

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/18**

Date: **27 November 2024**

PRE-TRIAL CHAMBER I

Before:

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

SITUATION IN THE STATE OF PALESTINE

Public

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

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 with respect to 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 ICC 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, *ab initio*, 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 investigation – has now affirmed that deeply flawed approach.⁴

3. The fundamental error committed by the Pre-Trial Chamber is its finding that no “new situation has arisen” and that “no substantial change has occurred in the parameters of the investigation into the situation” since 7 October 2023.⁵ This conclusion does not accord with reality or common sense. No one could have foreseen or contemplated that the nature, scale, type, or context of the criminality alleged in the Prosecution’s arrest warrants would be part of the ICC’s investigations as defined in the notification given in March 2021. The change of circumstance is so fundamental that seven States, following 7 October 2023, sent referrals

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”).

⁵ Impugned Decision, para. 15.

purportedly triggering the jurisdiction of the Court, purporting not only to encourage renewed investigations, but referring new crimes, new events, and a new situation of crisis.

4. Israel hereby urgently requests leave to appeal the Impugned Decision, which is infected by fundamental errors of both law and fact. The Impugned Decision involves issues that significantly affect the fair and expeditious conduct of proceedings, or their outcome, and for which immediate resolution by the Appeals Chamber may materially advance the proceedings.

II. PROCEDURAL HISTORY AND RELEVANT EVENTS

5. On 3 March 2021, following a Palestinian referral⁶ and a majority decision of the Pre-Trial Chamber I concerning the Court's territorial jurisdiction,⁷ the OTP announced the initiation of an investigation into “the Situation in Palestine.”⁸ On 9 March 2021, the then Prosecutor provided a notification of this investigation to States, including to Israel, pursuant to article 18(1).⁹

6. 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.”¹⁰ 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).¹¹ 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.”¹² The Prosecution did not reply to this communication.

7. 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 and destroyed border posts; killed more than a thousand Israeli citizens;

⁶ [Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I](#), 24 May 2018, ICC-01/12-1-AnxI, References to the 2018 referral are without prejudice to Israel’s position on jurisdiction.

⁷ 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.

⁸ [Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#), 3 March 2021.

⁹ 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.

¹⁰ Article 18 Request, Annex C.

¹¹ Article 18 Request, Annex D.

¹² Article 18 Request, Annex E.

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.

8. 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.”¹³ This “referral” refers not only to the “continuing commission of the crimes detailed in the [previous] Referral by the State of Palestine,”¹⁴ but also asserts that “additional crimes appear to have been committed within the jurisdictional scope of the Court”.¹⁵ The “additional crimes” identified in this new “referral” are alleged to extend as far as genocide and the war crime of starvation¹⁶ – 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.¹⁷

9. 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 2023.¹⁸ 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.¹⁹

10. 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

¹³[“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.

¹⁴ [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.

¹⁵ *Id.* para. 2.3 (underline added).

¹⁶ *Id.* paras. 2.3, 2.4.1.

¹⁷ [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”).

¹⁸ [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.

¹⁹ *Id.* p. 2.

proceedings under its national legal system, as further explained below.”²⁰ 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.”²¹

11. 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.”²²

12. 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.²³

13. 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.²⁴ On 5 September 2024, the Prosecution filed a response opposing this request.²⁵

14. 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.²⁶

15. On the same day, Israel filed its Challenge to the Jurisdiction of the Court pursuant to article 19(2) of the Rome Statute.²⁷

16. 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*

²⁰ Article 18(1) Request, Annex F.

²¹ *Id.*

²² Article 18(1) Request, Annex G.

²³ [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#), 20 May 2024.

²⁴ 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.

²⁵ 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).

²⁶ Article 18 Request.

²⁷ 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”).

decision issuing arrest warrants against the Prime Minister of Israel, Benjamin Netanyahu, and the former Minister of Defence, Mr. Yoav Gallant.²⁸

III. APPLICABLE LAW

17. A decision is subject to appeal, pursuant to Article 82(1)(d), where it:

involves an issue that would significantly affect the fair and expeditious conduct of proceedings or the outcome of the trial, and for which, in the opinion of the [...] Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

18. The Appeals Chamber has defined an “issue” as:

an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is a disagreement or conflicting opinion. There may be disagreement or conflict of views on the law applicable for the resolution of a matter arising for determination in the judicial process. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.²⁹

19. “Essential” implies that the issue is necessary for determination of the impugned decision, “not merely a question over which there is disagreement or conflicting opinion.”³⁰

