

CR 2026/31

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

held on Tuesday 8 September 2026, at 10 a.m., at the Peace Palace,

President Iwasawa presiding,

*in the case concerning Alleged Breaches of Certain International Obligations
in respect of the Occupied Palestinian Territory
(Nicaragua v. Germany)*

VERBATIM RECORD

ANNÉE 2026

Audience publique

tenue le mardi 8 septembre 2026, à 10 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

*en l'affaire concernant des Manquements allégués à certaines obligations
internationales relativement au Territoire palestinien occupé
(Nicaragua c. Allemagne)*

COMPTE RENDU

Present: President Iwasawa
 Vice-President Sebutinde
 Judges Tomka
 Abraham
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi
 Hmoud
 Okowa
Judge *ad hoc* Al-Khasawneh

Registrar Villalpando

Présents : M. Iwasawa, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi
Hmoud
M^{me} Okowa, juges
M. Al-Khasawneh, juge *ad hoc*

M. Villalpando, greffier

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comme assistante.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the first round of oral arguments of Nicaragua on the preliminary objections raised by Germany in the case concerning *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*.

For reasons duly made known to me, Judge Bhandari is unable to sit with us today. After ascertaining the views of the parties, the Court decided, pursuant to Article 53, paragraph 2 of its Rules, that copies of the pleadings and documents annexed thereto will be made accessible to the public. In accordance with the Court's practice, these pleadings and documents annexed will be placed on the Court's website.

I shall now give the floor to HE Mr Carlos Argüello Gómez, Agent of Nicaragua. You have the floor, Sir.

Mr ARGÜELLO GÓMEZ:

1. Mr President, Members of the Court, good morning. It is an honour to appear before you once again as Agent of Nicaragua, accompanied and assisted by a team of colleagues who will plead before this Court to address a matter concerning not only Nicaragua's rights and obligations, but those of the entire international community and most crucially, the rights of the Palestinian people, whose representatives are also part of our delegation. Before continuing I would like to extend our congratulations and welcome the newly elected Registrar Mr Santiago Villalpando.

2. Mr President, Nicaragua invokes Germany's responsibility in connection to multiple violations of international law, particularly in respect of the odious scourge of genocide and international humanitarian law, the right to self-determination and the prohibition of racial discrimination, racial segregation and apartheid. It involves Germany's obligations under treaty law and customary international law¹. The claims made by Nicaragua involve the most serious breaches of obligations arising under peremptory norms of general international law². Mr President, it has been more than two years since Nicaragua filed this case and submitted a request for the indication of provisional measures. The Court's Order of 30 April 2024 recalled that "all States parties are under

¹ MN, para. 11.

² MN, para. 16.

an obligation ‘to respect and ensure respect’ for the [Geneva] Conventions ‘in all circumstances’” and that the Genocide Convention “requires State parties that are aware, or that should normally have been aware, of the serious risk that acts of genocide would have been committed, to employ all means reasonably available to them to prevent genocide so far as possible”³. The Court also “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[se] . . . Conventions”. You specifically 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”⁴.

3. Mr President, without going further for the moment permit me to make two comments on the text of your Order just cited. First of all, as the Genocide Convention recognizes in its preamble “at all periods of history genocide has inflicted great losses on humanity”⁵. So, the scourge of genocide is not new, but what is new in the case before us is the way it is being carried out publicly and livestreamed. This is something that has never happened before. The crimes for which the Nazis were punished in Nuremberg, particularly the inhumane acts committed against the civilian population of the different countries in which it was perpetrated were not publicized at the time of commission. Even the horrible scenes of the emaciated survivors of the concentration and extermination camps are photos and videos taken only after their liberation. Over the past three years, every single day people around the world bear witness to horrible scenes of brutality, suffering and destruction. Schoolchildren in Germany are probably more aware today of what is happening in the Occupied Palestinian Territory and particularly the Gaza Strip, than their ancestors were of the horrors during the Nazi régime.

4. The consequence of all these crimes being committed in public with all cameras running is important for the present case. Despite the news blackout imposed by Israel, there cannot be any doubt that the German Government is fully aware of the crimes being committed by Israel. If even the general public is aware of it — whether or not they know the name to give it — it is impossible

³ *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 (II), para. 23.

⁴ *Ibid.*, para. 24.

⁵ Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, *Treaty Series (UNTS)*, Vol. 78, p. 278.

that with the type of political, commercial and military relations of Germany with Israel it could not be aware, or normally should have been aware, of the serious risk that acts that could amount to genocide were being committed by Israel, and to have employed all means reasonably available to them to prevent genocide as far as possible. The means reasonably available were enormous: Germany is the second largest provider of weapons to Israel and its second largest business partner.

5. Germany's agent spoke about what she described as the "horrific"⁶ events of 7 October 2023. But while she boasted about Germany sending money⁷ and other forms of assistance to the Occupied Palestinian Territories, there was not a word of sympathy, of condolences, of concern, about the tens of thousands of Palestinian children and other non-combatants who have lost their lives, who have lost their limbs, who have no homes, who are living in the wasteland that Israel's army has imposed upon the people of the Gaza Strip, and of the Palestinians who live in the West Bank who, every single day, suffer violent attacks by settlers who are protected and encouraged by Israel's Government.

6. Mr President, one of the main claims of Germany before this Court today is that Israel is an indispensable party to these proceedings⁸. That is, that only with Israel being a party to this case can it be established that there is even a danger of genocide that would impose the obligation to prevent it. Although our case is not limited to the obligation to prevent and ensure respect in various conventions as well as in customary law, it is illogical to presume that it is necessary for Israel to be present in order for the Court to determine that genocide is taking place and, hence, the obligation to prevent exists; that it is plausible that violations of international humanitarian law might be taking place and thus the obligation to ensure respect exists.

7. Mr President, what Israel is doing is a question of fact that has been amply established in different instances, including the Advisory Opinion⁹ and an Order of this Court¹⁰. This point will be amply covered by Professor Pellet in the course of this pleading.

⁶ CR 2026/30, p. 14, para. 5 (Monar).

⁷ CR 2026/30, p. 21, para. 32 (Monar).

⁸ CR 2026/30, p. 57, para. 11 (Wordsworth).

⁹ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III)*, p. 1.

¹⁰ *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 (I)*, p. 1.

8. Nicaragua's claims rest entirely upon the obligations of Germany. It was Germany who on 11 and 12 October 2023 declared that "there [was] only one place for Germany: the place at the side of Israel"¹¹ and it was Germany that "offered Israel all [its] support in every area"¹². It was Germany who in November 2023 publicly stated that it opposed a ceasefire¹³ and it was also Germany who authorized and continues to authorize millions in military exports despite this Court's pronouncement that "[a]ll these obligations are incumbent upon Germany as a State party to the said Conventions in its supply of arms to Israel"¹⁴.

9. Mr President, the second comment I would make about your Order of 30 April 2024 reminding Germany of its international obligations relating to the transfer of arms to parties to an armed conflict, including Israel, is that this Order and all the international obligations and instruments on which this Order was based upon have been entirely ignored by Germany.

10. Certainly, Germany has claimed since the oral hearings on provisional measures in April 2024 that it checked compliance with international humanitarian law on a case-by-case basis and for each of the export authorizations granted¹⁵. It has given various statements over the past three years expressing concern for the "catastrophic" situation in Gaza¹⁶, acknowledging that "international humanitarian law [has been] truly violated"¹⁷, and yet, Germany has not only never stopped exporting military equipment to Israel, but has also opposed and blocked broad State-level actions against Israel in compliance with international law¹⁸.

¹¹ Application instituting proceedings and Request for the indication of provisional measures, 1 March 2024, *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, para. 44.

¹² *Ibid.*, para. 46.

¹³ *Ibid.*, para. 51.

¹⁴ *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 (II)*, para. 24.

¹⁵ CR 2024/16, p. 39, paras. 28-41 (Peters).

¹⁶ "Germany calls Gaza's humanitarian situation 'catastrophic,' renews push for immediate ceasefire", Anadolu Agency, 12 June 2025 (<https://www.aa.com.tr/en/europe/germany-calls-gaza-s-humanitarian-situation-catastrophic-renews-push-for-immediate-ceasefire/3595403>).

¹⁷ MN, para. 265.

¹⁸ "Germany blocks EU move to ban trade with illegal Israeli settlements", Anadolu Agency, 13 July 2026, available at <https://www.aa.com.tr/en/europe/germany-blocks-eu-move-to-ban-trade-with-illegal-israeli-settlements/3996452>.

11. Germany affirmed before this Court that 98 per cent of exports were only subordinate, protective equipment¹⁹ and it went on to authorize millions in military equipment and components for lethal weapons and ammunition directly after the hearings on provisional measures²⁰. Between early April 2024 and the end of June 2026, the value of individual export licences granted amounted to €1,154,046,124²¹.

12. Germany supposedly declared a strict halt on authorizations of exports of military equipment bound for the Gaza Strip in August 2025²². Yet at the same time, it allowed shipments based upon previously approved equipment to continue²³. In fact, as an Israeli official described it “this was mainly symbolic”²⁴. In November 2025, Germany started again to approve exports of considerable value.

13. But, in contrast to its declarations, Germany’s profound indifference to international humanitarian law does not end there. In November 2025, Germany participated in “[a]n international seminar [organized by the Israeli armed forces] on operational lessons from the war across all arenas” 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”²⁵. In January of this year, both countries concluded a cybersecurity pact²⁶. This normalizes the unlawful combat methods and tactics that have resulted in well-documented atrocities against Palestinians.

¹⁹ CR 2024/16, p. 9, para. 19 (Tams).

²⁰ MN, paras. 199-201.

²¹ MN, paras. 199, 202, 209; WSN, paras. 23-24; 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, Arms exports to Israel in the first quarter of 2026, German *Bundestag*, doc. 21/5906, 11 May 2026, response to questions nos. 1 and 2, available at <https://dserver.bundestag.de/btd/21/059/2105906.pdf>; Written questions with answers received from the Federal Government in the week of 1 June 2026, German *Bundestag*, doc. 21/6244, 5 June 2026, response to question no. 39, available at <https://dserver.bundestag.de/btd/21/062/2106244.pdf>; Federal Government’s Arms Export Policy in the First Half of 2026, Press Release, Federal Ministry for Economic Affairs and Energy, 15 July 2026, available at <https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Pressemitteilungen/2026/07/20260715-ruestungsexportpolitik-1-halbjahr-2026.html>.

²² WSN, Annex 21.

²³ WSN, paras. 26-27.

²⁴ “How Israel’s arms exports have made it sanctions-proof”, *The Economist*, 4 Sept. 2025, available at <https://archive.is/2026.03.01-154624/https://www.economist.com/international/2025/09/04/how-israels-arms-exports-have-made-it-sanctions-proof#selection-1157.184-1159.22>.

²⁵ WSN, para. 31.

²⁶ WSN, para. 31.

14. In the first half of 2026, Germany has already approved almost €800 million in arms exports to Israel²⁷. Yesterday, Germany stated that it receives “assurances from Israel that military equipment will be used in accordance with international humanitarian law”²⁸. These assurances, whatever they are worth, do not waive Germany’s obligation not to supply weapons to Israel as recalled in the Order of the Court.

15. But the commerce of military weapons is not only one-way. Israel also sells large amounts of security and military equipment to Germany. Most conspicuously, Germany’s 2023 contract to buy the Arrow 3 missile system from Israel, initially valued at \$3.5 billion, was further expanded in December 2025 to another \$3.1 billion, bringing the total figure to a \$6.6 billion. This was described as the largest defence export contract in Israel’s history²⁹. Now Germany has announced that it wants to purchase from Israel the Arrow 4 missile system and, although a price tag remains a closely guarded secret, one requires little imagination to see the astronomical numbers on the wall³⁰. As described by an Israeli diplomat, “[t]hese deals tie countries into a long-term relationship with Israel which helps curb moves towards sanctions against Israel”³¹.

16. In a recent visit to Israel, the German Minister for Foreign Affairs declared that Germany and Israel are “bound by a mutual security partnership”³² and further stated that “[o]ur relations with Israel can never be seen independently of the responsibility that Germany bears for the security of the only Jewish State in light of the Shoah — that most atrocious crime against humanity committed

²⁷ “Explainer-Germany’s criticism of Israel not matched by arms exports”, Anadolu Agency, 28 July 2026, available at <https://www.aa.com.tr/en/world/explainer-germany-s-criticism-of-israel-not-matched-by-arms-exports/4011547>.

²⁸ CR 2026/30, p. 18, para. 19 (Monar).

²⁹ “Expanded \$6.5B Arrow agreement with Germany now largest Israeli defense export deal”, Breaking Defense Europe, 18 December 2025, available at <https://breakingdefense.com/2025/12/expanded-6-5b-arrow-agreement-with-germany-now-largest-israeli-defense-export-deal/>; “German parliament approves \$3.5 billion expansion of Arrow 3 deal with Israel”, *Times of Israel*, 17 December 2025, available at <https://www.timesofisrael.com/german-parliament-approves-3-5b-expansion-of-arrow-3-deal-with-israel/>.

³⁰ “Germany wants to procure Israel’s Arrow 4 – report”, Globes, 11 May 2025, available at <https://en.globes.co.il/en/article-germany-wants-to-procure-israels-arrow-4-1001509985>.

³¹ “How Israel’s arms exports have made it sanctions-proof”, *The Economist*, 4 September 2025, available at <https://archive.is/2026.03.01-154624/https://www.economist.com/international/2025/09/04/how-israels-arms-exports-have-made-it-sanctions-proof#selection-1157.184-1159.22>.

³² “Foreign Minister Wadehul travels to Israel”, press release, 7 July 2026, available at <https://www.auswaertiges-amt.de/en/newsroom/news/2777082-2777082>.

by Germans”³³. Germany claims that this responsibility has the force of a *Staatsräson*. This was reiterated by Germany yesterday³⁴.

17. So let us consider this *Staatsräson* for a moment. The trial of the war criminals at Nuremberg was for multiple crimes against humanity as a whole and not only for the Jewish Shoah. If there is a sincere moral imperative justifying this *raison d'état* it must be for the responsibility for *all* these crimes against humanity, and it should involve the obligation to do all possible to stop this from happening to other human beings. A sincere *raison d'état* would see Germany doing everything possible to stop the crimes being committed by Israel against the Palestinian people.

18. Another less dignified aspect of the way this *raison d'état* has evolved is by covering with a moral layer the highly lucrative business for both German and Israeli weapons manufacturers. I have pointed out above the huge amount of business involved in the mutual buying and selling of weapons.

19. Mr President, in spite of the statement yesterday “that Germany’s domestic legal régime does not leave any leeway for German’s international legal obligations under international law to be disregarded”³⁵, German foreign policy is best illustrated in the words of the German Minister for Foreign Affairs, who explained in July in reference to international law that “[l]egal systems are there to provide guidance . . . but they’re never followed 100 percent to the letter”³⁶.

20. Mr President, Germany has emphasized that it has recently supported individual sanctions by the European Union against the Israeli Minister of National Security. This action was admittedly taken by Germany after the Minister advocated nightly executions of Gazans. This statement was described by the German Chancellor as “inhumane” and as an explicit “violation of international law”³⁷. One is compelled to wonder how is this statement any different from the other statements and conduct by Israeli officials since October 2023? For example, when the Israeli Prime Minister

³³ “Foreign Minister Wadehul travels to Israel”, Press Release, 7 July 2026, available at <https://www.auswaertiges-amt.de/en/newsroom/news/2777082-2777082>.

³⁴ CR 2026/30, p. 21, paras. 30-31 (Monar).

³⁵ CR 2026/30, p. 17, para. 14 (Monar).

³⁶ “Germany has chosen Israel over international law”, Middle East Eye, 16 Aug. 2026, available at https://www.middleeasteye.net/opinion/germany-has-chosen-israel-over-international-law?utm_source=linkedin&utm_medium=social&utm_campaign=news-2026-08&utm_content=c967092f-9459-48cf-97bb-a7da7c2b7915&utm_platform=linkedin.

³⁷ “Germany condemns Israeli minister’s Gaza ‘killings’ remarks”, DW, 19 Aug. 2026, available at <https://www.dw.com/en/germany-israel-palestinians-gaza-targeted-killings-itamar-ben-gvir-merz/a-78435299>.

referred to Palestinians as “bloodthirsty monsters” and described Palestinian children as “children of darkness”, while also inciting the killing alike of men, women and children by citing biblical passages³⁸; or when the Minister of Defence announced a complete siege because Palestinians were “human animals” and declared that he had “removed every restriction” on the Israeli military³⁹; or when the same Minister of National Security said that “they’re all terrorists, and they should also be destroyed”⁴⁰.

21. Mr President, I reviewed the judgment of the Israeli court on the Nazi criminal, Eichmann, to see if statements of this nature were part of his indictment. I found none. The comments of Hannah Arendt on this trial, famously recalled as the “banality of evil” have no mention of Eichmann’s indictment involving these types of assertions now commonly reiterated by Israeli officials.

22. This Court has on record all the explicit statements dehumanizing Palestinians, inciting genocide and war crimes, and yet Germany has always effectively opposed any measures in response to this conduct. That was the case in April 2024 when it refused to review the Association Agreement with Israel⁴¹, and in June and August 2024 when it led a group of nations against a proposal aimed at sanctioning Israeli Ministers for “incitement to war crimes”⁴². Similarly, in August 2025, Germany opposed the suspension of scientific research funding for Israeli entities⁴³. It was also the case two months ago in July when some European countries attempted to introduce a ban on products from

³⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Application instituting proceedings and Request for the indication of provisional measures, 29 December 2023, p. 141, para. 101.

³⁹ *Ibid.*, pp. 142-144, para. 101.

⁴⁰ *Ibid.*, p. 144, para. 101.

⁴¹ “Germany and Italy block bid to suspend EU-Israel trade pact”, Al Jazeera, 21 April 2026, available at <https://www.aljazeera.com/news/2026/4/21/spain-slovenia-ireland-push-eu-to-debate-israel-pact-suspension>.

⁴² “EU top diplomat seeks sanctions against Israeli ministers”, Al Jazeera, 29 August 2024, available at <https://www.aljazeera.com/news/2024/8/29/eus-top-diplomat-seeks-sanctions-against-israeli-ministers>; see also “German lawmakers call for EU sanctions on Israel’s Ben-Gvir over Gaza killings remarks”, Politico, 18 August 2026, available at <https://www.politico.eu/article/german-lawmakers-call-for-eu-sanctions-on-israels-ben-gvir-over-gaza-killing-remarks/>.

⁴³ “Germany and other EU states stall scientific sanctions against Israel”, Science Business, 31 July 2025, available at <https://sciencebusiness.net/news/international-news/germany-and-other-eu-states-stall-scientific-sanctions-against-israel>.

territories illegally occupied or restrict government officials from Israel⁴⁴. In fact, Germany described those measures as “inappropriate”⁴⁵.

23. The current Minister for Foreign Affairs has visited Israel ten times since he was appointed last year. It seems it is business as usual despite the increasingly catastrophic situation for Palestinians⁴⁶.

24. Mr President, if Germany is so secure in the legality and morality of the *raison d'état* that is supposed to inspire its dealings with Israel, then it should welcome the opportunity afforded by this case to explain and justify its reasons. And yet we are now involved in an attempt by Germany to avoid at all costs that its actions be judged by this Court. These legal questions will be dealt with in the following way.

The existence of the dispute

25. Dr Crosato will address the question of the existence of a dispute in all detail. At this point I would only comment that Nicaragua's and Germany's position “concerning the question of the performance or non-performance of certain international obligations”⁴⁷ incumbent on Germany, are irreconcilable, and have been from the very beginning. On 12 January 2024, a few days after South Africa filed its Application against Israel for violations of the Convention on Genocide, Germany announced publicly that it would be filing an intervention in support of Israel. Germany went on to describe South Africa's genocide allegations as baseless and even warned against “political instrumentalization” of this charge against Israel⁴⁸. If there was any doubt about the contrasting positions and the existence of a dispute it should be recalled that Nicaragua filed a request to

⁴⁴ “Germany blocks EU move to ban trade with illegal Israeli settlements”, Anadolu Agency, 13 July 2026, available at <https://www.aa.com.tr/en/europe/germany-blocks-eu-move-to-ban-trade-with-illegal-israeli-settlements/3996452>.

