

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/18
Date: 9 May 2025

PRE-TRIAL CHAMBER I

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

SITUATION IN THE STATE OF PALESTINE

Public Document

**Request to Have Arrest Warrants Withdrawn or Vacated and Response to
Prosecution Observations dated 5 May 2025**

Source: The State of Israel

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I. INTRODUCTION

1. Israel requests that the Pre-Trial Chamber, pursuant to article 58(4), order that the arrest warrants issued against Prime Minister Benjamin Netanyahu (“Mr Netanyahu”) and Former Minister of Defence Yoav Gallant (“Mr Gallant”) be withdrawn or vacated.¹

2. Articles 19(1) and 58(1) of the Statute require a Pre-Trial Chamber to be “satisfied” that alleged acts that are the basis of an arrest warrant fall within the Court’s jurisdiction. This “prerequisite of a warrant of arrest” was absent to begin with, a situation now made clear following the Appeals Chamber’s Judgment reversing the Pre-Trial Chamber’s decision on Israel’s jurisdictional challenge. Unless and until the Pre-Trial Chamber has “rule[d] on the substance of the jurisdictional challenge”,² as now remanded by the Appeals Chamber, the prerequisite jurisdictional finding does not exist. It follows that the arrest warrants issued on 21 November 2024 must be withdrawn or vacated pending the Pre-Trial Chamber’s determination of Israel’s jurisdictional challenge.

3. Failure to withdraw or vacate the arrest warrants pending the necessary jurisdictional ruling not only risks depriving two individuals of their liberty on an unlawful basis, it constitutes an ongoing infringement upon Israel’s sovereign rights and also places the Court in the position of inducing States to violate their international law obligations to Israel by executing such a warrant. The mere *issuance* of arrest warrants where, as here, these considerations are engaged is an internationally wrongful act on the part of the Court. For these reasons, even more scrupulous compliance with the Court’s own statutory requirement that no arrest warrant be issued without a prerequisite jurisdictional finding is needed.

4. Israel additionally reiterates its previous request that article 19(7) apply for the duration of the Pre-Trial Chamber’s adjudication of Israel’s jurisdictional challenge, requiring the Prosecutor to suspend its investigations into the Situation until the Pre-Trial Chamber’s determination on the issue.

5. Finally, Israel opposes the Prosecution’s unjustified request that Israel’s jurisdictional challenge be re-filed.³ The colourable purpose of that request is nothing more than to give the

¹ This filing is without prejudice to Israel’s position regarding the Court’s lack of jurisdiction in respect to the above-captioned Situation, or to Israel’s status as a State not Party to the Rome Statute.

² Judgment on the appeal of the State of Israel against Pre-Trial Chamber I’s Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, [ICC-01/18-422 OA2](#), 24 April 2025, (“Appeal Judgment”), para. 6.

³ Prosecution’s observations regarding the procedure to be followed following the issuance of the warrants of arrest against Benjamin Netanyahu and Yoav Gallant and the Appeal Judgment, [ICC-01/18-425](#), 5 May 2025 (“Prosecution Observations”), para. 15.

Prosecution the opportunity to provide submissions on the merits of the jurisdictional challenge that it chose quite deliberately not to make in its seven-page response filed just four days after Israel’s comprehensive jurisdictional challenge.⁴ In seeking the opportunity to supplement its submissions, the Prosecution wilfully disregards – and asks the Pre-Trial Chamber to ignore – that the existing jurisdictional challenge remains pending before the Pre-Trial Chamber following remand by the Appeals Chamber: “*the Appeals Chamber’s determination in this appeal is to reverse the Impugned Decision and remand the matter to the Pre-Trial Chamber for it to decide anew on the substance of the jurisdictional challenge.*”⁵ If the Prosecution wishes now to supplement its previous submissions, it should withdraw its current request and seek leave to make out of time supplementary submissions, which should not be lightly granted. The Prosecution had every opportunity to make those submissions in September 2024, and despite the fact that more than 70 States, NGOs and individuals provided submissions on the merits of Israel’s jurisdictional challenge, the Prosecution itself chose not to do so. The substantive issues on the merits have now – as the Prosecution itself argues – “been amply briefed.”⁶

