

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **27 November 2024**

THE APPEALS CHAMBER

Before:

**Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin**

SITUATION IN THE STATE OF PALESTINE

Public

Notice of Appeal of “Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice” (ICC-01/18-375)

Source: The State of Israel

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

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I. INTRODUCTION

1. Israel has never received notice of the scope of the Prosecution’s intended investigations into the events arising from Hamas’s unprecedented and cataclysmic attack on Israel starting on the morning of 7 October 2023.¹ Notice of such investigations is required, pursuant to article 18(1) of the Rome Statute, to provide States – including States that are not party to the Rome Statute and which dispute the Court’s jurisdiction – with the opportunity of showing that they are exercising their own jurisdiction in respect of the alleged criminality. This is not a technical rule: it is the “central premise of the Court’s exercise of jurisdiction.”² “No State should have to face”, as the Appeals Chamber has stated, the “serious reproach” of not acting “without at least being given an opportunity to explain itself.”³

2. Instead of promptly providing such a notice following 7 October when its investigations were just starting, the Prosecution purported to rely on a notice as to the scope of its intended investigations into the *Palestine* situation in March 2021. The Prosecution refused to provide Israel with a new article 18(1) notice, even though circumstances required a new investigation, from scratch, into wholly new and unprecedented events, and involving allegations of fundamentally different types of criminality committed in radically different circumstances. The March 2021 notice did not provide, and could not have provided, that notice. Nevertheless, the Pre-Trial Chamber – on the same day that it issued arrest warrants derived from that post-7 October investigations – has now affirmed that deeply flawed approach.⁴

3. Israel hereby provides notice of its intent to appeal the Impugned Decision, which declines to require the Prosecution to provide Israel with notice, pursuant to its obligation under article 18(1) of the Statute, of the parameters of its post-7 October investigations. This failure has deprived Israel of the opportunity of showing that its own domestic investigations sufficiently mirror those of the Prosecution which, in turn, would require it to defer its investigations, subject to potential judicial review.

4. The significance of the Impugned Decision cannot be over-stated. It goes to the heart of the Court’s relations with sovereign States, especially those that are not party to the Rome Statute.

¹ This filing is without prejudice to Israel’s position regarding the Court’s lack of jurisdiction in respect of the above-captioned Situation, or to Israel’s status as a State not Party to the Rome Statute.

² Yekatom, Public redacted version of “Judgment on Mr. Yekatom’s appeal against Trial Chamber V’s ‘Decision on the Yekatom Defence’s Admissibility Challenge’”, ICC-01/14-01/18-678-Conf, 9 October 2020, ICC01/14-01/18-678-Red, 11 February 2021, para. 42.

³ *Id.*

⁴ *Palestine*, Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice, ICC-01/18-375, 21 November 2024 (“Impugned Decision”).

Furthermore, it goes to the heart of the important role that must be played by the ICC judiciary in ensuring that the Prosecutor – whose primary function is to aggressively investigate and prosecute – adheres to the constraints imposed upon him by the Statute and by the principle of complementarity.

5. Israel lodges this notice as a matter of right pursuant to article 82(1)(a) as being a “decision with respect to [...] admissibility.” Furthermore, Israel requests that this appeal be given “suspensive effect” pursuant to article 82(3) and rule 156(5) which, in the present context, requires that the arrest warrants issued *ex parte* by the Pre-Trial Chamber, as well as any other legal acts taken by the Court based thereon, be suspended for the duration of an appeal.

II. PROCEDURAL HISTORY AND RELEVANT EVENTS

6. On 3 March 2021, following a Palestinian referral⁵ and a majority decision of the Pre-Trial Chamber I concerning jurisdiction,⁶ the OTP announced the initiation of an investigation into “the Situation in Palestine.”⁷ On 9 March 2021, the then Prosecutor provided a notification of this investigation to States, including to Israel, pursuant to article 18(1).⁸

7. On 8 April 2021, Israel responded to this notification, asserting that the notice was not sufficiently specific. Israel emphasised that it “has and will continue to examine and investigate rigorously allegations of misconduct or crimes – regardless of their source – and to hold to account those persons within its jurisdiction found to be responsible.”⁹ The Prosecutor on 9 April 2021 sought to clarify whether Israel was asserting its right to have the investigation deferred pursuant to article 18(2) and, if so, whether further information was sought under rule 52(2).¹⁰ Israel responded by re-affirming its view, *inter alia*, that the article 18 notification was not sufficiently specific, which “effectively precluded Israel from making any request of the OTP in response to the Prosecutor’s letter.”¹¹ The Prosecution did not reply to this communication.

