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No.: ***ICC-01/21-01/25***
Date: **9 June 2025**

PRE-TRIAL CHAMBER I

Before: **Judge Iulia Antoanella Motoc , Presiding Judge**
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public Document
With Public Annex A

Victims' Observations on the Defence Challenge with Respect to Jurisdiction

Source: **Office of Public Counsel for Victims**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ **The Office of the Prosecutor**	☒ **Counsel for the Defence** D36
☐ **Legal Representatives of the Victims**	☐ **Legal Representatives of the Applicants**
☐ **Unrepresented Victims**	☐ **Unrepresented Applicants (Participation/Reparation)**
☒ **The Office of Public Counsel for Victims**	☐ **The Office of Public Counsel for the Defence**
☐ **States' Representatives**	☐ **Amicus Curiae**

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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the "OPCV" or the "Office"), appointed to represent the collective interests of potential victims until the mandate of the team of common legal representatives takes effect,[1] files her observations on the "Defence Challenge with Respect to Jurisdiction" (the "Defence Challenge" or the "Challenge"),[2] pursuant to article 19(3) of the Rome Statute (the "Statute") and rule 59 of the Rules of Procedure and Evidence (the "Rules").

2. The Principal Counsel submits that the Defence Challenge should be dismissed. The wording of articles 12 and 127 of the Rome Statute (the "Statute") is crystal clear and thus the Republic of the Philippines' withdrawal from the Statute has no legal effect upon the already established jurisdiction of the Court, especially since the Prosecutor's preliminary examination had commenced before the said withdrawal became effective. Therefore, the need to resort to statutory interpretation does not arise and the decisions of the Pre-Trial Chamber in its previous composition (the "former Chamber") on the matter remain binding.

3. Nevertheless, even if Pre-Trial Chamber I (the "Chamber") deems that it must interpret articles 12 and 127 of the Statute, the natural and ordinary meaning of said provisions read in their context and in light of their object and purpose makes it clear that the withdrawal in question does not prevent the Court from exercising its jurisdiction over the case at hand. This interpretation is further confirmed by the legislative history of the relevant provisions and by the subsequent acts of the Government of the Philippines. In particular, the context of article 127 of the Statute confirms the intention of the drafters to include in the definition of "*any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective*" the stage of the preliminary examination conducted by the Prosecutor.

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[1] See the "Order on the conduct of confirmation proceedings" (Pre-Trial Chamber I), No. ICC-01/21-01/25-114, 17 April 2025, paras. 68-69.
[2] See the "Defence Challenge with Respect to Jurisdiction", No. ICC-01/21-01/25-121, 1 May 2025 (the "Defence Challenge" or the "Challenge").

4. Victims expressed great concern at the possibility that proceedings against Mr Duterte could be halted if the Defence Challenge is successful. They consider that the jurisdiction of the Court is well established and that it can exercise its jurisdiction over the present case. Concluding otherwise would mean upholding impunity and depriving Victims of justice.

II. PROCEDURAL BACKGROUND

5. On 30 August 2011, the Republic of the Philippines acceded to the Rome Statute becoming the 117th State Party to the International Criminal Court (the "ICC").[3]

6. On 8 February 2018, the Prosecutor opened a preliminary examination in the Situation in the Republic of the Philippines in relation to the crimes allegedly committed in the country since at least 1 July 2016 in the context of the so called "*war on drugs*" campaign launched by the Government.[4]

7. On 17 March 2018, the Republic of the Philippines withdrew from the Statute (effective on 17 March 2019).[5]

8. On 24 May 2021, the Prosecutor filed a request for authorisation to open an investigation into the Situation in the Republic of the Philippines pursuant to article 15(3) of the Statute.[6]

9. On 15 September 2021, the former Chamber issued its Decision authorising the Prosecutor to commence an investigation into the Situation in relation to crimes within

[3] See ASP Press Release, The Philippines becomes the 117th State to join the Rome Statute system, 30 August 2011.
[4] See the Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela, 8 February 2018.
[5] See ICC Press Release, President of the Assembly of States Parties regrets withdrawal from the Rome Statute by the Philippines, 18 March 2019.
[6] See the "Public redacted version of 'Request for authorisation of an investigation pursuant to article 15(3)', 24 May 2021, ICC-01/21-7-SECRET-Exp", No. ICC-01/21-01/25-7-Red, 14 June 2021.

the jurisdiction of the Court, allegedly committed on the territory of the country between 1 November 2011 and 16 March 2019 (the "Article 15 Decision").[7]

10. On 24 June 2022, following a deferral request from the Republic of the Philippines,[8] the Prosecutor requested the former Chamber to authorise the resumption of the investigation into the Situation.[9]

11. On 26 January 2023, the former Chamber issued its Decision authorising the Prosecutor to resume the investigation into the Situation (the "Article 18(2) Decision").[10] The ruling was confirmed by the Appeals Chamber on 18 July 2023.[11]

12. On 10 February 2025, the Prosecutor filed an application for a warrant of arrest for Mr Rodrigo Roa Duterte ("Mr Duterte") as an alleged indirect co-perpetrator pursuant to article 25(3)(a) of the Statute for three crimes against humanity allegedly committed in the Philippines between 1 November 2011 and 16 March 2019.[12]

