

INTERNATIONAL COURT OF JUSTICE

**DISPUTE CONCERNING
ALLEGED BREACHES OF CERTAIN INTERNATIONAL OBLIGATIONS
IN RESPECT OF THE OCCUPIED PALESTINIAN TERRITORY
(NICARAGUA V. GERMANY)**

MEMORIAL
OF THE REPUBLIC OF NICARAGUA



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LIST OF ACRONYMES

BAFA	Bundesamt für Wirtschaft und Ausfuhrkontrolle –
CERD	United Nations Committee on the Elimination of Racial Discrimination
DAAD	Germany’s Academic Exchange Service
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD.....	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR.....	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
ILC	International Law Commission
JLR	Jerusalem Light Rail
KIT	Karlsruher Institut für Technologie
MPG	German Max Planck Society for the Advancement of Science
MTU	German company Motoren- und Turbinen-Union
SIPRI	Stockholm International Peace and Research Institute
TUM.....	Technische Universität München
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSCOP	United Nations Special Committee on Palestine
WIS	Weizmann Institute of Science

MEMORIAL OF THE REPUBLIC OF NICARAGUA

CHAPTER 1. INTRODUCTION

I. Procedural History

1. On 1 March 2024, the Republic of Nicaragua (“Nicaragua”) instituted proceedings before the International Court of Justice against the Federal Republic of Germany (“Germany”) in relation to breaches of its international obligations in respect of the Palestinian people and the Occupied Palestinian Territory, *i.e.*, the West Bank, including East Jerusalem, and the Gaza Strip (“OPT”).

2. That same day, Nicaragua also submitted a request for the indication of provisional measures requesting the Court to order *inter alia* that Germany cease the transfer of military equipment to Israel that could risk being used to commit gross violations of international law both conventional and customary law. The Court held oral hearings on the request on 8 and 9 April 2024. In a letter to the Court dated 23 April 2024, Nicaragua submitted additional evidence relevant to its request for the indication of provisional measures together with brief explanations. In its Order of 30 April 2024, even as the Court “considered[ed] it particularly important to remind all States of their international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate the [Geneva and Genocide] Conventions”, the Court found “that the circumstances, as they [then presented] themselves to the Court, [were] not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures”¹.

3. By an order dated 19 July 2024, the Court fixed 21 July 2025 as the time-limit for the filing of the Memorial by Nicaragua and 21 July 2026 for the filing of the Counter-Memorial of Germany. This Memorial is filed accordingly.

¹ *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany), Provisional Measures, Order of 30 April 2024, I.C.J. Reports 2024*, p. 567, para. 20, 24. (hereafter “Order of 30 April 2024”).

4. By a letter dated 21 October 2024, Nicaragua informed the Court about new information in its possession relevant to the present dispute and submitted further documents. It considered “indispensable for the Court to exercise its power under Article 49 of the Statute and to call upon the Federal Republic of Germany to produce any documents or to supply any explanations in relation to these recent publications, information, and statements on an urgent basis”. On 31 October 2024, Germany made observations on Nicaragua’s letter and request. By a letter of 18 December 2024, the Registrar informed Nicaragua that “the Court has decided that there are no reasons for it to exercise its power under Article 49 of the Statute”.

II. Scope of the Dispute: Germany’s Responsibility

5. It is settled case-law that “to identify the subject-matter of the dispute, the Court bases itself on the application ... In particular, it takes account of the facts that the applicant identifies as the basis for its claim”², which does not mean however that those claims must remain unchanged until the end of the oral pleadings. As noted by the Court, “the subject-matter of a dispute is not limited by the precise wording that an applicant State uses in its application. The Rules of Court provide an applicant State with some latitude to develop the allegations in its application, so long as it does not ‘transform the dispute brought before the Court by the application into another dispute which is different in character’”³.

6. In paragraph 3 of its Application, Nicaragua:

“requests the Court to adjudge and declare that Germany by its conduct with respect to the serious violations of peremptory norms of international law taking place in the [Occupied Palestinian Territory] (a) has not only failed to fulfil its obligation to prevent the genocide committed and being committed against the Palestinian people – including those in its component part in the Gaza Strip – but has contributed to the commission of genocide in violation of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter ‘Genocide Convention’); (b) has failed to comply with its obligations under international humanitarian law, derived both from the Geneva Conventions of 1949 and its Protocols of 1977 and from the intransgressible principles of international humanitarian law, by not respecting its

² *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objections, Judgment, I.C.J. Reports 2015, pp. 602-603, para. 26. See also *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 26, para. 53.

³ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 92, para. 61. See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, pp. 318-319, paras. 98 and 99.

obligations to ensure respect for these fundamental norms in all circumstances; and (c) has failed to comply with other peremptory norms of general international law in particular by rendering aid or assistance in maintaining the illegal situation of the continued military occupation of Palestine including its ongoing, unlawful attack in Gaza, and (d) has failed to comply with other peremptory norms of general international law in particular by rendering aid or assistance and not preventing the illegal regime of apartheid and the negation of the right of self-determination of the Palestinian people”.

7. This description coincides in every respect with that of the dispute which Nicaragua intended to submit to the Court, as described in the *Note Verbale* addressed and transmitted to Germany on 1 February 2024. It is also fully reflected in the submissions set out at the end of its Application:

“While reserving its right to revise, supplement or amend the present application, Nicaragua respectfully requests the Court to adjudge and declare that Germany:

(1) has breached and continues to breach its obligations under the Genocide Convention in particular the obligations provided in Article I by, with full knowledge of the situation, failing to prevent the ongoing genocide against the Palestinian People in particular Gazans;

(2) has breached and continues to breach its obligations under the Genocide Convention in particular the obligations provided in Article I by not only failing to prevent the ongoing genocide but by providing aid, including military equipment, to Israel that would be used in the commission of genocide, by Israel, and by withdrawing the financial assistance to the victims provided by UNRWA;

(3) has breached and continues to breach its obligations under Article I of the Fourth Geneva Convention and intransgressible principles of humanitarian law, not only by failing to ensure that the requirements of that Convention are complied with, but also by providing aid, including military equipment, that would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes, in violation of its duties under 1949 Geneva Conventions and customary international law and by withdrawing Germany’s financial assistance to UNRWA;

(4) has breached and continues to breach its obligations under international humanitarian law not only by failing to ensure that these rules of elementary consideration of humanity are respected by Israel, but also by providing aid and assistance to Israel, and withdrawing Germany’s financial assistance to UNRWA;

(5) has breached and continues to breach its conventional and customary law obligations, including the obligation to facilitate and cooperate in bringing about the Palestinian people’s right to self-determination, by providing aid and particularly military equipment to Israel that is used to deny this right of self-determination and moreover helps to maintain and impose an apartheid regime;

(6) has breached and continues to breach international law by refusing to prosecute, bring to trial and punish persons responsible for, or accused of grave crimes under

international law, including war crimes and apartheid, whether or not such persons are German nationals;

(7) must cease immediately the breaches of its international obligations indicated above;

(8) must give assurances of non-repetition of the breaches of its obligations indicated above;

(9) must make full reparation for the injury caused by its internationally wrongful acts”⁴.

8. Moreover, with the exception of a short sub-section explaining the context in which the present case arose⁵, the factual section of the Application was devoted to “The Facts” and consistently focused on “*Germany’s* serious breaches of its obligations, including peremptory norms”⁶ and “*Germany’s* further support to the collective punishment of the Palestinians”⁷. The same is true concerning the present Memorial.

9. As Nicaragua clearly explained during the hearings on provisional measures, the purpose of the present case is not to hold Germany responsible for the genocide and other serious violations of obligations deriving from fundamental norms of conventional and customary international law committed by Israel against the Palestinian people. The purpose of this case is to hold Germany responsible for its own failures to fulfil *its* international obligations in relation to these rules, inasmuch as it has failed to ensure respect for these rules and to prevent their gross violation, including by providing assistance for their continued perpetration, and in so far as it has failed to cooperate to bring these violations to an end, and to prosecute and punish those responsible⁸.

10. Since the filing of Nicaragua’s Application and the hearings on provisional measures, the Court has further clarified and established the existence of certain facts and serious violations of fundamental norms of international law, including *jus cogens* norms of *erga omnes* character, taking place in the Occupied Palestinian Territory and which bear directly on Germany’s independent legal obligations as claimed by Nicaragua in these proceedings. In its Advisory Opinion on *Legal Consequences arising from the Policies and Practices of Israel in*

⁴ Application, para. 67.

⁵ *Ibid.*, paras. 32-37.

⁶ *Ibid.*, Section B, paras. 38-56.

⁷ *Ibid.*, Section C, paras. 57-66.

⁸ See, e.g., CR 2024/15, 8 April 2024, p. 46, para. 1 (Pellet).

the Occupied Palestinian Territory, including East Jerusalem of 19 July 2024⁹, the Court determined Israel’s continued settlement and presence in the Occupied Palestinian Territory to be unlawful as a violation of Article 2 (4) of the United Nations Charter and its corollary prohibiting the acquisition of territory through the use of force, and as a violation of the Palestinian people’s right of self-determination and their right to be free from racial segregation and apartheid¹⁰. The Court determined that Israel is under an obligation to bring its presence in the Occupied Palestinian Territory to an end as “rapidly as possible”, and that it must make reparation for the damage caused to all the natural and legal persons concerned in the Occupied Palestinian Territory¹¹. Given the seriousness of these violations, including their peremptory and *erga omnes* character, the Court accordingly also determined that “all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory”¹². This authoritative interpretation of the international legal obligations of all States plainly includes those of Germany, which as set out further in this Memorial, it has failed to respect despite its public undertaking to do so¹³.

11. It is equally important to note that the present case is different from that submitted by South Africa against Israel which exclusively involves violations of the Genocide Convention by Israel. In the present case, Nicaragua is invoking the responsibility of Germany in connection with that Convention but also in connection with a number of other treaties and customary rules concerning international humanitarian law (IHL) including the transfer of arms to a party in an armed conflict, the protection of fundamental human rights – including the right to self-determination and the prohibition of racial discrimination and apartheid¹⁴.

12. However, there are two common aspects between the two cases:

⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024 (hereafter “*Palestine Advisory Opinion*”).

¹⁰ *Ibid.*, paras. 155, 173-179, 229-243, 261-262, 285.

¹¹ *Ibid.*, para. 285.

¹² *Ibid.*

¹³ On Germany’s public undertaking to respect its obligations flowing from the *Palestine Advisory Opinion*, see below, paras. 272 and 353. See also United Nations, *Official Records of the General Assembly*, Tenth Emergency Special Session, 55th plenary meeting, 18 September 2024, A/ES-10/PV.55, p. 35.

¹⁴ See CR 2024/15, 8 April 2024, p. 16, para. 13 (Argüello).

- (a) *first*, many of the gross violations committed by Israel of its obligations under the Genocide Convention (and its corresponding obligations under customary law) are elements establishing the crime of genocide but are also independently violations of international humanitarian law, the right to self-determination and the prohibition of racial discrimination, segregation and apartheid and the inadmissibility of the acquisition of territory by force; in this respect some facts are common to both cases; however, the scope of the present case is wider than the one brought before the Court by South Africa in its substance and different concerning the Defendant and its responsibilities;
- (b) *second*, Nicaragua does not act for its own interest as a direct victim of Germany's internationally wrongful acts, exactly as South Africa is not acting as a victim of the genocide committed by Israel against the Palestinian people. In the latter case, referring to the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*¹⁵, the Court

“observed that all the States parties to the Convention have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves to fulfilling the obligations contained in the Convention. Such a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case. The common interest in compliance with the relevant obligations under the Genocide Convention entails that any State party, without distinction, is entitled to invoke the responsibility of another State party for an alleged breach of its obligations *erga omnes partes*. Accordingly, the Court found that any State party to the Genocide Convention may invoke the responsibility of another State party, including through the institution of proceedings before the Court, with a view to determining the alleged failure to comply with its obligations *erga omnes partes* under the Convention and to bringing that failure to an end”¹⁶.

13. In this respect both cases are similar: insofar as Nicaragua bases its claims on conventions in force between itself and Germany, it is entitled to invoke the responsibility of Germany for breaches of its obligations *erga omnes partes*, and insofar as most of its claims are based on violations of peremptory customary norms, it is entitled to invoke the responsibility of Germany because the norms in question impose obligations *erga omnes* on all members of the international community of States.

¹⁵ *Preliminary Objections, Judgment, I.C.J. Reports 2022 (II)*, pp. 515-517, paras. 107-108 and 112.

¹⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024*, pp. 16-17, para. 33.

14. Regarding specifically the transfers of arms to Israel, which is a central issue in the present case, in its Order of 30 April 2024, the Court considered

“it particularly important to remind all States of their international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate the above-mentioned Conventions. All these obligations are incumbent upon Germany as a State party to the said Conventions in its supply of arms to Israel”¹⁷.

15. The same holds true for all other treaty breaches by Germany at stake in the present case. Germany has provided direct and indirect continued assistance and support to the illegal settlements, in particular breaching its obligations to not aid and assist in the maintenance of Israel’s unlawful presence, its continued violation of the Palestinian right to self-determination and the prohibition of racial discrimination, segregation, and apartheid in the Occupied Palestinian Territory.

16. Concerning the obligations stemming from customary rules, the basic reasoning is the same: those invoked by Nicaragua are serious breaches of obligations arising under peremptory norms of general international law within the meaning of Article 40 of the International Law Commission’s (ILC) Articles on the Responsibility of States for Internationally Wrongful Acts of 2001¹⁸. In the words of Article 53 of the Vienna Convention on the Law of Treaties, these norms are “accepted and recognized by the international community of States as a whole as [norms] from which no derogation is permitted”; they are binding *erga omnes*. Consequently, it is the duty of all members of the international community to respect them and to ensure that they are respected. That said, even if some of those breaches were of rules ‘only’ binding both Germany and Nicaragua, they would still give rise to Germany’s responsibility.

¹⁷ Order of 30 April 2024, p. 568, para. 24.

¹⁸ *ILC Yearbook*, 2001, vol. II (2), p. 29. See also United Nations, General Assembly, Resolution 56/83, Responsibility of States for internationally wrongful acts, 12 December 2001, Annex (hereafter “ILC Articles on State Responsibility”).

III. The Court has Jurisdiction and the Dispute is Admissible

A. JURISDICTION

1. Existence of a Dispute

17. As recalled in paragraph 26 of Nicaragua’s Application:

“In accordance with the Court’s well-established case-law, the existence of a dispute is a *sine qua non* condition for the exercise of its jurisdiction. A dispute is ‘a disagreement on a point of law or fact, a conflict of legal views or of interests’ between parties”¹⁹.

18. During the hearings regarding the Request for Provisional Measures submitted by Nicaragua, Germany alleged that the Court has no jurisdiction because of the “[t]he absence of a dispute”²⁰.

19. Germany stresses “the need for a ‘claim of one party that is positively opposed by the other’ ... and that the two sides must ‘hold clearly opposite views concerning the question of the performance or non-performance of certain ‘international obligations’” to determine the existence of a dispute, prior to the submission of an application to the Court, is “well established”²¹. More generally, Germany affirms that “for there to be a dispute as a matter of substance, there would have to be some form of meaningful engagement with a claim, pursuant to which Germany communicated its position either to Nicaragua or in such a way that it could objectively be understood as crystallizing a dispute”²².

20. According to a *jurisprudence constante*, to establish the existence of a dispute, the Court “takes into account in particular any statements or documents exchanged between the parties”²³. In the present case, Nicaragua duly informed Germany of the existence of a dispute on 1 February 2024 by means of a *Note Verbale* sent by the Nicaraguan Ministry of Foreign

¹⁹ Application, para. 26. *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11.

²⁰ CR 2024/16, 9 April 2024, pp. 30-33, paras. 24-32 (Wordsworth).

²¹ *Ibid.*, p. 31, para. 25.

²² *Ibid.*, p. 31, para. 7 (Wordsworth).

²³ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 92, para. 61. See also *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, pp. 443-445, paras. 50-55.

Affairs to Germany's Ministry of Foreign Affairs, through their respective permanent missions to the United Nations in New York²⁴. The *Note Verbale*, which is crystal-clear regarding the existence of a dispute between the Parties, reads as follows:

“Nicaragua urges the government of Germany to immediately halt the supply of arms, ammunitions, technology or components to Israel as it is plausible they are being used to facilitate or commit violations of the Genocide Convention, including but not limited to acts of genocide, attempted genocide, complicity in genocide and conspiracy to commit genocide.

.....
Nicaragua is of the opinion that these facts reveal that Germany is engaged in a gross and systematic failure to fulfill its obligations under the 1948 Genocide Convention. Therefore, it is the right and the duty of Nicaragua, as a State Party to the Genocide Convention to seek Germany's compliance with its obligations under the Convention as recognized by the Court when it concerns *erga omnes partes* obligations. Consequently, Nicaragua will adopt all measures it considers appropriate in accordance with international law, to guarantee respect for this fundamental international text, including recourse to the International Court of Justice.

Moreover, Nicaragua also considers that Germany has disregarded and continues to disregard its obligations under international humanitarian law, including but not limited to the 1949 Geneva Conventions, its Additional Protocols and customary international law. Common Article I of the 1949 Geneva Conventions explicitly mandates the High Contracting Parties to “respect and to ensure respect for the present Convention in all circumstances”, which includes the obligation to actively take steps to endeavor that other Contracting Parties respect the rules.

In this vein, Nicaragua is giving notice in writing of its claims concerning violations by Germany of its obligations under the Geneva Conventions of 1949, in particular the Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 and the Additional Protocol of 1977, and generally of international humanitarian law and customary international law, including the law of occupation, in the context of its failure to prevent and facilitation [*sic*] of breaches of international law by Israel in its operations against Palestinians in the Occupied Palestinian Territories, particularly Gaza”²⁵.

21. During the hearings on provisional measures, Germany stated that “this Note Verbale was sent to the public information email address of Germany's Permanent Mission to the United Nations in New York, not any address that is used for official diplomatic communications. It was not picked up until 13 February ... This approach of Nicaragua is, to say the least,

²⁴ Application, para. 27. See also *Note Verbale* from the Ministry of Foreign Affairs of Nicaragua to the German Federal Foreign Office, 2 February 2024 (Application, Annex 1).

²⁵ *Ibid.*

unusual.”²⁶ According to it, “Germany was actively considering its response and seeking coordination with the three States that had received similar emails when, without warning, Nicaragua commenced the current proceedings on 1 March”²⁷.

22. Germany’s assertion that the means by which Nicaragua transmitted its note to Germany was inappropriate is quite surprising. Contrary to the affirmation of Germany during the hearings, the *Note Verbale* sent by Germany on 13 February does not mention that Nicaragua’s means of communication was inappropriate. It only mentions that “[t]he Permanent Mission of the Federal Republic of Germany to the United Nations wishes to confirm receipt of the latter’s Verbal Note No. MINIC-MIS-071-02-2024 dated 1 February 2024”²⁸. As acknowledged by Germany’s Permanent Mission itself, it was the direct recipient of Nicaragua’s *Note Verbale*. Moreover, Germany was fully aware that this *Note Verbale* was sent on 1 February 2024. It is moreover quite surprising that the German mission to the United Nations needed 12 days to pick up Nicaragua’s notification.

23. Although Germany affirms that it became aware of the Nicaraguan *Note Verbale* on 13 February 2024, it was fully aware of its content before then. On 1 February 2024, Nicaragua published an official press release regarding the *Note Verbale* it sent to Germany the same day²⁹. In this press release, Nicaragua made public the content of the *Note verbale* sent to Germany and the object of the dispute between both States. The press release stated, *inter alia*, that:

“The Government of Reconciliation and National Unity informs the people of Nicaragua and the international community that it has notified the government[] of ... Germany ... of its decision to hold them responsible under international law for gross and systematic violations to the Convention on the Prevention and Punishment of the Crime of Genocide, international humanitarian law and customary law, including the law of occupation in the Occupied Palestinian Territories, in particular the Gaza Strip”³⁰.

²⁶ CR 2024/16, 9 April 2024, p. 32, para. 28 (Wordsworth).

²⁷ *Ibid.*, p. 32, para. 30.

²⁸ See Note from the Permanent Mission of Germany to the United Nations to the Permanent Mission of Nicaragua to the United Nations, 14 February 2024 (Application, Annex 2).

²⁹ “Nacionales Gobierno de Nicaragua: Impedir y detener el genocidio en Palestina”, Consejo de Comunicación y Ciudadanía, 1 February 2024 (<https://www.el19digital.com/articulos/ver/titulo:148879-gobierno-de-nicaragua-impedir-y-detener-el-genocidio-en-palestina>).

³⁰ *Ibid.* See also “Nicaragua Taking Germany, Canada, UK, Netherlands to ICJ for genocide”, *Al Mayadeen*, 5 February 2024 (<https://english.almayadeen.net/news/politics/nicaragua-taking-germany--canada--uk--netherlands-to-icj-for>).

24. During a government press conference held on 7 February 2024, questions were asked by a journalist regarding the *Note Verbale* sent by Nicaragua. A representative of the German Federal Foreign Office stated that “[w]e [*i.e.*, the German Government] know the press release. Nothing else is known”³¹, although the press release directly mentions the *Note Verbale* sent by Nicaragua on 1 February 2024. In any case, the spokesperson of the German Foreign Office explicitly acknowledged that “[Germany] reject[ed] the contents of the press release”³². Given that the press release summarized the content of the *Note Verbale* sent by Nicaragua a few days before, through this statement Germany expressed “a disagreement on a point of law or fact, a conflict of legal views or of interests”³³ with Nicaragua and showed “that the claim of [Nicaragua] is positively opposed by [Germany]”³⁴.

2. Grounds for the Court’s Jurisdiction

25. Article 36 of the Statute contemplates various bases for the Court’s jurisdiction. In the present case, the Court’s jurisdiction is based on the declarations of acceptance of the Court’s jurisdiction made by Germany and Nicaragua under Article 36 (2) of the Statute (*a*) and on the compromissory clause contained in Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide (*b*).

(a) Germany’s Declaration Recognizing the Jurisdiction of the Court as Compulsory

26. According to Article 36(2) of the Statute:

“The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

³¹ Statements by the German Federal Foreign Office at the Government Press Conference, 7 February 2024 (extract) (Application, Annex 4).

³² *Ibid.*

³³ Cf. *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.*

³⁴ See, e.g., *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328*; *East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 105, para. 22*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 17, para. 22*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998, pp. 122-123, para. 21*; *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening), Preliminary Objections, Judgment, I.C.J. Reports 2024, p. 393, para. 44.*

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.”

27. According to the German declaration of 30 April 2008, Germany recognises the jurisdiction of the Court:

“1. ... over all disputes arising after the present declaration, with regard to situations or facts subsequent to this date other than:

- (i) any dispute which the Parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement or which is subject to another method of peaceful settlement chosen by all the Parties.
- (ii) any dispute which
 - (a) relates to, arises from or is connected with the deployment of armed forces abroad, involvement in such deployments or decisions thereon,
 - or
 - (b) relates to, arises from or is connected with the use for military purposes of the territory of the Federal Republic of Germany, including its airspace, as well as maritime areas subject to German sovereign rights and jurisdiction;
- (iii) any dispute in respect of which any other Party to the dispute has accepted the compulsory jurisdiction of the International Court of Justice only in relation to or for the purpose of the dispute; or where the acceptance of the Court’s compulsory jurisdiction on behalf of any other Party to the dispute was deposited or ratified less than twelve months prior to the filing of the application bringing the dispute before the Court”³⁵.

28. The reservations set out in Germany’s Article 36 (2) declaration are not relevant to the present dispute. Therefore, Germany’s declaration constitutes a valid basis for the Court’s jurisdiction.

29. Regarding the Nicaraguan declaration as modified on 23 October 2001, it contains a single reservation providing that “Nicaragua will not accept the jurisdiction or competence of the International Court of Justice in relation to any matter or claim based on interpretations of

³⁵ See <https://icj-cij.org/declarations/de>.

treaties or arbitral awards that were signed and ratified or made, respectively, prior to 31 December 1901”³⁶. This reservation is not relevant in this case.

(b) *The Compromissory Clauses Contained in the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Elimination of All Forms of Racial Discrimination*

30. Additionally, Nicaragua relies upon Article 36 (1) of the Statute of the Court, which provides that “[t]he jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force”.

31. Accordingly, concerning Germany’s obligations stemming from the Genocide Convention, the jurisdiction of the Court is also based on Article IX of that Convention, which reads as follows:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”³⁷.

32. Both Nicaragua³⁸ and Germany³⁹ acceded the Genocide Convention without reservation. The Court therefore also has jurisdiction to deal with Nicaragua’s claims regarding and based on the Genocide Convention under Article IX of that Convention.

33. Furthermore, the jurisdiction of the Court is also based on Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination which states:

“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement”⁴⁰.

³⁶ See <https://www.icj-cij.org/declarations/ni>.

³⁷ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, *Treaty Series (UNTS)*, vol. 78, p. 277 (hereafter “Genocide Convention”).

³⁸ United Nations Circular of 13 February 1952, C.N.6.1952.TREATIES; *UNTS*, vol. 120, p. 300.

³⁹ United Nations Circular of 23 June 1954, C.N.99.1954.TREATIES; *UNTS*, vol. 201, p. 369.

⁴⁰ International Convention on the Elimination of all forms of Racial Discrimination, 7 March 1966, *UNTS*, vol. 660, p. 195 (hereafter “ICERD”).

Both Nicaragua⁴¹ and Germany⁴² acceded or ratified to the Convention on the Elimination of All Forms of Racial Discrimination without reservation.

B. THE COURT DOES NOT NEED TO RULE ON THE LAWFULNESS OF ISRAEL'S CONDUCT IN ORDER TO DECIDE ON GERMANY'S RESPONSIBILITY

34. Regarding the admissibility of Nicaragua's application, Germany's main argument seems to be "that alleged violations of international law by Israel constitute the essential bedrock of Nicaragua's Application and Request". Germany affirms that "the basic point is that Nicaragua seeks determinations on the conduct of Israel, an absent party, which determinations are a prerequisite to any finding of responsibility on the part of Germany"⁴³. This is an incorrect description of the case as submitted by Nicaragua for at least two reasons.

35. First, Nicaragua's Application relies on determinations of facts and violations of a number of norms of international law, mainly fundamental norms of international law, that is *jus cogens* norms, which are by definition, of *erga omnes* character, taking place in the Occupied Palestinian Territory as *already established* by the Court in the *Palestine* Advisory Opinion and in its *Wall* Advisory Opinion. As noted above, although the parties in the present proceedings could not have known how the Court would opine in July 2024, opine it did. And the findings of fact and violations of fundamental norms of international law made in that case bear directly on Germany's independent legal obligations in the present proceedings, namely, *inter alia*, "not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory"⁴⁴.

36. Second, this assertion is made by Germany in order to be able to invoke the so-called "*Monetary Gold* Principle" which, according to Germany, does "no more than reflect the basic

⁴¹ United Nations Circular of 7 April 1978, C.N.42.1978.TREATIES-1; *UNTS*, vol. 1077, p. 305.

⁴² United Nations Circular of 29 May 1969, C.N.80.1969.TREATIES-10; *UNTS*, vol. 672, p. 384.

⁴³ CR 2024/16, 9 April 2024, p. 23, para. 3 (Wordsworth).

⁴⁴ *Palestine* Advisory Opinion, para. 285.

rule on the essential need for consent”⁴⁵ as a condition for exercising jurisdiction and would bar the Court to exercise its jurisdiction⁴⁶.

37. Drawing parallels between the *Monetary Gold* case and the present one, Germany affirmed, during the hearings on provisional measures that:

“In the determination of these questions – questions which relate to the lawful or unlawful character of certain actions of Albania vis-à-vis Italy – only two States, Italy and Albania, are directly interested. [*And just so here, substituting Israel for Albania and Nicaragua for Italy*]. To go into the merits of such questions would be to decide a dispute between Italy and Albania” (*Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland, and United States of America), Preliminary Question, Judgment, ICJ Rep. 1954, p. 32*).”⁴⁷

38. A parallel cannot be drawn in the manner alleged by Germany: to determine the responsibility of Germany for violations of *its own* obligations, only two States are *directly* interested: Germany and Nicaragua (although it could also be any other members of the international community of States or parties to relevant treaties together with Germany). Israel may have a political or even a legal interest in the outcome of the case, but its “legal interests would not ... form the very subject-matter of the decision”⁴⁸ – and these interests would in any event be sufficiently preserved by Article 59 of the Statute.

39. Moreover, contrary to Germany’s suggestion at the provisional measures hearing⁴⁹, the “*Monetary Gold*-type situation” is quite exceptional and in no way comparable to that in the present case.

40. As the Court accurately emphasized in the case concerning *Military and Paramilitary Activities in and against Nicaragua*:

“There is no doubt that in appropriate circumstances the Court will decline, as it did in the case concerning *Monetary Gold Removed from Rome in 1943*, to exercise the

⁴⁵ CR 2024/16, 9 April 2024, p. 25, para. 7 (Wordsworth). See also Andrew J. Grotto, “Monetary Gold Arbitration and Case”, *MPEPIL*, December 2008 (<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e175>).

⁴⁶ See CR 2024/16, 9 April 2024, p. 28, para. 16 (Wordsworth).

⁴⁷ *Ibid.*, p. 30, para. 21 (Wordsworth) – the expression within square brackets is included in the text and italicized.

⁴⁸ *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America), Preliminary Question, Judgment, I.C.J. Reports 1954, p. 32*.

⁴⁹ CR 2024/16, 9 April 2024, p. 25, para. 7 (Wordsworth).

jurisdiction conferred upon it where the legal interests of a State not party to the proceedings ‘would not only be affected by a decision, but would form the very subject-matter of the decision’ (*I.C.J. Reports 1954*, p. 32). Where however claims of a legal nature are made by an Applicant against a Respondent in proceedings before the Court, and made the subject of submissions, *the Court has in principle merely to decide upon those submissions.*”⁵⁰

In the absence of an absolutely decisive reason for declining to entertain a case, it is incumbent upon the Court to fully perform its function, which, under Article 38 (1) of its Statute, “is to decide in accordance with international law such disputes as are submitted to it”. The exercise of jurisdiction is the rule; refusal to exercise it must remain strictly limited.

41. The *Monetary Gold* principle was invoked in other cases before the Court but it was positively applied only once. This was in the *East Timor* case, where the central question was whether Australia, in negotiating and concluding the 1989 Treaty concerning the delimitation of the continental shelf in the area of the Timor Gap, had infringed Portugal’s rights as the administering Power of East Timor⁵¹. The Court considered that:

“the very subject-matter of the Court’s decision would necessarily be a determination whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it could or could not have acquired the power to enter into treaties on behalf of East Timor relating to the resources of its continental shelf. The Court could not make such a determination in the absence of the consent of Indonesia”⁵².

42. As in the *Monetary Gold* case, the case directly involved three States, two of which claimed to be the sole holders of the power to negotiate on behalf of the territory of East Timor: by ruling in favour of one, the Court’s judgment would necessarily have excluded the other. For the *Monetary Gold* principle to apply, there must exist concurring similar claims between one of the parties to the case before the Court and a third State⁵³. This is not so in the present case: in ruling on Germany’s obligations based on its own treaty or customary commitments towards Nicaragua and the international community of States, the Court will not need to rule on Israel’s obligations.

⁵⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction of the Court and Admissibility of the Application, Judgment*, *I.C.J. Reports 1984*, p. 431, para. 88 (emphasis added).

⁵¹ *East Timor (Portugal v. Australia)*, *Judgment*, *I.C.J. Reports 1995*, p. 105, p. 98, para. 19.

⁵² *Ibid.*, p. 102, para. 28.

⁵³ *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, *Preliminary Objections, Judgment*, *ITLOS Reports 2020-2021*, p. 44, para. 83 and p. 48, para. 99.

43. Importantly, in the *Nauru* case, wherein the Court ruled differently, the applicant complained that Australia had failed to fulfil its obligations as a mandating and later administering authority, whereas the United Kingdom and New Zealand, which Nauru was not suing before the Court, had jointly exercised the mandate conferred by the League of Nations and later the trusteeship granted by the United Nations relating to Nauru⁵⁴. However, the Court considered that, contrary to its decision in the *Monetary Gold* case, it could not “decline to exercise its jurisdiction” even though “a finding by the Court regarding the existence or the content of the responsibility attributed to Australia by Nauru might well have implications for the legal situation of the two other States concerned ...”⁵⁵. Thus, the Court confirmed that a finding in a case before it may have implications for a State not party to the proceedings without preventing the Court from ruling on the case before it and directly concerning two other States. In our case, most of Nicaragua’s claims rest upon already established facts and law as determined by the Court in the *Palestine* Advisory Opinion and the *Wall* Opinion. Furthermore, most of Nicaragua’s claims do not require the Court to rule on Israel’s legal interests, but merely to find, as a matter of fact, that there is a risk of violations of international law by Israel, which creates obligations for Germany. This was acknowledged by Germany during the oral hearings of April 2024:

“[O]bligations to prevent genocide and to ensure respect with international humanitarian law are indeed Germany’s own obligations, nevertheless the emergence of these obligations, the scope, the exact content and any possible breach of such obligations, inevitably depend on, and they also vary by reference to the degree and to the kind of the risk of wrongful acts by another State, in this case Israel”⁵⁶.

44. Germany sought to add another argument in support of its pledge for the application of the *Monetary Gold* principle at the provisional measures hearings⁵⁷, stressing that “a State can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed”, with reference to the Court’s judgment in the *Bosnia Genocide* case⁵⁸.

⁵⁴ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 246, para. 9.

⁵⁵ *Ibid.*, pp. 261-262, para. 55; See also *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011 (II), p. 660, para. 43.

⁵⁶ CR 2024/16, 9 April 2024, p. 37, para. 19 (Peters).

⁵⁷ *Ibid.*, p. 27, para. 15 (Wordsworth).

⁵⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 221, para. 431; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I), p. 128, para. 441.

The only authorities invoked in support of that argument are the Court's 2007 and 2015 judgments in the cases against Serbia. In those cases, the State accused of complicity in genocide or of aiding and abetting genocide was *the respondent* in the proceedings. This is not the case here, and that makes a significant difference: when the respondent State is itself accused of genocide and complicity in genocide, the facts of the case form a whole, and without proven genocide it is rather absurd to think that failure to prevent or to punish genocide could hold.

45. The same does not apply when the State suspected of committing or risking to commit genocide is not present at the proceedings; in such circumstances, when it invokes a violation of the obligation to prevent by a third State, the claimant State cannot reasonably be required to prove anything more than the existence of a risk of genocide which the respondent must prevent. Moreover, as the Court itself has emphasised, it would be absurd “that the obligation to prevent genocide only comes into being when perpetration of genocide commences ... since the whole point of the obligation is to prevent, or attempt to prevent, the occurrence of the act”⁵⁹. This is all the more true in Nicaragua's present case as the Court has already concluded in its Order of 26 January 2024 in the *South Africa v. Israel* case “that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible. This is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III, and the right of South Africa to seek Israel's compliance with the latter's obligations under the Convention”⁶⁰.

46. With regard specifically to the Nicaraguan claims that Germany assisted Israel in its violations of international law and was complicit regarding the commission of a genocide, at least two reasons explain why the *Monetary Gold* principle cannot find application in our case. One is general and the other is more specific concerning genocide.

47. Regarding the first general point, Germany's main argument is that, for determining that Germany aided and assisted Israel in the violations of peremptory norms of international law, the Court “is entirely dependent upon this, that is, upon a prior finding of breach by

⁵⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 222, para. 431.

⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024, p. 23, para. 54.

Israel”⁶¹. But this assertion overlooks the very clear determinations already made by the Court in the *Palestine* Advisory Opinion concerning the situation in the Occupied Palestinian Territory and Israel’s related conduct as discussed below⁶².

48. Second, as to the complicity of genocide, it must be kept in mind that complicity in genocide is an autonomous crime punishable by itself in accordance with Article III (e) of the Genocide Convention separately from genocide which is mentioned under paragraph (a) of that same provision. And, as stressed by the Court in the *Bosnia and Herzegovina v. Serbia and Montenegro* case, “there is no doubt that ‘complicity’, in the sense of Article III, paragraph (e), of the Convention, includes the provision of means to enable or facilitate the commission of the crime; it is thus on this aspect that the Court must focus”⁶³. Therefore, the burden incumbent on Nicaragua in this respect focuses not on the commission of genocide itself but on the aid and assistance which Germany has furnished to Israel in order to perpetrate its genocidal acts against the Palestinian people in full knowledge of Israel’s intent to destroy it, in whole or in part. In the present case, as shown below⁶⁴, Germany could not ignore Israel’s acts of genocide, not less than the intent behind them.

49. It is then apparent that Germany, which could not ignore all the warnings concerning Israel’s breaches of fundamental international obligations⁶⁵ – including those identified in the Advisory Opinions, and at the minimum the plausibility of genocidal acts as underlined by the Court in its Order of 26 January 2024⁶⁶, has made itself an accomplice in these internationally wrongful acts.

50. As shown in other parts of this Memorial⁶⁷, in furnishing arms and military equipment to Israel Germany could by no possible means ignore the illegality of Israel’s continued settlement and illegal presence in the Occupied Palestinian Territory, including the violation of

⁶¹ CR 2024/16, 9 April 2024, p. 23, para. 3 (Wordsworth).

⁶² See below paras. 91-123.

⁶³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 218, para. 421.

⁶⁴ See paras. 49-50 below.

⁶⁵ For detailed presentation, see paras. 124-126 below.

⁶⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024, p. 23, para. 54.

⁶⁷ See below, paras. 124-126.

the Palestinian people's right to self-determination and their right to be free from racial discrimination, segregation and apartheid. Nor could Germany ignore the heinous acts perpetrated in the Occupied Palestinian Territory, including Gaza by Israel, which were found by the Court as early as January 2024 as entailing a risk of genocide against the Palestinian people, nor that German military equipment could be used to that effect. Moreover, the delivery of military equipment is not the only means by which Germany has made itself complicit in the violation of fundamental international legal norms against the Palestinian people in the Occupied Palestinian Territory : this is also the case, for example, with the measures it has taken to support Israel's continued presence in the Occupied Palestinian Territory, the delivery of weapons, as well as the measures it had initially taken against UNRWA⁶⁸ or the contrast between its declarations criticizing the blockade of humanitarian assistance and its inaction to stop it with all the means at its disposal.

51. Finally, the genocide being perpetrated by Israel that is still ongoing has already been established by multiple authorities⁶⁹.

IV. Outline of the Memorial

52. Following the Introduction in Chapter 1, Chapter 2 presents the relevant law, Chapter 3 sets out the historical and factual background of the case detailing Germany's many modalities of support for Israel. Chapter 4 demonstrates that Germany has failed to comply with its international obligations under both conventional and customary international law, in particular those relating to international humanitarian law, and respect for the principle of self-determination, and the prohibition of racial discrimination, segregation and apartheid and genocide. Chapter 5 sets out Nicaragua's remedies, and concludes with its submissions.

⁶⁸ See paras. 193-195 below.

⁶⁹ See paras. 444-452 below. See also Non exhaustive list of statements on International Humanitarian Law and Genocide (Annex 1).

CHAPTER 2.

RELEVANT LAW

53. Nicaragua's case against Germany in these proceedings is based upon Germany's independent legal obligations that essentially flow from certain serious violations of international law in the Occupied Palestinian Territory most of which are of *jus cogens* and *erga omnes* character. These include the failure to ensure respect for international humanitarian law, the failure to respect and promote the realization of the Palestinian people's right to self-determination including to do nothing to aid or assist Israel in the maintenance of the situation created by its illegal presence and regime of racial discrimination, segregation and apartheid in the Occupied Palestinian Territory, and the failure to prevent, punish and not be complicit in genocide.

54. This Chapter will identify the relevant international law applicable in this case, namely international humanitarian law (I), international human rights law (II), the law governing use of force and the prohibition of the acquisition of territory through force (III), and the law relating to third State responsibility for serious breaches of peremptory norms of general international law (IV).

I. International Humanitarian Law

55. The Court has twice affirmed that international humanitarian law applies to the Occupied Palestinian Territory, both as a matter of treaty as well as customary international law⁷⁰.

56. As to treaty law, this includes the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War⁷¹, which according to the Court applies as it would to "any occupied territory in the event of an armed conflict arising between two or more High

⁷⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, paras. 89 and 101 (hereafter "*Wall Advisory Opinion*"); *Palestine Advisory Opinion*, paras. 86-96.

⁷¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, *UNTS*, vol. 75, p. 287 (hereafter "*Fourth Geneva Convention*").

Contracting Parties”, as was the case when Israel invaded the Occupied Palestinian Territory after the 1967 armed conflict with Egypt, Jordan and Syria⁷².

57. As to customary international law, the Court has also determined that the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, with its annexed Regulations⁷³ “have become part of customary law” and therefore apply to the Occupied Palestinian Territory⁷⁴. In view of its number of High Contracting Parties – 196 States as at 15 July 2025 – the *Fourth Geneva Convention* is widely regarded as a codification of custom⁷⁵. This was the position taken by the Secretary-General in his May 1993 report on the establishment of the International Criminal Tribunal for the former Yugoslavia, where he stated that:

“The part of conventional international humanitarian law which has *beyond doubt become part of international customary law* is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims ...”⁷⁶

The report of the Secretary-General was subsequently approved by the Security Council in resolution 827 of 5 May 1993.⁷⁷ In its 19 July 2024 *Palestine* Advisory Opinion, the Court also indicated that

“[a] great many of the rules of [the Fourth Geneva Convention] are so fundamental to the respect of the human person, and elementary considerations of humanity, that they are ‘to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law’. These rules incorporate obligations which are essentially of an *erga omnes* character.”⁷⁸

⁷² *Wall* Advisory Opinion, p. 177, para. 101. See also *Palestine* Advisory Opinion, para. 96.

⁷³ Convention Respecting the Laws and Customs of War on Land, 18 October 1907, 36 Stat. 2277, 1 Bevans 631, annex.

⁷⁴ *Wall* Advisory Opinion, p. 172, para. 89. See also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), p. 256, para. 75; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, para. 148; and *Judgment of the International Military Tribunal of Nuremberg*, 30 September and 1 October 1946, p. 65.

⁷⁵ For a restatement of customary international humanitarian law, see J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Volume I: *Rules* (ICRC, Cambridge University Press, 2005).

⁷⁶ Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), S/25704, 3 May 1993, para. 35 (emphasis added).

⁷⁷ United Nations, Security Council, Resolution 827, 5 May 1993, preamble and para. 1.

⁷⁸ *Palestine* Advisory Opinion, para. 96.

Many of these rules are also codified in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Civilian Victims of International Armed Conflicts of 8 June 1977⁷⁹. Although Israel is not party to the Additional Protocol I, its norms are binding on it in the Occupied Palestinian Territory to the extent that it reflects customary international law.

58. Germany is bound by treaty law and by customary international law applicable to armed conflict. Germany ratified the Hague Convention II on the Laws and Customs of War on Land on 4 September 1900. When it ratified the Treaty of Versailles in January 1920, Germany recognized the right to bring to trial persons accused of violating “the laws and customs of war”. Germany has ratified the four Geneva Conventions of 1949 and the three Additional Protocols thereto⁸⁰. According to the website of the German Foreign Ministry, “[m]any provisions of these conventions, in particular the rules designed to shield civilians from the effects of war, are now regarded as customary international law applicable to all countries, irrespective of whether or not they are parties to the conventions”⁸¹. This is consistent with the view of the Court, that the “great majority” of codified norms of international humanitarian law are also customary in nature⁸² and, as noted above, “constitute intransgressible principles of international customary law”⁸³.

59. As will be further developed in this Memorial, among the most important rules of international humanitarian law relevant to Germany’s obligations in respect of the Occupied Palestinian Territory is common Article 1 of the 1949 Geneva Conventions which articulates the duty of all High Contracting Parties to “ensure respect” for international humanitarian law.

⁷⁹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Civilian Victims of International Armed Conflicts, 8 June 1977, *UNTS*, vol. 1125, p. 3 (hereafter “Additional Protocol I”).

⁸⁰ The 1949 Geneva Conventions were ratified on 3 September 1954, the 1977 Protocols I and II Additional to the Geneva Conventions of 1949 were ratified by Germany on 14 February 1991, and the 2005 Protocol III Additional to the 1949 Geneva Conventions was ratified by Germany on 17 June 2009. See <https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties?state=DE&sort=state>. Nicaragua for its part ratified the 1949 Geneva Conventions on 17 December 1953, the 1977 Protocols I and II Additional to the Geneva Conventions of 1949 were ratified on 19 July 1999, and the 2005 Protocol III Additional to the 1949 Geneva Conventions was ratified by Nicaragua on 2 April 2009. See <https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties?title=&topic=&state=NI&from=&to=&sort=state&order=ASC>.

⁸¹ “International Humanitarian Law”, Federal Foreign Office, Article, 21 November 2018 (<https://www.auswaertiges-amt.de/en/aussenpolitik/themen/humanitaeresvoelkerrecht-228976>).

⁸² *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 82.

⁸³ *Ibid.*, p. 257, para. 79.

As determined by the Court in the *Wall* Advisory Opinion, “all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention”⁸⁴. According to the 2016 Commentary of the International Committee of the Red Cross (ICRC), common Article 1 indicates that States Parties “not only apply the provisions themselves, but also do everything *reasonably in their power* to ensure that the provisions are respected universally”⁸⁵. The obligation to ensure respect for international humanitarian law is therefore one of conduct, not result.

II. International Human Rights Law

60. Several international human rights treaties apply specifically to these proceedings. Among the most important of these are the International Covenant on Civil and Political Rights (ICCPR)⁸⁶, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸⁷, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), and the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). Both Nicaragua and Germany have ratified these conventions.

61. All the United Nations bodies monitoring adherence to the ICCPR, ICESCR and ICERD have confirmed that they apply to the Occupied Palestinian Territory and have uniformly and categorically rejected Israel’s argument that its human rights treaty obligations do not exist in the Occupied Palestinian Territory.⁸⁸

⁸⁴ *Wall* Advisory Opinion, p. 200, para. 159.

⁸⁵ “Article I. Respect for the Convention”, in Knut Dörmann, Liesbeth Lijnzaad, Marco Sassoli, and Philip Spoerri (eds.), *Commentary on the First Geneva Convention* (Cambridge University Press, 2016), p. 36 (emphasis added).

⁸⁶ International Covenant on Civil and Political Rights, 16 December 1966, *UNTS*, vol. 999, p. 171 (hereafter “ICCPR”).

⁸⁷ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, *UNTS*, vol. 993, p. 3 (hereafter “ICESCR”).

⁸⁸ See, e.g., Concluding Observations of the Human Rights Committee on the Fifth Periodic Report of Israel, CCPR/C/ISR/CO/5, 5 May 2022, para. 6; Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Fourth Periodic Report of Israel, E/C.12/ISR/CO/4, 12 November 2019, para. 8; Concluding Observations of the Committee on the Elimination of all forms of Racial Discrimination on the Combined Seventeenth to Nineteenth Reports of Israel, CERD/C/ISR/CO/17-19, 27 January 2020, para. 9; Concluding Observations of the Committee on the Elimination of Discrimination Against Women on the Sixth Periodic Report

62. In the *Wall* Advisory Opinion, the Court found, *inter alia*, that both the ICCPR and ICESCR apply to the Occupied Palestinian Territory⁸⁹. More generally, the Court considered that “the protection offered by human rights conventions does not cease in case of armed conflict”, subject only to specific derogation provisions that may exist in relevant conventions⁹⁰. It further held that human rights law instruments are applicable “in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”⁹¹. This position was affirmed by the Court in its *Palestine* Advisory Opinion, where the Court additionally affirmed the applicability of ICERD to the Occupied Palestinian Territory⁹².

63. As to customary international law, various human rights norms that exist as customary principles of law also bind Germany, including in respect of the ongoing violation of *jus cogens* norms of *erga omnes* character in the Occupied Palestinian Territory.

64. Among the most important human rights norms that applies in these proceedings is the right of peoples to self-determination and the obligation of all States – including Germany – to respect and promote that right. The United Nations Charter explicitly affirms, as one of the primary purposes of the organization, the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”⁹³. The General Assembly has on multiple occasions affirmed the importance of the right of self-determination, embodied in Article 1, paragraph 2, and 55 of the Charter, and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States which declared the right as one of the “basic principles of international law”⁹⁴, and in the Declaration on the Granting of Independence to Colonial Countries and Peoples, which affirms

of Israel, CEDAW/C/ISR/CO/6, 17 November 2017, para. 14; Concluding Observations of the Committee on the Rights of the Child on the Second to Fourth Periodic Reports of Israel, adopted by the Committee at its Sixty-Third Session (27 May-14 June 2013), CRC/C/ISR/CO/2-4, 4 July 2013, para. 3; Concluding Observations of the Committee Against Torture of the Fifth Periodic Report of Israel, CAT/C/ISR/CO/5, 3 June 2016, para. 8.

⁸⁹ *Wall* Advisory Opinion, paras. 111, 112, and 113.

⁹⁰ *Ibid.*, para. 106.

⁹¹ *Ibid.*, paras. 106 and 111. See also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 243, para. 216. See also *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, p. 353, para. 109.

⁹² *Palestine* Advisory Opinion, paras. 97-101.

⁹³ United Nations Charter, Art. 1 (2).

⁹⁴ United Nations, General Assembly, Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970 (hereafter the “Friendly Relations Declaration”).

the application of the right to all peoples and territories that have not yet attained independence⁹⁵. The right is codified as common Article 1 of the ICCPR and the ICESCR⁹⁶. In *East Timor*, the Court indicated that the right to self-determination is “one of the essential principles of contemporary international law”⁹⁷, and in both the *Wall* Advisory Opinion and the *Chagos* Advisory Opinion it affirmed the obligation to respect the right to self-determination is owed *erga omnes* by all States⁹⁸. In the context of foreign occupation, such as exists in the Occupied Palestinian Territory, the Court has specifically found that the “right to self-determination constitutes a peremptory norm of international law”⁹⁹. In addition, the International Law Commission (ILC) has identified the obligation to respect self-determination of peoples as a *jus cogens* norm¹⁰⁰.

65. Another human right applicable in these proceedings and which is codified, *inter alia*, in ICERD, is the obligation of all States to condemn and prevent racial discrimination, segregation, and apartheid. Article 3 of ICERD provides that: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”¹⁰¹ Racial discrimination, segregation and apartheid are also prohibited under customary international law and, according to the ILC, also qualify as *jus cogens* norms¹⁰² with *erga omnes* character. As will be developed in this Memorial, all States – including Germany – must, at a minimum, ensure that they are not actively contributing, or acting in the insurmountable risk of contributing, to the maintenance of racial discrimination, segregation, and apartheid.

66. Under the Genocide Convention all parties – including Germany – have undertaken to prevent, punish and not be complicit in genocide. As developed in this Memorial, the duty to

⁹⁵ United Nations, General Assembly, Resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, 14 December 1960.

⁹⁶ ICCPR, Art. 1; ICESCR, Art. 1.

⁹⁷ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 102, para. 29.

⁹⁸ *Wall* Advisory Opinion, p. 199, para. 155; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019 (I), p. 139, para. 180.

⁹⁹ *Palestine* Advisory Opinion, para. 233.

¹⁰⁰ Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), Report of the International Law Commission, Seventy-third session (18 April–3 June and 4 July–5 August 2022), A/77/10, p. 88, para. (14) of the commentary to Conclusion 23 and its annex.

¹⁰¹ ICERD, Art. 3.

¹⁰² Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), *supra* note 100, p. 89.

prevent genocide, in particular, arises from the moment when there is a “serious risk” of genocide being committed. As noted by the Court in *Bosnia v. Serbia*, “[f]rom that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit”¹⁰³. In its 26 January 2024 Provisional Measures Order in the *South Africa v. Israel* case, the Court found “that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible”, and that “[t]his is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III” of the Genocide Convention¹⁰⁴. In indicating certain provisional measures, the Court further considered that “there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision”¹⁰⁵. In view of this, from at least 26 January 2024 all parties to the Genocide Convention – including Germany – and all States as a matter of customary international law, were put on notice of a “serious risk” of genocide against the Palestinian people in the Gaza Strip and therefore had come under an obligation to prevent it, as well as to punish and not be complicit in it. As with the duty to ensure respect for international humanitarian law, the obligation to prevent genocide is one of conduct, not of result.

III. Law Governing Use of Force and the Prohibition of the Acquisition of Territory by Force

67. The central pillar of the law governing the use of force (*jus ad bellum*) is the general prohibition on the threat or use of force in international relations. Article 2 (4) of the UN Charter provides that: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁰⁶ In *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court explained

¹⁰³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 431.

¹⁰⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024, p. 23, para. 54.

¹⁰⁵ *Ibid.*, p. 28, para. 74.

¹⁰⁶ United Nations Charter, Art. 2 (4).

that “the prohibition against the use of force is a cornerstone of the United Nations Charter”¹⁰⁷. The Article applies, *inter alia*, to a situation of military occupation which *ipso facto* entails an ongoing use of force within the territory of another State. A consequence of that principle is the prohibition of the acquisition of territory, or any part of it, by the occupying military forces¹⁰⁸.

68. Likewise, the prohibition on the use of force applies where force is used in any other manner inconsistent with the “Purposes of the United Nations”. This includes the purpose of developing “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”, as set out in Article 1 (2) of the United Nations Charter¹⁰⁹.

69. The Declaration on Friendly Relations provides that: “States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.”¹¹⁰ In detailing the content of this principle, the Friendly Relations Declaration affirms that: “[t]he territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force”; “[e]very State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination and freedom and independence”; and “[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal”¹¹¹.

70. The rule prohibiting the acquisition of territory through the use of force is thus a corollary of the general prohibition on the use of force, and both of these principles apply in these proceedings. The prohibition on territorial conquest is rooted in the purpose of safeguarding two of the most fundamental values of the international system – squarely at issue in this case – namely, respect by all States for the territorial integrity and political independence of States, and the obligation to respect the right of peoples to self-determination.

¹⁰⁷ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 223, para. 148.

¹⁰⁸ See, e.g., *Wall Advisory Opinion*, p. 171, para. 87; *Palestine Advisory Opinion*, paras. 175-177.

¹⁰⁹ United Nations Charter, Art. 1 (2).

¹¹⁰ Friendly Relations Declaration, *supra* note 94.

¹¹¹ *Ibid.*

71. In the *Wall* Advisory Opinion, this Court unreservedly affirmed the prohibition against “territorial acquisition resulting from the threat or use of force” as set out in the Friendly Relations Declaration:

“As the Court stated in its Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the principles as to the use of force incorporated in the Charter reflect customary international law (see *I.C.J. Reports 1986*, pp. 98-101, paras. 187-190); the same is true of its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force.”¹¹²

72. The Court further observed that “both the General Assembly and the Security Council have referred, with regard to Palestine, to the customary rule of ‘the inadmissibility of the acquisition of territory by war’.”¹¹³ Among the resolutions referred to by the Court in this regard were Security Council resolution 242 (1967) of 22 November 1967 and General Assembly resolution ES-10/14 of 8 December 2003.¹¹⁴

73. In the *Palestine* Advisory Opinion, the Court reaffirmed this position and “found that Israel’s policies and practices amount to annexation of large parts of the Occupied Palestinian Territory”¹¹⁵. It further took the view that “to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel in East Jerusalem and the West Bank, is contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force”.¹¹⁶ Most importantly, for the purposes of the present case against Germany, the Court held that “all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory”¹¹⁷.

74. The prohibition on the use of force and its corollary prohibiting the acquisition of territory through force, qualifies as a peremptory norm of general international law from which

¹¹² *Wall* Advisory Opinion, p. 171, para. 87.

¹¹³ *Ibid.*, p. 182, para. 117.

¹¹⁴ *Ibid.*, pp. 139-141, 166, 182, paras. 1, 74, 117.

¹¹⁵ *Palestine* Advisory Opinion, para. 179.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, para. 285.

no derogation is permitted¹¹⁸. Germany's duty not to recognize as legal the situation arising from Israel's unlawful presence in the Occupied Palestinian Territory, nor to render aid or assistance in the maintenance of that situation, is a duty of conduct, not result.

IV. Law relating to Third State Responsibility for Serious Breaches of Peremptory Norms of General International Law

75. The law of State responsibility is also relevant and applicable to these proceedings. This includes Articles 40 and 41 of the ILC Articles on State Responsibility.

76. Article 40 of the ILC Articles on State Responsibility provides that "a serious breach by a State of an obligation arising under a peremptory norm of general international law ... involves a gross or systematic failure by the responsible State to fulfil the obligation"¹¹⁹. Article 41, in turn, provides that "States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40", and that "[n]o State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation"¹²⁰.

77. Due to the *jus cogens* nature of the applicable law in this case, namely the fundamental rules of international humanitarian law, the right of peoples to self-determination, and the prohibitions of racial discrimination, segregation, and apartheid, genocide and territorial conquest, the serious breach of these norms give rise to legal obligations on the part of all States in line with articles 40 and 41 of the ILC Articles on State Responsibility. As further developed in this Memorial, this includes Germany's obligations in relation to ongoing violations of Palestinian rights in the Occupied Palestinian Territory.

¹¹⁸ See Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), *supra* note 100, para. 44, Annex, where the "prohibition of aggression" is listed. The inadmissibility of acquisition of territory through the threat or use of force is a corollary of the prohibition of aggression. According to the Friendly Relations Declaration, *supra* note 94, there appears to be little, if any, *normative* difference between the prohibition of aggression and its corollary prohibiting the acquisition of territory through the threat or use of force.

¹¹⁹ ILC Yearbook, 2001, vol. II (2), p. 29.

¹²⁰ *Ibid.*

CHAPTER 3. THE FACTUAL BACKGROUND

I. Brief History of the Violation of the Palestinian People's Rights in the Occupied Palestinian Territory

78. Nicaragua's case against Germany in these proceedings is based upon Germany's independent legal obligations that flow from certain serious violations of international law in the Occupied Palestinian Territory that are of *jus cogens* and *erga omnes* character. These include the failure to ensure respect for IHL, the failure to respect and promote the realization of the Palestinian people's right to self-determination including to do nothing to aid or assist Israel in the maintenance of the situation created by its illegal presence and regime of racial discrimination, segregation and apartheid in the Occupied Palestinian Territory, and the failure to prevent, punish, and not be complicit in genocide.

79. The following section adds some historical elements to the general context that is already described by the Court in its 2004 *Wall* Advisory Opinion and its 2024 *Palestine* Advisory Opinion¹²¹. These historical elements, assist in more fully appreciating the seriousness of these violations and their resulting implications for third States and the international community as a whole, including Germany.

A. ZIONIST SETTLER-COLONIALISM IN PALESTINE

80. The ongoing violation of the rights of the Palestinian people is the product of an approximately 140-year old self-described European settler-colonial movement and political ideology known as Zionism¹²². Underpinned by Western imperial interests and growing anti-

¹²¹ *Wall* Advisory Opinion, p. 165-167, paras. 70-78; *Palestine* Advisory Opinion, paras. 51-71.

