

**Original: English****No. ICC-01/18 OA
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**

Decision on the admissibility of the appeal of the State of Israel against Pre-Trial Chamber I's "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

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

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 request for an order to the Prosecution to give an Article 18(1) notice” of 21 November 2024 (ICC-01/18-375),

After deliberation,

Renders, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, the following

DECISION

1. The appeal of the State of Israel is dismissed as inadmissible;
2. The request of the State of Israel for suspensive effect of arrest warrants issued by Pre-Trial Chamber I against two Israeli nationals and “any other legal acts taken by the Court based thereon” is dismissed, as moot; and
3. The request of the State of Israel for leave to reply and to reject *in limine* the Prosecutor’s submissions concerning suspensive effect is dismissed as moot.

REASONS

I. PROCEDURAL HISTORY

1. On 3 March 2021, the Prosecutor announced the initiation of an investigation respecting 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”.¹
2. On 9 March 2021, the Prosecutor provided notice, pursuant to article 18(1) of the Rome Statute (hereinafter: “Statute”), of the initiation of the investigation to all

¹ Office of the Prosecutor, [Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine](#).

States Parties and other States that would normally exercise jurisdiction, including the State of Israel (hereinafter: “Israel” and “Article 18(1) Notification”).²

3. On 8 April 2021, Israel sent a letter to the Prosecutor indicating its “firm [...] view that the Court manifestly lacks jurisdiction” and that Israel’s “robust legal system [...] has and will continue to examine and investigate rigorously all allegations of misconduct or crimes (hereinafter: “8 April 2021 Letter”).³

4. On 9 April 2021, the Prosecutor sought clarification from Israel as to whether it intended to trigger the application of article 18(2) of the Statute (hereinafter: “2021 Clarification Request”).⁴

5. On 26 April 2021, Israel reiterated “its principled position that the Court manifestly lacks jurisdiction” and indicated that it “will continue to examine and investigate rigorously all allegations of misconduct or crimes” (hereinafter: “26 April 2021 Letter”).⁵

6. On 17 November 2023, five States Parties to the Statute submitted a referral, pursuant to articles 13(a) and 14 of the Statute.⁶ Upon receipt of the referral, the

² See Pre-Trial Chamber I, [Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice](#), 21 November 2024, ICC-01/18-375, para. 10 referring to annex ICC-01/18-355-SECRET-Exp-AnxB. See also Annex A to [Prosecution response to Israel’s “Appeal of ‘Decision on Israel’s request for an order to the Prosecution to give an article 18\(1\) notice’ \(ICC-01/18-375\)”](#), 13 January 2025, ICC-01/18-407-Conf-AnxA. In the notice, the Prosecutor indicated that she had “initiated an investigation with respect to alleged crimes within the jurisdiction of the Court committed in the Situation in Palestine since 13 June 2014”. The Prosecutor noted that, as a result of her office’s preliminary examination and based on the information available, she had “determined that there is a reasonable basis to believe that war crimes were committed in the context of the 2014 hostilities in Gaza” and “further considers that the scope of the investigation encompasses allegations of crimes committed by members of the IDF through the use of non-lethal and lethal means against persons participating in demonstrations beginning in March 2018 near the border fence between the Gaza Strip and Israel”. Nevertheless, the Prosecutor underlined that “the above events and their provisional legal qualifications, which have been identified by [her] Office for the threshold-setting purpose of opening an investigation, are without prejudice to the future scope of a subsequent investigation, which may encompass any alleged crimes within the scope of the situation”. The Appeals Chamber notes that this information is contained in a confidential document, but it considers that the aforementioned excerpt does not undermine this classification.

³ See [Impugned Decision](#), para. 10 referring to annex ICC-01/18-355-SECRET-Exp-AnxC.

⁴ See [Impugned Decision](#), para. 10 referring to annex ICC-01/18-355-SECRET-Exp-AnxD.

⁵ See [Impugned Decision](#), para. 10 referring to annex ICC-01/18-355-SECRET-Exp-AnxE.

