

**Original: English****No. ICC-01/18 OA2****Date: 24 April 2025****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 document****Judgment****on the appeal of the State of Israel 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"**

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

**The Office of the Prosecutor**

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel  
for Victims**

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

**States' Representatives**

**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**

**Other**  
Pre-Trial Chamber I

The Appeals Chamber of the International Criminal Court,

In the appeal of the State of Israel against the decision of Pre-Trial Chamber I entitled “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” of 21 November 2024 (ICC-01/18-374),

After deliberation,

Unanimously,

*Delivers* the following

## JUDGMENT

1. The State of Israel’s appeal 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” is admissible under article 82(1)(a) of the Statute;
2. The State of Israel’s request for leave to reply is rejected;
3. 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” is reversed and remanded for Pre-Trial Chamber I to rule on the substance of the State of Israel’s jurisdictional challenge;
4. The State of Israel’s request for suspensive effect of two arrest warrants issued by Pre-Trial Chamber I and “any other purported exercise of jurisdiction by the Court” is dismissed as moot; and
5. The requests of the Office of the Public Counsel for Victims and the European Centre for Law and Justice are dismissed as moot.

## REASONS

### I. PROCEDURAL HISTORY

1. On 21 January 2009, the Minister of Justice of the State of Palestine (hereinafter: “Palestine”) lodged a declaration under article 12(3) of the Rome Statute

(hereinafter: “Statute”) “for acts committed on the territory of Palestine since 1 July 2002” (hereinafter: “2009 article 12(3) Declaration”).<sup>1</sup>

2. On 3 April 2012, the Prosecutor decided not to initiate an investigation following the 2009 article 12(3) Declaration, on the basis that the preconditions for the exercise of jurisdiction under article 12 of the Statute had not been complied with, as it required determining whether Palestine qualified as a “State”. The Prosecutor concluded that the Statute “provides no authority for the Office of the Prosecutor to adopt a method to define the term ‘State’”, and that it was for the relevant organs of the United Nations (hereinafter: “UN”) or the Assembly of States Parties to make such determination.<sup>2</sup>

3. On 29 November 2012, the UN General Assembly (hereinafter: “UNGA”) issued Resolution 67/19, which, *inter alia*, reaffirmed “the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967” and accorded Palestine “non-member observer State” status in the UN.<sup>3</sup>

4. On 31 December 2014, Palestine lodged a renewed declaration under article 12(3) of the Statute in respect of “crimes within the jurisdiction of the Court committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”.<sup>4</sup>

5. On 2 January 2015, Palestine acceded to the Statute.<sup>5</sup>

6. On 16 January 2015, the Prosecutor opened a preliminary examination into the Situation in Palestine, noting that UNGA Resolution 67/19 was “determinative of Palestine’s ability to accede to the Statute pursuant to article 125, and equally, its ability to lodge an article 12(3) declaration”.<sup>6</sup>

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<sup>1</sup> Palestinian National Authority, Ministry of Justice, [Declaration recognizing the Jurisdiction of the International Criminal Court](#).

<sup>2</sup> Office of the Prosecutor, [Declaration on the Situation in Palestine](#).

<sup>3</sup> United Nations, General Assembly, Resolution adopted by the General Assembly on 29 November 2012, 4 December 2012, [A/RES/67/19](#).

<sup>4</sup> President of the State of Palestine, [Declaration Accepting the Jurisdiction of the International Criminal Court](#).

<sup>5</sup> Rome Statute of the International Criminal Court, State of Palestine Accession, 6 January 2015, [C.N.13.2015.TREATIES-XVIII.10](#).

<sup>6</sup> ICC Press Release, [The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine](#).

7. On 22 May 2018, pursuant to articles 13(a) and 14 of the Statute, Palestine referred to the Prosecutor the Situation related to “past, ongoing and future crimes within the court’s jurisdiction, committed in all parts of the territory of the State of Palestine”.<sup>7</sup>

8. On 20 December 2019, the Prosecutor issued a statement announcing that the preliminary examination into the Situation in Palestine had concluded with the determination that all the statutory criteria under the Statute for the opening of an investigation had been met. However, the Prosecutor indicated that, “given the unique and highly contested legal and factual issues attaching to this situation, namely, the territory within which the investigation may be conducted”, she deemed it necessary to request from the Pre-Trial Chamber a jurisdictional ruling under article 19(3) of the Statute.<sup>8</sup>

9. On 22 January 2020, the Prosecutor submitted before Pre-Trial Chamber I (in a different composition) a request for a ruling, pursuant to article 19(3) of the Statute, on the Court’s territorial jurisdiction in Palestine (hereinafter: “Request for ruling under article 19(3)”).<sup>9</sup> Specifically, the Prosecutor sought confirmation that the “territory” over which the Court may exercise its jurisdiction under article 12(2)(a) of the Statute comprised the Occupied Palestinian Territory, that is the West Bank, including East Jerusalem, and Gaza.<sup>10</sup>

10. On 5 February 2021, Pre-Trial Chamber I issued a decision on the Prosecutor’s request for ruling under article 19(3) of the Statute (hereinafter: “Article 19(3) Decision”).<sup>11</sup> Pre-Trial Chamber I found unanimously that “Palestine is a State Party to the Statute”, and by majority, with Judge Péter Kovács dissenting,<sup>12</sup> that “Palestine

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<sup>7</sup> [Annex I to Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I](#), 24 May 2018, ICC-01/18-1-AnxI, para. 9.

<sup>8</sup> Office of the Prosecutor, [Statement of ICC Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the Situation in Palestine, and seeking a ruling on the scope of the Court’s territorial jurisdiction](#).

<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, with [Annex A](#).

<sup>10</sup> [Request for ruling under article 19\(3\)](#), para. 5.

<sup>11</sup> 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.

