

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21-01/25**

Date: **23 October 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

Decision on the Defence Challenge to the Jurisdiction of the Court

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☐ **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**

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’), in the case of *The Prosecutor v. Rodrigo Roa Duterte*, having regard to articles 19 and 57(2)(a) of the Rome Statute (the ‘Statute’) and rules 58 and 59 of the Rules of Procedure and Evidence (the ‘Rules’), issues this decision on the Defence challenge to the jurisdiction of the Court (the ‘Defence Challenge’).¹

I. RELEVANT PROCEDURAL BACKGROUND

1. On 1 November 2011, the Statute entered into force for the Republic of the Philippines (the ‘Philippines’), further to it having deposited its instrument of ratification of the Statute on 30 August 2011.²
2. On 8 February 2018, the Court’s then Prosecutor announced that she had decided to open a preliminary examination into the Situation in the Philippines (the ‘Philippines Situation’).³
3. On 17 March 2018, the Government of the Philippines deposited a written notification of withdrawal from the Statute.⁴
4. On 17 March 2019, the withdrawal of the Philippines from the Statute took effect, in accordance with article 127(1) of the Statute.
5. On 12 April 2021, the Court’s then Prosecutor notified the Presidency of her intention to file a request pursuant to article 15 of the Statute.⁵
6. On 19 April 2021, the Presidency assigned the situation in the Republic of the Philippines to the Chamber.⁶
7. On 15 September 2021, further to a request by the Prosecutor on 24 May 2021,⁷ the Chamber, in a previous composition, authorised the commencement of an investigation into the Philippines Situation ‘in relation to crimes within the jurisdiction of the Court allegedly

¹ [Defence Challenge with Respect to Jurisdiction](#), 1 May 2025, ICC-01/21-01/25-121 with [Annex A](#).

² United Nations, Secretary-General, [Rome Statute of the International Criminal Court, Philippines: Ratification](#), C.N.530.2011.TREATIES-3 (Depositary Notification).

³ [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela](#) (the ‘Prosecutor’s Statement on Opening a Preliminary Examination in the Philippines Situation’).

⁴ United Nations, Secretary-General, [Rome Statute of the International Criminal Court, Philippines: Withdrawal](#), C.N.138.2018.TREATIES-XVIII.10 (Depositary Notification) (the ‘Philippines: Notification of Withdrawal’).

⁵ See [Statement of the Prosecutor, Fatou Bensouda, on her request to open an investigation of the Situation in the Philippines](#), 14 June 2021.

⁶ [Decision on the assignment of the situation in the Republic of the Philippines](#), ICC-01/21-01/25-1.

⁷ [Request for authorisation of an investigation pursuant to article 15\(3\)](#), ICC-01/21-7-SECRET-Exp (public redacted version notified on 14 June 2021, ICC-01/21-01/25-7-Red).

committed on the territory of the Philippines between 1 November 2011 and 16 March 2019 in the context of the so-called “war on drugs” campaign’ (the ‘Article 15 Decision’).⁸

8. On 24 June 2022, following a deferral request from the Philippines⁹ and a temporary suspension of the investigative activities,¹⁰ the Prosecution requested the Chamber to authorise the resumption of the investigation into the Philippines Situation.¹¹

9. On 26 January 2023, the Chamber authorised the Prosecution to resume its investigation into the Philippines Situation (the ‘Article 18(2) Decision’).¹²

10. On 18 July 2023, the Appeals Chamber, by majority, confirmed the Article 18(2) Decision,¹³ (the ‘Article 18(2) Appeal Judgment’), finding, *inter alia*, that it was not a decision with respect to jurisdiction, that ‘the issue of the effect of the Philippines’ withdrawal from the Statute on the Court’s jurisdiction was neither properly raised and discussed before the Pre-Trial Chamber nor adequately raised on appeal’, and that the Appeals Chamber therefore could not entertain the appeal of the Philippines on that point.¹⁴ Judge Perrin de Brichambaut and Judge Lordkipanidze filed a dissenting opinion to the Article 18(2) Appeal Judgment (the ‘Dissenting Opinion’).¹⁵

11. On 7 March 2025, further to an application by the Prosecution (the ‘Application for a Warrant of Arrest’),¹⁶ the Chamber issued a warrant of arrest for Mr Rodrigo Roa Duterte (‘Mr Duterte’) pursuant to article 58 of the Statute (the ‘Warrant of Arrest’).¹⁷

⁸ [Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15\(3\) of the Statute](#), ICC-01/21-01/25-12.

⁹ [Annex A to the Notification of the Republic of the Philippines’ deferral request under article 18\(2\)](#), 18 November 2021, ICC-01/21-01/25-14-AnxA.

¹⁰ [Notification of the Republic of the Philippines’ deferral request under article 18\(2\)](#), 18 November 2021, ICC-01/21-01/25-14.

¹¹ [Prosecution’s request to resume the investigation into the situation in the Philippines pursuant to article 18\(2\)](#), ICC-01/21-01/25-46.

¹² [Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation](#), ICC-01/21-01/25-56-Conf (public redacted version notified on the same day, ICC-01/21-01/25-56-Red).

¹³ [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”](#), ICC-01/21-01/25-77.

¹⁴ [Article 18\(2\) Appeal Judgment](#), para. 57. *See generally* paras 48-58.

¹⁵ [Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze](#), 18 July 2023, ICC-01/21-01/25-77-OPI.

¹⁶ [Prosecution’s urgent application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE](#), 10 February 2025, ICC-01/21-01/25-80-US-Exp (public redacted version notified on 13 March 2025, ICC-01/21-01/25-80-Red) with public Annexes A-B, D-E and under seal *ex parte* Annex C.

¹⁷ [Warrant of Arrest for Mr Rodrigo Roa Duterte](#), ICC-01/21-01/25-83.

12. On 12 March 2025, Mr Duterte was arrested by the authorities of the Philippines¹⁸ and surrendered to the Court.¹⁹ He made his first appearance before the Chamber on 14 March 2025.²⁰

13. On 1 May 2025, the Defence filed the Defence Challenge under article 19(2) of the Statute.

14. On 9 June 2025, the Plenary of the Judges rejected a Defence application pursuant to article 41(2)(b) of the Statute for Judge Alapini-Gansou and Judge Flores to be disqualified from adjudicating the Defence Challenge.²¹

15. Also on 9 June 2025, pursuant to an order from the Chamber setting the time limit within which to do so,²² the Prosecution²³ and the Office of Public Counsel for Victims (the ‘OPCV’)²⁴ filed their respective observations on the Defence Challenge (the ‘Prosecution Response’ and the ‘OPCV Observations’ respectively).

16. On 2 July 2025, the Defence filed its reply to the Prosecution Response (the ‘Defence Reply’).²⁵

¹⁸ ICC Press Release, [Situation in the Philippines: Rodrigo Roa Duterte in ICC custody](#).

¹⁹ [Decision convening a hearing for the first appearance of Mr Rodrigo Roa Duterte](#), ICC-01/21-01/25-90, para. 6.

²⁰ [Transcript of hearing](#), ICC-01/21-01/25-T-002-ENG.

²¹ [Decision on the ‘Corrigendum to Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction’ filed on 9 May 2025 \(ICC-01/21-01/25-130-Corr\)](#), ICC-01/21-01/25-148. The reasons for that decision were filed on 3 July 2025: [Reasons for the Decision on the ‘Corrigendum to Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction’ filed on 9 May 2025 \(ICC-01/21-01/25-130-Corr\)](#), ICC-01/21-01/25-172 (the ‘Reasons’). Paragraphs 6-14 of the Reasons set out the procedural history of the Defence’s application for the disqualification of those two judges, including its initial invitation to them to excuse themselves from adjudicating the Defence Challenge, which was rejected by the Chamber *in limine* (see paragraphs 6-8 of the Reasons).

²² [Order setting time limits for observations in relation to the ‘Defence Challenge with Respect to Jurisdiction’ \(ICC-01/21-01/25-121\)](#), 7 May 2025, ICC-01/21-01/25-128.

²³ [Prosecution response to “Defence Challenge with Respect to Jurisdiction”](#), ICC-01/21-01/25-146-Conf-Corr (public redacted version notified on the same day, ICC-01/21-01/25-146-Red-Corr; corrected versions of both the confidential and public versions, dated 10 June 2025, were registered on 11 June 2025). On 9 June 2025, the Prosecution also filed, on a secret and *ex parte* Prosecution only basis, its Notice of annex to “Prosecution response to ‘Defence Challenge with Respect to Jurisdiction’”, ICC-01/21-01/25-147-Conf, together with its Annex A, ICC-01/21-01/25-147-Conf-AnxA-Corr (the ‘Confidential Annex A’). Further to a series of requests and orders in relation to the reclassification of those documents and the documents contained in Annex A, these documents were reclassified as confidential on 20 and 23 June 2025 respectively. By email order from the Chamber on 19 June 2025 at 11:23, the Chamber had clarified that it would treat Confidential Annex A, together with its associated filing ICC-01/21-01/25-147-Conf, as an annex to the Prosecution Response.

²⁴ [Victims’ Observations on the Defence Challenge with Respect to Jurisdiction](#), ICC-01/21-01/25-145, with [Public Annex A](#).

