

**RESPONSE TO THE QUESTION PUT BY HE JUDGE HILARY
CHARLESWORTH TO THE REPUBLIC OF NICARAGUA**

I. Introduction

1. At the end of the public sitting held on Thursday, 10 September 2026, in the case concerning *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, HE Judge Charlesworth put the following question to the Republic of Nicaragua¹:

“In light of the temporal limits to Germany’s Optional Clause Declaration, which is confined, in the relevant part, to ‘disputes . . . with regard to situations or facts subsequent to [30 April 2008] . . .’, can Nicaragua specify the situation or facts that are the source, or real cause, of its dispute with Germany with respect to each of Nicaragua’s claims listed in submissions 4 to 9?”

« *A la lumière des limites temporelles de la déclaration d’acceptation de la juridiction obligatoire de l’Allemagne, laquelle est, pour la partie pertinente, circonscrite aux ‘différends . . . au sujet de situations ou de faits ultérieurs [au 30 avril 2008]’, le Nicaragua peut-il préciser quels sont, pour chacune de ses demandes formulées aux conclusions 4 à 9, les situations ou les faits qui constituent la source, ou la cause réelle, du différend l’opposant à l’Allemagne ?* »

2. Nicaragua is grateful for the opportunity to clarify further its position that the temporal limitation contained in Germany’s Optional Clause Declaration does not prevent the Court from exercising jurisdiction over the present dispute². Before specifying the situations or facts that are – in Nicaragua’s view as expressed in its Application and in its Memorial – the source (*les faits générateurs*) or the real cause of the present dispute with respect to each of Nicaragua’s claims listed in submissions (4) to (9) in its Memorial, it is appropriate to reiterate the following important observations.

¹ CR 2026/33, p. 38. See also Letter from HE Santiago Villalpando, Registrar, 10 September 2026.

² Written Statement of the Republic of Nicaragua (WSN), paras. 148-183; CR 2026/31, p. 19, paras. 26-28 (Argüello Gómez); pp. 33-50 (Müller); CR 2026/33, pp. 16-21, paras. 2-15 (Müller).

3. *First*, nothing in Germany’s Optional Clause Declaration, nor in the Court’s case law concerning similar or identical temporal limitations, suggests that the dispute must necessarily be traced to a single discrete fact or situation, or that its source or real cause must be reducible to one isolated event. A dispute may arise with regard to a constellation of facts, each independently capable of giving rise to disagreement between States. The terms of Germany’s Optional Clause Declaration confirm this point: the declaration refers to disputes “with regard to situations or facts subsequent to [30 April 2008]”, not to disputes with regard to *a* situation or *a* fact subsequent to that date. The question put to Nicaragua likewise asks it to identify the “facts that are the source, or real cause, of its dispute”. It does not presuppose the existence of a single isolated fact. In its previous decisions concerning similar temporal limitations, the Court and its predecessor have also not sought to collapse a dispute artificially into one unique source or cause. They have merely identified “[t]he facts or situations . . . with regard to which the dispute has arisen”³. Rather than singling out a particular fact or situation as *the* source or *the* cause of the dispute, the appropriate application of the temporal limitation requires identifying the facts “which form the centre point of the argument and must be regarded as constituting the facts with regard to which the dispute arose”⁴, and verifying whether those facts relied upon by Nicaragua occurred after 30 April 2008. As Nicaragua will demonstrate below, this is the case: all facts on which Nicaragua relies in the present case and which constitute internationally wrongful acts attributable to Germany postdate 30 April 2008.

4. For the sake of completeness, it is worth noting that the Court’s orders in the *Legality of Use of Force* cases – orders which Germany no longer relied upon during its oral arguments⁵ – do not suggest otherwise. While similar facts which occur once a

³ *Certain Property (Liechtenstein v. Germany)*, Preliminary Objections, Judgment, I.C.J. Reports 2005, p. 24, para. 44; *Right of Passage over Indian Territory (Portugal v. India)*, Merits, Judgment, I.C.J. Reports 1960, p. 35; *Electricity Company of Sofia and Bulgaria*, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 82. See also CR 2026/31, p. 35, para. 8 (Müller).

⁴ *Electricity Company of Sofia and Bulgaria*, Judgment, 1939, P.C.I.J., Series A/B, No. 77, p. 82.