<sup>12</sup> See [Partly Dissenting Opinion of Judge Péter Kovács](#), 5 February 2021, ICC-01/18-143-Anx1 annexed to [Article 19\(3\) Decision](#). In the view of Judge Péter Kovács, “[...] the Prosecutor may exercise her investigative competences *under the same circumstances that would allow Palestine, as a State Party, to assert jurisdiction over such crimes under its legal system*, namely by duly taking into account the

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 in the Situation in Palestine extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem”.<sup>13</sup>

11. On 3 March 2021, the Prosecutor announced the initiation of an investigation into the Situation in Palestine, with respect to “crimes within the jurisdiction of the Court that are alleged to have been committed in the Situation since 13 June 2014”.<sup>14</sup>

12. On 20 May 2024, the Prosecutor publicly announced that he would be filing applications for warrants of arrest, among others, against Israeli nationals, for their alleged responsibility for “war crimes and crimes against humanity committed on the territory of the State of Palestine (in the Gaza strip) from at least 8 October 2023”.<sup>15</sup>

13. On 23 September 2024, the State of Israel (hereinafter: “Israel”) submitted before Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) a challenge to the jurisdiction of the Court pursuant to article 19(2) of the Statute (hereinafter: “Challenge”).<sup>16</sup> Israel argued that the pre-conditions to the Court’s jurisdiction have not been fulfilled as “sovereignty over the West Bank and the Gaza Strip remains in abeyance, and there is no ‘territory of’ a State (within the meaning of the Rome Statute) over which the Court may exercise its jurisdiction”.<sup>17</sup>

14. On 21 November 2024, the Pre-Trial Chamber issued a decision rejecting Israel’s article 19(2) Challenge (hereinafter: “Impugned Decision”).<sup>18</sup>

15. On 27 November 2024, Israel filed its notice of appeal against the Impugned Decision (hereinafter: “Notice of Appeal”).<sup>19</sup> Israel also requested

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repartition of competences according to the Oslo Accords [...] [w]hen the prosecutor concludes that continuing an investigation may trespass the limits *ratione loci* or *ratione personae* of Palestine’s competences in this complex criminal law regime, the prosecutor should satisfy herself that Israel [...] also consents according to article 12(3) of the Statute [...]” (paras 370-371) (emphasis in the original).

<sup>13</sup> [Article 19\(3\) Decision](#), p. 60.

<sup>14</sup> Office of the Prosecutor, [Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#).

<sup>15</sup> Office of the Prosecutor, [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#).

<sup>16</sup> [Israel’s challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute](#), ICC-01/18-354-AnxII-Corr.

<sup>17</sup> [Challenge](#), para. 124.

<sup>18</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, p. 7.

<sup>19</sup> [Notice of Appeal of “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute” \(ICC-01/18-374\)](#), ICC-01/18-386.

suspensive effect, pending the Appeals Chamber’s resolution of the appeal and pursuant to article 82(3) of the Statute and rule 156(5) of the Rules of Procedure and Evidence (hereinafter: “Rules”), of two warrants of arrest issued after the Impugned Decision by the Pre-Trial Chamber, and of “any other purported exercise of jurisdiction by the Court”.<sup>20</sup>

16. On the same day, Israel filed a request for leave to appeal the Impugned Decision pursuant to article 82(1)(d) of the Statute before the Pre-Trial Chamber.<sup>21</sup>

17. On 29 November 2024, the Prosecutor submitted a request to dismiss *in limine* Israel’s Appeal.<sup>22</sup>

18. On 12 December 2024, the Pre-Trial Chamber issued a decision deferring “its consideration of Israel’s requests for leave to appeal under article 82(1)(d) of the Statute until the Appeals Chamber has pronounced itself on the admissibility of Israel’s appeals pursuant to article 82(1)(a) of the Statute”.<sup>23</sup>

19. On 13 December 2024, Israel filed its appeal against the Impugned Decision (hereinafter: “Appeal Brief”).<sup>24</sup>

20. On the same day, the Office of Public Counsel for Victims filed a request to appear before the Chamber (hereinafter: “OPCV Request”) pursuant to regulation 81(4) of the Regulations of the Court (hereinafter: “Regulations”).<sup>25</sup>

21. On 18 December 2024, the Registry transmitted to the Appeals Chamber a request received from the European Centre for Law and Justice, for leave to submit

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<sup>20</sup> [Notice of Appeal](#), paras 5, 37.

<sup>21</sup> [Request for leave to appeal “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute”](#), ICC-01/18-388.

<sup>22</sup> [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” \(ICC-01/18-374\)’](#)”, ICC-01/18-392 (hereinafter: “Prosecutor’s Request”).

<sup>23</sup> [Deferral of the Chamber’s consideration of two requests for leave to appeal filed by the State of Israel](#), ICC-01/18-398, para. 6.

<sup>24</sup> [Appeal of “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute” \(ICC-01/18-374\)](#), ICC-01/18-402.

<sup>25</sup> [OPCV Request to appear before the Chamber under Regulation 81\(4\) of the Regulations of the Court in the Appeal of the State of Israel 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”](#), ICC-01/18-399.

*amicus curiae* observations pursuant to rule 103(1) of the Rules (hereinafter: “ECLJ Request”).<sup>26</sup>

22. On 13 January 2025, the Prosecutor filed his response to the Appeal Brief (hereinafter: “Prosecutor’s Response”).<sup>27</sup>

23. On 17 January 2025, Israel submitted a request for leave to reply to the Prosecutor’s Response, and to reject *in limine* the Prosecutor’s submissions concerning suspensive effect (hereinafter: “Request for Leave to Reply”).<sup>28</sup>

24. On 22 January 2025, the Prosecutor responded to Israel’s Request for Leave to Reply, arguing that it should be rejected.<sup>29</sup>

## II. RELEVANT PARTS OF THE IMPUGNED DECISION

25. In the Impugned Decision, the Pre-Trial Chamber rejected Israel’s argument that its acceptance of the Court’s jurisdiction is required under article 12 of the Statute, even if another State has delegated jurisdiction, as “incorrect as a matter of law”.<sup>30</sup> The Pre-Trial Chamber noted that “the Court can exercise its jurisdiction on the basis of the territorial jurisdiction of Palestine”.<sup>31</sup> It underlined that, “[a]s soon as there is one jurisdictional basis pursuant to article 12(2)(a) or (b) of the Statute, there is no need for an additional one”.<sup>32</sup>

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<sup>26</sup> [Registry Transmission of a “Request by the European Centre for Law & Justice for Leave to Submit Amicus Curiae Observations Pursuant to Rule 103\(1\) of the Rules of Procedure and Evidence”](#), ICC-01/18-404, with [Annex I](#).