The issue must further be one for which:

immediate resolution by the Appeals Chamber will settle the matter posing for decision through its authoritative determination, ridding thereby the judicial process of possible mistakes that might taint either the fairness of the proceedings or mar the outcome of the trial.³¹

20. An appealable issue may be “legal or factual or mixed.”³² Issues certified for appeal usually involve a mixture of law and fact in one degree or another. There is no set formula for articulating an appealable issue, and the form of such issues that have been approved in the past reflect the variety of situations from which they arise:

Whether the Chamber had already made the requisite findings under Article 87(7) of the Statute that the Kenyan Government failed to comply with the Prosecution’s cooperation request, such that it ought to have referred the matter to the Assembly of States Parties (‘ASP’); or in the alternative, if the Chamber’s findings are not considered ‘formal’ or ‘judicial’ findings under Article 87(7)

²⁸ [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.

²⁹ *Situation in the Democratic Republic of the Congo*, Judgment on Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber’s 31 March 2006 Decision Denying Leave to Appeal, ICC-01/04-168, 13 July 2006, (“Leave to Appeal Judgment”), para. 9.

³⁰ *Lubanga*, Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims’ Participation of 18 January 2008, ICC-01/04-01/06-1191, , 26 February 2008, para. 8.

³¹ Leave to Appeal Judgment, para 14.

³² Leave to Appeal Judgment, para. 9.

of the Statute, whether it had any discretion not to enter the required finding under that provision and thus refer the matter to the ASP.³³

...

[W]hether the Chamber erred in law when finding that, for the purpose of providing notice, as far as the legal characterisation of the facts is concerned, it is not necessary for the charges to set out the constituent legal elements of the alleged mode(s) of liability”.³⁴

...

[W]hether the Chamber erred in finding that Mr Yekatom was sufficiently informed of the contours of the ‘common plan’ and his alleged ‘essential contribution’ although PTC II had not used this terminology established in the jurisprudence of the Court to characterise the relevant facts”.³⁵

...

Whether the Chamber erred in permitting the trial to proceed in respect of charges for which the Chamber declined to consider the sufficiency of the Prosecution’s evidence;³⁶

...

Whether declining to entertain a Defence motion for a judgement of partial acquittal is a discretionary matter”.³⁷

...

Whether the Chamber erred in law by finding that the Rule 68(2)(d)(i) requirement that the witness must have ‘failed to give evidence with respect to a material aspect’ may be fulfilled in situations where the witness does attend, but recants fundamental aspects of their prior recorded testimony”.³⁸

Whether the Chamber erred in law in its interpretation of the Rule 68(2)(d)(i) ‘interest of justice’ requirement by finding Rule 68(2)(d)’s purpose is the same as contempt proceedings namely to protect the integrity of the proceedings as a reactionary measure and not that the requirement is linked to the main purpose of Rule 68 of the Rules, which is to expedite trial proceedings”.³⁹

...

Whether the test for an excusal of the accused developed by the Majority is supported by the applicable law.⁴⁰

IV. SUBMISSIONS AS TO APPEALABLE ISSUES

³³ *Kenyatta*, Decision on the Prosecution’s request for leave to appeal, 9 March 2015, ICC-01/09-02/11-1004, (“*Kenyatta* Leave Decision”), para. 9.

³⁴ *Yekatom & Ngaiissona*, Decision on the Yekatom Defence Request for Leave to Appeal the Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial, ICC-01/14-01/18-730, 13 November 2020, para. 3.

³⁵ *Id.* paras. 14-16.

³⁶ *Ntaganda*, Judgment on the appeal of Mr Bosco Ntaganda against the “Decision on Defence request for leave to file a ‘no case to answer’ motion”, ICC-01/04-02/06-2026, 5 September 2017, para. 7.

³⁷ *Id.*

³⁸ *Yekatom & Ngaiissona*, Decision on the Ngaiissona Defence Request for Leave to Appeal the Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(d) of the Rules, ICC-01/14-01/18-2163, 25 October 2023, para. 2.

³⁹ *Id.*

⁴⁰ *Ruto et al.*, Decision on Prosecution’s Application for Leave to Appeal the ‘Decision on Mr Ruto’s Request for Excusal from Continuous Presence at Trial’, ICC-01/09-01/11-817, 18 July 2013, para. 2(ii), 18-19.