13. On 7 March 2025, the Chamber issued a warrant of arrest for Mr Duterte (the "Warrant of Arrest").[13]

14. On 12 March 2025, Mr Duterte was surrendered to the ICC.[14]

15. On 1 May 2025, the Defence filed its Challenge.[15]

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[7] See the "Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute (Pre-Trial Chamber I)", No. ICC-01/21-12, 15 September 2021 (the "Article 15 Decision").
[8] See the "Notification of the Republic of the Philippines' deferral request under article 18(2)", No. ICC-01/21-01/25-14, 18 November 2021.
[9] See the "Prosecution's request to resume the investigation into the situation in the Philippines pursuant to article 18(2)", No. ICC-01/21-01/25-46, 24 June 2022.
[10] See the "Authorisation pursuant to article 18(2) of the Statute to resume the investigation" (Pre-Trial Chamber I), No. ICC-01-21-56-Red (the "Article 18(2) Decision").
[11] See the "Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation'" (Appeals Chamber), No. ICC-01/21-01/25-77 OA, 18 July 2023.
[12] See the "Public redacted version of 'Prosecution's urgent application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE'", 10 February 2025, ICC-01/21-80-US-Exp, No. ICC-01/21-01/25-80-Red, 13 March 2025.
[13] See the "Warrant of Arrest for Mr Rodrigo Roa Duterte" (Pre-Trial Chamber I), No. ICC-01/21-01/25-83, 7 March 2025 (the "Warrant of Arrest").
[14] See ICC Press Release, Rodrigo Roa Duterte in ICC custody, 12 March 2025.
[15] See the Defence Challenge, *supra* note 2.

III. SUBMISSIONS

16. The Defence raises several arguments concerning the parameters of articles 12 and 127 of the Statute. Firstly, while not disputing the fact that the Court has jurisdiction over the alleged crimes committed in the Philippines, the Defence argues that the Court could not properly exercise its jurisdiction after the State's effective withdrawal under the pre-conditions set out in article 12(2) of the Statute.[16] In particular, the Defence submits that the use of the present simple tense in article 12(2) - reading "[i]*n the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States* ***are*** *Parties to this Statute*" – has to be interpreted as requiring that a State must be a Party to the Statute contemporaneously with the Court's decision to exercise jurisdiction.[17] The Defence adds that, since the State's withdrawal became effective on 17 March 2019, the preconditions to the exercise of the Court's jurisdiction are no longer fulfilled.[18]

17. The relevant provisions read as follows:

> ***Article 12***
> ***Preconditions to the exercise of jurisdiction***
>
> *1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.*
> *2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3: (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; (b) The State of which the person accused of the crime is a national.*
> […]

[16] *Idem*, paras. 16-21.
[17] *Idem*, para. 23.
[18] *Idem*, paras. 24-25.

Article 13
Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14; (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 127
Withdrawal

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations which may have accrued. Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective, nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

18. The Principal Counsel submits that articles 12 and 13, read in light of article 127 of the Statute make it clear that a State's withdrawal has no impact on the jurisdiction and on the exercise of the jurisdiction of the Court. Indeed, article 127 of the Statute - which constitutes the *lex specialis* in the matter at hand - explicitly provides that a State Party's withdrawal shall not *"prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective*." In this regard, the former Chamber ruled, in the Article 15 Decision, that, since the Prosecutor's preliminary examination had commenced prior to the Philippines' withdrawal from the Statute, the jurisdiction of the Court or its exercise of jurisdiction is not in any way prejudiced or affected by the latter. In particular, the former Chamber held that:

> "[…] *While the Philippines' withdrawal from the Statute took effect on 17 March 2019, the Court retains jurisdiction with respect to alleged crimes that occurred on the territory of the Philippines while it was a State Party, from 1 November 2011 up to and including 16 March 2019. This is in line with the law of treaties, which provides that withdrawal from a treaty does not affect any right, obligation or legal situation created through the execution of the treaty prior to its termination*. […] *The Court's exercise of such jurisdiction is not subject to any time limit, particularly since the preliminary examination here commenced prior to the Philippines' withdrawal*".[19]

19. In its Article 18(2) Decision, the former Chamber further confirmed these conclusions with reference to article 127 of the Statute.[20] The same reasoning is endorsed in the Warrant of Arrest.[21] These findings were based on the plain reading of the relevant articles of the Statute pertaining to the jurisdiction of the Court, as well as to the withdrawal from the Statute, in their context. Consequently, there is no need for the Chamber to resort to methods of statutory interpretation of said provisions. As held by the International Court of Justice (the "ICJ"), "*the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant*

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[19] See the Article 15 Decision, *supra* note 7, para. 111, citing the "Public Redacted Version of 'Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", No. ICC-01/17-X-9-US-Exp (Pre-Trial Chamber III), 25 October 2017", No. ICC-01/17-9-Red, 9 November 2017, para. 24. Pre-Trial Chamber III held that "*by ratifying the Statute, a State Party accepts, in accordance with article 12(1) and (2) of the Statute, the jurisdiction of the Court over all article 5 crimes committed either by its nationals or on its territory for a period starting at the moment of the entry into force of the Statute for that State and running up to at least one year after a possible withdrawal, in accordance with article 127(1) of the Statute. This acceptance of the jurisdiction of the Court remains unaffected by a withdrawal of the State Party from the Statute. Therefore, the Court retains jurisdiction over any crimes falling within its jurisdiction that may have been committed in Burundi or by nationals of Burundi up to and including 26 October 2017. As a consequence, the exercise of the Court's jurisdiction, i.e. the investigation and prosecution of crimes committed up to and including 26 October 2017, is, as such, not subject to any time limit*". See also, the "Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302)", No. ICC-02/05-01/20-391, 17 May 2021, para. 33. Pre-Trial Chamber II held that "[s]*pecific mechanisms and guarantees have been built into the Statute precisely against the risk that, once established, the jurisdiction of the Court could be taken away by a simple act purportedly endowed with a contrary effect. The withdrawal of a State Party from the Statute, whilst provided for under article 127 and therefore possible, has no effect on the previously established jurisdiction of the Court and takes effect only one year after the date of its receipt at the earliest; also, it has no impact either on already ongoing proceedings or on duties of cooperation with the Court in connection with investigations and proceedings having commenced prior to the date on which the withdrawal became effective, nor does it otherwise prejudice 'the continued consideration of any matter which was already under consideration by the Court' prior to that date.*"

[20] See the Article 18(2) Decision, *supra* note 10, para. 26.

