further without the requested ruling from the
10 Chamber. She regards the question whether to seek a ruling under Article 19(3) as a
11 matter of the exercise of her independent discretion under Article 42.
12 As a last point before we move to question three, we also note that some of the same
13 considerations I have just described explain why we are not currently in a position to
14 estimate the precise time frame for the further analysis or its outcome respecting the
15 alleged deportation of the Rohingya. Since we have not yet completed even our
16 phase 1 analysis, these allegations have not yet been subject to the full process
17 adopted by our office, which in terms of our policy are encompassed in phases 2 to 4
18 of the preliminary examination process.
19 Even so, I can say that we will proceed expeditiously with all due diligence.
20 Question 3:
21 As your third question, your Honours enquire whether the Prosecutor envisages
22 including other crimes intrinsically linked to the alleged deportation of Rohingya
23 people from Myanmar into Bangladesh in her preliminary examination, or potentially
24 into a request for authorisation of an investigation under Article 15 of the Statute.
25 The answer to this question is necessarily conditional.

1 If we assume that the Court does have jurisdiction on the basis we identified in our
2 request, then the primary focus of any preliminary examination or subsequent
3 investigation is very likely to be the crime of deportation. In considering the
4 coercion required to establish deportation, the Prosecution will necessarily look, as a
5 factual matter, to evidence of other crimes allegedly committed against the Rohingya
6 in Myanmar as a necessary part of the narrative, and these could include murder,
7 termination, sexual violence, torture, and other inhumane acts. In the event of a trial,
8 as proof of the required coercion, the Court would enter factual findings as
9 appropriate.

10 But it must be stressed that the narrow basis for the Court's jurisdiction would
11 preclude seeking separate convictions for this conduct if it occurred entirely on the
12 territory of Myanmar, which is not a State Party to the Rome Statute.

13 That said, we can admit the possibility that the evidence will disclose other crimes
14 which might fall within the jurisdictional parameters we have identified. Since the
15 types of Article 5 crimes which may fall within the scope of an investigation are not
16 limited by the particular crimes identified at the preliminary examination stage, it is
17 not legally necessary at the present time to reach any conclusion on this possibility.
18 For the purpose of the current proceedings, the focus on the crime of deportation
19 alone is sufficient.

20 While it may be that the crime of persecution -- I said the crime of deportation alone is
21 sufficient. While it may be that the crime of persecution, given its encompassing
22 nature, may also possibly be established based on substantially the same conduct as
23 deportation, it is too soon for us to take any position on that possibility.

24 For other crimes, including those mentioned in some of the additional briefs your
25 Honours have received, we reserve our position, as it would require further factual

1 and legal analysis to determine if any of those crimes was in fact committed in part on
2 the territory of Bangladesh.

3 It is not necessary to determine such questions at the present time. The focus on
4 deportation, we submit, is enough.

5 All that being said, of course, these limitations would not apply in the event that
6 Myanmar accepts the Court's jurisdiction under Article 12(3), or the UN Security
7 Council makes a suitable referral to the Court. In such circumstances, we would
8 have jurisdiction so analyse, investigate, and potentially charge all the relevant Article
9 5 crimes.

10 However, for reasons I will come to later, we do not consider it likely that the Court
11 will obtain jurisdiction on such a basis.

12 Question 4:

13 Your Honours' fourth question asks us to elaborate on our submission that the
14 Rohingya people were specifically and intentionally deported from Myanmar into
15 Bangladesh. You also enquire whether victims were allegedly deported to States
16 other than Bangladesh, and if so whether the Prosecutor intends to address alleged
17 deportations into other States.

