

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/18**
Date: **9 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
with Confidential Annexes A, B and C

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. Israel's Appeal, filed on 26 May 2025, against Pre-Trial Chamber I's "Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice" ("Decision") should be dismissed.¹ The Chamber correctly rejected Israel's argument that "a new situation has arisen" since 7 October 2023 and found that no new notification under article 18 of the Statute was required.² It aptly concluded that the alleged conduct underlying the Prosecution's Applications for Warrants of Arrests filed in May 2024 ("Applications")³ took place in the context of the same types of armed conflicts involving the same territories and the same parties to the conflicts as those described in the Article 18(1) Notification provided at the time of the opening of the Prosecution's investigation in March 2021.⁴

2. There is no error in the Chamber's approach nor in its Decision. The conduct alleged in the Applications is consistent with, and reflects a continuation of, the same patterns and forms of criminality as those identified at the time of Palestine's 2018 Referral—albeit with much greater intensity, scale and number of victims—and which have been the subject of the Prosecution's investigation in the *Situation in the State of Palestine* ("Situation" or "*Palestine Situation*") opened in March 2021. The Prosecution has consistently stated and communicated this position, including to Israeli authorities, which knowingly engaged with the Court on that basis shortly after the October 2023 events. Israel has occupied the Occupied Palestinian Territory ("oPt") since 1967 and has established, maintained and expanded illegal settlements which has entailed widespread human rights violations. In addition, Israel and Hamas have long been engaged in continuing hostilities causing serious harm to civilians from both sides similar to those described in the Applications. Israel's Appeal fails to show any error in the Decision, and much less an error that would have materially affected it.

3. First, the Chamber correctly relied on the existence of the same types of armed conflicts in the same territories and the same parties to the conflicts to determine that no new situation had arisen. Contrary to Israel's submission, the Prosecution's Article 18 Notification explicitly referred to the existence of an armed conflict between Israel Defence Forces ("IDF") and Hamas and other Palestinian armed groups ("PAGs"). The 2014 hostilities, assessed during the Preliminary Examination ("PE") and mentioned in the Notification, are a representative sample of the successive rounds of hostilities between the IDF and Hamas/PAGs. This does not

¹ [ICC-01/18-375](#) ("Decision"); [ICC-01/18-434 OA3](#) ("Appeal"). The Prosecution uses "Chamber" or "PTC I".

² [Decision](#), para. 15.

³ [OTP 20 May 2024 Statement](#), 20 May 2024.

⁴ [Decision](#), para. 15.

preclude the Prosecution's investigation into crimes and incidents arising in subsequent hostilities as long as they fall within the scope of the situation under investigation. Likewise, the Prosecution's investigation is fully consistent with and does not exceed the parameters of Palestine's 2018 Referral, which referred to conduct committed in the oPt since 13 June 2014 and describes a situation of crisis not limited to settlement-related crimes. Israel misrepresents the features of this Situation. Significantly, while Israel disagrees with the relevant factors considered by the Chamber, it fails to identify other factors that the Chamber should have instead considered and that would have led it to a different determination.

4. Second, the Chamber reasonably addressed the 2023 and 2024 referrals by seven State Parties. The facts underlying the referrals, and the referring States' own statements, demonstrate that these States did not request the opening of a new situation but instead sought to emphasise the need for progress with respect to the ongoing investigation.

5. Israel's Appeal should be dismissed and the Decision confirmed.

II. SUBMISSIONS

6. Even though Israel argues that "the PTC's errors are primarily legal",⁵ it actually raises purported factual (or procedural) errors since it disagrees with the factors relied upon by the Chamber to reach its conclusions. Yet, as demonstrated below, Israel does not show that the Decision was unreasonable⁶ nor that the Chamber erred in procedure⁷ or that it abused its discretion⁸ or that it provided insufficient reasoning. Instead, the Chamber properly considered the content of the Prosecution's Article 18 Notification and the Prosecution's Applications, and was guided by relevant factors to issue its reasonable, and correct, Decision.

7. As shown below, the events arising on 7 October 2023 squarely fall within the parameters of the Prosecution's investigation in the *Palestine* Situation (opened in March 2021) and are in any event sufficiently linked to the situation of crisis underlying the 2018 Palestine Referral (which continues). As developed in response to Israel's First Ground, the Chamber considered relevant factors and reached a reasonable, and correct, decision. In any event, and as it is developed in response to Israel's Third Ground, even if assuming *arguendo* the Chamber should have considered other factors, this would not have materially affected the Decision and

⁵ [Appeal](#), para. 6.

⁶ ICC-01/04-02/06-2666-Red ("Ntaganda AJ"), paras. 39, 41 (describing the standard of reasonableness); *see also* ICC-02/11-01/15-1400 ("*Gbagbo & Blé Goudé Majority AJ*"), para. 70.

⁷ [ICC-01/04-01/06-3466-Red](#), para. 29 (holding that such errors may occur in the proceedings leading up to an impugned decision. [] However, [] the Appeals Chamber will only reverse [the decision] if it is materially affected by the procedural error. In that respect, the appellant needs to demonstrate that, in the absence of the procedural error, the [decision] would have substantially differed from the one rendered).

⁸ [ICC-01/04-02/06-2667-Red](#), para. 31; *see also* [ICC-01/09-02/11-1032](#), para. 25.

the Chamber would have reached the same conclusion. Nor did the Chamber err in its assessment of the 2023 and 2024 referrals. As explained in responding to Israel’s Second Ground, these States emphasised the “escalation of violence” in the context of the ongoing investigation and sought to emphasise the need for progress in the Prosecution’s investigation.

8. Finally, Israel’s submissions challenging the specificity of the Article 18 Notification should be summarily dismissed.⁹ The specificity of the Article 18 Notification is not the issue for which the Pre-Trial Chamber granted leave to appeal (which relates to the “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”)¹⁰ nor is it inextricably linked to it. In any event, as the Chamber correctly found that the Notification was sufficiently specific and consistent with Court’s jurisprudence.¹¹ Indeed, “the Notification included the types of alleged crimes, potential alleged perpetrators, the starting point of the relevant timeframe, as well as a reference to further relevant information, including the summary of the Prosecution’s preliminary examination findings”.¹² Israel did not seek leave to appeal this finding¹³ and its attempt to circumvent the Court’s legal process should not be allowed.

9. Likewise, Israel’s obscure “invitation” to the Appeals Chamber “to exercise its inherent discretion to consider any matters that it considers relevant to the resolution of an appeal” should be dismissed.¹⁴ An appellant is required to substantiate its assertions and to explain how an error materially affects the impugned decision.¹⁵ Israel’s veiled remark is at odds with this requirement. Significantly, the Appeals Chamber has consistently held that it is not an advisory body and that it will only address matters which are under appeal and/or inextricably linked to them.¹⁶ That Israel, a non-State Party, lodges this appeal is no reason to depart from this consistent jurisprudence.¹⁷ Should nevertheless the Appeals Chamber decide to address

⁹ See e.g. [Appeal](#), paras. 25, 48-52.

¹⁰ [ICC-01/18-429](#) (“Decision ALA”), paras. 17-20.

¹¹ [Decision](#), para. 11 (citing [ICC-02/18-89 OA](#) (“Venezuela Article 18(2) AJ”), paras. 110, 114, 116).

¹² [Decision](#), para. 11.

¹³ [ICC-01/18-387](#).

¹⁴ [Appeal](#), para. 5.

¹⁵ ICC-02/04-01/15-2022-Red (“[Ongwen AJ](#)”), para. 88, quoting [Ntaganda AJ](#), para. 48. Even though this jurisprudence relates to final appeal briefs under rule 150, it is similarly applicable to interlocutory appeals: regulation 62(2) RoC contains similar language as regulation 58(2) RoC.

¹⁶ [ICC-01/14-01/21-514 OA5](#), para. 23, citing [ICC-02/11-01/11-572 OA5](#), paras. 54, 65; [ICC-01/04-01/07-1497 OA8](#), para. 38; [ICC-01/04-01/10-514 OA4](#), para. 68; see also [ICC-01/04-503 OA4 OA5 OA6](#), para. 30, citing [ICC-01/04-01/07-3132 OA12](#), para. 7; see also [ICC-01/04-01/06-873 OA8](#), para. 6.

