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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2024

Public sitting

held on Monday 8 April 2024, at 10 a.m., at the Peace Palace,

President Salam presiding,

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

VERBATIM RECORD

ANNÉE 2024

Audience publique

tenue le lundi 8 avril 2024, à 10 heures, au Palais de la Paix,

sous la présidence de M. Salam, président,

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

COMPTE RENDU

Present:	President	Salam
	Vice-President	Sebutinde
	Judges	Tomka
		Abraham
		Yusuf
		Xue
		Bhandari
		Iwasawa
		Nolte
		Charlesworth
		Brant
		Gómez Robledo
		Cleveland
		Aurescu
		Tladi
	Judge *ad hoc*	Al-Khasawneh
	Registrar	Gautier

Présents : M. Salam, président
M^me^ Sebutinde, vice-présidente
MM. Tomka
Abraham
Yusuf
M^me^ Xue
MM. Bhandari
Iwasawa
Nolte
M^me^ Charlesworth
MM. Brant
Gómez Robledo
M^me^ Cleveland
MM. Aurescu
Tladi, juges
M. Al-Khasawneh, juge *ad hoc*

M. Gautier, greffier

The Government of the Republic of Nicaragua is represented by:

HE Mr Carlos José Argüello Gómez, Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands and Permanent Representative of the Republic of Nicaragua to the international organizations based in the Kingdom of the Netherlands, member of the International Law Commission,

as Agent and Counsel;

Mr Alain Pellet, Emeritus Professor of the University Paris Nanterre, former Chairperson of the International Law Commission, member and former President of the Institut de droit international,

Mr Daniel Müller, Founding Partner of FAR Avocats, member of the Paris Bar,

as Counsel and Advocates;

Ms Claudia Loza Obregon, Legal Adviser, Ministry of Foreign Affairs of the Republic of Nicaragua,

Mr Ysam Soualhi, PhD candidate, Faculty of Law, University of Angers,

as Assistant Counsel;

Ms Sherly Noguera de Argüello, Consul General of the Republic of Nicaragua,

as Administrator;

Ms Kassandra Gómez Pineda, First Secretary, Permanent Representation of the Republic of Nicaragua to the Organisation for the Prohibition of Chemical Weapons,

Mr Pedro Hernández Balladarez, Financial Administrative Officer, Permanent Representation of the Republic of Nicaragua to the Organisation for the Prohibition of Chemical Weapons,

HE Mr Ammar Hijazi, Assistant Minister of Foreign Affairs and Expatriates for Multilateral Affairs of the State of Palestine,

HE Mr Omar Awadallah, Assistant Minister of Foreign Affairs and Expatriates for the United Nations and Specialized Agencies of the State of Palestine,

Mr Federico Argüello Noguera,

as Members of the Delegation.

The Government of the Federal Republic of Germany is represented by:

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as Agent;

Ms Wiebke Rückert, Director for Public International Law, Federal Foreign Office of the Federal Republic of Germany,

Le Gouvernement de la République du Nicaragua est représenté par :

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comme agent et conseil ;

M. Alain Pellet, professeur émérite de l'Université Paris Nanterre, ancien président de la Commission du droit international, membre et ancien président de l'Institut de droit international,

M. Daniel Müller, associé fondateur du cabinet FAR Avocats, avocat au barreau de Paris,

comme conseils et avocats ;

M^me^ Claudia Loza Obregon, conseillère juridique, ministère des affaires étrangères de la République du Nicaragua,

M. Ysam Soualhi, doctorant, faculté de droit de l'Université d'Angers,

comme conseils adjoints ;

M^me^ Sherly Noguera de Argüello, consule générale de la République du Nicaragua,

comme administratrice ;

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M. Pedro Hernández Balladarez, directeur administratif et financier, représentation permanente de la République du Nicaragua auprès de l'Organisation pour l'interdiction des armes chimiques,

S. Exc. M. Ammar Hijazi, ministre adjoint des affaires étrangères et des expatriés de l'État de Palestine, département des affaires multilatérales,

S. Exc. M. Omar Awadallah, ministre adjoint des affaires étrangères et des expatriés de l'État de Palestine, département des affaires relatives aux organes et institutions spécialisées de l'ONU,

M. Federico Argüello Noguera,

comme membres de la délégation.

Le Gouvernement de la République fédérale d'Allemagne est représenté par :

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comme agente ;

M^me^ Wiebke Rückert, directrice de la section de droit international public, ministère des affaires étrangères de la République fédérale d'Allemagne,

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Mr Paolo Palchetti, Professor at the University Paris 1 Panthéon-Sorbonne,

Mr Antonios Tzanakopoulos, Professor at the University of Oxford, Three Stone Chambers, London,

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Mr Edgar Gansen, Minister, Deputy Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands,

Mr Caspar Sieveking, Legal Adviser, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

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Mr Johannes Scharlau, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

Ms Elisabeth-Anna Angermeier, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

Ms Andrea Waldau, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

Ms Clara Rother, Embassy of the Federal Republic of Germany in the Kingdom of the Netherlands,

as Assistants.

S. Exc. M. Cyrill Jean Nunn, ambassadeur de la République fédérale d'Allemagne auprès du Royaume des Pays-Bas,

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M. Nikolaus Koch, responsable du département du droit international général, ministère des affaires étrangères de la République fédérale d'Allemagne,

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M. Johannes Scharlau, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M^me^ Elisabeth-Anna Angermeier, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M^me^ Andrea Waldau, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

M^me^ Clara Rother, ambassade de la République fédérale d'Allemagne au Royaume des Pays-Bas,

comme assistants.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets this morning, under Article 74, paragraph 3, of the Rules of Court, to hear the single round of oral argument of the Republic of Nicaragua on its Request for the indication of provisional measures submitted in the case concerning *Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua* v. *Germany)*.

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As the Court does not include upon the Bench a judge of Nicaraguan nationality, Nicaragua availed itself of the right, under Article 31, paragraph 2, of the Statute, to choose a judge *ad hoc* to sit in the case; it chose His Excellency Mr Awn Shawkat Al-Khasawneh. Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*. Notwithstanding that Judge Al-Khasawneh has been a judge *ad hoc* and made a solemn declaration in previous cases, Article 8, paragraph 3, of the Rules of Court provides that he must make a further solemn declaration in the present case.

Before inviting Judge Al-Khasawneh to make his solemn declaration, I shall first, in accordance with custom, say a few words about his career and qualifications.

Judge Awn Al-Khasawneh, of Jordanian nationality, is well known to the Court, having served as a judge from 2000 to 2011 and as Vice-President from 2006 to 2009. He also sat as judge *ad hoc* in the joined cases between Costa Rica and Nicaragua concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean* and *Land Boundary in the Northern Part of Isla Portillos*. Judge Al-Khasawneh read history and law at Cambridge University and completed post-graduate studies in international law at the same university. He then pursued a distinguished career in the diplomatic service of his country, the Hashemite Kingdom of Jordan, including serving as the Head of the Legal Department at the Ministry of Foreign Affairs; as Ambassador; as Adviser to the late King Hussein of Jordan and Adviser on international law with the rank of Cabinet Minister; and as

Chief of the Royal Court. He is well acquainted with the United Nations, having served as the representative of Jordan in the Sixth Committee of the General Assembly for two decades and as Jordan's alternate representative on the Security Council from 1981 to 1982. He was a member of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities from 1984 to 1993. He was also a member of the International Law Commission from 1986 to 1999. He currently serves as a member of the Secretary-General's High Panel on Access to Medicines. Judge Al-Khasawneh has been chosen as arbitrator in several State-to-State and Investor-State arbitration cases. He has also represented his country at numerous conferences and committees in the field of the progressive development of international law. After his departure from the Court in 2011, Judge Al-Khasawneh became Prime Minister of his country, a position he occupied until April 2012. He is an Honorary Fellow of Queens' College, Cambridge, and has lectured at prestigious universities around the world. He is currently a member, as Academic Expert, of Doughty Street Chambers in London.

I shall now invite Judge Al-Khasawneh to make the solemn declaration prescribed by the Statute, and I request all those present to rise.

Mr AL-KHASAWNEH:

> "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: I thank you, Judge Al-Khasawneh. Please be seated. I take note of the solemn declaration made by Judge Al-Khasawneh and declare him duly installed as judge *ad hoc* in the present case.

I shall now recall the principal steps of the procedure in the present case. On 1 March 2024, the Republic of Nicaragua filed in the Registry of the Court an Application instituting proceedings against the Federal Republic of Germany for alleged violations by the latter of its obligations deriving from the Convention on the Prevention and Punishment of the Crime of Genocide, to which I shall refer as the "Genocide Convention", from the Geneva Conventions of 1949 and their Additional Protocols, as well as "intransgressible principles of international humanitarian law" and other norms

of general international law in relation to the Occupied Palestinian Territory, particularly the Gaza Strip. In particular, Nicaragua argues that by providing political, financial and military support to Israel and by defunding the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), "Germany is facilitating the commission of genocide and, in any case has failed in its obligation to do everything possible to prevent the commission of genocide". To found the jurisdiction of the Court, the Applicant invokes the declarations by which both States accept the compulsory jurisdiction of the Court and the compromissory clause contained in Article IX of the Genocide Convention.

The Application also contained a Request for the indication of provisional measures, pursuant to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court. Nicaragua requests the Court to indicate provisional measures as a matter of extreme urgency, pending the Court's determination on the merits of the case, with respect to Germany's alleged "participation in the ongoing plausible genocide and serious breaches of international humanitarian law and other peremptory norms of general international law occurring in the Gaza Strip".

The Registrar will now read out the passage from the Request specifying the provisional measures which the Government of Nicaragua is asking the Court to indicate. You have the floor, Mr Registrar.

The REGISTRAR: Thank you, Mr President. I quote:

"(1) Germany shall immediately suspend its aid to Israel, in particular its military assistance including military equipment, in so far as this aid may be used in the violation of the Genocide Convention, international humanitarian law or other peremptory norms of general international law such as the Palestinian People's right to self-determination and to not be subject to a regime of apartheid;

(2) Germany must immediately make every effort to ensure that weapons already delivered to Israel are not used to commit genocide, contribute to acts of genocide or are used in such a way as to violate international humanitarian law;

(3) Germany must immediately do everything possible to comply with its obligations under humanitarian law;

(4) Germany must reverse its decision to suspend the funding of UNRWA as part of the compliance of its obligations to prevent genocide and acts of genocide and the violation of the humanitarian rights of the Palestinian People which also includes the obligation to do everything possible to ensure that humanitarian aid reaches the Palestinian people, more particularly in Gaza;

(5) Germany must cooperate to bring to an end the serious breaches of peremptory norms of international law by ceasing its support, including its supply of military equipment to Israel that may be used to commit serious crimes of international law and that it continue the support of the UNRWA on which this Organization has counted and based its activities."

Le PRÉSIDENT : Je remercie le greffier. Immédiatement après le dépôt de la requête et de la demande en indication de mesures conservatoires, le greffier en a transmis un exemplaire original au Gouvernement de l'Allemagne ; il a également informé le Secrétaire général de l'Organisation des Nations Unies.

Aux termes du paragraphe 1 de l'article 74 du Règlement, une demande en indication de mesures conservatoires a priorité sur toutes autres affaires ; il est précisé au paragraphe 2 de ce même article que la Cour doit statuer d'urgence sur une telle demande. Cet impératif doit néanmoins être concilié avec la nécessité de fixer la date des audiences de manière à donner aux parties la possibilité d'y être représentées. La Cour a décidé que ces audiences s'ouvriraient le 8 avril 2024.

Je voudrais à présent souhaiter la bienvenue aux délégations des Parties. Je prends note de la présence des agents et conseils du Nicaragua et de l'Allemagne. La Cour entendra ce matin le Nicaragua en son tour unique de plaidoiries sur sa demande en indication de mesures conservatoires. Nous entendrons l'Allemagne en son tour unique de plaidoiries demain, mardi 9 avril 2024 à 10 heures. Chacune des Parties disposera de deux heures maximum pour présenter son exposé oral.

Pour l'audience de ce jour, le Nicaragua pourra, si nécessaire, poursuivre un peu au-delà de midi, compte tenu du temps consacré à mes observations liminaires.

Avant de donner la parole à l'agent du Nicaragua, je souhaite appeler l'attention des Parties sur l'instruction de procédure XI, selon laquelle,

« [d]ans leurs exposés oraux sur les demandes en indication de mesures conservatoires, les parties devraient se limiter aux questions touchant aux conditions à remplir aux fins de l'indication de mesures conservatoires, telles qu'elles ressortent du Statut, du Règlement et de la jurisprudence de la Cour. Les parties ne devraient pas aborder le fond de l'affaire au-delà de ce qui est strictement nécessaire aux fins de la demande. »

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

Mr ARGÜELLO GÓMEZ:

1. Mr President, Members of the Court, good morning. It is my honour to come before you representing Nicaragua in a case involving its rights and obligations as well as those of the entire international community, and most importantly, those of the Palestinian people.

2. The case before us involves momentous events affecting the life and well-being of hundreds of thousands of people and even the destruction of an entire people. But in spite of the gravity of the situation, the facts and the law are very simply explained.

3. Serious breaches of international humanitarian law and other peremptory norms of international law, including genocide, are taking place in Palestine. These breaches are being committed openly, have been witnessed on the ground by thousands of people and have been viewed on public news services and social media by probably the majority of the population of the world.

4. When a situation of this nature occurs or is in danger of occurring, the obligations for all States are clear. Not only States must not abet the situation by aiding or assisting the perpetrator, but they must use their best efforts to ensure respect for these fundamental norms and prevent their breaches.

5. With respect to these obligations, there are no third States: all States are under the obligation to respect them, they are *erga omnes* obligations. Germany has violated these obligations imposed on all States.

6. Mr President, Nicaragua is not a newcomer to the Court.

7. On 9 April 1984, tomorrow it will be 40 years, Nicaragua filed an Application[1] against the United States for serious violations of international law against its rights and sovereignty. The present case is different, but it has a striking similarity. Forty years ago in this month of April, during the hearings on provisional measures requested in that case, Nicaragua was asking, among other things, that the Court order:

> "that the United States should immediately cease and desist from providing directly or indirectly any support including training, arms, ammunition, supplies, assistance, finances, direction or any other form of support to any nation, group, organization,

[1] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, Application of 9 April 1984.

movement or individual engaged or planning to engage in military or paramilitary activities in or against Nicaragua"[2].

8. In the present case, Nicaragua is also requesting the Court to order that Germany should cease providing support to Israel in its campaign of destruction of the Palestinian people. But in the present case, Nicaragua is acting not only on its own behalf on the basis of the rights and obligations conferred by the peremptory norms invoked, but also on behalf of the Palestinian people that is being subjected to one of the most destructive military actions in modern history. Beyond its legal rights and obligations in bringing this case, the Government and people of Nicaragua have a special sympathy for the plight of the Palestinian people. Nicaragua has not had to suffer the levels of inhuman treatment and destruction that has been the fate of Palestine for more than three quarters of a century; nonetheless it has also been subject to intervention and military attacks for most of its existence and feels empathy for the Palestinian people.

9. On the subject of empathy and sympathy, it is of note that Germany emphasizes that its assistance to Israel is a *raison d'État* because of the historical treatment of the Jewish people during the Nazi régime[3]. That is an understandable and laudable policy if it were addressed to the Jewish people. The Israeli State, and particularly its present Government, should not be confused and equated with the Jewish people. The real friends of the Jewish people should emphasize the difference. The Jewish victims in concentration camps during the Second World War would feel sympathy and empathize with the more than thirty thousand civilians[4], including twenty-five thousand mothers and children massacred so far in Palestine[5], and the twenty thousand children

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[2] *I.C.J. Pleadings, Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, Vol. 1, Oral Arguments on the Request for the Indication of Provisional Measures, Minutes of the Public Sittings, 25 and 27 April and 10 May 1984, Argument of Professor Chayes, p. 65.

