



Original: **English**

No.: **ICC-01/18**

Date: **16 July 2025**

THE APPEALS CHAMBER

Before: Judge Tomoko Akane, Presiding Judge
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE STATE OF PALESTINE

Public
With Confidential Annex I

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)

Source: The State of Israel

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I. INTRODUCTION

1. Israel hereby replies to the Prosecution response¹ 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)".² The Appeals Chamber has granted leave to reply in respect of four issues.³

II. SUBMISSIONS

A. First Issue: The Prosecution's assertions that the "Summary of Preliminary Examination Findings" formed part of the notification to Israel pursuant to article 18(1) of the Statute

2. The Prosecution Response mischaracterizes the Article 18(1) Notification that it gave to Israel in this Situation. The mischaracterization is particularly important as it goes to the heart of the issue raised in the present appeal, namely, the sufficiency of the notification given to Israel pursuant to article 18(1) in respect of the Prosecution's future investigations.

3. The Prosecution asserts in its Response that:

In any event, in the [Article 18(1)] Notification, the Prosecution specifically explained that "[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."⁴

4. Elsewhere in the Response, the Prosecution repeats several times, presumably on the basis of this quotation, that "the Prosecution's Article 18 Notification *explicitly referred* to the existence of an armed conflict between Israel Defence Forces ("IDF") and Hamas and other Palestinian armed groups ("PAGs").⁵

5. The above quotation, and the other references based upon it, comes from footnote 3 of page 5 of an annex appended to the Prosecution Response – "Annex A." This Annex is presented as

¹ 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](#), 9 June 2025 ("Response").

² 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](#), 26 May 2025 ("Appeal").

³ 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](#), 9 July 2025. See 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](#), 13 June 2025, with Confidential Annex I.

⁴ [Response](#), para. 14.

⁵ *Id.* para. 3 (italics added). See also para. 35 ("The Prosecution's Article 18 Notification refers to the existence of armed conflicts.")

if it were a single document. Furthermore, the Prosecution expressly avers that this text is “in the Notification” – i.e. in the Article 18(1) Notification – as sent to Israel.⁶

6. This is false. The Article 18(1) Notification as sent to Israel on 9 March 2021 consists, rather, of only pages 2, 3, and 4 of Prosecution Annex A. This document, as sent to Israel with a covering email, is annexed to this filing as confidential Annex I.⁷

7. Pages 5, 6, 7 and 8 of Prosecution Annex A are, in fact, from a different document that was not attached to, or hyperlinked in, the Article 18(1) Notification. The Prosecution’s presentation of Annex A as a single document, combined with the representation that its content is “in the Notification” is misleading in respect of an issue that is highly material to the present appeal.

8. Pages 5 through 8 of Prosecution Annex A, rather than being part of the Article 18(1) Notification itself, is a separate document that appears on the ICC website.⁸ This four-page document is entitled “Situation in Palestine – Summary of Preliminary Examination Findings.” This “Summary” is neither quoted, nor referred to, in the Article 18(1) Notification. Instead, the Article 18(1) Notification contains its own two-paragraph description of the conclusions arising from “the Office’s preliminary examination and based on the information available.”⁹ Indeed, the Impugned Decision characterises this recitation of facts in the Article 18(1) Notification as “the summary of the Prosecution’s preliminary examination findings.”¹⁰ These were the findings upon which the Pre-Trial Chamber relied to assess the specificity and scope of the Article 18(1) Notification.

9. A month after the Article 18(1) Notification, in a letter to Israel dated 9 April 2021, the Prosecution included a hyperlink to the “Summary” document on the ICC website in the following context:

I wish to recall in this respect that in paragraphs four and five of my letter of 9 March 2021 I listed the criminal acts that my Office has identified during the preliminary examination in this situation as meeting the reasonable basis standard. In my statement of 3 March 2021 (which is publicly available in the Court’s website) I provided similar information. I hereby attach the link for ease of reference:

⁶ *Id.* para. 14 (underline added).

⁷ Confidential Annex I (email from OTP to Israel dated 9 March 2021 with attached document) (“Article 18(1) Notification”).

⁸ ICC, Office of the Prosecutor, [Situation in Palestine | Summary of Preliminary Examination Findings](#), 3 March 2021 (“Summary of Preliminary Examination Findings”).

