

1. DRAWING THE LINE: NAVIGATING JURISDICTION IN THE ICC'S PRELIMINARY EXAMINATION PHASE

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Abstract

The Philippines' withdrawal from the Rome Statute in response to the ICC's proprio motu preliminary examination has once again sparked concerns about the Court's jurisdictional overreach. The Office of the Prosecutor's broad discretionary powers under this stage have long been a source of international apprehension, as they seem to place excessive authority in the hands of a single entity. This apprehension is fuelled because the process is seen as wholly under the Office of the Prosecutor rather than a pivotal function of the Court, which underlines another issue that stems from this: the varying comprehensions of the term 'Court' especially the contention of whether the Office of the Prosecutor is encompassed under the definition of Court. The debate was reignited when the Republic of the Philippines decided to withdraw from the Rome Statute in furtherance of the initiation of the preliminary examination against the state by the Office of the Prosecutor. The Philippines argued that without a Pre-Trial Chamber-authorized investigation, the ICC had no authority to probe the country. They contended that a preliminary examination alone was insufficient to establish jurisdiction.

This argument brings us to the core concern of whether the process of preliminary examination in itself establishes the jurisdiction of the Court over the concerned state(s). Preliminary examination does establish jurisdiction over a situation owing to the fact that preliminary examination is a crucial step preceding any authorised investigation. The article delves into the basics of the preliminary examination, navigating through the procedure within the preliminary examination which eventually establishes jurisdiction in a situation. In addition to this, the article highlights the validity of the

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process of preliminary examination with respect to the provisions of the Rome Statute. While the concerns of the state party and the international community stand true on their own grounds, it is time to realise the significance of the preliminary examination. This process opens paths for the ICC to secure its broader objective to secure justice for the victims of heinous crimes and, meanwhile, also revive the Court, which seems to have deviated from its central purpose.

Keywords: *Preliminary Examination, Jurisdiction, Court, Rome Statute, Philippines.*

INTRODUCTION

A Preliminary Examination (PE) is a process conducted by the Office of the Prosecutor (OTP) in the International Criminal Court (ICC) to gather initial information about a situation, determine the grounds for jurisdiction and admissibility, and assess whether pursuing the case serves the interests of justice. The process of PE in the ICC has been extensively debated. The process had been surrounded by allegations of opaqueness, and there was little understanding of how the OTP goes about it.

The procedure of PEs is also under contention because of its stretching over a protracted period, even exceeding the time span of the one-year withdrawal period without initiation of an authorised investigation. The stretch beyond this cooling period in the conduct of the PEs attracts pertinent questions surrounding the jurisdictional authority of PE over the state that has withdrawn. One such instance was when the Republic of the Philippines decided to withdraw from the Rome Statute (RS) on March 17, 2018, in furtherance of the PE initiated by the OTP on February 8, 2018. This was followed by the State of the Philippines raising concerns about the validity of the jurisdiction of the ICC over the State.

The case of “*Situation in the Republic of Philippines*” pertains to the allegations of crimes against humanity in the Republic of the Philippines framed by the OTP committed in the midst of the ‘war on drugs’ campaign between 1 November 2011 and 16 March 2019. While the Philippines’ withdrawal from the Statute took effect on 17 March 2019, the OTP received authorisation for the initiation of the investigation only on September 15, 2021. The Republic of the Philippines objected to this very decision of the Pre-Trial Chamber 1 (PTC) on the 18th of November 2021, as the withdrawal from the RS purportedly resulted

in the ICC lacking its jurisdiction over the State. The PTC on the 26th of January 2023 granted the OTP permission to resume the investigation whilst overriding the contentions raised by the Philippines. The PTC reasoned that “the Court retains jurisdiction with respect to alleged crimes that occurred on the territory of the Philippines while it was a State Party” to the RS.¹ The Republic of the Philippines submitted a “Notice of Appeal” against the Decision of the PTC on 3 February 2023. The Appeals Chamber upheld the decision of the PTC and the majority stated “that this issue was not properly raised before the Pre-Trial Chamber and that the impugned decision does not constitute a ‘decision with respect to the jurisdiction.’”² Judge Perrin de Brichambaut and Judge Lordkipanidze however, dissented from this majority judgment in the Appeals Chamber. They expressed their concern about PE not triggering jurisdiction as it “is largely due to the informal nature of the preliminary examinations, which do not carry sufficient weight for engaging the Court’s jurisdiction, in the absence of a pre-trial chamber’s formal authorisation of the commencement of an investigation pursuant to Article 15 of the Statute.” This case brought to the fore yet again the jurisdictional concerns surrounding PE when proprio motu was initiated by the OTP.

