

**Cour
Pénale
Internationale**



2024/11/21

**International
Criminal
Court**

Original: English

No.: ICC-01/18

Date: 21 November 2024

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public

**Decision on Israel's request for an order to the Prosecution to give an Article
18(1) notice**

Decision 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
Mr Andrew Cayley

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives
State of Israel

Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on the ‘Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice’ (the ‘Request’)¹ by the State of Israel (‘Israel’).

I. Procedural history

1. On 1 January 2015, the State of Palestine (‘Palestine’) accepted the jurisdiction of the Court from 13 June 2014 onwards by way of an article 12(3) declaration,² and the next day, on 2 January 2015, Palestine acceded to the Rome Statute (the ‘Statute’).³
2. On 22 May 2018, Palestine referred the situation in the State of Palestine to the Prosecution pursuant to articles 13(a) and 14 of the Statute, following which the Presidency referred the *Situation in the State of Palestine* (the ‘Situation’) to the Chamber.⁴
3. On 17 November 2023, the Prosecution received referrals, pursuant to articles 13(a) and 14 of the Statute, from five State Parties.⁵ On 14 January 2024, two more State Parties submitted such a referral to the Prosecution.⁶

¹ 23 September 2023, ICC-01/18-355-SECRET-Exp-AnxI-Corr, together with secret Annexes A to G, only available to the Prosecution and the State of Israel. Pursuant to an order by the Chamber on 4 October 2024, the request was reclassified as public: ICC-01/18-355-AnxI-Corr. In the present decision, the Chamber will refer to certain information contained in the annexes classified as secret or in other filings, such as the Prosecution’s response to the Request, that are at present classified as secret. The information referred to is either publicly known, or the Chamber considers it appropriate to make the relevant information or the existence of a filing public, as part of the present decision.

² Annex I to Presidency, Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I, 24 May 2018, ICC-01/18-1-Anx1 (‘Annex to Presidency Decision’).

³ Secretary-General of the United Nations, ‘Rome Statute of the International Criminal Court, Rome, 17 July 1998, State of Palestine: Accession’, 6 January 2015, C.N.13.2015, Treaties XVIII.10.

⁴ Annex to Presidency Decision, p. 3. On 22 April 2024, the Presidency designated Judge Guillou to replace a judge of the Chamber: Presidency, Decision replacing a judge in Pre-Trial Chamber I, 22 April 2024, ICC-01/18-164-SECRET. On 20 May 2024, on instruction of the Presidency, this decision was reclassified as public. On 25 October 2024, the Presidency designated Judge Hohler to replace a judge of the Chamber: Presidency, Decision replacing a judge in Pre-Trial Chamber I, 24 October 2024, ICC-01/18-366.

⁵ See Prosecutor’s consolidated response to observations by interveners pursuant to article 68(3) of the Rome Statute and rule 103 of the Rules of Procedure and Evidence, 23 August 2024, ICC-01/18-346 (‘Consolidated Response’), para. 4, referring to 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, State Party referral in accordance with Article 14 of the Rome Statute of the International Criminal Court, 17 November 2023, available at <<https://www.icc-cpi.int/sites/default/files/2023-11/ICC-Referral-Palestine-Final-17-November-2023.pdf>>.

⁶ See Consolidated Response, referring to The Republic of Chile and the United Mexican States, State Party referral in accordance with Article 14 of the Rome Statute of the International Criminal Court, 18 January 2024, available at <https://www.icc-cpi.int/sites/default/files/2024-01/2024-01-18-Referral_Chile_Mexico.pdf>.

4. On 23 August 2024, the Registry transmitted to the Chamber a request by Israel for an extension of the page limit from 20 to 35 pages for an intended filing ‘in relation to the Prosecutor’s non-compliance with article 18(1) of the Statute, and its consequences’.⁷ On 5 September 2024, the Prosecution opposed the request for extension of the page limit.⁸ On 12 September 2024, the Registry transmitted to the Chamber a request by Israel for leave to reply to the Prosecution’s response to the request for an extension of the page limit.⁹
5. On 20 September 2024, the Registry transmitted to the Chamber the Request, in which the State of Israel (‘Israel’) requests the Chamber to ‘require the Prosecutor to give an article 18(1) notice setting out the new defining parameters of his investigation in this Situation, or in any other Situation that has now been constituted as a result of the two referrals made by a total of seven States Parties following 7 October 2023’.¹⁰
6. On 27 September 2024, the Chamber received the Prosecution’s response to the Request (the ‘Response’),¹¹ arguing that the Request should be dismissed *in limine* for lack of standing. Furthermore, the Prosecution submits that the cases described in its applications under article 58 of the Statute fall within the parameters of this Situation; that its notification under article 18(1) of the Statute was sufficiently specific and consistent with the Palestine’s referral; and that Israel misunderstands the Court’s jurisprudence.¹²
7. On 7 October 2024, the Registry transmitted to the Chamber a request by Israel for leave to reply to the Response (the ‘Leave to Reply Request’).¹³

⁷ 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.