II. PROCEDURAL HISTORY

6. On 23 September 2024, Israel challenged the jurisdiction of the Court pursuant to article 19(2)(c) of the Statute in respect of “the pending application concerning Benjamin Netanyahu and Yoav Gallant, or in any other investigative action on the same jurisdictional basis.”⁷ Israel offered full submissions over the course of 42 pages explaining: (1) its standing to file a jurisdictional challenge under article 19(2)(c); (2) its position as to whether such an application could be brought prior to the issuance of an arrest warrant; and (3) in detail the merits of the jurisdictional challenge. As to the merits, Israel argued, *inter alia*, that the pre-conditions to the Court’s jurisdiction have not been fulfilled as sovereignty over the West Bank and the Gaza Strip remains in abeyance, and there is no “territory of” a State (within the meaning of the ICC Statute) over which the Court may exercise its jurisdiction.⁸ Moreover, Israel explained that the existing Israeli-Palestinian agreements make it clear that the Palestinian authorities have no criminal jurisdiction either in law or fact over Area C, Jerusalem and Israeli nationals – and

⁴ Prosecution Response to “Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute” - ICC-01/18-354-SECRET-Exp-AnxI-Corr, [ICC-01/18-357](#), 27 September 2024 (“Prosecution Response to Jurisdiction Challenge”).

⁵ [Appeal Judgment](#), para. 66.

⁶ [Prosecution Observations](#), para. 14.

⁷ Public Redacted Version of “Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute”, [ICC-01/18-354-AnxII-Corr](#), 23 September 2024, para. 1 (“Jurisdictional Challenge”).

⁸ [Jurisdictional Challenge](#), para. 124.

thus cannot validly delegate such jurisdiction to the Court.⁹ Israel also requested that the Pre-Trial Chamber “declare with immediate effect, pursuant to article 19(7) and (8) of the ICC Statute and rule 58 of the Rules of Procedure and Evidence (“Rules”), that the investigation of the Prosecutor in the cases of Mr Netanyahu and Mr Gallant, and the proceedings before this Chamber under article 58 of the Statute, are to be suspended until the Court has given its ruling on this challenge to jurisdiction”.¹⁰

7. On 27 September 2024, the Prosecution submitted a seven-page response, asserting that the jurisdictional challenge should be dismissed *in limine* on the basis that Israel did not have standing under article 19(2)(c), including prior to the issuance of an arrest warrant.¹¹ The OTP did not then provide submissions on the merits of Israel’s jurisdictional challenge and has not sought leave to provide out of time submissions on the merits at any point in the intervening eight months.

8. On 21 November 2024, Pre-Trial Chamber I rejected Israel’s Jurisdictional Challenge,¹² and in a press release on the same day¹³ announced that it had filed a decision, classified as secret”, issuing arrest warrants against Mr Netanyahu and Mr Gallant.

9. On 27 November 2024, Israel filed its notice of appeal against the Pre-Trial Chamber Jurisdiction Decision.¹⁴ Israel also requested suspensive effect, pending the Appeals Chamber’s resolution of the appeal and pursuant to article 82(3) of the Statute and rule 156(5) of the Rules, of the arrest warrants and of any other purported exercise of the jurisdiction of the Court.¹⁵

10. On 29 November 2024, the Prosecution submitted a request to dismiss *in limine* Israel’s Appeal.¹⁶ The Prosecution elected not to provide submissions on Israel’s request for suspensive effect in its request.

⁹ [Jurisdictional Challenge](#), para 125.

¹⁰ [Jurisdictional Challenge](#), paras 11(a), 128(a).

