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**International  
Criminal  
Court**

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Date: **27 September 2024**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Iulia Motoc, Presiding Judge  
Judge Reine Adélaïde Sophie Alapini-Gansou  
Judge Nicolas Guillou

**SITUATION IN THE STATE OF PALESTINE**

**Secret and *EX PARTE*, only available to the Prosecution and the State of Israel**

**Prosecution's Response 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-SECRET-Exp-AnxI-Corr**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. Israel's request for an order requiring the Prosecution to make a further notification to Israel, pursuant to article 18(1) of the Statute, concerning its investigation into events in and around Gaza from 7 October 2023 onwards, and staying proceedings pending such a notice ("Request"), should be dismissed *in limine*.<sup>1</sup> Israel lacks standing to file the Request, which is without legal basis. The Request also encompasses a further attempt to challenge the jurisdiction of the Court, circumventing the requirements of article 19(2). It is yet another example of Israel's practice of fragmented litigation, outside the mechanisms foreseen in the Rome Statute, with the risk of diverting the Court's resources at the mercy of Israel's tactical choices. In any event, the Request misrepresents relevant facts and misunderstands the Court's jurisprudence, which make clear that no further article 18(1) notification is required in the *Situation in the State of Palestine*.

2. The Prosecution respectfully requests the Chamber to rule on this motion as a matter of urgency, and to reject the Request *in limine*. The Prosecution stands ready to provide further submissions, elaborating further on those herein, should this assist the Chamber.

## II. CONFIDENTIALITY

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this application is filed SECRET, in line with the classification of Israel's Request and because it refers to filings with this level of classification. The Prosecution observes that there seems to be no basis for this classification—and submits that these matters should be addressed in public. If the Request, the existence of which has been made public by Israel, and the other filings are reclassified, this Response can follow the same classification. Otherwise, the Prosecution will file a public redacted version of this submission when instructed by the Chamber to do so.

## III. SUBMISSIONS

4. The Request should be dismissed *in limine* because Israel lacks standing to raise these matters. It adopts a procedure unforeseen in the Statute and unnecessary to ensure the Prosecution's compliance with the framework of article 18. In addition, and in any event, Israel misrepresents the relevant facts and misunderstands the Court's jurisprudence, making clear that no further article 18(1) notification is required.

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<sup>1</sup> ICC-01/18-355-SECRET-Exp-AnxI-Corr ("Israel's Request" or "Request"). The Prosecution will interchangeably use "Pre-Trial Chamber I" and "the Chamber". It will refer to the applications for arrest warrants as "the Article 58 Applications".

**A. Israel has no standing to file the Request**

5. Israel has no standing to file the Request, which is unforeseen in the Statute. Rather, it appears to have made this filing as a disguised further attempt to challenge the jurisdiction of the Court in circumvention of the requirements of article 19(2), and risks diverting the Court's resources as a result of Israel's tactical choices.

(i) *Article 18 of the Statute provides no basis for the Request*

6. The Request lacks legal basis. The Court's legal framework exhaustively regulates when and how States, and other participants, can make observations before the Court, including on matters of complementarity. Israel identifies no provision under the Statute to support the filing of the present Request. There is none. Instead, Israel merely asserts in general terms that it must be "endowed with a 'right' under article 18(2) to 'inform the Court' that they are investigating", and that "the Prosecutor has wrongly failed to give an article 18(1) notice where it had to be given, with the consequence that it has been denied the opportunity to 'inform the Court' of anything".<sup>2</sup>

7. Israel's right under article 18 must be exercised under the conditions set out in the provision. Article 18 does not afford an automatic right to submit unsolicited requests and observations beyond the Court's legal framework. Notably, Israel declined to exercise its article 18 rights when they were ripe for it to do so in March-April 2021. It refused to do so, simply reiterating its total rejection of the Court's jurisdiction, even after the Prosecutor specifically asked Israel whether it was formally invoking article 18 and, if so, whether it wanted the Office to provide it with additional information regarding the scope of the investigation pursuant to rule 52(2).<sup>3</sup>

8. As the guardian of the Statute, the Court ensures that parties and participants appearing before it conform with the applicable procedures. This ensures not only that justice is done, but that it is done with procedural economy and fairness, enabling it to fulfil its mandate as effectively and expeditiously as possible. Thus, Chambers have dismissed *in limine* unsolicited requests submitted at the wrong procedural stage even by representatives of victims who purported to rely on their statutory rights under article 68(3) or other provisions, to file submissions before the Court.<sup>4</sup> Those Chambers held that even the statutory rights afforded to

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<sup>2</sup> Israel's Request, paras. 16-17.

