INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA

(NICARAGUA *v.* UNITED STATES OF AMERICA)

VOLUME I

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DES ACTIVITÉS MILITAIRES ET PARAMILITAIRES AU NICARAGUA ET CONTRE CELUI-CI

(NICARAGUA c. ÉTATS-UNIS D'AMÉRIQUE)

VOLUME I

ORAL ARGUMENTS ON THE REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

MINUTES OF THE PUBLIC SITTINGS

held at the Peace Palace, The Hague, on 25 and 27 April and 10 May 1984, President Elias presiding

PLAIDOIRIES RELATIVES À LA DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

tenues au Palais de la Paix, à La Haye, les 25 et 27 avril et le 10 mai 1984, sous la présidence de M. Elias, Président

FIRST PUBLIC SITTING (25 IV 84, 10 a.m.)

Present: President ELIAS; *Vice-President* SETTE-CAMARA; *Judges* LACHS, MOROZOV, NAGENDRA SINGH, RUDA, MOSLER, ODA, AGO, EL-KHANI, SCHWEBEL, SIR ROBERT JENNINGS, DE LACHARRIÈRE, MBAYE, BEDJAOUI; *Registrar* TORRES BERNÁRDEZ.

Also present:

For the Government of Nicaragua:

H.E. Mr. Carlos Argüello Gómez, Ambassador, *as Agent and Counsel*;

Mr. Ian Brownlie, Q.C., F.B.A., Chichele Professor of Public International Law in the University of Oxford; Fellow of All Souls College, Oxford,

Hon. Abram Chayes, Felix Frankfurter Professor of Law, Harvard Law School; Fellow, American Academy of Arts and Sciences, *as Counsel and Advocates*;

Mr. Augusto Zamora Rodríguez,
Mr. Paul S. Reichler,
Miss Judith C. Appelbaum,
Mr. Paul W. Kahn, *as Counsel.*

For the Government of the United States of America:

Hon. Davis R. Robinson, Legal Adviser, United States Department of State, *as Agent and Counsel*;

Mr. Daniel W. McGovern, Principal Deputy Legal Adviser, United States Department of State, *as Deputy-Agent and Counsel*;

Mr. Michael G. Kozak, Deputy Legal Adviser, United States Department of State, *as Special Counsel*;

Mr. Robert E. Dalton, Assistant Legal Adviser, United States Department of State,

Mr. K. Scott Gudgeon, Assistant Legal Adviser, United States Department of State,

Mr. Fred L. Morrison, J.D., Ph.D., Member of the Bar of the United States Supreme Court and of the State of Minnesota; Professor of Law, University of Minnesota; formerly Counselor on International Law, Office of the Legal Adviser, United States Department of State,

Mr. Patrick M. Norton, Assistant Legal Adviser, United States Department of State,

Mr. Stefan A. Riesenfeld, Member of the Bar of Minnesota; Professor of Law, University of California, School of Law, Berkeley, California, and the Hastings College of the Law, San Francisco, California; S.J.D. (Harvard), J.U.D. (Breslau), Dott. in Giur. (Milan), Dr. h.c. (Cologne); and formerly Counselor on International Law, Office of the Legal Adviser, United States Department of State,

Mr. David H. Small, Assistant Legal Adviser, United States Department of State, *as Counsel*;

Mr. Steven E. Asher, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mr. Michael J. Danaher, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mr. Dennis I. Foreman, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mrs. Elizabeth Keefer, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mr. Geoffrey M. Levitt, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mr. Peter M. Olson, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mr. Jonathan B. Schwartz, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mr. George Taft, Attorney-Adviser, Office of the Legal Adviser, United States Department of State,

Mr. Kenneth J. Vandevelde, Attorney-Adviser, Office of the Legal Adviser, United States Department of State, *as Attorney-Advisers*.

OPENING OF THE ORAL PROCEEDINGS

The PRESIDENT: The Court meets today to consider the request for the indication of provisional measures, under Article 41 of the Statute of the Court and Articles 73 and 74 of the Rules of Court, made by the Government of the Republic of Nicaragua, in the case concerning *Military and Paramilitary Activities in and against Nicaragua* brought by the Republic of Nicaragua against the United States of America.

The case was brought before the Court by an Application[1] filed in the Registry of the Court on 9 April 1984. In that Application, the Republic of Nicaragua claims to found the jurisdiction of the Court on the declarations made by the Republic of Nicaragua and by the United States of America accepting the jurisdiction of the Court as provided for in Article 36, paragraph 2, of the Statute of the Court. The Republic of Nicaragua then alleges a series of events over the period from March 1981 to the present date in Nicaragua, in the neighbouring territory of Honduras, and in the seas off the coasts of Nicaragua, which the Government of Nicaragua sums up by claiming that the United States of America

> "is using military force against Nicaragua and intervening in Nicaragua's internal affairs, in violation of Nicaragua's sovereignty, territorial integrity and political independence, and of the most fundamental and universally-accepted principles of international law".

On the basis of these allegations, set out more fully in the Application and in a chronological account[2] of what are claimed to be United States of America's covert activities in and against Nicaragua, annexed to the Application, the Republic of Nicaragua asks the Court to adjudge and declare that the United States has violated and is violating a number of Charter and treaty obligations to Nicaragua; that it has violated and is violating the sovereignty of Nicaragua; that it has used and is using force and the threat of force against Nicaragua; that it has intervened and is intervening in the internal affairs of Nicaragua; that it has infringed and is infringing the freedom of the high seas; that in breach of obligations under international law, it has killed, wounded and kidnapped, and is killing, wounding and kidnapping, citizens of Nicaragua; that it is under a particular duty to cease and desist from such activities, and that it has an obligation to pay to the Republic of Nicaragua reparations for damages caused.

On 9 April 1984, the day on which the Application itself was filed, the Republic of Nicaragua submitted the present request for the indication of provisional measures[3]. I now ask the Registrar to read from that request the statement of the measures which Nicaragua asks the Court to indicate.

The REGISTRAR:

> "Nicaragua respectfully requests that the Court indicate the following provisional measures to be in effect while the Court is seised of this case:

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[1] Pp. 1-24, *supra*.
[2] Pp. 11-21, *supra*.
[3] Pp. 25-29, *supra*.

— That the United States should immediately cease and desist from providing, directly or indirectly, any support — including training, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary activities in or against Nicaragua;
— That the United States should immediately cease and desist from any military or paramilitary activity by its own officials, agents or forces in or against Nicaragua and from any other use or threat of force in its relations with Nicaragua."

The PRESIDENT: The Government of the United States was informed forthwith by telex of the filing of the Application and of the submission of a request for provisional measures, and the submissions in the Application and the precise measures requested were set out in full in the telex message. A copy of the Application and the request was sent to the United States of America by express airmail on the same day.

By a letter dated 13 April 1984, received in the Registry of the Court the same day, the Ambassador of the United States of America in The Hague informed the Court of the appointment by the United States of America of an Agent and Deputy-Agent, gave certain explanations of the position of the United States with regard to the proceedings instituted by Nicaragua, and requested the Court "to strike Nicaragua's Application from the Court's list of pending matters". The letter continued:

> "Alternatively, the United States considers the circumstances and the extraordinary character of the measures requested by Nicaragua require an opportunity for written submissions by the Parties, and, thereafter, an oral hearing on Nicaragua's request for the indication of provisional measures."

Following a meeting, held pursuant to Article 31 of the Rules of Court on 16 April 1984, between the President of the Court and the Agents of the Parties, the Court decided in accordance with Article 74, paragraph 3, of the Rules of Court, to hold the present public sitting to hear the observations of both Parties on the request for the indication of provisional measures.

At the meeting between myself and the Agents of the two Parties held on 16 April 1984, I called upon both Parties, in exercise of the power conferred upon me by Article 74, paragraph 4, of the Rules of Court, to act in such a way as will enable any order the Court may make on the present request for provisional measures to have its appropriate effects, and that appeal was also conveyed to the Agents of the Parties in writing by a letter from the Registrar of the Court dated 16 April 1984.

The Court does not include upon the Bench a judge of Nicaraguan nationality; however the Agent of Nicaragua by a letter dated 17 April 1984, informed the Court that his Government intended to abstain from exercising its right to choose a judge *ad hoc* pursuant to Article 31, paragraph 2, of the Statute of the Court, *in respect of the proceedings relating to interim measures of protection*, while reserving its right to choose a judge *ad hoc* in respect to other proceedings in the present case.

By a letter dated 23 April 1984 and filed in the Registry that day, the Agent of the United States brought to the notice of the Court information which, in the view of the United States, establishes that Nicaragua has not accepted the compulsory jurisdiction of the Court under Article 36 of its Statute, as claimed in the Application. Accordingly the United States has submitted that an imme-

diate decision should be taken to preclude any further proceedings on the Application and the claims contained therein or on the request for provisional measures.

The Court has taken note of the request made by the United States of America, in its letters of 13 and 23 April 1984, that the Court at once remove the present case from the list, as also of the contents of a letter addressed to the Court by Nicaragua on 24 April 1984, in reaction to the second of these. However, the Court, after consideration, has decided that it has no sufficient basis for now acceding to that request.

On receipt of a request for the indication of provisional measures the Court, under Article 41 of its Statute, has 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. Furthermore, the Court, pursuant to Article 74, paragraph 3, of its Rules, is to receive and take into account any observations that may be presented to it before the closure of the oral proceedings.

The present hearing has been convened to hear argument on a request for the indication of provisional measures, and the Court wishes the Parties to address themselves essentially to the question of such measures. Both will of course be at liberty to address all matters connected with that subject, including the question of competence to the extent requisite to convey their views on whether the Court possesses prima facie jurisdiction.

I note the presence in Court of the Agent and other representatives of the Republic of Nicaragua and of the United States of America. The Agent of the Republic of Nicaragua, which is the Applicant and the State requesting provisional measures, will be heard first.

I therefore call upon Mr. Carlos Argüello Gómez, Agent for Nicaragua.

STATEMENT BY MR. ARGÜELLO GÓMEZ

AGENT FOR THE GOVERNMENT OF NICARAGUA

Mr. ARGÜELLO GÓMEZ: Mr. President and Members of the Court. On the night of 10 October 1983 the principal port of Nicaragua was attacked by sea and by air. Five oil storage tanks were destroyed, containing several million gallons of gasoline and diesel fuel that represented a substantial amount of the fuel reserves of Nicaragua. A hundred and twelve port dwellers, including children and elderly people, were injured. The whole port town of around 20,000 people had to be evacuated, while the flames raged for several days. Firefighters with rudimentary equipment drenched other tanks of fuel with water for days, to avoid — fortunately with success — an explosion that would have demolished the port.

A few days after this savage act, that seriously endangered the lives of thousands of people, the President of the United States was asked, in a press interview, whether he thought this type of activity was proper. The President answered: "I do believe in the right of a country, when it believes that its interests are best served, to practice covert activity."

This astounding statement asserts, in the crudest form, the doctrine that might makes right. Nicaragua is now before this highest of tribunals, defending the opposite principle. Nicaragua contends that not only morally, but also legally, the opposite principle rules the world: the principle propounded by religion and by law that right makes might.

In the course of our exposition the Court will be presented with irrefutable evidence that the Government of the United States is violating international law in invading, among others, the right of Nicaraguan citizens to life, liberty and security, and the right of sovereignty itself for Nicaragua.

The Court has been presented with public documents consisting, among others, of statements of President Reagan and senior officials of his administration admitting and acknowledging that the United States had sponsored so-called "covert activities" against Nicaragua. United States congressional reports, debates and other statements by members of Congress describing the United States-sponsored covert activities against Nicaragua; United States statutes, specially authorizing and appropriating millions of dollars in funds for the United States-sponsored covert activities against Nicaragua; these documents will bear witness to the flagrant violations of international law perpetrated by the United States Government. In these documents, the President of the United States unblushingly recognizes that his Government is presently engaged in the use of force against Nicaragua.

These documents demonstrate that President Reagan personally authorized the mining of Nicaraguan ports. This irresponsible and illegal act endangered the lives and caused serious physical injuries to many people of different nationalities. Under this authorization, several Nicaraguans were killed. Millions of Nicaraguans are suffering from lack of essential food and medicine because ships cannot unload in Nicaraguan ports. Nicaragua's export of its crops has been dangerously curtailed. This has been the result of Mr. Reagan's actions.

In these documents the Court will find proof of the urgency of our request for interim measures of protection. Mr. Reagan is asking the Congress of the United States for another law authorizing the expenditure of more millions of dollars

for killing Nicaraguans. This request has already been approved by the Senate. Only approval by the House of Representatives is required before these funds are expended. This could come about at any moment.

Among the exhibits presented are excerpts from the congressional records of the debate in the United States Senate on the granting of the additional millions to the mercenaries fighting against Nicaragua. In the record of that debate, the Court will read of an amendment, presented by a Senator, to the law proposed by the Reagan administration for the continued funding of its attacks against Nicaragua. This amendment stated:

> "that none of the funds appropriated under this heading may be available directly or indirectly for planning, directing, executing or supporting acts of terrorism in, over or offshore from the territory of Nicaragua".

The Court will be astounded to hear that the amendment was not accepted. It was voted down by a majority of the Senators. I will quote what Senator Dodd himself said to his colleagues about the amendment:

> "Let us just imagine tomorrow how this is going to look if the vote comes out against this amendment. We are going to be saying, in effect, that it is perfectly all right for the United States to subsidize a group of counter-revolutionaries, and if they blow up buses with innocent civilians aboard, that is all right with us. We can mine harbours where international shipping and innocent civilians are involved and that is no problem. It is perfectly all right to have as targets various things and people which have no military purpose whatsoever. Mr. President, may I ask for order in the Chamber?"

And, certainly, Mr. President, Members of the Court, our request is for order, for world order that can only be achieved through respect for international law. The debates I have quoted took place just four days before the filing of our request. The urgency of this case cannot be more clearly established.

In the face of all this, what has Nicaragua done? Here are some examples. On 17 July 1983 the presidents of the Contadora Group had a meeting in Cancún. They presented a programme for bringing about an end to the serious tensions in the area. Nicaragua accepted the initiative and responded two days later with a six-point peace plan that was publicly announced in front of hundreds of thousands of Nicaraguans on the fourth anniversary of the revolution. This plan included immediate execution of a non-aggression pact between Nicaragua and Honduras; the immediate end of arms traffic to belligerent forces in El Salvador; immediate end to military support and use of any territory to launch aggression against a government in the area. The United States response to Nicaragua's peace initiative was to send warships to the zone including two aircraft carriers and their support groups. A few days later, joint military manœuvres of the United States and Honduran armies were announced. More than 5,000 United States troops were involved and the manœuvres lasted more than six months.

This incredible reaction was seriously questioned at the time by the Contadora Group in countries such as France, that made public statements to the effect that these manœuvres were not conducive to peaceful results.

In October 1983 Nicaragua presented to Contadora a document entitled "Juridical Basis for Guaranteeing the International Peace and Security of the Central American States". This document, which we have submitted to the Court as our Exhibit IX, included a proposed treaty guaranteeing mutual respect, peace and security between the Republic of Nicaragua and the United States. The reaction of the United States Government was more attacks against Nicaragua. Among many others in that month, I have described the brutal attempt to

demolish the port of Corinto without consideration of the lives of thousands of people living in that city. It has now come to light that this attack was carried out directly by the CIA.

On 21 February of this year, Nicaragua announced its decision to move up the date of its elections from 1985 to November of this year. A few days later, the first ships were struck by the mines laid in Nicaraguan ports with the personal authorization of the President of the United States.

It is in the context of this steady escalation of the use of force that the Court is now faced with a request for interim measures of protection. It is a matter clearly stated in the law. It has been thus interpreted in a constant manner by the Court. The questions of jurisdiction need not be resolved before an indication of interim measures is given. Any other interpretation would in effect nullify the power of the Court to protect the rights of Nicaragua that are the subject of dispute in this proceeding during the pendency of this case. This is precisely what the United States is attempting to do in its letter of 13 April 1984 addressed to the Registrar of the Court.

In effect, the letter addresses what it refers to as "jurisdictional questions". In short, this letter tries to make two points.

First, that the attempted withdrawal of the acceptance of the jurisdiction of the Court in matters relating to Central America made by the United States Government on 6 April of this year is supposedly valid, and pre-empts the Court's jurisdiction to consider Nicaragua's Application and its request for interim measures.

The United States Government's attempt to escape the scrutiny of international law as embodied in this Court is totally invalid. In order to justify its unprecedented step to its own people and to the world community, the United States compared its illegal attempt to flee justice with what other countries have supposedly done in the past. Specifically, the Department of State issued a statement to the effect that: "Similar action has been taken by a number of countries in the past, among them Australia, India and the United Kingdom." The Court knows this comparison is false, but for the historical record I wish to point out a few differences.

In none of the examples given did the countries have advance notice that a specific case was about to be brought against them. The United States stated publicly it had this knowledge, and that this was the reason for its attempted withdrawal of its acceptance of the jurisdiction of the Court. In the cases of Australia and the United Kingdom, the other parties involved had not accepted the compulsory jurisdiction of the Court. In the present instance, Nicaragua accepted the jurisdiction of the Court without reservations more than 50 years ago, and has always considered itself subject to the compulsory jurisdiction of this Court. It has been a party before this high tribunal in the past.

The other country mentioned, India, made its declaration while a case was pending and only to avoid a possible future re-filing of the same case.

Finally, none of the countries mentioned had declared to the world that their acceptance of jurisdiction could only be withdrawn with a notice of six months. In each case, the declaration of those countries expressly reserved the right of withdrawal of the declaration immediately upon notice.

The intention of the United States in adopting a six-month notice provision was stated in the report of the Senate Foreign Relations Committee in 1946 in the following way:

> "The provisions for six-month notice of termination after the [original] five-year period has the effect of a renunciation of any intention to withdraw our obligation in the face of a threatened legal proceeding."

This is how the period of notice was interpreted by the United States legislature, and it is how it has been understood by other countries, including Nicaragua.

The second point in the letter of the United States of 13 April to this Court is that Nicaragua's allegations "comprise but one facet of a complex of interrelated political, social, economic and security matters that confront the Central American region", and that the indication of the interim measures "could irreparably prejudice the interests of a number of States and seriously interfere with the negotiations being conducted pursuant to the Contadora process".

This second statement made by the United States Government is a paraphrase of the argument used by the Government of Iran in the case concerning *United States Diplomatic and Consular Staff in Tehran*. The Iranian statement in that case said:

> "The Government of the Islamic Republic of Iran considers that the Court cannot and should not take cognizance of the case which the Government of the United States of America has submitted to it, and in the most significant fashion, a case confined to what is called the question of the 'hostages of the American Embassy in Tehran'.
>
> For this question only represents a marginal and secondary aspect of an overall problem, one such that it cannot be studied separately, and which involves, *inter alia*, more than 25 years of continual interference by the United States in the internal affairs of Iran, the shameless exploitation of our country and numerous crimes perpetrated against the Iranian people, contrary to and in conflict with all international and humanitarian norms.
>
> The problem involved in the conflict between Iran and the United States is thus not one of the interpretation and the application of the treaties upon which the American Application is based, but results from an overall situation containing much more fundamental and more complex elements. Consequently, the Court cannot examine the American Application divorced from its proper context, namely the whole political dossier of the relations between Iran and the United States over the last 25 years." (*I.C.J. Reports 1980*, pp. 8-9.)

The adequate answer to this effort of the United States to mix unrelated and impertinent facts — this clear case of *non sequitur* — is to quote the Court's decision in the Iran case precisely on this point:

> "Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's functions or jurisdiction be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes." (*Ibid.*, p. 20.)

This second point has also some mis-statements of facts that it is necessary to address.

First, the United States is not part of Contadora. It is not itself a participant in the Contadora process or even an observer. Nicaragua's legal claims against the United States are not comprehended within the Contadora process. The United States has no standing or other basis to use Contadora as a pretext for avoiding legal scrutiny of its actions against Nicaragua. In fact, on 8 April 1984, the United States was sharply criticized by the Foreign Ministers of the Contadora

Group, who indicated in a joint communiqué that the recent United States actions against Nicaragua were disruptive of the peace process (Exhibit VIII).

On this second point the United States also states that the indication of interim measures "could irreparably prejudice the interests of a number of States".

In the first place it is necessary to point out that the measures Nicaragua has requested, to the effect that the United States observe its international obligations and stop violating international law, cannot possibly cause prejudice to other countries.

Another evident observation on this statement relates to the right of the United States to speak on behalf of other countries. What right does the United States have to act as guardian of these countries before this Court?

The other countries, whose names have not been mentioned, are not minors to have guardians acting for them. In any case, Article 59 of the Statute of the Court protects their rights because any decision of the Court will have no binding force except between the Parties and in respect of this particular case. Moreover, under Articles 62 and 63, any interested parties that feel they may be affected by the Court's decision have the right to intervene.

In order to give the Court a clear understanding of the urgency of the present situation, and the compelling need for an indication of the interim measures of protection requested by my Government, we are presenting an affidavit of Commandante Luis Carrión, Vice-Minister of the Interior, who is the principal official responsible for all matters affecting the internal security of Nicaragua. His responsibility includes monitoring and maintaining of records of attacks against Nicaragua by military and paramilitary forces.

This is what Commandante Carrión says of recent happenings in Nicaragua:

> "The attacks against my country have been escalating steadily since the beginning of 1984, and reached their highest and most destructive level during the month of April. More than 8,000 armed mercenaries have been invading Nicaragua, from across both its northern and southern frontiers, for the past several weeks.
>
> Fighting is extremely heavy, and casualties are very high. Since April 1, 84 Nicaraguans have been killed, 122 wounded, 199 kidnapped." (Exhibit I, p. 135, *infra*.)

I draw the attention of the Court to a chart in that affidavit showing the number of Nicaraguans killed, wounded and kidnapped during the first three and one-half months of 1984. The affidavit continues:

> "The most intense fighting has taken place during the past ten days, and is continuing as of this date. During this most recent period alone, more than 34 Nicaraguans have been killed. . . .
>
> Based on the information collected, and the activities now taking place, my Government estimates that, unless the present invasion is halted, heavy fighting against the attackers in an effort to repel them will continue for several months.
>
> My Government estimates that, if this is successfully accomplished, it will be at a cost of hundreds more Nicaraguans killed, many more wounded, and physical damage to property and economic infrastructure totalling tens of millions of dollars." (*Ibid.*, pp. 135-136, *infra*.)

The urgency of the situation is also reflected in events happening outside of Nicaragua.

At the beginning of these observations we brought to the attention of the Court the statements made by the President of the United States and his present

attempt to obtain an additional $21,000,000 in funds to sustain, aggravate and extend the illegal actions now being carried out by the United States in and against Nicaragua. This is an ongoing situation that is causing the death of hundreds of Nicaraguans. To talk of urgency is really an understatement.

The United States has made a last-minute attempt to avoid the jurisdiction of the Court. On the 23rd of this month, the United States presented a letter stating that it had just come to its attention that Nicaragua had not accepted the jurisdiction of the Court.

We addressed this observation in a letter sent the following day to the Court. Although more will be observed later on this matter, I wish to emphasize that the statement of the United States is not true.

Nicaragua has been a party in this Court in the past. The United States is clearly aware of this because it participated in the mediation effort at the time to bring both Nicaragua and Honduras before this Court.

At this point I wish to state that, in the hypothetical case that Nicaragua had not accepted the jurisdiction of the Court, there are treaties in force that make compulsory the jurisdiction of this Court in the settlement of cases such as the one *sub judice*. These considerations will be presented at the appropriate procedural moment.

In conclusion, Mr. President and Members of the Court, let me say that in trying to find a peaceful solution to this situation, Nicaragua has used all the diplomatic channels open to it — has knocked on all doors. Our latest attempt was in the Security Council of the United Nations. The resolution proposed by Nicaragua condemned the mining of our ports and called on all States to refrain from carrying out, supporting or promoting any type of military action against any State of the region. Thirteen States voted in favour of the resolution; one abstained. The only negative vote was cast by the United States itself, which exercised its veto power.

Today we have come to knock on the Court's door, searching and hoping for justice. We have come searching, not for armaments or troops to defend us, but for the moral support of the highest legal authority in the world.

When the United States Senate voted on the amendment that would have made unlawful the use of funds for terrorism and sabotage, Senator Tsongas said of some of his colleagues:

> "The truth is they know terrorism is going on. They know we are paying for it. They would rather not know. My job is to make clear that it is happening, then let them vote for it and then go home and explain it."

Our Application asks the Court, for the sake of justice, for the historical record, to make clear that what is happening is unlawful, that the activities of the United States violate international law. Our request for interim measures of protection asks the Court to prevent further loss of human life, and further debasement of Nicaraguan sovereign rights. We ask the Court to indicate that the United States should immediately suspend all financial, military and other support to its mercenary army fighting to overthrow my Government, and that the United States should immediately cease and desist from all use and threat of force against Nicaragua.

In conclusion, Mr. President and Members of the Court, let me say that Nicaragua is proud to have such a distinguished and diverse team of counsel pleading in its behalf.

Professor Abram Chayes, formerly the Legal Adviser to the United States Department of State and now Felix Frankfurter Professor of Law at Harvard University will address you first on the substantive issues in this proceeding. He

will lay before you evidence of the activities now taking place in and against Nicaragua, establishing the complicity of the United States in those activities and defining its purposes in conducting them. He will then consider the legal issues, including the standards to be applied in cases of requests for indication of interim measures of protection and the norms of international law and the provisions of the United Nations and Organization of American States Charters rendering the United States conduct unlawful.

Nicaragua's second Advocate and Counsel is Professor Ian Brownlie, Q.C., one of the world's leading authorities on international law. Mr. Brownlie is Chichele Professor of International Law at Oxford. He will make some observations on the jurisdictional issues in this case in so far as that is appropriate at this stage of the proceedings.

I wish to thank you, Mr. President and the Court, for your careful attention to my presentation. Now I ask the Court to recognize Professor Chayes.

ARGUMENT OF PROFESSOR CHAYES

COUNSEL FOR THE GOVERNMENT OF NICARAGUA

Professor CHAYES: Thank you, Mr. President, Members of the Court. May it please the Court.

It is a great honour and privilege to appear before the Court in this case. If the Court will permit me a personal word — it is 20 years since I argued in this Hall for the Government of the United States in the *Certain Expenses* case. I recall that occasion with great pleasure. At that time Judge Schwebel was my valued associate on the United States team. My only regret in this matter is that the interval since my last appearance here has been too long. I trust that it will not be quite so long next time.

Mr. President, in my presentation this morning I will address the following points.

First, I will present the facts upon which Nicaragua's request for interim measures of protection are based. I will describe the extremely urgent situation in Nicaragua today already referred to by the Agent of Nicaragua, and resulting from the military and paramilitary actions carried out in and against Nicaragua by and under the direction of the United States. These facts fully establish the urgency of the situation, the complicity and responsibility of the United States, and the purpose and objective of the United States in carrying out and directing these activities, which are to destabilize and ultimately overthrow the Government of Nicaragua.

Second, I will discuss the law applicable to the indication of interim measures of protection, demonstrating that Nicaragua's request fully satisfies the criteria for interim measures previously established and consistently applied by the Court. I will also point out that the illegal conduct of the United States against Nicaragua constitutes flagrant violations of the most fundamental principles of general and customary international law and of the Charter of the United Nations and of the Organization of American States. These violations are totally unjustifiable and cannot be defended on any interpretation of international law.

Before beginning my presentation proper, if the Court please, I would like to describe in general terms the exhibits we have filed in this case. Exhibits I and II are respectively the affidavits of Commandante Luis Carrión, Vice-Minister of the Interior of Nicaragua, and the Reverend Miguel d'Escoto Brockmann, the Foreign Minister, as to matters within their direct responsibility relating to this proceeding. The next four exhibits are documents and papers grouped not according to subject-matter, but according to type.

Exhibit III contains relevant statutes of the United States authorizing and appropriating funds for the so-called "covert" activities of the United States against Nicaragua.

Exhibit IV contains statements of President Reagan and senior members of his Administration, acknowledging United States complicity in and responsibility for the "covert" activities against Nicaragua.

Exhibit V consists of reports of Committees of Congress and statements of responsible Congressmen on the floor of Congress, acknowledging and describing the United States role in the "covert" activities.

Exhibit VI consists of a collection of newspaper clippings relating to the events in question, and is composed in large part of press reports of statements by senior United States officials acknowledging and describing the "covert" activities.

Exhibit VII contains four newspaper accounts of statements by responsible United States authorities, contradicting the official United States position accusing Nicaragua of providing military supplies to El Salvador.

Exhibit VIII is the communiqué of the Foreign Ministers of the Contadora Group dated 8 April 1984.

Exhibit IX is a series of draft treaties proposed by Nicaragua within the framework of the Contadora process on 17 October 1983.

With these preliminary remarks let us turn now to the evidence.

I. The Evidence

A. The Urgency of the Current Situation

First, I discuss the urgency of the present situation. Nicaragua's request for interim protection presents this Court with what is literally a matter of life and death for hundreds of Nicaraguan citizens. The object of this request is primarily humanitarian. Nicaragua seeks this Court's aid in bringing an immediate halt to the present campaign of armed attacks and physical destruction, the legality of which is the subject of this suit.

While the primary object of this request is humanitarian, Nicaragua wishes also to bring to the Court's attention the severe economic consequences that Nicaragua is suffering and will continue to suffer if no relief is obtained from this Court. Since September 1983 the campaign of military and paramilitary activities against Nicaragua has purposefully targeted facilities vital to Nicaragua's economy. Thus Nicaragua finds its ports mined just at the critical time for the shipping of its main exports. It finds its fuel facilities sabotaged and its power and transportation systems under constant attack. Nicaragua is a small country, without extensive financial reserves. The illegal attacks on its economic infrastructure are causing an economic crisis that compounds and exacerbates the physical harm that Nicaraguan citizens are suffering.

The extreme urgency of the situation is demonstrated by a review of the events of the last few weeks during which the assaults by land and sea against Nicaragua have escalated beyond all previous levels. In March 1984 the largest assault in the history of the three-year campaign of military and paramilitary attacks against Nicaragua commenced. More than 8,000 armed mercenaries invaded Nicaraguan territory from across both its northern and southern frontiers. This invasion is described in the affidavit of Commander Carrión, our Exhibit I. The fighting has been extremely heavy and casualties are running high. Commander Carrión estimates that a successful effort to defend Nicaraguan territory and nationals against this attack and to repel the mercenary forces will take several months and will cost "hundreds more Nicaraguans killed, many more wounded and physical damage to property and economic infrastructure totalling tens of millions of dollars". The quotation is also from Commander Carrión's affidavit.

In the current fighting Nicaragua is suffering heavier casualties than ever before. In the month of March 1984 alone, that is last month, 173 Nicaraguan citizens were killed, 197 were wounded and 164 were kidnapped (Exhibit I, Ann. B, chart 1). In the first 19 days of April an additional 84 Nicaraguans were killed, 122 wounded and 199 kidnapped (*ibid.*, Ann. B). Furthermore, the Court must understand that these casualties are not occurring primarily in battles between the Nicaraguan armed forces and the mercenaries that have invaded its territory. Rather, these mercenary forces have chosen to target unarmed civilians,

concentrating on villages, agricultural facilities, health facilities and important elements of the economic infrastructure of the State.

I will mention only a few of the most recent attacks, a complete list of which can be found in Annex A of the affidavit of Commander Carrión, to make this point entirely clear.

To much of the world the most drastic of the military and paramilitary actions in recent weeks has been the mining of all of Nicaragua's ports. Full responsibility for the planning and implementation of this activity has been acknowledged by the United States. Senator Barry Goldwater, Chairman of the Senate Intelligence Committee of the United States Senate, in a letter to William Casey, Director of the Central Intelligence Agency, has written that "the CIA had, with written approval of the President, engaged in such mining, and the approval came in February". You can see that letter of Senator Goldwater in our Exhibit V at tab 2. The results of this effort to cut off Nicaragua from vital international imports and to prevent Nicaragua's own critical exports deserve mention here.

The mining began in late February 1984. On 1 March 1984 the Dutch dredger *Geoponte* was severely damaged when it struck a mine in the port of Corinto. Six days later, on 7 March, the Panamanian ship *Los Caraibes* carrying medicine, food and industrial materials struck a mine at Corinto. On 20 March the Soviet tanker *Lugansk* carrying urgently needed crude oil struck a mine at Puerto Sandino. On 28 March the Liberian ship *Inderchaser*, with British captain and crew, carrying molasses struck a mine at Corinto, and two days later in the same port a Japanese ship, the *Terushio Maru* carrying bicycles, automobile parts and construction materials struck yet another mine.

The same speedboats supplied by the United States and used to lay the mines operating from the same United States-owned mother ship lying just beyond the 12-mile territorial limit recognized by the United States, twice attacked with machine guns and cannons the Panamanian ship *Homin* while it was in Puerto Sandino loading sugar for export. These details are contained in a report of the Central American Historical Institute of Georgetown University in Washington, which has just been presented to the Court as Exhibit X. See also the Senate discussion of these events in Exhibit V, tab 6 at page S3769.

While this unprecedented attack on peaceful international commerce has focused the attention of the world on the United States efforts to undermine the Government of Nicaragua, to Nicaraguans the mining of the ports is only a small part of the recent escalation of paramilitary and military attacks on civilian and economic targets within Nicaragua.

The following incidents are taken from the affidavit of Commander Carrión:

On 1 April 1984 a force of approximately 350 men attacked the Nicaraguan villages of Waslala, Manccra and El Guabo. They destroyed the bridges of Yaoska, El Jicaral and Kusuli, as well as homes, a school, and transportation and communications equipment. In the course of these attacks 19 Nicaraguans were killed and 13 more were injured.

On 4 April 1984, three days later, the mining towns of Bonanza and Siuna in North Zelaya were attacked. Simultaneously, the electrical generating station in El Salto, which supplies power to the mining area and operations, was destroyed.

On 5 April, the following day, a productive farm unit in Las Brisas was destroyed. In the course of this operation four Nicaraguans were killed and eight more were wounded.

On 6 April 1984 a civilian health centre, as well as a number of private homes, were attacked and destroyed in El Guadalupe Valley.

On 8 April 1984 mercenary forces attacked and destroyed "La Colonia", a

State farm near the town of San Rafael de Yali. Six Nicaraguan civilians died during this attack.

On 17 April 1984 a force of approximately 300 men attacked the Sumubila settlement in North Zelaya. The attack totally destroyed a cacao seed-planting project, a health centre and a grain storage warehouse. Four Nicaraguan civilians were killed, 15 were wounded and 35 were kidnapped. The whereabouts and condition of this last group remain unknown.

In addition to these attacks, there has been a sustained military campaign at San Juan del Norte, in the south-eastern corner of Nicaragua near the border with Costa Rica. The assault on San Juan del Norte started on 6 April 1984. On 13 April a 500-man force attacked the town and its port. The attack included co-ordination with, and support from, air and naval forces. A successful Nicaraguan counter-offensive ended on 17 April, just last week, with the retaking of the town, but 17 Nicaraguans were killed and another 40 were injured. The latter were taken prisoner by the mercenary forces and remain in captivity as of this date (Affidavit of Commander Carrión, Exhibit I, p. 136, *infra*).

Now I have been speaking of recent events, but to understand fully these latest attacks on Nicaragua they must be viewed against the background of the three-year campaign of the United States to destabilize and overthrow the Government. The pattern of attacks on Nicaraguan targets corresponds exactly to the course of decisions in Washington. This pattern has been one of ever increasing escalation, just as the decisions in Washington have been to seek ever broader purposes, including now the destruction of the economic infrastructure in Nicaragua. An extended account of the sequence of formal decisions is provided to the Court in the Annex to the Application of Nicaragua. The following account summarizes the pattern into which those decisions and actions fall.

On 20 January 1981, Ronald Reagan assumed the office of President of the United States. Just six weeks later, on 9 March 1981, he made a formal "presidential finding" authorizing the expenditure of $19,000,000 on "covert" activities in and against Nicaragua (Exhibit VI, tab B, p. 143). Such a presidential finding is required by law to authorize covert CIA activities. Isolated hit-and-run attacks against Nicaraguan civilians and militia, and paramilitary patrols by small bands of armed paramilitary forces based in Honduras began shortly after this first finding.

A serious escalation of these hit-and-run attacks followed a second presidential finding, issued by President Reagan on 2 December 1981 (Exhibit VI, tab B, p. 152). That finding authorized the expenditure of an additional $19,950,000 in order to establish a 1,500-man paramilitary force to operate out of Honduras. The explicit purpose of this new authorization was to "build popular support in Central America and Nicaragua for an opposition front that would be nationalistic, anti-Cuban and anti-Somoza" (Exhibit VI, tab B, p. 123). The accompanying National Security Directive signed by the President made clear that the Central Intelligence Agency was to implement this plan through the

> "formation and training of action teams to collect intelligence and engage in paramilitary and political operations in Nicaragua and elsewhere; [the CIA was to] work primarily through non-Americans to achieve the foregoing, but in some circumstances CIA might (possibly using United States personnel) take unilateral paramilitary action" *(ibid.)*.

We have just talked about the second presidential finding in December of 1981. In accordance with this decision and authorization, the United States then set about building a Honduras-based mercenary force to engage in actions in and against Nicaragua. During the months of January, February and March of

1982 attacks in Nicaragua by groups of approximately 50 men occurred regularly. In one of the most serious of these raids, on 14 March 1982, two important bridges — at Rio Negro in Chinandega province and at Ocotal in Nueva Segovia — were destroyed. William Casey, Director of the Central Intelligence Agency, is reported to have acknowledged United States responsibility for the attacks on the bridges in May 1982, in secret congressional testimony (Exhibit VI, tab B, p. 150).

By April 1982, the size of the armed groups attacking Nicaragua had increased significantly. Bands exceeding 100 men, heavily armed with modern equipment supplied by the United States, regularly attacked villages in northern Nicaragua. For example, on 4 July 1982, a force of 200, armed with United States-made M-16 rifles and M-79 grenade launchers, attacked the village of Seven Bank. The battle raged over three days; 15 Nicaraguans lost their lives.

In late 1982 the United States allocated an additional $30,000,000 to support the operations (Exhibit VI, tab B, p. 155). This new funding enabled the United States to engage in a substantial build-up of the armed forces operating against Nicaragua. According to regular reports provided by the Central Intelligence Agency to the two Intelligence Committees of the United States Congress, as is required by the domestic law of the United States, those armed forces had reached 4,000 men by December 1982; 5,500 by February 1983; 7,000 by May 1983; 8,000 by June 1983; 10,000 men by July 1983; and 12,000 to 15,000 men by September 1983. Those figures are given in Exhibit VI, tab B, page 85. As the size of these forces increased, so did the scale of the armed operations carried out inside Nicaragua, until today Nicaragua is facing a co-ordinated attack by invading forces numbering approximately 8,000 men. But I would note, if the Court would permit, that all these attacks have been based in Honduras and are attacks of armed bands marching over the border. In all of these three years, these mercenaries have not been able to establish any permanent bases or support within Nicaragua.

In September 1983 President Reagan made a new "finding" authorizing a shift in the strategy for the armed interventions in Nicaragua. The new strategy emphasized the importance of destroying vital economic installations within Nicaragua. That appears at Exhibit VI, tab B, page 104. This strategy was designed to weaken support among Nicaraguans for the established government by making it increasingly difficult to satisfy the basic economic and social needs of the populace. Since September, this strategy has been pursued with the most serious consequences for Nicaragua, leading up to and including the recent events I described at the beginning of my presentation.

This finding, its purpose and its consequences were described by a senior member of the Intelligence Committee of the House of Representatives, Congressman Lee Hamilton:

> "We have a new finding submitted by the administration which considerably expands the purposes of that operation . . . The covert war continues and it has expanded. We now see a new strategy. That strategy is to target economic targets like electrical plants and storage facilities, and fighting in the cities." (Exhibit V, tab 7, p. H. 8416.)

May I call to the Court's attention here only the most extreme of the actions taken pursuant to the new strategy. On 8 September 1983 the Managua international airport was attacked by air: runways were bombed, and the terminal facility was severely damaged when an attacking aircraft crashed into it after being hit by anti-aircraft fire. Documents found in that plane demonstrated not only that it was of American origin, but that it was registered with a company

with a long history of involvement in CIA "covert" operations. Reference here is to Exhibit VI, tab B at page 92.

Nicaragua's fuel facilities have been the subject of frequent attack since the September 1983 finding. On 8 September, saboteurs destroyed oil storage and pipeline facilities at Puerto Sandino; on 2 October oil storage facilities at the town of Benjamin Zeledon were attacked; on 10 October, in the most destructive of these raids, the oil storage facilities at Corinto were destroyed, resulting in the loss of 1.6 million gallons of fuel and forcing the evacuation of 20,000 residents of the city. This is an attack for which United States officials have now acknowledged not only their responsibility, but also the direct participation of United States personnel — see Exhibit VI at tab A, page 21 and at tab B, page 98. On 14 October, the oil pipeline facilities at Puerto Sandino were again attacked and damaged. Finally, in February 1984 the campaign of mining the ports of Nicaragua — a campaign that I have already described — was begun.

United States responsibility for military and paramilitary activities against Nicaragua extends not only to the financial, technical and logistical support for these thousands of men, responsibility for the choice of targets and direction of activities, but also to direct action by the United States armed forces. For example, the United States Ambassador to the United Nations, Ms Jeane Kirkpatrick, openly acknowledged in the Security Council that the United States engages in regular overflights of Nicaragua to obtain intelligence information for the mercenary army attacking Nicaragua (United Nations, *Security Council, Provisional Record*, S/PV 2335, 22 March 1982). Furthermore, since 25 July 1982 the United States armed forces have engaged in a continuous series of land and naval deployments in the area surrounding Nicaragua. These manœuvres have been co-ordinated with the attacks inside Nicaragua in order to provide a threat of direct United States military intervention that, in turn, serves as a shield behind which the armed paramilitary forces can act more freely. I draw your attention to Exhibit VI, tab B, page 114.

In all, more than 1,400 Nicaraguans have now died, and more than 3,000 others have been wounded or kidnapped as a result of the attacks by mercenary forces since the United States first began recruiting, training, arming, supplying and directing those forces in 1981. The pattern of recent escalations, as well as the unchanged policies of the United States, prove beyond question that this death and destruction will continue. The basic object of the provisional relief Nicaragua seeks here is to save those lives and to avert that destruction.

B. United States Admissions of Its Complicity in and Responsibility for the Armed Attacks on Nicaragua

To this point I have concentrated primarily on the actual facts on the ground in Nicaragua — the scope and scale of armed incursion. At this point, with the Court's permission, I propose to direct the Court's attention to the admissions by the United States of its complicity in these actions, a complicity that, in turn, as I will show later, establishes the responsibility of the United States at international law for these actions and their consequences. In this I beg the Court's pardon for some necessary repetition of a few items that have already been mentioned.

That the United States Government is funding, directing and actively carrying out the attacks against Nicaragua is a matter of public record, not open to dispute. It is plainly stated in United States domestic laws, has been directly and publicly acknowledged by President Reagan himself and senior members of his

administration, and has also been confirmed by the committees and members of Congress responsible for the oversight of United States "covert" operations.

First, an Act of Congress, a formal statute of the United States, enacted in December 1983 expressly provides, for the fiscal year 1984, up to 24 million dollars for the support of military or paramilitary operations in Nicaragua. That statute is the Intelligence Authorization Act for fiscal year 1984, Section 108, and it appears as Exhibit III, tab 1, P.L. 98-215, 9 December 1983. (See also tab 2, Department of Defense Appropriations Act for 1984, Section 775; P.L. 98-212, 8 December 1983.) President Reagan has now asked the United States Congress to pass another law, authorizing an additional 21 million dollars to sustain these operations. That appears in a statement on behalf of the President, issued by the Office of the Press Secretary to the President on 8 March 1984; it appears at Exhibit IV, tab 4.

Moreover, President Reagan has openly admitted that the United States Government is using these funds to support "covertly" the mercenaries engaged in military and paramilitary attacks in and against Nicaragua, whom he calls "freedom fighters". For example, on 5 May 1983, in a presidential news conference, Mr. Reagan was asked whether he would try to continue providing support in some other manner if direct funding of these "covert" activities were cut off by Congress. He replied:

> "Now if they [Congress] want to tell us that we can give money and do the same things we've been doing . . . money, giving, providing subsistence and so forth — to these people directly and make it overt instead of covert — that's all right with me." (Exhibit IV, tab 7, Transcript, Office of the Press Secretary to the President.)

And at a news conference on 19 October 1983 — just days after the attacks on Nicaraguan oil storage facilities and pipelines at Corinto — Mr. Reagan was asked "Is it proper for the CIA to be involved in planning such attacks and supplying equipment for air raids?" He responded:

> "I do believe in the right of a country when it believes that its interests are best served to practice covert activity." (Exhibit IV, tab 5, Transcript, Office of the Press Secretary to the President.)

Other senior officials of the United States Government have been equally outspoken in accepting United States responsibility for the acts of the mercenaries attacking Nicaragua, and for other violations of Nicaragua's sovereignty by the United States. Under-Secretary of Defense, Fred C. Ikle, for example, declared that "United States assistance to the Nicaraguan resistance forces" must be continued in order to "prevent consolidation of a Sandinista régime in Nicaragua" — and that's at Exhibit IV, tab 6. And as noted above, the United States Ambassador to the United Nations, Ms Jeane J. Kirkpatrick, in remarks in the Security Council in March 1982, openly confirmed the fact that the United States has repeatedly conducted reconnaissance flights over Nicaraguan territory.

I turn now to the admissions of United States complicity contained in the reports of certain Committees of the United States Congress, and of the statements of Congressmen and Senators on the floor of their respective Houses of Congress. I have mentioned some of these statements before, and let me at this point ask the Court's indulgence to describe briefly a peculiarity of United States law that lends special significance to the statements I am about to quote and have already quoted.

As the Court is no doubt aware, the "covert intelligence operations" conducted by the United States Government are intended to be maintained in secret. Even

the Congress is not officially informed of these activities. However, under United States law, the President is legally required to report "covert activities" to the Intelligence Committees of the House of Representatives and the Senate. That is pursuant to Title 50 of the United States Code, Section 413 (Exhibit III, tab 3). The Intelligence Committees are in turn responsible for monitoring those activities on behalf of the entire Congress. The congressional statements I now bring to your attention are exclusively those of the Intelligence Committees and their individual members, who are particularly well situated to know and evaluate the "covert" operations of the United States Government, and who are responsible for reporting on them to their colleagues. The special significance of these statements should be understood in that light.

Now let me turn to the statements. The Permanent Select Committee on Intelligence of the United States House of Representatives — this is the Committee as a whole — issued an official report on 13 May 1983 reviewing the United States "covert" activities against Nicaragua: that is House Report No. 98-122 of the 98th Congress, 1st Session, Part I (Exhibit V, tab 10). The Committee acknowledged that "encouragement and support has been provided to Nicaraguan exiles to foster insurgency within Nicaragua" (p. 2).

Likewise, in the House of Representatives debates on the question of continued funding, members of the House Intelligence Committee have repeatedly confirmed the United States role in supporting and carrying out these activities. One member, for example, stated:

> "We are now supporting a large army inside Nicaragua. We can no longer deny that we are fighting a mercenary war in Nicaragua to overthrow the government of that country." (Remarks of Representative Lee Hamilton, 129 Cong. Rec. H. 5725, 27 July 1983 (Exhibit V, tab 9).)

It is well documented, moreover, that United States employees and operatives play a direct and critical role in actually carrying out the mercenaries' attacks on Nicaragua. For example, one account, from November 1982, describes in detail the role played by the United States Ambassador in Honduras — called "The Boss" by the mercenaries — in "overseeing an ambitious covert campaign to arm, train and direct [the] Nicaraguan exiles", with the assistance of an expanded CIA station in that country. According to this account, the United States Ambassador is "the spearhead . . . He was sent down there . . . to carry out the operation without any qualms of conscience" (Exhibit VI, tab B, pp. 162-170).

Thus, the memorandum attached as Annex C to the Affidavit of Commander Carrión takes on added significance. This is a memorandum from the mercenary leaders — the Task Force Commanders of the FDN and MISURAS — to the United States Embassy in Honduras, dated 23 January 1984. In this signed memorandum, the genuineness of which is attested to by Commander Carrión, the mercenary commanders state that they "deeply thank the Government of the United States of America for its great interest taken in the solution of the recent problem, which we hope will correctly culminate in the near future". In this document, the mercenaries ask for additional United States help to "facilitate an eventual unity that will help achieve the common objective", and they pledge to "co-operate with you always — until the last consequences".

There can be no doubt that the United States is directly responsible for the most recent incidents of attacks and sabotage against Nicaragua. As I have stated, Administration and congressional sources have now confirmed what the Nicaraguan Government alleged months ago — that the CIA directly supervised the assaults on Nicaragua's oil storage facilities at Corinto and Puerto Sandino

last September and October, and the mining of Nicaragua's three principal harbours this spring. This operation has been described in vivid detail by Government sources familiar with the operations:

> "CIA officers aboard a 'mother ship' off the coast of Nicaragua directly supervised commando raids from speedboats that heavily damaged Nicaraguan port facilities last fall . . . The CIA leased the ship last summer, according to the sources, and American agents furnished the speedboats, guns and ammunition and directed the raid by anti-government rebels in the port city of Corinto last October 10. The CIA officers stayed on the ship in international waters beyond the 12-mile limit, while CIA-trained Latin commandos piloted the speedboats into the harbour and shot up an oil terminal, the sources said." (Exhibit VI, tab A, p. 21.)

Administration and congressional sources have also confirmed in great detail that the mining of Nicaragua's harbours has been conducted under CIA supervision from the same CIA "mother ship" off Nicaragua's Pacific coast, again using CIA-trained and paid mercenaries and CIA-provided speedboats and mines (Exhibit VI, tab A, pp. 69, 76).

The Court adjourned from 11.32 a.m. to 11.56 a.m.

Just before the recess, I had been quoting from newspaper stories detailing the operations of the CIA in the attacks on the harbour at Corinto and in the mining of the port.

Once these detailed newspaper revelations appeared, the Chairmen of the Intelligence Committees, both in the House and the Senate, publicly confirmed that the CIA did in fact direct the mining programme and the operation had been personally approved by President Reagan. So we do not have to rely on newspaper reports for that information. The Chairman of the Senate Select Committee on Intelligence, Senator Barry Goldwater, noting on 10 April 1984 that the CIA Director, William J. Casey, had briefed the Committee on the mining that very afternoon, stated: "I learned to my deep regret that the President did approve this mining program, and that he approved it almost two months ago" (Exhibit V, tab 4, p. S. 4198). Senator Daniel Patrick Moynihan, Vice-Chairman of the Committee, also described "the mining of Nicaraguan harbors with American mines from an American ship under American command" (Exhibit V, tab 1). Likewise, the House Intelligence Committee Chairman, Congressman Edward Boland, discussing the mine-laying programme on the floor of the House of Representatives, first noted that the CIA had recently informed his Committee that "they had continued mining harbors and had mined them before that briefing, mining the Port of Corinto". Mr. Boland then exclaimed:

> "Where did the equipment come from, where did the mines come from? Who got on the small boats and where did the small boats come from? The small boats came from a mother ship that was lying in the international waters manned by people paid by the CIA." (Exhibit V, tab 3, p. H. 2918.)

C. The Admitted Purpose and Objective of the United States Actions

Now, finally, let me spend a few moments on the purpose and objective of the United States action.

Not only has the United States demonstrated its direct complicity in the campaign being waged against Nicaragua, but it has made clear that almost since the inception of this campaign, its purpose has been to destabilize and ultimately overthrow the Government of Nicaragua. On 12 November 1981, when then Secretary of State, Alexander Haig, Jr., was asked at a congressional hearing whether he could assure the Congress that the United States was not then participating and would not "participate in or encourage in any way, directly or indirectly, any effort to overthrow or destabilize the current Government of Nicaragua", Secretary Haig replied: "No, I would not give you such an assurance." (Testimony before Committee on Foreign Affairs, US House of Representatives, 97th Congress, 1st Session, p. 21. Exhibit IV, tab 9.)

In fact, as the "covert" programme has escalated and evolved, the intention of the United States has been revealed to be precisely what Mr. Haig's answer intimated. As House Intelligence Committee Chairman Boland concluded last July: "The purpose and the mission of the operation was to overthrow the Government of Nicaragua." (Exhibit V, tab 9, p. H. 5748.) Numerous other members of the Intelligence Committee — who as I noted earlier have been fully briefed on the nature of the "covert" activities — have reached precisely the same conclusion, and their statements appear at Exhibit V in tabs 8 and 9, pages H. 5725, H. 5752 and H. 5837. The full House Intelligence Committee itself also concluded in its 13 May 1983 report that "the activities and purposes of the anti-Sandinista insurgents ultimately shape the program", and noted that the United States-backed "insurgents" have the "openly acknowledged goal of overthrowing the Sandinistas" (Exhibit V, tab 10).

In addition, the senior officials of the Administration have publicly acknowledged that the object of their policy is to destabilize the Nicaraguan Government. I have already noted Under-Secretary of Defense Ikle's speech on 12 September 1983, stating that the United States "must prevent consolidation of a Sandinista régime in Nicaragua" (Exhibit IV, tab 6).

Finally, President Reagan himself has stated that the purpose of his Government's campaign against Nicaragua is not simply to interdict an alleged flow of arms to El Salvador, or even to force Nicaragua to stop its purported support for Salvadoran insurgents, but to force the Nicaraguan Government to change in ways that would suit the United States.

On 28 March 1984, Mr. Reagan said directly, in an interview with reporters, that his Government's purpose in supporting the mercenaries is to force changes in Nicaraguan internal policies. He said:

> "We have made it plain to Nicaragua — made it very plain — that this will stop when they keep their promise and restore a democratic rule. And have elections. Now, they've finally been pressured, the pressure's led to them saying they'll have an election." (Exhibit IV, tab 3.)

While the President later attempted to reassure members of Congress that his administration's object is not the outright overthrow of the Nicaraguan Government, he apparently sees nothing wrong in using "covert activities" in an attempt forcefully to intervene in the domestic affairs of a foreign State.

Before leaving the evidence that we have been reviewing thus far, and addressing the legal issues relevant to interim measures of protection, I should say a word about the significance in this proceeding of the newspaper accounts contained in Exhibit VI. Of course, we do not contend that those newspaper reports provide dispositive evidence of every fact stated therein. We do believe, however, that these accounts — for the most part reports of statements by senior officials of the United States Government acknowledging and describing the

United States responsibility for the "covert" action — these accounts, when taken together and in context with the corroborating material from the other Exhibits, should be taken as evidence, in a general way, of the activities that have been conducted, the categories under which they fall, and their scope and scale. At least for the purposes of this proceeding, which is a request for indication of provisional measures, they have that effect.

I would point out that in the *United States Diplomatic and Consular Staff in Tehran* case, the United States referred to matters of common knowledge reported in the press, and submitted newspaper clippings for the consideration of the Court.

II. The Law

A. The Criteria for Indicating Interim Measures of Protection

Mr. President, Members of the Court, to this point we have been dwelling on the facts of this case: they are distressing facts, not very pleasant to spend this much time on. I now wish to turn to the legal issues relevant to Nicaragua's request beginning with a discussion of the criteria established by the Court for indication of interim measures of protection. In the course of that discussion I will show how the facts already developed relate to those criteria.

Nicaragua submits, Mr. President, that under the law of this Court applicable to provisional relief, the circumstances of this case plainly require the indication of interim measures of protection as requested by Nicaragua. They plainly require that the United States immediately suspend its support of the mercenaries fighting to overthrow the Nicaraguan Government; and they plainly require that the United States immediately cease all direct use and threats of force against Nicaragua.

The Court has clearly articulated the standard for indication of interim measures on previous occasions, most recently in the case concerning *United States Diplomatic and Consular Staff in Tehran (United States* v. *Iran).* There the Court stated that the object of its power under Article 41 of the Statute is "to preserve the respective rights of the parties pending the decision of the Court" and that this "presupposes that irreparable prejudice should not be caused to rights which are the subject of dispute in judicial proceedings".

Mr. President, unless the requested interim measures are indicated here, Nicaragua's rights — the precise rights it seeks to vindicate in these proceedings — will be prejudiced irreparably and will be incapable of restoration should Nicaragua prevail in this case.

First and foremost is the fundamental right of Nicaraguan nationals to life, liberty and security.

Since the most recent invasion of the mercenaries began in March 1984, at least 257 Nicaraguans have been killed, 319 wounded and 363 kidnapped. All this death, injury and human suffering in less than two months. And since Nicaragua's request for interim measures, only 16 days ago, at least 34 Nicaraguan nationals have been killed in numerous mercenary raids.

Mr. President, some rights may be capable of restoration by a final judgment of this Court on the merits, but a human life lost cannot be restored by this or any other court.

This Court has previously found that the mere threat of physical harm to human beings requires the indication of interim measures of protection. In the *Nuclear Tests (Australia* v. *France)* case, it indicated that a great power —

France — should suspend a practice that it felt to be critical to its national security. The Court observed that "the information" submitted to it "does not exclude the possibility that damage to Australia might be shown to be caused by the deposit of radioactive fall-out". In fact, as Professor Sztucki has pointed out, Australia's own technical studies submitted to the Court showed that the effects of this fall-out were "expected to be of a rather insignificant magnitude" (Sztucki, *Interim Measures in the Hague Court*, Deventer, Netherlands (1983), p. 126).

Again, in the *United States Diplomatic and Consular Staff in Tehran* case, the Court indicated interim measures of protection in part because:

> "Continuance of the situation the subject of the present request exposes the human beings concerned to privation, hardship, anguish and even danger to life and health and thus to a serious possibility of irreparable harm." (*I.C.J. Reports 1979*, p. 20.)

The present case is similar to the *United States Diplomatic and Consular Staff in Tehran* case, but the circumstances here require interim measures of protection even more urgently. In the *United States Diplomatic and Consular Staff in Tehran* case, as here, the Applicant requested interim measures to avoid irreparable prejudice, above all, as it said (and this was the United States) "to the rights of its nationals to life, liberty, protection and security". I quote again from the United States Agent in that case, the then Legal Adviser of the Department of State. He said:

> "If the hostages are physically harmed, the Court's decision on the merits cannot possibly heal them. Given the nature of the rights involved, an ultimate award of monetary damages simply could not make good the injuries currently being sustained as this case awaits the Court's judgment." (*I.C.J. Pleadings, United States Diplomatic and Consular Staff in Tehran*, p. 30.)

Mr. President, the words of the United States Agent in the *United States Diplomatic and Consular Staff in Tehran* case were correct when spoken. They apply with even greater force here today. Here we are not talking merely about a potential danger to life and health. Here we are not talking merely about a serious possibility of irreparable harm. Here, to my great sadness, we are talking about certain death for hundreds of human beings. Most of the dead will be innocent civilians, as in the past, in Nicaragua. The rest: soldiers, guilty of nothing more than fighting on their soil to defend their homeland against invasion by mercenaries supported and directed by a foreign power. Such people are dying now and they will continue to die if the United States persists in its illegal conduct.

The rights, other than human life, sought to be vindicated by Nicaragua in this case will also be prejudiced irreparably if the United States does not suspend its support for the mercenaries. These rights are equally incapable of restoration by final judgment or by award of monetary compensation: the right of Nicaragua to enjoy its sovereignty as a State; the right of Nicaragua to be free from foreign intervention in its internal affairs; the right of the Nicaraguan people to self-determination. These sovereign rights are being invaded and diminished each day that the use of military force against Nicaragua continues. Once compromised, these rights cannot be restored by monetary compensation.

Furthermore, Mr. President, if the United States were to achieve its acknowledged purpose and objective — if it were to succeed in bringing about the

overthrow of the Nicaraguan Government, or destabilizing it to the point where a full-scale civil war ensues — the present Government could not be restored to power by any kind of judicial order.

In the past, when less fundamental sovereign rights were threatened and indeed when the threat was no more than a mere possibility, the Court found it appropriate to indicate interim measures of protection. In the *Fisheries Jurisdiction* case *(United Kingdom* v. *Iceland)*, the Court indicated interim measures because it found that Iceland's implementation of new regulations, purporting to extend its territorial waters from 3 to 12 miles, would "prejudice the rights claimed by the United Kingdom and affect the possibility of their full restoration in the event of a judgment in its favour".

Mr. President, if possible prejudice to the right to fish in international waters within 12 miles of Iceland's coast was sufficient to justify interim measures, then it hardly needs argument that interim measures are required here.

Finally, the urgency of the situation could hardly be greater. At this very moment, as we debate this matter in this Great Hall, more than 8,000 armed mercenary invaders, financed, armed, equipped and directed by the United States are on the attack inside Nicaraguan territory. Without the financial and military support provided by the United States this army will be forced to terminate its offensive and withdraw from Nicaraguan territory.

Senior officials of the United States Government have reported that of the $24 million appropriated in December 1983, $22 million had been spent by the end of March 1984, leaving only $2 million remaining. Thus, the United States officials reported, the funds could be exhausted by the end of this month (Exhibit VI, tab 4, pp. 38 and 47). In short, if no additional financial or other support is provided to the mercenaries, hundreds of Nicaraguan lives will be spared and further irreparable prejudice to Nicaragua's rights as a sovereign State will be avoided.

But as we debate this matter here, the United States Congress in Washington is debating the appropriation of an additional $21 million at the urging of the President of the United States and his Administration — $21 million to permit the mercenaries to keep their military offensive going. The Senate has already approved this expenditure and only the concurrence of the House of Representatives is required before the funds can be disbursed to the mercenaries. This action may be forthcoming within days.

The Administration's funding request pressed so assiduously and now so close to approval, is clear proof that, in the absence of an indication of interim measures of protection by the Court, the United States will certainly continue and intensify its unlawful course of conduct.

In sum, Nicaragua's request for interim measures of protection not only satisfies the established criteria for the indication of such measures, but presents the most compelling circumstances for the indication of interim measures that have ever been put before this Court.

In closing my observations on this branch of the case, may I draw the Court's attention to page 29, *supra*, of Nicaragua's request for interim measures filed on 9 April. There it is stated:

> "The situation has already resulted in a dangerous level of tension, not only between the United States and Nicaragua, but between Nicaragua and Honduras and other Central American neighbors that could have serious implications for international peace and security. It is clear that, in the absence of an indication of provisional measures, the dispute will be aggravated and extended. The gravest consequences cannot be excluded."

B. The United States Violations of Fundamental Principles of International Law

Finally, Mr. President, and Members of the Court, I want to discuss briefly the specific violations of international law asserted in this case and the flagrant nature of those violations.

On the basis of the facts adduced earlier in my presentation, it is clear that the conduct of the United States over the past three years, and more blatantly in recent months, constitutes a massive and flagrant violation of the most fundamental precepts of international law and of the United States duties to Nicaragua under international law.

Paragraphs 14 to 24 of Nicaragua's Application in this case set forth the substance of these violations in elaborate detail. We have grouped them under two main heads: first, breaches of obligations under the United Nations and Organization of American States Charters and other treaties to which the two States are parties (paras. 15-19) and, second, violations of duties arising under general and customary international law (paras. 20-24).

At this stage of the case, the only question before the Court is the indication of interim measures. For that purpose, there is no need to make a definitive determination of the issues, and therefore no need to dwell exhaustively on the factual or legal bases of Nicaragua's claim on the merits. Nevertheless, the Court will wish, of course, to satisfy itself as to the reality of the conduct of the United States against which provisional measures are sought and that it constitutes, at least prima facie, a breach of fundamental legal obligations.

As to the facts, the truth is that the United States has not denied the general tenor of its activities. Nor could it. In broad outline the facts set forth before you today by Nicaragua are common knowledge in the United States. They are accepted by all sides in the United States as the premise of the debate about United States policy in Central America now going on in the Congress, the press and the public.

What do these facts mean in law? They add up to a massive use of force by the United States, in the legal sense. They show the expenditure of more than $70 million over a two and a half-year period to organize, equip and direct a mercenary army that has grown steadily from 1,500 to 15,000 men. The force is based at a number of camps in Honduras and is now conducting a major co-ordinated invasion across the northern border between Nicaragua and Honduras. In the south it has just been expelled from a town that it had "captured" a few days earlier with great public fanfare. In addition to these massive land incursions, there have been extensive seaborne operations, including the mining of harbours and attacks on port facilities. Likewise there have been numerous violations of Nicaraguan airspace on reconnaissance and combat missions. These activities amount to a "use of force" on any construction of the words, whether as used in the Charter of the United Nations or that of the Organization of American States Charter or in general international law.

Nor can the United States deny its international responsibility for this conduct. On the contrary, as the material before you shows, the highest organs and officials of the Government of the United States attest explicitly not only to United States involvement, but to the organization and direction, by United States officials, of the activities. To summarize only the most striking of these avowals, an act of Congress explicitly appropriates funds for the support of "military and para-military operations in Nicaragua". The President not only acknowledges that covert activities are being carried out against Nicaragua, but affirms the right of the United States to do so. Unimpeachable authority — the Chairman of the Senate Select Committee on Intelligence — confirms that the

President personally approved the mining of the ports. It is also admitted that this operation was carried on under CIA direction and control. Similarly, the President's most recent finding authorizing attacks on economic targets in Nicaragua was followed quickly by the bombing of the Managua airport and the attacks on the port facilities in Puerto Sandino and Corinto.

As to the extensive land operations it is impossible to assume that the United States has provided $70 million of arms and support, one-third of it in the last six months, without assuring itself of the efficacy of the application of these resources. Indeed, the letter from the *contra* leaders to the United States Ambassador in Honduras, submitted by Commander Carrión as an annex to his affidavit, is vivid testimony that the overall direction of land activities rests with Americans, whose approval is necessary even as to the details of the command structure.

Thus, to the extent that the activities carried out against Nicaragua violate international law, there can be no doubt that the United States bears responsibility.

It requires no citation of authority to show that the use of force by one State against another on the scale and with the intensity demonstrated by the evidence here is a violation of general international law. Indeed, it is generally considered by publicists that Article 2 (4) of the United Nations Charter is in this respect an embodiment of existing general principles of international law.

In the Court's full dress consideration of the problem of intervention in the *Corfu Channel* case, it set forth the bed-rock principle against which all modern discussion of the subject must take place:

> "The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to the most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law." (*I.C.J. Reports 1949*, p. 35.)

But aside from the breach of the overarching norm against use of force, the United States, on the admitted facts, is guilty of a number of more specific international delicts or invasions of sovereignty.

Let me mention only the most egregious of these: incursions into the national airspace and territorial waters of Nicaragua in violation of its sovereignty. In the *Corfu Channel* case the Court laid it down that: "Between independent States, respect for territorial sovereignty is an essential foundation of international relations". *(Ibid.)* But the United States representative to the United Nations proclaimed in Security Council debate that "of course the Government of the United States" was conducting overflights of Nicaraguan territory. Professor Rosalyn Higgins in her work on *The Legal Limits to the Use of Force*, which I select from among many that could be cited, says that "even temporary incursions without permission into another's airspace constitute a violation of its territorial integrity" (p. 183). Ms Kirkpatrick sought to justify this intentional invasion of sovereign airspace on the basis of the United States need for "information" on Nicaragua's own activities — that is, for spying. Again, in the *Corfu Channel* case the Court refused to accept a similar justification for British violation of Albania's territorial waters. It hardly seems credible that a senior member of the United States Government would so casually seek to excuse a repeated invasion of the sovereignty of a small, and in this respect, defenceless nation. Surely, the United States would never permit such incursions into its own national airspace. Nor would any other country that had the means to prevent them.

Similarly, we now have unequivocal knowledge of the direct responsibility of

the United States for the mining of Nicaraguan ports and other attacks on port facilities. Again, the invasion of territorial waters, the destruction of harbours, the interference with peaceful and indeed essential commerce, is in violation of the most axiomatic principles of international law. To cite the *Corfu Channel* case once again, it is direct authority for the proposition that incursion into the territorial waters of a State is a violation of that State's sovereignty.

So far I have been talking about the situation under general principles of international law. Let me turn now, Mr. President, to a consideration of the Charters of the United Nations and of the Organization of American States. As the Court well knows, these are the constitutive instruments regulating international relations respectively among the States of the world, and in the Western hemisphere. Each contains at its foundation provisions prohibiting the use of force by one State against the other.

Article 2, paragraph 4, of the United Nations Charter is phrased in the most comprehensive and universal language its framers could conceive;

> "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."

That provision was designed, of course, to enact into positive law existing international norms against the use of force. But it went beyond that. By the very scope and breadth of its language it was intended to sweep away qualifications — cavils of lawyers and diplomats mostly — sometimes asserted in discussion of earlier legal prohibitions, whether in treaties or general international law. Earlier language outlawing war "as an instrument of national policy" or condemning "aggression" or "wars of aggression" is replaced in the Charter by an unqualified prohibition against "the threat or use of force" in any form.

Whatever limitations on the language of Article 2 (4) might be suggested by sophistical analysts, armed action of the scope and scale revealed in this case is surely "use of force" against Nicaragua within the meaning of that Article. And, as already shown, this use of force is clearly attributable to the United States.

Only two exceptions to the peremptory bar of Article 2 (4) are contemplated: first "the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations". That, of course, is recognized in Article 51 of the Charter, and I shall refer to it in a moment. The second exception is action taken under the authority of a competent organ of an international organization; and, of course, there is nothing of that kind in this case.

The basic prohibition of the Charter of the Organization of American States is in essence the same. Article 21 provides:

> "The American States bind themselves in their international relations not to have recourse to the use of force except in the case of self-defense in accordance with existing treaties or in fulfilment thereof."

This basic obligation is further developed in two other Articles in the OAS Charter. According to Article 18:

> "No State or group of States has the right to intervene directly or indirectly for any reason whatever in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements."

And Article 20:

> "The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever . . . "

These Articles deserve somewhat fuller consideration, because although they express the basic prohibition against the use of force in more extended language, they also reflect the particular history and experience of the States of the Western hemisphere. That history, in so far as here relevant, is dominated by United States interventions, direct and indirect, in the affairs of Latin American countries. Initially, the United States asserted a claim of right to intervene stemming from the Monroe Doctrine, and did so on a variety of grounds, including the collection of international debts and the assurance of internal régimes satisfactory to the United States. Indeed, Nicaragua itself was subject to occupation by United States troops on several occasions, the latest between 1926 and 1932. It is truly distressing to see that again today the avowed object of the United States intervention in Nicaraguan affairs is to secure a government whose policies will be satisfactory to the United States.

Much of the diplomatic and political activity of Latin American countries, especially in this century, has been directed at securing the abandonment by the United States of this claimed right of intervention. The story unfolds in a series of hemispheric diplomatic conferences in the 1920s, the 1930s and 1940s. As late as the Sixth International Conference of American States at Havana in 1928, a resolution declaring that no State has the right to intervene in the internal affairs of another was withdrawn because of the obdurate opposition of the United States.

Not until the Seventh Conference in Montevideo in 1933 did the United States, reflecting the new "good neighbour" policy of the Roosevelt administration, accept such a limitation on its freedom of action. It was contained in the Convention on Rights and Duties of States adopted at that conference. Even this concession had to be perfected by a Protocol to the Convention adopted at the Inter-American Conference for the Maintenance of Peace, at Buenos Aires in 1936. The Protocol added the language "directly or indirectly", which we see appearing in the Articles of the OAS Charter I cited, and "for whatever reason" also appearing in those Articles. The inadmissibility of "intervention" by any State "in the internal or external affairs of another" was confirmed at the Eighth International Conference of American States at Lima in 1938.

This history accounts for the extended language of the prohibition against intervention and the use of force in the OAS Charter. That language is particularly apt in this case. It removes any shred of doubt that the activities attributable to the United States on the evidence before the Court are a clear violation of the Charter. Thus the language barring intervention whether "direct or indirect" was actually drafted to read on a situation where a State makes use of a surrogate — in this case a mercenary army — instead of its own forces. The exclusion of "any reason whatever", again is designed to override any justification that may be adduced, except as stated for "self-defense in accordance with existing treaties" as provided in Article 21. Indeed, as a matter of history, the prohibitions of Articles 18 and 20 were directed at the very type of conduct now being indulged in by the United States.

As I have noted, and as the Court well knows, both the United Nations Charter and the OAS Charter contain an exception for self-defence. Since the United States has publicly claimed that its actions fall within that exception, this concept must be accorded a brief examination.

Here again, the more general language of the United Nations Charter is elucidated by specific stipulations in the Organization of American States documents. Indeed, the history of Article 51 demonstrates that it was adopted primarily to accommodate the possibility for collective self-defence by regional organizations, of which the most prominent at the time was the Pan American Union, as the OAS was then called. (See the United Nations Conference on International Organization, doc. 576, III/4/9, 25 May 1945.)

Article 51 recognizes "the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations". The critical words are "if an armed attack occurs". They delimit the scope of the exception. There is substantial agreement among publicists that, in keeping with the breadth of the prohibition in Article 2 (4), the concept of "armed attack" in Article 51 is to be narrowly and strictly construed. Some actual incursion by the armed forces of, or under the direction of, the attacking State into the territory of the State claiming the right is required. Interventions or assistance, short of that, even if themselves unlawful, do not amount to armed attack giving rise to the inherent right of self-defence.

The structure of the Charter reinforces this construction. Under Article 2 (3) and Chapter VI, disputes between States are to be settled by peaceful means. The existence of a threat to the peace, breach of the peace, or act of aggression is to be determined under Article 39 by the Security Council, not unilaterally by the aggrieved State. These categories are clearly much broader than "armed attack". In such cases, the aggrieved State is remitted to the collective decision of the Security Council as to measures for its redress. Self-help is proscribed.

The OAS Charter provision on self-defence stipulates that it must be in accordance with or in fulfilment of "existing treaties". Apart from the United Nations Charter, this reference to existing treaties was to the recently concluded Inter-American Treaty of Reciprocal Assistance (the Rio Treaty). Here the distinction between armed attack and other forms of aggression is spelled out even more clearly than in the United Nations Charter. Article 3 of the Rio Treaty deals with "an armed attack by any State against an American State". In such a case, each of the Contracting Parties "undertakes to assist in meeting the attack in the exercise of the inherent right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations".

By contrast, Article 6 of the Rio Treaty deals with "an aggression which is not an armed attack". In such a case unilateral action or self-help is forbidden even in the first instance. The Organ of Consultation must meet "to agree on the measures which must be taken in case of aggression to assist the victim of aggression". Action under Article 6 requires the approval of "two-thirds of the Signatory States which have ratified the Treaty" (Art. 17).

The interlocking language and procedures of the two Articles demonstrate again the extremely limited range of the right of self-defence.

An illustration of these points is provided by the case of the Cuban Missile Crisis, recognized as the most serious armed confrontation since World War II. In that crisis the United States scrupulously observed the procedures I have outlined. It declined to characterize the emplacement of Soviet missiles in Cuba as an "armed attack" justifying a unilateral response under Article 51 of the United Nations Charter and Article 3 of the Rio Treaty. Nowhere in any of the official United States documents in the course of the crisis is there any reference to Article 51 or the inherent right of self-defence. On the contrary, President Kennedy announced that he was calling for a meeting of the OAS Organ of Consultation under Article 6 of the Rio Treaty, not Article 3. The Organ convened pursuant to that Article, and the resolution of the OAS authorizing

the naval quarantine, was taken under the same Article. No orders were issued to the United States fleet to intercept ships carrying missiles to Cuba until after the Organization of American States had acted. And the Proclamation of President Kennedy imposing the quarantine recites the OAS resolution as a source of authority for his action.

Attorney General Robert Kennedy later commented:

> "It was the vote of the Organization of American States that gave a legal basis for the quarantine . . . It . . . changed our position from that of an outlaw acting in violation of international law into a country acting in accordance with twenty allies legally protecting their position." (R. Kennedy, *Thirteen Days*, p. 121.)

The United States has no such vote to rely on in this case. Neither can it rely on the inherent right of self-defence.

United States officials have stated that Nicaragua is now supplying or has in the past supplied military material and medical supplies to rebel groups in El Salvador. On this basis those officials have sought to justify the United States activities described here today as an exercise of the right of collective self-defence.

The claim of self-defence — like other efforts of the United States to avoid the indication of provisional measures — will not withstand even superficial examination. Nevertheless, to clarify the situation on the record before the Court, the Government of Nicaragua wishes to make several observations on this matter. In the first place, permit me to draw the Court's attention to the sworn affidavit of the Reverend Miguel d'Escoto Brockmann, Foreign Minister of Nicaragua, dated 21 April 1984 and presented in evidence in this proceeding as Exhibit II. In paragraph 2 of that affidavit the Foreign Minister solemnly swears before this Court:

> "I am aware of the allegations made by the Government of the United States that my Government is sending arms, ammunition, communications equipment and medical supplies to rebels conducting civil war against the Government of El Salvador. Such allegations are false and constitute nothing more than a pretext for the United States to continue its unlawful military and paramilitary activities against Nicaragua intended to overthrow my Government. In truth, my Government is not engaged, and has not been engaged, in the provision of arms or other supplies to either of the factions engaged in the civil war in El Salvador."

The affidavit goes on to recount the efforts of the Government of Nicaragua to prevent the use of its territory "as a conduit for arms or other military supplies intended for other Governments or rebel groups", and indeed gives an example of an interception of contraband supplies crossing from Costa Rica through Nicaragua. That appears in paragraph 3.

The Foreign Minister also testifies in detail to the efforts of Nicaragua to secure international agreement on collective measures designed to stop such traffic. These efforts include bilateral approaches to the Government of Honduras to establish joint border patrols (see paragraph 6 of the affidavit) and a proposal in the Contadora Group for a comprehensive treaty requiring each Central American State

> "to adopt all possible measures to prevent its territory from being used for traffic in arms or other supplies to armed groups seeking to overthrow any established Government of the region, and to prevent any such armed groups from operating or seeking sanctuary in its national territory".

The text of that draft treaty is also provided as Exhibit IX.

These undertakings would be subject to international verification including on-site inspection. To this day Nicaragua is prepared to sign such an agreement.

But the plain fact is that the Court need not resolve these controverted questions. They are simply irrelevant to this proceeding, certainly at the present stage of request for interim protective measures, and indeed on the merits of the case. If the accusations of the United States are taken at face value, they fall far short of the armed attack necessary to justify resort to collective self-defence under either the United Nations or the OAS Charter. None of the actions charged by the United States, either singly or altogether, approaches the level of armed incursions by forces of or under the direction of Nicaragua across the borders of El Salvador. That is what would be necessary for legitimate self-defence.

And on the matter of supply, according to the testimony of Mr. Ikle, the United States Under-Secretary of Defense, the major supplier of the Salvadorian rebels is the United States itself. Mr. Ikle stated that the guerrillas have been able to secure as much as half their total supply of weapons by capture or purchase from Government troops.

In any case, the United States has met none of the procedural requirements stipulated in the United Nations and OAS Charters for the lawful exercise of the right of collective self-defence. Article 3, paragraph 2, of the Rio Treaty states that assistance by others shall be provided "on the request of the State directly attacked". To date at least, no such formal request by El Salvador invoking Article 3 has been made public. Article 3 also contemplates that any self-defensive action shall be reported promptly to the Organ of Consultation of the inter-American system, so that it can "meet without delay for the purpose of examining those measures and agreeing upon the measures of a collective character that should be taken".

Similar reporting requirements exist under the United Nations Charter. Article 51 provides that "Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council . . .". Neither the United States nor El Salvador has ever made such a report to the Security Council. On the contrary, it was Nicaragua itself that twice invoked the assistance of the Security Council, and in each case resolutions for the cessation of activities such as those being conducted by the United States received an overwhelming majority vote in the Security Council. They were vetoed by the negative vote of the United States, which stood alone in opposing the resolutions.

The reporting requirements I have been discussing are not mere procedural technicalities. They are designed to constrict to the narrowest possible compass the opportunity for unilateral judgment and action that is a necessary concomitant of the right of self-defence. They are designed to ensure that the response of the acting State, as well as the alleged activities of the attacking State, will be submitted promptly to the review of the competent international organs and that community responsibility and community judgment will be substituted as quickly as possible for the unilateral self-judgment of the acting State.

It is exactly this kind of objective community review that the United States has tried almost desperately to avoid in this matter: by its refusal to report to the competent United Nations and OAS organs, by its veto of the efforts of the Security Council to exercise its responsibility for the political aspects of the situation, and by its crude attempts to withdraw from the jurisdiction of this Court and thus prevent judicial consideration of the validity of its conduct under international law.

Finally, I would observe that the United States in its public statements has

not claimed the right to act in its own defence. Obviously it has not been the object of armed attack by Nicaragua. Instead, it asserts a right of collective defence in association with El Salvador, which is alleged to be the country under attack.

But El Salvador itself has not reported or complained, either to the Security Council or the Organ of Consultation of the OAS. Even more curious, El Salvador, the purported victim, although it maintains full diplomatic relations with Nicaragua, according to Foreign Minister d'Escoto's affidavit,

> "has never, not once, lodged a protest with [the Government of Nicaragua] accusing it of complicity in or responsibility for any traffic in arms or other military supplies to rebel groups in that country" (p. 143, *infra*).

Thus, there is no possible claim of right or justification for United States actions in and against Nicaragua.

The character of these actions as flagrant violations of the most fundamental and universally recognized principles of international law provide a further predicate for the indication of interim measures of protection as requested by Nicaragua.

And now, Mr. President and Members of the Court, I have come to the end of my presentation and have only a few remarks to make in conclusion.

I wish to reiterate that the criteria for indication of interim measures of protection are fully satisfied in this case. Nicaragua has clearly demonstrated that in the absence of such measures, the rights at issue in this case — above all the right of Nicaraguan nationals to life, and physical security — will be irreparably prejudiced. There can be no doubt that the situation is of the utmost urgency. Furthermore, given the flagrant nature of the United States violations of law without any possible justification, this case is an especially compelling one for an indication of interim measures.

Nicaragua therefore submits that the Court should issue an order indicating the following interim measures of protection as specified in our request.

First, that the United States should immediately cease and desist from providing directly or indirectly any support including training, arms, ammunition, supplies, assistance, finances, direction or any other form of support to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary activities in or against Nicaragua. I would just note, Mr. President and Members of the Court, that the last three lines or so of the request track the language of the United States Statute authorizing support to a nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary activities in or against Nicaragua.

And then, that the United States should immediately cease and desist from any military or paramilitary activity by its own officials, agents or forces in or against Nicaragua, and from any other use or threat of force in its relations with Nicaragua.

Finally, the Court should indicate that the United States should take no action that would have the effect of extending or aggravating the situation pending further consideration of this case by the Court.

I wish to thank you personally, Mr. President, and the Court as well, for your patient attention to this lengthy and extended argument.

The Court rose at 1 p.m.

SECOND PUBLIC SITTING (25 IV 84, 3 p.m.)

Present: [See sitting of 25 IV 84, 10 a.m.]

ARGUMENT OF PROFESSOR BROWNLIE

COUNSEL FOR THE GOVERNMENT OF NICARAGUA

Professor BROWNLIE: Mr. President, Members of the Court. May it please the Court, it is my privilege to be present as counsel in this Great Hall of Justice for the third time since the New Year, and it is an honour to appear on behalf of the Republic of Nicaragua in support of its request for the indication of provisional measures as a matter of urgency in connection with the Application to the Court, dated 9 April 1984.

I. The Nature of Incidental Jurisdiction

With your permission, Mr. President, I propose to deal with the question of jurisdiction in so far as that issue may be said to arise in proceedings in which a State seeks interim protection and, in accordance with Article 74 of the Rules, the Court has been "convened forthwith for the purpose of proceeding to a decision on the request as a matter of urgency".

In the 1978 revision of the Rules, interim measures, along with preliminary objections and some other matters, were given the rubric "incidental proceedings" and Dr. Rosenne has observed that the change from the rubric of "occasional rules" "reflects a more accurate perception of the peculiarities of the jurisdiction of the Court in the matters coming within the scope of this section". I refer to Rosenne's book *The Procedure in the International Court*, published last year (p. 148).

The provisions both of the Statute and of the Rules of Court do not call for the existence of a consensual basis of jurisdiction in the case of requests for interim measures. Thus Article 41 of the Statute provides simply that:

> "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."

Moreover, the carefully drafted provisions of Articles 73 to 76 of the Rules contain no provision or condition as to the existence of jurisdiction.

In this respect the wide terms of Article 75 of the Rules are of particular interest. Paragraph 1 thereof provides:

> "The Court may at any time decide to examine *proprio motu* whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties."

These observations on the nature of jurisdiction to order interim measures of protection provide a preface to a consideration of the true character of the question of jurisdiction in this context, and of the relevant jurisdictional test.

II. The Relevant Jurisdictional Test

The power of the Court to order interim measures is not directly related to any consensual basis of jurisdiction and the only explicit criteria for exercise of this power relate to what may be described as the substantive issues of urgency, the probability of irreparable prejudice, and so forth, and these matters have already been addressed by my colleagues.

The prominence of the issue of urgency, the inherent nature of incidental proceedings, and the wide powers of the Court under Rule 75 — all these factors indicate, Mr. President, that the real issue is the very nature of the power of the Court to order interim measures, that is, the modalities of that power.

Thus, the issue of jurisdiction arises in a special way and is, strictly speaking, a question of the propriety of the exercise of a discretionary power by the Court and for the Court.

Mr. President, the Republic of Nicaragua submits that the jurisdictional test is not to be applied within the framework of consensual jurisdiction but is one to be applied in the light of the constitutional character of the power to grant interim measures. The test, which reflects a simple conception of public law, is as follows. The Court should exercise its power to order interim measures exclusively upon the criteria of urgency, *save only if there is a manifest lack of jurisdiction on the merits.*

In the view of the Republic of Nicaragua this is the only test which is compatible with the Statute and Rules of Court and hence with the pertinent, positive international law.

Mr. President, the test I have just formulated is essentially the test adopted by the Court in the *Fisheries Jurisdiction* cases (*I.C.J. Reports 1972*, pp. 15 and 33, respectively). It is of course true that in those cases and in others, the Court has found that interim measures should be ordered only if the provisions invoked by the applicant appear: "prima facie, to afford a possible basis on which the jurisdiction of the Court might be founded" (*I.C.J. Reports 1972*, pp. 16 and 34). Such a standard was applied by the Court in the case concerning *United States Diplomatic and Consular Staff in Tehran* (*I.C.J. Reports 1979*, p. 13, para. 15).

The Republic of Nicaragua considers that, simply because such a standard was regarded as *sufficient* in certain cases, it does not follow that it is in all cases a *necessary* condition. In particular, the question of sufficiency of jurisdiction, which is really that of judicial propriety in the present context of incidental proceedings, is to be related to the special circumstances of each case.

Notwithstanding such legal considerations it is submitted that there is a prima facie basis for jurisdiction in this case, or more precisely, circumstances which appear "prima facie, to afford a possible basis on which the jurisdiction of the Court might be founded".

By way of what is logically speaking a concession, the Republic of Nicaragua will demonstrate that this standard is satisfied in the present incidental proceedings.

III. The Criterion of the Likelihood of Serious Harm or Irreparable Prejudice

Mr. President, I have observed already that in the context of interim measures the issue of jurisdiction arises in a special way and is, strictly speaking, a question of the propriety of the exercise of a discretionary power by the Court. It follows that, in weighing up the factors pertinent to a decision on propriety, matters of

substance must be given prominence, and these are, quite naturally, dominated by the problem of urgency. Thus in the particular case, provided there is no manifest lack of jurisdiction — this is the public law test — in deciding whether it is proper to order interim measures, that is, in resolving the issue of propriety, the Court should give particular weight to the criteria of the likelihood of serious harm or irreparable prejudice.

In other words, Mr. President, the issue of jurisdiction is closely related to the issues of substance and the concept of urgency which underlies interim measures. In this connection it is useful to note the conclusions of Dr. Mendelson, in his substantial study in the *British Year Book* for the years 1972-1973 at page 259.

After all is said and done, an order for interim measures is not anticipatory but conservatory and consequently there is no need to show a prima facie case on the merits. In the *Fisheries Jurisdiction* cases the Court stated:

> "the decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the merits themselves and leaves unaffected the right of the Respondent to submit arguments against such jurisdiction or in respect of such merits" (*I.C.J. Reports 1972*, pp. 16 and 34).

IV. The United States Declaration of 1946

I now come to the United States declaration of 1946. In her Application to the Court Nicaragua invokes Article 36 of the Statute on the basis that both the Applicant and Respondent States have accepted the compulsory jurisdiction of the Court by virtue of the so-called Optional Clause, which in fact consists of the provisions of paragraph 2 of Article 36.

It may be recalled that the United States declaration of acceptance of 1946 was subject to the appropriate treaty-making procedures within the United States Congress. In the Report of the Senate Committee on Foreign Relations on the pertinent Senate Resolution, the declaration is described as:

> "a unilateral Declaration having the force and effect of a treaty as between the United States and each of the other States which accept the same obligations".

The Report of the Senate Committee giving approval to the advice and consent Resolution also contains the following emphatically clear statement:

> "The resolution provides that the declaration should remain in force for a period of five years or thereafter until 6 months following notice of termination. The declaration might, therefore, remain in force indefinitely. The provision for 6 months' notice of termination after the 5-year period has the effect of a renunciation of any intention to withdraw our obligation in the face of a threatened legal proceeding." (*Congressional Records*, Senate, August 1946, pp. 10706, 10707 and 10709.)

With your permission, Mr. President, I will read the text of the United States declaration of acceptance of 1946, which was still in force on the date of the Application made by Nicaragua on 9 April 1984.

> "United States of America
>
> 26 VIII 46.
>
> I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2,

of the Statute of the International Court of Justice, and in accordance with the Resolution of 2 August 1946 of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising 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;

Provided, that this declaration shall not apply to

(a) disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or
(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or
(c) disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Done at Washington this fourteenth day of August 1946.

(Signed) Harry S. TRUMAN."

(*I.C.J. Yearbook 1982-1983*, p. 88.)

V. THE NICARAGUAN DECLARATION OF 1929

The Nicaraguan declaration of 1929 appears in a translation in the *Yearbook* of the Court as follows:

"On behalf of the Republic of Nicaragua I recognize as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice." (*I.C.J. Yearbook 1982-1983*, p. 79.)

The effect of this declaration, the validity of which has never been challenged, has been maintained as a consequence of the provisions of Article 36, paragraph 5, of the Statute of the Court.

VI. SUMMARY OF THE BASIS OF THE COURT'S JURISDICTION IN THE PRESENT PROCEEDINGS

Mr. President, it will be of assistance to the Court if Nicaragua's position on the basis of jurisdiction in the present proceedings is set forth in summary form at the outset. The Court will appreciate that the expressions of view on the

question of jurisdiction are made provisionally, exclusively within the context of these incidental proceedings, and exclusively in relation to the position adopted by Nicaragua with reference to the test of jurisdiction in the context of an order for the indication of interim measures of protection.