<sup>27</sup> [Prosecution response to the “Appeal of ‘Decision on Israel’s Challenge to the Jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute’ \(ICC-01/18-374\)”](#), ICC-01/18-406.

<sup>28</sup> [Request for leave to reply to Prosecution Response to Israel’s “Appeal of ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute’ \(ICC-01/18-374\)” and to reject the Prosecution’s submissions concerning suspensive effect \*in limine\*](#), ICC-01/18-408.

<sup>29</sup> [Prosecution response to Israel’s “Request for leave to reply to Prosecution Response to Israel’s “Appeal of ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19\(2\) of the Rome Statute \(ICC-01/18-374\)” and to reject the Prosecution’s submissions concerning suspensive effect \*in limine\*”](#), ICC-01/18-410 (hereinafter: “Prosecutor’s Response to Request for Leave to Reply”), paras 1-2, 10.

<sup>30</sup> [Impugned Decision](#), para. 13.

<sup>31</sup> [Impugned Decision](#), para. 13.

<sup>32</sup> [Impugned Decision](#), para. 13, referring to Pre-Trial Chamber II, *Situation in the Islamic Republic of Afghanistan*, [Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan](#), 12 April 2019, ICC-02/17-33, para. 58. See also [Article 19\(3\) Decision](#), paras 90-113.



26. The Pre-Trial Chamber further rejected “Israel’s argument that merely because it *claims* that Palestine could not have delegated jurisdiction to the Court, the Chamber would have to ignore its previous decision (rendered in a different composition) which has become *res judicata*”.<sup>33</sup> It stressed the “fundamental difference between granting a State standing on the presumptive validity of its claim to have jurisdiction over a situation or a case and granting it standing on the basis of an argument – which was already ruled upon – that a particular State Party does not have jurisdiction”.<sup>34</sup> The Pre-Trial Chamber further stressed that Israel’s standing is not an issue, as it “clearly would have standing to bring a challenge as the State of nationality under article 19(2)(b) *juncto* article 12(2)(b) of the Statute if the Chamber decides to issue any warrants of arrest for Israeli nationals”.<sup>35</sup>

27. The Pre-Trial Chamber indicated that “[t]he 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”.<sup>36</sup> On this point, the Pre-Trial Chamber determined that “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”.<sup>37</sup> The Pre-Trial Chamber noted that the Prosecutor “typically conducts the entire application process under Article 58 of the Statute *ex parte*” and, therefore, States only become aware of the existence of the proceedings after the Court has ruled on the application, when the summons or warrant is notified or made public.<sup>38</sup> Further, it noted that the “wording of article 19(2)(b) of the Statute makes it clear that States may only challenge the Court’s jurisdiction in relation to a particular *case*”.<sup>39</sup>

28. Lastly, the Pre-Trial Chamber reassured Israel that it “will have the full opportunity to challenge the Court’s jurisdiction and/or admissibility of any particular case if and when the Chamber issues any arrest warrants or summonses against its nationals”.<sup>40</sup>

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<sup>33</sup> [Impugned Decision](#), para. 15 (emphasis in the original).

<sup>34</sup> [Impugned Decision](#), para. 15.

<sup>35</sup> [Impugned Decision](#), para. 16.

<sup>36</sup> [Impugned Decision](#), para. 16.

<sup>37</sup> [Impugned Decision](#), para. 17.

<sup>38</sup> [Impugned Decision](#), para. 17.

<sup>39</sup> [Impugned Decision](#), para. 17 (emphasis in the original).

<sup>40</sup> [Impugned Decision](#), para. 18.

### III. ADMISSIBILITY OF THE APPEAL

#### A. Summary of the submissions

29. In its Notice of Appeal, Israel argues that the Impugned Decision is “plainly” and “by its very nature” a decision with respect to jurisdiction, as it is a decision on a challenge to the jurisdiction of the Court brought pursuant to article 19(2) of the Statute, as its title indicates.<sup>41</sup> Further, Israel submits that the operative part of the Impugned Decision directly rejects Israel’s challenge, which concerned jurisdiction over persons and territorial jurisdiction, as premature.<sup>42</sup>

30. Israel further argues that, despite the fact that the Impugned Decision focuses on Israel’s standing to bring a jurisdictional challenge, this does not diminish its character as a jurisdictional decision.<sup>43</sup> In the submission of Israel, a decision precluding Israel from bringing a jurisdictional challenge pursuant to article 19(2)(c) of the Statute can only be regarded as a decision on jurisdiction.<sup>44</sup> Israel argues that this is particularly clear considering that the Pre-Trial Chamber relies upon and bases its rejection on a prior decision that it considers *res judicata*, which is a decision containing a substantive determination on jurisdictional issues.<sup>45</sup> Israel submits that any other interpretation would render the automatic right to appeal under article 82(1)(a) of the Statute meaningless, as a chamber could simply rely on previous jurisdictional decisions made *ex parte* to deny challenges, leaving no procedural recourse for the challenging party.<sup>46</sup>

31. The Prosecutor requests that Israel’s Appeal be dismissed *in limine*, arguing that it does not satisfy the conditions of article 82(1)(a) of the Statute.<sup>47</sup> The Prosecutor submits that the Impugned Decision is not a decision “with respect to [...] jurisdiction” and thus, it is not directly appealable under article 82(1)(a) of the Statute.<sup>48</sup>

32. The Prosecutor further submits that the Pre-Trial Chamber, in fact, identified the issue before it as whether Israel is entitled or indeed obliged to bring such a challenge *before* the Pre-Trial Chamber has ruled on the Prosecutor’s applications for warrants of

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<sup>41</sup> [Notice of Appeal](#), paras 24, 26.

<sup>42</sup> [Notice of Appeal](#), para. 24.

<sup>43</sup> [Notice of Appeal](#), para. 25.

<sup>44</sup> [Notice of Appeal](#), para. 25.

<sup>45</sup> [Notice of Appeal](#), para. 26.

<sup>46</sup> [Notice of Appeal](#), para. 26.

