

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
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

Prosecution Response to “Appeal Brief on Jurisdiction”

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INTRODUCTION

1. In its decision, the Pre-Trial Chamber confirmed the Court’s lawful exercise of jurisdiction in this situation.¹ This followed its previous finding of jurisdiction in the Arrest Warrant,² echoing former decisions,³ which were not disturbed by the Appeals Chamber.⁴ This judicial consensus is unsurprising given the Court’s clear mandate, the plain terms of the Rome Statute, and the interests of States in acceding to it.

2. If this case proceeds to trial, the Court will determine whether Mr Duterte—as Mayor of Davao City and then President of the Republic of the Philippines, then a State Party to the Statute—was responsible for the murder of numerous civilians on the territory of the Philippines, as part of a widespread and systematic attack pursuant to a State or organisational policy: a crime against humanity.⁵ This is one of the archetypal harms that the Court was created to deter and punish.

3. Yet Mr Duterte’s administration withdrew the Philippines from the Statute even as the alleged campaign of killing continued, commencing this process within days of the former Prosecutor announcing that she had initiated a preliminary examination of these allegations—the statutory precondition to requesting the Pre-Trial Chamber’s leave to open an investigation. While the Prosecutor then duly proceeded to make such a request, which the Chamber granted, the Philippines’ withdrawal from the Statute had taken effect in the intervening period.

4. Finding that the withdrawal from the Statute would now bar the Court’s exercise of jurisdiction would strike at the heart of the Philippines’ status as a State Party at the time of the alleged crimes. Such an *ex post facto* act would circumvent the Philippines’ sovereign decision to protect its civilian population from the most serious crimes of international concern by accepting the Court’s jurisdiction. This is not—and cannot be—the correct interpretation of the Statute, which would undermine one of the key purposes of accession in the first place.

5. Crucially, while a State Party’s right to withdraw must be effective, that same State Party’s decision *to accede* to the Statute must also be effective. The Statute therefore balances

¹ See [ICC-01/21-01/25-309](#) (“Decision”).

² See [ICC-01/21-83](#) (“Arrest Warrant”), para. 6.

³ See [ICC-01/21-12](#) (“Article 15(4) Decision”), paras. 109-111; [ICC-01/21-56-Red](#) (“Article 18(2) Decision”), paras. 25-26.

⁴ See [ICC-01/21-77 OA](#) (“Article 18(2) Appeal Judgment”), paras. 48-62. *But see also* [ICC-01/21-77-OPI OA](#) (“Dissenting Opinion”).

⁵ See e.g. [Arrest Warrant](#), paras. 10-25.

these interests precisely. This is reflected in the meaning given in the Decision to the relationship between articles 12-13 of the Statute (jurisdiction) and article 127 (withdrawal).

SUBMISSIONS

6. The Appeals Chamber should dismiss the appeal because it fails to show any error in the Decision warranting reversal.⁶ Each of the four grounds of appeal is incorrect.⁷ Consequently, the jurisdiction of the Court in this situation should be upheld, and proceedings in this case should continue.

7. The Decision carefully analysed the Statute, according to the interpretive principles of the Vienna Convention on the Law of Treaties (VCLT)—the correct methodology consistently affirmed by the Appeals Chamber.⁸ On this basis, the Chamber correctly interpreted article 127 as preserving the Court’s jurisdiction in the present circumstances. It likewise correctly determined that a “matter under consideration” *can* encompass a preliminary examination, as in this situation, and that the “Court” includes the Office of the Prosecutor.

8. It follows that the Chamber correctly found that “the Court can exercise its jurisdiction” over crimes allegedly committed on the territory of the Philippines while it was still a State Party, because the Prosecution had commenced the preliminary examination before the Philippines had either notified its intention to withdraw or before that withdrawal became effective.⁹

9. Furthermore, even if the Chamber had misinterpreted article 127 (either as “*lex specialis*”, or in its own terms), this would not materially affect the Decision. This is because the Chamber understood article 127(2) to preserve the Court’s exercise of jurisdiction, notwithstanding a narrow interpretation of articles 12(2) and 13(c).¹⁰ In apparently accepting this narrow approach, the Chamber did so with very limited reasoning and as an *obiter dictum* (observing that it was “not strictly necessary” to determine the question given its interpretation of article 127).¹¹ Yet *if* the Chamber had erred in interpreting article 127, then it *would* become

⁶ *Contra* [ICC-01/21-01/25-319 OA3](#) (“Appeal Brief”), paras. 3-4, 59.

⁷ While the Appeal Brief makes passing reference to errors of fact (see [Appeal Brief](#), paras. 4, 39), the errors in the four grounds of appeal all appear to be errors of law. As explained further below, the only factual point raised by the Defence is not a discrete error in itself, but rather the Defence’s disagreement with certain facts mentioned by the Chamber and its preference for a different fact, which it considers more significant: see *below* para. 39.

⁸ See e.g. [ICC-02/04-01/15-2022-Red A](#) (“Ongwen Appeal Judgment”), para. 1061; [ICC-01/05-01/13-2275-Red A A2 A3 A4 A5](#) (“Bemba *et al.* Appeal Judgment”), para. 675; [ICC-01/04-01/06-3121-Red A5](#) (“Lubanga Appeal Judgment”), para. 277; [ICC-01/04-168 OA3](#) (“DRC Extraordinary Review Appeal Judgment”), para. 33.

⁹ [Decision](#), para. 84.

¹⁰ See [Decision](#), paras. 79-83.

¹¹ See [Decision](#), paras. 78-80. See also [Appeal Brief](#), para. 6.

necessary to determine whether the Chamber's narrow (*obiter*) interpretation of articles 12(2) and 13(c) was correct. While the Prosecution could not appeal the Chamber's interpretation of articles 12(2) and 13(c),¹² this would now require resolution if the Appeals Chamber were to find that the Chamber erred with regard to article 127.¹³

A. The Chamber correctly recognised the significance of article 127 for the Court's jurisdiction (Ground One)

10. The Chamber found that "Part 2 of the Statute sets out the Court's jurisdictional regime [...] when a State is a Party to the Statute" but that "article 127 [...] was specifically enacted as *lex specialis* to set out the regime that would apply to [...] a State that withdraws from the Statute". This followed from article 127(2) itself, which in the Chamber's view can only be given effect if "the jurisdictional provisions of Part 2 [...] continue to apply to the State concerned as if that State were still a Party to the Statute."¹⁴

11. In its first ground of appeal, the Defence argues that the Chamber erred by formulating "a novel doctrine".¹⁵ The Defence claims, first, that article 127 cannot be *lex specialis*¹⁶ and, second, that the Chamber was influenced by "irrelevant policy considerations" in its analysis.¹⁷ Since this second claim relates more generally to the interpretive approach adopted by the Chamber, this is addressed first. Failing to show any error, this ground should be dismissed.