The issue raised by the case in question is whether a PE is equivalent to jurisdiction under the ICC. This article explores this pressing concern of the ICC and the international community, revealing a spectrum of divergent opinions. The pursuit of justice is complicated by conflicting arguments regarding the potential overreach of powers vested in the OTP. While addressing the central question, the article would assess the finding of the Court in the aforementioned case, along with investigating the fundamental aspects of the process of PE and examining whether it qualifies as a 'matter under consideration by the Court' according to Article 127 of the RS.

PRELIMINARY EXAMINATION: A JURISDICTIONAL ANALYSIS

¹ *Situation in the Republic of Philippines* (Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute) ICC-01/21 (15 September 2021) [111]

² *Situation in the Republic of Philippines* (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) ICC-01/21 OA (18 July 2023) [55]

The ICC, since its inception in 2002 has examined, investigated, and tried cases of a critical nature concerning genocide, war crimes, crimes against humanity, and crimes of aggression.³ The Court can exercise its jurisdiction under/in three situations⁴: referral of a situation by a State Party⁵; referral by the United Nations Security Council⁶; *proprio motu* investigation undertaken by the Prosecutor.⁷ Under all these scenarios, the thread of commonality is the initiation of the process of PE by the OTP as soon as the communications/information is received.

The PE serves as an examination of a situation/case undertaken by the OTP to analyse the situation/case to determine whether there lies any reasonable legal basis for the initiation of an investigation. PE serves as the “pre-investigative phase”⁸ and precedes investigation in all three trigger mechanisms as per Article 13. PE is “one of the Office’s three core activities” alongside investigating and prosecuting within the jurisdiction of the Court.⁹

The OTP eventually determines whether the investigation into the concerned case should be initiated or not. However, in the first two instances, i.e., referral by a State Party and UNSC, the OTP can commence an investigation if it believes there are sufficient grounds to do so without taking the authorisation of the Pre-Trial Chamber. On the other hand, when the OTP *proprio motu* initiates a preliminary examination, the authorisation by the PTC to initiate an investigation into the matter becomes necessary. Thus, only in the second scenario, the issue of jurisdiction becomes a challenge in the absence of authorisation by the PTC.

THE OTP’s ROLE IN DETERMINING JURISDICTION: PRELIMINARY EXAMINATION

³ RS 2178 UNTS 9018 (“RS”), art 12

⁴ RS, art 13

⁵ RS, art 13,14

⁶ RS, art 13 ; Charter of the United Nations 1 UNTS XVI 1945, ch VI

⁷ RS, art 15

⁸ *Request under Regulation 46(3) of the Regulations of the Court* (Decision on the Prosecution’s Request for Ruling on Jurisdiction under Article 19(3) of the Statute) ICC-RoC46(3)-01/18-37 (6 September 2018) [82]

⁹ The OTP, “Strategic Plan 2016-18” (2015), para 54

The OTP in the process of determining the existence of “reasonable basis” also considers the jurisdictional question over a case for which the OTP employs a four-level filtering process that finds its roots in Article 53(1)(a)-(c)¹⁰ of the RS. Each of these phases has a well-defined, distinct intent to achieve the objective; nevertheless, the office uses a holistic approach to the process of PE as a whole.

The filtering process is divided into four phases. Phase 1 assesses the communications and information received. Phase 2 assesses the jurisdiction. Phase 3 assesses the admissibility. Phase 4 assesses the interest of justice in the situation.

Phase 1 inculcates the process wherein the prosecutor analyses and verifies the information/communication received under Article 15. This phase is the first step to determine if the crimes committed “seem” to come under the jurisdiction of the Court.

