

**Cour  
Pénale  
Internationale**

OA2



**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 challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” (ICC-01/18-374)**

**Source: The State of Israel**

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

**The Office of the Prosecutor**

Mr. Karim A.A. Khan KC

Mr. Andrew Cayley KC

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants (Participation /  
Reparation)**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

Office of the Attorney General of Israel

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr. Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Public Information and Outreach Section**

## I. INTRODUCTION

1. Pre-Trial Chamber I, on the same day that it issued arrest warrants against the Prime Minister and former Minister of Defence of Israel, rejected – on the basis of procedural grounds – Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2)(c) of the ICC Statute.<sup>1</sup> As part of that challenge, Israel had requested that the Court determine that the Prosecutor’s article 58 “application concerning Mr. Netanyahu and Mr. Gallant, and any investigative action on the same jurisdictional basis, are not within the Court’s jurisdiction”. Despite the critical importance of the Court adhering to its jurisdictional limitations when issuing arrest warrants, the Pre-Trial Chamber dismissed, without substantive scrutiny, Israel’s serious objections as to the Court’s lack of jurisdiction with respect to the *Palestine* Situation. Rather, the Pre-Trial Chamber held that: (i) Israel does not have standing to file a jurisdictional challenge pursuant to article 19(2)(c) at all; and (ii) States do not have standing to file a jurisdictional challenge pursuant to article 19(2) prior to the issuance of arrest warrants. The issuance of the Impugned Decision and the arrest warrants on the same day also deprived Israel of any opportunity to appeal this decision prior to the issuance of arrest warrants against its democratically elected officials.

2. Against this background, Israel urgently files this notice of appeal against the decision of Pre-Trial Chamber I rejecting Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the ICC Statute.<sup>2</sup> This rejection of Israel’s standing to bring a jurisdictional challenge means that a drastic step – the issuance of arrest warrants – has taken place without any judicial consideration of Israel’s submissions on jurisdiction. The refusal to substantively consider these submissions is particularly egregious considering that, simultaneously, the Trial Chamber made an *ex parte* determination, as it was required to do pursuant to article 19(1) of the Statute, that it had jurisdiction to issue the arrest warrants.<sup>3</sup>

3. The Impugned Decision’s significance cannot be over-stated. The Court’s article 19(1) obligation to “satisfy itself that it has jurisdiction in any case brought before it” and the ability of States to bring challenges to the jurisdiction of the Court under article 19(2) are not mere

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<sup>1</sup> 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.

<sup>2</sup> Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-374, 21 November 2024 (“[Impugned Decision](#)”).

<sup>3</sup> ICC Press Release, “[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: “At the outset, the Chamber considered that the alleged conduct of Mr Netanyahu and Mr Gallant falls within the jurisdiction of the Court. The Chamber recalled that, in a previous composition, it already decided that the Court’s jurisdiction in the situation extended to Gaza and the West Bank, including East Jerusalem. Furthermore, the Chamber declined to use its discretionary *proprio motu* powers to determine the admissibility of the two cases at this stage. This is without prejudice to any determination as to the jurisdiction and admissibility of the cases at a later stage”.

formalities. Jurisdiction plays a critical role in defining judicial competence in order to prevent abuse of the judicial process and guarantee that courts do not exceed the carefully defined mandates entrusted to them, including when issuing arrest warrants. The Court's legitimacy depends, in equal measure, both on the effective discharge of its mandate, and on adherence to its jurisdictional limitations. The latter is further safeguarded by sovereign States, including those that are not party to the ICC Statute, being permitted to exercise their rights to challenge the Court's jurisdiction.

4. The Impugned Decision adopts and applies a test for standing that, in essence, eliminates any opportunity for (a) a State to challenge the jurisdiction of the Court prior to arrest warrants being issued; (b) a suspect's State of nationality to challenge the jurisdiction of the Court on the basis that article 12(2)(a)'s territorial precondition to the exercise of jurisdiction is not satisfied. Further, the Impugned Decision effectively holds that a Pre-Trial Chamber's article 19(3) decision on jurisdiction that specifically reserves an issue for further consideration nonetheless operates as *res judicata* thus barring future scrutiny of the issue that it reserved. The Chamber's Impugned Decision seriously curtails the rights of States, and undermines the foundational jurisdictional safeguards enshrined in the ICC Statute. Moreover, it is set out in a decision which is summary in nature and lacking as to reasoning and discussion of the relevant jurisprudence.

