ICJ
STUDY GUIDE

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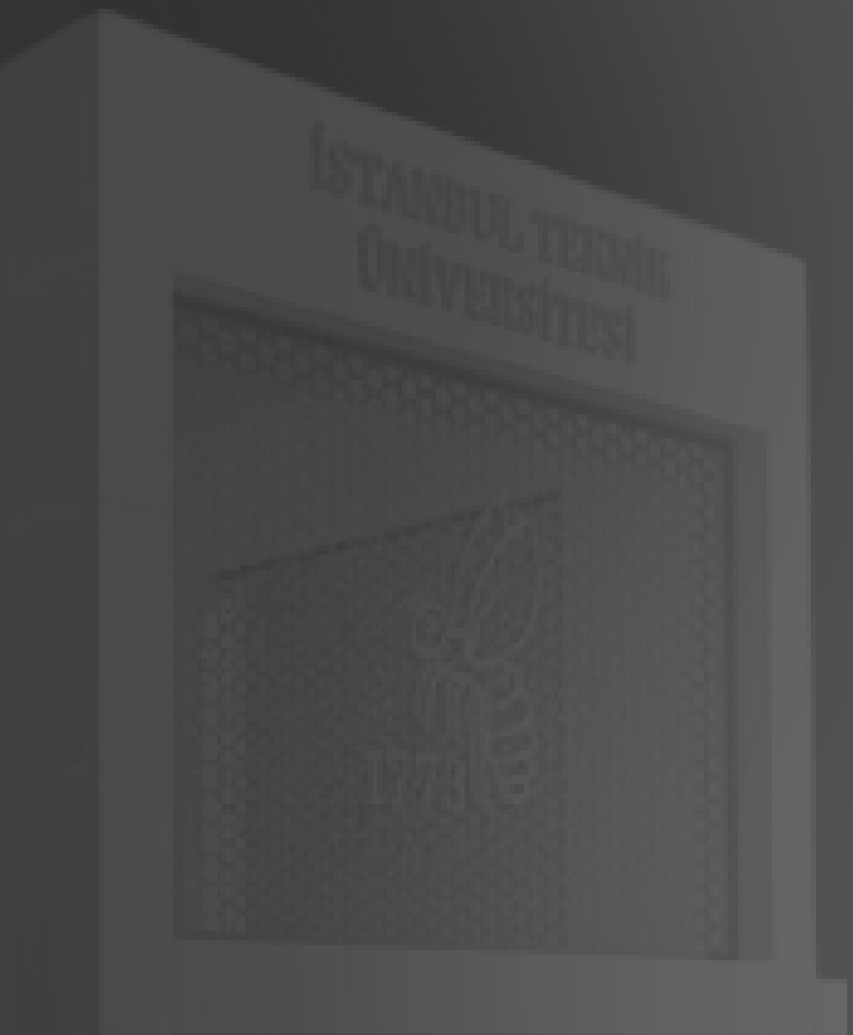

ITU MUN

LETTER FROM SECRETARY GENERAL

Dear Delegates,

It is with great pleasure that I welcome you to ITUMUN 2026.

By choosing to take part in this conference, you have already done something meaningful: you have chosen dialogue over indifference, understanding over assumption, and engagement over silence. In a world increasingly shaped by division, conflict, and uncertainty, such choices matter.

Today's international landscape is marked by ongoing conflicts, humanitarian crises, and profound global challenges that demand more than rhetoric. They demand informed, open-minded, and principled individuals, particularly from the younger generation, who are willing to listen, to question, and to act responsibly. MUNs offers precisely this space: one where ideas are tested, diplomacy is practised, and perspectives are broadened.

As delegates, you are not merely representing states or institutions; you are actually engaging in the art of negotiation, the discipline of research, and the responsibility of decision-making. Approach this experience with curiosity, respect, and intellectual courage. Learn not only from debate, but from one another.

On behalf of the Secretariat, I sincerely hope that ITUMUN 2026 will challenge you, inspire you, and leave you better equipped to contribute to a more peaceful and cooperative world.

I wish you a rewarding conference and every success in your deliberations.

Yours sincerely,
Abdullah Kikati
Secretary-General

ABBREVIATIONS

ICJ	International Court of Justice
UN	United Nations
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
WHO	World Health Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
NGO	Non-Governmental Organization
IHL	International Humanitarian Law
OPT	Occupied Palestinian Territory
GC	Geneva Convention
GC IV	Fourth Geneva Convention (Geneva Convention IV)
UNGA	United Nations General Assembly
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

ICC	International Criminal Court
ILC	International Law Commission
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
EU	European Union
OSD	On-screen display (on-screen text/graphics)

1. INTRODUCTION TO THE INTERNATIONAL COURT OF JUSTICE

The UN flag is positioned in front of the Peace Palace in The Hague, which houses the International Court of Justice (ICJ). Also called the "World Court," ICJ is the primary judicial organ of the UN. Founded through the UN Charter in 1945 and commencing operations in April 1946, ICJ fulfills two major roles in the international legal framework: first, to resolve legal issues arising between and involving countries as plaintiff and defendant; second, to provide advisory opinions regarding questions of international law posed by authorized agencies of the UN and other legal bodies. ICJ is one and only universal court that has universal jurisdiction over disputes involving cases of countries, playing a pivotal part in encouraging respect for rule of law across all of international society. ICJ Statute makes all UN member countries automatic parties to it, ascertaining that it has a universal coverage although in a situation, it relies upon consensus of countries in question before ICJ acquires any authority. In essence, ICJ represents an old dream that dates to late 19th century that seeks an end to resolution of international matters through might and power and not law.

1.1. Historical Overview and Founding of the ICJ

The ICJ has historical roots that date back to other attempts to implement international adjudication. This was actualized through The Hague Peace Conferences of 1899 and 1907, which resulted in the formation of the Permanent Court of Arbitration (PCA), which was a crucial forerunner that provided a basis for adjudicatory resolutions of disputes. Later in 1920, under the sponsorship of the League of Nations, a Permanent Court of International Justice (PCIJ) was founded as a true world court. This court exercised jurisdiction and rendered advisory opinions from 1922 until the Second World War and made a crucial contribution to jurisprudence during this period. After WWII, it was important to formulate a new structure and basis as a consequence of which the United Nations was born in 1945 during the San Francisco Conference, and the ICJ as the principal judicial organ of that entity was established to supplant the PCIJ with very little elaboration of changes to structure and statute. Nonetheless, it should be noted that ICJ Statute (which is a constitution for this court) was annexed to that of UN Charter in 1945 and borrowed heavily from PCIJ Statute. This court first held a plenary session in April of 1946 and opened a new stage upon which settlement of disputes through judicial means became one of the cornerstones of an international structure.

1.2. Structure of the Court and Relationship with the United Nations

The ICJ has historical roots that date back to other attempts to implement international adjudication. This was actualized through The Hague Peace Conferences of 1899 and 1907, which resulted in the formation of the Permanent Court of Arbitration (PCA), which was a crucial forerunner that provided a basis for adjudicatory resolutions of disputes. Later in 1920, under the sponsorship of the League of Nations, a Permanent Court of International Justice (PCIJ) was founded as a true world court. This court exercised jurisdiction and rendered advisory opinions from 1922 until the Second World War and made a crucial contribution to jurisprudence during this period. After WWII, it was important to formulate a new structure and basis as a consequence of which the United Nations was born in 1945 during the San Francisco Conference, and the ICJ as the principal judicial organ of that entity was established to supplant the PCIJ with very little elaboration of changes to structure and statute. Nonetheless, it should be noted that ICJ Statute (which is a constitution for this court) was annexed to that of UN Charter in 1945 and borrowed heavily from PCIJ Statute. This court first held a plenary session in April of 1946 and opened a new stage upon which settlement of disputes through judicial means became one of the cornerstones of an international structure.

