

1 International Criminal Court
2 Appeals Chamber
3 Situation: Islamic Republic of Afghanistan
4 ICC-02/17
5 Presiding Judge Piotr Hofmański, Judge Howard Morrison, Judge Luz de Carmen
6 Ibáñez Carranza, Judge Solomy Balungi Bossa and Judge Kimberly Prost
7 Appeals Judgment - Courtroom 1
8 Thursday, 5 March 2020
9 (The hearing starts in open session at 10.02 a.m.)
10 THE COURT USHER: [10:02:13] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE HOFMANSKI: [10:02:53] Good morning.
14 Would the court officer please call the case.
15 THE COURT OFFICER: [10:03:02]
16 Good morning, Mr President and your Honours.
17 Situation in Islamic Republic of Afghanistan, situation reference ICC-02/17.
18 And for the record, we are in open session.
19 PRESIDING JUDGE HOFMANSKI: [10:03:15] Thank you very much.
20 My name is Piotr Hofmański, and I am the Presiding Judge in the appeal
21 of the Prosecutor against the decision of Pre-Trial Chamber II of 12 April 2019 on the
22 authorisation of an investigation into the situation in the Islamic Republic of
23 Afghanistan. The other judges of the Appeals Chamber on this appeal are
24 Judge Howard Morrison, Judge Luz del Carmen Ibáñez Carranza,
25 Judge Solomy Balungi Bossa, and Judge Kimberly Prost.

1 May I ask the parties and participants to please introduce themselves for the record,
2 starting with the Office of the Prosecutor whose appeal we are deciding today.

3 MR GUARIGLIA: [10:04:03] Good morning, your Honours.

4 My name is Fabricio Guariglia, I am director of Prosecutions. Appearing with me
5 today are Ms Helen Brady, senior appeals counsel; Mr Matteo Costi, appeals counsel;
6 Mr Matt Cross, appeals counsel; and Mr Manoj Sachdeva, trial lawyer.

7 PRESIDING JUDGE HOFMANSKI: [10:04:19] Thank you very much.

8 Mr Guariglia.

9 And then I would ask the legal representative of the government of the Islamic
10 Republic of Afghanistan.

11 MR DIXON: [10:04:28] Good morning, Mr President, your Honours.

12 Rodney Dixon, counsel for the government of Afghanistan, instructed by and with
13 His Excellency Mohammad Azizi, the ambassador for the government of Afghanistan
14 in The Hague, and Sanga Siddiqi, and assisted by Aidan Elias and Anne Coulon.

15 PRESIDING JUDGE HOFMANSKI: [10:04:53] Thank you very much.

16 And legal representatives for victims, we have LRV1 and 2 in the courtroom.

17 MS KISWANSON: [10:05:02] Good morning, your Honours.

18 My name is Nada Kiswanson van Hooydonk, and I represent 82 Afghan victims on
19 behalf of LRV1.

20 PRESIDING JUDGE HOFMANSKI: [10:05:14] Thank you.

21 MS GALLAGHER: [10:05:15] Good morning, your Honours.

22 Katherine Gallagher from the Center for Constitutional Rights in New York,
23 representing Sharqawi Al Hajj and Guled Duran, two victims who remain detained in
24 Guantanamo without charge. And on behalf of the legal representatives for
25 Mr al-Asad, Mr Rabbani, Mr Al Nashiri and two others, I convey their regrets that

1 they cannot be here in Court today.

2 PRESIDING JUDGE HOFMANSKI: [10:05:47] Thank you very much.

3 I would like to ask Legal Representative of Victims OPCV, please.

4 MS MASSIDDA: [10:05:56] Good morning, your Honours. The office is appearing
5 today representing the general interests of the victims in the situation.

6 My name is Paolina Massidda, principal counsel. I am accompanied today by

7 Ms Sarah Pellet, counsel, and Ms Anna Bonini, legal officer.

8 PRESIDING JUDGE HOFMANSKI: [10:06:09] Thank you very much.

9 And last but not least is *amici curiae*, OPCD.

10 MR KEÏTA: [10:06:18] (Interpretation) Good morning, your Honour, your

11 excellencies. For the OPCD I am accompanied today by Madam Marie O'Leary,

12 counsel; Michael Herz, associate counsel; and I am myself Xavier-Jean Keïta, lead

13 counsel. Thank you.