¹²² Zionism's settler-colonial nature was a fact readily admitted by its main proponents, including the "founding father" of Zionist movement, Theodor Herzl. See "Herzl and Zionism", Israel Ministry of Foreign Affairs (<https://www.gov.il/en/pages/herzl-and-zionism>). In the late 19th century, Herzl boasted of Zionism as a "colonial idea" and presented Jewish settlement of Palestine as "form[ing] a portion of the rampart of Europe against Asia, an outpost of civilization against barbarism". See Schleifer, A. *The Fall of Jerusalem* (Monthly Review, 1972), p. 23; and T. Herzl, *The Jewish State* (1896) (Sylvie d'Avigdor trans., Dover, 1998), p. 96. In addressing the fourth Zionist Congress in 1900, Herzl said it was in "the interest of the civilized nations and of civilization in general that a cultural station be established on the shortest road to Asia. Palestine is this station and

Semitism across Europe¹²³, in 1897 the World Zionist Organisation declared at its First Congress that “[t]he aim of Zionism is to create for the Jewish people a home in Eretz Israel [i.e., Palestine] secured by public law”¹²⁴. This set the agenda for a mass colonisation program to promote Jewish settlement in Palestine which continues to the present day¹²⁵.

81. The main problem for the Zionist movement has been the fact that Palestine was never *terra nullius* – as its early proponents argued¹²⁶ – but has had an indigenous Palestinian Arab people continuously rooted in the land for millennia¹²⁷. Between the establishment of the first Zionist colony in Palestine in 1882 and 1914, the Jewish population in Palestine is estimated to have accounted for only approximately 60,000, or 7.6 percent of the total population, of whom two thirds were European settlers¹²⁸. Altogether, they owned no more than 2 percent of the land¹²⁹. Zionist leaders have therefore historically adopted a three-pronged policy toward the Palestinian people, the essence of which continues today through the policies and practices of the State of Israel, including in the Occupied Palestinian Territory: (1) permanent take-over of

we Jews are the bearers of culture who are ready to give our property and our lives to bring about its creation.” See *The Congress Addresses of Theodor Herzl*, trans. Nellie Straus (Federation of American Zionists, 1917), p. 24. In July 1947, when giving evidence to the United Nations Special Committee on Palestine, Chaim Weizmann, a founder of the Jewish Agency for Palestine and first President of Israel, openly spoke of the colonial nature of the Jewish Agency: “Other peoples have colonized great countries, rich countries. They found when they entered there backward populations ... In olden times, such backward countries were built up by charter companies. All of you will remember the East Indian Charter Company. But charter companies were hard to fashion in 1918, the first quarter of the twentieth century. The Wilsonian conception of the world certainly would not have allowed a charter company. Therefore, we had to create a substitute. This substitute was the Jewish Agency which had the function of a charter company, which had the function of a body which would conduct the colonization, immigration, improvement of the land, and do all the work which a government usually does without really being a government.” See UNSCOP, Report to the General Assembly, in *Official Records of the General Assembly*, Second session, Suppl. No. 11, A/364/Add.2, Second session, A/364/Add.2, Vol. III, Annex A, Oral Evidence Presented at Public Meetings, 9 September 1947, pp. 75-76.

¹²³ Abdul-Wahab Kayyalip, “Zionism and Imperialism: The Historical Origins”, *Journal of Palestine Studies*, vol. 6, 1997, pp. 101-104.

¹²⁴ World Zionist Organisation (https://knesset.gov.il/vip/herzl/eng/Herz_zionframe_eng.html).

¹²⁵ The Constitution of the World Zionist Organisation and the Regulations for its Implementation (Updated November 2019) ([https://www.wzo.org.il/Upload/media/Files/wzo constitution as amended in June 2009_1.pdf](https://www.wzo.org.il/Upload/media/Files/wzo%20constitution%20as%20amended%20in%20June%202009_1.pdf)).

¹²⁶ The original slogan “A land without people for a people without a land” was coined by Max Nordau, contemporary of Theodor Herzl and “one of the most famous European orators of Zionism”. See E.B. Childers, “The Wordless Wish: From Citizens to Refugees”, in I. Abu-Lughod (ed.), *The Transformation of Palestine: Essays on the Origin and Development of the Arab-Israeli Conflict* (Evanston: Northwestern University Press, 1971), p. 168.

¹²⁷ Written Statement of the State of Palestine, Request for an Advisory Opinion by the United Nations General Assembly in Resolution 77/247 of 30 December 2022 Pertaining to the Question of Palestine, 24 July 2023, para. 1.7.

¹²⁸ John Strawson, *Partitioning Palestine: Legal Fundamentalism in the Palestinian-Israeli Conflict* (Pluto, 2010), pp. 26-27.

¹²⁹ *Ibid.*, p. 27.

Palestinian territory; (2) permanent displacement of the Palestinian population from that territory; and (3) permanent replacement of the displaced Palestinian population by Jewish settlers in the territory. In 1937, the then Chairman of the World Zionist Organisation, and future founding Prime Minister of Israel, David Ben Gurion, explained his vision in simple terms: “We must expel Arabs and take their place.”¹³⁰ This policy of displacement and replacement was well summarized by Zionist leader Yosef Weitz when he proclaimed in 1940 that:

“Among ourselves it must be clear that there is no place in the country for both peoples together ... With the Arabs we shall not achieve our aim of being independent people in this country. The only solution is Eretz Israel [i.e., Palestine] ... without the Arabs ... and there is no other way but to transfer the Arabs from here to the neighboring countries, transfer all of them, not one village or tribe should remain ...”¹³¹

B. THE INDISPENSABLE ROLE OF THIRD STATES

82. For the Zionist movement to succeed in colonizing Palestine and taking over the land of the indigenous Palestinian Arab people, assistance from powerful third States was therefore indispensable.

1. *The Balfour Declaration and the Interwar Years*

83. The issuance of the Balfour Declaration by Great Britain in November 1917 was the first key event of such third State support for Zionism in Palestine.

84. Palestine was then a Class “A” mandated territory, according to which the independence of its people (then some 90 percent of the population being native Palestinians) was provisionally recognized via article 22 of the League of Nations Covenant¹³². Nevertheless,

¹³⁰ Letter from David Ben-Gurion to his son Amos, 5 October 1937, obtained from the Ben-Gurion Archives in Hebrew and translated into English by the Institute of Palestine Studies, Beirut (<https://www.jewishvoiceforpeace.org/2013/04/06/the-ben-gurion-letter/>).

¹³¹ Uri Davis, *Israel: An Apartheid State* (Zed Books, 1987), p. 5.

¹³² Covenant of the League of Nations, 28 June 1919, 112 BFSP 13, Art. 22. The Court has indicated that the purpose of the “sacred trust of civilization” codified in Art. 22 of the Covenant was “the self-determination and independence of the peoples concerned”. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, *I.C.J. Reports 1971*, p. 31, para. 53.

and despite wartime promises to the Palestinians of post-war independence given by Britain¹³³, the Balfour Declaration was incorporated into the British mandate at the San Remo Conference in April 1920. The declaration proclaimed that:

“His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.”¹³⁴

85. The Mandate for Palestine accordingly furnished Great Britain with “full powers of legislation and of administration” aimed at “placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home”¹³⁵. This in turn enabled the first systemic drive to permanently alter the status of Palestinian territory, and to progressively but permanently displace and replace the Palestinian people in it with European settlers. This included the transfer of 60,000 German Jewish settlers under the Ha’avara agreement between the German Economics Ministry, the Jewish Agency for Palestine and the German Zionist Federation in 1933¹³⁶. Between 1922 and 1947, Great Britain facilitated the growth of the Jewish settler population of Palestine more than tenfold, and promoted their independent land acquisition, agricultural development and the establishment of industries and banks. Hundreds of new Jewish colonial settlements were established, and an independent settler labour organization, school system and military were developed for their exclusive benefit. The political leadership and institutions of the Jewish settlers were actively invited to coordinate and work within the British Administration to further develop an *imperium in imperio* under the guise of the so-called Jewish national home policy¹³⁷. Throughout this time, the political development of the indigenous Palestinian people was

¹³³ Hussein-McMahon Correspondence, as quoted in D. Ingrams, *Palestine Papers*, 1917-1922 (John Murray Publishers Ltd.), p. 2. See also Memorandum on British Commitments to King Hussein, Political Intelligence Department, Foreign Office, Special 3, FO 608/92, Peace Conference, British Delegation 1919.

¹³⁴ British Mandate for Palestine, 24 July 1922, (1922) League of Nations, *Official Journal* 1007.

¹³⁵ *Ibid.*, Arts. 1 and 2.

¹³⁶ “Refugees”, Holocaust Encyclopedia (<https://encyclopedia.ushmm.org/content/en/article/refugees>); Jehuda Reinharz, Vaacov Shavit, *The Road to September 1939: Polish Jews, Zionists and the Yishuv on the Eve of World War II* (Brandeis University, 2018), p. 127; Yfaat Weiss, *The Transfer Agreement and the Boycott Movement: A Jewish Dilemma on the Eve of the Holocaust* (Yad Vashem, Shoah Resource Centre), p. 1 ([https://www.yadvashem.org/odot_pdf/microsoft word - 3231.pdf](https://www.yadvashem.org/odot_pdf/microsoft%20word%20-%203231.pdf)); Kimche, Jon and David, *The secret roads; the illegal migration of a people, 1938-1948. With an introduction by David Ben Gurion* (Farrar, Straus and Cudahy, 1955), pp. 33-35.

¹³⁷ Tom Segev, *One Palestine Complete* (Metropolitan, 2000), p. 5.

deliberately neglected as their land was colonized and their right to self-determination was undermined. In the words of Balfour himself:

“[I]n the case of Palestine we deliberately and rightly decline to accept the principle of self-determination. If the present inhabitants were consulted, they would unquestionably give an anti-Jewish verdict. Our justification for our policy is that we regard Palestine as being absolutely exceptional”¹³⁸.

2. *The United Nations Plan of Partition and the 1948 Nakba*

86. A second key event in third State support for the Zionist colonization of Palestine came following the 1947 British decision to quit the Mandate. This was represented by the adoption of the Plan of Partition by United Nations General Assembly resolution 181 (II) of 29 November 1947, which was patently at odds with the self-determination rights vested in the Palestinian people by virtue of Palestine’s status as a Class “A” mandate. As noted by the United Nations Special Committee on Palestine (UNSCOP), whose September 1947 report formed the basis of the Partition Plan:

“With regard to the principle of self-determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the ‘A’ Mandates, it was not applied to Palestine, obviously because of the intention to make possible the creation of the Jewish National Home there. Actually, it may well be said that the Jewish National Home and the sui generis Mandate for Palestine run counter to that principle.”¹³⁹

87. Despite this admission that the so-called “Jewish National Home” policy violated the right of self-determination of the Palestinian people, the United Nations Partition Plan proposed the creation of a “Jewish State” in Palestine. The Partition Plan allocated approximately 57 percent of the land of Palestine to this “Jewish State” and only around 42 percent for an “Arab State”, with the City of Jerusalem to be established as a *corpus separatum* under United Nations administration¹⁴⁰. These terms of the plan ignored the fact that the indigenous

¹³⁸ A. Imseis, *The United Nations and the Question of Palestine* (Cambridge, 2023), p. 47.

¹³⁹ UNSCOP, Report to the General Assembly, in *Official Records of the General Assembly*, Second session, Suppl. No. 11, A/364, Vol. I, p. 35, para. 176. This report formed the basis of the United Nations General Assembly’s partition plan. See note 140 below.

¹⁴⁰ United Nations, General Assembly, Resolution 181 (II), Future government of Palestine, 29 November 1947.

Palestinian people at the time comprised 66 percent of the population and surpassed the Jewish settler community in land ownership in every one of Palestine's sixteen sub-districts¹⁴¹.

88. Without putting into question the legal effects of the resolution, it bears recalling that in 1947 the General Assembly did not have the universal and representative character it enjoys today following the decolonization and attainment of independence by the majority of the world's countries¹⁴². A review of the verbatim and summary records of the General Assembly at the time, as well as the public and private records of UNSCOP, reveals that the decision to recommend partition was motivated by a then Western-dominated General Assembly intent on compensating the Jewish victims of Nazi Germany by supporting Zionist goals in Palestine¹⁴³. But, as noted by the permanent representative of Yemen to the United Nations at the time: "If Jews were persecuted in Europe, what have the people of Palestine to do with that?"¹⁴⁴

89. The Partition Plan, whilst being solely a recommendation, was relied upon by the Zionists to further assert their territorial claims in Palestine and to proclaim the establishment of the State of Israel in May 1948¹⁴⁵. It was during this period that the Palestinian people suffered the *Nakba*, denoting their mass ethnic cleansing and dispossession by Zionist militias and later by Israeli military forces seeking to expand the territory under Israeli control and to

¹⁴¹ In 1945, of the 26,323,023 million dunam landmass of Palestine, the Jews owned only 1,491,699 million dunams (5.6 percent) to the Arab's 12,574,774 dunams (48 percent), the remainder being publicly owned land. Ad Hoc Committee on the Palestinian Question, Summary Records of Meetings, 25 September – 25 November 1947, *Official Records of the General Assembly*, Second session, Annex 25, Report of Sub-Committee 2, A/AC.14/32 and Add.1, pp. 292-293 and Appendix VI.

¹⁴² For example, as noted by one member of UNSCOP, "the Jews had made a pleasant and healthy country out of a land in which a sparse and rachitic population had merely vegetated. It was incomprehensible that the Arabs should adduce their numerical superiority as an argument ... An ignorant majority should not be allowed to impose its will." See *ibid.*, 10th meeting, 10 October 1947, pp. 56-58.

¹⁴³ See A. Imseis, *The United Nations and the Question of Palestine*, *op. cit.* note 138, pp. 52-109.

¹⁴⁴ Statement of H.R.H. Prince Seif El Islam Abdullah (Yemen), *Official Records of the General Assembly*, Second session, 124th plenary meeting, 26 November 1947, A/PV.124, p. 1316. See also Ad Hoc Committee on the Palestinian Question, Summary Records of Meetings, 25 September – 25 November 1947, *Official Records of the General Assembly*, Second session, 18th meeting, 18 October 1947, p. 120, where a representative of the Arab Higher Committee stated: "Nations which had initiated or permitted anti-Semitism had no right to ask tiny Arab Palestine to pay by the loss of its rights for the mistakes of others"; and *Official Records of the General Assembly*, Second session, 126th plenary meeting, 28 November 1947, A/PV.126, p. 1385, where Ernesto Dihigo (Cuba) stated: "With regard to the Jewish or non-Jewish refugees now in camps for displaced persons, a problem on which so much emphasis has been laid by those in favour of partition ... it should be solved by good will on the part of all United Nations, each of which should receive a proportion of refugees in accordance with its ability to do so and in the particular conditions in each country. But we do not see why Palestine should be expected to solve the whole problem alone, especially as that country had no hand in determining the circumstances which originally caused the displacement of all these persons."

¹⁴⁵ Declaration of the Establishment of the State of Israel, 14 May 1948 (<https://main.knesset.gov.il/en/about/pages/declaration.aspx>).

create a clear Jewish majority therein. This resulted in the forced displacement of two-thirds of the Palestinian population – between 750,000 and 900,000 Palestinians, now numbering with their descendants over 7 million refugees worldwide – who are still waiting to exercise their right to return to their homeland more than 77 years later¹⁴⁶; the destruction of over 400 Palestinian villages¹⁴⁷; and the wholesale seizure of moveable and immovable Palestinian property¹⁴⁸. By the time of the 1949 armistice agreement, Israel seized control of 78 percent of historic Palestine, far more territory than was allotted to the “Jewish State” under the Partition Plan, with the remainder of historic Palestine, namely the West Bank, including East Jerusalem, and the Gaza Strip (*i.e.*, the Occupied Palestinian Territory), coming under Jordanian and Egyptian administration respectively¹⁴⁹.

90. Israel’s conquest of Palestinian territory was consolidated by a cabinet decision of the provisional government of Israel of 16 June 1948 barring the return of the Palestinian refugees to their homes and property¹⁵⁰. In response, the General Assembly passed resolution 194 (III) of 11 December 1948 resolving that the refugees be repatriated “at the earliest practicable date” and that appropriate reparation be made¹⁵¹. The Israeli government further consolidated its position through various administrative acts (e.g., the blocking of Palestinian refugee bank accounts) and the passage of legislation. This included the *Emergency Regulations (Absentees’ Property)* of 2 December 1948¹⁵², the *Law of Return* of 5 July 1950¹⁵³, and the *Citizenship Law* of 1 April 1952¹⁵⁴. The combined effect of these and other similar administrative and legislative acts was to codify Israel’s ethnic cleansing of the Palestinian refugees, the wholesale destruction, dispossession and/or usurpation of their property, and their mass-denationalization *en bloc* – all of which remain ongoing internationally wrongful acts. Between 1948 and 1966, those Palestinians that remained in what became Israel were subjected to Israeli military rule

¹⁴⁶ A. Imseis, *The United Nations and the Question of Palestine*, *op. cit.* note 138, p. 124.

¹⁴⁷ Walid Khalidi, *All That Remains* (Institute for Palestine Studies, 1992), p. 585.

¹⁴⁸ A. Imseis, *The United Nations and the Question of Palestine*, *op. cit.* note 138, pp. 123-131.

¹⁴⁹ Sami Hadawi, *Palestinian Rights and Losses* (Saqi, 1988), p. 81.

¹⁵⁰ Prime Minister David Ben-Gurion told his cabinet: “[W]e must prevent at all costs their return.” See Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited* (Cambridge, 2004), pp. 318-319.

¹⁵¹ United Nations, General Assembly, Resolution 194 (III), Palestine-Progress Report of the United Nations Mediator, 11 December 1948, para. 11.

¹⁵² This was later amended as the Absentees’ Property Law, 1950, 14 March 1950, Laws of the State of Israel: Authorized Translation from the Hebrew, Vol. 4. Government Printer, Jerusalem, (1948-1987), p. 68-82.

¹⁵³ Law of Return, 1950, 5 July 1950, Art. 1, Sefer Ha-Chukkim, No. 51, p. 159.

¹⁵⁴ Citizenship Law, 1 April 1952, Sefer Ha-Chukkim No. 95, p. 146.

while Jewish citizens of the State enjoyed full civil, political, economic, social and cultural rights¹⁵⁵.

C. ISRAELI POLICIES AND PRACTICES IN THE OCCUPIED PALESTINIAN TERRITORY SINCE 1967

91. In the June 1967 war, Israel unlawfully seized the Occupied Palestinian Territory thereby acquiring control over the whole of historic Palestine. In only six days of hostilities, Israel forcibly transferred a further 250,000-300,000 Palestinians from their homes¹⁵⁶. Since then, Israel has continued its settler-colonial drive to permanently acquire Palestinian territory, and to permanently displace and replace Palestinians with Israeli settlers in the Occupied Palestinian Territory.

92. On 22 November 1967, the Security Council adopted resolution 242 (1967) emphasising “the inadmissibility of the acquisition of territory by war” and unambiguously called for the “[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict”¹⁵⁷. Israel has refused to comply with this resolution. The Security Council and General Assembly have subsequently adopted hundreds of resolutions which have condemned the policies and practices of Israel in the Occupied Palestinian Territory over many decades, including resolutions respecting: the inadmissibility of acquisition of territory through force¹⁵⁸; the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory¹⁵⁹; the status of Jerusalem¹⁶⁰; the two-State solution and the Palestinian people’s right to self-

¹⁵⁵ Amnesty International, *Israel’s Apartheid Against Palestinians: Cruel System of Domination and Crime Against Humanity*, 2022, p.107 (<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>).

¹⁵⁶ UNRWA, Report of the Commissioner-General 1967-1968, *Official Records of the General Assembly*, 23rd session., Supp. 13 (A/7213), paras. 9-10.

¹⁵⁷ United Nations, Security Council, Resolution 242 (1967), 22 November 1967, preamble and para. 1.

¹⁵⁸ United Nations, Security Council, Resolution 478 (1980), 20 August 1980; United Nations, General Assembly, Resolution 76/12, Jerusalem, 1 December 2021.

¹⁵⁹ United Nations, Security Council, Resolution 478 (1980), 20 August 1980; United Nations, General Assembly, Resolution 70/88, *Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War*, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories, 9 December 2015.

¹⁶⁰ United Nations, Security Council, Resolution 476 (1980), 30 June 1980; United Nations, General Assembly, Resolution 76/12, Jerusalem, 1 December 2021.

determination¹⁶¹; Israeli settlements in the Occupied Palestinian Territory¹⁶²; permanent sovereignty of the Palestinian people over its natural resources¹⁶³; international protection of the Palestinian people¹⁶⁴; and the peaceful settlement of the question of Palestine¹⁶⁵. Israel remains in serial breach of each and every one of these resolutions.

93. As for third State obligations in respect of the situation in the Occupied Palestinian Territory, United Nations resolutions have been crystal clear. For instance, by resolution 2334 (2016) of 23 December 2016, the Security Council called upon “all States ... to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”¹⁶⁶. Of note, Germany has affirmed that it will abide by resolution 2334 (2016) because it “is binding law and that is the international consensus”¹⁶⁷. Additionally, resolution ES-10/24 of 18 September 2024 passed by the General Assembly recalled the *Palestine* Advisory Opinion of July 2024, including the obligations on third States therein, and called upon the Member States to take steps consistent with their international obligations.

94. Israel’s reliance on the diplomatic and military support of a selection of powerful third States has been a marked feature of its occupation of the Occupied Palestinian Territory since 1967. As set out in this Memorial, Germany has provided continued support, direct and indirect, of Israel’s policies, practices, and illegal presence in the Occupied Palestinian Territory, and has therefore been in serious default of its international legal obligations since at least that time.

¹⁶¹ United Nations, Security Council, Resolution 2334 (2016), 23 December 2016; United Nations, General Assembly, Resolution 78/192, The right of the Palestinian people to self-determination, 19 December 2023.

¹⁶² United Nations, Security Council, Resolution 2334 (2016), 23 December 2016; United Nations, General Assembly, Resolution 78/78, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 7 December 2023.

¹⁶³ United Nations, General Assembly, Resolution 78/170, Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, 19 December 2023.

¹⁶⁴ United Nations, Security Council, Resolution 2720 (2023), 22 December 2023; United Nations, Security Council, Resolution 681 (1990), 20 December 1990; United Nations, General Assembly, Resolution 70/90, Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, 9 December 2015.

¹⁶⁵ United Nations, Security Council, Resolution 2334 (2016), 23 December 2016; United Nations, General Assembly, Resolution 76/10, Peaceful settlement of the question of Palestine, 1 December 2021.

¹⁶⁶ United Nations, Security Council, Resolution 2334 (2016), 23 December 2016, para. 5.

¹⁶⁷ Statement of Mr. Heusgen (Germany), United Nations, Security Council, 8583rd meeting, 23 July 2019, S/PV.8583, p. 13.

95. Another marked feature of the violation of Palestinian rights in the Occupied Palestinian Territory since 1967 has been the unlawful employment by the Occupying Power of tactics of collective punishment, and conventional and siege warfare on the protected Palestinian population, particularly in the Gaza Strip. Writing *one month before* the events of 7 October 2023, the United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel reported that:

“Israeli security forces have carried out repeated military incursions and aerial attacks in Gaza prior to and since Israel launched its disengagement plan in 2005. Israeli security forces carried out at least five large-scale military operations (2006, 2008–2009, 2012, 2014 and 2021) through ground incursions and/or heavy artillery shelling and air-to-surface missile attacks in one of the most densely populated areas in the world. ... These incursions and attacks are directly linked to the larger context of the Israeli occupation and the blockade of Gaza. Israel’s occupation policies ... such as systematic discrimination, coercive environment, settlement expansion and impunity for settler violence, evictions and displacement of Palestinians from their homes, as well as the 16-year blockade of Gaza, have all served as a backdrop and catalyst for attacks on Gaza. The blockade, which constitutes a collective punishment of the residents in Gaza, has significantly weakened the capacity of the population and public sector to respond to the devastation caused by repeated attacks. More than 600,000 people have been internally displaced as a result.”¹⁶⁸

The United Nations Commission of Inquiry continued:

“According to the Office for the Coordination of Humanitarian Affairs, since the beginning of 2008, incursions and attacks by Israeli security forces have killed 2,749 Palestinian civilians in Gaza, including 388 women, 240 girls and 606 boys. Of those, 2,198 were killed as result of Israeli aerial attacks and 393 by live ammunition. In addition, 62,850 have been injured (including 7,214 women, 1,749 girls and 14,653 boys). More than 52,000 houses have reportedly been totally or partially destroyed and over 1,500 education facilities have been damaged. Crucial infrastructure vital to the health, energy, industrial, commercial, media and agricultural sectors in Gaza has also been damaged.”¹⁶⁹

96. In July 2024, the Court examined and opined upon a number of the policies and practices pursued by Israel, the Occupying Power, since 1967 in advisory proceedings initiated by the General Assembly. Building on its previous determinations made in its 2004 *Wall Advisory Opinion*¹⁷⁰, the Court determined Israel’s continued presence in the Occupied Palestinian Territory to be unlawful, that it is under an obligation to bring such presence to an

¹⁶⁸ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/78/198, 5 September 2023, paras. 48–49.

¹⁶⁹ *Ibid.*, para. 50.

¹⁷⁰ *Wall Advisory Opinion*, p. 156.

end as “rapidly as possible”, and that it must make reparation for the damage caused to all the natural and legal persons concerned in the Occupied Palestinian Territory¹⁷¹. As Israel’s continued presence in the Occupied Palestinian Territory is affected by an ongoing use of force in the form of its 58-year military occupation, this finding means Israel is committing an ongoing aggression in violation of the United Nations Charter in the occupied territory thereby triggering third State obligations. The Court accordingly also determined that “all States are under an obligation not to recognize as legal the situation arising from the unlawful presence of the State of Israel in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory”¹⁷². In discussing the scope of third State obligations under Security Council 2334 (2016), the Court determined that:

“that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, *inter alia*, the obligation [on third States] to abstain from treaty relations with Israel in all cases in which it [i.e. Israel] purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory.”¹⁷³

97. In addition, in contentious proceedings brought by South Africa under the Genocide Convention, the Court in 2024 issued a number of binding provisional measures orders in relation to actions of Israel in the Occupied Palestinian Territory, particularly in the Gaza Strip¹⁷⁴. Given the relevant findings of the Court (set out below), Germany’s individual obligations as a party to the Genocide Convention cannot continue to be ignored.

¹⁷¹ *Palestine Advisory Opinion*, para. 285.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*, para. 278.

¹⁷⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, *Provisional Measures, Order of 26 January 2024*, *I.C.J. Reports 2024*, p. 3. See also *ibid.*, *Request for the Modification of the Order Indicating Provisional Measures of 26 January 2024*, *Order of 28 March 2024*, *I.C.J. Reports 2024*, p. 513; and *ibid.*, *Request for the modification of the Order of 28 March 2024 indicating provisional measures*, *Order of 24 May 2024*.

98. Below is a general description of some of these policies, practices, and actions taken by Israel in the Occupied Palestinian Territory since 1967, all of which engage the above-mentioned international norms of *jus cogens* and *erga omnes* character and the independent legal obligations of third States – including Germany. This includes the obligation to ensure respect for IHL, the failure to promote the realization of the Palestinian people’s right to self-determination including to do nothing to aid or assist Israel in the maintenance of the situation created by its illegal presence and regime of racial discrimination, segregation and apartheid in the Occupied Palestinian Territory, and the failure to prevent, punish and not be complicit in genocide.

I. Israeli Settlements

99. Israel’s settlement policy in the Occupied Palestinian Territory is the proximate cause and driver of most of the above-noted violations of Palestinian rights in the Occupied Palestinian Territory. Both conventional¹⁷⁵ and customary¹⁷⁶ IHL expressly provide that an “Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. According to the authoritative ICRC commentary on the Fourth Geneva Convention, the prohibition on civilian settlement by an Occupying Power was:

“intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race”¹⁷⁷.

100. Under common Article 1 of the Fourth Geneva Convention and Additional Protocol I, all High Contracting Parties – which includes Germany – have undertaken to “ensure respect for the terms of the present Convention in all circumstances”¹⁷⁸. The Court has accordingly affirmed that “all the States parties to the Fourth Geneva Convention have the obligation, while respecting the Charter of the United Nations and international law, to ensure compliance by

¹⁷⁵ Fourth Geneva Convention, Article 49 and Additional Protocol I, Article 85(4)(a).

¹⁷⁶ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Volume I: *Rules* (ICRC, Cambridge University Press, 2005), p. 462 (Rule 130).

¹⁷⁷ J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, 1958), p. 283.

¹⁷⁸ Fourth Geneva Convention, Art. 1; Additional Protocol I, Art. 1.

Israel with international humanitarian law as embodied in that Convention”¹⁷⁹. As noted above the obligation to ensure respect for IHL is an obligation of conduct, not of result.

101. As set out below¹⁸⁰, since 1967, successive Israeli governments have transferred upwards of approximately 700,000 Israeli nationals into the Occupied Palestinian Territory and house them in purpose-built colonies, supported by physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of these settler colonies. This includes the Wall and its associated regime declared unlawful by the Court in 2004¹⁸¹. According to the United Nations Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, including East Jerusalem, Israel’s settlement of the Occupied Palestinian Territory has largely followed a series of “master plans” drawn up by governmental or quasi-governmental bodies, including the Allon Plan (1967), the Drobles Plan (1978), the Sharon Plan (1981), and the Hundred Thousand Plan (1983)¹⁸², envisioning civilian settlement as means to simultaneously colonize the Occupied Palestinian Territory and forestall the emergence of an independent Palestinian state in it. Thus, in the words of the Drobles Plan:

“The best and most effective way of removing every shadow of doubt about our intention to hold on to Judea and Samaria [viz. the OPT] forever is by speeding up the settlement momentum in these territories. The purpose of settling the areas between and around the centers occupied by the minorities [viz. the Palestinian majority] is to reduce to the minimum the danger of an additional Arab state being established in these territories. Being cut off by Jewish settlements, the minority population will find it difficult to form a territorial and political continuity.”¹⁸³

102. Israel’s intended drive to “hold on” to the Occupied Palestinian Territory “forever” is evinced by the fact that whereas in May 1967 there were no Israeli settlements or settlers residing in the Occupied Palestinian Territory, there are now more than 270 Israeli settlements

¹⁷⁹ *Palestine* Advisory Opinion, para. 279.

¹⁸⁰ See below, paras. 309-334.

¹⁸¹ *Wall* Advisory Opinion, p. 201, para. 163 (3) (A).

¹⁸² Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, Including East Jerusalem, A/HRC/22/63, 7 February 2013, paras. 20-24. This report was endorsed by the United Nations Human Rights Council in its resolution 22/29, 15 April 2013.

¹⁸³ M. Drobles, Master Plan for the Development of Settlement in Judea and Samaria, as quoted in I. Matar, “Exploitation of Land and Water Resources for Jewish Colonies in the Occupied Territories” in E. Playfair (ed.), *International Law and the Administration of Occupied Territories* (Oxford, 1992), p. 446.

in the West Bank, with more than 465,000 Israeli settlers, in addition to the 14 settlements and more than 233,000 settlers in occupied East Jerusalem¹⁸⁴. These settlements have purposely been established in strategic locations so as to fundamentally disrupt the territorial contiguity of the Occupied Palestinian Territory in a manner designed to fragment and frustrate the territorial integrity of the State of Palestine. Since the first settlements were established in the wake of the 1967 military conquest and occupation of the Occupied Palestinian Territory, successive Israeli governments have supported and facilitated their proliferation, growth, expansion and entrenchment, including through the active engagement of Israel's Ministry of Defence and the Israeli armed forces.

103. For these reasons, in its 2024 Advisory Opinion the Court found that “the Israeli settlements in the West Bank and East Jerusalem, and the regime associated with them, have been established and are being maintained in violation of international law”¹⁸⁵. Notwithstanding this, on 29 May 2025 the Israeli government announced the authorization of 22 new settlements in the Occupied Palestinian Territory¹⁸⁶.

2. Annexation of the Occupied Palestinian Territory

104. Since 1967, Israel has annexed a substantial portion of the Occupied Palestinian Territory through a series of legislative, administrative, military and other acts in contravention of the peremptory norm prohibiting the acquisition of territory through the use of force¹⁸⁷. Following the 1967 war, Israel extended its municipal law and jurisdiction to occupied East Jerusalem, unilaterally expanding the city's 6.5 km² area to encompass 71 km² of expropriated Palestinian land in the surrounding areas of the West Bank¹⁸⁸. In response, the General

¹⁸⁴ Peace Now, *Israel's Settlements 2023* (https://peacenow.org.il/wp-content/uploads/2023/01/settlements_map_En_2023_.pdf).

¹⁸⁵ *Palestine* Advisory Opinion, para. 155. See also *Wall* Advisory Opinion, pp. 183-184, para. 120.

¹⁸⁶ “Israel Announces Creation of 22 New Settlements in West Bank”, *Le Monde*, 29 May 2025 (https://www.lemonde.fr/en/international/article/2025/05/29/israel-announces-creation-of-22-new-settlements-in-west-bank_6741808_4.html).

¹⁸⁷ *Palestine* Advisory Opinion, para. 173.

¹⁸⁸ The Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 explains 34 that “[s]everal weeks after the military occupation of East Jerusalem and the West Bank – among other territories – by Israel in the June 1967 war, Israel formally extended its law and administration to East Jerusalem and 28 surrounding Palestinian villages in the West Bank, creating a much-enlarged Jerusalem municipality. The 1967 annexation absorbed not only the 6,400 dunams of East Jerusalem – previously ruled by Jordan – but also 65,000 dunams in the West Bank, attaching them to the 38,000 dunams belonging to West Jerusalem.” (A/73/447, 22 October 2018, para. 34).

Assembly declared “all measures taken by Israel to change the status of the city” to be “invalid”¹⁸⁹, and the Security Council determined that “all legislative and administrative actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”¹⁹⁰. These resolutions affirmed the inadmissibility of the acquisition of territory by force. After the passage of Israel’s 1980 Basic Law declaring Jerusalem to be its “complete and united” capital, the Security Council reaffirmed this position, deciding “not to recognize the basic law, and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem”, and called upon “all member states to accept this decision”¹⁹¹.

105. Beyond Jerusalem, Israeli actions elsewhere in the Occupied Palestinian Territory have effectuated its annexation in all but name. This includes the unilateral expropriation of large segments of territory for Israeli settlements and related infrastructure (by-pass roads, electrical and sewage grids, tunnels, checkpoints etc.), as well as the construction of the Wall and its associated regime. As noted by the 2013 United Nations Fact-Finding Mission, each Israeli government since 1967 has “openly lead and directly participated in the planning, construction, development, consolidation and/or encouragement of settlements” in the Occupied Palestinian Territory through a variety of political, economic, and military means, including through the active engagement of Israel’s Ministry of Defence and the Israeli armed forces¹⁹².

106. For these reasons, in its 2024 *Palestine* Advisory Opinion the Court “found that Israel’s policies and practices amount to annexation of large parts of the Occupied Palestinian Territory”¹⁹³. It further took the view that “to acquire sovereignty over an occupied territory, as shown by the policies and practices adopted by Israel in East Jerusalem and the West Bank, is contrary to the prohibition of the use of force in international relations and its corollary principle

¹⁸⁹ United Nations, General Assembly, Resolution 2253 (ES-V), Measures taken by Israel to change the status of the City of Jerusalem, 4 July 1967.

¹⁹⁰ United Nations, Security Council, Resolution 252(1968), 21 May 1968. See also United Nations, Security Council, Resolution 267 (1969), 3 July 1969; Resolution 298 (1971), 25 September 1971.

¹⁹¹ United Nations, Security Council, Resolution 478 (1980), 20 August 1980. See also United Nations, Security Council, Resolution 476 (1980), 30 June 1980.

¹⁹² Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, Including East Jerusalem, A/HRC/22/63, 7 February 2013, paras. 20-24.

¹⁹³ *Palestine* Advisory Opinion, para. 179.

of the non-acquisition of territory by force”¹⁹⁴. In this connection, the Court considered “that Israel is not entitled to sovereignty over or to exercise sovereign powers in any part of the the Occupied Palestinian Territory on account of the occupation. Nor can Israel’s security concerns override the principle of the prohibition of the acquisition of territory by force.”¹⁹⁵ As noted above, this means Israel is committing an ongoing aggression in the Occupied Palestinian Territory in violation of Article 2 (4) of the Charter, triggering third State obligations – including those of Germany – of non-recognition and refraining from aiding or assisting in the maintenance of its illegal presence in the Occupied Palestinian Territory. The duties of non-recognition and of not aiding or assisting in the maintenance of an illegal act are duties of conduct, not of result.

3. Violation of Self-Determination

107. The Court has twice affirmed that the Palestinian people have a right to self-determination¹⁹⁶.

108. The policies and practices pursued by Israel in the Occupied Palestinian Territory since 1967, especially its unlawful transfer of its civilian nationals into the territory and its annexation of it, all of which have been and are being made possible by the active engagement of Israel’s Ministry of Defence and the Israeli military, have resulted in the violation of the Palestinian people’s right of self-determination in at least four respects.

109. First, the territorial integrity of the State of Palestine is being violated. As noted by the Court, Israel “has fragmented the West Bank and severed East Jerusalem from it ... The sprawl of settlements in the West Bank, coupled with the expansion of a road network to which Palestinians have limited or no access has had the effect of encircling Palestinian communities in enclaves in the West Bank ... Moreover, Israel’s annexation of large parts of the Occupied Palestinian Territory violates the integrity of the Occupied Palestinian Territory, as an essential element of the Palestinian people’s right to self-determination.”¹⁹⁷

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*, para. 254.

¹⁹⁶ *Wall Advisory Opinion*, pp. 182-183, para. 118; *Palestine Advisory Opinion*, para. 230.

¹⁹⁷ *Ibid.*, para. 238.

110. Second, the Palestinian population is being displaced within and outside of the Occupied Palestinian Territory. The Court has affirmed that, “by virtue of the right of self-determination, a people is protected against acts aimed at dispersing the population and undermining its integrity as a people”¹⁹⁸. Among those acts responsible for dispersing the Palestinian population and undermining its integrity as a people include Israel’s settlement policy; construction and maintenance of the Wall and its associated regime; ongoing military operations in the Occupied Palestinian Territory leading to mass forcible transfer of the Palestinian population; annexation of Palestinian territory and related legislation and measures that discriminate against Palestinians; and restrictions on Palestinian movement within and between segments of the Occupied Palestinian Territory. As noted by the Court, “these policies and practices undermine the integrity of the Palestinian people in the Occupied Palestinian Territory, significantly impeding the exercise of its right to self-determination”¹⁹⁹.

111. Third, the Palestinian people’s sovereignty over its natural resources is being violated. As noted by the Court, “Israel has been exploiting the natural resources of the Occupied Palestinian Territory for its own benefit and for the benefit of settlements, in breach of its obligations to respect the Palestinian people’s permanent sovereignty over natural resources ... In depriving the Palestinian people of its enjoyment of the natural resources in the Occupied Palestinian Territory for decades, Israel has impeded the exercise of its right to self-determination”²⁰⁰.

112. Fourth, the right of the Palestinian people to freely determine its political status and to pursue its economic, social and cultural development is being violated. As noted by the Court, Israeli policies and practices in the Occupied Palestinian Territory have created a “dependence” of Palestinians “on Israel for the provision of basic goods and services [which] impairs the enjoyment of fundamental human rights, in particular the right to self-determination”²⁰¹.

113. For these reasons, in its 2024 *Palestine* Advisory Opinion, the Court found that “[a]s a consequence of Israel’s policies and practices, which span decades, the Palestinian people has been deprived of its right to self-determination over a long period, and further prolongation of

¹⁹⁸ *Ibid.*, para. 239.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*, para. 240.

²⁰¹ *Ibid.*, para. 241.

these policies and practices undermines the exercise of this right in the future”²⁰². The Court further found that “the existence of the Palestinian people’s right to self-determination cannot be subject to conditions on the part of the Occupying Power, in view of its character as an inalienable right”²⁰³. Finally, given the status of the Palestinian people’s right of self-determination as a *jus cogens* norm of *erga omnes* character, the Court found that “[i]t is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end”²⁰⁴. This plainly includes Germany, which has a duty of non-recognition in respect of the illegal situation created by Israel’s unlawful presence in the Occupied Palestinian Territory, as well as a duty to refrain from aiding or assisting in the maintenance of that unlawful presence. Again, the duties of non-recognition and of not aiding or assisting in the maintenance of an illegal act are duties of conduct, not of result.

4. Racial Segregation, and Apartheid

114. Article 3 of ICERD, to which Israel is party, provides that: “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”²⁰⁵ As further developed below²⁰⁶, racial discrimination, segregation, and apartheid are also prohibited under customary international law and also qualify as *jus cogens* norms²⁰⁷, with *erga omnes* character.

115. The policies and practices continued and pursued by Israel in the Occupied Palestinian Territory since 1967, especially its unlawful transfer of its civilian nationals into the territory and its annexation of it, including through the active engagement of Israel’s Ministry of Defence and the Israeli military, have resulted in the violation of the Palestinian people’s right to freedom from racial discrimination, segregation and apartheid. The fragmentation of Palestinian space and the imposition of two legal systems along racial lines are a marked feature

²⁰² *Ibid.*, para. 243.

²⁰³ *Ibid.*, para. 257.

²⁰⁴ *Ibid.*, para. 279.

²⁰⁵ ICERD, Art. 3.

²⁰⁶ See below, paras. 373-432.

²⁰⁷ Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), *supra* note 100, p. 89.

of these violations. As noted by the United Nations Committee on the Elimination of Racial Discrimination (CERD) in 2012:

“The Committee is extremely concerned at the consequences of policies and practices which amount to *de facto* segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is particularly appalled at the hermetic character of the separation of two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources. Such separation is concretized by the implementation of a complex combination of movement restrictions consisting of the Wall, roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population (art. 3 of the Convention)”²⁰⁸.

116. Likewise, in 2019 the CERD provided the following in its Concluding Observations to Israel:

“Recalling its previous concluding observations (CERD/C/ISR/CO/14-16, para. 11), the Committee draws the State party’s attention to its general recommendation 19 (1995) on article 3 of the Convention, concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urges the State party to give full effect to article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices that severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory”²⁰⁹.

117. Israel’s 2018 *Basic-Law: Israel - The Nation State of The Jewish People* enshrines settler colonialism and Jewish dominance as constitutional values, while the right of Palestinian self-determination is erased. According to the Human Rights Committee, this law exacerbates “pre-existing systematic and structural discrimination against non-Jews in the State party”²¹⁰, reasoning that applies to the Occupied Palestinian Territory *mutatis mutandis* owing to Israel’s illegal application of this law in that territory. The law declares that the “State of Israel is the nation State of the Jewish people”, and that “[t]he realization of the right to national self-determination in the State of Israel is exclusive to the Jewish People”, while promoting “Jewish

²⁰⁸ Concluding Observations of the Committee for the Elimination of Racial Discrimination, Israel, CERD/ISR/CO/14-16, 3 April 2012, para. 24.

²⁰⁹ CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 27 January 2020.

²¹⁰ Human Rights Committee, Concluding observations on the fifth periodic report of Israel, CCPR/C/ISR/CO/5 (5 May 2022), para. 10-11.

settlement” as a “national value”²¹¹. As noted by former United Nations Special Rapporteur Michael Lynk, references to “the Land of Israel” as the “historical homeland of the Jewish people” applies broadly “to areas of historic Jewish settlement, including the Occupied Palestinian Territory”²¹², erasing Palestinian presence and history.

118. All the actions described further below²¹³, facilitated by Germany, have been undertaken with clear intent by the Occupying Power, to ensure the domination of one racial group – Jewish settlers or those who qualify under Israeli law as Jews – over another racial group – the Palestinian people. As noted by the former United Nations Special Rapporteur Michael Lynk, Israel’s:

“system of alien rule has been established with the intent to maintain the domination of one racial-national-ethnic group over another. Israeli political leaders, past and present, have repeatedly stated that they intend to retain control over all of the occupied territory in order to enlarge the blocs of land for present and future Jewish settlement while confining the Palestinians to barricaded population reserves. This is a two-sided coin: the plans for more Jewish settlers and larger Jewish settlements on greater tracts of occupied land cannot be accomplished without the expropriation of more Palestinian property together with harsher and more sophisticated methods of population control to manage the inevitable resistance. Under this system, the freedoms of one group are inextricably bound up in the subjugation of the other”²¹⁴.

119. For these reasons, in its 2024 *Palestine* Advisory Opinion, the Court found that “a broad array of legislation adopted and measures taken by Israel in its capacity as an Occupying Power treat Palestinians differently on grounds specified by international law”, and that “the regime of comprehensive restrictions imposed by Israel on Palestinians in the Occupied Palestinian Territory constitutes systemic discrimination based on, *inter alia*, race, religion or ethnic origin, in violation of Articles 2, paragraph 1, and 26 of the ICCPR, Article 2, paragraph 2, of the ICESCR, and Article 2 of CERD”²¹⁵. It further found “that Israel’s legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities. For this reason, the

²¹¹ Basic-Law: Israel – The Nation State Of The Jewish People, Arts 1(b), 1(c), and 7 (<https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>)

²¹² United Nations, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 August 2022, para. 49.

²¹³ See below, paras. 373-432.

²¹⁴ United Nations, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 August 2022, para. 54.

²¹⁵ *Palestine* Advisory Opinion, para. 223.

Court considers that Israel’s legislation and measures constitute a breach of Article 3 of CERD” (i.e., a breach of Israel’s obligation to not only condemn, but also to prevent, prohibit and eradicate racial segregation and apartheid in territories under its jurisdiction, including the Occupied Palestinian Territory)²¹⁶. As a serious violation of a *jus cogens* norm of *erga omnes* character, the violation of the prohibition on racial discrimination and apartheid in the Occupied Palestinian Territory gives rise to obligations on the part of all third States, including Germany, an obligation to condemn and prevent racial discrimination, segregation and apartheid, to not recognize as lawful the situation arising as a result of such violation, nor to render aid or assistance in their maintenance. These are, once again, obligations of conduct, not of result.

5. Genocide

120. Under the Genocide Convention all parties – including Germany – have undertaken to “prevent” genocide. As discussed in greater detail below²¹⁷, the duty to prevent genocide arises from the moment when there is a “serious risk” of genocide being committed. As noted by the Court in *Bosnia v. Serbia*, “[f]rom that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit”²¹⁸.

121. Since 7 October 2023 several authorities have warned that a genocide is ongoing²¹⁹. As the Court is well aware, the Palestinian people in the Occupied Palestinian Territory, particularly in the Gaza Strip, have suffered a level of violence by the Occupying Power not seen anywhere this century. According to the United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), over 57,680 Palestinians have been killed so far, with another 137,409 injured, many for life²²⁰. Those persons killed include over 17,000 Palestinian

²¹⁶ *Ibid.*, para. 229.

²¹⁷ See below, paras. 433-460.

²¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 431.

²¹⁹ See below, paras. 444-452. See also Non exhaustive list of statements on International Humanitarian Law and Genocide (Annex 1).

²²⁰ UN OCHA, Humanitarian Situation Update No. 304, Gaza Strip, 9 July 2025 (<https://www.unocha.org/publications/report/occupied-palestinian-territory/humanitarian-situation-update-304-gaza-strip>).

children²²¹ and over 1,400 Palestinian families who have literally been wiped off the civil registry²²². A further 1.9 million (almost 90 percent of the population) have been repeatedly forcibly displaced²²³, with indiscriminate bombardment, scorched earth tactics and starvation as a tool of war deployed against them. As the Court is aware from ongoing advisory proceedings in the matter concerning *Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States, in and in Relation to the Occupied Palestinian Territory*, the Occupying Power has arbitrarily cut off humanitarian aid from the Palestinians in the Gaza Strip for months, including through the passage of legislation banning the operations of the UNRWA²²⁴. Objects indispensable for the survival of the population continue to be arbitrarily withheld – including life-saving medicines, anaesthetics, food (including baby formula), fuel, water, and electricity. In the words of the Secretary-General, “Gaza is a killing field – and civilians are caught in an endless death loop”²²⁵.

122. All of this has been accompanied by hundreds of open and repeated statements of genocidal intent uttered by Israeli officials and military officers of the highest rank, as well as other public personalities, including mainstream media and entertainment figures. The list of these statements is far too long to recite, and the Court is well aware of the evidence of them and how they have been acted upon by members of the Israeli military in Gaza²²⁶.

²²¹ UNRWA Situation Report No. 178 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem, 4 July 2025 (<https://www.unrwa.org/resources/reports/unrwa-situation-report-178-situation-gaza-strip-and-west-bank-including-east-jerusalem>).

²²² “1,410 Palestinian Families Erased from Civil Registry by Genocide in Gaza”, Middle East Monitor, 27 November 2024 (<https://www.middleeastmonitor.com/20241127-1410-palestinian-families-erased-from-civil-registry-by-genocide-in-gaza/>).

²²³ UNRWA Situation Report No. 178 on the Humanitarian Crisis in the Gaza Strip and the West Bank, including East Jerusalem, 4 July 2025 (<https://www.unrwa.org/resources/reports/unrwa-situation-report-178-situation-gaza-strip-and-west-bank-including-east-jerusalem>).

²²⁴ “Israel’s New Laws Banning UNRWA Already Taking Effect”, UN News, 29 January 2025 (<https://news.un.org/en/story/2025/01/1159586>).

²²⁵ “Secretary-General’s Press Encounter on Gaza”, 8 April 2025 (<https://www.un.org/sg/en/content/sg/press-encounter/2025-04-08/secretary-generals-press-encounter-gaza-scroll-down-for-arabic>).

²²⁶ See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application of 29 December 2023, paras. 101-107. See also Letter dated 27 February 2025 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council, S/2025/130, Annex: Public Dossier of Openly Available Evidence on the State of Israel’s Acts of Genocide Against the Palestinians in Gaza as at 4 February 2025, paras. 113-117 and Annexes I-IV.

123. For these reasons, in its 26 January 2024 provisional measures Order in the *South Africa v. Israel* case, the Court found “that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible”, and that “[t]his is the case with respect to the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III” of the Genocide Convention²²⁷. In indicating certain provisional measures, the Court further considered that “there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights found by the Court to be plausible, before it gives its final decision”²²⁸. Although the Court indicated further provisional measures Orders on 28 March and 24 May 2024, respectively, Nicaragua contends that from at least 26 January 2024 all parties to the Genocide Convention – including Germany – and all States as a matter of customary international law, were put on notice of a “serious risk” of genocide against the Palestinian people in the Gaza Strip and therefore had come under an obligation to prevent it. As above, this obligation is one of conduct, not of result.

D. ALL STATES, INCLUDING GERMANY, ARE FULLY AWARE OF THE VIOLATION OF
PALESTINIAN RIGHTS IN THE OCCUPIED PALESTINIAN TERRITORY

124. The question of Palestine is the most documented geo-political conflict on the agenda of the United Nations²²⁹. Literally thousands of resolutions, statements, reports, and other investigation and documentation have been issued by relevant organs of the United Nations since 1947, including a number of judicial proceedings before this Court. As such, no third State – including Germany – can suggest that they are not fully aware of the record of the serious violation of the Palestinian people’s rights, including of *jus cogens* norms of *erga omnes* character, in the Occupied Palestinian Territory, all of which have already been established by this Court.

125. Apart from the United Nations documentation, there has been ample news and reports going back decades of the violations of Palestinian rights in the Occupied Palestinian Territory. These reports have increased since 7 October 2023.

²²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024, p. 23, para. 54.

²²⁸ *Ibid.*, p. 28, para. 74.

²²⁹ A. Imseis, *The United Nations and the Question of Palestine*, *op. cit.* note 138.

126. With all the public news reports and videos of the atrocities available as they have occurred in the Occupied Palestinian Territory, in particular the Gaza Strip, since 7 October 2023, along with the declarations of international officials on the consequences of these events based on a full description of what Israel has been doing in in the Occupied Palestinian Territory, no third State – including Germany – can deny knowledge of the serious illegality of the conduct of Israel, nor can any third State – including Germany – deny that its knowledge has triggered obligations for them under international law to ensure respect for IHL, and to respect and promote the realization of the Palestinian people’s right to self-determination including to do nothing to aid or assist Israel in the maintenance of the situation created by its illegal presence and regime of racial discrimination, segregation, and apartheid in the Occupied Palestinian Territory, and to prevent genocide.

II. Germany's Special Relationship with Israel

A. DIPLOMATIC, ECONOMIC AND CULTURAL RELATIONS

127. Germany has close, amicable relations with Israel which are described by German authorities as “unique”²³⁰ or “special”²³¹.

128. Both States formally entered into diplomatic relations on 12 May 1965. Since the 1960s, the relationship between the two countries has been continuously deepened and strengthened.

129. The political relations between the two states are generally close and conducted on the highest level. In 2008, the German Federal Government and the Israeli Government held their first round of government consultation with the aim to strengthen the relationship between Germany and Israel through forward-looking political measures; several of these consultations at the highest level of government were held regularly. For example, as recently as May 2025, Federal President Steinmeier and Israel's President Herzog visited each other. Earlier that month, the new Federal Minister for Foreign Affairs, Johann Wadephul, paid his first visit outside Europe to Israel²³². The former Chancellor, Olaf Scholz, and members of the previous Federal Government visited Israel multiple times, in particular after 7 October 2023²³³. On several occasions, they not only reaffirmed Germany's solidarity with and support of Israel but also claimed to be in particularly close contact with the Israeli authorities in respect of the situation.

130. For many years, Germany has been one of Israel's most important trade partners, and its most important trade partner within the European Union. Israel's imports from Germany in 2022 amounted to 5.9 billion Euro and Israel exported products and services to Germany in the

²³⁰ “Germany and Israel: Bilateral relations”, Federal Foreign Office, 4 January 2024 (<https://www.auswaertiges-amt.de/en/aussenpolitik/laenderinformationen/israel-node/israel-228212>).

²³¹ “Israel”, Federal Foreign Office, February 2006 (<https://web.archive.org/web/20070919135523/https://www.auswaertiges-amt.de/diplo/en/Laender/Israel.html>).

²³² German *Bundestag*, Plenary protocol 21/9, 4 June 2025, p. 659 (Annex 68). See also Opening statement by Foreign Minister Wadephul during questions put to the Federal Government in the German *Bundestag* on 4 June 2025, Federal Foreign Office (<https://www.auswaertiges-amt.de/en/newsroom/news/2721004-2721004>).

²³³ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/14661, 24 January 2025, answer to question no. 22 (Annex 53).

amount of 2.7 billion Euro in the same period²³⁴. In 2023, the total turnover for trade between Israel and Germany represented 8.1 billion Euro²³⁵ and increased again to 8.2 billion Euros in 2024²³⁶. According to the German Office for Foreign Affairs, “[p]roducts made in Germany enjoy an excellent reputation, while German firms are well positioned to bid on Israeli infrastructure projects”²³⁷. German authorities, including some German *Länder*, have established representations in Israel specifically dedicated to trade and economic relations. The German-Israel Chamber of Industry and Commerce (*Deutsch-Israelische Industrie- und Handelskammer*), as part of the government supported network of German Chambers of Commerce Abroad (*Deutsche Auslandshandelskammern*), was established in 1967 as the official representative of the German economy in Israel to foster strong bilateral trade relations and investments between the two countries.

131. The strong economic links between Germany and Israel have also translated into cooperation, which has been lasting and developing for years, between German companies and Israeli companies. This also includes activities in the Occupied Palestinian Territory or otherwise directly or indirectly facilitating the maintenance of Israel’s unlawful presence in the Occupied Palestinian Territory. German banks, financial institutions, and companies invest in Israel and Israeli companies. In some instances, this also facilitates the maintaining of the situation resulting from Israel’s unlawful presence in the Occupied Palestinian Territory, including *inter alia* through investments in entities with activities in Israeli settlements in the

²³⁴ *Außenhandel* [Foreign Trade], Ranking of Germany’s trading partners in foreign trade 2022, German Federal Statistical Office, 2023 (Annex 14). See also Israel Product exports and imports to Germany 2022, World Integrated Trade Solution, World Bank (<https://wits.worldbank.org/CountryProfile/en/Country/ISR/Year/2022/TradeFlow/EXPIMP/Partner/DEU/Product/all-groups>).

²³⁵ *Außenhandel* [Foreign Trade], Ranking of Germany’s trading partners in foreign trade 2023, German Federal Statistical Office, 2024 (Annex 14).

²³⁶ *Außenhandel* [Foreign Trade], Ranking of Germany’s trading partners in foreign trade 2024, German Federal Statistical Office, 2025 (Annex 14).

²³⁷ “Germany and Israel: Bilateral relations”, Federal Foreign Office, 4 January 2024 (<https://www.auswaertiges-amt.de/en/aussenpolitik/laenderinformationen/israel-node/israel-228212>).

Occupied Palestinian Territory²³⁸. At times, German banks, financial institutions and companies themselves directly engage in such participation²³⁹.

132. Germany and Israel have also developed strong relationships and cooperation outside trade and economics.

133. Relations in the areas of science and research are intensive. The German Max Planck Society for the Advancement of Science (MPG) entertains close collaborations in Israel and is involved in a number of projects with the Israeli universities, the Weizmann Institute of Science (WIS) and other Israeli government research facilities²⁴⁰. Its Minerva Stiftung, created in 1964 and financed by the Federal Ministry for Education and Research, offers opportunities for research and cooperation through fellowship and exchange programmes, the establishment of research centres, workshops, conferences and project funding²⁴¹. A number of German universities have established closed partnerships with universities in Israel, including in the Occupied Palestinian Territory²⁴², facilitating academic collaborations as well as student exchange trips of German students to universities in Israel, and, in some instances, to Israeli entities in the Occupied Palestinian Territory²⁴³. Germany's Academic Exchange Service (DAAD) awards grants enabling Israelis to study and conduct research in Germany²⁴⁴.

134. Strong relations have also been established through youth exchange programmes, which have been conducted since 2001 under the auspices and the coordination of

²³⁸ See below paras. 271-308. See also European Union, Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards, 19 July 2013, 2013/C 205/05, Art. 12 (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:205:0009:0011:EN:PDF>); United Nations, Report of the independent international fact finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/22/63, 7 February 2013, para. 96; United Nations, Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory, Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 6 June 2014 (<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/OPTStatement6June2014.pdf>).

²³⁹ See below, paras. 295-301.

²⁴⁰ "Israel", Max-Planck-Gesellschaft (<https://www.mpg.de/israel>).

²⁴¹ "About us", Minerva Stiftung (<https://www.minerva.mpg.de/about-us>).

²⁴² See below, paras. 302-307.

²⁴³ "Collaborations of TUM and LMU with Israeli institutions and possible breaches of international law", Academics for Justice, pp. 7-8 (https://www.academicsforjustice.com/report/feb_25_2025).

²⁴⁴ "Germany and Israel: Bilateral relations", Federal Foreign Office, 4 January 2024 (<https://www.auswaertiges-amt.de/en/aussenpolitik/laenderinformationen/israel-node/israel-228212>).

Koordinierungszentrum Deutsch-Israelischer Jugendaustausch – ConAct [Coordination Centre for German-Israeli Youth Exchange], the establishment of the *Deutsch-Israelische Gesellschaft* [German Israeli Society] in 1966 and its activities, and approximately 100 partnerships and cooperations between German and Israeli towns and cities. Most recently, Berlin and Tel Aviv announced the establishment of a new twin-city partnership²⁴⁵.

