

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

WRITTEN STATEMENT OF THE REPUBLIC OF NICARAGUA
ON THE PRELIMINARY OBJECTIONS RAISED BY
THE FEDERAL REPUBLIC OF GERMANY



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WRITTEN STATEMENT OF THE REPUBLIC OF NICARAGUA

CHAPTER 1. INTRODUCTION

I. Procedural Developments

1. On 1 March 2024, the Republic of Nicaragua (“Nicaragua”) instituted proceedings against the Federal Republic of Germany (“Germany”) concerning breaches of international obligations by Germany in respect of the Occupied Palestinian Territory (“OPT”).

2. Together with its Application, Nicaragua submitted a request for the indication of provisional measures seeking that the Court order, *inter alia*, that Germany cease the transfer of military equipment to Israel that could be used to commit gross violations of conventional and customary international law. The Court held oral hearings on the request on 8 and 9 April 2024. On 23 April 2024, Nicaragua submitted additional evidence relevant to its request for the indication of provisional measures, accompanied by brief explanations. In its Order of 30 April 2024, 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. It nevertheless “consider[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”². It also pointed out that “[a]ll these obligations are incumbent upon Germany as a State party to the said Conventions in its supply of arms to Israel”³.

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.

² *Ibid.*, p. 568, para. 24.

³ *Ibid.*

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. Nicaragua submitted its Memorial (“NM”) within that time-limit.

4. On 21 October 2025, Germany filed Preliminary Objections (“GPO”) in respect of the jurisdiction of the Court and the admissibility of the claims contained in paragraph 484 (1)-(9) of Nicaragua’s Memorial.

5. By an Order of 22 October 2025, the Court confirmed that “by virtue of Article 79*bis*, paragraph 3, of the Rules of Court, the proceedings on the merits are suspended and a time-limit has to be fixed for the presentation by the other Party of a written statement of its observations and submissions on the preliminary objections”⁴. Accordingly, the Court fixed 23 February 2026 as the time-limit for the presentation by Nicaragua of a written statement of its observations and submissions on the preliminary objections raised by Germany and reserved the subsequent procedure for further decision⁵.

6. The present Written Statement is submitted in accordance with the Court’s Order.

II. Nicaragua’s Case against Germany

7. Germany persistently attempts to reformulate and transform Nicaragua’s case into a dispute concerning alleged breaches of international law by Israel⁶. However, it is for the Applicant to formulate its case, and for the Respondent to reply to that case, rather than to recast or redefine the dispute. The Court has confirmed that when determining the subject-matter of the dispute, it gives particular attention to the formulation of the dispute chosen by the

⁴ *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, Order of 22 October 2025.

⁵ *Ibid.*

⁶ GPO, para. 2.

applicant⁷. Nicaragua must reiterate, as it did in its Memorial and the Application⁸, that the case submitted to the Court exclusively concerns the responsibility of Germany for violations by Germany of international obligations that it owes under conventional and customary international law.

8. All the obligations at issue in the present proceedings are aimed at respecting, guaranteeing and realizing the full enjoyment of fundamental rights of the Palestinian people, both as individuals and as a group, in the Gaza Strip and in other parts of the OPT. They are not merely “ancillary”, as Germany repeatedly contends⁹ in order to bolster its allegation that Germany’s responsibility could only be “ancillary”¹⁰. The obligations on which Nicaragua relies are self-standing obligations expressly recognized and assumed by Germany as a party to the conventional instruments in question or legally binding on Germany as part of customary international law. They are neither ancillary nor secondary nor minor in nature. Rather, as recalled by the Court, these *erga omnes* obligations derive, *inter alia*, “from the general principles of humanitarian law”¹¹, are “normative and compelling” and have their “own scope”¹². They are obligations of Germany owed to the international community as a whole.

⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, Preliminary Objections, Judgment of 12 November 2024, para. 71; *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. 87, para. 42; *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)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 575, para. 24; *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018, p. 308, para. 48; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, I.C.J. Reports 2015, p. 602, para. 26; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 848, para. 38; *Fisheries Jurisdiction (Spain v. Canada)*, Jurisdiction of the Court, Judgment, I.C.J. Reports 1998, p. 448, para. 30.

⁸ Application, para. 3; NM, paras. 5-16.

⁹ GPO, paras. 5, 25 and 38.

¹⁰ On that question, see below, paras. 184-243.

¹¹ *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. 568, para. 23; *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.

¹² *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. 220, para. 427.

9. There is also nothing “unusual”¹³, “exceptional”¹⁴ or “unique”¹⁵ in the case that Nicaragua has submitted to the Court that would require or justify any enhanced requirements for jurisdiction or admissibility. Germany’s allegations that this case is “twice-removed” from what it calls a “usual” or “classical bilateral dispute”¹⁶ are of no avail. The obligations that are the subject of the present proceedings are obligations *erga omnes* and, in so far as they are contained in conventional instruments, *erga omnes partes*. All States, or all States parties, have a common interest in compliance with the relevant obligations¹⁷. To the extent that Nicaragua considers that Germany has not fulfilled them, it is entitled to invoke Germany’s responsibility for these breaches, including through the institution of proceedings before the Court¹⁸. This is, and remains, a bilateral dispute – one between Nicaragua and Germany – even if the obligations concerned are owed by Germany to all other States, or all other States parties to the relevant conventions, and independently of whether other States could also invoke Germany’s responsibility.

10. Nicaragua submitted its dispute with Germany to the Court because it remains fully committed to ensuring the full respect for and the early realization of the rights of the Palestinian people recognized by and protected under international law. It considers that it has not only a right, but a duty to secure the respect and realization of these rights, including through recourse to the mechanisms available for the peaceful settlement of disputes. This has been recalled once and again by Nicaragua¹⁹. Germany’s speculations and assertions about what it calls “repeated

¹³ GPO, para. 5.

¹⁴ *Ibid.*, para. 25.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, paras. 25 and 38.

¹⁷ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33.

¹⁸ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022*, pp. 515-516, paras. 107-108.

¹⁹ CR 2024/15, 8 April 2024, p. 13, para. 8 (Argüello Gómez); Government of Nicaragua, “Nicaragua with Palestine Always!”, Press Release, 4 April 2025 (GPO, Annex 2); Government of Nicaragua, Press release on proceedings before the International Court of Justice in The Hague, 28 April 2025 (Annex 17). See also Government of Nicaragua, Press Release, 9 January 2024 (attached to Note verbale from the Permanent Mission of Nicaragua to the United Nations to all Permanent and Observer Missions to the United Nations, no. MINIC-MIS-019-01-2024, 9 January 2024 (Annex 4), and also published online at <https://www.el19digital.com/articulos/ver/titulo:148127-nicaragua-acoge-con-satisfaccion-demandade->); Government of Nicaragua, Press Release, 23 January 2024 (attached to Note verbale from the Permanent Mission of Nicaragua to the United Nations to all Permanent and Observer Missions to the United Nations, no. MINIC-MIS-061-01-2024, 23 January 2024 (Annex 5), and also published online at <https://www.el19digital.com/articulos/ver/titulo:148564-grun-presenta-solicitud-de-intervencion-ante-la-cij-en-el-caso-de-sudafrica-contra-israel>).

and exceptional *volte faces* of Nicaragua”²⁰ are groundless. Nicaragua explained straightforwardly the reasons and circumstances that regrettably obliged it to withdraw its Application, as well as the reasons that ultimately made the continuation of this case possible. The press releases annexed by Germany to its Preliminary Objections²¹ are unequivocal in this regard. The withdrawal had nothing to do with any alleged “defects in its case”, as Germany suggests²². The Memorial filed on 21 July 2025, within the time-limit fixed by the Court, fully attests to Nicaragua’s continuing efforts to present and defend its case, despite “the high financial cost involved for a developing country with the economic restrictions that Nicaragua suffers”²³, its persistence “in its support for the People and State of Palestine in all the areas within its reach”, and its resolve “not [to] cease to meet its international obligations in defense of the Fraternal Palestinian People and of International Law”²⁴.

11. Nicaragua regrets that Germany has resorted to the procedure under Article 79*bis* of the Rules of Court, mindful of the procedural consequences that follow from this decision. The suspension of the proceedings on the merits entails not only that Germany again refuses to engage meaningfully with the facts and the legal consequences set out in detail in Nicaragua’s Application and Memorial. It will also significantly delay the resolution of the dispute submitted to the Court and the realization of the rights of the Palestinian people.

12. For many Palestinian children, women and men, it is already too late. The situation was already extremely urgent by the time Nicaragua instituted proceedings against Germany on 1 March 2024: a total of 30,228 Palestinians had then already been killed and 71,377 Palestinians injured in Gaza alone²⁵; another 7,000 Palestinians were estimated buried beneath the rubble²⁶; the civilian population, locked under total siege, was subjected to mass aerial

²⁰ GPO, para. 6.

²¹ Government of Nicaragua, “Nicaragua with Palestine Always!”, Press Release, 4 April 2025 (GPO, Annex 2); Government of Nicaragua, “Nicaragua and Palestine”, Press Release, 10 April 2025 (GPO, Annex 1).

²² GPO, para. 6.

²³ Government of Nicaragua, “Nicaragua and Palestine”, Press Release, 10 April 2025 (GPO, Annex 1); Government of Nicaragua, “Nicaragua with Palestine Always!”, Press Release, 4 April 2025 (GPO, Annex 2).

²⁴ Government of Nicaragua, Press release on proceedings before the International Court of Justice in The Hague, 28 April 2025 (Annex 17).

²⁵ OCHA, Hostilities in the Gaza Strip and Israel – reported impact, 1 March 2024 at 15:00, 1 March 2024 (<https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-reported-impact-1-march-2024-1500>).

²⁶ OCHA, Hostilities in the Gaza Strip and Israel | Flash Update #60, 5 December 2023 (<https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-60>).

bombardments with no safe space to flee²⁷; 1.7 million Palestinians were forcibly displaced; and at least 60 percent of properties in Gaza had been either completely or partially destroyed. United Nations representatives described “scenes of utter horror”²⁸, “apocalyptic conditions”²⁹ and “a bloodbath”³⁰, warning that “life is draining out of Gaza at terrifying speed”³¹, and that “Gaza has become a graveyard for children”³². Since then, the situation has deteriorated constantly and considerably with particularly severe repercussions for women, children and other vulnerable groups in the Gaza Strip³³. The “ceasefire” of 10 October 2025 has brought little to no improvement to the dire humanitarian situation in which Palestinians are compelled to live. Strikes on civilian infrastructure, including UNRWA premises, and the killing of civilians in the Gaza Strip continue, on both sides of the so-called “yellow line”³⁴. Since 7 October 2023 and up to 12 February 2026, at least 72,045 Palestinians have been killed and

²⁷ “Security Council meets over widening Middle East crisis”, UN News, 12 January 2024 (<https://news.un.org/en/story/2024/01/1145487>).

²⁸ *Ibid.*

²⁹ “Gaza fighting continues amid ‘apocalyptic’ conditions; Security Council to meet Friday”, UN News, 7 December 2023 (<https://news.un.org/en/story/2023/12/1144492>).

³⁰ “UN workers delivering aid to Gaza hospital describe ‘bloodbath’ in overflowing emergency department”, UN News, 16 December 2023 (<https://news.un.org/en/story/2023/12/1144877>).

³¹ Post of Tom Fletcher (@UNReliefChief), X, 29 February 2024, 2:52 PM, (<https://x.com/UNReliefChief/status/1763215562455359648>). See also NM, para. 121.

³² Statement by UNICEF Middle East and North Africa Regional Director Edouard Beigbeder, on the killing of children in Nuseirat and Al Mawasi, Gaza, UNICEF, 6 December 2024 (<https://www.unicef.org/press-releases/statement-unicef-middle-east-and-north-africa-regional-director-edouard-beigbeder>).

³³ *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*, Advisory Opinion of 22 October 2025, para. 59 and 158.

³⁴ OCHA, Humanitarian Situation Update #331 | Gaza Strip, 16 October 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-331-gaza-strip>); Humanitarian Situation Update #334 | Gaza Strip, 23 October 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-334-gaza-strip>); Humanitarian Situation Update #336 | Gaza Strip, 30 October 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-336-gaza-strip>); Humanitarian Situation Update #338 | Gaza Strip, 6 November 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-338-gaza-strip>); Humanitarian Situation Update #340 | Gaza Strip, 12 November 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-340-gaza-strip>); Humanitarian Situation Update #344 | Gaza Strip, 27 November 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-344-gaza-strip>); Humanitarian Situation Update #345 | Gaza Strip, 4 December 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-345-gaza-strip>); Humanitarian Situation Update #347 | Gaza Strip, 11 December 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-347-gaza-strip>); Humanitarian Situation Update #349 | Gaza Strip, 18 December 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-349-gaza-strip>); Humanitarian Situation Update #351 | Gaza Strip, 30 December 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-351-gaza-strip>); Humanitarian Situation Update #353 | Gaza Strip, 14 January 2026 (<https://www.ochaopt.org/content/humanitarian-situation-update-353-gaza-strip>); Humanitarian Situation Update #355 | Gaza Strip, 14 January 2026 (<https://www.ochaopt.org/content/humanitarian-situation-update-355-gaza-strip>); Humanitarian Situation Update #357 | Gaza Strip, 12 February 2026 (<https://www.ochaopt.org/content/humanitarian-situation-update-357-gaza-strip>).

171,686 have been injured³⁵. In the period of the so called “ceasefire” up until 12 February at least 591 Palestinians killed, 1,591 injured and 720 bodies retrieved from under the rubble in the period of the so-called “ceasefire”³⁶.

13. The situation in the West Bank, including East Jerusalem, is also deteriorating daily. Palestinians are killed, injured and forcibly displaced while illegal settlements prosper and continue to expand³⁷.

14. In light of its unwavering commitment to the rights, and indeed the very survival, of the Palestinian people, Nicaragua urges Germany to comply fully with its international obligations, including those recalled by the Court in its Order of 30 April 2025³⁸. Nicaragua further expresses its expectation that the current phase of the proceedings be addressed with the celerity required and that the proceedings on the merits resume without further undue delay.

III. Germany Continues to Disregard Its International Obligations

15. Nicaragua is mindful of the limited scope of the present phase of the proceedings and does not intend to address issues that pertain to the merits of the case. However, Germany, in its Preliminary Objections, purports to make “the Court aware of certain developments concerning Germany that post-date the provisional measures hearings of April 2024”³⁹. Nicaragua considers it necessary and appropriate to provide some comments in reply because, in reality, apart from a reference to the statement of the Federal Chancellor of 8 August 2025, quoted in isolation and without presenting subsequent clarifications made by German

³⁵ Humanitarian Situation Update #357 | Gaza Strip, 12 February 2026 (<https://www.ochaopt.org/content/humanitarian-situation-update-357-gaza-strip>).

³⁶ *Ibid.*

³⁷ OCHA, Humanitarian Situation Update #350 | West Bank, 23 December 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-350-west-bank>); OCHA, Humanitarian Situation Update #352 | West Bank, 7 January 2026 (<https://www.ochaopt.org/content/humanitarian-situation-update-352-west-bank>); OCHA, Humanitarian Situation Update #354 | West Bank, 22 January 2026 (<https://www.ochaopt.org/content/humanitarian-situation-update-354-west-bank>); OCHA, West Bank Humanitarian Access Snapshot | January – December 2025, 4 February 2026 (<https://www.ochaopt.org/content/west-bank-humanitarian-access-snapshot-january-december-2025>); OCHA, Humanitarian Situation Update #356 | West Bank, 5 February 2026 (<https://www.ochaopt.org/content/humanitarian-situation-update-356-west-bank>).

³⁸ *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. 568, paras. 23-24.

³⁹ GPO, para. 11.

authorities⁴⁰, Germany does not present any development in its conduct or position since the hearings on provisional measures or since the filing of the Memorial.

16. To the contrary, Germany again⁴¹ declines to provide information that would clarify its conduct. In these circumstances, Germany is ill placed to accuse Nicaragua of rushing to the Court or of not seeking to engage meaningfully with Germany⁴². If anything, Germany confirms that any further engagement would have been of no avail because, as Germany itself has confirmed, “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.”⁴³

17. In seeking to persuade the Court that the present case warrants no further consideration, Germany asserts in its Preliminary Objections that “respect for, as well as the promotion of, international law are cornerstones of Germany’s constitution and of its foreign policy”⁴⁴. While such a commitment is indeed expected of every Member State of the United Nations, the assertion itself – even when embodied in constitutional provisions – does not guarantee that Germany has complied with its international obligations⁴⁵, nor can it shield Germany’s conduct from scrutiny by the international community and by this Court.

18. Germany cannot evade its international responsibility by the allegation that its “approach to the conflict is the subject of vigorous debate in parliament, and in society at large”⁴⁶. As a matter of international law, of which the Court is the organ⁴⁷, domestic political debate is not a measure of a State’s respect for its international obligations. In any case, what could be of significance is the decisions and actions taken by the government and not the debate.

⁴⁰ See below, paras. 25-27.

⁴¹ Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, in particular para. 7.

⁴² GPO, para. 5.

⁴³ Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 3 (footnote omitted).

⁴⁴ GPO, para. 12.

⁴⁵ See also *Elettronica Sicala S.p.A. (ELSI) (United States of America v. Italy)*, Judgment, I.C.J. Reports 1989, p. 51, para. 73.

⁴⁶ GPO, para. 13.

⁴⁷ *Certain German Interests in Polish Upper Silesia, Merits, Judgment, 1926, P.C.I.J., Series A, No. 7*, p. 19; *Corfu Channel (United Kingdom/Albania)*, Judgment, I.C.J. Reports 1949, p. 35.

As a matter of fact, it is doubtful that members of the German *Bundestag*, let alone the general public⁴⁸, are in a position to fully assess Germany's approach to the situation in the Gaza Strip or, more broadly, in the OPT. The Federal Government withholds detailed information about the number, nature, destination and use of military equipment exported by Germany and German companies⁴⁹, and does not provide complete information regarding the involvement of German companies and institutions in the maintenance of the unlawful occupation, racial discrimination, segregation and apartheid in the OPT. The little and fragmented information made available to the public, to Nicaragua and to the Court is incomplete, truncated and curated⁵⁰.

19. Scrutiny before domestic courts of Germany's conduct and its conformity with its domestic legal framework, even if available and effective, is also no substitute for the scrutiny required under international law. However, contrary to Germany's allegations⁵¹, German courts have declined to assess the conformity of decisions of the Federal Government in respect of authorizations for the export of war weapons and military equipment under German law, *i.e.*, the War Weapons Control Act (*Kriegswaffenkontrollgesetz*)⁵² or the Foreign Trade and Payments Act (*Außenwirtschaftsgesetz*)⁵³, let alone under international law⁵⁴. In respect of the

⁴⁸ See "Germany: UN expert warns space for freedom of expression is shrinking amidst growing threats", Special Procedures, Press Release, 6 February 2026 (<https://www.ohchr.org/en/press-releases/2026/02/germany-un-expert-warns-space-freedom-expression-shrinking-amidst-growing>).

⁴⁹ See also Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, preliminary remark of the authors of the question (Annex 50).

⁵⁰ NM, para. 178; Administrative Tribunal Cologne, decision of 26 May 2025, 6 L 2205/24, MN 42-44 (NM, Annex 66). See also "Exclusive: Germany Coordinated ICJ Testimony on Arms Exports With Israel", *Drop Site News*, 31 October 2025 (<https://www.dropsitenews.com/p/exclusive-germany-coordinated-icj-testimony-israel-arms-genocide>) (also published in German: "Waffen für Israel: Hat die Bundesregierung vor Gericht nur die halbe Wahrheit gesagt?", *Der Stern*, 31 October 2025 (<https://www.stern.de/politik/deutschland/waffen-fuer-israel--hat-die-regierung-nur-die-halbe-wahrheit-gesagt--36171758.html>)). See also Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Desiree Becker, Gökay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Coordination between the Federal Government and the Israeli Government prior to its statement before the International Court of Justice, German *Bundestag*, doc. 21/3454, 19 December 2025 (Annex 46).

⁵¹ GPO, para. 13.

⁵² 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. For an English version of the law, as published by the Federal Government, see https://www.bafa.de/SharedDocs/Downloads/EN/Foreign_Trade/afk_war_weapons_control_act.pdf.

⁵³ See also, NM, para. 249. For an English translation of the *Außenwirtschaftsgesetz*, published by the Federal Government, see https://www.gesetze-im-internet.de/englisch_awg/englisch_awg.html.

⁵⁴ See NM, paras. 255-259.

Foreign Trade and Payments Act, the German courts considered that the Act does not provide for any individual protection of third parties and rejected the actions introduced by Palestinians as inadmissible⁵⁵. As regards licences granted under the War Weapons Control Act, the Administrative Tribunal of Berlin confirmed only weeks after the filing of the Preliminary Objections that legal protection against further, potential authorizations is inadmissible because it cannot be foreseen that the Federal Government will decide on war weapons deliveries to Israel and in doing so disregard the grounds for refusal under the War Weapons Control Act, in particular the violation of Germany's obligations under international law⁵⁶. The same tribunal also rejected on procedural grounds an action concerning the unlawfulness of authorization for the export of war weapons that occurred in October and November 2023⁵⁷: because the weapons concerned had been exported and the authorization was deemed extinguished, there was no interest in assessing the legality of the authorization absent a risk that the German government will grant similar authorization in the same circumstances⁵⁸. Before the Administrative Tribunal of Berlin, the Federal Government claimed, contrary to its assertion before the Court⁵⁹, that it enjoys a large margin of discretion in respect of decisions on export authorizations for war weapons which are therefore subject to very limited judicial review⁶⁰.

20. Germany cannot claim that its decisions concerning the export of military equipment – taken by the *Bundessicherheitsrat* (Federal Security Council) and other ministries in secrecy and absent any effective judicial or parliamentary oversight – are necessarily consistent with international law merely because they are required not to contravene it. Germany itself casts

⁵⁵ Administrative Tribunal Frankfurt, decision of 11 September 2024, 5 L 2333/24.F, MN 20 (NM, Annex 39); Administrative Tribunal Frankfurt, decision of 16 December 2024, 5 L 3799/24.F, MN 15 (Annex 16). The latter decision was confirmed on appeal (“Military equipment: Appeal dismissed”, Higher Administrative Court Kassel, Press release, 23 September 2025 (Annex 30) and a constitutional complaint against these decision was denied as inadmissible (“Inadmissible constitutional complaint against licenses granted for the export of military equipment to Israel”, Federal Constitutional Court, Press release, No. 11/2026, 12 February 2026 (Annex 52)). See also NM, para. 257.

⁵⁶ Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 45/24, MN 25-34 (Annex 34); “Klagen gegen Kriegswaffenlieferungen an Israel ohne Erfolg (Nr. 47/2025)” [Actions against deliveries of war weapons to Israel unsuccessful (No. 47/2025)], Press Release of the Administrative Tribunal Berlin, 12 November 2025 (Annex 36).

⁵⁷ This concerned the authorizations concerning the export of 3,000 portable anti-tank weapons granted on 31 October 2023 and 1 November 2023 (Germany's Judges Folder, 9 April 2024, tab 19; Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 130/24, MN 2 (Annex 35)). See also NM, para. 235.

⁵⁸ Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 130/24, MN 18, 20-32 (Annex 35).

⁵⁹ GPO, para. 13.

⁶⁰ Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 45/24, MN 21 (Annex 34); Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 130/24, MN 13 (Annex 35).

significant doubt on its commitment to the respect of international law in its Preliminary Objections. Although it postulates that it “is doing its utmost to live up to its responsibilities vis-à-vis both the Israeli and the Palestinian people”⁶¹, it explains that, in regard to what it calls the “the political, moral and legal dilemmas posed by the situation in Gaza”, those responsible for German foreign policy have sought to “strike the right balance between competing principles”⁶². But which principle could compete with, or override, Germany’s obligation to prevent and punish genocide, to ensure respect for peremptory rules of international humanitarian law, to respect the inalienable right of the Palestinian people to self-determination and to promote its early realization, or to condemn and prevent racial discrimination, segregation and apartheid? Which principle or international obligation could overrule these obligations binding on Germany and all States as *jus cogens*?

21. While professing full acceptance of its international obligations, in particular those recalled authoritatively by the Court in its Order of 30 April 2024⁶³, Germany consciously sets them aside in the name of the “competing” principle of its *Staatsräson*, of “an important part of German foreign policy”⁶⁴, or of a “non-negotiable component of [Germany’s] normative foundations”⁶⁵. This has been amply demonstrated in Germany’s correspondence with the Court prior to the filing of Nicaragua’s Memorial⁶⁶ and in the documents presented by Nicaragua in its Memorial. It has been confirmed yet again by Germany’s statements, actions and inaction since the filing of the Memorial.

22. Despite concerns openly voiced by the German Chancellor and the Federal Foreign Minister regarding respect of international law and international humanitarian law in the Gaza

⁶¹ GPO, para. 12.

⁶² GPO, para. 13.

⁶³ *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. 568, paras. 23-24. See also Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 8.

⁶⁴ “Merz im Interview: Wir wollen die stärkste konventionelle Armee in Europa aufbauen” [Merz in Interview: ‘We want to build the strongest conventional army in Europe’], *Frankfurter Allgemeine Zeitung*, 17 October 2025 (Annex 33).

⁶⁵ Speech by Federal Chancellor Friedrich Merz on the 75th anniversary of the Central Council of Jews in Germany, Berlin, 16 September 2025 (Annex 29).

⁶⁶ See Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 21. See also NM, para. 263.

Strip and, more broadly, in the OPT⁶⁷, Germany has never ceased authorizing the export of military equipment with Israel as final destination. The Federal Foreign Minister unmistakably confirmed that “in principle, we supply weapons to Israel. ... This German support clearly stems from our commitment to Israel’s right to exist”⁶⁸.

23. Between 7 October 2023 and 23 December 2025, Germany has granted individual licences (*Einzelausfuhrgenehmigungen*) for the final export of military equipment to Israel amounting to 606,034,511 Euro⁶⁹. This means that, in the six months since the filing of Nicaragua’s Memorial alone (27 June 2025 to 23 December 2025), the Federal Government increased the authorization of the export of military equipment to Israel by 114,190,014 Euro⁷⁰ or 23.2 % (see also Figure 1 below).

24. The military equipment authorized for the final export to Israel through individual licences is far from being insignificant or of a subsidiary character. In the first half of the year 2025, the export of all-terrain vehicles with ballistic protection and parts, parts for armored vehicles, and parts for battle tanks worth 52 million Euro were granted⁷¹. Germany also authorized the export of 13,045,000 parts for rifle ammunition⁷². In the second half of the year 2025, export licences granted by Germany concerned military equipment falling within almost all categories, including ammunition and fuze setting devices (A0003), bombs, torpedoes, rockets, missiles, other explosive devices (A0004), fire control, surveillance and warning equipment, comprising weapon control systems (A0005), ground vehicles, including tanks, and components (A0006), chemical agents (A0007), equipment for naval vessels (A0009), aircraft and unmanned aerial vehicles, related equipment and components (A0010), electronic

⁶⁷ Summer press conference of the Federal Chancellor, Federal Government, 18 July 2025 (Annex 18); “Johann Wadephul: ‘Wir stehen an der Seite Israels’” [Johann Wadephul: ‘We stand by Israel’], *Die Zeit*, 23 July 2025 (Annex 19); “‘It is time now to end this war’ – Foreign Minister Wadephul travels to Israel and the Palestinian territories”, Federal Foreign Office, 31 July 2025 (<https://www.auswaertiges-amt.de/en/aussenpolitik/2729200-2729200>).

⁶⁸ “Johann Wadephul: ‘Wir stehen an der Seite Israels’” [Johann Wadephul: ‘We stand by Israel’], *Die Zeit*, 23 July 2025 (Annex 19).

⁶⁹ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, answer to question no. 6 (Annex 50).

⁷⁰ See NM, para. 192.

⁷¹ Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2025 [Report by the Federal Government on its export policy for conventional arms in the first half of 2025], Federal Ministry of Economic Affairs and Energy, 10 December 2025, Appendix 3 (Annex 43).

⁷² *Ibid.*, Appendix 6.

equipment specially designed for military use and components (A0011), armored or protective equipment, constructions, components, and accessories (A0013), imaging or countermeasure equipment specially designed for military use, and specially designed components and accessories therefore (A0015), production equipment (A0019), software (A0021), and technology (A0022)⁷³. As it had done previously⁷⁴, Germany refrained from providing more granular data claiming that “the information would provide concrete insights into the current goods requirements of the recipient country” and that “this could have negative effects on the foreign policy relations of the Federal Republic of Germany”⁷⁵.

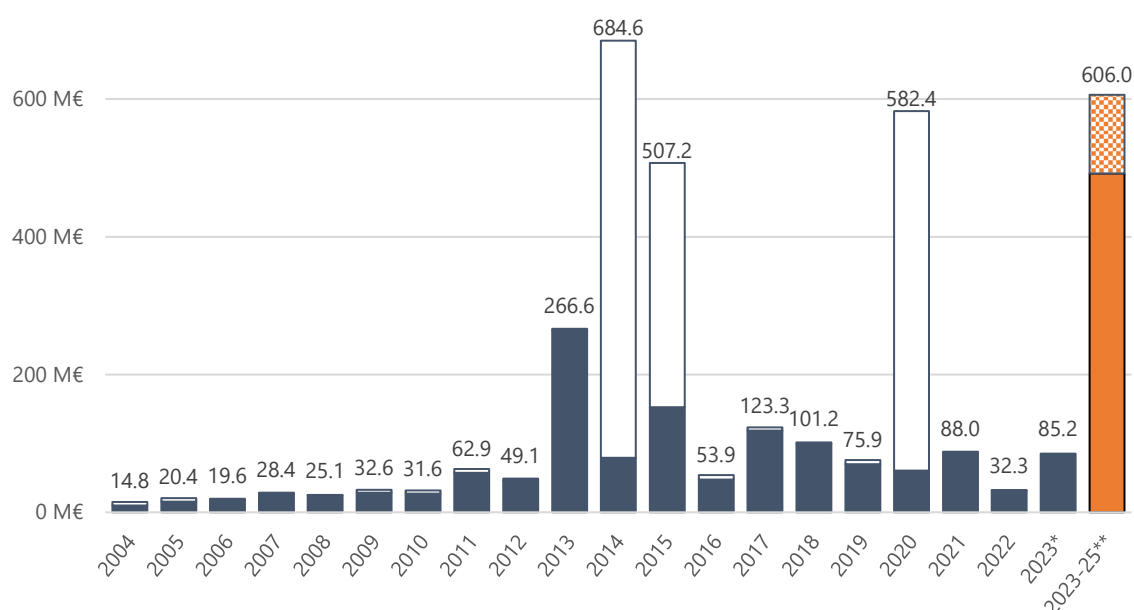


Figure 1. Value of approved individual licences for the export of military equipment to Israel (since 2004, in million Euro). Licences concerning naval vessels or submarines (A0009) are indicated in blank (□), where data is available. * Data for 2023 comprises the period January – 6 October 2023. ** Data for 2023 – 2025 comprises the value of export licences granted between 7 October 2023 – 26 June 2025 (■) and 27 June 2025 – 23 December 2025 (▨)⁷⁶.

