

Comments on Nicaragua's Response submitted by the Federal Republic of Germany, in accordance with Article 72 of the Rules of Court

1. At the end of the public sitting of 10 September 2026, HE Judge Charlesworth asked Nicaragua to “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”. Germany has taken note of Nicaragua’s Response to the question. In accordance with Article 72 of the Rules of Court, it offers three comments on Nicaragua’s Response, which are meant to help clarify the scope of the Court’s jurisdiction under the optional clause declaration. Germany does not, in the following, respond to Nicaragua’s claims regarding alleged wrongful conduct of Germany. Germany’s position on these allegations has been set out in the statement of its Agent of 7 September 2026, to which reference is made.¹

Nicaragua’s Response seeks to transform the subject-matter of the dispute it intends to bring before the Court

2. Germany’s first comment addresses discrepancies between Nicaragua’s Response and its earlier characterization of the dispute. In its Response, Nicaragua contends that the claims it put forward in its submission 4 to 9 only relate to facts and situation which took place after 30 April 2008. This leads it to claim that “the dispute before the Court is rooted in facts and situations, i.e., conduct of Germany, subsequent to 30 April 2008” and that this conduct must be distinguished from “earlier similar conduct” which “might form part of the historical background; but it does not determine the temporal jurisdiction of the Court”.² On the basis of its general characterization, Nicaragua, in section II of its Response, refers to “German conduct ... since late 2008” — or, variously, to “several facts - all occurring after 2008”, or “facts occurring and deepening after Germany's Optional Clause Declaration” — as “the causes of the dispute and the basis of the claims” listed in its submissions 4 to 9.³
3. This Response marks a break with the position previously taken by Nicaragua and is an attempt to transform the subject-matter of the dispute Nicaragua intends to bring before the Court with respect to claims listed in submissions 4 to 9. From the arguments set out in the Memorial of 21 July 2025, it is clear that this dispute relates to facts and situations that predate 30 April 2008 as well as facts and situations after that date. Specifically, as Germany has demonstrated in its written Preliminary Objections and in the oral proceedings,⁴ Nicaragua in its Memorial had referred to a variety of acts and omissions which date from before 30 April 2008. Nicaragua presented these earlier acts and omissions as forming part of the same pattern of conduct as subsequent acts and omissions from after 30 April 2008, and assessed them against the same obligations. To illustrate, Nicaragua in the Memorial explicitly asserted that Germany’s “long-term policy” and “active conduct of aiding and assisting Israel for decades

¹ CR 2026/30, pp. 15-22 (paras. 7-35) (Monar).

² Response of Nicaragua, para. 9.

³ Response of Nicaragua, at paras. 14, 17, 18 and 21.

⁴ See the position set out in Germany’s Preliminary Objections, paras. 83-118; CR 2026/30, pp. 40-50 (paras. 6-40) (Tams); CR 2026/32, pp. 19-22 (paras. 6-15) (Tams).

in its illegal conduct, despite the Court's conclusions in its Advisory Opinions of 2004 and 2024" amounted to "breaches of international law".⁵ Seeking to substantiate its allegations of breach, Nicaragua in its Memorial had referred to acts and omissions from before 2008, which are now left out of its account in section II of its Response.⁶

4. Contrary to what Nicaragua now asserts,⁷ its explicit allegations of breach contained in the Memorial (and now left out) were presented as "indications of what the party was asking the Court to decide",⁸ not as part of the historical background. Moreover, Nicaragua's submissions in the Memorial contained no temporal limitation to conduct after 30 April 2008. In fact, Germany notes that the date of 30 April 2008, which in Nicaragua's Response is now presented as critical, features only once in the 219 pages of Nicaragua's Memorial, in a brief passage in which Nicaragua introduces the German optional clause declaration.⁹
5. As Germany noted in its oral presentation,¹⁰ it is not open to Nicaragua to transform the subject-matter of the dispute it intends to bring to the Court during the present stage of proceedings. As the Court has repeatedly stated, "the formulation of the dispute chosen by the applicant" is central for determining the subject-matter of the dispute between the parties.¹¹ In the same vein, when called upon to identify the real cause or source of a dispute, the Court's predecessor has taken note of the fact that a claimant, in its written proceedings "ha[d] represented [conduct preceding the critical date] as an unlawful international act".¹² When considering whether to raise preliminary objections, Germany naturally relied on the formulation of the dispute presented by Nicaragua in its Memorial. Nicaragua cannot now change the formulation of the dispute in an attempt to evade the temporal limitation to the Court's jurisdiction. This would inadmissibly "transform the dispute brought before the Court by the application into another dispute which is different in character",¹³ at a time when "the

⁵ Nicaragua's Memorial, e.g. at paras. 356, 462.