[21] See the Warrant of Arrest, *supra* note 13, para. 6.

words in their natural and ordinary meaning make sense in their context, that is an end of the matter."[22]

20. *In arguendo*, the Principal Counsel posits that, even if the Chamber considers it necessary to resort to the interpretation of the relevant statutory provisions, the natural and ordinary meaning of their terms further confirms the correctness of the former Chamber's findings in the Article 15 and Article 18(2) Decisions, rather than supporting the Defence's arguments in this regard.

21. Concerning statutory interpretations, the Appeals Chamber ruled that:

> "*The interpretation of treaties, and the Rome Statute is no exception, is governed by the Vienna Convention on the Law of Treaties (23 May 1969)* [the Vienna Convention], *specifically the provisions of articles 31 and 32. The principal rule of interpretation is set out in article 31(1) that reads: A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.* […] *The rule governing the interpretation of a section of the law is its wording read in context and in light of its object and purpose. The context of a given legislative provision is defined by the particular sub-section of the law read as a whole in conjunction with the section of an enactment in its entirety. Its objects may be gathered from the chapter of the law in which the particular section is included and its purposes from the wider aims of the law as may be gathered from its preamble and general tenor of the treaty*".[23]

22. Indeed, the Preamble of the Statute clearly states its object and purposes, *inter alia*, affirming:

> "*The States Parties to this Statute,*
>
> ***Conscious*** *that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,*
> ***Mindful*** *that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,*
> ***Recognizing*** *that such grave crimes threaten the peace, security and well-being of the world,*

[22] See ICJ, Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), Judgment of 12 November 1991, para. 48.
[23] See the "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal" (Appeals Chamber), No. ICC-01/04-168 AO 3, 13 July 2006, para. 33 (footnotes omitted).

> ***Affirming*** *that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,*
> ***Determined*** *to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,*
> […]
> ***Determined*** *to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole,*
>
> ***Resolved*** *to guarantee lasting respect for and the enforcement of international justice".*[24]

23. In other words, the Preamble of the Statute acknowledges the shared humanity and cultural heritage of all peoples, expresses concern over atrocities committed worldwide and recognises that international crimes threaten global peace and security. Most importantly, it affirms the need to ensure that said crimes do not go unpunished, calling for national and international cooperation to prosecute offenders and concludes with a firm commitment *to end impunity* and uphold lasting international justice. In this regard, as recently as 3 June 2025, the Appeals Chamber affirmed that the Statute's overarching purpose or broader aim is to "*put an end to impunity*".[25] Thus, this constitutes the very object and purpose of the Statute which represents in many cases, as in the Situation in the Republic of the Philippines, the only possible recourse for Victims to see the impunity gap closed and pursue justice.

24. The general tenor of the Statute - which refers to the overall tone, the main message, spirit, and intent of the treaty as a whole, beyond just the literal wording of each clause - is also *to end impunity* for serious international crimes and promote justice and accountability for the Victims once and for all. Said object and purpose is evident

[24] See the Preamble of the Statute (emphasis added).
[25] See the "Judgment on the appeal of Mr Joseph Kony against the decision of Pre-Trial Chamber III of 29 October 2024 entitled 'Decision on the criteria for holding confirmation of charges proceedings in absentia'" (Appeals Chamber), No. ICC-02/04-01/05-610 OA4, 3 June 2025, para. 78 (the "Kony Appeal Judgement").

in practically all provisions which all aim at investigating and prosecuting atrocities perpetrated against countless children, women and men around the world.

25. Moreover, as the Appeals Chamber held, the context of a given legislative provision is defined by the particular sub-section of the law read as a whole in conjunction with the section of an enactment in its entirety.[26] In this regard, as recent as on 3 June 2025, the Appeals Chamber further reaffirmed that both the Preamble of the Statute and the chapter in which the relevant provisions are situated should be considered in interpreting the object and purpose of said provisions.[27]

26. In particular, the context of article 12 is further provided in Part 2 of the Statute, governing jurisdiction and admissibility of cases before the Court, read in conjunction with article 13 (by direct reference), and article 127, dealing with the legal implications of withdrawal (affecting the whole Statute) contained in Part 13.

27. The context of articles 12 and 127 of the Statute leads to the following conclusions: (a) when a State becomes a Party to the Statute, it accepts the jurisdiction of the Court with respect to the crimes referred to in article 5; (b) after the Prosecutor has initiated a preliminary examination in respect of such crimes in accordance with article 15, the Court may exercise its jurisdiction if the State in question had accepted the jurisdiction of the Court; and (c) even if that State withdraws from the Statute, such withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings which were commenced prior to the date on which the withdrawal became effective. It will also not impact upon the continued consideration of any matter which was already under consideration by the Court prior to that date.

28. In concrete terms, the withdrawal of the Republic of the Philippines cannot have any effect on the exercise of the jurisdiction of the Court - which it had accepted when

[26] See the "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal", *supra* note 23, para. 33. See also, ICJ, Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia and Malaysia), Judgment of 17 December 2022, para. 51.
[27] See the Kony Appeal Judgment, *supra* note 25, para. 73.

it became a State Party - since the Prosecutor had already opened the preliminary examination prior to the date on which the withdrawal became effective. This is the only determinative interpretation of articles 12 and 127 in accordance with the ordinary meaning to be given to the terms contained in said provisions read in their context and in light of the object and purpose of the Statute, as asserted in its Preamble and confirmed by its general tenor.

