Cour
Pénale
Internationale

International
Criminal
Court

Original: English

No. ICC-01/18 OA3
Date: 15 December 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

Judgment
on 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"

Judgment 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,

By majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting,

Delivers the following

JUDGMENT

Pre-Trial Chamber I's "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) is confirmed.

REASONS

I. PROCEDURAL HISTORY

A. Proceedings before the Pre-Trial Chamber

1. On 22 May 2018, pursuant to articles 13(a) and 14 of the Rome Statute (hereinafter: "Statute"), the State of Palestine (hereinafter: "Palestine") referred to the Prosecutor the situation related to "past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine" (hereinafter: "2018 Referral" and "Palestine Situation").[1]

[1] Annex I to Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I, 24 May 2018, ICC-01/18-1-AnxI, para. 9.

2. On 3 March 2021, the Prosecutor announced the initiation of an investigation in 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".[2]

3. On 9 March 2021, the Prosecutor provided notice, pursuant to article 18(1) of the Statute, of the initiation of the investigation to all States Parties and other States that would normally exercise jurisdiction, including the State of Israel (hereinafter: "Israel" and "Article 18(1) Notification").[3]

4. 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").[4]

5. 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").[5]

6. 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").[6]

7. On 17 November 2023, five States Parties to the Statute submitted a referral, pursuant to articles 13(a) and 14 of the Statute (hereinafter: "2023 Referral").[7] Upon

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[2] Office of the Prosecutor, Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine.
[3] 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)", 9 June 2025, ICC-01/18-440-Conf-AnxA. The Appeals Chamber notes that this document is classified as confidential, but it considers that any excerpts therefrom as set out in the present Judgment do not undermine this classification.
[4] 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)", 9 June 2025, ICC-01/18-440-Conf-AnxB, pp. 2-3 (hereinafter: "Annex B to Prosecutor's Response").
[5] Annex B to Prosecutor's Response, pp. 4-6.
[6] Annex B to Prosecutor's Response, p. 7.
[7] States Parties referral of 17 November 2023. The referral was 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.

receipt of the referral, the Prosecutor confirmed that he was conducting an investigation in the Palestine Situation.[8]

8. On 18 January 2024, two States Parties to the Statute submitted an additional referral pursuant to article 14(1) of the Statute (hereinafter: "2024 Referral").[9]

9. On 1 May 2024, Israel sent a letter to the Prosecutor, requesting him to "defer any investigation [his office] 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" (hereinafter: "Deferral Request").[10]

10. On 7 May 2024, the Prosecutor responded to the Deferral Request, 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".[11]

11. 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".[12]

12. On 23 September 2024, Israel submitted before Pre-Trial Chamber I (hereinafter: "Pre-Trial Chamber") a request for 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").[13]

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[8] 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.
[9] States Parties referral of 18 January 2024. The referral was submitted by the Republic of Chile and the United Mexican States.
[10] Annex B to Prosecutor's Response, pp. 8-12.
[11] Annex B to Prosecutor's Response, pp. 13-14.
[12] 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.
[13] 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. 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"), in which it rejected the Article 18 Request.[14] On the same day, the Pre-Trial Chamber issued warrants of arrest against, *inter alia*, two Israeli nationals.[15]

14. On 27 November 2024, Israel filed its notice of appeal against the Impugned Decision (hereinafter: "Article 82(1)(a) Appeal").[16]

15. 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.[17]

16. On 24 April 2025, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, dismissed Israel's Article 82(1)(a) Appeal as inadmissible.[18]

17. 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 no new situation had arisen, and that no substantial change had occurred in the parameters of the investigation into the [Palestine Situation], following 7 October 2023" (hereinafter: "Leave to Appeal Decision").[19]

B. Proceedings before the Appeals Chamber

18. On 26 May 2025, Israel filed its appeal brief (hereinafter: "Appeal Brief").[20]

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[14] Impugned Decision, p. 9.
[15] ICC 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.
[16] 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.
[17] 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.
[18] 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", ICC-01/18-423.
[19] 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', ICC-01/18-429.
[20] 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-01/18-434, with public Annex A, ICC-01/18-434-AnxA.

19. On 9 June 2025, the Prosecutor filed his response to the Appeal Brief (hereinafter: "Prosecutor's Response").[21]

20. On 16 July 2025, having been granted leave by the Appeals Chamber,[22] Israel submitted its reply (hereinafter: "Reply").[23]

21. On 17 October 2025, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, rejected two requests for leave to submit observations in the current appeal filed by four teams of legal representatives of victims.[24]

II. STANDARD OF REVIEW

22. In the present appeal, Israel alleges that "[t]he [Pre-Trial Chamber]'s errors are primarily legal, as they involve the misinterpretation and misapplication of article 18 and other statutory provisions, the appreciation of legal notifications provided under these provisions, and the legal characterization of the Prosecution's post-7 October 2023 investigations".[25]

23. Regarding errors of law, the Appeals Chamber has previously held that it:

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[21] 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-01/18-440, with confidential Annexes A-C.
[22] 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)", ICC-01/18-456. *See also* 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)", ICC-01/18-441.
[23] 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), ICC-01/18-458.
[24] Decision on victims' requests to submit observations in the appeal against the "Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice", ICC-01/18-469. *See also* Registry Transmission of "Joint Victims' Request to submit Observations in the appeal against the « Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice » of 21 November 2024", ICC-01/18-459, with public Annex I, ICC-01/18-459-AnxI; Registry Transmission of "Requête de représentants légaux de victimes de soumettre des observations dans le cadre de l'appel contre la "Decision on Israel's request for an order to the Prosecution to give an Article 18(1) notice" (ICC-01/18-375)", ICC-01/18-460, with public Annex I, ICC-01/18-460-AnxI.
[25] Appeal Brief, para. 6.

> will not defer to the relevant Chamber's interpretation of the law, but will arrive at its own conclusions as to the appropriate law and determine whether or not the first instance Chamber misinterpreted the law.[26]

24. If the relevant chamber committed such an error, the Appeals Chamber will only intervene if the error materially affected the decision impugned on appeal.[27] A decision is "materially affected by an error of law" if the chamber "would have rendered a [decision] that is substantially different from the decision that was affected by the error, if it had not made the error".[28]

25. The appellant is obliged to set out the alleged error in the appeal brief and "indicate, with sufficient precision, how [the] alleged error would have materially affected the impugned decision".[29]

26. The above standard of review will guide the analysis of the Appeals Chamber.

III. RELEVANT PARTS OF THE IMPUGNED DECISION

27. 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".[30] 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

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[26] Appeals Chamber, *Situation in the Republic of the Philippines*, Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation", 18 July 2023, ICC-01/21-77 (OA) (hereinafter: "*Philippines* OA Judgment"), para. 35 and references therein.
[27] Appeals Chamber, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against the decision of Trial Chamber I of 17 February 2023 entitled "Decision on the admissibility of video (DAR-OTP-0216-0119) and records of telephone calls (DAR-OTP-0216-0127, DAR-OTP-0216-0128)", 28 June 2023, ICC-02/05-01/20-982 (OA12) (hereinafter: "*Abd-Al-Rahman* OA12 Judgment"), para. 21 and references therein.
[28] *Abd-Al-Rahman* OA12 Judgment, para. 21 and references therein.
[29] Appeals Chamber, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Judgment on the appeal of Mr Abd-Al-Rahman against the Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302)", 1 November 2021, ICC-02/05-01/20-503 (OA8) (hereinafter: "*Abd-Al-Rahman* OA8 Judgment"), para. 14 and references therein.
[30] Impugned Decision, para. 11.

further relevant information, including the summary of the Prosecution's preliminary examination findings".[31]

28. 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".[32] 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".[33] 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".[34]

29. In addition, the Pre-Trial Chamber underlined that filing 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".[35] The Pre-Trial Chamber further found that the time limit set in article 18(2) of the Statute serves "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".[36]

30. 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.[37] 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".[38] 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

[31] Impugned Decision, para. 11.
[32] Impugned Decision, para. 12 (emphasis in original).
[33] Impugned Decision, para. 12.
[34] Impugned Decision, para. 13.
[35] Impugned Decision, para. 14.
[36] Impugned Decision, para. 14.
[37] Impugned Decision, para. 15.
[38] Impugned Decision, para. 15.

armed conflicts, concerning the same territories, with the same alleged parties to these conflicts".[39]

31. 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".[40]

IV. MERITS

32. At the outset, the Appeals Chamber recalls that the only issue on appeal is "[w]hether the Pre-Trial Chamber erred in finding that no new situation had arisen, and that no substantial change had occurred in the parameters of the investigation into the [Palestine Situation], following 7 October 2023".[41]

33. The Appeals Chamber recalls that, in the past, it has declined to consider grounds of appeal or arguments that went beyond the scope of the issue with respect to which leave to appeal was granted,[42] unless such arguments were "intrinsically linked" to the issue on appeal.[43]

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[39] Impugned Decision, para. 15.
[40] Impugned Decision, para. 16.
[41] Leave to Appeal Decision, paras 8, 17-20 and p. 8.
[42] Appeals Chamber, *The Prosecutor v. Laurent Koudou Gbagbo*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 3 June 2013 entitled "Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute", 16 December 2013, ICC-02/11-01/11-572 (OA5), paras 63-66; Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultation with the VWU", 8 October 2010, ICC-01/04-01/06-2582 (OA18), para. 45; Appeals Chamber, *The Prosecutor v. Joseph Kony et al.*, Judgment on the appeals of the Defence against the decisions entitled 'Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06' of Pre-Trial Chamber II, 23 February 2009, ICC-02/04-01/05-371 (OA2), para. 32.
[43] Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Public redacted Judgment on Mr Bosco Ntaganda's appeal against the decision reviewing restrictions on contacts of 7 September 2016, 8 March 2017, ICC-01/04-02/06-1817-Red (OA4), para. 85; Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeals of Mr Laurent Gbagbo and Mr Charles Blé Goudé against the decision of Trial Chamber I of 9 June 2016 entitled 'Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)', 1 November 2016, ICC-02/11-01/15-744 (OA8), paras 13, 19; Appeals Chamber, *The Prosecutor v. Mahamat Said Abdel Kani*, Public Redacted Version of "Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II entitled 'Decision on the "Prosecution's Request for Extension of Contact Restrictions"'", 29 June 2021, ICC-01/14-01/21-111, 17 May 2022, ICC-01/14-01/21-111-Red (OA), paras 37-38.

