

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **18 June 2025**

THE APPEALS CHAMBER

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

SITUATION IN THE STATE OF PALESTINE

Public

Prosecution's Response to Israel's 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: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution requests the Appeals Chamber (“Chamber”) to dismiss Israel’s request¹ for leave to reply to the Prosecution’s response² 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)”.³
2. None of the four issues raised by Israel is a new issue arising from the Prosecution’s Response that would merit a reply, let alone one that Israel could not reasonably have anticipated. In particular, these issues had already been raised or foreshadowed, including in the recent appeal proceedings related to Israel’s appeal against the same Impugned Decision,⁴ filed under article 82(1)(a) on 13 December 2024⁵ and found inadmissible by the Appeals Chamber on 24 April 2025.⁶ Israel is simply seeking to utilise a reply to supplement and elaborate on arguments that were already raised in its Appeal. These are not grounds to justify a reply.
3. In any event, the proposed reply is not necessary for the Appeals Chamber’s adjudication of the present Appeal, which is limited to the issue of “[w]hether 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”.⁷

II. SUBMISSIONS

4. The Appeals Chamber has granted leave to reply in circumstances where the reply addresses new issues that could not reasonably have been anticipated or that the Appeals Chamber considered otherwise necessary for the adjudication of the matter before it.⁸ Ordering a reply lies within the Appeals Chamber’s discretion.⁹ In line with these principles, an appellant should not be permitted to utilise a reply merely in an attempt to strengthen arguments previously advanced,¹⁰ or to repeat submissions already made in the appeal brief.¹¹
5. Israel seeks leave to reply on the following four issues:

¹ ICC-01/18-441 (“Israel’s Request”).

² [ICC-01/18-440](#) (“Prosecution’s Response of June 2025”).

³ [ICC-01/18-434 OA3](#) (“Israel’s Second Appeal of May 2025”).

⁴ Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice, [ICC-01/18-375](#).

⁵ [ICC-01/18-401 OA](#) (“Israel’s First Appeal of December 2024”).

⁶ [ICC-01/18-423](#).

⁷ [ICC-01/18-429](#), paras. 8, 20.

⁸ See e.g. [ICC-02/18-66](#) (“Venezuela Leave to Reply Decision”), paras. 10-11; [ICC-01/21-72](#) (“Philippines Leave to Reply Decision”), paras. 6-7; [ICC-02/17-206](#) (“Afghanistan Leave to Reply Decision”), paras. 7-8; [ICC-01/04-02/06-1994](#) (“Ntaganda July 2017 Leave to Reply Decision”), para. 9.

⁹ [ICC-01/14-01/18-799](#) (“Yekatom Leave to Reply Decision”), para. 8; [Ntaganda July 2017 Leave to Reply Decision](#), para. 9; [ICC-01/04-02/06-1813](#) (“Ntaganda March 2017 Leave to Reply Decision”), para. 8.

¹⁰ [ICC-01/04-02/12-296-tENG](#) (“Ngudjolo Leave to Reply Decision”), para. 7.

¹¹ [ICC-01/04-02/06-2488](#) (“Ntaganda March 2020 Leave to Reply Decision”), para. 8.

- (i) the “relationship” between the “Summary of Preliminary Examinations Findings” (“Summary”) and the Article 18 Notification provided to Israel in March 2021 (“First Issue”);¹²
- (ii) whether Israel raised any issue regarding the scope of the Prosecution’s investigation during its engagements with the Office after the 7 October 2023 events and before its letter of 1 May 2024 (“Second Issue”);¹³
- (iii) whether “statements by States during the Assembly of States Parties should be accorded weight in evaluating the legal significance or scope of a referral” (“Third Issue”);¹⁴ and
- (iv) whether “the Prosecution routinely expands its investigations into crimes against humanity even in the absence of a notification of such crimes”, and the alleged unfairness of the Prosecution relying on confidential article 18(1) notifications in the *DRCI* and *Uganda* situations as a basis for its practice (“Fourth Issue”).¹⁵

6. None of these issues constitutes a “new issue”, which Israel could not reasonably have anticipated. Nor is the proposed reply necessary for the Appeals Chamber’s adjudication of the matters before it in this appeal.