29. Any other interpretation would defeat the whole object and purpose of the Statute and, in particular, the clear terms of articles 12 and 127 will be completely disregarded if a State which has withdrawn from the Statute is further allowed to impede the exercise of the jurisdiction of the Court which it had voluntarily accepted. If such were the case, the Court could never exercise its jurisdiction over the crimes in article 5 of the Statute even when the Prosecutor had already opened its preliminary examination pursuant to article 15 prior to the date on which the withdrawal became effective. In other words, most serious crimes of concern to the international community as a whole *will go unpunished* and the effective prosecution of atrocities committed against countless victims *will never materialise*. As a result, the Court will be prevented from putting an end to impunity for the perpetrators of international crimes and thus will fail to guarantee lasting respect for and the enforcement of international justice. This perspective is irreconcilable with the letter and spirit of the Statute, therefore cannot be accepted.[28]

30. In this regard, the ICJ held that the object and purpose of the statute of an international court is to enable it to fulfil the functions provided in therein, not being prevented from exercising its tasks entrusted by its founders.[29] Consequently, an

[28] See ICJ, Interpretation of Peace Treaties, (Second Phase), Advisory Opinion of 18 July 1950, p. 12.
[29] See ICJ, La Grand Case (Germany v. United States of America), Judgment of 27 June 2001, para. 102. See also, ICJ, Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion of 8 July 1996, para. 19. The ICJ ruled that "[…] *the constituent instruments of international organizations are also treaties of a particular type; their object is to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals. Such treaties can raise specific problems of interpretation owing, inter alia, to their character which is conventional and at the same time institutional; the very nature of the organization created, the objectives which have been assigned to it by its founders, the*

interpretation of legal provisions that will render a court unable to achieve its mandate within the parameters of its founding instruments would be contrary to the object and purpose of said instruments.[30] As specified by the ICTY, such overly-limiting interpretation of the concept of jurisdiction must not be allowed especially where it could jeopardise the Court's "*judicial character*.[31] This type of narrow interpretation of the concept of jurisdiction "*falls foul of a modern vision of the administration of justice*"[32] and thus "*in a court of law, common sense ought to be honoured not only when facts are weighed, but equally when laws are surveyed and the proper rule is selected*".[33]

31. With regard to the Defence's contention in relation to the use of the present simple tense in article 12(2) of the Statute,[34] the fact that the word "*to be*" is written in the present tense is not, in itself, determinative in the matter at hand. The argument that the Court can exercise its jurisdiction only if the State concerned is still a Party to the Statute overlooks the context of the whole Statute, especially given the fact that the word in question can have more than one sense depending on the circumstance within which it is interpreted. Indeed, "[…] *it is obvious that the* [a treaty] *must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense*".[35]

32. Certainly, no such interpretation of article 12 of the Statute, isolated from its context, can accurately reflect the genuine intention of the drafters of the Statute. As the ICJ held, "[a specific choice of a word in a treaty] *obtains its meaning from the context in which it is used*" and [the true meaning of such words and expressions] *cannot be determined in isolation by recourse to its usual or common meaning* […]" since "[if] *the*

imperatives associated with the effective performance of its functions, as well as its own practice, are all elements which may deserve special attention when the time comes to interpret these constituent treaties".

[30] See ICJ, La Grand Case (Germany v. United States of America), *supra* note 29, para. 102.

[31] See ICTY, *Prosecutor v. Duško Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (The Appeals Chamber), Case No. IT-94-1-A**,** 2 October 1995, para. 11.

[32] *Idem*, para. 6.

[33] *Ibid.*

[34] See the Defence Challenge, *supra* note 2, para. 23.

[35] See Permanent Court of International Justice (PCIJ), Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture, PCIJ Series B. No 2, 12 August 1922, p. 23.

context requires a meaning which connotes a wide choice, it must be construed accordingly, just as it must be given a restrictive meaning if the context in which it is used so requires".[36]

33. Hence, the Chamber is required not only to look into article 12 but also, given the specific factual circumstances of the case, into article 127 of the Statute. Indeed, these provisions constitute together - and along with the object and purpose of the Statute - *the context* within which the specific wording or the tense of the word "*to be*" must be interpreted. In this regard, the ICJ also ruled that the relevant texts of a treaty, read in light of their object and purpose, *as a whole* provides *the context* in which any particular provisions should be interpreted.[37]

34. It follows that the interpretation favoured by the Defence is incorrect and untenable. Indeed, the rule of interpretation according to the natural and ordinary meaning of the words employed is "*not an absolute one* [and where] *such a method of interpretation results in a meaning incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained, no reliance can be validly placed on it*".[38]

35. Therefore, as mentioned *supra*,[39] the context of articles 12 and 127 of the Statute requires an interpretation which connotes a wider use of the word "*to be*", not only expressing the meaning attached to its present tense but also the one to its past tense. In simpler terms, this interpretation would mean that the Court must be able to exercise its jurisdiction in relation to States that "*are*" still Parties to the Statute, as well as States that "*were*" Parties to the same. This would constitute the determinative interpretation of articles 12 and 127 that is most compatible with the object and purpose of the Statute, as asserted in its Preamble and confirmed by its general tenor.

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[36] See ICJ, Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, Advisory Opinion of 8 June 1960, p. 158.
[37] See ICJ, Maritime Delimitation in the Indian Ocean, (Somalia v. Kenya), Preliminary Objections, Judgment of 2 February 2017, para. 65.
[38] See ICJ, Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal), 12 November 1991, para. 48.
[39] See para. 33.

36. Moreover, according to article 31(3)(b) of Vienna Convention, the Court must take into account, together with the context, any subsequent practice in the application of a treaty. Indeed, "*the importance of such subsequent practice in the application of treaty, as an element of interpretation is obvious; for it constitutes objective evidence of the understanding of the parties as to the meaning of the treaty. Recourse to it as a means of interpretation is in the jurisprudence of international tribunals*"[40] and "[i]*f there were any ambiguity, the Court might, for the purpose of arriving at the true meaning, consider the action which has been taken under the Treaty*".[41]