¹¹ [Prosecution Response to Jurisdiction Challenge](#).

¹² Decision on Israel’s challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute, [ICC-01/18-374](#), 21 November 2024 (“Pre-Trial Chamber Jurisdiction Decision”).

¹³ 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”](#), 21 November 2024.

¹⁴ Notice of Appeal of “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to Article 19(2) of the Rome Statute”, [ICC-01/18-386](#), 27 November 2024 (“Notice of Appeal”).

¹⁵ [Notice of Appeal](#), paras 5, 37.

¹⁶ Prosecution Request to Dismiss *in limine* Israel’s Notice of Appeal of “Decision on Israel’s challenge to the jurisdiction of the Court pursuant to Article 19(2) of the Rome Statute”, [ICC-01/18-392](#), 29 November 2024.

11. On 13 December 2024, Israel filed its appeal brief in respect of the Pre-Trial Chamber Jurisdiction Decision.¹⁷
12. On 13 January 2025, the Prosecution filed its response to Israel’s Appeal in which it, for the first time, provided submissions as to Israel’s request for suspensive effect.¹⁸
13. On 17 January 2025, Israel submitted a request for leave to reply to the Prosecution’s Response and to reject *in limine* the Prosecutor’s out of time submissions concerning suspensive effect.¹⁹
14. On 22 January 2025, the Prosecution responded to Israel’s Request for Leave to Reply arguing that it should be rejected.²⁰
15. On 24 April 2025, the Appeals Chamber issued the Appeal Judgment.
16. On 5 May 2025 the Prosecution filed its Observations.²¹

III. SUBMISSIONS

A. An Initial Determination of Jurisdiction “Is a Prerequisite for the Issuance of a Warrant of Arrest”

17. Article 19 of the Statute provides that “[t]he Court shall satisfy itself that it has jurisdiction in any case before it.” Article 58 (1) prescribes that a “Pre-Trial Chamber shall [...] issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that: (a) there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.”

18. Pre-Trial Chambers of this Court have consistently held that an “initial determination” that a case falls within the Court’s jurisdiction is a “*prerequisite* for the issuance of a warrant of arrest”:

[I]t is the view of the Chamber that an initial determination on whether the case against Bosco Ntaganda falls within the jurisdiction

¹⁷ Appeal of ‘Decision on Israel’s challenge to the jurisdiction of the Court pursuant to Article 19(2) of the Rome Statute’, [ICC-01/18-402](#), 13 December 2024.

¹⁸ Prosecution Response to the Appeal of Decision on Israel’s Challenge to the Jurisdiction of the Court pursuant to Article 19(2) of the Rome Statute, [ICC-01/18-406](#), 13 January 2025 (“Prosecution Response”).

¹⁹ Request for leave to reply to Prosecution Response to Israel’s Appeal of Decision on Israel’s Challenge to the Jurisdiction of the Court pursuant to Article 19(2) of the Rome Statute, [ICC-01/18-408-Corr](#), 17 January 2025 (“Israel’s Request for Leave to Reply”).

²⁰ Prosecution Response to Israel’s Request for Leave to Reply to Prosecution Response to Israel’s Appeal of Decision on Israel’s Challenge to the Jurisdiction of the Court pursuant to Article 19(2) of the Rome Statute, [ICC-01/18-410](#), 22 January 2025.

²¹ [Prosecution Observations](#).

of the Court is a prerequisite for the issuance of a warrant of arrest for him.²²

...

[A]n initial determination as to whether the case against Ahmad Harun and Ali Kushayb falls within the jurisdiction of the Court is a prerequisite for the issuance of summonses to appear or warrants of arrest.²³

....

[A]n initial determination as to whether the case against Mr Jean-Pierre Bemba falls within the jurisdiction of the Court is a prerequisite for the issue of a warrant of arrest against him.²⁴

...