A.1. The Chamber adopted the correct interpretive approach to the Statute

12. The Chamber correctly recalled 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", as required by article 31 of the VCLT.¹⁸ The Chamber scrupulously applied this approach in the Decision itself—considering the ordinary meaning of the terms of article

¹² On the entitlement of a respondent to an appeal to raise errors of law which were a premise of the reasoning at first instance, but which could not be raised directly on appeal, see e.g. [ICC-01/05-01/08-3636-Anx1-Red A](#) ("Bemba Appeal Judgment, Dissenting Opinion of Judges Monageng and Hofmański"), para. 327. See also [Decision](#), para. 78 (noting that the Chamber's views on articles 12(2) and 13(c) were "not strictly necessary" for its ultimate conclusion). For this reason, the Prosecution regards this holding as an *obiter dictum*: see also above fn. 11; below fn. 148. Since the Chamber's (correct) interpretation of article 127 did not depend on its interpretation of articles 12(2) and 13(c), it could not be shown that any error in this latter regard materially affected the Decision.

¹³ For the avoidance of doubt, if the Appeals Chamber agrees that the Chamber's interpretation of article 127 is correct, then it need not enter into the question of articles 12(2) and 13(c). For the Prosecution's view of articles 12(2) and 13(c), see further below paras. 17, 57.

¹⁴ [Decision](#), para. 82. See also paras. 47 ("Article 127 [...] makes specific provision for the consequences of the withdrawal of a State and from the Statute and, as such, constitutes *lex specialis*"), 83 ("far from 'trumping' the Court's jurisdictional regime, article 127(2) [...] is an essential part of it in respect of a State that has withdrawn from the Statute"), 84.

¹⁵ [Appeal Brief](#), para. 7.

¹⁶ See [Appeal Brief](#), paras. 8-23.

¹⁷ See [Appeal Brief](#), paras. 24-26.

¹⁸ See [Decision](#), paras. 49 (quoting [VCLT](#), art. 31), 50, 64, 70.

127(2), their context, and the object and purpose of the Statute as a whole.¹⁹ Given this strict adherence to the proper methodology, it is thus clear that the Chamber *did* seek to ascertain “the balance that was actually struck by the drafters of the Rome Statute”, rather than the “subjective policy preferences of individual judges”.²⁰ The Defence shows no error. If anything, it is the Defence position which may be less strict in adhering to the VCLT.²¹

13. Significantly, and in addition to the other relevant considerations addressed below, the Decision also emphasised two important contextual points which the Defence does not challenge (or address) at all. These further demonstrate the correctness both of its interpretive approach and its ultimate conclusions on article 127(2).

14. First, the Chamber stressed the significance of the first sentence of article 127(2), which states unequivocally that “[a] State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party”.²² This sets the overall principle which guides the correct interpretation of the second sentence of article 127(2).²³

15. Second, applying article 31(3)(c) of the VCLT,²⁴ the Chamber noted that the scheme of article 127 “is consistent with the general framework provided for by article 70 of the VCLT.”²⁵ Specifically, “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’”.²⁶ While the *first part* of the second sentence of article 127(2) (concerning cooperation only) may depart from the principle in article 70(1)(b) of the VCLT, the broad framing of the *second part* of that sentence (concerning jurisdiction) is *consistent* with the general rule in article 70(1)(b) of the VCLT.²⁷ Again, this is also consistent with the general intention expressed in the first sentence of article

¹⁹ See [Decision](#), paras. 51-63 (ordinary meaning), 64-69 (context), 70-77 (object and purpose of the Statute).

²⁰ *Contra* [Appeal Brief](#), paras. 24-26.

²¹ See e.g. [Appeal Brief](#), para. 27 (dismissing the ordinary meaning of the terms of the Statute as mere “semantic analysis add[ing] little of relevance”).

²² [Statute](#), art. 127(2).

²³ See [Decision](#), para. 67 (reasoning that the second sentence then gives effect to the principle in the first sentence and considering that, while the first part of the second sentence is confined to “the narrow question of a State’s cooperation obligations” following withdrawal, the second part is “considerably broader” and contains “no further specification or limitation” which would suggest that the second part “should be given a more specific or restricted meaning than the broad phrasing of its terms would ordinarily permit”).

²⁴ [VCLT](#), art. 31(3)(c) (“There shall be taken into account, together with the context: [...] (c) any relevant rules of international law applicable in the relations between the parties”).

²⁵ [Decision](#), para. 68.

²⁶ [Decision](#), para. 68 (quoting [VCLT](#), art. 70(1)(b)). See also [Statute](#), art. 21(1)(b).

²⁷ See also [ICC-01/21-01/25-146-Red-Corr](#) (“Prosecution Response to Jurisdictional Challenge”), paras. 75-79.

127(2) of the Statute. These considerations thus strongly support the correctness of the Decision, both in its methodology and its ultimate conclusion.

A.2. *The Chamber correctly recognised that article 127(2) can preserve the Court’s exercise of jurisdiction notwithstanding a narrow interpretation of articles 12(2) and 13(c)*

16. Criticising the Chamber’s use of the term “*lex specialis*” in its Decision, the Defence asserts that: (i) this maxim can only be applied in certain circumstances; (ii) there is no evidence of the drafters’ intent to treat any provision of the Statute as *lex specialis*, and; (iii) article 127 in particular cannot be treated as *lex specialis*. However, these largely formalistic arguments miss the Chamber’s point.

17. Even assuming that articles 12(2) and 13(c) must be read narrowly, as the Chamber did, it recognised that a correct interpretation of article 127(2) *preserves* the Court’s ability to exercise jurisdiction in certain circumstances when a State Party withdraws. On the basis of this apparent conflict, it therefore described article 127(2) as *lex specialis* to its narrow interpretation of articles 12(2) and 13(c). While the Prosecution does not agree with the Chamber’s reliance on such a narrow interpretation of articles 12(2) and 13(c)—and therefore about the actual existence of the conflict—the Chamber’s reasoning was correct in its own terms. The Defence shows no error.

18. In particular, the Defence asserts that *lex specialis* can apply only if “two provisions relate to the ‘same subject matter’” and “there is a conflict or need to clarify these two provisions”.²⁸ As rightly acknowledged, this is essentially a question of interpretation.²⁹ The Chamber found that the second part of the second sentence of article 127(2) is jurisdictional in nature³⁰—and that preliminary examinations are included within its scope as a “matter under consideration by the Court”, which must not be “prejudiced in any way”. Since this would conflict with the Chamber’s (*obiter*) view of the ordinary jurisdictional requirements in Part 2,³¹ the very test proposed by the Defence was met within the terms of the Decision.³²

19. First, it is irrelevant whether the specific words “*lex specialis*” were used in the drafting history of article 127, or in academic commentary.³³ What matters is that, *in fact*, based on a correct interpretation of the Statute, the Chamber correctly understood the relationship between

²⁸ [Appeal Brief](#), para. 9. *See also* para. 8.

²⁹ [Appeal Brief](#), para. 10.

³⁰ *See* [Decision](#), paras. 45-77, 81 (“article 127 of the Statute, [...] as explained in the previous section of this decision, [...] provide[s] for the continuing jurisdiction of the Court in the circumstances set out in that article”).

³¹ *See* [Decision](#), paras. 79-83.

³² *Contra* [Appeal Brief](#), para. 11.

