



Original: **English**

No.: **ICC-01/18**  
Date: **14 May 2025**

**PRE-TRIAL CHAMBER I**

**Before:** **Judge Nicolas Guillou, Presiding Judge**  
**Judge Reine Adélaïde Sophie Alapini-Gansou**  
**Judge Beti Hohler**

**SITUATION IN THE STATE OF PALESTINE**

**Public**

Decision on Israel's request for leave to appeal the 'Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice'

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

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| <input type="checkbox"/> The Office of the Prosecutor                          | <input type="checkbox"/> Counsel for the Defence                             |
| <input type="checkbox"/> Legal Representatives of the Victims                  | <input type="checkbox"/> Legal Representatives of the Applicants             |
| <input type="checkbox"/> Unrepresented Victims                                 | <input type="checkbox"/> Unrepresented Applicants (Participation/Reparation) |
| <input type="checkbox"/> The Office of Public Counsel for Victims              | <input type="checkbox"/> The Office of Public Counsel for the Defence        |
| <input checked="" type="checkbox"/> States' Representatives<br>State of Israel | <input type="checkbox"/> Amicus Curiae                                       |

## REGISTRY

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| <b>Registrar</b><br>Mr Osvaldo Zavala Giler                            | <input type="checkbox"/> Counsel Support Section |
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**PRE-TRIAL CHAMBER I** (the ‘Chamber’) of the International Criminal Court (the ‘Court’), having regard to article 82(1)(d) of the Rome Statute (the ‘Statute’), issues this decision on the ‘Request for leave to appeal “Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice”’ (the ‘Request’),<sup>1</sup> filed by the State of Israel (‘Israel’).

## **I. Procedural history and background**

1. On 23 September 2024, Israel submitted before this Chamber a request seeking an order to ‘the Prosecutor to give an article 18(1) notice setting out the new defining parameters of his investigation in this Situation, or any other Situation that has now been constituted as a result of the two referrals made by a total of seven States Parties following 7 October 2023’ (the ‘Request for a Notice’).<sup>2</sup>

2. On 21 November 2024, the Chamber issued the ‘Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice’ (the ‘Impugned Decision’), in which it rejected the Request for a Notice.<sup>3</sup>

3. On 27 November 2024, Israel filed before the Appeals Chamber a notice of appeal of the Impugned Decision.<sup>4</sup> On the same day, Israel filed the Request.

4. On 2 December 2024, the Prosecution filed its response to the Request (the ‘Prosecution’s Response’).<sup>5</sup>

5. On 12 December 2024, the Chamber deferred its consideration of the Request until the Appeals Chamber’s determination on the admissibility of Israel’s appeal pursuant to article 82(1)(a) of the Statute.<sup>6</sup>

6. On 13 December 2024, Israel filed its appeal against the Impugned Decision (the ‘Appeal Brief’).<sup>7</sup>

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<sup>1</sup> 27 November 2024, ICC-01/18-387.

<sup>2</sup> Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice, ICC-01/18-355-AnxI-Corr, para.61.

<sup>3</sup> ICC-01/18-375.

<sup>4</sup> Notice of Appeal of “Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice” (ICC-01/18-375), ICC-01/18-385.

<sup>5</sup> Prosecution Response to Israel’s “Request for leave to appeal ‘Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice’”, ICC-01/18-394.

<sup>6</sup> Deferral of the Chamber’s consideration of two requests for leave to appeal filed by the State of Israel, ICC-01/18-398.

<sup>7</sup> Appeal of ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’ (ICC-01/18-374).