The phrase “satisfy itself that it has jurisdiction” [in article 19(1)] also entails that the Court must “attain the degree of certainty” that the jurisdictional parameters set out in the Statute have been satisfied. Thus, the Chamber determination as to whether it has jurisdiction over the case against Muthaura, Kenyatta and Ali is a prerequisite for examining the Prosecutor’s Application and in turn, the issuance or not of summonses to appear against those persons pursuant to article 58 of the Statute.²⁵

19. The “initial determination” requires, as reflected in the *Muthaura et al.* and *Ruto et al.* decisions, a “degree of certainty” relative to the issues before the decision-maker at the time of the determination. The “initial determination” requires an assessment of the material, temporal, and territorial elements of the case – including whether the alleged crime “satisfies one or other of the two criteria laid down in article 12 of the Statute: either it was committed on the territory of a State Party to the Statute or by a national of that State.”²⁶

²² See e.g. *Prosecutor v. Ntaganda*, Decision on the Prosecution Application for a Warrant of Arrest, [ICC-01/04-02/06-1-Red-tENG](#), 6 March 2007, para. 23.

²³ *Prosecutor v. Harun & Ali Kushayb*, Decision on the Prosecution Application under Article 58(7) of the Statute, [ICC-02/05-01/07-1-Corr](#), 27 April 2007, para. 13; *Prosecutor v. Mudacumura*, Decision on the Prosecutor’s Application under Article 58, [ICC-01/04-01/12-1-Red](#), 13 July 2012, para. 9 (“Consequently, an initial determination as to whether the case against Mr. Mudacumura falls within the jurisdiction of the Court is a prerequisite for the issuance of a warrant of arrest against him.”)

²⁴ *Prosecutor v. Bemba*, Decision on the Prosecutor’s Application for a Warrant of Arrest against Jean-Pierre Bemba Gombo, [ICC-01/05-01/08-tENG](#), 17 July 2008, para. 11.

²⁵ *Prosecutor v. Muthaura et al.*, Decision on the Prosecutor’s Application for Summonses to Appeal for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, [ICC-01/09-02/11-1](#), 8 March 2011, para. 9. See *Prosecutor v. Ruto et al.*, Decision on the Prosecutor’s Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, [ICC-01/09-01/11-1](#), 18 July 2012, para. 9.

²⁶ *Prosecutor v. Gbagbo*, Public redacted version of the “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”, [ICC-02/11-01/11-9](#), 20 December 2011, para. 9.

B. The Pre-Trial Chamber cannot have “satisfied itself that it has jurisdiction” Without Determining the Jurisdictional Challenge That Has Now Been Remanded

20. The Appeals Chamber has now held that the Pre-Trial Chamber erred in failing to determine the merits of Israel’s jurisdictional challenge and instructed it to do so: “*the Appeals Chamber’s determination in this appeal is to reverse the Impugned Decision and remand the matter to the Pre-Trial Chamber for it to decide anew on the substance of the jurisdictional challenge.*”²⁷ This reversal eliminates the Pre-Trial Chamber decision that was the predicate for the jurisdictional finding in the arrest warrants.

21. This is not only self-evident from the circumstances, but is also reflected in the Court’s public press release, which indicates that the arrest warrants decision relied on the reasoning of the 2021 decision of the previously-composed Pre-Trial Chamber to substantiate its finding on jurisdiction.²⁸ Yet this reliance was one of the errors identified by the Appeals Chamber, which led it to the conclusion that “considered as a whole, the Impugned Decision insufficiently addresses Israel’s central contention that article 19(2)(c) of the Statute permits it to challenge the jurisdiction of the Court.”²⁹

22. In the absence of a reasoned determination by the Pre-Trial Chamber on the substance of Israel’s Jurisdictional Challenge, the arrest warrants lack an essential prerequisite for their issuance, as required by articles 19(1) and 58(1).