⁴⁵ “EU's heavyweights Germany and Italy block proposal to suspend EU-Israel landmark agreement”, Euro Reporter, 24 April 2026, available at <https://www.eureporter.co/world/israel/2026/04/24/eus-heavyweights-germany-and-italy-block-proposal-to-suspend-eu-israel-landmark-agreement/>.

⁴⁶ “Germany opposes EU trade embargo on settlements”, Globes, 13 July 2026, available at <https://en.globes.co.il/en/article-germany-opposes-trade-embargo-on-settlements-1001549190>.

⁴⁷ *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 (I)*, para. 50.

⁴⁸ “Germany says will intervene at The Hague on Israel's behalf, blasts genocide charge”, The Times of Israel, 12 January 2024, available at <https://www.timesofisrael.com/germany-says-will-intervene-at-the-hague-on-israels-behalf-blasts-genocide-charge/>.

intervene in the *South Africa v. Israel* case on 7 February 2024, on the basis of Article 62 of the Statute, asserting the same claims as South Africa.

**The dispute is one with “with regard to situations or facts subsequent”
to Germany’s optional clause declaration**

26. Mr President, Germany has indicated that “[a] significant number of Nicaragua’s claims do not relate to ‘situations or facts subsequent’ to 30 April 2008”⁴⁹ and has taken particular issue with the position of Nicaragua considering “the right to self-determination of the Palestinian people to have long been violated”⁵⁰, long before 2008. Although Dr Müller will address how Germany’s preliminary objection based on the temporal limitation of its declaration is without merit, I will make a small point.

27. The facts and situations mentioned by Nicaragua that occurred prior to 30 April 2008 are part of and inform the historical background of the case. They merely reveal the gravity of the conduct with regards to the Palestinians which Nicaragua has submitted to the Court’s scrutiny. How could it be otherwise, given Germany’s *Staatsräson* is blind devotion and loyalty to Israel’s attacks on the Palestinian people that go back to Israel’s very beginnings. But let me restate very clearly that each of Germany’s violations invoked by Nicaragua are stand-alone acts, whose legality must be appraised on its own merits.

28. In simple terms what Germany claims is that since the rights of the Palestinian People have been violated since long before 2008, then Germany must have been responsible for the violation of its own obligations ever since, and that reiteration of such violations occurring after the critical date are excluded. This is an unheard extension of the temporal limitation used by some States when accepting the Court’s jurisdiction. If Germany really intended to exclude consent to the Court’s jurisdiction over any responsibility with respect to crimes committed by Israel after 2008 — that were of the same nature as those committed before that date and hence supposedly exclude its *erga omnes* obligations derived from these crimes — then it should have stated that clearly. It would have been a very embarrassing reservation to the Court’s jurisdiction if it had been expressed so clearly, but that is in fact what they are now claiming under the cloud of legalese.

⁴⁹POG, para. 68 (ii).

⁵⁰ POG, para. 96.

The Court has jurisdiction over Nicaragua's claims regarding racial discrimination, racial segregation and apartheid

29. Mr President, the scope of this case extends beyond the crime of genocide as it encompasses a pattern of racial discrimination, racial segregation and apartheid, one that has been facilitated by Germany.

30. Germany asserts in its preliminary objections that the Court has no jurisdiction to adjudicate these claims⁵¹. Professor Imseis will explain in detail how Germany errs in its assertions and misconstrues the terms of Article 22 of the Convention.

31. Dr Power will afterwards explain that in fact Article 22 of the Convention does not bar the Court's jurisdiction over breaches of the Convention in light of the urgency and circumstances of the present case.

Monetary Gold

32. Mr President, the question of the so-called Monetary Gold principle will be addressed by Professor Pellet.

33. At this point I would emphasize that Nicaragua is not requesting the Court to adjudge that Israel has committed these violations and is responsible for them. Your judgment will be binding only between Germany and Nicaragua. If this judgment were a judgment on Israel's rights and obligations, with conclusions directed at Israel, then it could have been considered as a possible indispensable party, but Nicaragua is only asking for a judgment against Germany. If Israel considers that it is an indispensable party, it should ask to join the case or intervene in any other way — we would certainly not oppose an appropriate attempt to do so. Nicaragua's optional clause acceptance of the Court's jurisdiction and the fact that it is also a party to the Genocide Convention, of which Israel is also a party, affords Israel the possibility of bringing a case against Nicaragua for its statements that it had violated the Genocide Convention and international humanitarian law. Any judgment by the Court on this case would not remove this possibility for Israel of presenting such a case since this Court has not been asked to rule anything against Israel. Mr President, Members of the Court, thank you for your kind attention. May I ask you to please give the floor to Dr Crosato.

⁵¹ POG, pp. 31-35.

The PRESIDENT: I thank the Agent of Nicaragua for his statement. I now invite Dr Alfredo Crosato Neumann to take the floor. You have the floor, Sir.

Mr CROSATO:

THE EXISTENCE OF THE DISPUTE

1. Mr President, Members of the Court, it is an honour to appear before you on behalf of the Republic of Nicaragua.

2. As announced by the Agent, I shall address Germany's first preliminary objection: the alleged inexistence of a dispute between the Parties. This objection is entirely without merit and may be easily dismissed. As Nicaragua showed in its written statement⁵² — and as I will further explain in responding to what Germany said yesterday — such a dispute most certainly exists and this jurisdictional requirement is met in the present case.

3. I shall proceed as follows. I will first say a few words about the criteria to determine the existence of a dispute (I). I will then address the facts showing that a dispute existed by 1 March 2024, when these proceedings were instituted (II). And finally, I shall recall Germany's subsequent conduct, rejecting at every opportunity Nicaragua's claims (III).

I. The criteria to determine the existence of a dispute

4. Mr President, I turn first to the criteria to determine the existence of a dispute between the Parties. I can be brief on this point as those criteria are well known and the Parties are largely in agreement on them.

5. A “dispute”, as the Court has consistently noted, is a “disagreement on a point of law or fact, a conflict of legal views or interests”⁵³, where the claim of one party is “positively opposed by

⁵² WSN, Chap. 2.

⁵³ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11. See also *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, para. 50.

the other”⁵⁴. Determining the existence of a dispute is a “matter of substance, not of form or procedure”⁵⁵, and requires an objective assessment of the facts⁵⁶.

6. A disagreement “need not necessarily be stated *expressis verbis*” — whatever the professed view of a party, its actual position can be inferred from the facts⁵⁷. This is so, also, when a State fails to respond to a claim in circumstances calling for a response⁵⁸.

7. Keeping with the prevalence of substance over form, the Court has flexibly applied the criteria I have just mentioned, not least when seised of a case under exceptional circumstances. Most recently, in *Allegations of Genocide*, the Court found that a dispute between Ukraine and Russia existed concerning alleged breaches of Articles I and IV of the Genocide Convention by Russia. The Court found it sufficient that Ukraine had advanced that claim very broadly, in a public statement, and only hours before the seisin of the Court⁵⁹. Germany, intervening under Article 63 of the Statute in those proceedings, supported such a flexible approach⁶⁰.

8. There is, Mr President, one particular point on which the Parties do disagree. Germany suggests that, in this case, these criteria should not be applied in the way the Court normally applies them. It refers to Nicaragua’s claims as “exceptional” or “unique”, arguing that the dispute is “twice-removed from a usual bilateral dispute”. Because of this, according to Germany, the “usual test” should be “stringently applied”⁶¹. This was repeated yesterday in a somewhat more *à l’*: it was

⁵⁴ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 328.

⁵⁵ *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 (II), 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 (I), 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 (II), para. 38.

⁵⁶ *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 (II), 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 (I), para. 50.

⁵⁷ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, para. 89.

⁵⁸ *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 (II), para. 71.

⁵⁹ *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 (II), para. 50.

⁶⁰ CR 2023/15, pp. 35-36, paras. 9-11 (Rückert).

⁶¹ POG, para. 25. See also *ibid.*, paras. 38-39.

suggested that the Court should apply the “usual test”, not a “different test”, not a “stricter test”; Germany called upon the Court “to be strict in the application of the requirements of the usual test”⁶².

9. Be that as it may, this position has no basis in law. There is no precedent in the Court’s case law, nor any other authority, supporting it.

10. In fact, the Court has been seised of several cases by States not directly injured by the alleged breach of an international obligation, such as those involving East Timor⁶³, Myanmar⁶⁴, Syria⁶⁵ and Israel⁶⁶. The Court has never suggested that the criteria to determine the existence of a dispute should be applied any differently; and there is indeed no good reason to do so here.

11. Germany’s characterization of the Court’s “usual context” might have had some relevance in the previous century, but it is no longer the right way to describe things. States seek the Court’s intervention in a growing number of circumstances that are not situated in a purely bilateral context. A significant number of contentious cases, as I just noted, rely on the *erga omnes* principle. Advisory opinions, five of them within the past seven years, respond to requests from large majorities of States, who actively participate in the proceedings before the Court. This multilateralization characterizes the Court’s activities in recent years. It manifests, in an unprecedented manner, great expectations from States and confidence in the Court to deliver rulings that promote the principles and purposes of the United Nations.

12. In any event, it is not clear what Germany expects when it refers to a stringent or strict application of the usual test⁶⁷. The suggestion essentially appears to be that Nicaragua should have sought prior negotiations with Germany and that the Court should have been seised only after such

⁶² POG, paras. 48-54. See also CR 2026/30, p. 37, para. 39 (Tzanakopoulos).

⁶³ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, paras. 21-22.

⁶⁴ *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 (II), pp. 497-507, paras. 51-77.

⁶⁵ *Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Netherlands v. Syrian Arab Republic)*, Provisional Measures, Order of 16 November 2023, I.C.J. Reports 2023 (II), paras. 24-33.

⁶⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Provisional Measures, Order of 26 January 2024, I.C.J. Reports 2024 (I), paras. 19-28.

⁶⁷ WSN, paras. 59-60.

negotiations failed. Yet such a precondition would be inconsistent with the criteria to determine the existence of a dispute, which only require opposing views between the parties⁶⁸.

13. Such a precondition is also not found in two of the bases of jurisdiction invoked by Nicaragua: Article IX of the Genocide Convention and Germany's optional clause declaration of 30 April 2008. Germany made a new declaration on 21 October 2025, with effect from 30 October. That new declaration does contain a condition on prior negotiations. But it cannot be retroactively applied to these proceedings, which were instituted when Germany's 2008 declaration was valid. If anything, Germany's new declaration confirms that the 2008 declaration did not contain such a precondition and that it is not a pre-existing bar to jurisdiction⁶⁹. To the extent that Germany seeks such retroactive application when calling for a stringent test — which would appear to be the case — such position must be rejected.

II. A dispute existed between the Parties at the time of the filing of the Application

14. Mr President, I now turn to the facts showing that a dispute existed at the time of the filing of the Application.

A. Nicaragua formulated its claims against Germany clearly and comprehensively

15. Nicaragua formulated its claims against Germany on two occasions in early February 2024. It did so in a Note Verbale from its Foreign Ministry addressed to the Ministry of Foreign Affairs of Germany on 1 February 2024, which laid down several claims for what Nicaragua considered breaches by Germany of its obligations under international law⁷⁰. And it did so in a press release issued by the Government of Nicaragua, also on 1 February, addressing alleged violations of international law by Germany, as well as Canada, the Netherlands and the United Kingdom⁷¹. These documents, which should be read together, are available at tabs 3 and 4 of your folders.

⁶⁸ *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 (II), para. 38. See also *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections, Judgment, I.C.J. Reports 1998, para. 109.

⁶⁹ See also WSN, para. 59 and Annex 41 (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).

⁷⁰ 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).

⁷¹ Press Release of the Government of Nicaragua, 1 February 2024 (Application, Annex 3).

16. Nicaragua's legal position was conveyed clearly and comprehensively. Both documents indicated, first, the urgent context of Nicaragua's claims. Among other things, Nicaragua referred to the "ongoing military actions carried out by Israel . . . in the Gaza Strip since the events of 7 October 2023", as well as the Court's provisional measures Order of 26 January 2024 in the *South Africa v. Israel* case. It was recalled that the Court, alongside various United Nations organs, agencies, special rapporteurs, and independent experts, 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 [IHL]".

17. Nicaragua also spelled out the rules of international law that it considered were being breached by Germany. The Note Verbale and Press Release referred to violations by Germany of the Genocide Convention, in particular the obligation to prevent genocide; IHL, including the law of occupation; the principle of self-determination; and related rules of customary international law.

18. Germany's conduct contrary to these rules was laid down as well. Nicaragua referred to, among others, the supply of arms, ammunition, military technology and components to Israel; the suspension of funding to UNRWA; and, more generally, to Germany's contribution to the "collective punishment of the Palestinians and to the apparent objective of forcing the Palestinian population to leave" the Occupied Palestinian Territory.

19. Germany does not contest that Nicaragua set out "some of its claims" in the Note Verbale and Press Release⁷². But it maintains that "what are now central claims of [Nicaragua's] case as reflected in its Memorial"⁷³ were not mentioned in these documents. Germany refers specifically to Nicaragua's claims relating to self-determination; racial discrimination, racial segregation and apartheid; non-recognition and non-assistance; and the obligation to prosecute and punish⁷⁴.

20. This argument, Mr President, is based on a far too restrictive reading of the Note Verbale and Press Release taken out of their context. What matters is not whether a specific rule is expressly

⁷² POG, para. 23.

⁷³ *Ibid.*

⁷⁴ POG, paras. 48-54. See also CR 2026/30, pp. 26-28, paras. 11-13 (Tzanakopoulos).

mentioned, but whether its subject-matter is referred to with sufficient clarity⁷⁵. In this regard, Germany appears to be confused between the subject-matter of the dispute and the underlying argument for it.

21. As explained in the written statement, the right of the Palestinian people to self-determination was in fact expressly mentioned in the Note Verbale and Press Release, and the continuing denial of that right has always been a central part of Nicaragua's claims⁷⁶.

22. Claims concerning racial discrimination are also readily apparent from the references in the Note Verbale and Press Release to IHL and customary international law. This body of law, as is well known, prohibits various forms of discrimination⁷⁷.

23. The same is true in respect of the obligation to prosecute and punish. Practices of apartheid are considered a grave breach of Additional Protocol I, and customary law requires States to investigate, prosecute and punish such a war crime. The Genocide Convention similarly imposes an obligation to punish the commission of acts of genocide⁷⁸.

24. As for claims on non-recognition and non-assistance, these arise, as you know, under the customary international law on State responsibility⁷⁹.

25. The background of Nicaragua's claims must also be considered — those claims were not made in a vacuum but in a context that was all too well known to Germany. Germany's breaches of international law of which Nicaragua complains arise in the context of serious, systematic and inter-connected violations of international law in the Occupied Palestinian Territory — violations which have been confirmed by this Court and a great number of other authorities. The rules at issue span across various fields of international law⁸⁰, including those that Germany argues do not fall within the scope of the present dispute.

⁷⁵ *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 (I), 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 (II), para. 72.

⁷⁶ WSN, paras. 81-82.

⁷⁷ WSN, para. 83.

⁷⁸ WSN, para. 85.

⁷⁹ WSN, para. 84.

⁸⁰ WSN, paras. 77-79.

26. In sum, all of Nicaragua's claims were conveyed to Germany on 1 February 2024. Those claims are reflected in Nicaragua's Application and Memorial, with the further developments that are necessary in pleadings before the Court.

27. Significantly, Germany has not argued that Nicaragua's Memorial transforms the subject-matter of the dispute so as to render all or some of Nicaragua's claims inadmissible. This suggests that Germany has, from the outset, understood the scope of Nicaragua's claims in their entirety.

28. If you were to find that Nicaragua did not convey some of its claims with sufficient clarity before the filing of the Application, that would in any event not be the end of the matter. As I will show in a moment, Germany's conduct subsequent to the Application — of which we heard very little yesterday — confirms and further crystallizes the scope of the dispute.

B. Nicaragua conveyed its claims in appropriate form

29. Mr President, another argument advanced by Germany concerns form. The Note Verbale, according to Germany, was sent to the wrong email address and only “picked up” on 13 February 2024 — 12 days after it was transmitted by Nicaragua's Foreign Ministry⁸¹. It also argues that the Press Release was not addressed to Germany specifically⁸². Because of this Germany says it could not have been aware of Nicaragua's claims, and did not have sufficient time to consider them⁸³.

30. This is not a convincing argument. The Note Verbale was sent to the official email address of the Permanent Mission of Germany to the United Nations in New York. Germany confirmed receipt on 14 February 2024⁸⁴ and did not indicate that this way of transmission was defective. Diplomatic exchanges with Permanent Missions at the United Nations, as the Court has noted, are relevant when determining the existence of a dispute⁸⁵. This is particularly so when the matter is

⁸¹ POG, para. 23; CR 2026/30, p. 32, para. 26 (Tzanakopoulos).

⁸² POG, para. 44. See also CR 2026/30, p. 26, para. 10 (Tzanakopoulos).

⁸³ CR 2026/30, p. 32, para. 26 (Tzanakopoulos).

⁸⁴ WSN, para. 91; 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).

⁸⁵ *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 (II), paras. 74-76. See also *ibid.*, para. 65.

being actively discussed at the United Nations — as was and is the case of the question of Palestine, including the situation in the Gaza Strip.

31. As for the Press Release, Germany complains that it begins by addressing “the people of Nicaragua and the international community”, and not Germany specifically⁸⁶. But this is beside the point. The Press Release referred to conduct by Germany that Nicaragua considered contrary to international law. And Germany was aware of the Press Release — it had been widely disseminated and transmitted through a diplomatic Note to all Permanent Missions to the United Nations⁸⁷.

The PRESIDENT: Excuse me, the interpreters are having problems, so please speak slowly.

Mr CROSATO: Yes, of course.

This is further confirmed by the exchange of emails between Germany, Canada, the Netherlands and the UK, which shows that, as early as 2 February 2024, Germany had already started to consider Nicaragua’s claims and to co-ordinate its response with the other States concerned⁸⁸. I will come back to this exchange shortly.

C. Germany positively opposed Nicaragua’s claims

32. I now turn to Germany’s opposition to Nicaragua’s claims. Germany, in brief, argues that it never opposed those claims, but had rather “reserved its position”, and that it had not yet given a response to Nicaragua when the Application was filed. During the entire period between 1 February and 1 March 2024, Germany was “actively considering its position”⁸⁹.

33. This argument is plainly contradicted by the facts.

34. Germany did oppose Nicaragua’s claims, and did so quite clearly. On 7 February 2024, during a press conference, the German Foreign Ministry made public official statements on the

⁸⁶ POG, para. 44; CR 2026/30, p. 26, para. 10 (Tzanakopoulos). See also WSN, para. 94.

⁸⁷ 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 (WSN, Annex 7).

⁸⁸ POG, Annex 9 (Email correspondence between the German Federal Foreign Office and the legal departments of the Foreign Ministries of Canada, the Netherlands and the United Kingdom relating to Nicaragua’s allegations (2 February-1 March 2024)).

⁸⁹ POG, paras. 24-25. See also CR 2026/30, p. 35, para. 34 (Tzanakopoulos).

“[p]ossible action by Nicaragua against Germany, the Netherlands, the [UK] and Canada before the [Court] in connection with the conflict in the Gaza Strip”⁹⁰.

35. Asked about the Note Verbale and Press Release, and how Germany intended to react, the Foreign Ministry said 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”⁹¹.

36. This last statement — which Germany was careful not to highlight yesterday — was not a casual one. As I noted a moment ago, Germany had for days been considering the contents of the Press Release, and co-ordinating its response with Canada, the Netherlands and the UK⁹².