Nicaragua's position on the basis of jurisdiction rests upon four propositions.

First, the principles of the law of treaties apply generally to the modification and termination of declarations of acceptance of jurisdiction under the Optional Clause.

Secondly, a declaration which lays down express conditions for termination or modification cannot be terminated or modified except on those conditions or on some other ground recognized in the law of treaties.

Thirdly, the conditions laid down in respect of termination or modification must also be compatible with the Statute of the Court.

Fourthly, the United States letter of 6 April is an invalid attempt to modify or vary the existing United States Declaration which has been neither validly varied nor terminated and thus remains in force.

Fifthly, and alternatively, the letter of 6 April has the effect of terminating the original declaration but, of course, on its express terms that termination can only take effect six months after notice.

VII. The Consequences of Being within the System of the Optional Clause in Treaty Law

The system of the interlocking of declarations accepting compulsory jurisdiction has been characterized by the late President Waldock in his classic examination of the Optional Clause as follows:

> "States subscribing to the Optional Clause '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', etc. These declarations undoubtedly constitute 'international engagements' binding on the State concerned in relation to any other State also making a declaration under the Optional Clause. The question is whether such an 'international engagement' is constitutionally to be regarded as founded upon a unilateral legislative act done vis-à-vis the Court, or as founded upon a bilateral, consensual transaction effected by the joining together of the declarations of any given pair of States through the Optional Clause. Nor is this question purely academic, since the unilateral or bilateral character of the 'engagement' may have legal consequences and, notably, with regard to the right to terminate the engagement.
>
> The text of the Optional Clause — 'declare that they recognize as compulsory . . . *in relation to any other State* [French text: *à l'égard de tout autre Etat*] accepting the same obligation' — is not crystal clear on the point whether the declaration is to be regarded as made vis-à-vis the Court or vis-à-vis the other declarants. The majority of States which have made their declarations in French have substituted the words *vis-à-vis de tout autre Etat* for the words of the Clause, which perhaps suggests that they conceived of their declarations as directed at the other declarants rather than at the Court. More conclusive is the fact that, under the original Statute, the declarations were not notified to the Registrar of the Court but to the Secretary-General of the League of Nations, who was in no sense an officer of the Court, since the Court was not an organ of the League. The Secretary-

> General in turn registered the declarations under Article 18 of the Covenant expressly as belonging to the category of 'international engagement or acts by which nations or their governments intend to establish *legal obligations between themselves and another State, nation or government*'. The position is similar under the new Statute, declarations being notified to the Secretary-General and registered by him as 'international agreements' under Article 102 of the Charter. Admittedly, the Court is now an organ of the United Nations, but there can be no doubt that the Secretary-General receives the declarations not as an officer of the Court but as a depositary of instruments relating to an international agreement."

That was President Sir Humphrey Waldock's assessment of these matters.

The truth is that the making of declarations and especially the issues of variation and termination are matters governed by the law of treaties. This was recognized by the United States Senate Committee on Foreign Relations in the report to which I have already referred. There is a further passage of that report which is worthy of quotation:

> "Inasmuch as the declaration would involve important new obligations for the United States, the Committee was of the opinion that it should be approved by the treaty process, with two-thirds of the Senators present concurring. The force and effect of the declaration is that of a treaty, binding the United States with respect to those States which have or may in the future deposit similar declarations." (*Op. cit.*, p. 10709.)

In the *Anglo-Iranian Oil Co.* case the Court accepted the essential legal character of the Iranian declaration as a treaty text (*I.C.J. Reports 1952*, para. 93 at p. 103), as President Waldock himself remarks in his study (at p. 253).

Mr. President, the consequence of the essential treaty character of interlocking declarations is of great importance in the present proceedings. The declarations of Nicaragua and the United States effectively bring both States within the system of the Optional Clause.

Such declarations, whether or not they are subject to reservations and conditions, form a prima facie basis for "the jurisdiction of the Court in all legal disputes".

Thus paragraph 2 of Article 36 of the Statute — the basis of compulsory jurisdiction — provides:

> "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."

The application of the principles of the law of treaties must take as its starting point the existence of two declarations, neither of which can be varied or terminated except on the basis of the principles governing the modification and termination of treaties.

The declaration of Nicaragua was made unconditionally. The declaration of

the United States makes no provision for variation but does contain an express provision for termination on expiration of six months' notice of termination.

Mr. President, with your permission, I would recall two important provisions of the Vienna Convention on the Law of Treaties. First, there is Article 26, which appears under the heading *Pacta Sunt Servanda* and provides that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

Secondly, there is Article 42, which is the first provision of Part V of the Convention which deals with the invalidity, termination and suspension of the operation of treaties.

Article 42 establishes a certain presumption in favour of the validity of treaties and is entitled "Validity and continuance in force of treaties", and its provisions are as follows:

> "1. The validity of a treaty or the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.
>
> 2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty."

VIII. Mr. Shultz's Note to the United Nations Secretary-General of 6 April 1984

Mr. President, I shall now turn from the legal background of the question of jurisdiction to consider the significance of a dramatic episode which occurred a little more than two days prior to the presentation, on 9 April, of Nicaragua's Application to the Court.

I refer of course to the Note sent by the Secretary of State, Mr. Shultz, to the United Nations Secretary-General on 6 April.

The text is as follows:

> "I have the honor on behalf of the Government of the United States of America to refer to the declaration of my Government of August 26, 1946, concerning the acceptance by the United States of America of the compulsory jurisdiction of the International Court of Justice, and to state that the aforesaid declaration shall not apply to disputes with any Central American State or arising out of or related to events in Central America, any of which disputes shall be settled in such manner as the parties to them may agree.
>
> Notwithstanding the terms of the aforesaid declaration, this proviso shall take effect immediately and shall remain in force for two years, so as to foster the continuing regional dispute settlement process which seeks a negotiated solution to the interrelated political, economic and security problems of Central America."

That is the end of the text of Mr. Shultz's letter.

That this document constituted a deliberate attempt to withdraw from a treaty obligation in face of a threatened legal proceeding there can be no doubt.

The text of Mr. Shultz's statement speaks for itself but, in so far as it may not speak for itself, it was supplemented a few days later by a Departmental Statement dated 8 April.

This Departmental Statement has considerable significance for the evaluation

of the episode as a whole and, with your permission, Mr. President, I would like to read the text in full:

> "The United States has notified the Secretary-General of the United Nations of a temporary and limited modification of the scope of the US acceptance of the compulsory jurisdiction of the International Court of Justice in The Hague. The notification, effective April 6, provides that the Court's compulsory jurisdiction shall not apply to the United States with respect to disputes with any Central American States or any disputes arising out of or related to events in Central America, for a period of two years.
>
> Similar action has been taken by a number of countries in the past, among them Australia, India and the United Kingdom. In addition, a large number of countries have not accepted the compulsory jurisdiction of the ICJ at all — France, Italy, the Federal Republic of Germany, Spain, the Soviet Union and other communist countries, to name only a few. Many other countries have accepted ICJ jurisdiction, but with many more reservations than the United States. The United States has long been active in its support for the Court, and its readiness to make full use of the Court in the Iran Hostages case and the now-pending Gulf of Maine case clearly demonstrates this longstanding commitment.
>
> This step has been taken to preclude the Court's being misused to divert attention from the real issues in the region and to disrupt the ongoing regional peace process by protracted litigation of claims and counterclaims. We believe that, as evidenced by their appeal to the United Nations Security Council, recent Nicaraguan behavior has shown a lack of serious interest in addressing regional issues or the Contadora discussions. We do not wish to see the Court abused as a forum for furthering a propaganda campaign. The parties to the Contadora process can determine for themselves in what respect they wish to submit regional issues to adjudication or other forms of dispute resolution.
>
> The regional peace process, while slow, has achieved notable successes. In agreeing to the 21 objectives last September, the parties set forth an agreed framework for continuing and completing their efforts to achieve a comprehensive regional peace dealing with the interrelated political, security, social and economic problems of the region. This work has recently entered a stage involving issues of both technical and political difficulty. While this is the point at which the greatest attention and commitment to that work is required, Nicaragua is regrettably considering action to divert attention from its failure to address those issues seriously by staging propaganda spectaculars in other fora. By our action we served notice that we do not intend to co-operate with this plan, or to permit the Court to be misused in that manner."

This Departmental Statement has an Appendix entitled "Examples of Modification of Acceptance of Compulsory Jurisdiction to Avoid Adjudication".

Three episodes are described as "examples of modification" and each description is accompanied by a reference to the study by the late President Waldock of the Optional Clause in the *British Year Book of International Law* (Vol. XXXII, 1955-1956, p. 244). This reference to the Waldock study is ironical indeed, for that very article gives no support for the view that the Shultz statement has the effect contended for by the United States.

The Appendix evokes three items of State practice which are presented as though they are parallel to and support the validity of the attempt in the Shultz letter to modify the United States Declaration. If I may read the Appendix:

"1. *India* (1956). To avoid an application by Portugal concerning rights of passage over Indian territory, India modified one reservation from 'disputes with regard to questions which by international law fall exclusively within the jurisdiction of India' to 'matters which are essentially within the domestic jurisdiction of India as determined by the Government of India' (*I.C.J. Yearbook 1955-1956*, at 186-187; *I.C.J. Yearbook 1953-1954*, at 216 (former reservation); Waldock, 'Decline of the Optional Clause', 32 *BYBIL*, 244, 268 (1955-1956)).

2. *United Kingdom* (1955). In October 1955, the UK terminated a declaration issued five months previously and substituted a new one containing a new reservation excluding 'disputes in respect of which arbitral or judicial proceedings are taking, or have taken, place, with any State which, at the date of the commencement of the proceedings, has not itself accepted the compulsory jurisdiction of the Court'. This was in response to the breakdown of an arbitration with Saudi Arabia due to bribery of potential witnesses (*I.C.J. Yearbook 1955-1956*, at 185; Waldock, *supra*, at 268).

3. *Australia* (1954). In 1954, to avoid a Japanese application to the ICJ on rights to pearl fisheries off the Australian coast, Australia submitted a new declaration excluding 'disputes arising out of or concerning jurisdiction or rights claimed or exercised by Australia . . . in respect of the continental shelf of Australia; . . . in respect of the natural resources of the sea-bed and subsoil of that continental shelf including the products of sedentary fisheries; or in respect to Australian waters . . . being jurisdiction or rights claimed or exercised in respect of those waters . . .' (*I.C.J. Yearbook 1953-1954*, at 210; Waldock, *supra*, 267-268)."

Mr. President, this material — in each of the three cases — involves a withdrawal of a declaration in accordance with its terms and the making of a new declaration. They were cases of withdrawal and not of modification. Indeed, President Waldock refers at page 269 of the article to which I have already referred to the three States "mentioned in the previous paragraph as having terminated their declarations and reissued them with new reservations", and is referring to India, the United Kingdom and Australia. The Departmental Statement nonetheless relies on this material in its Appendix, and it must be apparent that the result is less than satisfactory.

IX. The Legal Significance of Mr. Shultz's Letter to the United Nations Secretary-General

With your permission, Mr. President, I shall now indicate the views of the requesting State on the legal significance of the letter from Mr. Shultz to the United Nations Secretary-General of 6 April 1984. At this stage these views are to some extent provisional and they will be developed at a later stage of these proceedings.

In Nicaragua's view, the Shultz letter bears two possible interpretations. In the first place it may be regarded as an invalid attempt to modify or vary the existing United States declaration, which has thus been neither varied nor terminated and remains in force.

An alternative view is that the Shultz letter has the effect of terminating the original declaration but on its express terms that termination can only take effect six months after notice.

In either case the Court has been properly seised of a legal dispute as a result of the Application of Nicaragua.

The first of these two constructions may now be examined further. On its face the Shultz letter does not involve termination. It purports to add a "proviso". This "proviso" is to take effect immediately "notwithstanding the terms" of the declaration. This interpretation of United States intentions is supported by the opening paragraph of the Departmental Statement which refers to a "temporary and limited modification of the scope of the US acceptance of the compulsory jurisdiction of the International Court of Justice".

In the view of Nicaragua this purported modification is of no effect.

In the first place, the Shultz letter is contrary to the terms of the United States declaration, which expressly reserved the right of termination but made no attempt to reserve a right of modification. It may be noted in passing that such attempts, leaving aside the question of their legality, are extremely rare. Moreover, as I have already pointed out, the provision for six months' notice in the original declaration was expressly intended to rule out a possible withdrawal of the obligation "in the face of a threatened legal proceeding". It would be strange indeed, Mr. President, if a modification with immediate effect were possible, whilst a termination with immediate effect would be contrary to the terms of the declaration.

Additional factors support this construction. The maxim *expressio unius exclusio alterius* is applicable. If a power of modification had been sought it would have been expressly provided for. In any case the Shultz letter tends to accept an *ex facie* incompatibility with the terms of the declaration when it employs the phrase "notwithstanding the terms of the aforesaid declaration".

Mr. President, I now turn to the alternative construction of the Shultz letter, namely that it had the effect of terminating the original declaration on the terms expressed therein, and such termination can therefore only take effect six months after notice — that is, six months after 6 April. This result is indicated by the following factors.

First, the letter terminates the operation of the United States declaration *tout court* as against certain identifiable States and that is not a matter of modification. It is not like the introduction of a condition in a new declaration, since in relation to those identifiable States an existing acceptance of jurisdiction is not modified *ratione materiae* but is terminated. And, Mr. President, in this context, suspension has the same effect, or substantially the same effect, as termination.

Second, the real intention, indicated by the Departmental Statement of 8 April, was to withdraw the declaration of 1946 and — but this is a matter of some obscurity — substitute a new one with effect from 6 April 1984 consisting of the original declaration together with the contents of the Shultz letter.

The evidence of this intention takes two forms:

First, the precedents invoked by the Departmental Statement all involved withdrawal of a declaration followed by the making of new declarations. In other words, there are cases of termination but not of modification.

Second, a number of officials quoted in the press, making more or less contemporaneous comment upon the Shultz letter, were to speak of a "withdrawal of jurisdiction" (see Press Disclosure Bundle, p. 63), or the same people were to emphasize that the acceptance of jurisdiction had been suspended (*ibid.*, pp. 65-66).

Moreover, as a matter of logical analysis, a unilateral withdrawal of an existing jurisdiction *ratione personae* is *pro tanto* a termination and, so to speak, there is no severability allowed in such a case, more especially when the original declaration does not make provision for modification.

Mr. President, I would conclude my examination of the problems of construc-

tion of the Shultz letter by referring once again to the relevance in this case of the principles of the law of treaties. A State may only terminate or vary a declaration in accordance with those principles. In this case it would follow that the United States could only terminate on six months' notice in accordance with the terms of its own declaration. In this context it may be recalled that the precedents adduced by the United States to support its action are inapplicable since in each of those instances the declaration was by its terms terminable with effect from the date of notice.

The article by President Waldock in the *British Year Book* at pages 263 to 265, contains certain passages in which he examines the issues with his customary clarity.

If I may, Mr. President, I would read the whole passage because I think it may be of assistance to the Court. President Waldock says:

> "The making of a declaration, is a unilateral act; it does not, however, follow that the unmaking of a declaration is equally a unilateral act at the free discretion of the State concerned. The declaration, once made, sets up consensual relations with other States and the question necessarily arises whether a State can have any right to terminate its declaration except in accordance with an express term of the declaration . . . This would normally mean that a State having a declaration without any provision for its termination would not be entitled to cancel it as against other States having declarations for fixed periods except with their consent. Otherwise, termination of the declaration would not be justifiable except by reference to one of the special rules concerning the termination of treaties, such as the doctrine of *rebus sic stantibus*; moreover, under the final paragraph of Article 36 of the Statute it would be for the Court to decide any dispute as to the validity of a purported cancellation of a declaration . . ."

And I continue the quotation from the Waldock article:

> "A State which, having the right to make its declaration only 'for a certain time', chooses to make it without time-limit, is in a position analagous to that of a State which has entered into a bilateral treaty of indefinite duration. If two States both have declarations without time-limit, their position vis-à-vis each other seems clearly to be that of parties to a bilateral treaty of indefinite duration and any right which either State may have to put an end to their mutual obligation to accept the compulsory jurisdiction of the Court under the Optional Clause can only derive from the general law concerning the termination of treaties. The agreement between the two States, which is constituted by their parallel acceptances of the Optional Clause, contains no reference to a right arbitrarily to terminate their mutual obligation under the clause simply by giving notice to the Secretary-General. Nor can such a right be implied in Article 36 of the Statute, paragraph 3 of which clearly contemplates an indefinite commitment unless provision for a time-limit is made when a State makes its declaration."

If I may continue to refer to the text of the Waldock article.

> "The same reasoning applies to the case of a State whose declaration is either made for a specific period of years or is expressed to be terminable after a specific period of notice and which nevertheless purports, regardless of the terms of the declaration, to cancel it immediately by notice to the Secretary-General. The legitimacy of terminating any declaration otherwise than in accordance with its terms must, on principle, hinge upon the rules

governing the termination of treaties. This is borne out by the fact that when France, the United Kingdom, and other Commonwealth States notified the Secretary-General of the League in September 1939 that they would 'not regard their acceptances of the Optional Clause as covering disputes arising out of events occurring during the present hostilities', they formulated the grounds on which they justified their action in a manner strongly to imply that they were invoking the doctrine of *rebus sic stantibus*. At the date in question the declarations of these States were valid for fixed periods which had not yet expired, and they clearly did not consider themselves to have the right unilaterally to terminate or vary their declarations except on principles analagous to those governing the termination or variation of treaties. Even so, a number of neutral States made reservations in regard to the legal effect of the action taken by these States."

And Waldock concludes:

"On principle, therefore, there is no right of unilateral termination of a declaration under the Optional Clause unless the right has been expressly reserved in the declaration. On the same principle also there is not, in the absence of an express term, any right of unilateral variation of a declaration previously made and still in force."

And that is the end of the passages from the Waldock study.

So much, Mr. President, for the alternative construction of the Shultz letter, and the view that the effect was a termination of the original declaration on the terms expressed therein.

X. The Reservations in the United States Declaration of 1946

As is well known, the United States declaration of 1946 contains reservations, two of which may be relevant if they are invoked by way of preliminary objection.

In the present proceedings it is not necessary for Nicaragua to establish the non-applicability of the United States reservations. The co-existence of two declarations, both still in force, provides a prima facie basis of jurisdiction.

It might be that this position would be too formal a view of the law, and in need of qualification, if the United States reservations or any one of them were such as to offer a palpable barrier to the existence of compulsory jurisdiction.

But this is not the case. The reservation relating to "matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America" creates notoriously difficult problems of analysis. However, it is not necessary to resolve these problems at the stage of this request for interim measures.

The decision of the Court in the *Interhandel* case on interim measures (*I.C.J. Reports 1957*, p. 105) is of relevance in this connection. Professor Herbert Briggs, in his Hague lectures some years ago, observed:

"The major significance of the Court's Order of October 24, 1957, in the Interhandel case lies in the fact that the Court rejected a challenge to its jurisdiction to indicate interim measures of protection which was based on a reservation of matters of domestic jurisdiction unilaterally determined. The Court's Order did not join the United States 'Preliminary Objection' to the merits or preserve it for future examination. In fact, the Court did not even denominate it as a 'Preliminary Objection' but referred to it as a 'contention'."

And Briggs concludes:

> "The Court merely observed in this connection that 'if this contention is maintained' the Court would listen to arguments against its jurisdiction on the merits." (*Recueil des cours*, Vol. 93, p. 229 at p. 353.)

It remains for me to point out that the Government of the Republic of Nicaragua finds it difficult to believe that the issue of responsibility for the mining of vessels in the territorial sea of another State, either in time of peace or of war, or the other territorial incursions revealed by the facts, could fall within even a flexible conception of domestic jurisdiction.

Another United States reservation relates, in complicated form, to "disputes arising under a multilateral treaty". The same general considerations concerning the relevance of preliminary objections at this stage apply with equal force in this case. In addition, it may be noted that the breaches of international law rehearsed in the Application of Nicaragua in large part concern causes of action based upon general or customary international law. Moreover, this reservation includes the proviso "unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court". It is neither possible nor appropriate for the Court to attempt, at this early stage of these proceedings, to determine what other States, if any, may be affected by a decision that the Court may or may not make at a later stage.

XI. Certain Other Considerations

Mr. President, the Court will appreciate that the Republic of Nicaragua, as Applicant, retains the right to present its views on jurisdictional questions in a less provisional way at the appropriate time.

It follows that a number of points which militate in favour of the existence of jurisdiction, but which I have not been able to deal with, must be left on one side. These issues relate particularly to the precise construction of the contents of Mr. Shultz's letter of 6 April. One such issue concerns the interpretation of the purported modification which, leaving the question of its validity aside, applies apparently only to disputes which may arise after 6 April.

In concluding my consideration of the jurisdictional issue, I would pause to emphasize the continuing legal validity of the Nicaraguan declaration which has been published in the *Yearbook* of the Court consistently since 1946. Whilst reserving the right to make a more extended examination of the question at a later stage, Nicaragua considers that the validity of the declaration of 1929 as a declaration within the system of the Optional Clause has been generally recognized by States making such declarations. The evidence of such general recognition includes, but is not confined, to the following:

Firstly, the *Yearbook* of the Court has included the declaration of Nicaragua for some 37 years and no declarant State in that period has raised any question of its validity.

Secondly, the United States official publication, *Treaties in Force* — a list of treaties and other international agreements of the United States — *Treaties in Force* on 1 January 1983 (Dept. of State Publications, p. 351), lists Nicaragua as a State accepting the compulsory jurisidiction of the Court and it makes no qualification.

Thirdly, the standard United Nations Information Book on the International Court also lists Nicaragua as such a State, without qualification.

Fourthly, in the case concerning the *Arbitral Award Made by the King of Spain*

on 23 December 1906, the Application of Honduras relied in part upon the Nicaraguan declaration (*I.C.J. Pleadings, Arbitral Award Made by the King of Spain on 23 December 1906*, Vol. I, pp. 8-9). Incidentally, it should be affirmed that the Protocol of Signature of the Permanent Court was ratified by the relevant organs of the Constitution of Nicaragua namely the Chamber of Deputies and the Senate in 1935 (*ibid.*, p. 129).

XII. Submission on Jurisdiction in these Proceedings on Interim Measures

Mr. President, I would complete my observations with certain submissions.

On the question of jurisdiction, the Republic of Nicaragua submits: firstly, that the United States declaration of 26 August 1946, in its original form, remained in force at the time of the making of the Nicaraguan Application of 9 April 1984.

Secondly, that the jurisdictional factor should be related to the issues of irreparable prejudice and urgency in proceedings concerning interim measures; and thirdly, that without prejudice to the foregoing, the jurisdictional factor in this case is conducive to the exercise of the power to order interim measures.

Mr. President, I would like to thank you and the Members of the Court for the courtesy and patience which you have shown me. Mr. President, would you please give the floor to the Agent of Nicaragua, who wishes to make a very short presentation, in conclusion.

STATEMENT BY MR. ARGÜELLO GÓMEZ

AGENT FOR THE GOVERNMENT OF NICARAGUA

Mr. ARGÜELLO GÓMEZ: Mr. President, Members of the Court. On behalf of the Government of Nicaragua I wish to thank you for the rapidity with which the urgent plea of Nicaragua has been heard and these hearings have taken place, and to conclude just on behalf of my colleagues and myself to thank you for your courtesy and patience in hearing us out.

The PRESIDENT: I have had a request from the Agent of the United States not to speak tomorrow, but to be allowed to do so first thing on Friday.

My information is that the Nicaraguan Agent has no objection to that. If so, we shall resume on Friday morning with the Agent of the United States making a reply to Nicaragua. The Court is adjourned until Friday.

The Court rose at 4 p.m.

THIRD PUBLIC SITTING (27 IV 84, 10 a.m.)

Present: [See sitting of 25 IV 84, 10 a.m.]

The PRESIDENT: The Court sits this morning to continue the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, to hear the observations of the Parties on the request of Nicaragua for the indication of provisional measures under Article 41 of the Statute. The representatives of Nicaragua having made their presentation two days ago, I now give the floor to the Agent of the United States of America, Mr. Davis R. Robinson.

STATEMENT BY MR. ROBINSON

AGENT FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. ROBINSON: Mr. President, distinguished Members of the Court, may it please the Court: it is a distinct honour and rare privilege to appear before the International Court of Justice as Agent on behalf of my country, the United States of America, in connection with the Application of the Republic of Nicaragua and its request for the indication of provisional measures. As the Court is aware, the United States is of the conviction that this case is unlike any other interim measures request to come before the Court. The United States refers to the fact that Nicaragua's Application manifestly falls outside the Court's jurisdiction. No evidence — I repeat — no evidence has been adduced to support Nicaragua's claim that it has ever accepted the compulsory jurisdiction of this Court, a fundamental prequisite for invoking the Court in these circumstances. Moreover, the terms of the acceptance of the Court's jurisdiction by the United States unambiguously exclude consideration of Nicaragua's Application at this time. This is especially so when Nicaragua's action comes in the midst of on-going regional negotiations to which Nicaragua is by its own agreement a party. The very purpose of these regional talks, which have been endorsed by the competent international organs of the United Nations and the Organization of American States, is to bring peace and justice to all the countries of Central America.

By appearing here today, the United States is not in any way prejudicing its position that the Court fundamentally lacks jurisdiction in this case. Rather, the United States appears because of its deep and long-standing commitment to the International Court of Justice as an important institution for resolving differences of a juridical character between States. This is the second time in the history of the Court that the United States has been named as respondent in a provisional measures proceeding, and this is the second time the United States has appeared. Every other respondent in such circumstances has simply ignored the call of the Court and has failed to appear. By participating in this proceeding, the United States reaffirms its confidence in this Court as an impartial and conscientious judicial institution.

With the Court's permission, the extraordinary nature of the Application and request of Nicaragua and its oral presentation on Wednesday compels the United States to make a few introductory remarks before proceeding to the body of our

legal argument. Given the essentially political nature of Nicaragua's filings and oral presentation, it is clear that this is not a customary situation for the Court. From the statement of Nicaragua's Agent and counsel on Wednesday morning, one might have assumed that this were a political forum and not a court of law. Indeed, one might have wondered whether Nicaragua thought it was before the United Nations Security Council or the United Nations General Assembly, rather than before the International Court of Justice. Regrettably, the approach of Nicaragua to this proceeding, both inside and outside the courtroom, has raised grave doubts about its objectives in instituting these proceedings.

On Wednesday morning, Nicaragua gave a vivid account of violence and destruction, premised on the apparent view that this Court, by way of provisional measures, could bring peace to Nicaragua and the Central American region. It was clear that Nicaragua hoped to show, by selectively quoting from carefully chosen documents — documents which were drawn primarily from the open political system of the United States of America — that Nicaragua is an innocent victim of aggression. The United States has not come here to this judicial body today to enter into a debate about this fundamentally political topic. To do so would be fundamentally incompatible with the purposes for which this institution was established. But it is unthinkable that the United States could allow Nicaragua's distortion of the record before this honourable judicial body to go entirely unanswered.

The United States would like, therefore, to bring to the Court's attention just one of the documents upon which Nicaragua has relied in protesting its innocence. This is the Report of the United States House of Representatives Permanent Select Committee on Intelligence of 13 May 1983 (Nicaraguan Exhibit X, tab 1). Pages 2 and 5 of this Report, in discussing Nicaraguan support for armed guerrillas seeking to overthrow the Government of El Salvador, state

> "[C]ontrary to the repeated denials of Nicaraguan officials, that country is thoroughly involved in supporting the Salvadoran insurgency . . . It is not popular support that sustains the insurgents . . . [T]his insurgency depends for its life-blood — arms, ammunition, financing, logistics and command-and-control facilities — upon Nicaragua and Cuba. This Nicaraguan-Cuban contribution to the Salvadoran insurgency is longstanding . . . It has provided — by land, sea and air —. the great bulk of the military equipment and support received by the insurgents."

What this quotation shows, from a document selected by the Republic of Nicaragua in arguing in its own case, is that the problems of Central America are not problems of isolated violence affecting Nicaragua's security alone. All the States of Central America have an interest in restoring peace to the region, and achieving this is a complex, delicate and urgent task firmly supported by the United States of America.

The question is how best to bring peace to the region as a whole. With all due respect, the United States does not believe that this judicial forum is the appropriate place to address this issue in light of the actions of the United Nations and the Organization of American States, and certainly not in the absence of the other States whose vital interests are at stake.

As one commentator has written concerning the role of practitioners of international law,

> "Above all, they must avoid the temptation to deal with very difficult political and moral issues as though they could be resolved by rather simple

and very general legal imperatives." (Professor Abram Chayes, 57 *Proceedings of the American Society of International Law 1963*, pp. 11-12.)

Nicaragua's neighbours, whose rights and interests would be directly affected by these proceedings agree that, under the circumstances, this is not the proper forum for addressing the intertwined problems of Central America. Later in our presentation, we will be reading for the record portions of their recent communications bringing to the Court's attention their concerns about this proceeding. These nations have independently communicated these messages to the United States. For the present, it will suffice to quote from the Note transmitted by the Republic of Honduras to the Secretary-General of the United Nations on 18 April 1984 (United States Exhibit III S):

> "Once again the Government of Nicaragua is seeking to flout the Contadora negotiation process by attempting to bring the Central American crisis, essentially a political issue, under the jurisdiction of the International Court of Justice. This is detrimental to the negotiations in progress and fails to recognize the resolutions of the United Nations and the Organization of American States or the full international endorsement that the Contadora peace process has so deservedly received."

It is against this background that the United States presents itself today before this honourable Court. It is our contention that the Court does not have, and could not properly exercise, jurisdiction in the unprecedented circumstances of this case. The Court does not have jurisdiction because Nicaragua has never accepted the compulsory jurisdiction of this Court. Without this acceptance, Nicaragua's effort to invoke this forum can only be viewed as politically motivated. The Court also does not have jurisdiction because the United States has not given its consent to these proceedings. Finally, this Court, under the international system of which it is but a part, is not institutionally designed under the circumstances of this case to remedy the regional conflict that is tragically engulfing Central America. In light of the Court's manifest lack of jurisdiction, the United States believes with all due respect that there is no basis for this Court to proceed with Nicaragua's Application, the claims contained therein, or the request for the indication of provisional measures.

With the permission of the Court, the presentation of the United States today will consist of five sections. First, it will be my privilege to give a short synopsis of the standards to be applied by the Court in reviewing a request for the indication of provisional measures. In this presentation, the United States will establish three basic propositions. First, that the fundamental premise of proceedings before this Court, including those on provisional measures requests, is the mutual consent of the States before the Court. Second, that where an application fails to reveal legal grounds on which the applicant can claim a title of jurisdiction, as is the case here, the application should be excluded from the General List and no further proceedings taken in connection with the Application or the claims contained therein. And third, provisional measures cannot, in any event, be indicated in the absence of a prima facie showing of jurisdiction by the Applicant.

Drawing upon the foregoing, it will be the honour of the Agent of the United States to turn to the jurisdictional facts which fundamentally flaw the whole case of Nicaragua. In the absence of any new evidence to the contrary, these facts demonstrate a serious and knowing impropriety on the part of Nicaragua in the institution of these proceedings. This conclusive defect was the subject of the letter of the Agent of the United States to the Registrar of the Court of 23 April

1984, to which the distinguished President of the Court made reference in his opening remarks on Wednesday. In that letter, the United States advised the Court of information that, in the absence of any new evidence to the contrary, establishes conclusively that Nicaragua has never accepted the compulsory jurisdiction of the Court. The United States indicated, as it will stress again today, that Nicaragua's Application and request therefore have deliberately violated the most fundamental prerequisite for jurisdiction by this Court — and that is, the equality of treatment of sovereign States on the basis of reciprocity. The United States will argue further that an application with this grave defect as to title of jurisdiction is not a permissible basis upon which to institute proceedings in this Court. Indeed, it would be unthinkable for this Court to permit a State which has not itself accepted the jurisdiction of the Court unilaterally to confer on the Court the power to impose provisional measures by the mere filing of an application coupled with a request for an indication of such measures. The United States will therefore submit that in the absence of any new, direct and colourable evidence of Nicaragua's acceptance of the compulsory jurisdiction of the Court, Nicaragua's request for the indication of provisional measures must be denied by the Court forthwith and a total and immediate bar issued with regard to any further proceedings on the Application, the claims contained therein, and the request.

The United States emphasizes this point at the outset because the circumstances in this case are particularly egregious. In the letter of the United States to the Registrar of 23 April, the United States put Nicaragua on notice of our intention to raise the question of its claim to any title of jurisdiction. Nevertheless, neither in its letter of the following day to the Registrar nor in its oral presentation on Wednesday did Nicaragua give any specific indication of why Nicaragua believes it is entitled to invoke this Court's compulsory jurisdiction. Nicaragua's letter of 24 April, to which the President of the Court referred on Wednesday morning, made only two general statements: first, "Nicaragua ratified in due course the Protocol of Signature of the Statute of the Permanent Court", and second, "there are in force other treaties which provide this Court jurisdiction". The representatives of the United States listened with interest on Wednesday in hope of learning what Nicaragua meant by these opaque references.

As to the second of the two alleged bases of jurisdiction — and the word "alleged" is used advisedly, since an allegation ordinarily would have at least some substance underlying it — Nicaragua identified on Wednesday no "treaties" as a foundation for jurisdiction over its Application and request. Similarly, the Application and request are completely devoid of any such reference. Indeed, Nicaragua's counsel on Wednesday afternoon at page 69, *supra*, cited Article 36 (5) of the Statute of the Court as the basis of compulsory jurisdiction and Article 36 (2) of the Statute, to which Article 36 (5) leads, does not even admit of a treaty basis for jurisdiction.

At page 68, *supra*, Professor Brownlie stated:

> "In her Application to the Court Nicaragua invokes Article 36 of the Statute on the basis that both the Applicant and Respondent States have accepted the compulsory jurisdiction of the Court by virtue of the so-called Optional Clause, which in fact consists of the provisions of paragraph 2 of Article 36."

On Wednesday, United States representatives listened intently to learn of any Nicaraguan evidence that it had, in fact, accepted the Court's compulsory jurisdiction through adherence to the Protocol of Signature to the Statute of the Permanent Court of International Justice. An examination by the United States

of the records at the United Nations in New York, at the League of Nations archives in Geneva and in the files of the Department of State in Washington after the 9 April filing of Nicaragua's Application and request revealed evidence directly to the contrary.

On this point, Professor Brownlie told the Court only the following:

> "Incidentally, it should be affirmed that the Protocol of Signature of the Permanent Court was ratified by the relevant organs of the Constitution of Nicaragua namely the Chamber of Deputies and the Senate in 1935." (P. 79, *supra*.)

Frankly, in light of the material submitted in connection with its Agent's letter of 23 April 1984, the United States can only construe Professor Brownlie's statement as an admission by Nicaragua that it never did deposit an instrument of ratification to the Protocol of Signature. Without that deposit, Nicaragua's declaration of 1929 was fundamentally ineffective and unenforceable. The United States letter of 23 April appended documents that, in the absence of new evidence to the contrary, establish that Nicaragua by its own admission as of 13 May 1943, had in fact, not ratified the Protocol even as a matter of its own domestic law. If the Protocol of Signature was indeed ratified "in due course" as the Agent of Nicaragua has claimed in his letter of 24 April, this must have occurred between that date and 18 April 1946, when the League of Nations and Permanent Court were dissolved. The United States has caused an examination of Nicaragua's own official publication, *La Gaceta*, to be made through this entire period and has been unable to find any publication of notice in *La Gaceta* which was, under Nicaragua's own internal laws, a *sine qua non* to any Nicaraguan ratification being effective as a matter of even its own domestic law.

The United States accordingly objects to the institution of contentious proceedings before this body by a State which is unwilling to reveal any basis for a claim of entitlement to invoke the Court's jurisdiction. Moreover, the United States regards it as totally unnecessary in these circumstances to adduce further responses to Nicaragua's request for provisional measures. Nevertheless, out of respect for this Court, the United States in its presentation today will address the additional grounds why this Court manifestly lacks even a prima facie basis for jurisdiction over the Application, the claims contained therein and the request for the indication of provisional measures.

With the Court's permission, the third part of our presentation will be made by my colleague, Michael Kozak, who is a Deputy Legal Adviser in the Department of State and Special Counsel for the United States in this proceeding. Mr. Kozak will describe in more detail the origin and progress of the regional peace process now in progress which has been denominated as the "Contadora" process. The purpose of this discussion will be to provide the Court with a balanced understanding of this regional arrangement which has been endorsed by the United Nations Security Council and by the Organization of American States as the appropriate means for resolving the present conflict in Central America. Mr. Kozak's remarks should also put to rest Nicaragua's spurious assertions that the United States has no interest in the Contadora process and that the issues raised by Nicaragua in its Application fall outside that Contadora process. Certainly, a process that is designed to bring peace to Central America, and that has been approved by the competent regional organization to which the United States — and Nicaragua — are parties, is a proper subject of intense interest and commitment on the part of the United States of America. This is all the more so when this process offers the prospect, after many years of Nicaraguan

intransigence, of arriving at arrangements and mechanisms to bring a halt to the cycle of violence that is plaguing Central America.

The next two sections of our presentation, with the Court's permission, will be made by Daniel W. McGovern, the Deputy Agent of the United States in this case and the Principal Deputy Legal Adviser of the Department of State. Against the background of the on-going Contadora process, Mr. McGovern will first speak to the 6 April 1984 action by the United States with respect to its 26 August 1946 declaration accepting the compulsory jurisdiction of the Court. The purpose of this temporary and limited action was to place Nicaragua on notice that the United States would not permit the Contadora process to be subverted by further Nicaraguan efforts to take the issues of Central America out of the appropriate regional arrangements — the one forum that has any realistic prospect of bringing an end to the suffering in Central America. The United States action on 6 April is legally effective in ensuring that the present effort by Nicaragua to abuse the judicial process cannot take place.

Mr. McGovern will then present three additional compelling reasons why the Court cannot properly grant Nicaragua's request for the indication of interim measures.

First, because the subject of the Application, the claims contained therein and the request are currently committed to a regional arrangement approved by the Security Council of the United Nations and strongly endorsed by the competent regional organization, the Organization of American States. Under the Charter of the United Nations, Nicaragua is obligated to pursue good faith negotiations in this process. The United States believes, with due respect, that it would be singularly inappropriate for this Court to substitute itself in the circumstances of this case for the mechanisms provided for in the Charter for resolving disputes involving armed conflict.

Second, Nicaragua's Application and its request for provisional measures inevitably implicate the rights and interests of the other Central American States. In their absence, jurisdiction here is lacking under the Court's jurisprudence as expressed in the *Monetary Gold Removed from Rome in 1943* Judgment.

Third and finally, Nicaragua's Application and request improperly call upon this Court in the circumstances of this case to make judgments and to impose measures potentially impairing the inherent right of States to individual and collective self-defence under Article 51 of the United Nations Charter.

With the Court's permission, when the Deputy Agent of the United States has finished, it will be my privilege to make a few further remarks on this opening United States presentation.

With your permission, the United States will now examine in detail our contention that this Court lacks jurisdiction, in an unprecedented fashion. This is so because, contrary to the allegations in its Application, Nicaragua has never accepted the compulsory jurisdiction of this Court. This question has two aspects: first, the extent to which jurisdiction is properly examined in a proceeding on provisional measures; secondly, an examination of the facts relevant to jurisdiction that are now available to the Court.

The United States will show that under this Court's jurisprudence at least a prima facie showing of jurisdiction is a necessary precondition to an indication of interim measures.

The United States will then demonstrate that given the absence of any new evidence to the contrary Nicaragua's failure to accept the Court's compulsory jurisdiction is beyond dispute. The Court therefore lacks jurisdiction by any standard. This is true whether the Court applies either the standard advanced by Professor Brownlie on Wednesday, that is, that there must be a "manifest

lack of jurisdiction" (p. 67, *supra*) or the standard which the Court used in the *Fisheries Jurisdiction* cases and to which Professor Brownlie also referred. Professor Brownlie said on Wednesday:

> "It is of course true that in those cases and in others, the Court has found that interim measures should be ordered only if the provisions invoked by the applicant appear 'prima facie to afford a possible basis on which the jurisdiction of the Court might be founded'." *(Ibid.)*

The demonstrable evidence of lack of even a colourable title to jurisdiction distinguishes the present case from all other provisional measures proceedings that have come before this Court. It compellingly argues, moreover, for the immediate termination of all proceedings with respect to Nicaragua's application, the claims therein, and the request for an indication of interim measures.

Before commencing this discussion, it is useful to recall the words of this Court a few years ago in the *Appeal Relating to the Jurisdiction of the ICAO Council* case between India and Pakistan. The Court there described as "An essential point of legal principle" that a "party should not have to give an account of itself on issues of merits before a tribunal which lacks jurisdiction in the matter, or whose jurisdiction has not yet been established" (*I.C.J. Reports 1972*, p. 56). Although that ruling was on the merits, the principle enunciated by the Court is applicable here. Again, in the Court's own words, this time from the *Peace Treaties* case, "The consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases" (*I.C.J. Reports 1950*, p. 71). And only a few weeks ago, in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application by Italy for Permission to Intervene* case, the Court emphasized: "The basic principle that the jurisdiction of the Court to deal with and judge a dispute depends on the consent of the parties thereto" (*I.C.J. Reports 1984* p. 22).

The proceeding in the Italian application case, moreover, was an "incidental proceeding" similar in many respects under the new Rules of Court to the incidental proceedings on provisional measures here. The United States would refer the Court on this point to Professor Rosenne's recent book, *The Procedure in the International Court*, at page 148. Thus, contrary to the contention of Nicaragua's counsel on Wednesday afternoon (p. 67, *supra*), all proceedings before this Court are consensual in nature.

This Court has already indicated what it considers to be the appropriate jurisdictional standard in a provisional measures proceeding. In its decision of Tuesday, 24 April 1984, to which you referred, Mr. President, at the opening of these hearings, the Court indicated that Nicaragua and the United States were at liberty to address all matters connected with the request for provisional measures including "the question of competence to the extent requisite to convey their views on whether the Court possesses prima facie jurisdiction" (p. 37, *supra*). The Court's determination that a prima facie showing of jurisdiction is a prerequisite to the indication of interim measures is of course consistent with the Court's holdings on this question in the *United States Diplomatic and Consular Staff in Tehran, Nuclear Tests* and *Fisheries Jurisdiction* cases.

In light of the Court's specific pronouncement on 24 April and the well-established jurisprudence of the Court on which it is based, it is difficult to understand how Nicaragua's counsel could contend, as he did Wednesday afternoon, that no proof of jurisdiction is prerequisite to the issuance of interim measures (p. 66, *supra*). Nor is such a contention consistent with the Court's Statute, or indeed with common sense. Article 41 of the Statute authorizes the Court to indicate provisional measures "to preserve the respective rights of either party". Unless a State is properly a "party" in the first place, Article 41

does not authorize the Court to indicate measures. As the reference to "party" and "parties" in Article 41 shows, the Court has power to act only if a case is properly before the Court, that is, provided that there exists at least prima facie jurisdiction under Article 36 of the Statute. This is supported by the change introduced in 1978 in the title of Section D of the Rules from "occasional rules" to "incidental proceedings" and by the interpretation given by the Court to Article 73, paragraph 1, of the Rules of Court. Thus, there is a definite linkage between Article 41 and Article 36 of the Statute of the Court.

To the extent to which the jurisprudence of the Court suggests a jurisdictional standard other than a prima facie demonstration, it generally suggests a higher standard of probability that jurisdiction will ultimately be found on the merits.

In the *Aegean Sea Continental Shelf* case, for example, the Court found it unnecessary to rule definitively on the jurisdictional threshold since it refused for other reasons to indicate provisional measures. Even so several Judges emphasized the need for careful scrutiny of jurisdiction before imposing provisional measures. Judge Nagendra Singh articulated the underlying considerations as follows:

> "The essence of the matter is that if the Court is taking action affecting the rights of either party, even by way of freezing them, it should do so only after reaching a point of satisfaction in regard to its own competence which comprises a clear and distinct possibility of the Court proceeding to render judgment in the case. The purpose of the entire exercise of protecting the rights of the Parties *pendente lite* is to be able to implement the Court's judgment when it comes. The acid test of the Court's competence, therefore, is that the judgment must be within clear prospect. This positive test of satisfaction as to distinct possibility appears necessary if the Court is to avoid the regrettable prospect of granting interim measures and then finding later that it cannot ever proceed to judgment in the case."

Judge Nagendra Singh also had the following observation which should be emphasized in light of Professor Brownlie's arguments to the contrary:

> "Even though there is the admitted factor of urgency attending the request for interim measures, I feel that the Court has nevertheless to spend the time needed to reach the point of satisfaction as to its own prospective competence prior to exercise of powers under Article 41 of its Statute." (*I.C.J. Reports 1976*, p. 17.)

Judge Lachs asserted that a provisional determination on jurisdiction was necessary even when, as in the *Aegean Sea Continental Shelf* case the Court refused to grant the measures for other reasons. He said:

> "Not only was the Court's jurisdiction contested by Turkey but the Court was in my view under an obligation to consider the issue *proprio motu* and make clear its provisional views thereon, notwithstanding the negative answer it felt bound to give the request for interim measures." (*I.C.J. Reports 1976*, p. 19.)

Judge Morozov held that:

> "The Court has no right to consider . . . the question of interim measures of protection, before it has satisfied itself that it has jurisdiction." (*I.C.J. Reports 1976*, p. 21).

Judge Ruda also expressed the importance of an explicit finding as to jurisdiction:

> "In my view the Court cannot decide on a request for interim measures of protection, without having first considered, at least prima facie, the basic question of its own jurisdiction to entertain the merits of the dispute." (*I.C.J. Reports 1976*, p. 23.)

Judge Mosler also cited the prima facie test and emphasized that it represents a "provisional conviction" that the Court "has jurisdiction on the merits of the case" (*I.C.J. Reports 1976*, p. 24).

Let us examine now the jurisdictional evidence before the Court in the present case. The United States will show that Nicaragua's Application manifestly fails to meet the prima facie test and, *a fortiori*, fails to meet any more rigorous test.

The Court will recall that under Article 38, paragraph 2, of its Rules, it is obligatory for an application to "specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based". Nicaragua refers in the preamble to its Application to the "declarations made by the Republic of Nicaragua and by the United States of America accepting the jurisdiction of the Court as provided for in Article 36 of the Statute". Nicaragua also alleges in paragraph 13 of its Application that "both the United States and Nicaragua have accepted the compulsory jurisdiction of the Court under Article 36 of the Statute of the Court". Nicaragua thus devotes two lines in its entire Application to a simple conclusory statement on jurisdiction without, as Article 38 (2) of the Rules requires, specifying "the legal grounds upon which the jurisdiction of the Court is said to be based". Nicaragua's Application failed to identify the specific declarations of either Nicaragua or the United States or even the clause of Article 36 on which Nicaragua relied to establish jurisdiction.

It was only with Professor Brownlie's presentation on Wednesday (p. 69, *supra*) that Nicaragua confirmed, as the United States had anticipated in our letter of 23 April, that Nicaragua relies upon Article 36 (5) of this Court's Statute. That Article provides as follows:

> "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."

As the United States demonstrated to the Court in its letter dated 23 April, Nicaragua's declaration under Article 36 of the Statute of the Permanent Court of International Justice never came into force because Nicaragua never became a party to the Statute of the Court, through ratification of its Protocol of Signature. Nicaragua may not, therefore, be deemed to have accepted the compulsory jurisdiction of the Court under Article 36, paragraph 5, of this Court's Statute. This conclusion is indisputable if one examines, first, the procedure by which States accepted the compulsory jurisdiction of the Permanent Court of International Justice and, second, Nicaragua's failure to implement those procedures.

A State accepted the compulsory jurisdiction of the Permanent Court by adopting the Statute of that Court and declaring its acceptance of the so-called "Optional Clause" in Article 36 of that Court's Statute. The procedure was analogous to that of the present Court, where a State becomes party to the Statute of the Court by virtue of being a Member of the United Nations, and then may make a declaration under Article 36 (2) of that Statute accepting the Court's jurisdiction. The difference — and it is a decisive one here — is that a State did not automatically become party to the Statute of the Permanent Court

by virtue of its membership in the League of Nations. It had also to ratify another instrument — the Protocol of Signature of the Statute — and, in the absence of new evidence to the contrary, it is clear on the record before the Court that Nicaragua did not do so.

The Protocol of Signature of the Statute of the Permanent Court of International Justice was opened for signature at Geneva on 16 December 1920. A State had to ratify the Protocol of Signature in order to adopt the Statute of the Court. Only after a State had in this way accepted the Statute of the Court could it make an effective and binding declaration under Article 36, the "Optional Clause", accepting the compulsory jurisdiction of the Court. The late Judge Manley O. Hudson succinctly summarized this relationship between the Statute and the Optional Clause in his treatise on the Permanent Court of International Justice:

> "A State cannot become a party to the Optional Clause unless it becomes or has become a party also to the Protocol of Signature." (M. Hudson, *Permanent Court of International Justice 1920-1943*, p. 451 (1943).)

In order to become a party to the Protocol of Signature, a State had both to sign the Protocol and to deposit with the Secretary-General of the League of Nations its instrument of ratification. Ratification was accomplished only by this deposit of an instrument of ratification with the Secretary-General. Upon receipt of the instrument of ratification, the Secretary-General was to give formal notice to other signatory Powers that the ratifying State had ratified the Protocol of Signature and thereby had adopted the Statute of the Court. The third paragraph of the Protocol of Signature explains these requirements. The United States respectfully requests the Court to take cognizance of the fundamental nature of this provision:

> "The present Protocol . . . is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations: the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratification shall be deposited in the Archives of the Secretariat of the League of Nations."

Because of the critical nature of this paragraph, with your permission I think I shall repeat it. [Quotation repeated.]

The express requirement in the Protocol of Signature of the deposit of an instrument of ratification to bring the Statute into effect with respect to the ratifying State was, and is, standard international practice and was intended to confirm a State's intention to be bound. See, for example, J. Mervyn Jones, *Full Powers and Ratification: A Study in the Development of Treaty-Making Procedures*, at pages 111 to 112; Chapter VI of Dehousse's Treatise, *La ratification des traités*; and Satow, *A Guide to Diplomatic Practice*, third edition, at page 408.

Nicaragua signed the Protocol of Signature on 14 September 1929. On 24 September 1929, Nicaragua made the following declaration:

> "On behalf of the Republic of Nicaragua I [T. F. Medina] recognize as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice."

Nicaragua, however, never ratified the Protocol of Signature, and under the terms of the Protocol, never became a party to the Statute. As a result, Nicaragua's declaration with regard to the Optional Clause of the Statute never became effective or enforceable.

The official records of the League of Nations confirm that Nicaragua's signature of the Protocol and its 1929 declaration did not bind Nicaragua to the Protocol or to the Court's compulsory jurisdiction. Thus, the report of the Permanent Court of International Justice for 1929-1930 lists Nicaragua among the "States having signed [the Optional Clause] without condition as to ratification but not ratified the Protocol of Signature of the Statute" (*P.C.I.J., Series E, No. 6* (1929-1930), at pp. 145-146). The report notes that these States are "not bound by the Clause" (*ibid.*, p. 146). There is also a list of what is called "States at present bound by the [Optional] Clause", but this list does not include Nicaragua (*ibid.*, p. 145). Nicaragua is listed in the same way in subsequent issues of the report of the Permanent Court of International Justice. (See, e.g., *P.C.I.J., Series E, No. 7* (1930-1931), at pp. 159, 161, 457; *P.C.I.J., Series E, No. 14* (1937-1938), at pp. 59-60. See also *Texts Governing the Jurisdiction of the Court, Series D, No. 6* (1932), at p. 19.)

On 4 April 1935, the Nicaraguan Minister of Foreign Relations wrote to the Secretary-General of the League of Nations stating that the Protocol of Signature which had been signed by Nicaragua on 14 September 1929, and other instruments, had been submitted to the Congress of the Republic of Nicaragua for their constitutional ratification. The Minister added that, after this formality had been completed and the document published in the *Official Gazette*, he would be pleased to transmit the respective instruments of ratification to the Secretariat of the League of Nations. On 5 April 1935, the Legal Adviser of the Secretariat replied that the Secretariat was at the disposal of the Nicaraguan Government to facilitate such a deposit (United States Exhibit I).

On 29 November 1939, Nicaragua addressed a telegram to the Secretary-General of the League of Nations stating that Nicaragua would be ratifying the Protocol of Signature in due course by depositing an instrument of ratification. The original telegram, which is contained in United States Exhibit I, uses the Spanish term "oportunamente". As its text shows, the telegram was not meant to constitute, and could not have constituted, an instrument of ratification to the Protocol of Signature.

The telegram was received in the League of Nations in Geneva on 30 November 1939. On the same date, the Acting Legal Adviser of the League of Nations, Mr. McKinnon Wood, wrote to the Nicaraguan Ministry for Foreign Affairs. He acknowledged receipt of the telegram and, in the following passage, noted that ratification had yet to be completed. Mr. President, if the Members of the Court will pardon my accent — which indeed is even worse in French than in Spanish — I will quote the original:

> "En réponse, je m'empresse de vous informer que le service compétent du Secrétariat se tient à la disposition de votre gouvernement pour lui faciliter les formalités relatives au dépôt dudit instrument de ratification."

The telegram from Nicaragua and the response from the Acting Legal Adviser to the League of Nations may both be found in the United Nations Library, Geneva, League of Nations Archives, 1933-1946, File No. 3C/17664/1589. That file contains all the materials from the period 1933 to 1946 relating to the signature and ratification by Nicaragua of the Protocol of Signature of the Statute of the Permanent Court of International Justice and the Optional Clause.

The League of Nations Archives contain no evidence that the League ever received from Nicaragua the necessary instrument of ratification. The Report of the Permanent Court reflects this by continuing to list Nicaragua as one of the States having signed but not ratified the Protocol (*P.C.I.J., Series E, No. 16* (15 June 1939-31 December 1945), p. 50).

The League Archives contain additional material that demonstrates that, in the absence of new evidence to the contrary, Nicaragua did not ratify the Protocol and therefore never became party to the Permanent Court Statute. On 4 August 1942, Judge Hudson sent a letter to the Acting Secretary-General of the League enquiring about the status of Nicaragua's ratification. The Acting Legal Adviser, Mr. Emile Giraud, replied on 15 September 1942, as follows:

> "We have not received the ratification necessary to complete the signature of the Court Protocol and at the same time to bring into force the obligations concerning Article 36. But on November 29th, 1939, the Secretary General was informed by telegram that the Court Protocol was ratified by the President of the Republic of Nicaragua. We have however never received the instrument of ratification itself, which should have been sent to us. Nicaragua is therefore not bound either by the protocol or by the optional clause."

On 16 September 1942, the Registrar sent a letter to Nicaragua's Foreign Minister which stated, *in translation:*

> "By a telegram dated November 29, 1939, you informed me that the Protocol of Signature of the Statute of the Permanent Court of International Justice (of 16 December 1920) had been ratified by the President of the Republic of Nicaragua and that the instrument of ratification would be sent to the Secretariat. I have never received the instrument of ratification, the deposit of which is necessary to establish effectively the obligation. Perhaps this instrument was lost en route. I wanted to draw your attention to this matter." (United States Exhibit I.)

Thus, in 1942, the Registrar explicitly informed Nicaragua that the instrument of ratification still had not been deposited and reiterated that, under the terms of the Protocol of Signature, it was necessary to deposit an instrument of ratification in order to become party to the Protocol.

The League of Nations Archives in Geneva have no further record of any communication with respect to Nicaragua's accession to the Protocol of Signature. League of Nations records continued to include Nicaragua in the list of "Signatures not yet Perfected by Ratification" (League of Nations, *Official Journal, Special Supplement No. 193* (10 July 1944), at pp. 37, 42-43). Nor has the United States been able to find, despite a diligent search, any record of deposit of an instrument of ratification, either in the records of the United Nations in New York or in United States Government records. You will recall that there was supposed to be notice sent to the other signatory powers.

The records of the United States do, however, contain the following related correspondence. We have filed those records with the Court as our Exhibit No. II. In October 1942, Judge Hudson apparently wrote to the United States Ambassador in Nicaragua, enquiring about the status of Nicaragua's signature of the Protocol of Signature. We do not have the letter of enquiry. On 15 May 1943, the United States Ambassador to Nicaragua sent to the Department of State a most interesting letter for transmission to Judge Hudson, then in residence at the Harvard Law School. The letter stated:

> "I have discussed this matter with the Foreign Office, which was able to find a copy of the telegram of November 29, 1939, stating that Nicaragua had in fact adhered to the Protocol of Signature and that the appropriate document of ratification would be transmitted in the near future. There is enclosed a copy, without translation, of the legal decree, approved and

signed by the President of Nicaragua on July 19, 1935. You will note that the second article of the decree states that it is to become effective on the date of its publication in *La Gaceta*. The Foreign Minister informs me that the decree was never published in *La Gaceta*. He also declares that there is no record of the instrument of ratification having been transmitted to Geneva. It would thus appear that, while appropriate legislative action was taken in Nicaragua to approve adherence to the Protocol, Nicaragua is not legally bound thereby, in as much as it did not deposit its official document of ratification with the League of Nations. The Foreign Minister, however, volunteered the information that he would take steps to have this document drawn up and transmitted, and indicated that he would then have the appropriate decree published in *La Gaceta*."

The United States, Mr. President, has reviewed all the issues of *La Gaceta* published from May of 1943, when the Ambassador wrote to Judge Hudson, through April of 1946, when the League of Nations and the Permanent Court of International Justice were dissolved. No notice of publication of the Decree could be found. Thus, in the absence of new evidence to the contrary, Nicaragua did not even complete the necessary steps to make the Decree effective as a matter of its domestic law, and most certainly did not take the step of depositing an instrument of ratification necessary to ratify the Protocol as a matter of international law.

In sum, the official records of the League of Nations and the Permanent Court of International Justice clearly and consistently show that Nicaragua never, on the international plane, ratified the Protocol of Signature before the League of Nations dissolved on 18 April 1946. Nicaragua therefore never became a party to the Protocol of Signature, and Nicaragua's 1929 declaration under the Optional Clause never came into force. Accordingly, Nicaragua cannot be deemed to have accepted the compulsory jurisdiction of this Court under Article 36 (5) of this Court's Statute.

The foregoing information, except for the exchange of 1935, was conveyed to the Court and the counsel for Nicaragua in the United States letter of 23 April. It is remarkable that, in four hours of oral argument, Agent and counsel for Nicaragua did not even allude to the 23 April letter. Mr. Brownlie did say that the validity of Nicaragua's Declaration had never been challenged (p. 69, *supra*). But that is not the point. The United States contends that the declaration plainly never entered into force.

Counsel for Nicaragua also noted in passing that Nicaragua's legislature apparently authorized ratification of the Protocol of Signature in 1935. But this, too, is irrelevant. The exchange of correspondence of 1943 shows that Nicaragua's Foreign Minister specifically advised the United States Ambassador that, eight years after the Congress acted, Nicaragua's domestic legal requirements permitting ratification still had not been completed. And whatever the status of its domestic procedures, Nicaragua could ratify the Protocol of Signature on the international plane only in accordance with its terms, which required deposit of the instrument of ratification. The League's records show beyond dispute that the deposit was never made, and that Nicaragua was formally advised at least twice — in 1939 and 1942 — that it had not, accordingly, become party to the compulsory jurisdiction of the Court.

In April 1946, when the League and the Permanent Court were dissolved, Nicaragua was thus on notice that it did not have "in force" a declaration under Article 36 of the Statute of the Permanent Court, and that it could not, therefore, be deemed to have accepted the compulsory jurisdiction of this Court pursuant

to Article 36 (5) of this Court's Statute. Nicaragua could have remedied this situation very easily. It only had to make a declaration under Article 36 (2) of this Court's Statute. It has been 38 years now, and, in the absence of new evidence to the contrary, Nicaragua has never done so.

What has Nicaragua done with respect to the Court in the last 38 years? Until the present proceedings it had never brought an application. This, we submit, is why the status of Nicaragua's acceptance of the Court's compulsory jurisdiction has never been thoroughly examined before.

Nicaragua was once named as a respondent before the Court in the *King of Spain Arbitral Award* case, mentioned both by the Agent of Nicaragua and by Professor Brownlie, on Wednesday. That case was brought pursuant to a compromissory clause in the Washington Agreement of 1957. To be sure, Honduras pleaded both the compromissory clause and Nicaragua's 1929 declaration as bases for jurisdiction. Interestingly — and neither Nicaragua's Agent nor Professor Brownlie mentioned this — Nicaragua herself characterized the invocation of compulsory jurisdiction as inaccurate and explained its role as party as derived solely from the compromis. In this regard, the United States calls the Court's attention to the *Pleadings* in that case, Volume I, pages 8, 9, 59, 131 and 132. The Court itself never reached the issue in light of the specificity of the compromissory clause of the Washington Agreement (*I.C.J. Reports 1960*, p. 203).

Nicaragua's counsel made one other argument on Wednesday, apparently intended to demonstrate that Nicaragua's declaration is somehow effective, although the logic of that argument was neither articulated nor self-evident. Professor Brownlie noted that Nicaragua has been listed in the Court's *Yearbook* as a party to the compulsory jurisdiction and listed in certain other publications derived therefrom. This is a curious argument. My Government and, we submit, most other governments, would be very much surprised to learn that they can be deemed to have accepted the Court's compulsory jurisdiction merely by being listed in the Court's *Yearbook* or some other publication, especially when such a listing is manifestly inconsistent with the official records concerning their acceptance.

Although counsel for Nicaragua read the declaration as it appears in the *Yearbook*, he omitted, however, to note that every volume of this Court's own *Yearbook* since the 1955-1956 Volume makes the following qualification to the declaration of Nicaragua:

> "According to a telegram dated 29 November 1939, addressed to the League of Nations, Nicaragua had ratified the Protocol of Signature of the Statute of the *Permanent Court of International Justice* (16 December 1920), and the instrument of ratification was to follow. It does not appear, however, that the instrument of ratification was ever received by the League of Nations."

We have already considered the basis for this footnote and the inevitable conclusion to which it leads. Why the Registrar did not include this qualification in the *Yearbook* from 1946 to 1955, we do not know. The United States notes, however, that in 1955 Nicaragua was clearly apprehensive that Honduras was about to file an application in the then highly contentious boundary dispute between Honduras and Nicaragua. One can thus only wonder who instigated the reappearance of the footnote in the *Yearbook* of this Court just at this time in 1956; I repeat, one can thus only wonder who instigated the reappearance of the footnote in the *Yearbook* of this Court just at this time in 1956.

In any event, what is important to note is that Nicaragua, through the Court's

own *Yearbook* of the last three decades, has clearly been on notice that its declaration was in question. Again, this doubt could have been easily dispelled had Nicaragua so chosen. Instead, it can only appear that throughout the last 45 years Nicaragua has, in the absence of any new evidence to the contrary, been left with a basis to object to any application which might be filed against it in connection with the Optional Clause of the Statute of the Permanent Court of International Justice. On the basis of the clear and fundamental terms of the Protocol of Signature, Nicaragua could only have succeeded with such an objection. Under these circumstances, it is unthinkable to permit Nicaragua to invoke this Court's jurisdiction now against another country when the *sine qua non* of international adjudication is equality of treatment and reciprocity.

Before this fundamental jurisdictional argument is concluded, it should be noted that this case differs fundamentally with respect to jurisdictional objections from every other preliminary measures proceeding held by this Court. In all the prior proceedings, there was before the Court an instrument of the applicant that prima facie established jurisdiction, whether a declaration in effect under Article 36 (2) or a compromissory clause of a treaty. The respondent objected on the basis of reservations by itself, or, under the principle of reciprocity, on the basis of reservations by the applicant. Here in this case, however, the jurisdictional instrument of the applicant is lacking entirely. The United States believes that the Court therefore lacks jurisdiction *e limine*. The United States raises this lack of jurisdiction as a plea in bar of fundamental importance, such as that held desirable to consider at the outset in the *Nottebohm* case (Second Phase) (*I.C.J. Reports 1955* p. 12).

The United States submits that this fundamental threshold issue can and must be addressed immediately by the Court. Unless Nicaragua can plainly show the Court that it deposited its instrument of ratification to the Protocol of Signature with the League of Nations before April 1946, or that it deposited with the Secretary-General of the United Nations, prior to the filing of its Application on 9 April 1984, a declaration pursuant to Article 36 (2) and (4) of this Court's Statute, these proceedings must be terminated immediately and the Application and request removed from the Court's List.

Despite this conviction, the United States, out of deference to the Court, will also now present several other compelling reasons why this Court lacks jurisdiction or otherwise may not properly take cognizance of Nicaragua's Application and request. These arguments depend upon a more thorough understanding of the background to that Application and request and to the situation in Central America generally. For these purposes, I would respectfully invite the Court to call upon our distinguished Special Counsel in this matter, my colleague, Mr. Kozak.

ARGUMENT OF MR. KOZAK

SPECIAL COUNSEL OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. KOZAK: Mr. President, distinguished Members of the Court.

It is a great honour to be before you today.

As the Agent of the United States has demonstrated, the Republic of Nicaragua has never acceded to the compulsory jurisdiction of this Court. Its Application and request for provisional measures must therefore be rejected. There are, however, additional reasons why this case is manifestly outside the jurisdiction of this Court, which the Deputy-Agent of the United States will be reviewing later in this presentation. The United States does not intend to engage in a debate concerning the facts alleged by Nicaragua, given the absence of jurisdiction. Nevertheless, certain background information may be useful to the Court in considering the jurisdictional arguments which follow.

As the Agent of the United States has indicated, the Application filed by the Republic of Nicaragua in this case seeks to convey to the Court the impression that the problems facing Central America today are essentially a bilateral dispute between the Government of the United States and the Government of Nicaragua. Unfortunately for the peoples of Central America, the issue is not that simple.

The problems of Central America do not respect frontiers and they are not confined to security matters. With few exceptions, the region as a whole has long suffered from severe problems of social inequality, poverty and economic dislocation, lack of respect for human rights, unrepresentative government and political violence. Throughout the region, the economic and other stresses of the 1970s undermined important progress made in the preceding two decades. Those challenges contributed to significant political change in a number of countries in the region. They have undoubtedly contributed to armed insurgencies throughout the region.

The search for a means of addressing the complex and interrelated problems of Central America has been arduous. But through the efforts of the Central American States themselves, other States in the region, the Organization of American States, and the United Nations, a region-wide negotiating process has been initiated and reinforced. This regional process, known as the "Contadora process", has been accepted by all of the parties concerned, including Nicaragua. It has made substantial progress towards the achievement of a comprehensive and enforceable resolution of the multi-faceted problems of Central America.

The United States considers the nature and status of these regional negotiations to be directly relevant to the issues confronting this Court in the present proceedings. The United States therefore hopes that a brief review of the origin and progress of this process will be of value to the Court.

The five Central American countries — Costa Rica, El Salvador, Honduras, Guatemala and Nicaragua — each faces problems unique to its own heritage. Costa Rica is a well-established democracy with a high degree of social, political and economic development, and a long-standing commitment to peace. For over 30 years it has had no standing army and has been a leader in the hemisphere in promoting the peaceful resolution of disputes. El Salvador, Guatemala, Honduras and Nicaragua has each suffered from internal insurgencies, and each was ruled by military leaders during most of the 1970s.

The beginning of this decade brought profound change in each of these

societies. It also marked a transformation of the character of the problems in the region from largely internal difficulties to region-wide strife.

In Honduras and El Salvador, broadly based democratic Governments, committed to profound reform, assumed power. In Nicaragua, the repressiveness and corruption of a dynastic régime led to a broad-based uprising which, in 1979, was able — with significant support from other countries in the region — to overthrow that régime through a combination of violence and diplomacy. Power was assumed by a broad coalition of opposition forces, including parties spanning the political spectrum, business, labour, and agrarian groups, and the Sandinistas. That coalition came to power on a platform of pluralism, electoral democracy and respect for human rights. The commitment of the new "Junta of Government of National Reconstruction" to these policies was expressed in a letter to the Organization of American States of 12 July 1979. This letter is United States Exhibit III, tab A.

Other States have supported these goals. For example, the United States itself provided substantial assistance to the Governments of El Salvador, Honduras and Nicaragua to help them in their efforts to rebuild their societies in accordance with the pluralistic and democratic goals they had set for themselves. The United States provided to Nicaragua 118 million dollars in assistance in the first two years following the revolution — more than any other single country.

The new Government of Nicaragua, however, departed from its early promise of rebuilding its own society on a pluralistic and democratic basis. It turned instead to an increasingly authoritarian internal policy. It initiated a massive build-up of its military forces unprecedented in the region. The previous régime had, in normal times, a combined military and police force totalling approximately 9,000 men which increased to 14,000 during the height of civil strife. By 1983, military and security forces in Nicaragua numbered at least 75,000 persons, plus approximately 3,000 Cuban military personnel. I refer to the March 1984 report of Secretary Shultz to the Congress on United States efforts to achieve peace in Central America, which is United States Exhibit III, tab V.

Nicaragua also became deeply involved in insurgencies in neighbouring countries, in furtherance of its "active promotion for 'revolution without frontiers' throughout Central America". This quotation is found in Nicaragua's Exhibit V, tab 10, at pages 5 to 6.

The results have been a tragedy for all of Central America. As El Salvador's Permanent Representative to the United Nations noted last November:

> "My country has been the victim, among other warlike and hostile acts, of a continuing traffic in weapons, with Nicaragua as the last link in the chain. From there orders are sent to armed groups of the extreme left operating in El Salvador. These groups have their headquarters in Nicaragua and logistic support is channelled through them."

This statement can be found in United States Exhibit IV, tab A.

Although Nicaragua's greatest efforts have gone towards supporting Salvadoran guerrillas, it has also promoted guerrilla violence in other Central American countries. Costa Rica, Honduras and Guatemala have all been affected.

At the same time, Nicaragua's armed forces have conducted open armed attacks across its borders. Honduras has repeatedly protested armed incursions into its territory and waters, which have resulted in a loss of Honduran lives and destruction of property. Costa Rica has protested Nicaraguan military incursions, shelling of its border posts and seizures of fishing vessels within Costa Rican waters. Examples of these protests are included in United States Exhibit IV, tabs B through D.

As Nicaraguan support of such activities increased, Nicaragua's neighbours turned to the United States for security assistance. At the same time, the threat posed by Nicaragua to the other Central American countries has also resulted in increased co-operation among those countries in collective self-defence measures.

Nicaragua itself has not been immune from the violence spreading throughout the region. The failure to date of the Government of Nicaragua to fulfil the early promises of pluralism, democracy and justice has led to the growth of political opposition in Nicaragua. That Government has been accused by its own former collaborators of betraying the promises of the revolution, through its attacks against the free exercise of religion, a free press, civil and political rights, rights of free association, the security and welfare of minority populations and other serious violations of human rights. I refer to United States Exhibit IV, tab E.

In response to these policies, many Nicaraguans, including leaders of the 1979 revolution and former high-ranking members of the Sandinista government itself, have since 1980 gone into armed opposition to achieve the original goals of the revolution. Nicaragua's counsel described in some detail the recent capture of the town of San Juan del Norte by what he termed "mercenary forces". In fact, the forces involved in that action were reportedly under the leadership of Eden Pastora — the famous Comandante Cero — who was the most prominent military leader of the 1979 revolution and former Vice-Minister of Defence of the present Government of Nicaragua.

Nicaragua has accused other nations of instigating and supporting the opposition movements within its own territory. But just as it cannot be argued that violence in El Salvador or other neighbouring countries is exclusively the result of Nicaraguan and Cuban aggression, Nicaragua's Government cannot pretend that its armed opposition is solely a creature of outside forces. This was recognized by the Episcopal Conference of Bishops in Nicaragua which issued a pastoral letter this Easter Sunday calling for an internal dialogue aimed at national reconciliation. The Bishops proposed that all parties, including the armed Nicaraguan opposition, take part. The response of the Government, by the way, was to censor publication of the entire letter by the independent press and to distort its contents in the Government press.

The other four Central American nations, other States in the region, and the United States became increasingly concerned by these trends in the region from 1981 on. Efforts were made by several States, including the United States — both bilaterally and in support of regional efforts — to resolve the security situation peacefully.

The problems, however, were too complex and interrelated to be dealt with on a piece-meal basis. Cross-border attacks by regular military forces could not be effectively addressed in isolation from the growing disproportionality in the size of national military forces. The problem of external support for armed insurgents could not be dealt with in the absence of attention to the social, political and economic factors in each society that give rise to those insurgencies.

In October 1982, consistent with this realization that a regional approach was needed to address the region's problems, the Government of Costa Rica hosted a conference in its capital, San José, attended by representatives of Belize, Colombia, El Salvador, Honduras, Jamaica and the United States. Panama and the Dominican Republic designated special observers. This conference formulated proposals for dealing on a comprehensive basis with the problems of instability in the region, including the escalation of local conflicts caused by external support for insurgencies in the Central American countries. The United States signed the San José conference final act. In so doing, the United States committed itself to

support a solution involving such fundamental principles as an end to cross-border support for insurgencies, the reduction and eventual elimination of foreign military personnel in the region — including those of the United States — proportionality of military force levels and limitations on the introduction and maintenance of weapon systems — all on an enforeeable and mutually verifiable basis.

The Court adjourned from 11.30 a.m. to 11.45 a.m.

Mr. President, distinguished Judges, prior to the break I was describing the Conference that was held in San José, Costa Rica, in October of 1982, and mentioned that the United States had signed the Final Act of that Conference. In so doing, the United States committed itself to support a solution involving such fundamental principles as an end to cross-border support for insurgencies; the reduction and eventual elimination of foreign military personnel in the region, including those of the United States; proportionality of military force levels and limitations on the introduction and maintenance of weapon systems: all on an enforeeable and mutually verifiable basis.

In addition to sueh security issues, the San José Conference participants recognized that an enduring structure of peace and progress in the region would be dependent upon the establishment of pluralistic and non-repressive systems in each of the eountries. The Conference enunciated a series of principles designed to address these equally complex and sensitive issues. A copy of the Final Act of the San José Conference can be found at United States Exhibit III, tab B.

The Foreign Minister of Costa Rica was requested by the Conference to communicate the San José principles to the Government of Niearagua and to seek its participation in a regional dialogue designed to deal with the problems of the area. The Government of Nicaragua refused to receive him.

The search for peace continued. In January 1983, the four Latin States closest to Central America — Mexico, Panama, Colombia and Venezuela — met on the Island of Contadora, in Panama, and undertook a diplomatic initiative of exceptional importance and particular relevance here. Through skilful joint efforts, this "Contadora Group" suceeeded in bringing together the five Central American States, including Nicaragua. Meeting 28 to 30 May 1983, the five Central American and the four Contadora countries agreed on the need to develop a general agenda of political, security, economic, social and compliance issues.

The broad aceeptance of this regional approach was aided in part by United Nations Security Council resolution 530 of 19 May 1983. That resolution expressly endorsed the Contadora process as the appropriate avenue for resolution of the problems of Central America. This resolution is United States Exhibit III, tab D. Also important to the success of the Contadora Group in initiating this process was the support for the concept of a regional solution expressed by other nations, including the United States.

On 17 July 1983, the Contadora Group met again in Cancún, Mexico, and issued a publie declaration proposing to the countries of Central America a comprehensive agenda addressing the security, economic, social, political and compliance issues facing the region. A copy of this Cancún Declaration is United States Exhibit III, tab E.

Nicaragua countered with proposals of its own which, while unbalanced and focused almost entirely on security issues, did recognize the need to address these problems on a regional basis. The other four Central American States offered an

eight-point plan covering all of the issues included in the Cancún Declaration, emphasizing both security and the need for democratic development.

These three proposals were considered together by the four nations of the Contadora Group and the five Central American States. Their discussions produced one of the most significant steps forward in the search for peace.

Meeting again in Panama from 7 to 9 September 1983, the nine countries involved prepared a 21-point "document of objectives", the text of which is found in Exhibit III, tab F. This document constituted the first *agreed*, comprehensive listing of the issues and principles which were to form the basis of a regional peace, and established the framework for negotiation of detailed treaty language. The document of objectives calls for the development of an agreement dealing with a wide range of social, political, economic and security issues and providing for effective verification. The document focuses on the need for an end to external support for terrorism, subversion and destabilization; for national reconciliation and respect for political and civil rights; for reduction of foreign military presences and of levels of armed forces; and, finally, for renewed economic co-operation. In the document of objectives, the parties list, *inter alia*, the following objectives:

> "To create political conditions intended to ensure the international security, integrity and sovereignty of the States of the region;
>
> To stop the arms race in all its forms and begin negotiations for the control and reduction of current stocks of weapons and on the number of armed troops;
>
> To prevent the installation on their territory of foreign military bases or any other type of foreign military interference;
>
> To conclude agreements to reduce the presence of foreign military advisers and other foreign elements involved in military and security activities, with a view to their elimination;
>
> To establish internal control machinery to prevent the traffic in arms from the territory of any country in the region to the territory of another;
>
> To eliminate the traffic in arms, whether within the region or from outside it, intended for persons, organizations or groups seeking to destabilize the Governments of Central American countries;
>
> To prevent the use of their own territory by persons, organizations or groups seeking to destabilize the Governments of Central American countries and to refuse to provide them with or permit them to receive military or logistical support;
>
> To refrain from inciting or supporting acts of terrorism, subversion or sabotage in the countries of the area; . . ."

The document of objectives concludes:

> "The Ministers for Foreign Affairs of the Central American countries, with the participation of the countries in the Contadora Group, have begun negotiations with the aim of preparing for the conclusion of the agreements and the establishment of the machinery necessary to formalize and develop the objectives contained in this document, and to bring about the establishment of appropriate verification and monitoring systems . . ."

As the Contadora negotiations have subsequently progressed, however, Nicaragua has repeatedly attempted to separate from the regional negotiating process issues of concern to Nicaragua and to divert them to other fora. Nicaragua has consistently attempted to portray the problems of the region as the product

of United States antagonism towards Nicaragua and to exclude the concerns of its own neighbours from consideration.

Foreign Minister Ortega of Panama, for example, stated in an interview in October 1983, that

> "Panama and the Contadora Group are concerned about Nicaragua's inclusion of the Central American situation in United Nations debates, since this could weaken the authority of the Venezuelan, Mexican, Colombian and Panamanian effort."

Similarly, the Permanent Representative of Honduras stated, in the debate of the United Nations General Assembly of 8 November 1983:

> "[T]hrough this debate Nicaragua is attempting to attain several ends . . . [I]t wishes to escape from the future Contadora Group negotiations because of their global and regional character . . . [I]t wishes to polarize the Central American issue through East-West confrontation . . . [I]t wishes to obtain support for its recent proposal . . . The latter project is aimed only at protecting Nicaragua, guaranteeing it impunity for its acts of intervention . . ."

I refer the Court to United States Exhibit III tab G at page 286, *infra*.

On 11 November 1983, the General Assembly of the United Nations in its resolution 38/10 manifested its support for the regional negotiating process by reiterating the terms of Security Council resolution 530. On 18 November the General Assembly of the Organization of American States adopted resolution 675 expressing its firmest support of the Contadora process. Both of the resolutions took specific notice of the Document of Objective, and both firmly expressed their support of the Contadora process. The General Assembly resolution is United States Exhibit III, tab K. The Organization of American States resolution is United States Exhibit III, tab H.

These clear indications by the principal United Nations organs and the competent regional organizations that Central American issues were to be addressed exclusively in the Contadora negotiating process had appropriate effects.

On 9 December 1983 pursuant to Security Council resolution 530, the Secretary-General of the United Nations reported to the Council:

> "[T]he pace of the efforts of the Contadora Group is accelerating, and in that context diplomatic activity has been redoubled. Furthermore, there is perceptible movement in the position in the Government of Nicaragua, consisting mainly in the submission of proposals within the framework of the efforts of the Contadora Group and in measures which, notwithstanding their domestic nature, take cognizance of certain requirements of the other countries of the region."

The Secretary-General's Note is United States Exhibit III, tab L.

In January 1984, the nine countries participating in the Contadora process agreed to a specific programme establishing three working commissions for the purpose of preparing studies, legal drafts and recommendations concerning security and political matters, and economic and social questions. The commissions were also asked to make proposals for verifying and supervising the implementation of the measures agreed upon. That document is contained in United States Exhibit III, tab M. They further agreed to a work schedule anticipating the completion of the groups' task and the transmission of their work to a joint meeting of the Foreign Ministers by 30 April — next Monday.

On 4 April, however, as the working group meetings were actually in progress, Nicaragua again sought to raise complaints in the United Nations Security Council, and on 9 April it filed its Application with this Court.

As the Agent of the United States indicated in his opening remarks, each of the other Central American States has expressed concern as to the potential effect of these Nicaraguan moves on the negotiating process. The texts of their statements can be found in United States Exhibit III, tabs P through T. Several have brought their concerns directly to the attention of the Court. The Foreign Minister of Costa Rica has stated:

> "The Government of Costa Rica is of the opinion that whatever measure which the Court might adopt in the 'case' presented for its consideration, taking such measures outside the context of the complete political and military situation that prevails in the Central American region, could become a distorting factor in the difficult equilibrium sought by the forum of Contadora in a broader framework of solutions and could compromise, if not taken with prudence and equity, all possibilities of success for the 'forum of Contadora'."

The Government of Honduras made the following observations:

> "In more than a year of delicate multilateral negotiations, the Contadora Group has had the full support of the Organization of American States and the United Nations General Assembly and Security Council, as well as the international community in general, regardless of ideological, political, economic, and legal systems.
>
> That is why the Government of Honduras considers it necessary and in the best interests of the nations of the Central American region and of other peace-loving nations for the Contadora Group to continue its efforts to achieve a stable and lasting peace in the region, without being hampered by some country seeking recourse to other means of peaceful solution.
>
> In accordance with this viewpoint, which is shared by the majority of Central American countries and by the Contadora Group, the Government of Honduras wishes to point out the dangers of discussing the Central American crisis in various international forums simultaneously, as the Government of Nicaragua has requested, when direct negotiations are already in progress. This viewpoint has also been corroborated by the fact that the United Nations Security Council and General Assembly, and the Organization of American States General Assembly, have sent the Central American issue back to the Contadora Group, to which they give their unconditional support."

The Government of El Salvador has observed:

> "The issues raised by the Government of Nicaragua cannot be divorced from the regional issues under negotiation in the Contadora process. In the view of my Government, the complaint by Nicaragua, if considered by the Court, or if the provisional measures were ordered by the Court, would damage prospects for success of multilateral negotiations within the Contadora framework, especially if such measures were applied to only one party to the dispute."

Finally, the Government of Guatemala has stated publicly that

> "Any attempt to seek another forum or international body in order to discuss security problems of a political, economic and social nature has a negative impact on the Contadora process."

The United States has from the outset of the Contadora process shared the concern that attempts to separate individual aspects from the comprehensive regional process for address in other fora would impede the prospects for negotiating a comprehensive solution by the parties most directly concerned. These concerns of the United States were heightened by an anticipated Nicaraguan effort to seek to utilize this Court in the same manner as it has sought to use other international fora, at a critical stage in the negotiating process.

After careful consideration, the United States concluded that it had no choice but to place Nicaragua on notice that the United States would not join in such a diversionary exercise and would continue to do all it could to give the regional negotiating process the time it needs to accomplish its work successfully. To this end, the United States, on 6 April, submitted a notice to make express that the United States acceptance of compulsory jurisdiction of the Court would not, for a period of two years, include any possibility of adjudication that might interfere with the Contadora negotiations. The effect of this notice will be discussed by the Deputy-Agent of the United States.

The United States wishes to emphasize that this temporary and limited notice was designed solely to protect the viability of an agreed-upon and active negotiating process for resolving this regional conflict in the manner foreseen under the United Nations and the Organization of American States Charters. Indeed, the working commissions which are scheduled to produce proposals to the Foreign Ministers by 30 April are to be meeting at this very time.

The United States action was not taken lightly. The United States has sought to make clear that it does not reflect any change in the long-standing United States policy of support for the Court as an effective instrument for resolving international legal disputes. Indeed, as the regional negotiating process progresses, there may well be unresolved issues of a genuine legal character and which are capable of resolution by adjudication. In the meantime, the United States believes that the focus should be on allowing the States most directly concerned to complete their quest for a realistic, mutually acceptable and workable solution to the social, economic, political and security issues which confront the entire region of Central America.

Nicaragua's counsel referred several times to the fact that the United States is not a direct participant in the Contadora process. This is as it should be. The representative of Venezuela to the United Nations, in her support of the Contadora process, referred to initiatives aimed at the institutional stabilization of the area and co-operation among the Central American countries and stated:

> "But all of this must be done within a Latin American framework . . . It is in Latin American forums and with Latin American protagonists that we should be able to consider the situation in Central America in its overall complexity."

This statement is United States Exhibit III, tab C.

The United States has fully supported the Contadora process. The President of the United States has on numerous occasions publicly affirmed the strong support of the United States for the Contadora process, and has sent his special representative to the region to assist in facilitating discussion of the various peace proposals. The United States sent a team of verification specialists to Central America in February-March to provide expertise to friendly governments in this phase of the process and to underline our own strong commitment to its success. Secretary Shultz's March 1984 report to Congress states:

> "a verifiable agreement to implement the 21 points would address our concerns with Nicaraguan behavior, would meet the interests of the other

> Central American States, and would give Nicaragua a concrete framework for peaceful political and economic co-operation with its neighbors".

I refer the Court to United States Exhibit III, tab V at pages 331-332, *infra*.

This support for a comprehensive regional solution to the Contadora process is not limited to the United States or to the countries directly involved in the Contadora process. Spanish Prime Minister Gonzalez, following a meeting with Colombian President Betancur in October 1983, publicly stressed the support that the Contadora Group received from Spain, Europe, the non-aligned countries and the United States. "This shows us", he said, "that there is no need for another alternative." His statement is included in United States Exhibit III, tab I.

Mr. President, this is the background against which Nicaragua's Application must be viewed in considering the several additional reasons why this Court lacks jurisdiction and should not take cognizance of the Application. For those arguments, I would respectfully ask the President to call upon the Deputy-Agent of the United States, Mr. Daniel W. McGovern, Principal Deputy Legal Adviser of the Department of State.

ARGUMENT OF MR. McGOVERN

DEPUTY-AGENT FOR THE UNITED STATES OF AMERICA

Mr. McGOVERN: Mr. President, distinguished Members of the Court.

I share the feeling expressed by my colleagues, Mr. Robinson and Mr. Kozak, that it is a distinct honour and a rare privilege to appear before this Court as the Deputy-Agent of my country, the United States of America.

The region-wide strife in Central America and the Contadora process are relevant in the present proceedings in several respects. First, the United States has expressly qualified its consent to this Court's jurisdiction to allow the Contadora process to proceed without diversion or disruption by Nicaragua. There is, accordingly, no jurisdiction over the United States *ratione personae* in this case.

Second, the other States of Central America have stated their view that Nicaragua's request for the indication of provisional measures directly implicates their rights and interests, and that an indication of such measures would interfere with the Contadora negotiations. These other Central American States are indispensable parties in whose absence this Court cannot properly proceed.

Third, Contadora itself is a properly instituted regional process seeking to resolve complex and interrelated social, political and economic issues, as well as security matters underlying the current turmoil in Central America. This Court cannot take cognizance of Nicaragua's Application or indicate the interim measures Nicaragua requests without detrimentally affecting that process in unpredictable and irremediable ways.

Finally, Nicaragua's Application appears on its face to request a definitive legal determination regarding an alleged illegal use of armed force in the midst of on-going hostilities. In the circumstances of this case, where the United Nations and the Organization of American States have approved the Contadora process, such questions regarding the use of force during hostilities are more properly committed to resolution by the political organs of the United Nations and the Organization of American States.

Let me turn first to the United States qualification of its acceptance of this Court's compulsory jurisdiction.

On 6 April 1984, in accordance with Article 36 (4) of the Court's Statute the United States sent the Secretary-General of the United Nations a note with respect to the United States 1946 Declaration. The note read in pertinent part:

> "[The] Declaration shall not apply to disputes with any Central American State or arising out of or related to events in Central America, any of which disputes shall be settled in such manner as the parties to them may agree.
>
> Notwithstanding the terms of the aforesaid Declaration, this proviso shall take effect immediately and shall remain in force for two years, so as to foster the continued regional dispute settlement process which seeks a negotiated solution to the interrelated political, economic and security problems of Central America."

Nicaragua's Application, filed on 9 April 1984 falls squarely within the terms of the 6 April 1984 note in two respects: it is a "dispute with [a] Central American State" and "it aris[es] out of or [is] related to events in Central America".

The rationales for this action were clearly stated in the 6 April note and in a Department of State Statement of 8 April. Nicaragua's counsel, Professor Brownlie, read the full Statement of 8 April into the record on Wednesday (p. 73, *supra*). The United States clearly stated in these documents that it wished to avoid having the Contadora process interrupted by adjudication of the claims of one participant in that process.

This Court has consistently held that jurisdictional determinations shall be made *ex nunc*, that is, as of the date an application is filed. Thus, in the *Right of Passage over Indian Territory* case (*I.C.J. Reports 1957*, p. 146), the Court held that the status of both the applicant's and the respondent's declarations accepting the Court's compulsory jurisdiction should be examined as of the date the application was filed. Since both Portugal and India had outstanding on that date declarations accepting the Court's jurisdiction over Portugal's claims the Court determined it had jurisdiction. In the *Pajzs, Csáky, Esterházy* case, both the Parties and the Court agreed that the respondent, Yugoslavia, was not bound by the Permanent Court's compulsory jurisdiction because its acceptance of the Optional Clause had expired a few days before the application was filed (*P.C.I.J., Series A/B, 1936, No. 68* (Merits) at p. 41 and *P.C.I.J., Series A/B, 1936, No. 66* (Preliminary Objection) at pp. 5-6). To similar effect, see the *Nottebohm* case (*I.C.J. Reports 1953*, p. 122).

Sir Gerald Fitzmaurice summarized this practice in his article "The Law and Procedure of the International Court of Justice, 1951-54" (34 *BYBIL*, p. 18). There he wrote that the date of filing

> "is the date of effective seisure, in the sense that if the Tribunal has jurisdiction on that date, this cannot be affected by what happens thereafter, or by subsequent events or the subsequent acts of the Parties".