³³ *Contra* [Appeal Brief](#), paras. 12-13.

its view of the relevant provisions of Part 2 (articles 12(2) and 13(c)) and article 127(2), and its implications for the Court’s jurisdiction.³⁴ In its own submissions before the Chamber, the Prosecution had likewise described this relationship without using the term *lex specialis*.³⁵

20. Second, the Defence criticism depends on its mere assertion—with reference to the location of article 127 in the Statute³⁶—that article 127(2) does not pertain to jurisdiction.³⁷ This fails to engage with the Chamber’s reasoning,³⁸ as addressed in the remainder of this appeal. The Decision specifically explained how the proviso in article 127(2)—that withdrawal from the Statute shall not “prejudice in any way the continued consideration of any matter which was already under consideration by the Court”—is jurisdictional.³⁹

21. For the same reason, the Defence cannot show that the Chamber erred by failing to identify a conflict between article 127(2) and the relevant provisions of Part 2.⁴⁰ If article 127(2) is *correctly* interpreted, as in the Decision, then a conflict necessarily arises with articles 12(2) and 13(c), based on the narrow *obiter dictum* of the Chamber.⁴¹ It is unrealistic to suggest that no conflict arises because a withdrawing State Party could nonetheless accept the Court’s jurisdiction *ad hoc*. This is contrary to the object of article 127(2), which provides *as a matter of law* (rather than the withdrawing State Party’s discretion) that the Court’s continued consideration of a matter shall not be prejudiced *in any way*.⁴²

22. Third, the Defence policy concern, that “the mere opening of a preliminary examination would be sufficient for the exercise of jurisdiction over alleged crimes committed even *after* the withdrawal of the State concerned,” is immaterial. This scenario is not the factual basis of the present situation, nor was it addressed in (or essential to) any part of the reasoning in the Decision. It need not be resolved in the present appeal.⁴³

³⁴ See e.g. [Decision](#), para. 83 (“far from ‘trumping’ the Court’s jurisdictional regime, article 127(2) [...] is an essential part of it in respect of a State that has withdrawn from the Statute”).

³⁵ *Contra* [Appeal Brief](#), para. 12 (“the Prosecution [...] has not once asserted that Article 127(2) is *lex specialis*”). See [Prosecution Response to Jurisdictional Challenge](#), para. 48 (“[i]n any event, *notwithstanding the correct interpretation of article 12(2), article 127(2) establishes an important safeguard* where a State Party withdraws from the Statute” by “preclud[ing] a withdrawing State Party depriving the Court of the exercise of its jurisdiction, if such a matter is already under consideration before the withdrawal becomes effective”, emphasis added).

³⁶ *Contra* [Appeal Brief](#), paras. 16, 23.

³⁷ [Appeal Brief](#), paras. 14, 17.

³⁸ See [Appeal Brief](#), paras. 14-16.

³⁹ See [Decision](#), paras. 46, 48, 77, 81, 84.

⁴⁰ *Contra* [Appeal Brief](#), paras. 18-21.

⁴¹ *But see further above* para. 9; *below* paras. 56-58. If the Chamber’s view of articles 12(2) and 13(c) is incorrect, then a conflict with article 127(2) would not necessarily arise—but this would still lead to the same result that the Court is lawfully exercising its jurisdiction in this situation.

⁴² *Contra* [Appeal Brief](#), para. 21.

⁴³ *Contra* [Appeal Brief](#), para. 22 (emphasis supplied).

B. The Chamber correctly found that a preliminary examination can be a “matter under consideration” for the purpose of article 127(2) (Ground Two)

23. Article 127(2) provides, materially, that the “withdrawal” of a State Party 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.”⁴⁴ Notably, in this situation, the Prosecution had announced the opening of a preliminary examination on 8 February 2018. Only thereafter did the Philippines deposit its written notification of withdrawal (on 17 March 2018), taking effect on 17 March 2019.⁴⁵

24. In its second ground of appeal, the Defence claims that the Chamber erred in law by: incorrectly interpreting the terms “matter”⁴⁶ and “under consideration” in article 127(2);⁴⁷ relying upon the “subsequent practice” of the Philippines,⁴⁸ and; incorrectly recognising jurisdictional continuity from preliminary examination to investigation.⁴⁹ Since the Defence fails to show error in any of these respects, the second ground of appeal should be dismissed.

B.1. The Chamber correctly interpreted the term “any matter”

25. The Chamber interpreted the term “matter” carefully according to the principles of the VCLT, analysing both the ordinary meaning of the term and the context provided by the other elements of the phrase in which the term is situated.⁵⁰ It specifically addressed the Defence arguments with regard to the drafting history of the Statute, and the possible significance of the terms used in other equally authentic versions of the Statute (such as in French and Chinese).⁵¹ On this basis, it concluded that “matter” for the purpose of article 127(2) “is a broad general term which can therefore include alleged crimes under consideration during a preliminary examination.”⁵²

26. The Defence alleges that the Chamber’s conclusion was “overly broad” because it “reduced the concept to a mere ‘concern’ or even just a ‘thought’”, and because it “failed to give due weight to the more restrictive language employed in other language versions of the Statute”. In its view, the Chamber “erred by resorting to its subjectively formed opinion as to

⁴⁴ [Statute](#), art. 127(2).

⁴⁵ [Decision](#), para. 43. *See also* [Appeal Brief](#), para. 5. The Prosecution subsequently requested authorisation to open an investigation on 24 May 2021, and this was granted by the Pre-Trial Chamber on 15 September 2021.

⁴⁶ *See* [Appeal Brief](#), paras. 27-29.

⁴⁷ *See* [Appeal Brief](#), paras. 30-37.

⁴⁸ *See* [Appeal Brief](#), paras. 38-42.

⁴⁹ *See* [Appeal Brief](#), paras. 43-46.

⁵⁰ [Decision](#), paras. 51-52. *See also above* paras. 12-15; *below* para. 28.

⁵¹ [Decision](#), paras. 53-55.

⁵² [Decision](#), para. 51.

the purpose of the Statute, without any attempt at linguistic reconciliation.”⁵³ Each of these claims is incorrect.

27. First, the Defence mischaracterises the Chamber’s reasoning and conclusion. Nothing in the Decision suggests that the Chamber considered that a mere “concern” or “thought” would suffice to establish the existence of a relevant “matter” for the purpose of article 127(2). Rather, the Defence takes out of context individual words even from within the dictionary definitions quoted by the Chamber.⁵⁴ The Chamber’s actual conclusion was that the term “matter” 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’.”⁵⁵ As such, it did not conclude that “a mere prosecutorial ‘thought’” would suffice for the purpose of article 127(2).⁵⁶ Rather, it held that “matter” could encompass the object of the preliminary examination process, and did so in this situation.⁵⁷ This contextual approach—considering not only particular terms, but also their significance within a phrase—is consistent with the principles of the VCLT.⁵⁸

28. The Defence ignores important further aspects of the Chamber’s reasoning which confirm its conclusion. Notably, the Chamber took account that article 127(2) refers not simply to “matter” but to “*any matter*”.⁵⁹ This “makes even clearer that this is a broad general term rather than one which has been limited by the drafters to something more specific.”⁶⁰ As the Chamber continued to note, if the drafters of the Statute had intended to limit the scope of article 127(2) to a particular stage of proceedings, they could easily have done this by using an express term such as “‘trial’ or ‘investigation’”—but they did not.⁶¹ The Chamber also noted the drafting history of article 127(2)⁶²—which the Defence again does not address.