37. Answering a follow-up question, Germany’s Foreign Ministry then reaffirmed its position: “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”⁹³.

38. These official statements alone suffice to establish that Germany positively opposed Nicaragua’s claims, giving rise to a dispute between the Parties.

39. Yesterday we heard a somewhat hesitant attempt by Germany to argue that these statements did not amount to a rejection of Nicaragua’s claims. It was suggested, for example, that Germany’s rejection of the “relevant content of the press release” referred to the “receipt of the Note Verbale”⁹⁴. But this is not what the Foreign Ministry said — the statements were referring to the content of the Press Release in its entirety, including the claims advanced by Nicaragua — this is self-evident. Counsel for Germany also indicated that this was an “ad hoc response to an unexpected question” addressed to a journalist, and not to Nicaragua⁹⁵. Yet Germany was in fact addressing claims advanced by Nicaragua; the statements were public; and Germany must have known that

⁹⁰ WSN, para. 98; Statements by the German Federal Foreign Office at the Government Press Conference, 7 February 2024 (Application, Annex 4).

⁹¹ WSN, para. 98; Statements by the German Federal Foreign Office at the Government Press Conference, 7 February 2024 (Application, Annex 4).

⁹² POG, Annex 9 (Email Correspondence between the German Federal Foreign Office and the legal departments of the Foreign Ministries of Canada, the Netherlands and the United Kingdom relating to Nicaragua’s allegations (2 February-1 March 2024)).

⁹³ WSN, para. 99; Statements by the German Federal Foreign Office at the Government Press Conference, 7 February 2024 (Application, Annex 4).

⁹⁴ CR 2026/30, p. 34, para. 31 (Tzanakopoulos).

⁹⁵ CR 2026/30, pp. 34-35, paras. 31-33 (Tzanakopoulos).

Nicaragua would become aware of these statements — as in fact it did. How else could Nicaragua understand these statements, other than a rejection of its claims against Germany? This is, we submit, the only reasonable way to interpret the statements of the German Foreign Ministry⁹⁶.

40. There is another reason why Germany's argument fails: having rejected Nicaragua's claims on 7 February 2024, Germany then remained silent for weeks until Nicaragua felt compelled to seise the Court.

41. The urgent circumstances in fact called for a swift and serious response by Germany. The claims advanced by Nicaragua were of the utmost gravity and concerned an unfolding humanitarian catastrophe in the Occupied Palestinian Territory. And Nicaragua, confronted with Germany's blanket rejection of any claim against it, could not be expected to just sit and wait. In the circumstances, Germany could not prevent a dispute from arising, and the present case from being brought to the Court, by remaining silent. Such an outcome, in the words of the Court, would be "unacceptable"⁹⁷.

42. To somehow justify its silence, Germany has suggested that it was considering Nicaragua's claims when the Application was filed⁹⁸. The Preliminary Objections did not produce any evidence in support of this assertion⁹⁹. It was only weeks ago, on 31 July, that Germany belatedly sought to do so, requesting the Court's authorization to submit the email exchange I mentioned earlier. Nicaragua in principle did not oppose the production of such a document, but with a caveat: the email exchange was clearly incomplete and heavily redacted, so Germany should provide a complete copy. Germany provided a new copy of the email exchange on 24 August.

43. Having now before us a fuller, though still partly redacted, version, one can easily conclude that the email exchange does not support Germany's position. The emails that Germany initially sought to withhold from Nicaragua and from the Court show that Germany was considering Nicaragua's claims from 2 February 2024, and that it was engaged in active discussions about those claims, only not with Nicaragua. Then, as we have shown, Germany rejected Nicaragua's claims on

⁹⁶ Cf. CR 2026/30, p. 35, para. 33 (Tzanakopoulos).

⁹⁷ *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 (II), para. 71.

⁹⁸ POG, para. 24; WSN, para. 97; CR 2026/30, p. 35, para. 34 (Tzanakopoulos).

⁹⁹ Cf. CR 2026/30, pp. 35-36, paras. 34-35 (Tzanakopoulos).

7 February. The fact that Germany was at that time considering the contents of the Press Release, and not the Note Verbale¹⁰⁰, is irrelevant — the contents of the two documents were virtually identical¹⁰¹.

44. I should emphasize, Mr President, that there is no shred of evidence showing that Germany was considering Nicaragua's claims in a positive manner; that Germany did not oppose Nicaragua's claims; that Germany agreed with Nicaragua's legal position; or that Germany was willing to change its course of action to meet Nicaragua's concerns. Germany offers nothing of the sort.

45. In light of this, Mr President, Members of the Court, the inescapable conclusion is that Nicaragua's claims were positively opposed by the other Party.

III. Germany's conduct after the filing of the Application confirms the existence of the dispute and crystallizes its scope

46. This takes me to the last part of my presentation: Germany's conduct after these proceedings commenced.

47. That conduct is significant. Germany has, at every opportunity, rejected Nicaragua's claims as presented in the Application and Memorial. This continuous opposition confirms the existence of the dispute and further crystallizes its scope¹⁰².

48. In a Government press conference of 4 March 2024, three days after the Application was filed, the spokesperson of the Federal Government said that Germany considered the allegations of aiding and abetting genocide "unfounded": "[L]et us make it very clear that we naturally reject the accusation made against us by Nicaragua"¹⁰³. This language, as you will notice, echoes that used by the German Foreign Ministry on 7 February.

49. In a Note Verbale to the Court dated 11 March 2024, Germany again stated that it "firmly reject[ed] the factual and legal basis of Nicaragua's Application"¹⁰⁴.

¹⁰⁰ CR 2026/30, p. 34, para. 30 (Tzanakopoulos).

¹⁰¹ Cf. CR 2026/30, p. 26, para. 10 (Tzanakopoulos).

¹⁰² *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016 (I), para. 52; *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 (II), para. 43.

¹⁰³ WSN, para. 103.

¹⁰⁴ WSN, para. 104.

50. In a post on X dated 15 March 2025, Germany's Agent yet again confirmed that "[t]he German government rejects the unfounded allegations" made by Nicaragua¹⁰⁵.

51. Germany's pleadings at the hearing on provisional measures were also replete with rejections of Nicaragua's position. Germany "firmly" rejected Nicaragua's accusations and denied that any of the rights invoked by Nicaragua were plausible, adding that Nicaragua's claims "do not withstand scrutiny". Germany also made it clear that the Parties' position on the facts of the case could not be further apart¹⁰⁶.

52. Germany did not address these statements in its presentation yesterday. And the reason for this is understandable: they completely defeat any argument by our friends opposite that Germany did not oppose Nicaragua's claims before the filing of the Application. As we have demonstrated, it did, and has continued to do so until today.

Conclusion

53. To conclude, Mr President, the Parties have a disagreement on points of law and fact. Nicaragua conveyed its claims in early February 2024 and did so in appropriate form. Germany firmly rejected those claims on 7 February and then remained silent for weeks, despite the gravity and urgency of the matters raised by Nicaragua. After the Court was seised of this case, Germany continued to oppose Nicaragua's claims, confirming the existence of the dispute and crystallizing its scope. As a result, Germany's first preliminary objection must be rejected.

54. Mr President, Members of the Court, this concludes my presentation today. I thank you for your attention and kindly ask you, Mr President, to invite Dr Müller to the podium.

The PRESIDENT: I thank Mr Crosato Neumann. I now give the floor to Dr Daniel Müller. You have the floor, Sir.

¹⁰⁵ *Ibid.*

¹⁰⁶ WSN, paras. 105-108.

Mr MÜLLER

**THE DISPUTE IS ONE WITH “WITH REGARD TO SITUATIONS OR FACTS SUBSEQUENT” TO
GERMANY’S OPTIONAL CLAUSE DECLARATION**

1. Mr President, Members of the Court, it is always a special moment to stand before you in this Great Hall of Justice, here, where the stained-glass window to my right reminds us that the realization of a more just order — an order that allows all peoples to flourish in peace — is possible. With this awareness, and with respect for the role of the Court, I have the honour of assisting the Republic of Nicaragua this morning. The present case shows, in the clearest and most serious way, why international law exists and why it remains indispensable.

2. The Federal Republic challenges the Court’s jurisdiction, arguing, among other things, that “Nicaragua now presents a case against Germany . . . that spans decades, and that relies on distant events” and that, according again to Germany, “Nicaragua’s claims . . . depend on assertions of decades-long violations of international law, centred on Germany’s long-standing ‘loyal relationship’ with Israel”¹⁰⁷.

3. Germany aims at convincing you that the present dispute, or parts of it, fall outside the consent contained in Germany’s optional clause declaration of 30 April 2008¹⁰⁸, which is limited to, and you have it on the screen, “all disputes arising after the present declaration, with regard to situations or facts subsequent to this date”. But, Members of the Court, the dispute that Nicaragua has brought to your attention is not the one that Germany describes, by making a deliberate and selective choice of very small extracts and dates drawn from the Nicaragua’s Memorial¹⁰⁹.

4. Before discussing Germany’s overly broad application of this temporal limitation, I must make three preliminary points.

5. *First*, Mr President, Germany’s objection concerns only the second aspect of the temporal limitation: the Respondent contends that the present dispute is not “with regard to situations or facts

¹⁰⁷ POG, para. 7 (ii).

¹⁰⁸ UNTS, Vol. 2515, p. 255 (I-44914).

¹⁰⁹ CR 2026/30, pp. 42-44, paras. 12-20, pp. 47-49, paras. 30-38 (Tams).

subsequent” to its optional clause declaration. Germany does not, however, contest that the dispute brought before the Court by Nicaragua arose after the date of that declaration: after 30 April 2008¹¹⁰.

6. *Second*, Germany submits that its objection would have the effect of excluding “a significant number of Nicaragua’s claims”¹¹¹ or, as counsel described it yesterday, “[c]entral claims of Nicaragua”¹¹². Although he then continued to list these claims¹¹³, he avoided explaining which of Nicaragua’s claims would remain unaffected. Yet, there is no doubt that Germany does not target claims based on the Genocide Convention by this objection¹¹⁴. And, of course, it cannot: the temporal limitation of Germany’s optional clause declaration could not have any effect on the compromissory clauses invoked by Nicaragua¹¹⁵. Claims based on Article IX of the Genocide Convention, or on Article 22 of CERD, therefore remain subject to the Court’s jurisdiction regardless of whether they concern situations or facts prior to 2008, or not.

7. *Third*, and this is my last preliminary point, the temporal limitation that Germany included in its 2008 optional clause declaration¹¹⁶ is well known to the Court. The PCIJ and this Court have already had occasion to consider limitations formulated in comparable, if not identical, terms contained in optional clause declarations of other States¹¹⁷, or in treaties¹¹⁸. This was also recalled yesterday morning¹¹⁹. I will not dwell on these cases in detail. The Court knows them.

8. It is entirely sufficient to note — and the Parties agree on that point¹²⁰ — that, for the proper application of the temporal limitation, the Court must identify the dates of those facts or situations

¹¹⁰ CR 2026/30, p. 40, para. 6 (Tams). See also WSN, para. 149.

¹¹¹ POG, paras. 8, 19, 67, 68 (*ii*), 83, 84, 87.

¹¹² CR 2026/30, p. 39, para. 5 (Tams).

¹¹³ *Ibid.*

¹¹⁴ POG, para. 195 (*b*). See also *ibid.*, paras. 19 and 118.

¹¹⁵ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 76. See, *mutatis mutandis*, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, para. 109. See also POG, para. 79.

¹¹⁶ UNTS, Vol. 2515, p. 255.

¹¹⁷ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 10; *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 64; *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, p. 6.

¹¹⁸ *Certain Property (Liechtenstein v. Germany), Judgment, I.C.J. Reports 2005*, p. 6; *Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010 (I)*, p. 310.

¹¹⁹ CR 2026/30, p. 40, para. 6 (Tams).

¹²⁰ POG, para. 90.

“with regard to which the dispute has arisen or, in other words, as was said by the Permanent Court in the case concerning the *Electricity Company of Sofia and Bulgaria*, only ‘those which must be considered as being the source of the dispute’, those which are its ‘real cause’”¹²¹;

or, to use the more accurate and more telling French version of the Permanent Court’s Judgment: facts and situations “*qui doivent être considérés comme générateurs du différend*”, ceux qui en sont “*réellement la cause*”.

9. Despite this general agreement, we still consider that our colleagues apply this case law in a highly questionable manner. They do so with a single aim: expanding the scope of the temporal limitation far beyond what its terms allow, transforming it into a limitation without any limits whatsoever. Rather than identifying the facts or situations that constitute *les faits générateurs du différend* — Germany endeavours to identify, and even adds, facts or situations that, in its view, should have given rise to a dispute with Nicaragua. Germany accepts that “[its] more recent conduct may have prompted Nicaragua to submit its claims to the Court”¹²². Indeed, Members of the Court, this more recent conduct constitutes the object of the dispute and its real cause. However, Germany asserts then that “this more recent conduct cannot be separated from conduct predating 30 April 2008, and does not give rise to a new, separate dispute”¹²³. This more recent conduct is, still according to Germany, “inextricably linked to prior conduct by which, if Nicaragua is to be believed, Germany violated its international obligations”¹²⁴.

10. Members of the Court, Germany’s argument cannot stand, for at least three reasons, which I will address in turn.

I. The historical context and the sources of the rights and obligations at issue do not constitute either the *fait générateur* or the real cause of the dispute

11. The first reason is simple and straightforward, although Germany has carefully ignored it: the question whether a fact or situation constitutes the source (the *fait générateur*) or the real cause of the dispute is not merely a question of causation. It is neither necessary nor sufficient to identify

¹²¹ *Right of Passage over Indian Territory (Portugal v. India)*, Merits, Judgment, I.C.J. Reports 1960, p. 35 (citing *Electricity Company of Sofia and Bulgaria*, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 82). See also *Certain Property (Liechtenstein v. Germany)*, Judgment, I.C.J. Reports 2005, para. 44.

¹²² POG, para. 93. See also CR 2026/30, p. 14, para. 5 (Monar).

¹²³ POG, para. 93.

¹²⁴ *Ibid.*

the fact or situation without which the dispute would never have existed. The Permanent Court explained this in the case of the *Electricity Company of Sofia and Bulgaria*: “It is true that 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.”¹²⁵

12. For this simple reason, Germany’s effort of carefully singling out from Nicaragua’s factual presentation every date prior to 30 April 2008 is inapposite. In fact, our colleagues attempt to transform the historical context of the dispute into its subject-matter. Contrary to Germany’s allegations in its preliminary objections¹²⁶, the dispute submitted to your scrutiny concerns neither the 1897 World Zionist Congress, nor the 1917 Balfour Declaration — nor distant events or circumstances, such as, for example, the 1947 General Assembly resolution 181 (II). Without doubt, the dispute would most likely never have arisen without these events. But these events merely constitute the background against which the dispute is set — the history, or, to use the Court’s characterization in its 2024 Advisory Opinion, the “General Context”¹²⁷. Of course, this context dates back and has been lasting for several decades — to the great distress of the Palestinian people and the international community¹²⁸. Nevertheless, these historical facts do not constitute the real cause of the present dispute. They are its indispensable background to understand the present situation.

13. For the proper application of the temporal limitation, it is equally pointless to insist — as Germany does¹²⁹ — on the fact that the inalienable right of the Palestinian people to self-determination has been violated “for decades”¹³⁰; that the unlawful occupation of Palestinian territory has lasted since 1967¹³¹; or that Palestinians in the Occupied Palestinian Territory or elsewhere have been subjected to racial discrimination, racial segregation, and apartheid for nearly

¹²⁵ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 82.*

¹²⁶ POG, para. 7 (ii).

¹²⁷ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III), pp. 779-783. See also Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), pp. 165-171.*

¹²⁸ See, in particular, United Nations, resolution ES-10/24 adopted by the General Assembly on 18 September 2024: “Advisory Opinion of the International Court of Justice on the Legal Consequences of Israel’s Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem, and from the Illegality of Israel’s Continued Presence in the Occupied Palestinian Territory”, UN doc. A/RES/ES-10/24 (19 Sept. 2024).

¹²⁹ POG, para. 104.

¹³⁰ *Ibid.*, paras. 96 and 104. See also CR 2026/30, pp. 42-43, para. 14 (Tams).

¹³¹ *Ibid.*, p. 48, para. 33 (Tams).

80 years¹³². These facts — as serious as they are — do not constitute the cause and subject-matter of the dispute before you. They explain why there is an obligation to respect and promote the right of the Palestinian people to self-determination; why there is an obligation to ensure respect for international humanitarian law; an obligation to prevent and condemn racial segregation and apartheid; and an obligation not to recognize an unlawful situation. However, the dispute does not arise from the facts or situations that generate these obligations.

14. Mr President, in this respect, the present case can be compared to the case concerning *Jurisdictional Immunities of the State*. In 2010, the Court considered 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”¹³³.

The dispute that Nicaragua has brought to your attention also concerns the violations by Germany of its own obligations — obligations arising from the serious violations of the rights of the Palestinians and the Palestinian people. It does not concern these serious violations of the rights of the Palestinian people themselves. The facts that gave and give rise to these serious violations constitute the origin of the rights asserted by Nicaragua and the obligations incumbent upon Germany. They are not, however, “the facts or situations to which the dispute in question relates”¹³⁴.

15. It is worth recalling at this point that organs and bodies of the United Nations, including the Security Council and the Court as its principal judicial organ, have already established these facts and situations and the consequences that flow from the violations of the rights of the Palestinian people for all States. In 2004, the Court found that the construction of the wall and other measures taken previously “severely impede[] the exercise by the Palestinian people of its right to self-determination”¹³⁵. Your Court further found that “[a]s a consequence of Israel’s policies and practices, which span decades, the Palestinian people has been deprived of its right to self-determination over a long period, and further prolongation of these policies and practices

¹³² POG, para. 109. See also CR 2026/30, p. 47, para. 30 (Tams)

¹³³ *Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010 (I)*, para. 26.

¹³⁴ *Ibid.*

¹³⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, para. 122.

undermines the exercise of this right in the future”¹³⁶. The Court also reaffirmed that “Israeli settlements in the West Bank and East Jerusalem, and the régime associated with them, have been established and are being maintained in violation of international law”¹³⁷ and that the occupation of the entirety of the Palestinian territory, which has lasted since 1967, is unlawful¹³⁸. Still in 2024, the Court found that “the 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”¹³⁹ and that “Israel’s legislation and measures impose and serve to maintain a near complete separation in the West Bank and East Jerusalem between the settler and Palestinian communities”¹⁴⁰, in violation of essential international obligations under the Covenants and CERD. And again, in 2025, this Court considered that the new urgent request for an advisory opinion of the General Assembly was “situated in the context of Israel’s prolonged occupation of the Occupied Palestinian Territory for more than 58 years, and the continued denial of the Palestinian people’s right to self-determination”¹⁴¹.

16. Members of the Court, all this is part of the background of the present case. Not only has your Court established these facts and their consequences with full authority — and Professor Pellet will revisit this point later this morning — but Germany itself has expressly acknowledged them¹⁴², including yesterday morning¹⁴³. But while Germany accepts these facts — which therefore cannot be the cause of the dispute between the Parties — what remains is the question whether Germany

¹³⁶ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III)*, para. 243.

¹³⁷ *Ibid.*, para. 155.

¹³⁸ *Ibid.*, para. 261.

¹³⁹ *Ibid.*, para. 223.

¹⁴⁰ *Ibid.*, para. 229.

¹⁴¹ *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. 218.