Since the ICJ's inception, it has been widely recognized for its utility in the promotion of peace and the "rule of law" in the international community. Indeed, in accordance with the provisions of Article 92 of the UN Charter, the ICJ has been recognized as the "principal judicial organ of the UN." Indeed, its unique role in international relations is an affirmation of its intended role in providing a peaceful resolution of disputes that have the potential of igniting international peace and security. Over the years, the ICJ has addressed a full range of matters relating to the resolution of international disputes, including those concerning territory, maritime boundaries, diplomatic and consular relations, interpretation of treaties, and many others. Through the years, the role of the ICJ has also involved a contribution in the clarification and development of international law in the resolution of the said matters. Moreover, the decisions and opinions of the ICJ in the aforementioned matters are advisory in nature in the sense that they are binding on the contesting parties for each matter. In fact, the advisory opinions of the ICJ are, on the one hand, without binding authority on those entities for whom they are addressed.

1.3. Structure of the Court and Relationship with the United Nations

The UN Security Council voted to fill an open position on the international court of justice (ICJ) bench. The structure and administration of the ICC are specifically designed to ensure independence, impartiality and representation throughout the world's legal systems. The ICJ consists of fifteen judges, each elected for a nine-year term by a concurrent express vote of the United Nations General Assembly and the United Nations Security Council. There is a staggered election process whereby three years after each instance of election, one-third of the judges (totaling 5 judges) will be elected, which ensures that continuity exists on the bench. Judges can be re-elected and there are restrictions that ensure that not every judge comes from the same country; this restriction ensures that judges display both geographical

and legal diversity on the court. The ICJ Statute requires that the wash represents broadly “the principal legal systems in the world and the main forms of civilization” of the human race; these principles are the same principles that were inherited from the Permanent Court of International Justice (PCIJ). Once elected, judges serve individually and not on behalf of their respective states; they are required to act independently in judging cases and to rely solely on International Law.

The leadership of the Court consists of its President and Vice-President, who are elected by the judges and serve terms of three years. The President is responsible for presiding over the Court's hearings/deliberations and also has certain administrative duties. The President continues to be an active judge on the Court. The Registry is the Court's permanent administrative secretariat and supports the operation of the Court. For example, the Registry is responsible for managing administrative support services such as communications, research, translations of documents, and other logistical functions in the Court. The Registrar of The Registry (assisted by the Deputy Registrar) is elected by the judges for seven years, and may be re-elected. The Registrar has broad responsibilities, including the management of the administrative staff of the Court, management of the budget of the Court, maintenance of official records of the Court, and liaison with States and the United Nations. The Registry is accountable to the Court only, clarifying the autonomy of the ICJ; although the ICJ is a UN organ, its judicial functions and administrative activities are not managed by the Secretariat of the UN or any other political bodies.

The International Court of Justice (ICJ) is one of the principal organs of the United Nations and as such maintains a special position within the UN System. The ICJ is located in The Hague, Netherlands, in the Peace Palace and therefore the only principal organ headquartered outside of New York City. This separation of location is intended to preserve the independence of the Court while still operating within the broader framework of the UN System. The UN General Assembly and Security Council not only have the power to elect judges to the Court but are also entitled to receive an annual report from the Court and participate in decisions relating to the budget of the Court. All member states of the UN automatically become parties to the ICJ Statute, and all member states are required by the UN Charter (Article 94) to comply with any judgment of the ICJ that relates to a case in which they are a party. If a member state does not comply with a judgment of the Court, the issue may be referred to the Security Council, which has the authority to recommend or determine what actions should be taken in order to enforce the judgment. In practice, however, enforcement of judgments is politically difficult, and Security Council action may be blocked by the veto power of any of its permanent members.

Even though it doesn't have an enforcement mechanism, the authority of The International Court of Justice (ICJ) comes from each of the nations that belong to the UN agreeing to uphold the ‘Rule of Law’ and the influence of its reasoning. The ICJ works co-operatively with other arms of the UN; for example, both the UN General Assembly (UNGA) and the UN Security Council (UNSC) can request Advisory Opinions from the ICJ, and Judges on the ICJ occasionally present to UN Committees within the area of International Law. In short, the structural integrity of the ICJ comes from the fact that it operates within the framework of

the UN but has a substantial amount of judicial autonomy, operates with its own staff and procedures, and relies on the United Nations for funding and the possibility of the enforcement of its decisions.

1.4. Types of Cases: Contentious Cases and Advisory Opinions

The International Court of Justice (ICJ) deals with two main kinds of case types:

a. *Contentions Cases*

b. *Advisory Opinions.*

A contention case is one which has two or more parties in a dispute at law and the ICJ's function is to settle that specific dispute in accordance with international law. In contentions cases, only sovereign states can bring a matter before the ICJ or be respondents to an ICJ judgment. The ICJ's Statute prohibits individuals, corporate bodies, non governmental organisations, and all other entities from filing a claim in contentions cases. Contentions case types often involve disputes over boundaries (either land or sea), ownership of territory, safety of maritime navigation, agreement obligations, use of force, & all matters subject to International Law. Since the establishment of the ICJ in 1946, the International Court of Justice has issued over 200 judgment in contentions cases and has had many disputes of such major significance in the world today. All parties to an ICJ case are obligated to comply with the judgment of the ICJ; while the ICJ's judgment is enforceable through a number of other methods. Compliance by states with the judgment is reliant on good faith by states & when necessary, by the political enforcement mechanisms available to the United Nations.

In contrast, advisory proceedings are not legal disputes between states, but requests from recognised intergovernmental bodies for an opinion on a legal question. The International Court of Justice (ICJ), by the authority of the United Nations (UN) Charter (Article 96) and Statute (Article 65), has the authority to render an advisory opinion on any question of law that is presented on behalf of designated UN organs or specialised agencies. With regard to the vast majority of issues, the General Assembly and the Security Council each may request an advisory opinion on virtually any legal question. Other UN organs and specialised agencies, including (but not limited to) the World Health Organisation, United Nations Educational, Scientific and Cultural Organisation, etc., are entitled to request an opinion on legal questions only to the extent that the General Assembly has granted that agency's authority in that specific area. Advisory opinions are considered non-binding, and are, therefore, not enforceable as decisions of a tribunal, but they carry the weight of moral and legal authority.

As with before, the PCIJ provided similar advisory opinions on issues that are of great significance to the international legal community. Advisory opinions have covered a wide variety of subjects, including the admission of states into the UN and their subsequent legal effects, the legality of UN spending, the status of territories in an international mandate (such as Namibia and Western Sahara), and the legality of the use/threat of nuclear weapons. While there are no binding effects of advisory opinions on states, the prestige of the Court often

leads to advisory opinions being considered in international negotiations and the development of international legal norms. Additionally, the advisory opinions provide guidance to the requesting UN body in its policies and/or resolutions related to international law.

Whether in cases of a contentious or advisory character, it is key to note that the International Court of Justice makes decisions on only legal matters; thus, it cannot act as a forum for locating political solutions or investigating issues that do not relate to the legal issues at stake in a case. Regarding contentious cases, the Court can only exercise its competence over a legal dispute, meaning that the Court can only exercise its competence if there is a legal disagreement about a legal right or obligation, pursuant to international law. **The focus on legal disputes allows the ICJ to function as a judicial body rather than as a diplomatic or political body.** The Court will take no action in contentious cases unless it has jurisdiction and the admissibility of the case, which is covered next.

1.5. Jurisdiction and Procedure of the International Court of Justice

States are the only parties who have access to the ICJ for matters involving contention, and as such jurisdiction is not automatically granted between two states. The principle on which the ICJ has jurisdiction regarding contentious disputes is based on the agreement of those parties to permit the ICJ to hear their case. There are many methods available by which states may agree to permit the Court to have jurisdiction over them in regards to their own cases or for particular instances:

- **Compromissory Clauses in Treaties:** States typically enter into Treaties which include Jurisdictional Clauses that provide for the resolution of Treaty related disputes by the International Court of Justice (ICJ). If a dispute arises under a Treaty relating to its interpretation or application, any party may independently commence proceedings in the ICJ on the strength of the Jurisdictional Clause included in that Treaty. As of the end of the 1990's, there were in excess of 400 Jurisdictional Clauses contained within Bilateral and Multilateral Treaties conferring ICJ jurisdiction upon the parties to the Treaty.