⁹ Article 18(1) Notification, p. 1.

¹⁰ Decision on Israel’s request for an order to the Prosecution to give an Article 18(1) notice, [ICC-01/18-375](#), 21 November 2024 (“Impugned Decision”), para. 11.

<https://www.icc-cpi.int/itemsDocuments/210303-office-of-the-prosecutor-palestine-summary-findings-eng.pdf>.¹¹

10. No indication is given in the 9 April letter that the Prosecution intended to amend or broaden the Article 18(1) Notification. No comment or suggestion is made that the hyperlinked summary of findings was meant to supersede, change or expand the scope of the investigation as already set out in the Article 18(1) Notification. On the contrary, the hyperlinked document is characterised as providing “similar information” in respect of the criminal acts that the Prosecution intends to investigate.

11. Even assuming that the hyperlinked “Summary” could be relevant to the scope of the Article 18(1) Notification, it in no way changes the scope of defining parameters of the Prosecution’s intended investigation. On the contrary, the “Summary” reinforces that the scope of the Prosecution’s intended investigation is not defined with reference to any ongoing armed conflict. The only reference to “armed conflict” in this “Summary” is in a footnote, not the main text.¹² Even then, the time-frame of this purported armed conflict is specifically limited to the period “between 7 July and 26 August 2014.”¹³ No reference is made to any ongoing armed conflict. Finally, the stated purpose of the discussion is not to define the parameters of the Prosecution’s future investigation, but rather to explain the “possible legal qualifications of the relevant alleged acts of the alleged perpetrators.”¹⁴

12. This footnote, given its context and content, does not enlarge or alter the scope of the Prosecution’s intended investigation as communicated through the Article 18(1) Notification. The discussion concerns nothing more than the legal characterization of alleged crimes during a specific time period: “between 7 July and 26 August 2014.” The Prosecution’s assertion that this single episode of hostilities was meant to be “a representative sample of the regular hostilities in this Situation”¹⁵ is not sustainable. If this were the case, then the time-period with reference to which any purported armed conflict was discussed would have been broader or open-ended, especially given the Prosecution’s belated assertions concerning the regularity of such events.¹⁶

¹¹ Letter from the Prosecution to Israel dated 9 April 2021, Annex D 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-AnxI-Corr, 23 September 2024.

¹² 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)”, ICC-01/18-440-AnxA, 9 June 2025 (“Prosecution Annex A”), p. 5, para. 2, fn. 3.

¹³ [Summary of Preliminary Examination Findings](#), fn. 3.

¹⁴ *Id.*

¹⁵ [Response](#), para. 20.

¹⁶ The Prosecution now purports to refer to many such incidents, none of which are to be found in the Article 18(1) Notification. See e.g. [Response](#), paras 21-22.

13. The Prosecution’s attempt to rely on a preliminary examination summary is, in any event, unjustified. The purpose of the preliminary examination is to assess whether “the factors set out in article 53(1)(a)-(c) of the Statute” are satisfied.¹⁷ This requires, according to the Prosecution, only a reasonable basis to believe that “at least one” Article 5 crime has been committed.¹⁸ Yet this is manifestly deficient for Article 18(1), which serves the different purpose of providing “sufficiently specific” notice to a State about “the general parameters of the situation and sufficient detail with respect to the groups or categories of individuals in relation to the relevant criminality”.¹⁹ This footnote excerpted from a preliminary examination summary does not communicate that an armed conflict of any description is a defining parameter of the Prosecution’s investigation.

14. The Prosecution also purports to rely on various “other documents” having no colourable connection to the Article 18(1) Notification as giving notice of the scope of the Prosecution’s intended investigation. The Prosecution attempts to rely, *inter alia*, on a Prosecution press release on the ICC website in 2018; a Tweet by the Prosecutor in 2021; an interview by the Prosecutor with the media in 2021; and various speeches and pronouncements by the Prosecutor given after 7 October 2023 – long after the Article 18(1) Notification itself.²⁰

15. These subsequent *ad hoc* pronouncements that are not communicated to a State within the framework of article 18(1) are irrelevant to the requirements of that provision. As made clear from the jurisprudence in the *Venezuela* and *The Philippines* situations, and contrary to the Prosecution’s approach,²¹ documents other than the article 18 notification are relevant for that purpose only if this is the “*stated purpose* of the Prosecutor’s additional information”.²² For example, information provided to a State in the specific context of inquiries and responses within the framework of article 18(2) and rule 52(2) could constitute a “Second Article 18(1) Notification.”²³ The “other documents” relied upon for that purpose in *The Philippines* situation were limited to: (i) the Pre-Trial Chamber article 15 decision authorizing the investigation

¹⁷ Office of the Prosecutor, [Report on Preliminary Examination Activities \(2019\)](#), 5 December 2019, paras 3, 11.