⁶ For example, while Nicaragua now claims to have "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 2008" (Response of Nicaragua, para. 18, with reference to paras. 357-369 of the Memorial), it leaves to a side that in the relevant section of the Memorial, it had not limited itself to acts and omissions after 2008, but *also* declared Germany's conduct from before 2008 to be "manifestly at odds with Germany's international obligations" (Memorial, para. 358). In fact, to take just one example, in its Response (at para. 18), Nicaragua continues to assert that Germany's "provision of military assistance and cooperation to Israel, including by granting licences for the export of weapons of war and military equipment" as set out in paras. 138-153 of the Memorial violates international law – without acknowledging that in this very section, it addresses Germany's "provision of military assistance and cooperation" since well before 2008, and declares it to be unlawful.

⁷ Response of Nicaragua, para. 9.

⁸ *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, I.C.J. Reports 1998, p. 449, para. 32.

⁹ Nicaragua's Memorial, para. 32.

¹⁰ CR 2026/32, p. 22 (para. 15) (Tams).

¹¹ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2021, p. 87, para. 42; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2019 (II), p. 575, para. 24; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2024, p. 1143, para. 71.

¹² See *Phosphates in Morocco*, *Judgment*, 1938, P.C.I.J., Series A/B, No. 74, p. 25; *Right of Passage over Indian Territory (Portugal v. India)*, *Merits, Judgment*, I.C.J. Reports 1960, p. 35.

¹³ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment*, I.C.J. Reports 1998, pp. 318-319, paras. 98 and 99.

proceedings on the merits [are] suspended”¹⁴, and would run counter to demands “of legal security and the good administration of justice”.¹⁵

The dispute as now presented in Nicaragua’s Response does not have its real cause or source in facts or situations subsequent to 30 April 2008

6. Germany’s second comment relates to the dispute as now presented in Nicaragua’s Response to Judge Charlesworth’s question. If assessed against the criteria set out in the Court’s jurisprudence, this dispute, insofar as it relates to Nicaragua’s submissions 4 to 9, does not relate to situations or facts subsequent to 30 April 2008.
7. Germany has set out its position of the Court’s jurisprudence and its application to the present case in the written Preliminary Objections and during the first and second round of the oral proceedings.¹⁶ Two aspects deserve to be highlighted, as they form the basis for Germany’s comments on Nicaragua’s Response.
 - i. The Court and its predecessor have had to assess whether allegations of breach that could be said to have occurred before or after a critical date “gave rise to a cause of action after the crucial date”.¹⁷ The present proceedings are one such case. In clarifying that, in such settings, “regard must be had ... only ... [to those facts and situations] ‘which must be considered as being the source of the dispute’, those which are its ‘real cause’”,¹⁸ the Court has made clear that it is not sufficient for claimants to present each alleged breach as a dispute in its own right, with its separate ‘source’ or ‘real cause’. If it were otherwise, the Court and its predecessor, when confronted with allegations of multiple breaches, would not have been required to identify their ‘real cause’ or ‘source’ with great care.
 - ii. The jurisprudence of the Court and its predecessor provides guidance on how this ‘real cause’ or ‘source’ is to be identified. As Germany has indicated, the Court has proceeded from the characterization of the dispute in the claimant’s written proceedings, and (drawing on the very terms used in double exclusion clauses, such as Germany’s) asked what “situation” the claimant “denounced as unlawful” and what “facts” it had relied on “as showing the failure of [the respondent] to comply with its obligations”.¹⁹ What is more, when assessing a respondent’s argument that claims focused on conduct that occurred after the critical date could not be entertained because this later conduct involved “no change of position” and therefore could not be separated from earlier acts and omissions, the Court in the *Certain Property* case underlined the need for claimants to establish that the later

¹⁴ Article 79bis(3) of the Rules of the Court.