<sup>3</sup> See Letter from OTP to Israel, 9 April 2021: ICC-01/18-355-SECRET-Exp-AnxD, p. 4; Communication from Israel to OTP, 26 April 2021, 9:30: ICC-01/18-355-Conf-AnxE, p. 2.

<sup>4</sup> [ICC-01/19-58](#), para. 12. The legal representative of victims purportedly relied on article 68(3): [ICC-01/19-52-Anx1-Red](#), para. 1. See similarly [ICC-01/13-89](#), paras. 18-21. In this instance, an NGO promoting the interests of victims of terrorism relied on article 119(1): [ICC-01/13-82-AnxI](#), paras. 1, 17.

victims do not provide “for an automatic right of intervention [...] beyond the scope of the Court’s statutory documents”.<sup>5</sup> The same must also apply to States, such as Israel, whose rights under the Statute do not entitle it to an automatic and unqualified right of participation in the Court’s proceedings.

9. Furthermore, the Request has not identified any lacuna in the article 18 framework. There is no need for States to be vested with standing to make filings such as the Request, because the Court itself ensures that the Prosecution acts in accordance with article 18. In particular, Israel disregards the role of this Chamber which, in deciding on the Article 58 Applications, will satisfy itself that the Court has jurisdiction over the cases before it, including whether they are sufficiently linked with the situation that triggered the jurisdiction of the Court through Palestine’s referral.<sup>6</sup> Thus, contrary to Israel’s suggestion, the Prosecution does not seek to block judicial review of its actions.<sup>7</sup> Rather, it simply requests that this judicial review takes place without delay and in its proper forum.

10. At the current stage of proceedings under article 58, that forum is *ex parte* in nature.<sup>8</sup> Allowing Israel to provide further submissions concerning the alleged violation of article 18(1)—which, as explained below, amounts to a further challenge to the Court’s jurisdiction—would turn the present article 58 proceedings into adversarial litigation in a manner not foreseen in the Statute. The Court’s consistent jurisprudence has held that this should not be permitted.<sup>9</sup> Chambers have found that “[i]n qualifying the proceedings under article 58 of the Statute as *ex parte*, the Chamber indicates that the proceedings are to be conducted ‘without [...] argument by any person adversely interested’” and “the concrete factual circumstances are not of relevance and cannot ground the modification of the *ex parte* nature of these proceedings”.<sup>10</sup> The same applies to this situation.

11. In sum, Israel’s Request should be dismissed because it lacks legal basis.

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<sup>5</sup> [ICC-01/19-58](#), para. 10; *see similarly* [ICC-01/13-89](#), paras. 18-21.

<sup>6</sup> *See* ICC-02/05-01/20-503 OA8 (“[Abd-Al-Rahman Jurisdiction AD](#)”), para. 45. *See e.g.* [ICC-01/11-01/17-2](#) (“*Al Werfalli* First Arrest Warrant”), para. 23; [ICC-01/11-01/17-13](#) (“*Al Werfalli* Second Arrest Warrant”), para. 20. This may include, depending on the circumstances, an assessment of the validity of the referral that triggered the Court’s exercise of jurisdiction in a given situation, as well as the parameters which delimit that situation: [Abd-Al-Rahman Jurisdiction AD](#), para. 45.

<sup>7</sup> *Contra* Request, para. 57.

<sup>8</sup> ICC-01/18-355-SECRET-Exp, para. 4.

<sup>9</sup> [ICC-01/09-35](#), para. 10; [ICC-01/09-42](#), paras. 6, 10.