⁵ CR 2026/31, p. 39, para. 20.

dispute has arisen and crystallized might not give rise to new, separate disputes⁶, a dispute can of course arise and relate to multiple facts, whether similar or not. Nothing in those Orders detracts from the principle that the dispute must be assessed by reference to the facts or situations that constitute its real cause, and nothing in them requires that a dispute must only arise from a single isolated fact.

5. Nicaragua's dispute with Germany arises from multiple, distinct and independent facts occurring after 30 April 2008, each of which concerns Germany's conduct in relation to its own international obligations relating to the Occupied Palestinian Territory and the Palestinian people. These include, *inter alia*, the granting of licences and authorizations for the export of military equipment to Israel after 2008; its support to Israel despite successive hostilities that unfolded in and after 2008 in the Occupied Palestinian Territory; the suspension of funding to UNRWA in 2024; and the engagement with, and assistance to, Israel against the background of Israel's unlawful presence in the Occupied Palestinian Territory, as well as its discriminatory and apartheid policies which all intensified significantly after 2008. Each of these facts occurred after 30 April 2008. Each of them is independently capable of engaging Germany's responsibility. Each of them forms the centre point of the argument. Each of them constitutes the source or real cause of the dispute.

6. *Second*, as Nicaragua explained during the oral hearings⁷, whether Germany may have engaged in similar or even identical conduct before 30 April 2008 is irrelevant. The limitation in Germany's Optional Clause Declaration does not require that the impugned conduct be unprecedented or novel; it requires only that the dispute concern situations or facts subsequent to the critical date. The existence of similar pre-critical-date facts cannot disqualify facts or situations subsequent to that date from constituting the source of the dispute. In the same vein, it is irrelevant for the proper application of

⁶ *Legality of Use of Force (Yugoslavia v. Belgium)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), pp. 134-135, paras. 28-29; *Legality of Use of Force (Yugoslavia v. Canada)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 269, paras. 27-28; *Legality of Use of Force (Yugoslavia v. Netherlands)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (I), p. 552, paras. 28-29; *Legality of Use of Force (Yugoslavia v. Portugal)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999 (II), pp. 666-667, paras. 27-28.

⁷ CR 2026/31, pp. 39-41, paras. 17-24 (Müller); CR 2026/33, pp. 18-20, paras. 4-11 (Müller).

the temporal limitation, “[w]hether those [previous] facts could have engaged the State’s responsibility on the same or similar basis and arguments”⁸.

7. Moreover, it is important to underline that the situation in the Occupied Palestinian Territory did not simply remain static. On the contrary, after the collapse of the Annapolis process in late 2008, the situation deteriorated significantly⁹: intensified expansion of illegal settlements; deepened entrenchment of control; increasingly severe movement restrictions; the tightening and later catastrophic escalation of the closure and siege of the Gaza Strip; and successive large-scale hostilities in 2008-2009, 2012, 2014, 2021¹⁰, in addition to the latest military assault that began in October 2023 in the Occupied Palestinian Territory, particularly in the Gaza Strip, and that is still ongoing. These developments – documented by the United Nations, humanitarian organizations, and the Court’s own Advisory Opinions of 2024 and 2025 – form the factual context in which Germany’s conduct, particularly its conduct since late 2008 which constitutes the centre point of Nicaragua’s argument, must be assessed. This includes Germany’s arms transfers since 2008, its political and diplomatic support since 2008, its failure to ensure respect for international humanitarian law since 2008, its assistance to Israel’s discriminatory and apartheid policies since 2008, and its suspension of UNRWA funding. These are not merely continuations of earlier patterns. They are new, distinct and legally significant facts that occurred after 30 April 2008, each of which gives rise to the dispute between Nicaragua and Germany concerning the latter’s international obligations.

8. *Third*, the same facts or situations can be relevant to more than one of Nicaragua’s claims and can constitute a breach of more than one of the international obligations owed by Germany to the international community, including Nicaragua. This is undisputed. Whether certain facts or situations are in breach of international obligations by Germany, and of which of these international obligations, is not a

⁸ CR 2026/33, p. 19, para. 9 (Müller).

⁹ See Application, para. 32.

¹⁰ *Ibid.*, para. 34.

question that is determinative or relevant for the issue of the temporal limitation contained in Germany's Optional Clause Declaration. This is a question that the Court will have to answer at the merits stage of the proceedings.

9. Below, Nicaragua will identify, by way of examples and for each of submissions 4 to 9, specific situations or facts that constitute the source or real cause of the dispute. Earlier similar conduct might form part of the historical background; but it does not determine the temporal jurisdiction of the Court. The dispute before the Court is rooted in facts and situations, *i.e.*, conduct of Germany, subsequent to 30 April 2008. The temporal limitation in Germany's Optional Clause Declaration is fully satisfied.