[3] Government statement by Federal Chancellor Olaf Scholz on the situation in Israel to the German Bundestag, 12 October 2023, available at https://www.bundesregierung.de/breg-de/service/newsletter-und-abos/bulletin/regierungserklaerung-von-bundeskanzler-olaf-scholz-2230150 (Application, Annex 8).

[4] Hostilities in the Gaza Strip and Israel, reported impact Day 180, OCHA, 3 April 2024, available at https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-reported-impact-day-180?_gl=1*k4duwl*_ga*ODAzNTE3ODQ5LjE3MTIxNDg3MTU.*_ga_E60ZNX2F68*MTcxMjIyNDM2MC4yLjEuMTcxMjIyNDQwNC4xNi4wLjA.

[5] More than 25,000 women and children killed in Gaza: US defence secretary, Aljazeera, 1 March 2024, available at https://www.aljazeera.com/news/2024/3/1/more-than-25000-women-and-children-killed-in-gaza-us-defence-secretary.

orphaned[6] and the two mothers being killed every hour[7]. States like Germany that sympathize with what the State of Israel was meant to represent when it was created should be doing their best to put a stop to what is happening and not continue backing Israel in practice, even though they now, at least in public — perhaps forced by the enormous public outcry — make statements for peace six months after the start of the massacre; perhaps also in reaction to the present case before the Court.

10. With all due respect to this moral imperative of Germany that identifies defence of Israel as a *raison d'État*, there is another less noble reality that perhaps is not known by the generality of the German people: there is also a lucrative *quid pro quo* involved.

11. German companies involved in the military industry are directly profiting from the situation as they have seen their share prices rise since 7 October[8] and they have substantially increased the joint development contracts for weapons with their Israeli counterparts. Proudly and openly, on 23 November 2023, the Israeli Ministry of Defence announced that they had officially concluded an agreement to sell the Arrow 3 air defence system to Germany for an estimated US$3.6 billion, describing it as the "largest-ever defense export" for Israel[9]. The Israeli defence minister further described the moment as

> "an emotional moment, to be here as the son and grandson of Holocaust survivors, on German soil, in Berlin, to sign a defensive arms contract . . . It's very important, personally and diplomatically. This moment of history leans on our past and dictates our shared future."

He called the sale "a moving event for every Jew"[10].

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[6] BBC reports that at least 20,000 children have been orphaned by the Israeli war in Gaza, Middle East Monitor, 24 March 2024, available at https://www.middleeastmonitor.com/20240324-bbc-reports-that-at-least-20000-children-have-been-orphaned-by-the-israeli-war-in-gaza/; see also https://www.instagram.com/reel/C46GebvrTJP/?utm_source=ig_embed&utm_campaign=loading.

[7] Press release: Two mothers are killed in Gaza every hour as fighting exceeds 100 days, UN Women, 19 January 2024, available at https://www.unwomen.org/en/news-stories/press-release/2024/01/press-release-two-mothers-are-killed-in-gaza-every-hour-as-fighting-exceeds-100-days.

[8] See, for example, Rheinmetall sales to double by 2026 bolstered by heightening geopolitical tensions, Financial Times, 21 November 2023, available at https://www.ft.com/content/1f36ad1d-4191-4ac1-a202-29c2e24c4632; see also Prospect of high defense spending drives Rheinmetall & Co. up, Market Screener, 13 February 2024, available at https://uk.marketscreener.com/quote/stock/RHEINMETALL-AG-436527/news/Prospect-of-high-defense-spending-drives-Rheinmetall-Co-up-45937460/.

[9] Israel finalizes Arrow 3 deal with Germany, aims for late 2025 delivery, Breaking Defense, 27 November 2023, available at https://breakingdefense.com/2023/11/israel-finalizes-arrow-3-deal-with-germany-aims-for-late-2025-delivery/.

[10] Germany signs nearly €4 billion deal for Israel's Arrow 3 missile defense system, The Times of Israel, 28 September 2023, available at https://www.timesofisrael.com/germany-signs-nearly-e4-billion-deal-for-israels-arrow-3-missile-defense-system/.

12. As has been reported many times, Israel is a technological hub, particularly in the weapons industry and Israeli companies proudly advertise their products as "battle-tested". Needless to say, that for years the international community has been aware that the testing field is Palestine and its people, particularly Palestinians living in Gaza[11].

GERMANY'S OWN RESPONSIBILITY

13. Mr President, the present case is different than that filed against Israel by South Africa and in which Nicaragua is seeking to intervene as a party[12]. The South Africa case only involves violations of the Genocide Convention by Israel. In the present case, Nicaragua is invoking the responsibility of Germany in connection with the genocide committed by Israel and also the responsibility of Germany for the violations of its own obligations under the Genocide Convention and of the violation by Germany of its own obligations under international humanitarian law. The cases are thus different with respect to the norms being violated and with respect to the form of the violations. Germany is failing to honour its own obligation to prevent genocide or to ensure respect of international humanitarian law. The violations of international humanitarian law by Israel create obligations for Germany, as it does for all States of the international community, obligations for which Germany is responsible and which are being claimed in the present proceedings.

14. Mr President, the fact that the acts of one State generate independent obligations for third States is not an unusual legal situation. The first case of the present Court, the *Corfu Channel* case, involved the laying of mines in Albanian waters that caused damages to United Kingdom vessels. The Court found no evidence that Albania itself had laid the mines or that it had colluded in the laying of the mines by a third party.

15. But it was established to the satisfaction of the Court, including by the report of experts appointed by the Court, that "laying of the minefield . . . could not have been accomplished without

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[11] See, for example, The Cruel Experiments of Israel's Arms Industry, Pulitzer Center, 28 December 2016, available at https://pulitzercenter.org/stories/cruel-experiments-israels-arms-industry; see also Israel's arms and spyware: used on Palestinians, sold to the world, Middle East Eye, 6 June 2023, available at https://www.middleeasteye.net/opinion/israel-arms-industry-palestinians-guinea-pigs; How is Israel's arms industry profiting from the war on Gaza?, Aljazeera, 20 February 2024, available at https://www.aljazeera.com/program/the-stream/2024/2/20/how-is-israels-arms-industry-profiting-from-the-war-on-gaza.

[12] See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel)*, Application for permission to intervene submitted by Nicaragua, 23 January 2024.

the knowledge of the Albanian Government"[13]. And having that knowledge "[t]he obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield"[14].

16. This ruling in the *Corfu Channel* case was taken up by the International Law Commission in the following manner:

> "A State may be required by its own international obligations to prevent certain conduct by another State, or at least to prevent the harm that would flow from such conduct. Thus the basis of responsibility in the Corfu Channel Case was Albania's failure to warn the UK of the presence of mines in Albanian waters which had been laid by a third State. Albania's responsibility was original and not derived from the wrongfulness of the conduct of any other State."[15]

17. This Judgment was one of the bases for the general rule contained in Article 16 of the Articles on Responsibility of States for Internationally Wrongful Acts, providing that a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if "that State does so with knowledge of the circumstances of the internationally wrongful act"[16]. It is pertinent to point out that the International Law Commission makes a special note of the situation when the responsibility arises from a serious breach of peremptory norms of general international law, which is the situation we are dealing with in the present case. In these circumstances, the International Law Commission comments that there is no need to mention the requirement of knowledge of the circumstances in Article 41 (2) of the Articles on Responsibility "as it is hardly conceivable that a State would not have notice of the commission of a serious breach by another State"[17].

GERMANY'S KNOWLEDGE OF THE VIOLATIONS OF PEREMPTORY NORMS

18. Mr President, permit me to emphasize what the International Law Commission is pointing out: the violations of peremptory norms are facts that are evident and of public knowledge. These

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[13] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22.

[14] *Ibid.*

[15] J. Crawford, *The International Law Commission's Articles on State Responsibility* (2002), Cambridge University Press, p. 146.

[16] Article 16, Articles on Responsibility of States for Internationally Wrongful Acts.

[17] Article 41, Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, p. 115, para. 11.

are not facts that can only be established by especial authority and that can only be acted upon until they have been so established. They are facts that must be acted upon as soon as they become known.

19. The importance of this knowledge of the violations has been reiterated in other cases, and Professor Pellet will go briefly into some of them since a short pleading on provisional measures is not the appropriate moment to go deeply into this question. Notwithstanding, a brief review of the reasons why Germany must have had knowledge and full awareness of what was happening and is happening in Palestine is useful.

20. From the first days of the Israeli military actions in Gaza, it became evident that grave violations of international humanitarian law were being committed. Statements pointing this out were urgently made, among others, by the Secretary-General of the United Nations on 9 October, by the President of the International Committee of the Red Cross on 11 October and even at a political level with full participation of Germany in the statement by the High Representative of the European Union on 10 October[18]. All these are in 2023.

21. From that moment, even if the genocidal intent was not yet entirely evident, the grievous violations of international humanitarian law were evident. In practice, it was not even necessary to await these declarations in order to realize that, for example, dropping bombs of one tonne in densely inhabited areas[19] was a completely unjustifiable violation of the most basic humanitarian laws that had been recognized as such for many years (centuries in reality).

22. If those statements just mentioned were not enough information to trigger the obligatory response by Germany, in your folders is a non-exhaustive list, dating from 9 October until last Friday 5 April[20], of 32 statements from hundreds of the most respected authorities, organizations, experts, legal scholars and practitioners on questions of international humanitarian law, calling out that Israel was breaching or plausibly breaching the Genocide Convention and that it was breaching the most important norms of international humanitarian law. This ever-growing list includes the recent open letter of more than six hundred legal experts, including three Supreme Court justices, calling the

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[18] See para. 9 of the Application by Nicaragua instituting proceedings against the Federal Republic of Germany, 1 March 2024.

[19] See for example, Not seen since Vietnam: Israel dropped hundreds of 2,000-pound bombs on Gaza, analysis shows, CNN, 22 December 2023, available at https://edition.cnn.com/gaza-israel-big-bombs/index.html.

[20] Tab 1 of Nicaragua's judges' folder.

United Kingdom[21] Government to end weapons sales to Israel, as well as the resolution with a similar but universal call from the Human Rights Council of 4 April[22], not surprisingly with Germany's negative vote.

23. With all this undeniable knowledge of the situation, Germany's reaction was to increase its military assistance to Israel[23]. Its complete support of Israel, even at the political level, was manifest when South Africa filed its Application against Israel on 29 December 2023, the prompt reaction of Germany was to announce that they would intervene in favour of Israel[24].

24. But apart from all these public statements and warnings of what was happening, the Court, in its Order of 26 January, considered that genocide was plausibly being committed against the Palestinian people. From that moment on, paraphrasing one of your Members: the alarm was sounded and the indications of genocidal activities were flashing red[25].

25. With the alarm sounded — in fact it was a final alarm resounding amid a horizon of alarms from all quarters — there should have been no further possibility of ignoring the situation. And yet Germany continued, and still continues to this day, to supply weapons and military assistance in general to Israel.

26. The norms of the Genocide Convention, which are part of customary international law, impose the obligation on third States to undertake to prevent genocide. This obligation arises from the moment that that State becomes aware that genocide might be committed, and there can be no question that Germany, as is evident from the preceding comments, was well aware and is well aware of at least the serious risk of genocide being committed, most certainly after your Order of 26 January. The consequences of the violation of this obligation will be further addressed by Professor Pellet.

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[21] UK arms sales to Israel should end, say legal experts, BBC, 4 April 2024, available at https://www.bbc.com/news/uk-68729302; see also the text of the letter available at https://lawyersletter.uk/wp-content/uploads/2024/04/Gaza-letter-FIN-3-April5.pdf.

[22] Gaza: Human Rights Council resolution urges arms embargo on Israel, 6 April 2024, available at https://news.un.org/en/story/2024/04/1148261.

[23] See for example para. 51 of Nicaragua's Application.

[24] Germany announces decision to intervene on Israel's behalf in ICJ case, Haaretz, 14 January 2024, available at https://www.haaretz.com/israel-news/2024-01-14/ty-article/.premium/germany-announces-decision-to-intervene-on-israels-behalf-in-icj-case/0000018d-0787-dd07-a7df-cfff1f090000.

[25] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 28 March 2024*, declaration of Judge Yusuf, para. 12.

27. In the present case, in addition to the obligations under the Genocide Convention, we are also invoking violations to other peremptory norms of public international law, particularly the norms of international humanitarian law of the Geneva Conventions, which are also norms of customary international law. Many of the violations of these norms are also part of the constitutive elements of the crime of genocide. For this reason, even if genocide were found to not have been committed, which Nicaragua does *not* accept, these violations of international humanitarian law stand alone and involve obligations for third States.

28. A grievous example of this can be appreciated in the violations, among others, of Articles 55 and 56 of the Geneva Conventions on the duties of the occupying Power of ensuring food and medical supplies for the occupied population. On this point, the Court noted in its Order of 28 March "the unprecedented levels of food insecurity experienced by Palestinians in the Gaza Strip over recent weeks, as well as the increasing risks of epidemics"[26]. As one of your Members pointed out, "[t]hese circumstances also reflect a plausible risk of a violation of relevant rights under the Genocide Convention"[27].

29. But even if it were found, *quod non*, that provoking this famine and catastrophic situation does not amount to genocide, it is in and by itself a clear violation of the Geneva Conventions. These norms also impose obligations *erga omnes* which Germany, like all other States of the international community, is bound to respect and, therefore, the violations of these norms, in the binding aspects that they have on third parties, can be claimed and are being claimed by Nicaragua against Germany as part of this case before the Court.

30. In view of the catastrophic situation of famine and epidemics in Gaza, the decision of Germany to suspend the funding of UNRWA and to maintain to this day the suspension of the funding of UNRWA's operations in Gaza is particularly telling of Germany's support of Israel. The question of the suspension of the funding will be reviewed by Dr Müller. At this point, some brief comments. UNRWA has been working in Palestine almost as long as the existence of Israel as a

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[26] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 28 March 2024*, para. 31.

[27] *Ibid.*, separate opinion of Judge Nolte, para. 6.

State[28]. It has been providing the essential needs of the many refugees in the area. During this military campaign of Israel in Gaza, nearly two hundred humanitarian workers, the majority of whom were part of the staff of UNRWA, have been killed[29]. Israel accused about a dozen of the more than twelve thousand workers of UNRWA with involvement in the events of 7 October[30]. Immediately, and based on the sole say-so of the Israeli Government, Germany suspended its funding of UNRWA[31]. Incredibly, this occurred the day after your Order of 26 January. What is striking in respect of this reaction of Germany is that on the sole say-so of Israel they suspended assistance to UNRWA, but they have ignored the statements and the accusations of the most important world authorities that genocide and other violations of international humanitarian law were being perpetrated by Israel in Palestine, and continued their full assistance, including military assistance to Israel. Moreover, possibly realizing the absurdity of such a decision, Germany finally reversed its decision, except for the most shocking aspect: the suspension of funding for UNRWA operations in Gaza — precisely where it is most needed to limit the scale of the humanitarian disaster[32].

GERMANY'S POSITION

31. Mr President, up to this point Germany has had the opportunity of studying our Application and will have the opportunity of listening to our pleading today and responding tomorrow. Nicaragua has not had the opportunity to be informed of the position of Germany on the legal issues involved. The only reactions of which we have notice are those mentioned in our Application[33]; they amount to simply indicating that Germany rejects Nicaragua's claims as well as other public declarations justifying their backing of Israel's actions.

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[28] General Assembly resolution 302, Assistance to Palestine Refugees, available at https://www.unrwa.org/content/general-assembly-resolution-302.

