

## **NICARAGUA V. GERMANY – INTERNATIONAL COURT OF JUSTICE GENOCIDE CASE**

### **Background**

On 29<sup>th</sup> December 2023, South Africa filed an application instituting proceeding against Israel before the international Court of Justice (ICJ),<sup>1</sup> concerning alleged violations by Israel of its obligations under the convention of the Prevention and Punishment of Genocide (the “Genocide Convention”). The application also contained a request for the indication of provisional measures in order to protect against further “severe and irreparable harm to the rights of the Palestinian people under the Genocide Convention” and to ensure Israel’s compliance with its legal obligations.

On 26<sup>th</sup> January 2024, the Court found that Israel’s acts against Palestinians in Gaza are plausibly acts of Genocide while outlining the statements made by Israeli politicians that support intent to commit Genocide. The order by the Court opened a window for other counties to bring legal challenges aiming to protect Palestinians rights. On 1<sup>st</sup> March 2024, Nicaragua initiated proceedings against Germany before the ICJ,<sup>2</sup> alleging that Germany has failed in upholding its obligations under the Genocide Convention,<sup>3</sup> in addition to aiding and abetting Israel’s ongoing commission of genocide against Palestinians in Gaza.

### **Case Summary**

The proceedings brought by Nicaragua against Germany before the ICJ make the case that Germany has:

- failed in upholding its obligations under the Convention of the Prevention and Punishment of the Crime of Genocide;
- failed to comply with its obligations derived from both the Geneva Conventions of 1949,<sup>4</sup> their Additional Protocols, and intransgressible principles of international humanitarian law (“IHL”);
- failed to comply with peremptory norms of general international law in particular by rendering aid or assistance in maintaining the illegal continued military occupation of Palestine including its ongoing, unlawful attack in Gaza;
- failed to comply with other peremptory norms of general international law in particular by rendering aid or assistance and not preventing the illegal regime of apartheid and the negation of Palestinians right to self-determination.

### **Nicaragua’s main legal arguments**

Nicaragua maintains the position that despite Germany not directly committing genocide against Palestinians, it has aided and abetted Israeli violations and crimes, therefore is in violation of its obligation to prevent genocide. Israel’s violations of intransgressible IHL norms create obligations for Germany; a state may be required by its own international obligations to prevent certain conduct by another state or at least to prevent violations of *erga omnes* and/or peremptory norms.

According to the ICJ Advisory opinion on the Wall,<sup>5</sup> third parties have an obligation of non-recognition of a situation arising from illegal acts, and to bring to an end an illegal situation.

According to Nicaragua, Germany has not acted to bring to an end the wrongful acts of Israel perpetrated against the Palestinians, and has instead “supported Israel by providing it with all type of aid, including military aid that would be used to commit graves crimes under international law, such as anti-tank weapons, ammunition for

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<sup>1</sup> International Court of Justice [ICJ]. (29<sup>th</sup> December 2023) [Application instituting proceedings and request for the indication of provisional measures.](#)

<sup>2</sup> ICJ (30<sup>th</sup> April 2024) [Alleged Breaches of Certain International Obligations in respect of the OPT \(Nicaragua v. Germany\).](#) Press Release 24/37.

<sup>3</sup> United Nations. (1948) [Convention on the Prevention and Punishment of Genocide.](#) Resolution 260A(III).

<sup>4</sup> International Committee of the Red Cross. (2014) [Geneva Conventions and Additional Protocols.](#)

<sup>5</sup> ICJ. (2003) [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.](#) ES-10/14.

machine guns, detonators, propellant charges, land vehicles and technology for the development, manufacture, operation, maintenance and repair of weapons.” With regards to claims made regarding Israel’s right to self-defence, Nicaragua makes the case that the right is only valid with regards to defending Israeli citizens, and not within the meaning stipulated within Article 51 of the UN Charter.

### **Nicaragua’s Argument Regarding UNRWA**

Nicaragua argues that Germany’s decision to halt funding to UNRWA is problematic, as it not only supports a state that is in breach of the most fundamental and sacred norms of international law, but by cutting off funds, Germany jeopardises any affective assistance being given to Palestinians victims in Gaza. Nicaragua makes the case that Germany’s decision to cut funding to UNRWA amounts to collective punishment of millions of Palestinians, in particular Gazans, as they will be condemned to famine, starvation and disease.

### **Germany’s main legal arguments**

Germany argues that no order should be made on provisional measures given the absence of *prima facie* jurisdiction and/or basis for exercise of jurisdiction. Germany argues that the attempt to request provisional measures against one State by reference to the conduct of another State stretches the plausibility assessment to breaking point in an unprecedented manner.

Another challenge that Nicaragua’s case faces is its reliance on a finding that genocide is being committed in Gaza. To make this finding means that the court would have to make findings in relation to Israel’s actions and conduct. Germany argues that this would result in Israel being an indispensable third party to the case, as its interests are being discussed, therefore adding the hurdle of the Court finding the case inadmissible.

In response to pausing their funds to UNRWA, Germany argues they have since increased their funding to other humanitarian aid agencies and focused their diplomatic efforts aimed at opening more humanitarian aid corridors. Germany also makes the claim that it did not defund UNRWA, it has simply taken a decision not to approve further funds, arguing that this decision had no direct effect on UNRWA operations. This argument does not respond to Nicaragua’s main argument which makes the case that defunding or not renewing funding to UNRWA constitutes collective punishment towards the Palestinian people.

### **Germany’s Argument Regarding Military Aid**

Germany argues that they have a robust framework of military exports which distinguishes between weapons and other military equipment as a determining factor of licences granted to Israel. Germany argues that the 98% of licenses since 7th of Oct 2023 did not concern war weapons but other military equipment. This argument does not provide a direct response as to whether Germany has inspected how such weapons have been used by Israel in its assault on Gaza to ensure its compliance with international law.

### **Provisional Measures Requested**

In its application against Germany, Nicaragua requested the Court to indicate provisional measures to preserve the rights invoked from imminent and irreparable loss. On 30<sup>th</sup> April 2024, the court ruled against provisional measures, however they also ruled against throwing the case out, as requested by Germany. This means that the case has still been allowed to go ahead.<sup>6</sup> The provisional measures requests included:

- To suspend its aid to Israel particularly its military assistance and weapons in so far this aid may be used in contravention to the Genocide Convention, IHL, and peremptory norms of general international law;
- To ensure that weapons already delivered to Israel are not used to commit, facilitate or contribute to acts of genocide or violations of IHL;
- Germany must resume its funding to UNRWA.

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<sup>6</sup> International Centre of Justice for Palestinians. (1<sup>st</sup> May 2024) [ICJ Issues First Ruling in Nicaragua v. Germany – Case Shall be Heard, but no Provisional Measures.](#)