The OTP does not consider the first phase as the initiation of the process of PE but rather a pre-preliminary examination stage.¹¹ The question of jurisdiction does not stand in this phase, given this phase is only concerned with an initial assessment of the communications that have been received, but it is *important* because, among the numerous communications received, it is crucial to filter out the ones that are a matter of grave concern to the ICC. Following a comprehensive analysis of the communications, the OTP determines whether to proceed to the second phase.

Phase 2 is the official commencement of the preliminary examination.¹² The OTP here assesses the prerequisites of jurisdiction in accordance with the RS. This assessment is concerned with Article 5 (subject-matter jurisdiction), Article 11 (temporal jurisdiction), Article 12(2)(a) (territorial jurisdiction), and Article 12(2)(b) (personal jurisdiction) of the RS. This phase is essentially and exclusively a stage where the OTP determines jurisdiction over a situation. This phase forms the basis for the initiation of any PE in the case of OTP.

¹⁰ RS, art 53(1)(a)-(c)

¹¹ The OTP, “Policy Paper on Preliminary Examinations’ (2018)”, para 18

¹² *ibid*

Phase 2 entails a thorough factual and legal assessment of the available information in view of identifying the potential cases falling within the jurisdiction of the Court.¹³ If the jurisdiction has been established by the PTC in phase 2, the situation would come under the jurisdiction of the Court. This deduction still stands even if a state decides to withdraw from the RS.

This phase is followed by the third stage, which is concerned with the question of admissibility, which includes the complementarity and gravity of crimes. This phase eventually leads to the last phase i.e., the 4th phase, which deals with the criterion of interest of justice.

The process of PE and its distinct phases were very recently a worrisome issue for the international community, the reason being the covert nature of the working of the OTP. No obvious boundaries were visible in the conducting of the process which again brought in uncertainty and distrust in the working of the OTP. To combat the same, OTP in its efforts to ensure transparency, releases detailed reports on each of the PEs pursued by it.

After the assessment of the communications in the course of all four phases, if the OTP concludes not to go ahead with the investigation, the same has to be informed to those who provided the information.¹⁴ In the course of the OTP's assessment, not leading to the establishment of jurisdiction, it is still compelled to inform PTC.¹⁵ Additionally, there is also a likelihood that a case taken to PTC for a grant of authorisation can be denied by the Court if the Court is convinced that the jurisdiction over the case/situation does not stand. Thus, such measures provided by the RS itself uphold a check on the powers of the OTP by the Court to prevent arbitrariness of decision-making and keep the scales of justice balanced.

The well-established principle of *la compétence de la compétence* signifies that any international tribunal possesses the authority to decide the scope of its own jurisdiction. This principle underscores the power of the OTP, as an organ of the Court, to define its

¹³ The OTP, "Policy Paper on Preliminary Examinations' (2013)", para 81

¹⁴ RS, art 15(6)

¹⁵ RS, art 53(1)

jurisdiction through the PE process to exert authority and jurisdiction over the state party to the statute.

PRELIMINARY EXAMINATION AND COURT: A PIVOTAL FUNCTION OR OVERSTEPPING BOUNDARIES

PE is the sole procedure through which the OTP inspects a situation and determines the jurisdictional validity, among other requirements, of a situation. To determine the primary question of jurisdiction under PE of a state party it is important to take into account Article 127 along with the other articles dealing with jurisdiction in the RS i.e., Articles 5, 11, 12, and 13.

Article 127 of the RS states the obligations of the state even after the withdrawal from the RS. Article 127(2) stresses that the withdrawal would not influence the jurisdiction of any situation/case that is already under investigation and proceeding in the ICC as well as a “matter already under consideration by the Court.” The term ‘Court’ in the RS is often limited to the understanding of judicial organs. Nonetheless, expansive interpretation has also come into use under different circumstances.

Further, evaluation of the term “Court” and Article 127 of the RS will follow considering the jurisdictional basis established by the initiation of the preliminary examination.