⁶ [States Parties referral of 17 November 2023](#). The referral, submitted by 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, requested the Prosecutor to “vigorously investigate crimes under the jurisdiction of the Court allegedly committed within the context of the Situation in Palestine”, including “evidence of continuing commission of the crimes” detailed in the referral by Palestine in 2018 and additional crimes that appeared to have been committed in “recent weeks”, including genocide, crimes against humanity, and war crimes.

Prosecutor confirmed that he was presently conducting an investigation in the Situation in Palestine.⁷

7. On 18 January 2024, two States Parties to the Statute submitted an additional referral pursuant to article 14(1) of the Statute.⁸

8. On 1 May 2024, Israel sent a letter to the Prosecutor (hereinafter: “Deferral Request”), thereby requesting him 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”.⁹

9. On 7 May 2024, the Prosecutor responded to the Deferral Request, thereby indicating that, 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”.¹⁰

10. On 20 May 2024, the Prosecutor publicly announced that he would be filing applications for warrants of arrest against, among others, 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”.¹¹

⁷ Office of the Prosecutor, [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](#). The Prosecutor noted that the investigation commenced on 3 March 2021 and encompassed crimes committed since 13 June 2014, which remains ongoing, and “extends to the escalation of hostilities and violence since the attacks that took place on 7 October 2023”.

⁸ [States Parties referral of 18 January 2024](#). The referral, submitted by the Republic of Chile and the United Mexican States, sought to “draw further attention of the Office of the Prosecutor to the situation in the State Palestine”, underlining that they were “gravely concerned at the latest escalation of violence, including against civilians, and the alleged ongoing commission of crimes under the jurisdiction of the Court, not limited to, but particularly, starting with the attack of 7 October 2023 [...] and the subsequent hostilities in occupied Palestinian Territory [...]”.

⁹ See [Impugned Decision](#), para. 10 referring to annex ICC-01/18-355-SECRET-Exp-AnxF. See also Annex B to [Prosecution response to Israel’s “Appeal of ‘Decision on Israel’s request for an order to the Prosecution to give an article 18\(1\) notice’ \(ICC-01/18-375\)”](#), 13 January 2025, ICC-01/18-407-Conf-AnxB. In this letter, Israel referred to various requests for assistance transmitted by the Prosecutor between February and April 2024, which indicated that the investigation opened in 2021 “encompasses events on and after 7 October 2023, including alleged crimes committed on Israeli territory by Palestinian nationals” and “crimes allegedly committed in Gaza by Israeli armed forces from 7 October 2023”. The Appeals Chamber notes that this information is contained in a confidential document, but it considers that the aforementioned excerpt does not undermine this classification.

¹⁰ See [Impugned Decision](#), para. 10 referring to annex ICC-01/18-355-SECRET-Exp-AnxG, see also ICC-01/18-407-Conf-AnxB, pp. 9-10.

¹¹ 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](#).

11. On 23 September 2024, Israel submitted before Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) a request seeking an order to “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” (hereinafter: “Article 18 Request”).¹²

12. On 21 November 2024, the Pre-Trial Chamber issued the “Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice” (hereinafter: “Impugned Decision”), thereby rejecting the Article 18 Request.¹³

13. On 27 November 2024, Israel filed its notice of appeal against the Impugned Decision (hereinafter: “Notice of Appeal”).¹⁴ Israel also requested 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, of two warrants of arrest issued by the Pre-Trial Chamber after the Impugned Decision and “any other legal acts taken by the Court based thereon”.¹⁵

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

15. On 29 November 2024, the Prosecutor submitted before the Appeals Chamber a request to dismiss Israel’s appeal *in limine*.¹⁷

16. 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

¹² [Abridged Request for an Order Requiring an Article 18\(1\) Notice, and Staying Proceedings Pending Such a Notice](#), ICC-01/18-355-AnxI-Corr, para. 61.

¹³ [Impugned Decision](#), p. 9.

¹⁴ [Notice of Appeal of “Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice” \(ICC-01/18-375\)](#), ICC-01/18-385.

¹⁵ [Notice of Appeal](#), paras 5, 38.

¹⁶ [Request for leave to appeal “Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice](#), ICC-01/18-387 (hereinafter: “Request for Leave to Appeal”).