<sup>47</sup> [Prosecutor’s Request](#), para. 3.

<sup>48</sup> [Prosecutor’s Request](#), para. 4.

arrest.<sup>49</sup> The Prosecutor argues that, by answering this question in the negative, the Pre-Trial Chamber rejected Israel’s challenge as premature, which does not make it a “decision with respect to jurisdiction”.<sup>50</sup> The Prosecutor further underlines that the operative part of the Impugned Decision does not determine any aspect of jurisdiction, and that it is rather procedural, as it applied the procedural law concerning jurisdictional challenges and did not determine jurisdiction itself.<sup>51</sup>

## **B. Determination by the Appeals Chamber**

33. Article 82 of the Statute, in its relevant parts, provides as follows:

1. Either party may appeal any of the following decisions in accordance with the Rules of Procedure and Evidence:

(a) A decision with respect to jurisdiction or admissibility;

[...]

34. The issue of what constitutes “a decision with respect to jurisdiction or admissibility”, within the meaning of article 82(1)(a) of the Statute, has been addressed by the Appeals Chamber on numerous occasions. In 2011, in the *Kenya* Situation, the Appeals Chamber stated:

15. Article 82 (1) (a) of the Statute provides that either party may appeal “a decision with respect to jurisdiction or admissibility”. The Appeals Chamber understands 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. The French version of article 82 (1) (a) of the Statute confirms this interpretation as it provides that a party may only appeal a “[d]écision sur la compétence ou la recevabilité”.

16. The Appeals Chamber’s reading of the plain meaning of article 82 (1) (a) of the Statute is also confirmed by its relationship with other provisions of the Statute. Article 82 (1) (a) of the Statute must be read in conjunction with articles 18 and 19 of the Statute. Article 18 (4) of the Statute provides that the State concerned or the Prosecutor may appeal to the Appeals Chamber against a preliminary ruling of the Pre-Trial Chamber regarding admissibility in

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<sup>49</sup> [Prosecutor’s Request](#), para. 5.

<sup>50</sup> [Prosecutor’s Request](#), paras 5-6.

<sup>51</sup> [Prosecutor’s Request](#), paras 6-7.

accordance with article 82 of the Statute. Article 19 of the Statute provides that the Court may decide on the admissibility of a case either on its own motion, on request of the Prosecutor or in response to a challenge brought by certain specified persons or States. Article 19 (6) of the Statute provides that “[d]ecisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82”. In the view of the Appeals Chamber, the specific references to article 82 of the Statute and the use of identical language in articles 19 (6) and 82 (1) (a) of the Statute indicate that the right to appeal a decision on jurisdiction or admissibility is intended to be limited only to those instances in which a Pre-Trial or Trial Chamber issues a ruling specifically on the jurisdiction of the Court or the admissibility of the case.

17. The Appeals Chamber has also previously held with respect to appeals under article 82 (1) (b) of the Statute that the “effect or implications of a decision confirming or denying the charges do not qualify or alter the character of the decision”. The Appeals Chamber finds that the same logic applies to appeals under article 82 (1) (a) of the Statute. It is the nature, and not the ultimate effect or implication of a decision, that determines whether an appeal falls under article 82 (1) (a) of the Statute. Even if the ultimate impact of a decision of a Pre-Trial or Trial Chamber were to affect the admissibility of cases, that fact would not, in and of itself, render the decision a “decision with respect to [...] admissibility” under article 82 (1) (a).<sup>52</sup>

35. In the case at hand, as noted above,<sup>53</sup> the Pre-Trial Chamber declined to address the jurisdictional challenge on the basis of its interpretation of a number of legal questions related to articles 12 and 19 of the Statute. These considerations underpinned the Pre-Trial Chambers ultimate conclusion, as also set out in the operative part of the Impugned Decision, that the jurisdictional challenge was submitted prematurely. Accordingly, the Appeals Chamber concludes that, by virtue of the finding that the jurisdictional challenge was premature, the Impugned Decision amounts to a decision

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<sup>52</sup> *Situation in the Republic of 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’”](#), 10 August 2011, ICC-01/09-78 (OA), paras 15-17 (footnotes omitted). *See also*, *Situation in the Democratic Republic of the Congo*, [Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58”](#), 13 July 2006, ICC-01/04-169 (OA), para. 18; *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, [Decision on the admissibility of the Prosecutor’s appeal against the “Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation”](#), 6 November 2015, ICC-01/13-51 (OA), para. 49; *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision on “Government of Libya’s Appeal Against the ‘Decision Regarding the Second Request by the Government of Libya for Postponement of the Surrender of Saif Al-Islam Gaddafi’” of 10 April 2012](#), 25 April 2012, ICC-01/11-01/11-126 (OA2), para. 13; *The Prosecutor v. Germain Katanga*, [Decision on the admissibility of the appeal against the “Decision on the application for the interim release of detained Witnesses DRC-D02-P0236, DRC-D02-P0228 and DRC-D02-P0350”](#), 20 January 2014, ICC-01/04-01/07-3424 (OA14), para. 33; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, [Decision on the admissibility of the appeal](#), 4 September 2020, ICC-02/05-01/20-145 (OA3), para. 7.

<sup>53</sup> *See supra* paras 25-28 referring to [Impugned Decision](#), paras 13-18.

that consists of or is based on a ruling on the jurisdiction of the Court. As a result, the Appeals Chamber finds that the appeal is admissible under article 82(1)(a) of the Statute.