- **Optional Clause Declarations:** Optional Clause Declarations allow a state to accept the compulsory jurisdiction of the International Court of Justice (ICJ) under **Article 36(2) of the ICJ Statute** with respect to any other state that has made the same declaration (commonly referred to as an "Optional Clause Declaration"). A state may file an Optional Clause Declaration with the United Nations Secretary-General, stating that it consents to possible ICJ jurisdiction over a broad range of legal issues. Many states choose to file their Optional Clause Declarations with certain exceptions (e.g., certain types of disputes excluded, limits on the scope of their jurisdiction). In the 2020s, about 1/3 of membership from the United Nations has filed Optional Clause Declarations; for example, the United Kingdom, Australia, and Japan all accept majority jurisdiction under the ICJ, while others such as the United States have withdrawn or limited their Optional Clause Declarations. The effect of an Optional Clause Declaration is both voluntary and reciprocal, which means that the ICJ only

has jurisdiction under the Optional Clause Declaration where the applicant and the defendant state both have filed an Optional Clause Declaration and the matter in dispute is encompassed within both states' respective declarations.

- **Special Agreement (Compromis):** States may mutually agree in the form of a Special Agreement, sometimes referred to as a "compromis," wherein they agree to submit a specific dispute for resolution to the International Court of Justice (ICJ). Even if states have not accepted the compulsory jurisdiction of the court for all disputes, any combination of two or more states may execute a Special Agreement that identifies the subject matter at issue for resolution by the ICJ. This has been used extensively by states seeking to submit disputes to the ICJ on an ad hoc basis, as it represents a direct expression of the parties' consent to submit the matter to the Court for determination. In practice, many contentious matters have been submitted to the ICJ under Special Agreements, particularly when the parties believe that resolution through the Court would be more effective than either negotiations or arbitration.

- **Forum Prorogatum:** Forum Prorogatum, derives from Latin and means "Postponed Jurisdiction."The term refers to the acceptance of a Court's jurisdiction at a later date. It is possible for a State that has not accepted the jurisdiction of the International Court of Justice (ICJ) to give its acceptance of the court's jurisdiction after another State has filed an action against it in an attempt to raise the court's jurisdictional defect. This is called "forum prorogatum," allowing the State that is the subject of the action filed against it to cure the jurisdictional defect. An example of this is where State A has brought an action against State B to the ICJ and State B has not accepted the jurisdiction of the ICJ at that time. State B may subsequently choose to give its acceptance of the ICJ's jurisdiction for this action. However, incidents of this type are infrequent, although it has occurred. One early case that illustrates this concept is the Corfu Channel case (United Kingdom v. Albania, 1949) which is often cited as an example of forum prorogatum. Albania accepted the jurisdiction of the ICJ to allow the ICJ to hear the Corfu Channel case after the United Kingdom filed a case requesting for the Court to hear Albania's actions in the Corfu Channel.

The International Court of Justice (ICJ), before it hears the substantive issues and merits of a contentious case, must determine whether it has the authority to hear the case and whether the application is appropriately before the Court. Normally, a state that has been sued will contest the Court's ability to consider a case based on a jurisdictional basis or contest an application for judicial resolution based on an admissibility basis through "preliminary objections." These preliminary objections will then be handled separately from the merits of the case, meaning the judges will review them, issue a decision on those objections (which could result in the Court dismissing the case or allowing the case to go forward), and determine whether to hear the merits of the dispute and evidence. For instance, the respondent state may object in court that it has not provided valid consent to jurisdiction, or it may argue in court that there is no "legal dispute" that is within the scope of the Court's jurisdiction for judicial consideration. If the ICJ establishes that it does not have jurisdiction, or finds the case inadmissible (as there may be a non-party that should be joined or in some cases where the

Court must require that local remedies have been utilized), then the case will be closed. If the Court establishes that it does have jurisdiction to hear the dispute on the merits, it will proceed to review and hear the case on the substantive legal issues that were raised.

During contentious cases that are submitted to the International Court of Justice (ICJ), procedural steps include an initial written phase followed by an oral phase of the proceedings. The party bringing the case (the applicant state) initiates the case by submitting a written application to the ICJ, stating its jurisdictional basis, and including all the applicable claims. The applicant state will then submit its written pleadings (known as memorials and counter-memorials), with the opposing party also submitting written pleadings according to the Court's schedule. After the completion of the written pleadings, the Court will typically conduct public hearings where both parties may present arguments to the Court, call witnesses or experts, and respond to questions from the Bench.

While it is rare, the ICJ also has the power to appoint experts to investigate facts or obtain expert opinions independent of the parties (for example, to obtain information from a scientific or medical professional). After the conclusion of all evidence presented at the public hearings, the Judges will deliberate in closed session and render a written Judgment, which will be read in public. Judges can issue separate opinions (concur or dissent); thus, it does not require unanimity from all Judges, and it is common for the ICJ to hand down Judgments that differ in opinion from one another, reflecting the diversity of the views of Judges on the Bench. The final Judgment is binding on both parties and cannot be appealed, but both parties can request that the Court provide them with an interpretation or modification of the Court's Judgment if new evidence emerges or for other exceptional reasons, as provided in the Court's Statute.

Advisory opinions have a slightly simplified procedure to follow when requesting such opinions from the Court. A UN organ can make a request for an advisory opinion to the Court by submitting their specific question to the Court. The Court generally will then send out an invitation to all Member States (and potential observers, if so desired) to send in written and/or oral statements regarding the question posed. The Court will take into account the statements that were received and following their deliberation, the Court will render the advisory opinion in writing with several judges sometimes giving their individual dissenting opinions. The decision will be sent back to the requesting body along with a publication of the advisory opinion, but the advisory opinion itself is not legally binding and only represents the Court's view on the question put to them.

The International Court of Justice (ICJ) has two types of jurisdiction for state cases: either prior agreement through formal treaties or optional declarations, or through ad hoc agreement. In either case, the Court will always have to establish its authority to hear a case based on agreed-upon criteria. To ensure that states' legal arguments are given thorough, objective consideration, the Court follows the procedures set by international law and the Statute and Rules of the International Court of Justice. This method of reviewing cases reinforces both the legitimacy of the Court and the acceptance by the international community of its rulings.

1.6. Key Legal Principles Applied by the ICJ and Its Contributions to International Law

The sources and principles of International Law, as defined in Article 38(1) ICJ Statute, guide the International Court of Justice (ICJ) as a Judicial Body.

The ICJ will utilize treaties or relevant agreements first when deciding a dispute, then rely on customary International Law norms and on general legal principles. It may refer to decisions made by other courts (including previous decisions made by the ICJ) as well as writings by respected authorities on Public Law as secondary methods of establishing the rule of law.

While it is true that there is no formal requirement (stare decisis) to follow previous decisions made by the ICJ, in practice it will cite and adhere to its own prior case law to achieve consistency and stability in the development of International Law. **The use of precedent, although it is not binding on the International Court of Justice, promotes uniformity in the evolution of the Law.**

The Court's work relies on a number of essential legal principles, with **state sovereignty and consent being the most significant.** The ICJ can only adjudicate a dispute involving a state if that state agrees to the Court's jurisdiction; states are all equal under international law and thus, cannot adjudicate without their consent (as noted in the jurisdiction section above). However, while the ICJ respects state sovereignty, it also requires states, when they consent to having their dispute resolved by the ICJ, to act in good faith to comply with the Court's decision **(pacta sunt servanda)**, or agreements must be kept. Thus, the ICJ supports the principle of settling disputes by peaceful means, including Article 2(3) and Chapter VI of the UN Charter, which establish that all disputes should be resolved through peaceful means, and that legal disputes should be settled through Courts or Arbitral Tribunals rather than by force. Finally, the ICJ demonstrates that even large, powerful states are accountable to the international rule of law. An instance of how ICJ has promoted the understanding of international legal principles is the **Nicaragua v. United States case in 1986**, **in which the Court ruled on the United States' violation of the principle of non-intervention, and use of force, under international law.** This decision reaffirmed the application of these norms even where they are applied to a major power, and despite that the United States subsequently rescinded its acceptance of compulsory jurisdiction, following the Court's ruling against it. Although the issues before the ICJ do not specifically deal with individual cases, ICJ decisions provide a further clarification of certain principles under international law, including but not limited to: **Equality of States, Territorial Integrity, the Right to Self-Determination and Human Rights.**