Similarly Professor Rosenne observes in his treatise *The Law and Practice of the International Court*, Volume I, page 502, at note 3, that the date of the introduction of the proceedings is the " 'critical date' for determining all questions of jurisdiction and admissibility".

Since the United States acceptance of compulsory jurisdiction that was in effect on 9 April 1984, the date Nicaragua filed its Application, did not extend to disputes with Nicaragua or arising out of events in Central America, the Court clearly has no jurisdiction over that application or the claims therein.

Nicaragua has correctly noted that a proviso in the United States 1946 declaration placed the declaration in force for five years after deposit "and thereafter until the expiration of six months after notice may be given to terminate this declaration". Nicaragua has argued that this proviso barred the effect of the United States 6 April note for six months. This is not so for several reasons. In the first place, the proviso is addressed to the termination of the United States declaration. It is therefore irrelevant to the United States 6 April note which did not terminate or purport to terminate the 1946 declaration and the effect of which was narrowly limited in time and geography.

Now by this the United States does not mean to make a terminological quibble. The 1946 declaration's six-month proviso must be read by its terms. In this the United States and Nicaragua are agreed. The learned counsel for Nicaragua stated clearly Nicaragua's view that because the United States action of 6 April was not a termination, the six-month proviso was not applicable. I call the Court's attention to pages 74 and 75, *supra*.

Nicaragua's primary argument, therefore, appears to be that, because the United States did not reserve a right to modify or suspend operation of its 1946

declaration, it could not do so. As the United States shall demonstrate, this argument is simply inconsistent with the practice of States and this Court.

The United States must note parenthetically that Nicaragua did argue in the alternative that the United States 6 April note terminated the United States 1946 declaration in its entirety and substituted a new declaration therefore. The United States calls the Court's attention to pages 74 to 76, *supra*. The United States, however, never intended such an action, and its 6 April note quite clearly says so. Nicaragua's only basis for concluding otherwise appears to be certain precedents cited in the Department of State's statement of 8 April. Those cases, to be sure, involved terminations and substitutions of new declarations. The United States cited them, however, only to demonstrate that a declaration may be terminated and a new one substituted for it and that, *a fortiori*, a simple qualification is permissible. We submit that Nicaragua's argument in the alternative imputes to the United States an intention it never had and an action it never took. The argument, accordingly, merits no further consideration.

Nicaragua argues further that an attempt to "terminate or vary" a declaration must be read in the light of the law of treaties, and that the law of treaties requires here that the variance must be made in accordance with the terms of the declaration, specifically the six-month notice proviso (pp. 75-77, *supra*). This argument, of course, directly contradicts Nicaragua's argument at page 74, *supra*, admitting that the six-month notice proviso applies only to terminations and that the 6 April communication was not a termination.

The law of treaties argument is inapplicable in any event. The argument appears to be based almost entirely on lengthy quotations from a 1954 article by Sir Humphrey Waldock. It is no disservice to that eminent jurist and scholar to note that there have been many developments and a great volume of additional scholarship in the last three decades.

The only decision of this Court cited by Nicaragua in this regard is the *Anglo-Iranian Oil Co.* case (p. 71, *supra*). Nicaragua contends — as did Sir Humphrey Waldock — that the Court recognized declarations as a form of treaty text. This is not an accurate reading of the case. To the contrary, the Court explicitly held that a declaration is not a treaty and should not be interpreted as such:

> "[B]ut the text of the Iranian Declaration is not a treaty text resulting from negotiations between two or more States. It is the result of unilateral drafting by the Government of Iran." (*I.C.J. Reports 1952*, p. 105.)

Later decisions, State practice and authoritative writings have, in any event, long since superseded former President Waldock's views in this regard.

It is useful here to refer first to the Court's ruling in the *Right of Passage over Indian Territory* case. The Court was confronted there with a determination of the date on which the unilateral declarations of two States — Portugal and India in that case — established a bilateral agreement bringing a dispute between them within the jurisdiction of this Court. Referring to the day the Application is filed, the Court held that: "It is on that very day that the consensual bond, which is the basis of the Optional Clause, comes into being between the States concerned" (*I.C.J. Reports 1957*, p. 146). The clear implication of the Court's ruling is that before the date of filing, there is no "consensual bond" between the "States concerned" and hence no obligation of the respondent to the applicant to continue the terms of its declaration.

On the basis of the *Right of Passage over Indian Territory* case, the *Anglo-Iranian Oil Co.* case, and other authorities, Professor Rosenne has aptly concluded in his treatise that:

> "When a State deposits a declaration under Article 36 (2) of the Statute, it makes a general offer to all other States doing likewise, to recognize as defendant the jurisdiction of the Court in a future concrete case, and on the terms specified. . . . The terms upon which that offer is made are not constant, but consist in the area of coincidence with the terms of like declarations made, or to be made, by other States. . . . There is, as yet, no element of direct agreement between any of the States making declarations. That agreement will only come about when a legal dispute is concretized by the filing of an application. That step alone sets the process of compulsory adjudication in motion." (Vol. I, pp. 413-414.)

The eminent Indian scholar, R. Anand, concurs fully in his treatise, *Compulsory Jurisdiction of the International Court of Justice*, in which he states, at page 147, that "The making of a declaration is a unilateral act, entirely in the discretion of a State, which becomes a bilateral agreement only when an application is filed with the Court".

As these authorities clearly indicate, the United States was entitled, before Nicaragua filed its application, to qualify its 1946 declaration in any respect, including suspension of the operation of the six-month notice provision.

This right is also confirmed by State practice under the Optional Clause, which is replete with examples of unilateral qualifications, including modifications and terminations of unilateral declarations under Article 36 (2) so as to exclude certain disputes. The United States shall not attempt to examine that practice comprehensively here, but two features may be noted. First, States have frequently withdrawn their consent to adjudication of disputes arising out of or related to armed conflicts — and, indeed, sometimes even past armed conflicts. Second, States have frequently modified their declarations to avoid the possible imminent filing of a case against them. As Nicaragua notes, at the outbreak of World War II, Great Britain, the British Commonwealth countries, and France modified their existing declarations expressly to exclude disputes arising out of events occurring during the war, even though the duration of those declarations had not expired. Nicaragua seems to approve these modifications (pp. 76-77, *supra*). Sir Humphrey Waldock certainly does so, on the ground that there was a fundamental change of circumstances. If those States were entitled to determine unilaterally that a change of circumstances had occurred and to revoke their declarations contrary to the time-limits specified in those declarations, surely the United States may act similarly here.

The World War II cases are not unique, moreover. In 1973, El Salvador, citing the need "to accord . . . with the present circumstances", replaced her 1921 declaration with one declining the Court's compulsory jurisdiction over disputes

> "relating to or connected with facts or situations of hostilities, armed conflicts, individual or collective actions taken in self-defence, resistance to aggression . . . and other similar or related acts, measures or situations in which El Salvador is, has been or may at some time be involved" (*I.C.J. Yearbook 1982-1983*, p. 65).

These and other unilateral modifications of declarations in light of changed circumstances have not been considered invalid simply because they have preceded an imminent Application. On at least three other occasions in the last 30 years, other States confronted with imminent litigation have not merely qualified their declarations but have terminated them altogether. These cases are discussed in the Department of State Statement of 8 April, which counsel for Nicaragua has already read into the record. These precedents also stand for the proposition

that a State may terminate its declaration altogether. *A fortiori*, a limited suspension such as the United States made on 6 April is valid.

The United States note of 6 April is valid for another reason. Under the principle of reciprocity, the United States could only be bound by its six-month notice proviso in relation to Nicaragua if Nicaragua had a similar or greater notice period in its declaration. As this Court ruled in the *Interhandel* case:

> "[R]eciprocity . . . enables the State which has made the wider acceptance of the jurisdiction of the Court to rely upon the reservations to the acceptance laid down by the other Party." (*I.C.J. Reports 1959*, p. 23.)

Assuming for the purposes of the present argument that Nicaragua's declaration is legally effective in any respect, it is wider *ratione materiae*, but narrower *ratione temporis*, than the United States declaration. As the State making the wider temporal acceptance of the Court's jurisdiction, the United States was therefore also entitled to rely on Nicaragua's purported declaration to modify its own declaration with immediate effect.

To be sure, Nicaragua purported to accept the jurisdiction of the Permanent Court of International Justice, "unconditionally". This term was apparently a specific reference to the option in Article 36 of the Permanent Court of International Justice's Statute, permitting acceptance of that Court's compulsory jurisdiction "unconditionally or on condition of reciprocity". Since subsequent decisions of the Permanent Court and of this Court have indicated that all declarations must be construed on a reciprocal basis, it is difficult to state what continuing force such an "unconditional" acceptance would have. In the absence of other reservations it would appear that such a declaration is unlimited *ratione materiae*. But surely such an "unconditional" acceptance was not intended to bind a State *in perpetuo*.

State practice and the opinions of authorities confirm this. In 1933, for example, Paraguay deposited a declaration similar to Nicaragua's, "unconditionally" accepting the jurisdiction of the Permanent Court of International Justice. Five years later, however, after Paraguay had withdrawn from the League of Nations, it denounced its purportedly unconditional acceptance citing, *inter alia*, the fact that its original acceptance had not been made for any fixed period of time. Paraguay's declaration was removed from the *Yearbook* of the Court in 1960 and has not, thereafter, appeared in it. Shihata notes in his treatise, *The Power of the International Court to Determine its Own Jurisdiction* (p. 167, note 1), that the Deputy-Registrar at the Court advised him that "the omission was not inadvertent".

El Salvador similarly had accepted the Permanent Court of International Justice's compulsory jurisdiction with only limited reservations in 1921. The Salvadoran Minister of Foreign Affairs, in announcing El Salvador's 1973 modification of its acceptance, noted that refusal to recognize such modifications would leave States

> "permanently bound by the original declaration they had addressed to a defunct court of justice, although the declaration had been presented several decades earlier and even though current circumstances were completely different from those in which the declaration was made".

This communication appears in Professor Rosenne's *Documents on the International Court of Justice*, second edition, at page 368.

Based on this practice, writers have concluded that purportedly "unconditional" acceptances such as Nicaragua's in 1929, are, in fact, denounceable. Shihata, for example, does so at page 167; Rosenne at Volume I, pages 417 and

472; and Merrills in an article in the 1979 *British Year Book of International Law* at page 93. None of these leading authorities suggest any limit, temporal or otherwise, on the right to denounce these outdated acceptances.

Sir Humphrey Waldock observed in his 1954 article in the *British Year Book of International Law*, at page 278 — the article on which Nicaragua almost wholly rests its argument — that

> "[R]eciprocity would seem to demand that in any given pair of States each should have the same right as the other to terminate the juridical bond existing between them under the Optional Clause."

In this case, Nicaragua's purported declaration was immediately terminable. The United States, which had made a wider temporal acceptance of the Court's compulsory jurisdiction was, therefore, entitled to introduce a temporal qualification into its declaration with immediate effect, in accordance with the principle of reciprocity.

In sum, the 6 April note was effective since, first, a State may qualify its consent to the Court's jurisdiction at any time up to the filing of an application, and, second, the principle of reciprocity requires that the United States notice be subject to immediate and unilateral qualification, as is Nicaragua's purported declaration.

At this point, the United States would like to turn to additional compelling reasons why the Court should deny the request for indication of provisional measures.

First, Costa Rica, El Salvador and Honduras have communicated directly with the Court to express their concern as to the effect this case may have on the Contadora process. Guatemala has issued a public statement to the same effect. We have already quoted extensively from these communications, which were independently given to the United States, copies of the full texts of which we have submitted in our Exhibits.

These communications from the other Central American States make it quite clear that Nicaragua's claims are inextricably linked to the rights and interests of those other States. It is also evident that the indication of the provisional measures requested by Nicaragua will directly impinge on the Contadora negotiations with results neither foreseeable nor remediable by this Court. As one example, it may be useful to recall here the communication of Honduras to the Court:

> "Once again the Government of Nicaragua is seeking to flout the Contadora negotiation process by attempting to bring the Central American crisis, essentially a political issue, under the jurisdiction of the International Court of Justice. This is detrimental to the negotiations in progress and fails to recognize the resolutions of the United Nations and the Organization of American States or the full international endorsement that the Contadora peace process has so deservedly received."

These communications should be enough to show that Nicaragua is confronting the Court with only a small segment of a much broader and interrelated conflict. Nicaragua complains here of armed interference in its affairs. The other States complain of Nicaragua's armed interference in their affairs. All of the Central American States have agreed, in signing the 21 Objectives, that their mutual complaints should be resolved comprehensively in the Contadora process (United States Exhibit III, tab F). That process aims at stopping hostilities in all the affected countries through verifiable security arrangements, and at the solution of all the complex and interrelated social, economic and political issues. For this

Court to grant Nicaragua in these proceedings the relief it seeks in the Contadora process, in whole or in part, can only prejudice the ability of the other Central American States to have their grievances, too, satisfied. Indeed, as Honduras rightly points out, Nicaragua's present Application appears deliberately designed to accomplish precisely that result. The Court should resist this attempt to achieve such an improper exercise of judicial discretion.

Moreover, the United States submits that the other Central American States are indispensable parties in whose absence this case should not go forward. Any decision to indicate the interim measures requested, or a decision on the merits, would necessarily affect the rights of States not party to the proceedings. The request would cut these States off from their right to seek and receive support from the United States in meeting the armed attacks against them. This would violate the indispensable party rule. Judge Nagendra Singh articulated that rule in the *Pakistani Prisoners of War* case as follows:

> "It is indeed an elementary and basic principle of judicial propriety which governs the exercise of the judicial function, particularly in inter-State disputes, that no court of law can adjudicate on the rights and responsibilities of a third State *(a) without giving that State a hearing,* and *(b)* without obtaining its clear consent." (*I.C.J. Reports 1973*, p. 332.)

This principle is reflected in proviso *(c)* of the 1946 United States declaration accepting the compulsory jurisdiction of this Court, commonly known as the Vandenberg Amendment, which is a total bar to the claims in this case arising under multilateral conventions.

It is wrong to say, as did Nicaragua's Agent on Wednesday morning (p. 42, *supra*), that Article 59 of the Court's Statute would protect the rights of the other Central American States, which would not be legally bound by a ruling of this Court. That contention is, at best, unsound and beside the point. The effect that a ruling months or years hence might have on the abstract legal rights of the other States is not the pressing issue now. It is, rather, the real and immediate rights and interests of the other Central American States that will be gravely impaired by the indication of the provisional measures requested in the present proceeding.

Nor is it germane to the issue at hand to state, as did the Agent for Nicaragua *(ibid.)*, that these other States have the right to intervene here. That argument was specifically rejected in the *Monetary Gold* case (*I.C.J. Reports 1954*, p. 32). The other States cannot be compelled to intervene. Further, they have stated unequivocally that they do not wish to have their rights and interests determined here but, rather, in the political process to which all the States of Central America have agreed.

Finally — and the United States mentions this point only because Nicaragua has raised it — the *United States Diplomatic and Consular Staff in Tehran* case is wholly inapposite. There, the Court properly rejected Iran's attempt to prevent the indication of provisional measures. Iran raised the contention that the issue was merely part of a broader dispute between the Parties, but it did not and could not claim that an important legal right would be impaired. Here, there are rights of States, including States not before the Court, which are inextricably linked to the case and which would necessarily be adversely affected by the measures requested.

The foregoing considerations concerning the Contadora process and the rights and interests of other States in that process are relevant to the present proceedings in another respect. Article 52 of the United Nations Charter requires that Members of the United Nations participating in regional arrangements or

agencies "shall make every effort to achieve pacific settlement of local disputes through such regional arrangements . . . before referring them to the Security Council". This provision was introduced at the San Francisco Conference at the request of the Latin American States to ensure the efficacy of the Organization of American States, or the "Pan-American Union" as it was then known. Article 52 of the United Nations Charter is mirrored in an even stronger form in Article 23 of the OAS Charter, which provides:

> "All international disputes that may arise between the American States shall be submitted to the peaceful procedures set forth in this Charter, before being referred to the Security Council of the United Nations."

Even if Contadora did not comprehend the dispute Nicaragua raises in this Court, Nicaragua would remain bound to fulfil this commitment to regional agencies and arrangements. However, the Contadora process does comprehend them. It has been expressly endorsed by the OAS General Assembly, the United Nations General Assembly and the United Nations Security Council as an appropriate regional arrangement for resolving the complex region-wide disputes that beset Central America.

The United States would again invite the Court's attention to United States Exhibit III, tabs D, H and K. Each time that Nicaragua has attempted to circumvent the Contadora process by bringing its own grievances to one of the political bodies of the Organization of American States or the United Nations, those bodies have reaffirmed the appropriateness of Contadora.

The United States submits that Nicaragua — and the other Central American States — are under a good faith obligation to negotiate within the Contadora process. This follows from the terms of Article 52 of the United Nations Charter and Article 23 of the Organization of American States Charter, and the specific endorsement of the Contadora process by the political organs of those organizations. It is wholly inappropriate for Nicaragua to attempt to substitute for that process the judicial processes of this Court. This is especially so when the Contadora work schedule calls for studies, legal drafts, and recommendations concerning security and political matters and related economic and social questions to be referred to the Foreign Ministers this coming Monday, 30 April.

Such on-going diplomatic dispute settlement efforts are, generally, a strong argument against judicial intervention which, in the nature of things, would be premature. In the *Mavrommatis Palestine Concessions* case, this Court's predecessor recognized the "importance of the rule laying down that only disputes which cannot be settled by negotiation should be brought to it" (*Mavrommatis Palestine Concessions (Greece* v. *United Kingdom), P.C.I.J., Series A, No. 2*, p. 15). The importance of this principle for this case is affirmed, moreover, by the *Aegean Sea Continental Shelf* case in the proceedings concerning provisional measures. There, as you will recall, this Court declined to indicate provisional measures precisely because the parties to the proceedings had been called upon by the Security Council to pursue a peaceful settlement of their differences through negotiations; the Court refused to presume that they would disregard their obligations under the Charter to do so (*I.C.J. Reports 1976*, p. 13).

There is a final, additional reason for the Court not to take cognizance of Nicaragua's Application generally or to indicate interim measures in particular. Nicaragua seeks to enjoin the United States from a wide range of actions, the legitimacy of which might not be adjudicated for an indefinite period. A request of this nature, raising very fundamental questions, is absolutely unprecedented in the history of this Court and its predecessor. It strains incidental proceedings beyond any reasonable bounds.

Nicaragua's counsel noted on Wednesday morning that questions of collective self-defence may be involved here. He denied, first, that Nicaragua was engaged in any action that might give rise to such a right, relying entirely on the sworn statement of Nicaraguan Foreign Minister d'Escoto Brockmann submitted in these proceedings. Suffice it to say with respect to that self-serving document, that its denial of Nicaraguan complicity in the security problems of other Central American States is directly contradicted by the public statements of those States, which we have quoted, and by every independent attempt to examine the situation in that region.

The argument of Nicaragua's counsel also was premised on a fundamental logical inconsistency. In essence, the argument is reducible to this: Nicaragua's allegations of United States support for insurgents in Nicaragua present questions concerning the lawful use of force. Allegations of Nicaraguan support for insurgency and terrorism in the territories of other Central American States somehow do not present questions concerning the lawful use of force. Simply to state counsel's argument accurately is to refute it.

More fundamentally, the primary responsibility for the maintenance of international peace and security is assigned by the Charter of the United Nations to the Security Council. Action with respect to threats to the peace, breaches of the peace and acts of aggression is within the competence of the Security Council under Chapter VII, which also provides the power to call for appropriate provisional measures in Article 40. Chapter VIII provides for regional arrangements for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action. That allocation of responsibility cannot be circumvented, as Nicaragua has attempted to do here, merely by purporting to isolate an issue of the lawfulness of the force in one part of an on-going armed conflict throughout large parts of Central America and unilaterally calling it a "legal dispute". All situations involving the threat or use of force necessarily involve Article 2 (4) and Article 51 of the United Nations Charter or other issues of law or legally significant fact. That does not mean that this Court can, or should, take cognizance of the legal aspects of those situations in the midst of hostilities, and while the political processes of the United Nations and the OAS are still engaged.

As former President Jiménez de Aréchega observed in the *Aegean Sea Continental Shelf* case with regard to Article 41 of the Statute of this Court:

> "The Court's specific power under Article 41 of the Statute is directed to the preservation of rights '*sub judice*' and does not consist in a police power over the maintenance of international peace nor in a general competence to make recommendations relating to peaceful settlement of disputes." (*I.C.J. Reports 1976*, p. 16.)

The Security Council has endorsed the Contadora process as the proper avenue for resolution of Nicaragua's complaints (United States Exhibit III, tab D). It has not regarded this as a legal dispute. Nor has it recommended that the parties refer it, or even its arguably legal aspects, to the Court as the Security Council may do under Article 36 (3) of the Charter. The Charter's referral of problems involving armed hostilities to the political processes of the United Nations is, in the opinion of the United States, a wise one in the circumstances of a case such as this and is justified by the advantages of those processes over judicial processes in such a case. Successful resolution of armed conflict requires the participation of all parties to the conflict. Frequently, as in this case, not all parties are available in judicial proceedings, particularly those on provisional measures. The negotiation and arrangement of cease-fires, separation of forces, supervisory

machinery, finance and logistics, and other agreements are complex and delicate tasks requiring political, military, administrative and other expertise. Careful consideration must be given to the actual situation of the various elements of the forces on all sides. The requirements of verification are especially important in an armed conflict of a guerrilla nature.

The 21 Objectives of the Contadora process themselves illustrate these complexities. The Objectives, to which the United States would again direct this Court's attention, indicate the way the Contadora participants, including Nicaragua, have themselves agreed to address their mutual security concerns. In the agreed Document of Objectives, those participants articulated eight interrelated security concerns which we quoted to the Court previously. These concerns are currently being translated by the Contadora working groups into concrete arrangements. While this is an ambitious programme, the affected States in the region, including Nicaragua, have agreed that it is an essential one. It is their programme, and it is one which the United States supports. It bears re-emphasizing that the States of the Contadora process have given special emphasis to having "appropriate verification and monitoring systems" in place for implementation.

In sum, under these circumstances the United States submits that this Court should not take proceedings on Nicaragua's Application and most certainly should not indicate provisional measures.

Mr. President, I have concluded my arguments. It has been a privilege to appear before the Court. With your permission, I would respectfully ask the President to call upon the Agent of the United States for some concluding remarks to this statement.

STATEMENT BY MR. ROBINSON

AGENT FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. ROBINSON: Mr. President, distinguished Members of the Court. It has, indeed, been an honour for me and my colleagues to appear on behalf of the United States of America in these proceedings. With the leave of the Court, the United States will now make a few brief concluding remarks.

The United States has presented to the Court today several reasons why this Court does not have jurisdiction over, and should not take cognizance of, Nicaragua's Application and request for the indication of provisional measures. Briefly stated, those reasons are as follows.

First, Nicaragua has not accepted the compulsory jurisdiction of the Court and the United States has not consented to the jurisdiction of the Court for purposes of Nicaragua's Application and request. The Court, accordingly, manifestly and prima facie lacks jurisdiction.

Second, the claims stated in Nicaragua's Application and request are inextricably related to the claims of the other Central American States against Nicaragua. Those other States are indispensable parties, and the case may not proceed in their absence.

Third, the claims of Nicaragua and the claims of the other Central American States against Nicaragua are properly subject to resolution through the Contadora process to which Nicaragua by its own affirmative agreement is a party. Because of the actions of the United Nations and the Organization of American States, this Court may not improperly intervene in that negotiating process by adjudicating Nicaragua's claims in isolation from the claims of its neighbours against Nicaragua.

And fourth, Nicaragua's Application requests a determination that an unjustified use of force is occurring. Any such determination in the circumstances of this case comes within the proper purview of the political organs of the United Nations and the regional arrangements associated therewith.

Each of these contentions is alone sufficient to warrant the denial of Nicaragua's request for provisional measures. Together, they indicate that Nicaragua's Application and its request for provisional measures are indefensible.

My Government has dwelt today upon one of these arguments in particular. The United States has shown that, in the absence of any new evidence to the contrary, Nicaragua has never accepted the compulsory jurisdiction of this Court and may not invoke that jurisdiction against the United States. The fundamental importance of this argument cannot be overemphasized. In the absence of even a colourable title to jurisdiction by Nicaragua, *all* proceedings with respect to Nicaragua's Application and its request for provisional measures must immediately cease.

If Nicaragua does have a basis for compulsory jurisdiction under Article 36 (5) of the Statute as Nicaragua professes, it is inexcusable, indeed shocking, that Nicaragua has not presented any evidence in support of such jurisdiction. Article 38 of the Rules of Court specifically required Nicaragua fully to support a claim to jurisdiction in its Application. We understand that Nicaragua has been preparing this case for many months. Nicaragua has, in any event, clearly had ample opportunity to research thoroughly its basis for jurisdiction, as its hundreds of pages of exhibits and its carefully prepared four-hour oral argument on Wednesday surely demonstrate.

In contrast, the United States Government, in the less than three weeks since the Application was filed, has obtained from public records in the United States and in Europe extensive documentation that, in the absence of any new evidence to the contrary, demonstrates conclusively that Nicaragua, in fact, has never accepted this Court's compulsory jurisdiction. All of these records were available upon request to Nicaragua just as they were to the United States. If Nicaragua *had* accepted the Court's jurisdiction, moreover, we assume that its own archives would contain the appropriate documentation. Surely, Nicaragua was not unaware of the footnote that has appeared each year in this Court's own *Yearbook* since the time of Nicaragua's boundary dispute with Honduras.

Under these circumstances, my Government can draw only one conclusion. Nicaragua came to this Court in the full knowledge that there was no basis for jurisdiction over its claims. Thus, it may only appear that, in the absence of any new evidence to the contrary, Nicaragua has used this Court, in the most cynical way, as a political stage on which to parade its propaganda.

In conclusion, the United States submits that, if there is any basis for jurisdiction here, Nicaragua must be directed to substantiate it forthwith. Nicaragua either must produce documentation showing that, on or before 18 April 1946, it deposited an instrument of ratification of its signature to the Protocol of Signature of the Permanent Court of International Justice or it must produce documentation demonstrating on or before 9 April 1984 the deposit with the Secretary-General of the United Nations of a declaration pursuant to Article 36 (2) and (4) of the Statute of this Court. The Agent for Nicaragua should be required to produce that evidence here and now. If he is unable to do so, the United States submits that this Court, as a matter of law, has no alternative but to strike Nicaragua's Application and request immediately from the General List of the Court.

Mr. President, distinguished Members of the Court, at this time, the United States respectfully requests the President of the Court to call upon the Agent of Nicaragua either, (1) to produce evidence, for purposes of Article 36 (5) of the Statute of this Court, of the deposit of its instrument of ratification to the Protocol of Signature to the Statute of the Permanent Court of International Justice, or (2) to produce evidence of a declaration under Article 36 (2) of the Statute of this Court prior to the filing of the Application on 9 April 1984. I request, Mr. President, that you make such a request to the Agent for Nicaragua at this time.

The PRESIDENT: In accordance with the process of the Court I take it that you allow the Agents for the other Party to speak in their turn, not to be called upon and brought to the dock now.

Mr. ROBINSON: Mr. President, I am simply requesting you as the President of the International Court of Justice to ask the Agent for Nicaragua at this moment to produce the evidence that Nicaragua has accepted the compulsory jurisdiction of this Court. If the Agent for Nicaragua is unable to produce that evidence at this moment, the Agent of the United States repeats the request in its letter of 23 April 1984 that this Court immediately, without further ado, preclude any further proceedings in this matter.

The PRESIDENT: Well your request is a bit unprecedented in my view and I have not the benefit of consulting with my colleagues to obey or . . .

Mr. ROBINSON: Mr. President, we obviously defer to your judgment. In our view indeed this is an astonishingly unprecedented situation.

The PRESIDENT: May I ask the Agent of Nicaragua to reply?

REPLY OF MR. ARGÜELLO GÓMEZ

AGENT FOR THE GOVERNMENT OF NICARAGUA

Mr. ARGÜELLO GÓMEZ: Mr. President, Members of the Court, in the first place I wish to make use of the words said by the President of the Court that this is an unusual way to proceed. If we are talking about producing documents, or about producing evidence, it is not a matter for raising from a chair the agent of a country and telling him to come forward and produce it. The way in which this has been handled, I think, is unusual and it is also discourteous of the Agent of the United States who has even called our exposition cynical in his last words.

What I wish to request from the Court is that we have a right to reply in full to everything that is being expressed by the United States at this moment and this is something that can be arranged in any way which you, Mr. President, and the Court would allow us. I do not wish impromptu to argue our case to answer what the United States has said, but I think it is obvious in a case like this that a consultation is necessary and the usual forms are observed.

When we presented our Application the United States had three weeks to study it and yet requested another day to answer or to make clear its position today, so I think that with these words I will leave it to you, Mr. President and Members of the Court, to outline the procedure we should follow at this moment.

The PRESIDENT: May I know whether it is your wish to speak any time today or tomorrow. My understanding before we came in was that the Nicaraguan side had already told my Registry that they might wish to speak after hearing the United States delegation. Is it still your wish to speak or not?

Mr. ARGÜELLO GÓMEZ: Yes Mr. President, particularly from the last remarks from the Agent of the United States, I think it is imperative that we speak. We feel that our case was definitely closed, but in the way which this was handled, I think it is imperative and even necessary for my country to answer, particularly in the tone in which we have been addressed in this Court of Justice.

The PRESIDENT: Well, if it is your wish to reply to the points raised, the Court's normal jurisprudence is to allow you to exercise that right before taking any decision and, secondly, the Court, as I understand it, has not been used to being ordered in matters of procedure as to how to handle cases before it, so we shall give you the right to reply in due course.

The Court rose at 13.15 p.m.

FOURTH PUBLIC SITTING (27 IV 84, 4 p.m.)

Present: [See sitting of 25 IV 84, 10 a.m.]

STATEMENT BY MR. ARGÜELLO GÓMEZ

AGENT FOR THE GOVERNMENT OF NICARAGUA

Mr. ARGÜELLO GÓMEZ: Mr. President, Members of the Court. I will address briefly several observations made in the morning session by the United States.

In the first place, the observation about Nicaragua's right to be here present. Nicaragua made a general declaration accepting the jurisdiction of the Permanent Court of Justice in 1929. On 14 February 1935, Nicaragua's Senate ratified the Statute of the Permanent Court of International Justice, also the Protocol of Signature. The amendments to said Statute and the Protocol of Signature are the same. This was published in *La Gaceta*, the official diary, No. 130, of 12 June 1935. The Chamber of Deputies' approval was published in *La Gaceta*, No. 207, of 18 September 1935.

Both arguments were presented by Honduras in the litigation with Nicaragua in 1960 and can be seen on pages 128 and 129 of the first volume of the case mentioned. The presidential approval necessarily preceded these ratifications in accordance with Nicaraguan law. This approval is mentioned in the Chamber of Deputies' approval, and dates from 4 December 1934.

As Agent of Nicaragua, and with my knowledge as former Minister of Justice of my country, I can avow that no further proceedings were necessary and that it is a valid law in force in Nicaragua.

The United States has presented a document in which the United States Ambassador to Nicaragua in 1943 states otherwise. The Ambassador was wrong and his opinions are of no value as to Nicaraguan law.

The United States mentions that in Nicaragua's Counter-Memorial, in the case in reference, on page 132, Nicaragua denied its acceptance of the compulsory jurisdiction of the Court. That is not true, and I will read the pertinent paragraphs. This is Nicaragua's answer to the Honduran Memorial:

> "Ajoutons que ce ne peut être que par inadvertance que le Honduras présente la première demande formulée dans ses conclusions comme entrant dans la catégorie de différends visés à l'article 36, chiffre 2 *c)*, du Statut de la Cour internationale de Justice. Le présent différend ne porte en aucune façon *sur la réalité* de tout fait qui, s'il était établi, constituerait la violation d'un engagement international. Il n'y a en l'espèce aucune contestation sur la réalité de l'exercice litigieux; mais il y a désaccord sur l'existence d'une obligation quelconque pour le Nicaragua de se prêter à l'exécution d'une prétendue sentence arbitrale contre laquelle il a formulé depuis des années une série de critiques graves et précises, se déclarant dès le début disposé à se ranger sur ce point à l'opinion d'arbitres."

From this document it can be clearly established that Nicaragua, quite the opposite, did not deny its acceptance of the jurisdiction of the Court. All it stated was that Article 36, paragraph 2 *(c)*, was not applicable to matters referring to internal affairs in Nicaraguan territory.

When the Statute of the Court became a law of Nicaragua, this fact was notified to the Secretary of the League of Nations. It was the year 1939: the start of the World War II. There are quite obvious reasons why this ratification may not have reached Geneva at the time but, in any case, this has no bearing on Nicaragua's acceptance. Professor Brownlie will enlarge on this subject with more professional authority than myself in just a few moments.

Before closing on this point, I wish to place in adequate perspective this argument of the United States to attempt to escape the jurisdiction of this Court.

If we accept theoretically that the ratification did not reach Geneva and that this fact were legally imperative, what steps could Nicaragua take to perfect this case? The Agent of the United States stated that we would have to go to the Secretary-General of the United Nations and deposit the ratification.

Let us suppose that were done. Then the United States argument is reduced to the concrete fact that Nicaragua would have to start its case again in just a few days. That is injustice; that is legal formalism. That is just another attempt to flee from the justice of international law.

I will mention in passing that if Nicaragua saw, or had seen, any reason to doubt the validity of its acceptance it could very easily have cited Article 31 of the Pact of Bogotá in which Nicaragua reaffirmed its acceptance of the jurisdiction of the Court. But none of this is necessary. We indicate that there is more than sufficient legal basis to establish the jurisdiction of this Court for the purpose of this hearing, that is, indication of interim measures of protection.

Mr. President, I would be in dereliction of my duty if I failed to make some observations on the substance of the matter before the Court. In its three-hour presentation this morning, the United States made no effort to deny any of the facts recited in our Application or placed before you on Wednesday. As we said at the time, the United States could not do that because the facts are matters of common knowledge. Thus, for the purpose of these proceedings, it stands as admitted that the United States has organized, equipped and erected a large army in continuous attack on Nicaragua across its border with Honduras; that the United States is mining Nicaraguan ports and attacking its shipping; that the United States is repeatedly violating Nicaraguan airspace; and that in the course of these actions Nicaraguan men, women and children are being killed by hundreds.

Mr. President, the United States has made no effort to justify these actions. It has made no claim of self-defence, individual or collective. And, in addition, Mr. President, none of the countries whose remarks the Agent of the United States read before the Court, including El Salvador, made any claim of self-defence either. Furthermore, the United States has not denied — nor could it — the extreme urgency of the situation. The United States has not denied — nor could it — that without the provisional relief sought by Nicaragua, the rights at issue would be irreparably prejudiced. Instead, Mr. President, we were treated to hours of talk about the Contadora process.

Our claims in this case are only claims against the United States. They are only claims of violations of international law. While Nicaragua is actively participating in the Contadora process, and will continue to do so, our legal claims against the United States cannot be resolved, or even addressed, through that process. Nor can we resolve our legal claims against the United States in any other forum, as the United States has itself demonstrated by twice casting a strong negative vote and thereby vetoing resolutions of the Security Council condemning the United States use of force in various forms in and against Nicaragua.

In any event, there is absolutely nothing about this lawsuit or request for

provisional measures that is inconsistent with or destructive of the Contadora process, or prejudicial to the rights of other States. In our request for provisional measures, we ask only that the Court indicate that the United States should cease its illegal use of force, both direct and indirect, against Nicaragua. How could such a motive prejudice the legitimate rights of any other States, or disrupt the Contadora process? Does any other Central American State have a legitimate right to have the United States mine Nicaragua's ports? Does any Central American State have a legitimate right to have the United States plan, finance and direct an invasion of Nicaragua by 8,000 armed mercenaries? Does the United States really contend that the Contadora process, the road to peace, will be blocked if this Court indicates no more than that it should stop mining our ports and invading our country by both direct and indirect means?

The United States has not produced any statement by any of the four Contadora countries themselves — Mexico, Venezuela, Colombia and Panama — suggesting that Nicaragua's legal claims against the United States should not be heard in this Court. On the contrary, on 8 April, the Foreign Ministers of these four countries issued a joint communiqué condemning the United States for its dangerous escalation of military activities against Nicaragua (Exhibit VIII).

On 13 April, the Foreign Minister of Mexico, the honourable Bernardo Sepúlveda, called for "the total elimination of all armed violence, direct or indirect, against Nicaragua" (Exhibit VI, tab 8, p. 35). Mr. Sepúlveda called the United States attempt to evade the jurisdiction of the Court in this case both "capricious" and "invalid" (pp. 35-36).

The Court conclusively resolved this issue in the *United States Diplomatic and Consular Staff in Tehran* case, when it declared in its Order on provisional measures that

> "No provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important."

Mr. President, Members of the Court, I have no wish to engage in political debate before you. Nicaragua, as I said on Wednesday, has turned to this Court for a judicial determination of its legal rights. On the record before this Court, the United States violations of international law stand admitted for the purpose of these proceedings. It is true, of course, that important political elements are involved but, as the Court said in the *Certain Expenses* case:

> "It has been argued that the question put to the Court is intertwined with political questions, and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task, namely the interpretation of a treaty provision."

The Court can do no less here. It will not, I am confident, be intimidated by the United States. Nicaragua makes its plea here for justice under law. I ask the Court to heed this plea by granting the interim measures requested.

Mr. President, before closing I wish to mention one other fact — a matter of the internal affairs of Nicaragua but it was mentioned — presumably as a justification for killing people in Nicaragua.

Mr. Kozak, on the United States bench, said that the Bishops in Nicaragua had issued a pastoral letter, and that this letter was not published in the news-

papers because it was censored. That is not true. In *La Prensa*, the opposition newspaper, it was published on the front page on the twenty-fourth of this month. If it were pertinent I could, of course, bring it to the Court, but as I said it is a matter of the internal affairs of Nicaragua and I just wish to set the record straight.

With this closing statement, Mr. President, I request you to recognize Professor Brownlie.

ARGUMENT OF PROFESSOR BROWNLIE

COUNSEL FOR THE GOVERNMENT OF NICARAGUA

Professor BROWNLIE: Mr. President, Members of the Court. May it please the Court.

My purpose in speaking this afternoon is to clarify some of the issues concerning the jurisdictional aspects of these proceedings, and these of course were given considerable prominence this morning by several of the speakers on behalf of the United States.

The framework is, as we know, the issues concerning the power of the Court by virtue of Article 41 of its Statute, to consider whether to exercise that power in this case. The resolution of these issues depends, quite naturally, upon legal reasoning, legal materials and a quiet consideration of those materials. These are matters subject to the Court's appreciation. These are contentious proceedings. They are issues concerning matters of law and matters of evidence, and the Court will of course very shortly resolve those issues, and there seems little need to attempt to indicate to the Court that it should resolve some of these issues, so to speak, *in limine*.

By way of preface, I would say that I would like to reaffirm that the whole question of the effect of the United States declaration, the effect of the Nicaraguan declaration, and the effect of Mr. Shultz's letter of 6 April, must be judged in accordance with the principles of the law of treaties. No one thinks the law of treaties applied to these matters *tout court*, or in some simple and mechanical way, but no one denies that the question of the interlocking of declarations is a legal matter, and does involve a certain type of consensual legal obligation.

It is generally accepted that, *mutatis mutandis*, the principles of the law of treaties apply to these questions.

In my exposition, I referred to the *Anglo-Iranian Oil Co.* case, which is referred to also by President Waldock in his article. I was criticized by the other side for this reference, but the fact remains that in that case the Court was simply pointing out that, because of the unilateral process of drafting of an instrument then, the mode of interpretation is not exactly the same mode of interpretation as it would be of a bilateral treaty. But the fact remains that the general approach of the Court in the *Anglo-Iranian Oil Co.* case is similar to the approach of the Court towards any written obligation affecting relations between States.

And then I referred to the study by the late President Waldock; I make no apology for that reliance. Mr. McGovern says that that article on the Optional Clause has been superseded. The Court will no doubt take its own view of that matter.

The fact remains that professional international lawyers in general still regard the article as an important contribution. For our present purpose, namely its references to the essential legal character of declarations under the Optional Clause and the legal significance of the way in which they interact, on fundamental matters of principle of that kind, I think it is difficult to say that the article has been superseded. No doubt, as Merrills's article shows, the Waldock article needs updating in matters like the different types of declaration that are made and how many declarations are made of this kind and that kind. But on points of principle I submit to you, Mr. President, that that article is still of considerable significance.

Indeed the Departmental Statement does the Waldock article the honour of

making it the sole citation — it is the only legal citation in that Departmental Statement.

Those remarks are by way of preface. My purpose this afternoon is firstly to reply to the remarks of Mr. McGovern this morning and, secondly, to refer to the problem concerning the footnote to the Nicaraguan Declaration as printed in the *I.C.J. Yearbook*.

First of all then, to refer to Mr. McGovern's criticisms of my presentation on 25 April. The Court will, no doubt, be ready to compare what I actually said (pp. 66-79, *supra*), which appears very efficiently presented in the verbatim records, with some of the things that Mr. McGovern said I said. And it would help the Court perhaps if I just recall the two constructions which I placed on the letter of 6 April by Mr. Shultz to the United Nations Secretary-General. I said that the first possible construction was that it was an invalid attempt to modify or vary the existing United States declaration and that therefore remains in force. I then said that an alternative view would be that the letter of Mr. Shultz has the effect of terminating the original declaration, but on its express terms, and so that termination can only take effect six months after the giving of notice on 6 April.

Some of Mr. McGovern's reasoning, quite frankly, I found rather difficult to follow. It was not always clear whether he was referring to reservations of the right to vary or modify, on the one hand, or the actual practice of making unilateral modifications on the other, and he made a statement which I found very surprising. He said that State practice under the Optional Clause was replete with unilateral qualifications, unilateral modifications. Now I find that surprising. I think such State practice as there is on the question of unilateral termination and modification tends to show that the matter is governed by the law of treaties. There is no, so to speak, categorical right in these matters. There may be a right in a particular case, but that is determined by the application of the principles of the law of treaties. That appears both from what is said in President Waldock's article and from what is said in the article by Merrills. As I read the Merrills's article it points out that only in three cases in recent practice have States reserved, or attempted to reserve — there may be some questions of the legality of this under the Statute — but only in three cases have States attempted to reserve a *general* right to modify the terms of their declaration.

So if one adopts the McGovern thesis, which is that States have a sort of inherent right to modify, to vary the terms of their declaration, then perhaps the terms of an instrument do not matter. Perhaps the instrument is not a legal instrument in any case. If those terms can be modified at any time, even outside the terms of the instrument itself, the terms of that instrument itself become somewhat, as it were, floating, fluid, unimportant. And so my submission, once again, is that the principles of the law of treaties apply. So far as an instrument, a declaration, may be modifiable or terminable depends on legal principles derived from the law of treaties.

Mr. McGovern invoked the principle of reciprocity and he referred to the word "unconditionally" in the Nicaraguan declaration. And he suggested that such a declaration cannot be intended to bind perpetually, and he said there could be no limit on the right to denounce such acceptances. And the argument would then be that on the basis of reciprocity the other declarant, the United States, could benefit from such a free right to denounce.

Now, we know there are some very interesting problems about the application of the principle of reciprocity to matters of time and I am certainly not admitting that the principle does, in principle, apply to matters of time. I think that if a declaration is made unconditionally and there is no reference to termination, the

presumption is that it cannot be denounced except in accordance with the principles of the law of treaties. And Article 56 of the Vienna Convention, with which the Court will be familiar, lays down a fairly strong presumption that treaties are not to be taken to be terminable, to be open to denunciation.

So much for my remarks on the presentation this morning by Mr. McGovern in particular, I turn now to the question of the footnote to Nicaragua's declaration as it appears in the *Yearbook* of the Court and as it has appeared either by reference or otherwise in the *Yearbook* since 1946.

So, Nicaragua does not ignore this footnote. It is difficult to ignore a footnote which is prominent in a public document and has been present in that document for some 37 years. We do not ignore it, but we do not agree with the other side on what the legal consequences of that footnote may be; and it is, of course, the Court's duty to resolve those differences. So let me read this footnote; it appears at page 79 of the current *Yearbook*, No. 37, for 1982-1983; published by the Court itself. It is an official publication of the Court. And the footnote reads:

> "According to a telegram dated 29 November 1939 addressed to the League of Nations, Nicaragua ratified the protocol of signature of the Statute of the Permanent Court of International Justice 16 December 1920 and the instrument of ratification was to follow. It does not appear, however, that the instrument of ratification was ever received by the League of Nations."

And that is the text of the footnote.

Now, in accordance with general principles of law and legal reasoning which would apply both within the jurisdiction of this Court and in most jurisdictions, a footnote of that kind appearing in a public document together with the declaration itself, raises a certain presumption of regularity, because after all the footnote draws no legal consequences. It makes a statement, it records facts, which it is true Nicaragua is not attempting to controvert.

It is, after all, not Nicaragua that has made an issue of the footnote. It is — and it is their privilege — the United States which has made an issue of the footnote, and that is entirely their right in these proceedings. What is the significance of this fact? It is not just the footnote — the footnote is appended to a statement. It is appended to a declaration which is recorded as the declaration under the Optional Clause made by Nicaragua in 1929, and the declaration has been printed in successive *Yearbooks* since 1946, either with a footnote or with a reference to the footnote; for a number of years it appeared as a reference back to the *Yearbook* of 1946 which contained the footnote.

Now let us look at the matter from the point of view of the law of treaties. Mr. President, I may be taxing the patience of the Court, but I want to present the matter as clearly as possible. In the law of treaties — and this is the law — the question of form is not regulated in a general way. It depends on the intention of the parties, and *ex post facto* it may depend on the conduct of the parties, which may indicate a readiness on the part of the relevant States to waive a formal defect.

Let us suppose that what has happened is — as it may be — that in 1946, in accordance with Article 36, paragraph 5, an instrument was inherited with a formal defect. If you will forgive me, I am not assuming that the formal defect is to be accepted as such, as having any significance as a formal defect, because it may be that the significance of these declarations is vis-à-vis each other; if I could refer the Court to the passages from the article by Sir Humphrey Waldock, which is not liked by the other side, those passages make it clear that the con-

sensual nature of the declaration is essentially as between declarants. It is not between the declarant and the Secretary-General of the United Nations, or previously the Secretariat of the League. And it may be perfectly possible to argue that the formal defect is, so to speak, not a relevant formal defect, if you take that view of mutuality as between declarations.

But for the sake of the argument, and in order to assist the Court in approaching these problems, let us assume that it is a formal defect and that in 1946, under the operation of Article 36 of the Statute, a declaration with a formal defect was inherited. Now, my submission is that that formal defect has been waived by the subsequent practice of the declarant States over this long period since 1946 in face of this recurring footnote. It is not a mystery, the footnote — it is there. You do not have to find it in the archives: it is in the *I.C.J. Yearbook*. That is one approach to the question of what is the significance, if any, of the footnote. And of course — if I may repeat myself — the footnote itself draws no legal conclusions at all.

There is a second approach, quite apart from the categories of law of treaties, which will approach it in another way, although the result will be much the same. Beyond the law of treaties, within the general principles of international law, waiver by the conduct of States is quite well known. The classic example of such waiver is to be found in the *Temple of Preah Vihear* case, in the merits, in *I.C.J. Reports 1962*, page 6. That was quite a dramatic case of waiver because the situation before the Court involved the question of sovereignty over territory, and, if you recall, you had in 1908 a set of transactions between Thailand and France which resulted in the production of a map which was the unilateral product of one side of a joint boundary commission. The map was not therefore binding, although it had a technical provenance which made it as a map, so to speak, respectable. It was not binding on the two States because it had not been produced by the joint operations of the Boundary Commission. The Court eventually held that Thailand, not having objected to the map for a period of 50 years — it made its first reservation in 1958 — could be said to have adopted, and that is a word that appears quite often in the Judgment, the line on the map.

Although on its face the line on the map was incompatible with the principles which were supposed to have been applied and, in particular, the principle of the watershed, the line on the map did not coincide with the escarpment. But this defect had been ignored for so long that eventually Thailand was held bound by that defect.

But of course there are all sorts of differences between that sort of situation and the present: it is a different context. But the principle is all that I want to indicate to the Court: the principle that by the conduct of the relevant parties a formal defect may be ignored or cured. And the fact is that the validity of the declaration as it has appeared since 1946 in the *Yearbook* of the Court is supported by the presumption of regularity. Why is it there? It is not just the question of the footnote. The declaration is there — with a footnote.

There has been a general recognition of the validity — the correctness, the regularity — of the inclusion of that declaration in the *Yearbook* for so long. The summary conclusions are that the validity of that declaration is borne out. There is a presumption of its validity arising from its inclusion in the *I.C.J. Yearbook* for so long without reservations by declarant States. The first reservation appears the day before these proceedings began on Wednesday — and that took the form of a letter to the Court.

The official United States listing in its treaties in force is not accompanied by any qualification. And if one turns, for example, to the two-volume study by Dr. Rosenne, a well-known classic on the Court, then in the documentation at the

back of the volume by Rosenne you find included with a footnote the declaration of Nicaragua.

I take this work as an example, although of course it is a leading example, of the literature on the Court. Now, Dr. Rosenne is a meticulous scholar, and at page 880, where Appendix X containing the declarations accepting the compulsory jurisdiction of the Court begins, he very carefully puts a proviso. He says the text and other particulars have been taken from the League of Nations and United Nations *Treaty Series* except where otherwise indicated. Inclusion or exclusion of any declaration in this Appendix is not to be considered an expression of the author's views on any question connected with the status of that declaration.

Nonetheless he includes it. He does not exclude it. In the same way as the *I.C.J. Yearbook* includes the declaration. If the invalidity, as alleged by the other side, of the declaration was so palpable, if it was so flawed as to be recognized *in limine*, then why does the declaration appear in every context in which you might expect it to appear? — either in a public document in the *I.C.J. Yearbook*, or in the work of scholars and publicists like Dr. Rosenne.

Mr. President, I would conclude by referring briefly to another matter.

The Agent of the United States made some remarks to the effect that the Nicaraguan declaration had not been perfected under Nicaraguan domestic law, and these remarks have been sufficiently answered by the statement of Nicaragua's Agent this afternoon. I am advised by my colleague, Professor Chayes, that the letter of 6 April from Secretary Shultz is vulnerable to the same charge. As we have seen, the United States considers the declaration as having the force and effect of a treaty, and thus requiring approval by the constitutional process of treaty ratification in the United States — that is, a two-thirds vote of the Senate and approval by the President. How, then, can these obligations be varied by a mere letter from the Secretary of State?

Mr. President, I thank you and the Court for their patience in hearing me this afternoon. That concludes the presentation by way of reply on behalf of Nicaragua.

The Court adjourned from 4.57 to 5.26 p.m.

STATEMENT BY MR. ROBINSON

AGENT FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Mr. ROBINSON: Mr. President, distinguished Members of the Court, the Agent and Counsel for Nicaragua have made a number of points here this afternoon.

The United States does not believe it necessary to respond to all of those points. The United States does emphasize that it has admitted no factual allegations of Nicaragua whatsoever, and that we stand by our interpretations of the authorities that we relied upon this morning. The United States would only ask that the Court review the facts and the authorities upon which the United States relied this morning. For example, as to the Pleadings from the *King of Spain* case, we relied on the two sentences preceding the one that was quoted by Nicaragua this afternoon.

More importantly, the United States today made a simple argument, although we explored it in rather great detail. That argument was as follows: under Article 36, paragraph 5, of the Statute of the International Court of Justice, a declaration for the Statute of the Permanent Court of International Justice had to be in force on 18 April 1946 in order to continue thereafter. Second, in order to have a declaration in force in 1946, a State had to deposit an instrument of ratification to the Protocol of Signature. Third, Nicaragua was notified on several occasions that it had not done so, and as a result was not bound. Fourth, therefore, the Nicaragua declaration was not in force and Nicaragua is not a party to the compulsory jurisdiction of the International Court of Justice under Article 36 (5) of the Statute of the International Court of Justice.

Nicaragua made several points this afternoon but none refuted this fundamental United States argument. Indeed, Nicaragua's Counsel appears expressly to have admitted that Nicaragua did not make the necessary deposit of ratification and, hence, that its declaration was not in effect in 1946.

We would submit with all due respect, Mr. President, that our argument might simply stop there.

The United States will, however, briefly note the flaws in the arguments that Nicaragua made this afternoon in other respects.

First, Nicaragua's internal ratification, even if true, did not constitute the necessary international act. Second, World War II is, of course, irrelevant. Nicaragua was formally notified twice during the war that a deposit was necessary. League records showed in 1944 that Nicaragua was not a party to the Protocol. Yet, for whatever reason, Nicaragua took no step between the end of the war and the termination of the League in 1946 to, in effect, bind itself to the Statute of the Permanent Court of International Justice. Furthermore, for whatever reason, for 38 years Nicaragua has not seen fit to make a declaration under Article 36 (2) of the Statute of this Court.

Listings in various documents of Nicaragua among States that made declarations are irrelevant. They do not prove that the declaration is effective and they cannot of course constitute a declaration in themselves. Article 36 (2) and Article 36 (4) of the Statute of the International Court of Justice provide specific procedures for a declaration.

Nicaragua's argument on estoppel is wholly unfounded. Nicaragua never brought a case before. No State has ever had reason to examine its acceptance.

Contrary to Nicaragua's argument, the *Yearbook* of the International Court of Justice of course is not official and, in any event, contains a specific disclaimer in the Preface that it does not bind the Court in any official way. What is important is that the fact of the footnote was certainly no mystery to Nicaragua. Obviously treaties are not amended by Yearbooks and authors.

Nicaragua's various arguments on the law of treaties are simply erroneous. The treaty here is the Protocol. It required by its terms the deposit of an instrument of ratification. With your permission I would like to quote from the Court's decision in the *Ambatielos* case of 1952:

> "The ratification of a treaty which provides for ratification . . . is an indispensable condition for bringing it into operation. It is not therefore a mere formal act but an act of vital importance." (*I.C.J. Reports 1952*, p. 43.)

Nicaragua's Agent alluded briefly to two other possibilities. He cited the Pact of Bogotá, but of course the United States is not a party to that Pact and the United States, under the law of treaties, as a result cannot be bound thereby. Further, the Pact of Bogotá is clearly a treaty under Article 36 (1) of the Statute of the International Court of Justice and not a declaration under Article 36 (2) of the Statute of the International Court of Justice that could give rise to mutual obligations. The United States would like to note only one further point with respect to Nicaragua's mention of the Pact of Bogotá.

Nicaragua became party to the Pact of Bogotá but not without reservation, because Nicaragua was concerned that Honduras would attempt to use the Court to enforce the prior Arbitral Award of the King of Spain. Nicaragua made the following reservation, both upon signing and upon ratification of the Pact of Bogotá:

> "The Nicaraguan delegation on giving its approval to the American treaty on pacific settlement, the Pact of Bogotá, wishes to record expressly that no provisions contained in the said treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law which clearly permit arbitral decisions to be attacked when they are judged to be null and invalidated. Consequently, the signature of the Nicaraguan delegation to the treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain."

The United States would respectfully ask the Court to consider the following: if Nicaragua was so concerned about being compelled to submit the arbitral award dispute with Honduras to the Court's jurisdiction, concerned to the extent of making the same reservation twice, why was Nicaragua apparently not worried about being compelled to submit that dispute to the Court by force of its 1929 declaration? The only answer, Mr. President and distinguished Members of the Court, we submit, is that Nicaragua knew full well that the 1929 declaration was not in force; otherwise, Nicaragua logically would have acted to modify, terminate or replace its 1929 declaration.

Mr. President and distinguished Members of the International Court of Justice, the United States simply wishes to reiterate the point I was, with all due respect, trying to make at the end of this morning's proceedings.

The United States respectfully requested that the President ask the Agent of Nicaragua whether he could adduce evidence that Nicaragua has acceded to the compulsory jurisdiction of this Court. Nicaragua's presentation this afternoon has provided further confirmation that Nicaragua is not able to do so.

As we suggested this morning, Mr. President, in the complete absence of any evidence that the Applicant has solemnly accepted its part of the compulsory jurisdiction bargain the United States respectfully submits that the Court is now in a position to consider this question without further proceedings.

The United States therefore respectfully reiterates its request to the Court that these proceedings on Nicaragua's Application and request for the indication of interim measures be terminated for once and for all.

The PRESIDENT: Does Nicaragua wish to say anything more? Then I will bring the proceedings to an end. The Court will deliberate and decide what to do next. The proceedings are adjourned.

CLOSING OF THE ORAL PROCEEDINGS

The PRESIDENT: Thank you. This brings us to the end of this series of hearings.

I would like to express my sincerest thanks to the Agents, counsel and advocates of the Parties for the valuable assistance they have given to the Court in the accomplishment of its task, as well as for the courtesy and co-operation they have displayed throughout the proceedings. In accordance with the usual practice, I would ask the Agents to remain at the disposal of the Court for further information which it might need and, subject to this, I now declare closed the oral hearings on the request for the indication of provisional measures in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America).* The Court will now withdraw to deliberate. The Agents of the Parties will be notified in due course of the date when the Court will deliver its Order.

There being no other matters before it today, the Court will now rise.

The Court rose at 5.40 p.m.

FIFTH PUBLIC SITTING (10 V 84, 12 noon)

Present: [See sitting of 25 IV 84.]

READING OF THE ORDER

The PRESIDENT: Please be seated. The sitting is open.

The Court meets today to deliver its decision on the request for the indication of provisional measures made by the Republic of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America).*

The proceedings were begun on 9 April 1984 by the filing of an Application by the Republic of Nicaragua instituting proceedings against the United States of America. On the same day, the Republic of Nicaragua presented to the Court a request under Article 41 of the Statute of the Court for the indication of provisional measures, justified, in its submission, by the facts set out in the Application.

Following the usual practice, I shall not read the opening paragraphs of the Order, which set out the procedural history of the case and the submissions of the Parties. I will accordingly start the reading of the Order at paragraph 10.

[The President reads from paragraphs 10 to the end.]

I now call upon the Registrar to read the operative clause of the Order in French, the other official language of the Court.

[Le Greffier lit le dispositif en français.]

Judge Mosler and Sir Robert Jennings append a joint separate opinion to the Order of the Court; Judge Schwebel appends a dissenting opinion to the Order of the Court.

In accordance with practice, the Order has been read today from a duplicated copy of the text, a limited stock of which will be available to the public and the press. The usual printed text of the Order will be available in a few weeks' time.

Since the Court has no other business before it today, I declare the present sitting closed.

(Signed) T. O. ELIAS,
President.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

EXHIBITS SUBMITTED BY NICARAGUA AND THE UNITED STATES OF AMERICA IN CONNECTION WITH THE ORAL PROCEDURE ON THE REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

DOCUMENTS DÉPOSÉS PAR LE NICARAGUA ET LES ÉTATS-UNIS D'AMÉRIQUE AUX FINS DE LA PROCÉDURE ORALE RELATIVE À LA DEMANDE EN INDICATION DE MESURES CONSERVATOIRES

A. EXHIBITS SUBMITTED BY NICARAGUA

Exhibit I

AFFIDAVIT OF LUIS CARRIÓN

I, Commander of the Revolution Luis Carrión, Certify and declare the following:

1. I am Vice-Minister of the Interior of the Republic of Nicaragua.

My official duties include responsibility for all matters affecting the internal security of Nicaragua.

2. My official responsibilities include monitoring and maintaining records of attacks against Nicaragua by military and paramilitary forces based outside of Nicaragua. In the exercise of my official duties, I receive regular reports on these attacks from local and regional officials and employees of the Ministry of the Interior throughout the country. Pursuant to my standing instructions, these local and regional officials and employees regularly report the date, time, location and nature of each attack against Nicaragua, the size of the attacking force, the military equipment used, the number of people killed, wounded, kidnapped or displaced from their homes, and the physical damage to property caused by the attack. This information is analysed under my supervision, and communicated to civilian and military authorities of my Government. It is used by the Government in defence and economic planning.

3. The attacks against my country have been escalating steadily since the beginning of 1984, and reached their highest and most destructive level during the month of April. More than 8,000 armed mercenaries have been invading Nicaragua, from across both its northern and southern frontiers, for the past several weeks.

Fighting is extremely heavy, and casualties are very high. Since April 1, 84 Nicaraguans have been killed, 122 wounded, 199 kidnapped.

The following chart shows the number of Nicaraguans killed, wounded and kidnapped during the first three and one-half months of 1984:

Months	*Killed*	*Wounded*	*Kidnapped*
January	41	103	4
February	43	73	47
March 173	197	164	
April	84	122	199
Total	341	495	214

4. The most intense fighting has taken place during the past ten days, and is continuing as of this date. During this most recent period alone, more than 34 Nicaraguans have been killed. The most significant attacks during this period include the following:

(a) On April the 1st a mercenary force estimated to number around 350 men attacked the villages of Waslala, Mancera and El Guabo destroying the bridges of Yaoska, El Jicaral and Kusuli. The mercenary forces also burned

several homes, a school, two trucks and damaged communication cables. In these attacks 19 Nicaraguans were killed and 13 injured.

(b) On the 4th of April while one mercenary force was attacking the mining towns of Bonanza and Siuna in North Zelaya, another armed group, using explosives destroyed the electrical powerhouse in El Salto which supplied energy to the entire population of that area, especially to the mining area.

(c) From the 6th of April onwards, mercenary groups originating from Costa Rican territory initiated a number of attacks against the San Juan del Norte border post. On April 13th, about 500 mercenaries launched attacks against the port there, engaging in fierce combat until the 17th of April when they were forced to intern themselves in Costa Rica. During the onslaught the mercenary forces received extensive support from airplanes, helicopters as well as ships, that all took off from bases in Costa Rican territory. Seventeen Nicaraguans were killed, and, the 40 that were injured find themselves prisoners in Costa Rican territory.

(d) On April 17th, an estimated force of 300 mercenaries attacked the Sumubila settlement in North Zelaya burning and totally destroying a cacao seed-planting project, a health centre and a warehouse belonging to the Institute of Agrarian Reform used to store basic grains. Four Nicaraguans were killed, among them 3 women; 15 were injured and 35 kidnapped. The whereabouts of the kidnapped is still unknown.

5. Based on the information collected, and the activities now taking place, my Government estimates that, unless the present invasion is halted, heavy fighting against the attackers, in an effort to repel them, will continue for several months.

My Government estimates that, if this is successfully accomplished, it will be at a cost of hundreds more Nicaraguans killed, many more wounded, and physical damage to property and economic infrastructure totalling tens of millions of dollars.

6. Attached to this affidavit as Exhibit A are three annexed references accompanying the present document. Annex A, as the title itself indicates, contains a chronology of the principal attacks directed by the mercenary forces, from the 1st to the 17th of April of this year. During this period Nicaragua suffered a total of 82 armed actions against it, principally directed against socio-economic targets as well as services: Annex B contains 2 charts, one which indicates the number of Nicaraguans killed, injured and kidnapped during 1984 and, a graph illustrating actions directed by the enemy during the same period.

The last annex, C, contains photocopies of a memorandum addressed to the US Embassy in Honduras on January 24, 1984 by the Commanders of the Task Forces of the FDN and MISURA requesting the assistance of an "Operational Advisor". This copy whose original document lies already in the hands of the Government of Nicaragua, provides new evidence that the mercenary forces which attack Nicaragua are at the service of the US Government.

April 19, 1984.

(Signed) Luis CARRIÓN C.,
Comandante de la Revolucion,
Vice-Ministro I del Interior.

[Certification in Spanish not reproduced]

Annex A

Chronology of the Principal Attacks Directed by the Mercenary Forces

During the period extending from the 1st to the 17th of April, the mercenary groups active on the northern and southern borders as well as inside Nicaraguan territory directed their actions on the following targets: attacks against villages and border posts, sabotage efforts against socio-economic targets as well as services, and, carrying out massive kidnappings of peasants and indigenous sectors of the country.

In this period, there have been a total of 82 armed actions accounted for. The following chronology highlights the costs in human and economic terms:

Date	*Description*
4-1-84	Approximately 16 kilometres to the southeast of Colonia Serrano, counter-revolutionary groups simultaneously attacked the settlement there, resulting in the kidnapping of one woman, the assassination of 2 and injuring of 11 persons. In their retreat they mined the road causing one mine to explode on a truck. On April the 1st a mercenary force estimated to number around 350 men attacked the villages of Waslala, Mancera and El Guabo destroying the bridges of Yaoska, El Jicaral and Kusulí. The mercenary forces also burned several homes, a school, two trucks and damaged communication cables. In these attacks 19 Nicaraguans were killed and 13 injured. A construction truck which was heading to La Tronquera from Puerto Cabeza traversed a counter-revolutionary mine-field approximately 3 kms south of the Likus bridge causing 5 deaths and 8 wounded.
4-4-84	On the 4th of April while one mercenary force was attacking the mining towns of Bonanza and Siuna in North Zelaya, another armed group, using explosives destroyed the electrical powerhouse in El Salto which supplied energy to the entire population of that area, especially to the mining area.
4-5-84	A mercenary group attacked Las Brisas, situated 17 kms to the southwest of El Cuá Valley destroying a productive farm unit and burning a pick-up truck. This action resulted in the deaths of 4 persons and the wounding of 8.
4-6-84	In El Guadalupe Valley, 30 kms to the southwest of San Carlos, a counter-revolutionary group burned several homes and the health center in that area.
4-7-84	A commando group destroyed 2 electrical towers situated on the Santa Rosa farm, 5 kms east of Chinandega.
4-8-84	Around 150 mercenaries burned down "La Colonia", a state farm lying 15 kms northwest of San Rafael de Yalí; 6 peasants were assassinated.
4-10-84	A counter-revolutionary group assaulted ENABAS, a state-run supply post for the basic foodstuffs in Kuriniwas 22 kms northeast of Nueva Guinea, killing 4 persons and kidnapping one woman. They also robbed 500,000 cordobas equal to 50,000 US dollars.
4-13-84	Mercenaries used explosives to sabotage electrical wiring poles in the settlement of "La Fonseca", 18 kms to the southeast of Nueva Guinea. A mercenary commando group used C-4 explosives to blow up telephone poles in Chagüite Grande, 6 kms northeast of Ocotal.

4-14-84 A counter-revolutionary group ambushed a truck in Yali, Jinotega, killing 4 Nicaraguans and injuring 2.

4-16-84 Around 30 counter-revolutionaries ambushed a truck belonging to the Ministry of Construction 4 kms south of Mulukukú, situated 35 kms northeast of Rio Blanco. The result: 2 killed and 1 wounded.
About 70 mercenaries attacked the settlement area of Los Chiles, 11 kms northeast of Azucena killing 3 persons, wounding 2, among them, a citizen of Dutch origin.

4-17-84 An estimated force of 300 mercenaries attacked the Sumubila settlement in North Zelaya burning and totally destroying a cacao seed-planting project, a health center and a warehouse belonging to the Institute of Agrarian Reform used for storing grain. Four Nicaraguans were assassinated, including 3 women, 15 were injured and 35 were kidnapped. The whereabouts of this last group is as yet unknown.

Annex B

Chart 1

NICARAGUAN CITIZENS KILLED, WOUNDED AND KIDNAPPED BY THE MERCENARY FORCES DURING THE MONTHS OF JANUARY, FEBRUARY, MARCH, ON UP TO APRIL 19TH, 1984

	Concept		
Months	*Dead*	*Wounded*	*Kidnapped*
January	41	103	4
February	43	73	47
March	173	197	164
April	84	122	199
Total	341	495	214

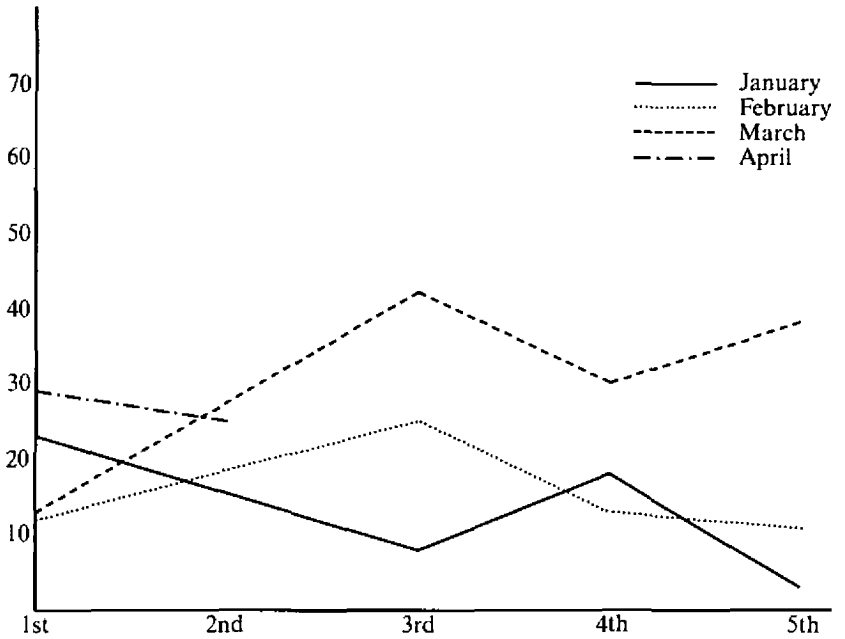
Annex B

Chart 2

NICARAGUAN CITIZENS KILLED, WOUNDED AND KIDNAPPED BY THE MERCENARY FORCES FROM APRIL 1ST-19TH, 1984

	Concept		
Month	*Dead*	*Wounded*	*Kidnapped*
April	84	122	199

GRAPH OF ENEMY ACTIONS UNDERTAKEN DURING THE MONTHS OF JANUARY, FEBRUARY, MARCH, AND APRIL 1984.



Annex C

(Translation)

[Spanish text not reproduced]

MEMORANDUM

January 23, 1984.

To: Embassy of the United States of America, Tegucigalpa, Honduras, C.A.

From: Task Force Commanders of the FDN and MISURAS.

Channel: Coronel Raymond.

Subject: Request for an Operational Advisor.

1. By means of this letter we request that considerations be made with regards to the possibility of operationally incorporating Mr. Gustavo Villoldo in our project, who has been a very important factor in the recently-occurred crisis, and, whom we know and admire because of his successful background in the anti-communist struggle.

His identification with us, and his capabilities, will provide us with what could be the decisive element in this venture given that his good relationship with the leaders of the Anti-Sandinist Movement will facilitate an eventual unity that will help achieve the common objective.

2. As an additional point we want to deeply thank the Government of the United States of America for its great interest taken in the solution of the recent problem, which we hope will correctly culminate in the near future. We are willing to cooperate with you always — until the last consequences — hoping that once the solution to the problem which is only partially affecting us is finalized we can reach a greater level of efficiency in our actions.

Exhibit II

AFFIDAVIT OF MIGUEL D'ESCOTO BROCKMANN

APRIL 21ST 1984.

I, Miguel d'Escoto Brockmann, certify and declare the following:

1. I am Foreign Minister of the Republic of Nicaragua. My official duties include overall responsibility for conducting and monitoring relations between Nicaragua and other countries.

2. I am aware of the allegations made by the Government of the United States that my Government is sending arms, ammunition, communications equipment and medical supplies to rebels conducting a civil war against the Government of El Salvador. Such allegations are false, and constitute nothing more than a pretext for the United States to continue its unlawful military and paramilitary activities against Nicaragua intended to overthrow my Government. In truth, my Government is not engaged, and has not been engaged, in the provision of arms or other supplies to either of the factions engaged in the civil war in El Salvador.

3. Since my Government came to power on July 19, 1979, its policy and practice has been to prevent our national territory from being used as a conduit for arms or other military supplies intended for other governments or rebel groups. In fact, on numerous occasions the security forces of my Government have intercepted clandestine arms shipments, apparently destined for El Salvador, and confiscated them. In one specially notable incident, our security forces intercepted a private passenger bus — from the Costa Rican bus line "TICABUS" — with a false bottom loaded with arms en route to El Salvador. The arms was confiscated and the delivery was prevented.

4. Very difficult objective conditions notwithstanding, my Government has and will continue to make the greatest efforts to prevent the use of our national territory for arms smuggling. Nicaragua's frontier with Honduras, to the north, is 530 kilometres long. Most of it is characterized by rugged mountains, or remote and dense jungles. Most of this border area is inaccessible by motorized land transport and simply impossible to patrol. To the south, Nicaragua's border with Costa Rica extends for 220 kilometres. This area is also characterized by dense and remote jungles and is also virtually inaccessible by land transport. As a small underdeveloped country with extremely limited resources, and with no modern or sophisticated detection equipment, it is not easy for us to seal off our borders to all unwanted and illegal traffic.

5. Another complicating factor has been the presence of armed mercenary bands along both our northern and southern borders. These bands, numbering more than 10,000 men in the north and more than 2,000 in the south — recruited, armed, financed and directed by the United States — have made it almost impossible for my Government to adequately patrol its borders to prevent illegal arms trafficking. My Government has been compelled to devote all of its military and security resources to defending our national territory from attack by these mercenaries. Since 1981, more than 1,400 of our people have been killed in this fighting and more than 3,000 others have been wounded or kidnapped. We simply do not have the luxury of being able to divert our security forces to the

interception of arms traffic. Nicaragua thus has sought to complement its own efforts with regional co-operation.

6. For these reasons, my Government has actively sought verifiable international agreements for halting all arms traffic in the region. Commencing in May 1981, my Government proposed to the Government of Honduras that joint measures be taken to eliminate the flow of arms across our common border. In particular, my Government proposed joint border patrols, composed of military and security forces of both countries, to police the border. On May 13, the Head of State of Honduras accepted the proposal in principle and agreed with the Nicaraguan Head of State to follow up with a meeting of our two Ministers of Defence, but this meeting never took place because Honduras unilaterally withdrew from the negotiations. In April 1982, my Government again initiated a dialogue with Honduras in an effort to terminate the flow of arms and attacks by armed bands in the border area. Our proposal, consisting of seven specific points, was rejected by Honduras in April 23, 1982. In May 1982, another meeting of our respective Chiefs of Staff took place wherein Nicaragua sought agreement on a joint border patrol. Honduras refused. In August 1982, Nicaragua proposed another meeting of Chiefs of Staff, together with Foreign Ministers. Honduras rejected such a meeting and bilateral efforts to reach a solution to the arms problem came to a halt.

7. Thereafter, Nicaragua sought, and continues to seek, a multilateral agreement to eliminate arms traffic in the region. In September 1983, Nicaragua was the first of the five Central American States to accept and ratify the 21 Point Declaration of Objectives promulgated by the Contadora Group (Colombia, Mexico, Panama and Venezuela). Included in these points were provisions to eliminate arms traffic to rebel or mercenary groups seeking to overthrow established Governments in the region. The Contadora Group asked each of the five Central American countries (Nicaragua, Costa Rica, Honduras, Guatemala and El Salvador) to prepare and present draft treaty proposals addressing all of the 21 Points set forth in the Declaration of Objectives, including those relating to elimination of arms traffic.

8. In October 1983, Nicaragua prepared and presented to the Contadora Group, to the other Central American States, and to the Government of the United States, a package of four proposed treaty agreements, collectively entitled "JURIDICAL BASES TO GUARANTEE PEACE AND INTERNATIONAL SECURITY FOR THE CENTRAL AMERICAN STATES". These proposed treaties would require each Central American State to adopt all possible measures to prevent its territory from being used for the traffic in arms or other supplies to armed groups seeking to overthrow any established government of the region, and would require each State to prevent any such armed groups from operating or seeking sanctuary in its national territory. Under Nicaragua's proposals, the Contadora Group would act as guarantor of these provisions, and would have the power to conduct on-site inspections in the territory of any State accused of tolerating or supporting arms traffic or the presence of armed rebel groups. In the case of a violation the Contadora Group would be empowered to direct the offending State to terminate its improper conduct and to pay compensation to any other State or States injured as a result of such conduct. Nicaragua announced its readiness to sign and ratify these proposed treaties immediately, or to entertain counterproposals from the other Central American States or from the United States. The United States has refused to respond in any way. Nor have the other Central American States accepted Nicaragua's proposal or responded with specific counterproposals of their own.

9. I submit that the foregoing demonstrates Nicaragua's commitment to

eliminating unlawful arms trafficking in Central America — a plague, it is important to bear in mind, of which Nicaragua itself is the primary victim — and refutes the false accusations that the Government of the United States has made against Nicaragua. It is interesting that only the Government of the United States makes these allegations, and not the Government of El Salvador, which is the supposed victim of the alleged arms trafficking. Full diplomatic relations exist between Nicaragua and El Salvador. Yet, El Salvador has never — not once — lodged a protest with my Government accusing it of complicity in or responsibility for any traffic in arms or other military supplies to rebel groups in that country.

(Signed) Miguel D'ESCOTO BROCKMANN,
Foreign Minister,
Republic of Nicaragua.

[Certification in Spanish not reproduced]

Exhibit III

UNITED STATES STATUTES RELATING TO US-SPONSORED "COVERT ACTIVITIES" AGAINST NICARAGUA

1. INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1984, PUBLIC LAW 89-215, DECEMBER 9, 1983

Public Law 98-215 [H.R. 2968]; December 9, 1983

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1984

(An Act to authorize appropriations for fiscal year 1984 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1984".

TITLE I — INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

Sec. 101. Funds are hereby authorized to be appropriated for fiscal year 1984 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.
(10) The Drug Enforcement Administration.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

Sec. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1984, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the committee of conference to accompany H.R. 2968 of the Ninety-eighth Congress. That Schedule of Authorizations shall be made available to the

Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule within the executive branch.

CONGRESSIONAL NOTIFICATION OF EXPENDITURES IN EXCESS OF PROGRAM AUTHORIZATIONS

Sec. 103. During fiscal year 1984, funds may not be made available for any intelligence or intelligence-related activity unless such funds have been specifically authorized for such activity or, in the case of funds appropriated for a different activity, unless the Director of Central Intelligence or the Secretary of Defense has notified the appropriate committees of Congress of the intent to make such funds available for such activity, except that, in no case may reprograming or transfer authority be used by the Director of Central Intelligence or the Secretary of Defense unless for higher priority intelligence or intelligence-related activities, based on unforeseen requirements, than those for which funds were originally authorized, and in no case where the intelligence or intelligence-related activity for which funds were requested has been denied by Congress.

AUTHORIZATION OF APPROPRIATIONS FOR DESIGN AND CONSTRUCTION OF AN ADDITIONAL BUILDING AT THE CENTRAL INTELLIGENCE AGENCY HEADQUARTERS COMPOUND

Sec. 104. Of the amounts authorized to be appropriated under section 101 (1), there is authorized to be appropriated the sum of $75,500,000 for the design and construction of a new building at the Central Intelligence Agency headquarters compound.

AUTHORITY FOR TRANSFER OF AUTHORIZED FUNDS OF THE CENTRAL INTELLIGENCE AGENCY TO THE STATE OF VIRGINIA

Sec. 105. Of the amounts authorized to be appropriated under section 101 (1), the Central Intelligence Agency is authorized to transfer an amount not to exceed $3,000,000 to the State of Virginia for the design and construction of highway improvements associated with construction at the Central Intelligence Agency headquarters compound.

AUTHORIZATION OF APPROPRIATIONS FOR COUNTERTERRORISM ACTIVITIES OF THE FEDERAL BUREAU OF INVESTIGATION

Sect. 106. In addition to the amounts authorized to be appropriated under section 101 (9), there is authorized to be appropriated for fiscal year 1984 the sum of $13,800,000 for the conduct of the activities of the Federal Bureau of Investigation to counter terrorism in the United States.

PERSONNEL CEILING ADJUSTMENTS

Sec. 107. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for the fiscal year 1983 under sections 102 and 202 of the Intelligence Authorization Act for fiscal year 1983 (Public Law 97-269) and in excess of the numbers authorized for the fiscal year 1984 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except

that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

LIMITATION ON COVERT ASSISTANCE FOR MILITARY OPERATIONS IN NICARAGUA

Sec. 108. During fiscal year 1984, not more than $24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

CONGRESSIONAL FINDINGS

Sec. 109. *(a)* The Congress finds that

(1) the Government of National Reconstruction of Nicaragua has failed to keep solemn promises, made to the Organization of American States in July 1979, to establish full respect for human rights and political liberties, hold early elections, preserve a private sector, permit political pluralism, and pursue a foreign policy of nonaggression and nonintervention;

(2) by providing military support (including arms, training, and logistical, command and control, and communications facilities) to groups seeking to overthrow the Government of El Salvador and other Central American governments, the Government of National Reconstruction of Nicaragua has violated article 18 of the Charter of the Organization of American States which declares that no state has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state;

(3) the Government of Nicaragua should be held accountable before the Organization of American States for activities violative of promises made to the Organization and for violations of the Charter of that Organization; and

(4) working through the Organization of American States is the proper and most effective means of dealing with threats to the peace of Central America, of providing for common action in the event of aggression, and of providing the mechanisms for peaceful resolution of disputes among the countries of Central America.

(b) The President should seek a prompt reconvening of the Seventeenth Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States for the purpose of reevaluating the compliance by the Government of National Reconstruction of Nicaragua —

(1) with the commitments made by the leaders of that Government in July 1979 to the Organization of American States; and

(2) with the Charter of the Organization of American States.

(c) The President should vigorously seek actions by the Organization of American States that would provide for a full range of effective measures by the member states to bring about compliance by the Government of National

Reconstruction of Nicaragua with those obligations, including verifiable agreements to halt the transfer of military equipment and to cease furnishing of military support facilities to groups seeking the violent overthrow of governments of countries in Central America.

(d) The President should use all diplomatic means at his disposal to encourage the Organization of American States to seek resolution of the conflicts in Central America based on the provisions of the Final Act of the San José Conference of October 1982, especially principles *(d)*, *(e)*, and *(g)*, relating to nonintervention in the internal affairs of other countries, denying support for terrorist and subversive elements in other states, and international supervision of fully verifiable arrangements.

(e) The United States should support measures at the Organization of American States, as well as efforts of the Cantadora Group, which seek to end support for terrorist, subversive, or other activities aimed at the violent overthrow of the governments of countries in Central America.

(f) Not later than March 15, 1984, the President shall report to the Congress on the results of his efforts pursuant to this Act to achieve peace in Central America. Such report may include such recommendations as the President may consider appropriate for further United States actions to achieve this objective.

TITLE II — INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATION

Sec. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1984 the sum of $18,500,000.

AUTHORIZATION OF PERSONNEL END-STRENGTH

Sec. 202. *(a)* The Intelligence Community Staff is authorized two hundred and fifteen full-time personnel as of September 30, 1984. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1984, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1984, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

Sec. 203. During fiscal year 1984, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 *et seq.*) and the Central Intelligence Agency Act of 1949

(50 U.S.C. 403a-403n) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III — CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

AUTHORIZATION OF APPROPRIATIONS

Sec. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1984 the sum of $86,300,000.

TITLE IV — ADMINISTRATIVE PROVISIONS RELATED TO THE CENTRAL INTELLIGENCE AGENCY AND THE INTELLIGENCE COMMUNITY STAFF

ELIGIBILITY FOR APPOINTMENT TO CERTAIN CENTRAL INTELLIGENCE AGENCY POSITIONS

Sec. 401. Section 5 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f) is amended by striking the last "and" in subsection *(d)*, by striking the period at the end of subsection *(e)* and substituting in lieu thereof "; and", and by adding at the end thereof the following new subsection:

"*(f)* Determine and fix the minimum and maximum limits of age within which an original appointment may be made to an operational position within the Agency, notwithstanding the provision of any other law, in accordance with such criteria as the Director, in his discretion, may prescribe."

ELIGIBILITY FOR INCENTIVE AWARDS

Sec. 402. *(a)* The Director of Central Intelligence may exercise the authority granted in section 4503 of title 5, United States Code, with respect to Federal employees and members of the Armed Forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff, in the same manner as such authority may be exercised with respect to the personnel of the Central Intelligence Agency and the Intelligence Community Staff.

(b) The authority granted by subsection *(a)* of this section may be exercised with respect to Federal employees or members of the Armed Forces detailed or assigned to the Central Intelligence Agency or to the Intelligence Community Staff on or after a date five years before the date of enactment of this section.

APPOINTMENT OF DIRECTOR OF THE INTELLIGENCE COMMUNITY STAFF

Sec. 403. The National Security Act of 1947 (50 U.S.C. 401 *et seq.*) is amended by adding after section 102 the following new section:

"APPOINTMENT OF DIRECTOR OF INTELLIGENCE COMMUNITY STAFF

"Sec. 102*a*. (1) If a commissioned officer of the Armed Forces is appointed as Director of the Intelligence Community Staff, such commissioned officer, while serving in such position —

"(A) shall not be subject to supervision, control, restriction, or prohibition by the Department of Defense or any component thereof; and

(B) shall not exercise, by reason of his status as a commissioned officer, any supervision, control, powers, or functions (other than as authorized as

Director of the Intelligence Community Staff) with respect to any of the military or civilian personnel thereof.

"(2) Except as provided in subsection (1), the appointment of a commissioned officer of the Armed Forces to the position of Director of the Intelligence Community Staff, his acceptance of such appointment and his service in such position shall in no way affect his status, position, rank, or grade in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, position, rank, or grade. Any such commissioned officer, while serving in the position of Director of the Intelligence Community Staff, shall continue to hold a rank and grade not lower than that in which he was serving at the time of his appointment to such position and to receive the military pay and allowances (including retired or retainer pay) payable to a commissioned officer of his grade and length of service for which the appropriate military department shall be reimbused from any funds available to defray the expenses of the Intelligence Community Staff. In addition to any pay or allowance payable under the preceding sentence, such commissioned officer shall be paid by the Intelligence Community Staff, from funds available to defray the expenses of such staff, an annual compensation at a rate equal to the excess of the rate of compensation payable for such position over the annual rate of his military pay (including retired and retainer pay) and allowances.

"(3) Any commissioned officer to which subsection (1) applies, during the period of his service as Director of the Intelligence Community Staff, shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the Armed Force of which he is a member, except that only one commissioned officer of the Armed Forces occupying the position of Director of Central Intelligence or Deputy Director of Central Intelligence as provided for in section 102, or the position of Director of the Intelligence Community Staff, under this section, shall be exempt from such numbers and percentage at any one time.".

TITLE V — ADMINISTRATIVE PROVISIONS RELATED TO THE DEFENSE INTELLIGENCE AGENCY

BENEFITS FOR CERTAIN EMPLOYEES OF THE DEFENSE INTELLIGENCE AGENCY

Sec. 501. *(a)* Title 10, United States Code, is amended by inserting after section 191 the following new section:

"§192. Benefits for certain employees of the Defense Intelligence Agency

"*(a)* The Director of the Defense Intelligence Agency, on behalf of the Secretary of Defense, may provide to military and civilian personnel of the Department of Defense who are United States nationals, who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Officers outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection, allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (6), (7), (8), and (13) of section 901 and under sections 903, 705, and 2308 of the Foreign Service Act of 1980 (22 U.S.C. 4025; 22 U.S.C. 4081 (2), (3), (4), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4)).

"*(b)* The authority of the Director of the Defense Intelligence Agency, on behalf of the Secretary of Defense, to make payments under subsection *(a)* is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

"*(c)* Members of the Armed Forces may not receive benefits under both subsection *(a)* and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.

"*(d)* Regulations issued pursuant to subsection *(a)* shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.".

(b) The table of sections at the beginning of chapter 8 of title 10, United States Code, is amended by inserting after Sec. 191 the following new item:

"192. Benefits for certain employees of the Defense Intelligence Agency.".

TITLE VI — GENERAL PROVISIONS

RESTRICTION OF CONDUCT OF INTELLIGENCE ACTIVITIES

Sec. 601. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE BENEFITS AUTHORIZED BY LAW

Sec. 602. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

Approved December 9, 1983.

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2. DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1984, PUBLIC LAW 98-212, *DECEMBER 8, 1983*

Public Law 98-212 [H.R. 4185]; December 8, 1983

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1984

An Act making appropriations for the Department of Defense for the fiscal year ending September 30, 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year

ending September 30, 1984, for military functions administered by the Department of Defense, and for other purposes, namely:

TITLE I

MILITARY PERSONNEL

MILITARY PERSONNEL, ARMY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Army on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; $15,048,533,000.

MILITARY PERSONNEL, NAVY

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Navy on active duty (except members of the Reserve provided for elsewhere), midshipmen, and aviation cadets; $11,171,278,000: *Provided*, That notwithstanding any other provision of law, funds made available by this Act shall be available for payment of the Aviation Officer Continuation Bonus pursuant to agreements accepted from officers of all aviation specialties where shortages exist.

MILITARY PERSONNEL, MARINE CORPS

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Marine Corps on active duty (except members of the Reserve provided for elsewhere); $3,433,859,000: *Provided*, That notwithstanding any other provision of law, funds made available by this Act shall be available for payment of the Aviation Officer Continuation Bonus pursuant to agreements accepted from officers of all aviation specialties where shortages exist.

MILITARY PERSONNEL, AIR FORCE

For pay, allowances, individual clothing, subsistence, interest on deposits, gratuities, permanent change of station travel (including all expenses thereof for organizational movements), and expenses of temporary duty travel between permanent duty stations, for members of the Air Force on active duty (except members of reserve components provided for elsewhere), cadets, and aviation cadets; $12,577,203,000.

RESERVE PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army Reserve on active duty under sections 265,

3019, and 3033 of title 10, United States Code, or while serving on active duty under section 672 *(d)* of title 10, United States Code, in connection with performing duty specified in section 678 *(a)* of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; $1,361,150,000.

RESERVE PERSONNEL, NAVY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Naval Reserve on active duty under section 265 of title 10, United States Code, or personnel while serving on active duty under section 672 *(d)* of title 10, United States Code, in connection with performing duty specified in section 678 *(a)* of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Reserve Officers' Training Corps, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; $739,800,000.

RESERVE PERSONNEL, MARINE CORPS

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Marine Corps Reserve on active duty under section 265 of title 10, United States Code, or while serving on active duty under section 672 *(d)* of title 10, United States Code, in connection with performing duty specified in section 678 *(a)* of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty, and for members of the Marine Corps platoon leaders class, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; $176,200,000.

RESERVE PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air Force Reserve on active duty under sections 265, 8019, and 8033 of title 10, United States Code, or while serving on active duty under section 672 *(d)* of title 10, United States Code, in connection with performing duty specified in section 678 *(a)* of title 10, United States Code, or while undergoing reserve training, or while performing drills or equivalent duty or other duty, and for members of the Air Reserve Officers' Training Corps, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; $380,000,000.