#### IV. MERITS

##### A. Preliminary issue

36. Israel requests leave to reply in relation to: (i) the application of articles 31 and 32 of the Vienna Convention on the Law of Treaties (hereinafter: “VCLT”) to the interpretation of article 19(2)(c) of the Statute;<sup>54</sup> and (ii) the Pre-Trial Chamber’s finding on *res judicata* and the interpretation of the Impugned Decision.<sup>55</sup> Israel submits that neither of the two issues could have been reasonably anticipated, and that a reply is thus necessary for the Appeals Chamber’s determination of the appeal.<sup>56</sup>

37. Regarding the first issue, the Prosecutor argues that it could be foreseen that the Prosecutor would address Israel’s interpretation of article 19(2)(c) in light of the VCLT, considering Israel’s submission that the correct interpretation of article 19(2)(c) was supported by “the object and purpose of article 19(2)”.<sup>57</sup> With respect to the second issue, the Prosecutor avers that Israel could foresee that the Prosecutor would assess the correctness of Israel’s interpretation of the Pre-Trial Chamber’s reliance on the doctrine of *res judicata*.<sup>58</sup>

38. The Appeals Chamber indeed considers that none of the issues raised by the Prosecutor amount to “new issues raised in the response” within the meaning of regulation 24(5) of the Regulations, which Israel could not have anticipated. Furthermore, the Appeals Chamber is of the view that further submissions on this issue would not assist it in its determination of the present appeal.<sup>59</sup>

39. In these circumstances, the Appeals Chamber considers that the Request for Leave to Reply fails to meet the conditions set out in regulation 24(5) of the

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<sup>54</sup> [Request for Leave to Reply](#), paras 10-16.

<sup>55</sup> [Request for Leave to Reply](#), paras 17-21.

<sup>56</sup> [Request for Leave to Reply](#), paras 1-2, 9, 12, 15, 20-21, 25.

<sup>57</sup> [Prosecutor’s Response to Request for Leave to Reply](#), para. 6.

<sup>58</sup> [Prosecutor’s Response to Request for Leave to Reply](#), para. 7.

<sup>59</sup> See for example, *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda’s request for leave to reply](#), 3 March 2017, ICC-01/04-02/06-1813 (OA5), para. 8.

Regulations. In light of the foregoing, the Appeals Chamber rejects Israel's Request for Leave to Reply.

## B. Standard of review

40. In the present appeal, Israel alleges errors of law and errors of fact.

41. Regarding errors of law, the Appeals Chamber has previously held that it:

will not defer to the relevant Chamber's legal interpretation of the law, but will arrive at its own conclusions as to the appropriate law and determine whether or not the first instance Chamber misinterpreted the law.<sup>60</sup>

42. If the relevant chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the decision impugned on appeal.<sup>61</sup> A decision is "materially affected by an error of law" if the chamber "would have rendered a [decision] that is substantially different from the decision that was affected by the error, if it had not made the error".<sup>62</sup>

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<sup>60</sup> *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022 entitled "Decision on legal representation further to the Appeals Chamber's judgment of 19 July 2022"](#), 19 December 2022, ICC-01/14-01/22-124-Red (OA3) (hereinafter: "Mokom OA3 Judgment"), para. 19, referring to *The Prosecutor v. Bosco Ntaganda*, [Judgment on the appeal of Mr Bosco Ntaganda against the "Decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9"](#), 22 March 2016, ICC-01/04-02/06-1225 (OA2), para. 33; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, [Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V\(A\) of 19 August 2015 entitled "Decision on Prosecution Request for Admission of Prior Recorded Testimony"](#), 12 February 2016, ICC-01/09-01/11-2024 (OA10), para. 20; *The Prosecutor v. Uhuru Muigai Kenyatta*, [Judgment on the Prosecutor's appeal against Trial Chamber V\(B\)'s "Decision on Prosecution's application for a finding of non-compliance under Article 87\(7\) of the Statute"](#), 19 August 2015, ICC-01/09-02/11-1032 (OA5), para. 23; *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Judgment on the appeal of Mr Al Hassan against the decision of Pre-Trial Chamber I entitled "Décision relative à l'exception d'irrecevabilité pour insuffisance de gravité de l'affaire soulevée par la défense"](#), 19 February 2020, ICC-01/12-01/18-601-Red (OA) (hereinafter: "Al Hassan OA Judgment"), para. 38.

<sup>61</sup> [Mokom OA3 Judgment](#), para. 20, referring to [Al Hassan OA Judgment](#), para. 38; *The Prosecutor v. Simone Gbagbo*, [Judgment on the appeal of Côte d'Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled "Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo"](#), 27 May 2015, ICC-02/11-01/12-75-Red (OA) (hereinafter: "Simone Gbagbo OA Judgment"), para. 40. See also *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, [Judgment on the appeal of Mr Abd-Al-Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' \(ICC-02/05-01/20-302\)"](#), 1 November 2021, ICC-02/05-01/20-503 (OA8) (hereinafter: "Abd-Al-Rahman OA8 Judgment"), para. 12; *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX's 'Decision on Defence Motions Alleging Defects in the Confirmation Decision'](#), 17 July 2019, ICC-02/04-01/15-1562 (OA4) (hereinafter: "Ongwen OA4 Judgment"), para. 45.

<sup>62</sup> [Mokom OA3 Judgment](#), para. 20, referring to [Al Hassan OA Judgment](#), para. 38; [Simone Gbagbo OA Judgment](#), para. 41. See also [Abd-Al-Rahman OA8 Judgment](#), para. 12; *The Prosecutor v. Al Hassan Ag*



43. As to errors of fact,

the Appeals Chamber will determine whether a chamber's factual findings were reasonable in the particular circumstances of the case. The Appeals Chamber will not disturb a trial chamber's factual finding only because it would have come to a different conclusion. When considering alleged factual errors, the Appeals Chamber will allow the deference considered necessary and appropriate to the factual findings of a chamber. However, the Appeals Chamber may interfere where it is unable to discern objectively how a chamber's conclusion could have reasonably been reached from the evidence on the record.<sup>63</sup>

44. For all alleged errors, the appellant is obliged to set out the alleged error in the appeal brief and "indicate, with sufficient precision, how [the] alleged error would have materially affected the impugned decision".<sup>64</sup>

45. The above standard of review will guide the analysis of the Appeals Chamber.

## C. Summary of the submissions

### 1. Israel's submissions

46. Israel argues that the Pre-Trial Chamber rejected the jurisdictional challenge on procedural grounds, without substantive scrutiny of Israel's serious objections to the Court's lack of jurisdiction with respect to the situation.<sup>65</sup> In addition, it states that the issuance of the Impugned Decision on the same day as the warrants of arrest deprived Israel of any opportunity to appeal prior to the issuance of the warrants.<sup>66</sup> According to Israel, the refusal to substantially consider its submissions is particularly egregious as the Pre-Trial Chamber made *ex parte* determinations as required by article 19(1) of the Statute that it had jurisdiction to issue the warrants.<sup>67</sup>

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*Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Judgment on the appeal of Mr Al Hassan against the decision of Trial Chamber X entitled 'Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55\(2\) of the Regulations of the Court'](#), 1 July 2021, ICC-01/12-01/18-1562-Red (OA3), para. 18; [Ongwen OA4 Judgment](#), para. 45.