34. For the reasons set out in their opinions, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissent from the findings of the majority of the Appeals Chamber with respect to the second ground of appeal and they will not address the first and third grounds of appeal. As a result, the first and third grounds of appeal are only considered by Judge Tomoko Akane, Judge Gocha Lordkipanidze, and Judge Erdenebalsuren Damdin (hereinafter: "Majority").

A. First ground of appeal: alleged error in finding that the Prosecutor's post-7 October 2023 investigation falls within the scope of the pre-existing investigation on the basis that it concerns the "same type of armed conflicts" and "same alleged parties to these conflicts"

35. Under this ground of appeal, Israel argues that the Pre-Trial Chamber's conclusion that the Prosecutor's post-7 October 2023 investigation concerns the "same type of armed conflicts" and the "same alleged parties to these conflicts" is erroneous for the following three reasons: (i) an "armed conflict" is not a "defining parameter" of the Article 18(1) Notification or the 2018 Referral; (ii) the single reference to "hostilities" in the Article 18(1) Notification is temporally limited to 2014; and (iii) the Article 18(1) Notification "impermissibly exceeds" the scope of the 2018 Referral.[44]

1. An "armed conflict" is not a "defining parameter" of the Article 18(1) Notification or the 2018 Referral

a. Summary of the submissions

i. Israel's submissions

36. Israel argues that neither the Article 18(1) Notification nor the 2018 Referral makes reference to an "armed conflict".[45] Israel submits that the 2018 Referral rather defines the situation of crisis referred to the Court for investigation as related to ongoing crimes allegedly committed within the context of an "Israeli 'settlement regime', 'settlement-related crimes' and a 'settlement policy'", and that it does not identify an "armed conflict" as the relevant context for the situation referred.[46] Israel avers that the 2018 Referral incorporates "war crimes", which "can be committed by a State alleged to be in occupation of territory even in the absence of any active fighting between

[44] Appeal Brief, paras 19-39.
[45] Appeal Brief, para. 21.
[46] Appeal Brief, paras 21-22.

parties to an armed conflict", and that there is no reference to an armed conflict or fighting with an armed group in connection with the alleged violence against peaceful demonstrations in Gaza in March 2018.[47] It similarly contends that the Article 18(1) Notification also treats these events "as mere crowd control unrelated to any armed conflict, and there is no indication of any related 'hostilities'".[48]

37. Israel also avers that the Article 18(1) Notification refers to crimes committed in the context of "hostilities", mentioning war crimes "committed in the context of the 2014 hostilities in Gaza" and identifying "members of the Israeli Defence Forces" and "members of Hamas and Palestinian Armed Groups" as alleged perpetrators.[49] However, Israel posits that this reference in the Article 18(1) Notification to a specific episode of hostilities, limited to a specific time-period in 2014, and without reference to any broader armed conflict, cannot be equated to an investigation into a time-unlimited armed conflict.[50]

38. Accordingly, Israel argues that the Article 18(1) Notification "does not provide sufficiently specific nor representative notice of an intention to investigate crimes in relation to an ongoing armed conflict which is not even mentioned let alone defined".[51] Comparing the Article 18(1) Notification with the scope of the investigation in the Afghanistan Situation, relied upon by the Pre-Trial Chamber, Israel argues that in the Palestine Situation an armed conflict is not a "defining parameter" of the investigation.[52]

ii. Prosecutor's submissions

39. The Prosecutor submits that, contrary to Israel's submission, the Article 18(1) Notification "explicitly referred to the existence of armed conflicts in the context of the 2014 Gaza hostilities".[53] In particular, the Prosecutor contends that the Article 18(1) Notification: (i) referred to the occupation by Israel and identified a "sample of the relevant criminality (war crimes)" allegedly affecting the West Bank and Gaza, as well as Israel, in the context of international and non-international armed conflicts, as shown

[47] Appeal Brief, para. 22.
[48] Appeal Brief, para. 23.
[49] Appeal Brief, para. 24.
[50] Appeal Brief, para. 25.
[51] Appeal Brief, para. 25.
[52] Appeal Brief, paras 26-29.
[53] Prosecutor's Response, para. 12.

by the references to article 8(2)(a), (b), (c) and (e) of the Statute;[54] (ii) identified various categories of alleged perpetrators;[55] and (iii) expressly noted that alleged crimes continued to be committed in the Palestine Situation.[56]

40. The Prosecutor contends that it is apparent from the factual allegations in the Article 18(1) Notification and from widely reported public information that the 2014 hostilities involved "active fighting between parties to an armed conflict".[57] The Prosecutor further avers that, in any event, the Article 18(1) Notification indicated that: (i) "[b]ased on the information available, the hostilities that took place in Gaza between 7 July and 26 August 2014 may be classified as either an *international or non-international armed conflict*; alternatively, it may be considered that *two different conflicts (one international and the other non-international)* existed in parallel during the relevant period"; (ii) it is not necessary to reach a "conclusive view" on the precise legal qualifications at the preliminary examination stage; and (iii) "these incidents and crimes were illustrative" and had been assessed only for the threshold setting determination under article 53(1)(a) of the Statute.[58]

41. The Prosecutor further submits that the 2018 Referral "did encompass crimes arising from the conduct of hostilities or armed conflict(s) in Gaza", since it described *inter alia* "the geographical and temporal parameters of the situation as the [occupied Palestinian territories] (including Gaza) since 13 June 2014", and the ongoing Israeli occupation.[59] The Prosecutor also asserts that the fact that Palestine did not expressly refer to "armed conflict" in the 2018 Referral "is not determinative of the scope of the Prosecution's investigation" because "clashes and periodic hostilities between the [Israel Defence Forces] and Hamas/[other Palestinian armed groups] are a defining feature of the situation underlying the Referral".[60]

iii. Israel's submissions in reply

42. Israel argues that the Prosecutor's Response mischaracterises the Article 18(1) Notification, as it makes references to passages that are included in another document,

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[54] Prosecutor's Response, para. 13.
[55] Prosecutor's Response, para. 13.
[56] Prosecutor's Response, para. 13.
[57] Prosecutor's Response, para. 14.
[58] Prosecutor's Response, para. 14 (emphasis in the original).
[59] Prosecutor's Response, para. 15.
[60] Prosecutor's Response, para. 15.

namely the Summary of the Preliminary Examination Findings (hereinafter: "Summary"), which was neither attached, nor referred to in the Article 18(1) Notification.[61] Israel avers that the Prosecutor submitted a single annex, which includes both the Article 18(1) Notification and the Summary, which is "misleading in respect of an issue that is highly material to the present appeal".[62] Israel submits that, a month after the Article 18(1) Notification, the Prosecutor included in a letter to Israel dated 9 April 2021 a hyperlink to the Summary, but that no indication was given that the Prosecutor "intended to amend or broaden" it or "supersede, change or expand the scope of the investigation".[63]

43. Israel further argues that, even assuming that the Summary could be relevant to the scope of the Article 18(1) Notification, it does not change the scope or defining parameters of the intended investigations.[64] Israel submits that, on the contrary, the Summary reinforces the argument that the scope of the intended investigation is not defined with reference to any ongoing armed conflict.[65] It contends that the only reference to armed conflict in the Summary is contained in a footnote that does not define the parameters of the investigation, but explains the possible legal characterisation of the facts alleged during a specific time period in 2014.[66] Israel avers that, as such, it cannot be "a representative sample of regular hostilities".[67]

44. Israel also contends that the other documents upon which the Prosecutor relies have no connection to the Article 18(1) Notification and cannot be considered to supplement or clarify that notification, given that article 18(1) of the Statute "necessarily prescribes a certain formality".[68]

b. Determination by the Appeals Chamber

45. At the outset, the Majority notes that Israel's argument concerning the "time-limited set of events in Gaza in 2014" is also raised under the second sub-ground of the

[61] Reply, paras 2-8.
[62] Reply, para. 7.
[63] Reply, paras 9-10.
[64] Reply, para. 11.
[65] Reply, para. 11.
[66] Reply, paras 11-12.
[67] Reply, para. 12.
[68] Reply, paras 14-16.

first ground of appeal.[69] The Majority finds it appropriate to address it under that sub-ground.

46. The Majority finds, for the reasons that follow, that Israel's argument that neither the 2018 Referral nor the Article 18(1) Notification refers to or describes any "armed conflict" must be rejected, as it is based on an overly narrow reading of these documents in disregard of the need to assess them in keeping with the Court's legal framework.

47. The Majority first notes that the 2018 Referral and the Article 18(1) Notification refer to various war crimes or acts that may be qualified as war crimes under the Statute. By listing the relevant legal bases, these documents invoke crimes that, from a legal viewpoint, can only be committed in the context of an armed conflict.

