

CR 2026/32

International Court
of Justice

Cour internationale
de Justice

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

held on Wednesday 9 September 2026, at 4.30 p.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 mercredi 9 septembre 2026, à 16 heures 30, 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 second round of oral argument of Germany on its preliminary objections 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 will no longer participate in these proceedings.

I shall now give the floor to Professor Antonios Tzanakopoulos. You have the floor, Sir.

Mr TZANAKOPOULOS:

**THERE WAS NO DISPUTE BETWEEN NICARAGUA AND GERMANY
AT THE TIME OF THE FILING OF THE APPLICATION**

I. Introduction

1. Mr President, Members of the Court, good afternoon. It has been Germany's consistent position that no dispute existed between itself and Nicaragua at the critical time of the filing of the Application, that is 1 March 2024. We heard little of substance to challenge that position yesterday. But there was some obfuscation, as well as some distortion of the position of Germany, both of which it is necessary to address. I will do this in three steps.

2. First, I will take the Court through a timeline of events, from the first step of Nicaragua towards what eventually became the case before you, on 1 February 2024, to the filing of the Application on 1 March. Second, I will respond on the Court's jurisprudence on the existence of a dispute, to flesh out the relevant requirements and to demonstrate how they apply in this case. Third, and finally, I will take a little time to present to you what happened during the press conference of 7 February 2024.

II. Timeline of events

3. Let me start with the timeline, which you can also see on your screens now. On 1 February 2024, the Nicaraguan Government issues the press release which is, to our understanding, circulated to all States. On the same date at 7.18 p.m. Eastern Standard Time, that means in the early hours of 2 February 2024 Central European Time, a Note Verbale is sent to the general "info" address of the

Permanent Mission of Germany to the United Nations — this is as yet undiscovered. Nicaragua is fully aware that this is the case, as the cover email conveying the Note Verbale in an attachment includes a request for confirmation of receipt of both the email and its attachments.

4. So, we are now on 2 February 2024 in Europe, and this is when the email chain that you have in tab 8 of your judges' folder begins. I will not go over that again: the four States that are named in the Press Release begin looking for the Notes Verbales which the Press Release has foreshadowed and start early co-ordination attempts. They are operating in the dark, as they do not have the Notes Verbales. Counsel for Nicaragua argued yesterday that whether Germany was considering the contents of the Press Release or the Note Verbale is irrelevant, as the contents of the two were “virtually” identical¹. But, even if this were correct, Germany had no way of knowing it *before* actually seeing the Note Verbale, which it did not see until 13 February.

5. While the four States are looking for the Notes Verbales, a regular Government press conference takes place on 7 February 2024. I will deal with what happened in the press conference in some detail later.

6. On 13 February, Germany finds the Note Verbale, and on 14 February confirms its receipt, as requested by Nicaragua. As an aside, let me just note that this does not qualify as a diplomatic exchange, as opposing counsel tried to imply yesterday²; and the citation to *The Gambia v. Myanmar* provided in the compte rendu as authority does not actually support any such implication either, as the relevant paragraphs cited refer to actual exchanges between the parties at the United Nations, not to a simple sending of a Note Verbale³. More importantly, however, it is only at this point that Germany is in a position to compare the contents of the Press Release and the Note Verbale — which are *not* identical, as I demonstrated on Monday. And Nicaragua knows that it is only on this date — 13 February — that Germany found the Note Verbale and confirmed receipt; it knows this, also, because it had just resent the email with the Note Verbale on 13 February 2024. Now, in the background, co-operation and discussion continues between the four States on this basis — the Notes Verbales.

¹ CR 2026/31, p. 31, para. 43 (Crosato).

² CR 2026/31, p. 27, para. 30 (Crosato).

³ See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Preliminary Objections, Judgment, I.C.J. Reports 2022 (II), paras. 65 and 74-76.

7. On 29 February, the United Kingdom proposes 7 March for the next co-ordination meeting of the four. Germany accepts this proposal on 1 March, which however is the date on which Nicaragua files its Application with the Court. So, this is it: this is the whole timeline within which Nicaragua argues a dispute was established between itself and Germany: one month from first generic indication via press release broadcast to the world at large, and just over two weeks from the actual receipt of the Note Verbale.

III. The Court's jurisprudence on the existence of a dispute

8. Mr President, Members of the Court, I wish now to take this timeline and use it to compare to the Court's careful jurisprudence; a jurisprudence that opposing counsel sought to brush to the side yesterday, arguing that it is all about substance, not form⁴. The Court has consistently stated that the determination of the existence of a dispute is a matter of substance and not a question of form or procedure⁵. But this does not somehow suggest that the criteria for the existence of a dispute do not matter; much less does it suggest that the formal step of sending a Note Verbale and then waiting is enough to establish a dispute, simply because the violations alleged in that Note Verbale are "grave". Quite the contrary: the Court has always carefully reviewed the facts against the distinct set of criteria in order to establish the existence of a dispute. This is what gives flesh to the Court's preference for substance over form, and it is this substance that we will review now.

9. The evidence that the Court relies on for determining positive opposition, and thus the existence of a dispute is most helpfully, if only partially, summarized in *The Gambia v. Myanmar*: the Court takes into consideration "any statements or documents exchanged between the parties"; "exchanges made in multilateral settings"; as well as "the author of the statement or document"; "their intended or actual addressee"; and "their content"⁶. The Court also carefully considers the

⁴ Cf. CR 2026/31, p. 22, para. 7 (Crosato).

⁵ *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; and see also *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; *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. 45.

⁶ *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. 64.

length and number of exchanges between the parties, as well as the specificity of the claims made, as this is evident in a number of cases⁷. I will now discuss these aspects.

10. First, the length of exchanges between the parties, leading up to the filing of an application with the Court. In *Allegations of Genocide (Ukraine v. Russia)*, the Court considered exchanges going back eight years, to 2014⁸. In *Belgium v. Senegal*, four years of exchanges were considered⁹. In *Georgia v. Russia* it was just over eight years¹⁰. In *The Gambia v. Myanmar*, more than one year¹¹. And in the *Marshall Islands* cases, where the Court found that a dispute had *not* crystallized, it was more than six months¹². In our case, we have only *one* month — the shortest month in the year, no less — and that is taking the starting-point to be 1 February. Which it really is not, as will have become clear from the timeline: the starting-point is 13 February.

11. Second, the number of exchanges between the parties. In *Allegations of Genocide (Ukraine v. Russia)*, numerous exchanges were considered¹³. In *Belgium v. Senegal*, there were numerous Notes Verbales exchanged¹⁴. In *Georgia v. Russia*, again numerous exchanges¹⁵. In

⁷ See e.g. *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), paras. 47 and 48; *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. 65; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (II), para. 47; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), paras. 50-51; *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), paras. 31-113.

⁸ *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. 48.

⁹ *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), paras. 31-113.

¹⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), paras. 25-26, 30, 50-51.

¹¹ *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. 65.

¹² *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (II), paras. 45-47.

¹³ *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. 394, paras. 47-48.