The International Court of Justice's contribution towards the development of international law is much larger than that of an individual party; rather, it has vast implications for the whole world community through its decisions regarding international conflicting claims (in turn, clarifying or defining the substantive content of international law regarding specific issues). For example, the ICJ has defined the methods by which countries may delineate their maritime boundaries, elaborated upon what diplomatic immunity may entail, clarified the

terms under which states may be held responsible for violations of international law (such as the definition of what constitutes a violation of international obligation, and how and to whom reparations must be paid), and applied various principles of international environmental law in determining issues arising from transboundary harm. **A decision of the court becomes a part of international jurisprudence and will be cited often by lawyers and future courts in making legal arguments.** Although only the parties before the Court are technically bound to follow its ruling, because the court's reasoning is viewed as being authoritative by virtually every country in the world, it is highly probable that many other states will eventually adopt similar reasoning and practice based on the court's decision(s). In fact, in many cases, the jurisprudence developed by the court has been subsequently recognized by countries' conduct and/or passed by UN legislatures as legal, thereby demonstrating that ICJ jurisprudence is normative in relation to other international law principles. Moreover, given that the judges are from various areas of the world and represent a wide range of approaches to legal issues, the opinions rendered by the ICJ can be viewed as a product of deliberation among judges from diverse legal cultures, and therefore carry with them an added level of universal weight and validity than would otherwise be found from decisions created in only one specific region or legal culture.

In a similar fashion to the role played by advisory opinions issued by the International Court of Justice (ICJ), advisory opinions have also played an important part in the evolution of international law. **Although advisory opinions do not have binding force, they frequently answer novel and unsolved legal issues and thus may address gaps and ambiguities in international legal regulation.** The Advisory Opinion on Reparations for Injuries Suffered in the United Nations (1949) provided authority as to what constitutes a legal personality of an international organization i.e., United Nations; it established that, as an organization, the United Nations possesses the right to submit international claims for compensation on behalf of its personnel for damages incurred in the course of performing their responsibilities as agents of the United Nations. The Advisory Opinion of Namibia (1971) provided guidance regarding the legal status of South West Africa (Namibia) and established a framework for the obligations of states regarding an illegally occupied territory, thereby advancing the law relating to decolonisation and relating to the consequences of illegality. The Advisory Opinion of the Court Concerning the Legality of the Use of Nuclear Weapons (1996) addressed questions concerning international humanitarian law and the use of armed force, influencing the ongoing discourse surrounding disarmament (despite the Court's conclusions regarding this issue, being more nuanced and leaving many questions on the topic unaddressed). Recently (outside of the scope of the assignment defined by “recent landmark decisions”), the Advisory Opinion of the Court Concerning the Chagos Archipelago (2019), addressed self-determination, and colonial era treaties; based on these examples, through its advisory opinions, the Court has repeatedly helped consolidate evolving principles or articulate legal standards which guide the global community.

The International Court of Justice (ICJ) represents and reflects the commitment of governments around the world to uphold international law and justice. The Court provides states with a forum where they can bring their disputes to be resolved according to

international law and not through force. As such, the Court promotes stability in the international system because even though there will be differences among States regarding individual decisions of the Court, the mere act of using legal arguments to resolve disputes and the general adherence to the Court's decisions demonstrates that law has a civilized effect on the interaction of States in the international system. Over time, the ICJ has established an extensive body of case law that will often be utilized as guidance by other international courts, such as the International Tribunal for the Law of the Sea (ITLOS) or the International Criminal Court (ICC), as well as by national courts who will be addressing issues that deal with international law. The opinions of the Court have been relied upon by many researchers and practitioners which is another way of establishing them as being part of the framework of the international legal system. The Statute of the ICJ forms part of the Charter of the United Nations, which was intended to demonstrate that the enforcement of international law by the World Court was to be an important component of a world organization that promotes peace and cooperation among States.

The International Court of Justice is governed by established legal principles employed with impartial and rigorous application, and through its case law (jurisprudence), it develops international law on an ongoing basis. The authority of the Court does not derive from coercive strength, but rather from the trust established between states and the international community regarding the Court's wisdom and expertise. The International Court of Justice is an important component of international law by defining the rights and responsibilities of states and providing a non-violent way to settle international disputes. With every evolution in the international system that is driven by emerging problems and cases, the principle of the rule of law governs relationships between states.

2. CASE OF NICARAGUA v. GERMANY

2.1. Introduction to the case

On 1 March 2024, Nicaragua filed an Application instituting proceedings against Germany for alleged violations by Germany of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide and the Geneva Conventions of 1949 and their Additional Protocols, as well as “intransgressible principles of international humanitarian law and other peremptory norms of general international law” in relation to the Occupied Palestinian Territory, in particular the Gaza Strip.

In its Application, Nicaragua states that “[e]ach and every Contracting Party to the Genocide Convention has a duty under the Convention to do everything possible to prevent the commission of genocide” and that since October 2023, there has been “a recognised risk of genocide against the Palestinian people, directed first of all against the population of the Gaza Strip”.

Nicaragua further 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, “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”.

Nicaragua seeks to found the Court's jurisdiction on the declarations by which both States have accepted the compulsory jurisdiction of the Court pursuant to Article 36, paragraph 2, of its Statute and on the compromissory clause contained in Article IX of the Genocide Convention.

The Application was accompanied by a request for the indication of provisional measures, in which Nicaragua asks the Court to indicate such measures as a matter of extreme urgency, pending the Court's determination on the merits of the case, with respect to the "participation [of Germany] 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".

Public hearings on this request were held on 8 and 9 April 2024. By an Order dated 30 April 2024, the Court found that the circumstances, as they then presented themselves to it, were not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

By an Order dated 19 July 2024, the Court fixed 21 July 2025 and 21 July 2026 as the respective time-limits for the filing of the Memorial by Nicaragua and the Counter-Memorial by Germany. The Memorial of Nicaragua was filed within the time-limit thus fixed.

On 21 October 2025, within the time-limit fixed for the filing of its Counter-Memorial, Germany filed preliminary objections challenging the jurisdiction of the Court and the admissibility of Nicaragua's Application. In accordance with Article 79bis, paragraph 3, of the Rules of Court, the filing of these objections has the effect of suspending the proceedings on the merits.

Following this filing, the President of the Court issued an Order fixing 23 February 2026 as the time-limit for Nicaragua to present a written statement containing its observations and submissions on Germany's preliminary objections. Once the written phase regarding these objections is concluded, the Court will schedule public oral hearings to hear the arguments of both States. These hearings will focus exclusively on whether the Court has the authority (jurisdiction) to hear the case and whether the claim is legally fit to proceed (admissibility) before any further consideration of the substantive merits.

Following the filing of Nicaragua's written statement, the oral proceedings on the preliminary objections commenced before the International Court of Justice on (tarih).

2.2. Framing the Dispute and the Method

2.2.1. The central legal question: third-State obligations and the "risk" logic (prevention, non-assistance, due diligence)

The legal core of this case involves the doctrine of "Third-State Responsibility" under international law. This concept examines whether a state that is not a direct party to a conflict can be held liable for failing to prevent violations committed by another state or for providing

assistance that facilitates such violations. Central to this is the principle of "due diligence," which requires states to take reasonable steps to prevent foreseeable breaches of international law. The "risk logic" refers to the threshold of awareness - the point at which a state is considered to have sufficient knowledge of a risk to trigger its legal obligations to act or refrain from certain activities, such as military exports.