23. The Pre-Trial Chamber has the authority pursuant to article 58(4) to order that the arrest warrants “shall cease to have effect” as a result of legal or factual developments. Regardless of the exact terminology, the Pre-Trial Chamber accordingly has the authority to withdraw or “vacate”³⁰ the warrant of arrest, or simply declare that it “shall cease to have effect.”³¹

C. Withdrawing or Vacating the Warrants Is Necessary to Ensure Legality Under the Statute, and to Avoid the Court Inducing States to Violate Their Obligations under International Law

²⁷ [Appeal Judgment](#), para. 66.

²⁸ 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](#)”, 21 November 2024.

²⁹ [Appeal Judgment](#), paras 60-61.

³⁰ *Prosecutor v. Mokom*, Order in relation to the Prosecution’s “Notice of Withdrawal of the Charges against Maxiem Jeoffroy Eli Mokom Gawaka”, [ICC-01/14-01/22-276](#), 17 October 2023, p. 6.

³¹ *Prosecutor v. Simone Gbagbo*, Decision on the Prosecutor’s request to vacate the effect of the Warrant of Arrest issued against Ms Simone Gbagbo, [ICC-02/11-01/12-90](#), 19 July 2021, para. 14 (“The Chamber finds that developments at the trial and appeal stage of the case of Mr Gbagbo make it apparent that the evidence upon which the Warrant of Arrest for Simone Gbagbo was grounded can no longer be considered as satisfying the evidentiary threshold required in Article 58(1)(a) of the Statute. Accordingly, the Chamber considers it appropriate to decide that the Warrant of Arrest for Simone Gbagbo shall cease to have effect.”)

24. Articles 19(1) and 58(1) plainly require the Pre-Trial Chamber to make a jurisdictional determination as a condition precedent to the issuance of an arrest warrant. The Appeals Chamber's Judgment has now reversed the Pre-Trial Chamber decision that was the basis for that condition precedent. The Appeals Chamber noted that the arrest warrants themselves were not before the Appeals Chamber, but were "rather issued separately by the Pre-Trial Chamber and they are, as such, not before the Appeals Chamber."³² The responsibility to withdraw or vacate the arrest warrants, accordingly, now rests exclusively with the Pre-Trial Chamber which issued the warrants whose foundation is now lacking. Indeed, the Appeals Chamber expressly directed that "it is for the Pre-Trial Chamber ... to provide any required further instructions on the procedure to be followed"³³ and "the Pre-Trial Chamber will also have to determine the effect, if any, of its decision on the warrants of arrest".³⁴ The necessary consequence of the Appeals Chamber's reversal of the Pre-Trial Chamber's decision on jurisdiction is to withdraw or vacate the arrest warrants.

25. Additional circumstances militate strongly in favour of withdrawing or vacating the arrest warrants against Mr Netanyahu and Mr Gallant immediately.

26. First, failing to do so could result in an arrest while the Pre-Trial Chamber is still assessing Israel's jurisdictional challenge. Depriving persons of their liberty on the basis of an arrest warrant issued in the absence of the necessary legal pre-conditions is an egregious violation of fundamental human rights and of the rule of law.

27. Second, these arrest warrants wrongly seek to induce States to violate their international law obligations to Israel. The mere issuance³⁵ and circulation³⁶ of such arrest warrants is an

³² [Appeal Judgment](#), para. 66.

³³ [Appeal Judgment](#), para. 64.

³⁴ [Appeal Judgment](#), para. 66.

³⁵ Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), [Judgment](#), I.C.J. Reports 2002 ("Arrest Warrants Case"), para. 70 ("The Court notes that the *issuance*, as such, of the disputed arrest warrant represents an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister for Foreign Affairs on charges of war crimes and crimes against humanity. The fact that the warrant is enforceable is clearly apparent from the order given to 'all bailiffs and agents of public authority . . . to execute this arrest warrant' (see paragraph 69 above) and from the assertion in the warrant that 'the position of Minister for Foreign Affairs currently held by the accused does not entail immunity from jurisdiction and enforcement'. [...] The Court is bound, however, to find that, given the nature and purpose of the warrant, its mere issue violated the immunity which Mr. Yerodia enjoyed as the Congo's incumbent Minister for Foreign Affairs. The Court accordingly concludes that the issue of the warrant constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of that Minister and, more particularly, infringed the immunity from criminal jurisdiction and the inviolability then enjoyed by him under international law.")