135. In conclusion, Germany’s “special” relationship with Israel and strong political, economic and cultural links means that it has a greater capacity to influence and ensure compliance with the international obligations being flagrantly violated by Israel²⁴⁶. Furthermore, it also highlights the fact that despite decades of denying elementary rights to the Palestinian people, Germany has only increased its ties to Israel in direct violation of its international obligations.

B. OVERVIEW OF GERMAN-ISRAELI RELATIONS

1. *Israel’s Security as German Staatsräson*

136. On the basis of its specific historic responsibility for its acts of genocide against the Jewish people, Germany has raised the security and the existence of Israel to an essential political guideline of its policy – in particular its foreign policy. Germany claims it as a *Staatsräson*. In this context, Angela Merkel, former German Chancellor, framed this value of German foreign policy before the United Nations General Assembly in 2007:

“Each and every German Chancellor before me has shouldered Germany’s special responsibility for the existence of Israel. I, too, pledge to live up to this responsibility that our history has bequeathed us. It is one of the fundamental principles [*Teil der Staatsräson*] that guides my country. In other words, Israel’s security is non-negotiable for me as German Chancellor. And that being the case, we have to do more than pay lip-service to it.”²⁴⁷

²⁴⁵ “Berlin and Tel Aviv-Yafo to sign Twin Cities agreement”, Israeli Ministry of Foreign Affairs, Press Release, 7 April 2025 (<https://www.gov.il/en/pages/berlin-and-tel-aviv-yafo-sign-twin-cities-agreement-7-apr-2025>).

²⁴⁶ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 221, para. 430.

²⁴⁷ United Nations, *Official Records of the General Assembly*, Sixty-second session, 5th plenary meeting, 25 September 2007, A/62/PV.5, p. 42.

137. This clear stance in the German political discourse in respect of the security and the existence of Israel²⁴⁸ is, however, nothing more than this: a political statement²⁴⁹. The mere repetition of the *Staatsräson* discourse cannot change this picture and cannot modify or set aside the rule of law. This is even more so in respect of Germany's international obligations.

2. German Israeli Military Cooperation

138. In April 2024 before the Court, Germany confirmed:

“Of course, Germany and Israel have close ties, including in defence co-operation. Germany's responsibility for Israel's security – emphasized by Germany's Agent just now in her opening statement – is an important factor in this respect”²⁵⁰.

139. This cooperation, in particular through German arms deliveries to Israel, began well before the two States established formal bilateral relations²⁵¹. As reported by then-Federal Minister for Defence, Franz Josef Strauss, Israeli officials specifically voiced the need for military equipment in 1957, during a meeting at Strauss' personal home, asking for “transport aircraft, helicopters, artillery, anti-tank guns”²⁵². High-ranking German officials at the time, including the Federal Chancellor, Adenauer, and the Federal Minister for Foreign Affairs, von Brentano, knew about and agreed to the request. Between 1957 and 1964, Germany offered and transferred to Israel military equipment valued at 300 million *Deutsche Mark*. Strauss also explains that the transfers remained secret and occurred under the most dubious circumstances. He acknowledged, in particular, that:

“We secretly removed the equipment and weapons promised to Israel from *Bundeswehr* [German Armed Forces] depots and, in some cases, filed reports of theft with the police as a diversionary tactic. Helicopters and aircraft were

²⁴⁸ Speech by the Federal Minister for Foreign Affairs, Annalena Baerbock, at the beginning of the questioning of the Federal Government before the German Bundestag, 11 October 2023 (Application, Annex 10); Government statement by Federal Chancellor Olaf Scholz on the situation in Israel to the German Bundestag, 12 October 2023 (Application, Annex 8); Government statement by Federal Chancellor Friedrich Merz, German Bundestag, Plenary protocol 21/3, 14 May 2025, p. 87 (Annex 61). See also CR 2024/16, 9 April 2024, pp. 8-9, paras. 6-8 (von Uslar-Gleichen).

²⁴⁹ Written questions with the answers received from the Federal Government in the week of 18 June 2012, doc. 17/10050, 22 June 2012, answer to question no. 4 (Annex 4).

²⁵⁰ CR 2024/16, 9 April 2024, p. 17, para. 14 (Tams).

²⁵¹ German Bundestag, Research and Documentation Services, “Kurzinformation: Militärische Kooperation und Rüstungsexporte nach Israel” [Short information: Military cooperation and arms exports to Israel], WD 2 - 3000 - 162/18, 8 November 2018 (Annex 8).

²⁵² “The operation remained secret” [“Die Aktion blieb geheim”], *Spiegel*, September 1989 (Annex 2).

transported to France without national insignia and shipped to Israel from Marseille.”²⁵³

140. In the decades that followed, both countries continued their cooperation in military matters, highlighting a lack of transparency in these matters since the very beginning.

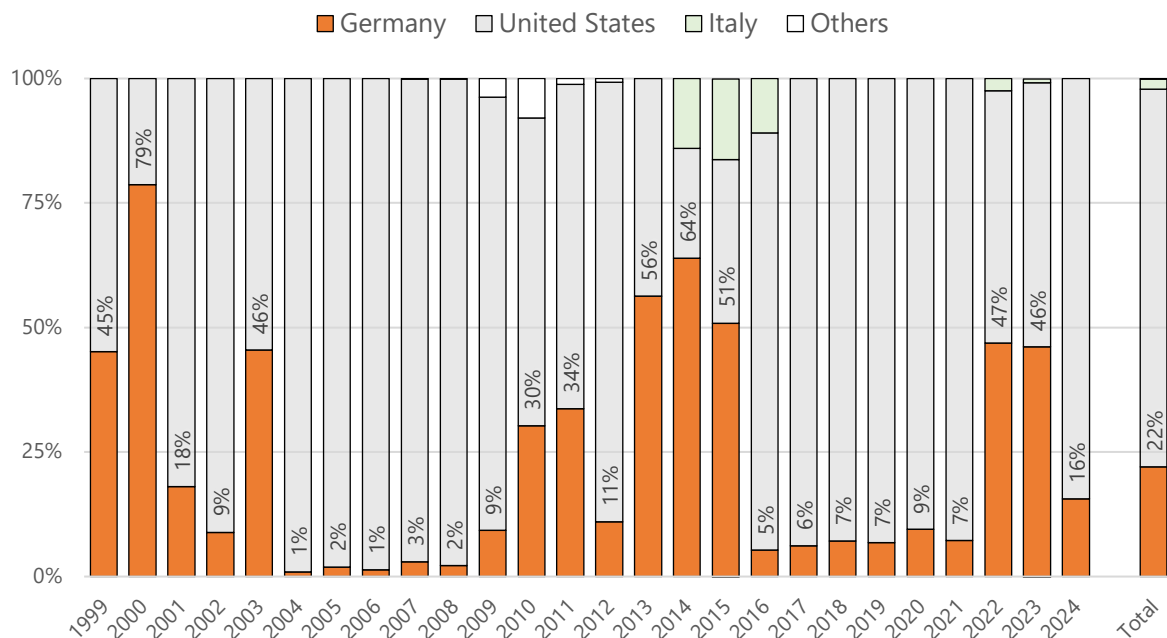


Figure 1. Suppliers of major conventional weapons to Israel (1999-2024)²⁵⁴.

141. According to data of the Stockholm International Peace Research Institute²⁵⁵ Germany is, only behind the United States of America, Israel’s most important source of military equipment. In particular, in the period 1999-2024, imports of military equipment from Germany accounts for a significant part of Israel’s overall imports (more than 22 percent) (see Figure 1 above). For the period 2019-2023, the importance of imports from Germany to Israel increased to almost 30 percent,²⁵⁶ for the period 2020-2024, to 33 percent²⁵⁷. In 2000, 2013,

²⁵³ *Ibid.*

²⁵⁴ Based on data extracted from the “Arms Transfer Database”, Stockholm International Peace and Research Institute (<https://armstransfers.sipri.org/ArmsTransfer/>), and “German Arms Exports to Israel, 2003-2023”, Forensics (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensics-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>), and the updated data available at (<https://counter-investigations.org/investigation/german-arms-exports-to-israel-2003-2023>).

²⁵⁵ The data is published as part of a database online: <https://armstransfers.sipri.org/ArmsTransfer/>. For 2025, no data is available.

²⁵⁶ Trends in International Arms Transfers, 2023, SIPRI Fact Sheet March 2024, p. 6 (https://www.sipri.org/sites/default/files/2024-03/fs_2403_at_2023.pdf).

²⁵⁷ Trends in International Arms Transfers, 2024, SIPRI Fact Sheet March 2025, p. 6 (https://www.sipri.org/sites/default/files/2025-03/fs_2503_at_2024_0.pdf).

2014, and 2015, Germany was even Israel's largest source of military equipment (with 78.7 percent, 56.3 percent, 63.9 percent, and 51.0 percent, respectively)²⁵⁸. In 2023, imports of military equipment from Germany represented 46 percent of overall imports²⁵⁹.

142. Germany's military contributions of naval equipment to Israel are particularly significant. Israel has received from Germany four Sa'ar 6-class corvettes designed and built by Thyssenkrupp Marine Systems in Kiel²⁶⁰. In October 2023, Israel's military declared the corvettes "carried out their inaugural operational attack on the Gaza Strip"²⁶¹. Israel also has a total of five Dolphin-class submarines from the same German manufacturer. A sixth submarine is still being constructed and tested in Kiel, with delivery planned for 2026²⁶². During a ceremony held in early November 2024, this submarine was named *INS Dragon*²⁶³. Not only have these naval vessels been built by German manufacturer, Germany itself has significantly subsidised the purchase price for the Sa'ar 6-class corvettes²⁶⁴ and the submarines for Israel (100 percent for the first two submarines; half or one third of the purchase price for the others). In 2017, the Federal Government also approved the sale of three additional submarines to Israel,

²⁵⁸ See also Forensis, German Arms Exports to Israel, 2003-2023, 2 April 2024 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>), and the updated data available at (<https://counter-investigations.org/investigation/german-arms-exports-to-israel-2003-2023>).

²⁵⁹ *Ibid.*

²⁶⁰ See also "Naming world's most modern corvette for the Israeli Navy", thyssenkrupp Marine Systems, Press Release, 25 May 2019 (<https://www.thyssenkrupp-marinesystems.com/en/newsroom/press-releases/press-detail-page/naming-worlds-most-modern-corvette-for-the-israeli-navy-86232>).

²⁶¹ "Israel's 'Saar 6' missile ships used for precision strikes on Gaza", *i24NEWS*, 16 October 2022 (<https://www.i24news.tv/en/news/israel/defense/1697461422-israel-s-saar-6-missile-ships-used-for-precision-strikes-on-gaza>). See also "Army Recognition Group, Israeli Navy uses Sa'ar 6-Class corvettes for first live combat against Hamas", *Global Defence News*, 19 October 2023 (<https://www.armyrecognition.com/archives/archives-naval-defense/naval-defense-2023/israeli-navy-uses-sa-ar-6-class-corvettes-for-first-live-combat-against-hamas>).

²⁶² "Hohe Sicherheitsstufe: U-Boot für Israel bei TKMS in Kiel ausgedockt" [High Security Level: Submarine for Israel undocked at TKMS in Kiel], *Kieler Nachrichten*, 14 June 2025 (Annex 73). According to the information provided by Germany during the oral hearings concerning Nicaragua's request for provisional measures on 9 April 2024, "a licence according to the War Weapons Control Act (*KrWaffKontrG*) was issued for a submarine on 19 December 2023. A licence pursuant to the Foreign Trade and Payments Act (*AWG*) has not yet been granted, therefore the export of the submarine has not yet been finally approved." (Germany's Judges Folder, tab 19).

²⁶³ "Israel names its biggest ever submarine", *Globes*, 14 November 2024 (<https://en.globes.co.il/en/article-israel-names-its-largest-ever-submarine-1001494029>); "Watch: Israel moves forward on sixth submarine from Germany", *The Jerusalem Post*, 12 November 2024 (<https://www.jpost.com/israel-news/article-828836>).

²⁶⁴ "Germany subsidizes sale of four warships to Israel", *Reuters*, 11 May 2015 (<https://www.reuters.com/article/markets/commodities/germany-subsidizes-sale-of-four-warships-to-israel-idUSL5N0Y21IL/>).

which was finally concluded in 2022²⁶⁵. The German Government will be financing these new submarines with discounts worth hundreds of millions of euros, representing approximately 20 percent of the operation²⁶⁶. These submarines²⁶⁷ and corvettes run a clear immitigable risk of being used by Israel to further impose its total naval blockade on Gaza and maintain its unlawful occupation over the Occupied Palestinian Territory, including *inter alia* its territorial waters²⁶⁸.

143. Germany's support in terms of exports of military equipment to Israel, is far from being limited to the delivery of corvettes or submarines, Germany also provides a significant amount of military equipment in the form of parts, often significant and indispensable components for weapons systems, including for war ships, fighter planes, tanks, and similar systems, such as engines, transmission systems, or technology. The data collected from official German reports on licences for the export of military equipment to Israel shows – subject to the caveats and limitations concerning the completeness, availability and reliability of this data²⁶⁹ – that out of the 4,427 individual export licences granted between 2003 and 2023, representing 3.3 billion Euro worth of military equipment, only a relatively small number was attributed to the category of naval vessels and components. Over half of the value of licences granted between 2003 and 2022 concerned different categories of military equipment²⁷⁰. Similarly, for the year 2023, out of 326,505,156 Euro worth of equipment for which licences were granted, only 6.9 percent related to the category of naval vessels and components²⁷¹.

²⁶⁵ “Israel signs €3b ThyssenKrupp submarine deal”, *Globes*, 20 January 2022 (<https://en.globes.co.il/en/article-israel-signs-3b-thyssenkrupp-submarine-deal-1001399297>).

²⁶⁶ Details on the financial arrangement have been withheld by Germany. See below paras. 174-181.

²⁶⁷ Israel's Defence Minister at the time, Benny Gantz, stated that “[t]he acquisition of three first-class operational submarines joins a series of measures we have been promoting over the past year in equipping and strengthening the IDF and operational readiness for all war zones”. See “Israel orders three Dakar-class subs from Germany under \$3.4B deal”, *Defense Brief*, 20 January 2022 (<https://defbrief.com/2022/01/20/israel-orders-three-dakar-class-subs-from-germany-under-3-4b-deal/>).

²⁶⁸ “Navy's new warships ready to protect maritime gas fields”, *Ynet News*, 23 April 2023 (<https://www.ynetnews.com/article/r1jvjgmq2>); “Israel's Stealthy New Navy Sa'ar Corvettes are a Big Deal”, *The National Interest*, 14 January 2021 (<https://nationalinterest.org/blog/reboot/israels-stealthy-new-navy-saar-corvettes-are-big-deal-176337>). See also below, note 753.

²⁶⁹ On this question, see below paras. 163-182.

²⁷⁰ “German Arms Exports to Israel, 2003-2023”, *Forensis*, pp. 27-29 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>).

²⁷¹ Twenty-Sixth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, OJ C, C/2025/472, 21.2.2025, ELI: <http://data.europa.eu/eli/C/2025/472/oj>, pp. 167-172.

144. On the other hand, Germany is also a significant partner of Israel's military industry and thus contributes to the investments and development of the sector. Over the last 15 years, Germany imported more than 10 percent of military equipment from Israel, making Israel Germany's third largest supplier²⁷². Recently, the Federal Ministry for Defence has ordered state-owned Israel Aerospace Industries' Arrow system for the interception of ballistic missiles for 4 billion euro²⁷³.

145. In February 2025, the Israeli armament company Elbit Systems was awarded a contract valued at approximately 57 million USD to supply its PULS Rocket Launcher Artillery Systems to the German Armed Forces²⁷⁴. The PULS system has been used extensively by the Israeli military in the ongoing military assault on the Gaza Strip²⁷⁵.



Figure 2. PULS Rocket Launcher Artillery System²⁷⁶.

146. Since 2010, German armed forces have been using military drones constructed and provided by the state-owned armament company, Israel Aerospace Industries. The drones (*Heron I*) were leased by Germany from Israel Aerospace Industries. The initial contract, which was supposed to end in 2012, has been reconducted several times. In 2016, Germany decided

²⁷² Based on data extracted from the "Arms Transfer Database", Stockholm International Peace and Research Institute (<https://armstransfers.sipri.org/ArmsTransfer/>).

²⁷³ "Mit der Bundeswehr dick im Geschäft" [Big business with the German Armed Forces], *Zeit Online*, 1 July 2024 (Annex 32).

²⁷⁴ "Germany Selects PULS Rocket Launcher Artillery System for its Armed Forces", Elbit Systems, 6 February 2025 (<https://www.elbitsystems.com/news/germany-selects-puls-rocket-launcher-artillery-system-its-armed-forces>).

²⁷⁵ "IDF employs PULS rocket artillery system during ongoing war", Defence Industry Europe, 5 February 2024 (<https://defence-industry.eu/idf-employs-puls-rocket-artillery-system-during-ongoing-war/>).

²⁷⁶ "Germany Selects PULS Rocket Launcher Artillery System for its Armed Forces", Elbit Systems, 6 February 2025 (<https://www.elbitsystems.com/news/germany-selects-puls-rocket-launcher-artillery-system-its-armed-forces>).

to lease the more advanced drone *Heron TP* under similar conditions and circumstances. In 2022, the German *Bundestag* authorised the arming of these unmanned aerial vehicles²⁷⁷. German soldiers were trained for the operation of the drones leased by Germany in Israel²⁷⁸.



Figure 3. German Heron TP drone²⁷⁹.

The training in Israel was suspended in October 2023 but has resumed since April 2025²⁸⁰. Israel has openly admitted to the development and operational use of armed drones by Israeli armed forces in the Occupied Palestinian Territory and elsewhere, including for killings²⁸¹. Since October 2023, Germany has made the leased *Heron TP* drones, which remained in Israel, available to the Israeli armed forces²⁸², but it has refused to disclose the particulars of the

²⁷⁷ “Weg frei zur Bewaffnung der Drohne Heron TP mit Präzisionsmunition” [The way is clear for arming the Heron TP drone with precision munitions], Federal Ministry of Defence, 6 April 2022 (Annex 15).

²⁷⁸ “Information about Heron Drones, as provided by the German Bundeswehr”, Germany’s Judges’ Folder, 9 April 2024, tab 20.

²⁷⁹ Image available at “Drohne German Heron TP: Die Verstärkung aus der Luft startet in die Testphase” [German Heron TP drone: Airborne support enters test phase], German Armed Forces, 15 May 2024 (<https://www.bundeswehr.de/de/organisation/luftwaffe/aktuelles/faq-neue-drohne-german-heron-tp-5782432>). The description of the image in German is: “Die Drohne German Heron TP hat am 15. Mai 2024 ihren offiziellen Erstflug im deutschen Luftraum über Norddeutschland absolviert.” [The German Heron TP drone completed its official maiden flight in German airspace over northern Germany on 15 May 2024].

²⁸⁰ German *Bundestag*, Plenary protocol 21/9, 4 June 2025, Appendix 2, answer to question no. 24 (Annex 68).

²⁸¹ “Israel military admits it uses armed drones”, Reuters, 20 July 2022 (<https://www.reuters.com/world/middle-east/israel-military-admits-it-uses-armed-drones-2022-07-20/>).

²⁸² “Germany clears Israel’s use of two Heron TP combat drones, source says”, Reuters, 11 October 2023 (<https://www.reuters.com/world/germany-clears-use-two-heron-tp-combat-drones-by-israel-spiegel-2023-10-11/>).

arrangement²⁸³. The CEO of Israel Aerospace Industries admitted that “in the face of the 7 October challenges”, the Heron drones have demonstrated their “strategic importance by providing real-time intelligence, supporting targeted acquisitions, and aiding in the neutralization of threats”²⁸⁴.



Figure 4. Training at the Heron TP. The work area of the German training participants at Tel Nof Airbase²⁸⁵.

147. In addition, German and Israeli armament companies collaborate closely on the development and the construction of arms systems. For instance, in 2022, the German company Rheinmetall signed a cooperation agreement for the development, production and marketing of a fully automated 155 mm wheeled howitzer system with the Israeli armament company Elbit Systems, which supplies essential military systems to the Israeli armed forces²⁸⁶. The

²⁸³ Response of the Federal Government to the parliamentary question by members of the Bundestag Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the Bundestag and the BSW group, German military cooperation with Israel and the war in Gaza, doc. 20/12859, 10 September 2024, answers to questions nos. 25, 27 to 35 and 39 (Annex 37). See also below, para. 176.

²⁸⁴ “Introducing the IAI Heron unmanned aerial vehicle (UAS). Playing a strategic role in the Iron Swords War”, The Jerusalem Post, 22 November 2023 (<https://www.jpost.com/israel-news/article-774574>). See also “German Arms Exports to Israel, 2003-2023”, Forensics, p. 8 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensics-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>).

²⁸⁵ Image available at “Die Drohne German Heron TP erhält die deutsche Musterzulassung” [The German Heron TP drone receives German certification], German Armed Forces, 9 December 2022 (<https://www.bundeswehr.de/de/organisation/luftwaffe/aktuelles/die-drohne-german-heron-tp-erhaelt-die-deutsche-musterzulassung-5538042>). The description of the image in German is: “Ausbildung an der Heron TP. Der Arbeitsbereich der Deutschen Lehrgangsteilnehmer auf der Tel Nof Airbase” [Training at the Heron TP. The work area of the German training participants at Tel Nof Airbase].

²⁸⁶ The annual report of Elbit Systems for the year 2024 acknowledges its role in the ongoing war conducted by Israel in the Gaza Strip: “Since the commencement of the war, Elbit Systems has experienced a material increased demand for its products and solutions from the IMOD [Israel’s Ministry of Defense] compared to the demand levels prior to the war. The Company has also increased its support to the IMOD, mainly through deliveries of its various systems and the dedicated efforts of its employees ... During 2024, the Company was awarded contracts by the IMOD totaling over \$5 billion. Subject to further developments, which are difficult to

companies conducted a live fire demonstration of the automated howitzer in March 2023. According to the accounts of both companies, this cooperation involved “[i]ntensive bilateral technology transfer ... increasing the availability of domestic know-how and components”²⁸⁷. A representative of Rheinmetall and Elbit stated in this respect:

“We are proud to present the world with this advanced 155mm artillery system ... The successful demonstration of the automated howitzer highlights the synergies and innovative technologies of the Rheinmetall-Elbit team – a team that is uniquely positioned to supply the armed forces of Germany and other nations with an outstanding new tube artillery capability. We are convinced that this joint German-Israeli project will contribute to strengthening ties between our two nations and their armed forces”²⁸⁸.



Figure 5. Elbit Systems and Rheinmetall Live-Fire Demo of Automated 155mm Self-Propelled Howitzer²⁸⁹.

predict, the IMOD’s increased demand for the Company’s products and solutions may continue and could generate material additional orders to the Company.” The company also acknowledged that its operation and supply chains are sensitive to disruptions, including as a result of “material and component shortages, limitations imposed by some countries on exports to Israel and attacks on some of the Company’s global facilities by anti-Israeli organizations”. See “Annual Report 2024”, Elbit Systems Ltd, p. 36 (<https://www.elbitsystems.com/sites/default/files/2025-03/20032025e.pdf>).

²⁸⁷ “Rheinmetall and Elbit Systems conduct live-fire demonstration of automated 155mm L52 wheeled self-propelled howitzer”, Elbit Systems, Press Release, 17 May 2023 (<https://www.elbitsystems.com/news/rheinmetall-and-elbit-systems-conduct-live-fire-demonstration-automated-155mm-l52-wheeled-self>); “Rheinmetall and Elbit Systems carry out live fire demonstration of wheeled self-propelled howitzer”, Rheinmetall, Press Release, 16 May 2023 (<https://www.rheinmetall.com/en/media/news-watch/news/2023/mai/2023-05-16-rheinmetall-and-elbit-systems-carry-out-live-fire-demonstration-of-wheeled-self-propelled-howitzer>).

²⁸⁸ *Ibid.*

²⁸⁹ Screenshot of video (embedded in “Rheinmetall and Elbit Systems conduct live-fire demonstration of automated 155mm L52 wheeled self-propelled howitzer”, Elbit Systems, Press Release, 17 May 2023 (<https://www.elbitsystems.com/news/rheinmetall-and-elbit-systems-conduct-live-fire-demonstration-automated-155mm-l52-wheeled-self>)).

The Federal Government has not denied that technology transfer or other authorisations relevant to the cooperation between Rheinmetall and Elbit have been granted. More detailed information was not made accessible to the public. It exists but is classified as confidential²⁹⁰. Such continued cooperation and supply of artillery systems confirms Germany's failure to comply with its international obligations to respect and to ensure respect for international humanitarian law, to not aid or assist Israel's unlawful presence in the Occupied Palestinian Territory, and its obligation to prevent genocide²⁹¹.

148. The German company Lufthansa has also announced that it will work with Elbit Systems for the maintenance and delivery of Israeli Drones to the German Navy²⁹².

149. The cooperation between Germany and Israel in military matters is not limited to arms export, import or collaboration in the armament industry. It is accompanied and complemented by cooperation in the area of training for the armed forces and regular exchange of information.

150. Between 1984 and 2014, 493 Israeli officers, officer cadets and other soldiers took part in training programmes run by the German armed forces; 254 German soldiers participated in corresponding programmes offered by the Israeli armed forces during the same period²⁹³. This cooperation was formalised in 2008 by an Agreement on mutual training between Israel and the Federal Republic of Germany (*Vereinbarung über gegenseitige Ausbildung zwischen Israel und der Bundesrepublik Deutschland*)²⁹⁴. In 2020, the Israeli Air Force conducted its first

²⁹⁰ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answers to question no. 39 (Annex 37). See also para. 176 below.

²⁹¹ See Chapter 4 below.

²⁹² "Lufthansa Technik to work with Israel's Elbit on military drones", Reuters, 6 May 2024 (<https://www.reuters.com/business/aerospace-defense/lufthansa-technik-work-with-israels-elbit-military-drones-2024-05-06/>).

²⁹³ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Christine Buchholz, Jan van Aken, Annette Groth, other members of the *Bundestag* and the parliamentary group DIE LINKE, 9 October 2014, doc. 18/2787 (<https://dserver.bundestag.de/btd/18/027/1802787.pdf>), answers to questions nos 8-10 (Annex 6). The Federal Government did not disclose further information about these trainings, relying on the provisions of the 2008 Agreement on mutual training between Israel and the Federal Republic of Germany according to which, in the opinion of the Federal Government, "information about training and exercises is subject to confidentiality agreements".

²⁹⁴ *Ibid.*, Preliminary Observation.

joint training with their German counterparts in German airspace²⁹⁵. In 2021, members of the German Air Force participated in a ten-day drone training exercise in Israel²⁹⁶.

151. The German and Israeli armed forces have also created strong links through exchanges of information and discussions at regular meetings of the Army General Staff. According to the information provided by the German Government, this included information and exchanges on the situation in the region, including, for instance, information concerning the 2008-2009 military offensive in the Gaza Strip²⁹⁷.

152. Germany also contributes financially, and in significant amounts, to the purchase of military equipment by Israel. Between 2012 and 2023, Germany offered 295 million Euro as “Contribution to the procurement of defence systems for Israel” (*Beitrag zur Beschaffung von Verteidigungssystemen für Israel*)²⁹⁸. The German budget for 2024 included commitments under the same position until 2031 in the total amount of 495 million Euro. The German Government confirmed that these sums and commitments “relate to a contribution to the purchase of defence systems for Israel, which is not repayable”²⁹⁹.

153. Israel’s interests appear to have a significant influence over Germany’s decisions concerning military cooperation and arms exports to third countries. It has been revealed that

²⁹⁵ “Israeli Air Force conducts first joint military exercise in Germany”, Airforce Technology, 21 August 2020 (<https://www.airforce-technology.com/news/israeli-air-force-joint-military-exercise-germany/>).

²⁹⁶ “Joint exercise in Israel: German Luftwaffe take part in training with armed drones for the first time”, 7 October 2021 (<https://digit.site36.net/2021/10/07/joint-exercise-in-israel-german-luftwaffe-take-part-in-training-with-armed-drones-for-the-first-time/>).

²⁹⁷ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Christine Buchholz, Jan van Aken, Annette Groth, other members of the *Bundestag* and the parliamentary group DIE LINKE, 9 October 2014, doc. 18/2787 (<https://dserver.bundestag.de/btd/18/027/1802787.pdf>), answers to questions nos 13 and 14 (Annex 6).

²⁹⁸ See Accounts for the Budget of Section 60 – General Financial Administration – for the financial years 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023 (<https://www.bundeshaushalt.de/static/daten/2012/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2013/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2014/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2015/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2016/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2017/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2018/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2019/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2020/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2021/ist/epl60.pdf>, <https://www.bundeshaushalt.de/static/daten/2022/ist/epl60.pdf> and <https://www.bundeshaushalt.de/static/daten/2023/ist/epl60.pdf>). According to data presented in a parliamentary question to the Federal Government, the expenditures earmarked for the period 2006 to 2027 and beyond amount to approximately 1 billion Euro. See Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answer to question no. 3 (Annex 37).

²⁹⁹ *Ibid.*

when the Federal Security Council (*Bundessicherheitsrat*) modified the political guidelines for arms exports in 1982 – against the background of a request from Saudi Arabia for German tanks – a note to the protocol was included in the following terms:

“Federal Minister Genscher would like it to be recorded that, in weighing up our overall interests, the historical responsibility of the Germans towards the Jewish people will also be taken into account. The Federal Chancellor expressly notes general agreement on this point”³⁰⁰.

This political understanding or “Israel clause” is astonishing given that, according to the Political Principles of the Federal Government for the export of war weapons and other military equipment in their current version, “[i]n accordance with the principle of case-by-case examination, the Federal Government will not grant blanket privileges to individual countries or regions”³⁰¹.

3. Germany’s Political Backing and Shielding of Israel

154. Germany does not only aligns its own policy with Israel’s interests and security; it also shields Israel from any criticism, irrespective of the great number of reports and calls from international organisations, human rights bodies and Special Rapporteurs, or non-governmental organisations, particularly in respect of the military assault on the Gaza Strip. At the end of October 2023, the German Chancellor considered:

“Israel is a democratic State guided by very humanitarian principles. And that is why we can be sure that the Israeli army will also observe the rules of international law in its actions. I have no doubt about that”³⁰².

155. The coalition agreement between the political parties forming the Federal Government specifically mandated and obliged Germany to take a stance and action in respect of mounting accusations against Israel:

³⁰⁰ Quoted by H. Leber, “Rüstungsexporte und Holocaust-Erinnerung” [Arms exports and Holocaust remembrance], *Vierteljahrshefte für Zeitgeschichte*, 2020, vol. 68, pp. 338-339 (Annex 11).

³⁰¹ Political Principles of the Federal Government for the export of war weapons and other military equipment, 26 June 2019, point III.1 (Annex 10). Nicaragua notes that the text reproduced by Germany in its Judges’ Folder of 9 April 2024 (tab 15) omits this part of point III.1.

³⁰² “Mühsames Ringen um eine gemeinsame Haltung” [Arduous negotiations to reach a common position], *Tagesschau*, 26 October 2023 (Annex 18). See also Government Press Conference of 1 November 2023, Federal Government (Annex 20).

“We strongly oppose attempts to condemn Israel on anti-Semitic grounds, including in the United Nations”³⁰³.

156. This strong stance of German authorities to defend Israel and to oppose any attempt to condemn Israel’s actions and policies in the Occupied Palestinian Territory not only has tangible effects on the international or multilateral level³⁰⁴, but is also visible within Germany itself and operates to foster Israel’s unlawful presence in the Occupied Palestinian Territory and the denial of inalienable rights of the Palestinian people to self-determination. As noted by the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the conflict in Gaza has significantly expanded the scope and the gravity of state practice in suppressing protests, advocacy and critical expression against Israel³⁰⁵. She noted with respect to Germany:

“In Germany, the response was among the toughest, imposing a blanket ban on all demonstrations in support of Palestinian people from 7 to 21 October 2023, and pre-emptively banning several such gatherings and explaining its action was to prevent ‘public celebration of the Hamas terrorist attacks’”³⁰⁶.

157. The blanket ban³⁰⁷ of critique of Israeli practices and policies within Germany forms part of the broader policy of alignment with Israel. In this context, Germany’s blanket ban shields the Israeli regime from international accountability.

³⁰³ “Mehr Fortschritt Wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit” [Dare to make more progress. An alliance for freedom, justice and sustainability], Coalition Agreement 2021-2025 between SPD, Bündnis 90/Die Grünen and FDP, 7 December 2021, p. 123 (Annex 13).

³⁰⁴ See, for instance, on Germany’s position in respect of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, “Wadephul blockiert Sanktionen gegen Israel” [Wadephul blocks sanctions against Israel], *Süddeutsche Zeitung*, 23 June 2025 (Annex 74).

³⁰⁵ United Nations, General Assembly, Global threats to freedom of expression arising from the conflict in Gaza, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan, A/79/319, 23 August 2024, para. 32.

³⁰⁶ *Ibid.*, para. 33.

³⁰⁷ See, for example, “2024 Rule of Law Report Country Chapter on the rule of law situation in Germany”, European Commission, 2024, p. 29 (https://commission.europa.eu/document/download/3d1a2f80-5989-4364-a9e6-d925d4a1c900_en?filename=161_58059_coun_chap_germany_en.pdf); “The Index of Repression”, Forensic Architecture (<https://forensic-architecture.org/investigation/the-index-of-repression>); “World Report 2025 Events of 2024”, Human Rights Watch, 2025, p. 182 ([https://www.hrw.org/sites/default/files/media_2025/01/World Report 2025.pdf](https://www.hrw.org/sites/default/files/media_2025/01/World%20Report%2025.pdf)); “German court fines woman for ‘from the river to the sea’ chant”, *Al Jazeera*, 6 August 2024 (<https://www.aljazeera.com/news/2024/8/6/german-court-fines-woman-for-from-the-river-to-the-sea-chant>); R. Brockhaus *et al.*, “Zwischen Fluss, Meer und Strafbefehl” [Between river, sea and summary penalty orders], *Verfassungsblog*, 26 March 2024 (Annex 25); “The State of the World’s Human Rights”, Amnesty International, April 2025, p. 179 (<https://www.amnesty.org/en/wp-content/uploads/2025/04/WBPOL1085152025ENGLISH.pdf>). “‘From the river to the sea’. Ist die Parole zwangsläufig strafbar?” [‘From the river to the sea’. Is the slogan necessarily punishable?], *Tagesschau*, 1 July 2024 (Annex 33); “Einschränkung der Versammlungsfreiheit in Deutschland: ‘Jetzt ist der Moment, um

158. Even after the Federal Chancellor, Friedrich Merz, and the Federal Minister for Foreign Affairs, Johann Wadephul, voiced criticism in respect of the actions of the Israeli military³⁰⁸, Germany is not changing its position, in particular in respect of the delivery of arms to Israel³⁰⁹. In a response to a question asked by a member of the German *Bundestag* on whether the Federal Government is reconsidering its position on the export of military equipment to Israel in light of the “brutality” of its military campaign in the Gaza Strip, the Federal Government simply referred to its previous stance and acknowledged that “[d]ecisions on arms exports to Israel also take into account Germany’s special political responsibility for the existence and security of the State of Israel”³¹⁰. Even if this may be the reason for the discrepancy between the limited statements of concern and the fact of the continued export of weapons, Germany’s “special” relationship with Israel does not relieve it of its obligations under international law. Export authorisations continue to be granted to this day³¹¹, and Germany releases less and less detailed information on these exports³¹².

159. German support for the facilitating the maintenance of Israel’s occupation takes many forms: Military, political, diplomatic, cultural, economic as outlined below.

aktiv zu werden” [Restrictions on freedom of assembly in Germany: ‘Now is the moment to take action’], Amnesty International, 13 November 2024 (Annex 46); “Germany’s Muddle on Antisemitism: New Parliamentary Resolution Threatens Human Rights”, Human Rights Watch, 11 November 2024 (<https://www.hrw.org/news/2024/11/11/germanys-muddle-antisemitism>); “German university cancels event featuring UN Special Rapporteur on Palestine”, Middle East Monitor, 13 February 2025 (<https://www.middleeastmonitor.com/20250213-german-university-cancels-event-featuring-un-special-rapporteur-on-palestine/>); “Controversial UN rapporteur Albanese speaks of restrictions on academic freedom”, *Spiegel*, 19 February 2025 (Annex 55).

³⁰⁸ re:publica 25: Friedrich Merz – Kriege, Krisen, Kanzlerschaft [Wars, crises, chancellorship], WDR Europaforum, 26 May 2025 (Annex 64); “WDR Europaforum: Kanzler Merz kritisiert Israels Vorgehen in Gaza” [WDR Europaforum: Chancellor Merz criticizes Israel’s approach in Gaza], WDR, 26 May 2025 (Annex 65); Interview with Federal Foreign Minister, Johann Wadephul, in the *Süddeutsche Zeitung*, published on 30 May 2025, available at the official website of the Federal Foreign Office (<https://www.auswaertiges-amt.de/en/newsroom/news/2720264-2720264>).

³⁰⁹ See *ibid.* See also German *Bundestag*, Plenary protocol 21/9, 4 June 2025, p. 659 (Annex 68).

³¹⁰ German *Bundestag*, Written questions with answers received from the Federal Government in the week of 22 April 2025, doc. 21/69, 25 April 2025, answer to question no. 5 (Annex 60).

³¹¹ See also para. 210 below.

³¹² See para. 172 below.

III. Germany's Delivery of Arms and of Military Equipment Used in the Gaza Strip and Elsewhere in the Occupied Palestinian Territory

160. Germany has been for decades Israel's second most important source of arms and military equipment³¹³. Exports of military equipment from Germany, or of equipment, technology, and knowhow by German companies, including through third States, have equipped and supported the Israeli armed forces and thus been used to enable the maintenance of Israel's unlawful presence in the Occupied Palestinian Territory and the violation of the fundamental rights of Palestinians before and after 7 October 2023.

161. Nicaragua has already informed the Court about the difficulties of accessing information and data capable of showing the entire scope of Germany's military cooperation with Israel³¹⁴. This situation has not changed since the hearings on provisional measures; instead, it has become increasingly difficult to establish a full and detailed picture of Germany's export licences practice (A). Germany's allegations concerning the "robustness" of its legal procedures and requirements concerning export licences have, again, proven to be at best exaggerated, if not false (C).

162. Indeed, despite the deteriorating situation in the Gaza Strip and other parts of the Occupied Palestinian Territory, and irrespective of concerns voiced by German authorities, the data available demonstrates that Germany continues to authorise the export, delivery, and transport of military equipment until this day. The data also shows that these authorisations did not cover only material "of a subordinate or defensive nature"³¹⁵ – as Germany made the Court believe³¹⁶. Whatever artificial distinction put forward by Germany, all transfer of arms to the Israeli occupying power amounts to aid and assistance in maintaining Israel's unlawful presence in the Occupied Palestinian Territory. Germany continuously delivered weapons and essential parts of weapon systems that are used to maintain Israel's presence in the Occupied Palestinian Territory and to deprive the Palestinian people of their fundamental rights (B).

³¹³ See para. 141 above.

³¹⁴ Letter from Nicaragua to the Registrar, no. HOL-NIC-518-2024, 21 October 2024.

³¹⁵ CR 2024/16, p. 17, para. 14 (Tams).

³¹⁶ Order of 30 April 2024, paras. 17-18.

A. INHERENT LIMITS AND DIFFICULTIES TO ACCESS TIMELY, ACCURATE,
DETAILED, AND COMPLETE DATA

163. Nicaragua experiences the utmost difficulties in accessing timely, accurate, detailed and complete information concerning the scope and the nature of military equipment exported by Germany or by German companies directly or indirectly to Israel.

164. The information publicly available and published or provided by the Federal Government contains only aggregate and generic data. Detailed information is often not revealed or only disclosed after significant delay.

1. Delay in the Publication of Data

165. For instance, the Report by the Federal Government on its export policy for conventional arms for the year 2023 was published and made available only in December 2024³¹⁷. No report for the year 2024 is currently available. Only a partial less detailed report covering the first half of the year 2024 was published recently on 11 June 2025³¹⁸. It is therefore difficult to access actual data in a timely manner. The only source of information for such data are the responses of the Federal Government to requests for information made by members of the German *Bundestag*, which often remain limited, due to the specific nature of the questions asked, as well as the limited and frequently incomplete responses provided. As a matter of principle, the Federal Government only informs the German *Bundestag* (and the general public) of final decisions granting export licences³¹⁹. This means, information is only available *ex post* and with significant delay, jeopardizing any meaningful control of planned or imminent exports³²⁰.

³¹⁷ Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im Jahre 2023 [Report by the Federal Government on its export policy for conventional arms in 2023] (*Rüstungsexportbericht 2023*), 16 December 2024 (Annex 50).

³¹⁸ Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2024 [Report by the Federal Government on its export policy for conventional arms in the first half of 2024], 11 June 2025 (Annex 71).

³¹⁹ See also Geschäftsordnung des Bundessicherheitsrat [Rules of the Federal Security Council], 13 August 2015 (<https://dserver.bundestag.de/btd/18/057/1805773.pdf>), Sect. 8: “The Federal Government shall inform the German Bundestag of final decision on authorisations that have been referred to the Federal Security Council. This information shall generally be provided in writing and shall include the type and number of goods authorised, the recipient country, the German companies involved and the total volume of the transaction, unless publication is precluded in individual cases by constitutionally protected interests. A subsequent oral explanation may be provided on the basis of individual considerations. Confidentiality pursuant to Section 1 (2) sentence 4 shall not apply in this respect”.

³²⁰ See also para. 258 below.

2. *The Data Available is Limited and Represents only an Incomplete Account of the Cooperation between Germany and Israel in Respect of Military Equipment*

166. The data provided by Germany are limited to licences of the export of military equipment granted by the Federal Government or its agencies. Germany does not provide data on the actual exports of military equipment from Germany to Israel, or on exports of military equipment delivered to Israel by German companies through third States. The quantity and value of military equipment for which export licences were granted can therefore provide only a limited picture of the actual support by Germany to Israel.

167. In respect of collective licences (*Sammelausfuhrgenehmigungen*) which authorise a large number of exports or transfers to different receiving countries and end users in different countries for a specified total value or quantity, it is impossible to determine the specific military equipment or the value of such equipment that will be made available to Israel³²¹. For instance, according to the data made available by Germany for the year 2023, five collective licences which include Israel as one of the receiving countries were granted with a combined value of 205.5 million Euro. For the year 2022, ten such collective licences were granted with a combined value of 138 million Euro. Given that such collective licences are also used to authorise cooperation and the export of parts or spare parts of military equipment, often spanning several years, as well as the delivery of military equipment on a Government-to-Government basis (so-called *Länderabgaben*, i.e., deliveries from German authorities or the German armed forces)³²², the shortcomings in the available data are critical.

168. In respect of arms that fall under the War Weapons Control Act (*Kriegswaffenkontrollgesetz*)³²³, the reports published by the Federal Government are said to contain data for the actual export – rather than only export licences granted – in a given year. The data should contain not only commercial exports, but also exports from Government resources. However,

³²¹ The Federal Government confirmed this shortcoming in a response to questions asked by member of the German *Bundestag*: “It is not possible to provide the total value for collective export licences for Israel as the final recipient country for the period covered by the question, as collective export licences allow for a large number of exports or transfers to different recipients, who may be located in several countries.” (Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/11838, 13 June 2024, answer to questions nos. 22 and 23 (Annex 30)).

³²² See Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/14661, 24 January 2025, answer to question no. 33 (Annex 53).

³²³ See also para. 250 below.

since 2019, no data on actual exports of arms falling under the War Weapons Act has been made available in respect for Israel³²⁴. The 2023 Report, as similar reports before it, contains simply an asterisk with the note referring to trade and business secrets³²⁵.

169. In light of all these circumstances, the data actually provided by Germany must be treated with caution and can only be seen as representing a fraction of German actions or inaction. The actual cooperation between Germany and Israel is very likely to be more important, in terms of volume, nature and value, than suggested by the available data on individual export licences for military equipment.

3. The Data Available Lacks Detail and Granularity

170. Moreover, in light of the limitations established by the German Constitutional Court, the data published and accessible often lacks details and granularity. For instance, Germany does not provide detailed information about the identification, nature, price, or number of items for which export licences were granted. Rather, it publishes aggregate data on the overall number of individual licences (*Einzelausfuhrlicenzen*) granted, the overall value of the licences, and, in some circumstances, a breakdown into the different categories of military equipment set out in Germany's Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*) under which the items fall³²⁶. These categories often remain very generic and are likely to encompass a great number of materials, making it particularly difficult to assess for what specific military equipment Germany granted export licences.

171. Germany itself seems to have “difficulties” handling its own statistics. For instance, during the oral hearing on the provisional measures requested by Nicaragua, counsel for Germany alleged that the export licences granted on 10 November 2023 and on 5 February 2024 concerned 500,000 and 1,000 pieces of “training ammunition”³²⁷. However,

³²⁴ It is however clear that this data exists. See para. 176 below.

³²⁵ The note reads: “It cannot be ruled out that the individual details listed here could be used to re-identify the companies concerned. In accordance with the provisions of the Federal Statistics Act, publication is therefore not permitted in order to protect trade and business secrets”. See *Rüstungsexportbericht 2023*, *op. cit.* note 317, p. 128

³²⁶ See also para. 249 below.

³²⁷ CR 2024/16, 9 April 2024, p. 21, para. 30 (Tams). See also Germany's Judges' Folder, 9 April 2024, tab 19. The document in Germany's Judges Folder used the term “Practice ammunition”.

the 2023 Report³²⁸ and the report for the first half of 2024³²⁹, recorded these licences as relating to “rifle ammunition” under the Export List category A0003 dedicated to “ammunition and fuze setting devices”³³⁰. Neither the reports nor information previously made available³³¹ specified that this ammunition was suitable for training purposes only. The mere fact that Germany also considered it necessary to grant a separate licence for this ammunition under the War Weapons Control Act, which applies to “weapons intended for warfare”³³² raises doubts about the arguments made by Germany in April 2024.

172. Although the Federal Government has previously provided at least the value of items broken down according to the different categories³³³, this limited and generic information has been curtailed since the beginning of this year. For instance, in its response of 26 May 2025 to a question asked by members of the German *Bundestag*, the Federal Government limited itself to providing the overall value of the licences of exports of military equipment granted to Israel³³⁴. Albeit specifically asked to do so, the Government declined to provide any breakdown of this value into the specific categories of military equipment concerned. The Federal

³²⁸ *Rüstungsexportbericht 2023*, *op. cit.* note 317, p. 38 (Table H).

³²⁹ Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2024 [Report by the Federal Government on its export policy for conventional arms in the first half of 2024], 11 June 2025, p. 19 (Annex 71).

³³⁰ According to a note included in the Export List (*Ausfuhrliste*), and also in the Munitions List of the Wassenaar Arrangement (see also note 496 below), ammunition not suitable for combat operations is not included in this category: “[Sub-item 0003a] does not apply to any of the following: (a) Ammunition crimped without a projectile (blank star); (b) Dummy ammunition with a pierced powder chamber; (c) Other blank and dummy ammunition, not incorporating components designed for live ammunition; or (d) Components specially designed for blank or dummy ammunition, specified in this Note ...”.

³³¹ Written questions to the Federal Government in December 2023, Question no. 12/531, 9 January 2024 (Application, Annex 7).

³³² Ausführungsgesetz zu Artikel 26 Abs. 2 des Grundgesetzes (*Kriegswaffenkontrollgesetz*) [Act Implementing Article 26 (2) of the Basic Law (War Weapons Control Act)], as promulgated in 1990, and amended, Sect. 1 (1). An English version of the law, as published by the Federal Government (https://www.bafa.de/SharedDocs/Downloads/EN/Foreign_Trade/afk_war_weapons_control_act.pdf).

³³³ See, e.g., Written questions with answers received from the Federal Government in the period between 23 December 2024 and 3 January 2025, doc. 20/14393, 3 January 2025, answer to question no. 5 (Annex 51).

³³⁴ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Nicole Gohlke, Lea Reisner, Ulrich Thoden, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/284, 26 May 2025, answer to question no. 6 (Annex 63). See also Written questions with the answers received from the Federal Government in the week of 3 February 2025, doc. 20/14894, 7 February 2025, answer to question no. 7 (Annex 54); Written questions with the answers received from the Federal Government in the period from 17 March 2025 to 25 March 2025, doc. 20/15135, 21 March 2025, answer to question no. 8 (Annex 58); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Nicole Gohlke, Doris Achelwilm, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/843, 10 July 2025, answer to question no. 2 (Annex 74).

Government explained that, in its opinion, it is entitled to refuse to provide information on grounds of national security. And it continued:

“This is the case if, as here, the information would provide concrete insights into the recipient country’s [*i.e.*, Israel’s] current needs, as this could have negative effects on the foreign policy relations of the Federal Republic of Germany”³³⁵.

173. This makes the actual evaluation of the limited evidence even more difficult.

4. Data in Germany’s Possession is Being Withheld

174. Germany’s annual reports on its export licences practice concerning military equipment claim to provide:

“the German *Bundestag* and the public with a comprehensive overview of German arms export policy, including in an international context, and provides information on the licences granted for the export of military equipment and the actual exports of war weapons in the past reporting year. With its regularly published arms export reports, the Federal Government makes an important contribution to an objective and informed debate on the subject of arms exports”³³⁶.

175. Before the Court, Germany also contended that data on licencing decisions is neither confidential nor secret³³⁷. However, the information actually provided is not only incomplete, it is lacking in detail. It is also apparent that Germany is in the possession of other, more detailed information that the Federal Government does not share with the general public, or even with the German *Bundestag*.

176. Nicaragua has already drawn the Court’s attention to the fact that in a number of instances, the Federal Government is in the possession of detailed information concerning arms and military equipment exported or made available to Israel or on similar facts³³⁸. This is apparent from its responses to questions asked by members of the German *Bundestag*. In these

³³⁵ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Nicole Gohlke, Lea Reisner, Ulrich Thoden, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/284, 26 May 2025, answer to question no. 6 (Annex 63). See also Written questions with the answers received from the Federal Government in the week of 3 February 2025, doc. 20/14894, 7 February 2025, answer to question no. 7 (Annex 54); Written questions with the answers received from the Federal Government in the period from 17 March 2025 to 25 March 2025, doc. 20/15135, 21 March 2025, answer to question no. 8 (Annex 58); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Nicole Gohlke, Doris Achelwilm, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/843, 10 July 2025, answer to question no. 2 (Annex 74).

³³⁶ *Rüstungsexportbericht 2023*, *op. cit.* note 317, p. 6.

³³⁷ CR 2024/16, 9 April 2024, p. 40, para. 35 (Peters).

³³⁸ See Letter from Nicaragua to the Registrar, no. HOL-NIC-518-2024, 21 October 2024, para. 9.

responses, the Federal Government has not only conceded that it is in the possession of such information, but has also made this information available to the members of the German *Bundestag*. The information is designated as “Classified – For official use only” (“*VS – Nur für den Dienstgebrauch*”). The attachments containing such information are not available as part of the publicly accessible documents of the German *Bundestag*. This classified information concerns, for instance:

- data concerning the actual exports of arms and equipment falling under the provisions of the German War Weapons Control Act for the years 2019, 2020, 2021, 2022, and 2023³³⁹ (information that is undisclosed in the relevant reports of the Federal Governments for these years³⁴⁰);
- information concerning the type of the 3,000 anti-tank weapons for which Germany granted an export licence on 1 November 2023³⁴¹. The Federal Government explained that:

“The open communication of details about the equipment of the armed forces of the recipient country would, particularly in the current situation, impair its legitimate security interests, so that negative effects on its relations with the Federal Republic of Germany would be likely”³⁴².
- information on arms deliveries to Israel from the material of the German Armed Forces in 2023 and 2024³⁴³;
- information on whether Heron TP drones provided by Germany to Israel³⁴⁴ are being used by the Israeli armed forces in the Gaza Strip, to what extent there is a risk that they are

³³⁹ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/10994, 10 April 2024, answer to questions 8-9 (Annex 26).

³⁴⁰ See para. 167 above.

³⁴¹ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/11838, 13 June 2024, answer to questions nos. 9 and 10 (Annex 30).

³⁴² *Ibid.*

³⁴³ *Ibid.*, answer to questions nos. 24 and 25.

³⁴⁴ See also para. 146 above.

used in the Gaza Strip, and on the particulars of the contractual arrangements concerning the drones³⁴⁵;

- information on Germany’s financial participation³⁴⁶ for the purchase of submarines by Israel³⁴⁷;
- information on holders of licences for the export of military equipment to Israel³⁴⁸.

177. The fact that Germany is withholding information has also been confirmed specifically in respect of *Länderabgaben*, i.e., export of equipment from the stock of the German armed forces. Germany acknowledged that, in 2023³⁴⁹, the German armed forces supplied material directly to Israel. During the oral hearings on provisional measures, it pointed out that “the only items directly supplied from the German Bundeswehr (armed forces) to Israel are sanitary material and helmets”³⁵⁰, without providing any particulars³⁵¹. The Administrative Tribunal (*Verwaltungsgericht*) of Cologne conceded recently, in a decision concerning a request for information on Germany’s *Länderabgaben* to Israel by representatives of the press, that such transfers took place³⁵². The Administrative Tribunal further noted in its decision:

“In its written submissions ... the Respondent [*i.e.*, the Federal Government] stated that information on *Länderabgaben*, as on specific export licensing procedures, was treated as confidential as a matter of principle, as it constituted a further instrument of direct State support and a form of cooperation based on bilateral agreements to which the Federal Government was bound. The relevant transfer agreements routinely contained a contractual provision on ‘confidentiality and secrecy’ in which both sides agreed to maintain confidentiality and secrecy vis-à-vis the public regarding the content of the agreement. The confidentiality agreement referred to the entire content of the agreement and therefore also covered the information

³⁴⁵ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answer to questions nos. 25-35 (Annex 37).

³⁴⁶ See also para. 142 above.

³⁴⁷ Written questions with answers received from the Federal Government in the week of 29 January 2024, doc. 20/10233, 2 February 2024, answer to question no. 57 (Annex 23).

³⁴⁸ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/14661, 24 January 2025, answer to question nos. 20-21 (Annex 53).

³⁴⁹ According to the Federal Government, in 2024, no transfer of material of the German armed forces to Israel occurred. (*Ibid.*, response to question no. 34).

³⁵⁰ CR 2024/16, 9 April 2024, p. 21, para. 28 (Tams).

³⁵¹ See Germany’s Judges Folder, 9 April 2024, tab 19.

³⁵² Administrative Tribunal Cologne, decision of 26 May 2025, 6 L 2205/24, MN 30 (Annex 66).

sought by the applicant as to whether and to what extent transfers from Bundeswehr stocks had taken place ... [I]n the case of *Länderabgaben*, it is not only the transfer of military equipment and the associated equipping of the armed forces of the partner state that is important, but also the specific political context in which the respective cooperation is embedded. A wide variety of political, military and economic aspects, such as the nature and level of the consideration provided in return, play a role here, which could justify not making these transactions available to the general public and classifying them as confidential in accordance with the confidentiality clause.

Unlike with Ukraine, for example, with which the Federal Government had agreed on open communication, such an agreement stipulating confidentiality also existed with Israel. The comprehensive confidentiality agreement between Israel and the Federal Republic of Germany applied without exception to all aspects of possible transfers of property and thus also to the amount of the value. A decision in favour of the Applicant would ultimately mean that the Federal Government would be obliged to disclose information contrary to the agreement. ... Israel could interpret this as a lack of consideration for its security interests, which would complicate future cooperation involving mutual obligations, but also other aspects of bilateral cooperation”³⁵³.

This decision confirms that, at least under German law and regulations, information on *Länderabgaben* is unlikely to be accessible and identifiable in the data made available to the public or to the member of the German *Bundestag*.

178. Interestingly, the Administrative Tribunal added, in respect of the statement made by Germany before the Court, that:

*“the Respondent has also not provided any information on the extent of the German Armed Forces’ transfers to Israel in the other contexts cited by the Applicant, such as in the proceedings before the International Court of Justice ... so that there are no serious doubts as to the validity of the confidentiality agreement. According to the Respondent, the statement made in the proceedings before the International Court of Justice that the only goods supplied directly by the German Armed Forces to Israel were medical supplies and helmets ... was made in agreement with the State of Israel.”*³⁵⁴

In other words, Germany revealed to the Court only information with and to the extent agreed with Israel. It is highly concerning that Germany’s “sincere effort to provide information that will enable the Court to soundly administer justice in the present proceedings”³⁵⁵ is limited by and subject to the agreement of Israel.

³⁵³ *Ibid.*, MN 40-41.

³⁵⁴ *Ibid.*, MN 42-44 (emphasis added).

³⁵⁵ Letter from the Agent of Germany, Ms von UsLAR-Gleichen, to the Registrar, 31 October 2024, para. 4. See also CR 2024/16, 9 April 2024, p. 18, para. 18 (Tams).

179. In a non-insignificant change of position to Germany's explanation in April 2024 before the Court³⁵⁶, the Respondent confirmed in its letter to the Court dated 31 October 2024 that:

“details about decisions on the granting of licences for the export of military equipment are classified under German national legislation, as they pertain to issues of national security. Neither the general public, nor for that matter Nicaragua, can claim a right to detailed information about specific cases”³⁵⁷.

180. This does not, however, mean that, as a party to proceedings before the Court, Germany is entitled to refuse to provide for the Court's scrutiny – and, in light of procedural equality, to the other party – information and evidence related to the factual issues raised³⁵⁸. As the Court held, “[w]hile the burden of proof rests in principle on the party which alleges a fact, this does not relieve the other party of its duty to co-operate ‘in the provision of such evidence as may be in its possession that could assist the Court in resolving the dispute submitted to it’”³⁵⁹. It is certainly not enough to simply assert that the evidence produced by the applicant is wrong; and it is not enough, as Germany did, to produce its figures and explanations without any evidence in support³⁶⁰. This holds true in particular in respect of information that is incomplete on account of arrangement or agreements with a third State. In addition, whatever the status of documents or information might be under German legislation, or whatever limits the German Constitutional Court has set in respect of the right of the German *Bundestag* to be informed about export licences for military equipment and arms³⁶¹, they have no bearing before this Court.

³⁵⁶ See para. 175 above.

³⁵⁷ Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 3.

³⁵⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 71, para. 163. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 73, para. 173.

³⁵⁹ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, I.C.J. Reports 2024, p. 63, para. 169, citing *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 71, para. 163.

³⁶⁰ See, in particular, Germany's Judges Folder, tab 19. This document simply explains that “[d]ata and information contained in this document has been provided by the Federal Ministry for Economic Affairs and Climate Action, Division E C 4-G (General issues of procedures of export controls for military equipment) and Division E C 6 (War weapons control, special export control procedures), and by the Federal Office for Economic Affairs and Export Control, Division 221, on behalf of the Federal Government”.

³⁶¹ See, in this respect, German Federal Constitutional Court [*Bundesverfassungsgericht*], Judgment of 21 October 2014, 2 BvE 5/11, MN 137 ff. (https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/10/es20141021_2bve000511en.html).

181. Nicaragua also notes that it made a genuine request in order to obtain, through the office of the Court and in accordance with its Rules of Court, detailed explanations and access to documents that, albeit classified, exist³⁶². Germany did not accede to that request³⁶³. It is therefore ill-placed to allege that:

“Not once has Nicaragua sought information – or even an exchange of views – with the German Government. Indeed, it has rushed to bring this case to the Court on the basis of the flimsiest of evidence”³⁶⁴.