¹⁵ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 267, para. 69; *Société Commerciale de Belgique, P. C.I.J., Series A/B, No. 78*, p. 173.

¹⁶ Germany’s Preliminary Objections, paras. 83-118; CR 2026/30, pp. 40-50 (paras. 6-40) (Tams); CR 2026/32, pp. 19-22 (paras. 6-15) (Tams).

¹⁷ See the separate opinion of Judge Higgins, *Legality of Use of Force (Serbia and Montenegro v. Belgium)*, Provisional Measures, Order, I.C.J. Reports 1999, p. 162 (para. 6).

¹⁸ *Right of Passage over Indian Territory, Merits, Judgment*, I.C.J. Reports 1960, p. 35; and further *Certain Property (Liechtenstein v. Germany)*, Preliminary Objections, Judgment, I.C.J. Reports 2005, p. 25, para. 44.

¹⁹ See *Phosphates in Morocco, Judgment*, 1938, P.C.I.J., Series A/B, No. 74, p. 25; *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment*, I.C.J. Reports 1960, p. 35.

acts either “departed from [its] previous position” or gave rise, “for the first time” to “a new situation”.²⁰

In light of this guidance, Nicaragua’s Response calls for two reactions:

8. First, it is insufficient for Nicaragua to now present the dispute that it intends to bring before the Court as one that “arises from multiple, distinct and independent facts occurring after 30 April 2008”, such as “the granting of licences and authorizations for the export of military equipment to Israel after 2008” or Germany’s “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”.²¹ This attempt to fragment the dispute into manifold discrete disputes, “each of them” (according to Nicaragua) “independently capable of engaging Germany’s responsibility” and “each of them constitut[ing] the source or real cause of the dispute”,²² ignores the essence of the Court’s jurisprudence on the ‘real cause’ or ‘source’ of disputes. This jurisprudence is a careful attempt to identify the ‘real cause’ or ‘source’ of disputes, precisely where a claimant points to a range of facts that, in its assessment, “sho[w] the failure of [the respondent] to comply with its obligations”.²³ If Nicaragua’s approach were to be followed, this jurisprudence would become obsolete. Put simply, if Nicaragua’s reading were correct, the Court and its predecessor need not have gone to great lengths to assess whether (to adapt questions raised in earlier decisions), German court decisions at stake in the *Certain Property* case “departed from a previous ... position”, or whether French administrative acts at stake in the *Phosphates* case were “merely the confirmation or development of earlier situations or facts”.²⁴
9. Second, while Nicaragua, in other passages of its Response, asserts that “facts that occurred after 30 April 2008” are “not merely the continuations of earlier patterns”,²⁵ these later facts are not the real cause or source of the dispute. In its Response, Nicaragua — for the first time in these proceedings — contrasts the situation in Gaza until 2008 to subsequent developments: it notably points to a “significant deterioration” of the situation “after the collapse of the Annapolis process in late 2008” (a process it had never previously referred to) and mentions the “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” after 2008.²⁶
10. As a preliminary point, Germany observes that in advancing this argument, Nicaragua seems to contradict its own position, referenced in paragraph 8 above, that each of the “multiple, distinct and independent facts occurring after 30 April 2008” it considers to be unlawful “constitutes the source or real cause of the dispute”.²⁷ Rather, Nicaragua seems to accept that

²⁰ *Certain Property (Liechtenstein v. Germany)*, Preliminary Objections, Judgment, I.C.J. Reports 2005, p. 25, para. 49.

²¹ Response of Nicaragua, para. 5.

²² Response of Nicaragua, para. 5.

²³ See *Phosphates in Morocco*, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 25; *Right of Passage over Indian Territory (Portugal v. India)*, Merits, Judgment, I.C.J. Reports 1960, p. 35.

²⁴ See *Certain Property (Liechtenstein v. Germany)*, Preliminary Objections, Judgment, I.C.J. Reports 2005, p. 25, para. 49; *Phosphates in Morocco*, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 24.

²⁵ Response of Nicaragua, para. 7.

²⁶ Response of Nicaragua, para. 7.

