

**Cour
Pénale
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**International
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PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public

Prosecution's response to Israel's "Request for leave to appeal the 'Decision on the State of Israel's request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor's investigation'"

Source: Office of the Prosecutor

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I. INTRODUCTION

1. Pre-Trial Chamber I¹ should reject Israel's request for leave to appeal² its "Decision on the State of Israel's request to have arrest warrants withdrawn, vacated, or declared of no force or effect and to suspend the Prosecutor's investigation".³ In the Decision, the PTC dismissed Israel's request⁴ to withdraw or vacate the Warrants issued against Israel Prime Minister Mr Benjamin NETANYAHU and former Minister of Defence Mr Yoav GALLANT ("Warrants") pending the Chamber's determination on Israel's Jurisdictional Challenge.⁵

2. Israel's Request fails to meet the threshold conditions for granting leave to appeal set forth in article 82(1)(d) of the Statute. The purported Issue identified by Israel does not arise from the Decision, and constitutes a mere disagreement with the Chamber's analysis of the Appeals Chamber's Judgment of 24 April 2025⁶ and its conclusions. Nor does the Issue significantly affect the fair and expeditious conduct of the proceedings. The Appeals Chamber's intervention, at this juncture, would not materially advance the proceedings.

II. PROCEDURAL BACKGROUND

3. On 21 November 2024, the PTC dismissed Israel's Jurisdictional Challenge, filed on 20 September 2024, as premature.⁷ The PTC held that States are not entitled to challenge the Court's jurisdiction under article 19 *prior* to the issuance of a warrant of arrest or summons to appear; and that States may only file such a challenge in relation to a particular case *after* the Pre-Trial Chamber issues a warrant or a summons.⁸ On the same day, the PTC issued three warrants of arrest in the *Situation in the State of Palestine*, including against Israeli Prime Minister Benjamin NETANYAHU and former Minister of Defence Yoav GALLANT.

4. On 24 April 2025, the Appeals Chamber issued its Judgment on Israel's Appeal against the Decision, finding that the PTC "insufficiently addresse[d] Israel's central contention that article 19(2)(c) of the Statute permits it to challenge the jurisdiction of the Court".⁹ Noting the PTC's observation that "Israel will have the full opportunity to challenge the Court's jurisdiction and/or admissibility of any particular case if and when the Chamber issues any

¹ Pre-Trial Chamber I will be referred to as "the Chamber" or "the PTC" hereafter.

² [ICC-01/18-461](#) ("Request").

³ [ICC-01/18-457](#) ("Decision").

⁴ [ICC-01/18-426](#) ("Withdrawal Request").

⁵ [ICC-01/18-354-AnxII-Corr](#) ("Israel's Jurisdictional Challenge").

⁶ [ICC-01/18-422 OA2](#) ("Judgment").

⁷ [ICC-01/18-374](#) ("Article 19(2) Decision"), p. 7.

⁸ [Article 19\(2\) Decision](#), para. 17. *See also* [Article 19\(2\) Decision](#), para. 18 : "Israel will have the full opportunity to challenge the Court's jurisdiction and/or admissibility of any particular case if and when the Chamber issues any arrest warrants or summonses against its nationals" [emphases added].

⁹ [Judgment](#), para. 61; *see also* paras. 57, 59, 60.

arrest warrants or summonses against its nationals” and the subsequent issuance of the Warrants, the Appeals Chamber decided to reverse the Article 19(2) Decision and to remand the matter to the PTC for it to “rule on the substance of the jurisdictional challenge” and “to determine the applicable legal basis under article 19(2) of the Statute for addressing Israel’s jurisdictional challenge at the present stage of proceedings”.¹⁰

5. On 5 May 2025, the Prosecution submitted its observations regarding the procedure to be followed following the issuance of the Warrants and the Judgment.¹¹

6. On 9 May 2025, Israel filed its Withdrawal Request, asking the PTC, *inter alia*, to withdraw or vacate the Warrants, and to declare that the Prosecution must suspend its investigation into the Situation in Palestine pending the PTC’s substantive ruling on Israel’s Jurisdictional Challenge.¹²