48. In particular, the 2018 Referral specifies that the war crimes enshrined in "[a]rticles […] 8(2)(a)(i), (ii), (iii), (iv), (vi), (vii), (b)(i), (ii), (iii), (iv), (viii), (ix), (xiii), (xvi) and (xxi) of the Rome Statute" have purportedly been committed,[70] and includes more general references to the commission of alleged war crimes.[71] It further lists categories of alleged crimes that may amount to, *inter alia*, war crimes under article 8(2)(a), (b), (c) and/or (e) of the Statute.[72]

49. The Article 18(1) Notification also explicitly stipulates that, in the view of the Prosecutor, there is a reasonable basis to believe that, in the context of the 2014 hostilities in Gaza, specific war crimes were committed.[73] In this respect, it cites to article 8(2)(a)(i) and (iii), 8(2)(b)(iv), (viii) and (xxiv), 8(2)(c)(i), and 8(2)(e)(ii) of the Statute.[74] The Article 18(1) Notification further refers to "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".[75]

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[69] Appeal Brief, para. 25.
[70] 2018 Referral, para. 11.
[71] *See for instance* 2018 Referral, paras 3-4.
[72] 2018 Referral, para. 12.
[73] Article 18(1) Notification, pp. 2-3.
[74] Article 18(1) Notification, p. 3.
[75] Article 18(1) Notification, p. 3.

50. In this regard, the Majority recalls that war crimes can only be committed within the context of an international armed conflict or an armed conflict not of an international character (hereinafter: "non-international armed conflict"). One of the elements of each war crime contained in article 8 of the Statute is the requirement that "[t]he conduct took place *in the context of* and was associated with an international armed conflict" or "an armed conflict not of an international character".[76]

51. The Majority further notes that both the 2018 Referral and the Article 18(1) Notification contain a number of references to the occupation of Palestinian territory. The former indicates, for instance, that

> [t]he unlawful occupation of the territory of the State of Palestine and the establishment and maintenance of settlements by Israel in Occupied Palestinian Territory ("OPT"), including East Jerusalem, has involved the enactment and maintenance of a multi-layered system of violence and intimidation against the Palestinian population, the destruction and unlawful appropriation of their properties, the severe violation of their fundamental rights on discriminatory grounds and the institutionalization of a separate structure of life and dual system of law and other measures deliberately intended to change the demographic composition of the OPT, including in particular in East Jerusalem.[77]

52. The Article 18(1) Notification contains the Prosecutor's assessment that, "in the context of Israel's occupation of the West Bank, including East Jerusalem, members of the Israeli authorities have committed war crimes under article 8(2)(b)(viii) in relation, *inter alia*, to the transfer of Israeli civilians into the West Bank since 13 June 2014".[78] In this regard, it is recalled that the Elements of Crimes expressly recognise that, with respect to some of the crimes under article 8 of the Statute, "[t]he term 'international armed conflict' includes military occupation".[79] Therefore, occupation is regarded as a particular form of international armed conflict.

53. Furthermore, the Majority notes that the 2018 Referral and the Article 18(1) Notification describe additional facets of the notion of armed conflict, either in relation

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[76] *See for example* element 4 of the Elements of Crimes for article 8(2)(a)(i) of the Statute (emphasis added). *See also for instance* ICRC, "Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War", 2020, article 130, para. 5186; ICRC, "Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War", 2020, article 3, para. 920.
[77] 2018 Referral, para. 3. *See also for instance* 2018 Referral, paras 7, 16.b.
[78] Article 18(1) Notification, p. 3.
[79] Elements of Crimes, fn 34.

to international armed conflict (whether or not in the form of occupation) or non-international armed conflict.

54. In particular, the 2018 Referral and the Article 18(1) Notification identify (some of the) parties to the international armed conflict (whether or not in the form of occupation) and/or non-international armed conflict, including Israeli civilian and military officials,[80] and Hamas and other Palestinian armed groups.[81]

55. In view of the foregoing, the Majority is not persuaded by Israel's argument that neither the 2018 Referral nor the Article 18(1) Notification refers to or describes any "armed conflict". When read together and when considered against the applicable legal framework, it is clear that these documents concern crimes and conduct that, in legal terms, can only be committed in an international armed conflict (whether or not in the form of an occupation) or non-international armed conflict.

56. Furthermore, the submission that the 2018 Referral limits the situation of crisis to a "settlement policy" (or related designations) is supported neither by the terms of the 2018 Referral nor by the applicable legal framework.[82] The 2018 Referral explicitly states that "[t]his settlement policy has been carried out *through the commission of multiple crimes within the Court's jurisdiction*",[83] and that acts associated with such a policy "qualify under the Rome Statute as both *war crimes* and crimes against humanity".[84] Therefore, the 2018 Referral refers to a "settlement policy" (or related designations) as the factual context in which a number of alleged crimes were committed. As such, rather than excluding "armed conflict", the 2018 Referral indicates that the legal qualification of the crimes allegedly committed within that factual context is to be conducted in accordance with the Court's legal framework, including with reference to war crimes.

57. Lastly, the Majority takes note of Israel's submission that, in the context of another situation, the Prosecutor has used a more specific description of the relevant armed conflict.[85] However, the approach taken by the Prosecutor in those other

[80] *See for instance* 2018 Referral, paras 3-5, 15-16; Article 18(1) Notification, p. 3.
[81] Article 18(1) Notification, p. 3.
[82] Appeal Brief, paras 21-22.
[83] 2018 Referral, para. 2 (emphasis added).
[84] 2018 Referral, para. 3 (emphasis added).
[85] Appeal Brief, paras 26-27.

proceedings has no bearing on the present proceedings. Irrespective of the level of specificity of description, it has not been shown that the 2018 Referral and the Article 18(1) Notification make no reference to "armed conflict".

58. Accordingly, the Majority finds that it has not been demonstrated that the Pre-Trial Chamber erred in finding that "armed conflict" is a defining parameter of the 2018 Referral and the Article 18(1) Notification. For this reason, Israel's first sub-ground of appeal is rejected.

59. In light of this conclusion, it is immaterial whether the Summary was communicated to Israel.[86] As set out in the Reply, the central issue arising from the Summary for the purposes of the present sub-ground of appeal is that it contains the Prosecutor's assertion that "the hostilities that took place in Gaza between 7 July and 26 August 2014 may be classified as either an international or non-international armed conflict; alternatively, it may be considered that two different conflicts (one international and the other non-international) existed in parallel during the relevant period".[87] However, irrespective of whether Israel was put on notice of this specific assertion, the Majority reiterates that it is sufficiently apparent from the terms of the 2018 Referral and the Article 18(1) Notification that "armed conflict" is a defining parameter.

2. The single reference to "hostilities" in the Article 18(1) Notification is temporally limited to 2014

a. Summary of the submissions

i. Israel's submissions

60. Israel argues that, in the Article 18(1) Notification, the "single reference to 'hostilities' is temporarily closed" in that it refers to the 2014 hostilities in Gaza.[88] By contrast, Israel notes that the Article 18(1) Notification is not temporarily closed in respect of the alleged occupation-related crime of transfer of Israeli civilians into the West Bank, which is framed as occurring "since 13 June 2014".[89]

[86] Reply, paras 2-16.
[87] Reply, para. 3.
[88] Appeal Brief, para. 30.
[89] Appeal Brief, para. 30.

61. Israel argues that, while there is no requirement of notification of every single incident to be investigated, the Prosecutor "must at the very least" define its investigation according to specific criteria.[90] Israel submits that, whichever parameters are chosen, the Prosecutor is obliged to do more than including a "catch-all" provision – like the one included in the Article 18(1) Notification – as such an approach has been rejected in the Court's jurisprudence.[91] Similarly, Israel contends that the Court's jurisprudence has rejected the practice of defining a situation without limitations as to context or duration "as incompatible with the concept of a 'situation' and with 'the proper functioning of the principle of complementarity'".[92]

62. Accordingly, in the submission of Israel, rather than defining the scope of the situation and intended investigation as an armed conflict, the Article 18(1) Notification limited it to a single period of hostilities in Gaza, without linking it to any broader series of hostilities or armed conflict.[93]

ii. Prosecutor's submissions

63. The Prosecutor submits that Israel misunderstands the purpose of notifications pursuant to article 18(1) of the Statute.[94] The Prosecutor argues that, in the context of deferral requests under article 18(2) of the Statute, Chambers have considered other documents in addition to the article 18 notification in order to assess whether sufficient notice was provided.[95] According to the Prosecutor, this approach "is consistent with the limited nature of article 53(1) determinations".[96] The Prosecutor argues that he is not barred from investigating events post-dating the Article 18(1) Notification and that the focus on incidents arising from the 2014 hostilities are "examples of relevant criminality", which do not limit the scope of subsequent investigations.[97]

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[90] Appeal Brief, para. 31.
[91] Appeal Brief, para. 31, *referring inter alia to* Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute", 1 March 2024, ICC-02/18-89 (OA) (hereinafter: "*Venezuela* OA Judgment"), paras 8, 222-228, 348.
[92] Appeal Brief, para. 31, *referring to* Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, Decision on the "Defence Challenge to the Jurisdiction of the Court", 26 October 2011, ICC-01/04-01/10-451 (hereinafter: "*Mbarushimana* Jurisdiction Decision"), paras 21, 23, 28.
[93] Appeal Brief, para. 32.
[94] Prosecutor's Response, paras 17-18.
[95] Prosecutor's Response, para. 18.
[96] Prosecutor's Response, para. 19.
[97] Prosecutor's Response, para. 19.