37. In the current case, the Government of the Philippines voluntarily surrendered Mr Duterte to the Court in 2025 after its withdrawal from the Statute in 2019. This action demonstrates amply that, even six years after making its formal decision to terminate its membership to the Court, the Government of the Philippines still considered itself to be bound by the Statute when complying with the Arrest Warrant and surrendering the suspect into the custody of the Court. This further provides an irrefutable proof to the effect that the Republic of the Philippines does consider that the Court still can exercise its jurisdiction over the crimes committed in its territory as described in the Warrant of Arrest against Mr Duterte, pursuant to articles 12 and 127 of the Statute. This view was also confirmed by the Supreme Court of the Philippines.[42] Indeed, a State's own conduct in accordance of a treaty, showing whether it considers itself to be bound by it or not, is indicative of its understanding of that treaty.[43] The action in the form of surrender of Mr Duterte taken by the Government of the Philippines is indeed consistent with the interpretation of article 12 to the effect that the Court maintains - and can indeed exercise - jurisdiction over crimes committed on

[40] See Draft Articles on the Law of Treaties with commentaries, International Law Commission, Yearbook of the International Law Commission, 1966, vol. II, pp. 221 and 222.
[41] See PCIJ , Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture, PCIJ Series B. No 2, 12 August 1922, p. 39. See also, for subsequent practice – ICJ, The Corfu Channel Case Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania) (Merits), Judgment of 9 April 1949, p. 25.
[42] See Supreme Court of the Philippines, *Pangilinan vs. Cayetano,* G.R. No. 238875, Decision En Banc, 16 March 2021.
[43] See ICJ, Maritime Delimitation in the Indian Ocean, (Somalia v. Kenya), Preliminary Objections, Judgment of 2 February 2017, para. 92.

the territory of the States which *were* Parties under the condition of article 127 of the Statute.

38. Nevertheless, *in arguendo*, if the Chamber still deems the interpretation of articles 12, 13 and 127 to be ambiguous or obscure, it may further resort to the preparatory work of the Statute and the circumstances of its adoption as supplementary means of interpretation under article 32 of the Vienna Convention.[44]

39. The issue at hand – the legal implications of a State's withdrawal from the jurisdiction of the Court – had attracted the full attention of the drafters of the Statute from the very beginning of the drafting process. Since then, they clearly intended that a State Party's withdrawal will not have any effect over the jurisdiction of the Court - and the exercise of its jurisdiction - where the proceedings in question have already commenced before the withdrawal becomes effective. Notably, the relevant articles initially developed by the International Law Commission in the draft Statute of 1993 contained a specific sentence in this regard. It stated clearly that:

> *"Article 23. Acceptance by States of jurisdiction over cranes listed in article 22*
> […]
> *1. A State Party to this Statute may, by declaration lodged with the Registrar, accept at any time the jurisdiction of the Court over one or more of the crimes referred to in article 22.*
> […]
> *3. A declaration may be made under paragraph 1 for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case six months' notice of withdrawal must be given to the Registrar.* ***Withdrawal does not affect proceedings already commenced under this Statute***".[45]

[44] See the Kony Appeal Judgment, *supra* note 25, para. 89. The Appeals Chamber recalled that, according to article 32 of the Vienna Convention, the *travaux préparatoires* of a treaty are only supplementary means of interpretation, to which recourse may only be had in order to confirm an interpretation, or if the interpretation leaves the meaning ambiguous or obscure, or leads to a manifestly absurd or unreasonable result.

[45] See the Report of the International Law Commission on the work of its forty-fifth session (3 May-23 July 1993), UN Doc A/48/10, p. 108 (emphasis added). See also, Comments of Governments on the Report of the Working Group on a Draft Statute for an International Criminal Court, International Law Commission, UN Doc. A/CN.4/458/Add.5, 13 May 1994, p. 5, Working Group on a Draft Statute for an International Criminal Court, International Law Commission, UN Doc. A/CN.4/L.491/Rev.1, 8 July 1994,

40. In the course of the next stage of the drafting process in 1996 and 1997, the Preparatory Committee on the Establishment of an International Criminal Court (the "Preparatory Committee") also expressed the same view, clearly stating that withdrawal does not affect proceedings already commenced under the Statute in the event a State decides to withdraw from the treaty.[46]

41. The final part of the Statute developed by the Preparatory Committee in August of 1997 contained an article dealing with withdrawal which read as follows:

> *"Article H Withdrawal*
>
> *1. Any State Party may withdraw from this Statute by written notification to the Secretary-General of the United Nations.*
>
> *2. Withdrawal shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. The withdrawal shall not affect any obligations of the withdrawing State under the Statute".*[47]

42. The next document prepared by the Preparatory Committee in 1998 contained both of these proposals, one dealing with the legal effect of withdrawal upon the Court's jurisdiction and the other with withdrawals in general. It stated, in particular, that:

> *"Acceptance of the jurisdiction of the Court*
> […]
> *3. A declaration may be made for a specified period, in which case it may not be withdrawn before the end of that period, or for an unspecified period, in which case it may be withdrawn only upon giving a six month's notice of withdrawal to the Registrar.* ***Withdrawal does not affect proceedings already commenced under this Statute.***

p. 17, and Report of the International Law Commission on the work of its forty-sixth session, UN Doc. A/49/10, 22 July 1994, p. 82.

[46] See the Report of the Preparatory Committee on the Establishment of an International Criminal Court, Volume II, (Compilation of proposals), Supplement No. 22A, UN Doc. A/51/22, 1996, p. 73. See also, Rolling Text for Articles 21, 22, 23, 24 and 25, Working Group on Complementarity and Trigger Mechanism, Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/AC.249/1997/WG.3/CRP.1, 13 August 1997, p. 3 and Decisions taken by the Preparatory Committee at Its Session held from 4 to 15 August 1997, Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/AC.249/1997/L.8/Rev.1, 14 August 1997, p. 6.

[47] See the Draft Text Relating to Final Clauses, Final Act and Establishment of a Preparatory Commission, Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/AC.249/1998/L.11, 20 December 1997, p. 4 (emphasis added).

