

1 International Criminal Court

2 Appeals Chamber

3 Situation: Republic of the Philippines - ICC-01/21

4 Presiding Judge Marc Perrin de Brichambaut

5 Appeals Judgment - Courtroom 1

6 Tuesday, 18 July 2023

7 (The hearing starts in open session at 10.00 a.m.)

8 THE COURT USHER: [10:00:39] All rise.

9 The International Criminal Court is now in session.

10 Please be seated.

11 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:01:09] Court officer, please

12 call the case.

13 THE COURT OFFICER: [10:01:14] Good morning, Mr President.

14 This is the situation in the Republic of the Philippines, situation number ICC-01/21.

15 And for the record, we are in open session.

16 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:01:26] Good morning again.

17 I am Judge Marc Perrin de Brichambaut, presiding this appeal arising from

18 the Situation of the Republic of the Philippines. My fellow Judges in this appeal are

19 Judge Piotr Hofmański, Judge Luz del Carmen Ibáñez Carranza, Judge Solomy

20 Balungi Bossa and Judge Gocha Lordkipanidze.

21 May I ask the parties and participants to please introduce themselves for the record,

22 starting with the Representative of the Philippines on whose appeal we are deciding

23 today. Please, sir.

24 MS BAFADHEL: [10:02:04] Good morning, your Honour. Good morning to

25 everyone in and around the courtroom. The government of the Republic of

1 the Philippines is represented today by Ambassador Eduardo Malaya, Counsel
2 Jarie Osias, Counsel Marisar Cabatingan, from the Philippines embassy here in
3 the Netherlands. And we are also fortunate to have Counsel Sarah Cruz from
4 the Office of the Solicitor General in the Philippines. And I am Sarah Bafadhel,
5 external counsel assisting in this matter. Thank you.

6 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:02:34] Thank you very much
7 to you.

8 Could I please ask the Office of the Prosecutor to introduce themselves.

9 MR STEYNBERG: [10:02:39] Good morning, your Honour. Appearing for
10 the Prosecution this morning, trial lawyer Colin Black, to my right. Directly behind
11 me, associate trial lawyer Inbal Djalovski; behind me to my right, associate trial
12 lawyer Robynne Croft. And I am senior trial lawyer Anton Steynberg. Thank you.

13 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:02:57] Thank you very
14 much.

15 Could I ask the Legal Representative for Victims, the OPCV, to please introduce
16 themselves.

17 MS PELLET: [10:03:05](Interpretation) Thank you, your Honour. The OPCV is
18 represented by Ludovica Vetrucchio and myself, Sarah Pellet.

19 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:03:20] Thank you very much.
20 I think VPRS is present. Could they please introduce themselves. No?
21 Yes, sorry.

22 MS BRIKCI: [10:03:27] Good morning, your Honour. For VPRS, on my left, my
23 colleague Alexandra David, and myself Soraya Brikci.

24 PRESIDING JUDGE PERRIN DE BRICHAMBAUT: [10:03:36] Thank you very much
25 indeed to all of you.

1 So, today the Appeals Chamber will deliver its judgment in the appeal of the Republic
2 of the Philippines against Pre-Trial Chamber I's decision of 26 January 2023, entitled
3 "Authorisation pursuant to Article 18(2) of the Statute to resume the investigation". I
4 shall refer to it as the "Impugned Decision".

5 This is a non-authoritative summary of the Appeals Chamber's written judgment in
6 the appeal. The written judgment, together with the dissenting opinion that is
7 appended to it, will be made available and notified after this hearing.

8 I will now briefly explain the background to this appeal.

9 On 17 March 2018, the Philippines announced its withdrawal from the Rome Statute,
10 which became effective from 17 March 2019, pursuant to Article 127(1) of the Statute.

11 On 24 May 2021, the Prosecutor requested, pursuant to Article 15(3) of the Statute,
12 that the Pre-Trial Chamber grant authorisation to commence an investigation into
13 the situation in the Philippines.