²⁵ [Defence Reply to the Prosecution’s Response to the Defence Challenge on Jurisdiction \(ICC-01/21-01/25-146\)](#), ICC-01/21-01/25-171-Conf (public redacted version notified on 10 July 2025, ICC-01/21-01/25-171-Red). The Defence Reply was filed further to: an order varying the time for the Defence to file a request for leave to reply (Email from the Chamber, ‘[ICC-01/21-01/25 – Confidential] Order on the extension of time limits’, on 20 June 2025, at 12:44); a request from the Defence in that regard ([Defence Request for Leave to Reply to the](#)

17. On 22 July 2025, the Defence filed a request for the Chamber to postpone issuing its decision on the Defence Challenge (the ‘Request to Postpone’),²⁶ to which the Prosecution²⁷ and the OPCV²⁸ responded on 23 and 24 July 2025 respectively, opposing the Request to Postpone.

II. SUBMISSIONS

A. The Defence

18. The Defence’s first set of arguments are based upon its overall submission that the Court cannot exercise jurisdiction in the Philippines Situation after the effective withdrawal of the Philippines from the Statute.²⁹

19. The Defence submits that a State must be a State Party at the time that the Court exercises its jurisdiction; and that “it is essential to differentiate between jurisdiction *stricto sensu* [...] and the *exercise* of jurisdiction”.³⁰ It contends that “jurisdiction *stricto sensu*” is defined by articles 5, 11 and 25(1) of the Statute which state, “as a factual determination, that the Court ‘has jurisdiction’ over (i) certain crimes (ii) committed after the entry into force of the Statute (iii) by natural persons”.³¹ The Defence further avers that, therefore, “the additional criteria of ‘nationality’ and ‘territory’ are not pertinent to the existence of jurisdiction *stricto sensu* but, rather, are factors requiring consideration in the context of the Court’s *exercise* of jurisdiction”.³² It avers that it is not in dispute that the Court has “jurisdiction *stricto sensu*” over the alleged crimes in the Philippines Situation, which is determined only at the time that

[Prosecution’s Response to the Defence Challenge on Jurisdiction \(ICC-01/21-01/25-146\)](#), 23 June 2025, ICC-01/21-01/25-158-Conf (public redacted version notified on the same day, ICC-01/21-01/25-158-Red); the response of the Prosecution thereto ([Prosecution’s response to “Defence Request for Leave to Reply to the Prosecution’s Response to the Defence Challenge on Jurisdiction \(ICC-01/21-01/25-146\)”](#)), 25 June 2025, ICC-01/21-01/25-163); and a decision from the Chamber granting the request ([Decision on the ‘Defence Request for Leave to Reply to the Prosecution’s Response to the Defence Challenge on Jurisdiction \(ICC-01/21-01/25-146\)’](#)), 25 June 2025, ICC-01/21-01/25-164).

²⁶ [Defence Request to Postpone the Decision on the Challenge with respect to Jurisdiction](#), ICC-01/21-01/25-205-Conf (public redacted version notified on the same day, ICC-01/21-01/25-205-Red).

²⁷ [Prosecution’s response to “Defence Request to Postpone the Decision on the Challenge with respect to Jurisdiction”](#), ICC-01/21-01/25-210-Conf (public redacted version notified on the same day, ICC-01/21-01/25-210-Red) (the ‘Prosecution Response to the Request to Postpone’).

²⁸ [Victims’ Response to the “Defence Request to Postpone the Decision on the Challenge with respect to Jurisdiction”](#), ICC-01/21-01/25-212-Conf (public redacted version notified on the same day, ICC-01/21-01/25-212-Red) (the ‘OPCV Response to the Request to Postpone’).

²⁹ [Defence Challenge](#), heading 1 on p. 7; paras 13-48.

³⁰ [Defence Challenge](#), heading 1.1 on p. 7; para. 13 (emphasis in original).

³¹ [Defence Challenge](#), paras 14-15.

³² [Defence Challenge](#), para. 15 (emphasis in original).

they were committed, but submits that the “true issue” is whether the Court could properly exercise its jurisdiction after the Philippines withdrew from the Statute.³³

20. The Defence submits that the alternative ‘preconditions to the exercise of jurisdiction’ of territory and nationality that are set out in article 12(2) of the Statute do not establish jurisdiction *per se* but are, as the title of the provision states, preconditions that must be assessed at the time that the Court considers whether to exercise its jurisdiction under article 13 of the Statute.³⁴ It argues that a holistic reading of articles 12 and 13 of the Statute demonstrates that the existence of jurisdiction is determined at the date of the alleged crimes, but that the appropriate time for the “determination of whether the conduct was committed on the territory of a State Party or could be attributed to a national of a State Party happens at the time the decision is made to exercise jurisdiction, not at the time of the commission of the crime”.³⁵

21. The Defence argues that article 13(c) of the Statute, which was relied upon by the Prosecution to trigger the exercise of jurisdiction in the Philippines Situation, requires the Prosecutor to have initiated an investigation under article 15, which includes the requirement for a pre-trial chamber to have authorised the investigation pursuant to article 15(4) of the Statute.³⁶ It avers that, as it was over two years from the withdrawal of the Philippines from the Statute when both the Prosecutor requested, and the Chamber authorised, the investigation in this case, the preconditions to the exercise of jurisdiction were not fulfilled as the Philippines was no longer a State Party.³⁷

22. The Defence further submits that the Prosecution has consistently confused jurisdiction with the preconditions to its exercise, as illustrated by its contentions on jurisdiction in the Application for a Warrant of Arrest³⁸ and the references upon which it relied.³⁹ The Defence makes similar arguments in respect of the Chamber’s findings in the Article 15 Decision.⁴⁰

23. The Defence’s second set of arguments aver that article 127(2) of the Statute is irrelevant or inapplicable to the present situation.⁴¹

³³ [Defence Challenge](#), paras 16-17.

³⁴ [Defence Challenge](#), paras 18, 20.

³⁵ [Defence Challenge](#), paras 19, 21-23, referring to [Dissenting Opinion](#), para. 23.

³⁶ [Defence Challenge](#), para. 24.

³⁷ [Defence Challenge](#), paras 24-25, referring to, *inter alia*, [Dissenting Opinion](#), paras 26-27.

³⁸ [Defence Challenge](#), paras 26-28, referring to [Application for a Warrant of Arrest](#), para. 102.

³⁹ [Defence Challenge](#), paras 29-42.

⁴⁰ [Defence Challenge](#), paras 43-48, referring to [Article 15 Decision](#), para. 111.

⁴¹ [Defence Challenge](#), heading 2 on p. 18; paras 49-113.

24. The Defence argues that “[n]o interpretation of Article 127(2) can trump the plain language of Article 12(2), which requires that, as a ‘pre-condition to the exercise of jurisdiction’, a State be contemporaneously a party to the Rome Statute”.⁴² The Defence further avers that article 127(2) of the Statute, in particular its reference to ‘any matter which was already under consideration by the Court’, cannot apply to matters under consideration by the Prosecutor, such as a preliminary examination.⁴³

25. First, the Defence argues that the expression “the Court” in article 127(2) of the Statute “refers to the judicial organ of the Court, to the exclusion of the Prosecutor”.⁴⁴ The Defence refers to numerous articles of the Statute and rules of the Rules which use the expression ‘by the Court’ to argue that the expression is used to refer to the judiciary and/or an administrative entity, not the Prosecutor.⁴⁵

26. Second, the Defence submits that a ‘preliminary examination’ is not a ‘matter under consideration’ under article 127(2) of the Statute.⁴⁶ It argues that a preliminary examination is not “a formal procedural phase” but rather one that is “internal, informal and non-justiciable”, which can be constituted by “even the most mundane acts”;⁴⁷ and it refers to reasoning in the Dissenting Opinion that it is only once a pre-trial chamber authorises an investigation that a situation is under consideration by the Court.⁴⁸

27. The Defence further avers that both the drafting history of the Statute, and its French and Chinese language versions, support a narrow reading of article 127(2) of the Statute;⁴⁹ and that article 70 of the Vienna Convention on the Law of Treaties (the ‘VCLT’) is irrelevant, both because article 127 of the Statute is *lex specialis* on withdrawal from the Statute, with article 70(1) of the VCLT therefore not being applicable, and because article 70(1) of the VCLT does not alter what the Defence submits is the correct interpretation of article 127(2) of the Statute.⁵⁰ The Defence further submits that, even if a ‘preliminary examination’ were a

⁴² [Defence Challenge](#), para. 52. *See generally* paras 49-52.

⁴³ [Defence Challenge](#), paras 53-54.

⁴⁴ [Defence Challenge](#), para. 54. *See also* para. 55.

⁴⁵ [Defence Challenge](#), paras 56-93 and [Annex A](#) to the Defence Challenge, *referring to* articles 12(3), 15(4), 17(1), 19(8) and (9), 20, 21, 23, 58(4), 67(1)(d), 68(2) and (3), 70(4)(b), 72, 73, 87, 89, 90, 93, 99, 100, 103, 107, 108, 109, 110 and 111 of the Statute; and to rules 12(5), 22, 32, 39, 64, 65, 74, 90(5), 101, 117, 146, 166, 168, 171, 180, 184, 191, 193, 200, 212, 215, 218, 219 and 225 of the Rules. It is noted that rule 203 of the Rules is mentioned at para. 89 of the Defence Challenge, but that rule does not appear in the accompanying annex nor does it contain the expression ‘by the Court’.