⁷³ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Doris Achelwilm, Gökay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Authorisations for arms deliveries to Israel, German *Bundestag*, doc. 21/1958, 2 October 2025, answer to questions nos. 8 and 9 (Annex 31); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, answers to question nos. 1, 2 and 5 (Annex 50).

⁷⁴ NM, para. 172.

⁷⁵ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Doris Achelwilm, Gökay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Authorisations for arms deliveries to Israel, German *Bundestag*, doc. 21/1958, 2 October 2025, answer to questions nos. 8 and 9 (Annex 31).

⁷⁶ See NM, figure 6; Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary

25. This significant increase in authorizations for the final export of military equipment to Israel casts serious doubt on the content and implementation of the decision taken by the Federal Chancellor on 8 August 2025, to which Germany refers in its Preliminary Objection⁷⁷. The Federal Chancellor stated that:

“In the German Government’s view, the new military push by the Israeli army in the Gaza Strip agreed by the Israeli security cabinet last night makes it increasingly unclear how these goals are to be achieved. Under these circumstances, the German Government will, until further notice, authorise no military equipment exports that can be used in the Gaza Strip.”⁷⁸

He further explained that his statement:

“was prompted by the decision of the Israeli security cabinet on 7 August to significantly expand the military offensive in the Gaza Strip and to begin a siege of Gaza City. This decision is of great concern to the Federal Government. It poses considerable risks to the safety of the hostages held by Hamas, including German citizens. It threatens to further exacerbate the already catastrophic humanitarian situation in the Gaza Strip. There could be many more civilian casualties. It is questionable whether expanding military operations in Gaza will increase the chances of a ceasefire agreement.”⁷⁹

26. Yet, despite the expressed “great concern”, the announcement did not constitute a change in Germany’s position, and the Chancellor made clear that it did not⁸⁰. Germany never ceased authorizing the export of military equipment to Israel, not even after 8 August 2025, but continued with business as usual⁸¹. Although, according to the Federal Chancellor’s statement, no new authorizations would be granted for the export of military equipment that can be used

group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, answer to question no. 6 (Annex 50).

⁷⁷ GPO, para. 15.

⁷⁸ Statement by Federal Chancellor Friedrich Merz on the development in Gaza, 8 August 2025 (Annex 21).

⁷⁹ Background to the Statement by the Federal Chancellor on the decision of the Israeli Security Cabinet on 8 August 2025, point 3 (Annex 26). See also Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Doris Achelwilm, Gökay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Authorisations for arms deliveries to Israel, German *Bundestag*, doc. 21/1958, 2 October 2025, answer to question no. 19 (Annex 31).

⁸⁰ Background to the Statement by the Federal Chancellor on the decision of the Israeli Security Cabinet on 8 August 2025, point 5 (Annex 26); Press conference by Federal Chancellor Merz and Prime Minister Netanyahu at the inaugural visit to Israel, Federal Government, 7 December 2025, p. 7 (Annex 42).

⁸¹ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Doris Achelwilm, Gökay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Authorisations for arms deliveries to Israel, German *Bundestag*, doc. 21/1958, 2 October 2025, answers to questions nos. 8, 9 and 19 (Annex 31); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, answer to questions nos. 1 and 2 (Annex 50).

in the Gaza Strip, the Federal Government provided no specific details on the nature or quantity of equipment and items concerned by these new authorizations. Instead, it reiterated that “the information would provide concrete insights into the current goods requirements of the recipient country”⁸². If, as Germany claims, no equipment that could be used in the Gaza Strip was authorized, there is no reason not to provide such information.

27. The alleged “suspension” of new authorizations for the export of military equipment left untouched the continuing export of military equipment approved before 8 August 2025 but not yet delivered⁸³, and this irrespective of its possible use in the Gaza Strip. The Federal Government has remained elusive on this question and has provided no information about exports or export licences still to be executed⁸⁴. It has confirmed, however, that the Federal Chancellor’s decision concerned only new authorizations and that, notwithstanding the expressed “grave concerns” regarding the situation in the Gaza Strip, deliveries were not suspended⁸⁵. The Deputy Spokesman of the Federal Government explained in response to a question concerning such deliveries:

“[T]he Federal Government can do many things, but it cannot shift time and space. How can things that lie in the past be stopped? Of course, it is a matter of approvals that affect the future. Otherwise, they cannot be stopped. That is in the nature of things. It is nice that you have such confidence in the Federal Government, so to speak, but even we cannot change time and space.”⁸⁶

In other words, authorizations for the export of military equipment that had already been granted were neither reviewed⁸⁷ nor revoked⁸⁸.

⁸² Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Doris Achelwilm, Gökay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Authorisations for arms deliveries to Israel, German *Bundestag*, doc. 21/1958, 2 October 2025, answer to questions nos. 8 and 9 (Annex 31).

⁸³ The Administrative Tribunal of Berlin confirmed that “the licence is one that the beneficiary may make use of at any time” (Judgment of 12 November 2025, 4 K 130/24, MN 36 (Annex 35)).

⁸⁴ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Doris Achelwilm, Gökay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Authorisations for arms deliveries to Israel, German *Bundestag*, doc. 21/1958, 2 October 2025, answer to questions nos. 11 to 17 (Annex 31).

⁸⁵ Government Press Conference of 11 August 2025, Federal Government, p. 5 (Annex 23).

⁸⁶ Government Press Conference of 1 September 2025, Federal Government, p. 3 (Annex 28).

⁸⁷ See above, para. 19.

⁸⁸ See also NM, para. 262.

28. While Germany never halted the export of military equipment to Israel, the announcement of 8 August 2025 vividly demonstrates that the “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” received from the Government of Israel on 8 October 2024⁸⁹ and on the basis of which export authorizations surged again in October 2024⁹⁰, was not, and never could have been, sufficient for Germany to conclude that it was respecting its own international obligations or limiting the risk, existing in the Gaza Strip and having largely materialized since then, of genocide being committed and international humanitarian law not being complied with. As the 8 August 2025 decision confirms, even in Germany’s own view, the “assurances” provided could not ensure that military equipment exported by Germany, or by any other State⁹¹, would not, or could not, be used in breach of international law, including international humanitarian law.

29. Whereas Germany indicated in its Preliminary Objections of October 2025 that it “remain[ed] deeply concerned about the devastating humanitarian situation in Gaza, notwithstanding the recent ceasefire”⁹², the Federal Government announced on 17 November 2025 the lifting of the suspension of 8 August 2025, with effect from 24 November 2025⁹³, and has since granted export licences at a considerable pace⁹⁴. The Government spokesman declared:

“The restrictions on arms exports to Israel announced in the German government’s press release of 8 August 2025 are being lifted. The lifting of the restrictions will take effect on 24 November 2025.

⁸⁹ Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 19. See also NM, paras. 204-207.

⁹⁰ NM, paras. 202-203.

⁹¹ See, for instance, the assessment of the United States of America: Report to Congress under Section 2 of the National Security Memorandum on Safeguards and Accountability with Respect to Transferred Defense Articles and Defense Services (NSM-20), May 2024, pp. 20-32 (<https://www.justsecurity.org/wp-content/uploads/2024/05/Report-to-Congress-under-Section-2-of-the-National-Security-Memorandum-on-Safeguards-and-Accountability-with-Respect-to-Transferred-Defense.pdf>).

⁹² GPO, para. 14.

⁹³ “Berlin to lift suspension of Israel weapons sales, but says ceasefire must hold”, *Reuters*, 17 November 2025 (<https://www.reuters.com/world/europe/germany-resume-arms-exports-israel-nov-24-2025-11-17/>).

⁹⁴ According to the data made available by the Federal Government, 65 individual export licences were granted in the period from 24 November to 23 December 2025. See Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, answer to question no. 5 (Annex 50).

The background to this is as follows: we have always said that we would review this practice in light of developments on the ground. As you yourself just mentioned, there has been a ceasefire in Gaza since 10 October, which has generally stabilized. That is the basis for this decision. We expect everyone to abide by the agreements that have been reached. This includes maintaining the ceasefire, providing humanitarian aid on a large scale, and continuing the process in an orderly manner as agreed.

.....
[F]rom 24 November, when this lifting of the ban takes effect, the export of military equipment to Israel will be possible again. But as always with exports of military equipment, the following applies: These are decisions made on a case-by-case basis, based on individual assessments. That is of course also the case here.”⁹⁵

30. This decision, which remains in force, is yet another confirmation of Germany’s deliberate choice not to suspend or revoke authorizations. Germany has always been able to change its stance, but has chosen not to do so, even as “developments on the ground” clearly pointed to serious violations of international law taking place in the Gaza Strip and more widely in the OPT. Only days after Germany’s decision to fully “resume” the authorization of exports of military equipment, OCHA reported:

“On the evening of 19 November, the Israeli military reported that its troops came under fire in Khan Younis, in response to which it carried out multiple strikes across the Strip. According to the Ministry of Health (MoH) in Gaza, as of 20:00 on 19 November, 25 Palestinians were reportedly killed and over 77 others were injured due to the strikes. According to the Palestinian Civil Defence (PCD) spokesperson, casualties, mostly women and children, were reported in eastern Gaza city and Khan Younis.”⁹⁶

The situation has not improved since then⁹⁷.

31. Germany is fully aware of this unacceptable situation on the ground in the Gaza Strip⁹⁸. Although the decision to resume the authorization for export of military equipment seemed to have been conditioned, at least in formal terms⁹⁹, on respect for the ceasefire agreement and the

⁹⁵ Government Press Conference of 17 November 2025, Federal Government, pp. 1-2 (Annex 37).

⁹⁶ Humanitarian Situation Update #342 | Gaza Strip, 20 November 2025 (<https://www.ochaopt.org/content/humanitarian-situation-update-342-gaza-strip>).

⁹⁷ See above, para. 12.

⁹⁸ Government Press Conference of 3 December 2025, Federal Government, p. 1 (Annex 39); Government Press Conference of 17 December 2025, Federal Government, p. 1 (Annex 45); Government Press Conference of 2 February 2026, Federal Government (Annex 51).

⁹⁹ The Deputy Government Spokesman remained unclear on this point: “I said that we would review this decision in light of developments. We have said this repeatedly in the last few weeks. Now, in light of developments, we have made this decision. One of the reasons for this decision is that there has been a ceasefire

large-scale provision of humanitarian aid, these conditions have manifestly not been met, in particular with regard to the access of United Nations aid convoys to Gaza and the delivery of medical equipment from the European Union, as the Federal Government knows very well¹⁰⁰. Nevertheless, Germany favors the resumption of business as usual over its obligations and responsibilities under international law. Besides the export of military equipment, Germany also participates in larger cooperation in military matters with Israel¹⁰¹. According to information from Israel's armed forces, Germany participated in November 2025 in "[a]n international seminar *on operational lessons from the war* across all arenas ... with senior commanders and officials from various militaries worldwide" aimed at "strengthen[ing] cooperation, enhanc[ing] familiarity with diverse operational approaches, exchang[ing] professional knowledge and experience between the participating militaries, and reinforc[ing] understanding of the IDF's activity"¹⁰². The German Federal Minister for the Interior recently concluded with Israel's Prime Minister a security and cybersecurity pact aimed at strengthening both countries' "close and trusting cooperation in the field of security"¹⁰³.

32. Yet another demonstration that Germany falls short of respecting international law can be found in its stance regarding the obligation to prosecute or punish¹⁰⁴. Germany's Federal Public Prosecutor General started preliminary investigations into whether Palestinian armed groups committed crimes to the detriment of German citizens during the events of 7 October 2023¹⁰⁵. However, no investigations have been initiated against Israeli armed forces for criminal offences falling under Germany's Code of Crimes against International Law

since 10 October, which is crucial for developments and the situation on the ground. The reverse conclusion would again be a hypothetical mind game: What would happen if? I hope you can deduce what that means from my wording. Of course, developments on the ground are decisive for what we have decided." (Government Press Conference of 17 November 2025, Federal Government, p. 2 (Annex 37)).

¹⁰⁰ Government Press Conference of 3 December 2025, Federal Government, pp. 1–2 (Annex 39). See also Open letter to the Federal Minister for Foreign Affairs from Members of the European Parliament, 27 November 2025 (Annex 38).

¹⁰¹ German *Bundestag*, Plenary Protocol 21/30, 8 October 2025, p. 3212 (answer to question no. 72) (Annex 32).

¹⁰² Post of Israel Defense Forces (@IDF), X, 16 November 2025, 11:33 AM (<https://x.com/idf/status/1990005271662354803>) (emphasis added).

¹⁰³ "Cybersecurity cooperation with Israel expanded", Federal Ministry for the Interior, News, 12 January 2026 (<https://www.bmi.bund.de/SharedDocs/kurzmeldungen/EN/2026/01/israel-dobrindt-en.html>). See also PM Netanyahu's Statement, Israel's Prime Minister's Office, 11 January 2026 (<https://www.gov.il/en/pages/event-germany110126>).

¹⁰⁴ See also NM, paras. 230 and 278.

¹⁰⁵ Written questions with answers received from the Federal Government in the week of 22 January 2024, German *Bundestag*, doc. 20/10170, 26 January 2024, answer to question no. 57 (Annex 6).

(*Völkerstrafgesetzbuch*)¹⁰⁶ committed in Gaza since 7 October 2023 were initiated¹⁰⁷. To the best of Nicaragua’s knowledge¹⁰⁸, criminal complaints filed against members of Israel’s armed forces¹⁰⁹ or against, *inter alia*, executives of German armament companies bearing significant responsibility for the actual delivery of military equipment used in the Gaza Strip¹¹⁰ have not led to investigations.

33. In a similar vein, Germany pays lip service to its obligations in respect of the Palestinian people’s right to self-determination. It simply recalls that it “has repeatedly called on the Israeli Government to refrain from taking any further steps towards an annexation of the West Bank” and that it “considers Israeli settlements in the occupied territories unlawful and a serious obstacle to peace”¹¹¹. During his visit in Israel, the Federal Chancellor said:

“The truth also includes, ladies and gentlemen, that from our perspective there can be no steps towards annexation in the West Bank – no formal, no political, no constructional or any other measures that in their effect amount to annexation.”¹¹²

However, the truth is also that German companies, financial and academic institutions are still contributing to and profiting from the illegal occupation of the OPT and the system of racial discrimination, segregation and apartheid in the OPT, and that Germany has not taken any concrete action to prevent its companies from doing so:

¹⁰⁶ 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.

¹⁰⁷ Written questions with answers received from the Federal Government in the week of 8 April 2024, German *Bundestag*, doc. 20/11038, 12 April 2024, answer to question no. 64 (Annex 15).

¹⁰⁸ At least, the Federal Government refuses to provide information on structural or preliminary investigations. See Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, answer to question no. 8 (Annex 50).

¹⁰⁹ See NM, para. 230. See also “Alleged war crimes in Gaza: Criminal complaint filed in Germany against a member of the Israeli Army”, European Center for Constitutional and Human Rights (ECCHR), Press Release, 10 September 2025 (<https://www.ecchr.eu/en/press-release/alleged-war-crimes-in-gaza-criminal-complaint-filed-in-germany-against-a-member-of-the-israeli-army/>); “The Sniper from Munich”, *Der Spiegel*, 10 September 2025 (<https://www.spiegel.de/international/world/targeted-killings-israeli-soldier-from-munich-allegedly-shot-unarmed-men-in-gaza-a-28efbd28-a80c-46dc-a46d-7ab3eca4e1ec>).

¹¹⁰ “The Time for Accountability is Now: Criminal Complaint against German Government Officials for Aiding and Abetting Israel’s Genocide in Gaza”, European Legal Support Center (ELSC), Press release, 19 September 2025 (<https://elsc.support/the-time-for-accountability-is-now-criminal-complaint-against-german-government-officials-for-aiding-and-abetting-israels-genocide-in-gaza/>).

¹¹¹ GPO, para. 14. See also Government Press Conference of 5 December 2025, Federal Government, p. 1 (Annex 40).

¹¹² Press conference by Federal Chancellor Merz and Prime Minister Netanyahu at the inaugural visit to Israel, Federal Government, 7 December 2025, p. 4 (Annex 42).

(a) Pursuant to Human Rights Council resolutions 31/36 and 53/25¹¹³, the Office of the United Nations High Commissioner for Human Rights (OHCHR) included the German company Heidelberg Materials and its Israeli subsidiary Hanson Israel Ltd. into the Database of business enterprises involved in certain business activities in the OPT¹¹⁴. Thereby, the OHCHR confirmed¹¹⁵ that there are reasonable grounds to believe that Heidelberg Materials and its subsidiary are involved, in particular, in the use of natural resources for business purposes¹¹⁶. The High Commissioner recalled in its report that:

“States must fully respect their legal obligations under international law, including as clarified by the International Court of Justice in its advisory opinion of 19 July 2024, including as they relate to the regulation of business enterprises domiciled in their territory and/or subject to their jurisdiction.

¹¹³ United Nations, Human Rights Council, Resolution 31/36, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 24 March 2016; Resolution 53/25, Implementation of Human Rights Council resolution 31/36, 14 July 2023.

¹¹⁴ 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/60/19, 26 September 2025, Annex I, nos. 76 and 78.

¹¹⁵ See also NM, paras. 275-278 and 429, and 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, Francesca Albanese, A/HRC/59/23, 2 July 2025, paras. 50-51.

¹¹⁶ 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/60/19, 26 September 2025, paras. 25 and 27. Heidelberg Materials has contested its inscription into the database and stated that “Hanson Israel ceased all operations at the Nahal Raba quarry, asphalt plant, and ready-mix concrete plant in 2023. The entire Nahal Taba complex remains closed, and as of today, Hanson Israel does not operate any active facilities in the Occupied Palestinian Territory, including East Jerusalem.” (Statement by Heidelberg Materials AG regarding the OHCHR Database Update – Human Rights Council resolutions 31/36 and 53/25, 24 September 2025 (<https://www.ohchr.org/sites/default/files/documents/issues/business/pot-db/78-heidelberg-materials-ag.pdf>)). Publicly available information demonstrates, however, that although the operation of the Nahal Raba quarry was previously suspended because of the exhaustion of the natural resources, the Israeli Civil Administration Supreme Planning Council’s Subcommittee for Mining and Quarrying approved, in June 2025, a plan to expand the quarry enabling the resumption of its operations (“Administrative petition: Rescind approval of the expansion plan for Wadi Rabah Quarry”, Yesh Din, 1 August 2025 (<https://www.yesh-din.org/en/administrative-petition-rescind-approval-of-the-expansion-plan-for-wadi-rabah-quarry/>)); The Private Actors Behind the Economy of Occupation and Genocide, Don’t Buy into Occupation V report, November 2025, p. 67 (<https://dontbuyintooccupation.org/wp-content/uploads/2025/11/2025-DBIO-V-report.pdf>)). Hanson confirmed before Israeli courts that it “is a leading supplier of raw materials to the construction and infrastructure industry in Israel, and the Nahal Rabba quarry constitutes a vital and significant source of such materials. The reserves provided by the expansion of the Nahal Rabba quarry are intended to meet existing demand and the shortage of supply in this area. ... [Q]uarries are an inseparable part of the way of life we maintain, and their products are required by all and used by all on a daily basis, particularly in light of recent events in the State of Israel. In addition, the quarry, situated as stated in the area of Judea and Samaria, is expected to provide a livelihood for dozens of workers, who will receive comprehensive training and support, together with various benefits.” (Administrative Petition No. 38035-07-25, Jerusalem District Court, Response of Hanson (Israel) Ltd., 7 August 2025, paras. 2-4 (Annex 20)).

States should implement their duty to protect and ensure respect for human rights, including by setting out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. States of domicile, in particular, have a crucial role to play, using their regulatory and policy tools, to ensure that business enterprises respect internationally recognized human rights in challenging operating contexts, including contexts affected by conflict.”¹¹⁷

- (b) Although Germany is duly informed about the direct involvement of German media group Axel Springer in enabling and facilitating real estate transactions in the OPT, and in particular in illegal Israeli settlements¹¹⁸, no action has been taken to ensure that the company respects international law and refrains from such activities that are contrary to international law.
- (c) The last report issued by Don’t Buy into Occupation identified European financial institutions (including banks, asset managers, insurance companies, and pension funds) which entertain financial relationships with businesses and companies involved in or connected to the illegal settlement enterprise in the OPT and the maintenance of the illegal occupation¹¹⁹. The report summarized that “[b]etween January 2023 and August 2025, USD 310 billion was provided in the form of loans and underwriting to these businesses. As of 31 August 2025, European investors also held USD 1,503 billion in shares and bonds in these businesses.”¹²⁰ This includes, notably, numerous German banks and financial institutions that, between January 2023 and August 2025, provided loans and underwriting services to businesses involved in or connected to the occupation and the settlement enterprise¹²¹. The report further identified a number of German banks, financial institutions and institutional investors that invested in such businesses through shareholding or bonds¹²².

¹¹⁷ 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/60/19, 26 September 2025, paras. 32-33.

¹¹⁸ NM, paras. 291-294.

¹¹⁹ The Private Actors Behind the Economy of Occupation and Genocide, Don’t Buy into Occupation V report, November 2025 (<https://dontbuyintooccupation.org/wp-content/uploads/2025/11/2025-DBIO-V-report.pdf>).

¹²⁰ *Ibid.*, p. 8.

¹²¹ *Ibid.*, pp. 12-13.

¹²² *Ibid.*, pp. 14-16.

34. Germany's failure to ensure respect for international law, including international humanitarian law, by its companies is exacerbated by the fact that those companies are ready to circumvent potential restrictions¹²³. In the wake of the Federal Chancellor's announcement of 8 August 2025, the CEO of the German manufacturer Renk, producing in particular gear-boxes for the Merkava tank¹²⁴, said: "If we cannot produce them (hundreds of trans[m]issions) in Germany, we will relocate these volumes to a different plant, for example to the U.S.. This might take maybe 8 to 10 months, but, if there's no move forward, we will do it because we have this business."¹²⁵

35. These recent developments demonstrate that Germany is still failing to uphold its responsibilities, in particular *vis-à-vis* the Palestinian people and the international community as a whole. It persistently refuses to meet the most fundamental obligations imposed by international law favoring other alleged "competing principles" and hiding behind a purported "robust system" of domestic law.

IV. Overview of Germany's Preliminary Objections and Outline of these Observations

36. In its Preliminary Objections, Germany raises several objections to the Court's jurisdiction and to the admissibility of a number of claims made by Nicaragua in its Memorial. None of these objections is justified in fact or in law.

37. By its first objection, Germany contends that the Court has no jurisdiction over the entirety of Nicaragua's claims and submissions because "Nicaragua has failed to establish the existence of a dispute as between itself and Germany with regard to any of its claims and submissions"¹²⁶. This objection is addressed in **Chapter 2** below.

¹²³ See "How Berlin's Gaza Arms Embargo Can Block Israeli Firms in Germany From Selling Weapons to Israel", *Haaretz*, 9 August 2025 (Annex 22).

¹²⁴ NM, para. 232. The Federal Government confirmed that, since 7 October 2023, 15 individual export licences were granted to companies of Renk Group AG (Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Janine Wissler, Desiree Becker, other members of the *Bundestag* and the parliamentary group *Die Linke*, Transparency on export licences for military equipment to Israel, German *Bundestag*, doc. 21/3774, 22 January 2026, answer to question no. 7 (Annex 50)).

¹²⁵ "Germany's Renk could relocate production to avoid weapons restrictions to Israel", *Reuters*, 13 August 2025 (Annex 24); "Es gibt einen Plan B: Rüstungsfirma Renk – Könnten Lieferstopp nach Israel umgehen" ["There is a Plan B': Armament company Renk – Could circumvent halt in deliveries to Israel], *Jüdische Allgemeine*, 13 August 2025 (Annex 25).

¹²⁶ GPO, para. 18.

38. Germany's second objection also concerns the jurisdiction of the Court. Germany argues that "[a] significant number of [Nicaragua's] claims would fall outside the Court's jurisdiction"¹²⁷. Although presented as a single objection, it encompasses in reality two different questions.

39. The first question concerns the Court's jurisdiction to entertain "Nicaragua's claims concerning alleged breaches of international legal rules against racial discrimination, segregation, and apartheid"¹²⁸. Germany does not object to the Court's subject-matter jurisdiction over Nicaragua's claims concerning international humanitarian law, self-determination, and genocide. However, it contends that "Nicaragua cannot bring claims on the basis of Article 22 CERD" because the preconditions of this provision are not fulfilled, and that "Nicaragua's claims relating to racial discrimination, segregation, and apartheid, to the extent they could have been covered by CERD, cannot be brought on the basis of Germany's optional clause declaration as an alternative source of jurisdiction"¹²⁹. This objection is addressed in **Chapter 3** below.

40. The second question concerns the interpretation and the scope of Germany's declaration accepting the Court's jurisdiction pursuant to Article 36, paragraph 2, of the Statute, and particularly the temporal limitation contained therein. Nicaragua will show in **Chapter 4** below that Germany's objection grounded in the temporal limitation of its declaration accepting the Court's jurisdiction lacks merit.

41. The final objection raised by Germany concerns the admissibility of Nicaragua's claims and is based on the so-called *Monetary Gold* principle. According to Germany, "the great majority of [Nicaragua's] claims would be inadmissible. This is because all Nicaragua's major claims require the Court to adjudicate upon the lawfulness of Israel's conduct in the absence of its consent or participation."¹³⁰ **Chapter 5** below will address this objection and conclude that Nicaragua's claims are admissible in their entirety.

¹²⁷ *Ibid.*, para. 19.

¹²⁸ *Ibid.*, para. 77.

¹²⁹ *Ibid.*, para. 78.

¹³⁰ *Ibid.*, para. 119.

42. These observations are concluded with Nicaragua's **Submissions**. They are accompanied by 52 annexes in Volume II, a list of which is included below¹³¹.

¹³¹ See pp. 121-125.

CHAPTER 2.

A DISPUTE EXISTS BETWEEN NICARAGUA AND GERMANY

43. In its Preliminary Objections, Germany argues that “Nicaragua has failed to establish the existence of a dispute between itself and Germany with regard to any of its claims and submissions”, and that the Court therefore “has no jurisdiction over any of Nicaragua’s claims”¹³².

44. This first preliminary objection is without merit and must be rejected. Section I addresses the criteria for determining the existence of a dispute as a prerequisite for the establishment of the Court’s jurisdiction. Section II then demonstrates that a dispute existed between the Parties with respect to each of the claims advanced by Nicaragua at the time the Application was filed – a dispute which has since been confirmed and further crystallized by Germany’s subsequent conduct.

I. The Criteria to Determine the Existence of a Dispute

45. It is well-established in the Court’s jurisprudence that the existence of a dispute between the parties to a contentious case is a “primary condition for the Court to exercise its judicial function”¹³³. Certain criteria have been established in order to assess the existence of such a dispute. Germany sought to address those criteria in its Preliminary Objections¹³⁴, but it has done so in a selective and self-serving manner, going as far as to suggest, without any basis in law, that a stricter test should be applied with respect to Nicaragua’s claims in the present case. This approach should not be countenanced by the Court.

¹³² GPO, para. 17. See also Germany’s submission at *ibid.*, para. 195 (a).

¹³³ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, pp. 270-271, para. 55. See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 26, para. 50.

¹³⁴ GPO, paras. 27-40.

46. The Court has consistently indicated that a dispute is a “disagreement on a point of law or fact, a conflict of legal views or interests”¹³⁵. In order for a dispute to exist, it must be shown that “the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations”¹³⁶; the claim of one party must be “positively opposed” by the other¹³⁷. The applicant should demonstrate that the respondent must have been “aware”, or could not have been “unaware”, that such positive opposition exists¹³⁸.

47. The Court has also stated on several occasions that the existence of a dispute “is a matter of substance, not of form or procedure”¹³⁹. Prior negotiations are not required when the Court has been seised on the basis of a declaration pursuant to Article 36 (2) of the Statute, unless the declaration provides otherwise¹⁴⁰. Germany’s declaration of 30 April 2008, which is invoked by Nicaragua as one of the bases for the Court’s jurisdiction, does not contain any precondition of negotiations¹⁴¹. The same logic applies when the Court is seised on the basis of a compromissory clause containing no negotiations requirement. In the present case, this is true of Article IX of the Genocide Convention, which Nicaragua also invokes as basis for the Court’s jurisdiction¹⁴².

¹³⁵ *Mavrommatis Palestine Concessions, Judgment, 1924, P.C.I.J., Series A, No. 2, p. 11.*

¹³⁶ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74.* See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 26, para. 50.*

¹³⁷ *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328.*

¹³⁸ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 850, para. 41.*

¹³⁹ *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. 45.* See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 84, para. 30; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 849, para. 38.*

¹⁴⁰ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 849, para. 38.* See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 322, para. 109.*

¹⁴¹ See further below, paras. 59-60.

¹⁴² As regards Article 22 of CERD, see below, paras. 140-146.

48. Moreover, a formal diplomatic protest or a notice of intention to file a case are not required as conditions for the seisin of the Court¹⁴³. As further shown below, Nicaragua, although not required to do so, did give Germany clear notice of its intention to file a case with the Court if it continued to disregard its international obligations at issue¹⁴⁴.

49. Whether a dispute exists is a matter for objective determination by the Court¹⁴⁵. The Court takes into account, in particular, any statements or documents exchanged between the parties, as well as exchanges made in multilateral settings. In this context, the Court pays special attention to the author of the statement or document, the intended addressee and its content¹⁴⁶. The conduct of the parties is also relevant¹⁴⁷. As the Court has indicated, a disagreement on a point of law or fact “need not necessarily be stated *expressis verbis* ... [T]he position or attitude of a party can be established by inference, whatever the professed view of that party.”¹⁴⁸

50. Failure to respond to a claim in circumstances where a response is called for confirms the existence of a dispute¹⁴⁹. In *The Gambia v. Myanmar*, the Court further clarified in this

¹⁴³ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 849, para. 38. See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 32, para. 72; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 297, para. 39.

