

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

PROVISIONAL MEASURES, 9 April 2024

Professor Christian J. Tams - Factual background

I. Introduction

1. Mr President, Members of the Court, it is an honour to address you, and a privilege to do so on behalf of Germany. In my presentation, I will respond to Nicaragua's depiction of Germany as willfully disregarding rights of the Palestinian people and supporting or enabling breaches of international law.
2. Nicaragua's claims do not withstand scrutiny. They are based on speculation and at times misrepresentation. To set the record straight, Germany has provided you with a set of core documents in the Judges' folder. I will refer you to these documents in relatively quick succession but provide key points on the slide.

II. Ongoing and Substantial Humanitarian Assistance

3. I do so first to rebut Nicaragua's accusation that Germany had turned its back on the Palestinians. On this point, Nicaragua yesterday changed its pleading significantly. It now no longer seems to claim, as it had done in its Application, that Germany had "halt[ed] its bilateral financial assistance to the Palestinians without further consideration early in the conflict".¹ Instead, counsel yesterday acknowledged that "Germany is engaged in facilitating or improving humanitarian aid and for its suffering people".² We welcome this correction. However, Germany firmly rejects Nicaragua's characterisation of Germany's engagement as a "pathetic excuse",³ which is completely at odds with the facts.
4. Documents contained in Annexes 2-5 of the Judges' folder show how inaccurate this assertion is. Annex 2 brings together a list of statements by high-ranking German representatives, which reflect Germany's commitment to support Palestinians in Gaza from very early on in the

¹ Nicaragua's Application and Request for Provisional Measures, at para. 57.

² CR 2024/15, at para. 21.

³ CR 2024/15, at para. 21.

conflict. Let me take you to the first statement from the list, made by Foreign Minister Baerbock on 19 October. You'll see it on the slide, with its two key messages highlighted. One, the appointment of a senior German diplomat, Mrs Potzel, as Special Envoy for Middle East Humanitarian Issues. You heard nothing about Mrs Potzel and her work in Nicaragua's pleading yesterday - nothing about five months of tireless humanitarian diplomacy, nothing about her public and behind-the-scenes engagement to increase the flow of humanitarian assistance under extremely challenging conditions.

5. Two, also on the slide: a pledge, on 19 October, that Germany "stands ready to provide comprehensive humanitarian aid": a pledge on which Germany made good on the same day by allocating an additional €50 million in humanitarian assistance for the people of Gaza.
6. Annex 3 gives us a fuller account of Germany's concrete commitment, and the central information is also on the slide. It contains figures from the UN Office for the Coordination of Humanitarian Affairs (OCHA), listing support for the Occupied Territories by country. The chart for 2023 lists Germany as the largest international donor for the year. And if you look at the chart for January to 31 March 2024, which is in Annex 4 and the slide, you will see that Germany remains the largest donor.
7. Germany's total support for Palestine since early 2023 stands at €254.5 million in humanitarian assistance alone. Since 7 October 2023, rather than halting its support, Germany has more than tripled its humanitarian assistance to the Palestinians in the Occupied Territories. Annex 5 highlights the real impact of Germany's commitment. I would ask you to consider this as you reflect on Nicaragua's characterisation of this all being just a 'pathetic excuse'.
8. Mr. President, members of the Court, in addition to dismissing Germany's support, yesterday counsel for Nicaragua accused Germany of having "defunded" UNRWA:⁴ a decision that Nicaragua presents as the cutting off of aid at the most critical moment. This Nicaraguan claim is entirely without merit. Core information on what really happened is in Annex 6-9 of your folder. I will limit myself to three points.
9. First, Germany has not defunded UNRWA. On 27 January, it took a temporary decision not to approve further funds to UNRWA operations in Gaza. This was taken in response to grave

⁴ Nicaragua's Application and Request for Provisional Measures, at para. 16.

allegations that UNRWA staff were implicated in the terror attacks of 7 October: allegations that left the UN Secretary General "horrified" and continue to be investigated. Germany has since resumed its funding for UNRWA operations in the West Bank, Jordan and elsewhere, committing € 45 million. And already on 1 March, the day Nicaragua instituted proceedings, Germany agreed, in consultation with other EU member States, to release a €50 million emergency assistance package from European Union funds. € 12.5 million of these funds are provided by Germany.