14 PRESIDING JUDGE HOFMANSKI: [10:06:39] (Interpretation) Thank you, Mr Keïta.

15 (Speaks English) I shall now summarise the Appeals Chamber's judgment on

16 the Prosecutor's appeal. This summary is not part of the written judgment, which is

17 the only authentic account of the Appeals Chamber's ruling and reasons. The

18 written judgment will be made available at the conclusion of this hearing.

19 By way of introduction and procedural background, the Appeals Chamber notes that

20 pursuant to Article 15 of the Statute, the Prosecutor may initiate an investigation

21 *proprio motu* without having received a referral from a State Party to the Rome Statute

22 or the Security Council of the United Nations.

23 However, in such a case, the investigation must be authorised by a Pre-Trial Chamber

24 before the Prosecutor can proceed.

25 On 20 November 2017, the Prosecutor filed a request for authorisation of an

1 investigation into crimes allegedly committed in the Islamic Republic of Afghanistan,
2 hereinafter Afghanistan, since 1 May 2003, as well as related crimes allegedly
3 committed in other State Parties since 1 July 2002. The request involved crimes
4 allegedly committed by, firstly:
5 the Taliban and affiliated groups of crimes against humanity and war crimes;
6 the Afghan National Security Forces for war crimes; and
7 the armed forces of the United States of America and its Central Intelligence Agency,
8 the CIA, for war crimes.

9 On 12 April 2019, Pre-Trial Chamber II rejected the Prosecutor's request and decided
10 not to authorise an investigation into the situation in Afghanistan on the basis that an
11 investigation would not serve the interests of justice. The Pre-Trial Chamber
12 concluded that, I quote, "notwithstanding the fact that all the relevant requirements
13 are met as regards both jurisdiction and admissibility, an investigation into the
14 situation in Afghanistan would not serve the interests of justice". End quote.

15 On appeal, the Prosecutor raises two grounds, namely, that the Pre-Trial Chamber
16 erred in law in seeking to make a positive determination that the initiation of an
17 investigation into the situation in Afghanistan was in the interests of justice. This is
18 the first ground of appeal. And further, or alternatively, that the Pre-Trial Chamber
19 abused its discretion in assessing the interests of justice. This is the second ground
20 of appeal.

21 The Appeals Chamber, in addition to reviewing all the written submissions from
22 the Prosecutor, victims, and other participants, held a hearing for three days to hear
23 oral arguments. During the hearing the Appeals Chamber issued an oral decision by
24 which it dismissed, Judge Ibáñez Carranza dissenting, the appeals brought by the
25 legal representatives of victims for lack of standing. The legal representatives were

1 nevertheless permitted to make observations at the hearing as participants. The full
2 reasons for the Appeals Chamber decision was filed separately yesterday and Judge
3 Ibáñez Carranza's further reasoning of her dissent will be filed later today.

4 Turning to the merits of the appeal, the Appeals Chamber recalls that under the first
5 ground of appeal the Prosecutor argues that the Pre-Trial Chamber erred in law when
6 it decided to determine, pursuant to Article 15(4) and Article 53(1)(c) whether the
7 initiation of an investigation would serve the interests of justice taking into
8 consideration the gravity of the alleged conduct, the potential victims' interests and
9 the likelihood that an investigation would be feasible and meaningful under the
10 relevant circumstances.

11 The Prosecutor argues that in the absence of any cause to doubt the Prosecutor's
12 determination that there were no substantial reasons to believe that an investigation
13 would not be in the interests of justice, she submits that the Pre-Trial Chamber should
14 have agreed with her assessment under Article 53(1)(c) of the Statute and authorised
15 the investigation.

16 The Appeals Chamber notes that the Prosecutor's arguments under her first ground
17 of appeal are predicated on the assumption that a Pre-Trial Chamber's decision
18 pursuant to Article 15(4) of the Statute should take into account the interests of justice
19 factor of Article 53(1)(c) of the Statute, but that the manner in which the Pre-Trial
20 Chamber considered this factor in the present case was wrong.

21 In contrast, the victims and certain *amici curiae* argue that the Pre-Trial Chamber
22 should not have addressed the interests of justice at all. Therefore, the first issue for
23 the Appeals Chamber to determine is whether the interests of justice factor under
24 Article 53(1)(c) of the Statute should be assessed in determining whether there is
25 a reasonable basis to proceed with an investigation under Article 15(4) of the Statute.