18 Our submission that the Rohingya people were specifically deported into Bangladesh
19 was made in the context of our request under Article 19(3), and was therefore based
20 on an allegation that has not yet been fully analysed according to Article 53(1) of the
21 Statute.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 The alleged intention of the perpetrators forcibly to displace the Rohingya into
11 Bangladesh is a key allegation. As the sources cited at paragraph 7 to 10, and 42 of
12 our request suggest, the alleged facts, if true, inescapably point to the perpetrators'
13 intent to drive the Rohingya people out of Myanmar and into Bangladesh. This
14 follows not only from the circumstances in which the alleged coercive acts were
15 committed, but also the resulting exodus across the border, the reported statements of
16 some perpetrators, and the portrayal of the Rohingya merely as Bengali immigrants.
17 Concerning the possibility whether any Rohingya were deported from Myanmar into
18 the territory of any other State Party, we note that Myanmar does not share a land
19 border with any ICC State Party other than Bangladesh. Thus, for this practical
20 reason also, if your Honours agree with our request, we anticipate the focus of any
21 preliminary examination or investigation will be on deportations into Bangladesh.
22 That being said, if any of the Rohingya were also intentionally deported from
23 Myanmar directly onto a vessel or an aircraft of an ICC State Party, that conduct may
24 also in principle fall within the Court's jurisdiction. However, we have no
25 information of such allegations.

1 On a separate point, we do not argue that the Court has jurisdiction under Article
2 12(2)(a) in the event a person is first deported from Myanmar to another non-State
3 Party and thence the person relocates from that receiving non-State Party to an ICC
4 State Party. In this scenario, the crime of deportation would have been completed on
5 the person's entry upon the receiving non-State Party. No element would be
6 committed on the territory of an ICC State Party, and thus the crime would fall
7 entirely outside the Court's jurisdiction.

8 Mr President, your Honours, if it's helpful we can illustrate this with a couple of
9 examples. We have a slide.

10 First, as your Honours can see on the screen, the Prosecution considers that Article
11 12(2)(a) establishes jurisdiction if a person is deported from Myanmar, a non-State
12 Party, directly to Bangladesh, an ICC State Party. This is because Bangladesh is an
13 ICC State Party and an element of an Article 5 crime has occurred on its territory.
14 By contrast, and now speaking hypothetically, we do not consider that Article 12(2)(a)
15 establishes jurisdiction if a person is deported from State A, a non-State Party, directly
16 to State B, a non-State Party, and that person then travels to State C, an ICC State
17 Party. This is because, although an element of an Article 5 crime occurs on the
18 territory of State B, State B is not an ICC State Party. Conversely, State C is an ICC
19 State Party, but no element of an Article 5 crime is committed there. The crime of
20 deportation is completed, in our submission, at such time as the victim is forced to
21 cross from State A to State B.

22 In our submission, the crime of deportation is not a continuing but an instantaneous
23 crime: The deportation of the victim by expulsion or coercive acts and the crossing
24 of the border finalise the crime. While the effects of deportation continue, until the
25 victims are permitted to return and even beyond, the elements of the crime are

1 completed with the coercive acts and the crossing of a border.

2 In this sense, we respectfully disagree with the theory put forward, for example, by

3 Global Rights Compliance in their filing number 9. The Court would not have

4 jurisdiction based on objective territoriality if only the third receiving State was a

5 party to the Statute. By then the crime would already have been committed and

6 only its further consequences would have taken place on the territory of such State.

7 We make this clear, Mr President, your Honours, in order to emphasise that our

8 request does not rely on some version of the so-called "effects doctrine", according to

9 which the Court's jurisdiction would be established simply based on the State in

10 which a victim may end up after the crime has been completed. This is not our

11 position.

12 In this context, it may also be helpful to emphasise that refugees fleeing from war or

13 other crisis situations are not necessarily victims of the crime of deportation. For

14 that crime to be established, it must be shown that the perpetrators intentionally

15 deported persons to another State by expulsion or other coercive acts and without

16 grounds permitted under international law.

17 We come now to question 5:

18 Your Honours' fifth question raises the issue whether the Prosecution has been in

19 contact with Bangladesh or any other State Party in connection with a possible

20 referral of the situation to the Prosecutor under Article 13(a). You further ask what

21 effect, if any, the Chamber's ruling on the request could have on a State deciding to

22 refer the situation to the Prosecutor. Finally, you enquire about the prospect of

23 securing State cooperation from Bangladesh or any other State Party in the event that

24 this situation would be referred to the Court, or if the Prosecutor decided to act on her

25 own motion under Article 15 of the Statute.

