

Pursuant to Pre-Trial Chamber I's Order ICC-01/21-01/25-115 dated 17.04.2025, this document is reclassified as Public

Annex

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**Cour
Pénale
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**International
Criminal
Court**



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Date: 7 April 2025

PRE-TRIAL CHAMBER I

Before:

**Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera**

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public Document

**Rule 103 Request for Leave to Submit *Amicus Curiae* Observations on Whether the ICC
May Exercise Jurisdiction in the Philippines Situation Following the State's
Withdrawal from the Rome Statute**

Source: International Probono Legal Services Association Ltd.

Pursuant to Pre-Trial Chamber I's Order ICC-01/21-01/25-115 dated 17.04.2025, this document is reclassified as Public

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The International Probono Legal Services Association Ltd. (“IPLSA”), pursuant to Rule 103 of the International Criminal Court (“ICC”) Rules of Procedure and Evidence (“Rules”), hereby requests leave to submit *amicus curiae* observations on a dispositive jurisdictional issue in *Prosecutor v. Duterte: Whether the ICC may lawfully exercise jurisdiction where the Office of the Prosecutor (“OTP”) failed to timely seek judicial authorization from the Pre-Trial Chamber, as required by Article 15(3) of the Rome Statute, to open an investigation more than two years after the Philippines was no longer a State Party to the Rome Statute*. The IPLSA is a Hong Kong-registered non-profit organization dedicated to promoting *pro bono* legal services through global networks of legal practitioners, supporting Rule of Law initiatives, and facilitating the exchange of legal knowledge, expertise, and experience across multiple jurisdictions and legal traditions.¹ The IPLSA offers courses in international legal practice, jurisdictional and national security issues, and judicial reform. Recognized for its competence and contributions to the law, the IPLSA holds Special Consultative Status with the United Nations (“UN”) Economic and Social Council and has participated in sessions of the UN Human Rights Committee on issues of human rights and national security.² Accordingly, the IPLSA is well positioned to contribute its legal expertise, experience, and unique perspective on this jurisdictional issue. This Request is submitted publicly and electronically to the Registrar pursuant to Rule 103(3) and Regulation 24(5) of the Court’s Regulations.

I. INTRODUCTION

1. The jurisdictional issue raised in this Request goes to the heart of the Rome Statute’s integrity and the ICC’s relationship with its States Parties: *can the ICC assert jurisdiction over a former State Party when the OTP failed to seek authorization to open an investigation until well after that State’s withdrawal had taken effect?*
2. This jurisdictional issue is not a procedural technicality. It is a foundational issue about how and when the ICC may lawfully exercise jurisdiction over sovereign States that joined the Rome Statute on the express condition that any delegation of sovereignty would be structured, limited, and subject to strict procedural safeguards.³ Unlike the *ad hoc* International Criminal Tribunals for the former Yugoslavia (“ICTY”) and Rwanda (“ICTR”), which were created by UN Security Council (“UNSC”) Resolutions – with

¹ IPLSA Website, [About IPLSA](#) (last visited 7 April 2025).

² IPLSA Website, [IPLSA participates in the 57th session of the United Nations Human Rights Council, holding a press conference and an online discussion in Geneva](#), 12 September 2024.

³ JOSEPH POWDERLY, [JUDGES AND THE MAKING OF INTERNATIONAL CRIMINAL LAW](#) (Brill 2020), p. 328, 329, 333, 404; Morten Bergsmo and Dan Zhu, *Article 15*, in KAI AMBOS (ED), [ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: ARTICLE-BY-ARTICLE COMMENTARY](#) (Beck, Hart, Nomos 4th ed., 2021), pp. 881-886.

governing Statutes imposed on *all* UN Member States⁴ and Judges with quasi-legislative gap-filling authority to overcome UNSC inaction⁵ – the Rome Statute establishing the ICC codified strict limits on the ICC's prosecutorial and jurisdictional authority.⁶ Concerned about prosecutorial and judicial overreach and legitimacy at the Rome Conference, the Assembly of States Parties ("ASP"), as the legislative body of the ICC, reserved for itself, not the judges, the authority to amend both the Statute and Rules,⁷ subject to narrow exceptions.⁸

3. The jurisdictional issue raised in this Request is unsettled. It provoked a split among the Appeals Chamber Judges.⁹ The Dissenting Judges considered that the ICC no longer had jurisdiction in the Philippines Situation because no Article 15 investigation had been authorized before the withdrawal took effect.¹⁰ The Majority, by contrast, declined to address the issue of jurisdiction in light of the Philippines' withdrawal, leaving this jurisdictional issue unresolved.¹¹ This silence from the Court threatens to create an expansive precedent by omission – one that risks unsettling the carefully negotiated balance between State sovereignty and international justice that underpins the Rome Statute.
4. This jurisdictional issue is the foundation that anchors the power of the Rome Statute, which, by design and agreement, rests exclusively on the consent of its State Parties. When

⁴ UNSC Resolution 827, UN Doc. No. [S/RES/827](#) (1993) (establishing the ICTY); UNSC Resolution 935, UN Doc. No. [S/RES/935](#) (1994) (establishing the ICTR).

⁵ Judges in those tribunals were given broad authority to develop rules of procedure and evidence, often exercising quasi-legislative powers to fill gaps, respond to practical needs, or overcome the political gridlock of UNSC inaction. This allowed for a flexible approach to mixing and mashing procedural modalities to be tinkered with for efficacy and efficiency as deemed necessary, but it seemingly gave the judges quasi-legislative authority. With the unlikelihood of the UNSC amending the statutory provisions, the judges could cleverly get around this inconvenience by amending and interpreting their own rules. See JOSEPH POWDERLY, [JUDGES AND THE MAKING OF INTERNATIONAL CRIMINAL LAW](#) (Brill 2020), pp. 328, 329, 333; See Göran Sluiter, [Procedural Lawmaking at the International Criminal Tribunals](#) in SHANE DARCY AND JOSEPH POWDERLY (ed), JUDICIAL CREATIVITY AT THE INTERNATIONAL CRIMINAL TRIBUNALS (2010), p. 315. See also Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. [IT/32](#) (1994), at 6(C). Proposing amendments was not limited to the judges; the Registry, the Prosecution, and the Defence could also do so. The ICTY Rules have been amended more than 50 times. See ICTY Website, [Rules of Procedure and Evidence](#) (last visited 7 March 2025).