5. Israel lodges this notice of appeal as a matter of right pursuant to article 82(1)(a) as the Impugned Decision is a "decision with respect to [...] jurisdiction." Furthermore, Israel requests that this appeal be given "suspensive effect" pursuant to article 82(3) which, in the present context, requires any purported legal effect of the arrest warrants issued *ex parte* by the Pre-Trial Chamber, as well as any other purported exercise of jurisdiction by the Court, be suspended.

## II. PROCEDURAL HISTORY

6. On 1 January 2015, the Registrar received a purported declaration under Article 12(3) of the Statute,<sup>4</sup> claiming to be signed by the "President of the State of Palestine", which stated that "the Government of the State of Palestine" accepted the jurisdiction of the Court with respect to crimes "committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014".<sup>5</sup>

7. On 2 January 2015, the United Nations Secretary General received a purported instrument of accession to the Statute by the "State of Palestine" pursuant to Article 125(2) of the Statute.<sup>6</sup>

<sup>4</sup> ICC Press Release, "[Palestine declares acceptance of ICC jurisdiction since 13 June 2014](#)", 5 January 2015.

<sup>5</sup> Document dated 31 December 2014, "[Declaration Accepting the Jurisdiction of the International Criminal Court](#)".

<sup>6</sup> Depositary Notification, [C.N.13.2015.TREATIES-XVIII.10](#), 6 January 2015.

8. On 16 January 2015, the OTP announced that it had decided to open a preliminary examination into the “*Situation in Palestine*” (“the Situation”).<sup>7</sup>

9. On 22 May 2018, the Prosecution received a purported referral by the “Government of the State of Palestine” pursuant to Articles 13(a) and 14 of the Statute, requesting the investigation of crimes “committed in all parts of the territory of the State of Palestine”.<sup>8</sup>

10. On 22 January 2020, the OTP filed a request for a jurisdictional ruling pursuant to Article 19(3) of the Statute,<sup>9</sup> seeking a ruling from the Pre-Trial Chamber on “the scope of the Court’s territorial jurisdiction in the situation of Palestine”.<sup>10</sup>

11. On 5 February 2021, the Pre-Trial Chamber issued its Decision on the “Prosecution request pursuant to article 19(3)”. That Decision found, unanimously, that “Palestine is a State Party to the Statute”; and, by a majority, that due to its “State Party” status, “Palestine qualifies as ‘[t]he State on the territory of which the conduct in question occurred’ for the purposes of article 12(2)(a) of the Statute”, and that “the Court’s territorial jurisdiction [...] extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem”.<sup>11</sup> The Decision did not address the arguments regarding the Oslo Accords, as those were “not pertinent to the resolution of the issue under consideration, namely the scope of the Court’s territorial jurisdiction in Palestine” and “as a consequence, the Chamber will not address these arguments”.<sup>12</sup> The Pre-Trial Chamber deemed it “opportune to emphasise” that its conclusions pertained only to “the current stage of proceedings, namely the initiation of an investigation by the Prosecutor”.<sup>13</sup> The Pre-Trial Chamber expressly reserved further consideration of jurisdictional issues as and when the Prosecution might bring an Article 58 application, or a challenge were brought under Article 19(2): “[w]hen the Prosecutor submits an application for the issuance of a warrant of arrest or summons to appear under article 58 of the Statute, or if a State or a suspect submits a challenge under article 19(2) of the Statute, the Chamber will be in a position to *examine further* questions of jurisdiction which may arise at that point in time”.<sup>14</sup> Judge Peter Kovács appended a Partly Dissenting Opinion, in which he disagreed on the fact that Palestine qualifies as “[t]he State on the territory of which the conduct in question occurred” for the purposes of article 12(2)(a) of the Statute, and that the

<sup>7</sup> ICC Press Release, “[The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine](#)”, 16 January 2015.

<sup>8</sup> ICC OTP, “[Statement by ICC Prosecutor, Mrs Fatou Bensouda, on the referral submitted by Palestine](#)”, 22 May 2018.

<sup>9</sup> Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, [ICC-01/18-12](#), 22 January 2020.

