

**MEMORIAL OF NICARAGUA**

**MÉMOIRE DU NICARAGUA**

## PART ONE

# THE EVIDENCE OF COSTA RICA'S LEGAL RESPONSIBILITY FOR MILITARY AND POLITICAL ACTIVITIES INTENDED TO OVERTHROW THE GOVERNMENT OF NICARAGUA

## INTRODUCTION

1. On 28 July 1986, Nicaragua filed its Application in the Court alleging that Costa Rica, by organizing, assisting, fomenting, participating in and tolerating acts of armed force in and against the territory of Nicaragua, committed by armed bands of counter-revolutionaries based in Costa Rican territory had violated its obligations to Nicaragua *under international law*. The Application asked that the Court declare the conduct of Costa Rica to be in breach of international law and to order Costa Rica to cease and desist from such activities. It requested the Court to declare that Costa Rica is under a duty to make compensation for all injury caused to Nicaragua by the breaches of international law found by the Court.

2. On 17 October 1986, time-limits were set for the presentation of written Memorials on the merits of the case, under which the Memorial of Nicaragua was to be filed on 21 July 1987, and the Memorial of Costa Rica was to be filed nine months later. On 16 July 1987, the Court extended the date for the presentation of Nicaragua's Memorial to 10 August 1987.

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## CHAPTER I. SUMMARY AND OVERVIEW OF THE EVIDENCE

3. The Government of Costa Rica has permitted counter-revolutionary organizations dedicated to the armed overthrow of the Government of Nicaragua to use Costa Rican territory to conduct military and political activities against Nicaragua, and has actively collaborated in these activities. Costa Rica's actions constitute a blatant and ongoing intervention in Nicaragua's internal affairs, and a use of force against Nicaragua, in violation of its legal obligations to Nicaragua under general international law, the Charters of the Organization of American States and the United Nations, two bilateral treaties of amity, the Convention on Duties and Rights of States in the Event of Civil Strife, and other multilateral instruments.

### A. The Use of Costa Rican Territory with the Knowledge and Approval of the Costa Rican Government

4. There is overwhelming evidence that Nicaraguan counter-revolutionary (or "*contra*") organizations have used Costa Rican territory to conduct military and political activities aimed at overthrowing the Government of Nicaragua by armed force. At least two of these politico-military organizations, ARDE<sup>1</sup> (from 1982 to mid-1986) and UNO<sup>2</sup> (from mid-1985 to 1987) were permitted by Costa Rican authorities to establish headquarters facilities in San José, and to maintain numerous military camps in the northern part of the country, close to the border with Nicaragua. The headquarters facilities were used to hold regular public assemblies of *contra* leaders, where military and political strategies were developed for forcibly replacing the Government of Nicaragua, for organizational activities in connection with this effort, for issuing public declarations calling for armed struggle against the Nicaraguan Government, and for coordinating supply and logistical services in support of the military activities conducted from the camps in the north.

5. The military camps themselves were used as staging points for armed attacks in and against Nicaragua, as safe havens for *contra* forces after completion of their combat missions inside Nicaragua, as training grounds for new recruits, and as military supply depots. By 1985, at least 27 of these camps were in operation. (Ann. C, Attachment 5, Table 1.) There were also at least nine airstrips in Costa Rican territory that were used to airdrop supplies to *contra* forces during missions inside Nicaragua. (Ann. C, Attachment 5, Table 2.) The evidence demonstrates that this was no small-scale operation, but a full-fledged war effort. According to the United States Ambassador to Costa Rica, as many as 2,800 *contra* combatants operated from the Costa Rican camps, spread all along the border with Nicaragua. (Ann. I, Attachment 63.) They were heavily armed with automatic weapons, mortars, grenade launchers and even a small air force and navy. In five years of continuous fighting, they carried out more

<sup>1</sup> Alianza Revolucionaria Democrática, or Democratic Revolutionary Alliance.

<sup>2</sup> United Nicaraguan Opposition.

than 350 attacks inside Nicaragua, mostly by land but also by air and sea. There have been hundreds of airdrops of supplies to *contra* forces inside Nicaragua originating from Costa Rican airstrips. The consequences to Nicaragua, with a population of barely 3 million and a per capita gross national product of \$770, have been staggering both in human and economic terms<sup>1</sup>.

6. The evidence is equally overwhelming that these activities were conducted with the knowledge and approval of the Costa Rican Government at its highest levels. Costa Rica could hardly be unaware of the existence of *contra* headquarters in its own capital city, of the much publicized presence of *contra* military and political leaders, of the frequent public assemblies and declarations calling for the armed overthrow of the Nicaraguan Government, or the countless other daily activities of these organizations aimed at that end. It is equally inconceivable that Costa Rica could have been unaware of the extensive and continuous military activities of the *contras* based in Costa Rican territory. Like the *contras'* political activities in San José, their military activities in the northern part of the country have always been matters of public knowledge in Costa Rica. The existence of the camps, the training activities conducted there and the constant cross-border attacks on Nicaragua have been reported regularly in the Costa Rican press, and in the newspapers that the *contra* organizations themselves are permitted to publish and distribute in Costa Rica. The *contras'* use of Costa Rican territory to wage war on Nicaragua has been so open that it is recognized in official publications of the United States Department of State, such as the *Dictionary of International Relations Terms* (1987), which defines the word "Contras" as follows:

"Shortened form of the word 'countrarevolucionarios' (counter-revolutionaries), the term the Sandinista regime in Nicaragua uses for the guerrilla forces fighting against them. The Contras comprise former members of the Somozist National Guard, dissident right-wing former Sandinistas, and the Miskito Indian minority; each of these forces operates independently. *The Contras operate from bases in Honduras and Costa Rica*, and receive political and material support from the United States. There have been recurrent armed clashes between Sandinista government troops and the rebels since March 1982." (Ann. F, Attachment 1, p. 23 (emphasis supplied).)

7. Between 1982 and 1987, Nicaragua delivered to Costa Rica more than 150 diplomatic notes protesting the *contras'* activities in or emanating from Costa Rica, in many cases providing detailed evidence of the use of Costa Rican territory and the active collaboration or participation of Costa Rican officials. (See, e.g., Ann. A, Attachments 109, 125, 172, 207, 228, and 237 (Diplomatic Notes of Nicaragua).) Nicaragua delivered similar protests to the bilateral Mixed Commission that functioned from 1982 to 1984, and the Commission of Supervision and Prevention, established in 1984 through the good offices of the Contadora Group. (Ann. B, Attachments 1 and 2.) Both commissions were established at Nicaragua's urging in order to investigate and help resolve disputes arising from military activities by *contra* forces based in Costa Rica. (See also Ann. B, Attachment 3.) Both directly and through these commissions, Nicaragua presented Costa Rica with concrete proof of the existence and locations of the following *contra* military camps inside Costa Rica, *inter alia*:

1. *El Infierno* — 5.5 km south-east of Peñas Blancas.
2. *Barra de Colorado* — 22.5 km south-west of San Juan del Norte.

<sup>1</sup> International Bank for Reconstruction and Development, *World Development Report 1987*, Oxford University Press (1987).

3. *El Valle* — 9.5 km west of Cardenas.
4. *Las Vueltas* — 7.5 km south of Peñas Blancas.
5. *Quebrada de Agua* — 17 km south-west of Peñas Blancas.
6. *El Murciélago* — 35 km south-west of Peñas Blancas.
7. *Los Andes* — 5 km north-east of El Naranjo (Monte Plata).
8. *La Libertad* — east of Peñas Blancas.
9. *Sarapiquí* — 28 km south-west of San Juan del Norte.
10. *Luna Azul* — 10 km south-west of El Castillo.
11. *Luna Blanca* — south-west of El Castillo.
12. *Tango Rojo 2* — 500 meters from Los Chiles, along the border.
13. *Tango 1 and 2* — in the El Castillo sector.
14. *21 and 22* — 12.5 km south-west of the El Papaturre border post.
15. *Hacienda Conventillo* — 3 km east of El Naranjo.
16. *San Dimas* — 4 km south of Peñas Blancas.
17. *El Amo* (Hacienda) — 21 km south of Peñas Blancas.
18. *Verdum* — 11 km south-east of Cardenas.
19. *Santa Cecilia* (Hacienda) — 14 km south of Mexico, along the border.
21. *El Refugio* — 2 km south of the Fátima border post.
22. *Los Angeles* — 6 km south of Fátima.
23. *Berlin* (Hacienda) — 11 km from Fátima.
24. *Santa Isabel* (Hacienda) — 8 km south of Fátima.
25. *Cerro Crucitas* — 5 km south of Río El Infiernito.
26. *Fincas El Chivito and Escalera* — 15 km south-west of El Castillo.
27. *Laguna Garza* — 8 km south of the San Juan delta. (Ann. C, Attachment 5, Table 1.)

8. As of the date of Nicaragua's Application to this Court, Costa Rica had made no serious effort to curtail the military activities of the *contras* emanating from these and other *contra* camps, or to restrict the other *contra* activities addressed in the diplomatic correspondence. Indeed, Costa Rica's refusal to acknowledge responsibility for the armed attacks against Nicaragua emanating from its own territory, or to take appropriate remedial measures, resulted in the failure of both the Mixed Commission and the Commission of Supervision and Prevention.

## **B. The Active Collaboration of the Costa Rican Government in Military and Political Activities against Nicaragua**

9. While Costa Rica's approval of the *contras'* military and political efforts to overthrow the Nicaraguan Government may be presumed from its undeniable knowledge of these activities and its failure to take appropriate action to curtail them, there is also abundant and irrefutable direct evidence that Costa Rican Government officials, at the highest level, actively collaborated with and assisted the *contras* in these efforts. For example, it is now fully admitted on the public record that Costa Rican President Luis Alberto Monge personally and officially approved the construction of a major airbase in northern Costa Rica for the purpose of resupplying the *contra* forces inside Nicaragua. He did so at the request of the Ambassador of the United States, Lewis A. Tambs. In his sworn testimony in the Joint Hearings on the Iran-Contra Investigation of the United States Congress, Ambassador Tambs confirmed that the airbase was approved by Costa Rican authorities:

“Q: With regard to the airstrip that was constructed in Costa Rica, is it fair to say that that was done only after permission was granted by the authorities of Costa Rica?

“A: Yes, sir.” (Ann. F, Attachment 3 (Testimony of Mr. Tambs, p. 35-1)<sup>1</sup>.)

President Monge has publicly acknowledged that he himself granted this permission. (Ann. I, Attachment 56.) And the testimony of other knowledgeable witnesses in the United States congressional investigation has established that senior officers from the Costa Rican Civil Guard chose the site for the airbase, obtained the permits and licenses necessary for its construction and supervised the entire project. (See, e.g., Ann. F, Attachment 3 (Testimony of Joe Fernandez, alias “Tomás Castillo”, pp. 38-42, 99).)

10. The evidence establishes that the Civil Guard and the Rural Guard — the two Costa Rican security forces that should have been dispatched to close down the *contra* camps and airstrips and to curtail all hostile activities against Nicaragua — instead have been allowed by the Costa Rican Government to assist the *contras* and facilitate their attacks on Nicaragua. The Costa Rican security forces are a professional army in all but name. Totalling more than 9,500 officers and enlisted men, armed and equipped principally by the United States, they have been fully capable of preventing the *contras* from using Costa Rican territory to attack Nicaragua<sup>2</sup>. Indeed, Costa Rica itself has consistently maintained that it exercises “absolute” control over the entire border region. (See, e.g., Ann. A, Attachments 106, 131, 137, 138, 142, 144, 148 and 245 (Diplomatic Notes of Costa Rica).) The Government’s failure to impede the *contras*’ military activities, therefore, has provoked internal protests by professionally-minded, middle- or lower-level Costa Rican officials. For example:

“In Los Chiles [in northern Costa Rica, site of a major *contra* military camp], there is much activity by both sides; according to rumors, it is feared that there will be an act of terrorism near Upala. *There is talk of movements by members of the counter-revolution, and the Commander of the Civil Guard does absolutely nothing . . .*” (Ann. D, Attachment 5 (30 August 1983, report from Costa Rican Director of Intelligence and Public Security to the Minister of Public Security).)

11. In an official report submitted to the Vice Minister of Public Security, a lieutenant colonel in the Civil Guard complained that:

“the subversives [i.e., *contras*] travel freely through the entire zone, without encountering any opposition from the respective authorities . . .”.

A subsequent report from the same officer states that:

“. . . the immigration controls are deficient and any foreigner is given legal documentation in Liberia [in northern Costa Rica] . . . We have detected

<sup>1</sup> Joint Hearings on the Iran-Contra Investigation of the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and the House Committee to Investigate Covert Arms Transactions with Iran. The Joint Hearings, which commenced on 5 May 1987, are continuing as of the date of this Memorial. Accordingly, Nicaragua may wish to supplement this Memorial and Annexes with additional transcripts and records produced at the hearings should they contain material that is relevant to this case.

<sup>2</sup> The International Institute for Strategic Studies, *The Military Balance 1986-1987*, London, 1987.

that there are 'safe houses' in La Cruz which are used, among other things, to recruit combatants and send them to Honduras. The same is true of Liberia and Canas. We recommend an investigation and 'clean-up' of those towns by National Security.

*We cannot disregard the assistance which the counterrevolutionary and non-counterrevolutionary elements have received from persons who form part of this Government . . .*" (Ann. D, Attachments 6 and 7 (two 29 August 1983 memoranda from Lt. Col. Mario Araya to the Vice Minister of Public Security).)

12. In May 1985, Col. Ricardo Rivera, a former chief of the Rural Guard, stated at a press conference that officials of the Costa Rican Government maintained close ties with the *contras*, and that the *contras* operated from military camps in Costa Rica with the complicity of ranking government and security officials. (Ann. H, Attachment 58.) During the same month, in legal proceedings in the Costa Rican courts, foreign mercenaries who had served with the *contras* in Costa Rica and Nicaragua testified that Rural Guard officers and enlisted men assisted in the establishment of a *contra* training base in northern Costa Rica. (Ann. G, Attachment 2, p. 23.) In subsequent public statements, they provided details of the active collaboration of the Civil Guard in their military efforts against Nicaragua:

- The Civil Guard gave them precise information, including maps and diagrams of targets inside Nicaragua.
- The Civil Guard actively helped them in an attack on the Nicaraguan border post of La Esperanza.
- Civil Guard officers made frequent friendly visits to *contra* training camps in northern Costa Rica and promised them protection. (See, e.g., Ann. H, Attachment 59; Ann. I, Attachment 18.)

13. The collaboration of the Costa Rican security forces with the *contras* was not contrary to official Costa Rican policy, but in furtherance of it. Public statements by senior government officials demonstrate that they shared the *contras'* ultimate objective: to change the Government of Nicaragua by military force. In June 1985, for example, Foreign Minister Carlos José Gutiérrez publicly stated that he would regard a change of Government in Nicaragua with approval, and he called upon the United States Congress to enact legislation approving millions of dollars of military assistance for the *contras*. (Ann. I, Attachment 16.) President Monge, too, appealed to the United States Congress to approve President Ronald Reagan's request for an appropriation of \$14 million for military assistance to the *contras*. (Ann. I, Attachment 15.)

14. In the *Military and Paramilitary Activities in and against Nicaragua*, the Court found that United States support for the *contras*, in "training, arming, equipping, financing and supplying the *contra* forces", constituted unlawful intervention in Nicaragua's internal affairs, and the illegal use of force against Nicaragua. (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, ICJ Reports 1986*, p. 146 (hereinafter *Nicaragua v. United States*)). The Court found that United States support for the *contras* was so pervasive that

"the *contra* force has, at least at one period, been so dependent on the United States that it could not conduct its crucial or most significant military and paramilitary activities without the multi-faceted support of the United States". (*Id.*, p. 63.)

Yet, as dependent as the *contras* were on the “multi-faceted” support of the United States, they could not have operated at all without the particular support they received from Costa Rica and Honduras. For without military bases in Costa Rican and Honduran territory, the *contras* would not have been able to carry out any armed attacks on Nicaragua, regardless of the amount of material and other support they received from the United States. Thus, it was essential to the United States, if its own support for the *contras* was to have any impact, to secure the collaboration of Costa Rica and Honduras. It is hardly coincidental, then, that from 1982 to 1985 United States economic assistance to Costa Rica rose from \$7.1 million to \$220 million; United States military assistance to Costa Rica, which was only \$0.5 million in 1982, rose to \$11.2 million in 1985, a sum that exceeded United States military assistance to Panama for that year<sup>1</sup>.

15. For whatever reason — monetary reward or shared ideological conviction — Costa Rica’s collaboration with the United States in supporting the *contras* was secured. As set forth in the detailed chronology that follows this introductory section, and as summarized below, Costa Rica’s collaboration went through three distinct phases: the first, from the end of 1981 through the middle of 1985; the second, from the middle of 1985 through the filing of Nicaragua’s Application in this case; and the third, from the time of Nicaragua’s Application to the present.

### C. The First Phase: Late 1981 to Mid-1985

16. The *contras* began attacking Nicaragua from Costa Rican territory in the final months of 1981; however, the first phase of Costa Rica’s collaboration with *contras* began in earnest on 15 April 1982, when Edén Pastora was permitted to hold a press conference in San José calling for the armed overthrow of the Nicaraguan Government and announcing the formation of a guerrilla force, to be headed by Pastora himself, to fight against the Government. (Ann. H, Attachments 7, 8, 9, 10.) Pastora was permitted to organize and train his force in Costa Rica and to begin mobilizing for armed attacks on Nicaraguan installations and troops. (Ann. H, Attachment 11.) In September 1982, another press conference was held in San José to announce the formation of ARDE, a coalition of Pastora’s guerrilla organization, the Sandino Revolutionary Front (FRS); another guerrilla group headed by Fernando (“El Negro”) Chamorro (known as the UDN/FARN, and which had actually begun conducting raids on Nicaraguan territory from Costa Rican base camps in late 1981)<sup>2</sup>; the Nicaraguan Democratic Movement (MDN), a political organization headed by Alfonso Robelo, a former member of the Nicaraguan Government Junta; and Mísurasata, an organization of Miskito, Sumo and Rama Indians headed by Brooklyn Rivera. (See Ann. E, Attachment 2, Nos. 4, 5.) The leaders of the new coalition called for the unification of military and political groups seeking the overthrow of the Government of Nicaragua. (*Id.*; see also Ann. E, Attachment 2, Nos. 3, 6.)

17. From 1982 until the middle of 1985, the United States and Costa Rica provided vital support to ARDE. The United States provided financial assistance and arms. Costa Rica permitted ARDE to maintain military bases

<sup>1</sup> United States Agency for International Development, *US Overseas Loans and Grants*, 1987.

<sup>2</sup> Nicaraguan Democratic Union — Revolutionary Armed Forces of Nicaragua.

throughout the northern part of the country and to use Costa Rican territory to launch armed attacks on Nicaragua. Costa Rica also permitted ARDE to maintain its political and military headquarters in San José, and to openly conduct the full range of political and logistical activities necessary to support the war effort. (See Ann. E, Attachment 1 (Pamphlet of the Opposition Bloc of the South (BOS); Ann. H, Attachments 34, 47, 50; Ann. A, Attachment 106 (Diplomatic Note of Costa Rica); Ann. C, Attachments 1, 3, 4.)) The Costa Rican Government's collaboration with the *contras* and the United States was so open and extensive that protests arose from sectors of the Government and population anxious to preserve Costa Rica's international image and its official policy of "neutrality". In response to these protests, the Government insisted that Pastora and Chamorro and their forces keep a low profile, so that their activities in or from Costa Rica could be plausibly denied. Occasionally, when their activities became too open or notorious, the Government made a public show of its efforts to restrain them. For international consumption, the Government "arrested" Pastora on various occasions and "expelled" him from the country at least twice. However, he was always released from custody, or allowed back into Costa Rica, where his military activities continued, within a brief time. (See *infra*, para. 35.) Occasionally, members of Pastora's force were also detained, but again, they were generally released within a short time and allowed to resume fighting. (See, e.g., Ann. H, Attachment 14.) Most important, ARDE continued to maintain military camps in Costa Rica and its attacks in and against Nicaragua did not abate. Nor was there any cessation of, or limitation imposed upon, ARDE's political activities in San José.

18. ARDE's military activities against Nicaragua hit full stride in 1983, and over the next three years it carried out much-publicized aerial bombings of vital economic installations in Nicaragua, including the international airport at Managua on 8 September 1983. (See *infra*, para. 54.) ARDE also launched seaborne assaults on oil storage tanks, destroying more than 300,000 gallons of fuel at the port of Benjamin Zeledón on 2 October 1983. (See *infra*, para. 58.) On the ground, there were scores of armed attacks on Nicaraguan villages, customs houses and military posts. The forces of Pastora and Chamorro, augmented by special units of the FDN (Fuerza Nicaraguense Democrática) — the main *contra* army operating out of Honduras — constituted a veritable "Southern Front" of the counter-revolution, threatened as much damage to Nicaragua as the *contra* effort based in Honduras. Some of the Costa Rica-based *contra* attacks involved large concentrations of forces. Most notorious was ARDE's attack on the border town of San Juan del Norte, which commenced on 6 April 1984. Approximately 500 *contras*, coming from Costa Rica, stormed the town with mortars and machine guns. After six days of fierce fighting, during which the *contras* were regularly resupplied by boat from Costa Rica, they succeeded in taking the town. Costa Rican authorities, including officials of the Rural Guard, facilitated the resupply operation, as well as the transport of journalists from San José to San Juan del Norte to report on the *contras'* capture of Nicaraguan territory. (See *infra*, para. 68.)

19. While the Costa Rican-based *contras* continued to harass Nicaragua from the south, and to cause considerable death and destruction in the process, they proved unable to weaken, let alone overthrow, the Nicaraguan Government. Their lack of success in this regard led to internal dissension. Concerned about this situation, in July 1984 the United States Central Intelligence Agency sent Joe Fernandez (alias "Tomás Castillo") to San José to serve as CIA Station Chief. (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, p. 16).) According to Mr. Fernandez, in his sworn testimony in the Joint Hearings on the Iran-

Contra Investigation of the United States Congress, his instructions from Washington were (i) to bring about a new, unified *contra* political organization, based in Costa Rica and (ii) to reorganize the *contra* military forces in Costa Rica, turn them into a more effective fighting force, and ultimately move them from their camps in Costa Rica to forward bases in Nicaragua. (*Id.*, pp. 18-19, 23-24.) Mr. Fernandez testified that United States strategy called for Costa Rica to serve as the principal political base for *contra* efforts to overthrow the Government of Nicaragua; Costa Rica was “where we felt — we, CIA, felt — that the primary value to the program was the political side”. (*Id.*, p. 23.) In carrying out his duties, Mr. Fernandez worked in close co-operation with senior Costa Rican officials. As Mr. Fernandez himself described his activities during this period:

“My view of my responsibility was to develop the southern political organizations in concert with the efforts being made here in Washington and in [deleted by United States Government censors] and in Miami to bring together the Nicaraguan resistance under one unified leadership. . . .

All of us were pulling together with these people and out of that came the obvious necessity that there was a military side to the resistance effort. . . .

We, in turn, encouraged the leadership to seek every means that they could to put pressure on the Sandinista regime. . . .” (*Id.*, pp. 18-19.)

He continued:

“It was really encouragement to [deleted] go into Nicaragua, where if they claimed they were fighters is where they should be. And so it came about because of continuous large numbers of problems that we were experiencing with the [Costa Rican] government — because of the presence of these people who were not very covert in their — in protecting the fact of their presence in [Costa Rica] and there were a number of incidents on a continuing basis that the [Costa Rican] officials would bring to my attention and to the attention of other [deleted] officials, and so whenever I had contact with them, for whatever reason [deleted] I would encourage them to seek some means to leave [Costa Rica] where we felt — we, CIA, felt — that the primary value to the program was the political side.

In other words, [Costa Rica] presented a better environment for the political declarations to be made, access to [San José] where there was relative tranquility, modern conveniences, daily flights to the U.S. and so forth, and that is what the political side needed.” (*Id.*, pp. 23-24.)

#### D. The Second Phase: Mid-1985 to 28 July 1986

20. By the middle of 1985, Mr. Fernandez and his CIA colleagues had succeeded in creating a new, unified *contra* political organization and in establishing Costa Rica as the political center of the counter-revolution. UNO, the United Nicaraguan Opposition — which joined together the heretofore separate *contra* organizations operating in Costa Rica and Honduras — came into existence in June 1985, with regional headquarters in San José. (Ann. E, Attachment 2, No. 17. See Ann. E, Attachment 3, Nos. 4, 7; Attachment 4, No. 7.) Thus began the second phase of Costa Rica’s collaboration with the United States in support of the *contras*, a phase that was characterized by even

more open and extensive Costa Rican assistance than in the past. First, as indicated, the President and Foreign Minister of Costa Rica openly supported the *contras*' military and political objectives, publicly calling upon the United States Congress to appropriate additional funding for military and other assistance to the *contras*. Second, the Costa Rican Government permitted UNO — now the pre-eminent *contra* political and military organization — to use San José as its own headquarters, holding periodic public assemblies and organizing sessions, and issuing regular public pronouncements calling for the armed overthrow of the Nicaraguan Government. Third, Costa Rica's collaboration in the establishment of a revitalized Southern Front signalled a new and higher level of participation in the *contras*' military effort to overthrow the Nicaraguan Government.

21. In July 1985, Ambassador Tambs arrived in Costa Rica with explicit instructions from the United States Government's "Restricted Interagency Group", which oversaw all United States efforts in support of the *contras*, "to aid the Nicaragua Resistance Forces in setting up a 'Southern Front'". (Ann. F, Attachment 2, Report of the President's Special Review Board, 26 February 1987 ("Tower Commission Report"), p. C-12. See also Ann. F, Attachment 3 (Testimony of Mr. Tambs, p. 2-1).) As Mr. Fernandez testified to the Tower Commission:

"When Ambassador Tambs arrived in Costa Rica, he called together the Deputy Chief of Mission, the Defense Attache and myself, and said that he had really only one mission in Costa Rica, and that was to form a Nicaraguan resistance southern front." (Ann. F, Attachment 2 (Tower Commission Report), p. C-12.)

22. Fernando "El Negro" Chamorro, formerly of the UDN/FARN and ARDE and now integrated into UNO, was chosen to command the newly-reorganized *contra* units based in Costa Rica. (Ann. I, Attachment 33; Ann. H, Attachment 60.) Ambassador Tambs testified that his objective was to "encourage them to fight" inside Nicaragua. (Ann. F, Attachment 2 (Tower Commission Report, p. C-12).) In the Joint Congressional Hearings, he explained:

"[T]he question was, how you were going to get the armed democratic resistance out of Costa Rica, and, of course, that was something which both the Costa Ricans and we were interested in, and the only way that you could get them out of Costa Rica was assure them that they would have logistical support inside Nicaragua. . . ." (Ann. F, Attachment 3 (Testimony of Mr. Tambs, p. 29-1).)

23. Providing logistical support to *contra* forces inside Nicaragua required airstrips and supply depots in Costa Rica. Thus, the Costa Rican Government, at its highest levels, permitted the United States to deposit war materiel and other supplies intended for the *contras* in designated locations on Costa Rican territory, for subsequent aerial delivery — from airstrips inside Costa Rica — to *contra* units fighting in Nicaragua. As indicated above, it is a matter of public record that President Monge personally approved construction of the major airbase at Santa Elena. It was that very airbase that Lt. Col. Oliver North, Director of Political-Military Affairs for the United States National Security Council, and a member of the Restricted Interagency Group, described in an internal memorandum as "a vital element in supporting the resistance". (Ann. F, Attachment 2 (Tower Commission Report, pp. C-11 to C-12).) The Presi-

dent of the United States was told by his National Security Adviser, Vice Admiral John Poindexter, that the Santa Elena airbase "was a dramatic display of cooperation and support for the President's policy by the country involved". (Ann. F, Attachment 3 (Testimony of Adm. Poindexter, p. 5).)