2.2.2. Applicable normative anchors: the Genocide Convention (Arts. I, III, IX) and IHL (Common Article 1; occupation framework)

The primary legal instruments governing this dispute are the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the four Geneva Conventions of 1949. Article I of the Genocide Convention establishes an obligation for all contracting parties to prevent genocide. Article III lists punishable acts, including "complicity in genocide." In the realm of International Humanitarian Law (IHL), Common Article 1 of the Geneva Conventions stipulates that states must "ensure respect" for the Conventions in all circumstances. Additionally, the legal framework governing "Belligerent Occupation" provides the rules for the administration of territories and the protection of civilian populations under foreign control.

2.2.3. Selection criteria for historical events: “status change + legal relevance + Germany nexus”

The historical events detailed in this guide are selected based on three criteria: a significant change in the legal or administrative status of the territory (Status Change); the creation of specific legal rights or obligations under international law (Legal Relevance); and the historical or contemporary involvement of Germany in the region through diplomatic, financial, or military relations (Germany Nexus). This framework provides the factual foundation necessary to assess the degree of knowledge and the scope of obligations relevant to the present proceedings.

2.3. Ottoman Rule and the Pre-Mandate Background (Contextual, Limited)

2.3.1. Administrative status and the origins of competing claims

During the late 19th and early 20th centuries, the territory of Palestine was under the sovereignty of the Ottoman Empire, divided into administrative units such as the Mutasarrifate of Jerusalem. The population was predominantly Arab, with a growing Jewish minority. During this period, the land was subject to various Ottoman land laws and administrative reforms. The decline of Ottoman authority and the strategic interests of European powers during World War I transformed the territory into a focal point of international diplomacy and conflicting territorial aspirations.

2.3.2. Early emergence of self-determination narratives as a bridge to the post-1917 order

The transition from Ottoman rule was marked by the rise of distinct national movements. Arab nationalism sought independence from imperial rule, while the Zionist movement sought the establishment of a Jewish national home. These movements were catalyzed by international declarations and secret agreements made during World War I, such as the 1917 Balfour Declaration and the McMahon-Hussein Correspondence. These competing narratives of self-determination over the same geographic area established the political and legal tensions that would eventually be inherited by the United Nations system.

2.4. The Mandate Period and the Birth of the UN Legal Order (1917–1949)

2.4.1. From Mandate governance to the internationalisation of the question of Palestine

Following World War I, the League of Nations established the British Mandate for Palestine (1922). Under Article 22 of the Covenant of the League of Nations, Mandates were viewed as a "sacred trust of civilization." The British administration was tasked with balancing the civil and religious rights of the existing population with the establishment of a Jewish national home. In 1947, the newly formed United Nations attempted to resolve the escalating conflict through Resolution 181 (the Partition Plan), which proposed the creation of independent Arab and Jewish States with a Special International Regime for Jerusalem.

2.4.2. 1947–1949 as a constitutive rupture: conflict, displacement, and the formation of the refugee regime

The period between 1947 and 1949 saw a major armed conflict following the rejection of the Partition Plan and the 1948 Declaration of the Establishment of the State of Israel. This war resulted in the displacement of approximately 700,000 Palestinians, an event known as the Nakba. The 1949 Armistice Agreements (Green Line) established the de facto borders of Israel and the remaining territories (West Bank and Gaza). This era also saw the creation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to address the resulting humanitarian crisis.

2.4.3. Foundational codification: the 1948 Genocide Convention and the 1949 Geneva Conventions

Concurrent with the conflict in Palestine, the international community codified the modern laws of war and human rights in response to the atrocities of World War II. The Genocide Convention was adopted on December 9, 1948, and the four Geneva Conventions were adopted on August 12, 1949. These treaties established the universal legal standards for the protection of civilians and the prevention of mass atrocities. Both Germany and the states involved in the regional conflict eventually became parties to these conventions, making them the primary yardsticks for measuring state conduct in modern international adjudication.

2.5. Post-1967: The Consolidation of the “Occupied Palestinian Territory” and the Law of Occupation (1967–1993)

2.5.1. Legal characterisation of the occupation after 1967 and the emergence of the OPT framework

Following the 1967 Six-Day War, the West Bank, East Jerusalem, and the Gaza Strip came under Israeli military control. The international community, primarily through UN Security Council Resolution 242, characterized these lands as "Occupied Palestinian Territory" (OPT). This status triggered the application of the 1907 Hague Regulations and the 1949 Fourth Geneva Convention, which establish the legal framework for "Belligerent Occupation." Under this regime, the occupying power does not acquire sovereignty over the territory but assumes administrative responsibilities and duties toward the "protected persons" (the civilian population) residing there.

2.5.2. Settlements, annexation claims, and the dynamics of prolonged occupation

From 1967 onwards, the establishment of Israeli settlements and the formal annexation of East Jerusalem in 1980 (declared "null and void" by UN Security Council Resolution 478) altered the demographic and physical landscape of the OPT. While the Law of Occupation was originally designed for temporary military control, the "prolonged" nature of this occupation created complex legal questions regarding the permanence of infrastructure and the applicability of human rights law alongside International Humanitarian Law (IHL). These developments established the factual background for international legal debates regarding the "irreversibility" of territorial changes and the duties of third States in response to such shifts.

2.5.3. The IHL baseline: protection of civilians and the third-State obligation to “ensure respect”

The legal baseline for the treatment of civilians in the OPT is rooted in the Fourth Geneva Convention, which prohibits the transfer of a state's own civilian population into occupied territory and bans collective punishment. Central to the current proceedings is the interpretation of "Common Article 1" of the Geneva Conventions. This article stipulates that all High Contracting Parties -including those not involved in a specific conflict, like Germany- undertake not only to respect the Conventions themselves but also to "ensure respect" for them by others. This creates a systemic expectation that third States monitor and respond to potential IHL violations in occupied territories.

2.6. From Oslo to Fragmented Governance and the Distinctive Position of Gaza (1993–2022)

2.6.1. The Oslo architecture: allocation of powers and limits of territorial authority

The Oslo Accords (1993 and 1995) created a transitional governance framework, establishing the Palestinian Authority (PA) and dividing the West Bank into Areas A, B, and C with varying degrees of Palestinian and Israeli control. While the PA assumed civil and internal security functions in certain areas, Israel retained control over borders, airspace, and external

security. This "fragmented governance" model did not terminate the status of occupation under international law but created a dual-layered administrative system where territorial authority was shared and often restricted by the overarching military framework.

2.6.2. Gaza's evolving status, access restrictions, and recurring escalations

In 2005, Israel implemented its "Disengagement Plan," withdrawing its military personnel and settlements from the Gaza Strip. However, following the 2007 political takeover of Gaza by Hamas, a comprehensive blockade was imposed on the territory's land, sea, and air borders. The UN and various international bodies continued to characterize Gaza as occupied due to Israel's "effective control" over its borders and essential services. Between 2008 and 2022, multiple large-scale military escalations occurred, leading to significant destruction of civilian infrastructure and establishing a pattern of humanitarian crises that informed the international community's "risk assessment" of the region.

2.6.3. Humanitarian infrastructure and UN operational presence (including UNRWA) in conflict settings

The humanitarian situation in the OPT is managed by a complex network of UN agencies, with UNRWA (United Nations Relief and Works Agency) being the primary provider of education, healthcare, and social services to millions of Palestinian refugees. Because the local economy and infrastructure are heavily restricted, the population is largely dependent on international aid. The operational presence of UNRWA and other agencies (like OCHA and WHO) serves as the primary source of real-time data on civilian casualties and living conditions, which is used by third States to evaluate the necessity and impact of their humanitarian funding and diplomatic policies.

2.7. Accountability Milestones in International Law (2004–2021)

2.7.1. ICJ advisory jurisprudence on the OPT (2004) and its implications for third States

In 2004, the International Court of Justice (ICJ) issued an Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The Court affirmed that the Fourth Geneva Convention applies to the OPT and that the construction of the wall violated international law. Significantly, the Court stated that all States are under an obligation not to recognize the illegal situation resulting from the wall's construction and not to render aid or assistance in maintaining that situation. This established a precedent for the "erga omnes" (toward all) nature of certain obligations regarding the Palestinian people's right to self-determination.

