

**Cour
Pénale
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**International
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Court**



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Date: **23 January 2026**

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

**Defence Response to Additional Submissions on Jurisdiction
under Regulation 28 of the Regulations of the Court**

Source: Defence for Mr Rodrigo Roa Duterte

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

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I. INTRODUCTION

1. While the Appeals Chamber is undeniably entitled, *proprio motu*, to receive additional submissions on any matter it deems to be of crucial importance, the Defence submits that the issues identified in paragraphs 11(a) and (b) of the Order of 16 December 2025¹ have already been comprehensively addressed. The Defence reiterates its view that the Prosecution's resort to Regulation 28(2) of the Regulations of the Court was nothing more than a calculated attempt to obtain a second bite of the cherry on a fully litigated matter it chose not to appeal.

II. SUBMISSIONS

A. UNDERSTANDING ARTICLES 12(2) AND 13(C) OF THE ROME STATUTE WITHIN THE JURISDICTIONAL FRAMEWORK OF THE INTERNATIONAL CRIMINAL COURT

2. At no stage during the litigation has either the Prosecution or the OPCV explained why the drafters of the Rome Statute saw fit to distinguish between jurisdiction *stricto sensu* (material, temporal and personal), on the one hand, and the 'exercise of jurisdiction' (*i.e.* the criteria of territory and nationality), on the other. The Prosecution² and the OPCV³ have consistently conflated these two jurisdictional concepts by reference to the 'object and purpose' of the Statute. Yet, the distinction between jurisdiction *stricto sensu* and the exercise thereof is reflected in the very language of the Rome Statute itself, which states, as a concrete axiom, that the Court "has jurisdiction" over (i) certain crimes (ii) committed after the entry into force of the Statute (iii) by natural persons. From this, it follows that the additional criteria of 'nationality' and 'territory' are not determinative of the existence of jurisdiction *stricto sensu* but, rather, are distinct factors pertinent to the Court's *exercise* of jurisdiction to be considered when jurisdiction, as established, is about to be exercised.

3. Even the language employed in Articles 12(1) and 12(2) highlights the aforementioned conceptual distinction in so far as these statutory provisions differentiate between the

¹ Order for Further Submissions, [ICC-01/21-01/25-340](#), 16 December 2025, para. 11. All references to "Article" and to "Rules" in the present submission are to the Rome Statute and the ICC Rules of Procedure and Evidence respectively, unless otherwise indicated.

² Additional Prosecution observations under regulation 28, [ICC-01/21-01/25-353](#), 16 January 2026 ("[Prosecution Additional Observations](#)"), para. 11. *See also* Corrected version of "Public redacted version of 'Prosecution response to 'Defence Challenge with Respect to Jurisdiction'", 9 June 2025, ICC-01/21-01/25-146-Red", [ICC-01/21-01/25-146-Red-Corr](#), 10 June 2025, paras 14-19, 27; Public redacted version of "Prosecution's urgent application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE, 10 February 2025, ICC-01/21-80-US-Exp", [ICC-01/21-01/25-80-Red](#), 17 March 2025, para. 102.

³ Victims' Further Submissions on the Defence Appeal against the "Decision on the Defence Challenge to the Jurisdiction of the Court", [ICC-01/21-01/25-354](#), 16 January 2026 ("[OPCV Additional Observations](#)"), para. 15. *See also* Victims' Observations on the Defence Challenge with Respect to Jurisdiction, [ICC-01-21-01/25-145](#), 9 June 2025, para. 3.

acceptance of material jurisdiction and the *exercise* thereof once material jurisdiction is acknowledged. To wit, according to Article 12(1), accession to the Rome Statute *ipso facto* entails that a State Party ‘accepts’ its material jurisdiction. For the *exercise* of that material jurisdiction under Article 12(2), however, the Court must verify that the allegedly criminal conduct occurred on the territory of an Article 12(1) State Party or by a national thereof (except in the case of a United Nations Security Council referral). Article 12(3) similarly distinguishes between *ad hoc* or selective ‘acceptance’ of material jurisdiction *per se* and the *exercise* of jurisdiction.

