

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/21-01/25
Date: 8 December 2025

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
Judge Tomoko Akane
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public

**Victims' Response to the Defence Appeal against the
"Decision on the Defence Challenge to the Jurisdiction of the Court"**

Source: Office of the Public Counsel for Victims

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D36

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☒ The Office of Public Counsel for Victims

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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “Legal Representative” and the “OPCV”), appointed to represent the collective interests of potential victims until the mandate of the team of common legal representatives takes effect,¹ files her response to the Defence’s Appeal² against Pre-Trial Chamber I’s (the “Chamber”) “Decision on the Defence Challenge to the Jurisdiction of the Court” (the “Impugned Decision”).³

2. The Legal Representative opposes each ground of the Appeal, as well as the relief sought by the Defence in its entirety. In the first ground of appeal, the Defence misrepresents the Impugned Decision and fails to demonstrate that the Chamber did not adhere to the *lex specialis* principle. In the second and third grounds of appeal, the Defence’s arguments reflect mere disagreement with the Chamber’s findings. In the Impugned Decision, the Chamber properly interpreted article 127(2) of the Statute pursuant to articles 31, 32, and 33 of the Vienna Convention on the Law of Treaties (the “VCLT”). The Chamber correctly determined that the ordinary meaning of the words “any matter” which was “under the consideration of the Court” contained therein includes a preliminary examination conducted by the Office of the Prosecutor (the “OTP”) prior to the effective date of the withdrawal. As for the fourth ground of appeal, the Defence’s arguments are misguided. The Chamber properly held that the object and purpose of the one-year waiting period prior to the withdrawal becomes effective is, *inter alia*, to prevent a State Party from withdrawing immediately upon discovering that alleged crimes for which it has responsibility are under consideration by the Court. Therefore, all grounds of appeal raised by the Defence fail and must be rejected.

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 “Notice of Appeal”, [No. ICC-01/21-01/25-312](#), 28 October 2025.

³ See the “Decision on the Defence Challenge to the Jurisdiction of the Court” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-309](#), 23 October 2025 (the “Impugned Decision”).

II. PROCEDURAL BACKGROUND

3. On 1 May 2025, the Defence filed its Challenge with Respect to Jurisdiction (the “Defence Challenge”).⁴

4. On 9 June 2025, the OPCV and the OTP filed their respective responses to the Defence Challenge.⁵

5. On 23 October 2025, the Chamber issued the Impugned Decision.⁶

6. The Defence lodged its Notice of Appeal and Appeal Brief on 28 October 2025 and 14 November 2025, respectively.⁷

III. SUBMISSIONS

A. Applicable law

7. Regarding errors of law, the Appeals Chamber has consistently held that it will not defer to the relevant Chamber’s legal interpretation of the law, but will arrive at its own conclusions as to the appropriate law and determine whether or not the first instance Chamber misinterpreted the law.⁸ The Appeals Chamber will only intervene if the error materially affected the impugned decision.⁹ It is for the appellant to set out

⁴ See the “Defence Challenge with Respect to Jurisdiction”, [No. ICC-01/21-01/25-121](#), 1 May 2025 (the “Defence Challenge”).

⁵ See the “Victims’ Observations on the Defence Challenge with Respect to Jurisdiction”, [No. ICC-01/21-01/25-145](#), with Public Annex A, 9 June 2025 (the “Initial Observations”) and the “Prosecution response to ‘Defence Challenge with Respect to Jurisdiction’”, [No. ICC-01/21-01/25-146-Conf-Corr](#), 10 June 2025. A corrected public redacted version [No. ICC-01/21-01/25-146-Red-Corr](#) was notified on 11 June 2025.

⁶ See the Impugned Decision, *supra* note 3.

⁷ See the “Notice of Appeal”, *supra* note 2 and the “Appeal Brief on Jurisdiction”, [No. ICC-01/21-01/25-319 OA3](#), 14 November 2025 (the “Appeal Brief”).

⁸ See the “Judgment on the appeal of the State of Israel against Pre-Trial Chamber I’s ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’” (Appeals Chamber), [No. ICC-01/18-422 OA2](#), 24 April 2025, para. 41.

⁹ *Idem*, para. 42.

the alleged error in the appeal brief and indicate, with sufficient precision, how the alleged error would have materially affected the impugned decision.¹⁰

B. Merits of the Appeal

Ground 1. The Chamber erred in law by finding that article 127 of the Statute is lex specialis

8. First, the Defence argues that, in interpreting article 12 of the Statute, the Chamber concluded that a State must be a Party to the Statute at the time the Court exercises its jurisdiction.¹¹ According to the Defence, this allegedly implies that the Chamber endorsed its argument that the Court lacks jurisdiction due to the Philippines' withdrawal.¹² The Defence grossly misrepresents the reasoning of the Chamber. In the parts of the Impugned Decision cited by the Defence, the Chamber was merely addressing the remaining Defence's arguments after having rejected its Challenge and ruled that the Court *does have jurisdiction* over the case in light of articles 12 and 127(2) of the Statute.

9. Thus, the parts of the Impugned Decision referred to by the Defence were *mere observations* or *obiter dicta* on the parameters of article 12 of the Statute *in normal circumstances*, namely, in cases where *no* matter was already under consideration by the Court prior to the effective date of the withdrawal. These observations do not form part of the Chamber's legal ruling concerning the issue at hand. This is clearly reflected in the wording of the Impugned Decision where the Chamber explicitly stated that it made those additional observations due to the importance of the issue.¹³ These arguments are based on the misrepresentation of the Chamber's reasoning and should be dismissed accordingly.