¹⁴⁴ See below, paras. 87-95.

¹⁴⁵ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, pp. 849-850, para. 39. See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 26, para. 50.

¹⁴⁶ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, pp. 849-850, para. 39. 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; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 94, para. 51, p. 95, para. 53, p. 100, para. 64.

¹⁴⁷ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, pp. 850, para. 40. See also *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, pp. 32-33, paras. 71 and 73.

¹⁴⁸ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 315, para. 89.

¹⁴⁹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 84, para. 30, citing *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, p. 315, para. 89.

regard that it is not required “that the respondent must expressly oppose the claims of the applicant. If that were the case, a respondent could prevent a finding that a dispute exists by remaining silent in the face of the applicant’s legal claims. Such a consequence would be unacceptable.”¹⁵⁰ At the same time, the respondent should not be “deprived of the opportunity to react before the institution of proceedings to the claims made against its own conduct”¹⁵¹.

51. It is also established in the Court’s jurisprudence that “[w]hile it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument before the Court ..., the exchanges must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter”¹⁵².

52. The date on which the existence of a dispute must be determined is, in principle, the date on which the application is filed¹⁵³. Conduct subsequent to the application (or the application itself), however, may also be relevant to confirm the existence and scope of a dispute, or to determine whether a dispute has disappeared before the Court takes its decision¹⁵⁴.

53. The Court has shown a flexible approach in determining the existence of a dispute when a case is brought before it, including when this is done under exceptional circumstances. Most recently, in the *Allegations of Genocide* case, the Court found that a dispute between Ukraine and the Russian Federation existed concerning the latter’s alleged breaches of Articles I and IV of the Genocide Convention through the use of force and the recognition of certain entities as States, even though such a claim had only been very generally advanced by

¹⁵⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, p. 505, para. 71.

¹⁵¹ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 851, para. 43.

¹⁵² *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, pp. 84-85, para. 30. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, pp. 505-506, para. 72.

¹⁵³ *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 27, para. 52.

¹⁵⁴ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 851, para. 43.

Ukraine in a public statement on 26 February 2022, while Ukraine’s Application was filed on 27 February 2022 – only hours had passed between the public statement and the institution of proceedings¹⁵⁵. Germany, intervening in that case under Article 63 of the Statute, supported such an approach by the Court¹⁵⁶.

54. In keeping with the flexible approach applied to determine the existence of a dispute, the fact that such determination is a question of substance and not of form or procedure, and the relevance of conduct subsequent to the filing of an application in this context, the Court has also had recourse to the “principle according to which it should not penalize a defect in a procedural act which the applicant could easily remedy”, and where the applicant would be entitled to institute fresh proceedings with a new application even if the first application were dismissed¹⁵⁷.

55. The above criteria are applicable to all the claims advanced by Nicaragua against Germany in these proceedings, regardless of the specific basis of jurisdiction invoked by Nicaragua (*i.e.*, whether the compromissory clause in a treaty or Germany’s declaration pursuant to Article 36 (2) of the Statute)¹⁵⁸.

56. As noted above, Germany suggests that the criteria for the determination of the existence of a dispute should be applied differently in the present case. Relying on what it calls the “exceptional” or “unique” nature of Nicaragua’s claims, Germany states the following:

“[T]he current case is exceptional – indeed unique – as it ultimately concerns hostilities in which neither the Applicant nor the Respondent is directly engaged: it is twice-removed from a usual bilateral dispute as it involves an Applicant asserting a right to act in pursuit of a public interest (a right that would reside in an unlimited pool of States) and a Respondent said to have violated ancillary

¹⁵⁵ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, I.C.J. Reports 2024, p. 393, para. 50 (“Even though this statement was issued only shortly before the institution of proceedings, it is clear that the Russian Federation knew at that time that its views were positively opposed by Ukraine, which was accusing it of acting unlawfully by using the Convention as a pretext to justify its actions. In the specific circumstances of the case, the Court considers that Ukraine could seise it without further delay.”).

¹⁵⁶ CR 2023/15, 20 September 2023, pp. 35-36, paras. 9-11 (Rückert).

¹⁵⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, I.C.J. Reports 1996, pp. 613-614, para. 26, referring to *Mavrommatis Palestine Concessions*, P.C.I.J., Series A, No. 2, p. 34; *Certain German Interests in Polish Upper Silesia*, Preliminary Objections, Judgment, P.C.I.J., Series A, No. 6, p. 14; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, pp. 428-429, para. 83.

¹⁵⁸ See also GPO, para. 32.

obligations of prevention, of non-recognition, non-assistance, etc. (which are incumbent upon an allegedly unlimited pool of States). In such a setting, it is all the more important that the Court's usual test for the determination of the existence of a dispute be stringently applied. This is necessary to avoid an unsuspecting State being brought before the Court before it has even formulated its position with respect to the claim being asserted.”¹⁵⁹

Later in its Preliminary Objections, Germany also asserts that, in such a “setting”, the “general criteria” established in the Court's jurisprudence need to be applied “with particular care”, so as to ensure that “a dispute has indeed crystallised between the applicant and the respondent specifically, and does not simply float in the ether as a potential claim of all against all”¹⁶⁰.

57. This position has no basis in law. There is no trace of precedent in the Court's jurisprudence – nor any other authority – suggesting that the criteria for determining the existence of a dispute should be more “stringently” applied because of the nature of the international obligations at issue, or because the applicant brought a case before the Court in respect of obligations that are owed *erga omnes* or *erga omnes partes*, or of obligations of a *jus cogens* character. Quite the opposite: the Court has been seised of several cases in which the applicant made claims concerning the alleged breach of such obligations and where the applicant was not directly injured by the alleged breach – notably, in addition to the present proceedings: *East Timor*¹⁶¹, *The Gambia v. Myanmar*¹⁶², *Canada and the Netherlands v. Syrian Arab Republic*¹⁶³, and *South Africa v. Israel*¹⁶⁴. In none of these cases did the Court suggest that the test for establishing the existence of a dispute must be applied any differently from other cases where the applicant claimed to be directly injured by an alleged breach of international law.

¹⁵⁹ GPO, para. 25. See also *ibid.*, paras. 38-39.

¹⁶⁰ *Ibid.*, para. 40.

¹⁶¹ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, pp. 99-100, paras. 21-22.

¹⁶² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, pp. 497-507, paras. 51-77.

¹⁶³ *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and The Netherlands v. Syrian Arab Republic)*, Provisional Measures, Order of 16 November 2023, I.C.J. Reports 2023, pp. 595-598, paras. 24-33.

¹⁶⁴ *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. 12-15, paras. 19-28.

58. In short, the relevant criteria remain exactly the same, and the Court has – as its jurisprudence shows – applied them with a degree of flexibility, taking into account all relevant circumstances.

59. Furthermore, it is not clear from the Preliminary Objections what is to be understood under Germany’s proposed “stringent” approach in concrete terms. Germany appears to seek to conflate the criteria for the determination of the existence of a dispute as regularly applied by the Court with a condition of prior negotiations before the seisin of the Court, which may be found in some compromissory clauses and declarations of acceptance of jurisdiction pursuant to Article 36 (2) of the Statute. Indeed, on the day it submitted its Preliminary Objections in the present case, Germany modified its declaration pursuant to Article 36 (2) of the Statute to this effect, excluding from the Court’s jurisdiction:

“(iv) any claim or dispute in respect of which the claim or dispute has not been notified to the Federal Republic of Germany by the State or States concerned in writing, including of an intention to submit the claim or dispute to the Court failing an amicable settlement, at least six months in advance of the submission of the claim or dispute to the Court”¹⁶⁵.

When informing the German *Bundestag* on 5 December 2025 of this amendment, the Federal Government further stated that:

“With the amendment to the declaration of compulsory jurisdiction, we will in the future require States to engage in substantive dialogue with us before bringing a case before the ICJ. Experience in recent years has shown that the declaration first issued in 2008 should be modified and supplemented with such a clause. This will enable us to seek dialogue with States on different legal views even before legal proceedings are initiated.”¹⁶⁶

60. Germany’s recently amended declaration, however, cannot apply retroactively to the present proceedings so as to limit the Court’s jurisdiction, and Germany does not seem to contend otherwise. More importantly, the amendment and the explanation provided by the German Federal Government constitute a clear admission that the 2008 optional clause declaration did not contain a condition of prior negotiations. Under the terms of the relevant 2008 optional clause declaration, Nicaragua was neither required to notify Germany of its

¹⁶⁵ Declaration of Germany recognizing the jurisdiction of the Court as compulsory pursuant to Article 36 (2) of the Statute, 21 October 2025.

¹⁶⁶ Information from the Federal Government, Modification of the declaration on the recognition of the compulsory jurisdiction of the International Court of Justice pursuant to Article 36 (2) of the Statute of the International Court of Justice, German *Bundestag*, doc. 21/3141, 5 December 2025 (Annex 41).

intent to submit a dispute to the Court, nor to engage with Germany in negotiations with a view to finding an amicable settlement. Such preconditions for the seisin of the Court – which are distinct from the condition of existence of a dispute¹⁶⁷ – are not found therein, nor in Article IX of the Genocide Convention¹⁶⁸; and, but for their absence, Germany would not have engaged in its recent modification of the declaration at issue.

61. As the next section shows, the evidence before the Court demonstrates that, consistent with the Court’s jurisprudence, a dispute existed between Nicaragua and Germany with respect to Nicaragua’s claims at the time of the filing of the Application and continues to exist today.

II. A Dispute Exists between Nicaragua and Germany concerning Germany’s Breaches of Its Obligations under International Law

62. Nicaragua clearly and comprehensively formulated its claims against Germany in its Note Verbale dated 2 February 2024, as well as in a Press Release of 1 February 2024 (A). The form in which those claims were conveyed to Germany was fully appropriate and Germany cannot convincingly argue not to have been aware of them (B). Germany unequivocally rejected Nicaragua’s claims and thereafter remained silent, even though Nicaragua raised urgent matters of grave concern in circumstances that were well-known to Germany. Germany’s conduct, in this context, amounts to a positive opposition to Nicaragua’s claims (C). Germany’s conduct after the filing of the Application confirms the existence of the dispute between the Parties and further crystallizes its scope (D).

A. NICARAGUA CLEARLY AND COMPREHENSIVELY FORMULATED ITS CLAIMS IN THE NOTE VERBALE AND PRESS RELEASE OF FEBRUARY 2024

63. Nicaragua formulated its claims against Germany on two occasions and did so in a clear and comprehensive manner: first, in the Note Verbale from the Ministry of Foreign Affairs of Nicaragua addressed to the Ministry of Foreign Affairs of Germany, dated

¹⁶⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70, para. 157.

¹⁶⁸ As regards the preconditions for the seisin of the Court under Article 22 of the CERD, see below, paras. 140-146.

2 February 2024¹⁶⁹; and second, the Press Release of the Government of Nicaragua dated 1 February 2024¹⁷⁰.

64. Germany admits that Nicaragua set out at least “some of its claims” in these documents¹⁷¹, yet it argues that “[i]n neither document did Nicaragua refer to what are now central claims of its case as reflected in its Memorial”¹⁷². At the same time, Germany does not contend that Nicaragua’s claims in the Memorial transform the subject-matter of the dispute originally brought before the Court under the terms of the Application¹⁷³. They indeed do not.

65. The Note Verbale of 2 February 2024 addressed to the Federal Foreign Office of Germany by Nicaragua’s Ministry of Foreign Affairs started by referring to the “ongoing military actions carried out by Israel for almost four months in the Gaza Strip since the events of 7 October 2023”, as well as the Court’s provisional measures order in the *South Africa v. Israel* case of 26 January 2024¹⁷⁴. Nicaragua recalled in this context that the Court¹⁷⁵, alongside the Office for the Coordination of Humanitarian Affairs (OCHA)¹⁷⁶, the World Health Organization (WHO)¹⁷⁷, the United Nations Relief and Works Agency for Palestine Refugees

¹⁶⁹ Ministry of Foreign Affairs of Nicaragua, Note Verbale No. MRE/VM-AMM/0023/02/2024 addressed to the German Federal Foreign Office, 2 February 2024 (Application, Annex 1).

¹⁷⁰ Press Release of the Government of Nicaragua, 1 February 2024 (Application, Annex 3).

¹⁷¹ GPO, para. 23.

¹⁷² *Ibid.*

¹⁷³ *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. 399, para. 68. See also *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Provisional Measures, Order of 28 May 2009, *I.C.J. Reports* 2009, p. 149, para. 48, noting that the fact that the scope of a dispute may have changed since the filing of an application does not necessarily affect the existence of a dispute.

¹⁷⁴ Ministry of Foreign Affairs of Nicaragua, Note Verbale No. MRE/VM-AMM/0023/02/2024 addressed to the German Federal Foreign Office, 2 February 2024 (Application, Annex 1), pp. 1-2.

¹⁷⁵ *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. 10-11, paras. 13-14.

¹⁷⁶ See, e.g., Statement by the Humanitarian Coordinator for the Occupied Palestinian Territory, Lynn Hastings, on the hostilities between Palestinian armed groups in the Gaza Strip and Israel, 10 October 2023 (<https://www.unocha.org/publications/report/occupied-palestinian-territory/statement-humanitarian-coordinator-occupied-palestinian-territory-lynn-hastings-hostilities-between-palestinian-armed-groups-gaza-strip-and-israel-enarhe>); Briefing by Martin Griffiths, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator at the Emergency Session of the UN Security Council, 18 October 2023 (<https://www.un.org/unispal/document/briefing-by-martin-griffiths-under-secretary-general-for-humanitarian-affairs-and-emergency-relief-coordinator-at-the-emergency-session-of-the-un-security-council/>).

¹⁷⁷ See, for example, Joint statement by UNDP, UNFPA, UNICEF, WFP and WHO on humanitarian supplies crossing into Gaza, 21 October 2023 (<https://www.unfpa.org/press/joint-statement-undp-unfpa-unicef-wfp-and-who-humanitarian-supplies-crossing-gaza>); WHO Director-General’s opening remarks at the media

in the Near East (UNRWA)¹⁷⁸, the United Nations Secretary-General¹⁷⁹, several United Nations Special Rapporteurs, independent experts and members of Working Groups of the Human Rights Council¹⁸⁰, and the CERD Committee¹⁸¹, had warned of “the humanitarian disaster unfolding in Gaza, the use of hate speech against Palestinians and the risk of genocide, along with breaches of international humanitarian law”¹⁸². In its Preliminary Objections, Germany does not dispute that it was aware of and familiar with this relevant context.

66. Nicaragua further noted that the Court had concluded in its provisional measures order that some of the rights claimed by South Africa were plausible, including “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 Convention]”¹⁸³. Based on the Court’s conclusion, Nicaragua recalled that “[t]he obligation to prevent genocide arises and begins when there is a risk of it occurring; in fact, when it is plausible that it is occurring or might occur. This plausibility is now beyond doubt and dispute.”¹⁸⁴

briefing, 10 January 2024 (<https://reliefweb.int/report/occupied-palestinian-territory/who-director-generals-opening-remarks-media-briefing-10-january-2024>).

¹⁷⁸ See, e.g., UNRWA, “The Gaza Strip: a struggle for daily survival amid death, exhaustion and despair”, Statement by Philippe Lazzarini, Commissioner-General of UNRWA, 17 January 2024 (<https://www.unrwa.org/newsroom/official-statements/gaza-strip-struggle-daily-survival-amid-death-exhaustion-and-despair>).

¹⁷⁹ See, for example, Secretary General’s remarks to the press on the situation in the Middle East, 9 October 2023 (<https://www.un.org/sg/en/content/highlight/2023-10-09.html>), and those referred by the Court in its Order of 26 January 2024 as Letters by the Secretary General to the United Nations Security Council, S/2023/962, 6 December 2023 and S/2024/26, 8 January 2024.

¹⁸⁰ See, for example, UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence, 12 October 2023 (<https://www.ohchr.org/en/press-releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians>); Gaza: UN experts decry bombing of hospitals and schools as crimes against humanity, call for prevention of genocide, 19 October 2023 (<https://www.ohchr.org/en/press-releases/2023/10/gaza-un-experts-decry-bombing-hospitals-and-schools-crimes-against-humanity>); Gaza: UN experts call on international community to prevent genocide against the Palestinian people, 16 November 2023 (<https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>); UN experts urge States to unite for peace and push for ceasefire in Gaza, 8 December 2023 (<https://www.ohchr.org/en/press-releases/2023/12/un-experts-urge-states-unite-peace-and-push-ceasefire-gaza>).

¹⁸¹ Committee on the Elimination of Racial Discrimination, Statement 5 (2023), Israel and the State of Palestine, 27 October 2023 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/SWA/9904&Lang=en); Decision 2 (2023), Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure, 21 December 2023 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/EWU/9942&Lang=en).

¹⁸² Ministry of Foreign Affairs of Nicaragua, Note Verbale No. MRE/VM-AMM/0023/02/2024 addressed to the German Federal Foreign Office, 2 February 2024 (Application, Annex 1), pp. 2-3.

¹⁸³ *Ibid.*, p. 3.

¹⁸⁴ *Ibid.*, p. 4.

67. Nicaragua stated moreover that “[s]ince the risk of genocide is established ... the government of Germany should comply with its obligations under the Genocide Convention”¹⁸⁵. Nicaragua thus urged 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”¹⁸⁶.

68. Nicaragua also referred to the suspension by Germany of its funding to UNRWA, noting that by doing this Germany “continue[d] to disregard its obligations and to actively facilitate violations of the rules of international law by Israel to the severe and immediate prejudice of the Palestinian people”¹⁸⁷. This act, Nicaragua maintained, “contributes to the collective punishment of the Palestinians and to the apparent objective of forcing the Palestinian population to leave the Occupied Palestinian Territories, particularly Gaza, and preventing the exercise of their right to self-determination”¹⁸⁸.

69. Finally, Nicaragua stated its position 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”¹⁸⁹. Nicaragua referred to common Article I of the Geneva Conventions, which mandate the High Contracting Parties to “respect and to ensure respect for the ... Convention in all

¹⁸⁵ *Ibid.*, pp. 4-5.

¹⁸⁶ *Ibid.*, p. 5. It is of note that several organizations and experts had also urged Germany to comply with its obligations under the Genocide Convention in this context. See, e.g., “Law for Palestine Sends Urgent Letters to Foreign Ministers Warning of Genocide Complicity and Individual Criminal Responsibility”, Law for Palestine, 15 November 2023 (<https://law4palestine.org/law-for-palestine-sends-urgent-letters-to-foreign-ministers-warning-of-genocide-complicity-and-individual-criminal-liability/>); Letter from Prof. M. M. Qafisheh, Law for Palestine Organization, to Ms A. Baerbock, Federal Minister for Foreign Affairs, 13 November 2023 (Annex 3); “Gaza and Germany’s departure from reason: In an open letter, 300 scholars from across the world condemn Germany’s role in silencing Palestinians and contributing to Israel’s genocide”, *Al Jazeera*, 22 January 2024 (<https://www.aljazeera.com/opinions/2024/1/22/gaza-and-germanys-departure-from-reason>). Germany’s support for Israel had also led to an impasse between Germany and Namibia. See “Namibia, Gaza and German hypocrisy on genocide”, *Al Jazeera*, 20 February 2024 (<https://www.aljazeera.com/opinions/2024/2/20/namibia-gaza-and-german-hypocrisy-on-genocide>); “Namibia: Germany ‘unable to draw lessons from history’”, *Deutsche Welle*, 24 January 2024 (<https://www.dw.com/en/namibia-germany-unable-to-draw-lessons-from-its-horrific-history/a-68065159>).

¹⁸⁷ Ministry of Foreign Affairs of Nicaragua, Note Verbale No. MRE/VM-AMM/0023/02/2024 addressed to the German Federal Foreign Office, 2 February 2024 (Application, Annex 1), p. 6.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*, p. 7.

circumstances”, including an obligation “to actively take steps to endeavor that other Contracting Parties respect the rules”¹⁹⁰.

70. The Note Verbale ended with the following statement:

“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 of breaches of international law by Israel in its operations against the Palestinians in the Occupied Palestinian Territories, particularly Gaza ...”¹⁹¹

71. The Press Release of 1 February 2024 also set out Nicaragua’s claims against Germany (as well as against Canada, the Netherlands and the United Kingdom) in clear terms:

“The Government of Reconciliation and National Unity informs the people of Nicaragua and the international community that it has notified the governments of the United Kingdom, Germany, the Netherlands and Canada 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.”¹⁹²

The Press Release referred to the abovementioned Note Verbale and recalled its terms, including the Court’s provisional measures order in the *South Africa v. Israel* case and Germany’s obligation to prevent genocide pursuant to the Genocide Convention. Nicaragua insisted that Germany “immediately halt the supply of arms, ammunitions, technology and/or components to Israel as it is plausible that they might have been 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”¹⁹³. Nicaragua also underscored that Germany’s suspension of funds to UNRWA contributed to “the collective

¹⁹⁰ *Ibid.*, pp. 7-8. Several organizations and experts had similarly called upon States (including Germany) to comply with their obligations under international humanitarian law in this context. See, for example, “More than 250 humanitarian and human rights organisations call to stop arms transfers to Israel and Palestinian armed groups”, Amnesty International, 24 January 2024 (<https://www.amnesty.org/en/latest/news/2024/01/more-than-250-humanitarian-and-human-rights-organisations-call-to-stop-arms-transfers-to-israel-palestinian-armed-groups/>); “Arms exports to Israel must stop immediately: UN experts”, OHCHR, Press Release, 23 February 2024 (<https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>).

¹⁹¹ Ministry of Foreign Affairs of Nicaragua, Note Verbale No. MRE/VM-AMM/0023/02/2024 addressed to the German Federal Foreign Office, 2 February 2024 (Application, Annex 1), p. 8.

¹⁹² Press Release of the Government of Nicaragua, 1 February 2024 (Application, Annex 3).

¹⁹³ *Ibid.*

punishment of the Palestinians and to the apparent objective of forcing the Palestinian population to leave the Occupied Palestinian Territories, particularly Gaza, and preventing the exercise of their right to self-determination”¹⁹⁴.

72. The Press Release finally stated: “Nicaragua has given written notice to these governments that it will adopt all measures it considers appropriate in accordance with international law, including recourse to the International Court of Justice, to guarantee respect for these fundamental international texts and customary international law”¹⁹⁵.

73. As is clear from the Note Verbale and the Press Release of February 2024, Nicaragua conveyed to Germany what it considered to be serious breaches by the latter of various rules of international law. In particular, Nicaragua referred to violations by Germany of its duty to prevent genocide and other acts enumerated in Article III of the Genocide Convention; international humanitarian law and the law of occupation, including as reflected in the 1949 Geneva Conventions and its Additional Protocols; and the right of the Palestinian people to self-determination. Nicaragua also stressed that the obligations of Germany at issue arose not only from treaties to which Germany is a party, but also, more generally, from customary international law.

74. Nicaragua also referred to certain conduct by Germany constituting a breach of these obligations, in particular the supply of arms, ammunition, technology or components to Israel, as well as other types of assistance. Moreover, Germany’s suspension of its funding to UNRWA was highlighted, noting that this conduct contributed to the collective punishment of the Palestinian people, their displacement from the OPT and the denial of their right to self-determination.

75. Germany does not contest that, prior to the institution of the present proceedings, Nicaragua advanced claims concerning Germany’s breaches of its obligations relating to the prevention of genocide and international humanitarian law¹⁹⁶. In contrast, Germany argues that Nicaragua failed to advance claims concerning self-determination, racial discrimination, non-recognition, non-assistance, and the obligation to prosecute and to punish, so that no dispute in

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ GPO, paras. 56, 60 and 63.

relation to these matters could have arisen between the Parties before the Application was filed¹⁹⁷.

76. This argument lacks merit. Germany's position is based on an unduly restrictive and formalistic reading of the Note Verbale and the Press Release of February 2024 – a position which is moreover inconsistent with the Court's *jurisprudence constante* that, for a dispute relating to the alleged breach of a rule of international law to exist, it suffices for the exchanges between the parties to refer to the subject-matter of the rules at issue¹⁹⁸. The correct approach is thus to interpret the documents at issue holistically and in their context. The fact that a particular rule or treaty provision may not have been expressly mentioned by Nicaragua in the relevant exchanges is not enough to determine that no dispute existed.

77. Germany's breaches of international law of which Nicaragua complains in the present case arise in the context of serious, widespread and systematic violations of international law in the OPT, including after the events of 7 October 2023. The illegality of Israel's policies and practices in the OPT was confirmed by the Court in its 2004 and 2024 advisory opinions – including breaches of the principle of self-determination, the prohibition of the acquisition of territory by threat or use of force, international humanitarian law (including the law of occupation), and international human rights law, encompassing the prohibition of racial discrimination, segregation and apartheid. While the 2024 advisory opinion was rendered after Nicaragua instituted the present proceedings, Germany cannot deny that it had knowledge of the serious matters being discussed before the Court at the relevant time, and long before that at the United Nations and other international organizations¹⁹⁹.

78. The Note Verbale and Press Release were also conveyed to Germany shortly after the Court's 26 January 2024 provisional measures order in the *South Africa v. Israel* case was rendered. In that order, the Court stated that it "is acutely aware of the extent of the human

¹⁹⁷ GPO, paras. 48-54.

¹⁹⁸ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, pp. 84-85, para. 30; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, pp. 505-506, para. 72. See also above, para. 51.

¹⁹⁹ Germany voted against Resolution 77/247 of 30 December 2022, whereby the UN General Assembly requested the Court's advisory opinion in *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. See *Official Records of the General Assembly*, Seventy-seventh session, 56th plenary meeting, 30 December 2022, A/77/PV.56 (Resumption 1), p. 4.

tragedy that is unfolding in the region and is deeply concerned about the continuing loss of life and human suffering”²⁰⁰, and concluded that “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 Convention were plausible²⁰¹. The Court found moreover that “the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating further before the Court renders its final judgment”²⁰².

79. It must be highlighted that the breaches of international law by Israel in the OPT, as determined by the Court in previous advisory proceedings, are systematic in nature. Israel’s conduct has simultaneously violated several rules across different fields of international law. Both the rules at issue and Israel’s violations thereof are closely intertwined. Serious breaches of *jus cogens* norms have moreover taken place in the OPT, as a result of which third States, including Germany, have particular obligations under international law to cooperate to put an end to those breaches, not to render aid or assistance to Israel, and not to recognize as lawful the illegal situation created by Israel in the OPT. Nicaragua, in public statements prior to February 2024, had already denounced the support provided to Israel in such circumstances by States with close ties to the latter, which includes Germany²⁰³.

80. Nicaragua’s claims in the Note Verbale and Press Release must be seen against the abovementioned background.

81. As regards the right of the Palestinian people to self-determination, the Note Verbale and the Press Release expressly mentioned it. Both documents referred to conduct by Germany that contributes to “the collective punishment of the Palestinians and the apparent objective of forcing the Palestinian population to leave the [OPT], particularly Gaza, and preventing the exercise of their right to self-determination”²⁰⁴. This was not a statement made “in passing” or

²⁰⁰ *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. 10-11, paras. 13-14.

²⁰¹ *Ibid.*, p. 23, para. 54.

²⁰² *Ibid.*, p. 28, para. 72.

²⁰³ See, for example, Message from the Government of Reconciliation and National Unity at the High-Level Political Consultative Conference on the Situation in Palestine, held in Tehran on 23 December 2023 (<https://www.tortillaconsal.com/bitacora/node/3244>).

²⁰⁴ Ministry of Foreign Affairs of Nicaragua, Note Verbale No. MRE/VM-AMM/0023/02/2024 addressed to the German Federal Foreign Office, 2 February 2024 (Application, Annex 1), p. 6; Press Release of the Government of Nicaragua, 1 February 2024 (Application, Annex 3).

“only as part of the purported factual background”, as Germany wrongly suggests²⁰⁵, but one that was central to Nicaragua’s concerns and related claims. The right of the Palestinian people to self-determination and its continuing denial has always been and continues to lie at the heart of the situation in Palestine.

82. It is true, as Germany notes²⁰⁶, that this claim was made with particular reference to Germany’s announcement to suspend its funding to UNRWA. But this does not mean that other acts by Germany that Nicaragua complains of could not be in breach of the right of the Palestinian people to self-determination as well. For example, the transfer of military equipment to a State in a context where genocide is being committed or is likely to be committed, or where systematic breaches of international humanitarian law – including the law of occupation – are taking place, can naturally also involve a breach of the obligation to facilitate and cooperate in bringing about the right of a people to self-determination²⁰⁷. Such action, rather than contributing to the realization of the right to self-determination, would further hamper the latter by facilitating, for instance, the destruction or displacement of a group, and more generally altering its demographic composition in an irreversibly manner.

83. Nicaragua’s claims concerning racial discrimination, segregation and apartheid also form part of the subject-matter of the exchanges that Nicaragua sought to have with Germany before the latter outright rejected Nicaragua’s claims. In particular, Nicaragua’s reliance on international humanitarian law, including the law of occupation, made clear that its claims concern these matters. As the Court has indicated, “[c]ertain forms of discrimination are prohibited under international humanitarian law”²⁰⁸. This is the case, for example, of Articles 13²⁰⁹ and 27²¹⁰ of the Fourth Geneva Convention, as well as Article 75²¹¹ of Additional

²⁰⁵ GPO, para. 53.

²⁰⁶ *Ibid.*

²⁰⁷ See *Palestine* Advisory Opinion, paras. 237-243 and 256-257.

²⁰⁸ *Ibid.*, para. 186.

²⁰⁹ Article 13 of the Fourth Geneva Convention provides: “The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war”.

²¹⁰ Article 27 of the Fourth Geneva Convention provides: “Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based on, in particular, on race, religion or political opinion”.

²¹¹ Article 75 (1) of Additional Protocol I provides: “In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all

Protocol I. States have moreover a general obligation under customary international law not to engage in any form of racial discrimination in the application of international humanitarian law²¹².