4. Since crimes under Article 5 of the Rome Statute have allegedly been committed in the Philippines after the entry into force of the Statute for that country, the Court, as a result, “**has**” jurisdiction *stricto sensu* over the Situation. This is not in dispute. When, however, the Court was required to consider the exercise of that jurisdiction, the preconditions for such were no longer satisfied because the Philippines was no longer a State Party to the Rome Statute.

i) The provisions relating to the exercise of jurisdiction

5. To argue blandly that Article 12(2) defines the ‘territorial jurisdiction’ and ‘nationality jurisdiction’ of the Court⁴ is erroneous. As jurisdictional ‘preconditions’, the criteria of territoriality and nationality must be assessed, as the language indicates, prior to or at the moment the Court is considering whether to exercise its jurisdiction. Article 13, by contrast, sets out the prerequisite triggering mechanisms for the ‘exercise of jurisdiction’ by the Court as opposed to stipulating criteria for the *a priori* existence of jurisdiction. Consequently, while the existence of jurisdiction *stricto sensu* is determined by reference to the date of the commission of the alleged crimes, a plain reading of Articles 12 and 13 indicates that the appropriate moment to determine the preconditions to the exercise of jurisdiction is when the Court’s jurisdiction is triggered under Article 13 – as confirmed by two judges of this honourable Chamber.⁵

6. Such a holistic reading of Articles 12 and 13 is, as previously argued,⁶ supported by the use of the present simple tense in Article 12(2): “[i]n the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States **are** Parties to

⁴ [Prosecution Additional Observations](#), para. 18.

⁵ *Situation in the Republic of the Philippines*, Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, [ICC-01/21-77-OPI](#), 18 July 2023 (“[Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze](#)”), para. 26.

⁶ Defence Challenge with Respect to Jurisdiction, [ICC-01/21-01/25-121](#), 1 May 2025, paras 18-25.

this Statute”.⁷ Textually, this indicates that a State must be a Party to the Rome Statute **contemporaneously** with the Court’s decision to exercise jurisdiction. It thus flows, as a matter of logic, that determination of whether an alleged Article 5 crime was committed on the territory of a State Party or by a State Party national can only occur subsequent to one of the recognised triggering mechanisms under Article 13 and, thereafter, when jurisdiction is exercised – but **not** at the time of the commission of that crime.

ii) The Prosecution and the OPCV have not displaced the plain reading of Article 12(2)

7. The Prosecution deems Article 12(2) to be a “compromise”⁸ between competing approaches to the exercise of jurisdiction. This is both misleading and a distortion of the plain reading of the Statute, as espoused by both the Prosecution and the OPCV. Most provisions of the Rome Statute arise out of a compromise between State Party drafters. Such is the essence of treaty negotiation, and the agreed result of a compromise cannot be dismissed for this reason alone. The supposed disagreement between States Parties participating in the Rome negotiations, referenced by the Prosecution,⁹ as to what preconditions to the exercise of jurisdiction should be enshrined in the Rome Statute is an irrelevancy. Such disagreement sheds no light on the pertinent issue of when those preconditions must be satisfied and ignores the drafters’ unequivocal decision to employ the present tense in Article 12(2). Conscious of the inconvenience to their case theory, the Prosecution and the OPCV seem to ignore their much-vaunted insistence on the ‘good faith’ and ‘ordinary meaning’ requirements of the Vienna Convention on the Law of Treaties.¹⁰ The Prosecution, for example, argues that it is “equally plausible” that the use of the present tense is a “drafting convenience, or even an oversight” and “a subtle grammatical nuance”.¹¹ To excuse an inconvenient interpretation in such a manner would set a dangerous and unacceptable precedent, as it would permit the Prosecution or the Court to substitute, at will, their own reading of the Statute, simply by claiming that the drafters committed an “oversight”.

8. The Prosecution’s claim that “Article 12(2) requires only that a relevant State has accepted the jurisdiction of the Court” is also incorrect.¹² This is not the language of Article

⁷ Rome Statute, [Article 12\(2\)](#) (emphasis added).