<sup>63</sup> [Mokom OA3 Judgment](#), para. 21, referring to *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 10 March 2017 entitled "Decision on Mr Gbagbo's Detention"](#), 19 July 2017, ICC-02/11-01/15-992-Red (OA10), para. 16; *The Prosecutor v. Bosco Ntaganda*, [Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled 'Sentencing judgment'](#), 30 March 2021, ICC-01/04-02/06-2667-Red (A3), paras 27-29.

<sup>64</sup> [Abd-Al-Rahman OA8 Judgment](#), para. 14, referring to *The Prosecutor v. Joseph Kony et al.*, [Judgment on the appeal of the Defence against the "Decision on the admissibility of the case under article 19\(1\) of the Statute" of 10 March 2009](#), 16 September 2009, ICC-02/04-01/05-408 (OA3), para. 48.

<sup>65</sup> [Notice of Appeal](#), para. 1.

<sup>66</sup> [Notice of Appeal](#), para. 1.

<sup>67</sup> [Notice of Appeal](#), para. 2.

47. Israel further argues that States should be allowed to exercise their rights to challenge the Court’s jurisdiction,<sup>68</sup> and that the test adopted by the Pre-Trial Chamber eliminates the possibility for: (i) a State to challenge the Court’s jurisdiction prior to the issuance of an arrest warrant; and (ii) a suspect to challenge the Court’s jurisdiction on the basis that article 12(2)(a) of the Statute is not satisfied.<sup>69</sup> Israel submits that the Impugned Decision effectively holds that a prior decision that reserved an issue for further consideration operates as *res judicata*, thus barring future scrutiny of the reserved issue, curtailing the rights of States and undermining the foundational jurisdictional safeguards enshrined in the Statute.<sup>70</sup> In Israel’s submission, the Impugned Decision is a summary ruling lacking reasoning and discussion.<sup>71</sup>

48. Israel further underlines that the issues arising in this appeal are: (i) the standing of specially affected States to file a jurisdictional challenge under article 19(2)(c) of the Statute; and (ii) the appropriate juncture for States to be permitted to do so.<sup>72</sup> Israel submits that these issues are of critical importance to ensuring that the Court adheres to its jurisdictional limitations, and require appellate clarification in order to prevent undue infringement upon the sovereign rights and interests of States.<sup>73</sup> Israel argues that the significance of the matters under consideration “cannot be over-stated” as the jurisdictional safeguards on the Statute are not mere formalities; they play a critical role in defining judicial competence, preventing abuse of the judicial process, and guaranteeing that courts do not exceed their mandate.<sup>74</sup> It contends that the Court’s legitimacy depends in equal measure on the effective discharge of its mandate and the adherence to its jurisdictional limitations.<sup>75</sup>

49. Israel submits that the errors in the Impugned Decision are reflected in the following three grounds of appeal:

- i. The Pre-Trial Chamber erred in law in finding that Israel does not have standing to file a jurisdictional challenge pursuant to article 19(2)(c) as it is

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<sup>68</sup> [Notice of Appeal](#), para. 3.

<sup>69</sup> [Notice of Appeal](#), para. 4.

<sup>70</sup> [Notice of Appeal](#), para. 4.

<sup>71</sup> [Notice of Appeal](#), para. 4.

<sup>72</sup> [Appeal Brief](#), para. 1.

<sup>73</sup> [Appeal Brief](#), para. 1.

<sup>74</sup> [Appeal Brief](#), para. 3.

<sup>75</sup> [Appeal Brief](#), para. 3.



not “a State from which acceptance of jurisdiction is required under article 12” (first ground of appeal);

- ii. The Pre-Trial Chamber erred in fact and law in rejecting Israel’s standing under article 19(2) on the basis that to find otherwise would be to override its previous article 19(3) decision which had become *res judicata* (second ground of appeal); and
- iii. The Pre-Trial Chamber erred in law in finding that Israel’s filing of a jurisdictional challenge pursuant to article 19(2) was premature as it was filed prior to the issuance of arrest warrants (third ground of appeal).<sup>76</sup>

50. Israel argues that the appropriate remedy is to reverse the Impugned Decision and issue an order declaring that: (i) Israel has standing to challenge the jurisdiction of the Court pursuant to article 19(2)(c), including prior to the issuance of arrest warrants; (ii) Israel’s jurisdictional challenge shall be remitted to the Pre-Trial Chamber for consideration on the merits; and (iii) the two arrest warrants against Israeli nationals, erroneously issued by the Pre-Trial Chamber, should be declared null and void.<sup>77</sup>

## 2. *Prosecutor’s submissions*

51. The Prosecutor submits that the appeal should be dismissed as it fails to show any error materially affecting the Pre-Trial Chamber’s determination that Israel’s jurisdictional challenge was premature.<sup>78</sup> The Prosecutor further argues that nothing in the Impugned Decision deprives any person or entity with standing under article 19(2) of the Statute from bringing challenges now that cases in this situation have been identified.<sup>79</sup> The Prosecutor maintains that the appeal primarily concerns technicalities under article 19(2) of the Statute.<sup>80</sup>

52. The Prosecutor argues that Israel’s allegations of “infringement upon the sovereign rights and interests of States” are “misplaced and immaterial to the proper disposition of [the] appeal”, as it is incorrect to assume that the exercise of jurisdiction

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<sup>76</sup> [Appeal Brief](#), para. 4.

<sup>77</sup> [Appeal Brief](#), paras 6, 70.

<sup>78</sup> [Prosecutor’s Response](#), paras 1, 3, 6.

<sup>79</sup> [Prosecutor’s Response](#), paras 2-3.