2.7.2. UNGA and status-recognition developments shaping the legal discourse (2012)

In 2012, the UN General Assembly adopted Resolution 67/19, granting Palestine "non-member observer State" status. While this did not settle the question of full UN membership, it allowed Palestine to accede to various international treaties and organizations, including the Rome Statute of the International Criminal Court (ICC). This development shifted the legal discourse from a purely "political dispute" to a "state-like" interaction within the international judicial system, providing new avenues for seeking accountability through treaty-based mechanisms.

2.7.3. ICC jurisdictional developments concerning Palestine (2021) and their broader systemic effect

In February 2021, a Pre-Trial Chamber of the International Criminal Court (ICC) ruled that the Court's territorial jurisdiction extends to the territories occupied by Israel since 1967, namely Gaza and the West Bank, including East Jerusalem. This ruling allowed the ICC Prosecutor to open a formal investigation into alleged war crimes committed by all parties to the conflict. While the existence of an active ICC investigation does not in itself impose legal obligations on third States, it contributes to the establishment of a factual and legal context relevant to the assessment of knowledge and foreseeability when evaluating the risks associated with providing military or financial support to parties involved in the territory.

2.8. The 7 October 2023 Escalation and the Foreseeability of Irreparable Harm (Oct 2023–Feb 2024)

2.8.1. The post-7 October hostilities and the humanitarian emergency as a legal-risk context

On October 7, 2023, Hamas and other Palestinian armed groups launched a large-scale attack on Israel, resulting in approximately 1,200 deaths and the taking of over 240 hostages. In response, Israel launched "Operation Iron Swords," involving extensive aerial bombardment and a ground invasion of the Gaza Strip. By February 2024, UN agencies reported over 28,000 deaths in Gaza, widespread famine, and the destruction of nearly 70% of residential housing. These facts established the "humanitarian emergency" context used by international bodies to assess whether there was a foreseeable risk of irreparable harm to the rights of the civilian population.

2.8.2. The relevance of South Africa v. Israel (provisional measures, 26 January 2024) to “prevention” narratives

On January 26, 2024, the International Court of Justice (ICJ) issued an Order for provisional measures in the case *South Africa v. Israel*. The Court found it "plausible" that the rights of Palestinians in Gaza under the Genocide Convention were being violated and ordered Israel to take all measures within its power to prevent the commission of genocidal acts.

2.9. The “Germany Nexus”: Arms Transfers, Diplomatic Positioning, and UNRWA Financing (Jan–Feb 2024)

2.9.1. Germany's arms export control framework and the public/legal scrutiny of authorisations

Germany is a major global exporter of military equipment to Israel, with the relationship governed by the War Weapons Control Act (*Kriegswaffenkontrollgesetz* - KWKG), the Foreign Trade Act (*Außenwirtschaftsgesetz*), and the EU Common Position on arms exports. Under these frameworks, the German government is required to assess whether a "clear risk" exists that military technology might be used to commit serious violations of International Humanitarian Law (IHL). In 2023, Germany authorized military exports to Israel totaling €326.5 million, representing a significant increase in authorizations following the events of October 7.

A granular breakdown of the 2023 data shows that €20.1 million of this total was classified as "war weapons" (lethal equipment), while €306.4 million (approximately 93.8%) consisted of "other military equipment," such as armored vehicles, protective gear, and communication systems. Beyond direct sales, long-standing industrial agreements include the provision of MTU engines for Israel's Merkava IV tanks and Namer APCs, as well as Germany's lease of Heron TP drones from Israel under a €1 billion strategic agreement. Reports from *Reuters* and *Der Spiegel* indicated that German export authorizations for war weapons decreased in early 2024, dropping from the high levels seen in late 2023 to near zero for lethal weapons in the first quarter of the year. These authorizations remain subject to both domestic administrative law and international treaty obligations regarding the non-facilitation of unlawful acts.

2.9.2. The suspension of UNRWA funding and its legal salience in an acute humanitarian context

In late January 2024, following Israeli allegations that 12 UNRWA employees participated in the October 7 attacks, Germany -along with 15 other major donors- announced the temporary suspension of new funding to the agency. This decision was framed by the German government as a pause on new budgetary commitments pending the results of a formal investigation and audit. Because UNRWA is the primary distributor of food, medicine, and social services in the Gaza Strip, this suspension occurred simultaneously with warnings from the ICJ and other international bodies regarding a catastrophic humanitarian situation.

During this same period, Germany increased its humanitarian assistance to the Palestinian territories through other organizations, including the International Committee of the Red Cross (ICRC) and the World Food Programme (WFP), bringing its total humanitarian aid for Palestinians to over €160 million for the 2023/2024 period. The factual and legal impact of the UNRWA funding pause remains a central component of the dispute: Nicaragua characterizes the suspension as a failure to prevent genocide by undermining the survival of the population, while Germany characterizes it as a necessary administrative step to mitigate security and terror-financing risks while maintaining aid through alternative channels.

2.9.3. Diplomatic protest and dispute crystallisation: Nicaragua's Note Verbale (2 February 2024)

Under the Statute of the International Court of Justice, the existence of a "legal dispute" is a jurisdictional prerequisite, often requiring proof that the parties held opposing views which were formally communicated to one another. This dispute officially crystallized on **February 2, 2024**, when Nicaragua sent a **Note Verbale** to the German Federal Foreign Office. In this document, Nicaragua formally urged Germany to stop its military support to Israel and to reverse its decision regarding the suspension of UNRWA funding, alleging that continued support facilitated a "plausible genocide" and serious breaches of International Humanitarian Law (IHL).

Germany's subsequent diplomatic response rejected these demands, asserting that its actions remained fully compliant with IHL and its international obligations. Media coverage from outlets such as *Deutsche Welle* and *Al Jazeera* at the time noted that Germany initially characterized Nicaragua's move as premature, arguing that no legal dispute had yet "crystallized" because Germany was still in the process of auditing the UNRWA allegations and evaluating its export licenses. However, the rejection of Nicaragua's formal diplomatic requests served as the factual basis for the crystallization of the dispute, satisfying the procedural requirements for Nicaragua to institute proceedings on March 1, 2024.

2.10. Crystallisation of the Dispute and the Turn to Adjudication (Feb 2024)

2.10.1. Consolidation of opposing legal positions through diplomatic exchanges

Throughout February 2024, the diplomatic exchanges between Managua and Berlin clarified and hardened the opposing legal stances of both States. Nicaragua maintained that Germany's support violated the Genocide Convention and IHL, arguing that the "duty to prevent" constitutes an absolute obligation that requires an immediate arms embargo once a "plausible risk" of genocide or serious violations becomes apparent. In contrast, Germany maintained that its actions remained consistent with international law and its right to support a state's self-defense. Central to Germany's position is its "compliance architecture," which asserts that international law does not mandate a blanket embargo but rather a rigorous, case-by-case assessment of export licenses.

Furthermore, the two States presented diverging interpretations of their obligations under Common Article 1 of the Geneva Conventions. Nicaragua argued that continued assistance facilitated serious breaches, whereas Germany contended that its influence is exerted through "quiet diplomacy" and active engagement. Germany maintained that it consistently pressured for increased humanitarian aid, thereby fulfilling its duty to "ensure respect" for IHL through diplomatic channels rather than a total withdrawal of support. These exchanges successfully transformed a broader political disagreement into a specific legal contest regarding the interpretation and application of treaty obligations, setting the stage for adjudication.

2.10.2. The invocation of erga omnes partes interests under the Genocide Convention framework

Nicaragua's legal standing (*locus standi*) to institute proceedings is grounded in the principle of obligations ***erga omnes partes***. This doctrine, significantly developed and reinforced by the ICJ in cases such as *Belgium v. Senegal* (2012) and *The Gambia v. Myanmar* (2020), establishes that certain international treaties protect the collective interests of all member states rather than just the individual interests of a specifically harmed state.

Under this framework, because the 1948 Genocide Convention aims to protect a "common interest" of humanity, the obligations contained therein are owed by each State party to all other States parties to the Convention. Consequently, any State party possesses a legal interest in ensuring compliance and is entitled to invoke the responsibility of another State for alleged breaches -such as the failure to prevent genocide or complicity in genocidal acts- regardless of whether the applicant State has been directly affected by the conduct in question. This principle transforms the enforcement of the Genocide Convention into a collective responsibility, allowing any member state to act as a guardian of these fundamental norms within the International Court of Justice.