⁸ [Prosecution Additional Observations](#), para. 11.

⁹ [Prosecution Additional Observations](#), para. 11.

¹⁰ Vienna Convention on the Law of Treaties, [Article 31\(1\)](#).

¹¹ [Prosecution Additional Observations](#), para. 10.

¹² [Prosecution Additional Observations](#), para. 4.

12(2), but rather of Article 12(3). Article 12(2) permits the Court to exercise jurisdiction if the State concerned is a Party to the Rome Statute. As developed in the Defence Appeal Brief,¹³ this language demonstrates that Article 12(2), in conjunction with Article 12(3), explicitly provides for the situation where the Court is considering exercising jurisdiction in relation to a Non-State Party (irrespective of the existence of a withdrawal) – a fact that is opportunistically ignored by the Prosecutor.

9. The OPCV’s grammatical creativity – claiming that the present tense should also be understood as including the past tense of the verb “to be”¹⁴ – is pure Orwellian doublespeak to be dismissed out of hand. Furthermore, the OPCV’s citation of ICTY precedent to argue that the term ‘jurisdiction’ should be given a broad meaning¹⁵ is equally misguided and unfounded in so far as the *Tadić* Appeals Chamber was addressing issues that are not relevant to the correct interpretation of Article 12(2) of the Rome Statute.¹⁶

iii) A ‘preliminary examination’ does not trigger the Court’s exercise of jurisdiction

10. The Prosecution argues that, even if the Pre-Trial Chamber was correct in its interpretation of Article 12(2), the opening of a preliminary examination in the Philippines Situation – which took place prior to the withdrawal – would constitute the initiation of an investigation under Article 13(c). This position is both unsupported by the Court’s case law and is contrary to the Prosecution’s own practice.

11. For jurisdiction to be exercised pursuant to the triggering mechanism provided by way of Article 13(c), the language contained in that statutory provision requires the Prosecutor to have initiated an investigation “in accordance with article 15”. This, in turn, would require satisfaction of all the procedural requirements under Article 15, *including* the authorisation to open an investigation under Article 15(4), since Article 13(c) refers to Article 15 in its totality.¹⁷

¹³ Appeal Brief on Jurisdiction, [ICC-01/21-01/25-319](#), 14 November 2025 (“[Defence Appeal Brief](#)”), para. 16.

¹⁴ [OPCV Additional Observations](#), para. 14.

¹⁵ [OPCV Additional Observations](#), para. 16, fn. 27.

¹⁶ ICTY, *Tadić*, IT-94-I-A, [Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction](#), 2 October 1995, paras 9-22 (addressing the legal question of whether a challenge to the legality of the creation of the ICTY could be deemed a challenge to “jurisdiction” and whether the Appeals Chamber had “jurisdiction” to entertain such a challenge).

¹⁷ See W. A. Schabas & G. Pecorella, [Article 13](#), in Rome Statute of the International Criminal Court: A Commentary 852 (K. Ambos ed., Beck Hart, 4th ed., 2021); F. Lafontaine & F. Bousquet, *Article 13*, in Statut de Rome de la Cour pénale internationale, Commentaire article par article 794 (J. Fernandez, X. Pacreau & M. Ubéda-Saillard eds., Pedone, 2nd ed., 2019); S. Vasiliev, [Piecing the Withdrawal Puzzle: May the ICC still open an investigation in Burundi? \(Part 2\)](#), *Opinio Juris*, 6 November 2017; D. Jacobs, [Peek-A-Boo: ICC authorises investigation in Burundi, some thought on legality and cooperation](#), *Spreading the Jam*, 11 November 2017; D. Jacobs, [A short rejoinder to Kevin Jon Heller on Burundi and the ICC](#), *Spreading the Jam*, 12 November 2017.

As correctly noted by two judges of this honourable Chamber,¹⁸ the Pre-Trial Chamber only issued its decision to authorise an investigation on 15 September 2021,¹⁹ precipitating, thereby, the ‘initiation of an investigation’ when the Philippines was no longer a State Party.