¹⁷ This is not the first appeal by a non-State Party. See e.g. Philippines’ appeal to the article 18 decision: [ICC-01/21-65 OA](#). See also [ICC-02/11-01/15-172 OA6](#), para. 14 (finding that “while the Appeals Chamber has discretion to depart from its previous jurisprudence, it will not readily do so, given the need to ensure predictability of the law and the fairness of adjudication to foster public reliance on its decisions” and referring to [ICC-01/05-01/08-566](#), para. 16 where the Appeals Chamber found that absent ‘convincing reasons’ it will not depart from its previous decisions), cited in [ICC-01/14-01/21-318](#), para. 45.

extraneous issues—which it should not—the Prosecution respectfully requests an opportunity to be heard prior to a ruling on such issues.

10. To address the relevant issues in a logical order, the Prosecution first addresses the First Ground followed by the Third Ground, to then conclude with the Second Ground of Appeal.

A. First Ground of Appeal: the Chamber correctly found that the post-October 2023 events fall within the scope of Prosecution’s ongoing investigation considering the “same type of armed conflict” and “same alleged parties to these conflicts”

11. In its First Ground, Israel raises three sub-grounds—all connected to the Chamber’s assessment that the Applications relate to the “same type of armed conflicts, concerning the same territories, with the same alleged parties to the conflicts” as those described in the Article 18 Notification.¹⁸ As explained below, none of Israel’s arguments have merit.

A.1. The Article 18 Notification, and the Palestine’s 2018 Referral, refer to the existence of armed conflict(s)

12. Israel’s submission in its first sub-ground that the Prosecution’s Article 18 Notification never uses the term “armed conflict” is incorrect since the Prosecution explicitly referred to the existence of armed conflicts in the context of the 2014 Gaza hostilities.¹⁹

13. In its Article 18 Notification, the Prosecution referred to the Israeli occupation and identified a sample of the relevant criminality (war crimes) allegedly affecting the West Bank and Gaza, as well as Israel, in the context of international and non-international armed conflicts, as shown by the references to articles 8(2)(a) and (b) applicable to the former type of armed conflicts, and articles 8(2)(c) and (e) applicable to the latter. These included the war crime of transfer of population from the occupying power into occupied territory but also war crimes arising from the 2014 Gaza hostilities, as well as in the use of force in the context of demonstrations in March 2018 near the border fence in Gaza.²⁰ It identified various categories

¹⁸ [Decision](#), para. 15. See [Appeal](#), paras. 19-39, 46.

¹⁹ *Contra* [Appeal](#), paras. 21-24, 29. The Prosecution will address Israel’s suggestion that it was not on notice that the investigation included possible future hostilities ([Appeal](#), para. 25) in section A.2. below.

²⁰ The Office found that there is a reasonable basis to believe that, in the context of Israel’s occupation of the West Bank, including East Jerusalem, members of the Israeli authorities committed war crimes under art. 8(2)(b)(viii) in relation, *inter alia*, to the transfer of Israeli civilians into the West Bank since 13 June 2014. The Office also found that there is a reasonable basis to believe that, in the context of the 2014 hostilities in Gaza, members of the IDF committed the war crimes of: intentionally launching disproportionate attacks in relation to at least three incidents (art. 8(2)(b)(iv)); wilful killing and wilfully causing serious injury to body or health (arts. 8(2)(a)(i) and 8(2)(a)(iii), or art. 8(2)(c)(i)); and intentionally directing an attack against objects or persons using the distinctive emblems of the Geneva Conventions (art. 8(2)(b)(xxiv), or 8(2)(e)(ii)). The Office also found that there is a reasonable basis to believe that members of Hamas and PAGs committed the war crimes of: intentionally directing attacks against civilians and civilian objects (arts. 8(2)(b)(i)-(ii), or 8(2)(e)(i)); using protected persons as shields (art. 8(2)(b)(xxiii)); wilfully depriving protected persons of the rights of fair and regular trial (arts. 8(2)(a)(vi) or 8(2)(c)(iv)) and wilful killing (arts. 8(2)(a)(i), or 8(2)(c)(i)); and torture or inhuman treatment (art. 8(2)(a)(ii), or

of alleged perpetrators (including the IDF, Israeli authorities, and members of Hamas and other PAGs) and expressly noted that crimes allegedly continued to be committed in the Situation.²¹

14. From the factual allegations described in the Notification, as well from widely reported public information, including the Prosecution's PE reports,²² UN reports²³ and Israel's own involvement in the conflict, it is apparent that the 2014 hostilities involved "active fighting between parties to an armed conflict".²⁴ In any event, in the Notification, the Prosecution specifically explained that "[b]ased on the information available, the hostilities that took place in Gaza between 7 July and 26 August 2014 may be classified as either an *international or non-international armed conflict*; alternatively, it may be considered that *two different conflicts (one international and the other non-international)* existed in parallel during the relevant period".²⁵ It also noted that it is not necessary at the PE stage to reach a conclusive view on the precise legal qualifications and emphasised that these incidents and crimes were illustrative, and had been assessed only for the threshold setting determination under article 53(1)(a) and are therefore without prejudice of the subsequent investigation, which could encompass other incidents and crimes within the scope of the Situation.²⁶

15. Likewise, Palestine's 2018 Referral did encompass crimes arising from the conduct of hostilities or armed conflict(s) in Gaza.²⁷ The Referral described the geographical and temporal parameters of the situation as the oPt since 13 June 2014²⁸ and described the ongoing Israeli occupation, expansion of settlements and alleged violations of fundamental rights throughout the territory (including Gaza) and also listed a non-exhaustive sample of crimes against humanity and war crimes.²⁹ In addition, Palestine referred to the findings by several UN fact-finding and inquiry commissions,³⁰ such as those assessing and/or reporting on the 2008-2009,

8(2)(c)(i)) and/or outrages upon personal dignity (arts. 8(2)(b)(xxi), or 8(2)(c)(ii)). The Prosecution noted that the scope of the situation also encompassed crimes allegedly committed by members of the IDF in demonstrations beginning in March 2018 near the border fence between the Gaza Strip and Israel.

²¹ Article 18(1) notification, 9 Mar. 2021, [Summary of Preliminary Examination Findings](#), para. 9. See Annex A.

²² [OTP PE Report 2015](#), para. 58; [OTP PE Report 2016](#), para. 114; [OTP PE Report 2017](#), para. 57; [OTP PE Report 2018](#), para. 260; [OTP PE Report 2019](#), para. 209.

²³ See e.g. [UN Com. Inq. Rep.](#), 24 June 2015, paras. 27-52.

²⁴ *Contra* [Appeal](#), para. 22.

²⁵ Article 18(1) notification, 9 Mar. 2021, [Summary of Preliminary Examination Findings](#), fn. 3 (emphasis added). See Annex A. The Prosecution had provided a similar explanation in its PE reports: [OTP PE Report 2017](#), para. 70; [OTP PE Report 2018](#), para. 273.

²⁶ Article 18(1) notification, 9 Mar. 2021, p. 2; [Summary of Preliminary Examination Findings](#), paras. 6-9. See Annex A. Likewise, the Prosecution did not have to make a determination as to whether the conflict was continuous or not.

²⁷ *Contra* [Appeal](#), paras. 21-22, 28.

²⁸ [Palestine Article 14 Referral](#), paras. 1 (referring Palestine's [article 12\(3\) declaration](#) of 1 January 2015 accepting the Court's jurisdiction in the oPt since 13 June 2014) and 9 (fn. 4).

²⁹ [Palestine Article 14 Referral](#), paras. 3, 11-12, 16, 18.

³⁰ [Palestine Article 14 Referral](#), para. 18 (d).