Withdrawal
[…]
2. Withdrawal shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations. ***The withdrawal shall not affect any obligations of the withdrawing State under the Statute****"*.[48]

43. Commenting on the provision, Amnesty International observed that:

"C. Withdrawal
It is to be hoped that no state party will ever find it necessary to withdraw from the statute. Indeed, it is extremely rare for states to withdraw from membership in intergovernmental organizations. If it is decided, however, that that withdrawal should be permitted in exceptional circumstances, then the statute should have a withdrawal provision spelling out the procedure for withdrawal and the obligations of the withdrawing state to avoid ambiguities concerning the obligations of the withdrawing state.
[…]
Paragraph 1 of Article H of the Secretariat's Draft Text (Zutphen text, Art. 98) requires written notification to the Secretary-General of intention to withdraw and Paragraph 2 provides in part that "[w]ithdrawal shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations". Article H could be strengthened to require an initial period of several years before a notice of withdrawal could be given. ***Paragraph 2 also states that "[t]he withdrawal shall not affect any obligations of the withdrawing State under the Statute." This provision could be improved by making clear that the withdrawing state remains under an obligation to cooperate with the permanent international criminal court with respect to any crime committed before the date of the notification and to any investigation or proceeding concerning such a crime at any time in the future, not just pending proceedings. This would reduce the incentive to denounce the statute to avoid investigations of concealed crimes on the verge of discovery****"*.[49]

[48] See the Report of the Inter-Sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands, Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/AC.249/1998/L.13, 4 February 1998, pp. 39 and 171 (emphasis added).
[49] See Amnesty International, The International Criminal Court, Making the Right Choices - Part IV Establishing and financing the court and final Clauses, March 1998, p. 36 (emphasis added).

44. It appears that the Preparatory Committee adopted this suggestion since the article dealing with withdrawal was then amended and modified in the following fashion:

> *"Article 98 [H] Withdrawal*
>
> *1. A State Party may, by written notification addressed to the Secretary- General of the United Nations, withdraw from this Statute. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.*
>
> *2. A State shall not be discharged by reason of its withdrawal from the financial obligations which accrued while it was a Party to this Statute. Nor shall the withdrawal affect the duty of that State to cooperate with the Court in connection with criminal investigations and proceedings commenced under this Statute prior to its termination for that State; nor shall it prejudice in any way the continued consideration of any matter which is already under consideration by the Court prior to the date at which the withdrawal becomes effective*".[50]

45. On this draft, Amnesty International further commented :

> *"If withdrawals are to be permitted, the statute should contain a provision permitting withdrawal only after an initial period of several years, upon a notice of at least one year,* ***provided that such withdrawal may not take effect with respect to any crimes within the jurisdiction of the international criminal court which were committed before the date the notice was given and that the withdrawing state remains bound to cooperate with the court concerning investigations or proceedings of any such crimes, at any time after the date of the notice, no matter when begun***. […] *Paragraph 2, which provides that a state "shall not be discharged by reason of its withdrawal from the financial obligations which accrued while it was a Party to this Statute" and that it must cooperate with the court concerning investigations and proceedings commenced before the effective date of withdrawal, is not fully consistent with this principle. The bracketed paragraph would ensure that the court would be a more effective complement to national jurisdictions by providing that a state is not discharged from any obligations arising from the statute before the effective date, not just financial obligations. If this is interpreted as a continuing duty to cooperate with the court concerning investigations started after the effective date of withdrawal, but involving crimes committed before that date, then this option is satisfactory. It would be better, however, for this to be expressly stated to avoid*

[50] See Part 11. Final Clauses, Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/AC.249/1998/CRP.4, 20 March 1998, p. 4. See also, Draft Statute for the International Criminal Court, Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/AC.249/1998/CRP.18, 1 April 1998, p. 6 and Report of the Preparatory Committee on the Establishment of an International Criminal Court, UN Doc. A/CONF.183/2/Add.1, 14 April 1998, pp. 33 and 167.

> *an incentive for certain states to denounce the statute when they fear that a concealed massacre is about to be discovered or that an investigation is likely to be opened concerning crimes which are known*".[51]

46. Another NGO, which actively participated in the meetings of the Preparatory Committee, also submitted:

> *"NGO Positions - Establishment by treaty, ratifications, reservations, withdrawal.*
>
> *NGOs expressing a view would prohibit all reservations to the Statute, both to prevent a tangle of obligations varying from state to state, and to ensure that the effectiveness of the Court. They would also make any right of withdrawal from the Statute arise only after its first several years of operation, and then be effective only after expiry of a specified,* ***substantial notice period, provided that it not affect the Court's powers with respect to acts occurring before the submission of notice***".[52]

47. Subsequently, the Preparatory Committee presented both articles (dealing with the legal effect of withdrawal upon the Court's jurisdiction and withdrawals in general) in the draft Statute to the Rome Conference in July 1998.[53]

48. During the Rome Conference, the delegates of the States eventually re-organized the provisions dealing with the jurisdiction of the Court, deleted the sentence "[w]*ithdrawal does not affect proceedings already commenced under this Statute*", but adopted the article concerning withdrawals with a minor modification in the final version of the Statute.[54]

49. In this regard, some observers of the Rome Conference asserted that:

> *"Withdrawal: A state can notify the UN if it withdraws from the statute. This would take effect a year later. But the state would still be obligated to pay contributions*

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[51] See Amnesty International, The International Criminal Court, Making the Right Choices - Part V, Recommendations to the Diplomatic Conference, May 1998, pp. 88-89 (emphasis added).

[52] See Core Principles of the Women's Caucus, Monitor - The Newspaper of the NGO Coalition for an International Criminal Court, Issue 8, June 1998, p. 14 (emphasis added). Document not available online and annexed to the present submission as Annex A.

[53] See Draft Statute for the International Criminal Court, Preparatory Committee, UN Doc. A/CONF.183/2/Add.1, 14 April 1998, pp. 33 and 167.