64. The Prosecutor also submits that Israel misrepresents the features of the referred situation and the Prosecutor's investigation.[98] The Prosecutor contends that the 2014 Gaza hostilities are a "representative sample of the regular hostilities in this Situation", which are "in any event inextricably linked to Israel's overall occupation and settlement policy in the West Bank".[99] The Prosecutor argues that the "link between Israel's protracted occupation, its settlement policy and related discriminatory policies and practices in the West Bank, the Gaza blockade as well as the periodic hostilities between the IDF and Hamas/PAGs has been consistently recalled".[100]

65. Lastly, the Prosecutor submits that Israel disregards that determining whether certain events amount to a new situation before the Court is a case-specific and fact-dependent determination.[101] The Prosecutor argues that the applications for warrants of arrest "alleged the commission of some of the very same war crimes described in the [Article 18(1) Notification], as well as additional war crimes and crimes against humanity".[102] The Prosecutor argues that the crimes alleged in the applications for warrants of arrest: (i) "took place in the context of the ongoing Israeli occupation of the West Bank and Gaza, and its associated armed conflicts"; and (ii) "involve conduct by the same groups or categories of perpetrators allegedly responsible for the crimes at the time of the Referral and opening of the investigation".[103] In sum, the Prosecutor argues that the investigation into the Palestine Situation is not limited to the 2014 hostilities nor to settlement-related crimes.[104]

b. Determination by the Appeals Chamber

66. For the following reasons, the Majority rejects Israel's contention that "[t]he single reference to 'hostilities' in the Article 18(1) Notification is limited temporally".

67. First, in the view of the Majority, the argument that "[t]he single reference to 'hostilities' is temporally closed" misconstrues the Article 18(1) Notification.

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[98] Prosecutor's Response, paras 17, 20.
[99] Prosecutor's Response, para. 20.
[100] Prosecutor's Response, para. 22.
[101] Prosecutor's Response, paras 17, 24.
[102] Prosecutor's Response, para. 25.
[103] Prosecutor's Response, para. 26.
[104] Prosecutor's Response, para. 27.

68. As part of the 2018 Referral, Palestine clarified that "the referred situation encompasses crimes falling within the jurisdiction of the International Criminal Court committed since 13 June 2014, with no end date".[105] On this basis, the Article 18(1) Notification defined the starting date of the matter under investigation. It indicates that an investigation has been initiated "with respect to alleged crimes within the jurisdiction of the Court committed in the Situation in Palestine *since 13 June 2014*, on the basis of a referral submitted by the Government of the State of Palestine".[106] After reiterating that 13 June 2014 is the starting date of the matter under investigation,[107] the Article 18(1) Notification continues to specify that "there is a reasonable basis to believe that war crimes were committed in the context of the 2014 hostilities in Gaza".[108]

69. In this regard, the Majority recalls that the relevant enquiry for the purposes of article 18 of the Statute concerns "the same groups or categories of individuals in relation to the relevant criminality, including the patterns and forms of criminality, within a situation" and that "there is no expectation at this stage of the proceedings that the Prosecutor should notify States of every act he or she intends to investigate, especially in those situations referred to the Court which cover a large number of alleged criminal acts".[109]

70. Therefore, when considered as a whole and read together with the 2018 Referral, on which it is based, the Article 18(1) Notification specifies, in general terms, that 13 June 2014 is the starting date of the matter under investigation and, in that context, it refers to certain war crimes allegedly committed in the 2014 hostilities in Gaza as "patterns and forms" of the relevant criminality. Accordingly, the Article 18(1) Notification does not temporally limit the reference to hostilities in 2014 in Gaza.

71. The Majority further notes that the contention that a "catch-all provision" was employed by the Prosecutor similarly misreads the Article 18(1) Notification.

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[105] 2018 Referral, p. 2.
[106] Article 18(1) Notification, p. 2 (emphasis added).
[107] Article 18(1) Notification, p. 2.
[108] Article 18(1) Notification, p. 2.
[109] *Venezuela* OA Judgment, para. 110. *See also* Philippines OA Judgment, para. 106.

72. The Article 18(1) Notification, after identifying the starting date of the matter under investigation, concludes by indicating that the specified patterns and forms of criminality within the situation, "which have been identified by [the] Office [of the Prosecutor] 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".[110]

73. The Majority notes that the Appeals Chamber has previously found that the Prosecutor "issues an article 18(1) notification at a time when he or she is only commencing an investigation" and "the Prosecutor may not yet have identified all acts which he or she intends to investigate and therefore the contours of the likely cases may still be vague".[111] Thus, it cannot be said that "a notification under article 18(1) of the Statute […] must be limited to alleged criminal acts which the Prosecutor will investigate".[112]

74. As a result, the indication that the future scope of the Prosecutor's investigation may encompass any alleged crimes in the Palestine Situation is not a "catch-all" provision. It rather reflects the relationship between the provisions in the Court's legal texts regulating the threshold for commencing an investigation under article 53(1) of the Statute, the requirement to provide sufficiently specific information to a State for the purposes of article 18(2) of the Statute, and the Prosecutor's prerogative to continue the investigation within the parameters of the Palestine Situation. Therefore, the fact that the Article 18(1) Notification specifies the starting date of the matter under investigation and identifies patterns and forms of the relevant criminality, together with the reference to the future scope of the investigation, is consistent with the applicable framework.

75. In view of these determinations, the Majority does not consider it necessary to address Israel's arguments as to what it might have had to demonstrate had it decided to bring an admissibility challenge at a previous juncture.[113]

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[110] Article 18(1) Notification, p. 3.
[111] *Venezuela* OA Judgment, paras 105, 109.
[112] *Venezuela* OA Judgment, para. 114.
[113] Appeal Brief, para. 25.

76. It follows that it has not been established that the Pre-Trial Chamber erred in finding that the Article 18(1) Notification includes "the starting point of the relevant timeframe" and that the investigation is not limited to the incidents described in that notification. Accordingly, the Majority rejects the second sub-ground of the first ground of appeal.

3. The Article 18(1) Notification "impermissibly exceeds" the scope of the 2018 Referral

a. Summary of the submissions

i. Israel's submissions

77. Israel submits that, even if the reference to "hostilities" in the Article 18(1) Notification were to be interpreted as encompassing a broad or ongoing armed conflict, this would "impermissibl[y]" exceed the scope of the situation.[114] Israel argues that the notification under article 18(1) of the Statute must fall within the boundaries of the situation as referred to the Prosecutor; it may be narrower but must not exceed it.[115] Israel alleges that, pursuant to articles 14 and 13(a) of the Statute, the Prosecutor must invoke the *proprio motu* powers of article 15 of the Statute in order to go beyond the factual boundaries of the referral.[116] Accordingly, Israel submits that "ensuring that the Article 18(1) Notification falls within the scope of a Referral is vital to ensuring that the framework of authorizations and supervisions prescribed within the Statute is not usurped by a high-handed Prosecutor".[117]

78. Israel argues that the 2018 Referral "scrupulously, conspicuously and seemingly deliberately makes no reference" to an armed conflict.[118] Israel further submits that the Prosecutor is not allowed and has no authority to unilaterally expand the terms of the referral pursuant to its powers under articles 42 and 54 of the Statute.[119]

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[114] Appeal Brief, para. 33.
[115] Appeal Brief, para. 33, *referring to* *Venezuela* OA Judgment, para. 227; Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana, 28 September 2010, ICC-01/04-01/10-1 (hereinafter: "*Mbarushimana* Arrest Warrant Decision"), para. 6.
[116] Appeal Brief, para. 33.
[117] Appeal Brief, para. 33.
[118] Appeal Brief, paras 34-35, 38.
[119] Appeal Brief, paras 36-37.

ii. Prosecutor's submissions

79. The Prosecutor submits that the investigation into the Palestine Situation, which encompasses "the 2014 hostilities but also the current conflict", "does not exceed the scope of Palestine's 2018 Referral".[120] The Prosecutor reiterates the argument that the 2018 Referral "is not limited to settlement-related crimes" and instead encompasses "the situation of crisis in Palestine at the time of the referral, which is ongoing".[121] In addition, the Prosecutor argues that the Situation entails "widespread and interconnected criminality across the [occupied Palestinian territories] in pursuance of the same policies and following similar patterns".[122]

b. Determination by the Appeals Chamber

80. For the reasons that follow, the Majority rejects Israel's submission that, "[e]ven if the single reference to 'hostilities' in the [Article 18(1)] Notification is interpreted as purporting to provide notice of an investigation into an ongoing armed conflict, this impermissibly exceeds the scope of the situation".

81. The Majority has already rejected the arguments that the 2018 Referral does not refer to or describe any "armed conflict", and that the reference to "hostilities" in the Article 18(1) Notification is limited to certain events in 2014 in Gaza. As the 2018 Referral does not omit any reference to or description of "armed conflict", the Article 18(1) Notification cannot be seen as exceeding the scope of the referred situation on the basis of its reference to hostilities, which, in any case, is not confined to events in 2014 in Gaza.

82. In any event, as previously held by the Appeals Chamber, the referral of a situation by a State Party under article 14 of the Statute must be interpreted such as to "[extend] enough flexibility to the Prosecutor to investigate independently and impartially".[123] Therefore, referrals typically involve "the referral of a situation of crisis or armed conflict", enabling the Prosecutor to select potential cases,[124] rather than limiting the Prosecutor's future investigation to crimes or cases described in the referral.