182. Nicaragua has no other option than to rely on publicly available data made available by Germany to the general public, despite the many shortcomings attached to this information. It reserves its right to make further requests to the Court, in accordance with the Rules of Procedure, if Germany is willing to produce documents and information which are undoubtedly in its possession and which are likely to contribute to the sound administration of justice in the present proceedings.

B. LICENCES FOR THE EXPORT OF MILITARY EQUIPMENT GRANTED BY GERMANY, IN PARTICULAR SINCE 7 OCTOBER 2023

183. In April 2024, during the oral hearings on provisional measures, Germany repeatedly and steadfastly asserted that, while a large number of licences for the export of military equipment were granted following the events of 7 October 2023, the number or volume of licences had been declining significantly³⁶⁵. It further asserted that this constituted sufficient evidence that the German legal framework for the export of military exports was robust and that the stringent conditions set out therein were a sufficient safeguard to avoid any imminent risk of aggravation of the situation³⁶⁶.

184. Even the little and incomplete data available shows that the facts are very different. Although the situation in the Gaza Strip and in other parts of the Occupied Palestinian Territory steadily deteriorated, Germany granted licences for the export of military equipment and has

³⁶² Letter from Nicaragua to the Registrar, no. HOL-NIC-518-2024, 21 October 2024.

³⁶³ Letter from the Agent of Germany, Ms von Usler-Gleichen, to the Registrar, 31 October 2024.

³⁶⁴ CR 2024/16, p. 12, para. 26 (von Usler-Gleichen).

³⁶⁵ CR 2024/16, p. 20, paras. 23-26 (Tams).

³⁶⁶ CR 2024/16, 9 April 2024, p. 46, paras. 22-23 (Palchetti). The then-Federal Minister for Foreign Affairs took a similar position in September 2024. See “German policy on Israel”, *Lage der Nation*, No. 397, Podcast, Interview with Annalena Baerbock, Federal Minister for Foreign Affairs, 11 September 2024 (Annex 38).

continued to do so since April 2024 – indeed, immediately after the oral hearings of 8 and 9 April 2024 and before the Court rendered its Order on 30 April 2024³⁶⁷ as well as after the Court’s Advisory Opinion noting third States’ obligations “not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory³⁶⁸. The data made available by Germany – and other sources – confirms not only that Germany continuously granted licences for the export of military equipment ever since 7 October 2024 (2), but also that – however irrelevant the distinction – these licences and exports did not concern only equipment of “a subordinate or defensive nature”³⁶⁹ or “protective gear such as helmets or body protection plates”³⁷⁰ or “flak jackets”³⁷¹, but military equipment and parts that are nothing else than weapons used against the Palestinian people and civilian infrastructure in the Gaza Strip and other parts of the Occupied Palestinian Territory (3).

185. What is more, Germany’s highest representatives confirmed that Germany did and will export arms to Israel (1) and that the items exported or for which licences were granted include parts for the use and construction of weapons of war³⁷².

186. This in itself demonstrates that the “robust” legal framework – whatever its relevance for establishing Germany’s compliance with its international obligations – has failed or is indeed not as “robust” as Germany claims.

1. Germany’s Highest Representatives Confirmed that Military Equipment and Arms Were, Are, and Will Be Exported to Israel

187. Nicaragua already drew the attention of the Court to statements of members of the Federal Government concerning exports of arms to Israel in October 2024³⁷³.

188. Indeed, not even three months after the Court issued its Order of 30 April 2024 and reminded “all States of their international obligations relating to the transfer of arms to parties

³⁶⁷ See para. 200 below.

³⁶⁸ *Palestine* Advisory Opinion, para. 285.

³⁶⁹ CR 2024/16, p. 17, para. 14 (Tams).

³⁷⁰ *Ibid.*, p. 18, para. 15 (Tams).

³⁷¹ CR 2024/16, p. 41, para. 38 (Peters).

³⁷² See paras. 220 and 222 below.

³⁷³ See also Letter from Nicaragua to the Registrar, no. HOL-NIC-518-2024, 21 October 2024, paras. 11-24.

to an armed conflict, in order to avoid the risk that such arms might be used to violate the [Geneva Conventions and the Genocide Convention]”³⁷⁴, the then-Federal Chancellor, Olaf Scholz, confirmed clearly at a press conference that Germany was exporting and will continue to export arms:

“Question: Chancellor, my question relates to the Middle East conflict. You just said – correct me if I misunderstood you – that the legal opinion of the International Court of Justice does not change the position of the Federal Government, that there is no reason to make any changes to it. Does that also apply to military support for Israel? Specifically, in light of this opinion and in the shadow of the war in the Gaza Strip, will the Federal Government continue to supply weapons to Israel, including ammunition and anti-tank weapons, as it did last year?

Chancellor Scholz: We have supplied weapons to Israel, and we have not taken a decision to stop doing so. But we do of course decide on a case-by-case basis.

Supplementary question: Does that mean that it will remain possible? Does that mean that Israel can expect to continue to receive weapons from Germany?

Chancellor Scholz: To add to that: we do not always have everything that people would like us to have. But regardless of this question, we have not made any other decision.

Interjection: No other decision than ... (inaudible without microphone)

Chancellor Scholz: We have not decided that we will not supply weapons. So we will and have”³⁷⁵.

189. In December 2024, a member of the German *Bundestag* asked again the Federal Chancellor on the delivery of weapons to Israel. Referring to the Chancellor’s previous statement³⁷⁶, Mr. Dobrindt said:

“During my talks last week at the Foreign Ministry in Israel, I was informed that the requested artillery and tank ammunition has still not been delivered. Who is blocking these deliveries: the SPD, the Greens or you personally, Federal Chancellor?”³⁷⁷

And the then-Chancellor replied:

“I am happy to repeat the sentence you quoted from me. That is exactly how it is. We have made a whole series of decisions that have already led to a large number of deliveries to Israel. We have supplied weapons in the past and will continue to

³⁷⁴ Order of 30 April 2024, para. 24.

³⁷⁵ Summer press conference of the Chancellor 2024, Federal Government, 24 July 2024 (Annex 35). See also German *Bundestag*, Plenary Protocol 20/191, 10 October 2024, p. 24796 (Annex 40); German *Bundestag*, Plenary Protocol 20/193, 16 October 2024, pp. 25084, 25118 and 25148-25149 (Annex 42). See also Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 12.

³⁷⁶ See also German *Bundestag*, Plenary Protocol 20/191, 10 October 2024, p. 24796 (Annex 40).

³⁷⁷ German *Bundestag*, Plenary Protocol 20/202, 4 December 2024, p. 26037 (Annex 48).

do so in the future. A decision has also been made to this effect ... We will inform you when the delivery has been made so that you do not need to pursue these enquiries any further”³⁷⁸.

190. After the anticipated elections to the Germany *Bundestag*, the position on the delivery of weapons and military equipment has not changed. The new Federal Minister for Foreign Affairs indeed continues to confirm, contrary to criticism and doubts about the policy followed by the previous government and the position expressed by Germany before the Court³⁷⁹, that Germany did and will provide weapons to Israel. Despite the concerns expressed by the Federal Government in respect of the situation in the Gaza Strip, the Federal Minister for Foreign Affairs reiterated recently that:

“The principle is that Israel receives weapons from Germany. This has always been the case”³⁸⁰.

He further said that “Germany will continue to support the State of Israel, including with arms deliveries”³⁸¹.

2. Data on Individual Licences for the Export of Military Equipment to Israel Confirms that Germany Continued to Deliver Military Equipment in Significant Value

191. The statistical data made available by the Federal Government confirms the statements of German officials fully. Despite the shortcomings and the incomplete nature of this data, it is readily apparent that the volume and the value of individual export licences granted has continued to grow ever since 7 October 2023 and, in particular, since April 2024. As explained above, this data can only provide an incomplete picture of exports and deliveries of military equipment by Germany to Israel. In particular, the value of military equipment

³⁷⁸ *Ibid.*

³⁷⁹ Questioning former Federal Minister Baerbock on whether the Federal Government actually provides arms and ammunition to Israel, Mr. Wadephul said: “I would like to add that Professor Christian Tams, acting on our behalf, on your behalf, at your request, before the International Court of Justice in proceedings remarkably initiated by Nicaragua, referring to the period since October 2023, stated ... that no artillery ammunition, no ammunition whatsoever or other military equipment that could be used in combat had been delivered ... How does that fit in with your statements, Madam Minister?” (German *Bundestag*, Plenary Protocol 20/193, 16 October 2024, p. 25118 (Annex 42)).

³⁸⁰ Interview with Federal Foreign Minister, Johann Wadephul, in the *Süddeutsche Zeitung*, published on 30 May 2025, available at the official website of the Federal Foreign Office (<https://www.auswaertiges-amt.de/en/newsroom/news/2720264-2720264>).

³⁸¹ *Ibid.*

exported on the basis of collective licences (*Sammelausfuhrgenehmigungen*) is not included in this data³⁸². The figures are nevertheless compelling.

(a) *General Overview*

192. Between 7 October 2023 and 26 June 2025³⁸³, Germany has granted individual licences (*Einzelausfuhrgenehmigungen*) for the export of military equipment to Israel worth 491,844,497 Euro³⁸⁴. In comparison, since 2004, Germany has granted export licences for military equipment to Israel in an overall value of 3.4 billion Euro. This means that, in the last 20 months alone, the value of Germany’s individual export licences represents 14.6 percent of the value of the individual export licences granted in the last 22 years. Eliminating the effect of the significant licences granted by Germany for the export of submarines and naval vessels in particular in 2014, 2015 and 2020, the last 20 months account even for more than 26 percent of Germany’s export licences granted since 2004.

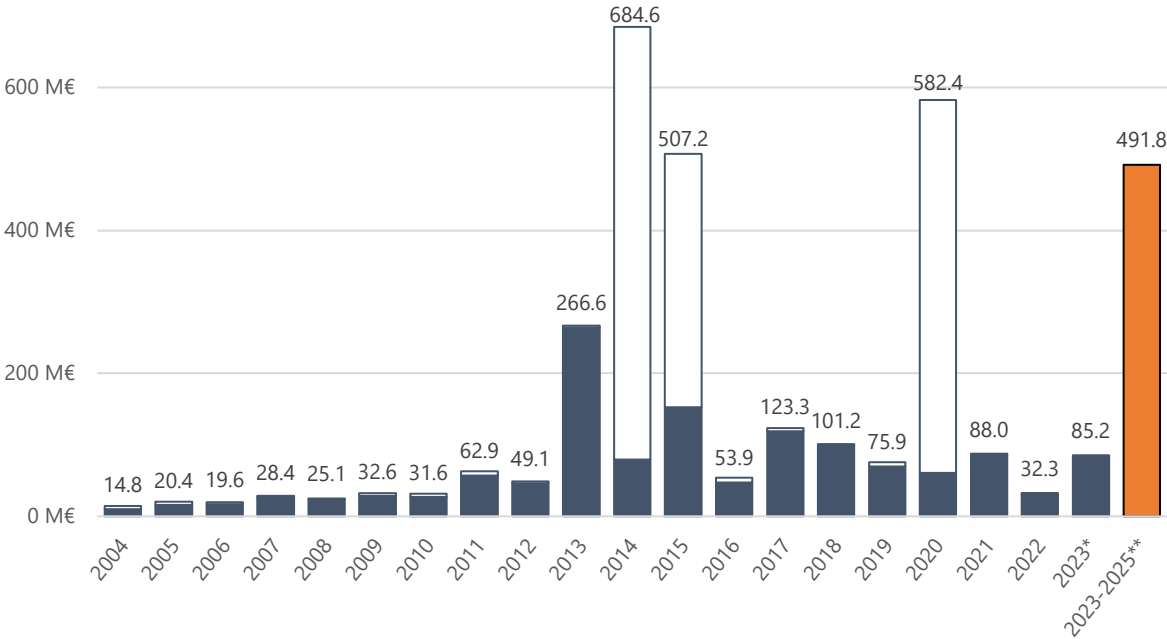


Figure 6. Value of approved individual licences for the export of military equipment to Israel (since 2004, in million Euro). Licences concerning naval vessels or submarines (A0009) are indicated in blank, where data is

³⁸² See para. 167 above.

³⁸³ This is the last date for which information is currently available.

³⁸⁴ Written questions with answers received from the Federal Government in the week of 10 June 2025, doc. 21/469, 13 June 2025, answer to question no. 96 (Annex 71).

available. * Data for 2023 comprises the period January – 6 October 2023. ** Data for 2023-2025 comprises the value of export licences granted between 7 October 2023 and 26 June 2025³⁸⁵.

193. Germany has not only granted individual export licences for military equipment in unprecedented amounts starting in October 2023 and notwithstanding the catastrophic humanitarian situation in the Gaza Strip – largely recognized by German authorities, but Germany also decided to suspend its support to the UNRWA³⁸⁶. In April 2024, Germany attempted to alleviate any concern about the unilateral suspension of any new contributions to UNRWA relying on resources made available by Germany to other humanitarian organisations and initiatives of a humanitarian nature conducted by Germany itself and together with partners³⁸⁷. Nevertheless, UNRWA was and remains the backbone of United Nations humanitarian relief operations and its development for the Palestinian people, not only in the acute and dramatic circumstances Palestinians have faced since October 2023 in the Gaza Strip, but also for the urgent realisation of their inalienable right to self-determination and of their fundamental human rights in the Occupied Palestinian Territory and elsewhere. In October 2024, the Secretary-General confirmed that there is “no realistic alternative to UNRWA which could adequately provide the services and assistance required, whether it be other United Nations entities, other international organizations or any other entity”³⁸⁸. The General Assembly and members of the Security Council have specifically requested that the Member States enable UNRWA to carry out its mandate³⁸⁹. The recent daily killings of many Palestinians waiting at aid distribution centres of the so-called Gaza Humanitarian Foundation – an aid distribution system that is bringing “dehumanization, chaos and death”, that is “fall[ing] far from abiding to the principle of humanity”, constitutes “a deliberate attempt to weaponize

³⁸⁵ Forensis, German Arms Exports to Israel, 2003-2023, Fig. 9 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>); Germany’s Judges Folder, tab 19; Written questions with answers received from the Federal Government in the week of 10 June 2025, doc. 21/469, 13 June 2025, answer to question no. 96 (Annex 71).

³⁸⁶ Application, paras. 57-65. See also Order of 30 April 2024, para. 19. See also German *Bundestag*, Response of the Federal Government to the parliamentary question by the CDU/CSU parliamentary group, doc. 20/14534, 9 January 2025, answer to question no. 2 (Annex 52).

³⁸⁷ CR 2024/16, 9 April 2024, pp. 14-16, paras. 3-12 (Tams), p. 22, para. 37 (Tams), p. 43, para. 7 (Palchetti).

³⁸⁸ Letter from the Secretary-General to the President of the General Assembly, A/79/558, 28 October 2024.

³⁸⁹ United Nations Security Council, Press Statement on United Nations Relief and Works Agency for Palestine Refugees in Near East (UNRWA), SC/15874, 30 October 2024. United Nations, General Assembly, Resolution ES-10/25, Support for the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 16 December 2024.

the aid”³⁹⁰, under an aid distribution system that “has become a killing field”³⁹¹ – confirm the vital and indispensable role played by UNRWA in the region, but also in the Gaza Strip, in particular in light of the dire “living” conditions therein.

194. Germany itself confirms the importance and necessity of UNRWA in the Gaza Strip and the Occupied Palestinian Territory. In March 2024, it announced the release of new funds to the Agency for its regional operations³⁹². In January 2025, the Federal Government accepted again that “UNRWA makes an essential contribution to providing basic services to the civilian population in Gaza” and that “this contribution is indispensable in the current crisis situation, particularly in the humanitarian field”³⁹³. It also recognized, putting significant doubt on its position expressed before the Court, that “[o]ther international aid organisations ... are based on UNRWA’s operational structures and can only cover part of UNRWA’s humanitarian tasks in the short term”³⁹⁴. Since the end of April 2024, Germany – according to its own statements³⁹⁵ – had been continuing funding of UNRWA on condition that the Agency implements the specific recommendations of the so-called Colonna Report³⁹⁶.

195. Nevertheless, this is incongruent, to say the least, with Germany’s authorization of exports of military equipment in the value of 489.1 million Euro.

³⁹⁰ “Gaza UN aid teams reject Israel’s ‘deliberate attempt to weaponize aid’”, UN News, 6 May 2025 (<https://news.un.org/en/story/2025/05/1162946>).

³⁹¹ Post of Philippe Lazzarini (@GozukaraFurkan), X, 27 June 2025 5:43 PM (<https://x.com/unlazzarini/status/1938624217807032322>). See also “‘It’s a Killing Field’: IDF Soldiers Ordered to Shoot Deliberately at Unarmed Gazans Waiting for Humanitarian Aid”, *Haaretz*, 27 June 2025 (<https://www.haaretz.com/israel-news/2025-06-27/ty-article-magazine/.premium/idf-soldiers-ordered-to-shoot-deliberately-at-unarmed-gazans-waiting-for-humanitarian-aid/00000197-ad8e-de01-a39f-ffbe33780000>).

³⁹² Joint statement by the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development on UNRWA, Federal Foreign Office, Press Release, 25 March 2024 (<https://www.auswaertiges-amt.de/en/newsroom/news/unrwa-2650308>).

³⁹³ Response of the Federal Government to the parliamentary question by the CDU/CSU parliamentary group, doc. 20/14534, 9 January 2025, preliminary observations of the Federal Government, p. 1 (Annex 52).

³⁹⁴ *Ibid.*, pp. 1-2.

³⁹⁵ *Ibid.*, answer to question no. 2. See also Joint statement on UNRWA by the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development, Federal Ministry for Economic Cooperation and Development, 24 April 2024 (<https://www.bmz.de/en/news/archive-press-releases/joint-statement-foreign-office-bmz-on-unrwa-210014>).

³⁹⁶ Final Report for the United Nations Secretary-General on the Independent Review of Mechanisms and Procedures to Ensure Adherence by UNRWA to the Humanitarian Principle of Neutrality, 20 April 2024 (https://www.un.org/sites/un2.un.org/files/2024/04/unrwa_independent_review_on_neutrality.pdf).

(b) *Period between 7 October 2023 and 10 April 2024*

196. As the Court is aware, between 7 October 2023 and the beginning of April 2024, Germany granted licences for the export of military equipment in the significant value of 251.3 million Euro. Most of these licences were granted in October (198.7 million Euro or 79 percent). In November 2023, the value of individual licences granted dropped to 23.5 million Euro (including two licences for 3,000 anti-tank weapons and 500,000 pieces of ammunition with a value of 20.1 million Euro). In December 2023, the value further decreased to 19 million Euro. In January 2024, Germany granted licences in the amount of 8.4 million Euro (including one licence for the export of 70 propellant charges worth 30,449 Euro). In February 2024, after the Court held that there was a real and imminent risk to the right of the Palestinians in the Gaza Strip to be protected from acts of genocide and related prohibited acts³⁹⁷, Germany still continued to grant export licences, although in less significant value, including one licence, worth 2,000 Euro, for 1,000 pieces of ammunition. And again, in March 2024, after Nicaragua brought the present case and requested the indication of provisional measures, Germany again granted licences for the export of military equipment in the value of more than 1 million Euro.

Table 1. Value of individual licences for the export of military equipment to Israel
(7 October 2023 – 10 April 2024) (in Euro)³⁹⁸.

2023			2024			Subtotal 07.10.-10.04.
October 07.10.-31.10.	November 01.11.-30.11.	December 01.12.-31.12.	January 01.01.-31.01.	February 01.02.-29.02.	March/April 01.03.-10.04.	
198,678,767	23,587,540	19,000,799	8,416,738	586,939	1,057,680	251,328,463

197. Germany graphically depicted the “evolution” of its licencing practices at the hearing in order to make the Court believe in the robustness of its legislative and regulatory safeguards and the absence of any urgency to order a stop of exports.

³⁹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024.*

³⁹⁸ Germany’s Judges Folder, 9 April 2024, tab 9.

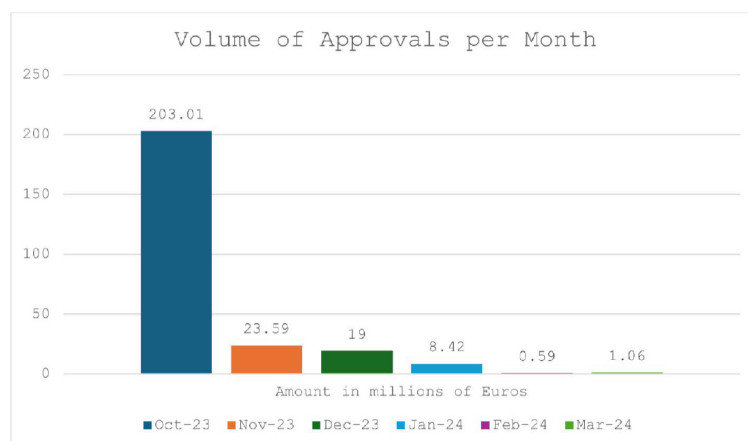


Figure 7. Slide presented by Germany during its presentation of 9 April 2024³⁹⁹.

198. The Court noted in its Order of 30 April 2024, that, “as stated by Germany, there has been a significant decrease since November 2023 in the value of material for which the licences were granted, from approximately €200 million in October 2023 to approximately €24 million in November 2023 to approximately €1 million in March 2024”⁴⁰⁰.

(c) *Period between 10 April and 30 September 2024*

199. Nevertheless, Germany still continued to grant individual export licences. The data for the period comprising 10 April 2024 (immediately after the hearing on provisional measures) to 30 September 2024 confirms that additional export licences were issued, even if the value of the equipment concerned (approximately 4.5 million Euro) remained below the months of October, November, December 2023 or January 2024.

Table 2. Value of individual licences for the export of military equipment to Israel (10 April 2024 – 30 September 2024) (in Euro)⁴⁰¹.

April 10.04.-30.04.	May 01.05.-31.05.	2024				Subtotal 10.04.-30.09.
		June 01.06.-30.06.	July 01.07.-31.07.	August 01.08.-31.08.	September 01.09.-30.09.	
32,959	187	2,036,602	1,412,531	975,261	42,836	4,500,376

³⁹⁹ *Ibid.*, tab 1.

⁴⁰⁰ Order of 30 April 2024, para. 18.

⁴⁰¹ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/11838, 13 June 2024, answer to question no. 20 (Annex 30); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answer to questions no. 42 (Annex 37); Written questions with the answers received from the Federal Government in the week of

200. It is at least surprising that Germany considered itself entitled to approve new licences for the export of military equipment to Israel while the Court held its deliberations on Nicaragua’s request for provisional measures in April 2024.

201. It is also surprising that Germany continued to issue such licenses after the Court’s findings on July 2024 with respect to third States’ obligations “not to render aid or assistance in maintaining the situation created by the continued presence of the State of Israel in the Occupied Palestinian Territory”⁴⁰².

(d) *Period between October and December 2024*

202. It appears that Germany remained relatively prudent in its licensing practice until the beginning of October 2024 – for reasons which remain open to speculation⁴⁰³. However, and despite the Court’s findings of July 2024 in its Advisory Opinion and Germany’s acknowledgment thereof, and the call of the United General Assembly upon Member States “[t]o take steps towards ceasing ... the provision or transfer of arms, munitions and related equipment to Israel, the Occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory”⁴⁰⁴, the situation changed drastically again in October 2024. Within the last three months of 2024, licences of the export of military equipment worth 146.5 million Euro were approved by the German authorities. This means that within these last three month of the year, Germany granted licences worth ten times the military equipment for which export licences had been granted since January 2024⁴⁰⁵.

21 October 2024, doc. 20/13511, 25 October 2024, answer to question no. 50 (Annex 44); Response of the Federal Government to the follow-up question by member of the *Bundestag* Sevim Dağdelen, 29 October 2024 (Annex 45).

⁴⁰² *Palestine* Advisory Opinion, para. 285.

⁴⁰³ “Grüne stoppten heimlich Waffen-Hilfe für Israel” [Greens secretly stopped weapons aid to Israel], *Bild*, 13 October 2024 (Annex 41); “Revealed: German FM secretly blocked arms transfers to Israel”, *Israel Hayom*, 13 October 2024 (<https://www.israelhayom.com/2024/10/13/revealed-german-fm-secretly-blocked-arms-transfers-to-israel/>).

⁴⁰⁴ United Nations, General Assembly, Resolution ES-10/24, Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory, 18 September 2024, para. 5 (b).

⁴⁰⁵ In its letter to the Court of 31 October 2024, Germany confirms that, in terms of value, 96 % of individual licences granted since 30 April 2024 fall within the period between 30 September and 25 October 2024. Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 25.

Table 3. Value of individual licences for the export of military equipment to Israel (1 October 2024 – 31 December 2024) (in Euro)⁴⁰⁶.

October 01.10.-17.10.	2024		Subtotal 01.10.-31.12.
	Oct./Nov. 18.10.-19.11.	Nov./Dec. 20.11.-31.12.	
93,034,297	23,623,383	29,848,099	146,505,779

203. In the first half of October 2024 alone, German authorities authorised the export of military equipment in the value of 93 million Euro, which is three times more than in November 2023. The value of the licences granted between 18 October and 19 November 2024, and between 20 November and 17 December 2024, respectively, is also well above the months of November and December 2023.

204. At the same time, the Federal Minister for Foreign Affairs confirmed to the German *Bundestag* that:

“there is no stop or boycott on exports or military equipment. Rather, as I said in my opening statement, we are complying with the law. You know from the Federal Security Council – I cannot read out the figures here – that there have been repeated deliveries in recent months.

As the Federal Government, we are obliged to comply with the laws, which means that we must also ensure that international humanitarian law is observed; I also said this here in the *Bundestag* last week. We made this clear in our statement to the International Court of Justice in April. ... This also means that there must be commitments to international humanitarian law. ... *This commitment has now been made for the most recent cases.* Accordingly, the Federal Chancellor has made it clear that further authorisations will then also be granted at this point.”⁴⁰⁷.

And she continued to explain:

“According to the European arms export guidelines – which are the guidelines we follow here in Germany – ... this must be examined on a case-by-case basis. That is why we do not say: ‘We examined it once five years ago or whenever’, but rather each individual case is examined. As I said, the question is whether international

⁴⁰⁶ Response of the Federal Government to the follow-up question by member of the *Bundestag* Sevim Dağdelen, 29 October 2024 (Annex 45); Written questions with the answers received from the Federal Government in the week of 25 November 2024, doc. 20/13973, 29 November 2024, answer to question no. 6 (Annex 47); Provisional arms export data for 2024 published and arms export report for 2023 adopted, Federal Ministry for Economic Affairs and Climate Action, Press Release, 18 December 2024 (Annex 49); Written questions with answers received from the Federal Government in the period between 23 December 2024 and 3 January 2025, doc. 20/14393, 3 January 2025, answer to question no. 5 (Annex 51); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Nicole Gohlke, Doris Achelwilm, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/843, 10 July 2025, answer to question no. 1 (Annex 74).

⁴⁰⁷ German *Bundestag*, Plenary Protocol 20/193, 16 October 2024, p. 25118 (emphasis added) (Annex 42).

humanitarian law – which you have just confirmed must be ensured – is being complied with. *There is now a letter that includes this for the most recent enquiries.* You will have to ask others why the letter took so long, not me.”⁴⁰⁸

205. Nicaragua voiced concerns about these statements and the alleged “letter” mentioned by the Federal Foreign Minister⁴⁰⁹. To recall, the German newspaper *Bild* revealed information according to which:

“the Green Party was blocking all licences until Israel fulfilled the following condition: the Israeli government had to assure the German government in writing that it would not use the arms exports from Germany to commit genocide.

No arms exports without this letter, the Green ministers announced. At the urging of Habeck [Federal Minister for Economic Affairs and Climate Action] and Baerbock [Federal Minister for Foreign Affairs], the Federal Government demanded this assurance from Jerusalem.

.....
The Jewish state, which is currently being attacked by Hamas (Gaza), Hezbollah (Lebanon), the Houthis (Yemen) and Iran, provided the necessary signature a few days ago. According to information obtained by BILD, the assurance arrived in Berlin on Thursday [*i.e.*, 10 October 2024]. And Chancellor Olaf Scholz (66, SPD) was able to declare in the Bundestag that ‘further deliveries will be made soon’.

.....
The Federal Security Council had taken a kind of anticipatory decision for urgently needed spare parts, which would automatically authorise the exports upon the arrival of the Israeli commitment”⁴¹⁰.

206. The German news magazine *Der Spiegel* reported more comprehensively on 19 October 2024:

“The idea arose in the Chancellery to draft a letter: Israel could assure that the German weapons would be used in accordance with international law, just as Ukraine does. With such a declaration, the Federal Government could credibly demonstrate in the event of future lawsuits that it had seriously endeavoured to comply with international law.

A rather German approach: trusting in the power of paper.

Initially, the Israelis were irritated. Jens Plötner, the Chancellor’s foreign policy adviser, tried to dispel their concerns. He emphasised in Israel and in numerous telephone calls with the Ministry of Defence that the German request for the declaration was a mere formality for the courts. Under no circumstances should it be understood as a sign of mistrust or even as an indictment. The letter was really

⁴⁰⁸ *Ibid.*, p. 15119 (emphasis added).

⁴⁰⁹ Letter from Nicaragua to the Registrar, no. HOL-NIC-518-2024, 21 October 2024, paras. 20-24.

⁴¹⁰ “Grüne stoppten heimlich Waffen-Hilfe für Israel” [Greens secretly stopped weapons aid to Israel], *Bild*, 13 October 2024 (Annex 41).

important, after all, Israel could have no interest in a German court imposing a delivery ban.

In the end, an agreement was reached. Israel signalled to the Germans in the second week of October that it would sign the declaration. Officials in Berlin prepared a swift decision by the secretly meeting Federal Security Council on the export applications. When the Chancellor parried Merz's attack in the Bundestag on Thursday last week^[411], it was clear that the signed Israeli declaration would soon arrive in Berlin⁴¹².

Der Spiegel also revealed that:

“A few hours after the duel between Merz and Scholz, a representative of the Federal Government called Renk [a German company supplying transmission systems for the Israeli Merkava main battle tank]. He said not to worry, the applications for export to Israel would now be waved through. One day later, on Friday evening last week, the first of the five applications was approved, and on Thursday the second⁴¹³.

207. In fact, Germany acknowledged in its letter to the Court that, in the internal licencing process, it takes into account “the conclusions drawn from the confidential dialogue between Germany and Israel *and the assurances given*”⁴¹⁴, and pointed specifically to the fact that:

“A bilateral assurance that all military equipment delivered from Germany or containing parts delivered from Germany, will only be used in accordance with international humanitarian law was received from the Government of Israel on 8 October 2024”⁴¹⁵.

Before administrative tribunals, the Federal Government seems to have reiterated the existence of “contractual arrangements” on the use of military equipment⁴¹⁶. The content and form of this bilateral assurance was not revealed.

(e) *Period between January and June 2025*

208. On 16 December 2024, Federal Chancellor, Olaf Scholz, lost a vote of confidence and requested the dissolution of the German *Bundestag*. Elections took place on 23 February 2025. The new Federal Government did not take office until 6 May 2025.

⁴¹¹ See German *Bundestag*, Plenary Protocol 20/191, 10 October 2024, p. 24796 (Annex 40)

⁴¹² “Deutscher Alleingang” [Germany acting alone], *Spiegel*, 19 October 2024, p. 25 (Annex 43).

⁴¹³ *Ibid.*, p. 23.

⁴¹⁴ Letter from the Agent of Germany, Ms von Usler-Gleichen, to the Registrar, 31 October 2024, para. 22 (emphasis added).

⁴¹⁵ *Ibid.*, para. 19.

⁴¹⁶ Administrative Tribunal Cologne, Decision of 6 March 2025, 21 L 2376/24, MN 7 (Annex 57).

209. Nevertheless, the acting Federal Government continued to grant individual licences for the export of military equipment. In January 2025, the value of the equipment authorised for export was close to 2 million Euro. For the period between 1 February and 16 March 2025, this value rose again to 22.5 million Euro, comparable to the licencing practice of the Federal Government in November and December 2024. After the coalition government lost its majority in the February 2025 elections and continued to act on a provisional basis only, individual licences for the export of military equipment to Israel in the amount of 58.3 million Euro were granted, between 17 March 2025 and 13 May 2025, *i.e.*, within the period in which Israel broke the ceasefire agreement, started again its unbearable military assault on the Gaza Strip, and denied all entry of humanitarian assistance with the consequences now well-documented.

Table 4. Value of individual licences for the export of military equipment to Israel (1 January 2025 – 6 June 2025) (in Euro)⁴¹⁷.

2025				Subtotal 01.01.-26.06.
January 01.01.-03.02.	Feb./March 04.02.-16.03.	March/May 17.03.-13.05.	May/June 14.05.-26.06.	
1,990,497	22,473,725	58,304,956	6,740,701	89,509,879

210. Despite concerns strongly and openly voiced as to respect for humanitarian law in the Gaza Strip⁴¹⁸, the new Federal Government and its agencies continued with “business as usual”. Between mid-May and the beginning of June 2025 only, individual licences for the export of military equipment to Israel were approved in the amount of 4 million Euro.

⁴¹⁷ Written questions with the answers received from the Federal Government in the week of 3 February 2025, doc. 20/14894, 7 February 2025, answer to question no. 7 (Annex 54); Written questions with the answers received from the Federal Government in the week of 17 February 2025, doc. 20/15008, 21 February 2025, answer to question no. 6 (Annex 56); Written questions with the answers received from the Federal Government between 17 March 2025 and 25 March 2025, doc. 20/15135, 21 March 2025, answer to question no. 8 (Annex 58); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Nicole Gohlke, Lea Reisner, Ulrich Thoden, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/284, 26 May 2025, answer to question no. 6 (Annex 63); Written questions with answers received from the Federal Government in the week of 10 June 2025, doc. 21/469, 13 June 2025, answer to question no. 96 (Annex 71); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Nicole Gohlke, Doris Achelwilm, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/843, 10 July 2025, answer to question no. 2 (Annex 74).

⁴¹⁸ re:publica 25: Friedrich Merz – Kriege, Krisen, Kanzlerschaft [Wars, crises, chancellorship], WDR Europaforum, 26 May 2025 (Annex 64); “WDR Europaforum: Kanzler Merz kritisiert Israels Vorgehen in Gaza” [WDR Europaforum: Chancellor Merz criticizes Israel’s approach in Gaza], WDR, 26 May 2025 (Annex 65); Interview with Federal Foreign Minister, Johann Wadephul, in the *Süddeutsche Zeitung*, published on 30 May 2025, available at the official website of the Federal Foreign Office (<https://www.auswaertiges-amt.de/en/newsroom/news/2720264-2720264>).

211. All this data – incomplete and partial as it is⁴¹⁹ – confirms entirely the statement of German officials according to which Germany did, is, and will deliver military equipment and arms to Israel. Moreover, contrary to the declarations made by Germany before the Court and expectations created therefrom, export licences did not continue to decrease in light of the humanitarian situation in the Gaza Strip and the ever more important concerns voiced about Israel’s violation of humanitarian law. In fact, within the last months of 2024 and the beginning of the year 2025 (1 October 2024 – 26 June 2025), Germany authorised, through individual licences, the export of military equipment in the incredible amount of 236,015,658 Euro. This is considerably more than the value of export licences granted in the immediate context of 7 October, and represents 48 percent of the overall value of military equipment authorised for export to Israel since 7 October 2023. The significant increase of export authorisation clearly took place despite the ever more dire situation of the Palestinian people in the Gaza Strip and other parts of the Occupied Palestinian Territory, and defies the Court’s reminder to all States, including Germany, of their international obligations relating to the transfer of arms to parties to an armed conflict⁴²⁰.

3. Data and Evidence Confirm that the Military Equipment Delivered by Germany is not of a Subordinate or Defensive Nature Only and is Used in the Gaza Strip

212. The value of individual export licences granted since 7 October 2023 by itself discredits Germany’s assertion that the overwhelming majority of these licences concerned equipment of a subordinate or defensive nature, like protective gear, helmets, body protection plates, camouflage paint, flak jackets, or medical equipment⁴²¹.

213. It is true that armoured or protective equipment, constructions, components, and accessories fall under German regulation within the scope of military equipment for which an export licence is necessary. However, as the data published by the Federal Government reveals, out of 280 individual export licences granted in 2023, only four licences concerned equipment falling within this category (Export List category A0013) worth 737,423 Euro⁴²². This

⁴¹⁹ See paras. 166-182 above.

⁴²⁰ See para. 188 above.

⁴²¹ It is unlikely that medical equipment is subject to the export control regulations concerning military equipment. The Export List does not include any such medical equipment.

⁴²² Written questions with answers received from the Federal Government in the week of 8 January 2024, doc. 20/10022, 12 January 2024, answer to question no. 2 (Annex 21); Twenty-Sixth Annual Report according to

represents only 0.2 percent of the value of all licences granted in 2023; even if all these licences would have been granted after 7 October 2023, they would still represent only a significantly small part of the 168 individual licences granted after that date (or 0.3 percent in terms of value). For the year 2024, licences for the export of armoured or protective equipment, constructions, components, and accessories were granted in the value of 106,000 Euro⁴²³, which represents less than 0.07 percent of the overall value of individual export licences.

214. The data concerning the individual licences for protective equipment in itself demonstrates that the emphasis placed by Germany on the number of licences concerning, what it called “other military equipment” of a subordinate character, on the one hand, and the number of licences concerning “war weapons”, on the other hand, is misleading. Germany projected – several times – the slide below arguing that “[n]inety-eight percent of the licences granted since 7 October 2023 did not concern ‘war weapons’, but ‘other military equipment’”⁴²⁴.

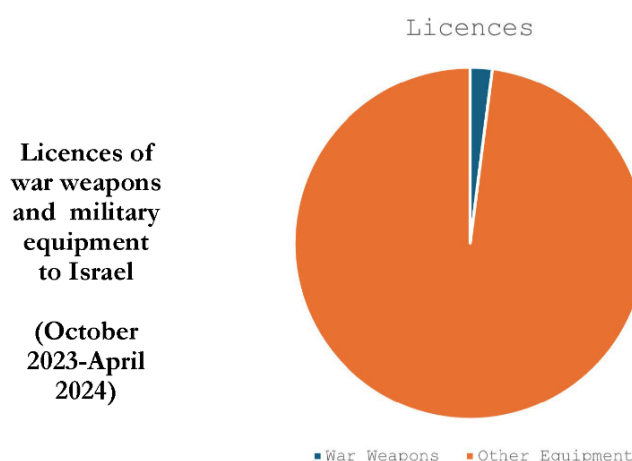


Figure 8. Slide projected by Germany⁴²⁵.

215. In itself, this graphic – and the 98 percent figure – is entirely misleading. It compares only the number of licences for “war weapons” (4) with the number of licences for “other equipment” (194). If one compares, however, correctly, the value of licences for “war weapons” with the value of licences granted for military equipment that is not “war weapons”, the

Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, OJ C, C/2025/472, 21.2.2025, ELI: <http://data.europa.eu/eli/C/2025/472/oj>, p. 169.

⁴²³ Written questions with answers received from the Federal Government in the period between 23 December 2024 and 3 January 2025, doc. 20/14393, 3 January 2025, answer to question no. 5 (Annex 51).

⁴²⁴ CR 2024/16, 9 April 2024, p. 19, para. 19 (Tams).

⁴²⁵ Germany’s Judges Folder, tab 1.

situation is different. Indeed, out of the 251.3 million Euro of equipment authorised between 7 October and the beginning of April, 20.1 million Euro or 8 percent concerned what Germany calls “war weapons”.

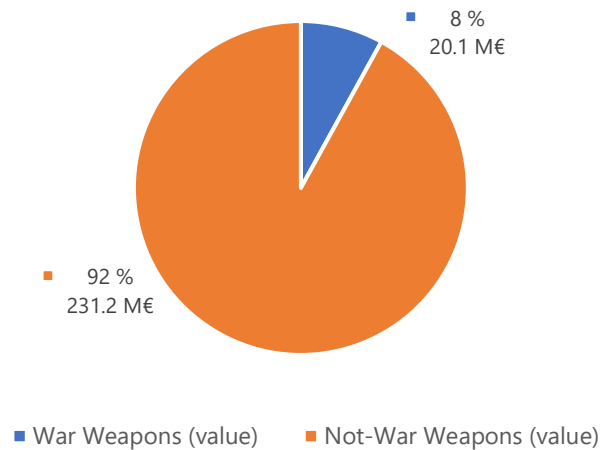


Figure 9. Corrected presentation of value of individual licences concerning “War Weapons” compared to all individual licences concerning military equipment (7 October 2023 –April 2024)⁴²⁶.

216. But, more fundamentally, the distinction made by Germany is by itself misrepresentative and inapposite⁴²⁷. By no means is this distinction alone capable to inform about the nature of the military equipment concerned or the risks associated with its use and export. Military equipment that are not “war weapons” is far from being only protective equipment or “innocent” equipment that might not be used to commit or facilitate serious violations of international humanitarian law. Moreover, all such equipment is at an immitigable risk of being used — and indeed is used — by the Israeli military in the continuation of its unlawful use of force — the maintenance of Israel’s unlawful presence in the Occupied Palestinian Territory.

217. In fact, the data available on individual licences granted by Germany in 2023, as well as in previous years, clearly shows that these licences did not relate to subordinate material at all. For the year 2023, the data available⁴²⁸ confirms that, in terms of value:

⁴²⁶ On the basis of the data contained in Germany’s Judges Folder, tab 19.

⁴²⁷ See also paras. 248-254 below.

⁴²⁸ Twenty-Sixth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, OJ C, C/2025/472, 21.2.2025, ELI: <http://data.europa.eu/eli/C/2025/472/oj>, pp. 167-172.

- 32.8 percent of the individual licences (107 million Euro) concerned equipment in the Export List category of ground vehicles and components (A0006), including off-road vehicles with ballistic protection and parts for armoured vehicles, battle tanks, and armoured howitzers (an artillery weapon);
- 29.7 percent of the individual licences (97 million Euro) concerned equipment in the Export List category of electronic equipment specially designed for military use and components (A0011), including electronic warfare equipment, air surveillance, and navigation equipment;
- 12.2 percent of the individual licences (39.8 million Euro) concerned equipment specially designed or modified for the production of military equipment (Export List category A0018).

218. Germany also granted licences for equipment falling within the Export List categories of smooth-bore weapons, other arms and automatic weapons, accessories, and specially designed components therefor (A0001), bombs, torpedoes, rockets, missiles, other explosive devices (A0004), fire control, surveillance and warning equipment, comprising weapon sights, bombing computers, gun laying equipment and weapon control systems (A0005), chemical agents, biological agents, riot control agents, radioactive materials, related equipment, components and materials (A0007), energetic materials, *i.e.*, substances or mixtures that react chemically to release energy required for their intended application (A0008), equipment for naval vessels (A0009), equipment for aircraft and unmanned aerial vehicles (A0010), software (A0021), and technology (A0022). Nevertheless, as far as the data published by Germany shows, none of this equipment was subject to a licence under the War Weapons Control Act. Only the export of 3,000 portable anti-tank weapons (under the Export List category A0002), and of 500,000 pieces of what Germany claims to be practice ammunition (under the Export List category A0003) fell within the scope of the War Weapons Control Act (*Kriegswaffenkontrollgesetz*).

219. For the year 2024⁴²⁹, the situation is comparable. Germany authorised the export of:

- ground vehicles and components (A0006) in the value of 48 million Euro or 29.9 percent;

⁴²⁹ Written questions with answers received from the Federal Government in the period between 23 December 2024 and 3 January 2025, doc. 20/14393, 3 January 2025, answer to question no. 5 (Annex 51).

- ammunition and components (A0003) in the value of 37.4 million Euro or 23.2 percent, although the propellant charges and practice ammunition that fell within the scope of the War Weapons Control Act and that were authorised in January and February 2024 represented an aggregate value of 32,449 Euro only;
- unfinished products for arms, ammunition, vehicles, aircraft or vessels (A0016) in the value of 17.7 million Euro or 11 percent;
- bombs, torpedoes, rockets, missiles, other explosive devices (A0004) in the value of 13.2 million Euro or 8.2 percent.

220. Germany also granted, as previously mentioned, licences for the export of equipment for the production of military equipment, technology and software. As conceded by Germany itself, between October 2023 and December 2024, it granted individual licences for the export of equipment and documents for the manufacturing and production of weapons, that, once completed and constructed, would fall within the scope of the War Weapons Control Act, in the amount of 4.7 million Euro⁴³⁰. No specific licence under the War Weapons Control Act was however granted for these exports, because these licences were subject only to the general requirements for military equipment (*Rüstungsgüter*).

221. The nature of Germany's military cooperation and support through exports of significant military equipment can also be confirmed by data provided by the Israeli customs⁴³¹ that has been extracted and evaluated by Shadow World Investigations⁴³². Despite the shortcomings of this data and their incomplete nature⁴³³, this data makes it clear that Israel imports military equipment that can hardly be qualified as subordinate or defensive only. This includes components for tanks and other armoured fighting vehicles, parts and accessories of military weapons, as well as bombs, grenades, missiles and similar ammunition of parts thereof.

⁴³⁰ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answer to question no. 12 (Annex 37).

⁴³¹ The German Federal Statistical Office does not provide sufficiently granular data to draw any meaningful conclusions.

⁴³² Shadow World Investigations, Germany supplied fighting vehicle parts and other arms to Israel throughout 2024, April 2025 (<https://shadowworldinvestigations.org/wp-content/uploads/2025/04/25-04-report-German-arms-to-Israel-corr-1.pdf>).

⁴³³ *Ibid.*, pp. 6-7.

222. The mere fact that Germany does not only provide complete weapon systems, like naval vessels or submarines, does not mean that its support in military matters is not conclusive or significant. Despite the fact that components of weapons or of weapon systems may not fall within the scope of the German War Weapons Control Act, weapons are only the sum of their components. In its letter to the Court, Germany itself acknowledged indeed that “[a] small share of the final export licenses for other military equipment includes spare parts for the repair and maintenance of war weapons”⁴³⁴.

223. This is particularly telling in respect of the significant value of export licences falling into the category of ground vehicles and components (A0006), that includes in particular components for tanks and other military armed vehicles. In the period of 2003 to 2024, Germany consistently authorized the export of military equipment under this category.

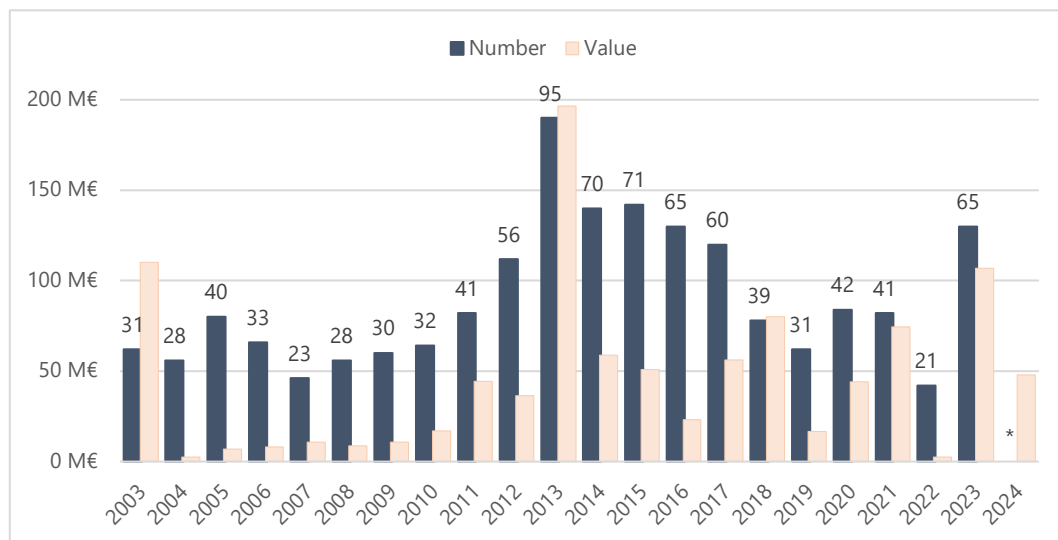


Figure 10. Number and value of approved individual licences for the export of military equipment to Israel falling under Export List category A0006 (ground vehicles and components) (2003-2024) (* number of licences for 2024 is not available).

In terms of value and number of licences, ground vehicles and components are very often the most important category of military equipment exported. In the period between 2003 and 2024, Germany granted 942 of such licences in an overall value of over 1 billion Euro⁴³⁵. In the period between 2023 and 2024, export licences under this category accounted for almost 155.1 million

⁴³⁴ Letter from the Agent of Germany, Ms von Usler-Gleichen, to the Registrar, 31 October 2024, para. 26.

⁴³⁵ Forensis, German Arms Exports to Israel, 2003-2023, p. 31 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>); Twenty-Sixth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, OJ C, C/2025/472, 21.2.2025, ELI: <http://data.europa.eu/eli/C/2025/472/oj>, pp. 167-172.

Euro. Germany nevertheless explained before its own courts and tribunals that components or spare parts “play only a minor role in the overall military equipment”⁴³⁶. This is simply not the case.

224. A particularly telling example is the Merkava IV battle tank. The tank is constructed in Israel and is said to be one of the most advanced battle tanks. It is used by the Israeli military, including during its assaults on the Gaza Strip. More generally, tanks and armoured vehicles, including for the transport of troops, constitute an essential and indispensable element of the battles on the ground engaged by Israel’s armed forces.



Figure 11. Merka IV Tank (May 2020)⁴³⁷.

225. Merkava IV tanks have been deployed and used during the 2014 ground invasion into the Gaza Strip that led to then unprecedented devastation and loss of life⁴³⁸.

226. The Independent Commission of Inquiry established by the Human Rights Council analysed that

“Information received by the commission concerning attacks on all vehicles in the area, including ambulances, as well as incidents in which groups of civilians appear to have been targeted by tank fire, raises serious concerns as to the respect by the IDF of the principle of distinction.

⁴³⁶ Administrative Tribunal Frankfurt, decision of 11 September 2024, 5 L 2333/24.F, MN 13 (Annex 39).

⁴³⁷ Photo available at https://fr.wikipedia.org/wiki/Merkava_Mark_4.

⁴³⁸ United Nations, Human Rights Council, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, A/HRC/29/CRP.4, 24 June 2015, para. 574.

.....
[T]he firing of over 800 artillery and tank shells with wide area effects in a densely populated and built up area over the period of a few hours ... indicate the use by the IDF of methods and means of combat which in the circumstances were of a nature to strike military objectives and civilians or civilian objects without distinction.
.....

[T]he IDF's ground operation was marked by significant use of explosive weapons with wide-area effects in densely populated areas, including the use of artillery and tank shells, mortars and air dropped high explosive munitions"⁴³⁹.

227. The report quotes a member of the Knesset Foreign Affairs and Defense Committee saying:

"In Gaza, the IDF fought against an enemy that had no armored vehicles, and Israeli soldiers probably saw no more than a few hundred armed Hamas militants. On average, an Israeli tank fired seven times as many shells a day as an American tank in Iraq. We fired more antitank missiles from the ground than the Americans, and twice as many Hellfire rockets from helicopters"⁴⁴⁰.



Figure 12. Image made from a video released by the Israeli military showing a tank crossing into the Gaza Strip at the beginning of the 2014 ground offensive⁴⁴¹.

⁴³⁹ United Nations, Human Rights Council, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, A/HRC/29/CRP.4, 24 June 2015, paras. 365, 366, 408.

⁴⁴⁰ *Ibid.*, para. 406.

⁴⁴¹ Photos: Gaza Ground Invasion, The Wall Street Journal, 20 July 2014 (Photo 2) (<https://www.wsj.com/articles/photos-gaza-ground-invasion-1405635643>).

228. An Israeli soldier is reported as having described the destruction in Shuja'iya causing the death of 55 civilians, including 19 children and 14 women in the following terms:

““[I]n previous times we had entered Gaza, a D9 (armored bulldozer) would go in and everyone drove in its trail. But in this operation they decided to do something different – just to enter as an offensive. A row of tanks go in, they spread out wide, get into position, identify ‘suspicious spots’, fire as required. The rules of engagement were very, very lax ... There was no such thing as requesting authorization. Just fire””⁴⁴².



Figure 13. An Israeli soldier directs a Merkava tank at an army deployment area near Israel’s boundary with the Gaza Strip⁴⁴³.



Figure 14. An Israeli soldier directing a Merkava tank, at an army deployment area near Israel's border with the Gaza Strip, on July 17, 2014. (Gili Yaari/Flash90)⁴⁴⁴.

⁴⁴² *Ibid.*, para. 284.

⁴⁴³ *Ibid.* (Photo 17).

⁴⁴⁴ Photo available at “Israel launches Gaza ground operation”, Jewish Telegraphic Agency, 17 July 2014 (<https://www.jta.org/2014/07/17/israel/israel-launches-gaza-ground-operation>).

229. The Merkava tanks have also been used in the Gaza Strip in the most recent assault. Tank fire has been identified as being responsible for the destruction of media outlets already in early November 2023⁴⁴⁵. Tanks have also been involved in the killing and maiming of starving Palestinian civilians at humanitarian aid distribution sites⁴⁴⁶. Recently, Israel deployed tanks again in the West Bank⁴⁴⁷.



Figure 15. An Israeli soldier looks on from a Merkava tank while operating in a location given as Gaza⁴⁴⁸.

⁴⁴⁵ “The destruction of press infrastructure in Gaza: A strategy to blind the public”, Forbidden Stories, 25 June 2024 (<https://forbiddenstories.org/the-destruction-of-press-infrastructure-in-gaza-a-strategy-to-blind-the-public/>). “Enquête video : comment Israël a tiré sur des caméras qui filmaient Gaza en direct pour l’AFP et Reuters”, *Le Monde*, 25 June 2024 (https://www.lemonde.fr/international/video/2024/06/25/enquete-video-comment-israel-a-tire-sur-des-cameras-qui-filmaient-gaza-en-direct-pour-l-afp-et-reuters_6243493_3210.html). “Todesmaschinen vom Bodensee” [Killing machines from Lake Constance], *Junge Welt*, 21 May 2025 (Annex 62).

⁴⁴⁶ “Israeli military kills 23 Palestinians near aid site in Gaza, witnesses and medics say”, *BBC*, 20 June 2025 (<https://www.bbc.com/news/articles/cd0vgerp402o>). “‘It’s a Killing Field’: IDF Soldiers Ordered to Shoot Deliberately at Unarmed Gazans Waiting for Humanitarian Aid”, *Haaretz*, 27 June 2025 (<https://www.haaretz.com/israel-news/2025-06-27/ty-article-magazine/.premium/idf-soldiers-ordered-to-shoot-deliberately-at-unarmed-gazans-waiting-for-humanitarian-aid/00000197-ad8e-de01-a39f-ffbe33780000>).

⁴⁴⁷ “Israel Imports Gaza Abuses into the West Bank”, Human Rights Watch, 26 February 2025 (<https://www.hrw.org/news/2025/02/26/israel-imports-gaza-abuses-west-bank>); “IDF deploys tanks in West Bank for first time since 2002, sending 3 to Jenin as it expands op”, *Times of Israel*, 23 February 2025 (<https://www.timesofisrael.com/idf-deploys-3-tanks-to-jenin-for-1st-time-since-2002-as-it-expands-west-bank-op/>).

⁴⁴⁸ “Exclusive: Biden administration presses Congress to approve tank shells for Israel’s war in Gaza - sources”, Humeyra Pamuk, Reuters, 9 December 2023 (<https://www.reuters.com/world/state-dept-asks-congress-approve-sale-israeli-tank-rounds-amid-growing-rights-2023-12-08/>).



Figure 16. Merkava IV tanks firing into homes in the Gaza Strip (December 2023)⁴⁴⁹.



Figure 17. Merkava tanks operate and fire shells in the Gaza Strip (December 2023)⁴⁵⁰.

⁴⁴⁹ Screenshot of video (available at <https://tiktokgenocide.com/uploads/candles-tank>) (initially published at <https://idfpsychos.com/which-candle/> with the date 30 December 2023 and the description: “Israeli soldiers celebrate Hanukkah by indiscriminately firing tank shells into homes in Gaza. Zionism desecrates Judaism to destroy Palestine”; see <https://web.archive.org/web/20240529181729/https://idfpsychos.com/which-candle/>).

⁴⁵⁰ Screenshot of video (“Merkava tanks operate and fire shells in Gaza”, YouTube, 28 December 2023, <https://www.youtube.com/watch?v=Rmk2Ik5kyP8>).



Figure 18. Israeli tanks are seen near the West Bank city of Jenin, 23 February 2025 (AP Photo/Majdi Mohammed)⁴⁵¹.

230. In light of the available reports and videos of the tanks' deployment and activities in the Gaza Strip, Germany cannot claim to not be aware. In addition, German authorities have been informed about the presence of these videos and recordings of tanks attacking indiscriminately civilian objects in the Gaza Strip. In March 2025, a non-governmental organisation filed criminal complaints against German-Israeli members of Israel's armed forces submitting *inter alia* videos material⁴⁵². The Federal Prosecutor General refused to engage criminal investigation⁴⁵³.

231. The engine of the Merkava IV is constructed by or under the licence of the German company Motoren- und Turbinen-Union ("MTU" or "*mtu*")⁴⁵⁴. According to information based on the data of the Stockholm International Peace and Research Institute (SIPRI), MTU has been delivering the engines for the Merkava IV tank for many years already⁴⁵⁵. The Federal Government has not confirmed that Germany supplied or is supplying directly or indirectly

⁴⁵¹ "IDF deploys tanks in West Bank for first time since 2002, sending 3 to Jenin as it expands op", Times of Israel, 23 February 2025 (<https://www.timesofisrael.com/idf-deploys-3-tanks-to-jenin-for-1st-time-since-2002-as-it-expands-west-bank-op/>).

⁴⁵² "HRF Files Formal Complaint Against German-Israeli IDF Soldier, Germany Refuses to Uphold Its Own Laws", Hind Rajab Foundation, 29 March 2025 (<https://www.hindrajabfoundation.org/perpetrators/hrf-files-formal-complaint-against-german-israeli-idf-soldier-germany-refuses-to-uphold-its-own-laws>).

⁴⁵³ *Ibid.* See also Letter for the Federal Prosecutor General, 26 March 2025 (Annex 59).

⁴⁵⁴ "Todesmaschinen vom Bodensee" [Killing machines from Lake Constance], *Junge Welt*, 21 May 2025 (Annex 62). "Merkava 4 Israel Defence Forces Main Battle Tank", Army Technology, 10 July 2020 (<https://www.army-technology.com/projects/merkava4/?cf-view>).

⁴⁵⁵ Stockholm International Peace and Research Institute, Arms Transfer Database (<https://armstransfers.sipri.org/ArmsTransfer/TransferData/transferDetail?entityId=813936>).

these engines. However, a video published in April 2025 by the Israeli armed forces in a Merkava IV tank construction or maintenance facility clearly shows the engine with the MTU branding (see Figure 19 below). In February 2025, MTU's holding company Rolls-Royce Power Systems reported record results and explained that “[t]he continuing demand for products for land and naval forces led to strong sales growth of 17% in the governmental business”⁴⁵⁶.