24. *Contra* forces inside Nicaragua were resupplied from Costa Rica not only by air, but by sea as well. This "maritime" operation was personally approved by the Costa Rican Minister of Public Security, Benjamin Piza, an ardent and active supporter of the *contras*. Mr. Piza agreed to the operation early in 1985 in a meeting with Lt. Col. North. The meeting was described in a February 1985 memorandum from Lt. Col. North to Adolfo Calero, the director of the FDN:

"[W]e ought to look at a maritime capability and something on the southern front. *I had a very useful meeting with the Security Minister of the place down south. He has agreed to meet with you very discreetly, I will let you know when this can be arranged. He is anxious to help, but only if it can be done without exposing him or making operations visible in his country.*" (Ann. F, Attachment 3 (Exhibits to Testimony of Oliver L. North, Exhibit OLN 258, p. 3) (emphasis added).)

25. With Mr. Piza's assistance, as well as that of Costa Rican port authorities, the maritime operation was in full swing by early 1986. As reported to Lt. Col. North by his special representative, Robert W. Owen, in a memorandum dated 7 April 1986:

#### "Southern Maritime Operations

On Friday [i.e., 4 April 1986], the third successful trip into Nicaragua was made by our maritime group.

A cover operation has been established in [deleted] and we will soon be able to send in several trips a week. One boat is fully operational, another should be ready in 15 to 21 days and a third 21 days later.

The operational part is being run strictly without Nicaraguans, except for the boat operators on each trip. *The local port officials are aware of the operation and approve, providing they don't get caught with arms and there are not a number of Indians running around.*" (Ann. F, Attachment 3 (Exhibits to Testimony of Robert W. Owen, Exhibit RWO-15, p. 2) (emphasis added).)

26. While some *contra* units did go to fight inside Nicaragua, and were resupplied from the airbase at Santa Elena and other airfields, and by sea, other units refused to abandon their Costa Rican base camps and continued conducting cross-border raids into Nicaragua, always returning to Costa Rica afterwards. As Mr. Fernandez testified:

"Q: To summarize, it posed a political problem for you to have these Nicaraguans in [Costa Rica] didn't it?

"A: Most definitely.

"Q: And you tried to encourage them to get to Nicaragua and to fight to get them out of [Costa Rica]?

"A: Yes sir.

"Q: And there was a reluctance on the part of Negro Chamorro to go into Nicaragua and fight?

"A: Yes sir." (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, p. 25).)

27. At the end of 1985, there were 27 *contra* military encampments in Costa Rica. (Ann. C, Attachment 5, Table 1.) During the second half of 1985 and the first half of 1986, there were constant attacks from these camps directed against Nicaraguan villages, border posts, and troops. Most of the attacks were carried out under the auspices of UNO, which included Chamorro's forces and the FDN. However, Pastora and his forces, which refused to join UNO (and were therefore cut off from further assistance from the United States), continued to carry out military activities from their own camps in northern Costa Rica. (See *infra*, paras. 124-125.)

### E. The Third Phase: Since 28 July 1986

28. The second phase of Costa Rica's collaboration with the United States and the *contras* drew to an end when Nicaragua filed its Application with this Court on 28 July 1986. Since then, the principal *contra* activity in Costa Rica has been political. Costa Rica has indeed become, as the United States intended, the political center of the counter revolution. UNO and its successor organization have been permitted to conduct their activities in San José openly and with impunity. (See *infra*, paras. 123-135, 141.) No limits whatsoever have been imposed on the *contras'* political activities in support of their armed struggle. In October 1986, for example, a three-day meeting of UNO's Consultative Assembly was held in San José, an Assembly that constituted

“vital support — in every sense of the word — for the directorate of UNO and, by extension, for the combatants who are generously sacrificing themselves to open our path of return to our country”. (Ann. E, Attachment 3, No. 8.)

In January 1987, the *contras* published and disseminated in San José, through their newspaper in that city, a “Document of Democratic Agreement of the Nicaraguan Resistance”, which was signed by leaders of UNO and BOS (Bloque Opositor del Sur), another San José-based *contra* organization with its own military units operating from northern Costa Rica. The document called for “replacement of the totalitarian regime of the FSLN” with a “Provisional Government of National Unity, the principal objective of which will be the reordering of the structure of our society”. (Ann. E, Attachment 4, No. 8 (*Nicaragua Hoy*, 1/24/87).)

29. The third phase of Costa Rica's support for the *contras*, thus far, has been characterized by a marked diminution in military activities against Nicaragua from Costa Rican territory. In part, this has resulted from the final defeat of Pastora and his forces by Nicaraguan Government troops. But it also has been the product of a conscious decision by the Costa Rican Government. To be sure, Costa Rica has continued to permit certain military activities in support of the *contras* in its territory. For example, it has allowed United States planes delivering supplies to *contra* forces in southern Nicaragua regularly to overfly Costa Rican territory, and it has permitted co-ordination of this resupply operation by United States Government personnel in San José. (See *infra*, paras. 136-140.) Although it closed down the notorious Santa Elena airbase, it allowed *contra* supply flights to refuel at San José's commercial airport, and allowed a network of *contra* airfields to remain in operation. (See *infra*, paras. 135-138.) However, it is notable that, coincident with the filing of Nicaragua's Application, Costa Rica suddenly discovered the means to restrict the armed attacks emanating from the *contras'* military bases in the north —

and these activities have dropped off substantially, although not entirely. The explanation for this turn of events was given by a captain in the Civil Guard who was involved in closing down the Santa Elena airbase in September 1986. It had to be closed down, he explained, "because it could affect Costa Rica's image in The Hague". (Ann. I, Attachment 46.)

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## CHAPTER II. CHRONOLOGICAL ACCOUNT OF COSTA RICA'S SUPPORT OF MILITARY AND OTHER ACTIVITIES AIMED AT OVERTHROWING THE GOVERNMENT OF NICARAGUA

30. Throughout the period from late 1981 to the present, the *contras* have used Costa Rica as a base for military activities against Nicaragua with the objective of overthrowing the Government by armed force. They have used San José as the political headquarters for their organizational and propaganda activities, and for the provision of combat support services. Without the military encampments, training facilities, command centers, intelligence posts and airstrips available to them on Costa Rican soil, the *contras* would not have been able to establish and maintain their critical "Southern Front". It is well documented that the Government of Costa Rica, at the highest levels, has at all times knowingly tolerated these *contra* activities on its territory, and has on numerous occasions actively assisted the *contras* in conducting their armed attacks in and against Nicaragua.

31. These activities and Costa Rica's knowledge of and complicity in them are demonstrated by, *inter alia*, admissions of officials of the Costa Rican Government; admissions, in sworn testimony before the United States Congress, of officials of the Government of the United States who participated in planning and implementing the *contras'* "Southern Front", and official United States Government reports on these events; diplomatic correspondence between Nicaragua and Costa Rica through which Costa Rica was repeatedly placed on official notice of the *contras'* activities on its territory; Nicaragua's routine, contemporaneous documentation of *contra* attacks launched from Costa Rica and logistical support operations conducted in Costa Rica; the publications and proclamations of *contra* organizations and their leaders in Costa Rica; sworn testimony before the Costa Rican courts of individuals involved in the *contras'* military activities against Nicaragua; and other independent, corroborative sources such as press accounts from Costa Rica and the United States.

A chronological account of these activities follows.

### 1981-1982

32. In 1981 and 1982, several organizations were formed which had as their objective the overthrow of the Government of Nicaragua through military and paramilitary operations against Nicaragua, waged wholly or in part from the territory of Costa Rica. One of the first such groups to form was the Nicaraguan Democratic Union (UDN) and its armed wing, the Nicaraguan Revolutionary Armed Forces (UDN/FARN). FARN, led by José Francisco Cardenal and Fernando "El Negro" Chamorro Rapaccioli, was "active in southern Nicaragua in 1981" and was "believed comprised of some 200 to 250 activists operating largely out of Costa Rica and Honduras" in early 1982, according to a 16 July 1982 report of the United States Defense Intelligence Agency. (Ann. F, Attachment 6, at p. 22.)

33. According to the Costa Rican National Security Agency, *contra* forces began using the zone along Costa Rica's northern border to train recruits in late

1981. (Ann. I, Attachment 2.) By early 1982, the presence of armed *contra* groups along Costa Rica's border with Nicaragua was widely reported, openly proclaimed by *contra* leaders, and acknowledged by Costa Rican officials. In January 1982, Costa Rica's Minister of Public Security and Administration, Arnulfo Carmona Benavides, confirmed the existence of the anti-Sandinista camps along the northern border. Sr. Carmona Benavides also reported that the mercenaries found in the border area were being paid by the *contra* group based in San José. (Ann. H, Attachments 1, 2. See also Ann. I, Attachment 1.) Costa Rican Rural Guard officials not only tolerated the *contras*' presence, but helped them. For example, on many occasions, Rural Guard officers assisted bands of *contras* in avoiding detection and capture by other authorities. (Ann. H, Attachments 3, 4.)

34. On 15 April 1982 at a press conference in San José, Edén Pastora called for the overthrow of the Nicaraguan Government and announced the formation of the Sandino Revolutionary Front (FRS) for that purpose. (Ann. F, Attachment 6 (Report of the United States Defense Intelligence Agency, 16 July 1982, p. 23); see also Ann. H, Attachments 7, 8.) Thereafter, Pastora and his followers operated freely in Costa Rican territory. Pastora himself called over Costa Rican radio for armed struggle against Nicaragua, and, according to a statement in June by one of his aides, "more than 1,000 men have been trained in Pastora's camps" in Costa Rica, and "another 3,000 support him in other ways". The aide claimed that the camps were scattered throughout Costa Rica, each housing between 180 and 300 members, who received military training and political indoctrination. (Ann. I, Attachment 2.)

35. The Costa Rican Government took no action against Pastora until May, citing his rights under the principle of "freedom of expression". (Ann. H, Attachment 9.) In May, several machine-guns and pistols were confiscated from Pastora's bodyguards in San José, but the bodyguards were freed soon thereafter. (Ann. H, Attachments 13 and 14.) Pastora himself was expelled from Costa Rica on 22 May. (Ann. H, Attachment 15.) However, his re-entry into Costa Rica was later authorized, and his activities allowed to resume. This was to become a recurrent pattern; for example, on 5 October 1982, he was captured with a large quantity of arms, but was immediately set free and given back his arms, by order of President Monge. (Ann. H, Attachment 22.)<sup>1</sup>

36. Meanwhile, on 7 April a *contra* group attacked the Nicaraguan customs post at Peñas Blancas from Costa Rican territory. Responsibility for the attack was claimed by *contra* leaders Fernando and Edmundo Chamorro. (Ann. H, Attachments 5, 6.) This attack was only the first of numerous assaults by Costa Rica-based *contras* on Peñas Blancas, site of the major border post where the Pan American Highway crosses between Nicaragua and Costa Rica.

37. On 10 May an airliner of the Nicaraguan airline Aeronica was hijacked and flown to Costa Rica. Nicaragua's application for the extradition of the hijacker was denied by Costa Rica. (Ann. A, Attachment 2 (Diplomatic Note of Nicaragua); Ann. H, Attachment 12; Ann. G, Attachment 3.)

38. By June, at least 2,000 *contras* were known to be established in Costa Rica, according to files of the Costa Rican National Security Agency. (Ann. H, Attachment 16.) That same month an alliance was announced between Pastora

<sup>1</sup> Pastora entered Costa Rica in April 1982 and was expelled on 22 May 1982; his re-entry was authorized on 11 September 1982; he was arrested and freed on 4 October 1982; expelled in April 1983; entered Costa Rica with 192 men at the end of January 1984; expelled 1 June 1984; and was granted asylum in Costa Rica in June 1986. (Ann. H, Attachments 14, 15, 20, 21, 22, 30, 39, 61, 62.)

and Alfonso Robelo, leader of a San José-based organization called the Nicaraguan Democratic Movement (MDN). (Ann. H, Attachment 17.) Paid political advertisements placed by Robelo and the MDN stated in part, "The moment has arrived for open struggle . . ." (Ann. E, Attachment 2, Nos. 1, 2.)

39. On 24 July FDN leader José Francisco Cardenal held a press conference in San José, at which he claimed responsibility for recent attacks against Nicaragua and declared that military means were necessary to establish a new Government in Nicaragua. (Ann. A, Attachment 16 (Diplomatic Note of Nicaragua, 4 August 1982); Ann. H, Attachments 18, 19.)

40. On 25 September a new alliance among the several Costa Rican-based *contra* groups was announced in San José, calling itself the Democratic Revolutionary Alliance (Alianza Revolucionaria Democrática), or ARDE. Among those included in the alliance were Eden Pastora (FRS), Alfonso Robelo (MDN), Fernando Chamorro (UDN/FARN), and Brooklyn Rivera, head of an organization of Miskito, Sumo and Rama Indians called Misurasata. (Ann. E, Attachment 2, Nos. 4, 5.)

41. On 2 November *contras* Fernando Chamorro and Juan José Zavala were detained in Naranjo, Guanacaste in northern Costa Rica, with a cargo of arms, maps, parachutes, aerial navigation charts and other equipment. (Ann. H, Attachments 25, 26.) The two were freed on the same day. On 4 November the weapons and supplies were returned to them. (Ann. H, Attachments 27, 28.) The mayor of Naranjo asserted that the arms were returned because the Ministry of Public Security had issued permits to Chamorro and Zavala to carry an unlimited quantity of weapons of any type. (*Id.*, see also Ann. I, Attachment 3.) The permits had been renewed on 13 October 1982, by the Arms and Explosives Controls Department of the Ministry of Public Security. (Ann. H, Attachment 28.)

42. The mobilization of *contra* groups in northern Costa Rica continued through the end of 1982 under the full view of Costa Rican authorities, who did little or nothing to stop it. (Ann. H, Attachment 23.) For example, on 1 December a group of *contras* attacked the Nicaraguan border village of Cardenas, supported by an aircraft that dropped flares over Cardenas near Nicaraguan defensive positions. Both the attackers and the aircraft returned unhindered to Costa Rican territory. This occurred in an area 5 kilometers from the frontier and near the Pan American Highway, where there are several Costa Rican observation posts. The attack lasted nearly five hours and could not have escaped the attention of the Costa Rican authorities, who took no action. Moreover, it occurred only one day after a meeting, held under the auspices of the Mixed Commission, between Nicaragua's Vice Minister of the Interior and Costa Rica's Vice Minister of Public Security, the purpose of which was to prevent the occurrence of such incidents. (Ann. A, Attachment 18 (Diplomatic Note of Nicaragua).) Two weeks later, a Member of the Costa Rican National Assembly stated that the attack on Cardenas was staged from Costa Rica and specifically from bases known to the Costa Rican Government:

"We have been able to confirm that the light airplane which overflew the village of Cardenas during the attack perpetrated against it took off from Playa Blanca in the jurisdiction of Hacienda El Murcielago, Costa Rican territory.

The Government knows that there and in a nearby estate there is not one small airplane, but two, plus a camouflaged helicopter.

The group of counter-revolutionaries who attacked the town (Cardenas) crossed the border having departed from Chapernon and Peña Lonja, in Costa Rica territory a few kilometers from the frontier.

New acts of aggression are being prepared in encampments on several estates on the border, one of which belongs to Hector Garcia, another in Monte Plata belonging to a widow named Medina, and also on estates of Rigoberto Gallegos and Ramiro Oregueda." (Ann. H, Attachment 64.)

43. At the same time, *contra* organizations continued, with impunity, to make San José their headquarters for making public appeals in support of their military and political campaign against Nicaragua. See, e.g., the numerous paid political advertisements appearing in San José newspapers in December 1982. (Ann. E, Attachment 2, Nos. 7-15.)

### 1983

44. *Contra* activity in Costa Rica continued and expanded in 1983, and the evidence mounted that Costa Rican authorities principally the Rural Guard, were openly assisting the mercenary forces. (Ann. I, Attachments 4, 8.) Throughout 1983 and into 1984, Pastora's operations — all on Costa Rican soil — continued unabated. (Ann. I, Attachment 5.) While his activities were shut down briefly by Costa Rican authorities from time to time, on each occasion they quickly resumed. (Ann. I, Attachment 8.)

45. *The public appeals of Pastora and other contra leaders for armed struggle* against Nicaragua likewise continued to emanate from Costa Rica. For example, on 7 January 1983 a press conference was held in San José in which Alfonso Robelo, Brooklyn Rivera, Edén Pastora and Francisco Fiallos, all members of ARDE, called for the overthrow of the Nicaraguan Government. (Ann. A, Attachment 22 (Diplomatic Note of Nicaragua).) On 9 February 1983, at a press conference at the Hotel Ambassador in San José, *contra* leader Adolfo Calero asserted that armed struggle against the Government of Nicaragua was growing daily. "It is a struggle which the people will launch against the comandantes", Calero asserted. (Ann. H, Attachment 29.) Further, on 5 and 7 January 1983, Pastora interfered with broadcasts on a Nicaraguan television channel to call for armed struggle against the Government of Nicaragua; the interfering broadcasts were traced to the Hacienda El Amo, Costa Rica, the location of one of Pastora's military camps. (Ann. A, Attachment 22 (Diplomatic Note of Nicaragua).)

46. Moreover, even when clandestine broadcasts by Pastora and others were investigated, the perpetrators were allowed to continue their activities. On or about 23 February 1983, in the course of an investigation of clandestine radio broadcasts, Major Mario Jara Castro of the Costa Rican Rural Guard conducted a search of the "Quinta Heroica" estate in the Department of San José. The estate belonged to a Dutch national, one of whose local representatives was a Nicaraguan, Carlos Maturana Marques, a member of ARDE. Major Jara's men discovered and confiscated a pick-up truck which contained a mobile transmitter. However, on 23 February Vice Minister of Governance Enrique Chacon telephoned Major Jara and instructed him to hand over the transmitter and truck to Maturana Marques. Major Jara did so, in the presence of Col. José Benito Zeledón González, Director General of the Rural Guard. (Ann. A, Attachment 109 (Diplomatic Note of Nicaragua).)

47. *Contra* attacks from Costa Rica against Nicaraguan vessels, border posts, and citizens continued throughout April and May 1983. A partial listing of such attacks includes the following:

On 10 April a *contra* group attacked and seized a launch belonging to the Nicaraguan Ministry of Transport near Tasbapauni, Nicaragua. The

passengers and crew were kidnapped and taken to Barra del Colorado and thence to Puerto Limon, Costa Rica. One of the kidnap victims was wounded and was being treated in a hospital in Limon. (Ann. A, Attachment 26 (Diplomatic Note of Nicaragua).)

On 15 April a *contra* group coming from Costa Rica attacked the border post of Fatima de Sarapiquí, in the Department of Río San Juan. (Ann. A, Attachment 28 (Diplomatic Note of Nicaragua).)

On 1-4 May *contras* repeatedly attacked, from Costa Rican territory, Nicaraguans who were guarding the ship *Bremen* at Machuca, El Castillo, Río San Juan. (Ann. C, Attachment 1; see Ann. A, Attachment 48 (Diplomatic Note of Nicaragua).)

On 2 May two Nicaraguans were killed when a *contra* group coming from Costa Rica attacked the border post of La Esperanza with mortars and rifle fire. (Ann. A, Attachment 38 (Diplomatic Note of Nicaragua).)

On 3 May 50 *contras* attacked the border post of Papaturo. After being repelled by Nicaraguan troops, they retreated to Costa Rica. Among the attackers killed was a Costa Rican national and former Major in the Rural Guard, Francisco Rodriguez. (Ann. A, Attachment 47 (Diplomatic Note of Nicaragua).)

On 5 May two Nicaraguans were wounded at Boca de Sabalos, Río San Juan, when they were ambushed by mercenaries. The attackers retreated to Costa Rican territory. (Ann. C, Attachment 1.)

On 5 May *contras* attacked, from Costa Rican territory, a civilian boat which was carrying provisions to one of the towns near San Juan del Norte. They kidnapped four Nicaraguans, including a ten-year-old boy, and took them to Costa Rica. (Ann. A, Attachment 44 (Diplomatic Note of Nicaragua).)

On 10 May, an aircraft coming from Costa Rica overflew the sector of Barra Río Maiz, where it dropped packages containing supplies for *contra* groups. The aircraft then returned in the direction of Costa Rica. (Ann. C, Attachment 1.)

On 25 May, a boat carrying three West German journalists and several members of the Nicaraguan border patrol was attacked by *contras* from the Costa Rican side of the San Juan River near El Castillo. Two Nicaraguans were killed in the attack; four Nicaraguans and one of the journalists were wounded. The attackers kidnapped all three of the journalists and took them to Costa Rica. (Ann. C, Attachment 1; Ann. C, Attachment 6; see also Ann. A, Attachment 4 (Diplomatic Note of Nicaragua).)

48. During this period, Costa Rican officers admitted that the *contras* operating on their territory received official Costa Rican support. In May, Lt. Col. Nestor Mora Rodríguez, a local Rural Guard commander in Los Chiles, admitted his support for the *contra* forces, and acknowledged that he had personally helped put Nicaraguan refugees in contact with *contra* organizers in Costa Rica to facilitate their recruitment into the *contra* forces. And Col. Gilberto Orozco, regional head of the Rural Guard for the province including Los Chiles, admitted that Costa Ricans gave the *contras* logistical support, including food and shelter. (See Ann. I, Attachment 4.)

49. On 24 May 1983, accused hijacker Miguel Bolaños Hunter departed from Costa Rica after having been freed the previous day from Costa Rican custody on the orders of the Trial Court of Liberia, Costa Rica. Hunter, a United States citizen, had been accused of hijacking an airplane belonging to "Alas", a private

Nicaraguan company, and forcing the pilot to fly to Costa Rica. He was released from Costa Rican custody without ever being tried for the hijacking. (See Memorandum of 8 August 1983, from Costa Rican Major Rodolfo Jiménez Montero, Deputy Director of Intelligence and Security, to Col. Johnny Campos, Vice-Minister of Public Security, on "the freeing and departure from our country of an accused hijacker", and Costa Rican court records documenting Bolaños Hunter's detention and release, attached to Annex A, Attachment 109 (Diplomatic Note of Nicaragua).)

50. *Contra* attacks from Costa Rican territory continued throughout the remainder of 1983. A partial listing of attacks in June and July includes the following:

Between 28 June and 2 July 1983, a group of *contras* infiltrated Nicaraguan territory from Costa Rica, attacking the border post of San Juan del Norte with heavy machine guns, mortars, rockets and rifle fire. One Nicaraguan was killed and two were wounded. (Ann. C, Attachment 1; Ann. A, Attachment 53 (Diplomatic Note of Nicaragua).)

On 6 July *contras* armed with rifles kidnapped Nicaraguan citizen David Abud near the border post of El Papaturro and took him to Costa Rica. (Ann. C, Attachment 1.)

On 7 July one Nicaraguan was killed and another wounded in the El Toro sector, Río San Juan, when their patrol was ambushed by *contras*. The attackers retreated to Costa Rica. (Ann. C, Attachment 1.)

On 8 July *contras* ambushed a border patrol near San Juan del Norte, killing the officer in charge of the border post there. After the attack the *contras* retreated toward Costa Rican territory. (Ann. C, Attachment 1.)

On 10 July *contras* on four boats armed with M-50 machine guns hijacked a Nicaraguan fishing boat, *Langostera 160*, and took it into Costa Rica. (Ann. C, Attachment 1.)

On 19 July the border post of El Papaturro was attacked by 20 to 30 *contras* who had infiltrated from Costa Rica. One Nicaraguan was wounded. (Ann. C, Attachment 1.)

On 23 July one Nicaraguan was wounded in a battle at Comarca Pavon II, near San Carlos, between a Nicaraguan border patrol unit and *contras* who had crossed from Costa Rican territory. After the battle, the *contras* retreated toward Costa Rica. (Ann. C, Attachment 1.)

51. On 31 July 1983, the Nicaraguan customs post at Peñas Blancas was hit by light arms fire from Costa Rican territory for about one-half hour, and the Nicaraguan Army returned the fire. Costa Rican military reports dated 3 and 5 August 1983 confirm that the attack began "from Costa Rican territory". (Ann. D, Attachment 1 (Letter from the officer in charge of the Northern Command, Lt. Col. Rodrigo Rivera Saborio, to Costa Rican Minister of Public Security, Angel Edmundo Solano Calderón, based on information provided by Sub-lieutenant Sigifredo Medrano, officer in command of the Costa Rican post at Peñas Blancas).) The report of Sub-lieutenant Medrano, officer in charge, further stated:

"From the moment when I was first assigned to the post at Peñas Blancas on June 5, 1983, I have seen activities taking place here along the border which I do not believe to be proper. Persons come and go without the documents which this department is supposed to require for entry into and departure from the country, for example, passport, visa, etc." (Ann. D, Attachment 4.)

52. Two additional official reports filed later in August, by Lt. Col. Mario Araya, head of the Special Supervisory Unit, to Johnny Campos, Vice Minister of Public Security, confirmed that the *contras* were operating throughout the area without restriction. Following a 24 August search of the Medio Queso Zone, Lt. Col. Araya, who commanded the search group, reported to Vice Minister Campos on 29 August that:

“the subversives [i.e., *contras*] travel freely through the entire zone, without encountering any opposition from the respective authorities. We recommend at least three fixed positions by the Civil Guard in the following locations: Cachito, La Trocha and Boca de Pocosol, as well as intensive patrolling of the entire zone. We recommend the closure of the airport in the La Chalupa estate or the establishment of a monitoring post there.” (Ann. D, Attachment 6.)

And in a report to Vice Minister Campos on searches conducted a few days later in Guanacaste, Lt. Col. Araya concluded:

“. . . the immigration controls are deficient and any foreigner is given legal documentation in Liberia. . . . We have detected that there are ‘safe houses’ in La Cruz which are used, among other things, to recruit combatants and send them to Honduras. The same is true of Liberia and Canas. We recommend an investigation and ‘clean-up’ of those towns by National Security.

*We cannot disregard the assistance which the counter-revolutionary and non-counter-revolutionary elements have received from persons who form part of this Government . . .*” (Ann. D, Attachment 7 (emphasis added).)

53. Still another report, from the Costa Rican Director of Intelligence and Security to Minister of Public Security Angel Edmundo Solano Calderón, dated 30 August reported that:

“In Los Chiles, there is much activity by both sides; according to rumors, it is feared that there will be an act of terrorism near Upaia. There is talk of movements by members of the counter-revolution, and *the Commander of the Civil Guard does absolutely nothing*. . . .” (Ann. D, Attachment 5 (emphasis added).)

54. Despite the fact that top officials of the Costa Rican Government were thus repeatedly alerted, by their own subordinates, to the *contras*’ operations and the active complicity of the local authorities, the *contras*’ activities in Costa Rica continued without interference. For example:

On 28 August an airplane flying from Costa Rica carried supplies to a *contra* unit located on the banks of the Santa Cruz River, La Azucena, Dept. of Río San Juan. (Ann. C, Attachment 1.)

On 29 August speedboats from Costa Rica brought supplies to *contras* at Barra Río Maiz. (Ann. C, Attachment 1.)

On 3 September one Nicaraguan was killed and another wounded in an ambush by *contras* near Cardenas. The *contras* kidnapped the wounded man and took him across the border into Costa Rica. (Ann. C, Attachment 1.)

On 8 September two ARDE aircraft proceeding from Costa Rican airspace entered Nicaragua. One attacked the Augusto C. Sandino International Airport in Managua, and was shot down. The other returned in the direction of Costa Rica. (Ann. A, Attachment 58 (Diplomatic Note of Nicaragua; see also Ann. H, Attachments 31, 33; Ann. I, Attachment 6).)

CIA Station Chief Fernandez also confirmed that Pastora's forces were responsible for this attack. (Ann. F, Attachment 3 (Testimony of Mr. Fernandez at p. 160).)

On 9 September a Cessna 185 airplane bearing the registration TI AGN was shot down in the Bolillo sector near El Castillo while on a mission to carry supplies to *contra* units. (Ann. C, Attachment 1.)