<sup>80</sup> [Prosecutor’s Response](#), para. 2.

over one or more persons violates the sovereignty of their State of nationality.<sup>81</sup> The Prosecutor contends that this view would incorrectly permit non-party States to veto the sovereign prerogative of States Parties to accept the jurisdiction of the Court in their own territory and the “exercise of their own national law, even over foreign nationals, unless benefiting from a specific immunity grounded in the mutual consent of the States concerned”.<sup>82</sup>

53. Further, the Prosecutor submits that, while strictly *obiter dicta* and not determinative of the outcome of the Impugned Decision, the Pre-Trial Chamber also correctly concluded that: (i) its prior ruling on the Court’s exercise of jurisdiction was *res judicata* “for the purpose at least of its proceedings under article 58”; and (ii) Israel lacks standing to challenge jurisdiction under article 19(2)(c) of the Statute.<sup>83</sup> The Prosecutor argues that, even if the Chamber erred in these conclusions, such errors did not materially affect the decision.<sup>84</sup>

54. The Prosecutor also submits that none of the errors identified by Israel, even if it would be found that the Pre-Trial Chamber erred, materially affected the Impugned Decision, and the appeal should consequently be dismissed.<sup>85</sup> Regarding Israel’s first and second grounds of appeal, the Prosecutor submits that the relevant finding from the Pre-Trial Chamber was no more than an *obiter dictum*, rather than the *ratio decidendi* of the Impugned Decision.<sup>86</sup>

#### **D. Determination by the Appeals Chamber**

55. As part of the first sub-ground of its first ground of appeal, Israel contends that:

Rather than addressing issues of standing substantively under article 19(2)(c), the Pre-Trial Chamber premised its rationale for denying Israel standing to bring a jurisdictional challenge under article 19(2)(c) on its observation that “as soon as there is one jurisdictional basis pursuant to article 12(2)(a) or (b) of the Statute, there is no need for an additional one”.<sup>87</sup>

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<sup>81</sup> [Prosecutor’s Response](#), para. 4

<sup>82</sup> [Prosecutor’s Response](#), para. 5.

<sup>83</sup> [Prosecutor’s Response](#), para. 7.

<sup>84</sup> [Prosecutor’s Response](#), para. 7.

<sup>85</sup> [Prosecutor’s Response](#), paras 1, 6, 48.

<sup>86</sup> [Prosecutor’s Response](#), paras 48, 58.

<sup>87</sup> [Appeal Brief](#), para. 24.

56. The Appeals Chamber understands that, under this part of its first ground of appeal, Israel submits, in essence, that the Pre-Trial Chamber erred in law by failing to sufficiently address Israel's argument that it has standing to submit a jurisdictional challenge pursuant to article 19(2)(c) of the Statute.

57. The Appeals Chamber observes that, besides concluding that “[a]s soon as there is one jurisdictional basis pursuant to article 12(2)(a) or (b) of the Statute, there is no need for an additional one”,<sup>88</sup> the Pre-Trial Chamber did not further elaborate as to how the existence of a basis for the exercise of the Court's jurisdiction under article 12(2) relates, as such, to Israel's central contention that it has standing to challenge the jurisdiction of the Court pursuant to article 19(2)(c) of the Statute. Despite the correlation between these provisions, they regulate, in principle, different matters, namely the preconditions for the exercise of the Court's jurisdiction (article 12(2) of the Statute), and one of the mechanisms to challenge the admissibility of a case or the jurisdiction of the Court (article 19(2)(c) of the Statute). In addition, as Israel's primary assertion is that article 19(2)(c) of the Statute permits it to challenge the jurisdiction of the Court, it was incumbent on the Pre-Trial Chamber to specifically address why, in its view, Israel is precluded from bringing such a challenge by virtue of article 12(2) of the Statute.

58. The Pre-Trial Chamber further rejected Israel's argument “that merely because it *claims* that Palestine could not have delegated jurisdiction to the Court, the Chamber would have to ignore its previous decision”.<sup>89</sup> Without providing reasons in support thereof, the Pre-Trial Chamber determined that “there is a fundamental difference between granting a State standing on the presumptive validity of its claim to have jurisdiction over a situation or a case and granting it standing on the basis of an argument – which was already ruled upon – that a particular State Party does not have jurisdiction”.<sup>90</sup>

59. In view of the particularities of the preceding stages of the proceedings in the Situation in Palestine, the Pre-Trial Chamber should have more specifically addressed the applicability of the notion of *res judicata*. The reason is that the Pre-Trial Chamber

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<sup>88</sup> [Impugned Decision](#), para. 13.

<sup>89</sup> [Impugned Decision](#), para. 15.

<sup>90</sup> [Impugned Decision](#), para. 15.

was previously seized of a question pertaining to the jurisdiction of the Court pursuant to article 19(3) of the Statute in the context of proceedings to which Israel, despite an invitation to provide observations, was not a party. This is even more so in view of the fact that, in the Article 19(3) Decision, the Pre-Trial Chamber specifically held that issues pertaining to the impact of the Oslo Agreements on the Court's jurisdiction "may be raised by interested States based on article 19" at a later stage.<sup>91</sup> In the Impugned Decision, the Pre-Trial Chamber nonetheless omitted to address why, in light of these particular circumstances, the notion of *res judicata* prevented Israel from making a challenge under article 19(2)(c) of the Statute.

60. The Pre-Trial Chamber went on to find that Israel has standing "under article 19(2)(b) *juncto* article 12(2)(b) of the Statute if the Chamber decides to issue any warrants of arrest for Israeli nationals", although "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".<sup>92</sup> Nevertheless, the Pre-Trial Chamber did not actually consider the merits of Israel's challenge under article 19(2)(b) of the Statute, the provision it indicated Israel should have invoked.<sup>93</sup> Neither did the Pre-Trial Chamber specify why it altered the legal basis to article 19(2)(b) of the Statute, despite the fact that Israel's submissions were specifically centred around article 19(2)(c) of the Statute. In doing so, while noting the entirety of Israel's submissions regarding article 19(2)(c) of the Statute,<sup>94</sup> the Pre-Trial Chamber failed to specifically address Israel's submissions in connection with this particular legal basis. In particular, the Pre-Trial Chamber omitted to direct itself to Israel's contentions regarding the scope of article 19(2)(c) of the Statute.<sup>95</sup>

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<sup>91</sup> [Article 19\(3\) Decision](#), para. 129. In that Decision, Pre-Trial Chamber I found that: "[...] the Chamber finds that the arguments regarding the Oslo Agreements in the context of the present proceedings are not pertinent to the resolution of the issue under consideration, namely the scope of the Court's territorial jurisdiction in Palestine. The Chamber considers that these issues may be raised by interested States based on article 19 of the Statute, rather than in relation to a question of jurisdiction in connection with the initiation of an investigation by the Prosecutor arising from the referral of a situation by a State under articles 13(a) and 14 of the Statute. As a consequence, the Chamber will not address these arguments".