1 When we filed the request, neither the Prosecutor nor any member of her staff had
2 indications from Bangladesh or any other State Party that they would make a referral
3 to the Prosecutor under Article 13(a).
4 The reference to the possibility of a State referral in paragraph 3 of the request was
5 not made because we had specific information that any State was contemplating this
6 step. Rather, it reflects the fact that the jurisdictional question we identify is of just
7 as much relevance to State referrals as it is to own motion activities by the Prosecutor.
8 Whichever trigger is used, both depend on the claim that Article 12(2)(a) applies by
9 virtue of conduct occurring on the territory of Bangladesh.
10 Specifically, the only scenario in which the jurisdictional question raised in the
11 request, vis-à-vis Bangladesh, is not relevant is if Myanmar accepts the jurisdiction of
12 the Court under Article 12(3) or the UN Security Council makes a relevant referral.
13 Now, since filing our request, we still have no indication that Bangladesh or any other
14 State Party intends to refer the situation to the Prosecutor. (Redacted)
15 (Redacted)
16 (Redacted), what I have just reported
17 to you sums up the essence of our knowledge, no referral is expected.
18 However, in preparing for this hearing, we have identified some public statements,
19 which may be of relevance to your Honours' deliberations. The full content of these
20 statements can be found in the written materials we filed last night, number 27, filing
21 number 7, annexes B to F. Since some of these documents are quite lengthy, we
22 would like to take this opportunity briefly to highlight some portions on the screen,
23 what we consider to be key portions.
24 The first slide is coming up now.
25 So first on the screen, and this is a statement from the recent UN Security Council

1 meeting which would have taken place on 14 May of this year, found at annex B, we
2 note that France has expressly acknowledged that "forced displacement of people
3 constitutes a crime against humanity" under our Statute, and that "Bangladesh is
4 party to it". That is, party to the Statute. (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 Secondly, in that same meeting, Sweden, which is also currently sitting on the
10 UN Security Council, stressed the need for the "international community" to "look
11 seriously into the possible mechanisms" which might be available if the government
12 of Myanmar fails to take adequate steps to ensure accountability for the alleged
13 crimes. (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Redacted)
19 (Redacted)
20 (Redacted)
21 (Redacted)
22 (Redacted)
23 (Redacted)
24 (Redacted)
25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 Fourthly, and similarly, Canada has made clear that it supports a referral in principle.

11 This is based on a policy recently announced by the Canadian prime minister, which

12 we have included in annex D. (Redacted)

13 (Redacted)

14 (Redacted)

15 Following the filing of our request, we also noted the public statement by the Office of

16 the State Counsellor of Myanmar recalling that Myanmar is not a party to the Rome

17 Statute and asserting that our request infringes on the principles of national

18 sovereignty and non-interference. Your Honours can find this statement in filing 27,

19 at annex E. On this basis, we see no prospect that Myanmar is likely to accept the

20 jurisdiction of the Court under Article 12(3). (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Concerning the anticipated cooperation of Bangladesh or any other State Party to the

25 Rome Statute, the Prosecution will of course expect the same degree of cooperation as

1 the Statute requires in any other situation before the Court. (Redacted)

2 (Redacted)

3 (Redacted)

4 Other influential bodies have also indicated support. For example, both the Europe
5 Union Foreign Affairs Council and the European Parliament have endorsed potential
6 ICC action.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 Overall, given the level of concern in the international community about the situation
12 of the Rohingya, we should expect full support for any action by the ICC.

13 Mr President and your Honours, I come now to question 6.

14 And you will be pleased to know I am not too far from the end of my submissions.

15 Under your sixth question, your Honours note that our request refers to the general
16 principle known as *compétence de la compétence*, and you ask us to clarify to
17 whether this is an alternative basis to our argument based on Article 19(3).

18 The short answer to your question is no. Should your Honours find that Article 19(3)
19 is not applicable to the present situation by means of Regulation 46(3), we do not
20 consider that *compétence de la compétence* is a viable procedural alternative. We
21 referred to it in our request not to suggest it was a procedural alternative to Article
22 19(3), but to reinforce the logic and rationale of Article 19. And I would refer you to
23 paragraph 53 of our request.

24 To explain our position on that matter a little more fully, we surmise that your
25 Honours would at least find that Article 19(3) would be available procedurally in

1 circumstances where a situation already exists before the Court.

2 We anticipate that your concern however may be that Regulation 46(3) cannot apply
3 in order to make Article 19(3) operative before a situation exists before the Court.

