



Original: English

No. ICC-01/18 OA3

Date: 9 July 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 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)”**

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**

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),

Having before it the 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)” of 13 June 2025 (ICC-01/18-441),

Pursuant to regulation 24(5) of the Regulations of the Court,

Renders unanimously the following

DECISION

The State of Israel may file a reply to the 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)” by 16 July 2025, as specified in paragraphs 12-13 of the present decision. The reply shall not exceed 15 pages.

REASONS

I. PROCEDURAL HISTORY

1. On 21 November 2024, Pre-Trial Chamber I (hereinafter: “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 request submitted by the State of Israel (hereinafter: “Israel”) pursuant to article 18 of the Statute.¹

2. On 14 May 2025, the Pre-Trial Chamber granted Israel’s request for leave to appeal on the following issue: “[w]hether the Pre-Trial Chamber erred in finding that

¹ [Impugned Decision](#), p. 9.

no new situation had arisen, and that no substantial change had occurred in the parameters of the investigation into the situation, following 7 October 2023”.²

3. On 26 May 2025, Israel filed its appeal brief against the Impugned Decision (hereinafter: “Appeal Brief”).³

4. On 9 June 2025, the Prosecutor filed his response to Israel’s Appeal Brief (hereinafter: “Prosecutor’s Response”).⁴

5. On 13 June 2025, Israel filed a request for leave to reply to the Prosecutor’s Response (hereinafter: “Request”).⁵

6. On 18 June 2025, the Prosecutor filed his response to the Request (hereinafter: “Response to Request”).⁶

II. MERITS

A. Summary of the submissions

7. Israel requests, pursuant to regulation 24(5) of the Regulations of the Court (hereinafter: “Regulations”), the Appeals Chamber to grant it leave to reply to the Prosecutor’s Response with respect to the following four issues: (i) the Prosecutor’s assertion that the “Summary of Preliminary Examination Findings” formed part of the notification to Israel pursuant to article 18(1) of the Statute; (ii) the Prosecutor’s submission that “Israel ‘did not raise any issue regarding the scope of the investigation’ during the period that it was cooperating with the Office of the Prosecutor”; (iii) the Prosecutor’s assertion that statements made by referring States during the Assembly of States Parties should be accorded weight; and (iv) the Prosecutor’s reliance on two

² [Decision on Israel’s request for leave to appeal the ‘Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice’](#), 14 May 2025, ICC-01/18-429, paras 8, 17-20 and p. 8.

³ [Appeal of “Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice” \(ICC-01/18-375\)](#), 26 May 2025, ICC-01/18-434, with Public Annex A, [ICC-01/18-434-AnxA](#).

⁴ [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’ \(ICC-01/18-375\)”](#), 9 June 2025, ICC-01/18-440, with Confidential Annexes A, B and C.

⁵ [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’ \(ICC-01/18-375\)”](#), 13 June 2025, ICC-01/18-441, with Confidential Annex I.

⁶ [Prosecution’s 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’ \(ICC-01/18-375\)”](#), 18 June 2025, ICC-01/18-443.

documents presented for the first time in the Prosecutor’s Response (hereinafter: “Four Issues”).⁷

8. Israel argues that a reply with respect to the Four Issues “will assist the adjudication of the present appeal”.⁸ Israel also argues that a “full presentation of the issues and facts” is of particular importance due to the broader significance of its appeal in relation to the principle of complementarity and the relationship between the Court and States, in particular States not party to the Statute.⁹

9. The Prosecutor submits that none of the issues raised by Israel amount to a new issue arising from the Prosecutor’s Response or could not have been reasonably anticipated, and that “the proposed reply is not necessary for the Appeals Chamber’s adjudication of the present Appeal”.¹⁰ The Prosecutor further avers that the issues that are the subject of the Request “had already been raised or foreshadowed”, and that, by requesting leave to reply, Israel seeks to “supplement and elaborate on arguments that were already raised in its Appeal”.¹¹

B. Determination by the Appeals Chamber

10. Regulation 24(5) of the Regulations provides:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

11. The Appeals Chamber may grant a request for leave to reply if the above-mentioned conditions are met, or if it considers that a reply would otherwise be necessary for the adjudication of the appeal.¹² The Appeals Chamber recalls that the

⁷ [Request](#), paras 3-7.

⁸ [Request](#), para. 8.

⁹ [Request](#), para. 8.

¹⁰ [Response to Request](#), paras 2-3, 6.

¹¹ [Response to Request](#), para. 2.

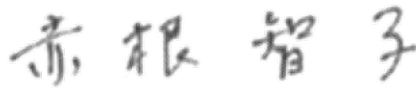
¹² See, for example, *Situation in the Islamic Republic of Afghanistan*, [Decision on the Prosecutor’s request for leave to reply](#), 23 December 2022, ICC-02/17-206 (OA5), para. 8 (footnote omitted); *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda’s request for leave to reply](#), 17 July 2017, ICC-01/04-02/06-1994 (OA6), para. 9 (footnote omitted); *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.

question of whether leave to reply should be granted lies within its discretionary powers and must be considered on a case-by-case basis.¹³

12. The Appeals Chamber considers that the present appeal raises novel and complex issues and that a reply from Israel on the Four Issues would assist it in its determination of the appeal. Accordingly, the Appeals Chamber grants Israel leave to reply to the Prosecutor's Response with respect to the Four Issues.

13. The Appeals Chamber considers it appropriate to limit Israel's reply to no more than 15 pages and to set the time limit for filing the reply to no later than 16 July 2025.

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



Judge Tomoko Akane
Presiding

Dated this 9th day of July 2025

At The Hague, The Netherlands

¹³ See, for example, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on Mr Bemba's request for leave to reply to the Prosecutor's response to the additional evidence request](#), 2 December 2016, ICC-01/05-01/08-3479 (A), para. 7.