8. On the morning of 7 October 2023, Hamas and other terrorist groups launched an invasion of Israeli territory with thousands of heavily armed terrorists. These thousands of militants overran

⁵ [Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I](#), ICC-01/12-1-AnxI, 24 May 2018. References to the 2018 referral are without prejudice to Israel’s position on jurisdiction.

⁶ Pre-Trial Chamber I, Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, ICC-01/18-143, 5 February 2021.

⁷ [Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#), 3 March 2021.

⁸ Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice, , ICC-01/18-355AnxI-Corr, 23 September 2024 (“Article 18 Request”), Annex B, p. 1.

⁹ Article 18 Request, Annex C.

¹⁰ Article 18 Request, Annex D.

¹¹ Article 18 Request, Annex E.

and destroyed border posts; killed more than a thousand Israeli citizens; murdered men, women and children in cold blood; committed widespread rape, sexual violence, torture, and other inhumane acts inside Israel; took 251 hostages back to Gaza, committing murder, torture, rape and other forms of sexual violence against them inside Gaza; continue to hold hostages to this day, of whom 101 still remain unaccounted for; and have continued in the course of the hostilities to direct attacks against civilians inside Israel to the extent of their diminishing capabilities.

9. On 17 November 2023, South Africa, Bangladesh, Comoros, Djibouti and Bolivia submitted a letter to the Prosecutor with an “attached referral of the Situation in Palestine.”¹² This “referral” refers not only to the “continuing commission of the crimes detailed in the [previous] Referral by the State of Palestine,”¹³ but also asserts that “additional crimes appear to have been committed within the jurisdictional scope of the Court”.¹⁴ The “additional crimes” identified in this new “referral” are alleged to extend as far as genocide and the war crime of starvation¹⁵ – neither of which were mentioned or even implicitly contemplated in the Palestinian purported 2018 referral or the Prosecution’s March 2021 article 18(1) notification.¹⁶

10. On 18 January 2024, Mexico and Chile also wrote to the ICC Prosecutor to “refer for your investigation regarding the situation in Palestine” certain events that are further described in the letter, in particular having occurred since 7 October 2023.¹⁷ This third referral – unlike any previous referral – for the first time includes crimes committed by any Palestinian armed group as part of the referred Situation.¹⁸

11. On 1 May 2024, Israel notified the OTP that it “is willing and able to investigate and, where necessary, prosecute any alleged violations of international law relating to the current conflict,” and requested that the Prosecutor “defer any investigation it may be conducting in relation to any alleged criminal acts attributed to Israeli nationals or others within Israel’s jurisdiction, in favour of Israel’s processes for review, examination, investigation and proceedings under its national legal system,

¹²“[Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan KC, on the Situation in the State of Palestine: receipt of a referral from five States Parties](#)”, 17 November 2023 (“South Africa *et al.* Referral”), p.1.

¹³ [Referral of the Situation in Palestine on behalf of the Republic of South Africa, the People’s Republic of Bangladesh, the Plurinational state of Bolivia, the Union of the Comoros, and the Republic of Djibouti, in accordance with Article 13\(a\) and Article](#), 17 November 2023, para. 1.

¹⁴ *Id.* para. 2.3 (underline added).

¹⁵ *Id.* paras. 2.3, 2.4.1.

¹⁶ [Statement of ICC Prosecutor Karim A.A. Khan KC: Application for arrest warrants in the Situation in the State of Palestine](#), 20 May 2024 (“these acts were committed as part of a common plan to use starvation as a method of war and other acts of violence against the Gazan civilian population”).

¹⁷ [Referral regarding the situation in the State of Palestine, under the provisions of Article 14, paragraph 1, by the Governments of the Republic of Chile and the United Mexican States](#), 18 January 2024.