12. The Prosecution’s position also runs counter to the logic of Article 15 of the Rome Statute, which was designed, specifically, to regulate the exercise of the Prosecutor’s *proprio motu* powers whereby the Pre-Trial Chamber, through its discretion to authorise an investigation,²⁰ acts as a safeguard against prosecutorial abuse.²¹ Such a “constitutional check”²² even served to persuade the more reticent States Parties to agree to the Prosecutor’s proposed *proprio motu* power. Accordingly, to permit a mere preliminary examination to trigger the Court’s exercise of jurisdiction under Article 13(c) would fly in the face of such cautionary intent.

13. Careful analysis of the Rome Statute reveals that the ‘initiation of an investigation’ cannot comprehend a preliminary investigation. The Defence provides here two obvious examples. Firstly, Article 58 provides that the Prosecutor can request the issuance of an arrest warrant “at any time **after** the initiation of an investigation”.²³ Evidently, this means “after” an investigation has been authorised by a Pre-Trial Chamber, because the Prosecutor has no power to request an arrest warrant during a preliminary examination. Secondly, Article 18(1) stipulates that the Prosecutor shall notify concerned States when he or she “initiates an investigation pursuant to articles 13(c) and 15”. This provision has been consistently interpreted by judges as applying only after an investigation has been authorised.²⁴ Strikingly,

¹⁸ [Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze](#), para. 30.

¹⁹ *Situation in the Republic of the Philippines*, Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, [ICC-01/21-12](#), 15 September 2021.

²⁰ Rome Statute, [Article 15\(3\)](#).

²¹ M. Bergsmo & D. Zhu, [Article 15](#), in Rome Statute of the International Criminal Court: A Commentary 882-886 (K. Ambos ed., Beck Hart, 4th ed., 2021) (“[Ambos Commentary on the Rome Statute](#)”).

²² [Ambos Commentary on the Rome Statute](#), p. 886.

²³ Rome Statute, [Article 58\(1\)](#) (emphasis added).

²⁴ *See Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, [ICC-01/09-19-Corr](#), 31 March 2010, para. 51 (“[t]he Chamber emphasizes that defining the scope of potential case(s) at this stage may well serve an effective application of article 18 of the Statute, which is immediately applicable when a Pre-Trial Chamber authorizes the commencement of an investigation. This would generally enable States which ‘would normally exercise jurisdiction over the crimes’ in question to receive useful information (subject to the limitation provided in article 18(1) of the Statute), as to the parameters of possible case(s) before the Court. In turn, this would facilitate a mutual understanding between the Court and the relevant State(s) as to the scope of the complementarity assessment dictated by article 18(2)-(5) of the Statute”). *See also Situation in the Republic of Burundi*, 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”, [ICC-01/17-9-Red](#), 9 November 2017 (“[Burundi Decision](#)”), paras 8 (“[t]he Chamber agrees that article 15(3) of the Statute does not

this has also been the constant position of the Prosecutor, who has systematically argued that s/he will notify States under Article 18(1) only after authorisation of an investigation.²⁵ The fact that the Prosecution is now presenting a different and conflicting interpretation of the expression ‘initiation of an investigation’ in the current litigation indicates that its current approach to Article 12(2) is more opportunistic than principled in so far as it displays a chameleon-like tendency to adapt itself to the outcome sought. Such a lack of consistency devalues the weight that should be attributed to the entirety of the Prosecution’s additional submissions.