Figure 19. Engine before being mounted into Merkava IV tanks showing **mtu** branding⁴⁵⁷.

232. Another German company, Renk AG, is providing the transmission system for the Merkava IV tank. The company describes itself as “a global market leader for mission-critical propulsion systems for military and civilian end markets”⁴⁵⁸. It supports its status as “the world’s leading supplier of transmissions for military tracked vehicles with an impressive range of state-of-the-art products”, with reference to its transmission system used in the Merkava IV⁴⁵⁹. According to press reports, representatives of Renk met with the then-opposition leader Friedrich Merz in early October 2024 and complained about the delay in the approval of export

⁴⁵⁶ “Rolls-Royce Power Systems achieves record result”, MTU, Press Release, 28 February 2025 (<https://www.mtu-solutions.com/eu/en/pressreleases/2025/rolls-royce-power-systems-achieves-record-result.html>).

⁴⁵⁷ Screenshots of video (“איך מרכיבים טנק 'מרכבה' סימן 4? תובה אחר צריח”, 30 April 2025, official website of the Israeli Military, <https://www.idf.il/-/4-מרכבה-סימן-4-תובה-אחר-צריח>).

⁴⁵⁸ RENK Group AG, Annual Report 2024, p. 7 (https://ir.renk.com/media/document/35c6cdee-d54a-4d4c-9107-f477ce041099/assets/02_RENK_Annual_Report_2024_ext.pdf?disposition=inline).

⁴⁵⁹ Renk Group AG, Transmissions (<https://www.renk.com/en/products/vehicles/transmissions>).

licences to Israel. *Der Spiegel* also reports that a little later these applications for export to Israel “were waved through”⁴⁶⁰.

233. This again confirms that Germany supplied and continues to supply military equipment to Israel, and that, contrary to Germany’s allegations, this military equipment is not of a subordinate character nor does it play only a minor role in the overall weapon systems as spare parts. A tank without a powerpack, *i.e.*, an appropriate engine with an appropriate gear and transmission system, simply loses its essential characteristics and utility. The same is true for military equipment falling into other categories. These are not just any standard spare parts or screws, but highly specialised, often single-sourced parts and components designed and manufactured for military purposes, as the terms of Germany’s Export List and the significant value of the export licences granted make clear. Without these components, parts or technology⁴⁶¹, the weapons systems for which they are designed and used, are unfit for their intended purpose: ammunition is not ammunition if it does not contain the necessary energetic materials, *i.e.*, explosives etc. Indeed, if, as Germany contends, the components and spare parts authorised for the export to Israel are only a “minor role”, it is questionable for which reasons these components are submitted to the export control regime of military equipment, in the first place, and why Germany refuses to release detailed and conclusive information on the nature and the specificities of these components or parts. Indeed, if Germany were right, there is simply no reason not to “provide concrete insights into the recipient country’s [*i.e.*, Israel’s] current needs”⁴⁶² of parts and components of “minor importance”.

234. In any event, it must not be forgotten that Germany’s military cooperation with Israel is not limited to the delivery of components, spare parts or technology. Germany also provided Israel with military equipment that under its own regulatory framework falls within the scope of the War Weapons Control Act. Germany itself admitted that the “the risks associated with the export of war weapons are naturally much higher”⁴⁶³.

⁴⁶⁰ “Deutscher Alleingang” [Germany acting alone], *Der Spiegel*, No. 43, 19 October 2024, p. 23 (Annex 43).

⁴⁶¹ See, in respect of the important technological cooperation between the German company Rheinmetall and the Israeli armament company Elbit for the development and production of a fully automated 155 mm wheeled howitzer system, para. 147 above.

⁴⁶² See para. 172 above.

⁴⁶³ CR 2024/16, 9 April 2024, p. 19, para. 19 (Tams).

235. Despite the “much higher” risks, Germany approved the export of 3,000 anti-tank weapons to Israel at the end of October 2023. Despite its assurance of a detailed and specific case-by-case analysis under its “robust” regulatory framework, the two necessary authorisations, falling under two separate legal instruments, were granted within two days on 31 October and 1 November 2023⁴⁶⁴. Germany remained remarkably silent about these licences in its pleadings of April 2024. It simply stated that “[t]he fourth licence, which was in the immediate context of Hamas massacres, concerned the export of 3,000 portable anti-tank weapons”⁴⁶⁵, as if these circumstances could diminish the “much higher” risks associated with the export of complete weapons systems.

236. The Federal Government seems to be in the possession of information on the specificities of the 3,000 anti-tank weapons authorised for export, but decided to classify this information “for the protection of the foreign relations of the Federal Republic of Germany”⁴⁶⁶. According to different investigations and reports⁴⁶⁷, it is more than likely that these weapons are of the type MATADOR (Man-portable, Anti-Tank, Anti-DOoR), a weapon system developed by Germany, Israel and Singapore, and produced by the German company Dynamic Nobel Defence. On the website of the construction company, the MATADOR is advertised as the “game changer” and “the infantryman’s ultimate set of instruments for winning in a complex battlefield. It’s a complete toolbox of shoulder-launched infantry weapon systems giving dismounted forces the edge over any opponent — in all operational scenarios and climatic environments”. The mission spectrum reaches from “anti-tank” and “anti-vehicle”, to “anti-structure” and “anti-personnel”⁴⁶⁸.

⁴⁶⁴ Germany’s Judges Folder, 9 April 2024, tab 19.

⁴⁶⁵ CR 2024/16, 9 April 2024, p. 21, para. 32 (Tams).

⁴⁶⁶ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/11838, 13 June 2024, answer to questions nos. 9 and 10 (Annex 30). See also para. 176 above.

⁴⁶⁷ Forensis, German Arms Exports to Israel, 2003-2023, p. 33 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>); See also “Todeszone Gaza: Waffen aus Deutschland” [Death Zone Gaza: Weapons from Germany], Panorama, *Das Erste*, 18 April 2024 (Annex 27). The latter report describes a video (see Figure 23 below) with the following terms: “This anti-tank weapon looks very similar to the one from *Siegerland*. We showed the videos to the manufacturer. No comment. It is obviously the Matador. Israeli soldiers apparently posted this video online themselves, music included.”

⁴⁶⁸ Dynamit Nobel Defence, RGW90 (<https://dn-defence.com/rgw-90/>).



Figure 22. Use of an anti-tank weapon in the Gaza Strip (Screenshots of a video)⁴⁷¹.



Figure 23. Use of an anti-tank weapon in the Gaza Strip (Screenshots of a video)⁴⁷².

⁴⁷¹ Screenshots of video by Younis Tirawi (@ytirawi), X, 26 May 2024 12:53 AM (<https://x.com/ytirawi/status/1794439012511334714>); reposted by Hanno Hauenstein (@hahauenstein), X, 11 February 2024 12:13 AM (<https://x.com/hahauenstein/status/1794502008436900061>) with the description: “This weapon used in Gaza appears to be a Matador—a portable anti-tank weapon manufactured in Germany by Dynamit Nobel Defence, based in Burbach, North Rhine Westphalia. These are assumed ... to be among the 3000 portable anti-tank weapons authorized for export to Israel in 2023”.

⁴⁷² Screenshots of video by Younis Tirawi (@ytirawi), X, 26 May 2024 12:53 AM (<https://x.com/ytirawi/status/1794439012511334714>); reposted by Hanno Hauenstein (@hahauenstein), X, 11 February 2024 12:13 AM (<https://x.com/hahauenstein/status/1794502008436900061>). See also “Todeszone Gaza: Waffen aus Deutschland“ [Death Zone Gaza: Weapons from Germany], Panorama, *Das Erste*, 18 April 2024 (Annex 27); post of Furkan Gözükarar (@GozukaraFurkan), X, 11 February 2024 2:00 PM (<https://x.com/GozukaraFurkan/status/1756664489733222851>).



Figure 24. Use of an anti-tank weapon in the Gaza Strip (Screenshots of a video)⁴⁷³.

238. The Sa'ar 6 corvettes, built in Germany by Thyssenkrupp Marine Systems in Kiel⁴⁷⁴, which constitute a critical element of Israel's operation at sea, including the imposition of the blockade of the Gaza Strip. They have been exported to Israel since 2020⁴⁷⁵.



Figure 25. Sa'ar-6-class missile corvette⁴⁷⁶.

⁴⁷³ Screenshots of video reposted by Younis Tirawi (@ytirawi), X, 22 December 2023 12:38 AM (<https://x.com/ytirawi/status/1738162183425716586>) with the description: "Israeli soldiers firing MATADOR missiles at a civilian car in Gaza for a fun experiment to test their accuracy in hitting distant targets".

⁴⁷⁴ See para. 142 above.

⁴⁷⁵ United Nations Register of Conventional Arms, Original Report Germany 2020 (<https://www.unroca.org/en/germany/report/2020/>); Forensis, German Arms Exports to Israel, 2003-2023, 2 April 2024, p. 28 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>).

⁴⁷⁶ "Israeli Navy uses Sa'ar 6-Class corvettes for first live combat against Hamas", Global Defense News, Army Recognition Group, 19 October 2023 (<https://www.armyrecognition.com/archives/archives-naval-defense/naval-defense-2023/israeli-navy-uses-sa-ar-6-class-corvettes-for-first-live-combat-against-hamas?highlight=WyJzYSIsImV4Y2x1c2l2ZSJd>).

239. Since 7 October 2023, the corvettes have been involved in operations against Gaza and carried out their first operational attacks⁴⁷⁷.

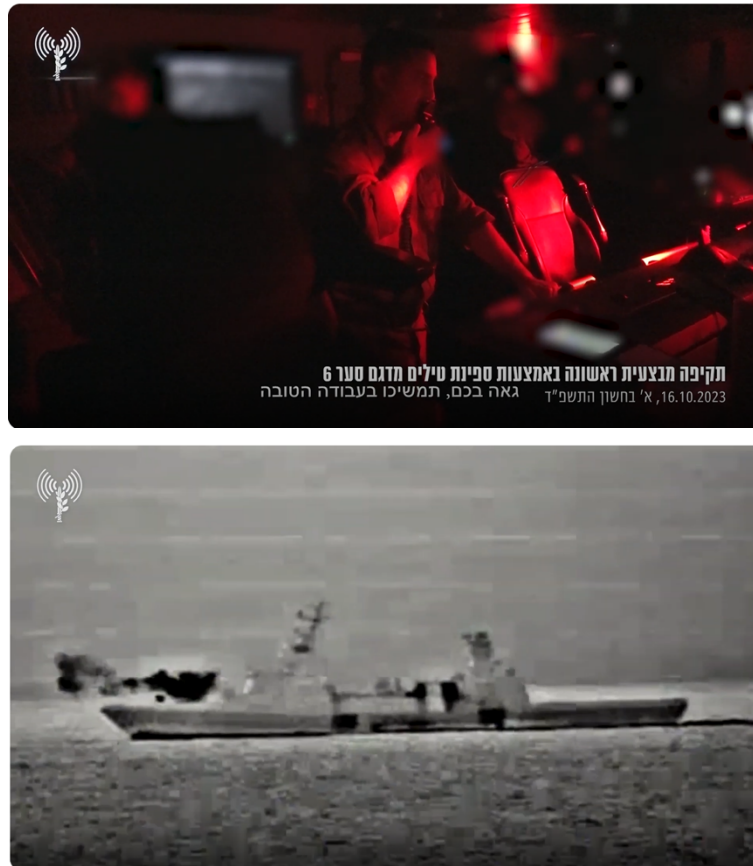


Figure 26. Sa'ar 6 corvette operation attacking the Gaza Strip, 16 October 2023⁴⁷⁸.

240. In addition to its delivery of military equipment in significant numbers, of significant value, and of significant nature, Germany has provided support to Israel's military operations in the Gaza Strip in other forms, before and in particular after 7 October 2023; as well as to Israel's military operations throughout the Occupied Palestinian Territory, including in its airspace.

⁴⁷⁷ “Israel’s ‘Saar 6’ missile ships used for precision strikes on Gaza”, *i24NEWS*, 16 October 2023 (<https://www.i24news.tv/en/news/israel/defense/1697461422-israel-s-saar-6-missile-ships-used-for-precision-strikes-on-gaza>). See also “Israeli Navy uses Sa’ar 6-Class corvettes for first live combat against Hamas”, *Global Defence News*, Army Recognition Group, 19 October 2023 (<https://www.armyrecognition.com/archives/archives-naval-defense/naval-defense-2023/israeli-navy-uses-sa-ar-6-class-corvettes-for-first-live-combat-against-hamas>).

⁴⁷⁸ Screenshots of video published by the Israeli military, official website of the Israeli military, 29 October 2023 (<https://www.idf.il/-/דוכונים-ברזל-חברות-מלחמה-ייוזמות/הכתבות-כתבות-ייוזמות>). On the video, it is marked in Hebrew: “First operational attack using a Sa’ar 6 missile boat. We are proud of you, keep up the good work. 16 October 2023”. See also Annex 19.

241. Nicaragua already referred the Court to the fact⁴⁷⁹ that, immediately after 7 October 2023, Germany decided that it would “support Israel in its defence battle with two Heron TP drones”⁴⁸⁰, which Germany leased from Israel and which were in Israel for training purposes⁴⁸¹. Drones have played a significant part in the operations in the Gaza Strip. They have caused widespread destruction and were used to kill civilians and humanitarian aid workers⁴⁸². Nevertheless, Germany, which seems to be in the possession of relevant classified information on whether Heron TP drones provided by Germany to Israel are being used by the Israeli armed forces in the Gaza Strip, to what extent there is a risk that they are used in the Gaza Strip, and on the particulars of the contractual arrangements concerning the drones⁴⁸³, did not take steps to prevent the participation of the drones constructed for Germany and leased from Israel in the military operations. Before German administrative courts, the Federal Government asserted that “there is ... a contractual agreement with Israel to the effect that the drones provided may only be used in accordance with international humanitarian law”⁴⁸⁴. Such commitment is not being enforced by Germany, and in any event, it is disingenuous to say the least, as Israel has demonstrated a culture of impunity with respect to the violations of IHL of its armed forces⁴⁸⁵. Moreover, independently of the existence of such an arrangement and its scope, the mere fact that Germany relies on “contractual arrangements” to secure respect of IHL shows that there are significant doubts and risks that the drones can and will be used differently. Indeed, the administrative tribunal of Cologne considered, *inter alia*, that

“The drones can also be deployed unarmed, and the decision on the specific use of the drones, including whether to arm them, which could constitute an impairment

⁴⁷⁹ Application, para. 45; CR 2024/15, 8 April 2024, p. 27, para. 9 (Müller).

⁴⁸⁰ “Minister Pistorius sagt Heron TP, Personal und Sanitätsmaterial für Israel zu” [Minister Pistorius pledges Heron TP, staff and medical supplies for Israel], Federal Ministry for Defense, 12 October 2023 (Annex 17).

⁴⁸¹ See also para. 146 above.

⁴⁸² Application, para. 45.

⁴⁸³ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answer to questions nos. 25-35 (Annex 37).

⁴⁸⁴ Administrative Tribunal Cologne, decision of 6 March 2025, 21 L 2376/24, MN 7 (Annex 57).

⁴⁸⁵ United Nations, Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/50/21, 9 May 2022; *Palestine* Advisory Opinion, p. 47, para. 156; United Nations, Security Council, Letter dated 27 February 2025 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council, S/2025/130, 28 February 2025, pp. 50-56, paras. 97-112. See also ICC, Situation in the State of Palestine, 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. 93 (<https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180949087.pdf>).

or endangerment, lies solely with the Israeli army, without any further involvement of the German State being apparent in this respect”⁴⁸⁶.

242. Moreover, Germany permits, or at least does not prevent or preclude the transport of military equipment and weapons to Israel by German transport companies or through German territory⁴⁸⁷.

*

243. The declarations of the highest German authorities, the available data on Germany’s export control and licensing practices, as well as other evidence confirms that Germany authorised the export of military equipment of significant nature and in significant amounts. The former-Foreign Minister for Foreign Affairs, Annalena Baerbock, suggested in September 2024 that

“[W]ith regard to arms exports, which you are now referring to, there have been no arms exports since 7 October that could be used in Gaza and that violate international law there ... But then you see that 2% of other military equipment was exported because, according to our definition, other military equipment is equipment that is also military equipment but cannot be used for what is happening in Gaza”⁴⁸⁸.

She has been proven wrong by the statements made in October by former-Federal Chancellor, Olaf Scholz, by the data available, and by the overwhelming evidence that military equipment exported by Germany, including components and spare parts “Made in Germany”, was and is used in the Gaza Strip.

C. GERMANY’S ASSURANCES IN RESPECT OF THE “ROBUSTNESS” OF ITS EXPORT CONTROL SYSTEM

244. During the hearings on provisional measures, Germany placed significant emphasis not only on figures, but also on its regulatory and procedural system for exports of military

⁴⁸⁶ Administrative Tribunal Cologne, decision of 6 March 2025, 21 L 2376/24, MN 19 (Annex 57)

⁴⁸⁷ See, e.g., “German airline illegally transported a tonne of munitions through Irish territory in past week”, The Ditch, 31 March 2025 (<https://www.ontheditch.com/german-airline-illegally-transported/>). See also “Emergency motion against the delivery of explosives carried by the German ship MV Kathrin to Israel”, European Legal Support Center, Press Release, 30 October 2024 (<https://elsc.support/emergency-motion-against-the-delivery-of-explosives-from-the-german-ship-mv-kathrin-to-israel/>); “FedEx faces criminal complaint in Belgium over arms shipments to Israel”, The Cradle.co, 26 June 2025 (<https://thecradle.co/articles/fedex-faces-criminal-complaint-in-belgium-over-arms-shipments-to-israel>).

⁴⁸⁸ German policy on Israel (Interview with Annalena Baerbock, Federal Minister for Foreign Affairs), Lage der Nation, No. 397, Podcast, 11 September 2024 (Annex 38).

equipment. It called it “a robust legal framework”⁴⁸⁹, and repeated this assertion several times⁴⁹⁰. In its letter of 31 October 2024, Germany again alleged that it complies with its international obligations, “in particular by putting in place a robust domestic legal framework governing the licensing of ‘war weapons’ and ‘other military equipment’”⁴⁹¹ and that it continued “to follow a robust domestic process”⁴⁹².

245. Independently of the question whether Germany satisfies its international obligations by simply “putting in place” a domestic legal framework — *quod non*, the issue of the present proceedings is not and cannot be limited to the respect by Germany of its legal and procedural framework. The question is not whether the Federal Government authorised the export of military equipment in accordance with the relevant legal and procedural requirements under German law. The issue pending before the Court is whether Germany breached its international obligations and committed an international wrongful act. This question “is not affected by the characterization of the same act as lawful by internal law”⁴⁹³.

246. It is therefore entirely irrelevant whether Germany has put into place a “robust” system of export controls concerning military equipment and whether it has meticulously respected this “robust” domestic legal and procedural framework or not.

247. That being said, it is readily apparent that this domestic legal and procedural framework is far from “robust” as Germany continuously claims.

1. The Distinction between Kriegswaffen (war weapons) and Military Equipment that are not Kriegswaffen is a Distinction Without a Difference

248. This is demonstrated by Germany’s continuous allegation that no authorisations of war weapons have been granted since February 2024, suggesting that it remains fully entitled to grant exports of minor, less important equipment of a subordinate character.

⁴⁸⁹ CR 2024/16, 9 April 2024, p. 17, para. 14 (Tams).

⁴⁹⁰ *Ibid.*, p. 17, para. 18 (Tams); p. 36, para. 16; p. 41, para. 39 (Peters); pp. 45-46, paras. 16-21 (Palchetti).

⁴⁹¹ Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 9.

⁴⁹² *Ibid.*, para. 11.

⁴⁹³ Articles on the Responsibility of States for internationally wrongful acts, A/RES/56/83, 12 December 2001, Annex. See also *Elettronica S.p.A. (ELSI) (United States of America v. Italy)*, Judgment, *I.C.J. Reports* 1989, p. 51, para. 73.

249. It needs to be stressed that, in Germany, the export of military equipment is foremost regulated by the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*)⁴⁹⁴ and the related Foreign Trade and Payments Ordinance (*Außenwirtschaftsverordnung*)⁴⁹⁵. In an appendix to the latter Ordinance — the so-called Export List (*Ausfuhrliste*) — military equipment (*Rüstungsgüter*) falling within the scope of the Ordinance is defined through an exhaustive list under the heading “List of weapons, ammunition and military equipment” divided into 22 categories⁴⁹⁶. According to Section 8 (1) of the Foreign Trade and Payments Ordinance, the export of all equipment in this list is subject to a licence. The principle of freedom of foreign trade, underpinning Germany’s foreign trade law, entitles applicants to an export licence (Foreign Trade and Payments Act, Section 1), unless a licence can be refused on the grounds that it would jeopardise the legally protected interests listed in Section 4 (1) of the Foreign Trade and Payments Act, including essential security interests of the Federal Republic, the prevention of a disturbance of the peaceful coexistence of nations, and the prevention of substantial disturbances to the foreign relations of the Federal Republic⁴⁹⁷.

250. In addition, Germany has implemented a distinct legal framework in respect of what it calls *Kriegswaffen* (war weapons). Article 26 (2) of the German Basic Law (*Grundgesetz*) sets out that “[w]eapons designed for warfare may be manufactured, transported or marketed only with the permission of the Federal Government”⁴⁹⁸. Details are regulated by the War

⁴⁹⁴ For an English translation of the *Außenwirtschaftsgesetz*, published by the Federal Government, see https://www.gesetze-im-internet.de/englisch_awg/englisch_awg.html.

⁴⁹⁵ For an English translation of the *Außenwirtschaftsverordnung*, published by the Federal Government, see https://www.gesetze-im-internet.de/englisch_awv/.

⁴⁹⁶ Anlage AL zur Außenwirtschaftsverordnung [Appendix EL to the Foreign Trade and Payments Ordinance], Part I. A, BGBl. 2024 I, Nr. 243, pp. 6-31 (available in German at <https://www.recht.bund.de/bgbl/1/2024/243/VO.html>). The list of military equipment included in the Export List transposes and is largely aligned to the Munitions List of the Wassenaar Arrangement (Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, 12 July 1996 (<https://www.wassenaar.org/app/uploads/2021/12/Public-Docs-Vol-I-Founding-Documents.pdf>) and, for the “Munition List” (<https://www.wassenaar.org/app/uploads/2024/12/List-of-Dual-Use-Goods-and-Technologies-and-ML-2024.pdf>)), similar to the Common Military List of the European Union (Common Military List of the European Union, adopted by the Council on 20 February 2023 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, (CFSP) 2023/C 72/02, OJ C 72, 28.2.2023, pp. 2-37 ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XG0228\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XG0228(01))))). For the ease of reference, and in light of the similarity of the German Export List and the Munition List of the Wassenaar Arrangement, Nicaragua refers to the English text of the latter. The categories of the Munition List correspond to the categories of the Export List. Category ML1 of the Munition List is identical to category A0001 of the Export List, and so on.

⁴⁹⁷ *Außenwirtschaftsgesetz*, *op. cit.* note 494, Sect. 4 (1), Nos. 1-3.

⁴⁹⁸ *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law for the Federal Republic of Germany], 1949, as amended, Art. 26 (2). For an English translation of the *Grundgesetz*, published by the Federal Government, see https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

Weapons Control Act (*Kriegswaffenkontrollgesetz*) which implements the constitutional provision above⁴⁹⁹. The provisions of this law submit the production, marketing, transport, and transfer of *Kriegswaffen* (war weapons) to the authorization of the Federal Government. There is no entitlement to receive such a licence. In particular, a licence shall not be granted if there is a danger of the weapons being used for an act detrimental to peace, or if there is a reason to assume that the granting of a licence would violate the international obligations of the Federal Republic⁵⁰⁰.

251. Contrary to Germany's submissions to this Court, German law does not distinguish between *Kriegswaffen* (war weapons) and *sonstige Rüstungsgüter* (other military equipment). Certainly, the production, marketing, transport, and transfer of certain military equipment which fall under the definition and the scope of the War Weapons Control Act – a definition that is subject to change and modification in the appreciation of the Federal Government⁵⁰¹ —, requires a specific licence. But the export of any military equipment, independently of whether it falls also under the War Weapons Control Act, always requires a licence granted under the provisions of the Foreign Trade and Payments Act and Ordinance.

252. In this respect, the *Kriegswaffen* distinction is, to some extent, a distinction without a difference. The criteria for refusing an export licence are the same for all military equipment.

253. This is also made clear by the Common Position of the Council of the European Union defining common rules governing control of exports of military technology and equipment⁵⁰², which constitutes one of the legal benchmarks taken into account by the Federal Government⁵⁰³. The EU Common Position sets out, in its Article 2, eight criteria against which

⁴⁹⁹ *Kriegswaffenkontrollgesetz*, *op. cit.* note 332. An English version of the law, as published by the Federal Government, is available at https://www.bafa.de/SharedDocs/Downloads/EN/Foreign_Trade/afk_war_weapons_control_act.pdf.

⁵⁰⁰ *Ibid.*, Sect. 6 (1) and (3).

⁵⁰¹ *Ibid.*, Sect. 1 (2) (“The Federal Government is authorised to amend and supplement the War Weapons List, by statutory order requiring the consent of the Federal Council, in accordance with the level of scientific, technical and military knowledge, with the aim to include all items, substances or organisms that are capable alone or in conjunction with each other or with other items, substances or organisms of causing disruption or damage to persons or things and of being used as a means of violence in armed conflicts between states.”).

⁵⁰² European Union, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, OJ L 335, 13.12.2008, p. 99, as amended (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008E0944-20250415>).

⁵⁰³ Political Principles of the Federal Government for the export of war weapons and other military equipment, 26 June 2019, para. I.1 (Annex 10). Some extracts of these Political Principles were included in Germany's Judges Folder, 9 April 2024, tab 15.

Member States shall assess export licence applications, including those relating to government-to-government transfers, for any item on the EU Common Military List⁵⁰⁴ — which is very similar, if not identical, to the German Export List (*Ausfuhrliste*)⁵⁰⁵ — and includes all military equipment and not only war weapons. Criteria two, which is of particular relevance in the present case, is formulated in the following terms:

“Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

- Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, including the human rights situation in that country, Member States shall:
 - (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used to commit or facilitate internal repression, serious acts of gender-based violence or serious acts of violence against women, children, or other serious violations of human rights;
 - (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe;

For these purposes, technology or equipment which might be used for internal repression includes, inter alia, technology or equipment where there is evidence of the use of that or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end use or end-user and be used for internal repression. In line with Article 1, the nature of the technology or equipment shall be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions, and other serious violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

- Having assessed the recipient country’s attitude towards relevant principles established by instruments of international humanitarian law and respect for international humanitarian law, Member States shall:
 - (c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used to commit or facilitate serious

⁵⁰⁴ European Union, Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, OJ L 335, 13.12.2008, Art. 1 (1), as amended (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008E0944-20250415>).

⁵⁰⁵ See note 496 above.

violations of international humanitarian law, including against protected groups under international humanitarian law, such as women and children”⁵⁰⁶.

254. Germany confirmed in April 2024 with reference to that provision that “[w]here the German authorities identify such a clear risk, they must deny the export licences”⁵⁰⁷. It added that “the assessment of course is by reference to the relevant equipment supplied. If it is a batch of helmets or training ammunition, of course the assessment may be no risk at all”⁵⁰⁸. However, it also follows that if the export licences concern engines, transmissions or spare parts that will be or are likely to be used in tanks, then there is no reason, on the basis of the information available and presented above, and the declarations of the Federal Government itself in respect of the situation in the Gaza Strip, to not deny the export licences.

2. Absence of any Meaningful Review of the Decisions of the Federal Government

255. The export licence system is also devoid of any meaningful control. Licences are granted by the Federal Government, in some cases with the participation of the Federal Security Council holding meetings in secret, and the Federal Office for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle* – BAFA).

256. Since October 2023, Palestinians tried to reverse or to prevent export licences or licences granted under the War Weapons Control Act (*Kriegswaffenkontrollgesetz*), but with no avail.

257. Concerning export licences granted under the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*), the Administrative Tribunal of Frankfurt (Main) rejected the requests as inadmissible. The Tribunal explained, in particular, that the Act, and in particular its Section 4 (1), does not provide for any individual protection of third parties, with the possible

⁵⁰⁶ European Union, Council Common Position 2008/944/CFSP, *op. cit.* note 496, Art. 2 (1).

⁵⁰⁷ CR 2024/16, 9 April 2024, p. 40, para. 36 (Peters).

⁵⁰⁸ *Ibid.* This statement was made despite the fact there already existed news reports indicating the use of training ammunition in combat. See, for example, “‘Indian Explosives’: In Gaza, IDF Used 70-year-old Munitions and Shells Intended for Training”, *Haaretz*, 24 March 2024 (<https://www.haaretz.com/israel-news/security-aviation/2024-03-24/ty-article/a-huge-mess-in-gaza-idf-used-70-year-old-munitions-and-shells-intended-for-training/0000018e-5db4-d4b2-afcf-dfb626a90000>).

exception of disputes between armament competitors⁵⁰⁹. The Tribunal also considered that it was not

“established that the five applicants belong to a vulnerable group of the population in Gaza who are exposed to dangers from the war that go beyond the catastrophic level to which all people there are exposed. They are all apparently uninjured, middle-aged men in employment who are better able than other groups to seek protection from the fighting in Gaza”⁵¹⁰.

Although the Administrative Tribunal admitted, in passing, the catastrophic level of the danger to which the population in the Gaza Strip is exposed, it noted:

“The Respondent [*i.e.*, BAFA] has stated that it is implementing a robust and multi-layered review programme to prevent violations of international law. Without knowing the details of this programme due to the lack of access to the administrative files, the Tribunal considers this to be sufficient at present, in agreement with the Higher Administrative Tribunal of Berlin-Brandenburg and the International Court of Justice ...”⁵¹¹.

In other words, the decision to grant or to refuse export licences for military equipment remains within the sole discretion of the Federal Government and its agencies.

258. Prior decisions of German Administrative Tribunals concerning interim measures against licences under the War Weapons Control Act (*Kriegswaffenkontrollgesetz*) were also rejected as inadmissible. The Administrative Tribunal of Berlin and the Higher Administrative Tribunal of Berlin-Brandenburg considered that as long as it is not possible to foresee with the necessary certainty what measures are likely to be taken in the future and under what factual and legal conditions, then preventive interim relief cannot be granted⁵¹². Given that the Federal Government informs the German *Bundestag* and the general public only about positive licencing decision on an *ex post* basis⁵¹³, this means that there is no meaningful way to prevent licences and exports of military equipment through judicial scrutiny. In this respect, the tribunals considered:

⁵⁰⁹ Administrative Tribunal Frankfurt, decision of 11 September 2024, 5 L 2333/24.F, MN 20 (Annex 39).

⁵¹⁰ *Ibid.*, MN 22.

⁵¹¹ *Ibid.*, MN 30 (references omitted).

⁵¹² Administrative Tribunal Berlin, decision of 10 June 2024, 4 L 119/24, MN 8 (Annex 29); Higher Administrative Tribunal Berlin-Brandenburg, decision of 8 August 2024, OVG 1 S 46/24, MN 7-9 (Annex 36). See also Administrative Tribunal Berlin, decisions of 10 June 2024, L 44/24, MN 6, ECLI:DE:VGBE:2024:0610.4L44.24.00 (<https://gesetze.berlin.de/perma?d=NJRE001577573>); 4 L 148/24, MN 9, ECLI:DE:VGBE:2024:0610.4L148.24.00 (<https://gesetze.berlin.de/perma?d=NJRE001577574>).

⁵¹³ See para. 165 above.

“Nor can the contrary be inferred from the fact that the applicants have no enforceable right to be informed in advance of a decision on pending authorisation procedures under the War Weapons Control Act and their specific subject matter, and that information on authorisations granted is to be provided only to a limited extent and subject to the protection of trade and business secrets. Licensing procedures for the export of war weapons, in particular those involving the Federal Security Council, concern the core area of executive responsibility, are subject to fundamental rights in relation to the manufacturers of military equipment and therefore enjoy confidentiality protection. These rights of confidentiality granted to the government to protect unbiased decision-making and to safeguard foreign policy interests would be virtually reversed if one were to derive from them a claim to prohibit the granting of an export licence on the basis of an abstract risk of a violation of the interests referred to in Section 6 (3) War Weapons Control Act”⁵¹⁴.

In other words, the “robust” legal framework is more protective of the interest of the armament industry requesting licences, than of legitimate interests of the general public to a judicial review of decisions to be taken or already taken in light of the dire situation created in the Gaza Strip and other parts of the Occupied Palestinian Territory.

259. Absent any meaningful control mechanism, the export control system is entirely within the hands of the Federal Government. In these circumstances, one can only hope that the Federal Government is and will take its decisions in full respect of Germany’s obligations set out under international law.

3. Germany Concedes that it has no Information about and no Means to Control the Use of Military Equipment Exported to Israel

260. The mere hope or expectation that Germany is and will respect its “robust” framework has however been severely affected by Germany’s own admissions in recent months. Rather than proceeding with a detailed case-by-case analysis in order to assess, for the specific military equipment concerned, the risk that it “might be used to commit or facilitate serious violations of international humanitarian law”⁵¹⁵, the Federal Government continues to grant export authorisations, in significant number and value, disregarding these stringent requirements.

⁵¹⁴ Higher Administrative Tribunal Berlin-Brandenburg, decision of 8 August 2024, OVG 1 S 46/24, MN 12 (Annex 36).

⁵¹⁵ European Union, Council Common Position 2008/944/CFSP, *op. cit.* note 496, Art. 2 (1) (c).

261. Indeed, Germany admitted that it has no information on whether military equipment delivered by Germany to Israel was or is used in the Gaza Strip. This was already confirmed on 10 April 2024⁵¹⁶, immediately after the hearing on provisional measures, and reiterated ever since⁵¹⁷. Relevant information on the actual use of the Heron TP drones was classified⁵¹⁸. Besides the evidence presented above, indicating that Israel is also using military equipment delivered by Germany — information that Germany cannot ignore —, this admission puts serious doubts on the extent to which the Federal Government does or is indeed able to assess the risk associated with military equipment exported to Israel. Recently, having been asked how the Federal Government ensures that German weapons are not used to commit war crimes, no concrete answer was provided⁵¹⁹. It is indeed questionable how the Federal Government assesses compliance with international humanitarian law, as it claims, without having any specific information on the use of the military equipment that is exported.

262. Before the Court, Germany itself admitted that it is simply not in a position to control or to influence the use of military equipment already delivered to Israel. Nicaragua requested the Court to compel Germany to “immediately make every effort to ensure that weapons already delivered to Israel are not used to commit genocide, contribute to acts of genocide or are used in such a way as to violate international humanitarian law”⁵²⁰. Accepting its impuissance Germany replied that this measure:

⁵¹⁶ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/10994, 10 April 2024, answer to questions 1-2 (Annex 26).

⁵¹⁷ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/11838, 13 June 2024, answers to questions nos. 3-5, 6, 7, 8, 16-18 (Annex 30); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answer to question no. 5 (Annex 37).

⁵¹⁸ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/12859, 10 September 2024, answer to questions nos. 25 and 27 (Annex 37).

⁵¹⁹ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Nicole Gohlke, Lea Reisner, Ulrich Thoden, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/284, 26 May 2025, answer to question no. 3 (Annex 63); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Nicole Gohlke, Doris Achelwilm, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/843, 10 July 2025, answer to questions no. 7 and 8 (Annex 74).

⁵²⁰ Application, para. 101 (2).

*“vis[ait] à imposer à l’Allemagne une obligation de vigilance par rapport aux armes déjà livrées à Israël. Or, le Nicaragua n’indique pas comment l’Allemagne pourrait concrètement exercer cette vigilance”*⁵²¹.

This is exactly the point. It is not for Nicaragua to guess how Germany might monitor and control the use of military equipment it has exported. Germany must be in a position to control the use of military equipment delivered to third States. Its own legal framework commands exactly this and provides, for instance, that a licence granted under the *Kriegswaffenkontrollgesetz* can be revoked at any time if one of the reasons for refusing the licence becomes evident or occurred subsequently⁵²². Article 1 (1a) of the Council Common Position also provides that Member States should reassess export licences for items on the EU Common Military List after they have been granted if new relevant information becomes available⁵²³. To this end, Germany’s legal framework includes provisions under which the German authorities can require, for instance, “on-the-spot controls by German agencies” in certain circumstances⁵²⁴.

263. Against this background, it is surprising that in its letter to the Court of 31 October 2024, Germany tried to reassure:

“Detailed assessments in every specific case have come to the conclusion that there were no grounds for refusing the requested licences under the terms of Germany’s international obligations”⁵²⁵.

And Germany continued:

“The thorough assessment of every case encompasses, inter alia, the following factual criteria:

- the nature of the military equipment and the risk associated with its likely use;
- the certified end use and end-user of the goods;
- the conclusions drawn from the confidential dialogue between Germany and Israel and the assurances given;

⁵²¹ CR 2024/16, 9 April 2024, p. 44, para. 12 (Palchetti).

⁵²² *Kriegswaffenkontrollgesetz*, *op. cit.* note 332, Sect. 7.

⁵²³ European Union, Council Common Position 2008/944/CFSP, *op. cit.* note 496, Art. 1 (1a).

⁵²⁴ Außenwirtschaftsverordnung, *op. cit.* note 495, Sect. 21 (5) (“In the case of certain countries, the Federal Office for Economic Affairs and Export Control (BAFA) can require that the application for licensing of the export of goods cited in Part I of the Export List must be accompanied by documentation stating the agreement of the country of destination to accept on-the-spot controls by German agencies of the end-use and of the compliance of the recipient with obligations assumed in accordance with subsection 4 as well as documentation of the marking placed on the goods.”).

⁵²⁵ Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 21.

- internal assessments of the threats Israel is facing.”⁵²⁶

It is revealing that none of these criteria refers to the situation in the Gaza Strip or the threats the Palestinian people are facing. It is also telling that Germany is claiming to be assessing the risk associated with the likely use of military equipment without taking account of the actual use of similar or comparable equipment in the Gaza Strip. At no point does the list refer even to allegations of violations of IHL or the acute risk of such violations, or refer to Israel’s maintenance of its unlawful occupation.

264. In fact, Germany confirms by the content of its letter that it relies heavily, if not exclusively, on the assurance given by Israel, *i.e.*, “a bilateral assurance [received from Israel] that all military equipment delivered from Germany or containing parts delivered from Germany, will only be used in accordance with international humanitarian law”⁵²⁷. This falls short of a case-by-case analysis. Indeed, just as in the early days of Israel’s war in the Gaza Strip, Germany blindly claims that Israel will respect its international obligations, and this despite the fact that “[i]n accordance with the principle of individual assessment, the Federal Government will not grant blanket privileges to individual countries or regions”⁵²⁸. The swiftness, if not to say haste, with which Germany waved through export licences of a significant value in the first half of October 2024⁵²⁹ — exactly when Germany received the assurances letter from Israel on 8 October 2024 — confirms this point.

265. In May 2025 German Chancellor Friedrich Merz expressed clear and unambiguous criticism against the violation of IHL in the Gaza Strip:

“I will now say it even more clearly. Frankly, I no longer understand the Israeli army’s actions in the Gaza Strip or what their goal is. Causing such suffering to the civilian population, as has been increasingly the case in recent days, can no longer be justified as a fight against Hamas terrorism ... [W]hen boundaries are crossed, when international humanitarian law is truly violated, then Germany must also

⁵²⁶ *Ibid.*, para. 22.

⁵²⁷ *Ibid.*, para. 19. See also paras. 204-207 above.

⁵²⁸ Political Principles of the Federal Government for the export of war weapons and other military equipment, 26 June 2019, point III.1 (Annex 10). See also para. 153 above.

⁵²⁹ See para. 203 above. In the period from 1 October to 17 October 2024, the value of individual export licences granted by the Federal Government amounted to 93,034, 297 Euro.

... speak out, then the German Federal Chancellor must also speak out ... We must now say this more clearly, and I am doing so”⁵³⁰.

However, the Federal Foreign Office continues to contend that it is still examining “allegations” of violation of international humanitarian law, but that the Federal Government does not dispose of its own information⁵³¹.

266. It is even more surprising that Germany does not rely on or pay credit to the many reports and information from the United Nations or non-governmental organisations, as it claims⁵³². Those reports include reports by the Commission of Inquiry, finding Israel has extensively engaged in both war crimes and crimes against humanity in Gaza; and affirming the continued maintenance of Israel’s unlawful occupation and denial of Palestinian self-determination⁵³³. German courts suggest that even information from the United Nations is not trustworthy:

“Statements relating to Israel made by UN bodies, such as the report entitled ‘Anatomy of a Genocide’ of 25 March 2024 by the UN Special Rapporteur on the human rights situation in the Palestinian territories occupied since 1967, Francesca Albanese, cited by the applicants, cannot be used as a basis for allegations of violations of international law in summary proceedings without closer examination, given that the United Nations and its sub-organisations have in the past demonstrated a controversial approach to the Middle East conflict”⁵³⁴.

⁵³⁰ re:publica 25: Friedrich Merz – Kriege, Krisen, Kanzlerschaft [Wars, crises, chancellorship], WDR Europaforum, 26 May 2025 (Annex 64). See also “WDR Europaforum: Kanzler Merz kritisiert Israels Vorgehen in Gaza” [WDR Europaforum: Chancellor Merz criticizes Israel’s approach in Gaza], WDR, 26 May 2025 (Annex 65).

⁵³¹ Statements by the Federal Foreign Office at the government press conference of 4 June 2025, Germany, Federal Foreign Office, 4 June 2025 (Annex 69).

⁵³² Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, paras. 17 and 23.

⁵³³ United Nations, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/77/328, 14 September 2022, paras. 75-90; United Nations, Detailed findings on the military operations and attacks carried out in the Occupied Palestinian Territory from 7 October to 31 December 2023, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/56/CRP.4, 10 June 2024, paras. 419-474, 501-507; United Nations, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/79/232, 11 September 2024, paras. 88-99 and 101-110; United Nations, Human Rights Council, “More than a human can bear”: Israel’s systematic use of sexual, reproductive and other forms of gender-based violence since 7 October 2023, Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/58/CRP.6, 13 March 2025, paras. 213-226; United Nations, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/59/26, 6 May 2025, paras. 76-97, especially 79 and 89; United Nations, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/78/198, 5 September 2023, paras. 65-77.

⁵³⁴ Administrative Tribunal Frankfurt, decision of 11 September 2024, 5 L 2333/24.F, MN 31 (Annex 39).

267. However, Germany submitted a declaration of intervention in the *Gambia v. Myanmar* case, co-signed by five other States, that conversely stressed the significance of exactly such reports:

“As a final consideration, the Declarants further submit that it is particularly important for the Court to consider the evidentiary value of certain documents in its construction of Article II of the Genocide Convention, bearing in mind the *erga omnes partes* nature of the obligations under this convention. Specifically, certain sources must be regarded as having particular probative value in establishing the elements required to demonstrate the existence of genocide, including the facts that allow the Court to draw inferences as to specific intent. In this regard, the Declarants submit that reports generated by the United Nations, such as reports produced by fact finding missions, commissions of inquiry, and reports that the Secretary-General of the United Nations may prepare for the United Nations Security Council or General Assembly, can have special importance. Indeed, such reports can be particularly credible because they emanate from a ‘disinterested witness,’ namely ‘one who is not a party to the proceedings and stands to gain or lose nothing from its outcome’”⁵³⁵.

268. In the meantime, nevertheless, export licensing still continues⁵³⁶.

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269. The shortcomings of Germany’s robust system and its implementation are also apparent from Germany’s own arguments. To recall, Germany asserted before the Court that the “robustness” of its municipal system is demonstrated by the decline in the value of export licences granted between October 2023 and March 2024⁵³⁷. In other words, Germany’s licencing practice showed, in the opinion of Germany, that the system worked properly in light of the situation in the Gaza Strip: “[L]a situation actuelle est claire. Le droit allemand impose des conditions strictes aux exportations d’armements. Ce droit a été appliqué, et continuera d’être appliqué de manière rigoureuse par les autorités allemandes, y compris s’agissant d’Israël”⁵³⁸. But if Germany was right in April 2024, then, in its own logic, the significant increase in value of military equipment for which export licences were and have been granted in and since October 2024 puts significant doubts on the “robustness” of the system. Against

⁵³⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Joint declaration of intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland, 15 November 2023, para. 76.

⁵³⁶ See para. 210 above.

⁵³⁷ See, in particular, CR 2024/16, 9 April 2024, pp. 46-47, paras. 22-28 (Palchetti).

⁵³⁸ *Ibid.*, p. 47, para. 28 (Palchetti).

all odds, the Federal Government now suggests that the position it has taken before the Court in April 2024 and the increase of exports since October 2024 do not contradict each other; replying to a question of a member of the German *Bundestag*, the Federal Government said:

“The procedure for granting export licences for ‘other military equipment’ was presented in the aforementioned proceedings before the International Court of Justice and thus formed the basis for the Court’s decision. The licensing procedure remains unchanged”⁵³⁹.

The Federal Government also suggested that the Court “has expressly recognised the Federal Government’s practice of carefully examining individual cases in the proceedings”⁵⁴⁰. However, Germany cannot claim that the system worked because exports declined, on the one hand, and that an increase of exports is covered by the system it has presented to the Court, on the other hand. The only conclusion that can and must be drawn is that, for whatever reason, Germany’s “robust” legal framework has failed.

CONCLUSION

270. Despite the limited data available and made accessible by Germany, certainly also despite the rising pressure of its own public opinion, Germany has continuously authorised the export of military equipment to Israel that is not only *likely* to be used against the Palestinian people in the Gaza Strip, but also in other parts of the Occupied Palestinian Territory, but is *actually* used there. This is the case, for instance, of the delivery of German-made engines and transmission systems that constitute indispensable parts for Israeli tanks. Germany authorities have confirmed these facts and the delivery of arms, while at the same time having raised concerns about the respect of IHL in particular in the Gaza Strip, and having recognized that IHL is breached. Therefore, Germany did not and, in any event, could not have ignored the situation in the Gaza Strip and in other parts of the Occupied Palestinian Territory. Independently of its alleged “robust” export control system, which entirely failed, Germany’s acts and omissions are contrary to its “international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate” international humanitarian law, the Geneva Conventions, the Genocide Convention, and *jus*

⁵³⁹ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, doc. 20/14661, 24 January 2025, answer to questions no. 13 (Annex 53).

⁵⁴⁰ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Nicole Gohlke, Lea Reisner, Ulrich Thoden, other members of the *Bundestag* and the parliamentary group Die Linke, doc. 21/284, 26 May 2025, answer to question no. 4 (Annex 63).

cogens norms with *erga omnes* character such as the continued maintenance of Israel's unlawful presence and regime of racial discrimination, segregation, and apartheid in the Occupied Palestinian Territory. Given the primary role of the Israeli armed forces in sustaining the unlawful presence of Israel in the Occupied Palestinian Territories, this military support constitutes a form of aid and assistance in violation of Germany's obligations under international law. Arms and military equipment from Germany were and are used against the Palestinian people, civilian infrastructure and housing in the Gaza Strip and elsewhere; and are used to maintain Israel's unlawful presence in the Occupied Palestinian Territory.

IV. Germany's other Assistance and Support

271. Germany is not only actively delivering arms and military equipment to Israel, but it is doing so despite the devastating humanitarian situation in the Occupied Palestinian Territory that Germany is well aware, and despite its obligations to do everything in its power to ensure respect for international humanitarian law, do nothing to aid or assist Israel in maintaining its illegal presence in the Occupied Palestinian Territory, and to prevent genocide.

272. Germany recognized in 2024 that “the State of Israel’s continued presence in the Occupied Palestinian Territory is unlawful and that Israel is under an obligation to bring it to an end as rapidly as possible” and stated that it “respect[ed] the International Court of Justice’s advisory opinion, that [it would] act in line with the obligations of international law set out in it”⁵⁴¹.

273. Nevertheless, German companies and other entities have been and continue to be actively involved in project and activities especially in the illegal settlements in the Occupied Palestinian Territory.

274. The report of the independent international fact finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem sets out types of business activities that directly or indirectly enabled, facilitated or profited from the growth of settlements, including *inter alia* the supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, services and utilities including transport, banking and financial operations, and the use of natural resources⁵⁴². Germany has continued to allow such companies and others to be actively

⁵⁴¹ United Nations, *Official Records of the General Assembly*, Tenth Emergency Special Session, 55th plenary meeting, 18 September 2024, A/ES-10/PV.55, p. 35.

⁵⁴² United Nations, Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/22/63, 7 February 2013, para. 96. The business activities outlined in paragraph 96 of the report that contribute directly or indirectly to settlements include: The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures; The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements; The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops; The supply of security services, equipment and materials to enterprises operating in settlements; The provision of services and utilities supporting the maintenance and existence of settlements, including transport; Banking and

involved in project and activities contributing to Israel's maintenance of its illegal settlements in the Occupied Palestinian Territory and maintenance of the situations resulting therefrom. German companies exploit Palestinian resources and deprive Palestinians of benefitting from these resources, including water (1). They participate substantially in the construction of infrastructures, like trains, tramways or roads, that foster the occupation and illegal settlements (2). They support the operation of ever more sophisticated surveillance and control systems aimed at identifying and controlling the movement of Palestinians in the West Bank (3). They are involved in the marketing and transactions of real estate in illegal Israeli settlements (4). German banks and financial institutions continue to contribute to the activities directly or indirectly through equity participations and underwritings in companies involved in such activities or loans (5). In addition, academic institutions continue to entertain relations and partnership, in particular in the academic sectors, with Israeli universities established and operating illegally in the West Bank (6). All these activities contribute to the maintenance of the occupation and impede the full realization by the Palestinian people of their right to self-determination and the full enjoyment of their fundamental human rights.

1. Activities contributing to the Deprivation of Natural Resources

275. German companies are actively involved in depriving the Palestinian people of its enjoyment of the natural resources in the Occupied Palestinian Territory.

276. For instance, as reported by Human Rights Watch in 2016⁵⁴³, the Nahal Raba Quarry is one of several Israeli- and internationally-run quarries located in the so-called Area C of the West Bank and licensed by the Israeli government. The Nahal Raba Quarry occupies an area of 60 hectares and extracts dolomite and crushes it to produce gravel which is used to produce concrete and asphalt. The quarry is on the Palestinian side of the Green Line. Yet it is entirely

financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses; The use of natural resources, in particular water and land, for business purposes; Pollution, and the dumping of waste in or its transfer to Palestinian villages; Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints; Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements.

⁵⁴³ Human Rights Watch, Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights, 2016, pp. 45-49 (https://www.hrw.org/sites/default/files/report_pdf/israel0116_web2.pdf). See also United Nations, Human Rights Council, "From economy of occupation to economy of genocide", Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/59/23(Advance edited version), 30 June 2025, para. 50.

separated from the West Bank by the Wall which encompasses the quarry from the east diverting significantly from the Green Line.

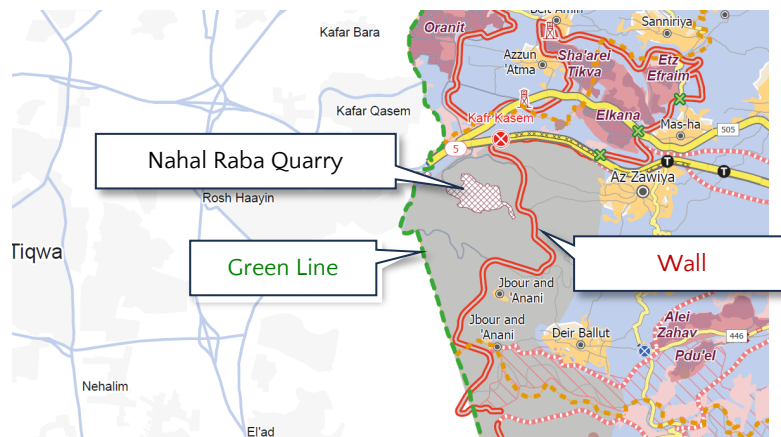


Figure 27. Nahal Raba Quarry in the Occupied Palestinian Territory⁵⁴⁴.

277. The Nahal Raba Quarry has been operated by the German group Heidelberg Materials, one of Germany's largest manufacturers of building materials (before 2022: HeidelbergCement), through its Israeli subsidiary Hanson Israel⁵⁴⁵ since 2007. In a letter addressed to Human Rights Watch, Heidelberg Material stated in 2015:

"The Civil Administration in Judea and Samaria collects fees for the activity of the Israeli quarries located in Area C, mainly consisting of royalties. The Civil Administration is the Israeli governing body that operates in the West Bank and administers Area C of the West Bank.

.....
In 2014, our subsidiary Hanson Israel paid royalties of approx. 3,250,000 € and an additional 430,000 € of municipal taxes for the operation of the Nahal Raba quarry to the Shomron Regional Council, the governing municipal authority"⁵⁴⁶.

According to information provided by Heidelberg Material to Human Rights Watch in 2020, royalties paid by its subsidiary to Israel in 2019 amounted to approximately one million Euro, in addition to 50,000 Euro for the land lease and one million Euro in municipality taxes⁵⁴⁷.

⁵⁴⁴ United Nations, Office for the Coordination of Humanitarian Affairs, Extract of Salfit Access Restrictions, July 2018, UN OCHA, 19 March 2019 (<https://www.ochaopt.org/content/salfit-access-restrictions-july-2018>).

⁵⁴⁵ Heidelberg Materials, Annual and Sustainability Report 2024, p. 277 (https://www.heidelbergmaterials.com/sites/default/files/2025-03/HM_ASR24_en.pdf).

⁵⁴⁶ Letter from Heidelberg Cement to Human Rights Watch, 19 May 2015, in *Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights*, 2016, Annex VIII, pp. 132-133 (https://www.hrw.org/sites/default/files/report_pdf/israel0116_web2.pdf).

⁵⁴⁷ Letter from Heidelberg Cement to Human Rights Watch, 10 June 2020 (https://media.business-humanrights.org/media/documents/files/documents/2020-06-10-_Letter_HRW.pdf).



Figure 28. A Heidelberg Cement Group truck, which says “Hanson” in Hebrew, leaves the Nahal Rabba quarry⁵⁴⁸.

278. According to information of a leading German television magazine from 2010, the minerals produced are brought to Israel without any benefit to the Palestinian communities⁵⁴⁹. The report also reveals that the journalists then requested further information from the Federal Foreign Office. This means that Germany cannot ignore the activities of Heidelberg Materials in the Occupied Palestinian Territory. Indeed, Germany is well aware about Heidelberg Materials activities. In 2021, the Federal Prosecutor General refused to engage criminal investigations under the German Code of Crimes against International Law (*Völkerstrafgesetzbuch*) against members of the company considering *inter alia* that, under German law, the crime of transferring parts of the civilian population of the Occupying Power into the occupied territory applied only in international armed conflicts, which, according to the Federal Prosecutor General, is not the case of the Palestine-Israel conflict, on the one hand, and that the exploitation of the quarry was “validated” by the High Court of Israel, on the other hand⁵⁵⁰.

279. German companies are also involved in the pillage of water resources. The German company Herrenknecht, specialised in the construction of tunnelling equipment, was involved in the construction of a water bypass pipeline in the Palestinian village of Bardala, located in

⁵⁴⁸ Picture at Human Rights Watch, *Occupation, Inc.: How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights*, 2016, p. 48 (https://www.hrw.org/sites/default/files/report_pdf/israel0116_web2.pdf).

⁵⁴⁹ “Deutsches Investment: Raubbau im Palästinenesergebiet” [German investment: Plundering in the Palestinian Territory], *Panorama* (NDR), 2 September 2010 (Annex 3).

⁵⁵⁰ Letter from the Federal Public Prosecutor General, 1 December 2021 (Annex 12).

the northern Jordan Valley of the West Bank⁵⁵¹. The project of the Israeli water company Mekorot — a company featured on the United Nations Human Rights Council’s Database of all business enterprises involved in the activities detailed in the report of the independent international fact-finding mission⁵⁵² — is intended to provide water to illegal Israeli settlements⁵⁵³.

280. Equipment from German companies has also been used for solar energy installations of and serving illegal settlement in the Occupied Palestinian Territory, including SMA Solar Technology⁵⁵⁴. These and other economic activities of these companies in the Occupied Palestinian Territory make Israel’s unlawful presence in the Occupied Palestinian Territory a profitable endeavour for German companies and assists Israel’s unlawful presence.

2. Participation in Infrastructure Projects driven by Israel in the Occupied Palestinian Territory and for the Benefit of Illegal Settlement

281. German companies have been and remain involved in the realization of infrastructure projects driven by Israel in the Occupied Palestinian Territory that, similar to the Wall, aid and assist in maintaining the occupation, in particular by serving illegal settlements, making no distinction between the Occupied Palestinian Territory and Israel’s territory as required by the Security Council and this Court, or the benefit and use of which is denied to Palestinians. The Report of the United Nations Fact-Finding Mission on the Gaza Assault of 2008-2009, appointed by the United Nations Human Rights Council, warned in 2009:

⁵⁵¹ “In the Pipeline: Israeli Bypass Water Project in the Jordan Valley”, Who Profits – The Israeli Occupation Industry, February 2020 (<https://www.whoprofits.org/writable/uploads/old/uploads/2020/02/BardalaFINAL.pdf>).

⁵⁵² United Nations, Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, Report of the United Nations High Commissioner for Human Rights, A/HRC/43/71, 28 February 2020, p. 7.

⁵⁵³ “The Right to Water and the War Crime of Pillage”, Al-Haq, 12 December 2022, p. 50 (https://www.alhaq.org/cached_uploads/download/2022/12/12/al-haq-report-2-1670826325.pdf).

⁵⁵⁴ “Plundering the Sun: The Israeli Solar Energy Industry And Palestinian Forced Displacement”, Who Profits – The Israeli Occupation Industry, May 2018 (https://www.whoprofits.org/writable/uploads/old/uploads/2018/06/old/solar_flash_report.pdf).

“According to reports reviewed by the Mission, aside from the settlements themselves, much new infrastructure is being built to service the settlements, including roads, rail and tram lines, tunnels and waste dumps”⁵⁵⁵.

282. The Report pointed specifically to the train line between Tel Aviv and Jerusalem and to the Jerusalem light rail project⁵⁵⁶. In 2010, the Human Rights Council:

“[e]xpresse[d] its grave concern at ... (g) The Israeli decision to establish and operate a tramway between West Jerusalem and the Israeli settlement of Pisgat Zeev, which is in clear violation of international law and relevant United Nations resolutions”⁵⁵⁷.

