

Telders International Law Moot Court Competition 2012

Written memorial on behalf of the United States of Merseystan

(Respondent)

in

The Case of North Manconia

(Republic of North Manconia *v.* United States of Merseystan)

Registration Number

14 B

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b) Abbreviations

Art.	Article
Doc.	Document
ECtHR	European Court of Human Rights
Ibid	Ibidem
ICC	International Criminal Court
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda
ILM	International Legal Materials
ILA	International Law Association
ILC	International Law Commission
ILR	International Law Reports
No.	Number
Mr	Mister
Para./Paras.	Paragraph/Paragraphs
PCIJ	Permanent Court of International Justice
Res.	Resolution
RNM	Republic of Northern Manconia
SC	Security Council
Ser.	Series
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Series
UNTC	United Nations Treaty Collection
US	United Sates
USM	United States of Merseystan
V	<i>Versus</i>
V	
VCLT	Vienna Convention on the Law of Treaties
Vol.	Volume

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d) Statement of Relevant Facts

The Republic of Manconia (RoM), a former colony of the United States of Merseystan (USM), achieved its independence on 5 July 1965. Ever since, tension has existed between the two largest ethnic groups living in the country, the Blues and Reds, comprising 62% and 28% of the population respectively.

Due to a series of successive election victories by the Blue-dominated “Manconia Peoples Party” from 1965 onwards, the Reds perceived themselves to be increasing marginalization in the political affairs of RoM. Resentment grew to such a point in the predominantly red-populated north of the country, particularly in the city of Redville, that sporadic violence commenced against government forces. In 1992, an armed group, the Keanos of North Manconia, was established to coordinate the insurrectionary movement.

Violence escalated to such a degree between the Keanos and the Armed Forces of the Republic of Manconia (AFRM), that USM brought the matter to the attention of the UN Security Council. After a decade of negotiation, on the 5th of July, 1999, the Republic of North Manconia (RNM) was established, joining the United Nations soon after. The tension and violence between the Blues and Reds, however, did not stop.

After years of conflict, many of the Blues, who comprise 20% of the population of RoM, feared reprisals at the hands of the new Red-dominated regime. As the RNM regime struggled with high unemployment and spiraling crime-rate, the situation became increasingly volatile, and the Keanos refused to hand over their weapons.

After the sudden death of the RoM President at a function organized by representatives of the Blue community, the Reds immediately blamed the death on the Blues, which sent the country into chaos. The Keanos begin a violent campaign, directing attacks at the vulnerable Blue minorities in RoM, in an effort to eliminate them from the country.

Over a short period of time, from the death of the RoM President on the 9th of July 2009 to the 18th of July, scores of unarmed Blues were killed and hundreds beaten. By the 25th, the attacks had spread all over the country. Leading Keanos and their sympathizers began to use radio to coordinate their attacks against the Blue community. Mr. Neville, a leading radio DJ, told his listeners to “squash” the Blues, relaying precise information as to the addresses of where they live and work, ordering them to be “fried”, “roasted”, “squashed” and “eliminated.”

On the 30th July, the UN Security Council adopted Resolution 2778, ordering all parties to cease incitement, through mass media, to violence and hatred. The brutality, however, continued in RNM. Despite persistent lobbying by USM and human rights groups, the threat of veto by two permanent members of the Council meant that no peacekeepers were deployed to RNM. Another Resolution, 3782 (2009), was adopted instead, declaring that acts of genocide are punishable under international law. It calls for the individuals responsible for such crimes to be brought to justice.

By 25 August 2009, the attacks on Blues had ceased under international pressure; however, violence had reduced their population in the country from 600,000 to 70,000 people: the number of dead is estimated at 320,000 dead, while 200,000 fled the country.

On 20 October 2009, a reconciliation government was formed, consisting primarily of Reds, but with some Blues as well. The Red side resisted calls for a UN criminal tribunal to prosecute people accused of involvement in the genocide, agreeing instead to establish a hybrid UN-RNM tribunal instead. In a controversial move, Mr. Neville was appointed as the RNM government’s new Minister for Culture, Media and Sport.

Under the 2002 Genocide Act, USM domestic law provides for the capacity to exercise universal jurisdiction over genocide. This act prescribes such jurisdiction over direct and public incitement of genocide, wherever committed, and without any distinction based on

official capacity. On the basis of this legislation, USM prosecutors opened up criminal proceedings against MR. Neville for the crime of inciting genocide in and around the city of Redville between 28 July and 15 August 2009. USM requested for Mr. Neville to be extradited, but RNM refused.

Over a year later, by December 2010, the Blue community remained without justice. No progress was made in establishing the UN-RNM Criminal Tribunal. Civil justice groups, attempting to hold Mr. Neville and other Red Members of the current government to account before domestic courts, had met with similar defeat. The RNM court maintains that under RNM law, Ministers of the State have immunity from civil action.

With prior-knowledge that Mr. Neville will be in attendance at the annual Regional Ministers' meeting in Orangestan, USM explored the possibility of Orangestan arresting Mr. Neville and extraditing him to USM. Orangestan, however, refused citing the lack of an Orangestan-USM extradition treaty.

On 12 May 2011, USM Special Forces apprehended Mr. Neville at the Regional Minister's Meeting, where he was subsequently handed over to the courts of USM to face trial for his accused crimes.

Mr. Neville was permitted to defend his proceedings together with the assistance of the local RNM Consulate, however, the USM court dismissed Mr. Neville's complaints regarding his circumstances. His case was sent back down to the criminal court. On 3 March 2012, RNM instituted proceedings against USM before the International Court of Justice.

e) Issues:

In *The Case of North Manconia*, United States of Merseystan requests this honorable Court to adjudge and declare whether:

I. Does USM lack jurisdiction over the alleged acts of Mr. Neville?

A. Does customary international law to allow USM to assert universal jurisdiction over the crime of genocide?

1. Can third parties claim the Genocide Convention against State-parties?

2. Does customary international law allow USM to assert universal jurisdiction?

B. Does an absence of a prohibition against asserting universal prescriptive jurisdiction allow USM to assert universal prescriptive jurisdiction?