<sup>10</sup> [ICC-01/09-42](#), para. 16.

(ii) *Israel's Request is a further attempt to challenge the jurisdiction of the Court, outside the requirements of article 19(2)*

12. The Request must also be rejected because it amounts to a disguised jurisdictional challenge outside the framework of article 19(2). The crux of Israel's argument is that the Court lacks jurisdiction because the cases identified in the Article 58 Applications do not fall within the parameters of this situation and are not sufficiently linked to it. Yet, as set out in the Prosecution's response to Israel's separate jurisdictional challenge (filed simultaneously with this response), any such request is premature—and, in any event, Israel has no standing to challenge the Court's jurisdiction under article 19(2) of the Statute. Such challenges can be brought only after a Chamber has commenced proceedings before the Court in a "case" by granting an article 58 application. As the Chamber has yet to rule on the Prosecution's Article 58 Applications, there is presently no such "case", and therefore article 19(2) is not available. Furthermore, and in any event, Israel is not a State whose "acceptance of jurisdiction is required" for the purpose of article 19(2)(c), and therefore it cannot challenge the Court's jurisdiction on that basis, even if the Article 58 Applications are granted.

13. On this basis, Israel's Request should also be rejected.

(iii) *The Request risks diverting the Court's resources to serve Israel's tactical choices*

14. The Prosecution draws to the Chamber's attention the broader procedural context in which the Request has been made. Viewing this context overall, and the extent to which Israel has chosen to participate and not to participate in the proceedings managed by the Chamber, it appears that the Request has been brought at the present time—and in its present form—in the hope of tactical advantage and to serve Israel's apparent view of its strategic interests. The Prosecution submits that Israel's pattern of fragmented litigation outside the Court's legal framework should not be permitted. Indeed, even in the context of a party to the proceedings [which Israel is not], the Appeals Chamber has held that: "[the] discretion to organise and conduct his or her case [...] is not absolute [...] [and] may be circumscribed by the Statute, Rules of Procedure and Evidence and the Regulations of the Court. [...] The defence strategy must respect both the procedural framework established by the Court's legal instruments and the overall interests of the administration of justice".<sup>11</sup>

15. First, Israel declined to participate, directly, in the general process established by the Chamber, under rule 103, to allow interested parties to seek leave to make submissions arising

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<sup>11</sup> [ICC-01/04-01/07-2259 OA10](#), para. 77.

from the Article 58 Applications<sup>12</sup> in light of the request by the United Kingdom to provide observations on the Oslo Accords.<sup>13</sup> Israel had likewise declined to participate in the rule 103 process set up by the Chamber prior to the Article 19(3) Decision.<sup>14</sup>

16. Second, Israel separately sought access to the Article 58 Applications with the stated aim of making observations on complementarity and challenging the Court's jurisdiction.<sup>15</sup> The Chamber rightly rejected this request because article 58 proceedings are conducted *ex parte*.<sup>16</sup>

17. Third, on the same day that the Prosecution filed its consolidated response to the observations made by interveners under rule 103,<sup>17</sup> Israel sought an extension of pages in order to provide observations on the Prosecutor's alleged non-compliance with article 18 of the Statute.<sup>18</sup> The Prosecution opposed Israel's request on the basis that it had no standing.<sup>19</sup> Israel sought leave to reply,<sup>20</sup> and the Chamber has yet to rule on these filings. However, rather than awaiting the Chamber's decision (which may have rendered this Request moot), Israel has rushed to file it in an "abridged" form.

18. By filing the Request and other submissions at the present time—four months after the Prosecution submitted its Article 58 Applications, and with the benefit of the Prosecution's Consolidated Response to Intervenors—Israel now seeks the 'last word' on a number of matters, a tactic that could potentially occasion further delay to the Chamber's deliberations under article 58.

