GERMANY'S CONTRADICTORY STANCE ON THE GAZA ISSUE

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Nicaragua recently filed a complaint against Germany at the International Court of Justice (ICJ) for political, economic and military support for genocide, and the first injunction hearing was held at the Court. The protests in favor of Palestine in front of ICJ prior to the hearing have demonstrated the publicity of the issue. Within this context, hearings and decisions on the issue carry significance.

The Nicaraguan delegation asked the Court to declare that Germany's financial support to Israel and export and import of ammunition should be stopped immediately; that Germany's consistent assistance to Israel constitutes a criminal offence under the Genocide Convention and is contrary to international law; that Germany should ensure that weapons and similar items currently in Israeli inventory and supplied by Germany are not used in violation of human rights and international law; and finally, that Germany should resume financial support to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), which had been discontinued. Germany has rigorously denied the accusations.[1]

Nicaragua argued before the Court that Germany has openly supported genocide in the occupied Palestinian territories and that it -at any rate- is failing to prevent genocide in the context of its international legal and human rights obligations; that it is currently aiding a racist and discriminatory action; and that the Palestinian right to self-determination is not being respected. Nicaragua also stated that Germany has violated *jus cogens* (peremptory norms), which are considered the basic rules of international law, and due to the urgency of the situation, asked the Court to order the halting of the financial and military support provided by Germany until a final decision is made and thus to issue an injunction.[2]

Noting that one of the most destructive military campaigns witnessed by modern society is taking place in Palestine, the Nicaraguan representative indicated that Germany has remained silent and has even financially and militarily supported, the campaign, which -

according to Nicaragua- constitutes an irrefutable violation of international humanitarian law. It should also be emphasized that in his speech, the representative of Nicaragua said that Germany, due to the Holocaust, supports the state of Israel as it conflates Israel with the Jewish community at large, ignoring the fact that Jews with a Holocaust history could empathize with the murdered civilians, and that Germany considers this policy to be in the interests of the state (*raison d'état*). The policy was characterized by the Nicaraguan representative as a matter of state interest for Germany for historical reasons, as well as the fact that Germany regularly concludes arms import and export agreements with Israel over six-month periods. It is also worth noting that in his speech, the representative pointed out that Israel, in defense industry agreements, promotes its products as battle-tested and that it is internationally known that the aforesaid battlefield is Palestine.[3]

When South Africa brought a case against Israel at the ICJ for violation of the Genocide Convention, Germany intervened on Israel's behalf. Germany, which has maintained its financial, military, and political support from Israel since the beginning of the Palestinian-Israeli conflict, has argued that this policy is above all based on historical responsibility. Insisting that the welfare of the state of Israel after the Holocaust has occupied an extremely important place in Germany's foreign policy objectives, the German representative tried to create the conviction that Germany had a kind of guarantor duty in the international arena for the existence and security of Israel. The representative argued that, contrary to the Nicaraguan representative's speech, all Hamas acts, in which it killed, injured, and sexually assaulted many civilians, took place on Israeli territory. Besides, the German representative indicated that Nicaragua claimed that these areas were Gaza territory, and this claim thus constituted a direct attack on the existence and territorial independence of the state of Israel. The German representative also said that Hamas, which he referred to as a terrorist organization, is using civilians in the region as human shields in the hopes that their deaths will cause outrage in the international community and is trying to legitimize these terrorist acts.[4]

Stating that Germany has long supported the Palestinian people in the provision of basic necessities and that this is known to be essential from a human rights point of view, the representative of Germany argued that Israel is only acting in self-defense against a terrorist entity and its terrorist acts and that they would like to see a ceasefire between Hamas and Israel, but that this can only be achieved on favorable terms if Hamas releases the captives.[5]

In general, Germany based its defense on the fact that Hamas is a terrorist organization, that other states are disregarding this situation, and that terrorist movements also constitute a violation of human rights. In the case of Nicaragua, Germany argued, all states that consider Israel to be in breach of its obligations are blind to these facts.[6] One of the reasons why Germany, which speaks so confidently about human rights and international obligations, has been criticized to such an extent is undoubtedly what happened in Namibia in the past.

Between 1904 and 1908, Germany, the colonial state in what was then called German Southwest Africa, which today has ceased to be a colonial state and has become Namibia as an independent state, carried out a series of interventions that can be characterized as

genocide. With regard to this massacre, in which thousands of people were brutally murdered through various methods, Germany has found it more appropriate to adopt a policy that avoids history and stands far from the acceptance it has shown in the international arena regarding the Holocaust and its bilateral relations with Israel. Germany, which recognized the Namibian Massacre through international initiatives, signed a joint memorandum of understanding with Namibia, but did not take any concrete reparation initiatives other than financial aid, which are not sufficient and cannot be considered compensation for the relatives of the victims.[7]

Germany's unlimited tolerance for the Israeli state's excessive retaliations, which cannot be explained as merely self-defense, was found to be shocking and condemned by the Namibian Presidency. It was also asserted in the official social media account of the Namibian Presidency that Germany should learn from its past, withdraw from intervening in the Israeli-Palestinian conflict in favor of Israel, and ultimately abandon its stance in support of genocidal acts.[8]

In conclusion, in the case brought before the International Court of Justice by Nicaragua alleging that Germany has financially and militarily supported the genocide in Gaza, Germany's defense and seemingly contradictory position since the beginning of the conflict have not escaped public attention. Although the reason for Germany's strong support for Israel is often attributed to its historical past, Germany appears to persist in not learning from its history.

[1] Verbatim Record of the Public Sitting Held on Monday 8 April 2024, at 10 a.m., at the Peace Palace, President Salam Presiding, in the Case Concerning Alleged Breaches of Certain International Obligations in Respect of the Occupied Palestinian Territory (Nicaragua v. Germany), *International Court of Justice*, accessed April 26, 2024, https://www.icj-cij.org/sites/default/files/case-related/193/193-20240408-ora-01-00-bi.pdf

[2] International Court of Justice, "Verbatim Record of the Public Sitting Held on Monday 8 April 2024, at 10 a.m. ...".

[3] International Court of Justice, "Verbatim Record of the Public Sitting Held on Monday 8 April 2024, at 10 a.m. ...".

[4] International Court of Justice, "Verbatim Record of the Public Sitting Held on Monday 8 April 2024, at 10 a.m. ...".

[5] International Court of Justice, "Verbatim Record of the Public Sitting Held on Monday 8 April 2024, at 10 a.m. ...".

[6] International Court of Justice, "Verbatim Record of the Public Sitting Held on Monday 8 April 2024, at 10 a.m. ...".

[7] Reinhart Kössler, "Entangled history and politics: Negotiating the past between Namibia and Germany", Journal of Contemporary African Studies, 26(3), 2008: 313–339.

[8] Tafi Mhaka, Namibia, Gaza and German hypocrisy on genocide, Al Jazeera, accessed April 26, 2024, https://www.aljazeera.com/opinions/2024/2/20/namibia-gaza-and-german-hypocrisy-on-genocide

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