II. Has Mr. Neville's immunity been violated?

1. Is Mr. Neville's functions of a nature to grant him immunity?

2. Does Mr. Neville enjoy immunities although he cannot bind his State while carrying out his functions abroad?

3. Extending immunity to further government officials would counter the general trend of fighting impunity

4. Mr. Neville remains individually responsible for his acts committed prior to ministerial appointment

III. Is extraterritorial abduction illegal under international law?

1. What is the current status of the *male captus bene detentus* principle under international law?

2. In cases of extraterritorial abduction, does the need to obtain accountability for universally condemned offences, outweigh any territorial violation to another State?

3. What is the appropriate balance between prosecuting universally condemned offences, and the need to respect rules of due process and the human rights of the abducted accused?

f) Summary of arguments:

(1) The United States of Merseystan submits that the Genocide Convention does not apply in the dispute between USM and RNM.

(2) The United States of Merseystan submits that an international custom allowing for the assertion of universal prescriptive jurisdiction exists.

(3) The United States of Merseystan submits that there is no international legal prohibition against a State exercising universal prescriptive jurisdiction.

(3) The United States of Merseystan submits that the nature of Mr. Neville's ministerial responsibilities cannot grant him immunity under international law.

(4) The United States of Merseystan submits that extending immunity to further government officials would counter the general trend of fighting impunity.

(5) The United States of Merseystan submits that Mr. Neville remains individually responsible for his acts committed prior to ministerial appointment.

(6) The United States of Merseystan submits that Mr. Neville should not be granted immunity, as he cannot enter into binding international agreements on the behalf of RNM.

(7) The United States of Merseystan submits that the manner in which Mr. Neville was apprehended does not preclude its courts from exercising jurisdiction over him.

(8) The United States of Merseystan submits that the violation to the territorial sovereignty of Orangestan does not prevent it from exercising jurisdiction over Mr. Neville.

(9) The United States of Merseystan submits that the alleged human rights violations to Mr. Neville do not serve as an impediment to the exercise of jurisdiction over him.

(g) Jurisdiction of the Court

The United States of Merseystan and the Republic of North Manconia are both members of the United Nations and parties to the Statute of the ICJ. They have accepted the Court's jurisdiction by means of respective declarations under Article 36 of the Statute of the Court, to which they have not attached any reservations.

On 3 March 2012 RNM, the Republic of North Manconia brought proceedings.

**I. USM HAS JURISDICTION OVER THE ALLEGED ACTS OF MR. NEVILLE,
WHICH WERE COMMITTED OUTSIDE USM TERRITORY AND DID NOT
INVOLVE USM NATIONALS**

**A. USM IS PERMITTED UNDER CUSTOMARY INTERNATIONAL LAW TO
PRESCRIBE GENOCIDE UNDER ITS DOMESTIC LAW**

1. The Genocide Convention does not apply in this dispute

The Genocide Convention is not applicable to the dispute in question, as RNM is not a party to the Convention. Applying VCLT Art. 34 “[a] treaty does not confer either obligations or rights for a third State without its consent”. However, States remain permitted to assert prescriptive universal jurisdiction under customary international law.¹ The universality principle “provides every State with jurisdiction over a limited category of offences generally recognized as of universal concern, regardless of the situs of the offence and the nationality of the offender and the offended”.² In order prove customary international law, both state practice and *opinio juris* is needed.³ These two elements will both be established below.

**2. Prescriptive universal jurisdiction for the crime of genocide is widely supported by
the international community**

The international community widely accepts an international customary rule to prescribe genocide. The ICJ held in the *Application of the Genocide Convention* that “the rights and obligations enshrined in by the [Genocide] Convention are rights and obligations *erga omnes*” and “that the obligations each State thus has to prevent and punish the crime of genocide is not territorially limited by the Convention”.⁴ Although the decision of the Court in *Arrest*

¹ ICJ Statute, Art. 38(1)(b).

² Randall (1988), 788; quoting O. Schachter (1985), 262.

³ *Continental Shelf case*, para. 77.

⁴ *Application of the Genocide Convention*, para. 31.

Warrant remained silent on the issue of universal jurisdiction, this is not to be taken as evidence against the existence of such a customary rule under international law. On the contrary, a majority of the judges expressing an opinion on universal jurisdiction in *Arrest Warrant* did so favorably.⁵ Judge Van den Wyngaert recognized explicitly that in the case of genocide “States are entitled to assert extraterritorial jurisdiction”, affirming the *Genocide Case dicta*.⁶

Additionally the Appeals Chamber of the ICTY stated that “universal jurisdiction [is] nowadays acknowledged in the case of international crimes” in *Tadic*, which was repeated by the ICTR in *Ntyahaga*.⁷ Similarly, the European Court of Human Rights endorsed the exercise of extraterritorial jurisdiction following *Jorgic* where the accused claimed that the German Courts did not have jurisdiction to convict him of genocide.⁸

Various other international organs have similarly recognized universal jurisdiction over the crime of genocide. A commission set up by the UNSC recognized that universal jurisdiction exists for genocide⁹, as did ILC in its draft Code of Crimes under Article 8.¹⁰ Universal jurisdiction has also gained much scholarly support¹¹, including from scholarly organisations¹². It is also the view held within UN human rights institutions.¹³

⁵ *Separate Opinion on Arrest Warrant*, para. 9; *Joint Separate Opinion on Arrest Warrant*, para. 59 *et seq.*; *Dissenting Opinion on Arrest Warrant*, para. 67.

⁶ *Dissenting Opinion on Arrest Warrant*, para. 59.

⁷ *Tadic*, para. 62; *Ntyahaga*; *see also* *Blaskic*, para. 29; and *Furundzija*, para. 156.

⁸ *Jorgic (ECtHR)*, para. 68.

⁹ Final Report of the Commission of Experts, 42.

¹⁰ ILC Report (1996), 42.

¹¹ Meron, 570; Paust, 91-92; Randall, 837; Stern 286-87; Kress (2006), 576; Chadwick (2009); Inazumi (2005), 155; Gaeta (2009), 244.

3. Prescriptive universal jurisdiction for the crime if genocide is widely supported in domestic legislation

Many states have provisions under their national legislation asserting prescriptive universal jurisdiction over the crime of genocide.