³⁶ [Arrest Warrants Case](#), para. 71 ("The Court also notes that Belgium admits that the purpose of the international circulation of the disputed arrest warrant was 'to establish a legal basis for the arrest of Mr. Yerodia . . . abroad and his subsequent extradition to Belgium.' The Respondent maintains, however, that the enforcement of the warrant in third States was 'dependent on some further preliminary steps having been taken' and that, given the 'inchoate'

internationally wrongful act towards Israel, whose status as a State not party to the Rome Statute necessitates even greater care and caution by the Court in the purported exercise of its jurisdiction. This makes the continued validity of the arrest warrants absent the necessary jurisdictional finding all the more inexcusable.³⁷ Indeed, the mandatory nature of that finding prior to the issuance of the warrants is reinforced by the prohibition in article 98(1) that: “The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State.” This provision aligns with the more general requirement of international law that international organizations are responsible for their internationally wrongful acts.³⁸

28. The importance of vacating or withdrawing the arrest warrants is reinforced by the time that will likely be required by the Pre-Trial Chamber to issue a reasoned decision on Israel’s jurisdictional challenge, in accordance with the Appeals Chamber’s remand. Pre-Trial Chamber I took more than a year to issue its ruling on the Prosecution’s article 19(3) request.³⁹ This Pre-Trial Chamber required more than two months to summarily reject Israel’s jurisdictional challenge, and the Appeals Chamber required more than four months following the filing of the appeal brief to reverse that decision. The substantive jurisdictional issues under consideration are complex and it is no doubt for this reason that the Pre-Trial Chamber received more than 70 submissions on the underlying issues from States and *amicus curiae*.

29. Allowing the arrest warrants to remain in place during these deliberations, and to continue to demand of States Parties that they violate their international obligations by executing those warrants, is unlawful and undermines the legitimacy of the Court. This situation can be remedied only by withdrawing or vacating the arrest warrants immediately.

quality of the warrant as regards third States, there was no ‘infringe[ment of] the sovereignty of the [Congo]’. It further points out that no Interpol Red Notice was requested until 21 September 2001, when Mr. Yerodia no longer held ministerial office. The Court cannot subscribe to this view. As in the case of the warrant’s issue, its international circulation from June 2000 by the Belgian authorities, given its nature and purpose, effectively infringed Mr. Yerodia’s immunity as the Congo’s incumbent Minister of Foreign Affairs and was furthermore liable to affect the Congo’s conduct of its international relations. Since Mr. Yerodia was called upon in that capacity to undertake travel in the performance of his duties, the mere international circulation of the warrant, even in the absence of ‘further steps’ by Belgium, could have resulted in his arrest while abroad [...] Accordingly, the Court concludes that the circulation of the warrant, whether or not it significantly interfered with Mr. Yerodia’s diplomatic activity, constituted a violation of an obligation of Belgium towards the Congo, in that it failed to respect the immunity of the incumbent Minister of Foreign Affairs of the Congo and, more particularly, infringed the immunity from criminal jurisdiction and the inviolability enjoyed by him under international law.”)

³⁷ *Arrest Warrants Case* para. 61: “... an incumbent or former Minister for Foreign Affairs may be subject to criminal proceedings before certain international criminal courts, *where they have jurisdiction*.” [Emphasis added]

³⁸ Shaw, M., ‘International Law’, CUP, 9th Ed, 2021, pp. 1158-1159.

³⁹ [Jurisdictional Challenge](#), paras 11(a), 128(a).