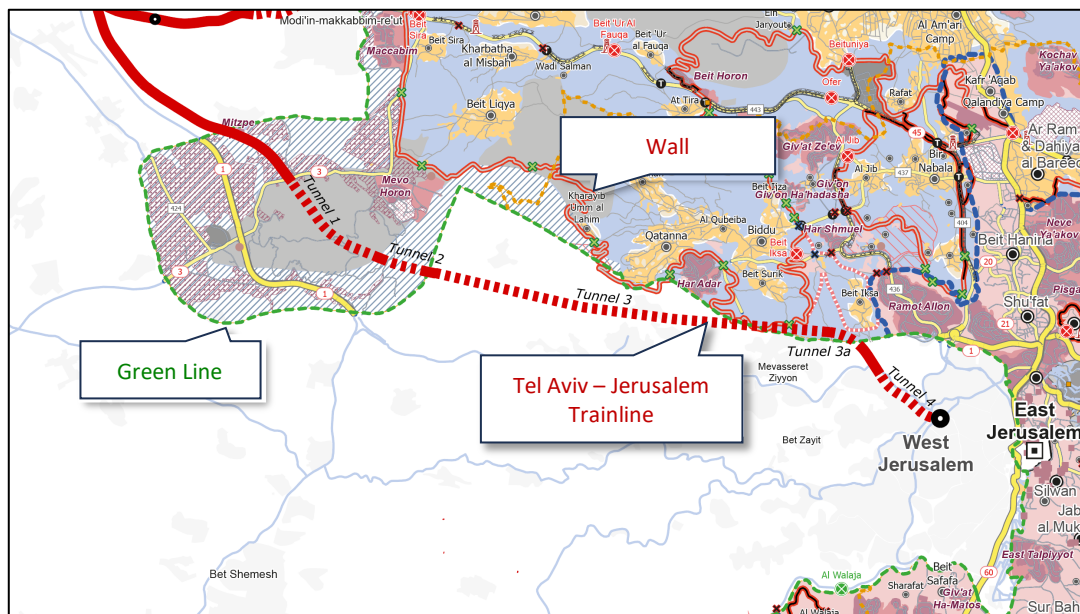


Figure 29. Tel Aviv - Jerusalem Fast Train (Red Line) and the Occupied Palestinian Territory⁵⁵⁸.

283. Nevertheless, several German companies have been significantly involved in the construction of the Tel Aviv – Jerusalem Fast Train (A1 Train). The new railway line crosses the Green Line and encroaches on the Occupied Palestinian Territory at the Latrun Enclave and

⁵⁵⁵ United Nations, Human Rights Council, Human Rights in Palestine and other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009, para. 1540.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ United Nations, Human Rights Council, Resolution 13/7, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, A/HRC/RES/13/7, 24 March 2010, para. 5 (g).

⁵⁵⁸ Extract of West Bank Access Restrictions Map, November 2024, UN OCHA, 28 November 2024 (<https://www.ochaopt.org/content/west-bank-access-restrictions-map-november-2024>). Trainline added on the basis of Wikipedia (https://de.wikipedia.org/wiki/Bahnstrecke_Tel_Aviv-Jerusalem#/media/Datei:Bahnstrecke_Tel_Aviv-Jerusalem.svg). For illustrative purposes only.

near the Palestinian West Bank villages of Beit Surik and Beit Iksa, mainly through tunnels⁵⁵⁹. These parts of the Palestinian land have already been fully annexed by Israel through the Wall.

284. The German company Herrenknecht, already mentioned above, contributed to the construction of tunnels by its technology and machinery specifically developed for the project⁵⁶⁰. One of the largest construction companies in the German construction industry, Max Bögl Stiftung & Co., won, together with Israeli and Swiss partners, tenders for the construction of the tracks and related infrastructure, and for their maintenance⁵⁶¹.

285. The German TÜV Nord Group, a service provider assessing and validating in particular the safety of products and services of all kinds, has been significantly involved in the operationalising of the Jerusalem Light Rail, that connects, *inter alia*, West Jerusalem with illegal settlements in East Jerusalem and the West Bank and led to the expropriation of Palestinian land. In September 2010, TÜV Nord announced that “[r]ail experts from the company are currently working on an independent safety assessment of the total system; tracks, infrastructure, the trams themselves, the depot, operations control technology — everything is new”⁵⁶². This safety assessment and certification constituted an integral part to the opening and operation of the Jerusalem Light Rail. The company itself confirmed that “[w]hen the first tram in Israel rolls through Jerusalem in Spring 2011, TÜV NORD Group will have played a

⁵⁵⁹ “Crossing the Line: Tel Aviv Jerusalem Train (A1)”, Who Profits Research Center, July 2017 (<https://www.whoprofits.org/publications/report/37>); “Fast train between TA, J’lem to run through West Bank”, *The Jerusalem Post*, 6 November 2010 (<https://www.jpost.com/israel/fast-train-between-ta-jlem-to-run-through-west-bank>); Palestine Liberation Organization, Statement by Dr. Saeb Erekat on the Inauguration of the Tel Aviv – Jerusalem Train, 23 September 2018 (<https://www.plo.ps/en/Article/60596>).

⁵⁶⁰ “Herrenknecht”, Who Profits Research Center, 3 March 2022 (<https://www.whoprofits.org/companies/company/4735>).

⁵⁶¹ “Max Bögl Stiftung & Co.”, Who Profits Research Center, 14 March 2022 (<https://www.whoprofits.org/companies/company/3634>). See also “First use of slab track Bögl in Israel”, Press Release, Max Bögl, 15 November 2018 (<https://max-boegl.de/en/news/first-use-of-slab-track-boegl-in-israel>). See also “Electra Bogl wins NIS 760m Jerusalem rail link tender”, *Globes*, 5 February 2015 (<https://en.globes.co.il/en/article-electra-bogl-wins-jerusalem-rail-link-tender-1001007535>).

⁵⁶² “Traffic: TÜV NORD Group Gets Jerusalem’s Trams On Track”, TÜV NORD Group, Press Release, 24 September 2010 (<https://www.prlog.org/10952123-traffic-tv-nord-group-gets-jerusalems-trams-on-track.html>).

substantial role”⁵⁶³. Moreover, material and equipment of German companies was also recorded at construction site of the light rail system⁵⁶⁴.

286. German companies and their subsidiaries have also been contributing to the construction of roads in the Occupied Palestinian Territory that connect illegal settlements and are constructed in such a way that their use is excluded for Palestinians. For instance, Heidelberg Materials subsidiary Hanson Israel includes in its project portfolio the supply of construction materials for Highway 4197 (or Highway 20) in the vicinity of Jerusalem (see Figure 30 below). The highway is located entirely within the Occupied Palestinian Territory but is disconnected from Palestinian villages and Palestinian villages by the Wall while connecting the Israeli settlement of Pisgat Ze’ev to Jerusalem.



Figure 30. Extract from the website of Hanson Israel (Projects)⁵⁶⁵. The text in Hebrew reads: “Bentsion Interchange. Supply of construction materials for Road 4197 – a dual interchange named after the historian Prof. Bentsion Netanyahu. The road is 4.2 km long and connects the north-eastern entrance to Jerusalem with Road 50, passing through the neighbourhoods of Pisgat Ze’ev and Beit Hanina. The construction of the road included the building of huge bridges, and most of the road is elevated. The interchange was inaugurated in May 2013. Construction costs: approximately 180 million shekels.”

⁵⁶³ *Ibid.* See also “TÜV NORD AG Expands Board of Management. Dirk Stenkamp To Strengthen International Focus” Press Release, 1 February 2013 (<https://www.pressrelease.com/news/t-v-nord-ag-expands-board-of-management-dirk-stenkamp-to-strengthen-131319>).

⁵⁶⁴ “Schwing”, Who Profits Research Center, 25 December 2017 (<https://www.whoprofits.org/companies/company/3683>).

⁵⁶⁵ “עבודות גישור ותשתית” [Bridges and infrastructure], Hanson Israel, Projects (available in Hebrew: <https://www.hanson-israel.com/Projects>).

287. Moreover, material and equipment of German companies was also documented at construction sites for similar road projects⁵⁶⁶ or as traffic control equipment⁵⁶⁷.

288. Moreover, Volkswagen's MAN brand, also supplies busses and chassis to the EGGED group⁵⁶⁸, which provides transport "services ... supporting the maintenance and existence of [Israeli] settlements' in the occupied Palestinian territory"⁵⁶⁹.

3. Involvement in the Development, Installation and Operation of Surveillance Systems in the Occupied Palestinian Territory

289. German companies are also involved, often through subsidiaries or on the basis of partnerships and contractual relations, in the development and operation of surveillance systems that are used by Israel in the Occupied Palestinian Territory, and particularly in order to collect, store, and analyse data on Palestinians and their movements. It is unlikely that, because of their nature and means, these contributions and collaborations are submitted to, or recorded as part of Germany's export licensing data. This does not render them less relevant in assessing Germany's obligations in respect of the Occupied Palestinian Territory.

⁵⁶⁶ "Bomag", Who Profits Research Center, 18 August 2017 (<https://www.whoprofits.org/companies/company/3761>). See also United Nations, Office for the Coordination of Humanitarian Affairs, New bypass road in Qalqiliya area raises humanitarian concerns, 25 May 2017 (<https://www.ochaopt.org/content/new-bypass-road-qalqiliya-area-raises-humanitarian-concerns>). "Efco Equipment", Who Profits Research Center, 15 August 2017 (<https://www.whoprofits.org/companies/company/3769>).

⁵⁶⁷ "Siemens AG: A German multinational conglomerate in the electronics and industrial engineering industries. Its equipment is installed in illegal settlement roads and the railway tracks in the occupied West Bank". American Friends Service Committee, Investigate (<https://investigate.afsc.org/company/siemens>).

⁵⁶⁸ See, e.g., Israel: Egged builds on MAN chassis, Automotive World, 7 November 2017 (<https://www.automotiveworld.com/news-releases/israel-egged-builds-man-chassis/>).

⁵⁶⁹ See further United Nations, Office of the High Commissioner for Human Rights, OHCHR update of database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 30 June 2023, p. 5 (<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session31/database-hrc3136/23-06-30-Update-israeli-settlement-opt-database-hrc3136.pdf>); United Nations, Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/43/71, 28 February 2020, p. 7.

290. For instance, the German company Bosch, through its shareholding in the Israeli company AnyVision Interactive Technologies (since 2021, Oosto⁵⁷⁰) and its sales and technology partnership with that company⁵⁷¹, contributes to the mass surveillance of the Palestinian civilian population in the West Bank including through facial recognition technology as an integral part of the occupation and discrimination regime. Oosto provides Israel with a live facial recognition surveillance system which is deployed “deep inside the West Bank to spy on Palestinians and enable the Israeli military’s illegal targeting of civilians”⁵⁷². According to information of the Israeli armed forces, the company is part of a program to upgrade military checkpoints in the West Bank through adding technology for new identification and inspection stations⁵⁷³. Several reports confirm that the Israeli military, as well as other security forces, deployed Oosto’s face recognition systems in the Occupied Palestinian Territory⁵⁷⁴. By August 2019, the Israeli military said that 450,000 West Bank Palestinians were registered in the biometric database established on the basis of Oosto’s technology⁵⁷⁵. In 2018, AnyVision received the Israel Defence Prize for its “project”⁵⁷⁶.

⁵⁷⁰ “Visual AI Company AnyVision Changes its Name to Oosto”, Oosto, Press Release, 27 October 2021 (<https://oosto.com/press/anyvision-now-oosto/>).

⁵⁷¹ “Bosch Building Technologies invests in AnyVision”, Oosto, Press Release, 19 June 2018 (<https://oosto.com/press/bosch-building-technologies-invests-in-anyvision/>).

⁵⁷² “Better Tomorrow”, Database of Israeli Military and Security Export (<https://dimse.info/better-tomorrow/>); “This Israeli Face-Recognition Startup is Secretly Tracking Palestinians”, *Haaretz*, 15 July 2019 (<https://www.haaretz.com/israel-news/business/2019-07-15/ty-article/.premium/this-israeli-face-recognition-startup-is-secretly-tracking-palestinians/0000017f-f47b-ddde-abff-fc7fe25c0000>).

⁵⁷³ “Better Tomorrow”, Database of Israeli Military and Security Export (<https://dimse.info/better-tomorrow/>).

⁵⁷⁴ “This Israeli Face-Recognition Startup is Secretly Tracking Palestinians”, *Haaretz*, 15 July 2019 (<https://www.haaretz.com/israel-news/business/2019-07-15/ty-article/.premium/this-israeli-face-recognition-startup-is-secretly-tracking-palestinians/0000017f-f47b-ddde-abff-fc7fe25c0000>); “Why Did Microsoft Fund an Israeli Firm that Surveils West Bank Palestinians?”, *NBC News*, 28 October 2019 (<https://www.nbcnews.com/news/all/why-did-microsoft-fund-israeli-firm-surveils-west-bank-palestinians-n1072116>); “Face Recognition Lets Palestinians Cross Israeli Checkposts Fast, But Raises Concerns”, *NPR*, 22 August 2019 (<https://www.npr.org/2019/08/22/752765606/face-recognition-lets-palestinians-cross-israeli-checkposts-fast-but-raises-conc>).

⁵⁷⁵ *Ibid.*

⁵⁷⁶ Omar Yousef Shehabi, “Emerging Technologies, Digital Privacy, and Data Protection in Military Occupation”, in Russell Buchan and Asaf Lubin (eds.), *The Rights to Privacy and Data Protection in Times of Armed Conflict*, NATO Cooperative Cyber Defence Centre of Excellence, 2022, p. 92 (<https://ccdcoc.org/uploads/2022/06/The-Rights-to-Privacy-and-Data-Protection-in-Armed-Conflict.pdf>); “AnyVision Interactive Technologies (Oosto)”, Who Profits Research Center, 31 January 2023 (<https://www.whoprofits.org/companies/company/6872>).

4. Participation in the Marketing and in Transactions of Real Estate in Illegal Israeli Settlements

291. The German media group Axel Springer is directly involved in enabling and facilitating real estate transaction in the Occupied Palestinian Territory, and in particular in illegal Israeli settlements. In 2014, Axel Springer and its joint venture partner General Atlantic acquired ownership of Coral-Tell which operates Israel's leading classified portal *Yad2* – an online platform where people can post and browse advertisements for goods, services, and real estate⁵⁷⁷.

292. *Yad2* publishes numerous real estate listings across Israel and the Occupied Palestinian Territory, including rental apartments and sales in illegal Israeli settlements or even in Israeli “outposts” in the West Bank:

“The tab for apartment sales leads users to a huge number of real estate listings, including for approximately 1,300 apartments and commercial spaces in Jewish settlements in the occupied West Bank alone, as of mid-January. *Yad2* users can also find around 1,000 available rental apartments in Jewish-only settlements. Of those, paid posts from brokerages make up more than 800 sale listings, more than 100 rental listings, and more than 100 commercial real estate listings.”⁵⁷⁸

293. *Yad2*'s advertisement presents the Occupied Palestinian Territory as an integral part of Israel together with the slogan: “From the River to the Sea” and the description: “*Yad2* helps you look forward and build a future in your next home in Israel.”⁵⁷⁹ (see Figure 31 below). The website offers properties in Israel and the Occupied Palestinian Territory without distinction (see Figure 32 below), including in what it calls the “Judea and Samaria and the Jordan Valley”, or “Jerusalem” including, without distinction, East Jerusalem (see Figure 33 below).

⁵⁷⁷ “Axel Springer acquires leading Israeli classified portal *yad2*”, Axel Springer, Press Release, 6 May 2014 (<https://www.axelspringer.com/en/ax-press-release/axel-springer-acquires-leading-israeli-classifieds-portal-yad2>).

⁵⁷⁸ “German Media Giant Axel Springer Makes Money on Israel's Illegal Settlements”, *The Intercept*, 5 February 2024 (<https://theintercept.com/2024/02/05/axel-springer-israel-settlement-profit/>).

⁵⁷⁹ “Germany: Media Giant Springer advertises Israel's illegal settlements in the West Bank through its classified ads website *Yad2*; Incl. Co. comment”, Business and Human Rights Resources Center, 26 March 2024 (<https://www.business-humanrights.org/en/latest-news/germany-media-giant-axel-springer-advertises-israels-illegal-settlements-in-the-west-bank-through-its-classified-ads-website-yad2-incl-co-comment/>).

294. In addition to listings for homes and apartments, *Yad2*'s sub-website *Yad1* promotes listings for construction projects “all over the country” in the West Bank and in Israel without distinction⁵⁸⁰.

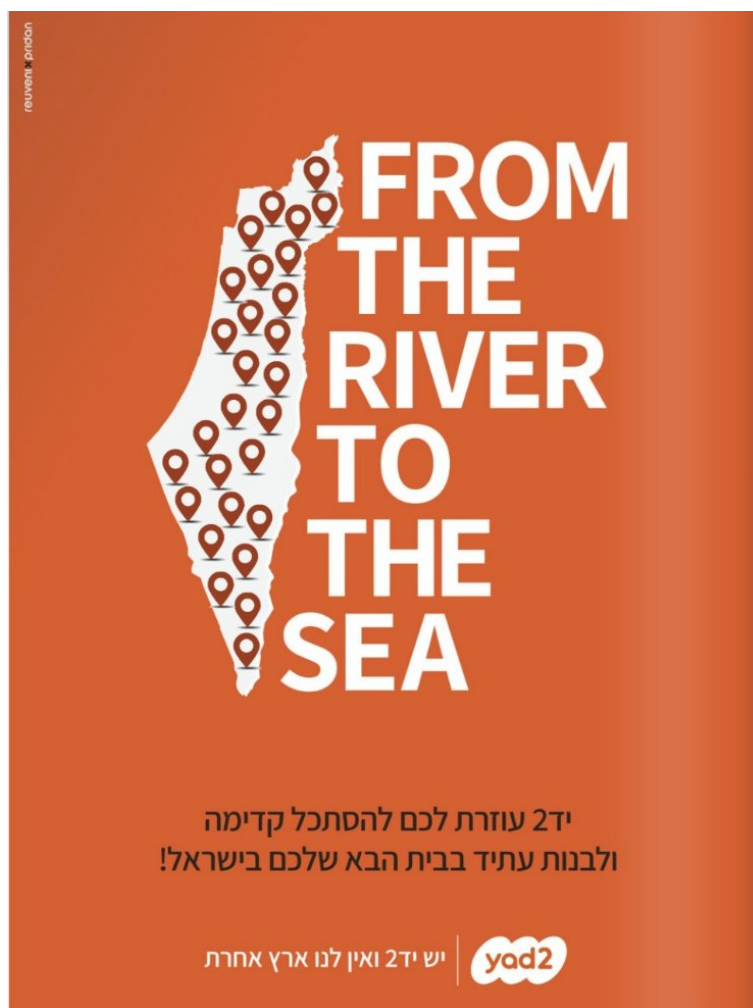


Figure 31. Advertisement of *Yad2*: From the River to the Sea⁵⁸¹.

⁵⁸⁰ “פרויקטים חדשים בכל רחבי הארץ” [New projects all over the country], *Yad1* (<https://www.yad2.co.il/yad1?page=32>).

⁵⁸¹ Post of Michael Sappir (@GozukaraFurkan), X, 23 December 2023, 6:32 PM (<https://x.com/meemsaf/status/1738613686573371659>).

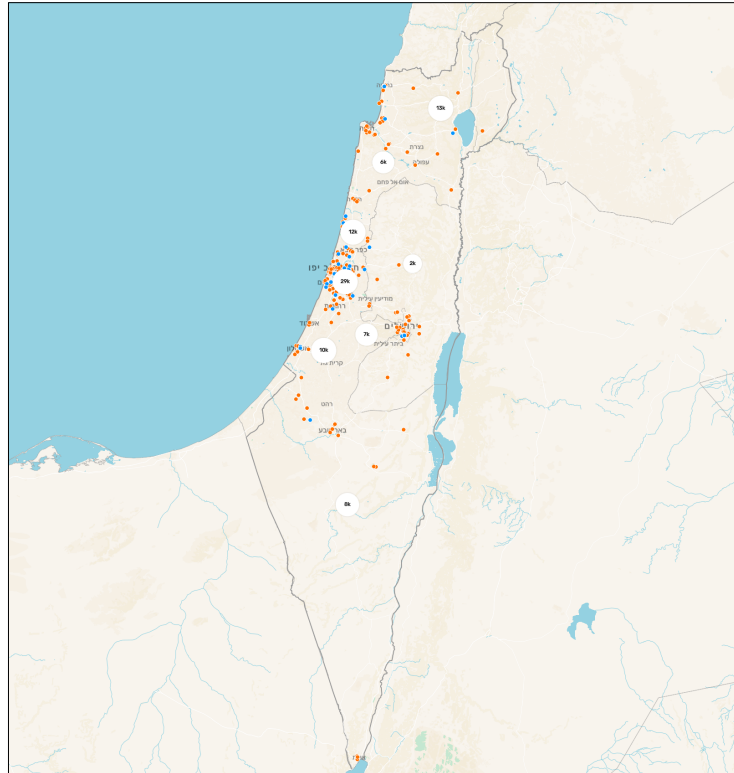


Figure 32. Screenshot of map on Yad2 website showing real estate offerings⁵⁸².

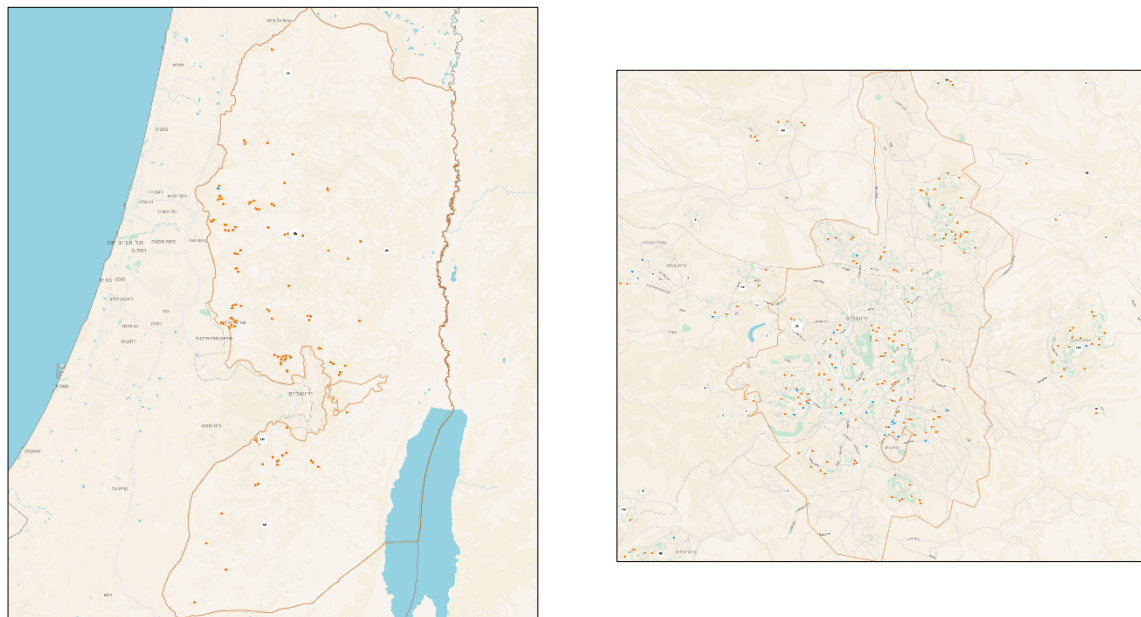


Figure 33. Screenshot of maps on Yad2 website showing real estate offerings in “Judea and Samaria and the Jordan Valley” (left) and in “Jerusalem” (right)⁵⁸³.

⁵⁸² Yad2, “Real Estate for Sale” [נדל"ן למכירה] (<https://www.yad2.co.il/realestate/forsale>) (as of 11 July 2025).

⁵⁸³ Yad2, “Real estate for sale in Judea and Samaria and the Jordan Valley” [נדל"ן למכירה ביהודה ושומרון ובקעת] (<https://www.yad2.co.il/realestate/forsale?zoom=9&topArea=75>); Yad2, “Real estate for sale in the Jerusalem area” [נדל"ן למכירה באזור ירושלים] (<https://www.yad2.co.il/realestate/forsale?zoom=11&topArea=100&area=7>) (as of 11 July 2025).

5. Financial Support from German Banks and Financial Institutions

295. The financial sector provides a critical channel of funding to corporations and actors whose operations serve to maintain and entrench the unlawful occupation of the Occupied Palestinian Territory and Israel's other wrongful acts, as well as to the Israeli state itself⁵⁸⁴. Germany has an obligation to regulate the conduct of natural and legal persons — including financial institutions — operating in its jurisdiction, stemming *inter alia* from its obligation to “take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory”⁵⁸⁵. Yet German banks, financial institutions and insurance companies continue facilitating Israel's continued wrongful conduct.

296. For instance, Deutsche Bank alongside several other large banks provided crucial underwriting services for bond issuances of 8 billion USD in March 2024⁵⁸⁶ and 5 billion USD in February 2025⁵⁸⁷, boosting market confidence⁵⁸⁸. Allianz's asset management subsidiary PIMCO purchased bonds for 960 million USD⁵⁸⁹.

297. While bonds are not earmarked by Israel for the specific purpose of its wrongful conduct, their fungible nature and lack of contractual conditionality mean capital raised through bond issuance cannot be ring-fenced and funds the state's general budget, including expenditures contributing to Israel's military offensive in Gaza; to its continued unlawful presence in the Occupied Palestinian Territory; to its settlement policies and practices throughout the Occupied Palestinian Territory; and to its regime of racial discrimination,

⁵⁸⁴ See also United Nations, Human Rights Council, “From economy of occupation to economy of genocide”, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/59/23 (Advance edited version), 30 June 2025, paras. 73-81.

⁵⁸⁵ *Palestine Advisory Opinion*, para. 278.

⁵⁸⁶ “A public issue of dollar-denominated bonds in the international markets with 8 billions dollars was completed”, Israeli Ministry of Finance (https://www.gov.il/en/pages/press_06032024); Prospectus Supplement, State of Israel, 5 March 2024 (https://www.sec.gov/Archives/edgar/data/52749/000110465924031445/tm247783-2_424b5.htm).

⁵⁸⁷ Prospectus Supplement, State of Israel, 11 February 2025 (https://www.sec.gov/Archives/edgar/data/52749/000110465925012805/tm255845-2_424b5.htm).

⁵⁸⁸ See also United Nations, Human Rights Council, From economy of occupation to economy of genocide, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/59/23 (Advance edited version), 30 June 2025, para. 74 and 76.

⁵⁸⁹ “Seven underwriters of “war bonds” instrumental in enabling Israel's assault on Gaza, new research finds”, BankTrack, 14 February 2025 (https://www.banktrack.org/news/seven_underwriters_of_war_bonds_instrumental_in_enabling_israel_s_assault_on_gaza_new_research_finds;https://www.banktrack.org/news/seven_underwriters_of_war_bonds_instrumental_in_enabling_israel_s_assault_on_gaza_new_research_finds).

segregation and apartheid⁵⁹⁰. Where capital raised through bonds could be specifically and contractually earmarked for lawful expenditures, such expenditures would offset the State's budget, freeing reserved shekels for military spending.

298. In addition, German financial institutions provide financial services such as loans and underwriting to businesses operating in illegal Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem.

299. By their nature, financial investments in these businesses do not allow investors to distinguish between financing lawful operations of the corporation in question and its operations which facilitate the maintenance of Israel's unlawful occupation; and facilitate the commission of its other wrongful acts and the maintenance of the situations resulting therefrom. As with government bonds, such investments are fungible and generally cannot be ringfenced. By way of illustration, for *inter alia* this reason the European Commission found itself obliged to exclude any Israeli entities with activities in the Occupied Palestinian Territory from eligibility for EU-funded financial instruments; whereas for grants and prizes such entities could remain eligible for activities as long as they did not take place either partially or entirely in the Occupied Palestinian Territory⁵⁹¹.

300. From January 2021 to September 2024 alone, 11 identified German financial institutions provided a total of 56.05 billion USD to businesses operating in illegal settlements in the Occupied Palestinian Territory, including 36.85 billion USD in loans and underwriting services and 19.21 billion USD in shares and bond holdings⁵⁹². This includes the State-owned

⁵⁹⁰ On the question of fungibility of sovereign debt, bonds and securities, see *Abaclat and Others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, 4 August 2011, para. 355: "Thus, the term 'obligation' may be understood as referring to an economic value incorporated into a credit title representing a loan. This kind of obligations would in the English language more commonly be called 'bond,' rather than 'obligation'. Similarly, the term 'title' in Spanish and Italian would be more accurately translated into the English term of 'security', which means nothing more than a fungible, negotiable instrument representing financial value"; and, *ibid.*, para. 378: "There is no doubt that the funds generated through the bonds issuance process were ultimately made available to Argentina, and served to finance Argentina's economic development. Whether the funds were actually used to repay pre-existing debts of Argentina or whether they were used in government spending is irrelevant. In both cases, it was used by Argentina to manage its finances, and as such must be considered to have contributed to Argentina's economic development ...".

⁵⁹¹ European Union, Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards, 19 July 2013, 2013/C 205/05, Art. 12 (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:205:0009:0011:EN:PDF>).

⁵⁹² Don't Buy Into Occupation, Don't Buy into Occupation IV report, November 2024 (<https://dontbuyintooccupation.org/reports/dont-buy-into-occupation-report-2024/>). The 11 financial institutions

German development bank (KfW)⁵⁹³, which in this period contributed 4.3 billion USD in loans and underwriting services to businesses operating in illegal settlements in the Occupied Palestinian Territories. It also includes Commerzbank, in which the German Federal State has a 12 percent share.

301. German financial institutions also provide economic support to Israeli banks which play a central role in financing the unlawful occupation. Israeli banks such as Bank Hapoalim, Bank Leumi and Bank Mizrahi Tefahot provide financial services in the illegal settlements in the form of loans, guarantees or credit for construction projects, mortgages for home buyers, loans for settlement regional and local councils and bank branches⁵⁹⁴. German financial institutions' investments in Israeli banks which finance the development, maintenance and expansion of Israeli settlements in the Occupied Palestinian Territory include Allianz, Bayern LB, Deka Group, Deutsche Bank and DZ Bank⁵⁹⁵.

6. Academic Cooperation between German Universities and Israeli Universities in the Occupied Palestinian Territory

302. Germany's academic institutions, including universities, also entertain relations and programmes with Israeli institutions despite the fact that the latter establishments are set up in illegal Israeli settlements or are actively involved in Israel's occupation and discriminatory regime.

identified in the report are: Deutsche Bank, Commerzbank, KfW, LBBW, Landesbank Hessen-Thüringen, DZ Bank, BayernLB, Noddeutsche Landesbank, Hamburg Commercial Bank, Allianz, Deka Group.

⁵⁹³ The German Federal Republic owns 80 percent of KfW while German *Länder* own the remaining 20 percent. KfW, Promotional mandate and history (<https://www.kfw.de/About-KfW/F%C3%B6rderauftrag-und-Geschichte/>)

⁵⁹⁴ UN OHCHR, OHCHR update of database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 30 June 2023, pp. 4-5 (<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session31/database-hrc3136/23-06-30-Update-israeli-settlement-opt-database-hrc3136.pdf>); UN HRC, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/43/71, 28 February 2020, pp. 6-7; Human Rights Watch, Bankrolling Abuse: Israeli Banks in West Bank Settlements, 29 May 2018 (<https://www.hrw.org/report/2018/05/29/bankrolling-abuse/israeli-banks-west-bank-settlements>); Who Profits, Financing Land Grab: The Direct Involvement of Israeli Banks in the Israeli Settlement Enterprise, February 2017 (https://www.whoprofits.org/writable/uploads/publications/1668630886_81fd6b82b80761f6a853.pdf).

⁵⁹⁵ See "DBIO Data 2024", Don't Buy into Occupation (<https://dontbuyintooccupation.org/dbio-data-2024/>).

303. The Technische Universität München (TUM) and the Ludwig-Maximilians-Universität München have entered into a memorandum of understanding with the Israeli Ariel University, including for facilitating student exchange programmes⁵⁹⁶.

304. Ariel University (formerly called Ariel University Center of Samaria) is located in the illegal Israeli settlement of Ariel in the middle of the West Bank. The settlement and the University are detached from the Palestinian villages in their surroundings by the Wall.

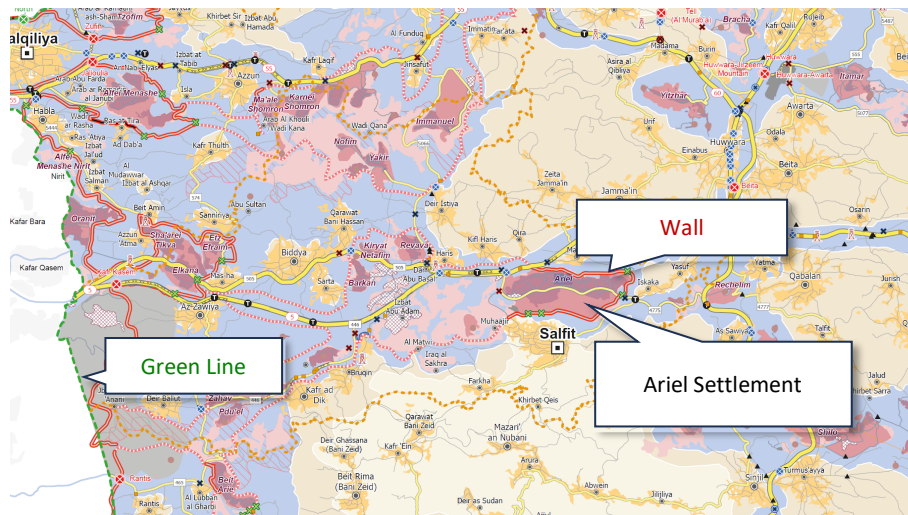


Figure 34. The illegal Israeli settlement Ariel in the West Bank⁵⁹⁷.

305. As early as 2011, Israeli academics vowed not to take part in academic functions at the Ariel University Center of Samaria⁵⁹⁸. Their petition, which was signed inter alia by three Israel Prize laureates, stated that:

“[Ariel] was founded on occupied territory. Only a few kilometers from the flourishing settlement, Palestinians live in villages and refugee camps under difficult living conditions, and lacking basic human rights. Not only do they not have access to higher education, a number of them don’t even have access to running water”⁵⁹⁹.

⁵⁹⁶ Academics for Justice, Collaborations of TUM and LMU with Israeli institutions and possible breaches of international law, February 2025, pp. 7-8 (https://www.academicsforjustice.com/report/feb_25_2025). See also “Academic Agreements”, Ariel University (<https://campuscore.ariel.ac.il/wp/au-international/partnerships/academic-agreements/?location=de>).

⁵⁹⁷ “West Bank Access Restrictions Map, November 2024”, UN OCHA, 28 November 2024 (<https://www.ochaopt.org/content/west-bank-access-restrictions-map-november-2024>).

⁵⁹⁸ “165 Academics sign boycott against Ariel University”, The Jerusalem Post, 9 January 2011 (<https://www.jpost.com/national-news/165-academics-sign-boycott-against-ariel-university>).

⁵⁹⁹ *Ibid.*

The academics further stressed that the settlement “is not part of the sovereign territory of the State of Israel, and therefore it is impossible to require us to work there. Our conscience and our social responsibility demand that we bring forth an obvious stance on the matter”⁶⁰⁰.

306. Nevertheless, the TUM and the Ludwig-Maximilians-Universität München, as well as the Karlsruher Institut für Technologie (KIT)⁶⁰¹, collaborate with Ariel University.

307. It should also be noted that Dutch academic institutions have voiced concerns about the Hebrew University of Jerusalem, in particular in light of its contribution to direct and specific human rights violations in a number of cases and its involvement in breaches of academic integrity, more specifically regarding joint courses with the Israeli armed forces⁶⁰². They have suspended or frozen their partnerships⁶⁰³. Key academic partners of the Hebrew University of Jerusalem in Germany⁶⁰⁴, *i.e.*, the Universität Bonn, the Georg-August-Universität Göttingen⁶⁰⁵, or the TUM, have taken no such steps or even started recently new cooperations⁶⁰⁶.

⁶⁰⁰ *Ibid.*

⁶⁰¹ “Collaborations (partial list)”, MetaboLab, Ariel University (<https://campuscore.ariel.ac.il/wp/metabolab/collaborations/>).

⁶⁰² International Partnerships Advisory Committee, Radboud Universiteit, Opinion on cooperation with Hebrew University of Jerusalem (machine translation), March 2025, p. 10 (https://www.ru.nl/sites/default/files/2025-04/ru-acp-advies-hebrew-university-maart-2025_en-gb-002_0.pdf). See also “A dialogue about the recommendation of the International Partnerships Advisory Committee”, Radboud Universiteit, 1 April 2025 (<https://www.ru.nl/en/about-us/news/a-dialogue-about-the-recommendation-of-the-international-partnerships-advisory-committee>). See further Advisory Committee on Sensitive Collaborations, Erasmus University Rotterdam, Advice on the collaborations with Israeli Universities, 26 May 2025, pp. 29-31 (<https://www.eur.nl/media/2025-05-20250526-advice-collaborations-israeli-universities-publication>).

⁶⁰³ “Radboud University is suspending institution-wide partnerships with two Israeli universities”, Radboud Universiteit, 21 May 2025 (<https://www.ru.nl/en/about-us/news/radboud-university-is-suspending-institution-wide-partnerships-with-two-israeli-universities>); “EUR freezes institution-wide collaborations with Bar-Ilan University, The Hebrew University of Jerusalem, and University of Haifa”, Erasmus University Rotterdam, Press Release, 5 June 2025 (<https://www.eur.nl/en/news/eur-freezes-institution-wide-collaborations-bar-ilan-university-hebrew-university-jerusalem-and>).

⁶⁰⁴ “Key Academic Partners”, Hebrew University of Jerusalem International (<https://international.huji.ac.il/key-academic-partners>). See also “Exchange Partners”, Hebrew University of Jerusalem International (<https://international.huji.ac.il/exchange-partners>).

⁶⁰⁵ “Israel”, Georg-August-Universität Göttingen (<https://www.uni-goettingen.de/en/israel/634340.html>).

⁶⁰⁶ “AI and sustainable food systems: Workshop on AI applications from agriculture to food safety”, TUM School of Life Sciences, Technical University of Munich, News, 3 December 2014 (<https://www.ls.tum.de/en/ls/public-relations/news/news-detail/article/ai-in-revolutionizing-sustainable-food-systems/>).

CONCLUSION

308. Besides Germany's assistance in terms of military cooperation and delivery of military equipment that is significant in terms of volume, value and nature, Germany also fails to not contribute to the maintenance of the unlawful occupation of the Occupied Palestinian Territory, and of the occupation regime, the denial of inalienable fundamental rights to the Palestinian people, racial discrimination and segregation. Germany does not prevent its companies and other entities from being actively involved in projects and activities especially in illegal settlements in the Occupied Palestinian Territory. Germany does not prevent its companies from exploiting Palestinian resources and from depriving Palestinians of benefitting from these resources. Germany does not prevent its companies from participating in the construction and from benefiting from infrastructures projects, or from other economic, commercial or other activities which foster the occupation and illegal settlements. It does so despite the fact that these activities contribute to the maintenance of the occupation and impede the full realization by the Palestinian people of their right to self-determination and the full enjoyment of their fundamental human rights.

CHAPTER 4.

GERMANY'S BREACHES OF ITS INTERNATIONAL LEGAL OBLIGATIONS

I. Germany's Breaches of International Humanitarian Law

309. Germany is bound by treaty law and by customary international law applicable to armed conflict. Germany ratified the Hague Convention II on the Laws and Customs of War on 4 September 1900 and the four Geneva Conventions of 1949 and the three Additional Protocols thereto. According to the website of the German Foreign Ministry, “[m]any provisions of these conventions, in particular the rules designed to shield civilians from the effects of war, are now regarded as customary international law applicable to all countries, irrespective of whether or not they are parties to the conventions”⁶⁰⁷. This is consistent with the view of the Court that the “great majority” of codified norms of international humanitarian law are also customary in nature⁶⁰⁸ and, moreover, “constitute intransgressible principles of international customary law”⁶⁰⁹.

A. THE DUTY TO ENSURE RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

310. The duty to ensure respect for IHL is codified in common Article 1 of the 1949 Geneva Conventions: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”. It is also established in customary international law, set out in Rule 144 of the Customary Law Study issued by the International Committee of the Red Cross (ICRC) in 2005: “States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law”. Rule 144 is entitled “Ensuring respect for international humanitarian law *erga omnes*”⁶¹⁰. With respect to Rule 144,

⁶⁰⁷ “International Humanitarian Law”, Federal Foreign Office, 21 November 2018 (<https://www.auswaertiges-amt.de/en/aussenpolitik/themen/humanitaeresvoelkerrecht-228976>).

⁶⁰⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 258, para. 82.

⁶⁰⁹ *Ibid.*, p. 257, para. 76.

⁶¹⁰ J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Volume I: *Rules* (ICRC, Cambridge University Press, 2005), p. 509 (Rule 144).

the data base of practice of the International Committee for the Red Cross cites a speech by Germany's Commissioner for Human Rights Policy and Humanitarian Aid at the Federal Foreign Office at a ceremony in 2009 commemorating "150 years since Solferino":

"It is the duty of the community of States to ensure respect for international humanitarian law in a determined and credible manner, including as regards the investigation and punishment of serious violations. In particular due to the increase in violations [of IHL], we must not silently accept disrespect for and violations of international humanitarian law"⁶¹¹.

311. In its 2004 *Wall* Advisory Opinion, the Court said, with reference to common Article 1 of the Geneva Conventions:

"It follows from that provision that every State party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with."⁶¹²

The Court repeated these words in the Order of 30 April 2024 in the present case⁶¹³. Furthermore, it added, with reference to *Nicaragua v. United States of America*, that such an obligation "does not derive only from the Conventions themselves, but from the general principles of humanitarian law to which the Conventions merely give specific expression"⁶¹⁴.

312. In the *Wall* Advisory Opinion, the Court also observed:

"In addition, all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention."⁶¹⁵

313. According to the 2016 Commentary of the ICRC, common Article 1 indicates that States Parties "not only apply the provisions themselves, but also do everything reasonably in their power to ensure that the provisions are respected universally"⁶¹⁶. The ICRC considers the

⁶¹¹ Practice relating to Rule 144: Ensuring Respect for International Humanitarian Law *Erga Omnes*, International Humanitarian Law Databases, ICRC (<https://ihl-databases.icrc.org/en/customary-ihl/v2/rule144>).

⁶¹² *Wall* Advisory Opinion, pp. 199-200, para. 158.

⁶¹³ Order of 30 April 2024, p. 568, para. 23.

⁶¹⁴ *Ibid.*, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, p. 114, para. 220.

⁶¹⁵ *Wall* Advisory Opinion, p. 200, para. 159.

⁶¹⁶ "Article I. Respect for the Convention", in K. Dörmann, L. Lijnzaad, M. Sassoli and Ph. Spoerri (eds.), *Commentary on the First Geneva Convention* (Cambridge University Press, 2016), p. 36.

“prevailing view”, and one it supports, is that common Article 1 of the Geneva Conventions requires States Parties to “ensure respect for the Conventions by other States and non-State Parties”. It said this view was already expressed in Pictet’s 1952 Commentary, and that it is confirmed by subsequent developments in customary international law.

314. In its analysis of the “ensure respect” component as it applies to other States, the ICRC cited a pronouncement of the Court in its 1986 judgment in *Nicaragua v. United States of America* to the effect that States were under an obligation “not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3 common to the four 1949 Geneva Conventions”⁶¹⁷. In that case, the Court considered that the United States had breached the negative obligation of the duty to ensure respect when it encouraged violations of IHL by disseminating a manual with instructions “in circumstances where the commission of such acts was likely or foreseeable” and where such encouragement “was likely to be effective” in prompting commission of acts contrary to general principles of international humanitarian law⁶¹⁸. The Court held that the duty to “ensure respect” arose in circumstances where violations of the Geneva Conventions were “likely or foreseeable”, or when the State was aware of “allegations” that the belligerents’ conduct was not consistent with humanitarian law⁶¹⁹. Germany’s responsibility to ensure respect of the Conventions and of IHL generally was triggered as soon as it knew or should have known of plausible violations of IHL and regardless of the ascertainment of intent on the part of Israel.

315. Moreover, States Parties to the Geneva Conventions also have “positive obligations” pursuant to common Article I to take “proactive steps to bring violations of the Conventions to an end and to bring an erring Party to a conflict back to an attitude of respect for the Conventions, in particular by using their influence on that Party”⁶²⁰. The ICRC Commentary of 2016 refers to the “similar due diligence obligation” that is derived from Article I of the Genocide Convention, as held by the Court in *Bosnia v. Serbia*⁶²¹.

⁶¹⁷ *Ibid.*, p. 50, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, p. 114, para. 220.

⁶¹⁸ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, I.C.J. Reports 1986, p. 130, para. 256.

⁶¹⁹ *Ibid.*

⁶²⁰ “Article I. Respect for the Convention”, in K. Dörmann, L. Lijnzaad, M. Sassoli and Ph. Spoerri (eds.), *Commentary on the First Geneva Convention* (Cambridge University Press, 2016), p. 52.

⁶²¹ *Ibid.*, p. 53.

316. Germany has expressed its general agreement with this analysis of the scope of the duty to ensure respect. “The obligation to ensure respect generates so-called positive obligations to exert one’s influence on parties to an armed conflict to observe international humanitarian law”, its counsel told the Court during the provisional measures hearing⁶²². However, Germany’s view of what is required makes a mockery of the obligation. The oral hearing took place at a time when there were notorious reports of large-scale violations of IHL perpetrated by Israel in the Occupied Palestinian Territory. Indeed, the violations of IHL by Israel in the Occupied Palestinian Territory had been thoroughly exposed in the submissions by South Africa during the oral hearing held by the Court on 11 January 2024 and assessed by the Court in its Order of 26 January 2024. Furthermore, these violations were discussed at great length during the oral hearings on the Advisory Opinion held by the Court during the week of 19 February 2024. Germany cannot claim that it was not aware of them and of the many allegations that Israel was responsible for serious violations of international humanitarian law perpetrated on the Occupied Palestinian Territory. As it has been pointed out, the Order of 30 April 2024 itself removes “any plausible deniability of knowledge of the risk” that triggers the obligation to take appropriate measures to prevent violations of international humanitarian law⁶²³.

317. In the Declaration that is attached to the 30 April 2024 Order of the Court in the present case, Judge Cleveland recognized that it was “common ground between the parties, and consistent with the jurisprudence of the Court” that common Article 1 of the Geneva Conventions encompasses positive obligations to prevent violations by third States. Judge Cleveland wrote:

“It is also common ground that these obligations go beyond duties to refrain from ‘complicity’ in violations by third States, such as that required under Article III, paragraph (e), of the Genocide Convention, or from “aiding or assisting” internationally wrongful acts by third States under general international law”⁶²⁴.

318. During the oral hearing on provisional measures in this case, Germany did not acknowledge that serious violations of IHL could be attributed to Israel but nor did it deny this. In explaining to the Court its compliance with the obligation to “ensure respect”, Germany claimed it was “our duty to remind Israel that even when exercising its right to self-defence

⁶²² CR 2024/16, 9 April 2024, p. 38, para. 24 (Peters).

⁶²³ Order of 30 April 2024, Declaration of Judge Tladi, para. 13.

⁶²⁴ *Ibid.*, Declaration of Judge Cleveland, para. 3.

international humanitarian law applies”⁶²⁵. This was the extent of Germany’s contention that it was taking measures to “ensure respect” for the Geneva Conventions and the intransgressible principles of international humanitarian law. Surely when the drafters of the Geneva Conventions defined what Jean Pictet said was “no mere empty form of words”, a provision “deliberately invested with imperative force” that “must be taken in its literal meaning”⁶²⁶, they meant something more than a polite reminder to obey the law.

319. The ICRC Commentary of 2016 lists several possible measures that States Parties may take on an individual basis in order to “ensure respect” for the Geneva Conventions, including “addressing questions of compliance within the context of a diplomatic dialogue”, “exerting diplomatic pressure by means of confidential protests or public denunciations”, “adopting lawful countermeasures such as arms embargoes, trade and financial restrictions, flight bans and the reduction or suspension of aid and cooperation agreements”, “conditioning, limiting or refusing arms transfers”, “resorting to penal measures to repress violations of humanitarian law”, and “supporting national and international efforts to bring suspected perpetrators of serious violations of international humanitarian law to justice”⁶²⁷.

320. The ICRC Commentary of 2016 also notes that common Article 1 of the Geneva Conventions does not establish any primacy of collective measures over individual measures⁶²⁸. In any event, there is no evidence that Germany has taken any measures, be they individual or collective, directed at preventing Israel from perpetrating violations of the Geneva Conventions or of customary international humanitarian law. Consequently, any suggestion that collective measures might be preferable to individual action by States does not arise and need not be considered further. In its unqualified support for Israel, Germany has taken no significant steps to reign in Israel, despite full awareness of the serious violations of international humanitarian law.

321. Germany is a devoted friend of Israel. It confirmed this in statements before the Court during the hearing on the provisional measures request in the present case. Germany’s close

⁶²⁵ CR 2024/16, 9 April 2024, p. 10, para. 13 (von Uslar-Gleichen).

⁶²⁶ Jean S. Pictet (ed.), *Commentary, IV, Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, 1958), p. 27.

⁶²⁷ “Article I. Respect for the Convention”, in K. Dörmann, L. Lijnzaad, M. Sassoli and Ph. Spoerri (eds.), *Commentary on the First Geneva Convention* (Cambridge University Press, 2016), pp. 57-59.

⁶²⁸ *Ibid.*, p. 56.

and loyal relationship with Israel⁶²⁹ means that it is in a particularly influential position and quite possibly able, to a much greater extent than most other States, to influence Israel's conduct and to deter it from continuing violations of IHL. But what has it done? In the public sphere, it has never even acknowledged that Israeli forces have committed serious violations of IHL in Gaza. It has not undertaken any of the measures proposed by the ICRC in the 2016 Commentary, described above. Germany makes vague claims to "diplomatic dialogue" but this is impossible to verify. There is no credible evidence that Germany has exercised its influence with Israel to ensure respect for international humanitarian law.

322. In 2008, Israel presented its first report to the Human Rights Council in the context of the Universal Periodic Review mechanism. For example, this was an opportunity, among others, for Germany to call upon Israel to comply with the conclusions of the 2004 *Wall* Advisory Opinion of the Court, and "to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory" and "[i]n the event that such restitution should prove to be materially impossible, ... to compensate the persons in question for the damage suffered"⁶³⁰. More generally, the Court said all States were under an obligation "to ensure compliance by Israel with international humanitarian law as embodied in that Convention"⁶³¹. But when Israel's first report was being considered, Germany confined itself to noting "that the difficult security situation in and around Israel must be borne in mind when the Government considers its human rights policy. It condemned the missile attacks from Gaza against Israel and was concerned about the closure of border crossings and the resulting humanitarian situation". Germany "asked Israel how access to humanitarian personnel, diplomats and international media representatives to Gaza could be ensured". Several States, but not Germany, called upon Israel to comply with the Advisory Opinion⁶³². When the *Wall* Advisory Opinion was discussed by the General Assembly, on 20 July 2004, Germany did not speak. It voted in favour of a resolution adopted by 100 votes to 6 against with 10 abstentions. All European Union States voted in favour⁶³³.

⁶²⁹ See above, paras. 127-135.

⁶³⁰ *Wall* Advisory Opinion, pp. 197-198, para. 153.

⁶³¹ *Ibid.*, p. 200, para. 159.

⁶³² United Nations, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Israel, A/HRC/10/76, 8 January 2009, para. 30.

⁶³³ United Nations, *Official Records of the General Assembly*, General Assembly, Tenth Emergency Special Session, 27th meeting, 20 July 2004, p. 5.

323. Germany might have taken up the opportunity of the written proceedings and oral hearings on the Advisory Opinion in February 2024 in order to use its influence with respect to Israel. It chose to remain silent. Elsewhere, Germany is equally taciturn when it comes to criticism of Israel for its failure to respect basic rules of international humanitarian law. In the special emergency sessions of the United Nations General Assembly it has focussed its attention on violations of humanitarian law committed by Palestinians and refrained from criticism of Israel. For example, on 12 December 2023, Germany abstained in the vote on a General Assembly resolution that “*express[ed] grave concern over the catastrophic humanitarian situation in the Gaza Strip and the suffering of the Palestinian civilian population*”⁶³⁴. Germany took the floor to say it could not “endorse a text that does not condemn the heinous acts of terror and the violations of international humanitarian law that have been committed by Hamas against Israel since 7 October, including the horrific acts of sexual violence against Israeli women and girls”. As for Israel’s conduct, all that Germany could say was that “Israel has a right to defend itself in accordance with international law and international humanitarian law”⁶³⁵.

324. On rare occasions, Germany has offered muted criticism of the expansion of Israel’s settlements and of the conduct of “radical Israeli settlers” but it has refrained from any public comment on the violations of IHL by Israel in the Gaza Strip⁶³⁶. However, these criticisms have not been transposed into actions, and Germany continues to provide direct and indirect continued assistance and support to the illegal settlements. Germany’s indifference to violations of IHL only encourages Israel. It is entirely consistent with its continued supply of weapons and other materials that have only facilitated Israel in its attacks on the people of Palestine.

325. The Court determined in the *Palestine* Advisory Opinion that Israel’s continued presence in the Occupied Palestinian Territory is unlawful. It reached this determination based on Israel’s breach of a number of peremptory norms of international law, including the right of the Palestinian people to self-determination, as discussed in the following section, but also on the prohibition on the acquisition of territory by force. The Court determined that:

⁶³⁴ United Nations, General Assembly, Resolution ES-10/22, Protection of civilians and upholding legal and humanitarian obligations, 19 December 2023.

⁶³⁵ United Nations, *Official Records of the General Assembly*, Tenth Emergency Special Session, 45th plenary meeting, 12 December 2023, A/ES-10/PV.45, p. 14.

⁶³⁶ *Ibid.*, 55th plenary meeting, 18 September 2024, A/ES-10/PV.55, pp. 32-33.

“[T]he violations by Israel of the prohibition of the acquisition of territory by force and of the Palestinian people’s right to self-determination have a direct impact on the legality of the continued presence of Israel, as an occupying Power, in the Occupied Palestinian Territory. The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel’s presence in the Occupied Palestinian Territory unlawful.”⁶³⁷

326. Specifically, the Court found that:

“This illegality relates to the entirety of the Palestinian territory occupied by Israel in 1967. This is the territorial unit across which Israel has imposed policies and practices to fragment and frustrate the ability of the Palestinian people to exercise its right to self-determination, and over large swathes of which it has extended Israeli sovereignty in violation of international law.”⁶³⁸

327. As outlined above⁶³⁹, the prohibition on annexation as a method of acquiring territory through force is established in the 1970 Friendly Relations Declaration⁶⁴⁰, Article 2 (4) of the United Nations Charter, and parallel customary international law⁶⁴¹. The prohibition on the use of force moreover constitutes a *jus cogens* norm⁶⁴². Because Israel is engaged in a continual act of unlawful force by maintaining its presence in the Occupied Palestinian Territory⁶⁴³, Germany is obligated to refrain from recognising the legitimacy of Israel’s annexation of and unlawful presence in the Occupied Palestinian Territory and refraining from any actions which contribute towards its maintenance. The Court stressed that third states must:

“[abstain] from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory; to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian

⁶³⁷ *Palestine* Advisory Opinion, para. 261.

⁶³⁸ *Ibid.*, para. 262.

⁶³⁹ See para. 67-74 above.

⁶⁴⁰ Friendly Relations Declaration, *supra* note 94.

⁶⁴¹ *Wall* Advisory Opinion, p. 171, para. 87.

⁶⁴² *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Judgment, Merits, I.C.J. Reports 1986, pp. 100-101, para. 190; Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), *supra* note 100, p. 16, Annex, para. (a) (referring to the “prohibition of aggression”).

⁶⁴³ *Palestine* Advisory Opinion, para. 267: “With regard to the Court’s finding that Israel’s continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. *It is a wrongful act of a continuing character which has been brought about by Israel’s violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people.*” (emphasis added).

Territory or parts thereof which may entrench its unlawful presence in the territory; to abstain, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory; and to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory”⁶⁴⁴.

328. Germany has nonetheless failed to do so. Germany continues to import goods and services originating from illegal Israeli settlements, continues to allow German companies and universities to operate in these settlements and perform contracts requiring the use of unlawfully appropriated property therein, continues to maintain and facilitate investment relations that assist in the maintenance of settlements and Israel’s unlawful presence, and continues to trade in military material and provide military assistance used to maintain the ongoing unlawful occupation and annexation of the Occupied Palestinian Territory⁶⁴⁵.

B. THE DUTY TO PUNISH SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

329. The grave breach provisions of the Geneva Conventions and the Additional Protocol relative to international armed conflict impose an *aut dedere aut judicare* duty on States Parties. Prof. Claus Kreß has explained that the grave breach provisions are mandatory and that they exclude the possibility of an exercise of prosecutorial discretion not to investigate and prosecute⁶⁴⁶. By its failure to investigate and prosecute serious violations of IHL perpetrated by Israelis in the Occupied Palestinian Territory, Germany is in violation of its obligations under the Geneva Conventions, the Additional Protocol I and customary international law.

330. Indeed, an obligation to prosecute persons suspected of perpetrating serious violations of IHL may also be derived from the broad duty to ensure respect that is codified in common Article 1 of the Geneva Conventions.

331. The German Code of Crimes against International Law (*Völkerstrafgesetzbuch – VStGB*)⁶⁴⁷ confirms Germany’s understanding of its obligations to prosecute persons suspected

⁶⁴⁴ *Palestine* Advisory Opinion, para. 278.

⁶⁴⁵ More generally, see paras. 271-308 above.

⁶⁴⁶ Cl. Kreß, “Reflections on the *Iudicare* Limb of the Grave Breaches Regime”, *Journal of International Criminal Justice*, vol. 7, 2009, p. 802.

⁶⁴⁷ For an English translation of the Code published by the Federal Ministry of Justice, see https://www.gesetze-im-internet.de/englisch_vstgb/englisch_vstgb.html.

of serious violations of international humanitarian law⁶⁴⁸. According to Section 1, sentence 1, of the Code, international crimes defined in the Code, including serious violations of international humanitarian law, are punishable in Germany by German courts even when the offence has been committed abroad and has no relation to Germany⁶⁴⁹. The presence of the suspect on German territory is not a requirement for investigations of crimes subject to universal jurisdiction as claimed by Germany⁶⁵⁰.

332. Violations of IHL punishable on the basis of universal jurisdiction as claimed and recognized by German national law include crimes against persons (such as wilful killing, torture or other inhumane treatment, sexual violence, unlawful deportation or transfer of persons, gravely humiliating and degrading treatment and transfer of parts of a civilian population into occupied territory), crimes against property (including pillaging, destruction, appropriation and seizure of property), and prohibited means and methods of warfare (including attacks against a civilian population and against civilian objects, attacks causing excessive civil damages, intentional starvation of civilians and attacks causing excessive damage to the natural environment).

333. German courts have held several trials based upon the principle of universal jurisdiction accepted in its national legal system. In a statement to the Sixth Committee of the General Assembly, Germany boasted about more than 100 investigations underway on the basis of its claims of universal jurisdiction. “The message was clear: there was no safe haven in Germany for perpetrators of international crimes, and justice would be served for victims and survivors”, Germany told the Committee⁶⁵¹.

334. However, Germany’s zeal for prosecution on the basis of its claims of universal jurisdiction has its limits. There is no evidence that Germany is investigating or prosecuting serious violations of IHL committed in the Palestinian Occupied Territory and directed against

⁶⁴⁸ “Universal Jurisdiction Law and Practice in Germany”, Open Society Justice Initiative and Trial International, Briefing Paper, March 2019 (<https://www.justiceinitiative.org/publications/universal-jurisdiction-law-and-practice-germany>).