19. Furthermore, there appears to be no justification for Israel having delayed raising its alleged concerns with regard to article 18(1). Since October 2023 the Prosecution has indicated that the recent events in Gaza fall within the parameters of the ongoing investigation in the *Situation in the State of Palestine*.<sup>21</sup> Israel itself acknowledges that it was "aware of the public statements of the Prosecutor concerning his view of the permissible scope of his investigation under the existing Situation referral."<sup>22</sup> However, it asserts that, despite its knowledge, Israel "anticipated that either the OTP would conclude that it had no basis to proceed further, or that

<sup>12</sup> [ICC-01/18-249](#), [ICC-01/18-256](#), [ICC-01/18-325](#).

<sup>13</sup> ICC-01/18-171-Red.

<sup>14</sup> Even though the Chamber expressly invited Israel to do so: ICC-01/18-14 ("Article 19(3) Order"), para. 16

<sup>15</sup> ICC-01/18-187-SECRET-Exp-AnxI, para. 5

<sup>16</sup> ICC-01/18-350-SECRET-Exp, para. 4.

<sup>17</sup> ICC-01/18-346 ("Prosecution's Consolidated Response to Intervenors").

<sup>18</sup> ICC-01/18-345-SECRET-Exp-Anx.

<sup>19</sup> ICC-01/18-349-SECRET-Exp-Anx.

<sup>20</sup> ICC-01/18-352-SECRET-Exp-Anx.

<sup>21</sup> [Statement of ICC Prosecutor Karim A. A. Khan KC from Cairo on the situation in the State of Palestine and Israel](#), 30 October 2023; [Statement of ICC Prosecutor Karim A. A. Khan KC from Ramallah on the situation in the State of Palestine and Israel](#), 6 December 2023.

<sup>22</sup> Israel's Request, para. 54.

an article 18(1) notification would be forthcoming”.<sup>23</sup> There was no basis for that expectation because the Prosecution’s statements made clear that it did not consider it necessary to open a new investigation and, accordingly, no new article 18(1) notification would be sent.

20. Israel took no action to raise its concerns regarding article 18 after the Prosecutor’s statements in 2023 nor during its engagements with the Office in 2024, when it provided some material.<sup>24</sup> Even in the 1 May 2024 letter in which the Israeli ambassador purportedly requested “the Prosecutor [to] defer any investigation it may be conducting”,<sup>25</sup> Israel did not invoke article 18 of the Statute nor did it attach any of the supporting material that article 18 requires.<sup>26</sup> It appears that only after the Prosecution stated in response—on 7 May 2024<sup>27</sup>—that the statutory deadline for article 18 deferral requests had elapsed in April 2021, Israel now seeks to argue that the Prosecution should have sought to open a new investigation.

21. Because of the foregoing, Israel’s Request should be dismissed.

#### **B. Israel misrepresents the facts and misinterprets the Court’s jurisprudence**

22. As the Prosecution explained in its Consolidated Response to Interveners, the cases identified in the Article 58 Applications fall within the parameters of, and are in any event sufficiently linked to, the situation referred by Palestine in May 2018.<sup>28</sup> Accordingly, the Prosecution correctly decided that it was not necessary to commence a new preliminary examination with a view to opening a new investigation, to which the notification requirement of article 18(1) would apply afresh.<sup>29</sup>

23. Israel’s submissions in this Request only underscore the correctness of the Prosecution’s approach. Israel’s argument that the Court lacks jurisdiction with regard to these Applications

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<sup>23</sup> Israel’s Request, para. 54.

<sup>24</sup> Israel’s Request, para. 53.

<sup>25</sup> ICC-01/18-346-Conf-AnxB; Letter from Israel to OTP, 1 May 2024: ICC-01/18-355-SECRET-Exp-AnxF, p. 3.

<sup>26</sup> *Contra* Israel’s Request, para. 55.

<sup>27</sup> ICC-01/18-187-SECRET-Exp-AnxIII; Letter from OPT to Israel, 7 May 2024: ICC-01/18-355-SECRET-Exp-AnxG.

<sup>28</sup> [Prosecution’s Consolidated Response to Interveners](#), paras. 98-103.