2012 and 2014 Gaza hostilities as well as other episodes of violence and restrictions resulting from the Israeli blockade.³¹ Thus, that Palestine did not expressly use the term “armed conflict” in its Referral is not determinative of the scope of the Prosecution’s investigation since the clashes and periodic hostilities between the IDF and Hamas/PAGs are a defining feature of the situation underlying the Referral.³²

16. Finally, that in *Afghanistan* the Prosecution and the Pre-Trial Chamber used a certain formulation to define the armed conflict(s) and/or describe the authorised investigation in the article 15 proceedings is consistent with the fact-specific nature of each situation and does not detract from the correctness of the Decision, where the Chamber was called to make a different determination in a different situation.³³

A.2. The parameters of the Situation under investigation are not limited to the 2014 Gaza hostilities nor to settlement-related crimes

17. In its second sub-ground Israel posits that the Prosecution can only investigate the 2014 Gaza hostilities because, in its Notification, the Prosecution only referred to this “specific episode of ‘hostilities’ limited to a specific time-period in 2014”.³⁴ In a nutshell, Israel suggests that it was not on notice that the Prosecution’s ongoing investigation (opened in March 2021) could include possible future episodes of hostilities between the IDF and Hamas/other PAGs. This is incorrect. As demonstrated below, Israel misunderstands: (i) the specific purpose of an article 18 notification and the analysis required to open an investigation; (ii) misrepresents the features of this Situation; and (iii) confuses the assessment of the Chamber in the Decision.

18. First, Israel misunderstands the specific purpose of article 18 notifications. In the context of litigation ensuing from States’ deferral requests under article 18(2), Chambers have held that the purpose of an article 18 notification is to provide sufficiently specific information to allow States to exercise their right to request a deferral under article 18(2).³⁵ However, these Chambers have also considered other documents to assess whether sufficient notice was provided,³⁶ which is in any event a case-specific determination, and importantly, they have

³¹ [Palestine Article 14 Referral](#), para. 18 (d), fn. 34 referring *inter alia* to [UN Fact-Finding Rep.](#), 25 Sept. 2009; UNSG Report, [A/HRC/24/30](#), 22 August 2013; OHCHR Report, [A/HRC/28/80/Add.1](#), 26 Dec. 2014; UNSG Report, [A/HRC/28/45](#), 5 March 2015; [UN Com. Inq. Rep.](#), 24 June 2015; UNSG Report, [A/HRC/31/44](#), 20 Jan. 2016.

³² Cf. Chaitidou, E., “Article 14” in Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary*, 4th ed. (Beck/Hart: München, 2022) (“Chaitidou”), p. 872 (nm. 29: noting that the referring entity does not need to present a comprehensive legal analysis of all the crimes).

³³ *Contra* [Appeal](#), paras. 26-27.

³⁴ [Appeal](#), paras. 30-32; *see also* para. 25.

³⁵ ICC-02/18-45 (“[Venezuela Article 18\(2\) Decision](#)”), paras. 76-77.

³⁶ [Venezuela Article 18\(2\) AJ](#), paras. 114-118; [Philippines Article 18\(2\) AJ](#), paras. 107, 185-187, 191-193.

held that “[a]s this obligation merely concerns article 18 proceedings, this does not limit in any way the Prosecution’s future investigations”.³⁷

19. This approach is consistent with the limited nature of article 53(1) determinations. In order to open an investigation, article 53(1)(a) only requires the Prosecution to provide “a reasonable basis to believe that *a crime* within the jurisdiction of the Court has been or is being committed” (emphasis added). The Prosecution is thus not required to identify and assess every single fact, incident and crime in the situation at the PE stage, nor would this even be possible given its limited powers and the possibility that crimes may be ongoing and new crimes may be committed.³⁸ Nor is the Prosecution barred from investigating events post-dating the Article 18 Notification. The Appeals Chamber has repeatedly rejected this approach,³⁹ as have various Pre-Trial Chambers in defining the parameters of the authorised situations in their article 15(4) decisions.⁴⁰ Consistent with the above, and while acknowledging the periodic hostilities and continuous clashes between the IDF and Hamas/PAGs,⁴¹ the Prosecution emphasised in its Article 18 Notification⁴² and annual PE reports⁴³ that it had focused its PE assessment on some incidents arising from the 2014 hostilities as “examples of relevant criminality”, but that these did not (and could not) limit the scope of the subsequent investigation.

20. Second, Israel misrepresents the features of the referred Situation, and the Office’s investigation into it.⁴⁴ Israel unsuccessfully attempts to geographically and temporarily compartmentalise the criminality in the oPt.⁴⁵ The 2014 Gaza hostilities are a representative sample of the regular hostilities in this Situation, and are in any event inextricably linked to Israel’s overall occupation and settlement policy in the West Bank.

21. Israel’s 58-year protracted occupation of the oPt⁴⁶ has involved the continuing expansion of illegal settlements in the West Bank, including East Jerusalem⁴⁷ and the development of an

³⁷ [Venezuela Article 18\(2\) Decision](#), para. 76; [Venezuela Article 18\(2\) AJ](#), para. 230.

³⁸ See e.g. [ICC-RoC46\(3\)-01/18-37](#), para. 85. The Prosecution clearly explained as much in its Summary of Findings attached to the Notification: Article 18(1) notification, 9 March 2021, [Summary of Preliminary Examination Findings](#), paras. 7-9; see Annex A.

³⁹ ICC-02/17-138 OA4 (“[Afghanistan AJ](#)”), paras. 2, 61; ICC-02/17-218 OA5 (“[Afghanistan Second AJ](#)”), paras. 57-59; [Venezuela Article 18\(2\) AJ](#), para. 230.

⁴⁰ See e.g. [ICC-01/19-27](#), para. 133; [ICC-02/11-14-Corr](#), para. 179.

⁴¹ [OTP PE Report 2015](#), paras. 55-58; [OTP PE Report 2016](#), paras. 112-114; [OTP PE Report 2018](#), para. 267; [OTP PE Report 2019](#), para. 217;

⁴² [Summary of Preliminary Examination Findings](#), paras. 7-9; see Annex A.

⁴³ [OTP PE Report 2017](#), paras. 73-75; [OTP PE Report 2018](#), paras. 273-274, 279; [OTP PE Report 2019](#), para. 223.

⁴⁴ See [Appeal](#), paras. 25, 32-38 (suggesting that the Referral is limited to settlement-related crimes).

⁴⁵ See similarly [Sp. Rapporteur report A/HRC/49/87](#), 12 August 2022, paras. 42-45 (describing Israel’s strategy of fragmenting the oPt into separate areas of population control, with Gaza, the West Bank and East Jerusalem physically divided from one another); see also [Sp. Rapporteur report A/HRC/44/60](#), 22 Dec. 2020, para. 57.

⁴⁶ [ICJ Advisory Opinion](#), 19 July 2024, paras. 104, 155-156. [Sp. Rapporteur report A/72/556](#), 23 Oct. 2017, paras. 25, 56, 57; [Sp. Rapporteur report A/HRC/47/57](#), 29 July 2021, para. 69.

⁴⁷ See e.g. [ICJ Advisory Opinion](#), 19 July 2024, paras. 155-156.

oppressive military rule as well as policies and practices involving disproportionate movement restrictions, land dispossessions and property demolitions targeting the Palestinian population and displacing them, among other fundamental rights violations, amidst a relentless surge of settler violence.⁴⁸ Likewise, the 18-year long blockade of Gaza had already placed the Palestinian population in the Strip in a precarious situation well before 7 October 2023 as a result of suffocating border restrictions, limited electricity supply, insufficient water and poor sewage conditions,⁴⁹ which had converted Gaza into “an open-air prison”.⁵⁰ The different rounds of heightened hostilities in 2008-2009, 2012, 2014, 2021, 2023-2025 as well as other intermediate clashes with Hamas/PAGs rocket attacks and IDF strikes and incursions followed similar patterns and exacerbated Gaza’s lamentable situation.⁵¹ Clashes and tensions in Gaza are generally accompanied by an increase of restrictions and violence in the West Bank, including East Jerusalem.⁵²

22. The link between Israel’s protracted occupation, its settlement policy and related discriminatory policies and practices in the West Bank, the Gaza blockade as well as the periodic hostilities between the IDF and Hamas/PAGs has been consistently recalled.⁵³ Recent statements by Israeli State officials calling for the displacement of the Palestinian population and the re-settling of Gaza is yet another manifestation of this connection.⁵⁴ As a former Special

⁴⁸ [Sp. Rapporteur report A/HRC/31/73](#), 11 Jan. 2016, para. 32; [Sp. Rapporteur report A/HRC/44/60](#), 22 Dec. 2020, paras. 24, 38-52, 77-79, [Sp. Rapporteur report A/HRC/47/57](#), 29 July 2021, paras. 21-23; [Sp. Rapporteur report A/HRC/49/87](#), 12 August 2022, paras. 35-37, 41; [EU 2023 Report, 2 Aug. 2024](#); [UNSG Report](#), 12 Sept. 2024, paras. 4-71; [OHCHR Rep.](#), 6 March 2025; *See also* [ICJ advisory opinion](#), 19 July 2024, paras. 205-206, 213, 222.