84. As regards Nicaragua's claims on non-recognition and non-assistance, these stem from other claims set out in the Note Verbale and Press Release read in context. Germany's obligations in this regard arise from the customary rules of State responsibility as reflected in Article 41 of the ILC Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA)²¹³, and are thus linked to serious breaches of *jus cogens* norms in the OPT, which have been authoritatively confirmed by the Court in its advisory opinions concerning the situation in Palestine.

85. Finally, Nicaragua's claim relating to the prosecution and punishment of crimes was also conveyed to Germany with sufficient clarity in the light of Nicaragua's references to international humanitarian law and customary international law. In particular, Article 85 of Additional Protocol I lists several acts that shall be regarded as grave breaches of the Protocol, including "practices of 'apartheid' and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination". Moreover, under customary international law, "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspect. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects"²¹⁴. Article IV of the Genocide Convention similarly imposes on States an obligation to punish persons committing genocide or any of the other acts enumerated in Article III of the Convention.

circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon 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. Each Party shall respect the person, honour, convictions and religious practices of all such persons."

²¹² ICRC, Database of Rules of Customary International Humanitarian Law, Rule 88 (Non-Discrimination): "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" (<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule88#>).

²¹³ *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.

²¹⁴ ICRC, Database of Rules of Customary International Humanitarian Law, Rule 158 (Prosecution of War Crimes) (<https://ihl-databases.icrc.org/en/customary-ihl/v1/rule158>).

86. In summary, all of Nicaragua’s claims were conveyed to Germany in a clear and comprehensive manner, in a wider context relating to the OPT and the serious and systematic breaches of international law therein that Germany was and is fully aware of. Germany’s argument that some of Nicaragua’s claims were not transmitted with sufficient clarity, or not transmitted at all, does not stand scrutiny.

B. NICARAGUA’S CLAIMS WERE CONVEYED IN APPROPRIATE FORM

87. As recalled earlier, the Court has consistently indicated that determining the existence of a dispute is a question of substance, not one of form or procedure²¹⁵. Germany nonetheless puts significant emphasis on the form in which Nicaragua’s claims as set out in the Note Verbale and the Press Release were conveyed to Germany. It argues in this regard that Germany was not given sufficient time to formulate its position *vis-à-vis* Nicaragua, and therefore no dispute could have arisen between the Parties at the time of the filing of the Application²¹⁶. These arguments are without merit.

88. The Note Verbale dated 2 February 2024 emanated from the Ministry of Foreign Affairs of Nicaragua and was addressed to the German Federal Foreign Office. Germany complains that the Note Verbale was transmitted by e-mail to its Permanent Mission to the United Nations in New York (an institution that, according to Germany, “has no competence whatsoever to deal with bilateral German-Nicaraguan matters”²¹⁷), instead of the German Embassy in Managua or the Federal Foreign Office in Berlin²¹⁸.

89. There is however nothing unusual in States engaging in diplomatic exchanges through their missions to the United Nations in New York, in particular, when the questions at issue relate to matters that are being actively discussed within the United Nations and which are of common concern for the international community as a whole, such as the Palestinian question and the unfolding genocide in the Gaza Strip after the events of 7 October 2023. The Court dealt with a similar situation in *The Gambia v. Myanmar*, where it considered that a note verbale sent by The Gambia to the Permanent Mission of Myanmar to the United Nations on

²¹⁵ See above, paras. 47-49.

²¹⁶ GPO, paras. 24-25, and 47.

²¹⁷ *Ibid.*, para. 43 (ii).

²¹⁸ *Ibid.*, para. 43 (iii).

11 October 2019, and Myanmar’s failure to respond thereto, taking also into account the seriousness of the allegations made by The Gambia, “brought clearly into focus the positive opposition of views between the Parties”²¹⁹.

90. The e-mail address from which the Note Verbale was transmitted to the Permanent Mission of Germany belongs to the Permanent Mission of Nicaragua to the United Nations in New York (nicaraguaunny@yahoo.com). This is the e-mail address officially registered by Nicaragua with the United Nations Protocol and Liaison Service²²⁰ and is therefore known to all permanent missions to the United Nations in New York. German diplomatic officials in New York must have therefore been aware of the identity of the sender of the e-mail and acted with the due diligence required in diplomatic and multilateral relations. The e-mail to which the Note Verbale was transmitted²²¹ is also the only one officially registered by Germany with the United Nations Protocol and Liaison Service (info@new-york-un.diplo.de)²²².

91. Germany admits that the Note Verbale was “picked up” on 13 February 2024²²³, that is, 11 days after it was transmitted to its Permanent Mission in New York. Official confirmation of receipt of the Note Verbale was sent by the Permanent Mission of Germany to the Permanent Mission of Nicaragua on 14 February²²⁴. Nothing in this reply suggests that Germany then considered the channel of transmission inappropriate or “defective”, as Germany now claims²²⁵.

²¹⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022, pp. 506-507, paras. 74-76. See also *ibid.*, pp. 502-503, para. 65.

²²⁰ See United Nations, Protocol and Liaison Service, *Permanent Missions to the United Nations*, No. 311 (January 2023), ST/PLS/SER.A/311, p. 218 (available at https://www.un.org/dgacm/sites/www.un.org.dgacm/files/Documents_Protocol/bb311.pdf).

²²¹ Cf. GPO, para. 43 (ii).

²²² See United Nations, Protocol and Liaison Service, *Permanent Missions to the United Nations*, No. 311 (January 2023), ST/PLS/SER.A/311, p. 119 (available at https://www.un.org/dgacm/sites/www.un.org.dgacm/files/Documents_Protocol/bb311.pdf).

²²³ GPO, para. 23.

²²⁴ Permanent Mission of Germany to the United Nations in New York, Note Verbale No. 038/2024 addressed to the Permanent Mission of Nicaragua to the United Nations in New York, 14 February 2024 (Application, Annex 2).

²²⁵ GPO, para. 24. Canada and the Netherlands also replied to the Permanent Mission of Nicaragua to the United Nations in New York confirming receipt of the notes verbales addressed to them. See Note verbale from the Permanent Mission of the Kingdom of the Netherlands to the United Nations to the Permanent Mission of Nicaragua to the United Nations, no. NYV/2024/051, 13 February 2024 (Annex 11); Note verbale from the Permanent Mission of Canada to the Permanent Mission of Nicaragua to the United Nations, no. PRMNY-13006,

92. As for the Press Release of 1 February 2024, it was published by the Government of Nicaragua in *El 19 Digital*, an official newspaper regularly used by the Government to make public official announcements and other publications, such as statements in multilateral fora and news regarding bilateral activities with other States. All announcements of the executive are made through this portal to the Nicaraguan people and the Diplomatic Corps accredited in Nicaragua, including those of Germany²²⁶.

93. Germany does not claim in its Preliminary Objections that it did not have knowledge of the Press Release at the time it was published²²⁷. Indeed, the Press Release was also transmitted via e-mail by the Permanent Mission of Nicaragua to the United Nations in New York to all other permanent and observer missions on 1 February 2024²²⁸. Unlike the Note Verbale, Germany does not claim to have “picked up” the e-mail with the attached Press Release on 13 February 2024. Germany was thus aware, as early as 1 February 2024, of the Press Release and its content, including its reference to the Note Verbale that had been sent to the German Federal Foreign Office. Indeed, this much was also confirmed by Germany in the Government Press Conference of 7 February 2024²²⁹. For Germany to argue that it only “picked up” the Note Verbale on 13 February makes no sense in these circumstances.

94. Germany’s sole complaint with regard to the Press Release appears to be that the latter states that Nicaragua wished to inform “the people of Nicaragua and the international

7 March 2024 (Annex 13). Neither State considered that the channel of communication employed by Nicaragua was inappropriate.

²²⁶ Germany had an embassy and accredited diplomats in Nicaragua when the Press Release was issued in February 2024.

²²⁷ GPO, para. 44.

²²⁸ Note verbale from the Permanent Mission of Nicaragua to the United Nations to all Permanent and Observer Missions to the United Nations, no. MINIC-MIS-075-02-2024 (with the attached Press Release of the Government of Nicaragua and the email from the Permanent Mission of Nicaragua transmitting the Note verbale and its attachments), 1 February 2024 (Annex 7).

²²⁹ Statements by the German Federal Foreign Office at the Government Press Conference, 7 February 2024 (Application, Annex 4), noting that Germany was “aware of a press release” and that it “[knew] the press release”. See further paras. 98-100 below. The Press Release was also discussed in German media. See, for example, “Nicaragua will Deutschland wegen ‚Beihilfe zum Genozid in Gaza‘ vor IGH in Den Haag anklagen” [Nicaragua will bring claims against Germany before the ICJ in The Hague for ‘aiding and abetting genocide in Gaza’], *NachDenkSeiten*, 8 February 2024 (Annex 10). The Press Release was disseminated in media outlets of other countries as well. See, for example, “Nicaragua señala a Alemania, Canadá, Países Bajos y Reino Unido por ‘genocidio’ en Gaza” [Nicaragua accuses Germany, Canada, the Netherlands, and the United Kingdom of “genocide” in Gaza], *Infobae*, 2 February 2024 (Annex 8); “Nicaragua denuncia cómplices imperialistas de genocidio en Gaza” [Nicaragua denounces imperialist accomplices to genocide in Gaza], *TeleSur*, 2 February 2024 (Annex 9).

community”²³⁰ of the course of action that Nicaragua was adopting in the light of the ongoing humanitarian catastrophe and unfolding genocide in the OPT, including Gaza. However, the Press Release clearly refers to the Note Verbale addressed to the German Federal Foreign Office and of Nicaragua’s intent to bring Germany to the Court in order to hold it responsible for its serious breaches of international law, should Germany insist on its unlawful conduct.

95. In conclusion, Nicaragua adequately transmitted its claims to Germany through the Note Verbale and Press Release of February 2024, and Germany cannot now claim not to have been aware of those claims or not have had enough time to consider them. Germany’s unequivocal rejection of Nicaragua’s claims, as further shown below, confirms this.

C. NICARAGUA’S CLAIMS ARE POSITIVELY OPPOSED BY GERMANY

96. To argue that no dispute existed between Nicaragua and Germany at the time of the filing of the Application, Germany further suggests that there was no positive opposition between the Parties with respect to Nicaragua’s claims. Germany argues that it “reserved its position” with respect to the Note Verbale and the Press Release²³¹, and that “it had not yet responded to Nicaragua’s claims” by the time the Application was filed²³². Germany further claims that by 13 February 2024, “[u]pon receipt” of the Note Verbale²³³, it was “actively considering its position”, but it was not given “reasonable time to formulate its position and respond to the note verbale”²³⁴.

97. There is no evidence on the record showing that Germany was “actively considering its position”²³⁵ by 13 or 14 February 2024, or that Germany was “seeking co-ordination with the three states – The Netherlands, the United Kingdom, and Canada”²³⁶ – that had received notes verbales from Nicaragua, in a manner that would show that there was a coincidence of legal positions between the Parties. On the contrary, the available evidence shows that Germany unequivocally rejected Nicaragua’s claims during a Government Press Conference

²³⁰ GPO, para. 44.

²³¹ *Ibid.*, para. 24.

²³² *Ibid.*, para. 25.

²³³ *Ibid.*, para. 24.

²³⁴ *Ibid.*

²³⁵ *Ibid.* See also *ibid.*, para. 46 (ii).

²³⁶ *Ibid.*

of 7 February 2024²³⁷ and thereafter remained silent despite the fact that those claims concerned matters of the utmost gravity and urgency. In this context, there can be no doubt that Germany positively opposed Nicaragua's position.

98. Germany's express rejection of Nicaragua's position is found in the Government Press Conference of 7 February 2024, where the German Federal Foreign Office made certain official statements in response to questions from the press on the "[p]ossible action by Nicaragua against Germany, the Netherlands, the United Kingdom and Canada before the ICJ in connection with the conflict in the Gaza Strip"²³⁸. Asked about the Note Verbale and the Press Release and how Germany intended to react to the steps that Nicaragua was going to take, the representative of the Federal Foreign Office stated the following:

"We are aware of a press release. I cannot confirm here any further steps that you are suggesting. Beyond that, we naturally reject the relevant content of the press release."²³⁹

99. Answering a follow-up question, the representative of the Federal Foreign Office further stated: "We know the press release. Nothing else is known. Accordingly, we have no reason to comment further. We reject the contents of the press release."²⁴⁰

100. The German Federal Foreign Office thus rejected, in no unclear terms, the claims of Nicaragua as set out in the Press Release of 1 February 2024, which largely mirrored the claims contained in the Note Verbale²⁴¹.

101. In addition to this rejection of Nicaragua's claims, Germany remained silent for more than two weeks after it "picked up" Nicaragua's Note Verbale of 2 February 2024. Indeed, Germany indicates in its Preliminary Objections that the Note Verbale was not met with "any response" or even a "follow-up"²⁴² after 13 or 14 February. Given the gravity of the content of Nicaragua's Note Verbale and the urgency of the situation it addressed, a swift and serious

²³⁷ Statements by the German Federal Foreign Office at the Government Press Conference, 7 February 2024 (Application, Annex 4).

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ See also *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Admissibility of Counter-Claims*, Order of 5 December 2025, para. 35.

²⁴² GPO, para. 46 (i).

response from Germany was to be expected. Seen together with Germany's position in the Press Conference of 7 February (an outright, blanket opposition to Nicaragua's claims), this silence can only be reasonably interpreted as yet another rejection of Nicaragua's claims by Germany.

D. GERMANY'S CONDUCT SUBSEQUENT TO THE FILING OF THE APPLICATION CONFIRMS THE
EXISTENCE OF A DISPUTE AND CRYSTALLIZES ITS SCOPE

102. The conduct of Germany after Nicaragua filed its Application further confirms the existence of a dispute between the Parties and crystallizes its scope. Like the statements of the German Federal Foreign Office on 7 February 2024, Germany has on every occasion continued to reject Nicaragua's claims and to deny any wrongdoing.

103. In a Government Press Conference of 4 March 2024 (three days after the institution of proceedings), the German Federal Government was asked by a reporter how it assessed Nicaragua's case filed before the Court for "aiding and abetting genocide". The Spokesperson of the Federal Government answered that Germany had taken note of Nicaragua's Application and that it considered the allegations made against it "unfounded". In response to a follow-up question, the Spokesperson of the Federal Foreign Office reaffirmed Germany's firm opposition to Nicaragua's claims: "[L]et us make it very clear that we naturally reject the accusation made against us by Nicaragua"²⁴³.

104. In the Note Verbale sent by the Embassy of Germany in The Hague to the Court on 11 March 2024, Germany again stated that it "firmly reject[ed] the factual and legal basis of Nicaragua's Application"²⁴⁴. On 15 March 2024, Germany's appointed Agent in the present proceedings again confirmed in a social media post that "[t]he German government rejects the unfounded allegations"²⁴⁵.

105. During the provisional measures hearing, Germany continued to reject Nicaragua's allegations regarding Germany's conduct in breach of international law. It did so on several occasions, leaving again no doubt as to its opposition to Nicaragua's claims.

²⁴³ Government Press Conference of 4 March 2024, Federal Government (Annex 12).

²⁴⁴ Note Verbale from the Embassy of Germany in The Hague to the Registrar, no. 32/2024, 11 March 2024, annexed to Letter from the Registrar, no. 161617, 11 March 2024.

²⁴⁵ Post of Tania von Uslar (@GermanyOnIntLaw), X, 15 March 2024, 5:58 PM (<https://x.com/GermanyOnIntLaw/status/1768683272257646821>) (Annex 14).

106. Germany stated, for example, that Nicaragua had taken a “one-sided view of the conflict”, and that Nicaragua “fail[ed] to properly appreciate both the facts and the law in this situation”. Germany expressly said, as it had already done as early as 7 February 2024, that it “firmly rejects Nicaragua’s accusations”²⁴⁶.

107. Germany also sought to explain, in some length, that “Nicaragua’s depiction of Germany as wilfully disregarding the rights of the Palestinian people and supporting or enabling breaches of international law” was inaccurate and argued that Nicaragua’s claims “do not withstand scrutiny”²⁴⁷.

108. Moreover, in addressing the plausibility of the rights invoked by Nicaragua, Germany argued at length that those rights were not plausible. In particular, Germany denied that it is complicit in genocide under the Genocide Convention and customary international law; that it is engaged in aid and assistance in maintaining a situation created by serious breaches of *jus cogens* norms in the OPT; that it has breached its obligation to prevent genocide under Article I of the Genocide Convention; and that it has breached its obligation to ensure respect for international humanitarian law under common Article I of the Geneva Conventions²⁴⁸. Germany’s opposition to Nicaragua’s claims could not be clearer.

109. Germany’s Preliminary Objections also confirm the existence of a dispute. Although they are partly aimed at arguing that no dispute exists between the Parties, they ultimately demonstrate the exact opposite. Germany states, for example, that Nicaragua’s claims “as now presented” (*i.e.*, as presented in the Memorial) “have no more merit than the allegations first made in Nicaragua’s Application, and Germany rejects them”²⁴⁹. Moreover, Germany’s brief account of its “role in the wider context” of the situation in Palestine yet again shows that the positions of the Parties are far apart²⁵⁰. In particular, Nicaragua firmly contests Germany’s assertion that “Germany continues to uphold the highest standards when it comes to security cooperation and only authorises arms exports on the basis of detailed case-by-case scrutiny, a

²⁴⁶ CR 2024/16, 9 April 2024, p. 8, para. 5 (von Uslar-Gleichen). See also *ibid.*, p. 12, para. 22 (“Germany firmly rejects Nicaragua’s accusations: they have no basis in fact or law”).

²⁴⁷ *Ibid.*, pp. 13-14, paras. 1-2 (Tams).

²⁴⁸ *Ibid.*, pp. 34-42, paras. 7-47 (Peters). See also p. 50, para. 3 (von Uslar-Gleichen).

²⁴⁹ GPO, para. 8.

²⁵⁰ GPO, paras. 10-16.

scrutiny that not only respects, but exceeds the requirements of international law”²⁵¹. This assertion has no basis on the facts as described by Nicaragua in its Application and Memorial; in any case, this is precisely one of the subjects of the dispute that the Court is asked to rule upon.

110. Finally, as noted in the Introduction, Germany has continued to grant licenses for the export of military equipment to Israel after Nicaragua filed its Application and the Court rendered its provisional measures order. Germany’s continuation of the conduct that is at the heart of the present proceedings, without any apparent consideration being given to the serious concerns raised by Nicaragua, are further evidence of the dispute that exists between the Parties²⁵².

111. It follows that the dispute that had arisen between Nicaragua and Germany prior to the filing of the Application has been confirmed, and its scope further crystallized, by Germany’s subsequent conduct.

*

112. To conclude, there can be no doubt that the Parties have a “disagreement on a point of law or fact, a conflict of legal views or of interests”²⁵³. Nicaragua set out its claims against Germany clearly and comprehensively in the Note Verbale and Press Release of February 2024. Those claims were conveyed through appropriate channels and Germany cannot convincingly argue that it was not aware of them.

113. Germany unequivocally rejected all of Nicaragua’s claims as set out in the Note Verbale and Press Release on 7 February 2024. Germany thereafter remained silent for weeks despite the gravity and urgency of the matters raised by Nicaragua and the unfolding genocide in the OPT, including Gaza, to which such matters related. Germany’s positive opposition to Nicaragua’s claims is thus established.

²⁵¹ GPO, para. 15.

²⁵² See paras. 21-35 above.

²⁵³ *Mavrommatis Palestine Concessions, Judgment, 1924, P.C.I.J., Series A, No. 2, p. 11.*

114. After the filing of the Application, Germany has continued to deny any breach of its obligations under international law and to reject Nicaragua's claims, both within and outside the present proceedings. Germany has moreover continued to engage in the conduct that Nicaragua complains of, and which is at the heart of the present case. Germany's continuing opposition to Nicaragua's claims after the institution of proceedings confirms the existence of the dispute between the Parties and further crystallizes the scope thereof.

115. Consequently, Germany's first preliminary objection must be rejected.

CHAPTER 3.

THE COURT HAS JURISDICTION OVER NICARAGUA'S CLAIMS REGARDING RACIAL DISCRIMINATION, SEGREGATION AND APARTHEID

116. Germany's second objection to the Court's jurisdiction concerns Nicaragua's claims relating to racial discrimination, segregation and apartheid²⁵⁴. These claims are set out in Nicaragua's submissions in the following terms:

“[Germany] 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”²⁵⁵.

117. Germany claims that the Court has no jurisdiction to adjudicate these claims because, in Germany's view, these claims:

“cannot be brought on the basis of Article 22 CERD as there has been no attempt for any such dispute to be ‘settled by negotiation or by the procedures expressly provided for in [the] Convention’”²⁵⁶.

Germany further asserts that:

“Jurisdiction over these claims cannot be based on Germany's optional clause declaration either, as Article 22 CERD amounts to ‘another method of peaceful settlement chosen by all the Parties’ in the sense of paragraph (i) of that declaration”²⁵⁷.

118. Germany's objection to the Court's jurisdiction misconstrues Nicaragua's claims. As is readily apparent from the formulation of Nicaragua's submission, it does not merely assert that Germany breached its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)²⁵⁸. Rather, it asserts that the Respondent

²⁵⁴ GPO, para. 70.

²⁵⁵ NM, para. 484 (9).

²⁵⁶ GPO, para. 68 (i).

²⁵⁷ *Ibid.*

²⁵⁸ United Nations, *Treaty Series*, vol. 660, p. 195. It is not disputed that Nicaragua and Germany are parties to the Convention by virtue of their accession or ratification without reservations. See NM, para. 33 and GPO, para. 81 (ii) and fn. 95.

breached, and continues to breach, “international law”²⁵⁹. This includes, in particular, Germany’s binding obligations under customary international law and international instruments to which both States are parties. The dispute between the Parties concerning the violation of these obligations *erga omnes*, owed by Germany under customary international law, or of obligations *erga omnes partes*, owed by Germany under other international instruments, does not fall under Article 22 of CERD. Disputes over such obligations are plainly encompassed by the Parties’ consent to the Court’s jurisdiction by virtue of their respective optional clause declarations under Article 36 (2) of the Statute (I).

119. Germany also errs in asserting that Nicaragua’s claims “to the extent they could have been covered by CERD, cannot be brought on the basis of Germany’s optional clause declaration”²⁶⁰. This assertion ignores and misconstrues the terms of Article 22 of CERD and the object and purpose of this provision, as well as Germany’s optional clause declaration. Germany and Nicaragua have consented, through their optional clause declarations, to the jurisdiction of the Court in respect of all disputes, including disputes concerning the interpretation or application of CERD (II).

120. In the alternative, if the Court considers that Nicaragua’s claims covered by CERD fall under the compromissory clause of Article 22 of CERD, the exceptional circumstances in the present case necessitated and still necessitate settling the dispute without undue delay or additional procedural constraints in light of the object and purpose of CERD and Nicaragua’s duty to prevent the worsening acts of racial discrimination, segregation, and apartheid (III).

I. Nicaragua’s Claims Concerning Violations by Germany of Its Obligations under Customary International Law, Including International Humanitarian Law, Fall under Germany’s Optional Clause Declaration

121. Article 22 of CERD provides:

“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.”

²⁵⁹ NM, para. 484 (9).

²⁶⁰ GPO, para. 78.

122. It is plain that Article 22 of CERD only relates to disputes “with respect to the interpretation or application of [that] Convention”, *i.e.*, of CERD, and to the responsibility of a State Party for the violation of obligations set out in CERD²⁶¹. Article 22 of CERD does not apply to any other disputes, even where such disputes concern obligations under international law relating to the prohibition of racial discrimination, segregation, and apartheid²⁶².

123. As already recalled and evidenced in its submissions, Nicaragua submitted to the Court’s scrutiny claims against Germany concerning the latter’s violations of “international law” by contributing to the maintenance of racial discrimination, segregation, and apartheid²⁶³. These claims do not only concern CERD, but various other obligations that are binding on Germany. It is well established in the Court’s jurisprudence that “[c]ertain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the ‘interpretation or application’ of more than one treaty or other instrument”²⁶⁴. This is the case with respect to Nicaragua’s claims concerning racial discrimination, segregation, and apartheid. As explained in Nicaragua’s Memorial, the obligations breached by Germany are grounded, *inter alia*, 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.”²⁶⁵

124. Whether these obligations are binding on Germany and whether Germany has breached them is a matter for the merits. It is sufficient to recall at the present stage that the

²⁶¹ *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. 94, para. 72. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment of 12 November 2024, paras. 60 and 77.

²⁶² See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015, pp. 46-48, paras. 87-88.

²⁶³ NM, para. 484 (9). See also *ibid.*, paras. 431-432.

²⁶⁴ *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. 27, para. 56; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment of 12 November 2024, para. 77.

²⁶⁵ NM, para. 431. See also NM, paras. 381-384.

prohibition of racial discrimination, to which CERD *and* other international instruments give expression, “is now part of customary international law”²⁶⁶ and that “the prohibition of racial discrimination, an essential part of international human rights law, is also a fundamental element of international humanitarian law”²⁶⁷. The prohibition of racial discrimination and apartheid constitutes also a peremptory norm of general international law (*jus cogens*)²⁶⁸. It follows that racial segregation and apartheid, which the Court has characterized as constituting “two particularly severe forms of racial discrimination”²⁶⁹, are equally prohibited under customary international law. In other words, as the Court has already acknowledged, acts and omissions that might contravene obligations provided for by CERD may also “be covered by other rules of international law, including humanitarian law”²⁷⁰.

125. This also remains true in respect of violations of customary international law reflected in the provisions of CERD. Even if the Convention might be useful to determine the existence and the scope of these obligations binding on Germany under customary international law²⁷¹, these customary international law obligations remain independent and self-standing²⁷². The Court has already had occasion to consider, in not dissimilar circumstances in *Nicaragua v. United States of America*, that it:

“cannot dismiss the claims of Nicaragua under principles of customary and general international law, simply because such principles have been enshrined in the texts of the conventions relied upon by Nicaragua. The fact that the above-mentioned principles, recognized as such, have been codified or embodied in multilateral conventions does not mean that they cease to exist and to apply as principles of customary law, even as regards countries that are parties to such conventions. [Such

²⁶⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, para. 189 (hereafter “*Palestine Advisory Opinion*”).

²⁶⁷ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment of 12 November 2024, para. 74.

²⁶⁸ See Conclusion 23 of the Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*jus cogens*) and its annex (*Report of the International Law Commission*, Seventy-third session (18 April – 3 June and 4 July–5 August 2022), A/77/10, p. 16).

²⁶⁹ *Palestine Advisory Opinion*, para. 225.

²⁷⁰ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment of 12 November 2024, para. 75. 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. 387, para. 112; *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)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 592, para. 86, and p. 595, para. 96.

²⁷¹ *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, paras. 311–312.

²⁷² See *ibid.*, para. 314.

principles] continue to be binding as part of customary international law, despite the operation of provisions of conventional law in which they have been incorporated.”²⁷³

On this basis, the Court then concluded that “since the claim before the Court in this case [was] not confined to violation of the multilateral conventional provisions invoked, it would not in any event be barred by the multilateral treaty reservation in the United States 1946 Declaration”²⁷⁴.

126. In the same vein, Nicaragua’s claims under customary international law or international humanitarian law do not fall under Article 22 of CERD. The Court’s jurisdiction on these issues is independent of Article 22 of CERD and Germany’s objection – whether justified or not – cannot affect the Court’s jurisdiction over these claims.

127. Indeed, questions concerning violations of customary international law related to racial discrimination, segregation, and apartheid – even if these rules might be *also* codified and reflected in the provisions of CERD – as well as violations of international humanitarian law, including the obligation to ensure respect for international humanitarian law in all circumstances, fall within the Parties’ consent to the Court’s jurisdiction under their respective optional clause declarations.

128. Under the terms of its declaration made in 2008, Germany recognizes and accepts “as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice, in conformity with paragraph 2 of Article 36 of the Statute of the Court ... over all disputes arising after the present declaration, with regard to situations or facts subsequent to this date”. Germany itself considers that the dispute concerning respect for customary international law and international humanitarian law in relation to racial discrimination, segregation, and apartheid *qua* customary international law and *qua* international humanitarian law falls within the ambit of its optional clause declaration. Indeed, it alleges – as part of another objection that is equally ill-founded²⁷⁵ – that Nicaragua’s submissions and claims concerning racial discrimination, segregation and

²⁷³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Jurisdiction and Admissibility, Judgment*, I.C.J. Reports 1984, p. 424, para. 73.

²⁷⁴ *Ibid.*, pp. 424-425, para. 73.

²⁷⁵ See below, paras. 148-183.

apartheid²⁷⁶, on the one hand, and those related to ensuring respect for international humanitarian law²⁷⁷, on the other hand, do not fall within the temporal limitation of its declaration. This allegation makes sense only if these submissions and claims could fall under the optional clause declaration. They clearly do. Indeed, Germany's reliance on the temporal limitation in its optional clause declaration necessarily presupposes that these claims fall within the scope of that declaration and thus confirms that Article 22 of CERD is not the relevant jurisdictional basis for them. Germany also does not consider that these submissions and claims are precluded under the first reservation to its optional clause declaration, which excludes "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". To the extent Germany discusses this reservation in its Preliminary Objections, it argues that, in its opinion, "Nicaragua's claims relating to racial discrimination, segregation, and apartheid, *to the extent they could have been covered by CERD*, cannot be brought on the basis of [its] optional clause declaration ..."²⁷⁸. It necessarily follows that, to the extent that these claims are covered by other rules of customary international law, including international humanitarian law, the reservation is irrelevant. Indeed, in respect of these claims, Article 22 of CERD is not applicable and therefore cannot constitute another method of peaceful settlement.

129. For all of these reasons, Germany's objection according to which "Nicaragua's claims concerning alleged breaches of international legal rules against racial discrimination, segregation, and apartheid fall outside the Court's jurisdiction under Article 22 CERD and Germany's optional clause declaration"²⁷⁹ cannot be upheld.

II. Nicaragua's Claims on Racial Discrimination, to the Extent They Are Covered by CERD, Fall within Germany's Optional Clause Declaration

130. As recalled above, Germany also objects to Nicaragua's claims relating to racial discrimination, segregation, and apartheid, "to the extent they could have been covered by

²⁷⁶ GPO, para. 92 (iii) and paras. 108–111.

²⁷⁷ *Ibid.*, para. 92 (iv) and paras. 112–116.