¹⁴ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), pp. 433-435, paras. 25-26 and 30; pp. 443-444, paras. 50-51.

¹⁵ *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), pp. 85-120, paras. 31-113.

The Gambia v. Myanmar, there were four statements and one Note Verbale¹⁶. And in the *Marshall Islands* cases there were two statements in the United Nations General Assembly, but no dispute was found to exist¹⁷. In the current case, there is *not a single exchange* on any substance. There is the sending of a Note Verbale, and the confirmation of its receipt. Nothing more. Neither the issuance of a press release, nor the short back and forth between a journalist and the Federal Foreign Office spokesperson constitutes an exchange.

12. Third, the specificity of the claims. In *Allegations of Genocide (Ukraine v. Russia)* the claims were very specific and they related to the alleged protection of people in the Donbas region from genocide allegedly perpetrated by Ukraine¹⁸. In *Belgium v. Senegal*, the claims that survived scrutiny as to the existence of a dispute were wholly specific: they referred to a named individual in relation to specific provisions under the Convention Against Torture¹⁹. In *Georgia v. Russia*, the Court took great care to identify whether there was truly a claim specifying that it related to racial discrimination²⁰. In *The Gambia v. Myanmar*, the claims specifically related to allegations of genocide in the fact-finding mission reports and were later also put forward by Note Verbale²¹. And in the *Marshall Islands* cases, no dispute was found to exist, precisely because of a failure to specify the conduct of the respondents that gave rise to the alleged breach²². In the current case, vague references to international law at large are meant to signify specific claims as to violations of everything: from the right to self-determination, to the obligation not to recognize as lawful a situation created by a serious breach of a peremptory norm of international law, to the obligation to

¹⁶ *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. 502-503, para. 65.

¹⁷ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (II), pp. 569-570, paras. 45-47.

¹⁸ *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. 394, paras. 47-48.

¹⁹ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), pp. 443-444, paras. 50-51.

²⁰ *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), pp. 85-120, paras. 31-113.

²¹ *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. 502-508, paras. 65-77, in particular para. 74.

²² *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (II), pp. 569-570, paras. 45-47.

prosecute persons accused of grave crimes under international law. I note, as an aside, that in most of the cases above the claims were no less grave or urgent than they are in the current case: the allegations were of torture — they were of genocide, of racial discrimination. And yet, the Court did not consider that gravity and urgency would be sufficient reasons to forego the application of the criteria for the determination of the existence of a dispute.

13. Finally, on the author of the claims and their actual or intended addressee, I can be brief. In all the cases already discussed, the numerous, specific exchanges over a period of months came either from organs of the State including the highest organs²³ or from representatives to international organizations and embassies²⁴. And they were addressed to the other State — when the addressee was unspecified or generic, the existence of a dispute was not established²⁵. In none of these cases, however, was the author a government spokesperson reserving the State's position and the addressee a journalist asking questions at a press conference.

IV. The press conference of 7 February 2024

14. Mr President, Members of the Court, it is clear that the two Parties have different ways of perceiving what happened at the regular government press conference of 7 February. You have the full transcript in tab 7 of your judges' folder. But for context, this is a regular press conference that is hosted by a German association of press correspondents and attended by the speaker of the German Government and the spokespersons of every single Federal Ministry. It takes place three times a week and journalists may ask questions that span every conceivable issue within the competence of the Federal Government.

15. As you can see, the regular press conference does take a long time. In this instance, more than 1 hour and 20 minutes. This particular press conference covered everything from European

²³ See e.g. *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. 394-395, paras. 47-48; *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. 502-503, para. 65.

²⁴ See e.g. *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), pp. 443-444, paras. 50-51.

²⁵ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. Pakistan)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (II), pp. 569-570, paras. 45-47.

Union fleet emission standards for trucks to the proposal of a levy on meat products to enhance animal welfare.

16. The exchange at issue today lasted 2 minutes and 45 seconds — out of a grand total of 80 or more minutes. The journalist’s questions, together with the intervention from the chairperson, took up 2 minutes and 15 seconds. Ms Deschauer, the spokesperson, gave two answers, which is one answer simply repeated, and which lasted 15 seconds each. These 15 seconds is what Nicaragua is basing its entire argument for positive opposition on. It is asking you to find the needed positive opposition to a claim in a few words to a journalist — and in a way that would mark a radical departure from what the Court has consistently required in terms of the formulation of a claim and the required opposition to that claim.

V. Conclusion

17. Nicaragua has filed an Application with the Court. Nicaragua is bringing this case before you. It is thus Nicaragua that needs to show how its claims are “positively opposed”. To demand from Germany to show that they are not would be absurd. And yet this is essentially what Nicaragua did yesterday²⁶. But it went even further: Nicaragua invited you to infer positive opposition from its own internal assumption that, in any case, Germany would probably not change its course of action²⁷. This is not what positive opposition means and it is a type of speculation in which the Court has not engaged.

18. Mr President, Members of the Court, it is evident that Nicaragua has not established that a dispute existed at the critical time of the filing of the Application. This is why it has tried to obfuscate the requirements consistently applied by the Court. And this is why it also relies on subsequent conduct, which is of no avail to its case. There was no dispute between the Parties on 1 March 2024. Thank you for your kind attention. May I now ask, Mr President, that you give the floor to Professor Christian Tams, who will continue Germany’s presentation in this second round?

The PRESIDENT: I thank Professor Tzanakopoulos for his statement. I now invite Professor Christian Tams to take the floor. You have the floor, Sir.

²⁶ CR 2026/31, p. 31, para. 44 (Crosato).

²⁷ *Ibid.*

Mr TAMS:

**“DISPUTE” REQUIREMENT; JURISDICTION *RATIONE TEMPORIS* UNDER THE OPTIONAL CLAUSE;
NICARAGUA’S RACIAL DISCRIMINATION CLAIM**

I. Introduction

1. Mr President, Members of the Court, it is an honour to address you and to continue Germany’s second-round presentation. I will be making three points:

- (a) First, pursuing Professor Tzanakopoulos’ argument just presented, I will offer a brief observation on the significance of the requirement of a dispute.
- (b) Second, I will respond to Nicaragua’s arguments about the temporal scope of the Court’s jurisdiction under the optional clause.
- (c) Third, I will briefly speak to Nicaragua’s racial discrimination claim.

II. The primary condition for the exercise of the Court’s judicial function

2. Mr President, Members of the Court, you have just heard Professor Tzanakopoulos set out Germany’s position on why, in the present instance, there was no dispute between Nicaragua and Germany at the time when Nicaragua filed its Application on 1 March 2024. Underlying his approach — and underlying Germany’s position in this case — is the firm conviction that the requirement of a dispute is important and deserves careful scrutiny. It is not — and I would emphasize the point, given Nicaragua’s approach yesterday — a formality; it is, in the words of the Court, the “primary condition” for the exercise of the Court’s judicial function.