⁴⁹ [UN Fact-Finding Rep.](#), 25 Sept. 2009, paras. 65, 311-326; [Sp. Rapporteur report A/HRC/44/60](#), 22 Dec. 2020, paras. 61-70; [oPt COI Report](#), 14 June 2024, para. 48; [UNCTAD Report](#), 10 Sept. 2024, paras. 2, 6, 24; *see also* [ICRC report](#), Nov. 2020 (on electricity shortages).

⁵⁰ [Sp. Rapporteur report A/HRC/49/87](#), 12 August 2022, para. 9.

⁵¹ [UN Fact-Finding Rep.](#), 25 Sept. 2009, paras. 29, 41-54, 65-75, 103-110, 183, 327-351, 365, 653-885, 913-1031, 1217-1335; [OHCHR Rep.](#), 4 Jul. 2013, paras. 4-48; [Sp. Rapporteur report A/HRC/28/78](#), 22 Jan. 2015, paras. 12-37; [UN Com. Inq. Rep.](#), 24 June 2015, paras. 19-20, 27-56, 59-65; [oPt COI Report](#), 14 June 2024, paras. 38-61, 70-72, 79-85; [OHCHR Rep.](#), 19 June 2024 (on indiscriminate and disproportionate attacks during the conflict in Gaza); [UNCTAD Report](#), 10 Sept. 2024, paras. 2, 8, 16-26; [oPt COI Report](#), 11 Sept. 2024, paras. 6-40 (on attacks on medical facilities).

⁵² [UN Fact-Finding Rep.](#), 25 Sept. 2009, paras. 93-96, 1373-1440, 1594-1691; [Sp. Rapporteur report A/HRC/28/78](#), 22 Jan. 2015, paras. 2, 41-42; [UN Com. Inq. Rep.](#), 24 June 2015, paras. 69-71; [UNSG Report](#), 12 Sept. 2024, para. 6; *see also* [oPt COI Report](#), 14 June 2024, paras. 62-63, 105.

⁵³ [UN Fact-Finding Rep.](#), 25 Sept. 2009, paras. 198-209, 1877-1879; [UN Com. Inq. Rep.](#), 24 June 2015, para. 14; [oPt COI Report](#), 14 June 2024, para. 6; [UNSG remarks](#), 24 Oct. 2023.

⁵⁴ [Prime Minister Netanyahu's statement](#), 4 Feb. 2025 (“Last night in the Gaza Strip, we switched gears. The IDF is seizing territory, striking the terrorists and destroying the infrastructure”); CNN, “[Israel vows to escalate war with new plan to ‘conquer’ Gaza](#)”, 6 May 2025 (reporting Netanyahu announcing that: “We’ll call up reserves to come, hold territory — we’re not going to enter and then exit the area, only to carry out raids afterward. That’s not the plan. The intention is the opposite”); Times of Israel, “[Smotrich says Gaza to be ‘totally destroyed,’ population ‘concentrated’ in small area](#)”, 6 May 2025 (reporting on Finance Minister Bezalel Smotrich’s statement that “Gaza will be totally destroyed”, and that the inhabitants “will be totally despairing, understanding that there is no hope and nothing to look for in Gaza, and will be looking for relocation to begin a new life in other places”).

Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 foreshadowed in describing the May 2021 hostilities:

This escalation is the fourth of its kind since 2008, with more yet to come if the root causes of such violence are not addressed. These latest events have made it abundantly clear that the persistent discrimination against Palestinians throughout the West Bank and East Jerusalem, threats of forced displacement, forced displacement, demolitions, settlement expansion and settler violence and the 14-year blockade of Gaza, to name but a few, have all contributed to and will continue to contribute to cycles of violence.⁵⁵

23. In March 2021 the Prosecution opened its investigation into the situation underlying Palestine’s 2018 Referral, and within its temporal and geographical parameters. Accordingly, ICC Prosecutors have consistently recalled that incidents of evictions and destruction of property in the West Bank, the violence at the Gaza border with Israel in 2018,⁵⁶ the 2021 May hostilities⁵⁷ as well as the current hostilities⁵⁸ fall within the parameters of the ongoing investigation and are in any event sufficiently linked to the situation of crisis triggering the 2018 Referral, which unfortunately continues.

24. Third, Israel disregards that determining whether certain events amount to a new situation before the Court, or whether they fall within the parameters of a pre-existing investigation and/or are sufficiently linked to it,⁵⁹ is a case-specific and fact-dependent determination.⁶⁰

25. The Applications filed on 20 May 2024 concerned the alleged conduct of two senior Israeli leaders and three senior Hamas leaders and related to events arising from the escalation of hostilities since the 7 October 2023 attack by Hamas/ PAGs, as well as to subsequent Israeli actions and policies affecting the civilian population in Gaza. These events, and the relevant allegations underlying the criminality, related to the same ongoing crisis, the same or very similar conflicts between the same parties in the same territories, and indeed reproduced many

⁵⁵ [Sp. Rapporteur report A/HRC/47/57](#), 29 July 2021, para. 10.

⁵⁶ [OTP 17 October 2018 statement](#).

⁵⁷ [OTP 12 May 2021 post](#) (“I note with great concern the escalation of violence in the West Bank, including East Jerusalem, as well as in and around Gaza, and the possible commission of crimes under the Rome Statute. I echo the call from the international community for calm, restraint and a stop to the violence”). See also [OTP 13 May 2021 interview](#).

⁵⁸ [OTP 30 October 2023 Statement](#); [OTP 17 November 2023 Statement](#); [OTP 3 December 2023 Statement](#); [OTP 6 December 2023 Statement](#).

⁵⁹ [ICC-01/04-01/10-451](#), para. 16 (observing that a situation can include crimes committed at the time of the referral and subsequent crimes that were sufficiently linked to the situation of crisis which was ongoing at the time of the referral); see [ICC-02/05-01/20-391](#), para. 25 (quoting [ICC-01/04-101-tEN-Corr](#), para. 65 (A situation is “generally defined in terms of temporal, territorial and in some cases personal parameters”)). See also Chaitidou, p. 871 (nm. 29: “the concept of a situation must be understood in a generic and broad fashion: a description of facts, defined by space and time, which circumscribe the prevailing circumstances at the time (‘conflict scenario’) underlying the referral. The prevailing circumstances or conflict scenario (not necessarily within the meaning of ‘armed conflict’) establish the broader context in which ‘one or more crimes within the jurisdiction of the Court appear to have committed’”).

⁶⁰ As Israel conceded in its previous Appeal, there is no fixed set of factors that a Chamber must invariably consider: see [ICC-01/18-401 OA](#), para. 43.

of the same patterns observed in previous escalation of hostilities, even if with much greater intensity, scale and number of victims as well as more cruel methods of warfare. The Applications thus alleged the commission of some of the very same war crimes described in the Notification, as well as additional war crimes and crimes against humanity.⁶¹

26. Against this backdrop, and in relation to Israel's submissions that "a new situation has arisen" and that an "investigation with new 'defining parameters' has been taking place since 7 October 2023",⁶² the Chamber correctly concluded that "no substantial change has occurred to the parameters of the investigation into the situation".⁶³ In particular:

- As noted above, the Chamber correctly observed that the alleged "conduct [was] committed in the context of the same type of armed conflicts, concerning the same territories".⁶⁴ Indeed, the crimes took place in the context of the ongoing Israeli occupation of the West Bank and Gaza, and its associated armed conflicts. As held by the International Court of Justice ("ICJ"), Israel has occupied the West Bank and Gaza since 1967 (notwithstanding its disengagement from Gaza in September 2005) and has annexed East Jerusalem.⁶⁵ Moreover, Israel and Hamas have been parties to (an) armed conflict(s) since at least 2008, which have involved operations such as Operation Cast Lead in 2008-2009,⁶⁶ Operation Pillar of Defence in 2012,⁶⁷ Operation Protective Edge in 2014 (which was analysed during the PE),⁶⁸ Operation Guardian of the Walls in 2021,⁶⁹ and most recently the 2023-2025 Operation Iron Swords that has evolved into Operation Gideon's Chariots in May 2025.

