

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

PROVISIONAL MEASURES, 9 April 2024

Tania von Uslar-Gleichen – Opening Statement

1. Mr President, Members of the Court, it is an honour to address you today and to open the oral pleadings of the Federal Republic of Germany.
2. Monsieur le Président, Madame la Vice-Présidente, permettez-moi au début de vous féliciter chaleureusement pour votre élection.
3. Germany comes to these proceedings as a friend of the Court and a firm believer in the peaceful settlement of international disputes. Proceedings before this Court are rightly noted for their deep and serious engagement with the law and the facts.
4. Respect for, as well as the promotion of, international law are cornerstones of Germany's constitution and its foreign policy. Germany has always been an advocate for the promotion and strengthening of international humanitarian law and humanitarian principles. This also guides our response to the conflict at stake here. Germany is doing its utmost to live up to its responsibilities vis-à-vis both the Israeli and the Palestinian people.
5. Nicaragua, initiating proceedings against Germany before this Court, takes a one-sided view of the conflict. It fails to properly appreciate both the facts and the law in this situation. Germany firmly rejects Nicaragua's accusations.
6. I need to emphasize one point at the beginning: Germany has learned from its past – a past that includes the responsibility for one of the most horrific crimes in human history, the Shoa. This explains one of the principles upon which our foreign policy with regard to all Middle East issues rests.
7. Our history is the reason why Israel's security has been at the core of German foreign policy. In her speech to the Knesset on 18 March 2008, Germany's then Chancellor Angela Merkel spoke about "Germany's special historical responsibility for Israel's security" as part of Germany's "raison d'état". Federal Chancellor Olaf Scholz reiterated this point in his speech

to the German Bundestag on 12 October 2023: “Our own history, our responsibility deriving from the Holocaust, makes it our permanent duty to stand up for the existence and security of the State of Israel. This responsibility guides us.”

8. Indeed, this responsibility must continue to guide us - because Israel’s right to exist continues to be denied. In fact, it is denied in Nicaragua’s Application, in the section devoted to Hamas’ massacres of 7 October. According to Nicaragua, these attacks were directed at (and I quote) “settlements located in the occupied Palestinian territories of Sderot, Kfar Azza, Nir Oz, and Be’eri” (end of quote). Germany firmly rejects this notion. Hamas’ terrorist attacks left 1,200 dead and thousands wounded, countless women, youth and children became victims of the most horrific sexual violence and 240 hostages were taken, many of them held until today. These attacks targeted communities located within the borders of Israel – not in Gaza, but in the State of Israel. Does Nicaragua really stand by its characterisation that these are “occupied Palestinian territories”, thus denying Israel’s right to exist? Germany will not tolerate this. The international community founded the State of Israel as a safe haven for Jewish people. Its right to exist is internationally recognized.
9. Based on international law, Germany has, since 7 October, affirmed Israel’s right to protect itself against these ongoing attacks. We are faced with the dilemma that the Hamas terrorists use the civilian population as human shields and abuse civilian infrastructure to hide their terrorist activities. Foreign Minister Annalena Baerbock fully recognized this dilemma in the UN Security Council on 24 October 2023 when she pointed out that “Hamas is playing with human suffering” and “that the fight is against Hamas and not against civilians”. Therefore, she has insisted that Israel, in defending itself, must do its utmost to protect civilian lives and respect the limits of self-defence and international humanitarian law at all times.
10. The other point I need to emphasize at the outset is: Germany has always been a strong supporter of the rights of the Palestinian people. This is – alongside Israel’s security – the second principle that has guided Germany’s response to the Middle East conflict in general - and to its current escalation in particular. Germany remains committed to a two-state solution as the only path towards lasting peace in the Middle East. Germany has provided significant support to Palestinians living in the occupied Palestinian territories for decades. To date, Germany has bilaterally supported the economic and social development of the occupied Palestinian territories and administrative capacity-building there with a total of 1.5 billion euro.

11. Germany recognises the right of Palestinians to self-determination, to be exercised in the territories that came under occupation in 1967. It has firmly condemned attempts to undermine the two-state solution, such as through the expansion of illegal settlements. There is no doubt on where Germany stands. As Foreign Minister Baerbock stressed in her speech to the German Bundestag on 21 March 2024, our position is defined by international law.
12. Only a week after Hamas' massacre, on 13 October 2023, Foreign Minister Baerbock declared that "civilians need safe spaces where they can find protection and be provided with essential goods". On 29 February 2024, she called the suffering of Palestinians "indescribable" and life in Gaza "hell".
13. You will recognize these quotes also from Nicaragua's presentation. You will recognize others. This is not surprising. They are not proof, as claimed by Nicaragua, that Germany is failing to live up to its responsibilities. On the contrary, calling for the adherence to international law does not constitute the manifestation of its breach. To us these quotes prove that Germany is fulfilling its obligations to ensure respect for international humanitarian law – in a situation in which Israel is faced with ongoing attacks by Hamas terrorists who, long after 7 October, continued to fire rockets on Israeli towns and villages and who still hold more than 100 Israeli men, women and children hostage in Gaza. It is our duty to remind Israel that even when exercising its right to self-defense international humanitarian law applies.
14. The concern with the dramatic humanitarian situation in Gaza, reflected in the Court's orders of 26 January and 28 March, also guides Germany: our conduct is directed at alleviating the dramatic situation in Gaza that the Court describes in its order.
15. We have been making humanitarian assistance available directly to the Palestinian people for months, and are working with international agencies towards this goal. Germany is the largest individual donor of humanitarian assistance, with 203.55 million euro in 2023 and 50.95 million euro in 2024 so far, implemented not only via UNRWA but also organisations like OCHA, the World Food Programme, the ICRC and the German Red Cross. Germany has increased its support threefold since October 2023, precisely to alleviate the catastrophic conditions that Palestinians are exposed to in Gaza. The legitimate Palestinian leadership in Ramallah has acknowledged Germany's contributions on more than one occasion.