4 In other words, for the sake of argument the Prosecutor cannot use Regulation 46(3)
5 to create a judicial proceeding in which she can then make an Article 19(3) request.

6 However, we submit that such an interpretation is unwarranted and would defeat the
7 object and purpose of Article 19(3) itself and would run counter to the purely
8 procedural scope of Regulation 46(3).

9 As we explained in our request, once judicial proceedings are on foot, there is much
10 less need for an Article 19(3) procedure. This is especially so by the time that those
11 proceedings have an adversarial component.

12 The essential value of Article 19(3) is the ability to use it early so the Prosecutor can
13 take action where necessary to avoid, despite her best intentions, going down the
14 wrong jurisdictional path at the outset. We note too that Regulation 46(3) applies to,
15 quote, "any matter, request or information not arising out of a situation assigned to a
16 Pre-Trial Chamber" unquote, which anticipates just our situation. In this context we
17 submit that the synergy between Article 19(3) and Regulation 46(3) is both necessary
18 and obvious.

19 If we accept that Regulation 46(3) cannot serve to trigger Article 19(3), then we must
20 also accept that Article 46(3) cannot serve to trigger the *compétence de la compétence*
21 principle. There are two reasons for this.

22 First, we understand the doctrine of *compétence de la compétence* is meant to ensure
23 that the Court can always answer a jurisdictional question when judicial proceedings
24 already exist, but this is a very different proposition from suggesting that the doctrine
25 can be used to create judicial proceedings which do not otherwise exist solely for the

1 purpose of then ascertaining the Court's jurisdiction. If such a power is not
2 expressly provided, such as in Article 19(3) in combination with Regulation 46(3) as
3 necessary, then we submit that it cannot just be implied. Such a power would have
4 no apparent limitation and would simply be a vehicle for the Court to express its
5 opinion whenever it saw fit. If the drafters of the Statute had intended such a
6 mechanism, they would have said so.

7 Secondly, to any extent that your Honours doubt Regulation 46(3) can be applied on a
8 relatively narrow basis to Article 19(3) where the drafters gave the Prosecutor an
9 express power, at her discretion, to request a ruling on jurisdiction, we do not see
10 how it can logically be applied to an implied or inherent power to a similar effect
11 with broader scope. This would read content into Regulation 46(3) which simply
12 isn't there.

13 Finally on a related point we also note that if your Honours agree with us that
14 Article 19(3) and Regulation 46(3) can be used in combination, as we hope you will,
15 this would still exclude the use by the Court on its own motion of Regulation 46(3)
16 and the principle of *compétence de la compétence* in combination. This is because
17 Article 19(3) gives exclusively to the Prosecutor a general discretion to determine
18 whether to seek a jurisdictional ruling, otherwise such matters could only be raised
19 where the Statute expressly permits it.

20 Reading the principle of *compétence de la compétence* broadly would defeat the
21 object of Article 19(3) since it would then potentially allow any party or participant to
22 exercise the same power.

23 For these reasons, your Honour, we are compelled to take an all or nothing position.

24 Either the Prosecutor has the power to request a ruling at this stage under Article 19(3)
25 and Regulation 46(3) in combination or there is no such power to trigger a ruling on

1 jurisdiction at this time. This we submit cannot be what the framers of the Statute
2 intended.

3 In sum, Article 19(3) permits the Prosecutor to seek a ruling on jurisdiction at any
4 time and Regulation 46(3) allows for the Pre-Trial Chamber to be set up to hear the
5 request.

6 Question 7:

7 Finally in your seventh question your Honours refer to the recent visit of the
8 UN Security Council delegation to Myanmar and Bangladesh and ask our view of the
9 prospects of a UN Security Council referral and related matters.

10 In this context it is common ground we submit that a UN Security Council referral is
11 one of only two conditions, the other being Myanmar accepting the Court's
12 jurisdiction, which would serve to make our request moot. We must begin by
13 making the obvious point that we have no particular insight into the private
14 deliberations of the UN Security Council. We're only in a position to speak on public
15 matters within our knowledge. Nor indeed is it the practice of the Prosecutor to act
16 on behalf of the Council or to seek its approval before she acts. To the contrary,
17 consistent with Articles 13(b), 16 and 42 of the Statute, the Prosecutor proceeds how,
18 as and when she sees fit and leaves it to the Council to act within the scope of its
19 powers.

