

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **29 November 2024**

THE APPEALS CHAMBER

Before: Judge Tomoko Akane, Presiding
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE STATE OF PALESTINE

Public

Prosecution Request to Dismiss *in limine* Israel's '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: Office of the Prosecutor

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

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Section**

I. INTRODUCTION

1. On 27 November 2024, Israel filed a direct appeal before the Appeals Chamber under article 82(1)(a) of the Statute (“Appeal”)¹ against Pre-Trial Chamber I’s “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” (“Decision”).² Simultaneously, “out of an abundance of caution, and in order to preserve all of its procedural rights”,³ Israel also filed an application for leave to appeal before Pre-Trial Chamber I under article 82(1)(d) of the Statute against the same Decision (“Application for Leave”).⁴ In its Appeal, Israel requests that the Appeals Chamber suspend the Pre-Trial Chamber’s arrest warrants against Benjamin Netanyahu and Yoav Gallant pursuant to article 82(3) pending the resolution of the Appeal (“Suspension Request”).⁵

2. The Prosecution respectfully submits that Israel’s Appeal should be dismissed *in limine*.⁶ The Decision is not a decision “with respect to jurisdiction” and it is therefore not directly appealable under article 82(1)(a) of the Statute.⁷ Accordingly, these appeal proceedings should be discontinued and Israel’s Suspension Request be rejected while the proceedings before Pre-Trial Chamber with respect to the same Decision follow their course.⁸

II. SUBMISSIONS

3. Israel’s Appeal should be dismissed *in limine* and the appeal proceedings discontinued.⁹ The Appeal does not satisfy the conditions of article 82(1)(a). As noted, Israel has simultaneously filed a request for leave to appeal under article 82(1)(d) against the Decision before the Pre-Trial Chamber. If this were to be granted, it would result in an appeal against the same Decision that is the subject of the present proceedings. The Prosecution respectfully

¹ [ICC-01/18-386](#) (“Appeal”).

² [ICC-01/18-374](#) (“Decision”).

³ [ICC-01/18-388](#) (“Application for Leave”), para. 7.

⁴ [Application for Leave](#).

⁵ [Appeal](#), paras. 29-37.

⁶ This is without prejudice to the Prosecution’s position that Israel did not have standing to file a challenge under article 19 before the Pre-Trial Chamber due to the *ex parte* nature (Prosecution and Pre-Trial Chamber only) of the article 58 proceedings.

⁷ Statute, article 82(1)(a).

⁸ The preliminary resolution of the (in)admissibility of an appeal is not uncommon and ensures the efficient conduct of the Court’s overall proceedings. *See e.g.* ICC-02/05-01/20-145 OA3 (“[Abd-al-Rahman Admissibility AD](#)”); ICC-01/13-51 OA (“[Comoros Admissibility AD](#)”).

⁹ This includes the filing of Israel’s appeal brief due on 13 December 2024: *see* Regulations of the Court, regulation 64(2).

submits that the Pre-Trial Chamber is, at this juncture, the proper forum to address Israel's challenge against the Decision.

A. The Decision is not appealable under article 82(1)(a)

4. Israel's purported basis for its Appeal is article 82(1)(a) of the Statute, which provides: "Either party may appeal [...] [a] decision with respect to jurisdiction [...]".¹⁰ Yet the Decision is not a "decision with respect to jurisdiction" under article 82(1)(a) of the Statute.

5. In the Decision, Pre-Trial Chamber I precisely identified the issue before it: "The issue before the Chamber is whether Israel is entitled – or indeed obliged – to bring such a challenge *before* the Chamber has ruled on the Prosecution's applications for warrants of arrest."¹¹ Answering this question in the negative, because "States are not entitled under the Statute to challenge jurisdiction of the Court on the basis of Article 19 prior to the issuance of a warrant of arrest or a summons",¹² the Chamber rejected Israel's challenge as premature.¹³

6. A decision that a challenge is premature is not a "decision with respect to jurisdiction" within the terms of article 82(1)(a) of the Statute. Rather, as the Appeals Chamber has held, this phrase means "that *the operative part of the decision itself must pertain directly* to a question on the jurisdiction of the Court."¹⁴

7. The operative part of the Decision does not determine any aspect of jurisdiction.¹⁵ Specifically, it does not determine subject matter jurisdiction or jurisdiction over persons; it does not determine territorial jurisdiction or temporal jurisdiction.¹⁶ Rather, the operative part of the Decision is *procedural*. The Decision tells Israel that it could not make a challenge to jurisdiction before the Court had taken a decision under article 58 of the Statute, and also holds that such a challenge could potentially be made once that condition was satisfied.¹⁷ In short, the Decision applied the procedural law concerning jurisdictional challenges, and did not determine jurisdiction itself.

¹⁰ Statute, art. 82(1)(a); [Appeal](#), para. 24.

¹¹ [Decision](#), para. 16.

¹² [Decision](#), para. 17.

¹³ [Decision](#), p. 7.

¹⁴ ICC-01/09-78 ("[Kenya Admissibility AD](#)"), para. 15 (emphasis added).

¹⁵ See [Comoros Admissibility AD](#), para. 50; see also [Abd-al-Rahman Admissibility AD](#), para. 8 (dismissing the Defence appeal because "the Impugned Decision makes no pronouncement with respect to any of the types of jurisdiction"); *contra* [Appeal](#), paras. 22-24.

¹⁶ See ICC-02-05-01/20-503 ("[Abd-al-Rahman Jurisdiction AD](#)"), para. 42.

¹⁷ [Decision](#), paras. 17-18.

8. In line with the Court's consistent jurisprudence,¹⁸ Israel's Appeal should therefore be dismissed *in limine* and the appeal proceedings discontinued.

B. The Suspension Request fails as it depends on the admissibility of the appeal

9. Since Israel's Appeal is inadmissible, it follows that the request for suspensive effect falls away. Israel's Suspension Request should thus also be rejected *in limine*. In any event, there is no legal basis to suspend the arrest warrants issued by the Pre-Trial Chamber.

10. Should the Appeals Chamber wish to receive further submissions on the admissibility of the appeal and/or Israel's Suspension Request, the Prosecution stands ready to provide them.

III. RELIEF REQUESTED

11. For these reasons, Israel's Appeal should be dismissed *in limine*. The Appeals Chamber should likewise dismiss Israel's Suspension Request.



Karim A.A. Khan KC, Prosecutor

Dated this 29th day of November 2024

At The Hague, The Netherlands

¹⁸ [Comoros Admissibility AD](#), para. 45. There are no convincing reasons to depart from this jurisprudence: [ICC-02/11-01/15-172](#), para. 14 cited in [ICC-01/14-01/21-318](#), para. 45.