⁴⁶ [Defence Challenge](#), para. 94. *See generally* paras 94-110.

⁴⁷ [Defence Challenge](#), paras 95-96; *see also* paras 98-101.

⁴⁸ [Defence Challenge](#), para. 97, *referring to* [Dissenting Opinion](#), para. 35.

⁴⁹ [Defence Challenge](#), paras 102-106.

⁵⁰ [Defence Challenge](#), paras 107-110.

‘matter under consideration’ by the Court, that would merely result in the Prosecution being able to continue its preliminary examination further to a State’s withdrawal, but it has no bearing upon whether the Court is able to exercise its jurisdiction under article 12 of the Statute further to the effective withdrawal of the Philippines; it argues that the preliminary examination and the decision to open an investigation are not the same ‘matters’.⁵¹

28. The Defence concludes its submissions, *inter alia*, by averring that the current President of the Philippines “has impliedly accepted, for jurisdictional reasons, that former President Duterte should not be tried at the [...] Court”, having also given a written undertaking that his government would not ‘assist the ICC, in any way, shape or form’.⁵² It submits that the preconditions for the exercise of jurisdiction were not present in this case;⁵³ and that the Chamber should find that there is no legal basis for the proceedings against Mr Duterte and order his immediate and unconditional release.⁵⁴

B. The Prosecution

29. The Prosecution submits that both sets of Defence arguments should be rejected, the Defence Challenge dismissed and the Court’s exercise of jurisdiction over Mr Duterte affirmed.⁵⁵

30. First, the Prosecution avers that the Court is lawfully exercising its jurisdiction over Mr Duterte as the Philippines was a State Party at the time of the alleged commission of the crimes.⁵⁶ It argues that article 12(2) of the Statute requires the conditions of territoriality and nationality to be satisfied at that time rather than at the time that the Court exercises its jurisdiction.⁵⁷ It submits that: (i) the Philippines accepted the Court’s exercise of jurisdiction over crimes under article 5 of the Statute without limitation at the time that it accepted the jurisdiction of the Court under articles 11 to 13;⁵⁸ (ii) the context of article 12(2) of the Statute means that, at the time that the Court’s jurisdiction is exercised, it is not necessary for the territorial State or the State of the suspect’s nationality to be a State Party;⁵⁹ (iii) this

⁵¹ [Defence Challenge](#), paras 111-113.

⁵² [Defence Challenge](#), para. 115, referring to a video of First Hearing of the Senate of the Republic of the Philippines, Committee on Foreign Relations, chaired by Senator Imee Marcos, 20 March 2025, at 1:09:15.

⁵³ [Defence Challenge](#), para. 116.

⁵⁴ [Defence Challenge](#), para. 118. See also para. 117.

⁵⁵ [Prosecution Response](#), paras 7, 95.

⁵⁶ [Prosecution Response](#), paras 10, 14-47.

⁵⁷ [Prosecution Response](#), para. 19.

⁵⁸ [Prosecution Response](#), paras 20-26.

⁵⁹ [Prosecution Response](#), paras 27-37.

interpretation is supported by the object and purpose of the Statute;⁶⁰ and (iv) it is consistent with the rule excluding limitations over article 5 crimes under customary international law.⁶¹ The Prosecution argues that the Defence Challenge can be dismissed on this basis alone.⁶²

31. Second, the Prosecution submits that article 127(2) of the Statute precludes a State Party that withdraws from the Statute from depriving the Court of the exercise of its jurisdiction if the matter was already under consideration by the Court before the withdrawal becomes effective; and that the initiation of a preliminary examination in this case is sufficient for the matter to have been under such consideration.⁶³ The Prosecution argues that: (i) the ordinary meaning of the terms of article 127(2) of the Statute includes a preliminary examination as a ‘matter’ under ‘consideration’ by ‘the Court’;⁶⁴ (ii) the context of article 127(2) of the Statute supports the inclusion of preliminary examinations initiated by the Prosecutor being encompassed within the term ‘any matter which was already under consideration by the Court’;⁶⁵ and (iii) interpreting the second part of the second sentence of article 127(2) of the Statute as encompassing preliminary examinations is most consistent with the object and purpose of the Statute.⁶⁶

C. The OPCV

32. The OPCV submits that the Defence Challenge should be dismissed.⁶⁷

33. The OPCV argues that the wording of articles 12, 13 and 127 of the Statute is “crystal clear”, and that the withdrawal of the Philippines from the Statute does not therefore have any “effect upon the already established jurisdiction of the Court, especially since the Prosecutor’s preliminary examination had commenced before the said withdrawal became effective”.⁶⁸ It therefore submits that there is no need to resort to an interpretation of the Statute and that the decisions of the Chamber in its former composition remain binding.⁶⁹

34. The OPCV contends that, if the Chamber nevertheless decides to interpret articles 12 and 127 of the Statute, those provisions make clear that the withdrawal of the

⁶⁰ [Prosecution Response](#), paras 38-43.

⁶¹ [Prosecution Response](#), paras 44-46.

⁶² [Prosecution Response](#), para. 47.

⁶³ [Prosecution Response](#), paras 11-12, 48-94.

⁶⁴ [Prosecution Response](#), paras 53-73.

⁶⁵ [Prosecution Response](#), paras 74-87.

⁶⁶ [Prosecution Response](#), paras 88-93.

⁶⁷ [OPCV Observations](#), paras 2, 67. *See generally* paras 2-67.

⁶⁸ [OPCV Observations](#), para. 2. *See also* paras 17-18.

⁶⁹ [OPCV Observations](#), paras 2, 17-19.

Philippines from the Statute does not prevent the Court from exercising its jurisdiction in this case, when the provisions are given their natural and ordinary meaning, when read in context and in light of their object and purpose.⁷⁰ The OPCV submits that this interpretation is confirmed by: (i) the subsequent actions of the Government of the Philippines in surrendering Mr Duterte to the Court in 2025 further to its withdrawal from the Statute in 2019, thereby considering itself still to be bound by the Statute and providing “irrefutable proof” that it considers that the Court can exercise jurisdiction over the crimes alleged in this case;⁷¹ and (ii) the drafting history of the relevant provisions.⁷² It contends that, “[i]n 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 the consideration by the Court prior to the date on which the withdrawal became effective’ the stage of the preliminary examination conducted by the Prosecutor”.⁷³ As a result, the OPCV submits that the Court may exercise its jurisdiction in this case.⁷⁴

35. The OPCV avers that the victims in this case were greatly concerned about proceedings coming to an end if the Defence Challenge were successful; were of the view that concluding that the Court could not exercise its jurisdiction in the current case would uphold impunity and deprive them of justice; and indicated that they could face threats from Mr Duterte and his supporters if he were thereafter returned to the Philippines.⁷⁵

D. The Defence Reply

36. In the Defence Reply, the Defence submits, in respect of its first set of arguments in the Defence Challenge, that “[t]he ‘fight against impunity’ cannot warrant an inappropriate application of the [Statute]” and that the Prosecution “fails coherently to articulate the textual difference between Articles 5, 11, and 25(1) (jurisdiction *stricto sensu*) and Article 12(2) (preconditions to the exercise of jurisdiction)”, frequently confusing the two concepts.⁷⁶ It argues that both the Prosecution and the OPCV use “tortuous textual interpretation” to try to overcome the use of the present simple tense in article 12(2) of the Statute.⁷⁷ It further submits that the “fight against impunity” cannot justify an interpretation of the Statute that is

⁷⁰ [OPCV Observations](#), paras 3, 20-35.

⁷¹ [OPCV Observations](#), paras 3, 36-37.

⁷² [OPCV Observations](#), paras 3, 38-50.

⁷³ [OPCV Observations](#), paras 3, 51-62.

⁷⁴ [OPCV Observations](#), para. 63.

⁷⁵ [OPCV Observations](#), paras 4, 64-66.

⁷⁶ [Defence Reply](#), para. 8.

⁷⁷ [Defence Reply](#), para. 9.

inconsistent with its plain language;⁷⁸ and that the object and purpose of the Statute equally includes fundamental rights such as those of the accused to due process and a fair trial which are not “subservient to the principle of accountability”.⁷⁹ The Defence further avers that “Mr Duterte has never expressed a desire to shirk accountability”;⁸⁰ and that “it is the Prosecution which must shoulder the responsibility for its miscalculated and, ultimately, erroneous decision not to initiate an investigation within the designated time-period”.⁸¹

37. In respect of its second set of arguments in the Defence Challenge, the Defence submits that at least one of the reclassified documents that was disclosed to it subsequent to its filing of the Defence Challenge “irreparably prejudices the Prosecution case”.⁸² The Defence further submits that article 127(2) of the Statute is irrelevant as the withdrawal of a State from the Statute does not preclude the Prosecution from conducting a preliminary examination;⁸³ and that, in any event, the Defence’s interpretation of article 12(2) of the Statute renders it unnecessary to consider the legal effect of article 127(2) of the Statute as no investigation may be initiated if a State is not a Party to the Statute at that time, with any steps taken during a preliminary examination therefore being of no consequence.⁸⁴

III. DETERMINATION BY THE CHAMBER

A. Preliminary Issue

38. Before addressing the merits, the Chamber is required to determine, as a preliminary issue, the request of the Defence for the Chamber to postpone issuing this decision on the Defence Challenge until the “crucial issue” of Mr Duterte’s fitness to stand trial has been resolved.⁸⁵ The Defence submits that, if the Chamber accepts the Defence argument that Mr Duterte is not fit to stand trial, there would be no need to issue a decision on jurisdiction;⁸⁶ and that “it would

⁷⁸ [Defence Reply](#), para. 10.