¹⁷ [Prosecution Request to Dismiss *in limine* Israel’s “Notice of Appeal of ‘Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice’ \(ICC-0118-375\)”](#), ICC-01/18-391 (hereinafter: “Prosecutor’s Request”).

until the Appeals Chamber has pronounced itself on the admissibility of Israel’s appeals pursuant to article 82(1)(a) of the Statute”.¹⁸

17. On 13 December 2024, Israel filed its appeal against the Impugned Decision (hereinafter: “Appeal Brief”).¹⁹

18. On 13 January 2025, the Prosecutor filed his response to the Appeal Brief (hereinafter: “Prosecutor’s Response”).²⁰

19. 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”).²¹

20. On 22 January 2025, the Prosecutor responded to Israel’s Request for Leave to Reply, arguing that it should be rejected.²²

II. RELEVANT PARTS OF THE IMPUGNED DECISION

21. The Pre-Trial Chamber rejected the Article 18 Request on the basis that “the Prosecution complied with its statutory obligations when it provided Israel and other States with the [Article 18(1)] Notification” and it was satisfied that the Article 18(1) Notification was “sufficiently specific”.²³ In the view of the Pre-Trial Chamber, the Article 18(1) Notification contained all relevant information for the purposes of article 18(2) of the Statute, namely “the types of alleged crimes, potential alleged perpetrators, the starting point of the relevant timeframe, as well as a reference to

¹⁸ [Deferral of the Chamber’s consideration of two requests for leave to appeal filed by the State of Israel](#), ICC-01/18-398 (hereinafter: “Pre-Trial Chamber Deferral”), para. 6.

¹⁹ [Appeal of “Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice” \(ICC-01/18-375\)](#), ICC-01/18-401, with [Annex A](#), ICC-01/18-401-AnxA.

²⁰ [Prosecution response to Israel’s “Appeal of ‘Decision on Israel’s request for an order to the Prosecution to give an article 18\(1\) notice’ \(ICC-01/18-375\)”](#), ICC-01/18-407, with confidential Annexes A and B.

²¹ [Request for leave to reply to Prosecution response to Israel’s “Appeal of ‘Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice’ \(ICC-01/18-375\)” and to reject the Prosecution’s submissions concerning suspensive effect *in limine*](#), ICC-01/18-409.

²² [Prosecution response to Israel’s “Request for leave to reply to Prosecution Response to Israel’s “Appeal of ‘Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice’ \(ICC-01/18-375\)” and to reject the Prosecution’s submissions concerning suspensive effect *in limine*”](#), ICC-01/18-411.

²³ [Impugned Decision](#), para. 11.

further relevant information, including the summary of the Prosecution’s preliminary examination findings”.²⁴

22. The Pre-Trial Chamber also found that, despite the 2021 Clarification Request, “Israel did *not* proceed to request a deferral under article 18(2) of the Statute” and “merely repeated its previous arguments”.²⁵ Therefore, the Pre-Trial Chamber concluded that the 8 April 2021 Letter and the 26 April 2021 Letter “did not constitute a deferral request under article 18(2) of the Statute”.²⁶ The Pre-Trial Chamber further determined that “the statutory time limit [of one month] had passed in April 2021 without Israel having requested a deferral under article 18(2) of the Statute”.²⁷

23. In addition, the Pre-Trial Chamber underlined that the filing by Israel of the Article 18 Request after the Prosecutor had announced the requests for warrants of arrest and three years after the time limit had passed “appears to go against the very object and purpose of the statutory complementarity framework”.²⁸ The Pre-Trial Chamber underlined that the time limit of article 18(2) of the Statute 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”.²⁹

24. The Pre-Trial Chamber also indicated that it was not persuaded by Israel’s argument that “a new situation” or an “investigation with new ‘defining parameters’” had arisen.³⁰ It noted that the Article 18(1) 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”.³¹ The Pre-Trial Chamber concluded that no substantial change to the parameters of the investigation requiring new notification had occurred, as the Prosecutor now “alleges conduct committed in the context of the same type of

²⁴ [Impugned Decision](#), para. 11.

²⁵ [Impugned Decision](#), para. 12 (emphasis in original).

²⁶ [Impugned Decision](#), para. 12.

²⁷ [Impugned Decision](#), para. 13.