7. On 24 April 2025, the Appeals Chamber issued its decision on Israel’s appeal of the Impugned Decision, declaring the appeal inadmissible under article 82(1)(a) of the Statute.<sup>8</sup>

## II. Submissions

8. Israel requests leave to appeal three issues, namely:

(i) Whether the Pre-Trial Chamber erred in finding that no new situation had arisen, and that no substantial change had occurred in the parameters of the investigation into the situation, following 7 October 2023 (the ‘First Issue’);<sup>9</sup>

(ii) Whether the Pre-Trial Chamber erred in finding that any other approach “would effectively mean that the Prosecution’s investigation in every situation would be limited to the incidents and crimes addressed during the preliminary examination and described in the article 18 notification” (the ‘Second Issue’);<sup>10</sup>

(iii) The Pre-Trial Chamber erred in asserting that any investigation into the events following 7 October 2023 had “substantially advanced” prior to that date (the ‘Third Issue’).<sup>11</sup>

9. Regarding the First Issue, Israel submits that the Chamber’s error lies in misapplying the criteria for an article 18(1) notification, namely the type of armed conflict, geography, and parties to the conflict, and the failure to consider ‘other relevant criteria’.<sup>12</sup>

10. As for the Second Issue, Israel argues that the Chamber mischaracterised Israel’s position in the request for notification by saying that, according to Israel, every Prosecution’s investigation would be limited to the incidents and crimes addressed during the preliminary examination and described in the article 18 notification.<sup>13</sup>

11. As for the Third Issue, Israel argues that the arrest warrants are ‘limited to events and circumstances that arose after 7 October 2023’, thus all relevant investigations in the situation ‘must have been conducted after that date’.<sup>14</sup>

12. The Prosecution argues that ‘Israel’s [Request] should be dismissed because it fails to meet the threshold conditions for granting leave to appeal set forth in article 82(1)(d) of the

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<sup>8</sup> Decision on the admissibility of 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”, ICC-01/18-423.

<sup>9</sup> Request, heading A and para. 21.

<sup>10</sup> Request, heading B and paras 22-23.

<sup>11</sup> Request, heading C and paras 24-28.

<sup>12</sup> Request, para. 21.

<sup>13</sup> Request, para. 22.

<sup>14</sup> Request, para. 25.

Statute'.<sup>15</sup> The Prosecution submits that 'Israel does not discharge its burden to demonstrate that each of the purported issues affects each of the article 82(1)(d) conditions that it has chosen to address'.<sup>16</sup> Furthermore, the Prosecution considers that the First Issue is a 'mere disagreement with the Chamber's factual assessment of the relevant criteria, the jurisprudence it relied upon and its conclusion'.<sup>17</sup> The Prosecution also considers that the Second Issue is 'a disagreement with the Chamber's (accurate) observation of the unworkable consequences of Israel's position'.<sup>18</sup> Finally, the Prosecution submits that on the Third Issue 'Israel appears to misunderstand, or to mischaracterise the Chamber's non-dispositive remark with respect to the tardiness of Israel's Article 18(1) Request'.<sup>19</sup>

### III. Applicable law

13. Article 82(1)(d) of the Statute provides that a party may appeal a decision that (i) involves an issue that would significantly affect *both* the 'fair' and 'expeditious' conduct of the proceedings; *or* the outcome of the trial; and (ii) that an immediate resolution of this issue by the Appeals Chamber may, in the opinion of the Chamber, materially advance the proceedings.<sup>20</sup> These requirements are cumulative and, therefore, failure to demonstrate one makes it unnecessary for the Chamber to address the others.<sup>21</sup>

<sup>15</sup> Prosecution's Response, para. 2.

<sup>16</sup> Prosecution's Response, para. 7. See also Prosecution's Request, paras 8-9.

<sup>17</sup> Prosecution's response, para. 12.

<sup>18</sup> Prosecution's response, para. 13.

<sup>19</sup> Prosecution's response, para. 15.