¹⁰ *Idem*, para. 44.

¹¹ See the Appeal Brief, *supra* note 7, para. 6.

¹² *Ibid.*

¹³ See the Impugned Decision, *supra* note 3, paras. 78-83.

10. Second, the Defence argues that the Chamber erroneously extended the exercise of the Court's jurisdiction beyond the effective date of a State Party's withdrawal by holding that article 127 of the Statute is *lex specialis* on the matter.¹⁴ The Defence further argues that said principle should only apply to resolve conflicting provisions on the same subject matter but articles 12 and 127(2) of the Statute deal with entirely different concepts and thus remain fully compatible with one another.¹⁵ While the Chamber did not specifically outline the requirements for applying the *lex specialis* principle in the Impugned Decision, its reasoning clearly demonstrates the elements of this principle are fulfilled in relation to article 127(2) of the Statute in this case.

11. The most authoritative pronouncement of the principle of *lex specialis* has recently been made by the International Court of Justice (the "ICJ") which held that:

*"The principle of lex specialis is a maxim of interpretation that is used for determining which of several potentially applicable rules is to prevail or whether the rules simply coexist. It is generally accepted that, in some cases, a specific rule, or a specific set of rules, takes precedence over more general or less focused rules, while in other cases the specific rule should be seen as an elaboration of one or more general rules, the latter continuing to play an interpretative role in the background. [...] The International Law Commission has explained that '[f]or the lex specialis principle to apply it is not enough that the same subject matter is dealt with by two provisions; there must be some actual inconsistency between them, or else a discernible intention that one provision is to exclude the other. [...] Such an intention may be established by the object and purpose of a treaty.'"*¹⁶

12. In the Impugned Decision, the Chamber correctly interpreted articles 12 and 127(2) of the Statute within the meaning of said principle for the following reasons. First, the Chamber held that articles 12(2) and 13(c) require a State to be a Party to the

¹⁴ See the Appeal Brief, *supra* note 7, para. 7.

¹⁵ *Idem*, paras. 8-10.

¹⁶ See ICJ, [Obligations of States in Respect of Climate Change, Advisory Opinion of 23 July 2025](#), paras. 166-169 and 412. See also, ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, [UN Doc. A/56/10](#), 2001, p. 140. The ILC stated that "[the application of the principle of *lex specialis* depends] on the special rule to establish the extent to which the more general rules [on a particular matter] are displaced by that rule. In some cases, it will be clear from the language of a treaty or other text that only the consequences specified are to flow. Where that is so, the consequence will be 'determined' by the special rule [...]".

Statute at the time that the Court exercises its jurisdiction. Thus, the Court may not exercise its jurisdiction, if at the time that the OTP initiates an investigation, the State concerned is no longer a Party to the Statute.¹⁷ On the other hand, the Chamber found that this is also subject to the provisions of article 127(2) which provides that the withdrawal of the State will not prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the effective date of the withdrawal.¹⁸

13. In other words, the Chamber did find that articles 12, 13(c), and 127(2) of the Statute deal with the same subject matter. While articles 12 and 13(c) suggest that the Court may lack jurisdiction if a State withdraws from the Statute, article 127(2), on the other hand, explicitly provides for the continuing jurisdiction of the Court under certain conditions, even after a State's withdrawal. Moreover, articles 12 and 13 are silent on the legal consequences of withdrawals. These provisions instead outline the general conditions for the Court's jurisdiction. In contrast, the Chamber emphasized that article 127(2) *specifically* provides for the withdrawal of a State from the Statute and further elaborates *ensuing legal consequences* pursuant to the methods of interpretation under the VCLT.¹⁹

14. Second, the Chamber did find that there is a discernible intention for article 127(2) to exclude the application of articles 12 and 13 in the event a State withdraws from the Statute. As recalled *supra*, such discernible intention can be inferred from the object and purpose of the treaty. Indeed, the Chamber carefully examined the object and purpose of article 127(2), adhering strictly to the interpretive techniques provided in the VCLT. In particular, the Chamber found that: (i) by ratifying the Statute, States Parties affirm to put an end to impunity and demonstrate their commitment to punish the perpetrators of the most serious crimes of international concern; (ii) it would be entirely against the object and purpose of

¹⁷ See the Impugned Decision, *supra* note 3, para. 80.

¹⁸ *Idem*, para. 81.

¹⁹ *Idem*, paras. 46-47.

article 127(2) to interpret it in a way enabling a State Party to evade these responsibilities by withdrawing from the Statute immediately after such crimes are being examined by the OTP; and (iii) this interpretation also reflects the overall object and purpose of the Statute in achieving an appropriate balance between the responsibilities of States Parties and their ability to withdraw.²⁰ Based on these reasons, the Chamber essentially found that there exists a discernible intention to designate article 127(2) of the Statute as *lex specialis*.

15. Nevertheless, the Defence maintains that the Chamber's reasoning is totally unsupported by the drafting history of the Statute.²¹ Still, the Chamber did examine relevant preparatory works and find that the drafters of the Statute intentionally chose the words "*any matter*" in article 127(2) to include preliminary examination conducted by the OTP.²² Moreover, as submitted in her Initial Response,²³ the Legal Representative posits that, in fact, there exists an enormous body of preparatory works that amply shows the clear intent of the drafters on the matter.