[54] See Part 2. Jurisdiction, Admissibility and Applicable Law, Discussion Paper, Committee of The Whole, UN Doc. A/CONF.183/C.1/L.53, 6 July 1998, p. 12, Rolling Text Part 13. Final Clauses, Committee of The Whole, UN Doc. A/CONF.183/C.1/L.54, 7 July 1998, p. 7 and Part 2. Jurisdiction, Admissibility and Applicable Law, Bureau Proposal, Committee of the Whole, UN Doc. A/CONF.183/C.1/L.59, 10 July 1998, p. 10 and the Final Version of the Statute, UN Doc. A/CONF.183/9, 17 July 1998.

> *incurred during the period of membership.* ***Withdrawal would not affect the "continued consideration of any matter which is already under consideration" by the court prior to withdrawal. In other words, once a case is under way a state could not avoid the court simply by withdrawing from the statute*** […]".[55]

50. Consequently, it can be concluded that the drafters of the Statute were acutely aware of the risk that States may intentionally avoid investigations and prosecutions of crimes on the verge of discovery by simply withdrawing from the Statute and thus the Court may not be able to exercise its jurisdiction and fall into ineffectiveness in such instances. They could not fail to see the danger of such withdrawals which would ultimately deprive countless Victims of access to justice. As a result, the States adopting the Statute must have intended to subsume the notion that withdrawal will not affect the Court's jurisdiction into the meaning of article 127 of the Statute by stating that withdrawals shall not prejudice or affect "*any matter which is already under consideration by the Court prior to the date at which the withdrawal becomes effective*". This conclusion naturally arises from the universal agreement on the matter by the drafters of the Statute from the very beginning of the drafting process, as shown *supra*.[56]

51. However, the Defence further argues that the term "*the Court*" included in article 127 of the Statute refers to the judicial organ, excluding the Prosecutor since "*systematic analysis of the Statute and the Rules of Procedure and Evidence shows that, in nearly all instances where the term 'by the Court' is used, it refers to the judiciary to the exclusion of the Prosecutor*" as shown, in its view, by a number of provisions.[57]

52. This is incorrect and misleading. The Statute and the Rules use the term "*the Court*" hundreds of times while each expressing a different meaning depending on the context within which it is employed. Indeed, the number of times that the term "*the Court*" refers to the judiciary is not determinative of the issue at hand.

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[55] See ON THE RECORD: Your link to the Rome conferences for the establishment of an international criminal court, OTR ICC Volume 1, Issue 20, No Peace Without Justice, 14 July 1998, p. 8 (emphasis added.) See also, ON THE RECORD: Your link to the Rome conferences for the establishment of an international criminal court, OTR ICC Volume 1, Issue 21, No Peace Without Justice, 15 July 1998, p. 10.
[56] See paras. 39 – 49.
[57] See the Defence Challenge, *supra* note 2, paras. 54-93.

53. It is apparent that the Statute and the Rules also refer to the Prosecutor - along with the Chambers - by using the term "*the Court*" when said term is read within the context of the legal instruments in question. Such examples can be found from the very first articles of the Statute. Article 1 states that "[a]*n International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions*." Article 4(1) also indicates that "[t]*he Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes*." Obviously, the Statute established the Court as *single legal entity* composed of various organs, including the Office of the Prosecutor (not only the judiciary as argued by the Defence). In this respect, article 34 explicitly states that the Court shall be composed of the following organs: (a) The Presidency; (b) An Appeals Division, a Trial Division and a Pre-Trial Division; (c) The Office of the Prosecutor; and (d) The Registry.

54. Indeed, the Office of the Prosecutor falls within the Court's remit while maintaining its operational independence under the Statute. Consequently, the term "*the Court*" refers to the judiciary sometimes, to the Office of the Prosecutor at other times and, in other contexts, even to both at the same time. What is determinative is the context of the specific legal provision within which the term is employed. Indeed, "[a term in a treaty] *obtains its meaning from the context in which it is used*" and [the true meaning of such words and expressions] *cannot be determined in isolation by recourse to its usual or common meaning*".[58]

55. The context in which the term "*the Court*" is used in article 127(2) of the Statute is wider than the one advocated for by the Defence. In fact, the provision states that "[a State's] *withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty*

[58] See ICJ, Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, *supra* note 36, p. 158.

to cooperate and which were commenced prior to the date on which the withdrawal became effective […]". While using the term "*the Court*", the article makes clear that a State's withdrawal will have no effect on its cooperation in connection with *criminal investigations* which are conducted only by the Office of the Prosecutor pursuant to articles 15, 53 and 54 of the Statute, not by the judiciary.

56. The same article also provides that a State's withdrawal shall not "*prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective*". The term "*any matter*" - when read in the context of the whole Statute - refers to all legal and factual questions that may arise at all phases of the proceedings before the Court since this use of catch-all term is deliberate, not accidental. Indeed, no word in a treaty should be presumed to be superfluous or to lack meaning or purpose as the presumption is warranted that lawmakers enact or agree upon rules that are well thought out and meaningful in all their elements.[59] As discussed *supra*,[60] the concrete intention of the drafters of the Statute with respect to article 127(2) was to bar opening an impunity gap by virtue of a withdrawal from the Statute, and, hence, envisioned to extend to *all* phases of the Court's engagement, clearly encompassing the Prosecutor's preliminary examinations.

57. Consequently, said all-inclusive term used in article 127 of the Statute, read in the context of the whole Statute, appears to include all stages of the proceedings before the Court, namely, preliminary examination, investigation, pre-trial and trial, appeals and review proceedings. This is consistent with the rule of interpretation upheld by the ICJ, according to which "[if] *the context requires a meaning which connotes a wide choice, it must be construed accordingly, just as it must be given a restrictive meaning if the context in which it is used so requires*".[61]

[59] See ICTY, *Prosecutor v. Duško Tadic*, Appeals Judgement, Case No. IT-94-1-A, 15 July 1999, para. 284.
[60] See para. 50.
[61] See ICJ, Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, *supra* note 36, p. 158.