⁷⁹ [Defence Reply](#), para. 11.

⁸⁰ [Defence Reply](#), para. 12.

⁸¹ [Defence Reply](#), para. 13, referring to [Dissenting Opinion](#), para. 29.

⁸² [Defence Reply](#), paras 2-5.

⁸³ [Defence Reply](#), para. 6.

⁸⁴ [Defence Reply](#), para. 7.

⁸⁵ [Request to Postpone](#), para. 1. See also paragraph 17 above. In the Request to Postpone, the fact that the issue concerned was submitted by the Defence to be Mr Duterte’s fitness to stand trial was redacted from the public version of that filing. As reference to that matter has subsequently been made public in other documents (see e.g. [Decision postponing the hearing on the confirmation of charges](#), 8 September 2025, ICC-01/21-01/25-267, paras 4, 7-8), the Chamber is referring to it here as well for greater clarity in relation to this preliminary issue.

⁸⁶ [Request to Postpone](#), para. 2.

be more advantageous to all if the decision on jurisdiction, which is secondary to the issue of [fitness to stand trial], be postponed for the time being”.⁸⁷

39. The Prosecution requests the Chamber to reject the Defence’s request,⁸⁸ submitting that “[j]urisdiction is a central issue in this case”, the parties have filed their submissions and a decision from the Chamber is pending, and “[a] prompt ruling on jurisdiction can only promote the efficiency and expeditiousness of the proceedings”.⁸⁹

40. The OPCV also requests the Chamber to reject the Defence’s request,⁹⁰ submitting that the issue of Mr Duterte’s fitness to stand trial is a separate matter which “has no bearing on the legal question of jurisdiction”,⁹¹ the Chamber has been fully briefed on the Defence Challenge and is required to rule on the matter pursuant to articles 57(1) and 57(2)(a) of the Statute;⁹² the Chamber’s ruling will affect victims, who have a right to legal certainty on the issue of jurisdiction;⁹³ “[i]t would not be in the interests of justice to effectively abort the current deliberations only to re-litigate the matter at a later stage”;⁹⁴ and the Defence had previously submitted that determining the question of jurisdiction at the earliest opportunity would prevent unnecessary expenditure of resources.⁹⁵

41. The Chamber emphasises that establishing that the Court has jurisdiction is fundamental to the proceedings. If the Chamber were to decide that the Court does not have jurisdiction, that would conclude the proceedings in this case (subject to any appeal that may be brought against that decision). In those circumstances, the Chamber would no longer have competence to rule upon any further issue, including Mr Duterte’s fitness to participate in the pre-trial proceedings. The Chamber is therefore not persuaded by the submission of the Defence that the decision on jurisdiction is secondary to the issue of fitness to stand trial. Furthermore, the Chamber observes that, as outlined in the previous two sections of this decision, it has received full submissions on the Defence Challenge from all parties to the proceedings and that they are primarily legal in nature. No further submissions in relation to this issue are required for the Chamber to decide upon it. For the foregoing reasons, to make the essential determination of

⁸⁷ [Request to Postpone](#), para. 3.

⁸⁸ [Prosecution Response to the Request to Postpone](#), paras 1, 3.

⁸⁹ [Prosecution Response to the Request to Postpone](#), para. 2.

⁹⁰ [OPCV Response to the Request to Postpone](#), paras 2, 23.

⁹¹ [OPCV Response to the Request to Postpone](#), para. 4; *see also* paras 3, 18.

⁹² [OPCV Response to the Request to Postpone](#), para. 5; *see also* para. 18.

⁹³ [OPCV Response to the Request to Postpone](#), paras 2-3, 5, 21-22.

⁹⁴ [OPCV Response to the Request to Postpone](#), para. 5; *see also* para. 21.

⁹⁵ [OPCV Response to the Request to Postpone](#), paras 5, 16.

whether the Court has competence over this case, and in the interests of efficiency and expeditiousness, it is necessary to rule on jurisdiction at the earliest opportunity.⁹⁶

42. Accordingly, the Chamber cannot defer the issuance of this decision. The Defence Request to Postpone is therefore rejected and the Chamber will proceed to consider the merits of the Defence Challenge.

B. Merits of the Defence Challenge

43. Turning to the merits, the Chamber recalls that the Statute entered into force for the Philippines on 1 November 2011.⁹⁷ The Chamber further recalls that, following the then Prosecutor's announcement that she had decided to open a preliminary examination into the Philippines Situation on 8 February 2018,⁹⁸ the Government of the Philippines deposited a written notification of withdrawal from the Statute on 17 March 2018.⁹⁹ That withdrawal took effect on 17 March 2019.¹⁰⁰ The Philippines was therefore a State Party to the Statute and was bound by its provisions from 1 November 2011 to 16 March 2019. The crimes against humanity alleged against Mr Duterte in the present case were committed during that time period.¹⁰¹

44. The Defence submits that the Court does not have jurisdiction in this case because the Philippines was no longer a State Party at the time that the Chamber authorised the commencement of the investigation into the Philippines Situation under article 15 of the Statute. It further argues that article 127(2) of the Statute does not affect that conclusion and that the phrase "any matter which was already under consideration by the Court", contained within its second sentence, cannot apply to matters under consideration by the Prosecution, such as a preliminary examination.

1. The Philippines' Withdrawal and Article 127 of the Statute

45. The central issue that arises in this case is the effect of the withdrawal of the Philippines from the Statute upon the Court's ongoing jurisdiction. More specifically, whether the Court

⁹⁶ The Chamber notes that, at the time of filing the Defence Challenge, the Defence itself submitted that: "For the sake of judicial efficiency [...] this challenge should be resolved as a preliminary matter. Such an approach will prevent the unnecessary expenditure of resources incurred by allowing a confirmation of charges hearing to proceed in the absence of any jurisdictional basis": see [Defence Challenge](#), para. 2.

⁹⁷ This was pursuant to the Philippines depositing its instrument of ratification of the Statute on 30 August 2011 and articles 11(2) and 126 of the Statute (see United Nations, Secretary-General, [Rome Statute of the International Criminal Court, Philippines: Ratification](#), C.N.530.2011.TREATIES-3 (Depositary Notification)).

⁹⁸ [Prosecutor's Statement on Opening a Preliminary Examination in the Philippines Situation](#).

⁹⁹ [Philippines: Notification of Withdrawal](#).

¹⁰⁰ See article 127(1) of the Statute.

¹⁰¹ [Warrant of Arrest](#), paras 5, 14-15; [Document Containing the Charges](#), 4 July 2025, ICC-01/21-01/25-178-Conf (public redacted version notified on 22 September 2025, ICC-01/21-01/25-178-Red).

lacks jurisdiction over the alleged crimes referred to above as a result of the fact that the Prosecutor requested the authorisation of an investigation into the Philippines Situation pursuant to article 15(3) of the Statute – and that the Chamber granted that request under article 15(4) of the Statute – after the withdrawal of the Philippines had become effective.

46. This issue requires resolution by reference to article 127 of the Statute. That provision specifically provides for the withdrawal of a State from the Statute and its consequences. That includes whether the Court retains jurisdiction further to the withdrawal of the Philippines from the Statute in the present case. It reads as follows:

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.

47. Article 127 of the Statute is consistent with the general framework provided for by article 70 of the VCLT, which addresses the consequences of the termination of a treaty.¹⁰² Article 127 of the Statute makes specific provision for the consequences of the withdrawal of a State from the Statute and, as such, constitutes *lex specialis* in relation to the issues that require determination in the present case.

48. For the reasons elaborated in the sections that follow, the facts of this case fall squarely within the express provision in article 127(2) of the Statute that the withdrawal of a State from the Statute “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

¹⁰² Article 70 of the [VCLT](#) provides that:

“1. Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:

(a) releases the parties from any obligation further to perform the treaty;
(b) does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.

2. If a State denounces or withdraws from a multilateral treaty, paragraph 1 applies in the relations between that State and each of the other parties to the treaty from the date when such denunciation or withdrawal takes effect”.

effective”. That part of article 127(2) of the Statute results in the jurisdiction of the Court continuing over any such matter. As explained further below, the subject-matter of the Prosecution’s preliminary examination – namely the alleged crimes in the Philippines Situation for which an investigation was ultimately authorised – was a matter which was already under consideration by the Court both at the time that the Philippines deposited its notification of withdrawal and when its withdrawal subsequently took effect. Contrary to the arguments of the Defence,¹⁰³ and as argued by the Prosecution and the OPCV,¹⁰⁴ this conclusion follows from the correct interpretation of the phrase “any matter which was already under consideration by the Court” in the second part of the second sentence of article 127(2) of the Statute, for the reasons set out below.