²⁷⁸ *Ibid.*, para. 78 (emphasis added).

²⁷⁹ *Ibid.*, para. 70.

CERD” because, it argues, these claims “cannot be brought on the basis of Germany’s optional clause declaration as an alternative source of jurisdiction”²⁸⁰. In this regard, Germany relies specifically on the first reservation to its 2008 optional clause declaration which excludes from its consent to the Court’s jurisdiction:

“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”.²⁸¹

131. In Germany’s view, Nicaragua’s claims concerning “compliance with questions of racial discrimination, segregation and apartheid under CERD”²⁸² fall within this reservation because, Germany argues, these claims and disputes are “subject to another method of dispute settlement”, *i.e.*, Article 22 of CERD²⁸³, which Nicaragua and Germany “chose” by becoming parties to CERD²⁸⁴. Germany also contends that the dispute resolution procedure under CERD is “another method of peaceful settlement” than that accepted in accordance with its optional clause declaration because Article 22 “mak[es] recourse to the Court dependent on the fulfillment of specific ‘preconditions’” and such preconditions “do not generally apply to claims based on the optional clause”²⁸⁵. Although Germany accepts that the Court’s jurisdiction under optional clause declarations and compromissory clauses must be assessed separately, and that the former may be broader than the latter²⁸⁶, it nevertheless claims that, by virtue of its reservation, recourse to the dispute settlement mechanisms of Article 22 of CERD is – to the extent that claims under CERD are raised – exclusive and overrides its optional clause declaration.

132. Germany’s position on the question of the operation of both its optional clause declaration, and its reservation thereto, and the compromissory clause of CERD ignores not only the text of CERD itself but also the Court’s case law and that of its predecessor.

²⁸⁰ *Ibid.*, para. 78.

²⁸¹ For the full text of the declaration, see United Nations, *Treaty Series*, vol. 2515, pp. 256-257 or NM, para. 27.

²⁸² GPO, para. 81.

²⁸³ *Ibid.*, para. 81 (i).

²⁸⁴ *Ibid.*, para. 81 (ii).

²⁸⁵ *Ibid.*, para. 81 (iii).

²⁸⁶ *Ibid.*, para. 79.

133. In *Electricity Company of Sofia and Bulgaria*, the Permanent Court dealt with a comparable issue. Belgium relied on two bases for the Court's jurisdiction: the parties' optional clause declarations, on the one hand, and the Treaty of conciliation, arbitration and judicial settlement concluded by Belgium and Bulgaria on 23 June 1931, on the other hand²⁸⁷. Although the Permanent Court accepted Bulgaria's objection concerning the 1931 Treaty, which imposed a condition of exhausting local remedies, it upheld its jurisdiction under the optional clause declarations rejecting, in particular, Bulgaria's objection *ratione temporis*. It did so even though the Belgian optional clause declaration contained a limitation similar to Germany's reservations in the case at bar, excluding "cases where the Parties have agreed or shall agree to have recourse to another method of pacific settlement"²⁸⁸. If Germany's position in the present case were correct – *quod non* – the 1931 Treaty would have constituted a "nuanced scheme of dispute settlement"²⁸⁹, including relevant preconditions, reflecting "the conscious choice"²⁹⁰ of Belgium and Bulgaria, to which Belgium's declaration would have given exclusivity and preference. But this was not the case. In this respect, the Permanent Court explained that:

"[T]he multiplicity of agreements concluded accepting the compulsory jurisdiction is evidence that the contracting Parties intended to open up new ways of access to the Court rather than to close old ways or to allow them to cancel each other out with the ultimate result that no jurisdiction would remain.

In concluding the Treaty of conciliation, arbitration and judicial settlement, the object of Belgium and Bulgaria was to institute a very complete system of mutual obligations with a view to the pacific settlement of any disputes which might arise between them. There is, however, no justification for holding that in so doing they intended to weaken the obligations which they had previously entered into with a similar purpose, and especially where such obligations were more extensive than those ensuing from the Treaty.

It follows that if, in a particular case, a dispute could not be referred to the Court under the Treaty, whereas it might be submitted to it under the declarations of Belgium and Bulgaria accepting as compulsory the jurisdiction of the Court, in accordance with Article 36 of the Statute, the Treaty cannot be adduced to prevent those declarations from exercising their effects and disputes from being thus submitted to the Court."²⁹¹

134. Nothing in the text of Article 22 of CERD suggests that the dispute settlement mechanism it establishes is exclusive and must be pursued by States parties having a dispute

²⁸⁷ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 75.*

²⁸⁸ For the text of Belgium's optional clause declaration, see *ibid.*, p. 81.

²⁸⁹ GPO, para. 81 (iii).

²⁹⁰ *Ibid.*

²⁹¹ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 76.*

on the interpretation or application of the Convention. In fact, the text of Article 22 of CERD itself confirms the contrary. It expressly authorizes recourse to other modes of settlement agreed upon by the parties to a dispute. This is the plain meaning of the terms at the end of the provision: “unless the disputants agree to another mode of settlement”. In addition, Article 16 of CERD further confirms that what Germany calls the “nuanced scheme of dispute settlement imposed by Article 22 CERD”²⁹² is not considered to be exclusive. This provision clearly confirms that “[t]he provisions of this Convention concerning the settlement of disputes or complaints ... shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them”.

135. It is worth recalling that very early in the drafting process of CERD, the Sub-Commission on Prevention of Discrimination and Protection of Minorities included, as part of its proposals on the implementation of the draft convention²⁹³, a provision that expressly confirmed the non-exclusivity of the implementation mechanisms. This provision was formulated in the following way:

“The provisions of this Convention shall not prevent the States Parties to the Convention from submitting to the International Court of Justice any dispute arising out of the interpretation or application of the Convention in a matter within the competence of the Committee; or from resorting to other procedures for settling the dispute, in accordance with general or special international agreements in force between them.”²⁹⁴

This proposal remained part of the draft throughout the negotiations. It was taken up by the Philippines in the Third Committee of the General Assembly²⁹⁵, and later integrated into the joint proposal of Ghana, Mauritania, and the Philippines²⁹⁶. That proposal was ultimately adopted with minor amendments and became what is now Article 16 of CERD²⁹⁷. This

²⁹² GPO, para. 81 (iii).

²⁹³ Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 2 (XVI), Additional measures of implementation, in Report of the Sixteenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights, 13–31 January 1964, E/CN.4/873, pp. 52–57.

²⁹⁴ *Ibid.*, p. 57 (Article 17).

²⁹⁵ UN doc. A/C.3/L.1221, Article 19. See also Official Records of the General Assembly, Twentieth session, Third Committee, 1344th meeting, 16 November 1965, A/C.3/SR.1344, para. 19 (Philippines).

²⁹⁶ UN doc. A/C.3/L.1291, Article XIII.

²⁹⁷ Report of the Third Committee, Draft International Convention on the Elimination of All Forms of Racial Discrimination, A/6181, paras. 168–171.

provision was neither abandoned nor modified when the compromissory clause of Article 22 was introduced, discussed, and adopted²⁹⁸. The text of Article 22 and Article 16 of CERD, together with the *travaux préparatoires*, thus confirm the understanding that disputes concerning the interpretation or application of CERD could be submitted by States parties to dispute resolution outside the system of Article 22 of CERD.

136. Taking due account of the text of CERD, Germany's position would create an endless loop between Germany's optional clause declaration ("...other than: (i) any dispute which the Parties thereto have agreed or shall agree to have recourse to some other method of peaceful settlement...") and Article 22 of CERD ("unless the disputants agree to another mode of settlement"). The reservations of Germany's optional clause declaration would preclude jurisdiction of the Court because Article 22 of CERD constitutes another method of peaceful settlement; at the same time, Article 22 would preclude the Court's jurisdiction because the Parties agreed to another mode of settlement through their optional clause declarations, with each of these agreements being independent and separate, as Germany itself accepts²⁹⁹. This approach would create a circular mechanism in which Article 22 of CERD excludes the optional clause, and the optional clause in turn excludes Article 22 of CERD, leaving no jurisdictional avenue at all – a result fundamentally at odds with the very purpose of both instruments.

137. Nor is this loop resolved by Germany's position that its reservation is aimed at precluding a "wider" jurisdiction of the Court in case of an agreement to a "more limited" jurisdiction under Article 22 of CERD. Indeed, nothing in the text of Germany's reservation distinguishes between a specific, more restrictive agreement and a more general agreement concerning peaceful settlement of disputes, nor does anything suggest that Germany's reservation turns on the degree of specificity or restrictiveness of another agreement on dispute settlement or its "preconditions"³⁰⁰. In any event, Germany cannot claim that Article 22 of

²⁹⁸ The draft proposal that was considered by the Third Committee and became Article 23 of the Convention was made on the basis of a Working Paper prepared by the United Nations Secretariat (E/CN.4/L.679, point VIII) by the officers of the Committee (A/C.3/L.1237, Clause VIII) (see also *Official Records of the General Assembly*, Twentieth session, Third Committee, 12999th meeting, 11 October 1965, A/C.3/SR.1299, para. 2). The proposal was adopted by the Third Committee with only minor changes (Report of the Third Committee, Draft International Convention on the Elimination of All Forms of Racial Discrimination, A/6181, paras. 198-200). The part of the provision "unless the disputants agree to another mode of settlement" was not put into question or discussed substantively.

²⁹⁹ GPO, para. 79.

³⁰⁰ See, *mutatis mutandis*, *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 46, para. 120.

CERD constitutes a more demanding or more specific agreement governing the Court's jurisdiction to which its optional clause declaration refers; just as Germany cannot maintain that its optional clause declaration constitutes a more demanding or specific agreement governing the Court's jurisdiction to which Article 22 of CERD refers. In the end, Germany's approach would allow it to unilaterally determine which "mode of settlement" it considers more demanding or more specific for seizing the Court and defining the Court's jurisdiction.

138. However, Germany's optional clause declaration provides that it accepts the Court's jurisdiction "over all disputes ... other than ... 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". The Court underlined in respect of a similar optional clause declaration that it reflects an intention that all disputes with another State accepting the Court's jurisdiction under Article 36, paragraph 2, of the Statute (other than those addressed by Germany's limitations or reservations) will be subject to a method of dispute settlement, either in this Court or pursuant to another method to which the parties have agreed³⁰¹. Yet Germany uses its reservation in the opposite manner, importing limitations – such as prior negotiations – that its declaration does not require in order to reject the Court's jurisdiction; just as Germany also uses the limitations *ratione temporis* of its optional clause declarations, which Article 22 of CERD does not include, in order to reject the Court's jurisdiction over claims concerning racial discrimination, segregation and apartheid³⁰². Rather than "open[ing] up new ways of access to the Court", Germany seeks "to close old ways or to allow them to cancel each other out with the ultimate result that no jurisdiction would remain"³⁰³. This clearly contradicts Germany's intention, affirmed by the Federal Government when informing the German *Bundestag* of its 2008 optional clause declaration, to "send[...] a strong and positive signal to the international community on the strengthening of international law" and its aim "at strengthening international jurisdiction and peaceful dispute resolution and at putting international relations on a legal footing"³⁰⁴.

³⁰¹ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, I.C.J. Reports 2017, p. 46, para. 119.

³⁰² GPO, paras. 92 (iii) and 108–111. This objection is also unfounded as explained in paras. 148–183 below.

³⁰³ *Electricity Company of Sofia and Bulgaria*, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 76.

³⁰⁴ Information from the Federal Government, Declaration on the recognition of the compulsory jurisdiction of the International Court of Justice pursuant to Article 36 (2) of the Statute of the International Court of Justice, German *Bundestag*, doc. 16/9218, 5 May 2008 (Annex 2).

139. In line with these observations, no reason precludes Nicaragua from establishing the Court’s jurisdiction in respect of violations of CERD on the basis of the Parties’ optional clause declarations, to which Article 22 of CERD refers. It is with this objective that Nicaragua’s Memorial stated that “the jurisdiction of the Court is *also* based on Article 22 [CERD]”³⁰⁵. To the extent that Nicaragua’s claims fall under CERD, the Court has jurisdiction on the basis of Germany’s optional clause declaration to which Article 22 of CERD, read together with Article 16 of CERD, refers. Germany’s objection to the Court’s jurisdiction because of the “preconditions” of Article 22 must therefore be rejected.

III. Alternatively, in the Specific Circumstances of the Present Case, Article 22 of CERD Does Not Bar the Court’s Jurisdiction over Breaches of CERD

140. Alternatively, should the Court consider that claims concerning breaches of CERD fall exclusively within the compromissory clause of Article 22 of that Convention, Nicaragua considers that the conditions set out in that provision do not constitute a bar to the Court’s jurisdiction in the particular circumstances of the present case.

141. In its judgment on Russia’s preliminary objections in the case concerning *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)*, the Court confirmed not only that the conditions for the seisin of the Court under Article 22 of CERD are not cumulative. The Court also noted that:

“Article 22 of CERD must also be interpreted in light of the object and purpose of the Convention. Article 2, paragraph 1, of CERD provides that States parties to CERD undertake to eliminate racial discrimination ‘without delay’. Articles 4 and 7 provide that States parties undertake to eradicate incitement to racial discrimination and to combat prejudices leading to racial discrimination by adopting ‘immediate and positive measures’ and ‘immediate and effective measures’ respectively. The preamble to CERD further emphasizes the States’ resolve to adopt all measures for eliminating racial discrimination ‘speedily’. The Court considers that these provisions show the States parties’ aim to eradicate all forms of racial discrimination effectively and promptly.”³⁰⁶

³⁰⁵ NM, para. 33.

³⁰⁶ *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)*, Preliminary Objections, Judgment, I.C.J. Reports 2019, p. 600, para. 111.

This objective is further reinforced by the fact that CERD, and other international human rights instruments, are not only aimed at responding to human right violations, but also, and even more importantly, at preventing such violations. The substantive obligations assumed by States under CERD clearly confirm this preventive function. Under Article 3 of CERD, States parties “undertake to prevent” racial segregation and apartheid. The preamble of CERD recalls that, under the United Nations Charter, “all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is *to promote and encourage* universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion”³⁰⁷. Article 3 of the United Nations Declaration on the Elimination of all Forms of Racial Discrimination, to which the preamble also refers, also states that “[p]articular efforts shall be made *to prevent* discrimination based on race, colour or ethnic origin ...”³⁰⁸.

142. The available implementation mechanisms and procedures must also be interpreted and applied so as to effectively achieve this overarching aim³⁰⁹. The Committee on the Elimination of Racial Discrimination, established pursuant to Article 8 of CERD as part of its implementation provisions, recognized the necessity of instituting an early warning and urgent action procedure on this basis³¹⁰, aimed at “consider[ing] specific situations ... in order to prevent them from escalating or to identify those that require immediate attention to prevent or limit the scale or number of serious violations of the Convention”³¹¹.

143. By the time Nicaragua instituted proceedings against Germany on 1 March 2024, the death toll in Gaza was mounting exponentially, necessitating an urgent response³¹². The Committee on the Elimination of Racial Discrimination had already triggered its early warning

³⁰⁷ Emphasis added.

³⁰⁸ United Nations, General Assembly, Resolution 1904 (XVIII), United Nations Declaration on the Elimination of all Forms of Racial Discrimination, 20 November 1963, Article 3.

³⁰⁹ See also Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, Report of the fourth meeting of persons chairing the human rights treaty bodies, A/47/628, 10 November 1992, Annex, para. 44.

³¹⁰ Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly*, Forty-eighth session, Supplement No. 18, A/48/18, Annex III.

³¹¹ Committee on the Elimination of Racial Discrimination, Rules of procedure, CERD/C/35/Rev.4, 2025, Rule 118.

³¹² See above, para. 12.

and urgent action procedure in respect of the situation in the OPT. On 27 October 2023, the Committee, “[a]larmed by the scale of violence and the humanitarian catastrophe that is unfolding in the occupied Gaza Strip and by the well-founded fears that the region is being engulfed in a broader conflict”, issued a statement under that procedure recalling “the international obligations that Israel and other State parties have undertaken under the ICERD”³¹³. On 21 December 2023, the Committee, still acting under its early warning and urgent action procedure, adopted Decision 2 (2023) expressing “its grave concern about the resumption of brutal hostilities in the Gaza Strip” and noting the deterioration of the human rights situation in the Gaza Strip and the West Bank including East Jerusalem. It called, *inter alia*, upon “all State parties to fully respect their international obligations, in particular those arising from the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide and to cooperate to bring an end [to] the violations that are taking place and to prevent atrocity crimes, particularly genocide”³¹⁴.

144. The dire situation in the Gaza Strip was further confirmed by numerous United Nations organs and bodies, including the Security Council³¹⁵, the General Assembly³¹⁶, the Secretary-General³¹⁷, the High Commissioner for Human Rights³¹⁸, by Special Procedures³¹⁹,

³¹³ Committee on the Elimination of Racial Discrimination, Statement 5 (2023), Israel and the State of Palestine, 27 October 2023 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/SWA/9904&Lang=en). See also Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly*, Seventy-ninth session, Supplement No. 18, A/79/18, paras. 42–47.

³¹⁴ Committee on the Elimination of Racial Discrimination, Decision 2 (2023), Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure, 21 December 2023 (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/EWU/9942&Lang=en). See also Report of the Committee on the Elimination of Racial Discrimination, *Official Records of the General Assembly*, Seventy-ninth Session, Supplement No. 18, A/79/18, paras. 26–28.

³¹⁵ United Nations, Security Council, Resolutions 2712 (2023), 15 November 2023, and 2720 (2023), 22 December 2023.

³¹⁶ United Nations, General Assembly, Resolutions ES-10/21, Protection of civilians and upholding legal and humanitarian obligations, 27 October 2023, and ES-10/22, Humanitarian ceasefire, 12 December 2023.

³¹⁷ “UN chief appalled by ‘tragic human toll’ of Gaza war”, UN News, 29 February 2024 (<https://news.un.org/en/story/2024/02/1147082>).

³¹⁸ “Türk calls for end to ‘carnage’ in Gaza”, Office of the High Commissioner for Human Rights, Statements and speeches, 29 February 2024 (<https://www.ohchr.org/en/statements-and-speeches/2024/02/turk-calls-end-carnage-gaza>).

³¹⁹ “Israel/Occupied Palestinian territory: UN experts deplore attacks on civilians, call for truce and urge international community to address root causes of violence”, Special Procedures, Press Release, 12 October 2023 (<https://www.ohchr.org/en/press-releases/2023/10/israeloccupied-palestinian-territory-un-experts-deplore-attacks-civilians>); “Gaza is ‘running out of time’ UN experts warn, demanding a ceasefire to prevent genocide”, Special Procedures, Press Release, 2 November 2023 (<https://www.ohchr.org/en/press-releases/2023/11/gaza-running-out->

and indeed the Court³²⁰. Shortly before the introduction of the present proceedings, on 23 February 2024, 34 Special Rapporteurs, Independent Experts and members of Working Groups of the Special Procedures of the UN Human Rights Council (UNHRC) recalled that “[a]ll States must ‘ensure respect’ for international humanitarian law by parties to an armed conflict, as required by [the] 1949 Geneva Conventions and customary international law” and that “States must accordingly refrain from transferring any weapon or ammunition – or parts for them – if it is expected, given the facts or past patterns of behaviour, that they would be used to violate international law”. They considered that the circumstances “necessitate[d] halting arms exports”³²¹.

145. In light of these findings and circumstances, engaging in negotiations through the Committee on the Elimination of Racial Discrimination – which had already pronounced on the matter – or with Germany, would not have taken due account of the urgency of the situation and the immediate necessity of preventing further violations of the rights of the Palestinian people in the Gaza Strip and in other parts of the OPT. The exceptional, life-destroying circumstances in the present case necessitate settling the dispute without undue time constraints. Any further delays created by a protracted negotiating process under Article 22 of CERD, along with Germany’s entrenched and unwavering expressions of support for Israel as its *Staatsräson* and blinkered assurance that Israel is compliant with international humanitarian law³²², would have caused a real and foreseeable risk of irreparable harm to the Palestinian people. Nicaragua referred to this urgency and necessity to protect, without delay, the rights of the Palestinian people in its Application and its Request for the indication of provisional measures³²³. Indeed,

time-un-experts-warn-demanding-ceasefire-prevent-genocide); “Gaza: UN experts call on international community to prevent genocide against the Palestinian people”, Special Procedures, Press Release, 16 November 2023 (<https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-a-gainst>); “Over one hundred days into the war, Israel destroying Gaza’s food system and weaponizing food, say UN human rights experts”, Special Procedures, Press Release, 16 January 2024 (<https://www.ohchr.org/en/press-releases/2024/01/over-one-hundred-days-war-israel-destroying-gazas-food-system-and>).

³²⁰ *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*, *ICJ Reports 2024*, p. 23, para. 54. See also Decision of the Court on South Africa’s request for additional provisional measures, Press Release, No. 2024/16, 16 February 2024 (<https://icj-cij.org/sites/default/files/case-related/192/192-20240216-pre-01-00-en.pdf>).

³²¹ “Arms exports to Israel must stop immediately: UN experts”, Special Procedures, Press releases, 23 February 2024 (<https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>).

³²² “Germany Takes Ostrich Approach to Israel’s Violations of International Humanitarian Law in the Gaza War”, by St. Talmon, *German Practice in International Law*, 7 April 2024 (<https://gpil.jura.uni-bonn.de/2024/04/germany-takes-ostrich-approach-to-israels-violations-of-international-humanitarian-law-in-the-gaza-war/>).

³²³ Application and Request for the Indication of Provisional Measures, paras. 32-37 and 94-100.

Nicaragua had a duty to act to prevent and condemn the worsening of acts of racial discrimination, segregation, apartheid, and genocide.

146. Based on these considerations, and in light of the object and purpose of CERD, the jurisdiction of the Court under Article 22 of CERD cannot be barred by an alleged non-compliance with the conditions set out in this provision. Germany's objection in this respect must therefore be rejected.

*

147. For the reasons set out in the present Chapter, Germany's objection concerning the Court's jurisdiction, in particular on the basis of Article 22 of CERD, is unfounded and must be rejected. Insofar as Nicaragua submits to the Court's scrutiny claims concerning racial discrimination, segregation, and apartheid based on violations of customary international law, including international humanitarian law, these claims do not fall under Article 22 of CERD but under Germany's optional clause declaration. To the extent that Nicaragua makes claims that fall under CERD, these claims are also covered by Germany's optional clause declaration, to which Article 22 of CERD refers. In the alternative, should Article 22 of CERD constitute the only basis for the Court's jurisdiction over those claims falling under CERD, the conditions set out in Article 22 of CERD cannot preclude the Court's jurisdiction in light of the particular urgency and circumstances of the case.

CHAPTER 4.
GERMANY’S OBJECTION BASED ON THE TEMPORAL LIMITATION OF
ITS DECLARATION ACCEPTING THE COURT’S COMPULSORY
JURISDICTION IS WITHOUT MERIT

148. Germany contends that “[a] significant number of Nicaragua’s claims ... fall outside the scope of the Court’s jurisdiction under the two parties’ optional clause declarations”³²⁴. In particular, Germany argues that these claims fall outside the temporal limitation contained in Germany’s declaration³²⁵. Its declaration of 30 April 2008 is limited to “all disputes arising after the present declaration, with regard to situations or facts subsequent to this date”³²⁶.

149. Germany does not contest that the dispute submitted to the Court arose after it made its optional clause declaration, *i.e.*, after 30 April 2008³²⁷. However, it contends that the dispute – or at least some of the claims made by Nicaragua – is not one “with regard to situations or facts subsequent” to 30 April 2008.

150. At the outset, Nicaragua notes that Germany’s objection is limited to claims falling under the Parties’ optional clause declarations. Other claims for which the Court’s jurisdiction is not based on these declarations are not covered by this objection. Although Germany has never specifically identified the claims that, in its view, do not fall within its objection on the basis of the temporal limitation of its optional clause declaration, it is clear from its submissions³²⁸ that it does not include Nicaragua’s claims brought on the basis of the Genocide Convention in this objection. The temporal limitation of Germany’s optional clause declaration

³²⁴ GPO, para. 83.

³²⁵ *Ibid.*, para. 87.

³²⁶ United Nations, *Treaty Series*, vol. 2515, pp. 256-257.

³²⁷ As addressed above in Chapter 2, Germany rather argues that no dispute yet existed on 1 March 2024 (see, *e.g.*, GPO, para. 41).

³²⁸ GPO, para. 195 (*b*). See also *ibid.*, paras. 19 and 118.

does not produce any limiting effect on the compromissory clauses relied upon by Nicaragua³²⁹, and Germany does not contend otherwise³³⁰.

I. The Proper Construction of the Temporal Limitation in Germany's Optional Clause Declaration

151. When formulating its optional clause declaration in 2008, Germany did not explain in detail its intention for limiting the scope of this declaration. The Federal Government simply informed the *Bundestag* thereof. It stated at the time that:

“Submitting the declaration is in line with Germany’s policy on international law, which, based on the international law-friendly orientation of the Basic Law, aims at strengthening international jurisdiction and peaceful dispute resolution and at putting international relations on a legal footing. ... The Federal Republic of Germany’s submission of this declaration sends a strong and positive signal to the international community on the strengthening of international law.”³³¹

As to the limitations and reservations, the Federal Government merely explained that:

“Such reservations are expressly permitted under the ICJ Statute and are common practice among States. They limit the jurisdiction of the International Court of Justice, which is comprehensively established by the declaration, to certain areas or periods of time.”³³²

152. In another case before the Court, Germany also did not provide specific reasons or a specific intention for the temporal limitation of its declaration. It merely stated that “[a]t first glance already, ... Germany’s Declaration does not provide a legal basis for [the relevant counter-claims]. The jurisdiction is accepted only *pro futuro* (‘all disputes arising after the

³²⁹ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 76. In this sense, see also the Joint Dissenting Opinion of Judges Onyeama, Dillard, Jiménez de Aréchaga and Sir Humphrey Waldock to the Court’s judgments in the *Nuclear Tests (Australia v. France)* case, *I.C.J. Reports 1974*, p. 350, para. 83; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 321-322, para. 109.

³³⁰ See also GPO, para. 79.

³³¹ Information from the Federal Government, Declaration on the recognition of the compulsory jurisdiction of the International Court of Justice pursuant to Article 36 (2) of the Statute of the International Court of Justice, German *Bundestag*, doc. 16/9218, 5 May 2008 (Annex 2). See also Information from the Federal Government, Modification of the declaration on the recognition of the compulsory jurisdiction of the International Court of Justice pursuant to Article 36 (2) of the Statute of the International Court of Justice, German *Bundestag*, doc. 21/3141, 5 December 2025 (Annex 41).

³³² Information from the Federal Government, Declaration on the recognition of the compulsory jurisdiction of the International Court of Justice pursuant to Article 36 (2) of the Statute of the International Court of Justice, German *Bundestag*, doc. 16/9218, 5 May 2008 (Annex 2).

present declaration, with regard to situations or facts subsequent to this date’); the declaration has no retroactive effect. World War II is hence excluded from the temporal scope of the declaration.”³³³ German scholars had indeed suggested that an optional clause declaration by Germany should include temporal limitations or reservations to prevent the Court from exercising jurisdiction over old cases, in particular concerning disputes relating to World War II or to legal issues arising from the division of Germany³³⁴.

153. Whatever Germany’s intention may have been, it has chosen to limit the temporal scope of its optional clause declaration by a formula widely used, in identical or similar terms, by other States in their declarations or in international conventions, and that has already been interpreted by the Court and its predecessor. Germany referred to these previous decisions and judgments selectively, in order to draw conclusions that are biased and self-serving³³⁵.

154. In light of the Court’s case law, the temporal limitation in optional clause declarations similar to Germany’s must be assessed by reference to “situations or facts” that constitute the “source of the dispute” (“*générateurs du différend*”) and which are “its real cause” (“*qui en sont réellement la cause*”)³³⁶. When determining the situations or facts that are the source or the real cause of the dispute, the objective pursued by such temporal limitations must be taken into account³³⁷. As the Permanent Court noted, such a temporal limitation:

“was inserted with the object of depriving the acceptance of the compulsory jurisdiction of any retroactive effects, in order both to avoid, in general, a revival of old disputes, and to preclude the possibility of the submission to the Court by means of an application of situations or facts dating from a period when the State

³³³ Preliminary Objections of the Federal Republic of Germany regarding Italy’s Counter-Claim, *Jurisdictional Immunities of the State (Germany v. Italy)*, 10 March 2010, pp. 4–5, para. 6 (available at <https://www.icj-cij.org/sites/default/files/case-related/143/16019.pdf>).

³³⁴ Ch. J. Tams and A. Zimmermann, “Deutschland und der Internationale Gerichtshof: Zeit für eine allgemeine Unterwerfungserklärung” [Germany and the International Court of Justice: Time for a general optional clause declaration], *DGVN Policy Paper 2/2007*, pp. 5 and 6 (Annex 1).

³³⁵ GPO, paras. 89–91.

³³⁶ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 23; *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 82; *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, p. 35; *Certain Property (Liechtenstein v. Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 25, para. 46; *Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010*, p. 318, para. 23. See also GPO, para. 89 (*in fine*): “It is this necessary to identify the facts or situations which are the ‘real cause’ or ‘source’ of a dispute and to assess whether these facts or situations have occurred after or before the critical date set by the optional clause declaration.” (footnote omitted).

³³⁷ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 24.

whose action was impugned was not in a position to foresee the legal proceedings to which these facts and situations might give rise.”³³⁸

155. Whether a fact or a situation has to be taken into account for the purpose of applying the temporal limitation of optional clause declarations is not a simple issue of causality³³⁹. Not every fact or situation occurring before the acceptance of the Court’s jurisdiction constitutes the source or real cause of the dispute. As recalled by the Permanent Court, “a dispute may presuppose the existence of some prior situation or fact, but it does not follow that the dispute arises in regard to that situation or fact”³⁴⁰. Moreover, the Court drew “a distinction between the situations or facts which constitute the source of the rights claimed by one of the Parties and the situations or facts which are the source of the dispute” and confirmed that “[o]nly the latter are to be taken into account for the purpose of applying the Declaration accepting the jurisdiction of the Court”³⁴¹.

156. Germany largely ignores these findings. Instead, it puts significant emphasis on “three considerations” that it purports have guided the Court when determining the source or real cause of a dispute³⁴², without, however, taking due account of the factual circumstances prevailing in the relevant cases it relies upon.