14 On 15 September 2021, the Pre-Trial Chamber issued a decision authorising
15 the commencement of the Prosecutor's investigation.

16 On 18 November 2021, the Prosecutor notified the Pre-Trial Chamber that he had
17 received a deferral request from the Philippines, pursuant to Article 18(2) of
18 the Statute.

19 On 24 June 2022, the Prosecutor requested the Pre-Trial Chamber to authorise
20 the resumption of the investigation into the Philippines situation, pursuant to
21 Article 18(2) of the Statute.

22 On 26 January 2023, the Pre-Trial Chamber rendered the Impugned Decision,
23 authorising the Prosecutor to resume the investigation into the Philippines situation,
24 pursuant to Article 18(2) of the Statute.

25 On 13 March 2023, the Philippines filed its appeal brief, raising the following four

1 grounds of appeal.

2 First, the Philippines alleges that the Pre-Trial Chamber erred in finding that
3 the Court could exercise its jurisdiction on the basis that the Philippines was a State
4 Party at the time of the alleged crimes, despite its subsequent withdrawal from
5 the Statute.

6 Second, the Philippines alleges that the Pre-Trial Chamber erred in reversing
7 the Prosecutor's burden of proof in the context of Article 18 proceedings.

8 Third, the Philippines alleges that the Pre-Trial Chamber committed an error of law in
9 its application of "the legal standard applicable to a case, overstating the degree of
10 overlap required in the Article 18 context", "which invalidated the entire admissibility
11 assessment". The Philippines also alleges a number of errors in
12 the Pre-Trial Chamber's findings on specific domestic proceedings and on the degree
13 of overlap with the Court's investigation.

14 Fourth, the Philippines alleges that the Pre-Trial Chamber's finding that it was not
15 satisfied that the Philippines is making "a real or genuine effort" to carry out
16 the investigations and prosecutions is not based on any actual assessment, and that
17 the Pre-Trial Chamber failed to consider whether the situation is of sufficient gravity.
18 The Philippines seeks a reversal of the Impugned Decision.

19 Before I address the merits of the appeal, I would like to state that it is rejected by
20 the Appeals Chamber by majority and that the Impugned Decision is therefore
21 confirmed.

22 I will now address the merits of the appeal and the Appeals Chamber's findings.

23 Under the first ground of appeal, the Philippines alleges that the Pre-Trial Chamber
24 erred in finding that the Court could exercise its jurisdiction despite the Philippines'
25 withdrawal from the Statute.

1 The Philippines also argues that it is entitled to raise this issue in its appeal, as
2 the Impugned Decision contains "a positive finding of jurisdiction based on
3 the [Philippines'] status, as a State Party to the Rome Statute, at the time of the alleged
4 crimes".

5 The Appeals Chamber, by majority, I and Judge Lordkipanidze dissenting, finds that
6 the Philippines sets out the alleged errors in a manner that renders unclear both
7 the precise nature of its challenge as well as the legal basis pursuant to which
8 the challenge is made.

9 The Appeals Chamber, by majority, observes that the Impugned Decision does not
10 constitute a "decision with respect to jurisdiction" within the meaning of
11 Article 82(1)(a) of the Statute. While the Pre-Trial Chamber addressed the issue of
12 jurisdiction in general terms, the Impugned Decision is not a decision on jurisdiction.
13 Contrary to the Philippines' assertions, the findings of the Pre-Trial Chamber, in
14 particular those concerning the Court's jurisdiction over the present situation and
15 the effects of the Philippines' withdrawal on the Court's jurisdiction, are not
16 "a positive finding of jurisdiction" that is "inextricably linked" to its admissibility
17 ruling. Rather, the Pre-Trial Chamber simply recalled and reaffirmed its previous
18 findings on jurisdiction made in its decision authorising the investigation under
19 Article 15 of the Statute.