Some States have adopted statutes that explicitly provides for universal jurisdiction over genocide. German legislation was amended in 2002 with the German Code of Crimes against International Law.¹⁴ Section 1 extends German jurisdiction to genocide even where the crime is committed outside German territory and has no link to Germany. In the Netherlands genocide is criminalized under the International Crimes Act of 19 June 2003, Section 3. Provided the suspect is present in the territory, Section 2, §1 allows for universal jurisdiction.¹⁵ Previously, Spain's Article 23(4) of the Spanish Organic code states that "Spanish courts have jurisdiction over acts committed by Spanish or foreign nationals outside the Spanish territory which constitute the following offences punishable under Spanish law: a. Genocide..."¹⁶ The Spanish legislation was recently amended to require the victims to be Spanish or the perpetrator on Spanish territory. Canada's Crimes Against Humanity and War Crimes Act similarly explicitly authorizes jurisdiction over crimes that are committed abroad by non-nationals, as long as the offender is present in Canada.¹⁷

¹² Princeton Principles, Principle 1; the Cairo Principles; the Kamminga Report, 5; IIL Resolution, 3(a).

¹³ Van Boven (1996), Art. 5.

¹⁴ Völkerstrafgesetzbuch, §1; but even prior to the amendment German law provided for universal jurisdiction under Strafgesetzbuch (Germany), §6.

¹⁵ International Crimes Act, s. 2(1)(a).

¹⁶ Lei Orgánica, Art. 23(4).

¹⁷ Crimes Against Humanity and War Crimes Act 2000, Section 6, §1.

There are further examples of state legislation that does not explicitly provide for universal jurisdiction, but effectively asserts universal prescriptive jurisdiction over non-nationals for acts committed abroad. The United States have amended their jurisdictional basis for genocide with the Genocide Accountability Act.¹⁸ Previously limited only to genocide committed within its territory and by its nationals, it now extends to include even non-nationals “brought into, or found in, the United States, even if that conduct occurred outside”.¹⁹ France temporarily adapted its legislation to include universal jurisdiction, provided the perpetrator is present on French territory, for crimes incorporated in the UNSC resolutions 827 and 955, creating the ICTY and the ICTR respectively.²⁰ France recently adapted its Penal Code to the ICC, which authorizes French courts to exercise jurisdiction over a genocide perpetrator habitually resident in France.²¹ Under the British International Criminal Court Act 2001 genocide can be prosecuted if it is committed by a UK national, a UK resident or a person subject to UK service jurisdiction.²²

One more example is in order, because of the particular circumstances surrounding it. Provoked by the controversy surrounding Belgium’s former Act Concerning the Punishment of Grave Breaches of International Humanitarian Law²³, the Act was repealed and amendments were introduced into the Belgian criminal code.²⁴ The new Article 6, 1^o *bis* provides that Belgian courts may exercise jurisdiction over crimes committed abroad over

¹⁸ Genocide Accountability Act.

¹⁹ Proxmire Act, (d); Proxmire Act (as amended), (d)(3)-(5).

²⁰ Loi no 95-1; Loi no 96-432.

²¹ Code de Procédure Pénale, Art. 689-11.

²² International Criminal Court Act, Section 51, § (2)(b).

²³ *Act Concerning the Punishment of Grave Breaches of International Humanitarian Law*

²⁴ CCP, 136 *bis* – 136 *octies*.

“toute persona ayant sa residence principale sur la territoire du Royaume”, including individuals becoming residents after the commission of the crime. Article 10,1° extends the Court’s jurisdiction beyond nationals to additionally include genocide committed against Belgian residents. This amendment, still providing for jurisdiction in regards to the crime of genocide committed extra-territorially against non-nationals, therefore must reflect the international community’s opinion on the issue.

These are only an overview of the examples of national legislation based on universal prescriptive jurisdiction. For further examples, the European Court of Human Rights noted in *Jorgic* that most European countries asserted, at the time of decision, universal jurisdiction, expressly mentioning Spain, France, Belgium, Finland, Italy, Latvia, Luxembourg, Netherlands, Russia, Slovak Republic, Czech Republic and Hungary.²⁵

4. Prescriptive universal jurisdiction for the crime of genocide is widely supported by domestic case-law

In *AG of Israel v Eichmann*, the Israeli Court refuted the accused challenge on the grounds that the alleged crime of genocide had been committed outside Israel. The Israeli government had enacted retroactive legislation creating an offence similar to that under the Genocide Convention. The Court concluded that the Court had jurisdiction to try *AG of Israel v Eichmann* on the basis of the universality principle. In regard to universal jurisdiction, the Court held that “every sovereign State may exercise its existing powers within limits of customary international law”.²⁶

In *Demjanjuk* the US courts allowed an extradition to Israel of a suspect, which was neither an Israeli national nor an Israeli resident for crimes committed in Poland. The Court

²⁵ *Jorgic*, para. 52-54. For further examples of practice: S-G Report (2011); S-G Report (2010); Amnesty International Survey; Kaleck (2009).

²⁶ *AG v Eichmann*, para. 23.

held that: “When proceeding [under the universality principle], neither the nationality of the accused or the victim(s), nor the location of the crime is significant. The underlying assumption is that the crimes are offenses against the law of nations or against humanity and that the prosecuting nation is acting for all nations.”²⁷

Germany has launched several prosecutions under its older criminal code, the *Strafgesetzbuch*. Recently, it prosecuted two Bosnian Serbs of genocide committed against Muslims in Serbia: *Jorgic* in 1999, and *Sokolovic* in 2001. Another two instances of genocide charges may likewise be noted.²⁸ Similarly, the Spanish courts have dealt with universal jurisdiction under the Spanish Organic Law many times. In the case of *Pinochet* the National Court approved an arrest warrant on charges of genocide. In *Cavallo* Spain sought to exercise universal jurisdiction over the former Argentinian Navy Captain for genocide and terrorism committed in Argentina, which was approved by the Spanish Supreme Court. The Spanish Supreme Court recently rules in the *Guatemalan Genocide Case* that no nexus or tie to Spain, such as presence, nationality or Spanish national interest, was needed in order to assert universal jurisdiction.²⁹ One of the most recent domestic cases is the prosecution of a Rwandan Hutu under the Canadian Crimes Against Humanity and War crimes Act.³⁰

The above-mentioned state practice provides *opinio juris*, the second element necessary for the formation of customary international law.³¹ Further *opinio juris* can be obtained from statements made by representatives during the 64th, 65th and 66th Session of the

²⁷ *Demjanjuk*, para 582-83.

²⁸ *Djajic; Kuslijc*.

²⁹ *Guatemalan Genocide Case*; It should be noted that the Spanish Organic Law has been amended, although this does not of itself suggest that the Spanish courts will cease to hear genocide cases based on the new legislation.