16. During his recent visit to Israel on 17 March 2024, Chancellor Scholz expressed his grave concern about the humanitarian situation in Gaza. In six official visits to Israel and the occupied Palestinian territories since October 2023, Minister Baerbock in constructive and close engagement with Israeli and Palestinian leaders – has tirelessly sought to build agreement towards concrete measures that will contribute to reducing the pain endured by individuals on both sides of the conflict. She visited the border crossings in Rafah (Egypt) and Kerem Shalom (Israel) herself in order to examine how access for humanitarian assistance can be improved. Most other countries have not shown this intense level of engagement. Since October 2023, Germany has expanded its humanitarian assistance under the most difficult conditions.
17. Germany's policy is aligned with the demands expressed in UN Security Council Resolution 2728 adopted on 25 March.
18. Like the UN Security Council, Germany is calling for “the immediate and unconditional release of all hostages”, many of whom have German citizenship. It has done so since 7 October 2023.
19. Like the UN Security Council Germany sees the need to expand the flow of humanitarian assistance and has left no stone unturned in helping to address the basic needs of Palestinians in Gaza.
20. Chancellor Scholz and Foreign Minister Baerbock have for months, in numerous bilateral talks, urged Israel to allow humanitarian aid into Gaza on a larger scale and to agree to a humanitarian ceasefire, which can only be sustainable if Hamas ceases its terrorist operations and releases the hostages.
21. Unlike Nicaragua Germany is not blind to the fact that Hamas also has obligations under international humanitarian law, including towards the civilian population in Gaza. Not only does Hamas not comply with its obligations, but it also renounces any responsibility in the most cynical manner.
22. Mr President, Members of the Court, the bulk of Nicaragua's Application and Request assesses Israel's conduct and alleged violations of international law by Israel. But this is not a case brought against Israel. Nicaragua has initiated proceedings against Germany. Germany firmly

rejects Nicaragua's accusations: they have no basis in fact or law. They are dependent on an assessment of conduct by Israel, not a party to these proceedings.

23. Therefore, a significant part of Germany's presentation today will be dedicated to "setting the record straight". It is our hope that these proceedings will contribute to a better understanding of the fact that Germany's action in this conflict has been firmly rooted in international law.
24. Where Germany has provided support to Israel, including in the form of exports of arms and other military equipment, the quantity and purposes of these supplies have been grossly distorted by Nicaragua, as Professor Tams will demonstrate. Germany only supplies arms on the basis of detailed scrutiny, a scrutiny that not only respects, but in fact far exceeds the requirements of international law. Arms exports that take into account the security threats Israel is facing, in particular immediately after 7 October. At the same time, Germany's supply of arms and other military equipment to Israel is subject to a continuous evaluation of the situation on the ground.
25. Mr President, Members of the Court, like many other States, Germany has been tested by the conflict raging since 7 October. The entire international community is grappling with the political, moral and legal dilemma posed by the situation in Gaza. The principles I have mentioned – protection of Israeli security and support for the rights of Palestinians – have required Germany to make difficult decisions. All those responsible for German foreign policy have worked tirelessly to strike the right balance. We are committed to translating into day-to-day practice what it means to respect international law in circumstances as challenging as these.
26. Nicaragua appears not to properly appreciate this. It projects the image of a Germany that wilfully enables, or even aids and abets, the alleged commission of the gravest breaches of international law. Not once has Nicaragua sought further information – or even an exchange of views – with the German Government. Instead, it has rushed to bring this case to the Court on the basis of the flimsiest of evidence.
27. As counsel for Germany will develop, Nicaragua's Request for Provisional Measures plainly fails to meet the requirements of Article 41 of the Statute, as interpreted in the jurisprudence of this Court.

28. As Mr Sam Wordsworth, KC, will demonstrate, Nicaragua's case does not fall within the jurisdiction of this Court, not even *prima facie*. Germany has been brought before the Court in the absence of a dispute while, on the basis of its established case law, the Court cannot exercise jurisdiction in the absence of Israel, which is a truly indispensable party.
29. Professor Anne Peters will follow and demonstrate that Nicaragua's Request is not linked to any plausible rights that are at issue in this case. Far from enabling alleged breaches of the most fundamental rules of international law, Germany has consistently called for strict compliance with international law. And Germany has always acted on this basis.
30. As Professor Paolo Palchetti will demonstrate, while the situation in Gaza is dramatic, there is no imminent risk of irreparable prejudice concerning the rights that Nicaragua asserts *vis-à-vis* Germany.
31. Above all, Nicaragua's Application and Request for Provisional Measures is based on factual premises that do not reflect reality. For that reason, Germany will begin the presentation by its counsel by setting the record straight; this will be done by Professor Christian Tams.
32. This concludes my opening presentation. I please ask you, Mr President, to give the floor to Professor Tams.