20 Furthermore, the issue of the impact of the Philippines' withdrawal from the Statute
21 on the Court's jurisdiction was neither properly raised nor adequately ventilated
22 before the Pre-Trial Chamber.

23 The Appeals Chamber by majority, Judge Lordkipanidze and myself dissenting,
24 therefore considers that the Appeals Chamber cannot entertain the Philippines'
25 appeal at this point.

1 As a result, the Appeals Chamber, by majority, Judge Lordkipanidze and myself
2 dissenting, dismisses the first ground of the appeal -- of the Philippines' appeal.

3 As a result of the dissenting opinion of Judge Lordkipanidze and myself with respect
4 to the first ground of appeal, the following grounds of appeal are only considered by
5 the majority of the Appeals Chamber.

6 Under the second ground of appeal, the Philippines alleges that
7 the Pre-Trial Chamber erred in reversing the Prosecutor's burden of proof in
8 the context of Article 18 proceedings.

9 In support, the Philippines argue that in Article 18 proceedings, the Prosecutor, as
10 moving party, bears the burden of proof. It is because, in its view, the State is not
11 the party seeking to change the status quo. Rather, the Prosecutor is seeking
12 a preliminary ruling regarding admissibility to end his continued deferral, after
13 having received a deferral request from a State.

14 The majority recalls that Article 18(2) of the Statute provides that a State may inform
15 the Court that "it is investigating or has investigated" the relevant persons and request
16 a deferral. The majority further recalls that Rule 53 of the Rules requires the State
17 seeking a deferral to "provide information concerning its investigation".

18 The majority notes that by "inform[ing] the Court that it is investigating or has
19 investigated" and requesting deferral, the State concerned is alleging a fact.

20 The majority is of the view that the Court's legal texts place the burden of proof in
21 Article 18 proceedings on the party which seeks to establish the existence of a fact. It
22 is thus incumbent upon the State to establish the facts supporting the assertion.

23 Recalling Rule 54(1) of the Rules, the majority notes that when the Prosecutor seises
24 a pre-trial chamber with an application for a ruling under Article 18(2) of the Statute,
25 the pre-trial chamber, in its determination of the Prosecutor's application, relies on

1 the information which the State initially provided to the Prosecutor.

2 As a result, the burden of providing information relevant to the pre-trial chamber's

3 determination under Article 18(2) remains on the State seeking deferral, and

4 the Prosecutor's subsequent duty to communicate to the pre-trial chamber

5 the information initially provided by the State in support of its deferral request does

6 not affect the allocation of the burden of the proof.

7 For the foregoing reasons, the majority finds that the Philippines has failed to

8 demonstrate that the Pre-Trial Chamber erred in placing the onus on the Philippines

9 "to show that investigations or prosecutions are taking place or have taken place".

10 Therefore, the majority rejects the second ground of appeal.

11 Under the third ground of appeal, the Philippines alleges that the Pre-Trial Chamber

12 erred in applying the "same person/same conduct test" and the high standard of

13 assessment of the degree of mirroring with the Prosecutor's investigations, both tests

14 being, in its view, applicable to cases, rather than to situations. Philippines provide

15 a number of examples of domestic proceedings which, it submits, were erroneously

16 assessed.

17 The majority recalls the jurisprudence of the Appeals Chamber that any investigation,

18 irrespective of its stage, have certain defining parameters.

19 The majority is of the view that, for the purpose of admissibility challenges under

20 Article 18 of the Statute, a State is required to demonstrate an advancing process of

21 domestic investigations and prosecutions of the same groups or categories of

22 individuals in relation to the relevant criminality, including the patterns and forms of

23 criminality, within a situation. The domestic criminal proceedings must sufficiently

24 mirror the scope of the Prosecutor's intended investigation. The Appeals Chamber

25 observes that a pre-trial chamber's assessment in this context is a largely fact-driven

1 inquiry.