II. Situation or facts that are the source or real cause of the dispute with respect to each of Nicaragua's claims

Submission (4): Breach of obligations under Article 1 of the Fourth Geneva Convention and intransgressible principles of humanitarian law by failing to ensure that the requirements of that Convention are complied with

10. The situation or facts that constitute the causes of the dispute and the basis of the claims set out in submission (4) consist of Germany's conduct, acts and omissions, since late 2008 in failing to ensure respect for the Fourth Geneva Convention and intransgressible principles of humanitarian law in the Occupied Palestinian Territory, including during the 2008-2009, 2012, 2014, 2021 hostilities, and, significantly, after October 2023¹¹.

11. In its Memorial, Nicaragua described and relied upon licences for the export of military equipment that occurred and significantly increased since 7 October 2023¹², that have continued since then¹³. But it also demonstrated that, since 2008 and against the background of the breaches of international humanitarian law in the Occupied Palestinian Territory, Germany authorized the export of military equipment, including

¹¹ See MN, para. 316.

¹² MN, paras. 192-243.

¹³ WSN, paras. 22-24; CR 2026/31, pp. 42-45, paras. 27-28 (Müller).

the export of naval vessels¹⁴, as well as ground vehicles and components¹⁵, that includes parts for tanks produced by the German MTU and German Renk. The volume of these export licences significantly increased not only at the end of 2023. It also rose in the period of 2008-2013¹⁶. Each of these authorizations constitutes an autonomous fact, issued by Germany on a case-by-case basis in light of the particular circumstances prevailing at the time Germany authorized the export of the weapons and military equipment concerned.

12. Moreover, as set out by Nicaragua, in 2023, Germany itself provided Israel with military equipment, e.g., *Heron TP* drones¹⁷, despite the risk that such equipment be used in violation of international humanitarian law. Since 2008, Germany has also undertaken to purchase military equipment from Israeli armament companies, thereby encouraging the development of Israel's military capacity and contributing significantly to the development of arms and military equipment by Israel's armament industry – arms and military equipment used to attack and suppress the Palestinian people¹⁸. Germany has also provided Israel with very substantial financial assistance in the development of military equipment and technology¹⁹. The relevant facts relied upon by Nicaragua are all subsequent to Germany's 2008 Optional Clause Declaration.

13. Moreover, Nicaragua set out other facts – distinct from the authorization and delivery of armament – that constitute the causes of the dispute it submitted to the Court and that give rise to claims under submission (4). Nicaragua considers that Germany has not taken measures, including positive measures, to influence to deter violations of international humanitarian law in the Occupied Palestinian Territory, including in the Gaza Strip.

¹⁴ MN, figure 6.

¹⁵ MN, para. 223 and figure 10.

¹⁶ MN, figure 6.

¹⁷ MN, para. 146. See also Application, para. 45.

¹⁸ MN, paras. 144-146.

¹⁹ MN, para. 152.

14. It is not the close and loyal relationship between Germany and Israel that constitutes the basis of these allegations. Rather, it is the fact that, despite the influential position Germany enjoys in light of that relationship²⁰, Germany did not act and did not fulfil its obligations under Article 1 of the Fourth Geneva Convention and intransgressible principles of humanitarian law. Nicaragua relies upon several facts – all occurring after 2008 – where Germany failed to use its influence to condemn violations of international humanitarian law, or where its muted criticisms did not translate into concrete actions²¹. Rather, since 2008, Germany has not prevented German companies to invest or to conduct business and infrastructure operations in the Occupied Palestinian Territory for the sole benefit of illegal settlements²², or to deliver materials and equipment used for imposing racial segregation and apartheid in the occupied territory by the occupying power²³.

Submission (5): Breach of obligations under Article 1 of the Fourth Geneva Convention and intransgressible principles of humanitarian law by providing aid and assistance, including military equipment, in violation of its duties under the 1949 Geneva Conventions, customary international law, the Court's Advisory Opinions of 2004 and 2024, as well as the obligation upon Germany related to the transfer of arms to parties to an armed conflict as recalled in the Order of the Court of 30 April 2024

15. The situation or facts that constitute the causes of the dispute and the basis of the claims set out in submission (5) are those set out above in respect of submission (4)²⁴.

²⁰ MN, para. 321.

