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No.: **ICC-01/18**
Date: **17 October 2025**

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

Decision on Israel's request for leave to appeal the 'Decision on the State of Israel's request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor's investigation'

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

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| ☒ 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
State of Israel | ☐ 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 ‘Chamber’) of the International Criminal Court (the ‘Court’), acting under article 82(1)(d) of the Rome Statute (the ‘Statute’), hereby decides on the State of Israel’s (‘Israel’) ‘Request for leave to appeal the “Decision on the State of Israel’s request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor’s investigation”’ (the ‘Request’).¹

I. PROCEDURAL HISTORY

1. On 5 February 2021, Pre-Trial Chamber I, in a different composition, issued a decision on a request by the Prosecution² pursuant to article 19(3) of Statute, finding unanimously that the State of Palestine (‘Palestine’) is a State Party to the Statute and holding by majority that, as a consequence, ‘Palestine 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 the State of Palestine (‘Palestine Situation’) extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem (the ‘Article 19(3) Decision’).³

2. On 3 March 2021, the Prosecutor publicly announced the initiation of an investigation into the Palestine Situation, with respect to ‘crimes within the jurisdiction of the Court that are alleged to have been committed in the Situation since 13 June 2014’.⁴

3. On 20 May 2024, the Prosecutor publicly announced the filing of applications for warrants of arrest in the Palestine Situation against five individuals, including Benjamin Netanyahu (‘Mr Netanyahu’) and Yoav Gallant (‘Mr Gallant’).⁵

¹ 22 July 2025, ICC-01/18-461.

² Prosecution’s request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18-12.

³ 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.

⁴ Office of the Prosecutor, Statement of the ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine, 3 March 2021.

⁵ Office of the Prosecutor, Statement of ICC Prosecutor Karim A.A. Khan K.C.: Applications for arrest warrants in the situation in the State of Palestine, 20 May 2024.

4. On 23 September 2024, Israel filed before the Chamber ‘Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’ (‘Israel’s Jurisdiction Challenge’).⁶

5. On 21 November 2024, the Chamber rejected Israel’s Jurisdiction Challenge as premature (the ‘Article 19(2) Decision’).⁷ On the same day, the Chamber issued three warrants of arrest, including warrants for Mr Netanyahu and Mr Gallant (the ‘Warrants’).⁸

6. On 27 November 2024, Israel filed a notice of appeal against the Article 19(2) Decision before the Appeals Chamber, pursuant to article 82(1)(a) of the Statute (the ‘Notice of Appeal’),⁹ in which it asked the Appeals Chamber to give suspensive effect to the appeal pursuant to article 82(3) of the Statute and to suspend the Warrants.¹⁰

7. On 13 December 2024, Israel filed its appeal brief, in which it asked the Appeals Chamber to find, *inter alia*, that the Warrants were erroneously issued because the Chamber had failed to provide a substantive determination on the merits of Israel’s Jurisdiction Challenge and were therefore null and void (‘Israel’s Appeal Brief’).¹¹

8. On 24 April 2025, the Appeals Chamber issued its judgment on Israel’s appeal against the Article 19(2) Decision (the ‘Judgment’).¹² The Appeals Chamber reversed the Article 19(2) Decision for insufficient reasoning and remanded the matter to the Chamber for it to rule on the substance of the jurisdictional challenge.¹³ The Appeals Chamber dismissed Israel’s request for suspensive effect of the Warrants as moot.¹⁴

⁶ Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-354-AnxII-Corr.

⁷ Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, ICC-01/18-374.

⁸ ICC-01/18-377-SECRET; ICC-01/18-378-SECRET. The issuance of the arrest warrants was made public on the same day. See 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.

⁹ 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.

¹⁰ Notice of Appeal, paras 5 and 29-37.

¹¹ Appeal of ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute’, ICC-01/18-402.

¹² 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”, ICC-01/18-422.

¹³ Judgment, para. 64.

¹⁴ Judgment, para. 66.