[29] UNRWA situation report #99 on the situation in the Gaza Strip and the West Bank, including East Jerusalem, 4 April 2024, available at https://www.unrwa.org/resources/reports/unrwa-situation-report-99-situation-gaza-strip-and-west-bank-including-east-Jerusalem.

[30] UNRWA: Claims vs Facts, February 2024, available at https://www.unrwa.org/unrwa-claims-versus-facts-february-2024.

[31] Application, para. 59.

[32] UNRWA: Eur 45 million in new contributions from Germany services to Palestine refugees in Jordan, Lebanon, Syria and the West Bank, 26 March 2024, available at https://www.unrwa.org/newsroom/news-releases/unrwa-eur-45-million-new-contributions-germany-services-palestine-refugees.

[33] Application, paras. 27-30.

32. From the public statements made by Germany, we could note two alleged justifications for their continued support of Israel: that Israel is not violating the Genocide Convention and that it has a right to defend itself[34].

33. With respect to the first point, we already pointed out the full knowledge Germany had, and has, of what is happening in Palestine and the legal consequences of this knowledge, not only of the plausible violations of the Genocide Convention but also of the norms of international humanitarian law. This is not a question that can be or need be addressed during these pleadings that are inevitably short since they are addressed basically to the issues involved in the request for provisional measures. In any case, Professor Pellet will have some further comments on this issue.

34. With respect to the second point, the right of self-defence of Israel which is also invoked by Germany for its continued assistance, some brief comments. The question of the right of Israel to defend itself is correct if it refers to the right to protect its people and not the right of self-defence contemplated in Article 51 of the United Nations Charter[35].

35. But in the exercise of the right to protect its citizens, Israel as occupying Power has assumed the duty to, and I quote from the Regulations concerning the Laws and Customs of War on Land, "take all the measures in (its) power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country"[36]. In practice this implies that the police or general security powers the occupant has are similar to those of the State occupied. This right of protection is a right that frequently has to be exercised by States even in difficult circumstances. But even in the most blatant situations of violence, the State has to respect the peremptory norms of international law.

36. Mr President, this is the bottom line: on whatever basis or definition a so-called right of self-defence is invoked, it can never serve to justify violations of the norms of the Genocide

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[34] Answer of the Federal Government to the minor interpellation by the MPs Sevim Dagdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other MPs and the BSW group, 20/10806, 21 March 2024, p. 2, 4, available at https://dserver.bundestag.de/btd/20/108/2010806.pdf.

[35] See for example UN expert says Israel cannot claim 'right of self-defense', MM News, 16 November 2023 available at https://www.youtube.com/watch?v=93685wJgycQ; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004 (I)*, paras. 138-139.

[36] Article 43, Regulations concerning the Laws and Customs of War on Land, Annexed to the Fourth Hague Convention of 1907.

Convention or other norms of international humanitarian law. Surprisingly, Germany seems not to be able to differentiate between self-defence and genocide.

37. Furthermore, Germany cannot invoke that Israel is in some state of necessity of its assistance for its defence and survival. In spite of its size and population, Israel is in the top 10 per cent of the most militarily powerful countries in the world[37]. Its per capita expense is more than four times larger than that of Germany; it is even higher than that of the United States[38]. Its total yearly military expenditure — going back many years — is higher than that of its neighbours Iran and Egypt that have a population more than ten times larger and immense territories in comparison with Israel[39].

PALESTINIAN SITUATION

38. Mr President, two considerations can also be briefly added on the question of the attacks that occurred on 7 October which, to our knowledge, have not been taken into account by Germany.

39. Firstly, the Palestinian people have the right to self-determination. That means that they have the right to take up arms against alien occupation and against racist régimes in the exercise of their right of self-determination as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter. This right must be exercised in line with the norms of international law as indicated in Article 1, paragraph 4, of the 1977 General Protocol I. Any violations of these norms that occurred on 7 October are not justified by the right of self-determination, but do not terminate this right of the Palestinian people and even less their right to exist as a people.

40. The second consideration that is sidelined is that the events on 7 October did not occur in a void, on the spur of the moment, without any provocation. This was pointed out a few days after the events of 7 October by the Secretary-General of the United Nations, speaking before the Security

[37] See, for example, Countries with the highest military spending worldwide in 2022, Statista, 30 November 2023, available at https://www.statista.com/statistics/262742/countries-with-the-highest-military-spending/.

[38] See, for example, SIPRI Military Expenditure Database, available at https://milex.sipri.org/sipri.

[39] Countries with the highest military spending worldwide in 2022, Statista, 30 November 2023, available at https://www.statista.com/statistics/262742/countries-with-the-highest-military-spending/.

Council. He stated: "It is important to also recognize the attacks by Hamas did not happen in a vacuum. The Palestinian people have been subjected to 56 years of suffocating occupation."[40]

41. If it were necessary to confirm the truth of the statement of the Secretary-General, it is not necessary to make an interminable list of the suffering of the Palestinian people since the Nakba in 1948, and we could simply recall the statement that the Secretary-General himself had made three years earlier on 21 May 2021 in an address to the United Nations General Assembly. He said: "If there is a hell on earth, it is the lives of children in Gaza today."[41] "Today" was three years ago, before 7 October.

42. Mr President, Members of the Court, if the actions of Israel continue unrestrained as they have since its birth as a State, and they continue to receive the indiscriminate support of States like Germany, then a new generation of Palestinians will rise up again in the near future, and we will hear a future Secretary-General commenting "this did not happen in a vacuum". The case before the Court is an opportunity to break this vicious cycle. Without support of States like Germany, Israel would not feel it can act with total impunity. Nicaragua is hopeful that States, particularly with the history of Germany, will heed the decisions of this Court.

43. Thank you, Mr President and Members of the Court, with this I end my presentation and may I please ask you, Mr President, to give the floor to Dr Daniel Müller. Thank you.

The PRESIDENT: I thank the Agent of Nicaragua for his statement. I now invite Mr Daniel Müller to take the floor. You have the floor, Sir.

Mr MÜLLER:

THE FACTUAL CIRCUMSTANCES

1. Thank you, Mr President. Mr President, Members of the Court, my task this morning is to set out some of the facts underlying the dispute between Nicaragua and the Federal Republic brought before the Court. I shall of course concentrate on those facts that are relevant for the request for

[40] Secretary-General's remarks to the Security Council- on the Middle East, 24 October 2023, available at https://www.un.org/sg/en/content/sg/speeches/2023-10-24/secretary-generals-remarks-the-security-council-the-middle-east%C2%A0.

[41] Secretary-General's remarks to the General Assembly meeting on the Situation in the Middle East and Palestine, 20 May 2021, available at https://www.un.org/sg/en/content/sg/statement/2021-05-20/secretary-general%E2%80%99s-remarks-the-general-assembly-meeting-the-situation-the-middle-east-and-palestine-delivered.

provisional measures. Nicaragua has already explained the factual background in its Application[42]. Unfortunately, since then, the situation has evolved further and, in light of that, provisional measures are becoming increasingly more urgent and necessary.

I. The developments in Gaza and the remaining Occupied Palestinian Territory

2. Mr President, Members of the Court, you are already acquainted with the devastating situation in Gaza and the imminent risk to which the Palestinian people, children, women and men, in Gaza, but also in other parts of the Occupied Palestinian Territory, is currently exposed. Ten days ago, you qualified the living conditions imposed on Palestinians as "catastrophic"[43] and the most recent developments in Gaza as "exceptionally grave"[44].

3. The Court knows and has acknowledged that there was an imminent risk of irreparable harm to "the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited acts identified in Article III" of the Genocide Convention[45]. And you concluded, twice, that the situation was such as to justify provisional measures aimed at protecting the rights of the Palestinian people in Gaza as a people[46]; in fact, measures aimed at ensuring their sheer existence and survival as a group.

You also considered that "the catastrophic humanitarian situation in the Gaza Strip is at serious risk of deteriorating"[47]. Since the end of January, the situation has indeed worsened and deteriorated. Already on 16 February, the Court endorsed the grave concerns expressed by the United Nations

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[42] Application, paras. 32-66.

[43] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel)*, *Request for the Modification of the Order of 26 January 2024 indicating Provisional Measures, Order of 28 March 2024*, para. 18.

[44] *Ibid.*, para. 22.

[45] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, para. 54. See also *Request for the Modification of the Order of 26 January 2024 indicating Provisional Measures, Order of 28 March 2024*, para. 27.

[46] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, para. 86; *Request for the Modification of the Order of 26 January 2024 indicating Provisional Measures, Order of 28 March 2024*, para. 51.

[47] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, para. 72.

Secretary-General before the General Assembly[48] and noted that "the most recent developments in the Gaza Strip, and in Rafah in particular, 'would exponentially increase what is already a humanitarian nightmare with untold regional consequences'"[49].

Yet, what was then a desperate call for reason, action and change has turned into blatant and brutal reality. The situation *has* increased the nightmare; the nightmare *is* increasing every single day. The Republic of Nicaragua drew your attention to the escalation of the situation in Gaza in its Application and its Request for provisional measures and again in the letter of its Agent dated 7 March. The Republic of South Africa reiterated it again in its request of 6 March. In your Order of 28 March, you also acknowledged that "the catastrophic humanitarian situation in the Gaza Strip . . . has deteriorated even further"[50].

4. Mr President, Members of the Court, this is still the reality in Gaza. Only two weeks ago, the United Nations Secretary-General visiting Egypt and the border with Gaza made the horrifying comment that:

> "Looking at Gaza, it almost appears that the four horsemen of war, famine, conquest and death are galloping across it."[51]

And he continued:

> "Nothing justifies the abhorrent October 7 Hamas attacks and hostage-taking in Israel. But nothing justifies the collective punishment of the Palestinian people."[52]

5. The world is aware of all of that; and the world cannot turn its eyes away. The risk — if this term is still appropriate — of irreparable harm to the rights of the Palestinian people in Gaza to be protected from acts of genocide and to live in dignity is very real indeed, imminent and grave. As recently as last Friday, the United Nations OCHA Director reported to the Security Council on the

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[48] "In Today's Troubled World, Building Peace 'Humanity's Greatest Responsibility', Secretary-General Stresses, Outlining Organization's Priorities for 2024", Press Release, SG/SM/22127, 7 February 2024, available at https://press.un.org/en/2024/sgsm22127.doc.htm.

[49] Press Release No. 2024/16, *Decision of the Court on South Africa's request for additional provisional measures*, 16 February 2024.

[50] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Request for the Modification of the Order of 26 January 2024 indicating Provisional Measures, Order of 28 March 2024*, para. 30.

[51] United Nations, Secretary General, Secretary-General's press encounter with the Foreign Minister of Egypt, Cairo, 24 March 2024, available at https://www.un.org/sg/en/content/sg/statement/2024-03-24/secretary-generals-press-encounter-the-foreign-minister-of-egypt-qa-follow.

[52] *Ibid.*

"unconscionable brutality of [the] conflict" and confirmed again the tragic reality that "there is no protection of civilians in Gaza"[53].

6. While the world is witnessing the destruction of Gaza and its life, the situation in the remainder of the Occupied Palestinian Territory has been deteriorating, too. Last February, the Minister of Foreign Affairs of Palestine described at this Bar the suffering of the Palestinian people throughout the Occupied Palestinian Territory, "subjected to the colonization of their territory", to "the racist violence that enables it", to the denying of their fundamental rights, to the most inhuman segregation and apartheid, to the negation of their very existence[54]. Day by day, raids, air strikes, violence against, and illegal detention of, Palestinians in the West Bank are intensifying[55].

II. Germany's continuing support to Israel

7. Members of the Court, the Federal Republic was and is aware of the situation, and, in any event, could not have ignored it. Despite the very many warnings, alarming reports and messages of the United Nations Secretary-General, United Nations Special Rapporteurs, the International Red Cross, and even the European Union's High Representative[56], Germany continues to assure and implement full support to Israel for its war against Gaza and its population.

8. Addressing the *Bundestag* on 12 October 2023, the German Chancellor stated:

> "At this moment, there is only one place for Germany: the place at the side of Israel. This is what we mean when we say that Israel's security is a German *raison d'État*. Our own history, our responsibility arising from the Holocaust, makes it our

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[53] "Speakers in Security Council Condemn Deadly Israeli Airstrikes on Aid Workers in Gaza, Urge Immediate Action to End Violations of International Humanitarian Law", Meeting Coverage, Security Council, 9596th meeting, SC/15653, 5 April 2024, available at https://press.un.org/en/2024/sc15653.doc.htm. *See* also United Nations, Human Rights Council, "Anatomy of a Genocide", Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, A/HRC/55/73 (Advance unedited version), 25 March 2024, para. 94, available at https://www.ohchr.org/en/documents/country-reports/ahrc5573-report-special-rapporteur-situation-human-rights-palestinian.

[54] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (Request for advisory opinion submitted by the General Assembly of the United Nations)*, CR 2024/4, pp. 52-53, para. 2 (Malki).

[55] United Nations, OCHA, Hostilities in the Gaza Strip and Israel | Flash Update #143, 20 March 2024, available at https://www.unocha.org/publications/report/occupied-palestinian-territory/hostilities-gaza-strip-and-israel-flash-update-143; Hostilities in the Gaza Strip and Israel | Flash Update #149, 3 April 2024, available at https://www.ochaopt.org/content/hostilities-gaza-strip-and-israel-flash-update-149.

[56] *See* Application, paras. 7-11 and 39 *ff*. *See* also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, paras. 65-74.

> perpetual duty to stand up for the existence and security of the State of Israel. This responsibility guides us."[57]

The Minister for Foreign Affairs said the day before: "Israel's security is a German *raison d'État*. With this understanding, I have offered Israel all our support in every area."[58] This was also confirmed by the spokespersons of the Federal Government and the Federal Foreign Office who both underlined that "solidarity with Israel is paramount"[59].

9. Germany's support to Israel "in every area", and in particular in the form of supplying weapons of war, was immediate. On 12 October 2023, the Federal Minister for Defence confirmed in Brussels that Germany had allowed Israel's air forces to use two Heron military drones for — what he called — Israel's "defence battle"[60]. The widespread and indiscriminate destruction caused by unmanned aerial vehicles like these drones, to civilians, to civilian infrastructure, to houses and homes, and to humanitarian aid workers, has been widely reported[61].

10. In early November, a representative of the Federal Ministry of Economy and Climate Protection confirmed that, due to the situation, the German Government processed and decided on applications for the export of military equipment to Israel as a matter of priority[62].

11. The German Government had authorized for the year 2023 exports of military equipment and war weapons in the amount of more than €326 million[63]. Although Germany was even before October 2023 Israel's second most important supplier of military equipment[64], this figure shows that

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[57] Government statement by Federal Chancellor Olaf Scholz on the situation in Israel to the German *Bundestag*, 12 October 2023 (Application, Annex 8).

[58] Speech by the Federal Minister for Foreign Affairs, Annalena Baerbock, at the beginning of the questioning of the Federal Government before the German Bundestag, 11 October 2023 (Application, Annex 10).

[59] Government press conference, 11 October 2023 (Application, Annex 11).

[60] "Minister Pistorius sagt Heron TP, Personal und Sanitätsmaterial für Israel zu", Federal Ministry for Defense, 12 October 2023, available at https://www.bmvg.de/de/aktuelles/heron-tp-drohnen-fuer-israel-5687836.

[61] Application, para. 45; Forensis, *German Arms Exports to Israel 2003-2023*, Report, Berlin, 2 April 2024, pp. 25-26, available at https://content.forensic-architecture.org/wp-content/uploads/2023/04/Forensis-Report-German-Arms-Exports-to-Israel-2003-2023.pdf.