2. *The interpretation of “any matter which was already under consideration by the Court” within article 127(2) of the Statute*

49. The Chamber recalls that the provisions of the Statute are to be interpreted according to their ordinary meaning in their context and in the light of the object and purpose of the treaty.¹⁰⁵ This is in accordance with article 31 of the VCLT which provides, in full, as follows:

Article 31
General rule of interpretation

1. 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.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

¹⁰³ See generally [Defence Challenge](#), paras 49-113.

¹⁰⁴ See generally [Prosecution Response](#), paras 48-94; [OPCV Observations](#), paras 2-3, 17-63.

¹⁰⁵ See, among other authorities, Appeals Chamber, *The Prosecutor v. Joseph Kony*, [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”](#), 3 June 2025, ICC-02/04-01/05-610 (OA4) (the ‘Kony OA4 Appeal Judgment’), para. 36; Appeals Chamber, *Situation in the Democratic Republic of the Congo*, [Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal](#), 13 July 2006, ICC-01/04-168 (OA3), para. 33.

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.¹⁰⁶

50. The Chamber will therefore consider the interpretation of the phrase “any matter which was already under consideration by the Court” according to those principles.

a. Ordinary meaning

i. “Any matter”

51. Turning first to the words “any matter”, and as argued by the Prosecution,¹⁰⁷ the ordinary meaning of the word “matter” demonstrates that it is a broad general term which can therefore include alleged crimes under consideration during a preliminary examination. It is defined in the Oxford English Dictionary under two main headings that are of relevance for present purposes. The first is “[a] thing, affair, concern”;¹⁰⁸ and the second is “[t]hat which constitutes or forms the basis of thought, speech, or action”.¹⁰⁹ Under the first of those two headings it is further sub-defined, *inter alia*, first as “[a]n event, circumstance, fact, question, state or course of things, etc., which is or may be an object of consideration or practical concern; a subject, an affair, a business”.¹¹⁰ That ordinary meaning of the word is clearly broad enough to incorporate the subject of the preliminary examination in this case; and it further demonstrates that it is that subject-matter, rather than any specific stage of proceedings, that is incorporated by the term “matter”.

52. In addition to the broad general nature of the term “matter” itself, the word that precedes it in article 127(2) of the Statute – namely, “any” – makes even clearer that this is a broad general term rather than one which has been limited by the drafters to something more specific.

¹⁰⁶ [VCLT](#), article 31. For further commentary on article 31 of the VCLT, see also J. Hill, *Aust’s Modern Treaty Law and Practice* (2023); O. Dörr and K. Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2018); R. Gardiner, *Treaty Interpretation* (2015); O. Corten and P. Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (2011).

¹⁰⁷ See [Prosecution Response](#), paras 56-59.

¹⁰⁸ Oxford University Press, “Oxford English Dictionary” (the ‘OED’): Matter, I.

¹⁰⁹ OED: Matter, II.

¹¹⁰ OED: Matter, I.1.a.

In particular, the use of the words “any matter” do not limit this phrase to any specific phase of the proceedings. Had any such specific limitation been intended, the provision would instead have used a word such as “trial” or “investigation” so as to narrow its application to a particular procedural stage.

53. The Chamber is not persuaded by the arguments of the Defence to the contrary. First, the Defence refers to the drafting history of the provision.¹¹¹ The Chamber recalls that, pursuant to article 32 of the VCLT, the preparatory work of a treaty is a supplementary means of interpretation to which recourse may be had “to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable”.¹¹² In light of the definition of the term “matter” to which the Chamber has referred above – and the interpretation of the words “any matter which was already under consideration by the Court” which is elaborated further below by reference to the interpretative principles set out in article 31 of the VCLT – the Chamber is not persuaded that reference to the preparatory work of the Statute is necessary.

54. In any event, the Chamber further notes that the Defence itself submits that “[t]he *travaux préparatoires* to the [Statute] do not provide a definitive answer as to the interpretation of a ‘matter under consideration by the Court’”.¹¹³ The Chamber is also not persuaded by what the Defence avers was a narrow understanding by certain non-governmental organisations that the phrase in question means that “once a case is under way” a State could not avoid the Court simply by withdrawing from the Statute.¹¹⁴ In itself, it is a correct statement that a State cannot avoid the Court ‘once a case is under way’; yet that statement does not rule out other stages of the proceedings, such as a preliminary examination, also falling within the phrase “any matter which was already under consideration”. More significantly, the Chamber observes that the change in wording to which the Defence refers from the 1994 draft Statute (that withdrawal does not affect “*proceedings already commenced*”) to the final wording of article 127(2) of the Statute (that withdrawal shall not prejudice “*any matter which was already under consideration by the Court*”),¹¹⁵ more readily demonstrates that the drafters ultimately chose the broader phrase “any matter” as opposed to the potentially narrower former specific mention of

¹¹¹ [Defence Challenge](#), paras 102-105.

¹¹² [VCLT](#), article 32.

¹¹³ [Defence Challenge](#), para. 102.

¹¹⁴ [Defence Challenge](#), para. 105.

¹¹⁵ [Defence Challenge](#), paras 103-105.

“proceedings”. This is consistent with the Chamber’s above finding that the phrase “any matter” is broad and not limited to a specific phase of the proceedings.

55. Second, the Chamber is not persuaded by the Defence argument that the French and Chinese versions of the Statute “support a narrower understanding of the expression ‘matter’”.¹¹⁶ The Chamber recalls that, pursuant to article 128 of the Statute, each of the six language versions of its text are equally authentic; and the use of the word “affaires” in the French version does not detract from the broad meaning of the word “matter” in the equally authentic English version.¹¹⁷ The Chamber further recalls that, pursuant to article 33(4) of the VCLT, in circumstances in which the authentic texts disclose a difference of meaning which is not otherwise removed by the application of articles 31 and 32 of the VCLT, “the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted”.¹¹⁸ If at all, the discrepancies to which the Defence refers merely highlight the need to have regard to the meaning of “any matter” by reference to the context of the provision and the object and purpose of the Statute. As will be seen when considering those latter factors further below, the object and purpose of the Statute as a whole and of article 127 itself best reconciles any difference of wording in the texts in favour of a broad reading of the phrase “any matter”.

ii. *“Under consideration”*

56. In terms of the phrase “under consideration”, the Chamber observes that the ordinary meaning of the word “consideration” is “[t]he action of considering”,¹¹⁹ with other definitions including “[t]he keeping of a subject before the mind”,¹²⁰ “attentive thought”¹²¹ and “[t]he action of taking into account”.¹²² By reference to that ordinary meaning of the word, the fact that the Philippines Situation was being considered by the Prosecution by way of a preliminary examination does not affect the conclusion that it was a matter “under consideration” by the Court. What is of importance is that, during the preliminary examination, the Prosecution was considering allegations that crimes had been committed in the Philippines. Indeed, it was the result of its consideration of those alleged crimes that led the Prosecution to proceed to seek the authorisation of an investigation into the Philippines Situation and the prosecution of the

¹¹⁶ [Defence Challenge](#), para. 106.

¹¹⁷ Statute, article 128. *See also* [Prosecution Response](#), para. 59.

¹¹⁸ [VCLT](#), article 33(4).

¹¹⁹ OED: Consideration.

¹²⁰ OED: Consideration, 2.a.

¹²¹ OED: Consideration, 2.a.

¹²² OED: Consideration, 3.a.

present case. The second part of the second sentence of article 127(2) of the Statute does not prescribe any particular stage of the proceedings during which a matter needs to be under consideration. What has been “under consideration” throughout for the purposes of article 127(2) of the Statute is alleged crimes committed in the Philippines Situation.

57. Furthermore, contrary to the arguments of the Defence,¹²³ the Chamber does not accept that the preliminary examination is too informal in nature to encompass a matter that is “under consideration” by the Court. As argued by the Prosecution,¹²⁴ the preliminary examination is a statutory process which is a necessary precondition to seeking authorisation for the commencement of an investigation. It is regulated by article 15 of the Statute and rules 46-50 of the Rules. Article 15(6) of the Statute expressly refers to the “preliminary examination” in articles 15(1) and (2). Those latter provisions state that the Prosecutor “may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court”;¹²⁵ and that the Prosecutor shall analyse the seriousness of the information received, also being entitled to seek further information from various sources and to receive written or oral testimony at the seat of the Court.¹²⁶ Article 15(6) of the Statute requires the Prosecutor to inform those who provided the information if it is concluded that it does not constitute a reasonable basis for an investigation; and, in those circumstances, it specifically refers to the Prosecutor potentially “considering further information” submitted in light of new facts or evidence. The reference to the Prosecutor “considering” information during a preliminary examination mirrors the language used of a matter being “under consideration” for the purposes of article 127(2) of the Statute.

58. The Chamber further notes the Prosecution’s description of the preliminary examination being, *inter alia*, an “active and focused inquiry leading to a specific legal conclusion”;¹²⁷ that its initiation is generally publicly announced, as was done in the present case;¹²⁸ that it may

¹²³ See [Defence Challenge](#), paras 94-100. See also [Defence Reply](#), para. 6.

¹²⁴ See [Prosecution Response](#), para. 64.

¹²⁵ Article 15(1) of the Statute.

¹²⁶ Article 15(2) of the Statute, which provides: “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”.

¹²⁷ [Prosecution Response](#), para. 65.