⁶ See [Rome Statute](#), Arts. 12, 13, and 15.

⁷ [Rome Statute](#), Art. 51(1). See also Bruce Broomhall, *Article 51*, in KAI AMBOS (ED), [ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: ARTICLE-BY-ARTICLE COMMENTARY](#) (Beck, Hart, Nomos 4th ed., 2021), p. 1590.

⁸ [Rome Statute](#), Art. 51(3) provides: "After the adoption of the Rules of Procedure and Evidence, in urgent cases where the Rules do not provide for a specific situation before the Court, the judges may, by a two-thirds majority, draw up provisional Rules to be applied until adopted, amended or rejected at the next ordinary or special session of the Assembly of States Parties."

⁹ *Situation in the Philippines*, [ICC-01/21-77](#), Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation", 18 July 2023 ("[Article 18 Appeal Decision](#)"); *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023.

¹⁰ [Article 18 Appeal Decision](#), para. 55.

¹¹ *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023, paras. 26, 35-36.

that consent is withdrawn in accordance with the treaty's terms, the Court must respect those limits. If the ICC can nevertheless trigger jurisdiction years after a State's lawful withdrawal by virtue of the OTP issuing a press release that it has opened opening a preliminary examination – surfing the internet and downloading open-source reports from human rights organizations¹² – the withdrawal mechanism becomes hollow and meaningless.

5. This jurisdictional issue affects every State that has ratified the Rome Statute – and those considering doing so in the future. It raises profound questions about the legal consequences of withdrawal, the scope of prosecutorial authority, and whether the ICC as a treaty-based court can extend its reach beyond what States knowingly accepted. These are questions the States Parties themselves should help to answer. Hence why *amicus curiae* intervention is warranted. States' views, along with those of organizations and legal experts, are vital for the issue to be fully ventilated to enable the Pre-Trial Chamber to make an informed and reasoned determination.

II. BACKGROUND

6. Twenty-six months after the Philippines was no longer a State Party to the Rome Statute, and just one month prior to the departure of former ICC Prosecutor Fatou Bensouda,¹³ the OTP sought authorization on 24 May 2021 from the Pre-Trial Chamber – as required under Article 15(3) of the Rome Statute when there is no UNSC or State Party referral¹⁴ – to formally open an investigation into the “war on drugs” campaign in the Philippines.¹⁵ At that time, the Philippines had not been a State Party for more than two years.
7. While the OTP announced in a press release that it had opened a preliminary examination on 8 February 2018¹⁶ – downloading open-source materials from the internet and reviewing information from States, NGOs, and communications from individuals and

¹² See [Rome Statute](#), Art. 15(2). See *infra*, fn. 93.

¹³ ICC Press Release, [Mrs Fatou Bensouda finishes her mandate as ICC Prosecutor](#), 15 June 2021.

¹⁴ [Rome Statute](#), Art. 15(3): “If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she *shall* submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected” (italic emphasis added).

¹⁵ *Situation in the Philippines*, [ICC-01/21-7-Red](#), Public redacted version of “Request for authorisation of an investigation pursuant to article 15(3)”, 24 May 2021, ICC-01/21-7-SECRET-Exp, 14 June 2021.

¹⁶ ICC Press Release, [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela](#), 8 February 2018.

institutions, as empowered under Article 15(2) of the Rome Statute¹⁷ – it neither sought nor obtained authorization to open an investigation from the Pre-Trial Chamber.¹⁸

8. During the nearly 40-month period between the OTP's press release and its formal request for authorization to open an investigation (as required by Article 15(3) of the Rome Statute), the OTP brought no formal proceedings to the Pre-Trial Chamber. It only provided public updates as part of its annual reports on preliminary examination activities. According to the 2018-2020 annual reports, the OTP had only conducted internal reviews in the Philippines Situation based on open source material and other information it received to (i) determine whether it had a plausible case for jurisdiction and admissibility, and (ii) evaluate whether there was a reasonable basis to believe that crimes within the ICC's jurisdiction were committed.¹⁹
9. Amidst the OTP's preliminary examination, the Philippines deposited its notice of withdrawal from the Rome Statute in accordance with Article 127 on 17 March 2018,²⁰ taking effect on 17 March 2019.²¹
10. When the OTP finally sought authorization to investigate, it argued that the Court's jurisdiction persisted under Article 127(2), citing the fact that its preliminary examination began prior to the withdrawal.²² It relied on the Pre-Trial Chamber's previous decisions in *Burundi* and *Abd-Al-Rahman*. Yet, beyond cavil, neither of those decisions concerned preliminary examinations:
 - a. In *Burundi*, the Pre-Trial Chamber considered the "legal consequences of Burundi's withdrawal on the Request [for authorization under Article 15(3)] and Burundi's

¹⁷ ICC OTP, [Report on Preliminary Examination Activities](#) (2018), 5 December 2018, para. 54. [Rome Statute](#), Art. 15(2): "The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or nongovernmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court."

¹⁸ [Rome Statute](#), Art. 15(3).

¹⁹ ICC OTP, [Report on Preliminary Examination Activities](#) (2019), 5 December 2019, paras. 250-253. According to the OTP's policy document on preliminary examinations, it considers this second step as the beginning of its "formal preliminary" examination. ICC OTP, [Policy Paper on Preliminary Examinations](#), 1 November 2013, paras. 78-84. *See also* ICC OTP, [Report on Preliminary Examination Activities](#) (2018), 5 December 2018; ICC OTP, [Report on Preliminary Activities](#) (2020), 14 December 2020.

²⁰ *Situation in the Philippines*, [ICC-01/21-12](#), Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute, 15 September 2021

²¹ UN Communication, [C.N.138.2018-TREATIES-XVIII.10](#), Depository Notification), Philippines Withdrawal (acknowledging deposit of the Philippines' withdrawal with the UN Secretary-General on 17 March 2018).