55. On 13 September 1983, a San José newspaper printed a full-page statement by Edén Pastora filled with "promises" of military actions against Nicaragua and threats to kill Nicaraguan leaders. "We are going to keep on bombing [Nicaraguan] military positions", the statement said. "We are stronger than ever . . . and you (Members of the Nicaraguan Government) will be killed." (Ann. H, Attachment 32.) Ten days later, an airplane flying from Costa Rica used rockets to attack the "Nicarao" electric plant and the "Induquinisa" factory in Nicaragua. In a communiqué issued by ARDE military headquarters in San José, Edén Pastora claimed responsibility for the attack. (Ann. H, Attachment 34.) The Government of Nicaragua vigorously protested the use of Costa Rican territory for ARDE's continuing military and propaganda campaign against it. (Ann. A, Attachment 63 (*Diplomatic Note of Nicaragua*).)

56. On 28 September beginning at 5.10 a.m., an ARDE force of approximately 80 to 100 *contras* invaded Nicaragua from Costa Rica, mounting simultaneous mortar and grenade attacks against the customs office at Peñas Blancas and the towns of Cardenas and La Boca del Sapoa. The attackers withdrew to positions one-half kilometer from the border, in the vicinity of the Costa Rican customs facilities, where they had to have been observed by Costa Rican authorities. From there, they used mortars and other heavy weapons to effect the almost total destruction of the Nicaraguan customs post at Peñas Blancas. Subsequently, attacks resumed against the Nicaraguan post. This time the *contras* fired mortars and other weapons from emplacements in the Costa Rican customs facilities themselves. Two aircraft also invaded Nicaraguan airspace from Costa Rica, bombing Nicaraguan positions in the El Naranjo sector and retreating into Costa Rican territory. Three Nicaraguans were killed and nine were wounded in these attacks. (Ann. A, Attachments 67, 68 (*Diplomatic Notes of Nicaragua*); Ann. H, Attachments 35, 36.) Costa Rican Minister of Public Security, Angel Edmundo Solano, subsequently confirmed that "counter-revolutionaries used Costa Rican territory to attack Nicaragua" in the 28 September attack on Peñas Blancas. (Ann. I, Attachment 7.)

57. In response to Nicaraguan protests over the Peñas Blancas assault, Costa Rican Foreign Minister Fernando Volio Jiménez denied that the attack on Peñas Blancas was launched from Costa Rican territory. (Ann. A, Attachment 71 (*Diplomatic Note of Costa Rica*).) However, in the same note, Volio admitted that Costa Rican forces were in the area where the attack occurred, but that, rather than impede the *contras*, they withdrew.

"The Costa Rican authorities (ten Civil Guards and nine Rural Guards), in accordance with orders from their superiors, pulled back from the border post at the outbreak of the battle, because of [their] proximity to the location of the conflict", Volio wrote. (*Id.*)

Major Juan Rafael Guerara, second-in-command of the Costa Rican Northern Command, told visiting members of the National Assembly that the Rural Guard had given advance warning to the Civil Guard at Peñas Blancas that a *contra* attack would take place there. The Assembly members concluded that ARDE forces had attacked Nicaragua from Costa Rican territory. (Ann. A,

Attachments 67, 68 (Diplomatic Notes of Nicaragua); Attachments 69, 71 (Diplomatic Notes of Costa Rica). See also Ann. H, Attachments 35, 36.)

58. Additional attacks to the end of 1983 included the following.

On 2 October *contra* commandos operating from Costa Rica used speed-boats to reach the port of Benjamín Zeledón, where they destroyed two large fuel tanks which supplied the entire Atlantic Coast region of Nicaragua. One of the tanks had a capacity of 308,448 gallons of diesel fuel and the other a capacity of 71,253 gallons of gasoline. The attack paralyzed economic activity in the Department of Zelaya, Nicaragua, and seriously affected the town of Puerto Cabezas. (Ann. A, Attachment 74 (Diplomatic Note of Nicaragua).)

On 5 October a group of 40 *contras* kidnapped a Nicaraguan civilian from Aguas Claras, Río San Juan, and took him to Costa Rica. (Ann. C, Attachment 1.)

On 7 October the border post of El Naranjo was attacked from Costa Rica with mortars. ((41.42); Ann. A, Attachment 76 (Diplomatic Note of Nicaragua).)

On 18 October *contras* coming from Costa Rica kidnapped 4 workers from the La Flor farm near Peñas Blancas, taking them toward Costa Rican territory. (Ann. C, Attachment 1.)

On 5 November, *contras* based in Costa Rican territory attacked the border post of Pueblo Nuevo. (Ann. A, Attachment 82.)

On 6 November, approximately 60 *contras* coming from Costa Rica attacked Orosi, Nicaragua, with rifles and mortars. One Nicaraguan was wounded. (Ann. A, Attachment 84.)

On 18 November the town of Cardenas was attacked with mortars from Costa Rican territory. Three civilians were wounded. On the same day, a concentration of counter-revolutionaries was reported in the vicinity of Peñas Blancas. (Ann. A, Attachment 85 (Diplomatic Note of Nicaragua).)

On 19 December *contras* crossed over from Costa Rica, burned the Santa Ana farm near the Colon border post, and kidnapped the family living there. (Ann. C, Attachment 1.)

## 1984

59. During 1984, at least 16 *contra* base camps were in active operation in Costa Rica. The precise locations of these camps are set out in Annex C, Attachments 3, 4; see also Annex A, Attachment 109 (Diplomatic Note of Nicaragua). Several of these camps had communications facilities, as well as landing strips. In addition, numerous *contra* collaborators operated in various capacities throughout Costa Rica. They are specifically identified in Ann. C, Attachment 3; Annex A, Attachment 109 (Diplomatic Note of Nicaragua).

60. In all, at least nine airstrips inside Costa Rica were being used by the *contras* in 1984: El Murciélago, Liano Grande de Liberia, Upala, Medio Queso, Los Chiles, Boca de San Carlos, Barra del Colorado, Barra del Tortuguero, and Guapiles. (Ann. C, Attachment 5, Table 2.) An American mercenary named Bruce Jones who enlisted in Pastora's campaign and operated with Pastora's force from mid-1982 to February 1985 has stated that he was aware of approximately 100 deliveries of supplies for the *contras* — everything from boots to anti-aircraft guns — provided by CIA-sponsored aircraft landing at Costa Rican farms between May 1982 and May 1984. (Ann. I, Attachment 14.) Members of

ARDE also openly used the Tobias Bolaños Airport in Pavas, and the Las Loras Airport in Puntarenas, for diverse military-related activities. ARDE leader Fernando "El Negro" Chamorro was found at Tobias Bolaños Airport on 3 March 1984, before one of his periodic expulsions from Costa Rica. (Ann. H, Attachment 40.)

61. One site of landing strips in northern Costa Rica used by aircraft making deliveries to the *contras* was the farm of a United States-born, naturalized Costa Rican citizen named John Hull. Hull, who has lived in Costa Rica for 20 years, owns the "La Chalupas" farm near the Nicaraguan border. Hull has admitted helping the *contras* operating in northern Costa Rica by allowing their supply flights to land on airstrips on his property. He has also admitted directing *contra* supply flights to landing sites on neighboring properties; feeding and housing *contra* forces after they have sustained military defeats; providing intelligence to the *contras*; and helping to plan *contra* attacks, including ARDE's 8 September 1983 air attack on Sandino International Airport in Managua. (See, e.g., Ann. I, Attachments 65, 57, 43, 40.) In addition, CIA Station Chief Fernandez has testified that "Hull was very active in supporting the resistance people [i.e., *contras*]", by allowing his property in northern Costa Rica to be used for the delivery of supplies. (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, pp. 157, 164).) Two former United States Ambassadors to Costa Rica, Curtin Windsor and Francis McNeil, have also confirmed that Hull's farm has been used regularly by *contras* on the "Southern Front". (Ann. I, Attachment 64.)

62. During 1984, *contra* organizations headquartered in San José continued to issue appeals for military action against Nicaragua. On 9 January ARDE published in San José a paid advertisement containing its manifesto, which "supports a political and military struggle to eradicate the Marxist-Leninist totalitarianism of the FSLN, to expel the interventionist forces and rescue the Nicaraguan revolution". (Ann. E, Attachment 2, No. 16.)

63. Specific attacks waged by the *contras* against Nicaragua from Costa Rican territory in early 1984 included the following:

On 11 January a Nicaraguan patrol fought with a group of *contras* east of El Castillo as they attempted to infiltrate into Nicaraguan territory. (Ann. C, Attachment 3.)

On 21 January a *contra* group which penetrated from Costa Rica in the sector of Loma Quemada, Río San Juan, kidnapped 14 Nicaraguans, among them six surveyors and three campesinos. The kidnap victims were taken to Costa Rican territory. One managed to escape. (Ann. A, Attachment 94 (Diplomatic Note of Nicaragua).)

On 23 January the town of El Castillo was attacked with mortars by *contras* based in Costa Rica. (Ann. C, Attachment 3.)

On 25 January one Nicaraguan was killed and two were wounded by *contras* in a battle at Portugal, Department of Rivas. The *contras* retreated in the direction of Costa Rican territory. (Ann. C, Attachment 1.)

On 29 January *contras* attacked Comarca La Concordia from Costa Rican territory. (Ann. C, Attachment 3.)

64. In February, a Civil Guard official investigation determined that "from Costa Rican territory, counter-revolutionary activists with emplacements of machine-guns attacked Sandinista positions located very close to the border on Nicaraguan soil". (Ann. D, Attachment 8 (Report from Col. Oscar Vidal Quesada to Minister of Public Security Solano); Attachments 97, 99 (Diplomatic Notes of Nicaragua); cf. Ann. A, Attachment 98 (Diplomatic Note of Costa Rica).)

65. Costa Rican authorities not only knew of such activities, but aided and abetted them. For example, on 28 January 1984, Edén Pastora entered Costa Rica with 192 men, seeking refuge for them and for some 2,000 others who were to follow. (Ann. H, Attachment 37.) Pastora's entry was contrary to stated Costa Rican policy at the time. (Ann. H, Attachments 37, 38.) Nevertheless, the regional commander of the Rural Guard, Col. Gilberto Orozco, not only permitted Pastora to enter the country, but met with him on Costa Rican soil. (Ann. H, Attachment 37.) The co-ordinator of the State Security Council, Armando Arauz, announced that the Council had ordered Col. Orozco to be fired for allowing Pastora to enter Costa Rica. (*Id.*)

66. Col. Orozco was still regional Rural Guard commander two months later, however, when he was reported to have visited the site where an ARDE supply plane had crashed on 23 or 24 March 1984. (Ann. H, Attachment 43. See also Ann. H, Attachment 39.) The plane was loaded with 500,000 rounds of ammunition and hundreds of articles of military clothing. It crashed near the town of Chamorrito, Costa Rica, 20 kilometers from the Nicaraguan border. Lic. Mainor Calvo, director of Costa Rica's Bureau of Judicial Investigation, later reported that the plane was carrying supplies for ARDE. According to Calvo, the supplies were to be dropped by parachute on an ARDE camp inside Nicaragua. (See Ann. H, Attachment 49.) Col. Orozco's visit to the area took place three days after the crash and some ten days before Costa Rican officials say that they learned about the crash. (Ann. H, Attachments 41, 42, 43, 49.) A member of the National Assembly asserted that Col. Orozco had participated in a cover-up of the incident. (Ann. H, Attachment 44.)

67. Additional attacks in early 1984 included these:

On 9 February a group of *contras* attacked a Nicaraguan army patrol from Cerro Las Mercedes, Costa Rica, with 81 mm mortars. (Ann. C, Attachment 3.)

On 18 February a group of *contras* coming from Costa Rica attacked Hill 169, near the border post of El Naranjo. (Ann. C, Attachment 3.)

On 20 February two boats coming from Costa Rica attacked the border post of San Juan del Norte with machine-gun fire. (Ann. C, Attachment 3.)

On 22 February a *contra* group coming from Conventillos in Costa Rica again attacked the border post at Hill 169, 1 km south of the El Naranjo border post. (Ann. C, Attachment 3.)

On 29 February a *contra* group coming from Costa Rican territory attacked the border post of San Juan del Norte. (Ann. C, Attachment 3.)

On 8 March two "piranha" speedboats coming from Costa Rica attacked the Port of San Juan del Sur. (Ann. C, Attachment 3.)

On 12 March 20 *contras* attacked the town of Los Chiles, near San Carlos. (Ann. C, Attachment 3.)

On 13 March one Nicaraguan was wounded when *contras* attacked the border post of Peñas Blancas from Costa Rican territory. Some of the shots were fired from the Costa Rican command post there. (Ann. C, Attachment 1.)

On 13 March a *contra* group located 200 meters from Peñas Blancas, in Costa Rican territory, attacked the Nicaraguan border post there. (Ann. C, Attachment 3.)

On 15 March a group of 30 *contras* fought with Nicaraguan troops as they attempted to infiltrate into Nicaragua from the sector opposite the border post of Colon. (Ann. C, Attachment 3.)

On 17 March 15 *contras* entered Nicaragua from Costa Rica and engaged in combat with Nicaraguan troops at the border post of El Papaturro. On their retreat, the *contras* were supported by firing from rocket launchers and rifles of the Costa Rican Rural Guard. (Ann. C, Attachment 1.)

On 17 March a *contra* group coming from Costa Rican territory attacked the border post of Peñas Blancas. (Ann. C, Attachment 3.)

On 21 March a patrol of the Nicaraguan army was ambushed near the border post of La Noca. One Nicaraguan was wounded. (Ann. C, Attachment 3.)

On 23 March a *contra* group coming from the sector of Cabalceta, Costa Rica, again attacked the border post of Peñas Blancas. (Ann. C, Attachment 3.)

On 30 March a *contra* group coming from Costa Rican territory attacked the border post of Cardenas. (Ann. C, Attachment 3.)

On 5 April a Nicaraguan army patrol was ambushed near the border post of La Noca, near San Carlos; Nicaraguan troops were also ambushed by a group of *contras* near the border post of El Papaturro, San Carlos. (Ann. C, Attachment 3.)

68. Beginning on 6 April 1984, a group of approximately 500 *contras* coming from Costa Rica attacked the border post of San Juan del Norte. On 12 April the town was taken by ARDE forces after a series of mortar and machine-gun attacks. During the assault, the attacking *contras* were supplied with provisions from boats based in Costa Rica. This resupply operation was known to and authorized by the head of the Rural Guard for the Atlantic zone. During the brief period when the town was occupied, journalists were transported to San Juan del Norte from San José with the co-operation of Costa Rican officials, and an ARDE spokesman in San José provided extensive information on the military operation. (Ann. A, Attachments 101, 102, 104, 109 (Diplomatic Notes of Nicaragua 10 April 1984, 11 April 1984, 16 April 1984, 28 April 1984); Ann. C, Attachment 3; see also Ann. H, Attachments 45, 46.)

69. Additional attacks from Costa Rica through the end of 1984 included these:

Between 26 and 30 April a major attack was carried out by 500 *contras* from Costa Rican territory against Nicaraguan positions in the El Castillo zone, Department of Río San Juan. After the attack the *contras* returned to Costa Rican territory. One Nicaraguan was killed and five were wounded in this series of attacks. (Ann. A, Attachments 110, 111. (Diplomatic Notes of Nicaragua).)

On 11 April a group of approximately 30 *contras* entered Nicaragua from Costa Rica, attacked the border post of El Gobernador, Río San Juan, with mortars and machine guns, and then withdrew to Costa Rican territory. (Ann. C, Attachment 3.)

On 24 April a group of 10 *contras* ambushed Nicaraguan troops who were traveling by boat in the El Jobito sector, 40 kilometers south-east of San Carlos, damaging the boat. (Ann. C, Attachment 3.)

On 27 April a group of *contras* coming from Costa Rican territory fought with a Nicaraguan patrol on the Gavilán Hill, 5 kilometers south-west of El Castillo. One Nicaraguan was killed and six were wounded. (Ann. C, Attachment 3.)

On 28 April a group of 20 to 30 *contras* ambushed a Nicaraguan army vessel headed for the border post of Orosi, north-east of Cardenas. One Nicaraguan was killed and another wounded. (Ann. C, Attachment 3.)

On 29 April a group of *contras* coming from Costa Rican territory attacked the town of Cardenas with 81 mm mortar fire. (Ann. C, Attachment 3.)

On 30 April a group of approximately 300 *contras* fought with Nicaraguan troops on Gavilán Hill. Seven Nicaraguans were killed and 12 wounded. The *contras* withdrew into Costa Rica. (Ann. C, Attachment 3.)

On 1 May 150 ARDE combatants fought with Nicaraguan troops in Quebrada La Flor, near El Castillo, killing four Nicaraguans and wounding six. The *contras* withdrew in the direction of Las Alturas in Costa Rican territory. (Ann. C, Attachment 1.)

On 7 May a group of 80 to 100 *contras* attacked the border post of Palo de Arco, killing four Nicaraguan civilians, including two children, and wounding four others. The El Cachito post of the Costa Rican Rural Guard is located 500 meters from the place of the attack. After the attack, the *contras* withdrew to Costa Rica, where at least 26 were treated for their wounds in Costa Rican hospitals. (Ann. H, Attachment 48; Ann. A, Attachment 116 (Diplomatic Note of Nicaragua); Ann. C, Attachment 3.)

70. On 30 May 1984, Edén Pastora held a press conference at La Penca, Costa Rica, during which a bomb exploded, injuring Pastora and others and killing eight people. ARDE had organized the ill-fated press conference from San José — the base for numerous foreign correspondents covering the escalating *contra* operations in Costa Rica — and transported the journalists to La Penca. (Ann. 1, Attachments 9, 10.) After the explosion at La Penca, Edén Pastora was transported to the Clinica Biblica in San José for treatment of his injuries. Pastora was not arrested by the Costa Rican authorities, despite a deportation order of 29 March 1983, which still barred his entry into the country. Pastora announced in San José that he would resume his “war of liberation” within a month. (Ann. H, Attachments 51, 53, 54, 55, 56.)

71. Two lawsuits have been brought as a result of the bombing at La Penca. One was a libel action brought in the First Penal Court of San José by John Hull against Costa Rican-based journalists Tony Avirgan and Martha Honey, for statements they made linking Hull with the CIA and an alleged conspiracy to kill Pastora at La Penca. (After two days of testimony in May 1986, Hull’s complaint was dismissed, and his appeals were unsuccessful.) (See Ann. G, Attachment 2.) The other is a civil action brought by Avirgan (who was injured at the La Penca bombing) and Honey against Hull and 29 others, alleging a conspiracy in violation of United States laws. It is pending in a United States federal court in Florida.

72. The Costa Rican Government could hardly have been unaware of *contra* activities within its territory during this period. Indeed, on 6 September 1984, Ricardo Rodríguez Solórzano, a Member of the Costa Rican Legislative Assembly, wrote to President Monge, with a copy to Benjamín Piza, Minister of Public Security, providing extensive details on *contra* operations, bases and supplies in northern Costa Rica, and describing growing popular opposition to the *contras*’ presence. His letter, and the transcript of a press conference he held on “The Presence of Somocista Troops in Costa Rica”, were reprinted in a paid full-page announcement in *La Nación*. (Ann. H, Attachment 57.) In this announcement, Deputy Rodríguez provided the precise locations of recent *contra* activities in northern Costa Rica that had been reported to him by “distinguished businessmen from Guanacaste”. In his letter to President Monge, he requested that the Government put an end to these activities, which he described as the “mobilization of men in the FDN, who are armed and in our national

territory in order to harass the government and territory of Nicaragua". (Ann. H, Attachment 57.)

73. On 18 December in the Trial Court of San Carlos, Alajuela, Costa Rica, charges were filed against members of ARDE for the murder of a Costa Rican citizen in June 1984. Witnesses testified that ARDE was operating from Costa Rican bases at the time. Fausto Rojas Cordero, head of the Branch Office of the Bureau of Judicial Investigation for the canton of San Carlos, testified that "the 'military zone' on Costa Rican territory where ARDE operated [was] in the border sector of Los Chiles". He further testified that a member of the Costa Rican Rural Guard in Los Chiles, Jorge García García, fought with the *contras* against the Nicaraguan Army while off duty. (Ann. G, Attachment 4 (records of trial).)

\* \* \*

74. In mid-1984, the Reagan Administration reached a policy decision that it would seek to open a more effective "southern front" in Costa Rica as part of a co-ordinated effort to put pressure on the Government of Nicaragua simultaneously from Costa Rican territory to the south and Honduran territory to the north. While Costa Rica was to continue to be used for military and paramilitary operations, Costa Rica's primary role in this two-front strategy was to serve as a base for organizational and propaganda activity in support of the war effort.

75. In July 1984, Joe Fernandez (alias "Tomás Castillo") arrived in San José as the Costa Rican Station Chief for the United States Central Intelligence Agency. (Thomas Castillo is the pseudonym under which he has testified in the United States Congress and is generally known; however, because his real name has also been publicly disclosed, it is used here.) (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, p. 16).) As Fernandez later testified in the Joint Hearings on the Iran-Contra Investigation of the United States Congress, the *contras* in the south had to be brought under a unified leadership, based in Costa Rica. Fernandez explained that his responsibility was:

"to develop the southern political organizations in concert with the efforts being made here in Washington and in [deleted] and in Miami to bring together the Nicaraguan resistance under one unified leadership. . . . We, in turn, encouraged the leadership to seek every means that they could to put pressure on the Sandinista regime. So there wasn't military advice, per se, but there was certainly encouragement on the part of all CIA officers to bring as much pressure as possible in the political area against the regime. . . ." (*Id.*, pp. 18-19.)

76. Militarily, Fernandez testified, the United States objective was to move the *contra* forces out of Costa Rica and into Nicaragua to engage in battle there. Allowing the military forces to continue to attack from Costa Rican bases, he explained, was causing too much embarrassment to Costa Rica and could jeopardize the success of the organizational and propaganda activities — "the political side" — conducted inside Costa Rica. Thus, Mr. Fernandez testified that the *contra* forces in Costa Rica were encouraged to:

"go into Nicaragua, where if they claimed they were fighters is where they should be. And so it came about because of continuous large numbers of problems that we were experiencing with the [Costa Rican] government — because of the presence of these people who were not very covert in their

— in protecting the fact of their presence in [Costa Rica] and there were a number of incidents on a continuing basis that the [Costa Rican] officials would bring to my attention and to the attention of other [ ] officials, and so wherever I had contact with them, for whatever reason [ ] I would encourage them to seek some means to leave [Costa Rica] where we felt — we, CIA, felt — that the primary value to the program was the political side". (*Id.*, p. 23.)<sup>1</sup>

77. Fernandez further described the efforts to move the *contras* from their bases in Costa Rica:

"In explaining this to Negro (Fernando 'Negro' Chamorro) repeatedly would come the suggestion that they should get out of [Costa Rica] and into Nicaragua.

Q. To summarize, it posed a political problem for you to have these Nicaraguans in [Costa Rica] didn't it?

A. Most definitely.

Q. And you tried to encourage them to get to Nicaragua and to fight to get them out of [Costa Rica]?

A. Yes sir.

Q. And there was a reluctance on the part of Negro Chamorro to go into Nicaragua to fight?

A. Yes sir.

Q. In fact, you had to be constantly encouraging him to get in there and fight, right?

A. Yes sir. . . ." (*Id.*, p. 25.)

78. Shortly after the arrival of Fernandez in Costa Rica, efforts to enhance the *contra* organizing and propaganda activities centered in Costa Rica began to achieve results.

79. At the end of August, an unusual agreement was signed between the United States Information Agency and a private group of Costa Rican business leaders to permit Voice of America programs hostile to the Nicaraguan Government to be relayed from a new 50,000 watt radio station in Costa Rica. Voice of America agreements are generally made between the United States and foreign Governments, but Costa Rican law prohibits foreigners from broadcasting in the country. To circumvent this constraint, the VOA agreement was signed with a private business group formed for that purpose. A VOA spokesman, Rogene Waite, stated that President Monge had requested the establishment of the transmitter, and approved the final \$3.2 million arrangement, which was formalized at his home on 30 August. (Ann. I, Attachments 11, 13.) According to Waite, the contract "ha[d] the full approval of the Costa Rican government". (Ann. I, Attachment 12.)

80. While the *contras'* political and organizational activities in San José intensified, the *contras'* military forces kept up their constant stream of military attacks on Nicaragua from their bases in northern Costa Rica. On 20 October the Nicaraguan customs post at Peñas Blancas was again attacked by *contra*

<sup>1</sup> In the transcript of this portion of Mr. Fernandez' testimony, "classified" material has been deleted, but the context makes clear that Costa Rica was the country, and San José the city, to which he was referring. Where these references are clear, they are supplied in brackets; where they are not clear, the deletion of material is indicated in brackets.

forces from Costa Rican territory. (Ann. A, Attachment 151 (Diplomatic Note of Nicaragua).)

81. On 31 October 1984, Costa Rican Foreign Minister Carlos José Gutiérrez, in response to Nicaraguan denunciations of *contra* attacks from Costa Rica, denied that the attack had come from Costa Rica. Gutiérrez admitted, however, that "the control [i.e., by Costa Rican forces] that is exercised in this zone, as in the whole frontier region, is absolute . . .". (Ann. A, Attachment 142 (Diplomatic Note of Costa Rica).) Thus, it can only be concluded that the *contras'* use of Costa Rican territory to attack Nicaragua was permitted by the Costa Rican forces who controlled that territory.

82. In November and December 1984, a series of meetings were taking place in both Costa Rica and the United States among representatives of the United States Government, *contra* leaders, John Hull, and others, to plan ways to "help the remnants of the Southern Front". (Ann. F, Attachment 3 (Testimony of Mr. Owen, p. 22-4).) Robert W. Owen, a consultant to the United States Department of State who served unofficially as an agent for Lt. Col. Oliver North, Director of Political-Military Affairs for the United States National Security Council, traveled to Costa Rica in October 1984, where he met with Adolfo Calero of the FDN and John Hull. At that meeting, Hull agreed "to do anything he could" to help the southern front. (*Id.*) Subsequently, Owen and Hull attended other meetings in the United States to discuss the location of bases, farms and airstrips to be used in Costa Rica, and the manner in which Hull would co-ordinate the war effort in northern Costa Rica from his farm there. (Ann. G, Attachment 2, pp. 14-15.)

### 1985

83. These efforts to solidify the southern front intensified in early 1985. In February, the tactical aspects of the war were further discussed in meetings with Hull, Calero and others in Miami. At these sessions, plans were made to obtain arms, move them to Hull in Costa Rica, and distribute them for use in the attacks on Nicaragua from Costa Rican bases. (*Id.*, at p. 15.) CIA officer Fernandez reported that he too attended a series of meetings "concerning the future of the Southern Front", held both "in the South and in Washington". (Ann. F, Attachment 3, Exhibits to Testimony of Robert W. Owen (Exhibit RWO-7), pp. 1-2.)

84. Meanwhile, the regular attacks from Costa Rican territory against Nicaraguan targets continued in 1985:

On 26 January four health-care workers were kidnapped from Rama Key, Zelaya, Nicaragua, by a group of 30 armed men, who later engaged Nicaraguan forces in combat. The available information indicated that they were being held in Costa Rica by forces commanded by Edén Pastora. They were subsequently released in Costa Rica. (Ann. A, Attachment 174 (Diplomatic Note of Nicaragua, 18 February 1985).)

On 28 January the "La Flor" estate near Cardenas was attacked by *contra* groups coming from Costa Rican territory. The attackers kidnapped three Nicaraguan citizens and fled, taking the victims in the direction of Costa Rica. (Ann. A, Attachment 170 (Diplomatic Note of Nicaragua).)

85. On 7 February 1985, Nicaragua sent a Diplomatic Note to Costa Rica, attaching

“a list of the camps, houses of operations, names, and addresses of the mercenary terrorists belonging to the counter-revolutionary military organizations which operate in Costa Rica, so that [Costa Rica] may proceed to dismantle their support structures and capture, disarm, and remove their members from the border, with a view to definitively expelling them from Costa Rica”. (Ann. A, Attachment 171 (Diplomatic Note of Nicaragua).)

86. Nonetheless, the support structures were not dismantled, and there was no lessening of the *contra* activities launched from Costa Rica, with official Costa Rican knowledge, approval and assistance.