3. While Professor Tzanakopoulos has focused on the criteria guiding the Court’s assessment, there is a broader point to draw out: this is the care and the diligence with which this Court has approached the question of whether there existed a dispute at the material time. In the case *Georgia v. Russia*, this care led the Court to (as has been noted) “undert[ake] a detailed review of the relevant diplomatic exchanges, documents and statements”²⁸, and to find eventually that a dispute about racial discrimination had only crystallized between the parties between 9-12 August 2008, after the

²⁸ See *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), separate opinion of Judge Bhandari, p. 1058, para. 5.

outbreak of the Russo-Georgian war²⁹. That finding was very important as it limited drastically the period in which it could be said that there had been negotiations required by Article 22 CERD. In *Belgium v. Senegal*, the Court carefully assessed the applicant's claims and rejected those that had not been articulated with sufficient clarity³⁰. Finally, in *Marshall Islands*, the Court, after careful scrutiny again, found that the applicant had failed to demonstrate that, on the facts, a dispute existed between it and the respondent States at the time of filing³¹. Stepping back from their details, these cases — and others could be added — illustrate the importance of the requirement of a dispute, which is, as has been observed, “fundamentally, a condition for the very existence of [the Court’s] jurisdiction”³².

4. Whether this fundamental condition is met, needs to be assessed in each and every case. But the assessment, we submit, is particularly important in this case, because this case is particular in a number of respects. I mention five of them:

- (i) The documentary record on which Nicaragua bases its case is exceptionally slim, and the time between the first articulation of any claim, and the filing of the Application was short. Professor Tzanakopoulos has spoken to this.
- (ii) Germany had no particular reason to anticipate a claim from Nicaragua. Neither State was or is a party to the underlying conflict, and Nicaragua had not engaged or opposed Germany in meetings before United Nations bodies.
- (iii) While proceedings were eventually instituted against Germany, in the short period of time preceding the filing of the Application, Nicaragua was apparently considering proceedings against no less than four States. All of these four States received Notes Verbales with a similar content. Which of these four would be sued seems to have been decided only a few days before the filing of the case, and on the basis, it seems, of reasons of convenience.

²⁹ *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. 120, para. 113.

³⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 445, para. 55.

³¹ *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)*, p. 856, para. 58.

³² See *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)*, separate opinion of President Abraham, p. 858, para. 3.

(iv) Since the filing of the Application on 1 March 2024, Nicaragua's claims pursued in the present proceedings have been anything but static. As Germany has noted in its written preliminary objections, in the Memorial Nicaragua introduced both new substantive claims and a new jurisdictional basis. As I will discuss shortly, in the course of the present oral proceedings, Nicaragua seems to contemplate a restriction of its claims.

(v) Finally, notwithstanding this potential restriction, with Nicaragua's submissions running to ten interrelated claims and three further requests for remedies — advanced on the basis of three separate jurisdictional bases — this was and this is a case of enormous scope, as to which Germany naturally needed some reasonable time to formulate and voice a response.

5. Mr President, Members of the Court, the requirements of a dispute and the Court's case law assessing it are very well known. They would have been very well known to Nicaragua. For whatever reason, Nicaragua elected not to take those rules seriously and presented as a mere formality what, according to the rules of the Court, is a crucial step in assessing "the very existence of [the Court's] jurisdiction"³³. Mr President, Germany considers it of the highest importance that the Court, in assessing Nicaragua's claims, follow the careful approach of its settled jurisprudence, and on that basis, dismiss Nicaragua's claims in their entirety.

III. Nicaragua's argument on temporal jurisdiction under the optional clause

6. Mr President, Members of the Court, with this I move on to my second point, and that is Nicaragua's argument on temporal jurisdiction.

7. On Monday, Germany put to you that Nicaragua's submissions 4-9 have their real cause not in facts and situations after 30 April 2008, but in Germany's long-term policy vis-à-vis Israel. I took you to passages from Nicaragua's Memorial which said exactly that, and which specified how Nicaragua advanced facts from well before the critical date to assert that Germany had breached international law: from Volkswagen's shareholding in MAN to submarines contracted in the 1990s and 2000s to the alleged *decade-long* "aid and assistance to Israel".

8. Yesterday, Nicaragua was emphatic that its dispute was only about facts and situations after 30 April 2008. But, in reality, its pleading affirmed Germany's position. It affirmed Germany's

³³ See *ibid.*, p. 858, para. 3.

position because Nicaragua of course must accept that its Memorial explicitly accuses Germany of what counsel yesterday referred to as “past violations”³⁴ — i.e. violations from before the critical date. Mr President, significantly, it is now also clear that Nicaragua considers these “past violations” to be of the same character as alleged later breaches: Counsel yesterday described the “past breaches” as “similar”³⁵, and asserted that the Court could assess later breaches even where “similar facts and situations existed in the past and might have given rise to responsibility on the basis of comparable or identical legal arguments”³⁶. But, Mr President, Members of the Court, we have to ask: why are the legal arguments identical? The response is clear: because all of Nicaragua’s assertions advanced under claims 4-9 rely on facts of the same nature; their real cause does not lie after the critical date.

9. Mr President, Members of the Court, in Germany’s submission, this clarification is fatal to Nicaragua’s argument on the real cause of the dispute. Fatal because it is simply not plausible for Nicaragua to argue that its dispute with Germany has its real cause in facts and situations after 30 April 2008, when at the same time, it has in its Memorial made this a case about Germany’s long-term policy and when it recognizes, as it now has, that alleged breaches from before or after the critical date fall to be assessed on the basis of similar or identical legal arguments.

10. Mr President, Members of the Court, permit me to highlight what we perceive as the weakness of Nicaragua’s case by inviting you to reflect on a hypothetical, one closely modelled on a case with which this Court is very familiar and which both Parties have relied on in the first round, and this is the *Certain Property* case. Now, in the real *Certain Property* case, Liechtenstein challenged German court decisions of the 1990s. These had been rendered after the critical date, which in the real *Certain Property* case was in 1980 — in February 1980. As I discussed on Monday, Liechtenstein’s challenge prompted the Court to clarify that these later court decisions had their real cause in earlier facts and situations and so the case could not be pursued.

11. Now, Mr President, Members of the Court, assume this — assume Liechtenstein had not merely challenged German court decisions of the 1990s, from after the critical date. But that, in its Memorial, it had pointed to earlier court decisions as well, rendered, say, in the 1960s or 1970s,

³⁴ CR 2026/31, p. 39, para. 18 (Müller).

³⁵ *Ibid.*

³⁶ CR 2026/31, p. 40, para. 22 (Müller).

before the critical date, and assume further that, in its Memorial, Liechtenstein had expressly portrayed the earlier and the later decisions as part of a long-term German jurisprudence. And this Liechtenstein — in my hypothetical case — would have further said what counsel for Nicaragua told you yesterday: that decisions from before and after the critical date raised “comparable or identical legal arguments”.

