

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**No.: ICC-01/18
Date: 5 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

Prosecution's observations regarding the procedure to be followed following the issuance of the warrants of arrest against Benjamin NETANYAHU and Yoav GALLANT and the Appeal Judgment ICC-01/18-422 OA2

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I. INTRODUCTION

1. In light of the warrants of arrest against Mr Benjamin NETANYAHU and Mr Yoav GALLANT issued on 21 November 2024 (“Warrants”) and the Appeal Judgment of 24 April 2025,¹ the Prosecution herewith provides its observations regarding the procedure that the Pre-Trial Chamber should follow to address any jurisdictional challenge that may be brought at this stage of the proceedings.

2. *First*, the Prosecution submits that the Pre-Trial Chamber should set a deadline for those with standing to bring a jurisdictional challenge in relation to the cases against NETANYAHU and GALLANT. Should there be any such challenge, the Prosecution, victims and relevant States shall be allowed to respond to and to provide observations within a set deadline, in accordance with rules 58 and 59 of the Rules.

3. *Second*, the Prosecution submits that the Pre-Trial Chamber should not receive or invite any observations under rule 103 of the Rules. The issues arising from the exercise of the Court’s jurisdiction in this situation have been amply briefed by more than 100 interveners in two rounds of *amici curiae* observations in 2020 and 2024. Further observations on the same issues would not assist the Chamber in its determination; instead, they would only generate unnecessary costs and delays while the crimes alleged in the Warrants and the suffering of the victims continue.

4. The Prosecution respectfully submits that the adoption of this procedure would ensure an expeditious resolution of any jurisdictional challenge while ensuring compliance with the Court’s legal framework and respect of the rights and interests of parties and participants.

II. BACKGROUND

5. On 21 November 2024, Pre-Trial Chamber I issued three warrants of arrest in the *Situation in the State of Palestine*, including against Israeli Prime Minister Benjamin NETANYAHU and former Minister of Defence Yoav GALLANT. On the same day, the Chamber dismissed “Israel’s challenge to the jurisdiction of the Court”,² filed on 20 September 2024 under article 19(2)(c) of the Statute,³ on the basis that States are not entitled to challenge jurisdiction under article 19 prior to the issuance of a warrant of arrest or summons to appear.⁴ The Chamber further held that Israel could make such a challenge once that condition was

¹ [ICC-01/18-422 OA2](#) (“Judgment”).

² [ICC-01/18-374](#) (“Decision”).

³ [ICC-01/18-354-AnxII-Corr](#) (“Challenge”).

⁴ [Decision](#), para. 17.

satisfied “as the State of nationality under article 19(2)(b) *juncto* article 12(2)(b) of the Statute”.⁵

6. On 27 November 2024, Israel filed an Appeal before the Appeals Chamber under article 82(1)(a) of the Statute against the Decision,⁶ to which the Prosecution responded on 29 November 2024 arguing that the Appeal was inadmissible and requesting its dismissal *in limine*.⁷ On 13 December 2024, Israel filed its Appeal Brief against the Decision,⁸ to which the Prosecution responded on 13 January 2025.⁹

7. On 24 April 2025, the Appeals Chamber ruled that Israel’s Appeal is admissible under article 82(1)(a) of the Statute, holding that “by virtue of the finding that the jurisdictional challenge was premature, the Impugned Decision amounts to a decision that consists of or is based on a ruling on the jurisdiction of the Court”.¹⁰ It also found that the Pre-Trial Chamber “insufficiently address[ed] Israel’s central contention that article 19(2)(c) of the Statute permits it to challenge the jurisdiction of the Court”.¹¹ The Appeals Chamber found this to be an error of law¹² which materially affected the Decision.¹³

8. Accordingly, the Appeals Chamber reversed the Decision and remanded the matter to the Pre-Trial Chamber.¹⁴ The Appeals Chamber also noted that “it is for the Pre-Trial Chamber to determine the applicable legal basis under article 19(2) of the Statute for addressing Israel’s

⁵ [Decision](#), paras. 16-18.

⁶ [ICC-01/18-386](#) (“Appeal”). In its Appeal, Israel requests that the Appeals Chamber suspend the Pre-Trial Chamber’s arrest warrants against Benjamin Netanyahu and Yoav Gallant pursuant to article 82(3) pending the resolution of the Appeal: [Appeal](#), paras. 29-37. Simultaneously, Israel also filed an application for leave to appeal before Pre-Trial Chamber I under article 82(1)(d) of the Statute against the same Decision (“Application for Leave”): ICC-01/18-388 (“[Application for Leave](#)”). On 2 December 2024 the Prosecution responded to Israel’s application for leave to appeal: [ICC-01/18-393](#). On 12 December 2024, the Pre-Trial Chamber decided to defer its decision on the Application for Leave to Appeal until the Appeals Chamber rule on the admissibility of Israel’s Appeal under article 82(1)(a): [ICC-01/18-398](#), para. 6.

⁷ [ICC-01/18-392 OA2](#).