NATIONAL GUARD PERSONNEL, ARMY

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Army National Guard while on duty under sections 265, 3033, or 3496 of title 10 or section 708 of title 32, United States Code, or while serving on active duty under section 672 *(d)* of title 10 or section 502 *(f)* of title 32, United States Code, in connection with performing duty specified in section 678 *(a)* of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses autho-

rized by section 2131 of title 10, United States Code, as authorized by law; $1,882,980,000.

NATIONAL GUARD PERSONNEL, AIR FORCE

For pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for personnel of the Air National Guard on duty under sections 265, 8033, or 8496 of title 10 or section 708 of title 32, United States Code, or while serving on active duty under section 672 *(d)* of title 10 or section 502 *(f)* of title 32, United States Code, in connection with performing duty specified in section 678 *(a)* of title 10, United States Code, or while undergoing training, or while performing drills or equivalent duty or other duty, and expenses authorized by section 2131 of title 10, United States Code, as authorized by law; $589,100,000.

TITLE II

RETIRED MILITARY PERSONNEL

RETIRED PAY, DEFENSE

For retired pay and retirement pay, as authorized by law, of military personnel on the retired lists of the Army, Navy, Marine Corps, and Air Force, including the reserve components thereof, retainer pay for personnel of the Inactive Fleet Reserve, and payments under section 4 of Public Law 92-425 and chapter 73 of title 10, United States Code; *$16,592,600,000*

TITLE III

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law, not to exceed $8,490,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army, and payments may be made on his certificate of necessity for confidential military purposes, $17,054,846,000, of which not less than $1,247,000,000 shall be available only for the maintenance of real property facilities.

ARMY STOCK FUND

For the Army stock fund; $388,600,000.

OPERATION AND MAINTENANCE, NAVY

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Navy and the Marine Corps, as authorized by law, not to exceed $2,700,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Navy, and payments may be made on his certificate of necessity for confidential military purposes $21,943,818,000, of which not less than $605,000,000 shall be available

only for the maintenace of real property facilities: *Provided*, That of the total amount of this appropriation made available for the alteration, overhaul, and repair of naval vessels, not more than $3,100,000,000 shall be available for the performance of such work in Navy shipyards: *Provided further*, That funds herein provided shall be available for payments in support of the LEASAT program in accordance with the terms of the Aide Memoire, dated January 5, 1981.

NAVY STOCK FUND

For the Navy stock fund; $632,869,000.

OPERATION AND MAINTENANCE, MARINE CORPS

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Marine Corps, as authorized by law, $1,524,600,000, of which not less than $231,000,000 shall be available only for the maintenance of real property facilities.

MARINE CORPS STOCK FUND

For the Marine Corps stock fund; $20,780,000.

OPERATION AND MAINTENANCE, AIR FORCE

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Air Force, as authorized by law, including the lease and associated maintenance of replacement aircraft for the CT-39 aircraft to the same extent and manner as authorized for service contracts by section 2306 *(g)*, title 10, United States Code, and not to exceed $4,770,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Air Force, and payments may be made on his certificate of necessity for confidential military purposes, $17,573,895,000, of which not less than $1,217,200,000 shall be available only for the maintenance of real property facilities.

AIR FORCE STOCK FUND

For the Air Force stock fund; $1,288,725,000.

OPERATION AND MAINTENANCE, DEFENSE AGENCIES

For expenses, not otherwise provided for, necessary for the operation and maintenance of activities and agencies of the Department of Defense (other than the military departments), as authorized by law, $6,446,652,000, of which not to exceed $8,571,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of Defense, and payments may be made on his certificate of necessity for confidential military purposes. Of the total amount of this appropriation, not less than $78,000,000 shall be available only for the maintenance of real property facilities.

DEFENSE STOCK FUND

For the Defense stock fund; $43,600,000.

DEFENSE INDUSTRIAL FUND

For the Defense industrial fund; $150,000,000.

OPERATION AND MAINTENANCE, ARMY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Army Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $683,850,000, of which not less than $39,000,000 shall be available only for maintenance of real property facilities.

OPERATION AND MAINTENANCE, NAVY RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Navy Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting, procurement of services, supplies, and equipment; and communications, $634,500,000, of which not less than $29,500,000 shall be available only for the maintenance of real property facilities.

OPERATION AND MAINTENANCE, MARINE CORPS RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration, of the Marine Corps Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $52,129,000, of which not less than $2,200,000 shall be available only for the maintenance of real property facilities.

OPERATION AND MAINTENANCE, AIR FORCE RESERVE

For expenses, not otherwise provided for, necessary for the operation and maintenance, including training, organization, and administration of the Air Force Reserve; repair of facilities and equipment; hire of passenger motor vehicles; travel and transportation; care of the dead; recruiting; procurement of services, supplies, and equipment; and communications, $781,600,000, of which not less than $19,000,000 shall be available only for the maintenance of real property facilities.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For expenses of training, organizing, and administering the Army National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, and repairs to structures and facilities; hire of passenger motor vehicles; personnel services in the National Guard Bureau; travel expenses (other than mileage), as authorized by law for Army personnel on active duty, for Army National Guard division, regimental, and battalion commanders while inspecting units in compliance with National Guard Bureau; supplying and equipping the Army National Guard as authorized by

law; and expenses of repair, modification, maintenance, and issue of supplies and equipment (including aircraft), $1,170,190,000, of which not less than $40,000,000 shall be available only for the maintenance of real property facilities.

OPERATION AND MAINTENANCE, AIR NATIONAL GUARD

For operation and maintenance of the Air National Guard, including medical and hospital treatment and related expenses in non-Federal hospitals; maintenance, operation, repair, and other necessary expenses of facilities for the training and administration of the Air National Guard, including repair of facilities, maintenance, operation, and modification of aircraft; transportation of things; hire of passenger motor vehicles; supplies, materials, and equipment, as authorized by law for the Air National Guard; and expenses incident to the maintenance and use of supplies, materials, and equipment, including such as may be furnished from stocks under the control of agencies of the Department of Defense; travel expenses (other than mileage) on the same basis as authorized by law for Air National Guard personnel on active Federal duty, for Air National Guard commanders while inspecting units in compliance with National Guard regulations when specifically authorized by the Chief, National Guard Bureau, $1,789,300,000, of which not less than $38,800,000 shall be available only for the maintenance of real property facilities.

NATIONAL BOARD FOR THE PROMOTION OF RIFLE PRACTICE, ARMY

For the necessary expenses, in accordance with law, for construction, equipment, and maintenance of rifle ranges; the instruction of citizens in marksmanship; the promotion of rifle practice; and the travel of rifle teams, military personnel, and individuals attending regional, national, and international competitions; $899,000, of which not to exceed $7,500 shall be available for incidental expenses of the National Board; and from other funds provided in this Act, not to exceed $680,000 worth of ammunition may be issued under authority of title 10, United States Code, section 4311: *Provided*, That competitors at national matches under title 10, United States Code, section 4312, may be paid subsistence and travel allowances in excess of the amounts provided under title 10, United States Code, section 4313.

CLAIMS, DEFENSE

For payment, not otherwise provided for, of claims authorized by law to be paid by the Department of Defense (except for civil functions), including claims for damages arising under training contracts with carriers, and repayment of amounts determined by the Secretary concerned, or officers designated by him, to have been erroneously collected from military and civilian personnel of the Department of Defense, or from States, territories, or the District of Columbia, or members of the National Guard units thereof; $160,400,000.

COURT OF MILITARY APPEALS, DEFENSE

For salaries and expenses necessary for the United States Court of Military Appeals; $3,372,000, and not to exceed $1,500 can be used for official representation purposes.

SUMMER OLYMPICS

For logistical support and personnel services (other than pay and nontravel related allowances of members of the Armed Forces of the United States, except for members of the Reserve components thereof called or ordered to active duty to provide support for the XXIII Olympiad) provided by any component of the Department of Defense to the 1984 games of the XXIII Olympiad; $45,000,000: *Provided*, That the Department of Defense may also provide support to the Los Angeles Olympic Organizing Committee on a reimbursable basis, with such reimbursements to be credited to the current applicable appropriation accounts of the Department.

ENVIRONMENTAL RESTORATION, DEFENSE

For expenses, not otherwise provided for, for environmental restoration programs, including hazardous waste disposal operations and removal of unsafe or unsightly buildings and debris of the Department of Defense, and including programs and operations at sites formerly used by the Department of Defense, $150,000,000.

TITLE IV

PROCUREMENT

AIRCRAFT PROCUREMENT, ARMY

For construction, procurement, production, modification, and modernization of aircraft, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $3,214,048,000, to remain available for obligation until September 30, 1986.

MISSILE PROCUREMENT, ARMY

(Including Transfer of Funds)

For construction, procurement, production, modification, and modernization of missiles, equipment, including ordnance, ground handling equipment, spare parts, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the

foregoing purposes, as follows: For Other Missile Support, $9,200,000; for the Patriot program, $885,000,000; for the Stinger program, $105,200,000, and in addition, $32,600,000 to be derived by transfer from "Missile Procurement, Army, 1983/1985"; for the Laser Hellfire program, $218,800,000; for the TOW program, $189,200,000; for the Pershing II program, $407,700,000; for the MLRS program, $532,100,000; for modification of missiles, $123,300,000; for spares and repair parts, $271,000,000; for support equipment and facilities, $109,200,000; in all: $2,822,700,000, and in addition $32,600,000 to be derived by transfer, to remain available until September 30, 1986: *Provided*, That within the total amount appropriated, the subdivisions within this account shall be reduced by $28,000,000 for revised economic assumptions.

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY

(Including Transfer of Funds)

For construction, procurement, production, and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants, reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $4,594,103,000, and in addition, $65,200,000, to be derived by transfer from "Procurement of Weapons and Tracked Combat Vehicles, Army, 1982/1984" and $83,800,000, to be derived by transfer from "Procurement of Weapons and Tracked Combat Vehicles, Army 1983/1985", to remain available for obligation until September 30, 1986: *Provided*, That notwithstanding any other provision of law, within three months after enactment of this Act the Secretary of Defense shall complete and submit to the Committees on Appropriations and Armed Services of the House and Senate a study on the feasibility and cost effectiveness of establishing a second production source or multiyear procurement of the AGT 1500 engine for the M-1 tank, together with the Secretary's determination, based on the findings of such study, whether a second production source or multiyear procurement contract is in the national interest: *Provided further*, That current production of the AGT 1500 engine shall not be interrupted or reduced in the interim.

PROCUREMENT OF AMMUNITION, ARMY

For construction, procurement, production, and modification of ammunition, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including ammunition facilities authorized in military construction authorization Acts or authorized by sections 2673, title 10, United States Code, and the land necessary therefor, without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plants and Government and contractor-owned

equipment layaway; and other expenses necessary for the foregoing purposes; $1,980,100,000, of which $1,200,000 shall be available only for procurement of 9mm handgun ammunition, to remain available for obligation until September 30, 1986.

OTHER PROCUREMENT, ARMY

For construction, procurement, production, and modification of vehicles, including tactical, support (including not to exceed fifteen vehicles required for physical security of personnel notwithstanding price limitations applicable to passenger carrying vehicles but not to exceed $100,000 per vehicle), and non-tracked combat vehicles; the purchase of not to exceed two thousand one hundred and forty-one passenger motor vehicles for replacement only; communications and electronic equipment; other support equipment; spare parts, ordnance, and accessories therefor; specialized equipment and training devices; expansion of public and private plants, including the land necessary therefor, without regard to section 4774, title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes; $4,680,528,000, of which $24,400,000 shall be available for the M9 Armored Combat Earthmover under a multiyear contract, to remain available for obligation until September 30, 1986.

AIRCRAFT PROCUREMENT, NAVY

For construction, procurement, production, modification, and modernization of aircraft, equipment including ordnance, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway; $10,174,608,000, to remain available for obligation until September 30, 1986.

WEAPONS PROCUREMENT, NAVY

(Including Transfer of Funds)

For construction, procurement, production, modification, and modernization of missiles, torpedoes, other weapons, and related support equipment including spare parts, and accessories therefor; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, as follows: For missile programs, $2,962,600,000; for the MK-48 torpedo program, $124,600,000; for the MK-46 torpedo program, $212,900,000; for the MK-60 captor mine program, $73,900,000; for the MK-30 mobile target program,

$17,600,000; for the MK-38 mini mobile target program, $2,000,000; for the antisubmarine rocket (ASROC) program, $17,300,000; for modification of torpedoes, $111,800,000; for the torpedo support equipment program, $72,100,000; for the MK-15 close-in weapons system program, $120,400,000; for the MK-45 gun mount/MK-6 ammunition hoist, $16,100,000; for the MK-75 gun mount program, $11,100,000; for the MK-19 machine gun program, $900,000; for the 25mm gun mount, $700,000; for the 9mm handgun, $500,000; for small arms and weapons, $2,500,000; for the modifications of guns and gun mounts, $13,600,000; for the guns and gun mounts support equipment program, $9,300,000; in all: $3,725,332,000, and in addition, $77,800,000, to be derived by transfer from "Weapons Procurement, Navy, 1983/1985", to remain available until September 30, 1986: *Provided*, That within the total amount appropriated, the subdivisions within this account shall be reduced by $44,568,000, as follows: $8,568,000 for spares and repair parts and $36,000,000 for revised economic assumptions.

SHIPBUILDING AND CONVERSION, NAVY

(Including Transfer of Funds)

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical long leadtime components and designs for vessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended, as follows: for the Trident submarine program, $1,704,900,000; for the T-AK cargo ship conversion program, $900,000; for the SSN-688 nuclear attack submarine program, $2,018,000,000; for the reactivation of the U.S.S. Missouri, $57,700,000: *Provided*, That none of these funds shall be available for obligation until the Secretary of the Navy reports to the Committees on Appropriations on the decision whether to implement the phase II battleship modernization, and any decision to proceed with phase II shall be accompanied by a plan for implementation to include cost and schedule data; for the aircraft carrier service life extension program, $95,900,000; for the CG-47 AEGIS cruiser program, $3,285,000,000; for the DDG-51 guided missile destroyer program, $79,000,000; for the LSD-41 landing ship dock program, $405,500,000; for the FFG-7 guided missile frigate program, $116,400,000, and in addition, provided that the FFG-7 guided missile frigate shall be constructed with an upgraded MK-92 fire control system and an X-band phased array radar, the following amounts shall be derived by transfer: from the FFG-7 guided missile frigate program of "Shipbuilding and Conversion, Navy, 1980/1984", $26,500,000; from the FFG-7 guided missile frigate program of "Shipbuilding and Conversion, Navy 1981/1985", $19,100,000; from SSN-688 nuclear attack submarine, FFG-7 guided missile frigate, T-AGOS ocean surveillance ship, and escalation programs of "Shipbuilding and Conversion, Navy, 1982/1986", $66,000,000; and from the Trident submarine, SSN-688 nuclear attack submarine, FFG-7 guided missile frigate, CVN aircraft carrier, and escalation programs of "Shipbuilding and Conversion, Navy, 1983/1987", $72,000,000; in all, $183,600,000 to be derived by transfer; for the T-AO fleet oiler ship program, $335,500,000; for the MCM

mine countermeasures ship program, $301,000,000: *Provided further*, That funds appropriated or made available in this Act for the MCM mine countermeasures ship program may be obligated or expended only under a firm fixed price contract: *Provided further*, That none of the funds appropriated or made available in this Act for the MCM mine countermeasures ship program may be obligated or expended until such time as the Department of the Navy develops electromagnetic interference specifications for the MCM-1 class of ships, and the Secretary of the Navy certifies to the Committees on Appropriations that the electromagnetic interference specifications developed will result in a design that will be free of electromagnetic interference in the context of the approved electromagnetic interference and electromagnetic compatibility specifications; for the MSH coastal mine hunter program, $65,000,000; for the T-AGS surveying ship program, $17,000,000; for the T-AKR fast logistics ship program, $230,000,000; for the T-AH hospital ship program, $180,000,000, and in addition, $44,000,000 to be derived by transfer from the T-AH hospital ship program of "Shipbuilding and Conversion, Navy, 1983/1987"; for the T-AFS combat stores ship program, $11,000,000; for the LDH-1 amphibious assault ship program, $1,365,700,000; for the strategic sealift program, $31,000,000; for craft, outfitting, post delivery, cost growth, and escalation on prior year programs, $1,056,400,000; in all: $11,215,400,000, and in addition, $227,600,000 to be derived by transfer, to remain available for obligation until September 30, 1988; *Provided further*, That additional obligations may be incurred after September 30, 1988, for engineering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction; and each Shipbuilding and Conversion, Navy, appropriation that is currently available for such obligations may also hereafter be so obligated after the date of its expiration: *Provided further*, That within the total amount appropriated, the subdivisions within this account shall be reduced by $140,500,000, as follows: $27,500,000 for consultants, studies, and analyses, and $113,000,000 for revised economic assumptions: *Provided further*, That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: *Provided further*: That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards.

OTHER PROCUREMENT, NAVY

For procurement, production, and modernization of support equipment and materials not otherwise provided for, Navy ordnance and ammunition (except ordnance for new aircraft, new ships, and ships authorized for conversion); the purchase of not to exceed one vehicle required for physical security of personnel notwithstanding price limitations applicable to passenger carrying vehicles but not to exceed $100,000 per vehicle and the purchase of not to exceed six hundred and sixty-seven passenger motor vehicles of which six hundred and twenty-five shall be for replacement only; expansion of public and private plants, including the land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; and procurement and installation of equipment, appliances, and machine tools in public and private plants; reserve plant and Government and contractor-owned equipment layaway, as follows: For ship support equipment, $673,909,000; for communications and electronics equipment, $1,555,233,000; for aviation support equipment, $699,405,000; for

ordnance support equipment, $926,162,000, of which $698,000 shall be available only for procurement of 9mm handgun ammunition; for civil engineering support equipment, $196,622,000; for supply support equipment, $112,474,000; for personnel/command support equipment, $275,601,000; in all: $4,308,543,000, to remain available until September 30, 1986: *Provided*, That within the total amount appropriated, the subdivisions within this account shall be reduced by $130,863,000 as follows: $16,863,000 for spares and repair parts; $20,000,000 undistributed reduction; $4,000,000 for consultants, studies, and analyses; and $90,000,000 for revised economic assumptions.

PROCUREMENT, MARINE CORPS

For expenses necessary for the procurement, manufacture and modification of missiles, armament, ammunition, military equipment, spare parts, and accessories therefor; plant equipment, appliances, and machine tools, and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; vehicles for the Marine Corps, including purchase of not to exceed two hundred and four passenger motor vehicles for replacement only; and expansion of public and private plants, including land necessary therefor, and such lands, and interests therein, may be acquired and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; $1,741,306,000, to remain available for obligation until September 30, 1986.

AIRCRAFT, PROCUREMENT, AIR FORCE

(Including Transfer of Funds)

For construction, procurement, and modification of aircraft and equipment, including armor and armament, specialized ground handling equipment, and training devices, spare parts, and accessories therefor; specialized equipment; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land without regard to section 9774 of title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; $21,080,110,000, of which $5,626,800,000 shall be available only for the purchase of the B-1B bomber under a multiyear contract, of which $112,100,000 shall be available for contribution of the United States share of the cost of the acquisition by the North Atlantic Treaty Organization of an Airborne Early Warning and Control System (AWACS) and, in addition, the Department of Defense may make a commitment to the North Atlantic Treaty Organization to assume the United States share of contingent liability in connection with the NATO E-3A Cooperative Programme; and in addition, $310,200,000, which shall be derived by transfer from "Aircraft Procurement, Air Force, 1983/1985", of which $288,200,000 shall be from the A-10 program, $14,000,000 shall be from the C-135 modification program, and $8,000,000 shall be from the C-130H program to be available only for the purchase of C-130H aircraft; and in addition, $12,900,000, which shall be derived by transfer from "Aircraft Procurement, Air Force, 1982/1984", from the Civilian Reserve Airlift Fleet modification program to be available only for the Civilian

Reserve Airlift Fleet modification program: *Provided*, That none of the funds in this Act may be obligated under the four major fiscal year 1984 production contracts for the B-1B bomber if the current dollar costs of such production contracts would exceed the Air Force's original current dollar estimates for the four major fiscal year 1984 B-1B production contracts based on the production portion of the $20,500,000,000 estimate for the B-1B bomber baseline costs expressed in fiscal year 1981 constant dollars; to remain available for obligation until September 30, 1986: *Provided*, That none of the funds appropriated by this Act may be obligated for procurement of the alternate fighter engine until the Secretary of Defense notifies the appropriations committees of both the House and the Senate of his approval of the decision made by the source selection authority; *Provided further*, That nothing in this paragraph shall prohibit award of separate long lead contracts for essential parts and components necessary to meet the required delivery schedule for the alternate fighter engine.

MILITARY PROCUREMENT, AIR FORCE

(Including Transfer of Funds)

For construction, procurement, and modification of missiles, spacecraft, rockets, and related equipment, including spare parts and accessories therefor, ground handling equipment, and training devices; expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land without regard to section 9774 of title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; reserve plant and Government and contractor-owned equipment layaway; and other expenses necessary for the foregoing purposes including rents and transportation of things; $7,747,838,000, of which $81,600,000 shall be available for the purchase of the phase III Defense Satellite Communications System (DSCS III) under a multiyear contract: *Provided*, That after the Secretary of the Air Force gives written notification of a proposed multiyear contract for the Defense Satellite Communications System to the Committees on Appropriations of the Senate and House of Representatives, such contract may not then be awarded until forty-five days after such notification; and of which $200,000,000 for cooperative NATO air base defense shall not be available to support implementing an agreement with any foreign government until forty-five days after such agreement, together with supporting data including total program cost estimates, has been submitted to the Congress; and in addition, $55,000,000, to be derived by transfer from "Missile Procurement, Air Force, 1983/1985", to remain available for obligation until September 30, 1986.

OTHER PROCUREMENT, AIR FORCE

For procurement and modification of equipment (including ground guidance and electronic control equipment, and ground electronic and communication equipment), and supplies, materials, and spare parts therefor, not otherwise provided for; the purchase of not to exceed five vehicles required for physical security of personnel notwithstanding price limitations applicable to passenger carrying vehicles but not to exceed $100,000 per vehicle and the purchase of not to exceed one thousand two hundred and sixty-one passenger motor vehicles of

which seven hundred and thirteen shall be for replacement only; and expansion of public and private plants, Government-owned equipment and installation thereof in such plants, erection of structures, and acquisition of land without regard to section 9774 of title 10, United States Code, for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon, prior to approval of title as required by section 355, Revised Statutes, as amended; reserve plant and Government and contractor-owned equipment layaway; $6,914,232,000, of which $1,000,000 shall be available only for procurement of 9mm handguns and $446,000 shall be available only for procurement of 9mm handgun ammunition, to remain available for obligation until September 30, 1986.

NATIONAL GUARD AND RESERVE EQUIPMENT

For procurement of aircraft, missiles, tracked combat vehicles, and other procurement for the reserve components of the Armed Forces, not to exceed $176,000,000, to remain available until September 30, 1986, distributed as follows: Army National Guard, not to exceed $100,000,000; Air National Guard, not to exceed $25,000,000; Naval Reserve, not to exceed $51,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS, COAST GUARD

For acquisition, construction, and improvements, not otherwise provided for; $300,000,000, to be transferred to the Coast Guard: "Acquisition, Construction, and Improvements", to remain available for obligation until September 30, 1986.

PROCUREMENT, DEFENSE AGENCIES

For expenses of activities and agencies of the Department of Defense (other than the military departments) necessary for procurement, production, and modification of equipment, supplies, materials, and spart parts therefor, not otherwise provided for; the purchase of not to exceed seven vehicles required for physical security of personnel notwithstanding price limitations applicable to passenger carrying vehicles but not to exceed $100,000 per vehicle and the purchase of not to exceed seven hundred and twenty-two passenger motor vehicles of which three hundred and ninety-three shall be for replacement only; expansion of public and private plants, equipment, and installation thereof in such plants, erection of structures, and acquisition of land for the foregoing purposes, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title as required by section 355, Revised Statutes, as amended; reserve plant and Government and contractor-owned equipment layaway; $942,657,000, to remain available for obligation until September 30, 1986.

TITLE V

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, ARMY

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $4,199,125,000, of which

$15,000,000 shall be available only for integration (including qualification) of the Hellfire missile on the UH-60 helicopter, to remain available for obligation until September 30, 1985.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $7,559,818,000, of which not less than $72,593,000 shall be available only for the Mark 92 fire control system which includes the phase array radar improvement program and of which not less than $61,165,000 shall be available only for the Marine Corps Assault Vehicles program which includes the MPGS, LVT (X), and LAV subprojects, to remain available for obligation until September 30, 1985.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, AIR FORCE

For expenses necessary for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $12,227,706,000, of which $23,500,000 shall not be made available for obligation on visible/ultraviolet laser technology prior to the submission of a report by the Department of Defense Defensive Technologies Study Team recommending a plan for the expenditure of laser technology funds, to remain available for obligation until September 30, 1985.

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE AGENCIES

For expenses of activities and agencies of the Department of Defense (other than the military departments), necessary for basic and applied scientific research, development, test, and evaluation; advanced research projects as may be designated and determined by the Secretary of Defense, pursuant to law; maintenance, rehabilitation, lease, and operation of facilities and equipment, as authorized by law; $2,703,620,000, of which $20,000,000 shall not be made available for obligation on short wavelength laser technology prior to the submission of a report by the Department of Defense Defensive Technologies Study Team recommending a plan for the expenditure of laser technology funds, to remain available for obligation until September 30, 1985: *Provided*, That such amounts as may be determined by the Secretary of Defense to have been made available in other appropriations available to the Department of Defense during the current fiscal year for programs related to advanced research may be transferred to and merged with this appropriation to be available for the same purposes and time period: *Provided further*, That such amounts of this appropriation as may be determined by the Secretary of Defense may be transferred to carry out the purposes of advanced research to those appropriations for military functions under the Department of Defense which are being utilized for related programs to be merged with and to be available for the same time period as the appropriation to which transferred.

DIRECTOR OF TEST AND EVALUATION, DEFENSE

For expenses, not otherwise provided for, of independent activities of the Director of Defense Test and Evaluation in the direction and supervision of test

and evaluation, including initial operational testing and evaluation; and performance of joint testing and evaluation; and administrative expenses in connection therewith; $49,000,000, to remain available for obligation until September 30, 1985.

TITLE VI

SPECIAL FOREIGN CURRENCY PROGRAM

For payment in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States for expenses in carrying out programs of the Department of Defense, as authorized by law; $3,050,000, to remain available for obligation until September 30, 1985: *Provided*, That this appropriation shall be available in addition to other appropriations to such Department, for payments in the foregoing currencies.

TITLE VII

GENERAL PROVISIONS

Sec. 701. The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.

Sec. 702. No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress.

Sec. 703. During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 3109 of title 5, United States Code, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty stations and return as may be authorized by law: *Provided*, That such contracts may be renewed annually.

Sec. 704. During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense.

Sect. 705. Appropriations contained in this Act and in subsequent appropriation Acts for the Department of Defense shall be available for insurance of official motor vehicles in foreign countries, when required by laws of such countries; payments in advance of expenses determined by the investigating officer to be necessary and in accord with local custom for conducting investigations in foreign countries incident to matters relating to the activities of the department concerned; reimbursement to General Services Administration for security guard services for protection of confidential files; and all necessary expenses, at the seat of government of the United States of America or elsewhere, in connection with communication and other services and supplies as may be necessary to carry out the purposes of this Act.

Sec. 706. Any appropriation available hereafter to the Army, Navy, or Air

Force may, under such regulations as the Secretary concerned may prescribe, be used for expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in Army, Navy, or Air Force custody whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detailed in such custody pursuant to Presidential proclamation.

Sec. 707. Appropriations available to the Department of Defense for the current fiscal year and hereafter for maintenance or construction shall be available for acquisition of land or interest therein as authorized by sections 2672, 2675 or 2828 of title 10, United States Code.

Sec. 708. Appropriations for the Department of Defense for the current fiscal year shall be available *(a)* for transportation to primary and secondary schools of minor dependents of military and civilian personnel of the Department of Defense as authorized for the Navy by section 7204 of title 10, United States Code; *(b)* for expenses in connection with administration of occupied areas; *(c)* for payment of rewards as authorized for the Navy by section 7209 *(a)* of title 10, United States Code, for information leading to the discovery of missing naval property or the recovery thereof; *(d)* for payment of deficiency judgments and interests thereon arising out of condemnation proceedings; *(e)* for leasing of buildings and facilities including payment of rentals for special purpose space at the seat of government, and in the conduct of field exercises and maneuvers or, in administering the provisions of the Act of July 9, 1942 (56 Stat. 654); 43 U.S.C. 315q), rentals may be paid in advance; *(f)* payments under contracts for maintenance of tools and facilities for twelve months beginning at any time during the fiscal year; *(g)* maintenance of defense access roads certified as important to national defense in accordance with section 210 of title 23, United States Code; *(h)* for the purchase of milk for enlisted personnel of the Department of Defense heretofore made available pursuant to section 202 of the Agricultural Act of 1949 (7 U.S.C. 1446a), and the cost of milk so purchased, as determined by the Secretary of Defense, shall be included in the value of the commuted ration; *(i)* transporting civilian clothing to the home of record of selective service inductees and recruits on entering the military services; *(j)* payments under leases for real or personal property, including maintenance thereof when contracted for as a part of the lease agreement, for twelve months beginning at any time during the fiscal year; *(k)* pay and allowances of not to exceed nine persons, including personnel detailed to International Military Headquarters and Organizations, at rates provided for under section 625 *(d)* (1) of the Foreign Assistance Act of 1961, as amended; *(l)* the purchase of right-hand-drive vehicles not to exceed $12,000 per vehicle; *(m)* for payment of unusual cost overruns incident to ship overhaul, maintenance, and repair for ships inducted into industrial fund activities or contracted for in prior fiscal years: *Provided*, That the Secretary of Defense shall notify the Congress promptly prior to obligation of any such payments; *(n)* for payments from annual appropriations to industrial fund activities and/or under contract for changes in scope of ship overhaul, maintenance, and repair after expiration of such appropriations, for such work either inducted into the industrial fund activity or contracted for in that fiscal year; and *(o)* for payments for depot maintenance contracts for twelve months beginning at any time during the fiscal year.

Sec. 709. Appropriations for the Department of Defense for the current fiscal year shall be available for: *(a)* donations of not to exceed $25 to each prisoner upon each release from confinement in military or contract prison and to each person discharged for fraudulent enlistment; *(b)* authorized issues of articles to prisoners, applicants for enlistment and persons in military custody; *(c)* subsistence of selective service registrants called for induction, applicants for enlistment,

prisoners, civilian employees as authorized by law, and supernumeraries when necessitated by emergent military circumstances; *(d)* reimbursement for subsistence of enlisted personnel while sick in hospitals; *(e)* expenses of prisoners confined in nonmilitary facilities; *(f)* military courts, boards, and commissions; *(g)* utility services for buildings erected at private cost, as authorized by law, and buildings on military reservations authorized by regulations to be used for welfare and recreational purposes; *(h)* exchange fees, and losses in the accounts of disbursing officers or agents in accordance with law; *(i)* expenses of Latin American cooperation as authorized for the Navy by section 7208 of title 10, United States Code; *(j)* expenses of apprehension and delivery of deserters, prisoners, and members absent without leave, including payment of rewards of not to exceed $75 in any one case; *(k)* carrying out section 10 of the Act of September 23, 1950, as amended; and *(l)* providing, with or without reimbursement, not to exceed $60,000,000 to procure secure communications systems, equipment and related items throughout the United States Government.

Sec. 710. The Secretary of Defense and each purchasing and contracting agency of the Department of Defense shall assist American small and minority-owned businesses to participate equitably in the furnishing of commodities and services financed with funds appropriated under this Act by increasing, to an optimum level, the resources and number of personnel jointly assigned to promoting both small and minority business involvement in purchases financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this Act, and by assisting small and minority business concerns to participate equitably as subcontractors on contracts financed with funds appropriated herein, and by otherwise advocating and providing small and minority business opportunities to participate in the furnishing of commodities and services financed with funds appropriated by this Act.

Sec. 711. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 712. *(a)* During the current fiscal year, the President may exempt appropriations, funds, and contract authorizations, available for military functions under the Department of Defense, from the provisions of section 1512 of title 31, United States Code, whenever he deems such action to be necessary in the interest of national defense.

(b) Upon determination by the President that such action is necessary, the Secretary of Defense is authorized to provide for the cost of an airborne alert as an expected expense in accordance with the provisions of section 3732 of the Revised Statutes (41 U.S.C. 11).

(c) Upon determination by the President that it is necessary to increase the number of military personnel on active duty subject to existing laws beyond the number for which funds are provided in this Act, the Secretary of Defense is authorized to provide for the cost of such increased military personnel, as an expected expense in accordance with the provisions of section 3732 of the Revised Statutes (41 U.S.C. 11).

(d) The Secretary of Defense shall immediately advise Congress of the exercise of any authority granted in this section, and shall report monthly on the estimated obligations incurred pursuant to subsections *(b)* and *(c)*.

Sec. 713. No appropriation contained in this Act shall be available in connection with the operation of commissary stores of the agencies of the Department of Defense for the cost of purchase (including commercial transportation in the United States to the place of sale but excluding all transportation outside the United States) and maintenance of operating equipment and supplies, and for the actual or estimated cost of utilities as may be furnished by the Government and of shrinkage, spoilage, and pilferage of merchandise under the control of such commissary stores, except as authorized under regulations promulgated by the Secretaries of the military departments concerned with the approval of the Secretary of Defense, which regulations shall provide for reimbursement therefor to the appropriations concerned and, notwithstanding any other provision of law, shall provide for the adjustment of the sales prices in such commissary stores to the extent necessary to furnish sufficient gross revenues from sales of commissary stores to make such reimbursement: *Provided*, That under such regulations as may be issued pursuant to this section all utilities may be furnished without cost to the commissary stores outside the continental United States and in Alaska: *Provided further*, That no appropriation contained in this Act shall be available to pay any costs incurred by any commissary store or other entity acting on behalf of any commissary store in connection with obtaining the face value amount of manufacturer or vendor cents-off discount coupons unless all fees or moneys received for handling or processing such coupons are reimbursed to the appropriation charged with the incurred costs: *Provided further*, That no appropriation contained in this Act shall be available in connection with the operation of commissary stores within the continental United States unless the Secretary of Defense has certified that items normally procured from commissary stores are not otherwise available at a reasonable distance and a reasonable price in satisfactory quality and quantity to the military and civilian employees of the Department of Defense.

Sec. 714. No part of the appropriations in this Act shall be available for any expense of operating aircraft under the jurisdiction of the armed forces for the purpose of proficiency flying, as defined in Department of Defense Directive 1340.4, except in accordance with regulations prescribed by the Secretary of Defense. Such regulations (1) may not require such flying except that required to maintain proficiency in anticipation of a member's assignment to combat operations and (2) such flying may not be permitted in cases of members who have been assigned to a course of instruction of ninety days or more.

Sec. 715. No part of any appropriation contained in this Act shall be available for expense of transportation, packing, crating, temporary storage, drayage, and unpacking of household goods and personal effects in any one shipment having a net weight in excess of thirteen thousand five hundred pounds.

Sec. 716. Vessels under the jurisdiction of the Department of Transportation, the Department of the Army, the Department of the Air Force, or the Department of the Navy may be transferred or otherwise made available without reimbursement to any such agencies upon the request of the head of one agency and the approval of the agency having jurisdiction of the vessels concerned.

Sec. 717. Not more than 20 per centum of the appropriations in this Act which are limited for obligation during the current fiscal year shall be obligated during the last two months of the fiscal year: *Provided*, That this section shall not apply to obligations for support of active duty training of civilian components or summer camp training of the Reserve Officers' Training Corps, or the National Board for the Promotion of Rifle Practice, Army.

Sec. 718. During the current fiscal year the agencies of the Department of Defense may accept the use of real property from foreign countries for the

United States in accordance with mutual defense agreements or occupational arrangements and may accept services furnished by foreign countries as reciprocal international courtesies or as services customarily made available without charge; and such agencies may use the same for the support of the United States forces in such areas without specific appropriation therefor.

In addition to the foregoing, agencies of the Department of Defense may accept real property, services, and commodities from foreign countries for the use of the United States in accordance with mutual defense agreements or occupational arrangements and such agencies may use the same for the support of the United States forces in such areas, without specific appropriations therefor: *Provided*, That the foregoing authority shall not be available for the conversion of heating plants from coal to oil at defense facilities in Europe: *Provided further*, That within thirty days after the end of each quarter the Secretary of Defense shall render to Congress and to the Office of Management and Budget a full report of such property, supplies, and commodities received during such quarter.

Sec. 719. During the current fiscal year, appropriations available to the Department of Defense for research and development may be used for the purposes of section 2353 of title 10, United States Code, and for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Service concerned.

Sec. 720. No appropriation contained in this Act shall be available for the payment of more than 75 per centum of charges of educational institutions for tuition or expenses of off-duty training of military personnel (except with regard to such charges of educational institutions *(a)* for enlisted personnel in the pay grade E-5 or higher with less than 14 years' service, for which payment of 90 per centum may be made or *(b)* for military personnel in off-duty high school completion programs, for which payment of 100 per centum may be made), nor for the payment of any part of tuition or expenses for such training for commissioned personnel who do not agree to remain on active duty for two years after completion of such training: *Provided*, That the foregoing limitation shall not apply to the Program for Afloat College Education.

Sec. 721. No part of the funds appropriated herein shall be expended for the support of any formally enrolled student in basic courses of the senior division, Reserve Officers' Training Corps, who has not executed a certificate of loyalty or loyalty oath in such form as shall be prescribed by the Secretary of Defense.

Sec. 721A. No part of any appropriation contained in this Act, except for small purchases in amounts not exceeding $10,000 shall be available for the procurement of any article of food, clothing, cotton, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or specialty metals including stainless steel flatware, or hand or measuring tools, not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters, and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided*, That nothing herein shall

preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States or its possessions when such procurement is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements or where such procurement is necessary in furtherance of the standardization and interoperability of equipment requirements within NATO so long as such agreements with foreign governments comply, where applicable, with the requirements of section 36 of the Arms Export Control Act and with section 2457 of title 10, United States Code: *Provided further*, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions: *Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations other than certain contracts not involving fuel made on a test basis by the Defense Logistics Agency with a cumulative value not to exceed $4,000,000,000, as may be determined by the Secretary of Defense pursuant to existing laws and regulations as not to be inappropriate therefor by reason of national security considerations: *Provided further*, That the Secretary specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards of such contracts will be made at a reasonable price and that no award shall be made for such contracts if the price differential exceeds 2.2 per centum: *Provided further*, That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

Sec. 722. None of the funds appropriated by this Act may be obligated under section 206 of title 37, United States Code, for inactive duty training pay of a member of the National Guard or a member of a reserve component of a uniformed service for more than four periods of equivalent training, instruction, duty or appropriate duties that are performed instead of that member's regular period of instruction or regular period appropriate duty.

Sec. 723. Appropriations contained in this Act and in subsequent appropriation Acts for the Department of Defense shall be available for the purchase of household furnishings, and automobiles from military and civilian personnel on duty outside the continental United States, for the purpose of resale at cost to incoming personnel, and for providing furnishings, without charge, in other than public quarters occupied by military or civilian personnel of the Department of Defense on duty outside the continental United States or in Alaska, upon a determination, under regulations approved by the Secretary of Defense, that such action is advantageous to the Government.

Sec. 724. During the current fiscal year, appropriations available to the Department of Defense for pay of civilian employees shall be available for uniforms, or allowances therefor, as authorized by section 5901 of title 5, United States Code.

Sec. 725. Funds provided in this Act for legislative liaison activities of the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Office of the Secretary of Defense shall not exceed $9,500,000 for the current fiscal year: *Provided*, That this amount shall be available for apportionment to the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Office of the Secretary of Defense as determined by the Secretary of Defense.

Sec. 726. Of the funds made available by this Act for the services of the Military Airlift Command, $100,000,000 shall be available only for procurement of commercial transportation service from carriers participating in the civil reserve air fleet program; and the Secretary of Defense shall utilize the services of such carriers which qualify as small businesses to the fullest extent found practicable; *Provided*, That the Secretary of Defense shall specify in such procurement, performance characteristics for aircraft to be used based upon modern aircraft operated by the civil reserve air fleet.

Sec. 727. During the current fiscal year, appropriations available to the Department of Defense for operation may be used for civilian clothing, not to exceed $40 in cost for enlisted personnel: (1) discharged for misconduct, unsuitability, or otherwise than honorably; (2) sentenced by a civil court to confinement in a civil prison or interned or discharged as an alien enemy; or (3) discharged prior to completion of recruit training under honorable conditions for dependency, hardship, minority, disability, or for the convenience of the Government.

Sec. 728. No part of the funds appropriated herein or in subsequent appropriation Acts for the Department of Defense shall be available for paying the costs of advertising by any defense contractor, except advertising for which payment is made from profits, and such advertising shall not be considered a part of any defense contract cost. The prohibition contained in this section shall not apply with respect to advertising conducted by any such contractor, in compliance with regulations which shall be promulgated by the Secretary of Defense, solely for (1) the recruitment by the contractor of personnel required for the performance by the contractor of obligations under a defense contract, (2) the procurement of scarce items required by the contractor for the performance of a defense contract, or (3) the disposal of scrap or surplus materials acquired by the contractor in the performance of a defense contract.

Sec. 729. Upon determination by the Secretary of Defense that such action is necessary in the national interest, he may, with the approval of the Office of Management and Budget, transfer not to exceed $1,200,000,000 of working capital funds of the Department of Defense or funds made available in this Act to the Department of Defense for military functions (except military construction) between such appropriations or funds or any subdivision thereof, to be merged with and to be available for the same purposes, and for the same time period, as the appropriation, or fund to which transferred: *Provided*, That such authority to transfer may not be used unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which funds are requested has been denied by Congress: *Provided further*, That the Secretary of Defense shall notify the Congress promptly of all transfers made pursuant to this authority.

Sec. 730. During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant to section 2208 of title 10, United States Code, may be maintained in only such amounts as are necessary at any time for cash disbursements to be made from such funds: *Provided*, That transfers may be made between such funds in such amounts as may be determined by the Secretary of Defense, with the approval of the office of Management and Budget, except that transfers between a stock fund account and an industrial fund account may not be made unless the Secretary of Defense has notified the Congress of the proposed transfer. Except in amounts equal to the amounts appropriated to working capital funds in this Act, no obligations may be made against a working capital fund to procure war reserve material inventory, unless the Secretary of Defense has notified the Congress prior to any such obligation.

Sec. 731. Not more than $225,400,000 of the funds appropriated by this Act shall be made available for payment to the Federal Employees Compensation Fund, as established by 5 U.S.C. 8147.

Sec. 732. No part of the funds appropriated under this Act shall be used to provide a loan, guarantee of a loan, or a grant to any applicant who has been convicted by any court of general jurisdiction of any crime which involves the use of or the assistance to others in the use of force, trespass, or the seizure of property under control of an institution of higher education to prevent officials or students at such an institution from engaging in their duties or pursuing their studies.

Sec. 733. None of the funds available to the Department of Defense shall be utilized for the conversion of heating plants from coal to oil at defense facilities in Europe.

Sec. 734. None of the funds appropriated by this Act shall be available for any research involving uninformed or nonvoluntary human beings as experimental subjects: *Provided*, That this limitation shall not apply to measures intended to be beneficial to the recipient and consent is obtained from the recipient or a legal representative acting on the recipient's behalf.

Sec. 735. Appropriations for the current fiscal year and hereafter for operation and maintenance of the active forces shall be available for medical and dental care of personnel entitled thereto by law or regulation (including charges of private facilities for care of military personnel, except elective private treatment); welfare and recreation; hire of passenger motor vehicles; repair of facilities; modification of personal property; design of vessels; industrial mobilization; installation of equipment in public and private plants; military communications facilities on merchant vessels; acquisition of services, special clothing, supplies, and equipment; and expenses for the Reserve Officers' Training Corps and other units at educational institutions.

Sec. 736. No part of the funds in this Act shall be available to prepare or present a request to the Committees on Appropriations for reprogramming of funds, unless for higher priority items, based on unforeseen military requirements, than those for which originally appropriated and in no case where the item for which reprograming is requested has been denied by the Congress.

Sec. 737. No funds appropriated by this Act shall be available to pay claims for nonemergency inpatient hospital care provided under the Civilian Health and Medical Program of the Uniformed Services for services available at a facility of the uniformed services within a 40-mile radius of the patient's residence: *Provided*, That the foregoing limitation shall not apply to payments that supplement primary coverage provided by other insurance plans or programs that pay for at least 75 per centum of the covered services.

Sec. 738. None of the funds contained in this Act available for the Civilian Health and Medical Program of the Uniformed Services under the provisions of section 1079 *(a)* of title 10, United States Code, shall be available for *(a)* services of pastoral counselors, or family and child counselors, or marital counselors unless the patient has been referred to such counselor by a medical doctor for treatment of a specific problem with results of that treatment to be communicated back to the physician who made such referral; *(b)* special education, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis; *(c)* therapy or counseling for sexual dysfunctions or sexual inadequacies; *(d)* treatment of obesity when obesity is the sole or major condition treated; *(e)* surgery which improves physical appearance but which is not expected to significantly restore functions including, but not limited to, mammary augmentation, face lifts and sex gender changes except that breast reconstructive

surgery following mastectomy and reconstructive surgery to correct serious deformities caused by congenital anomalies, accidental injuries and neoplastic surgery are not excluded; *(f)* reimbursement of any physician or other authorized individual provider of medical care in excess of the eightieth percentile of the customary charges made for similar services in the same locality where the medical care was furnished, as determined for physicians in accordance with section 1079 *(h)* of title 10, United States Code; or *(g)* any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, except as authorized by section 1079 *(a)* (4) of title 10, United States Code; *Provided*, That any changes in availability of funds for the Program made in this Act from those in effect prior to its enactment shall be effective for care received following enactment of this Act.

Sec. 739. *Appropriations available to the Department of Defense for the* current fiscal year shall be available to provide an individual entitled to health care under chapter 55 of title 10, United States Code, with one wig if the individual has alopecia that resulted from treatment of malignant disease: *Provided*, That the individual has not previously received a wig from the Government.

Sec. 740. Funds appropriated in this Act shall be available for the appointment, pay, and support of persons appointed as cadets and midshipmen in the two-year Senior Reserve Officers' Training Corps course in excess of the 20 percent limitation on such persons imposed by section 2107 *(a)* of title 10, United States Code, but not to exceed 60 percent of total authorized scholarships.

Sec. 741. None of the funds appropriated by this Act shall be available to pay any member of the uniformed service for unused accrued leave pursuant to section 501 of title 37, United States Code, for more than sixty days of such leave, less the number of days for which payment was previously made under section 501 after February 9, 1976.

Sec. 742. None of the funds appropriated by this Act may be used to support more than 300 enlisted aides for officers in the United States Armed Forces.

Sec. 743. No appropriation contained in this Act may be used to pay for the cost of public affairs activities of the Department of Defense in excess of $34,200,000.

Sec. 743A. None of the funds provided in this Act shall be available for the planning or execution of programs which utilize amounts credited to Department of Defense appropriations or funds pursuant to the provisions of section 37 *(a)* of the Arms Export Control Act representing payment for the actual value of defense articles specified in section 21 *(a)* (1) of that Act: *Provided*, That such amounts so credited shall be deposited in the Treasury as miscellaneous receipts as provided in section 3302 *(b)* of title 31, United States Code.

Sec. 744. No appropriation contained in this Act shall be available to fund any costs of a Senior Reserve Officers' Training Corps unit — except to complete training of personnel enrolled in Military Science 4 — which in its junior year class (Military Science 3) has for the four preceding academic years, and as of September 30, 1983, enrolled less than *(a)* seventeen students where the institution prescribes a four-year or a combination four- and two-year program; or *(b)* twelve students where the institution prescribes a two-year program: *Provided*, That, notwithstanding the foregoing limitation, funds shall be available to maintain one Senior Reserve Officers' Training Corps unit in each State and at each State-operated maritime academy: *Provided further*, That units under the

consortium system shall be considered as a single unit for purposes of evaluation of productivity under this provision: *Provided further*, That enrollment standards contained in Department of Defense Directive 1215.8 for Senior Reserve Officers' Training Corps units, as revised during fiscal year 1981, may be used to determine compliance with this provision, in lieu of the standards cited above.

Sec. 745. *(a)* None of the funds appropriated by this Act or available in any working capital fund of the Department of Defense shall be available to pay the expenses attributable to lodging of any person on official business away from his designated post of duty, or in the case of an individual described under section 5703 of title 5, United States Code, his home or regular place of duty, when adequate Government quarters are available, but are not occupied by such person.

(b) The limitation set forth in subsection *(a)* is not applicable to employees whose duties require official travel in excess of fifty percent of the total number of the basic administrative work weeks during the current fiscal year.

Sec. 746. *(a)* None of the funds appropriated by this Act shall be available to pay the retainer pay of any enlisted member of the Regular Navy, the Naval Reserve, the Regular Marine Corps, or the Marine Corps Reserve who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of title 10, United States Code, on or after December 31, 1977, if the provisions of section 6330 *(d)* of title 10, are utilized in determining such member's eligibility for retirement under section 6330 *(b)* of title 10: *Provided*, That notwithstanding the foregoing, time creditable as active service for a completed minority enlistment, and an enlistment terminated within three months before the end of the term of enlistment under section 6330 *(d)* of title 10, prior to December 31, 1977, may be utilized in determining eligibility for retirement: *Provided further*, That notwithstanding the foregoing, time may be credited as active service in determining a member's eligibility for retirement under section 6330 *(b)* of title 10 pursuant to the provisions of the first sentence of section 6330 *(d)* of title 10 for those members who had formally requested transfer to the Fleet Reserve or the Fleet Marine Corps Reserve on or before October 1, 1977.

(b) None of the funds appropriated by this Act shall be available to pay that portion of the retainer pay of any enlisted member of the Regular Navy, the Naval Reserve, the Regular Marine Corps, or the Marine Corps Reserve under section 6330 of title 10, United States Code, on or after December 31, 1977, which is attributable under the second sentence of section 6330 *(d)* of title 10 to time which, after December 31, 1977, is not actually served by such member.

Sec. 747. None of the funds appropriated by this Act for programs of the Central Intelligence Agency shall remain available for obligation beyond the current fiscal year, except for: *(a)* funds appropriated for the Reserve for Contingencies, which shall remain available until September 30, 1985; and *(b)* funds appropriated for Headquarters Construction, which shall remain available until September 30, 1988.

Sec. 748. None of the funds provided by this Act may be used to pay the salaries of any person or persons who authorize the transfer of unobligated and deobligated appropriations into the Reserve for Contingencies of the Central Intelligence Agency.

Sec. 749. None of the funds appropriated by this Act may be used to support more than 9,901 full-time and 2,603 part-time military personnel assigned to or used in the support of Morale, Welfare, and Recreation activities as described in Department of Defense Instruction 7000.12 and its enclosures, dated September 4, 1980.

Sec. 750. All obligations incurred in anticipation of the appropriations and

authority provided in this Act are hereby ratified and confirmed if otherwise in accordance with the provisions of this Act.

Sec. 751. None of the funds provided by this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

Sec. 752. None of the funds appropriated by this Act shall be used for the provision, care or treatment to dependents of members or former members of the Armed Services or the Department of Defense for the elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

Sec. 753. None of the funds appropriated by this Act shall be available for the purchase of insignia for resale unless the sales price of such insignia is adjusted to the extent necessary to recover the cost of purchase of such insignia and the estimated cost of all related expenses, including but not limited to management, storage, handling, transportation, loss, disposal of obsolete material, and management fees paid to the military exchange systems: *Provided*, That amounts derived by the adjustment covered by the foregoing limitations may be credited to the appropriations against which the charges have been made to recover the cost of purchase and related expense.

Sec. 754. None of the funds appropriated by this Act or heretofore appropriated by any other Act shall be obligated or expended for the payment of anticipatory possession compensation claims to the Federal Republic of Germany other than claims listed in the 1973 agreement (commonly referred to as the Global Agreement) between the United States and the Federal Republic of Germany.

Sec. 755. During the current fiscal year the Department of Defense may enter into contracts to recover indebtedness to the United States pursuant to section 3718 of title 31, United States Code, and any such contract entered into by the Department of Defense may provide that appropriate fees charged by the contractor under the contract to recover indebtedness may be payable from amounts collected by the contractor to the extent and under the conditions provided under the contract.

Sec. 755A. None of the funds appropriated by this Act shall be available for a contract for studies, analyses, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines:

(a) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work, or

(b) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source, or

(c) where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support:

Provided, That this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract as in the interest of the national defense.

Sec. 756. None of the funds appropriated by this Act shall be available to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department of Defense is reimbursed for the costs of providing such care: *Provided*, That reimbursements

for medical care covered by this section shall be credited to the appropriations against which charges have been made for providing such care.

Sec. 757. None of the funds appropriated by this Act shall be obligated for the second career training program authorized by Public Law 96-347.

Sec. 758. None of the funds appropriated or otherwise made available in this Act shall be obligated or expended for salaries or expenses during the current fiscal year for the purposes of demilitarization of surplus nonautomatic firearms less than .50 caliber.

Sec. 759. During the current fiscal year, not to exceed $125,000,000 of the funds provided in this Act for the Civilian Health and Medical Program of the Uniformed Services may be used to conduct a test program in accordance with the following guidelines: In carrying out the provisions of sections 1079 and 1086 of title 10, United States Code, the Secretary of Defense, after consulting with the Secretary of Health and Human Services, may contract with organizations that assume responsibility for the maintenance of the health of a defined population, for the purpose of experiments and demonstration projects designed to determine the relative advantages and disadvantages of providing pre-paid health benefits: *Provided*, That such projects must be designed in such a way as to determine methods of reducing the cost of health benefits provided under such sections without adversely affecting the quality of care. Except as provided otherwise, the provisions of such a contract may deviate from the cost-sharing arrangements prescribed and the types of health care authorized under sections 1079 and 1086, when the Secretary of Defense determines that such a deviation would serve the purpose of this section.

Sec. 760. None of the funds provided in this Act shall be available to initiate (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000 or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the Committees on Appropriations and Armed Services of the Senate and House of Representatives have been notified at least thirty days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for major systems unless specifically provided herein. For purposes of this provision, a major system is defined as a system or major assembly thereof whose eventual total expenditure for research, development, test, and evaluation is more than $200,000,000, or whose eventual total expenditure for procurement is more than $1,000,000,000.

Sec. 761. None of the funds appropriated by this Act which are available for payment of travel allowances for per diem in lieu of subsistence to enlisted personnel shall be used to pay such an allowance to any enlisted member in an amount that is more than the amount of per diem in lieu of subsistence that the enlisted member is otherwise entitled to receive minus the basic allowance for subsistence, or pro rata portion of such allowance, that the enlisted member is entitled to receive during any day, or portion of a day, that the enlisted member is also entitled to be paid a per diem in lieu of subsistence: *Provided*, That if an enlisted member is in a travel status and is not entitled to receive a per diem in lieu of subsistence because the member is furnished meals in a Government mess, funds available to pay the basic allowance for subsistence to such a member shall not be used to pay that allowance, or pro rata portion of that allowance, for each day, or portion of a day, that such enlisted member is furnished meals in a Government mess.

Sec. 762. None of the funds appropriated by this Act shall be available to pay the retired pay or retainer pay of a member of the Armed Forces for any month who, on or after January 1, 1982, becomes entitled to retired or retainer pay, in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served: *Provided*, That the foregoing limitation shall not apply to any member who before January 1, 1982: *(a)* applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve; *(b)* is being processed for retirement under the provisions of chapter 61 of title 10 or who is on the temporary disability retired list and thereafter retired under the provisions of sections 1210 *(c)* or *(d)* of title 10; or *(c)* is retired or in an inactive status and would be eligible for retired pay under the provisions of chapter 67 of title 10, but for the fact that the person is under 60 years of age.

Sec. 762A. None of the funds appropriated by this Act shall be available to approve a request for waiver of the costs otherwise required to be recovered under the provisions of section 21*(e)*(1)(C) of the Arms Export Control Act unless the Committees on Appropriations have been notified in advance of the proposed waiver.

Sec. 763. Funds available to the Department of Defense during the current fiscal year shall be available to continue a program to provide child advocacy and family counseling services to deal with problems of child and spouse abuse.

Sec. 764. None of the funds appropriated by this Act shall be available for the transportation of equipment or material designated as Prepositioned Material Configured in Unit Sets (POMCUS) in Europe in Excess of four division sets: *Provided*, That the foregoing limitation shall not apply with respect to any item of equipment or materiel which is maintained in the inventories of the Active and Reserve Forces at levels of at least 70 per centum of the established requirements for such an item of equipment or materiel for the Active Forces and 50 per centum of the established requirement for the Reserve Forces for such an item of equipment or materiel: *Provided further*, That no additional commitments to the establishment of POMCUS sites shall be made without prior approval of Congress.

Sec. 765. *(a)* None of the funds in this Act may be used to transfer any article of military equipment or data related to the manufacture of such equipment to a foreign country prior to the approval in writing of such transfer by the Secretary of the military service involved.

(b) No funds appropriated by this Act may be used for the transfer of a technical data package from any Government-owned and operated defense plant manufacturing large caliber cannons to any foreign government, nor for assisting any such government in producing any defense item currently being manufactured or developed in a United States Government-owned, Government-operated defense plant manufacturing large caliber cannons.

(c) None of the funds in this Act shall be used, in any way, directly or indirectly, to sell or otherwise provide the AN/SQR-19 Towed Array Sonar to any foreign country, directly or indirectly, including any administrative and military and civilian personnel costs in connection with the arrangement of the sale of the AN/SQR-19 Towed Array Sonar to any foreign country.

Sec. 766. None of the funds appropriated in this Act may be made available through transfer, reprogramming, or other means for any intelligence or special activity different from that previously justified to the Congress unless the Director of Central Intelligence or the Secretary of Defense has notified the House and

Senate Appropriations Committees of the intent to make such funds available for such activity.

Sec. 767. Of the funds appropriated by this Act for strategic programs, the Secretary of Defense shall provide funds for the Advanced Technology Bomber program at a level at least equal to the amount provided by the committee of conference on this Act in order to maintain priority emphasis on this program.

Sec. 767A. None of the funds available to the Department of Defense during the current fiscal year shall be used by the Secretary of a military department to purchase coal or coke from foreign nations for use at United States defense facilities in Europe when coal from the United States is available.

Sec. 768. None of the funds available to the Department of Defense shall be available for the procurement of manual typewriters which were manufactured by facilities located within States which are Signatories to the Warsaw Pact.

Sec. 769. None of the funds appropriated by this Act may be used to appoint or compensate more than 37 individuals in the Department of Defense in positions in the Executive Schedule (as provided in sections 5312-5316 of title 5, United States Code).

Sec. 770. None of the funds appropriated by this Act shall be available to convert a position in support of the Army Reserve, Air Force Reserve, Army National Guard, and Air National Guard to a position to be held by a person in an active Guard or Reserve status if that conversion would reduce the total number of positions occupied by, or programed to be occupied by, military technicians of the component concerned, below the number of positions occupied by military technicians in that component on September 30, 1982: *Provided*, That none of the funds appropriated by this Act shall be available to support more than 28,108 positions in support of the Army Reserve or Army National Guard occupied by, or programed to be occupied by, persons in an active Guard or Reserve status: *Provided further*, That none of the funds appropriated by this Act shall be available to support more than 25,714 positions occupied by, or programed to be occupied by, persons in an active Reserve or Guard status in support of the Army Reserve or Army National Guard after February 1, 1984: *Provided further*, That none of the funds appropriated by this Act may be used to include military technicians in computing civilian personnel ceilings, including statutory or administratively imposed ceilings, on activities in support of the Army Reserve, Air Force Reserve, Army National Guard or Air National Guard.

Sec. 771. None of the funds provided in this Act may be used to impose civilian personnel ceilings on Department of Defense industrially funded activities: *Provided*, That any increase in civilian personnel of such industrial funds in excess of the number employed on September 30, 1982, shall not be counted for the purposes of any statutory or administratively imposed civilian personnel ceiling otherwise applicable during fiscal year 1984.

Sec. 772. Appropriations or funds available to the Department of Defense during the current fiscal year may be transferred to appropriations provided in this Act for research, development, test, and evaluation to the extent necessary to meet increased pay costs authorized by or pursuant to law, to be merged with and to be available for the same purposes, and the same time period, as the appropriation to which transferred.

Sec. 773. The proviso contained in section 790 of the Department of Defense Appropriation Act, 1983, as enacted in Public Law 97-377 is hereby repealed.

Sec. 774. During the current fiscal year and subsequent fiscal years, for the purposes of the appropriation "Foreign Currency Fluctuations, Defense" the foreign currency exchange rates used in preparing budget submissions shall be

the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on this Act.

Sec. 775. During fiscal year 1984, not more than $24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

Sec. 775A. So far as may be practicable, Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of Defense: *Provided*, That the products must meet pre-set contract specifications.

Sec. 776. None of the funds made available by this Act shall be used in any way for the leasing to non-Federal agencies in the United States aircraft or vehicles owned or operated by the Department of Defense when suitable aircraft or vehicles are commercially available in the private sector: *Provided*, That nothing in this section shall affect authorized and established procedures for the sale of surplus aircraft or vehicles: *Provided further*, That nothing in this section shall prohibit such leasing when specifically authorized in a subsequent Act of Congress.

Sec. 777. None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.

Sec. 778. No funds available to the Department of Defense during the current fiscal year may be used to enter into any contract with a term of three years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft or vehicles, through a lease, charter, or similar agreement, that imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the Government exceeding 50 per centum of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided authority in an appropriation Act for the obligation of 10 per centum of such termination liability.

Sec. 779. None of the funds appropriated by this Act may be obligated or expended to formulate or to carry out any requirement that, in order to be eligible to submit a bid or an offer on a Department of Defense contract to be let for the supply of commercial or commercial-type products, a small business concern (as defined pursuant to section 3 of the Small Business Act) must (1) demonstrate that its product is accepted in the commercial market (except to the extent that may be required to evidence compliance with the Walsh-Healey Public Contracts Act), or (2) satisfy any other prequalification to submitting a bid or an offer for the supply of any such product.

Sec. 779A. None of the funds appropriated in this Act may be obligated or expended in any way for the purpose of the sale, lease, rental, or excessing of any portion of land currently identified as Fort DeRussy, Honolulu, Hawaii.

Sec. 780. None of the funds made available by this Act shall be available to operate in excess of 247 commissaries in the contiguous United States.

Sec. 781. None of the funds provided in this Act shall be used to procure aircraft ejection seats manufactured in any foreign nation that does not permit United States manufacturers to compete for ejection seat procurement requirements in that foreign nation.

Sec. 782. No more than $203,322,000 of the funds appropriated by this Act shall be available for the payment of unemployment compensation benefits.

Sec. 783. None of the funds appropriated by this Act should be obligated for

the pay of any individual who is initially employed after the date of enactment of this Act as a technician in the administration and training of the Army Reserve and the maintenance and repair of supplies issued to the Army Reserve unless such individual is also a military member of the Army Reserve troop program unit that he or she is employed to support. Those technicians employed by the Army Reserve in areas other than Army Reserve troop program units need only be members of the Selected Reserve.

Sec. 784. Notwithstanding any other provision of law, the Export-Import Bank of the United States may transfer to the Department of the Air Force, specifically for the Air National Guard, if requested, without reimbursement, five (5) DC-10 aircraft and associated spare parts in the possession of the Bank as a result of a default of a borrower from the Bank.

Sec. 785. None of the funds appropriated by this Act may be obligated or expended to adjust a base period under section 1079 *(h)* (2) of title 10, United States Code, more frequently than the Secretary of Defense considers appropriate.

Sec. 786. None of the funds appropriated by this Act shall be available to pay Variable Housing Allowance pursuant to section 403 *(a)* title 37, United States Code, in amounts that exceed the amount of Variable Housing Allowance to which the member would otherwise be entitled under section 403 *(a)*, title 37, United States Code, minus the difference between the amount of Basic Allowance for Quarters such member is receiving and the Basic Allowance for Quarters payable to a member of the same rank and grade on September 30, 1983.

Sec. 787. None of the funds available to the Department of Defense shall be used to adjust any contract price for amounts set forth in any shipbuilding claim, request for equitable adjustment, or demand for payment or incurred due to the preparation, submission, or adjudication of any such shipbuilding claim, request, or demand under a contract entered into after the date of enactment of this Act, arising out of events occurring more than eighteen months prior to the submission of such shipbuilding claim, request, or demand. For the purposes of this Act, the requirement for "submission" of a shipbuilding claim, request, or demand is met only when the certification required in section 6 *(c)* (1) of the Contracts Disputes Act of 1978 is provided and the shipbuilding claim, request, or demand is fully documented and substantiated in accordance with regulations to be promulgated by the Secretary of Defense.

Sec. 788. Under regulations prescribed by the Secretary of Defense, the Department of the Air Force, and Defense Logistics Agency, may test a flat rate per diem system for military and civilian travel allowances: *Provided*, That per diem allowances paid under a flat rate per diem system shall be in an amount determined by the Secretary of Defense to be sufficient to meet normal and necessary expenses in the area in which travel is performed, but in no event will the travel allowances exceed $75 for each day in travel status within the continental United States: *Provided further*, That the test approved under this section shall expire on September 30, 1985, or upon the effective data of permanent legislation establishing a flat rate per diem system for military and civilian personnel, whichever occurs first.

Sec. 789. None of the funds appropriated by this Act shall be used for the transfer of the Department of Defense Dependents Schools (DODDS) to the Department of Education, as prohibited by section 1223 of the Department of Defense Authorization Act, 1984.

Sec. 790. No part of the funds appropriated herein shall be available for the purchase of more than 50 per centum of the fiscal year requirements for aircraft power supply cable assemblies of each military facility from industries established pursuant to title 18, United States Code: *Provided*, That the restric-

tion contained herein shall not apply to small purchases in amounts not exceeding $10,000.

Sec. 791. None of the funds appropriated by this Act shall be used to purchase dogs or cats or otherwise fund the use of dogs or cats for the purpose of training Department of Defense students or other personnel in surgical or other medical treatment of wounds produced by any type of weapon: *Provided*, That the standards of such training with respect to the treatment of animals shall adhere to the Federal Animal Welfare Law and to those prevailing in the civilian medical community.

Sec. 792. Beginning on April 1, 1984, or on the effective date of the next adjustment in the General Schedule of compensation for Federal classified employees, whichever occurs first, none of the funds appropriated by this Act shall be available to pay Variable Housing Allowance to a member pursuant to section 403 *(a)*, title 37, United States Code, in an amount that exceeds the difference between $800 and the amount of Basic Allowance for Quarters such member receives pursuant to section 403, title 37, United States Code, in the case of members with dependents, or the difference between $600 and the amount of Basic Allowance for Quarters such member receives pursuant to section 403, title 37, United States Code, in the case of a member without dependents.

Sec. 793. The land and building located on the parcel described as lot four (4), block four (4), Fairbanks Original Townsite, section 10 townsite 1 south, range 1 west, Fairbanks meridian, shall be transferred to the city of Fairbanks.

Sec. 794. *(a)* Except as otherwise provided in this section, none of the funds appropriated by this or any other Act may be obligated or expended for the procurement of a weapon system unless the prime contractor or other contractors for such system provides the United States with written guarantees —

(1) that the system and each component thereof were designed and manufactured so as to conform to the Government's performance requirements as specifically delineated (A) in the production contract, or (B) in any other agreement relating to the production of such system entered into by the United States and the contractor;

(2) that the system and each component thereof, at the time they are provided to the United States, are free from all defects (in materials and workmanship) which would cause the system to fail to conform to the Government's performance requirements as specifically delineated (A) in the production contract, or (B) in any other agreement relating to the production of such system entered into by the United States and the contractor; and

(3) that, in the event of a failure of the weapon system or a component to meet the conditions specified in clauses (1) and (2) —

(A) the contractor will bear the cost of all work promptly to repair or replace such parts as are necessary to achieve the required performance requirements; or

(B) if the contractor fails to repair or replace such parts promptly, as determined by the Secretary of Defense, the contractor will pay the costs incurred by the United States in procuring such parts from another source.

(b) A written guarantee provided pursuant to subsection *(a)* shall not apply in the case of any weapon system or component thereof which has been furnished by the Government to a contractor.

(c) The Secretary of Defense may waive the requirements of subsection *(a)* in the case of a weapon system if the Secretary —

(1) determines that the waiver is necessary in the interest of the national defense or would not be cost-effective; and
(2) notifies the Committees on Armed Services and Appropriations of the Senate and the House of Representatives in writing of his intention to waive such requirements with respect to such weapon system and includes in the notice an explanation of the reasons for the waiver.

(d) The requirements for written guarantees provided in subsection *(a)* hereof shall apply only to contracts which are awarded after the date of enactment of this Act and shall not cover combat damage.

Sec. 795. None of the funds appropriated by this Act shall be obligated under the competitive rate program of the Department of Defense for the transportation of household goods to or from Alaska and Hawaii.

Sec. 796. No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of $85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. §541, *et seq.*

Sec. 797. None of the funds made available by this Act shall be used to initiate full-scale engineering development of any major defense acquisition program until the Secretary of Defense has provided to the Committees on Appropriations of the House and Senate —

(a) a certification that the system or subsystem being developed will be procured in quantities that are not sufficient to warrant development of two or more production sources, or

(b) a plan for the development of two or more sources for the production of the system or subsystem being developed.

Sec. 798. Funds appropriated by this Act shall be available for such studies and analysis contracts with federally established non-profit corporations which operate Federal Contract Research Centers as the Secretary of Defense may determine in accordance with procedures in effect on June 1, 1983, notwithstanding any other provisions of law: *Provided,* That this section shall expire on April 30, 1984.

Sec. 799. It is the sense of the Congress that the Secretary of Defense should formulate and carry out a program under which contracts awarded by the Department of Defense in fiscal year 1984 would, to the maximum extent practicable and consistent with existing law, be awarded to contractors who agree to carry out such contracts in labor surplus areas (as defined and identified by the Department of Labor).

Sec. 799A. The Administrator of General Services shall transfer to the State of Washington for educational correctional facility use and in accordance with provisions of law relating to the disposal of Federal property, that part of the real property, including all improvements and related personal property thereon, which was administered by the Department of Justice, located in Pierce County, Washington, known as the former McNeil Island Federal Penitentiary. Such transfer shall not include that part of McNeil Island comprising the wildlife refuge area.

Sec. 799B. Within the funds made available under title III of this Act, the military departments may use funds as necessary, but not to exceed $2,300,000, to carry out the provisions of section 430 of title 37, United States Code.

Sec. 799C. Within funds available under title III of this Act, the Department

of Defense shall provide free mailing privileges to members of the Armed Forces of the United States assigned to duty as part of the multinational peacekeeping force in Lebanon and to members of the Armed Forces of the United States assigned to duty in Grenada in the same manner and to the same extent such privileges would be accorded under section 3401 of title 39, United States Code, to members of the Armed Forces of the United States serving on active duty in an overseas area, as designated by the President, when the Armed Forces of the United States are engaged in military operations involving armed conflict with a hostile foreign force.

Sec. 799D. None of the funds appropriated or otherwise made available under this Act may be available for any country during any three-month period beginning on or after November 1, 1983, immediately following a certification by the President to the Congress that the government of such country is failing to take adequate measures to prevent narcotic drugs or other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse and Prevention Control Act of 1971 (21 U.S.C. 812)), which are cultivated, produced, or processed illicitly, in whole or in part, in such country, or transported through such country from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from entering the United States unlawfully.

Sec. 799E. Within funds available under title III of this Act, but not to exceed $100,000, and under such regulations as the Secretary of Defense may prescribe, the Department of Defense may, in addition to allowances currently available, make payments for travel and transportation expenses of the surviving spouse, children, parents, and brothers and sisters of any member of the Armed Forces of the United States, who dies as the result of an injury or disease incurred in line of duty to attend the funeral of such member in any case in which the funeral of such member is more than 200 miles from the residence of the surviving spouse, children, parents or brothers and sisters, if such spouse, children, parents or brothers and sisters, as the case may be, are financially unable to pay their own travel and transportation expenses to attend the funeral of such member.

Sec. 799F. *(a)* Not later than June 1, 1984, the Office of Federal Procurement Policy (hereinafter in this section referred to as the "Office") shall review the procurement practices, regulations, and reform proposals and programs of the Department of Defense relating to the procurement of spare parts for weapon systems and shall transmit to the Congress a report on the findings, conclusions, and recommendations of the office relating to such matters. The report shall include (1) an evaluation of the adequacy of the reform proposals and programs to promote practices and the development of directives which will achieve control of costs, economy, and efficiency in the procurement of such spare parts and (2) such recommendations for legislation with respect to the procurement of such spart parts as the office considers appropriate.

(b) (1) The Secretary of Defense shall furnish to the office such information on the practices, regulations, and reform proposals and programs of the Department of Defense relating to the procurement of spare parts for weapon systems as the Office considers necessary to carry out subsection *(a)*.

(2) The Inspector General of the Department of Defense shall furnish to the Office such information on the practices of the Department of Defense in procuring spare parts for weapon systems as the Inspector General acquires during his audits of such practices and the Office considers necessary to carry out subsection *(a)*.

(c) The Inspector General of the Department of Defense shall have reasonable opportunity to review and comment on the report required by subsection *(a)*

before the report is transmitted to the Congress. The comments of the Inspector General shall be included in such report.

Sec. 799G. It is the sense of the Congress that competition, which is necessary to enhance innovation, effectiveness, and efficiency, and which has served our Nation so well in other spheres of political and economic endeavour, should be expanded and increased in the provision of our national defense.

Sec. 799H. Notwithstanding any other provision of this Act, no funds appropriated by this Act shall be expended for the research, development, test, evaluation or procurement for integration of a nuclear warhead into the Joint Tactical Missile System (JTACMS).

TITLE VIII

RELATED AGENCIES

INTELLIGENCE COMMUNITY STAFF

For necessary expenses of the Intelligence Community Staff; $17,323,000.

CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM FUND

For payment to the Central Intelligence Agency Retirement and Disability System Fund, to maintain proper funding level for continuing the operation of the Central Intelligence Agency Retirement and Disability System; $86,300,000.

This Act may be cited as the "Department of Defense Appropriation Act, 1984".

Approved December 8, 1983.

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3. TITLE 22, US CODE, SECTION 2422 AND TITLE 50, US CODE, SECTION 413

Public Law 98-213 [S. 589]; December 8, 1983

INSULAR AFFAIRS

For Legislative History of Act, see Pamphlet No. 9A

An Act to authorize $15,500,000 for capital improvement projects on Guam, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 *(a)* (1) of Public Law 95-348 (92 Stat. 487) as amended by Public Law 97-357 (96 Stat. 1705) is amended by deleting the word "and" where it last appears, and inserting after the words "fiscal year 1983", the words "and effective October 1, 1983, $15,500,000".

Sec. 2. Funds authorized to be appropriated for the construction of a hydroelectric facility in Ponape pursuant to section 101 of Public Law 96-205 (94 Stat. 84), as amended, may be appropriated directly to the Secretary of the Army for expenditure by the Chief of Engineers on such construction.

Sec. 3. *(a)* Section 205 *(a)* of Public Law 96-205, as amended by Public Law 96-597, is further amended by changing "1983." to "1985.".

(b) Section 205 *(c)* of Public Law 96-205 (94 Stat. 87) is amended to read as follows: "As provided in section 602 of Public Law 94-241 (90 Stat. 263, 270) the term 'rebate of any taxes' shall, effective January 1, 1985, apply only to the extent taxes have actually been paid pursuant to section 601 of said Act, shall not exceed the amount of tax actually paid for any tax year, and may only be paid following the close of the tax year involved. Notwithstanding any other provision of law, effective January 1, 1985, the Commonwealth of the Northern Marina Islands shall maintain, as a matter of public record, the name and address of each person receiving such a rebate, together with the amount of the rebate, and the year for which such rebate was made."

(c) The Secretary of the Interior and the Governor of the Commonwealth of the Northern Mariana Islands shall each submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any efforts to develop any needed modification of the income tax rates required by sections 601 and 602 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America approved by Public Law 94-241 (90 Stat. 263, 269-270) to enforce such sections. The initial report shall be transmitted not later than January 1, 1984, with subsequent reports to be transmitted every three months thereafter until January 1, 1985. The reports shall set forth the precise objectives of both the Commonwealth government and the administration, any areas of difference, the modifications under consideration, and what progress has been made to resolve any differences and implement the provisions of sections 601 and 602.

TITLE 22, UNITED STATES CODE, SECTION 2422

§ 2422. Intelligence activities

No funds appropriated under the authority of this chapter or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States. Each such operation shall be considered a significant anticipated intelligence activity for the purpose of section 413 of Title 50.

(As amended Pub.L. 96-450, Title IV, § 407 *(a)*, Oct. 14, 1980, 94 Stat. 1981.)

TITLE 50, UNITED STATES CODE, SECTION 413

SUBCHAPTER III — ACCOUNTABILITY FOR INTELLIGENCE ACTIVITIES

§ 413. Congressional oversight

(a) *Reports to Congressional Committees of current and proposed activities*

To the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches

of the Government, and to the extent consistent with due regard for the protection from unauthorized disclosure of classified information and information relating to intelligence sources and methods, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States involved in intelligence activities shall —

(1) keep the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives (hereinafter in this section referred to as the "intelligence committees") fully and currently informed of all intelligence activities which are the responsibility of, are engaged in by, or are carried out for or on behalf of, any department, agency, or entity of the United States, including any significant anticipated intelligence activity, except that (A) the foregoing provision shall not require approval of the intelligence committees as a condition precedent to the initiation of any such anticipated intelligence activity, and (B) if the President determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States, such notice shall be limited to the chairman and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate;

(2) furnish any information or material concerning intelligence activities which is in the possession, custody, or control of any department, agency, or entity of the United States and which is requested by either of the intelligence committees in order to carry out its authorized responsibilities; and

(3) report in a timely fashion to the intelligence committees any illegal intelligence activity or significant intelligence failure and any corrective action that has been taken or is planned to be taken in connection with such illegal activity or failure.

(b) *Failure to inform: reasons*

The President shall fully inform the intelligence committees in a timely fashion of intelligence operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, for which prior notice was not given under subsection *(a)* of this section and shall provide a statement of the reasons for not giving prior notice.

(c) *Establishment of procedures for relaying information*

The President and the intelligence committees shall each establish such procedures as may be necessary to carry out the provisions of subsections *(a)* and *(b)* of this section.

(d) *Protection from unauthorized disclosure*

the[1] House of Representatives and the Senate, in consultation with the Director of Central Intelligence, shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all classified information and all information relating to intelligence sources and methods furnished to the intelligence committees or to Members of the Congress under

[1] So in original. Subsec. *(d)* enacted with a lower case "t".

this section. In accordance with such procedures, each of the intelligence committees shall promptly call to the attention of its respective House, or to any appropriate committee or committees of its respective House, any matter relating to intelligence activities requiring the attention of such House or such committee or committees.

(e) *Construction of authority conferred*

Nothing in this chapter shall be construed as authority to withhold information from the intelligence committees on the grounds that providing the information to the intelligence committees would constitute the unauthorized disclosure of classified information or information relating to intelligence sources and methods.

(July 26, 1947, c. 343, Title V, § 501, as added Oct. 14, 1980, Pub.L. 96-450, Title IV, § 407 *(b)* (1), 94 Stat. 1981.)

Exhibit IV

STATEMENTS OF UNITED STATES PRESIDENT RONALD REAGAN, AND SENIOR OFFICIALS OF HIS ADMINISTRATION, RELATING TO US-SPONSORED "COVERT ACTIVITIES" AGAINST NICARAGUA

1. STATEMENT RELEASED BY US CENTRAL INTELLIGENCE AGENCY, APRIL 16, 1984, AS REPRINTED IN THE *NEW YORK TIMES*, APRIL 17, 1984

[Not reproduced]

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2. REMARKS OF US AMBASSADOR TO THE UNITED NATIONS JEANE J. KIRKPATRICK IN LUNCHEON ADDRESS TO THE AMERICAN SOCIETY OF INTERNATIONAL LAW, APRIL 12, 1984, AS REPRINTED IN THE *NEW YORK TIMES*, APRIL 13, 1984

MRS. KIRKPATRICK CHIDES LATIN CRITICS

By Stuart Taylor, Jr., Special to The New York Times

Washington, April 12 — Jeane J. Kirkpatrick, the chief United States delegate to the United Nations, said today that the Government could not practice "unilateral compliance" with rules of international law that its adversaries violated with impunity.

She also told a group of more than 300 specialists in international law that "to portray Nicaragua as a victim in the current situation is a complete, Orwellian inversion of what is actually happening in Central America".

In a speech to a joint luncheon of the American Society of International Law and the Section of International Law and Practice of the American Bar Association, Mrs. Kirkpatrick said the United States and friendly Central American nations had a right to act in "individual and collective self-defense" against Nicaraguan aggression.

Later today, the American Society of International Law overwhelmingly adopted a resolution that it "deplores and strongly favors rescission of" the Reagan Administration's effort to turn aside World Court consideration of Nicaragua's charges that the United States has directed military attacks against it in violation of international law.

IMPATIENT AND UNILATERAL

Covey T. Oliver, the society's outgoing president, said it was the first vote condemning an action of the United States Government in the 78-year history of the society. The group, one of the nation's leading organizations of international lawyers, is holding its annual meeting here this week.

The motion, adopted by a voice vote, was favored by all but a handful of the roughly 100 members, many or most of them professors, who voted.

Mr. Oliver, who was Assistant Secretary of State for Latin American Affairs from 1967 to 1969, said after the vote that the Administration "has persistently acted in an impatient and unilateral way in international organizations". He said that if the Administration's policy was to engage in conduct "modeled on that of the Soviet Union, then down that path lies madness".

Another supporter of the resolution, Detlev F. Vagts, a Harvard Law School professor, said the group was motivated by a feeling that the Administration's action was "a breach of faith to the commitment we made in 1946" in joining the World Court.

NICARAGUA ACCUSED

Mrs. Kirkpatrick said that "Nicaragua is engaged in a continuing, determined armed attack against its neighbors" and "has initiated the violation of international law through the use of violence against its neighbors".

She said the rules against use of military force in the United Nations charter were not "a suicide pact", and suggested that violations by the Soviet Union, Nicaragua and other nations required a response in kind.

"Unilateral compliance with the charter's principles of nonintervention and nonuse of force may make sense in some specific, isolated instances", she said, "but are hardly a sound basis for either US policy or for international peace and stability".

Mrs. Kirkpatrick said that "the legalistic approach to international affairs" was inadequate to cope with the realities of Communist aggression and subversion, but stopped short of saying that the United States should disregard international law.

She also said that she was "of two minds" about submitting to World Court jurisdiction on the Nicaragua question. She said other nations, including the Soviet Union, had long defied the court, and Nicaragua was seeking to use it "for blatantly propagandistic purposes".

The United States has declared that it will not accept the jurisdiction of the World Court, formally known as the International Court of Justice, in cases concerning Central America for the next two years. Mrs. Kirkpatrick said two-thirds of the world's nations have not consented to the jurisdiction of the court at all.

In response to a questioner who asked why the United States did not submit its evidence and "have faith in the impartiality of the World Court", she said the court's 15 judges were chosen in a process "as nonpolitical as the General Assembly itself".

She said the General Assembly, along with other United Nations bodies, applied a "double standard", judging the United States more harshly than Marxist régimes that considered themselves "exempt from the normal prohibitions of international law".

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3. INTERVIEW OF PRESIDENT RONALD REAGAN BY THE *NEW YORK TIMES*, MARCH 28, 1984 (TRANSCRIPT, OFFICE OF THE PRESS SECRETARY TO THE PRESIDENT, MARCH 29, 1984)

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Q: Why don't — I'd like to ask the final question about Central America, Mr. President. I wonder if I could ask you to explain or justify how the United States can go about assisting people who are, as you call them, freedom fighters who are seeking to overthrow a government that we have diplomatic relations with? And answer, if you could, critics who are worried that this is increasing our involvement in Central America.

THE PRESIDENT: Well, the answer to that is, first of all, this particular government of Nicaragua is a government that was set up by force of arms. The people have never chosen it. It's a revolutionary government. And that government, in violation of its pledge to us at a time when it was a revolutionary force trying to become a government, had promised that it would not aid the guerrillas in El Salvador who are attempting to overthrow a duly elected government and a democratic government. And they have violated that. The guerrillas are literally being directed from bases near Managua. They're being supplied by that government. And, the other factor with regard, and why I have referred to them on occasion as "freedom fighters" is because many of them are elements of the same revolution that put the Sandinista government in force.

The revolution against the Somoza dictatorship — and our government, under the previous administration, sat back and never lifted a finger in behalf of Somoza. And then when the fighting was over, did start to give financial aid to the revolutionary government, to help it install itself. And had to cancel that when it discovered what that government was doing. During the revolution against Somoza, the revolutionaries appealed to the Organization of American States, of which we're a member also. And appealed to that organization to ask Somoza to step down and end the bloodshed. And the Organization of American States asked for a statement of what were the goals of the revolution. And they were provided: democracy, a pluralistic government, free elections, free labor unions, freedom of the press, human rights observed — those were the goals of the revolution, submitted in writing to the Organization of American States.

After they got in, they followed the pattern that was followed by Castro in Cuba.

Those other elements that were not Sandinista, other groups who wanted — and they thought all the same thing, democracy — to rid themselves of a dictatorship. Those elements were denied participation in the government. Arrests were made. There were some who were exiled. There were some, I'm afraid, were executed. And, many of the people now fighting as so-called "contras" are elements of the revolution. And it is less an overthrow that they're fighting for as it is a demand that they be allowed to participate in the government and that the government keep its promises as to what it had intended for the people.

And I see no dichotomy in our supporting the government, the democratic government of El Salvador, and the contras here — and we've made it plain to Nicaragua — made it very plain that this will stop when they keep their promise and restore a democratic rule. And have elections. Now, they've finally been pressured, the pressure's led to them saying they'll have an election. I think they've scheduled it for next November. But, there isn't anything yet to indicate that that election will be anything but the kind of rubber-stamp that we see in any totalitarian government. How do you have — there aren't any rival

candidates, there aren't any rival parties, and how would they campaign without a free press?

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4. STATEMENT ISSUED ON BEHALF OF PRESIDENT RONALD REAGAN, OFFICE OF THE PRESS SECRETARY TO THE PRESIDENT, MARCH 8, 1984

March 8, 1984

The President today requested the Congress to provide $21 million in additional funding for fiscal year 1984 for activities of the Central Intelligence Agency. The request will provide funds necessary to continue certain activities of the Central Intelligence Agency which the President has determined are important to the national security of the United States. The appropriate committees of the Congress have been thoroughly briefed on these classified activities and will be fully briefed on this request.

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5. NEWS CONFERENCE BY PRESIDENT RONALD REAGAN, OCTOBER 19, 1983 (TRANSCRIPT, OFFICE OF THE PRESS SECRETARY TO THE PRESIDENT)

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Q: Mr. President, regarding the recent rebel attacks on a Nicaraguan oil depot, is it proper for the CIA to be involved in planning such attacks and supplying equipment for air raids? And do the American people have a right to be informed about any CIA role?

THE PRESIDENT: I think covert actions have been a part of government and a part of government's responsibilities for as long as there has been a government. I'm not going to comment on what, if any, connection such activities might have had with what has been going on, or with some of the specific operations down there.

But I do believe in the right of a country when it believes that its interests are best served to practice covert activity and then, while your people may have a right to know, you can't let your people know without letting the wrong people know, those that are in opposition to what you're doing.

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6. REMARKS OF FRED C. IKLE, UNDER SECRETARY OF DEFENSE FOR POLICY, TO THE BALTIMORE COUNCIL ON FOREIGN AFFAIRS, SEPTEMBER 12, 1983

I am delighted to be here this evening and to have the opportunity to speak to you.

Central America is closer to Baltimore than is California — in terms of geographic distance, that is. But the intellectual distance between here and Central America is enormous. Most of the American people are not well informed about Central America; many are misinformed; and some are outright disdainful about the cultural and social importance of this region.

You all have an obligation to remedy this situation, so that you and your representatives in Congress can engage in constructive support — or constructive criticism — of the Administration's policy.

To begin with, you should know that the President's policy for Central America has not yet been given a chance to work: the blocking votes in Congress have denied the President the means to succeed.

Indeed, members of Congress have involved themselves in the management of US policy for Central America more than for any other region of the world.

— While Congress has quickly and easily approved some four and a half billion dollars in Security Assistance for nations in the Mediterranean region, it slashed nearly in half the much smaller allocation for nations in the Caribbean region — so much closer to home.
— While Congress has been generally supportive of the deployment of some 1,200 US Marines to Lebanon, it fought fiercely to limit the number of US trainers in El Salvador to 55.
— While Congress has not objected to large military exercises in the faraway Indian Ocean region, many members have heavily criticized the recent military exercises in the nearby Caribbean region.
— While Congress has for a long time supported Radio Free Europe, the fine radio program that brings the truth to the people of Eastern Europe, members of Congress have delayed for two years President Reagan's request for Radio Marti, a new radio station that would bring the truth to the people in Cuba.

As we consult with members of Congress on these issues, we are often told that, you, their constituents, are pressing such positions on them. But as we review the public opinion polls, we discover an extraordinary lack of information. For example, in a recent *New York Times*/CBS poll, only 8 percent of the respondents knew, both for El Salvador and Nicaragua, whether the US was supporting the government or the insurgents.

You must help us overcome not only a lack of information, but also a great deal of misinformation. This information is not accidental; it is the result of a well-organized and well orchestrated effort. A fabric of fiction has been tightly woven to conceal the essential facts. Let me review with you some of these fictions:

Fiction has it that US influence in Central and Latin America has prevented democratic development, that the spread of Leninist régimes is the tide of history, a natural process of social reform that we should not oppose. The fact is that the trend toward democratization has continued: among the 32 independent states of Latin America and the Caribbean, 17 are now democratic. Since 1978, five countries have made a peaceful transition from military régimes to elected democratic governments. It is the much criticized military régimes that are often transformed into a democracy; but there has never yet been a Marxist-Leninist régime that was succeeded by democracy.