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[120] Prosecutor's Response, para. 28.
[121] Prosecutor's Response, para. 29.
[122] Prosecutor's Response, para. 30.
[123] *Abd-Al-Rahman* OA8 Judgment, para. 25.
[124] *Abd-Al-Rahman* OA8 Judgment, para. 25 *referring to, inter alia, Mbarushimana* Jurisdiction Decision, para. 27.

Indeed, the 2018 Referral specifies that "the crimes set forth below are not the only crimes committed within the jurisdiction of the ICC and are *not intended to limit the scope of the [Prosecutor's] investigation*".[125]

83. Thus, Israel's references to the *Mbarushimana* Jurisdiction Decision and the Prosecutor's approach to the scope of the situation in Uganda do not support this sub-ground of appeal.[126] As the 2018 Referral expressly indicates that it does not seek to limit the Prosecutor's investigation to the crimes set forth therein, there is no basis for claiming that "the Prosecutor gave no indication either in the [Article 18(1)] Notification or in public statements that the scope of the 2018 Referral was incompatible with her obligations under the Statute, or that it needed to be broadened".[127]

84. In light of the above, it has not been demonstrated that the Article 18(1) Notification exceeds the 2018 Referral and that the Pre-Trial Chamber erred in finding that the Prosecutor's intended investigation is defined with reference to the same type of armed conflicts and the same alleged parties to those conflicts as those having occurred following 7 October 2023. Accordingly, the Majority rejects the third sub-ground of Israel's first ground of appeal.

4. Conclusion

85. Having rejected the above arguments raised by Israel, the Majority does not discern an error in the Pre-Trial Chamber's finding that it is not persuaded by "Israel's submissions that 'a new situation has arisen', or an 'investigation with new "defining parameters" has been taking place since 7 October 2023'" on the basis that, in the applications for warrants of arrest before the Pre-Trial Chamber, the Prosecutor "alleges conduct committed in the context of the same type of armed conflicts, concerning the same territories, with the same alleged parties to these conflicts" in comparison with the Article 18(1) Notification.[128] Accordingly, the first ground of appeal is rejected.

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[125] 2018 Referral, para. 12 (emphasis added); *see also* 2018 Referral, para. 9.
[126] Appeal Brief, para. 37.
[127] Appeal Brief, para. 37.
[128] Impugned Decision, para. 15.

B. Second ground of appeal: alleged error in failing to find, and giving no reasons to reject, Israel's submission that a new situation was triggered by referrals following 7 October 2023

1. Summary of the submissions

a. Israel's submissions

86. Israel argues that, following the 7 October 2023 events, "at least seven States agreed that the 2018 Referral did not encompass the radical change of circumstances that had arisen, and the consequent scope of the situation of crisis to be referred" by virtue of the 2023 Referral and the 2024 Referral.[129] Israel, while firmly rejecting the allegations included in the two additional referrals, submits that they acknowledged a radical change in the situation and identified additional crimes, including genocide, various violations concerning methods of warfare in the course of hostilities, and additional circumstances that were not previously encompassed.[130]

87. Israel submits that the 2023 Referral "triggered a new situation", which needed to be registered pursuant to regulations 45 and 46 of the Regulations of the Court (hereinafter: "Regulations"), and required the Prosecutor to make a determination pursuant to article 53(1) of the Statute and, if he decided to investigate, provide for a new notification under article 18(1) of the Statute.[131] Israel avers that the Prosecutor's alleged failure to comply with regulation 45 of the Regulations is not consistent with his previous practice in other situations.[132]

b. Prosecutor's submissions

88. The Prosecutor argues that the Pre-Trial Chamber reasonably addressed the 2023 and 2024 Referrals as the facts underlying them and the States' own statements "demonstrate that these States did not request the opening of a new situation but instead sought to emphasise the need for progress with respect to the ongoing investigation".[133] The Prosecutor submits that the Pre-Trial Chamber did not err by rejecting Israel's submissions regarding the alleged effect of the post-7 October 2023 referrals, and that

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[129] Appeal Brief, para. 40.
[130] Appeal Brief, paras 41-42.
[131] Appeal Brief, paras 42-43.
[132] Appeal Brief, para. 44, *referring to* the situations in Venezuela II and the Democratic Republic of the Congo (hereinafter: "DRC") where, despite the Prosecutor's view that new referrals overlapped with existing situations, notifications were provided to the Presidency pursuant to regulation 45 of the Regulations.
[133] Prosecutor's Response, para. 4.

Israel's arguments under the second ground of appeal are based on mischaracterisations of the criminality of the Palestine Situation, the scope of the ongoing investigation, and the import of the State referrals of 2023 and 2024.[134]

89. The Prosecutor reiterates that the scope of the investigation into the Palestine Situation goes beyond settlement policies and encompasses other crimes related to the situation of crisis ongoing at the time of the 2018 Referral, including "crimes in the context of an international armed conflict between Israel and Palestine, Israel's conduct in the context of its long-standing occupation, and a non-international armed conflict between Hamas/PAGs and Israel".[135]

90. The Prosecutor also submits that the 2023 Referral and the 2024 Referral "related to the same situation referred by Palestine in 2018, which has been under investigation by the Prosecution since March 2021".[136] The Prosecutor argues that the context of the 2023 Referral, although referring to additional crimes such as genocide, "shows that the five referring States simply sought to draw the Prosecution's attention to these crimes in the conduct of its ongoing Palestine investigation, and to call for its speedy progress".[137] The Prosecutor notes that this was reiterated by statements made by representatives of Bangladesh and South Africa at the Assembly of States Parties of the Court in December 2023, which were made after the Prosecutor had confirmed that the existing investigation "extend[ed] to the escalation of hostilities and violence" since 7 October 2023.[138] Regarding the 2024 Referral, the Prosecutor argues that the two referring States expressed their grave concern regarding the latest escalation of violence and, recalling the 2023 Referral, explained that they also wanted "to draw further attention of the Office of the prosecutor to the situation".[139] The Prosecutor argues that this confirms that "the seven referring States correctly understood the crimes committed since 7 October 2023 to form part of the existing *Palestine* investigation".[140]

91. In any event, the Prosecutor submits that, "independently of the States' assertions, the events described […] fall squarely within, and are in any event sufficiently linked

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[134] Prosecutor's Response, para. 38.
[135] Prosecutor's Response, para. 39.
[136] Prosecutor's Response, para. 40.
[137] Prosecutor's Response, para. 40.
[138] Prosecutor's Response, paras 40-41.
[139] Prosecutor's Response, para. 42.
[140] Prosecutor's Response, para. 43.

to, the situation underlying Palestine's 2018 Referral and under investigation".[141] The Prosecutor further submits that the decision not to inform the Presidency, under regulation 45 of the Regulations, of the 2023 Referral and the 2024 Referral is consistent with its past practice, including the approach taken in relation to the referrals made by Venezuela in 2022 and by the DRC in 2023.[142]

92. The Prosecutor submits that the Pre-Trial Chamber "sufficiently explained the reasons for its conclusion that no substantial change has occurred to the parameters of the investigation into this situation".[143] The Prosecutor contends that whether a new situation has arisen is a case-specific and fact-dependent determination and that the Pre-Trial Chamber did consider the potential relevance of the 2023 Referral and the 2024 Referral to the parameters of the investigation.[144]

c. Israel's submissions in reply

93. Israel replies that the statements made at the Assembly of States Parties by the States that submitted the 2023 Referral are "neither legally relevant, nor factually probative, as to the legal consequences arising from their referrals".[145] It submits that the consequences of a State Party referral are governed by article 14 of the Statute, which "expressly prescribes that the only thing that can be referred by a State Party is 'a situation'", and that "[n]either the [Assembly of States Parties] nor any individual State Party has any role to play under the ICC Statute in this determination".[146] Israel further submits that the statements made at the Assembly of States Parties are "highly equivocal and political in nature" and do not support the Prosecutor's assertion that the referred situations are "materially identical to an existing situation".[147]

2. Determination by the Appeals Chamber

94. As indicated above, the Palestine Situation was originally referred to the then Prosecutor by Palestine in 2018. An investigation was opened in March 2021, while a notice under article 18(1) of the Statute was provided to all States Parties and other States that would normally exercise jurisdiction, including Israel, shortly thereafter.

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[141] Prosecutor's Response, para. 43.
[142] Prosecutor's Response, para. 44.
[143] Prosecutor's Response, para. 46.
[144] Prosecutor's Response, paras 47-48.
[145] Reply, para. 24.
[146] Reply, para. 25.
[147] Reply, para. 26.

Following the events of 7 October 2023, the 2023 Referral was submitted by five States Parties on 17 November 2023, and the 2024 Referral by two States Parties on 18 January 2024.