¹⁸ [Response](#), para. 35, third bullet; Prosecution’s consolidated response to observations by interveners pursuant to article 68(3) of the Rome Statute and rule 103 of the Rules of Procedure and Evidence, [ICC-01/18-346](#), 23 August 2024, para. 107 (“This limitation is consistent with the applicable threshold for the Prosecution’s assessment in considering whether to proceed— relevantly, a reasonable basis to believe that ‘a crime’ within the jurisdiction of the Court has been committed, which is to say ‘at least one’ such crime. While the Prosecutor may in his discretion choose to identify multiple ‘examples’, this is ‘merely illustrative of a threshold that has already been met.’”)

¹⁹ See e.g. *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”, [ICC-02/18-89](#), 1 March 2024 (“*Venezuela AD*”), para. 8.

²⁰ [Response](#), para. 23.

²¹ *Id.* para. 18

²² [Venezuela AD](#), para. 99 (italics added).

²³ *Situation in the Bolivarian Republic of Venezuela I*, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, [ICC-02/18-45](#), 27 June 2023, paras 4, 49, 69, 74, 122.

itself;²⁴ and (ii) communications by the Prosecution pursuant to a specific request pursuant to article 18(2).²⁵ This jurisprudence merely underscores how narrow is the category of “other documents” that may be taken into account as supplementing or clarifying an article 18(1) notification.

16. Neither Tweets nor public speeches or media statements, whether given contemporaneous with the Article 18(1) Notification or several years thereafter, are relevant to the scope of the Article 18(1) Notification. Article 18(1) necessarily prescribes a certain formality so that the State is placed on proper notice of the scope of the investigation that it must “mirror” to satisfy the requirements of complementarity. The Prosecution’s purported reliance on reports prepared within the context of article 53(1), let alone other miscellaneous pronouncements about the scope of the investigation, reflects a fundamental disregard for the distinct purposes of article 18(1). If the defining parameters of an investigation change, or if a new situation arises, what is required is not a press release, a speech, or a Tweet, but a new article 18(1) notification.

B. Second Issue: The Prosecutor’s submission that “Israel ‘did not raise any issue regarding the scope of the investigation’ during the period that it was cooperating with the Prosecutor”

17. The Prosecution argues that Israel’s alleged failure to “raise concerns” about the scope of the Prosecution’s investigation during its period of voluntary engagement with the Prosecution following 7 October 2023 constitutes some sort of indication, or evidence, that “Israel was well aware that the recent and ongoing events in Gaza fall within the scope of the investigation opened in March 2021.”²⁶ The Prosecution concludes from this assertion that the current litigation “only seeks to further disrupt the discharge of the Court’s mandate in this Situation.”²⁷

18. Israel strenuously objects to these submissions which, simply put, allege that these proceedings are conducted in bad faith. These allegations are even more objectionable as they are based on genuine attempts by a non-party State, acting on an entirely voluntary basis, to engage with the Office of the Prosecutor, including by supplying substantial quantities of information and facilitating visits by the Prosecutor himself and members of his Office to Israel.²⁸ It is deeply regrettable, and damaging to the principle of complementarity, that the

²⁴ *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”, [ICC-01/21-77](#), 18 July 2023, paras 107, 185.

²⁵ *Id.* paras 186-187, 191-193.

²⁶ [Response](#), para. 36.

²⁷ *Id.*

²⁸ Abridged Request for an Order Requiring an Article 18(1) Notice, and Staying Proceedings Pending Such a Notice, [ICC-01/18-355-Anxi-Corr](#), 23 September 2024, para. 53.

Prosecution now mischaracterises this voluntary engagement in an attempt to gain an advantage in this litigation.