⁸ 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).

⁹ Registry Transmission of a ‘Request for leave to reply to the ‘Prosecution Response to Israel’s “Request to extend the page limit for submission concerning article 18(1)” (ICC-01/18-345-SECRET-Exp-Anx)’, ICC-01/18-352-SECRET-Exp.

¹⁰ Request, para. 61.

¹¹ 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-Anx1-Corr, ICC-01/18-360-SECRET-Exp.

¹² Response, paras 22-28.

¹³ ICC-01/18-362-SECRET-Anx.

II. Determination

Preliminary matters

8. The Chamber observes that Israel submitted the Request before the Chamber ruled on its request for an extension of the page limit and the related request for leave to reply to the Prosecution's opposition to such an extension. These requests have become moot with the submission of the Request.
9. As to the Leave to Reply Request, the Chamber considers that the Request and Response are clear and that no further submissions are required for the Chamber to consider the matter.

Consideration of the merits of the Request

10. Based on the submissions of Israel and the Prosecution, as well as the material before the Chamber, the Chamber understands that:
 - On 9 March 2021, the Prosecution notified all States Parties and other States with jurisdiction, including Israel, pursuant to article 18(1) of the Statute, that it had initiated an investigation in the Situation (the 'Notification').¹⁴
 - On 8 April 2021, Israel sent a letter to the Prosecution, indicating its 'firm [...] view that the Court manifestly lacks jurisdiction' over the Situation; and submitting that 'Israel's robust legal system [...] has and will continue to examine and investigate rigorously all allegations of misconduct or crimes [...] and to hold to account those persons within its jurisdiction found to be responsible' (the '8 April 2021 Letter').¹⁵
 - On 9 April 2021, with reference to the 8 April 2021 Letter, the Prosecution sent a letter to Israel, *inter alia*, requesting clarification whether it was 'the Government of Israel's intention [...] to trigger the application of article 18(2) of the Statute, and if so, the specific domestic proceedings to which any request for deferral under article 18(2) might relate' (the 'Clarification Request').¹⁶

¹⁴ ICC-01/18-355-SECRET-Exp-AnxB.

¹⁵ ICC-01/18-355-SECRET-Exp-AnxC.

¹⁶ ICC-01/18-355-SECRET-Exp-AnxD.

- On 26 April 2021, the Legal Advisor of the Embassy of Israel to The Netherlands sent an email to the Prosecution, conveying that Israel: (i) ‘maintains its principled position that the Court manifestly lacks jurisdiction’ over the Situation; (ii) ‘maintains its grave reservations [...] regarding the handling of this situation by the OTP’; and (iii) ‘will continue to examine and investigate rigorously all allegations of misconduct or crimes, regardless of their source, and to hold to account those responsible’ (the ‘26 April 2021 Letter’).¹⁷
- On 1 May 2024, Israel sent a letter to the Prosecution requesting it to ‘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’ (the ‘1 May 2024 Letter’).¹⁸
- On 7 May 2024, the Prosecution responded to the 1 May 2024 Letter by stating that Israel has ‘no standing now, under the Statute, to make such an application’ given that it had ‘expressly declined to make an application for deferral of the investigation within the prescribed time limit’.¹⁹

11. In its Request, Israel *inter alia* submits that, in its 8 April 2021 Letter, it asserted that the Notification was not ‘sufficiently specific’ and that it reiterated this assertion in its 26 April 2021 Letter. Israel does not indicate what the consequence of its contention would be, but to the extent it intends to argue that the Notification was deficient and as such cannot have served as a notification pursuant to article 18(1) of the Statute, this argument fails. Based on the material before it, the Chamber considers that the Prosecution complied with its statutory obligations when it provided Israel and other States with the Notification. As explained by the Appeals Chamber, a notification under article 18(1) of the Statute ‘shall contain information “relevant for the purposes of article 18 paragraph 2” of the Statute’, namely: 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 the Prosecution intends

¹⁷ ICC-01/18-355-SECRET-Exp-AnxE.

¹⁸ ICC-01/18-355-SECRET-Exp-AnxF.