9. On 9 May 2025, Israel asked the Chamber to, *inter alia* (i) withdraw, vacate or declare the Warrants of no force or effect; and (ii) declare that the Prosecution must suspend its investigation into the Palestine Situation,¹⁵ to which the Prosecution responded on 21 May 2025.¹⁶

10. On 16 July 2025, the Chamber rejected Israel's request to withdraw, vacate or declare the Warrants of no force or effect; and to declare that the Prosecution must suspend its investigation into the Palestine Situation (the 'Impugned Decision').¹⁷

11. On 22 July 2025, Israel filed the Request, seeking leave to appeal the Impugned Decision.¹⁸

12. On 25 July 2025, the Prosecution responded to the Request (the 'Response').¹⁹

II. SUBMISSIONS

13. Israel seeks permission to appeal the following issue (the 'Issue'):

Whether the Warrants against Israeli citizens could have been issued in conformity with article 19(1) of the Statute notwithstanding a pending challenge to the jurisdictional basis for its issuance; and whether [they] must, consequently, now be suspended or given no force or effect in light of the Appeals Chamber's reversal of the Article 19(2) Decision.²⁰

14. Israel submits that the Issue constitutes an appealable issue. It argues that the reasoning of the Chamber in the Impugned Decision is 'incorrect' for two reasons.²¹ *First*, Israel argues that 'the reasoning does not discuss whether the Chamber was required, as part of its obligatory prior ascertainment of jurisdiction in the [Warrants] to have addressed the merits of the

¹⁵ Request to Have Warrants Withdrawn or Vacated and Response to Prosecution Observations dated 5 May 2025, ICC-01/18-426.

¹⁶ Prosecution's response to Israel's "Request to Have Warrants Withdrawn or Vacated and Response to Prosecution Observations dated 5 May 2025", ICC-01/18-431.

¹⁷ Decision on the State of Israel's request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor's investigation, ICC-01/18-457.

¹⁸ ICC-01/18-461.

¹⁹ Prosecution's response to Israel's 'Request for leave to appeal the 'Decision on the State of Israel's request to have arrest warrants withdrawn, vacate or declared of no force or effect and to suspend the Prosecutor's investigation', ICC-01/18-463.

²⁰ Request, para. 4

²¹ Request, para. 19.

Jurisdictional Challenge.’²² According to Israel, the Appeals Chamber’s reversal of the Article 19(2) Decision means that ‘the legal basis for the [Chamber] not having addressed the substance of Israel’s Jurisdiction Challenge, which otherwise would have been pending when the [Warrants] were issued, was incorrect.’²³ It follows, according to Israel, that the Chamber was retroactively placed in the position before it issued the Warrants, but this time with a pending jurisdictional challenge.²⁴ *Second*, Israel submits that the substantive implications of the Appeals Chamber’s Judgment ‘are greater than acknowledged in the Impugned Decision’.²⁵ Israel argues that the Appeals Chamber’s Judgment invalidated the Chamber’s reliance in the Warrants on the reasoning contained in the Article 19(3) Decision. According to Israel, this follows from the fact that the Appeals Chamber found that the Chamber had not sufficiently explained why it had invoked the notion of *res judicata* in the Article 19(2) Decision.²⁶ Israel further submits that the Issue affects the fair and expeditious conduct of proceedings, and immediate resolution thereof may materially advance the proceedings.²⁷

15. The Prosecution opposes the Request. The Prosecution submits that the Issue, identified by Israel, is not appealable because (i) it does not arise from the Impugned Decision as it is based on misrepresentations of the Appeals Chamber’s Judgment; and (ii) it constitutes a mere disagreement with the Chamber’s analysis and conclusions regarding the impact of the Appeals Chamber’s Judgment on the Warrants.²⁸ The Prosecution further argues that the Issue does not significantly affect the fair and expeditious conduct of the proceedings and that, in any case, an immediate resolution by the Appeals Chamber would not materially advance the proceedings.²⁹

²² Request, para. 19.

²³ Request, para. 17.

²⁴ Request, paras 18-19.

²⁵ Request, para. 20.

²⁶ Request, para. 20.

²⁷ Request, paras 23-28.

²⁸ Response, paras 15-20.

²⁹ Response, paras 21-26.