19. First, the Prosecution’s submissions are irrelevant to the Impugned Decision and to the errors therein, or their materiality. Neither the fact of Israel’s requests to the Prosecution concerning the scope of its investigation, nor the Prosecution’s current imputations, feature in the Impugned Decision. The Prosecution’s submissions are gratuitous and irrelevant, and appear to be designed merely to place Israel in a negative light.

20. Second, Israel, as a State not Party to the ICC Statute, was entitled to engage with the Prosecution on a voluntary basis without being subject to any adverse inference. As a State not Party, Israel is not, and was not, under any obligation to reserve its rights or to reiterate its previous positions concerning the Article 18(1) Notification to the Prosecution. At no time did Israel ever acknowledge that the Article 18(1) Notification encompassed events starting on the morning of 7 October 2023. The Prosecution’s current argument that such engagement may later be used against a State is likely to have negative consequences for encouraging future voluntary cooperation by States with the Court.

21. Third, during its meetings with the Prosecution, Israel did repeatedly ask the Prosecution about the scope of its intended investigations, including prior to the 1 May 2024 letter.²⁹ The Prosecution was entirely unresponsive to these requests. This scenario illustrates precisely why, in practice, article 18(1) is such an important safeguard for complementarity: it ensures that the Prosecution does not conceal the scope of its investigation so as to prevent a State from showing that its own investigations sufficiently mirror those of the Prosecution.

22. Fourth, the Prosecution’s attempt to reproach Israel for not expressly invoking article 18(1) in the 1 May 2024 letter³⁰ is ironic given that the Prosecution responded six days later that “Israel has no standing” to do so.³¹ Israel always believed that it would be incumbent on the Prosecution, if it chose to proceed, to give Israel a new article 18(1) notification, and this is precisely what Israel requested in its 1 May letter.³² Israel’s position in the 1 May 2024 letter is

²⁹ *Id.* para. 10

³⁰ [Response](#), para. 36.

³¹ Letter from Andrew Cayley, KC, Principal Trial Lawyer, to Modi Ephraim, Ambassador of Israel to the Netherlands, OTP/PSE/ISR/07052024/IOP-acbhcg, ICC-01/18-355-AnxI-Corr, Annex G, 23 September 2024 (“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.”)

³² Letter from Modi Ephraim, Ambassador of Israel in The Hague, to Karim A.A. Khan KC, ICC Prosecutor, ICC-01/18-355-AnxI-Corr, Annex F, 23 September 2024 (“in line with the principle of complementarity, should your Office become aware of specific incidents or issues related to alleged crimes attributed to Israeli nationals or others within Israel’s jurisdiction, my government requests that your Office bring these matters to our attention with

perfectly consistent with the view – also advanced in this litigation – that it is incumbent on the Prosecution to issue Israel an appropriate article 18(1) notification.

23. Far from demonstrating any acknowledgement that the Article 18(1) Notification encompasses events in and around Gaza on and after 7 October 2023, Israel’s conduct and statements have always been consistent with the relief it now requests from the Appeals Chamber: that the Prosecution be required to comply with regulation 45 of the Regulations of the Court and article 53(1) of the Statute in respect of the 2023 Referral and, as the case may be, issue Israel with an article 18(1) notification that gives sufficiently specific notice of any investigation concerning the situation of crisis that has arisen in and around Gaza following and encompassing the events of 7 October 2023.

C. Third Issue: The Prosecutor’s assertion that statements made by referring States during the Assembly of States Parties should be accorded weight

24. The statements at the 2023 Assembly of States Parties (“ASP”) by the States that submitted the 17 November 2023 referral are neither legally relevant, nor factually probative, as to the legal consequences arising from their referrals.

25. The consequences of a “referral” by a State are governed by article 14 of the ICC Statute. Neither the ASP nor any individual State Party has any role to play under the ICC Statute in this determination. Statements made or not made at the ASP are simply irrelevant. On the contrary, article 14 itself expressly prescribes that the only thing that can be referred by a State Party is “a situation.”