⁵³ [Appeal Brief](#), paras. 27-29.

⁵⁴ See e.g. [Decision](#), para. 51 (“The first is ‘[a] thing, affair, *concern*’; and the second is ‘[t]hat which constitutes or forms the basis of *thought*, speech, or action’. 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’, emphasis added, quoting *Oxford English Dictionary*, “matter, n.”, I, I.1.a, II)

⁵⁵ [Decision](#), para. 51 (emphasis added).

⁵⁶ *Contra* Appeal Brief, para. 27.

⁵⁷ See [Decision](#), paras. 57-61. See further below paras. 34-37, 42.

⁵⁸ See [Decision](#), para. 53 (referring not just to “the term ‘matter’” but also to the phrase “‘any matter which was already under consideration by the Court’”).

⁵⁹ [Statute](#), art. 127(2) (emphasis added).

⁶⁰ [Decision](#), para. 52 (continuing: “In particular, the use of the words “any matter” do not limit this phrase to any specific phase of the proceedings”).

⁶¹ [Decision](#), para. 52.

⁶² See [Decision](#), paras. 53-54 (noting that reference to the preparatory work of the Statute was unnecessary in the circumstances, but recalling that in any event the substitution of the phrase “any matter [...] already under

29. Second, the Defence misconceives the correct approach to differences between equally authentic linguistic texts. As the Chamber correctly recalled, “each of the six language versions” of the Statute is “equally authentic”, and if those 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.’”⁶³ This plainly contradicts the Defence claim that the “Chamber appears to suggest that the outcome of certain litigation may depend on which version of the Statute is used or the language preferred by the presiding judge.”⁶⁴ By complaining that the Decision failed to give “due weight” to alternative linguistic terms (especially the term “*affaires*” in French), the Defence merely seeks to substitute its preferred interpretation for that reached by the Chamber on the basis of the correct legal method.⁶⁵

30. In particular, the Defence incorrectly implies that, where equally authentic linguistic texts differ in meaning, there is a legal obligation to adopt the *narrower* term.⁶⁶ This is inconsistent with the approach expressly set out in article 33(4) of the VCLT.⁶⁷ It is also wrong in principle—the Defence approach would disregard the *equal authenticity* of the two texts, and instead mean that the narrower construction must always prevail. To the contrary, as recognised in the Decision, it may be possible to reconcile the relevant terms through the ordinary application of the principles in articles 31 and 32 of the VCLT. If not, the “*best*” interpretation should be adopted (rather than the *narrowest* interpretation) consistent with the object and purpose of the treaty.

31. This is just what the Chamber did. In its view, “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”.⁶⁸ But even if it did,⁶⁹ the Chamber then concluded that the “best”

consideration” for the phrase “proceedings already commenced” suggests that “the drafters ultimately chose the broader phrase” and that this is “consistent with the Chamber’s above finding”).

⁶³ [Decision](#), para. 55 (citing [Statute](#), art. 128; [VCLT](#), art. 33(4)).

⁶⁴ [Appeal Brief](#), para. 28.

⁶⁵ *Contra* [Appeal Brief](#), paras. 28-29.

⁶⁶ *Contra* [Appeal Brief](#), para. 29 (“if a term in one version of the Statute possesses either a broad or narrow meaning (‘matter’) while its parallel term in another language version of the Statute has *only* a narrow meaning (such as the French word ‘*affaires*’), the logical solution would be to adopt the common denominator, *i.e.* the narrower interpretation”).

⁶⁷ [VCLT](#), art. 33(4) (“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, shall be adopted”).

⁶⁸ [Decision](#), para. 55.

⁶⁹ *Cf.* [Appeal Brief](#), para. 28 (fn. 30: asserting without further elaboration that “the word ‘*affaires*’ in the French version does detract from the broad meaning of the word ‘matter’”, underlining supplied). *But see* [Decision](#), para. 55 (emphasising that, “[i]f at all, the discrepancies to which the Defence refers merely highlight the need to have [...] reference to the context of the provision and the object and purpose of the Statute”).

interpretation is in any event the broader meaning consistent with the English version, based on the object and purpose of the Statute.⁷⁰ The Defence shows no error in this conclusion.⁷¹

B.2. The Chamber correctly interpreted the term “under consideration”

32. The Chamber likewise interpreted the term “under consideration” carefully according to the principles of the VCLT. It concluded that, in its ordinary meaning, this term could encompass the process of preliminary examination conducted by the Prosecution.⁷² The Chamber expressly rejected the Defence argument that the preliminary examination process is “too informal in nature”, based not only on its statutory foundation but also the manner in which the preliminary examination was actually conducted in this situation.⁷³

33. Without directly contesting the Chamber’s understanding of the phrase “under consideration”, the Defence alleges that the Chamber erred in considering that a “preliminary examination is a statutory process”.⁷⁴ It argues that “an internal prosecutorial concern or random interest in a situational crisis at the pre-investigation stage cannot, and must not, take precedence over a State’s sovereign decision to withdraw from the Rome Statute.”⁷⁵ This mischaracterises the Decision, both with regard to the process contemplated in the Statute and the actual practice of the Prosecution, and the interests of a State Party.

34. First, a preliminary examination is undoubtedly a statutory process, as the Chamber found.⁷⁶ Any contrary view is unsustainable.⁷⁷ In particular, the requirement for a preliminary examination follows from article 15 of the Statute and rules 46-50 (in the context of a *proprio motu* situation) and article 53(1) of the Statute and rules 104-110 (in the context of a referred situation).⁷⁸ Without a preliminary examination, the Prosecutor would not be in a proper

⁷⁰ [Decision](#), para. 55.

⁷¹ *Contra* [Appeal Brief](#), para. 28. *See further above* paras. 12-15; *below* paras. 51-55.

⁷² [Decision](#), para. 56. *See also* para. 61. *See also above* paras. 12-15, 27-28.

⁷³ [Decision](#), paras. 57-58, 60. *See also* para. 59 (rejecting the Defence argument that activities for which a Pre-Trial Chamber was specifically assigned under regulation 46(2) should be excluded). To the extent that the Defence seeks to maintain this position, it shows no error: *cf.* [Appeal Brief](#), para. 31 (fn. 35).

⁷⁴ [Appeal Brief](#), para. 30.

⁷⁵ [Appeal Brief](#), para. 35.

⁷⁶ *See* [Decision](#), para. 57.

⁷⁷ *Contra* [Appeal Brief](#), paras. 30 (“[n]o statutory provisions govern the nature and conduct of a preliminary examination”), 31 (“the Prosecutor is at liberty to conduct such preliminary examination as he or she wishes”), 32 (“completely discretionary”), 33 (“no special statutory status [...] non-justiciable and [...] legally non-consequential nature”).