10. But Nicaragua not only - and this is my second point - ignores this context. It ignores the fact that Germany's temporary decision has had no direct effects on UNRWA operations. On 27 January, Germany was not due to release any funds for UNRWA operations in Gaza that would have been withheld or withdrawn as a result of the decision. This was made clear in the statement announcing the decision, which you see on the slide, which includes the phrase "no new commitments are currently pending". Put differently, not a single euro of support has been halted or withdrawn. Quite to the contrary, Germany honours its pledges: funds provided before 27 January are still being used to support UNRWA work in Gaza.
11. Third, quite apart from UNRWA, Germany has stepped up its support for Gaza. The information contained in Annex 10 of the Judges' Folder make this abundantly clear. Annex 10 lists relevant actions and decisions taken by Germany since 27 January. It is by no means exhaustive, but shows what has really been happening. I will have to be very selective, but would urge you to look at Annex 10 when you consider Nicaragua's claims. When you look, you will see that immediately after 27 January 2024, the German Government made available support to other humanitarian donors, such as UNICEF, the ICRC and the World Food Programme: an additional support now amounting to € 40 million, in addition to funds provided to UNRWA and contributions via the EU and the regular UN budget.
12. Annex 10 also highlights numerous examples of direct, operational support, aimed to alleviate the situation in Gaza. In-kind support such as supplying hundreds of tonnes of medical and sanitary equipment to the Palestinian Red Crescent in February. On-going work behind the scenes to ensure help provided by agencies actually reaches Gaza under the most difficult conditions. And - as an emergency measure - air drops: an initiative by the Jordanian Government in which the German air force cooperates: 16 air drops so far have landed 83 tons of food directly into Gaza; another one is scheduled for today. It is plainly wrong to

suggest that Germany has in any way turned its back on Palestine. It works with countless partners, through various routes, leaving no stone unturned to alleviate the suffering.

III. Licensing of Military Exports

13. Mr President, Members of the Court, I turn to the second part of my presentation. Nicaragua accuses Germany of providing Israel with military aid and thereby facilitating breaches of international law. It says relatively little on how this equipment is supposedly used (a matter to which I will return). Instead, counsel for Nicaragua repeatedly mentioned the total volume of licensed exports in 2023 - € 326 millions - and made references to items allegedly delivered, such as "artillery shells" and "munitions".⁵
14. But the picture presented by Nicaragua is best inaccurate; at worst, it is a deliberate misrepresentation of the actual situation. Of course, Germany and Israel have close ties, including in defence cooperation. Germany's responsibility for Israel's security - emphasised by Germany's Agent in her opening statement - is an important factor in this respect. But this cooperation is based on a robust legal framework that assesses export licensing requests on a case-by-case basis, and that ensures compliance with national law and international obligations. And if we look at what has actually been licensed for export to Israel under this framework since October 2023, we see no artillery shells, no munitions, or other war weaponry that could be used in combat. Nearly all exports involve what is known as "other military equipment", typically of a subordinate or defensive nature.

A robust framework governing exports of military equipment

15. Permit me to begin with a comment about the German framework governing exports of military equipment, about which you have heard nothing from Nicaragua. This is a robust framework. All German exports of military technology and equipment to Israel are subject to strict licensing requirements. Among these German law distinguishes between "war weapons" (Kriegswaffen) and "other military equipment" (sonstige Rüstungsgüter). "War weapons" comprise, for example, combat aircraft or tanks -- but also automatic weapons and certain corresponding ammunition or essential components. These war weapons require two licences before export according to the War Weapons Control Act and the Foreign Trade and Payments Act. The other category - "other military equipment" - is broad and goes much

⁵ See CR 2024/15, p. 53 (para. 16) (Argüello Gómez); CR 2024/15, p. 27 (para. 11) (Müller).

beyond “weaponry” in the usual sense. It includes, for example, defence equipment against chemical hazards, protective gear such as helmets or body protection plates, communication equipment, camouflage paint and components, parts and other equipment of a subordinate character. Outside standardised categories for routine deliveries, not only war weapons, but also all 'other military equipment' under German law requires to be licensed for export. Such a licence can only be granted following a case-by-case assessment of an individual application on the basis of binding criteria.