95. For the reasons that follow, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, rejects Israel's assertion that the Pre-Trial Chamber "erred in failing to find, and giving no reasons to reject, Israel's submission that a new Situation was triggered by referrals following 7 October 2023".[148]

96. As to Israel's contention that "[t]he [Pre-Trial Chamber] erred in law by failing to provide any reasons at all in the Impugned Decision addressing [the 2023 Referral and the 2024 Referral]",[149] the Appeals Chamber previously found that the extent of "reasoning will not necessarily require reciting each and every factor that was before the Pre-Trial Chamber to be individually set out, but it must identify which facts it found to be relevant in coming to its conclusion".[150]

97. The Appeals Chamber, by majority, observes that, whilst the Pre-Trial Chamber did not include an explicit finding discussing the legal implications, or lack thereof, of the two referrals, it nonetheless explicitly noted the 2023 Referral and the 2024 Referral.[151] It further acknowledged that, in its request for a new notice to be provided under article 18(1) of the Statute, Israel referred to these two referrals as having constituted a new situation.[152]

98. The Appeals Chamber, by majority, further notes that, in the Article 18 Request, Israel did not elaborate on how, in its view, the 2023 and 2024 referrals constituted a new situation. Rather, the request focuses on the alleged changes to the "defining

[148] Appeal Brief, p. 15.
[149] Appeal Brief, para. 45.
[150] *See, for instance,* Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81", 14 December 2006, ICC-01/04-01/06-773 (OA5), para. 20.
[151] Impugned Decision, para. 3.
[152] Impugned Decision, para. 5, fn 24, *referring to* Article 18 Request, paras 2, 19-30.

parameters" of the situation. In this regard, Israel only relied upon the two referrals to show "[t]he extent of the change following 7 October 2023".[153]

99. Furthermore, while in the Article 18 Request Israel referred to the Prosecutor's duty under regulation 45 of the Regulations, it only addressed its formal aspect. Indeed, the argument before the Pre-Trial Chamber was that "[t]hese referrals triggered an obligation under regulation 45 of the [Regulations] to 'inform the Presidency in writing […]' [and] [t]his Prosecutor appears to have failed to do so".[154] However, this argument was not meant to support Israel's main proposition that a new situation had arisen.

100. The Pre-Trial Chamber provided reasons for its ultimate conclusion that no new situation had arisen and that no investigation with new defining parameters has been taking place since 7 October 2023. The Appeals Chamber, by majority, considers that it was correct for the Pre-Trial Chamber to focus its reasoning on the defining parameters of the situation. Given the way in which Israel formulated the Article 18 Request, there was no need for the Pre-Trial Chamber to specifically address the general submission that a new situation had been constituted as a result of the 2023 Referral and the 2024 Referral. It is clear from the Article 18 Request that Israel only relied upon the two referrals as indicative of the alleged change in the parameters of the situation, rather than constituting a new situation.

101. Israel further argues that "the [Pre-Trial Chamber] erred in law by […] failing to find that the 2023 Referral required the registration of a new situation before the Court; and failing to find that a new article 18(1) notification had to be provided to Israel if the Prosecutor were to conclude, on the basis of the second condition in article 18(1) that 'there would be a reasonable basis to commence an investigation'".[155] The Appeals Chamber, by majority, understands Israel to be arguing that, notwithstanding the absence of reasoning, the Pre-Trial Chamber erred in law by omitting to conclude that the 2023 Referral brought about a new situation compared to the situation originally referred by Palestine in 2018 and that, as a result, it failed to require the Prosecutor to comply with regulation 45 of the Regulations and to issue a further notification under article 18(1) of the Statute. For the reasons that follow, the Appeals Chamber, by

[153] Article 18 Request, para. 2.
[154] Article 18 Request, para. 30 (footnote omitted).
[155] Appeal Brief, para. 45.

majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, rejects Israel's assertion that the Pre-Trial Chamber erred in this regard.

102. First, both referrals explicitly rely on the 2018 Referral as the basis for the exercise of the Court's jurisdiction.[156] The relevant States Parties further express their grave concern about the "escalation of violence, including against civilians, and the alleged ongoing commission of crimes within the jurisdictional scope of the Court".[157] In the view of the majority of the Appeals Chamber, it follows that the reference to the "escalation of violence" reveals that the two referrals consider the events on and after 7 October 2023 as connected to the situation as set out in the 2018 Referral.

103. Second, the two referrals do not characterise the 2018 Referral as pertaining to a "settlement regime".[158] They rather refer to the 2018 Referral in keeping with the legal framework of the Court. The 2023 Referral invokes "all matters related to the Israeli settlement regime" as merely one of the bases, and not the exclusive basis, for its assertion that "there is evidence of continuing commission of the crimes detailed in the [2018 Referral]". In this regard, the 2023 Referral additionally refers to "any conduct, policies, laws, official decisions and practices that underlie, promote, encourage or otherwise make a contribution to the commission of crimes that come within the terms of" a number of sub-provisions of articles 7 and 8 of the Statute, as well as "categories of crimes" as set out in the 2018 Referral.[159] With the exception of article 8(2)(b)(viii) of the Statute and the corresponding "category of crime",[160] none of these legal bases is inherently limited to matters associated with "settlements", even though some of them may have been committed in the factual context of an alleged "settlement policy". The 2024 Referral is framed even more generally. It refers to the 2018 Referral as pertaining to "the commission of crimes under the jurisdiction of the Court […], including but not limited to crimes against humanity of article 7 and war crimes of article 8 of the Rome Statute".[161] It then concludes by requesting "[…] the Prosecutor to investigate the situation to determine whether one or more specific persons should

[156] 2023 Referral, p. 3; 2024 Referral, section I.
[157] 2023 Referral, p. 3; 2024 Referral, section II.
[158] Appeal Brief, para. 42.
[159] 2023 Referral, paras 1.2, 1.3.
[160] 2018 Referral, para. 12; 2023 Referral, para. 1.3.3.
[161] 2024 Referral, section II.

be charged with the commission of *such crimes that would have taken place concerning the situation in the State of Palestine, beginning on 13 June 2014* […]".[162]

104. Third, Israel's contention that the 2023 Referral also speaks of "additional crimes" *vis-à-vis* the 2018 Referral and that the 2024 Referral for the first time makes reference to "the attack of 7 October 2023 conducted by Hamas militants" does not disturb this determination.[163] Since both referrals proceed on the basis of a connection between the 2018 Referral and the events of 7 October 2023, references to crimes allegedly committed following the 2018 Referral, including by alleged perpetrators not mentioned therein, are consistent with the scope of the situation as referred by Palestine. Such references are, thus, compatible with the notion that, in the early stages of the investigation, the Prosecutor is not in a position to identity or anticipate all potential cases for investigation and that, as the investigation progresses, it may come to encompass alleged crimes not previously identified or anticipated.[164]

105. Accordingly, the Appeals Chamber, by majority, dismisses Israel's submission. Instead of identifying a new situation, the two referrals were submitted with a view to urging the Prosecutor to advance the investigation in respect of the alleged crimes committed before 7 October 2023, as well as those committed on and after that date, as forming part of a single situation arising from the 2018 Referral. This is sufficiently apparent from the explicit terms of the 2023 and 2024 referrals, irrespective of any further statements provided at the Assembly of States Parties by the relevant States Parties. As a result, the Appeals Chamber, by majority, does not consider it necessary to deal with the submissions concerning these statements.[165]

106. Having examined and rejected Israel's arguments, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, rejects the second ground of appeal. Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa append dissenting opinions to the present Judgment insofar as it concerns the second ground of appeal.

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[162] 2024 Referral, section III (emphasis added).
[163] Appeal Brief, para. 41.
[164] *See, for instance*, *Venezuela* OA Judgment, paras 105, 109.
[165] Prosecutor's Response, paras 40-41; Reply, paras 24-27.

107. Judge Luz del Carmen Ibáñez Carranza dissents from the Majority's reasoning and conclusion regarding the second ground of appeal. She considers that the Pre-Trial Chamber committed errors of law and procedure by failing to consider the procedure established in regulation 45 of the Regulations and to expressly address, without providing any reasons, relevant arguments raised by Israel in the Article 18 Request. Judge Luz del Carmen Ibáñez Carranza is of the view that the second ground of appeal raises the following two issues that require resolution before assessing the first and third grounds of appeal: (i) whether it was correct for the Prosecutor not to have followed the procedure established in regulation 45 of the Regulations when he received the two referrals and its legal implications and consequences; and (ii) whether the substantive content of the referrals required prior consideration. The Pre-Trial Chamber's failures have an impact on the process of complementarity and the rights of States, including to receive proper notification pursuant to article 18. In addition, the Pre-Trial Chamber's failure to provide sufficient reasoning has an impact on the guarantee of due process of law and fairness. Judge Luz del Carmen Ibáñez Carranza considers that the Pre-Trial Chamber's errors materially affected the Impugned Decision. Accordingly, she would have remanded the matter to the Pre-Trial Chamber for a new examination.

108. Having found that the matter should have been remanded, Judge Luz del Carmen Ibáñez Carranza considers that the first and third grounds of appeal are intrinsically linked to the second ground of appeal and she is therefore unable to examine them.

109. Judge Solomy Balungi Bossa dissents from the conclusion of the Majority to reject Israel's submission that the Pre-Trial Chamber "erred in failing to find, and giving no reasons to reject, Israel's submission that a new Situation was triggered by referrals following 7 October 2023". She is of the view that the Pre-Trial Chamber erred by failing to duly address and to provide sufficient reasoning with respect to certain arguments raised by Israel in the Article 18 Request with regard to the legal effect of the 2023 and 2024 Referrals, namely that they: (i) had a distinct legal effect, namely that they would "identify a new situation of crisis"; and (ii) "triggered an obligation under regulation 45 of the [Regulations of the Court] to 'inform the Presidency in writing as soon as a situation has been referred to the Prosecutor by a State Party'". Judge Solomy Balungi Bossa considers that this error materially affected the Impugned Decision because the basis upon which the decision was taken cannot be discerned. As

a result, she would have reversed the Impugned Decision and remanded the matter to the Pre-Trial Chamber for it to properly address and provide reasons regarding Israel's arguments on the referrals.

110. Judge Gocha Lordkipanidze concurs with the findings of the Majority regarding the second ground of appeal. At the same time, he is of the view that the Prosecutor should continuously assess whether the particular circumstances of an investigation require an updated notification under article 18(1) of the Statute to be issued. This obligation forms part of his due diligence duty.