12. Mr President, this is a hypothetical — but it is one that, we submit, shares essential features of the dispute Nicaragua intends to bring before this Court. So let me put the question to you, and perhaps also to counsel for Nicaragua: in my hypothetical *Certain Property* case, would it have been plausible for Liechtenstein to assert that its dispute with Germany — the one it sought to bring before the Court — presented as a dispute about a long-standing jurisprudence, with court decisions from before and after the critical date — that this dispute fell within the Court’s temporal jurisdiction, which began in 1980? On what basis could Liechtenstein in this hypothetical *Certain Property* case have claimed that the real cause of its dispute lay after 18 February 1980, the relevant critical date? We submit that this Court, had it been confronted with the hypothetical *Certain Property* case that I presented to you, would have had little difficulty in finding that the claims of Liechtenstein fell outside the Court’s temporal jurisdiction — and we say the same should apply to Nicaragua’s claims 4-9 in our case.

13. Mr President, Nicaragua yesterday offered two comments to avoid this result. It first warned that Germany’s understanding would transform the temporal limitation clause into a “limitation without any limits whatsoever”³⁷. But this is mere assertion. Germany’s temporal limitation falls to be interpreted in line with the long-standing jurisprudence of this Court and its predecessor. Germany submitted its reservation with its optional clause in 2008, 70 years after the PCIJ’s judgment in the *Phosphates* case, and roughly three years after this Court’s Judgment in the *Certain Property* case — that is, the real *Certain Property* case, in which this Court had insisted on the importance of assessing whether later facts marked a departure from prior conduct, or raised particular issues for the first time. On Monday, Germany asked you to apply precisely these tests to

³⁷ CR 2026/31, p. 35, para. 9 (Müller).

Nicaragua's claims. The temporal limitation is not a limitation without limits — its meaning is shaped by the jurisprudence of this Court.

14. But Mr President, Nicaragua yesterday went one step further. It urged you simply to ignore its earlier arguments regarding past breaches. Counsel asserted that Nicaragua “submits” — or perhaps we should say, “*now* submits” — “to the Court’s scrutiny and jurisdiction . . . 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 submissions”³⁸. Now, this is clearly not the case Nicaragua pleaded in its Memorial, in which it expressly accused Germany of manifold “past breaches”, which it now wants to drop in order to somehow fit its claims 4-9 into the scope of the Court’s temporal jurisdiction.

15. But Mr President, Members of the Court, contrary to what Nicaragua may feel, a dispute submitted to the principal judicial organ of the United Nations is not an accordion that can be stretched and squeezed at will, to suit the claimant’s changing procedural objectives. To put it differently, and perhaps less musically, the preliminary objections stage is not one in which claimants can change their pleadings on the merits. The proceedings on the merits in this case, as you, Mr President, reminded the Parties in opening these hearings on Monday, were suspended on 22 October 2025 by an Order of the Court by virtue of Article 79*bis*, paragraph 3, of the Rules of Court. To permit Nicaragua now to again change the scope of its claims would not only undermine the idea of the preliminary objections phase in which the proceedings on the merits are “frozen”. It would also affect the procedural fairness between the Parties. And for that reason, Nicaragua’s last-minute effort to curtail its claims for reasons of procedural convenience must fail.

IV. Nicaragua’s racial discrimination claim

16. Mr President, Members of the Court, I move on, more briefly, to points made by Nicaragua in relation to its racial discrimination claim — a claim, as Professor Tzanakopoulos reiterated earlier, was never even mentioned in the Note Verbale or Press Release, but that now has become an important aspect of Nicaragua’s case.

³⁸ CR 2026/31, p. 45, para. 30 (Müller).

17. I will address two aspects in particular: the construction of Article 22 CERD; and the scope of Germany's special agreement reservation.

18. First, Article 22 CERD: our case on Monday was that Nicaragua had manifestly failed to fulfil the preconditions for the Court's seisin. Yesterday, counsel for Nicaragua asserted that "Germany's insistence on an 'amicable settlement' would have resulted in irreparable harm to the Palestinian people"³⁹. Counsel continued that "[r]ecourse to negotiations under CERD's inter-State complaint mechanism entails lengthy procedures"⁴⁰.

19. In response, Mr President, permit me to clarify that it is not Germany's position that, as a precondition to the seisin of the Court under Article 22, an applicant must have pursued "negotiations under CERD's inter-State complaint mechanism". As the Court has clarified, in referring to negotiations or the methods referred to in the Convention, Article 22 "imposes alternative preconditions to the Court's jurisdiction"⁴¹. However, as the Court has also, and repeatedly, made clear, some *negotiations* must have been pursued — negotiations must have been pursued after a dispute about questions of racial discrimination has crystallized, in a distinct phase. Nicaragua yesterday seemed to suggest that this requirement could be dispensed with where the situation required urgent action. In response, Germany notes first of all that the Court, at the provisional measures stage of this proceeding, did consider questions of urgency. But what is more, the Court's case-law affirms that negotiations must be pursued in settings in which applicants perceive the need to require "urgent action": this is true for the cases between Ukraine and Russia, Armenia and Azerbaijan, but above all for the case of *Georgia v. Russia*, in which Georgia's claim failed because it had failed to seek a negotiated settlement at a time when it was party to an armed conflict waged on its territory. In light of this jurisprudence, Germany submits that it is simply not sufficient for Nicaragua to point to the situation on the ground in Gaza to assert that negotiations need not be pursued.

³⁹ CR 2026/31, p. 59, para. 4 (Power).

⁴⁰ *Ibid.*

⁴¹ *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. 113.

20. Mr President, Members of the Court, my second point: if Article 22 of CERD is of no help to Nicaragua, can Nicaragua bring its racial discrimination claim on the basis of the optional clause? On Monday, I had taken you to Germany's optional clause declaration, which contains — as I was showing to you — a “special agreement reservation”. Yesterday, counsel for Nicaragua took issue with Germany's position. But counsel had very little to say on the terms of the reservation: Nicaragua, in fact, had nothing to say on why CERD was not a “special agreement” providing for “another form of dispute settlement” — in the terms of Germany's reservation — and why Nicaragua and Germany had not “chosen” it when joining the CERD régime.

21. What we heard instead were warnings about an “endless loop” if you gave effect to the special agreement reservation. An endless loop because, according to Nicaragua, Article 22 also accommodates a preference for “special agreements” — which, according to Nicaragua, means that “Parties [to CERD] would have been deemed to have agreed to ‘another mode of settlement’ through their optional clause declarations”. Yet this misses the central point I had made on Monday: Article 22 of the CERD does not speak of CERD parties, it speaks of “disputants”, or in French: « *les parties au différend* ». The renvoi in Article 22 of the CERD is only to other modes of settlement that have been agreed after a dispute has emerged, not to a general system that permits the unilateral submission of disputes. Or put more simply, there are no disputants about CERD in our case. Therefore, Article 22 CERD does not refer back to the German (or any other State's) optional clause declaration. And as this is so, Germany encourages this Court to give effect to the terms of Germany's special agreement reservation. You can do so without fear of an “endless loop”.

22. This, Mr President, Members of the Court, brings to an end my second-round presentation. I thank you for your kind attention, and I would ask you now, Mr President, to call Mr Samuel Wordsworth.