16. We have provided in Annex 11-18 of the Judges Folder relevant excerpts of the applicable German laws, but also the 2008 EU Council Common Position defining common rules governing control of exports of military technology and equipment, and the Arms Trade Treaty. Professor Peters will take you through these in detail.
17. At this stage, permit me to make a threshold point: For every licence that is granted, the German Government carefully assesses whether the export would pose a clear risk that the particular items subject to licencing would be used in the commission of genocide, crimes against humanity, or grave breaches of the Geneva Conventions of 1949. This requirement follows from binding rules of German and European law, which exceed international requirements. As Professor Peters will illustrate, this scrutiny is detailed, and it involves an interagency process with consideration by at least two Ministries, the Federal Ministry for Economic Affairs and Climate Action and the Federal Foreign Office, and - depending on the content of the license application – potentially also the Ministry of Defence, other ministries and Federal Chancellery, the Federal Ministry for Economic Cooperation and Development, the Federal Ministry of Finance, the Federal Ministry of the Interior and Community and the Federal Ministry of Justice. As regards “war weapons”, licenses must be issued at the ministerial level and accompanied by a corresponding additional license issued by the Federal Office for Economic Affairs and Export Control.

Actual approvals since 7 October 2023

18. Mr. President, what military equipment has Germany licensed? Military exports of course are a highly sensitive matter. But Germany has made a sincere effort to provide you with information that allows you to scrutinise Nicaragua's assertions. We have included core figures - provided by government departments involved in the licensing process - in Annex 19 of the

Judges Folder. Let me highlight three points before commenting on particular accusations that Nicaragua made yesterday.

19. My first comment concerns the central categories of military equipment distinguished under German law, which I have mentioned already: “war weapons” (including certain ammunition and essential components) on the one hand, and “other military equipment” on the other. This is an important distinction because the risks associated with the export of war weapons are naturally much higher, which is a central factor in deciding on licenses. Nicaragua was very brief on this distinction. From the slide you see what Nicaragua omitted. 98% of the German licences granted since 7 October *did not* concern “war weapons”, but “other military equipment”. In four instances only has Germany eventually licensed the export of war weapons. This is the first relevant point of context if we want to appreciate the *actual* licensing practice.
20. My second point, which also appears from Document 19, and on which Nicaragua again was completely silent. If we look at the statistics, we see that over 25% of the volume of exports were never destined for final use in Israel. Licences worth around €85 million concern military equipment to be processed in Israel and then re-imported to Germany, for use by the German armed forces. Yet this equipment features in the statistics that Nicaragua relies on to make its accusations.
21. My third point: the temporal context - another crucial factor, as the risks are being assessed - not just with respect to particular military goods, but also at a particular point in time, in light of circumstances obtaining then. Nicaragua yesterday sought to make you think that there had been no evolution: Professor Pellet asserted that Germany "*continue à autoriser la livraison à une large échelle d'armes*".⁶
22. The following slide shows how the total value of exports (for war weapons and other military equipment) to Israel since October 2023 is spread out over the past months. The exact figures are in Annex 19 of the Judges' Folder, but the basic point emerges clearly from the slide:

⁶ CR 2024/15, p. 46 (para. 25) (Pellet).

23. Almost 80% of the volume of exports was approved before the end of October 2023, in "the immediate context"⁷ of Hamas horrendous massacres. At that point and in this dramatic situation, Germany decided to prioritise pending license requests.
24. Following October, the total volume of exports dropped sharply, and you see the figures on the slide. For now, permit me to mention two salient aspects:
25. In February and March 2024, the total volume of exports (for war weapons and other military equipment) approved was at circa € 500,000 and circa 1 million respectively. The licenses eg were issued for lenses for daylight observation binoculars, bonding devices for hydrogen storage on submarines and Infra-Red protection systems for defence against guided missiles.
26. The most recent licence overall was granted on 8 March 2024. It concerned a slip ring for the installation in a radar system, not an item that could plausibly be used to commit war crimes. A limited number of requests for exports remain under review for the time being. They are reviewed by German authorities in light of the developing situation and the potential impact that the particular item might have.
27. Mr President, this brings me to the end of my overview of what exports were actually licensed. Permit me to conclude by responding to three specific allegations Nicaragua made yesterday. They concern particular military items that, according to Nicaragua, Germany has delivered to Israel. But I begin by responding to points raised by Dr Müller yesterday who noted that - quite apart from exports of military equipment, Germany had supplied military equipment directly to Israel - and specifically mentioned a request for tank ammunition.
28. We have verified this with the German Ministry of Defence yesterday. Based on that information I can confirm that Israel approached Germany in 2023 for tank ammunition. This application is being scrutinised. No license has been approved. In fact - and this goes to Nicaragua's insinuation yesterday: the only items directly supplied from the German *Bundeswehr* to Israel are sanitary material and helmets.
29. Nicaragua's second specific allegation made concerns war weapons allegedly licensed for export. Nicaragua yesterday repeated points made in the Application, namely that Germany