20 We're going to put a slide up for now and your Honours can see on your screens
21 proceedings at the UN Security Council have evolved since we filed our request.

22 The mission to which your Honours refer took place between April 28 and May 1 of
23 this year, almost three weeks after we submitted our filing. Furthermore, some
24 weeks after that, and now just over a month ago on May 14, the UN Security Council
25 met again in New York to discuss that mission.

1 The formal record of the May 14 meeting, which is a public document, is contained in
2 our filing number 27 at annex B. Your Honours may find the document to be of
3 interest as a whole; however, for the present purposes, we will briefly take you
4 through some of its most salient points.

5 The screen now shows the current membership of the Security Council. In addition
6 to the five permanent members, it includes Bolivia, Côte d'Ivoire, Equatorial Guinea,
7 Ethiopia, Kazakhstan, Kuwait, The Netherlands, Peru, Poland and Sweden. As such,
8 the Council includes significant representation of States which are not parties to our
9 Statute, specifically 60 per cent of the permanent members of the Council and
10 40 per cent of the elected members.

11 As additional background, your Honours can also see a brief excerpt of the remarks
12 of Bangladesh and Myanmar at this meeting.

13 (Redacted)

14 (Redacted) Based

15 on the remarks of UN Security Council members at this meeting, we see little
16 prospect in the present climate of a Chapter VII resolution referring the situation in
17 Myanmar to the Court.

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 As at the moment we see no prospect that the UN Security Council would issue a
11 resolution which will materially promote cooperation with the Court if it is unable to
12 make a referral to the Court.

13 That being said, this does not detract from the strong support the Court might expect
14 from some individual members of the UN Security Council, including permanent
15 members and the possible assistance that these States could potentially provide to the
16 Prosecutor in any future investigation.

17 Mr President, your Honours, what we've been presenting to you may be valuable
18 context. In the end, however, I submit that the Chamber should focus its attention
19 on the narrow jurisdictional question that we have submitted to it in our request
20 under Article 19(3): Does this Court, as we suggest it does, have jurisdiction over the
21 situation of the Rohingya in Bangladesh because a legal element of the crime against
22 humanity of deportation was accomplished on the territory of Bangladesh, a State
23 Party to the Rome Statute? That is the issue.

24 If your Honours have any further questions, we'll endeavour to answer them, and I
25 thank you very much for your kind attention.

1 PRESIDING JUDGE KOVÁCS: [10:45:42] Thank you very much, Mr Deputy

2 Prosecutor.

3 And in fact we prepared a number of additional questions for you which relate also to
4 the submission made later by the government of Bangladesh, as well as several
5 amicus curiae.

6 However, in the meantime, when we followed your presentation, we realised also
7 that there are some overlappings between our pre-formulated questions. And so in
8 such a situation I will drop one of our previous questions. It was, by the way,
9 number 1 question. Instead I will have another one, by the way. And in fact I call
10 up on your wisdom to skip some elements of the other questions, telling that okay,
11 you covered it abundantly, or you may also seize the occasion to deepen it, I mean the
12 explanation of your position.

13 So in fact our first question substituting that one which was already covered is, so
14 finally taking into account the position of the government of Myanmar that you
15 submitted to us officially in annex A, the press communiqué of the government, do
16 you analyse this document and other documents related thereto as a challenge to the
17 jurisdiction or as the contestation of the jurisdiction of the Court? This is the first
18 question.

19 MR STEWART: [10:47:38] May I have your indulgence for a moment just to consult
20 with my think-tank.

21 PRESIDING JUDGE KOVÁCS: [10:47:50] Yes, of course.

22 MR STEWART: [10:48:04] Thank you for that indulgence, Mr President.

23 The government of Myanmar would have to file something with the Chamber in
24 order to challenge jurisdiction of the Court. (Redacted)

25 (Redacted)

Ex Parte Status Conference

(Closed Session)

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1 (Redacted)

2 (Redacted)

3 I can just add that that reinforces in a sense the very conservative approach we have
4 taken focusing on Bangladesh and what has happened on the territory of Bangladesh
5 as being the hook, if you will, for jurisdiction. And what occurred in Myanmar of
6 course would be subject to investigation because those are the triggering events for
7 the deportation (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 I hope that responds to your question.