⁷⁸ *See e.g.* [Statute](#), arts. 15(2) (“the Prosecutor *shall analyse* the seriousness of the information received”, emphasis added), 15(6) (referring to the Prosecutor “*considering* further information”, emphasis added, if re-opening a preliminary examination), 53(1) (referring to the Prosecutor “having *evaluated* the information made available”, “*deciding whether* to initiate an investigation”, and setting out the factors which the Prosecutor “*shall consider*”, emphasis added). *See also* [Decision](#), para. 57 (noting that the reference in article 15(6) 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)”).

position to activate the procedures contemplated in articles 15(3) and 53(1)—in just the same way that, without carrying out an investigation, the Prosecutor would not be in a proper position to activate the procedure contemplated in article 58(1).

35. The Defence is likewise wrong to assert that the Statute and Rules “do not regulate [the conduct of] a preliminary [examination]”.⁷⁹ To the contrary, for example, rule 48 obliges the Prosecutor to consider certain factors when carrying out a preliminary examination *proprio motu*, and article 53(1) fulfils the same function for referred situations.⁸⁰ The fact that some procedural measures to preserve evidence are discretionary in nature does not mean that the preliminary examination *as a whole* lacks a sufficient statutory foundation for the purpose of article 127(2).⁸¹ The discretionary nature of evidence preservation measures in particular is explained by the fact that they are not necessary in every situation.

36. Second, the actual practice of the Prosecution—both in general, and in this situation—underlines the substantial nature of a preliminary examination as an “active and focused inquiry leading to a specific legal conclusion”.⁸² In this regard, contradicting the Defence claims,⁸³ the Decision accepted that: the opening of a preliminary examination is generally publicly announced;⁸⁴ it may necessitate collateral procedural measures (such as for the preservation of evidence, or for protecting relevant persons); it is inherently connected to a subsequent

⁷⁹ *Contra* [Appeal Brief](#), para. 31.

⁸⁰ See [ICC RPE](#), rule 48. See also [ICC-02/17-138 OA4](#) (“Afghanistan Article 15(4) Appeal Judgment”), paras. 34-37 (explaining that these factors are to be considered by the Prosecutor for the purpose of the preliminary examination only, and are not to be assessed by the Pre-Trial Chamber for the purpose of its own assessment under article 15(4)). For the Prosecution’s view that the factors in rule 48 are non-exhaustive, see further [ICC-ROC46\(3\)-01/24-3](#), paras. 15-19. By contrast, for referred situations, the factors to be considered by the Prosecutor in carrying out a preliminary examination are not only prescribed expressly but also exhaustively: [Statute](#), art. 53(1). Consistent with this distinction between *proprio motu* and referred situations, the Pre-Trial Chamber has greater powers to review the outcome of a preliminary examination of referred situations: see e.g. [Statute](#), art. 53(3). *Contra* [Appeal Brief](#), para. 31 (“without judicial oversight”).

⁸¹ *Contra* [Appeal Brief](#), para. 31. The Defence quotes the dissenting view of Judge Lordkipanidze, together with (former) Judge Perrin de la Brichambaut, when analysing article 127(2), referring to the “informal nature of [...] preliminary examinations, which do not carry sufficient weight for engaging the Court’s jurisdiction”: para. 34 (quoting [Dissenting Opinion](#), para. 35). In this regard, the Prosecution notes that the question whether preliminary examinations are sufficient to fall within the scope of the second part of the second sentence of article 127(2) is not necessarily the same as the question whether they are sufficient to amount to an exercise of the Court’s jurisdiction for the purpose of articles 12(2) and 13(c).

⁸² [Decision](#), para. 58. The Prosecution does not open a preliminary examination for situations which are manifestly outside the jurisdiction of the Court: see [Regulations of the Office of the Prosecutor](#), reg. 27. In the *Ukraine* and *Palestine* situations, cited by the Defence, there was a sufficient showing of the required jurisdictional link on the basis of the relevant steps taken by Ukraine and Palestine to accept the jurisdiction of the Court under article 12(3) of the Statute: *contra* [Appeal Brief](#), para. 30 (fn. 34).

⁸³ *Contra* [Appeal Brief](#), paras. 33 (“internal process”), 35 (“internal prosecutorial concern or random interest”).

⁸⁴ While there is no absolute requirement for a public announcement (see also [Regulations of the Office of the Prosecutor](#), reg. 28), this practice (and the responses thereto) is at least consistent with the broad recognition that this is a substantial procedural step. See also [Decision](#), para. 58 (fn. 128). Cf. [Appeal Brief](#), paras. 32-33.

investigation, and; it may entail judicial decision-making by the Court.⁸⁵ It is not—and never has been—“something as trivial as a Prosecution staff member leafing through an NGO report without taking further action.”⁸⁶

37. Further supporting its analysis, the Chamber noted the procedural steps that were actually taken in the preliminary examination in this situation.⁸⁷ In this way, it stressed that its finding that article 127(2) was engaged was “not an automatic exercise”.⁸⁸ It need not be decided in this appeal whether the Chamber correctly implied that not *every* preliminary examination would satisfy article 127(2).⁸⁹ What matters is that the Chamber found the preliminary examination in *this* situation to be consistent with—and corroborative of—the correct interpretation of “matter under consideration” for the purpose of article 127(2).

38. Third, there is no inconsistency between the Chamber’s interpretation of article 127(2) and the interests of States Parties.⁹⁰ Nothing in article 127(2) impedes a State Party’s ability to withdraw from the Statute. Rather, article 127(2) provides that a State Party may not, by its withdrawal, frustrate a matter under consideration by the Court—and thus deprive its own population of the very protection obtained by acceding to the Statute in the first place.⁹¹ Consistent with its broader reasoning concerning the object and purpose of the Statute, and based on the substantial nature of the preliminary examination process as outlined above, the Chamber rightly concluded that a preliminary examination can fall within article 127(2), as in this situation.⁹² The Defence concern about the supposedly open-ended nature of this conclusion does not arise, since preliminary examinations are no more open-ended than investigations.⁹³ In both respects, what matters is that the Court and the Prosecutor are able to act independently in concluding these procedures in accordance with the Statute.

⁸⁵ [Decision](#), para. 58. Importantly, the fact that the Court may not compel the cooperation even of States Parties for the purpose of a preliminary examination does not mean that these measures are not sufficiently substantial—for example, measures seeking the cooperation of a non-State Party even at trial are likewise non-compulsory, but still reflect the Court’s exercise of jurisdiction: [Prosecution Response to Jurisdictional Challenge](#), paras. 69-70.

⁸⁶ *Contra* [Appeal Brief](#), para. 33. *See further* [Prosecution Response to Jurisdictional Challenge](#), paras. 64-68.

⁸⁷ [Decision](#), para. 58.

⁸⁸ [Decision](#), para. 60.