Another bit of fiction: that the Sandinista régime in Nicaragua would have developed into a pluralistic democracy, had it not been for the US intervention. The fact is that the Sandinistas, only a few weeks after they came into power, reneged on their promise for early elections, began to attack the democratic trade unions, and invited Cuban military and security personnel in steadily growing numbers. Yet, during the first 18 months of the Sandinista régime, the United States provided more than $120 million in direct aid and endorsed over $220 million in Inter-American Development Bank aid — more than the previous Somoza régime in Nicaragua had received from the United States in 20 years! Clearly, it was not US interference that drove the Sandinistas to link up with Fidel Castro — unless economic aid is regarded as "interference".

Another piece of fiction is the charge that the Reagan Administration is "militarizing" the problems of Central America and is bringing the East-West conflict to the region. Well, the East is already here. The Soviets are giving ten times as much military assistance to Cuba and Nicaragua as we are providing to all of Latin America. And Soviet military advisors in Cuba and Nicaragua outnumber US military advisors in the Caribbean region twenty to one.

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Since Congress is so deeply involved in our day-to-day policy towards Central America, our key objectives need to be clear to the American people. Moreover, Congress must share with the Administration an understanding of our basic strategy.

On one thing we can all agree: We do not want the United States to fail. We must succeed.

But what is it we would like to see happen, and what do we want to prevent? We have wide agreement, I believe, that the United States favors a continuation and strengthening of the trend toward open, genuine democracy. And we favor social and economic betterment for the people in Central America, a region so close to us.

Equally important is what we want to prevent. We want to prevent the expansion of totalitarian régimes — particularly Leninist ones, since they will import Stalinist police systems, bring in Soviet arms, and even invited Soviet military bases. There are two more reasons why Leninist régimes are particularly dangerous: once entrenched, they tend to become irreversible, and they usually seek to export their totalitarianism to other nations.

Given these objectives, what should be our strategy?

I

First, we want to help build the road toward democracy and economic development. In the end, the people in each country will have to make their own choices. They can succeed only through their own dedicated effort. But we can help, through advice and influence, by facilitating trade, and by giving aid. The Caribbean Basin Initiative of the Reagan Administration (to which Congress has now agreed) is right on target. So are our efforts in El Salvador in behalf of elections and for improvements in the judicial system.

Also, we are using diplomacy to help the government of El Salvador win over those who are willing to abandon violence and compete in elections, provided they can be assured of safe and fair participation. But we must not underestimate our adversaries. The hard core among the insurgents will never settle for a fair democratic process. We can no more negotiate an acceptable political solution

with these people than the social democrats in revolutionary Russia could have talked Lenin into giving up totalitarian Bolshevism.

II

This leads us to the second requirement. As Secretary Shultz recently explained, the guerrillas in El Salvador have used a "rule or ruin" strategy: they seek to destroy economic assets faster than our aid can restore them. You cannot have economic development in a nation, if guerrilla forces keep blowing up bridges, power lines, school buildings, buses . . . You have to defeat these "rule or ruin" forces militarily. This is the purpose for our military assistance.

Every so often the critics of the Administration proclaim — with accusatory connotation — that we seek a "military solution" in El Salvador. If a "military solution" means putting primary emphasis on military assistance and military means, then it is more factual to accuse the Reagan Administration of seeking an "economic solution", since three dollars out of four in the requested assistance programs are for economic aid.

What we seek to do is to open the doors to democracy and close the doors to violence. But we have to use military means against those who insist — till they have imposed their rule — on using violence.

Let me make this clear to you:

— We do not seek a military defeat for our friends.
— We do not seek a military stalemate.
— We seek victory for the forces of democracy.

And that victory has two components:

One: defeating militarily those organized forces of violence that refuse to accept the democratic will of the people.

Two: establishing an adequate internal system for justice and personal security.

At this point, let us recall our first agreed principle: We do not want the United States to fail. Hence, we must allocate sufficient means so that we can succeed. As long as a group in Congress keeps crippling the President's military assistance program, we will have a policy always shy of success. We will remain locked into a protracted failure.

This the American people should not tolerate. If we are merely involved to fail, then we should not be involved at all.

The resources needed to succeed are small compared to our investment for security in other regions of the world. Once those in Congress who are now blocking adequate assistance give us the means to succeed, the capability and determination of the United States will become clear. This will make the Soviet Union more cautious, which in turn will help our success. On the other hand, if we signal that we are afraid of victory over the forces of violence, if we signal that we have opted for protracted failure, we will only encourage the Soviets to redouble their effort. We will be inviting ever-increasing difficulties.

III

The third requirement of US strategy for Central America is least well understood. We should seek to prevent the partition of Central America, a division of this region into two spheres, one linked to the Soviet bloc and one

linked to the United States. Such a partition would inexorably lead to a hostile confrontation of large military forces, a confrontation that could last for decades.

We can see how such a confrontation works, as we look at Cuba. During the 24 years of the Castro dictatorship, while the standard of living deteriorated and human rights were widely violated, Cuba built up a large military establishment. It has the second largest army in Latin America (second only to Brazil), it has some 200 MIG fighter aircraft, submarines, 6,000 to 8,000 Soviet advisors, and several Soviet intelligence installations. In addition, Castro has sent some 30 to 40 thousand troops abroad to provide the mercenary forces to protect the Soviet imperial outposts. As a result of the militarization of Cuba, our sealines to NATO are now seriously threatened.

The Sandinista régime in Nicaragua is determined to create a "second Cuba" in Central America. Ever since they seized power, the Sandinistas embarked on a major military buildup. Today, they have a much larger army than Somoza ever had, and they have expressed the intention to build the largest force in Central America. Nicaragua is building new military airfields, and is importing Soviet tanks, helicopters, armored vehicles, and other equipment.

This "second Cuba" in Nicaragua would be more dangerous than Castro's Cuba since it shares hard to defend borders with Honduras and Costa Rica. The Sandinistas have already started terrorist activities in both these countries. In addition, Nicaragua provides essential support for the insurgency in El Salvador.

Even after the insurgency in El Salvador has been brought under control, Nicaragua — if it continued on its present course — would be the bridgehead and arsenal for insurgency for Central America. And once the Sandinistas have acquired the military strength that they have long been planning for, they might well use that strength for direct attacks on their neighbors to help speed up the "revolution without frontiers" that they promised us.

At that time, the only way to help protect the democracies might be for the United States to place forward deployed forces in these countries, as in Korea or West Germany. Clearly, we must prevent such a partition of Central America.

. . . In the Democrats response to President Reagan's April 27 address on Central America to a Joint Session of Congress, Senator Dodd said: "We will oppose the establishment of Marxist states in Central America." Yet, a majority in the House of Representatives has done exactly the opposite. It voted to oppose US assistance to those who oppose the establishment of a Marxist state in Nicaragua. That is to say, a blocking majority in the House, in effect, voted to establish a sanctuary for the Sandinistas.

Congressional legislation to deny US support to the democratic resistance forces in Nicaragua would turn Nicaragua into a sanctuary from which the nations of Central America could be safely attacked, but in which US supported forces could not operate. This would enable the promoters of totalitarianism — while being supplied and replenished by Cuba and the Soviet bloc — to attack neighboring countries indefinitely, and always with impunity. Hence, it would deprive the Marxist groups in El Salvador of any incentive to compromise. Indeed, if such legislation were passed, the Sandinistas and Cubans might well find it safe to *increase* their assistance to the insurgents in El Salvador and to step up the destabilization of Honduras and Costa Rica. This, after all, would be fully consistent with their presently declared objectives; and the guaranteed sanctuary would render such escalation almost risk-free.

The psychological impact from cutting off US assistance to the Nicaraguan resistance forces fighting for democracy in their native land would be severe. Such a cut off would signal throughout the region that the totalitarian Leninist forces represent the winning side. The democratic forces would have cause to

despair. They would see that terrorist and insurgent attacks against them are being generously supported by Cuba and the Soviet bloc, and that these attacks could be conducted from safe havens that would be protected by the US Congress, in effect, from all counter-interference. Conversely, the totalitarian Leninist force would know that as soon as they seize control of a country, they will be secure: Cuba and the Soviet bloc will help them maintain an efficient police machinery to repress the people; and should any group arise to fight for freedom, the United States Congress would have denied it all support.

* * *

Let me recapitulate.

Our basic objectives for Central America are clear: we want to strengthen democracy; we want to prevent in this hemisphere the expansion of totalitarian régimes, especially those linked to the Soviet Union.

To this end, we extend economic support and promote democratic development. But given forces of violence that will not accept the democratic will of the people, we also have to provide military assistance — enough to succeed. In addition, we must prevent consolidation of a Sandinista régime in Nicaragua that would become an arsenal for insurgency, a safe haven for the export of violence. If we cannot prevent that, we have to anticipate the partition of Central America. Such a development would then force us to man a new military front-line of the East-West conflict, right here on our continent.

To prevent such an outcome, the Administration and Congress must work together with a strategy that can succeed.

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7. REMARKS OF PRESIDENT RONALD REAGAN IN INTERVIEW WITH REPORTERS MAY 5, 1983 (TRANSCRIPT, OFFICE OF THE PRESS SECRETARY TO THE PRESIDENT)

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Q: Mr. President, moving on to another topic, before this session began, you asked why you should not be scolding Members of the House committee that voted yesterday to stop funding for overt operations against Nicaragua. Do you really see any consequences of that action? Does that vote stop you from doing anything, or hinder anything your administration is doing?

THE PRESIDENT: It is in a committee. And there is the Senate yet to go on this. And I would hope that, maybe, we could do better there.

It, also, had an element in it that looked at partisanship, since the vote was on straight party lines. And I do not believe that that reflects the thinking of a great many Democrats, because many of them spoke up right after my speech.

Q: Does this vote indicate that you failed in your objectives in that speech?

THE PRESIDENT: No, as I say, because I know that there are still a great many Democrats who have been quite outspoken, including some of the leadership in the House of their party, in support of what I had proposed — of making this a bipartisan approach, and even being critical of some of their members who did seem to sound partisan.

The thing that needs telling about this whole situation in Nicaragua — I

thought I had covered this subject but, maybe, I did not cover it enough the other night. And that is that, right now, these forces that have risen up in opposition to the Sandinista government are — under what you might say is a sort of a group — a controlling body that formed in the northern part of Nicaragua. There are about seven leading members to this kind of committee. Most of them were former anti-Somoza people. They are people who simply want this government of Nicaragua to keep its promises.

If you remember, the Organization of American States asked Somoza to resign at that time. And Somoza, his reply to them was that if it would benefit his country, Nicaragua, he would. And he did resign.

The Organization of American States also gave four points to the Sandinistas that they, the Organization of American States, would support them if their goal was these four things: Of promoting democracy, of immediate elections of a concern for human rights and the Sandinistas acceded to that and said yes, those were their goals and they would keep those four provisions or promises. And they haven't. They never made an effort to keep them. They violated all of them.

Now, this is what makes me say that there's a great hypocrisy there of the Sandinista government protesting what is happening in its own country and from people who were once a part of its own revolution at the same time that they are supporting people in another country who are seeking to overthrow a duly elected government of the people.

Q: Mr. President, you — in referring to these groups, you seem to suggest that these groups are seeking a change in Nicaragua itself. And how does that statement square with your saying that we're not violating the law in aiding groups who seek the overthrow of the Nicaraguan government?

THE PRESIDENT: Well, do they? Or are they asking that government — or that revolution of which they themselves were a part — asking it to go back to its revolutionary promises and keep faith with the revolution that the people of Nicaragua supported.

Many of these people are businessmen whose businesses have been taken over. They are farmers whose land was seized by this government, farmers whose crops were — they were forced to sell them to the government at less than the cost of production. And they're protesting this violation of what had made them support the revolution to begin with.

But the whole purpose of the Sandinista government seems to be not only with El Salvador but the export of revolution to their other neighbors, to countries that are already democracies. Honduras has taken that step; Costa Rica, the oldest democracy of all. And all of them are plagued by radicals in their midst who are encouraged by the Sandinista government.

Q: Mr. President, I'd like to go back to what the committee actually did yesterday in voting the cutoff. CIA Director Casey is reported to have said it would lead to a bloodbath for the guerrillas inside the country. Do you agree with that? And how seriously do you take what the committee does? How back would it be if that cutoff of covert aid went through?

THE PRESIDENT: Well, I'm saying if — well, if that became the policy, I think it would set a very dangerous precedent. The executive branch of government and the Congress has a shared responsibility, as I pointed out in my speech, for foreign policy. And we have — we each have a place in formulating foreign policy, but we each have a responsibility also. And I think that what I said about this was that it was very irresponsible. And it was — it literally was taking away the ability of the executive branch to carry out its constitutional responsibilities.

Q: Do you believe that it would lead to the bloodbath that the CIA Director talked about?

THE PRESIDENT: Well, I haven't heard his entire remark in connection with that term or how he described it or what he meant with it. I'll make it a point to find out. I once used a bloodbath term as Governor of California, and one individual reversed it in the press and had it saying the opposite of what I had intended it to say and I never did quite get the situation cleared up.

Q: Well, what — I don't understand. What's wrong with the committee's position? What difference does it make if instead of giving covert aid to the guerrillas in Nicaragua, you give overt aid to the countries of El Salvador and Honduras to stop the flow of weapons through their countries, which is what you say you want in the first place? What's wrong with that?

THE PRESIDENT: Except then the only help that you can give is through other governments. And I don't think that — I don't think that's an effective thing to do, and how do you know that the other governments would want to themselves, then, participate in helping the people that need the help? In other words, we'd be asking some other government to do what our own — what our Congressional — or our Congress has said that we can't do.

. . . . . .

Q: Many members of the administration say that our commitment must be, in El Salvador, must be a sustained one and that it could take seven to ten years to turn things around. I think Ambassador Hinton suggested as much recently. Is that your view?

THE PRESIDENT: I think that he, I may be wrong, but I think that when he made that statement he was talking with regard to a more limited way that we have been trying to perform there. I know that guerrilla wars — that time is on the side of the guerrillas, and they aren't something that is instantly resolved, just as terrorism isn't something that can be curbed just by normal police actions. These are very difficult things. The hit-and-run tactics of guerrillas are similar to terrorist activities. It's, I suppose, based on an extension of the same principle that you can't ever totally eliminate crime.

Q: But do you think if the, if this aid package were approved by Congress, that it would be sufficient to turn things around there this year? Your own proposal calls for less aid next year, and it seems to suggest that this surge of aid would do the trick.

THE PRESIDENT: Well, the surge we're asking for right now is a restoration of what we asked for in the first place. And, as I say, it's better than two to one economic aid. The problem with a country like El Salvador and what its problems are right now that requires military aid in the sense of more training, so far only having trained one-tenth of the army — more training that we could offer, more military supplies and ammunition and so forth — we must do is, when you've got a government that is trying to reverse the course, the history, of the country and bring about democracy and human rights and things of that kind, and you have guerrillas that are making it impossible to function, or for those programs to function, what good does it do to have a land reform program and give land to the peasants if the peasants can't go out and work the land for fear of being shot by the guerrillas? What good does it do to try and improve the economic standards of a people if they're out of work simply because someone has shut off the power and the factory can't operate or transportation has broken down

so that the supplies that are needed and the products from whatever they're working on cannot be transported, because of the bridges and so forth that are blown up.

When a third of one area of the country — a third of the year, they were totally without power, then you have to say, "If we're going to make this economic improvement work, we've got to stop that conflict". We have to stop those people that are preventing the economy from moving with their firearms and their murders and so forth.

And this is what, it seems, that sometimes the debate in the Congress, they seem to be ignoring.

Q: Mr. President, can I follow up on something you said earlier? Did I understand you to say that if you were forced to stop aid to the Nicaraguan guerrillas, that you would try to funnel through other countries?

THE PRESIDENT: No, I was saying that's what the Committee said, that the Committee said we would have to go overt, and, then, in going overt, you can only give money to another government. And, if you did that, then you would have to be depending on — well, maybe those other governments in Central America would give that money to the freedom fighters in Nicaragua.

Now, if they want to tell us that we can give money and do the same things we've been doing — money, giving, providing subsistence and so forth to these people directly and making it overt instead of covert — that's all right with me. I just don't want the restrictions put on it that they might put on.

Q: You'd be willing to accept the idea of overt aid to the anti-Sandinista guerrillas in Nicaragua?

THE PRESIDENT: Yes, but not if they do it as one individual or more than one, as suggested on the Hill — that they would do it and, then, we would have to enforce restrictions on the freedom fighters as to what tactics they could use.

And I have said that if we were to do that, then I would expect that the only fair thing would be that the Nicaraguan government would itself impose the same restrictions on the freedom fighters in El Salvador, only I don't call them freedom fighters because they've got freedom and they're fighting for something else. They're fighting for a restraint on freedom.

Q: Can I just — All of a sudden now we're aiding freedom fighters. I thought we were just interdicting supplies into —

THE PRESIDENT: I just used the words, I guess, "freedom fighters" because the fact that we know that the thing that brought those people together is the desire, as I said, for the same revolutionary principles that they once fought and have been betrayed in. As I say, they have made it plain. They want what they once fought beside the Sandinistas to get. And they have been betrayed. And I thought that the use of freedom fighters was because — I found out that it seems as if there is a kind of a bias in the treatment of guerrilla fighters. It depends on what kind of a government they are opposing. And some are treated more kindly than others.

Now, I think the ones in El Salvador who are fighting against an elected government, they are guerrillas. But in reality, when we talk about Nicaragua and everyone says, "the government in Nicaragua", well, it was a government out of the barrel of a gun. And, true, we favored it before I got here. We did not lift a hand for the existing government of Nicaragua, because we did not believe that it was treating its people fairly.

And here was a revolution that took place that seemed to express all the things that we all believe in. Well now, they have not carried out those things. And

they are there by force. And what really — other than being in control of the capital, you might say, and having a handle on all the levers — what makes them anymore a legitimate government than the people of Nicaragua who are asking for a chance to vote for the kind of government they want?

THE PRESS: Thank you, Mr. President.

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8. NATIONAL SECURITY COUNCIL DOCUMENT ON POLICY IN CENTRAL AMERICA AND CUBA, APRIL 1982, AS REPRINTED IN THE *NEW YORK TIMES*, APRIL 7, 1983

Washington, April 6 — Following is the text of a National Security Council document, "US Policy in Central America and Cuba Through F.Y. '84, Summary Paper", on a meeting of the National Security Planning Group in April 1982:

I. INTERESTS AND OBJECTIVES

We have an interest in creating and supporting democratic states in Central America capable of conducting their political and economic affairs free from outside interferences. Strategically, we have a virtual interest in not allowing the proliferation of Cuba-model states which would provide platforms for subversion, compromise vital sea lanes and post a direct military threat at or near our borders. This would undercut us globally and create economic dislocation and a resultant influx to the US of illegal immigrants. In the short run we must work to re-eliminate Cuban/Soviet influence in the region, and in the long run we must build politically stable governments able to withstand such influences.

II. THE CURRENT SITUATION

The deterioration in our position so evident 6 to 12 months ago has been halted. Political developments in the region have been positive. The elections in Honduras, Costa Rica and El Salvador provided a strong contrast to an increasingly totalitarian Nicaragua and have stalled the public affairs momentum and the political program of the extreme left. In Guatemala the recent junior officer coup has given us new possibilities for working out an improved relationship with that country. The minicoup in Panama has brought to power a new, more dynamic and more pro-US national guard commander. Regional cooperation among democratic states has improved, as is evident by the formation of the Central American Democratic Community.

Militarily, the situation has improved in El Salvador, where any prospect of a near-term military victory by the F.M.L.N. has been foreclosed and the Salvadoran forces have shown improved capabilities. Regional interdiction efforts have hampered but not stopped guerrilla resupply efforts. The Guatemala coup may cause some erosion in the Government's military capabilities but, in the long run, if the Government is able to address problems of official violence it may prove more effective in carrying out an active counterinsurgency. In Nicaragua, the Sandinistas are under increased pressure as a result of our covert efforts and because of the poor state of their economy. For the first time the Sandinistas have cause to doubt whether they can export subversion with impunity.

But serious problems remain:

— Guerrilla strength in El Salvador and Guatemala remains at 4-5,000 in each country.

— There is a dangerous lack of political consensus in both El Salvador and Guatemala, which could lead to political disintegration. Continued political, social and institutional reforms must be pursued.

— We continue to have serious difficulties with US public and Congressional opinion, which jeopardizes our ability to stay the course. International opinion, particularly in Europe and Mexico, continues to work against our policies.

— Cuba and Nicaragua retain the ability to continue or even increase their support for insurgencies and terrorist groups, particularly in Honduras and Costa Rica, where their activities are increasing. Panama could become a target.

— Mexico continues public and covert support for the extreme left with propaganda, funds and political support.

— The P.L.O. and Libya continue their military and financial support for the extreme left.

— The regional economic situation continues to deteriorate, causing social and political dislocations which impede our efforts to stabilize the situation.

III. The Strategy

Our current strategy consists of building a sustained and effective commitment to the region by:

— Improving the military capabilities of the democratic states to counter subversion by the extreme left.

— Improving the economic situation through direct economic assistance and the C.B.I. package.

— Assisting directly in the regional interdiction and intelligence collection effort.

— *Increasing the pressure on Nicaragua and Cuba to increase for them the* costs of interventionism.

— Building democratic political institutions capable of achieving domestic political support.

— Pursuing reform programs to correct severe social dislocations which foment and aid insurgency.

— Stimulating regional cooperation among democratic states to provide a basis for collective security action through the O.A.S., Rio Treaty and the C.A.D.C.

— Addressing the public affairs dimension of the Central American problem by a concerted public information effort.

— Co-opting cut-and-run negotiation strategies by demonstrating a reasonable but firm approach to negotiations and compromise on our terms.

Most, but not all, the elements necessary to implement this strategy are in place.

IV. Where We Will Be in 1984

Where we stand by the end of FY 1984 will depend on a number of assumptions. We have indicated six situations. Situation 1 outlined below is deemed to be the most probable set of assumptions and outcomes. Situations 2 through 6 are annexed to this paper.

Situation 1 (Likely Case)

Assumptions

(1) Resource availability at $1 billion of economic and military assistance a year for the Caribbean Basin.
(2) Significant covert effort as approved in N.S.D.D. 17 and other existing authorities.
(3) No US troops introduced and no significant increase in US trainers.
(4) Incremental increase in Cuban and Nicaraguan effort. No major qualitative changes in types of support.
(5) Increasing effectiveness of the arms interdiction effort but substantial arms continue to get through.
(6) Gradual upturn in world economy with resulting improvement in balance of payments and domestic economies in the Basins.

Results

Regional

— Cuban/Nicaraguan influence is slowly reduced.
— The region strengthens economically.
— Regional military and intelligence cooperation among the democratic countries improves.
— Democratic structures are strengthened in a number of countries.
— The C.A.D.C. develops as a significant multilateral actor.
— Swing in regional confidence in our favor.

El Salvador — Armed forces improve, putting guerrillas increasingly on the defensive, but guerrillas continue to have significant capability. Increased friction between guerrilla groups and guerrilla supporters. A National Assembly and presidential elections in 1983. Slow but finite reduction in political and/or indiscriminate violence. US public opinion problems continue in cyclical pattern triggered by six-month certification and by 1984 US elections.

Nicaragua — Nicaragua's isolation increases.

Guatemala — Depending on stability of the region, situation could improve substantially (see issues for decision)

Honduras and Costa Rica — Low-level insurgency remains under control. Serious economic problems create social tensions . . .

Policy Implications

A. Continue pursuit of strategy outlined in Section III above. Consistency and sticking power are the keys.

B. Maintain funding levels at $1 billion per year for Basin (economic and military). This will require a $250-300 million supplemental in F.Y. '83 and active pursuit of the F.Y. '82 supplementals.

C. Make major effort to obtain Congressional approval of F.Y. '82 Caribbean Basin and Security Assistance supplementals to help alleviate critical short-term economic problems in the region, to prevent military set-backs in El Salvador between now and October and to assure continued cooperation from Honduras.

D. If Guatemala situation continues to improve we will need some additional resources beyond those levels for economic and security and intelligence assistance.

E. Carry out all N.S.D.D. 17 November 1981 decisions.

F. Further upgrade US intelligence collection and improve internal intelligence capabilities in countries of the region.

G. Substantially upgrade quality of political and economic understanding of the region through augmentation of personnel assigned to those functions.

H. Improve public information effort using themes outlined in State Department paper. Allocate necessary personnel resources.

I. Adopt more active diplomatic campaign to turn around Mexico and Social Democrats in Europe. In the meantime keep them isolated in Central American issues and highlight positive support from Christian Democratic Parties and free trade unions.

J. Build public pressure against Cuba by highlighting human and political rights issue. Use International Cuban community to carry the message.

K. Step up military training efforts in region with emphasis on multilateralization where possible and productive.

L. Increase economic pressure on Cuba. (Consideration to be given to quantum tightening of economic embargo by stronger restrictions on Cuban content from third countries.)

M. Step up efforts to co-opt negotiators . . .

N. Continue to build C.A.D.C. capabilities.

O. Institute efforts to increase factional strife among guerrilla groups.

P. Push for major amnesty program in El Salvador and Guatemala and publicized informant programs in Costa Rica and Honduras. Make concerted effort to exacerbate factional strife in extreme left.

V. Issues for Decision

As noted in Section III above, the key elements of our policy are in place. However, the following additional issues should be addressed:

A. Resource Levels (F.Y. '82): The Situation 1 scenario outlined above is predicated on a resource commitment level of one billion dollars per year through (and probably beyond) F.Y. '84. The F.Y. '82 program to include security and economic assistance, C.B.I. and security supplementals and the use of 500 authority will total about one billion dollars. If the supplemental requests are not approved our programs will be seriously jeopardized.

Decision: To make a maximum effort under White House direction to obtain Congressional approval for these supplemental requests.

B. Resource Levels (F.Y. '83): Our F.Y. '83 budget request will fall about $300 million short of the one billion level (in 1982 dollars).

No decision is needed now but early in F.Y. '83 the funding shortfall problem will have to be addressed.

C. Resource Level (personnel): Vital political, military and economic reporting from Central America has been seriously constrained by a lack of personnel resources.

Decision: That the global ceiling on personnel strength in the State Department be increased by 35 positions (above F.Y. '82 supplemental and F.Y. '83 budget levels) to provide additional resources to the public information effort and to augment political and economic reporting in the region. Similarly, that D.O.D. resources in the area be reviewed for adequacy and augmented as necessary.

D. Resource Levels (Guatemala): Additional F.Y. '82 and F.Y. '83 assistance will be needed to demonstrate support for the new Government and to assist it in dealing with its insurgency.

Decision: That up to $50,000 in IMET be reprogrammed to Guatemala in F.Y. 1982. That F.M.S. cash sales to Guatemala be authorized immediately. That up to $10 million in F.M.S. credits be reprogrammed to Guatemala in F.Y. '83.

E. Resource Levels (Guatemala — Interdiction): Immediate steps are needed to implement an arms interdiction program in Guatemala as provided by the 9 March 1981 Presidential Finding on Central America.

Decision: that the Central Intelligence Agency's authority under the 9 March 1981 Presidential Finding be increased from $19.5 million to $22.0 million in order that an expanded program in Guatemala be initiated this fiscal year. These funds should be obtained, if possible, from the C.I.A.'s Reserve for Contingencies.

F. Intelligence Efforts: Despite major improvements in collection, much more needs to be done.

Decision: That D.O.D. and C.I.A. be tasked with further improvements in intelligence collection efforts in the region with an emphasis on the development of intelligence capabilities in each of the democratic countries of the region.

G. Public and Congressional Information: Further improvements are needed.

Decision: That, under the auspices of the White House, the public information effort be augmented and targetted on improving communication with the Congress and with opinion leaders.

H. N.S.D.D. 17: Not all provisions of N.S.D.D. 17 have been implemented.

Decision: To reaffirm the continued validity of N.S.D.D. 17 and task full implementation thereof.

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9. TESTIMONY OF FORMER SECRETARY OF STATE ALEXANDER M. HAIG, JR., BEFORE THE COMMITTEE ON FOREIGN AFFAIRS, US HOUSE OF REPRESENTATIVES, 97TH CONGRESS, 1ST SESSION, NOVEMBER 12, 1981

MR. STUDDS: I couldn't possibly support anything that sounds that multisyllabic and horrible, no.

Secretary HAIG: That is the first real compliment I have had from you.

MR. STUDDS: Let me ask you this, having failed with that one. As you know, rumors persist throughout Central America that the military in Honduras may not permit the elections that are scheduled in that country for November 29 to be held or that they might not sanction the results of those elections.

The United States, quite properly in my judgment, supports those elections. Are you willing, as Secretary of State, to say that in the event that the military in Honduras should prevent the elections or should fail to recognize their results, the United States would seriously reexamine its increasingly close relationship with the Honduran military?

Secretary HAIG: I am not prepared to make that statement today, Mr Studds.

MR. STUDDS: OK, let me try Nicaragua. We have been criticizing Nicaragua for building up its military. You yourself have done so. Nicaragua, as you know, says that they fear a direct or indirect attack from the United States as well as destabilization efforts aimed at the current government from exiles in Honduras and in Florida, among other places.

Can you provide this committee and this Congress with an assurance that the United States is not and will not participate in or encourage in any way, directly or indirectly, any effort to overthrow or to destabilize the current government of Nicaragua?

Secretary HAIG: No; I would not give you such an assurance, but that must not be interpreted by mischievous inquisitors to represent an articulation of a policy one way or the other. Just merely it would be a self-defeating statement by a responsible executive branch official.

MR. STUDDS: We couldn't have that. I would take the reference to mischievous inquisitors to be reference to the press and not the members of the committee who are asking.

Secretary HAIG: If the shoe fits, it can be worn.

MR. STUDDS: I will try it on. My point, I guess, is pretty obvious. It seems to me that the failure of the United States to respond clearly and directly to, for example, the three illustrative and straightforward questions which I just posed to you is contributing directly to a growing tension in Central America. I simply asked you to reaffirm the support of the United States for principles of democracy, for peaceful resolution of conflicts, for nonintervention in the affairs of other states, and in each of those instances —

Secretary HAIG [interrupting]: That I have no trouble —

MR. STUDDS: I know you haven't. At that level of generality it is fine, but in each of the three specific instances which I asked you that, you declined to give me explicit assurance.

Secretary HAIG: It seems to me, Mr. Studds, that you should be concerned about the mounting evidence in Nicaragua of a totalitarian character of the Sandinista régime. Now, if you are espousing policies that would support that trend, then I would be rather concerned about your —

MR. STUDDS: Mr. Secretary, I am not espousing any policies. I am trying to elicit what the policies of my government are. In my own judgment, if it is material, many of the actions by the current Government of Nicaragua are indefensible.

Secretary HAIG: I am glad you —

MR. STUDDS [interrupting]: But I must ask if you have seen the cartoon where a patient is talking to a psychiatrist and he says, "Doctor, what do you call it when you think everybody is after you and they are?"

And it seems to me —

Secretary HAIG [interrupting]: Probably he lives in Washington.

MR. STUDDS: Yes; I do believe that we ought to take a careful look at our own unwillingness to clearly state that we will not intervene, we will not destabilize, we will not continue to fuel violence. That we support unconditional talks aimed at a peaceful resolution of a tragically violent conflict. We are asking the region of Central America to choose between Fidel Castro and Ronald Reagan, and I submit to you that we are making Mr. Castro look a lot better than he deserves to look.

Secretary HAIG: I probably agree with that under any set of circumstances, but I hope, Mr. Studds, that you understand that the policies we are pursuing in this hemisphere, both with respect to Mr. Castro and the increasingly totalitarian régime in Nicaragua are designed to preclude the outcome of

totalitarianism, and to espouse and further the basic values of the American people.

Now, the fact that you differ as an individual with how best to accomplish that is, of course, your prerogative, but I can assure you that if motives are being questioned you are on the wrong track.

MR. STUDDS: Let me just say motives are not being questioned, but if it is the judgment of this administration that our policies in El Salvador reflect the values of the American people, then I must submit that I have a very different picture of those values.

Secretary HAIG: You know as well as I that on two occasions in the very recent past we have discussed this issue with the Nicaraguan Government, and in the wake of those discussions, which included the potential for complete normalization, economic support, and a dialog of a constructive character, that they have responded by flaunting the actions that I outlined here in response to an earlier question, and that is a fact. That is a fact, and I am shocked that you haven't even made reference to those efforts, which you know about.

MR. STUDDS: My time is up.

MR. FOUNTAIN: Mr. Barnes.

MR. BARNES: Mr. Secretary, I want to follow up on Mr. Studds' questions. I chair the Subcommittee on Inter-American Affairs, and I have been meeting on a regular basis with representatives of the Government of Nicaragua, and the Cubans having been around to see us.

As you know, there has been a lot of speculation in the press that we are about to engage in some military action. Most of us have been assuring them that that was extraordinarily unlikely, and we have had briefings by your subordinates suggesting that that was extraordinarily unlikely. But based upon your responses this morning to questions from Mr. Fountain, Mr. Lagomarsino, and Mr. Studds, if I were in Nicaragua I would be building my bomb shelter this afternoon.

Secretary HAIG: I would hope you would be pluralizing your site.

MR. BARNES: I would hope they would do that as well, Mr. Secretary. Certainly, as you know, our subcommittee and members of this committee have expressed our concern with respect to some of the points you have raised today. Specifically, most of the members of this committee joined me in sending a cable to Nicaragua recently expressing our concern with respect to arrest and sentencing—

Secretary HAIG [interrupting]: I compliment you on that.

MR. BARNES [continuing]: Of the private sector leaders. But nonetheless your response to questions this morning certainly fuels the speculation and concerns throughout the Western Hemisphere about possible military action by the United States.

Secretary HAIG: Mr. Barnes, as recently as yesterday — the day before, excuse me — the President of the United States addressed this issue, and he unequivocally stated to the American people that there are no plans for the employment of American forces anywhere worldwide, and I think that answer should stand here today, and I wonder what you are trying to drive at.

MR. BARNES: Well, there are rumors just rampant throughout this town — and you point out it is a town that is always full of rumors — that we are seriously contemplating, if we have not already decided, to institute a military blockade in the Central American region aimed at Nicaragua. Would you be prepared to state this morning that we are not, that we have not planned to do that and we are not going to do that?

Secretary HAIG: I am not prepared to say anything. I think the President has

addressed the issue, and I think you know that, and I think if you are trying to create circumstances to reassure those régimes who have thus far been undeterred in their drive towards establishing a totalitarian régime in this hemisphere, why, I question whether or not we are on a sound course.

MR. BARNES: Mr. Secretary, in your opening statement you make some very constructive points with respect to the need to have the resources to carry out our foreign policy, and I certainly want to salute that. I am concerned, however, that in specific instances we are going in precisely the wrong direction. I am informed by everyone who is close to the situation that Costa Rica, for example, is going bankrupt and has a very short time before it goes over the brink.

My perception is that it seems to be a matter of indifference to this administration whether what is a bastion of democracy in this region, very close to the United States, survives at all economically. The administration has proposed no ESF for Costa Rica, and has cut development assistance for that country by a magnitude that is exceeded in percentage terms only by the cuts for Nicaragua. Why is this happening?

Here is a country that stands for everything we believe in, that has been helpful to us in the international organizations time after time, that is in desperate financial shape, and we ought to be responding not tomorrow, but yesterday. What is going on?

Exhibit V

UNITED STATES CONGRESSIONAL REPORTS, DEBATES, AND OTHER STATEMENTS BY MEMBERS OF CONGRESS RELATING TO US-SPONSORED "COVERT ACTIVITIES" AGAINST NICARAGUA

1. STATEMENT BY US SENATOR DANIEL PATRICK MOYNIHAN, VICE-CHAIRMAN, SENATE SELECT COMMITTEE ON INTELLIGENCE, APRIL 15, 1984

2. LETTER FROM US SENATOR BARRY GOLDWATER, CHAIRMAN, SENATE SELECT COMMITTEE ON INTELLIGENCE, TO US DIRECTOR OF CENTRAL INTELLIGENCE WILLIAM J. CASEY, APRIL 9, 1984, AS REPRINTED IN THE *WASHINGTON POST*, APRIL 11, 1984

3. DEBATE IN THE US HOUSE OF REPRESENTATIVES, 98TH CONGRESS, 2D SESSION, APRIL 12, 1984 (129 *CONGRESSIONAL RECORD* H. 2878-2940)

4. DEBATE IN THE US SENATE, 98TH CONGRESS, 2D SESSION, APRIL 10, 1984 (129 *CONGRESSIONAL RECORD* S. 4192-4205)

5. DEBATE IN THE US SENATE, 98TH CONGRESS, 2D SESSION, APRIL 5, 1984 (129 *CONGRESSIONAL RECORD* S. 3848-3898)

6. DEBATE IN THE US SENATE, 98TH CONGRESS, 2D SESSION, APRIL 4, 1984 (129 *CONGRESSIONAL RECORD* S. 3742-3796)

7. DEBATE IN THE US HOUSE OF REPRESENTATIVES, 98TH CONGRESS, 1ST SESSION, OCTOBER 20, 1983 (129 *CONGRESSIONAL RECORD* H. 8389-8433)

8. DEBATE IN THE US HOUSE OF REPRESENTATIVES, 98TH CONGRESS, 1ST SESSION, JULY 28, 1983 (129 *CONGRESSIONAL RECORD* H. 5819-5882)

9. DEBATE IN THE US HOUSE OF REPRESENTATIVES, 98TH CONGRESS, 1ST SESSION, JULY 27, 1983 (129 *CONGRESSIONAL RECORD* H. 5720-5762)

10. REPORT OF THE US HOUSE OF REPRESENTATIVES PERMANENT SELECT COMMITTEE ON INTELLIGENCE, 98TH CONGRESS, 1ST SESSION, REPT. NO. 98-122, PART I (MAY 13, 1983)

[Not reproduced]

Exhibit VI

PRESS DISCLOSURES OF UNITED STATES-SPONSORED "COVERT ACTIVITIES" AGAINST NICARAGUA

A. SINCE 1 APRIL 1984

1. "A FUROR OVER THE SECRET WAR", *NEWSWEEK*, 23 APRIL 1984

2. "EXPLOSION OVER NICARAGUA", *TIME*, 23 APRIL 1984

3. "WAYS EYED TO FOSTER LATIN AIMS", *WASHINGTON POST*, 20 APRIL 1984

4. "REAGAN URGED TO GO TO AMERICAN PEOPLE ON NICARAGUA ISSUE", AND "KEY CIA ROLE SEEN IN BARRING OF NICARAGUA", *NEW YORK TIMES*, 20 APRIL 1984

5. "WHY CIA 'PUT THE HEAT ON' ", *NEWSDAY*, 19 APRIL 1984

6. "CIA DIRECTLY OVERSAW ATTACK IN OCTOBER ON NICARAGUA OIL FACILITY", *WASHINGTON POST*, 18 APRIL 1984

7. "OCT. 10 ASSAULT ON NICARAGUANS IS LAID TO CIA", *NEW YORK TIMES*, 18 APRIL 1984

8. "MOYNIHAN RESIGNS INTELLIGENCE PANEL POST, ASSAILS CIA", *WASHINGTON POST*, 16 APRIL 1984

9. "COVERT AID SALVAGE TRY UNDER WAY", *WASHINGTON POST*, 16 APRIL 1984

10. "HOW CONGRESS WAS INFORMED OF MINING OF NICARAGUA PORTS", *NEW YORK TIMES*, 16 APRIL 1984

11. "MOYNIHAN TO QUIT SENATE PANEL POST IN DISPUTE ON CIA", *NEW YORK TIMES*, 15 APRIL 1984

12. "HOUSE UNIT SAYS REPORT ON MINES ARRIVED JAN. 31", *NEW YORK TIMES*, 14 APRIL 1984

13. "MEXICAN OFFICIAL CONDEMNS MINING OF NICARAGUA'S PORTS", *NEW YORK TIMES*, 14 APRIL 1984

14. "MEXICO HITS US FOR BARRING COURT IN MINING CASE", *WASHINGTON POST*, 14 APRIL 1984

15. "NICARAGUA MINELAYING SAID TO HARM US GOALS", *WASHINGTON POST*, 13 APRIL 1984

16. "CIA FUNDS RUN SHORT FOR COVERT OPERATIONS", *WASHINGTON POST*, 13 APRIL 1984

17. "US-BACKED ANTI-SANDINISTA REBELS USE HELICOPTERS TO EVACUATE WOUNDED", *WASHINGTON POST*, 12 APRIL 1984

18. "SHIPPING CONCERNS STOP CALLS IN NICARAGUA", *NEW YORK TIMES*, 12 APRIL 1984

19. "HOUSE COMMITTEE ECHOING SENATE OPPOSES MINING", *NEW YORK TIMES*, 12 APRIL 1984

20. "MINING TO CONTINUE, REBEL CHIEF SAYS", *NEW YORK TIMES*, 12 APRIL 1984

21. "US SAYS PORT MINING HAS CEASED", *WASHINGTON POST*, 12 APRIL 1984

22. "SENATE VOTES, 84-12, TO CONDEMN MINING OF NICARAGUAN PORTS", *WASHINGTON POST*, 11 APRIL 1984

23. "AMBIGUITIES ON GOALS", *NEW YORK TIMES*, 11 APRIL 1984

24. "SENATE, 84-12, ACTS TO OPPOSE MINING NICARAGUA PORTS", *NEW YORK TIMES*, 11 APRIL 1984

25. "REBELS REPORT PUSH AGAINST NICARAGUA", *WASHINGTON POST*, 10 APRIL 1984

26. "CIA VIEWS MINELAYING PART OF COVERT 'HOLDING ACTION'", *WASHINGTON POST*, 10 APRIL 1984

27. "REAGAN SNUBS WORLD COURT OVER NICARAGUA", *WALL STREET JOURNAL*, 9 APRIL 1984

28. "US VOIDS ROLE OF WORLD COURT ON LATIN POLICY", *NEW YORK TIMES*, 9 APRIL 1984

29. "LATIN DEBATE REFOCUSED", *NEW YORK TIMES*, 9 APRIL 1984

30. "AMERICANS ON SHIP SAID TO SUPERVISE NICARAGUA MINING", *NEW YORK TIMES*, 8 APRIL 1984

31. "US SAID TO DRAW LATIN TROOPS PLAN", *NEW YORK TIMES*, 8 APRIL 1984

32. "CIA HELPED TO MINE PORTS IN NICARAGUA", *WASHINGTON POST*, 7 APRIL 1984

33. "US ROLE IN MINING NICARAGUAN HARBORS REPORTEDLY IS LARGER THAN FIRST THOUGHT", *WALL STREET JOURNAL*, 6 APRIL 1984

34. "MINES IN MAIN PORT IMPERIL NICARAGUAN ECONOMY", *WASHINGTON POST*, 2 APRIL 1984

35. "NICARAGUA REPORTS MORE REBEL ATTACKS ON SHIPS", *WASHINGTON POST*, 1 APRIL 1984

B. NOVEMBER 1981 THROUGH MARCH 1984

1. "NICARAGUA REPORTS 33 DEAD TROOPS IN OFFENSIVE BY US-BACKED REBELS", *WASHINGTON POST*, 28 MARCH 1984

2. "NICARAGUA REPORTS RAIDS BY PLANES AT BORDER POST", *WASHINGTON POST*, 4 FEBRUARY 1984

3. "CIA IS SAID TO USE BASES IN HONDURAS", *WASHINGTON POST*, 29 JANUARY 1984

4. "NICARAGUAN REBELS PREDICT SUCCESS WITH US AID", *NEW YORK TIMES*, 16 JANUARY 1984

5. "APPLYING PRESSURE IN CENTRAL AMERICA", *WASHINGTON POST*, 23 NOVEMBER 1983

6. "COVERT AID TO NICARAGUA REBELS APPROVED", *WASHINGTON POST*, 19 NOVEMBER 1983

7. "EX-SANDINISTA WARNS AGAINST US INTERVENTION IN NICARAGUA", *WASHINGTON POST*, 16 NOVEMBER 1983

8. "EX-US INTELLIGENCE AND MILITARY PERSONNEL SUPPLY ANTI-NICARAGUAN REBELS", *NEW YORK TIMES*, 8 NOVEMBER 1983

9. "NICARAGUA CURBS ENERGY USE FOLLOWING OIL FACILITY ATTACKS", *WASHINGTON POST*, 25 OCTOBER 1983

10. "House Votes to End Rebel Aid in Nicaragua", *Wall Street Journal*, 21 October 1983

11. "Challenges Rise To CIA Support For Latin Rebels", *Washington Post*, 20 October 1983

12. "Reagan Defends US Right to Use Covert Activity", *Washington Post*, 20 October 1983

13. "US Officials Say CIA Helped Nicaraguan Rebels Plan Attacks", *New York Times*, 16 October 1983

14. "Nicaragua Evacuates 25,000 from Port Raided by Rebels", *New York Times*, 13 October 1983

15. "CIA Is Said to Resupply Rebels in Nicaragua from Salvador Base", *New York Times*, 2 October 1983

16. CIA Orders Said to Guide Nicaraguan Rebels' Shift", *Washington Post*, 29 September 1983

17. "New Reagan Strategy for Covert Activities in Nicaragua Likely to Clear Senate Panel", *Wall Street Journal*, 21 September 1983

18. "House Votes to Cut Off Covert Aid", *Washington Post*, 29 July 1983

19. "Muskie, Rusk, Vance Urge Hill to Cut Off Covert Aid in Nicaragua", *Washington Post*, 27 July 1983

20. "'Finding' Backs Covert Action", *Washington Post*, 27 July 1983

21. "US Seeks Increase In Covert Activity In Latin America", *New York Times*, 25 July 1983

22. "Maneuvers Part of New Latin Plan", *Washington Post*, 22 July 1983

23. "Israel Said to Aid Latin Aims of US", *New York Times*, 21 July 1983

24. "CIA Planning to Back More Nicaragua Rebels", *Washington Post*, 14 July 1983

25. "US-Backed Nicaraguan Rebel Army Swells to 7,000 Men", *Washington Post*, 8 May 1983

26. "Senate Panel Compromises on Nicaragua", *Washington Post*, 7 May 1983

27. "Reagan Seeks Money for Covert Activity in Nicaragua as House Moves to Ban It", *Wall Street Journal*, 5 May 1983

28. "President Calls Nicaragua Rebels Freedom Fighters", *New York Times*, 5 May 1983

29. "Reagan Defends Nicaragua Role", *Washington Post*, 5 May 1983

30. "Panel Votes Halt of Covert Aid for Nicaragua Rebels", *Washington Post*, 4 May 1983

31. "Point Man Speaks Out About Central America", *New York Times*, 2 May 1983

32. "Covert Assistance May Be Eliminated", *Washington Post*, 27 April 1983

33. "President Admits Aiding Guerrillas Against Nicaragua", *Washington Post*, 15 April 1983

34. "Covert Actions: Debating Wisdom and Morality", *New York Times*, 8 April 1983

35. "STATE DEPT. AIDES SAID TO QUESTION ROLE IN NICARAGUA", *NEW YORK TIMES*, 7 APRIL 1983

36. "NOTHING RAGTAG ABOUT NICARAGUAN REBELS", *WASHINGTON POST*, 6 APRIL 1983

37. "REBELS WANT US TO DECLARE SUPPORT OPENLY", *WASHINGTON POST*, 4 APRIL 1983

38. "WASHINGTON'S ROLE TROUBLES CONGRESS", *WASHINGTON POST*, 3 APRIL 1983

39. "US TIES TO ANTI-SANDINISTS ARE REPORTED TO BE EXTENSIVE", *NEW YORK TIMES*, 3 APRIL 1983

40. "'WAR ON NICARAGUA' ", *NEW YORK TIMES*, 28 MARCH 1983

41. "CIA CHIEF SAID TO CONFIRM RAIDS", *THE EVENING SUN*, 10 JANUARY 1983

42. "NICARAGUA: HILL CONCERN ON US OBJECTIVES PERSISTS", *WASHINGTON POST*, 1 JANUARY 1983

43. "CIA QUIETLY DOGS SANDINISTAS", *DALLAS TIMES HERALD*, 22 DECEMBER 1982

44. "CONGRESS RENEWS CURBS ON ACTIONS AGAINST NICARAGUA", *NEW YORK TIMES*, 22 DECEMBER 1982

45. "US BANKROLLING SANDINISTAS' FOES", *THE MIAMI HERALD*, 19 DECEMBER 1982

46. "FEARS OF WAR ALONG THE BORDER", *TIME*, 6 DECEMBER 1982

47. "A SECRET WAR FOR NICARAGUA", *NEWSWEEK*, 8 NOVEMBER 1982

48. "US BACKING RAIDS AGAINST NICARAGUA", *NEW YORK TIMES*, 2 NOVEMBER 1982

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51. "REAGAN BACKING COVERT ACTIONS, OFFICIALS ASSERT", *NEW YORK TIMES*, 14 MARCH 1982

52. "SENATE CONDUCTS ITS OWN PROBE OF LATIN UNREST", *WASHINGTON POST*, 13 MARCH 1982

53. "US REPORTEDLY SENDING MILLIONS TO FOSTER MODERATES IN NICARAGUA", *NEW YORK TIMES*, 11 MARCH 1982

54. "NICARAGUA DENOUNCES US PLANES' INTRUSION", *WASHINGTON POST*, 11 MARCH 1982

55. "US APPROVES COVERT PLAN IN NICARAGUA", *WASHINGTON POST*, 10 MARCH 1982

56. "REAGAN AUTHORIZES PLAN TO COUNTER CUBAN PRESENCE IN NICARAGUA", *WASHINGTON POST*, 14 FEBRUARY 1982

57. "HAIG WON'T RULE OUT ANTI-NICARAGUA ACTION", *WASHINGTON POST*, 13 NOVEMBER 1981

[Not reproduced]

Exhibit VII

PRESS DISCLOSURES OF STATEMENTS BY THE US ADMINISTRATION INDICATING THE ABSENCE OF NICARAGUAN ARMS SHIPMENTS TO SALVADORAN REBELS

1. "WHY CIA 'PUT THE HEAT ON' ", *NEWSDAY*, 19 APRIL 1984

2. "SALVADOR OFFICER SAYS NICARAGUA SENDS AMMUNITION, NOT WEAPONS", *NEW YORK TIMES*, 18 APRIL 1984

3. "LEFTISTS GETTING SALVADORAN WEAPONS", *WASHINGTON POST*, 28 MARCH 1984

4. "NICARAGUAN AID CALLED NOT VITAL TO SALVADORANS", *WASHINGTON POST*, 21 FEBRUARY 1984

[Not reproduced]

Exhibit VIII

COMMUNIQUÉ OF THE FOREIGN MINISTERS OF THE CONTADORA GROUP

1. CERTIFIED ENGLISH TRANSLATION OF COMMUNIQUÉ

Communiqué of the Foreign Ministers of the Contadora Group Caracas, Venezuela, April 8, 1984

"The Foreign Ministers of Colombia, Mexico, Panama and Venezuela met on April 8, 1984, to evaluate the critical situation in the region, and the most recent events that have taken place in Central America as well as the progress of the working commissions created within the framework of the Contadora process dealing with political matters, security and social and economic affairs.

"As regards the situation in Central America, the Ministers examined the degree of fulfillment of the Document of Objectives ratified in September 1983 by the five Central American Governments which objectives establish the commitments undertaken in the negotiation process. They took note of the necessity that the Governments of the region conform their international conduct to the spirit of conciliation which derives from the norms of execution adopted in January of this year. They warned that in the course of the past weeks the regional situation had deteriorated seriously. Actions of irregular forces have intensified aided by supplies and communications centers located in the territories of neighboring countries and oriented toward the destabilization of the Governments of the region. Sophisticated arms, new military tactics and dangerous methods of attack have been introduced.

"Operations such as the mining of the ports have been carried out which drain the economy, disrupt trade and militate against freedom of navigation. At the same time they expressed their concern at the presence, each time more visible, of foreign troops and advisers, the increase of the arms race, the proliferation of military actions and maneuvers, all of which contribute to the increase of tensions and the deepening of distrust. That is why they consider it indispensable that the countries of the region demonstrate with concrete actions the support which they have expressed for the Contadora Group underlining once again that a conflict of greater proportions would have serious repercussions in all the countries of the region and would affect the entire continent.

"As far as the political situation is concerned the ministers took note of the electoral processes that are underway. And they affirmed their value in the sense that they can contribute to internal reconciliation and the lessening of regional tensions to the degree that proper guarantees are granted by an independent electoral organ and the effective participation of all political currents is assured. As far as social and economic matters are concerned, they referred to the formal establishment and the beginning of the works of the action committee of assistance to the Social and Economic Development in Central America (CADESCA) which has opened a useful and opportune perspective to channel international aid for the internal efforts of integration of the Central America countries, in cooperation and coordination with the economic organs already established by the governments themselves of central America.

"Evaluating the progress made by the working commissions the Foreign Ministers of the Contadora Group agreed that in certain aspects significant progress had been made, but in others there persisted obstacles derived from attitudes that on occasion were not always flexible and effectively oriented toward negotiation.

"In the light of all these considerations, the Foreign Ministers of the Contadora Group exhorted the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua to renew their political disposition and to intensify the preparations for the final phase of the working commissions which should be entrusted with their juridical projects, studies and recommendations at the joint meeting of Ministers which will take place the 29th of April, with this purpose and to prepare for that meeting they will establish direct communication with their Central American counterparts."

I certify that this is a correct English translation of the Communiqué of the Foreign Ministers of the Contadora Group, issued on April 8, 1984.

(Signed) Carlos ARGÜELLO GÓMEZ,
Agent of the Republic of Nicaragua.

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2. ORIGINAL SPANISH VERSION OF COMMUNIQUÉ

(As reported by the Venezuelan Press Agency on 9 April 1984)

[Not reproduced]

Exhibit IX

MINISTRY OF FOREIGN AFFAIRS

FUNDAMENTAL COMMITMENTS TO ESTABLISH PEACE IN CENTRAL AMERICA

OFFICIAL PROPOSAL SUBMITTED BY NICARAGUA WITHIN THE FRAMEWORK OF THE CONTADORA PROCESS (1 DECEMBER 1983, MANAGUA, FREE NICARAGUA)

GENERAL PRESENTATION

The history of the countries of the Central American Isthmus has been characterized by foreign intervention, exploitation and injustice. In the face of this reality, the peoples of the region have struggled uninterruptedly to liberate themselves and to create a more worthy and humane life. This just cause has provoked the reaction of those who have identified their own interests with the maintenance of the *status quo*, even to the extreme of accepting and justifying foreign intervention and fomenting fratricidal wars between historically fraternal peoples, as means of deforming the libertarian aspirations of their people.

Today, confronted with the triumph of the Sandinist Popular Revolution, the repression against some peoples of the area has increased, while foreign intervention reaches alarming proportions, not only to halt the process of change in the area but also to prevent the consolidation of the Sandinist Popular Revolution. Simultaneously, the regressive forces attempt to pin the blame on Nicaragua for the struggles in those countries, trying to hide their true origins in order to justify the multiple aggressions suffered by Nicaragua, which are organized and directed by the Government of the United States.

Faced with the United States' policy of reestablishing *manu-militari* its domination and hegemony in Central America, Latin America has responded by sponsoring and promoting petitions for dialogue to achieve a peaceful solution based on respect for the right of Central American peoples to self-determination, and to their political and economic independence, without intervention in their internal affairs.

Within this context, on April 14, 1983, the noble and transcendental efforts to promote peace and non-intervention in Central America were initiated by the countries of the Contadora Group, with the visit to the five Central American capitals by the Foreign Ministers of Colombia, Mexico, Panama and Venezuela. This was later followed up by four joint meetings of Foreign Ministers in Panama; by the meeting of the Presidents of the Contadora Group countries in Cancún, Mexico; and by various meetings of the Contadora Group at the Ministerial and expert level. The first phase of this process of negotiation culminated with the Fourth Joint Meeting of the Foreign Ministers of Contadora and Central America, held in Panama on the 7th, 8th and 9th of September.

As was recorded in its Information Bulletin, the Fourth Joint Meeting resulted in

> "The elaboration of a Document of Objectives that collects diverse criteria, identifies areas of agreement and consecrates fundamental commitments for the establishment of peace, democracy, security, stability and cooperation for economic and social development in the Central American region."

This Document of Objectives, as stated in the same Information Bulletin,

> "Departs from a diagnosis of the regional crisis, and, based on that, collects the proposals of the Governments of the region on behalf of concrete measures to promote détente and put an end to the conflictive situations in the area, foreseeing action mechanisms to achieve these ends. It constitutes, therefore, the basis of understanding for negotiations that must be undertaken at the earliest possible moment with the aim of preparing the accords and adopting the necessary mechanisms to formalize commitments and assure adequate control and verification systems."

It is indisputable that the militaristic, anti-Contadora and anti-dialogue process sponsored by the Reagan Administration has advanced much more rapidly than the Contadora negotiation process. However, faithful to its dedication to peace and with the purpose of keeping the agreements of the Document of Objectives in a renewed effort to prevent the violence imposed on Central America from establishing its own dynamic in irreversible form, on October 17th, Nicaragua officially presented the Contadora Group, through the Secretary of Foreign Relations of Mexico, its proposal concerning the "LEGAL FOUNDATIONS TO GUARANTEE INTERNATIONAL PEACE AND SECURITY OF THE CENTRAL AMERICAN STATES", requesting its urgent transmittal to all the interested parties. In consideration of the real and objective fact that the United States has been and is the principal factor in the development and aggravation of the crisis in the region, this proposal for peace includes a Bilateral Draft Treaty between the United States and Nicaragua that was officially presented to the United States Government with an accompanying Note dated October 18th.

Subsequently, on the 26th of October, despite the fact that said proposal had already been officially presented via Contadora, the Government of Nicaragua directly delivered the same to all the Central American Governments through their accredited Ambassadors in Managua.

Analyzed as a whole, the Document of Objectives of Contadora may be divided into four fundamental areas, as follows:

(1) The area that refers to basic principles of International Law, strict adherence to which, forms the basis of international peace and security.

(2) The area that includes matters of military development or arms buildup.

(3) The area referring to political questions of an internal nature or internal policies with international projection.

(4) The area concerning economic and social questions.

The proposal entitled "Legal Foundations to Guarantee International Peace and Security of the Central American States", that Nicaragua officially presented to the Contadora Group on October 17th embraces and develops points that accrue to basic principles of International Law respecting peace and security, including verification and control mechanisms of the draft treaties and accord contained in said proposal, which covers the first and most important area of the Document of Objectives.

In an additional effort to facilitate and hasten the pursuit of peace and security in the Central American area, and an understanding between the countries that comprise it, Nicaragua has presented complementary proposals that embrace the areas of the Document of Objectives of Contadora that had not been considered in the initial proposal. These are included in a Draft Document of Commitment Concerning Military Affairs, a Draft Declaration and a Draft Accord to Promote the Economic and Social Development of Central America, corresponding to the second, third and fourth areas, respectively.

These last three documents were presented and officially delivered by the Nicaraguan delegation to the representatives of the Contadora and Central American countries during the last meeting of the Technical Group at the Deputy-Ministerial level, held in the city of Panama on the 1st and 2nd of December.

It must be pointed out that, during the joint meeting of the Foreign Ministers of the Contadora Group and Central America, held in Washington on November 14th of this year, it was agreed to fix a term ending on December 1st for the presentation of concrete and detailed proposals by the Central American chancellories. Nicaragua was the only country to comply with said accord and, up to the present date, December 10th, Nicaragua alone has presented concrete proposals, for which reason it is deemed necessary that the other parties, in a constructive spirit, respond to these Nicaraguan proposals and present their opinions or amendments or, if they prefer, present counterproposals in order to not further delay the negotiation process which can arrive at a positive conclusion only with the active and effective participation of all parties.

In covering and developing all 21 points of the Document of Objectives of Contadora, Nicaragua aspires to broaden the path of dialogue and understanding *that will permit the effective reestablishment of international peace and security* in the region. Likewise, Nicaragua is confident that these will be positively received and examined with the attention they merit by all Governments interested in establishing the bases for a true peace in the region, which is the highest aspiration of Nicaragua and of all Central American peoples.

DOCUMENT OF OBJECTIVES

ELABORATED IN THE 4TH JOINT MEETING OF FOREIGN MINISTERS OF CONTADORA AND CENTRAL AMERICA ON 9 SEPTEMBER 1983 AND APPROVED BY THE HEADS OF STATE OF CENTRAL AMERICA

TEXT OF THE DOCUMENT OF OBJECTIVES

WHEREAS:

The prevailing situation in Central America, characterized by a climate of tension that endangers security and peaceful coexistence in the region, and which requires for its solution observance of the principles of International Law that regulate the action of States, especially:

The free determination of peoples;
Non-intervention;
The sovereign equality of States;
The peaceful solution of controversies;
The abstinence from recurring to the threat or the use of force;
The respect for the territorial integrity of States;
Pluralism in its diverse manifestations;
The full operation of democratic institutions;
The promotion of social justice;
International cooperation for development;
Respect for and promotion of human rights;
The proscription of terrorism and subversion.

The desire to reconstruct the Central American homeland through the progressive integration of its economic, legal and social systems.

The need for economic cooperation between the Central American States in order to contribute in a fundamental way to the development of its peoples and the strengthening of its autonomy.

The commitment to create, promote and strengthen representative democratic institutions in all the countries of the region.

The unjust economic, social and political structures that sharpen the conflicts in Central America.

The imperative to put an end to tensions and to establish the bases for understanding and solidarity between the countries of the area.

The arms race and the increasing arms traffic in Central America that causes deterioration of political relations in the region and diverts economic resources that could be directed toward development.

The presence of foreign advisers and other forms of foreign military interference in the zone.

The risks that the territory of Central American States may be utilized for the carrying out of armed actions and policies of destabilization against others.

The need for political arrangements to sponsor dialogue and understanding in Central America, to avert the threat of the generalization of conflicts and to set in motion the mechanisms that can assure the peaceful coexistence and security of its peoples.

The signatories express the intention of achieving the following objectives:

To promote détente and to put an end to conflictive situations in the area, abstaining from realizing any actions that imperil political confidence or tend to obstruct the objective of achieving peace, security and stability in the region.

To assure strict compliance with the previously enunciated principles of International Law, whose non-observance may establish responsibilities.

To respect and guarantee the exercise of Human, Political, Civic, Economic, Social, Religious and Cultural Rights.

To adopt measures conducive to the establishment and, when existent, the perfecting of representative, pluralistic democratic systems that guarantee effective popular participation in the making of decisions and that assure the free access of the diverse currents of opinion to honest, periodic electoral processes, founded on the full observance of the rights of citizens.

To promote actions for national reconciliation in those cases where profound divisions have occurred within the society, that will permit the participation, in accordance with law, in political processes of a democratic character.

To create political conditions directed toward guaranteeing the international security, integrity and sovereignty of the States in the region.

To halt the arms race in all its forms and to initiate negotiations concerning control and reduction of the existing inventory of armaments and concerning the number of armed troops.

To proscribe the installation in their territory of foreign military bases or any other form of foreign military interference.

To reach agreements to reduce, with a view to eliminating, the presence of foreign military advisers and of other foreign elements that participate in military and security activities.

To establish internal control measures to impede the trafficking of arms from the territory of any country in the region to the territory of any other.

To eliminate the trafficking of arms, whether intraregional or coming from outside the region, to persons, organizations or groups that attempt to destabilize the Governments of the Central American countries.

To impede the use of their own territory and to not lend or permit military or

logistical support to persons, organizations or groups that attempt to destabilize the Governments of the Central American countries.

To abstain from promoting or supporting acts of terrorism, subversion or sabotage in the countries of the area.

To set up mechanisms and to coordinate systems of direct communication for the purpose of preventing or, if existent, resolving incidents between the States of the region.

To continue the humanitarian aid to assist Central American refugees who have been displaced from their country of origin, providing as well adequate conditions for the voluntary repatriation of these refugees, in communication or cooperation with the High Commission of the United Nations — ACNUR — and other international organisms deemed pertinent.

To undertake programs of economic and social development for the purpose of achieving greater well being and an equitable distribution of wealth.

To revitalize and normalize mechanisms of economic integration to achieve sustained development based on solidarity and mutual benefits.

To promote the securing of foreign monetary resources that will permit the assurance of additional resources to finance the reactivation of intraregional commerce, to overcome the grave balance of payments problems, to obtain funds for working capital, to support programs to enlarge and restructure their productive systems and to promote medium and long range investment projects.

To promote a better and greater access to international markets to the end of expanding the flow of commerce between the Central American countries and the rest of the world, especially with the industrialized countries, by means of revision of commercial practices, elimination of tariff and non-tariff barriers and the assurance of remunerative and just prices for the export products of the countries of the region.

To promote mechanisms of technical cooperation for planning, programming and executing multisector investment and commercial promotion projects.

The Ministers of Foreign Relations of the Central American countries, with the participation of the countries of the Contadora Group, initiated negotiations with the intention of laying the groundwork for the reaching of agreements and the adoption of necessary mechanisms to formalize and develop the objectives contained in the present document, and to assure the establishment of adequate verification and control systems. To these effects they will take into account the initiatives presented at the meetings called by the Contadora Group.

Panama, 9 September 1983.

LEGAL BASES TO GUARANTEE THE PEACE AND INTERNATIONAL SECURITY OF THE STATES OF CENTRAL AMERICA

PRESENTATION

This four-point proposal was officially presented by Nicaragua on 17 October 1983, and it covers only the points of the Document of Objectives that are related to the International Peace and Security of States. It seeks to establish the legal bases and their respective control mechanisms to guarantee that States will not be attacked from other States in the Central American region or from the outside, fully respecting their right to self-determination and to political and economic independence, thus creating suitable conditions that will make possible

the signing of other agreements concerning military developments, military advisers and concerning political, social and economic matters.

The following drafts of three treaties and one accord, which are the four elements of the present proposal, are presented as an indivisible whole, for which reason the omission of any one of them would mean that the security of the States of the isthmus, which is the fundamental objective of this Nicaraguan proposal, would not be duly guaranteed, thus making the reestablishment of peace impossible.

The four projects of this proposal are:

(a) Draft treaty between the Republic of Nicaragua and the United States of America;
(b) Draft treaty between the Republics of Honduras and Nicaragua;
(c) Draft accord concerning El Salvador;
(d) Draft treaty between the Central American Republics.

DRAFT TREATY BETWEEN THE REPUBLIC OF NICARAGUA AND THE UNITED STATES OF AMERICA

INTRODUCTION

In April 1982 the Government of the United States presented Nicaragua with an eight-point proposal in which were summed up the conditions that must be met, according to that Government, for the normalization of relations between the United States and Nicaragua. The Government of Nicaragua agreed to discuss the eight points presented by the United States if the United States agreed to discuss those questions that preoccupied Nicaragua. Notwithstanding this disposition to engage in dialogue the North American Government refused to accept a continuation of the conversations, even interrupting the informal epistolary exchange that had been maintained until 13 August, date of the last Nicaraguan communication, which remains unanswered.

Having abandoned the way of dialogue, the North American Administration qualitatively and quantitatively increases its aggressions against Nicaragua, utilizing as its instruments counter-revolutionary mercenaries organized, trained, financed, armed and directed by the Central Intelligence Agency (CIA), and redoubling its political pressures and economic aggressions to the prejudice of Nicaragua.

Despite this situation, and guided by the will to achieve a normalization of the relations between both States, the Government of Nicaragua has considered necessary and fundamental the elaboration of an instrument that will permit the cessation of aggressions, the normalization of relations between both countries and the eventual harmonious development of these within the strictest respect for the fundamental principles of International Law.

For Nicaragua, the reestablishment of peace and mutual respect between the United States and Nicaragua requires full guarantees of its internal and external security and recognition of the right of each people to freely choose its own destiny.

The extremely grave consequences of the policy of the United States against Nicaragua which has led the North American Government to involve in this policy countries of the area whose territories are utilized as operational bases and sanctuaries for counter-revolutionary activities, obliges the presentation of this draft Treaty with the United States within the context of the measures that

the countries of the Contadora Group have been developing, in awareness that, should the acts of aggression against Nicaragua continue to increase and the situation of the border zone with Honduras continue to deteriorate because of this policy, there may occur an open conflict of incalculable consequences, one of which may be the direct involvement of North American troops in the conflict.

The magnitude of this threat and the impossibility of achieving an effective reestablishment of peace in Central America unless there exists a clear will on the part of the North American Government to desist from promoting its interventionist plans, makes it inevitable that the Contadora Group also direct its efforts in this obligatory direction.

The present draft Treaty between the United States and Nicaragua responds to the firm will of the Nicaraguan Government to exhaust all possible and licit recourses to achieve a peaceful solution to the grave crisis existing in Central America, within which the North American Administration plays a central and undeniable role.

The present draft Treaty is an integral part of a general proposal that also contains a draft multilateral Treaty with Central American countries, a bilateral Treaty with Honduras and an ACCORD concerning respect for the right to self-determination of the Salvadoran people.

Nicaragua hopes that proposal, which addresses itself to all the subtantive preoccupations susceptible to being discussed between sovereign States and which, with respect to Nicaragua, have been previously expressed by the United States, will be duly evaluated by the North American Government, making possible the initiation of a normalization of relations between the United States and Nicaragua.

DRAFT TREATY TO GUARANTEE MUTUAL RESPECT, PEACE AND SECURITY BETWEEN THE REPUBLIC OF NICARAGUA AND THE UNITED STATES OF AMERICA

The Governments of Nicaragua and of the United States of America considering that, for the maintenance of peace and security between both nations and in the Central American area, it is necessary to reestablish confidence and relations of friendship and cooperation between both States, and that these lofty purposes require, in the first place, putting an end to all situations of belligerency and the giving of all guarantees for their internal and external security through respect for the fundamental principles that govern the relations between States, primarily the principles of abstention from recourse to the threat or the use of force, non-intervention, self-determination of peoples, territorial integrity, mutual respect and the sovereign equality of States, in conformity with the Charter of the United Nations Organization, have agreed to the following:

Chapter I

Article One

The High Contracting Parties solemnly promise to not take recourse, in their international relations, to the threat or to the use of force against the territorial integrity or the political independence of the other State or as means of solving the controversies that may arise between both States.

Article Two

The High Contracting Parties condemn wars of aggression as a crime against humanity.

Article Three

The High Contracting parties promise to not give political, military, economic or any other kind of aid, direct or indirect, overt or covert, to individuals or groups that advocate the overthrow or the destabilization of the other Government, as well as to impede, employing all means within their capacity, the utilization of their territory for the purpose of attacking or organizing attacks, acts of sabotage or criminal or terrorist actions against the other State.

Article Four

Persons within the territory of each State may not devote themselves to any type of activity for the purpose of promoting, organizing, instigating, raising funds for or carrying out actions against the other State.

Article Five

The United States of America recognizes the inalienable right of the Republic of Nicaragua to its independence and self-determination, in its condition as a sovereign State. It recognizes, as well, that the Republic of Nicaragua does not constitute a strategic reserve or area of influence of any foreign power, inasmuch as these, or other similar concepts, are unlawful and incompatible with the sovereignty and independence of the Republic of Nicaragua.

Article Six

The Republic of Nicaragua declares that the exercise of its sovereign rights constitutes no threat whatsoever to the security of the United States and that it will not permit the territory of Nicaragua to be utilized to affect or to threaten the security of the United States or to attack any other State, insuring as well, the transit of merchant ships and commercial airplanes bearing the flag of the United States in its territorial waters and air space, in conformity with International Law and the internal laws of Nicaragua.

Chapter II

Article Seven

The High Contracting Parties solemnly promise not to intervene, directly or indirectly, overtly or covertly, for whatever reason, in the internal or external affairs of the other State.

Article Eight

The High Contracting Parties proscribe, in their international relations, armed intervention and all interference or unlawful threats against the personality of the other State or the political, economic and cultural elements that constitute it.

Article Nine

The High Contracting Parties recognize, in like manner, the inalienable right of the other State to choose its economic, social, cultural and governmental system without any interference on the part of any other States.

Article Ten

The High Contracting Parties declare to be incompatible with the present Treaty all military maneuvers, by land, air or sea, that are carried out or may be carried out by the Armed Forces of the other State, on its own initiative or in conjunction with the Armed Forces of one or more States, in proximity to the territory of the other High Party or in jurisdictional areas of the other State. Equally incompatible is the presence of ships or warplanes or espionage aircraft, military units or any other type of military force in or over the territory of the State or in its jurisdictional waters.

Chapter III

Article Eleven

Neither of the High Contracting Parties shall apply, support or foment the use of economic, political or any other type of measures, to coerce the other State with the end of achieving the subordination of its exercise or its sovereign rights or to obtain from it advantages of whatever order.

Article Twelve

International commerce and other forms of economic cooperation between the High Contracting Parties shall be conducted independently of any differences in economic, social or governmental system. Discrimination based solely on such differences is incompatible with the present Treaty. The discriminatory measures that may have been adopted by either of the High Parties prior to the signing of the present Treaty shall be revoked.

Article Thirteen

The High Contracting Parties recognize the right and the responsibility of each State to freely choose its objectives and means of development, to mobilize and fully utilize its resources and to carry out economic and social reforms that assure the full participation of its peoples in the process and in the benefits of economic, social and cultural development.

Chapter IV

Article Fourteen

The High Contracting Parties solemnly promise to solve any situation or controversy through peaceful means recognized by International Law, in such a way as will not endanger international peace and security.

Article Fifteen

In the event of a controversy or situation between the two States that affects or could affect international peace and security, the High Parties shall take recourse in the first place to direct and friendly negotiations, including the constitution of Mixed Commissions, to achieve its solution, and, if it be not possible to reach an agreement, they shall take recourse to other means of peaceful solution of controversies recognized in the Charter of the United Nations as established in the following articles.

Article Sixteen

The High Contracting Parties, in the event of controversy, shall abstain from adopting any measure that could aggravate the situation so as to endanger the maintenance of international peace and security.

Article Seventeen

The High Contracting Parties, designate the Republics of Colombia, Mexico, Panama and Venezuela as Guarantor States of the present Treaty.

Article Eighteen

In the event that no agreement can be achieved through direct negotiation or via the Mixed Commissions previously established, recourse shall be taken to the good offices of the Guarantor States. Should this recourse not succeed, either of the Parties may request that the Security Council of the United Nations resolve that controversy or situation that affects or could affect international peace and security.

Chapter V

Article Nineteen

Accusations made by either of the High Parties relative to the violation of the present Treaty, should no agreement be reached through direct negotiations or via Mixed Commissions, may be submitted to the good offices of the Guarantor States.

Article Twenty

When the validity of an accusation presented is proven, the State determined to be responsible shall be obliged to compensate the injured State for all the damages and losses that have been occasioned as well as the indemnities to which the latter is entitled. The Guarantor States shall determine on the basis of the damages and losses that have been caused, the amount and the form of payment and the other measures that must be taken to prevent the repetition of violations of the present Treaty. The reparations to which the present article refers constitute an international obligation.

Article Twenty-One

In the event that the good offices of the Guarantor States do not exceed or in the event that no solution is presented within a prudential period of no more than thirty days or within the period of time agreed by the High Parties, commencing on the date the accusation was presented, or in the event that the gravity of the situation so requires, either of the Parties may turn to the Security Council of the United Nations, even before the expiration of said term, so that this forum may resolve the controversy or situation.

Chapter VI

Article Twenty-Two

The present Treaty in no way affects the rights and obligations of the High Contracting Parties, as established in the Charter of the United Nations.

Article Twenty-Three

The present Treaty shall be in force for a term of five years, renewable for an equal period on the consent of the Parties, and it shall enter into effect when the instruments of ratification have been exchanged. In case of denunciation, the Treaty shall continue in effect for one year after it has been communicated to the other Party.

Article Twenty-Four

A copy of the present Treaty and of the instruments of ratification shall be deposited with the Secretariat of the United Nations.

The Republics of Colombia, Mexico, Panama and Venezuela shall subscribe to the present Treaty as Guarantor States.

In witness whereof, the plenipotentiary representatives of the Republic of Nicaragua and of the United States of America sign the present Treaty in the English and Spanish languages, both of equal validity, in the city of ..... on the ..... of .....

DRAFT TREATY BETWEEN THE REPUBLICS OF HONDURAS AND NICARAGUA

INTRODUCTION

In the month of May 1981, on the initiative of Nicaragua, a meeting was held at the Nicaraguan border post of El Guasaule, between the Chiefs of State of Honduras and Nicaragua, for the purpose of examining the delicate situation in the border zone that had resulted from the increasing attacks by counter-revolutionary bands against Nicaraguan territory. In this meeting it was agreed to hold an early meeting between the highest military chiefs of both States to the end of agreeing on the manner of carrying out joint patrolling of the border zone, as a means of preventing such incidents. Unfortunately Honduras refused to carry out that commitment.

Later, with the present Honduran Government in power, in the month of April 1982, Nicaragua presented Honduras with a peace proposal of seven points, the principle of which was the signing of a non-aggression agreement between both States, with the objective of halting the rapid deterioration of relations caused by the continual attacks on its national territory and by the increasing participation of the Armed Forces of Honduras in counter-revolu-

tionary activities that are promoted by the Government of the United States through the Central Intelligence Agency. That same month of April, the Government of Honduras rejected in all its parts the Nicaraguan peace proposal. In August and September of last year, Nicaragua continued its initiative to arrive at an understanding with the Honduran Government and encountered the same negative response.

Understanding the grave consequences that can derive from the utilization of Honduran territory as a base of operations and refuge for the mercenary forces that daily perpetrate multiple crimes and attacks against Nicaragua, and in compliance with Resolution 530 of the Security Council of the United Nations, which, besides manifesting its grave preoccupation at the possibility of a military confrontation between Honduras and Nicaragua, urges the concerned States to take the necessary measures to avoid such a conflict, the Government of Nicaragua considers it an unpostponable necessity to formalize the draft of a non-aggression Treaty between Honduras and Nicaragua that opens the path to peace, security and mutual confidence. This bilateral Treaty with Honduras is even more urgent when, as time passes, the participation of the Honduran Army is accentuated and the North American military apparatus in that country is upgraded, with the purpose of launching larger and more dangerous military offensives against Nicaragua. This situation is opening the way for a generalized conflict that is not desired by either of the two peoples and that is repudiated by the Government of Nicaragua.

The increase of terrorist actions and the upgrading of the aggressive belligerent machinery against Nicaragua gives irrefutable and evident importance to the present draft Treaty which Nicaragua proposes be signed with Honduras.

The proposed Treaty draft, based on basic principles of International Law, constitutes a new manifestation of the will to peace that guides Nicaraguan policy in its relations with all the countries of the world, particularly with its neighbors.

Non-intervention, proscription of the threat or the use of force and respect for the right of free determination of peoples are, among others, the principles upon which the peace and security of peoples must be erected.

Nicaragua hopes that this draft Treaty of peace, friendship and cooperation encounters a favorable and constructive reception on the part of the Government of Honduras, which has claimed to be interested in an effective reestablishment of peace and in the normalization of relations between Honduras and Nicaragua: fraternal countries now set against each other artificially because of the policy of the Government of the United States.

DRAFT TREATY OF PEACE, FRIENDSHIP AND COOPERATION BETWEEN THE REPUBLICS OF HONDURAS AND NICARAGUA

The Governments of the Republics of Honduras and Nicaragua, desirous of invigorating the historic and fraternal bonds that unite both peoples and, for that reason, insistent upon the strengthening of peace and security between both States, within the framework of respect for the principles of abstention from recourse to the threat or the use of force, non-intervention in the internal affairs of States, free determination of peoples, peaceful solution of controversies, territorial integrity and sovereign equality of States, in conformity with the principles established in the Charter of the United Nations Organization, have agreed to the following:

Chapter I

Article One

The Republics of Honduras and Nicaragua solemnly promise to not take recourse to the threat or the use of force as a means of solving the controversies that may arise between both States.

Article Two

The High Contracting Parties renounce the use of force against the sovereignty, territorial integrity or political independence of the other State.

Article Three

Likewise, the High Contracting Parties promise not to give political, military, economic or any other kind of support to individuals or groups that advocate the overthrow or the destabilization of the other Government, as well as to impede, employing all means within their capacity, the use of their territory for the purpose of attacking or organizing attacks, acts of sabotage, kidnappings or criminal acts in the territory of the other State.

Article Four

Each of the High Contracting Parties, with the purpose of complying with the agreed terms of the present Treaty, shall disarm and remove to the interior of the country far from the common boundary any individual or group taking actions against the other State and that penetrates or is discovered in its respective territory, and shall prohibit all traffic of arms and war material that might be used against the other State.

Article Five

Persons within the territory of each State may not devote themselves to any kind of activity with the goal of promoting, organizing, instigating, raising funds for or carrying out actions against the other State.

Article Six

In the event that third parties declare war or carry out belligerent actions against either of the two High Contracting Parties, both Parties agree absolutely not to enter into an offensive alliance nor to lend any sort of assistance or support to the enemies of either of the two Republics. The foregoing does not impede the formalization of alliances for the defense of their respective territories in case they are attacked or invaded.

Article Seven

Commercial and economic relations shall not be used in any way harmful to the sovereignty, territorial integrity or political independence of the other party.

Article Eight

The High Contracting Parties agree, moreover, to punish in conformity with their respective internal laws and with international treaties in force, those

individuals who illicitly seize possession of ships or airplanes of the other State and who transport them to their respective territories, and to sign a treaty of extradition covering the persons who commit this kind of crime. The hijacked ships or airplanes shall be placed at the disposition of the injured party within the shortest possible time, without their being subject to retention or to any judicial measures whatsoever.

Chapter II

Article Nine

In the event of controversy or of any situation between both States that may affect international peace and security, the High Parties shall take recourse in the first place to direct and friendly negotiations, including the constitution of Mixed Commissions, to achieve its solution and, if it be not possible to arrive at an agreement, they shall take recourse to other means for the peaceful solution of controversies recognized in Resolution 530 of the Security Council of the United Nations, in accordance with the terms of the following articles:

Article Ten

The High Contracting Parties designate the Republics of Colombia, Mexico, Panama and Venezuela as Guarantor States of the present Treaty.

Article Eleven

In case an agreement cannot be reached through direct negotiations or through the Mixed Commissions constituted to that effect, recourse shall be taken to the good offices or the mediation of the Guarantor States, which shall be given all facilities to acquaint themselves with and to assist in the solution of the controversy or situation that has been submitted to them.

Article Twelve

If, through the good offices or the mediation of the Guarantor States, an agreement cannot be reached, either of the High Parties may request the Security Council of the United Nations to resolve the controversy or situation that affects, or could affect, international peace and security.

Chapter III

Article Thirteen

The High Contracting parties, in order to carry out what is agreed upon in the present Treaty, promise to disarm and to remove to the interior of the country far from the common boundary all individuals and groups established in their territories, as well as to dismantle any kind of encampments or bases in their territory that are being used or that may be used to organize or to carry out attacks against the territory and the population of the other State, or to carry out any other action of a similar nature contemplated in the present Treaty.

Article Fourteen

In the event that one of the contracting States denounces the existence in the territory of the other State of groups, encampments or bases, or attacks against its territory proceeding from the other State, and if direct negotiations with the other State have failed to achieve positive results, either of the Parties may solicit the good offices or the mediation of the States referred to in Article Ten of the present Treaty.

Article Fifteen

Should the accusation presented be proven, the State responsible shall be obliged to compensate the injured State for all damages and losses that have been occasioned as well as the indemnities to which the latter is entitled. The Governments of Colombia, Mexico, Panama and Venezuela shall determine on the basis of the facts the amount and the form of payment and the other measures that must be taken to prevent the repetition of violations of the present Treaty. The reparations to which the present article refers constitute an international obligation.

Article Sixteen

Should the Guarantor States fail to resolve the controversy or situation within a prudential period of no more than thirty days from the date of presentation of the accusation, or if the gravity of the situation so requires, either of the Parties may go to the Security Council of the United Nations, even before the expiration of said period, so that this forum may familiarize itself with and resolve the situation or controversy.

Article Seventeen

The present Treaty in no way affects the rights and obligations of the High Contracting Parties, as established in the Charter of the United Nations.

Article Eighteen

The present Treaty shall be in force for a period of five years, renewable on the consent of the Parties, and shall enter into effect when the instruments of ratification have been exchanged. In case of denunciation, this Treaty shall remain in effect until one year after it has been communicated to the other Party.

Article Nineteen

A copy of the present Treaty and its instruments of ratification shall be deposited with the Secretariat of the United Nations.

The Governments of the Republics of Colombia, Mexico, Panama and Venezuela shall subscribe to the present treaty as Guarantor States.

In witness whereof the plenipotentiary representatives of the Republics of Nicaragua and Honduras sign the present Treaty in the city of ....., on the ..... of .....

DRAFT ACCORD CONCERNING EL SALVADOR

INTRODUCTION

The persistence of the Salvadoran conflict and its indefinite prolongation in time is seriously affecting the peace and security of the entire Central American region as well as its economic and social development. To act responsibly with respect to this reality, it is a moral obligation and an unavoidable necessity to contribute to, or at least not to obstruct the steps being taken inside El Salvador to achieve a negotiated political solution between the conflicting forces in that country that will guarantee stable and lasting peace, to contribute to a peaceful solution through licit means established by International Law and, in particular, fully respecting the sovereign right of peoples to decide for themselves their own destiny, without foreign interference, coercion or threats.

The sustained and ever-increasing intervention of the Government of the United States in the internal Salvadoran struggle is the principal factor that hampers and renders difficult the achievement of a negotiated political solution, since it has constituted itself in fact as the principal supplier of arms directly to the governmental forces as well as indirectly to the revolutionary forces.

As an argument that permits it to justify its policy of intervention in El Salvador, the Government of the United States has accused Nicaragua of a supposed transfer of arms to the revolutionary forces from Nicaraguan territory; a pretext that has served it equally as a justification to attack the Sandinist Popular Revolution and the people of Nicaragua politically, economically and militarily in both overt and covert form.

Conscious of this situation, and in a new effort to contribute to a political solution, the Government of Nicaragua made public on 19 July 1983 an appeal to all nations in which it asked:

> "the absolute cessation of all supply of arms by any nation to the forces in conflict in El Salvador, in order that this people may resolve its problems without outside interference".

Having received no answer to this appeal, the Government of Nicaragua has considered it necessary to formalize this proposal in concrete and detailed terms, in the form of an accord, to be subscribed to by all nations that desire to contribute to the peaceful solution of the present armed conflict in the Republic of El Salvador. In any event, Nicaragua is disposed to subscribe to said accord immediately, even though it be with the United States only, in order that the Government of that country cease justifying its interventionist policy in El Salvador on the basis of supposed actions by Nicaragua.

DRAFT ACCORD TO CONTRIBUTE TO THE PEACEFUL SOLUTION OF THE ARMED CONFLICT IN THE REPUBLIC OF EL SALVADOR

The Governments of .....

Considering that the grave crisis suffered by the Republic of El Salvador, as a consequence of the armed conflict being waged there, is one of the principal factors affecting the peace and security of the Central American region, and that it is the obligation of all nations without impairment of the principles of non-intervention and the self-determination of peoples, to contribute by all possible licit means to the cessation of bloodshed in the Republic of El Salvador and to

propitiate a peaceful solution that makes possible the cessation of hostilities between the contending forces and the reestablishment of peace and concord in El Salvador, and taking into account that the continuation of the supplying and trafficking of arms, munitions and military equipment and of military and economic assistance to the contending forces greatly impedes their possibilities of achieving a peaceful negotiated settlement that ends the armed conflict suffered by the Republic of El Salvador, have agreed to the following:

Chapter I

Article One

The High Contracting Parties promise not to offer and, should such be the case, to suspend military assistance and training and the supply and trafficking of arms, munitions and military equipment that may be made directly to the contending forces or indirectly through third States.

Article Two

The High Contracting Parties promise to adopt in their respective territories whatever measures may be necessary to impede all supply and trafficking of arms, munitions and military equipment and military assistance to and training of the contending forces in the Republic of El Salvador.

Article Three

Likewise, the High Contracting Parties promise to exercise their good offices, jointly or on their own initiative, with respect to third States who supply or permit the traffic of arms, munitions and military equipment or who lend military assistance and training to the contending forces in El Salvador, to the end of suspending such supply and assistance and joining the efforts being made to reestablish peace and concord in that nation.

Article Four

To the effect of guaranteeing the fulfillment of the disposition of the present agreement by all persons, natural or juridical, in their respective territories, the High Contracting Parties shall adopt all the measures necessary to impede the supply and traffic of arms, munitions and military equipment to any of the contending forces in El Salvador. With this aim, they shall reinforce the vigilance of borders, ports, airports, coastal zones or any other place that may be utilized to this end.

Article Five

The High Contracting Parties promise not to offer, and if, already extended, to suspend all forms of economic, financial or technical assistance destined or potentially destined for the acquisition of arms, munitions and military equipment by the contending forces, as well as the training of troops or for other military purposes. Likewise, they shall make the necessary efforts so that third States suspend economic, financial or technical assistance furnished for the same or similar ends as those enunciated in the present article.

Article Six

The High Contracting Parties also promise to promote and support in the international forums all the initiatives to contribute to the restoration of peace in El Salvador, particularly those that promote the cessation of the supply and traffic of arms, munitions and military equipment and military assistance and training of the contending forces of that nation and, when applicable, not to impede in any forum the adoption of resolutions or sanctions proposed to that effect.

Article Seven

The High Contracting Parties designate the Republics of Colombia, Mexico, Panama and Venezuela as Guarantor States of the present accord.

Chapter II

Article Eight

The denunciations made by any of the High Parties in relation to violations of the present accord, if not resolved through direct negotiation, may be submitted to the good offices or the mediation of the Guarantor States.

Article Nine

For the purpose of facilitating the investigation of the acts denounced, the accusing party will present all the supporting evidence and indications to the Ministers of Foreign Relations of the Guarantor States. The accused State will permit and facilitate the carrying out of all investigations in its territory that may be necessary to determine the validity or inconsistency of the denunciation or denunciations presented.

Article Ten

In the case that the good offices or the mediation of the States designated as guarantors should not succeed, or in the case that a solution not be presented within a prudential period of time no longer than thirty days or within the period agreed by the High Parties, counting from the day the denunciation is presented, or if the gravity of the situation so requires, any of the High Parties may turn to the Security Council of the United Nations, even before the expiration of said time period, so that this forum may familiarize itself with and resolve the controversy or situation.

Article Eleven

The present accord shall enter into force as soon as the proper ratifications have been made and it shall remain in force for the duration of the present armed conflict in El Salvador. A copy of the present accord shall be deposited with the Secretariat of the United Nations Organization.

The Governments of the Republics of Colombia, Mexico, Panama and Venezuela subscribe to the present Accord in their condition of guarantors.

In witness whereof the plenipotentiary representatives of the Governments of ..... sign the present Accord in the city of ..... on the ..... of .....