<sup>10</sup> *Id.* para. 220.

<sup>11</sup> Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’, [ICC-01/18-12](#), 5 February 2021, p. 60.

<sup>12</sup> *Id.*, para. 129.

<sup>13</sup> *Id.*, para. 131.

<sup>14</sup> *Id.* (emphasis added).

Court's territorial jurisdiction in the Situation extends – in a quasi-automatic manner and without restrictions – to the territories of Gaza, the West Bank and East Jerusalem. Instead, he found that in the absence of Israel's acceptance of the Court's jurisdiction, such jurisdiction could not exceed the restricted competences *ratione personae* and/or *ratione loci* transferred to the Palestinian Authority pursuant to the Oslo Accords that created it.<sup>15</sup>

12. On 3 March 2021, the OTP announced the initiation of an investigation into crimes within the jurisdiction of the Court that are alleged to have been committed in the Situation since 13 June 2014.<sup>16</sup>

13. On 17 November 2023, the Prosecutor announced that the OTP had received a referral of the "Situation in the State of Palestine" from South Africa, Bangladesh, Bolivia, Comoros, and Djibouti.<sup>17</sup> On 18 January 2024, the Prosecutor received an additional referral from Chile and Mexico.<sup>18</sup>

14. On 20 May 2024, the Prosecutor announced the filing of confidential and *ex-parte* applications under Article 58 of the Statute for warrants of arrest against Israel's Prime Minister, Mr. Benjamin Netanyahu, and Israel's Minister of Defence, Mr. Yoav Gallant ("Article 58 Application"), as well as against three senior Hamas operatives. The Prosecutor chose to make public certain details regarding his applications.<sup>19</sup>

15. On 10 June 2024, the United Kingdom submitted a request to file *amicus curiae* observations on '[w]hether the Court can exercise jurisdiction over Israeli nationals, in circumstances where Palestine cannot exercise criminal jurisdiction over Israeli nationals pursuant to the Oslo Accords'.<sup>20</sup> On 27 June 2024, the Pre-Trial Chamber issued a decision granting the UK's request, and setting the deadline for any additional requests to submit *amicus curiae*

<sup>15</sup> Judge Kovács' Partly Dissenting Opinion, [ICC-01/18-143-Anx 1](#), paras. 370-371 *et seq.*

<sup>16</sup> ICC OTP, "[Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#)", 3 March 2021.

<sup>17</sup> ICC OTP, "[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.

<sup>18</sup> Republic of Chile and the United Mexican States, [referral](#), 18 January 2024.

<sup>19</sup> ICC OTP, "[Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#)", 20 May 2024. The Prosecutor also released, in conjunction with his announcement, a report by a "[Panel of Experts In International Law Convened by the Prosecutor of the International Criminal Court](#)". This report purports to offer further information about the Prosecutor's confidential and *ex parte* allegations, including regarding the Court's jurisdiction over the "*Situation in Palestine*", *Id.* para. 10.

<sup>20</sup> Request by the United Kingdom for leave to submit written observations pursuant to Rule 103, [ICC-01/18-171-Anx](#), 10 June 2024, para. 27.

observations.<sup>21</sup> The large majority of the requests was subsequently granted.<sup>22</sup> The Pre-Trial Chamber issued additional Orders with respect to the participation of victims,<sup>23</sup> and the OPCD.<sup>24</sup> By 16 August 2024, the Pre-Trial Chamber received over 70 observations submitted by, *inter alia*, States, organisations, individuals and victims' representatives. On 23 August 2024, the OTP filed a consolidated response to observations by interveners.<sup>25</sup>

16. On 23 September 2024, Israel filed its Challenge to the Jurisdiction of the Court pursuant to article 19(2) of the Rome Statute.<sup>26</sup> On the same day, Israel filed its Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice.<sup>27</sup>

17. On 27 September 2024, the Prosecution submitted its Responses to Israel's Jurisdiction Challenge<sup>28</sup> and to Israel's Abridged Request for an Article 18(1) Notice.<sup>29</sup> The Prosecution argued that Israel's Jurisdiction Challenge should be dismissed for prematurity and lack of standing.<sup>30</sup>

18. On 4 October 2024 Israel submitted Requests for Leave to Reply to the Prosecution's Responses to Israel's Jurisdiction Challenge<sup>31</sup> and its Request for an Article 18(1) Notice.<sup>32</sup>