⁶¹ The Prosecution alleged the criminal responsibility of Netanyahu and Gallant for (i) starvation under art. 8(2)(b)(xxv); (ii) wilfully causing great suffering, or serious injury to body or health under art. 8(2)(a)(iii), or cruel treatment under art. 8(2)(c)(i); (iii) wilful killing under art. 8(2)(a)(i), or murder under art. 8(2)(c)(i); (iv) intentionally directing attacks against a civilian population under arts 8(2)(b)(i), or 8(2)(e)(i); and the crimes against humanity of (v) extermination and/or murder under arts 7(1)(b) and 7(1)(a); (vi) persecution under art. 7(1)(h); and (vii) other inhumane acts under art. 7(1)(k). The Prosecution alleged the criminal responsibility of Haniyeh, Sinwar and Deif for the war crimes of murder under art. 8(2)(c)(i); taking of hostages under art. 8(2)(c)(iii), rape and other forms of sexual violence under art. 8(2)(e)(vi), torture and cruel treatment under art. 8(2)(c)(i), outrages upon personal dignity under art. 8(2)(c)(ii) in the context of captivity; the crimes against humanity of extermination under art. 7(1)(b); murder under art. 7(1)(a); rape and other forms of sexual violence under art. 7(1)(g), torture under art. 7(1)(f), and other inhumane acts under art. 7(1)(k) in the context of captivity. See [OTP 20 May 2024 Statement](#).

⁶² ICC-01/18-355-AnxI-Corr ("[Abridged Request](#)"), paras. 2, 19-58.

⁶³ [Decision](#), para. 15.

⁶⁴ [Decision](#), para. 15.

⁶⁵ [ICJ Advisory Opinion](#), paras. 78, 104, 138, 170, 179.

⁶⁶ [IDF](#), 30 Oct. 2017; [UN Ind. Com. Rep.](#), 18 Mar. 2019, para. 220; [UN Fact-Finding Rep.](#), 25 Sept. 2009, para. 29.

⁶⁷ [IDF](#), 30 Oct. 2017; [UN Ind. Com. Rep.](#), 18 Mar. 2019, para. 220; [OHCHR Rep.](#), 4 Jul. 2013, paras. 4-8.

⁶⁸ [IDF](#), 30 Oct. 2017; [UN Ind. Com. Rep.](#), 18 Mar. 2019, para. 220; [UN Com. Inq. Rep.](#), 24 June 2015, para. 19.

⁶⁹ [IDF](#), 14 June 2021; [UN Ind. Com. Rep.](#), 5 Sept. 2023, paras. 13, 22, 54.

Between these, airstrikes and other actions by Israel further deteriorating the humanitarian situation in Gaza continued⁷⁰ as well as repeated rocket attacks by Hamas against Israel.⁷¹

- Further, the Chamber correctly noted that the alleged “conduct [was] committed [...] with the same alleged parties to these conflicts”.⁷² Indeed, the crimes alleged in the Applications involve conduct by the same groups or categories of perpetrators allegedly responsible for the crimes at the time of the Referral and opening of the investigation: Israeli authorities and the IDF as well as Hamas and other PAGs. The victims were also the same: Palestinian civilian population in Gaza and civilian and non-civilian (for hostage-taking) in Israel.

27. In sum, the Prosecution’s investigation in the *Palestine* situation is not limited to the 2014 hostilities nor to settlement-related crimes. For the reasons provided by the Chamber, the conduct described in the Applications falls squarely within the parameters of the investigation and is in any event sufficiently linked to the situation of crisis underlying the Referral, which is ongoing.

A.3. The scope of the Prosecution’s investigation is consistent with the situation underlying Palestine’s 2018 Referral

28. Finally, contrary to Israel’s submissions in its third sub-ground,⁷³ the Prosecution’s investigation in the *Palestine* Situation (encompassing the 2014 hostilities but also the current conflict) does not exceed the scope of Palestine’s 2018 Referral. Both events are an integral part of the Situation under investigation.

29. First, as developed in response to Israel’s first sub-ground, Palestine’s 2018 Referral is not limited to settlement-related crimes and instead encompasses the situation of crisis in Palestine at the time of the referral, which is ongoing, including periodic hostilities between the IDF and Hamas/PAGs in the oPt since 13 June 2014.⁷⁴

30. Second, as developed in response to Israel’s second sub-ground, Israel fundamentally misrepresents the features of the Situation, which entails widespread and interconnected criminality across the oPt in pursuance of the same policies and following similar patterns.⁷⁵

31. Because of the foregoing, Israel’s First Ground of Appeal should be dismissed.

⁷⁰ [UN Ind. Com. Rep.](#), 5 Sept. 2023, paras. 48, 58; [UN Ind. Com. Rep.](#), 18 Mar. 2019, para. 221.

⁷¹ [UN Ind. Com. Rep.](#), 5 Sept. 2023, para. 51; [UN Ind. Com. Rep.](#), 18 Mar. 2019, para. 221.

⁷² [Decision](#), para. 15.

⁷³ [Appeal](#), paras. 33-39.

⁷⁴ *See above* para. 15.

⁷⁵ *See above* paras. 20-23.

B. Third Ground: the Chamber considered relevant factors in assessing the post-7 October 2023 events

32. In its Third Ground of Appeal, Israel argues that the Chamber should have considered other factors to assess whether a new situation had arisen.⁷⁶ However, rather than identifying specific factors and demonstrating how they would have materially affected the Chamber's conclusion, Israel refers to extracts of decisions in the context of article 18 litigation describing the content of an article 18 notification,⁷⁷ or assessing whether certain domestic proceedings sufficiently mirror the scope of the Prosecution's intended investigation in those situations.⁷⁸ Yet, none of those Chambers were called to determine whether a new situation had arisen. Accordingly, Israel's Third Ground is ill-founded and should be summarily dismissed. In any event, Israel's additional submissions are misplaced and do not show an error.

33. First, as noted above, Israel's repeated attempts to belatedly challenge the specificity of the Article 18 Notification by reference to posterior jurisprudence issued in the context of other situations should not be entertained.⁷⁹ Not only this is not an issue under appeal but Israel had the opportunity to raise this matter in the context of article 18 proceedings in March/April 2021, when it received the Prosecution's Article 18 Notification. Yet, in its letter of 8 April 2021 Israel merely asserted "its firm [] view that the Court manifestly lacks jurisdiction" and emphasised the Office's "repeated failure [] to identify allegations of specific 'criminal acts'".⁸⁰ Even though the Prosecution sought clarification as to whether Israel intended to trigger the application of article 18(2) or to request additional information pursuant to rule 52(2), in its reply of 26 April 2021, Israel again recalled that the Court lacked jurisdiction and maintained "its grave reservations [] regarding the handling of this situation by the OTP".⁸¹ As the practice shows, the article 18 process would have allowed Israel to raise its unfounded

⁷⁶ [Appeal](#), para. 47.

⁷⁷ [Appeal](#), para. 47 (referring to "the groups or categories of individuals in relation to the relevant criminality, including the patterns and forms of criminality" and "the types of alleged crimes, potential alleged perpetrators, the starting point of the relevant timeframe"), fn. 94 (citing Decision, para. 11 and [Venezuela Article 18\(2\) AJ](#), para. 114). The Chamber considered this jurisprudence to assess whether the Art. 18 Notification was sufficiently specific.

⁷⁸ [Appeal](#), para. 47 (referring to "the context or circumstances of the crimes", "the hierarchical level of the potential perpetrators" and whether the crimes were committed as part of a "State policy"), fns. 95 to 97 (referring to ICC-01/21-56-Red ("Philippines Article 18 Decision"), paras. 35 (finding that the DOJ Panel reviewed a very low number of cases "when compared with the estimated number of killings that allegedly occurred in the context of 'war on drugs' operations") and 68 (assessing that Philippines domestic proceedings "appear to concern the responsibility of low-ranking police officers" and not "high ranking officials"), [ICC-01/21-77 OA](#) ("Philippines Article 18(2) AJ"), para. 163 (noting that the PTC expected domestic proceedings to focus on high-ranking officials), [Venezuela Article 18\(2\) AJ](#), paras. 348-349 (noting that domestic proceedings related to direct/low level perpetrators instead of focusing on high-ranking officials).