¹⁸ *Id.* p. 2.

as further explained below.”¹⁹ The Prosecutor was specifically invited to bring to Israel’s attention any alleged crimes attributed to Israeli nationals or others within its jurisdiction so that “relevant Israeli authorities can examine and investigate those allegations with a view to ensuring accountability in line with the applicable law.”²⁰

12. On 7 May 2024, the OTP responded with a one-page letter referring to the exchange of correspondence in March and April 2021 and asserting: “Having expressly declined to make an application for deferral of the investigation within the prescribed time limit, Israel has no standing now, under the Statute, to make such an application.”²¹

13. On 20 May 2024, the Prosecutor announced to the media that he had filed an application seeking warrants of arrest in respect of, *inter alia*, Israel’s Prime Minister, Mr. Benjamin Netanyahu, and Israel’s then Minister of Defence, Mr. Yoav Gallant.²²

14. On 23 August 2024, Israel filed a request to extend the page limit for an intended filing concerning the Prosecution’s non-compliance with article 18(1) of the Statute.²³ On 5 September 2024, the Prosecution filed a response opposing this request.²⁴

15. On 23 September 2024, in the absence of any decision on its request for an extension of the page limit, Israel filed its Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice.²⁵

16. On the same day, Israel filed its Challenge to the Jurisdiction of the Court pursuant to article 19(2) of the Rome Statute.²⁶

17. On 21 November 2024, Pre-Trial Chamber I rejected Israel’s Article 18(1) Request and its Jurisdictional Challenge and, on the same day, announced that it had filed an *ex parte* decision

¹⁹ Article 18(1) Request, Annex F.

²⁰ *Id.*

²¹ Article 18(1) Request, Annex G.

²² [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#), 20 May 2024.

²³ Registry Transmission of Request to extend the page limit for submissions concerning article 18(1), ICC-01/18-345-SECRET-Exp. Israel’s request, with filing number ICC-01/18-345-Anx was reclassified as public on 4 October 2024.

²⁴ Prosecution Response to Israel’s “Request to extend the page limit for submissions concerning article 18(1)” (ICC-01/18-345-SECRET-Exp-Anx, ICC-01/18-345-SECRET-Exp. On 10 October 2024, this filing was reclassified as public (ICC-01/18-345).

²⁵ Article 18 Request.

²⁶ Public Redacted Version of “Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute”, ICC-01/18-354-AnxII-Corr (“Jurisdictional Challenge”).

issuing arrest warrants against the Prime Minister of Israel, Benjamin Netanyahu, and the former Minister of Defence, Mr. Yoav Gallant.²⁷

III. THE APPEAL IS ADMISSIBLE UNDER ARTICLE 82(1)(A)

18. Article 82(1)(a) provides that either party may appeal “[a] decision with respect to jurisdiction or admissibility.”

19. The Appeals Chamber has explained that it:

[U]nderstands from the phrase ‘decision with respect to’ that the operative part of the decision itself must pertain directly to a question on the jurisdiction of the Court or the admissibility of a case. It is not sufficient that there is an indirect or tangential link between the underlying decision and questions of jurisdiction or admissibility. As previously held by the Appeals Chamber, a decision of a Pre-Trial or Trial Chamber may constitute a “decision with respect to [...] admissibility” only to the extent that it consisted of or “was based on” a ruling that a case was admissible or inadmissible.²⁸

20. In that case, the Appeals Chamber was seized of a notice of appeal concerning a request by Kenya to the Prosecutor for information under article 93(10) which “was not linked to the admissibility of pending cases.”²⁹ Indeed, Kenya apparently acknowledged that “its challenge to the admissibility of the pending cases ‘is, of course, not at all, dependent on’ the resolution of its Request for Assistance.”³⁰

21. The admissibility prong of Article 82(1)(a) is not limited to decisions based on article 18(2). Indeed, previous rulings on admissibility have been appealed as of right even though they were not decided within the specific context of article 18(2) litigation. Hence, the Prosecutor was permitted to appeal as of right a decision made under article 58 declining to issue an arrest warrant in respect of the specific finding that the case was inadmissible.³¹ The Appeals Chamber subsequently explained that this was because “the Pre-Trial Chamber had the power to determine admissibility in that context.”³²

²⁷ [Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant](#), 21 November 2024.

²⁸ *Kenya*, Decision on the admissibility of the “Appeal of the Government of Kenya against the ‘Decision on the Request for Assistance Submitted on Behalf of the Government of the Republic of Kenya Pursuant to Article 93(10) of the Statute and Rule 194 of the Rules of Procedure and Evidence’”, ICC-01/09-78, 10 August 2011, para 15.

²⁹ *Id.* para. 18.

³⁰ *Id.* para. 19.

³¹ *DRC*, Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58”, ICC-01/04-169, 13 July 2006, para. 18.

³² *Situation on Registered Vessels*, Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of Comoros to review the Prosecutor’s decision not to initiate an investigation,” ICC-01/13-51, 6 November 2015, para. 48.