²² *Situation in the Philippines*, [ICC-01/21-7-Red](#), Public redacted version of "Request for authorisation of an investigation pursuant to article 15(3)", 24 May 2021, ICC-01/21-7-SECRET-Exp, 14 June 2021, para. 81.

obligations in relation to an investigation, *if authorized*.”²³ The Pre-Trial Chamber did not hold that the OTP’s preliminary examination constituted an “investigation” or “proceeding” such that it would preserve the ICC’s jurisdiction post-withdrawal; rather, the Pre-Trial Chamber considered it a distinct phase that occurs prior to any “investigation” or “prosecution”.²⁴

- b. In *Abd-Al-Rahman*, the UNSC referred the *Darfur Situation* to the OTP in accordance with Article 13(b) of the Rome Statute, so no Pre-Trial Chamber authorization was required to investigate.²⁵ The issue in that case also did not concern State withdrawal either, but whether a subsequent UNSC Resolution could reverse or affect a prior referral to the ICC.²⁶

11. Even though the Philippines’ withdrawal from the ICC had become effective before the OTP’s request, the Pre-Trial Chamber authorized the investigation on 15 September 2021 (“Article 15 Authorization”).²⁷ It held that the ICC retained jurisdiction over the crimes which occurred on Philippine territory from 1 November 2011 (the date the Rome Statute entered into force for the Philippines) to 16 March 2019 (the effective date of its withdrawal).²⁸ The Pre-Trial Chamber relied on the principle of “continuity of obligations” under Article 70 of the Vienna Convention on the Law of Treaties (“VCLT”), considering that withdrawal does not affect obligations arising before termination.²⁹ It also referred to the Pre-Trial Chamber’s previous *Burundi* decision, although that decision held that the ICC retained jurisdiction in Burundi because *both* the OTP’s request for authorization *and* the Pre-Trial Chamber’s authorization decision were “delivered prior to the entry into effect of Burundi’s withdrawal...”³⁰

²³ *Situation in the Republic of Burundi*, [ICC-01/17-9-Red](#), Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, 25 October 2017, para. 23 (italic emphasis added).

²⁴ *Id.*, para. 15. The Pre-Trial Chamber considered: “The use of ‘particularly’ [in Article 68(1) of the Statute] indicates that [protective] measures are not confined to the investigation and prosecution stages and may, therefore also be applied at the preliminary examination stage”

²⁵ *Prosecutor v. Abd-Al-Rahman*, [ICC-02/05-01/20-391](#), Decision on the Defence ‘Exception d’incompétence’ (ICC-02/05-01/20-302), 17 May 2021, paras.1, 33-34. [Rome Statute](#), Art. 13(b) provides that the Court may exercise jurisdiction if a situation is referred to it by the UNSC acting under [Chapter VII of the UN Charter](#). In such cases, unlike Article 15 *proprio motu* investigations by the Prosecutor, no Pre-Trial Chamber authorization is required. Compare with [Rome Statute](#), Art. 15(1)-(4).

²⁶ *Prosecutor v. Abd-Al-Rahman*, [ICC-02/05-01/20-391](#), Decision on the Defence ‘Exception d’incompétence’ (ICC-02/05-01/20-302), 17 May 2021, paras. 33-34.

²⁷ *Situation in the Philippines*, [ICC-01/21-12](#), Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, 15 September 2021.

²⁸ *Id.*, para. 111.

²⁹ *Id.*

³⁰ *Id.*, citing *Situation in the Republic of Burundi*, [ICC-01/17-9-Red](#), Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, 25 October 2017, paras. 24-26.

12. Rather than appeal the Pre-Trial Chamber's Article 15 Authorization, the Philippines sought deferral of the investigation pursuant to Article 18(2) of the Rome Statute on 18 November 2021.³¹ Without waiving the jurisdictional issue concerning its withdrawal, the Philippines asserted that it was conducting its own investigations into alleged crimes from the "war on drugs" campaign and intended to address the matter domestically.³²
13. After the six-month review period for deferrals under Article 18(3) expired, the OTP requested authorization from the Pre-Trial Chamber to resume the investigation in the Philippines on 24 June 2022.³³ Its request did not address the issue of jurisdiction considering withdrawal. Having been invited by the Pre-Trial Chamber, the Philippines filed its observations on the OTP's request, but did not address jurisdiction.³⁴
14. The Pre-Trial Chamber authorized the resumption of the investigation on 26 January 2023, finding that the various domestic proceedings presented by the Philippines did not amount to tangible, concrete, and progressive investigative steps that would warrant deferral under the complementarity principle.³⁵ Citing its Article 15 Authorization, the Pre-Trial Chamber held that, as part of the deferral procedure under Article 18(2), a Chamber may authorize the OTP to resume an investigation, and that the Rome Statute provisions and related obligations remain applicable, notwithstanding the Philippines' withdrawal from it.³⁶
15. The Philippines appealed the Pre-Trial Chamber's decision to authorize the resumption of the investigation on 13 March 2023.³⁷ It argued that the Pre-Trial Chamber erred by holding that the Court could exercise jurisdiction on the basis that the Philippines was a State Party "at the time of the alleged events" and that the "ensuing obligations" of the Rome Statute remained applicable notwithstanding the Philippines' withdrawal.³⁸

³¹ *Situation in the Philippines*, [ICC-01/21-14](#), Notification of the Republic of the Philippines' deferral request under article 18(2), 18 November 2021, 18 November 2021.

³² *See Situation in the Philippines*, [ICC-01/21-56-Red](#), Authorisation pursuant to article 18(2) of the Statute to resume the investigation, 26 January 2023, para. 3.

³³ *See Situation in the Philippines*, [ICC-01/21-46](#), Prosecution's request to resume the investigation into the situation in the Philippines pursuant to article 18(2), 24 June 2022.

³⁴ *Situation in the Philippines*, [ICC-01/21-56-Red](#), Authorisation pursuant to article 18(2) of the Statute to resume the investigation, 26 January 2023, paras. 10-11.

³⁵ *Id.*, paras 35-90, 96.

³⁶ *Id.*, para. 26.

³⁷ *Situation in the Philippines*, [ICC-01/21-65](#), Philippine Government's Appeal Brief Against "Authorisation pursuant to article 18(2) of the Statute to resume the investigation", 13 March 2023.