12 PRESIDING JUDGE KOVÁCS: [10:49:23] Thank you, Mr Deputy Prosecutor.

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 In your request the Prosecution puts the number of Rohingya persons allegedly
19 driven out of Myanmar and into Bangladesh between August 2017 and March 2018 at
20 about 670,000. (Redacted)

21 (Redacted) However, apart from that,

22 is the Prosecutor able to offer any clarifications of this discrepancy and whether these
23 imprecisions or conflicting figures could hamper the analysis and the future work.

24 The floor is yours.

25 MR STEWART: [10:50:52] Mr President, we would submit that the discrepancy at

1 this stage would not hamper the analysis that the Chamber would make in the least.
2 If my memory serves me correctly, there were Rohingya people who fled into
3 Bangladesh even before the huge exodus that began in August of 2017. The
4 figure 670,000 is drawn from the various reports that we've relied on to this point.
5 Clearly in a further examination of the situation, were we to pursue a preliminary
6 examination, we would attempt to get a clearer sense of what the figures were. At
7 this stage I suppose, I don't want to be flippant, but an awful lot of people have
8 escaped from Bangladesh -- I mean from Myanmar into Bangladesh and a million
9 people, 670,000 people, we are talking about hundreds of thousands of people. And
10 I'm sure you have seen on television, as we all have, the vast refugee camps that have
11 been set up around Cox's Bazar in the Chittagong area of Bangladesh. So we can see
12 that this is a humanitarian catastrophe of absolutely gigantic proportions. But I
13 would submit to you that the discrepancy in the numbers at this stage should make
14 no difference to your deliberations.

15 PRESIDING JUDGE KOVÁCS: [10:52:26] Thank you, Mr Deputy Prosecutor.

16 And in the meantime I got warning that I should take care on the rights of the
17 translators. And because we have, in fact, several questions and it cannot be
18 excluded that my Judge colleagues will also have questions to you, so what I suggest
19 is to take a break now and let's resume the hearing at 11.30.

20 MR STEWART: [10:52:58] Thank you, Mr President.

21 THE COURT USHER: [10:52:59] All rise.

22 (Recess taken at 10.53 a.m.)

23 (Upon resuming in closed session at 11.31 a.m.) *Reclassified as Open session

24 THE COURT USHER: [11:31:28] All rise.

25 Please be seated.

1 PRESIDING JUDGE KOVÁCS: [11:31:44] Thank you very much. And we resume
2 the session.

3 So this is combined third and fourth question that I will be ask to you, Mr Deputy
4 Prosecutor. And these two questions relate to the agreements reached by Myanmar
5 and Bangladesh on the return of the displaced persons and the memoranda of
6 understanding signed by the two States with the United Nations, more precisely with
7 the UNDP and the UNHCR.

8 Firstly, do these agreements and the memoranda of understanding have any impact
9 on the Prosecutor's decision whether to conduct preliminary examination and
10 potentially initiate an investigation at a later stage? And secondly, Mr Deputy
11 Prosecutor, can you develop on the impact you envisage a potential preliminary
12 examination and/or investigation by your office might have on the implementation of
13 these agreements?

14 MR STEWART: [11:33:02] Thank you.

15 PRESIDING JUDGE KOVÁCS: [11:33:06] The floor is yours.

16 MR STEWART: [11:33:08] Thank you, Mr President, your Honours.

17 I'm not aware of all of the details that you have mentioned but am generally aware
18 that there was some sort of agreement signed between Myanmar and Bangladesh.

19 I'm not aware that anything has happened to return anybody from Bangladesh to
20 Myanmar. (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 We just don't know what is going to happen with respect to any of these agreements.

25 Now, I just don't have any further information. That's, I know, a very vague

1 response to what you have said. I would say that we would of course take that into
2 account in a further preliminary examination, but the focus of the preliminary
3 examination and any further investigation would be on the crime completed. The
4 enormity of the crime is such that even if there was a resolution, and whether there
5 will be a resolution is very much up in the air, the need for accountability is still there,
6 even if some kind of resolution is effected.