⁷⁹ [Appeal](#), paras. 48-52.

⁸⁰ See Annex A.

⁸¹ See Annex A.

complaints in a timely manner.⁸² It cannot now be permitted to circumvent the Court's legal framework.

34. Second, the Chamber correctly concluded that: (i) the Article 18 Notification was sufficiently specific;⁸³ and that (ii) no new situation had arisen as a result of the 7 October events that would require a new article 18 notification.⁸⁴ Unlike Israel, the Chamber did not conflate the two assessments. Instead, it considered relevant factors and reached correct conclusions. Israel does not demonstrate an error in either of the Chamber's determinations; instead, it simply disagrees with them and misconstrues the facts of the Situation and the Court's jurisprudence to bolster its arguments.⁸⁵

35. Third, and for the reasons provided above, Israel does not demonstrate that the Chamber committed any error that would materially affect the decision.⁸⁶ Specifically, and contrary to Israel's submissions:

- The Prosecution's Article 18 Notification refers to the existence of armed conflicts.⁸⁷
- The situation underpinning the Referral as reflected in the Article 18 Notification reflects the widespread and systematic nature of Israel's actions as well as Israel's policy of exercising control over the oPt and of attacking the Palestinian population through the commission of multiple criminal acts.⁸⁸
- That the Prosecution did not refer to crimes against humanity in the Article 18 Notification is consistent with the limited purpose of a PE to determine whether there is "a reasonable basis to believe that *a crime* within the jurisdiction of the Court has been or is being committed".⁸⁹ This does not prevent the Prosecution from relying on this legal qualification in the Applications since the relevant allegations fall squarely within, and are in any event sufficiently linked, to the situation referred and under investigation. Nor would this be the first situation where the Office has conducted prosecutions into crimes against humanity even though the article 18 notifications did not refer to them.⁹⁰

⁸² [ICC-02/18-9-Red](#), paras. 4, 14, 16; [Philippines Article 18\(2\) AJ](#), paras. 107, 185-187, 191-193; [Venezuela Article 18\(2\) AJ](#), paras. 110-118.

⁸³ [Decision](#), para. 11.

⁸⁴ [Decision](#), para. 15.

⁸⁵ [Contra Appeal](#) para. 48.

⁸⁶ [Appeal](#), paras. 50-52.

⁸⁷ [Contra Appeal](#), para. 50; *see above* paras. 13-14.

⁸⁸ [Contra Appeal](#), para. 51.

⁸⁹ Art. 53(1)(a), Statute.

⁹⁰ Compare DRC I Article 18 Notification with [ICC-01/04-02/06-2359](#) ("Ntaganda TJ"), pp. 535-537; compare Uganda Article 18 Notification with [ICC-02/04-01/15-1762-Red](#) ("Ongwen TJ"), para. 3116. *See* Annex C. [Contra Appeal](#), para. 52.

- As also described above, the alleged criminality in the Applications is another example of hostilities between the IDF and Hamas/PAGs and reproduces many of the same patterns and crimes, even though with much greater intensity, scale and number of victims, and more cruel methods of warfare.⁹¹ That the July 2024 ICJ Advisory Opinion did not address the current conflict does not detract from the above. The ICJ was bound by the specific parameters of the UN General Assembly resolution identifying two specific questions regarding the consequences of Israel’s “prolonged occupation, settlement and annexation of the Palestinian territory” and “the legal status of the occupation”.⁹² Further, as three ICJ judges noted in their joint opinion,⁹³ at the time of the July 2024 Advisory Opinion, there were two contentious cases pending before the ICJ, which were specifically related to the allegations of genocide committed against the Palestinian people in Gaza since 7 October 2023.⁹⁴ They noted that addressing the recent Gaza events in the advisory opinion could have risked prejudging some questions raised in those cases.⁹⁵ Conversely, several States at the recent public hearings at the ICJ regarding Israel’s obligations in relation to the presence and activities of the UN and others in the oPt⁹⁶ argued that the recent measures taken by Israel, including blocking humanitarian assistance, are linked to Israel’s goal of causing Palestinians’ displacement from the oPt and settling and annexing their land.⁹⁷
36. Finally, Israel’s remark as to its inability to “explain itself” in respect of the Prosecution’s investigation that led to the Applications is simply incorrect.⁹⁸ As described above, Israel could have requested the deferral of the investigation in March/April 2021 but it chose not to do so. Further, shortly after 7 October 2023, Israel was on notice that the Prosecutor considered the recent events as falling within the scope of the pre-existing investigation into the situation.⁹⁹

⁹¹ *Contra* [Appeal](#), para. 53. *See above*, paras. 21, 26.

⁹² UNGA [Resolution A/RES/77/247](#), 30 Dec. 2022, para. 18.

⁹³ [Joint opinion of Judges Tomka, Abraham and Aurescu](#), para. 14.

⁹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, [Application instituting proceedings](#), 29 Dec. 2023 (alleging violations by Israel of its obligations under the Genocide Convention in relation to Palestinians in the Gaza Strip); *Alleged breaches of certain international obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, [Application instituting proceedings](#), 1 March 2024 (alleging that by providing political, financial and military support to Israel and by defunding UNRWA, Germany is facilitating the commission of genocide and has failed in its obligation to do everything possible to prevent its commission).

⁹⁵ [Joint opinion of Judges Tomka, Abraham and Aurescu](#), para. 14.

⁹⁶ UNGA [Resolution A/RES/79/232](#), 19 Dec. 2024, para. 10; [ICJ press release](#), 2 May 2025.

⁹⁷ *See e.g.* [Verbatim record 2025/5](#), 29 April 2025, Statement of Algeria at p. 28, para. 23; Statement of Saudi Arabia at p. 36, para. 5; [Verbatim record 2025/7](#), 30 April 2025, Statement of Indonesia at p. 50, para. 60; [Verbatim record 2025/9](#), 1 May 2025, Statement of Namibia at p. 43, para. 10.

⁹⁸ [Appeal](#), para. 57.

⁹⁹ *See* Reuters, [Exclusive: Hamas attack, Israeli response fall under ICC jurisdiction, prosecutor says](#), [OTP 30 October 2023 Statement](#); [OTP 17 November 2023 Statement](#); [OTP 3 December 2023 Statement](#); [OTP 6 December 2023 Statement](#).

Although it has conceded being aware of the Prosecution’s position,¹⁰⁰ 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 2023 and 2024. Significantly, Israel was present at the 22nd ASP in December 2023 as an observer state. While it claimed that its domestic legal system would examine and investigate any credible allegations of wrongdoing by its own forces and complained about the “charges and libels” and the “outrageous claims” made against Israel, it did not raise any issue regarding the scope of the investigation.¹⁰¹ Other States expressed their support to the Prosecution’s investigation in the Situation¹⁰² and encouraged the Office to intensify its investigative efforts into the post-October 2023 events.¹⁰³ Even in the 1 May 2024 letter, in which the Israeli ambassador purportedly requested “the Prosecutor [to] defer any investigation it may be conducting”,¹⁰⁴ Israel did not invoke article 18 of the Statute nor attach any of the supporting material required by rule 53 of the Rules.¹⁰⁵ The above suggests that Israel was well aware that the recent and ongoing events in Gaza fall within the scope of the investigation opened in March 2021, and that it engaged with the Court upon such understanding. It also suggests that the present litigation only seeks to further disrupt the discharge of the Court’s mandate in this Situation.

37. The Prosecution respectfully submits that granting Israel’s Appeal would defeat the object and purpose of article 18, and of the complementarity regime more generally. Article 18 was introduced to ensure that States would be aware of the commencement of the Court’s investigation in order to avoid duplication of proceedings.¹⁰⁶ Significantly, States wanted to avoid any interpretation of article 18 that would allow States to protect perpetrators by frustrating and delaying investigations by the Prosecutor.¹⁰⁷ Israel’s Third Ground of Appeal should be dismissed.

¹⁰⁰ [Abridged Request](#), para. 54.

¹⁰¹ [Israel ASP Statement](#), 7 Dec. 2023.