³⁸ *Id.*

16. The Appeals Chamber, by Majority, Presiding Judge Perrin de Brichambaut and Judge Lordkipanidze dissenting, confirmed the Pre-Trial Chamber's decision on 18 July 2023.³⁹

The Majority:

- a. Considered that the jurisdictional issue concerning the Philippines' withdrawal was "neither properly raised nor adequately ventilated" before the Pre-Trial Chamber and did not rule on this issue;⁴⁰
- b. Remarked that the Philippines "should have raised the question of the effect of its withdrawal on the Court's jurisdiction before the Pre-Trial Chamber in order for all parties and participants to make observations on the issue, and for the Pre-Trial Chamber to make a fully informed decision thereon";⁴¹ and
- c. Stated in *obiter dicta*, and without citing any legal authority, that by making a deferral request under Article 18, the Philippines "implicitly accepted" the ICC's jurisdiction.⁴²

17. By contrast, Dissenting Judges de Brichambaut and Lordkipanidze concluded that the ICC cannot exercise jurisdiction because the Philippines' withdrawal became effective *before* the OTP requested the Pre-Trial Chamber's authorization.⁴³ Notably, both Judges played significant roles in drafting the Rome Statute. Judge de Brichambaut led the French delegation at the Rome Conference and signed the Statute on behalf of France.⁴⁴ Judge Lordkipanidze represented Georgia in the Preparatory Commission on issues such as the relationship agreement between the Court and the UN and the Rules of the Court.⁴⁵ Their Dissent reflects their appreciation of the States' desires to safeguard their sovereignty by placing restrictions on prosecutorial overreach and overly broad judicial discretion in statutory interpretation (verging on legislating from the bench). Presiding Judge de Brichambaut and Judge Lordkipanidze reasoned:

³⁹ [Article 18 Appeal Decision](#).

⁴⁰ *Id.*, para. 55.

⁴¹ *Id.*

⁴² *Id.*, para. 56.

⁴³ *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023.

⁴⁴ ICC Website, [Judge Marc Perrin de Brichambaut](#) (last visited 7 April 2025).

⁴⁵ ICC Website, [Judge Gocha Lordkipanidze](#) (last visited 7 April 2025).

- a. Where the OTP acts on its own initiative (as it did here), the ICC's jurisdiction is only triggered when the Pre-Trial Chamber authorizes an investigation under Article 15(4) of the Rome Statute;⁴⁶
- b. Article 127(2) of the Rome Statute does not reserve any jurisdiction for the ICC in this instance because a preliminary examination is only an "informal step" and not a "matter under consideration by the Court";⁴⁷
- c. The OTP's broad reading of Article 127(2) – which would allow the ICC to trigger jurisdiction *even after a withdrawal becomes effective* – is contrary to both (i) the Rome Statute's structure and jurisdictional limits in Part II, and (ii) the VCLT, which supports a strict reading of withdrawal clauses;⁴⁸
- d. The OTP's proposed interpretation – allowing jurisdiction to be triggered post-withdrawal – renders the withdrawal provisions in Article 127 meaningless by allowing the OTP to trigger the Court's jurisdiction indefinitely;⁴⁹ and
- e. Since the ICC's jurisdiction was not timely and lawfully triggered prior to the Philippines' withdrawal, the proceedings should be immediately terminated (thus implicitly rejecting the Majority's *obiter dicta* that the Philippines "implicitly accepted" the Court's jurisdiction by making submissions).⁵⁰

18. While the Appeals Chamber effectively invited the Parties and Participants to make submissions before the Pre-Trial Chamber on the issue of jurisdiction, no such submissions were made. The public case file does not reflect that any submissions were filed.

19. On 10 February 2025, the OTP applied for a warrant of arrest against Mr. Duterte.⁵¹ The Pre-Trial Chamber issued the warrant on 7 March 2025.⁵² Four days later, Mr. Duterte was arrested⁵³ and transferred to ICC custody, making his first appearance before the Pre-Trial Chamber on 14 March 2025.⁵⁴

⁴⁶ *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023, para. 26.

⁴⁷ *Id.*, para. 35.

⁴⁸ *Id.*, para. 36.

⁴⁹ *Id.*

⁵⁰ *Id.*, para. 37.

⁵¹ *Situation in the Philippines*, [ICC-01/21-80-Red](#), Public Redacted Version of 'Prosecution's urgent application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE', 10 February 2025.

⁵² *Situation in the Philippines*, [ICC-01/21-83](#), Warrant of Arrest for Mr Rodrigo Roa Duterte, 7 March 2025.

⁵³ Amnesty International, [Philippines: Former President Duterte's arrest a monumental step for justice](#), 11 March 2025.

⁵⁴ ICC Press Release, [Rodrigo Roa Duterte makes first appearance before the ICC: confirmation of charges hearing scheduled for 23 September 2025](#), 14 March 2025.

III. LAW AND ARGUMENT IN SUPPORT OF LEAVE

20. Rule 103(1) empowers the Pre-Trial Chamber to grant leave to an organization to submit any observation on any issue the Chamber deems appropriate, and at any stage of the proceedings, if it “considers it desirable for the proper determination of the case”. In assessing *amicus* requests under Rule 103, the core question for the Chamber is whether the proposed observations would assist in the proper determination of the case.⁵⁵
21. The ICC Chambers have consistently welcomed *amicus* observations in complex, sensitive, or unsettled areas of law, for instance:
- a. In *Katanga*, the Trial Chamber granted leave to two Dutch lawyers, Mr. Philip-Jan Schüller and Mr. Göran Sluiter, to submit *amicus* observations on the nature and potential duration of asylum proceedings in the Netherlands for two ICC witnesses, considering that their submissions could “enable the Chamber to be more fully informed of the issues arising in the case.”⁵⁶
 - b. In *Lubanga*, the Appeals Chamber granted leave to the International Criminal Bar (“ICB”) to submit *amicus curiae* observations on whether certain materials constituted exculpatory evidence, considering that the ICB’s submissions “may assist the Appeals Chamber in the proper determination of the case” and noting that “neither the [defence] nor the Prosecutor has opposed the filing of submissions....”⁵⁷
 - c. In *Kony et al.*, the Pre-Trial Chamber granted leave to the Uganda Victims Foundation and the Redress Trust to submit *amicus curiae* observations addressing the Annexure to the Agreement on Accountability and Reconciliation, signed between the Government of the Republic of Uganda and the Lord’s Resistance Army, and the case’s admissibility under Article 17 of the Rome Statute.⁵⁸
 - d. In *Gaddafi et al.*, the Pre-Trial Chamber invited the OTP, the Office of Public Counsel for the Defence, the Office of Public Counsel for Victims, and the UNSC, and granted leave to Lawyers for Justice in Libya and the Redress Trust to submit *amicus curiae*

⁵⁵ *Prosecutor v. Lubanga*, [ICC-01/04-01/06-1289](#), Decision on “Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence”, 22 April 2008, para. 8.