³⁰ *Munyaneza*.

³¹ *Continental Shelf case*, para. 77.

General Assembly's Sessions on the scope and application of universal jurisdiction, where prescriptive universal jurisdiction meets little opposition.³²

5. It follows that States have acquiesced to the existence of a customary international rule permitting universal prescriptive jurisdiction over genocide

International recognition, domestic legislation and national court practice proves that state practice and *opinion juris* have accumulated to form a customary international rule allowing universal prescriptive jurisdiction. Such practice is so widely established today that is today without encountering protest that States must be seen to have acquiesced as to its customary nature.³³ Consequently USM is authorized to assert universal prescriptive jurisdiction over Mr. Neville's acts. States who do not assert universal jurisdiction should not be seen as objecting to the practice. States are not required to "legislate up to the full scope of jurisdiction allowed by international law"³⁴, as pointed out by Judges Higgins, Kooijmans, and Buergenthal in their Joint Separate Opinion in *Arrest Warrant*.³⁵

B. THERE IS NO INTERNATIONAL LEGAL PROHIBITION AGAINST THE COURTS OF USM ASSERTING UNIVERSAL PRESCRIPTIVE JURISDICTION OVER THE CRIMES OF MR. NEVILLE

The leading case on the question of extraterritorial jurisdiction is the 1927 *Lotus Case*.³⁶ The PCIJ held: "the first and foremost restriction imposed by international law upon a State is that – failing a permissive rule to the contrary – it may not exercise its power in any form on the

³² UNGA considering Universal Jurisdiction (64th Session); UNGA considering Universal Jurisdiction (65th Session); UNGA considering Universal Jurisdiction (66th Session).

³³ *Ibid*, paras. 3, 28-32.

³⁴ Joint Separate Opinion on *Arrest Warrant*, 45.

³⁵ *Ibid*.

³⁶ *Dissenting Opinion on Arrest Warrant*, para. 48.

territory of another state.”³⁷ However, the Court immediately qualified this principle: “It does not, however, follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad ... which is only limited in certain cases by prohibitive rules.”³⁸

A distinction must be made between prescriptive jurisdiction and enforcement jurisdiction.³⁹ The above-mentioned dictum concerns prescriptive jurisdiction.⁴⁰ It concerns what a State may do on its own territory when investigating and prosecuting crimes committed abroad. It is not about what a State may do on the territory of other States when prosecuting such crimes.⁴¹ It follows from the *Lotus Case* that a State has the right to provide universal prescriptive jurisdiction on its territory, unless there is a prohibition under international law.⁴²

It is submitted that there is no prohibition under international law to enact legislation allowing for the investigation and prosecution of crimes against humanity, i.e. genocide, committed abroad.⁴³ As declared by Judge Higgins, Koojimans, and Buergenthal in *Arrest Warrant*: “the only prohibitive rule is that criminal jurisdiction should not be exercised, without permission, within the territory of another State.”⁴⁴ In assessing the facts of their particular case, they argued that the Belgian arrest warrant envisaged the arrest of Mr.

³⁷ *Lotus Case*, 18-19.

³⁸ *Ibid.*, 19.

³⁹ *Dixon (2007)*, 142-143.

⁴⁰ *Lotus Case*, 18-19.

⁴¹ *O’Keefe (2004)*, 737-738.

⁴² Scharf (2001), 366-368.

⁴³ *Dissenting Opinion on Arrest Warrant*, para. 51-52.

⁴⁴ *Joint Separate Opinion on Arrest Warrant*, para. 54.

Yerodia in Belgium, or the possibility of his arrest in third States at the discretion of the States concerned. This, they claimed, “would in principle seem to violate no existing prohibiting rule of international law.”⁴⁵

There is no conventional international law prohibiting universal prescriptive jurisdiction.⁴⁶ The most important legal basis for this is Article 146 of the IV Geneva Convention of 1949, which lays down the principle *aut dedere aut judicare*.⁴⁷ This article obliges all states to establish their domestic criminal jurisdiction over one and the same act of a grave breach of the IV Geneva Convention as defined in its Article 147.⁴⁸ As Judge ad hoc Van den Wyngaert argued in *Arrest Warrant*, the purpose of the Geneva Conventions is not to restrict the prescriptive jurisdiction of States for crimes under international law.⁴⁹ There are also numerous other examples of international conventions that provide States with the ability to assert universal prescriptive jurisdiction.⁵⁰

There is no customary international law to this effect either. To the contrary, there is clearly *opinio juris*, evidenced through State practice, that universal prescriptive jurisdiction is allowed. There are numerous States asserting universal prescriptive jurisdiction over acts

⁴⁵ *Ibid.*, para. 54.

⁴⁶ *Ibid.*, para. 54.

⁴⁷ Art. 146, GC IV.

⁴⁸ Art. 146-147, GC IV.

⁴⁹ *Joint Separate Opinion on Arrest Warrant*, para. 54

⁵⁰ Nuclear Material Convention; Convention against Torture; Civil Aviation Convention; Internationally Protected Persons Convention; Convention of Against the Taking of Hostages; Safety of Maritime Navigation Convention; Narcotic Drugs and Psychotropic Substances; Terrorist Bombings Convention; Financing of Terrorism Convention.

committed on foreign territory in their domestic criminal legislation. This includes Australia, Netherlands, Belgium, Canada, France, Spain, the United Kingdom, and the United States.⁵¹

National court decisions, including *Eichmann*, the Danish *Saric* case, the French *Javor* case, and the German *Jorgic* case; all show national courts applying universal prescriptive jurisdiction.⁵²

The *Lotus* Principle continues to be cited with approval. Most recently, in *Arrest Warrant*, Judge Higgins, Koojimens, and Buergenthal in their joint separate opinion stated that the *Lotus* Principle: “represents a continuing potential in the context of jurisdiction over international crimes.”⁵³ In particular, in her dissenting opinion in *Arrest Warrant*, Judge ad hoc Van den Wyngaert noted the special applicability of the *Lotus* Principle to the issue of universal prescriptive jurisdiction.⁵⁴ In its 1996, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, the ICJ confirmed the continuing vitality of the *Lotus* Principle. In its majority opinion the Court concluded: “State practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorization but, on the contrary, is formulated in terms of prohibition” – which the Court found existed in the form of international humanitarian law.⁵⁵ In its brief to the ICJ in the *Nuclear Weapons Case*, the United States similarly argued: “It is a fundamental principle of international law that restrictions on States cannot be presumed, but must be found in

⁵¹ Code de Procédure Pénale (France), Art. 689-1; Code de Procédure Pénale; Canadian Crimes Against Humanity and War Crimes Act, c. 24; Australian War Crimes Act, Art. 9, 11; International Crimes Act; International Criminal Court Act; Lei Organica; Genocide Accountability Act.