16. The legal implications of withdrawals on the jurisdiction of the Court were a key concern for the drafters of the Statute from the outset of the drafting process. Notably, the articles on the Court's jurisdiction initially developed by the International Law Commission (the "ILC") in the draft Statute of 1993 stated explicitly that withdrawal of a State will *not affect proceedings already commenced* under the Statute.²⁴ In the course of next stages of the drafting process in 1996 and 1997, the Preparatory Committee on the Establishment of an ICC (the "Preparatory Committee") likewise

²⁰ *Idem*, paras. 70-75.

²¹ See the Appeal Brief, *supra* note 7, para. 13.

²² See the Impugned Decision, *supra* note 3, paras. 52-54.

²³ See the Initial Observations, *supra* note 5, paras. 38-50.

²⁴ See the Report of the ILC on the work of its 45th session (1993), [UN Doc A/48/10](#), p. 108. See also, Comments of Governments on the Report of the Working Group on a Draft Statute for an ICC, [UN Doc. A/CN.4/458/Add.5](#), 13 May 1994, p. 5; Report of the Working Group on a Draft Statute for an ICC, [UN Doc. A/CN.4/L.491/Rev.1](#), 8 July 1994, p. 17; and Report of the ILC on the work of its 46th session, [UN Doc. A/49/10](#), 22 July 1994, p. 82.

affirmed that a State's withdrawal would not impact proceedings that had already been initiated under the Statute.²⁵

17. In 1998, the Preparatory Committee developed two provisions in the draft Statute, one dealing specifically with the legal effects of withdrawal upon the Court's jurisdiction and the other with withdrawals in general. These provisions also clearly stated that such withdrawal will neither affect any proceedings already commenced nor any other obligations of the withdrawing State under the Statute.²⁶ On these provisions, Amnesty International urged that the States should remain under an obligation to cooperate with the Court with respect to any crime committed before the date of the withdrawal notification in order to reduce States' incentives to denounce the Statute just to avoid scrutiny of concealed crimes.²⁷

18. It appears that the Preparatory Committee adopted this suggestion. The provisions dealing with withdrawal were then subsumed into a single sub-paragraph at the final part of the Statute, explicitly stating that withdrawal shall not affect the continued consideration of any matter that was already under the Court's consideration prior to the effective date of the withdrawal.²⁸ On this draft, Amnesty International reiterated its previous position.²⁹ Another human rights organisation, which actively participated in the meetings of the Preparatory Committee, also

²⁵ See the Report of the Preparatory Committee on the Establishment of an ICC, Vol II, (Compilation of proposals), Supplement No. 22A, [UN Doc. A/51/22](#), 1996, p. 73; Rolling Text for Articles 21, 22, 23, 24 and 25, Working Group on Complementarity and Trigger Mechanism, [UN Doc. A/AC.249/1997/WG.3/CRP.1](#), 13 August 1997, p. 3; Decisions taken by the Preparatory Committee at Its Session held from 4 to 15 August 1997, [UN Doc. A/AC.249/1997/L.8/Rev.1](#), 14 August 1997, p. 6; and the Draft Text Relating to Final Clauses, Final Act and Establishment of a Preparatory Commission, [UN Doc. A/AC.249/1998/L.11](#), 20 December 1997, p. 4.

²⁶ See the Report of the Inter-Sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands, [UN Doc. A/AC.249/1998/L.13](#), 4 February 1998, pp. 39 and 171.

²⁷ 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.

²⁸ See Part 11. Final Clauses, [UN Doc. A/AC.249/1998/CRP.4](#), 20 March 1998, p. 4; Draft Statute for the ICC, [UN Doc. A/AC.249/1998/CRP.18](#), 1 April 1998, p. 6; and Report of the Preparatory Committee on the Establishment of an ICC, [UN Doc. A/CONF.183/2/Add.1](#), 14 April 1998, pp. 33 and 167.

²⁹ See Amnesty International, [The International Criminal Court, Making the Right Choices - Part V. Recommendations to the Diplomatic Conference](#), May 1998, pp. 88-89.

pleaded that any withdrawal must not affect the Court's powers with respect to acts occurring before the submission of the notice of withdrawal.³⁰

19. During the Rome Conference, the State delegates eventually adopted the provisions dealing with the jurisdiction of the Court and withdrawals developed earlier by the Preparatory Committee with minor modifications in the final version of the Statute.³¹ Hence, some observers asserted *at the time* that, due to the final formulation of article 127(2) of the Statute, a withdrawal would not affect the Court's continued consideration of any matter already under review before the withdrawal became effective. In their view, a State could not escape its responsibilities simply by withdrawing from the Statute.³² These negotiation records constitute highly important preparatory work of the Statute due to their direct relevance to the issue pursuant to article 32 of the VCLT.³³

20. Consequently, it can be safely concluded that, from the very beginning of the process, the drafters were acutely aware of the risk that States may intentionally avoid prosecutions of crimes on the verge of discovery by simply withdrawing from the Statute. As a result, the discernible intention of the drafters to designate article 127(2) as *lex specialis* with regard to such withdrawal is clear and confirmed by the extensive

³⁰ 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 attached as Public [Annex A](#) to [No. ICC-01/21-01/25-145](#), *supra* note 5.