⁵⁶ *Prosecutor v. Katanga*, [ICC-01/04-01/07-3557](#), Order authorising the submission of observations, 7 March 2013, para. 12.

⁵⁷ *Prosecutor v. Lubanga*, [ICC-01/04-01/06-1289](#), Decision on “Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence”, 22 April 2008, para. 8.

⁵⁸ *Prosecutor v. Kony et al.*, [ICC-02/04-01/05-333](#), Decision on Application for leave to submit observations under Rule 103, 5 November 2008, paras. 5, 9-11.

observations on Libya's ability and willingness under Article 17 of the Rome Statute to investigate and prosecute. The Pre-Trial Chamber considered that these organizations had been closely monitoring institutional developments in Libya and did not purport to speak on behalf of specific victims nor take a position on the merits of the admissibility challenge.⁵⁹

- e. In *Bemba*, the Pre-Trial Chamber granted leave to the Women's Initiative for Gender Justice to submit *amicus curiae* observations on "cumulative charging and its impact on the rights of the accused to a fair trial in light of article 21 of the Statute", considering that the proposed submission would provide legal information that the Chamber "may find useful in the context of the present case."⁶⁰
- f. In the *Situation in Myanmar/Bangladesh*, facing an innovative jurisdictional question – whether the ICC could exercise jurisdiction over alleged deportation of Rohingya from Myanmar (a non-party) into Bangladesh (a State Party) – the Pre-Trial Chamber invited Myanmar's authorities to submit *amicus curiae* observations.⁶¹
- g. Most recently, in the *Situation in Palestine*, the Pre-Trial Chamber admitted *amicus curiae* submissions from a wide range of States, organizations, and scholars regarding the Court's territorial jurisdiction – including States with vested interests in the matter (e.g., the United States of America), organizations with partisan stances (e.g., Lawyers for Palestinian Human Rights and UK Lawyers for Israel), and Student organizations – adopting a flexible approach to admitting *amici curiae* observations.⁶²

22. Comparative international jurisprudence further supports a flexible approach to admitting *amici curiae*. With corresponding *amicus* rules mirroring ICC Rule 103, the ICTY, ICTR, and the Special Court for Sierra Leone ("SCSL") permitted third party interventions where these Tribunals considered that there was reason to believe that submissions would assist

⁵⁹ *Prosecutor v. Gaddafi et al.*, [ICC-01/11-01/11-153](#), Decision on the "Application by Lawyers for Justice in Libya and the Redress Trust for Leave to Submit Observations pursuant to Rule 103 of the Rules of Procedure and Evidence", 12 May 2012 para. 4.

⁶⁰ *Prosecutor v. Bemba*, [ICC-01/05-01/08-451](#), Decision on Request for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, 17 July 2009, paras. 5-7, 12.

⁶¹ *Situation in Bangladesh/Myanmar*, [ICC-RoC46\(3\)-01/18-28](#), Decision Inviting the Competent Authorities of the Republic of the Union of Myanmar to Submit Observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', 21 June 2018.

⁶² *Situation in Palestine*, [ICC-01/18-14](#), Order setting the procedure and the schedule for the submission of observations, 28 January 2020; See also *Situation in Palestine*, [ICC-01/18-249](#), Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, 22 July 2024.

the Court to reach the right decision.⁶³ The SCSL explicitly held that, to be admitted, *amici* observations need not be “essential,” only “desirable” to assist the Chamber.⁶⁴ The SCSL noted that NGOs, States, or legal advocacy groups can seek leave to intervene as *amici* simply to “have the law clarified or declared or developed in a particular way.”⁶⁵

23. There is no ulterior motive⁶⁶ underlying this Request for leave to file *amicus curiae* observations on the issue of jurisdiction. The IPLSA has no relationship with the Accused, the victims, or the OTP, nor does it have any interest in assisting any party or participant in this case.⁶⁷ The purpose of this proposed *amicus curiae* submission is to clarify unsettled law for the Court's and States Parties' benefit. Granting leave in this instance would be consistent with past ICC practice and would contribute meaningfully to the proper determination of a matter central to the Court's legitimacy.

24. The Pre-Trial Chamber's Article 15 Authorization and split Appeals Chamber decision not only raise novel legal issues but also carry significant implications for the Court's jurisdictional boundaries and relationship with its States Parties. A decision by the Pre-Trial Chamber will set a precedent affecting how the Court handles investigations involving States that have withdrawn from the Rome Statute, potentially shaping future interactions with States and perceptions of the Court's authority on the international stage.

25. The *Burundi Situation* illustrates the profound implications that the Pre-Trial Chamber's decisions can have on the ICC's relationships with its States Parties. Following the Pre-Trial Chamber's authorization to investigate in Burundi, it became the first country to withdraw from the Rome Statute on 27 October 2017.⁶⁸ This was not an isolated move either. It prompted other States Parties, including South Africa and The Gambia, to announce similar intentions.⁶⁹ While South Africa and The Gambia eventually reversed

⁶³ See e.g., *Prosecutor v. Prlić et al.*, [IT-04-74-T](#), Order Appointing an Amicus Curiae, 3 July 2009; *Prosecutor v. Akayesu*, [ICTR-96-4-T](#), Order Granting Leave for Amicus Curiae to Appear, 12 February 1998; *Prosecutor v. Kallon*, [SCSL-2003-07](#), Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae brief and to Present Oral Arguments, 1 November 2003.

⁶⁴ *Prosecutor v. Kallon*, [SCSL-2003-07](#), Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae brief and to Present Oral Arguments, 1 November 2003.

⁶⁵ *Id.*, para 4.

⁶⁶ See *Id.*, para. 7.

⁶⁷ See *Situation in the Republic of Kenya*, [ICC-01/09-35](#), Decision on Application for Leave to Submit *Amicus Curiae* Observations, 18 January 2011, para. 6.