⁵² *AG of Israel v Eichmann*, para. 13; *Public Prosecutor v T*, 838; *Cassese (2003)*, 288; *Public Prosecutor Jorgic*, 396.

⁵³ *Joint Separate Opinion on Arrest Warrant*, para. 54

⁵⁴ *Dissenting Opinion on Arrest Warrant*, para. 48-50.

⁵⁵ *Legality of the Threat or Use of Nuclear Weapons*, para. 52.

conventional law specifically accepted by them or in customary law generally accepted by the community of nations.”⁵⁶

As discussed above, there is no prohibition on the ability of a State to exercise universal prescriptive jurisdiction over criminal acts committed abroad. Therefore, the courts of USM are able to prescribe jurisdiction over the crimes committed by Mr. Neville in the territory of the Republic of North Manconia.

II. USM HAS NOT VIOLATED THE IMMUNITY FROM CRIMINAL JURISDICTION OF MR. NEVILLE

A. IMMUNITY FROM FOREIGN CRIMINAL JURISDICTION CANNOT BE GRANTED BY VIRTUE OF THE NATURE OF MR. NEVILLE’S OFFICIAL FUNCTIONS

1. Mr. Neville’s position as Minister of Culture, Media and Sport is not of a nature requiring him to conduct international relations on behalf of RNM

Mr. Neville’s position entails standard ministerial responsibilities such as overseeing the activities of the departments relevant to his areas, which by the nature of his internal, essentially administrative, responsibilities does not require travelling and therefore not perpetual immunity against criminal prosecution.⁵⁷ Since his appointment he has only left RNM to attend two regional Culture Minister’s Meetings, one in April 2010 and a second in May 2011. This argument is supported by both ICJ jurisprudence and state practice.

In the oral proceedings of *Certain Questions of Mutual Assistance in Criminal Matters*, the French Counsel Pellet argued that “immunities are not granted to officials of the State simply because, in the exercise of their functions, they may, fairly occasionally, or even regularly, have to make trips abroad. This only applies if such immunities are indispensable to those missions being carried out, and provided that they are inherent to the functions

⁵⁶ *Nuclear Weapons Case (1995)*, 8.

⁵⁷ Borghi (2003), 204-08, Dinstein (2012), 429.

concerned”.⁵⁸ Although the Court offered no explanation as to its refusal to extend immunity to the *Procureur de la République* and to the Head of National Security of Djibouti⁵⁹ we can draw the inference that when the Court in *Arrest Warrant* extended immunity from criminal jurisdiction to the Minister of Foreign affairs it did not intend to widen the category of high ranking officials any further.

Such a reading of the two ICJ cases is supported in domestic practice. Courts of domestic States have refused to extend personal immunities beyond a very strict category of functions: Heads of States, Head of Governments, and Foreign Ministers. In 1961, the *Cour d’Appel de Paris* denied immunity to a minister of State of Saudi Arabia, taking part of a UN Conference, allowing a claim in relation to a lease of a Parisian flat to proceed.⁶⁰ The court implied in its judgment that immunity would have been granted if the claim had concerned a minister of foreign affairs. In the same line of reasoning, the French court has rejected to grant immunity to a Moroccan Minister of Interior.⁶¹

Similarly, the Courts of the United States of America have refused to extend personal immunity beyond head of government and two ministers of foreign affairs. 6 February 2008, a Spanish judge issued an indictment charging 40 current or former high-ranking Rwandan military officials with serious international crimes. Among the indicted are Rwanda’s ambassador to India, the Current Chief of Staff of the RDF; and the Deputy Force

⁵⁸ *Mutual Assistance in Criminal Matters (Oral Proceeding)*, 63; supported by Parlett (2006), 59.

⁵⁹ *Mutual Assistance in Criminal Matters*, para. 194.

⁶⁰ *Ali Ali Reza v Grimpbell*; it should be noted that this is a civil case whereas Mr. Neville faces criminal charges. However, *Arrest Warrant* does not distinguish between criminal and civil jurisdiction.

⁶¹ *Ben Barka case* in Memorandum by the Secretariat, 124.

Commander of the UN-AU Mission in Darfur.⁶² This, quite unprecedented event, provides additional support for a narrower category of high-ranking officials.

We can conclude that it is rarely certain high-ranking officials are granted immunity by domestic courts unless they belong to the three positions mentioned in *Arrest Warrant*. However, domestic courts have extended immunities to high-ranking officials in cases where travelling was seen as *indispensible* in order to carry out their functions. In *Mofaz*, the British Magistrate Court found that the Israeli Defence Minister enjoyed immunity from criminal jurisdiction. The District Judge argued that “many States maintain troops overseas and there are many United Nations missions to visit in which military issues do play a prominent role between certain States”.⁶³ He, however, considered it “very unlikely that ministerial appointments such as Home Secretary, Employment Minister, Environment Minister, Culture Media and Sports Minister would automatically acquire a label of state immunity”.⁶⁴ Of the domestic cases cited in favour of USM’s proposition, this is the most authoritative, as the District Judge explicitly sought to apply the outcome of *Arrest Warrant* in his decisions.⁶⁵

Arrest Warrant read in conjunction with *Mutual Assistance in Criminal Matters* shows that the scope of the category of high-ranking officials enjoying immunity is narrow. Additional support is found in practice, of which the British *Mofaz* supports USM’s argument in full.

2. Mr. Neville is not capable of representing RNM in its conduct of international relations

⁶² Robinson (2008).

⁶³ *Mofaz*, 14.

⁶⁴ *Ibid*, 13.

⁶⁵ *Ibid*, para. 11.

