Cour
Pénale
Internationale

International
Criminal
Court

Original: **English**

No.**: ICC-01/18**
Date: **12 December 2024**

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public

Deferral of the Chamber's consideration of two requests for leave to appeal filed by the State of Israel

Decision to be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
Mr Karim A.A. Khan
Mr Andrew Cayley

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives
State of Israel

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 'Chamber') of the International Criminal Court (the 'Court') hereby issues this decision deferring its consideration of two requests made by the State of Israel ('Israel').

1. On 21 November 2024, the Chamber issued two public decisions: i) the Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute ('Decision related to Article 19');[1] and ii) the Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice ('Decision related to Article 18').[2]

2. On 27 November 2024, Israel filed a notice of appeal of the Decision related to Article 19,[3] and a notice of appeal of the Decision related to Article 18[4] before the Appeals Chamber. On the same day, Israel also filed requests for leave to appeal the Decision related to Article 19 ('Request for Leave to Appeal the Decision related to Article 19')[5] and the Decision related to Article 18 ('Request for Leave to Appeal the Decision related to Article 18')[6] before the Chamber.

3. On 29 November 2024, the Prosecution filed two requests before the Appeals Chamber related to Israel's notices of appeal.[7]

4. On 2 December 2024, the Prosecution responded to the Request for Leave to Appeal the Decision related to Article 19[8] and the Request for Leave to Appeal the Decision related to Article 18[9] (together 'Prosecution Responses').

[1] ICC-01/18-374.
[2] ICC-01/18-375.
[3] 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.
[4] 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.
[5] 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.
[6] 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.
[7] 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; and 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.
[8] Prosecution Response to Israel's "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-01/18-393 ('Prosecution Response to Request for Leave to Appeal the Decision related to Article 19').
[9] Prosecution Response to Israel's "Request for leave to appeal 'Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice"', ICC-01/18-394 ('Prosecution Response to Request for Leave to Appeal the Decision related to Article 18').

5. The Chamber observes that Israel at the same time challenges the aforementioned two decisions directly before the Appeals Chamber, invoking article 82(1)(a) of the Statute according to which a 'decision with respect to jurisdiction or admissibility' may be appealed, and requests leave to appeal these decisions before the Chamber pursuant to article 82(1)(d) of the Statute, which is a residual clause concerning decisions not mentioned in paragraphs (a), (b), and (c) for which leave to appeal must be sought first. The Chamber further notes that Israel indicates that its primary position is that the Decision related to Article 19 and the Decision related to Article 18 may be appealed 'as of right without requiring leave from the Pre-Trial Chamber', and that leave to appeal is sought from the Chamber 'out of abundance of caution'.[10] The Chamber also notes that the Prosecution requested the Appeals Chamber to dismiss the appeals filed pursuant to article 82(1)(a) *in limine* and to discontinue the appellate proceedings.[11]

6. In these circumstances, with Israel having elected to simultaneously follow two separate avenues set out in article 82(1) of the Statute, and noting the structure of the aforementioned provision and the inter-related nature of the proceedings, the Chamber considers it appropriate to defer 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.

[10] Request for Leave to Appeal the Decision related to Article 19, paras 6-7; Prosecution Response to Request for Leave to Appeal the Decision related to Article 18, para. 1.
[11] Prosecution Response to Request for Leave to Appeal the Decision related to Article 19, para. 1; and Prosecution Response to Request for Leave to Appeal the Decision related to Article 18, para. 1.

THEREFORE, THE CHAMBER HEREBY,

DEFERS its decision on the Request for Leave to Appeal the Decision related to Article 19; and

DEFERS its decision on the Request for Leave to Appeal the Decision related to Article 18.

Done in English. A French translation will follow. The English version remains authoritative.

Judge Nicolas Guillou
Presiding Judge

Judge Reine Adélaïde Sophie Alapini-Gansou

Judge Beti Hohler

Dated this Thursday, 12 December 2024
At The Hague, The Netherlands