[62] "Erheblich mehr Rüstungsexporte für Israel genehmigt", *Süddeutsche Zeitung*, 8 November 2023, available at https://www.sueddeutsche.de/wirtschaft/ruestungsindustrie-erheblich-mehr-ruestungsexporte-fuer-israel-genehmigt-dpa.urn-newsml-dpa-com-20090101-231108-99-867297; "Rüstungsexporte nach Israel fast verzehnfacht", *Tagesschau*, 8 November 2023, available at https://www.tagesschau.de/inland/israel-deutschland-ruestungsexporte-100.html; "German military exports to Israel up nearly 10-fold as Berlin fast-tracks permits", *Reuters*, 8 November 2023, available at https://www.reuters.com/world/europe/german-military-exports-israel-up-nearly-10-fold-berlin-fast-tracks-permits-2023-11-08/; "German arms exports to Israel surge as Berlin backs campaign against Hamas", *Financial Times*, 8 November 2024, available at https://www.ft.com/content/1a09622b-91cf-4527-a887-f8f328bd7cad. *See* also Application, para. 51.

[63] Written questions to the Federal Government in December 2023, Question no. 12/531, 9 January 2024 (Application, Annex 7).

[64] "Trends in International Arms Transfers, 2023", SIPRI Fact Sheet, March 2024, p. 6, available at https://www.sipri.org/sites/default/files/2024-03/fs_2403_at_2023.pdf.

export licences granted by the Federal Republic are more than ten times as important as for the year 2022. Most of these licences were granted in the second half of 2023, after the invasion of Gaza by Israel and the start of its war in the territory and against its population. Indeed, according to the official figures of the German Government, until 30 June 2023, "only" licences in the volume of €38 million had been granted[65]. In other words, export licences for military equipment worth almost €300 million had been delivered by German authorities, as a matter of priority, within and against the background of the specific situation of Israel's war in Gaza and against its population. This includes export licences for weapons of war in the value of €20 million, such as 3,000 anti-tank weapons — which according to one manufacturer in Germany are "a complete toolbox of shoulder-launched infantry weapon[s]" used against tanks, but also vehicles, structures and buildings, and persons[66] — 500,000 rounds of machine gun ammunition, 44 propellant charges — a key component in artillery ammunition — and 239 ignition charges[67]. These are weapons built to and aimed at destroying and killing, or to quote from Germany's own definition, "objects [and] substances . . . capable . . . of causing destruction or damage to persons or property and of serving as a means of using force in armed conflicts between States"[68].

12. In early 2024, the German Federal Government continued to provide export licences for miliary equipment and weapons of war. According to the data submitted by the Government to the members of the *Bundestag*, these licences concerned military equipment of a value of more than €9 million[69]. Despite requests made by members of the *Bundestag* concerning more recent data[70], at

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[65] Bericht der Bundesregierung über ihre Exportpolitik für konventionelle Rüstungsgüter im ersten Halbjahr 2023, p. 8, available at https://www.bmwk.de/Redaktion/DE/Publikationen/Aussenwirtschaft/ruestungsexport-zwischenbericht-2023.pdf?__blob=publicationFile&v=6.

[66] *See* RGW 90, Dynamit Nobel Defense GmbH, available at https://dn-defence.com/rgw-90/. *See* also "Sind Waffen aus Burbach aktuell im Krieg in Gaza im Einsatz?", *Siegener Zeitung*, 31 October 2023, available at https://www.siegener-zeitung.de/lokales/siegerland/burbach/wuergendorf-ruenstungsfirma-dynamit-nobel-defense-liefert-panzerfaeuste-nach-israel-UXMIKBQTKZAS3E6YRLH4ZULRRE.html; Forensis, *German Arms Exports to Israel 2003-2023*, *op. cit.* (note 61), p. 26.

[67] Written questions to the Federal Government in December 2023, Question no. 12/531, 9 January 2024 (Application, Annex 7). *See* also Forensis, *German Arms Exports to Israel 2003-2023*, *op. cit.* (note 61), p. 19.

[68] Kriegswaffenkontrollgesetz, Section 1 (1), available at https://www.gesetze-im-internet.de/krwaffkontrg/__1.html.

[69] *See* German *Bundestag*, shorthand report, 153rd meeting, 21 February 2024 (Application, Annex 13).

[70] *See* German Bundestag, *Deutsche Kriegswaffenexporte nach Israel*, Minor question by the MPs Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, Klaus Ernst, Andrej Hunko, Christian Leye, Amira Mohamed Ali, Żaklin Nastić, Jessica Tatti, Alexander Ulrich and the BSW group, 4 March 2024, available at https://dserver.bundestag.de/btd/20/105/2010539.pdf.

the best of our knowledge, no further information has been made available by the Federal Government since the introduction of the present proceedings.

13. Mr President, although those figures are telling, they do not reflect the full picture of the military support provided by Germany and the German industry to Israel's war in Gaza. These figures do not include export of equipment that does not fall under the export licence requirements. They do also not include supply of military equipment directly by Germany to Israel. The German news magazine *Der Spiegel* revealed information about plans of the German Government to deliver tank ammunition from the stocks of the German armed forces[71]. Moreover, due to the very dense and intense co-operation between Germany and Israel also in terms of military equipment and exports, a great part of the military machinery and equipment of Israel is, at least partially, from Germany and depends on supplies, motors, engines and spare parts from Germany, too[72]. Israel's Sa'ar 6 corvette warships, built by the German group ThyssenKrupp and sold with the support of the German Government in 2015[73], have been used since October against Gaza and its people[74]. German manufacturer Mercedes is under contract with Israel's armed forces, in particular for the delivery of tank carriers and has speeded up its operation amidst the war[75].

14. Of course, Germany could not and did not ignore the situation in Gaza largely documented by the press, official reports and statements. Germany could not and did not ignore the likelihood that its support — the military equipment and the weapons of war — would be used by Israel to bomb and kill thousands of Palestinian children, women and men. These questions were raised time and again, and this from the very beginning of the large-scale invasion of Gaza.

15. Already on 11 October, the spokesperson of the Federal Foreign Office was asked very directly whether the military actions of Israel were in conformity with international humanitarian law. He eluded the question and replied that "Israel has the right under international law to defend

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[71] "Bundesregierung prüft Lieferung von Panzermunition an Israel", *Der Spiegel*, 16 January 2024 (Application, Annex 12).

[72] Forensis, *German Arms Exports to Israel 2003-2023*, *op. cit.* (note 61), pp. 23-25.

[73] "Israel Navy To Upgrade Combat Surface Fleet", *Defense News*, 28 June 2015, available at https://www.defensenews.com/naval/2015/06/28/israel-navy-to-upgrade-combat-surface-fleet/.

[74] "Israeli Navy uses Sa'ar 6-Class corvettes for first live combat against Hamas", *Navy Recognition*, 19 October 2023, available at https://navyrecognition.com/index.php/naval-news/naval-news-archive/2023/october/13692-israeli-navy-uses-sa-ar-6-class-corvettes-for-first-live-combat-against-hamas.html.

[75] *See* "Israel-Hamas war: Delivery of Mercedes IDF tank carriers speeds up", *The Jerusalem Post*, 29 November 2023, available at https://www.jpost.com/business-and-innovation/all-news/article-775255.

itself against the current attack, the terrorist attack by Hamas. We support this right, and we stand by Israel's side." He added simply, in passing, that "of course, even in this absolutely exceptional situation, the protection of the civilian population is a requirement of international humanitarian law"[76].

16. On 8 November, the Federal Government was specifically asked whether, to its knowledge, Israel is "fully complying with the relevant norms of international law, international humanitarian law and refugee law in its current military operations in the Gaza Strip"[77]. In its response, the Government confirmed that, under the relevant legal framework, export licences must be denied "if there is a clear risk that the military technology or equipment to be exported might be used to commit serious violations of international humanitarian law"[78]. Despite the numerous reports on the concrete situation in Gaza — which Germany could not have ignored, the Government representative continued: "Israel assures the German government that it is taking precautions to ensure compliance with the requirements of international law. The German government currently sees no reason to doubt this."[79]

17. Against the continuing reports on the catastrophic situation in Gaza, the German authorities seem to have finally started to doubt Israel's assurances. On 25 January 2024, the Federal Foreign Minister declared that:

> "Notwithstanding the right to self-defence, there are rules, and international humanitarian law also applies in the fight against terrorists. Israel needs to respect these rules just like all other states in the world — even in a difficult environment in which Hamas is breaking them all and using people as human shields."[80]

However, irrespective of these assertions and, indeed, of the very "clear risk" that grave violations of humanitarian law and international law are committed in Gaza — recognized by your Court[81] — Germany has not suspended its military support.

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[76] Government press conference, 11 October 2023 (Application, Annex 11).

[77] Questions of the German Bundestag on 8 November 2023, Question no. 19, 8 November 2023, available at https://www.bmwk.de/Redaktion/DE/Parlamentarische-Anfragen/2023/11/19.pdf.

[78] *Ibid.*

[79] *Ibid.*

[80] "Foreign Minister Baerbock on the situation in Gaza", Federal Foreign Office, Press Release, 25 January 2024, available at https://www.auswaertiges-amt.de/en/newsroom/news/-/2641566.

[81] *See* above, paras. 3-5.

18. The Federal Republic, together with all other European Union Member States, again expressed its concerns about "the humanitarian situation in Gaza and the suffering of the hostages as well as the Israeli government's plans for a possible ground operation in Rafah" on 19 February 2024. It recalled in this context "the importance of ensuring the protection of all civilians at all times in line with International Humanitarian Law and to respect the 26 January Order of the International Court of Justice, which is legally binding"[82]. Yet again, no suspension of its military support for Israel.

19. Germany did also not move after the Court of Appeal of The Hague concluded that there were "many indications that Israel has violated the humanitarian laws of war" and ordered the Kingdom of the Netherlands "to cease all (actual) export and transit of F-35 parts with final destination Israel"[83]. The Canadian Parliament recalled that "Israel must respect international humanitarian law and the price of defeating Hamas cannot be the continuous suffering of all Palestinian civilians"[84]; the Canadian Government stopped approving exports of military equipment, like other States before. Germany did not.

Members of the Court, if Germany might not have doubted the assurances of Israel in October 2023, as it claimed then, this is simply not tenable anymore. On 24 March, the Federal Foreign Minister referred to the "hell of Gaza" and the dire situation of people starving to death. She also underlined that "military action has its limits in international humanitarian law"[85]. During her visit in Tel Aviv, Ms Baerbock announced that Germany will send a delegation to Israel to discuss questions of international humanitarian law because: "As a signatory of the Geneva Convention, Ger[many] is obliged to remind all parties of their duty to abide by [international humanitarian

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[82] Israel/Palestine: Statement by the Foreign Ministers of Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden, Federal Foreign Office, Press Release, 19 February 2024, available at https://www.auswaertiges-amt.de/en/newsroom/news/israel-palestine/2644832.

[83] Netherlands, Court of Appeal The Hague, 12 February 2024, ECLI:NL:GHDHA:2024:191 (Application, Annex 14).

[84] Canada, House of Commons, 44th Parliament, 1st Session, Vote No. 658, 18 March 2024, available at https://www.ourcommons.ca/members/en/votes/44/1/658.

[85] Federal Foreign Minister Annalena Baerbock, X Post, 24 March 2024, available at https://x.com/ABaerbock/status/1771897515723362388?s=20. *See* also "For an immediate humanitarian pause which leads to a permanent ceasefire: Foreign Minister Baerbock travels to the Middle East once again", Federal Foreign Office, Article, 24 March 2024, available at https://www.auswaertiges-amt.de/en/aussenpolitik/baerbock-middle-east/2650230.

law].”[86] And still yesterday, it was reported that a group of 600 German civil servants was calling on the Government to cease armed deliveries to the Israeli Government with immediate effect, exactly because “Israel is committing crimes in Gaza that are in clear contradiction to international law and thus to the Constitution which we are bound to, as federal civil servants and public employees”.

20. Nevertheless, Germany still has not taken the decision to suspend its military support and the export of military equipment to Israel. Rather, in a recent response to a series of questions asked by members of the Bundestag, the Government reiterated its position that export licences will be considered on a case-by-case basis and in light of the specific circumstances[87]. Members of the Court, to put it simple: highest German officials have recognized that the situation in Gaza raises doubts about the respect of elementary rules of international law and that these questions need to be addressed; yet, while we speak, the export of German weapons and military equipment to Israel likely to be used for committing these grave violations of international law is continuing. The German Government has also not made any declaration concerning the stop of its military support to Israel after the United Nations Security Council “[d]emand[ed] an immediate ceasefire”[88]. Contrary to the Canadian or the Dutch Governments, it has not decided to stop nor suspend its supplies of arms to the Israeli Government, nor has it resumed its funding of UNRWA’s humanitarian operations in Gaza.

21. The fact that Germany is engaged in facilitating or improving humanitarian aid in Gaza and for its suffering people does not change the picture. It is indeed a pathetic excuse to the Palestinian children, women and men in Gaza to provide humanitarian aid, including through air drops, on the one hand, and to furnish the weapons and military equipment that are used to kill and annihilate them — and to kill also humanitarian aid workers as most recently evidenced by the missile attack against vehicles and workers of World Central Kitchen, on the other hand. Humanitarian aid in itself cannot “keep the hope for peace alive”, as demanded by Ms Baerbock, in

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[86] Richard Walker (Chief International Editor, DW), X Post, 26 March 2024, available at https://x.com/rbsw/status/1772660172139225416?s=20.

[87] Response of the Federal Government to the parliamentary question by Sevim Dağdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other members of the Bundestag and the BSW group, The Federal Government and the accusation of genocide levelled by South Africa against Israel before the International Court of Justice, Document No. 20/10579, 21 March 2024, available at https://dserver.bundestag.de/btd/20/108/2010806.pdf.

[88] United Nations, Security Council, resolution 2728 (2024), 25 March 2024, para. 1. *See* also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Request for the Modification of the Order of 26 January 2024 indicating Provisional Measures, Order of 28 March 2024*, para. 37.

particular if the safety of those delivering this aid is not guaranteed and their work hampered. To take the words of the European Union High Representative, Josep Borrell:

> "If you believe that too many people are being killed, maybe you should provide less arms in order to prevent so many people [from] being killed. . . . [I]t is a little bit contradictory to continue saying that there are too many people being killed: 'Too many people being killed. Please take care of people. Please do not kill so many'. Stop saying 'please' and do something."[89]

Yet, Germany continues to say "please" without doing what it is supposed to do — in fact, required under international law to do: stopping its support, in particular, its military support, and "ensur[ing] compliance by Israel with international humanitarian law"[90].

22. Mr President, this brings me to the last point I want to quickly touch upon: Germany did not only not do something about its military supply and aid; it also decided to suspend its contribution to UNRWA that is supposed to take care of people in Gaza.

23. There is no question that Germany fully appreciates the importance of UNRWA for the Palestinian people in Gaza and elsewhere in the Occupied Palestinian Territory. Before 7 October 2023, Germany was by far one of the most important donors to the Agency — its second most important contributor. After having suspended its development aid to the Occupied Palestinian Territory, in October 2023, the Federal Ministry for Economic Cooperation and Development released funds initially earmarked for UNRWA's operation in Gaza on 7 November 2023. The Federal Minister recognized then that "UNRWA is the most important partner for providing assistance to the people in the Gaza Strip"[91].

24. On 13 December 2023, the German authorities confirmed that the review of allegations of misuse was completed, and that the "safeguards are robust" and that "[n]o indications of the misuse

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[89] Remarks by High Representative Josep Borrell at the press conference, European Union External Action Service, Informal Foreign Affairs Council (Development), 12 February 2024, available at https://www.eeas.europa.eu/eeas/informal-foreign-affairs-council-development-remarks-high-representative-josep-borrell-press_en. *See* also Application, para. 54.

[90] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 200, para. 159.