7. On 16 July 2025, the PTC issued the Decision, rejecting the Withdrawal Request on the grounds, *inter alia*, that: (i) contrary to Israel’s contentions, the Appeals Chamber’s Judgment did not impact the jurisdictional findings contained in the Warrants; and (ii) the impact of Israel’s Jurisdictional Challenge on the Warrants, if any, could only be determined when the Chamber would have ruled on the substance thereof.¹³

8. On 22 July 2025, Israel filed its Request for leave to appeal the Decision.

III. SUBMISSIONS

9. The conditions for granting leave to appeal under article 82(1)(d) have three principal limbs. First, an “issue” in the context of article 82(1)(d) must “aris[e] from the decision”,¹⁴ and must be “essential for the determination of matters arising under the judicial cause under examination”.¹⁵ As recently recalled by this Chamber,¹⁶ it cannot be “merely a question over which there is [a] disagreement or conflicting opinion”,¹⁷ or “a hypothetical concern or abstract legal question”.¹⁸

¹⁰ [Judgment](#), paras. 63-64 (emphasis added). *See also* para. 66.

¹¹ [ICC-01/18-425](#), para. 15.

¹² [Withdrawal Request](#), para. 40.

¹³ [Decision](#), para. 28. Considering that the suspension of investigation pursuant to article 19(7) of the Statute could only result from a State challenging the admissibility of a case, it also rejected Israel’s request to declare that the Prosecution must suspend its investigation into the cases against Mr NETANYAHU and Mr GALLANT or the Situation in the State of Palestine as whole, since Israel has not challenged admissibility. *See* [Decision](#), para. 37.

¹⁴ *See e.g.* ICC-01/04-01/10-487 (“[Mbarushimana Decision](#)”), para. 4.

¹⁵ ICC-01/04-168 (“[DRC Extraordinary Review AJ](#)”), para. 9.

¹⁶ [ICC-01/18-429](#), para. 14.

¹⁷ [DRC Extraordinary Review AJ](#), para. 9.

¹⁸ [ICC-02/11-01/11-464](#), para. 8.

10. Second, the decision must involve an issue that would “significantly” affect both the “fair” and “expeditious” conduct of the proceedings *or* the outcome of the trial.¹⁹ An issue may “significantly affect the fairness of the proceedings whenever the procedural rights of the parties and participants are not respected, and their expeditiousness ‘whenever failure to provide for an immediate resolution of the issue at stake by the Appeals Chamber would entail the risk that lengthy and costly trial activities are nullified at a later stage’”.²⁰

11. Third, the issue must be one for which, in the opinion of the relevant Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.²¹ This means that “the issue must be such that its immediate resolution by the Appeals Chamber will settle the matter [...] through its authoritative determination, ridding thereby the judicial process of possible mistakes that might taint either the fairness of the proceedings or mar the outcome of the trial”.²²

12. These requirements are cumulative and, therefore, failure to demonstrate one makes it unnecessary for the Chamber to address the others.²³ Chambers have emphasised the “limited nature of the remedy foreseen by article 82(1)(d) of the Statute”, and highlighted that “[i]n the system of the Statute, interlocutory appeals are meant to be admissible only under limited and very specific circumstances”.²⁴

13. In its Request, Israel purportedly identifies one issue:

“[w]hether the arrest warrant in this case could have been issued in conformity with article 19(1) notwithstanding a pending challenge to the jurisdictional basis for its issuance; and whether it must, consequently, now be suspended or given no force or effect in light of the Appeals Chamber's reversal of the dismissal of that jurisdictional challenge (“Issue”).”²⁵

14. However, for the reasons provided below, the purported Issue identified by Israel does not satisfy the conditions for granting leave to appeal under article 82(1)(d) of the Statute. It does not amount to an “appealable” issue because it does not arise from the Decision, and constitutes a mere disagreement with the Chamber’s analysis regarding the impact of the Appeals Chamber’s Judgment and its conclusions. Moreover, and in any event, the Issue does

¹⁹ [ICC-01/18-429](#), para. 13; ICC-01/22-111 (“[Mongolia Decision](#)”), para. 23.