⁸ [ICC-01/18-402 OA2](#) (“Appeal Brief”). Israel raised four grounds of appeal: (i) first, the Pre-Trial Chamber erred in law by applying the principle of *res judicata* in circumstances in which the identity of the parties to the article 19(3) and article 19(2) proceedings was not the same; (ii) second, the Pre-Trial Chamber erred in law by applying the principle of *res judicata* in circumstances where the previous article 19(3) decision was preliminary in nature and was not a “final judgment”; (iii) third, the Pre-Trial Chamber erred in fact and law by applying the principle of *res judicata* to bar a challenge arising out of the Oslo Accords premised on a previous decision which expressly did not deal with, and indeed reserved, the legal effect of the Oslo Accords on the Court’s capacity to exercise jurisdiction; and (iv) fourth, the Pre-Trial Chamber erred in law by failing to provide reasons for rejecting Israel’s submissions as to why the 2021 article 19(3) decision does not operate as a bar to Israel’s standing to bring a jurisdictional challenge under article 19(2)(c).

⁹ [ICC-01/18-406 OA2](#).

¹⁰ [Judgment](#), para. 35; *see also* para. 1.

¹¹ [Judgment](#), para. 61; *see also* paras. 57, 59, 60.

¹² [Judgment](#), para. 61.

¹³ [Judgment](#), para. 62.

¹⁴ [Judgment](#), para. 64; *see also* para. 66. The Appeals Chamber rejected Israel’s request to suspend the two arrest warrants because it was not persuaded that the arrest warrants are based on, or “inextricably connected” to the Decision.

jurisdictional challenge at the present stage of the proceedings, and to provide any required further instructions on the procedure to be followed".¹⁵

III. SUBMISSIONS

9. In view of the foregoing, the Prosecution proposes the below course of action, which ensures compliance with the Court's legal framework, respect of the rights and interests of parties and participants, as well as an efficient resolution of any jurisdictional challenge that may be brought in relation to the cases against NETANYAHU and GALLANT.

(i) *Challenge under article 19(2) to be brought within a prescribed deadline*

10. The Prosecution respectfully submits that, at this stage of the proceedings, following the issuance of the Warrants and in light of the Appeal Judgment of 24 April 2025, the Chamber should set an appropriate deadline for those with standing to bring a jurisdictional challenge under article 19(2) of the Statute in the cases against NETANYAHU and GALLANT.

11. At the present stage of the proceeding, that is, after the issuance of the Warrants, article 19(2) of the Statute provides the only valid avenue and specific legal basis for bringing a jurisdictional challenge with respect to the cases at hand.

12. The Prosecution recalls that on 20 September 2024, Israel already attempted to prematurely challenge the Court's jurisdiction, under article 19(2)(c), prior to the issuance of the Warrants. In those circumstances, the Prosecution was only able to make submissions regarding Israel's lack of standing under that provision and at that particular stage, arguing that the Challenge was premature and requesting its dismissal *in limine*. Even though it did not respond to the substance of Israel's Challenge, the Prosecution offered to provide further submissions on the matter should the Pre-Trial Chamber so require.¹⁶ The Pre-Trial Chamber dismissed Israel's Challenge as premature and no further submissions were requested.

13. Should there be any jurisdictional challenge brought within the timeframe prescribed, the Prosecution, victims and relevant States shall be allowed to submit their responses and observations in accordance with rules 58 and 59 of the Rules.¹⁷

¹⁵ [Judgment](#), para. 64.

¹⁶ [ICC-01/18-357](#), para. 27.

¹⁷ Prior to issuing the Decision, the Pre-Trial Chamber (correctly) did not resort to this provision to set out a procedure prior to the issuance of the Decision since Israel Challenge had not been properly made.

(ii) *Observations under rule 103 would not assist the Pre-Trial Chamber*

14. The Prosecution further requests the Pre-Trial Chamber not to receive or invite any observations under rule 103 of the Rules. The various issues arising from the Court's exercise of jurisdiction in this situation have been amply briefed by over 100 interveners in two rounds of *amici curiae* processes held in 2020 and 2024. Further submissions on the same matters would be repetitive and not capable of assisting the Chamber in its determination.¹⁸ Rather, they would generate unnecessary cost and delays, while the crimes alleged in the Warrants continue to be committed and the number of casualties increase every day.

IV. RELIEF REQUESTED

15. In light of the foregoing, the Prosecution respectfully requests the Pre-Trial Chamber:

- to set a deadline for those with standing to bring a jurisdictional challenge in relation to the specific cases against NETANYAHU and GALLANT. The Prosecution, victims and relevant States shall be allowed to respond and to provide observations on any challenges made, in accordance with rules 58 and 59 of the Rules; and
- not to invite or receive any observations under rule 103 of the Rules.



Karim A.A. Khan KC, Prosecutor

Dated this 5th day of May 2025
At The Hague, The Netherlands

¹⁸ Chambers have required proposed observations under rule 103 to be desirable in assisting them in resolving questions requiring their determination: *see e.g.* [ICC-02/04-01/15-1955 A A2](#), para. 12; [ICC-02/18-78 OA](#), para. 8; [ICC-01/04-02/06-2569 A2](#), para. 9 and [ICC-01/04-02/06-2554 A2](#), para. 11; [ICC-02/04-01/15-1914 A A2](#), para. 15 and [ICC-02/04-01/15-1884 A](#), para. 19; [ICC-02/17-97 OA OA1 OA2 OA3 OA4](#), para. 31; [ICC-01/11-01/11-675 OA8](#), para. 9; [ICC-02/05-01/09-330](#), para. 1. Chambers have also required that proposed observations under rule 103 are not repetitive: [ICC-01/05-01/08-602 OA2](#), para. 11; [ICC-01/09-01/11-988 OA5](#), para. 12.