⁶⁴⁹ *Ibid.*, p. 4.

⁶⁵⁰ *Ibid.*, p. 17.

⁶⁵¹ *Official Records of the General Assembly*, Seventy-seventh session, 12th meeting, 12 October 2022, A/C.6/77/SR.12, para. 35. See also Permanent Mission of the Federal Republic of Germany to the United Nations New York, Sixth Committee – Agenda item 84: The scope and application of the principle of universal jurisdiction Statement by the Federal Republic of Germany, 12 October 2023 (https://www.un.org/en/ga/sixth/78/pdfs/statements/universal_jurisdiction/12mtg_germany.pdf).

Palestinians and their property. Germany's policy is one of total impunity. Indeed, when arrest warrants were issued by the International Criminal Court with respect to senior officials of Israel and concerning serious violations of international humanitarian law, Germany's Chancellor Friedrich Merz stated his intention to find "ways and means" to invite Benjamin Netanyahu to Germany, in open defiance of Germany's obligations as a State Party to the Rome Statute of the International Criminal Court⁶⁵². Thus, the message is even clearer than Germany's hypocritical claim before the Sixth Committee: Germany is indeed a safe haven for perpetrators of international crimes to the extent that these concern crimes attributable to Israeli leaders and where the victims are the people of Palestine.

⁶⁵² "Merz invites Netanyahu to Germany despite ICC arrest warrant", Deutsche Welle, 1 March 2025 (<https://www.dw.com/en/merz-invites-netanyahu-to-germany-despite-icc-arrest-warrant/a-71788069>); "Merz says Netanyahu will be able to visit Germany despite ICC warrant", Al Jazeera, 24 February 2025 (<https://www.aljazeera.com/news/2025/2/24/merz-says-netanyahu-will-be-able-to-visit-germany-despite-icc-warrant>).

II. Germany's Violations in Respect of the Principle of Self-Determination of Peoples

335. The present section addresses Germany's breaches of international law in respect of the principle of self-determination of peoples. It first recalls the Court's determination that the Palestinian people are entitled to the inalienable right to self-determination and that the latter, alongside other fundamental rights, has been systematically and continuously denied to them (A). The section then addresses Germany's obligations in this context, in particular those requiring Germany to respect the right of the Palestinian people to self-determination and to promote the realization thereof; to cooperate to bring to an end the ongoing serious breaches of this right in light of its peremptory (*jus cogens*) character; not to recognize as lawful the situation created by such breaches; and not to render aid or assistance in maintaining that situation (B). A final section shows that, through its conduct in relation to the Occupied Palestinian Territory, Germany has breached these obligations, thereby creating significant obstacles for the realization of the right of the Palestinian people to self-determination (C).

A. THE PALESTINIAN PEOPLE ARE ENTITLED TO THE RIGHT TO SELF-DETERMINATION, WHICH IS BEING SYSTEMATICALLY AND CONTINUOUSLY DENIED

336. It is well-established that the Palestinian people are entitled to the right to self-determination under international law⁶⁵³. The Court has “affirmed the existence of the right of the Palestinian people to self-determination”⁶⁵⁴ – a matter which is “no longer in issue”⁶⁵⁵. The right of all peoples to self-determination is one of the “basic principles of international law”⁶⁵⁶, and the obligation of States to respect this right “is owed *erga omnes*”; thus, “all States have a legal interest in protecting that right”⁶⁵⁷. It moreover has a “broad scope of application”⁶⁵⁸ and, as indicated by the Court, “in cases of foreign occupation such as [that of the Occupied Palestinian Territory]”, it “constitutes a peremptory norm of international law”⁶⁵⁹.

⁶⁵³ See paras. 64 and 107-113.

⁶⁵⁴ *Palestine Advisory Opinion*, para. 230.

⁶⁵⁵ *Wall Advisory Opinion*, pp. 182-183, para. 118.

⁶⁵⁶ *Palestine Advisory Opinion*, para. 231.

⁶⁵⁷ *Ibid.*, para. 232. See also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 139, para. 180.

⁶⁵⁸ *Palestine Advisory Opinion*, para. 234.

⁶⁵⁹ *Ibid.*, para. 233.

337. The right of the Palestinian people to self-determination encompasses a number of specific elements that define its content and which all States, including Germany, must respect. In particular:

- The Palestinian people have a right to territorial integrity⁶⁶⁰, including a “right to an independent and sovereign State, over the entirety of the [Occupied Palestinian Territory]”⁶⁶¹;
- Palestinians have a right to maintain their integrity as a people, which protects the latter from acts aimed at dispersing them⁶⁶² and, more generally, altering their demographic composition;
- The Palestinian people have a right to exercise permanent sovereignty over their natural resources⁶⁶³;
- The Palestinian people have a right freely to determine their political status and to pursue their economic, social and cultural development⁶⁶⁴.

338. The Court has found in no unclear terms, both in the 2004 *Wall Advisory Opinion* and the 2024 *Palestine Advisory Opinion*, that each of these elements of the right of the Palestinian people to self-determination is being systematically and continuously violated in a myriad of ways⁶⁶⁵. The denial of this inalienable right having been established by the principal judicial organ of the United Nations, no State, including Germany, can claim not to have been aware of it.

339. Specifically, the Court has established that Israel has been in breach of the right to territorial integrity of the Palestinian people as a result of its settlement policy and the

⁶⁶⁰ *Ibid.*, para. 237. See also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 134, para. 160.

⁶⁶¹ *Palestine Advisory Opinion*, para. 237.

⁶⁶² *Ibid.*, para. 239.

⁶⁶³ *Ibid.*, para. 240.

⁶⁶⁴ *Ibid.*, para. 241.

⁶⁶⁵ While the policies and practices that seek to deny this fundamental right to Palestinians also constitute violations of other rules of international law that are addressed elsewhere in this Memorial, the principle of self-determination is a distinct *jus cogens* norm and determining its breach does not require establishing a violation of such other rules; different types of breaches may occur simultaneously.

annexation of large parts of the Occupied Palestinian Territory⁶⁶⁶. Moreover, the Court has determined that the realization of the right to self-determination has been severely impeded through the construction of the wall and its associated regime, which contribute to the forced transfer of Palestinians from the Occupied Palestinian Territory and thus bring about alterations of the demographic composition of the latter, and “create a *‘fait accompli’* on the ground that could well become permanent”⁶⁶⁷. The Court has moreover found that “Israel’s settlement policy as a whole, its annexation of territory and its related legislation and measures that discriminate against Palestinians in the Occupied Palestinian Territory contribute to the departure of Palestinians from certain areas” of that territory⁶⁶⁸. The same is true for Israel’s strict restrictions on movement between and within the Gaza Strip and the West Bank, including East Jerusalem⁶⁶⁹.

340. The Court has also determined that the Palestinian people are being deprived of their right to exercise permanent sovereignty over their natural resources in the Occupied Palestinian Territory because of Israel’s exploitation of such resources for its own benefit and that of settlements⁶⁷⁰. Furthermore, Israel’s policies and practices have severely impaired the fundamental human rights of Palestinians in virtually all fields. The severe mental and physical harm inflicted on Palestinians over several decades and the restriction of their rights to liberty and security of person and freedom of movement, have frustrated their economic, social and cultural development, and forced Palestinian economic dependence on Israel. As the Court indicated, these policies and practices gravely obstruct the realization of the right of the Palestinian people to self-determination⁶⁷¹.

341. The Court’s conclusion based on all the above in 2024 was clear:

“The prolonged character of Israel’s unlawful policies and practices aggravates their violation of the right of the Palestinian people to self-determination. As a consequence of Israel’s policies and practices, which span decades, the Palestinian people has been deprived of its right to self-determination over a long period, and further prolongation of these policies and practices undermines the exercise of this right in the future. For these reasons, the Court is of the view that Israel’s unlawful

⁶⁶⁶ *Palestine* Advisory Opinion, para. 238. See also *Wall* Advisory Opinion, p. 184, paras. 121-122.

⁶⁶⁷ *Palestine* Advisory Opinion, para. 239; *Wall* Advisory Opinion, p. 184, para. 122.

⁶⁶⁸ *Palestine* Advisory Opinion, para. 239.

⁶⁶⁹ *Ibid.*

⁶⁷⁰ *Ibid.*

⁶⁷¹ *Ibid.*, paras. 241-242.

policies and practices are in breach of Israel's obligations to respect the right of the Palestinian people to self-determination."⁶⁷²

342. The egregious conduct that the Palestinian people have been subjected to can only be described as a "subjection of peoples to alien subjugation, domination and exploitation" which constitutes a "denial of fundamental rights", and is contrary to the United Nations Charter and an "impediment to the promotion of world peace and co-operation"⁶⁷³. This situation, as the Court stressed, is nothing new, but rather "span[s] decades".

343. It ought to be emphasized that the policies and practices aimed at denying the right of the Palestinian people to self-determination would not be possible without the systematic and widespread use of force against Palestinians, including, more recently, the military onslaughts on the Gaza Strip and northern West Bank. Indeed, as the Court has noted, "the violence by settlers against the Palestinians, Israel's failure to prevent or to punish it effectively and its excessive use of force against Palestinians contribute to the creation and maintenance of a coercive environment against Palestinians"⁶⁷⁴. Israel's ability to commit such violent acts is directly connected to the military and other support it receives from certain third States, including Germany, as further addressed below.

B. GERMANY MUST RESPECT THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION AND PROMOTE THE REALIZATION THEREOF

344. Germany's obligations in the context described in the previous section are clear and unequivocal. International law requires Germany, first and foremost, to respect the right of the Palestinian people to self-determination – including their right to territorial and demographic integrity, permanent sovereignty over natural resources, and freely to determine their political status and to pursue their economic, social and cultural development –, and to promote the realization of that right. Moreover, Germany has obligations arising from the systematic and continuous denial of the right of the Palestinian people to self-determination, which have been the subject of judicial determination by the Court and acknowledged by Germany.

⁶⁷² *Ibid.*, para. 243.

⁶⁷³ United Nations, General Assembly, Resolution 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960, para. 1.

⁶⁷⁴ *Palestine Advisory Opinion*, para. 154. See also *ibid.*, para. 151.

345. States' obligation to respect the right of peoples to self-determination and to promote the realization thereof is well-established in both treaties to which Germany is a party and in customary international law. Article 1 (2) of the United Nations Charter lists as one of the purposes of the Organization "[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". The Friendly Relations Declaration, which reflects customary international law, further affirms that "[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding implementation of the principle". The Declaration also provides that "[e]very State has the duty to refrain from any forcible action which deprives peoples ... in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence"⁶⁷⁵.

346. Moreover, under Article 1(3) common to the ICCPR and the ICESCR, States Parties "shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations". The obligation to "promote" the right to self-determination of peoples is particularly broad in scope, in line with the importance that the international community attaches to that right. As indicated by the Human Rights Committee, it requires States to "take positive action to facilitate realization" of the right⁶⁷⁶. In other words, States must adopt active measures, within their own capacities and in accordance with international law, to ensure that the right to self-determination of peoples can be effectively exercised. Inaction and, more seriously, acts that tend to create obstacles to the realization of that right are not compatible with the obligation to promote.

347. As noted above⁶⁷⁷, the Court has determined in previous advisory opinions that the right of the Palestinian people to self-determination has been systematically and continuously denied in a myriad of ways – an illegal situation that spans decades and which all States acting with due diligence must have been aware of. In so doing, and bearing in mind the *jus cogens*

⁶⁷⁵ See also *Wall* Advisory Opinion, pp. 171-172, para. 88.

⁶⁷⁶ General Comment No. 12 (Article 1 Right to self-determination), 13 March 1984, para. 6, in *Official Records of the General Assembly*, Thirty-ninth session, Supp. No. 40, A/39/40 (Supp.), Annex VI, p. 143.

⁶⁷⁷ See above, paras. 338-343.

and *erga omnes* character of this inalienable right, the Court determined the legal consequences for third States – including Germany – arising from such denial. These entail, in essence, and consistent with the customary rule reflected in Article 41 of the ILC Articles on State Responsibility, obligations incumbent upon all States to cooperate to bring to an end through lawful means the systematic and continuous denial of the right of the Palestinian people to self-determination, not to recognize as lawful the situation created by such denial, and not to render aid or assistance that may contribute to maintaining that situation⁶⁷⁸.

348. More specifically, in the 2004 *Wall* Advisory Opinion, the Court determined that all States are under an “obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem”; an obligation “not to render aid or assistance in maintaining the situation created by such construction”; and an obligation “to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end”⁶⁷⁹.

349. Furthermore, in the 2024 *Palestine* Advisory Opinion, the Court determined that all States are under an obligation to cooperate with the United Nations to put the modalities for the full realization of the right of the Palestinian people to self-determination into effect⁶⁸⁰; not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory⁶⁸¹; and not to render any aid or assistance in maintaining the situation created by Israel’s illegal presence⁶⁸². The Court noted in this regard that “[i]t is for all States, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the [Occupied Palestinian Territory] to the exercise of the Palestinian people of its right to self-determination is brought to an end”⁶⁸³.

⁶⁷⁸ The ILC has noted in this regard that the obligation of States to cooperate to bring to an end serious breaches of *jus cogens* norms requires positive action, while the duties of non-recognition and non-assistance are negative ones requiring States to refrain from acting, the latter thus being “less onerous”. See Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), *supra* note 100, p. 76, para. (12) of the commentary to Conclusion 19.

⁶⁷⁹ *Wall* Advisory Opinion, p. 200, para. 159.

⁶⁸⁰ *Palestine* Advisory Opinion, para. 275.

⁶⁸¹ *Ibid.*, para. 279.

⁶⁸² *Ibid.*

⁶⁸³ *Ibid.*

350. Consistent with the above obligations, the Court determined moreover that States must not “recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967”, and that they have a duty to “distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967”⁶⁸⁴. This latter duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory includes, *inter alia*: (1) an obligation to abstain from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or any part thereof; (2) an obligation to abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory which may entrench its unlawful presence in the territory; and (3) an obligation to take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory⁶⁸⁵.

351. Following the *Palestine* Advisory Opinion, the General Assembly adopted resolution ES-10/24, where it reaffirmed, among others, the obligations of all States in respect of the ongoing illegal situation in the Occupied Palestinian Territory and the denial of the right of the Palestinian people to self-determination, as determined by the Court. The resolution:

“4. *Calls upon* all States to comply with their obligations under international law, *inter alia*, as reflected in the advisory opinion, including their obligation:

- (a) To promote, through joint and separate action, the realization of the right of the Palestinian people to self-determination, the respect of which is an obligation *erga omnes*, and refrain from any action which deprives the Palestinian people of this right and, while respecting the Charter of the United Nations and international law, to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise by the Palestinian people of its right to self-determination is brought to an end;
- (b) Not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory;
- (c) Not to render aid or assistance in maintaining the situation by Israel’s illegal presence in the Territory;
- (d) Not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations ... and the obligation in this regard, in relation to, *inter*

⁶⁸⁴ *Ibid.*, para. 278.

⁶⁸⁵ *Ibid.*, referring to *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, notwithstanding Security Council Resolution 276 (1970), *Advisory Opinion*, I.C.J. Reports 1971, pp. 55-56, paras. 122, 125-127.

alia, their diplomatic, political, legal, military, economic, commercial and financial dealings with Israel, to distinguish between Israel and the Palestinian territory occupied since 1967, including by:

- (i) Abstaining from treaty relations with Israel in all cases in which it purports to act on behalf of the Occupied Palestinian Territory or a part thereof on matters concerning the Occupied Palestinian Territory or a part of its territory;
- (ii) Abstaining from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the Territory, including with regard to the settlements and their associated regime;
- (iii) Abstaining, in the establishment and maintenance of diplomatic missions in Israel, from any recognition of its illegal presence in the Occupied Palestinian Territory, including by refraining from the establishment of diplomatic missions in Jerusalem ...;
- (iv) Taking steps to prevent trade and investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory, including with regard to the settlements and their associated regime;

.....
5. *Also calls upon* all States in this regard, consistent with their obligations under international law:

- (a) To take steps to ensure that their nationals, and companies and entities under their jurisdiction, as well as their authorities, do not act in any way that would entail recognition or provide aid or assistance in maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory;
- (b) To take steps towards ceasing the importation of any products originating in the Israeli settlements, as well as the provision or transfer of arms, munitions and related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory ...”⁶⁸⁶.

352. Germany is mindful of the abovementioned obligations and, at least formally, it acknowledges them. Before the General Assembly, for example, Germany explained in May 2024 that:

“Germany firmly believes in two States — Israel and Palestine — for two peoples in the Middle East. We share the goal of a Palestinian State. We fully support the Palestinians’ right to self-determination. Every child and every family deserve to live in peace, prosperity and dignity. We want the Palestinian people to have their own State. Germany has worked towards that for years, and we will relentlessly

⁶⁸⁶ United Nations, General Assembly, Resolution ES-10/24, Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory, 18 September 2024.

continue to do so. Today immediate action is required, supported by collective international efforts, to stop the fighting, release the hostages, ensure and guarantee security for Israelis and Palestinians alike, provide humanitarian assistance and end the suffering and the destruction. Without such immediate steps, a Palestinian State will not become a reality.”⁶⁸⁷

353. Similarly, in September 2024, Germany formally vowed to respect the obligations laid down by the Court in the *Palestine* Advisory Opinion:

“Let there be no doubt that we respect the International Court of Justice’s advisory opinion, that we will act in line with the obligations of international law set out in it, and that we are ready to assist in its implementation in its entirety to achieve justice and lasting peace and security for both Israelis and Palestinians.”⁶⁸⁸

354. And during the hearing on provisional measures in the present case, Germany again confirmed before the Court that it

“recognizes the right of Palestinians to self-determination, to be exercised in the territories that came under occupation in 1967. It has firmly condemned attempts to undermine the two-State solution, such as through the expansion of illegal settlements. There is no doubt where Germany stands. As Foreign Minister Baerbock stressed in her speech to the German Bundestag on 21 March 2024, our position is defined by international law.”⁶⁸⁹

355. These political statements, as promising as they may seem, do not however match Germany’s actual actions. As the next section will show, Germany has engaged in a variety of conduct that runs contrary to its obligations under international law and, rather than promoting the realization of the right to self-determination of the Palestinian people, creates serious obstacles thereto.

C. GERMANY’S BREACHES OF ITS OBLIGATIONS

356. Chapter 3 described how Germany has conducted a long-term policy of cooperating with and providing a wide range of assistance to Israel, up to the present day, with respect to acts undertaken in or in relation to the Occupied Palestinian Territory. By reason of this conduct, Germany has failed to respect the right of the Palestinian people to self-determination and to promote the realization thereof, and to cooperate to put an end to the ongoing denial of

⁶⁸⁷ United Nations, *Official Records of the General Assembly*, Tenth Emergency Special Session, 49th plenary meeting, 10 May 2024, A/ES-10/PV.49, p. 16.

⁶⁸⁸ *Ibid.*, 55th plenary meeting, 18 September 2024, A/ES-10/PV.55, p. 33.

⁶⁸⁹ CR 2024/16, 9 April 2024, p. 10, para. 11 (von Uslar-Gleichen).

that right and to refrain from action that may entrench such denial. Germany's international responsibility is thus engaged. Germany has consistently professed its commitment to a two-state solution, envisioning the peaceful coexistence of Israel and a sovereign Palestinian state. However, despite this stated position, Germany's actions – particularly in light of the Court's Advisory Opinions in 2004 and 2024 – contradict its professed support for Palestinian self-determination. Through various political, military, and diplomatic measures, Germany has facilitated and enabled the ongoing violation of the Palestinian right to self-determination, contravening international legal norms and contributing to the perpetuation of Israel's occupation and the denial of Palestinian sovereignty. Furthermore, despite the Court's clear rulings, Germany's actions continue to support a status quo deemed illegal by the Court. By failing to act on the Court's findings, Germany demonstrates a reluctance to hold Israel accountable, thus undermining the Palestinian people's ability to exercise their right to self-determination.

357. To recall, Germany's conduct in relation to the Occupied Palestinian Territory, including its close cooperation with Israel, encompasses a variety of acts and omissions, among them:

- Engagement in extensive military cooperation, which is the backbone of Germany-Israel relations, in a manner that does not distinguish between Israel and the Occupied Palestinian Territory, including export of arms and other military and related equipment to Israel, financing of the Israeli military, training, exchange of information, as well as close collaboration between German and Israeli armament companies with the knowledge and approval of Germany⁶⁹⁰;
- Engagement by German companies in the extraction of natural resources from the Occupied Palestinian Territory (including illegal settlements), with Germany's knowledge and tolerance⁶⁹¹;
- Contribution by German companies to infrastructure projects in the Occupied Palestinian Territory (including illegal settlements), with Germany's knowledge and tolerance⁶⁹²;

⁶⁹⁰ See paras. 138-153 and 160-270 above.

⁶⁹¹ See paras. 275-280 above.

⁶⁹² See paras. 281-288 above.

- Involvement by German companies in the development, installation and operation of surveillance systems in the Occupied Palestinian Territory, with Germany’s knowledge and tolerance⁶⁹³;
- Participation by German companies in the marketing and transactions of real estate in the Occupied Palestinian Territory (including illegal settlements), with Germany’s knowledge and tolerance⁶⁹⁴;
- Cooperation between German and Israeli academic institutions operating within the Occupied Palestinian Territory (including illegal settlements), with Germany’s knowledge and tolerance;⁶⁹⁵
- At the political and multilateral level, opposing attempts to condemn Israel for the illegal situation the latter has created in relation to the Occupied Palestinian Territory⁶⁹⁶.

358. This conduct is manifestly at odds with Germany’s international obligations. The provision of arms and other military equipment to Israel, which are used or likely to be used by the latter to entrench its unlawful presence of the Occupied Palestinian Territory and related policies and practices, is in breach, first and foremost, of the obligations to respect and to promote the realization of the right of the Palestinian people to self-determination under the ICCPR, ICESCR, and customary international law. The same is true for the financing of Israel’s military, training, exchange of information, and close collaboration between German and Israeli armament companies⁶⁹⁷, which can only serve to maintain and strengthen Israel’s military capacities in the context of the unlawful presence.

359. Rather than taking positive action to facilitate the realization of the right of the Palestinian people to self-determination – consistent with the obligation to respect and to promote that right –, Germany’s conduct enables the military oppression of the Palestinian people in the Occupied Palestinian Territory. With respect to the Gaza Strip since October 2023,

⁶⁹³ See paras. 289-290 above.

⁶⁹⁴ See paras. 291-294 above.

⁶⁹⁵ See paras. 302-307 above.

⁶⁹⁶ See paras. 154-158 above.

⁶⁹⁷ See above, note 690.

Germany's conduct leads to far more serious consequences – it endangers the very existence of the Palestinian people living in that part of the Occupied Palestinian Territory.

360. By providing Israel with significant military aid and advanced weapons systems, including submarines and missile technology, knowing that these could be used in the Occupied Palestinian Territory, Germany directly undermines the Palestinian right to self-determination, in violation of the Principle of non-recognition and non-assistance. Germany's continued military assistance to Israel, knowing that these weapons are deployed in the Occupied Palestinian Territory, it not only strengthens Israel's military capabilities but also perpetuates the conditions that prevent Palestinians from gaining sovereignty over their land. This support has been integral in enabling Israel to, *inter alia*, maintain its military occupation, build settlements, and impose restrictive measures on the movement of Palestinians.

361. Germany's close military cooperation with Israel further violates its obligation not to render any aid or assistance that may contribute to maintaining the situation created by Israel's illegal presence in the Occupied Palestinian Territory, as determined by the Court. As noted above, all States, including Germany, must ensure that any impediment resulting from such illegal presence to the exercise of the Palestinian people of its right to self-determination is brought to an end. In order to do its part to achieve this, Germany's military cooperation with Israel must cease. Yet Germany's military aid and assistance to Israel leads to the opposite result. Attempted justification for this assistance fails to distinguish between Israel's right to self-defense within its internationally recognized borders and the illegality of its presence and actions in the Occupied Palestinian Territory.

362. The *Palestine* Advisory Opinion emphasized that Israel must cease its illegal activities in the Occupied Palestinian Territory — particularly the construction of the separation wall and the expansion of settlements — and withdraw from the territory as swiftly as possible. However, Germany has not used its diplomatic influence to demand Israel's withdrawal from these territories, which continue to obstruct the realization of the Palestinian right to self-determination.

363. Moreover, Germany's refusal to vote on General Assembly resolutions calling for Israel's unconditional withdrawal from the Occupied Palestinian Territory is particularly significant. For instance, Germany has abstained or voted against resolutions such as Resolution 67/19 (2012), which reaffirmed the Palestinian people's right to self-determination and

endorsed the upgrading of Palestine's status at the United Nations, and Resolution ES-10/24 (2024), which reiterated the Court's findings regarding the illegality of the Israeli occupation and proposed measures to end it. This is despite the explicit call in the ICJ's advisory opinion for states to "co-operate with the United Nations to put those modalities into effect"⁶⁹⁸.

364. By failing to align its diplomatic actions with international law, Germany not only fails to pressure Israel into compliance with the Court's findings but also obstructs both the Court's opinion and the global community's efforts to achieve a lasting peace based on the recognized right of the Palestinian people to self-determination.

365. Germany's rhetoric coupled with its material support effectively signals to Israel that it has *carte blanche* to act with impunity against the Palestinian people, with Germany offering unlimited backing. In doing so, Germany normalizes and perpetuates Israel's occupation, directly obstructing the Palestinian people's ability to exercise control over their land, resources, and political future.

366. Through these actions, Germany facilitates an environment where Israel's occupation continues unchecked. By obstructing international efforts to hold Israel accountable, Germany sustains a situation in which Palestinians remain unable to exercise their inalienable right to self-determination.

367. Dealings by German companies in relation to the Occupied Palestinian Territory also engage Germany's responsibility. Although such dealings are usually undertaken by German nationals, companies or other entities, Germany has a duty to ensure that all those under its jurisdiction act in a manner consistent with the right of the Palestinian people to self-determination, and in particular Germany's obligation to promote the realization of that right and not to render aid or assistance that may contribute to maintaining Israel's illegal presence in the Occupied Palestinian Territory.

368. The extraction of natural resources in the Occupied Palestinian Territory by or with the assistance of German companies; their contribution to infrastructure projects in the Occupied Palestinian Territory; their involvement in the development, installation and operation of surveillance systems in the Occupied Palestinian Territory; their participation in

⁶⁹⁸ *Palestine Advisory Opinion*, para. 275.

the marketing and transactions of real estate in the Occupied Palestinian Territory; and their collaboration with Israeli academic institutions operating within the Occupied Palestinian Territory – all constitute acts that render aid or assistance to Israel in maintaining the latter’s illegal presence in that Territory and contribute to entrenching the denial of the right of the Palestinian people to self-determination. Contrary to the Court’s findings in the *Palestine* Advisory Opinion, Germany has evidently failed to distinguish dealings with Israel between its own territory and the Occupied Palestinian Territory, including illegal Israeli settlements.

369. Furthermore, the German government has actively provided cover to reject the idea of halting the import of goods from illegal settlements. During a press conference on 24 July 2024, then-Federal Chancellor Olaf Scholz was asked what the government had done to comply with this Court’s call to refrain from supporting Israel’s illegal policies in the West Bank, specifically to prevent trade in products and natural resources from the occupied territories. The Chancellor responded:

“A government led by me will not support a boycott of goods, services and products from Israel. To be honest, I also find such demands disgusting.”⁶⁹⁹

CONCLUSION

370. In conclusion, the right of the Palestinian people to self-determination is beyond question. It possesses a *jus cogens* character and creates obligations *erga omnes* incumbent upon the international community of States as a whole. The Court has determined in no unclear terms that this right has been systematically and continuously denied to the Palestinian people for decades – an illegal situation that subsists today and must be put to an end.

371. In this context, Germany has an obligation to respect the right of the Palestinian people to self-determination and to promote the realization thereof. Furthermore, as a result of Israel’s unlawful presence in the Occupied Palestinian Territory and the denial to Palestinians of their inalienable right, all States – including Germany – have an obligation not to recognize as legal the situation created by Israel’s unlawful presence in the Occupied Palestinian Territory, not to render any aid or assistance that may contribute to maintaining that situation, and to cooperate to bring Israel’s breaches to an end.

⁶⁹⁹ *Ibid.*

372. Germany's actions – its failure to demand Israel's withdrawal from the Occupied Palestinian Territory, its provision of military aid to Israel, and its obstruction of international accountability – fundamentally undermine the right of the Palestinian people to self-determination. By aligning its policies with Israel's occupation, Germany facilitates an environment in which Palestinians cannot fully exercise their sovereignty or achieve a viable, independent state. As will be further explained Germany must immediately cease such assistance and bring its conduct in conformity with international law.

III. Racial Discrimination, Segregation and Apartheid

373. Since its establishment in 1948, Israel has subjected the Palestinian people to a regime of settler colonial displacement, dispossession, and racial discrimination⁷⁰⁰. This institutionalised regime is predicated on the discrimination and differential treatment of Palestinians from Israeli Jews as a distinct racial, ethnic or religious group in Israeli law⁷⁰¹, policy, and practice, where the latter enjoy preferential treatment above all “non-Jews”⁷⁰². The Palestinian group includes Palestinian citizens of Israel, Palestinians in the Occupied Palestinian Territory, and Palestinian refugees and exiles in the diaspora. On both sides of the Green Line⁷⁰³ and in forced exile, the Palestinian people have endured systematic racial discrimination⁷⁰⁴, strategic fragmentation, and the weakening of the Palestinian group; their lands have been expropriated and colonised, Palestine’s demography altered, and the Palestinian people’s individual and collective rights to return to their homes, lands, and properties, and to self-determination denied⁷⁰⁵.

374. To maintain domination, the Palestinian group has been strategically fragmented, treating different parts of the group under differing bodies of law. Palestinians living in illegally annexed East Jerusalem are classed as “permanent residents” under the Entry into Israel Law 1952, which, in order to retain this status, requires them to prove that their “centre of life” is in the city and that they do not breach their allegiance to Israel⁷⁰⁶; Palestinians in the occupied West Bank (not including East Jerusalem) are subject to Israeli military laws of occupation, a status which is meant to be temporary; Palestinians in the occupied Gaza Strip are treated as

⁷⁰⁰ See paras. 78-123 above.

⁷⁰¹ *Palestine Advisory Opinion*, para. 223. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) Provisional Measures*, Order of 26 January 2024, *I.C.J. Reports 2024*, p. 20, para. 45.

⁷⁰² *Palestine Advisory Opinion*, paras. 190 and 193.

⁷⁰³ The Green Line refers to the armistice demarcation line. See *Palestine Advisory Opinion*, para. 54.

⁷⁰⁴ CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 27 January 2020, para. 23; United Nations, General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/77/356, 21 September 2022, para. 10.

⁷⁰⁵ *Palestine Advisory Opinion*, paras. 237-243; Al-Haq *et al*, *Israeli Apartheid Tool of Zionist Settler Colonialism*, 2022, pp. 13-14 (https://www.alhaq.org/cached_uploads/download/2022/12/22/israeli-apartheid-web-final-1-page-view-1671712165.pdf).

⁷⁰⁶ *Palestine Advisory Opinion*, para. 193.

being from “hostile territory” which Israel considers unoccupied⁷⁰⁷; Palestinian citizens of Israel, although subject to Israeli civil law, have citizenship rights but are not considered nationals, a status applying exclusively to Israeli Jews; while Palestinian refugees and exiles are denied their rights to return, compensation, and restitution of property, in line with Israel’s settler-colonial goal of Palestinian erasure.

375. Palestinians are systematically segregated. Palestinians with West Bank identity cards cannot cross the Green Line without a permit; Palestinian “permanent residents” of Jerusalem cannot access the Gaza Strip, and are denied family unification with Palestinians from the rest of the West Bank, Gaza Strip, and refugees in exile; Palestinians under Israeli civil law are denied family unification with Palestinians from the West Bank, Gaza Strip, and Palestinian refugees in exile. Palestinians in the Gaza Strip are held under blockade, prevented from returning to their homes since 1948, and to family unification with Palestinians elsewhere. Palestinian refugees and exiles are prevented from entering their homeland in historic Palestine, denied family unification with Palestinians under Israeli control. Because of this fragmentation and segregation, the Palestinian people cannot exercise their collective rights, in particular their right to self-determination.

376. This racial oppression and domination is maintained through controlling Palestinian territory, including through unlawful presence, colonial settlement construction and expansion, entrenching territorial fragmentation, and carving the territory into isolated fragmented enclaves, cutting off Palestinian territorial contiguity to impede their exercise of the right to self-determination. Racial oppression and domination are further maintained through demographic control, to create and maintain an Israeli Jewish majority and Palestinian minority population across historic Palestine since 1948, through the control over entry into historic Palestine, acts of direct and indirect forcible transfer, discriminatory planning and zoning, and the denial of the right of return⁷⁰⁸.

377. By continuing to materially and politically support Israel, Germany directly contributes to the maintenance of the racial discrimination, segregation and apartheid imposed on the Palestinian people, or acts despite the insurmountable and immitigable risk that its

⁷⁰⁷ “Behind the Headlines: Israel Designates Gaza a ‘Hostile Territory’”, Israel Ministry of Foreign Affairs, 24 September 2007 (<https://www.gov.il/en/pages/behind-the-headlines-israel-designates-gaza-a-hostile-territory>).

⁷⁰⁸ See also paras. 91-123 above.

support contributes to the maintenance of racial discrimination, segregation, and apartheid against the Palestinian people. This is done both directly by German authorities and indirectly by Germany's failure to prevent German companies and other entities from participating, contributing to, and indeed profiting from, the racial domination, oppression, and dispossession of Palestinians. Germany is in flagrant violation of its international obligations to prevent racial discrimination, segregation and apartheid.

A. INTERNATIONAL LAW PROHIBITING RACIAL DISCRIMINATION, SEGREGATION, AND APARTHEID

378. Racial discrimination, segregation, and apartheid violate the fundamental principles of equality and non-discrimination under international law and contravene the purposes of the United Nations Charter. Article 3 of the ICERD provides that:

“States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

379. Apartheid constitutes a crime against humanity as enshrined in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention)⁷⁰⁹. Article II of the Apartheid Convention which reflects customary international law provides:

“For the purpose of the present Convention, the term ‘the crime of apartheid’, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

- (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
 - (i) By murder of members of a racial group or groups;
 - (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
 - (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

⁷⁰⁹ International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, *UNTS*, vol. 1015, p. 243.

- (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- (d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
- (e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
- (f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.”⁷¹⁰

380. Apartheid is similarly included as a “grave breach” of Additional Protocol I to the Geneva Conventions, which is reflective of customary international law⁷¹¹. The prohibition of Apartheid is covered by the obligations of third States to ensure respect for international humanitarian law. The relevant provision in Additional Protocol I provides that:

“the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

.....

(c) practices of ‘apartheid’ and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination ...”⁷¹².

381. While Germany and Israel are parties to ICERD, neither have ratified the Apartheid Convention. Nevertheless, in addition to its inclusion in ICERD and Additional Protocol I, the prohibition on apartheid is now firmly established in customary international law as an internationally wrongful act and as an international crime.

⁷¹⁰ *Ibid.*, Art. II.

⁷¹¹ Rule 88, International Humanitarian Law Databases, ICRC (<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule88>); and Rule 156, *ibid.* (<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule156>).

⁷¹² Article 85 (4) (c), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 8 June 1977, *UNTS*, vol. 1125, p. 3.

382. In the 1970 Advisory Opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, the Court held that South Africa's apartheid regime, as imposed in modern-day Namibia, was in violation of the purposes and principles of the Charter of the United Nations:

"To establish ... and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."⁷¹³

383. Racial discrimination, segregation, and apartheid are also the subject of a long list of resolutions adopted by both the United Nations Security Council and the United Nations General Assembly in the context of apartheid South Africa⁷¹⁴. Significantly, in Resolution 392 (1976), the Security Council considered the prohibition of apartheid as established in international law, including as a criminal act:

"3. *Reaffirms that the policy of apartheid is a crime* against the conscience and dignity of mankind and seriously disturbs international peace and security;

4. *Recognizes the legitimacy of the struggle of the South African people for the elimination of apartheid and racial discrimination ...*"⁷¹⁵.

In their Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations, the representatives of States Members of the United Nations solemnly declared:

"We strongly condemn the evil policy of *apartheid*, which is a crime against the conscience and dignity of mankind and, like nazism, is contrary to the principles of the Charter. We reaffirm our determination to spare no effort, including support to those who struggle against it, in accordance with the letter and spirit of the Charter, to secure the elimination of *apartheid* in South Africa. We also condemn all forms

⁷¹³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 57, para. 131.

⁷¹⁴ See, *inter alia*, United Nations, Security Council, Resolution 134 (1960), 1 April 1960; Resolution 181 (1963), 7 August 1963; Resolution 190 (1964), 9 June 1964; Resolution 282 (1970), 23 July 1970; Resolution 311 (1972), 4 February 1972; Resolution 392 (1976), 19 June 1976; Resolution 417 (1977), 31 October 1977; Resolution 418 (1977), 4 November 1977; Resolution 472 (1980), 13 June 1980; Resolution 535 (1983), 29 June 1983; Resolution 554 (1984), 17 August 1984; Resolution 556 (1984), 23 October 1984; Resolution 560 (1985), 12 March 1985; Resolution 568 (1985), 26 July 1985; Resolution 580 (1985), 30 December 1985; Resolution 581 (1986), 13 February 1986; Resolution 591 (1986), 28 November 1986; Resolution 610 (1988), 16 March 1988; Resolution 615 (1988), 17 June 1988; United Nations, General Assembly, Resolution 1761 (XVII), The policies of apartheid of the Government of the Republic of South Africa, 6 November 1962; Resolution 2054 (XX), The policies of apartheid of the Government of the Republic of South Africa, 22 December 1965; Resolution 2396 (XXIII), The policies of apartheid of the Government of the Republic of South Africa, 2 December 1968; Resolution 3324 (XXIX), Policies of apartheid of the Government of South Africa, 16 December 1974.

⁷¹⁵ United Nations, Security Council, Resolution 392 (1976), 19 June 1976, paras. 3-4 (emphasis added).

of oppression and tyranny wherever they occur and racism and the practice of racial discrimination in all its manifestations.”⁷¹⁶

384. In addition to its customary status, the prohibition of racial discrimination and apartheid is universally accepted as a peremptory norm (*jus cogens*) of international law, owed *erga omnes*. The ILC has listed racial discrimination and apartheid as such a norm in their 2022 Draft conclusions on identification and legal consequences of peremptory norms of general international law⁷¹⁷. As stated by the Commission’s Special Rapporteur, there is “ample State practice recognizing the prohibition of apartheid and racial discrimination as a peremptory norm of general international law”⁷¹⁸.

B. INTERNATIONAL RECOGNITION OF ISRAELI RACIAL DISCRIMINATION, SEGREGATION, AND APARTHEID

385. There is ample international recognition that Israel’s treatment of the Palestinian people constitutes racial discrimination, segregation, and apartheid to alert Germany of its obligation to condemn and prevent and that its material and political support to Israel is assisting in maintaining this system. This recognition has been consistently and steadily growing in recent decades. Germany cannot argue that it is unaware of the racially discriminatory character of Israeli laws and policies towards the Palestinian people.

386. The CERD has repeatedly expressed concern regarding Israel’s violation of Article 3 of ICERD, prohibiting racial segregation and apartheid. In 2012, the Committee wrote:

“The Committee is extremely concerned at the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is particularly appalled at the hermetic character of the separation of two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources. Such separation is concretized by the implementation of a complex combination of movement restrictions consisting of the Wall,

⁷¹⁶ United Nations, General Assembly, Resolution 2627 (XXV), Declaration on the Occasion of the Twenty-fifth Anniversary of the United Nations, 24 October 1970, para. 7.

⁷¹⁷ Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*), *supra* note 100, p. 16, Annex, point (e). See *ILC Yearbook*, 2001, vol. II (2), p. 112, para. (4) of the commentary to Art. 41 of the ILC Draft Articles on State Responsibility.

⁷¹⁸ ILC, Fourth report on peremptory norms of general international law (*jus cogens*) by Dire Tladi, Special Rapporteur, A/CN.4/727, 2019, para. 94.

roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population ...

The Committee ... urges the State party to take immediate measures to prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory and which violate the provisions of article 3 of the Convention”⁷¹⁹.

387. This was reiterated by the Committee in 2019:

“The Committee reiterates its concern ... that the Israeli society continues to be segregated as it maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities, namely Jewish municipalities and the so-called “municipalities of the minorities”, which raises issues under article 3 of the Convention ...

As regards the specific situation in the Occupied Palestinian Territory, the Committee remains concerned ... at the consequences of policies and practices that amount to segregation, such as the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is appalled at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and water resources. Such separation is materialized by the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impacts the Palestinian population negatively ...”⁷²⁰

388. The *ad hoc* conciliation commission on the inter-State communication submitted by the State of Palestine against Israel under Article 11 of ICERD found in 2024:

“The commission, having considered the serious allegations raised by the State of Palestine under article 3 of the Convention regarding discriminatory practices and policies of racial discrimination and apartheid committed by Israeli authorities, recalls that in recommendations addressed to Israel, the Committee has urged the State party to take immediate measures to prohibit and eradicate such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory and which violate the provisions of article 3 of the Convention. The commission agrees with the Committee, which has also urged Israel to eradicate all forms of segregation between Jewish and non-Jewish communities that affects Palestinians in Israel proper and in the Occupied Palestinian Territory. The commission notes the severe consequences of such measures on populations living essentially in Gaza and other occupied territories in the context of armed conflict between Israel and Hamas along with other armed

⁷¹⁹ CERD, Concluding observations on the consideration of reports submitted by States parties under article 9 of the Convention, CERD/C/ISR/CO/14-16, 3 April 2012, para. 24. See also *ibid.*, paras. 25-27.

⁷²⁰ CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 12 December 2019, paras. 21-23.

groups in Gaza. In the same vein, the commission recalls recommendations in concluding observations issued by several other treaty bodies, including the Human Rights Committee and the Committee on Economic, Social and Cultural Rights that Israel should amend the Basic Law: Israel – The Nation-State of the Jewish People, which institutionalizes discrimination against Palestinians.”⁷²¹

389. The Court observed in its *Palestine* Advisory Opinion that Israel dominates Palestinians, notably finding that “[t]he dependence of the West Bank, East Jerusalem, and especially of the Gaza Strip, on Israel for the provision of basic goods and services impairs the enjoyment of fundamental human rights, in particular the right to self-determination”⁷²², and concluded that:

“Israel’s legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities. For this reason, the Court considers that Israel’s legislation and measures constitute a breach of Article 3 of [ICERD].”⁷²³

390. South Africa, in the case it has brought against Israel, characterised Israel’s conduct as “subjecting the Palestinian people to apartheid, on both sides of the Green Line”⁷²⁴, and as a “75-year apartheid” regime⁷²⁵. It further stated that:

“The institutionalised regime of discriminatory laws, policies and practices applied by Israel subjects Palestinians to what constitutes an apartheid regime.”⁷²⁶

391. Also in November 2024, a resolution of the African Commission on Human and Peoples Rights condemned “Israel’s ongoing massacre in Gaza, apartheid, illegal occupation of Palestinian territory, and all associated policies and practices, including East Jerusalem and

⁷²¹ CERD, Report of the *ad hoc* conciliation commission on the inter-State communication submitted by the State of Palestine against Israel under article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, CERD/C/113/3, 21 August 2024, para. 44.

⁷²² *Palestine* Advisory Opinion, para. 241.

⁷²³ *Ibid.*, para. 229. See also United Nations, General Assembly, Resolution ES-10/24, Advisory opinion of the International Court of Justice on the legal consequences arising from Israel’s policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and from the illegality of Israel’s continued presence in the Occupied Palestinian Territory, 13 September 2024, para. 4 (f).

⁷²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, CR 2024/1, 11 January 2024, p. 17, para. 4 (Madonsela).

⁷²⁵ *Ibid.*, para. 5 (Madonsela). See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings and request for the indication of provisional measures, 29 December 2023, para. 2.

⁷²⁶ *Ibid.*, para. 35.

Gaza Strip” and called upon “States Parties to act on their responsibility to prevent genocide and not to aid and abet the commission of crimes against humanity, including apartheid”⁷²⁷.

392. Successive United Nations Special Rapporteurs on the situation of human rights in the Palestinian territories occupied since 1967 have qualified Israel’s treatment of the Palestinian people as constituting apartheid. John Dugard, writing as Special Rapporteur, observed as early as 2007 that:

“Israel’s laws and practices in the OPT certainly resemble aspects of apartheid ... and probably fall within the scope of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid.”⁷²⁸

393. John Dugard’s successor, Richard Falk, determined in 2014 that Israel was in violation of the prohibition of apartheid:

“None of the human rights violations discussed in the context of possibly constituting ‘inhuman acts’ for the purpose of the International Convention on the Suppression and Punishment of the Crime of Apartheid or the Rome Statute can be said to be isolated events. Rather, their commission reflects systematic and discriminatory Israeli policies, laws and practices, which determine where in the occupied land Palestinians may or may not travel, live and work. Laws and policies have also institutionalized just how lightly a civilian Palestinian life may be weighed, when placed on the scales against claims of overarching security concerns, contrasting with the legal protection of the Israeli constitutional system given to unlawful Israeli settlers. The combined effect of the measures designed to ensure security for Israeli citizens, to facilitate and expand settlements, and, it would appear, to annex land, is *hafrada*, discrimination and systematic oppression of, and domination over, the Palestinian people.”⁷²⁹

394. In 2022, United Nations Special Rapporteur Michael Lynk wrote:

“[T]he Special Rapporteur has concluded that the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule *sans droits, sans égalité, sans dignité et sans liberté* (without rights, without

⁷²⁷ African Union, African Commission on Human and Peoples Rights, Resolution on the Situation in Palestine and the Occupied Territories, ACHPR/Res.611 (LXXXI) 2024, 14 November 2024.

⁷²⁸ United Nations, Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, A/HRC/4/17, 29 January 2007, para. 61.

⁷²⁹ United Nations, Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, A/HRC/25/67, 13 January 2014, para. 77.

equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.”⁷³⁰

395. Also in 2022, the current United Nations Special Rapporteur on Palestine, Francesca Albanese, wrote:

“Realizing the inalienable right of the Palestinian people to self-determination requires dismantling once and for all the Israeli settler-colonial occupation and its apartheid practices. International law is very clear in this regard. No solution can be just and fair, nor effective, unless it centres on decolonization, allowing the Palestinian people to freely determine their political will and pursue their social, economic and cultural development, alongside their Israeli neighbours. The international community must embrace a more accurate diagnosis of the Israeli settler-colonial occupation in the occupied Palestinian territory and abide by its own obligations under international law to fully realize the Palestinian people’s right to self-determination.”⁷³¹

396. Numerous Palestinian, Israeli, and international human rights organisations and civil society groups have for over two decades similarly determined that Israel’s treatment of the Palestinian people constitutes racial discrimination and apartheid under international law⁷³².

397. In light of the above, there is ample and considerable evidence from the past twenty years that Israel’s treatment of the Palestinian people is racially discriminatory and constitutes both racial segregation and apartheid. The aforementioned recognitions of racial discrimination, segregation, and apartheid by States, international organisations, United Nations organs, human rights treaty bodies, United Nations Special Rapporteurs, and respected human rights organisations have been accompanied by rigorous and convincing legal analyses. In light of this

⁷³⁰ United Nations, Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 August 2022, para. 52.

⁷³¹ United Nations, General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/77/356, 21 September 2022, para. 74.

⁷³² Al-Haq *et al.*, Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel’s Seventeenth to Nineteenth Periodic Reports, 10 November 2019 (https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf); Al Mezan, The Gaza Bantustan: Israeli Apartheid in the Gaza Strip, 2021 (<https://mezan.org/uploads/files/16381763051929.pdf>); Al-Haq *et al.*, Israeli Apartheid: Tool of Zionist Settler Colonialism, 2022 (https://www.alhaq.org/cached_uploads/download/2022/12/22/israeli-apartheid-web-final-1-page-view-1671712165.pdf); Yesh Din, The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion by Adv. Michael Sfard, 2020 (<https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>); B’Tselem, A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid, 2021 (https://www.btselem.org/publications/fulltext/202101_this_is_apartheid); Human Rights Watch, A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution, 2021 (<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>); Amnesty International, Israel’s apartheid against Palestinians: Cruel system of domination and crime against humanity, 2021 (<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>).

evidence and these analyses Germany cannot claim to ignore the racial discrimination, segregation, and apartheid being perpetrated by Israel in the Occupied Palestinian Territory.

C. GERMANY’S DUTY TO CONDEMN AND PREVENT RACIAL DISCRIMINATION,
SEGREGATION, AND APARTHEID

398. In light of the evidence that Israel imposes an institutionalised regime of racial discrimination, segregation, and apartheid on the Palestinian people, including in particular the finding that Israel is in breach of Article 3 of ICERD⁷³³, all States, including Germany, have a duty to uphold the rights of Palestinians, individually and as a group, to promote their realisation, and to prevent their frustration. Germany is obligated, both through treaty law and customary international law, to condemn Israel’s racial discrimination, segregation and apartheid against the Palestinian people, to ensure respect for the prohibition of racial discrimination and apartheid during armed conflict, including military occupation, and to refrain from supporting, sustaining or encouraging Israel’s regime of discrimination, segregation and apartheid.

1. The Duty to Condemn Racial Discrimination, Segregation and Apartheid

399. Article 3 of ICERD contains two obligations on States Parties: an obligation to “condemn racial segregation and apartheid” and an obligation “to undertake to prevent, prohibit, and eradicate all practices of this nature in territories under their jurisdiction”.

400. There is a clear obligation on States to take action by ending all policies, practices and relations that support, sustain or encourage racist regimes, as part of the duty to condemn racial discrimination and apartheid in accordance with Article 3 of ICERD⁷³⁴.

401. Apartheid was the first concern of CERD, which linked the call to States parties to “condemn” in Article 3 to the reporting requirement of Article 9. At its first session in January 1970, the Committee sent a communication to all States parties in relation to the content of State reports under Article 9 requesting:

⁷³³ See paras. 388 and 389 above.

⁷³⁴ CERD, Decision 2 (XI), Relations with racist regimes, 7 April 1975, in Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly*, Thirtieth Session, Suppl. No. 18 (A/10018), p. 68.

“Information on the legislative, judicial, administrative or other measures that have been adopted and that give effect to the following provisions of the Convention:

- (a) Condemnation of racial segregation and apartheid, in accordance with article 3 ... ”⁷³⁵.

402. The obligation to condemn racial segregation and apartheid is not restricted to territories subject to a State Party’s jurisdiction, as supported in the practice of CERD, which from 1970 to 1994 required all States Parties to report on their diplomatic, economic and other relations with the “racist regimes of Southern Africa”⁷³⁶ even though South Africa was not a party to ICERD during this period. Therefore, Germany has the obligation to condemn Israel’s racial discrimination, segregation and apartheid in breach of Article 3 of ICERD⁷³⁷, and accordingly to bring to an end all policies, practices or relations with Israel that support, sustain or encourage the regime of racial discrimination, segregation and apartheid.

403. Germany has failed to condemn Israel’s racial discrimination, segregation and apartheid regime and to prevent, investigate, punish and redress human rights abuses of German enterprises entrenching discrimination, segregation and apartheid in the Occupied Palestinian Territory through those enterprises’ operations in settlements or material support to maintaining them. Germany continues to provide support, including military support, to Israel, despite the risk that such support will be used to impose and continue to entrench racial segregation and apartheid, including through Israel’s unlawful presence in the Occupied Palestinian Territory⁷³⁸. This support is antithetical to the obligation to condemn racial segregation and apartheid and constitutes a direct violation of Article 3 of ICERD.

⁷³⁵ CERD, Communication sent to States parties under Article 9 of the Convention, CERD/C/R.12, 23 January 1970, para. 1 (a), in Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly*, Twenty-fifth Session, Suppl. No. 27 (A/8027), p. 32.

⁷³⁶ For a history and overview of Article 3 as a collective as well as an individual obligation, see D. Keane, “*Palestine v Israel* and the Collective Obligation to Condemn Apartheid under Article 3 of ICERD”, *Melbourne Journal of International Law*, vol. 23, 2022, no. 2 pp. 251-275.

⁷³⁷ See also CERD, Decision 1 (IV), General recommendation III, 18 August 1972, in Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly*, Twenty-seventh Session, Supplement No. 18 (A/8718), p. 37. Decision 1 (IV) sets out the Committee’s view that “measures adopted on the national level to give effect to the provisions of the Convention are interrelated with measures taken on the international level to encourage respect everywhere for the principles of the Convention”.

⁷³⁸ See above, paras. 138-308.

2. Third State Obligations Concerning Serious Breaches of Peremptory Norms

404. As established above⁷³⁹, all States are under an obligation to (i) refrain from recognising an unlawful situation arising from a serious violation of *jus cogens* as lawful; (ii) refrain from rendering aid or assistance in maintaining that situation; and (iii) cooperate to bring the unlawful situation to an end through lawful means. In much the same way that providing support, including military support to Israel constitutes a violation of the obligation to condemn racial segregation and apartheid, providing support to Israel despite the risk that such support will be used in the maintenance of racial discrimination and apartheid constitutes a violation of the obligations set out in Article 41 of the ILC Articles on State Responsibility.

3. Duty to Ensure Respect for International Humanitarian Law

405. As noted above⁷⁴⁰, Article 85 (4) of Additional Protocol I identifies “practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination” as a grave breach. This conclusion is reflective of customary international law. As determined by the ICRC:

“Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited.”⁷⁴¹

406. This rule is also recognised in Germany’s own military manual. In outlining Germany’s interpretation of international humanitarian law as applicable during belligerent occupations, the manual states:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law must prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁷⁴²

⁷³⁹ See paras. 75-77.

⁷⁴⁰ See para. 380 above.

⁷⁴¹ ICRC, IHL Databases, Rule 88 (<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule88>).

⁷⁴² Bundesministerium der Verteidigung, Law of Armed Conflict Manual, 2013, p. 96 (<https://www.onlinelibrary.ihi.org/wp-content/uploads/2021/05/GER-Manual-Law-of-Armed-Conflict.pdf>).

407. Accordingly, the duty to prevent racial discrimination, segregation and apartheid in situations of armed conflict or occupation fits comfortably within the broader obligation to ensure respect for international humanitarian law, as set out in common Article 1⁷⁴³.

408. Such a duty is engaged “in the face of a risk” of relevant breaches⁷⁴⁴. The risk that Israel is carrying out practices of racial discrimination, segregation and apartheid has been firmly established and has been acknowledged by Germany. In response to the Court’s findings that Israel’s policies and practices in the Occupied Palestinian Territory constitute racial segregation and apartheid, Germany acknowledged:

“[W]e now have clarity on a legal point that has always been criticised by the Federal Government, namely that there is unequal treatment of Palestinians and Israeli settlers in the occupied territories ... The advisory opinion itself now states – and this is also our view – that there is obviously discrimination and unequal treatment of Israeli settlers and Palestinians in the occupied territories. The advisory opinion confirms, so to speak, a legal position that we also held.”⁷⁴⁵

409. In light of the insurmountable risk that support to Israel, including military support, will be used to carry out or help maintain practices of apartheid and racial discrimination against Palestinians and entrench Israel’s unlawful presence in the Occupied Palestinian Territory, such support constitutes a violation of the obligation to ensure respect for the international humanitarian law prohibitions on apartheid and racial discrimination.

4. Duty to Condemn and Prevent Racial Discrimination, Segregation, and Apartheid

410. Taken cumulatively, the Article 3 ICERD obligation to condemn racial segregation and apartheid, the customary obligations of non-maintenance, non-recognition, and the duty to cooperate to bring racial discrimination and apartheid to an end, and the IHL obligation to ensure respect for the prohibitions of apartheid and racial segregation together represent an obligation on all States including Germany to, at the very minimum, ensure that they do not contribute to, and avoid conduct which bears the risk of contributing towards, the establishment,

⁷⁴³ See above, paras. 310-328.

⁷⁴⁴ See *mutatis mutandis*, Order of 30 April 2024, Declaration of Judge Tladi, para. 13.

⁷⁴⁵ Government Press Conference of 22 July 2024, Federal Government (Annex 34).

maintenance, or further entrenchment of racial discrimination, segregation, and apartheid⁷⁴⁶. As with the duty to prevent genocide⁷⁴⁷, this duty is one of conduct, rather than of result.

D. GERMANY'S UNLAWFUL ASSISTANCE TO RACIAL DISCRIMINATION, SEGREGATION, AND APARTHEID

411. Germany has violated its obligation to condemn and prevent racial discrimination, segregation, and apartheid by assisting and by failing to prevent racial discrimination, segregation and apartheid through the delivery of arms and military equipment and through not preventing German companies from supporting and profiting from unlawful occupation, racial discrimination, segregation, and apartheid, and through its cooperation with Israel in other fields. Under the banner of German *Staatsräson*⁷⁴⁸, this conduct contributes directly, both materially and politically, to the maintenance of racial discrimination, segregation, and apartheid over the Palestinian people, in violation of Germany's international obligations.

1. Right to Life and Liberty of Persons

412. In 2024 the Court noted that “Israel’s legislation and measures constitute a breach of Article 3 of [ICERD]”⁷⁴⁹. It confirmed that “Israel’s settlement policy has given rise to violence by settlers and security forces against Palestinians”⁷⁵⁰, and concluded that “Israel’s systematic failure to prevent or to punish attacks by settlers against the life or bodily integrity of Palestinians, as well as Israel’s excessive use of force against Palestinians is inconsistent” with the obligations under Article 46 of the Hague Regulations, complemented by Article 27 of the Fourth Geneva Convention, and the rights to life and to protection against violence guaranteed by Articles 6 (1) and 7 of the ICCPR⁷⁵¹.

⁷⁴⁶ See also CERD, Report of the *ad hoc* conciliation commission on the inter-State communication submitted by the State of Palestine against Israel under Article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination, CERD/C/113/3, 21 August 2024, para. 53 (d) (“The commission recommends that the States parties to the Convention ... [e]nsure that their resources are not used to enforce or support discriminatory policies and practices against Palestinians living in the Occupied Palestinian Territory.”).

⁷⁴⁷ See para. 66 above and paras. 434-453 below.

⁷⁴⁸ See para. 119 above.

⁷⁴⁹ *Palestine Advisory Opinion*, para. 229.

⁷⁵⁰ *Ibid.*, para. 148.

⁷⁵¹ *Ibid.*, para. 154.

413. The use of physical violence against the oppressed racial group is integral to racial discrimination, segregation, and apartheid. Contributing to the maintenance and further entrenchment of racial discrimination, segregation, and apartheid by providing the regime, *inter alia*, with military assistance and equipment is therefore fundamentally and incontrovertibly incompatible with Germany's obligations. Importantly, this is true even where equipment provided is not used specifically in the Occupied Palestinian Territory. Because Israel's control over the Palestinian people extends both to the Occupied Palestinian Territory and within Israel, the provision of such assistance and material is at immitigable risk of being used to enforce and maintain racial discrimination, segregation, and apartheid over Palestinians regardless of whether it is employed in Israel or in the Occupied Palestinian Territory⁷⁵².