<sup>29</sup> The Prosecution did not notify the Presidency pursuant to regulation 45 of the RoC of the referrals of South Africa, Bangladesh, Bolivia, Comoros and Djibouti, as well as Chile and México, because there was a pre-existing situation already assigned to this Chamber encompassing the most recent events cited in those State referrals. *Contra* Israel’s Request, para. 30. This is consistent with the past practice of the Prosecution, in notifying the Presidency of State referrals when there was *not* a situation that encompassed the events referred. This is necessarily a situation-specific determination. In certain situations, where the Prosecution has not been able to make an immediate determination at the time of receiving the referral, whether the referral relates to an ongoing situation or to a new situation (such as with the DRC referral of 23 May 2023, with respect to the investigation in the DRC situation, opened after the DRC referral of April 2004) it has erred on the side of caution and notified the Presidency—but with the express caveat that the Office will 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”. See [Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan KC, on the referral by the Democratic Republic of the Congo regarding the situation on its territory](#), 15 June 2023.



is based on the following errors: (i) it wrongly narrows the material scope of Palestine's referral;<sup>30</sup> (ii) it misunderstands the purpose of article 18 notifications;<sup>31</sup> and (iii) it misrepresents the Court's jurisprudence.<sup>32</sup> Israel's approach is thus factually and legally incorrect, for the reasons set out below.

(i) *The cases described in the Article 58 Applications fall within the parameters of the situation referred to the Court by Palestine*

24. First, Israel argues that Palestine's 2018 referral is too broad (because it has no end date)<sup>33</sup> but also too narrow (because it is purportedly limited to "settlement crimes").<sup>34</sup> These arguments are incorrect. The cases described in the Applications fall squarely within the parameters of the referred situation. Palestine's emphasis on Israel's ongoing occupation of the Occupied Palestinian Territory ("oPt") adequately describes the events relevant to the situation. Indeed, all Palestinian territory, including Gaza, has been under occupation for almost 60 years, and this has given rise to wide-ranging allegations of article 5 crimes by different actors supporting or opposing Israel's practices and policies. Israel's suggestion that the Referral impermissibly "abdicate[s] [Palestine's] responsibility for exercising jurisdiction over atrocity crimes for eternity" is unfortunate.<sup>35</sup> In particular, since, by referring the Situation to the Court, Palestine sought accountability for the crimes arising from, and related to, Israel's long-lasting (and unlawful) presence in the oPt.<sup>36</sup>

25. Palestine's emphasis on Israel's settlement policies is likewise understandable due to its impact on the population and its inextricably relation with Israel's unlawful occupation. Yet the referral does not limit the Prosecution's investigation to "settlement-related crimes".<sup>37</sup> Nor could the Prosecution have accepted such a narrow scope in light of its statutory obligations under articles 42 and 54 of the Statute. For the same reasons, the Prosecution cannot be precluded from investigating crimes committed during the conduct of hostilities even though Palestine did not explicitly mention the 2014 hostilities in the Referral.<sup>38</sup> Tellingly, Israel engaged in discussions and sharing of information regarding the 2014 wave of hostilities. In

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<sup>30</sup> Israel's Request, paras. 21-22.

<sup>31</sup> Israel's Request, para. 23.

<sup>32</sup> Israel's Request, paras. 43-48.

<sup>33</sup> Israel's Request, paras. 25-26.

<sup>34</sup> Israel's Request, paras. 21-22.

<sup>35</sup> Israel's Request, para. 25.

<sup>36</sup> [Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem](#), Advisory Opinion, 19 July 2024, para. 261.

<sup>37</sup> *Contra* Israel's Request, paras. 21-22.

<sup>38</sup> *Contra* Israel's Request, paras. 22-23; *see also* para. 27 (stating that "[t]he Palestinian Authority, unlike Uganda, never tacitly acknowledged that its referral encompassed crimes committed by anyone other than those identified in its referral").

any event, since the Prosecution cannot be obliged to investigate the incidents mentioned by the referring entity, *a contrario*, the Prosecution is entitled to investigate other incidents not mentioned as long as they fall within the parameters of the situation and/or are sufficiently linked to it. In this Situation, the 2014, 2021 and 2023-2024 waves of hostilities are part of the ongoing situation referred to the Court by Palestine.