2 The majority notes that in the present situation, the general parameters of
3 the situation were defined by the Pre-Trial Chamber's Article 15 decision and by
4 the Prosecutor's notification to the Philippines under Article 18(1) of the Statute, and
5 that those parameters were sufficiently specific to enable the Philippines to provide
6 information in relation to its domestic investigations and prosecutions under
7 Article 18(1) of the Statute and demonstrate the degree of mirroring.

8 The Pre-Trial Chamber stated that it considered whether the domestic investigations
9 and prosecutions of the Philippines cover "the same individuals and substantially
10 the same conduct as the investigations before the Court". The majority notes that
11 the Pre-Trial Chamber, however, acknowledged that its assessment must be carried
12 out in the context of a specific situation and taking into account the different types of
13 investigations.

14 Furthermore, in its application of the test, the Pre-Trial Chamber examined whether
15 the Philippines showed, first, that it is indeed investigating and prosecuting the same
16 groups or categories of individuals in relation to relevant criminality within the scope
17 of the situation, i.e. crimes related to the "war on drugs" campaign; second, that it has
18 undertaken "tangible, concrete, progressive investigative steps" in its investigations
19 and proceedings; and third, that its domestic investigations and prosecutions
20 "sufficiently mirror the content of the Article 18(1) notification, by which
21 the Prosecution notified the concerned State of the opening of an investigation, and its
22 scope".

23 In light of the foregoing, the majority considers that in its assessment of
24 complementarity in the context of Article 18(2) of the Statute, the Pre-Trial Chamber
25 correctly assessed whether there exists an advancing process of domestic

1 investigations or prosecution of the same groups or categories of individuals in
2 relation to relevant criminality within the situation which sufficiently mirror that
3 of the Prosecutor, taking into account the stage of a situation, as well as the specific
4 circumstances and parameters of the Philippines situation.

5 Therefore, the majority finds that the Pre-Trial Chamber did not err in law.

6 The Philippines alleges a number of errors in the Pre-Trial Chamber's findings on
7 specific domestic proceedings and on the degree of overlap with the Court's
8 investigation. With respect to the Pre-Trial Chamber's assessment and rejections of
9 information submitted to substantiate the Philippines' investigations, the Philippines
10 alleges that the Pre-Trial Chamber erroneously imposed a "high threshold, developed
11 in the Article 19 context".

12 For the reasons set out in detail in the judgment, the majority finds that
13 the Philippines has failed to demonstrate any errors of the Pre-Trial Chamber in
14 the Impugned Decision.

15 As regards the Pre-Trial Chamber's assessment concerning the contours of
16 the investigation, the Philippines alleges that the Pre-Trial Chamber imposed
17 "a degree of mirroring with the Prosecution's investigations which cannot reasonably
18 exist" "at the Article 18 stage whereby the contours of the Prosecution's investigations
19 concerning a specific case are undefined and unclear".

20 For the reasons set out in detail in the judgment, the majority finds that by failing to
21 show instances in which the Pre-Trial Chamber allegedly applied the wrong
22 threshold or standard, the Philippines has failed to demonstrate the alleged legal
23 error.

24 Having rejected the Philippines' arguments regarding the application of the alleged
25 erroneous admissibility test and the examples of alleged erroneously assessed

1 domestic proceedings, the majority rejects the third ground of appeal.

2 Under the fourth ground of appeal, the Philippines alleges that

3 the Pre-Trial Chamber's finding that, in its view, the Philippines is not making "a real
4 or genuine effort" to carry out investigations and prosecutions is not based on any
5 actual assessment.

6 The majority does not agree that the Pre-Trial Chamber's finding that no "real or
7 genuine effort" was made was a finding on the Philippines' willingness and ability to
8 carry out investigations. This finding of the Pre-Trial Chamber should be viewed in
9 light of the two-step approach that the Pre-Trial Chamber applied, which requires it
10 to assess the willingness and ability of the domestic authorities to genuinely carry out
11 an investigation or prosecution only if it first finds that there were ongoing, or that
12 there had been, investigations or prosecutions.