<sup>20</sup> See Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168 (hereinafter: DRC Appeal Judgment), paras 7-19; Pre-Trial Chamber III, *The Prosecutor v. Jean Pierre-Bemba Gombo*, Decision on the Prosecutor's application for leave to appeal Pre-Trial Chamber III's decision on disclosure, 25 August 2008, ICC-01/05-01/08-75, paras 5-20; Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Prosecutor's Request for Leave to Appeal the Decision Rejecting the Amendment of the Charges (ICC-01/09-01/11-859), 6 September 2013, ICC-01/09-01/11-912, paras 14-22 and n. 22 for further references.

<sup>21</sup> See, for example, Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Consolidated Decision on filings ICC-01/14-01/18-524-Corr and ICC-01/14-01/18-545 (Prosecutor's requests for leave to appeal the decisions pursuant to article 61(9) of the Rome Statute dated 14 May 2020 and 1 June 2020), 19 June 2020, ICC-01/14-01/18-560, para. 55; Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Decision on a Request for Leave to Appeal, 11 February 2011, ICC-01/09-43, para. 12; Pre-Trial Chamber I, *Situation in Democratic Republic of the Congo*, Decision on the Prosecution's Application for Leave to Appeal the Chamber's Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 31 March 2006, ICC-01/04-135-tEN, para. 28; Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Decision on the Defence request for leave to appeal the Decision on the Prosecution's applications to add witnesses and items to its List of Witnesses and List of Evidence and to rely on recently collected evidence, 4 May 2022, ICC-02/05-01/20-682, para. 4; Trial Chamber I, *Prosecutor v. Lubanga Dyilo*, Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008, 26 February 2008, ICC-01/04-01/06-1191, para. 10 (the 'Lubanga Decision'); Trial Chamber II, *Prosecutor v. Yekatom and Ngaïssona*, Decision on the 'Ngaïssona Defence Request for Leave to Appeal the Second Decision on Disclosure and Related Matters', 24 May 2019, ICC-01/14-01/18-206, para. 11; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, No. ICC-01/18

14. An issue that would significantly affect the fair and expeditious conduct of proceedings is ‘not merely a question over which there is disagreement or conflicting opinion’,<sup>22</sup> or ‘a hypothetical concern or an abstract legal question’.<sup>23</sup> Instead, an issue in the context of article 82(1)(d) of the Statute refers to ‘a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination’.<sup>24</sup>

15. Regarding the first prong of the test, the Chamber recalls that an issue may significantly affect the fairness of the proceedings whenever the procedural rights of the parties and participants are not respected,<sup>25</sup> and their expeditiousness ‘whenever failure to provide for an immediate resolution of the issue at stake by the Appeals Chamber would entail the risk that lengthy and costly trial activities are nullified at a later stage’.<sup>26</sup>

16. As to the second prong of the test, on whether the immediate resolution of the issue by the Appeals Chamber is warranted, the Appeals Chamber has stated that the issue must be such that ‘its immediate resolution by the Appeals Chamber will settle the matter posing for decision through its authoritative determination, ridding thereby the judicial process of possible mistakes that might taint either the fairness of the proceedings or mar the outcome of the trial’.<sup>27</sup>

#### IV. Analysis

##### a. *The First Issue*

17. With respect to the alleged error in finding that no new situation had arisen and no substantial change had occurred in the parameters of the investigation in the situation following 7 October 2023,<sup>28</sup> the Chamber notes that, despite Israel not specifying which other relevant criteria should have been considered,<sup>29</sup> this finding was determinative for the Chamber’s

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Decision on Defence request for leave to appeal the ‘Decision on Defence request for disclosure of *ex parte* communication between the Chamber and the VWU’, 2 December 2022, ICC-01/12-01/18-2430, para. 10.

<sup>22</sup> DRC Appeal Judgment, para. 9.

<sup>23</sup> Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges, 31 July 2013, ICC-02/11-01/11-464, para 8.

<sup>24</sup> DRC Appeal Judgment, para. 9.

<sup>25</sup> Pre-Trial Chamber I, *Situation in Democratic Republic of the Congo*, Decision on the Prosecution’s Application for Leave to Appeal the Chamber’s Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 31 March 2006, ICC-01/04-135-tEN, para. 38.