III. APPLICABLE LAW

16. Article 82(1)(d) of the Statute provides that a party may appeal a decision that (i) involves an issue that would significantly affect both the fair and expeditious conduct of the proceedings or the outcome of the trial; but only if (ii) in the opinion of the Chamber, an immediate resolution of this issue by the Appeals Chamber may materially advance the proceedings.³⁰ The two prongs of this test are cumulative and, therefore, failure by the party seeking leave to appeal to demonstrate one makes it unnecessary for the Chamber to address the other.³¹

17. An issue pursuant to article 82(1)(d) is an identifiable subject or topic requiring a decision for its resolution.³² The issue must arise from the impugned decision itself,³³ and not

³⁰ See Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168 (hereinafter: DRC Appeal Judgment), paras 7-19; Pre-Trial Chamber III, *The Prosecutor v. Jean Pierre-Bemba Gombo*, Decision on the Prosecutor's application for leave to appeal Pre-Trial Chamber III's decision on disclosure, 25 August 2008, ICC-01/05-01/08-75, paras 5-20; Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Prosecutor's Request for Leave to Appeal the Decision Rejecting the Amendment of the Charges (ICC-01/09-01/11-859), 6 September 2013, ICC-01/09-01/11-912, paras 14-22 and n. 22 for further references.

³¹ See, for example, Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Consolidated Decision on filings ICC-01/14-01/18-524-Corr and ICC-01/14-01/18-545 (Prosecutor's requests for leave to appeal the decisions pursuant to article 61(9) of the Rome Statute dated 14 May 2020 and 1 June 2020), 19 June 2020, ICC-01/14-01/18-560, para. 55; Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Decision on a Request for Leave to Appeal, 11 February 2011, ICC-01/09-43, para. 12; Pre-Trial Chamber I, *Situation in Democratic Republic of the Congo*, Decision on the Prosecution's Application for Leave to Appeal the Chamber's Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 31 March 2006, ICC-01/04-135-tEN, para. 28; Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Decision on the Defence request for leave to appeal the Decision on the Prosecution's applications to add witnesses and items to its List of Witnesses and List of Evidence and to rely on recently collected evidence, 4 May 2022, ICC-02/05-01/20-682, para. 4; Trial Chamber I, *Prosecutor v. Lubanga Dyilo*, Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008, 26 February 2008, ICC-01/04-01/06-1191, para. 10 (the 'Lubanga Decision'); Trial Chamber II, *Prosecutor v. Yekatom and Ngaïssona*, Decision on the 'Ngaïssona Defence Request for Leave to Appeal the Second Decision on Disclosure and Related Matters', 24 May 2019, ICC-01/14-01/18-206, para. 11; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for leave to appeal the 'Decision on Defence request for disclosure of *ex parte* communication between the Chamber and the VWU', 2 December 2022, ICC-01/12-01/18-2430, para. 10.

³² DRC Appeal Judgment, para. 9.

³³ Pre-Trial Chamber I, *Prosecutor v. Callixte Mbarushimana*, Decision on the "Prosecution's Application for Leave to Appeal the 'Decision on the confirmation of charges'", 1 March 2012, ICC-01/04-01/10-487, para. 4; Pre-Trial Chamber I, *Prosecutor v. Laurent Gbagbo*, Decision on the Prosecutor's and Defence request for leave to appeal the decision adjourning the hearing on the confirmation of charges, 31 July 2013, ICC-02/1101/11-464, para 8; Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Prosecutor's Application for Leave to Appeal the "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", 18 September 2009, ICC-01/05-01/08-532, para. 17; Pre-Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on the Prosecutor's application for leave to appeal Pre-Trial Chamber III's decision on disclosure, 25 August 2008, ICC-01/05-01/08-75, para. 11.

from other decisions³⁴ or from hypothetical concerns or abstract legal questions.³⁵ The issue must also identify an error of fact or law, or a mix of both,³⁶ and not merely constitute a disagreement or a conflicting opinion.³⁷ Errors of law include misrepresentations of the law³⁸ and insufficient reasoning,³⁹ while errors of fact relate to deficient evidentiary analysis.⁴⁰ Even if an alleged issue emanates from the impugned decision, and pertains to a legal or factual error, it would not be appealable if it is based on a mischaracterisation or misrepresentation of the impugned decision.⁴¹

³⁴ Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Aimè Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, Joint decision on the applications for leave to appeal the “Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute”, ICC-01/05-01/13-801, 23 January 2015, para. 5.

