

**CONCURRING OPINION OF JUDGE GOCHA LORDKIPANIDZE**

1. Whilst I agree with the Judgment rendered by the majority of the Appeals Chamber on the appeal of the State of Israel against Pre-Trial Chamber I's "Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice", I wish to add the following considerations on the Prosecutor's notification under article 18(1) of the Statute.

2. In my view, the Prosecutor, in the exercise of his due diligence, should continuously assess whether the particular circumstances of a given investigation call for an updated notification under article 18(1) of the Statute to be issued. This is because such an assessment would strike a balance between two concomitant interests, on the one hand, providing a meaningful opportunity to a State to exercise its rights under article 18(2) of the Statute and, on the other hand, ensuring the progression of the Prosecutor's investigation without unwarranted interruption in accordance with the principles set out in the Court's jurisprudence.

3. The assessment as to the need for an updated article 18(1) notification should be based on a careful appraisal of the relevant circumstances of a particular investigation as a whole. In this regard, two factors are especially relevant.

4. The first factor is the lapse of time between the original article 18(1) notification and the alleged perpetration of further crimes falling within the jurisdiction of the Court that are not explicitly covered by that notification. As noted in today's judgment, the Appeals Chamber has endorsed the interpretation that a situation of crisis for which the jurisdiction of the Court was activated "can include not only crimes that had already been or were being committed at the time of the referral, but also crimes committed after that time, in so far as they are sufficiently linked to the situation of crisis referred

to the Court as ongoing at the time of the referral”.<sup>1</sup> While I agree with this position, I wish to emphasise that the more time lapses between the article 18(1) notification and the alleged perpetration of further crimes, the greater the need to establish a sufficient link between such crimes and the relevant situation of crisis.

5. The second factor concerns the “patterns and forms of criminality”. As also set out in today’s judgment, the Appeals Chamber has found that the relevant enquiry for the purposes of article 18 of the Statute concerns “the same groups or categories of individuals in relation to the relevant criminality, including the patterns and forms of criminality, within a situation” and that “there is no expectation at this stage of the proceedings that the Prosecutor should notify States of every act he or she intends to investigate, especially in those situations referred to the Court which cover a large number of alleged criminal acts”.<sup>2</sup> In my view, similarly to the preceding factor, the need to assess the sufficiency of an article 18(1) notification increases when there are substantive indications that, in comparison with the parameters set out in that notification, any alleged crimes committed thereafter exhibit diverging “patterns and forms of criminality”. In this regard, I wish to note that referrals might be indicative of the existence of new patterns of criminality.

6. Lastly, it is my view that, in the specific circumstances of the present situation, no information has been placed before the Appeals Chamber that would compel the conclusion that the Prosecutor omitted to take the aforementioned factors into account in considering whether a new situation had arisen that would require a new notification under article 18(1) of the Statute to be issued. Should the Prosecutor, in a different scenario, arrive at the conclusion that changed circumstances give rise to a new situation upon receiving one or more referrals, he would be then duty-bound to decide whether to initiate an investigation into the new situation pursuant to articles 13(c), 14 and 53 of the Statute. That would further entail that, if the Prosecutor assesses that the

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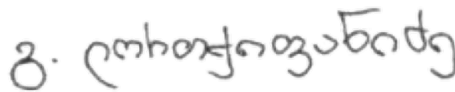
<sup>1</sup> Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, [Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I’s “Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute”](#), 1 March 2024, ICC-02/18-89 (OA) (hereinafter: “Venezuela OA Judgment”), para. 227, referring to Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, [Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana](#), 28 September 2010, ICC-01/04-01/10-1, para. 6.

<sup>2</sup> [Venezuela OA Judgment](#), para. 110. See also Appeals Chamber, *Situation in the Republic of the 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”](#), 18 July 2023, ICC-01/21-77 (OA), para. 106.

relevant requirements for initiating an investigation have been fulfilled, he would have to notify all States Parties and those States which would normally exercise jurisdiction over the crimes concerned, in accordance with article 18(1) of the Statute. This is without prejudice to the power of States, in accordance with articles 13(a) and 14 of the Statute, to refer a situation to the Prosecutor.

7. In order to meet the requirements set out in the letter and spirit of articles 13, 14, and 18 of the Statute, the Prosecutor shall exercise due diligence in all circumstances, as explained above.

Done in both English and French, the English version being authoritative.



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**Judge Gocha Lordkipanidze**

Dated this 15<sup>th</sup> day of December 2025

At The Hague, The Netherlands