¹⁰² See e.g. [New Zealand ASP Statement](#); [Switzerland ASP Statement](#); [Estonia ASP Statement](#).

¹⁰³ See e.g. [Senegal ASP Statement](#); [Jordan ASP Statement](#); [The Netherlands ASP Statement](#); [Chile ASP Statement](#).

¹⁰⁴ Annex B.

¹⁰⁵ *Contra* [Abridged Request](#), para. 55.

¹⁰⁶ Holmes, J., “The Principle of Complementarity” in Lee (ed.), *The International Criminal Court: the making of the Rome Statute* (Martinus Nijhoff Publishers: The Hague, 1999) (“Holmes 1999”), p. 69; Nsereko, D. and Ventura, M., “Article 19” in Ambos (ed.), *Rome Statute of the International Criminal Court: Article-by-Article Commentary*, 4th ed. (Beck/Hart: München, 2022) (“Nsereko/Ventura”), p. 1012, mn. 4.

¹⁰⁷ Holmes 1999, p. 70; Nsereko/Ventura, p. 1013; Holmes, J., “Complementarity: National Courts versus the ICC” in Cassese *et al.* (eds.), *The Rome Statute of the International Criminal Court*, Vol. 1 (Oxford University Press: 2002), pp. 681-682.

C. Second Ground of Appeal: the Chamber did not err by rejecting Israel’s submission that “a new Situation was triggered by referrals following 7 October 2023”

C.1. The Chamber did not error by rejecting Israel’s submissions regarding the alleged effect of the post-7 October 2023 referrals

38. Contrary to Israel’s Second Ground of Appeal, the Chamber did not err in rejecting Israel’s submissions regarding the referral of South Africa, Bangladesh, Bolivia, Comoros and Djibouti submitted in November 2023,¹⁰⁸ or the referral of Mexico and Chile submitted in January 2024,¹⁰⁹ “triggered” a new situation. As Israel acknowledges,¹¹⁰ not every referral under article 14 of the Statute requires an opening of an investigation into a new situation. Where a referral relates to crimes that fall within the parameters of an ongoing investigation by the Prosecution, as in this case, there is no need to open a new investigation or provide an article 18(1) notification. Israel’s arguments are based on mischaracterisations of the criminality of this Situation as well as the scope of the ongoing investigation and the import of the 2023-2024 State referrals.

39. First, as described above, the scope of the investigation into this Situation goes beyond “settlement policies” and encompasses other crimes related to the situation of crisis ongoing at the time of the Palestine’s 2018 Referral, including crimes in the context of an international armed conflict between Israel and Palestine, Israel’s conduct in the context of its long-standing occupation, and a non-international armed conflict between Hamas/PAGs and Israel.

40. Second, the November 2023 and January 2024 Referrals related to the same situation referred by Palestine in 2018, which has been under investigation by the Prosecution since March 2021.¹¹¹ In the November 2023 Referral, the preamble refers, *inter alia*, to the referral by Palestine made on 22 May 2018 of “the situation since 13 June 2014, with no end date”, the OTP’s announcement on 3 March 2021 of the opening of “an investigation in respect of the Situation in Palestine, covering crimes within jurisdiction of the court”, and the grave concern about the “escalation of violence” and “the alleged ongoing commission of crimes within the jurisdiction of the court”, followed by the operative paragraph stating that the referring States “decide to refer the Situation in Palestine to the Prosecutor of the Court with a view to requesting the Prosecutor to vigorously investigate crimes under the jurisdiction of the Court alleged committed within the context of the Situation in Palestine”.¹¹² While the November

¹⁰⁸ [South Africa et al. Article 14 Referral](#), 17 Nov. 2023 (“November 2023 Referral”).

¹⁰⁹ [Chile and Mexico Article 14 Referral](#), 18 Jan. 2024 (“January 2024 Referral”).

¹¹⁰ [Appeal](#), para. 43.

¹¹¹ *Contra* [Appeal](#), paras. 40-42.

¹¹² [South Africa et al. Article 14 Referral](#), p. 1.

2023 Referral then refers to “additional crimes”, such as genocide,¹¹³ the context shows that the five referring States simply sought to draw the Prosecution’s attention to these crimes in the conduct of its ongoing *Palestine* investigation, and to call for its speedy progress.¹¹⁴ This is also clear from their statements at the 22nd session of the ASP held in early December 2023, a few weeks after the submission of the referral on 17 November 2023, where representatives of Bangladesh¹¹⁵ and South Africa¹¹⁶ emphasised that with their November 2023 Referral, they had sought to draw the Prosecution’s attention to the need for progress with respect to the ongoing *Palestine* investigation.

41. Notably, these statements were made *after* the Prosecutor received the November 2023 Referral and confirmed that the existing investigation “extend[ed] to the escalation of hostilities and violence” since the 7 October 2023 attack.¹¹⁷ None of the States Parties or the Observer States, including Israel, present at the ASP meeting in December 2023 challenged this position, let alone suggested that a new article 18(1) notification should be provided. In fact, some States Parties specifically referred to the ongoing investigation in the *Palestine* Situation as covering the escalation of violence since the 7 October 2023 attack,¹¹⁸ or expressed support for ICC

¹¹³ [South Africa et al. Article 14 Referral](#), p. 2, para. 2.

¹¹⁴ *Contra* [Appeal](#), paras. 41-42.

¹¹⁵ [Statement by Bangladesh](#), 7 Dec. 2023, p. 2 (“It is [...] critically important that ICC remains objective in its attention to the protracted or longstanding situations. We are deeply concerned by the failure of the ICC to make any progress in the investigation in Palestine situation, which has only emboldened the State of Israel to continue its atrocities unabated in the Occupied Palestinian Territory. In the context of the ongoing Israeli aggression and atrocities in Gaza, Bangladesh, along with four other countries, has made a referral to the ICC seeking investigation by the Office of the Prosecutor about possible commission of genocide, war crimes and crimes against humanity in the OPT. We call upon the Prosecutor’s office to prioritize this investigation [...].”).

¹¹⁶ [Statement by South Africa](#), 6 Dec 2023, p. 4-5 (“[W]hen looking at two major current and ongoing armed conflicts, in Ukraine and in the State of Palestine, where both situations are under investigation by the Office of The Prosecutor, we have observed far more speedy progress and indictments from the Ukraine investigation than the investigation into the long outstanding situation in the State of Palestine. [...] Our concern about the unacceptable loss of life and human suffering in Gaza obliged South Africa, joined by Bangladesh, Bolivia, Comoros and Djibouti, to refer the situation in Palestine to the Office of the Prosecutor on 17 November 2023. Fully aware that other violations in occupied Palestine have been under investigation. [...] We urge the Office of the Prosecutor to apply the resources made available to it under the programme budget of the Court to investigate all situations with which it is seized in a manner that accords with the requisite sense of equity and balance”).

¹¹⁷ [OTP 30 October 2023 Statement](#); [OTP 17 November 2023 Statement](#); [OTP 3 December 2023 Statement](#); [OTP 6 December 2023 Statement](#). See also [Prosecutor’s statement at the ASP](#), 4 Dec. 2023 (noting, *inter alia*, that the denial of humanitarian relief is a matter that the office is investigating)

¹¹⁸ See e.g. [New Zealand ASP Statement](#); (stating that: “[a]s the Prosecutor has noted, the investigation includes the attacks that took place on 7 October 2023 and the subsequent escalation of hostilities and violence”); [Switzerland ASP Statement](#) (noting that: “[l]a situation en Palestine fait l’objet d’une enquête depuis mars 2021, qui s’étend aux attaques du 7 octobre 2023 et à l’escalade d’hostilités et de violence qui leur a fait suite.”); [Estonia ASP Statement](#) (noting that: “[t]he workload of the Court is continuously growing, including investigation into the Situation in the State of Palestine, which extends to the escalation of hostilities and violence since the attacks that took place on 7 October 2023”).

investigations in relation to the recent events in Gaza.¹¹⁹

42. Similarly, in the January 2024 Referral, the two referring States Parties expressed their grave concern at the “latest escalation of violence, including against civilians, and the alleged ongoing commission of crimes, not limited to, but particularly, starting with the attack of 7 October 2023 conducted by Hamas militants and the subsequent hostilities in occupied Palestinian Territory, including indiscriminate and disproportionate military operations of Israel against civilians in Gaza”.¹²⁰ They also referred to the November 2023 Referral, and explained that: “encouraged by this example, we want to draw further attention of the Office of the Prosecutor to the situation in the State of Palestine, based on the gravity of this situation, especially, considering the Office of the prosecutor needs to prioritize certain situations.”¹²¹

43. The above confirms that the seven referring States correctly understood the crimes committed since 7 October 2023 to form part of the existing *Palestine* investigation.¹²² In any event and independently of the States’ assertions, the events described in the November 2023 and the January 2024 Referrals fall squarely within, and are in any event sufficiently linked to, the situation underlying Palestine’s 2018 Referral and under investigation.