[91] "Development Ministry releases funding for UNRWA", Press Release, 7 November 2023, available at https://www.bmz.de/en/news/press-releases/development-ministry-releases-funding-for-unrwa-188032.

of funding have been found"[92]. They further explained and recognized the central role of UNRWA for the Palestinian people in Gaza:

> "The first focus of the review was activities that ensure the provision of basic services for the people, especially for particularly vulnerable groups. That is why the projects run by the [UNRWA], which provide life-saving services, were first reviewed and approved, followed by projects under Germany's transitional development assistance, which are making a direct contribution towards services for civilians in the current crisis."[93]

The central and vital role of the Agency for the Palestinian people and its sheer existence, fully recognized and endorsed by the Federal Republic, had also been recalled by the United Nations Secretary-General: UNRWA was and remains the "backbone of the humanitarian distribution in Gaza . . . No other organization has a meaningful presence inside Gaza and . . . there is no other organization that would be able now to replace [UNRWA]."[94] This remains the case today, as recently recalled last Friday in the Security Council[95] and in the Human Rights Council[96].

25. Nevertheless, and in full knowledge of the consequences, Germany suspended its funding of UNRWA's operation in January 2024 amidst still unsupported accusations against the Agency[97], and this despite immediate action taken by UNRWA to address these accusations and Germany's previous own assessment of the robustness of the control mechanisms. The suspension of funding deprived the Agency of US$450 million with no capacity to absorb this financial shock, in particular in the pressing situation of war raging in Gaza[98]. UNRWA's Commissioner-General urged "countries who have suspended their funding to re-consider their decisions before UNRWA is forced to suspend

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[92] "Following review of safeguards, Germany resumes development cooperation with Palestinian territories", Press Release, 13 December 2023, available at https://www.bmz.de/en/news/press-releases/development-cooperation-with-palestinian-territories-resumed-195860.

[93] *Ibid.*

[94] Press Conference by Secretary-General Antonio Guterres at United Nations Headquarters, 8 February 2024, available at https://press.un.org/en/2024/sgsm22130.doc.htm. *See* also Application, para. 60.

[95] "Speakers in Security Council Condemn Deadly Israeli Airstrikes on Aid Workers in Gaza, Urge Immediate Action to End Violations of International Humanitarian Law", Meeting Coverage, Security Council, 9596th meeting, SC/15653, 5 April 2024, available at https://press.un.org/en/2024/sc15653.doc.htm.

[96] United Nations, Human Rights Council, resolution 55/…, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice, doc. A/HRC/55/L.30, 5 April 2024, para. 32.

[97] "UNRWA's lifesaving aid may end due to funding suspension", UNRWA, Official Statement, 27 January 2024, available at https://www.unrwa.org/newsroom/official-statements/unrwa%E2%80%99s-lifesaving-aid-may-end-due-funding-suspension; Joint statement on UNRWA by the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development, 27 January 2024, available at https://www.auswaertiges-amt.de/en/newsroom/news/-/2641762.

[98] Statement of the Commissioner-General of UNRWA to the General Assembly, 4 March 2024, available at https://www.unrwa.org/newsroom/official-statements/statement-commissioner-general-unrwa-general-assembly.

its humanitarian response. The lives of people in Gaza depend on this support and so does regional stability."[99]

26. Germany acknowledged, while still authorizing supply of military equipment, that "the humanitarian situation in Gaza is catastrophic and the situation of the people there is becoming more desperate with each passing day"[100]. Yet, it has not, to this day, resumed the funding of the operations of UNRWA in Gaza, which are needed more than ever. Nicaragua does of course welcome the decision of the German authorities to provide new funds to UNRWA's operations in Jordan, Lebanon, Syria and the West Bank. But still, the much-needed support for the Agency's central and life-saving operations in Gaza remains suspended[101]. This unjustified decision contributes to the suffering in Gaza, where children, women and men are starving; a situation created by the attempts to ensure the defunding of the Agency. According to UNRWA it is lacking 35 per cent of the forecasted income for 2024. For good reason, this Court has considered on 28 March 2024 that in view of the worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation, it is necessary to "[t]ake all necessary and effective measures to ensure, without delay, in full co-operation with the United Nations, the unhindered provision at scale by all concerned of urgently needed basic services and humanitarian assistance"[102].

Mr President, Members of the Court, I thank you for your attention. Mr President, may I ask you to give the floor to Professor Alain Pellet.

The PRESIDENT: I thank Mr Müller for his statement. J'appelle maintenant M. le professeur Alain Pellet à la barre. Vous avez la parole, Monsieur le professeur.

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[99] "UNRWA's lifesaving aid may end due to funding suspension", UNRWA, Official Statement, 27 January 2024, available at https://www.unrwa.org/newsroom/official-statements/unrwa%E2%80%99s-lifesaving-aid-may-end-due-funding-suspension.

[100] Federal Foreign Office on the European Commission's decision to release an instalment of funding for UNRWA, Press Release, 1 March 2024, available at https://www.auswaertiges-amt.de/de/newsroom/-/2647058.

[101] Joint statement by the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development on UNRWA, Federal Foreign Office, Press Release, 25 March 2024, available at https://www.auswaertiges-amt.de/en/newsroom/news/unrwa/2650308.

[102] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Request for the Modification of the Order of 26 January 2024 indicating Provisional Measures, Order of 28 March 2024*, para. 51 (2) *(a)*.

M. PELLET :

LES MANQUEMENTS DE L'ALLEMAGNE À SES OBLIGATIONS EN VERTU DU DROIT INTERNATIONAL

1. Monsieur le président, Mesdames et Messieurs de la Cour, l'Allemagne n'est pas juridiquement responsable de l'enfer qui s'est installé à Gaza. Ou plutôt, elle ne l'est que de *ses* propres manquements à *ses* propres obligations internationales liés à cette épouvantable situation. Et elle l'est dans la mesure où *ses* manquements ont rendu possibles, ou facilité, les violations graves des normes fondamentales du droit international général commises à l'encontre du peuple palestinien — non seulement dans la bande de Gaza, mais également dans les territoires occupés et en Israël même. C'est ce qui justifie la requête du Nicaragua contre l'Allemagne aussi bien que la demande en indication de mesures conservatoires qui motive l'audience de ce jour.

2. Je pense pouvoir passer rapidement sur la question du *jus standi* du Nicaragua. Comme vous l'avez excellemment rappelé dans votre ordonnance du 26 janvier dernier en vous référant à l'affaire qui oppose la Gambie au Myanmar[103], « tous les États parties à la convention sur le génocide ont, en souscrivant aux obligations contenues dans cet instrument, un intérêt commun à veiller à ce que le génocide soit prévenu, réprimé et puni ». Ce sont des obligations *erga omnes partes*, que « chaque État partie a un intérêt à [faire] respect[er] …, notamment par l'introduction d'une instance devant la Cour »[104].

3. *Mutatis mutandis*, il en va de même dans la présente affaire : l'Allemagne et le Nicaragua sont parties à la convention sur le génocide[105], dont ils tirent, l'une et l'autre, des obligations et des droits qu'ils sont fondés à invoquer devant vous.

4. Toutefois, notre agent y a insisté, les demandes du Nicaragua ne se limitent pas à des violations de la convention de 1948. Elles portent également sur les violations par l'Allemagne des obligations qui lui incombent en vertu des quatre conventions de Genève de 1949, y compris la

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[103] *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), exceptions préliminaires, arrêt, C.I.J. Recueil 2022 (II)*, p. 516-517, par. 107-108 et 112.

[104] *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël)*, *mesures conservatoires, ordonnance du 26 janvier 2024*, par. 33.

[105] Convention pour la prévention et la répression du crime de génocide, signée à Paris le 9 décembre 1948, entrée en vigueur le 12 janvier 1951, *Recueil des traités des Nations Unies*, vol. 78, p. 277. Le Nicaragua a accédé à la convention le 29 janvier 1952 ; l'Allemagne, le 24 novembre 1954.

quatrième, relative à la protection des personnes civiles en temps de guerre, et de leurs protocoles de 1966. Nos demandes portent aussi sur d'autres de ces manquements de l'Allemagne à d'autres traités pertinents protégeant les droits de l'homme ou concernant le droit international humanitaire. Toutes ces conventions énoncent des obligations *erga omnes partes* que tout État partie a un intérêt juridique à faire respecter, y compris par l'introduction d'une instance devant la Cour. Comme vous l'avez souligné dans l'avis sur le *Mur*,

> « tous les États parties à la convention de Genève relative à la protection des personnes civiles en temps de guerre, du 12 août 1949, ont l'*obligation*, dans le respect de la Charte des Nations Unies et du droit international, de faire respecter par Israël le droit international humanitaire incorporé dans cette convention »[106].

5. En outre, en tant que membre de la communauté internationale des États, le Nicaragua prie la Cour de constater et sanctionner les violations graves par l'Allemagne des obligations lui incombant en vertu de normes impératives du droit international général dans ces mêmes domaines : qu'il s'agisse de ses devoirs de prévention et de répression des crimes de génocide ou d'apartheid, de violations de principes fondamentaux en matière de droits de l'homme ou de droit humanitaire ou de son droit à demander réparation dans l'intérêt du peuple palestinien. Ici encore, les constatations faites par la Cour dans *Gambie c. Myanmar* et rappelées dans votre ordonnance du 26 janvier doivent s'appliquer pleinement.

6. Comme vous l'avez indiqué dans votre avis consultatif sur la *Licéité de la menace ou de l'emploi d'armes nucléaires* et rappelé dans celui sur le *Mur*,

> « un grand nombre de règles du droit humanitaire applicable dans les conflits armés sont si fondamentales pour le respect de la personne humaine et pour des "considérations élémentaires d'humanité" ... , qu'elles "s'imposent ... à tous les États, qu'ils aient ou non ratifié les instruments conventionnels qui les expriment, parce qu'elles constituent des principes intransgressibles du droit international coutumier"… De l'avis de la Cour, les règles en question incorporent des obligations revêtant par essence un caractère *erga omnes*. »[107]

7. Je remarque en tout état de cause que, à ce stade, il vous incombe seulement de vous prononcer sur votre compétence *prima facie*, sans que vous ayez besoin de vous « assurer de manière

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[106] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif*, *C.I.J. Recueil 2004 (I)*, p. 200, par. 159 (les italiques sont de nous). Voir aussi Comité international de la Croix-Rouge, *Base de données de droit international coutumier* (2005), règle 144. Faire respecter le droit international humanitaire *erga omnes.* Les italiques sont de nous.

[107] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif*, *C.I.J. Recueil 2004 (I)*, p. 199, par. 157, citant *Licéité de la menace ou de l'emploi d'armes nucléaires, avis consultatif, C.I.J. Recueil 1996 (I)*, p. 257, par. 79.

définitive qu[e vous avez] compétence quant au fond de l'affaire »[108]. *A fortiori*, vous n'êtes pas appelés aujourd'hui, Mesdames et Messieurs les juges, à exercer votre compétence au fond : à ce stade, il vous appartient seulement d'indiquer les mesures urgentes de nature à « sauvegarder ... les droits que l'arrêt qu[e vous aurez] ultérieurement à rendre pourrait reconnaître » au Nicaragua[109]. C'est que la jurisprudence de la Cour repose « sur une distinction entre deux notions différentes : d'une part, *l'existence* de la compétence de la Cour et, de l'autre, *l'exercice* de cette compétence, lorsqu'elle est établie »[110]. Qu'en l'espèce la compétence de la Cour soit établie *prima facie* pour se prononcer sur la requête ne peut faire aucune espèce de doute : votre jurisprudence récente le confirme à suffisance et cela suffit pour vous donner également compétence pour indiquer les mesures conservatoires demandées.

8. Cela suffit aussi pour écarter l'objection, que l'Allemagne ne manquera très probablement pas d'invoquer demain, fondée sur le principe de l'*Or monétaire* — alors même qu'il s'agit, par excellence, d'une question qui relève non pas de l'existence de la compétence — qui ne saurait faire de doute — mais de son exercice[111].

9. Même si les circonstances dramatiques de l'affaire qui vous est soumise aujourd'hui ne se prêtent guère à l'exposé d'états d'âme doctrinaux, permettez-moi de dire, Monsieur le président, que je n'ai jamais compris l'utilité de ce prétendu « principe ». Bien qu'il ait été énoncé dans une affaire présentant des caractéristiques tout à fait exceptionnelles, la Cour y a proclamé son attachement à plusieurs reprises (au prix d'acrobaties intellectuelles qui me semblent parfois outrancières). S'il s'agit seulement de dire que la compétence de la Cour est fondée sur le consentement, l'article 59, combiné avec les possibilités d'intervention que le Statut offre aux États, en tant que parties ou non, me paraît suffire à la besogne. Comme vous l'avez d'ailleurs rappelé citant l'arrêt n° 11 de la Cour

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[108] *Allégations de génocide au titre de la convention pour la prévention et la répression du crime de génocide (Ukraine c. Fédération de Russie), mesures conservatoires, ordonnance du 16 mars 2022, C.I.J. Recueil 2022 (I)*, p. 217-218, par. 24, renvoyant à *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar), mesures conservatoires, ordonnance du 23 janvier 2020, C.I.J. Recueil 2020*, p. 9, par. 16.

[109] Voir *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), mesures conservatoires, ordonnance du 1er décembre 2023*, par. 19. Voir aussi *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Émirats arabes unis), mesures conservatoires, ordonnance du 14 juin 2019, C.I.J. Recueil 2019 (I)*, p. 361, par. 17 ; ou *Anglo-Iranian Oil Co. (Royaume-Uni c. Iran), mesures conservatoires, ordonnance du 5 juillet 1951, C.I.J. Recueil 1951*, p. 93.

[110] *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela), exception préliminaire, arrêt du 6 avril 2023*, par. 64 (les italiques sont de nous).

[111] Voir notamment *ibid*., par. 107.

permanente, « le but de l'article 59 est ... d'éviter que des principes juridiques admis par la Cour dans une affaire déterminée soient obligatoires pour d'autres États ou d'autres litiges »[112]. Et « [i]l résulte clairement de cette dernière disposition que les principes et règles de droit international que la Cour aura estimés applicables » dans les relations entre le Nicaragua et l'Allemagne « et les indications qu'elle aura données quant à leur application pratique, ne pourront pas être invoqués par les Parties à l'encontre de tout autre État »[113].

10. Mais admettons que le « principe de l'*Or monétaire* » soit autre chose qu'une invention prétorienne conjoncturelle et, sinon superflue, du moins clairement sans pertinence en la présente espèce, et prenons-le sérieusement. Deux arguments au moins doivent vous conduire, Mesdames et Messieurs les juges, à l'écarter :

— D'une part, comme je viens de le dire, la question ne se pose pas au stade des mesures conservatoires, dans lequel il ne vous est pas demandé de vous prononcer au fond sur la situation juridique ou factuelle résultant de la violation des principes juridiques applicables.

— D'autre part, et de toute manière, il ne suffit pas que l'arrêt à intervenir soit « susceptible d'avoir des incidences sur les intérêts juridiques d'un État qui n'est pas partie à l'instance »[114] pour que le « principe » de l'*Or monétaire*, si principe il y a, trouve à s'appliquer. Dans les termes mêmes utilisés dans l'arrêt de 1954, il n'en va ainsi que si « *la question essentielle* ("the vital issue") à trancher a trait à la responsabilité internationale d'un État tiers »[115]. C'était le cas dans l'espèce très particulière de 1954 dans laquelle l'Italie demandait expressément à la Cour de décider que les gouvernements des États défendeurs lui remettent la quote-part d'or monétaire normalement dévolue à l'Albanie[116]. Mais ce n'est pas le cas dans l'affaire qui nous occupe aujourd'hui, dans laquelle *aucune* demande ne porte sur un droit quelconque d'un État tiers. La position prise par

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[112] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 26, par. 42, citant *Interprétation des arrêts n^os^ 7 et 8 (usine de Chorzów), arrêt n^o^ 11, 1927, C.P.J.I. série A n^o^ 13*, p. 21.