²¹ MN, paras. 322-324.

²² MN, paras. 275-280. See also below, para. 24.

²³ See also below, paras. 22-23.

²⁴ See above, paras. 11, 12, and 14.

Submission (6): Breach of obligations under international humanitarian law not only by failing to ensure that these rules of elementary consideration of humanity are respected by Israel, but also by providing aid and assistance to Israel

16. The situation or facts that constitute the causes of the dispute and the basis of the claims set out in submission (6) are those set out above in respect of submission (4)²⁵.

Submission (7): Breach of conventional and customary law obligations, including the obligation to facilitate and cooperate in bringing about the Palestinian people's right to self-determination, by providing aid and particularly military equipment to Israel that is used to deny this right of self-determination and moreover helps to maintain and impose an apartheid regime

17. As explained in the Memorial, Germany has obligations under treaty and customary international law to respect the right of the Palestinian people to self-determination and to promote the realization thereof²⁶. The situation or facts that constitute the causes of the dispute and the basis of the claims set out in submission (7) consist of Germany's conduct, acts and omissions, since late 2008 in failing to facilitate and to cooperate towards the realization of this inalienable right.

18. Nicaragua specifically set out in its Memorial its position that Germany has breached its obligations through the following acts or omissions, all occurring after 30 April 2008²⁷: (1) the provision of military assistance and cooperation to Israel, including by granting licences for the export of weapons of war and military equipment²⁸; (2) engagement by German companies in the Israeli extraction of natural resources from the Occupied Palestinian Territory, including water, with Germany's knowledge and tolerance²⁹; (3) contribution by German companies to infrastructure projects in the Occupied Palestinian Territory for the sole benefit of illegal settlements,

²⁵ See above, paras. 11, 12, and 14.

²⁶ MN, paras. 344-355.

²⁷ MN, paras. 357-369.

²⁸ MN, paras. 138-153, 160-270. See also above, para. 11.

²⁹ MN, paras. 275-280. See also below, para. 24.

with Germany's knowledge and tolerance³⁰; (4) involvement by German companies in the development, installation and operation of Israeli surveillance systems in the Occupied Palestinian Territory, with Germany's knowledge and tolerance³¹; (5) participation by German companies in the marketing and transactions of real estate in illegal settlements in the Occupied Palestinian Territory, with Germany's knowledge and tolerance³²; (6) cooperation between Germany and Israeli academic institutions operating with the Occupied Palestinian Territory, with Germany's knowledge and tolerance³³; (7) opposing, at the political and multilateral level, attempts to condemn Israel for the illegal situation the latter has created in relation to the Occupied Palestinian Territory³⁴. Such conduct by Germany amounts to the specific situations or facts constituting the source or real cause of the dispute. These facts, relied upon by Nicaragua, are all subsequent to Germany's Optional Clause Declaration.

Submission (8): Breach of international law by failing in its obligation not to recognize as legal the situation arising from the unlawful presence of Israel in the Occupied Palestinian Territory and not render aid or assistance in maintaining the situation created by the continued illegal presence of Israel in the Occupied Palestinian Territory

19. The situation or facts that constitute the causes of the dispute and the basis of the claims set out in submission (8) are, by the nature of the obligations relied upon in that submission, those set out in respect of all of Nicaragua's other submissions.

Submission (9): Breach of international law by providing unlawful assistance to Israel's commission of racial discrimination, segregation and apartheid against the Palestinian people

20. In its Memorial, Nicaragua explained that Germany has breached and continues to breach international law by providing unlawful assistance to the commission of racial

³⁰ MN, paras. 281-288.

³¹ MN, paras. 289-290.

³² MN, paras. 291-294.

³³ MN, paras. 302-307.

³⁴ MN, paras. 154-158.

discrimination, segregation and apartheid against the Palestinian people³⁵. The situation or facts that constitute the causes of the dispute and the basis of the claims set out in submission (9) consist, notably, of the “delivery of arms and military equipment and through not preventing German companies from supporting and profiting from unlawful occupation, racial discrimination, segregation, and apartheid, and through its cooperation with Israel in other fields”³⁶ – facts occurring and deepening after Germany’s Optional Clause Declaration³⁷.