22. Yekatom was permitted to appeal as of right a decision on admissibility where the sole ground of appeal argued was not a finding that the case was admissible under article 17(1), but rather the related procedural error of “denying the Defence’s admissibility challenge without first seeking observations from [State] authorities.”³³ No party objected to this ground of appeal as not falling within the parameters of article 82(1)(a), and the Appeals Chamber entertained the appeal without commenting on its admissibility. The Impugned Decision is of a strikingly similar nature to that appealed in *Yekatom* and, in the event, the Appeals Chamber determined that the Trial Chamber had erred by not inviting submissions from the concerned State.

23. By contrast, the Prosecution was not permitted to appeal as of right a decision whose operative provision called for “the Prosecutor to reconsider the decision not to initiate an investigation” on the basis of lack of gravity.³⁴ Merely calling for reconsideration was not, according to the Appeals Chamber, “by its nature a decision determining admissibility.”³⁵ Since the Prosecutor retained the final decision-making authority, the decision did not “determine admissibility.”³⁶ The Appeals Chamber also noted that the grounds of appeal advanced by the Prosecution suggested that its “appeal primarily requires the Appeals Chamber to consider the scope of article 53 review proceedings as opposed to reviewing a pre-trial chamber determination of admissibility.”³⁷

24. The Impugned Decision, by contrast, does “pertain directly to a question on [...] the admissibility of a case.”³⁸ In particular, the operative part of the Impugned Decision states that it “**REJECTS** Israel’s request for an order to the Prosecution to give an Article 18(1) notice and staying proceedings pending such a notice.” This disposition finds that there has been no non-compliance with article 18(1) that would render the Prosecution’s investigations, including the two arrest warrants arising therefrom, inadmissible. This is, by its very nature, a “decision with respect to [...] admissibility.”

³³ *Yekatom & Ngaïssona*, Yekatom Defence Appeal Brief – Admissibility, ICC-01/14-01/18-523, 19 May 2020, para. 10.

³⁴ *Registered Vessels*, Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation, ICC-01/13-34, 16 July 2015, p. 26.

³⁵ *Registered Vessels*, Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of Comoros to review the Prosecutor’s decision not to initiate an investigation,” ICC-01/13-51, 6 November 2015, para. 50.

³⁶ *Id.* para. 51.

³⁷ *Id.* para. 52.

³⁸ *Kenya*, Decision on the admissibility of the “Appeal of the Government of Kenya against the ‘Decision on the Request for Assistance Submitted on Behalf of the Government of the Republic of Kenya Pursuant to Article 93(10) of the Statute and Rule 194 of the Rules of Procedure and Evidence’”, ICC-01/09-78, 10 August 2011, para 15.

25. The fact that the Impugned Decision is not necessarily the only decision that may ever be taken concerning admissibility in this situation does not diminish its character as a “decision with respect to [...] admissibility.”

26. In addition, the Impugned Decision has not been rendered moot by the Pre-Trial Chamber’s issuance of the arrest warrants. On the contrary, those arrest warrants could have been – and were – issued only after rejecting Israel’s position that it was entitled to an article 18(1) notice as a prerequisite to the investigation that produced those warrants. Israel, as addressed below, requests that the Pre-Trial Chamber’s decision on the arrest warrants be suspended immediately and for the duration of an appeal. Meanwhile, the Prosecution has recently reiterated that its investigation continues – which is not permissible if the Impugned Decision is wrong.³⁹

27. Israel notes that, out of an abundance of caution, it has also filed a request for leave to appeal the Impugned Decision before Pre-Trial Chamber I pursuant to article 82(1)(d). Israel’s primary and firm position, however, is that an appeal is admissible as of right as it pertains to a decision “with respect to [...] admissibility” pursuant to article 82(1)(a).

IV. NOTICE OF APPEAL

28. Israel submits the following information pursuant to regulation 64 (1) of the Regulations of the Court:

- a. Name and number of the case or situation: *The Situation in the State of Palestine*, ICC-01/18;
- b. The title and date of the decision being appealed: Pre-Trial Chamber I, “Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice”, 21 November 2024, ICC-01/18-375;
- c. Whether the appeal is directed against the whole decision or part thereof: the appeal is directed against the part of the decision, and any supporting reasoning, that “REJECTS Israel’s request for an order to the Prosecution to give an Article 18(1) notice and staying proceedings pending such a notice”;
- d. The specific provision of the Statute pursuant to which the appeal is filed: Article 82(1)(a) of the Statute;

³⁹ [Statement of ICC Prosecutor Karim A.A. Khan KC on the issuance of arrest warrants in the Situation in the State of Palestine](#), 21 November 2024

- e. The relief sought: an order requiring the Prosecutor to provide an Article 18(1) notice in respect of any ongoing investigation in the Situation in the State of Palestine, to quash or suspend the arrest warrants issued by the Pre-Trial Chamber following the impugned Decision, and all proceedings arising from the Prosecution's ongoing investigation unless and until such a notice in compliance with the requirements of article 18 is provided.