The PRESIDENT: I thank Professor Tams for his statement. I now call Mr Samuel Wordsworth to the podium. You have the floor, Sir.

Mr WORDSWORTH:

**NICARAGUA’S CLAIMS REQUIRE THE COURT TO ADJUDICATE UPON THE LAWFULNESS
OF ISRAEL’S CONDUCT IN THE ABSENCE OF ITS CONSENT OR PARTICIPATION**

I. Introduction

1. Mr President, Members of the Court, I will be responding on Monetary Gold — to the submissions made by Professor Pellet, a self-confessed Monetary Gold sceptic⁴². He made two principal submissions:

- (a) First, that the requirements for application of the Monetary Gold principle are not met because, it was argued, Nicaragua is not asking the Court to decide whether Israel’s responsibility is engaged by its activities in the Gaza Strip and the Occupied Palestinian Territory more generally⁴³;
- (b) Second point: that in any event, this is my translation, “it has already been established . . . that the responsibility of Israel is engaged by virtue of serious and persistent violation of numerous imperative norms of international law. This is an established fact, *fait acquis*, a given.” Reliance in this respect was placed on a list of reports and materials at tab 13 of Nicaragua’s judges’ folder, as well as on the Court’s past three advisory opinions concerning Israel⁴⁴.

2. And these two lines of argument, it might be thought, are pulling in two different and rather contradictory directions.

II. The Monetary Gold principle is engaged

3. So far as concerns application of the Monetary Gold principle, there are three points calling for response.

4. First, Nicaragua notably avoided making any reference to the formulation of the principle in *East Timor* and other subsequent cases, i.e. that the relevant question is whether “the Court would necessarily have to rule upon the lawfulness of [the absent State’s] conduct as a prerequisite for deciding on [the claimant State’s] contention that the [respondent State] violated its obligation”⁴⁵. As

⁴² CR 2026/31, p. 65, paras. 1-2 (Pellet).

⁴³ E.g. CR 2026/31, pp. 66-67, para. 9 (Pellet).

⁴⁴ CR 2026/31, pp. 71-72, paras. 21-22 (Pellet).

⁴⁵ See e.g. *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 104, para. 33.

Germany noted in opening, this is the question that comes out of the reasoning in *Monetary Gold*, as indeed the Court itself explained in the *Nauru* case as part of its key reasoning distinguishing Nauru's claim against Australia from the claim of Italy in the *Monetary Gold* case. It is because "the determination of Albania's responsibility was a prerequisite for a decision to be taken on Italy's claims" that the Court found that the interests of Albania formed the "very subject-matter of the [decision]"⁴⁶. Nicaragua avoids the use of the Court's repeated formulation because it is aware that its case does require determinations of wrongful conduct by Israel — and hence, it says, that this wrongful conduct can somehow be taken as a "given".

5. Second, my friend Professor Pellet sought to draw a distinction between the submission made by Italy in the *Monetary Gold* case and the submissions now made by Nicaragua, and it was said that, in the current case, it is only the responsibility of Germany that is in play⁴⁷. That distinction was made by reference to slide 1 of Nicaragua's tab 10, which, however, gave an incomplete portrayal of Nicaragua's submissions. The words omitted from Nicaragua's slide — and you can see these now in red — form a key part of Nicaragua's actual case, that they concern the alleged conduct of Israel, that is an alleged "ongoing genocide . . . in the Gaza Strip" and the question of Israel's compliance with the Geneva Conventions. The point is equally if not more clear from Nicaragua's other submissions, for example its submission three alleging complicity in genocide through provision of "aid, including military equipment to Israel that has been used in the commission of genocide by Israel". That is submission number three. Now, the substantive rules of law are of course different to those at issue in the *Monetary Gold* case, but the parallel submissions are materially similar in the two cases, in that both require a determination of the conduct of an absent third State as a prerequisite to the Court being able to make the declaration sought. In any event, the fundamental rule on consent that *Monetary Gold* reflects could not be bypassed by artful pleading, and one notes that, in the *East Timor* case⁴⁸, Portugal made no express mention of the absent State, Indonesia, in

⁴⁶ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 261, para. 55, referring to *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom of Great Britain and Northern Ireland, and United States of America)*, Preliminary Question, Judgment, I.C.J. Reports 1954, p. 32.

⁴⁷ CR 2026/31, p. 67, para. 11 (Pellet).

⁴⁸ *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 94, para. 10.

its formal submissions but, of course, the Court looked at the substance of what it was being asked to decide.

6. That leads to the third point. It was said yesterday that Israel's conduct was only in the background and that the Court was not called upon to make any legal judgment on the conduct of Israel⁴⁹. That might be thought to be difficult to square with Nicaragua's actual submissions, but in any event, the argument turned on the incorrect contention that it is enough for Nicaragua to show a risk of breach by Israel, with a particular focus then being placed by Nicaragua on certain of the Court's conclusions in the *Bosnian Genocide* case.

7. However, as Germany has always made clear, including on Monday⁵⁰, the Court in *Bosnian Genocide* made a clear distinction between (i) the substantive conditions for triggering the obligation to prevent genocide and (ii) the substantive conditions required for breach of the obligation. Nicaragua does not assist the Court when, as yesterday, it focuses only on the first of these points because its allegation is that Germany has breached its obligation of prevention, not that the obligation of prevention has been triggered.

8. To return very briefly to our slide of Monday, you can see in red the point concerning when the obligation is triggered, which is the point that Nicaragua seeks to emphasize. You may recall my reading it out. But the key point, underlined, concerns what is required for breach. It makes no difference that, as identified in the preceding paragraph of the Court's judgment, the obligation to prevent is identified as an obligation of conduct not result, with emphasis being placed by the Court on the duty of due diligence⁵¹. Nicaragua alleges breach, the current question concerns what the Court would have to determine to find a breach, and — the Court could not have been more clear — the answer is that there must have been commission of a genocide. In the current case, the only genocide alleged is that allegedly committed by Israel, the absent party, and hence Israel's alleged wrongdoing is as squarely engaged as that of Albania in the *Monetary Gold* case. And, as the *Bosnian Genocide* case makes crystal clear, the characterization of an obligation of prevention as comprising a duty of

⁴⁹ CR 2026/31, p. 67, para. 11 (Pellet).

⁵⁰ CR 2026/30, p. 60, para. 21 (Wordsworth); cf. CR 2026/31, pp. 67-68, para. 12 (Pellet).

⁵¹ Cf. CR 2026/31, pp. 68-69, para. 14 (Pellet), referring to *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports 2007 (I), para. 430.

due diligence does not, as Nicaragua suggests, including with respect to its characterization of Common Article 1, dispose of the need for the third State's wrongful conduct to have actually occurred before there can be a breach of the obligation to prevent genocide, or to ensure respect under Common Article 1.