[113] *Plateau continental (Jamahiriya arabe libyenne/Malte), requête à fin d'intervention, arrêt, C.I.J. Recueil 1984*, p. 26, par. 42.

[114] *Timor oriental (Portugal c. Australie), arrêt, C.I.J. Recueil 1995*, p. 104, par. 34.

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

[116] *Ibid.*, p. 22.

la Cour dans l'affaire de l'*Or monétaire* ne saurait être utilisée pour empêcher la Cour de se prononcer sur des demandes concernant un État qui accepte de se présenter devant elle.

11. Monsieur le président, c'est évidemment la requête qui, dans chaque affaire, permet de déterminer quelle est la « question essentielle à trancher »[117]. En l'occurrence, la lecture de la requête introduite par le Nicaragua le 1er mars ne laisse aucun doute sur son objet : il n'est pas de savoir si *Israël* a manqué à ses obligations internationales mais bien si l'*Allemagne* a manqué aux siennes.

12. Dans votre ordonnance du 26 janvier, vous avez considéré que « la Cour n'est pas appelée à se prononcer définitivement sur le point de savoir si les droits que l'Afrique du Sud souhaite voir protégés existent »[118]. Il en va de même dans la présente espèce, dans laquelle, à ce stade, la Cour est seulement appelée à « déterminer si les droits que l[e Nicaragua] revendique et dont [il] sollicite la protection sont plausibles »[119].

13. Ici encore, je ne pense pas qu'il soit nécessaire de vous faire perdre un temps précieux, ni de dilapider les minutes comptées dont nous disposons, pour développer exagérément ce moyen. Dans votre sagesse, vous avez limité et vous limitez de plus en plus drastiquement le temps laissé aux échanges contradictoires entre les Parties. Dans cette même ordonnance du 26 janvier, vous vous êtes déclarés

> « d'avis que les faits et circonstances [que vous aviez relevés alors] suffis[ai]ent pour conclure qu'au moins certains des droits que l'Afrique du Sud revendique et dont elle sollicite la protection sont plausibles. Il en va ainsi du droit des Palestiniens de Gaza d'être protégés contre les actes de génocide et les actes prohibés connexes visés à l'article III [de la convention sur le génocide] et du droit de l'Afrique du Sud de demander qu'Israël s'acquitte des obligations lui incombant au titre de la convention. »[120]

14. Comme cela résulte des faits exposés par Daniel Müller, ceci est encore bien plus « plausible » — pour ne pas dire avéré — aujourd'hui. Vous l'avez confirmé dans votre ordonnance du 28 mars en visant : « les conditions désastreuses dans lesquelles vivent les Palestiniens de la bande

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[117] Voir *Ahmadou Sadio Diallo (République de Guinée c. République démocratique du Congo), arrêt, C.I.J. Recueil 2010 (II)*, p. 656, par. 39 ; *Essais nucléaires (Australie c. France), arrêt, C.I.J. Recueil 1974*, p. 263, par. 30 ; *Compétence en matière de pêcheries (Espagne c. Canada), compétence de la Cour, arrêt, C.I.J. Recueil 1998*, p. 449, par. 31.

[118] *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël)*, *mesures conservatoires, ordonnance du 26 janvier 2024*, par. 36.

[119] *Ibid.*

[120] *Ibid.*, par. 54.

de Gaza se sont, depuis [le 26 janvier], encore détériorées »[121] et « la situation actuelle dont [la Cour] est saisie entraîne un risque accru qu'un préjudice irréparable soit causé aux droits plausibles »[122] du peuple palestinien à Gaza.

15. Les mesures sollicitées par le Nicaragua visent la protection de son droit à voir l'Allemagne respecter ses obligations en vertu de la convention sur le génocide ainsi que celle des droits concomitants du peuple palestinien qui est directement lésé par le comportement de l'Allemagne[123]. C'est un droit ; c'est aussi une obligation conventionnelle.

16. Le même raisonnement s'impose, sans la moindre hésitation, s'agissant de la violation des grands traités protecteurs des droits humains ou de ceux qui codifient le droit international humanitaire que j'ai énumérés tout à l'heure : en témoignent effroyablement l'enfer de Gaza, dont vous avez fait état vous-mêmes[124], les exactions perpétuées par les colons israéliens dans le Territoire palestinien occupé, avec le soutien du Gouvernement israélien, dont sont victimes, dans des proportions croissantes, les Palestiniens de Cisjordanie.

17. Ici encore, Monsieur le président, je ne pense pas qu'il faille être devin pour anticiper les protestations de la Partie allemande :

> « Oui, la situation humanitaire à Gaza est préoccupante et nous — c'est l'Allemagne que je fais parler — nous nous en inquiétons et l'avons fait savoir ; mais nous n'y sommes pour rien : nous ne commettons aucun des actes génocidaires énumérés à l'article II de la convention de 1948 et n'avons nullement l'intention de détruire, en tout ou en partie, "[le] groupe national, ethnique, racial ou religieux" — quelle qu'en soit la définition — que constitue le peuple palestinien. »

Et je ne doute pas que cette attitude à la Ponce Pilate s'exprimera, avec une égale bonne conscience, au sujet des violations des droits humains et du droit humanitaire : « il n'y a pas de soldat allemand à Gaza ni dans le Territoire palestinien occupé ; et il faut comprendre — et on ne peut qu'approuver — le droit d'Israël de se défendre ». À moins que, pris de scrupules, mes amis de

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[121] *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël)*, *mesures conservatoires, ordonnance du 28 mars 2024*, par. 18.

[122] *Ibid.*, par. 40.

[123] Voir *Affaire Jadhav (Inde c. Pakistan), mesures conservatoires, ordonnance du 18 mai 2017, C.I.J. Recueil 2017*, p. 243, par. 48. Voir aussi *LaGrand (Allemagne c. États-Unis d'Amérique), mesures conservatoires, ordonnance du 3 mars 1999, C.I.J. Recueil 1999 (I)*, p. 15, par. 24. Voir aussi l'article 48 des Articles de la CDI sur la responsabilité de l'État pour fait internationalement illicite.

[124] *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël)*, *mesures conservatoires, ordonnance du 26 janvier 2024*, par. 67-72. Voir aussi, dans la même affaire, l'ordonnance en indication de mesures conservatoires en date du 28 mars 2024, par. 18-21 et par. 30-39.

l'autre côté de la barre fassent preuve de retenue sur ce point tant la disproportion de la riposte à l'attaque du Hamas du 7 octobre est monstrueuse, et alors que rien ne saurait, de toute manière, justifier le ciblage systématique des hôpitaux, des écoles et des distributions de vivres encore effectuées par les rares ONG qui arrivent à subsister à Gaza... Quoi qu'il en soit, il ne paraît pas douteux que l'Allemagne plaidera demain : « C'est pas moi, Monsieur le président ! C'est pas moi, Monsieur le président ! »

18. Si tel est le cas, c'est qu'elle se sera trompée de procès. L'objet de celui qui nous réunit est exposé de façon claire et précise dès le paragraphe 3 de la requête et réitéré dans les conclusions de celle-ci. Ce que le Nicaragua reproche à l'Allemagne :

— ce n'est pas (sous une réserve sur laquelle je reviendrai dans un instant) de commettre un génocide dans la bande de Gaza ou en Palestine, mais c'est d'avoir manqué — et de manquer — à *ses* obligations — aux siennes propres — d'empêcher que ce génocide soit commis, et de punir les personnes qui le commettent ou qui se livrent à l'un quelconque des actes énumérés aux articles II et III de la convention ;

— ce n'est pas de violer les obligations s'imposant aux belligérants — ce que l'Allemagne n'est pas — dans le conflit israélo-palestinien, ni à celles qui s'imposent plus spécialement aux puissances occupantes, ce que l'Allemagne n'est pas davantage ; ce que le Nicaragua lui reproche c'est de ne pas respecter les obligations qui lui incombent, *à elle*, Allemagne, en vertu du droit international humanitaire, qu'il lui appartient de faire respecter en toutes circonstances *y compris* en s'acquittant de son obligation de poursuivre, de juger et de punir les personnes responsables ou accusées de crimes graves au regard du droit international, qu'il s'agisse de génocide, de crimes de guerre ou d'apartheid. Loin de s'en acquitter, c'est pour l'Allemagne « business as usual » ou plutôt, comme Daniel Müller l'a expliqué[125], « business better than usual » : les ventes d'armes n'ont pas cessé, elles se sont amplifiées très considérablement ;

— le Nicaragua ne reproche pas non plus à l'Allemagne de pratiquer une politique d'apartheid contre le peuple palestinien ou de nier son droit à l'autodétermination. Ce qu'il lui reproche, c'est d'apporter une aide et une assistance au maintien de la discrimination raciale systématique et du

[125] Voir par. 13-15 de la plaidoirie de ce jour de Daniel Müller.

régime d'apartheid dont ce peuple est victime, et de ne pas s'acquitter de son obligation de coopérer à la réalisation de son droit à disposer de lui-même, en fournissant à Israël une aide, notamment militaire, utilisée — et utilisable — pour en empêcher l'exercice ;

— et c'est bien *à* l'*Allemagne*, pas à un autre État, pas à Israël, que le Nicaragua reproche d'avoir privé l'Office de secours et de travaux des Nations Unies pour les réfugiés de Palestine dans le Proche-Orient (UNRWA) de son aide financière pour ses activités à Gaza, l'empêchant ainsi de jouer son rôle humanitaire, irremplaçable dans l'enclave, au moment où ce rôle est pourtant le plus indispensable, en y facilitant du même coup les exactions israéliennes et en aggravant la famine, le manque d'eau et de soins médicaux et l'aggravation de la catastrophe humanitaire.

19. Il en va de même de la demande en indication de mesures conservatoires dont notre agent va lire la version finale dans quelques minutes. Dans les limites inhérentes à la compétence de la Cour[126], elles concernent toutes et exclusivement la seule Allemagne, qu'il s'agisse :

— de la suspension immédiate *par l'Allemagne* de son aide à Israël, en particulier militaire, dans la mesure où elle est susceptible d'être utilisée pour violer la convention sur le génocide, ou d'autres normes impératives du droit international général notamment en matière humanitaire ;

— du déploiement *par l'Allemagne* de tous les efforts nécessaires en vue de s'assurer que les armes déjà livrées à Israël ne soient pas utilisées pour commettre un génocide ou de manière à violer le droit international humanitaire ; ou encore

— de la révocation *par l'Allemagne* de sa décision de suspendre ses contributions aux opérations de l'UNRWA à Gaza, dans le cadre du respect de ses obligations de prévention du génocide et de violations graves du droit international humanitaire.

Il s'agit de demandes précises et spécifiques qui concernent toutes la seule Allemagne et qui sont toutes de nature à alléger dans l'immédiat les souffrances du peuple palestinien et les atteintes aux principes les plus fondamentaux du droit humanitaire, ainsi qu'à atténuer la pression génocidaire dont ce peuple est victime.

20. Monsieur le président, je n'entends pas entrer dans le détail des griefs du Nicaragua à l'égard de l'Allemagne mais je voudrais donner quelques exemples de leur existence autonome par

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[126] *Application de la convention pour la prévention et la répression du crime de génocide dans la bande de Gaza (Afrique du Sud c. Israël)*, *mesures conservatoires, ordonnance du 28 mars 2024*, par. 44.

rapport à ceux qui pourraient être adressés à Israël si ce pays acceptait la compétence de la Cour hors la seule exception de l'article VIII de la convention sur le génocide.

21. Mais commençons par celui-ci, par le génocide. Je l'ai dit, sauf sur un point — il est vrai important —, le Nicaragua n'accuse pas l'Allemagne de commettre un génocide contre le peuple palestinien à Gaza ou ailleurs. Ce dont il la rend responsable au premier chef, c'est de manquer à *son* obligation de prévenir et réprimer le crime de génocide, obligation qui pèse sur toutes les parties à la convention de 1948. Cela ressort du titre complet de la convention et de son article premier, dans lequel « [l]es Parties contractantes confirment que le génocide, qu'il soit commis en temps de paix ou en temps de guerre, est un crime du droit des gens, *qu'elles s'engagent à prévenir et à punir* »[127]. Comme la Cour l'a souligné avec une grande fermeté dans la première affaire contentieuse sur le génocide qui lui a été soumise, « [l]'obligation *pour chaque État contractant* de prévenir le génocide revêt une portée normative et un caractère obligatoire »[128]. L'Allemagne en est d'ailleurs bien consciente : elle s'est réclamée de ce devoir pour intervenir dans l'affaire du génocide contre les Rohingya[129] et s'en est expliquée plus précisément encore dans une déclaration du ministère fédéral des affaires étrangères du 17 novembre 2023 :

> « Germany feels it has a special responsibility to contribute to the fight against and the prevention and investigation of any potential genocide and to send a message that states will be held accountable for all acts of genocide. Genocide concerns us all, wherever in the world it occurs. »[130]

22. C'est *cette* obligation que l'Allemagne n'a pas respectée ; c'est *ce* manquement que vous serez appelés à apprécier lors de l'examen de l'affaire au fond — et je rappelle au passage qu'il s'agit d'une obligation de comportement et non de résultat, ce qui la différencie de celle de ne pas commettre un génocide comme la Cour l'a également relevé dans son arrêt de 2007[131]. Il en résulte — et c'est fondamental en ce qui nous concerne — que

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[127] Les italiques sont de nous. Voir aussi l'article VIII.

[128] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 220, par. 427 (les italiques sont de nous).

[129] Cf. *Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar) – Intervention*, déclaration conjointe de l'Allemagne, du Canada, du Danemark, de la France, des Pays-Bas et du Royaume-Uni, 15 novembre 2023, notamment par. 9-10.

[130] Federal Foreign Office, Statement on Germany's intervention in the proceedings against Myanmar in the International Court of Justice for alleged genocide, 17 novembre 2023, accessible à l'adresse suivante : https://www.auswaertiges-amt.de/en/newsroom/news/-/2632040 (dernière consultation, 4 avril 2024).

[131] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 221, par. 430.

> « l'obligation qui s'impose aux États parties est ... de mettre en œuvre *tous les moyens qui sont raisonnablement à leur disposition en vue d'empêcher, dans la mesure du possible, le génocide*. La responsabilité d'un État ne saurait être engagée pour la seule raison que le résultat recherché n'a pas été atteint ; elle l'est, en revanche, si l'État a manqué manifestement de mettre en œuvre les mesures de prévention du génocide qui étaient à sa portée, et qui auraient pu contribuer à l'empêcher. »[132]

23. Je sais bien, Monsieur le président, que « la responsabilité d'un État pour violation de l'obligation de prévenir le génocide n'est susceptible d'être retenue que si un génocide a effectivement été commis »[133]. Mais, comme la Cour l'a précisé également,

> « [c]ela ne signifie évidemment pas que l'obligation de prévenir le génocide ne prend naissance qu'au moment où le génocide commence à être perpétré, ce qui serait absurde, puisqu'une telle obligation a précisément pour objet d'empêcher, ou de tenter d'empêcher, la survenance d'un tel acte ».

Ce devoir de prévention et d'action prend naissance au moment où l'État

> « a connaissance, ou devrait normalement avoir connaissance, de l'existence d'un risque sérieux de commission d'un génocide. Dès cet instant, l'État est tenu, s'il dispose de moyens susceptibles d'avoir un effet dissuasif à l'égard des personnes soupçonnées de préparer un génocide, ou dont on peut raisonnablement craindre qu'ils nourrissent l'intention spécifique (*dolus specialis*), de mettre en œuvre ces moyens, selon les circonstances. »[134]

Il ne saurait faire de doute, Monsieur le président, qu'au point où nous en sommes, pour tout observateur, pour tout État de bonne foi, le « seuil de prise de conscience » est largement franchi : la plausibilité d'un génocide ou d'un apartheid, la matérialité des violations massives des règles les plus fondamentales du droit international humanitaire sont amplement dépassées.