²⁰ [ICC-01/18-429](#), para. 15.

²¹ [DRC Extraordinary Review AJ](#), para. 14. *See also* [ICC-01/18-429](#), para. 13; [Mongolia Decision](#), para. 23.

²² [DRC Extraordinary Review AJ](#), para. 14. *See also* [ICC-01/18-429](#), para. 16.

²³ *See e.g.* [ICC-01/18-429](#), para. 13. *See also* [Mongolia Decision](#), para. 23; [ICC-01/14-10/18-560](#), para. 55; [ICC-01/12-01/18-342-Red-tENG](#), para. 24.

²⁴ [ICC-01/12-01/18-342-Red-tENG](#), para. 25; [ICC-01/04-135-tEN](#), para. 22; [Mongolia Decision](#), para. 23.

²⁵ [Request](#), para. 4.

not significantly affect the fair and expeditious conduct of the proceedings, nor would its immediate resolution by the Appeals Chamber materially advance the proceedings.

A. The Issue is not an “appealable” issue under article 82(1)(d)

15. The Issue is not “appealable” under article 82(1)(d) of the Statute because: (i) it does not arise from the Decision because it is based on misrepresentations of the Appeals Chamber’s Judgment and the Decision; and (ii) it merely constitutes a disagreement with the Chamber’s analysis and its conclusions that “the Appeals Chamber’s Judgment did not impact the jurisdictional findings contained in the Warrants” and that “there is no legal basis for withdrawing, vacating or declaring them of no force or effect at this point in time”.²⁶

16. First, the Issue is expressly premised on the assumption that the jurisdictional finding in the Warrants required by article 19(1) was made “notwithstanding a *pending* challenge to the jurisdictional basis” under article 19(2) (emphasis added).²⁷ Yet, this was not the case, and consequently was not the basis of the Decision. To the contrary, the Chamber had *first* “issued a decision rejecting Israel’s Jurisdiction Challenge as premature” and *then subsequently* on the same day issued three warrants, including the Warrants.²⁸ As such, there was no valid “pending” challenge under article 19(2) when the Chamber made its jurisdictional finding under article 19(1) in the Warrants.

17. Nor did the Appeals Chamber find the Chamber erroneous to have dismissed Israel’s Jurisdictional Challenge as *premature* (because it was made prior to the issuance of the Warrants). Rather, it only found that the Chamber’s reasoning concerning Israel’s standing under article 19(2)(c) was inadequate,²⁹ and declined to address the issues regarding the timing of Israel’s Jurisdictional Challenge.³⁰ Importantly, it was after explicitly noting the issuance of the Warrants that the Appeals Chamber directed the Chamber to “rule on the substance of the jurisdictional challenge [...] [and] to determine the applicable legal basis [...] *at the present stage of proceedings*”.³¹ Thus, the Jurisdictional Challenge was deemed valid and meriting a determination on its substance only *after and because of* the issuance of the Warrants. The Appeals Chamber did not identify any error in the timing of the issuance of the Warrants by the PTC.

²⁶ [Decision](#), para. 28.

²⁷ [Request](#), para. 4.

²⁸ [Decision](#), para. 5, referring to the [Article 19\(2\) Decision](#) (ICC-01/18-374), and the three warrants issued, ICC-01/18-376-SECRET, ICC-01/18-377-SECRET and ICC-01/18-378-SECRET.

²⁹ [Judgment](#), paras. 57-61.

³⁰ [Judgment](#), para. 65.

³¹ See [Decision](#), para. 24. See also [Judgment](#), paras. 63-64.