²⁸ [Impugned Decision](#), para. 14.

²⁹ [Impugned Decision](#), para. 14.

³⁰ [Impugned Decision](#), para. 15.

³¹ [Impugned Decision](#), para. 15.

armed conflicts, concerning the same territories, with the same alleged parties to these conflicts”.³²

25. Lastly, the Pre-Trial Chamber noted that its conclusions “do not impact, in any way, on the ability of States, including Israel, to raise issues of admissibility for cases” under article 19(2)(b) of the Statute “on the ground that it is investigating or prosecuting or has investigated or prosecuted’ the respective case”.³³

III. ADMISSIBILITY OF THE APPEAL

A. Summary of the submissions

26. In its Notice of Appeal, Israel argues that the admissibility of an appeal pursuant to article 82(1)(a) of the Statute is not limited to decisions based on article 18(2) of the Statute.³⁴ Israel further submits that the Impugned Decision pertains directly to a question of admissibility because its operative part rejects Israel’s request for an order to the Prosecutor to give a new notice pursuant to article 18(1) of the Statute.³⁵ In the view of Israel, the Impugned Decision’s determination that there has not been a lack of compliance with article 18(1) of the Statute – that would render the Prosecutor’s investigations, including the warrants of arrest arising therefrom, inadmissible – is, by its very nature, a decision with respect to admissibility.³⁶

27. Israel further contends that the possibility that other decisions concerning admissibility may be issued in the course of the proceedings does not diminish the character of the Impugned Decision as a decision with respect to admissibility.³⁷ Lastly, it submits that the Impugned Decision has not been rendered moot by the issuance of warrants of arrest because such warrants were issued only after rejecting Israel’s request for a new notice under article 18(1) of the Statute.³⁸

28. The Prosecutor avers that Israel’s appeal should be dismissed *in limine*, as the Impugned Decision is not a decision “with respect to [...] admissibility”, and thus not

³² [Impugned Decision](#), para. 15.

³³ [Impugned Decision](#), para. 16.

³⁴ [Notice of Appeal](#), paras 21-23.

³⁵ [Notice of Appeal](#), para. 24.

³⁶ [Notice of Appeal](#), para. 24.

³⁷ [Notice of Appeal](#), para. 25.

³⁸ [Notice of Appeal](#), para. 26.

directly appealable under article 82(1)(a) of the Statute.³⁹ The Prosecutor further submits that the Pre-Trial Chamber did not and could not assess the admissibility of potential cases because Israel had not requested a deferral under article 18(2) of the Statute.⁴⁰

B. Determination by the Appeals Chamber

29. 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;

[...]

30. 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 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

³⁹ [Prosecutor’s Request](#), paras 2-3.

⁴⁰ [Prosecutor’s Request](#), para. 6.

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).⁴¹

31. Accordingly, in determining the scope of “decision[s] with respect to jurisdiction or admissibility”, the Appeals Chamber needs to assess the Impugned Decision in its context. In particular, the impugned decision must consist of or be based on a ruling on the jurisdiction of the Court or that a case is admissible or inadmissible.⁴² In addition, the operative part of the decision must pertain directly to a question on the jurisdiction of the Court or the admissibility of a case.⁴³

32. The Appeals Chamber will thus assess whether, in the present case, the Impugned Decision satisfies the above conditions. Considering that Israel alleges that

⁴¹ *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) (hereinafter: “Kenya OA Decision”), 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) (hereinafter: “DRC OA Judgment”), 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) (hereinafter: “Comoros OA Decision”), 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.

⁴² [DRC OA Judgment](#), para. 18.

⁴³ [Kenya OA Decision](#), para. 15.

the Impugned Decision pertains directly to a question of admissibility,⁴⁴ the Appeals Chamber will focus its analysis on whether the decision is appealable under article 82(1)(a) of the Statute as a decision “with respect to [...] admissibility”.