DRAFT TREATY BETWEEN THE CENTRAL AMERICAN REPUBLICS

INTRODUCTION

The crisis that affects the Central American region, whose true causes are the secular misery and oppression of its people, has been substantially aggravated by foreign interventionism, which has been present in the region since its independence and which has been and is one of the principal factors contributing to the existing situation of profound injustice and to the consequent state of political and social unrest throughout the region.

The Sandinist Popular Revolution and its national project, ever since the advent of the Reagan Administration, has become the object of military, political and economic aggressions by the Government of the United States, to the prejudice of the Nicaraguan people.

Despite Nicaragua being the country that since 1981 has daily suffered aggressions launched from other countries in the region and "covert actions" in violation of International Law that are financed and directed by the Central Intelligence Agency (C.I.A.), the Government of the United States attempts to present Nicaragua as the country that threatens the peace and security of other countries in the region. These accusations are no more than the pretext utilized by the Government of the United States to attempt to justify its "covert actions" against Nicaragua.

With the intention of clearly establishing Nicaragua's unqualified adherence to the principles of International Law that must govern relations between sovereign States, the Government of National Reconstruction has considered it necessary to formalize the present draft General Treaty.

On proposing the present draft Treaty, Nicaragua is confident that it will be received positively by governments that are sincerely committed to guaranteeing international peace and security and to promoting fraternal and harmonious relations between the Central American countries.

DRAFT GENERAL TREATY CONCERNING THE MAINTENANCE OF PEACE AND SECURITY AND CONCERNING THE RELATIONS OF FRIENDSHIP AND COOPERATION BETWEEN THE REPUBLICS OF CENTRAL AMERICA

The Governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, fully conscious that, for the development and well-being of their peoples, the maintenance of peace and security is necessary, as well as the fomenting of relations of friendship and cooperation between the nations comprising the region, and that the achievement of these lofty aspirations requires of the Central American States absolute respect for the fundamental principles that govern the relations between States, such as the principles of non-intervention, self-determination of peoples, of abstention from recourse to the threat or the use of force, peaceful solution of controversies, respect for territorial integrity and the sovereign equality of States, principles that are consecrated in the Charter of the United Nations Organization, and

Recognizing that the legitimate concern of the Central American States to guarantee their security has generated a military development that, at the present time, tends toward a deterioration of the political situation in the region and a diversion of economic resources that should be invested in the development of the countries of Central America, and that this situation makes urgent the adoption of adequate measures to guarantee said security through respect for the fundamental principles of International Law, as pointed out above,

Therefore, the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, with the purpose of guaranteeing peace and security between their States, have agreed to the following:

Chapter I

Article One

The High Contracting Parties solemnly promise to refrain from taking recourse in their international relations to the threat or to the use of force against the territorial integrity or the political independence of any of the contracting States.

Article Two

The High Contracting Parties shall not take recourse to the threat or to the use of force to violate the existing international borders of other States nor as a means of resolving international controversies, including territorial controversies and problems relating to the boundaries of the States. Likewise, they shall abstain from carrying out any act of reprisal that implies or that may imply the use of force.

Article Three

The High Contracting Parties shall refrain in their respective territories, from organizing, fomenting or tolerating the organization of irregular forces or of bands, whether armed or not, including mercenary bands, to make incursions in the territories of the other States.

Article Four

The High Contracting Parties shall adopt the necessary measures to impede the utilization of their respective territories to organize, instigate, aid or participate in acts that threaten the internal or external security of the other States or to permit organized activities within their territory that are directed toward the commission of said acts.

Chapter II

Article Five

The High Contracting Parties solemnly promise not to intervene directly or indirectly, whatever may be the motive, in the internal or external affairs of any of the other States.

Article Six

The High Contracting Parties proscribe, in their international relations, armed intervention and all interference or threats against the personality of the other States or of the political, economic and cultural elements that compose them.

Article Seven

Likewise, they shall refrain from organizing, supporting, fomenting, financing, instigating or tolerating armed, subversive or terrorist activities directed toward

changing the régime of another State or intervening in the internal struggles of another State.

Article Eight

The High Contracting Parties recognize the inalienable right of States to choose their economic, social, political and cultural systems without any interference on the part of any other State.

Article Nine

None of the High Contracting Parties shall apply, support or foment the use of economic, political or any other kind of measures to coerce the other States with the end of achieving the subordination of the exercise of their sovereign rights or to obtain from them advantages of whatever order.

Article Ten

International commerce and other forms of economic cooperation between the High Contracting Parties shall be conducted independently of any differences in political, economic and social systems. No State shall be the object of any sort of discrimination based solely on such differences.

Article Eleven

Within the primordial responsibility of promoting the economic, social and cultural development of their respective peoples, the High Contracting Parties have the right and the responsibility of freely choosing their objectives and means of development, of mobilizing and fully using their resources and of carrying out economic and social reforms that assure the full participation of their peoples in the process and in the benefits of development.

Chapter III

Article Twelve

Ratifying their condition as free, sovereign and independent States, the High Contracting Parties declare that neither the Central American region nor any of those States which comprise it constitute a strategic reserve of any extra-regional State.

Article Thirteen

The High Contracting Parties shall not authorize the installation in their respective territories of foreign land, air or sea bases or foreign military schools; nor shall they permit that their national bases or schools be utilized for the training of military personnel who are not nationals of their own countries.

Article Fourteen

Likewise, without the previous agreement of all High Contracting Parties, they shall not participate in, authorize or tolerate the carrying out of military exercises by foreign forces, be they land, sea, air or joint exercises, in their respective

territories nor in the areas under their jurisdiction, nor any sort of military exercises in which military troops of foreign armed forces take part or in which war material belonging to foreign armed forces is employed.

Article Fifteen

In the event that third countries declare war or carry out belligerent actions against any of the High Contracting Parties, none of the Central American States shall join an offensive alliance nor lend assistance or support to the enemies of any of the Central American republics. The foregoing does not impede the formalization of alliances for the defense of their respective territories in the event of any attack.

Article Sixteen

The High Contracting Parties agree to cancel maneuvers, exercises and military training exercises in which foreign armed forces participate, within a term of no more than thirty days, and they likewise agree to cancel foreign military bases, installations and schools within a term of no more than ninety days. Both terms shall commence on the date when the present Treaty enters into force.

Article Seventeen

The High Contracting Parties agree to punish in conformity with their respective internal laws and with international treaties in force, those individuals who illicitly seize possession of ships or airplanes of the other States and who transport them to their respective territories, and to sign a treaty of extradition covering this class of crime. The hijacked ships or airplanes shall be placed at the disposition of the injured party within the shortest possible time, without their being subject to retention or to any judicial measures whatsoever.

Article Eighteen

The High Contracting Parties, in order to carry out what is agreed upon in the present Treaty, promise to disarm and to remove to the interior of the country far from the common boundary all individuals and groups established in their territories, as well as to dismantle any kind of encampments or bases in their territory that are being used or that may be used to organize or to carry out attacks against the territory and the population of the other State, or to carry out any other action of a similar nature contemplated in the present Treaty.

Chapter IV

Article Nineteen

The High Contracting Parties solemnly promise to solve any situation or controversy by the peaceful means recognized by International Law, in such a way that international peace and security and justice are not endangered.

Article Twenty

In the event of a controversy or situation that affects or that may affect peace and security, the High Contracting Parties shall take recourse in the first place

to direct and friendly negotiations including the constitution of Mixed Commissions, in order to achieve their solution and, if it be impossible to reach an agreement, they shall take recourse to other means of peaceful solution of controversies recognized in Resolution 530 of the Security Council of the United Nations, as established by the following articles:

Article Twenty-One

The High Contracting Parties, in the event of controversy, shall refrain from adopting any measure that may aggravate the situation in a way that endangers the maintenance of international peace and security.

Article Twenty-Two

The High Contracting Parties designate the Republics of Colombia, Mexico, Panama and Venezuela as Guarantor States of the present Treaty.

Article Twenty-Three

In the event that an agreement cannot be reached through direct negotiations or via the previously-established Mixed Commissions, recourse shall be taken to the good offices or to the mediation of the Guarantor States, to whom shall be given all facilities in order that they may acquaint themselves with and contribute to the solution of the controversy or situation that has been submitted to them.

Article Twenty-Four

If through the good offices or the mediation of the Guarantor States an agreement cannot be reached, any of the High Contracting Parties may submit the controversy or situation that affects or may affect international peace and security to the Security Council of the United Nations.

Chapter V

Article Twenty-Five

The accusations made by any of the Contracting Party States with respect to the violation of the present Treaty shall be presented, with all the respective evidence and proofs, to the Guarantor States, who may be requested to initiate the respective investigations in order to determine the justification or lack of justification of the charges. The High Contracting Parties shall accept as binding the resolution issued by the Guarantor States.

In order to facilitate the investigation of the denounced acts, the accusing party shall present all the evidence and proofs that support its accusation to the Ministers of Foreign Relations of the Guarantor States. The State that has been accused shall permit and shall grant facilities to carry out all investigations in its territory that may be necessary in order to determine the validity or the inconsistency of the accusation or accusations presented.

Article Twenty-Six

When the validity of the accusations presented is proven, the State responsible shall be obligated to compensate the injured State for all the damages and losses

that have been occasioned as well as the indemnities to which the latter is entitled. The Guarantor States shall determine on the basis of the facts the amount and form of payment and the other measures that must be taken to prevent the repetition of violations of the present Treaty. The reparations to which the present article refers constitute an international obligation.

Article Twenty-Seven

If the Guarantor States should not resolve the controversy or situation within a prudential period of no more than thirty days from the date of presentation of the accusation, or should the gravity of the situation so require, any of the Parties may turn to the Security Council of the United Nations even before the term has expired, so that this forum may examine and resolve the controversy or situation.

Article Twenty-Eight

The present Treaty in no way affects the rights and obligations of the High Contracting Parties as established in the Charter of the United Nations Organization.

Article Twenty-Nine

The present Treaty shall be in force for a term of five years, renewable on the consent of the Parties, and it shall enter into effect when the Fifth Instrument of Ratification has been deposited. Denunciation of the Treaty shall take effect for the denouncing State one year after it has been communicated, with the Treaty remaining in effect so long as three of the High Parties remain so disposed.

Article Thirty

The Minister of Foreign Relations of the Republic of ..... is entrusted with sending authentic certified copies of the instruments of ratification to the signatory and Guarantor States.

A copy of the present Treaty and of the instruments of ratification shall be deposited with the Secretariat of the United Nations Organization.

The Governments of the Republics of Colombia, Mexico, Panama and Venezuela shall subscribe to the present Treaty as Guarantor States.

In witness whereof the plenipotentiary representatives of the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua sign the present Treaty in the city of ..... on the ..... of .....

PROPOSAL CONCERNING MILITARY AFFAIRS

INTRODUCTION

The Draft Document of Commitment concerning military affairs, elaborated in the form of an Act of Commitment, embraces and develops points 7, 8 and 9 of the Document of Objectives, that is to say, those referring to the immediate

proscription of foreign bases or military schools and any other form of foreign military presence, including military maneuvers with foreign forces; the immediate cessation of the acquisition of arms of any type or point of origin for Central American countries; the immediate withdrawal of all foreign advisers and military personnel; the limitation of arms and number of regular army troops, and the establishment of supervision and control mechanisms for the verification of adherence to such commitments.

This Draft Document of Commitment Concerning Military Affairs addresses the substantive concerns regarding subject and gives them a concrete response. There can be no doubt that the existence of foreign military bases or schools, a foreign military presence, the continual exercise of military maneuvers with foreign armed forces, the constant acquisition of weaponry and the presence of foreign military advisers obstructs the development and friendly understanding of the Central American peoples. In this respect, the Governments of the region would assume concrete commitments with respect to these matters that would favor détente and confidence and, above all, the reestablishment of international peace and security in Central America.

DRAFT ACT OF COMMITMENT CONCERNING MILITARY AFFAIRS

The Ministers of Foreign Relations of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, meeting within the framework of the efforts of the Contadora Group.

Considering

1. That it is necessary to strengthen peace, security and confidence between the States of the Central American region.
2. That it is the obligation of States to guarantee and assure their people adequate standards of living in the economic, educational, cultural and health fields and that their resources must be directed to the achievement of these great objectives.
3. That the acquisition of arms and the increase of regular troops beyond the objective needs for the defense of the sovereignty and territorial integrity of their States has a negative repercussion on economic and social development by diverting resources and efforts which should be utilized in improving the living standards of their people.
4. That the existence of foreign bases and foreign military forces and other forms of foreign military presence is one of the factors that can affect peace, security and balance in the region and disturb the understanding between the States of Central America.
5. That the presence of foreign military advisers in the present tense climate of the region is a factor that can obstruct understanding between the countries of Central America.
6. That it is the primordial obligation of States to guarantee peaceful coexistence in the region based on respect for the basic principles of international law which must regulate the relations between sovereign nations, as established in the Charter of the United Nations Organization.

Contract the Commitment Within the Framework of Contadora to:

1. Immediately proscribe within their respective territories the installation of foreign military bases or schools and any other form of foreign military presence,

including all types of military maneuvers with foreign armed forces, as well as to dismantle existing foreign military bases or schools and to cancel scheduled or existing military maneuvers with foreign armed forces.

2. To immediately discontinue the acquisition of arms of whatever type and point of origin for any country of Central America.

3. To immediately begin the withdrawal of all foreign advisers and military personnel in the region and to complete their withdrawal within thirty days of having signed this agreement.

4. To reach accords concerning arms limitations and the number of standard army troops taking into account the objective defense needs for sovereignty, independence and territorial integrity of each State.

5. To establish supervision and control mechanisms in order to verify adherence to the commitments referred to in the preceding points.

In Furtherance of Such Aims, They Agree to:

1. The establishment of a Special Commission composed of the representatives of the Central American Governments and of the Contadora Group to initiate negotiations on the commitments referred to in the preceding Chapter.

This Commission shall meet within a period of no more than fifteen days commencing on the date of approval of the present commitment, in the city of Panama.

2. The Special Commission should report the results of each round of negotiations to its respective Governments and the Governments of the Contadora countries.

The Ministers of Foreign Relations of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, sign the present Act of Commitment in the city of Panama on the ..... day of the month of December of 1983.

DRAFT DECLARATION

INTRODUCTION

The Draft Declaration takes up and develops points 3, 4, 5, and 15 of the Document of Objectives, that is to say, those referring to Political Affairs of an internal nature and internal affairs with international projection. The reasons on which Nicaragua bases itself in delineating these points in a Declaration rather than in an international instrument, are implicit in the very nature of the affairs to which the indicated points refer. Unquestionably, the internal political systems can only be a commitment assumed before each people, and therefore cannot be the object of an international instrument between countries. It is a universally accepted principle that peoples have the inalienable right to choose their own laws as part of their right to freely choose their own political and social system.

On the other hand, internal questions with international projection, as in the case of human rights and refugees, are already expressed in international instruments such as International Pacts on Human Rights, the San José Pact and the Convention concerning the Status of Refugees and its Protocol, for

which reason it is unnecessary to reflect in a new Treaty what already constitute international obligations.

In any case, it is the obligation of Governments, in accordance with their own internal ordinances, to guarantee the full maintenance of the fundamental rights of man, which is also a matter of constitutional order.

As such, the Draft Declaration reaffirms those commitments acquired by each Government before its own people.

DRAFT DECLARATION

The Ministers of Foreign Relations of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, meeting within the framework of the efforts of the Contadora Group.

1. Firmly determined to assure peace, security, development and the welfare to which the Central American peoples have full right.
2. Convinced that the peaceful and harmonious coexistence of the States of the Isthmus requires respect for the different social, economic and political systems, the right to free determination and to the resolution of their internal affairs on the basis of their own development and particularities.
3. Conscious that the absolute and unrestricted observance of the principle of non-intervention in the affairs of other States is vital for the maintenance of the peace and security of the countries of the area.
4. Considering that the strengthening of democratic political institutions is closely linked to the betterment and the advances that may be achieved in the fields of economic development and social justice.
5. Recognizing the right of peoples, as the only depositories of national sovereignty, to freely determine their own economic, social and governmental systems.
6. Acknowledging, likewise, that the perfecting of democratic systems requires adequate conditions of peace and security that do not disturb the normal development of these institutions.

Reaffirm the Assumed Commitments with Their Own Peoples

1. Respect and guarantee in conformity with the Charter of the United Nations the exercise of human, political, civic, economic, social, religious and cultural rights, taking into account that all human rights and fundamental freedoms are indivisible and interdependent; and that the same attention and urgent consideration must be given to the application, promotion and protection of economic, social and cultural rights as to civil and political rights.
2. Adopt measures conducive to the establishment of, or, if existing, to the perfecting of representative and pluralistic democratic systems that guarantee effective popular participation in decision-making and that assure the free access of the diverse currents of opinion to honest and periodic electoral processes founded on the full observance of the rights of citizens.
3. Develop a genuine democratic system that sustains the existence of just economic and social structures which assure the people their inalienable rights to work, education, health and culture, making possible in this manner the effective exercise of its other fundamental rights.
4. Promote actions of national reconciliation in those cases where profound divisions have been produced within society, permitting participation with full guarantees, in political processes of a democratic nature.

5. Continue humanitarian aid aimed at assisting Central American refugees who have been displaced from their countries of origin, and promoting, as well, adequate conditions for the voluntary repatriation of these refugees in communication with, or with the cooperation of, the High Commission of the United Nations — ACNUR — and other international organisms that are judged pertinent.

PROPOSAL CONCERNING ECONOMIC AND SOCIAL AFFAIRS

INTRODUCTION

The economic and social questions contained in points 16, 17, 18, 19 and 20 of the Document of Objectives are assembled in the form of a Draft Accord to Promote the Economic and Social Development of Central America. Points in this draft are developed referring to Central American integration, international trade, external cooperation, food security and medical supplies, Latin American integration and the conformation of a special Central American group that will set about reformulating the Central American Common Market and that will coordinate the necessary actions for the execution of the contents of said draft accord.

DRAFT ACCORD TO PROMOTE THE ECONOMIC AND SOCIAL DEVELOPMENT OF CENTRAL AMERICA

The Foreign Relations Ministers of the Republics of:

1. Conscious that the profound structural problems of the region, aggravated by the international economic crisis, are the fundamental cause of the political and social tensions of the area.
2. Firmly convinced that the international peace and security of the States of Central America, based on the unrestricted respect for the principles and norms that govern the coexistence among nations, constitute vital conditions for the achievement of economic and social development.
3. Reaffirming the right of each State to take its own path in economic, social, political and cultural matters without any interference, coercion or threat whatsoever on the part of any other State or States.
4. Convinced that Central American economic integration and cooperation between States founded on the principles of equality, sovereignty, political independence, solidarity, mutual and equitable benefits, non-discrimination and respect for ideological pluralism, are indispensable instruments to assure the integrated economic and social development in the region.
5. Convinced likewise of the urgent need to reformulate, in integral form, the bases and mechanisms of Central American Economic Integration in order to adapt them to the new economic and social conditions of the area.
6. Recognizing that external cooperation is an essential factor for the efforts toward the stability and socio-economic development of Central America and that in the international community actions are being promoted towards the support of such efforts.

7. Considering that the economic vulnerability of Central America requires the adoption of concrete measures directed towards conjointly defending the security and independence of the countries of the area, especially in the face of situations that have been provoked by the application of economic measures of a coercive nature.

AGREE TO:

A. INTERNAL MEASURES

Article One

Carry out the necessary internal transformations to remove the obstacles that impede the economic political, social and cultural development of their peoples in whatever form each country may adopt in exercise of its sovereignty.

B. CENTRAL AMERICAN INTEGRATION

Article Two

Strengthen and perfect the process of Central American Economic Integration, reformulating its bases and mechanisms in order to transform it into an effective instrument of economic and social development.

Article Three

Reformulation of the bases and mechanisms of the Process of Central American Economic Integration shall be oriented principally toward:

(a) Achieving a greater degree of commercial, industrial and agricultural cooperation among the five countries of the area.

(b) Reorienting industrial policy with the aim of taking maximum advantage of the installed capacity for the production of capital inputs and basic consumer products: linking the Industrial Sector to the Agricultural Sector, diminishing dependence on imported raw materials and increasing the capability of competing in foreign markets.

(c) Increasing the capability of the countries to act in a coordinated way in taking advantage of the external market for agricultural products.

(d) Achieving in gradual form a balanced and more equitable trade between the five countries of the area.

(e) Placing in effect the new Central American Tariffs and Customs Régime.

(f) Establishing a financial mechanism of reciprocal payments that sustains the policies of equilibrated production, commerce and development among the countries of the Central American area with international financial support, and that neutralizes the negative effects of intraregional commercial deficits.

Article Four

For the purposes indicated in the second and third articles, the parties commit themselves to subscribing during the year of 1984 the substantive Conventions or Accords to reformulate the economic instruments and policies of the Central American Common Market. Likewise, they shall adopt in transitory or complementary form, multilateral or bilateral accords aimed at revitalizing commercial

interchange within the framework and with the flexibility permitted by the Treaties, Conventions and Resolutions presently in force.

C. INTERNATIONAL COMMERCE

Article Five

Reaffirm their adherence to the principles, norms and dispositions contained in the Charter of the United Nations, the Declaration concerning the Establishment of a New International Economic Order, and in the Charter of Economic Rights of States, in particular:

(a) Mutual and equitable benefits between States.
(b) Adhering in good faith to international obligations.
(c) The right to engage in trade and other forms of international economic cooperation irrespective of any differences in political, economic and social systems.
(d) The prohibition against employing or fomenting the use of economic, political and other types of measures to coerce another, or, other States, with the purpose of achieving the subordination of the exercise of its sovereign right.

Article Six

Assist each other mutually in order to achieve a more favorable relation with the rest of the world in international trade; to require adherence to the principles and norms of international trade; to promote the signing of accords concerning basic products; and, to demand the reduction of tariff and non-tariff barriers that impede the access of their products to the markets of the developed nations.

Article Seven

Commit their support to prevent the application of restrictive commercial measures, blockades, embargos and other economic sanctions against any of the countries of the Central American area as a means of political coercion; and in case this should occur, to make common and adequate cause against such measures.

D. FOREIGN DEBT

Article Eight

Draw up formulas that permit meeting the problem of the foreign debt on the basis of a rational and realistic evaluation of the payment capacity of the five countries and of the critical economic situation of the area, duly taking into account the adequate influx of additional resources that will permit attention to the needs for economic and social development.

E. EXTERNAL COOPERATION

Article Nine

Collectively promote the attraction of technical and financial foreign resources that will permit, alongside their own efforts, a reversal of the serious deterioration

of recent years; promote economic development with financial stability; increase exports, and reactivate the program of regional economic integration.

The magnitude of external resources must permit the expansion and restructuring of the productive system, an adequate flow of working capital, financing of maladjustments in the balance of payments and the reactivation of intraregional trade.

Article Ten

Strengthen the financial institutions of the area; the Central American Bank of Economic Integration and the Central American Monetary Council, and, support them in their efforts to obtain short-term and medium-term resources.

Article Eleven

Adopt the necessary measures aimed at granting legal representation to the Central American Monetary Council.

Article Twelve

Collectively demand that the international financial institutions allow the Central American countries credit, while respecting their development strategies reducing their degree of conditionality and taking into account the efforts they are making to reactivate the economies of the countries and to reformulate the regional economic integration scheme.

Carry out in like manner collective actions before the International Community to increase the financial cooperation directed to the area and to channel it through regional organisms and institutions, in addition to cooperation that is granted bilaterally to Central American countries.

F. FOOD SECURITY AND MEDICAL SUPPLIES

Article Thirteen

Elaborate a regional strategy with respect to other countries and specialized bodies such as the FAO, the PMA and the WHO, so that they will increase the flow of food and medical supplies.

Article Fourteen

Support and stimulate the rapid establishment and development of food security systems in the region.

Article Fifteen

In the medium term, coordinate regional efforts in the fields of research, production, collection and distribution of agricultural products with the aim of creating mechanisms of intraregional cooperation within the plans for food security that are developed by all the countries.

G. LATIN AMERICAN INTEGRATION

Article Sixteen

Recognize that the process of Central American integration is a part of the Latin American integration. In virtue of that, demand the sustained support of Latin American countries and of the Organs and Organisms of Regional Integration within a framework of political heterogeneity and styles of internal development sovereignly adopted by each country.

Article Seventeen

Subscribe to the constitutive act and offer the most decisive support to the Action Committee in support of the Economic and Social Development of Central America, urging all member States of SELA to join the same.

H. CONSTITUTION OF A SPECIAL CONTROL AMERICAN GROUP

Article Eighteen

Create a special, high level, working group, formed by a delegate of each Chief of State, in order to agree upon the legal instruments that will activate the reformulation of the Central American Common Market and coordinate the necessary actions for the execution of the present accord.

Said delegates must be designated within a term of 30 days from the date of subscription to this instrument.

I. PLAN OF ACTION

Article Nineteen

Carry out the annexed plan of action destined to materialize the commitments of this accord, which forms an integral part of the same.

DRAFT PLAN OF IMMEDIATE ACTION TO PROMOTE THE ECONOMIC AND SOCIAL DEVELOPMENT OF CENTRAL AMERICA

1. January 30, 1984: First Meeting of the Special Central American Group. Place: Managua.

2. January-February 1984: The Special Central American Group shall elaborate a timetable of work for the entire year to accomplish what is agreed to in Articles four and six.

3. January 1984: The naming of a Technical Commission that within the term of six months shall formulate a diagnosis of the Central American industrial sector and identify concrete possibilities for industrial complementation.

4. January 1984: The naming of a Technical Commission that within the term of six months shall formulate a diagnosis of the agricultural potential of the area

and the possibilities of its complementation to the end of obtaining alimentary security of the region.

5. January-March 1984: The Special Central American Group shall identify joint actions that the Central American countries will bring before the International Community.

6. January-March 1984: Subscription to the central American Monetary Convention that grants juridical personality to the Central American Monetary Council.

7. January-March 1984: Present joint applications to the World Bank to grant resources to the BCIE.

8. January-March 1984: Request the Administration of BCIE to prepare, in consultation with the member States, a draft reform of the Constitutive Convention of that institution that will permit opening its stock capital to third countries in accordance with the principle that this shall not alter the decision-making power of the countries within the Bank's area.

9. April-June 1984: Convocation of the Extraordinary Assembly of Governors of the BCIE to study the previously indicated Draft Reform.

10. July-September 1984: A meeting of Ministers of Industry of the area, or their equivalents, to reformulate regional industrial policy on the basis of the diagnosis elaborated by the Industrial Technical Commission.

11. July-September 1984: A meeting of Ministers of Agriculture to define pertinent measures and policies on the basis of the diagnosis of the Agricultural Technical Commission.

Exhibit X

THE MINING OF NICARAGUA'S PORTS

(Central American Historical Institute, *Update*, Vol. 3, No. 13, 5 April 1984)

Toward the end of 1983, the "covert war" against Nicaragua entered a new phase, a war of attrition, as Nicaraguan rebels sought to sabotage major economic targets and isolate Nicaragua physically (see *Update*, Vol. 2, No. 23). Since the end of February, this strategy has been reinforced by a renewed military offensive, focused on sea and air attacks of Nicaragua's ports. The situation has become particularly serious, because for the first time access channels to Nicaragua's ports have been heavily mined.

Armed speed-boats, called "Sea Riders" or "Piranhas" in Spanish, first attacked Nicaragua's ports on October 1, 1983, damaging fuel tanks at Puerto Corinto. Despite losses then, the attack pales in comparison to the current campaign. In the last six months, Nicaragua has suffered 19 major assaults at its ports.

PHASE ONE: ATTACKS AT PORTS

9/8/83 Puerto Sandino oil pipeline sabotaged, temporarily suspending the unloading of oil.

9/9/83 Two planes attacked Puerto Corinto with rockets.

10/2/83 Two 380,000 gallon fuel tanks were blown up at Puerto Benjamin Zeledon on the Atlantic Coast.

10/14/83 Puerto Sandino oil pipeline was sabotaged again.

10/21/83 Puerto Cabezas on the Atlantic Coast was attacked.

PHASE TWO: MINING OF PORTS

2/24/84 Sea Riders attacked fuel deposits in El Bluff (near Bluefields, on the Atlantic Coast). They planted mines which blew up two Nicaraguan fishing vessels the following day.

3/1/84 The Dutch dredger *Geoponte* was damaged when it struck a mine at Corinto.

3/7/84 The Panamanian ship *Los Caraibes*, carrying medicine, food and industrial inputs, was severely damaged when it struck a mine at Corinto.

3/20/84 The Soviet tanker *Lugansk*, carrying 250,000 barrels of crude oil, was damaged by a mine in Puerto Sandino.

3/27/84 In a naval battle in Corinto, the Nicaraguan Navy discovered three Sea Riders; a war plane was flying over the area. Four Nicaraguans were hurt and one Sea Rider damaged in the battle.

3/28/84 The Liberian ship *Inderchaser*, carrying molasses, ran into a mine in Corinto.

The Panamanian ship *Homin* was attacked by Sea Riders when it was loading 9,700 tons of sugar at Puerto Sandino.

A Nicaraguan shrimp boat was destroyed by a mine in Corinto.

3/29/84 The Nicaraguan fishing vessel *San Albino* was destroyed by a mine in Corinto.

The Nicaraguan Navy confronted five Sea Riders and one plane in the heaviest naval attack to date.

3/30/84 The Nicaraguan shrimp boat *Alma Sultana* was damaged by a mine in Corinto.

The Japanese ship *Terushio Maru*, carrying bicycles, spare parts for cars, construction materials and loading cotton, was damaged by a mine in Corinto.

Three Sea Riders and three helicopters attacked the Panamanian ship *Homin*.

SOPHISTICATED MILITARY OFFENSIVE

The "Piranhas", or Sea Riders, can reach a speed of 75 miles per hour. They can be armed with M-60 machine guns or 20 mm. cannons in the bow, and grenade launchers in the stern. They have room for a three-person crew. Sea Riders have the capacity to submerge partially, which gives them greater stability and makes it more difficult to detect them.

The United States has given Honduras ten of these speed-boats over the past months. Nicaraguan military intelligence have asserted that boats attacking Nicaragua's ports leave from a "mother-ship", which they claim is a US frigate permanently stationed 40 or 50 miles from Nicaragua, opposite Corinto and Puerto Sandino.

To date, three types of mines have been discovered in Nicaraguan waters: contact mines, which explode by direct contact; sound mines, which explode with the noise of a ship; and pressure mines, which explode because of the waves produced by a ship's movement.

The Ministry of Defense issued an official communiqué March 29, stating that these are "highly sophisticated, industrially-manufactured mines, which come from arsenals of the United States Army", and "they are being placed by C.I.A. specialists, using modern surface and underwater naval techniques".

On March 2, the Nicaraguan Democratic Force (FDN) and the Democratic Revolutionary Alliance (ARDE) announced from Costa Rica that Nicaraguan ports had been mined, and they claimed responsibility. Given the sophistication of the mines, however, most analysts find it hard to believe that these irregular military organizations would have been able to make and place mines.

This offensive has shown, as never before, the limitations of Nicaraguan defense against such sophisticated techniques. The National Port Authority (ENAP) told the Instituto Historico Centroamericano that the access channel to Corinto is being "cleaned out" with primitive methods such as dragging a deep sea fishing net between two fishing boats in order to "fish out" mines. Most of the Pacific fishing fleet is currently involved in this task; three boats have been destroyed thus far. Foreign commercial vessels entering and leaving Nicaraguan harbors are preceded by an escort of fighting boats, which test the route. Twenty-seven mines have been deactivated to date.

Because of this primitive means of defense, the Nicaraguan Government has called on other governments to provide "technical and military means" to allow Nicaragua to defend itself from these attacks.

THE ECONOMIC IMPACT

Figures from the Nicaraguan National Statistics and Census Institute (INEC) indicate that in 1982, approximately 1,749,000 short tons of different products

entered and left Nicaraguan customs posts. (1 short ton = .907 metric tons.) This does not include 675,000 short tons of imports and exports that passed through Puerto Sandino. These two figures add up to 2,400,000 short tons, of which, according to ENAP, 1,529,151 passed through the six major ports in the country: Corinto, Sandino, San Juan del Sur on the Pacific, and El Bluff, Cabezas and Arlen Siu on the Atlantic. Thus, 63 per cent of Nicaragua's imports and exports passed through its ports in 1982.

In 1983, this total increased significantly, due to difficulties created along the northern and southern borders by counterrevolutionary attacks. For example, on March 7, the FDN blew up a tanker truck carrying 9,000 gallons of propane, as the truck was going through El Espino border crossing between Nicaragua and Honduras. The 1983 estimate by ENAP is that 80 per cent of all foreign trade passed through Nicaraguan ports.

To date, Corinto and Puerto Sandino on the Pacific side, have been attacked most often. In 1983, 1,119,407 metric tons of goods passed through the country's main port of Corinto (1 metric ton = 1,000 kgs). Puerto Sandino, equipped with oil pipelines, received 629,612 metric tons of imports, primarily oil and its derivatives. The total of both figures (1,749,019 metric tons) over total imports and exports in all of the country's ports (1,810,084 metric tons) shows that in 1983, 96 per cent of economic activity of Nicaraguan ports was at Corinto or Puerto Sandino.

Nicaragua currently spends $200 million annually on oil imports. This represents 40 per cent of the foreign exchange earned through export sales. Since the 1980 San José agreements, which benefitted Central America and the Caribbean, Nicaragua has received oil at a good price from Mexico and Venezuela. At the end of 1982, Venezuela cut off oil to Nicaragua, blaming Nicaragua's foreign debt of $19 million. Mexico increased its exports briefly, then reduced them in August 1983 to their now stable daily supply of 7,500 barrels. In October 1983, Mexico was pressured by the International Monetary Fund to stop selling oil to Nicaragua until Nicaragua paid the bill. Nicaragua and Mexico came to a new agreement and oil shipments continue to arrive from Mexico.

APRIL-MAY PRIME PORT MONTHS

Taking all this into consideration, it is apparent that the objective of the systematic attacks on Nicaraguan ports is primarily economic, not military — particularly now, when the coffee and cotton harvests are ready for export. And, May is the peak month of the year for port activity.

The "War of the Ports" has already produced greater shortages of imported goods (spare parts and industrial machinery) and delays in the arrival of donations, such as medicine and wheat. It also represents a constant threat to the already-fragile energy system in the impact on oil pipelines.

The current strategy of the counterrevolution is the most serious threat thus far in the two-year war, because of the economic consequences. The FDN has pressured Lloyd's of London, the largest insurance company in the world, to stop insuring any merchant ship that is headed for Nicaraguan waters. ARDE has announced that it has mined 50 kms of Lake Nicaragua, which is transitted primarily by small fishing vessels. Reducing the ports' capacity could further isolate Nicaragua and cause great problems as Nicaragua moves towards elections. In a strongly worded statement, Foreign Minister of France, Claude Cheysson, condemned the mining of the ports:

One feels cast down not only on the level of international relations but also on the moral level; and one can only react with horror knowing that the mining of the Nicaraguan ports means that women, children and the dispossessed of Nicaragua are being deprived of the provisions and medications supplied by international humanitarian aid (several shipments, some of which come from Europe, have been annulled or sent elsewhere). It is also distressing, given that we are witnessing the watershed to a new stage in the escalation of clandestine military operations supported from outside against Nicaragua.

B. EXHIBITS SUBMITTED BY THE UNITED STATES OF AMERICA

Exhibit I

DOCUMENTS FROM LEAGUE OF NATIONS FILES REGISTRY NO. 3C/17664/1589

AFFIDAVIT OF STEPHEN R. BOND, COUNSELOR FOR LEGAL AFFAIRS WITH THE UNITED STATES MISSION TO THE UNITED NATIONS IN GENEVA, CONCERNING FILE ENTITLED "LEAGUE OF NATIONS ARCHIVES, 1933 TO 1946, STATUTE OF THE COURT AND OPTIONAL CLAUSE, GENEVA, 1920, SIGNATURE AND RATIFICATION BY NICARAGUA", REGISTRY NUMBER 3C/17664/1589, DATED 25 APRIL 1984

Confederation of Switzerland
Canton and City of Geneva
Consular Service of the
United States of America } ss.

Before me Kathleen M. Daly, Consul of the United States of America, duly commissioned and qualified, personally appeared Stephen R. Bond who, being duly sworn, deposes and says as follows:

I, Stephen R. Bond, Counselor for Legal Affairs with the United States Mission to the United Nations and other International Organizations in Geneva, hereby affirm that I have personally examined and photocopied the cover and complete contents of the file entitled "League of Nations Archives, 1933 to 1946, Statute of the Court and Optional Clause, Geneva, 1920, signature and ratification by Nicaragua", Registry Number 3C/17664/1589. The contents of this file correspond exactly to those documents listed on the inside rear cover of the archives file, a photocopy of which is appended to this statement along with a photocopy of each and every document contained in the aforementioned file.

And further deponent saith not.

(Signed) Stephen R. BOND.

Subscribed and sworn to before me
this 25th day of April 1984.

(Signed) Kathleen M. DALY,
Consul of the United States of
America.

SIGNATURE AND RATIFICATION BY NICARAGUA

[Not reproduced]

LETTER FROM THE LEGAL COUNSEL, LEAGUE OF NATIONS, TO JUDGE MANLEY O. HUDSON, DATED GENEVA, 14 OCTOBER 1942

My Dear Hudson,

As we are now in possession of a further supply of the 1940 edition of the Court Statute and Rules asked for by your letter of August 4th, last, I am forwarding to you to-day another copy of this document.

Sincerely yours,

(Signed) E. GIRAUD.

LETTER FROM THE ACTING LEGAL ADVISER OF THE LEAGUE OF NATIONS TO THE MINISTER FOR FOREIGN AFFAIRS OF NICARAGUA, DATED GENEVA, 16 SEPTEMBER 1942

Monsieur le ministre,

Par un télégramme en date du 29 novembre 1939, vous avez bien voulu me faire savoir que le protocole de signature du Statut de la Cour permanente de Justice internationale (du 16 décembre 1920) avait été ratifié par le président de la République de Nicaragua et que l'instrument de ratification serait envoyé au Secrétariat.

Or, je n'ai jamais reçu cet instrument de ratification dont le dépôt est nécessaire pour faire naître effectivement l'obligation. Peut-être cet instrument s'est-il perdu en cours de route.

J'ai tenu à attirer votre attention sur cette question.

Veuillez agréer, Monsieur le ministre, les assurances de ma haute considération.

Pour le Secrétaire général p.i.,
Le conseiller juridique p.i. du Secrétariat,
(Signé) E. GIRAUD.

LETTER FROM THE ACTING LEGAL ADVISER OF THE LEAGUE OF NATIONS TO JUDGE HUDSON, DATED GENEVA, 15 SEPTEMBER 1942

Dear Manley Hudson,

Mr. Lester has asked me to answer your letter of August 4th.
The position of Nicaragua in regard to the Statute of the Court is as follows:

Nicaragua signed without reservation the Court Protocol of December 16th, 1920, on September 14th, 1929, and the optional clause of Article 36 on September 24th, 1929. The declaration accompanying the signature of the above-mentioned clause was drafted as follows:

> "On behalf of the Republic of Nicaragua, I recognise as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice."

We have not received the ratification necessary to complete the signature of the Court Protocol and at the same time to bring into force the obligations concerning Article 36. But on November 29th, 1939, the Secretary-General was informed by telegram that the Court Protocol was ratified by the President of the Republic of Nicaragua. We have however never received the instrument of ratification itself, which should have been sent to us. Nicaragua is therefore not bound either by the Protocol or by the optional clause.

Perhaps you could take the necessary steps to have the instrument of ratification sent to us.
A copy of Treaty Series Vol. 200 and a copy of the Court Statutes and Rules, both the 1936 and 1941 editions, have been sent to you. Unfortunately we cannot send you more than one copy of the last two documents, as our stock is nearly exhausted. Owing to the political events, the stock intended for us was never received from La Haye.

Sincerely yours,

(Signed) E. GIRAUD.

LETTER FROM JUDGE HUDSON TO MR. LESTER OF THE LEAGUE OF NATIONS SECRETARIAT, DATED 4 AUGUST 1942

Dear Sean,

Will you please give me exact information on ratification of Court Protocol and Statute, of Dec. 16, 1920, by Nicaragua.
I have a note that a ratification[1] was deposited by Nicaragua on Nov. 29, 1939, but you have not announced it and I wonder. Please help me.
I plan to represent Court at meeting of Supervisory Commission this month.
Will you please have sent to me

[1] Reg. No. 3C/17664/1589.

(1) Treaty Series, vol. 200
(2) 5 copies of Court Statute and Rules, both 1936 and 1941 editions.

Many thanks and best wishes,

(Signed) Manley O. HUDSON.

RATIFICATION OF THE STATUTE AND PROTOCOL OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE DEPOSITED BY NICARAGUA ON 29 NOVEMBER 1939

[Not reproduced]

LETTER FROM THE ACTING LEGAL ADVISER OF THE LEAGUE OF NATIONS TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED GENEVA, 30 NOVEMBER 1939

Monsieur le ministre,

J'ai l'honneur d'accuser réception du télégramme en date du 29 de ce mois, par lequel vous avez bien voulu me faire savoir que le protocole de signature du Statut de la Cour permanente de Justice internationale (Genève, le 16 décembre 1920) a été ratifié par le président de la République de Nicaragua et que l'instrument de ratification sera envoyé au Secrétariat.

En réponse, je m'empresse de vous informer que le service compétent du Secrétariat se tient à la disposition de votre gouvernement pour lui faciliter les formalités relatives au dépôt dudit instrument de ratification.

Veuillez agréer, Monsieur le ministre, les assurances de ma haute considération.

Pour le Secrétaire général,
Le conseillier juridique p.i.
du Secrétariat,
(Signé) H. MCKINNON WOOD.

TELEGRAM FROM MANAGUA TO SECRETARY, LEAGUE OF NATIONS, DATED 30 NOVEMBER 1939

[For English translation see II, Counter-Memorial of the United States, Ann. 14]

19781 Managua Nic CL 340 22 29 1710 via CIAL RS

No. 2959

Secretario Sociedad Naciones, Ginebra.

Estatuto y Protocolo Corte Permanente Justicia Internacional La Haya ya fueron ratificados. Euviarasele oportunamente instrumento ratificación Relaciones.

[Stamp: Received 30 November 1939]

LETTER FROM THE ACTING LEGAL ADVISER OF THE LEAGUE OF NATIONS TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED GENEVA, 6 MAY 1935

Monsieur le ministre,

J'ai l'honneur d'accuser réception de la lettre du 4 avril 1935, n° 45-35, par laquelle vous avez bien voulu me communiquer, en vous référant à ma lettre circulaire C.L.34.1935.V, du 5 mars dernier, quelques renseignements relatifs à la ratification ou à l'adhésion du Gouvernement de la République de Nicaragua à certaines conventions conclues sous les auspices de la Société des Nations.

En réponse, j'ai l'honneur d'attirer votre attention sur le fait que le Gouvernment du Nicaragua a notifié au Secrétariat, par une lettre datée à Managua du 15 février 1932, n° 52/32, son adhésion formelle à la convention portant loi uniforme sur les chèques et protocole, à la convention relative à certains conflits de lois en matière de chèques et protocole, ainsi qu'à la convention relative au droit de timbre en matière de chèques et protocole, signés à Genève le 19 mars 1931. Cette notification était conçue dans les termes suivants:

> « De conformidad con los arts. V, 13 y 4 de dichas Convenciones y como complemento de mi nota No. 183, del 9 de noviembre de 1931, en conexion con las de esa Secretaria, Nos. C.L.80.1931.II.B del 10 de mayo de 1931, y lo D/32941/26480, del 23 de diciembre del propio año, tengo el honor de trasmitirle la adhesion formal del Gobierno de Nicaragua las mencionadas convenciones; y en tal virtud, se servira Ud. tomar nota de esta notificacion y depositarla en los archives de la Secretaria. »

Ladite lettre ayant été reçue au Secrétariat le 16 mars 1932, c'est à cette date que l'adhésion fut enregistrée. Elle fut ensuite portée à la connaissance de tous les Etats intéressés par lettre circulaire n° C.L.52.1932.V datée à Genève du 7 avril 1932. Le Gouvernement du Nicaragua est donc d'ores et déjà considéré comme partie contractante à ces trois conventions.

Je constate d'autre part que le Gouvernement du Nicaragua n'a pas encore notifié le Secrétariat de son adhésion à la convention portant loi uniforme sur les lettres de change et billets à ordre et protocole, à la convention relative à certains conflits de lois sur les lettres de change et billets à ordre et protocole, et à la convention relative au droit de timbre en matière de lettres de change et billets à ordre et protocole, adoptés également par la conférence internationale pour l'unification du droit en matière de lettres de change, billets à ordre et chèques, à Genève, le 7 juin 1930. Dans ces conditions, il me semble possible qu'une confusion ait pu se produire entre deux séries d'instruments internationaux qui portent sur des matières aussi connexes.

Le Secrétariat a pris bonne note que les instruments d'adhésion de la République de Nicaragua à la convention sur la traite des femmes et des enfants, du 30 septembre 1921, et à la convention relative à la répression de la traite des femmes majeures, du 11 octobre 1933, lui seront adressés prochainement, ainsi que les instruments de ratification sur la convention pour faciliter la circulation internationale des films ayant un caratère éducatif, signée à Genève le 11 octobre 1933, sur le protocole de signature du Statut de la Cour permanente de Justice internationale, du 16 décembre 1920, et sur le protocole concernant la revision de ce Statut et le protocole concernant l'adhésion des Etats-Unis d'Amérique au protocole de signature du Statut de la Cour permanente de Justice internationale, *signés à Genève le 14 septembre 1929.*

Le Secrétrariat se tient donc à l'entière disposition de votre gouvernement pour lui faciliter les formalités relatives à ces dépôts.

Quant à l'arrangement international en vue d'assurer une protection efficace contre la traite des blanches, signé à Paris, le 18 mars 1904, et à la convention internationale relative à la répression de la traite des blanches, signée à Paris, le 4 mai 1910, c'est auprès du Gouvernement français, en vertu des articles 7 et 8 respectivement de ces deux accords, que les instruments d'adhésion doivent être déposés.

Ces deux articles spécifient, en effet, que:

(article 7 — arrangement de 1904)

> «les Etats non signataires sont admis à adhérer au présent arrangement. A cet effet, ils notifieront leur intention, par la voie diplomatique, au Gouvernement français, qui en donnera connaissance à tous les Etats contractants»;

(article 8 — convention de 1910)

> «les Etats non signataires sont admis à adhérer à la présente convention. A cet effet, ils notifieront leur intention par un acte qui sera déposé dans les archives du Gouvernement de la République française. Celui-ci en enverra par la voie diplomatique copie certifiée conforme à chacun des Etats contractants et les avisera en même temps de la date du dépôt. Il sera donné aussi, dans ledit acte de notification, communication des lois rendues dans l'Etat adhérent relativement à l'objet de la présente convention.
>
> Six mois après la date du dépôt de l'acte de notification, la convention entrera en vigueur dans l'ensemble du territoire de l'Etat adhérent, qui deviendra ainsi Etat contractant.
>
> L'adhésion à la convention entraînera de plein droit, et sans notification spéciale, adhésion concomitante et entière à l'arrangement du 18 mai 1904, qui entrera en vigueur, à la même date que la convention elle-même, dans *l'ensemble de territoire de l'Etat adhérent.*

Il n'est toutefois pas dérogé, par la disposition précédente, à l'article 7 de l'arrangement précité du 18 mai 1904 qui demeure applicable au cas ou un Etat préférerait faire acte d'adhésion seulement à cet arrangement.»

Veuillez agréer, Monsieur le ministre, les assurances de ma haute considération.

Pour le Secrétaire général,
le conseiller juridique p.i. du Secrétariat,
(Signé) H. McKINNON WOOD.

LETTER FROM THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA TO THE SECRETARY-GENERAL OF THE LEAGE OF NATIONS, DATED MANAGUA, 4 APRIL 1935

[Spanish text not reproduced. For English translation see **II**, *Counter-Memorial of the United States, Ann. 11]*

Exhibit II

DOCUMENTS FROM UNITED STATES ARCHIVES

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: United States of America

This public document

2. has been signed by Milton O. Gustafson
3. acting in the capacity of Chief, Legislative and Diplomatic Branch
4. bears the seal/stamp of The National Archives

Certified

5. at Washington, D.C.
6. the twentieth of April, 1984
7. by Authentication Officer, United States Department of State
8. No. 84/4612
9. Seal/Stamp: 10. Signature:

(Signed) Annie R. MADDUX.

CERTIFICATION

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

8404612

. . . to whom these presents shall come, Greeting:

By virtue of the authority vested in me by the Administrator of General Services, I certify on his behalf, under the seal of the National Archives of the United States, that the attached reproduction(s) is a true and correct copy of documents in his custody.

(Signed) Milton O. GUSTAFSON,
Chief, Legislative and Diplomatic Branch.

April 20, 1984.

The National Archives,
Washington, D.C. 20408.

LETTER FROM THE UNITED STATES AMBASSADOR TO NICARAGUA TO THE SECRETARY OF STATE, DATED MANAGUA, 13 MAY 1943, ENCLOSING A LETTER FROM THE AMBASSADOR TO JUDGE MANLEY HUDSON, DATED 13 MAY 1943, AND AN UNSIGNED COPY OF THE DECREE OF 11 JULY 1935 [1]

No. 1035.

Subject: Letter For Transmission; Nicaraguan Adherence to International Court of Justice.

Sir:

I have the honor to enclose, for transmission to the addressee in the Department's discretion, a letter addressed to the Honorable Manley O. HUDSON, Judge of the World Court, in care of the Law School of Harvard University, Cambridge, Massachusetts. Judge Hudson requested information concerning the adherence of Nicaragua to the Protocol of Signature and Statute of the Permanent Court of International Justice. It is believed that the Department might be interested in having the text of the reply which has been prepared by this Embassy after consultation with the Nicaraguan Foreign Office, in its files.

Respectfully yours,

(Signed) James B. STEWART.

Air Mail Enclosure 1 to despatch No. 1035, dated May 13, 1943, from American Embassy, Managua, Nicaragua, on subject of: Letter for Transmission; Nicaraguan Adherence to International Court of Justice.

Managua, D.N., Nicaragua, May 15, 1943 *[sic?]*.

Sir:

The Honorable Pierre de L. Beal, American Ambassador to Bolivia, has forwarded to me your letter of October 14, 1942, stating that you have been informed from Geneva that on November 29, 1939, the Secretary General of the League of Nations was informed by telegram that the Protocol of Signature of December 16, 1920, relating to the Statute of the Permanent Court of International Justice, has been ratified by the President of the Republic of Nicaragua. You state that the collection of Nicaraguan law in the Harvard Law Library apparently does not contain a copy of this decree and ask to be furnished with such a copy.

I have discussed this matter with the Foreign Office, which was able to find a copy of the telegram of November 29, 1939, stating that Nicaragua had in fact adhered to the Protocol of Signature and that the appropriate document of ratification would be transmitted in the near future. There is enclosed a copy,

[1] Spanish text of decree not reproduced. For an English translation see II, Counter-Memorial of the United States, Ann. 13. *[Note by the Registry.]*

without translation, of the legal decree, approved and signed by the President of Nicaragua on July 12, 1935. You will note that the second article of the decree states that it is to become effective on the date of its publication in *La Gaceta*. The Foreign Minister informs me that the decree was never published in *La Gaceta*. He also declared that there is no record of the instrument of ratification having been transmitted to Geneva. It would thus appear that, while appropriate legislative action was taken in Nicaragua to approve adherence to the Protocol, Nicaragua is not legally bound thereby, in as much as it did not deposit its official document of ratification with the League of Nations. The Foreign Minister, however, volunteered the information that he would take steps to have this document drawn up and transmitted, and indicated that he would then have the appropriate decree published in *La Gaceta*.

Assuring you that it has been a pleasure to be of assistance to you in this matter, I am

Very truly yours,

(Signed) James B. STEWART,
American Ambassador.

Enclosure:
Copy decree.

Exhibit III

PART 1. DOCUMENTS RELATING TO THE SITUATION IN CENTRAL AMERICA

TAB A: ORGANIZATION OF AMERICAN STATES DOCUMENT OEA/2.3-33/79, OF 16 JULY 1979, SETTING FORTH A COMMUNICATION OF THE JUNTA OF THE GOVERNMENT OF NATIONAL RECONSTRUCTION STATING THE AIMS AND OBJECTIVES OF THE JUNTA

OEA/2.3-33/79

Because of the great significance of the matter dealt with, and because the issue was recently considered by the XVII Meeting of Consultation of Ministers of Foreign Affairs within whose jurisdiction it still falls, the Secretary General of the Organization of American States begs to forward to the Representative with his compliments the message he has received from the "Junta of the Government of National Reconstruction" of Nicaragua, the text of which is self-explanatory.

July 16, 1979.

COMMUNICATION OF THE JUNTA OF THE GOVERNMENT OF NATIONAL RECONSTRUCTION

RCA JUL 13 2047
248381 OAS UR
214

San José, Costa Rica.

Secretary General of the OAS,
Dr. Alejandro Orfola
Washington, D.C.

Mr. Secretary General:

We are pleased to make available to you, and to the Ministers of Foreign Affairs of the Member States of the Organization, the document containing our "Plan to Secure Peace" in our heroic, long-suffering country at the moment when the people of Nicaragua has consolidated its political and military victory over the dictatorship.

We have developed this plan on the basis of the Resolution of the XVII Meeting of Consultation on June 23, 1979, a Resolution that was historic in every sense of the word: it demands the immediate replacement of the genocidal Somoza dictatorship, which is now nearing its end, and backs the installation of a broadly-representative democratic government in our country, such as the one we have formed. While saying that "the solution of the serious problem is exclusively within the jurisdiction of the people of Nicaragua", it appeals to hemispheric solidarity to preserve our people's right to self-determination.

We are presenting to the Community of Nations of the hemisphere in connection with our "Plan to Secure Peace" the goals that have inspired our

government ever since it was formed. They have been set forth in our documents and political declarations, and we wish to ratify some of them here:

I. Our firm intention to establish full observance of human rights in our country in accordance with the United Nations Universal Declaration of the Rights of Man, and the Charter on Human Rights of the OAS. Our observance of human rights has already been made plain by the way the Sandinista National Liberation Front has treated hundreds of prisoners of war. Our government thus invites the Inter-American Commission on Human Rights (CIDH) to visit our country as soon as we are installed in our national territory.

II. Our wish that our installation in Nicaragua come about through a peaceful and orderly transition. The Government of National Reconstruction would take it as a gesture of solidarity if the Foreign Ministers of the hemisphere were to visit our country, and we hereby extend them a fraternal invitation to do so.

III. Our decision to enforce civil justice in our country and to try those incriminated of crimes against our people according to the regular laws. By their heroic struggle, the people have won themselves the right to let justice prevail for the first time in half a century, and will do so within the framework of the law, without a spirit of vengeance and without indiscriminate reprisals.

IV. Those collaborators with the régime that may wish to leave the country and that are not responsible for the genocide we have suffered or for other serious crimes that demand trial by the civil courts, may do so with all the necessary guarantees, which the Government of National Reconstruction authorizes as of now. The departure of these persons may be supervised by the Inter-American Commission on Human Rights and by the International Red Cross.

V. The plan to call the first free elections our country has known in this century, so that Nicaraguans can elect their representative to the city councils and to a constituent assembly, and later elect the country's highest authorities.

Mr. Secretary General, it is now up to the governments of the hemisphere to speak, so that the solidarity with the struggle our people has carried forward to make democracy and justice possible in Nicaragua can become fully effective.

We ask that you transmit the text of this letter to the Foreign Ministers of the OAS,

Yours most respectfully,

Junta of the Government of National Reconstruction: Violeta de Chamorro — Sergio Ramirez Mercado — Alfonso Robelo Callejas — Daniel Ortega Saavedfa — Moises Hassan Morales.

Plan of the Government of National Reconstruction to secure peace.

We began on the basis that while it is true that the solution of the serious problem is exclusively within the jurisdiction of the people of Nicaragua, that hemispheric solidarity that is vital if this plan is to be carried out will come about in fulfillment of the Resolution of the XVII Meeting of Consultation of Ministers of Foreign Affairs of the OAS adopted on June 23, 1979.

The following steps will ensure the immediate and definitive replacement of the Somoza Régime, which has already been defeated by the heroic fighting people of Nicaragua and their vanguard, the Sandinista National Liberation Front. Rejection of this plan for a political solution would leave the military annihilation of the Somoza régime as the only way out. This could go on for a

few more weeks, and would cause unnecessarily many more deaths and much more destruction

The states of the plan

I. Somoza submits his resignation to his Congress. His Congress accepts it and turns power over to the Government of National Reconstruction in recognition of the backing it has received from all sectors of Nicaraguan society.

II. Installation of the Government of National Reconstruction. This government is formed of representatives of all sectors of Nicaraguan politics, and has received the official support of all of them.

III. Immediately following the Government of National Reconstruction's installation inside Nicaragua, the Member States of the OAS, particularly those that sponsored or voted in favor of the Resolution, will proceed officially to recognize it as the legitimate government of Nicaragua.

IV. The Government of National Reconstruction will immediately proceed to:

1. Abolish the Somoza Constitution.
2. Decree the Fundamental Statute by which the Government of National Reconstruction will be provisionally governed.
3. Dissolve the National Congress.
4. Order the National Guard to cease hostilities and to return immediately to their barracks, with guarantees that their lives and other rights be respected. Those officers, non-commissioned officers and ranks of the National Guard that wish to do so may join the new national army, or they may return to civilian life. The Sandinista army will enforce the ceasefire to facilitate compliance with these decisions, standing in place in the positions gained up to the moment the decree is issued.
5. Maintain order using those sectors of the National Guard that have observed the ceasefire and that are appointed to these duties by the Government of National Reconstruction. They will work alongside soldiers of the Sandinista army.
6. Decree the organic law that will govern the institutions of the State.
7. Implement the program of the Government of National Reconstruction.
8. Guarantee the departure from the country of all those soldiers, Somoza officials who wish to leave and who are not involved in serious crimes against the people.

Appendix I — Resolution of the XVII Meeting of Consultation of Ministers of Foreign Affairs of the OAS.
Appendix II — Law of Guarantees.
Appendix III — Organic Law.
Appendix IV — Program of the Government of National Reconstruction.

We ask you please to acknowledge receipt of this message.

Press Office — Junta of the Government of National Reconstruction.

TAB B: BULLETIN REPRINT OF DEPARTMENT OF STATE STATEMENT ON DECLARATION ON DEMOCRACY IN CENTRAL AMERICA, INCLUDING TEXT OF SAN JOSÉ DECLARATION (FINAL ACT OF THE MEETING OF FOREIGN MINISTERS OF COUNTRIES INTERESTED IN THE PROMOTION OF DEMOCRACY IN CENTRAL AMERICA AND THE CARIBBEAN)

DECLARATION ON DEMOCRACY IN CENTRAL AMERICA

October 1982.

United States Department of State, Bureau of Public Affairs, Washington, D.C.

Following are texts of the Department statement and summary of October 5, 1982 and the Final Act of the Meeting of Foreign Ministers of Countries Interested in the Promotion of Democracy in Central America and the Caribbean of October 4, 1982.

DEPARTMENT STATEMENT, OCT. 5, 1982[1]

Yesterday in San José, Costa Rica, there was a meeting of foreign ministers of countries interested in promoting democracy in Central America and the Caribbean. The meeting was attended by the Prime Minister of Belize, who concurrently holds the foreign minister portfolio, and five other foreign ministers — Colombia, El Salvador, Honduras, Jamaica, and Costa Rica. Assistant Secretary for Inter-American Affairs [Thomas O.] Enders attended as a special representative of the Secretary of State, and Panama and the Dominican Republic designated special observers.

The final act of the meeting emphasized the importance of representative democracy and pluralism to the peoples of the region and as an essential element in bringing about peace in Central America. It also set forth certain other conditions and actions to achieve peace in the region:

National reconciliation in a democratic framework;
Respect for the principle of nonintervention;
An end to arms trafficking and foreign support for terrorism and violence;
Limitation of armaments;
Control of frontiers under reciprocal and verifiable conditions including international supervision;
Withdrawal under effective conditions of reciprocity of foreign troops and military and security advisers; and
A halt to the importation of heavy offensive weapons.

The conference also established a forum for peace and democracy that would analyze within the framework of the declaration the different peace proposals and initiatives that emerged and transmit the results to other interested states. The conference also resolved to create an office to provide technical electoral assistance to those countries desiring to hold free and honest elections.

The Government of the United States believes that this initiative of these regional democracies marks an important step forward in the promotion of representative democracy and the resolution of regional tensions within a peaceful framework. We hope other governments in the region will seriously address the

[1] Read to news correspondents by acting Department spokesman Alan Romberg.

concepts set forth in the final act of the conference. They provide a blueprint for peace in the region.

FINAL ACT, OCT. 4, 1982[2]

FINAL ACT OF THE MEETING OF FOREIGN MINISTERS OF COUNTRIES INTERESTED IN THE PROMOTION OF DEMOCRACY IN CENTRAL AMERICA AND THE CARIBBEAN

The representatives of the Governments of the Republics of Belize, Colombia, El Salvador, the United States of America, Honduras, Jamaica, and Costa Rica, and the observer representative of the Government of the Dominican Republic, convinced that direct dialogue among democratic countries is the appropriate way to review the situation in their states and, therefore, to search for solutions to common problems, met in San José, on October 4, 1982, represented as follows:

BELIZE

His Excellency George Price, Prime Minister and Minister of Foreign Affairs

COLOMBIA

His Excellency Rodrigo Lloreda Caicedo, Minister of Foreign Affairs.
His Excellency Carlos Borda Mendoza, Ambassador of Colombia in Costa Rica.
Ambassador Julio Londono, General Secretary of the Ministry of Foreign Affairs.
Ambassador Luis Carlos Villegas, Under Secretary for Economic Affairs.
Mr. Julio Riano Velandia, Deputy Chief of Protocol

EL SALVADOR

His Excellency Fidel Chavez Mena, Minister of Foreign Affairs.
His Excellency Carlos Matamoros Guirola, Ambassador of El Salvador in Costa Rica.
His Excellency Oscar Castro Araujo, Director General of Foreign Policy.
Mr. Alvaro Menendez Leal, Director General of Culture and Communications.

UNITED STATES OF AMERICA

His Excellency Thomas O. Enders, Assistant Secretary of State for Inter-American Affairs.
His Excellency Francis McNeil, Ambassador of the United States in Costa Rica.
Advisers:
Mr. Arthur Giese, Deputy Director, Central American Affairs.
Mr. Ronald Godard, First Secretary, Embassy of the United States in Costa Rica.
Mr. Scott Gudgeon, Legal Adviser, Department of State.
Mr. Donald Barnes.

HONDURAS

His Excellency Edgardo Paz Barnica, Minister of Foreign Affairs.
His Excellency Ricardo Arturo Pineda Milla, Ambassador on Special Mission.
His Excellency Jorge Roman Hernandez Alcerro, Ambassador on Special Mission.

[2] The Panamanian observer at this meeting did not sign the final act.

His Excellency Herminio Pineda B., Chargé d'Affaires a.i. of Honduras in Costa Rica.

JAMAICA

His Excellency Neville Gallimore, Minister of Foreign Affairs and Foreign Trade.

His Excellency Louis Heron Boothe, Ambassador of Jamaica in Costa Rica.

His Excellency Neville Clark, Consul General of Jamaica in Costa Rica.

COSTA RICA

Mr. Fernando Volio Jimenez, Minister of Foreign Affairs and Worship.

Mr. Ekhart Peters Seevers, Vice Minister of Foreign Affairs and Worship.

Mr. Alvar Antillon Salazar, Senior Director General of the Ministry of Foreign Affairs and Worship.

DOMINICAN REPUBLIC

His Excellency José Marcos Iglesias Inigro, Ambassador of the Dominican Republic in Costa Rica.

The opening session was held in San José at 9:30 a.m. and was attended by the President of the Republic of Costa Rica, Luis Alberto Monge, who delivered the inaugural address.

In order to have a moderator for the discussions, the meeting of Ministers unanimously elected Mr. Fernando Volio Jimenez, Minister of Foreign Affairs and Worship of Costa Rica, as Chairman.

The participants agreed on the following points as the final result of their deliberations:

1. They expressed their conviction that it is the ineludible task of governments that have been legitimized by the will of the people, expressed at the polls, to defend, promote, and develop a democratic, representative, pluralistic, and participatory system, and that the time has come to define the conditions that will permit the reestablishment of a lasting and stable peace in Central America;

2. They recognized the challenges facing the democratic institutions of our countries, and the unavoidable duty to face them firmly;

3. They likewise recognized that it is necessary and desirable to establish organizations to help maintain and improve democratic institutions:

4. They noted that democratic institutions, in addition to serving as a means of expressing the sovereignty of the people, should contribute to the strengthening of peace and solidarity among peoples and the promotion of economic development, freedom, and social justice.

5. They reaffirmed the fundamental importance of respect for international law and treaties as the basis of regional cooperation and security.

6. They stated that the maintenance of peace and democratic institutions requires respect for the fundamental values of human dignity emanating from the Supreme Being, and the elimination of existing conditions of social injustice;

7. They stressed the need for the prevention and solution of conflicts between states to be channeled through the mechanisms for peaceful settlement recognized by international law, and emphasized that it is the duty of governments to use such mechanisms to achieve that end;

8. They noted that the current world economic crisis produces phenomena such as disproportionate foreign indebtedness, a deterioration of the international financial system, and an increasing imbalance in the terms of trade among states;

9. They considered that such phenomena result in unemployment, inflationary

trends, serious financial problems, and political, economic, and social conflicts which are exploited by totalitarianism for the purpose of destabilizing the democratic way of life and government;

10. They noted the objective enunciated this year by the Chiefs of State and Government on the occasion of the inauguration of the President of Honduras, Dr. Roberto Suazo Cordova, on January 27; of the President of Costa Rica, Mr. Luis Alberto Monge, on May 8; of the President of Colombia, Dr. Belisario Betancur, on August 7; of the President of the Dominican Republic, Dr. Salvador Jorge Blanco, on August 16; and in the Joint Communiqués of the Presidents of Costa Rica and El Salvador, of June 10, and of the Presidents of Costa Rica and Panama, on September 26, of this same year, and that such objectives point to the adoption of measures for the achievement of peace, democracy, security, development, freedom, and social justice.

THEY THEREFORE DECLARE

I. Their faith in and support for the principles of representative, pluralistic, and participatory democracy which, when properly understood, constitutes a way of life, of thinking, and of acting which can accommodate within its scope different social and economic systems and structures having a common denominator, which is respect for life, for the security of the individual, for freedom of thought, and for freedom of the press, as well as the right to work and to receive proper remuneration, the right to fair living conditions, to the free exercise of suffrage, and of other human, civil, political, economic, social, and cultural rights.

II. Their concern about the serious deterioration of the conditions of the present international economic order and international financial system, which gives rise to a process of destabilization, anguish, and fear, affecting, in particular, those countries that have a democratic system of government. In this regard, they appeal to the industrialized democratic countries to step up their cooperation with the democratic countries of the area by implementing bold and effective initiatives to strengthen the recovery and economic and social development efforts of the various interested countries in the area. As part of this cooperation, the initiative of the President of the United States of America with regard to the Caribbean Basin is especially urgent and should be encouraged and fully implemented as soon as possible. Likewise, those present recognize the economic cooperation and assistance efforts undertaken by the Governments of the Nassau Group: Canada, Colombia, Mexico, the United States, and Venezuela.

They support current efforts towards subregional economic integration, including the Central American Common Market and the Caribbean Community and point out the urgency of updating and improving those integration processes which are now in trouble in order to place them in an appropriate political, economic, juridical, and institutional framework.

III. Their conviction that, in order to promote regional peace and stability, it is necessary to support domestic political understandings that will lead to the establishment of democratic, pluralistic, and participatory systems; to the establishment of mechanisms for a continuing multilateral dialogue; to absolute respect for delimited and demarcated borders, in accordance with existing treaties, compliance with which is the proper way to prevent border disputes and incidents, observing, whenever applicable, traditional lines of jurisdiction; to respect for the independence and territorial integrity of states; to the rejection of threats or the use of force to settle conflicts; to a halt to the arms race; and to the elimination, on the basis of full and effective reciprocity, of the external factors which hamper the consolidation of a stable and lasting peace.

In order to attain these objectives, it is essential that every country within and without the region take the following actions:

(a) Create and maintain truly democratic government institutions, based on the will of the people as expressed in free and regular elections, and founded on the principle that government is responsible to the people governed;

(b) Respect human rights, especially the right to life and to personal integrity, and the fundamental freedoms, such as freedom of speech, freedom of assembly, and religious freedom, as well as the right to organize political parties, labor unions, and other groups and associations;

(c) Promote national reconciliation where there have been deep divisions in society through the broadening of opportunities for participation within the framework of democratic processes and institutions;

(d) Respect the principle of non-intervention in the internal affairs of states, and the right of peoples to self-determination;

(e) Prevent the use of their territories for the support, supply, training, or command of terrorist or subversive elements in other states, end all traffic in arms and supplies, and refrain from providing any direct or indirect assistance to terrorist, subversive, or other activities aimed at the violent overthrow of the governments of other states;

(f) Limit arms and the size of military and security forces to the levels that are strictly necessary for the maintenance of public order and national defense;

(g) Provide for international surveillance and supervision of all ports of entry, borders, and other strategic areas under reciprocal and fully verifiable arrangements;

(h) On the basis of full and effective reciprocity, withdraw all foreign military and security advisers and forces from the Central American area, and ban the importation of heavy weapons of manifest offensive capability through guaranteed means of verification.

The preceding actions represent the essential framework that must be established in each State in order to promote regional peace and stability.

The signing countries call on all the peoples and governments of the region to embrace and implement these principles and conditions as the basis for the improvement of democracy and the building of a lasting peace.

They note with satisfaction the efforts being made in that direction, and deem that the achievement of these objectives may be reached more fully through the reestablishment of the rule of law and the organization of election processes that will guarantee full participation of the people, without any discrimination whatsoever.

THEY RESOLVE

IV. To create a democratic organization to provide development assistance and advisory services for elections, the purpose of which organization will be to maintain the electoral system and to develop, strengthen, and stimulate its utilization in the inter-American area, providing advice to countries that request it about its practice and implementation. The organization will operate either autonomously, sponsored by the countries represented in the meeting and by other interested countries, or as a section or branch of the Inter-American Institute of Human Rights, since suffrage is an essential part of the theory and practice of human rights.

To request the Minister of Foreign Affairs and Worship of Costa Rica, Mr. Fernando Volio Fernandez, to prepare an appropriate document, containing the

comments of the participants in this meeting and of the representatives of other democratic countries and to circulate it among them and implement it as soon as possible.

V. Lastly, they agree to participate in a Forum for Peace and Democracy, the purpose of which will be to contribute to the implementation of the actions and the attainment of the objectives contained in this document, and, within the framework of this declaration, to study the regional crisis and analyze the various peace proposals or initiatives aimed at solving it. The Forum may be broadened by the inclusion of the collaboration of other democratic States.

The Forum may entrust specific tasks to representatives of given participating countries, who will report on the results; and will transmit the final act of this meeting, so that comments and opinions deemed advisable, may be presented to the Forum.

The representatives requested the Minister of Foreign Affairs and Worship of Costa Rica, on behalf of the participating governments, to transmit this declaration to the governments of the region and other interested governments, and to obtain their views on the principles and conditions for peace that it contains.

They agreed to convene a new meeting as soon as possible, in order to evaluate the development of the objectives of the declaration.

VI. The Plenary Session in this meeting of Foreign Ministers noted with pleasure the presence of Panama and the Dominican Republic as observers.

The representatives expressed their appreciation to the Government of the Republic of Costa Rica for the courtesies it extended to them, which made possible the successful completion of their deliberations.

Signed at San José, Republic of Costa Rica, on October 4, 1982.

For Belize

For El Salvador

For Honduras

For Costa Rica

For Colombia

For the United States of America

For Jamaica

True copy of the original.

(Signed) Alvar Antillon S.,
Director General of the Ministry of Foreign Affairs and Worship of Costa Rica

For the Dominican Republic.

SUMMARY OF THE FINAL ACT

In this final act, the democratic states of the region, for the first time, set forth the conditions they regard as essential to achieve peace in Central America. These conditions include:

An end to foreign support for terrorist and subversive elements operating toward the violent overthrow of other countries;

An end to arms trafficking;

A ban on the importation of heavy weapons and limitations on all armaments and forces to those required for defense;

Withdrawal of all foreign military and security advisers and troops under fully verifiable and reciprocal conditions;

Respect for the principle of nonintervention and peaceful solution of disputes;

Respect for human rights, including fundamental freedoms such as freedom of speech, assembly, and religion and the right to organize political parties, labor unions, and other organizations; and

Establishment of democratic, representative, and participatory institutions through free and regular elections in an atmosphere of political reconciliation within each state.

The final act called on each state of the region to implement these conditions, which will be presented to other interested countries as indispensable to the establishment of a lasting peace. The final act also established a Forum for Peace and Democracy to analyze proposals for ending the conflict in Central America against the overall framework of these essential conditions and authorized the Costa Rican Foreign Minister to transmit the results of the conference to other states of the region.

The participating states noted that legitimately elected democratic governments have a responsibility to defend and develop democratic values. One important step toward the promotion of democracy in the region is the participants' resolve to create a body for democratic electoral assistance, available on request to advise countries wishing to hold democratic elections.

TAB C: UNITED NATIONS SECURITY COUNCIL, PROVISIONAL VERBATIM RECORD OF MEETING OF 28 MARCH 1983, INCLUDING TEXT OF PRESENTATION BY MRS. CORONEL DE RODRIGUEZ, REPRESENTATIVE OF VENEZUELA (DOC. S/PV.2425)

PROVISIONAL VERBATIM RECORD OF THE TWO THOUSAND FOUR HUNDRED AND TWENTY-FIFTH MEETING

Held at Headquarters, New York, on Monday, 28 March 1983, at 3.30 p.m.

President: Sir John Thomson
(United Kingdom of Great Britain and Northern Ireland)

. . . . . .

The President: The next speaker is the representative of Venezuela. I invite her to take a place at the Council table and to make her statement.

Mrs. Coronel de Rodriguez (Venezuela) (interpretation from Spanish): Sir, I should like to express, on behalf of my delegation, our congratulations to you on your assumption of the presidency of the Security Council. We wish you every success. Through you, Sir, I should also like to convey to the Ambassador of the Soviet Union our most cordial congratulations on the excellent work he accomplished as President of the Council last month.

Venezuela wished to participate in this meeting of the Security Council that was requested by the Permanent Representative of Nicaragua, because we consider that today it is increasingly urgent for us to seek formulas of understanding to put an end to the grave problems facing the peoples of Central America.

We have listened with interest to the statements by the representatives of Nicaragua and Honduras. Many countries have expressed their views and their

hopes that peace may take root in that region of our world where for almost five years now a constant battle has been waged.

Mr. Luis Herrera Campíns, the President of my country, in the statement he made in Nicaragua on 19 July 1982, on the occasion of the third anniversary of the Sandinist Revolution, which he attended as the only Head of State invited to that event, stated that there had been no peace initiative or measure in which Venezuela would not have participated.

Venezuela has been accompanied and is accompanied today by many countries that are genuinely interested in the quest for stable and lasting peace. Suffice it to mention the initiative taken by the Presidents of Mexico and Venezuela, taken up at the recent meeting on Contadora Island by the Foreign Ministers of Panama, Colombia, Mexico and Venezuela and which the Dominican Republic expressed its wish to join during the recent visit to Caracas by its Foreign Minister Vega Imbert.

These efforts are hampered by the participation of other interests that are more concerned with their own hegemonic positions than with the establishment of effective and genuine peace.

The Central American countries are not arms producers. Their economies are weakened, not only by the world economic crisis, but also by a long war of considerable proportions, repeated natural disasters, such as earthquakes and floods, and because of the terrible scourge of terrorism and sabotage . . .

We have always affirmed that Latin American problems must be resolved by our own family of peoples, without foreign interference. It does not in any way help the global solution of the crisis existent in Central America that the conflict be internationalized. We do not want — indeed, we reject — the positions of those who, from other continents, request for our countries what they forcefully reject for their own countries. Venezuela has never sought any type of help from outside our continent which cannot solve the political and military problems of an area vital to it, as is Central America.

Consistent in our rejection of war, terrorism and violence and in support of free popular expression and genuine democracy, which is not imposed by weapons but rather is brought about by the genuine desire of the citizens expressed through the vote, we have supported all initiatives aimed at the institutional stabilization of the area and at the search for sincere agreements among the countries concerned, aimed at reducing weaponry, eradicating terrorism and strengthening the climate of peace.

But all of this must be done within a Latin American framework. All of the initiatives, even though they have not been fully successful, have had positive prospects for the reduction of tension. There have been initiatives of a bilateral and multilateral nature. Today, together with other friendly countries, we are promoting the high-level meeting for peace and disarmament in Central America, with the presence of Central American countries, in addition to the presence of five countries acting as witnesses in good faith. One of those witnesses of good faith will be Venezuela. That meeting should take place as soon as possible. Such an initiative is in no way an obstacle to any other procedure that the States concerned may wish to promote within the regional framework. But we insist that this is not the place, by promoting the internationalization of the conflict and increased interference by the major Powers in matters involving our peoples to defend the cause of Latin America: It is in Latin American forums and with Latin Americans as protagonists that we should be able to consider the situation in Central America in its overall complexity.

TAB D: RESOLUTION 530 OF THE UNITED NATIONS SECURITY COUNCIL, INCLUDING ANNEX (DOC. S/RES/530 (1983))

Resolution 530 (1983)

Adopted by the Security Council at its 2437th meeting, on 19 May 1983

The Security Council,

Having heard the statement of the Foreign Minister of the Republic of Nicaragua,

Having also heard the statements of various States Members of the United Nations in the course of the debate,

Deeply concerned, on the one hand, at the situation prevailing on and inside the northern border of Nicaragua and, on the other hand, at the consequent danger of a military confrontation between Honduras and Nicaragua, which could further aggravate the existing crisis situation in Central America,

Recalling all the relevant principles of the Charter of the United Nations, particularly the obligation of States to settle their disputes exclusively by peaceful means, not to resort to the threat or use of force and to respect the self-determination of peoples and the sovereign independence of all States,

Noting the widespread desire expressed by the States concerned to achieve solutions to the differences between them,

Commending the appeal of the Contadora group of countries, Colombia, Mexico, Panama and Venezuela, in its 12 May 1983 communiqué (S/15762) that the deliberations of the Council should strengthen the principles of self-determination and non-interference in the affairs of other States, the obligation not to allow the territory of a State to be used for committing acts of aggression against other States, the peaceful settlement of disputes and the prohibition of the threat or use of force to resolve conflict,

Considering the broad support expressed for the efforts of the Contadora Group to achieve solutions to the problems that affect Central American countries and to secure a stable and lasting peace in the region,

1. *Reaffirms* the right of Nicaragua and of all the other countries of the area to live in peace and security, free from outside interference;
2. *Commends* the efforts of the Contadora Group and urges the pursuit of those efforts;
3. *Appeals* urgently to the interested States to co-operate fully with the Contadora Group, through a frank and constructive dialogue, so as to resolve their differences;
4. *Urges* the Contadora Group to spare no effort to find solutions to the problem of the region and to keep the Security Council informed of the results of these efforts;
5. *Requests* the Secretary-General to keep the Security Council informed of the development of the situation and of the implementation of the present resolution.

Annex

Information Bulletin

The Ministers for Foreign Affairs of the Contadora Group, at their meeting held at Panama City on 11 and 12 May 1983, considered the following subjects:

(a) The request of the Government of Costa Rica for the establishment of an observer commission;
(b) The course of the debate in the United Nations Security Council convened at the request of Nicaragua;
(c) The programme of work of the next meeting of the Ministers for Foreign Affairs of the Contadora Group with the five Ministers for Foreign Affairs of the Central American countries, to be held at Panama beginning on 28 May 1983.

The Government of Costa Rica has made a request to the Organization of American States for the establishment of a "peace force, capable of effectively monitoring the area of Costa Rica bordering on Nicaragua". As grounds for its request, it pointed out that Costa Rica has no army and has difficulty in patrolling a long and irregular frontier. The authorities of Costa Rica advanced similar considerations to the Governments of Colombia, Mexico, Panama and Venezuela through special envoys, indicating their desire that an observer commission should be established for that purpose.

The Ministers for Foreign Affairs of the Contadora Group, acting in accordance with the principles which guide their conduct, recalled that the original and essential purpose of the formation of the Group was to fulfil a diplomatic role designed to seek the settlement of conflicts through political means, relying on the co-operation of the parties involved.

From this perspective, the Contadora Group believes that its work should focus on the concentration of political efforts to promote dialogue, understanding and, in general, the development of political machinery which, with the co-operation of the States concerned, can ensure the full attainment of their objectives.

In the circumstances of the case, the proposal to set up an observer commission is closely related to the efforts to create conditions of peace in the region. The success of this proposal requires the co-operation of both countries.

In view of the foregoing, the Ministers for Foreign Affairs of the Contadora Group have decided to send an observer commission, consisting of two representatives from each of their countries, which will have the task of carrying out a study *in situ* in order to establish the facts, evaluate the circumstances and submit appropriate recommendations.

For the performance of these functions, the members of the commission may be accompanied by such advisers as, in the view of each country, are necessary, and they may, if they deem it appropriate, consult international experts.

The Ministers for Foreign Affairs of Colombia, Mexico, Panama and Venezuela note with deep concern the development of the Central American conflict over the past few days and the repeated violation of essential principles of the international legal order.

These circumstances have given rise to various initiatives aimed at seeking the intervention of multilateral organizations. The initiatives include the recent requests made by Central American countries to the United Nations Security Council and the Permanent Council of the Organization of American States.

It would be highly desirable that in the deliberations taking place in the said

forums, and especially those currently under way in the Security Council, there should be a strengthening of principles which should guide the activities of States in the international arena.

These principles include: self-determination and non-interference in the affairs of other States, respect for the territorial integrity of other States, the obligation not to allow the territory of a State to be used for committing acts of aggression against other States, the peaceful settlement of disputes and the prohibition of the threat or use of force to resolve conflicts.

The countries of the Contadora Group once again call upon the Central American countries to help attain the goal of peace and, to that end, to apply their political will to the search for ways leading to dialogue and understanding to settle their current differences. This constructive and open attitude will largely determine the success of the peace initiatives.

With a view to achieving these objectives, a formal invitation has been sent to the five Ministers for Foreign Affairs of Central America to hold a working meeting at Panama on 28, 29 and 30 May 1983. The meeting will operate within the framework agreed upon during the most recent meeting held in April regarding the procedure for consultations and negotiations. A time-frame concerning the organization of items, their discussion in working groups and, lastly, their consideration in plenary meeting has been worked out.

The Ministers for Foreign Affairs of Colombia, Mexico and Venezuela express appreciation for the hospitality and generous facilities provided for their work, which once again enabled them to fulfil the purpose for which the Contadora Group had been convened on this occasion.

Panama City, 12 May 1983.

TAB E: UNITED NATIONS DOCUMENT CONTAINING TEXT OF CANCÚN DECLARATION ON PEACE IN CENTRAL AMERICA (DOC. A/38/303 AND S/15877)

General Assembly; Security Council (Docs. A/39/71; S/16262)

Letter Dated 9 January 1984 from the Chargé d'Affaires a.i. of the Permanent Mission of Panama to the United Nations Addressed to the Secretary-General

I have the honour to transmit the text of the communiqué (Annex I) issued at the conclusion of the fifth joint meeting between the Ministers for Foreign Affairs of the Contadora Group and the Foreign Ministers of Central American countries, held at Panama City on 7 and 8 January 1984.

Also enclosed is the appendix to the communiqué entitled "Measures to be taken to fulfil the commitments entered into in the Document of Objectives", which was approved at the aforementioned meeting.

In addition, I have the honour to transmit the text of a statement (Annex II) made by His Excellency Mr. Ricardo de la Espriella, President of the Republic of Panama, on the occasion of the adoption of the "Measures to be taken to fulfil the commitments entered into in the Document of Objectives".

I would request you to arrange for the distribution of the communiqué, the appendix thereto and the statement of His Excellency the President of the Republic of Panama as a document of the General Assembly, under the items en-

titled "Development and strengthening of good-neighbourliness between States", "Review of the implementation of the Declaration on the Strengthening of International Security", "Development and international economic co-operation", "Peaceful settlement of disputes between States" and "The situation in Central America, threats to international peace and security and peace initiatives", and of the Security Council.

(Signed) Carlos ALBAN-HOLQUIN,
Ambassador,
Permanent Representative of Colombia.

(Signed) Miguel MARIN-BOSCH,
Ambassador,
Deputy Permanent Representative of Mexico, Chargé d'affaires a.i.

(Signed) Leonardo KAM,
Ambassador,
Deputy Permanent Representative of Panama, Chargé d'affaires a.i.

(Signed) Alberto MARTINI-URDANETA,
Ambassador,
Permanent Representative of Venezuela.

Annex

Cancún Declaration on Peace in Central America

In view of the worsening of the conflicts in Central America, the Heads of State of Colombia, Belisario Betancur; of Mexico, Miguel de la Madrid; of Panama, Ricardo de la Espriella; and of Venezuela, Luis Herrera Campíns, decided to meet at Cancún, Mexico, today, 17 July 1983.

We considered the critical situation in Central America and agreed that we were all deeply concerned at the speed with which it was deteriorating, as evidenced by an escalation of violence, the progressive mounting of tensions, frontier incidents and the threat of a flare-up of hostilities that might spread. All this, combined with the arms race and outside interference, creates a tragic setting affecting the political stability of the region and ruling out any progress and consolidation of institutions responsive to the democratic yearning for freedom, social justice and economic development. The conflicts in Central America present the international community with the dilemma of either resolutely supporting and strengthening the path of political understanding by offering constructive solutions or passively accepting the accentuation of factors which could lead to extremely dangerous armed confrontations.

The use of force is an approach that does not dissolve but aggravates, the underlying tensions. Peace in Central America can become a reality only in so far as respect is shown for the basic principles of coexistence among nations: *non-intervention*; *self-determination*; *sovereign equality* of States; *co-operation* for economic and social development; peaceful settlement of disputes; and free and authentic expression of the popular will. The creation of conditions conducive to peace in the region depends mainly on the attitude and the genuine readiness for dialogue of the countries of Central America, which must shoulder the primary responsibility and make the major effort in the search for agreements ensuring coexistence.

Accordingly, it is essential that the political will to seek understanding, which has been displayed since the very beginning of the Contadora Group's activities should continue to be clearly expressed in continued efforts for peace, so that it may be translated into concrete actions and commitments.

It is also necessary that other States with interests in and ties to the region should use their political influence in helping to strengthen the channels of understanding and should unreservedly commit themselves to the diplomatic approach to peace. The efforts of the Contadora Group have so far led to the initiation of a dialogue involving all the Governments of Central America, the establishment of machinery for consultation and the drawing up, by unanimous agreement, of an agenda covering the salient aspects of the problems of the region.

These achievements, although still inadequate, have been encouraged by the support of many countries, of a number of organizations and of the most varied opinion groups at the international level. All are agreed that the activities of the Contadora Group have helped to mitigate the dangers and reduce the risks of a widespread confrontation and have made it possible to identify problems and causes of what is now a landscape of conflict and fear.

This generous support by the international community impels us to persist in our endeavours and to make every effort in a cause, the noble purposes of which outweigh any possible lack of understanding.

Inspired by our countries' broad spirit of solidarity with the fraternal peoples of Central America, we consider it necessary to expedite the process that may transform the will for peace into proposals which, if properly developed, can effectively contribute to the settlement of conflicts.

To that end, we have agreed on the general lines of a programme to be proposed to the countries of Central America which requires, in addition to strict compliance with the essential principles governing international relations, the conclusion of agreements and political commitments that will lead, region-wide, to effective control of the arms race; the elimination of foreign advisers; the creation of demilitarized zones; the prohibition of the use of the territory of some States for the development of political or military destabilization actions in other States; the eradication of transit of and traffic in arms; and the prohibition of other forms of aggression or interference in the internal affairs of any country in the area.

In order to implement this general programme, it will be necessary to conclude agreements embodying political commitments designed to ensure peace in the region. These agreements could include:

Commitment to put an end to all prevailing situations of belligerency;

Commitment to freeze offensive weapons at their current level;

Commitment to begin negotiations on agreements for the control and reduction of current stocks of weapons, with the establishment of appropriate supervisory machinery;

Commitment to prohibit the existence in national territory of military installations belonging to other countries;

Commitment to give prior notice of troop movements near frontiers, when the contingents exceed the limits set in the agreement;

Commitment to organize, as appropriate, joint boundary frontier or international supervision of frontiers by groups of observers chosen by common agreement by the parties concerned;

Commitment to establish mixed security commissions, with a view to preventing and, where appropriate, resolving frontier incidents;

Commitment to establish internal control machinery to prevent the transit

of weapons from the territory of any country in the region to the territory of another;

Commitment to promote a climate of détente and confidence in the area by avoiding statements and other actions that jeopardize the essential climate of political confidence required;

Commitment to co-ordinate systems of direct communication between Governments with a view to preventing armed conflicts and generating an atmosphere of mutual political confidence.

Similarly, we consider that, simultaneously with the implementation of this general programme, the task of resolving specific differences between countries should be tackled initially by the signing of memoranda of understanding and the establishment of mixed commissions that will enable the parties to undertake joint action and guarantee the effective control of their territories, especially in frontier areas.

These measures, aimed at eliminating the factors which disturb the peace of the region, should be accompanied by a major internal effort to strengthen democratic institutions and guarantee respect for human rights.

To this end, it is necessary to improve methods of consulting the people, ensure that the various currents of opinion have free access to the electoral process and promote the full participation of citizens in the political life of their country.

The strengthening of democratic political institutions is closely linked to evolution and progress in the field of economic development and social justice. In fact, these are two aspects of a single process whose ultimate goal is the implementation of the fundamental values of mankind.

The economic backwardness which lies at the root of instability in the region and is the immediate cause of many of its conflicts should be approached from this standpoint.

Some of the steps most urgently needed to offset the effects of the world economic crisis are the strengthening of integration machinery, an increase in intra-zonal trade and the exploitation of opportunities for industrial complementarity. However, such efforts by the countries concerned must be supplemented by the support of the international community, especially the industrialized countries, through development credits, co-operation programmes and access of Central American products to their markets. The Governments of the countries of the Contadora Group reiterate their decision to continue the programmes of co-operation that benefit the subregion and offer their assistance in channelling international support towards these goals of economic reactivation. On the basis of these general outlines we have requested our Ministers for Foreign Affairs to prepare specific proposals that will be submitted to the Central American countries for their consideration at the next joint meeting of Ministers for Foreign Affairs.