87. On 6 March a group of five foreign mercenaries, from the United States, France and Great Britain, loaded a shipment of weapons on a chartered aircraft in Ft. Lauderdale, Florida, for eventual delivery to *contra* forces in Costa Rica. The plane was flown, with two of the mercenaries on board, to Ilopango Air Base in El Salvador. (Ann. I, Attachment 29.) The five mercenaries then flew to San José on a commercial flight, and traveled by land to northern Costa Rica. The arms were then delivered to John Hull's airstrip in Costa Rica, in fact, Robert Owen testified that he was present at John Hull's farm in Costa Rica when the arms shipment arrived. (Ann. F, Attachment 3 (Testimony of Mr. Owen, p. 11-3). See also, Ann. F, Attachment 5, “*Private Assistance*” and the *Contras*, Report of Staff of Senator John Kerry, p. 9; Ann. G, Attachment 2, pp. 15, 24; Ann. I, Attachments 18, 30.)

88. Additional attacks in early 1985 included these:

On 13 February 1985, a group of approximately 40 *contras* attacked the “El Naranjo” border post from Costa Rican territory. (Ann. A, Attachment 176 (Diplomatic Note of Nicaragua).)

On 18 February approximately 60 *contras* attacked the border post at Peñas Blancas with mortars, machine guns and rifle fire. Fifteen minutes later, they launched four grenades, wounding a border guard. After the attack, Nicaraguan Army Lieutenant Luis Timoteo Rocha spoke with Costa Rican Lieutenant Mamberto Ruiz, who confirmed that the attack had been carried out from Costa Rican territory. (Ann. A, Attachment 175 (Diplomatic Note of Nicaragua).)

On 1 March approximately 15 *contras* attacked the post of Peñas Blancas, this time from positions located about 250 meters north-east of the Costa Rican customs office. The *contras* used rifles, grenade launchers, and machine guns. Nicaraguan Lieutenant Luis Timoteo Rocha again communicated with Costa Rican Lieutenant Mamberto Ruiz, who again acknowledged that the attack had come from Costa Rica. (Ann. A, Attachment 181 (Diplomatic Note of Nicaragua).)

On 18 March one Nicaraguan was killed when a group of *contras* operating from Costa Rican territory engaged Nicaraguan forces located at San Juan del Norte. (Ann. C, Attachment 1.)

On 14 April a group of armed men carried out an attack from Costa Rican territory on the Nicaraguan border post of La Esperanza, near San Carlos, Río San Juan, using rifle fire, 81 mm mortars and RPG-4 rocket launchers. (Ann. A, Attachment 184 (Diplomatic Note of Nicaragua).)

On 27 April a group of armed men again attacked the border post of La Esperanza from Costa Rican territory, using rifles and RPG-7 grenade launchers. The weapons sent to John Hull's estate from Ft. Lauderdale by the five foreign mercenaries in March were used in this attack, in which one of these mercenaries participated. (Ann. A, Attachment 186 (Diplomatic

Note of Nicaragua); see also Ann. F, Attachment 5 (Report of Staff of Senator John Kerry, p. 9.)

On 24 June an olive-green helicopter resupplied a group of *contras* located near Nueva Guinea, Zelaya Sur, and withdrew in the direction of Costa Rican territory. (Ann. C, Attachment 1.)

89. First-hand reports of Costa Rican Government complicity in the *contras*' operations also continued to surface during this period. In May 1985, Col. Ricardo Rivera, former Director of the Rural Guard, charged at a press conference that government officials maintain close ties with *contra* forces, and that training camps were operating in Costa Rica with the complicity of ranking police and government officials. (Ann. H, Attachment 58.)

90. Two Cuban-American mercenaries who joined the UDN/FARN forces of Fernando "Negro" Chamorro, and were later captured and tried in Nicaragua, declared that in early 1985 they were actively assisted in Costa Rica by a Costa Rican Civil Guard officer named Colonel Rodrigo Paniagua Salazar, who helped them get through Costa Rican immigration and customs with suitcases full of military supplies in February 1985. They also claimed to have stayed in a San José "safe house" and on John Hull's farm before moving to a UDN/FARN camp near the north-western Costa Rican border town of Upala. (Ann. I, Attachment 42.)

91. In May, several witnesses implicated the Costa Rican Government in *contra* activities during the trial of the libel case brought in Costa Rica by John Hull against journalists Martha Honey and Tony Avirgan. For example, Peter Glibbery, the British mercenary who had come from Florida to Costa Rica to join the *contras* (and was arrested in April), testified that "Mr. Hull sent up a Captain Segura of the Costa Rican Rural Guard who drove us out to the training base we were setting up on Mr. Hull's farm. . . ." (Ann. G, Attachment 2, p. 23.) Carlos Rojas Chinchilla, another witness, testified that he was kidnapped to Hull's farm because of information he had obtained concerning Hull's activities, and that before he escaped he saw "people there wearing green uniforms with the Costa Rican flag on the arm". (Ann. G, Attachment 2, pp. 38-39.)

92. On 19 June Costa Rican Foreign Minister Carlos José Gutierrez stated in an interview that he would regard a change of government in Nicaragua with approval and called on the United States Congress to give its support to the mercenary forces which were committing armed attacks against Nicaragua. (Ann. I, Attachment 16. See Ann. A, Attachment 194 (Diplomatic Note of Nicaragua, 21 June 1985).) President Monge had flown to Washington two months earlier to lend his public support to the Reagan Administration's request for additional funding for the *contras*. (Ann. I, Attachment 15.)

93. As of July, a number of airstrips on Costa Rican territory were in regular use by the *contras* for transfer of weapons and personnel. Among these were landing areas on the estate of John Hull; the Las Loras Airport in Puntarenas; the estates of Climaco Salazar in the Los Chiles sector, also used for weapons storage by the *contras*; and the estate known as El Chapernal, where planes bringing arms from Panama landed in 1985. (See Ann. C, Attachments 3, 4.)

94. Among *contra* facilities located in Costa Rica as of July were the "Taller" or "Corinto" base, on the Costa Rican side of the San Juan River, 5 kilometers from La Penca; offices and buildings located in Escazu and used by Pastora for communications and political activities; a warehouse and communications center in San José; and another communications base in the locality of El Zarcero. (*Id.*)

95. In June and July, attacks launched from such bases in Costa Rica included the following:

Between 20 June and 4 July over 20 attacks were sustained at La Penca, Nicaragua, in a continuing series of rifle, cannon and mortar attacks undertaken from Costa Rican territory. Three Nicaraguans were killed and four were wounded. These attacks were carried out with impunity from positions in Costa Rica close to the Civil Guard post at the mouth of the San Carlos River. (Ann. A, Attachments 193, 194, 196, 204 (Diplomatic Notes of Nicaragua); Ann. I, Attachment 17.)

At the beginning of July 1985, *contra* mobilizations were observed across from the Nicaraguan army post at Papaturo. At the same time, an FDN base was identified at La Lucha, 3 kilometers from the Nicaraguan border on the Costa Rican side. (Ann. A, Attachment 196 (Diplomatic Note of Nicaragua).)

On 7 July three Nicaraguans were wounded when a group of *contras* attacked the Cano Machado sector from Costa Rican territory. (Ann. C, Attachment 1.)

On 18 July a group of *contras* attacked the San Rafael sector from Costa Rican territory with rifle fire, heavy machine guns and mortars, wounding four Nicaraguans. (Ann. C, Attachment 1.)

Seven Nicaraguans were wounded in attacks on the San Rafael sector by *contras* based in Costa Rica. The attacks, which lasted from 17 to 22 July were carried out with cannon, mortars and 50-caliber machine guns. (Ann. A, Attachment 202 (Diplomatic Note of Nicaragua).)

96. In late July, an ARDE helicopter carrying Edén Pastora — supposedly ordered out of Costa Rica, but always turning up there — crashed inside Costa Rican territory, near the Costa Rican village of Veracruz de Pital, about 25 miles south of the Nicaraguan border. Pastora and two companions were injured. Pastora was treated for his injuries at a local hospital, and then allowed to fly to Panama. (Ann. I, Attachments 20, 21, 22.)

97. Also in July, the foreign mercenaries who had traveled and shipped arms to Costa Rica from Florida in March made extensive public statements about their activities in Costa Rica and the involvement of Costa Rican authorities. Steven Carr, a United States citizen, and Peter Glibbery, a Briton, told reporters that the Costa Rican Civil and Rural Guards had provided extensive intelligence and other assistance to *contra* groups operating along the Nicaraguan border. They said that members of the Civil Guard had given them precise information, including maps and diagrams of targets inside Nicaragua, and that one of the guards had accompanied them on one of their incursions into Nicaragua. Steven Carr said that Costa Rican neutrality was a farce, and that the mercenaries had enjoyed "one hundred per cent support" from Costa Rica. (Ann. H, Attachment 59.) In particular, they said that the Costa Rican Civil Guard had actively helped them to carry out an attack on the Nicaraguan border post of La Esperanza on 11 April. A colonel in the Civil Guard had shown them access and resupply routes on a map and had put pick-up trucks at their disposal. Carr said that one of the Civil Guards had in fact served as a guide for the attack. Another of the mercenaries, Frenchman Claude Chafford, who said he had trained armed groups in camps inside Costa Rica a few kilometers from the Nicaraguan border, stated that he traveled to one such camp in the company of a major in the Civil Guard, and that over a period of nearly two months they received friendly visits almost every day from members of the Guard in the region, who promised them protection. (Ann. A, Attach-

ment 197 (Diplomatic Note of Nicaragua); see also Ann. I, Attachments 18, 19, 32.)

98. By July 1985, the political component of the strategy that CIA Station Chief Fernandez had sought to implement on his arrival in San José a year earlier — that is, the unification of the southern factions under one organization, and the intensification of their propaganda activities centered in San José — had begun to bear fruit.

99. On 12 June 1985, the United Nicaraguan Opposition (UNO) was formed, joining together Arturo Cruz, an opponent of the Nicaraguan Government residing in the United States; Alfonso Robelo of ARDE; and Adolfo Calero of the FDN. (Ann. E, Attachment 2, No. 17.) Six weeks later on 26 July a new umbrella organization called “Opposition Bloc of the South” (BOS) was founded in San José. The “constitution” of BOS was published in an advertisement in *La Nación* on 2 August 1985, and reprinted in a glossy pamphlet published in San José later that year. The BOS “constitution” explicitly called for military action to overthrow the Government of Nicaragua, stating in part:

“We resolve

...

5) To legitimize the resistance that in the face of Managua’s dictatorial repression is carried out with arms in hand by thousands and thousands of patriots in national territory.” (Ann. E, Attachment 1 (“B.O.S.: Opposition Bloc of the South”, San José, 1985 (English text quoted from original)); Ann. E, Attachment 2, No. 18.)

100. In its 1985 pamphlet, BOS also printed a “Declaration of Principles” which stated in part:

“We reaffirm . . .

...

That we declare as legitimate the struggle for defense that with arms in hand, is carried out by thousands of patriots throughout the national territory.

...

Finally, we make a call to all Nicaraguans of good will so that with patriotism and love to *[sic]* liberty, we may overcome all the obstacles existing until today, and we may forge the great Unity that is to take us to the definite liberation of Nicaragua.” (Ann. E, Attachment 1 (“B.O.S.: Opposition Bloc of the South”, San José, 1985).)

101. On 19 July 1985, UNO leaders Arturo Cruz, Alfonso Robelo and a representative of Adolfo Calero addressed a public rally in San José commemorating the sixth anniversary of what they called the “betrayal of the Nicaraguan revolution” with a dramatic display of apparent unity and yet another call to unite their fight and oust the Sandinista régime. (Ann. I, Attachment 23.)

102. In addition, in early 1985 two new *contra* publications, produced in San José, appeared as bi-weekly “supplements” to Costa Rican newspapers. The masthead of one of them, *Nicaragua Hoy*, carried the names of several prominent opponents of the Government of Nicaragua, including Arturo Cruz, a member of the UNO Directorate; his son Arturo Cruz Sequeira; Pedro Joaquín Chamorro, a member of the Permanent Advisory Committee of UNO; and Fabio Gadea Mantilla, Vice-President of the MDN. (Ann. E, Attachment 4; Ann. J.) The other, which carried the full title *Toward Our Liberation: Official*

*Organ of the United Nicaraguan Opposition*, is generally referred to by its short title, *Liberación*. Its editorial board included Orion Pastora, the longtime San José spokesman for the paramilitary organization ARDE. (Ann. E, Attachment 3.)

103. *Liberación* and *Nicaragua Hoy*, which continued to be published in San José as of mid-1987, offer blatant propaganda in support of the *contra* cause. Articles affirming that military action is required to change the Nicaraguan Government, and calls for support for organizations dedicated to the military overthrow of the Nicaraguan Government, are interspersed with interviews with *contra* military commanders and shrill and sensationalized stories purporting to describe events in Nicaragua. The overwhelming message — that force or violence should be used against the Government of Nicaragua — is plain. For example, under the headline “The Resistance Reacts to the Decision of the [U.S.] Congress”, *Nicaragua Hoy* published a declaration signed by UNO leaders Calero, Cruz and Robelo which stated in part,

“The Resistance restates its indissoluble covenant with the Nicaraguan people to struggle to the ultimate consequences for the democratization of the country and the rescue of our national sovereignty.”

The same issue carried an interview with the *contras*' supreme military commander, Enrique Bermúdez. A former colonel in the Somoza National Guard, Bermúdez, “somewhere in Jinotega” (Nicaragua), was quoted as asserting that the defeat in the United States Congress of a \$14 million *contra* aid package was merely a temporary setback; according to Bermúdez, this was

“only the first step leading to our victory . . . We have gotten aid from elsewhere and now we have all we need to begin our military operations anew, with greater intensity than before.” (Ann. E, Attachment 4, No. 1.)

104. With the political unification and propaganda components of the Southern Front well under way by July 1985, the United States — with the support and collaboration of Costa Rican government officials at the highest level — intensified its effort to improve the military situation in the south, and specifically to move the *contra* forces out of their bases in Costa Rica and into Nicaragua to fight there. Thus, when Lewis A. Tambs, appointed as the new United States Ambassador to Costa Rica, departed in July for San José, he was explicitly instructed by members of the “Restricted Interagency Group” (including Lt. Col. Oliver North and Assistant Secretary of State Elliot Abrams) that his mission was “to aid the Nicaragua Resistance Forces in setting up a ‘Southern Front’”. (Ann. F, Attachment 2 (Tower Commission Report, p. C-12); Ann. F, Attachment 3 (Testimony of Mr. Tambs, p. 2-1).) When asked what this mission meant to him, Ambassador Tambs responded that “the idea was that we would encourage them to fight”. (Ann. F, Attachment 2 (Tower Commission Report, p. C-12).) As he further explained, his assignment was to get the *contras* out of Costa Rica and into Nicaragua, and assure them of logistical support once inside Nicaragua. As he testified to the United States Congress:

“AMB. TAMBS: Well, the question was, how you were going to get the armed democratic resistance out of Costa Rica, and, of course, that was something which both the Costa Ricans and we were interested in, and the only way that you could get them out of Costa Rica was assure them that they would have logistical support inside Nicaragua. And, by inside Nicaragua, we’re talking about, you know, 80 to 100 kilometers, say 50 to

60 miles, because there were some forces, particularly belonging to Mr. Pastora, who were sitting in Nicaraguan territory on some islands in the San Juan River, which were about 5 to 10 feet from the shore of Costa Rica. So, obviously, that was not the sort of thing we were thinking about. So, the idea is that how do you get them to move? Well, you're going to have to feed them, supply them . . ." (Ann. F, Attachment 3 (Testimony of Mr. Tambs, p. 29-1).)

105. When Ambassador Tambs arrived in Costa Rica, he undertook to carry out this mission. As the Tower Commission reported, based on an interview with an unnamed "CIA field officer", plainly CIA Station Chief Fernandez:

"When Ambassador Tambs arrived in Costa Rica, he called together the Deputy Chief of Mission, the Defense Attache and myself, and said that he had really only one mission in Costa Rica, and that was to form a Nicaragua resistance southern front." (Ann. F, Attachment 2 (Tower Commission Report), p. C-12.)

106. The message apparently reached *contra* forces right away, as *contra* leaders announced at the end of August that they were "redoubling their efforts along the Costa Rican border with Nicaragua as part of a new southern front strategy . . ." (Ann. I, Attachment 28.)

107. A critical element in sustaining the contemplated southern front — and specifically in ensuring the necessary logistical support to the *contra* forces once they entered Nicaragua — was the construction of a new airbase inside Costa Rica, near the border, for the loading, fueling and repair of aircraft engaged in supply drops to *contras* inside Nicaragua. According to Fernandez, "the establishment of an airfield down in Costa Rica would be significant in order to be able to supply whatever *contras* may enter into Nicaragua and fight inside Nicaragua" (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, p. 101)); indeed, he testified, such an airfield was "an essential or integral part of any supply effort". (*Id.*, pp. 33, 145.) Thus, the CIA field officer interviewed by the Tower Commission — obviously Fernandez, although again he is not named — stated that the construction of such an airfield was a "pet project" of Ambassador Tambs. (Ann. F, Attachment 2 (Tower Commission Report), p. C-12.)

108. Approval had to be obtained from the Costa Rican Government before the airbase could be built, however. (Ann. F, Attachment 3 (Testimony of Assistant Secretary of State Abrams, p. 13-2).) Therefore, Lt. Col. North asked Ambassador Tambs, shortly after he arrived in Costa Rica, whether the Costa Rican Government would "go along" with the airbase. (Ann. F, Attachment 2 (Tower Commission Report), p. C-12.) Ambassador Tambs' response was to initiate "negotiations" with the Costa Rican Government to obtain such approval. (Ann. F, Attachment 3 (Testimony of Mr. Tambs, pp. 7-2 to 8-1).) His negotiations were successful, and President Monge approved construction of the airbase. Ambassador Tambs testified:

"AMB. TAMBS: The negotiations yielded an airfield which could be used for reinforcement and resupply, if there were an invasion from Nicaragua. At the same time, the airfield would be used for refueling and for emergency purposes [of] private aircraft which would be used to supply the Nicaraguan Democratic Resistance, which obviously would have to move inside Nicaragua to be resupplied, then, right?"

Q: Did you agree, also, that the airstrip would be deeded to the Costa Rican government?

A: Yes." (*Id.*, p. 8-1.)

Later in his testimony, Ambassador Tambs was even more explicit:

"Q: With regard to the airstrip that was constructed in Costa Rica, is it fair to say that that was done only after permission was granted by the authorities of Costa Rica?

A: Yes, Sir". (*Id.*, p. 35-1. See also, Ann. F, Attachment 3 (Testimony of Mr. Fernandez, pp. 36-37).)

109. Former President Monge has also acknowledged his approval of the new airbase. (See, e.g., Ann. I, Attachment 56, the exclusive interview he later gave to the *Tico Times* ("Monge Says He Okayed Strip in '85", 16 January 1987).) Costa Rica's current Foreign Minister, Rodrigo Madrigal Nieto, has also confirmed that the Monge Government authorized construction of the airstrip. (*Ann. I, Attachment 62.*)

110. After the Costa Rican Government granted the necessary approval for construction of the airbase, an appropriate site had to be selected. Accordingly, in August 1985 the CIA's Fernandez, joined by Robert Owen (Lt. Col. North's representative who flew to Costa Rica from Washington), met with a Costa Rican Colonel to discuss two possible locations. (Ann. F, Attachment 3 (Testimony of Mr. Owen, pp. 2-2 to 2-3).) Fernandez, Owen and the Costa Rican colonel then visited the potential sites to inspect them (Ann. F, Attachment 3 (Testimony of Mr. Owen, p. 3-1); Ann. F, Attachment 3 (Testimony of Mr. Fernandez, pp. 38-42, 99)), flying out "on a Costa Rican government helicopter". (Ann. F, Attachment 3 (Testimony of Mr. Owen, p. 18-3).) As Fernandez has testified, "the colonel and I walked around with Rob Owen, who took pictures of the land". (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, p. 41).) Ultimately, they selected an isolated spot on the Santa Elena peninsula in the northern province of Guanacaste, approximately 10 km south of the Costa Rican Civil Guard training base at Murciélago, 20 km south of the Nicaraguan border. The site is in an area where *contra* forces under the leadership of Fernando "El Negro" Chamorro had been active. It is in a narrow valley surrounded by mountains on three sides and the Pacific Ocean on one side, and near a deep-water port that can be used to land supplies. (Ann. I, Attachments 45, 46, 49.)

111. At that time, the property selected was owned by a United States citizen living in New York, and managed by a colonel in the Costa Rican Civil Guard. It was decided that the colonel would turn over the property for development of the airbase, which, once completed, would be "designated a military zone and . . . be guarded by the Colonel's people". (Ann. F, Attachment 3, Exhibit to Testimony of Mr. Owen (Exhibit RWO-9, a memorandum dated 25 August 1985, from Fernandez ("Tomas Castillo") to Lt. Col. North describing the selection of the Santa Elena site and the plans for its development); see also Ann. I, Attachment 48.) According to this plan, the property was promptly acquired by a newly-chartered Panamanian company, Udall Research Corporation, created for this purpose by agents of Lt. Col. North. (Ann. F, Attachment 2 (Tower Commission Report), pp. C-11 to C-12.)

112. Construction of the airbase was undertaken over the next several months. The work consisted of expanding and improving an abandoned 820 meter strip built in the 1940s into a modern airfield nearly 2 kilometers, or 1.2 miles long, as well as building other necessary facilities. The work was per-

formed by United States engineers with the assistance and co-operation of the Costa Rican Civil Guard. Employees of the neighboring Santa Rosa National Park, and local residents, have confirmed that the Civil Guard Commander based in the Guanacaste city of Liberia, Col. Ramon Montero, obtained permission from park officials to bring workers and equipment through park lands to work on the project. Col. Montero has admitted that he was the project administrator. After he obtained permission to use park land for access to the site, Civil Guard vehicles carrying United States engineers and workers shuttled back and forth over park roads, according to eyewitnesses. A local contractor, Leon Victor Arrieta, has further stated publicly that he was hired to do the construction work with the advice of United States personnel and the protection of the local police commander. (Ann. I, Attachments 46, 47, 49, 55.)

113. In December 1985, when United States National Security Adviser, Vice Admiral John Poindexter visited Costa Rica to discuss the airbase and the Costa Rican Government's co-operation with the *contras* in general. He testified to the United States Congress:

"[I]n Costa Rica we did discuss there for example, the private landing strip that was being constructed in the northwest corner of the country . . . of Costa Rica. And we discussed, in general, measures that could be taken to encourage the co-operation between the government of the country involved and the Democratic resistance forces." (Ann. F, Attachment 5 (Testimony of Adm. Poindexter, p. 2-1).)

Admiral Poindexter then informed the President of the United States that the Santa Elena airbase "was a dramatic display of co-operation and support for the President's policy by the country involved". (*Id.*, p. 4-2.)

114. On 23 April 1986, President Monge's Minister of Public Security, Benjamín Piza, who had authority over the airbase at Santa Elena, attended a private meeting with President Reagan, Lt. Col. North, and CIA Station Chief Fernandez in Washington, at the White House. The meeting was kept secret at the time and has never been fully explained. According to some reports, the United States arranged the meeting as a strategy session to determine how to ensure continued operation of the Santa Elena airbase and the continued use of Costa Rica as a base for *contra* operations in general; according to others, it was to thank Piza for the past co-operation of the Costa Rican Government. (Ann. I, Attachments 58, 59. See also Ann. F, Attachment 4, Report of the United States Senate Select Committee on Intelligence, 2 February 1987, p. 42; Ann. F, Attachment 6 (Exhibits to Testimony of Oliver L. North) (Exhibit OLN 258).)

115. The Santa Elena airbase remained secret until September 1986, even though the Government of President Oscar Arias Sanchez, inaugurated in May 1986, was well aware of its existence at least since June of that year. (Ann. I, Attachment 54.) In fact, after the inauguration of the Arias Government, a Civil Guard lieutenant was reported to have taken charge of the project. (Ann. I, Attachment 46.) In September 1986, however, the Arias Government finally ordered the airbase "raided" by the Civil Guard, and it was shut down. Public Security Minister Hernan Garron asserted at that time that the landing strip had been expanded during the Monge administration as part of a "tourism project". (*Id.*) It is well documented, however, that it was intended — and was in fact used — to serve as a base for the loading, fueling and servicing of aircraft supplying the *contras*. United States Ambassador Tambs and CIA officer Fernandez, among others, have confirmed that that was its purpose, as shown above. And

the airfield was in fact used to serve that end. As Lt. Col. North stated in a 30 September 1986 memorandum:

“The airfield at Santa Elena has been a vital element in supporting the resistance. Built by a Project Democracy proprietary (Udall Corporation S.A. — a Panamanian Company), the field was initially used for direct resupply efforts [to the Contras] [July 1985-February 1986] . . . the field has served as the primary abort base for aircraft damaged by Sandinista anti-aircraft fire.” (Ann. F, Attachment 2 (Tower Commission Report), pp. C-11 to C-12 (brackets and ellipses in original).)

Ambassador Tambs also told the Tower Commission that “the airstrip was used mainly for refueling before Contra resupply planes returned to ‘wherever they were coming from’”. (*Id.*, p. C-12. See also Ann. F, Attachment 3 (Testimony of Mr. Tambs, pp. 8-1, 41-2); Ann. F, Attachment 3 (Testimony of Mr. Fernandez, pp. 89, 101-104).) While Mr. Fernandez maintained that the airfield was never put into “regular use”, he too acknowledged that it was in fact used to service planes “in neutral Costa Rica loaded with lethal supplies [i.e., weapons]” bound for *contras* in Nicaragua. (*Id.*, p. 89.)

116. When the existence of the airbase was made public in September 1986, it was disclosed that the facility had considerable military capacity. In addition to the 1.2 mile landing strip, a modern military barracks for 30 men had been built. Moreover, 5,000 gallons of fuel were maintained at the site. Area residents reported they had seen “large cargo planes circling the area” and a camouflaged “Hercules” aircraft “coming down over the hills”. Fresh tire ruts were also found at the airstrip itself. (Ann. I, Attachments 46, 47, 49.) And, according to one area resident who was in the Santa Rosa National Park as the Civil Guards came out after their raid with 300 barrels of aviation gas and numerous closed crates:

“One [Guard] captain told me that the stuff belonged to the *contras*. . . . He said, ‘we had to do this operation without saying anything to the press because it could affect Costa Rica’s image in The Hague’.” (Ann. I, Attachment 46.)

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117. Meanwhile, during the last five months of 1985, while the airbase on the Santa Elena peninsula was being built and put into operation, the *contra* attacks launched from Costa Rican territory continued. Indeed, in August, the head of the Social Christian Unity Party in the Costa Rican Assembly, Deputy Danilo Chaverri Soto, denounced the Costa Rican Government’s tolerance of the Nicaraguan rebels who use Costa Rican territory for their operations, and suggested that an independent investigation would corroborate his assertions. He stated that he had personally confirmed these facts and that he had reported them to the Minister of Public Security. Former Costa Rican Director of Public Security, Juan José Echeverría, also charged that “Monge lets [the guerrillas] operate”. (Ann. I, Attachment 27.)

118. During August, interviews with Nicaraguan “refugees” staying at a Red Cross camp in northern Costa Rica revealed that many were *contra* forces regrouping after battles with the Nicaraguan Army. According to one member of ARDE, approximately one-third of the 3,000 men in the camp had fought with Pastora’s forces. After numerous interviews, the interviewer concluded

that the camp had become "as much a way station for *contras* as it is a camp for civilian refugees". (Ann. I, Attachment 25.)

119. In August, ARDE forces operating from Costa Rica seized a group of 29 members of a United States organization called Witness for Peace, and 18 journalists accompanying them, as they traveled on a barge on the San Juan River. The group was held captive in Costa Rican territory for several days. (Ann. I, Attachment 24.) According to NBC television correspondent John Basco, who was abducted with the group, the captors were ARDE forces. (Ann. I, Attachment 26.) Pastora also admitted later that it was his group that seized the barge; he revealed, in fact, that CIA Station Chief Fernandez radioed an instruction to him from San José not to harm anyone because the CIA had infiltrated an agent into the group. (Ann. I, Attachment 61. See also Ann. K (the report published by Witness for Peace on this incident).)