29. Without prejudice to the specific arguments or grounds that may be presented in the appeal brief, Israel intends to argue that the Pre-Trial Chamber erred in law or fact in determining that the Prosecutor was not required pursuant to article 18(1) to provide Israel with adequate notice of the parameters of its intended investigation concerning the events that commenced in and around Gaza on the morning of 7 October 2023.

V. SUSPENSIVE EFFECT

30. Pursuant to article 82(3), an appeal “shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules of Procedure and Evidence. Pursuant to Rule 156(5), “[w]hen filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.”

31. The Appeals Chamber has consistently held that whether to grant suspensive effect is “discretionary” and depends on “the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances”.⁴⁰ As a matter of general principle, the Appeals Chamber has consistently considered:

whether the implementation of the decision under appeal (i) “would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant”, (ii) would lead to consequences that “would be very difficult to correct and may be irreversible”, or (iii) “could potentially defeat the purpose of the appeal”.⁴¹

32. The Prosecution has expressed the view in its previous submissions that suspensive effect may be granted not only in respect of the decision under appeal, but also such related decisions where “this is an unavoidable consequence of suspending the implementation of the decision under

⁴⁰ *Al-Bashir*, Decision on Jordan’s request for suspensive effect of its appeal against the decision on the non-compliance by Jordan with the request for the arrest and surrender of Mr Omar Al-Bashir ICC-02/05-01/09-333, para. 8.

⁴¹ *Id.* See also *Registered Vessels*, Decision on suspensive effect, ICC-01/13-43 (OA), , 6 August 2015 para. 7, referring to *Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, ‘Decision on the Prosecutor’s urgent request for suspensive effect of the “Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido” of 21 October 2014’, ICC-01/05-01/13-718 (OA9), 22 October 2014, para. 5.

appeal.”⁴² Indeed, in the *Libya* and *Cote d’Ivoire* Situations, the Appeals Chamber was seized of requests to grant suspensive effect pending resolution of appeals concerning admissibility. In both cases, the Appeals Chamber evaluated not only the impact of suspending the admissibility decisions, but also the related decisions for the immediate transfer of the accused.⁴³

33. Likewise, in the context of an appeal under article 81(3)(c)(2), the Appeals Chamber has held that suspensive effect in relation to a denial of continued detention entails an extension of detention. According to the Appeals Chamber, “[t]his is because the position would be as if the Trial Chamber had not yet ruled on the Prosecutor’s request.”⁴⁴ Following this logic, a pending challenge to the legality of an investigation upon which an application for an arrest warrant is based must also entail the suspension of any decision on that warrant of arrest. Accordingly, the Appeals Chamber continued the detention of Mr. Laurent Gbagbo and Mr Charles Blé Goudé as a corollary of granting suspensive effect to a Trial Chamber decision denying their continued detention, as otherwise the “Prosecutor’s right to appeal would be potentially nugatory.”⁴⁵

34. The arrest warrant decisions are inextricably connected with the Pre-Trial Chamber’s decisions on admissibility and jurisdiction.⁴⁶ If either decision is reversed on appeal, the arrest warrants will have been invalidly issued. Suspensive effect of the Impugned Decision would be rendered essentially meaningless unless it extends to an arrest warrant whose validity depends on the Impugned Decision. Indeed, the Article 18(1) Request sought,⁴⁷ and the Impugned Decision rejected, a request to stay all proceedings whose legality depends on compliance with article 18(1).

⁴² *Bemba*, Prosecution’s response to Defence request for suspensive effect of the Defence appeal against the Decision on Admissibility and Abuse of Process, ICC-01/05-01/08-814, 8 July 2010, para. 7.

⁴³ See *Simone Gbagbo*, Decision on Côte d’Ivoire’s request for suspensive effect of its appeal against the “Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo” of 11 December 2014, ICC-02/11-01/12-56, 20 January 2015, paras. 14-16; *Gaddafi & Al-Senussi*, Decision on the request for suspensive effect and related issues, ICC-01/11-01/11-387, , 18 July 2013, paras 20, 26 (despite noting that the “Impugned Decision is a decision on admissibility and not the warrant of arrest and the request for surrender”, the Appeals Chamber went on to evaluate the potential irreversible impact of a transfer of custody to the Court, noting that “[t]he Appeals Chamber considers that it has not been provided with information as to why Mr. Gaddafi’s transfer to the Court would prevent Libya from continuing with its investigations concerning him”).