1 The Appeals Chamber notes that, in the five decisions that the Pre-Trial Chambers
2 have issued to date authorising investigations under Article 15(4) of the Statute, they
3 have considered all the factors set out in Article 53(1) of the Statute, including, to
4 a certain extent, the Prosecutor's interests of justice assessment under Article 53(1)(c)
5 of the Statute. In the case at hand, and in similar vein, the Pre-Trial Chamber found
6 that it, I quote, "must consider, on the exclusive basis of the information made
7 available by the Prosecutor, whether the requirements set out in Article 53(1)(a) to (c)
8 are met". End quote.

9 For reasons more fully addressed in the written judgment, the Appeals Chamber
10 finds that the Pre-Trial Chamber erred in its interpretation of Article 15(4)
11 of the Statute when it found itself bound to assess the factors under Article 53(1) of
12 the Statute.

13 The starting point for the Appeals Chamber's analysis is a consideration of the
14 function of Articles 15 and 53 of the Statute and the relationship between these
15 provisions. During the drafting of the Rome Statute, these provisions were the
16 subject of lengthy debate and the final text reflects a delicate balance regarding
17 the Prosecutor's discretionary power to initiate investigations and the extent to which
18 judicial review of these powers would be permitted.

19 At the outset, the Appeals Chamber notes that Article 13 of the Statute prescribes
20 three circumstances in which the Court may exercise its jurisdiction with respect to
21 Article 5 crime. In the case of a State or Security Council referral of a situation to
22 the Court, Article 53(1) of the Statute places, in principle, an obligation
23 on the Prosecutor to open an investigation by providing that the Prosecutor shall
24 initiate an investigation unless he or she determines that there is no reasonable basis
25 to proceed.

1 Article 53(1) of the Statute thus reflects an expectation that the Prosecutor will
2 proceed to investigate referred situations, while allowing the Prosecutor not to
3 proceed in the limited circumstances set out in Article 53(1)(a) to (c) of the Statute.
4 A decision not to investigate -- to initiate an investigation under Article 53(1)
5 of the Statute is subject to judicial control pursuant to Article 53(3) of the Statute.
6 In contrast, Article 15 of the Statute sets out the procedure for the triggering of an
7 investigation by the Prosecutor *proprio motu*, that is, on her own motion when
8 a situation has not been referred to her. Article 15 recognises the discretionary
9 nature of this power, providing in this context that it is for the Prosecutor to
10 determine whether there is a reasonable basis to initiate an investigation *proprio motu*.
11 If the Prosecutor concludes that there is no reasonable basis to proceed, Article 15(6)
12 of the Statute requires her to inform those who provided the information of her
13 conclusion. The legal framework does not, however, foresee the judicial review
14 of the Prosecutor's conclusion.
15 In the view of the Appeals Chamber, this is consistent with the discretionary nature of
16 the power accorded to the Prosecutor under Article 15 of the Statute. Indeed, it
17 would be contrary to the very concept to suggest that a duty to investigate could be
18 imposed by the Pre-Trial Chamber in the absence of a request for authorisation of an
19 investigation by the Prosecutor. Therefore, under the procedure set out in Article 15
20 of the Statute, the Pre-Trial Chamber has a role in respect of the Prosecutor's exercise
21 of discretionary power only if she determines that there is a basis to initiate an
22 investigation *proprio motu*.
23 The Appeals Chamber considers that the content and placement of Articles 15 and
24 53(1) of the Statute make it clear that these are separate provisions addressing the
25 initiation of an investigation by the Prosecutor in two distinct contexts. Article 15

1 of the Statute governs the initiation of a *proprio motu* investigation, while Article 53(1)
2 concerns situations which are referred to the Prosecutor by a State Party or the
3 Security Council.

4 For the purposes of authorising the *proprio motu* investigation the Appeals Chamber
5 notes that Article 15(4) of the Statute requires a Pre-Trial Chamber, at this early stage
6 of the proceeding, to only consider whether there is a reasonable factual basis to
7 proceed with an investigation, in the sense of whether crimes have been committed,
8 and whether a potential case or cases arising from such investigation appear to fall
9 within the Court's jurisdiction.

10 In this regard, the Appeals Chamber finds that Rule 48 of the Rules requires
11 the Prosecutor to consider all the factors under Article 53(1) of the Statute, including
12 the interests of justice. At the same time, there is no equivalent rule that would
13 import these considerations for the purposes of the Pre-Trial Chamber's
14 determination under Article 15(4) of the Statute.