We appeal to all members of the international community, especially those which have expressed sympathy with the efforts of the Contadora Group, and to the Secretary-General of the United Nations and the Chairman of the Permanent Council of the Organization of American States, to contribute, with their experience and diplomatic capability, to the search for peaceful solutions to the problems of Central America. For all these reasons we have contacted the leaders of the countries of the Americas with a view to obtaining their solidarity, which is necessary.

We, the Heads of State of Colombia, Mexico, Panama and Venezuela, reaffirm the aims that unite our Governments in the task of seeking to contribute to the

establishment of the just and lasting peace desired by the peoples of Central America.

Done at Cancún, Mexico, on 17 July 1983.

(Signed)

Belisario BETANCUR,
President of the Republic of Colombia.

Miguel DE LA MADRID H.,
President of the United Mexican States.

Ricardo DE LA ESPRIELLA,
President of the Republic of Panama.

Luis Herrera CAMPÍNS,
President of the Republic of Venezuela.

TAB F: UNITED NATIONS SECURITY COUNCIL DOCUMENT ON THE SITUATION IN CENTRAL AMERICA, SETTING FORTH AS AN ANNEX THE CONTADORA OBJECTIVES (DOC. S/16041**)

THE SITUATION IN CENTRAL AMERICA*

Note by the Secretary-General

1. Since the Security Council adopted resolution 530 (1983), on 19 May 1983, I have endeavoured to keep in contact with the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, as well as with the Governments of Colombia, Mexico, Panama and Venezuela, which comprise the Contadora Group, in order to keep informed of the efforts made to find a negotiated political solution to the problems in the Central American region and of the developments in the area. On two occasions, on 28 June and 13 July 1983, I reported orally on the situation to the members of the Council.

2. Within the framework of the Declaration adopted at Isla de Contadora on 9 January 1983[1], there was an initial phase of official contacts and visits by the Ministers for Foreign Affairs of the Contadora Group to the countries directly concerned, on 12 and 13 April[2]. As a result of the consultations held, it was agreed to initiate a new phase of joint meetings of the Ministers for Foreign Affairs of the Group with the Ministers for Foreign Affairs of the five Central American countries. The first three meetings were held in Panama City on 20 and 21 April[2], from 28 to 30 May[3] and from 28 to 30 July 1983[4], respectively.

3. On 17 July 1983, the Presidents of Colombia, Mexico, Panama and Venezuela met in Cancún, Mexico. The Declaration issued on that occasion

* Second reissue for technical reasons.
[1] A/38/68.
[2] S/15727.
[3] S/15809.
[4] S/15900.

proposed guidelines for the negotiating process as well as specific commitments the implementation of which would ensure peace in the region[1].

4. On the basis of the Cancún Declaration, the Ministers for Foreign Affairs of the Contadora Group and of the five Central American countries met again in Panama City, from 7 to 9 September 1983, and adopted a Document of Objectives[2]. On 6 October, I received a visit from the Minister for Foreign Affairs of Mexico and the Permanent Representatives of Colombia, Panama and Venezuela to the United Nations, who handed me the Document, which, I was informed, had been approved by the Heads of State of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua[3]. At the request of the Contadora Group, the Document is transmitted to the Security Council as an annex to this note.

5. On that occasion, the Minister for Foreign Affairs of Mexico pointed out that the Document of Objectives is a single consensus text, which sets out the positions and the concerns of the Governments directly concerned and the proposals of the Contadora Group, and which contains the principles on which the eventual solution of the Central American problems will have to be based. The Document also contains a definition of the specific areas of negotiation and the terms of reference for the formulation of the legal instruments and the machinery which would be essential in order to ensure harmonious coexistence in the region. I expressed to the Minister for Foreign Affairs of Mexico my fervent hope that the Group's activities would soon achieve substantive and concrete results. I also emphasized on that occasion that any attempt at a solution should take into account the profound economic and social imbalances with which the Central American peoples have always struggled.

6. In transmitting the Document of Objectives to the Security Council, I consider it my duty to express my profound concern at the grave and prolonged tension which persists in the area. In view of the nature and possible ramifications of the convulsive situation currently prevailing in the Central American region, the unavoidable conclusion is that it threatens international peace and security.

7. In communications addressed to the President of the Council and to the Secretary-General, there have been frequent accusations and counteraccusations of foreign interference in the region and complaints of numerous border incidents as well as incursions by sea and by air, causing deplorable loss of life and material damage[4]. In the view of some Governments, the military and naval manœuvres now in progress add to tensions in the region. It has also been pointed out that the presence of military advisers and training centres, the traffic in arms and the activities of armed groups, and the unprecedented build-up of arms and of military and paramilitary forces constitute further factors of tension. On 13 September, the Security Council met at the urgent request of a Government of the region, which complained of what it described as a further escalation of acts of aggression against its country[5]. Although the Secretary-General has no way of reliably verifying each and every one of the components of this situation

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[1] S/15877.

[2] S/15982.

[3] The texts of the communications from the Governments of Nicaragua and Honduras on this subject were circulated to the Security Council as documents S/16006 and S/16021 respectively.

[4] Documents S/15780, S/15787, S/15806, S/15808, S/15813, S/15816, S/15817, S/15835, S/15836, S/15837, S/15838, S/15839, S/15840, S/15855, S/15857, S/15858, S/15879, S/15893, S/15899, S/15930, S/15952, S/15973, S/15979, S/15980, S/15986, S/15993, S/15995, S/16007, S/16011, S/16012, S/16013, S/16016, S/16018, S/16020, S/16022, S/16024, S/16025, S/16026, S/16030, S/16031, S/16032.

[5] Document S/PV.2477.

and is therefore unable to make definite judgements, there is no doubt that an alarming picture is emerging in the area.

8. The five Governments of Central America have assured me on a number of occasions of their firm commitment to contribute in good faith to the search for peaceful solutions. In that connection, they have also reiterated their determination to co-operate with the Governments of the Contadora Group in their efforts for peace. The Governments of Colombia, Mexico, Panama and Venezuela are motivated by an earnest desire to find solutions adapted to the realities of the region, without any intrusion derived from the East-West conflict. That is why they have the manifest support of the international community as a whole.

9. In accordance with the terms of resolution 530 (1983), I shall continue to keep the Council informed as and when necessary.

Annex

(On September 9, 1983, the Central American Governments, under the auspices of the Contadora Group, adopted the following Document of Objectives.)

Document of Objectives

Considering:

The situation prevailing in Central America, which is characterized by an atmosphere of tension that threatens security and peaceful coexistence in the region, and which requires, for its solution, observance of the principles of international law governing the actions of States, especially:

The self-determination of peoples;
Non-intervention;
The sovereign equality of States;
The peaceful settlement of disputes;
Refraining from the threat or use of force;
Respect for the territorial integrity of States;
Pluralism in its various manifestations;
Full support for democratic institutions;
The promotion of social justice;
International co-operation for development;
Respect for and promotion of human rights;
The prohibition of terrorism and subversion;

The desire to reconstruct the Central American homeland through progressive integration of its economic, legal and social institutions;

The need for economic co-operation among the States of Central America so as to make a fundamental contribution to the development of their peoples and the strengthening of their independence;

The undertaking to establish, promote or revitalize representative, democratic systems in all the countries of the region;

The unjust economic, social and political structures which exacerbate the conflicts in Central America;

The urgent need to put an end to the tensions and lay the foundations for understanding and solidarity among the countries of the area;

The arms race and the growing arms traffic in Central America, which aggravate political relations in the region and divert economic resources that could be used for development;

The presence of foreign advisers and other forms of foreign military interference in the zone;

The risks that the territory of Central American States may be used for the purpose of conducting military operations and pursuing policies of destabilization against others;

The need for concerted political efforts in order to encourage dialogue and understanding in Central America, avert the danger of a general spreading of the conflicts, and set in motion the machinery needed to ensure the peaceful coexistence and security of their peoples;

Declare their intention of achieving the following objectives:

To promote détente and put an end to situations of conflict in the area, refraining from taking any action that might jeopardize political confidence or prevent the achievement of peace, security and stability in the region;

To ensure strict compliance with the aforementioned principles of international law, whose violators will be held accountable;

To respect and ensure the exercise of human, political, civil, economic, social, religious and cultural rights;

To adopt measures conducive to the establishment and, where appropriate, improvement of democratic, representative and pluralistic systems that will guarantee effective popular participation in the decision-making process and ensure that the various currents of opinion have free access to fair and regular elections based on the full observance of citizens' rights;

To promote national reconciliation efforts wherever deep divisions have taken place within society, with a view to fostering participation in democratic political processes in accordance with the law;

To create political conditions intended to ensure the international security, integrity and sovereignty of the States of the region;

To stop the arms race in all its forms and begin negotiations for the control and reduction of current stocks of weapons and on the number of armed troops;

To prevent the installation on their territory of foreign military bases or any other type of foreign military interference;

To conclude agreements to reduce the presence of foreign military advisers and other foreign elements involved in military and security activities, with a view to their elimination;

To establish internal control machinery to prevent the traffic in arms from the territory of any country in the region to the territory of another;

To eliminate the traffic in arms, whether within the region or from outside it, intended for persons, organizations or groups seeking to destabilize the Governments of Central American countries;

To prevent the use of their own territory by persons, organizations or groups seeking to destabilize the Governments of Central American countries and to refuse to provide them with or permit them to receive military or logistical support;

To refrain from inciting or supporting acts of terrorism, subversion or sabotage in the countries in the area;

To establish and co-ordinate direct communication systems with a view to preventing or, where appropriate, settling incidents between States of the region;

To continue humanitarian aid aimed at helping Central American refugees who have been displaced from their countries of origin, and to create suitable conditions for the voluntary repatriation of such refugees, in consultation with or with the co-operation of the United Nations High Commissioner for Refugees (UNHCR) and other international agencies deemed appropriate;

To undertake economic and social development programmes with the aim of promoting well being and an equitable distribution of wealth;

To revitalize and restore economic integration machinery in order to attain sustained development on the basis of solidarity and mutual advantage;

To negotiate the provision of external monetary resources which will provide additional means of financing the resumption of intra-regional trade, meet the serious balance-of-payments problems, attract funds for working capital, support programmes to extend and restructure production systems and promote medium- and long-term investment projects;

To negotiate better and broader access to international markets in order to increase the volume of trade between the countries of Central America and the rest of the world, particularly the industrialized countries, by means of a revision of trade practices, the elimination of tariff and other barriers, and the achievement of price stability at a profitable and fair level for the products exported by the countries of the region;

To establish technical co-operation machinery for the planning, programming and implementation of multi-sectoral investment and trade promotion projects.

The Ministers for Foreign Affairs of the Central American countries, with the participation of the countries in the Contadora Group, have begun negotiations with the aim of preparing for the conclusion of the agreements and the establishment of the machinery necessary to formalize and develop the objectives contained in this document, and to bring about the establishment of appropriate verification and monitoring systems. To that end, account will be taken of the initiatives put forward at the meetings convened by the Contadora Group.

TAB G: UNITED NATIONS GENERAL ASSEMBLY, PARTIAL TRANSCRIPT OF SESSION OF 8 NOVEMBER 1983, INCLUDING REMARKS BY MR. HERRERA CACERES, REPRESENTATIVE OF HONDURAS (DOC. A/38/PV.48)

PROVISIONAL VERBATIM RECORD OF THE FORTY-EIGHTH MEETING

Held at Headquarters, New York, on Tuesday, 8 November 1983, at 3 p.m.

President: Mr. Shah Nawaz (Vice-President) (Pakistan)
later: Mr Martini Urdaneta (Vice-President) (Venezuela)

— The situation in Central America: threats to international peace and security and peace initiatives [142] *(continued)*.

. . . . . .

Mr. Herrera Caceres (Honduras) (interpretation from Spanish): On 4 October my delegation spoke at the meeting of the General Committee on the proposal to include this item on the General Assembly's agenda. We there advanced some fundamental arguments demonstrating the harmful effects that a debate on this item might have on the progress made in the regional forum, consisting not only of the Contadora Group but also of the countries directly concerned, the Central American countries, and might also have on the great hopes, based on the

ratification of the Document of Objectives prepared in that forum by the five Central American countries, that the continuation of regional and global negotiations, by simultaneously solving the various problems raised by the present negotiations, by simultaneously solving the various problems raised by the present Central American situation, would soon lead to a general peace agreement for Central America.

My Government, I repeat, has placed its total trust in the action of the Contadora Group and, faithful to its international commitments, is speaking on this occasion in order to inform the international community of its position that a solution should be found to the Central American conflict — a solution completely consistent with strict mutual respect for the principles of international law which I have just mentioned. Through the implementation of those principles and through the thus far successful action and good offices of the Contadora Group, our country would like to discourage East-West confrontation, because it is for us, the Central American countries, to solve our own problems, as was stated by the Presidents of the countries of the Contadora Group at their meeting in Cancún on 17 July last.

There are no well-founded reasons at present to extract the Central American question from the regional framework. For the moment, the subregional forum of the good offices of the Contadora Group must be allowed to pursue its valuable participation in efforts to bring peace to the area. Meetings are planned for the coming weeks: processes of consultation are being developed; and our Government feels that if there exists on the part of the Central American countries the sense of historic responsibility that should be characteristic of this time in Central American life, if there is good faith in the negotiations and in the agreements that might be adopted in our region, if there is a firm and positive political will on the part of our countries to achieve harmony, agreement and coexistence — principles which Honduras practises and upholds — then no country involved should act in a way inconsistent with those objectives, so vital to the prosperity of the region, either through unilateral acts of provocation by means of sudden and passing acts of aggression or by weakening the negotiations in the Latin American forum by means of polarization in this forum.

Finally, in the view of Honduras, through this debate Nicaragua is attempting to attain several ends. First, it wishes to escape from the future Contadora Group negotiations because of their global and regional character. Secondly, it wishes to obtain the support of countries outside the continent. Thirdly, it wishes to polarize the Central American issue through East-West confrontation. Fourthly, it wishes to strike a harsh blow at the Latin American process of negotiation. Fifthly, it wishes to obtain support for its recent proposal to conclude four treaties: one multilateral treaty among the five Central American countries, two bilateral treaties — between the United States and Nicaragua, on the one hand, and Honduras and Nicaragua, on the other — and a fifth treaty, to be called an agreement among the countries interested in helping to solve the crisis in El Salvador. The latter project is aimed only at protecting Nicaragua, guaranteeing it impunity for its acts of intervention; it does not provide even the very minimum guarantees for the other countries of the area — least of all for Honduras. Furthermore, the four treaties do not fulfil the Contadora agenda, nor do they deal with the 21 objectives recently approved by the five Central American countries.

By means of all those tactics, the Government of Nicaragua is trying to escape from the future negotiations within the Contadora Group, to obtain political support against alleged acts of aggression, and not to be censured for its own acts of aggression against the rest of the Central American countries. Moreover, it does not undertake to comply with the original objectives of the revolution —

pluralism, a mixed economy, non-alignment and elections — which were adopted in the Organization of American States. Nicaragua is trying to evade a commitment to cease its arms race and to restore the military balance and security of the region. Furthermore, it is attempting to extend the competence of the United Nations to cover the Central American crisis, through a total rejection of the work of the Latin American forum and of the Organization of American States, the continental body.

In that spirit, Honduras has joined its voice to those of the other delegations that have participated in these deliberations in order to reaffirm its constitutional Government's will for peace, its faith in the process of negotiations sponsored by the Contadora Group and its complete commitment to the principles enshrined in the Charter of this Organization.

. . . . . .

TAB H: ORGANIZATION OF AMERICAN STATES RESOLUTION OF 18 NOVEMBER 1983 ON PEACE EFFORTS IN CENTRAL AMERICA (OAS DOC. AG/RES.675 (XIII-0/83))

AG/RES.675 (XIII-0/83)

Peace Efforts in Central America

(Resolution adopted at the seventh plenary session, held on November 18, 1983)

THE GENERAL ASSEMBLY,

Having seen the communication presented by the Ministers of Foreign Affairs of Colombia, Mexico, Panama, and Venezuela to this Assembly on the peace efforts they are making in Central America;

Noting the Declaration signed by the Presidents of Colombia, Mexico, Panama, and Venezuela at Cancún, Mexico, on July 17, 1983;

Commending the Document of Objectives adopted last September under the auspices of the Contadora Group, by Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua;

Cognizant that the Document of Objectives contains a set of principles for addressing the most serious problems of the area and achieving peace, security, and the cooperation needed for the region's economic and social development;

Considering that the Contadora Group is engaged in a worthy effort aimed at achieving peaceful relations in the region, based on the creation and strengthening of a climate of international security in keeping with the principles established in international law, of democratic and pluralistic institutions, and of sustained economic and social development activities,

RESOLVES:

1. To reaffirm the importance of the principles and rules of American comity contained in the Charter of the Organization of American States, and particularly the obligation to settle disputes by peaceful procedures alone, to abstain from the use of force, not to interfere either directly or indirectly or for whatever reason

in the internal or external affairs of any other state, and to respect the right of each state to lead its own cultural, political, and economic life freely and spontaneously.

2. To reaffirm the right of all countries in the region to live in peace and security, free from any external interference.

3. To express its firmest support for the efforts of the Contadora Group and to urge it to persevere in its efforts.

4. To welcome with satisfaction the Declaration of Cancún on Peace in Central America issued by Presidents Belisario Betancur of Colombia, Miguel de la Madrid of Mexico, Ricardo de la Espriella of Panama, and Luis Herrera Campíns of Venezuela.

5. To note with approval the adoption of the Document of Objectives approved by the Central American States at the proposal of the Contadora Group, which contains a set of basic principles and commitments to be negotiated for addressing the conflicts in the area and achieving peace, international security, democracy, and the cooperation needed for the region's economic and social development.

6. To urge the Central American states to negotiate forthwith, on the basis of the principles enunciated in the Document of Objectives, agreements that will formalize the objectives arising from those documents, and devise monitoring and verification mechanisms that will ensure their fulfillment.

7. To request all the states to abstain from any act that may heighten tensions, hamper the negotiation efforts the Contadora Group is making in mutual agreement with the Central American Governments, or impede the creation of a climate of dialogue and negotiation conducive to the restoration of peace in the region.

TAB I: TRANSLATION OF NEWS REPORT FROM MADRID BY *EFE* ON MEETING BETWEEN PRESIDENT BETANCUR OF COLOMBIA AND PRIME MINISTER GONZALEZ OF SPAIN

The following is a translation into English of a statement reported by *Efe* on 9 October 1983:

Madrid, 8 Oct. *(Efe)* — Spanish Prime Minister Felipe Gonzalez and Colombian President Belisario Betancur reiterated in Madrid today that the Contadora Group continues to be the "only valid forum for achieving peace in Central America".

In the government's "King's Room" of the Barajas airport, Gonzalez, Betancur, former Venezuelan President Carlos Andres Perez, and Spanish Foreign Minister Fernandon Moran and Culture Minister Javier Solana discussed the Central American situation for 90 minutes.

A few hours earlier in Oviedo, Betancur and Perez also met and discussed the same subject with Ambassador Richard Stone, personal representative of US President Ronald Reagan.

"We have reached the conclusion," Prime Minister Gonzalez said, "that Contadora is the only valid forum for achieving peace in Central America, and it naturally has Spain's support for this objective." "By having achieved a 21-point objective as expressed in the document presented to United Nations Secretary-General Javier Pérez de Cuéllar, the Central American situation becomes the concern of the United Nations", President Belisario Betancur said.

At the end of the Madrid meeting — at dawn in Spain — with which Betancur ended his 48-hour official visit to Spain, it was announced that the Colombian President would brief Venezuelan President Luis Herrera Campins on the results of the meeting. Betancur and Herrera will meet for 50 minutes in the Caracas airport during a technical stopover en route to Bogotá.

At the end of the meeting, Prime Minister Gonzalez said regarding Spain's role in the context of the Central American situation that "it is rather like a tennis game in which we return the ball to Contadora, where the situation should be solved since it is the appropriate forum".

Gonzalez stressed the "support" that the Contadora Group has received from Spain, Europe, the nonaligned countries, and the United States. "This shows us," he said, "that there is no need for another alternative."

The Colombian President emphasized the "patient work" that the Contadora Group — Colombia, Venezuela, Mexico and Panama — have carried out "to achieve a 21-point document of objectives". "Now that the issue has become the concern of the United Nations, we will see how each point can be implemented."

Betancur stressed that "the Contadora Group objectives end with the implementation of the document. We continue to believe that Central America can achieve real peace because the document has the total support of the five countries that make up the region." Those countries are Nicaragua, Honduras, Guatemala, Costa Rica and El Salvador.

According to Betancur, the document presented to the United Nations includes solutions in the military, border, social and economic areas.

The Spanish Prime Minister also reported that Betancur has been tasked with informing the other leaders of the group about the talks held in Spain. The Colombian President also visited Spain to receive the "Prince of Asturias" prize for Iberian-American co-operation.

Tonight's meeting was set up on Friday at the Spanish Prime Minister's initiative during a reception Betancur held at the Colombian Embassy in Madrid. "I am returning to Colombia very satisfied with the meetings I held in Spain on the subject of Central America, which concerns us all and which I am sure will be adequately and peacefully solved", Betancur said.

TAB J: TRANSLATION OF NEWS REPORT IN *CRITICA* OF OBSERVATIONS BY FOREIGN MINISTER OYDEN ORTEGA DURAN OF PANAMA

The following is a translation into English of an article which appeared in the Panama City newspaper *Critica*, in Spanish, on 14 October 1983:

Panamanian Foreign Minister Oyden Ortega Duran revealed yesterday during an exclusive interview with *Critica* that he fears the Central American conflict could undergo a regionalization and involve neighboring countries such as Panama and Costa Rica.

Foreign Ministers Meeting

Ortega said that the Contadora Group foreign ministers will meet in Panama next weekend and that the ambassadors representing the Central American

nations at the United Nations and the Organization of American States will participate.

Objectives Document

The Foreign Minister said that at that meeting, the foreign ministers of the region will sign the "Objectives" document, and the Contadora Group will act as witness.

This, he said, will permit work on additional activities aimed at stopping armed border confrontations in those countries, a situation that is obstructing the signing of Central American peace treaties.

Great Danger

The Panamanian Foreign Minister, who has just returned from a visit to the United States and Spain, said that "Panama and the Contadora Group are concerned about Nicaragua's inclusion of the Central American situation in United Nations debates, since this could weaken the authority of the Venezuelan, Mexican, Colombian and Panamanian effort".

He added that "This situation, instead of favoring a suitable climate for détente, would produce a greater controversy among the Central American countries".

Joint Efforts

Ortega appealed to the common sense and intelligence of the Central American governments and other governments of the world so that, even if the case is debated in the United Nations, the result will be a resolution supporting the area's peace initiative.

Ortega concluded by saying that united efforts by all concerned are necessary to secure an immediate peace.

TAB K: UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 38/10 ON THE SITUATION IN CENTRAL AMERICA

38/10. *The situation in Central America: threats to international security and peace initiatives*

Date: 11 November 1983 Meeting: 53
Adopted without a vote Draft: A/38/L.13/Rev.1

The General Assembly,

Recalling Security Council resolution 530 (1983) of 19 May 1983 in which the Council encouraged the efforts of the Contadora Group and appealed urgently to all interested States in and outside the region to co-operate fully with the Group, through a frank and constructive dialogue, so as to resolve their differences,

Reaffirming the purposes and principles of the Charter of the United Nations

relating to the duty of all States to refrain from the threat or use of force against the sovereignty, territorial integrity or political independence of any State,

Also reaffirming the inalienable right of all peoples to decide on their own form of government and to choose their own economic, political and social system free from all foreign intervention, coercion or limitation,

Considering that the internal conflicts in the countries of Central America stem from the economic, political and social conditions obtaining in each of those countries and that they should not, therefore, be placed in the context of East-West confrontation,

Deeply concerned at the worsening of tensions and conflicts in Central America and the increase in outside interference and acts of aggression against the countries of the region, which endanger international peace and security,

Mindful of the necessity of promoting the achievement of peace on a sound basis, which would make possible a genuine democratic process, respect for human rights, and economic and social development,

Noting with deep concern that in recent weeks armed incidents, border clashes, acts of terrorism and sabotage, traffic in arms and destabilizing actions in and against countries of the region have increased in number and intensity,

Noting with great concern the military presence of countries from outside the region, the carrying out of overt and covert actions, and the use of neighbouring territories to engage in destabilizing actions, which have served to heighten tensions in the region,

Deeply concerned at the prolongation of the armed conflict in countries of Central America, which has been aggravated by increasing foreign intervention,

Bearing in mind the progress achieved in the meetings that the Ministers for Foreign Affairs of the Contadora Group have held with the Foreign Ministers of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua in identifying issues of concern and proposing appropriate procedures for the consideration of those issues,

Recalling the Cancún Declaration on Peace in Central America issued by the Presidents of Colombia, Mexico, Panama and Venezuela on 17 July 1983 [1], which contains an appeal for political commitments on the part of countries situated in and outside the region with the aim of achieving lasting peace in the area,

Bearing in mind the Cancún Declaration and the endorsement by the States of Central America of a Document of Objectives [2], which provides a basis for an agreement on the negotiations, that should be initiated at the earliest possible date with the aim of drawing up agreements and adopting the necessary procedures for formalizing the commitments and ensuring appropriate systems of control and verification,

Appreciating the broad international support expressed for the efforts of the Contadora Group to secure a peaceful and negotiated settlement of the conflicts affecting the region,

1. *Reaffirms* the right of all the countries of the region to live in peace and to decide their own future, free from all outside interference or intervention,

[1] A/38/303-S/15877, Annex.
[2] S/16041, Annex.

whatever pretext may be adduced or whatever the circumstances in which they may be committed;

2. *Affirms* that respect for the sovereignty and independence of all States of the region is essential to ensure the security and peaceful coexistence of the Central American States;

3. *Condemns* the acts of aggression against the sovereignty, independence and territorial integrity of the States of the region, which have caused losses in human life and irreparable damage to their economies, thereby preventing them from meeting the economic and social development needs of their peoples; especially serious in this context are:

(a) The attacks launched from outside Nicaragua against that country's strategic installations, such as airports and seaports, energy storage facilities and other targets whose destruction seriously affects the country's economic life and endangers densely populated areas;

(b) The continued losses in human life in El Salvador and Honduras, the destruction of important public works and losses in production;

(c) The increase in the number of refugees in several countries of the region;

4. *Urges* the States of the region and other States to desist from or to refrain from initiating military operations intended to exert political pressure, which aggravate the situation in the region and hamper the efforts to promote negotiations that the Contadora Group is undertaking with the agreement of the Governments of Central America;

5. *Notes with satisfaction* that the countries of the region have agreed to take measures leading to the establishment and, where appropriate, the improvement of democratic, representative and pluralistic systems which will guarantee effective popular participation in decision-making and ensure the free access of various currents of opinion to honest and periodic electoral processes based on the full observance of civil rights, emphasizing that the strengthening of democratic institutions is closely linked to evolution and advances achieved in the sphere of economic development and social justice;

6. *Expresses its firmest support* for the Contadora Group and urges it to persevere in its efforts, which enjoy the effective support of the international community and the forthright co-operation of the interested countries in or outside the region;

7. *Welcomes with satisfaction* the Cancún Declaration of the Presidents of Colombia, Mexico, Panama and Venezuela and the Document of Objectives endorsed by the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, which contains the basis for the start of negotiations to ensure harmonious coexistence in Central America;

8. *Requests* the Secretary-General, in pursuance of Security Council resolution 530 (1983), to keep the Council regularly informed of the development of the situation and of the implementation of that resolution;

9. *Requests* the Secretary-General to submit a report to the General Assembly at its thirty-ninth session on the implementation of the present resolution;

10. *Decides* to keep under review the situation in Central America, threats to security which may occur in the region and the progress of peace initiatives.

TAB L: NOTE BY THE SECRETARY-GENERAL OF THE UNITED NATIONS ON THE SITUATION IN CENTRAL AMERICA, INCLUDING ANNEXES SETTING FORTH THE COMMUNICATION FROM THE MINISTERS FOR FOREIGN AFFAIRS OF THE CONTADORA GROUP AND THE TEXT OF THE ORGANIZATION OF AMERICAN STATES RESOLUTION OF 18 NOVEMBER 1983 (DOC. S/16208)

THE SITUATION IN CENTRAL AMERICA

Note by the Secretary-General

1. On 25 November I received a visit from the Permanent Representatives of Colombia, Mexico, Panama and Venezuela, which comprise the Contadora Group. On instructions from their Governments, they delivered to me a copy of the communication submitted by the Ministers for Foreign Affairs of the Contadora Group to the General Assembly of the Organization of American States, together with the text of the resolution adopted by that Assembly on 14 November 1983 on the topic "Peace efforts in Central America". In accordance with their request, these documents are transmitted to the Security Council as annexes to this note. On the same occasion, they informed me of the calendar of meetings of the Contadora Group, including one at the technical level on 1 and 2 December and another at the level of Ministers for Foreign Affairs later.

2. In the past few days I have also had interviews with the Permanent Representatives of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, who have made known to me the opinions of their respective Governments concerning the situation in Central America.

3. On this occasion, I must convey to the Security Council my impression that there are certain developments in the situation which, if taken advantage of, would make it possible to entertain hopes of improvement. Since I last reported to the Security Council in conformity with resolution 530 (1983)[1], while the Council has continued to receive communications regarding the situation in the region, taken as a whole they seem to indicate that there has been a reduction both in the number of border incidents and in their scope and magnitude[2]. Similarly, the pace of the efforts of the Contadora Group is accelerating, and in that context diplomatic activity has been redoubled. Furthermore, there is perceptible movement in the position of the Government of Nicaragua, consisting mainly in the submission of proposals within the framework of the efforts of the Contadora Group and in measures which, notwithstanding their domestic nature, take cognizance of certain requirements of the other countries of the region.

4. I must state, however, that the situation in Central America continues to be exceedingly complex and unstable, and that any of the multiple factors which together account for its dangerous character, to which I referred in my note of 18 October and which undoubtedly still exist, can aggravate it again from one moment to the next. Accordingly it is essential, acting in good faith and in a constructive spirit, to evaluate and take advantage of the opportunity which is apparently beginning to emerge.

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[1] S/16041.

[2] S/16037, S/16043, S/16058, S/16059, S/16060, S/16062, S/16080, S/16105, S/16109, S/16110, S/16113, S/16123, S/16127, S/16130, S/16133, S/16141, S/16143, S/16145, S/16161, S/16163, S/16167, S/16168, S/16176, S/16177, S/16180, S/16184, S/16200.

5. For this reason, and in accordance with Security Council resolution 530 (1983), I wish to express my fervent hope that the opportunity offered by the beginning of détente to which I have referred will be used to the full and that all States, whether or not they belong to the region, will co-operate in word and deed to ensure that the efforts of the Contadora Group bear fruit, and that they will refrain from any action or attitude which might have the opposite effect.

Annex I

Communication from the Ministers for Foreign Affairs of the Contadora Group to the General Assembly of the Organization of American States

On the occasion of the thirteenth regular session of the General Assembly of the Organization of American States, we, the Ministers for Foreign Affairs of Colombia, Mexico, Panama and Venezuela, have deemed it appropriate to inform this meeting of American Foreign Ministers of the efforts to achieve peace in Central America carried out by the Contadora Group.

At the first meeting which we held on 8 and 9 January on Contadora Island, emphasis was laid on the need to intensify the dialogue at the Latin American level as an effective way of dealing with the political, economic and social problems which are jeopardizing the peace, democracy, stability and development of the peoples of the continent. Furthermore, at that meeting an appeal was addressed to all the countries of the Central American area with a view to bringing about, through dialogue and negotiation, a lessening of the tensions and the establishment of bases for creating a permanent climate of peaceful coexistence and mutual respect among States, in accordance with the principles of non-intervention and the self-determination of peoples.

We, the Ministers assembled there, in expressing our deep concern at the foreign intervention in the Central American crisis, pointed out that it would be highly undesirable for the conflicts in the area to be brought into the context of the East-West confrontation. We also reaffirmed the obligation incumbent on States not to resort to the threat or use of force in international relations and to refrain from any acts which might aggravate the situation and create the danger of a generalized conflict spreading to all States of the region.

In order to achieve these objectives it was advocated that dialogue and negotiation should be conducted among the States involved on which it is incumbent to make the main effort to promote peace in the region. The Contadora Group proposed to facilitate understanding and political conciliation among the Central American countries in the conviction that a solution at the regional level could prevent an aggravation of the conflicts and pave the way to the establishment of peace in the area.

The Foreign Ministers of the Contadora Group met periodically by themselves and, on four occasions, with their counterparts of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. They also made visits to those countries in order to hold talks with all the Heads of State. The first three meetings of the Contadora Group with the Central American Foreign Ministers were held on 20-21 April, 28-30 May and 28-30 July 1983, respectively. These meetings made it possible to move ahead in establishing an agenda to cover the matters of concern to each Central American country and the consideration of procedures, approaches and possible ways of solving specific questions. At all these meetings, the primary objective was to create a climate of confidence that would make it possible to initiate substantive negotiations on each of the matters in dispute.

In view of the worsening of the conflicts in Central America, the rapid

deterioration of the situation in the region, the mounting escalation of violence, the progressive increase in tensions, the frontier incidents and the threat of a military conflagration which might become generalized, the Chairmen of the Contadora Group decided to meet at Cancún, Mexico, on 16 and 17 July. At this meeting, the Cancún Declaration on Peace in Central America was issued, setting forth, for the first time, a set of specific commitments which, if assumed, would make it possible to ensure peaceful coexistence in the area.

On the same occasion the Heads of State called upon the rulers of the Central American countries, Cuba and the United States, as well as the Secretary-General of the United Nations and the Secretary-General of the Organization of American States, and the Chairman of the Permanent Council of our regional organization to support the peace-making efforts of the group in Central America.

As a result of the negotiations held on the basis of the Cancún Declaration, and taking into account the contributions of the Central American countries, at the fourth joint meeting of Foreign Ministers, held in Panama on 7, 8 and 9 September, important progress was made, especially with regard to the formulation of the Document of Objectives which contains 21 basic points for achieving peace in Central America. This Document, adopted by the Foreign Ministers of the region, was subsequently endorsed by all the Central American Heads of State.

The Document of Objectives constitutes a set of fundamental principles and commitments for dealing with the most serious problems of the area and for achieving peace, security, the co-operation necessary for economic and social development, and the strengthening of the democratic institutions in Central America. It constitutes the first specific political understanding which, under the auspices of the Contadora Group, was adopted by Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

In order to make progress in determining the juridical instruments and the monitoring and verification machinery required for ensuring fulfilment of the obligations arising from the Document of Objectives, the Foreign Ministers of the countries of the Contadora Group met in Panama City on 21 and 22 October. The juridical instruments prepared at that meeting will be considered at the fifth joint meeting of Foreign Ministers scheduled for December.

At the present time the fundamental aim of the Contadora Group's action is the conclusion of specific agreements establishing and formalizing the commitments assumed and effectively guaranteeing peace, security, co-operation for development and the strengthening of the democratic institutions in the region. We consider that the negotiation process offers possibilities of success in the near future. We urge the Central American countries to expedite and intensify their efforts to that end and we urge all States having an interest in and ties with the region to co-operate in achieving our aim of peace.

Annex II

[See supra, Tab II, p. 287]

TAB M: UNITED NATIONS DOCUMENT TRANSMITTING TEXT OF COMMUNIQUÉ OF FIFTH JOINT MEETING OF CONTADORA GROUP AND OF CENTRAL AMERICAN STATES, AND INCLUDING, AS AN APPENDIX "MEASURES TO BE TAKEN TO FULFIL THE COMMITMENTS ENTERED INTO IN THE DOCUMENT OF OBJECTIVES" (DOCS. A/39/71 AND S/16262)

General Assembly; Security Council (Docs. A/39/71; S/16262)

Letter Dated 9 January 1984 from the Chargé d'Affaires a.i. of the Permanent Mission of Panama to the United Nations Addressed to the Secretary-General

I have the honour to transmit the text of the communiqué (Annex I) issued at the conclusion of the fifth joint meeting between the Ministers for Foreign Affairs of the Contadora Group and the Foreign Ministers of Central American countries, held at Panama City on 7 and 8 January 1984.

Also enclosed is the appendix to the communiqué entitled "Measures to be taken to fulfil the commitments entered into in the Document of Objectives", which was approved at the aforementioned meeting.

In addition, I have the honour to transmit the text of a statement (Annex II) made by His Excellency Mr. Ricardo de la Espriella, President of the Republic of Panama, on the occasion of the adoption of the "Measures to be taken to fulfil the commitments entered into in the Document of Objectives".

I would request you to arrange for the distribution of the communiqué, the appendix thereto and the statement of His Excellency the President of the Republic of Panama as a document of the General Assembly, under the items entitled "Development and strengthening of good-neighbourliness between States", "Review of the implementation of the Declaration on the Strengthening of International Security", "*Development and international economic co-operation*": "Peaceful settlement of disputes between States" and "The situation in Central America: threats to international peace and security and peace initiatives", and of the Security Council.

(Signed) Leonardo KAM,
Ambassador,
Deputy Permanent Representative,
Chargé d'Affaires a.i.

Annex I

Communiqué

On 7 and 8 January 1984, the Foreign Ministers of Colombia, Mexico, Panama and Venezuela, members of the Contadora Group, met with the Foreign Ministers of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua at Panama City, Republic of Panama.

The meeting, which was the twelfth meeting of the Contadora Group and the fifth held with the Foreign Ministers of Central American States, marked the end of the one-year period which has elapsed since the Contadora Declaration initiated the regional peace-making process. The participants stressed the fundamental role played by the Contadora process in strengthening the dialogue between the States of Central America and in the quest for a political entente in order to reach peaceful and negotiated settlements of the disputes and to restore harmony and stability in the area.

The joint meeting of Foreign Ministers laid down some specific measures

for the implementation of the Document of Objectives, adopted by the Central American Governments in September 1983, on the basis of the Cancún Declaration on Peace in Central America. To this end, it adopted the document annexed hereto, entitled "Measures to be taken to fulfil the commitments entered into in the Document of Objectives", which relates to questions of regional security, political matters and co-operation in the economic and social spheres.

Panama, 8 January 1984.

Appendix

Measures to Be Taken to Fulfil the Commitments Entered into in the Document of Objectives

The Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua,

Considering:

1. The adoption by the five Governments in September 1983 of the "Document of Objectives" as a frame of reference for the regional agreement to achieve peace,

2. The necessity of instituting measures designed to fulfil the commitments embodied therein,

Resolve:

I. *To adopt* the following measures for immediate application:

1. *Security questions:*

(a) The preparation by each of the Central American States of a register or inventory of military installations, weapons and troops, with a view to developing guidelines on a policy for their verification and reduction which sets ceilings and provides for a reasonable balance of forces in the region;

(b) The establishment of a list and timetable in each country with a view to reducing, and eventually eliminating, the presence of foreign military advisers and other outside elements participating in military or security activities;

(c) The identification and elimination of all forms of support or encouragement to and financing or toleration of irregular groups or forces engaged in destabilizing Central American Governments;

(d) The identification and disbandment of irregular groups or forces which, acting from or traversing the territory of a Central American State, participate in destabilizing actions against another Government of the region;

(e) The identification of areas, routes and channels used for illegal traffic in arms within and outside the region, so that such traffic may be stopped;

(f) The establishment of mechanisms of direct communication with a view to averting incidents between States and devising solutions in the event of the occurrence of such incidents;

2. *Political matters:*

(a) The promotion of national reconciliation on the basis of justice, freedom and democracy and the establishment for this purpose of machinery to facilitate dialogue between the countries of the region;

(b) The guaranteeing of full respect for human rights and, to this end, the securing of compliance with the obligations embodied in international legal instruments and the relevant constitutional provisions;

(c) The promulgation or review of legislation on the electoral process with a view to the holding of elections that guarantee the effective participation of the people;

(d) The establishment of independent electoral bodies to prepare reliable electoral registers and to ensure that the electoral process is impartial and democratic;

(e) The issue or, where appropriate, the updating of regulations guaranteeing the existence and participation of political parties which represent the different currents of opinion;

(f) The establishment of an electoral timetable and the adoption of measures designed to ensure that the political parties participate on an equal footing;

(g) Endeavours to bring about genuine political trust between the Governments of the area in order to promote détente;

3. *Economic and social questions:*

(a) The strengthening of programmes of assistance to Central American refugees and the promotion of voluntary repatriation, with the co-operation of the interested Governments, in liaison and/or co-ordination with national humanitarian bodies and competent international organizations;

(b) The extension of full co-operation to the Central American Integration Bank, ECLA, the Committee for Action in Support of the Economic and Social Development of Central America and the General Treaty on Central American Integration (SIECA);

(c) Joint negotiations to obtain external resources to help revitalize Central American integration processes;

(d) The encouragement of trade within the region and the promotion of greater and better access of Central American products to the international markets;

(e) The promotion of joint investment projects;

(f) The establishment of just economic and social structures which will reinforce an authentic democratic system and give the peoples full access to the judicial system, employment, education, health and culture;

II. *To authorize:* the Technical Group, as advisory body of the Joint Meeting of the Ministers for Foreign Affairs of Central America and of the Contadora Group, to follow up the measures provided for in this document on security, political and economic and social questions. The Technical Group will report to the meeting of Ministers on the progress made in carrying out these measures;

III. *To establish:* in the framework of the Contadora Group, three working commissions for the purpose of preparing studies, legal drafts and recommendations concerning security and political matters and economic and social questions and of making proposals for verifying and supervising the implementation of the measures agreed upon;

The working commissions will be governed by the following rules:

(a) They will be composed of representatives of the Governments of Central America, and each country may designate up to two advisers per commission;

(b) They will be convened by the Contadora Group, which will participate in their meetings in order that it may continue to collaborate actively in the study of the assigned topics and in the preparation of agreements;

(c) Recourse to external advisers, whether the latter are experts in their individual capacity or representatives of international organizations, must be approved in advance by consensus;

(d) The working commissions will be set up by 31 January 1984 at the latest, for which purpose the participating Governments will designate their representatives and advisers and will communicate their names in due course to the Ministry of Foreign Affairs of the Republic of Panama;

(e) Each commission will prepare and present its timetable and programme of work before 29 February 1984;

(f) The working commissions will carry out their tasks within the framework established by the "Document of Objectives". They will be co-ordinated by the Technical Group and will present their studies, legal drafts and recommendations to the Joint Meeting of Ministers for Foreign Affairs by 30 April 1984 at the latest.

Panama, 8 January 1984.

Annex II

Statement by His Excellency Mr. Ricardo de la Espriella, President of the Republic of Panama, upon the Adoption of the Document "Measures to Be Taken to Fulfil the Commitments Entered into in the Document of Objectives"

In my capacity as President of the Republic of Panama, a member country of the Contadora Group, I should like to state that I am pleased at the adoption by the Ministers for Foreign Affairs of the Central American countries of the document entitled "Measures to be taken to fulfil the commitments entered into in the Document of Objectives".

This act represents a real advance in the negotiations undertaken with a view to the signing of legal instruments which will ensure a lasting peace in Central America. It is also a recognition of the efforts made by the Contadora Group over the past year.

We urge the Heads of State of all the Central American countries and of all other States with interests and relations in the region to exert their political influence by supporting the document entitled "Measures to be taken to fulfil the commitments entered into in the Document of Objectives" and to pledge without reservations their firm guarantees to ensure the success of this important diplomatic option for peace.

Ricardo DE LA ESPRIELLA,
President of the Republic of Panama.

Panama, 8 January 1984.

PART 2. COMMUNICATIONS OF THE UNITED STATES TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

TAB N: LETTER OF 13 APRIL 1984

Embassy of the United States of America, The Hague.

April 13, 1984.

Dear Mr. Torres Bernárdez:

I wish to acknowledge on behalf of the Government of the United States of America receipt of your letter of April 9, 1984, transmitting (1) a certified copy of an application of the Government of Nicaragua to the Court naming the Government of the United States as respondent, and (2) a certified copy of a request of the Government of Nicaragua for the indication of provisional measures with respect to that application.

In accordance with Article 40 (2) of the Rules of the Court, I wish to advise you that the United States designates as its Agent with regard to Nicaragua's application the Honorable Davis R. Robinson, Legal Adviser of the Department of State, and as its Deputy Agent Mr. Daniel W. McGovern, Principal Deputy Legal Adviser, US Department of State. All communications to Mr. Robinson or Mr. McGovern may be addressed to the United States Embassy in The Hague.

In accordance with Article 31 of the Rules of the Court, the Agent of the United States is prepared to meet with the President of the Court at the President's convenience to discuss questions of procedure, and would request such a meeting before the scheduling of hearings or other action in the case. As you are aware, Mr. Robinson is presently in The Hague and could meet with the President at a mutually convenient time next week.

The United States is of the firm view that, under the terms of the United States Declaration of August 14, 1946, assenting to jurisdiction of the Court, and its communication of April 6, 1984, the Court lacks jurisdiction to consider the application of the Government of Nicaragua. A fortiori the Court lacks jurisdiction to indicate the provisional measures requested by the Government of Nicaragua.

The United States notes that the allegations of the Government of Nicaragua comprise but one facet of a complex of interrelated political, social, economic and security matters that confront the Central American region. Those matters are the subject of a regional diplomatic effort, known as the "Contadora Process", which has been endorsed by the Organization of American States, and in which the Government of Nicaragua participates. This process is strongly supported by the United States as the most appropriate means of resolving this complex of issues, consistent with the United Nations Charter and the Charter of the Organization of American States, in order to achieve a durable peace in the region. The concern of the United States is that bilateral judicial proceedings initiated by Nicaragua would impede this ongoing multilateral diplomatic process. This concern motivated the decision of the United States which was communicated to the Secretary-General on April 6, 1984.

The same concern makes the indication of the provisional measures requested by Nicaragua particularly inappropriate at this time. In the present situation in Central America, the indication of such measures could irreparably prejudice the interests of a number of States and seriously interfere with the negotiations being conducted pursuant to the Contadora Process.

Finally, the United States notes that the events of which the Government of

Nicaragua complains allegedly took place over at least three years. See Annex A to application. These circumstances are inconsistent with an argument that there is urgency to Nicaragua's request for the indication of provisional measures.

For the reasons stated above concerning jurisdictional questions, the United States requests the Court to strike Nicaragua's application from the Court's list of pending matters. Alternatively, the United States considers that the circumstances and the extraordinary character of the measures requested by Nicaragua require an opportunity for written submissions by the parties and, thereafter, an oral hearing on Nicaragua's request for the indication of provisional measures. The Agent of the United States will be prepared to discuss with the President the scheduling of written submissions by the parties and oral proceedings before the Court.

Please accept, Sir, the renewed assurances of my highest consideration.

Sincerely,

(Signed) L. Paul BREMER, III,
Ambassador.

TAB O: LETTER OF 23 APRIL 1984

Sir,

I have the honor to refer to the Application of the Republic of Nicaragua of 9 April 1984 (the "Application"), to its Request of the same date for the indication of provisional measures under Article 41 of the Statute of the Court (the "Request"), and to Article 48 of the Statute of the Court. The United States wishes to bring to the notice of the Court information that the United States has recently received, establishing that Nicaragua has not accepted the compulsory jurisdiction of the Court under Article 36 of the Statute of the Court. Consequently, the Application does not meet the requirements of Article 38 of the Rules of Court, particularly paragraph 2 thereof. The United States respectfully submits, therefore, that an immediate decision should be taken to preclude any further proceedings on the Application and the claims contained therein or on the Request.

In this regard, I have the honor to call attention to the following:

1. The Application refers in its opening paragraph to ". . . the Declarations made by the Republic of Nicaragua and by the United States of America accepting the jurisdiction of the Court as provided for in Article 36 of the Statute of the International Court of Justice . . .". The Application further states in paragraph 13 thereof that "[b]oth the United States and Nicaragua have accepted the compulsory jurisdiction of the Court under Article 36 of the Statute of the Court". Both the reference and the statement are incorrect. As of the date of the filing of the Application, Nicaragua had not accepted the compulsory jurisdiction of the Court.

2. Nicaragua has not specified in the Application the legal grounds upon which the jurisdiction of the Court is said to be based. In the absence of any other indication, the United States assumes that Nicaragua is seeking to rely upon Article 36, paragraph 5, of the Statute of the Court, which reads:

> "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."

On 14 September 1929, Nicaragua signed the Protocol of Signature of the Statute of the Permanent Court of International Justice. The Protocol of Signature provided:

> "The present Protocol, which has been drawn up in accordance with the decision taken by the Assembly of the League of Nations on the 13th December, 1920, is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations."

But Nicaragua never ratified the Protocol of Signature of the Statute of the Permanent Court. Thus, the declaration which Nicaragua made on 24 September 1929 purporting to accept the Optional Clause never entered into force. As a result, Nicaragua never accepted the compulsory jurisdiction of the Permanent Court. Consequently, Article 36, paragraph 5, of the Statute of the International Court of Justice is inapplicable, and cannot serve as the basis of jurisdiction over the Application and the claims contained therein or over the Request.

3. The Report of the Permanent Court of International Justice 1929-1930, *Ser. E, No. 6*, at 145-146, lists Nicaragua among the "States having signed [the Optional Clause] without condition as to ratification but not ratified the Protocol of Signature of the Statute". These are described as "States not bound by the Clause". *Id.* at 146. This Report does not include Nicaragua in the list of "States at present bound by the [Optional] Clause". *Id.* at 145. Nicaragua is similarly listed in subsequent issues of the *Reports of the Permanent Court of International Justice*. *See*, e.g., *Report 1930-1931, Ser. E, No. 7*, at 159, 161, 457; *Report 1937-1938, Ser. E, No. 14*, at 59-60. *See also*, *Collection of Texts Governing the Jurisdiction of the Court, Ser. D, No. 6*, at 19 (1932).

4. On 29 November 1939, Nicaragua addressed a telegram to the League of Nations stating that an instrument of ratification of the Protocol of Signature of the Statute would follow. *See Sixteenth Report of the Permanent Court of International Justice* (15 June 1939 to 31 December 1945), *Series E, No. 16*, p. 331; International Court of Justice, *Yearbook 1982-1983*, p. 79, fn. 1. I am informed that the records of the League of Nations in Geneva reveal that no instrument of ratification from Nicaragua was ever received. On 30 November 1939, the Acting Legal Adviser of the League of Nations informed the Government of Nicaragua that the Secretariat of the League of Nations was at the disposal of Nicaragua to facilitate the deposit of such an instrument. (*See* Annex I hereto, paragraph 3.) Later, on 15 September 1942, the Acting Legal Adviser (M. Emile Giraud) wrote to the Minister for Foreign Affairs of Nicaragua, drawing attention to Nicaragua's telegram of 29 November 1939 and adding:

> "I have never received the instrument of ratification, the deposit of which is necessary to bring Nicaragua's obligation into being."

(*See* Annex I hereto at paragraph 5). Attached to Annex II hereto is a duly authenticated copy of a letter dated 13 May 1943 from the United States Ambassador

to Nicaragua to Judge Manley O. Hudson. In that letter, there is further evidence that as of that date, Nicaragua had not ratified the Protocol of Signature and therefore was not bound thereby. Additional confirmation of the non-ratification of the Protocol of Signature by Nicaragua appears in the twenty-First List of Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the Auspices of the League of Nations, which includes Nicaragua in the list of "Signatures not yet perfected by Ratification". *See* League of Nations, *Official Journal, Special Supplement No. 193* (10 July 1944), at pp. 37, 42-43. So far as the United States has been able to ascertain, there is no indication that Nicaragua ratified the Protocol of Signature before the Charter of the United Nations entered into force on 24 October 1945, or before the League of Nations and the Permanent Court of International Justice were dissolved on 18 April 1946. That being so, Nicaragua cannot be deemed to have accepted the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 5, of the Statute of the Court.

5. The United States is further informed that Nicaragua has never deposited with the Secretary-General of the United Nations a declaration accepting the Court's compulsory jurisdiction pursuant to Article 36, paragraph 2, of the Statute of the Court.

6. In the circumstances, the Court is without jurisdiction to entertain the Application of the Government of the Republic of Nicaragua or any part of that Application, and the Request for the indication of provisional measures does not relate to any case properly before the Court. For these reasons and in consideration of Article 48 of the Statute of the Court, the United States respectfully seeks from the Court an immediate decision which will preclude any further proceedings on the Application and the claims contained therein, or on the Request.

7. This letter is without prejudice to any other rights, claims or positions of the United States, whether under the Statute of the Rules of the Court or otherwise, including, without limitation, such as may relate to the jurisdiction of the Court or the admissibility of the Application.

Please accept, Sir, the assurances of my highest consideration.

Sincerely,

(Signed) Davis R. ROBINSON,

Agent of the United States of America.

Annex I

1. Since receipt of the Registrar's letter of 9 April 1984 (171558), the United States has examined whether Nicaragua accepted the compulsory jurisdiction of the Permanent Court of International Justice. Inquiries in the United Nations Secretariat in New York disclosed that any relevant materials would be located in the League of Nations Archives in Geneva. From inquiries made in Geneva, the following has been established.

2. Nicaragua's telegram of 29 November 1939, referred to in the letter of the Agent of the United States of 23 April 1984, was received in the League of Nations in Geneva on 30 November 1939.

3. On 30 November 1939, the Acting Legal Adviser of the League of Nations wrote a letter to the Nicaraguan Ministry for Foreign Affairs in which, after acknowledging receipt of the telegram of 29 November 1939, he stated:

"En réponse, je m'empresse de vous informer que le service compétent du Secrétariat se tient à la disposition de votre gouvernement pour lui faciliter les formalités relatives au dépôt dudit instrument de ratification."

There is no reply to that letter in the file of the League of Nations.

4. On 4 August 1942, the late Judge Manley O. Hudson, then in residence at Harvard Law School, wrote to inquire as to the status of Nicaragua's ratification of the Protocol of Signature. On 15 September 1942, the Acting Legal Adviser of the League of Nations, M. Emile Giraud, replied (in part):

"We have not received the ratification necessary to complete the signature of the Court Protocol and at the same time to bring into force the obligations concerning Article 36. But on November 29th, 1939, the Secretary-General was informed by telegram that the Court Protocol was ratified by the President of the Republic of Nicaragua. We have however never received the instrument of ratification itself, which should have been sent to us. Nicaragua is therefore not bound either by the Protocol or by the Optional Clause."

5. On 16 September 1942, Acting Legal Adviser Giraud sent the following letter to the Minister for Foreign Affairs of Nicaragua:

"Par un télégramme en date du 29 novembre 1939, vous avez bien voulu me faire savoir que le protocole de signature du Statut de la Cour permanente de Justice internationale (du 16 décembre 1920) avait été ratifié par le président de la République de Nicaragua et que l'instrument de ratification serait envoyé au Secrétariat.

Or, je n'ai jamais reçu cet instrument de ratification dont le dépôt est nécessaire pour faire naître effectivement l'obligation. Peut-être cet instrument s'est-il perdu en cours de route.

J'ai tenu à attirer votre attention sur cette question."

6. This letter of 16 September 1942 is the last document contained in the United Nations Library, Geneva, League of Nations Archives, 1933-1946, File No. 3C/17664/1589. This file contains all the materials for the period from 1933 to 1946 relating to Nicaragua's actions in connection with the Protocol of Signature of the Statute of the Permanent Court of International Justice and the Optional Clause.

[When copies of the original document on file in Geneva are received in The Hague, the Agent of the United States will transmit copies to the Registrar.]

The Hague, 23 April 1984.

Annex II

1. While the inquiries to which Annex I refers were being pursued, the Department of State of the United States Government in Washington, D.C., conducted an examination of its own archives to determine whether they contained any relevant information on the possible acceptance by Nicaragua of the compulsory jurisdiction of the Permanent Court of International Justice. That examination revealed despatch No. 1035 of 13 May 1943 from the United States Ambassador to Nicaragua forwarding to the Department of State a letter of the same date from the Ambassador to Judge Hudson reporting on the results of the Ambassador's inquiries at the Ministry for Foreign Affairs of Nicaragua. That letter from the Ambassador to Judge Hudson reported that the Foreign

Minister of Nicaragua had informed the Ambassador that as of that date, "there is no record of the instrument of ratification having been transmitted to Geneva". An authenticated copy of the full text of the despatch and enclosed letter is appended to this Annex II [1].

2. The Department of State has found no further documentation, from any source, relating to this matter.

The Hague, 23 April 1984.

PART 3. COMMUNICATIONS AND STATEMENTS OF OTHER STATES

TAB P. COMMUNICATION TO THE REGISTRAR OF THE COURT FROM COSTA RICA, 18 APRIL 1984

The United States has received from the Government of Costa Rica the text of a communication, which the Government of Costa Rica indicated that it would send to the Registrar of the Court, an English version of which we understand to be as follows:

(Informal translation)

Honourable Sir,

With regard to the case presented before the International Court of Justice by the Government of Nicaragua, the Government of Costa Rica wishes, by this means, to present for the consideration of the Court the following communication:

Costa Rica declared its permanent neutrality in belligerent conflicts which affect other States in Presidential proclamation on November 17, 1983. The neutrality of Costa Rica is active, and for this reason fully compatible with the right of Costa Rica as a Member of the United Nations and the Organization of American States in all that relates to the preservation of peace and international security, as well as in relation to those activities conducive to a peaceful solution of disputes between States.

As a perpetually neutral State and a country situated in the Central American region, Costa Rica has a special interest in the peaceful solution of disputes and conflicts which affect this area of the world. For this reason and in pursuit of this interest in peace and international order, the Government of Costa Rica would like to provide its Observations concerning the case presented by the Government of Nicaragua against the United States of America and its Application for the adoption of provisional measures in conformity with Article 41 of the Statute and Article 73 of the Rules of Court, without these Observations being considered as an intervention in the case, in accordance with the doctrine of Article 62 of the Statute of the Court.

[1] For the documents appended to this Annex see Exhibit II, *supra. [Note by the Registry.]*

Based on the above, the Government of Costa Rica wishes to make the following Observations:

1. The "case" presented by the Government of Nicaragua before the Court touches upon only one aspect of a more generalized conflict that involves other countries within the Central American area as well as countries outside the region.

Faced with such conflicts, a group of American nations, within the doctrine of Article 33 of the Charter of the United Nations and of Article 23 of the Charter of the Organization of American States, created the so-called "Forum of Contadora" in order to seek at a subregional level, a solution to such conflicts, since their continuation would constitute a grave threat to the international peace and security of the entire Central American area. Within this forum intense diplomatic negotiations have taken place to resolve the conflicts, not only in their military aspect, but also their causes, which are of a political, social and economic nature both internal and external. This process is very far along and has as participants all the countries of the region, specifically: Colombia, Mexico, Panama, Venezuela, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, and with the support of the international community.

2. The Government of Costa Rica is of the opinion that whatever measure which the Court might adopt in the "case" presented for its consideration, taking such measures outside the context of the complete political and military situation that prevails in the Central American region, could become a distorting factor in the difficult equilibrium sought by the Forum of Contadora in a broader framework of solutions and could compromise, if not undertaken with prudence and equity, all possibilities of success for the "Forum of Contadora".

3. Therefore, Costa Rica without pretending to judge in any way the appropriateness of the provisional measures which the Court may decide, expresses the following opinion:

I. Whatever provisional measure the Court may adopt should entail obligations and commitments by both parties to the dispute.

II. The adoption of any provisional measure, whatever its nature, should take into account the existence of the diplomatic effort which is being carried out in the Contadora group, with the participation of all the countries of the area, and which seeks a solution to the conflicts such as those which have been brought before the Court.

TAB R. COMMUNICATION TO THE REGISTRAR OF THE COURT FROM EL SALVADOR, 19 APRIL 1984

The United States has received from the Government of El Salvador the text of a communication, which the Government of El Salvador indicated that it would send to the Registrar of the Court, an English version of which we understand to be as follows:

Excellency:

Although not a party to the case brought before the Court by the Government of Nicaragua requesting provisional measures related to its complaint against

alleged US military activities in the region, the Government of El Salvador wishes to provide the Court with certain information on the circumstances surrounding the complaint by Nicaragua and the whole Central American situation.

The problems besetting the Central American region are many and interrelated. They are political, economic, social, human rights and security issues; some are bilateral and others multilateral; some are legal while many are of a non-legal nature. The Government of El Salvador recalls that the Contadora process in which Nicaragua is a participant was initiated to deal with the entire array of these questions and that it is now engaged actively in its work. The Governments of El Salvador and Nicaragua, with the other concerned governments in the region, have endorsed the Contadora process without reservations, as has the Organization of American States. The Government of El Salvador continues to consider the Contadora process as the uniquely appropriate forum, consistent with Article 33 of the Charter of the United Nations and Article 24 of the Charter of the Organization of American States, in which to seek a realistic, durable, regional peace settlement that would take the manifold legitimate interests of each participating State into full account.

The issues raised by the Government of Nicaragua cannot be divorced from the regional issues under negotiation in the Contadora process. In the view of my Government, the complaint by Nicaragua, if considered by the Court, or if the provisional measures were ordered by the Court, would damage prospects for success of multilateral negotiations within the Contadora framework, especially if such measures were applied to only one party to the dispute.

Therefore, my Government requests that the Court take seriously into consideration its views as expressed above, and that the Court take no action with respect to the requested provisional measures which would be contrary to the negotiating process now taking place within the Contadora group for a comprehensive, regional solution in Central America.

Please accept, Excellency, assurances of my highest consideration and esteem.

TAB S. NOTE FROM HONDURAS TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, 18 APRIL 1984

The United States has received from the Government of Honduras the text of a note addressed to the Secretary-General of the United Nations, containing observations on the pending request for provisional measures, an English translation of which is as follows:

Mr. Secretary-General:

I have the honour to express to Your Excellency the deep concern of the Government of Honduras regarding the new international-level initiative undertake by the Government of Nicaragua. The purpose of this initiative is to remove from the jurisdiction of the group seeking a peaceful settlement, the Contadora group (Colombia, Mexico, Panama and Venezuela), the discussion of the poli-

tical, economic, social and security crisis which is affecting the Central American region and which, because of its complex nature, requires a comprehensive multilateral solution.

Your Excellency is aware that this crisis is the result of internal conflicts in certain countries of the area, a lack of respect for human rights, economic and social underdevelopment, and, most especially, the arms race and the inordinate build-up of the Nicaraguan Armed Forces. The Government of Nicaragua is engaged in the destabilization of neighbouring governments by providing encouragement, financing, training and logistical and communications assistance to groups of insurgents from other Central American countries with a view to establishing sympathetic governments within those countries.

It was precisely in order to seek a comprehensive solution to the Central American crisis that the Contadora Group proposed direct negotiations between the nations of the region. That proposal was accepted by the Government of Honduras, which, from the start, supported it fully and participated actively in all meetings convened by the Contadora Group.

On April 4, 1983, the Government of Honduras submitted to the Permanent Council of the Organization of American States a draft resolution aimed at restoring peace to the Central American region. On the request of the Contadora Group, submitted to the Permanent Council through the permanent representative of Colombia, Honduras agreed to suspend discussion of its draft resolution so that the direct negotiations sponsored by this group of OAS member countries would have a chance to achieve positive results. In this respect, His Excellency Bernardo Sepúlveda, Secretary of Foreign Relations of Mexico, acknowledged at a press conference in Mexico City on April 13, 1983, that the conciliatory attitude of Honduras within the OAS was what had made the fraternal effort of the Contadora Group possible. Referring to the Panama meeting of the Contadora Group ministers, during which this effort was decided upon, the Mexican Foreign Minister said:

> "First of all, it was realized that the immediate concern was to ensure that the OAS Permanent Council would not hamper the Foreign Ministers of the Contadora Group in their efforts to find solutions for Central America. This was an urgent issue inasmuch as the OAS Permanent Council was scheduled to consider a draft resolution submitted by Honduras that same Monday afternoon. Fortunately, through a series of conversations we had with other parties concerned, an agreement was reached to postpone consideration of the draft resolution in the OAS Permanent Council, and *this relieved the pressure so that the issue could be shifted from the* regional forum to the Panama forum — that is to say, to the Foreign Ministers of the Contadora Group. At the same time, it was clear that it would also be necessary to take steps to prevent duplication in the United Nations system of efforts that had just begun in Panama on the previous Monday."

"The parties concerned welcomed our proposal enthusiastically and decided to ask the OAS Permanent Council to postpone its consideration of the issue. This was the first action taken on the matter," stated Minister Sepúlveda, "and as I said before, it freed us by making it possible for us to exercise direct jurisdiction over the problem."

In more than a year of delicate multilateral negotiations, the Contadora Group has had the full support of the Organization of American States (AG Res. 675-XIII-0/83) and the United Nations General Assembly (Res. 38/10) and Security Council (Res. 530-1983), as well as the international community in general, regardless of ideological, political, economic and legal systems.

That is why the Government of Honduras considers it necessary and in the best interests of the nations of the Central American region and of other peace-loving nations for the Contadora Group to continue its efforts to achieve a lasting and stable peace in the region without this process being hampered by some country seeking recourse to other means of peaceful solution.

In accordance with this viewpoint, which is shared by the majority of the Central American countries and by the Contadora Group, the Government of Honduras wishes to point out the dangers of discussing the Central American crisis in various international forums simultaneously, as the Government of Nicaragua has requested, when direct negotiations are already in progress. This viewpoint has also been corroborated by the fact that the United Nations Security Council and General Assembly, and the OAS General Assembly, have sent the Central American issue back to the Contadora Group, to which they give their unconditional support.

Once again the Government of Nicaragua is seeking to flout the Contadora negotiation process by attempting to bring the Central American crisis, essentially a political issue, under the jurisdiction of the International Court of Justice. This is detrimental to the negotiations in progress and fails to recognize the resolutions of the United Nations and the Organization of American States or the full international endorsement that the Contadora peace process has so deservedly received.

Needless to say, the negotiations conducted by the Central American countries within the Contadora Group are expressly authorized by Article 52 of the United Nations Charter and Article 23 of the OAS Charter, which provide for regional settlement of disputes.

The Government of Honduras, without participating or seeking to intervene in any way in the proceedings initiated by Nicaragua against the United States of America in the International Court of Justice, views with concern the possibility that a decision by the Court could affect the security of the people and the State of Honduras, which depends to a large extent on the bilateral and multilateral agreements on international co-operation that are in force, published and duly registered with the Office of the Secretary-General of the United Nations, if such a decision attempted to limit these agreements indirectly and unilaterally and thereby left my country defenceless.

The Government of Honduras also considers that since the Contadora Group unanimously approved the "document of objectives" of September 9, 1983, which encompasses all the problems related to various aspects of the regional crisis, and since negotiations are in progress between the five Central American countries in the three working commissions created for this purpose, these negotiations must continue without disruption by removal of the matter from this jurisdiction.

In view of the reasons stated above and in consideration of Nicaragua's petition that the Court impose precautionary measures in the proceedings initiated by Nicaragua against the United States of America, I respectfully request that Your Excellency transmit with due urgency to the clerk of the International Court of Justice the text of this note expressing the Honduran Government's concerns about the impact such measures could have on the negotiations in progress and the international security of the State of Honduras.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

TAB T: PRESS RELEASE ISSUED BY GUATEMALAN MINISTRY OF FOREIGN AFFAIRS

(Translation)

Guatemala reiterates that the Central American issue should be discussed by the Contadora Group; that any attempt to seek another forum or international body in order to discuss security problems of a political, economic and social nature has a negative impact on the Contadora process.

Guatemala once again states its endorsement of and support for the positive work of the Contadora Countries, and will spare no effort in seeking formulas to relax the tensions and achieve permanent peace in the region.

PART 4. OTHER DOCUMENTS

TAB U: REPORT OF THE SENATE FOREIGN RELATIONS COMMITTEE, 25 JULY 1946

S. Res. 196

IN THE SENATE OF THE UNITED STATES

November 28 (legislative day, October 29), 1945

Mr. MORSE (for himself, Mr. TAFT, Mr. GREEN, Mr. FULBRIGHT, Mr. SMITH, Mr. FERGUSON, Mr. AITKEN, Mr. BALL, Mr. CORDON, Mr. WILEY, Mr. TOBEY, Mr. MAGNUSON, Mr. JOHNSTON of South Carolina, Mr. MYERS, AND Mr. MCMAHON) submitted the following resolution; which was referred to the Committee on Foreign Relations

July 25 (legislative day, July 5), 1946

Reported by Mr. THOMAS of Utah, with an amendment

[Omit the part struck through]

August 2 (legislative day, July 29), 1946

Considered, amended, and agreed to

Resolution

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations, of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising 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.

Provided, That such declaration shall not apply to —

a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future;
b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States; or
c. disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States specially agrees to jurisdiction.

Provided further, That such declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate the declaration.

INTERNATIONAL COURT OF JUSTICE

July 25 (legislative day, July 5), 1946. — Ordered to be printed

Mr. Thomas of Utah, from the Committee on Foreign Relations submitted the following

REPORT

(To accompany S. Res. 196)

The Committee on Foreign Relations, to whom was referred the resolution (S. Res. 196) providing that the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in certain categories of legal disputes hereafter arising, hereby report the same to the Senate, with an amendment, with the recommendation that the resolution do pass as amended.

A. TEXT OF RESOLUTION

Following is the text of the resolution, as amended by the committee:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising 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.

Provided, That such declaration should not apply to —

a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.

Provided further, That such declaration should remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate the declaration.

B. HEARINGS OF THE SUBCOMMITTEE

On November 28, 1945, Mr. Morse submitted Senate Resolution 196 for himself, Mr. Taft, Mr. Green, Mr. Fulbright, Mr. Smith, Mr. Ferguson, Mr. Aiken, Mr. Ball, Mr. Cordon, Mr. Wiley, Mr. Tobey, Mr. Magnuson, Mr. Johnston of South Carolina, Mr. Myers, and Mr. McMahon. The resolution was referred to the Committee on Foreign Relations. On June 12, 1946, Chairman Connally appointed a subcommittee consisting of Senator Thomas (Utah) as chairman, Senator Hatch and Senator Austin to hear witnesses on the resolution and to recommend any amendments that might seem appropriate.

The subcommittee held hearings on July 11, 12, and 15, with Senator Morse, Dean Acheson (Acting Secretary of State), and Charles Fahy (legal adviser of the Department of State) appearing and a number of other witnesses testifying on behalf of important private organizations. Outstanding jurists and international lawyers also submitted statements for the record. Witnesses appeared or statements were submitted from the following organizations:

American Bar Association
American Society of International Law
American Association of University Women
General Federation of Women's Clubs
Young Women's Christian Association
Americans United for World Government
Friends Committee on National Legislation
National League of Women Voters
Federal Bar Association
Women's Action Committee for Lasting Peace
Federal Council of the Churches of Christ in America
Catholic Association for International Peace
Pennsylvania Bar Association
National Council of Jewish Women
National Education Association

C. OVERWHELMING PUBLIC SUPPORT

The subcommittee was impressed by the fact that all the witnesses who appeared were enthusiastically in favor of the acceptance on the part of the

United States of the jurisdiction of the International Court of Justice with respect to legal disputes. The general feeling seemed to be that such a step taken now by the United States would be the natural and logical sequel to our entry into the United Nations. Twelve months' consideration since the signing of the Charter has strengthened the conviction that this action would immediately increase faith in the efficacy of the United Nations to promote order and peace.

This relative unanimity of American public opinion was demonstrated on December 18, 1945, when the house of delegates of the American Bar Association, without a dissenting vote, passed a resolution urging the President and the Senate to take appropriate action "at the earliest practicable time" to accept the compulsory jurisdiction of the Court. The American Society of International Law, on April 27, 1946, likewise adopted a favorable resolution by a unanimous vote. Many other national organizations, with large memberships, including the American Association of University Women, the General Federation of Women's Clubs, the Federal Bar Association, the Inter-American Bar Association, the Federal Council of Churches, the National League of Women Voters, the American Veterans Committee, the National Education Association, the National Council of Catholic Women, and the American Association for the United Nations, have similarly endorsed the proposal.

D. FAVORABLE ACTION BY FOREIGN RELATIONS COMMITTEE

On July 17 and July 24 the subcommittee reported its findings to the Senate Foreign Relations Committee. After a discussion of the legal and constitutional issues involved (see secs. G and J below) the committee reported the resolution to the Senate for favorable action. The vote, which was taken on July 24, was unanimous.

E. PURPOSE OF THE RESOLUTION

The immediate purpose of the resolution is to authorize the President to file with the Secretary General of the United Nations a declaration accepting the compulsory jurisdiction of the International Court of Justice over certain categories of legal disputes arising between the United States and any other nation which has accepted the same obligation. The United States would acquire the right and duty to sue or be sued in respect to such other states and would give the Court the power to decide whether the case properly falls within the terms of the agreement.

The ultimate purpose of the resolution is to lead to general world-wide acceptance of the jurisdiction of the International Court of Justice in legal cases. The accomplishment of this result would, in a substantial sense, place international relations on a legal basis, in contrast to the present situation, in which states may be their own judge of the law.

The United States has now become a member of the Court, but membership in itself means comparatively little. It is true that states can agree to submit specified cases to the Court, but they have always been able to settle their disputes by arbitration, assuming they could agree to do so. So long as individual members can refuse to be haled into the Court a regime of law in the international community will never be realized. The most important attribute of this or any other court is to hear and decide cases. For this function it must have jurisdiction of the parties and the subject matter.

F. OBLIGATIONS UNDER THE CHARTER OF THE UNITED NATIONS

The undertaking of this obligation by members of the United Nations is a logical fulfillment of obligations already expressed in the Charter. The preamble expresses the determination of the peoples of the United Nations:

> ". . . to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained . . ." —

and to this end —

> ". . . to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest . . .".

Among the purposes of the United Nations set forth in article 1 is —

> ". . . to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace . . .".

One of the principles of the Organization as set forth in article 2 is that —

> "all members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".

Article 36, paragraph 3, of the Charter provides that the Security Council should —

> ". . . take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court".

In addition, by virtue of the general right of states to bring disputes before the Security Council, any state is liable to have its political disputes brought before the Council without its consent and to be subject to such moral obligation as attaches to a recommendation of the Council (arts. 36 and 37 of the Charter). It is incongruous that such rights and obligations should exist with respect to political disputes but that there should be no similar obligation for the members of the United Nations to submit their legal disputes to adjudication.

G. JURISDICTION CONFERRED, DEFINED, AND LIMITED

The scope of the jurisdiction to be conferred pursuant to this resolution is carefully defined and limited.

There is, in the first place, a general limitation of jurisdiction to legal disputes. The resolution, like article 36, paragraph 2, of the Court Statute, states this limitation in general terms and proceeds to define the four categories of disputes thus included. These are:

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.

A second major limitation on the jurisdiction conferred arises from the con-

dition of reciprocity. This is again specified in the resolution in the language of the statute, the pertinent phrase being as follows:

> ". . . recognizing . . . in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice . . .".

Jurisdiction is thus conferred only as among states filing declarations. In addition, the similar phrase in the Statute of the Permanent Court of International Justice was interpreted by the Court as meaning that any limitation imposed by a state in its grant of jurisdiction thereby also became available to any other state with which it might become involved in proceedings, even though the second state had not specifically imposed the limitation. Thus, for example, if the United States limited its grant of jurisdiction to cases "hereafter arising", this country would be unable to institute proceedings regarding earlier disputes, even though the defendant state might not have interposed this reservation.

A third limitation specified in the resolution is that the United States should bind itself only as to disputes arising in the future. The United States may not, therefore, be confronted with old controversies as a result of filing the proposed declaration.

A fourth limitation provides that the proposed action shall not impede the parties to a dispute from entrusting its solution to some other tribunal if they so agree. The same provision is found in the Charter of the United Nations, article 95.

The fifth limitation is that the proposed declaration shall not apply to matters which are essentially within the domestic jurisdiction of the United States. A provision similar in principle is found in article 2, paragraph 7, of the Charter, providing that nothing in the Charter shall authorize the organization to intervene in essentially domestic matters. The committee feels that the principle is also implicit in the nature of international law, which, under article 38, paragraph 1, of the statute, it is the duty of the Court to apply. International law is, by definition, the body of rights and duties governing states in their relations with each other and does not, therefore, concern itself with matters of domestic jurisdiction. The question of what is properly a matter of international law is, in case of dispute, appropriate for decision by the Court itself, since, if it were left to the decision of each individual state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction. It is plainly the intention of the statute that such questions should be decided by the Court, since article 36, paragraph 6, provides:

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

It was also brought to the attention of the subcommittee that a number of states, in filing declarations under the Statute of the Permanent Court of International Justice, interposed reservations similar to that of the resolution under consideration, but in no case did they reserve to themselves the right of decision. The committee therefore decided that a reservation of the right of decision as to what are matters essentially within domestic jurisdiction would tend to defeat the purposes which it is hoped to achieve by means of the proposed declaration as well as the purpose of article 36, paragraphs 2 and 6, of the Statute of the Court.

The resolution provides that the declaration should remain in force for a period of 5 years and thereafter until 6 months following notice of termination. The declaration might, therefore, remain in force indefinitely. The provision for 6 months' notice of termination after the 5-year period has the effect of a

renunciation of any intention to withdraw our obligation in the face of a threatened legal proceeding.

Hon. John Foster Dulles, adviser to the State Department in relation to the Dumbarton Oaks proposals and adviser to the United States delegation to the United Nations Conference on International Organization, which drafted the Charter and the Statute of the Court, filed a memorandum with the subcommittee favoring agreement by the United States to submit to impartial adjudication its legal controversies. He pointed out that failure to take that step would be interpreted as an election on our part to rely on power rather than on reason.

Mr. Dulles advocated that the United States ought now to make the declaration submitting this country to the jurisdiction of the Court according to article 36 (2) of the Court Statute. He suggested, however, clarification of certain matters in the declaration, to wit:

> "1. *Advisory opinions.* — The compulsory jurisdiction should presumably be limited to disputes which are actual 'cases' between states as distinct from disputes in which advisory opinions may be sought."

On this point the committee view is that the jurisdiction to be accepted pursuant to Senate Resolution 196 is coextensive with the jurisdiction defined in article 36 (2) of the Statute of the Court, which is limited to legal disputes as distinct from the broader category of "cases" referred to elsewhere in the statute.

With respect to Mr. Dulles' suggestion, Hon. Charles Fahy, legal adviser of the State Department, made the following reply:

> "The declaration under article 36 (2) would grant jurisdiction in 'all legal disputes', as therein described. But the jurisdiction of the Court (art. 36 (1)) extends to 'cases which the parties refer to it' and 'all matters especially provided for in the Charter of the United Nations or the treaties and conventions in force'. Thus the Court's possible jurisdiction is broader than the jurisdiction conferred by a declaration under article 36 (2). The provisions of article 36 (2) are limited to 'legal disputes'. This compulsory jurisdiction clearly excludes cases which are not legal disputes, such as a case to be decided ex aequo et bono under article 38 (2) if the parties separately so agree. Such agreement, of course, would be over and above any jurisdiction accepted by the proposed declaration under article 36 (2). The only jurisdiction of the Court with respect to advisory opinions (art. 65) is as to a legal question on request of whatever body may be authorized to make such a request under the Charter. It is entirely apart from the compulsory jurisdiction which a State grants by its declaration under article 36 (2). No provision in the declaration would seem necessary to make it clear that the declaration under article 36 (2) is indeed limited to the jurisdiction covered by that article.
>
> 2. *Reciprocity.* — Jurisdiction should be compulsory only when all of the other parties to the dispute have previously accepted the compulsory jurisdiction of the Court."

The committee considered that article 59 of the Court Statute removes all cause for doubt by providing:

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

If the United States would prefer to deny jurisdiction without special agreement, in disputes among several states, some of which have not declared to be bound,

article 36 (3) permits it to make its declaration conditional as to the reciprocity of several or certain states.

Mr. Dulles' objection might possibly be provided for by another subsection in the first proviso of the resolution, on page 2, after line 14, reading:

> "*c.* Disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States specially agrees to jurisdiction.
>
> 3. *International law.* — If the basic law of the case is not found in an existing treaty or convention, to which the United States is a party, there should be a prior agreement as to what are the applicable principles of international law."

The committee considered both the policy and the parliamentary problems this suggestion raises and decided to leave Senate Resolution 196 unchanged as to this point, for the following reasons:

Article 92 provides:

> "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."

The Charter cannot be amended by a mere declaration of some of the states parties to the present statute. What a state may do is limited by article 36 (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."

This does not permit a state to condition submission upon different principles of international law than those which article 38 commands to be used, thus:

> "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 bono, if the parties agree thereto."

To accomplish substantial alteration of the applicable principles of international law would require consent of all the other parties to the Charter. The purpose of this declaration is to avoid the procedural necessity of "special agreement" and to recognize jurisdiction ipso facto over the specified subject matter and parties.

Hon. Charles Fahy, legal adviser of the State Department, in a memorandum prepared for the committee, replied to Mr. Dulles' suggestion as follows:

> "3. Mr. Dulles suggests there should be prior agreement as to what are the applicable principles of international law if the basic law of the case is not found in an existing treaty or convention. He feels that to permit

jurisdiction of legal disputes concerning 'any question of international law' is too vague at this time.

It is most inadvisable to accept this view. It would seriously impede the progress of the Court in the accomplishment of its purpose. The procedure followed in the case of the *Alabama* arbitration, referred to as an instance where previous agreement on the applicable law was had, was long before the establishment of the Court. The Charter of the United Nations and the present statute of the Court are designed to enlist sufficient confidence in judicial determinations by the Court to enable it to become a useful organ in the settlement of legal disputes. To require now an agreement, in advance of submission to the Court, on the applicable principles of international law would take from the Court one of the principal purposes of its creation. The United States should not insist on such a requirement. Whatever risk to the United States is involved in entrusting cases to the Court for its determination of the applicable basis of decision under international law is outweighed by the tremendous advance which would be made by our acceptance of such risk in the development of judicial processes in the world order."

Other points referred to the committee by Mr. Dulles for clarification related to the problem of domestic jurisdiction, the possibility of resorting to other tribunals, and the desirability of establishing a time limit for any declaration the United States might make.

As has been indicated above, domestic jurisdiction is safeguarded by article 1 (1) of the Charter of the United Nations, limiting the purposes of the United Nations to international disputes or situations, by article 2 (7) excluding domestic jurisdiction. The committee accepted article 36 (6) of the statute as covering this point.

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

The right to submit disputes to other tribunals is reserved in Senate Resolution 196, page 2, line 8. This reservation is permitted by article 95 of the Charter.

With respect to a possible time limitation, Senate Resolution 196 provides for 5 years' duration plus time of 6 months following notice of termination of the declaration. A further discussion of these points will be found in the first part of section (G) above.

II. COMPULSORY JURISDICTION PRIOR TO THE UNITED NATIONS

The first important step in the direction of compulsory jurisdiction was taken by the Advisory Committee of Jurists appointed by the League of Nations in 1920 to prepare the Statute of the Permanent Court of International Justice. This Committee, which included among its members the Honorable Elihu Root, former member of the Senate Foreign Relations Committee, Secretary of War, and Secretary of State, recommended a draft providing for general compulsory jurisdiction over specified categories of legal disputes. It was proposed that this should be binding upon all parties to the statute. This provision proved unacceptable to some of the larger powers when it was presented to the League Council and Assembly, and there was substituted for it a provision very similar to article 36, paragraph 2, of the present statute, enabling such states as desired to do so to agree among themselves to accept the jurisdiction of the Court as to the enumerated categories of legal disputes.

Under this provision some 44 states, including 3 of the 5 states now permanent members of the Security Council (Great Britain, France, and China), at one time or another deposited declarations accepting this jurisdiction.

Proceedings were invoked in 11 cases under these declarations, 2 of which proceeded to final determination. One of these was the Eastern Greenland case, involving conflicting claims to territory by Norway and Denmark. Upon the rendering of the decision of the Court, Norway withdrew the decrees affecting the territory which had precipitated the dispute. The second case which went to decision involved a claim by The Netherlands against Belgium for alleged wrongful diversions of water from the Meuse River. The other nine cases were terminated on procedural points or were withdrawn.

I. COMPULSORY JURISDICTION UNDER THE UNITED NATIONS

The negotiations leading to the conclusion of the statute of the new International Court of Justice saw a renewal of the effort to obtain general compulsory jurisdiction. It is indicated in the Report of the 1945 Committee of Jurists, which met in Washington to formulate proposals relating to the judicial organ of the proposed world organization, that a majority of the Committee was in favor of compulsory jurisdiction. At San Francisco the discussion was renewed, and again a very substantial body of opinion was shown in favor of general compulsory jurisdiction. Due to the opposition of some states and the doubtful position of others, it was felt, however, that such a provision might endanger acceptance of the Charter, of which the statute was to be an integral part. This was the position of the United States delegation. It was, therefore, agreed to retain the optional provision in a form similar to that employed in the Statute of the Permanent Court of International Justice. This is the present article 36, paragraph 2 of the statute, pursuant to which the action envisioned by the present resolution would be taken.

The San Francisco Conference added an additional paragraph to article 36 of the statute, according to which declarations accepting the jurisdiction of the old Court, and remaining in force, are deemed to remain in force as among the parties to the present statute for such period as they still have to run. Nineteen declarations are currently in force under this provision.

A further indication of the sentiment prevailing among United Nations delegations at San Francisco was the adoption by the Conference of a recommendation to the members of the Organization —

> "that as soon as possible they make declarations recognizing the obligatory jurisdiction of the International Court of Justice according to the provisions of article 36 of the statute".

J. THE CONSTITUTIONAL ISSUES INVOLVED

During the discussion which took place in the subcommittee three important constitutional issues were raised. These issues were: (1) Can the proposed action be taken by the treaty-making process or is a joint resolution of the two Houses preferable; (2) is it proper procedure to obtain the advice and consent of the Senate prior to the deposit of the declaration by the President; and (3) would the deposit of the declaration by the President establish treaty relations between the United States and the United Nations or between the United States and the various members of the United Nations who have deposited similar declarations?

With respect to the first issue, a declaration of this kind is no doubt unique

so far as the United States is concerned. No one, however, can doubt the power of this Government to make such a declaration. The question is one of procedure. During the debates on the United Nations Charter the problem was discussed at some length on the floor of the Senate, and it was generally agreed that the President could not deposit the declaration without congressional action of some kind granting him the authority to do so. To clarify the issue Senator Vandenberg requested an opinion of Mr. Green Hackworth, then legal adviser of the Department of State. The pertinent paragraph of this opinion, which Senator Vandenberg read on the floor of the Senate on July 28, 1945, follows:

> "If the Executive should initiate action to accept compulsory jurisdiction of the Court under the optional clause contained in article 36 of the statute, such procedure as might be authorized by the Congress would be followed, and if no specific procedure were prescribed by statute, the proposal would be submitted to the Senate with request for its advice and consent to the filing of the necessary declaration with the Secretary General of the United Nations."

Since that time both the President and the Secretary of State have indicated that, in their opinion, either the procedure outlined in Senate Resolution 196 (calling for a two-thirds vote of the Senate) or that outlined in House Joint Resolution 291 (calling for a simple majority vote of the two Houses) would furnish a satisfactory legal basis for acceptance by the United States of the compulsory jurisdiction clause.

Inasmuch as the declaration would involve important new obligations for the United States, the committee was of the opinion that it should be approved by the treaty process, with two-thirds of the Senators present concurring. The force and effect of the declaration is that of a treaty, binding the United States with respect to those states which have or which may in the future deposit similar declarations. Moreover, under our constitutional system the peaceful settlement of disputes through arbitration or judicial settlement has always been considered a proper subject for the use of the treaty procedure. While the declaration can hardly be considered a treaty in the strict sense of that term, the nature of the obligations assumed by the contracting parties are such that no action less solemn or less formal than that required for treaties should be contemplated.

With respect to the second issue, the answer may be found in the Constitution itself. Article 2, section 2, provides that the President shall have "power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur". It is evident that the advice and consent of the Senate is equally effective whether given before, during, or after the conclusion of the treaty. In fact, President Washington approached the Senate for its advice and consent prior to the negotiation of treaties, and this practice was followed on occasion by other Presidents. While the practice of prior consultations with the Senate fell into disuse after 1816, a recent precedent may be found in the convention of 1927, extending the General Claims Commission, United States and Mexico, of 1923. The treaty was signed on August 16, 1927, pursuant to a Senate resolution of February 17, 1927. A similar example is the convention of 1929, again extending the life of the Commission. The convention was signed on August 17, 1929, pursuant to the Senate resolution of May 25, 1929.

With regard to the third issue, the proposed declaration would not constitute, in any sense, an agreement between the United States and the United Nations. It is rather a unilateral declaration having the force and effect of a treaty as between the United States and each of the other states which accept the same obligations. It is merely an extension of the general principle that any two states

may agree to submit cases to arbitration or judicial settlement. The so-called optional clause would permit a large number of states to take such action with respect to the four categories of legal cases enumerated.

As to whether the United States can enter into a treaty with the United Nations, the question is not here at issue. In any event, it is clear that the United States can conclude agreements with the United Nations, inasmuch as the United Nations Participation Act authorized the President to take such action in conformity with the pledge of the United States to make armed forces available to the Security Council under article 43 of the Charter. Moreover, there appears to be nothing in the Constitution which forbids the conclusion of a treaty between the United States and an international organization.

If it follows that the legal capacity of the United Nations is all that is required to enable the United States and the United Nations to enter into treaty relationships, article 104 of the Charter would seem to establish that authority. Article 104 reads:

> "The Organization shall enjoy in the territory of each of its members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes."

K. DESIRABILITY OF SPEEDY ACTION

Most of the witnesses appearing before the subcommittee expressed the hope that the Senate would act speedily in order to demonstrate once more the conviction of the people of the United States that peace will be possible only if law and justice are firmly embedded in the foundations of the United Nations. To be sure, the extension of the compulsory jurisdiction of the International Court of Justice will not usher the world automatically into an era of peace; it is only one important step in man's long and painful march toward a warless world. The acceptance by the United States of the compulsory jurisdiction clause, however, would constitute a step of great psychological and moral significance. It would help develop a spirit of trust and confidence, particularly on the part of the small states, toward the United States. And it would give impetus to the principle of the peaceful settlement of disputes as the judges of the new Court begin their work at the Peace Palace in The Hague.