³⁵ Pre-Trial Chamber I, *Prosecutor v. Laurent Gbagbo*, Decision on the Prosecutor’s and Defence request for leave to appeal the decision adjourning the hearing on the confirmation of charges, 31 July 2013, ICC-02/11-01/11-464, para. 8.

³⁶ While these grounds of appeal are provided in article 81(1) of the Statute concerning appeals against decisions of acquittal, conviction or sentence, the Appeals Chamber has held that these are ‘in essence, also applicable’ to interlocutory appeals under article 82(1) of the Statute. See, DRC Appeals Judgment, para. 9; Appeals Chamber, *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-US-Exp, paras 32-34, 83-84; Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aime Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidele Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, 8 March 2018, ICC-01/05-01/13-2275-Red, para. 89 by reference to Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 17.

³⁷ DRC Appeals Judgment, para. 9.

³⁸ Appeals Chamber, *Prosecutor v. Banda and Jerbo*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber IV of 12 September 2011 entitled ‘Reasons for the Order on translation of witness statements (ICC-02/05-03/09-199) and additional instructions on translation”, ICC-02/05-03/09-295, 17 February 2012, para. 20.

³⁹ Appeals Chamber, *Prosecutor v. Laurent Gbagbo*, Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled “Décision on the Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo”, ICC-02/11-01/11-278, 26 October 2012, paras 56-47.

⁴⁰ Appeals Chamber, *Prosecutor v. Gaddafi and Al-Senussi*, Judgment on the Appeal of Libya against the decision of the Pre-Trial Chamber I of 31 May 2013 entitled “Decision on the admissibility of the case against Saif AlIslam Gaddafi”, ICC-01/11-01/11-547, 21 May 2014, para. 93.

⁴¹ Pre-Trial Chamber I, *Situation in the State of Palestine*, 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, para. 22; Pre-Trial Chamber III, *Prosecutor v. Joseph Kony*, Decision on the ‘Kony Defence request for leave to appeal [the] “Decision on the criteria for holding confirmation of charges proceedings in absentia”’, 28 January 2025, ICC-02/04-01/05-551, paras 29 and 42; Trial Chamber I, *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushaib’)*, Decision on the Defence’s request for leave to appeal the Decision on the Defence’s renewed request for admission of prior recorded testimony of Witness D-0028 under Rule 68(2)(c) of the Rules of Procedure and Evidence, 12 September 2024, ICC-02/05-01/20-1186, para. 9.

18. An issue may significantly affect the fairness of the proceedings whenever the procedural rights of the parties and participants are not respected.⁴² The expeditiousness of the proceedings is significantly affected ‘whenever failure to provide for an immediate resolution of the issue at stake by the Appeals Chamber would entail the risk that lengthy and costly trial activities are nullified at a later stage’.⁴³

19. The immediate resolution of the issue by the Appeals Chamber is warranted when the issue is such that ‘its immediate resolution by the Appeals Chamber will settle the matter posing for decision through its authoritative determination, ridding thereby the judicial process of possible mistakes that might taint either the fairness of the proceedings or mar the outcome of the trial’.⁴⁴

IV. DETERMINATION

20. The determinative question in the Impugned Decision was whether the Chamber’s legal and factual findings in the Warrants have been in any way affected by the Appeals Chamber’s Judgment reversing and remanding the Article 19(2) Decision. In its reasoning, the Chamber analysed and discussed Israel’s arguments about the Judgment’s purported impact on the jurisdictional findings in the Warrants. The Chamber notes that, in its Request, Israel essentially repeats the same arguments, rather than engaging with the Chamber’s analysis of them.⁴⁵

21. In paragraph 24 of the Impugned Decision the Chamber addressed the content of the Appeals Chamber’s Judgment and determined that nothing in the Judgment suggests that the Chamber was obliged to rule on Israel’s Jurisdictional Challenge before ruling on the applications for the warrants of arrest. The Chamber noted that the Appeals Chamber declined

⁴² Pre-Trial Chamber I, *Situation in the Democratic Republic of the Congo*, Decision on the Prosecution’s Application for Leave to Appeal the Chamber’s Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, VPRS 6, 31 March 2006, ICC-01/04-135-tEN, para. 38.