33. The Appeals Chamber notes that, as recalled above,⁴⁵ in the Impugned Decision, the Pre-Trial Chamber found that Israel had not requested a deferral pursuant to article 18(2) of the Statute when it had the opportunity to do so.⁴⁶ The Pre-Trial Chamber also rejected Israel’s argument that a new situation has arisen or that an investigation with new defining parameters has been taking place since 7 October 2023.⁴⁷ The Pre-Trial Chamber concluded that, in the absence of a “new situation” or “an investigation with new defining parameters”, the Prosecutor was under no obligation 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 States to request deferral upon receipt of the notification.⁴⁸ In the view of the majority of the Appeals Chamber, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, when making the aforementioned findings, the Pre-Trial Chamber did not rule on the admissibility of any potential case under article 18 of the Statute.⁴⁹ In addition, the majority of the Appeals Chamber, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, notes that the operative part of the Impugned Decision does not pertain directly to a question on the admissibility of any potential case.

34. In light of the above, the majority of the Appeals Chamber, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, is satisfied that the Impugned Decision does not consist of or is based on a ruling on the admissibility of any potential case under article 18 of the Statute.

35. The Appeals Chamber further considers that two of the precedents referred to by Israel, which are said to support its claim that appeals under article 82(1)(a) of the Statute are not limited to decisions based on article 18(2) of the Statute,⁵⁰ are not of

⁴⁴ [Notice of Appeal](#), para. 24.

⁴⁵ *See supra* para. 22 referring to [Impugned Decision](#), paras 12-13.

⁴⁶ [Impugned Decision](#), para. 12.

⁴⁷ [Impugned Decision](#), para. 15.

⁴⁸ [Impugned Decision](#), para. 15.

⁴⁹ [Impugned Decision](#), para. 15.

⁵⁰ [Notice of Appeal](#), paras 21-22.

assistance for the purposes of the current determination, as the decisions under appeal in those cases were in fact based on rulings on the admissibility of a case.⁵¹

36. In addition, the other precedent cited by Israel only reinforces the conclusions of the majority of the Appeals Chamber. In the 2015 decision in the *Comoros* situation, the Appeals Chamber, which dealt with the issue whether a decision requesting the Prosecutor to reconsider her decision not to initiate an investigation could be considered to be “a decision on admissibility”, found that:

50. [...] While the Impugned Decision might conceivably have an effect on the admissibility of potential cases arising out of the situation, in that it could potentially lead to the Prosecutor coming to a different conclusion in relation to admissibility (pursuant to article 53 (1) (b)) at the time that she reconsiders her initial decision not to initiate an investigation, the Impugned Decision is not by its nature a decision determining admissibility.

51. The Appeals Chamber further observes that the operative part of the Impugned Decision did not pertain directly to a question of the admissibility of a case, but rather requested “the Prosecutor to reconsider the decision not to initiate an investigation into the situation referred to her by [a State Party]”, based upon the Pre-Trial Chamber’s appreciation of the facts. The Impugned Decision provides the reasons for the Pre-Trial Chamber’s request to the Prosecutor to reconsider her decision – it does not determine admissibility.⁵²

37. In light of the foregoing, having found that the Impugned Decision does not constitute a decision with respect to admissibility within the meaning of article 82(1)(a) of the Statute, the majority of the Appeals Chamber, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, dismisses the appeal as inadmissible.

38. Notwithstanding the above, the majority of the Appeals Chamber notes that Israel has in parallel requested leave to appeal the Impugned Decision, pursuant to

⁵¹ In its 2006 judgment regarding the Situation in the DRC, the Appeals Chamber found that a decision on an application for a warrant of arrest could be qualified as a decision “with respect to admissibility”, considering that “the decision by the Pre-Trial Chamber to reject the Prosecutor’s application [...] was based on a ruling of the admissibility of the case [...]. To this extent, the impugned decision is a decision ‘with respect to [...] admissibility,’ as required by article 82 (1) (a) of the Statute”, see [DRC OA Judgment](#), para. 18. Similarly, in its 2021 judgment in the *Yekatom and Ngaïssona* case, the Appeals Chamber noted that, in the decision under appeal in that case, “the Trial Chamber rejected the admissibility challenge proper, because it was uncontested that the authorities of the CAR were not investigating and/or prosecuting Mr Yekatom at the time that he filed his Admissibility Challenge”, see *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Public redacted version of ‘Judgment on Mr Yekatom’s appeal against Trial Chamber V’s “Decision on the Yekatom Defence’s Admissibility Challenge”’, 9 October 2020, ICC-01/14-01/18-678-Conf](#), 11 February 2021, ICC-01/14-01/18-678-Red (OA), para. 23.