19. On 21 November 2024, Pre-Trial Chamber I rejected Israel's Article 18(1) Request<sup>33</sup> and its Jurisdictional Challenge<sup>34</sup> and, on the same day, announced that it had filed a decision, classified as 'secret', issuing arrest warrants against the Prime Minister of Israel, Benjamin Netanyahu, and

<sup>21</sup> Public redacted version of 'Order deciding on the United Kingdom's request to provide observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence, and setting deadlines for any other requests for leave to file amicus curiae observations', [ICC-01/18-173-Red](#), 27 June 2024.

<sup>22</sup> Decision on requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, [ICC-01/18-249](#), 22 July 2024.

<sup>23</sup> Public redacted version of 'Decision concerning the views, concerns and general interests of victims', 30 July 2024, ICC-01/18-256-Conf, [ICC-01/18-256-Red](#), 7 August 2024.

<sup>24</sup> Order in relation to OPCD's submissions on *amicus curiae* observations and the Prosecution's request to provide a consolidated response, [ICC-01/18/325](#), 9 August 2024.

<sup>25</sup> Prosecution Consolidated Response to Observations by Intervenors pursuant to Article 68(3) of the Statute and Rule 103 of the Rules of Procedure and Evidence, [ICC-01/18-346](#), 23 August 2024.

<sup>26</sup> 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, 23 September 2024 ("[Jurisdictional Challenge](#)").

<sup>27</sup> Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice, [ICC-01/18-355-AnxI-Corr](#), 23 September 2024.

<sup>28</sup> Prosecution's Response to "Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute" – ICC-01/18-354-SECRET-Exp-AnxI-Corr, [ICC-01/18-357](#), 27 September 2024.

<sup>29</sup> 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, [ICC-01/18-360](#), 27 September 2024.

<sup>30</sup> Prosecution's Response to "Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute" – ICC-01/18-354-SECRET-Exp-AnxI-Corr, [ICC-01/18-357](#), 27 September 2024, paras. 5-26.

<sup>31</sup> Request for leave to reply to Prosecution Response to "Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute" – ICC-01/18-354-SECRET-Exp-AnxI-Corr, [ICC-01/18-361-Anx](#), 4 October 2024.

<sup>32</sup> Request for leave to reply to 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, [ICC-01/18-362-Anx](#), 4 October 2024.

<sup>33</sup> 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.

<sup>34</sup> [Impugned Decision](#).



the former Minister of Defence, Mr. Yoav Gallant.<sup>35</sup> The Chamber also rejected Israel’s request for leave to reply to the Prosecutor’s response to its jurisdictional challenge and Israel’s request for leave to reply to the Prosecutor’s response to its Article 18(1) Request.

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

20. Article 82(1)(a) provides that either party may appeal “[a] decision with respect to jurisdiction or admissibility.” 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.<sup>36</sup>

21. The Appeals Chamber has previously recalled in the specific context of “a decision with respect to jurisdiction” for the purposes of article 82(1)(a) that:

The jurisdiction of the Court is defined by the Statute. The notion of jurisdiction has four different facets: subject-matter jurisdiction also identified by the Latin maxim jurisdiction *ratione materiae*, jurisdiction over persons, symbolized by the Latin maxim jurisdiction *ratione personae*, territorial jurisdiction - jurisdiction *ratione loci* - and lastly jurisdiction *ratione temporis*. These facets find expression in the Statute.

The jurisdiction of the Court is laid down in the Statute: Article 5 specifies the subject-matter of the jurisdiction of the Court, namely the crimes over which the Court has jurisdiction, sequentially defined in articles 6, 7, and 8. Jurisdiction over persons is dealt with in articles 12 and 26, while territorial jurisdiction is specified by articles 12 and 13(b), depending on the origin of the proceedings. Lastly, jurisdiction *ratione temporis* is defined by article 11.<sup>37</sup>

22. In that case, the Appeals Chamber noted that the Impugned Decision, which involved a dismissal of a defence request for the adoption and implementation of proposed additional principles of reparations, “makes no pronouncement with respect to any of the types of jurisdiction

<sup>35</sup> ICC Press Release, “[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.

<sup>36</sup> *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.