⁴³ Pre-Trial Chamber II, *Situation in Uganda*, Decision on Prosecutor’s Application for leave to appeal in part Pre-Trial Chamber’s II Decision on the Prosecutor’s applications for warrants of arrest under article 58, 19 August 2005, ICC-02/04-01/05-20-US-Exp, para. 36. Unsealed pursuant to Decision no. ICC-02/04-01/05-52 dated 13 October 2005.

⁴⁴ DRC Appeal Judgment, para 14.

⁴⁵ See ICC-02/11-01/11-350, para. 40; ICC-01/14-01/18-2612, para. 10; ICC-01/14-01-18-2519, para 10 : ‘a mere reiteration of prior arguments and an expression of disagreement with the analysis and conclusion made by the Chamber are not sufficient to identify an “issue”’.

to address the issue of timing in its Judgment, although this was one of the central points of contention in Israel's appeal. The Chamber pointed out that, in the context of discussing appropriate relief, the Appeals Chamber explicitly noted the issuance of the Warrants and then directed the Chamber to rule on the substance of the jurisdictional challenge *at the present stage of proceedings*. The Chamber also observed that, had the Appeals Chamber considered that the Warrants were automatically affected by the reversal of the Article 19(2) Decision, as had been argued by Israel, it would have issued different instructions. In addition, the Chamber pointed out that the Appeals Chamber held that the Warrants were issued separately from the Article 19(2) Decision and that they could not be considered to be based on or 'inextricably connected' to it. In paragraphs 21-22, the Chamber also discussed why Israel's suggestion that the Appeals Chamber's Judgment restricted the Chamber's ability to adopt the reasoning of the Article 19(3) Decision is untenable.⁴⁶

22. The Chamber notes that the Request does not identify an issue related to the abovementioned reasoning in the Impugned Decision. Indeed, the Issue identified by Israel does not arise from the Impugned Decision, but rather from the Article 19(2) Decision, which Israel has already appealed.

23. Israel's Jurisdiction Challenge, in addition to the main question on jurisdiction, also raised other questions, namely: (i) whether Israel had standing to bring a challenge to the Court's jurisdiction (the 'Standing Question');⁴⁷ (ii) whether Israel, if it had standing, could bring the challenge before the issuance of warrants of arrest (the 'Timing Question');⁴⁸ and (iii) whether the challenge, if it could be brought, had suspensive effect in relation to the Prosecution's investigation and in relation to the issuance of warrants of arrest (the 'Suspensive Effect Question').⁴⁹

24. In the Article 19(2) Decision, the Chamber only ruled on the Timing Question, finding Israel's Jurisdiction Challenge to have been premature.⁵⁰ In its appeal against the Article 19(2)

⁴⁶ Impugned Decision, paras 21-22.

⁴⁷ Israel's Jurisdiction Challenge, paras 38-45 and 58-62.

⁴⁸ Israel's Jurisdiction Challenge, paras 46-57.

⁴⁹ Israel's Jurisdiction Challenge, para. 128.

⁵⁰ Article 19(2) Decision, para. 17.

Decision, Israel argued that the Chamber had committed the following errors in relation to the Timing Question:⁵¹

- a. The Chamber erred in finding that States may only challenge the Court's jurisdiction in relation to a particular case or that a case for this purpose only arises after the issuance of a warrant of arrest;
- b. The Chamber erred in law by rejecting Israel's Jurisdiction Challenge as premature due to the fact that 'the Prosecution typically conducts the entire application process under article 58 of the Statute *ex parte*;
- c. The Chamber erred in law by failing to provide reasons for rejecting Israel's submission that article 19(5) exhortation for States to bring jurisdictional challenges at the earliest opportunity provided further support for Israel's standing to exercise prerogatives under article 19(2)(c) of the Statute prior to the issuance of warrants of arrest.