120. Specific attacks occurring from August to the end of 1985 included the following:

On 21-29 August a series of attacks against the Nicaraguan border posts at Boca de San Carlos, La Penca, and Peñas Blancas was carried out from Costa Rican territory. (Ann. A, Attachments 211, 213, 214 (Diplomatic Notes of Nicaragua to Costa Rica).)

On 1 September a Cessna airplane proceeding from Costa Rican territory overflew the Lomas del Lobo sector, 30 km north-east of San Miguelito, where it dropped parachutes with military supplies to a group of *contras*. (Ann. C, Attachment 1.)

On 30 October the Nicaraguan border post at Boca de San Carlos was attacked from the customs post directly opposite it on Costa Rican territory, and from the area immediately surrounding the Costa Rican post. The attackers used rifles, mortars, machine guns, and 82 mm cannon. Later on the same day, the Boca de San Carlos was again attacked from Costa Rican territory. The attackers openly moved about in vehicles on the Costa Rican side. (Ann. A, Attachment 233 (Diplomatic Note of Nicaragua).)

Between September and December 1985, armed attacks from Costa Rica were also mounted against Nicaraguan positions at or near Peñas Blancas (4 September); the Delta of the San Juan River (7 September, 7 October); La Penca (27 September, 7 October, 19 October, 22 October); Cano Machado (27 September); and Boca de San Carlos (27 September, 30 October). *Contras* also attacked Nicaraguan territory from the Costa Rican sector of Sarapiquí (7 October). Movements of groups of armed men on Costa Rican territory were detected in the vicinities of the Cano Machado and El Venado sectors (18 October), Boca de San Carlos (30 October), and La Isla La Culebra and Santa Isabel (4 December). Nicaraguan aircraft flying over Nicaraguan territory were fired upon from Costa Rican territory on 8 September, 9 September, and 3 October 1985. Nicaragua repeatedly protested these incidents in diplomatic correspondence with Costa Rica. (Ann. A, Attachments 218, 219, 220, 222, 223, 224, 225, 226, 228, 229, 232, 233, 237 (Diplomatic Notes of Nicaragua).)

121. At the end of 1985, at least 27 *contra* camps were established in Costa Rica, despite the fact that Nicaragua had repeatedly informed the Costa Rican Government of the nature and locations of *contra* bases and *contra* activities on its territory. (See, i.e., Ann. A, Attachment 171 (Diplomatic Note of Nicaragua).) The precise locations of these bases are stated in Ann. C, Attachment 5, Table 1.

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122. Notwithstanding the inauguration of President Arias in May 1986, and his renewed proclamations of Costa Rican "neutrality", both the *contra* political activities in San José and *contra* attacks against Nicaragua from bases inside Costa Rica have continued. (See Ann. E, Attachment 2, Nos. 19, 20; Ann. E, Attachment 4, No. 8; see also *infra*, paras. 127, 140.)

123. Alfonso Robelo and other leaders of UNO and BOS continued to live in San José, where they conducted political and organizational activities linked to the armed struggle to overthrow the Government of Nicaragua. (See Ann. J, Attachments 4 and 5.) For example, in February 1986, in an interview given at his residence in San José, Robelo called for the approval of substantial United States military aid to armed groups fighting the Government of Nicaragua. (Ann. A, Attachment 253 (Diplomatic Note of Nicaragua).) Following the United States House of Representatives' rejection in March 1986 of President Reagan's request for \$100 million for the *contras*, Robelo and other San José-based *contra* leaders expressed optimism that the defeat was only temporary. Fabio Gadea, UNO's representative in San José, claimed: "We have lost a battle, but not the war." (Ann. I, Attachment 31.)

124. In May 1986, military leaders of ARDE and FARN announced in San José that they had agreed to unite under UNO, whose forces also included those of the Honduras-based Nicaraguan Democratic Force (FDN). (Ann. H, Attachment 60.) As part of the accord with UNO, the military commanders agreed that Fernando "Negro" Chamorro, of the UDN/FARN, would lead the military forces in the south of Nicaragua. (Ann. I, Attachment 33.) Edén Pastora did not join UNO, but certain of his military commanders, reportedly lured by promises of a flow of cash and arms from the CIA, agreed to join UNO and accept Chamorro as their leader. (Ann. I, Attachments 35, 39.)

125. Defeated by the Nicaraguan Army and abandoned by his commanders, Pastora announced through a spokesman in San José that he was leaving the armed struggle against the Nicaraguan Government. (Ann. H, Attachment 61; Ann. I, Attachment 34.) The Arias Government quickly granted him political asylum in Costa Rica. (Ann. I, Attachments 36, 37.)

126. In June, Robelo publicly proclaimed in San José that armed *contra* groups could "win their war" if they received sufficient United States support. (Ann. I, Attachment 38.)

127. Later in June, UNO and BOS — the two major Costa Rican-based *contra* groups — announced in San José, at a ceremony at the Balmoral Hotel, that they had concluded a formal co-operation agreement. (Ann. I, Attachment 41; see also Ann. E, Attachment 2, No. 19.)

128. And in August, BOS held its first "Congress", a gathering of 78 delegates in San José, to hammer out a constitution and a political agenda. BOS' "foreign relations secretary", Octaviano Cesar, claimed that \$100 million of United States assistance "won't be enough to get rid of the Sandinistas, but it should be enough for us to take a piece of territory and hold it". Octaviano Cesar's brother Alfredo, a member of the BOS executive committee, agreed that BOS' goal was to take territory inside Nicaragua by early 1987, and also "to develop a front in Nicaragua's urban areas". (Ann. I, Attachment 44.)

129. In October 1986, UNO held a three-day meeting of its Consultative Assembly in San José. One representative at the conference, Jaime Martínez, was quoted as saying,

"the Assembly constitutes vital support — in every sense of the word — for the directorate of the UNO and, by extension, for the combatants who

are generously sacrificing themselves to open our path of return to our country". (Ann. E, Attachment 3, No. 7.)

130. On 24 November 1986, another session of the "Assembly" of UNO was held in San José with the authorization of the Costa Rican Government. The purpose of this "Assembly" was to make plans for an armed offensive against Nicaragua and the subsequent installation of a "provisional government". The "Assembly" was widely publicized by "Radio Impacto", a radio station based in Costa Rica which regularly broadcasts messages calling for the armed overthrow of the Nicaraguan Government. (Ann. A, Attachments 267, 268 (Diplomatic Notes of Nicaragua); Ann. H, Attachment 63. See also Ann. I, Attachment 53.)

131. Internal UNO documents reveal, further, the specific monthly expenditures incurred by UNO for "UNO/COSTA RICA" during a six-month period in late 1985 and early 1986. Among the categories of activities for which expenses are recorded are one for "Radio" (over \$69,000 in initial expenses and \$5,825 monthly) and others for various committees (e.g., youth, labor, legal, educational). (Ann. J, Attachment 1.) Another internal UNO document, the minutes of a meeting on 28 August 1985 of UNO's directors and advisory council, refers to specific projects in Costa Rica and reports that "the house in Costa Rica and existing facilities were discussed". (Ann. J, Attachment 4.)

132. The UNO office in San José served as a center for UNO's efforts to destabilize Nicaragua from Costa Rica. For example, in June 1986, the San José office of UNO was the site of a meeting attended by Fabio Gadea, "Member of the Regional Directorate of UNO-Costa Rica"; Reynaldo Hernández, "Coordinator of the UNO Regional Directorate"; UNO Director Alfonso Robelo; and Lewis Tambs, United States Ambassador to Costa Rica. At the meeting Tambs "reaffirmed the decision of the United States to support the cause of the liberation of Nicaragua". (See photograph at Ann. E, Attachment 4, No. 6. See also Ann. J, Attachments 4, 5, 6.)

133. In addition, throughout 1986 and 1987, publication of the two *contra* supplements to San José newspapers, *Nicaragua Hoy* and *Liberación*, and their appeals for military action against the Government of Nicaragua, continued. One article in *Nicaragua Hoy* in June 1986, for example, quoted remarks by FDN military commander Enrique Bermúdez delivered at a "graduation ceremony" for 1,000 "UNO-FDN commandos" which was supposedly held "in the mountains of Nicaragua". According to the article, Bermúdez: "emphasized the importance of the UNO-FDN alliance as the only way to achieve the liberation of Nicaragua". (Ann. E, Attachment 4, No. 5.)

134. The military activities of *contra* forces operating from Costa Rican soil also continued through 1986 and into 1987. During 1986, at least 10 *contra* camps remained in active operation in Costa Rica. They are identified in Ann. C, Attachment 5, Table 1. As of February 1987, *contra* camps in Costa Rica were located in Lomas del Valle, Buena Vista, La Unión, Cerro El Hucha, Conventillo, Upala, and Hacienda El Murciélago. (Ann. C, Attachment 5, Table 1.) Attacks waged against Nicaraguan territory from Costa Rica during 1986 included the following:

On 11 January 1986, a group of armed men operating from Costa Rican territory attacked the Nicaraguan border post of Sarapiquí from Costa Rican territory, using mortars and rifle fire. (Ann. A, Attachment 240 (Diplomatic Note of Nicaragua).)

On 16 January two helicopters of the Nicaraguan Air Force overflying the sectors of Sarapiquí and Boca de San Carlos in Nicaragua were

attacked with rifle fire by mercenary forces located on Costa Rican territory. Both helicopters were damaged. Pilot Lt. Enrique López Amador and co-pilot Norman Paguaga Moncada were wounded. Both helicopters landed on Nicaraguan territory. (Ann. A, Attachment 241 (Diplomatic Note of Nicaragua).)

On 17 January a group of armed men attacked the border post of Sarapiquí from a Costa Rican Rural Guard post. They used rifle fire, 50 mm machine guns and 75 mm cannon. (Ann. A, Attachment 242 (Diplomatic Note of Nicaragua).)

On 25 January a Nicaraguan Air Force helicopter which was on a mission to resupply the Nicaraguan border post of La Penca was attacked from Costa Rican territory with rifle fire. The helicopter was damaged. (Ann. A, Attachment 247 (Diplomatic Note of Nicaragua).)

On 28 January an airplane coming from Costa Rica machine-gunned Nicaraguan positions in the vicinity of a Nicaraguan border post in the San Juan River Delta sector. (Ann. A, Attachment 249 (Diplomatic Note of Nicaragua).)

On 11 February *contras* using a border post of the Costa Rican Rural Guard fired on the Nicaraguan border post located in the sector of El Sarampión, Río San Juan. Rifles, machine guns, and 57 mm cannon were used in the attack. (Ann. C, Attachment 1.)

On 11 February one Nicaraguan was wounded when a group of *contras* attacked, from Costa Rican territory, the Nicaraguan border post in the sector of the San Juan River Delta. (Ann. C, Attachment 1.)

On 16 April Nicaraguan troops located in the vicinity of Border Marker No. 12, 11 kilometers south-east of San Carlos, were attacked by armed men from Costa Rican territory using rifle fire, 81 mm mortars and M-79 grenade launchers. (Ann. A, Attachment 255 (Diplomatic Note of Nicaragua).)

On 21 April a group of individuals hijacked the *Promar 36*, a civilian ship of Nicaraguan registry, near Monkey Point, on the Atlantic coast of Nicaragua. The ship and its crew were taken to Costa Rica. (Ann. A, Attachment 257 (Diplomatic Note of Nicaragua).)

On 22 April a group of armed men operating from Costa Rican territory attacked a civilian boat near "Sombrero de Cuero" Island, 37 kilometers from San Carlos, Nicaragua. One woman was wounded and one person was reported missing. (Ann. A, Attachment 258 (Diplomatic Note of Nicaragua).)

On 29 May a group of armed men used mortars to attack the Nicaraguan border town of San Juan del Norte from Costa Rican territory. (Ann. A, Attachment 260 (Diplomatic Note of Nicaragua).)

On 1 June a group of some 15 persons wearing the uniform of the Costa Rican Civil Guard attacked the Nicaraguan observation post of Las Conchitas, 10 kilometers south-east of Peñas Blancas, using FAL and AK rifles. (Ann. A, Attachment 261 (Diplomatic Note of Nicaragua).)

On 19 August armed men operating from Costa Rican territory used 75 mm mortars to attack a Nicaraguan border post located 23 kilometers south-east of El Castillo. (Ann. A, Attachment 265 (Diplomatic Note of Nicaragua).)

135. During 1986, *contras* who had entered Nicaragua regularly received supplies through airdrops from flights over Costa Rican territory as well as flights that had used airfields in Costa Rica itself. A C123K cargo plane shot down in southern Nicaragua on 5 October 1986 had flown from Ilopango Air Base in El

Salvador to southern Nicaragua, taking it over Costa Rica. The aircraft was laden with military supplies intended for UNO forces inside Nicaragua. The surviving crew member, a United States citizen named Eugene Hasenfus, confirmed these facts in sworn testimony at his trial in Nicaragua on 16 October 1986. (Ann. G, Attachment 1. See also Ann. I, Attachments 50, 52.) Hasenfus also testified that he had previously participated in five similar flights, successfully dropping arms, ammunition and other supplies to *contra* forces inside Nicaragua, before the 5 October flight was shot down. (*Id.*) He also confirmed, in interviews with the press, that earlier in 1986 he had flown supply missions using the airbase at Santa Elena peninsula. (Ann. I, Attachment 52.)

136. CIA Station Chief Fernandez also confirmed that numerous supply flights for the *contras* in Nicaragua came from and/or flew over Costa Rica in 1986. In his testimony to the United States Congress, Fernandez described nine such supply drops occurring from April through September 1986. (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, pp. 57-67).) Fernandez further testified that aircraft involved in the *contra* supply operations landed for refueling at a commercial airport (“[Deleted] International Airport”) in Costa Rica on at least two occasions in May and June 1986. (*Id.*, pp. 78-80; see also Ann. F, Attachment 3 (Testimony of Mr. Tambs, p. 18-2).) Moreover, logs recovered from the wreckage of the C123K aircraft shot down over Nicaragua in October 1986 revealed that a co-pilot named Wallace Blaine Sawyer, who was killed on that flight, had been aboard two flights earlier in 1986 that had used a commercial airport in San José. (Ann. I, Attachments 51, 60.) Ambassador Tambs confirmed that such use of the commercial airport had to be cleared by airport officials. (Ann. F, Attachment 3 (Testimony of Mr. Tambs, p. 18-2).)

137. Mr. Fernandez personally assisted with these *contra* supply operations and reported on them to his superiors in Washington. His role was to relay information between the southern front commanders and the “private benefactors” working under the supervision of Lt. Col. North who operated the flights, to pinpoint locations for the supply drops and to help avoid encounters with Nicaraguan forces. (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, pp. 52-55, 67-68).) Thus, for example, he cabled Lt. Col. North about the fate of “an L-100 aircraft that delivered 20,000 pounds of lethal material to the southern front commanders on or about April Tenth”, in a memorandum dated 12 April 1986. (*Id.*, p. 61.) In this memorandum, Fernandez reported on both the April 10 airdrop, and plans for future air and sea deliveries to the *contras*:

“Per UNO South Force drop successfully completed in [illegible] minutes. . . . Our plans during next 2-3 weeks includes air drop [deleted] maritime deliveries NHAO [Nicaraguan Humanitarian Assistance Office of the United States Department of State] supplies to same, NHAO air drop to UNO South, but w/certified air worthy aircraft, lethal drop to UNO South, [deleted] visit to UNO South Force with photogs, UNO newspapers, caps and shirts, and transfer of 80 UNO/FARN recruits [deleted] carrying all remaining cached lethal materiel to join UNO South Force . . .” (Ann. F, Attachment 3 (Exhibit to Testimony of José Fernandez identified only as TC “W 12 April 1986”).)

138. Additional information on the maritime component of the resupply operation was reported in a separate cable to North dated 7 April 1986. In that memorandum, Fernandez reported that “the local port officials are aware of the operation and approve providing they don’t get caught with arms . . .”. (Ann. F, Attachment 3 (Exhibit to Testimony of Robert W. Owen) (Exhibit RWO-15).)

139. Fernandez made clear in his 12 April cable to North that the objective of all of these operations was to bring about the "creation of a 2,500-man force which can strike northwest and link up with quiche to form solid southern force. Likewise, envisage formidable opposition on Atlantic Coast resupplied at or by sea." He concluded: "realize this may be overly ambitious planning, but with your help, believe we can pull it off". (Ann. F, Attachment 3 (Testimony of Mr. Fernandez, p. 174).)

140. By late 1986, the *contras*' southern front had in fact been built up to a force of between 1,600 and 2,800 men, according to Ambassador Tambs. (Ann. I, Attachment 63.) Some 56 separate *contra* mobilizations from Costa Rica and encampments on Costa Rican territory had been reported between January 1985 and 21 December 1986 and, as noted earlier, at least 10 *contra* bases remained active at the end of 1986. (Ann. C, Attachment 5, Table 1.) As a result, Ambassador Tambs testified that by the time he left his post in Costa Rica in January 1987, he had succeeded in establishing an aggressive southern front against Nicaragua. (Ann. F, Attachment 3 (Testimony of Mr. Tambs, pp. 7-1, 18-1, 29-2). See also, Ann. F, Attachment 3 (Testimony of Mr. Owen, p. 24-3.)

141. The Costa Rican Government's tolerance of *contra* activities on its territory has continued, even as this Memorial is being prepared. On 14 July 1987, the Costa Rican Director General of Civil Aviation, Carlos Viquez, belatedly admitted the existence of a network of airstrips along the country's northern border with Nicaragua, claiming they had just been "discovered". Director General Viquez stated that the Government would investigate the possibility that these airstrips were being used by counter-revolutionaries seeking to overthrow the Government of Nicaragua. (Ann. I, Attachments 66, 67.) Nevertheless, on 20 July 1987, an airplane coming from Costa Rica dropped a small paratroop team and their weapons in Chontales province of Nicaragua, approximately 125 miles south-east of Managua. While the paratroopers themselves escaped, the Nicaraguan armed forces captured their weapons, including a United States Government supplied Redeye anti-aircraft missile, with serial number M41A3. These advanced-technology, heat-seeking missiles are now used by *contra* forces to shoot down Nicaraguan Government aircraft, and represent a grave threat to civil aviation as well. Their use in Nicaragua represents a serious escalation of the war effort to support the *contras*. (Ann. I, Attachment 68.)

## PART TWO

### BREACH OF THE DUTY OF NON-INTERVENTION

141 A. The norm prohibiting intervention by one State in the internal or external affairs of another is fundamental in contemporary international law. It is a foundation stone second in importance only to the prohibition against the use of force. Like the principle of non-use of force, its power and validity rest not only on positive expression in the United Nations Charter or on any other single source of international law, but on all combined. It is a principle of general international law. It is reiterated or reflected in countless separate international agreements, declarations, resolutions and other acts. It is embodied in the great constitutive charters of the United Nations and the Organization of American States.

142. The non-intervention principle is implicit in the central structural characteristic of the modern international system, the sovereign equality and independence of States. Judge Sette-Camara, in his separate opinion in *Nicaragua v. United States*, suggested that it is a rule of *jus cogens*:

“As far as non-intervention is concerned, in spite of the uncertainties which still prevail in the matter of identifying norms of *jus cogens*, I submit that the prohibition of intervention would certainly qualify as such, if the test of Article 53 of the Vienna Convention on the Law of Treaties is applied.” (*Nicaragua v. United States, supra*, p. 199. See also C. Choumont, 55 *Annuaire de l'Institut de droit international* 580 (1973).)

143. The content of the norm also is derived not from any single source of law, but by a continuous interaction among them. The Charter provisions draw on prior general law, and the practice and experience with the principle under the Charter's feed back into the development of the customary norm. These in turn are recapitulated, codified, and elaborated in bilateral and multilateral conventional instruments — themselves evidence of State practice — and solemn declarations of international assemblies — themselves indications of *opinio juris*. This process of continuing iteration between general international law and conventional law is no novelty in the progressive development of principles of contemporary international law. In *Nicaragua v. United States* itself, the Court took the occasion to consider and elucidate the subtle and complex relationships between general international law and parallel Charter provisions, in relation to the very norm of non-intervention here under discussion. (See *id.*, pp. 93-97.) This case presents another instance of such interaction.

144. It is the submission of Nicaragua that this norm, whatever its source and however defined, prohibits intervention of any State in the affairs of another:

- (a) directly by use of force against the second State,
- (b) indirectly by providing assistance and support to forces conducting military or paramilitary activities against the second State, or
- (c) by acquiescence in the use of its territory by irregulars or armed bands as a base for recruitment, training, logistical support or political backing for

military or paramilitary activities against the second State seeking to coerce or overthrow the government of that State.

Nicaragua submits that Costa Rica has violated its duty of non-intervention in all three of these main aspects.

145. Chapter III, immediately following, will demonstrate that the principle of non-intervention as defined above, is to be found in the same essential features in all sources of international law — general international law, the Charters of the UN and the OAS, and bilateral and multilateral agreements in force between the parties. Chapter IV will apply the law derived from this analysis to the facts developed in Part One, thus establishing the pervasive violations by Costa Rica asserted in the Application.

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## CHAPTER III. THE DUTY OF A STATE NOT TO INTERVENE IN THE AFFAIRS OF ANOTHER IS A FUNDAMENTAL PRINCIPLE OF INTERNATIONAL LAW

### A. General International Law

146. It is no longer open to question that the principle of non-intervention is an element of general international law. The proposition is established authoritatively and categorically by the judgment of the Court in *Nicaragua v. United States*:

“The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference; though examples of trespass against this principle are not infrequent, the Court considers that it is part and parcel of customary international law. As the Court has observed: ‘Between independent States, respect for territorial sovereignty is an essential foundation of international relations’ (*I.C.J. Reports 1949*, p. 35), and international law requires political integrity also to be respected. Expressions of an *opinio juris* regarding the existence of the principle of non-intervention in customary international law are numerous and not difficult to find. Of course, statements whereby States avow their recognition of the principles of international law set forth in the United Nations Charter cannot strictly be interpreted as applying to the principle of non-intervention by States in the internal or external affairs of other States, since this principle is not, as such, spelt out in the Charter. But it was never intended that the Charter should embody written confirmation of every essential principle of international law in force. The existence in the *opinio juris* of States of the principle of non-intervention is backed by established and substantial practice. It has moreover been presented as a corollary of the sovereign equality of States. A particular instance of this is General Assembly resolution 2625 (XXV), the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States.” (*Id.*, p. 106.)

147. The subsequent paragraphs of the Court’s judgment set out the evidence of both State practice and *opinio juris* supporting its conclusion. (*Id.*, pp. 107-110.) Nevertheless a recapitulation of the history of the doctrine and the evolution of its content is appropriate.

148. The rule originated on the American continent. Long ago, the Court itself characterized it as “one of the most firmly established traditions of Latin America, . . .” (*Colombian-Peruvian Asylum Case, Judgment of 20 November 1950, I.C.J. Reports 1950*, pp. 266, 285.) The opinions of the authors agree: “The principle of non-intervention . . . had its origins in the international law of the American States . . .” (E. Jiménez de Aréchaga, “General Course in Public International Law”, 159 *Hague Recueil* 111 (1978-I); see also, e.g., P. B. Potter, “L’*intervention*”, 32 *Hague Recueil*, pp. 634 ff. (1930-II); A. v. W. Thomas and A. J. Thomas, *Non-Intervention — The Law and Its Import in America*, p. 55 (Dallas, 1956);

C. Rousseau, *Droit international public. Les relations internationales*, Vol. IV, p. 38 (Paris, 1980).

149. This provenance is, perhaps, of special signification in the present case in which both of the parties are Latin American States and heirs to its legal tradition. But whatever its origins, the principle is now universal and the most eminent authorities unanimously acknowledge it as a self-evident customary norm. (See, e.g., A. Rivier, *Le droit international*, Vol. I, para. 108, Vol. III, para. 1298 (Paris, 1886); P. Fauchille, *Traité de droit international public*, pp. 538 *et seq.* (Paris, 1922); E. C. Stowell, *Intervention in International Law*, p. 321 (Washington, 1921); and "La théorie et la pratique de l'intervention", 40 *Hague Recueil* 123 (1932-II); cf. A. v. W. Thomas and A. J. Thomas, *supra*, pp. 216 ff. (Dallas, 1956); G. Fitzmaurice, "General Principles of International Law", 92 *Hague Recueil* 176 (1957-II); D. P. O'Connell, I *International Law*, pp. 299-300 (London, 1970); J. L. Brierly, *The Law of Nations*, p. 402 (6th ed., H. Waldock, Oxford, 1963); S. M. Schwebel, "Aggression, Intervention, and Self-Defence", 136 *Hague Recueil*, pp. 452-454 (1972-II); G. I. Tunkin, *Theory of International Law*, pp. 115-116, 437-440 (Butler Translation, London, 1974); R. Ago, 56 *Annuaire de l'Institut de droit international* 154 (1975); E. Jiménez de Aréchaga, *supra*, pp. 111-116; C. Rousseau, *supra*, pp. 37-39 (Paris, 1980); O. Schachter, "General Course on Public International Law", 178 *Hague Recueil* 160 ff. (1982-V); M. Virally, "Cours general de droit international public", 183 *Hague Recueil* 110 (1983-V).)

150. Although he admitted exceptions, Oppenheim constantly referred to the principle of non-intervention as a basic rule. (See *International Law — A Treatise*, p. 305 (8th ed., 1955).)

151. There is also substantial agreement as to the content of the norm. It is axiomatic that any unjustified use of armed force by one State against another is an intervention. (*Nicaragua v. United States*, *supra*, p. 108.) It is also established that assistance by a State to armed bands operating from its territory against another State is an intervention. (*Id.*, pp. 118-119.) The Court's holding in that case draws on and confirms the definition in the Declaration on "Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" (GA res. 2625 (XXV) (1970), *UNGAOR, Twenty-fifth session, Supp. No. 18, A/8082*, p. 21, discussed *infra*, paras. 159, 160). Under "*The principle that States shall refrain in their international relations from the threat or use of force*", the Declaration subsumes the following:

"Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force."

152. In Part Three, *infra*, Nicaragua submits that the activities of Costa Rica set forth in the Application and in Part One of this Memorial constitute a use of force against Nicaragua in violation of these principles. Under the rule that unlawful use of force is *ipso facto* intervention, these same actions also violate the customary law prohibition against intervention.

153. The Court has held, however, that *any* assistance by a State to armed bands or irregulars present upon its territory and carrying out operations against

another State, even though it may fall short of a use of force, is nevertheless an intervention prohibited by international law. Thus, in discussing the activities of the United States in support of the *contras*, the Court said:

“In the view of the Court, while the arming and training of the *contras* can certainly be said to involve the threat or use of force against Nicaragua, this is not necessarily so in respect of all the assistance given by the United States Government. In particular, the Court considers that the mere supply of funds to the *contras*, while undoubtedly an act of intervention in the internal affairs of Nicaragua, as will be explained below, does not in itself amount to a use of force.” (*Nicaragua v. United States, supra*, p. 119 (emphasis added).)

In its discussion of the violations of the duty of non-intervention by the United States, the Court expanded on this conception:

“The Court considers that in international law, if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow the government of that State, that amounts to an intervention by one State in the internal affairs of the other, whether or not the political objective of the State giving such support and assistance is equally far-reaching.” (*Id.*, p. 124.)

154. It is equally clear that a State's failure to prevent the use of its territory as a base for hostile activities against its neighbor is an intervention. Judge Ago, as Rapporteur of the International Law Commission on the responsibility of States, describes as follows the obligation of a State not to tolerate on its territory the organization and training of groups whose aim is the subversion of a neighboring State:

“Here the direct object of the obligation is not to prevent the occurrence of an attack or other event injurious to the Government from occurring in the territory of that State. The obligation requires, within the framework of mutual respect between independent sovereign entities, that the State should not allow an organization hostile to a foreign government to be established within its own frontiers and to engage there in action aimed at overthrowing the latter Government by violence. . . . It is thus clear that, in this case, there is a breach of the obligation, solely by reason of the fact that the authorities tolerated the establishment of the organization in question in the territory of the State and did not dissolve it as soon as they knew of its existence and its aims. It is thus possible to conclude that this breach exists and to bring out its consequences without depending, as a subsequent condition, on the fact of the subversive organization's having succeeded in carrying out attacks in a foreign territory, provoking subversion there and so forth.” (*Yearbook of the International Law Commission, 1978, Vol. II, Part One, para. 15, p. 36; see also, e.g., H. Lauterpacht, “Revolutionary Activities by Private Persons against Foreign States”, 22 Am. J. Int'l Law 126 (1928); G. Fitzmaurice, supra, at 177; D. Schindler, Annuaire de l'Institut de droit international 471 (1973).*)

There is no need to burden the Court with repetitive quotations from the authorities. But perhaps an exception can be made for the analysis of Thomas and Thomas, whose comprehensive work, *Non-intervention — The Law and Its Import in the Americas, supra*, has special weight in the Western Hemisphere context and deals at some length with the question of a State's failure to prevent

incursions from its territory against another. The authors begin their discussion with a restatement of the general position that:

“all nations owe other nations the duty to prevent their territory from being used as a base for hostile activities against the legitimate government of a third nation”. (*Id.*, p. 217.)