On July 28, 1945, the Senate ratified the United Nations Charter by the overwhelming vote of 89 to 2. Since that time the people of the United States, the Senate, the House of Representatives, the President, and the Secretary of State have repeatedly asserted the conviction that the foreign policy of the United States must be centered about the activities and the organs of the United Nations. The International Court of Justice is one of the principal organs of the United Nations. It would seem entirely consistent with our often pronounced policy for the Senate to take speedy action in order to ensure our full cooperation with the work of the Court at the earliest practicable date.

The Senate Foreign Relations Committee, in its report to the Senate on the United Nations Charter, expressed the following view:

> "Unless we are prepared to take all steps which are necessary to effectuate our membership in the United Nations, we would be merely deceiving the hopes of the United States and of humanity in ratifying the Charter."

TAB V. REPORT OF SECRETARY OF STATE GEORGE P. SHULTZ TO THE CONGRESS ON UNITED STATES EFFORTS TO ACHIEVE PEACE IN CENTRAL AMERICA, 15 MARCH 1984

TRANSMITTAL LETTER[1]

On behalf of the President I am pleased to forward herewith a report on US efforts to achieve peace in Central America, as required by Section 109 *(f)* of the Intelligence Authorization Act of 1984.

That legislation makes clear, as the Administration has long maintained, that a major share of blame for the conflict in Central America rests with the Government of Nicaragua.

Noting that Nicaragua should be held accountable for its actions before the OAS [Organization of American States], the Intelligence Authorization Act recommended that the President seek the reconvening of the Seventeenth Meeting of Consultation of the OAS Foreign Ministers to evaluate the activities of the Government of Nicaragua. The Act further recommended that the President:

seek OAS actions which would ensure Nicaragua's compliance with its obligations;

encourage the OAS to seek resolution of the conflicts in Central America; and

support measures of the OAS and of the Contadora Group to end support for subversion in Central America.

The report which I now submit describes the efforts the United States has made, consistent with the intent and spirit of the Act, to achieve peace through dialogue and negotiations in Central America. The report points out that, despite the valuable contributions made by the OAS over the years in the cause of peace, efforts to engage the OAS constructively in the current conflict generally have not met with the support of the member States, especially the countries most directly involved. The Nicaraguan Government, in particular, has strongly opposed direct OAS involvement in Central American negotiations.

The efforts of the Contadora Group have provided an effective alternate forum for regional dialogue. This report describes the major developments of the past year within the Contadora framework and actions taken by the United States to support the Contadora objectives. We are mindful that much of Contadora's success stems from its regional nature and accordingly we have limited ourselves to a facilitating role.

The regional States, recognizing the legitimate US interests and ties to Central America, have welcomed our assistance in promoting dialogue both among the governments of the region — through the Contadora process — and within the war-torn countries of Central America, through contacts between the Salvadoran Peace Commission and the FDR/FMLN [Revolutionary Democratic Front/ Farabundo Marti Liberation Front] guerrilla front and promotion of dialogue between the Nicaraguan Government and its armed opposition.

The enclosed report describes these steps in detail. They include high-level public statements of United States backing for the Contadora process; meetings between US officials and Latin American counterparts on this issue; and a continuous process of consultations in the region, both by our resident ambassadors and by Richard B. Stone, the President's former Ambassador-at-Large for Central American negotiations.

[1] Text of identical letters from Secretary Shultz to Thomas P. O'Neill, Jr., Speaker of the House of Representatives, and George Bush, President of the Senate, March 15, 1984.

These efforts will continue. Ambassador Harry Shlaudeman, whom the President has nominated to replace Ambassador Stone as Ambassador-at-Large, will begin his consultations with regional leaders soon after his confirmation to emphasize the President's deep, personal commitment to diplomatic solutions in Central America.

Regional dialogue is essential to peace and stability in Central America. But it is only one aspect of our policy toward the area. We also support political reform, economic development, and the security of the region's democratic nations. By proposing significant increases in future US assistance to the region, as recommended by the National Bipartisan Commission on Central America, the President has stressed that the US has both vital interests in this region and the will and capability to work with the Central Americans for peaceful development and the resolution of disputes.

As noted above, a key to peace is Nicaragua's attitude toward its neighbors. We have attempted to bring economic and diplomatic pressure to bear on Nicaragua precisely to encourage the Nicaraguan Government to join with its neighbors in regional dialogue. At the same time, we have made clear through public statements, diplomatic channels to the Nicaraguan Government, and conversations with other governments, that we will overlook no genuine opportunity for peace and will respond in kind to positive, concrete steps from the Government of Nicaragua.

Thus far, that government has not taken actions that would reflect the commitments made to the OAS in 1979. In this regard, it is worth noting the majority finding of the Bipartisan Commission that ". . . we do not believe it would be wise to dismantle existing incentives and pressures on the Managua régime except in conjunction with demonstrable progress on the negotiating front".

Bipartisan congressional support for US policy in Central America remains an important goal of this Administration. I urge prompt congressional approval of the Central America Democracy, Peace and Development Initiative as an important first step toward meeting our objectives in the region. Along with early Senate confirmation of Ambassador Shlaudeman as Ambassador-at-Large, adequate, timely funding for the programs to advance our goals in the region, including those authorized by the Intelligence Authorization Act, is clearly in the national interest. Such actions would signal continued US willingness to support our major national objectives in Central America, including the critical search for a comprehensive, verifiable basis for ending the conflict in that region.

Sincerely yours,

(Signed) George P. SHULTZ.

UNITED STATES EFFORTS TO ACHIEVE PEACE IN CENTRAL AMERICA

Report[1] Submitted Pursuant to Section 109 *(f)* of the Intelligence Authorization Act for Fiscal Year 1984

March 15, 1984

The achievement of genuine, lasting peace in Central America is the paramount goal of US policy toward the region. It constitutes a central component of a series of closely interrelated US national objectives. These include: the strengthening of democratic institutions, economic development, and improved living

[1] Appendices are not included.

standards for the peoples of the region and security for the countries of Central America from external threats and foreign-sponsored subversion. Our interests in the area are critical, as spelled out clearly in the report of the National Bipartisan Commission on Central America, and the Administration has pursued an active search for means to end conflict and bring about a reconciliation within and among the Central American nations.

Section 109 of the Intelligence Authorization Act of 1984 requested that the President report to the Congress on US efforts to achieve peace in Central America. Under section 109, the President was encouraged to take several steps in pursuit of this goal, specifically:

To seek a prompt reconvening of the Seventeenth Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States for the purpose of reevaluation of the compliance by the Government of National Reconstruction of Nicaragua:

(1) with the commitments made by the leaders of that Government in July 1979 to the Organization of American States; and
(2) with the Charter of the Organization of American States.

To vigorously seek actions by the Organization of American States that would provide for a full range of effective measures by the member States to bring about compliance by the Government of National Reconstruction of Nicaragua with those obligations, including verifiable agreements to halt the transfer of military equipment and to cease furnishing of military support facilities to groups seeking the violent overthrow of governments of countries in Central America.

To use all diplomatic means at his disposal to encourage the Organization of American States to seek resolution of the conflicts in Central America based on the provisions of the Final Act of the San José Conference of October 1982, especially principles *(d)*, *(e)* and *(g)*, relating to nonintervention in the internal affairs of other countries, denying support for terrorist and subversive elements in other States, and international supervision of fully verifiable arrangements.

To support measures at the Organization of American States, as well as efforts of the Contadora Group, which seek to end support for terrorist, subversive, or other activities aimed at the violent overthrow of the governments of countries in Central America.

This report, submitted in response to section 109 *(f)* of the act, is intended to inform the Congress of the efforts taken by the countries of the area and by the United States to promote peace in Central America and to put these in the perspective of other major developments in the area.

Background on Regional Peace Efforts

A prominent conclusion of the House Permanent Select Committee on Intelligence in the report and legislation cited above was that there must occur marked changes in behavior by the Government of Nicaragua in order for peace to be possible in Central America. We concur with that report and with the report of May 13, 1983, and the staff report of the Subcommittee on Oversight and Evaluation of the same committee of September 22, 1982, that the Government of Nicaragua bears a heavy burden of responsibility for the tragic situation that confronts us in Central America today. Specifically, the May 1983 report said: "the Sandinistas have stepped up their support for insurgents in Honduras" and that Cuban and Nicaraguan aid for insurgents constitutes "a clear picture of active promotion 'for revolution without frontiers' throughout

Central America by Cuba and Nicaragua". The committee also reiterated its earlier finding that the guerrillas in El Salvador "are well-trained, well-equipped with modern weapons and supplies, and rely on the use of sites in Nicaragua for command and control and for logistical support. The intelligence supporting these judgments provided to the Committee is convincing."

This conclusion, which remains valid today, is also shared by Nicaragua's immediate neighbors, all of which perceive themselves directly threatened by the Sandinista régime and its Cuban sponsors.

Since Cuba began its most recent expansionist efforts in 1978, peace has been a much sought after, but elusive, goal in Central America. To achieve this goal, the United States has worked diligently in recent years to implement a four-part policy toward the region:

(1) Support for democracy and human freedom;
(2) Support for improved living conditions and economic development in the region;
(3) Support for legitimate self-defense capabilities against subversion and the threat of aggression; and
(4) Support for dialogue and reconciliation between and within the countries of the region.

The United States has given vigorous and sustained support to regional efforts to resolve disputes in Central America. The complex, multilateral nature of the region's political and security problems — cross-border support for guerrilla groups, competition in arms and military force levels, the presence of foreign military advisers, and the contagious appeal of political and economic justice — rules out piecemeal or bilateral solutions. What is clearly required is a comprehensive, verifiable regional settlement.

Based upon its charter, the OAS normally would be, as the House Intelligence Committee described it, "the proper and most effective means of dealing with threats to the peace of Central America, of providing for common action in the event of aggression, and of providing the mechanisms for peaceful resolution of disputes among the countries of Central America". In practice, however, efforts to engage the OAS constructively in the current conflicts have not been effective. Nicaragua, a principal protagonist in the area, is strongly opposed to OAS treatment of these issues, alleging that the institution is too supportive of US interests (although the OAS was instrumental in helping the Sandinistas to power in 1979). Accordingly, many other member States are reluctant to become involved in Central America, preferring to rely on the Contadora mechanism. Recognizing this fact, the OAS, at its 13th General Assembly in November 1983, applauded the Contadora peacemaking initiative and "urge[d] it to persevere in its efforts".

A number of States believe it would be helpful at some point to pressure the Sandinistas for changes by formally holding them to account in the OAS for their broken promises. However, sufficient backing does not exist today for effective OAS action.

Nicaragua was also uninterested in pursuing the potential for regional negotiation offered by the October 1982 San José Final Act. This was an effort of concerned hemisphere democracies — Honduras, El Salvador, Costa Rica, Belize, Jamaica, Colombia, the Dominican Republic, and the United States — to set forth for the first time the essential conditions for peace in Central America. Nicaragua refused to receive the Costa Rican Foreign Minister, whom the regional States had appointed as their representative for discussing the San José Final Act with Nicaragua.

In recognition of the failure of initial efforts to find a satisfactory vehicle in which to pursue a settlement, the key regional nations active in the search began in early 1983 to seek different forums and formulas that would address the obstacles to peace in the region, notably Nicaraguan intransigence. The result was Contadora.

The Contadora Process

By April 1983 — responding to external and internal pressures — Nicaragua agreed to join El Salvador, Honduras, Guatemala and Costa Rica in regional negotiations under the auspices of what became known as the "Contadora Four" (Mexico, Panama, Colombia, and Venezuela). Initially, much of the region's leadership was guarded in its opinion of the Contadora Group's prospects — recalling that Nicaragua had already backed away from the OAS and the San José Final Act. But pressures on Nicaragua to end the growing conflict and the skillful diplomatic efforts of the other regional countries allowed the new process to develop momentum.

The first operational issues treated by the Contadora Group occurred in spring 1983 resulting from Nicaraguan interference with Costa Rican use of navigation rights on the San Juan River, the capture by Nicaragua of five Costa Rican guardsmen, an incursion into Costa Rican territory by a Nicaraguan military unit, and the capture of a Costa Rican sport fishing vessel by Nicaraguan patrol boats in Costa Rican waters. On May 6, the Government of Costa Rica requested that an OAS peacekeeping force be sent to patrol the border. The Contadora Group, however, asked that the OAS defer action on the request until it had had an opportunity to consider how to deal with the border incidents. Costa Rica agreed to the deferral, and on May 13, the Contadora Four Foreign Ministers met in Panama and agreed to create a Border Observer Commission, composed of civil and military representatives from each of the Contadora Four countries, with responsibility for monitoring the border and making recommendations for preventing incursions and keeping peace. The border observer force began its work May 22, 1983, and, after consultations in both capitals and on-the-ground inspections, reported to the May 28-30 meeting of the Contadora Group.

By April 1983 Nicaragua had begun to participate in the Contadora process. However, it still sought to avoid the concept of regional negotiations, preferring to deal individually and bilaterally with its neighbors from what it saw as a position of strength. Only on July 19, 1983, did Nicaragua accept Contadora's multilateral framework for discussions. On that date, Nicaraguan head of State Daniel Ortega announced a six-point Sandinista Front diplomatic proposal. Although it recognized the need for an end to arms supplies to the Salvadoran guerrillas, it also called for an end to security assistance to the Salvadoran Government; while it called for an end to foreign military bases in the region, it studiously ignored the issues of foreign military advisers and Nicaragua's militarization. It said nothing about democratization, and had no provisions for effective verification. The United States urged Nicaragua to follow up its proposal in the Contadora Group.

On July 17, chiefs of State of the Contadora Four met for the first time and signed the Cancún Declaration on Peace in Central America, which proposed that the Central American States undertake a series of commitments for peace. The chiefs of State transmitted the text of their declaration to their counterparts in the United States and other countries "with interests in and ties to the region", including Cuba . . .

The President responded by letter to the four chiefs of State on July 21, reiterating US adherence to the four fundamental principles for peace in Central America. As the official Contadora chronology described it, his letter ". . . signalled that [the US] Government has consistently expressed strong support for the Contadora group and that the Declaration of Cancún, by articulating the critical issues which must be treated to reach an effective and enduring resolution of the Central America conflict, is an important contribution to advancing that process" . . .

The Contadora process continued intermittently through the summer of 1983, achieving an important milestone on September 10, 1983, when all participants, including Nicaragua, agreed on a 21-point Document of Objectives which addressed all of the major concerns of the countries of the region and of the United States. This document represented a major breakthrough in the Central American peace process in the form of a written commitment to an agreed set of objectives, which included political, economic, and security concerns.

In the security field, the Document of Objectives called, *inter alia*, for steps to end support for external subversion, reductions in the numbers of foreign military and security advisers, a halt to illegal arms trafficking, and controls on armaments and troop levels. The socio-economic objectives emphasized the need for greater regional cooperation and called for assistance to, and the voluntary repatriation of, Central American refugees. Democratization, national reconciliation, and respect for human rights are prime elements of the political objectives, which call for establishment throughout the region of democratic, representative, and pluralistic systems that ensure fair and regular elections. While there is need for specific and verifiable undertakings on a range of sensitive issues beyond an agreement of principles, this was a key first step for Contadora . . .

Although Nicaragua billed itself as the first State to sign the Document of Objectives, the Sandinistas were clearly uncomfortable with many of them, particularly those calling for respect for basic human rights and national reconciliation through democratic pluralism. Consequently, the Sandinistas, while unwilling to accept the opprobrium for scuttling Contadora, have repeatedly sought to undercut the process by pushing their own agenda elsewhere.

In particular, they have sought to involve the United Nations in Central American issues, anticipating a friendlier hearing in this forum than in Contadora or the OAS where the Sandinistas' record works against them. In October 1983, for example, Nicaragua introduced the Central American issue before the UN Security Council — where it was discussed inconclusively — breaking an explicit commitment to the Contadora Group that it would not do so. The other Central American nations, the Contadora Four, and the United States all prefer that the issues be treated in a local forum of those most directly concerned rather than entering the highly politicized arena of UN debate.

In late October, Nicaragua tried another tack, presenting, first to the Contadora Group (through Mexico) and then to the United States, four draft peace treaties. The treaties covered four areas: Honduran-Nicaraguan relations; US-Nicaraguan relations; relations between the five Central American countries; and the conflict in El Salvador. Although the treaties acknowledged the need for an end to support for all guerrilla groups and said that each State should not take steps to threaten or to attack the others, the treaties stepped back from the position adopted by the signatories to the Contadora Document of Objectives. For example, they ignored the Contadora objective of establishing democratic institutions, reflecting instead the Nicaraguan position that democratization is not susceptible to treatment in international agreements. They also sought to diminish legitimacy of the elected Government of El Salvador by treating it as simply one

of two belligerent parties to an internal conflict; disregarded the objective of restoring military balance among the Central American States; and made no serious proposals for verification and control. (Although Nicaraguan Foreign Minister Miguel D'Escoto affirmed that the treaties provided for "on-site verification", the treaties contained no such language.) The Nicaraguan draft treaties deferred treatment of foreign advisers and arms buildup and failed to address the Contadora objectives dealing with refugees. In short, they disregarded many of the 21 points and renewed the Sandinista push for bilateral and piecemeal agreements. Thus, while paying lipservice to the aims of Contadora, the Sandinistas were still far from eager participants and actively sought to change the direction of the process.

Direct United States Efforts

In his April 27, 1983, address to a joint session of Congress, the President announced his intention to nominate a personal representative to facilitate Central American negotiations — both talks between the States and dialogue within countries to heal fragmented societies. Although the United States and the regional governments agreed that direct US participation in Contadora would not be helpful, all parties recognize the strong and legitimate US interest in the process and the need for our support and involvement. On May 26, 1983, Senator Richard B. Stone was appointed by the President as Ambassador-at-Large for Central American negotiations to fill this role.

Beginning with his trip to the nine participating Contadora countries in early June 1983, Ambassador Stone's initial consultations focused on ways to promote multilateral negotiations within the Contadora process and on initiating contact between the Salvadoran Peace Commission, established in February 1983, and the FDR/FMLN guerrilla front. The succeeding months were characterized by a series of consultations among the Central Americans and the Contadora Four. Ambassador Stone soon became a principal supporting actor in these ongoing discussions, albeit not a direct participant in the Contadora process. During this period, he also began to set the stage for possible talks between the Government of Nicaragua and its armed opposition.

Progress came first on bringing the Salvadoran guerrillas to the table with the Peace Commission. On July 30, 1983, Ambassador Stone made preliminary contact with representatives of the FDR/FMLN guerrilla groups. In August, they met for the second time. These efforts were instrumental in arranging direct contacts between the Government of El Salvador and these guerrilla groups. On August 29, 1983, the Peace Commission of the Government of El Salvador and representatives of the FDR/FMLN guerrillas held their first direct meeting. That meeting represented an important step by the Salvadoran Government toward implementing the September 1983 Contadora Document of Objectives which called for "pluralism and its various manifestations, . . . full play for democratic institutions, . . . and the need for political accommodation in order to bring about dialogue and understanding". At the second meeting with the FDR/FMLN in Bogotá, September 21, the Peace Commission offered the opportunity to discuss electoral guarantees. The FDR/FMLN rejected the offer and insisted instead, as in the past, on formation of a new provisional government in which they would be included prior to a "national debate" and elections.

In their latest proposal, dated January 31, 1984, and publicized in a Mexico City news conference on February 9, 1984, the FDR/FMLN leaders again proposed the formation of a provisional government. The measures proposed by the guerrillas include abolishing the 1983 Constitution, legitimizing the power of

the insurgents, purging the army, dissolving the security forces, banning the ARENA [National Republican Alliance] party, and judging and punishing civil and military personnel involved in alleged political crimes. The formation of the provisional government would be brought about through a negotiation which would include mediators nominated by the various parties to the talks and international witnesses. The process would culminate with the organization of a single national army made up of the insurgents and the purged Government of El Salvador forces, both of which would retain their weapons . . .

While refusing to participate in elections, the guerrillas had said that the voting scheduled in El Salvador for March 25, 1984, "would not be the object of direct military attacks". Their recent actions and comments in their propaganda radio broadcasts make it clear, however, that they have not wavered in their violent opposition to the elections and that their destructive activities will continue before, during and after the balloting. On January 27, a guerrilla group assassinated Legislative Assembly Deputy Arnoldo Pohl of the ARENA party, calling the murder a "response" to the elections. On February 24, PAISA [Authentic Institutional Salvadoran Party] Deputy Roberto Ayala was murdered, bringing to four the number of assembly members killed by leftist violence. Although no group has yet claimed the Ayala murder, it is almost certain the work of the Clara Elizabeth Ramirez Front (CERF), a leftist urban terrorist group which took responsibility for the assassination of Pohl and another ARENA deputy.

In addition to these attacks on politicians, the guerrillas persist in other attacks against the population and the economic infrastructure aimed at creating conditions that would make it impossible to carry out elections. These have included the murder of an American woman, the destruction of an important bridge, the bombing of a civilian train, the burning of a coffee-processing plant that employed 400 people in an area that has suffered significant economic hardship at the hands of the FMLN, and two attacks on an agrarian reform co-op in which 9 innocent co-op members, including 3 children, were killed. Nevertheless, the Government of El Salvador has publicly reiterated, as recently as February 2, 1984, that the door remains open to dialogue. The United States, through Ambassador Stone, also confirmed that it remains ready to further sincere talks. This effort will be resumed after the March 1984 presidential elections, looking toward legislative and municipal voting in 1985.

Both the Nicaraguan Democratic Force (FDN) and the Revolutionary Democratic Alliance (ARDE) have made known their interest in returning to a Nicaragua in which the original promises of the Sandinista revolution were observed. ARDE had issued a declaration of necessary conditions for its return on December 16, 1982; its leader, Eden Pastora, stated that ARDE would begin military operations against the government on April 15, 1983, if the conditions were not met. The Government brushed aside the declaration, and ARDE commenced guerrilla operations in April 1983. The FDN, which had been conducting military operations against the government since early 1982, issued its conditions for an end to fighting on January 16, 1983. The Nicaraguan Government similarly ignored this declaration.

In late 1983, Ambassador Stone began consultations with the various Nicaraguan armed opposition groups to promote a process of national reconciliation that would complement his efforts to support the parallel efforts toward reconciliation in El Salvador. Although the various groups were initially divided on what terms were acceptable for an end to the fighting, they agreed to discuss a common platform and to meet with Ambassador Stone in Panama from November 30 to December 1, 1983. Following that meeting, the FDN, and

MISURA (the Miskito, Sumo, and Rama Indian opposition group), supported by ARDE, offered to hold a direct or indirect dialogue with the Nicaraguan Government on ending the fighting in return for full democratization.

ARDE and the FDN issued further detailed statements on this subject on February 18, 1984, and February 21, 1984, respectively. . . . A comparison of their positions with that of the leftist Salvadoran rebels clearly indicates that the Nicaraguan opposition is prepared to accept a democratic outcome, while the Salvadoran FMLN is insisting even more rigidly on a power-sharing formula, without early elections. Nevertheless, the Nicaraguan Government has spurned negotiations with its armed opponents, and the Nicaraguan Minister of Justice affirmed on March 9, 1984, that the government would try some of the armed opposition leaders *in absentia*.

These efforts to stimulate the overall process of dialogue within the region have offered both the FDR/FMLN and the Nicaraguan Government a peaceful and democratic way to end the fighting. Unfortunately, neither side has seized the opportunity. As noted, the FDR/FMLN rejects elections in favor of immediate power sharing. The Nicaraguan Government appears to have ruled out negotiations with the armed opposition and shows no signs of changing its political system in a way that would allow the opposition the right to compete for power. Since December 4, 1983, Nicaragua has offered safe conduct, under some conditions, to certain members of the armed opposition, but it has excluded participation in this program by the armed opposition leadership, thus denying them the ability to contest the election scheduled for November 4, 1984. Although the unarmed, legal opposition will be allowed to participate in those elections, there are numerous obstacles to a true contest for power, as will be seen below.

While Ambassador Stone was promoting internal dialogue, the United States also actively pursued a program of clarifying and building support for the multilateral Contadora process and its 21-point Document of Objectives. On October 7, Secretary of State Shultz met with Central American foreign ministers and UN ambassadors at the UN General Assembly. They discussed the need to move forward simultaneously on all points elaborated in the Document of Objectives and emphasized internal democracy in all Central American countries as an essential method to ensure enforcement of all commitments. The Secretary and the Foreign Ministers of Costa Rica, Honduras, El Salvador, and Guatemala followed up this discussion with a November 16 meeting on the margins of the OAS General Assembly and again in Caracas in January 1984 during the Venezuelan presidential inauguration.

During this same period, Assistant Secretary for Inter-American Affairs Langhorne Motley made two trips to Central America to discuss all aspects of the conflict. On his first trip in September, Ambassador Motley hoped to include Nicaragua, and the Nicaraguan Government initially welcomed his visit However, shortly before his scheduled arrival in Managua, the Sandinistas canceled his appointments with senior officials. Assistant Secretary Motley postponed his visit, and the Nicaraguan Government later invited him for talks on October 13. In his discussions in Managua, Motley encouraged the Nicaraguans to implement the original principles of their revolution through sincere negotiations based on the 21 points.

In the meantime, we were active in pursuing these issues both in this hemisphere and with our European allies, most of whom backed the concept of a regional peace effort, but lacked first-hand information on the dynamics of relations in the region and of Contadora. In a series of visits and consultations, Ambassador Stone and other senior officers explained to European and other hemispheric governments how the groundwork had been prepared for agreement in the Docu-

ment of Objectives and the reasons for strong US support. We confirmed the belief of many Europeans that only a comprehensive and completely verifiable treaty could bring about peace in Central America.

During November and December 1983, the Contadora Group considered several proposals for converting the Document of Objectives into such a viable and verifiable final treaty. The Contadora Four, Nicaragua, and the other Central American States all presented suggestions for the content of a final agreement. A Vice Ministerial Technical Commission attempted to reconcile the proposals, but it became clear that only the nine foreign ministers could decide on the next steps to take.

On December 22, after consulting with Ambassador Stone, the President once again publicly reaffirmed our strong support for the peace process undertaken by the Contadora Group. The President said, "I want to reiterate my support and commitment to [Ambassador Stone's] delicate but crucial mission".

Ambassador Stone traveled again to the region prior to the January 7-8 foreign ministers meeting, to suggest means of facilitating discussion of the various peace proposals and to reiterate our strong conviction that Contadora's momentum should be maintained. In his January meetings in Managua, Ambassador Stone emphasized to the Sandinistas that Nicaragua could respond to all US concerns by sincere negotiations to turn the Document of Objectives into a comprehensive, operational and verifiable agreement. He also urged the Sandinistas to open a dialogue with the armed opposition groups, noting those groups' offer to lay down their weapons in exchange for democratization.

In these and other meetings we have made clear to the Sandinistas our four policy objectives vis-à-vis Nicaragua:

(1) Implementation of the Sandinistas' democratic commitments to the OAS;
(2) Termination of Nicaragua's support for subversion in neighboring States;
(3) Removal of Soviet/Cuban military personnel and termination of their military and security involvement in Nicaragua; and
(4) The reduction of Nicaragua's recently expanded military apparatus to restore military equilibrium among the Central American States.

At the January 1984 foreign ministers' meeting, the Contadora Group reached a second important milestone in the peace negotiations, an agreement on procedures and guidelines for translating the 21 objectives into verifiable commitments. The Contadora Four and the Central Americans charged three working commissions to refine proposals on political, security and socioeconomic issues. They agreed that the commissions would formally constitute themselves by January 31, would prepare work plans by February 29, and would present recommendations to the foreign ministers by April 30. By establishing working groups and a series of benchmark dates, the Contadora Group made clear that progress in all three areas is essential if a formal peace agreement is to be attained. The group since has met the first two benchmark dates.

For its part, the United States sent a team of security specialists to Central America in February-March to provide expertise to friendly governments in this phase of the process and to underline our own strong commitment to its success. At the most recent meeting of the Contadora Group, held in Panama on February 29, the working commissions agreed on agendas to guide their work until April 30. They agreed to caucus again with the Vice Ministerial Technical Commission on April 2-4 and 24-28, before meeting with the foreign ministers.

In moving from the conceptual stage to actual drafting of language which could form the basis of a Central American peace treaty, the Contadora process has entered a labor-intensive phase. A verifiable agreement to implement the 21

points would address our concerns with Nicaraguan behavior, would meet the interests of the other Central American States, and would give Nicaragua a concrete framework for peaceful political and economic cooperation with its neighbors.

Contadora and the OAS

The United States and other members of the OAS have respected the efforts of the Contadora Group by supporting the peace process it has fostered. In an effort to move the process forward, we have not invited more direct OAS involvement at this time, although we have been careful to leave open that possibility. The OAS role in other regional disputes has been very constructive. Future OAS involvement could be appropriate and highly desirable, depending on the circumstances that arise. We could foresee circumstances where the organization could play a useful role in helping to further develop or implement the terms of an agreement in Central America. At this stage, however, countries inside and outside the region, as well as those involved in the Contadora process, would interpret a US effort to shift the negotiating process into the OAS as a vote of no confidence in Contadora that would greatly reduce its effectiveness. Others would see it more simply as a US effort to sabotage the peace process. Therefore, the United States so far has attempted to achieve its goals, including those mentioned in section 109 of the act, through support for the Contadora process rather than by more direct and immediate involvement of the OAS or attempting to revive the San José concept.

Summary of Diplomatic Efforts

As stated above, US support for the peace process has been manifested by various actions: high-level public statements of US backing for the Contadora process; meetings by the Secretary of State with Latin American leaders on this issue; a continuous process of consultations in the region; private demarches to governments in Latin America and Western Europe asking them to lend diplomatic assistance to these regional negotiations; dispatch of a security experts team; and the efforts of the President's special envoy who over the past 8 months has made 12 trips to Central and South America to carry out his mission of furthering regional dialogue.

Through all of these efforts, the Administration has acted in full accord with the spirit of section 109 of the act. The President has reiterated the continued, dedicated support of the United States for the negotiating process and the cause of peace in Central America. His prompt nomination of Ambassador Harry Shlaudeman to succeed Ambassador Stone is a sign of the Administration's intention to remain fully engaged in this process.

Other Dimensions of the United States Search for Peace

As implied in our four-point policy toward Central America, the United States has contributed to the search for peace by providing needed economic and security assistance to democratic countries in the area in order to reduce vulnerability to externally supported insurgencies and to provide needed confidence to facilitate participation in regional peace discussions. By proposing significant increases in future US assistance to the region, as recommended by the National Bipartisan Commission on Central America, the President has demon-

strated our vital interest in this area and strong commitment to peaceful development and the prompt resolution of regional disputes.

As outlined above, an essential factor behind the progress to date in Contadora has been Nicaragua's willingness — albeit grudging — to participate in the process. While the shift in Nicaragua's posture appears due in part to tactics and to a desire not to be blamed for failure, it is clear that on a more basic level, the Sandinistas have moved from a prior position of unyielding obstructionism to their present stance as a direct result of pressure from its neighbors, the United States, other governments and international bodies, and the armed Nicaraguan opposition. The United States has attempted to bring economic and diplomatic pressure to bear on Nicaragua precisely because it had become clear that without it Nicaragua would be unwilling to modify its aggressive policies and nondemocratic system of internal controls. The United States has not been alone in taking such steps: West European and Latin American countries have informed Nicaragua that additional economic assistance will depend upon improving its attitude toward political pluralism.

At the same time, the armed opposition in Nicaragua has stepped up its activities, demonstrating clearly to the world the extent to which the Nicaraguan Revolutionary Government's failure to respect its internal and external commitments has led to popular discontent. These actions have imposed a stiff price on the Sandinistas and offer an incentive to explore mutual accommodation.

Although our relations with the Nicaraguan Government are strained, the United States has kept open its direct channels of communication to the Sandinistas. Initial attempts to engage Nicaragua bilaterally were unsuccessful. Nicaragua did not respond in a positive, substantive manner to two US proposals made in August 1981 and in April 1982 to resolve tensions in the region. Through these proposals, the United States addressed Nicaragua's stated concerns about alleged US intervention and the activities of Nicaraguan exile groups in the United States, as well as Nicaragua's support for guerrilla groups, militarization, the presence of foreign military advisers, the need for democratization, the possible resumption of US economic assistance to Nicaragua, and international verification. More recently, in addition to Ambassador Stone's conversations with Nicaraguan leaders, including four meetings with junta coordinator Ortega, Assistant Secretary of State for Inter-American Affairs Ambassador Langhorne A. Motley visited Nicaragua in October 1983. Later that month, Ambassador Motley received Nicaraguan Foreign Minister Miguel D'Escoto.

In late November and early December of 1983, as the Nicaraguan armed opposition intensified its attacks, the Sandinistas took several actions that suggested they might be willing to address in a more serious manner the concerns of Nicaragua's neighbors and of the United States. These actions included announcing preparations for elections, now scheduled for November 1984, an amnesty program for certain Miskito Indians, a safe-conduct program for some members of the armed opposition, relaxation of press censorship, hints that certain Cuban civilian advisers were leaving Nicaragua (which conformed to previous rotation schedules), and assertions that some Salvadoran guerrilla leaders had been asked by the Nicaraguan Government to leave the country. The Nicaraguan Government also reiterated its support for an end to all foreign support for guerrilla groups in the region, a regional arms freeze followed by arms negotiations, and reciprocal bans on foreign military bases and foreign military advisers.

In December 1983, the Secretary of State noted the positive nature of these gestures, but stressed that it was important for the United States to see what reality lay behind the rhetoric. The United States made clear, through public

statements, diplomatic channels to the Nicaraguan Government, and in conversations with other governments, that it was willing to respond in kind to concrete and genuine steps from the Nicaraguan Government.

Thus far, however, that Government has not taken actions that would affect its basic policies of military expansion, dependence on a substantial number of foreign military and security personnel, and continued material support for guerrilla groups in the region. In fact, a detailed look at the hints of moderation proved discouraging. Although 2,000 Cuban teachers left Nicaragua on normal rotation, about 1,000 may return this month, leaving the Cuban civilian presence at 4,500 to 6,500 and the Cuban military and security presence at about 3,000 persons. In addition, the Soviet Union and other Soviet-bloc countries maintain about 100 military advisers. While some civilian leaders of the Salvadoran guerrillas left Nicaragua, the Salvadoran guerrilla military personnel remain. Nicaraguan support for the Salvadoran guerrilla command-and-control centers, training facilities, and arms shipments has continued. Likewise, Nicaragua continues to receive heavy arms from the Soviet bloc, building an arsenal that dismays and alarms its neighbors.

The Nicaraguan military and security forces number at least 75,000 (including regular troops, reserves and organized militia), compared with about 43,000 in Guatemala, 22,000 in Honduras, 40,000 in El Salvador, and about 8,000 civil and rural guards and police in Costa Rica. In September 1983, Nicaragua instituted universal draft registration, placing it in a position to maintain and to expand its military force.

The Nicaraguan Government's tentative moves on the domestic front have similarly lacked substance. The amnesty program for Miskitos was ill-received by the Miskito people, 1,200 of whom fled to Honduras in December 1983, claiming mistreatment and torture by Nicaraguan authorities. Likewise, the safe-conduct program for the armed opposition appears to have few if any takers among the insurgents, who remain highly skeptical of Sandinista intentions.

Although the Sandinistas finally announced a date for elections, a first step to potentially fulfilling its 1979 pledge to the OAS, the Nicaraguan opposition remains convinced that the Nicaraguan electoral system now being devised will not permit a true contest for power to occur. For example, there has been no resolution of the issues of meaningful access to government-controlled media, or political parties' ability to organize and conduct a political campaign free from intimidation and harassment, or Sandinista access to State resources. Sandinista leaders have said that armed opposition leaders will not be allowed to run for office, and it now appears possible that the state of emergency (in effect since March 1982) will not be lifted for a long enough period to allow the opposition a fair chance to compete. A possible clue as to the type of election planned by the Sandinistas came from a comment of Minister of Planning Henry Ruiz on February 3, 1984, when he said the Nicaraguan people had a right to "pluralism, but with a Sandinista hegemony".

Meanwhile, the Nicaraguan Government periodically offers vivid reminders that despite occasional relaxation, press censorship remains very much in effect. New crackdowns led the independent newspaper *La Prensa* not to publish on three occasions in January and February of 1984. Nor has the Government relaxed its control over news programing by the remaining independent radio stations.

Conclusions and Recommendations

In the foregoing history, two themes emerge — the persistent efforts to achieve peace by the United States and most regional governments, and the obstruction-

ist response to these efforts by the Government of Nicaragua. As noted, there recently has been some movement by the Sandinistas away from their basic intransigence, but we have not yet seen any real change in their goals of spreading revolution or consolidating their rule. Rather, it appears that as the Sandinistas have become increasingly isolated and pressured at home and abroad, they have responded by giving out public hints and signals, accompanied by some grudging tactical shifts. On the basis of performance to date, their aim seems to be to adopt *de minimis* changes sufficient only to reduce internal and external pressure to modify their basic system. In the meantime, they have taken no steps that are not instantly reversible, as they proved when they cracked down with new intensity on *La Prensa* in January and February 1984.

Consequently, while the United States and Nicaragua's neighbors believe strongly that pressure is working — and indeed, has proven to be the only effective inducement to the Sandinistas — we believe that it should only be reduced or removed when Nicaragua undertakes the real changes in its external and internal policies that will contribute to regional peace. It is worth noting that 10 of the 12 members of the National Bipartisan Commission on Central America, chaired by former Secretary of State Kissinger, concluded ". . . we do not believe it would be wise to dismantle existing incentives and pressures on the Managua régime except in conjunction with demonstrable progress on the negotiating front".

Bipartisan congressional support for US policy toward Central America remains an important goal of this Administration. There are several areas in which future congressional support is essential to meeting our objectives in this area.

First, prompt congressional approval of the Central America Democracy, Peace and Development Initiative is an important first step. This proposal is proof of US recognition of its vital interests in the area and the need to adopt innovative measures to deal with the complex situation. Prompt approval would signal continued bipartisan interest and support in the United States for peaceful, democratic change in the area. To not approve it or to dilute it significantly would be read throughout the area as a sign of US unwillingness to shoulder its responsibilities in Central America. That would only weaken our friends' confidence in their ability to help maintain security and democracy and promote economic growth under terms of any negotiated settlement — or even to negotiate successfully.

Second, early Senate confirmation of Ambassador Harry Shlaudeman as Special Presidential Envoy for Central American Negotiations is also highly desirable.

The third area is adequate and timely funding for programs authorized by the Intelligence Authorization Act. Representatives of the executive branch have discussed this with appropriate committees of the Senate and the House. We have found conclusively that the broad array of incentives, both positive and negative, that currently exists in the area plays a very important role in reassuring our allies and in convincing those who oppose them that the Unived States will stand by its friends and its commitments. To hamper US ability to maintain these incentives would delay rather than advance our efforts and those of other countries to achieve peace in Central America.

Exhibit IV

OTHER DOCUMENTS RELATING TO THE SITUATION IN CENTRAL AMERICA

TAB A: UNITED NATIONS GENERAL ASSEMBLY, PARTIAL PROVISIONAL VERBATIM RECORD OF MEETING OF 9 NOVEMBER 1983 (DOC. A/38/PV.49)

PROVISIONAL VERBATIM RECORD OF THE FORTY-NINTH MEETING

Held at Headquarters, New York, on Wednesday, 9 November 1983, at 10.30 a.m.

President: Mr. Illueca (Panama)

— The situation in Central America: threats to international peace and security and peace initiatives [142] *(continued)*

. . . . . .

[*Mr. Rosales Rivera, El Salvador* (interpretation from Spanish)] . . . I should like to refer to El Salvador's policy based on what we have stated in the past. We know that Central America is now a region in turmoil, and hence we have acted with the most scrupulous respect for the principle of non-intervention in the affairs of our neighbours. Nicaragua, on the contrary, has followed an interventionist policy, and the accumulation of evidence singles out the Government of Nicaragua as the primary factor in the instability of Central America.

Thus my country has been the victim, among other warlike and hostile acts, of a continuing traffic in weapons, with Nicaragua as the last link in the chain. From there orders are sent to armed groups of the extreme left operating in El Salvador. These groups have their headquarters in Nicaragua and logistic support is channelled through them. Here by way of illustration I should like to refer to two publications.

In *Time* magazine of 9 May 1983 under the heading "Like a Sears Roebuck Catalogue", we read:

(spoke in English)

> "According to a Sandinista military defector interviewed by *Time*, the building of a Nicaraguan arms link to El Salvador began almost as soon as the victorious revolutionaries took power in the Nicaraguan capital of Managua in July 1979. Says the defector: 'It took nine months to plan the operation. The arms that eventually went to El Salvador were first taken from our forces who fought against Nicaraguan dictator Anastasio Somoza Debayle. After the triumph, they were instructed to turn in their weapons, which were put in warehouses and held for shipment to El Salvador. Then it was discussed who would take them there. It was decided that the organization to run this was [Sandinista] military intelligence. . . ."

TAB B: NOTES FROM THE PERMANENT MISSION OF HONDURAS TO THE ORGANIZATION OF AMERICAN STATES (OAS DOCUMENTS)

NOTE FROM THE PERMANENT MISSION OF HONDURAS TRANSCRIBING THE TEXT OF THE NOTE FROM THE MINISTER OF FOREIGN AFFAIRS OF HONDURAS TO THE AMBASSADOR OF NICARAGUA TO THAT COUNTRY DATED JANUARY 5, 1983

No. 31/83/MPH/OEA/CP January 6, 1983.

Excellency:

I have the honor to address Your Excellency in order that the Member States of the Permanent Council may be informed of the text of the note from His Excellency the Minister of Foreign Affairs of Honduras, Dr. Edgardo Paz Barnica, to His Excellency the Ambassador of Nicaragua to Honduras, Dr. Guillermo Suárez Rivas, in which my Government once again makes a strong protest over the consecutive violations of Honduran sovereignty and of the most basic human rights of our citizens by part of the Sandinista Army of Nicaragua. The text of the note reads as follows:

> "Official Note No. 05-DA. Tegucigalpa, D.C., January 5, 1983. Excellency: I have the honor to address Your Excellency to inform you that on December 26 last, at 14:00 hours, seven members of the Sandinista Popular Army penetrated the village of Sabana Yasy, in the township of San Marcos de Colon, Department of Choluteca, and took Pedro Torres and Danilo Rueda Cruz, both Honduran citizens, back to Nicaragua against their will. Their fate is unknown. On behalf of my Government, I hereby make a strong formal protest over this new act by part of the armed forces of Nicaragua violating our national territory. It does not augur well for any improvement in relations between our two countries in the New Year. I ask Your Excellency to use your good offices to ensure that the persons kidnapped are treated humanely and returned to their homes. Accept, Excellency, the renewed assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto RAMOS BUSTOS,
Acting Representative.

NOTE FROM THE ACTING REPRESENTATIVE OF HONDURAS TRANSCRIBING THE TEXT OF THE NOTE SENT BY THE MINISTER OF FOREIGN AFFAIRS OF HIS COUNTRY TO THE AMBASSADOR OF NICARAGUA IN HONDURAS, DATED JANUARY 6, 1983

No. 32/83/MPH/OEA/CP January 10, 1983.

Excellency:

I have the honor of addressing Your Excellency to forward to you the text of the note sent by His Excellency Dr. Edgardo Paz Barnica, Minister of Foreign Affairs of my country, to the Ambassador of Nicaragua in Honduras, Dr. Guillermo Suárez Rivas, wherein my Government files yet another energetic protest to the hostile acts perpetrated in Honduran territory by members of the Sandinista Army. The text reads as follows:

"Official Note No. 11 DA, Tegucigalpa, D.C., 6 January 1983. His Excellency, Dr. Guillermo Suárez Rivas, Ambassador of Nicaragua, City. Excellency: I again address Your Excellency to bring to your attention two more border incidents provoked by elements of the Sandinista army. These incidents constitute an open violation of Honduran sovereignty. In effect, on December 26 last, in the Palo Verde sector, Concepcion de Maria Jurisdiction, Sandinista forces fired upon a patrol of the Honduran army, which was forced to return the fire. On January 4, at 10:00 a.m., in the place called El Anonal, also in the Jurisdiction of Concepcion de Maria, another Honduran patrol, belonging to the XI Infantry Batallion, was ambushed by armed Sandinistas who fired 82mm caliber mortars, machine guns and rifles. This unjustified attack was also repelled. On my Government's behalf, I must once again vehemently protest the Nicaraguan Government's hostile acts and reconfirm Honduras's commitment to peace, notwithstanding the exercise of the right of legitimate self defense whenever circumstances so warrant. Accept, Excellency, the renewed assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs."

In view of the foregoing, I would respectfully request that Your Excellency give instructions to have this official note circulated to all the Member States on the Permanent Council.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto RAMOS BUSTOS,
Acting Representative

NOTE FROM THE PERMANENT MISSION OF HONDURAS CONTAINING THE TEXT OF THE NOTE THAT COUNTRY'S MINISTER OF FOREIGN AFFAIRS SENT TO THE AMBASSADOR OF NICARAGUA IN HONDURAS ON JANUARY 19, 1983

No. 02/83/MPH/OEA/CP 20 January 1983.

Excellency:

I have the honor to inform Your Excellency of the note His Excellency, the Minister of Foreign Affairs, Dr. Edgardo Paz Barnica, has sent to the Ambassador

of Nicaragua in our country, Dr. Guillermo Suárez Rivas, which reads as follows:

"Communication No. 33 DA. Tegucigalpa, D.C., 19 January 1983. His Excellency, Dr. Guillermo Suárez Rivas, Ambassador of Nicaragua. Excellency: I have the honor to address Your Excellency to express deep regrets concerning the continued hostile acts by the Government of Nicaragua against my country, Honduras. In fact, on the thirteenth of this month at 9:15 a.m., a five-man patrol of the Eleventh Infantry Batallion of our armed forces was attacked by members of the Sandinista army in the Palo Verde sector, Concepcion de Maria Jurisdiction. Despite the repeated manifestations by the Nicaraguan authorities as to their peaceful aims, contingents of the Sandinista people's army continuously harass members of our armed forces and alarm the Honduran citizens residing in the border area. These events have sometimes led to regrettable losses of our citizens' lives, and naturally they do not help maintain the harmonious relations that should exist between Honduras and Nicaragua. Once again, on behalf of my Government, I lodge a strong protest for the hostile acts by the Sandinista People's Army that deplorably continue to be repeated. Accept, Excellency, the renewed assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs."

I wish to ask Your Excellency to kindly convey this note to the Member States of the Permanent Council.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto Ramos Bustos,
Acting Representative.

NOTE FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE SENT BY THE MINISTER OF FOREIGN AFFAIRS OF HIS COUNTRY TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED MARCH 24, 1983

No. 11/83/MPH/OEA/CP March 25, 1983.

Excellency:

I have the honor to address Your Excellency to make known to you the text of the note sent by His Excellency, the Minister of Foreign Affairs of Honduras, Dr. Edgardo Paz Barnica, to Her Excellency, the Minister of Foreign Affairs of Nicaragua, Mrs. Nora Astorga, which reads verbatim as follows:

"Note No. 208-DSM. Tegucigalpa, D.C., March 24, 1983. Her Excellency, Mrs. Nora Astorga, Minister of Foreign Affairs, Managua, Nicaragua. Madam Minister: I have the honor to address Your Excellency to advise you that last Sunday, March 20, 1983, patrols of the Sandinista People's Army seized two fishing boats, in territorial waters of Honduras, off Punta Condega, and took the vessels and their crew members Julio Jimenez, Marco Arriola Santos, Pedro Antonio Sandoval, and Andres Cruz, to Nicaragua, whose whereabouts are unknown at this time. My Government vigorously protests this new act of provocation by Nicaraguan authorities, and requests

your excellent good offices to ensure the return of the captured persons and the boats unlawfully seized. Under present circumstances, this type of hostile action seems to be addressed to provoking a violent reaction by the Honduran Government in an attempt to involve it in the internal conflict that Nicaragua is suffering. Once again, I express to Your Excellency our firm determination to remain absolutely neutral in regard to that conflict, and to act only in defense of our national sovereignty and territorial integrity. Accept, Excellency, the renewed assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs of Honduras."

NOTE NO. 15/83 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, CONTAINING THE TEXT OF THE NOTE SENT BY HIS COUNTRY'S MINISTER OF FOREIGN AFFAIRS TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED APRIL 15, 1983

No. 15/83/MPH/OEA/CP April 15, 1983.

Excellency:

I have the honor of conveying to Your Excellency and, through you, to the Member States of the Permanent Council, the text of the note sent by His Excellency, the Minister of Foreign Affairs of Honduras, Dr. Edgardo Paz Barnica, to His Excellency, the Minister of Nicaragua, which reads as follows:

"Communication No. 228-DSM.-Tegucigalpa, D.C. 15 April 1983. Excellency: I have the honor to address Your Excellency to inform you that yesterday, 14 April, at 1:00 p.m., two Nicaraguan patrol boats attacked with naval guns two Honduran fishing boats which were located at 15.8° north latitude and 82.31° west longitude, in the vicinity of Bobel and Media Luna Keys, in Honduran jurisdictional waters. The boat *Noe-King* was seriously damaged by this unjustified attack, and the *Dayana-6* was taken to Nicaraguan territory, the fate of its crew unknown. My Government strongly protests this new act of aggression by the Government of Nicaragua against unarmed, civilian-operated ships. I wish to remind Your Excellency that the main purpose of the meeting held last year by the commanding officers of the naval forces of Honduras and Nicaragua was to seek suitable measures to avoid incidents of this kind. The delegation of Honduras made specific proposals to such effect, while the Government of Nicaragua never expressed itself thereon nor has it fostered holding of the subsequent meeting that was agreed upon, thus showing its reluctance to reach peaceful and civilized solutions to the problems faced by the Central American area in general and our two countries in particular. Accept, Excellency, the renewed assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto MARTÍNEZ ORDOÑEZ,
Ambassador.

NOTE NO. 16/83 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE THAT THE MINISTER OF FOREIGN AFFAIRS OF HIS COUNTRY ADDRESSED TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED APRIL 15, 1983

No. 16/83/MPH/OEA/CP April 18, 1983.

Excellency:

I have the honor to address Your Excellency to make known to you, and through your kindness to the representatives of the Member States on the Permanent Council, the text of a note addressed by His Excellency Dr. Edgardo Paz Barnica, Minister of Foreign Affairs of Honduras, to the Minister of Foreign Affairs of Nicaragua, which reads verbatim as follows:

"Official Note No. 146 DA. Tegucigalpa, D.C. April 15, 1983. Excellency: I have the honor to address Your Excellency to protest vigorously over the statements made by Commander Humberto Ortega Saavedra, Minister of Defense of Nicaragua, that appeared in the *New York Times* of April 10, in an article signed by Stephen Kinzer. That Commander, in a hostile and provocative attitude, has said that the Sandinista Government is disposed to favor actions of Honduran revolutionaries against the Constitutional Government of my country. Among other things, he also says that 'Honduras is going to see the cost of confronting an armed movement like the one we are facing' and that the Sandinista Government had received 'dozens and even hundreds of offers of military support from pro-Sandinist groups in Latin America and Europe'. Nicaragua's response to those offers, he said, 'will be made known at the proper time'. These statements constitute a clear threat by the Government of Nicaragua, in open violation of the Charter of the United Nations and an admission that that Government usurps the right to intervene in the affairs of other countries, making use of the most cowardly means of struggle, terrorism. In this regard, it must have been highly satisfactory for Your Excellency to ascertain that one of the subversive movements has already decided to give effect to its offer of solidarity with the Sandinista Government, offering it as a worthy reception in Bogotá a terrorist act against the Embassy of Honduras in Colombia, as a result of which the Secretary of the Mission lies between life and death. Moreover, I consider that the statements of the war-hardened Commander and its most immediate consequences constitute a real threat to the peace negotiations undertaken by the distinguished foreign ministers of Colombia, Mexico, Panama and Venezuela. It is not by criminal acts such as those that the Minister of Defense of Nicaragua, directly or indirectly, has already begun to commit, that we will see peace and security return to Central America. On the contrary, this manner of acting shows the interest the Nicaraguan Government has in internationalizing the internal conflict it has with its own people of Nicaragua. Once more I declare the pacifist calling of my Government, its constant willingness to settle international disputes by the civilized means established by law, as well as its firm decision to defend the national sovereignty and territorial integrity, in accordance with the provisions of the United Nations Charter. Accept, Excellency, the renewed assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs."

Accept, Excellency, the assurances of my highest consideration.

(Signed) Roberto MARTÍNEZ ORDOÑEZ,
Ambassador.

NOTE NO. 17/83 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE SENT BY THE MINISTER OF FOREIGN AFFAIRS OF HIS COUNTRY TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED APRIL 19, 1983

No. 17/83/MPH/OEA/CP April 20, 1983.

Excellency:

I have the honor to address Your Excellency to make known to you, and through your kindness, to the representatives of the Member States on the Permanent Council, the text of a note sent by His Excellency Dr. Edgardo Paz Barnica, Minister of Foreign Affairs of Honduras, to His Excellency the Minister of Foreign Affairs of Nicaragua, which reads verbatim as follows:

> "Official Note No. 243 DSM. Tegucigalpa, D.C. April 19, 1983. Excellency: I have the honor to address Your Excellency to inform you that today at eleven hours, while a fishing boat was navigating in territorial waters of Honduras, it was pursued by a patrol boat of the Sandinista People's Army and insistently harassed. In view of this circumstance, two patrol boats of the Government of Honduras went in aid of the aforementioned fishing boat, and following this four more patrol boats of the army of that country arrived, and an armed confrontation occurred in Honduran territorial waters, at longitude 82.40°" and latitude 15.10°" north in the Atlantic Ocean. Later, the two Honduran patrol boats returned to their bases. In view of acts such as those that I recount to Your Excellency, which can be seen as an act of hostility and aggression against the territorial integrity of Honduras, my Government, by this means, presents its most vigorous protest to the distinguished Government of Nicaragua and sees itself obliged to reiterate once more that if acts such as those cited continue to occur, they will continue to be repelled by the army of Honduras in fulfillment of its constitutional functions of defending the national sovereignty and making use of the right of self-defense established in multilateral legal instruments. I wish to remind Your Excellency once more of the continuing refusal of the Government of Nicaragua to attend a meeting of naval chiefs planned since several months ago, aimed at seeking machinery for preventing acts such as those that motivate this note of protest. Accept, Excellency, the assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto MARTÍNEZ ORDOÑEZ,
Ambassador.

NOTE NO. 25/83 FROM THE PERMANENT MISSION OF HONDURAS TRANSCRIBING THE TEXT OF THE NOTE DATED 29 JUNE 1983 THE MINISTER OF FOREIGN AFFAIRS OF HONDURAS SENT TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA

No. 25/83/MPH/OEA/CP 30 June 1983.

Excellency:

I have the honor to convey to Your Excellency, and through you to the Member States of the Permanent Council, the text of the note sent by His Excellency, the Acting Minister of Foreign Affairs of Honduras, Mr. Arnulfo Pineda López, to His Excellency, the Minister of Foreign Affairs of Nicaragua, which reads as follows:

"Tegucigalpa, D.C. 29 June 1983. His Excellency, Mr. Miguel D'Escoto Brockmann, Minister of Foreign Affairs, Managua, Nicaragua. Excellency: I am addressing Your Excellency to protest strongly a new act of aggression against my country by the People's Sandinista Army, which took place on the nineteenth of this month. It consisted of the shelling of the Honduran community of Cifuentes, causing the destruction of the homes of Mr. Cecilio Flores and Mrs. Eusebia Chacon. Despite the openly hostile nature of the acts like the one described, the Honduran army refrained from answering the fire, in one further effort to avoid an armed confrontation between our two countries, which the Nicaraguan Government seems determined to unleash, with the ominous outcome that can be easily predicted. Accept, Excellency, the renewed assurances of my highest consideration. Arnulfo Pineda López, Acting Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto RAMOS BUSTOS,
Chargé d'Affaires a.i.

NOTE NO. 26/83 FROM THE PERMANENT MISSION OF HONDURAS TRANSCRIBING THE TEXT OF THE NOTE DATED JUNE 30, 1983, SENT BY THE MINISTER OF FOREIGN AFFAIRS OF HONDURAS TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA

No. 26/83/MPH/OEA/CP July 1, 1983.

Excellency:

I have the honor to convey to you, and through your kindness, to the representatives of the other Member States on the Permanent Council, the text of the note sent by His Excellency Arnulfo Pineda López, Minister of Foreign Affairs of Honduras, to his Excellency the Minister of Foreign Affairs of Nicaragua. That note reads verbatim as follows:

"Note No. 311 DA. Tegucigalpa, D.C. June 30, 1983. His Excellency Miguel d'Escoto Brockmann, Minister of Foreign Affairs, Managua, Nicaragua. Excellency: I have the honor to address you in regard to Notes Nos. 331-DSM and 306-DA. Dated June 21 and 24 from this Ministry. The respective notes were in reference to the deaths of United States journalists Dial Torgerson and Richard Ernest Cross and to injuries suffered by a

Honduran citizen, Francisco Edas Rodriguez, and to the blowing up of a truck. Both incidents occurred on the road between Cifuentes and Trojes. The Government of Honduras again wishes to register its most energetic protest as contained in those Notes and after receiving the report of a commission of military specialists appointed to conduct a thorough investigation of the incidents is fulfilling its obligation to clarify that the cause of the criminal assaults was not the firing of antitank grenades from Nicaragua as was initially believed. It has been confirmed that they were caused by the explosion of antitank and antipersonnel mines placed by the Sandinista forces on the Honduran highway with the perverse intent to cause this type of indiscriminate bloody act in open violation of the territorial integrity of Honduras. Accept, Excellency, the renewed assurances of my highest consideration."

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto RAMOS BUSTOS,
Chargé d'Affaires a.i.

NOTE NO. 27/83 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE SENT BY THE MINISTER OF FOREIGN AFFAIRS OF HIS COUNTRY TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED JULY 1, 1983

No. 27/83/MPH/OEA/CP July 5, 1983.

Excellency:

I have the honor to convey to you, and through your kindness to the representatives of the other Member States on the Permanent Council, the text of a note sent by His Excellency Arnulfo Pineda López, Minister of Foreign Affairs of Honduras to His Excellency the Minister of Foreign Affairs of Nicaragua. That note reads verbatim as follows:

"Note No. 312 D.A. Tegucigalpa, D.C. July 1, 1983. His Excellency Miguel d'Escoto Brockmann, Minister of Foreign Affairs of Managua, Nicaragua. Excellency: I am addressing you to protest once again the repeated acts of harassment by the Sandinista People's Army against Honduran territory. Yesterday, June 30, at approximately 15:30 hours, Sandinista troops fired on our territory using 50-caliber machine guns in the Cifuentes sector. As a result of this new act of aggression a Honduran soldier, Luis Antonio Artica, was wounded on that same day at 24:00 hours, midnight, the Sandinista troops continued their constant harassment by firing on the same sector with 81 millimeter mortars. Today, at approximately 11:00 a.m. the Sandinista People's Army opened fire on Honduran territory in the sector between El Zanjon Hondo and Las Canitas. This time the Sandinista troops used small caliber weapons and heavy artillery. The actions described above are in addition to the interminable list of border incidents carried out by the Sandinista army in open provocation of Honduras, for the purpose of creating a belligerent spirit in our country, which would lead to an international escalation of the serious internal conflict Nicaragua is experiencing. The armed forces of Honduras have

maintained a serene and prudent attitude, but I wish to inform Your Excellency and through you your Government, that those forces will energetically repel any attempt by the Sandinista People's Army to enter our territory. My Government holds the Government of Nicaragua responsible for the serious consequences that could be derived from the continual harassment and provocations by the Sandinista People's Army and it energetically protests once again over its constant aggressive and warlike actions. The Government of Nicaragua seeks through those actions to maintain and deepen the climate of tension in the Central American area, for the purpose of weakening the possibilities of the regional negotiation under way, sponsored by the Contadora Group, thus contradicting the statements of its leaders who falsely maintain that they desire peace through dialogue and negotiation, statements that appear more to be intended to cover the preparation of an aggression of larger proportions against Honduras. The Government of Honduras again demands of the Government of Nicaragua that it cease its actions of harassment and provocation against Honduras and urges it to commit itself seriously and with responsibility in the process of regional negotiation under way, which for now is the only possible path for finding peace and security in Central America. Accept, Excellency, the renewed assurances of my highest consideration. Arnulfo Pineda López, Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto MARTÍNEZ ORDOÑEZ,
Ambassador.

NOTE NO. 29/83 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE SENT BY THE ACTING MINISTER OF FOREIGN AFFAIRS OF HIS COUNTRY TO THE ACTING MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, DATED JULY 8, 1983

No. 29/83/MPH/OEA/CP July 11, 1983.

Excellency:

I have the honor to address Your Excellency to make known to you, and through your kindness to the representatives of the other Member States on the Permanent Council, the text of a note sent by His Excellency Arnulfo Pineda López, Acting Minister of Foreign Affairs of Honduras, to Her Excellency the Acting Minister of Foreign Affairs of Nicaragua, which reads verbatim as follows:

"Official Note No. 322 D.A. Tegucigalpa, D.C., July 8, 1983. Excellency: I am addressing Your Excellency to inform you of the following facts: *(a)* On Sunday, July 3, at 16:00 hours, the Honduran soldier Roberto Meza Ramos, when returning from his guard duty near the La Vigia Ravine, along the Las Trojes-Cifuentes highway, stepped on a mine, which blew off his right foot. *(b)* On Tuesday July 5, at 10:00 hours, forces of the Sandinista People's Army opened fire on Honduran positions located in the same sector, trying to protect a patrol that was infiltrating near Cifuentes, possibly to continue mining the highway. *(c)* That same day, first at 20:40 hours and again at 22:15, the Sandinista forces harassed the Honduran positions

with group fire and 81mm. mortars. *(d)* Finally, at 9:45 hours on July 6, the Nicaraguan forces renewed the harassment with heavy weapons, causing a slight wound in the face of a Honduran soldier by fragments of rock impelled by the expansion wave of one of the projectiles. Once more, my Government is obliged energetically to protest these hostile acts of the Government of Nicaragua, which violate the sovereignty and the territorial integrity of Honduras, despite the fact that it is aware that, in accordance with your Note No. 103 of July 5, to detract from the serious charges made, Your Excellency will reply that they should be attributed to 'Pro-Somoza or other mercenaries'. I consider that that is an easy way to unload responsibilities and to try to give some credibility to the latest propaganda maneuver of the Government of Nicaragua, in the sense that it is groups of anti-Sandinistas and the Honduran army itself that attack the Honduran population and territory for the sole purpose of blaming the Sandinista forces. I also believe, Madam Minister, that not even the great publicity resources the Nicaraguan Government has available will be sufficient to sustain such an unlikely plan of action. Accept, Excellency, the renewed assurances of my highest consideration. Arnulfo Pineda López, Acting Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto MARTÍNEZ ORDOÑEZ,
Ambassador.

TAB C: NOTE FROM THE PERMANENT MISSION OF COSTA RICA TO THE ORGANIZATION OF AMERICAN STATES (OAS DOCUMENT)

NOTE FROM THE PERMANENT MISSION OF COSTA RICA, TRANSMITTING THE TEXT OF THE NOTE SENT BY THE MINISTER OF FOREIGN AFFAIRS AND WORSHIP OF COSTA RICA TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA, ON EVENTS THAT OCCURRED ON FEBRUARY 23, 1984

March 1, 1984.

Excellency:

I have the honor to transmit to Your Excellency, for your information and the appropriate purposes, a copy of the note dated February 29, 1984, addressed to the Secretary General of the Organization by the Acting Representative of Costa Rica, enclosing the text of the note sent by the Minister of Foreign Affairs and Worship of Costa Rica to the Minister of Foreign Affairs of Nicaragua, on events that occurred on February 23.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Val T. MCCOMIE,
Assistant Secretary General,
Officer in charge of the General Secretariat.

OEA-No. 107,
February 29, 1984.

Excellency:

I have the honor to address Your Excellency to send you herewith the text of a note addressed by the Minister of Foreign Affairs and Worship of Costa Rica, Dr. Carlos José Gutiérrez, to the Minister of Foreign Affairs of Nicaragua, Mr. Miguel d'Escoto Brockmann.

That note describes the serious events that occurred on February 23, 1984, when members of the Rural Guard of Costa Rica, in Conventillos, were attacked with heavy weapons from Nicaraguan territory by members of the Sandinista People's Army, while the former were making an investigation of cattle smuggling in Costa Rican territory.

I shall appreciate it if Your Excellency will make these events known to the Ambassadors, Permanent Representatives of the Member States, and the observers to the organization of American States.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Luis E. GUARDIA,
Acting Representative.

February 28, 1984.

Knowing that Your Excellency is meeting with the other Ministers of Foreign Affairs of the Contadora Group, it seems to me very important that you gentlemen study the danger to peace in Central America represented by acts of aggression such as that I referred to in my protest note.

The Government of Costa Rica maintains its firm will to cooperate with the effort of pacification you gentlemen are making. But in no way can it permit or ignore acts of open aggression against its nationals, members of its public force, or its territory.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Carlos JOSÉ GUTIÉRREZ,
Minister of Foreign Affairs and Worship.

San José, February 28, 1984.

Excellency:

I must address Your Excellency to inform you of the serious events that occurred last February 23, between 11:00 a.m. and 12:00 noon, when members of the Sandinista People's Army attacked Costa Rican territory in the border zone of Conventillos with 50-caliber machine-gun fire and 82-millimeter mortar fire, seriously endangering the lives of members of the Costa Rican Rural Guard, who were carrying on patrol work.

For the purpose of avoiding a confrontation, the Costa Rican patrol chose to withdraw. The intense fire continued for more than 45 minutes and left as evidence numerous impacts of mortar shells, some of them located more than

1,000 meters from the border line, within the national territory. In addition, as a result of this attack, more than 45 hectares of pastures of the Conventillos Farm were burned.

I must emphasize to Your Excellency that the border line, in the zone where the attack occurred, is duly marked and that the Costa Rican patrol was doing regular lookout work in full daylight, to prevent smuggling.

The distinguished Government of Nicaragua cannot expect that, in the face of the incomprehensible events that have occurred, the Government of Costa Rica will maintain the patient and conciliatory attitude that it has maintained until now as a contribution to the pacification of the region. These events constitute a flagrant violation of the national territory, for which reason I must present a most vigorous protest to Your Excellency's distinguished Government, and state to you that they place in doubt the sincerity of the intentions of the Government of Nicaragua to reduce tension in the area.

I likewise believe it appropriate to inform Your Excellency that, as a consequence of the events mentioned, the Government of Costa Rica has decided to postpone the meeting of the Mixed Committee that was going to be held in the beginning of the coming month of March, as well as to recall the Ambassador of Costa Rica to Nicaragua for consultation.

Finally, I must make Your Excellency see that, firm as the will of the Government of Costa Rica to support all efforts for bringing peace to Central America is, it considers that an essential condition of that attitude is absolute respect for the territorial integrity of the country, to defend which it will resort to such means as it deems necessary.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Carlos José GUTIÉRREZ,
Minister of Foreign Affairs and Worship.

TAB D : NEWS ACCOUNTS FROM COSTA RICA

COSTA RICA : MORE ON MONGE CHARGES AGAINST NICARAGUA

(Excerpts) San José, 1 Aug (ACAN-EFE) — Costa Rican President Luis Alberto Monge Alvarez today levied several charges against the Nicaraguan Government, accusing it of failing to punish three diplomats involved in terrorist activities and of provocations on the country's northern border (passage omitted).

In a speech broadcast to the nation over radio and television, President Monge reiterated Costa Rica's neutrality, while warning that his Government will turn to the Inter-American system in the event that war breaks out between Central American nations.

Monge added that Costa Rica's neutrality in a (potential — fris) Central American theater of war can be strengthened only by mutual respect among neighboring countries.

After noting the efforts that his Government is making to overcome the economic crisis with which the nation is afflicted, Monge Alvarez denounced the Costa Rican left wing which, at the same time that the diplomatic incident was

taking place with the Nicaraguans, has stepped up acts of social agitation in an effort to destabilize the democratic system.

On the case of the Nicaraguan diplomats, Monge said: "I wish to alert my compatriots to the gravity of this incident, because the Nicaraguan Government has failed to show due respect to the Costa Rican people and Government." (Passage omitted.)

After firmly stating that his Government will not fall "into the provocatory trap", Monge said that his country will avoid confrontations, "but will not evade, in any way and under any circumstances, the duty to defend our territorial integrity and the right to live in peace without foreign interference of any kind".

Finally, the Costa Rican President mentioned the efforts that are being made to maintain neutrality and mutual respect, "which influenced the decision to revoke Eden Pastora's visa".

Residents of Cristo Rey de Los Chiles charged yesterday in Ciudad Quesada that a patrol of Sandinist soldiers raided their village between Saturday and Sunday.

Col. Rolando Francis, rural police chief, said yesterday afternoon that the Corps would investigate the case.

Public Security Minister Harry Wohlstein did not know the details of the incident and asked Colonel Francis to investigate the facts.

According to the residents, eight heavily armed Sandinist soldiers carrying modern radio communications equipment marched into the town at 1600 on Saturday. The town is located 15 km inside Costa Rican territory.

The invaders said that they were searching for deserters from the Sandinist People's Army (EPS) and for anti-Sandinists. Because of their action, the members of some 20 area families decided to flee to the mountains. They returned to their homes the next day, after the patrol left the town.

The Sandinists left early Sunday morning and took two Nicaraguans with them as prisoners.

The townspeople were so alarmed that even yesterday they refused to sleep in their homes, for fear that the Sandinists might return.

It was also reported that on Saturday evening, one resident went to the rural Police Post at Los Chiles to report what had happened, but no attempt was made to verify the report because of a lack of personnel.

Colonel Francis acknowledged this and said that they were getting ready to leave early today in order to investigate.

The report was disclosed hours after Col. Rafael Artavia Jaramillo reported in San José, after touring towns near Santa Cecilia, that the entire border region was calm.

He said that during the past week he and a contingent of Civil Guards had toured the towns of Santa Cecilia, Armenia, Inocentes, Los Angeles, San Antonio, San Cristobal, Brasilia, El Chingo, La Virgen and Verdun, and that the local townspeople had told him that everything was normal.

According to Artavia, the townspeople are very calm. He did not observe great Sandinist military activity in the area, although reports from Los Chiles and Upala claim that vigilance has been increased.

TAB E: FILE OF NEWS ACCOUNTS ON CENTRAL AMERICAN ISSUES

FILE OF QUOTATIONS ON CENTRAL AMERICAN ISSUES

(From *La Nacion internacional*, San José, Costa Rica, Central American Edition of September 22-28, 1983 — original in Spanish)

"Without Support"

Costa Rica — The *Archbishop of San Salvador, Msgr. Arturo Rivera y Damas* said *September 15* in San José that the Salvadoran people do not support the guerrillas.

The prelate participated in the first Interdisciplinary Course on Human Rights, held in San José.

He declared that, if the Salvadoran guerrillas had popular support at this time, they would already have won.

He explained that the area of operations of these forces is located in places that are 70 per cent depopulated, and although their attacks are directed at important communities, they do not remain there, but retreat instead.

Msgr. Rivera y Damas affirmed that there is no doubt that the insurgents are receiving foreign assistance and that they have gained experience and increased effectiveness in their tactics of attack.

Even so, he noted that the only way to resolve the Salvadoran conflict is dialogue; he discounted the possibility of finding a resolution through armed confrontation. (9/28/83 MS)

* * *

(*Comment by FMLN-FDR representative Ruben Zamora at open meeting in* Washington *June 21, 1983*, sponsored by Washington Office on Latin America (WOLA))

Responding to a question, Zamora said that the FMLN takes "full responsibility" for the death of Lt. Commander Schaufelberger who was "carrying a machine-gun in one hand and a walkie-talkie in the other. The advisers weren't sent here to teach liberal arts . . . We can't guarantee that this won't happen again." (9/28/83 MS)

* * *

(Interview with *Costa Rican Foreign Minister Fernando Volio*, RPC television, Panama, *July 30, 1983* — original in Spanish — *FBIS*)

I am extremely puzzled about the great international commotion over US fleet maneuvers in Central American waters, since nothing is being said by the same international community about these 14 [Soviet] ships and other ships that have arrived in Nicaragua over many years — 4 years — with war materiel. This has altered the region's military balance and created an international communist threat to the entire region. It has clearly and irrefutably established the presence of the USSR and Cuba in Central America. This presence is very dangerous — not only to Central America, the entire Cental American isthmus, but to all Latin America. There is an uproar about US fleet maneuvers, but not about this ominous Soviet presence in our territory, Central America. (9/28/83 MS)

* * *

(Interview with *Costa Rican Foreign Minister Volio*, RPC television, Panama, *July 30, 1983* — original in Spanish — *FBIS*)

Every communist régime is expansionist, because to fulfill its objectives international communism should and must extend communist domination everywhere. Not even the communists themselves deny this. Hence, this kind of heavily armed régime — armed beyond its needs for national defense — represents a threat to our peoples and to Costa Rica. The international community must, therefore, wake up from its lethargy and come to the defense of countries like Panama and Costa Rica, which want to live in freedom. (9/28/83 MS)

* * *

(*President Luis Alberto Monge of Costa Rica*, in conversation *August 14, 1983*, with Senator Tsongas, Congressman Shannon, Taylor of *Boston Globe* and Zuckerman of *Atlantic Monthly* — translated from Spanish)

There can be no peace without liberty. Peace in Central America must cross over the bridge of democratic elections. (9/30/83 MS)

* * *

(Journalist *Michael Kramer* in the *September 12* issue of *New York* magazine)

Those who dismiss the Sandinistas' extraterritorial-revolution rhetoric are deluding themselves. When Comandante Bayardo Arce says "We will never give up supporting our brothers in El Salvador", he means it. And Sandinista defense minister Humberto Ortega is equally serious when he says, "Of course we are not ashamed to be helping El Salvador. We would like to help all revolutions." In practice, such words have translated into supplying the Salvadoran guerrillas with whatever they need. (And the guerrilla high command operates from a headquarters in Managua.) (10/3/83 MS)

* * *

(Full text of letter to Nicaraguan Sandinista leader Daniel Ortega from US *Congressmen Barnes, Zablocki, Hamilton, Solarz, Fascell, Torricelli, Mikulski, Stark, Alexander, Wright, Yatron* and *Leach, June 2, 1983*)

We are writing because of our alarm over the current situation in Nicaragua. The tragic fighting which is now taking place threatens to turn into full-scale civil war, possibly with international ramifications. Along with this we see a conspicuous Cuban presence, serious human rights violations, and the absence of democratic rights and of movement toward the institution of a truly democratic system.

We believe it is now imperative that the Government of Nicaragua open negotiations with the democratic opposition both inside and outside of Nicaragua with a view to seeking a political solution which would arrest the trend toward civil war, repression, and Cuban domination, and would place Nicaragua on the path toward the achievement of the objectives agreed to at the 17th Consultative Meeting of the Organization of American States in 1979.

We appreciate your consideration of this very important matter.

(10/3/83 MS)

* * *

(*Nicaraguan Defense Minister Humberto Ortega*, quoted in Managua's *La Prensa, October 2, 1983* — original in Spanish)

Our army will repel armed attacks from the contras no matter where they come from . . . We will pursue them in those territories which we consider no man's lands near our borders. (10/4/83 MS)

* * *

(*Nicaraguan Interior Minister Tomas Borge*, speech at 2nd anniversary of the FSLN in Managua, July 19, 1981 — translated from Spanish — *FBIS*)

This revolution goes beyond our borders. Our revolution was always internationalist from the moment Sandino fought in La Segovia. (10/4/83 MS)

* * *

(From *Sandinista poster* at Managua airport, *1983*, quoting from *Sandino* — original in Spanish)

Frontiers should not exist between the peoples of Latin America because we all share the same fate against the Yankee imperialists. (10/4/83 MS)

* * *

Eulogy by *Salvadoran guerrilla leader Cayetano Carpio* at funeral services in *Managua* for Commander Ana Maria, *April 11, 1983* — translated from Spanish — *FBIS*)

. . . the members of the Directorate and all its working teams, some inside the country and others outside the country, are steadfastly at work fully aware of the need to unite the internal struggle with international solidarity and with the struggle of all peoples for the liberation of Central America and El Salvador. That is why we move from one country to another . . . The Central American peoples' struggle is one single struggle . . . all the Central American nations will become one revolutionary fire if US imperialism carries out its aggressive plans against Nicaragua and El Salvador. (10/4/83 MS)

* * *

(From statement issued *March 12, 1983*, by the *ERP* (Salvadoran) *General Command*, signed by Commanders 'Mariana', 'Luisa', 'Balta', 'Chico', 'Jonas' and Joaquin Villalobos — *original in Spanish* — *FBIS*)

. . . we cannot and should not fail to include our plans within the framework of a regional conflict, in which the interests of the peoples of Central America, the Caribbean and Latin America in general are at stake. (10/5/83 MS)

* * *

(Leader of *FPL* (Salvadoran) guerrillas quoted by a Copley News Service reporter who spent 12 days with the guerrillas, cited in *The New World* (NY), *March 19, 1981* — translated from Spanish)

The Mexicans should not think because they are helping us now, that they will escape revolution. We know who they are and after we have won in El

Salvador and Guatemala we will give fraternal help to our Mexican revolutionary friends. (10/5/83 MS)

* * *

(The Nicaraguan *FSLN* "72-Hour Document" of *October 5, 1979* — translated from Spanish)

The popular Sandinista revolution bases its foreign policy on the full exercise of national sovereignty and independence and on the principle of revolutionary internationalism. (10/5/83 MS)

* * *

(From the *majority (Boland) report of the US House Permanent Select Committee on Intelligence* "to amend the Intelligence Authorization Act for FY 1983 to prohibit US support for military or paramilitary operations in Nicaragua . . ." *May 13, 1983*)

At the time of the filing of this report, the Committee believes that the intelligence available to it continues to support the following judgments with certainty:

A major portion of the arms and other material sent by Cuba and other communist countries to the Salvadoran insurgents transits Nicaragua with the permission and assistance of the Sandinistas.

The Salvadoran insurgents rely on the use of sites in Nicaragua, some of which are located in Managua itself, for communications, command-and-control, and for the logistics to conduct their financial, material and propaganda activities.

The Sandinista leadership sanctions and directly facilitates all of the above functions.

Nicaragua provides a range of other support activities, including secure transit of insurgents to and from Cuba, and assistance to the insurgents in planning their activities in El Salvador.

In addition, Nicaragua and Cuba have provided — and appear to continue providing — training to the Salvadoran insurgents.

Cuban and Sandinista political support for the Salvadoran insurgents has been unequivocable for years. The Committee concludes that similarly strong military support has been the hidden compliment of overt support.

(10/5/83 MS)

* * *

(From a speech, "What Is Happening in Central America", by Venezuelan author and intellectual *Carlos Rangel* (delivered at a Caracas conference sponsored by *Enfoque* Magazine *July 15, 1983*) — translated from Spanish)

If one analyzes what is happening in Central America, it really becomes evident that the Nicaraguan process, the Nicaraguan revolution, is being taken over by the communist empire, and that the only thing slowing down the process or governing it are tactical considerations. This is right there in the open, it is overtly admitted. Most or all Sandinista commanders are Marxist-Leninists. Their behavior proves it. Their statements, their trips, their vote in the United Nations, the style of annual demonstrations, of the celebration of the anniversary

of the revolution, the fact they get arms and advisers from communist countries, in short there is such a long list of evidence that it is needless to comment upon it . . .

There is objective evidence of the real aim of the Salvadoran guerrilla. There is no mistaking here. There are well-known statements of leaders such as Cayetano Carpio — who died in those rather strange circumstances known to us all — who declared to "uno mas uno", in Mexico, that there is only one revolution in Central America and that the turn of Costa Rica would also come. That irreproachably democratic and amazing small country, a country without an army, one that does not threaten its neighbors or anybody else is, nevertheless, one of the objectives of this Central American revolutionary process . . .

We are witnessing a process through which Nicaragua is becoming communist; one in which it is being used to subsequently conquer the whole of Central America. The communist empire will remain aggressive as long as a non-communist country exists. Communist government is not interested in coexistence. It needs to expand, it needs to annihilate those enemies it creates on its borders as soon as it grabs power. Democracy in Costa Rica cannot be accepted, it cannot be tolerated, because it constitutes a permanent temptation for the population of Nicaragua. (10/6/83 MS)

* * *

(From article in *Princeton Alumni Weekly, September 7, 1983*, by CBS documentary producer *William Urschel, Jr.*, reproduced in the *Congressional Record*)

The Sandinista government forces the farmers to sell their crops to the State at very low, fixed prices. The government arbitrarily confiscates their land, commandeers their cars, their trucks, and their sons for the military. Those who complain or refuse are sent to La Barranca prison near Esteli which a Sandinista "vigilante" told me "probably" holds more than 350 men and women. They sit, month after month, without trial, accused of "anti-patriotic" sentiments . . .

What has happened to the Sandinistas in Nicaragua reminds me of Cuba. A left-wing party, with genuine popular support, overthrew a repressive right-wing régime. But being made up of just one party, the new government has become increasingly fascistic and dictatorial to maintain its sovereignty. (10/6/83 MS)

* * *

(From "Central American Quagmire" article by *Alan Riding, N. Y. Times* Bureau Chief in Mexico City, in "America and the World" issue of *Foreign Affairs*, 1983, p. 651)

But the Sandinistas dominate all aspects of the nation's life through their powerful military, party and bureaucratic machines. And they have not only moved farther and faster to the Left than many Nicaraguans hoped, but they have also concentrated power in the hands of the nine-man National Directorate to such an extent that any suggestion of concessions to the opposition is vetoed by the radicals. The issue, then, is not how truly Marxist-Leninist the régime will become, but rather how Stalinist; once again, it is less a question of ideology than one of power. (10/8/83 BW)

* * *

(From interview with *Eden Pastora* in the San Pedro Sula *El Tiempo, October 25, 1982*, in Spanish)

Peace in Central America is inextricably linked to Nicaragua. There can be no peace in Central America if there is no internal peace in Nicaragua. There can be no peace in Nicaragua as long as the slaughter of the Miskitos, Sumus and Ramas continues; as long as there is no freedom of the press; and as long as the occupation by Cuban, German, Soviet and Bulgarian troops continues.

This is what we resent in these nine commanders. We were the only people in the world capable of practicing nonalignment, because we made our revolution in the 20th century supported in the first two years by $1.2 billion in aid from around the world. We got help from everyone: from the gringos, Germans, Russians, French, Spanish, Swedes, Norwegians — from all of Europe, Latin America and the Arab world . . . we could have practiced polydependency in order to avoid falling into a dependency on one of the two superpowers . . . We lost the chance that no other people in the world had: the chance to make a true revolution, genuine, the prototype of a Latin American revolution.

(10/8/83 BW)

* * *

(Nicaraguan poet *Pablo Antonio Cuadra*, in an interview in *La Nacion Internacional October 5, 1983* — original in Spanish)

I am not totally in exile, but I represent within that atmosphere a kind of internal exile: I am excluded and marginalized just as is anyone who suggests an independent point of view or who defends the independence of the writer in the face of the power of the State . . .

I am against the perversion of the revolution which they have engineered . . . My obligation as a poet is to hold up the banner of resistance against the tremendous damage which is being done to Nicaraguan culture. (10/11/83 MS)

* * *

(From a pamphlet prepared by several Nicaraguan *FSLN* organizations in commemoration of the 16th anniversary of the death of Che Guevara, quoted in pro-*GRN El Nuevo Diario October 8, 1983* — original in Spanish)

For us Sandinistas evoking Che Guevara is to keep in mind the projection without frontiers of the revolutionary, of the internationalist, of the man who goes in search of peace. (10/13/83 MS)

* * *

(From a *September 21, 1983*, article in *The Washington Post*, "Base for Ferrying Arms to El Salvador Found in Nicaragua")

Estero de Padre Ramos, Nicaragua — A radio-equipped warehouse and boat facility, disguised as a fishing cooperative on an island in northwestern Nicaragua, has served for three years as a transhipment point for smuggling arms to El Salvador, numerous residents here say.

Although the Nicaraguan Government denies the operation, fishermen and others in several tiny coastal hamlets nearby say that soldiers in military vehicles regularly trucked wooden boxes to the water's edge and loaded them in motor-powered launches bound for El Salvador's coast 40 miles to the north.

Fishermen report occasionally finding similar wooden boxes containing foot-long "bazookas" — presumably mortar shells or similar munitions — on shore north of the mouth of this estuary where the boats battle the surf to enter the Pacific Ocean.

A 14-boat fleet, including half a dozen large dugout canoes that can carry thousands of pounds of cargo, has been involved in the operation, residents say, with regular departures at two-week intervals . . .

Anti-Sandinista "counterrevolutionaries" attacked the island Sept. 14, blowing up the warehouse and three small boats . . .

Sandinista authorities claimed the FDN had attacked the state-financed Mario Carrillo fishing cooperative. *Barricada*, the official newspaper, condemned the attack as "irrational criminality".

. . . in two visits to La Concha, the swampy island base said by the Government to house the Mario Carrillo cooperative, reporters found no evidence the facility was ever used for fishing . . .

Fishermen and other residents who live in huts lining this tangled estuary, and also small farmers and fishermen in Jiquilillo, Padre Ramos, Venecia and other nearby hamlets, said La Concha island was not a fishing cooperative but a "military base".

. . . "I don't get involved in politics, but everyone around here knows they are carrying the arms to El Salvador", said the wife of a Padre Ramos fisherman.

(10/14/83 MS)

* * *

(From the *Washington Post*'s *For the Record* column, October 18, 1983, p. A16)

From a statement before the Organization of American States' Human Rights Commission by Bernard Nietshmann, a geography professor at the University of California, Berkeley:

I had the opportunity [this year] to go inside Nicaragua with the invitation from the Miskito, Sumo and Rama nations to visit their territory. I was in a Miskito area in eastern Nicaragua for several weeks. I traveled from village to village, staying for varying lengths of time depending on security considerations. I talked to hundreds of people, lived with them, ate what they were barely managing to live on, experienced the conditions, met many people I'd known from my previous visits years ago, listened and asked questions, and carried out research on what had happened to them during the years since the 1979 Sandinista revolution . . .

It is with sadness that I report widespread, systematic and arbitrary human rights violations in Miskito Indian communities. These violations by the Sandinista Government include arbitrary killings, arrests and interrogations; rapes; torture; continuing forced relocations of village populations; destruction of villages; restriction and prohibition of freedom of travel; prohibition of village food production; restriction and denial of religious freedom; and the looting of households and sacking of villages . . .

From their violations of human rights of Indian peoples, the Sandinistas have created a people in rebellion, Indian peoples united against them. United because of internal not external reasons. United because of what has happened to them at the hands of the Sandinistas. (10/18/83 JH)

* * *

(From an article by *Lawrence E. Harrison* titled "We Tried to Accept Nicaragua's Revolution". *The Washington Post, Thursday, June 30, 1983*)

We provided assistance valued at $120 million, including 100,000 tons of food. We had tried very hard to build that new relationship. But the effort failed, principally, I believe, because the Sandinistas could not live with a positive image of the US Government. They did not try at all. And many in the United States cheered them on. (10/18/83 BW)

* * *

(From an article by André Fontaine titled "How Many Vietnams?", *Le Monde, August 3, 1983*, translated/reprinted in *World Press Review*, Volume 30, Issue 10, October, 1983)

Many fundamental reasons warrant such a vote [to cut off covert funds to anti-Sandinista forces], even if it is only a rejection of Reagan's simplifications. Nevertheless, it gives Soviet President Andropov and his allies in Havana and Managua too much confidence. The USSR is stepping up arms deliveries to Nicaragua and, through it, to the Salvadoran rebels, causing Reagan increasing concern. He sees the trouble threatening the Panama Canal and the US southern flank. (10/20/83 RH)

* * *

(From Joint Communiqué of the Nicaraguan opposition — *ARDE, FDN, MISURA*, and *UTRANE, August 15, 1983*)

Central American stability will become a reality only when there is a truly democratic government in Nicaragua that will express the free will of the people of Nicaragua through free elections, the observance of freedom of the press, of religion, of thought, of speech, and of assembly, as well as the establishment of genuine social justice. A democratic government that would respond to the national interests of the Nicaraguan people and not to the expansionist interests of the Soviet Union. A government that because of its democratic principles will guarantee peace, progress and development in the region. (10/20/83 MS)

* * *

(*Aristides Calvani*, Secretary General of the Christian Democratic Organization of Latin America and former Venezuelan Foreign Minister, quoted in *La Nacion Internacional*, edition of *October 13-19, 1983* — original in Spanish)

The Sandinista Government refuses to open the way to a genuine process of democratization . . . It's not true that peace must be achieved first and later democracy, because without democracy there can be no peace. (10/20/83 MS)

* * *

(Archbishop of Managua Msgr. Miguel Obando y Bravo, homily of October 9, 1983 — original in Spanish)

I am afraid that our people may lose their smile [of hope], once they stop

being Nicaraguans, because we are already too influenced by other people who are not Nicaraguan. (10/20/83 MS)

* * *

(From *La Nacion Internacional* (San José, Costa Rica) edition of November 2, 1983)

Panama. The Panamanian Hugo Spadafora said October 20 that the Revolutionary Democratic Alliance (ARDE) of Nicaragua "does not reject the Sandinista Revolution" and that that movement, directed by Eden Pastora, is neither "counter-revolutionary nor anti-Sandinista".

Spadafora, former Vice Minister of Health of Panama, stated that "ARDE is attacking the totalitarianism of the nine" (in reference to the Commanders of the Sandinista Front) who "have yoked themselves to the cart of Soviet imperialism".

Fighter in the war of Guinea-Bissau (1966) at the side of African leader Amilcar Carbral and in the overthrow of the Nicaraguan dictator Anastasio Somoza (1978-1979), Spadafora said that he now fights together with Pastora because his movement, ARDE, "is revolutionary, non-aligned and anti-imperialist". (11/9/83 MS)

* * *

(From *La Nacion Internacional* (San José, Costa Rica) edition of November 2, 1983)

US-Nicaragua: for each a diplomatic "round"

The decision by the US House of Representatives to reject, by a wide majority, funding to the Central Intelligence Agency (CIA) to help the rebels who are trying to overthrow the Sandinista régime was "a blow" in favor of Nicaragua in the diplomatic and verbal battle in which it has been involved with the United States for the last several months.

Nonetheless, the latter nation achieved a point in its favor with the virtual collapse of a peace plan for the region which was presented to the Americans by Foreign Minister Miguel D'Escoto and which didn't even get any response from either Central America or the Contadora Group — formed by Mexico, Venezuela, Colombia and Panama . . .