(ii) *The Prosecution's article 18 notification of March 2021 was sufficiently specific and consistent with Palestine's referral*

26. Israel argues that the Prosecution's article 18 notification went beyond Palestine's 2018 Referral<sup>39</sup> and was still not sufficiently specific.<sup>40</sup> Neither assertion is correct. The notification was fully consistent with Palestine's 2018 Referral.<sup>41</sup> As noted, Israel misreads the Referral. Further, the article 18 notification was sufficiently specific to permit Israel to request the deferral of the Prosecution's investigation when it was entitled to do so—in March-April 2021.<sup>42</sup> Even if the notification pre-dates the *Philippines* and *Venezuela* jurisprudence,<sup>43</sup> it was consistent with it. Israel was well-informed of the parameters of the Prosecution's intended investigation as a result of the article 18 notification, as well as from the multiple engagements that both parties had, up to the date of the filing of the Article 58 Applications.<sup>44</sup> Israel's suggestion that the Prosecution refused to engage “in a spirit of complementarity and cooperation” is simply not accurate.<sup>45</sup> Significantly, Israel demonstrates no prejudice from the Prosecution's actions. Rather, Israel's current situation results from Israel's own actions and omissions.

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<sup>39</sup> Israel's Request, para. 23 (because it refers to the 2014 hostilities in Gaza).

<sup>40</sup> Israel's Request, para. 52 (arguing that the article 18 notification was not sufficiently specific); *see also* Letter from Israel to OTP, 8 April 2021: ICC-01/18-355-SECRET-Exp-AnxC, p. 3 (“the repeated failure by your Office, compounded by your letter of 9 March 2021, to identify allegations of specific ‘criminal acts’[...]”).

<sup>41</sup> *Contra* Israel's Request, para. 23.

<sup>42</sup> *Contra* Israel's Request, para. 52.

<sup>43</sup> ICC-01/21-77 (“[Philippines Article 18\(2\) Appeal Judgment](#)”), para. 107 (“those parameters were sufficiently specific to enable the Philippines to provide information in relation to its domestic investigations and prosecutions under article 18(1) of the Statute and demonstrate the degree of mirroring”); ICC-02/18-89 OA (“[Venezuela Article 18\(2\) Appeal Judgment](#)”), paras. 110 (“the Prosecutor's article 18(1) notification must be sufficiently specific in order for the State to be able to assert its jurisdiction in the proceedings under article 18(2) of the Statute”) and 114 (“such information, together with other information provided by the Prosecutor, provides the general parameters of the situation and sufficient detail with respect to the groups or categories of individuals in relation to the relevant criminality, including the patterns and forms of criminality, that he or she intends to investigate”).

<sup>44</sup> In *Philippines* the Appeals Chamber considered the totality of engagements with the Philippines, as well as the Prosecution's Article 18(2) request, in order to assess whether the Philippines was on notice of the Prosecution's intended investigation: [Philippines Article 18\(2\) Appeal Judgment](#), paras. 191-193; *see also* para. 107. The same holistic approach was taken by the Pre-Trial Chamber and Appeals Chamber in *Venezuela*: [Venezuela Article 18\(2\) Appeal Judgment](#), paras. 99, 114.

<sup>45</sup> *Contra* Israel's Request, para. 53.

(iii) *Israel misunderstands the Court's jurisprudence*

27. Israel misunderstands the Court's jurisprudence regarding article 18 of the Statute. Even if Israel denies taking a position that would require article 18 notifications to enumerate every act that the Prosecution intends to investigate,<sup>46</sup> this is the effective and intended consequence of its submissions.<sup>47</sup> Indeed, Israel argues that the cases described in the Article 58 Applications do not fall within the referred situation because the article 18 notification does not mention the same crimes<sup>48</sup> and the same incidents,<sup>49</sup> exactly match the perpetrators with the crimes,<sup>50</sup> or use the precise legal qualification of the contextual elements.<sup>51</sup> Israel's position thus effectively seeks to limit the Prosecution's investigation to the examples of incidents, crimes, and persons described in the article 18 notification. That position would require the Court to open a new investigation each time the Prosecution sought to investigate other incidents, crimes, and actors.<sup>52</sup> The Appeals Chamber has already rejected this unworkable approach in a different but related context.<sup>53</sup> Israel's reply to the Prosecution's Consolidated Response is thus misleading—and itself a “red herring”.<sup>54</sup>