C. Third ground of appeal: alleged error in failing to consider other defining parameters of the Article 18(1) Notification in assessing whether it encompassed post-7 October 2023 events

1. Summary of the submissions

a. Israel's submissions

111. Israel reiterates its argument that the Pre-Trial Chamber "mistakenly found" that the 2018 Referral and the Article 18(1) Notification were defined by reference to armed conflicts, which "resulted in the erroneous conclusion that the [Prosecutor's] post-7 October 2023 investigations concern the 'same type of armed conflicts' and the 'same alleged parties to these conflicts'".[166] Israel also submits that the Pre-Trial Chamber did not analyse or refer to any further defining parameters of the intended investigations, nor did it consider or apply the criteria developed by prior jurisprudence.[167]

112. Israel argues that the Pre-Trial Chamber's reference to various criteria for the purposes of assessing the specificity of the Article 18(1) Notification suggests that it "did not properly turn its mind to whether the [Article 18(1) Notification] [was] sufficiently specific or representative in relation to the post-7 October 2023 investigation".[168] Israel submits that, in accordance with the Court's jurisprudence, the notification under article 18(1) of the Statute must be specific enough for the relevant States to exercise their rights under article 18(2) of the Statute and representative

[166] Appeal Brief, para. 46.
[167] Appeal Brief, para. 47.
[168] Appeal Brief, para. 48.

enough of the scope of criminality to be investigated in future cases.[169] Israel submits that the notification should give examples, sufficient to provide in broad terms the contours of the future investigation.[170]

113. Israel contends that the defining parameters of the Article 18(1) Notification are not sufficiently specific or representative of the investigations post-7 October 2023.[171] In particular, Israel avers that, in the Article 18(1) Notification: (i) no armed conflict is articulated and, even if the reference to some crimes presupposes the existence of an armed conflict, there is no articulation that this constitutes a defining parameter; (ii) no allegation of crimes committed systematically or as a matter of State policy are included, except for the alleged transfer of Israeli civilians into the West Bank, with the crimes now alleged being of an entirely different nature; (iii) no crimes against humanity are included, narrowing the scope of the 2018 Referral which included them; and (iv) the factual context it describes has now changed "dramatically".[172]

b. Prosecutor's submissions

114. The Prosecutor submits that, while arguing that the Pre-Trial Chamber should have considered other factors to assess whether a new situation had arisen, Israel neither identifies specific factors nor demonstrates how they would have materially affected the conclusion of the Pre-Trial Chamber.[173] The Prosecutor argues that Israel's reference to extracts of decisions in the context of litigation under article 18 of the Statute are misplaced as none were issued in the context of determining whether a new situation had arisen.[174]

115. The Prosecutor also submits that "Israel's repeated attempts to belatedly challenge the specificity of the Article 18 Notification by reference to posterior jurisprudence issued in the context of other situations should not be entertained"

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[169] Appeal Brief, para. 48, *referring to* Pre-Trial Chamber I, *Situation in the Bolivarian Republic of Venezuela I*, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, 27 June 2023, ICC-02/18-45, para. 77.
[170] Appeal Brief, para. 48, *referring to* *Venezuela* OA Judgment, para. 106 and Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, 5 March 2020, ICC-02/17-138 (OA4) (hereinafter: "*Afghanistan* OA4 Judgment"), para. 59.
[171] Appeal Brief, para. 49.
[172] Appeal Brief, paras 50-53.
[173] Prosecutor's Response, para. 32.
[174] Prosecutor's Response, para. 32.

because: (i) this is not an issue under appeal; and (ii) Israel had the opportunity to raise this matter in the context of article 18 of the Statute proceedings in March and April 2021.[175]

116. The Prosecutor avers that the Pre-Trial Chamber considered relevant factors and correctly concluded that the Article 18(1) Notification was sufficiently specific and that no new situation had arisen as a result of the 7 October 2023 events that would require a new notification under article 18 of the Statute.[176] According to the Prosecutor, Israel "simply disagrees with them and misconstrues the facts of the [Palestine] Situation and the Court's jurisprudence to bolster its arguments".[177]

117. Further, the Prosecutor submits that Israel does not demonstrate that the Pre-Trial Chamber committed any error that would materially affect the decision as: (i) the Article 18(1) Notification refers to the existence of armed conflicts; (ii) the situation underpinning the 2018 Referral reflects the widespread and systematic nature of Israel's actions and its policy of attacking the Palestinian population through the commission of multiple criminal acts; (iii) the lack of reference to crimes against humanity in the Article 18(1) Notification is consistent with the limited purpose of a preliminary examination, which does not prevent the Prosecutor from investigating and prosecuting them; and (iv) the current alleged criminality "is another example of hostilities between the IDF and Hamas/PAGs and reproduces many of the same patterns and crimes, even though with much greater intensity, scale and number of victims, and more cruel methods of warfare" and several States have argued that the recent measures taken by Israel "are linked to Israel's goal of causing Palestinians' displacement from the [occupied Palestinian territories] and settling and annexing their land".[178]

118. The Prosecutor contends that Israel's submission that it has not been given an opportunity to "explain itself" is "simply incorrect".[179] In support, the Prosecutor argues that: (i) Israel could have requested a deferral of the investigation in March/April 2021, but chose not to do so; and (ii) in light of a series of interactions post-October 2023, Israel "was well aware that the recent and ongoing events in Gaza fall within the

[175] Prosecutor's Response, para. 33.
[176] Prosecutor's Response, para. 34, *referring to* Impugned Decision, para. 15.
[177] Prosecutor's Response, para. 34.
[178] Prosecutor's Response, para. 35.
[179] Prosecutor's Response, para. 36, *referring to* Appeal Brief, para. 57.

scope of the investigation opened in March 2021" and it "engaged with the Court upon such understanding".[180]

119. The Prosecutor further submits that "granting Israel's Appeal would defeat the object and purpose of article 18, and of the complementarity regime more generally".[181] The Prosecutor avers that article 18 of the Statute "was introduced to ensure that States would be aware of the commencement of the Court's investigation in order to avoid duplication of proceedings" and that "States wanted to avoid any interpretation of article 18 that would allow States to protect perpetrators by frustrating and delaying investigations by the Prosecutor".[182] As such, the Prosecutor submits that the third ground of appeal should be dismissed.[183]

c. Israel's submissions in reply

120. Israel contests the Prosecutor's argument that the lack of reference to crimes against humanity in the Article 18(1) Notification is consistent with the limited purpose of a preliminary examination,[184] which it supported with refence to two confidential notifications under article 18(1) of the Statute related to the situations in Uganda and the DRC.[185] Israel submits that the Prosecutor "misreads its own prior article 18(1) notifications", as neither of those are limited to war crimes.[186] On the contrary, Israel submits that both notifications included language implicitly satisfying the *chapeau* requirements for crimes against humanity and referred to crimes by name that could either be war crimes or crimes against humanity.[187]

121. Israel contends that neither the Uganda nor the DRC notifications expressly define the category of crimes to be investigated, unlike the Article 18(1) Notification in this situation which "identifies only war crimes".[188] Read in light of these two other situations, Israel argues that it reveals that, in the Palestine Situation, the Prosecutor "did not believe" that he could open an investigation into crimes committed as part of

[180] Prosecutor's Response, para. 36.
[181] Prosecutor's Response, para. 37.
[182] Prosecutor's Response, para. 37.
[183] Prosecutor's Response, para. 37.
[184] Prosecutor's Response, para. 35.
[185] Reply, para. 28.
[186] Reply, para. 29.
[187] Reply, para. 29.
[188] Reply, para. 30.

a widespread or systematic attack.[189] In the argument of Israel, these two notifications, if anything, only reinforce its argument that the Prosecutor expanded its investigation significantly, beyond its defining parameters.[190]

2. Determination by the Appeals Chamber

122. The Majority notes, at the outset, the Prosecutor's request to summarily dismiss Israel's submissions challenging the specificity of the Article 18(1) Notification, as exceeding the issue for which the Pre-Trial Chamber granted leave to appeal.[191] However, in the submissions in question, Israel links the specificity of the Article 18(1) Notification to "the post-7 October 2023 investigation".[192] The Majority, therefore, understands that these submissions are not directed solely at the specificity of that notification. Rather, they seek to demonstrate that the Article 18(1) Notification was not specific enough to encompass the subject-matter of the post-7 October 2023 investigation. The Majority is, therefore, satisfied that these submissions are intrinsically linked to the issue certified for appeal.[193]

123. Israel contends that the Pre-Trial Chamber "did not properly turn its mind to whether the [Article 18(1) Notification] is sufficiently specific or representative in relation to the post-7 October 2023 investigation".[194]

124. The Majority recalls that:

> There is no expectation at [the] stage of the [article 18(1)] proceedings that the Prosecutor should notify States of every act he or she intends to investigate, especially in those situations referred to the Court which cover a large number of alleged criminal acts. Indeed, in such situations, the Prosecutor may be in no position to identify all potential cases that fall within the scope of a broad referral and commit, so early in the process, to investigating them. However, the Prosecutor's article 18(1) notification must be sufficiently specific in order for the State to be able to assert its jurisdiction in the proceedings under article 18(2) of the Statute.[195]

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[189] Reply, para. 30.
[190] Reply, para. 30.
[191] Prosecutor's Response, para. 8.
[192] Appeal Brief, para. 48.
[193] *See* paragraphs 32-33 above.
[194] Appeal Brief, para. 48.
[195] *Venezuela* OA Judgment, paras 3, 110. *See also* *Venezuela* OA Judgment, para. 106 *citing* *Afghanistan* OA4 Judgment, para. 59.