iv) ICC case law does not displace the plain language of the Rome Statute

14. The circumstances giving rise to the 2017 decision to authorise an investigation in the Burundi Situation²⁶ are fundamentally distinguishable from the Philippines Situation, given that Pre-Trial Chamber III authorised the opening of an investigation *prior* to the entry into effect of Burundi’s withdrawal from the Rome Statute. With this in mind, any comments by Pre-Trial Chamber III on the Court’s ability to exercise jurisdiction after the withdrawal were clearly *obiter dicta* and, consequently, not binding on the Appeals Chamber. Pre-Trial Chamber III, in fact, acknowledged the ambiguity of the language used in Article 127(2), yet, as distinct from the task that the Appeals Chamber has now set itself, declined to address it.²⁷ By the same

confer any rights of participation on the State(s) which would normally exercise jurisdiction over the alleged crimes. Pursuant to article 18 of the Statute, such a State acquires rights of participation only once the Prosecutor initiates an investigation following authorization by a Pre-Trial Chamber”; 17 (“[t]he Chamber notes that article 18(1) of the Statute provides in the relevant part that, ‘[w]hen [...] the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned’. The words ‘shall notify’ signify the Prosecutor’s duty to proceed with such a notification [...] Accordingly, the Chamber considers that article 18(1) of the Statute, read in conjunction with article 15(1), (3) and (4) of the Statute, establishes in principle that, as soon as a Pre-Trial Chamber has authorized the commencement of an investigation, the Prosecutor must notify States and especially the State which would normally exercise jurisdiction, in order to enable it to assert its primary jurisdiction under article 18(2) of the Statute”).

²⁵ See *Situation in the Republic of Kenya*, Request for authorisation of an investigation pursuant to Article 15, [ICC-01/09-3](#), 26 November 2009, para. 113 (“[t]he Prosecution also informs the Chamber that it will provide the notice foreseen in Article 18(1) of the Statute upon a decision of the Chamber to authorise an investigation into the situation in the Republic of Kenya. As provided for in Article 18(1), such notification can only occur after an affirmative determination of the Chamber on the Prosecutor’s Application”). See also *Situation in the Republic of Côte d’Ivoire*, Request for authorisation of an investigation pursuant to article 15, [ICC-02/11-3](#), 23 June 2011, para. 180; *Situation in Georgia*, Corrected Version of “Request for authorisation of an investigation pursuant to article 15, 16 October 2015, ICC-01/15-4-Corr”, [ICC-01/15-4-Corr2](#), 17 November 2015, para. 348; *Situation in the Islamic Republic of Afghanistan*, Public redacted version of “Request for authorisation of an investigation pursuant to article 15, 20 November 2017, ICC-02/17-7-Conf-Exp”, [ICC-02/17-7-Red](#), 20 November 2017, para. 376.

²⁶ [Burundi Decision](#), para. 24.

²⁷ [Burundi Decision](#), para. 26 (“[t]he Chamber notes that the relationship between the first and second sentences of article 127(2) of the Statute may be construed in different ways. However, the Chamber considers that it need not resolve this matter in relation to this Request”).

token, Pre-Trial Chamber III should also have declined to comment on the question of *when* the Court can exercise jurisdiction.²⁸

15. Furthermore, in finding that “by ratifying the Statute, a State Party accepts, in accordance with article 12(1) and (2) of the Statute, the jurisdiction of the Court over all article 5 crimes committed either by its nationals or on its territory”,²⁹ Pre-Trial Chamber III conflated, without any explanation, the acceptance of material jurisdiction under Article 12(1) with the preconditions for the exercise of jurisdiction under Article 12(2). Such a conflation runs counter to the clear distinction evinced in the Rome Statute between jurisdiction *stricto sensu* and the exercise thereof. It is an erroneous finding on which the Appeals Chamber is not obliged to rely and should not rely.

16. Finally, Pre-Trial Chamber III does not provide any legal basis for its assertion that, because the Court has jurisdiction over certain crimes, the *exercise* of jurisdiction would be open-ended in time. In fact, the *Burundi* Decision does not actually touch on the distinction between jurisdiction *stricto sensu* and the *exercise* thereof, nor is there any discussion of the language of Article 12(2). The only legal source cited with respect to the lapse of time is to be found at footnote 33, where Pre-Trial Chamber III opines that “[i]t is also to be underlined that, in accordance with article 29 of the Statute, the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.”³⁰ This citation, however, does not justify the failure of Pre-Trial Chamber III to apply the plain language of Article 12(2) – a concept which was not brought to its attention. Indeed, the fact that Article 5 crimes are not subject to any statute of limitations is not and cannot be support for the contention that the Court may exercise its jurisdiction indefinitely and at any time, even when the conditions of Article 12(2) are not met.