D. Article 19(7) applies throughout the duration of the PTC’s consideration of Israel’s jurisdictional challenge requiring the Prosecution to suspend its investigations into the Situation under the Pre-Trial Chamber

30. Israel also reiterates its request for a declaration that article 19(7) applies for the duration of the Pre-Trial Chamber’s adjudication of Israel’s jurisdictional challenge,⁴⁰ requiring the Prosecution to suspend its investigations into the Situation until the Pre-Trial Chamber’s determination on the issue.

31. Article 19(7) provides that “If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.”

32. Article 19(7) applies to challenges to jurisdiction. Leading commentaries have expressed that article 19(7) is applicable to both types of jurisdictional challenges,⁴¹ and that the case is suspended irrespective of the nature of the article 19 challenge, but can “only be continued, if the Court declares the case admissible under article 17”,⁴² as any other result would be “illogical”.⁴³ Draft article 54(3) of the Preparatory Committee’s Report to the Rome Conference also indicates that challenges to jurisdiction would suspend the Prosecutor’s investigation.⁴⁴ Finally, in the *Ruto* proceedings it was recalled that pursuant to article 19(7) “if a challenge to the admissibility of a case or to the jurisdiction of the Court is made by a State referred to in article 19(2)(b) or (c) of the Statute, ‘the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17’”.⁴⁵

E. The Prosecution’s Request that Any Jurisdictional Challenges Be Re-Filed Should Be Rejected

33. On 24 April 2025, the Appeals Chamber decided “to reverse the Impugned Decision and remand the matter to the Pre-Trial Chamber for it to decide anew on the substance of the jurisdictional challenge.”⁴⁶ Accordingly, Israel’s jurisdictional challenge, as filed on 23

⁴⁰ [Jurisdictional Challenge](#) paras 11(a), 128(a).

⁴¹ Holmes, J., ‘The Principle of Complementarity’ at page 68 in Lee, R., ‘The International Criminal Court : The Making of the Rome Statute’, Kluwer, 1999: he states that during the Rome Conference “some delegations feared that States and individuals would use challenges to delay and block investigations initiated by the Prosecutor, and that pending the final decision on admissibility or [sic] jurisdiction, valuable evidence would be lost”.

⁴² Safferling C., et al, ‘International Criminal Procedure’, OUP, 2012, page 213.

⁴³ Schabas, W., ‘The International Criminal Court : A Commentary on the Rome Statute’, OUP, 2nd Ed, 2017, p. 493.

⁴⁴ Stigen, J., ‘The relationship between the International Criminal Court and National Jurisdictions’, Martinus Nijhoff, 2008, page 169.

⁴⁵ *Prosecutor v. Ruto*, Decision on the Prosecution’s application requesting disclosure after a final resolution of the Government of Kenya’s admissibility challenge and establishing a calendar for disclosure between the parties, [ICC-01/09-01/11-62](#), 20 April 2011, para. 18.

⁴⁶ [Appeal Judgment](#), para. 66.

September 2024, remains pending before the Pre-Trial Chamber for it to determine on the merits “anew”.

34. The Prosecution, entirely *proprio motu*, now asks the Pre-Trial Chamber to “set a deadline for those with standing to bring a jurisdictional challenge in relation to the cases” for which arrest warrants have been issued.⁴⁷ The false premise of this request is that there is no pending jurisdictional request before the Pre-Trial Chamber. On the contrary, as the Appeals Chamber’s directions make clear, there is such a pending request that must now be decided “anew”. Furthermore, the Prosecution’s request for a “deadline” ignores that article 19(4) already regulates this issue: any such “deadline” would be *ultra vires* as not in compliance with article 19(4), which permits a jurisdictional challenge to be brought until the start of trial. The Prosecution’s request ignores both the Appeals Chamber’s clear directions as to next steps before the Pre-Trial Chamber and the statutory framework for such challenges under article 19(2) of the Statute.