³¹ See Draft Statute for the ICC, [UN Doc. A/CONF.183/2/Add.1](#), 14 April 1998, pp. 33 and 167; 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; 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.

³² 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. and [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.

³³ See VILLIGER (M.), *Article 32, Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff Publishers, 2009, p. 445-446. See also, BOUTHILLIER (Y.L.), *Article 32* in CORTEN (O.) and KLEIN (P.) (Eds), *The Vienna Conventions on the Law of Treaties - A Commentary*, Oxford, Vol I, 2011, p. 852.

legislative history summarised *supra*. The Defence's arguments in this respect are without merit and must be rejected.

Grounds 2 and 3. A preliminary examination is not a "matter under consideration" and the expression "Court" does not include the OTP for the purposes of article 127(2) of the Statute

21. The Defence first argues that the Chamber erred in relying on definitions derived from the Oxford English Dictionary and in reducing the concept of "*a matter under consideration*" to a mere "*concern*" or even just a prosecutorial "*thought*" that is capable of nullifying the legal effect of a State Party's withdrawal.³⁴ The Defence again misrepresents the Chamber's reasoning. In fact, the Chamber never ruled that a prosecutorial thought would constitute a preliminary examination under article 127(2) of the Statute. Rather, it conducted its interpretation of the provision pursuant to the VCLT and held that the ordinary meaning of the word "*matter*" defined in the Oxford English Dictionary is broad enough to include alleged crimes under consideration of the Court during a preliminary examination.³⁵

22. International courts have relied on dictionaries for decades.³⁶ Especially in cases where a treaty is written in different languages, the ICJ habitually resorts to dictionaries in order to ascertain the ordinary meanings of the terminologies employed by the parties pursuant to article 31 of the VCLT.³⁷ Prominent legal scholars also commented that the starting point in the process of interpretation by international

³⁴ See the Appeal Brief, *supra* note 7, para. 27.

³⁵ See the Impugned Decision, *supra* note 3, paras. 51-52. Pre-Trial Chamber I recently agreed on the Chamber's reasoning and found that its review of a State Party's failure to cooperate with the Court may also be considered a matter under its consideration pursuant to article 127(2) of the Statute. See the "Finding under article 87(7) of the Statute on Hungary's non-compliance with the Court's request to cooperate in the provisional arrest of Benjamin Netanyahu and referral to the Assembly of States Parties", (Pre-Trial Chamber I), [No. ICC-01/18-462](#), 24 July 2025, para. 14.

³⁶ See PICJ, [Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture](#), Series B, Advisory Opinion of 12 August 1922, pp. 35-39.

³⁷ See ICJ, [Oil Platforms \(Iran v. USA\) \(Preliminary Objections\)](#), Judgment of 12 December 1996, para. 45 and [Case Concerning Kasikili/Sedudu Island \(Botswana v. Namibia\)](#), Judgment of 13 December 1999, para. 30.

judicial bodies is the linguistic and grammatical analysis of the text, looking for ordinary meaning or the meaning that is “regular, normal, or customary” by often consulting dictionaries, general or more specialized ones, under the VCLT.³⁸ In fact, the Defence does not argue that the definition of the English words (in particular, “*any matter*” under consideration of the “*Court*”) illustrated in the Oxford Dictionary and relied on by the Chamber is somehow inaccurate. Rather, it merely disagrees with the Chamber’s reasoning by repeating previously rejected arguments and failing to identify a legal error. A mere disagreement with the conclusions of the Chamber is not enough to establish a legal error.³⁹ Therefore, these arguments must also be rejected.

23. Under Ground 2, the Defence contends that the Chamber also failed to give due weight to the more restrictive language employed in the French or Chinese language versions of the Statute in place of the English term “*matter*”, without any attempt at linguistic reconciliation.⁴⁰ In relation to Ground 3, the Defence also argues that the word “*Court*” in the Statute, with some variations of the word “*consider*”, is always intended to denote the judiciary as confirmed by the Chinese and Spanish versions of the Statute.⁴¹

24. In the Impugned Decision, the Chamber held that: (i) the use of the word “*affaires*” in the French version does not detract from the broad meaning of the word “*matter*” in the English version; and (ii) 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

³⁸ See DÖRR (O.), *Article 31* in DÖRR (O.) and SCHMALENBACH (K.) (Eds), *Vienna Convention on the Law of Treaties - A Commentary*, Springer-Verlag, 2012, p. 542.

³⁹ See the “Judgment on the appeal of Mr Callixte Mbarushimana against the decision of Pre-Trial Chamber I of 19 May 2011 entitled ‘Decision on the ‘Defence Request for Interim Release’” (Appeals Chamber), [No. ICC-01/04-01/10-283 OA](#), 14 July 2011, para. 21. See also, the “Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’” (Appeals Chamber), [No. ICC-02/11-01/11-278-Red OA](#), 26 October 2012, para. 52; and the “Judgment on the appeal of Ali Muhammad Ali Abd-Al-Rahman against Trial Chamber I’s ‘Decision on the review of detention’” (Appeals Chamber), [No. ICC-02/05-01/20-542-Red OA10](#), 17 December 2021, para. 63.

⁴⁰ See the Appeal Brief, *supra* note 7, para. 28.