17. The *Abd-Al-Rahman* decision referred to by the Prosecution³¹ concerned a Defence challenge to the Court’s jurisdiction *per se* as opposed to its exercise thereof. In this scenario, however, the Court had already exercised jurisdiction through a UNSC referral and, as such, the consequences of State Party withdrawal were not an issue. In their proper context, the observations of the Pre-Trial Chamber in *Abd-Al-Rahman* are not pertinent to the current litigation because (i) the judges’ affirmation in that case – that the Court’s jurisdiction proper

²⁸ [Burundi Decision](#), paras 24-26.

²⁹ [Burundi Decision](#), para. 24.

³⁰ [Burundi Decision](#), fn. 33.

³¹ [Prosecution Additional Observations](#), para. 17, citing *Abd-Al-Rahman*, Decision on the Defence ‘Exception d’incompétence’ (ICC-02/05-01/20-302), [ICC-02/05-01/20-391](#), 17 May 2021, para. 33.

could not be taken away by a subsequent act – is irrelevant to the question of the timing of the Court’s exercise of jurisdiction, and (ii) the generic reference by the judges in that case to the language of Article 127 does not indicate how, precisely, this statutory provision should be applied to the specific factual circumstances of the present case.

B. THE INTERACTION OF ARTICLES 12, 13 AND 127 OF THE ROME STATUTE AND ITS CONSEQUENCES IN GENERAL AS WELL AS IN THE PRESENT CASE

18. Article 127(2) is of no relevance in determining the correct application of Articles 12 and 13 nor, as argued in the Defence’s Appeal Brief, is it *lex specialis* with respect to Article 12. Nothing in the language of Article 127(2) displaces the plain language of Article 12(2), which requires contemporaneous State Party membership of the Rome Statute as a “pre-condition to the exercise of jurisdiction” – something that evidently did not apply to the Philippines when the investigation was initiated in 2021.

19. With respect to the Prosecution’s argument concerning the absence of any prescriptive period for the exercise of jurisdiction, the Defence responds that timing considerations are not to be found in Article 127 but, rather, in Article 12(2) which, through the use of the present tense, mandates contemporaneity for the exercise of jurisdiction and, thus, the opening of an investigation.

20. Since Article 12(2) simply relates to the preconditions to the exercise of jurisdiction, there can, effectively, be no “matter” contemplated therein, the continued consideration of which could be envisaged under Article 127(2). In fact, there is no ostensible reason to link these Articles, other than to resolve the quandary in which the Prosecution now finds itself and its political need to retain the Philippines Situation on the Court’s docket. As explained in the Defence Appeal Brief, Articles 12 and 127 are located in entirely different parts of the Statute, and there is nothing in the language of either Article to indicate that they are related to each other or, for that matter, that Article 127(2) should be viewed as *lex specialis* of Article 12(2).

21. Article 12(2) is dispositive in all that concerns the timing of the Court’s exercise of jurisdiction. Furthermore, Article 12(3) adequately covers the situation where the Court can exercise jurisdiction over a Non-State Party and, for that matter, a withdrawn State Party which has accepted or renewed its acceptance of the Court’s jurisdiction *stricto sensu*. Accordingly, there is no gap, no ambiguity, and no lack of clarity in the legal regime set out in Article 12 that would require recourse to any other statutory provision, such as Article 127(2).

22. Neither the Prosecution nor the OPCV have pointed to the tiniest scintilla of a discussion during the *travaux préparatoires* that could suggest that the founding States Parties contemplated an exception to the application of Article 12(2) post-withdrawal. The drafters of the Rome Statute clearly viewed the matter as binary: Either a State is or is not a Party to the Rome Statute at the time that jurisdiction is to be exercised and an investigation initiated. Article 12(2), as drafted and agreed in Rome, answers it clearly and unambiguously.