In *Arrest Warrant*, the Court justified the extension of full immunity and inviolability by examining the nature of the functions performed by a Foreign Minister.⁶⁶ Much emphasis was placed on the representative character of a Foreign Minister in the conduct of international relations, the Court noting that he or she is capable of “binding the State represented” and that, like a Head of State and Head of Government, he or she “is recognized under international law as representative of the State solely by virtue of his or her office”.⁶⁷ The immunities granted to government officials draw from the rationale behind conventions on diplomatic immunities, such as the VCDR, the VCCR and the New York Convention. Just as diplomatic immunities are granted because they are deemed to be necessary, they also rely on the idea that the diplomatic immunity personifies the sending State.⁶⁸ This significance given to the representative character of the Foreign Minister is entirely consistent with the *Arrest Warrant* drawing guidance on customary international law from the rationale behind the VCDR.⁶⁹

International law does not grant Mr. Neville automatic authority to bind RNM in matters of international relations in the same manner as a Head of State, a Head of Government or a Minister of Foreign Affairs is deemed to.⁷⁰

This Court has, however, noted the development of modern international relations in *Armed Activities (Congo)*. Increasingly other “other persons representing a State in specific fields may bind its State by their statements in respect of matters falling within their

⁶⁶ *Arrest Warrant*, 53.

⁶⁷ *Ibid.*

⁶⁸ ILC Report (1958), 95.

⁶⁹ *Ibid.*, 52.

⁷⁰ *Nuclear Tests*, 49-51; *Arrest Warrant*, 53; *Armed Activities (Congo)*, 46.

purview”.⁷¹ In this case Mr. Neville was not participating in the negotiation of binding resolutions at his yearly visit. His government, therefore, did not endow him with representative powers.

This Court has, however, held that statements made by government officials can exceptionally bind the State in question notwithstanding what was intended by the government or the official. *Armed Activities (Congo)* stated that the legal effect of the statements is determined by the actual content as well as the circumstances in which it is made.⁷² Just as in the case of *Armed Activities (Congo)*, where the Rwandan Minister of Justice could not be held to statements made at the Human Rights Commission, the Regional Culture Ministers’ meeting does not negotiate or conclude treaties. The non-binding nature of the negotiations that Mr. Neville is taking part of precludes circumstances where MR. Neville could bind his government RNM.

To draw a parallel in domestic court practice, the Italian Court of Cassation appeared to apply a representative rationale when it refused to grant Monte Negro’s Prime Minister immunity against criminal charges.⁷³ The Court reasoned that since Montenegro was not a sovereign State, its Prime Minister could not enjoy immunity. This case does not follow within the functional rationale, and shows that an element of representation is still considered at least domestically.

In conclusion, Mr. Neville cannot be seen to represent his state in its conduct international relations and there is, consequently, no rationale for granting him immunity from criminal jurisdiction.

⁷¹ *Armed Activities (Congo)*, 47.

⁷² *Ibid*, 49.

⁷³ *Djukanovic*, para. 10.

3. Extending immunity to further government officials would counter the general trend of fighting impunity

Although immunity may be justified in order to secure the continuing operation of international relations, it must be correctly balanced against delivering justice. It must take into account current developments in international criminal law of prosecuting former government officials for crimes committed while in office.⁷⁴

Despite personal immunities being obsolete once the function terminates, this does not mean that impunity is avoided.⁷⁵ RNM is an example of how immunity can lead to impunity. RNM is failing to establish the UN-RNM Tribunal, and prosecution is incapable of going ahead in national courts due to domestic immunity provisions. Immunities should, therefore, remain constrained within those functions which importance to the maintenance of international relations require that impunity be tolerated. It should not be extended to functions, such as Minister of Culture, Media and Sport, which are essentially internal in nature.

As the outlines of the category of officials granted immunity is unclear, there is a further danger that extending immunities once can lead to further extensions until States right to exercise jurisdiction is dangerously narrowed.⁷⁶ Extension may therefore undermine rather than “provide for stability of international relations and effective international intercourse...”⁷⁷

4. Mr. Neville remains individually responsible for his acts committed prior to ministerial appointment

⁷⁴ Cassese (2002), 870; Gaeta (2002), 982.

⁷⁵ Dissenting Opinion of Judge Van Den Wyngaert in *Arrest Warrant*, 34-38.

⁷⁶ Borghi (2003), 208.

⁷⁷ *Arrest Warrant*, para. 53.

It is trite that immunity cannot be granted as regards to any conduct other than official acts performed in the exercise of his or her functions while serving as Minister for RNM.⁷⁸ Mr. Neville is charged with the crime of inciting genocide in and around the city of Redville between the 28 July and 15 August, taking place prior to his appointment as RNM's Minister for Culture and Sport. He is therefore personally responsible for his crimes and should face prosecution.

III. THE COURTS OF USM DO NOT LACK JURISDICTION OVER MR. NEVILLE BECAUSE HE WAS ILLEGALLY ABDUCTED FROM A FOREIGN STATE

A. THE MANNER IN WHICH AN ACCUSED IS APPREHENDED DOES NOT PRECLUDE THE EXERCISE OF JURISDICTION BY A DOMESTIC COURT

Over the past two-hundred years, State practice has shown that national courts have overwhelmingly held that jurisdiction should not be set aside, even though there might have been irregularities in the manner in which the accused was brought before them.⁷⁹ This doctrine, known as *male captus bene detentus*, has proven to be the primary method of domestic courts asserting jurisdiction, in cases involving extraterritorial abduction.⁸⁰

American courts have been the major proponents of this doctrine. In the landmark case of *Ker v Illinois*, the U.S. Supreme Court established the historical justification for extraterritorial abduction.⁸¹ *Ker* held that any wrongdoing prior to trial is not within the scope of the court's decision, a view later expanded in *Frisbie v Collins*, to suggest that a forcible abduction does not preclude a court trying the abducted accused.⁸² What has come to be

⁷⁸ Watts (1994), 112; Robertson (1999), 402.

⁷⁹ Costi (2002), 79.

⁸⁰ Henkin (1990), 305; Brownlie (1998), 320.

⁸¹ Costi (2002) 79; *Ker v Illinois* (1866), 444.

