



Original: **English**

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

Date: **13 June 2025**

THE APPEALS CHAMBER

Before: Judge Tomoko Akane, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE STATE OF PALESTINE

Public

With Confidential Annex I

Request for leave to reply to Prosecution Response to Israel's "Appeal of 'Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice' (ICC-01/18-375)"

Source: The State of Israel

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

☒ The Office of the Prosecutor

☐ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☒ States' Representatives

Office of the Attorney General of Israel

☐ Amicus Curiae

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

1. Regulation 24(5) of the Regulations of Court provides that:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

2. The Appeals Chamber may also grant leave if it considers that a reply would otherwise be necessary for the adjudication of the appeal.¹

3. The Prosecution's Response² to Israel's Appeal³ contains egregious factual misrepresentations that could not have been anticipated and which justify the exceptional remedy of a reply. Most importantly, the Prosecution asserts more than once in its Response that its "Article 18 Notification explicitly refers to the existence of an armed conflict."⁴ This claim rests on the false assertion that the "Summary of Preliminary Examinations Findings" – in which a footnote refers to "armed conflict" – formed part of the Article 18(1) Notification. The Prosecution tries to create the impression that this "Summary" formed part of the Article 18(1) Notification by stitching the two documents together into Annex A, which does not correspond to the actual Article 18(1) Notification as sent to Israel.⁵ Indeed, the Prosecution, citing Annex A, quotes phrases from the "Summary" claiming incorrectly that they are "in the Notification."⁶

4. Israel could not have anticipated that the Prosecution would attempt to mislead the Appeals Chamber by asserting that the "Summary" document was part of the Article 18(1) Notification. A reply is justified and necessary in these circumstances to correct the false impression created by "Annex A" and by the Prosecution's submissions based thereon. The Impugned Decision does not rely on the "Summary", instead relying specifically on the "summary of the

¹ *Situation in the Bolivarian Republic of Venezuela I*, Decision on the Arcadia Foundation's request for leave to reply to the "Prosecutor's Submissions on the Request for Recusal of the Prosecutor", [ICC-02/18-102](#), 12 December 2024, para. 9. *See Situation in the Republic of the Philippines*, Decision on the Republic of the Philippines' request for leave to reply to the "Prosecution's response to the Philippine Government's Appeal Brief against 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation' (ICC-01/21-65 OA)", [ICC-01/21-72](#), 2 May 2023, para. 9 (granting leave to reply in respect of issues where it "would assist in its determination of the appeal"); *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's request for leave to reply, [ICC-02/17-206](#), 23 December 2022, paras 8-10 (granting the Prosecution leave to reply in respect of new issues raised by victims).

² Prosecution Response to Israel's "Appeal of 'Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice' (ICC-01/18-375)", 9 June 2025, [ICC-01/18-440](#) ("Response").

³ Appeal of "Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice" (ICC-01/18-375), 26 May 2025, [ICC-01/18-434](#) ("Appeal").

⁴ [Response](#), paras 3, 35 ("The Prosecution's Article 18 Notification refers to the existence of armed conflicts.")

⁵ Annex I (email from OTP dated 9 March 2021 with attached document).

⁶ [Response](#), para. 14.

Prosecution’s preliminary examination findings” reproduced in the Article 18(1) Notice itself.⁷ This reinforces the unanticipated nature of the submissions, which concern the correctness of the Impugned Decision. Israel should be accorded an opportunity in these extraordinary circumstances to clarify the precise relationship between the “Summary” document and the Article 18(1) Notification.

5. Israel also requests leave to reply to three other issues. Firstly, the Response incorrectly claims that Israel “did not raise any issue regarding the scope of the investigation” during the period that it was cooperating with the Office of the Prosecutor.⁸ This issue was not a basis of the Impugned Decision, either in relation to the issue certified for appeal or at all. Israel should be accorded an opportunity to dispel the prejudicial impression that it did not ask for information about the scope of the Prosecution’s investigations prior to 1 May 2024.

6. Secondly, the Response asserts that statements by States during the Assembly of States Parties should be accorded weight in evaluating the legal significance or scope of a referral.⁹ This issue does not arise from the Impugned Decision or the Appeal and, accordingly, its injection into the appeal proceedings could not have been reasonably anticipated. Israel proposes to address whether the legal effect of the 17 November 2023 referral¹⁰ could be, or was, in any way affected by statements at the Assembly of States Parties.

7. Thirdly, the Prosecution relies on two confidential documents that are presented for the first time in Annex C of the Response.¹¹ Israel could not have reasonably anticipated the argument, purportedly based on confidential OTP article 18(1) notifications in other situations, that the Prosecution routinely expands its investigations into crimes against humanity even in the absence of a notification of such crimes. Contrary to the Prosecution’s submissions, the notices in question, which relate to *DRCI* and *Uganda*, actually do make reference to crimes against humanity, both directly and indirectly. Israel should be accorded an opportunity to address this issue, and to address the unfairness of the Prosecution relying selectively on confidential documents as a basis for a purported “practice”.

8. In light of the foregoing submissions, Israel respectfully requests leave to reply to the four issues identified above pursuant to Regulation 24(5) of the Regulations of Court. Such leave

⁷ Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice, [ICC-01/18-375](#), 21 November 2024, para. 11 (“Impugned Decision”).

⁸ [Response](#), para. 36.


⁹ [Response](#), paras 40-41.

¹⁰ [Referral of the Situation in Palestine on behalf of the Republic of South Africa, the People’s Republic of Bangladesh, the Plurinational state of Bolivia, the Union of the Comoros, and the Republic of Djibouti, in accordance with Article 13\(a\) and Article](#), 17 November 2023, para. 3.

¹¹ [Response](#), para. 35.

will assist the adjudication of the present appeal, as it concerns issues or information that could not reasonably have been anticipated. A full presentation of the issues and facts is particularly important given the broader significance of this Appeal to the principle of complementarity and for the Court's relations with States, in particular States not party to the Rome Statute.

Respectfully submitted:



Dr Gilad Noam, Office of the Attorney-General of Israel

Dated this 13 June 2025

At Jerusalem, Israel