⁸⁹ *Cf.* [Appeal Brief](#), paras. 36-37. Yet even if the Chamber were wrong to conclude that it was vested with discretion to determine that a *particular* preliminary examination did *not* meet the requirements of article 127(2), it was nevertheless unequivocal in its view, in principle and as a matter of law, that a preliminary examination *can* meet those requirements. Thus, even if the Chamber’s caution in paragraph 60 of the Decision were misplaced, this does not invalidate the correctness of its reasoning in the remainder of the Decision.

⁹⁰ *Contra* [Appeal Brief](#), paras. 35, 37.

⁹¹ *See* [Decision](#), paras. 70-72. *See also above* paras. 4-5, 13-15; *below* paras. 53-55.

⁹² [Decision](#), para. 61. *See further above* paras. 12-15, 34-37; *below* paras. 51-55.

⁹³ *Contra* [Appeal Brief](#), para. 35.

B.3. The Chamber did not err in its approach to the subsequent practice of the Philippines

39. In a single paragraph of the Decision, the Chamber further “note[d]” that even after its withdrawal from the Statute had taken effect, “the Philippines continued to engage with the Court”. While the Chamber considered that this “lends further support” to its conclusion concerning the correct interpretation of article 127(2),⁹⁴ its reasoning makes clear that this was not essential to the conclusion.⁹⁵ For the same reason that the Appeals Chamber should place limited weight on a withdrawing State Party’s opposition to the Court’s continued jurisdiction, only limited weight may be placed on apparent indications of a withdrawing State Party’s agreement or acquiescence.⁹⁶ Neither is dispositive. The Defence merely provides its own preferred interpretation of the Philippines’ practice, and suggests additional practice. It shows no error in the Decision.⁹⁷

B.4. The Chamber correctly recognised jurisdictional continuity from preliminary examination to investigation

40. The Chamber correctly concluded that, if the preliminary examination in this situation is a matter under consideration for the purpose of article 127(2), then the Court’s jurisdiction is likewise preserved over the ensuing *investigation*.⁹⁸ The Chamber explained that this is a “direct consequence” of article 127(2), which states that “a State’s withdrawal [...] ‘shall not [...] prejudice in any way the continued consideration’ of matters to which the second part of the second sentence applies.”⁹⁹

41. The Defence shows no error in this view. To the contrary, if article 127(2) preserves the right to continue a preliminary examination notwithstanding the withdrawal of a relevant State Party (as it does), it would be illogical to find a legal bar to initiating an investigation as the *consequence* of that preliminary examination. This would clearly amount to the “prejudice” which article 127(2) expressly precludes. In this regard, it is irrelevant that different organs of the Court conduct different stages or components of this process.¹⁰⁰ The use of broad terms in article 127(2) such as “any matter” and “the Court” underlines that the drafters sought to avoid such a counter-productive interpretation.¹⁰¹

⁹⁴ [Decision](#), para. 69.

⁹⁵ *Contra* [Appeal Brief](#), para. 38. This is also consistent with the fact that the Chamber looked only at the practice of a single State: *cf.* [Appeal Brief](#), para. 39.

⁹⁶ *Cf.* [Appeal Brief](#), paras. 39-42. *But see also* [Article 18\(2\) Appeal Judgment](#), para. 56.

⁹⁷ *Contra* [Appeal Brief](#), paras. 40-42.

⁹⁸ *See* [Appeal Brief](#), para. 43 (distinguishing between continuation of the preliminary examination and “whether the Court, in its judicial capacity, can exercise jurisdiction [...] and open an investigation”).

⁹⁹ [Decision](#), para. 77 (emphasis supplied).

¹⁰⁰ *Contra* [Appeal Brief](#), para. 44.

¹⁰¹ *See above* paras. 27-28; *below* paras. 44-47.

42. While the Defence raises further semantic questions about the precise use of the term “matter” in different parts of the Decision, these likewise show no error.¹⁰² From the Decision as a whole, it is clear that the Chamber understood the relevant “matter” to be those allegations which formed the basis for the preliminary examination and, thereafter, for the authorised investigation.¹⁰³ This does not imply that the consideration of those allegations was limited to any particular procedural stage.

C. The Chamber correctly found that the “Court” for the purpose of article 127(2) includes the Office of the Prosecutor (Ground Three)

43. In its third ground of appeal, the Defence challenges the Chamber’s interpretation of the term “the Court” in article 127(2) as including the Office of the Prosecutor.¹⁰⁴ Since the Defence fails to show any error, the third ground of appeal should be dismissed.

44. The Chamber’s reasoning again reflects the correct approach to interpreting the Statute, according to the principles of the VCLT. The Chamber acknowledged that “the ordinary meaning of the word ‘court’ could refer solely to the judicial Chambers of this Court”, but that it could *also* refer to the “specific institution of the International Criminal Court” as illustrated expressly by article 1 of the Statute.¹⁰⁵ Emphasising that the drafters declined to employ a more specific term in article 127(2) such as “the Chamber”, the Decision further considered the context of article 127(2) as well as the object and purpose of the Statute.¹⁰⁶ In particular, the Chamber considered both the internal context within article 127(2), and the external context provided by other provisions.¹⁰⁷

45. The Defence fails to show any error in the Decision, but rather merely disagrees with it, repeating its first instance submissions.¹⁰⁸ While the Defence maintains that “52 references to ‘the Court’ in the official texts did not include the [Prosecution]”, this is beside the point.¹⁰⁹ As the Chamber rightly acknowledged, there are multiple *other* provisions where “the Court” *does* include the Prosecution.¹¹⁰

¹⁰² *Contra* [Appeal Brief](#), paras. 45-46.

¹⁰³ See [Decision](#), para. 76.

¹⁰⁴ See [Appeal Brief](#), paras. 47-54.

¹⁰⁵ [Decision](#), para. 62. See [Statute](#), art. 1 (referring to the “International Criminal Court (‘the Court’)”).

¹⁰⁶ [Decision](#), para. 63. On object and purpose, *see further above* paras. 12-15; *below* paras. 51-55.

¹⁰⁷ [Decision](#), paras. 65-66.

¹⁰⁸ [Appeal Brief](#), para. 47.

¹⁰⁹ *Contra* [Appeal Brief](#), para. 47 (fn. 52). See also [Prosecution Response to Jurisdictional Challenge](#), paras. 80-82; D. Borden, ‘The ICC has jurisdiction over Rodrigo Duterte’s Drug War crimes,’ *Just Security*, 7 August 2025 (“the defense’s [sic] analysis only reflects the treaty’s 40 instances of ‘by the Court’. There are more than 300 other instances where the treaty references ‘the Court’, some plainly indicating the Prosecutor”).

¹¹⁰ See [Decision](#), para. 65 (fn. 139: citing [Statute](#), arts. 1, 4, 42, 48, 86, 112(2), 113-116, 118).