(i) *Israel could reasonably have anticipated the First Issue*

7. Israel could reasonably have anticipated that the Prosecution would rely on the Summary of Preliminary Examinations Findings as part of the information related to the scope of the situation under investigation since March 2021. In the Prosecution’s letter to Israel dated 9 April 2021,¹⁶ in response to Israel’s contention that the Prosecution had failed to identify allegations of specific criminal acts, the Prosecution referred not only to the relevant paragraphs in the Article 18 Notification but also to other publicly available information, including a link to the Summary on the Court’s website, which had been likewise provided in the Prosecution’s public statement announcing the opening of the investigation into this situation on 3 March 2021.¹⁷ Further, in its response to Israel’s First Appeal of December 2024, the Prosecution relied upon the Summary in support of its arguments related to the scope of its

¹² Israel’s Request, paras. 3-4.

¹³ Israel’s Request, para. 5.

¹⁴ Israel’s Request, para. 6.

¹⁵ Israel’s Request, para. 7.

¹⁶ Letter from the Prosecution to Israel dated 9 April 2021, included as Annex D to Israel’s Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice, [ICC-01/18-355-AnxI-Corr](#) (“Abridged Request”).

¹⁷ [OTP Statement](#), 3 March 2021.

investigation.¹⁸ Israel is simply attempting to strengthen the arguments it previously advanced, which is not a valid ground for granting leave to reply.

(ii) *Israel could reasonably have anticipated the Second Issue*

8. Similarly, Israel could reasonably have anticipated the Second Issue, which relates to the Prosecution’s assertion that Israel did not raise concerns regarding the scope of the Prosecution’s investigation in its engagements with the Office after the 7 October events and prior to Israel’s letter of 1 May 2024.¹⁹ In its Request of 20 September 2024, Israel stated that it had engaged with the Office “in a spirit of complementarity and cooperation” and acknowledged to be “aware of public statements of the Prosecutor concerning his view of the permissible scope of his investigation under the existing Situation referral”.²⁰ Israel claimed that it had anticipated “that either the OTP would conclude that it had no basis to proceed further, or that an article 18(1) notification would be forthcoming in due course”.²¹ In its First Appeal of December 2024, Israel further claimed that during its engagement with the Office before 1 May 2024, it had requested information concerning the scope of the Prosecution’s investigations,²² to which the Prosecution responded in January 2025, that “Israel took no action to raise its concerns regarding article 18—neither after the Prosecutor’s statements in 2023, nor during its engagements with the Office in 2024”.²³ Thus, that the Prosecution responded with the same assertion²⁴ in response to Israel’s very same proposition in its Second Appeal of May 2025²⁵ should be no surprise to Israel, and much less merits a reply.

9. Moreover, further submissions on the Second Issue would not assist the Chamber in adjudicating Israel’s Appeal on the question of whether any substantial change had occurred in the parameters of the investigation into the situation, following 7 October 2023.

(iii) *Israel could reasonably have anticipated the Third Issue*

10. Israel could also have reasonably anticipated the Third Issue relating to the statements of various States in the Assembly of States Parties (“ASP”). Given that Israel itself had alleged

¹⁸ [ICC-01/18-407](#) (“Prosecution’s Response of January 2025”). See, in particular, paras. 33-34, 42, fn. 74, 76, 77, 103. See also Prosecution’s consolidated response to observations by interveners pursuant to article 68(3) of the Statute and rule 103 of the Rules of Procedure and Evidence (“Consolidated Response to interveners”), [ICC-01/18-346](#), para. 99, fn. 246 and 247.

¹⁹ [Prosecution’s Response of June 2025](#), para. 36.

²⁰ [Abridged Request](#), paras. 53-54.

²¹ [Abridged Request](#), para. 54.

²² [Israel’s First Appeal of December 2024](#), para. 12 (“On 1 May 2024, following a period of intensive engagement by Israel with the Office of the Prosecutor – which included requests by Israel for information concerning the scope of the Prosecution’s investigations – Israel wrote to the Prosecutor as follows: [...]”).

²³ [Prosecution’s Response of January 2025](#), para. 59.

²⁴ [Prosecution’s Response of June 2025](#), para. 36.

²⁵ [Israel’s Second Appeal of May 2025](#), para. 12.

that the referring States “agreed that the 2018 Referral did not encompass the radical change of circumstances”,²⁶ it was foreseeable that the Prosecution would address those States’ understanding of the scope of the 2018 Referral by Palestine and their intention related to their own November 2023 Referral.