<sup>26</sup> Pre-Trial Chamber II, *Situation in Uganda*, Decision on Prosecutor’s Application for leave to appeal in part Pre-Trial Chamber’s II Decision on the Prosecutor’s applications for warrants of arrest under article 58, 19 August 2005, ICC-02/04-01/05-20-US-Exp, para 36. Unsealed pursuant to Decision no. ICC-02/04-01/05-52 dated 13 October 2005.

<sup>27</sup> DRC Appeal Judgment, para. 14.

<sup>28</sup> Request, heading A and para. 21.

<sup>29</sup> Request, para. 21.

conclusion that there was and is no obligation for the Prosecution to provide a new notification to the relevant States pursuant to article 18(1) of the Statute. The issue identified therefore arises from the decision and constitutes an appealable issue within the meaning of article 82(1)(d) of the Statute.

18. Considering that the issue addresses the fundamental question of the scope of the situation, the Chamber considers that it has the potential of affecting the fair and expeditious conduct of proceedings in this situation.

19. The Chamber is also of the view that an immediate resolution of the issue by the Appeals Chamber may materially advance the proceedings, since it would authoritatively settle the question, thereby ensuring that the ‘proceedings follow the right course’.<sup>30</sup> As previously pointed out by the Appeals Chamber, removing doubts about the correctness of a decision mapping a course of action along the right lines, provides a safety net for the integrity of the proceedings.<sup>31</sup>

20. Based on the above, the Chamber finds that this issue fulfils all requirements under article 82(1)(d) of the Statute and therefore grants Israel’s request for leave to appeal it.

*b. The Second Issue*

21. On the alleged error in finding that Israel’s position would mean that investigations are limited to specific incidents expressly enumerated in an article 18(1) notice,<sup>32</sup> the Chamber finds that it does not amount to an issue within the meaning of article 82(1)(d) of the Statute. Israel appears to disagree with the Chamber’s observation on the practical consequences of Israel’s position on investigations in general. Moreover, this disagreement is with a statement by the Chamber that was not dispositive for the decision. Since the issue does not amount to an appealable issue, Israel’s request for leave to appeal it is rejected.

*c. The Third Issue*

22. Concerning the alleged error in asserting that any investigation into the events following 7 October 2023 had ‘substantially advanced’ prior to that date, the Chamber considers that this issue does not amount to an appealable issue under article 82(1)(d) of the Statute. In framing its Third Issue, Israel mischaracterises the Impugned Decision, in which the Chamber did not state that the investigation into the events following 7 October 2023 had

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<sup>30</sup> DRC Appeal Judgment, para. 15.

<sup>31</sup> DRC Appeal Judgment, para. 15.

<sup>32</sup> Request, heading B and paras 22-23.

substantially advanced prior to 7 October 2023, but instead referred to investigations having substantially advanced at the time Israel's request was brought. Since the issue does not amount to an appealable issue, Israel's request for leave to appeal it is rejected.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**GRANTS** the Request, in part;

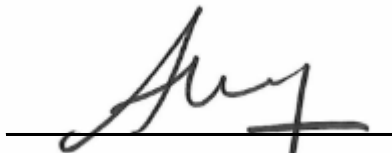
**CERTIFIES** the First Issue for appeal;

**REJECTS** the remainder of the Request.

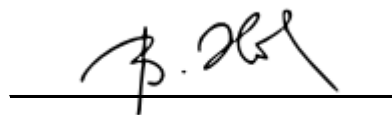
Done in English. A French translation will follow. The English version remains authoritative.



**Judge Nicolas Guillou**  
**Presiding Judge**



**Judge Reine Adélaïde Sophie Alapini-Gansou**



**Judge Beti Hohler**

Dated this Wednesday, 14 May 2025

At The Hague, The Netherlands