28. Finally, Israel unsuccessfully attempts to dilute the finding by the Pre-Trial Chamber in *Venezuela*, which was confirmed by the Appeals Chamber, that “the obligation to provide sufficiently specific information in an article 18 notification does not limit in any way the Prosecutor's future investigation”.<sup>55</sup> The *Venezuela* Pre-Trial Chamber made this finding in addressing the Prosecution's expressed concern that a detailed article 18 notification would improperly limit the scope of the Prosecution's subsequent investigation to the incidents and crimes mentioned therein.<sup>56</sup> That Pre-Trial Chamber ruled that it would not, and emphasised that since “[p]roviding the relevant States with information sufficiently specific to enable them to exercise the right to seek a deferral pursuant to article 18 of the Statute [...] merely concerns

<sup>46</sup> *Contra* Israel's Request, para. 44 (Israel argues that the Prosecution's submission that article 18(1) does not require the Prosecutor to enumerate every act that it will investigate “does not reflect Israel's position and is a red herring”).

<sup>47</sup> *See* Israel's Request, paras. 37-40.

<sup>48</sup> *Contra* Israel's Request, para. 37.

<sup>49</sup> *Contra* Israel's Request, para. 38.

<sup>50</sup> *Contra* Israel's Request, para. 39.

<sup>51</sup> *Contra* Israel's Request, para. 40.

<sup>52</sup> Specifically, the Prosecution would need a previous referral, or be required to seek authorisation of the Pre-Trial Chamber under article 15 of the Statute.

<sup>53</sup> ICC-02/17-138 OA4 (“[Afghanistan Appeal Judgment](#)”), para. 63.

<sup>54</sup> *Contra* Israel's Request, para. 44.

<sup>55</sup> *See* Israel's Request, paras. 47-48 (citing ICC-02/18-45 (“[Venezuela Article 18\(2\) Decision](#)”), para. 76 and [Venezuela Article 18\(2\) Appeal Judgment](#), para. 230).

<sup>56</sup> [Venezuela Article 18\(2\) Decision](#), para. 76 (“In this regard, there is no merit in the Prosecution's suggestion that the above understanding of article 18(2) ‘would artificially limit the scope of the Prosecution's future investigations on the basis of provision and untested information which may not necessarily reflect the full scale of criminality within a given situation’”) (quoting [ICC-02/18-18](#), para. 61).

article 18 proceedings, this does not limit in any way the Prosecution's future investigations in these proceedings".<sup>57</sup> The Appeals Chamber confirmed the Pre-Trial Chamber's finding.<sup>58</sup> It is apparent that Israel improperly conflates two different determinations.<sup>59</sup>

#### IV. RELIEF REQUESTED

29. For these reasons, Israel's Request should be dismissed *in limine*. The Prosecution stands ready to provide further submissions, if that would assist the Pre-Trial Chamber.



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**Karim A.A. Khan KC, Prosecutor**

Dated this 27<sup>th</sup> day of September 2024

At The Hague, The Netherlands

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<sup>57</sup> [Venezuela Article 18\(2\) Decision](#), para. 76.

<sup>58</sup> [Venezuela Article 18\(2\) Appeal Judgment](#), para. 230. Contrary to Israel's submission the Appeals Chamber did not recall this finding in the context of the arguments discussed in paragraphs 227 and 228 of the Appeal Judgment. Rather it related to a different argument from Venezuela. *See* para. 230 and fn. 429 (referring to [ICC-02/18-59-Red](#), paras. 102-103).

<sup>59</sup> *See* Israel's Request, paras. 46-47.