⁴¹ *Idem*, paras. 51-53.

of a broad reading of the phrase “*any matter*” pursuant to article 33(4) of the VCLT.⁴² As discussed *infra*, the Chamber’s reasoning is correct in every aspect.

25. Article 33 of the VCLT provides, *inter alia*, that: (i) when a treaty has been authenticated in more than one language, the text is equally authoritative in each language; (ii) the terms of the treaty are presumed to have the same meaning in each authentic text; and (iii) when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, must be adopted.

26. These provisions entail the following requirements for the interpretation of plurilingual treaties. First, the text of the treaty is equally authoritative in each language and thus their terms are presumed to have the same meaning.⁴³ In this regard, the ILC explained that: “[p]lurilingual in expression, the treaty remains a single treaty with a single set of terms the interpretation [...]. The unity of the treaty and of each of its terms is of fundamental importance in the interpretation of plurilingual treaties and it is safeguarded by combining with the principle of the equal authority of authentic texts the presumption that the terms are intended to have the same meaning in each text”.⁴⁴ In other words, “[...] in law there is only one treaty—one set of terms accepted by the parties and one common intention with respect to those terms—even when two authentic texts appear to diverge”.⁴⁵ For example, the ICJ held in this regard that, irrespective of various terminologies used in treaties made in different languages, the terms generally having similar meanings indicate the intention of the parties to refer to the same thing.⁴⁶ Thus, the presumption of identical meaning reflects the concept of the treaty constituting a

⁴² See the Impugned Decision, *supra* note 3, para. 55.

⁴³ See VILLIGER (M.), *Article 33, Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff Publishers, 2009, p. 458.

⁴⁴ See ILC, [Draft Articles on the Law of Treaties with commentaries](#), Yearbook of the International Law Commission, 1966, vol. II, p. 225 (emphasis added).

⁴⁵ *Ibid.*

⁴⁶ See ICJ, [Case Concerning Elettronica Sicula S.p.A. \(ELSI\) \(United States of America v. Italy\)](#), Judgment of 20 July 1989, paras. 118 and 132 and [Case Concerning Kasikili/Sedudu Island \(Botswana v. Namibia\)](#), *supra* note 37, para. 25.

*single treaty with a single set of terms and reflecting a single intention or will of the contracting parties.*⁴⁷

27. The use of differing words or terms is inherent in multilingual treaties⁴⁸ as they are penned in different languages reflecting the different legal systems. According to article 33(4) of the VCLT, there must be a real *difference of meaning* between the contested versions of a treaty and thus not every use of different words or terms in a treaty text will amount to divergence of *meaning*.⁴⁹ Such difference must be an *important one*, since applying means of interpretation contained in articles 31 and 32 of the VCLT will have failed to solve the problem of interpretation at this juncture.⁵⁰ At least, there must be real ambiguity in order to move to the next stage or compare the meaning of the terms used in texts written in different languages.⁵¹ For example, the ICJ decided to treat certain terms written in different languages as equivalent since the parties to the treaty did not express any *real difference of opinion* on the matter.⁵² Moreover, the ICJ also considered the fact that various authentic texts of a treaty - namely the Chinese, Russian, and Spanish texts - *do not contradict* its interpretation of the English and/or French texts is essential to confirm the intention of the parties to that treaty.⁵³

⁴⁷ See ILC, [Yearbook of the International Law Commission 1966](#), Vol I, Part II, p. 211. See also, DÖRR (O.), Article 33, in DÖRR (O.) and SCHMALENBACH (K.) (Eds), *Vienna Convention on the Law of Treaties – A Commentary*, Springer-Verlag, 2011, p. 597.

⁴⁸ See ILC, [Draft Articles on the Law of Treaties with commentaries](#), *supra* note 44, p. 225. See also, PAPAUX (A.) and SAMSON (R.), Article 33, in CORTEN (O.) and KLEIN (P.) (Eds), *The Vienna Conventions on the Law of Treaties - A Commentary*, Oxford, Vol I, 2011, 2011, p. 868.

⁴⁹ *Idem*, PAPAUX (A.) and SAMSON (R.), Article 33, p. 874.

⁵⁰ *Idem*, PAPAUX (A.) and SAMSON (R.), Article 33, p. 880. The ILC also explained that “[t]he plurilingual form of the treaty does not justify the interpreter in simply preferring one text to another and discarding the normal means of resolving an ambiguity or obscurity on the basis of the objects and purposes of the treaty, travaux préparatoires, the surrounding circumstances, subsequent practice, etc. On the contrary, the equality of the texts means that every reasonable effort should first be made to reconcile the texts and to ascertain the intention of the parties by recourse to the normal means of interpretation.” See ILC, [Draft Articles on the Law of Treaties with commentaries](#), *supra* note 44, p. 225.

⁵¹ See PICJ, [Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture](#), *supra* note 36, pp. 35-39.

⁵² See ICJ, [Case Concerning Kasikili/Sedudu Island \(Botswana v. Namibia\)](#), *supra* note 37, para. 25.

⁵³ See ICJ, [Case Concerning Application of the International Convention on the Elimination of all Forms of Racial Discrimination \(Georgia v. Russian Federation\)](#), Preliminary Objections, Judgment of 1 April 2011, para. 135.