35. The Prosecution’s evident purpose in requesting that the jurisdictional challenge be re-filed is to give itself a second chance to make the substantive submissions that it, without good reason or explanation, chose not to make when it responded to Israel’s jurisdictional challenge on 27 September 2024. Plainly, the proper channel for an unorthodox request of this kind would be for the Prosecution to withdraw its current request and instead seek leave to make out of time supplementary submissions without further delay.

36. If such a request were to be made by the Prosecution, it should be rejected. Regulation 35(2) sets a high standard for such requests filed after the expiry of the applicable time limit, namely, that the application “can demonstrate that he or she was unable to file the application within the time limit for reasons outside his or her control.” The Prosecution freely chose to only raise preliminary objections in its response of 27 September 2024. This approach interferes, and has interfered, with the Pre-Trial Chamber’s ability to deal expeditiously with perhaps the most important jurisdictional issue in the Court’s history. Furthermore, the Appeals Chamber’s decision has not altered the basis on which the merits of the jurisdictional challenge is to be addressed, which could have been a basis for additional submissions.⁴⁸ Additional submissions on remand are not justified merely to offer additional submissions that should have

⁴⁷ [Prosecution Observations](#), para. 2.

⁴⁸ See e.g. *Prosecutor v. Bemba et al.*, Order on Sentencing Submissions Following Appeals Chamber Judgments, [ICC-01/5-01/13-2277](#), 14 March 2018, para. 4; *Prosecutor v. Bemba et al.*, Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”, [ICC-01/05-01/13-2276-Red](#), 8 March 2018, paras 359-361.

been made previously and in relation to which no proper explanation has been given as to why they were not made at the proper juncture.

37. The Prosecution's attempt to justify its request on the basis that Israel's jurisdictional challenge was "premature" is contradicted by the Appeals Chamber's unambiguous finding that the Pre-Trial Chamber should have addressed the merits of Israel's jurisdictional challenge,⁴⁹ which necessarily implies that the challenge was not premature. In any event, the Prosecution's view as to whether the jurisdictional challenge was premature in no way justifies or excuses its failure to offer any such submissions on the merits as it considered necessary.

38. A more likely explanation for the Prosecution's failure to make such submissions is its position, reflected in this very application, that the substantive issues have "been amply briefed."⁵⁰

39. The Prosecution's request for an order requiring any jurisdictional challenges to be filed or re-filed should be rejected, as should any other request it may make to supplement the submissions that it was required to make in its 27 September 2024 response.

IV. CONCLUSION AND RELIEF SOUGHT


40. Israel requests that the Pre-Trial Chamber, pursuant to article 58(4):
- a. Withdraw, vacate, or declare of no force or effect the arrest warrants that it has issued against Mr Netanyahu and Mr Gallant;
 - b. Declare that the Prosecution must suspend its investigation into the Situation in Palestine until the Court has given its substantive ruling on Israel's article 19 Jurisdiction Challenge;
 - c. Reject the Prosecution's request for the re-filing of the jurisdictional challenge or any other request that it may make seeking leave to supplement its submissions on the merits of the jurisdictional challenge; and

⁴⁹ [Appeal Judgment](#), paras 61-62 ("[T]he Pre-Trial Chamber committed an error of law by failing to sufficiently direct itself to the relevant submissions brought before it in respect of the particular legal basis underpinning the challenge to the jurisdiction of the Court. The Appeals Chamber considers that this error materially affects the Impugned Decision. Had the Pre-Trial Chamber had sufficient regard to the central contention before it, it would have had to directly and specifically address Israel's standing to bring a jurisdictional challenge under article 19(2)(c) of the Statute.")

⁵⁰ 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](#), 24 April 2025, para. 14.

- d. Reject the Prosecution's request to set deadlines for the filing of jurisdictional challenges.

Respectfully submitted:



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

Dated this 9 May 2025

At Jerusalem, Israel