13 In the present situation, the Pre-Trial Chamber concluded that both questions were
14 answered by the negative. Consequently, the question of unwillingness or inability
15 did not arise.

16 The Philippines also submits that the Pre-Trial Chamber erred in law by declining to
17 consider the potential gravity of potential cases within the Philippines situation.

18 The majority notes, however, that the Pre-Trial Chamber did consider the Philippines'
19 arguments on gravity and limited its findings to the arguments which the Philippines
20 actually raised. The majority finds no error in the Pre-Trial Chamber's approach to
21 only address those issues of gravity that the Philippines had actually raised before it.

22 Therefore, the majority dismisses the Philippines' arguments regarding gravity.

23 The majority rejects the fourth ground of appeal in its entirety.

24 I am now going to summarise the dissenting opinion of Judge Lordkipanidze and
25 myself. And I intend to do it in French, so maybe you will need to get some

1 earphones.

2 (Interpretation) In today's judgment, the Appeals Chamber, by majority, dismissed
3 the first ground of appeal raised by the Philippines in its appeal brief. From
4 the Appeals Chamber's point of view, given that, first of all, the Impugned Decision is
5 not a decision on jurisdiction and, secondly, the issue of the effect of the Philippines'
6 withdrawal from the Statute on the jurisdiction of the Court was neither properly
7 raised nor adequately ventilated before the Pre-Trial Chamber, nor was the issue
8 adequately raised upon appeal, the Appeals Chamber cannot consider
9 the appeal's -- the Philippines' appeal on this point.

10 Judge Lordkipanidze and I respectfully disagree with the majority. We are of
11 the view that the first ground of appeal is admissible, and we would have considered
12 it on the merits and we would have allowed it.

13 We are of the view that the Appeals Chamber has been properly seised of
14 the exception of the lack of jurisdiction raised by the Philippines, given that, first of all,
15 the Impugned Decision does contain a finding on jurisdiction and, secondly,
16 the Philippines has correctly identified an error in this finding.

17 First of all, in our view, the issue of jurisdiction raised in the Appeal Brief is
18 a practical issue in the context of the Impugned Decision.

19 In accordance with the invitation by the Pre-Trial Chamber, the Philippines filed its
20 observations on the Prosecutor's Article 18 application, raising, *inter alia*, issues
21 relating to the jurisdiction of the Court. In particular, the Philippines submitted
22 arguments concerning the Court's alleged lack of material jurisdiction, insufficient
23 gravity of the constituent crimes and a more general argument on State sovereignty.
24 As a preliminary matter, the Pre-Trial Chamber examined several general challenges
25 of the Court's jurisdiction raised by the Philippines in its observations, and made

1 a specific finding on the effects of the Philippines' withdrawal on the jurisdiction of
2 the Court, although the arguments of the Philippines did not specifically relate to
3 the effect of its withdrawal from the Statute.

4 Contrary to the conclusion of the majority, we are of the view that the Impugned
5 Decision did make a finding on jurisdiction and that this finding is an integral part of
6 the decision and constitutes the foundation thereof. As such, we would have
7 addressed the merits of the Philippines' arguments challenging the Court's
8 jurisdiction.