¹²⁸ [Prosecution Response](#), para. 66. The Chamber observes that not only was the initiation of the preliminary examination announced in the present case, but the Prosecution also published annual updates about its progress. This included its progress in 2018 (the year that the Court’s then Prosecutor announced that she was opening a preliminary examination into the Philippines Situation and during which the Government of the Philippines deposited a written notification of withdrawal from the Statute, but prior to its withdrawal becoming effective):

require the Prosecution to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses under article 68(1) of the Statute and rule 47 of the Rules;¹²⁹ that it is inherently connected to any subsequent investigation;¹³⁰ and that the Court may be called upon to take substantive judicial decisions during its course.¹³¹ The Chamber notes the procedural steps that were taken in the present case during the course of the preliminary examination in the Philippines Situation, both before and after the withdrawal of the Philippines from the Statute took effect, as exemplified by the documents contained in the Prosecution's Confidential Annex A, which include Prosecution requests, rulings upon them by the Pre-Trial Chamber and related filings.

59. The Chamber further notes that it cannot accept the argument in the Defence Reply that at least one of the reclassified documents in the Prosecution's Confidential Annex A that was disclosed to it "irreparably prejudices the Prosecution case".¹³² A ruling in this case by a Pre-Trial Chamber, arising out of a request by the Prosecution during the preliminary examination, that each matter falling under regulation 46(3) of the Regulations of the Court (the

see [Report on Preliminary Examination Activities 2018](#), 5 December 2018, paras 42-58. This included reporting that the Prosecution had "received a total of 52 communications pursuant to article 15 in relation to this situation" (para. 42); that it had "been conducting a thorough factual and legal assessment of the information available in order to establish whether there is a reasonable basis to believe that the alleged crimes fall within the subject-matter jurisdiction of the Court", had "continued to gather, receive and review information available from a wide range of sources", including "publicly available information and information from individuals or groups, non-governmental or intergovernmental organisations" and had "subjected such information to rigorous source evaluation, including assessment of reliability of sources and credibility of information received" (para. 54); and that, in order to conduct its legal and factual analysis, the Prosecution had "focussed on recording, on an ongoing basis, relevant alleged incidents and examining the circumstances in which such incidents reportedly occurred and particular key features, such as in relation to the profile of alleged victims, the identity of the perpetrators and *modus operandi* employed", as well as having "collected and analysed information relevant to the overall context in which the alleged acts occurred" and having "engaged and consulted with relevant stakeholders, including by holding meetings at the seat of the Court" (para. 55). That description of the preliminary examination in the present case during the time prior to the withdrawal of the Philippines becoming effective is therefore different from some of the examples given by the Defence in support of its contention that a preliminary examination is not a formal procedural phase (see [Defence Challenge](#), para. 95) but rather an internal process which "may commence with [a Prosecution] staff member simply reading an NGO report on a particular ICC Situation and taking no further action" (see [Defence Challenge](#), para. 96) or, "[i]n the absence of hard and fast rules, and by way of *reductio ad absurdum*, a preliminary examination may constitute something as inconsequential as casting a prosecutorial eye over the headlines in the *Philippine Daily Inquirer*, looking at a map of Manila or reading "*Duterte Harry*" authored by Jonathan Miller [...]" (see [Defence Reply](#), para. 6, fn 15). More generally, the Chamber further notes that in November 2013 the Office of the Prosecutor published its "[Policy Paper on Preliminary Examinations](#)", which is a paper of 25 pages setting out the manner in which the Prosecution carries out preliminary examinations. As stated in the introduction to that paper, it describes "how the [Prosecution] applies the statutory criteria to assess whether a situation warrants investigation" (para. 19) and states that the Prosecution "has made this policy paper public in the interest of promoting clarity and predictability regarding the manner in which it applies the legal criteria set out in the Statute" (para. 21).

¹²⁹ [Prosecution Response](#), para. 67.

¹³⁰ [Prosecution Response](#), para. 68.

¹³¹ [Prosecution Response](#), para. 70.

¹³² See [Defence Reply](#), paras 2-5.

‘Regulations’) must be separately directed to the President of the Pre-Trial Division for it to be assigned to a Pre-Trial Chamber according to a roster does not have any impact upon the Chamber’s above findings. Whether “any matter, request or information” is assigned directly to a Pre-Trial Chamber under regulation 46(2) of the Regulations, or is directed by the President of the Pre-Trial Division to a Pre-Trial Chamber according to a roster under regulation 46(3) of the Regulations, is an unrelated procedural matter. This does not detract from the Prosecution requests concerned having each formed a part of the Prosecution’s preliminary examination into the Philippines Situation which, as a whole, and for the reasons explained above, constituted a matter “under consideration” by the Court.

60. The Chamber observes that, in future situations, it may not be that every preliminary examination would encompass a “matter which was already under consideration by the Court” within the meaning of article 127(2) of the Statute. A finding in this regard is not an automatic exercise and needs to be approached with utmost caution to avoid any abuse. Each situation will need to be analysed on its merits.

61. In the present case, however, the Chamber finds that the combined effect of the matters set out above demonstrates that the Philippines Situation was “under consideration”, within the meaning of article 127(2) of the Statute, during the course of the Prosecution’s preliminary examination before the Philippines deposited its written notification of withdrawal from the Statute and prior to the date on which the withdrawal of the Philippines became effective. This conclusion is further elaborated and confirmed when having regard to the remaining interpretative principles in article 31 of the VCLT, namely context and object and purpose, which are considered further below.¹³³

iii. “By the Court”

62. Turning to the phrase “by the Court”, the ordinary meaning of the word “court” could refer solely to the judicial Chambers of this Court, given that one of its dictionary definitions is “[a]n assembly of judges, or body of people presided over by a judge, judges, or magistrates, appointed and acting as a tribunal to hear cases and administer justice. Also more fully court of justice, court of law, law court”.¹³⁴ However, noting that the word “Court” is capitalised in article 127(2) of the Statute, its ordinary meaning is better defined by reference to the specific

¹³³ See paragraphs 64, 67-71, 74-76 below.

¹³⁴ OED: Court, II.9.

institution of the International Criminal Court. This is clear from article 1 of the Statute which designates the International Criminal Court as “the Court”.¹³⁵

63. The Court is expressly stated to be composed of four organs, one of which is the Office of the Prosecutor and another of which is the judicial Divisions of the Court,¹³⁶ which are made up of judicial Chambers. It is of note that article 127(2) of the Statute does not limit its wording to any matter under consideration “*by the Chamber*”. As such, the phrase “by the Court” in this provision requires further interpretation to determine whether it is intended to be limited solely to the judicial Chambers of the Court or also to include the Office of the Prosecutor. This needs to be done by reference to the context in which it is used in article 127(2) of the Statute and in the Statute as a whole, as well as to its object and purpose,¹³⁷ which is considered further below.

b. Context

64. The Chamber now turns to the context of the phrase “any matter which was already under consideration by the Court” in furthering its interpretation of article 127(2) of the Statute in accordance with article 31 of the VCLT. Having just addressed the ordinary meaning of the words “by the Court” directly above, and in light of the extensive arguments made by the Defence in this regard,¹³⁸ the Chamber shall do so first by considering the context in which those specific words are used before considering the context of the entire phrase “any matter which was already under consideration by the Court” more generally.

i. “By the Court”

65. As indicated when considering its ordinary meaning above, the term “Court” in the context of the International Criminal Court includes the Office of the Prosecutor. Whereas the Defence references numerous examples where the term is used to refer to the Chambers of the Court, article 34 of the Statute provides that “the Court” is composed of four organs, one of which is “The Office of the Prosecutor”.¹³⁹ Whether “the Court” refers to the Chambers of the Court, the Prosecution, or both,¹⁴⁰ therefore depends upon the context of the provision.

¹³⁵ Article 1 of the Statute provides, in relevant part: “An International Criminal Court (“the Court”) is hereby established”.

¹³⁶ Statute, article 34.

¹³⁷ See also [Prosecution Response](#), paras 72-73.

¹³⁸ See [Defence Challenge](#), paras 57-93; [Annex A](#) to the Defence Challenge.

¹³⁹ For other provisions of the Statute where the term “the Court” includes the Prosecution see *e.g.* articles 1, 4, 42, 48, 86, 112(2), 113-116, 118.

¹⁴⁰ The term “the Court” could also refer to the other two organs of the Court as set out in article 34, namely the Presidency and the Registry, but those organs are not relevant in the present circumstances.

