Comoros Situation: Dismissal of the Prosecutor’s Appeal Against Decision Requesting Reconsideration of the Decision Not to Initiate an Investigation

November 6, 2015

International Criminal Court

https://www.icc-cpi.int/en\_menus/icc/press%20and%20media/press%20releases/Pages/pr1170.aspx

Press Release : 06/11/2015

ICC-CPI-20151106-PR1170

Today, 6 November 2015, the Appeals Chamber of the International Criminal Court (ICC) decided by majority to dismiss, *in limine* and without discussing its merits, the Prosecutor's appeal against the [decision](https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation-ICC-01-13/Court-Records/chambers/ptcI/Pages/34.aspx) of Pre-Trial Chamber I requesting the Prosecutor to reconsider the decision not to initiate an investigation into the situation referred to her by the Union of the Comoros with regard to "the 31 May 2010 Israeli raid on the Humanitarian Aid Flotilla bound for Gaza Strip".

The Appeals Chamber found that, contrary to what the Prosecutor had submitted, the decision of Pre-Trial Chamber I was not one "with respect to […] admissibility" within the meaning of article 82 (1) (a) of the Rome Statute, the ICC founding treaty. The Prosecutor's appeal, submitted to the Appeals Chamber on the basis of article 82 (1) (a), was therefore inadmissible. As a part of its reasoning, the Appeals Chamber considered that to allow the Prosecutor's appeal to be heard would rupture the scheme for judicial review of the Prosecutor's decisions as explicitly set out in article 53 of the Statute, introducing an additional layer of review by the Appeals Chamber that lacks any statutory basis.

The Appeals Chamber's decision was adopted by a majority composed of Judges Sanji Mmasenono Monageng, Howard Morrison and Piotr Hofmański. Judges Silvia Fernández de Gurmendi and Christine Van den Wyngaert appended a joint dissenting opinion on the admissibility of the Prosecutor's appeal, concluding that they would declare the appeal to be admissible, without prejudice to their subsequent consideration of its merits.

[**Appeals Chamber decision and dissenting opinions**](https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation-ICC-01-13/Court-Records/chambers/ac/Pages/51.aspx)

**Background:** On 14 May 2013, a [referral](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-statement-14-05-2013.aspx) was received by the Office of the Prosecutor from the authorities of the Union of the Comoros, a State Party to the Rome Statute, in relation to the Humanitarian Aid Flotilla incident. On 6 November 2014, the Office of the Prosecutor had [announced](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-statement-06-11-2014.aspx) that it was concluding the preliminary examination of the situation referred by the Union of Comoros because legal requirements of the Rome Statute to proceed with an investigation had not been met, since the potential case(s) likely to arise from an investigation into this incident would not be of "sufficient gravity" to justify further action by the ICC.

On 29 January 2015, the representatives of the Government of the Union of the Comoros filed an [Application for Review](https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation-ICC-01-13/Court-Records/fop/sr/Pages/3.aspx) of the [Prosecutor's Decision](https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/Pages/otp-statement-06-11-2014.aspx) not to initiate an investigation into the Situation. On 16 July 2015, Pre-Trial Chamber I found, by majority, that the Prosecutor had committed material errors in her determination of the gravity of the potential case(s) and requested the Prosecutor to reconsider her decision not to investigate.