157. Germany argues that “where an applicant has instituted proceedings against specific measures adopted by the respondent, it is necessary to assess whether these specific measures are merely the consequence of a legal position adopted previously”³⁴³.

158. Indeed, the Permanent Court considered in *Phosphates in Morocco* that it could not take into account in isolation “subsequent factors which either presume the existence or are merely the confirmation or development of earlier situations or facts constituting the real causes of the dispute”³⁴⁴. On this basis, it found that the facts with regard to which the dispute arose

³³⁸ *Ibid.*

³³⁹ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 82.*

³⁴⁰ *Ibid.*

³⁴¹ *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960, p. 35; Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010, pp. 319–320, para. 26. See also Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 82.*

³⁴² GPO, para. 91.

³⁴³ *Ibid.*, para. 91 (i).

³⁴⁴ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 24.*

were legislative measures that predated France's optional clause declaration. The Court explained:

“The situation which the Italian Government denounces as unlawful is a legal position resulting from the legislation of 1920; and, from the point of view of the criticism directed against it, cannot be considered separately from the legislation of which it is the result.”³⁴⁵

Subsequent facts relied upon by Italy did not change this position because they did not add to or alter the legality or illegality of the monopoly legislation³⁴⁶. In a similar vein, the Permanent Court rejected Italy's allegations of denial of justice in respect of an Italian national³⁴⁷, considering that only a previous decision of the Department of Mines was the source or the real cause of the dispute. It explained that:

“the complaint of a denial of justice cannot be separated from the criticism which the Italian Government directs against the decision of the Department of Mines of January 8th, 1925, for the Court could not regard the denial of justice as established unless it had first satisfied itself as to the existence of the rights of the private citizens alleged to have been refused judicial protection. But the Court could not reach such a conclusion without calling in question the decision of the Department of Mines of 1925.”³⁴⁸

159. In other words, the Permanent Court considered that any possible claim made by Italy could only be addressed against the facts that constituted alleged violations of international law by France predating the latter's acceptance of the Court's jurisdiction. The consideration of these facts and the claims to which they gave rise was therefore excluded by virtue of France's temporal limitation. All subsequent facts or situations could not themselves have constituted the basis of such a claim and were therefore not the source or the real cause of the dispute submitted to the Court. The Court's decisions in *Certain Property* and *Jurisdictional Immunities of the State* confirm this interpretation³⁴⁹.

160. In light of these cases, assessed against their specific factual circumstances, it is apparent that Germany unduly broadens the operation, scope, and objective of the temporal

³⁴⁵ *Ibid.*, pp. 25–26.

³⁴⁶ *Ibid.*, p. 27.

³⁴⁷ *Ibid.*, p. 28.

³⁴⁸ *Ibid.*, pp. 28–29.

³⁴⁹ *Certain Property (Liechtenstein v. Germany)*, Preliminary Objections, Judgment, I.C.J. Reports 2005, p. 26, paras. 50–51; *Jurisdictional Immunities of the State (Germany v. Italy)*, Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010, p. 320, para. 28.

limitation of its optional clause declaration. It asserts that Germany's conduct "cannot be separated from conduct predating 30 April 2008" because "[i]t is inextricably linked to [such] prior conduct by which, if Nicaragua is to be believed, Germany violated its international obligations ..."³⁵⁰. However, the cases discussed above do not suggest that the source or real cause of a dispute must necessarily be the facts and situations that resulted in the first or initial internationally wrongful act committed by a respondent to the exclusion of all subsequent facts and situations. If such subsequent facts or situations are capable of constituting, in themselves and independently of the previous alleged illegal acts, a basis for the claims raised, they are not excluded from the Court's jurisdiction by the temporal limitation. Whether the respondent can point to similar earlier facts or situations that would also have been contrary to its international obligations is therefore immaterial.

161. This is fully in line with the objective of the temporal limitation³⁵¹ and does not constitute a retroactive application of the optional clause declaration³⁵²: when adopting – or omitting to adopt – a certain conduct after accepting the Court's jurisdiction, the respondent is plainly in a position to foresee the legal proceedings and their consequences. It could not hide behind the excuse of having done the same before without having been called before the Court.

162. Germany's reliance on the orders on provisional measures rendered by the Court in the cases introduced by Yugoslavia against several States in 1999 cannot change this conclusion and misses the point³⁵³. The Court did not, in these cases, determine whether the dispute related to facts or situations predating Yugoslavia's optional clause declaration. It merely had to determine whether the dispute submitted to it was one that arose before or after the date of that declaration³⁵⁴. These are two different questions, as Germany itself acknowledges³⁵⁵. It is one thing to establish that a dispute arose before a given date and that subsequent facts did not give

³⁵⁰ GPO, para. 93.

³⁵¹ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 24.

³⁵² *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, pp. 35-36.

³⁵³ GPO, para. 91 (ii).

³⁵⁴ *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999*, p. 134, para. 26. See also *Legality of Use of Force (Yugoslavia v. Canada), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999*, p. 269, para. 25; *Legality of Use of Force (Yugoslavia v. Netherlands), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999*, p. 552, para. 26; *Legality of Use of Force (Yugoslavia v. Portugal), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999*, p. 666, para. 25.

³⁵⁵ GPO, para. 89, fn. 103, referring to and quoting from *Certain Property (Liechtenstein v. Germany), Judgment, I.C.J. Reports 2005*, p. 25, para. 48.

rise to a separate, new dispute later, but quite another to determine whether a dispute relates to facts or situations that occurred prior to the relevant date.

163. It is inapposite to infer from the Court's decisions in the cases introduced by Yugoslavia the conclusion that a dispute must necessarily encompass and relate to all similar facts and situations, or series of similar measures, regardless of when they occurred³⁵⁶. Otherwise, a State could simply rely on the fact that it always violated its international obligations to exclude the possibility of a dispute arising in relation to a new, specific violation of its obligations in the circumstances, facts and situations surrounding that violation. In each specific case, it is necessary to identify the source or real cause of the dispute. In the words of the Permanent Court:

“The question whether a given situation or fact is prior or subsequent to a particular date is one to be decided in regard to each specific case, just as the question of the situations or facts with regard to which the dispute arose must be decided in regard to each specific case.”³⁵⁷

II. The Dispute Is One “With Regard to Situations or Facts Subsequent to” Germany’s Optional Clause Declaration

164. In its Preliminary Objections, Germany makes a strained attempt to identify and selectively refer to dates or formulations in Nicaragua’s Memorial, often taken out of context, in order to create the impression that some of Nicaragua’s claims “do not have their real cause or source in ‘facts or situations subsequent to [30 April 2008]’”³⁵⁸. It even goes so far as to introduce facts or situations predating 30 April 2008³⁵⁹ – facts on which Nicaragua did not rely in its Memorial – in an effort to portray the dispute as grounded in facts that occurred before that date.

165. Through this erratic demonstration, Germany not only unduly rewrites the dispute submitted by Nicaragua to the Court³⁶⁰, but also ignores the interpretation and application by

³⁵⁶ To this effect, see *Right of Passage over Indian Territory (Portugal v. India)*, *Merits, Judgment*, I.C.J. Reports 1960, p. 34.

³⁵⁷ *Phosphates in Morocco, Judgment*, 1938, P.C.I.J., Series A/B, No. 74, p. 24.

³⁵⁸ GPO, paras. 92, 93, 101, 107, 113, 118.

³⁵⁹ GPO, para. 100 (iii) and (v).

³⁶⁰ See above, para. 7.

the Permanent Court and by the present Court of similar temporal limitations, in light of their objective and the distinction between the source of the rights or obligations subject of the dispute, on the one hand, and the facts and situations that have generated the dispute, on the other hand (A). Moreover, Germany is wrong to allege that facts or situations that occurred after 30 April 2008 and give rise to its international responsibility are inextricably linked and could not be separated from similar acts or omissions predating its optional clause declaration (B).

A. THE HISTORICAL BACKGROUND AND THE SOURCES OF THE RIGHTS AND OBLIGATIONS
AT ISSUE ARE NOT THE SOURCE OR REAL CAUSE OF THE DISPUTE

166. Germany repeatedly argues³⁶¹ that the mere fact that Nicaragua presented and referred to a comprehensive factual background in its Memorial, which includes facts or situations dating from well before 30 April 2008, is sufficient to show that the dispute submitted by Nicaragua – or some of its claims – does not have its source or real cause in facts or situations subsequent to that date.

167. This allegation is significantly overstated. The large majority of the facts presented by Nicaragua in Sections II, III and IV of Chapter 3 of its Memorial occurred clearly after 30 April 2008. For instance, Nicaragua comprehensively describes and analyzes the available data on licences for the export of military equipment granted by Germany “since 7 October 2023”³⁶². It details German conduct – or failures to prevent conduct – relating to the deprivation of natural resources in the OPT, participation in infrastructure projects that benefit or sustain the maintenance of the occupation of the OPT and the system of racial discrimination, segregation and apartheid, the installation and operation of surveillance technology in the OPT, the marketing and sale of real estate in illegal settlements in the OPT, financial support by German financial institutions, and academic cooperation occurring after 30 April 2008³⁶³ – and Germany neither mentions nor criticizes any of these facts in its Preliminary Objections³⁶⁴ even though Nicaragua’s claims rest on them³⁶⁵.

³⁶¹ GPO, paras. 94, 96, 100, 104, 105, 110, and 115.

³⁶² NM, paras. 183–243.

³⁶³ *Ibid.*, paras. 271–398.

³⁶⁴ See, in particular, GPO, paras. 100, 105 and 110.

³⁶⁵ See, *e.g.*, NM, paras. 328, 357, 367–370, 403, 425–426, 429, and 430.

168. More fundamentally, Nicaragua cannot be blamed for having presented to the Court facts and situations that it considers relevant for a proper understanding of its claims and arguments, even if these facts and situations are not the source or the real cause of the dispute. They constitute prior situations and facts that are relevant for and part of the overall context of the dispute, without being the particular facts or situations in respect of which this dispute has arisen.

169. This is, for instance, the case of Germany's unique or special relationship with Israel that sheds light on the influence Germany could and should have exerted to prevent genocide or to ensure respect of international humanitarian law³⁶⁶. Germany itself confirmed that its "responsibility for Israel's security" constitutes an "important factor" in assessing its relations with Israel, including in military matters³⁶⁷. However, neither Germany's special relationship with Israel, nor its self-proclaimed responsibility for Israel's security, nor even the modification of the political guidelines for arms exports by the Federal Security Council in 1982³⁶⁸, is the object of the dispute submitted by Nicaragua. They are, however, part of its background.

170. The parties before the Court, and the Court itself³⁶⁹, often consider it appropriate and useful to describe the historical background of a case. For instance, in *Jurisdictional Immunities of the State*, Germany devoted observations in its Memorial to the "historical background of the dispute" and noted that "[t]his does not mean that occurrences of the period preceding the entry into force of the European Convention [for the Peaceful Settlement of Disputes] for both parties

³⁶⁶ See NM, para. 321.

³⁶⁷ CR 2024/16, 9 April 2024, p. 17, para. 14 (Tams).

³⁶⁸ GPO, para. 100 (i) (*in fine*).

³⁶⁹ For some examples, see *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, I.C.J. Reports 2018, pp. 518-519, paras. 17, 19-25; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, pp. 262-265, paras. 14-20; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, pp. 559-562, paras. 14-20; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, pp. 842-844, paras. 15-21; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, pp. 693-694, paras. 59-62; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 431, para. 16; *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011, pp. 653-655, paras. 15-22; *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, I.C.J. Reports 2009, pp. 226-230, paras. 15-24; and, in advisory opinions, *Palestine Advisory Opinion*, paras. 51-71; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 426, para. 57.

will be included in the subject-matter of the dispute”³⁷⁰. The Court recalled in its judgment this historical background beginning in 1940 with Italy’s entry into World War II, continuing with Italy’s surrender and its declaration of war against Germany in 1943, Germany’s occupation of Italian territory and its “many atrocities against the population of that territory”, the 1947 Peace Treaty, the 1953 Federal Compensation Law, the 1961 Agreements between Germany and Italy, and the 2002 German law establishing the “Remembrance, Responsibility and Future” Foundation³⁷¹. It did so, although these facts and situations predated the temporal limitation contained in Article 27 (a) of the European Convention for the Peaceful Settlement of Disputes³⁷². Hence, it is inapposite to conclude from the mere presentation by a party of some broader factual and historical context in its written pleadings a sufficient reason to consider that these facts or situations constitute the source or the real cause of the dispute.

171. The same conclusion must be drawn in respect of other elements of the background of the present case that Germany singles out in its Preliminary Objections.

172. Germany takes issue with the fact that the Palestinian people’s inalienable right to self-determination has been disregarded “for decades”³⁷³. However, this cannot mean that the dispute submitted by Nicaragua against Germany in respect of the latter’s actions arising after 30 April 2008 is generated by the emergence of this inalienable right of the Palestinian people to self-determination or the corresponding obligations for States, including obligations resulting from the denial of the right to self-determination. First, there is simply no dispute between the Parties on the existence of that right or of the consequences flowing therefrom. It has not only been established and recalled by the Court³⁷⁴, but has also been recognized and accepted by Germany itself³⁷⁵. Second, rather than constituting the *faits générateurs* of the dispute, the right of the Palestinian people to self-determination, its continued denial and the consequences

³⁷⁰ Memorial of the Federal Republic of Germany, *Jurisdictional Immunities of the State (Germany v. Italy)*, 12 June 2009, pp. 8–12, paras. 7–12 (available at <https://www.icj-cij.org/sites/default/files/case-related/143/16644.pdf>).

³⁷¹ *Jurisdictional Immunities of the State (Germany v. Italy)*, Judgment, *I.C.J. Reports 2012*, pp. 110–113, paras. 20–26.

³⁷² *Jurisdictional Immunities of the State (Germany v. Italy)*, Counter-Claim, Order of 6 July 2010, *I.C.J. Reports 2010*, p. 310.

³⁷³ GPO, paras. 96 and 104.

³⁷⁴ *Palestine Advisory Opinion*, para. 243. See also NM, paras. 341–342.

³⁷⁵ NM, paras. 352–354.

thereof for Germany and other States constitute the source of the obligations and rights that are the object of the present proceedings.

173. The decision of the Court regarding Italy's counter-claims in *Jurisdictional Immunities of the State* is particularly relevant in this regard. The Court noted that "the dispute that Italy intend[ed] to submit to the Court by way of its counter-claim relate[d] to the existence and the scope of the obligation of Germany to make reparation to certain Italian victims of serious violations of humanitarian law committed by Nazi Germany between 1943 and 1945 ..., rather than to the violations themselves" and observed that "while those violations are the source of the alleged rights of Italy or its citizens, they are not the source or 'real cause' of the dispute"³⁷⁶. Therefore, those violations were not "the facts or situations to which the dispute in question relate[d]"³⁷⁷. The same conclusion must be drawn in respect of the right of the Palestinian people to self-determination, its continued denial and the consequences flowing therefrom. These are not the facts or situations constituting the real cause of the dispute submitted to the Court in the present proceedings.

174. This conclusion is also apposite in respect of Germany's arguments concerning the illegal occupation of the Palestinian territory since 1967³⁷⁸ or the régime of racial discrimination against Palestinians established since 1948³⁷⁹. These facts or situations have triggered obligations for third States, as Germany itself acknowledges³⁸⁰. But this, in itself, does not make these facts the source or real cause of the dispute framed by Nicaragua. Rather, they constitute the sources of the obligations and rights invoked in the present proceedings.

175. The historical background and the facts and situations that constitute the sources of the obligations and rights at issue in the present proceedings are therefore not relevant to the application of the temporal limitation in Germany's optional clause declaration. For the purposes of applying Germany's optional clause declaration, only the facts and situations that gave rise to the present dispute and are its real cause – all of which post-date 30 April 2008 – matter.

³⁷⁶ *Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010*, pp. 319–320, para. 26.

³⁷⁷ *Ibid.*

³⁷⁸ GPO, paras. 104 and 114.

³⁷⁹ *Ibid.*, paras. 104 and 109.

³⁸⁰ *Ibid.*, para. 104.

B. FACTS AND SITUATIONS THAT OCCURRED AFTER THE RELEVANT DATE
ARE AUTONOMOUS AND NOT CONDITIONED BY EARLIER CONDUCT

176. Germany repeatedly argues that its conduct after 30 April 2008 cannot be separated from, or is inextricably linked to, conduct that occurred prior to that date so as to maintain that the dispute submitted by Nicaragua has its real cause or source in facts predating its optional clause declaration. As set out above³⁸¹, this attempt to subsume the circumstances of the present dispute under the Court's findings in previous cases – such as *Phosphates in Morocco*, *Certain Property*, or *Jurisdictional Immunities of the State* – largely disregards the particular factual and legal circumstances in these cases and is unconvincing.

177. Indeed, Germany cannot point to any fact or situation comparable to the 1920 dahirs establishing the monopoly régime or the 1925 decision of the Department of Mines in *Phosphates in Morocco*, to the Settlement Convention in *Certain Property*, or to the provisions of the 1947 Peace Treaty in *Jurisdictional Immunities of the State*, which constituted not just a previous wrongful act, but *the* prior wrongful conduct to which no subsequent conduct added anything. Any subsequent conduct was found to be inseparable or inextricably linked to these previous facts and situations because their legality or wrongfulness was conditioned by the legality of wrongfulness of those earlier facts or situations.

178. This is not the case of the conduct, facts and circumstances on which Nicaragua relies in the present case. Nicaragua does not claim that the régime established by Germany for the export of military equipment is illegal, just as it does not claim that Germany failed to comply with its own legal régime when granting export licences³⁸². Nicaragua's claims are based on the fact that the exports authorized by Germany, on whatever basis, are contrary to its international obligations under international law, including the Genocide Convention, international humanitarian law and international human rights law, as reflected, *inter alia*, in CERD, and customary international law. Each of Germany's breaches of international law alleged by Nicaragua must be assessed independently, in the light of the law and facts that existed when those breaches occurred.

179. Rather than presenting its licensing practice as a whole, based on predetermined general or generic decisions, it has been Germany's consistent position, including before the

³⁸¹ See above, paras. 157–160.

³⁸² NM, para. 245.

Court³⁸³, that each licence for the export of military equipment is self-standing and is assessed on a case-by-case basis, in light of the situation at hand, after careful evaluation, taking into account foreign and security policy considerations in accordance with legal and political guidelines. Germany's own Political principles for the export of war weapons and other military equipment confirm that "[i]n accordance with the principle of case-by-case examination, the Federal Government will not grant blanket privileges to individual countries or regions"³⁸⁴. Germany also confirmed before the Court that "[l]e droit allemand impose de tenir compte de l'évolution de la situation sur le terrain", and suggested that this was indeed the reason for the decrease in export licences in early 2024³⁸⁵. German courts and tribunals have rejected interim relief and claims, considering that potential further breaches of German rules on the export of military equipment were not foreseeable and could not be deduced from previous authorizations³⁸⁶. The same holds true for the export and delivery of submarines, as confirmed by Germany before the Court³⁸⁷.

180. Therefore, contrary to what Germany now claims in its Preliminary Objections, the facts and situations concerning the delivery of military equipment on which Nicaragua's claims are, *inter alia*, based, are entirely separate and separable facts which can and must be assessed independently of any previous similar conduct by Germany.

³⁸³ CR 2024/16, 9 April 2024, p. 18, para. 17 (Tams); Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, paras. 13–18. See also *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. 566, para. 17.

³⁸⁴ Political Principles of the Federal Government for the export of war weapons and other military equipment, 26 June 2019, point III.1 (NM, Annex 10).

³⁸⁵ CR 2024/16, 9 April 2024, pp. 46–47, paras. 23–28 (Palchetti).

³⁸⁶ Administrative Tribunal Berlin, decision of 10 June 2024, 4 L 119/24 (NM, Annex 29); Higher Administrative Tribunal Berlin-Brandenburg, decision of 8 August 2024, OVG 1 S 46/24 (NM, Annex 36); Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 130/24, MN 31 (Annex 35); Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 45/24, MN 28 (Annex 34). See also NM, para. 258.

³⁸⁷ According to the information provided by Germany during the oral hearings concerning Nicaragua's request for provisional measures, "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). The latter licence is, according to the information available, still outstanding. See NM, para. 142, fn. 262. See also Written questions with answers received from the Federal Government in the week of 18 August 2025, German *Bundestag*, doc. 21/1324, 22 August 2025, answer to question no. 42 (Annex 27); Response of the Federal Government to the parliamentary question by members of the *Bundestag* Lea Reisner, Doris Achelwilm, Gökyay Akbulut, other members of the *Bundestag* and the parliamentary group *Die Linke*, Authorisations for arms deliveries to Israel, German *Bundestag*, doc. 21/1958, 2 October 2025, answer to question no. 10 (Annex 31); Written questions with answers received from the Federal Government in the week of 8 December 2025, German *Bundestag*, doc. 21/3236, 12 December 2025, answer to question no. 107 (Annex 44).

181. The fact that Germany may have breached its international obligations before 30 April 2008 through similar conduct does not mean that all breaches that occurred after that date are non-separable or inextricably linked to those earlier violations. A dispute does not necessarily have to be grounded in or generated by the very first similar violation of an international obligation and an applicant is not required to search for or ground its claims on such historical violations. Each fact or situation that occurred after 30 April 2008 and that constitutes one or several breaches of Germany's international obligations – a question to be addressed during the merits phase of the proceedings – falls within the temporal limits of Germany's optional clause declaration. For each of these facts or situations, Germany was fully in a position to appreciate and foresee the legal proceedings to which these facts and situations might give rise³⁸⁸. This was the case for the approval and delivery of military equipment that occurred after 30 April 2008³⁸⁹, as well as for Germany's failure to take measures when such military equipment was used to undermine the rights of Palestinians and of the Palestinian people. The same is true, and Germany does not claim otherwise, when 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 after 2008³⁹⁰.

182. In an effort to avoid this conclusion, Germany appears to suggest that the mere fact that an obligation binding on a State existed well before the relevant date, and that a State failed to comply with that obligation from the moment it arose, means that the real cause of the dispute must necessarily have occurred before that date. However, such a conclusion again disregards the distinction between the source of the right or obligation subject to the proceedings, on the one hand, and the facts or situations that constitute the source and real cause of the dispute, on the other hand. It also disregards the purpose of the temporal limitation. Even if, in such circumstances, a State might not have been in a position to foresee proceedings concerning its failure to implement or respect its obligations before the critical date, it can fully appreciate the consequences of judicial scrutiny and proceedings concerning its non-compliance once it has submitted its optional clause declaration. In the words of the Court³⁹¹, accepting jurisdiction in such a situation does not amount to a retroactive application of the optional clause declaration, because the Court will only have to pass judgment upon the existence of the right claimed as at

³⁸⁸ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 24. See also above, para. 154.

³⁸⁹ NM, paras. 183–243.

³⁹⁰ NM, paras. 271–307.

³⁹¹ *Right of Passage over Indian Territory, Merits, Judgment, I.C.J. Reports 1960*, p. 35.

the relevant date or thereafter, upon the alleged failure to comply with the relevant obligations at that time and upon any redress in respect of such a failure. The question of whether Germany had engaged its responsibility earlier is immaterial. The Court is not called upon to decide that separate issue, and it need not pronounce on it in order to address Nicaragua's case.

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183. For the reasons set out above, the dispute submitted by Nicaragua and the claims it has formulated do not have their source or real cause in facts or situations predating 30 April 2008. The dispute and these claims fall squarely within the temporal limits set out in Germany's optional clause declaration, as it is a "dispute[] arising after the present declaration, with regard to situations or facts subsequent to this date". Germany's objection must therefore be rejected.

CHAPTER 5.
**THE *MONETARY GOLD* PRINCIPLE DOES NOT BAR THE COURT FROM
EXERCISING ITS JURISDICTION TO ADJUDICATE THE PRESENT CASE**

184. In its Preliminary Objections, Germany devoted lengthy arguments to the *Monetary Gold* principle. According to Germany:

“Even if the Court were to find that it had jurisdiction to entertain Nicaragua’s claims, the great majority of these claims would be inadmissible. This is because all Nicaragua’s major claims require the Court to adjudicate upon the lawfulness of Israel’s conduct in the absence of its consent or participation.”³⁹²

185. However, Germany itself recognizes that the principle is irrelevant concerning at least one of Nicaragua’s claims. Although Germany argues that “[t]he wrongfulness of Israel’s conduct is a prerequisite to any finding of breach by Germany”³⁹³, it concedes that the Court would not be precluded by the *Monetary Gold* principle from exercising its jurisdiction in respect of its responsibility for Germany’s breaches of the obligation to prosecute and punish individuals responsible for serious breaches of obligations under peremptory norms of general international law. According to Germany, the *Monetary Gold* principle:

“would not apply with respect to Nicaragua’s claim at Memorial, para. 484(10), that Germany ‘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’ (emphasis added) insofar as the alleged breach is based on the objective fact of an accusation.”³⁹⁴

186. Nicaragua takes note of this admission.

187. However, for the most part, the conclusions drawn by Germany from that case are erroneous. This results from an oversimplification of the *Monetary Gold* principle as applied by the Court, as well as from a distortion of the claims submitted by Nicaragua. In this chapter,

³⁹² GPO, para. 119.

³⁹³ *Ibid.*, p. 67.

³⁹⁴ *Ibid.*, para. 124, fn. 186.

Nicaragua will revisit the so-called “*Monetary Gold* principle” and Germany’s overly broad interpretation of that principle. It will show that, in the circumstances of the present case, the principle – assuming it really constitutes a legal principle – applies when considered in its entirety: even if Israel’s legal interests are accepted as being involved, Israel’s responsibility is not a prerequisite for determining Germany’s own responsibility for its own breaches of its own obligations (I). That is even more so because, in this case, it is not a question of protecting Israel’s interests but those of the international community of States as a whole. In any event, although not the subject-matter of the present proceedings, Israel’s responsibility is well established and has been confirmed, on a number of occasions, including by the Court and by Germany itself (II).

I. The Determination of Israel’s Responsibility Is Not the Subject-Matter of the Present Dispute

188. As Germany itself acknowledges, the *Monetary Gold* principle can bar the Court’s jurisdiction only insofar as a determination of the responsibility of a third party to the proceedings is a necessary prerequisite for ruling on Germany’s responsibility (A). Germany nonetheless incorrectly contends that the violations alleged by Nicaragua mostly concern preventive obligations, the assessment of which would require the Court to rule on the responsibility of Israel before it could assess whether Germany has breached its own obligations. Even assuming that the obligations at issue were merely obligations of prevention, this would not preclude the Court from exercising its jurisdiction (B).

A. THE *MONETARY GOLD* PRINCIPLE WOULD PRECLUDE THE COURT FROM EXERCISING JURISDICTION ONLY IF IT WERE FIRST REQUIRED TO RULE ON THE RESPONSIBILITY OF A THIRD STATE

189. As is well known, the so-called “*Monetary Gold* principle” originates from the eponymous case titled *Monetary Gold Removed from Rome in 1943*. During the hearings on provisional measures, Germany asserted that the principle does “no more than reflect the basic rule on the essential need for consent”³⁹⁵ as a condition for exercising jurisdiction³⁹⁶. This is partially true, but Germany uses this so-called principle as a means of evading responsibility

³⁹⁵ CR 2024/16, 9 April 2024, p. 25, para. 7 (Wordsworth).

³⁹⁶ *Ibid*, p. 28, para. 16 (Wordsworth).

by misinterpreting it. In effect, although it admits that “the *Monetary Gold* principle may not be a barrier to judicial proceedings in every case”³⁹⁷, Germany wrongly reduces the principle to that equivalence. In reality, the principle does not merely “reflect” the “basic rule” of consent to jurisdiction; it draws particular *consequences* from it. And it is these consequences that, *together*, form the *Monetary Gold* principle.

190. The very essence of this principle is twofold and consists of one positive rule combined with one exception. On the one hand, what could be called the “jurisdictional” or “positive” aspect of the principle recognizes that even if a third State can claim a legal interest in a case brought before the Court and could be “affected by the decision in the case”³⁹⁸, the Court may settle the dispute in question. On the other hand, the “exclusive” or “negative” aspect operates as an exception to that general rule: the Court cannot exercise jurisdiction if – and only if – in special circumstances, the legal interest of the third State “would not only be affected by a decision, but would form the very subject-matter of the decision” the Court would deliver³⁹⁹.

191. As Germany points out, the Court identified this principle and declined to rule on the dispute opposing Italy to France, the United Kingdom of Great Britain and Northern Ireland and the United States of America, considering that resolving that dispute would have required “the determination of ... questions which relate to the lawful or unlawful character of certain actions of Albania vis-à-vis Italy”, whereas Albania was not a party to the proceedings⁴⁰⁰. Germany then asserts that “[s]ince the question of priority as between Italy and the United Kingdom was dependent upon the Court accepting that Italy had a valid claim to the gold, the Court concluded that it could not adjudicate upon that question”⁴⁰¹. According to Germany, “[t]he same conclusion must be reached with respect to the great majority of the claims now brought by Nicaragua”⁴⁰².

³⁹⁷ *Ibid.*

³⁹⁸ *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, Judgment, I.C.J. Reports 1954, p. 32 (quoting from Article 62 of the Statute).

³⁹⁹ *Ibid.*

⁴⁰⁰ *Ibid.* See also GPO, para. 121.

⁴⁰¹ GPO, para. 123 quoting: “*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. 33.”

⁴⁰² GPO, para. 124.

192. At the outset, it should be noted that, although the Court has been called upon on several occasions to apply this alleged principle⁴⁰³, it has refused to exercise its jurisdiction on this basis on only one other occasion⁴⁰⁴. There is no basis for doing so in the circumstances of the present case.