⁸² *Frisbie v Collins*, 519, 522

known domestically, as the *Ker-Frisbie* doctrine, has been followed emphatically in the United States, most recently in *U.S. v Alvarez-Machain*.⁸³

Outside of the United States, the majority of national courts have either explicitly or implicitly supported the *male captus bene detentus* principle.⁸⁴ In *Eichmann*, the Supreme Court of Israel affirmed that a defendant may not dispute the jurisdiction of a court because of an extraterritorial abduction. The Court argued that it is a general rule that a defendant is without standing to challenge his detention based purely on territorial infringement.⁸⁵ In *Argoud*, the French Court of Cassation held that the violation of German sovereignty, lack of extradition, and nature of the arrest did not effect the validity of the trial court's jurisdiction.⁸⁶ In the South African cases of *Abrahams v Minister of Justice and Others* and *Nduli and Others v Minister of Justice and Others*,⁸⁷ the courts similarly stated that where there is a lawful detention, the circumstances of the arrest and capture are irrelevant.⁸⁸

⁸³ *Mahon v Justice*, 700, 714-715; *United States v Insull*, 310, 311-312; *Frisbie v Collins*, 519, 522; *Gerstein v Pugh*, 103, 119; *United States v Crews*, 463, 474; *United States v Yunis*, 896; *Noreiga v United States*, 1529; *United States v Verdugo-Urquidez*, 1341, 1343; *United States v Alvarez-Machain*, 2188, 2193.

⁸⁴ *R v Walton*, 269, 275; *Afouneh v Attorney General of Palestine*, 327, 328; *Lemmel V Rex*, 232; *AG of Israel v Eichmann*, 305-306; *Re Argoud*, 90, 97-98.

⁸⁵ *AG of Israel v Eichmann*, 5, 277.

⁸⁶ *Re Argoud*, 98.

⁸⁷ *Costi (2002)*, 93: Despite the criticism of *Kerr* and its progeny, those cases where it has been challenged, the need to respect international law and human rights was not the reason for the courts' refusal to exercise jurisdiction over the abducted. The threat to the good administration of justice was the primary reason in *Hartley* and in *Bennett*. In *Ebrahim*, South Africa's highest judicial organ only dealt with the possible breach of human rights following an extraterritorial abduction from the point of view of domestic law. In Germany, the fostering of strong inter-state relations was the main reason for the stay of proceedings against abducted criminals. Only in *Toscanino* and *Bennett* did the courts emphatically refuse to exercise its jurisdiction, relying on the expansion of international human rights law and its impact on the concept of due process.

⁸⁸ *Abrahams v Minister of Justice and Others*, 452, 545-546; *Naduli and Others v Minister of Justice and Others*, 909.

Given the irregular manner in which Mr. Neville has been brought before the courts of USM, the principle of *male captus bene detentus* can be applied as a means of exercising jurisdiction over the accused.⁸⁹

B. THE VIOLATION TO THE TERRITORIAL SOVEREIGNTY OF ORANGESTAN
DOES NOT PREVENT USM FROM EXERCISING JURISDICTION

1. The heinous nature of Mr. Neville's crimes outweigh any alleged breach of Orangestan's sovereignty that may have occurred in his apprehension

The impact of a breach of a State's territorial sovereignty on the exercise of jurisdiction presents difficulties for courts, particularly in situations involving extraterritorial abduction.⁹⁰ However, in cases involving genocide, crimes against humanity, and war crimes, which are universally recognized and condemned as such, both international and national courts seem to find in the special character of these offences and, arguably, in their seriousness, a good reason for not setting aside jurisdiction, despite the irregular methods used to apprehend the accused.⁹¹

At the national level, reference can be made to *Eichmann* and *Barbie*. In *Eichmann*, the Supreme Court of Israel decided to exercise jurisdiction over the accused, notwithstanding the apparent breach of Argentina's sovereignty involved in his abduction, because he was a "fugitive from justice" charged with "crimes of a universal character ... condemned publicly by the civilized world."⁹² In *Barbie*, the French Court of Cassation asserted its jurisdiction over the accused, despite the claim that he was a victim of a disguised extradition, on the

⁸⁹ Paras. 27, 28 Compromis.

⁹⁰ *Schwabach* (1993), 51

⁹¹ *Cassese* (2011), 561-562

⁹² *Eichmann* (1962), 306

basis, *inter alia*, of the special nature of the crimes ascribed to the accused, namely, crimes against humanity.⁹³

At the international level, in the *Nikolic*, the Appeals Chamber stated that the “damage caused to international justice by not apprehending fugitives accused of serious violations of international humanitarian law is comparatively higher than the injury, if any, caused to the sovereignty of the State by a limited intrusion in its territory, particularly when the intrusion occurs in default of the State’s cooperation.”⁹⁴ The Court argued further that it did not consider that in cases of universally condemned offences, jurisdiction should be set aside on the ground that there was a violation of the sovereignty of a State, when the violation is brought about by the apprehension of fugitives from international justice, whatever the consequences for the international responsibility of the State or organization involved.⁹⁵

Mr. Neville has been charged with genocide, a universally condemned crime. The gravity of the accused’s crimes far outweighs any territorial violation to the sovereignty of Orangestan, which may have occurred during his apprehension by USM special forces. For this reason, the seizure of Mr. Neville on Orangestan territory should not prevent the courts of USM from exercising jurisdiction over the accused.⁹⁶

2. Absent a formal complaint by Orangestan to the violation of its territorial sovereignty by USM’s seizure of Mr. Neville, the courts of USM can exercise jurisdiction over the accused.

⁹³ *Barbie*, 130-131

⁹⁴ *Nikolic*, para. 26-30.

⁹⁵ *Ibid.*, 26.

⁹⁶ Paras. 23,27, Compromis.

Situations where a State issues a formal complaint to an apparent intrusion of its territorial sovereignty, must be distinguished from those where no such complaint is made. In the latter case, the general rule of *male captus bene detentus* applies.⁹⁷

In the *Nikolic*, the Appeals Chamber recognized that there was significant State practice to discern a principle, evidenced through national court decisions, where absent a complaint by the State whose sovereignty has been breached, it is easier for courts to assert their jurisdiction. The initial injury has in a way been cured, and the risk of having to return the accused to the country of origin, is no longer present.⁹⁸

In the *Argoud* case, the French Court of Cassation held that the alleged violation of German sovereignty by French citizens in the operation leading to the arrest of the accused did not impede the exercise of jurisdiction over the accused. It would be for the injured State, Germany, to complain and demand reparation at the international level and not for the accused.⁹⁹ In *Stoche*, the German Federal Constitutional Court endorsed a ruling by the Federal Court of Justice, rejecting the appeal of the accused, a German national residing in France, claiming that he was the victim of an unlawful collusion between the German authorities and an informant who had deceptively brought him to German territory. The Court found that, even though there existed some decisions taking the opposite approach, according to international practice, courts would in general only refuse to assume jurisdiction in a case of a kidnapped accused if another State had protested against the kidnapping and had requested the return of the accused.¹⁰⁰

⁹⁷ *Brownlie (1998)*, 320.