24. Au demeurant, au stade des mesures conservatoires, il vous suffit de déterminer d'une part, la plausibilité qu'un génocide soit commis contre le peuple palestinien et, d'autre part, la plausibilité que l'Allemagne ne se soit pas acquittée de son obligation « de mettre en œuvre tous les moyens qui sont raisonnablement à [sa] disposition en vue d'empêcher, dans la mesure du possible, le génocide »[135] et la violation de nombreux autres principes intransgressibles qui sont en cause.

25. Sur la plausibilité d'un génocide, vous vous êtes prononcés par vos ordonnances du 26 janvier et du 28 mars derniers et, malheureusement, les choses n'ont fait qu'empirer depuis lors comme Daniel Müller l'a montré et elles empirent de jour en jour. J'ajoute que des actes qui, selon

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[132] *Ibid.* (les italiques sont de nous).

[133] *Ibid.*, par. 431.

[134] *Ibid.*

[135] Voir note 125 *supra.*

toute vraisemblance, relèvent de la définition du génocide, sont commis ailleurs qu'à Gaza sur le Territoire palestinien occupé. Or l'Allemagne non seulement n'a pas eu recours à tous les moyens dont elle disposait, notamment en tant que l'un des proches alliés d'Israël, pour faire cesser ces actes probables de génocide, mais elle continue à autoriser la livraison à une large échelle d'armes qui peuvent être utilisées pour les commettre.

26. Toujours s'agissant du génocide, il y a autre chose. L'article III de la convention de 1948, actuellement projeté, incrimine non seulement le génocide lui-même, tel qu'il est défini à l'article II, mais aussi, entre autres, « [l]a complicité dans le génocide ». Et, dans son arrêt de 2007, la Cour a affirmé, avec une grande netteté, que « la "complicité" au sens *litt. e)* de l'article III de la convention englobe sans nul doute la fourniture de moyens destinés à permettre ou à faciliter la commission du crime »[136].

27. Élaborant davantage, vous avez relevé

> « que si la "complicité" est, comme telle, une notion absente de l'actuelle terminologie du droit de la responsabilité internationale, elle se rapproche d'une catégorie qui est présente dans les règles coutumières qui composent le droit de la responsabilité des États, celle de l'"aide ou assistance" fournie par un État à la commission d'un fait illicite par un autre État »[137].

Vous vous êtes référés à cet égard à l'article 16 des Articles de la Commission du droit international (CDI) sur la responsabilité de l'État, qui exprime, vous le précisez, « la règle *coutumière* suivante » :

> « L'État qui aide ou assiste un autre État dans la commission du fait internationalement illicite par ce dernier est internationalement responsable pour avoir agi de la sorte dans le cas où :
>
> *a)* Ledit État agit en connaissance des circonstances du fait internationalement illicite ; et
>
> *b)* Le fait serait internationalement illicite s'il était commis par cet État. »

Et vous avez précisé ne pas apercevoir « de raison d'établir une différence substantielle entre la "complicité dans le génocide" au sens du *litt. e)* de l'article III de la convention et l'"aide ou assistance" d'un État à la commission d'un acte illicite par un autre État au sens de l'article 16 précité »[138].

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[136] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 217, par. 419.

[137] *Ibid.*

[138] *Ibid.*, p. 217, par. 420.

28. Comme le Nicaragua l'a montré dans sa requête[139], également complétée sur ce point par Me Müller, l'Allemagne avait et a pleinement connaissance des risques d'utilisation des armes qu'elle fournissait — et qu'elle continue de fournir — à Israël en vue de commettre un génocide contre le peuple palestinien. Et il va de soi que le génocide en question serait internationalement illicite s'il était commis par l'Allemagne elle-même. Il est urgentissime que celle-ci suspende enfin l'aide et l'assistance qu'elle fournit à cette fin ; ces aides et assistances entrent pleinement dans la définition de la complicité incriminée, en tant que telle, par l'article III de la convention.

29. L'urgence de mettre fin à la livraison d'armes qui permettent à Israël de mener son entreprise mortifère a encore été rappelée tout dernièrement par le Conseil des droits de l'homme (CDH)[140] et par la rapporteuse spéciale sur les territoires palestiniens occupés. Cette dernière a affirmé, je cite — en anglais faute de version française disponible :

> « The Special Rapporteur urges member states to enforce the prohibition of genocide in accordance with their non-derogable obligations. Israel and those states that have been complicit … must be held accountable and deliver reparations commensurate with the destruction, death and harm inflicted on the Palestinian people. »[141]

Ms Albanese called upon all States to « [i]mmediately implement an arms embargo on Israel, as it appears to have failed to comply with the binding measures ordered by the ICJ on 26 January 2024 »[142].

30. Dans sa résolution de vendredi dernier, adoptée malgré le vote négatif de l'Allemagne, le Conseil des droits de l'homme a également

> « *[e]xhort[é]* tous les États à continuer de fournir au peuple palestinien une aide d'urgence, notamment une assistance humanitaire et une aide au développement, pour remédier à la crise financière et à la situation socioéconomique et humanitaire désastreuse, en particulier dans la bande de Gaza, soulign[é] le rôle de premier plan que joue l'[UNRWA], qui fournit des services essentiels à des millions de Palestiniens dans la région, et demand[é] à tous les États de veiller à ce que l'Office reçoive un financement prévisible, durable et suffisant pour pouvoir s'acquitter de son mandat »[143].

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[139] Nicaragua, *Application instituting proceedings and request for the indication of provisional measures*, notamment par. 16 et 50 ; voir aussi par. 16-23 de la plaidoirie de ce jour de M. Daniel Müller.

[140] CDH, Situation des droits de l'homme dans le Territoire palestinien occupé, y compris Jérusalem-Est, et obligation de garantir les principes de responsabilité et de justice, projet A/HRC/55/L.30 tel que révisé oralement.

[141] CDH, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, Anatomy of a Genocide, A/HRC/55/73, par. 96.

[142] *Ibid*., par. 97 *a)*.

[143] CDH, Situation des droits de l'homme dans le Territoire palestinien occupé, y compris Jérusalem-Est, et obligation de garantir les principes de responsabilité et de justice, projet A/HRC/55/L.30 tel que révisé oralement.

Le Nicaragua vous invite, Mesdames et Messieurs de la Cour, à joindre votre voix — revêtue de la force obligatoire qui s'y attache — à celles de la rapporteuse spéciale et du Conseil des droits de l'homme qui, pour autorisées qu'elles soient, sont dépourvues d'une telle autorité.

31. Ce raisonnement est transposable, *mutatis mutandis*, à l'appui des autres mesures que le Nicaragua vous prie de bien vouloir indiquer. Et il l'est *a fortiori* car l'exigence du *dolus specialis* qui est l'une des conditions d'existence du génocide — que vous avez d'ores et déjà jugée plausible — ne présente évidemment aucune pertinence s'agissant des violations du droit international humanitaire et des droits humains dont l'Allemagne doit être tenue responsable.

32. Tel est assurément le cas en ce qui concerne ces mêmes fournitures d'armes qui ont pu servir, servent et risquent de servir encore, à commettre des violations graves du droit international humanitaire, y compris des crimes de guerre, ou le crime d'apartheid, alors qu'ici encore, elle ne pouvait qu'être pleinement consciente de ces risques et, en tout cas, de leur plausibilité.

33. Ces obligations pèsent à l'évidence sur l'Allemagne et lui imposent de ne pas prêter aide et assistance à Israël dans ses actions contraires au droit international mais, bien au contraire, de mobiliser tous les moyens dont elle disposait et continue de disposer pour faire respecter le droit humanitaire. Il est d'autant plus crucial qu'elle s'en acquitte que l'Allemagne jouit d'un grand pouvoir d'influence auprès d'Israël étant donné « l'intensité des liens politiques »[144] qui unissent les deux États ; liens dont l'Allemagne se prévaut en toute occasion.

34. Monsieur le président, l'Allemagne, qui a tout fait pour se repentir de la Shoah — et c'est tout à son honneur —, est choquée que l'on puisse — que l'on ose... — l'accuser d'aide et d'assistance au génocide et même de ne pas respecter scrupuleusement les normes du droit international humanitaire également en jeu dans la présente affaire — exactement comme Israël, qui se veut l'État du peuple juif, victime de l'hideuse Shoah, est ulcéré que l'on puisse l'accuser de génocide[145]. Mais *personne* n'est propriétaire de la « marque » génocide et aucun État, ni Israël, ni l'Allemagne, ne peut s'affranchir des règles fondamentales du droit international au prétexte qu'il

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[144] *Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro), arrêt, C.I.J. Recueil 2007 (I)*, p. 221, par. 430.

[145] Voir notamment « Israel's Netanyahu: Charge of genocide "outrageous" », *Reuters*, 24 janvier 2024 ou S. Sokol, « On eve of 100 days of war, PM pledges "complete victory", denounces genocide claims », *The Times of Israel*, 13 janvier 2024.

peut « se défendre », ou aider la victime d'une attaque à se défendre. Vous devez, Mesdames et Messieurs les juges, le rappeler avec les moyens qui sont les vôtres : l'arme du droit. C'est ce que le Nicaragua vous demande.

35. Monsieur le président, avant de vous prier de bien vouloir appeler à nouveau à cette barre, l'ambassadeur Argüello Gomez, agent et avocat du Nicaragua, je tiens à vous adresser, Mesdames et Messieurs les juges, mes vifs remerciements pour votre écoute attentive. J'ai souvent eu l'occasion de prendre la parole dans la grande salle de justice, mais j'ai rarement — peut-être jamais — eu aussi vivement la conscience de la responsabilité qui pèse sur tous les acteurs, pas de la comédie, mais du drame judiciaire qui se joue dans cette instance. Cette responsabilité, elle pèse sur les avocats des Parties, comme elle pèse sur la Cour. Je vous remercie.

Le PRÉSIDENT : Je remercie M. le professeur Pellet. I will now give the floor back to the Agent of Nicaragua, His Excellency Mr Carlos Argüello Gómez. You have the floor, Sir.

Mr ARGÜELLO GÓMEZ:

THE CRITERIA FOR THE ORDERING OF PROVISIONAL MEASURES

1. Mr President, Members of the Court, the Court has heard from Dr Müller the facts which impelled Nicaragua to initiate this case and this request for provisional measures, and Professor Pellet has just explained how Germany's conduct in relation to the ongoing situation in Palestine entails its responsibility under international law.

2. That responsibility arises under two broad headings: first, Germany's responsibility for its failure to take the action required by international law to prevent and punish the commission of genocide and of serious breaches of international humanitarian law; and second, Germany's responsibility for its actions or omissions that have facilitated — and continue to facilitate — the commission of genocide and of serious breaches of international humanitarian law. That is, the responsibility for Germany's omissions and for *its own* acts.

3. It remains for Nicaragua to address the criteria according to which the Court exercises its discretionary power to indicate provisional measures under Article 41 of the Statute.

4. The criteria are well established. There must be an admissible claim concerning a legal dispute over which the Court has prima facie jurisdiction.

5. As to jurisdiction, Nicaragua relies on the declarations accepting the compulsory jurisdiction of the Court made by Nicaragua and Germany respectively under Article 36 of the Court's Statute. As is explained in Nicaragua's Application[146], there are no reservations in either declaration relevant to the present case. Nicaragua's reservation relates to matters before 1901 and Germany's to the deployment of its armed forces abroad and the use of German territory for military purposes.

6. In addition, Article IX of the Genocide Convention, to which both Nicaragua and Germany are parties, provides jurisdiction over certain aspects of Nicaragua's case. It is evident that these grounds prima facie afford a basis on which the jurisdiction of the Court might be founded[147].

7. The legal dispute was described in Nicaragua's letter of 2 February 2024[148], in which it specified the breaches of international law for which it considers that Germany is responsible. The breaches relate to obligations under the Genocide Convention, the 1949 Geneva Conventions and Additional Protocols, and customary international law. Germany announced its rejection of Nicaragua's claims on 7 February 2024[149]. Nothing more was heard from Germany on the subject on a bilateral level, but Germany continued to reiterate publicly its support for Israel evidencing the difference of positions with Nicaragua and the subsistence of the dispute[150]. On 1 March 2024 Nicaragua filed its Application with the Court, as the only avenue holding out any hope of swiftly upholding the application of international law.

8. The timescale and bilateral level of intercourse was not lengthy and extensive; and that is as it should be in a case where the allegations concern an ongoing genocide and grave violations of international humanitarian law. It would be a blind retreat into formalism to require round upon round of diplomatic exchanges to reiterate the flat rejection of Nicaragua's claims that Germany had made

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[146] Application, paras. 20-23.

[147] *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Order of 18 August 1972, I.C.J. Reports 1972*, pp. 12, 16, para. 17; *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Order of 18 August 1972, I.C.J. Reports 1972*, pp. 30, 34, para. 18.

[148] Application, Annex 1.

[149] Application, paras. 27-30.

[150] See, for example, Answer of the Federal Government to the minor interpellation by the MPs Sevim Dagdelen, Dr Sahra Wagenknecht, Ali Al-Dailami, other MP's and the BSW group, 20/10806, 21 March 2024, p. 2, available at https://dserver.bundestag.de/btd/20/108/2010806.pdf.

on 7 February and its reiterated public support of Israel's actions in Palestine. This rejection was again evidenced in Germany's Note Verbale of 11 March 2024[151].

9. Mr President, Nicaragua's claim is plainly admissible. This question has been discussed in Professor Pellet's presentation, but it is relevant to emphasize it in the context of the criteria for ordering provisional measures which is here under discussion. As a Contracting Party, Nicaragua has a legal interest in the protection of the rights secured by the Genocide Convention. The point was reaffirmed earlier this year by the Court in the context of South Africa's request for provisional measures[152].

10. It is plain that the same is true in respect of the 1949 Geneva Conventions and Additional Protocols, and of customary rules of international humanitarian law which they embody. The Court itself has said that

> "all the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention"[153].

These are all obligations *erga omnes* or *erga omnes partes*; and each other State or State party has an interest in compliance with them in any given case[154].

11. The Court's jurisprudence refers to four other considerations to be taken into account in answering a request for provisional measures: (i) the plausibility of the rights claimed; (ii) the link between the provisional measures sought and the rights underlying the main merits claim; (iii) the risk of irreparable harm; and (iv) the urgency of the need for provisional measures. They all go to the basic question whether provisional measures are necessary in order to preserve rights which may subsequently be adjudged to belong to either party in the case[155].

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[151] Letter of the Registrar No. 161617, 11 March 2024, and Note Verbale of the German Embassy in The Hague, No. 32/2024, 11 March 2024.

[152] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, paras. 33-34.

[153] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 200, para 159.

[154] *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 449, para. 68.

[155] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Provisional Measures, Order of 26 January 2024*, para. 35.

12. The plausibility of the rights claimed, and the link with the rights sought required, are evident in the present case. As in the *South Africa* v. *Israel* case, there is here "a correlation between the rights of members of groups protected under the Genocide Convention, the obligations incumbent on States parties thereto, and the right of any State party to seek compliance therewith by another State party"[156], and the same is true of rights under the Geneva Conventions and international humanitarian law.

13. The "rights of members of groups protected" under the conventions and international humanitarian law — here, the Palestinians — are self-evident: they include the right to be spared from genocidal attacks and treatment that fails to reach even the basic standards of international humanitarian law. Nicaragua seeks to secure compliance with the obligations that underpin those rights. But in this action against Germany it is not for compliance with the obligation to refrain from such attacks. Rather, as already stressed by Professor Pellet, the obligations of Germany that are in question are *its* obligations to take actions to prevent or punish breaches of the Genocide Convention and of international humanitarian law, and to refrain from complicity in or facilitation of such breaches.