25. Israel requested the Appeals Chamber to reverse the Article 19(2) Decision and to issue an order declaring that (i) Israel has standing to challenge the jurisdiction of the Court pursuant to article 19(2)(c) of the Statute, including prior to the issuance of warrants of arrest; (ii) Israel's Jurisdiction Challenge shall be remitted to the Chamber for consideration on the merits; and (iii) the Warrants are null and void for having been erroneously issued by the Chamber prior to it providing a substantive determination on the merits of Israel's Jurisdiction Challenge.⁵²

26. As noted in the Impugned Decision,⁵³ the Appeals Chamber remanded the Article 19(2) Decision solely on the basis of one aspect of Israel's first ground of appeal related to the Standing Question.⁵⁴ Specifically, the legal error identified by the Appeals Chamber was that the Chamber had failed to 'sufficiently direct itself to the relevant submissions before it in respect of the particular legal basis underpinning the challenge to the jurisdiction of the Court. [...] 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* under article 19(2)(c) of the Statute.'⁵⁵

⁵¹ Israel's Appeal Brief, para. 4.

⁵² Israel's Appeal Brief, paras 6 and 70.

⁵³ Impugned Decision, para. 22.

⁵⁴ Judgment, paras 55-56 and 65.

⁵⁵ Judgment, paras 61-62 (emphasis added).

27. The Appeals Chamber did not address the Timing Question and it accordingly made no finding in relation to the Chamber's ruling that Israel's Jurisdiction Challenge was premature. Significantly, the Appeals Chamber also did not ask the Chamber to consider the Timing Question on remand. Instead, it reversed the Article 19(2) Decision and remanded 'the matter to the [Chamber] for it to rule on the substance of the jurisdictional challenge.' The Appeals Chamber, as noted above, held that 'it is for the [Chamber] to determine the applicable legal basis under article 19(2) of the Statute for addressing [Israel's Jurisdiction Challenge] *at the present stage of the proceedings*'⁵⁶ (i.e. after the Warrants had been issued).

28. In the Impugned Decision, the Chamber did not revisit the Timing Question. It simply reminded Israel that the Article 19(2) Decision was limited to the Timing Question⁵⁷ and that the Appeals Chamber's Judgment did not make any findings in relation to the validity of the Warrants or the jurisdictional findings contained therein.⁵⁸ The Chamber further noted that the Appeals Chamber had not made any finding suggesting that the Chamber would have been obliged to rule on Israel's Jurisdiction Challenge before issuing the Warrants, as highlighted above.⁵⁹ The Chamber did not make any ruling on the Timing Question, as it was not required to do so in light of the Appeals Chamber Judgment.

29. Accordingly, as stated above, the Issue does not arise from the Impugned Decision. It arises from the Article 19(2) Decision, which Israel already appealed. Israel raised the Issue before the Appeals Chamber,⁶⁰ which declined to address it,⁶¹ despite being aware of the fact that the Chamber had already issued the Warrants⁶² and despite Israel's explicit request to declare the Warrants null and void.⁶³ Israel is not entitled to re-submit the same issue for a second time to the Appeals Chamber, simply because it disagrees with how the Appeals Chamber dealt with it the first time.

⁵⁶ Judgment, para. 64 (emphasis added).

⁵⁷ Impugned Decision, para. 20.

⁵⁸ Impugned Decision, para. 21-23.

⁵⁹ Impugned Decision, para. 24.

⁶⁰ Israel's Appeal Brief, Third ground of appeal.

⁶¹ Judgment, para. 65.

⁶² Judgment, para. 63.

⁶³ Israel's Appeal Brief, paras 6 and 70.

30. Having found that the Issue, as framed by Israel, is not an appealable issue since it does not arise from the Impugned Decision, there is no need to consider whether the other conditions of article 82(1)(d) of the Statute have been met. The Chamber therefore rejects the Request.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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 Friday, 17 October 2025

At The Hague, The Netherlands