A. First Issue: Whether the Pre-Trial Chamber erred in finding that no new situation had arisen, and that no substantial change had occurred in the parameters of the investigation into the situation, following 7 October 2023

21. Israel submits that the Pre-Trial Chamber erred in concluding that there had been “no substantial change” in “the parameters” of the Prosecution’s investigation.⁴¹ Viewed in conjunction with the jurisprudence developed in the *Venezuela* and *The Philippines* situations, this is the decisive and determinative finding for the pre-Trial Chamber’s conclusion that the Prosecutor was not required to issue a new article 18(1) notice following 7 October 2023. This conclusion was based, in turn, on the Pre-Trial Chamber’s assessment of certain criteria, namely type of armed conflicts, geography, and parties to the conflict. Israel submits that the Pre-Trial Chamber misapplied these criteria, and failed to take into consideration other relevant criteria, in reaching this conclusion. Furthermore, the Pre-Trial Chamber erroneously relied on a decision rendered by the Appeals Chamber in the *Afghanistan* situation addressing only the issue of the scope of an investigation authorized under article 15, not the separate question of the conditions requiring the issuance of a new article 18(1) notification. Accordingly, this is an issue that arises directly from the Impugned Decision, and that is decisive – i.e. “essential” – to its ultimate rejection of the Article 18(1) Request.⁴² The issue is not merely one with which Israel disagrees, but is one that was necessary for, and integral to, the Pre-Trial Chamber’s determination of the request.

B. Second Issue: Whether the Pre-Trial Chamber erred in finding that any other approach “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”

22. The Pre-Trial Chamber erred in positing that Israel’s approach, as derived from the jurisprudence set out in the *Venezuela* and *Philippines* situations, would mean that investigations are limited to specific incidents expressly enumerated in an article 18(1) notice. This *in terrorem* scenario mischaracterizes the position set out in the Article 18(1) Request, and relied on precedent from the entirely different context of the scope of an authorization under Article 15 of the Statute.⁴³ In addition, the Pre-Trial Chamber hardly addressed at all the

⁴¹ Impugned Decision, para. 15.

⁴² *Yekatom & Ngaiissona*, Decision on the Yekatom Defence Request for Leave to Appeal the Decision on Motions on the Scope of the Charges and the Scope of the Evidence at Trial, ICC-01/14-01/18-730, 13 November 2020, para. 16 (“The Second Issue constitutes an appealable issue and is more than a mere disagreement with the Impugned Decision. Its resolution is essential to determine whether Mr Yekatom was sufficiently informed of the contours of the ‘common plan’ and his alleged ‘essential contribution’”).

⁴³ Impugned Decision, para. 15, fn. 26.

relevant Appeals Chamber jurisprudence, taking out of context a single phrase which again conflates the issue of the scope of investigations and the notice requirements of article 18.⁴⁴

23. Despite the lack of reasoning substantiating this approach, the Pre-Trial Chamber's ultimate disposition of the Article 18(1) Request appears to have been substantially impacted by it. The *in terrorem* scenario appears immediately prior to the ultimate conclusion that "[t]here was, and is, therefore, no obligation for the Prosecution to provide a new notification." This is, accordingly, an issue that arises directly from the Impugned Decision and which appears to have had a substantial impact on – i.e. was "essential" to – the Pre-Trial Chamber's ultimate determination.

C. Third Issue: The Pre-Trial Chamber erred in asserting that any investigation into the events following 7 October 2023 had "substantially advanced" prior to that date

24. The Pre-Trial Chamber reasoned that Israel's Article 18(1) Request goes "against the very object and purpose of the statutory complementarity framework" because the purpose of article 18(2) challenges 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.**"⁴⁵

25. The investigations that are the basis for the arrest warrants issued by the Pre-Trial Chamber had not, however, "substantially advanced" prior to 7 October. On the contrary, all the public statements concerning the content of the arrest warrants, including by the Pre-Trial Chamber itself, demonstrates that they are limited to events and circumstances that arose after 7 October 2023. All relevant investigations must have been conducted after that date. Accordingly, the Prosecutor could have given an article 18(1) notice at the very start of his investigations into the post-7 October events, and "not at a point in time when the investigation has substantially advanced."

26. The ability to do so, in fact, arose from the fundamentally and radically different nature of events after 7 October compared to what had gone before. An article 18(1) notice could, accordingly, have been given at the very beginning of the Prosecution's intended investigations into those events without having ongoing investigations interrupted in any meaningful way.

⁴⁴ Impugned Decision, para. 15, fn. 27.

⁴⁵ Impugned Decision, para. 14 (emphasis added).