2.11. Proceedings Instituted (1 March 2024)

On March 1, 2024, Nicaragua formally filed its Application instituting proceedings against the Federal Republic of Germany at the Peace Palace in The Hague. This filing officially placed the matter on the Court's General List and effectively seised the Court, subject to its subsequent determination of jurisdiction. This date marks the transition from the diplomatic phase to the judicial phase, shifting the focus of the dispute from political exchanges to the technical application of international law. By leveraging the ICJ's authority, Nicaragua seeks a judicial determination on Germany's obligations regarding military aid and humanitarian financing, moving the contest into a formal evidentiary and legal framework.

2.12. Filing before the ICJ: claims, jurisdictional basis, and the request for provisional measures

Claims: Nicaragua asserts that Germany's actions and omissions constitute a breach of several fundamental international obligations, specifically:

1. **Violation of the Duty to Prevent Genocide:** By providing military support despite a foreseeable risk of genocidal acts.
2. **Complicity through Assistance:** By rendering aid (military and financial) that facilitates the commission of prohibited acts.
3. **Breach of IHL Obligations:** By failing to "ensure respect" for the Geneva Conventions, as required by Common Article 1.

4. **Assistance to a Violation of Self-Determination:** Providing aid that helps maintain a situation of illegal military occupation and the denial of the Palestinian people's right to self-determination.

Jurisdictional Basis: Nicaragua invoked Article IX of the Genocide Convention, which provides the ICJ with jurisdiction over disputes between contracting parties relating to the "interpretation, application or fulfilment" of the Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in Article III.

The Request for Provisional Measures: Nicaragua requested the following five measures as a matter of urgency:

1. **Stop Military Aid:** Immediately suspend all military assistance and weapon exports to Israel.
2. **Prevent Misuse:** Ensure that weapons already delivered are not used to violate international law.
3. **Fulfill IHL Duties:** Take all possible steps to comply with general obligations under humanitarian law.
4. **Restore UNRWA Funding:** Reverse the decision to suspend financial support for UNRWA operations.
5. **Cooperate for Peace:** Use diplomatic influence and cooperation to stop ongoing breaches of international norms.

Following the filing of the Application, the International Court of Justice has scheduled the public oral hearings for (tarih). These proceedings will encompass the entirety of the case, where the Court will hear the oral arguments from both Nicaragua and Germany regarding the substantive merits, the legal claims, and the necessity of the requested provisional measures.

3. EVIDENCE

4. LEGAL BASIS OF THE PARTIES

4.1. Legal Basis of the Republic of Nicaragua

4.1.1. Jurisdictional basis (how Nicaragua says the ICJ can hear the case)

4.1.1.1. Optional Clause jurisdiction (ICJ Statute, Article 36(2))

Nicaragua pleads that **both States have accepted the Court's compulsory jurisdiction** via their **Article 36(2)** declarations, so the Court is competent *ratione materiae* for the "legal disputes" Nicaragua submits (subject to any reservations in the declarations).

4.1.1.2. Treaty compromissory clause (Genocide Convention, Article IX)

Independently (and cumulatively), Nicaragua invokes **Article IX of the Genocide Convention**, which confers ICJ jurisdiction over disputes relating to the "interpretation, application or fulfilment" of the Convention, including State responsibility for genocide or acts in Article III; Nicaragua notes neither State has a reservation to Article IX.

4.1.1.3. Standing framed through "erga omnes / erga omnes partes" logic

Nicaragua frames the case as enforcement of **community-interest obligations**: it characterizes itself as "aware of its erga omnes obligations," and—because both are parties to the Genocide Convention—asserts a right/duty to seek Germany's compliance with **erga omnes partes** obligations under that Convention.

4.1.2. Substantive legal basis (what obligations Nicaragua says Germany breached)

Nicaragua's pleadings bundle three layers of international obligations, all tied to Germany's alleged conduct in relation to Israel's operations in Gaza/OPT.

4.1.2.1. Genocide Convention: duty to prevent and not contribute (esp. Article I; linked to Article III acts)

Nicaragua's core Genocide Convention theory is that Germany **breached Article I** by (i) **failing to prevent** an alleged/"plausible" genocide and (ii) **contributing to genocide** through support—particularly arms/military assistance—and by withdrawing support to victims through UNRWA funding decisions (pleaded as aggravating the risk to protected groups).

4.1.2.2. International Humanitarian Law: Common Article 1 ("respect and ensure respect"), plus customary IHL

Nicaragua relies heavily on **Common Article 1 of the 1949 Geneva Conventions** (and particularly GC IV) as creating a duty for States—even if not a party to the conflict—to **"ensure respect"** for IHL "in all circumstances." It pleads Germany violated this by not using its influence to ensure compliance and by providing support alleged to facilitate serious IHL violations.

It also explicitly anchors IHL claims in **customary/intransgressible principles of humanitarian law**, portraying the duty to ensure respect as not only treaty-based but also reflective of fundamental customary norms.

4.1.2.3. "Peremptory norms" / law of occupation / non-assistance to an illegal situation

A distinctive part of Nicaragua's legal framing is that Germany allegedly aided or assisted serious breaches of **peremptory norms (jus cogens)** and related obligations, including:

- **non-assistance** in maintaining an illegal situation connected to the occupation,
- the **prohibition of apartheid** (as pleaded), and
- the **right of self-determination** of the Palestinian people.

Nicaragua further links this to the *secondary rules* vocabulary (cooperation to end serious breaches, etc.), referencing the broader architecture typically associated with aggravated responsibility/peremptory norms.

4.1.3. The pleaded "wrongful conduct" by Germany (the factual/legal bridge)

On Nicaragua's case, Germany's responsibility is triggered by a combination of actions/omissions, principally:

- **continued military assistance/arms and related support**, alleged to enable or facilitate breaches of the Genocide Convention and IHL;
- **withdrawal/suspension of UNRWA funding**, alleged to undermine protection of victims and thereby breach prevention/ensure-respect duties;
- **failure to ensure respect** for IHL under Common Article 1; and (as pleaded)
- **aid/assistance** in maintaining an apartheid/occupation-related illegal situation and the denial of self-determination.

4.1.4. Remedies Nicaragua asks for (what it wants the Court to declare/order)

In its merits submissions, Nicaragua seeks declarations that Germany breached those obligations, plus **cessation**, **assurances of non-repetition**, and **full reparation**.

In sum: Nicaragua's legal rationale is an **"indirect responsibility"** theory: Germany is not accused of committing genocide itself, but of **breaching third-State obligations**—to prevent genocide, to ensure respect for IHL, and to avoid aid/assistance regarding grave/peremptory-norm breaches—through arms support and related measures.

4.2. Legal Basis of the Federal Republic of Germany

4.2.1. Procedural defence (jurisdiction, admissibility, and the preliminary-objections phase)

4.2.1.1. No (or not yet) "dispute" at the critical date (jurisdictional precondition)

A central procedural line in Germany's oral pleadings at the provisional-measures stage is that Nicaragua **cannot show—even prima facie—that a dispute had crystallized** between the Parties at the moment proceedings were instituted. Germany frames Nicaragua as having filed the Application **before meaningful diplomatic engagement** could occur, emphasizing the short time window and the manner of communications relied upon.

This matters because, under ICJ practice, the existence of a dispute is commonly treated as a **precondition to the Court's exercise of jurisdiction** under compromissory clauses (and is frequently litigated in preliminary objections).

4.2.1.2. The "indispensable third party" bar (Monetary Gold principle) as an admissibility/consent problem

Germany's most structurally consequential procedural argument is that the case is **functionally about Israel's conduct**, and that Nicaragua's claims against Germany are **dependent upon** prior determinations that Israel has violated the Genocide Convention and/or IHL—while Israel is not before the Court and has not consented to adjudication in this case.