<sup>37</sup> *Ali Kushayb*, Decision on the Admissibility of the Appeal, [ICC-02/05-01/20-145](#), 4 September 2020, para. 6 citing *Lubanga*, Judgment on Appeal against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute, [ICC-01/04-01/06-772](#), 14 December 2006, paras. 21-22.



set out in the jurisprudence cited above. Nor does it suggest that the Court is not competent to consider a matter”.<sup>38</sup>

23. The Appeals Chamber therefore concluded that “as the Impugned Decision does not pertain to a question of the jurisdiction of the Court as previously defined by the Appeals Chamber’s jurisprudence, it cannot be appealed under article 82(1)(a) of the Statute”.<sup>39</sup>

24. Contrarily, the Impugned Decision in this case is plainly a “decision with respect to jurisdiction” for the purposes of article 82(1)(a). This is because it is a decision on Israel’s challenge to jurisdiction which was brought pursuant to article 19(2). Indeed, the title of the decision itself is clear on this issue (“Decision on Israel’s challenge to jurisdiction of the Court pursuant to Article 19(2) of the Rome Statute”) and the operative part of the Decision states that it “**REJECTS** Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Statute as premature”.<sup>40</sup> Further, Israel’s challenge to jurisdiction dealt specifically with two of the four different facets of jurisdiction referred to above, namely jurisdiction over persons and territorial jurisdiction pursuant to article 12.<sup>41</sup>

25. The fact that the Decision deals principally with Israel’s standing to bring a jurisdictional challenge does not diminish its character as a “decision with respect to jurisdiction.” Where the operative part of a decision is itself a determination that a party does not have standing to bring a jurisdictional challenge, that is plainly still a “decision with respect to jurisdiction”. As outlined above, the Appeals Chamber has observed when considering article 82(1)(a) admissibility that whether or not the decision suggests that “the Court is not competent to consider a matter” is a matter of relevance to whether or not that decision is “a decision with respect to jurisdiction”.<sup>42</sup>

26. Indeed, the Court’s decision not to permit Israel to bring a jurisdictional challenge pursuant to article 19(2)(c) at all<sup>43</sup> cannot properly be regarded as anything other than a decision which effectively dismisses Israel’s challenge to jurisdiction. This is particularly clear when one takes account of the fact that the Impugned Decision relies upon its own prior decision (rendered in a different composition) “which has become *res judicata*” as the basis for this rejection. That 2021 prior decision of Pre-Trial Chamber I was, in itself, a substantive determination on jurisdictional issues pursuant to an application brought by the Prosecutor under article 19(3). By treating that previous decision as *res judicata*, the Pre-Trial Chamber effectively makes a finding on

<sup>38</sup> *Ali Kushayb*, Decision on the Admissibility of the Appeal, [ICC-02/05-01/20-145](#), 4 September 2020, para. 8.

<sup>39</sup> *Id.* para. 9.

<sup>40</sup> [Impugned Decision](#), p. 7.

<sup>41</sup> [Jurisdictional Challenge](#), re territorial jurisdiction see paras. 65-85 ; re personal jurisdiction see paras. 90-102.

<sup>42</sup> *Ali Kushayb*, Decision on the Admissibility of the Appeal, [ICC-02/05-01/20-145](#), 4 September 2020, para. 8.

<sup>43</sup> [Impugned Decision](#), paras. 12-15.

jurisdiction. Any other interpretation of Article 82(1)(a) would render the automatic right to appeal meaningless, as a Chamber could simply rely on a previous jurisdictional decision issued under Article 19(3) on an *ex parte* basis to deny challenges to jurisdiction, leaving no procedural recourse for the challenging party. For all these reasons, the Impugned Decision is, by its very nature, a “decision with respect to jurisdiction”.