11. In any event, the relevance of the referring States’ statements (as well as statements by other States) at the ASP is an evidentiary matter, which the Appeals Chamber is free to consider. A reply on the Third Issue is accordingly not necessary for its adjudication of Israel’s Appeal.

(iv) Israel could reasonably have anticipated the Fourth Issue

12. The Fourth Issue as to whether “the Prosecution routinely expands its investigations into crimes against humanity even in the absence of a notification of such crimes” does not constitute a new issue arising from the Prosecution’s Response, or go beyond what Israel could reasonably have anticipated. Nor would a reply on this Issue assist the Appeals Chamber in the resolution of the matter under appeal.

13. Firstly, Israel misrepresents the Prosecution’s position. The Prosecution did not state that it “routinely expands its investigations into crimes against humanity even in the absence of a notification of such crimes”.²⁷ The Prosecution simply referred to its prior practice in the *DRC I* and *Uganda* situations to respond to Israel’s formalistic position in its Appeal,²⁸ and to explain that a lack of *explicit* reference to “crimes against humanity” in an article 18 notification does not prevent the Prosecution from relying on this legal qualification as long as the relevant allegations are sufficiently linked to the situation as described therein (as it is also the case in *Palestine*).²⁹ The Prosecution was well aware of the differences between the Article 18 Notification in *Palestine* and the notifications related to the other two situations, including the general reference to article 5 crimes in the latter.

14. Secondly, this is not the first time that the Prosecution referred to its prior practice in other situations in response to various issues raised by Israel.³⁰ In its Second Appeal of June 2025, Israel itself raised the issue related to the Prosecution’s past practice in other situations

²⁶ [Israel’s Second Appeal of May 2025](#), para. 40. *See also* para. 41.

²⁷ Request, para. 7.

²⁸ [Israel’s Second Appeal of May 2025](#), para. 52 (“the Article 18(1) Notification did not allege any crimes against humanity whatsoever”); *see also* para. 21 (with respect to war crimes alleging that “[t]he 2021 Notification never uses the phrase ‘armed conflict’”).

²⁹ [Prosecution’s Response of June 2025](#), para. 35, second bullet point.

³⁰ *See e.g.* Prosecution’s Response to the Abridged Request, [ICC-01/18-360](#), fn. 29; [Prosecution’s Response of January 2025](#), para. 46 (referring to a referral related to the *Situation in Afghanistan*). *See also* [Consolidated Response to interveners](#), para. 110, fn. 289 (referring to the article 18 notifications in *Uganda* and *Mali*, which were included in Annex D).

regarding the notification under regulation 45 of the Regulations of the Court.³¹ Israel could have anticipated that the Prosecution would also refer to the practice in other situations in response to Israel's arguments related to the lack of specific reference to crimes against humanity in the Article 18 Notification.

15. Finally, a reply on the Fourth Issue is not necessary for the Appeals Chamber's adjudication of the matter in this appeal because Israel already advanced its arguments related to the substance of the Issue in the Request,³² without leave being granted by the Chamber to reply, which can be a ground for its dismissal *in limine*.³³ In addition, determining whether an article 18 notification is sufficiently specific is a case-specific and fact-dependent determination. Whether or not "the notices in question, which relate to DRC I and Uganda, actually do make reference to crimes against humanity, both directly and indirectly" is irrelevant to the assessment of the specificity of the Article 18 Notification in *Palestine*.

16. In any event, and importantly, the specificity of the Article 18 Notification is not under appeal. Hence, further submissions on this matter would not assist the Appeals Chamber.

17. In light of the above, any alleged unfairness related to the fact that the confidential article 18 notifications in the *DRC* and *Uganda* situations (which are typically widely circulated in accordance with article 18(1) of the Statute) were presented for the first time in Annex C of the Prosecution's Response of June 2025 does not justify a reply.

III. CONCLUSION

18. For the foregoing reasons, Israel's Request should be dismissed in its entirety.



Mame Mandiaye Niang, Deputy Prosecutor, Officer-in-Charge

Dated this 18th day of June 2025
At The Hague, The Netherlands

³¹ [Israel's Second Appeal of May 2025](#), para. 44.

³² Request, para. 7 ("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").

³³ *C.f.* [ICC-01/04-01/06-824](#), para. 68 (noting that such a practice "in and of itself may also give rise to the rejection of an application for leave").