

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/18**
Date: **10 October 2024**

PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge Nicolas Guillou

SITUATION IN THE STATE OF PALESTINE

SECRET and *EX PARTE*, only available to the Prosecution and the State of Israel

Prosecution Response to Israel's "Request for leave to reply to Prosecution Response to 'Israel's Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice'- ICC-01/18-355-SECRET-Exp-AnxI-Corr"

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court*
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I. INTRODUCTION

1. Israel's Request for Leave to Reply to the Prosecution's Response to Israel's "abridged" request for an order requiring an article 18(1) notice and staying the proceedings should be rejected.¹ There is no basis for Israel's Request. Israel identifies no new issue arising from the Prosecution's Response that it could not reasonably have anticipated, nor are Israel's submissions necessary for the Chamber to adjudicate the matters before it.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this application is filed SECRET following the classification of the Request for Leave to Reply. The Prosecution observes that there seems to be no basis for this classification and that Israel also seems to share this position.² If the Request is reclassified, this Response can follow the same classification.

III. SUBMISSIONS

3. The granting of leave to reply under regulation 24(5) is discretionary, to be decided on a case-by-case basis.³ A reply may be warranted where the applicant seeks to provide arguments on matters that could not reasonably have been anticipated, or are otherwise necessary to adjudicate the matter.⁴ However, the three purported issues identified by Israel for the proposed reply do not meet this test for leave to reply. Israel's Request should not be granted.

4. *First*, Israel asserts that the Prosecution made a new factual assertion by stating that the sufficiency of the article 18(1) notification should be assessed on the basis of the engagements between the parties up to the filing of the Applications.⁵ There is nothing new in the Prosecution's submissions, which are not accurately represented by Israel, and which merely reflect the relevant law and common sense. In its Response, the Prosecution simply stated, once again, that Israel was well-informed of the parameters of the Prosecution's intended investigation as a result of the article 18 notification, and that the escalation of violence arising

¹ ICC-01/18-362-SECRET-Exp-Anx ("Israel's Request"). See also ICC-01/18-360-SECRET-Exp ("Prosecution's Response"). The Prosecution will interchangeably use "Pre-Trial Chamber I" and "the Chamber" and will refer to "Article 58 Applications."

² See Israel's Request, para. 3 ("Israel respectfully reiterates that it wishes for the Request, and all related filings, to be reclassified as 'Public' in their entirety.").

³ ICC-01/14-01/18-799 ("[Yekatom Reply Decision](#)"), para. 8; ICC-01/04-02/06-2530 ("[Ntaganda Second Reply Decision](#)"), para. 7; ICC-01/04-02/06-2488 ("[Ntaganda First Reply Decision](#)"), para. 7.

⁴ [Yekatom Reply Decision](#), para. 8, citing Regulation 24(5); ICC-02/18-66 ("[Venezuela Reply Decision](#)"), paras. 10-11; ICC-01/21-72 ("[Philippines Reply Decision](#)"), paras. 6-7.

⁵ Israel's Request, para. 6, citing Prosecution's Response, para. 26.

from the attack of 7 October fell squarely within the parameters of the referred situation.⁶ This was reinforced by the parties' more recent engagements up to the date of filing the Applications.⁷ Israel's Request for Leave to Reply to this issue should be rejected.

5. *Second*, Israel asserts that it could not have foreseen that "the Prosecution would attempt to mischaracterize the Request as a jurisdictional challenge" nor the Prosecution's submission that the Pre-Trial Chamber "will satisfy itself that the Court has jurisdiction over the cases before it, including whether they are sufficiently linked with the situation that triggered the jurisdiction of the Court through Palestine's referral".⁸ Israel argues that, if granted leave, it would explain why a Chamber, in an *ex parte* procedure and without submissions from a potentially aggrieved State, could not know whether an article 18(1) notification had been provided, and whether it was sufficient.⁹

6. Yet, while Israel continues to conflate the Chamber's jurisdictional assessment at the article 58 stage with the sufficiency of an article 18(1) notification, nothing in the Request shows any basis for granting leave to reply. This Chamber is already well placed to assess the nature of Israel's submission and whether the Prosecution is accurate in describing it as a disguised jurisdictional challenge. Likewise, the Chamber will naturally already be cognisant of the determinations that it is called to make in deciding upon article 58 applications, and does not need Israel's further assistance in that regard.

7. Moreover, Israel chose not to raise any concerns about the sufficiency or clarity of the article 18(1) notification at the proper time, or by the proper means. For example, in the *Venezuela* situation, Venezuela also sought to raise issues concerning the sufficiency of the Prosecution's article 18 notification, and did so through the processes foreseen in the Court's legal texts. Specifically, it requested further information under rule 52(2), and then sought the deferral of the Prosecution's investigation under article 18(2), providing further observations when the Chamber allowed it to do so.¹⁰ By contrast, Israel has picked and chosen when to interact with the Court, in disregard of the article 18 legal framework, which—as the Appeals Chamber has noted—applies a strict time limit.¹¹ Indeed, as previously noted, Israel simply

⁶ Prosecution's Response, paras. 24-26; *see* paras. 19-20.

⁷ Prosecution's Response, para. 26.

⁸ Israel's Request, para. 7.

⁹ Israel's Request, para. 7.

¹⁰ ICC-02/18-45 ("[Venezuela Article 18\(2\) Decision](#)"), paras. 5, 8, 11, 12, 15-16, 73, 80.

¹¹ *See* ICC-02/18-89 OA ("[Venezuela Article 18\(2\) Appeal Judgment](#)"), para. 100 (concerning the time limit applicable to article 18(2) and rule 52(2)).

declined to exercise its article 18 rights, and stated that it rejected the Court's jurisdiction, even after the Prosecutor specifically asked Israel whether it sought to invoke article 18, and whether it sought additional information regarding the scope of the investigation pursuant to rule 52(2).¹² Israel's Request for Leave to Reply to this issue should be rejected.

8. *Third*, Israel asserts that the Prosecution mispresents Israel's position regarding the level of specificity required in an article 18 notification.¹³ Again, the Chamber is well placed to assess the submissions of both parties, in light of the Court's jurisprudence, and requires no further assistance in this respect. Israel's Request for Leave to Reply to this issue should also be rejected.

IV. RELIEF REQUESTED

9. Because of the foregoing, the Prosecution respectfully requests that the Chamber reject Israel's Request for Leave to Reply. The Prosecution further recalls its request for the Chamber to expeditiously decide on the Prosecution's Article 58 Applications.



Karim A.A. Khan KC, Prosecutor

Dated this 10th day of October 2024

At The Hague, The Netherlands

¹² See Letter from OTP to Israel, 9 April 2021: ICC-01/18-355-SECRET-Exp-AnxD, p. 3; Communication from Israel to OTP, 26 April 2021, 9:30: ICC-01/18-355-SECRET-Exp-AnxE, p. 2.

¹³ Israel's Request, para. 8.