⁵² [Comoros OA Decision](#), paras 50-51.

article 82(1)(d) of the Statute, before the Pre-Trial Chamber,⁵³ which deferred consideration thereof “until the Appeals Chamber has pronounced itself on the admissibility of Israel’s appeals pursuant to article 82(1)(a) of the Statute”.⁵⁴ Thus, if and when leave to appeal is granted by the Pre-Trial Chamber, the Appeals Chamber will consider any issue brought before it. The majority of the Appeals Chamber further underlines that, in accordance with article 19(2)(b) of the Statute, as noted by the Pre-Trial Chamber,⁵⁵ Israel’s right to challenge the admissibility of any case remains unaffected. Any decision by the Pre-Trial Chamber on such admissibility challenges would eventually be appealable pursuant to article 82(1)(a) of the Statute.

39. Judge Luz del Carmen Ibáñez Carranza dissents on the basis that she considers the appeal to be admissible. Judge Ibáñez Carranza is of the view that a decision granting or denying a request under article 18 of the Statute constitutes a decision with respect to admissibility and is directly appealable under articles 18(4) and 82(1)(a) of the Statute, as it pertains to a preliminary ruling on admissibility. In relation to the merits of the appeal, Judge Ibáñez Carranza considers that the Pre-Trial Chamber committed an error of law that materially affected the Impugned Decision. In her view, a pre-trial chamber seized of a request under article 18 of the Statute, by a State that is not a party to the Court’s treaty and has not accepted the jurisdiction of the Court, before addressing its merits is required to: (i) define the relationship between such a State and the Court, as an international organisation, so as to specify the State’s legal standing before the Court; and (ii) establish the legal basis to apply the rights and obligations arising from the Statute, the treaty that created the Court, to such a State. For these reasons, she considers that the appropriate remedy would have been to reverse the Impugned Decision and to remand the matter to the Pre-Trial Chamber for a further determination in accordance with the applicable norms of public international law, before addressing Israel’s Article 18(1) Request on the merits. Given that the Pre-Trial Chamber failed to conduct the aforementioned analysis, Judge Ibáñez Carranza is not in a position to make an assessment of Israel’s grounds of appeal on the merits. Judge Luz del Carmen Ibáñez Carranza’s full views are annexed to the present decision.

⁵³ [Request for Leave to Appeal](#).

⁵⁴ [Pre-Trial Chamber Deferral](#).


⁵⁵ [Impugned Decision](#), para. 16.

40. Judge Solomy Balungi Bossa dissents to the extent that, in her view, the decision of the Pre-Trial Chamber on whether the Prosecutor executed his obligation to provide a notice pursuant to article 18(1) of the Statute is a preliminary ruling regarding admissibility. As such, it is directly appealable before the Appeals Chamber under articles 18(4) and 82(1)(a) of the Statute. As a result, the appeal should have been found to be admissible. Judge Solomy Balungi Bossa's full views are annexed to the present decision.

41. Regarding Israel's request for suspensive effect,⁵⁶ the Appeals Chamber considers that there is no basis for granting suspensive effect when an appeal has been found to be inadmissible.⁵⁷ Accordingly, Israel's request for suspensive effect has become moot and is therefore also dismissed.

42. In light of the findings above, the Appeals Chamber also dismisses Israel's Request for Leave to Reply as moot.

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



Judge Tomoko Akane
Presiding

Dated this 24th day of April 2025

At The Hague, The Netherlands

⁵⁶ [Notice of Appeal](#), paras 5, 30-38.

⁵⁷ [See *The Prosecutor v. Callixte Mbarushimana*, Reasons for "Decision on the appeal of the Prosecutor of 19 December 2011 against the 'Decision on the confirmation of the charges' and, in the alternative, against the 'Decision on the Prosecution's Request for stay of order to release Callixte Mbarushimana' and on the victims' request for participation" of 20 December 2011](#), 24 January 2012, ICC-01/04-01/10-483 (OA3), para. 26.