66. The fact that the “Court” includes the Prosecution for the purposes of article 127(2) of the Statute is clear from its context. The word “Court” is used twice within its second sentence. The first time it is used, it clearly includes the Prosecution, as it is provided that a State’s withdrawal “shall not affect any cooperation with the Court in connection with criminal investigations and proceedings [...]”. Contrary to the submissions of the Defence,¹⁴¹ requests for cooperation under Part 9 of the Statute can be made by the Prosecution, notwithstanding that requests for cooperation are made “by the Court”.¹⁴² It follows that the term “the Court” should be given the same meaning – and include the Prosecution – on the other occasion on which it is used in the same sentence. Given that the Prosecution is responsible, *inter alia*, for conducting investigations there is also every reason for that conclusion. It is the Prosecution that would be expected to be considering matters that form the subject-matter of preliminary examinations and investigations. It is the continued consideration of matters such as those that shall not be prejudiced by the withdrawal of a State, pursuant to article 127(2) of the Statute. This is further confirmed by the overall context of the phrase in question and its object and purpose, as is considered further below.

ii. “any matter [...] under consideration” by the Court

67. Giving the term “any matter” its broad, general ordinary meaning, as set out above, as well as applying the ordinary meaning of the phrase “under consideration”, as also elaborated above, is further confirmed by reading article 127(2) of the Statute in its context. Its first sentence sets out the broad general principle that a withdrawal does not discharge a State from its obligations under the Statute while it was a Party to it. The first part of its second sentence specifies the application of that broad general principle in relation to the narrow question of a State’s cooperation obligations under Part 9 of the Statute in respect of investigations and proceedings which had commenced prior to the date of its effective withdrawal. The second part of that sentence, which is relevant for present purposes, is considerably broader. It proceeds to clarify that the withdrawal shall not prejudice in any way the continued consideration of any matter which was already under consideration. It thereby provides that the Court can exercise its jurisdiction over matters that were already under consideration prior to

¹⁴¹ See [Defence Challenge](#), paras 69, 89.

¹⁴² See [Prosecution Response](#), para. 82. To provide but one example from the preliminary examination in the present case, it is clear that the Prosecution can make a formal request for cooperation under article 93(1)(e) of the Statute (which provides that States Parties shall comply with “requests by the Court” to assist in relation to investigations or prosecutions in facilitating the appearance of persons as witnesses or experts before the Court), as the Prosecution was instructed by Pre-Trial Chamber III to confirm that such a request had been made: see ICC-01/21-01/25-40-Conf, para. 13; p. 7.

the withdrawal of the State concerned. There is no further specification or limitation of that second sentence. Read as a whole, it can therefore be seen that there is nothing in the context of article 127(2) of the Statute that would suggest that the phrase “any matter which was already under consideration by the Court” should be given a more specific or restricted meaning than the broad phrasing of its terms would ordinarily permit. Its terms are clearly broad enough to incorporate the subject-matter of the preliminary examination in the present case.

68. Furthermore, the Chamber recalls that, pursuant to article 31(3)(c) of the VCLT, it shall take into account, together with the context, “any relevant rules of international law applicable in the relations between the parties”.¹⁴³ The Chamber has already outlined above that article 127 of the Statute, while *lex specialis*, is consistent with the general framework provided for by article 70 of the VCLT.¹⁴⁴ For present purposes, it is of note that article 70(1)(b) of the VCLT specifies that, unless otherwise provided, the termination of a treaty “does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination”.¹⁴⁵ Similarly to article 70(1)(b) of the VCLT providing for rights, obligations and legal situations to continue further to the termination of a treaty if they were created through the execution of that treaty, article 127(2) of the Statute provides for the continued consideration of “any matter which was already under consideration by the Court” prior to the withdrawal of a State from the Statute.

69. The Chamber also notes that, as argued by the OPCV,¹⁴⁶ pursuant to article 31(3)(b) of the VCLT, it shall take into account, together with the context, “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”.¹⁴⁷ In this case, after the withdrawal of the Philippines had taken effect on 17 March 2019, the Philippines continued to engage with the Court. In particular, in November 2021 the Philippines requested a deferral of the investigation by the Prosecution pursuant to article 18(2) of the Statute;¹⁴⁸ and, on 12 March 2025, Mr Duterte was arrested by

¹⁴³ [VCLT](#), article 31(3)(c).

¹⁴⁴ For the arguments of the parties in respect of article 70 of the VCLT, *see generally* [Defence Challenge](#), paras 107-110; [Prosecution Response](#), paras 76, 78-79.

¹⁴⁵ [VCLT](#), article 70(1)(b). *See also* Pre-Trial Chamber III, *Situation in the Republic of Burundi*, [Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi](#), 25 October 2017, ICC-01/17-9-US-Exp (public redacted version notified on 9 November 2017, ICC-01/17-9-Red), para. 25: “On the whole, article 127(2) of the Statute gives effect to the principle contained in article 70(1)(b) of the [VCLT], which provides that the termination of a treaty ‘[d]oes not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination’”.

¹⁴⁶ *See* [OPCV Observations](#), paras 3, 36-37.

¹⁴⁷ [VCLT](#), article 31(3)(b). *See also* G. Nolte (ed.), *Treaties and Subsequent Practice* (2013).

¹⁴⁸ *See* [Notification of the Republic of the Philippines’ deferral request under article 18\(2\)](#), with its public [Annex A](#), 18 November 2021, ICC-01/21-14 and ICC-01/21-14-AnxA.

the authorities of the Philippines¹⁴⁹ and surrendered to the Court.¹⁵⁰ This continued engagement of the Philippines with the Court, notwithstanding its withdrawal from the Statute, lends further support to the interpretation that the Court retained jurisdiction over the alleged crimes in this case as they were a matter which was already under consideration by the Court prior to the date on which the withdrawal became effective, pursuant to article 127(2) of the Statute.

c. Object and Purpose

70. The Chamber turns to the final interpretative principle under article 31(1) of the VCLT, namely object and purpose. This also confirms an interpretation of article 127(2) of the Statute that finds the Prosecution's preliminary examination in the present case to be encompassed by the phrase "any matter which was already under consideration by the Court". As argued by both the Prosecution and the OPCV,¹⁵¹ it is clear from its Preamble that, by ratifying the Statute, States Parties affirm, *inter alia*, that "the most serious crimes of concern to the international community as a whole must not go unpunished";¹⁵² are determined "to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes";¹⁵³ and have resolved "to guarantee lasting respect for and the enforcement of international justice".¹⁵⁴ States Parties thereby demonstrate a commitment to punishing and preventing the commission of the most serious crimes of international concern throughout the period that they are Parties to the Statute.

71. It would be entirely against that object and purpose to interpret article 127 of the Statute to enable a State Party to evade its responsibilities under the Statute by depositing a written notice of withdrawal from the Statute once it discovers that alleged crimes committed on its territory or by its nationals are being examined by the Prosecution. This is also clear from article 127 of the Statute itself. Article 127(1) of the Statute provides that a State Party may withdraw from the Statute by written notification and that "[t]he withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date". The object and purpose of that one year period is, *inter alia*, to prevent a State Party

¹⁴⁹ ICC Press Release, [Situation in the Philippines: Rodrigo Roa Duterte in ICC custody](#).

¹⁵⁰ [Decision convening a hearing for the first appearance of Mr Rodrigo Roa Duterte](#), ICC-01/21-01/25-90, para. 6.

¹⁵¹ [Prosecution Response](#), para. 88; [OPCV Observations](#), paras 22-25, 29.

¹⁵² Preamble to the Statute, paragraph 4.

¹⁵³ Preamble to the Statute, paragraph 5. The Appeals Chamber has held that the overarching purpose discernible from the Preamble to the Statute is "to put an end to impunity": see [Kony OA4 Appeal Judgment](#), para. 74 and the references cited therein.

¹⁵⁴ Preamble to the Statute, paragraph 11.

from withdrawing from the Statute with immediate effect once it discovers that alleged crimes for which it has responsibility are being considered by the Court. To find that the Prosecution's preliminary examination in the present case does not encompass a matter which was already under consideration by the Court prior to the date on which the withdrawal of the Philippines became effective, pursuant to article 127(2) of the Statute, would go directly against that object and purpose.

72. In the present case, the Court's then Prosecutor announced that she was opening a preliminary examination into the Philippines Situation on 8 February 2018.¹⁵⁵ In that announcement, she stated, *inter alia*, that the preliminary examination would "analyse crimes allegedly committed in this State Party since at least 1 July 2016, in the context of the 'war on drugs' campaign launched by the Government of the Philippines".¹⁵⁶ A few weeks later, and after reports had appeared in the media that the Philippines was withdrawing from the Court "due to what President Rodrigo Duterte called 'outrageous' attacks by U.N. officials and violations of due process by the ICC",¹⁵⁷ the Government of the Philippines deposited a written notification of withdrawal from the Statute on 17 March 2018.¹⁵⁸

73. In its written notification of withdrawal, the Government of the Philippines stated that:

The decision to withdraw is the Philippines' principled stand against those who politicize and weaponize human rights, even as its independent and well-functioning organs and agencies continue to exercise jurisdiction over complaints, issues, problems and concerns arising from its efforts to protect its people.¹⁵⁹

74. Based upon the above facts, the Chamber considers that there is a direct relationship between the Prosecutor's announcement of the opening of the preliminary examination and the decision of the Philippines to withdraw from the Statute. This apparent action to avoid compliance with the Statute is what article 127 of the Statute, read as a whole, is designed to prevent.

¹⁵⁵ [Prosecutor's Statement on Opening a Preliminary Examination in the Philippines Situation](#).

¹⁵⁶ [Prosecutor's Statement on Opening a Preliminary Examination in the Philippines Situation](#).

¹⁵⁷ Reuters, K. Lema and N. J. Morales, "Duterte to withdraw Philippines from ICC after 'outrageous attacks'", 14 March 2018. See also Rappler.com, "FULL TEXT: Duterte's statement on Int'l Criminal Court withdrawal", 14 March 2018, in which it was stated that Rappler had typed and set out the complete text of the statement of the President of the Philippines of 13 March 2018: that text includes reference to "outrageous attacks [...] by the officials of the United Nations" as well as to violations of due process by the ICC.