125. To the extent that Israel is arguing that the Pre-Trial Chamber omitted to take into account the degree of specificity of the Article 18(1) Notification, this argument is unsubstantiated. Referring to the *Venezuela* OA Judgment, the Pre-Trial Chamber found that the Article 18(1) Notification was sufficiently specific in view of the fact that it included "the types of alleged crimes, potential alleged perpetrators, the starting point of the relevant timeframe, as well as a reference to further relevant information, including the summary of the Prosecution's preliminary examination findings".[196] It subsequently assessed some of the criteria included therein against the conduct described in the applications for warrants of arrest. The Pre-Trial Chamber found 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", whereas, in the applications for warrant of arrest, the Prosecutor "alleges conduct committed in the context of the same type of armed conflicts, concerning the same territories, with the same alleged parties to these conflicts".[197]

126. Therefore, the Pre-Trial Chamber's findings on the specificity of the Article 18(1) Notification must be read together with its finding that no new situation or an investigation with new defining parameters had arisen, and not in isolation from each other, as suggested by Israel. Considered as a whole, it is clear that the finding on the absence of a new situation or an investigation with new defining parameters is informed by its preceding finding that the Article 18(1) Notification was sufficiently specific.

127. Israel also argues that the Pre-Trial Chamber failed to consider certain parameters previously identified in the jurisprudence.[198] This argument is to no avail either. It has been previously determined that "any investigation, irrespective of its stage, [has] certain defining parameters, which may vary depending on the circumstances of each specific situation".[199] On this basis, it cannot be maintained that the Court's jurisprudence has set out, in general, the *required* defining parameters for each and

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[196] Impugned Decision, para. 11.
[197] Impugned Decision, para. 15.
[198] Appeal Brief, para. 47.
[199] *Philippines* OA Judgment, para. 106, *referring to* Appeals Chamber, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled "Decision on the admissibility of the case against Saif Al-Islam Gaddafi", 21 May 2014, ICC-01/11-01/11-547-Red (OA4), para. 83.

every investigation. As this is a case-specific determination, the relevant parameters will depend on the particular circumstances of a situation. This is further confirmed by the fact that "[a] State Party's referral of a situation 'in which one or more [crimes within the jurisdiction of the Court] appears to have been committed', under article 13(a) of the Statute, provides the parameters of a situation".[200] Thus, the notification under article 18(1) of the Statute that is to be provided if the Prosecutor decides to initiate an investigation is inextricably linked to the State referral under article 13(a) of the Statute and shall be read in conjunction therewith.

128. On this basis, the Pre-Trial Chamber correctly proceeded to assess the specific parameters of the present situation, namely "the types of alleged crimes, potential alleged perpetrators, the starting point of the relevant timeframe, as well as a reference to further relevant information", and concluded that the Article 18(1) Notification was sufficiently specific.[201] This finding informed its subsequent ruling that no new situation or an investigation with new defining parameters had arisen. Accordingly, the Majority rejects Israel's contention that the Pre-Trial Chamber did not consider or apply the criteria developed by prior jurisprudence.

129. In any event, even if the Pre-Trial Chamber had considered the specific parameters highlighted by Israel, the Majority cannot discern an error in the relevant finding of the Pre-Trial Chamber.

130. As to Israel's assertion that no armed conflict was articulated in the Article 18(1) Notification as a defining parameter,[202] this matter has been addressed above under the first ground of appeal and does not require to be revisited.

131. In respect of Israel's contention that the defining parameters of the investigation do not include crimes committed systematically or as a matter of State policy, except for the alleged transfer of Israeli civilians into the West Bank, or that no crimes against humanity were included,[203] the Majority recalls that the Article 18(1) Notification shall be read together with the 2018 Referral.[204] The 2018 Referral expressly includes

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[200] *Venezuela* OA Judgment, para. 218.
[201] Impugned Decision, para. 11.
[202] Appeal Brief, para. 50.
[203] Appeal Brief, paras 51-52.
[204] Article 18(1) Notification, para. 1, p. 1.

allegations of crimes committed systematically as a matter of State policy, and specifically refers to crimes against humanity. It describes Israel's settlement regime as "pursuing [a] policy of displacement and replacement of the Palestinian people".[205] The 2018 Referral adds that this policy "encompasses a range of sub-policies and practices", which "has involved the enactment and maintenance of a multi-layered system of violence and intimidation against the Palestinian population" and "the widespread and systematic attack on the Palestinian civilian population, through the commission of crimes, to create and perpetuate such a regime".[206] It then explicitly indicates that "[t]hese acts qualify under the Rome Statute as both war crimes and crimes against humanity".[207] Lastly, the 2018 Referral stipulates that the circumstances "include but are not limited to, all matters related to the Israeli settlement regime" and that the referral "incorporates […] any conduct, policies, laws, official decisions and practices that underlie, promote, encourage or otherwise make a contribution to the commission of these crimes in accordance with the terms of the Statute".[208] In this regard, it specifically qualifies such alleged acts as crimes against humanity, including those falling under "articles 7(1)(a), (d), (e), (f), (h), (j) and (k) […] of the Rome Statute".[209]

132. Finally, the Majority is not persuaded by Israel's submission that the general circumstances in which the alleged criminality is said to have occurred have changed radically. Rather, as is apparent from the foregoing considerations, the currently investigated circumstances appear to be connected to the circumstances identified in the 2018 Referral and the Article 18(1) Notification in view of the continuity of the context in which the alleged crimes have been perpetrated. In this regard, the Majority recalls that, as set out above under the first ground of appeal, the Pre-Trial Chamber correctly held that, in comparison with the Article 18(1) Notification, the Prosecutor "alleges conduct committed in the context of the same type of armed conflicts, concerning the same territories, with the same alleged parties to these conflicts" in the applications for the warrants of arrest.[210] Therefore, the alleged crimes display a continuity in pattern, even though a certain shift in circumstances may have occurred

[205] 2018 Referral, para. 2.
[206] 2018 Referral, para. 3.
[207] 2018 Referral, para. 3.
[208] 2018 Referral, para. 11.
[209] 2018 Referral, para. 11.
[210] Impugned Decision, para. 15.

as a result of the events on and after 7 October 2023. Similarly, as determined in the preceding paragraphs, there continue to be allegations of crimes committed systematically and/or as a matter of State policy.

133. The Majority further considers that the question whether other judicial institutions have adopted a different approach is, contrary to Israel's assertion, not relevant in view of the dissimilar procedural frameworks in which such institutions operate.[211] Furthermore, the individual positions of certain States are not determinative for this question as the Majority is exclusively guided by the applicable legal framework.[212]

134. In any event, Israel's argument under this ground of appeal disregards the Prosecutor's prerogative to investigate matters occurring after the commencement of the investigation and the provision of information to States in accordance with article 18(1) of the Statute.

135. As previously noted by the Majority, "the Prosecutor's investigation is not limited to crimes pre-dating the referral [and] the obligation to provide sufficiently specific information in an article 18 notification does not limit in any way the Prosecutor's future investigations".[213] The Majority has also endorsed the interpretation that a situation of crisis for which the jurisdiction of the Court was activated "can include not only crimes that had already been or were being committed at the time of the referral, but also crimes committed after that time, in so far as they are sufficiently linked to the situation of crisis referred to the Court as ongoing at the time of the referral".[214] As is apparent from the preceding discussion, the alleged crimes committed on and after 7 October 2023 are sufficiently linked to the situation of crisis identified in the 2018 Referral and, as such, it fell within the Prosecutor's prerogatives to extend the investigation initiated in 2021 to encompass such alleged crimes.

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[211] Appeal Brief, para. 54.
[212] Appeal Brief, para. 54.
[213] *Venezuela* OA Judgment, para. 230.
[214] *Venezuela* OA Judgment, para. 227, *referring to* *Mbarushimana* Arrest Warrant Decision, para. 6. *See also* Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302), 17 May 2021, ICC-02/05-01/20-391, para. 25.

136. In light of the above, the Majority rejects Israel's third ground of appeal.

V. APPROPRIATE RELIEF

137. In an appeal pursuant to article 82(1)(d) of the Statute, the Appeals Chamber may confirm, reverse or amend the decision appealed. In the present case, it is appropriate to reject Israel's appeal and confirm the Impugned Decision.

138. The Appeals Chamber notes that, while the Chambers Practice Manual requires that a judgment on an interlocutory appeal filed under article 82(1)(d) of the Statute, in cases where the Appeals Chamber does not decide to hold a hearing, be rendered within four months from the date of the filing of the response to the appeal brief, the present judgment is delivered after this time limit in view of the nature of the legal issues contained in this appeal and the need for detailed consideration of the relevant arguments.

139. Lastly, in the circumstances of the present appeal, the Appeals Chamber considers that the requirement set forth in article 83(4) of the Statute and rule 158(2) of the Rules to deliver the judgment "in open court", which ensures the publicity of the proceedings with a view to guaranteeing that justice is transparent and accessible to the public, is adequately fulfilled by delivering this judgment in public version, notifying it to the parties to the proceedings, and publishing it on the Court's website.

140. Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa append dissenting opinions to the present judgment.

141. Judge Gocha Lordkipanidze appends a concurring opinion to this judgment.

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

Judge Tomoko Akane
Presiding

Judge Luz del Carmen Ibáñez Carranza

Judge Solomy Balungi Bossa

Judge Gocha Lordkipanidze

Judge Erdenebalsuren Damdin

Dated this 15th day of December 2025

At The Hague, The Netherlands