

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/21-01/25
Date: 16 January 2026

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' Further Submissions on 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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☐ Unrepresented Victims

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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”), appointed to represent the collective interests of potential victims until the mandate of the team of common legal representatives takes effect,¹ hereby files her further submissions on the Defence Appeal, pursuant to the Order issued on 16 December 2025 by the Appeals Chamber in the matter (the “Order”).²

II. PROCEDURAL BACKGROUND

2. On 1 May 2025, the Defence filed a challenge to the jurisdiction of the Court (the “Defence Challenge”).³ On 9 June 2025, the Legal Representative and the Office of the Prosecutor (the “OTP”) filed their respective responses to the Defence Challenge.⁴

3. On 23 October 2025, Pre-Trial Chamber I issued its Decision rejecting the Defence Challenge (the “Impugned Decision”).⁵

4. The Defence lodged its Notice of Appeal and Appeal Brief on 28 October 2025 and 14 November 2025, respectively.⁶ On 8 December 2025, the OTP and the Legal Representative filed their responses to the Appeal Brief.⁷

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 “Order for Further Submissions”, (Appeals Chamber), [No. ICC-01/21-01/25-340 OA3](#), 16 December 2025 (the “Order”).

³ See the “Defence Challenge with Respect to Jurisdiction”, [No. ICC-01/21-01/25-121](#), 1 May 2025 (the “Defence Challenge”).

⁴ 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; 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.

⁵ See the “Decision on the Defence Challenge to the Jurisdiction of the Court”, [No. ICC-01/21-01/25-309](#), 23 October 2025 (the “Impugned Decision”).

⁶ See the “Notice of Appeal”, [No. ICC-01/21-01/25-312](#), 28 October 2025; and the “Appeal Brief on Jurisdiction”, [No. ICC-01/21-01/25-319 OA3](#), 14 November 2025.

⁷ See the “Prosecution Response to ‘Appeal Brief on Jurisdiction’”, [No. ICC-01/21-01/25-328 OA3](#), 8 December 2025; and the “Victims’ Response to the Defence Appeal against the ‘Decision on the Defence Challenge to the Jurisdiction of the Court’”, [No. ICC-01/21-01/25-329 OA3](#), 8 December 2025.

5. On 16 December 2025, the Appeals Chamber issued the Order, inviting the OTP, the Legal Representative and the Defence to make further submissions, by 16 January 2026, on two issues, namely: (a) how should articles 12(2) and 13(c) of the Rome Statute (the “Statute”) be understood within the Court’s legal framework on jurisdiction? and (b) how do articles 12, 13 and 127 of the Statute interact? What are the consequences of such an interaction, both generally and in the specific case at hand?⁸

III. SUBMISSIONS

A. *How should articles 12(2) and 13(c) of the Statute be understood within the Court’s legal framework on jurisdiction?*

6. The Legal Representative recalls that articles 12(2) and 13(c) of the Statute provide the following:

Article 12 Preconditions to the exercise of jurisdiction

[...]

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

Article 13 Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

[...]

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

7. In relation to said provisions, the Appeals Chamber previously held that the jurisdiction of the Court or *its competence to deal with a criminal cause or matter* under the

⁸ See the Order, *supra* note 2, p. 3.

Statute is defined by the Statute itself.⁹ In particular, the Appeals Chamber opined that “[t]he notion of jurisdiction has four different facets: subject matter jurisdiction [or] *ratione materiae*, jurisdiction over persons [or] *ratione personae*, territorial jurisdiction [or] jurisdiction *ratione loci* - and lastly jurisdiction *ratione temporis*. These facets find expression in the Statute. [...] Article 5 specifies the subject-matter of the jurisdiction of the Court, namely the crimes over which the Court has jurisdiction, sequentially defined in articles 6, 7, and 8. Jurisdiction over persons is dealt with in articles 12 and 26, while territorial jurisdiction is specified by articles 12 and 13 (b), depending on the origin of the proceedings. Lastly, jurisdiction *ratione temporis* is defined by article 11.”¹⁰

8. Therefore, articles 12(2) and 13(c) of the Statute define the parameters of the Court’s personal and territorial jurisdiction once the Prosecutor has initiated a preliminary examination or investigation pursuant to article 15 within the Court’s overall legal framework on jurisdiction. According to prominent legal scholars, said provisions were an outcome of lengthy and intense negotiations of drafters of the Statute as part of a “*package deal*”¹¹ at the Rome Conference for the Establishment of the Court. This deal included: (i) the material jurisdiction of the Court provided in article 5 and defined further in articles 6, 7 and 8; (ii) the preconditions for the Court exercising its jurisdiction; and (iii) the trigger mechanism or the manner in which investigation and prosecution must be initiated at the Court.¹² The compromise made by the drafters of the Statute at the Rome Conference balanced various competing interests of the States Parties in establishing the jurisdiction of the Court (especially with nexus to the territorial State or the nationality of the defendant) while ensuring the independence of the Prosecutor.¹³

⁹ See the “Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006”, [No. ICC-01/04-01/06-772 OA4](#), 14 December 2006, paras. 21 and 24.