14. These obligations have indisputably arisen in this case. The existence of this obligation for States parties to the Genocide Convention, and its engagement in respect to the attacks in Gaza, has already been determined at least since the Order of the Court of 26 January 2024. It can scarcely be denied that the same is true in relation to the obligations to prevent and punish breaches of the Geneva Conventions and of international humanitarian law, as Professor Pellet explained. The Palestinians are being denied their rights to protection, and are dying and being injured and having their homeland reduced to rubble because of it.

15. Similarly, Nicaragua is also requesting provisional measures on the basis that Germany is not only failing in its duties to prevent and punish these breaches, but that it is complicit in them by aiding and assisting the commission of the breaches. The facts in Gaza and the other parts of the Palestinian Occupied Territory are notorious. They have been filmed and reported on and broadcast

[156] *Ibid.*, para. 43.

for the past six months in spite of the difficulties, and the more than a hundred journalists killed[157]. In its last Order of 28 March 2024, the Court referred to the "catastrophic situation in the Gaza Strip"[158], and the "worsening conditions of life faced by Palestinians in Gaza, in particular the spread of famine and starvation"[159]. Germany cannot but be aware of these statements by the Court. In fact, Germany has announced its intention to intervene in the case lodged by South Africa in favour of Israel[160] so it is obviously aware of the Orders of the Court in this case.

16. Mr President, Germany cannot but be aware that the munitions, the military equipment and the war weapons it is supplying are being used by Israel in these attacks. It does not matter whether an artillery shell is delivered straight from Germany to an Israeli tank shelling a hospital or university, or whether that artillery shell goes to replenish Israel's stockpile, for use at some later date; it doesn't matter whether the planes used in combat and to drop one-tonne bombs on the population were made entirely in Germany or just their spare parts and maintenance were supplied. The fact is that the assurance of supplies and replacements for armaments is crucial to Israel's pursuit of the attacks on Gaza. That much is evident from the "emergency" arrangements made by States, such as Germany and the United States, among others, to continue with military supplies to Israel even during the actual conflict and in the face of daily breaches of international humanitarian law.

17. These are the rights that Nicaragua invokes; and their plausibility is beyond question. But there is another aspect. Nicaragua is also seeking here to protect its own distinct rights under international law, which raises a principle of the greatest importance.

18. Those distinct rights are the rights entailed by accession to multilateral conventions in which all parties bear individual responsibility for securing the aims of the convention. Those responsibilities necessarily require each State party to conduct itself in a manner that does not

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[157] 103 journalists killed in 150 days in Gaza: a tragedy for Palestinian journalism, Reporter Without Borders, 7 March 2024, available at https://rsf.org/en/103-journalists-killed-150-days-gaza-tragedy-palestinian-journalism.

[158] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa* v. *Israel), Request for the Modification of the Order of 26 January 2024 indicating Provisional Measures Order of 28 March 2024*, para. 46.

[159] *Ibid.*, para. 45.

[160] Germany announces decision to intervene on Israel's behalf in ICJ case, Haaretz, 14 January 2024, available at https://www.haaretz.com/israel-news/2024-01-14/ty-article/.premium/germany-announces-decision-to-intervene-on-israels-behalf-in-icj-case/0000018d-0787-dd07-a7df-cfff1f090000. *See* also Declaration of the Federal Government on the proceedings before the International Court of Justice, 12 January 2024, available in German at https://www.bundesregierung.de/breg-de/aktuelles/erklaerung-der-bundesregierung-zur-verhandlung-am-internationalen-gerichtshof-2252842.

undermine the aims of the convention. Certainly, there are many States and organizations calling for compliance with international humanitarian law and observance of what the Court has called "elementary considerations of humanity"[161] in Gaza. But there are also States pouring gasoline on the fire. There are States that continue to supply — or to permit companies within their jurisdiction to supply — munitions of war to Israel knowing that such weapons are being used against Palestinians in violation of international humanitarian law and elementary considerations of humanity, and are thereby actively undermining these rules and principles. Sadly and shamefully, there are also important business interests that are profiting from this ongoing Nakba[162].

19. The important point is that such undermining is breaking faith with the other States that are committed to securing the basic rights and protections embodied in international humanitarian law. In more strictly legal terms, such conduct breaks the duty of co-operation in the promotion of the aims of international humanitarian law.

20. That duty to co-operate is a general principle of international law, with its own chapter in the Declaration on Principles of International Law of 1970[163]. Specifically, it is at the heart of the undertakings in Article I of the Genocide Convention, and in common Article 1 of the 1949 Geneva Conventions, and the 1977 Additional Protocols to the Geneva Conventions, and the Apartheid Convention, and the basic principles of international humanitarian law; and it applies to all States, *erga omnes* or *erga omnes partes*[164].

21. The point is that while co-operation may require much in the way of good faith efforts to pursue internationally-agreed policies, it must require that in so far as a State is bound by a duty of co-operation with other States, the State must *at a minimum* refrain from actions that undermine the efforts to secure the common goals. The principle might be inferred from the broader principle of

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[161] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 79.

[162] See, for example, Rheinmetall sales to double by 2026 bolstered by heightening geopolitical tensions, Financial Times, 21 November 2023, available at https://www.ft.com/content/1f36ad1d-4191-4ac1-a202-29c2e24c4632; Prospect of high defense spending drives Rheinmetall & Co. up, Market Screener, 13 February 2024, available at https://uk.marketscreener.com/quote/stock/RHEINMETALL-AG-436527/news/Prospect-of-high-defense-spending-drives-Rheinmetall-Co-up-45937460/; Israel finalizes Arrow 3 deal with Germany, aims for late 2025 delivery, Breaking Defense, 27 November 2023, available at https://breakingdefense.com/2023/11/israel-finalizes-arrow-3-deal-with-germany-aims-for-late-2025-delivery/; The companies profiting from Israel's 2023-2024 attacks on Gaza, AFSC Action Center for Corporate Accountability, January 2024, available at https://afsc.org/companies-2023-attack-gaza.

[163] UNGA resolution 2625 (XXV), 24 October 1970.

[164] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, para. 159.

good faith; and in relation to co-operation concerning substantive duties set out in treaties, is underpinned by the rules on treaty interpretation[165].

22. This focus on co-operation recognizes that while Germany happens to be one of the handful of States whose support for Israel is particularly important, and a particularly direct contributor to the continuation of Israel's attacks, as a matter of law it is obliged to co-operate with other States in using its best efforts to bring these breaches to an end, and as a matter of practicality it will have to do so if its efforts are to be effective.

23. Nicaragua does not at this stage ask the Court to make extensive orders regarding the entire range of Germany's legal duties to take positive actions in order to ensure compliance with the Genocide Convention and international humanitarian law. Nicaragua asks only that the Court order that Germany refrain from undermining that aim, and making the situation in Gaza worse, by providing or allowing the provision of munitions of war and other direct support for Israel at this juncture and by depriving UNRWA — the organization that is uniquely equipped to deliver humanitarian aid in Gaza — of funding and of the ability to continue working in accordance with its mandate.

24. Mr President, this is the explanation of the provisional measures requested. The first, request an order that Germany suspend its aid to Israel, in particular its military assistance including military equipment, in so far as this aid is used or may be used in the violation of the Genocide Convention, international humanitarian law or other peremptory norms of general international law. This requires a halt to the execution of any agreements for the supply of material or services that could be used or are being used by Israel for its attacks.

25. In view of the recent news on the possible more massive supply of weapons to Israel, it is necessary to add this note on this point. It is public knowledge that Germany collaborates with the United States in several military programmes related to the fabrication of equipment and spare and replacement parts, technical and logistical support, among other aspects[166]. The United States is in

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[165] VCLT, Article 31 (1); and cf., VCLT, Article 18. See also *Whaling in the Antarctic (Australia* v. *Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014*, para. 229.

[166] See, for example, The companies profiting from Israel's 2023-2024 attacks on Gaza, AFSC Action Center for Corporate Accountability, January 2024, available at https://afsc.org/companies-2023-attack-gaza. See also Press Release Rheinmentall plans to build state-of-the-art F-35 fuselage factory in Weeze, Germany, 4 July 2023, available at https://www.rheinmetall.com/en/media/news-watch/news/2023/7/2023-07-04-rheinmetall-f35-fuselage-factory.

the process of approving a plan to sell US$18 billion worth of F-15 fighter jets to Israel, a new order for F-35 jets[167] and an additional US$14 billion in military aid, including weapons and technology for a missile defence[168]. If this new deal by the United States involves Germany, Nicaragua wishes to make clear that this collaboration with the United States or any other associate must cease in the current context and should also be considered as part of any measures the Court might decide to adopt.

26. Mr President, the second measure requested requires Germany to use whatever legal or contractual powers, and whatever influence it has over Israel, to ensure that weapons already delivered by Germany and German entities to Israel are not used to commit or facilitate serious violations of the Genocide Convention or of international humanitarian law.

27. The third request seeks an order that, as part of its duties to prevent violations of the Genocide Convention and international humanitarian law, Germany resume its funding of UNRWA for its activities in Gaza. The crippling of UNRWA appears to be the biggest impediment to the distribution of humanitarian aid to the Palestinians who need it most — part of what the European Union and the United Nations have referred to as the "weaponizing of hunger"[169] by Israel. The request thus focuses precisely on a step that Germany can take that would have great practical effect in alleviating the suffering and destruction.

28. The submissions do not formally request the Court to recall to the Parties the obligation of compliance with humanitarian law as well as of the obligation of co-operation to bring to an end all serious breaches of peremptory norms of international law. The reference in the submissions is simply a reminder of existing obligations that do not need to be specially ordered by the Court.

29. The link between these measures and the rights in issue at the merits stage is obvious. The measures requested are conservatory. They are needed in order to ensure that Germany stops aiding

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[167] Biden administration presses Congress on 18 billion sale of F-15 jets to Israel, NYT, 2 April 2024, available at https://www.nytimes.com/2024/04/02/us/politics/biden-israel-weapons-deal.html.

[168] Biden Administration weighing $18 billion in arms transfers to Isarel, sources say, Reuters, 2 April 2024, available at https://www.reuters.com/world/biden-administration-weighing-18-billion-arms-transfers-israel-sources-say-2024-04-01/ ; see also What to know about U.S. military aid to Israel, The Washington Post, 2 April 2024, available at https://www.washingtonpost.com/world/2024/04/02/us-military-aid-israel-gaza-biden/.

[169] See for example EU official accuses Israel of weaponizing hunger as report warns Gaza famine imminent, CBC News, 18 March 2024, available at https://www.cbc.ca/news/world/ipc-gaza-famine-report-1.7146974; Gaza starvation could amount to war crime, UN human rights chief tells BBC, BBC, 28 March 2024, available at https://www.bbc.com/news/world-middle-east-68679482.

and abetting the complete devastation of Palestine; and that Gaza, in particular, is not completely devastated before the Court hears the merits of this case.

30. For that same reason, the urgency and necessity for the measures is, Nicaragua submits, as obvious as it could possibly be. The killing and the destruction are continuing, even as we sit in the Peace Palace of the Great Hall of Justice, at the heart of the only really global institution mandated to uphold the rule of law.

31. Mr President, Members of the Court, in considering the request for provisional measures, I would call attention to the importance that the decision of the Court be addressed to ordering *concrete* measures that admit of no rationalizations in their compliance. An order by the Court that simply recalls clear pre-existing obligations that should be complied without any specific order would *not* be effective.

32. In the course of these pleadings, we have referred on several occasions to the Advisory Opinion on the *Construction of a Wall*. In this Opinion, the Court considered the legal consequences of the internationally wrongful acts of Israel as regards other States. The situation then involved actions that in comparison to what is now under consideration would seem almost trivial. Yet the obligations then also under consideration involved similar peremptory norms of international law that, in the present circumstances apply even more forcefully and urgently.

33. Mr President, briefly, in that case the Court reaffirmed the obligation of all States not to recognize the illegal situation created by acts contrary to peremptory norms[170] — then, the actions under consideration were the construction of a wall; in the present case, the destruction of a people — the Advisory Opinion reaffirmed the obligation not to render aid or assistance in maintaining that illegal situation[171]; it specifically recalled the obligation "to ensure compliance by Israel with international law as embodied"[172] in the Geneva Convention. But, in dealing with the construction of a wall, the Court did not limit itself to refer directly by name to one State — Israel; it also recalled the obligation of all States to ensure that Israel complied with international humanitarian law.

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[170] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 200, para. 159.

[171] *Ibid*.

[172] *Ibid.*

34. An advisory opinion certainly is not a binding decision within the scope of Article 59 of the Statute, but it represents a statement by the highest judicial organ of the United Nations on the law in force. States that do not act in accordance with international law as interpreted by the Court are not violating a judgment of the Court, they are simply violating international law.

35. Mr President, if the obligations of all States with respect to the actions of Israel in Palestine as stated in the *Wall* Advisory Opinion had been complied with, we would not be here before you today. This is why we consider that the measures ordered by the Court should be clear, specific and of unavoidable compliance.

36. Germany, as all other States of the international community, has been aware, at the very least since the year 2004 when the Advisory Opinion on the *Construction of a Wall* was given, that peremptory norms of international law imposed the obligation not to render aid and assistance to Israel in its violations of international humanitarian law as embodied in the Geneva Conventions.

37. As we have pointed out in our Application and in the course of this pleading, Germany, as all States of the international community, has been aware since at least 9 or 10 October that serious violations of international law were being committed by Israel in Palestine, and at least as from the date of the Order of the Court of 26 January of the plausibility that these violations constituted the crime of genocide.

38. And Germany, as of today, ignoring its glaringly obvious obligations, continues providing assistance to Israel.

39. Mr President, this has got to stop. That is why we have come before you and why Nicaragua makes the following submissions. I will proceed, Mr President, to read Nicaragua's submissions.

SUBMISSIONS OF NICARAGUA

"Nicaragua respectfully requests the Court, as a matter of extreme urgency, pending the Court's determination of this case on the merits, and after recalling to the Parties the obligation of compliance with humanitarian law as well as of the obligation of cooperation to bring to an end all serious breaches of peremptory norms of international law, to indicate the following provisional measures with respect to Germany in its participation in the ongoing plausible genocide and serious breaches of international humanitarian law and other peremptory norms of general international law occurring in the Gaza Strip, as well as in other parts of Palestine, namely, to order that:

(1) Germany must immediately suspend its aid to Israel, in particular its military assistance, export and authorization of export of military equipment and war

weapons, in so far as this aid is used or could be used to commit or to facilitate serious violations of the Genocide Convention, international humanitarian law or other peremptory norms of general international law;

(2) Germany must immediately ensure that military equipment, war weapons, and other equipment used for military purposes already delivered by Germany and German entities to Israel are not used to commit or to facilitate serious violations of the Genocide Convention, international humanitarian law or other peremptory norms of general international law;

(3) Germany must resume its support and financing of UNRWA in respect of its operations in Gaza."

40. This is the end of Nicaragua's submissions. Mr President, Members of the Court, this concludes Nicaragua's pleading. Thank you for your kind attention. I would also like to thank the Registry, its staff and the interpreters for their invaluable assistance. My thanks also to the Nicaragua team.

The PRESIDENT:

I thank the Agent of Nicaragua, whose statement brings to an end the single round of oral argument of Nicaragua, as well as this morning's sitting. The Court will meet again tomorrow, Tuesday 9 April 2024, at 10 a.m., to hear Germany present its single round of oral argument.

The sitting is adjourned.

The Court rose at 12.15 p.m.

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