¹⁴² See, e.g., CR 2024/16, 9 April 2024, p. 10, para. 11, and p. 9, para. 10 (von Usler-Gleichen); POG, para. 14. See also Joint Statement from the Leaders of the United Kingdom, France, Germany, Italy, Canada, Australia, New Zealand, Norway, the Netherlands, Spain, Belgium and the EU on the situation in the West Bank, 22 May 2026, available at <https://www.gov.uk/government/news/joint-statement-from-the-leaders-of-the-e4-canada-australia-new-zealand-on-the-situation-in-the-west-bank>; Joint Statement from the Leaders of the United Kingdom, France, Germany, Italy, the European Commission, the Netherlands, Canada, Norway, Australia, New Zealand, Sweden, Belgium, Spain, Austria, Greece, Cyprus and Finland on the E1 West Bank Settlement Plan, 20 August 2026, available at <https://www.bundeskanzler.de/bk-de/aktuelles/joint-statement-from-the-leaders-of-the-united-kingdom-france-germany-italy-the-european-commission-the-netherlands-canada-norway-australia-new-zealand-sweden-belgium-spain-austria-greece-cyprus-and-finland-on-the-e1-west-bank-settlement-plan-2449908>.

¹⁴³ CR 2026/30, pp. 21-22, paras. 32-33 (Monar).

draws the necessary consequences in respect of *its own* international obligations. This, Mr President, is the object — the sole object — of the present dispute.

II. Past violations cannot transform a dispute into one concerning necessarily all of these violations

17. Members of the Court, our colleagues carefully avoid mentioning the distinction between the origin of the obligations and rights at issue, on the one hand, and the origin of the dispute, on the other hand. Indeed, they attempt to dilute that distinction and render it completely ineffective — and this is my second point. Germany asserts in essence that if Nicaragua’s submissions were to be accepted, Germany would necessarily have been in breach of its international obligations for decades and that, consequently, the present dispute would have to concern all of these violations, facts and situations, which it proclaims to be inseparable or “inextricably linked”¹⁴⁴.

18. This reasoning, Mr President, is flawed: similar past violations cannot, by themselves, transform a dispute into one concerning necessarily all violations.

19. In its preliminary objections, Germany justified its position by referring to the Court’s Orders on provisional measures in the *Legality of Use of Force* cases. It claimed to discern from those Orders a principle according to which, whenever an application concerns a particular act that forms part of a series of comparable or identical acts, the entire series must necessarily be treated as relevant and must constitute the source (the *faits générateurs*) or the real cause of the dispute¹⁴⁵.

20. Counsel for Germany did not refer to these Orders yesterday, and rightly so: they say nothing of the sort. There is one simple reason for that: the question the Court had to resolve was not whether the dispute concerned facts and situations prior to Yugoslavia’s consent to jurisdiction, but only “whether, in terms of the text of [Yugoslavia’s] declaration, the dispute brought before the Court ‘arose’ before or after 25 April 1999”¹⁴⁶. While the date on which the dispute arose is one thing, the

¹⁴⁴ POG, paras. 93 and 106.

¹⁴⁵ *Ibid.*, para. 91 (iii).

¹⁴⁶ *Legality of Use of Force (Yugoslavia v. Belgium), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, para. 26; *Legality of Use of Force (Yugoslavia v. Canada), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, para. 25; *Legality of Use of Force (Yugoslavia v. Netherlands), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I)*, para. 26; *Legality of Use of Force (Yugoslavia v. Portugal), Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II)*, para. 25.

question of whether that dispute stems from facts or situations prior to a certain date is another. Germany accepts this¹⁴⁷.

21. In any event, the mere fact that, in the context of these *Legality of Use of Force* cases, new similar facts could not give rise to new separate disputes at a later date in no way implies — either in logic or in law — that any dispute brought before the Court must necessarily concern all comparable facts or situations. This is illustrated by the *Right of Passage over Indian Territory* case. Although, in that case, there had been a few incidents in the past, as acknowledged by the Court¹⁴⁸, a dispute arose only with regard to violations of Portugal's rights in 1954. Despite the previous incidents, that dispute fell within the temporal limitation of India's optional clause declaration¹⁴⁹.

22. In the end, Members of the Court, this is nothing but common sense. The temporal limitation cannot preclude the Court from reviewing facts or situations occurring after the critical date simply because similar facts or situations existed in the past and might have given rise to responsibility on the basis of comparable or identical arguments¹⁵⁰. If it were otherwise, the temporal limitation in itself would weaken, merely through the passage of time, long-standing rights and obligations even in the face of more recent denials or violations.

23. “We have always done this” is not only a flimsy excuse to justify any internationally wrongful act¹⁵¹ — it is also not a sufficient reason to exclude facts and situations occurring after the critical date from the Court's jurisdiction under the temporal limitation. Germany did not intend to exclude, by its temporal limitation, disputes with regard to violations of its international obligations that began before 30 April 2008, but only disputes “with regard to situations or facts”¹⁵² prior to this date.

¹⁴⁷ POG, para. 89, note 103 (referring to and quoting from *Certain Property (Liechtenstein v. Germany)*, Preliminary Objections, Judgment, I.C.J. Reports 2005, para. 48).

¹⁴⁸ *Right of Passage over Indian Territory (Portugal v. India)*, Merits, Judgment, I.C.J. Reports 1960, p. 35.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*, p. 36.

¹⁵¹ Articles on Responsibility of States for internationally wrongful acts, Art. 29, in United Nations, General Assembly, Resolution <https://docs.un.org/A/RES/56/83>, Responsibility of States for internationally wrongful acts, 12 December 2001, Annex.

¹⁵² See above, fn. 108.

24. Of course, States are free to exclude from the Court's jurisdiction facts or situations more or less remote in time about whose lawfulness they might have doubts¹⁵³. Nevertheless, the temporal limitation cannot have such an effect on similar facts or situations subsequent to the critical date. This is consistent with the inherent purpose of such temporal limitations which, according to the Permanent Court, is 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 whose action was impugned was not in a position to foresee the legal proceedings to which these facts and situations might give rise"¹⁵⁴. However, once a State has made its declaration, it is fully in a position to foresee the consequences and the legal proceedings to which subsequent facts and situations might give rise. This was the case with India in the *Right of Passage* case¹⁵⁵; this was the case with Bulgaria in the *Electricity Company* case¹⁵⁶. And this is precisely the case here: Germany must answer before your Court to claims made by Nicaragua which concern facts and situations subsequent to 30 April 2008.

25. Germany does not deny that it has authorized the export of military equipment and war weapons since 2008. The data, however generic they may be, confirm this. Nicaragua also mentioned in its Memorial previous volumes of German export licences, in particular to illustrate the dramatic increase in authorizations in October 2023¹⁵⁷ or to highlight military co-operation as a defining element of Germany's relations with Israel¹⁵⁸. This does not mean, however, that the dispute concerns those earlier authorizations. These elements may shed light on the dispute, but they do not constitute its "real cause".

26. Since accepting the Court's compulsory jurisdiction, Germany could have foreseen that any authorization to export military equipment — whether it classifies such equipment as "other military equipment" or "war weapons" — could be the subject of legal scrutiny and proceedings before the Court. This is the case of the numerous authorizations granted between 2008 and 2023, as well as to the military contracts and co-operation agreements entered into during that period by

¹⁵³ See also *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 1998, para. 54.

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

¹⁵⁵ *Right of Passage over Indian Territory (Portugal v. India)*, *Merits, Judgment*, I.C.J. Reports 1960, pp. 35-36.

¹⁵⁶ *Electricity Company of Sofia and Bulgaria*, *Judgment*, 1939, P.C.I.J., Series A/B, No. 77, p. 82.

¹⁵⁷ MN, para. 192.

¹⁵⁸ *Ibid.*, para. 141.

German companies. All of this took place while the rights of Palestinians, particularly in the Gaza Strip, but also in the West Bank, were consistently and severely undermined, including through incursions and military operations such as so-called Operation *Cast Lead* in December 2008 and January 2009 or Operation *Protective Edge* in 2014.

27. Germany was also in a position to foresee the consequences of the dramatic increase in authorizations, granted at an accelerated pace, in October 2023, immediately after the tragic events of 7 October — events whose existence is neither to be denied, nor whose magnitude and gravity is to be minimized. The export licences for military equipment and weapons of war issued in October 2023, and those that have followed without interruption since then¹⁵⁹, are facts at the heart of this dispute. They must be assessed in light of the catastrophic situation in the Gaza Strip and the flagrant disregard for the most basic rights of the Palestinian people, both within the Gaza Strip, a territory held under total siege, and elsewhere, which continue to this day.

28. Members of the Court, Germany was — and remains — fully aware that these facts could be the subject of judicial scrutiny and proceedings before the Court.

(a) It was fully aware of this when it authorized the export of military equipment worth more than €251 million between 7 October 2023 and the hearings on provisional measures¹⁶⁰.

(b) It was still fully aware of this when it continued to grant authorizations worth approximately €4.5 million between April and September 2024¹⁶¹, even though, as recalled by Nicaragua’s Agent, your Court had reminded “all States of their international obligations relating to the transfer of arms to parties to an armed conflict”¹⁶².

(c) Germany was certainly fully aware of this when, in October 2024, it significantly increased the volume of authorizations¹⁶³, despite the General Assembly’s call urging all States to “ceas[e] . . . the provision or transfer of arms, munitions and related equipment to Israel . . . in all cases where

¹⁵⁹ WSN, paras. 15-35. For a recent overview, see also Forensis, German Arms Exports to Israel Report Addendum, 2023-2026, 1 September 2026, available at <https://content.forensic-architecture.org/wp-content/uploads/2026/09/Forensis-Report-Addendum-German-Arms-Exports-to-Israel-2023-2026-1.pdf>.

¹⁶⁰ MN, para. 196.

¹⁶¹ *Ibid.*, para. 199.

¹⁶² *Alleged Breaches of Certain International Obligations in Relation to the Occupied Palestinian Territory (Nicaragua v. Germany)*, Provisional Measures, Order of 30 April 2024, I.C.J. Reports 2024 (II), para. 24.

¹⁶³ MN, para. 202.

there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory”¹⁶⁴. Germany understood that the licences issued between October and December 2024 — worth more than €146 million — could be the subject of legal scrutiny and proceedings before the Court. Why, otherwise, would it have deemed it necessary to obtain, this time, a paper assuring that the exported equipment “will only be used in accordance with international humanitarian law”¹⁶⁵ — whatever these “assurances” were actually worth¹⁶⁶?

- (d) Nor could Germany have ignored that the authorizations granted in the first half of 2025, totalling nearly €90 million¹⁶⁷, were likely to be the subject of this dispute.
- (e) It was fully aware of this when, in the second half of 2025, it authorized the export of military equipment worth nearly €115 million¹⁶⁸ — and this despite a temporary suspension of new authorizations between August and November 2025¹⁶⁹, a suspension prompted by “great concern to the Federal Government” regarding the military offensive in the Gaza Strip¹⁷⁰. These figures also show that immediately after the lifting of the suspension in November 2025, justified by the so-called ceasefire in the Gaza Strip¹⁷¹, Germany again authorized exports in considerable amounts and with considerable pace.
- (f) And, Members of the Court, Germany was still fully aware of this when, in the first half of 2026, it continued granting authorizations for the export of military equipment. Although the German authorities were conscious that “the situation in Gaza remains and continues to be fragile”¹⁷² and

¹⁶⁴ United Nations, General Assembly, Resolution, available at <https://docs.un.org/fr/A/RES/ES-10/24>, Advisory Opinion of the International Court of Justice on the Legal Consequences of Israel’s Policies and Practices in the Occupied Palestinian Territory, including East Jerusalem, and the Illegality of Israel’s Presence in the Occupied Palestinian Territory, 18 September 2024, para. 5 (b).

¹⁶⁵ Letter from the Agent of Germany, Ms von Uslar-Gleichen, to the Registrar, 31 October 2024, para. 19. See also MN, para. 207.

¹⁶⁶ See also WSN, para. 28.

¹⁶⁷ *Ibid.*, para. 209.

¹⁶⁸ WSN, paras. 23-24.

¹⁶⁹ *Ibid.*, paras. 25-31.

¹⁷⁰ Statement by Federal Chancellor Friedrich Merz on the development in Gaza, 8 August 2025 (WSN, Annex 21).

¹⁷¹ CR 2026/30, p. 19, para. 21 (Monar).

¹⁷² Government press conference of 2 February 2026, Federal Government (WSN, Annex 51).

despite the increasingly worrying situation in the West Bank¹⁷³, the value of military equipment authorized for export between January and March 2026 reached €63.6 million¹⁷⁴, and, for the period between April and June 2026, the considerable amount of €735.8 million¹⁷⁵. According to information of the Federal Government made available only yesterday morning, this includes licences for the export of weapons of war in the amount of €508.8 million¹⁷⁶ — weapons of war that Germany consistently claimed it did not provide since February 2024. One of these weapons of war is, according to information provided by the Federal Government, “a major project in the maritime defence sector”¹⁷⁷, presumably referring to a nuclear-capable submarine. Whatever might have been the date of the underlying contractual arrangement, the necessary authorization for the export of the submarine was granted under Germany’s War Weapons Control Act [*Kriegswaffenkontrollgesetz*] in December 2023¹⁷⁸. The second authorization under the Foreign Trade and Payments Act appears to have been granted recently, and the submarine was reportedly delivered some days ago¹⁷⁹. But in the second quarter of this year, Germany has also granted

¹⁷³ Joint Statement from the Leaders of the United Kingdom, France, Germany, Italy, Canada, Australia, New Zealand, Norway, the Netherlands, Spain, Belgium and the EU on the situation in the West Bank, 22 May 2026, available at <https://www.gov.uk/government/news/joint-statement-from-the-leaders-of-the-e4-canada-australia-new-zealand-on-the-situation-in-the-west-bank>; Joint Statement from the Leaders of the United Kingdom, France, Germany, Italy, the European Commission, the Netherlands, Canada, Norway, Australia, New Zealand, Sweden, Belgium, Spain, Austria, Greece, Cyprus and Finland on the E1 West Bank Settlement Plan, 20 August 2026, available at <https://www.bundestkanzler.de/bk-de/aktuelles/joint-statement-from-the-leaders-of-the-united-kingdom-france-germany-italy-the-european-commission-the-netherlands-canada-norway-australia-new-zealand-sweden-belgium-spain-austria-greece-cyprus-and-finland-on-the-e1-west-bank-settlement-plan-2449908>.

¹⁷⁴ 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, Arms exports to Israel in the first quarter of 2026, German *Bundestag*, doc. 21/5906, 11 May 2026, response to questions nos. 1 and 2, available at <https://dserver.bundestag.de/btd/21/059/2105906.pdf>.

¹⁷⁵ 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, Arms exports to Israel in second quarter of 2026, German *Bundestag*, doc. 21/7784, 28 August 2026, response to questions nos. 1 and 2, available at <https://dserver.bundestag.de/btd/21/077/2107784.pdf>. See also written questions with answers received from the Federal Government in the week of 1 June 2026, German *Bundestag*, doc. 21/6244, 5 June 2026, response to question no. 39, available at <https://dserver.bundestag.de/btd/21/062/2106244.pdf>; Federal Government’s Arms Export Policy in the First Half of 2026, Press Release, Federal Ministry for Economic Affairs and Energy, 15 July 2026, available at <https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Pressemitteilungen/2026/07/20260715-ruestungsexportpolitik-1-halbjahr-2026.html>.

¹⁷⁶ *Ibid.*, response to question no. 5.

¹⁷⁷ *Ibid.*, response to question no. 1.

¹⁷⁸ Germany’s judges’ folder, 9 April 2024, tab 19. See also CR 2024/16, 9 April 2023, p. 21, para. 33 (Tams).

¹⁷⁹ “Navy’s sixth Dolphin 2-class submarine, Drakon, on its way to Israel”, *Times of Israel*, 1 September 2026, available at https://www.timesofisrael.com/liveblog_entry/navys-sixth-dolphin-2-class-submarine-drakon-on-its-way-to-israel/; “German arms export licenses for Israel surge with focus on sub project”, *Al Jazeera*, 27 July 2026, available at <https://www.aljazeera.com/news/2026/7/27/german-arms-export-licences-for-israel-surge-with-focus-on-sub-project>.

licences for the export of other weapons of war, including ammunition, like projectiles and propelling charges, and other essential components, like ignition charges¹⁸⁰.

29. Mr President, allow me to add this. The total value of military equipment whose export has been authorized by Germany since 7 October 2023 — more than €1.5 billion — confirms that this is not merely “the confirmation . . . of earlier situations or facts”¹⁸¹. It also completely refutes Germany’s claims that the equipment in question is merely of a subordinate or defensive nature¹⁸² — protective gear, helmets, body protection plates, camouflage paint, flak jackets, as you were told in April 2023¹⁸³. The equipment exported includes not only a submarine and other war weapons, but also essential military components, for instance equipment falling within Export List Category 0006, (Military Land Vehicles and Components), such as engines produced by MTU or transmission systems produced by Renk, which are indispensable to the Merkava tanks used on a large scale in the Gaza Strip and in the West Bank¹⁸⁴.

30. Let me return to the question of temporal limitation. What Nicaragua submits to the Court’s scrutiny and jurisdiction are the export authorizations for military equipment issued after 30 April 2008, as well as the numerous events occurring after that date that Nicaragua has detailed in its written submissions¹⁸⁵. These include, for instance, the involvement and participation of German companies, enterprises and institutions in activities contributing to the deprivation of natural resources in the Occupied Palestinian Territory, and in infrastructure projects carried out there for the sole benefit of illegal settlements. Very recently Germany, together with other States, expressed the position that businesses involved in such activities “should be aware of legal and reputational

¹⁸⁰ 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, Arms exports to Israel in second quarter of 2026, German *Bundestag*, doc. 21/7784, 28 August 2026, response to question no. 5, available at <https://dserver.bundestag.de/btd/21/077/2107784.pdf>.

¹⁸¹ CR 2026/30, p. 47, para. 28 (Tams) (quoting *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 24).

¹⁸² See also MN, paras. 212-222.

¹⁸³ CR 2024/16, 9 April 2023, pp. 17-18, para. 15 (Tams); *ibid.*, p. 40, para. 36 (Peters).

¹⁸⁴ MN, paras. 222-234. See also WSN, para. 34.

¹⁸⁵ MN, paras. 271–308; WSN, para. 33.

consequences including the risk of involving themselves in serious breaches of international law”¹⁸⁶. Members of the Court, so should Germany, including when German companies were and remain involved in the development, installation and operation of surveillance systems targeting the Palestinian population, and in the direct and indirect financing of economic and military activities to the detriment of the rights of Palestinians and the Palestinian people. This is also true of co-operation with universities located in the illegal settlements¹⁸⁷.

31. Submitting these facts to the Court’s jurisdiction in no way amounts to retroactively applying Germany’s optional clause declaration or to disregarding the intent behind its temporal limitation. Because — and I take the liberty of paraphrasing the Court’s Judgment in the *Right of Passage* case¹⁸⁸: a finding that the Court has jurisdiction in this case will not involve giving any retroactive effect to Germany’s acceptance of compulsory jurisdiction. The Court will, in fact, only have to rule on the existence of the obligations claimed by Nicaragua since 2008, on the alleged failures of Germany to comply with its obligations at that time, and on any redress with respect to such failures. The Court has not been asked to make any finding whatsoever regarding the period prior to 30 April 2008.

III. The facts and circumstances occurring after the optional clause declaration are not inextricably linked to those occurring before that declaration

32. Germany seeks to evade this conclusion by asserting that all these facts and situations are inextricably linked to those that occurred before its optional clause declaration and cannot be separated from them. This position is vain. And this, Members of the Court, is my third and final point.

33. Despite Germany’s efforts to present its practice in the field of export authorizations for military equipment as an inseparable whole, the circumstances of the present case are not comparable

¹⁸⁶ Joint Statement from the Leaders of the United Kingdom, France, Germany, Italy, the European Commission, the Netherlands, Canada, Norway, Australia, New Zealand, Sweden, Belgium, Spain, Austria, Greece, Cyprus and Finland on the E1 West Bank Settlement Plan, 20 August 2026, available at <https://www.bundeskanzler.de/bk-de/aktuelles/joint-statement-from-the-leaders-of-the-united-kingdom-france-germany-italy-the-european-commission-the-netherlands-canada-norway-australia-new-zealand-sweden-belgium-spain-austria-greece-cyprus-and-finland-on-the-e1-west-bank-settlement-plan-2449908>.