15 The interests of justice factor set out in Article 53(1)(c) of the Statute, while part
16 of the Prosecutor's consideration under Article 15(3) of the Statute is not part of the
17 Pre-Trial Chamber's decision under Article 15(4) of the Statute. Instead, the
18 Pre-Trial Chamber is required to reach its own determination under Article 15(4)
19 of the Statute as to whether there is a reasonable basis to proceed with an
20 investigation. It is not called to review the Prosecutor's analysis of the factors under
21 Article 53(1)(a) to (c) of the Statute.

22 Accordingly, the Appeals Chamber finds that the Pre-Trial Chamber erred in
23 deciding that an investigation into the situation in Afghanistan at this stage would
24 not serve the interests of justice. It finds that the Pre-Trial Chamber's decision under
25 Article 15(4) of the Statute should have addressed only whether there is a reasonable

1 factual basis for the Prosecutor to proceed with an investigation, in the sense of
2 whether crimes have been committed, and whether the potential case or cases arising
3 from such investigation would appear to fall within the Court's jurisdiction.
4 Turning to the Prosecutor's second ground of appeal, the Prosecutor argues that,
5 when determining that the initiation of an investigation into the situation in
6 Afghanistan was not in the interests of justice, the Pre-Trial Chamber abused its
7 discretion by failing to seek additional information from the Prosecutor,
8 misapprehending the factors it took into account for its decision, taking account into
9 factors it should not have taken into account and failing to take sufficient account of
10 other relevant factors.

11 Having determined in relation to the Prosecutor's first ground of appeal that the
12 Pre-Trial Chamber erred in considering the interests of justice when deciding on
13 the Prosecutor's request for authorisation of an investigation, the Appeals Chamber
14 sees no need to address the Prosecutor's second ground of appeal.

15 However, the interpretation given to the term interests of justice as it appears in
16 Article 53(1)(c) of the Statute by the Pre-Trial Chamber has been the subject of
17 extensive submissions before the Appeals Chamber and has provoked much
18 commentary from the academic community and civil society. The concept of the
19 interests of justice is of significance under the Statute, particularly for the Prosecutor
20 who remains obliged to consider it in her assessment under Article 15(3) and 53(1) of
21 the Statute. For this reason, the Appeals Chamber is of the view that it is
22 appropriate to provide some observations on the Pre-Trial Chamber's approach to
23 this concept.

24 First, the Appeals Chamber underlines that Article 53(1) of the Statute is formulated
25 in the negative. The Prosecutor must consider whether there are reasons to believe

1 that an investigation would not serve the interests of justice and need not
2 affirmatively determine that an investigation would be in the interests of justice, as
3 suggested by the Pre-Trial Chamber.

4 Second, the Appeals Chamber notes that the Pre-Trial Chamber's reasoning in
5 support of its conclusion regarding the interests of justice were cursory, speculative
6 and did not refer to information capable of supporting it.

7 Third, there is no indication that the Pre-Trial Chamber considered the gravity of the
8 crimes and the interests of victims as articulated by the victims themselves in
9 conducting this assessment. In these circumstances, the Appeals Chamber is of the
10 view that the Pre-Trial Chamber did not properly assess the interests of justice.

11 Having found that the Pre-Trial Chamber erred by considering the interests of justice
12 which was the basis for its decision not to authorise an investigation, the
13 Appeals Chamber finds that this error materially affected the Pre-Trial Chamber's
14 decision.

15 Rule 158(1) of the Rules directs the Appeals Chamber to either confirm, reverse or
16 amend the decision appealed under Article 82(1)(d) of the Statute.

17 In considering whether the Appeals Chamber should reverse the appealed
18 decision -- the decision and remand the matter to the Pre-Trial Chamber, the
19 Appeals Chamber notes that, in the appealed decision, the Pre-Trial Chamber found
20 that there is a reasonable basis to believe that the incidents underlying the request
21 occurred. Elsewhere, the Pre-Trial Chamber found that all the relevant requirements
22 are met as regards jurisdiction. Thus, based on the Prosecutor's request, the
23 Pre-Trial Chamber entered all the requisite findings under Article 15(4) of
24 the Statute -- that there is a reasonable factual basis to proceed with an investigation,
25 in the sense of whether crimes have been committed, and that potential case or cases

1 arising from such investigation appear to fall within the Court's jurisdiction.
2 These aspects of the Pre-Trial Chamber's decision have not been appealed. Given
3 these findings, if the matter were remanded to the Pre-Trial Chamber, it would have
4 no other recourse but to authorise the investigation. In these circumstances and in
5 the interests of judicial economy, the Appeals Chamber considers it appropriate to
6 amend the appealed decision and authorise the investigation based on the
7 aforementioned findings of the Pre-Trial Chamber.