⁶⁸ ICC Website, [Burundi](#) (last visited 7 April 2025).

⁶⁹ BBC, [South Africa revokes ICC withdrawal after court ruling](#), 8 March 2017; Amnesty International, [Gambia: Withdrawal from ICC a drastic blow to countless victims globally](#), 26 October 2016.

their positions,⁷⁰ these developments highlight the sensitivity of the Court's jurisdictional decisions and their potential to influence the States' perceptions of the ICC's authority and its potential to overreach and go well beyond the letter and spirit of the Rome Statute. The cascading effect of perceived judicial overreach also continues: on 3 April 2025, Hungary announced its intention to withdraw from the Rome Statute, citing perceived overreach in issuing arrest warrants against elected officials.⁷¹

26. Given the split within the Appeals Chamber and the absence of a conclusive ruling on this dispositive jurisdictional issue, not to mention the strength of the legal reasoning of the Appeals Chamber Dissenting Judges, the Pre-Trial Chamber would benefit from reasoned submissions by *amici curiae* who can assist in interpreting the Rome Statute's drafting history, structure, and relevant treaty law principles concerning the issue of withdrawal, particularly from States Parties, NGOs, and relevant international organizations.
27. No party will be prejudiced by the filing of *amicus* observations on jurisdiction. Rule 103(2) provides that the Parties have the right to respond to any *amicus* submissions should this Request be granted. Nor will granting this Request unduly delay the proceedings. To the contrary, if the Pre-Trial Chamber invites submissions and concludes that the ICC lacks jurisdiction in this case it would be compelled immediately to terminate the proceedings against Mr. Duterte. Not only would this prevent unnecessary expenditure of time and resources on confirmation, trial, and potential appeal proceedings conducted without proper jurisdictional authority, but it would also safeguard Mr. Duterte's fundamental human rights to liberty and due process by ensuring that his detention in The Hague is not unjustly continued where the Court lacks jurisdiction to proceed.
28. The Pre-Trial Chamber stands at a pivotal crossroads. Its decision will not only shape the trajectory of this case but also set a precedent that could redefine the ICC's jurisdictional authority, especially concerning States that have withdrawn from the Rome Statute. This is not some mere hair-splitting routine procedural issue of no substantive consequence – it underpins the very fabric of the Rome Statute and its carefully negotiated balance between holding perpetrators accountable and respecting State sovereignty. Respectfully, the voices of *amici curiae* would be incieful and assist the Pre-Trial Chamber in resolving this jurisdictional issue of first impression.

⁷⁰ ICC Press Release, [ASP President welcomes the revocation of South Africa's withdrawal from the Rome Statute](#), 11 March 2017; ICC Website, [ASP President welcomes Gambia's decision not to withdraw from the Rome Statute](#), 17 February 2017.

⁷¹ BBC, [Hungary to withdraw from International Criminal Court](#), 3 April 2025.

IV. PROPOSED SUBMISSIONS

29. If granted leave, the IPLSA intends to submit focused legal observations on four issues.

ISSUE 1: *Whether the Court's jurisdiction was lawfully triggered when the OTP did not request, and the Pre-Trial Chamber did not grant, authorization to open an investigation until more than two years after the Philippines was no longer a Party to the Rome Statute*

PROPOSED SUBMISSION 1: *No.* The ICC's jurisdiction was not lawfully triggered. For the Court to exercise jurisdiction in cases initiated *proprio motu* by the OTP, the OTP must submit a request for authorization under Article 15(3) of the Rome Statute, and the Pre-Trial Chamber must grant this authorization under Article 15(4), *while the concerned State is still a Party to the Statute*.⁷² Until the Pre-Trial Chamber issues its decision under Article 15(4), the OTP may not commence an investigation.⁷³ The Rome Statute distinguishes between the *existence of jurisdiction* (Article 12) – and the *exercise of jurisdiction*, which is only triggered by specific procedural acts under Article 13.⁷⁴ Article 13(c)'s terms reflect this distinction: "The Court may exercise its jurisdiction ... if the Prosecutor has initiated an investigation in accordance with Article 15." This "initiation" requires Pre-Trial Chamber authorization, not merely OTP action.⁷⁵ The OTP submitted its request on 24 May 2021. The Pre-Trial Chamber authorized the investigation on 15 September 2021.⁷⁶ Both the request and authorization come after two years after the Philippines was no longer a State Party. Since neither the OTP's request nor the Pre-Trial Chamber's authorization occurred while the Philippines was a State Party, the Court's jurisdiction was not timely or lawfully triggered.⁷⁷ Just as a State that is not a Party to the Statute (or is no longer a Party) cannot refer a situation to the Court to trigger its jurisdiction, the OTP cannot trigger jurisdiction once a withdrawal has become effective and the State in question is no longer a party to the Statute.⁷⁸ This view is reinforced by the Pre-Trial Chamber's *Burundi* decision where *both* the OTP's request for authorization *and* the Pre-Trial Chamber's decision were "delivered prior to the entry into effect of Burundi's withdrawal..."⁷⁹

⁷² *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023, paras. 26-27.

⁷³ See Morton Bergsmo and Dan Zhu, Article 15, in KAI AMBOS (ED), [ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: ARTICLE-BY-ARTICLE COMMENTARY](#) (Beck, Hart, Nomos 4th ed., 2021), pp. 893.

⁷⁴ *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023, para. 23.

⁷⁵ *Id.*, paras. 24-26.

⁷⁶ *Situation in the Philippines*, [ICC-01/21-12](#), Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute, 15 September 2021, para. 5.

⁷⁷ *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023, para. 23.

⁷⁸ *Id.* paras. 27.

⁷⁹ *Situation in the Republic of Burundi*, [ICC-01/17-9-Red](#), Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, 25 October 2017, paras 24-26.