9. Reference was made to the drafting work behind Article 14 (3) of the ILC Articles on State Responsibility to the effect that not all obligations of prevention are of the same kind⁵². This is a point that the Court had fully on board and in fact referred to in the *Bosnian Genocide* case when identifying what was required for a breach of Article I and for complicity in genocide, so this point could add nothing so far as concerns Nicaragua's three genocide claims⁵³. Reliance was then placed on the Court's finding in the *Tehran Hostages* case concerning Iran's failure to take appropriate steps and, from this, it was said that there was

“an autonomous obligation, independent of the concretization of the violation of the obligation which is the object of prevention . . . whether this concerned international humanitarian law, the prohibition of genocide or racial discrimination, or the right of the people of Palestine to self-determination”⁵⁴.

10. That, with respect, represented a notably large and brave leap in legal reasoning. Three short points:

- (a) *First*, the position so far as concerns what is required for breach of the obligation to prevent genocide is as established by the Court's consistent jurisprudence concerning the Genocide Convention.
- (b) *Second*, the position so far as concerns other obligations of prevention may depend on issues of specific wording and the Court heard on Monday our submissions on Common Article 1 of the Geneva Conventions⁵⁵. Germany's reasoning, just as the Court's reasoning in the *Bosnian Genocide* case, does not turn on a blind adherence to Article 14 (3) of the ILC Articles on State Responsibility, but on an interpretation of the relevant wording of Common Article 1 and an appreciation of what must be required for there to be a breach. If State A has in fact complied

⁵² Cf. CR 2026/31, pp. 69-70, para. 17 (Pellet).

⁵³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), paras. 429 and 431.

⁵⁴ Cf. CR 2026/31, p. 70, para. 18 (Pellet).

⁵⁵ CR 2026/30, pp. 63-66, paras. 32-38 (Wordsworth).

with its obligations under the Geneva Conventions, how can State B have failed to ensure that compliance⁵⁶?

(c) *Third*, the *Tehran Hostages* case concerned the obligation under the Vienna Convention on Diplomatic Relations “to take all appropriate steps to protect the premises of the mission against any intrusion or damage”⁵⁷. That is an obligation of a completely different nature to Common Article 1, not least because it is not concerned with ensuring compliance by another State of that other State’s international legal obligations. And if the *Hostages* case had been considered relevant to prevention or complicity in genocide — or indeed more broadly — no doubt the Court would have referred to it in the *Bosnian Genocide* case. But of course, it did not.

III. Nicaragua’s case that the unlawful nature of Israel’s conduct has already been established

11. Ultimately, Nicaragua has not sought to challenge Germany’s point that Nicaragua’s Application and Memorial “are replete with assertions that Israel is in breach of multiple and fundamental norms of international law”, and instead Nicaragua seeks to turn this into a positive, its more strongly argued answer to *Monetary Gold*, which is the argument that Israel’s breaches can be taken as a “given”. The juridical underpinning of this argument is the decision of the Tribunal — and certainly a very distinguished Tribunal — in *Laarsen v. Hawaiian Kingdom*. The dispute concerned alleged breach by Hawaii of its Treaty of Amity with the USA through the alleged unlawful imposition of US municipal law in Hawaii. Following its consideration of the *Monetary Gold* line of cases, with *East Timor* and *Nauru* being regarded as “particularly pertinent”, the Tribunal stated:

“11.23. . . . The Tribunal cannot rule on the lawfulness of the conduct of the respondent in the present case if the decision would entail or require, as a necessary foundation for the decision between the parties, an evaluation of the lawfulness of the conduct of the United States of America, or, indeed, the conduct of any other State which is not a party to the proceedings before the Tribunal. [You can see that is obviously borrowing the formulation from the *East Timor* case, picked up of course by this Court in *Guyana v. Venezuela*, and in many other cases.]

11.24. The Tribunal notes, for the sake of completeness, that there may well be exceptions to the *Monetary Gold* principle. For example, if the legal finding against an absent third party could be taken as given (for example, by reason of an authoritative

⁵⁶ See also Stendel and Wenker, “Monetary Gold in the Age of Public Interest Litigation”, *European Journal of International Law*, Vol. 36, no. 3, 559, at 573.

⁵⁷ *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, I.C.J. Reports 1980, paras. 62-63, applying Article 22 (2) of the Vienna Convention on Diplomatic Relations.

decision of the Security Council on the point), the principle may well not apply. It is also possible that the principle does not apply where the finding involving an absent third party is merely a finding of fact, not entailing or requiring any legal assessment or qualification of that party's conduct or legal position. [That is not our case, I note in passing, and Nicaragua has not suggested otherwise. The Tribunal continued:] In the present case, however, the parties did not seek to rely on any possible exception . . . ”⁵⁸

So, of course, the Tribunal did not dig any deeper into this possibility.

12. So, it was perhaps overstating matters to characterize this as the Tribunal saying “very clearly” that Monetary Gold “does not apply when ‘the legal finding against a third party could be taken as a given’”⁵⁹. The statement is qualified and the only example given of where the principle may well not apply is “an authoritative decision of the Security Council on the point”.

13. One notes the careful use of the words “authoritative decision” and, stepping back, it must be asked whether reliance on anything other than an authoritative decision of the Security Council on the relevant point — to establish a “given” — could be consistent with fulfilment of the Court's judicial function. Certainly, the Human Rights Council and other materials at tab 13 of Nicaragua's judges' folder could not — consistent with the Court's judicial function — be taken to establish as a “given” that Israel has engaged in a genocide or committed serious breaches of the Fourth Geneva Convention or the other wrongful conduct of Israel that is alleged. The Court might accord weight to such materials as evidence of alleged conduct, but that is quite different from what is now being suggested. To quote the Court's words from the *Bosnian Genocide* case, where it had been presented with abundant UN reports and other materials: “The Court must itself make its own determination of the facts which are relevant to the law which the Applicant claims the Respondent has breached.”⁶⁰ And one asks how could it be otherwise? As the Court also noted, it had the assistance of judgments on criminality on relevant conduct from the ICTY, which were of highly persuasive value, but Nicaragua cannot point to anything remotely equivalent here.

14. And one wonders, also, how carefully thought through this part of Nicaragua's case is. From the submissions of yesterday, it appeared that Nicaragua's case has now shrunk back to where it stood in the Application and Request for provisional measures of March 2024 — that is with the real focus being on alleged genocide and breach of international humanitarian law in the conduct of

⁵⁸ *Larsen v. Hawaiian Kingdom*, Arbitral Award, PCA Case 1999-01 (5 February 2001).

⁵⁹ Cf. CR 2026/31, pp. 71-72, at para. 21 (Pellet).

⁶⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 130, para. 212.

Israel in Gaza since 7 October 2023. How — consistent with its judicial function — could the Court take such serious matters as a “given”? The Court decides contentious cases by reference to its specific determinations of fact and law and yet, that is the approach that Nicaragua now asks you to abandon in express terms which, I note, also appear inconsistent with the way the matter was argued in its written statement⁶¹. Now, you are just to rely on a “*fait acquis*”.