26. The statements are also highly equivocal and political in nature, and fail to support the Prosecution’s assertion that the situations referred are materially identical to an existing situation. On the contrary, the Bangladeshi representative placed particular emphasis on the crime of “genocide”,³³ which forms no part of the Article 18(1) Notification or the Palestinian Referral. Indeed, Bangladesh underscores that it was “seeking investigation” of this crime, implying an understanding that it did not, and could not, form part of the pre-existing situation.

27. In any event, what matters is not how these representatives characterise the referral, but rather its content in relation to the pre-existing situation. The content of that referral, as previously submitted, unequivocally defines a “situation” that is not co-extensive – indeed, that

appropriate specificity and sufficient time, so that the relevant Israeli authorities can examine and investigate those allegations with a view to ensuring accountability in line with the applicable law.”)

³³ [Statement by Mr. Toufiq Islam Shatil, Deputy Permanent Representative of Bangladesh to the United Nations in New York at the general debate of the 22nd Session of Assembly of States Parties of the International Criminal Court, New York, 07 December 2023](#), p. 2. Israel again firmly rejects this odious allegation.

is markedly different – than that defined in the 2018 Referral, or notified in the Article 18(1) Notification.

D. Fourth Issue: The Prosecutor’s reliance on two documents presented for the first time in the Prosecutor’s Response

28. The Prosecution refers to two confidential article 18(1) notifications to substantiate that the category of Article 5 crimes notified (crimes against humanity, war crimes, genocide, or aggression) is not a relevant defining parameter of an investigation.³⁴ The Prosecution asserts that “[n]or would this be the first situation where the Office has conducted prosecutions into crimes against humanity even though the article 18 notifications did not refer to them.”³⁵

29. The Prosecution misreads its own prior article 18(1) notifications. Neither of those notifications is limited to war crimes. On the contrary, the *Uganda* article 18(1) notification refers to “widespread and brutal attacks” (implicitly satisfying the *chapeau* requirement of crimes against humanity) and referring to crimes by name that can be either war crimes or crimes against humanity.³⁶ Likewise, the *DRC* article 18(1) notification refers to a “potentially widespread pattern of victimization”, again implicitly satisfying the *chapeau* requirement of crimes against humanity, and referring to crimes by name that can be either war crimes or crimes against humanity.³⁷

30. Notably, neither the *DRC* nor the *Uganda* notifications expressly define the category of Article 5 crimes to be investigated, whereas the Article 18(1) Notification in this situation does, and identifies only war crimes. Read in the light of the *DRC* and *Uganda* notifications, this reveals that the Prosecution did not believe that it was in a position to open – and accordingly gave no notice of – an investigation into crimes committed as part of “a widespread or systematic attack”. The absence of any such reference is a further indicium of the extent to which the scope of the Prosecution investigation has broadened beyond the scope of the Article 18(1) Notification. The *DRC* and *Uganda* article 18(1) notifications, if anything, reinforce Israel’s argument that the expansion of the investigation beyond a specified category of Article 5 crimes can – and in this case, does – constitute a material and significant expansion of the Prosecution’s investigation, and a change of its defining parameters.³⁸

³⁴ [Response](#), para. 35, third bullet.

³⁵ *Id.*

³⁶ Annex C 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-01/18-440-AnxC, 9 June 2025, p. 4.

³⁷ *Id.* p. 2.

³⁸ [Appeal](#), para. 52.

31. Israel notes the unfairness of the Prosecution's selective re-classification of materials to which only it has access. The underlying materials re-classified in this case are, as it turns out, directly contrary to the asserted proposition. The Prosecution's practice of selectively choosing which confidential materials from other situations to reclassify in support of its own positions or arguments in unrelated proceedings gives rise to real concern as to whether there are other confidential materials that are supportive of Israel's position which it cannot access.

III. CONCLUSION

32. The Prosecution's Response, as the foregoing issues demonstrate, underscores the importance of article 18(1) as a safeguard against Prosecutorial over-reach, at the expense of the fundamental principle of complementarity and respect for the sovereignty of States. Prosecution Annex A, in conjunction with its virtually unconstrained view of what constitutes "notice" of the defining parameters of an investigation, demonstrates why the corrective intervention of the Appeals Chamber is now so necessary.

33. Israel maintains that the relief requested in the appeal should be granted.

Respectfully submitted:



Dr Gilad Noam, Office of the Attorney-General of Israel

Dated this 16 July 2025

At Jerusalem, Israel