18. Second, Israel repeats the same arguments previously —and unsuccessfully—made in its Withdrawal Request³² that the “prior ascertainment of jurisdiction” in the Warrants is invalid because the Chamber had not addressed “the substance of Israel’s Jurisdictional Challenge” at the time,³³ and that “the Appeals Chamber has invalidated, based on an absence of reasons, the Pre-Trial Chamber’s reliance on [the 2020 decision pursuant to article 19(3) on the Court’s territorial jurisdiction in Palestine³⁴] that it has utilised as part of its ‘prior ascertainment’ or jurisdiction in the arrest warrants”.³⁵

19. In the Decision, the Chamber duly addressed and correctly disagreed with these arguments before concluding that the prior ascertainment of jurisdiction remained valid.³⁶ In particular, as noted above, nothing in the Judgment suggests that the Chamber should have addressed the substance of Israel’s Jurisdictional Challenge before issuing the Warrants.³⁷ Rather, the Appeals Chamber explicitly held that the Warrants were issued separately from the Article 19(2) Decision and that they could not be deemed as based on, or “inextricably connected” to the Article 19(2) Decision.³⁸ Nor did the Appeals Chamber “impugn the Pre-Trial Chamber’s reliance on the Article 19(3) Decision in the context of its Jurisdiction Decision”.³⁹ In fact, as noted above, the error in the Article 19(2) Decision identified by the Appeals Chamber related only to the sufficiency of reasoning in addressing the issue of Israel’s standing under article 19(2)(c),⁴⁰ including the applicability of the notion of *res judicata*.⁴¹ The Appeals Chamber expressly left it to the Pre-Trial Chamber “to determine the effect, if any, of its decision on the warrants of arrest, which was issued separately from the Impugned Decision”, and dismissed Israel’s request for suspensive effect to be given to the Warrants.⁴²

³² Compare e.g. [Withdrawal Request](#), paras. 21 (claiming that reliance on the Article 19(3) Decision was “one of the errors identified by the Appeals Chamber”), 22 (claiming that “[i]n the absence of a reasoned determination by the Pre-Trial Chamber on the substance of Israel’s Jurisdictional Challenge, the arrest warrants lack an essential prerequisite for their issuance, as required by articles 19(1) and 58(1)”), with [Decision](#), paras. 18-25.

³³ [Request](#), paras. 3,16.

³⁴ ICC-01/18-143 (“[Article 19\(3\) Decision](#)”).

³⁵ [Request](#), para. 20.

³⁶ [Decision](#), paras. 18-25.

³⁷ See [Decision](#), para. 24. See further [Judgment](#), para. 65.

³⁸ [Judgment](#), para. 66.

³⁹ [Request](#), para. 20.

⁴⁰ [Judgment](#), para. 61 (concluding that: “In view of the foregoing, the Appeals Chamber finds that, considered as a whole, the Impugned Decision insufficiently addresses Israel’s central contention that article 19(2)(c) of the Statute permits it to challenge the jurisdiction of the Court. Therefore, the Pre-Trial Chamber committed an error of law by failing to sufficiently direct itself to the relevant submissions brought before it in respect of the particular legal basis underpinning the challenge to the jurisdiction of the Court sufficiently direct itself to the relevant submissions brought before it in respect of the particular legal basis underpinning the challenge to the jurisdiction of the Court”).

⁴¹ [Judgment](#), para. 59.

⁴² [Judgment](#), para. 66.

Clearly, the Appeals Chamber did not consider that the error it identified in the Article 19(2) Decision materially affected the validity of the jurisdictional findings in the Warrants.⁴³

20. In essence, Israel improperly seeks to re-litigate the same issues before the Appeals Chamber. Yet, “[a] mere reiteration of prior arguments and an expression of disagreement with the analysis and conclusion made by the Chamber are not sufficient to identify an ‘issue’.”⁴⁴

B. The Issue does not significantly affect the fair and expeditious conduct of the proceedings, nor is an immediate resolution by the Appeals Chamber required

21. The Issue raised by Israel does not significantly affect the fair and expeditious conduct of the proceedings in the cases against Mr NETANYAHU and Mr GALLANT, or the proceedings regarding Israel’s Jurisdictional Challenge. Nor would immediate resolution of the Issue by the Appeals Chamber materially advance the proceedings.

22. First, Israel appears to claim that its proposed Issue significantly affects the fair conduct of the proceedings because the continued validity of the Warrants places those named therein “in jeopardy of losing their liberty” based on what Israel considers may be “an invalid jurisdictional finding”.⁴⁵ However, the mere fact that the rights of a person may in principle be *engaged* by a judicial decision does not necessarily mean that the *fairness of those proceedings* will be significantly affected. If it were otherwise, any issue arising from a decision concerning an arrest warrant could automatically satisfy the requirement of article 82(1)(d).

