

## REGISTERED VESSELS OF COMOROS, GREECE AND CAMBODIA

### Procedural Background:

On **14 May 2013**, the authorities of the Union of the Comoros, a State Party to the Rome Statute, sent a referral to the Office of the Prosecutor (OTP), in relation to an alleged attack that killed 9 victims and severely injured dozens of people on 31 May 2010, allegedly by the Israeli Defence Forces on the Humanitarian Aid Flotilla bound for the Gaza strip. The referral addressed the request to the Prosecutor, pursuant to articles 12, 13 and 14 of the Rome Statute, to initiate “an investigation into the crimes committed within the Court’s jurisdiction, arising from the alleged raid/attack”.

*As this is a State referral, it is the Office of the Prosecutor that decides whether or not to open an ICC investigation, according to the criteria set out in the Rome Statute. On the same day, the Prosecutor announced the opening of a preliminary examination on the referred situation to establish whether the criteria for opening an investigation are met. The OTP also received other communications concerning to the Flotilla incident.*

On **5 July 2013**, the Presidency of the ICC assigned “the Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia” to Pre-Trial Chamber I (PTC).

On **6 November 2014**, the OTP announced the closing of its preliminary examination of the situation after concluding that “the potential case(s) likely arising from an investigation into this incident would not be of sufficient gravity to justify further action by the ICC.” The Prosecutor said that, accordingly, the legal requirements under the Rome Statute to open an investigation were not met.

On **29 January 2015**, the authorities of the Union of the Comoros filed an Application for Review of the Prosecutor's Decision- not to initiate an investigation in the Situation. They argued that the OTP had failed to take into account the relevant facts that occurred in places other than the three State party vessels, and had erroneously addressed the gravity threshold under article 17(1) (d).

On **16 July 2015**, the ICC PTC I, by majority, granted the request by the Union of the Comoros and ordered the Prosecutor to reconsider her decision.

On **6 November 2015**, the Appeals Chamber, by majority, dismissed *in limine* the Prosecutor’s appeal against the PTC I’s request. The majority concluded that it was not “a determination of admissibility that would have the effect of obliging the Prosecutor to initiate an investigation”; to the contrary, “the final decision in this regard” was “reserved for the Prosecutor.”

The Prosecutor filed the decision on **29 November 2017**, reaffirming her previous decision on closing this preliminary examination, therefore, rejecting on opening an investigation.

On **23 February 2018**, the Government of the Union of the Comoros submitted to PTC I its application for a new judicial review.

On **15 November 2018**, PTC I decided to grant the Union of Comoros's further application for judicial review and ordered the Prosecutor to further reconsider her initial decision.

On **11 February 2019**, the Prosecution appealed the latter decision arguing that (i) the PTC I erred in requiring the prosecutor under article 53(3)(a) to accept particular conclusions of law or fact; and (ii) the PTC I erred in invalidating the Prosecutor’s final decision and requiring the Prosecutor to further reconsider her initial decision

**On 2<sup>nd</sup> September 2019**, the ICC Appeals Chamber rejected the Office of the Prosecutor's appeal against the decision of Pre-Trial Chamber I (PTC 1) on the "Application for Judicial Review by the Government of the Union of the Comoros" of 15 November 2018. The judges, by majority, ordered the OTP to reconsider its 6 November 2014 decision, not to open an investigation in the situation on the "Registered Vessels of Comoros, Greece and Cambodia." The decision ordered the OTP to issue her reconsideration decision by 2 December 2019.

To know more about the case, <https://bit.ly/2k01uyo>