23. Should the Appeals Chamber, nonetheless, deem it necessary to consider the substance of Article 127(2) and, in particular, the over-dissected concept of “any matter which was already under consideration by the Court”, the Defence reiterates, for the comprehensive reasons presented in its Appeal Brief, that matters under consideration by the Prosecutor (such as a preliminary examination) are unable to survive the Philippines’ effective withdrawal from the Statute.³²

24. Finally, the Defence notes that the interpretation of Article 12(2) as proposed by the Prosecution and the OPCV would entail, as a consequence, the redundancy of the final sentence of Article 127(2). Indeed, what would be the point of providing that a withdrawal does not affect the continued consideration of any ‘matter’, if the Court were to be able to exercise jurisdiction indefinitely, simply because the State was a Party at the time the alleged conduct occurred, irrespective of any procedural steps taken? In other words, the final sentence of Article 127(2) would be utterly superfluous if the Prosecution’s theory was to be followed. This simply could not have been the intent of the drafters.

III. CONCLUSION

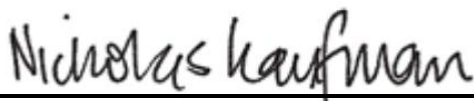
25. “Justice can only be rendered in accordance with the applicable procedure. If it is not, its value will be questioned. Only by duly following the procedure set out in the Court’s legal texts, can the Prosecutor and the Court ensure the prompt, proper, and fair administration of justice. The interests of victims and justice are better served with a process that is procedurally unassailable.”³³ The Defence endorses these sentiments wholeheartedly. Resort to the ‘object and purpose’ of the Rome Statute and the pursuit of accountability cannot serve to displace the clear application of the Rome Statute, as set out in these submissions. Such an argument is premised on an unfair and emotive argument calculated to tug at the heartstrings of the

³² [Defence Appeal Brief](#), paras 27-46.

³³ *Situation in the State of Palestine*, Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza, [ICC-01/18-481-OPI](#), 15 December 2025, para. 56.

international community. Combatting impunity is, of course, a noble objective, but it cannot be the means whereby the Court is made to feel obliged to compensate victims, at the expense of a suspect's right to legal propriety. As the Trial Chamber in *Katanga* specifically ruled, the 'fight against impunity' cannot, under any circumstances, justify an interpretation of the Rome Statute that is inconsistent with a literal reading of its text.³⁴

26. The Prosecution is acutely aware that it must shoulder the responsibility for a miscalculated and, ultimately, erroneous decision not to initiate an investigation within the one-year designated time-period.³⁵ It is for this reason that it is fighting tooth and nail to maintain the viability of the Philippines Situation. Yet, the tortuous textual interpretations of Article 12(2) proffered by the Prosecution and the OPCV are simply inconsistent with a plain reading of the Rome Statute and do not convincingly overcome the fact that the Court was not in a position to exercise jurisdiction in the Situation of the Philippines after that State's effective withdrawal from the Rome Statute.



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Dated this 23rd day of January 2026
At The Hague, The Netherlands

³⁴ *Katanga*, Judgment pursuant to article 74 of the Statute, [ICC-01/04-01/07-3436-tENG](#), 7 March 2014, para. 55 ("the Chamber considers it self-evident that the aim of the Statute, *viz.* to put an end to impunity for the perpetrators of the most serious crimes within the jurisdiction of the Court, **can under no circumstance be used to create a body of law extraneous to the terms of the treaty or incompatible with a purely literal reading of its text**") (internal citations omitted) (emphasis added).

³⁵ [Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze](#), para. 29 ("[t]herefore, the Prosecutor has to make all efforts to trigger the Court's jurisdiction in a manner that would not infringe the right of a State to withdraw from the Statute. **We are of the view that one year is sufficient for the Prosecutor to conduct his preliminary examination and request a pre-trial chamber to authorise the commencement of the investigation, and for the pre-trial chamber to rule upon such a request. The Statute thus gives the Court an opportunity to assert its jurisdiction**") (emphasis added).