15. To make one obvious point, so far as concerns Israel’s defence of the claim brought by South Africa, it could readily be said that issues were being predetermined against Israel before it had had a fair hearing. This would appear to be the inevitable effect of what Nicaragua now seeks. In the Court’s judgment on the current preliminary objections, which will no doubt be made in relatively short order and long before an assessment of the merits of the *South Africa v. Israel* case, the Court would on Nicaragua’s argument be saying that the Monetary Gold principle is not an obstacle to exercise of jurisdiction because it can be taken as a “given” that Israel has committed a genocide; has committed multiple serious breaches of IHL; has engaged in apartheid and other very serious unlawful conduct. Against that backdrop, how one wonders, on Nicaragua’s case, could Israel get — and be seen to get — a fair hearing?

16. Professor Pellet placed some weight on the Court’s provisional measures orders in the South Africa case and considerable weight on the Court’s three advisory opinions concerning Israel.

17. As to the former, there was a suggestion of not understanding why we say a finding of risk or plausibility of rights served a different purpose in a different case⁶². The answer, of course, is that in its 2024 orders in the *South Africa* case the Court was concerned only with the matters relevant to provisional measures in that case, and not with the current claims which require the Court to determine that Israel has committed a genocide — has not complied with its obligations under the Fourth Geneva Convention, as well as other obligations incumbent on Israel, which do not form part of the *South Africa* case.

18. As to the three advisory opinions, the first and indisputable point is that none speak to the question of whether there has been a genocide, or breach of international humanitarian law, or

⁶¹ Cf. CR 2026/31, pp. 75-76, para. 29 (Pellet); cf. written statement, para. 244, third sentence. See also CR 2026/31, pp. 76-77, para. 31 (Pellet).

⁶² Cf. CR 2026/31, pp. 72-73, para. 24 (Pellet).

breaches of CERD or other rules of international law through the conduct of Israel in Gaza since 7 October 2023⁶³. So, as we said in opening, at very best these could be only of very partial assistance.

19. Professor Pellet made three points:

- (a) First, that the Court itself and other international courts and tribunals habitually refer to or rely on the Court's advisory opinions, while Germany itself has stated that it respects the 2024 Opinion;⁶⁴
- (b) Second, that the Court has made clear in the three advisory opinions that it had sufficient information before it to answer the relevant requests, and the Court's 2024 Opinion on the "main features of Israel's practices and policies" were sufficient for Nicaragua's purposes in the current case⁶⁵;
- (c) Third, that the authority of the three Opinions had been universally recognized, including by Germany⁶⁶.

20. As to the first argument, of course the Court refers back to its own jurisprudence, where appropriate, including to advisory opinions. So, to take the first example footnoted by Professor Pellet, in the *Ukraine v. Russia* case concerning financing of terrorism⁶⁷, the Court was considering what was required for good-faith negotiations and, in that context, it referred to various cases, including one of the advisory opinions of the PCIJ. One asks, so what? The question is not whether the Court, or other international courts and tribunals, rely on the Court's advisory opinions — of course they do — but, rather, the question is: to what end? They are not and could not be relied on to bypass case-specific determinations of fact and law in a contentious case, such as whether Israel has been engaged in a genocide in Gaza.

21. The one case that Professor Pellet focused on was the decision of the ITLOS Chamber in *Mauritius v. Maldives* which, very notably — in considering and rejecting a Monetary Gold argument — considered the dispute involving the United Kingdom as to sovereignty over the Chagos

⁶³ See in particular *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. 786, para. 81.

⁶⁴ CR 2026/31, pp. 73-76, paras. 26-29 (Pellet).

⁶⁵ CR 2026/31, pp. 76-77, paras. 30-31 (Pellet).

⁶⁶ CR 2026/31, pp. 77-78, paras. 32-34 (Pellet).

⁶⁷ CR 2026/31, p. 74, para. 26, fn. 317 (Pellet).

Archipelago to have been resolved in Mauritius's favour by the Court in its 2019 Advisory Opinion⁶⁸. As I noted in opening, this is a controversial decision and, indeed, one distinguished commentator has characterized the Chamber's approach as "quite simply absurd", emphasizing that the Chamber should have been doing its own work⁶⁹. It is difficult to disagree. As to the other judgments referred to, these concerned, respectively, the status of Western Sahara and the way that human rights protections apply in armed conflict⁷⁰. None comes close to reliance on an advisory opinion to establish as a "given" that a third State is engaged in, for example, commission of an ongoing genocide and/or breaches of IHL.

22. As to the second argument, it is very difficult indeed to see how the legal characterizations made in the three Advisory Opinions could be sufficient to show, as was claimed, that Israel's "responsibility is recognised almost universally with respect to genocide . . . and diverse violations of IHL and other fundamental rules of international law"⁷¹. Even if it were otherwise — and it is not — Nicaragua's position fails to take into account Germany's point as to the different processes that the Court follows in its advisory as opposed to its contentious jurisdiction, as indeed the Court itself has taken care to emphasize in the 2025 UNRWA Advisory Opinion⁷².

23. Finally, as to the generally recognized authority of the three Opinions⁷³, their evident authority and importance can change nothing as to what matters they actually cover and in what detail. Germany's recognition of the Opinions likewise cannot bring about such a change, and is anyway irrelevant for the unchallenged reason that we put forward on Monday — the Monetary Gold principle is concerned with the consent of the absent third State, not the views of the Parties that are

⁶⁸ Cf. CR 2026/31, pp. 74-75, para. 27 (Pellet), referring to *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*, Preliminary Objections, Judgment, ITLOS Reports 2020-2021, paras. 202 and 205-206. See also paras. 97-100.

⁶⁹ A. Pellet, "Conclusions", in J.-M. Thouvenin and J. Joly Hébert, *The International Court of Justice at 75*, Paris, Pedone, 2023, pp. 311-316.

⁷⁰ Cf. CR 2026/31, pp. 74-75, para. 27 and fn. 321 (Pellet).

⁷¹ Cf. CR 2026/31, pp. 76-77, paras. 30-31 (Pellet).

⁷² CR 2026/30, pp. 67-68, paras. 44-46 (Wordsworth). See *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*, Advisory Opinion of 22 October 2025, paras. 30-31. See also *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. 46-47 and 77; *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, paras. 106 and 406.

⁷³ CR 2026/31, pp. 77-78, paras. 32-34 (Pellet).

before the Court. Indeed, the *Monetary Gold* case is an apt illustration of that, given that Italy no doubt considered that it had a good claim against Albania for delivery of the gold at issue.

24. Mr President, Members of the Court, that concludes my presentation. Germany regrets that, apparently due to Nicaragua's prior counsel overrunning yesterday, Professor Pellet was unable to complete his submissions with the potentially prejudicial result that Germany is deprived of the opportunity to respond⁷⁴. I thank you very much for your attention and ask you to hand the floor to the honourable Agent for Germany.

The PRESIDENT: I thank Mr Wordsworth for his statement. I now invite the Agent of Germany to take the floor. You have the floor, Madam.