⁷ See ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip* (South Africa v. Israel), Order of 26 January 2024, para. 13.

had provided Israel "with all type of ... military aid that would be used to commit graves crimes under international law, such as anti-tank weapons, ammunition for machine guns, [and] propellant charges".⁸ I have already mentioned that since October 2023, four licences for war weapons have been granted. But Nicaragua completely misrepresents what they covered.

30. Two of these licences concerned ammunition, as Nicaragua notes. 500,000 pieces approved in November, and a further 1000 pieces approved in early 2024, both for industrial cooperation. What Nicaragua does not say is that the license was for training ammunition. Training ammunition that is – as our experts involved in the licensing process confirmed yesterday – not suitable for combat operation.
31. The third license concerns propellant charges, as Nicaragua notes, also granted in connection with a cooperation project between German and Israeli industry. But again, Nicaragua omits the key bit of information. The propellant charges were for test purposes. Most of the 70 propellant charges licensed for export are to be destroyed in Israel, the rest is to be re-delivered to Germany.
32. So, to reiterate: three of the four final export licences for war weapons concerned items that are unsuitable for use in combat operations. The fourth license, which was in the immediate context of Hamas massacres, concerned the export of 3000 portable anti-tank weapons.
33. Finally, to complete the picture: let me add in full transparency that for one further military item, a license has been granted: this is a submarine, which has received one of two licenses required for export.
34. Four war weapons licensed for export, three of them for test and training purposes. And one submarine not yet approved for export. That is the outcome of the actual licensing practice since October 2023. Nicaragua's references yesterday -- referring to artillery shells or to munitions that would be used in Gaza -- simply bear no relation to reality. Germany rejects them.
35. Mr President, my final point concerns Heron drones - unmanned vehicles. These featured prominently in Nicaragua's application as well as in its presentation yesterday. Germany stands

⁸ Nicaragua's Application and Request for Provisional Measures, at para. 38; CR 2024/15 (para. 11) (Müller).

accused of "having handed over two Heron drones", and Dr Müller insisted on the point yesterday, noting that the "destruction caused by the unmanned aerial vehicles like these drones ... had been widely reported".⁹ Again, Nicaragua's assertions are false. The truth about the Heron drones can be found in the document in Annex 20 of the folder, and the essence is this:

36. The two Heron drones are Israeli drones, owned by Israel, not Germany. At no point did they leave Israel. German soldiers were trained on them while in Israel under a lease agreement, which specified Israel's ownership and control. While German soldiers trained on them, the drones were un-armed. After 7 October, German military personnel left Israel, as their security could not be guaranteed; and so their training on Israeli soil temporarily ended. This is the context. Nicaragua is again wrong on the basic facts.
37. Mr President, to sum up: 98% of licenses granted after 7 October do not concern war weapons, but other military equipment. 25% of this military equipment is destined for eventual re-importation for use by the German armed forces. 2/3 of applications date from before 7 October. And 80% of the volume was approved for export in October 2023. Applications for export licenses are scrutinized by different Ministries by reference to conditions that are more stringent than those under international law. As a matter of fact, only four licenses for war weapons have been granted since October 2024, three of which concern test or practice equipment. Finally, as regards humanitarian assistance, Germany continues to provide humanitarian support, every single day, under extremely difficult conditions, constructively engaging with international partners. The minute we look more closely, Nicaragua's accusations fall apart.
38. This, Mr. President, members of the Court, concludes my presentation on the factual background. I thank you for your kind attention. I would ask you now, Mr. President, to invite Mr Sam Wordsworth to the podium to continue Germany's presentation.

⁹ CR 2024/15, p. 27 (para. 9) (Müller).