⁹⁸ *Nikolic*, para. 20-26.

⁹⁹ *Re Argoud*, 97-560.

¹⁰⁰ *Nikolic*, para. 21-22.

In *Eichmann*, the Supreme Court of Israel held that Argentina had “condoned the violation of her sovereignty and has waived her claims, including that for the return of the appellant. Any violation therefore of international law that may have been involved in this incident ha[d] thus been removed.”¹⁰¹

Orangestan has not registered any kind of complaint, officially, or otherwise to the seizure of Mr. Neville by USM Special Forces.¹⁰² Absent such a complaint, therefore, the courts of USM can continue to assert its jurisdiction over the accused, as the initial injury to Orangestan’s territorial integrity has been cured.

C) THE ALLEGED HUMAN RIGHTS VIOLATIONS TO MR. NEVILLE DO NOT SERVE AS AN IMPEDIMENT TO THE EXERCISE OF USM JURISDICTION

1. The violations to Mr. Neville’s human rights are not of an egregious nature, warranting USM courts to set aside their jurisdiction

In cases of extraterritorial abduction, the setting aside of jurisdiction by a court must be weighed against the alleged violations to the human rights of the accused. In the *Lubanga*, the ICC held, along with the British House of Lords, that the power to stay proceedings should be used sparingly. Exercised “where either the foundation of the prosecution or the bringing of the accused to justice is tainted with illegal action or gross violation of the rights of the individual making it unacceptable for justice to embark on its course.”¹⁰³

In the *Nikolic*, the Appeals Chamber noted that certain human rights violations are of such a serious nature, as where an accused is seriously mistreated, subject to inhuman, cruel, or

¹⁰¹ *Eichmann (1962)*, 305-306.

¹⁰² Paras. 27, 28, *Compromis*.

¹⁰³ *Lubanga*, paras. 30-31; *Jones v Whalley*, 113.

degrading treatment, or even torture, the exercise of jurisdiction must be declined.¹⁰⁴ Apart from exceptional cases, however, the remedy of setting aside jurisdiction will usually be disproportionate.¹⁰⁵ In this particular case, the Court held that the evidence did not show that the rights of the accused were egregiously violated in the process of his arrest. The Trial Chamber had been, therefore, right in holding that the procedure adopted for his apprehension did not disable it from exercising jurisdiction.¹⁰⁶

The Appeals Chamber also observed that this approach was consistent with the dictum of the United States Federal Court of Appeal in *United States v Toscanino* that held: “[we] view due process as now requiring a court to divest itself of jurisdiction over the person of a defendant where it has been acquired as the result of the Government’s deliberate, unnecessary, and unreasonable invasion of the constitutional rights of the accused.”¹⁰⁷

As Mr. Neville was subjected to no ill treatment at the hands of the Special Forces of USM, his human rights were not egregiously violated in the process of his arrest.¹⁰⁸ The procedure adopted for his apprehension should, therefore, not disable the courts of USM from exercising jurisdiction over the accused.

2. The heinous nature of Mr. Neville’s crimes far outweigh any alleged violations to his human rights that may relate to his seizure

¹⁰⁴ *Nikolic*, para. 29; The ICTY Appeals Chamber in *Nikolic* followed the early ITCY and ICTR decisions of *Dakmanovic* and *Barayagwiza*, respectively.

¹⁰⁵ *Nikolic*, para. 28-31.

¹⁰⁶ *Ibid.*, 28-31.

¹⁰⁷ *Nikolic*, para. 29; *Toscanino v United States*, 267, 275.

¹⁰⁸ Para. 27, *Compromis*; Para. 3, *Clarifications*.

Universally condemned offences, such as genocide, are a matter of concern to the international community as a whole.¹⁰⁹ In *Nikolic*, the ITCY held that accountability for such crimes are a “necessary condition for the achievement of international justice.” when weighed against the fundamental rights of the accused, the possible damage to international justice is far more problematic.¹¹⁰

In *Eichmann*, the Supreme Court of Israel exercised jurisdiction over the accused, *inter alia*, because he was a “fugitive from justice” charged with “crimes of a universal character ... condemned publicly by the civilized world.”¹¹¹ Similarly, in *Barbie*, the French Court of Cassation asserted jurisdiction over the accused because of the heinous nature of the crime, i.e. crimes against humanity.¹¹²

Mr. Neville has been charged with the universally condemned offence of inciting genocide.¹¹³ As held in the case law above, any alleged violations to the human rights of the accused, is far outweighed by the necessity that there be accountability for such crimes for the achievement of international justice.

3. If a fair trial can be given, any violations of due process or to the human rights of the accused, do not warrant the setting aside of jurisdiction by the courts of USM

In *Lubanga*, the ICC agreed with both the ICTY and the ICTR cases, *Nikolic* and *Barayagwiza* respectively, that the setting aside of jurisdiction by the Court should be limited to cases involving only gross violations to due process and the human rights of the accused. The Court, however, went further holding that “if no fair trial can be held, the object of the

¹⁰⁹ *Cassese (2011)*, 200-201.

¹¹⁰ *Nikolic*, para. 28-33.

¹¹¹ *Eichmann (1962)*, 305, 306.

¹¹² *Barbie*, 130,131

¹¹³ Para. 23, *Compromis*.

judicial process is frustrated and the process must be stopped.”¹¹⁴ If the accused can be given a fair trial, therefore, non-egregious violations to due process and human rights are not grounds to set aside jurisdiction over the accused.¹¹⁵

In the case of Mr. Neville, there is no reason to assume that the courts of USM will not provide him with a fair trial. The lack of this requirement is thus not a basis for setting aside jurisdiction over the accused.

i) Submissions

For the above reasons, United States of Merseystan respectfully requests the Court to adjudge and declare that:

- I. USM does not lack jurisdiction over the alleged acts of Mr. Neville, which were committed outside USM territory and did not involve USM nationals;
- II. USM has not violated the immunity from criminal jurisdiction of Mr. Neville, a serving Minister in the RNM government;
- III. The Courts of USM do not lack jurisdiction over Mr. Neville because he was illegally abducted from a foreign State.

Respectfully submitted,

Agents of Respondent

¹¹⁴ *Lubanga*, paras. 30-31,37.

¹¹⁵ *Ibid*, paras. 35-45.