The authors directly address the question whether mere passive toleration, even though admittedly an international delict, can:

“be said to be an intervention, in view of the fact that intervention requires an intent on the part of the intervening state to impose its will on the other state, and failure to use due diligence might merely be an indication of complete disinterestedness and not of an intent to intervene?” (*Id.*)

Their answer is in the affirmative:

“Where there is a duty on the part of a state to act and that state omits to do the act with knowledge of what the consequences of that omission will be, it intends the consequences just as truly as it intended to omit what it should have done. Its inaction or failure to use due diligence did permit its territory to be used by persons to foment civil strife in another state, this constitutes an act of intervention in the affairs of that state, and the motive for its inaction is unimportant.” (*Id.* See also A. J. Thomas, “The Organization of American States and Subversive Intervention”, in *Proceedings of the American Society of International Law, 55th Meeting, 19 (1961)* (characterizing as intervention cases in which “the government of one state has tolerated, instigated or encouraged seditious movements against the government of another state, such movements generally being led by political exiles opposed to the latter government”).)

155. Beginning with the League of Nations in 1934, international organizations have regularly and consistently endorsed this principle in instruments defining and clarifying its content. In that year, the League Council declared:

“that it is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose; that every State must do all in its power to prevent and repress acts of this nature and must for this purpose lend its assistance to Governments which request it . . .”. (12 *League of Nations Official Journal*, p. 1759, Part II (July-December 1934).)

156. The early work of the International Law Commission, reflecting the state of customary international law at the time of the adoption of the United Nations and OAS Charters also addressed the principle of non-intervention. The draft Declaration on Rights and Duties of States, formulated by the Commission in 1949, provides:

#### “Article 3

Every State has the duty to refrain from intervention in the internal and external affairs of any other State.

#### Article 4

Every State has the duty to refrain from fomenting civil strife in the territory of another State, and to prevent the organization within its territory of activities calculated to foment such civil strife.” (GA res. 375 (IV) (6 December 1949).)

The Commission in its Report notes that the text has a Latin American provenance, having been derived from Articles 5 and 22 of the Panamanian draft on which the work of the Commission was based, and that "the principle[s] have] been enunciated in various international agreements". (Report of the International Law Commission covering its First Session 12 April-9 June 1949, *Yearbook of the ILC*, p. 287 (1949).)

157. Likewise, the 1954 ILC Draft Code of Offences against the Peace and Security of Mankind included:

"The undertaking or encouragement by the authorities of a State of activities calculated to foment civil strife in another State, or the toleration by the authorities of a State of organized activities calculated to foment civil strife in another State." (Draft Code of Offences Against the Peace and Security of Mankind, ILC Report, Article 2 (6), *UNGAOR Supp. 9* (Ninth Session, 1954).)

158. The Report of the Special Rapporteur, M. J. Spiropoulos, makes it clear that:

"if . . . the fomenting be due to private activities, the responsibility of the State officials of the State from which these private activities emanate will result from their *failure* to prevent or repress such fomenting by private activities". (Document A/CN.4/25, II *Yearbook of the International Law Commission* (1950), pp. 253, 262. (See also Article 11 of the new draft of Doudou Thiam including among the acts constituting crimes against the peace, "Interference by the authorities of a State in the internal and external affairs of another State". Report of the ILC on its 38th Session, 1986, A/41/10).)

159. In recent years the United Nations General Assembly has recognized the principle of non-intervention with increasing emphasis in a succession of resolutions and declarations. Foremost among these is the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations". (GA res. 2625 (XXV) (1970).) The Court has already remarked on the special weight to be accorded this resolution in defining the general international law norm of non-intervention. (*Nicaragua v. United States*, *supra*, p. 106.) The principle of non-intervention contained in the body of the resolution is described as "the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter". (GA res. 2625 (XXV) (1970).) In elaborating that duty the resolution states:

"armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.

. . . no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed toward the violent overthrow of the regime of another State . . ." (*Id.*)

160. Paragraphs 2 and 4 of the "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of Their Independence and Sovereignty" (GA res. 2131 (XX) (21 December 1965)), are the sources of the language in resolution 2625 (XXV) (1970), quoted above. The relevant texts of the two resolutions are almost identical.

161. The other United Nations resolutions on this subject use identical or very similar language:

Non-Interference in the Internal Affairs of States, GA res. 31/91 (12 January 1977), UN doc. A/Res./31/91 (1977):

"3. *Denounces* any form of interference, overt or covert, direct or indirect, including recruiting and sending mercenaries, by one State or group of States and any act of military, political, economic or other form of intervention in the internal or external affairs of other States, regardless of the character of their mutual relations or their social and economic systems;

...

5. *Calls upon* all States, in accordance with the purposes and principles of the Charter of the United Nations, to undertake necessary measures in order to prevent any hostile act or activity taking place within their territory and directed against the sovereignty, territorial integrity and political independence of another State."

Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, GA res. 36/103 (1981):

"*Reaffirming*, in accordance with the Charter of the United Nations, 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.

...

2. The principle of non-intervention and non-interference in the internal and external affairs of other States comprehends the following rights and duties:

...

## II

(a) The duty of States to refrain in their international relations from the threat or use of force in any form whatsoever to violate the existing internationally recognized boundaries of another State, to disrupt the political, social or economic order of other States, to overthrow or change the political system of another State or its Government, to cause tension between or among States or to deprive peoples of their national identity and cultural heritage;

(b) The duty of a State to ensure that its territory is not used in any manner which would violate the sovereignty, political independence, territorial integrity and national unity or disrupt the political, economic and social stability of another State; . . ."

Resolution 2625 (XXV) was adopted by consensus. There can be no doubt that it reflects *opinio juris* of the participating Governments. Resolution 2131 (XX) was adopted unanimously (with one abstention). In 1966, the Special Committee on Principles of International Law concerning Friendly Relations and Cooperation among States said that the Declaration:

"by virtue of the number of States which voted in its favor, the scope and profundity of its contents and, in particular, the absence of opposition, reflects a universal legal conviction which qualifies it to be regarded as an authentic and definite principle of international law". (UNGAOR, Annexes, v. III 74 (XXI) (1966).)

162. As already noted, in its judgment of 27 June 1986, the Court recognized the special significance of these resolutions in that they "set out principles which

the General Assembly declared to be 'basic principles of international law'". (*Nicaragua v. United States, supra*, p. 107.) The teachings of jurists also affirm that these resolutions represent codifications of existing customary law. (See, e.g., L. B. Sohn, "The Development of the Charter of the United Nations", in M. Bos (ed.), *The Present State of International Law*, pp. 50 ff. (Deventer, 1973); S. M. Schwebel, "Wars of Liberation as Fought in UN Organs", in J. N. Moore (ed.), *Law and Civil War in the Modern World*, p. 452 (Baltimore, 1974); E. Jiménez de Aréchaga, *supra*, pp. 12, 32.)

163. There can be no doubt that these resolutions constitute authoritative formulations of the general international law now in force.

## **B. The Charters of the Organization of American States and the United Nations**

### *1. The Charter of the Organization of American States*

164. The Charter of the Organization of American States represents the culmination of more than a century of effort by international lawyers and statesmen of the American States to curb intervention by one State in the affairs of another. According to J. M. Yepes, the principle of non-intervention "est comme l'épine dorsale du droit international au Nouveau Monde". (J. M. Yepes, "La contribution de l'Amérique latine au développement du droit international public et privé", 32 *Hague Recueil* 745 (1930).)

165. In this respect, the Charter is deeply marked by the special historic experience of the nations of the Western Hemisphere. To quote Dr. Yepes again, speaking in the ILC debate on the non-intervention provision of the draft Declaration on Rights and Duties of States:

"The Latin American position with regard to intervention was the result of events which had taken place during the nineteenth century and the first three decades of the twentieth century. During that period, the Latin American countries had been the victims of a series of unilateral interventions by a large number of European nations and by the United States . . . All those events had created very strong opposition to unilateral intervention in Latin America which had consistently affirmed the principle of non-intervention; it was one of the main ideas underlying Latin-American legal thought." (International Law Commission, 1st session, 12th meeting, 28 April 1949, A/CN.4/SR.12, pp. 6-7.)

Article 18 (originally Article 15) of the Charter provides:

"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 prevents 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."

Article 19 (originally Article 16) elaborates the non-intervention principle as follows:

"No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind."

166. The drafters of these Articles were working in the context of a long juridical history, especially rich in the Western Hemisphere, of efforts to curb intervention by one State in the affairs of another, both through the development of norms of general international law and through a series of conventional instruments in the American system specifically directed to the problem. The non-intervention provisions of the OAS Charter are a codification of the customary norms and an integrated and comprehensive statement of the provisions of the earlier Western Hemisphere conventional law. As Judge Fabela says:

“These provisions, which are complementary, clearly define, as the basis of peaceful pan-American coexistence, the principle of non-intervention for which Latin America has always struggled, most especially since the Havana Conference (1928)<sup>1</sup>.” (I. Fabela, *Intervencion*, p. 250 (Mexico, 1959).)

167. Thus, for example, the Charter text undertakes to resolve a number of issues of controversy and debate among jurists. In every case, the text comes down in favor of the more inclusive conception of intervention. It does not confine “intervention” to the use of armed force, but includes also “any other form of interference . . .”. Article 19 expressly condemns “coercive measures of an economic or political character . . .”. Intervention in the external as well as the internal affairs of another State is prohibited. And multilateral as well as unilateral intervention is covered.

168. It is widely recognized that these Articles comprise the broadest and most comprehensive formulation of the principle of non-intervention in any multilateral charter or instrument, certainly as of the time of the formation of the OAS in 1948. Therefore they should not be given a restrictive or grudging construction.

169. Since the OAS Charter in effect declares and codifies the customary international law norm, the discussion of the scope and content of that norm of non-intervention in section A above is equally relevant to the construction of Articles 18 and 19 of the OAS Charter. The identical conclusion as to the scope and content of the norm is derived from an analysis of the prior conventional law in the Western Hemisphere and subsequent applications and interpretations of the Charter by competent organs of the OAS.

170. The history of the evolution of the non-intervention provisions of the OAS Charter through a series of hemispheric instruments beginning in 1928 has often been told. (See, e.g., F. V. Garcia-Amador, *The Inter-American System — Its Development and Strengthening*, xxv-xxii (New York, 1966); C. G. Fenwick, *The Organization of American States — The Inter-American Regional System*, pp. 54-87 (1963); A. v. W. Thomas and A. J. Thomas, *The Organization of American States* (Dallas, Southern Methodist University Press, 1963), pp. 158-161. It need only be summarized briefly here. The first effort to secure a formal agreement on non-intervention among all the American States occurred at the Sixth International Conference of American States in Havana in 1928. The newly formed Commission of Jurists presented a draft treaty on Rights and Duties of States containing a non-intervention provision: “No state has the right to interfere in the internal affairs of another.” (See Thomas and

<sup>1</sup> Original Spanish text: En tales preceptos, que se complementan entre sí, queda definido, como base de la convivencia pan-americana, el principio de la no intervención por el que la América Latina vino luchando desde siempre, pero de manera muy significativa desde la Conferencia de La Habana (1928).

Thomas, *The Organization of American States, supra*, p. 59.) The proposal was defeated after long and acrimonious debate due to the opposition of the United States. As part of the same enterprise, however, the Commission of Jurists proposed a Convention on the Duties and Rights of States in the Event of Civil Strife, which was adopted by the Conference. (See *The International Conferences of American States 1889-1928*, p. 435 (New York, 1931).)

171. This Convention proclaimed the fundamental obligation of the contracting States:

“To use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife.” (*Id.*)

172. This provision embodies the general international law norm discussed above. The Convention has remained a permanent part of the array of Inter-American treaties giving conventional form to the principle of non-intervention.

173. In 1933 at Montevideo, the Latin American States gained the success that eluded them in Havana. The Seventh Conference adopted a Convention on Rights and Duties of States. Article 8 closely tracked the formula rejected five years earlier: “No state has the right to intervene in the internal or external affairs of another.” (*The International Conferences of American States, First Supplement, 1933-1940*, p. 122 (Washington, 1940).) This time, the United States signed, although subject to a long and somewhat opaque reservation. Nicaragua signed the Convention at Montevideo, and both Nicaragua and Costa Rica ratified soon thereafter. (*International Conferences of the American States, 1st Supp., 1933-1940*, pp. 123, 121, n. 1.) In 1936, at the Inter-American Conference for the Maintenance of the Peace at Buenos Aires, an Additional Protocol Relative to Non-Intervention was presented and adopted without reservation by all participants. It provides:

“The High Contracting Parties declare inadmissible the intervention of any one of them, directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties.” (*Id.*, p. 191.)

The Declaration of American Principles adopted by the Eighth Conference at Lima proclaims that “The intervention of any State in the internal or external affairs of another is inadmissible”. (*Id.*, p. 309.) And the Act of Chapultepec, adopted at Mexico City in 1945, recited that:

“The American states have been incorporating in their international law, since 1890, by means of conventions, resolutions and declarations, the following principles:

...

(b) The condemnation of intervention by one State in the affairs of another.” (*The International Conferences of the American States, 2nd Supp. 1942-1954*, p. 66 (Washington, 1958).)

174. Articles 15 and 16 of the Charter of the Organization of American States signed at Bogotá in 1948 (now Articles 18 and 19) mark the culmination and integration of this long development of Western Hemisphere non-intervention law. We can see the development and refinement of the text from the simple 13 word sentence at Havana through Montevideo and Buenos Aires to the final version at Bogotá.

175. The non-intervention Articles are included in Chapter III of the Charter entitled Fundamental Rights and Duties of States. This Chapter as well as those on Purposes and Principles were introduced into the Charter over the opposition of the United States. Mexico took the lead in urging a “comprehensive document incorporating principles and standards of conduct and policies previously proclaimed in inter-American documents”. (C. G. Fenwick, *The Organization of American States*, p. 81 (Washington, 1963).) The principle of non-intervention, including its corollaries embodied in the Convention on the Duties and Rights of States in the Event of Civil Strife, were prominent among those “principles, policies and standards of conduct previously proclaimed in inter-American documents”. (*Id.*, p. 85; see also Thomas and Thomas, *The Organization of American States*, *supra*, p. 63, Thomas and Thomas, *Non-Intervention*, *supra*, p. 115.) García-Amador says:

“Outstanding in this declaratory part of the Charter is Chapter III which defines the ‘fundamental rights and duties of States’ with a scope and precision unparalleled in any other conventional instrument.” (García-Amador, *supra*, p. xxxii.)

176. The applications and interpretations of the Charter by competent organs of the OAS can be regarded as authoritative statements of the meaning of these provisions. All of these concur in defining the failure of a State to prevent the use of its territory as a base for attacks against a neighbor as impermissible intervention.

177. Soon after the Charter came into force, the OAS Council was faced with a dispute between these same two parties, Costa Rica and Nicaragua. Then, Costa Rica initiated the complaint. The Costa Rican Ambassador:

“accuse[d] the Government of Nicaragua of having violated the territorial integrity of Costa Rica, and threatened its sovereignty and political independence by *tolerating, encouraging, and aiding a conspiracy concocted in Nicaragua* in order to overthrow the Costa Rican Government by force of arms, and finally by *making available to the conspirators the territory and material means* that enabled them to cross the border and invade Costa Rican soil”. 1 *Applications of the Inter-American Treaty of Reciprocal Assistance, 1948-1956*, p. 21 (Washington, 1957) (emphasis added) (hereinafter “*Applications*”).)

The Committee of Information reported to the Council that:

“[T]here is not the slightest doubt of the failure of the Nicaraguan Government to take adequate measures to prevent the revolutionary activities directed against a neighboring and friendly country from being carried out.” (*Id.*, p. 26.)

Accordingly the Council resolved:

“That the Nicaraguan Government could and should have taken adequate measures at the proper time for the purpose of preventing (a) the development, in Nicaraguan territory, of activities intended to overthrow the present regime in Costa Rica, and (b) the departure from Nicaraguan territory of revolutionary elements.” (*Id.*, p. 28.)

Meanwhile, Nicaragua had entered a similar counter-complaint against Costa Rica, as to which the Council made a similar finding. (*Id.*) The Council Resolution continued by requesting:

“that both governments, by every available means, faithfully observe the principles and rules of non-intervention and solidarity contained in the various inter-American instruments signed by them”. (*Id.*)

178. A Commission of Military Experts was appointed to assist in the effective fulfillment of the Resolution. (*Id.*, p. 30.) As a result of this incident and pursuant to the recommendation of the Commission and a Council Resolution, Nicaragua and Costa Rica, in 1949, concluded a bilateral Treaty of Amity looking toward “the constant application by both governments of the principles of non-intervention and continental solidarity”. (*Id.*)

179. Again in January 1955, Costa Rica brought a complaint against Nicaragua to the OAS Council. In the initial letter to the Chairman of the Council, Costa Rica listed as its most serious concern:

“the facilities that are being granted in Nicaragua to internal and external enemies of Costa Rica to organize military units and to plot against the stability of Costa Rican democratic institutions and the peace and security of the nation”. (*Id.*, p. 160.)

180. The OAS appointed an Investigating Committee, which through on the scene investigations was able to establish that the rebels, mostly of Costa Rican nationality and supported by several light aircraft, were attacking points in northern Costa Rica. Ultimately, the rebels were driven back to Nicaraguan territory, where they were interned. The Committee reported to the OAS that “A substantial number of the rebel forces and the war materials used by them, whatever their origin, entered by way of the Costa Rican-Nicaraguan frontier”. (*Id.*, p. 187.) It did not make any finding that the Government of Nicaragua had participated actively in the supply organization of the rebel forces. Nevertheless, the OAS Council adopted a resolution:

“condemn[ing] the acts of intervention of which Costa Rica is victim and call[ing] attention to the grave presumption that there exist violations of international treaties in force”. (*Id.*, p. 168.)

181. In a case brought before it by Haiti, the OAS Council passed a resolution requesting:

“the Government of the Dominican Republic to take immediate and effective measures to prevent government officials from tolerating, instigating, encouraging, aiding or fomenting subversive or seditious movements against other governments”. (*Id.*, p. 125.)

With respect to the Dominican Republic’s counter-complaint against Cuba and Guatemala, the Council resolved:

“To request the Governments of Cuba and Guatemala to adopt adequate measures so that they will not permit the existence in their territories of groups of nationals or foreigners organized on a military basis with the deliberate purpose of conspiring against the security of other countries and to request also the Governments of Cuba, Guatemala, and the Dominican Republic to take adequate measures to ensure absolute respect for the principle of non-intervention . . .” (*Id.*, p. 127.)

182. In all of these cases the OAS Council and its subordinate bodies acted on the basis that “intervention” did not require active participation by the accused State in the hostile actions directed against the complaining State. Failure to prevent or suppress such actions on the territory of the accused State was enough to violate the principle of non-intervention.

183. The Inter-American Juridical Committee has taken a similar view of the content of the principle of non-intervention embodied in the OAS Charter. In 1959, the Fifth Meeting of Consultation of the Ministers of Foreign Affairs, seeking to enhance “[t]he strict observance, by the American republics, of the contractual obligations not to intervene in the internal or external affairs of other states”, charged the Commission with preparing: “A draft instrument listing the greatest possible number of cases that constitute violations of the principle of non-intervention.” (Inter-American Juridical Committee, Instrument Relating to Violations of the Principle of Nonintervention, CIJ-51, p. 1 (General Secretariat, Organization of American States, February 1959).) The list prepared by the Commission in response to this request included:

“Permitting, in the areas subject to its jurisdiction, any person, national or alien, to participate in the preparation, organization, or carrying out of a military enterprise that has as its purpose the starting, promoting, or supporting of rebellion or sedition in an American state, even though its government is not recognized. The aforesaid participation includes the following acts:

- (1) The contributing, supplying, or providing of arms and war material;
- (2) The equipment, training, collecting, or transporting of members of a military expedition;
- (3) The provision or receipt of money, by any method, intended for the military enterprise.” (*Id.*, pp. 16-17.)

Note that although subparagraphs (1), (2), and (3) define “participation”, the act condemned by the Commission is not “participation” but “[p]ermitting . . . any person . . . to participate”.

184. Finally, the OAS General Assembly adopted the same view of intervention as proscribed in the OAS Charter in its Resolution on Strengthening of the Principles of Non-Intervention and the Self-Determination of Peoples and Measures to Guarantee Their Observance. (AG/res. 78 (II-0/72) (21 April 1972).) The preambular clause states that acts of direct and indirect intervention “constitute a flagrant violation of the principles of non-intervention and self-determination of peoples established in the Charter of the Organization of American States”. And the operative portion:

“RESOLVES:

. . .

3. To reaffirm the obligation of [member] states to refrain from organizing, supporting, promoting, financing, instigating, or tolerating subversive, terrorist, or armed activities against another state . . .”

185. It follows that, even apart from its intervention by use of force against Nicaragua or by its active assistance to the *contras*, Costa Rica has violated its obligation under Article 18 of the OAS Charter by failing to prevent and suppress the operation of those forces from bases within its territory.

## 2. The United Nations Charter

186. Unlike the OAS Charter, the Charter of the United Nations contains no express prohibition against intervention in the affairs of another State. The Court itself has remarked that “this principle is not, as such, spelt out in the Charter”. (*Nicaragua v. United States*, *supra*, p. 106.)

187. The Court's language suggests, however, that the principle may be implicit in the Charter. The obligation of non-intervention is a necessary corollary of "the principle of equal rights and self-determination of peoples" in Article 1 (2) and "the principle of the sovereign equality of all its Members" on which the Organization is based, according to Article 2 (1). (See *Nicaragua v. United States*, *supra*, p. 106.) In addition, Article 2 (7) prohibits the United Nations from intervening in matters that are essentially within the domestic jurisdiction of any State. It would seem strange to preclude the Organization from taking action collectively that was lawful for individual members.

188. Former President Jiménez de Aréchaga supports this view:

"While the Charter contains no provision dealing explicitly with the principle of non-intervention by States, that principle must be regarded as implicit in it. The embodiment of this principle follows from the fact that, by proclaiming the sovereign equality of States, the Charter prohibits one State from interfering in the affairs of another State. Sovereign equality would be meaningless if States were entitled to intervene in the domestic affairs of other States. The legal concept of non-intervention may be regarded as springing also from the respect for the political independence of States and the principle of self-determination, which encompasses the right of peoples to choose their own political, economic, social and cultural systems. It is true that Article 2 (7) prohibits intervention by the Organization but, since the Charter cannot permit States to do what it prohibits the Organization itself from doing, such a prohibition must extend *a fortiori* to member States in their relations with other States. Consequently, the introductory sentence of Article 2, enjoining the Organization and its members to 'act in accordance with the following principles' cannot be interpreted as meaning that some of the principles apply to the Organization and others to the member States: both the member States and the Organization are obliged to act in accordance with all the principles of the Charter, including that of non-intervention." (E. Jiménez de Aréchaga, 159 *Hague Recueil* 112 (1978-I); see also M. Virally, 183 *Hague Recueil* 108 (1983-V); A. v. W. Thomas and A. J. Thomas, *The Organization of American States*, *supra*, p. 157.)

189. It is not surprising, then, that the United Nations has consistently acted on the basis that the duty not to intervene in the affairs of another State is a Charter obligation. Moreover, the review of the pertinent United Nations resolutions (*supra*, paras. 159-161) shows that the United Nations, like the OAS, has always taken a broad view of that obligation, including within its purview the duty of a State to prevent armed bands or irregulars from operating on its territory against another State.

190. It is not necessary, therefore, to repeat the substantive portions of those resolutions and declarations. Here we review them to establish the proposition that non-intervention is a Charter principle and that its breach is a Charter violation.

191. As noted above, foremost among these instruments is the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations. (GA res. 2625 (XXV) (1970).) The Court has already remarked on the special significance to be accorded this resolution. (*Nicaragua v. United Nations*, *supra*, pp. 101, 106.) Resolution 2625 states expressly that non-intervention is a Charter obligation. The title of the resolution invokes the Charter. The preambular clause recites that:

*“the practice of any form of intervention not only violates the Charter, but also leads to the creation of situations which threaten international peace and security, . . .”* (emphasis added).

The principle of non-intervention contained in the body of the resolution is described as “the duty not to intervene in matters within the domestic jurisdiction of any State, *in accordance with the Charter*” (emphasis added).

192. The other United Nations resolutions on this subject follow the same pattern. (In each case, we have underscored the pertinent language indicating the foundation in the United Nations Charter of the non-intervention principle):

Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of Their Independence and Sovereignty, GA res. 2131 (XX) (1965):

*“Preamble:*

full observance of the principle of the non-intervention of States in the internal affairs of other States is essential to the fulfillment of the principles and purposes of the United Nations.

direct intervention, subversion and all forms of indirect intervention . . . constitute a violation of the Charter of the United Nations.

Declaration on the Strengthening of International Security, GA res. 2734 (XXV) (1970):

*“Calls upon all States to adhere strictly . . . to the purposes and principles of the Charter, including . . . the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; . . .”*

Non-interference in the Internal Affairs of States, GA res. 31/91 (1977):

*“5. Calls upon all States, in accordance with the purposes and principles of the Charter of the United Nations, to undertake necessary measures in order to prevent any hostile act or activity taking place within their territory and directed against the sovereignty, territorial integrity and political independence of another State.”*

Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, GA res. 36/103 (Annex) (1981):

*“Preamble:*

*Reaffirming, in accordance with the Charter of the United Nations, 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.*

*Considering that full observance of the principle of non-intervention and non-interference in the internal and external affairs of States is of the greatest importance . . . for the fulfillment of the purposes and principles of the Charter [of the United Nations].”*

193. It thus appears that the United Nations has consistently treated the principle of non-intervention as embodied in the Charter and a violation of the principle as a breach of the Charter. It has regarded the content of the principle as having the same latitude as the OAS and as identical with that of the customary norm. It includes not only use of force or assistance to others in the use of force

against a State, but the failure of a State to prevent its territory from being used for acts of intervention against another. It follows that acts of intervention in violation of general international law in breach of the OAS Charter are equally in violation of the United Nations Charter.

### C. Multilateral and Bilateral Conventions in Force between the Parties

194. Conventional instruments in force between the parties specifically address the question of intervention in facts and circumstances like those revealed in this case. The oldest of these is the Convention on the Duties and Rights of States in the Event of Civil Strife, *supra*.

195. As noted above, paragraph 170, this Convention was part of a two-pronged effort to enact into positive law the principles of non-intervention espoused by the Latin American States. The general condemnation of intervention, which was in essence directed at the United States, failed because of United States opposition. But the provisions of the Convention on the Duties and Rights of States in the Event of Civil Strife would apply, as a practical matter, to the relations of the Latin American States among themselves. Thus the United States did not oppose it, and it was adopted by the Conference. Nicaragua and Costa Rica are both parties to the Convention<sup>1</sup>.

196. The 1928 Convention is specifically directed to the types of activities revealed by the evidence in this case. The basic prohibitions of the Convention listed in Article I cover the very actions of Costa Rica of which Nicaragua complains in this case. The parties bind themselves:

“First: To use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife.

Second: To disarm and intern every rebel force crossing their boundaries, . . .

Third: To forbid the traffic in arms and war material, except when intended for the Government . . .

. . .” (*International Conferences of American States 1889-1928*, pp. 435-436 (New York, 1931).)