7 Now, whether or not a preliminary examination or investigation would have an
8 impact on the implementation of the agreement is impossible to say. It's an entirely
9 different situation, but I can from personal experience perhaps give you some
10 reassurance. If we take, for example, the situation of Columbia, the presence of the
11 International Criminal Court, and particularly the Office of the Prosecutor, in the
12 context of a preliminary examination did not impair the peace negotiations and
13 discussions that occurred in Havana and in fact in some way I have come to learn
14 assisted them, even if that wasn't our intention.

15 So it is impossible to predict what impact an investigation, for example, would have,
16 but it is not inevitable that it would be a negative one.

17 I think that's the best I can do.

18 PRESIDING JUDGE KOVÁCS: [11:35:54] Mr Deputy Prosecutor, I referred only to
19 the news published in the media that the Myanmar government mentioned that if
20 Bangladesh would be, let's say, active in this case, this could have an impact on the
21 implementation of these recently signed memoranda of understanding and
22 agreement.

23 MR STEWART: [11:36:19] Your Honour, I don't want to speculate, (Redacted)
24 (Redacted)
25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 May I have your indulgence a moment.

5 Yes, my colleagues point out to me that some States have said that accountability is
6 necessary in order to ensure safe return of refugees to Myanmar. So the notion of
7 accountability is inescapable in this situation.

8 I would submit that we cannot be concerned at this stage about the possible
9 implications for what is happening between Myanmar and Bangladesh of the
10 International Criminal Court's intervention.

11 PRESIDING JUDGE KOVÁCS: [11:37:28] Thank you, Mr Deputy Prosecutor. In
12 fact so here this is once again a question which has some overlapping, so it's up to
13 you whether to skip or to amplify your position on that.

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 Secondly, the Chamber would like to know whether there have been any
22 developments concerning the possibility of a Security Council referral under
23 Article 13(b) of the Rome Statute. You just mentioned that, I think, apparently about
24 that.

25 And thirdly, could you develop on Myanmar's position with regard to the possible

1 exercise of jurisdiction by this Court. Partly you replied on that, so if you think, you
2 may skip that or you can substantiate your position.

3 MR STEWART: [11:39:02] Thank you, Mr President.

4 With respect to the second and third questions, I think you have our submissions. I
5 don't know that I can assist you any further.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 PRESIDING JUDGE KOVÁCS: [11:40:17] Thank you, Mr Deputy Prosecutor.

18 Now I turn to my colleagues to give them the floor in case they have any additional
19 questions to you or if they would like to ask for more information on any aspect that
20 was already touched upon.

21 (Trial Chamber confers)

22 PRESIDING JUDGE KOVÁCS: [11:40:34] Apparently this is not the case.

23 Before closing the session, I would like to go back to your oral request concerning the
24 leave to reply to the amicus briefs on the one hand and concerning the length, the
25 expected lengths of the document. And in fact on this orally submitted request, we

1 give an oral order that the leave is granted for you for both of them.

2 MR STEWART: [11:41:20] Thank you very, very much.

3 PRESIDING JUDGE KOVÁCS: [11:41:23] You're welcome.

4 If there are no other comments or observations on the part of the Office of the
5 Prosecutor, we will come to the end of our status conference. And in order to have
6 a publicly redacted version of the transcript of the status conference, I would like to
7 ask the Prosecutor to submit to the Chamber proposals for redactions, if any, to the
8 transcript within one week of receipt of the final edited version of the transcript.

9 MR STEWART: [11:41:55] We'll be pleased to do that, Mr President.

10 PRESIDING JUDGE KOVÁCS: [11:41:58] Thank you very much, Mr Deputy
11 Prosecutor.

12 And so finally, I would like to thank you, Mr Deputy Prosecutor, and the members of
13 your team, the interpreters and the court officers.

14 The hearing is now closed.

15 THE COURT USHER: [11:42:13] All rise.

16 (The hearing ends in closed session at 11.42 a.m.) *Reclassified as Open session

17 RECLASSIFICATION REPORT

18 Pursuant to Pre-Trial Chamber I's Decision, ICC-RoC46(3)-01/18-32, dated 11th of July
19 2018, this version of the transcript with its redactions is reclassified as Public.