8 The Appeals Chamber notes that in declining to authorise the investigation, the
9 Pre-Trial Chamber made statements relating to the scope of any potential
10 investigation, which, in the view of the Appeals Chamber, are based on legal error
11 and incorrect understanding of its role under Article 15(4) of the Statute. These
12 concern the following issues:

13 First, whether the authorisation is limited to the incidents mentioned in the request
14 and those closely linked thereto; and whether certain acts committed outside
15 Afghanistan would amount to war crimes if the victims of these acts were captured
16 outside Afghanistan.

17 The Appeals Chamber will address these issues in turn.

18 In relation to the first issue, the Appeals Chamber notes that in support of her request
19 for authorisation of an investigation into the situation in Afghanistan, the Prosecutor
20 presented information relating to numerous incidents which, in her view, established
21 a reasonable basis that crimes under the jurisdiction of the Court have been
22 committed. The Prosecutor clarified, however, that she did not seek authorisation to
23 investigate only in respect of these alleged crimes, but that she should be able to
24 conduct an investigation into any other alleged crimes that fall within the scope of
25 authorised situation.

1 The Pre-Trial Chamber, in contrast, underlines that, if it were to authorise an
2 investigation, the Prosecutor could only investigate incidents mentioned in the
3 request and authorised by the Chamber, as well as those comprised within the
4 authorisation's geographical, temporal, and contextual scope, or closely linked to it.
5 For reasons more fully elaborated upon in the actual judgment, the Appeals Chamber
6 considers that restricting the authorised investigation to the factual information
7 obtained during the preliminary examination would erroneously inhibit
8 the Prosecutor's truth-seeking function. Such a restriction is also unnecessary to
9 fulfil the purpose of Article 15(4) of the Statute in ensuring that the Prosecutor does
10 not embark on a frivolous or politically motivated investigation in that she remains
11 restricted in her investigation to the contours of the situation authorised by the
12 Pre-Trial Chamber. Therefore, the Appeals Chamber considers that authorisation of
13 an investigation should not be restricted to the incidents specifically mentioned in
14 the Prosecutor's request and incidents that are closely linked to those incidents in the
15 manner described by the Pre-Trial Chamber.

16 In relation to the Afghanistan situation, the Appeals Chamber notes that
17 the Prosecutor presented information regarding the alleged large-scale commission of
18 multiple crimes against humanity and war crimes by various armed groups and
19 actors involved in the conflict, which began prior to the entry into force of the
20 Rome Statute on 17 July 2002 and continues to the present day. This information
21 was accepted by the Pre-Trial Chamber as providing a reasonable basis to believe that
22 the alleged events occurred and that they may constitute crimes within the
23 jurisdiction of the Court.

24 Given the scope of the information presented by the Prosecutor and accepted by the
25 Pre-Trial Chamber, the Appeals Chamber considers that the requirements of

1 Article 15(4) of the Statute would be met by granting the authorisation in the terms
2 requested by the Prosecutor, which sufficiently defines the parameters of the
3 situation.

4 In relation to the second issue, namely, whether certain acts committed outside
5 Afghanistan would amount to war crimes if the victims of these acts were captured
6 outside Afghanistan, the Appeals Chamber notes that in the Prosecutor's request she
7 provided information relating to alleged war crimes amounting to serious violations
8 of article 3 common to the four Geneva conventions, Common Article 3, of torture
9 and cruel treatment, outrages upon personal dignity, and rape and other forms of
10 sexual violence, committed as part of a policy, by members of the CIA in a number of
11 detention facilities in Afghanistan, as well as in detention facilities located on the
12 territory of other State Parties.

13 For the purpose of the request, the Prosecutor referred only to crimes allegedly
14 committed by the CIA on the territory of State Parties against individuals that she
15 considered to have a nexus to the armed conflict in Afghanistan.

16 The Appeals Chamber notes that the nexus requirement for war crimes is recognised
17 in the Elements of Crimes. It has been observed that the function of the nexus
18 requirement is to differentiate war crimes, for example, the killing or rape of
19 a prisoner of war, from ordinary or common crimes under domestic law, such as the
20 common crime of murder and rape.