MEANING OF THE TERM “COURT”

The meaning and understanding of the term ‘Court’ are a contentious sphere, encircled by the dilemma of whether the term includes the OTP within its limits. The term “Court” includes the OTP as an independent organ within it, as mentioned in Article 34 of the RS.¹⁶ Kevin Jon Heller, in his article titled “*A Dissenting Opinion on the ICC and Burundi*”¹⁷ stated multiple articles that differentiated the terms “Court” and “OTP” emphasising the point of OTP being a distinguished organ from the judicial wing (Pre-Trial Chamber, Trial Chamber, and the Appeals Chamber) i.e., the decision-making organ

¹⁶ RS, art 34

¹⁷ Kevin Jon Heller, ‘A Dissenting Opinion on the ICC and Burundi’ (*Opinio Juris* , 29th Dec, 2017) <<https://opiniojuris.org/2017/10/29/does-the-icc-still-have-jurisdiction-over-crimes-in-burundi/#respond>> accessed 8th July, 2024

of the Court. However, the articles that Heller mentions deal with specific situations with regard to admissibility,¹⁸ admission of guilt,¹⁹ and presumption of innocence,²⁰ wherein the OTP has no bearing in the proceedings of the Court.

However, if reference is given to more general provisions of the RS including Article 2, which mentions the relationship of the Court with the UN, and Article 16, which takes note of the deferral of investigation or prosecution there is clear evidence that they mention the Court in its entirety i.e., the institution as a whole.²¹ Article 127 of the RS, which introduces the issue of a withdrawal of a State party, also mentions the Court in its entirety and not only the judicial wing. Chapter II of The Rules of Procedure and Evidence aligns with this idea. The sections under the chapter titled '*Composition and Administration of the Court*' consist of sections about the Presidency, OTP, and Registry altogether, i.e., all of the organs of the Court; thus, clearly signifying the idea of the Court as an institution as a whole.

The Working Group of the International Law Commission also has concluded that 'for conceptual, logistical and other reasons', the organs of the Court had to be considered 'as constituting an international judicial system as a whole, notwithstanding the necessary independence which has to exist, for ethical and fair trial reasons, between the judicial branch (Court) and the prosecutorial branch (procuracy) of that system.'²²

PE AS A MATTER UNDER CONSIDERATION BY THE COURT

Part 13 of the RS, which encompasses the Final Clauses, also includes Article 127 i.e., Withdrawal. Article 127 (2)²³ contains in itself three limbs, each concerned with different repercussions imposed on the state after the withdrawal.

The first limb addresses the concern of financial obligations that arose while it was a party, and that a state shall not be released from them by virtue of its withdrawal.

¹⁸ RS, art 19

¹⁹ RS, art 65

²⁰ RS, art 66

²¹ William A Schabas, *An Introduction to the ICC* (6th edn, Cambridge University Press 2020) 61

²² *ibid*, 517

²³ RS, art 127

Going forward, the second limb states that the state party is obligated to cooperate with the Court with any investigations and proceedings that were commenced prior to the withdrawal by the state coming into effect.

The understanding of the term “investigation” is not unanimously agreed upon in the public discourse, especially among scholars and authors. From a layman’s and/or shallow comprehension, one would lean more toward the understanding that PE and investigation are two very different processes undertaken by the OTP. The term “investigation” in the article does not just refer to the investigation that has been authorised by the PTC, but *should* also encompass PE.

The wording of Article 15²⁴ (the article that analyses the process of preliminary examinations) of the RS introduces PE as “*proprio motu investigations*,” emphasising the point that PE is indeed a form or a part of the investigation that demands an authorisation from the PTC to make the ambit of the process wider. The OTP’s powers during an investigation are much more diverse than those present during the PE process, with powers like seeking the cooperation of the state party in contention, requesting the presence of and questioning persons being investigated, victims, and witnesses. These powers mark the divergence between the analysis process under PE and investigation, which are bridged by authorisation from the OTP. Therefore, even though investigation and PE cannot exactly be equated, they are inherent to each other, as the former necessitates the latter.

Legal precedents have also established the importance and interconnection of both processes. In the *Situation in the Islamic Republic of Afghanistan*, the Appeals Chamber differentiated between the existence of PE and the initiation of a “proper investigation.”²⁵ However, the Chamber affirmed that “PE is an initial step to determine whether there is a reasonable basis to proceed with an investigation.”

²⁴ RS, art 15

²⁵ *Situation in the Islamic Republic of Afghanistan* (Decision Pursuant to Article 15 of the RS on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan) ICC-02/17 (12 April 2019) [92]

Hence, it would be improbable to conclude that preliminary examinations are part of an investigation, however, it would also be erroneous to discern that PE and investigation are two different poles of the same stick.