193. The Court had an opportunity to clarify the principle in the case concerning *Military and Paramilitary Activities in and against Nicaragua*. The United States had argued that:

“Nicaragua has failed to bring before the Court parties whose presence and participation is necessary for the rights of those parties to be protected and for the adjudication of the issues raised in the Application. The United States first asserts that adjudication of Nicaragua’s claim would necessarily implicate the rights and obligations of other States, in particular those of Honduras, since it is alleged that Honduras has allowed its territory to be used as a staging ground for unlawful uses of force against Nicaragua, and the adjudication of Nicaragua’s claims would necessarily involve the adjudication of the rights of third States ... Secondly, it is claimed by the United States that it is fundamental to the jurisprudence of the Court that it cannot determine the rights and obligations of States without their express consent or participation in the proceedings before the Court.”⁴⁰⁵

In view of these allegations, the Court considered that:

“Where ... 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, with binding force for the parties only, and no other State, in accordance with Article 59 of the Statute. As the Court has already indicated (paragraph 74, above) other States which consider that they may be affected are free to institute separate proceedings, or to employ the procedure of intervention. There is no trace, either in the Statute or in the practice of international tribunals, of an ‘indispensable parties’ rule of the kind argued for by the United States, which would only be conceivable in parallel to a power, which the Court does not possess, to direct that a third State be made a party to proceedings. The circumstances of the Monetary Gold case probably represent the limit of the power of the Court to refuse to exercise its jurisdiction; and none of the

⁴⁰³ See, e.g., *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; *Certain Phosphate Lands in Nauru* (Nauru v. Australia), *Preliminary Objections, Judgment*, I.C.J. Reports 1992, p. 261, para. 55; *Land and Maritime Boundary between Cameroon and Nigeria* (Cameroon v. Nigeria), *Preliminary Objections, Judgment*, I.C.J. Reports 1998, pp. 311-313, paras. 79-83; *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), *Merits, Judgment*, I.C.J. Reports 2005, pp. 237-238, paras. 203-204; *Application of the Interim Accord of 13 September 1995* (the former Yugoslav Republic of Macedonia v. Greece), *Judgment*, I.C.J. Reports 2011, pp. 660-661, para. 43; *Arbitral Award of 3 October 1899* (Guyana v. Venezuela), *Preliminary Objection, Judgment*, I.C.J. Reports 2023, p. 284, para. 77.

⁴⁰⁴ *East Timor* (Portugal v. Australia), *Judgment*, I.C.J. Reports 1995, p. 105, para. 35.

⁴⁰⁵ *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. 430, para. 86.

States referred to can be regarded as in the same position as Albania in that case, so as to be truly indispensable to the pursuance of the proceedings.”⁴⁰⁶

194. The Court thus confirmed that, far from being automatic, the application of the “exclusive aspect” of the *Monetary Gold* principle is acceptable only if a third State is in the same legal position as Albania in the *Monetary Gold Removed from Rome in 1943* case. As explained by Nicaragua in its Memorial, the application of this aspect of the principle by the Court “is quite exceptional”⁴⁰⁷. But in all cases but one, the Court declined to apply it, considering that the legal interests of third parties did not constitute the *very subject-matter* of the decision that it was called upon to render, since the Court was not required to establish their responsibility. To borrow Germany’s wording, “what matters [regarding the application of the *Monetary Gold* exception] is whether the Court would have to rule upon the conduct of a third State as a *prerequisite* to a finding on the responsibility of the State before it, such that the *vital issue* to be settled concerns the international responsibility of a third State”⁴⁰⁸.

195. In the case of *Certain Phosphate Lands in Nauru*, the Court dealt with a dispute concerning the rehabilitation of certain phosphate lands that were mined under the tripartite administration of Australia, New Zealand and the United Kingdom prior to Nauru’s independence. In that case, Australia argued that:

“since together with itself, New Zealand and the United Kingdom made up the Administering Authority, any decision of the Court as to the alleged breach by Australia of its obligations under the Trusteeship Agreement would necessarily involve a finding as to the discharge by those two other States of their obligations in that respect, which would be contrary to the fundamental principle that the jurisdiction of the Court derives solely from the consent of States”⁴⁰⁹.

The Court however denied the application of the *Monetary Gold* exception by stating:

“In the present case, the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to be rendered on the merits of Nauru’s Application and the situation is in that respect different from that with which the Court had to deal in the *Monetary Gold* case. In the latter case, the determination of Albania’s responsibility was a prerequisite for a decision to be taken on Italy’s claims. In the present case, the determination of the responsibility

⁴⁰⁶ *Ibid.*, p. 431, para. 88.

⁴⁰⁷ NM, para. 39.

⁴⁰⁸ GPO, para. 130 (emphasis added).

⁴⁰⁹ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 259, para. 49.

of New Zealand or the United Kingdom is not a prerequisite for the determination of the responsibility of Australia, the only object of Nauru's claim."⁴¹⁰

196. In *Armed Activities on the Territory of the Congo*, the Court also refused to apply the *Monetary Gold* principle. It considered that:

"the interests of Rwanda clearly do not constitute 'the very subject-matter' of the decision to be rendered by the Court on the DRC's claims against Uganda, nor is the determination of Rwanda's responsibility a prerequisite for such a decision. The fact that some alleged violations of international human rights law and international humanitarian law by Uganda occurred in the course of hostilities between Uganda and Rwanda does not impinge on this finding. Thus it is not necessary for Rwanda to be a party to this case for the Court to be able to determine whether Uganda's conduct was a violation of these rules of international law."⁴¹¹

197. In the *Application of the Interim Accord of 13 September 1995* case, the Court was called upon to deal with a dispute concerning the interpretation and implementation of the Interim Accord of 13 September 1995. It considered that:

"the Respondent's argument that the rights and interests of a third party (which it identifies as NATO and/or the member States of NATO) would form the subject-matter of any decision which the Court might take, with the result that the Court should decline to hear the case under the principle developed in the case of the *Monetary Gold Removed from Rome in 1943*, is misplaced. The present case can be distinguished from the *Monetary Gold* case since the Respondent's conduct can be assessed independently of NATO's decision, and the rights and obligations of NATO and its member States other than Greece do not form the subject-matter of the decision of the Court on the merits of the case ..."⁴¹²

198. The only case in which the Court applied the exception set forth in the 1954 Judgment, was the *East Timor* case. In that case, referring to *Nauru*, the Court emphasized again that "it is not necessarily prevented from adjudicating when the judgment it is asked to give might affect the legal interests of a State which is not a party to the case"⁴¹³. However, it

⁴¹⁰ *Ibid.*, p. 261, para. 55.

⁴¹¹ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Merits, Judgment, I.C.J. Reports 2005, p. 238, para. 204.

⁴¹² *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment, I.C.J. Reports 2011, pp. 660-661, para. 43 (referring to *Monetary Gold Removed from Rome in 1943 (Italy v. France; United Kingdom and United States of America)*, Preliminary Question, Judgment, I.C.J. Reports 1954, p. 19; *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 105, para. 34; and *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 261, para. 55).

⁴¹³ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 104, para. 34. See also *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, pp. 261-262, para. 55.

considered that, “in order to decide the claims of Portugal, it would have to rule, as a prerequisite, on the lawfulness of Indonesia’s conduct in the absence of that State’s consent”⁴¹⁴.

199. Although each case is specific and highly dependent on its circumstances, the case law shows that it is only under the condition that the rights and obligations of a third State constitute *the very subject-matter of the dispute* that the exception provided for by the *Monetary Gold* principle could prevent the Court from exercising its jurisdiction; the mere existence of a legal interest of a third party does not trigger the application of the principle.

200. The present case is very different from both the *Monetary Gold Removed from Rome in 1943* and the *East Timor* cases. In these two cases, the Court concluded that the respective third State’s (*i.e.*, Albania’s and Indonesia’s) “legal interests would not only be affected by a decision, but would form the very subject-matter of the decision”⁴¹⁵ and that its “rights and obligations would thus constitute the very subject-matter”⁴¹⁶ of the judgments the Court had been asked to deliver. While Israel, who is not a party to the present proceedings, may have a legal interest at stake in the resolution of the present dispute, its rights and obligations in no way constitute the very subject-matter of the dispute submitted to the Court.

201. Israel, a third State in the present dispute, may have a legal interest in its settlement in that, for example, the Court might have to base itself on documents or legal findings establishing Israel’s violations of certain obligations. However, it is neither necessary nor required for the Court to rule on Israel’s responsibility in order to determine Germany’s responsibility for its own violations of its own and distinct legal obligations. That is the distinction between a right and an interest. As the Court made clear in *Barcelona Traction*: “Not a mere interest affected, but solely a right infringed involves responsibility.”⁴¹⁷

202. In the present case, Israel’s interest is not the very subject matter of the present case. It is firmly recalled that, in its Application, Nicaragua defined the dispute it submitted to the Court as a

⁴¹⁴ *Ibid.*, p. 105, para. 35.

⁴¹⁵ *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, Judgment, I.C.J. Reports 1954, p. 32.

⁴¹⁶ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 105, para. 34.

⁴¹⁷ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962), Second Phase*, Judgment, I.C.J. Reports 1970, p. 36, para. 46.

“dispute between Nicaragua and Germany concerning, but not limited to, the interpretation and application of the Genocide Convention, the Geneva Conventions of 1949 – and in particular the Convention IV relative to the Protection of Civilian Persons in Time of War – and their Additional Protocols of 1977, the principles and customary rules of international law, including intransgressible principles of international humanitarian law and peremptory norms of general international law, which involves the prohibition of racial discrimination and apartheid, *as a result of the conduct of Germany*.”⁴¹⁸

Nicaragua also made clear in its Memorial that:

“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 responsible.”⁴¹⁹

203. It may be that, when the Court pronounces itself on *Germany’s* violations in the present case, Israel’s interests will be concerned or affected by implication. But no more than, for example, the United Kingdom’s or New-Zealand’s were in the *Nauru* case or Rwanda’s in *Armed Activities on the Territory of the Congo*.

204. Finally, as the Court made very clear in the *Military and Paramilitary Activities in and against Nicaragua* case, “[t]here is no trace, either in the Statute or in the practice of international tribunals, of an ‘indispensable parties’ rule”⁴²⁰. By taking this position, the Court firmly rejected the position of the United States, which had argued that, in light of communications addressed to the Court by Costa Rica and El Salvador:

“... it [was] quite clear that Nicaragua’s claims [were] inextricably linked to the rights and interests of those other States’, and added ‘Any decision to indicate the interim measures requested, or a decision on the merits, would necessarily affect the rights of States not party to the proceedings’”⁴²¹.

⁴¹⁸ Application, para. 31 (emphasis added).

⁴¹⁹ NM, para. 9.

⁴²⁰ *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. See also *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 260, para. 51.

⁴²¹ *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, pp. 430-431, para. 87.

205. The *Monetary Gold* principle as applied by the Court should not, in the present case, lead to the resurrection of the argument previously advanced by the United States and rejected by the Court more than 40 years ago. It is well established that any decision rendered by the Court in the present case will apply as *res judicata* only to State Parties to the case, and that it is for any third State with a legal interest to seek to intervene if it so wishes. This is expressly provided for by Article 62 of the Statute of the Court.

206. As Germany seems to accept⁴²², in reality, the so-called *Monetary Gold* principle is but an illustration, only applicable in exceptional circumstances, of the principle of consent to jurisdiction. However, Germany's interpretation of the principle of consent to jurisdiction cannot prevent the Court from fulfilling its function, which "is to decide in accordance with international law such disputes as are submitted to it"⁴²³, when the States parties to the dispute have expressed their consent to its exercise. Such an interpretation would also have the effect of rendering meaningless Articles 59 and 62 of the Statute, whose combined function is to protect third States with a legal interest in the settlement of the case before the Court.

B. THE SPECIAL CHARACTER OF GERMANY'S OBLIGATIONS DOES NOT EXEMPT IT FROM HAVING ITS RESPONSIBILITY ENGAGED BEFORE THE COURT

207. In its Memorial, Nicaragua submitted 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.

208. In response to these submissions, Germany argues that, given the nature of the obligation to prevent, the Court would be barred from exercising jurisdiction over most of Nicaragua's claims by virtue of the *Monetary Gold* principle. The Court, in Germany's view,

⁴²² See above para. 189.

⁴²³ Article 38 of the Statute.

would need to establish Israel's responsibility as a prerequisite for addressing Nicaragua's submissions. However, Articles I to III of the 1948 Convention on the *Prevention and Punishment of the Crime of Genocide* establishes an autonomous obligation of prevention, as the Court held in *Bosnia and Herzegovina v. Serbia and Montenegro*⁴²⁴. Furthermore, it is incumbent upon Germany to prevent other serious violations of international law, whether conventional or customary (1), in particular its obligation to respect and to ensure respect for international humanitarian law (2), which goes beyond the obligation to prevent, or to facilitate and cooperate in bringing about the Palestinian people's right to self-determination, not to recognize, aid or assist Israel in the maintenance of its continued occupation of the OPT, including the imposition of policies and practices in the OPT of racial discrimination, segregation and apartheid (3).

1. Genocide

209. The obligation to prevent genocide is well established and applies *erga omnes*. According to Article 1 of the Genocide Convention, "[t]he Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish." Moreover, "the principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation"⁴²⁵, which means that the obligation to prevent genocide is also a customary obligation. The obligation to prevent genocide arises where there is a serious risk of genocide⁴²⁶. In the present case, the risk of genocide was established and known to Germany at the latest by the end of 2023⁴²⁷.

210. Germany attempts to neutralize this obligation by relying on the position of the Court in the 2007 *Bosnia Genocide* judgment:

"[A] State can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed. It is at the time when commission of the

⁴²⁴ *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. 220-221, para. 429.

⁴²⁵ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, I.C.J. Reports 1951, p. 23. See also *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction of the Court and Admissibility of the Application, Judgment, I.C.J. Reports 2006, p. 31, para. 64.

⁴²⁶ This is also confirmed by Article III (d) of the Genocide Convention criminalizing "Attempt to commit genocide". See also below, paras. 214-216.

⁴²⁷ NM, paras.120-123 and 437-448.

prohibited act (genocide or any of the other acts listed in Article III of the Convention) begins that the breach of an obligation of prevention occurs. In this respect, the Court refers to a general rule of the law of State responsibility, stated by the ILC in Article 14, paragraph 3, of its Articles on State Responsibility:

‘3. The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.’

This obviously does not mean that the obligation to prevent genocide only comes into being when perpetration of genocide commences; *that would be absurd, since 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. However, if neither genocide nor any of the other acts listed in Article III of the Convention are ultimately carried out, then a State that omitted to act when it could have done so cannot be held responsible *a posteriori*, since the event did not happen which, under the rule set out above, must occur for there to be a violation of the obligation to prevent.”⁴²⁸

211. Germany notes that this finding did not deter the Court from ruling on Serbia and Montenegro’s conduct regarding the massacres at Srebrenica “because these are the only acts in respect of which the Court had concluded in this case that genocide was committed”⁴²⁹. Then Germany asserts that it

“can only be held responsible for breaching the obligation to prevent genocide if a genocide has actually been (or is being) committed. Nicaragua is asking the Court to make a positive finding that Germany ‘has *breached* and continues to *breach*’ the obligation of prevention by ‘failing to prevent the ongoing genocide’.^[430] The question is thus not whether the obligation of prevention may have been triggered (an issue on which the Court also focused in the *Bosnian Genocide* case), but whether the obligation has been violated. That requires the Court to rule on whether Israel is committing genocide. Thus, the Court would ‘necessarily have to rule upon the lawfulness of [Israel’s] conduct as a prerequisite’ to the determination of this claim.^[431]”⁴³²

⁴²⁸ *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 (emphasis added).

⁴²⁹ *Ibid.*, p. 222, para. 432.

⁴³⁰ GPO, fn. 223: “Application, para. 67(1); Memorial, para. 484(1) (emphasis added).”

⁴³¹ *Ibid.*, fn. 224: “*East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 104, para. 33.”

⁴³² *Ibid.*, para. 150.

212. There is a fundamental mistake in this assertion: it is clearly not true that the question is not whether the obligation may have been triggered. On the contrary, it is precisely one of the main questions. The case law, cited by Germany itself, confirms that the question on this point is whether there have been, at any relevant time, circumstances that have triggered Germany's obligation. It is plain that such circumstances did and continue to exist, including at the time this Written Statement is submitted⁴³³. It is also worth noting that the Court has itself never hesitated to impose provisional measures as soon as the duty to prevent is incurred⁴³⁴ or 'triggered' to use Germany's language. This position is hardly compatible with the idea that the duty of prevention is generally dependent on the effective occurrence of the predictable genocide.

213. In *Bosnia and Herzegovina v. Serbia and Montenegro*, the Court found that the massacres of Srebrenica "were acts of genocide"⁴³⁵. However, the Court also considered that Bosnia and Herzegovina had

"not established that any of the [other] widespread and serious atrocities, complained of as constituting violations of Article II, paragraphs (a) to (e), of the Genocide Convention, were accompanied by the necessary specific intent (*dolus specialis*) on the part of the perpetrators"⁴³⁶.

For this reason, and for this reason only, the Court did not need to dwell upon the question whether Serbia had breached its obligation to prevent genocide or acts of genocide for these atrocities⁴³⁷.

214. In the present case, Germany cannot base itself on any finding of the Court that no genocide or genocidal acts are at stake; on the contrary, the Court ruled, in its Order of

⁴³³ NM, paras.120-123 and 437-448.

⁴³⁴ See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993, p. 24, para. 52 (1); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020, p. 30, para. 86 (1) and (3); *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. 28-29, paras. 78-81 and pp. 30-31, paras. 86 (1) and (3); *Request for the Modification of the Order Indicating Provisional Measures of 26 January 2024*, Order of 28 March 2024, I.C.J. Reports 2024, pp. 527-528, para. 51 (2) (b).

⁴³⁵ *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. 166, para. 297.

⁴³⁶ *Ibid.*, p. 198, para. 376.

⁴³⁷ *Ibid.*, pp. 221-222, para. 431 *in fine*. For the full quote, see below, para. 215.

26 January 2024 in the case of *South Africa v. Israel* 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”⁴³⁸. These rights included the “right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III” of the 1948 Convention⁴³⁹. In the absence of a decision, whether by the Court or by any other body empowered to rule on the matter, the obligation to prevent remains unaffected and the Court can clearly rule on its violations by Germany without having to concern itself with the *Monetary Gold* principle.

215. Furthermore, Nicaragua recalls the argument it already made in its Memorial, and which remains unanswered by Germany:

“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.’^[440] 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.

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 [the Court’s] case law taken as a whole, from the provisional measures orders issued in cases based upon the Genocide Convention^[441], 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

⁴³⁸ *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. 28, para. 74.

⁴³⁹ *Ibid.*, p. 23, para. 54.

⁴⁴⁰ NM, fn. 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.”

⁴⁴¹ See *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; *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 *Request for the Modification of the Order of 28 March 2024*, Order of 24 May 2024, I.C.J. Reports 2024, p. 649.

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.”⁴⁴²

Therefore, the Court is not required to determine that a genocide has occurred in order to find that Germany has breached *its* obligation to prevent genocide, whether under Article I of the Genocide Convention or under customary international law – although Nicaragua has no doubt that a genocide has taken and is taking place and noting that, in any event, the Court already recognized that there was, at least, a serious risk of genocide⁴⁴³.

216. In any case, the responsibility of another State for genocide or genocidal acts is not a condition for finding that a State is responsible for not preventing these acts. In the *Bosnian Genocide* case, the Court did not determine that any State Party was responsible for having actually committed genocide. It determined that genocide was committed by individuals and groups⁴⁴⁴, and that an obligation to prevent genocide arose when there was a “serious risk” of the crime being committed⁴⁴⁵. In the situation before the Court, to the extent that there is a serious risk of the commission of genocide in Gaza, obligations arise with respect to all States.

217. In addressing the claims submitted by Nicaragua, the Court is not even required to proceed as it did in the *Bosnian Genocide* case. To determine that Germany has failed and is failing to prevent the commission of a genocide and genocidal acts against the Palestinian people, in particular in the Gaza Strip, the Court only needs to note that these crimes occurred, have and still are likely to occur against the Palestinian people, anywhere under Israel’s control, whether in the Gaza Strip or elsewhere in the OPT. In this respect, the commission of such genocidal acts is well documented, and Nicaragua remains at the Court’s disposal to furnish all

⁴⁴² NM, paras. 452-453.

⁴⁴³ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the indication of provisional, Order of 26 January 2024, I.C.J. Reports 2024, pp. 26-28, paras. 65-74; 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. 521, para. 27 and p. 525, para. 40; Request for the Modification of the Order of 28 March 2024, Order of 24 May 2024, I.C.J. Reports 2024, p. 658, para. 28 and p. 663, para. 47.

⁴⁴⁴ *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. 166, para. 297.

⁴⁴⁵ *Ibid.*, pp. 221-222, para. 431.

necessary information that would permit the Court to make such a determination on the merits⁴⁴⁶.

218. The same reasoning applies to Germany's complicity in genocide.

219. According to Germany:

“as the Court explained in the *Bosnian Genocide* case, ‘there cannot be a finding of complicity against a State unless at the least its organs were aware that genocide was about to be committed or was under way, and if the aid and assistance supplied, from the moment they became so aware onwards, to the perpetrators of the criminal acts or to those who were on the point of committing them, *enabled or facilitated the commission of the acts*’.^[447] Complicity in genocide is dependent on the commission of genocide by some third party. In the absence of a finding of genocide, the question of complicity does not arise.^[448] Nicaragua’s claims thus again require to establish to the Court’s satisfaction the commission of genocide – in the absence of the third State allegedly responsible for that genocide.”⁴⁴⁹

220. At this stage, the Court is not called upon to determine if the conditions for deciding whether Germany was complicit in the commission of a genocide are met but only if Nicaragua’s submissions warrant the application of the *Monetary Gold* principle. In this respect, the *Bosnian Genocide* case is again helpful to establish that the Court is entitled to exercise its jurisdiction. In that case, the Court considered that some members of the VRS (also called the Army of the Republika Srpska or the Bosnian Serb Army) committed genocide in Srebrenica⁴⁵⁰. Although the Court did not establish, or consider it necessary to establish, the responsibility of a third State for that genocide, the Court assessed to what extent Serbia and Montenegro were complicit in the commission of that genocide⁴⁵¹. In the present case, Germany contends that by virtue of *Monetary Gold*, the Court cannot proceed ‘in the absence of the third State allegedly responsible for that genocide’. But in *Bosnia and Herzegovina v. Serbia and Montenegro* the Court did not require the presence of any third State.

⁴⁴⁶ See however below, paras. 244-268.

⁴⁴⁷ GPO, fn. 235: “*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. 432 (emphasis added).”

⁴⁴⁸ *Ibid.*, fn. 236: “*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.”

⁴⁴⁹ *Ibid.*, para. 160.

⁴⁵⁰ *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. 166, para. 297.

⁴⁵¹ *Ibid.*, p 218, para. 422.

221. If necessary and in the alternative, if it deems it more appropriate, the Court could proceed in the same manner here: after having noted that acts of genocide have been committed, it could determine to which extent Germany has provided aid and assistance in the commission of this genocide without having to decide that the State of Israel itself is responsible for genocide.

2. *International Humanitarian Law*

222. Concerning the breaches by Germany of its obligations regarding international humanitarian law, Nicaragua has asked the Court to decide that Germany

“(1) 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;

(2) 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 1949 Geneva Conventions and rules of customary international humanitarian law as recalled by the Court’s Advisory Opinions of 2004 and 2024 and by the Court’s Order of 30 April 2024;

(3) has breached and continues to breach its obligations under international humanitarian law by also providing aid and assistance to Israel.”⁴⁵²

223. As provided by common Article 1 of the Geneva Conventions, “[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”. This obligation is reflected in customary international law as it appears in Rule 144 of the ICRC’s *Study on Customary International Humanitarian Law*: “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.”⁴⁵³ This obligation applies whenever there is a risk of violations of international humanitarian law during an armed conflict, as recalled by Germany itself⁴⁵⁴. It was also recognized by the Court in the present case when it:

⁴⁵² See NM, para. 484 (1)-(3).

⁴⁵³ ICRC, *IHL Database, Customary International Humanitarian Law*, Rule 144 (available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule144>).

⁴⁵⁴ See GPO, para. 72 (ii) mentioning in fn. 257: “See para. 164 of the updated ICRC Commentary to Geneva Convention I (at <https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-1/commentary/2016?activeTab=>); Memorial para. 314, referring to *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, pp. 114, 130, paras 220 and 256.”

“consider[e] 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.”⁴⁵⁵

In the present case, Germany was, and remains, aware of the existence of a serious risk of violations of international humanitarian law in the OPT, including in Gaza⁴⁵⁶.

224. As Germany acknowledges in its Preliminary Objections, Article 1 of the Fourth Geneva Convention may be approached from two perspectives. The first is a positive one, which entails an obligation to exercise influence in order to prevent violations of the rules of international humanitarian law “in all circumstances”; the second is a negative one, which entails an obligation neither to encourage nor to assist in the commission of such violations⁴⁵⁷. Both aspects of this obligation are at stake in the present case; none of them lends itself to the application of the *Monetary Gold* principle.

225. According to Germany,

“In a manner analogous to the Genocide claims considered above, the determination of whether Germany has breached the obligation to ‘ensure respect’ would, as a prerequisite, require the Court to pass judgment on whether Israel has failed to ‘respect’ the Fourth Geneva Convention (and, more broadly, other provisions of treaty and customary law invoked by Nicaragua^[458]).”⁴⁵⁹

It would be so, still according to Germany, because “[a]n obligation to ensure respect (compliance) and an obligation to prevent non-compliance are simply two sides of the same coin”⁴⁶⁰.

226. Insofar as the obligation to ensure respect could be equated with the obligation of prevention, the same reasons as those put forward above with regard to the latter must lead the Court to rule out the application of the “*Monetary Gold* exception” to the exercise of its

⁴⁵⁵ *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. 568, para. 24 (emphasis added).

⁴⁵⁶ See, e.g., NM, paras. 241-242, 316 and 416.

⁴⁵⁷ GPO, para. 164.

⁴⁵⁸ *Ibid.*, fn. 250: “Application, para. 67(3); Memorial, para. 484(4).”

⁴⁵⁹ *Ibid.*, para. 168.

⁴⁶⁰ *Ibid.*, para. 172.

jurisdiction⁴⁶¹. Nicaragua does not dispute that the obligation to ensure respect may be partly analyzed as an obligation of prevention. However, the obligation to ensure respect provided for in Article 1 of the Fourth Geneva Convention cannot simply be equated with an obligation to prevent. The ICRC commentary on common Article 1 notes in particular that “[b]y committing themselves to ‘respect and ensure respect’ for the Conventions, States have also recognized the importance of adopting all reasonable measures to prevent violations from happening in the first place”⁴⁶². However, as acknowledged by Germany⁴⁶³, the obligation to ensure respect also includes a negative dimension which is more far-reaching than an obligation to prevent. This additional dimension implies that the High Contracting Parties “must abstain from certain conduct. In particular, they may neither encourage, nor aid or assist in violations of the Conventions.”⁴⁶⁴

227. With regard to this negative dimension of the obligation to “ensure respect” for international humanitarian law, it is sufficient for the Court to find that Germany, through its conduct, encouraged, aided or assisted in the commission of violations of international humanitarian law, at a time when there existed and exists a well-established risk of such violations, known by Germany. If so, the Court would have to conclude, on the merits, that Germany has breached Article 1 of the Fourth Geneva Convention without having to deal with the question of whether Israel is responsible for these violations.

228. This is confirmed by the Court’s judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua*. The Court, stated that:

“It is also appropriate to recall the circumstances in which the manual of psychological operations was issued [by the United States]. When considering whether the publication of such a manual, encouraging the commission of acts contrary to general principles of humanitarian law, is unlawful, it is material to consider whether that encouragement was offered to persons in circumstances where the commission of such acts was likely or foreseeable. The Court has however found (paragraph 121) that at the relevant time those responsible for the issue of the manual were aware of, at the least, allegations that the behaviour of the contras in the field was not consistent with humanitarian law; it was in fact even

⁴⁶¹ See above, paras. 207-217.

⁴⁶² Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, 2025, para. 190 (available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-1/commentary/2025?activeTab=1949GCs-APs-and-commentaries>).

⁴⁶³ GPO, para. 167.

⁴⁶⁴ Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, 2020, para. 191 (available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-1/commentary/2020>).

claimed by the CIA that the purpose of the manual was to ‘moderate’ such behaviour. The publication and dissemination of a manual in fact containing the advice quoted above must therefore be regarded as an encouragement, which was likely to be effective, to commit acts contrary to general principles of international humanitarian law reflected in treaties.”⁴⁶⁵

On this basis, the Court concluded that

“the United States of America, by producing in 1983 a manual entitled *Operaciones psicológicas en guerra de guerrillas*, and disseminating it to *contra* forces, has encouraged the commission by them of acts contrary to general principles of humanitarian law.”⁴⁶⁶

The Court reached this conclusion without demonstrating that the *contras* had committed such acts contrary to general principles of humanitarian law, relying instead solely on the existence of a known risk that such atrocities might occur.

229. Similarly, in the present case, the Court has jurisdiction to determine that Germany, by *inter alia* supplying military equipment to Israel while being aware that Israel was, at the very least, possibly engaging in violations of international humanitarian law in the Gaza Strip and in other parts of the OPT, has breached its own obligations. The Court is not required to determine that acts contrary to international humanitarian law have been committed, nor to rule on Israel’s responsibility for such acts. The Court is only called to find the existence of a risk of violations of international humanitarian law and Germany’s knowledge of that risk.

230. In the same line it can be noted that in its judgment in the *Corfu Channel* case, the Court observed that there was no evidence to establish that the mines were laid by Albania⁴⁶⁷, hinting at the possibility this was done by Yugoslavia⁴⁶⁸ – which was indeed the case –; but that did not preclude the Court from exercising its jurisdiction. It is to be noted that the alleged breaches incumbent on the Respondent State and on the absent State were of a different nature, just as is the case in the present instance.

⁴⁶⁵ *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 1986, p. 130, para. 256.

⁴⁶⁶ *Ibid.*, p. 148, para. 292 (9).

⁴⁶⁷ *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, *Merits, Judgment*, I.C.J. Reports 1949, p. 16.

⁴⁶⁸ *Ibid.*, p. 17.

231. Significantly, even at the provisional measures stage, the Court did not feel precluded from recalling, in its order on provisional measures, that Germany, like all other States, is bound by “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.”⁴⁶⁹ The Court also highlighted that “these obligations are incumbent upon Germany as a State party to the said Conventions in its supply of arms to Israel”⁴⁷⁰.

232. Germany also argues that

“any finding that State A had violated international law by providing aid and assistance to State B depends on the determination that State B’s conduct is indeed wrongful. Only this reading is in line with the ILC’s widely accepted formulation of the rule against aid and assistance in Article 16 of the Articles on State Responsibility, which applies to Nicaragua’s assertions.”⁴⁷¹

This argument is wholly irrelevant to the issue of breaches of Article 1 of the Fourth Geneva Convention.