197. As the facts show, and as will be developed more fully in Chapter IV, *infra*, the actions of Costa Rica have flouted all three of these solemn treaty obligations. Especially important in the context of this case is the first obligation: “to prevent” the inhabitants of the State from participating in or preparing for civil strife in another State.

198. Although the title of the Convention refers to civil strife, it is not a prerequisite for the application of the Convention that a condition of civil strife (whatever that may mean) must be shown. The obligations are absolute in accordance with their terms. The provision requires the parties to prevent certain activities when undertaken for the purpose of “starting or promoting civil strife”. Thus, it is clear that the obligations of the Convention attach before any civil strife is under way.

<sup>1</sup> A Protocol to the Convention was opened for signature at the Pan American Union on 1 May 1957. F. V. García-Amador, *The Inter-American System — Its Development and Strengthening*, *supra*, pp. 404-406. It has been ratified by Costa Rica but not by Nicaragua.

199. The 1928 Convention played a central role in OAS consideration of the disputes between Nicaragua and Costa Rica in 1949 and 1956, discussed *supra*, paragraphs 177-180. In the first incident, the OAS Council treated the charges and countercharges of the disputes as implicating the provisions of the Convention. In his invitation to members of the Inter-American Commission of Military Experts, established by the Council to help resolve the crisis, the Chairman of the Council specifically invoked the Convention. (*Applications, supra*, p. 29.) In enumerating the acts that the Council feared might occur and in anticipation of which the Commission was established, he repeated *in haec verba* the language of parts First to Fourth of Article 1 of the Convention. (*Id.*, p. 30.)

200. The two bilateral treaties of friendship now in force between the parties derive from the 1949 and 1956 disputes. They were negotiated at the instance of the OAS in response to OAS Council Resolutions enacted to resolve the crises. Both agreements are based explicitly on the 1928 Convention and are designed to provide for the implementation of its provisions between the parties.

201. The 1949 bilateral treaty refers in its preamble to the OAS Council Resolution of 24 December 1948 (annexing the text) which requested:

“that both governments by every available means, faithfully observe the principles and rules of non-intervention and solidarity contained in the various inter-American instruments signed by them”. (*Id.*, p. 28.)

The core of the Treaty of Amity is found in Article IV, which provides:

“The Governments of Costa Rica and Nicaragua likewise undertake to reach an agreement as to the best manner of putting into practice the provisions of the Convention on the Duties and Rights of States in the Event of Civil Strife, in cases contemplated by that Convention, so that it may be applied immediately whenever a situation of this kind arises, in the manner provided for in the said agreement, especially with respect to measures for the control and supervision of frontiers, as well as with respect to any other measure intended to prevent the organization or existence of any revolutionary movement against the Government of either of the two Parties in the territory of the other.” (Pact of Amity between the Governments of the Republic of Costa Rica and Nicaragua, signed at Pan-American Union, 21 February 1949, *Applications, supra*, pp. 48, 49 (hereinafter 1949 Pact of Amity).)

202. By this bilateral agreement, the parties translated their obligations under the multilateral Convention into bilateral obligations *inter sese*. The special agreement contemplated by Article IV was not immediately concluded by the two countries. When a similar dispute arose in 1955, Costa Rica appealed again to the OAS Council. An Investigating Committee was appointed which recommended, *inter alia*, that the two Governments should “prepare and sign the Bilateral Agreement mentioned in Article IV of the [1949] Pact”. (*Id.*, p. 188.) The Council adopted this recommendation in paragraph 1 of its Resolution of 24 February 1955. (*Id.*, p. 196.)

203. Pursuant to this resolution, the two countries, on 9 January 1956, concluded the “Agreement between the Governments of Nicaragua and Costa Rica in Compliance with Article IV of the Pact of Amity Signed on February 21, 1949”. (*Applications, supra*, p. 205 (hereinafter 1956 Agreement).) This instrument lists the measures the parties must take to “put into practice” the provisions of the 1928 Convention. Detailed undertakings of the parties elaborate the obligations of the Convention.

204. Article III is the basic provision. Again, it is especially relevant to the facts of this case:

“Each Party undertakes to take the necessary measures to prevent revolutionary movements against the other Party from being initiated or carried out in its territory.

Each Party undertakes to take measures of every kind to prevent any person, national or alien, from any place within its jurisdiction, from participating or aiding in any subversive enterprise, terrorist act, or attempt against the Chief of State of the other Party, . . .” (*Id.*, p. 207.)

The Article imposes an affirmative obligation “to take measures to prevent” the enumerated acts. It is not enough to rest passively on lack of knowledge or information, although in the present case, there is no doubt that the Costa Rican authorities were well aware of the character and scope of the *contra* activities. The 1956 Agreement mandates an active, aggressive policy to search out such activities and put a stop to them.

205. The remainder of the Agreement spells out this basic obligation in additional detail. Article II calls for “surveillance of their common boundary as a means of preventing either arms or armed parties from crossing illegally from the territory of one of the Parties to that of the other . . .” and for exchange of information to that end. (*Id.*) Article IV defines “participation” as including the provision of funds, arms, training, recruitment, organization or transportation of persons. (*Id.*)

206. Article V is especially interesting. It incorporates the most important provisions of the Convention on Territorial Asylum (signed at Tenth Inter-American Conference, Caracas, 28 March 1954, Treaty Series No. 19 (Pan-American Union 1961)) into the 1956 Agreement, thus making them applicable between the parties, although Nicaragua has not ratified the Convention. The 1956 Agreement repeats verbatim the text of the incorporated Articles. Incorporated Articles VII and VIII have special relevance to the political activities of the *contra* organizations in San José. They provide:

“Article VII. Freedom of expression of thought, recognized by domestic law for all inhabitants, may not be ground of complaint by a third state on the basis of opinions expressed publicly against it or its government by asylees or refugees, *except when these concepts constitute systematic propaganda through which they incite to the use of force or violence against the government of the complaining state.*

Article VIII. No state has the right to request that another state restrict for the political asylees or refugees the freedom of assembly or association which the latter state’s internal legislation grants to all aliens within its territory, *unless such assembly or association has as its purpose fomenting the use of force or violence against the government of the soliciting state.*” (*Id.*, p. 208 (emphasis added).)

A third Article of the Convention on Territorial Asylum, also incorporated in the 1956 Agreement, is of equal importance in connection with Costa Rica’s failure to clear the *contras* out of the border zone:

“Article IX. At the request of the interested state, the state that has granted refuge or asylum shall take steps to keep watch over, or to intern at a reasonable distance from its border, those political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it.” (*Id.*)

207. As will be shown in the next Chapter, the acts and omissions of Costa Rica shown by the evidence are manifestly contrary to the stipulations in these bilateral treaties. Nicaragua also considers that by the repeated and pervasive character of these violations Costa Rica has denatured the fundamental significance of these bilateral treaties. The preambles of both treaties recite that their purpose is “to maintain the closest friendship and to strengthen the fraternal bonds which have historically characterized their relations . . .” (1949 Pact of Amity) and “to maintain the closest friendship between them, as befits two kindred and neighboring peoples . . .” (1956 Agreement). In its judgment in *Nicaragua v. United States*, the Court said:

“There must be a distinction, even in the case of a treaty of Friendship, between the broad category of unfriendly acts and the narrower category of acts tending to defeat the object and purpose of the Treaty. That object and purpose is the effective implementation of friendship in the specific fields provided for in the Treaty, not friendship in the vague and general sense.” (*I.C.J. Reports 1986*, p. 137.)

However, the Court went on to hold that:

“there are certain acts of the United States which are such as to undermine the whole spirit of the bilateral agreement directed to sponsoring the friendship between the two States parties to it”. (*Id.*, p. 138.)

The direct attacks perpetrated against Nicaragua by the United States, the mining of the ports, and the trade embargo were acts of this character.

208. In this case, “the specific fields provided for in the [t]reaty” are intervention and the various acts and omissions that are instances of intervention, under the detailed stipulations of the treaties themselves and the more general conventional and customary norms. Thus, the overall pattern of Costa Rican assistance, complicity and acquiescence in the political and military activities of the *contras* must *a fortiori* be taken as “undermining the whole spirit of the bilateral agreement”. In this connection, the public appeal of Foreign Minister Gutierrez (see *supra*, para. 13), and of President Monge himself, to the United States Congress to renew aid to the *contras* (*id.*) take on special significance. They are certainly not calculated to “maintain the closest friendship and strengthen the fraternal bonds” between the two countries.

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209. It is ironic in a sense that the disputes between these two States three decades ago should play an important role in defining the law applicable to the current case. In 1948, Costa Rica accused the Government of Nicaragua:

“of having violated the territorial integrity of Costa Rica, and threatening its sovereignty and political independence by tolerating, encouraging, and aiding a conspiracy concocted in Nicaragua to overthrow the Costa Rican Government by force of arms, and finally by making available to the conspirators the territory and the material means that enabled them to cross the border and invade Costa Rican soil”. (*Applications, supra*, pp. 20-21.)

210. In its 1955 complaint, Costa Rica stated:

“The succession of acts that may be called aggressive include the closing of the San Juan River to navigation by Costa Rican merchant vessels;

defamation campaigns by the press, circulation of new items and tendentious official statements prophesying internal struggles in Costa Rica; . . . and still more serious, the facilities that are being granted in Nicaragua to internal and external enemies of Costa Rica to organize military units and to plot against the stability of Costa Rican democratic institutions and the peace and security of the Nation." (*Id.*, p. 160.)

211. Today the roles are reversed. Nicaragua could adopt practically word for word the complaints of Costa Rica against the Somoza dictatorship in 1948 and 1955. It was precisely to avoid a repetition of those incidents that the OAS Council reproved Nicaragua for its actions and that the 1949 Pact of Amity and the 1956 Agreement were concluded.

212. Costa Rica, by the general course of conduct disclosed in the evidence has defeated the object and purpose of those treaties. The next Chapter will demonstrate by a detailed review of the evidence, that Costa Rica, at the same time and by the same acts, has also violated the specific stipulations of the treaties, as well as the principles of non-intervention embodied in the Charters of the United Nations and the OAS and of general international law.

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**CHAPTER IV. THE FACTS ESTABLISHED IN PART ONE  
ABOVE CONSTITUTE MASSIVE AND PERSISTENT VIOLATIONS  
BY COSTA RICA OF ITS DUTY NOT TO INTERVENE  
IN THE AFFAIRS OF NICARAGUA**

213. The facts recited in Part One of this Memorial, taken as a whole, add up to a classic case of wilful intervention by Costa Rica in the affairs of Nicaragua in violation of the norms of general international law, Charter provisions and treaty obligations discussed in Chapter III, *supra*. The evidence discloses a persistent pattern of extensive military attacks, beginning in 1982, along the border between Nicaragua and Costa Rica by armed bands of *contras* seeking the overthrow of the Nicaraguan Government. The groups conducting these attacks are based in Costa Rica, they are trained and supplied there, they launch their attacks from Costa Rican territory, and, after being repulsed, they retreat to that country, where they are given sanctuary to recuperate and repeat the process. Meanwhile, in San José, the political leaders of this subversive enterprise, maintain their headquarters, freely conduct political activities and disseminate propaganda in support of the military operations, and call repeatedly for the overthrow of the Nicaraguan Government by force and arms. These activities are carried out with the full knowledge and sometimes the active assistance of the Costa Rican Government.

214. It would be sufficient simply to refer to these facts at large to establish that Costa Rica has violated its international legal obligation of non-intervention, as alleged in Nicaragua's Application. For the convenience of the Court, however, Nicaragua, in this Chapter organizes the factual material in relation to major elements or aspects of the non-intervention obligation and to specific treaty obligations subsisting between the two countries.

215. The facts<sup>1</sup> establish that Costa Rica has:

- (1) breached the duty of non-intervention by providing active assistance to the *contras*;
- (2) breached the duty of non-intervention by encouraging, tolerating and acquiescing in *contra* military activities based on and emanating from the territory of Costa Rica, with the full knowledge of the Costa Rican Government;
- (3) violated Article 1, Second of the Convention on Duties and Rights of States in the Event of Civil Strife, and Article IX of the Convention on Territorial Asylum (made applicable between the parties by the 1956 Agreement) by failing to disarm and intern the *contras* known to be in its territory;
- (4) violated Articles VII and VIII of the Convention on Territorial Asylum (made applicable by the 1956 Agreement) by failing to suppress the systematic propaganda and other political activities of Nicaraguan refugees and asylees in Costa Rica inciting to the overthrow of the Government of Nicaragua by force and violence.

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<sup>1</sup> Citations are to the relevant paragraphs in Part One of the Memorial, where references to the original sources are given.

**A. Costa Rica Violated the Duty of Non-Intervention  
by Providing Active Assistance to *Contra* Military Operations**

216. *The most blatant example of direct Costa Rican assistance to the contras* is the establishment and operation of the airbase on the Santa Elena peninsula, 20 kilometers south of the border with Nicaragua. This airfield became a key element in the secret network established by the United States administration to supply *contras* operating within Nicaraguan territory during the period when official aid was cut off by congressional action. The information about this operation is fully documented in evidence given to the President's Special Review Board (Tower Commission) and the Joint Congressional Hearings on the Iran-Contra Affair.

217. From this evidence, it appears that United States Ambassador Lewis H. Tams was a key actor in the affair. His basic mission in Costa Rica, as he saw it, "was to form a Nicaraguan resistance southern front". (See *supra*, para. 21.) The airbase was "an essential or integral part" of any such effort. (See *supra*, para. 107.) It was designed to ensure logistical support of the *contras* not just in the border areas, but inside Nicaragua. "And, by inside Nicaragua, we're talking about, you know, 80 to 100 kilometers, say 50 to 60 miles, . . .". (See *supra*, para. 104.) The construction and operation of the base required the formal approval of the Costa Rican Government. (See *supra*, para. 108.) Ambassador Tams personally conducted the negotiations leading to the grant of approval. (*Id.*) On the Costa Rican side, President Monge gave his personal authorization. (See *supra*, para. 109.)

218. The record also shows continuous and intimate involvement by Costa Rican personnel in the location, construction and operation of the airbase. (See *supra*, paras. 110-112.) It was a major installation, with a modern runway more than two kilometers in length and facilities for handling large volumes of fuel and cargo. (See *supra*, paras. 112, 116.) The plan was to turn it over to the Costa Rican Government when it was no longer needed to supply the *contras*. (See *supra*, para. 108.) It remained in operation until September 1986 (see *supra*, para. 115), and was an essential link in the supply and support system for *contra* depredations throughout southern Nicaragua. Eugene Hasenfus, the sole surviving crew-member of a *contra* supply plane shot down over Nicaragua, confirmed that he had participated in a number of previous supply flights, including some that used the Santa Elena airbase. (See *supra*, para. 135.)

219. The importance of the facility was fully recognized by the United States National Security Council officials responsible for its establishment and operation. Lt. Col. Oliver North testified at the Iran-Contra hearings that:

"The airfield at Santa Elena has been a vital element in supporting the resistance. Built by a Project Democracy proprietary (Udall Corporation S.A. — a Panamanian Company), the field was initially used for direct resupply efforts [to the *contras*] [July 1985-February 1986] . . . the field has served as the primary abort base for aircraft damaged by Sandinista anti-aircraft fire." (*Supra*, para. 115.)

Vice Admiral Poindexter, the President's National Security Adviser, testified at the same hearing that the Santa Elena airbase:

"was a dramatic display of cooperation and support for the President's policy by the country involved". (*Supra*, para. 113.)

220. Costa Rican assistance to *contra* supply activities was not confined to the Santa Elena base. Supply flights proceeding from Ilopango Airport in El

Salvador frequently stopped for refueling at the Juan Santamaria International Airport, San José's main commercial airport. The log books captured from the supply flight shot down over Nicaragua showed that the pilot had made two flights by this route, and testimony before the Iran-Contra hearings described others. (See *supra*, para. 136.) Ambassador Tambs said that such landings required special clearance by airport officials. (*Id.*) Supply flights also used some of the smaller airports (see *supra*, para. 60), and *contra* air strips located on Costa Rican territory (see *supra*, para. 136). (Moreover, whether or not they landed, many if not most of the supply flights traversed Costa Rican air space without hindrance for a large part of the route.)

221. Costa Rica provided direct assistance for supply of the *contras* in Nicaragua by sea as well as by air. In his Iran-Contra testimony, Lt. Col. North described the establishment of a "maritime capability" to transport military supplies from a port in Costa Rica to *contras* operating in Nicaragua. (See *supra*, para. 24.) The arrangements were worked out in a personal meeting between Lt. Col. North and the Costa Rican Minister of Public Security, Benjamín Piza. (*Id.*) Three supply trips were made in the first three months of 1986, and North looked forward to a schedule of "several trips a week". (See *supra*, para. 25.) Reports and communications between Lt. Col. North and the field show that the local port authorities approved of the operation as long as it did not become public. So the voyages were carried out under "a cover operation". "The operational part [was] run strictly without Nicaraguans, except for the boat operators on each trip." (*Id.*)

222. On numerous occasions, Costa Rican officials avowed publicly, some in disapproval and some in support, that the Government was extending direct assistance to the *contras*. In his report on *contra* activities in the border areas, Lt. Col. Mario Araya of the Costa Rican Civil Guard reminded Johnny Campos, Vice Minister for Public Security:

"We cannot disregard the assistance which the counter-revolutionary and non-counter-revolutionary elements have received from persons who form part of this government . . ." (*Supra*, para. 11.)

223. In May 1985, Col. Ricardo Rivera, a former Chief of the Rural Guard, told reporters at a press conference that officials of the Costa Rican Government maintained close ties with the *contras*, and that the *contras* operated from military camps in Costa Rica with the complicity of ranking government and security officials. (See *supra*, para. 12.) Col. Nestor Mora Rodríguez, a local Rural Guard commander in Los Chiles, the scene of many reported attacks, admitted that he personally put Nicaraguan refugees in Costa Rica in touch with *contra* recruiters. (See *supra*, para. 48.) Col. Gilberto Orozco, head of the Guard for the same province and a notorious *contra* collaborator, said that the Costa Ricans gave the *contras* logistical support, including food and shelter. (*Id.*)

224. Foreign mercenaries who came to Costa Rica to join the *contras* have also testified in court proceedings and to the press about the ubiquity of *contra* ties with the Costa Rican authorities. Peter Glibbery, an Englishman who served with the *contras* in Costa Rica, testified in court that officers and men of the Rural Guard helped with the construction of a *contra* training base in northern Costa Rica. (See *supra*, para. 12.) On his arrival in Costa Rica, he was met by a Rural Guard captain, who drove him to the assigned training base. (See *supra*, para. 91.) Glibbery and his associate, Steven Carr, a US citizen, later made detailed public statements about the involvement of the Costa Rican military with the *contras*. The Civil Guard gave them maps showing target locations

inside Nicaragua and assisted in a *contra* attack on the border post of La Esperanza. A Guard colonel put pick-up trucks at the disposal of the *contras* and showed them access and resupply routes. Carr said that the idea of Costa Rican neutrality was a farce; the mercenaries had "100 per cent support" from Costa Rica. (See *supra*, para. 97.) Claude Chafford, a French mercenary, said that he, like Glibbery, had been escorted to his camp by a Civil Guard officer. The camp was visited almost every day by local Guardsmen who assured the *contras* that they would be protected. (*Id.*) Two captured Cuban-American mercenaries who served under Fernando Chamorro told how they had been assisted by a Civil Guard colonel in clearing Costa Rican customs with suitcases filled with military supplies. (See *supra*, para. 90.)

225. The six-day attack on San Juan del Norte (see *supra*, para. 68) also owed much to the assistance of Costa Rican officials. Officials in the Rural Guard facilitated the operations to resupply the *contras* while they temporarily occupied the town. (See *supra*, para. 18.) Equally important, Costa Rican authorities, including Rural Guard officials, acquiesced in the transport of foreign journalists to the scene to report on the supposed *contra* "success". (*Id.*)

**B. Since 1982, Costa Rica Has Encouraged, Tolerated and Acquiesced in the Preparation and Launching of Hundreds of Armed Attacks from Its Soil against Nicaragua, with Full Knowledge of the Facts and Without Making Serious Efforts to Prevent Such Activities**

226. As developed in Chapter III, *supra*, the international law rules against intervention prohibit not only the use of force against another State or active assistance to those seeking its armed overthrow, but also encouragement and even passive toleration or acquiescence by one State when its territory is used as a base or launching pad for attacks against another by irregular forces or armed bands. A State does not discharge its duty under international law by remaining passive towards irregular forces organized and operating in its territory against the Government of a neighboring State, or by adopting an attitude of "neutrality" as between them. States are required to "use all means at their disposal" to prevent and suppress such activities. (See Convention on the Duties and Rights of States in the Event of Civil Strife, *supra*, Article I, First.)

227. The presentation of the evidence in Part One is replete with reports of *contra* training and supply operations in Costa Rica culminating in *contra* attacks on Nicaraguan territory. The Chronological Account, Chapter II, *supra*, lists more than 350 separate armed engagements initiated by the *contras* in less than five years. In the face of *contra* activities on this scale over such an extended period, the failure of the Costa Rican authorities to make any effective response is more than a technical violation of Costa Rica's duty not to "tolerate" such activities on its territory. It can only be described as complicity by encouragement and acquiescence.

228. This conclusion, moreover, is not a mere negative inference from the absence of effective Costa Rican action. Despite its protestations of neutrality, the Costa Rican Government at the highest levels actively encouraged and supported the *contras*. President Monge made a special trip to Washington in April of 1985 to lobby for the approval of military aid to the *contras*. (See *supra*, para. 92.) Foreign Minister Gutierrez said in a press interview that he would look on a change in the Government of Nicaragua with approval. He also publicly called on Congress to pass the bill providing aid to the *contras*. (*Id.*) The Minister of Public Safety, Benjamín Piza, well known as a *contra* col-

laborator, even met with President Reagan at the White House. (See *supra*, para. 114.)

229. The international responsibility of Costa Rica for the continuous use of its territory by the *contras* over a five-year period for training, supply and safe haven and to launch attacks against Nicaragua, as well as the assistance and collaboration provided by lower level civil and military officers, must be evaluated in the light of these endorsements of *contra* goals and objectives by senior officials.

230. It would serve no purpose to repeat all the incidents already set forth above in Part One. To illustrate the extent of the activities involved and the degree of Costa Rican complicity, this section of the Memorial adopts three approaches:

*First*, we summarize the evidence showing the number of *contra* military installations present at various times during the relevant period;

*Second*, we bring together all the evidence concerning some major objectives of *contra* attacks — San Juan del Norte, the subject of a sustained attack in April 1984; Peñas Blancas, an important border post that was attacked more than a dozen times during the four-year period; and Cardenas, also the target of a number of separate attacks;

*Third*, we assemble the evidence showing that the Costa Rican authorities had prompt and detailed knowledge of the *contra* presence and attacks.

### 1. Military Strength and Installations

231. For most of the period in issue the *contra* forces operating in Costa Rica numbered in the thousands. The Costa Rican National Security Agency put the figure at 2,000 in June 1982. (See *supra*, para. 38.) Pastora's groups alone claimed 1,000 men at this time. (See *supra*, para. 34.) By late 1986, Ambassador Tams estimated the force at 1,600-2,800 men. (See *supra*, para. 140.)

232. The principal *contra* military establishments during the period were camps (used for training, supply, safe haven and rehabilitation), and air strips (primarily for supply but sometimes providing air support for *contra* engagements).

233. Paragraph 7, *supra*, lists 27 camps as to which Nicaragua provided detailed information, including precise locations, to Costa Rica. At least 16 camps were operational in 1984 (see *supra*, para. 59), and 27 at the end of 1985. (See *supra*, para. 121.) At least 10 remained active in 1986. (See *supra*, para. 36.) At least nine named air strips were in use by the *contras* in 1984. (See *supra*, para. 60.) Five such landing strips, in use in July 1985, are listed in paragraph 93, *supra*.

### 2. Attacks on Major Targets

234. The basic pattern of the attacks reported in Part One, *supra*, is roughly similar. *Contras*, often based at different camps, rendezvous in Costa Rican territory near the objective of the attack. The assault forces may range from several tens to several hundred men. The target would be a border post, farm, village or town in Nicaragua. They are invariably pushed back and withdraw to the other side of the border, whence they often continue to attack Nicaraguan positions or forces with longer range weapons. The decisive point is that all of these attacks originated in and returned to Costa Rica. Indeed, often the *contras* confined themselves to firing across the border at Nicaraguan posts near the

frontier without ever leaving Costa Rican territory. The Costa Rican authorities did not attempt to prevent these groups of heavily armed men from assembling, crossing the border or retreating again into Costa Rican territory and returning to their camps.

235. The following examples are illustrative of attacks on a relatively large scale or against particularly important targets or both.

236. *The offensive against San Juan del Norte* — The most massive attack launched by the *contras* operating out of Costa Rica was against San Juan del Norte, a port on the Atlantic coast about 2 kilometers from the border. There had been smaller attacks against the town in June and July of 1983 (*supra*, para. 50), but the major assault came in April 1984, at the very moment when Nicaragua initiated proceedings against the United States in this Court.

237. The attack began with a mortar barrage from Costa Rican territory on 6 April, followed by further mortar bombardment from the sea on 9 April. On the 12th, a force of more than 500 *contras* attacked the town, with sea and air support. The attackers ultimately overwhelmed the 71 defending militiamen. Twenty-one were killed; the rest, wounded and captured, were taken to Costa Rican territory. On 17 April, after five days in *contra* hands, the town was recaptured by Nicaraguan forces, who drove the *contras* back across the border. A few days later, the wounded and kidnapped Nicaraguans who had been taken in the assault were returned to Nicaragua through its embassy in San José. (See *supra*, paras. 18, 68.)

238. During the entire 11 days of the engagement, the *contras* were supplied by boat from Costa Rica. As noted above, Costa Rican officials acquiesced in these supply operations and made it possible for foreign journalists to travel to San Juan del Norte to report on the supposed "victory". (See *supra*, para. 18.)

239. The town was attacked by a band of *contras* from Costa Rica again on 18 March 1985 (see *supra*, para. 88), and there was a further episode on 29 May 1986. (See *supra*, para. 134.)

240. *Attacks against Peñas Blancas* — This border crossing point on the Pan-American highway has been perhaps the most frequent target of *contra* attack. The first reported engagement is as early as April 1982. The *contras* fired on the customs post from their positions in a Costa Rican government building, without crossing into Nicaraguan territory. *Contra* leaders Fernando and Edmundo Chamorro claimed responsibility for the attack. (See *supra*, para. 134.)

241. On 31 July 1983, the *contras* again opened fire from the Costa Rican side of the border, and shots were exchanged for some time. (See *supra*, para. 51.)

242. On 28 September, the post was one of the main targets of a large scale ARDE offensive, which also included Cardenas and Sapoá. After a first assault was repulsed, the attackers withdrew behind the Costa Rican border and bombarded the post with mortars and heavy weapons. A second assault was supported by mortar fire from emplacements inside the Costa Rican customs facilities. The Nicaraguan customs post was destroyed. Three Nicaraguan soldiers were killed and nine wounded. That evening, Nicaraguan positions in the El Naranjo sector came under air bombardment. (See *supra*, para. 56.)

243. The local Costa Rican authorities knew in advance when and where the attack would take place. (See *supra*, para. 57.) Instead of opposing it, Costa Rican civil and military personnel withdrew from their positions before the attack began. The buildings they abandoned were used by the *contras* in their attack. (*Id.*)

## 244. Subsequent attacks on Peñas Blancas occurred:

- 18 October 1983; four workers from the La Flor farm were kidnapped. (See *supra*, para. 58.)
- 13 March 1984; one Nicaraguan wounded; the *contra* positions were 200 meters within Costa Rican territory; some of the shots were fired from the Costa Rican command post. (See *supra*, para. 67.)
- 17 March 1984. (*Id.*)
- 20 October 1984. (See *supra*, para. 80.)
- 18 February 1985; 60 *contras* supported by mortars, machine guns and grenade launchers. (See *supra*, para. 88.)
- 4 September 1985. (See *supra*, para. 120.)