9 Furthermore, we are of the view that the fundamental issue of the Court's jurisdiction
10 should be resolved as soon as possible. When an aspect of the Court's jurisdiction is
11 duly challenged, the Court must ensure, at the first opportunity, that it does indeed
12 have jurisdiction. This is particularly so in the case at hand, in which the Philippines
13 concretely challenged the jurisdiction of the Court subsequent to its withdrawal from
14 the Statute. In our opinion, this approach is consistent with the recent judgment by
15 the Appeals Chamber in the situation in the Islamic Republic of Afghanistan. In that
16 judgment the Appeals Chamber reviewed the scope of the jurisdiction as part of an
17 appeal arising from proceedings under Article 18. Now, although
18 the Pre-Trial Chamber may have already made similar findings on jurisdiction in
19 the Article 15 decision, which are referred to in the Impugned Decision, Article 15
20 of the Statute does not provide for the participation of the State concerned in
21 the relevant proceedings. Consequently, the Philippines was neither a party to nor
22 a participant in the Article 15 proceedings in this situation. It is only as part of
23 the proceedings under Article 18(2) that the Philippines had the opportunity to raise
24 issues concerning the jurisdiction of the Court. Although these arguments do not
25 bear expressly upon the Philippines' withdrawal from the Statute,

1 the Pre-Trial Chamber did rule on this matter in the Impugned Decision. As such,
2 we are of the view that the Philippines' challenge of the jurisdiction of the Court was
3 proper and that the Appeals Chamber should have examined the challenge on its
4 merits.

5 Secondly, the Philippines argues that the Pre-Trial Chamber erred in law by
6 concluding that the Court could exercise its jurisdiction on the basis of the fact that
7 the Philippines was a State Party at the time of the alleged crimes and that
8 the obligations under the Rome Statute remain applicable notwithstanding
9 the Philippines' withdrawal from the Statute.

10 An overall reading of Articles 12, 13, 15, 18(1) and 127 of the Statute leads us to
11 consider that there's a distinction between the existence of jurisdiction and the Court's
12 ability to exercise that jurisdiction, and that the conditions for the exercise of
13 jurisdiction as they are set out in Article 12 of the Statute must exist at the time when
14 jurisdiction is triggered under Article 13 of the Statute.

15 Article 12(2) of the Statute, read in conjunction with Articles 13(c) and 15
16 of the Statute, provides that where the Prosecutor has initiated a *proprio motu*
17 investigation in respect of a crime within the jurisdiction of the Court in accordance
18 with Article 15 of the Statute, the Court may exercise its jurisdiction if one or more
19 States of the States concerned are parties to this Statute or have accepted
20 the jurisdiction of the Court in accordance with Article 12(3) of the Statute.

21 In our view, the wording of this provision indicates that the appropriate time for
22 determining whether the preconditions of Article 12 of the Statute are met is when
23 the Court intends to exercise its jurisdiction, and not when the crimes are alleged to
24 have been committed. In other words, the preconditions for the exercise of
25 the Court's jurisdiction must exist at the time when jurisdiction is triggered in

1 accordance with Article 13 of the Statute, which, in the scenario provided for in
2 Article 13(c) of the Statute certainly occurs when the Pre-Trial Chamber authorises
3 the investigation in accordance with Article 15(4) of the Statute.
4 Bearing in mind that the Rome Statute is both an international treaty and an
5 international criminal code, two concomitant interests can be discerned when a State
6 withdraws from the Statute. Article 127 of the Statute guarantees States Parties
7 the right to withdraw from the Statute. In this respect, we consider that it is
8 a fundamental right of States to decide whether or not they wish to be bound by
9 a treaty. We are also aware of the Statute's objective of ending impunity. There is
10 an obvious risk of conflict between those two competing considerations. Indeed,
11 there's a risk that a State will use its right to opt out of the Statute to shield certain
12 individuals from prosecution by the Court.
13 We believe that the Statute strikes a fair balance between these competing
14 considerations and provides for a procedure that enables the Court to prevent any
15 abuse of a State's right to withdraw. Article 127(1) of the Statute provides that
16 "withdrawal shall take effect one year after the date of receipt of the notification".
17 Therefore, the Prosecutor must make every effort to trigger the Court's jurisdiction in
18 a manner that does not prejudice a State's right to withdraw from the Statute. In our
19 view, one year is sufficient for the Prosecutor to conduct his preliminary examination
20 and request a pre-trial chamber to authorise the commencement of the investigation
21 and for the pre-trial chamber to rule on that request. The Statute thus gives
22 the Court the opportunity to assert its jurisdiction. However, it also respects
23 the right of States to withdraw from the Statute and therefore provides for limitations
24 on this power of the Court. Without these limitations, the Court's jurisdiction would
25 expand to an extent that would defy the assurances and guarantees given to States in