¹⁸⁷ MN, paras. 302-307. See also “German public research money and the occupation of water in Palestine”, Collaborative Investigation by Not In Our Name TU Berlin, Academic Opposition, and Academic Boycott Campaign Germany, September 2026, available at <https://www.notinourname-tu.org/water-apartheid>.

¹⁸⁸ *Right of Passage over Indian Territory (Portugal v. India)*, Merits, Judgment, I.C.J. Reports 1960, pp. 35-36.

to those in *Phosphates in Morocco*, nor to those in *Certain Property* relied upon by counsel yesterday¹⁸⁹, nor to those in *Jurisdictional Immunities of the State*.

34. In *Phosphates in Morocco*, the 1920 dahirs establishing the monopoly régime were not only prior acts comparable to those occurring after the critical date. They were, in the words of the Permanent Court, “the essential facts constituting the alleged monopolization and, consequently, the facts which really gave rise to the dispute”¹⁹⁰. In the opinion of the Court, the legality of all subsequent conduct entirely depended on the “legal position resulting from the legislation of 1920”¹⁹¹. The post-critical-date facts or situations invoked by Italy did not add anything. The same was true in *Certain Property*, where the Court concluded that the German court decisions relied upon by Liechtenstein “cannot be separated from the Settlement Convention and the Beneš Decrees, and that these decisions cannot consequently be considered as the source or real cause of the dispute”¹⁹². In the same vein, in *Jurisdictional Immunities*, the provisions of the 1947 Peace Treaty formed the determining legal framework upon which the subsequent legal situation depended¹⁹³.

35. In the present case, however, Germany cannot — and does not even attempt to — identify or invoke any fact or situation prior to 30 April 2008 upon which the entirety of its conduct, including post-critical-date facts, would wholly depend. Quite to the contrary: Germany has itself confirmed that each of the facts that Nicaragua relies upon is autonomous, examined and assessed on a case-by-case basis, and adopted in light of the situation at the moment it occurred. As it repeatedly stated before the German *Bundestag*, the Federal Government:

“decides on the granting of licenses for the export of military equipment and arms on a case-by-case basis and in light of the situation at hand, after careful consideration, taking into account foreign and security policy considerations in accordance with legal and political guidelines. . . . This also applies to arms exports to Israel.”¹⁹⁴

¹⁸⁹ CR 2026/30, pp. 45-47, paras. 26-28 (Tams).

¹⁹⁰ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 26.

¹⁹¹ *Ibid.*, pp. 25-26.

¹⁹² *Certain Property (Liechtenstein v. Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, para. 51.

¹⁹³ *Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010 (I)*, paras. 27-30.

¹⁹⁴ Response of the Federal Government to the parliamentary question by members of the *Bundestag* Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the *Bundestag* and the BSW group, The military support of Israel by Germany against the background of the war in Gaza, German *Bundestag*, doc. 20/11838, 13 June 2024, response to questions nos. 3 to 5 (MN, Annex 30). See also Written questions with the answers received from the Federal Government in the week of 21 October 2024, German *Bundestag*, doc. 20/13511, 25 October 2024, response to question no. 50 (NM, Annex 44); Written questions with answers received from the Federal Government in the period between

During the hearings in April 2024, counsel for Germany also assured the Court that the review under Germany's so-called robust regulatory framework was conducted on a case-by-case basis and "for every licence that is granted"¹⁹⁵. You took note of this in your Order of 30 April 2024¹⁹⁶.

36. Members of the Court, Germany's Agent spoke yesterday quickly about the decision taken on 8 August 2025 suspending new authorizations¹⁹⁷. Indeed, that decision confirms that Germany does not consider itself bound in any way by past facts or circumstances when authorizing the export of military equipment. Of course, this was only a temporary decision, rescinded on 24 November 2025¹⁹⁸, and it did not entail a ban of exports of previously authorized military equipment¹⁹⁹. But it demonstrates that, irrespective of any prior practice, Germany could act differently within the framework of its own policy and regulations, and that its conduct was in no way dependent on, or conditioned by, any earlier essential facts akin to the 1920 dahirs in *Phosphates in Morocco*²⁰⁰ or the Settlement Convention in *Certain Property*²⁰¹.

37. German courts have confirmed the same. In two decisions, handed down just days before the suspension of new authorizations was lifted, the administrative tribunal of Berlin explained that

"[a] future decision-making practice by the Respondent [i.e. the German Government] that mirrors the present case, based on an essentially comparable factual situation in a future licensing procedure, cannot be predicted with the required degree of probability"²⁰².

23 December 2024 and 3 January 2025, German *Bundestag*, doc. 20/14393, 3 January 2025, response to question no. 43 (MN, Annex 51); Response of the Federal Government to the parliamentary question by members of the *Bundestag*: Nicole Gohlke, Lea Reisner, Ulrich Thoden; other members of the *Bundestag* and the parliamentary group Die Linke, German arms deliveries to Israel and the consequences for the population in Gaza, German *Bundestag*, doc. 21/284, 26 May 2025, response to questions nos. 2 and 3 (MN, Annex 63). See also Letter from the Agent of Germany, Ms von Usler-Gleichen, to the Registrar, 31 October 2024, para. 13.

¹⁹⁵ CR 2024/16, p. 18, para. 17 (Tams).

¹⁹⁶ *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 (II), para. 17.

¹⁹⁷ Statement by Federal Chancellor Friedrich Merz on the development in Gaza, 8 August 2025 (WSN, Annex 21). See also WSN, para. 25.

¹⁹⁸ Government Press Conference of 17 November 2025, Federal Government, pp. 1-2 (WSN, Annex 37). See also WSN, paras. 29-30.

¹⁹⁹ WSN, paras. 25-28.

²⁰⁰ See above, para. 0.

²⁰¹ *Ibid.*

²⁰² Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 130/24, ECLI:DE:VGBE:2025:1112. 4K130.24.00, MN 31 (WSN, Annex 35).

The administrative tribunal — which dismissed the appeals not because they were ill-founded, as you heard yesterday²⁰³, but on the ground that the plaintiffs lacked standing and a right to contest export licences decisions before German courts²⁰⁴ — so the administrative tribunal also emphasized that the lawfulness of export authorizations did not depend on the lawfulness of prior authorizations. Rather, it could be determined only on a case-by-case basis, taking into account the content of the decision and the specific circumstances in which it was adopted²⁰⁵. The same must apply in the present proceedings before your Court.

Conclusions

38. Mr President, Members of the Court, the dispute that Nicaragua has submitted to your jurisdiction does not concern situations or facts prior to 30 April 2008, as Germany claims. It concerns facts and situations that occurred after that critical date. The Court is called upon to rule on breaches by Germany of obligations existing after 2008, at the time of the alleged facts, and to determine the consequences of these internationally wrongful acts. The Court is not being asked to rule on any alleged violations of international law prior to 2008.

39. We are, of course, conscious that “jurisdiction only exists within the limits within which it has been accepted”²⁰⁶ and that it is for each State “to decide upon the limits it places upon its acceptance of the jurisdiction of the Court”²⁰⁷. But, Members of the Court, a State cannot, by adopting an excessively broad interpretation of the limits it has itself established, reduce the Court’s jurisdiction beyond what it has accepted. Your jurisdiction extends to everything that has been

²⁰³ CR 2026/30, p. 19, para. 23 (Monar).

²⁰⁴ See also BVerfGE — 2 BvR 1626/25 — (3 February 2026), MN 97 (available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2026/02/rk20260203_2bvr162625en.html).

²⁰⁵ Administrative Tribunal Berlin, judgment of 12 November 2025, 4 K 45/24, ECLI:DE:VGBE:2025:1112.4K45.24.00NWS, MN 28 (NWS, Annex 34).

²⁰⁶ *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 23; *Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, para. 44.

²⁰⁷ *Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, para. 44. See also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, para. 59.

accepted; and just as the Court “must not exceed the jurisdiction conferred upon it by the Parties, it is equally bound to “exercise that jurisdiction to its full extent”²⁰⁸.

40. Mr President, Members of the Court, I thank you for your kind attention. Mr President, may I ask you to please call on my colleague, Professor Ardi Imseis, so that he may continue the presentation on behalf of Nicaragua — perhaps after the coffee break?

The PRESIDENT: I thank Dr Müller. Before I give the floor to the next speaker, the Court will indeed observe a break of 10 minutes. The sitting is adjourned.

The Court is adjourned from 11.35 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now give the floor to Professor Ardi Imseis. You have the floor, Sir.

Mr IMSEIS:

THE COURT HAS JURISDICTION OVER GERMANY’S CLAIM REGARDING RACIAL DISCRIMINATION, RACIAL SEGREGATION AND APARTHEID — PART 1

1. Mr President, Members of the Court, it is an honour to once again appear before you, this time on behalf of the Republic of Nicaragua.

2. I shall address Germany’s preliminary objections concerning the Court’s jurisdiction over Nicaragua’s claims regarding racial discrimination, racial segregation and apartheid against the Palestinian people.

3. Germany asserts that the Court has no jurisdiction to adjudicate these claims because, in its view, these claims cannot be brought on the basis of Article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination (or CERD)²⁰⁹. Germany further asserts that jurisdiction over these claims cannot be based on its optional clause declaration either, as Article 22

²⁰⁸ *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, para. 19; *Frontier Dispute (Burkina Faso/Republic of Mali)*, Judgment, I.C.J. Reports 1986, para. 45; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), para. 136.

²⁰⁹ POG, para. 68 (i).

of CERD amounts to “another method of peaceful settlement chosen by all the Parties”, per paragraph (i) of that declaration²¹⁰.

4. Mr President, Nicaragua submits that Germany’s position is unfounded and must be dismissed. To this end, I will develop two points.

5. First, leaving aside Germany’s position regarding Article 22 of CERD — which I will get to in a moment — Nicaragua’s claims concerning racial discrimination, racial segregation and apartheid are grounded in rules of international law *outside of CERD*. These rules — being part of customary international law and conventional international humanitarian law — engage Germany’s obligations *erga omnes* and *erga omnes partes*. They are therefore plainly encompassed by the consent of the parties to the Court’s jurisdiction under their respective optional clause declarations (I).

6. Second, with respect to its argument under CERD, Germany is incorrect in asserting that Nicaragua’s claims, to the extent they *are* covered by CERD, cannot be brought on the basis of Germany’s optional clause declaration. And this is because Germany misconstrues the terms of Article 22 of CERD and misapplies the terms of its optional clause declaration (II).

7. If it pleases the Court, I shall now address each of these points in turn.

I. Nicaragua’s claims under customary international law and international humanitarian law fall under Germany’s optional clause declaration

8. First, the Court has jurisdiction over Nicaragua’s claims based on customary international law, and conventions other than CERD, regarding racial discrimination, racial segregation and apartheid against the Palestinian people.

9. The starting point for this contention, which you can see on your screens, is the limited scope of Article 22 of CERD which 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.” [emphasis added]

²¹⁰ *Ibid.*

10. On its face, it is therefore plain that Article 22 of CERD relates only to disputes “with respect to the interpretation or application of [*that*] Convention” and to no other instrument. This means that Article 22 *cannot* apply to any dispute concerning obligations that find their authority in rules of international law outside of CERD. And this is true even where such obligations relate to the prohibition of racial discrimination, racial segregation, and apartheid, as is the situation in the case at bar.

11. 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 instrument”²¹¹. It is precisely for this reason that, in its submissions on the issue, Nicaragua makes clear that its claims against Germany concern the latter’s breaches of “international law” *simpliciter*²¹². These claims concern customary international law, including as may be codified in CERD, and other conventional international law²¹³.

12. Substantively, it is settled that the prohibition of racial discrimination is “now part of customary international law”, as was affirmed by the Court in its 2024 Advisory Opinion on Palestine²¹⁴. In *Barcelona Traction*, the Court affirmed that the prohibition of racial discrimination qualifies as an obligation *erga omnes*²¹⁵.

13. In *Armenia v. Azerbaijan* the Court further noted that “the prohibition of racial discrimination, an essential part of international human rights law, is also a fundamental element of international humanitarian law”²¹⁶.

²¹¹ *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, para. 56; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, I.C.J. Reports 2024 (III), para. 77.

²¹² MN, para. 484 (9).

²¹³ *Ibid.*, para. 431. See also paras. 380-384.

²¹⁴ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, I.C.J. Reports 2024 (III), paras. 188-189.

²¹⁵ *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)*, Second Phase, Judgment, I.C.J. Reports 1970, para. 33-34.

²¹⁶ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, I.C.J. Reports 2024 (III), para. 74.

14. For its part, the International Law Commission has affirmed that the prohibition of racial discrimination and apartheid constitute peremptory norms of general international law²¹⁷. And it follows from that, that racial segregation and apartheid, which the Court has characterized as constituting “two particularly severe forms of racial discrimination”²¹⁸, are equally prohibited under customary international law.

15. Importantly, even if CERD might help in determining the existence and scope of a State’s obligations under custom²¹⁹, such customary legal obligations remain independent of CERD itself²²⁰.

16. Now, the implications of this for questions relating to jurisdiction were usefully addressed by the Court in another matter involving Nicaragua over 40 years ago. In dismissing a United States challenge to the Court’s jurisdiction in the case concerning *Military and Paramilitary Activities*, the Court stated 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 . . . [Such 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. Therefore, since the claim before the Court in this case is 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 1946 United States Declaration”²²¹. [emphasis added]

17. So what, then, Mr President, does all of this mean?

18. We submit that it means that Nicaragua’s claims against Germany that are grounded in rules of international law *outside of CERD* — in particular, rules of customary international law and conventional international humanitarian law — fall squarely within the consent of the parties to the Court’s jurisdiction under their respective optional clause declarations.

²¹⁷ 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, 73rd Sess., 18 April-3 June & 4 July-5 August 2022, A/77/10, p. 16.

²¹⁸ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion*, I.C.J. Reports 2024 (III), para. 225.

²¹⁹ *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, paras. 311-312.

²²⁰ *Ibid.*, para. 314.

²²¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, para. 73.

19. Crucially, not even Germany takes issue with this proposition, judging by its written pleadings on its preliminary objections and indeed by the fact that opposing counsel simply ignored this line of discussion yesterday. Two points underscore this.

20. First, Germany's optional clause declaration of April 2008 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".

21. But Nicaragua's claims that are grounded in rules *outside of CERD* are plainly not barred by this exclusion. Since Article 22 of CERD would not be applicable in such a situation, it would therefore not constitute "another method of peaceful settlement" agreed upon by the parties thereby depriving the Court of jurisdiction.

22. Perhaps this is why Germany strains to bring all of Nicaragua's claims regarding racial discrimination, racial segregation, and apartheid to those that "could have been covered by CERD"²²². Germany doubtless understands that absent this rather curious and self-serving qualification, which attempts to reframe the nature of Nicaragua's claims, it is clear the Court has jurisdiction on the basis of Germany's optional clause declaration.

23. Second, Germany asserts that Nicaragua's claims that are grounded in rules of international law *outside of CERD* do not fall within the temporal limitation of its optional clause declaration. As Dr Müller has explained, that argument lacks merit. But beyond that, by simply tendering it, Germany necessarily concedes that these claims fall within the scope of the declaration, rather than the terms of Article 22 of CERD. And this is because Article 22 of CERD has no temporal limitation, and as the Court is well aware, a State cannot import limitations and reservations from its optional clause declaration into compromissory clauses²²³.

II. Nicaragua's claims on racial discrimination, to the extent they *are* covered by CERD, fall within Germany's optional clause declaration

24. Mr President, Members of the Court, I now turn to the second of my two points, namely that Germany errs in asserting that the Court lacks jurisdiction under its optional clause declaration

²²² POG, para. 78.

²²³ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 76. See, mutatis mutandis, Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998, para. 109. See also POG, para. 79.*

in respect of Nicaragua's claims, to the extent they *are* covered by CERD. In this respect, Germany misconstrues the terms of Article 22 of CERD and misapplies the terms of its optional clause declaration.

25. Now, Germany objects to Nicaragua's claims "to the extent they could have been covered by CERD", because, in its view, these claims "cannot be brought on the basis of Germany's optional clause declaration as an alternative source of jurisdiction"²²⁴. In support, Germany relies on the previously mentioned reservation in its 2008 optional clause declaration excluding "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".

26. Germany posits that Nicaragua's claims under CERD fall within this reservation because these claims are "subject to another method of dispute settlement", namely through Article 22 of CERD²²⁵, which both litigants purportedly "chose" to become parties to through becoming parties to CERD²²⁶. Germany also contends that the dispute resolution procedure under CERD constitutes "another method of peaceful settlement", barring the Court's jurisdiction until such time as certain preconditions are met²²⁷.

27. Now, Germany rightly accepts — and there is agreement between the Parties on this — they rightly accept 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 latter²²⁸. Nevertheless — and this is where the Parties differ — Germany claims that, by virtue of its reservation, recourse to the dispute settlement mechanism of Article 22 of CERD for claims brought under that Convention is exclusive and overrides its optional clause declaration.

28. Mr President, Germany's position is mistaken. It ignores not only the relevant jurisprudence, but also the text of CERD itself. The following three points demonstrate this.

²²⁴ POG, para. 78.

²²⁵ *Ibid.*, para. 81 (i).

²²⁶ *Ibid.*, para. 81 (ii).

²²⁷ *Ibid.*, para. 81 (iii).

²²⁸ *Ibid.*, para. 79.

29. First, Germany fails to take sufficient note of a well-known case of the Permanent Court referred to earlier that is highly pertinent to this matter.

30. In *Electricity Company of Sofia and Bulgaria*, Belgium relied on each of the parties' optional clause declarations as well as a compromissory clause in its 1931 bilateral treaty as providing two jurisdictional bases for its claims against Bulgaria before the Court. Although the Permanent Court accepted Bulgaria's objection concerning the 1931 treaty, which imposed a condition requiring exhaustion of local remedies, it upheld its jurisdiction under the optional clause declarations, rejecting Bulgaria's *rationae temporis* objection. It did so, even though the Belgian optional clause declaration contained a limitation similar to Germany's reservation in the case at bar, excluding "cases where the parties have agreed or shall agree to have recourse to another method of pacific settlement"²²⁹. In its Judgment, the Court offered the following *dictum* which is instructive for the present matter and worth quoting at length:

"[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.*"²³⁰ [emphasis added]

31. Mr President, this reasoning remains most compelling. It is clear that Germany cannot be allowed to invoke the compromissory clause contained in Article 22 of CERD in order to prevent the Parties' optional clause declarations from "exercising their effects" to give jurisdiction to the Court.

²²⁹ The text of Belgium's optional clause declaration can be found at *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 81.*

²³⁰ *Ibid.*, p. 76.

Allowing it to do so would unduly weaken the obligations accepted by Germany through its optional clause declaration.

32. Second, nothing in the text of Article 22 of CERD actually suggests that the dispute settlement mechanism it establishes is exclusive. In fact, the text of Article 22 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”.

33. In point of fact, a cursory glance at Article 16 of CERD confirms this. It provides 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”. If Article 16 expressly contemplates the existence of other procedures for settling a dispute between States parties then, however can it be said that the Article 22 régime be exclusive? In short, Mr President, it can’t. And as covered in Nicaragua’s written statement²³¹, the negotiating record for Article 16 demonstrates that its drafters were indeed motivated by a desire to ensure the non-exclusivity of Article 22.

34. Accordingly, disputes concerning the interpretation or application of the Convention *can indeed* be submitted by States parties to dispute resolution outside the system of Article 22 of CERD.

35. Mr President, my third and final point is that, assuming Germany is correct, *arguendo*, one would be left with an absurd result. This is not a “smokescreen”, as was asserted by opposing counsel yesterday²³². Taken to its logical conclusion, an endless loop would indeed be created between Germany’s optional clause declaration and Article 22 of CERD in a manner that would ensure they “cancel each other out”, as was forewarned by the Permanent Court²³³.

36. The reservations of Germany’s optional clause declaration would preclude jurisdiction because Article 22 of CERD would — in Germany’s view — constitute “another method of peaceful settlement”. Simultaneously, Article 22 would preclude jurisdiction because — again, in Germany’s

²³¹ WSN, para. 135.