44. Third, the Prosecution’s decision not to inform the Presidency of the November 2023 and the January 2024 Referrals under regulation 45 of the RoC is consistent with its past practice.¹²³ In *Afghanistan*¹²⁴ and in *Venezuela I*,¹²⁵ the Prosecution did not provide regulation 45 notifications because the referrals received in 2024 and 2025 clearly related to the events falling within the ongoing investigations into these situations. Further, contrary to Israel’s

¹¹⁹ [Senegal ASP Statement](#) (noting that: “la situation dramatique, qui nous interpelle depuis le 07 octobre 2023, requiert une action diligente du Bureau du Procureur, afin que les violations du droit international et du droit international humanitaire, quels qu’en soient les auteurs ou les circonstances, ne restent pas impunies.”); [Jordan ASP Statement](#) (calling for the immediate investigation of the crimes in Gaza and the issuance of the arrest warrants, and the initiation of trials); [The Netherlands ASP Statement](#), 7 Dec. 2023 (explaining that it has decided to pledge a voluntary contribution of 3 million euros because “the heartbreaking events in Israel and Palestinian Territories that ensued after Hamas’ terrorist attack of 7 October” are likely to have a major impact on the capacity of the Court); [Chile ASP Statement](#), p. 2 (condemning the military operations in Gaza and the “war of aggression launched against Ukraine” and expressing its support to the Prosecutor and his team in the investigation into these situations).

¹²⁰ [Chile and Mexico Article 14 Referral](#), p. 2, para. 2.

¹²¹ [Chile and Mexico Article 14 Referral](#), p. 1.

¹²² *Contra* [Appeal](#), para. 42.

¹²³ *Contra* [Appeal](#), para. 44.

¹²⁴ [OTP 29 November 2024 Statement](#) (noting the 28 November 2024 referral from Chile, Costa Rica, Spain, France, Luxembourg, and Mexico and confirming that the Office “has been and continues to conduct an active investigation in the Situation in Afghanistan which already encompasses the alleged crimes described in this referral”). See [Chile et al. Referral](#) (stating, *inter alia*, that they are aware that the OTP has been working on the investigation of the Situation of Afghanistan and that they “want to draw further attention of the Office of the Prosecutor to the situation in Afghanistan”).

¹²⁵ On 6 September 2024, and 9 January 2025, Uruguay and Ecuador, respectively, submitted a referral of crimes against humanity committed in Venezuela “within the framework of the ongoing investigation called ‘*Venezuela I*’”. See [Uruguay referral](#). See [Ecuador referral](#).

suggestion,¹²⁶ there is no inconsistency with the approach taken regarding the referrals from Venezuela in 2022 and by the DRC in 2023. Those referrals related to specific allegations involving entities not mentioned in the earlier referrals that had led to the opening of PEs into the *DRC I* situation¹²⁷ and the *Venezuela I* situation,¹²⁸ respectively, and required more analysis to assess the possible overlap between the two situations. The Prosecution accordingly notified the Presidency of those new referrals, while noting the need for a further assessment as to whether the referred scope may be sufficiently linked to the existing situations to constitute a single situation.¹²⁹ In fact, with respect to the second DRC referral, the Prosecution later confirmed to the Pre-Trial Chamber that the events described therein indeed fall within the parameters of the pre-existing investigation in *DRC I* and do not amount to a new situation requiring a new investigation.¹³⁰

45. For the reasons above, the Chamber committed no error by rejecting Israel’s argument that a new situation had arisen following two post-7 October 2023 referrals.

C.2. The Chamber adequately explained the reasons for its conclusion that no substantial change has occurred to the parameters of the investigation into this Situation

46. The Chamber sufficiently explained the reasons for its conclusion that no substantial change has occurred to the parameters of the investigation into this situation.¹³¹ That it did not address in detail Israel’s arguments regarding the alleged effect of the November 2023 and January 2024 Referrals does not amount to an error.¹³²

47. First, a Chamber does not need to “necessarily [] recit[e] each and every factor that was before [it] to be individually set out, but it must identify which facts it found to be relevant in coming to its conclusion”.¹³³ As explained above, whether a new situation has arisen is a case-

¹²⁶ [Appeal](#), para. 44.

¹²⁷ The [2004 DRC referral](#) related to the situation in its territory since 1 July 2002, while the [2023 DRC referral](#) related to crimes in North Kivu since January 2022, with alleged implication of Rwanda Defence Force and M23.

¹²⁸ The 2018 referrals by Argentina, Canada, Colombia, Chile, Paraguay and Peru related to the situation regarding crimes against humanity in Venezuela under the government of President Nicolas Maduro since 12 February 2014 while the 2022 referral by Venezuela related to crimes against humanity “as a result of the application of unlawful coercive measures adopted unilaterally by the government of the United States of America against Venezuela, at least since the year 2014.” See [Argentina et al Referral](#), and [Venezuela Referral](#).

¹²⁹ [OTP 14 June 2023 Statement](#) (noting that “[I] intend to conduct a preliminary examination promptly in order to assess, as a preliminary matter, whether the scope of the two situations referred by the DRC Government are sufficiently linked to constitute a single situation”); [OTP 17 February Statement](#) (noting that: “the two referrals appear to overlap geographically and temporally and may therefore warrant assignment to the same Pre-Trial Chamber; but that this should not prejudice a later determination on whether the referred scope of the two situations is sufficiently linked to constitute a single situation.”)

¹³⁰ [ICC-01/23-4-Red](#), para. 2; see [OTP 14 October 2024 Statement](#).

¹³¹ [Decision](#), para. 15.

¹³² *Contra* [Appeal](#), para. 45.

¹³³ See [ICC-01/04-01/06-773 OA5](#), para. 20; [ICC-01/04-01/06-774 OA6](#), para. 30.

specific and fact-dependent determination.¹³⁴ The Chamber conducted the correct analysis and considered the relevant criteria for assessing any change in the parameters of the investigation.¹³⁵

48. Second, the Chamber did consider the potential relevance of the November 2023 and January 2024 Referrals to the parameters of the investigation. In paragraph 15, it stated that it was not persuaded by Israel's submissions that "a new situation has arisen", citing the paragraphs in Israel's Request, in which Israel argued, *inter alia*, that "[a] new situation has arisen since 7 October 2023, as reflected in the subsequent referrals by seven States, requiring a new article 18(1) notice".¹³⁶ The Chamber then explained the reasons for this finding by comparing the type of armed conflicts, territories and alleged parties to these conflicts mentioned in the Article 18(1) Notification and those mentioned in the Applications before reaching its conclusion that no substantial change has occurred to the parameters of the investigation into this situation.¹³⁷ The Chamber further noted that the Appeals Chamber has already rejected an interpretation as advanced by Israel, which would effectively mean that the Prosecution's investigation in every situation would be limited to the incidents and crimes considered during the PE and described in the article 18 notification.¹³⁸ There is no basis to consider that the Chamber's reasoning was inadequate. Israel's Second Ground of Appeal should likewise be dismissed.

III. RELIEF REQUESTED

49. For these reasons, Israel's Appeal should be dismissed and the Decision confirmed.



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

Dated this 9th day of June 2025
At The Hague, The Netherlands

¹³⁴ See above para. 24.

¹³⁵ [Decision](#), para. 15.

¹³⁶ [Decision](#), para. 15, referring to [Abridged Request](#), paras. 2, 19-30.

¹³⁷ [Decision](#), para. 15.

¹³⁸ [Decision](#), para. 15, referring to the [Afghanistan AJ](#), paras. 63-64.