21 In the appealed decision, the Pre-Trial Chamber found that the alleged incidents
22 which the Prosecutor attributed to the CIA fell outside the Court's jurisdiction since
23 these are said to have occurred against persons captured elsewhere than Afghanistan.
24 The Pre-Trial Chamber considered that the acts in question lacked the nexus with an
25 internal armed conflict required to trigger the application of international

1 humanitarian law. The Pre-Trial Chamber supported its view by reference to the
2 chapeau of Common Article 3 stating that, I quote, "[b]oth the wording and the spirit
3 of Common Article 3 to the Geneva Conventions are univocal in confirming its
4 territorial scope within the borders of the State where the hostilities are actually
5 occurring". End quote.

6 While it is true that the chapeau of Common Article 3 refers to an armed conflict not
7 of an international character occurring in the territory of one of the high contracting
8 parties, this phrase does not have the function ascribed to it by the Pre-Trial Chamber,
9 namely, to limit the applicability of the provision to the State on the territory of which
10 the armed conflict occurs. Relating to the view of the Appeals Chamber, it simply
11 describes the circumstances under which Common Article 3 applies, namely, there
12 must be an armed conflict not of an international character in one of the State Parties
13 to the Geneva Convention.

14 This view finds support in the position of the International Committee of the
15 Red Cross, which suggests that this phrase does not have the effect of restricting the
16 application of Common Article 3 to the territory of the State in which the armed
17 conflict occurs, but rather was aimed at ensuring that the provision would bind those
18 States that had ratified the Geneva Conventions. The ICRC indicated that the phrase
19 has lost its importance in practice, as any armed conflict not of an international
20 character cannot but take place on the territory of one of the Parties to the Convention
21 given the universal ratification of the Geneva Conventions. Indeed, all States
22 relevant to the allegations in question - Afghanistan, Poland, Romania and Lithuania,
23 as well as the United States - are parties to the four Geneva Conventions.

24 The remaining text of Common Article 3 also does not expressly limit the applicability
25 of Common Article 3 to the territory of the State where the conflict occurs. To the

1 contrary, the minimum provisions set out in subparagraph 1 stipulate that those
2 falling under its protection, and I quote, "shall in all circumstances be treated
3 humanely and that certain acts against these persons shall remain prohibited at any
4 time and in any place whatsoever". End quote.

5 Therefore, contrary to the Pre-Trial Chamber's finding, the text of Common Article 3
6 read in its totality does not suggest that the requisite nexus with the armed conflict in
7 Afghanistan cannot exist if the criminal conduct occurred outside Afghanistan and
8 the victim was not captured in Afghanistan. Importantly, such a conclusion would
9 also be contrary to the purpose of Common Article 3, which is to provide minimum
10 guarantees in relation to armed conflicts.

11 In sum, the Appeals Chamber considers that the Pre-Trial Chamber's finding
12 regarding the nexus requirement was incorrect. There is no reason to limit
13 the Prosecutor's investigation in the manner envisaged by the Pre-Trial Chamber.
14 This is not to say that the Appeals Chamber has determined that any or all of the
15 incidents listed in Annex 2C to the Prosecutor's request would necessarily have the
16 requisite nexus to qualify as war crimes. When the relevant circumstances have
17 been established in the course of an investigation into the situation as whole,
18 the Prosecutor will be in a position to evaluate the applicable law, the significance of
19 the fact that capture is alleged to have taken place outside Afghanistan and whether
20 one or more individual cases fall within the Court's jurisdiction.

21 In conclusion, the Appeals Chamber considers it appropriate to amend the appealed
22 decision to the effect that the Prosecutor is authorised to commence an investigation
23 in relation to alleged crimes committed on the territory of Afghanistan in the period
24 since 1 May 2003, as well as other alleged crimes that have a nexus to the armed
25 conflict in Afghanistan and are sufficiently linked to the situation and were

- 1 committed on the territory of other State Parties in the period since 1 July 2002.
- 2 Judge Ibáñez Carranza appends a separate opinion to this judgment which reflects
- 3 her reasoning on the interpretation of Article 15 and its relationship with
- 4 Article 53(1)(c) of the Statute.
- 5 This concludes my summary of the judgment. I wish to thank the legal team of the
- 6 Appeals Chamber, the interpreters, court reporters, other Registry staff, and parties
- 7 and participants.
- 8 I now declare this session closed.
- 9 THE COURT USHER: [10:40:28] All rise.
- 10 (The hearing ends in open session at 10.40 a.m.)