²³² See CR 2026/30, p. 53, para. 54 (Tams).

²³³ *Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 76.*

view — the Parties would have been deemed to have agreed to “another mode of settlement” through their optional clause declarations. Taking this position would in fact leave no jurisdictional avenue, thereby frustrating the very object and purpose of these dispute resolution instruments.

37. In the end, Germany’s approach clearly contradicts its own stated intentions. In May 2008, the Federal Government informed the *Bundestag* that its optional clause declaration was intended to “send . . . a strong and positive signal to the international community on the strengthening of international law”, and was aimed “at strengthening international jurisdiction and peaceful dispute resolution and at putting international relations on a legal footing.”²³⁴

38. Would that those lofty words were true, Mr President, Nicaragua would not now have to spend the Court’s precious time refuting Germany’s attempt to shield itself from international judicial scrutiny for its violations of obligations concerning racial discrimination, racial segregation and apartheid against the Palestinian people, among other serious breaches of peremptory norms of general international law.

Conclusion

39. Mr President, Members of the Court, this concludes my brief submission. I should like to thank you for your time and careful attention. I would also like to ask you to request that Dr Power be called to the bar to continue Nicaragua’s submission. Thank you.

The PRESIDENT: I thank Professor Imseis for his statement. I now invite Ms Susan Power to the podium. You have the floor, Madam.

Ms POWER:

THE COURT HAS JURISDICTION OVER GERMANY’S CLAIM REGARDING RACIAL DISCRIMINATION, RACIAL SEGREGATION AND APARTHEID — PART 2

Introduction

1. Mr President, Members of the Court, it is a great honour to appear before you, to assist the Republic of Nicaragua.

²³⁴ 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 (WSN Annex 2).

2. Yesterday, Germany argued that the conditions for seisin of the court under Article 22 of CERD were not met, as Nicaragua had made “no attempt to settle the alleged dispute over racial discrimination through negotiations” or via “the CERD . . . procedure”²³⁵.

3. I will demonstrate that, should the Court consider that Article 22 of CERD represents the *only* basis of jurisdiction for Nicaragua’s claims, the extreme urgency of the unfolding “horror”²³⁶ in Palestine was amongst the considerations requiring Nicaragua’s urgent recourse to the Court. The gravity of the situation, characterized by the CERD Committee as “a humanitarian catastrophe” marked by a “sharp increase in racist hate speech and dehumanization directed at Palestinians”²³⁷ — demanded that Nicaragua act without undue delay to give effect to CERD’s overriding object and purpose — namely the prompt eradication of racial discrimination in all its forms²³⁸, including “extreme manifestations of hatred” and genocide²³⁹.

I. Prolonged negotiations would result in irreparable harm to the Palestinian people

4. Mr President, Members of the Court, Germany’s insistence on an “amicable settlement” would have resulted in irreparable harm to the Palestinian people²⁴⁰. Recourse to negotiations under CERD’s inter-State complaint mechanism entails lengthy procedures, which would have risked imperilling the Palestinian group²⁴¹. The prescribed timelines — three months for a response under

²³⁵ CR 2026/30, p. 51, paras. 44, 46 (Tams).

²³⁶ United Nations Geneva @UNGeneva, Tweet (5.40 pm, 7 November 2023), available at <https://x.com/UNGeneva/status/1721945689297445005>.

²³⁷ UN Committee on the Elimination of Racial Discrimination, Statement 5 (2023), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2F9904&Lang=en.

²³⁸ UN Commission on Human Rights (41st Sess.: 1985: Geneva), *Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid*, E/CN.4/RES/1985/10, UN Commission on Human Rights, 26 February 1985; UN ECOSOC, *Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid*, Report of the Group of Three established under the Convention, para. 33, available at <https://digital.library.un.org/record/85336?ln=en&v=pdf>.

²³⁹ CERD, General recommendation No. 35 Combating racist hate speech, CERD/C/GC/35 (26 September 2013), para. 6, available at <https://docs.un.org/en/CERD/C/GC/35>; UN Committee on the Elimination of Racial Discrimination, Statement, Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure, Decision 2 (2023), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FEWU%2F9942&Lang=en.

²⁴⁰ CR 2026/30, 7 September 2026, p. 51, para. 44 (Tams).

²⁴¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Preliminary Objections, Judgment, I.C.J. Reports 2024 (III)*, paras. 53-55.

Article 11 (1) ²⁴²; six months for a Committee referral after “receipt . . . of the initial communication”²⁴³; and three months for parties to agree the composition of the *ad hoc* Conciliation Commission²⁴⁴ — would have prolonged, in the Secretary-General’s words, the “tragic human toll” faced by Palestinians²⁴⁵. The urgent need to prevent violations of *jus cogens* norms protecting the Palestinian group from destruction cannot be postponed by procedural delay: complaints themselves take years to be heard²⁴⁶, with no mechanism for injunctive relief.

5. After Nicaragua notified Germany of its claims, it was clear from Germany’s subsequent silence and continued arming of Israel²⁴⁷, that its basic position had “not subsequently evolved”²⁴⁸. As the Court noted in the *South West Africa* cases, “it is not so much the form of negotiation that matters as the attitude and views of the Parties on the substantive issues of the question involved”²⁴⁹. There was “no realistic possibility, at that stage, of a bilateral negotiated settlement of the disagreement between the Parties”²⁵⁰ or that “further negotiations would lead to a settlement”²⁵¹.

6. The exceptional life-destroying circumstances in the present case necessitated, and continue to necessitate, settling the dispute without undue time constraints. To prevent racial discrimination

²⁴² International Convention on the Elimination of All Forms of Racial Discrimination Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19 (CERD), Article 11 (1).

²⁴³ CERD, Article 11 (2).

²⁴⁴ CERD, Article 11.

²⁴⁵ UN Secretary General, Statement attributable to the Spokesperson for the Secretary-General — on Gaza, 29 February 2024, available at <https://www.un.org/sg/en/content/sg/statements/2024-02-29/statement-attributable-the-spokesperson-for-the-secretary-general-gaza>.

²⁴⁶ Report of the Ad Hoc Conciliation Commission (case State of Palestine v. Israel) — Committee on the Elimination of Racial Discrimination (CERD/C/113/3), 22 August 2024, (An inter-State complaint submitted by the State of Palestine against Israel for breaches of CERD was filed in April 2018, with a final decision only reached by the CERD ad hoc Conciliation Commission six years later in August 2024).

²⁴⁷ Nicaragua Application, para. 53; UN OHCHR, Arms exports to Israel must stop immediately: UN experts, 23 February 2024, available at <https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>.

²⁴⁸ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), para. 59; see also *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Preliminary Objections, Judgment, I.C.J. Reports 2018 (I), para. 76.

²⁴⁹ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 346.

²⁵⁰ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)*, Preliminary Objections, Judgment, I.C.J. Reports 2024 (III), para. 58.

²⁵¹ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, I.C.J. Reports 1962, p. 345.

against a group²⁵², there must be a group left to protect — that is true of the right of self-determination, and it is also true of the application of CERD. On 1 March, when Nicaragua filed its Application, over 30,000 Palestinians had been killed²⁵³ — “life [was] draining out of Gaza at terrifying speed”²⁵⁴. Nicaragua could not wait six months for thousands more Palestinians to be killed, especially given the CERD Committee’s warnings of “racist hate speech” and “dehumanisation” of the Palestinian people²⁵⁵ — and Nicaragua’s awareness that apartheid itself is a recognized “form of the crime of genocide”²⁵⁶.

7. And this Court had already recognized the threat to the existence of the Palestinian group, from plausible acts of genocide²⁵⁷. The Court can, and then should, consider the implications of this threat to the Palestinian group, the conventional and customary *jus cogens* duty to prevent harm, and the urgency in doing so, in its assessment of Article 22.

II. Interpreting Article 22 of CERD in light of the object and purpose of the Convention

8. Mr President, Members of the Court, this is all the more so given the fact, which you recalled in *Ukraine v. Russia*, that “Article 22 of CERD must also be interpreted in light of the object and

²⁵² *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III)*, separate opinion of Judge Xue, para. 28.

²⁵³ UN OHCHR, Hostilities in the Gaza Strip and Israel — reported impact, 1 March 2024 at 3 pm, available at <https://reliefweb.int/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-reported-impact-1-march-2024-1500>; UN ESCWA, War on Gaza: twenty-first century’s deadliest 100 days, 2023, p. 1, available at https://www.unescwa.org/sites/default/files/pubs/pdf/war_on_gaza_twenty_first_centurys_deadliest_100_days-en_0.pdf.

²⁵⁴ UN OCHA, Hostilities in the Gaza Strip and Israel — reported impact | Day 144, 28 February 2024, <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-144> (killings 29,954), available at <https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-144>; UN OCHA, Hostilities in the Gaza Strip and Israel — reported impact, 29 February 2024 at 3 pm, <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-reported-impact-29-february-2024-1500> (killings 30,035 recorded), available at <https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-reported-impact-29-february-2024-1500>; Tom Fletcher @UNReliefChief, Tweet (2.52 PM, 29 February 2024), available at <https://x.com/UNReliefChief/status/1763215562455359648?>; See also Nicaragua Memorial, para. 121.

²⁵⁵ UN CERD Committee, Statement 5 (2023), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FSWA%2F9904&Lang=en.

²⁵⁶ UN ECOSOC, Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid, Report of the Group of Three established under the Convention, E/CN.4/1985/27, para. 33, available at <https://digitallibrary.un.org/record/85336?ln=en&v=pdf>; *Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid*, E/CN.4/RES/1985/10.

²⁵⁷ *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 (I)*, paras. 45 and 54.

purpose of CERD”²⁵⁸ — which includes a number of separate considerations, provided for in Articles 2 (1), 4 and 7 of the Convention.

9. Considerations of urgency contained in those articles clearly inform the object and purpose of CERD — which requires State parties to eliminate racial discrimination “*without delay*”²⁵⁹, to adopt all measures “*speedily*”²⁶⁰, eradicating racial discrimination “*effectively and promptly*”²⁶¹.

10. All States were put on notice of the “extreme manifestations of hatred”²⁶² against the Palestinian people. United Nations Special Rapporteurs warned of a “second Nakba”²⁶³, “heightened discrimination” against Palestinian women and girls²⁶⁴, and “abusive practices against Palestinian children” requiring the “dismantling [of Israel’s] settler-colonial . . . apartheid”²⁶⁵. UN reports documented increased “hate speech and incitement to hatred”²⁶⁶, that “violence against Palestinians had exploded after 7 October 2023, entrenching the long-standing discriminatory system under which Israel exercises control over Palestinians”, and that “dangerous rhetoric” had “contributed to a toxic atmosphere within which violence and discrimination have flourished”²⁶⁷. The United Nations Office of the High Commissioner on Human Rights urged “[a]ll States, especially

²⁵⁸ *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 (II)*, p. 561.

²⁵⁹ *Ibid.*, para. 111.

²⁶⁰ CERD, preamble.

²⁶¹ *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 (II)*, para. 111.

²⁶² CERD, General recommendation No. 35 Combating racist hate speech, CERD/C/GC/35 (26 September 2013), para. 6, available at <https://docs.un.org/en/CERD/C/GC/35>.

²⁶³ UN OHCHR, Gaza: UN experts call on international community to prevent genocide against the Palestinian people, 16 November 2023, available at <https://www.ohchr.org/en/press-releases/2023/11/gaza-un-experts-call-international-community-prevent-genocide-against>.

²⁶⁴ UN OHCHR, Occupied Palestinian territory and Israel: UN experts call for permanent ceasefire to protect rights and futures of women and girls, 14 December 2023, available at <https://www.ohchr.org/en/press-releases/2023/12/occupied-palestinian-territory-and-israel-un-experts-call-permanent>.

²⁶⁵ UN OHCHR, Situation of human rights in the Palestinian territories occupied since 1967, Note by the Secretary-General, Report of the Special Rapporteur on the situation of Human Rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/78/545, 20 October 2023, para. 87(a), available at <https://www.ohchr.org/sites/default/files/documents/countries/palestine/a-78-545-auv.pdf>.

²⁶⁶ UN HRC, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, Report of the United Nations High Commissioner for Human Rights, A/HRC/55/28 (4 March 2024), para. 69, available at <https://docs.un.org/en/A/HRC/55/28>.

²⁶⁷ *Ibid.*, paras. 8, 50.

States with influence, [to] immediately take urgent and concrete measures”²⁶⁸, to “prevent”, “repress and punish” all “incitement to hatred and violence”²⁶⁹.

11. As Dr Crosato has shown, Germany rejected all of Nicaragua’s claims in February 2024, and it gave no signs of willingness to change the conduct that Nicaragua regarded as contrary to international law. Negotiations under such circumstances would have been futile²⁷⁰. Nicaragua acted “without delay” — to prevent the further arming of acts maintaining racial segregation and apartheid — which States, including Germany, have pledged under CERD and the United Nations Charter “to take joint and separate action” to end²⁷¹.

III. Nicaragua had a responsibility to “prevent” and “condemn” following the CERD Committees urgent warnings

12. Mr President, Members of the Court, *third*, Nicaragua’s recourse to Article 22 followed the CERD Committee’s emergency mechanism — issued not once, but twice — which Germany completely ignores in its assessment under Article 22²⁷² — and you can see that in your tab 8 and 9 of the judges’ folder. Nicaragua did so in line with its own duty to “prevent” and “condemn” under Article 3 of CERD.

13. The very purpose of CERD is preventative. Article 8 establishes an emergency mechanism²⁷³, where the Committee “consider[s] specific situations . . . that require immediate attention” in order to “prevent . . . serious violations of the Convention”²⁷⁴. States must take urgent action, by ending all policies, practices and relations that support, sustain or encourage racist régimes²⁷⁵.

²⁶⁸ UN OHCHR, The human rights situation in the occupied West Bank including East Jerusalem 7 October-20 November 2023, paras. 24, 56, available at <https://www.ohchr.org/sites/default/files/documents/countries/palestine/2023-12-27-Flash-Report.pdf>; UN HRC, Report of the United Nations High Commissioner for Human Rights, A/HRC/55/28 (4 March 2024), p. 16, para. 92(b), available at <https://docs.un.org/en/A/HRC/55/28>.

²⁶⁹ *Ibid.*

²⁷⁰ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Preliminary Objections, Judgment, I.C.J. Reports 2024 (III)*, p. 1058, para. 52; See also, CR 2026/30, p. 51, para. 45 (Tams).

²⁷¹ CERD, preamble.

²⁷² GPO, paras. 67-77; CR 2026/30, pp. 50-52, paras. 43-48 (Tams).

²⁷³ 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, Annex III.

²⁷⁴ CERD, Rules of procedure, CERD/C/35/Rev.4, 2025, Rule 118, available at <https://docs.un.org/CERD/C/35/Rev.4>.

²⁷⁵ CERD, Decision 2 (XI), Relations with racist regimes, 7 April 1975, in Report of the Committee on the

14. Germany does not mention the October 2023 Early Warning and Urgent Action Procedures triggered by the CERD Committee, which highlighted — the “increase in racist hate speech and dehumanisation” and the smearing of Palestinians as “human animals” — “language which could incite genocidal actions”²⁷⁶.

15. Nor does Germany acknowledge the second urgent warning of the CERD Committee on 21 December 2023, expressing “its grave concern about the resumption of brutal hostilities in the Gaza Strip” and the deterioration of human rights in Palestine. The Committee called upon “all State parties to fully respect their international obligations”, in particular those arising from CERD and for States “to cooperate to bring an end [to] the violations that are taking place and to prevent atrocity crimes”²⁷⁷.

16. But Germany, a State party to CERD, quite astonishingly, ignores the Committee’s urgent calls and the duty to prevent and condemn in its application of Article 22²⁷⁸, and in its arming and support of Israel.

Conclusion

17. Mr President, Members of the Court, the Palestinian people are not a political abstraction whose lives are subject to negotiation. They are a people whose actual existence is threatened by destruction, fuelled by the very system of racial discrimination, racial segregation, and apartheid that Germany materially supports and arms.

18. In light of the object and purpose of CERD, the jurisdiction of the Court cannot be barred by alleged non-compliance with the conditions of Article 22. Germany’s objection must therefore be rejected.

19. Mr President, Members of the Court, thank you for your kind attention. I ask you to please call on my colleague, Professor Pellet, so he may continue Nicaragua’s presentation.

Elimination of Racial Discrimination, Official Records of the General Assembly, Thirtieth Session, Suppl. No. 18 (A/10018), p. 68.

²⁷⁶ CERD, Statement 5 (2023).

²⁷⁷ CERD, Decision 2 (2023). 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 (available at: <https://docs.un.org/A/79/18>).

²⁷⁸ UN OHCHR, Arms exports to Israel must stop immediately: UN experts, 23 February 2024 (available at: <https://www.ohchr.org/en/press-releases/2024/02/arms-exports-israel-must-stop-immediately-un-experts>).

The PRESIDENT: I thank Ms Power. J'invite maintenant le professeur Alain Pellet à prendre la parole. Vous avez la parole, Monsieur.

M. PELLET : Thank you very much, Mr President.

**LE PRINCIPE DE L'OR MONÉTAIRE NE FAIT PAS OBSTACLE A L'EXERCICE PAR LA COUR
DE SA COMPETENCE DANS LA PRESENTE AFFAIRE**

1. Monsieur le président, Mesdames et Messieurs de la Cour, je suis de ceux qui n'ont jamais très bien compris à quoi peut bien servir le « principe » (entre guillemets) dit « de l'Or monétaire ». Qu'il faille préserver le principe — lui sans guillemets — du consentement à la juridiction, c'est évident. Mais pourquoi diable a-t-on érigé en « principe » les conséquences que la Cour en a tirées dans son arrêt du 15 juin 1954²⁷⁹ ? Ce précédent, dicté par des circonstances très singulières, est demeuré isolé, à l'exception de l'arrêt du 30 juin 1995 dans l'affaire du *Timor oriental*²⁸⁰, qui a été également rendu à propos d'une situation tout à fait particulière.

I. La portée, étroitement circonscrite, du « principe de l'Or monétaire »

2. Cela étant, Monsieur le président, je n'ai pas vocation à me battre contre des moulins et, sans vraiment y croire, je partirai de l'idée qu'il existe un « principe » de l'Or monétaire. En quoi consiste-t-il ?

3. On l'a souvent présenté comme « complexe ». Il l'est en ce sens que l'on ne peut pas le réduire à un élément unique. Pour que le principe puisse jouer, il faut :

- 1) qu'un État autre que celui visé par la requête ait un intérêt à la solution du différend ;
- 2) que cet État n'ait pas donné son consentement à être lié par l'arrêt à intervenir ;
- 3) il faut aussi que cet État tiers ait des intérêts juridiques qui pourraient être en cause dans l'affaire en examen — mais cela ne suffit pas ;
- 4) il faut aussi que ces intérêts constituent « l'objet même de la[] décision »²⁸¹.

4. Et c'est cela (et cela seulement) la nouveauté, toute relative, si ce n'est la clarté de l'expression, introduite par l'arrêt de la Cour dans l'affaire de l'*Or monétaire*. Il pose une règle

²⁷⁹ *Or monétaire pris à Rome en 1943 (Italie c. France, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et États-Unis d'Amérique)*, question préliminaire, arrêt, C.I.J. Recueil 1954, p. 17.

²⁸⁰ *Timor oriental (Portugal c. Australie)*, arrêt, C.I.J. Recueil 1995, p. 90.

²⁸¹ *Or monétaire pris à Rome en 1943 (Italie c. France, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et États-Unis d'Amérique)*, question préliminaire, arrêt, C.I.J. Recueil 1954, p. 32.

générale : la Cour *peut* se prononcer sur les conclusions des parties *même si les intérêts juridiques de l'État absent sont touchés*. Et la haute juridiction assortit ce principe d'une exception : elle doit s'en abstenir *si*, et seulement si, ces intérêts « constitueraient l'objet même de la[] décision ». Après avoir écouté M^e Wordsworth hier matin, il me semble que les Parties sont d'accord sur tout ceci²⁸².