23. In the present case, and consistent with the findings in the Decision as explained above, the Warrants contain a valid finding of jurisdiction under article 19(1) of the Statute.⁴⁶ Further, the Chamber is currently considering Israel’s Jurisdictional Challenge under article 19(2). In that context, the Chamber will determine any impact upon the validity of the Warrants when it makes its ruling on the Jurisdictional Challenge,⁴⁷ and Israel will have the right to appeal the jurisdictional ruling pursuant to article 82(1)(a). In these circumstances, Israel fails to show that the ongoing validity of the Warrants in the interim has the necessary impact upon the fairness of the proceedings—especially given the statutory presumption that arrest warrants should remain in effect once issued.⁴⁸

⁴³ [Decision](#), para. 24.

⁴⁴ [ICC-02/11-01/11-350](#), para. 40; [ICC-01/14-01/18-2612](#), para. 10; [ICC-01/14-01/18-2519](#), para. 10.

⁴⁵ [Request](#), para. 24.

⁴⁶ [Decision](#), para. 18.

⁴⁷ [Decision](#), para. 28. *See also* [Judgment](#), para. 66.

⁴⁸ Statute, art. 58(4). *See also* [Decision](#), para. 17.

24. Second, Israel’s suggestion that the resolution of its Jurisdictional Challenge may take “some time”⁴⁹—presumably with the implication that the expeditious conduct of the proceedings is significantly affected—is speculative and unfounded. Since the Appeals Chamber remanded the matter to the Chamber in April 2025, the litigation has already progressed to an advanced stage and the Chamber will have been fully briefed once Israel submits its reply to other participants’ observations by the deadline of 1 August 2025, which was extended upon Israel’s own request.⁵⁰ While the volume of submissions before the Chamber is large, many of them cover the same issues as discussed and considered in the context of the Article 19(3) Decision in 2020, and prior to the issuance of the Warrants in November 2024. There is no reason to believe that the appellate review of the Decision on the Withdrawal Request would be more “expeditious”.

25. Third, Israel’s arguments related to the consequences of the existence of the Warrants, such as the impact on the ability of Israel to conduct foreign relations and potential sanctions against States for perceived lack of cooperation,⁵¹ have no bearing on the fair and expeditious conduct of the proceedings in the cases against Mr NETANYAHU and Mr GALLANT, or the proceedings regarding Israel’s Jurisdictional Challenge. Rather, they concern at most potential new proceedings ancillary to these cases (which, if they arise and if necessary, could run in parallel to the conduct of the proceedings at hand). As regards any risk of violation of article 98(1) of the Statute related to a potential conflict between the Court’s request for cooperation in the execution of the Warrants and States’ obligations with respect to immunity of persons,⁵² the Court’s legal framework provides for procedural avenues to raise any such issues.⁵³ These arguments are irrelevant to the question of whether leave to appeal should be granted.

26. Finally, in view of the pending decision on Israel’s Jurisdictional Challenge, including on any impact on the Warrants, an immediate resolution of the Issue by the Appeals Chamber would not materially advance the proceedings.

27. For the reasons above, the Issue does not meet the cumulative requirements for granting leave to appeal under article 82(1)(d) of the Statute.

⁴⁹ [Request](#), para. 27.

⁵⁰ [ICC-01/18-455](#). See also [ICC-01/18-435](#), paras. 22-23, rejecting the request from the European Centre for Law & Justice for leave to submit to submit *amicus curiae* observations, considering that the Chamber has, in 2020 and 2024, already received a large number of submissions on largely the same issues.

⁵¹ [Request](#), paras. 25, 27.

⁵² [Request](#), para. 27.

⁵³ [Decision](#), para. 27.

IV. RELIEF REQUESTED

28. In light of the foregoing, the Prosecution respectfully requests the Chamber to reject Israel's Request for leave to appeal.



Nazhat Shameem Khan, Deputy Prosecutor, Officer-in-Charge

Dated this 25th day of July 2025

At The Hague, The Netherlands