¹⁹ ICC-01/18-355-SECRET-Exp-AnxG.

to investigate.²⁰ The Chamber specifically notes that the Notification included the types of alleged crimes, potential alleged perpetrators, the starting point of the relevant timeframe, as well as a reference to further relevant information, including the summary of the Prosecution's preliminary examination findings. Therefore, the Notification was sufficiently specific.²¹

12. Based on the material before it, the Chamber notes that, despite the Prosecution's Clarification Request, Israel did *not* proceed to request a deferral under article 18(2) of the Statute in 2021. Instead, it merely repeated its previous arguments on the Court's alleged lack of jurisdiction and stated that it continued investigating all relevant crimes. In this regard, the Chamber recalls that, '[f]or a State to be successful in seeking a deferral [...], it is [neither] enough for it to make a blanket statement that the Court lacks [...] jurisdiction [...];²² nor to simply assert that it is investigating or prosecuting crimes which may constitute crimes under article 5 of the Statute and that relate to the notification under article 18(1) of the Statute.²³ Therefore, Israel's 8 April 2021 Letter and 26 April 2021 Letter did not constitute a deferral request under article 18(2) of the Statute.
13. The Chamber further notes that, pursuant to article 18(2) of the Statute, a State may inform the Court that 'it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States [provided by the Prosecution under article 18(1) of the Statute]' within a period of one month of receipt of said notification. In light of this, the statutory time limit had passed in April 2021 without Israel having requested a deferral under article 18(2) of the Statute.
14. In any case, filing of the Request at this point in time – namely after the Prosecution announced it had filed applications for warrants of arrest and three years after the passing of the statutory time limit – appears to go against the very object and purpose of the

²⁰ Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute", 1 March 2024, ICC-02/18-89 (the '*Venezuela* OA Judgment'), para. 114; see also para. 110.

²¹ *Venezuela* OA Judgment, paras 116.

²² *Venezuela* OA Judgment, para. 12.

²³ See *Venezuela* OA Judgment, paras 64-78. See also Appeals Chamber, *Situation in the Republic of the Philippines*, Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation", 18 July 2023, ICC-01/21-77, para. 76.

statutory complementarity framework. The purpose of Article 18(2) proceedings is to allow for complementarity-related admissibility challenges to be brought at the initial stage of the investigation and not at a point in time when the investigation has substantially advanced. Where a State is given the opportunity to assert its right to exercise jurisdiction, but it has declined, failed or neglected to do so, the investigation may proceed.

15. The Chamber is also not persuaded by Israel's submissions that 'a new situation has arisen',²⁴ or an 'investigation with new "defining parameters" has been taking place since 7 October 2023'.²⁵ The Chamber notes that the Notification indicated that the investigation concerned alleged crimes in the context of an international armed conflict, Israel's alleged conduct in the context of an occupation, and a non-international armed conflict between Hamas and Israel. In the applications for warrants of arrest, as also explained by the Prosecutor in his public statement at the time of filing the applications, the Prosecution alleges conduct committed in the context of the same type of armed conflicts, concerning the same territories, with the same alleged parties to these conflicts. Therefore, no substantial change has occurred to the parameters of the investigation into the situation.²⁶ The Chamber notes that Israel's position would effectively mean that the Prosecution's investigation in every situation would be limited to the incidents and crimes addressed during the preliminary examination and described in the article 18 notification. Such interpretation has already been rejected by the Appeals Chamber.²⁷ There was, and is, therefore, no obligation for the Prosecution to provide a new notification to the relevant States pursuant to article 18(1) of the Statute, and as such to provide a new one-month timeline for requests for deferral.
16. The Chamber's conclusions do not impact, in any way, on the ability of States, including Israel, to raise issues of admissibility for cases brought by the Prosecution in the context of the investigation. Indeed, article 19(2)(b) of the Statute allows 'a State which has

²⁴ Request, paras 2, 19-30.

²⁵ Request, paras 31-58.

²⁶ See also Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber II entitled "Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation", ICC-02/17-138, 5 March 2020.

²⁷ *Ibid*, para. 63-64. See also *Venezuela* OA Judgment, para. 230. The Appeals Chamber reiterated that the obligation to provide sufficiently specific information in an article 18 notification does not in any way limit the Prosecution's future investigations.

jurisdiction over a case' to challenge the admissibility of such a case, 'on the ground that it is investigating or prosecuting or has investigated or prosecuted' the respective case.

THE CHAMBER HEREBY, FOR THE ABOVE REASONS,

DECLARES Israel's request for an extension of the page limit and its request for leave to reply to the Prosecution's response to the page limit request moot;

REJECTS Israel's request for leave to reply; and

REJECTS Israel's request for an order to the Prosecution to give an Article 18(1) notice and staying proceedings pending such notice.

Done in English. A French translation will follow. The English version remains authoritative.

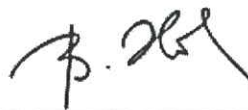


Judge Nicolas Guillou

Presiding



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge Beti Hohler

Dated this Thursday, 21 November 2024

At The Hague, The Netherlands