ISSUE 2: Whether Article 127(2) of the Rome Statute maintains ICC jurisdiction and the Philippines' obligation to cooperate after its withdrawal became effective, given that no formal investigation or prosecution were initiated during its membership as State Party

PROPOSED SUBMISSION 2: *No.* Article 127(2) of the Rome Statute does not maintain ICC jurisdiction or the Philippines' obligation to cooperate post-withdrawal. This provision specifies that a withdrawing State remains bound by obligations related to "investigations and proceedings ... commenced prior to the date on which the withdrawal became effective." To reiterate, the OTP did not submit a request to authorize an investigation in the Philippines until 21 May 2021, and the Pre-Trial Chamber did not grant this authorization until 15 September 2021 – both dates occurring over two years after the withdrawal became effective. No formal investigations or judicial proceedings were initiated while the Philippines was a State Party. Article 127(2) does not extend the Court's jurisdiction or the Philippines' obligation to cooperate beyond this one-year withdrawal date. It functions similarly to a statute of limitations, ensuring that jurisdiction and obligations are limited to matters formally initiated before withdrawals becomes effective. As Professor Roger Clark, who represented the Government of Samoa during the Rome Conference and played a key role in establishing the ICC, observed in his commentary to Article 127: "*A vigilant Prosecutor who bears pending withdrawals in mind will need to be careful to commence proceedings formally within the relevant time-frame*" (i.e., before the State's withdrawal becomes effective).⁸⁰ Cooperation obligations under Article 86 of the Rome Statute begin *only after* the Pre-Trial Chamber's authorization.⁸¹ This interpretation is consistent with the Pre-Trial Chamber's *Burundi* decision, where the Pre-Trial Chamber emphasized that Burundi's cooperation obligations survived post-withdrawal because the investigation had been authorized *before the withdrawal took effect*.⁸²

⁸⁰ Roger Clark and Simon S. Meisenberg, Article 127, in KAI AMBOS (ED), [ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: ARTICLE-BY-ARTICLE COMMENTARY](#) (Beck, Hart, Nomos 4th ed., 2021), pp. 2294; *See also* Roger Clark, Article 127, in OTTO TRIFFTERER AND KAI AMBOS (eds), [THE ROME STATUTE](#) (Beck, Hart, Nomos 3d ed. 2016), p. 2324.

⁸¹ Roger Clark and Simon M. Meisenberg, *Article 127*, in KAI AMBOS (ED), [ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: ARTICLE-BY-ARTICLE COMMENTARY](#) (Beck, Hart, Nomos 4th ed., 2021), p. 2294. *See also* Klaus Kress and Kimberly Prost, Article 86, in KAI AMBOS (ED), [ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: ARTICLE-BY-ARTICLE COMMENTARY](#) (Beck, Hart, Nomos 4th ed., 2021), p. 2543-2455.

⁸² *Situation in the Republic of Burundi*, [ICC-01/17-9-Red](#), Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, 25 October 2017, paras.24-26.

ISSUE 3: Whether the OTP's preliminary examination constitutes a "matter under consideration by the Court" so as to retain jurisdiction and States' obligations to cooperate post-withdrawal

PROPOSED SUBMISSION 3: *No.* The OTP's preliminary examination does not qualify as a "matter under consideration by the Court" within the meaning of Article 127(2). While the OTP is mentioned as an "organ of the Court" under Article 34(c) of the Rome Statute, the rest of the Statute's text uses the term when referring to the *judicial* organs (i.e., the Chambers), not the OTP. Provisions across the Rome Statute, including Articles 19(3),⁸³ 19(7),⁸⁴ 19(10),⁸⁵ 21(2),⁸⁶ 65(5),⁸⁷ 66(3),⁸⁸ 67(2)⁸⁹ and 95⁹⁰ demonstrate that the term "under consideration by the Court" refers to matters *pending before a judicial Chamber*, not an OTP internal review. As put by Appeals Chamber Judges de Brichambaut and Lordkipanidze, the OTP's preliminary examination is simply too informal and preliminary to qualify as a matter "under consideration by the Court."⁹¹ After the *Burundi* decision, Professor Kevin Jon Heller, currently Special Advisor to ICC Prosecutor Karim A.A. Khan on War Crimes, advocated that the OTP's preliminary examination could involve nothing more than downloading publicly available reports from organizations such as Human Rights Watch or Amnesty International.⁹² The ASP did not intend for such a shallow examination to be sufficient for establishing residual jurisdiction in the ICC long after a State's withdrawal. Simply, Article 127(2) neither preserves the Court's jurisdiction nor obligates the Philippines to cooperate when there was no matter under consideration by the Court prior to the Philippines' withdrawal.

⁸³ [Rome Statute](#), Art. 19(3): "The Prosecutor may seek a ruling *from the Court* regarding a question of jurisdiction or admissibility."

⁸⁴ [Rome Statute](#), Art. 19(7): "If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17."

⁸⁵ [Rome Statute](#), Art. 19(10): "If the Court has decided that a case is inadmissible... the Prosecutor may submit a request for a review of the decision."

⁸⁶ [Rome Statute](#), Art. 21(2): "The Court may apply principles and rules of law as interpreted in its previous decisions."

⁸⁷ [Rome Statute](#), Art. 65(5): "Any discussions between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court."

⁸⁸ [Rome Statute](#), Art. 66(3): "The Court must be convinced of the guilt of the accused beyond reasonable doubt."

⁸⁹ [Rome Statute](#), Art. 67(2): "In case of doubt as to the application of this paragraph, the Court shall decide."

⁹⁰ [Rome Statute](#), Art. 95: "Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19."

⁹¹ *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023, para. 35.

⁹² Kevin Jon Heller, *A Dissenting Opinion on the ICC and Burundi*, [OPINIOJURIS](#), 29 October 2017. ICC Website, Special Advisor on War Crimes, [Biography](#), Professor Kevin Jon Heller.