46. In particular, article 1 of the Statute defines the term “the Court” as pertaining to the whole institution. This is reiterated in article 34 which “provides that ‘the Court’ is composed of four organs, one of which is ‘The Office of the Prosecutor’.”¹¹¹ The Chamber was thus correct in concluding that the correct meaning of the term “the Court” in any particular provision—referring to judicial Chambers, the Office of the Prosecutor, or both, or indeed the Presidency and the Registry—“depends upon the context of the provision.”¹¹²

47. Considering the internal context of article 127(2), the Chamber concluded that the term “the Court” should be understood in the same way on *both* occasions it is used in the second sentence. Since the usage of “the Court” in the first part of the second sentence (relating to cooperation) “clearly includes the Prosecution”, the same meaning should apply in the second part. As the Chamber further noted, this conclusion is consistent with the mandate of the Office of the Prosecutor, since “[i]t is the Prosecution that would be expected to be considering matters that form the subject-matter of preliminary examinations and investigations”.¹¹³

48. The Defence challenges two aspects of this reasoning. First, the Defence asserts that the Statute “does *not* explicitly permit the Prosecutor to promulgate requests for cooperation”, and suggests that there is no legal authorisation for it to do so.¹¹⁴ This is wrong. For example, the Defence fails to address—let alone show any error in—the Chamber’s observation that “it is clear that the Prosecution *can* make a formal request for cooperation under article 93(1)(e) of the Statute”.¹¹⁵ Moreover, the Defence does not address rule 176(2) which states expressly that “[t]he Office of the Prosecutor shall transmit the *requests for cooperation made by the Prosecutor* and shall receive the responses, information and documents from requested States.”¹¹⁶ This is further supported by article 54(3)(c) of the Statute, which empowers the Prosecutor to “[s]eek the cooperation of any State or intergovernmental organisation or arrangement”. Likewise, article 93 can only be read coherently to include the Prosecution

¹¹¹ [Decision](#), para. 65. See [Statute](#), art. 34.

¹¹² [Decision](#), para. 65 (including fn. 140).

¹¹³ [Decision](#), para. 66.

¹¹⁴ [Appeal Brief](#), para. 49 (emphasis supplied).

¹¹⁵ [Decision](#), para. 66 (fn. 142, emphasis added). See also [ICC-01/21-01/25-40-Conf](#), para. 13, and Disposition.

¹¹⁶ [ICC RPE](#), rule 176(2) (emphasis added). See also rule 176(4) (using the term “the Court” to encompass the transmission by both the Registry and the Prosecution of requests for cooperation and assistance from an international organisation).

within the use of the term “the Court”.¹¹⁷ Thus, the Defence is incorrect to suggest that references to “the Court” in Part 9 “refer[] exclusively to the judiciary.”¹¹⁸

49. Second, the Defence incorrectly asserts that the Chamber should have given special account to article 95 merely because it uses the phrase “consideration by the Court”.¹¹⁹ There is nothing especially salient in this provision—which concerns the postponement of execution of Part 9 requests when an admissibility challenge or similar matter is pending before the Pre-Trial Chamber under articles 18 or 19—for the purpose of interpreting article 127(2). This is especially so given the careful contextual analysis undertaken by the Chamber.¹²⁰

50. The Defence is also incorrect when it claims that “whenever the word ‘Court’ is juxtaposed in the Rome Statute with some variation of the word ‘consider’, the language is *always* intended to denote the judiciary.”¹²¹ The Statute does not exclusively reserve the verb “consider” for judicial deliberation. Notably, article 15(6) refers to the Prosecutor “considering” information for the purpose of preliminary examination of a *proprio motu* situation, and article 53(1) refers to the factors which “the Prosecutor shall consider” for the purpose of preliminary examination of a referred situation.¹²² Since the Court can include the Prosecution,¹²³ and both judicial Chambers of the Court and the Prosecution can “consider” a matter, it is immaterial for the purpose of interpreting article 127(2) whether and to what extent the Statute may also refer to “the Court” (meaning a judicial Chamber) “considering” a matter. Likewise, for the reasons above, the Defence’s resort to other linguistic versions of the Statute shows no error in the Decision.¹²⁴

¹¹⁷ See e.g. [Statute](#), art. 93(6) (“If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial”, emphasis added). While this provision distinguishes between “the Court” and “the Prosecutor” for reasons of clarity, it illustrates that the preceding sub-provisions referring only to “the Court” did so in the sense of article 34 (encompassing the Prosecution, and not merely referring to a judicial chamber). See e.g. art. 93(1)-(5). See also art. 93(10) (providing that “[t]he Court may, upon request, cooperate with and provide assistance to a State Party”). For this purpose, while such requests are first sent to the Registrar, they are then to be “transmit[ted] [...], as appropriate, either to the Prosecutor or to the Chamber concerned”, and it is then either the Prosecutor or the Chamber which “decides” whether “to grant the request”: see [ICC RPE](#), rule 194(2), (4)-(5).

¹¹⁸ *Contra* [Appeal Brief](#), para. 49.

¹¹⁹ *Contra* [Appeal Brief](#), paras. 50, 54.

¹²⁰ See [Decision](#), paras. 65-66.

¹²¹ *Contra* [Appeal Brief](#), para. 51.

¹²² See also [Statute](#), arts. 53(3)-(4) (referring to the Prosecutor “reconsider[ing] a decision whether to initiate an investigation or prosecution”), 56(1) (referring to the Prosecutor “consider[ing]” an investigation to present a unique investigative opportunity), 61(7)(c) (referring to the Prosecutor “consider[ing]” whether to provide further evidence or conduct a further investigation with regard to a particular charge, or to amend a charge).

¹²³ See *above* paras. 44-47.

¹²⁴ *Contra* [Appeal Brief](#), paras. 51-53. Even if the Chinese or Spanish versions of the Statute employ terms with a different and narrower meaning to other linguistic versions, this does not mean that these alternative versions must be adopted but, rather, that if the different linguistic versions cannot be reconciled, then the “best”

D. The Chamber correctly referred to the object and purpose of the Statute (Ground Four)

51. In its fourth ground of appeal, the Defence criticises the Decision as a “policy-oriented determination”,¹²⁵ based on the Chamber’s view that it would be contrary to the object and purpose of the Statute “to enable a State Party to evade its responsibilities” by withdrawing from the Statute once alleged crimes on its territory are under preliminary examination.¹²⁶ The Defence’s criticism takes the Chamber’s reasoning out of context and shows no error. The fourth ground of appeal should be dismissed.

52. As explained above, the Chamber carefully interpreted article 127(2) according to the principles of the VCLT.¹²⁷ This necessarily entailed consideration of the object and purpose of the Statute—indeed, it would have been erroneous for the Chamber *not* to do so. But, equally, it is clear from the Decision (and the preceding submissions) that the Chamber did not *only* rely on its understanding of the object and purpose of the Statute. Rather, it did so alongside the ordinary meaning of the relevant terms in their relevant context.

53. The Defence seems to claim that the Chamber’s interpretation of article 127(2) was not, in fact, consistent with the object and purpose of the Statute.¹²⁸ Yet it asserts no error in the Chamber’s definition of that object and purpose.¹²⁹ Rather, it takes issue with the Chamber’s reasoning that this object and purpose “confirms an interpretation of article 127(2)” in which the preliminary examination process is “encompassed by the phrase ‘any matter which was already under consideration by the Court.’”¹³⁰ In that context, it was not necessary for the Chamber to exclude or discount all other conceivable means by which the object and purpose of the Statute could be promoted. The Defence’s subjective view of the sufficiency of the “one-year” withdrawal period under article 127(1) is immaterial.¹³¹ In any event, the Chamber *did* take account of the function of article 127(1), but considered this to support its view that the

interpretation should be adopted consistent with the object and purpose of the treaty: *see above* paras. 29-31; [VCLT](#), art. 33(4).