233. The 2025 ICRC commentary of this provision, which Germany abundantly quotes in its Preliminary Objections⁴⁷², makes clear that:

“Responsibility for aiding and assisting in violations of the Conventions in contravention of Common Article 1 is separate from and additional to responsibility for aiding or assisting another State in the commission of an internationally wrongful act under the secondary rules on State responsibility. The secondary rules of State responsibility on aid and assistance are concerned with derivative responsibility for complicity in the responsibility of another State. In contrast, the prohibition on aid and assistance under Common Article 1 is concerned with primary responsibility for contributing to violations of rules, for which the High Contracting Parties have specifically undertaken to ensure respect. Common Article 1 and the rules on State responsibility thus operate at different levels. An act that does not amount to aiding or assisting in the commission of a wrongful act by another State for the purposes of the secondary rules of State responsibility may, nonetheless, be prohibited under the primary rule set out in common Article 1. A key difference is the requirement of intent. According to the International Law Commission, derivative responsibility for aiding and assisting under the secondary rules of State responsibility requires that ‘the relevant State organ *intended*, by the aid or assistance given, to facilitate the occurrence of the wrongful conduct’. The subjective element of ‘intent’ is unnecessary, however, for the purposes of common

⁴⁶⁹ *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. 568, para. 24.

⁴⁷⁰ *Ibid.*

⁴⁷¹ GPO, para. 173.

⁴⁷² *Ibid.*, paras. 167 and 172 (i), (ii) and (iv).

Article 1. In line with the rationale laid out here, common Article 1 does not tolerate that a State would contribute to foreseeable violations of the Conventions by a Party to a conflict, whatever its intentions may be.”⁴⁷³

234. Germany also relies on Article 14(3) of the ARSIWA, which provides that

“the breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation”⁴⁷⁴.

Germany deduces from this provision that the Court cannot find that Germany is in breach of its obligation under Article 1 of the Fourth Geneva Convention unless it first determines that a third State had acted in violation of international humanitarian law. Such an interpretation of Article 1 is untenable in view of the Court’s case law.

235. For example, in the *United States Diplomatic and Consular Staff in Tehran*, the Court found that the Iranian Government, failed “to take any ‘appropriate steps’ to protect the premises, staff and archives of the United States’ mission against attack by the militants, and to take any steps either to prevent this attack or to stop it before it reached its completion” and “to take appropriate steps for the protection of the United States Consulates at Tabriz and Shiraz”⁴⁷⁵. There the Court concluded: “This inaction of the Iranian Government *by itself* constituted clear and serious violation of Iran’s obligations to the United States under the provisions of Article 22, paragraph 2, ... of the 1961 Vienna Convention on Diplomatic Relations”⁴⁷⁶.

236. It must then be admitted that, when the object of an international obligation is to prevent the occurrence of an ‘event’ (or breach of an obligation), the occurrence of that ‘event’ (or breach) is not required to establish a breach of a preventive obligation. Therefore, the *Monetary Gold* principle cannot be invoked by Germany to escape its responsibility for not preventing gross violations of obligations deriving from international humanitarian law as well

⁴⁷³ Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, 2025, para. 226 (footnotes omitted) (available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-1/commentary/2025?activeTab=1949GCs-APs-and-commentaries>). Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, 2020, para. 193 (available at <https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-1/commentary/2020>).

⁴⁷⁴ *ILC Yearbook*, 2001, vol. II (2), p. 27. See also United Nations, General Assembly, Resolution 56/83, Responsibility of States for internationally wrongful acts, 12 December 2001, Annex.

⁴⁷⁵ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, *I.C.J. Reports* 1980, p. 31, para. 63.

⁴⁷⁶ *Ibid.*, p. 32, para. 67.

as for not ensuring the respect of these obligations in the OPT, independently of any need for the Court to decide on these occurrences in its final judgment.

3. *Self-Determination, Racial Discrimination, Segregation, Apartheid, and Obligation of Non-Recognition*

237. Germany has always been well aware, at all relevant times, of the violation of the right of the Palestinian people to self-determination, and their subjection to racial discrimination, segregation, and apartheid⁴⁷⁷.

238. Concerning the breaches by Germany of its obligations regarding the right to self-determination of the Palestinian people and other fundamental human rights, Nicaragua’s submissions read as follows:

“Germany:

.....

- (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”⁴⁷⁸.

239. Germany’s rebuttal of these submissions on the basis of the *Monetary Gold* principle is most succinct.

240. According to Germany, the *Monetary Gold* principle would preclude the Court from ruling on its responsibility because it would need “a prior finding on whether Israel is denying the Palestinian people their right of self-determination” and whether Israel is engaging in racial

⁴⁷⁷ See, e.g., NM, paras. 124-125, 403 and 408.
⁴⁷⁸ *Ibid.*, para. 484 (7)-(9).

discrimination, segregation and apartheid⁴⁷⁹. Germany asserts that the present case is very similar to the *East Timor* case. It adds that “[t]he only question could be whether, with respect to the self-determination and recognition claims, Nicaragua can bypass the *Monetary Gold* principle by invocation of the Court’s past Advisory Opinions”⁴⁸⁰.

241. As shown in Section II below, Nicaragua can indeed invoke the Court’s past advisory opinions to that effect. The Court itself has pronounced on the issues concerning the Palestinian people’s right to self-determination and the racial discrimination, segregation and apartheid to which it is submitted. Many other sources point in the same direction. In any event, contrary to Germany’s assertion, the circumstances of the present case are not at all similar to those of the *East Timor* case⁴⁸¹. In that case, as in the *Monetary Gold* case itself, the rights of a third State would have formed the very subject of the Court’s judgment. The question was whether “the gold should be delivered to Italy rather than to Albania and whether the claim of the United Kingdom or of Italy to receive the gold should have priority”⁴⁸²; the three claims to priority were identical and incompatible.

242. Similarly, in *East Timor*, the question was which of Indonesia or Portugal had the right to enter a treaty on behalf of East Timor⁴⁸³. In other words, had the Court entertained Portugal’s claims, it would necessarily have decided on Indonesia’s rights since both States claimed *the same (and mutually incompatible) exclusive power* in this regard.

243. The issue in the present case is quite different because the obligations and rights at stake are different. Indeed, if the Court upholds Nicaragua’s submissions, Israel’s legal interests might be affected, but it is not the subject-matter of the case. That is the difference between mere interests, even if they are legitimate, and rights of a legal nature⁴⁸⁴. The former are not protected by the principle of *res judicata*; the latter are. And it is only in the latter case that the *Monetary Gold* principle could be relied upon.

⁴⁷⁹ GPO, paras. 176 and 182.

⁴⁸⁰ GPO, para. 180.

⁴⁸¹ See above, para. 200.

⁴⁸² *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland and United States of America)*, Judgment, I.C.J. Reports 1954, p. 26.

⁴⁸³ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 101, para. 27.

⁴⁸⁴ See also above, para. 201.

II. Israel's Responsibility Has Been Legally Confirmed and Is Not at Stake in the Present Proceedings

244. As made clear by Nicaragua in its Application, in its Memorial as well as in the present Written Statement, this case is *only* about Germany's breaches of its *own* obligations. The rights, obligations and responsibility of Israel are not at issue in the present dispute, and even less do they constitute the very subject-matter of the dispute. Nevertheless, in the alternative, if the Court were to deem it necessary to make findings on Israel's rights, obligations and responsibility before ruling on Nicaragua's claims (*quod non*), the Court should rely on the legal determinations it has already made. The Court's opinions and many other authoritative and widely distributed documents emanating from most reliable sources, establish Israel's responsibility for its violations of a great number of obligations *vis-à-vis* the Palestinian people and the international community of States (A). These findings constitute impressive and highly relevant legal facts (*faits juridiques*) that Germany cannot deny in order to exempt itself from its responsibility (B).

A. THE RESPONSIBILITY OF ISRAEL AS DETERMINED BY THE COURT

245. Before appreciating the relevance of the decisions of the Court for the purpose of the present case, it is necessary to assess the extent to which the Court has previously ruled on the rights, obligations, and responsibility of Israel that may be at issue in the present proceedings.

246. The present section focuses on advisory opinions and does not dwell on the provisional measures already indicated by the Court: in this respect, Nicaragua notes that Germany does not dispute⁴⁸⁵ that the Court has already acknowledged the existence of a risk of genocide in the Gaza Strip⁴⁸⁶.

247. Besides the Court's orders in the *South Africa v. Israel* case, three advisory opinions are relevant, namely those relating to the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 2004, the *Legal Consequences arising from the Policies*

⁴⁸⁵ See GPO, para. 151.

⁴⁸⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Request for the indication of provisional, Order of 26 January 2024, I.C.J. Reports 2024, pp. 26-28, paras. 65-74; 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. 521, para. 27 and p. 525, para. 40; Request for the Modification of the Order of 28 March 2024, Order of 24 May 2024, I.C.J. Reports 2024, p. 658, para. 28 and p. 663, para. 47.

and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem of 2024, and the 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 of 2025.

248. In its 2004 Advisory Opinion, the Court considered, *inter alia*, that:

“The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law;

.....
Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion.”⁴⁸⁷

And the Court concluded:

“All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention”⁴⁸⁸.

These findings, which are made by the Court *erga omnes*, define all States’, including Germany’s, obligations in their conduct towards Israel with regard to the violations of international law found by the Court in the body of its Opinion.

249. In its 2024 Advisory Opinion, the Court identified and documented a very large number of violations by Israel of its obligations under certain treaties and under customary international law. It considered, *inter alia*, that:

- “[T]he transfer by Israel of settlers to the West Bank and East Jerusalem, as well as Israel’s maintenance of their presence, is contrary to the sixth paragraph of Article 49 of the Fourth Geneva Convention”;⁴⁸⁹

⁴⁸⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, pp. 201-202, para. 163 (3) (A) and (B).

⁴⁸⁸ *Ibid.*, p. 202, para. 163 (3) (D).

⁴⁸⁹ *Palestine Advisory Opinion*, para. 119.

- “[T]he public property confiscated or requisitioned for the development of Israeli settlements benefits the civilian population of settlers, to the detriment of the local Palestinian population. ... [T]herefore, ... these land policies are not in conformity with Articles 46, 52 and 55 of the Hague Regulations”;⁴⁹⁰
- “Israel’s use of the natural resources in the Occupied Palestinian Territory is inconsistent with its obligations under international law [and] Israel acts inconsistently with its obligation to ensure the availability of water in sufficient quantity and quality (Article 55 of the Fourth Geneva Convention). ... [T]he Court also concludes that Israel’s policy of exploitation of natural resources in the Occupied Palestinian Territory is inconsistent with its obligation to respect the Palestinian people’s right to permanent sovereignty over natural resources”;⁴⁹¹
- “Israel has exercised its regulatory authority as an occupying Power in a manner that is inconsistent with the rule reflected in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention”;⁴⁹²
- “Israel’s policies and practices are contrary to the prohibition of forcible transfer of the protected population under the first paragraph of Article 49 of the Fourth Geneva Convention”;⁴⁹³
- “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 [Article 46 of the Hague Regulations, Article 27 of the Fourth Geneva Convention, Article 6, paragraph 1, and Article 7 of the International Covenant on Civil and Political Rights]”;⁴⁹⁴
- “[T]he Court considers that [Israel’s] policies and practices amount to annexation of large parts of the Occupied Palestinian Territory”;⁴⁹⁵
- “[Israel acted] contrary to the prohibition of the use of force in international relations and its corollary principle of the non-acquisition of territory by force”;⁴⁹⁶
- “[T]he régime 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”;⁴⁹⁷
- “[T]he Court considers that Israel’s legislation and measures constitute a breach of Article 3 of CERD”;⁴⁹⁸

⁴⁹⁰ *Ibid.*, para. 122.

⁴⁹¹ *Ibid.*, para. 133.

⁴⁹² *Ibid.*, para. 141.

⁴⁹³ *Ibid.*, para. 147.

⁴⁹⁴ *Ibid.*, para. 154.

⁴⁹⁵ *Ibid.*, para. 173.

⁴⁹⁶ *Ibid.*, para. 179.

⁴⁹⁷ *Ibid.*, para. 223.

⁴⁹⁸ *Ibid.*, para. 229.

- “Israel’s unlawful policies and practices are in breach of Israel’s obligation to respect the right of the Palestinian people to self-determination”;⁴⁹⁹ and that
- “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”⁵⁰⁰.

The Court then concluded:

“[W]hile it is for the General Assembly and the Security Council to pronounce on the modalities required to ensure an end to Israel’s illegal presence in the Occupied Palestinian Territory and the full realization of the right of the Palestinian people to self-determination, all States must co-operate with the United Nations to put those modalities into effect. ...

.....

Member States [of the United Nations] are under an obligation 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 to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967. The Court considers that the duty of distinguishing dealings with Israel between its own territory and the Occupied Palestinian Territory encompasses, *inter alia*, the 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 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 ...

[A]ll States are under an obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory. They are also under an obligation not to render aid or assistance in maintaining the situation created by Israel’s illegal presence in the Occupied Palestinian Territory. It 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. In addition, 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

⁴⁹⁹ *Ibid.*, para. 243.

⁵⁰⁰ *Ibid.*, para. 261.

compliance by Israel with international humanitarian law as embodied in that Convention.”⁵⁰¹

These conclusions amplify and clarify those made twenty years earlier in the *Wall* Advisory Opinion.

250. While the Court was not expressly called upon by the General Assembly to pronounce on the obligations incumbent on third States in its 2025 Advisory Opinion relating to *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 Court confirmed and clarified several of its previous findings⁵⁰².

251. Following the adoption of these advisory opinions, Germany itself considered that they are authoritative statements of the law. It voted in favour of the General Assembly Resolution which endorsed the *Wall* Advisory Opinion and called “upon all States Members of the United Nations to comply with their legal obligations as mentioned in the advisory opinion”⁵⁰³. Germany has also described the end of the Israeli occupation as being “required by the ICJ”⁵⁰⁴.

252. In the same vein, during a debate at the Tenth Emergency Special session of the United Nations General Assembly following the issuance by the Court of its 2024 Advisory Opinion, Germany declared:

“Let there be no doubt that [Germany] respect[s] 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.”⁵⁰⁵

⁵⁰¹ *Ibid.*, paras. 275, 278 and 279.

⁵⁰² *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*, Advisory Opinion of 22 October 2025, paras. 42-47.

⁵⁰³ United Nations, General Assembly, Resolution ES-10/15, Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem, 20 July 2004, para. 3.

⁵⁰⁴ Government Press Conference of 9 January 2026 (Annex 49).

⁵⁰⁵ *Official Records of the General Assembly*, Tenth Emergency Special session, 55th plenary meeting, 18 September 2024, A/ES-10/PV.55, p. 33. See also Statement on the resolution of the UN General Assembly on the ICJ’s advisory opinion regarding the legal consequences of Israel’s policies and practices in the occupied Palestinian territories, Federal Foreign Office, Press release, 19 September 2024 (<https://www.auswaertiges-amt.de/en/newsroom/news/2676262-2676262>): “International law is the bedrock of international order and security. Where there is no law, peace is unattainable. The advisory opinion of the International Court of Justice

Such a statement is not only a clear and explicit recognition of the declaratory value of existing law by the Court's Advisory Opinion, but also constitutes a firm commitment by Germany to comply with it. Such declarations commit the State making them to comply with them and are binding for the declaring State⁵⁰⁶.

253. On several occasions, Germany has also described Israeli settlement activity as indisputably unlawful and incompatible with the Palestinian people's right to self-determination. Recently, and in response to a question concerning the construction of new settlements in the occupied West Bank, the spokesperson of the German Federal Foreign Office stated that "[Germany has] commented on comparable cases in the past, and the position of the Federal Government is very clear: settlement construction violates international law. We reject it entirely."⁵⁰⁷ Joining its voice with that of other States in a joint statement, Germany further affirmed that "[it] recall[s] that such unilateral actions, as part of a wider intensification of the settlement policies in the West Bank, not only violate international law but also risk fueling instability"⁵⁰⁸.

254. The Court is not the only authority which has determined that Israel, through its actions in Palestine, and in particular in the Gaza Strip, has violated numerous norms of international law and has engaged its responsibility. Its findings are corroborated by a great number of reports emanating from independent and highly respected authorities. As stated by the Report of the *ad hoc* Conciliation Commission of the Committee on the Elimination of Racial Discrimination,

"Despite more than 100 resolutions adopted by several United Nations bodies, including the General Assembly, the Security Council and the Human Rights Council, the situation of Palestinians facing acts of racial discrimination remains unchanged. In the current context, the commission recalls that all States parties to the Convention have the duty to effectively enforce the Convention. In

published two months ago is far-reaching and provides an important frame of reference. It has made it clear that the status quo in the region cannot continue. Regarding Israel's settlement policy in the occupied territories, the Federal Government has reiterated time and again that it constitutes a violation of international law and stands in the way of a two-state solution. We will respect the advisory opinion of the International Court of Justice, act in accordance with the obligations of international law that it sets out and lend our full support to its implementation."

⁵⁰⁶ See, e.g., *Legal Status of Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 73; *Nuclear Tests (Australia v. France), Judgment, I.C.J. Reports 1974*, p. 267, para. 43; *Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 472, para. 46; *Obligation to Negotiate Access to the Pacific Ocean, Judgment, I.C.J. Reports 2018*, pp. 554-555, para. 146.

⁵⁰⁷ Government Press Conference of 22 December 2025, Federal Government (Annex 47).

⁵⁰⁸ Federal Foreign Office, Statement on Israeli settlement expansion in the West Bank, Press Release, 24 December 2025 (Annex 48).

article 2 (1) (b), the Convention states that each State party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations. Having regard to the above, tolerating Israeli policies and practices resulting in racial discrimination can engage the international responsibility of any State party. Eradicating racial discrimination is a shared responsibility of all States parties to the Convention.

.....
The commission recommends that the States parties to the Convention:

.....
(b) Call upon Israel to end all policies and practices that lead to discrimination against Palestinians and amount to segregation;

.....
(d) Ensure that their resources are not used to enforce or support discriminatory policies and practices against Palestinians living in the Occupied Palestinian Territory;

.....
(f) Take appropriate sanctions against any individual, group or entity inciting segregation, racially motivated violence, hate speech and racial discrimination in general that compromise the possibility of the peaceful coexistence of Israelis and Palestinians.”⁵⁰⁹

255. Examining the reports submitted by Israel, the CERD Committee⁵¹⁰, the Committee against Torture⁵¹¹, the Committee on the Rights of the Child⁵¹², the Committee on the Rights of Persons with Disabilities⁵¹³, or the Committee on the Elimination of Discrimination against Women⁵¹⁴ have all highlighted discriminatory and widespread violations of the rights of Palestinians by Israel.

⁵⁰⁹ CERD Committee, 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, Findings and recommendations, CERD/C/113/3, 21 August 2024, paras. 49 and 53.

⁵¹⁰ CERD Committee, Consideration of reports submitted by States parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Israel, 28 February 2012, CERD/C/ISR/CO/14-16; Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, CERD/C/ISR/CO/17-19.

⁵¹¹ Committee against Torture, Concluding observations on the sixth periodic report of Israel, 25 November 2025, CAT/C/ISR/CO/6.

⁵¹² Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Israel, 13 September 2024, CRC/C/ISR/CO/5-6.

⁵¹³ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Israel, 5 September 2023, CRPD/C/ISR/CO/1.

⁵¹⁴ Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Israel, 31 October 2017, CEDAW/C/ISR/CO/6.

256. As another example,

“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 war.”⁵¹⁵

257. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Ms Francesca Albanese, also noted that:

“there are reasonable grounds to believe that the threshold indicating the commission of the following acts of genocide against Palestinians in Gaza has been met: killing members of the group; causing serious bodily or mental harm to groups’ members; and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. Genocidal acts were approved and given effect following statements of genocidal intent issued by senior military and government officials”⁵¹⁶.

258. Numerous other reports by inter-State organizations and bodies⁵¹⁷, as well as non-governmental organizations⁵¹⁸ document Israel’s violations of international law. None of these

⁵¹⁵ NM, para. 415 (quoting 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).

⁵¹⁶ Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, *Anatomy of a genocide*, A/HRC/55/73, 1 July 2024, para. 93.

⁵¹⁷ See, e.g., the Concluding Observations of the Committee for the Elimination of Racial Discrimination, Israel, 28 February 2012, CERD/C/ISR/CO/14-16, para. 24; 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; 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; CERD Committee, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 12 December 2019, CERD/C/ISR/CO/17-19; Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 22 March 2022, CCPR/C/ISR/CO/5, para. 10-11; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/79/232, 11 September 2024; 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; Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, A/80/337, 14 August 2025; Human Rights Council, Legal analysis of the conduct of Israel in Gaza pursuant to the Convention on the Prevention and Punishment of the Crime of Genocide, A/HRC/60/CRP.3, 16 September 2025; Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, *Gaza Genocide: a collective crime*, A/80/492, 20 October 2025.

⁵¹⁸ “A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid”, B’Tselem, 2021 (https://www.btselem.org/publications/fulltext/202101_this_is_apartheid); “A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution”, Human Rights Watch, 2021 (<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>); “Israel’s apartheid against Palestinians: Cruel system of domination and crime against humanity”, Amnesty International, 2021 (<https://www.amnesty.org/en/documents/mde15/5141/2022/en/>); Human Rights Watch, *World Report 2025*, p. 182 (https://www.hrw.org/sites/default/files/media_2025/01/World_Report_2025.pdf).

reports deviates from the Court's conclusions, much less contradicts them. Whatever their legal value when considered in isolation, these findings, by their number, their consistency, and their firmness further confirm, if confirmation were needed, the indisputably mandatory nature of the Court's findings. What is clear is that the existence of at least the risk and the obligation of prevention and ensuring respect is well established.

B. THE ROLE OF PRIOR DETERMINATIONS OF ISRAEL'S RESPONSIBILITY
IN LIGHT OF THE *MONETARY GOLD* PRINCIPLE

259. In the present case, Germany contends that the Court cannot adjudicate the dispute before it, on the ground that doing so would require the Court first to rule on the international responsibility of the State of Israel for acts amounting to genocide, violations of international humanitarian law, as well as racial discrimination, segregation, and apartheid directed against the Palestinian people. However, Israel's responsibility in respect of all or part of these obligations has already been established.

260. According to the celebrated definition given by the Permanent Court of International Justice, a dispute is "disagreement on a point of law or fact, a conflict of legal views or of interests between two persons"⁵¹⁹. The International Court of Justice clarified that "it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non- existence."⁵²⁰

261. In the present case, the responsibility of Israel has been determined by various international bodies, beginning with the Court, and is no more disputed – nor can it be disputed.

262. In its Preliminary Objections, Germany dedicated a few paragraphs aiming at distinguishing "between the nature and function of [the Court's] contentious and advisory jurisdictions"⁵²¹. In so doing, Germany conflates the binding force of the decision rendered by the Court – whether an advisory opinion or a judgment – and the scope of the legal determinations reached by the Court.

⁵¹⁹ *Mavrommatis Palestine Concessions (Greece v. Great Britain)*, Judgment, 1924, P.C.I.J., Series A, No. 2, p. 11.

⁵²⁰ *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328.

⁵²¹ GPO, para. 185. See also *ibid.*, para. 186.

263. It is true that the Court has affirmed that an advisory opinion “*as such*, ... has no binding force”⁵²². This does not mean that the advisory opinions of the Court are deprived of legal authority. When the Court answers legal questions referred to it in an advisory opinion, its findings in law and fact are made with full knowledge of the circumstances and after careful examination of the legal rules applicable to those facts. It is worth noting in particular that, regarding the facts, the Court verifies that it has sufficient factual material to rule on the questions before it⁵²³. While the opinions “*as such*” have no binding force, their content has the same legal authority as the content of its other findings. As noted in the fifth edition of *Rosenne’s Law and Practice of the International Court*: “An advisory opinion states the law at large, *erga omnes* so to speak.”⁵²⁴

264. In the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean* before the ITLOS, the Special Chamber found

“it necessary to draw a distinction between the binding character and the authoritative nature of an advisory opinion of the ICJ. An advisory opinion is not binding because even the requesting entity is not obligated to comply with it in the same way as parties to contentious proceedings are obligated to comply with a judgment. However, judicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the ‘principal judicial organ’ of the United Nations with competence in matters of international law.”⁵²⁵

265. This reasoning applies equally to the effects of the Court’s findings in its advisory opinions establishing Israel’s numerous violations of obligations arising from peremptory norms of international law incumbent upon it. They do so with even more force because the dispute is not between Israel and Nicaragua, but between Nicaragua and Germany. The Court

⁵²² *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First phase, Advisory Opinion*, I.C.J. Reports 1950, p. 71 (emphasis added).

⁵²³ *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. 27, para. 40; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, pp. 114-115, paras. 69-74; *Palestine Advisory Opinion*, paras. 44-47; *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*, Advisory Opinion of 22 October 2025, paras. 36-37.

⁵²⁴ M.N. Shaw, *Rosenne’s Law and Practice of the International Court (1920-2015)*, 5th edn., Brill/Nijhoff, 2016, vol. III, p. 1771.

⁵²⁵ *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment*, ITLOS Reports 2021, p. 77, para. 202. See also *ibid.*, pp. 86-87, paras. 243-245.

can and, in Nicaragua's view, must rely on its own advisory opinions to the extent this might be necessary to address and uphold Nicaragua's claims.

266. Whereas in the *Chagos* case, ITLOS was neither the author nor the addressee of the Court's Advisory Opinion, it recognized it as having unquestionable authority.

267. Similarly, the Court of Justice of the European Union (CJEU) has, on several occasions, recognized the legal authority of the findings made by the International Court of Justice in its advisory opinions and considered them to be an expression of legal truth⁵²⁶, as have other international courts and tribunals⁵²⁷.

268. It would indeed be surprising if the Court were to accord less authority to the content of its own advisory opinions than that accorded by other international courts and tribunals. This would be all the more remarkable given that the Court has consistently considered that the content of its advisory opinions carries the same authority as its decisions in contentious cases. In its decisions, the Court does not distinguish between its judgments and its advisory opinions; it relies on them in the same manner, treating its past legal determinations as established⁵²⁸.

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⁵²⁶ See, e.g., CJEU, Judgment of the Court (Grand Chamber) of 21 December 2016, *Council of the European Union v Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)*, C-104/16 P, EU:C:2016:973, paras. 104-106; Judgment of the Court (Grand Chamber) of 17 January 2023, *Kingdom of Spain v European Commission*, C-632/20 P, EU:C:2023:28, para. 51; Judgment of the General Court (Ninth Chamber, Extended Composition) of 4 September 2024, *International Management Group (IMG) v European Commission*, T-509/21, EU:T:2024:590, paras. 208-209 and 211.

⁵²⁷ See, e.g., Inter-American Court of Human Rights, *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4 (1) and 5 (1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17 of 15 November 2017, *Series A No. 23*, para. 131, fn. 131; *Enrique Heemsen and Jorge Heemsen v. the Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction, 29 October 2019, para. 430; *Komaksavia Airport Invest Ltd. v. Republic of Moldova*, SCC Case No. 2020/074, Final Award, 3 August 2022, para. 144; *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, paras. 320-321; European Court of Human Rights, *Ukraine and the Netherlands v. Russian Federation* (Applications Nos. 8019/16, 43800/14, 28525/20 and 11055/22), Judgment of the Grand Chamber, 9 July 2025, paras. 147 and 443.

⁵²⁸ See, e.g., *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, *I.C.J. Reports* 1997, p. 66, para. 109; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, *Merits*, Judgment, *I.C.J. Reports* 2015, pp. 46-47, para. 87 and p. 64, para. 139; *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)*, *Merits*, Judgment of 19 May 2025, para. 185.

269. Nicaragua accuses Germany of violating its obligation to prevent genocide as well as a great many other obligations arising under peremptory norms of general international law. However, Germany is most certainly not alone in having failed to take appropriate action to stop the carnage in Gaza or to encourage the respect for the right of the Palestinian people to self-determination or of the prohibition of racial discrimination, segregation and apartheid; moreover, some of these States may not be parties to the applicable conventions (including the Genocide Convention) or may be parties to those conventions with a reservation to the clause providing for the Court's jurisdiction (like Article IX of the 1948 Convention). Yet the 'immunity' of these States from the jurisdiction of the Court resulting from Germany's excessively broad interpretation of the *Monetary Gold* principle would make it impossible to bring any State before the Court because any finding that genocide or other breaches of *erga omnes* obligations were committed would necessarily determine the legal obligations of States not before the Court. This is an untenable position.

270. In this respect, the situation is quite different from that in the *East Timor* case, where there was *one* missing party whose rights, *incompatible* with those claimed by one of the Parties, would have formed "the very subject-matter of the decision". In the present case, the legal interests of a large number of States in a situation similar to that of Germany could be affected by the Court's decision in the present case. However, just as in *Nauru*, their obligations are identical to those of Germany but not incompatible with them – they are parallel but not conditional breaches. If all States having the same obligations as those breached by Germany ought to be present, the application of the *Monetary Gold* principle would result in emasculating the obligations to prevent, ensure and promote, which bear upon the community of States as a whole. If a comparison is in order with an existing precedent, it would be with *Nauru*, not with *Monetary Gold* or *East Timor*: The Court's findings would *identically* concern all those States which are *in the same situation* as Germany *vis-à-vis* Israel, just like New Zealand and the United Kingdom were in the same situation as Australia *vis-à-vis* Nauru.

271. It is one thing to say that the consent of the States parties to a dispute before the Court is an essential condition for the exercise of its jurisdiction, but quite another to assert that the legal interests of a third State can paralyse the course of justice when the interests of the entire international community are at stake. Germany's breaches of its obligations are – or indeed should be – a concern for the international community of States as a whole.

SUBMISSIONS

272. For the reasons presented in this Written Statement, the Republic of Nicaragua requests the Court:

- to reject the preliminary objections submitted by the Federal Republic of Germany, both in respect of jurisdiction and admissibility;
- to proceed with the examination of the merits with the urgency required by this case.

The Hague, 23 February 2026

Carlos J. Argüello-Gómez

Agent of the Republic of Nicaragua

CERTIFICATION

I have the honour to certify that this Written Statement 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, 23 February 2026

Carlos J. Argüello-Gómez

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