Conclusively, the last limb asserts, “*nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.*”

“Matter under consideration” refers to the consideration of a situation or a case.²⁶ The RS does not provide an explicit understanding of the phrase “matter which was already under consideration by the Court”; upon comprehending the definition of “Court,” the term “matter under consideration” becomes susceptible to diverse interpretations.

First, an expansive interpretation of Article 127(2) states that ‘any matter’ is before the ‘Court’ when the OTP is ‘considering’ applying to the PTC for authorisation of an investigation, in accordance with Article 15 of the RS.²⁷

As the RS fails to define or elaborate on the phrase ‘matter under consideration’, using Article 31 as a recourse, VCLT can be used as a guiding source as it holds customary status.²⁸ Article 31 VCLT²⁹ provides that a treaty provision must be interpreted in good faith, in light of its ordinary meaning, object, and purpose. According to the good faith concept, a treaty should be interpreted in a way that best serves its goals and objectives, if there are two possible readings. Therefore, the positive interpretation that “continued consideration of any matter” includes a PE must be adopted in light of the intent and purpose of the RS and Article 127 in particular.

Second, the inclusion of phrases like “matter” and “under consideration” in the third limb, rather than the explicit term “investigation” as in the second limb, indicates the clear intention of the framers to extend the third prong beyond obligations arising from a post-

²⁶ William A Schabas, *An Introduction to the ICC* (6th edn, Cambridge University Press 2020) 1536

²⁷ *ibid*

²⁸ *Prosecutor v. Germain Katanga* (Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case) ICC-01/04-01/07-474 (13 May 2008) [78].; *Situation In the Republic of Kenya* (Decision Pursuant to Article 15 of the RS on the Authorisation of an Investigation into the Situation in the Republic of Kenya) ICC-01/09 (31 March 2010)[19]

²⁹ Vienna Convention on the Law of Treaties (“VCLT”) 115 UNTS 331, art 31

authorisation investigation. Every phrase must be given its distinct and fullest effect,³⁰ and understood in an interpretation that is bona fide. Thus, without any shadow of a doubt, it can be inferred that the drafters aimed not only to cover post-authorisation investigations (which are already addressed in the second limb) but also to encompass PE as ‘matters under consideration’.

Hence, PE does constitute a “matter under consideration by the Court.”

Sergey Vasiliev, in his article “*Piecing the Withdrawal Puzzle: May the ICC still open an investigation in Burundi?*”³¹ has stressed a contrary understanding of Article 127. He applies Article 70³² of the VCLT, which provides provision for “*Consequences on the Termination of the Treaty*,” for the understanding of Article 127 of the RS and maintains that if a situation is not under authorised investigation before the withdrawal becomes effective, then the situation would not constitute a legal situation under Article 70 of the VCLT.

Article 70 of the VCLT could be utilised to interpret Article 127 of the RS as observed by the PTC in the “*Situation of Republic of Burundi*.”³³ Article 70, contrary to the assessment of Sergey Vasiliev, does not negate the jurisdiction under PE in the ICC, and this could be assessed through the following reasons:

Firstly, the term “*unless otherwise, the treaty provides*” under Article 70 of the VCLT, paves the way for jurisdiction to be affirmed under Article 12 of the RS. Article 12 of the Rome Statute emphasises the conditions that are to be fulfilled to establish jurisdiction, one of them being that the country to be a state party to the RS when the conduct in question occurred. Therefore, jurisdiction could be established over any situation that has

³⁰ Case Concerning Anglo-Iranian Oil Company (United Kingdom v Iran) (Preliminary Objection) (1952) ICJ Rep 93 [105] ; Case concerning Fisheries Jurisdiction (Spain v Canada) (Judgment) (1998) ICJ Rep Series 432 [52]

³¹Sergey Vasiliev, ‘Piercing the Withdrawal Puzzle: May the ICC still open an investigation in Burundi? (Part 2)’ (*OpinioJuris*, 6 Nov 2017) <<http://opiniojuris.org/2017/11/06/piecing-the-withdrawal-puzzle-may-the-icc-still-open-an-investigation-in-burundi-part-1/>> accessed 10 December 2023

³² VCLT, art 70

³³ Situation in the Republic of Burundi (Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Burundi”) ICC-01/17-9-Red (9 November 2017) (“Burundi PTC”)

been committed by the state party. This theory does entail the initiation of a preliminary examination for the matter to come under jurisdiction.