<sup>92</sup> [Impugned Decision](#), paras 16-17.

<sup>93</sup> The Appeals Chamber notes that the Pre-Trial Chamber issued warrants of arrest on the same day as the Impugned Decision, *see* 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>94</sup> [Impugned Decision](#), fn. 14.

<sup>95</sup> [Challenge](#), paras 51-56.

61. In view of the foregoing, the Appeals Chamber finds that, considered as a whole, the Impugned Decision insufficiently addresses Israel's central contention that article 19(2)(c) of the Statute permits it to challenge the jurisdiction of the Court. Therefore, the Pre-Trial Chamber committed an error of law by failing to sufficiently direct itself to the relevant submissions brought before it in respect of the particular legal basis underpinning the challenge to the jurisdiction of the Court.

62. The Appeals Chamber considers that this error materially affects the Impugned Decision. Had the Pre-Trial Chamber had sufficient regard to the central contention before it, it would have had to directly and specifically address Israel's standing to bring a jurisdictional challenge under article 19(2)(c) of the Statute.

## V. APPROPRIATE RELIEF

63. In an appeal pursuant to article 82(1)(a) of the Statute, the Appeals Chamber may confirm, reverse or amend the decision appealed. The Appeals Chamber observes that, in the Impugned Decision, the Pre-Trial Chamber considered that "Israel will have the full opportunity to challenge the Court's jurisdiction and/or admissibility of any particular case if and when the Chamber issues any arrest warrants or summonses against its nationals".<sup>96</sup> In addition, the Pre-Trial Chamber subsequently issued two warrants of arrest against Israeli nationals.

64. Accordingly, the Appeals Chamber is of the view that, in light of the preceding considerations, the most appropriate course of action is to reverse the Impugned Decision and remand the matter to the Pre-Trial Chamber for it to rule on the substance of the jurisdictional challenge. The Appeals Chamber notes that it is for the Pre-Trial Chamber to determine the applicable legal basis under article 19(2) of the Statute for addressing Israel's jurisdictional challenge at the present stage of the proceedings, and to provide any required further instructions on the procedure to be followed.

65. The Appeals Chamber finds that, in light of the foregoing, the matter before it has been conclusively settled. As a result, the Appeals Chamber does not consider it

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<sup>96</sup> [Impugned Decision](#), para. 18.

necessary to address the remainder of Israel's first ground of appeal or any other grounds of appeal.

66. The Appeals Chamber notes that Israel requests suspensive effect of two arrest warrants issued by the Pre-Trial Chamber after the Impugned Decision and "any other purported exercise of jurisdiction by the Court".<sup>97</sup> The Appeals Chamber notes that it has previously indicated that granting suspensive effect "would have the effect of suspending any action *based on* the Impugned Decision".<sup>98</sup> In the present case, the Appeals Chamber is not persuaded that the arrest warrants are based on, or "inextricably connected", to the Impugned Decision.<sup>99</sup> In effect, while the Impugned Decision was based on the Pre-Trial Chamber's assessment of discrete aspects of the jurisdictional challenge brought by Israel, it stopped short of addressing the challenge in its entirety. Therefore, it cannot be said that the arrest warrants are *based on* the Impugned Decision. These warrants were rather issued separately by the Pre-Trial Chamber and they are, as such, not before the Appeals Chamber. In any event, the Appeals Chamber's determination in this appeal is to reverse the Impugned Decision and remand the matter to the Pre-Trial Chamber for it to decide anew on the substance of the jurisdictional challenge. In that context, the Pre-Trial Chamber will also have to determine the effect, if any, of its decision on the warrants of arrest, which were issued separately from the Impugned Decision. In these circumstances, the Appeals Chamber dismisses the request for suspensive effect as moot.

67. Regarding the OPCV Request,<sup>100</sup> and the ECLJ Request,<sup>101</sup> in light of the Appeals Chamber's determination to reverse the Impugned Decision and remand the matter to the Pre-Trial Chamber for it to decide anew on the substance of the jurisdictional challenge, the Appeals Chamber considers that both requests should be dismissed as moot.

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<sup>97</sup> [Notice of Appeal](#), paras 5, 37.

<sup>98</sup> *The Prosecutor v. Germain Katanga*, [Decision on the request for suspensive effect of the appeal against Trial Chamber II's decision on the implementation of regulation 55 of the Regulations of the Court](#), 16 January 2013, ICC-01/04-01/07-3344 (OA13), para. 5 (emphasis added).

<sup>99</sup> [Notice of Appeal](#), para. 33.

<sup>100</sup> [OPCV Request](#), paras 3-4, 24.

<sup>101</sup> [ECLJ Request](#), para. 2.

68. Lastly, in the circumstances of the present appeal, the Appeals Chamber considers that the requirement set forth in article 83(4) of the Statute and rule 158(2) of the Rules to deliver the judgment “in open court”, which ensures the publicity of the proceedings with a view to guaranteeing that justice is transparent and accessible to the public, is adequately fulfilled by delivering this judgment in public version, notifying it to the parties to the proceedings, publishing it on the Court’s website, and issuing a press release.

Done in both English and French, the English version being authoritative.

赤根 智子

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**Judge Tomoko Akane  
Presiding**




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**Judge Luz del Carmen Ibáñez  
Carranza**




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**Judge Solomy Balungi Bossa**




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**Judge Gocha Lordkipanidze**




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**Judge Erdenebalsuren Damdin**

Dated this 24th day of April 2025

At The Hague, The Netherlands