5. Il n'est pas utile que je m'attarde sur les deux premières conditions nécessaires pour que le principe s'applique. Elles sont réunies et les Parties en sont d'accord.

6. Elles le sont aussi pour considérer qu'un intérêt d'Israël pourrait être touché par l'arrêt à intervenir ne fût-ce que parce que, si la Cour fait droit aux conclusions du Nicaragua, Israël sera privé de l'assistance massive que l'Allemagne lui apporte en violation de ses obligations internationales. Il en ira ainsi si, du moins, l'Allemagne respecte l'arrêt à intervenir — mais il n'y a aucune raison d'en douter. Encore peut-on se demander s'il s'agit vraiment d'un intérêt « *juridique* ».

7. Si vous considériez néanmoins qu'Israël aurait un véritable intérêt méritant d'être protégé, la seule question qui appellerait une discussion serait de savoir si cet intérêt serait l'objet même de l'arrêt que vous êtes appelés à rendre sur le fond.

8. Dans son arrêt de 1954, la Cour explique que « [l']Italie estim[ait] avoir contre l'Albanie droit à réparation d'un délit international que ... l'Albanie aurait commis envers elle »²⁸³. « En conséquence », ajoute la Cour, « il est nécessaire de déterminer si l'Albanie a commis un délit international contre l'Italie ... ; puis, dans ce cas, de déterminer aussi le montant de l'indemnité. ... Examiner au fond de telles questions serait trancher un différend entre l'Italie et l'Albanie. »²⁸⁴

II. Les griefs du Nicaragua portent exclusivement sur la responsabilité de l'Allemagne

9. Monsieur le président, dans notre affaire, contrairement à l'Italie dans l'*Or monétaire*, le Nicaragua ne demande pas à la Cour de décider si la responsabilité d'Israël est engagée par ses activités dans la bande de Gaza et, plus généralement, dans le Territoire palestinien occupé. Conscient de l'attitude d'Israël qui — à une exception près — refuse toute clause de juridiction

²⁸² Voir CR 2026/30, p. 62, par. 28 (Wordsworth) ; voir aussi, par exemple, exposé écrit du Nicaragua sur les exceptions préliminaires de l'Allemagne (ci-après, « EEN »), par. 199-202 ; CR 2024/16, p. 26, par. 12 (Wordsworth).

²⁸³ *Or monétaire pris à Rome en 1943 (Italie c. France, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et États-Unis d'Amérique), question préliminaire, arrêt, C.I.J. Recueil 1954*, p. 32.

²⁸⁴ *Ibid.*

obligatoire de la Cour, le Nicaragua n'a nullement envisagé de vous prier, Mesdames et Messieurs les juges, de statuer sur les responsabilités d'Israël. Conformément à l'article 38, paragraphe 1, du Règlement, l'objet du différend était clairement indiqué à la fin de la requête, au paragraphe 67 — il figure dans vos dossiers sous l'onglet n° 11. Avec quelques nuances, ces demandes sont reprises dans les conclusions du mémoire du Nicaragua — également reproduites, sous l'onglet n° 12.

10. Ces conclusions consistent *toutes* à demander à la Cour de constater les manquements *de l'Allemagne à ses propres* obligations, résultant notamment de la convention sur le génocide, de la quatrième convention de Genève de 1949, des principes du droit international humanitaire et de divers principes fondamentaux du droit international. En dernier lieu, le Nicaragua appelle la Cour à déterminer que l'Allemagne doit « réparer intégralement le préjudice causé par *ses* faits internationalement illicites »²⁸⁵ — « Ses faits » avec un s — « *its* acts ».

11. Les demandes de l'Italie en 1954 d'une part, du Nicaragua aujourd'hui d'autre part, ne sont pas seulement *formulées* différemment. Elles sont différentes par nature : comme la Cour l'avait relevé dans son arrêt sur l'*Or monétaire*, « la question essentielle à trancher a[vait] trait à la responsabilité internationale » de l'Albanie²⁸⁶ ; dans notre affaire, c'est bien la responsabilité *de l'Allemagne* seule qui est en cause : ceci ressort non seulement du libellé des conclusions du Nicaragua, mais aussi et surtout des circonstances mêmes de l'affaire. Certes, les activités d'Israël dans la bande de Gaza et dans le reste du Territoire palestinien occupé constituent l'arrière-plan de celle qui nous occupe, mais la Cour n'est pas appelée à porter un jugement juridique sur le comportement d'Israël. Il faut et il suffit qu'elle constate que la conduite de l'Allemagne à son égard est incompatible avec ses obligations à elle, *Allemagne*, envers l'État requérant et envers la communauté internationale dans son ensemble.

III. Les conditions de l'exercice de sa compétence par la Cour sont réunies

12. Au demeurant, Monsieur le président, il n'est pas nécessaire que la responsabilité d'Israël soit établie — pour le génocide, les violations graves du droit international humanitaire ou des droits humains, y compris du droit à l'autodétermination, qui peuvent lui être attribués. Il faut et il suffit

²⁸⁵ Mémoire du Nicaragua (ci-après, « MN »), par. 484, point 13 (les italiques sont de nous).

²⁸⁶ *Or monétaire pris à Rome en 1943 (Italie c. France, Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et États-Unis d'Amérique)*, question préliminaire, arrêt, C.I.J. Recueil 1954, p. 33.

que le risque au moins que ces violations graves du droit international soit avéré pour que la responsabilité de l'Allemagne résulte de *son* non-respect des obligations *lui* incombant face à la plausibilité de ces risques. Je relève incidemment que même M^e Wordsworth a reconnu que le devoir de prévention ne reposait pas forcément sur l'*existence* d'un génocide mais s'imposait également en cas de « risque sérieux »²⁸⁷. C'était durant les audiences sur les mesures conservatoires. Hier matin, mon opposant et ami s'est montré plus confusément prudent²⁸⁸.

13. La seule existence du risque qu'une violation grave du droit international soit commise impose aux États de tout mettre en œuvre pour en prévenir la survenance ou la persistance. Comme la Cour l'a affirmé dans l'affaire du *Génocide* de 2007, « l'obligation de prévention et le devoir d'agir qui en est le corollaire prennent naissance, pour un État, au moment où celui-ci a connaissance, ou devrait normalement avoir connaissance, de *l'existence d'un risque sérieux* de commission d'un génocide »²⁸⁹.

14. Dans des cas de ce genre, les États sont tenus d'employer « tous les moyens qui sont raisonnablement à leur disposition en vue d'empêcher, dans la mesure du possible l[la survenance dudit événement] »²⁹⁰. Vous l'avez rappelé dans notre affaire, par votre ordonnance du 30 avril 2024, dans laquelle vous avez considéré qu'« en vertu de l'article premier commun aux conventions de Genève, tous les États parties ont l'obligation de “respecter et [de] faire respecter” ces conventions “en toutes circonstances” »²⁹¹. Il en va de même, d'une façon générale, de l'obligation incombant à tous les États membres de la communauté internationale de prévenir la survenance de violations graves de normes impératives du droit international. « [I]l s'agit [d']une obligation de comportement

²⁸⁷ CR 2024/16, p. 25, par. 8 (Wordsworth).

²⁸⁸ CR 2024/16, p. 69, par. 49 (Wordsworth) ; voir également p. 16, par. 12.

²⁸⁹ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), par. 431 (les italiques sont de nous).

²⁹⁰ *Ibid.*, p. 221, par. 430. Voir aussi *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, fond, arrêt, C.I.J. Recueil 1986, par. 254-256 ; *Responsabilités et obligations des États qui patronnent des personnes et des entités dans le cadre d'activités menées dans la Zone (Demande d'avis consultatif soumise à la Chambre pour le règlement des différends relatifs aux fonds marins)*, avis consultatif, 1^{er} février 2011, TIDM Recueil 2011, par. 110 ; et le commentaire mis à jour en 2016 de la convention (IV) de Genève pour l'amélioration du sort des blessés et des malades dans les forces armées en campagne, 12 août 1949, par. 127 et 254 à 256.

²⁹¹ *Manquements allégués à certaines obligations internationales relativement au Territoire palestinien occupé (Nicaragua c. Allemagne)*, mesures conservatoires, ordonnance du 30 avril 2024, C.I.J. Recueil 2024 (II), par. 23.

et non de résultat »²⁹², comme vous l’avez dit aussi en 2007. Dans l’affaire qui nous occupe, c’est essentiellement cette obligation de *due diligence* qui pèse sur l’Allemagne.

15. Dans son arrêt de 2007 dans l’affaire du *Génocide*, dont nos contradicteurs font si grand cas, la Cour a précisé que la responsabilité de l’État est engagée s’il « a manqué manifestement de mettre en œuvre les mesures de prévention du génocide qui étaient à sa portée, et qui auraient pu contribuer à l’empêcher »²⁹³. Il en va ainsi sans que « [l]’élément subjectif de “l’intention” [soit] nécessaire » car un État ne saurait « contribuer délibérément » à une telle violation « quelles que soient ses intentions »²⁹⁴. Ces directives s’appliquent, pour les mêmes raisons, à toute violation grave d’une obligation résultant d’une norme impérative du droit international.

16. Parmi les paramètres à prendre en compte, la Cour cite en premier lieu « la capacité ... à influencer effectivement l’action des personnes susceptibles de commettre, ou qui sont en train de commettre, un génocide » ainsi que « l’intensité des liens politiques et de tous ordres entre les autorités dudit État et les acteurs directs de ces événements »²⁹⁵. La capacité de l’Allemagne à prévenir le génocide contre le peuple palestinien — ou à contribuer à prévenir le génocide contre le peuple palestinien — est absolument indiscutable, étant donné ses liens privilégiés avec Israël.

17. Il est vrai que, comme le conseil de l’Allemagne l’a relevé hier²⁹⁶, dans son arrêt de 2007, la Cour avait affirmé que « la responsabilité d’un État pour violation de l’obligation de prévenir le génocide n’est susceptible d’être retenue que si un génocide a effectivement été commis »²⁹⁷. Pour justifier sa position dans son arrêt de 2007, ensuite reprise dans celui de 2015²⁹⁸, la Cour s’est

²⁹² *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), par. 430. Voir aussi Cour européenne des droits de l’homme, *Soering c. Royaume-Uni*, 1989, CEDH, Série A, n° 161, p. 33-36, par. 85-91 ; *Cruz Varas et autres c. Suède*, *ibid.*, n° 201, par. 69-70 ; *Vilvarajah et autres c. Royaume-Uni*, 1991, *ibid.*, n° 215, p. 37, par. 115 ; Cour interaméricaine des droits de l’homme, jugement, *Wong Ho Wing c. Pérou*, objections préliminaires, fond, réparations et coûts, 30 juin 2015, Series C No. 297, par. 169.

²⁹³ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), par. 430.

²⁹⁴ Comité international de la Croix-Rouge, commentaire commun aux conventions de Genève, 2025, disponible à l’adresse suivante : <https://ihl-databases.icrc.org/fr/ihl-treaties/gciv-1949/article-1/commentary/2025?activeTab=1949-GCs-APs-and-commentaries>.

²⁹⁵ *Ibid.*, p. 221, par. 430.

²⁹⁶ CR 2026/30, p. 60, par. 19 (Wordsworth).

²⁹⁷ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), par. 431.

²⁹⁸ *Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie)*, arrêt, C.I.J. Recueil 2015 (I), par. 441.

appuyée sur l'article 14, paragraphe 3, des Articles de la CDI relatif à l'« [e]xtension dans le temps de la violation d'une obligation internationale ». Il prévoit que

« [l]a violation d'une obligation internationale requérant de l'État qu'il prévienne un événement donné a lieu au moment où l'événement survient et s'étend sur toute la période durant laquelle l'événement continue et reste non conforme à cette obligation ».

18. Les travaux préparatoires de cet article montrent qu'il n'avait pas vocation à couvrir l'ensemble des obligations de prévention. Comme le précisait le rapporteur spécial, James Crawford, dans son deuxième rapport, « toutes les obligations imposées aux fins d'éviter qu'un événement ne se produise ne sont pas de même nature, et le projet d'articles n'a pas pour objet de réduire toutes ces obligations à une forme unique »²⁹⁹. La Cour elle-même a souligné qu'indépendamment de la survenance d'une situation à prévenir, le seul fait que l'État ait « manqué de prendre des “mesures appropriées” » constituait « *en tant que tel* » une violation grave et manifeste des obligations » lui incombant³⁰⁰. Il s'agit donc bien d'une obligation autonome, indépendante de la concrétisation de la violation de l'obligation qui est l'objet de la prévention — en l'espèce, il s'agit de l'obligation propre à l'Allemagne d'assurer le respect et de prévenir la violation des normes *erga omnes* en cause — qu'il s'agisse du droit international humanitaire, de l'interdiction du génocide et de la discrimination raciale, ou du droit du peuple palestinien à disposer de lui-même. Il ne serait évidemment pas tolérable d'attendre qu'un génocide ou des crimes contre l'humanité aient été commis pour sanctionner le non-respect de l'obligation de les prévenir.

19. Pour en revenir plus directement à l'arrêt de 2007, la suite du paragraphe 431, atténuée d'ailleurs immédiatement la portée de son affirmation liminaire *a priori* très paradoxale. La Cour ajoute :

« Cela ne signifie évidemment pas que l'obligation de prévenir le génocide ne prend naissance qu'au moment où le génocide commence à être perpétré, ce qui serait absurde, puisqu'une telle obligation a précisément pour objet d'empêcher, ou de tenter d'empêcher, la survenance d'un tel acte. En réalité, l'obligation de prévention et le devoir d'agir qui en est le corollaire prennent naissance, pour un État, au moment où celui-ci a connaissance, ou devrait normalement avoir connaissance, de l'existence d'un risque sérieux de commission d'un génocide. Dès cet instant, l'État est tenu, s'il dispose

²⁹⁹ Nations Unies, « Deuxième rapport sur la responsabilité des États présenté par M. James Crawford, Rapporteur spécial », 17 mars 1999, cinquante et unième session, doc. A/CN.4/498 et Add.1 à 4, p. 60, par. 132.

³⁰⁰ *Personnel diplomatique et consulaire des États-Unis à Téhéran (États-Unis d'Amérique c. Iran)*, arrêt, C.I.J. Recueil 1980, par. 63 et 67. Voir aussi *ibid.*, par. 85-86 (les italiques sont de nous). Voir aussi *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), par. 438.

de moyens susceptibles d'avoir un effet dissuasif à l'égard des personnes soupçonnées de préparer un génocide, ou dont on peut raisonnablement craindre qu'ils nourrissent l'intention spécifique (*dolus specialis*), de mettre en œuvre ces moyens, selon les circonstances. »³⁰¹

20. C'est donc bien le risque — lorsqu'il est avéré — qui fait naître l'obligation de prévenir.

On voit mal comment la position contraire pourrait être conciliable avec l'objet de la convention de 1948 et son « but purement humain et civilisateur »³⁰². Cela dit, en la présente occurrence, peu importe à vrai dire : très malheureusement, le génocide s'est produit et continue de se produire³⁰³, non seulement dans la bande de Gaza mais aussi dans l'ensemble du Territoire palestinien occupé y compris Jérusalem-Est ; les violations gravissimes des droits humains et du droit international humanitaire que tous les États ont le devoir — l'obligation juridique — de prévenir continuent ; le droit du peuple palestinien à disposer de lui-même est nié plus que jamais.

IV. L'illicéité du comportement d'Israël a déjà été établie

21. Mais il faut aller plus loin, Mesdames et Messieurs les juges : dans notre affaire, il n'est plus question de *risques* de génocide ou de *risques* de violations graves du droit international humanitaire ou des droits humains, y compris du droit du peuple palestinien à disposer de lui-même. Il est d'ores et déjà établi que ce risque s'est concrétisé et que la responsabilité d'Israël est engagée en raison de violations graves et persistantes de nombreuses normes impératives du droit international. C'est un fait acquis, un « *given* ». Dès lors, quand bien même le principe de l'Or monétaire, tel que l'Allemagne l'interprète, serait en jeu dans le présent différend (*quod non*), il ne peut faire obstacle à l'exercice de votre compétence. Le tribunal arbitral qui s'est prononcé dans l'affaire *Larsen v. Hawaiian Kingdom*, présidé par James Crawford, l'a rappelé très clairement dans

³⁰¹ *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro)*, arrêt, C.I.J. Recueil 2007 (I), par. 431 (les italiques sont de nous).

³⁰² *Ibid.*, p. 110-111, par. 161, se référant à *Réserves à la convention pour la prévention et la répression du crime de génocide, avis consultatif*, C.I.J. Recueil 1951, p. 23 ; voir aussi Ch. J. Tams, commentaire de l'article premier in Ch. J. Tams, L. Berster et B. Schiffbauer (sous la dir. de), *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary*, C. H. Beck, Hart, Nomos, 2024, p. 49, par. 41.

³⁰³ United Nations, 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", UN doc. A/HRC/60/CRP.3 (16 September 2025). Voir aussi Nations Unies, Assemblée générale, « Rapport de la Commission internationale indépendante chargée d'enquêter dans le Territoire palestinien occupé, y compris Jérusalem-Est, et en Israël », doc. A/80/337 (14 août 2025) ; Rapport de la rapporteuse spéciale sur la situation des droits de l'homme dans les territoires palestiniens occupés depuis 1967, Francesca Albanese, « Le génocide à Gaza : un crime collectif », doc. A/80/492 (20 octobre 2025) ; Amnesty International, « Israel's Genocide against Palestinians in Gaza », 2024 (disponible à l'adresse suivante : <https://www.amnesty.org/en/documents/mde15/8668/2024/en/>).

un autre contexte : le principe de l'Or monétaire ne s'applique pas lorsque « the legal finding against an absent third party could be taken as a “given” »³⁰⁴.

(i) La responsabilité d'Israël pour ses violations graves est un fait acquis

22. Selon les exceptions préliminaires de l'Allemagne et selon M^e Wordsworth hier³⁰⁵, la requête et le mémoire du Nicaragua « foisonnent d'assertions selon lesquelles Israël viole de multiples normes fondamentales du droit international, et la grande majorité des griefs du demandeur à l'égard de l'Allemagne sont subordonnés à des décisions préalables de la Cour concernant ces violations »³⁰⁶. C'est que la Cour et de nombreux organes internationaux ont déjà fait ces « constatations préalables ». Je peux en rappeler certaines. Toutefois, le temps m'étant compté, je n'en donnerai que quelques exemples et je vous prie, Mesdames et Messieurs les juges, de bien vouloir vous reporter, pour d'autres références utiles, à l'onglet n° 13 de vos dossiers.

23. En ce qui concerne le droit international humanitaire, l'État défendeur avance que,

« pour déterminer si l'Allemagne a manqué à l'obligation de “faire respecter” [le droit international humanitaire], la Cour devrait au préalable se prononcer sur le point de savoir si Israël a manqué de ‘respecter’ la quatrième convention de Genève (et, plus généralement, d'autres dispositions de droit conventionnel et coutumier invoquées par le Nicaragua) »³⁰⁷.

Mutatis mutandis, l'Allemagne raisonne de la même manière s'agissant de son manque de vigilance à l'égard des violations flagrantes par Israël d'autres normes fondamentales du droit international, qu'il s'agisse de la discrimination, de la ségrégation raciales et de l'apartheid³⁰⁸ ou des atteintes systématiques au droit du peuple palestinien à l'auto-détermination³⁰⁹.

24. En réalité, comme Daniel Müller l'a rappelé tout à l'heure³¹⁰, la Cour est déjà parvenue, à plusieurs reprises, à la conclusion qu'Israël commet et, en tout cas, risque de commettre, un

³⁰⁴ CPA, compromis d'arbitrage en date du 30 octobre 1999, *Larsen v. Hawaiian Kingdom*, sentence, 5 février 2001, par. 11.24.