¹⁰ *Idem*, paras. 21-22.

¹¹ See WILLIAMS (S.A.) and SCHABAS (W.A.), *Article 12 in TRIFFTERER (O.), Rome Statute of the ICC: Article-by-Article Commentary*, 2nd Ed, Verlag C.H. Beck/Nomos, Munich/Hart Publishing, Oxford, 2021.

¹² *Idem*, pp. 555 and 567.

¹³ *Idem*, pp. 560 and 566.

B. *How do articles 12, 13 and 127 of the Statute interact? What are the consequences of such an interaction, both generally and in the specific case at hand?*

9. As mentioned *supra*, the relevant articles are necessary parts of the interwoven jurisdictional architecture of the Court, as discussed during the negotiating process.¹⁴ In this regard, the specific location of the provisions in the overall structure of the Statute and their inter-relation with other important statutory provisions constitute the context within which, according to the Appeals Chamber, the ordinary meaning to be given to the terms in question must be interpreted.¹⁵

10. Thus, articles 12(2) and 13(c) (which are found in the part of the Statute governing jurisdiction and admissibility of a case) must always to be read in conjunction with article 127 (found in the final part of the Statute affecting the entirety of its provisions) when dealing with the legal implications of withdrawal upon the jurisdiction of the Court. The terms of said provisions – when read together in their context – lead to the following main conclusions: (a) when a State becomes a Party to the Statute, it accepts the jurisdiction of the Court with respect to the crimes referred to in article 5; (b) after the Prosecutor has initiated a preliminary examination or investigation in respect of such crimes in accordance with article 15, the Court may exercise its jurisdiction if the State in question has accepted it; and (c) even if that State subsequently withdraws from the Statute, such withdrawal shall not: (i) affect any cooperation with the Court in connection with criminal investigations and proceedings which were commenced prior to the effective date of the withdrawal or; (ii) prejudice the continued consideration of any matter which was already under consideration by the Court prior to that date.¹⁶

¹⁴ *Idem*, p. 574.

¹⁵ 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. See also, ICJ, [Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan \(Indonesia and Malaysia\)](#), Judgment of 17 December 2002, para. 51.

¹⁶ See the “Victims’ Observations on the Defence Challenge with Respect to Jurisdiction”, *supra* note 4, paras. 25-30.

11. In its Challenge, the Defence argued that the Court may only exercise its jurisdiction if States in question *are* Parties to the Statute since article 12(2) uses the present simple tense of the word “*to be*.”¹⁷ Yet, the use of the present tense is not, in itself, determinative of the matter at hand. The interpretation according to which the Court can exercise its jurisdiction only if the State concerned *is still* a Party to the Statute overlooks the context of the Statute as a whole, especially given the fact that the word in question can have more than one sense depending on the circumstance within which it is interpreted.¹⁸ In this regard, the Permanent Court of International Justice held that “[...] *it is obvious that [a treaty] must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense*”.¹⁹

12. Certainly, no such interpretation of article 12(2) of the Statute, isolated from its context, can accurately reflect the genuine intention of the drafters of the Statute. As the International Court of Justice held, “[a specific choice of a word in a treaty] *obtains its meaning from the context in which it is used*” and [the true meaning of such words and expressions] *cannot be determined in isolation by recourse to its usual or common meaning [...]*” since “[if] *the context requires a meaning which connotes a wide choice, it must be construed accordingly, just as it must be given a restrictive meaning if the context in which it is used so requires*”.²⁰

13. Hence, the Pre-Trial Chamber was required not only to look into the terms of article 12(2) but also, given the specific factual circumstances of the case, into those of article 127 of the Statute. As noted, these provisions constitute, together with the object and purpose of the Statute, *the context* within which the specific wording or the tense of the word “*to be*” must be interpreted. Indeed, the International Court of Justice

¹⁷ See the Defence Challenge, *supra* note 3, para. 23.

¹⁸ See the “Victims’ Observations on the Defence Challenge with Respect to Jurisdiction”, *supra* note 4, para. 35.

¹⁹ See PCIJ, [Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture](#), PCIJ Series B, No 2, 12 August 1922, p. 23.

²⁰ See ICJ, [Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization](#), Advisory Opinion of 8 June 1960, p. 158.

(the “ICJ”) also held that the relevant texts of a treaty, read in light of their object and purpose, *as a whole* provide *the context* in which any particular provisions should be interpreted.²¹ The ICJ also held that the rule of interpretation according to the natural and ordinary meaning of the words employed is “*not an absolute one [where] such a method of interpretation results in a meaning incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained, no reliance can be validly placed on it*”.²²

14. Consequently, the context of articles 12(2), 13(c) and 127 of the Statute requires an interpretation which connotes a wider use of the word “*to be*” encompassing both its present and past tense meanings. In simpler terms, this interpretation would mean that the Court must be able to exercise its jurisdiction in relation to States that “*are*” still Parties to the Statute, as well as States that “*were*” Parties to the same. Indeed, a term in a treaty *obtains its meaning from the context in which it is used* and the true meaning of such words and expressions cannot be determined in isolation by recourse to its usual or common meaning.²³