Instead, the Prosecutor used the existence of an investigation with fundamentally different parameters as a pretext to avoid giving a new article 18(1) notice, which could perfectly feasibly and practically have been given. Indeed, it is not the duration of a pre-existing investigation that governs whether complementarity requires the issuance of a new article 18(1) notice, but whether the defining parameters of a long-running investigation have changed as a result of changing circumstances.

27. Accordingly, the Chamber erred in relying on its observation that any relevant investigation had substantially advanced in a way that precluded, or weighed against the obligation of giving, an article 18(1) notice.

28. This third issue arises directly from the decision. The Pre-Trial Chamber's pronouncement that the timing of Israel's Article 18(1) Request "go[es] against the very object and purpose of the statutory complementarity framework," suggest that it was given substantial, if not decisive, weight in the reasoning that followed. This is, accordingly, an issue that arises directly from the Impugned Decision and which appears to have had a substantial impact on – i.e. was "essential" to – the Pre-Trial Chamber's reasoning and ultimate conclusion.

D. The appealable issues affect the fair and expeditious conduct of proceedings, and immediate resolution thereof by the Appeals Chamber may materially advance the proceedings

29. The three issues, individually and cumulatively, significantly affect the fair and expeditious conduct of proceedings.

30. Proceedings undertaken by the ICC without complying with the procedures of complementarity would be unlawful. Unlawful proceedings could never be considered fair or expeditious. The requirement of fair and expeditious proceedings extends to all phases and attributes of the Court's purported exercise of authority, including "any judicial proceedings arising out of the relevant investigations," including in the absence of charges pending against an accused.⁴⁶

31. That same approach applies with even greater force when arrest warrants have been issued and entail requests that they be enforced, and sanctions against States who may choose

⁴⁶ *Kenyatta* Leave Decision, para. 26 ("Therefore, the Chamber considers that, notwithstanding the fact that the charges against Mr Kenyatta have been withdrawn, the 'fair and expeditious conduct of the proceedings' prong of the test, for the purposes of the Request, extends to any judicial proceedings arising out of the relevant investigations").

not to enforce them, in circumstances where the legality of the arrest warrants is in doubt. It may also have a significant impact on the legitimacy of the Court, its standing in the international community, and its ability to encourage voluntary or legally required cooperation with the Court in these and other proceedings before the Court.⁴⁷ Accordingly, the foregoing issues – which concern the “central premise of the Court’s exercise of jurisdiction”⁴⁸ – significantly affect the fairness and expeditiousness of proceedings.

32. Immediate resolution of the issues may – indeed, will – materially advance the proceedings. The term “advance” has been described as relating to the attribute of “ensuring that the proceedings follow the right course” in circumstances where later discovery of error would be a setback:

Removing doubts about the correctness of a decision or mapping a course of action along the right lines provides a safety net for the integrity of the proceedings. A wrong decision in the context of article 82(1)(d) of the Statute unless soon remedied on appeal will be a setback to the proceedings in that it will leave a decision fraught with error to cloud or unravel the judicial process. In those circumstances the proceedings will not be advanced but on the contrary they will be set back.⁴⁹

33. The earliest possible resolution of these issues is vital to the protection of the integrity of these proceedings and the Court’s processes. The consequences of the arrest warrant decisions, which were based on the disposition of the Impugned Decision,⁵⁰ are far-reaching, unpredictable and irreversible. The reputational damage to the Court that would arise from calling for the arrest of democratically elected leaders 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

⁴⁷ *Kenyatta Leave Decision*, para. 28 (“the capacity of the Prosecution to secure future and ongoing cooperation would be significantly affected by whether or not the Chamber had appropriately exercised its discretion in this instance”).

⁴⁸ *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.

⁴⁹ [Leave to Appeal Judgment](#), paras. 15-16

⁵⁰ 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).

they are used as an excuse to cut off diplomatic communications. In the event that the arrest warrants were ever to be executed, the consequences are simply incalculable, but they would certainly be irreversible. In these circumstances, the “safety net” of appellate review is particularly timely and necessary at the present juncture.

34. The importance of the issues to these specific proceedings, and to the Court as a whole, cannot be overstated. Immediate appellate resolution of the issues arising from the Impugned Decision is in the interest of the Court, the Prosecution, and Israel.

V. CONCLUSION AND RELIEF REQUESTED

35. For the foregoing reasons, Israel respectfully requests that the Pre-Trial Chamber:

GRANT leave to appeal the Impugned Decision.

Respectfully submitted:



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

Dated 27 November 2024.

At Jerusalem, Israel.