58. In fact, nothing in the context of the Statute suggests that the use of the term "*the Court*" in article 127 of the Statute is only limited to the judiciary, thus excluding the Office of the Prosecutor. Rather, the natural and ordinary meaning of these clauses, read in their context, indicates that the term refers to both the Chambers and the Office of the Prosecutor, depending on the nature of the proceedings in question. Indeed, "[w]*hen the Court can give effect to a provision of a treaty by giving to the words used in it their natural and ordinary meaning, it may not interpret the words by seeking to give them some other meaning*".[62] It follows that the natural and ordinary meaning of the terms employed in article 127, read in their context and in the light of the object and purpose of the Statute refers, to the Office of the Prosecutor as "*the Court*" when it comes to preliminary examination and investigation that it conducts under the statutory regime.

59. Lastly, the Defence contends that a "*preliminary examination*" cannot be considered a "*matter under consideration*" in accordance with article 127(2) of the Statute as the former is "*not a formal procedural phase defined in the Rome Statute, but is, rather, a catch-all phrase designed to cover internal deliberations within the Office of the Prosecutor and a possible decision, at some future point in time, to open a formal investigation*".[63]

60. This argument also lacks merit. In fact, article 15(6) of the Statute explicitly recognises that the preliminary examination is a formal stage of the proceedings.[64]

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[62] See ICJ, Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion of 3 March 1950, p. 8

[63] See the Defence Challenge, *supra* note 2, paras. 94-95.

[64] See article 15 of the Statute: "*1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court. 2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court. 3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence. 4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case. 5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation. 6. If, after the preliminary examination referred to in paragraphs 1 and 2,*

Moreover, according to articles 15, 53 and 54 of the Statute, the Office of the Prosecutor is expected to conduct its preliminary examination under a number of evidentiary standards and to make legal and factual determinations in order to decide whether or not to proceed with an investigation. Various Chambers have consistently held that the Prosecutor's preliminary examination constitutes a formal stage of the proceedings that takes place before the Court. In this regard, Pre-Trial Chamber III observed that:

> "[…] *at the preliminary examination stage, the presence of several plausible explanations for the available information does not entail that an investigation should not be opened into the crimes concerned, but rather calls for the opening of such an investigation in order to properly assess the relevant facts. At the preliminary examination stage, the Prosecutor is allowed to draw conclusions on the basis of the information received, provided those conclusions do not appear manifestly unreasonable*".[65]

61. Thus, preliminary examination is an important phase of the proceedings provided for in article 15, immediately preceding formal investigation conducted by the Office of the Prosecutor pursuant to article 53 and 54 of the Statute. In this regard, the Appeals Chamber also ruled that:

> "[…] *article 15(2) and (3) require the Prosecutor to analyse the seriousness of information received on crimes within the jurisdiction of the Court and to submit a request for authorisation of an investigation to the pre-trial chamber if she concludes that there is a reasonable basis to proceed. At this early stage, the Prosecutor's investigative powers are limited and, barring exceptional circumstances, she will not be in a position to identify exhaustively or with great specificity each incident, crime or perpetrator that could be subject to investigation. Also, evidently she will not be able to reference crimes which may occur after the request for authorisation. Nevertheless, the examples of alleged crimes presented by the Prosecutor in her request under article 15(3) of the Statute should be sufficient to define in broad terms the contours of the situation that she wishes to investigate.* […] *If an investigation is authorised by the pre-trial*

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the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence" (emphasis added).

[65] See the "Public Redacted Version of 'Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi', ICC-01/17-X-9-US-Exp, 25 October 2017, (Pre-Trial Chamber III), No. ICC-01/17-9-Red, 9 November 2017, para. 138 (emphasis added). See also, the "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar (Pre-Trial Chamber III)", No. ICC-01/19-27, 14 November 2019, para. 128.

> *chamber, the full range of investigative powers under the Statute are available to the Prosecutor, but she is also subject to certain duties that affect the scope of her investigation. She is mandated under article 54(1)(a) of the Statute to 'extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally'. Under article 54(1)(b) of the Statute, she is required to '[t]ake appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court'. The Prosecutor's duty, according to article 54(1) of the Statute, is 'to establish the truth'. Therefore, in order to obtain a full picture of the relevant facts, their potential legal characterisation as specific crimes under the jurisdiction of the Court, and the responsibility of the various actors that may be involved, the Prosecutor must carry out an investigation into the situation as a whole*".[66]

62. Consequently, the Defence's argument – to the effect that a preliminary examination is not a formal phase defined in the Statute, but merely refers to internal deliberations within the Office of the Prosecutor – is misconceived and cannot be upheld.

63. In conclusion, based on the determinative interpretation of articles 12 and 127 of the Statute, the preliminary examination conducted by the Office of the Prosecutor in the Situation in the Republic of the Philippines must be considered as "*a matter*" that was "*already under the consideration of the Court*" prior to the date on which the State's withdrawal became effective and thus the Court may exercise its jurisdiction over the case against Mr Duterte.

64. Finally, the Principal Counsel informs the Chamber that, while she was unable to meet personally with the Victims, due to the security situation and time constraint, she was nevertheless able to contact Counsel representing some of them, as well as organisations supporting victims in the Philippines.

[66] See the "Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan (Appeals Chamber)", No. ICC-02/17-138 OA4, 5 March 2020, paras. 59-60 (emphasis added).

65. Victims expressed their concern about the possibility that the proceeding against Mr Duterte could be terminated. They expressed the view that if the Court chooses to uphold the overly restrictive reading of the Statute proposed by the Defence, and the suspect is returned to the Philippines as a result, they will have no judicial recourse and no hope of pursuing justice. Moreover, they indicated that they could face threats from the suspect and his supporters.

66. Victims also stressed that accountability must be a certainty and that, if the Defence's interpretation is accepted, the consequences of such impunity would be dire in the absence of any possibility to obtain justice at the national level.

IV. CONCLUSION

67. For the foregoing reasons, the Principal Counsel respectfully requests the Chamber to dismiss the Defence Challenge.

Paolina Massidda
Principal Counsel

Dated this 9th June 2025

At The Hague, The Netherlands