¹²⁵ [Appeal Brief](#), para. 55.

¹²⁶ [Decision](#), para. 71.

¹²⁷ *See above* paras. 12-15, 25, 27, 29-32, 44.

¹²⁸ *See* [Appeal Brief](#), paras. 56-57. To the extent the Defence also asserts that there was “no conflict or lacuna that would justify perverting the preexisting statutory regime set out in Article 127”, it appears to misunderstand the required interpretive approach under article 31 of the VCLT, which makes reference to the object and purpose as an integral part of all treaty interpretation: *see* [VCLT](#), art. 31(1).

¹²⁹ *See* [Decision](#), para. 70.

¹³⁰ [Decision](#), para. 70.

¹³¹ *Contra* [Appeal Brief](#), paras. 56-57. *See further* [Prosecution Response to Jurisdictional Challenge](#), para. 91 (explaining the basis for the submission that it may not always be practicable to initiate an investigation within the one-year period).

object and purpose of the Statute favoured a broader interpretation of article 127(2).¹³² The Defence does not show how this was erroneous.

54. Likewise, the Chamber expressly weighed the “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.”¹³³ The Defence shows no error in this analysis.

55. While the Chamber did (as a factual matter) draw a conclusion concerning the Philippines’ apparent motivation for withdrawing from the Statute in the circumstances,¹³⁴ this did not form part of its legal assessment in interpreting article 127(2). Significantly, the Chamber did *not* interpret article 127(2) in the manner in which it did *because* it disapproved of the Philippines’ apparent motivation. Rather, it drew upon the facts in this situation as an *example* of the very harm that article 127(2) was designed to prevent, consistent with the broader object and purpose of the Statute.¹³⁵ Reading the Decision as a whole (and in light of the broader facts of the situation), the Defence claim that the careful reasoning in the Decision was “policy-driven” or that the preliminary examination process was (or could be) used “to frustrate legitimate withdrawal” is baseless.¹³⁶ To the contrary, the Philippines *has* withdrawn from the Statute, as it was entitled to do. But this does not mean that it discharged the obligations arising from its former status as a State Party,¹³⁷ or that its population could retroactively be deprived of the protections of the Statute.

E. Even if the Chamber had erred in its interpretation of article 127, this would not have materially affected the Decision

56. Finally, even if the Chamber had erred in interpreting article 127, this would not have materially affected the Decision. As explained above, the Chamber considered that article 127(2) preserved the Court’s exercise of jurisdiction, notwithstanding a narrow interpretation of articles 12(2) and 13(c) (which it adopted as an *obiter dictum*, with very limited reasoning). Accordingly, if article 127(2) were found *not* to preserve the Court’s exercise of jurisdiction, the question would still remain whether the Chamber’s narrow (*obiter*) interpretation of articles

¹³² [Decision](#), para. 71.

¹³³ [Decision](#), para. 75.

¹³⁴ See [Decision](#), para. 74. See also paras. 72-73 (setting out relevant factual considerations leading to this conclusion). The Defence does not squarely assert that this conclusion was unreasonable: cf. [Appeal Brief](#), para. 58 (“By speculating on the reasons for the Philippines’ withdrawal, the [...] Chamber unduly relied on a subjective political critique”).

¹³⁵ Compare e.g. [Decision](#), para. 74, with para. 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”).

¹³⁶ Contra [Appeal Brief](#), para. 58. See also [Statute](#), art. 42(3).

¹³⁷ [Statute](#), art. 127(1).

12(2) and 13(c) was correct.¹³⁸ In particular, it would need to be determined: (i) whether these provisions require that a State has the status of a State Party *both* at the time the alleged crimes were committed *and* also when the Court’s exercise of jurisdiction is triggered, *and*; (ii) whether a preliminary examination amounts to a sufficient exercise of jurisdiction for this purpose.

57. At first instance before the Chamber, the Prosecution explained the basis for its view that, correctly interpreted, articles 12(2) and 13(c) require only that a State has the status of a State Party at the time the alleged crimes were committed.¹³⁹ In particular, the Prosecution highlighted that the apparent use of the present simple tense in article 12(2)—considered in isolation—should not be dispositive.¹⁴⁰ Rather, it submitted that a broader reading of articles 12(2) and 13(c) is more consistent with the general concept of “preconditions to the exercise of jurisdiction”,¹⁴¹ the majority of the Court’s prior caselaw,¹⁴² the context provided by articles 11(2), 12(1), and 29 of the Statute,¹⁴³ the object and purpose of the Statute,¹⁴⁴ and the broader framework of customary international law.¹⁴⁵ Given its view of articles 12(2) and 13(c), the Prosecution did not consider it necessary to address whether a preliminary examination could amount to a sufficient exercise of jurisdiction but expressly reserved its position.¹⁴⁶

58. Given the very limited reasoning on these issues in the Decision¹⁴⁷—which the Chamber did not consider essential to its conclusion on article 127(2)¹⁴⁸—and the limited position taken by the Defence in the Appeal Brief,¹⁴⁹ the Prosecution does not examine further the merits of these issues here. Rather, it respectfully proposes that, *if* the Appeals Chamber were to consider it necessary, the Appeals Chamber could invite the parties and participants under regulation 28 to make concise further submissions on these questions.

¹³⁸ See *above* para. 9.

¹³⁹ See [Prosecution Response to Jurisdictional Challenge](#), paras. 14-47.

¹⁴⁰ See [Prosecution Response to Jurisdictional Challenge](#), paras. 22-24.

¹⁴¹ See [Prosecution Response to Jurisdictional Challenge](#), para. 26.

¹⁴² See [Prosecution Response to Jurisdictional Challenge](#), paras. 25, 33-35, 37.

¹⁴³ See [Prosecution Response to Jurisdictional Challenge](#), paras. 27-32, 36.

¹⁴⁴ See [Prosecution Response to Jurisdictional Challenge](#), paras. 38-43.

¹⁴⁵ See [Prosecution Response to Jurisdictional Challenge](#), paras. 44-46.

¹⁴⁶ See [Prosecution Response to Jurisdictional Challenge](#), para. 62.

¹⁴⁷ See [Decision](#), paras. 79-80.

¹⁴⁸ [Decision](#), para. 78 (“not strictly necessary”). For this reason, the ruling on this point can be considered an *obiter dictum* and not part of the *ratio decidendi* of the Decision.

¹⁴⁹ See [Appeal Brief](#), paras. 2, 6-7.

CONCLUSION

59. For the reasons set out above, the Appeals Chamber should dismiss the Appeal in its entirety, and thereby affirm the Court's exercise of jurisdiction in the present case.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 8th day of December 2025

At The Hague, the Netherlands