21. More specifically, Nicaragua relies on Germany’s authorization and supplies of military equipment and protective gear³⁸ to Israel, granted on a case-by-case basis and after 30 April 2008, with the effect of maintaining the regime of racial discrimination, racial segregation and apartheid³⁹ segregating the Palestinian people. This includes, *inter alia*, the supply of naval vessels – Dolphin-class submarines (in 2012-2013 and 2026 respectively), Sa’ar 6-class corvettes (2020), and Dakar-class submarines (constructed in 2024)⁴⁰—MAN trucks for water canon in 2018⁴¹, and surveillance systems and equipment provided by a subsidiary of Bosch in 2021⁴². In 2023, Germany’s military export approvals to Israel increased nearly tenfold, including the export of radar equipment⁴³, flak jackets, air defence systems and communications equipment⁴⁴, as well as the handing over of drones⁴⁵.

22. Moreover, Nicaragua relies upon facts demonstrating that “Germany’s academic institutions, including universities, also entertain relations and programmes

³⁵ MN, para. 484 (9).

³⁶ MN, para. 411.

³⁷ MN, para. 462.

³⁸ MN, para. 417.

³⁹ MN, para. 415.

⁴⁰ MN, paras. 414, 142 and 238.

⁴¹ MN, para. 420.

⁴² MN, paras. 430 and 290.

⁴³ MN, para. 417.

⁴⁴ Application, para. 51.

⁴⁵ Application, para. 45. See also MN, para. 146.

with Israeli institutions despite the fact that the latter establishments are set up in illegal Israeli settlements or are actively involved in Israel's occupation and discriminatory regime"⁴⁶. These facts pertain to partnerships and collaborations after 30 April 2008, like the Technical University of Munich's cooperation with the Hebrew University on student exchanges since 2010; Erasmus student and faculty exchanges since 2015; and scientific partnerships since May 2022⁴⁷. Similarly, Nicaragua is concerned with the conclusion by the University of Bonn of research grant programs with the Hebrew University in 2020, and further collaborations in 2025⁴⁸, and the University of Göttingen and Hebrew University of Jerusalem's establishment of a Collaborative Research Grant Program for joint projects⁴⁹ in May 2020.

23. Nicaragua also relies upon facts showing that German companies have exploited the discriminatory system oppressing the Palestinian people for commercial gain, by exploiting Palestinian resources, and creating infrastructure altering the Palestinian territory, sustaining racial discrimination, racial segregation and apartheid⁵⁰. In this respect, the dispute submitted by Nicaragua and the origin of its claims in submission (9) concerns the involvement of German companies, such as German TÜV Nord Group since September 2010⁵¹, Max Bögl Stiftung & Co since February 2015⁵², and the German company Herrenknecht since 2011⁵³, in the construction and maintenance of tracks and railway infrastructure in the Occupied Palestinian Territory. Similarly, it concerns also German company Axel Springer's involvement, since 2014, in advertising the sale of settlement properties⁵⁴.

⁴⁶ MN, para. 302.

⁴⁷ MN, fn. 604.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ MN, paras. 424-425.

⁵¹ MN, para. 285.

⁵² MN, para. 284.

⁵³ *Ibid.*

⁵⁴ MN, paras. 291-294.

24. Nicaragua also relies upon facts relating to the pillage and exploitation of Palestinian resources for the benefit of the discriminatory Israeli settlement economy. Nicaragua has set out, for instance, that German company Herrenknecht is involved in a project resulting in the pillage of water resources that was constructed in 2020⁵⁵. Nicaragua has also explained that German company Heidelberg Materials has engaged in the exploration of the Nahal Raba Quarry in the Occupied Palestinian Territory since it acquired Hanson Israel in 2007⁵⁶. Although this fact is prior to Germany's Optional Clause Declaration, it must be noted that, according to Heidelberg Materials, the operation of the quarry ceased in 2023⁵⁷. However, Heidelberg Materials has been engaged, since 2024, in expanding operations of the quarry and pursuing a new license for additional quarried materials, approved in June 2025. These facts remain relevant and post-date Germany's 2008 Optional Clause Declaration⁵⁸.

The Hague, 16 September 2026



Carlos J. Argüello-Gómez

Agent of the Republic of Nicaragua

⁵⁵ MN, para. 279, fns. 551 and 553.

⁵⁶ MN, paras. 276-278.

⁵⁷ WSN, fn. 116 (Statement by Heidelberg Materials AG regarding the OHCHR Database Update – Human Rights Council resolutions 31/36 and 53/25, 24 September 2025 (<https://www.ohchr.org/sites/default/files/documents/issues/business/pot-db/78-heidelberg-materials-ag.pdf>)).

⁵⁸ MN, fn. 794. See also WSN, fn. 116.