414. Fragmentation of the Palestinian territory and the segregation of the Palestinian people is maintained through Israel's unlawful presence, occupation and blockade, denying Palestinians access to their land and maritime resources⁷⁵³, and effectively creating a "Gaza Bantustan"⁷⁵⁴. Naval vessels and equipment constructed and delivered by German companies and financed largely by the Federal Government⁷⁵⁵, but also other military equipment constitute

⁷⁵² CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 12 December 2019, para. 23.

⁷⁵³ Not only have the corvettes been used against Gaza, but reports extensively indicated Israel's intention to use the corvettes for the purpose of "defending Israel's Exclusive Economic Zone (EEZ)", and the natural gas fields located in what Israel alleges is its EEZ: "Navy's new warships ready to protect maritime gas fields", Ynet News, 23 April 2023 (<https://www.ynetnews.com/article/r1jvjgmq2>); Peter Suci, "Israel's Stealthy New Navy Sa'ar Corvettes are a Big Deal", The National Interest, 14 January 2021 (<https://nationalinterest.org/blog/reboot/israels-stealthy-new-navy-saar-corvettes-are-big-deal-176337>). Israel's gas exploration and exploitation licensing regime clarifies it considers gas fields located in the State of Palestine's declared EEZ as located within its own EEZ: Letter to Minister of Energy Eli Cohen and Attorney-General Gali Baharav-Miara Re: Illegality of the Fourth Offshore Tender and Gas Drilling in the Palestinian Territorial Waters and Exclusive Economic Zone, Adalah, 5 February 2024 (https://www.adalah.org/uploads/uploads/Letter_Tender_Gas_Gaza_Eng.pdf); "Israel, Gas Fields & Exploration Licenses Offshore Israel and Updated Map of Israel's EEZ after Completion of 2nd Offshore Bid Round", Government of Israel (https://www.gov.il/BlobFolder/news/os_300719/he/gas_fields.pdf). See also, "Al-Haq Welcomes the State of Palestine's Maritime Coordinates of Delimitation and Warns Companies Against Illegal Activities in the Sea off the Coast of Gaza", Al-Haq, 25 October 2019 (<https://www.alhaq.org/advocacy/16128.html>); "Israeli Gas Exploration Licenses in Palestine's Maritime Areas are Illegal and Violate International Law", Al Mezan, Al-Haq, Palestinian Centre for Human Rights, Adalah, 8 February 2024 (<https://www.mezan.org/public/en/post/46372>). Notably, the lucrative fields of "Noa", "Mari B", and "Shimshon" are partly or entirely located within Palestine's EEZ, and so are "Zone G", "Zone H", and "Zone E". Israel granted exploration and/or exploitation licenses or tendered for the provision of licenses for those fields and in those zones. Both the Gaza Marine and the contiguous Noa field, are located in the so called "Gaza Maritime Zone" under the Oslo Accords. See also Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory, Al-Haq, August 2015 (https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Annexing_Energy.pdf), pp. 17 and 56; "On the High Seas with Tamar's Defenders", Globes, 17 April 2014 (<https://en.globes.co.il/en/article-on-the-high-seas-with-tamars-defenders-1000932479>).

⁷⁵⁴ See Al Mezan, The Gaza Bantustan: Israeli Apartheid in the Gaza Strip, 2021 (<https://mezan.org/uploads/files/16381763051929.pdf>).

⁷⁵⁵ See paras. 142, 238-239 above.

an essential element for the implementation and the maintenance of these measures by Israel of racial discrimination, segregation and apartheid maintained through an unlawful occupation. Notably, in June 2025, Norwegian Pension Fund, KLP, excluded ThyssenKrupp from its portfolio due to the company's failure to carry out adequate due diligence assessments when supplying the Israeli military⁷⁵⁶.

415. Germany provides military support to Israel. As outlined above⁷⁵⁷, this includes, but is not limited to, the supply of military equipment to Israel – such as spare parts for tanks, advanced artillery systems, but also weapons systems like anti-tank weapons and drones – with the authorisation of the Federal Government despite the risk that such materiel would be used to impose and entrench racial discrimination, segregation, and apartheid. This also includes the financial support by Germany of Israel's purchases of military equipment, despite the risks involved. This point was forcefully made on 20 June 2024 by 14 United Nations Special Rapporteurs and 25 Independent Experts and Working Group Members:

“Arms initiate, sustain, exacerbate, and prolong armed conflicts, as well as other forms of oppression, hence the availability of arms is an essential precondition for the commission of war crimes and violations of human rights, including by private armament companies”⁷⁵⁸.

416. Even when Germany was placed directly on notice by the United Nations Working Group on Business and Human Rights of its obligations under the Geneva Conventions, Genocide Convention and human rights law – and German arms manufacturers were warned about the risk of becoming accomplices in human rights violations⁷⁵⁹ – Germany continued to supply arms to Israel⁷⁶⁰.

⁷⁵⁶ KLP Funds, Decision to exclude Oshkosh Corporation and ThyssenKrupp AG, June 2025 (<https://www.klp.no/en/corporate-responsibility-and-responsible-investments/exclusion-and-dialogue/Decision-to-exclude-companies-due-to-their-sales-of-weapons-to-the-Israeli-military-June-2025-Final-ENG.pdf>).

⁷⁵⁷ See paras. 141-152 and 217-241 above.

⁷⁵⁸ “States and companies must end arms transfers to Israel immediately or risk responsibility for human rights violations: UN experts”, UN OHCHR, Press Release, 20 June 2024 (<https://www.ohchr.org/en/press-releases/2024/06/states-and-companies-must-end-arms-transfers-israel-immediately-or-risk>); “Arms exports to Israel must stop immediately: UN experts”, UN OHCHR, Press Release, 23 February 2024 (<https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>).

⁷⁵⁹ Letter to Germany from United Nations Working Group on Business and Human Rights and others, no. AL DEU 3/2024, 17 May 2024 (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29071>).

⁷⁶⁰ See paras. 199-211 above.

417. Israeli armed forces carry out incursions, night raids, mass arrests, and detentions across the West Bank including East Jerusalem “disrupting the intimacy of Palestinian households and terrifying the residents”⁷⁶¹. In this respect, even protective gear, like helmets, body protection plates, camouflage paint, or flak jackets, radar equipment⁷⁶² and trainer aircraft⁷⁶³ – for which export licences were granted by Germany as readily admitted before the Court⁷⁶⁴ – are integral supplies to maintain the oppression of the Palestinian people. As such, the characterisation of weapons as offensive or defensive is irrelevant when they are employed to maintain a regime of racial discrimination, segregation and apartheid. Germany has obligations to not recognise as lawful, to not aid and to not assist in breaches of *jus cogens* norms of international law by supplying any systems used for the maintenance of Israel’s unlawful presence, racial discrimination, segregation, and apartheid in the Occupied Palestinian Territory, regardless of the consideration of such weapons as offensive or defensive systems⁷⁶⁵.

418. A telling example is the involvement of Germany’s Volkswagen Group, through its majority shareholding in MAN⁷⁶⁶, in the supply and operation of equipment used for controlling Palestinians in the Occupied Palestinian Territory and maintaining the occupation regime through force.

⁷⁶¹ United Nations, Human Rights Council, Arbitrary deprivation of liberty in the Occupied Palestinian Territory: the Palestinian experience behind and beyond bars, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/HRC/53/59, 28 August 2023, para. 47.

⁷⁶² Forensis, Report — Short Study: German Arms Exports to Israel 2003-2023, 2 April 2024, p. 56 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>); “HENDSOLDT to Provide ‘Friend-or-Foe’ Tech to Israeli Aerial Radars”, The Defense Post, 27 July 2022 (<https://thedefensepost.com/2022/07/27/hensoldt-friend-or-foe-israel/>).

⁷⁶³ Grob Aircraft SE, based in Tussenhausen-Mattsies, Germany is providing the “trainer aircraft G 120A-I” for Israel’s Air Force end-use. See Forensis, Report — Short Study: German Arms Exports to Israel 2003-2023, 2 April 2024, p. 55 (<https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf>); “Elbit Systems Marks 20 Years of Operating the Elementary Trainer Aircraft Fleet of the Israeli Air Force with 95% Availability Rate”, Elbit Systems, 29 March 2023 (<https://www.elbitsystems.com/news/elbit-systems-marks-20-years-operating-elementary-trainer-aircraft-fleet-israeli-air-force-95>).

⁷⁶⁴ See paras. 212-213 above.

⁷⁶⁵ See para. 404 above.

⁷⁶⁶ See Volkswagen Group, The History of MAN (<https://www.volkswagen-group.com/en/the-history-of-the-brands-17668/the-history-of-man-17687>).



Figure 35. Israeli police fire water canon on Palestinians protesters in the Sheikh Jarrah neighbourhood in East Jerusalem, 13 February 2022⁷⁶⁷.



Figure 36. Israeli soldiers use a truck to fire a water cannon containing a foul smelling substance during a protest against the controversial Israeli barrier in the West Bank village of Bilin, near Ramallah (July 2009)⁷⁶⁸.

419. Israeli forces fire at “dispersing” Palestinian protesters⁷⁶⁹, schools and even medical teams⁷⁷⁰. Specifically, the armoured vehicles in which MAN’s chassis are used, feature “water

⁷⁶⁷ “Clashes as controversial Israeli lawmaker visits Jerusalem flashpoint”, *Euractiv*, 14 February 2022 (<https://www.euractiv.com/section/global-europe/news/clashes-as-controversial-israeli-lawmaker-visits-jerusalem-flashpoint/>).

⁷⁶⁸ “Israeli ‘skunk’ fouls West Bank protests”, Reuters, 3 September 2012 (<https://www.reuters.com/article/us-israel-palestinians-skunk-idUSBRE88208W20120903/>).

⁷⁶⁹ *Ibid.*; “Who, What, Why: What is skunk water?” *BBC*, 12 September 2015 (<https://www.bbc.co.uk/news/magazine-34227609>); Who Profits Research Center, Volkswagen Group, 2 May 2023 (<https://www.whoprofits.org/companies/company/7374>).

⁷⁷⁰ Who Profits Research Center, Proven Effective: Crowd Control Weapons in the Occupied Palestinian

cannon technology” to spray Palestinian demonstrators with “skunk”, “a scent-based weapon manufactured by Odorect”, along with other substances such as water, tear gas, paint, and foam⁷⁷¹. Skunk mist, “which is fired from a water cannon, is usually yellow and leaves a stench of sewage in the mouths, hair and clothes of the people sprayed” – a stench that is very difficult to remove. Skunk water’s safety data sheet indicates that the liquid can cause skin irritation, eye pain or redness, abdominal pain, and breathing difficulties⁷⁷².

420. In 2018, two additional MAN trucks for water cannon “riot control” were added to Israel’s existing fleet of 15 “riot control” vehicles — all built on MAN truck chassis⁷⁷³. In June 2024, Automotive Equipment, MAN’s importer and representative in Israel, submitted a bid to provide “riot control” water cannon vehicles⁷⁷⁴ to the Israeli military⁷⁷⁵, fitted with water-resistant CCTV, facial recognition abilities and laser to allow targeting of specific individuals⁷⁷⁶.

Territories, April 2014 (https://www.whoprofits.org/writable/uploads/publications/1668627954_45a9756927392d533f0e.pdf), pp. 26-27; “Maintenance of MAN trucks in the importer’s garages”, Intention to engage, Accountant General, 7 March 2013 (Annex 5).

⁷⁷¹ HOS Technology R&D, Riot control vehicles (<https://www.hosrnd.com/riot-control-vehicles/>); The Database of Israeli Military and Security Export, Beit Alfa Technologies (<https://dimse.info/beit-alfa-technologies/>); Who Profits Research Center, Volkswagen Group, 2 May 2023 (<https://www.whoprofits.org/companies/company/7374>); Who Profits Research Center, Proven Effective: Crowd Control Weapons in the Occupied Palestinian Territories, April 2014 (https://www.whoprofits.org/writable/uploads/publications/1668627954_45a9756927392d533f0e.pdf), pp. 26-27.

⁷⁷² Safety Data Sheet: Skunk #1, 6 February 2019 (https://eybna.com/wp-content/uploads/2018/11/SDS-Skunk_1-US-en.pdf); Who Profits Research Centre, Israeli Repression of the Palestinian May Uprising: Supplier of Crowd Control Weapons, December 2021 (<https://www.whoprofits.org/writable/uploads/old/uploads/2022/01/Israeli-Repression-of-the-Palestinian-May-Uprising-Final.pdf>).

⁷⁷³ “The Israel Police is interested in buying 2 MAN trucks weighing 15 tons with 4x4 drive”, Intention to engage, Accountant General, 18 January 2018 (Annex 7).

⁷⁷⁴ “מי מתמודד ומי נשאר בחוץ? מכרו המכת”זית של ישראל כננס לשלב האחרון” [Who is bidding and who is left out? Israel’s water cannon tender enters final phase], Calcalist, 30 January 2024 (Annex 22).

⁷⁷⁵ “לא עומדים בלחץ: מדינת ישראל יוצאת למכרז - רוצה עוד מכת”זיות” [Can’t stand the pressure: The State of Israel goes out to tender – seeks more water cannon trucks], Calcalist, 27 July 2023 (Annex 16).

⁷⁷⁶ “מצלמה לזיהוי פנים, כוונת ליזר ומתזי פלפל: המכת”זית החדשה של המשטרה” [Facial recognition camera, laser sight and pepper spray: the police’s new water cannon truck], Calcalist, 16 June 2024 (Annex 31). MAN also supplies busses and chassis to the EGGED group. See, e.g., Israel: Egged builds on MAN chassis, Automotive World, November 2017 (<https://www.automotiveworld.com/news-releases/israel-egged-builds-man-chassis/>); Who Profits Research Center, Volkswagen Group, 2 May 2023 (<https://www.whoprofits.org/companies/company/7374>). See further UN OHCHR, OHCHR update of database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international factfinding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 30 June 2023 (<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session31/database-hrc3136/23-06-30-Update-israeli-settlement-opt-database-hrc3136.pdf>), p. 5; United Nations, Human Rights Council, Database of all business enterprises involved in the activities detailed in paragraph 96 of the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil,

421. This military and similar support plays a role in maintaining racial discrimination, segregation, and apartheid, or there is a clear risk that such support does so. Germany's continuing military assistance, its continuing delivery of military equipment, but also its failure to prevent German companies and entities from contributing to or tolerating racial discrimination, segregation or apartheid, constitute violations of Germany's international obligations.

2. Colonial Settlement and Dividing the Population Along Racial Lines

422. In addition to Israeli Jewish domination over Palestinians being maintained through direct acts of physical violence – racial discrimination, segregation, and apartheid is further maintained through the deprivation of liberty of the oppressed group, including severe restrictions on the freedom of movement, preventing the realisation of the right of self-determination, including return of the Palestinian people.

423. The imposition of racial discrimination, segregation, and apartheid through movement restrictions is most apparently manifested in the erection and maintenance of Israeli settlements in the West Bank, including East Jerusalem, along with the construction of the Wall and its associated regime. In its 2024 Advisory Opinion, the Court found that “Israel’s legislation and measures impose and serve to maintain a near-complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities”⁷⁷⁷. CERD has similarly recognised that “Israeli society continues to be segregated as it maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities ... which raises issues under Article 3 of the Convention”⁷⁷⁸. Such discrimination has been acknowledged by Germany⁷⁷⁹.

political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, A/HRC/43/71, 28 February 2020, p. 7; Stichting Diensten- en Onderzoekscentrum Palestina (‘docP’), Egged and Ta’avura Bus Services to Illegal Settlements in the Palestinian West, September 2019 (<https://bdsnederland.nl/wp-content/uploads/2022/03/EGGED-AND-EGGED-TAAVURA-BUS-SERVICES-TO-ILLEGAL-ISRAELI-SETTLEMENTS-1.pdf>); Who Profits Research Center, Egged Israel Transport Cooperative Society, 26 June 2022 (<https://www.whoprofits.org/companies/company/4065>); Greater Israel Bus Connections, Visualizing Palestine, July 2012 (<https://visualizingpalestine.org/visual/greater-israel-bus-connections/>); Across the Wall: Israeli Settlement Bus Routes, Visualizing Palestine, July 2012 (<https://visualizingpalestine.org/visual/across-the-wall/?v=large>).

⁷⁷⁷ *Palestine* Advisory Opinion, para. 229.

⁷⁷⁸ CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 12 December 2019, para. 21.

⁷⁷⁹ See para. 408 above.

424. Israel carries out practices of discriminatory planning and zoning, denying applications for construction to Palestinians while greenlighting unlawful settlement construction and infrastructure on appropriated Palestinian land. In particular transportation infrastructure is central to the process of settlement expansion and the entrenchment of racial segregation and apartheid. Palestinians “do not enjoy either equal use of roads and infrastructure or equal access to basic services”⁷⁸⁰. Road networks constructed by Israel in the Occupied Palestinian Territory entrench and advance Israel’s annexation as they are built on Palestinian land, compromising the contiguity and integrity of Palestinian territory⁷⁸¹, and restricting Palestinians’ ability to access their agricultural land and travel between Palestinian villages and cities⁷⁸². German companies are implicated in this construction⁷⁸³.

425. Constructed on appropriated Palestinian lands⁷⁸⁴, the Jerusalem Light Rail (JLR) connects various settlement blocs in purportedly annexed East Jerusalem to other parts of the city, “creating territorial continuity and easing settler movement”⁷⁸⁵. German company TÜV NORD which provides safety assessments for the JLR openly acknowledges the operation of the tram in the Occupied Palestinian Territory.

426. Germany is continuing to import and market both settlement goods and services. German company Axel Springer, for example, operates Yad2, a “leading Israeli classified portal” advertising the sale of settlement properties⁷⁸⁶.

⁷⁸⁰ CERD, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 12 December 2019, para. 22.

⁷⁸¹ *Palestine Advisory Opinion*, para. 117.

⁷⁸² United Nations, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, Note by the Secretary General, A/78/127-E/2023/95, 30 June 2023, paras. 50, 64 and 71. See also Highway to Annexation: Israeli Road and Transportation Infrastructure in the West Bank (2020), Israeli Centre for Public Affairs and Breaking the Silence (<https://www.breakingthesilence.org.il/inside/wp-content/uploads/2020/12/Highway-to-Annexation-Final.pdf>), p. 13.

⁷⁸³ See paras. 281-287 above.

⁷⁸⁴ Who Profits Research Centre, Tracking Annexation, July 2017 (<https://www.whoprofits.org/publications/report/38>), p. 1; Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, *Official Records of the General Assembly*, Sixty-third session, Suppl. No. 35, A/63/35, para. 35.

⁷⁸⁵ Who Profits Research Centre, Developments in the Expansion of the JLR Network: The J-Net Project, November 2022 (<https://www.whoprofits.org/publications/report/161?developments-in-the-expansion-of-the-jlr-network-the-j-net-project>), p. 2; “Jerusalem light rail to expand to 5 lines, 27km of tracks”, Ynet, 22 January 2018 (<https://www.ynetnews.com/article/5074318>); State of Palestine, Palestine Liberation Organisation, Negotiations Affairs Department, Israeli Light Rail in Occupied East Jerusalem, 21 May 2025 (<https://www.nad.ps/en/publication-resources/maps/israeli-light-rail-occupied-east-jerusalem>). See also Welcome: The Light Rail, Transportation Master Plan Team (<https://jet.gov.il/en/light-rail/>).

⁷⁸⁶ See paras. 291-294 above.

427. On 19 July 2024, the Court held that States are under an obligation to “abstain from entering into economic or trade dealings with Israel concerning the Occupied Palestinian Territory or parts thereof which may entrench its unlawful presence in the territory” and that they are under an obligation to “take steps to prevent trade or investment relations that assist in the maintenance of the illegal situation created by Israel in the Occupied Palestinian Territory”. Such trade and investment relations at a minimum include both the preferential and non-preferential import, marketing and selling of settlement goods and services; as such continued trade maintains acts of unlawful appropriation and expropriation of Palestinian property in the Occupied Palestinian Territory and other grave breaches of the Fourth Geneva convention associated with settlements; and maintains the resulting unlawful situation of racial discrimination, segregation and apartheid.

3. Exploitation of Palestinian Natural Resources for the Benefit of Israel

428. Racial discrimination, segregation, and apartheid are also evidenced and enhanced through Israel’s unlawful practices⁷⁸⁷ of natural resource allocation in the Occupied Palestinian Territory, as well as through Israel’s continued violation of the Palestinian people’s right to permanent sovereignty over national resources⁷⁸⁸. Such practices are inexorably linked to the broader settlement enterprise, and the racial discrimination, segregation, and apartheid inherent therein. As Germany is aware of the involvement of German companies in the exploitation of Palestinian natural resources⁷⁸⁹ in a context of racial discrimination, segregation, and apartheid, its duty to condemn and prevent is engaged.

429. German company Heidelberg Materials owns shares in Hanson Israel⁷⁹⁰ operating in Nahal Raba Quarry on appropriated Palestinian lands in the West Bank⁷⁹¹. Palestinian vehicles are prohibited from using roads between Palestinian villages surrounding Nahal Raba Quarry⁷⁹², and quarried materials are used for the exclusive benefit of Israeli Jews. In a case

⁷⁸⁷ *Palestine Advisory Opinion*, paras. 124-133.

⁷⁸⁸ *Ibid*, para. 240.

⁷⁸⁹ See paras. 275-279 above.

⁷⁹⁰ See also paras. 276-278 above.

⁷⁹¹ See “מפעלים ומרכזים של הנסון” [Hanson Factories and Centres], Hanson Israel (<https://www.hanson-israel.com/Factories>).

⁷⁹² UN OCHA, Salfit Access Restrictions, July 2018 (<https://www.ochaopt.org/content/salfit-access-restrictions-july-2018>); SOMO, Al-Haq, Violations Set in Stone: HeidelbergCement in the Occupied Palestinian

before the Israeli High Court of Justice in 2009, Israel admitted that the majority of materials quarried at the Nahal Raba Quarry served Israel; the admission followed Yesh Din's presentation of information by the Ministry of Interior that 75 percent of materials were transferred into Israel and used by the construction sector⁷⁹³. Rather than scaling back its presence in 2024, Heidelberg Materials "acquired an additional 20 [percent] of the shares in Stone Quarries Hanson Ltd., Ramat Gan, Israel ... thereby raising its shareholding to 70 percent"⁷⁹⁴.

4. Mass Surveillance of Palestinians

430. Israel carries out systematic racial discrimination and oppression "closely monitor[ing] Palestinian society through advanced cyber-surveillance"⁷⁹⁵. Germany has granted export licenses for surveillance and warning equipment, and German company Bosch provides facial recognition technology to the Israeli military through its shareholdings in Oosto⁷⁹⁶. Palestinians are subjected to Israeli authorities' oppressive digital monitoring on a daily basis, at checkpoints, on roads, in the streets, during peaceful protests, social gatherings, and on social media⁷⁹⁷. Facial recognition technology enables Israeli forces to store photos and biometric data of Palestinians, without their consent. By failing to prevent German companies and entities from contributing to this system of surveillance Germany is in further violation of its international obligation to condemn and prevent racial discrimination, segregation, and apartheid.

Territory, 2020 (https://www.alhaq.org/cached_uploads/download/2020/02/04/final-report-violationsetinstone-en-1580802889.pdf).

⁷⁹³ Yesh Din, Petition to halt all Israeli quarry and mining activities in the West Bank, 9 March 2009 (<https://www.yesh-din.org/en/petition-to-halt-all-israeli-quarry-and-mining-activities-in-the-west-bank-hcj-216409-yesh-din-volunteers-for-human-rights-v-the-commander-of-the-idf-forces-in-the-west-bank/>).

⁷⁹⁴ Heidelberg Materials, Annual and Sustainability Report 2024, p. 277 (https://www.heidelbergmaterials.com/sites/default/files/2025-03/HM_ASR24_en.pdf).

⁷⁹⁵ United Nations, Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, A/HRC/49/87, 12 August 2022, para. 42.

⁷⁹⁶ See para. 290 above.

⁷⁹⁷ "The start-up spy state", +972 Magazine, 6 April 2022 (<https://www.972mag.com/isdef-surveillance-tech-israel-army/>); "'We violated people's privacy for a living': How Israel's cyber army went corporate", +972 Magazine, 3 November 2021 (<https://www.972mag.com/nso-surveillance-companies-israel-army/>).

CONCLUSION

431. In light of the evidence presented herein, Germany is in flagrant violation of its duty to condemn, and prevent Israel's racial discrimination, segregation, and apartheid regime over the Palestinian people. This duty is represented in the obligation to condemn racial segregation and apartheid, set out in Article 3 of ICERD, the customary international law obligations of all States to refrain from recognising unlawful situations stemming from a violation of *jus cogens* norms, including the prohibition of racial discrimination and apartheid, as legitimate and to refrain from contributing towards their maintenance, and the obligation to ensure respect for international humanitarian law, in particular the prohibition of practices of apartheid in situations of international armed conflict, including military occupation.

432. Instead, Germany has politically and materially contributed, or acted despite the insurmountable and immitigable risk of contributing, to the maintenance of racial discrimination, segregation, and apartheid by, *inter alia*, providing Israel with military equipment and non-military material, by allowing German companies to engage in economic activities in and with illegal Israeli settlements and the discriminatory infrastructure in the Occupied Palestinian Territory, and by supporting and sustaining the discriminatory surveillance system.

IV. Germany's Breaches of the Convention on the Prevention and Punishment of the Crime of Genocide

433. It is unnecessary here to review the background of the Convention on the Prevention and Punishment of the Crime of Genocide. It is a subject with which the Court is very familiar.

A. THE DUTY TO PREVENT GENOCIDE

434. The duty to prevent genocide was developed by the Court in the *Bosnia v. Serbia* case. Article I of the Genocide Convention is not merely “hortatory or purposive”, the Court explained. The undertaking to prevent and punish genocide is unqualified, said the Court. “It is not to be read merely as an introduction to later express references to legislation, prosecution and extradition ... Article I, in particular its undertaking to prevent, creates obligations distinct from those which appear in the subsequent Articles. That conclusion is also supported by the purely humanitarian and civilizing purpose of the Convention.”⁷⁹⁸ The Court explained that the *travaux préparatoires* of the Convention confirm the “operative and non-preambular character of Article I”⁷⁹⁹. In *Croatia v. Serbia*, the Court indicated that the duty to prevent genocide could also be derived from customary international law⁸⁰⁰.

435. The unilateral nature of the obligation is made particularly evident in the Court's view. In *Bosnia v. Serbia*, the Court found that the scale and scope of the obligation to prevent “varies greatly from one State to another”, depending upon:

“the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of political and other links between the authorities of that State and the main actors in the events. The State's capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law; seen thus, a State's capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide.”⁸⁰¹

⁷⁹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 111, para. 162.

⁷⁹⁹ *Ibid.*, p. 112, para. 164.

⁸⁰⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, p. 49, para. 95.

⁸⁰¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 221, para. 430.

436. The obligation to prevent genocide exists from the moment when there is a “serious risk” of genocide being committed. “From that moment onwards”, said the Court in *Bosnia v. Serbia*, “if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.”⁸⁰² It explained that “a State may be found to have violated its obligation to prevent even though it had no certainty, at the time when it should have acted, but failed to do so, that genocide was about to be committed or was under way; for it to incur responsibility on this basis it is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed”⁸⁰³.

437. In the provisional measures hearing, Germany acknowledged that “the obligation to prevent genocide ... is an obligation of conduct that is incumbent upon *all* States”⁸⁰⁴. Germany did not recognize that there was a serious risk of genocide. It confined itself to stating that it was “fully aware of the diverging views over the legal categorization of the Israeli conduct of its defence against the ongoing attack by Hamas”⁸⁰⁵.

438. The closest that Germany came to recognizing whether there was a “serious risk” of genocide was in its submissions during the hearings on provisional measures in April 2024. Germany observed that in its Orders in the case of *South Africa v. Israel* the Court had “*certes reconnu que la situation à Gaza est telle qu’il existe un risque réel et imminent pour les droits des Palestiniens*”. He said that the Court’s Orders had clearly stated that “*la situation humanitaire qui règne dans la bande de Gaza est « catastrophique ». L’Allemagne en a bien conscience.*” Counsel said that Germany’s “*hauts responsables politiques ont déclaré à maintes reprises leur bouleversement face aux souffrances de la population civile de Gaza. En tant que membre de la communauté internationale, l’Allemagne s’est fermement employée à faire en sorte que ces souffrances cessent. Elle a insisté sur la nécessité que le droit international soit respecté et elle a pris des mesures concrètes visant à répondre aux préoccupations*

⁸⁰² *Ibid.*, p. 222, para. 431.

⁸⁰³ *Ibid.*, p. 223, para. 432.

⁸⁰⁴ CR 2024/16, 9 April 2024, p. 37, para. 20 (Peters).

⁸⁰⁵ *Ibid.*

internationales.”⁸⁰⁶ Thus, Germany confined itself to the perfunctory acknowledgement of a humanitarian crisis without invoking any concrete action.

439. In its oral submissions, Germany claimed that it had “fulfilled any conceivable obligation to prevent the occurrence of genocide” and indicated several initiatives Germany had taken in this respect. It said it has “continuously engaged politically with Israel in a dialogue that has not shied away from critical questions”. Counsel for Germany said that German leaders had, “in the strongest terms ... warned Israel of the grave dangers that a ground offensive in Rafah would pose”. Moreover, “[f]or months, in countless meetings, German leaders and diplomats have worked towards the opening of more border crossings”. Counsel also said that:

“[T]o prevent famine, Germany is engaged in emergency deliveries, dropping food from the air. These concrete measures are at the heart of Germany[’s] policy. So, Germany has continuously used all reasonable means at its disposal to both exert its influence on the Israeli partners in order to improve the situation and to itself furnish humanitarian aid. It continues to do so every day”.

She concluded: “We cannot see how any duty to prevent could demand more of Germany”⁸⁰⁷.

440. To start with, Germany could recognize the risk of genocide, something it has yet to do.

441. The Court might ask itself whether it would have been satisfied, in 2007, had Serbia claimed it had fulfilled its obligation to prevent by engaging in “dialogue” with the Bosnian Serb forces, and that it had insisted with them that they take measures to address humanitarian needs of the civilian population. In the *Bosnia v. Serbia* judgment the Court refers to a claim by Serbia’s president, Slobodan Milošević, that he had “warned” the Bosnian Serb general, Ratko Mladić, about the killings in Srebrenica. “I warned him not to do this, but he didn’t listen to me”, Milošević claimed in a conversation with the American General Wesley Clark that is quoted in paragraph 437⁸⁰⁸.

442. The Court was unimpressed by the claim that Milošević had warned Mladić of the risk of genocide. This was not the sort of “prevention” that it had in mind. The Court said that

⁸⁰⁶ *Ibid.*, p. 43, paras. 5-7 (Palchetti).

⁸⁰⁷ *Ibid.*, p. 37, para. 21 (Peters).

⁸⁰⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, pp. 224-225.

“[i]n view of their undeniable influence and of the information, voicing serious concern, in their possession, the Yugoslav federal authorities should, in the view of the Court, have made the best efforts within their power to try and prevent the tragic events then taking shape, whose scale, though it could not have been foreseen with certainty, might at least have been surmised”⁸⁰⁹. It said the Serbian leadership was “fully aware of the climate of deep-seated hatred which reigned between the Bosnian Serbs and the Muslims in the Srebrenica region ... [I]t must have been clear that there was a serious risk of genocide in Srebrenica.”⁸¹⁰ In finding that Serbia had violated Article I of the Genocide Convention, the Court held that Serbia had done nothing to prevent the massacres at Srebrenica, claiming it was powerless to do so. “[I]t had the means to do so and ... manifestly refrained from using them”, was the conclusion⁸¹¹.

443. In order to fulfil its obligations under the Convention, Germany was not required to acknowledge, at the time of the oral hearing in April 2024, that genocide had taken place and was taking place. But it was required to conduct a due diligence analysis. Did Germany undertake such an analysis? Has it made one subsequently? In its discussion of issuance of export licences for arms shipments during the provisional measures hearing, Germany explained that “for every licence that is granted, the German Government carefully assesses whether there is a clear risk that the particular item subject to licensing would be used in the commission of genocide ...” It described the assessment as “detailed”⁸¹². Elsewhere, Germany has spoken of a requirement imposed by Article I of the Genocide Convention of “a due diligence obligation to gather evidence from independent sources”⁸¹³. The provisional measures hearing would have been the occasion for Germany to share with the Court the contents of its “detailed” assessment of the risk that genocide was being committed.

444. If Germany had properly conducted a due diligence assessment of the serious risk of genocide, it should have started with the Order of this Court of 26 January 2024 in the *South Africa v. Israel* case. The Court’s Order was itself a powerful warning to Germany about the

⁸⁰⁹ *Ibid.*, p. 225, para. 438.

⁸¹⁰ *Ibid.*

⁸¹¹ *Ibid.*

⁸¹² CR 2024/16, 9 April 2024, p. 18, para. 17 (Tams).

⁸¹³ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Written observations of the Federal Republic of Germany on the construction of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, 5 July 2023, para. 26.

risks and dangers of genocide. There, the Court invoked a statement dated 16 November 2023 issued by 37 Special Rapporteurs, Independent Experts and members of Working Groups part of the Special Procedures of the United Nations Human Rights Council, in which they voiced alarm over “discernibly genocidal and dehumanising rhetoric coming from senior Israeli government officials”⁸¹⁴. Germany should also have examined the submissions by South Africa during the oral hearing on 11 January 2024. Germany should also have taken into account a range of statements and reports produced by expert bodies established under the aegis of the United Nations Human Rights Council, even if, in the light of decisions of German courts, this remains questionable.

445. When the hearing on provisional measures in the present case took place, Germany could not but have been aware of the report of the Special Rapporteur on the Occupied Palestinian Territory, entitled “Anatomy of a genocide”, which was presented to the Human Rights Council at its 55th session on 26 March 2024⁸¹⁵. In June 2024, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel reported to the Human Rights Council that “Israel has committed war crimes, crimes against humanity and violations of international humanitarian law and international human rights law”, noting in particular its disregard for the principles of distinction, proportionality and precaution. The Commission found Israel had used starvation as a method of war⁸¹⁶. Only months earlier, Germany had submitted a declaration of intervention in the *Gambia v. Myanmar* case, co-signed by five other States, that stressed the significance of such materials:

“As a final consideration, the Declarants further submit that it is particularly important for the Court to consider the evidentiary value of certain documents in its construction of Article II of the Genocide Convention, bearing in mind the *erga omnes partes* nature of the obligations under this convention. Specifically, certain sources must be regarded as having particular probative value in establishing the elements required to demonstrate the existence of genocide, including the facts that allow the Court to draw inferences as to specific intent. In this regard, the Declarants

⁸¹⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024, p. 23, para. 53.

⁸¹⁵ “States must adhere to obligations under Genocide Convention to prevent further loss of life in Gaza, says Special Rapporteur Francesca Albanese”, Press release, 26 March 2024 (<https://www.ohchr.org/en/press-releases/2024/03/states-must-adhere-obligations-under-genocide-convention-prevent-further>). For the report, see United Nations, Human Rights Council, Anatomy of a genocide, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/HRC/55/73, 1 July 2024.

⁸¹⁶ Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/HRC/56/26, 14 June 2024, paras. 97-107.

submit that reports generated by the United Nations, such as reports produced by fact finding missions, commissions of inquiry, and reports that the Secretary-General of the United Nations may prepare for the United Nations Security Council or General Assembly, can have special importance. Indeed, such reports can be particularly credible because they emanate from a ‘disinterested witness,’ namely ‘one who is not a party to the proceedings and stands to gain or lose nothing from its outcome’.”⁸¹⁷

It would seem Germany only pays attention to such materials when they correspond to its political outlook, *i.e.*, it does not rely on them if they do condemn Israel and affect German *Staatsräson*⁸¹⁸.

446. Actually, Germany made public statements defending Israel’s conduct and ridiculing the suggestion that the Genocide Convention might apply. On 10 January 2024, the German Federal Foreign Minister Annalena Baerbock challenged the qualification of genocide and the proceedings taken by South Africa, saying she could not see that there was any attempt to destroy a group and that Israel’s actions were explained as “self-defence against an armed terrorist organization Hamas”. She announced that Germany would “set out its legal opinion on the interpretation of the Genocide Convention through its own intervention” in the *South Africa v. Israel* case. On 11 January 2024, the German Federal Government issued a statement announcing its intention to intervene in the proceedings. It explained that it was opposed to “political instrumentalization” of the Genocide Convention and said the charge made by South Africa “has no basis whatsoever”⁸¹⁹.

447. The messages of unqualified support for Israel were clearly understood, and appreciated, in Israel. Prime Minister Netanyahu telephoned Federal Chancellor Olaf Scholz to thank him “for Germany’s willingness to send a delegation to The Hague to help refute this despicable lie [of an Israeli genocide]”⁸²⁰. Clearly, far from engaging in a “dialogue that has

⁸¹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Joint declaration of intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland, 15 November 2023, para. 76.

⁸¹⁸ See paras. 154-155 above.

⁸¹⁹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Declaration of intervention under Article 63 of the Federal Republic of Germany, 1 September 2022, para. 18.

⁸²⁰ Stefan Talmon, “Germany Rushes to Declare Intention to Intervene in the Genocide Case brought by South Africa Against Israel Before the International Court of Justice”, German Practice in International Law, 16 January 2024 (<https://gpil.jura.uni-bonn.de/2024/01/germany-rushes-to-declare-intention-to-intervene-in-the-genocide-case-brought-by-south-africa-against-israel-before-the-international-court-of-justice/>).

not shied away from critical questions” and confronting Israel “in the strongest terms”⁸²¹, as counsel misleadingly told the Court several weeks after these statements, in the hearing on provisional measures, Germany stands out as one of the most important cheerleaders and apologists for Israel’s conduct. Obviously, Germany’s actions have not deterred Israel, nor were they intended to deter Israel. Quite the contrary.

448. If Germany was indeed sincere about using its influence to intervene with Israel, as it suggested to the Court, it should have taken a range of robust measures. To start with, it should have condemned the racist and genocidal statements made by various Israeli leaders and attached consequences to them. It might have denied transfers of arms altogether instead of quibbling about whether or not the military supplies it was providing were actually being ready for combat. Especially because of Germany’s special relationship, public measures of censure by Germany might have had a genuine impact upon Israel, on its government and in public opinion. But above all, Germany should have undertaken concrete acts, such as a complete halt to the delivery of weapons.

449. At the same time as it was dismissing any application of the Genocide Convention in the *South Africa v. Israel* case, Germany was actively promoting a more generous and liberal construction of the definition of genocide set out in the 1948 Convention. In November 2023, Germany and five other States submitted an intervention to the Court in the *Gambia v. Myanmar* case in accordance with Article 63 of the Statute of the International Court of Justice. The intervention was politely critical of the jurisprudence of the Court, pointing to the danger of a “narrow construction of underlying acts of genocide”⁸²². It underscored the importance of the genocidal act of causing serious bodily or mental harm when the victims are children, an observation whose relevance to the situation in Gaza should be apparent. The intervenors said that “when considering whether an act is ‘serious’ or tends to contribute to the physical or biological destruction of a group, it is necessary to take into account not only the nature of the act but also the specific situation or position of the victims, particularly where they are children, as children have a higher susceptibility to harm ... In particular, the Intervenor submit that

⁸²¹ CR 2024/16, 9 April 2024, p. 37, para. 21 (Peters).

⁸²² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Joint declaration of intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland, 15 November 2023, para. 25.

there is a lower threshold for “serious bodily or mental harm” when the victim is a child”⁸²³. With respect to the genocidal act of “inflicting on the group conditions of life calculated to bring about its physical destruction”, Germany and its co-intervenors cited a holding of the International Criminal Tribunal for Rwanda that this encompassed “subjecting a group of people to a subsistence diet, systematic expulsion from homes and the induction of essential medical services below minimum requirement”⁸²⁴. They noted that “the amount of food that would ultimately lead to the death of an adult is different than that which would lead to the death of a child”⁸²⁵. The intervention that was signed by Germany also focussed on the significance of forced displacement of civilians not only as a punishable act of genocide but also as an important manifestation or indicator of genocidal intent. Germany and the other authors of the intervention urge the Court to focus on these factors in assessing genocidal intent in Myanmar yet Germany is indifferent to them when they are features of Israel’s conduct in Palestine.

450. In its discussion of the challenge of proving genocidal intent, the intervention of Germany and five other States appears to warn of an approach that is overly cautious and strict. The intervenors – among which Germany – refer to “mixed reactions” to the Court’s jurisprudence, noting that these have suggested that “the view that the standard of ‘the only inference that could reasonably be drawn’ sets the bar unduly high”⁸²⁶. In this context they cite the dissenting opinion of Judge Cançado Trindade in *Croatia v. Serbia*. They contend that “it is crucial for the Court to adopt a balanced approach that recognizes the special gravity of the crime of genocide, without rendering the threshold for inferring genocidal intent so difficult to meet so as to make findings of genocide near-impossible”⁸²⁷. This approach is commendable although in the present case “the only inference” threshold is irrelevant given the abundance of direct evidence in the form of genocidal, dehumanising, and racist statements by state officials. Evidence of genocidal intent is plain to see. It is not necessary to rely upon inferences from conduct. Rather, the conduct provides valuable confirmation of the direct manifestations of intent.

⁸²³ *Ibid.*, paras. 39-40.

⁸²⁴ *Ibid.*, para. 41.

⁸²⁵ *Ibid.*, para. 42.

⁸²⁶ *Ibid.*, para. 51.

⁸²⁷ *Ibid.*, para. 51.

451. In light of its intervention in *Gambia v. Myanmar*, it would be expected that Germany would be among the first to appreciate the warning signs of genocide in Gaza. They ought to have led the world in signalling the “serious risk” of genocide. Alas, Germany was blinded by its loyalty to Israel and as a consequence it failed to take any action to prevent genocide despite being in a very privileged position, due to its historic relationship with Israel, to influence its conduct in a positive manner. Instead, it continued to supply Israel with arms.

452. As the Court said in *Bosnia v. Serbia*, “the whole point of the obligation is to prevent, or attempt to prevent, the occurrence of the act. In fact, a State’s obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit.”⁸²⁸ If a State can hide behind the lack of a conclusive judicial finding of genocide solely by the International Court of Justice, in order to avoid admitting its duty to prevent genocide is triggered and requires it to take certain actions – genocide is bound to be repeated, and the enforcement structure around this heinous crime will remain deficient.

453. The judgment in *Bosnia v. Serbia* greatly strengthened the importance of the duty to prevent genocide. The profound importance of the prevention of genocide emerges from its case law taken as a whole, from the provisional measures orders issued in cases based upon the Genocide Convention, and in the activities of the United Nations, for example the establishment by the Secretary-General of a Special Advisor on the Prevention of Genocide. The Court has an important contribution to make in affirming that a failure to exercise due diligence in recognizing that there is a serious risk of genocide and to take appropriate lawful measures to diminish or eliminate that risk constitutes a violation of the Genocide Convention, and of the customary international law duty to prevent genocide, regardless of whether or not the crime of genocide actually occurs. In other words, this obligation exists independently of whether a third State actually commits genocide.

⁸²⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, pp. 221-222, para. 431.

B. THE DUTY TO PUNISH GENOCIDE

454. In accordance with Article I of the Genocide Convention, States Parties undertake to punish the crime of genocide. Germany's intervention in *Gambia v. Myanmar* set out its view of the content of this obligation:

“Article I must be construed in light of Articles IV to VI of the Genocide Convention, and thus interpreted as an obligation to investigate and prosecute persons accused of genocide, and to punish persons found to be guilty of genocide. In the view of the Declarants, pursuant to these provisions, a State Party discharges its obligation to punish genocide by prosecuting persons subject to criminal jurisdiction within its own criminal courts; by cooperating with competent international tribunals when it has accepted their jurisdiction; and by extraditing persons accused of genocide for trial in other States, as relevant.”⁸²⁹

Furthermore, the “duties to investigate, prosecute, and punish within their respective treaties include a duty to do so transparently, to ensure that society is duly and appropriately informed to be able to assess the integrity of the process, and to safeguard public confidence in the judicial process”⁸³⁰.

455. On this issue, reference should be made to the discussion of the duty to prosecute serious violations of international humanitarian law. In recent years, Germany has undertaken prosecutions for genocide committed in the former Yugoslavia, in Rwanda, and in Syria⁸³¹. There is no evidence of investigations or prosecutions for genocide perpetrated in the Occupied Palestinian Territory by Germany.

C. COMPLICITY IN GENOCIDE

456. Article III of the Genocide Convention lists as punishable acts not only those of genocide, but also includes those of attempts to commit genocide, conspiracy to commit genocide and complicity in genocide, as well as those acts of direct and public incitement. Each of those acts listed is an act punishable on its own.

⁸²⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Joint declaration of intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland, 15 November 2023, para. 77.

⁸³⁰ *Ibid.*, para. 80.

⁸³¹ F. Jeßberger, “A Short History of Prosecuting Crimes under International Law in Germany”, *Journal of International Criminal Justice*, vol. 21, 2023, p. 779.

457. It is therefore understood that the responsibility extends to those facilitating the commission of genocide. In the present case, it has been established that Germany has provided assistance⁸³² to Israel before and during the presently ongoing and publicly recognized⁸³³ genocide against the Palestinian people.

458. In particular, Germany has delivered military equipment, ammunition, technology, spare parts and components to facilitate Israel's military campaign in the Occupied Palestinian Territory, especially Gaza⁸³⁴. Germany has incurred in such active conduct despite being aware of the violations being committed by Israel from the moment of their first occurrence shortly after 7 October 2024, not least because of Israel's public broadcast of its intention and genocidal acts.

459. In any event, as the ILC has remarked when referring to the particular consequences of a serious breach of an obligation under peremptory norms of general international law "it is hardly conceivable that a State would not have notice of the commission of a serious breach by another State"⁸³⁵.

460. From the above, it is clear that Germany has not been an innocent bystander or merely culpable of omissions. Germany's actions have involved and continue to involve positive action in the form of assistance that amounts to complicity in genocide, which is an independent punishable act that Nicaragua has fully demonstrated. This is also the case for other serious breaches of international law that are discussed below.

V. Germany's Aid and Assistance to Other Serious Breaches of International Law

461. As has been demonstrated above⁸³⁶, there has been a very close and special relationship between Germany and Israel in all areas of life, diplomatic, economic, scientific, cultural, and military. Moreover, there has been and there is a dependency upon military

⁸³² See generally Chapter 3, Sections II and III, above.

⁸³³ See Non exhaustive list of statements on International Humanitarian Law and Genocide (Annex 1).

⁸³⁴ See paras. 183-243.

⁸³⁵ *ILC Yearbook*, 2001, vol. II (2), p. 115, para. (11) of the commentary to Art. 41 of the ILC Draft Articles on State Responsibility.

⁸³⁶ See paras. 127-135 above.

support, including weaponry, spare parts and components that have facilitated the continuation of Israel's long standing unlawful presence, apartheid system and active military campaign in the Occupied Palestinian Territory, undermining the right to self-determination of the Palestinian people.

462. In other words, this goes beyond an “undeniable influence”, to constitute active conduct of aiding and assisting Israel for decades in its illegal conduct, despite the Court's conclusions in its Advisory Opinions of 2004 and 2024, each of which details consequences and obligations for third states not to aid and assist Israel's unlawful conduct.

463. In its Order of 30 April 2024 in the present case, the Court said:

“Moreover, the Court considers it particularly important to remind all States of their international obligations relating to the transfer of arms to parties to an armed conflict; in order to avoid the risk that such arms might be used to violate the above-mentioned Conventions. All these obligations are incumbent upon Germany as a State party to the said Conventions in its supply of arms to Israel”⁸³⁷.

464. None of these clear elaborations by the Court of third states' obligations has stopped Germany from continuing to actively breach its obligations that flow from serious violations of international law in the Occupied Palestinian Territory as set out in this Memorial.

⁸³⁷ Order of 30 April 2024, para. 24.

CHAPTER 5.

REMEDIES

465. As shown throughout this Memorial, Germany bears responsibility for multiple violations of international legal norms, whether under treaties or customary international law, many of them constituting serious breaches of binding obligations pursuant to peremptory norms of international law. These relate to the prohibition of genocide, core provisions of international humanitarian law, international human rights law, the right of the Palestinian people to self-determination, the prohibitions of racial discrimination, segregation and apartheid, and the violation on the prohibition on the use of force (*ius ad bellum*). These breaches entail legal consequences for Germany as well as rights and duties for other States as parties to the treaties violated and as members of the international community.

466. As provided by Article 48 of the ILC Articles on State Responsibility:

“1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:

- (a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
- (b) The obligation breached is owed to the international community as a whole.

2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:

- (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
- (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.”

467. According to Article 30 of the ILC Articles on State Responsibility:

“The State responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.”

468. As the Court affirmed in its *Wall Advisory Opinion*:

“The obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation.”⁸³⁸

469. It is therefore incumbent upon Germany to immediately put an end, among other things, to its aid and assistance to Israel in all the fields enumerated in this Memorial and, in particular with urgency to end the delivery of weapons to Israel that could be used to commit serious violations of international law – including, for instance, components that may enable the operation of Merkava battle tanks.

470. In addition, Germany has the obligation to stop its breaches arising from its support for the denial of the Palestinian people’s exercise of its right to self determination and the maintenance of Israel’s unlawful occupation, and ongoing racial discrimination, segregation and apartheid. State organs must regulate and otherwise act with due diligence including with respect to the regulation of companies domiciled in or operating under Germany’s jurisdiction and performing activities, trade, or cooperation in Israeli settlements, or contributing to the maintenance of Israel’s unlawful presence in the Occupied Palestinian Territory.

471. This includes preventing natural and legal persons from profiting from the continued use of unlawfully appropriated property in the Occupied Palestinian Territory through their exporting to, marketing and selling of settlements goods and services in Germany. Germany must similarly refrain from participating in or creating new relationships with Israeli academic institutions, and withdraw support for cooperation with Israeli academic institutions which either operate in the Occupied Palestinian Territory or which contribute to the maintenance of the unlawful occupation.

472. As stressed by Article 29 of the ILC Articles on State Responsibility, “[t]he legal consequences of an internationally wrongful act under this Part [on the Content of the international responsibility of a State] do not affect the continued duty of the responsible State to perform the obligation breached”⁸³⁹. Hence, the mere cessation of the internationally

⁸³⁸ *Wall Advisory Opinion*, p. 197, para. 150 mentioning in the same paragraph: “*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 149; *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 44, para. 95; *Haya de la Torre, Judgment, I.C.J. Reports 1951*, p. 82”. See also *Palestine Advisory Opinion*, para. 267.

⁸³⁹ This principle was recalled in *Palestine Advisory Opinion*, para. 272.

wrongful acts for which Germany is responsible is not, in the present circumstances, sufficient to draw the necessary consequences from its responsibility.

473. In particular, Germany should guarantee non-repetition by performing by a detailed revision, termination or freeze of Germany's bilateral and multilateral treaties and agreements with Israel in any form, that facilitates the continued violation of Germany's *jus cogens* and *erga omnes* obligations. Article 53 of the Vienna Convention on the Law of Treaties provides that treaties are void when they conflict with peremptory norms of international law. Hence, Germany's guarantees of non-repetition must start by performing a revision of bilateral and multilateral agreements with Israel, for breach of peremptory norms of international law.

474. This revision must involve agreements related to trade, especially arms trade, but also other types of trade that helps to maintain Israel's unlawful occupation. In addition to treaties and agreements, that revision must also include non-preferential trade and other trade and investment ties to Israel, ensuring measures such as – at a minimum – adequate legislative and enforcement action to ensure natural and legal persons domiciled in Germany or operating in its jurisdiction do not aid and assist in Israel's settlement policies and practices or the maintenance thereof. Germany must also review academic cooperation with Israeli institutions and organisations, especially where activities are performed in the Occupied Palestinian Territory.

475. Germany is under an obligation to make reparation for the injury caused by its internationally wrongful acts. Moreover as established by the Permanent Court in the *Factory at Chorzów* case:

“It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation ... The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”⁸⁴⁰

476. Article 31 of the ILC Articles on State Responsibility reflects this well-established customary international law principle:

⁸⁴⁰ *Factory at Chorzów, Merits, Judgment no. 13, 1928, P.C.I.J., Series A, No. 17*, pp. 29 and 47.

“1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”

477. In accordance with Article 48 of the ILC Articles on State Responsibility, this reparation must be made “in the interest of the injured State or of the beneficiaries of the obligation breached”. In the present case, the injured State is the State of Palestine and the beneficiaries of the obligations breached are the Palestinian people. Given the peremptory nature of several of these norms, and the *erga omnes* obligations they impart, all States have *jus standi* to act as “a member of the international community as a whole”⁸⁴¹, as they all have a legal interest in seeing Germany comply with its international obligations⁸⁴².

478. Reparation can take various forms, as reflected by Article 34 of the ILC Articles on State Responsibility which provides that “[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination”.

479. In the present situation, all these forms of reparation are necessary to remedy the injury caused by Germany.

480. Among other measures, Germany should also establish a reparation or assistance fund for Palestinian victims and provide necessary support including political and financial support to the competent United Nations agencies, programmes and funds.

481. Since the suffering and anguish resulting from Germany’s internationally wrongful acts “cannot be made good by restitution or compensation” only, Germany must give satisfaction for the injury caused. This satisfaction could include a formal acknowledgement by Germany of its failure to fulfil its international obligations through official statements and issuance of an apology to the State of Palestine and its people. This is all the more necessary since Germany has long denied its responsibility for the terrible injury endured by the Palestinian people (including before this Court on the occasion of the examination of

⁸⁴¹ *ILC Yearbook*, 2001, vol. II (2), p. 126, para. (1) of the commentary to Art. 48.

⁸⁴² See also United Nations, General Assembly, Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, Annex, principle 20.

Nicaragua's request for provisional measures). When Germany has occasionally condemned Israel's illegal activities, its words have not been followed by action, nor have they addressed the situation that lies at the root of these wrongful acts: Israel's unlawful presence of the Occupied Palestinian Territory, the continued denial of the right of self-determination of the Palestinian people, and ongoing racial discrimination, segregation, and apartheid.

482. Germany must adopt all appropriate measures to use its influence upon Israel to cease its violations of international law, including international humanitarian law, human rights law, genocide and the law governing use of force. These measures should include financial and commercial pressure, limits on relations in the areas of culture, sport, and academic research, and any other lawful measures susceptible of influencing Israel's conduct.

483. In addition, in view of the continued commission of its internationally wrongful acts long after there could not exist any doubt concerning the possibility that these German acts or omissions were unlawful and detrimental to fundamental rights of the Palestinian people, together with Germany failure to comply with its past commitments, the present case is typical of a situation when circumstances require the State responsible "to offer appropriate assurances and guarantees of non-repetition"⁸⁴³.

⁸⁴³ ILC Articles on State Responsibility, Art. 30 (*b*).

SUBMISSIONS

484. While reserving its right to revise, supplement or amend the present Memorial, Nicaragua respectfully requests the Court to adjudge and declare that Germany:

- (1) has breached and continues to breach its obligations under the Genocide Convention in particular the obligations provided in Article I by, with full knowledge of the situation, failing to prevent the ongoing genocide against the Palestinian people in particular Palestinians in the Gaza Strip;
- (2) has breached and continues to breach its obligations under the Genocide Convention in particular the obligations provided in Article I by not only failing to prevent the ongoing genocide but by providing aid, including military equipment, to Israel that could be used in the commission of genocide by Israel;
- (3) has breached and continues to breach its obligations under the Genocide Convention in particular the obligations provided in Article III (e) by being complicit in genocide by providing aid, including military equipment to Israel that has been used in the commission of genocide by Israel;
- (4) has breached and continues to breach its obligations under Article 1 of the Fourth Geneva Convention and intransgressible principles of humanitarian law by failing to ensure that the requirements of that Convention are complied with, as recognized by the Court's Advisory Opinions of 2004 and 2024;
- (5) has breached and continues to breach its obligations under Article 1 of the Fourth Geneva Convention and intransgressible principles of humanitarian law by providing aid and assistance, including military equipment, in violation of its duties under the 1949 Geneva Conventions, customary international law, the Court's Advisory Opinions of 2004 and 2024, as well as the obligation upon Germany related to the transfer of arms to parties to an armed conflict as recalled in the Order of the Court of 30 April 2024;
- (6) has breached and continues to breach its obligations under international humanitarian law not only by failing to ensure that these rules of elementary consideration of humanity are respected by Israel, but also by providing aid and assistance to Israel;

- (7) has breached and continues to breach its conventional and customary law obligations, including the obligation to facilitate and cooperate in bringing about the Palestinian people's right to self-determination, by providing aid and particularly military equipment to Israel that is used to deny this right of self-determination and moreover helps to maintain and impose an apartheid regime;
- (8) has breached and continues to breach international law by failing in its obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory and not render aid or assistance in maintaining the situation created by the continued illegal presence of Israel in the Occupied Palestinian Territory;
- (9) has breached and continues to breach international law by providing unlawful assistance to Israel's commission of racial discrimination, segregation and apartheid against the Palestinian people;
- (10) has breached and continues to breach international law by refusing to prosecute, bring to trial and punish persons responsible for, or accused of grave crimes under international law, including war crimes and apartheid, whether or not such persons are German nationals;
- (11) must cease immediately the breaches of its international obligations indicated above;
- (12) must give assurances of non-repetition of the breaches of its obligations indicated above;
- (13) must make full reparation for the injury caused by its internationally wrongful acts.

The Hague, 21 July 2025.

Carlos J. Argüello-Gómez

Agent of the Republic of Nicaragua

CERTIFICATION

I have the honour to certify that this Memorial and the documents annexed are true copies and conform to the original documents and that the translations into English made by the Republic of Nicaragua are accurate translations.

The Hague, 21 July 2025.

Carlos J. Argüello-Gómez
Agent of the Republic of Nicaragua

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- Annex 4. Written questions with the answers received from the Federal Government in the week of 18 June 2012, doc. 17/10050, 22 June 2012 (extract) (<https://dserver.bundestag.de/btd/17/100/1710050.pdf>)
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- Annex 7. “The Israel Police is interested in buying 2 MAN trucks weighing 15 tons with 4x4 drive”, Intention to engage, Accountant General, 18 January 2018 (<https://mr.gov.il/ilgstorefront/he/p/610835>)
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- Annex 10. Political principles of the Federal Government for the export of war weapons and other military equipment, 26 June 2019 (<https://dserver.bundestag.de/btd/19/113/1911300.pdf>)
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- Annex 15. “Weg frei zur Bewaffnung der Drohne Heron TP mit Präzisionsmunition” [The way is clear for arming the Heron TP drone with precision munitions], Federal Ministry of Defence, 6 April 2022 (<https://www.bmvg.de/de/aktuelles/bewaffnung-der-heron-tp-drohnen-mit-praezisionsmunition-5389376>)
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מלחמה-ייוזמות-כתבות/הכתבות-כל/המלחמה-יומן/יחידות-אתרי/חוד-לוחם-ימיים-לוחמים-לים-סטי-ל-סטי-טילים-ספינות-נריות-6-סער-הים-זרוע-עדכונים-ברזל-חרבות-ימי/)
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