15. Any other interpretation would defeat the object and purpose of the Statute as a whole and, in particular, the clear terms of articles 12(2), 13(c) and 127 would be completely disregarded if a State which has withdrawn from the Statute were further allowed to impede the exercise of the jurisdiction of the Court. If such were the case, the Court could never exercise its jurisdiction even when the Prosecutor had already opened its preliminary examination pursuant to article 15 of the Statute prior to the effective date of the withdrawal. In other words, the most serious crimes of concern to the international community as a whole *would go unpunished* and the effective prosecution of atrocities committed against countless victims *would not ever materialise*. As a result, the Court would be prevented from putting an end to impunity for the

²¹ See ICJ, [Maritime Delimitation in the Indian Ocean \(Somalia v. Kenya\)](#), Preliminary Objections, Judgment of 2 February 2017, para. 65.

²² See ICJ, [Arbitral Award of 31 July 1989 \(Guinea-Bissau v. Senegal\)](#), 12 November 1991, para. 48.

²³ See ICJ, [Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization](#), *supra* note 20, p. 158.

perpetrators of international crimes and thus would fail to guarantee lasting respect for and the enforcement of international justice. This interpretation is obviously irreconcilable with the letter and spirit of the Statute, and cannot therefore be accepted.²⁴

16. With regards to treaty interpretation, the ICJ also held that the object and purpose of the statute of an international court is to enable it to fulfil the functions provided therein, not being prevented from exercising its tasks entrusted by its founders.²⁵ Consequently, an interpretation of legal provisions that would render a court unable to achieve its mandate within the parameters of its founding instruments would be contrary to the object and purpose of said instruments.²⁶ As also opined by the ICTY, an overly-limiting interpretation of the concept of jurisdiction must not be allowed especially where it could jeopardise the Court's judicial character.²⁷ Such interpretation *"falls foul of a modern vision of the administration of justice"*²⁸ and thus *"in a court of law, common sense ought to be honoured not only when facts are weighed, but equally when laws are surveyed and the proper rule is selected"*.²⁹

17. In the specific circumstances of the case before the Appeals Chamber, the reasoning contained in the Impugned Decision was thus legally and factually sound.

²⁴ See ICJ, [Interpretation of Peace Treaties](#), Advisory Opinion of 18 July 1950, p. 12.

²⁵ See ICJ, [La Grand Case \(Germany v. United States of America\)](#), Judgment of 27 June 2001, para. 102. See also ICJ, [Legality of the Use by a State of Nuclear Weapons in Armed Conflict](#), Advisory Opinion of 8 July 1996, para. 19. The ICJ ruled that "[...] the constituent instruments of international organizations are also treaties of a particular type; their object is to create new subjects of law endowed with a certain autonomy, to which the parties entrust the task of realizing common goals. Such treaties can raise specific problems of interpretation owing, inter alia, to their character which is conventional and at the same time institutional; the very nature of the organization created, the objectives which have been assigned to it by its founders, the imperatives associated with the effective performance of its functions, as well as its own practice, are all elements which may deserve special attention when the time comes to interpret these constituent treaties".

²⁶ See ICJ, [La Grand Case \(Germany v. United States of America\)](#), *supra* note 25, para. 102.

²⁷ See ICTY, *Prosecutor v. Duško Tadić*, [Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction](#), (Appeals Chamber), Case No. IT-94-1-A, 2 October 1995, para. 11.

²⁸ *Idem*, para. 6.

²⁹ *Ibid.*

Indeed, the Pre-Trial Chamber held in particular that:

“[Its] interpretation of article 127 of the Statute also reflects its overall object and purpose in achieving an appropriate balance between the responsibilities that a State adopts when voluntarily ratifying the Statute and its ability to withdraw from it subsequently, while still complying with the conditions for withdrawal that it accepted when becoming a Party to the Statute. [...] Article 127 of the Statute ensures that the Court may no longer exercise its jurisdiction in relation to alleged crimes committed on a State’s territory or by its nationals after the date of its effective withdrawal from the Statute. It provides States Parties with the flexibility to withdraw from the Statute while also establishing from the outset the regime that will apply upon such a withdrawal. More specifically, article 127(2) of the Statute provides that the Court may exercise its jurisdiction over any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective. [...] The Philippines Situation is an example of a matter which was already under consideration by the Court [...] The matter that was already under consideration by the Court was the allegations of crimes committed in the Philippines. That matter was under consideration in the preliminary examination and remained under consideration when the Prosecution requested and the Chamber granted authorisation for the commencement of the investigation in the Philippines Situation”.³⁰

18. Therefore, the Pre-Trial Chamber committed no error of law with respect to its interpretation of articles 12(2), 13(c) and 127 of the Statute and the Impugned Decision should be confirmed.

Respectfully submitted.



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Principal Counsel

Dated this 16th day of January 2026

At The Hague, The Netherlands

³⁰ See the Impugned Decision, *supra* note 5, para. 75.