ISSUE 4: Whether interpreting Article 127(2) to allow the OTP to trigger ICC jurisdiction post-withdrawal is compatible with the Rome Statute's structure and drafting history

PROPOSED SUBMISSION 4: *No.* Interpreting Article 127(2) of the Rome Statute to allow the OTP to trigger ICC jurisdiction post-withdrawal by simply opening a preliminary examination is incompatible with the Rome Statute's structure and drafting history. The Rome Statute delineates strict procedures for activating the Court's jurisdiction, in particular, by requiring judicial authorization from the Pre-Trial Chamber for the OTP's *proprio motu* investigations (i.e., when there is no UNSC or State Party referral) while a State is still Party to the Statute. Article 127, situated among the Rome Statute's "Final Clauses," is intended to preserve existing obligations, not to establish new jurisdictional avenues post-withdrawal. This interpretation aligns with Article 70 of the VCLT, which provides that withdrawal releases a State from future obligations unless rights or obligations have already been established. This interpretation also accords with the general rules of interpretation in civil law systems, where the meaning of a legal provision is considered in light of its language, place within the system, underlying principles, and objective.⁹³ The Rome Statute reflects a carefully negotiated balance between ending impunity and respecting State sovereignty and consent. Interpreting Article 70 of the VCLT to bypass the explicit withdrawal clauses in Article 127 not only disregards the Rome Statute's drafting history but also creates an absurd result, rendering Article 127 on withdrawal meaningless⁹⁴ – the OTP could trigger the Court's jurisdiction indefinitely by merely declaring a preliminary examination, downloading reports from the internet, or receiving communications.⁹⁵ Expanding Article 127(2) to allow for jurisdiction to be triggered post-withdrawal by relying the "continuity of obligations" under Article 70 of the VCLT unsettles the Rome Statute's balance between prosecutorial and judicial authority and State sovereignty, contravening the State Parties' intent.⁹⁶ Such an expansive interpretation could encourage further withdrawals from the Rome Statute and deter other States from joining, fearing unforeseen extensions of jurisdiction beyond their consent. This erosion of trust challenges the foundational principle of consent in international law and risks diminishing the Court's legitimacy and effectiveness in pursuing international justice.

⁹³ See ECCC Case 002, Decision on Immediate Appeal by Khieu Samphan on Application for Release, 6 June 2011, [E50/3/1/4](#), para. 31.

⁹⁴ *C.f. Situation in the Philippines*, [ICC-01/21-12](#), Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute, 15 September 2021, para. 111.

⁹⁵ *Situation in the Philippines*, [ICC-01/21-77-OPI](#), Dissenting Opinion of Judge Perrin de Brichambaut and Judge Lordkipanidze, 18 July 2023, para. 36.

⁹⁶ *Id.*

VI. CONCLUSION

30. The arrest warrant against former Philippine President Rodrigo Roa Duterte – years after the Philippines withdrew from its treaty obligations under the Rome Statute – is a jurisdictional issue of existential importance to the Court's continued viability and legitimacy as the world's permanent international criminal court.
31. Founded on a treaty where States Parties agreed to the strict adherence to the terms of the treaty – including the unqualified right to withdraw from it and revoke its consent to the ICC's jurisdiction – it behooves the Pre-Trial Chamber to consider the views of *amici curiae*, as it has done in other instances of equal or lesser importance. Whether the Court can exercise jurisdiction in this case raises troubling questions of potential prosecutorial and judicial overreach, threatening the core principles of the ICC framework and the Court's relationship with its States Parties.
32. Applying the standard treaty interpretation rules in Article 31 of the VCLT to Article 127 of the Rome Statute shows that once a State formally withdraws from the treaty, the ICC's jurisdiction ceases, except where “investigations” or “proceedings” are initiated before the withdrawal. The underlying intent of the Rome Statute supports this interpretation. The drafters carefully balanced the pursuit of international justice and accountability with the protection of State sovereignty.⁹⁷ The Pre-Trial Chamber would benefit from *amici curiae* interventions in deciding whether the ICC can initiate investigations post-withdrawal, which – as the IPLSA will show if granted leave – disrupts this delicate balance and contradicts the Statute's carefully crafted jurisdictional provisions.
33. ICC precedent also supports this interpretation. In *Burundi*, the OTP's request and the Pre-Trial Chamber's authorization both occurred before Burundi's withdrawal became effective. This supports the proposition that for the ICC to retain jurisdiction after withdrawal, formal steps (Pre-Trial Chamber authorization) must occur while the State is still a Party to the Statute. This interpretation is also consistent with tradition and established practices in international law, which emphasize respect for State sovereignty and the principle that treaty obligations do not extend beyond what States consented to.⁹⁸

⁹⁷ As Professor Powderly warns, when judicial decisions stray too far beyond the explicit framework of the Statute, they risk undermining the very principles the Statute was designed to protect. Specifically, judicial overreach, as seen in past decisions, can lead to destabilization and erode the trust of States Parties in the ICC's jurisdictional limits. JOSEPH POWDERLY, [JUDGES AND THE MAKING OF INTERNATIONAL CRIMINAL LAW](#) (Brill 2020) pp. 328, 329, 333, 404.

⁹⁸ Other international tribunals have strictly honored withdrawal or denunciation cut-off dates. For instance, Articles 71 and 72 of the Convention on the International Centre for Settlement of Investment Disputes (“[ICSID](#)

34. From a policy perspective, the ICC's potential overextension risks eroding its credibility and effectiveness. By disregarding clear jurisdictional limits, the Court may alienate current and prospective States Parties, undermining its *raison d'être*. If the ICC is to preserve the trust of its States Parties and ensure its actions remain within the four corners of the Rome Statute, it must allow this issue to be fully ventilated.⁹⁹
35. As Hersch Lauterpacht – renowned British lawyer widely regarded for his contributions to the development of international law and former Justice of the International Court of Justice – rightly emphasized, the evolution of international legal norms through judicial interpretation must be firmly anchored in the express consent of States and established legal principles.¹⁰⁰ Where such grounding is absent, judicial creativity risks slipping into judicial activism.
36. The rub that begs for *amici curiae* input is whether the Court can assert jurisdiction over a State that has formally withdrawn from the Rome Statute without meeting the necessary procedural thresholds – as the facts and circumstances suggest. As shown herein, the simple answer is no: judicially extending the ICC's jurisdiction beyond the clear and unambiguous jurisdictional limits set in the Rome Statute (as opined by Judges Perrin de Brichambaut and Lordkipanidze), will undoubtedly erode the confidence of States Parties. And this could result in a cascade of further withdrawals. Upholding the treaty-based jurisdictional limits is a matter of legal correctness.

Respectfully submitted, this 7th day of April 2025,

In Phnom Penh, Cambodia.



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[Convention](#)”) provide that a state's notice of denunciation does not affect that state's obligations only in respect of proceedings based on consent given before the notice.

⁹⁹ See [Article 18 Appeal Decision](#), para. 55.

¹⁰⁰ See JOSEPH POWDERLY, [JUDGES AND THE MAKING OF INTERNATIONAL CRIMINAL LAW](#) (Brill 2020), pp. 246, 248, 258, 558.