¹⁵⁸ [Philippines: Notification of Withdrawal](#). The withdrawal took effect one year thereafter, in accordance with article 127(1) of the Statute.

¹⁵⁹ [Philippines: Notification of Withdrawal](#).

75. The above interpretation of article 127 of the Statute also reflects its overall object and purpose in achieving an appropriate balance between the responsibilities that a State adopts when voluntarily ratifying the Statute and its ability to withdraw from it subsequently, while still complying with the conditions for withdrawal that it accepted when becoming a Party to the Statute.¹⁶⁰ In ratifying the Statute, a State agrees to be bound by its provisions for as long as it is a State Party and to abide by its terms, acting in good faith. Article 127 of the Statute ensures that the Court may no longer exercise its jurisdiction in relation to alleged crimes committed on a State's territory or by its nationals after the date of its effective withdrawal from the Statute. It provides States Parties with the flexibility to withdraw from the Statute while also establishing from the outset the regime that will apply upon such a withdrawal. More specifically, article 127(2) of the Statute provides that the Court may exercise its jurisdiction over any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.

76. The Philippines Situation is an example of a matter which was already under consideration by the Court for all of the reasons expressed above. The Chamber therefore also rejects the arguments of the Defence that the preliminary examination and the decision to authorise an investigation were different 'matters'.¹⁶¹ The matter that was already under consideration by the Court was the allegations of crimes committed in the Philippines. That matter was under consideration in the preliminary examination and remained under consideration when the Prosecution requested, and the Chamber granted, authorisation for the commencement of the investigation in the Philippines Situation. It remains under consideration in the present case.

77. The Chamber therefore finds that the Court can continue to consider the alleged crimes committed in the Philippines that form the subject-matter of the present case. It follows that the jurisdictional regime set out in Part 2 of the Statute continues to apply to this case as if the Philippines were still a Party to the Statute in respect of alleged crimes prior to the date on which its withdrawal became effective. This is a direct consequence of the wording of article 127(2) of the Statute that a State's withdrawal in the present circumstances "*shall not [...] prejudice in any way the continued consideration*" of the subject-matter of this case. Any

¹⁶⁰ See A. Morelli, 'Withdrawal from Multilateral Treaties' (2022), pp. 11-12: "No state can be compelled to join or to stay in an international agreement [...] in opposition to its sovereign will. Once states ratify or accede to an international agreement, they accept the conditions they negotiated ex ante, during the implementation phase, to guide their behaviour ex post. [...] Withdrawal clauses are not blank checks. They set prerequisites to guide states' action, limiting their free discretion and creating deterrents to exiting".

¹⁶¹ See [Defence Challenge](#), paras 111-113. See also para. 101.

other conclusion would necessarily prejudice the Court's continued consideration of that subject-matter. As the alleged crimes fall within the Court's subject-matter jurisdiction and are alleged to have been committed on the territory, and by a national, of the Philippines at a time when it was a Party to the Statute, the Chamber is satisfied that the Court can exercise its jurisdiction in this case pursuant to articles 5, 7 and 11-13, contained within Part 2 of the Statute.

3. *Further observations on the jurisdictional regime of the Court*

78. In light of its above findings in relation to article 127(2) of the Statute, it is not strictly necessary for the Chamber further to consider additional arguments of the Defence that relate specifically to the above provisions within Part 2 of the Statute. However, given the arguments that have been raised in respect of the Defence Challenge,¹⁶² and the importance of the issue, the Chamber deems it appropriate to make the following further observations.

79. The Chamber agrees with the finding that

[...] there is a distinction between the *existence* of jurisdiction and the Court's ability to *exercise* the jurisdiction, and that the preconditions to the exercise of the Court's jurisdiction set out in article 12 of the Statute must exist at the time that the exercise of the jurisdiction is triggered pursuant to article 13 of the Statute.¹⁶³

80. In that regard, the Chamber observes that articles 12(2) and 13(c), which are located within Part 2 of the Statute, require a State to be a Party to the Statute at the time that the Court exercises its jurisdiction. That is clear from the heading of article 12 of the Statute, which addresses "*Preconditions to the exercise of jurisdiction*"; from the wording of article 12(2) of the Statute which uses the present tense to provide that, for the Court to exercise its jurisdiction, "one or more of the following States *are* Parties to this Statute" or have accepted the jurisdiction of the Court; and from the heading of article 13 of the Statute and its chapeau which expressly address when the Court may "*exercise*" its jurisdiction. It follows that, for the purposes of articles 12(2) and 13(c) of the Statute, the Court may not exercise its jurisdiction if, at the time that the Prosecutor has initiated an investigation, the State concerned is no longer a Party to the Statute.

81. The above is subject to the provisions of article 127 of the Statute, which, as explained in the previous section of this decision, and as addressed further below, provide for the continuing jurisdiction of the Court in the circumstances set out in that article in respect of a State that has

¹⁶² See generally [Defence Challenge](#), paras 13-48, referring to, *inter alia*, [Dissenting Opinion](#), paras 23, 26-27; [Prosecution Response](#), paras 10, 14-47; [OPCV Observations](#), paras 2-67; [Defence Reply](#), paras 8-13.

¹⁶³ [Dissenting Opinion](#), para. 23 (emphasis in original).

withdrawn from the Statute. Article 127 of the Statute, when read together with articles 12(2) and 13(c) of the Statute, appropriately balances the right of a State to withdraw from the Statute with the overall objective of the Statute of putting an end to impunity. Once the withdrawal of a State from the Statute has become effective, that State is ordinarily no longer bound by the Statute's jurisdictional provisions. If that were not the case, the Court would be able to exercise its jurisdiction for the first time in respect of that State for the period during which it was a Party to the Statute many years – potentially even many decades – after that State had withdrawn from the Statute. That would fundamentally undermine the right of a State to withdraw. At the same time, article 127(2) of the Statute makes specific provision for the Court to be able to exercise its jurisdiction if the matter concerned was already under consideration by the Court prior to the withdrawal of a State becoming effective. Article 127(2) of the Statute thereby appropriately balances the right of a State to withdraw from the Statute and the risk of a State using its right to withdraw to shield persons from the jurisdiction of the Court.¹⁶⁴

82. The Chamber therefore rejects the argument of the Defence that article 127(2) of the Statute cannot “trump the plain language of [a]rticle 12(2)”.¹⁶⁵ Part 2 of the Statute sets out the Court's jurisdictional regime in the ordinary course of events, namely when a State is a Party to the Statute. However, article 127 of the Statute was specifically enacted as *lex specialis* to set out the regime that would apply to the exceptional circumstance of a State that withdraws from the Statute, providing that the withdrawal of a State from the Statute “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”. For the reasons expressed in the previous section of this decision, the subject-matter of the preliminary examination in the present case was such a matter at the time both that the Philippines deposited its written notification of withdrawal and when that withdrawal became effective. In those circumstances, article 127(2) of the Statute expressly provides that its continued consideration must not be prejudiced in any way. That provision therefore necessarily requires the Court to be able to exercise its jurisdiction in relation to the alleged crimes under consideration. Therefore, in that specific situation, the jurisdictional provisions of Part 2 of the Statute continue to apply to the State concerned as if that State were still a Party to the Statute.

¹⁶⁴ See also, in this context, [Dissenting Opinion](#), para. 28.

¹⁶⁵ [Defence Challenge](#), para. 52. See also, in this context, [Dissenting Opinion](#), para. 36.

83. For the above reasons, far from ‘trumping’ the Court’s jurisdictional regime, article 127(2) of the Statute is an essential part of it in respect of a State that has withdrawn from the Statute. It also guarantees that the right of a State to withdraw from the Statute is respected, while ensuring that it is not able to abuse that right by shielding persons from justice in relation to alleged crimes that are already under consideration by the Court in a manner that undermines the object and purpose of the Statute and the specific terms of withdrawal set out in article 127(2) of the Statute to which a State agrees at the time that it ratifies the Statute.

4. *Conclusion*

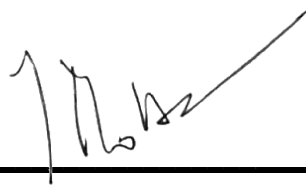
84. For all of the above reasons, as a result of the Prosecution’s preliminary examination having commenced prior to both the Philippines depositing its written notification of withdrawal from the Statute and the date on which that withdrawal became effective, the Chamber finds that the Court can exercise its jurisdiction in the present case over the crimes alleged against Mr Duterte that were committed on the territory of the Philippines while it was a State Party. The jurisdictional regime set out in Part 2 of the Statute continues to apply to this case as if the Philippines were still a Party to the Statute, so as to ensure that, pursuant to article 127(2) of the Statute, the withdrawal of the Philippines from the Statute “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”.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence request to postpone the issuance of this decision on the Defence Challenge to Jurisdiction.

REJECTS the Defence Challenge to Jurisdiction.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Iulia Antoanella Motoc
Presiding Judge



Judge Reine Adélaïde Sophie Alapini-
Gansou



Judge María del Socorro Flores Liera

Dated this Thursday, 23 October 2025

At The Hague, The Netherlands