28. Yet, the Defence's arguments do not rebut the above-mentioned presumption of equal authority of the texts. Nor does it show that the words or terms employed in the French, Chinese, and Spanish versions of the Statute actually contain *real difference of meaning* compared to the ones used in the English version. At best, the Defence contends that various versions of the Statute use dissimilar words or terms and thus they must inevitably mean something else, without clearly identifying an interpretation error that the Chamber allegedly committed.

29. Even if there were such real difference of meaning, a judicial interpreter cannot simply choose one version of the treaty over others.⁵⁴ As mentioned, pursuant to article 33(4) of the VCLT, when a comparison of the authentic texts discloses such difference, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, must be adopted.⁵⁵ This renewed and explicit mention of the object and purpose of the treaty emphasises their overriding importance if a reconciliation of the texts is not otherwise possible.⁵⁶ Thus, a judicial interpreter must prefer one of the texts that reconciles⁵⁷ or most closely approaches the object and purpose of the treaty.⁵⁸ If no text prevails, the correct interpretation is the one which, in light of the object and purpose of the treaty, best harmonizes the conflicting texts.⁵⁹ For example, the European Court of Human Rights (the "ECHR") held that it is necessary to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty.⁶⁰

30. Accordingly, the Chamber did interpret the English terms contained in article 127 of the Statute in a manner that best reconciles any difference of wording in

⁵⁴ See PAPAUX (A.) and SAMSON (R.), *Article 33*, op. cit. *supra* note 48, p. 879.

⁵⁵ This reflects customary international law, according to the ICJ. See ICJ, [Lagrand Case \(Germany v. United States of America\)](#), Judgment of 27 June 2001, para. 101. See also, VILLIGER (M), *Article 33*, op. cit. *supra* note 33, pp. 459-460 and DÖRR (O.), *Article 33*, op. cit. *supra* note 47, p. 600.

⁵⁶ See VILLIGER (M), *Article 33*, op. cit. *supra* note 43, p. 460.

⁵⁷ See ILC, [Draft Articles on the Law of Treaties with commentaries](#), *supra* note 44, p. 226.

⁵⁸ See DÖRR (O.), *Article 33*, op. cit. *supra* note 47, p. 600.

⁵⁹ See PAPAUX (A.) and SAMSON (R.), *Article 33*, op. cit. *supra* note 48, p. 880.

⁶⁰ See ECHR, [Wemhoff v. Germany](#), (Application no 2122/64), Judgment, 27 June 1968, para. 8. See also, [The Sunday Times v. The United Kingdom](#), (Application no. 6538/74), Judgment, 26 April 1979, para. 48.

various language texts of the Statute in light of its object and purpose. The Defence fails to establish how the Chamber allegedly committed an error of law in following the interpretative methods set out in the VCLT, but simply disagrees with the Chamber's reasoning and repeats its previously rejected arguments.

31. Furthermore, the Defence argues that the Chamber's application of the concept of "*subsequent practice*" was incorrect since the latter considered the sole and inconsistent conduct of the Philippines without assessing the conduct of other States.⁶¹ However, the Chamber recalled that, regardless of its withdrawal, the Philippines requested a deferral of the investigation and then surrendered Mr Duterte to the Court.⁶² Thus, the Chamber found that this continued engagement of the Government of the Philippines lends further support for the interpretation that the Court retains jurisdiction pursuant to article 127(2) of the Statute.⁶³ The Chamber's reasoning is legally and factually sound.

32. Article 31(3)(b) of the VCLT states that the interpreter shall take into consideration any subsequent practice in the application of the treaty, establishing the agreement of the parties regarding its interpretation. In this regard, the ILC explained that "*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*".⁶⁴ Therefore, the subsequent practice of the parties in implementing a treaty is of utmost importance for its interpretation.⁶⁵

33. In this case, the fact that the Philippines voluntarily surrendered Mr Duterte clearly proves that - even six years after making its formal decision to terminate its

⁶¹ See the Appeal Brief, *supra* note 7, para. 39.

⁶² See the Impugned Decision, *supra* note 3, para. 69.

⁶³ *Ibid.*

⁶⁴ See ILC, [Draft Articles on the Law of Treaties with commentaries](#), *supra* note 44, pp. 221 and 222.

⁶⁵ See DÖRR (O.), *Article 31*, op. cit. *supra* note 38, p. 554. See also, PCIJ, [Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture](#), *supra* note 36, p. 39 and ICJ, [The Corfu Channel \(United Kingdom of Great Britain and Northern Ireland v. Albania\)](#) (Merits), Judgment of 9 April 1949, p. 25.

membership to the Court - the State still considered itself to be bound by the Statute under article 127(2). This was a deliberate act aimed at fulfilling its specific obligation arising from the Statute which in turn constitutes a discernible subsequent practice.⁶⁶ This was also confirmed by the Supreme Court of the Philippines⁶⁷ which also forms a part of the subsequent practice of the withdrawing State.⁶⁸ According to the ICJ, a State's own conduct in accordance with a treaty, showing that it considers to be bound by it, is indicative of its understanding of that treaty itself.⁶⁹

34. As for the argument that the Chamber considered solely the conduct of the Philippines without assessing the conduct of other States, the Defence does not fully appreciate the requirements of article 31(3)(b) of the VCLT. While said provision refers to the practice establishing an agreement of the parties; this does not imply that each party must have individually engaged in that practice.⁷⁰ In this regard, an earlier draft of the VCLT contained the word "agreement of *all* the parties" which was later removed in the final version of the treaty. This was precisely to avoid the misconception that the practice in question must be actively performed by *all* the parties.⁷¹

35. This formulation also means that it is sufficient for some of the parties to engage in the practice, while others merely accept it, in order to fulfil the relevant conditions under the VCLT.⁷² In this respect, the ECHR also held that subsequent practice does not require the practice be followed unanimously by the contracting parties, as such practice does not necessitate the consent of all parties to a treaty.⁷³ Thus, the term

⁶⁶ *Idem*, p. 556.