In its pleadings, Germany characterizes alleged Israeli violations as the "essential bedrock" of Nicaragua's case, and argues that the Court cannot proceed because Israel is a **manifestly indispensable third party**.

Secondary analysis also records Germany relying on this as a *preliminary objection* (in the broader sense of "objection in response"), explicitly linking it to the Monetary Gold line of cases.

> *Important nuance (and why this will be a major battleground later): commentators disagree on whether the Monetary Gold principle truly blocks the Court where the respondent's responsibility could be assessed without legally determining the absent State's responsibility. But **Germany's procedural posture** is that, on Nicaragua's own framing, **Israel's legal responsibility would form the "very subject-matter"** (or a prerequisite) of the decision.*

4.2.1.3. "Remove the case from the General List" at the provisional-measures stage

At the April 2024 hearings, Germany asked the Court not only to reject provisional measures but also to **remove the case from the General List**—a signal that Germany was pushing a **threshold, dispositive** procedural challenge (jurisdiction/admissibility).

4.2.1.4. The case's current procedural posture: preliminary objections (filed October 2025)

Germany later **filed preliminary objections** on **21 October 2025**, moving the case into the ICJ's preliminary-objections phase (which typically suspends merits proceedings pending a ruling on jurisdiction/admissibility). Just Security+1

Two critical practical points for your framing:

- A detailed public text of Germany's objections may not be available in open sources; at least one specialist analysis notes they are **not publicly available**, so reconstructions rely on Germany's earlier oral pleadings and likely lines of objection. Just Security
- The President of the Court fixed **23 February 2026** as the time-limit for Nicaragua to present a written statement on Germany's preliminary objections.

4.2.2. Substantive defence (merits): why Germany says there is no breach

Even while contesting jurisdiction/admissibility, Germany also built a "no plausible breach / no responsibility" merits narrative—especially visible in its April 2024 oral pleadings on provisional measures.

4.2.2.1. No "aid or assistance" / no complicity: ARSIWA-style elements not met

Germany squarely counters Nicaragua's theory (complicity/aiding and assisting) by insisting that **both**:

1. the **objective element** (a *significant contribution* to another State's wrongful act), and
2. the **subjective element** (relevant *knowledge* and *intent* to facilitate)

are absent on the evidence and cannot even be treated as "plausible" at the provisional-measures stage.

Germany explicitly relies on the structure of the ILC Draft Articles' logic (notably the classic Article 16 framework as reflected in ILC commentary and ICJ case-law), arguing there is **no evidence** German matériel made a significant contribution and **no evidence** of Germany's

intent/knowledge in the strict sense required—especially in the genocide context, where "dolus specialis" features in the complicity analysis.

Germany adds that, because those elements are absent, claims framed as "aid and assistance in maintaining a situation created by serious breaches of peremptory norms" (echoing the ARSIWA Article 41(2) logic) are likewise baseless.

4.2.2.2. No plausible breach of the duty to prevent genocide (Genocide Convention, Article I)

Germany characterizes the obligation to prevent genocide as an **obligation of conduct** (due diligence), and argues that—whatever the contested legal characterization of Israel's conduct—Germany has **continuously used all reasonable means**at its disposal: diplomatic engagement, warnings, efforts to open crossings, emergency humanitarian deliveries, etc. Germany's position is essentially: **even on the broadest view of Article I**, Germany has done what the duty could reasonably demand.

There is also a *structural* merits argument with procedural consequences: Germany maintains that the "genocide case against Germany" is **dependent** on determinations about Israel's breach, reinforcing (in Germany's view) both (i) non-plausibility and (ii) the Monetary Gold/indispensable-party problem.

4.2.2.3. Common Article 1 (Geneva Conventions) and IHL: scope, standing, and what "ensure respect" requires

Germany's submissions on Common Article 1 have three layers:

1) Standing/admissibility framing (substance + procedure)

Germany argues that Nicaragua—**as a non-party to the conflict in Gaza**—has **no standing** to enforce Germany's Common Article 1 obligations "with regard to a third State like Israel."

This is not a universally accepted proposition in doctrine (erga omnes / erga omnes partes litigation is exactly what applicants often test), but it is part of **Germany's merits-adjacent admissibility** strategy.

2) Negative vs positive obligations

Germany acknowledges (at least arguendo) the *baseline* idea: Common Article 1 entails (i) a negative duty **not to encourage** IHL violations, and (ii) a positive duty to **exert influence** to stop violations—then argues Germany has not encouraged violations and has, in fact, exerted influence.

3) No "blanket arms embargo" rule in Common Article 1

Germany's most pointed merits position is that Common Article 1 **does not** create a freestanding prohibition on any military support to a State engaged in an armed

conflict. Germany frames a blanket ban as incompatible with the concept of lawful self-defence support and contends that, at most, Common Article 1 implies **risk-assessment/due-diligence constraints** on transfers.

4.2.2.4. Due diligence in export controls: Germany's "compliance architecture" narrative

Germany underpins its merits defence with an institutional argument: it has a **robust, multi-layered export control framework**, and licensing practice is structured to deny exports where there is a "clear risk" of serious IHL violations (tracking EU Common Position language).

Independent commentary on the ICJ's April 30, 2024 order notes that the Court's reasoning leaned heavily on Germany's **stated export-control assessments**, the reported **decrease in export value**, and the distinction between "war weapons" and other military equipment—reflecting how central Germany's "due diligence" narrative was to defeating provisional measures.

4.2.2.5. Provisional measures: Germany's factual assurances and the Court's response

Germany's overall posture at provisional measures was: even if the Court were to assume arguendo certain legal frameworks, the **circumstances did not require** provisional measures under Article 41.

Analyses of the Order emphasize that the Court **did not indicate provisional measures**, finding the circumstances not such as to require exercise of its Article 41 power, and that the Court's approach was unusually "fact-driven" (and strongly influenced by Germany's statements/assurances).

5. APPLICABLE LAW

5.1. Charter of the United Nations

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. *All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.*

2. *A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.*

Article 94

1. *Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.*

2. *If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.*

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. *The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.*

2. *Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.*

5.2. Statue of the International Court of Justice

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 34

1. *Only states may be parties in cases before the Court.*

2. *The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.*

3. *Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.*

Article 35

1. *The Court shall be open to the states parties to the present Statute.*

2. *When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.*

Article 36

1. *The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.*

2. ***The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:***
   a. the interpretation of a treaty;
   b. any question of international law;
   c. the existence of any fact which, if established, would constitute a breach of an international obligation ;
   d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. *The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.*

4. *Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.*

5. *Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.*

6. *In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.*

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. *The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:*
   a. ***international conventions,*** *whether general or particular, establishing rules expressly recognized by the contesting states ;*
   b. ***international custom,*** *as evidence of a general practice accepted as law;*
   c. ***the general principles of law*** *recognized by civilized nations ;*
   d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. *This provision shall not prejudice the power of the Court to decide a case ex aequo et bond, if the parties agree thereto.*

Article 40

1. *Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.*

2. *The Registrar shall forthwith communicate the application to all concerned.*

3. *He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.*

Article 41

1. *The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.*

2. *Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.*

Article 42

1. *The parties shall be represented by agents.*

2. *They may have the assistance of counsel or advocates before the Court.*

3. *The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.*

Article 43

1. *The procedure shall consist of two parts: written and oral.*

2. *The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.*

Article 53

1. *Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.*

2. *The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.*

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. *In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.*

Article 65

1. *The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.*

2. *Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.*

Article 66

1. *The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.*

2. *The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.*

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions, the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

5.3. Convention on the Prevention and Punishment of the Crime of Genocide (1948)

Article I

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article III

The following acts shall be punishable:
(a) Genocide;
(b) Conspiracy to commit genocide ;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide ;
(e) Complicity in genocide.

Article IX

Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

5.4. Geneva Conventions of 12 August 1949 (Common Article 1 / GC IV Article 1)

Article I

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

6. MERITS OF THE CASE

7. FURTHER READINGS

- http://opiniojuris.org/?s=Nicaragua+v.+Germany
- https://verfassungsblog.de/?s=Nicaragua+v.+Germany
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