Ms MONAR:

CLOSING STATEMENT

1. Mr President, Members of the Court, in my closing statement, allow me to make four short observations in response to points that have been raised by the representatives of Nicaragua yesterday. I will then continue to read the final submissions of the Federal Republic of Germany.

2. *Firstly*, it is entirely inappropriate to frame the raising of preliminary objections, as the Nicaraguan Agent did yesterday, as "an attempt by Germany to avoid at all costs that its actions be judged by this Court"⁷⁵. As countless States in previous proceedings have done, Germany has made use of this procedural right. The objections concern serious questions regarding the admissibility and jurisdiction with respect to this case. They are based on the law and the jurisprudence of this Court. They constitute the only subject-matter of the current stage of proceedings. In its oral argument yesterday, Nicaragua, however, has once again used these preliminary proceedings to formulate substantive allegations. Germany would address these points in detail if we were in the merits phase. But we are not.

3. *Secondly*, this is the first case in the history of this Court and its predecessor in which neither the Applicant, Nicaragua, nor the Respondent, Germany, is a party to the conflict at the heart of this

⁷⁴ CR 2026/31, p. 78, para. 37 (Pellet).

⁷⁵ CR 2026/31, p. 18, para. 24 (Argüello Gómez).

case. Germany respectfully submits that, in such cases, it is crucial to uphold the principle of consent — the very foundation on which the jurisdiction of this Court rests. Yesterday, Nicaragua asked you to look beyond the “legalese”⁷⁶ and to disregard what it described as “procedural delay”⁷⁷. What Germany asks for, however, is simply that the Court continue its sound administration of justice and that it applies the settled standards. This constant practice, developed over decades, has earned the Court the trust of the international community.

4. This brings me to my *third* observation. Germany is committed both to the existence and security of the State of Israel *as well as* to the full realization of the Palestinian people’s right to self-determination. Nicaragua, however, tried to portray us as one-sided. The opposite is true.

5. Germany supports — not just with words, but with many deeds — the implementation of United Nations Security Council resolution 2803 and the Comprehensive Plan to End the Conflict in Gaza. The German Government continuously urges all parties to adhere to their commitments under the Plan, including the disarmament of Hamas as well as the facilitation of unimpeded access and sustained distribution of humanitarian assistance at scale, into and throughout Gaza. The German Government actively engages in all efforts to end the conflict and in supporting a negotiated two-State solution through diplomatic means available to it. Nicaragua attempted to frame the German Foreign Minister’s many visits to Israel as “business as usual”⁷⁸. To the contrary: the German Government used these visits to convey critical messages and argue for a better humanitarian situation in Gaza. The Foreign Minister also visited the Palestinian territories, attended the United Nations High-level International Conference for the Peaceful Settlement of the Question of Palestine and the Implementation of the Two-State Solution in September 2025 and met on several occasions with President Abbas, Prime Minister Mustafa and Foreign Minister Shahin.

6. Let me also clarify that our substantive financial support to the Palestinians is not an abstract number to “boast” about⁷⁹, as the Nicaraguan Agent put it. That was an astonishing and regrettable characterization. The right of the Palestinian people to self-determination is of great importance to

⁷⁶ CR 2026/31, p. 19, para. 28 (Argüello Gómez).

⁷⁷ CR 2026/31, p. 60, para. 4 (Power).

⁷⁸ CR 2026/31, p. 18, para. 23 (Argüello Gómez).

⁷⁹ CR 2026/31, p. 12, para. 5 (Argüello Gómez).

Germany, and the funding from Germany enables practical steps towards its realization. It makes a real and immediate difference on the ground. We support, for example, the stabilization response mechanism with UNDP, which played a key role in facilitating the local elections in April 2026, particularly in Deir al-Balah, in Gaza. In the West Bank, we support the Palestinian civil defence, the Palestinian police, digitalization of public services and the Palestinian economy through job creation activities. Through the World Health Organization, the Palestinian Red Crescent and the International Committee of the Red Cross we directly and indirectly support health systems run by the Palestinian Authority.

7. *Fourthly*, Nicaragua wants to make the Court believe that Germany ignores the Court's Order of 30 April 2024. Let me assure you, again, that Germany fully respects the Court's Order of 30 April 2024. Nicaragua's Agent assumes that the Court's Order for Germany equals an absolute "obligation not to supply weapons to Israel"⁸⁰ under any circumstances. In fact, however, the Court reminded Germany of its "international obligations relating to the transfer of arms to parties to an armed conflict, in order to avoid the risk that such arms might be used to violate . . . conventions"⁸¹ of international law. This is precisely the standard that the German Government applies when authorizing export licences for specific goods under specific circumstances.

8. Mr President, Members of the Court, Germany's counsel have explained why every claim of Nicaragua faces one or more preliminary objections. At the time of the filing of the Application, there was no dispute between Nicaragua and Germany regarding any of the claims. The majority of Nicaragua's claims are excluded from the Court's jurisdiction under Germany's optional clause declaration of 2008 and Article 22 CERD, respectively. And entertaining Nicaragua's claims would require the Court to adjudicate upon the lawfulness of Israel's conduct in the absence of its consent or participation.

9. Mr President, Members of the Court, in accordance with Article 60, paragraph 2, of the Rules of the Court, I now turn to the reading of the final submissions of the Federal Republic of Germany.

⁸⁰ CR 2026/31, p. 15, para. 14 (Argüello Gómez).

⁸¹ *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.

10. For the reasons set out in its preliminary objections and presented by its counsel during these oral hearings, Germany respectfully requests the Court not to entertain any of Nicaragua's thirteen claims as set out in para. 484 of its memorial.

In particular, Germany respectfully asks the Court to adjudge and declare that:

As to submissions 1-3: The Court lacks jurisdiction for the reasons set out in Germany's first preliminary objection. In the alternative, the claims are inadmissible for the reasons set out in Germany's third preliminary objection.

As to submissions 4-9: The Court lacks jurisdiction for the reasons set out in Germany's first and second preliminary objections. In the alternative, the claims are inadmissible for the reasons set out in Germany's third preliminary objection.

As to submission 10: The Court lacks jurisdiction for the reasons set out in Germany's first preliminary objection.

11. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie chaleureusement de votre attention. Je remercie également vivement Monsieur le greffier et tous les membres du Greffe, les interprètes et les personnes chargées de l'établissement des comptes rendus. Je remercie les membres de la délégation nicaraguayenne pour la qualité de nos échanges au cours de ces audiences.

12. Monsieur le président, Mesdames et Messieurs les juges, j'ai ainsi achevé la présentation de la République fédérale d'Allemagne au cours de la présente audience. Je vous remercie.

The PRESIDENT: I thank the Agent of Germany, whose statement brings to an end today's sitting. The Court takes note of the final submissions which you have just read on behalf of your Government. The Court will reconvene tomorrow, Thursday 10 September 2026, at 4.30 p.m., to hear Nicaragua's second round of oral argument. At the end of that sitting, Nicaragua will present its final submissions.

The sitting is closed.

The Court rose at 5.55 p.m.