Secondly, the term “*legal situation*” under Article 70 of the VCLT does not exclude PE from its parameters, as contended by Sergey Vasiliev. The term’s scope is ambiguous, making it difficult to ascertain what constitutes under it. However, the commentary on VCLT by Oliver Dorr and Kirsten Schmalenbach while elucidating on the term *legal situation* holds that “if the dispute concerns claim that has arisen under the treaty, these continue to exist even if the treaty is terminated because such claims acquire an existence independent of the treaty whose breach gave rise to them.” Consequently, if a situation has arisen while the state party was party to the RS then that would encompass under the term “legal situation”. In such a scenario, initiating a PE into such a situation would be an official commencement of investigation and examination into the situation under the scope of ICC, indicating the establishment of jurisdiction under that “*legal situation*.”

Hence, even though the RS remains silent on the meaning of the term “Court” leaving out a grey spot, it can be understood through various other international sources that the Court includes within itself the OTP in meaning and essence. Thus, establishing that a “matter under consideration by the Court” under Article 127 of the RS includes consideration by the OTP that is done via the process of preliminary examination.

CONCLUSION

The *situation in the Republic of the Philippines* exhibits the issue of jurisdiction when a PE has been initiated, coupled with the state’s withdrawal before the authorisation of the investigation. This *prima facie* reflects that the withdrawal of the state party was a retaliatory action on the PE being initiated by the OTP against alleged crimes. This helps the state party to evade the grave nature of crimes committed by the government or the nationals of the country without having to take into account the consequences.

There is an apparent misuse of the one-year cooling period provided by the withdrawal clause of the Statute. The countries, instead of remaining as a state party within the jurisdiction of the ICC, choose to opt out for their own benefits. Such actions not only reveal a disregard for mutual obligations but also a sheer denial of justice to numerous

victims, as those responsible for the alleged crimes are never held responsible. If countries start withdrawing from the RS as a means of escaping their liabilities, it extinguishes one out of the three options of the ICC to assert its jurisdiction, which further weakens and limits the scope of OTP and the Court, which already does not have universal jurisdiction.

The pretext of the situation not being under authorised investigation but under PE as a reason for withdrawal is unjustified, as the initiation of PE does establish jurisdiction over a situation.

The second of the four-fold phases of PE probes into the question of jurisdiction, wherein the OTP thoroughly scrutinises the available information. The OTP can only proceed to the subsequent phase once the jurisdictional concern is resolved. After assessing the communications and information available through the four phases, if the OTP concludes the existence of a reasonable basis, then it approaches the PTC for authorisation. This step is not a discretionary option for OTP but rather a mandatory requirement that OTP is obligated to follow. This requirement provides transparency to the process as the judicial organ verifies the investigation undertaken by the OTP during PE. PE also establishes jurisdiction under Art 127 of the RS. Under the ambit of this article, PE is encompassed within the understanding of the term's 'investigation' and 'matter under consideration by the Court.'

The process of PE in recent years, under the direction and supervision of Prosecutor Fatou Bensoud, has become lucid, with reports providing clarity into each PE underway being issued. The concern regarding the process of PE being opaque and the potential arbitrariness under it in establishing jurisdiction is alleviated when such reports emerge.

The preliminary examination, often underestimated, plays a crucial role in the ICC's activities. While initially overlooked in the RS formulation, recent decades have witnessed a significant shift in perception, with the OTP becoming a pivotal force in defining and refining the PE process. This ongoing engagement underscores the indispensable nature of this preliminary step within the ICC's operations.

Moreover, the process of PE helps in strengthening the powers of the OTP and the ICC by bringing into the ambit cases that have global significance and cases that have not been

approached in the other two ways provided under Article 13. The heavy criticism surrounding the inefficiency of the ICC in resolving cases and the issue of the increasing number of countries withdrawing from the ICC on the initiation of PE could be resolved by placing importance on the procedure as it deserves.