⁶⁷ See Supreme Court of the Philippines, *Pangilinan v. Cayetano*, G.R. No. 238875, Decision En Banc, 16 March 2021.

⁶⁸ See DÖRR (O.), *Article 31*, op. cit. *supra* note 38, p. 556.

⁶⁹ See ICJ, [Maritime Delimitation in the Indian Ocean, \(Somalia v. Kenya\)](#), Preliminary Objections, Judgment of 2 February 2017, para. 92.

⁷⁰ See DÖRR (O.), *Article 31*, op. cit. *supra* note 38, p. 557.

⁷¹ See ILC, [Draft Articles on the Law of Treaties with commentaries](#), *supra* note 44, para. 15. See also, DÖRR (O.), *Article 31*, op. cit. *supra* note 38, p. 557.

⁷² *Ibid.*

⁷³ See ECHR, [Case of Loizidou v. Turkey](#) (Preliminary Objections) (Application No. 15318/89), Judgment, 23 March 1995, para. 79.

“subsequent practice” can include unilateral acts.⁷⁴ Agreement may be inferred from the silence of other States regarding the practice of a single State.⁷⁵ What is determinative is whether a certain practice received the tacit assent of other parties generally, which may be assumed from their reaction or absence of reaction, according to the ILC.⁷⁶ Indeed, in establishing subsequent practice, any action or even inaction of contracting parties with a view to implementing the treaty will have to be considered.⁷⁷

36. In relation to the present case, the subsequent practice of the Philippines in the application of article 127(2) of the Statute is sufficient to establish the agreement of the States Parties. Indeed, none of the 125 States Parties has so far formally expressed its disagreement with the ruling of the Chamber contained in the Impugned Decision. In addition, no State Party contested the decision of Pre-Trial Chamber III interpreting article 127(2) of the Statute in the Burundi Situation⁷⁸ in a manner similar to how the Chamber did in this case.⁷⁹ Thus, general agreement of the States Parties on the matter is evidenced by the lack of any dissent to this day.⁸⁰ In the absence of any objection,⁸¹ the Chamber was correct in ruling that the subsequent conduct of the Philippines suffices to establish an agreement of the States Parties on the interpretation of the Statute. Accordingly, the Defence’s arguments in this regard must be dismissed.

37. The Defence also contends that the Chamber erred in asserting that preliminary examination is a statutory process which can be considered as a “*matter under consideration*” under article 127(2) of the Statute.⁸² This argument also lacks merit. The

⁷⁴ See SOREL (J.M.) and EVENO (V.B), *Article 31* in CORTEN (O.) and KLEIN (P.) (Eds), *The Vienna Conventions on the Law of Treaties - A Commentary*, Oxford, Vol I, 2011, p. 826.

⁷⁵ See BOUTHILLIER (Y.L.), *Article 32*, op. cit. *supra* note 33, p. 862.

⁷⁶ See ILC, [Yearbook of the International Law Commission](#), 1966, Vol. II, p. 99.

⁷⁷ See DÖRR (O.), *Article 31*, op. cit. *supra* note 38, p. 555.

⁷⁸ 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](#), 09 November 2017, para. 24.

⁷⁹ See the Impugned Decision, *supra* note 3, footnote 145.

⁸⁰ See DÖRR (O.), *Article 31*, op. cit. *supra* note 38, p. 560.

⁸¹ See VILLIGER (M.E.), *Article 31, Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff Publishers, 2009, p. 431.

⁸² See the Appeal Brief, *supra* note 7, para. 30.

Chamber ruled that preliminary examination is a statutory process which is a necessary precondition to seek authorisation for the commencement of an investigation under article 15 of the Statute and rules 46 to 50 of the Rules of Procedure and Evidence.⁸³ As argued in her Initial Response,⁸⁴ the Legal Representative reiterates the fact that various Chambers have also held that the OTP's preliminary examination constitutes a formal stage of the proceedings, taking place before the Court.⁸⁵ Similarly, the Appeals Chamber ruled that preliminary examination is an important phase of the proceedings provided for in article 15, immediately preceding formal investigation conducted by the OTP pursuant to articles 53 and 54 of the Statute.⁸⁶ The Defence's arguments merely express disagreement with the Chamber's ruling, thus failing to identify an error of law, materially affecting the Impugned Decision.

38. Additionally, the Defence argues that, even assuming that preliminary examination is a "*matter*" under consideration by the Court, the decision to open an investigation is not identical to the former. Treating them as one and the same "*matter*" stretches said notion, according to the Defence.⁸⁷ In the Impugned Decision, the Chamber ruled that the Philippines Situation is a matter which had already been under consideration by the Court under article 127(2) of the Statute in the form of a preliminary examination which was later transformed into an investigation.⁸⁸ Therefore, the Defence's arguments on whether or not an investigation would also constitute a "*matter*" under consideration of the Court are immaterial to the correctness of the Impugned Decision. The Chamber's ruling only concerns the withdrawal of the

⁸³ See the Impugned Decision, *supra* note 3, para. 57.