27. 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 Article 19(2) Jurisdiction Challenge. Israel, as addressed below, requests that the Pre-Trial Chamber’s decision on the arrest warrants be suspended immediately and for the duration of this appeal and the Pre-Trial Chamber’s reconsideration of the merits of Israel’s Article 19(2) Jurisdiction Challenge. Further, it is notable that Article 19(2) protects the prerogative of States to challenge the Court’s jurisdiction of the Court in relation to a Situation as a whole, including any individual cases arising therefrom. The Prosecution has recently reiterated that its investigation into the Situation in Palestine continues and for this reason it is also essential that Israel’s Jurisdiction Challenge has the benefit of substantive judicial consideration.<sup>44</sup>

#### **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 challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute”, 21 November 2024, ICC-01/18-374;
- c. The appeal is directed against the whole decision;
- d. The specific provision of the Statute pursuant to which the appeal is filed: Article 82(1)(a) of the Statute;
- e. The relief sought is a reversal of the Impugned Decision and an order that: (1) Israel has standing to challenge the jurisdiction of the Court pursuant to article 19(2)(c), including prior to the issuance of arrest warrants; (2) Israel’s 19(2)(c) jurisdictional challenge shall be remitted to the Pre-Trial Chamber for consideration on the merits;

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<sup>44</sup> ICC OTP, “[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.

(3) the arrest warrants issued by the Pre-Trial Chamber following the Impugned Decision shall be quashed, or stayed pending the Pre-Trial Chamber's consideration of the merits of Israel's article 19(2)(c) jurisdiction challenge.

## V. SUSPENSIVE EFFECT

29. 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."

30. 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".<sup>45</sup> 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".<sup>46</sup>

31. 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 to related decisions where "this is an unavoidable consequence of suspending the implementation of the decision under appeal."<sup>47</sup> 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.<sup>48</sup>

<sup>45</sup> *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](#), 6 April 2018, para. 8.

<sup>46</sup> *Id.* See also *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Decision on suspensive effect, [ICC-01/13-43 \(OA\)](#), 6 August 2015, para. 7, referring to *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.

<sup>47</sup> *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.

<sup>48</sup> 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 and 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

32. 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.”<sup>49</sup> Following this logic, a pending challenge to the jurisdiction of the Court pursuant to 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.”<sup>50</sup>

33. The arrest warrant decisions are inextricably connected with the Pre-Trial Chamber’s decisions on admissibility and jurisdiction, as is apparent from the ICC press release of 21 November 2024 that relates to all three decisions.<sup>51</sup> Indeed, determining whether or not the Court is permitted to exercise jurisdiction is a necessary prerequisite to the issuance of any decision to issue an arrest warrant, as required by article 19(1) of the Statute. There is no jurisdictional basis for the issuance of arrest warrants as long as doubt remains about the Court’s capacity to exercise jurisdiction. Therefore, for as long as the current litigation (i.e. the current appeal, any reversal of the Pre-Trial Chamber’s decision, any remittance to the Pre-Trial Chamber, and consideration *de novo* of the actual substance of Israel’s jurisdictional challenge) remains pending, it cannot be in the interests of justice or judicial economy to maintain the arrest warrants and their purported legal effect. In other words, if either decision is reversed on appeal, the matter would remain pending, and it will remain open to the Court’s judges to conclude that the arrest warrants are invalid.

34. 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

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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”).

<sup>49</sup> *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.

<sup>50</sup> *Gbagbo and 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.

<sup>51</sup> ICC Press Release, “[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.

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.<sup>52</sup> In the event that the arrest warrants were ever to be executed, the consequences are simply incalculable, but they would certainly be irreversible.

35. A further factor weighing in favour of suspensive effect is the Impugned Decision's facially cursory reasoning and manifest indications of error. Israel's 44 page extensively and precisely reasoned pleading is dismissed by the Pre-Trial Chamber in five short paragraphs.<sup>53</sup> There is little to no discussion or citation of the applicable jurisprudence and no attempt to engage with the serious objections raised by Israel to the Court's jurisdiction. The lack of articulated reasoning in a decision of such importance is striking and should warrant immediate appellate scrutiny of the Impugned Decision.

36. Given the foundational issues upon which this notice of appeal is based, combined with the wide-ranging ramifications of the Court maintaining the arrest warrants where they may have been unlawfully issued, the Impugned Decision and 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* while also being widely publicized by the Prosecutor, and without any appellate review whatsoever.

## VI. CONCLUSION and RELIEF SOUGHT

37. 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:**



<sup>52</sup> [Palestinian Authority says ICC arrest warrants for Israeli officials sign of 'hope'](#), 21 November 2024, The Times of Israel ("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").

<sup>53</sup> [Impugned Decision](#), paras. 13-17.

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

Dated 27 November 2024, at Jerusalem, Israel.