²⁷ Response of Nicaragua, para. 5.

something more than “continuations of earlier patterns” of conduct is required. In light of the Court’s jurisprudence, this is plainly correct - yet it undermines Nicaragua’s attempt to fragment the dispute into manifold discrete disputes.

11. At the same time, if assessed against the standards set out in the Court’s jurisprudence, the “facts that occurred after 30 April 2008”²⁸ referenced by Nicaragua do not form the real cause or source of the dispute it intends to bring before the Court. Specifically, and, adapting the terms used in the Court’s jurisprudence, Nicaragua neither suggests that, in response to developments after 2008, Germany “departed from a previous ... position”, nor asserts that Germany’s conduct since 30 April 2008 gave rise to “a new situation”.²⁹ To the contrary, the position constantly held by Nicaragua during these proceedings is that Germany’s pattern of conduct was contrary to Germany’s obligations before 2008 and continued to be contrary after that date.
12. Even when, now, suggesting that events since 2008 are “not merely the continuations of earlier patterns”,³⁰ Nicaragua does not deviate from this approach. It makes no plausible attempt to explain why the “developments” it mentions - the “collapse of the Annapolis peace process”, “deepened entrenchment of control”, etc.³¹ - could be considered as new “facts or situations” in the sense of the temporal reservation to Germany’s optional clause declaration. To illustrate, given its claims that Germany’s “long-term policy” violated “the right of the Palestinian people to self-determination” and “thus” engaged “Germany’s international responsibility”,³² it is significant that Nicaragua does not offer any explanation why the pursuit of this alleged ‘long-term policy’ after 30 April 2008 qualified as a relevant ‘new fact’. By the same token, while asserting that Germany had “failed to use its influence to condemn violations of international humanitarian law” after 30 April 2008,³³ Nicaragua does not explain why the continuation of that omission *after the critical date* could be seen as a relevant ‘new fact’. To the contrary, it is telling that, even when underlining the importance of developments after 2008, Nicaragua still suggests that these developments were relevant to an assessment of “Germany’s conduct, *particularly* [but, it seems, not *exclusively*] its conduct since late 2008”.³⁴ In Germany’s view, this formulation suggests that Nicaragua’s Response remains haunted by the ghosts of its Memorial with its sweeping claims.

The Response illustrates Nicaragua’s inconsistent approach to these proceedings

13. Germany notes that, two and a half years after the institution of the present proceedings, Nicaragua seems incapable of providing the Court - and Germany - with a consistent account of the “precise nature of the claim[s]”³⁵ advanced in the proceedings. To recall, having initiated the proceedings before *any* dispute had crystallised, in its Memorial of 21 July 2025 Nicaragua

²⁸ Response of Nicaragua, para. 7.

²⁹ See *Certain Property (Liechtenstein v. Germany)*, *Preliminary Objections, Judgment*, I.C.J. Reports 2005, pp. 25-26, paras. 49, 51.

³⁰ Response of Nicaragua, para. 7.

³¹ Response of Nicaragua, para. 7.

³² Nicaragua’s Memorial, para. 356.

³³ Response of Nicaragua, para. 14.

³⁴ Response of Nicaragua, para. 7 (emphasis added).

³⁵ See Article 38(2) of the Rules of Court.

advanced sweeping claims that “implicate[d] further and much more long-standing aspects of the conflict in the Middle East”, which had never been raised in the Application or at any time before.³⁶ Nicaragua’s Response now unduly attempts to restrict the dispute it intends to bring before the Court with respect to claims listed in submissions 4 to 9 to the period from “late 2008” until today;³⁷ yet it cannot specify any facts or situations from after 30 April 2008 that are the source, or real cause, of this restricted dispute and thereby fails to answer the question posed by Judge Charlesworth. In Germany’s assessment, the Response is a further illustration of Nicaragua’s propensity to change the subject-matter of the dispute in light of changing procedural demands. Germany urges the Court to act with care so to ensure that essential demands of “legal certainty and the good administration of justice”³⁸ are observed in the present proceedings.

Berlin, 22 September 2026

³⁶ See Germany’s Preliminary Objections, para. 7.

³⁷ Response of Nicaragua, paras. 5 and 7.

³⁸ *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 267, para. 69.