⁸⁴ See the Initial Observations, *supra* note 5, paras. 56-63.

⁸⁵ 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'", *supra* note 78, para. 138. 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.

⁸⁶ 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.

⁸⁷ See the Appeal Brief, *supra* note 7, paras. 43-44.

⁸⁸ See the Impugned Decision, *supra* note 3, para. 57.

Philippines following the OTP's *preliminary examination* opened in 2018. Accordingly, these arguments are beyond the parameters of the present appeal and thus must be dismissed.

Ground 4. The Chamber erred in law by finding that the object and purpose of the Statute permitted the opening of an investigation even after withdrawal

39. The Defence lastly argues that, under article 127(2) of the Statute, the OTP is afforded only one year to seek an investigation – striking the correct balance between the responsibilities of a State Party and its ability to withdraw from the Statute.⁸⁹ As recalled *supra*, the Chamber found that it would be entirely against the object and purpose of the Statute (as illustrated by its preamble) to interpret article 127 to enable a State Party to evade its responsibilities by withdrawing from the Statute once it discovers that alleged crimes are being examined by the OTP.⁹⁰ In the same vein, prominent legal scholars agree that, despite the bar on reservations, the Statute presents flexibility by giving the States Parties the possibility of withdrawal, rather than imposing a definitive barrier, under article 127 of the Statute.⁹¹

40. The Defence's arguments on this alleged error remain unsubstantiated. The Appeals Chamber previously held that the object and purpose of the Statute may be gathered from its preamble and general tenor.⁹² Pursuant to article 31 of the VCLT, the preamble of a treaty significantly assists in determining its object and purpose.⁹³ The Defence does not argue that the Chamber somehow misunderstood and thus misinterpreted the object and purpose of the Statute as clarified by its preamble.

⁸⁹ See the Appeal Brief, *supra* note 7, paras. 24-26 and 56.

⁹⁰ See the Impugned Decision, *supra* note 3, para. 71.

⁹¹ See PELLET (A.), *Entry into Force and Amendment of the Statute* in CASSESE (A.), GAETA (P.) and JONES (J.R.W.) (Eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Vol. I, Oxford, 2002, p. 167.

⁹² 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.

⁹³ See DÖRR (O.), *Article 31*, op. cit. *supra* note 38, p. 544 and VILLIGER (M.E.), *Article 31*, op. cit. *supra* note 81, p. 427.

Rather, its arguments amount to mere disagreements with the Chamber's reasoning, without identifying an error of law that materially affects the Impugned Decision.

41. In addition, the Defence's arguments to the effect that the OTP is afforded only one year to seek an investigation are baseless. Article 127(1) of the Statute explicitly provides that the withdrawal shall take effect one year after the date of receipt of the notification of the State to withdraw, *unless the notification specifies a later date*. In other words, the withdrawing State may offer a date that is longer than one year, if it so wishes.⁹⁴ Moreover, according to the ILC, such a waiting period under the VCLT is generally offered to give adequate protection to the interests of contracting parties to the treaty by enabling them to adjust themselves to the new legal situation created by the withdrawal of a State and conduct further negotiations.⁹⁵ The ICJ also shares this view.⁹⁶

42. In the Impugned Decision, the Chamber also held that the object and purpose of the one-year period is, *inter alia*, to prevent a State Party from withdrawing from the Statute with immediate effect once it discovers that alleged crimes for which it bears responsibility are being considered by the Court.⁹⁷ In fact, the Statute does not indicate at all that the OTP has only one year to seek an investigation after a State notifies its intention to withdraw. No such time limit is imposed upon the OTP, except the specific conditions provided in article 127(2) of the Statute as discussed. Therefore, the Chamber was correct in rejecting the Defence's arguments in this regard. As the ICJ has held, it is impermissible for a Court to revise treaties or read into them provisions

⁹⁴ See CLARK (R.S.), *Article 127* in TRIFFTERER (O.), *Rome Statute of the ICC: Article-by Article Commentary*, 2nd Edition, Verl g C.H. Beck/Nomos, Munich/Hart Publishing, Oxford, 2021, p. 1778.

⁹⁵ See ILC, [Draft Articles on the Law of Treaties with commentaries](#), *supra* note 44, pp. 209, 236, 251, and 264.

⁹⁶ See ICJ, [Interpretation of the Agreement of 25 March 1951 Between the WHO and Egypt](#), Advisory Opinion of 20 December 1980, p. 96. See also, VILLIGER (M.E.), *Article 56, Commentary on the 1969 Vienna Convention on the Law of Treaties*, Martinus Nijhoff Publishers, 2009, p. 704.

⁹⁷ See the Impugned Decision, *supra* note 3, para. 71.

they do not, either expressly or by implication, contain.⁹⁸ Thus, Ground 4 must also be rejected.

IV. CONCLUSION

43. For the foregoing reasons, the Legal Representative respectfully requests the Appeals Chamber to dismiss the Defence's Appeal.



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Principal Counsel

Dated this 8th day of December 2025

At The Hague, The Netherlands

⁹⁸ See ICJ, [*Rights of Nationals of the United States in Morocco case \(France v. United States of America\)*](#), Judgment of 27 August 1952, pp. 196, 199 and p. 221.