⁴⁴ *Ngudjolo*, Decision on the request of the Prosecutor of 19 December 2012 for suspensive effect, ICC-01/04-02/12-12, 20 December 2012, para. 17.

⁴⁵ *Gbagbo & Blé Goudé*, Decision on the Prosecutor’s request for suspensive effect of her appeal under article 81(3)(c)(ii) of the Statute and directions on the conduct of the appeal proceedings, , ICC-02/11-01/15-1243, 18 January 2019, para. 18.

⁴⁶ As expressly stated in the Court’s press release on the day of the Impugned Decision, which appears to have been approved by Pre-Trial Chamber I: “Further, the Chamber considered that the parameters of the investigation in the situation have remained the same and, as a consequence, no new notification to the State of Israel was required. *In light of this*, the judges found that there was no reason to halt the consideration of the applications for warrants of arrest.” [Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant](#), 21 November 2024 (italics added).

⁴⁷ Article 18(1) Request, para. 61 (“Any proceedings arising from investigation for which no sufficiently specific article 18(1) notice has been provided, including any applications for arrest warrants, should be stayed until the requirements of article 18 are satisfied”).

Suspensive effect pending resolution must encompass the inextricable consequences of rejecting that stay request.

35. The consequences of the arrest warrant decisions are far-reaching, unpredictable and irreversible. The reputational damage to the Court that would arise from calling for the arrest of a democratically elected leader of a country fighting a war not of its own choosing, triggered by one of the largest terrorist attacks in history, which later turns out to have been illegally issued, would be profound and permanent. That damage would be much worse, of course, to the extent that the arrest warrants purport to create obstacles to travel to States Party who may believe that they are bound to give effect to these arrest warrants, or that they are used as an excuse to cut off diplomatic communications, as the Palestinian Authority has urged.⁴⁸ In the event that the arrest warrants were ever to be executed, the consequences are simply incalculable, but they would certainly be irreversible.

36. A further factor weighing in favour of suspensive effect is the Impugned Decision's facially cursory reasoning and manifest indications of error. The dispositive reasoning is contained in a single paragraph.⁴⁹ There is little to no discussion of the applicable appellate jurisprudence that was set out extensively and precisely in Israel's pleadings. Indeed, two of the three citations to appellate jurisprudence in the Chamber's reasoning concern the judicial authorization of investigations under article 15, which are inapplicable and inapposite to the question of when and whether an article 18(1) notice is required.⁵⁰ The lack of articulated reasoning in a decision of such importance is striking and should warrant immediate appellate scrutiny of the effects of the Impugned Decision.

37. Given the foundational issues upon which this appeal is based, combined with the wide-ranging ramifications of the Court maintaining the arrest warrants where they may have been unlawfully issued, the arrest warrants issued by Pre-Trial Chamber I should be immediately suspended pending the Appeals Chamber's disposition of an appeal. It is unjust and inappropriate that such major consequences should arise from a proceeding that has been kept partly *ex parte*

⁴⁸ https://www.timesofisrael.com/liveblog_entry/palestinian-authority-says-icc-warrants-for-israeli-officials-sign-of-hope/ ("The ICC's decision represents hope and confidence in international law and its institutions," [the Palestinian Authority] says in a statement published by the official PA news agency Wafa, which urges ICC members to enforce "a policy of severing contact and meetings with internationally wanted individuals, Netanyahu and Gallant.")

⁴⁹ Impugned Decision, para. 15.

⁵⁰ Impugned Decision, para. 15 (referring twice to the Appeals Chamber decision in the *Afghanistan* situation which, though entitled "Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation", actually concerned only an *obiter dictum* of the Pre-Trial Chamber concerning as to the scope of the situation authorized under article 15).

while also being widely publicized by the Prosecutor, and without any appellate review whatsoever.

VI. CONCLUSION and RELIEF SOUGHT

38. Accordingly, the Government of Israel requests the Appeals Chamber to:

SUSPEND the arrest warrants issued by Pre-Trial Chamber I for Prime Minister Benjamin Netanyahu, and former Minister of Defence Yoav Gallant.

Respectfully submitted:



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

Dated 27 November 2024, at Jerusalem, Israel.