1 the Statute. This could have a negative impact on the Court's system as a whole. In
2 the present case, as the Prosecutor did not trigger the Court's jurisdiction before
3 the withdrawal took effect, the Philippines reaffirmed what it considered to be its
4 primary jurisdiction.

5 When the former Prosecutor submitted his request for authorisation for an
6 investigation on 24 May 2021, the Philippines was no longer a party to the Statute, its
7 withdrawal having taken effect on 17 March 2019. And furthermore, it should be
8 noted that the Pre-Trial Chamber issued its decision on Article 15(4), authorising
9 the investigation of the Prosecutor, in September 2021, so more than two years after
10 the fact of the withdrawal of the Philippines.

11 Where it concerns the interpretation of Article 127(2) of the Statute, we consider that
12 the Prosecutor's preliminary examinations are not a matter under consideration by
13 the Court within the meaning of Article 127(2) of the Statute, and that a situation is
14 not under consideration by the Court until the pre-trial chamber authorises
15 the opening of an investigation into that situation. This is largely due to the informal
16 nature of preliminary examinations, which do not carry sufficient weight to engage
17 the jurisdiction of the Court, in the absence of formal authorisation by
18 a pre-trial chamber to open an investigation in accordance with Article 15
19 of the Statute. We consider that the last sentence of Article 127(2) of the Statute
20 cannot be invoked to extend the Prosecutor's power to submit a request under
21 Article 15(3) beyond the time when the withdrawal has become effective.

22 Crucially, the interpretation of Article 127(2) of the Statute, as advocated by
23 the Prosecutor, cannot be reconciled with the principles of the Vienna Convention on
24 the Law of Treaties and with the intention of the drafters of the Statute, as this
25 interpretation would render Article 127 meaningless by allowing the Court's

1 jurisdiction to be triggered indefinitely. In our view, Article 127 of the Statute is
2 contained in the final clauses, chapter 13 of the Statute. The provisions contained in
3 that part cannot alter the jurisdictional regime carefully elaborated in chapter 2
4 of the Statute.

5 For these reasons, Judge Lordkipanidze and I consider that the Pre-Trial Chamber
6 erred in law in concluding that the Court has jurisdiction over the situation in
7 the Philippines despite the withdrawal of the State. Accordingly, we would have
8 upheld the Philippines' first ground of appeal and found that the Court cannot
9 exercise its jurisdiction in the situation in the Philippines. Consequently, we would
10 have held that the other grounds of appeal were without object. We would have
11 also asked the Pre-Trial Chamber to withdraw its authorisation for the Prosecutor's
12 investigation and to terminate all proceedings in this situation.

13 (Speaks English) For these reasons - and for the reasons stated more fully in the
14 written judgment - the Appeals Chamber by majority, Judge Lordkipanidze and
15 myself dissenting, rejects the appeal and confirms the Impugned Decision.

16 This brings an end of the summary of the Appeals Chamber judgment.

17 The reading of this judgment takes place on the 25th anniversary of the signing of
18 the Rome Statute. It shows the continuity of purpose in implementing this
19 ambitious endeavour and in affirming the values of justice by all those who have
20 contributed to it. I would like to thank them.

21 I would like to thank the court reporters, interpreters and other Registry staff for their
22 valuable assistance today in holding this hearing.

23 The hearing is adjourned.

24 THE COURT USHER: [10:39:10] All rise.

25 (The hearing ends in open session at 10.39 a.m.)