³⁰⁵ CR 2026/30, p. 60, par. 20, p. 64, par. 34, et p. 66, par. 38 (Wordsworth).

³⁰⁶ Exceptions préliminaires de l'Allemagne (ci-après, « EPA »), par. 124.

³⁰⁷ EPA, par. 168, se référant en note 250 au point 3 du paragraphe 67 de la requête, ainsi qu'au point 4 du paragraphe 484 du mémoire.

³⁰⁸ EPA, par. 181-182.

³⁰⁹ EPA, par. 176-178.

³¹⁰ Voir CR 2026/31, p. 37-38, par. 15 (Müller).

génocide³¹¹ et qu'il agit en violation du droit international humanitaire³¹² et du droit international des droits de l'homme³¹³. Sam Wordsworth s'en est offusqué hier. Après avoir relevé que la Cour s'est prononcée « in particular on imminent risk and plausibility of rights, that were made in the context of the *South Africa v. Israel* provisional measures proceedings », he also alleged that « [t]he Court's findings in the *South Africa v. Israel* case served a different purpose in a different case ». Why is that Mr President ? L'affaire introduite par l'Afrique du Sud est assurément distincte de la nôtre, mais l'objectif de telles constatations est le même : déterminer le risque d'un génocide ou de violations graves dans le même contexte.

(ii) L'établissement de la responsabilité d'Israël fait échec à l'application du principe de l'Or monétaire

25. Pour minimiser la portée des conclusions auxquelles la Cour et de nombreux organes ou institutions internationaux et les ONG les plus crédibles sont parvenus, l'Allemagne affirme surtout qu'elles sont le fait, pour l'essentiel, d'avis consultatifs qui n'ont pas de force juridiquement obligatoire³¹⁴. C'est gravement sous-estimer la portée juridique de ces constatations et, en particulier, des avis que vous avez rendus.

26. Le Nicaragua ne conteste pas que les avis de la Cour ne revêtent pas, par eux-mêmes, de force obligatoire. Il reste que, lorsqu'elle rend ses avis, elle le fait « en tant qu'organe juridictionnel »³¹⁵ ; elle « *dit* le droit »³¹⁶ et ses déterminations bénéficient de la plus haute autorité

³¹¹ *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), mesures conservatoires, ordonnance du 26 janvier 2024, C.I.J. Recueil 2024 (I), par. 74 ; Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), demande tendant à la modification de l'ordonnance en indication de mesures conservatoires du 26 janvier 2024, ordonnance du 28 mars 2024, C.I.J. Recueil 2024 (II), par. 40 ; Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), demande tendant à la modification de l'ordonnance du 28 mars 2024, ordonnance du 24 mai 2024, C.I.J. Recueil 2024 (II), par. 47.*

³¹² *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif, C.I.J. Recueil 2024 (III), par. 173 (interdiction de l'annexion), par. 179 et 252-254 (interdiction de l'acquisition de territoire par la force), et par. 242-243 (droit de déterminer librement son statut politique et d'assurer librement son développement économique, social et culturel et plus globalement droit à l'autodétermination).*

³¹³ *Ibid.*, par. 229 (article 3 de la CIEDR).

³¹⁴ EPA, par. 183.

³¹⁵ *Obligations des États en matière de changement climatique, avis consultatif du 23 juillet 2025, par. 456. Voir aussi Conditions de l'admission d'un État comme Membre des Nations Unies (article 4 de la Charte), avis consultatif, 1948, C.I.J. Recueil 1947-1948, p. 61 ; Conséquences juridiques pour les États de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971, par. 29.*

³¹⁶ *Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, avis consultatif, C.I.J. Recueil 2019 (I), par. 137.*

juridique. La Cour souligne abondamment que, même lorsqu'elle rend des avis consultatifs, elle n'en reste pas moins une juridiction et, à ce titre, applique — et se doit d'appliquer — le droit international dont elle est l'interprète privilégiée. Je note en outre que, chaque fois que l'occasion s'en présente, la Cour se réfère, dans ses arrêts, aux conclusions juridiques de ses avis consultatifs, au même titre qu'à celles auxquelles elle parvient dans ses décisions obligatoires³¹⁷.

27. Quant à la chambre spéciale du TIDM dans l'affaire du *Différend relatif à la délimitation de la frontière maritime entre Maurice et les Maldives*, elle s'est expressément fondée sur les conclusions auxquelles la Cour était parvenue dans son avis *Chagos* de 2019. Après avoir affirmé « [qu']il est ... admis qu'un avis consultatif comporte un énoncé de droit international faisant autorité pour les questions sur lesquelles il porte »³¹⁸, la Chambre a considéré que « les conclusions formulées par la CIJ dans un avis consultatif ne sauraient être ignorées au seul motif que l'avis consultatif n'est pas obligatoire »³¹⁹ ; et la chambre du TIDM a « reconnu » les conclusions auxquelles la Cour est parvenue dans son avis de 2019 et en a « [tenu] compte pour apprécier le statut juridique de l'archipel des Chagos »³²⁰. Rien ne justifie de considérer les conclusions auxquelles vous êtes parvenus autrement que comme des « faits acquis » — des « *givens* ». Sauf à admettre que la Cour entend donner moins d'autorité à ses propres avis consultatifs que celle que lui reconnaissent le TIDM mais aussi, par exemple, la Cour de justice de l'Union européenne³²¹, la Cour interaméricaine des droits

³¹⁷ Voir, parmi de nombreux exemples, *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, exceptions préliminaires, arrêt, C.I.J. Recueil 2019 (II), par. 116 ; *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Émirats arabes unis)*, exceptions préliminaires, arrêt, C.I.J. Recueil 2021, par. 77 ; *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar)*, mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020, par. 20, 40 ou 69 ; *Différend concernant le statut et l'utilisation des eaux du Silala (Chili c. Bolivie)*, arrêt, C.I.J. Recueil 2022 (II), par. 99 ; *Certains actifs iraniens (République islamique d'Iran c. États-Unis d'Amérique)*, arrêt, C.I.J. Recueil 2023 (I), par. 146 ; *Délimitation terrestre et maritime et souveraineté sur des îles (Gabon/Guinée équatoriale)*, arrêt du 19 mai 2025, par. 185.

³¹⁸ Tribunal international du droit de la mer, *Différend relatif à la délimitation de la frontière maritime entre Maurice et les Maldives dans l'océan Indien (Maurice/Maldives)*, exceptions préliminaires, arrêt, TIDM Recueil 2020-2021, p. 77, par. 202.

³¹⁹ *Ibid.*, p. 78, par. 205.

³²⁰ *Ibid.*, p. 78, par. 206.

³²¹ Cour de justice de l'Union européenne, arrêt de la Cour (grande chambre), 21 décembre 2016, *Conseil de l'Union européenne c. 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, par. 104-106 ; arrêt de la Cour (grande chambre), 17 janvier 2023, *Royaume d'Espagne c. Commission européenne*, C-632/20 P, EU:C:2023:28, par. 51 ; arrêt du Tribunal (neuvième chambre élargie), 4 septembre 2024, *International Management Group (IMG) c. Commission européenne*, T-509/21, EU:T:2024:590, par. 208-209 et 211. Voir aussi Cour européenne des droits de l'homme, *Hassan c. Royaume-Uni*, arrêt, n°29750/09, 16 septembre 2014, par. 35-36 et 104.

de l'homme³²² et la Cour africaine des droits de l'homme et des peuples. Cette dernière, dans un important arrêt rendu en 2022, a donné plein effet à votre avis de 1975 sur le *Sahara occidental*³²³. Cette reconnaissance s'impose d'autant plus en l'espèce que les solutions retenues par la Cour sont reprises ou corroborées par un très grand nombre d'autres organes parfaitement dignes de foi³²⁴.

28. Le peu de considération que nos contradicteurs accordent en plaidoirie aux avis consultatifs tranche avec l'autorité que l'Allemagne leur reconnaît habituellement. Ainsi, lors du vote de la résolution de l'Assemblée générale prenant acte de l'avis de 2024, l'Allemagne affirmait :

« Il ne fait aucun doute que nous respectons l'avis consultatif de la Cour internationale de Justice, que nous agissons conformément aux obligations du droit international qui y sont énoncées et que nous sommes prêts à contribuer à sa mise en œuvre pleine et entière afin de parvenir à la justice ainsi qu'à une paix et une sécurité durables pour les Israéliens et les Palestiniens. »³²⁵

Et l'Allemagne a reconnu également que la Cour « found a violation of Article 3 of the Convention on the Elimination of Racial Discrimination, which prohibits racial segregation and apartheid »³²⁶.

29. Contrairement à ce que M^e Wordworth a affirmé, le Nicaragua n'est pas seul à

« seek[] to make something of Germany's vote in the United Nations General Assembly endorsing the 2024 Advisory Opinion and calling upon all States to comply, and likewise of a statement by Germany's representative that Germany would act in line with the obligations of international law set out in the Opinion »³²⁷.

L'agente de l'Allemagne s'est expressément prévalu hier de ces acceptations dans son discours introductif³²⁸. J'ajoute que mon contradicteur a une certaine tendance à déformer ce que nous disons — et cela dès le point de départ de son dernier argument lorsqu'il affirme que : « On Nicaragua's

³²² Voir, par exemple, Cour interaméricaine des droits de l'homme, jugement, *The Inhabitants of la Oroya c. Pérou*, objections préliminaires, fond, réparations et coûts, 27 novembre 2023, Series C No. 511, p. 49, par. 128.

³²³ Jugement, 22 septembre 2022, *République Arabe Saoudite Démocratique et République de Maurice*, arrêt, 22 septembre 2022, n° 028/2018, p. 88-89, par. 302-303.

³²⁴ Voir notamment Conseil de sécurité, « La situation au Moyen-Orient, y compris la question palestinienne », doc. S/RES/233 (23 décembre 2016) ; Conseil de sécurité, « La situation au Moyen-Orient, y compris la question palestinienne », doc. S/RES/2712 (15 novembre 2023) ; Nations Unies, Assemblée générale, « Les colonies de peuplement israéliennes dans le Territoire palestinien occupé, y compris Jérusalem-Est, et le Golan syrien occupé », doc. A/RES/80/81 (5 décembre 2025) ; Nations Unies, Assemblée générale, « Souveraineté permanente du peuple palestinien dans le Territoire palestinien occupé, y compris Jérusalem-Est, et de la population arabe dans le Golan syrien occupé sur leurs ressources naturelles », doc. A/RES/80/158 (15 décembre 2025). Voir aussi l'onglet n° 14 du dossier des juges.

³²⁵ Nations Unies, *Documents officiels de l'Assemblée générale, dixième session extraordinaire d'urgence*, 55^e séance plénière, 18 septembre 2024, doc. A/ES-10/PV.55, p. 36.

³²⁶ Gouvernement fédéral, conférence de presse du 22 juillet 2024 (Annexe 34).

³²⁷ CR 2026/30, p. 68-69, par. 47 (Wordworth).

³²⁸ CR 2026/30, p. 21-22, par. 33 (Monar).

case, even though the ‘very subject-matter’ of a contentious case is the State responsibility of a non-consenting party, the Court can still make findings concerning that absent State by reference to determinations made in past advisory opinions. »³²⁹ — C’est la façon dont il décrit notre position. Mais non, Monsieur le président ! Nous n’utilisons pas les positions antérieures de la Cour (et d’autres très nombreuses autorités) pour « établir » la responsabilité d’Israël, ce qui n’est pas l’objet de la présente affaire ; ces différentes prises de position, particulièrement fermes, montrent que cette responsabilité a été établie par ailleurs, comme l’Allemagne le reconnaît elle-même, et que c’est un fait acquis dont il convient de partir pour apprécier la responsabilité d’autres États, en l’occurrence de l’Allemagne.

30. Le second argument allemand, selon lequel la Cour n’a pas reçu assez d’informations pour parvenir à ses conclusions concernant la situation en Palestine³³⁰, n’est pas davantage convaincant et relève même d’un certain cynisme. La Cour elle-même a d’ailleurs souligné qu’elle disposait de renseignements suffisants pour répondre aux questions qui lui étaient posées lorsqu’elle a rendu ses différents avis concernant la situation en Palestine³³¹. J’ajoute qu’Israël a exercé son droit de faire valoir ses vues et d’apporter à la Cour tous les éléments qu’il considérait comme pertinents³³².

31. Hier, M. Wordsworth a cité un passage de l’avis de 2024 selon lequel la Cour devait « seulement déterminer les principales caractéristiques des politiques et pratiques d’Israël et, sur cette base, apprécier la conformité de ces politiques et pratiques au droit international »³³³. Ces « principales caractéristiques » sont aussi, très exactement, ce qui est nécessaire aux fins de la présente affaire : il ne s’agit nullement d’établir la responsabilité d’Israël pour des violations

³²⁹ CR 2026/30, p. 66, par. 39 (Wordsworth).

³³⁰ EPA, par. 188-189 ; voir en particulier le paragraphe 189.

³³¹ *Conséquences juridiques de l’édification d’un mur dans le territoire palestinien occupé, avis consultatif, C.I.J. Recueil 2004 (I)*, par. 57-58 ; *Conséquences juridiques découlant des politiques et pratiques d’Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif, C.I.J. Recueil 2024 (III)*, par. 44-47 ; *Obligations d’Israël en ce qui concerne la présence et les activités de l’Organisation des Nations Unies, d’autres organisations internationales et d’États tiers dans le Territoire palestinien occupé et en lien avec celui-ci, avis consultatif du 22 octobre 2025*, par. 36-37.

³³² *Conséquences juridiques de l’édification d’un mur dans le territoire palestinien occupé*, lettre du 29 janvier 2004 du directeur général adjoint et conseiller juridique du ministère des affaires étrangères d’Israël, accompagnée de l’exposé écrit du Gouvernement d’Israël, 30 janvier 2004 ; *Conséquences juridiques découlant des politiques et pratiques d’Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est*, exposé écrit de l’État d’Israël, 24 juillet 2023 ; *Obligations d’Israël en ce qui concerne la présence et les activités de l’Organisation des Nations Unies, d’autres organisations internationales et d’États tiers dans le Territoire palestinien occupé et en lien avec celui-ci*, exposé écrit de l’État d’Israël, 28 février 2025.

³³³ CR 2026/30, p. 67, par. 43 (Wordsworth), citant : *Conséquences juridiques découlant des politiques et pratiques d’Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif, C.I.J. Recueil 2024 (III)*, par. 77.

spécifiques mais de constater que cette responsabilité est reconnue quasi universellement pour génocide et au moins risque de génocide et pour diverses violations du droit international humanitaire et d'autres règles fondamentales du droit international général.

32. J'en viens brièvement, pour en terminer sur ce point, au dernier argument de l'Allemagne selon lequel les « avis peuvent tout au plus être pertinents à l'égard des parties de l'argumentation du Nicaragua qui ne concernent pas les événements survenus à Gaza après octobre 2023 »³³⁴. Je note que l'Allemagne admet ainsi, *a contrario*, la pertinence des conclusions auxquelles la Cour est parvenue pour la période antérieure à cette date. Il reste que, pour ce qui est de la période postérieure, les avis consultatifs rendus par la Cour n'ont pas de date de péremption.

33. L'autorité des avis consultatifs de 2004, 2024 et 2025 au sujet de la situation en Palestine, telle qu'elle se poursuit aujourd'hui, est quasi unanimement reconnue. Elle l'a été par l'Allemagne elle-même en différentes occasions³³⁵. Le 4 décembre 2024, elle a voté, avec 150 autres États, en faveur de la résolution 79/91 de l'Assemblée générale relative aux colonies de peuplement israéliennes³³⁶. Ces deux résolutions appellent au respect de vos avis consultatifs de 2004 et de 2024. Comme l'a relevé M^{me} l'ambassadrice Monar hier³³⁷, l'Allemagne a aussi voté en faveur de la demande d'avis consultatif de l'Assemblée générale du 19 décembre 2024 sur les *Obligations d'Israël en ce qui concerne la présence et les activités de l'Organisation des Nations Unies, d'autres organisations internationales et d'États tiers dans le Territoire palestinien occupé et en lien avec celui-ci*.

34. L'autorité juridique des avis consultatifs sur la situation en Palestine telle qu'elle prévaut depuis 2023 ressort également de la jurisprudence de la Cour qui, dans son avis de 2024, a mobilisé

³³⁴ EPA, par. 183 iii).

³³⁵ Voir aussi *supra*, par. 0.

³³⁶ Nations Unies, Assemblée générale, 47^e séance plénière, mercredi 4 décembre 2024, A/79/PV.47, p. 11 (les italiques sont de nous).

³³⁷ CR 2026/30, p. 21-22, par. 33 (Monar).

les conclusions auxquelles elle était parvenue vingt ans plus tôt, les considérant comme établies³³⁸. Et, dans son avis du 22 octobre 2025, elle a de nouveau rappelé ses précédents avis consultatifs³³⁹.

35. Outre ces avis, la Cour est également revenue sur la situation prévalant dans la bande de Gaza dans l'affaire relative à l'*Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza*³⁴⁰.

36. Monsieur le président, Mesdames et Messieurs les juges, quand bien même le principe de l'Or monétaire serait d'une quelconque pertinence dans notre affaire, il est acquis qu'Israël porte atteinte à de nombreuses règles du droit international. La Cour n'a donc nul besoin de procéder à des constatations préalables, des « prior determinations », quant au comportement d'Israël ; ces constatations, effectuées par elle à plusieurs reprises lors des vingt-deux dernières années, ont été appuyées par de nombreux autres organes internationaux. Elles constituent des faits acquis, des *given*.

37. Monsieur le président, Mesdames et Messieurs de la Cour, j'aurais pas mal d'autres choses à vous dire, malheureusement mes collègues ont été un peu plus gourmands en temps que je ne l'avais prévu donc ce sera à une prochaine occasion. Merci beaucoup pour votre attention. Et j'en termine avec ma plaidoirie, qui est également la plaidoirie finale du premier *round* de la République du Nicaragua.

The PRESIDENT: Je remercie le professeur Pellet, whose statement brings to an end today's sitting. The Court will reconvene tomorrow, Wednesday 9 September 2026, at 4.30 p.m., to hear Germany's second round of oral argument. At the end of that sitting, Germany will present its final submissions. Nicaragua will present its second round of oral argument at a sitting on Thursday

³³⁸ *Conséquences juridiques découlant des politiques et pratiques d'Israël dans le Territoire palestinien occupé, y compris Jérusalem-Est, avis consultatif, C.I.J. Recueil 2024 (III)*, notamment par. 239.

³³⁹ *Obligations d'Israël en ce qui concerne la présence et les activités de l'Organisation des Nations Unies, d'autres organisations internationales et d'États tiers dans le Territoire palestinien occupé et en lien avec celui-ci, avis consultatif du 22 octobre 2025*, par. 42-47.

³⁴⁰ *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), mesures conservatoires, ordonnance du 26 janvier 2024, C.I.J. Recueil 2024 (I)*, par. 74 ; *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), demande tendant à la modification de l'ordonnance en indication de mesures conservatoires du 26 janvier 2024, ordonnance du 28 mars 2024, C.I.J. Recueil 2024 (II)*, par. 40 ; *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël), demande tendant à la modification de l'ordonnance du 28 mars 2024, ordonnance du 24 mai 2024, C.I.J. Recueil 2024 (II)*, par. 47.

10 September, at 4.30 p.m., at the end of which it will also present its final submissions. Each Party will have a maximum of one and a half hours to present its arguments for the second round.

As the Parties and their counsel turn to their preparation for the second round of these oral proceedings, I take this opportunity to remind them of Article 60, paragraph 1, of the Rules of Court, pursuant to which the oral statements of the second round are to be as succinct as possible. The Court has emphasized this requirement in Practice Direction VI. The purpose of the second round is to enable each of the Parties to reply to the arguments put forward orally by the opposing Party. The second round must therefore not be a repetition of the statements already set forth by the Parties, which, moreover, are not obliged to use all the time allotted to them.

The sitting is closed.

The Court rose at 1 p.m.