245. *Attacks against Cardenas* — The repeated attacks against the Nicaraguan town of Cardenas are prime examples of the pattern described above. On the evening of 1 December 1982, a band of *contras* attacked the town supported by at least one aircraft. After a five-hour fire fight they withdrew. (See *supra*, para. 42.) Although the events took place in view of several Costa Rican observation posts the Costa Rican authorities did nothing to stop the attack. (*Id.*) However, Arnoldo Ferreto, a member of the Costa Rican Chamber of Deputies stated:

“We have been able to confirm that the light airplane which overflew the village of Cardenas during the attack perpetrated against it took off from Playa Blanca in the jurisdiction of the Hacienda El Murciélago, on Costa Rican territory.

The Government knows that there and in a nearby estate there is not one small airplane, but two, plus a camouflaged helicopter.

The group of counter-revolutionaries who attacked the town [Cardenas] crossed the border having departed from Chapernon and Peña Lonja, in Costa Rican territory a few kilometers from the border.” (*Id.*)

246. Another large-scale assault against Cardenas took place on 28 September 1983 (in which Peñas Blancas and Sapoá were also targets) (see *supra*, para. 56), and again on 18 November. (See *supra*, para. 58.) In 1984, attacks occurred on 30 March (see *supra*, para. 67), and on 29 April, with 81 mm. mortar fire. (See *supra*, para. 69.)

247. On 28 January 1985, the *contras* attacked a farm two kilometers from Cardenas kidnapping three Nicaraguans and taking them to Costa Rica. (See *supra*, para. 84.)

248. *Other attacks* — On 8 September 1983, two ARDE planes entered Nicaragua from Costa Rican airspace. One of them was shot down in an attack on Managua’s principal commercial airport, the Augusto C. Sandino International Airport. The other was driven off in the direction of Costa Rica. (See *supra*, para. 55.)

249. On 2 October 1983, *contras* based in Costa Rica made a speedboat attack that destroyed two fuel tanks at Benjamin Zeledón on the Atlantic Coast of Nicaragua. Almost 400,000 gallons of diesel fuel and gasoline were destroyed, paralyzing economic activity in the entire Department of Zelaya for a considerable period. (See *supra*, para. 58.)

250. On 7 August 1985, a group of *contras* from Costa Rica ambushed a boat travelling on the San Juan River and removed its 47 passengers to Costa Rica. Among them were 29 United States citizens who were members of the organization “Witnesses for Peace”. There were also a number of American journalists. John Dasco, an NBC television correspondent, confirmed that the terrorists belonged to ARDE. When the passengers were freed by their kidnapers the

next day, they were arrested by the Costa Rican Civil Guard. (See *supra*, para. 119.) The record shows a number of other *contra* attacks from Costa Rica against Nicaraguan traffic on the San Juan River. (See *supra*, paras. 47, 50; also see Ann. C, Attachment 1.)

### 3. Costa Rica's Knowledge and Complicity

251. From 1982 on, the *contras* carried on a major military campaign against Nicaragua based on and launched from Costa Rican territory. Several thousand men, armed with heavy weapons and with air and sea support, conducted hundreds of attacks on Nicaragua in that period. An extensive air and seaborne supply operation used Costa Rican air strips, air space and ports to provide arms and other military supplies to the *contras* for *contra* operations deep in Nicaragua. At the same time, political organizations supporting this military effort operated freely in the Costa Rican capital. (See *supra*, paras. 17, 39, 40, 43, 45, 62, 99, 101, 102, 103, 124, 126, 127, 128, 133.) All this was reported fully in the regular Costa Rican press and in propaganda disseminated by the *contras* and their supporters.

252. What is involved here is not simply a few sporadic border raids by outlaws that might not be noticed by the authorities. Activities on the scale shown by the evidence could not escape the observation of any Government in control of its own territory, even without the assistance of outside sources of information. The Costa Rican authorities must have been aware of this pattern of conduct, just as any Government is aware of massive activities carried out openly and notoriously within its territory and directly affecting its national interest and international relations.

253. In this case, however, the Court need not rely on inferences about what "must have been known". Costa Rica was informed explicitly and in detail about the *contra* activities from many sources, inside and outside the country. In fact, the evidence shows a number of admissions by responsible Costa Rican officials that the Government was well aware of the *contra* operations. As early as January 1982, the Costa Rican Minister of Public Security and Administration, Arnulfo Carmona Benavides, confirmed "the existence of Nicaraguan anti-Sandinista camps at the Northern border". (*Supra*, para. 33.) The Costa Rican National Security Agency estimated that there were 2,000 *contras* operating in the country in June 1982. (See *supra*, para. 38.) In August of 1983, Lt. Col. Mario Araya, head of the Special Intervention Unit of the Ministry of Public Security, warned the Vice Minister that "the subversives [i.e., *contras*] travel freely through the entire zone, without encountering any opposition from the respective authorities". (See *supra*, para. 11.) When the Minister of Public Security and Minister of Governance travelled to the northern region, they received a large number of protests about the complicity of Costa Rican officials in *contra* military activities in the area. (Ann. H, Attachment 65.)

254. Nicaragua itself continuously placed Costa Rica on notice of what was going on. The Nicaraguan Foreign Ministry dispatched more than 150 diplomatic notes protesting specific *contra* actions and often providing elaborately detailed information about them. (See Ann. A.) The meetings of the Mixed Commission and the Commission on Supervision and Prevention were also used as a forum for the transmission of information from Nicaragua to Costa Rica about *contra* actions. (Ann. B, Attachments 1 and 2. See also Ann. B, Attachment 3.)

255. In addition, the Costa Rican authorities were informed and alerted by many outside sources. Members of the Costa Rican legislature protested against

the passive attitude of the government and provided detailed information in an effort to spur action against the *contras*. As we saw above, Deputy Arnaldo Ferrero, in December 1982, pinpointed the origins of the attack against Cardenas in Costa Rican territory. He warned that:

“New acts of aggression are being prepared in encampments situated on several estates on the border, one of which belongs to Héctor García; another, in Monte Plata, is the property of a widow named Medina; and also on the estates of Roberto Gallegos and Ramiro Osegueda.” (See *supra*, para. 42.)

256. In the summer of 1984, Deputy Ricardo Rodríguez Solórzano protested against the presence of *contra* forces on Costa Rican territory. (See *supra*, para. 72.) In a statement at a press conference he gave details of the establishment and equipment of anti-Sandinista groups on Costa Rican territory. (*Id.*) In August 1985, the parliamentary head of the Social Christian Unity Party, Deputy Danilo Chaverri Soto, said he personally had confirmed that the *contras* were using Costa Rican territory for their operations and had reported the facts to the Minister of Public Security. (See *supra*, para. 117.)

257. The *contra* activities were even the subject of judicial proceedings in the Costa Rican courts. A murder trial of members of ARDE in December 1984 produced extensive testimony about ARDE operations in the border zone. (See *supra*, para. 73.)

258. *Contra* activities were widely reported both in the regular Costa Rican press and in the special *contra* publications that were circulated with the permission of the Government. (See *infra*, paras. 277-280. Also see *supra*, paras. 102, 103.)

259. Finally, as appears from the Tower Commission Report and the Iran-Contra hearings, Costa Rica's relations with the United States for much of this period were dominated by discussions of the *contra* “southern front” in Costa Rica and how to improve it and make it more effective. Salient examples are the negotiations with Ambassador Tambs about the Santa Elena airbase (see *supra*, paras. 108, 109), the discussions between Lt. Col. North and the Costa Rican Minister of Public Security, Benjamín Piza, concerning the maritime supply operation (see *supra*, para. 24), and another meeting of Minister Piza in the White House with President Reagan, North and the CIA station chief for San José. (See *supra*, para. 114.)

260. International law does not permit a State to remain passive in the face of such evidence. Every one of the legal sources and authorities analyzed and discussed in Chapter III, *supra*, prohibits a State from “tolerating” or “acquiescing in” activities of the sort shown by this evidence. The State on whose territory such activities take place is under a positive duty to take affirmative action to eliminate the threats to its neighbor. As noted (*supra*, paras. 171-173), this affirmative obligation is spelled out expressly in the Convention on the Duties and Rights of States in the Event of Civil Strife. The parties agree:

“To use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundary or sailing from their territory for the purpose of starting or promoting civil strife.” (Article I, First.)

261. This Convention, to which both States before the Court are parties, is made specifically applicable to them bilaterally in the 1956 Agreement under which:

“each Party undertakes to take the necessary measures to prevent revolutionary movements against the other Party from being initiated or carried out in its territory”. (See *supra*, para. 204.)

The facts show that Costa Rica has failed egregiously to discharge its affirmative duties in this respect.

### C. Costa Rica Failed Repeatedly to Carry Out Its Duty to Intern and Disarm *Contras* Within Its Territory

262. Certain aspects of the affirmative duty implicit in the general norm against intervention are elaborated and given more specific content in conventions and treaties to which Costa Rica and Nicaragua are parties. Under the Convention on Duties and Rights of States in the Event of Civil Strife, the parties agree “To disarm and intern every rebel force crossing their boundaries . . .”. (Art. I, Second.) Article IX of the Convention on Territorial Asylum, incorporated textually in the 1956 Agreement, between the two countries, provides:

“At the request of the interested state, the state that has granted refuge or asylum shall take steps to keep watch over, or to intern at a reasonable distance from its border, those political refugees or asylees who are notorious leaders of a subversive movement, as well as those against whom there is evidence that they are disposed to join it.”

263. The whole five-year history of inaction by the Costa Rican Government testifies to its neglect of these specific duties. But Nicaragua’s case goes further. On a number of occasions Costa Rican authorities actually arrested notorious *contra* leaders, sometimes along with their arms and equipment. Not even these prisoners were interned or permanently disarmed. In every such case, in deliberate violation of the treaty obligation, Costa Rica released them after a short time and returned their weapons.

264. Edén Pastora, the openly acknowledged and notorious military leader of the ARDE forces was several times taken into custody. On 22 May 1982, he was expelled from the country, but was readmitted less than four months later. (See *supra*, para. 35.) A month after his return he was captured with a large quantity of arms. Upon the personal intervention of President Monge, he was promptly released and the weapons were returned. (*Id.*) In November, *contra* leader Fernando Chamorro was detained with a cargo of weapons, maps, parachutes and other equipment. He was released on the same day. Two days later the Ministry of Public Security ordered the weapons returned. (See *supra*, para. 41. See also *supra*, para. 60 (concerning the pattern of repeated entries and expulsions of Chamorro).)

265. Pastora was expelled from Costa Rica again in April 1983, but in January 1984 he crossed the border at the head of a 192-man force, seeking refuge. The regional commander of the Rural Guard, Col. Gilberto Orozco, permitted Pastora and his men to enter and met with him on Costa Rican soil. (See *supra*, para. 65.) Although Col. Orozco acted directly contrary to stated Costa Rican policy at the time, he was not effectively disciplined, nor was Pastora expelled. (*Id.*; see also *supra*, para. 66.)

266. When Pastora’s helicopter crashed inside Costa Rica in July 1985, he was treated at a local hospital and then permitted to fly to Panama, whence he

ultimately returned to resume his Costa Rica-based attacks on Nicaragua. (See *supra*, para. 96.) When he finally announced that he was abandoning the contest in defeat, Costa Rica granted him asylum. (See *supra*, para. 125.)

267. A final example is the capture, in February 1983, of a mobile transmitter used by the *contras* for clandestine radio broadcasting. The transmitter was discovered and seized by a Rural Guard unit under the command of Major Mario Jara Castro. Vice Minister of Governance, Enrique Chacón, gave him personal instructions to return the transmitter to its *contra* operators. (See *supra*, para. 46.)

268. Nicaragua repeatedly protested the activities of Pastora and the other *contra* leaders in Costa Rica, in accordance with the requirements of Article IX of the Convention on Territorial Asylum. (See *supra*, para. 207.) To no avail.

269. Thus Costa Rica not only failed to intern and disarm the *contras*, as was its duty under the general norm of non-intervention and the specific provisions of the Convention on Duties and Rights of States in the Event of Civil Strife and the 1956 Agreement. When *contra* leaders or units or equipment actually fell into the hands of Costa Rican authorities, they were released and permitted to return to the attack against Nicaragua.

**D. Costa Rica Permitted the Establishment in San José of Organizations for the Purpose of Providing Political Support for the Military Activities of the *Contras* and for Publicly Advocating the Overthrow of the Government of Nicaragua by Force and Violence**

270. Freedom of expression and association are basic human rights. They are not surrendered when a person takes political refuge or asylum in another country. These rights are recognized in Articles VII and VIII of the Convention on Territorial Asylum, made applicable as between Nicaragua and Costa Rica by the 1956 Agreement. But under the Convention, asylees and refugees cannot abuse these rights of expression and association to incite to the use of force and violence to overthrow the Government of their native country:

“Article VII. Freedom of expression of thought, recognized by domestic law for all inhabitants, may not be ground of complaint by a third state on the basis of opinions expressed publicly against it or its government by asylees or refugees, *except when these concepts constitute systematic propaganda through which they incite to the use of force or violence against the government of the complaining state.*”

Article VIII. No state has the right to request that another state restrict for the political asylees or refugees the freedom of assembly or association which the latter state's internal legislation grants to all aliens within its territory, *unless such assembly or association has as its purpose fomenting the use of force or violence against the government of the soliciting state.*” (Emphasis added.)

271. Costa Rica has certainly permitted the *contras* to exercise the rights of expression and association. Unfortunately, it has not ensured that such exercise is kept within the limits established by the Convention. Since 1982 San José has been the headquarters of the major *contra* political organizations, providing essential political support for the military operations in the field and maintaining a drumbeat of systematic propaganda through a variety of media inciting to the overthrow of the Nicaraguan Government by force and violence.

### 1. Major Contra Political Organizations in San José

272. In the period since 1982, two major *contra* organizations and a number of their subsidiaries operated from headquarters in San José. The first was ARDE, established in September 1982 and operating continuously until mid-1986. The second is UNO, organized in mid-1985 at the instance of the United States, and still the chief umbrella organization for all groups working for the violent overthrow of the Nicaraguan Government. Although in this Memorial these organizations are referred to as "political", they were not in any sense participants in the Nicaraguan domestic political process. Nicaragua conducted an election for President and Constituent Assembly in November 1984, preceded by several months of campaigning. (See *Nicaragua v. United States, supra*, p. 90.) ARDE and its subsidiary organizations took no part in this process. Instead, they actively boycotted the elections and sought to discredit them.

273. The function of the *contra* organizations headquartered in San José is to provide political support for the military operations being conducted by the *contras* not only on the Costa Rican border but elsewhere. Some of the activities are public: conferences, meetings, rallies, manifestos, press relations and the like. The leit-motif of all these events and publications is the need for armed action to oust the present Government of Nicaragua. In addition, the organizational headquarters have provided a convenient place for *contra* leaders to meet to develop military strategy and plans and to co-ordinate supply and logistical services for the armed *contra* bands. Abundant detailed evidence supports these conclusions.

274. ARDE was essentially a union of a number of smaller organizations active in San José in 1981 and 1982. One of these was headed by Edén Pastora. In his initial press conference in San José in April 1982, Pastora defined the goal of his organization as the armed overthrow of the Nicaraguan Government. (See *supra*, paras. 16, 34.) Within a few months Pastora formed an alliance with Alfonso Robelo's MDN, which marked the occasion by placing paid advertisements in the San José press announcing that "The moment has arrived for open struggle . . ." (See *supra*, para. 39.) In July, José Francisco Cardenal, the leader of another group known as UDN/FARN, declared at a San José press conference that a new Government in Nicaragua would have to be established by military means. (See *supra*, para. 38.)

275. These three groups, all of which had already declared themselves in favor of armed overthrow of the Nicaraguan Government (together with an organization of Miskito Indians known as Misurasata), joined to form ARDE in September of 1982. (See *supra*, para. 40.) At the press conference announcing the merger, the leaders avowed that the object of the new organization was the overthrow of the Government of Nicaragua. (See *supra*, para. 16.)

276. At the beginning of the new year, the ARDE leaders repeated their public call for armed struggle against Nicaragua. (See *supra*, para. 45.) Again at the turn of 1984, in a manifesto published as a paid advertisement in San José, ARDE proclaimed itself an organization that:

"supports a political and military struggle to eradicate the Marxist-Leninist totalitarianism of the FSLN, to expel the interventionist forces and to rescue the Nicaraguan revolution". (See *supra*, para. 62.)

After the middle of 1985, ARDE began to go into eclipse as Pastora's military fortunes and relations with the United States Government worsened. (See *supra*, para. 125.) A new organization, UNO (the United Nicaraguan Opposition), was formed under the auspices of the United States in an effort to unify and

rehabilitate the political arm of the *contras*. Alfonso Robelo of ARDE was one of the original founders. (See *supra*, para. 99.) Shortly thereafter, BOS (Opposition Bloc of the South) was formed in San José, concentrating on political support for the southern front. According to its constitution, published widely in Costa Rica, one of its purposes was to “legitimize” the armed struggle against the Government in Managua. (*Id.*) At a public rally in San José at about the same time, the UNO leaders again issued an appeal for unity in the fight to oust the Nicaraguan Government. (See *supra*, para. 101.)

## 2. Costa Rican Media

277. In early 1985, two avowedly *contra* papers made their appearance on the San José scene. They were called *Nicaragua Hoy* and *Liberación* and were issued bi-weekly, as supplements to regular Costa Rican daily papers. Leading members of UNO and ARDE were on the editorial board of each paper. (See *supra*, para. 102.)

278. These two papers are nothing less than vehicles for “systematic propaganda” inciting “to the use of force and violence against the government” of Nicaragua. The material takes many forms, including editorials, explicit calls for support for *contra* military groups, interviews with *contra* military commanders, and sensationalized and distorted accounts of *contra* “victories” and events in Nicaragua. (See *supra*, para. 103.)

279. In addition, the *contras* placed paid advertisements in the regular newspapers in San José advocating the use of violence to overthrow the Nicaraguan Government. References to a sampling of these advertisements follow:

- MDN in *La Nación* of 20 June 1982 and in *La República* the following day. (Ann. E, Attachment 2, Nos. 1, 2.)
- FDN in *La Nación* on 6 October 1982. (Ann. E, Attachment 2, No. 6.)
- the Nicaraguan Conservative Party in exile, in *La Nación* on 4 December 1982. (Ann. E, Attachment 2, No. 8.)
- ARDE in *La Prensa Libre* on 9 January 1984. (Ann. E, Attachment 2, No. 16.)
- BOS in *La Nación* on 2 August 1985. (Ann. E, Attachment 2, No. 18.)

280. *Contra* propaganda is not confined to the press. Radio Impacto, a station based in Costa Rica, regularly broadcasts news of *contra* activities together with messages inciting to the overthrow of the Nicaraguan Government by force of arms. (See *supra*, para. 130.) And on at least one occasion, Pastora was able to bootleg a message from a covert transmitter in Costa Rica on to a Nicaraguan television channel, again calling for armed struggle against the Government. (See *supra*, para. 45.)

## 3. Since 1985

281. As described in Chapter I, *supra*, paragraphs 19-26, basic United States strategy in recent years calls for the Costa Rican groups to carry the main political burden for the *contras*. As the CIA station chief put it, Costa Rica:

“presented a better environment for the political declarations to be made, access to [San José] where there was relative tranquility, modern conveniences, daily flights to the U.S. and so forth, and that is what the political side needed”. (*Supra*, para. 19.)

282. In order to accommodate Costa Rican sensibilities and ensure its continued permission to operate on “the political side”, the *contras* even moderated the level of military activity emanating from Costa Rica from 1986 on. (But see *supra*, paras. 134, 135.) Political action in support of the military effort, however, remained undiminished.

283. The leaders of UNO and BOS maintained their residences in San José with full and continuous access to the local media. They mobilized support for United States military aid for the *contras*. (See *supra*, para. 123.) In June, for example, Robelo said in an interview that the *contras* would “win their war” if they got enough United States support. (See *supra*, para. 126.)

284. The amalgamation of UNO and ARDE was announced in San José along with the appointment of Fernando Chamorro as commander of the unified military forces in the south. (See *supra*, para. 124.) UNO and BOS also combined in San José in June. (See *supra*, para. 127.) At the first BOS “congress”, held in San José in August 1986, leaders asserted that the *contra* goal was “to take a piece of [Nicaraguan] territory and hold it” and “to develop a front in Nicaragua’s urban areas”. (See *supra*, para. 128.)

285. UNO too held its major conferences in San José. The purpose of one such “assembly”, held in November, was to plan a military offensive against Nicaragua, to culminate in the installation of a “provisional government”. (See *supra*, para. 130.)

286. The publication of *Nicaragua Hoy* and *Liberación* and the broadcasts from Radio Impacto continued throughout this period along the same lines as earlier described. (See, e.g., *supra*, paras. 130, 133.) Nicaragua protested these activities frequently and in detail. (See *supra*, para. 130.) If Costa Rica’s obligation to take action under Articles VII and VIII of the Convention on Territorial Asylum is contingent on a request from the aggrieved party, Nicaragua has amply fulfilled the requirement.

287. The foregoing account is only illustrative of the multi-faceted political and propaganda barrage conducted by the *contra* “political” organizations based in San José. They had one end in view: the promotion and incitement of violence and armed force against the Government of Nicaragua. Costa Rica’s failure to take any steps to stop this activity was, in effect, a grant of permission and approval. As such, it violated the general norm of non-intervention and the specific obligations of Articles VII and VIII of the Convention on Territorial Asylum, as incorporated into the 1956 Agreement between Nicaragua and Costa Rica.

## E. Conclusion

288. This Chapter has marshaled detailed evidence showing some of the ways in which Costa Rica has violated its duty not to intervene in the affairs of Nicaragua. But concentration on the specific details — a particular raid or attack or supply operation or publication or press conference or broadcast — runs the risk of not seeing the forest for the trees.

289. Nicaragua’s case does not depend on any particular incursion or overt act. It is based on the entire pattern of activity, military and political, conducted openly and notoriously by the *contras* in Costa Rica over the five-year period.

290. The evidence establishes that, from 1982 to the present, large numbers of armed *contras* — as many as several thousand in most periods — operating from numerous bases in Costa Rica, conducted repeated raids and attacks into Nicaragua. Costa Rican territory and air-space was an essential element in the

efforts mounted by the United States to provide arms, munitions and supplies to *contra* bands operating well within Nicaragua. The overall political leadership of the *contras* was headquartered in San José. Its function was to generate material and financial support for the military effort and to orchestrate propaganda inciting to the overthrow of the Nicaraguan Government by force of arms.

291. The evidence establishing this pattern is voluminous. It includes accounts of eye-witnesses, admissions by Costa Rican officials and military officers, public statements of the *contra* leaders themselves, contemporaneous records maintained by the Nicaraguan security forces, more than 150 diplomatic notes and other formal communications from the Foreign Ministry of Nicaragua, documents exchanged between the members of the Mixed Commission and the Commission of Supervision and Prevention, testimony before the Joint Congressional Hearings Before the Iran-Contra Affair and in Court proceedings, the Report of the Tower Commission and large numbers of corroborating press accounts.

292. The general pattern of *contra* activity in the border region and in the capital over the past five years is unmistakable and undeniable. Indeed, Costa Rica has made little effort to deny it. Given the volume of diplomatic correspondence, press coverage and other channels of information, it is clear that Costa Rica was fully aware of the situation, and in great detail. Given the extent and duration of this activity, the conclusion is inescapable that it was carried out with the permission and approval of the Government of Costa Rica — at the very minimum, with its knowledge, acquiescence and toleration. Costa Rica is therefore responsible to Nicaragua under the governing international law both on the basis of its positive actions and its omissions.

293. Nicaragua submits that the pattern of Costa Rican conduct established by the evidence, including:

- its active assistance, encouragement and approval of the military and political efforts of the *contras* in that country,
- its continued acquiescence in and tolerance of such activities, and
- its failure to take steps to suppress the armed attacks and hostile propaganda proceeding from its territory against the Government of Nicaragua,

constitutes intervention in the affairs of Nicaragua in violation of the international norms prohibiting such intervention and of the conventional obligations subsisting between the two States.

## PART THREE

### USE OF FORCE

#### CHAPTER V. BREACHES OF THE OBLIGATION NOT TO USE FORCE AGAINST ANOTHER STATE

##### A. Introduction

294. The purpose of this part of the Memorial is to develop the issues presented in paragraphs 15 and 20 of Nicaragua's Application, namely:

"15. The facts on which Nicaragua relies disclose serious and persistent violations of the provisions of the United Nations Charter, Article 2, paragraph 4, according to which all Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. In particular the assistance provided by Costa Rica to the counterrevolutionary armed bands in their attacks on the territory of Nicaragua and its civilian population (as described above) constitute the use of force against the territory of Nicaragua."

"20. The policy of assistance to the *contras* adopted by Costa Rica involves breaches of the obligation of customary international law not to use force against another State; and so also the direct attacks against Nicaragua by the armed forces of Costa Rica constitute serious breaches of this same obligation."

##### B. Assistance to *Contras* Operating Against Nicaragua

295. The evidence presented by Nicaragua establishes the existence of a long-established pattern of activities by *contras* operating from the territory of Costa Rica with the assistance of officials of the Government both at the local and at the ministerial level. The legal responsibility of the respondent State for the harmful consequences of the operations of the *contras* based in Costa Rica has three independent bases, as follows:

- (a) direct responsibility for breaches of the obligation not to use force;
- (b) responsibility by way of assistance to the *contras* and complicity in their activities; and
- (c) responsibility consequent upon breaches of the duty to exercise due diligence in the control of activities within the national territory.

296. The material relating to these three cumulative bases of responsibility will now be examined. A brief exposition of the pertinent legal principles will be followed by the application of the law to the facts of the case.

### 1. Breaches of the Obligation Not to Use Force

#### (a) The law

297. The general norm of customary law was affirmed by the Court in its Judgment in *Nicaragua v. United States* in the following passages:

“188. The Court thus finds that both Parties take the view that the principles as to the use of force incorporated in the United Nations Charter correspond, in essentials, to those found in customary international law. The Parties thus both take the view that the fundamental principle in this area is expressed in the terms employed in Article 2, paragraph 4, of the United Nations Charter. They therefore accept a treaty-law obligation to 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. The Court has however to be satisfied that there exists in customary international law an *opinio juris* as to the binding character of such abstention. This *opinio juris* may, though with all due caution, be deduced from, *inter alia*, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled ‘Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations’. The effect of consent to the text of such resolutions cannot be understood as merely that of a ‘reiteration or elucidation’ of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves. The principle of non-use of force, for example, may thus be regarded as a principle of customary international law, not as such conditioned by provisions relating to collective security, or to the facilities or armed contingents to be provided under Article 43 of the Charter. It would therefore seem apparent that the attitude referred to expresses an *opinio juris* respecting such rule (or set of rules), to be thenceforth treated separately from the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter.

190. A further confirmation of the validity as customary international law of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4, of the Charter of the United Nations may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law. The International Law Commission, in the course of its work on the codification of the law of treaties, expressed the view that ‘the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *ius cogens*’ (paragraph (1) of the commentary of the Commission to Article 50 of its draft Articles on the Law of Treaties, *ILC Yearbook*, 1966-II, p. 247). Nicaragua in its Memorial on the Merits submitted in the present case states that the principle prohibiting the use of force embodied in Article 2, paragraph 4, of the Charter of the United Nations ‘has come to be recognized as *ius cogens*’. The United States, in its Counter-Memorial on the questions of jurisdiction and admissibility, found it material to quote the views of scholars that this

principle is a 'universal norm', a 'universal international law', a 'universally recognized principle of international law', and a 'principle of *ius cogens*'." (*I.C.J. Reports 1986*, pp. 99-101.)

298. These passages relate to the position of Nicaragua and the United States but there is no ground for thinking that the position as between Nicaragua and Costa Rica is essentially different; and thus it is not necessary to elaborate further upon the legal basis of the norm prohibiting the use of force. However, the significance attached to the principle by the Governments of Costa Rica and Nicaragua is demonstrated in resolutions of a declaratory nature adopted at intergovernmental conferences. Thus the Eighth International Conference of American States at Lima in 1938 adopted a Declaration of American Principles, of which the third principle provided that:

"The use of force as an instrument of national or international policy is proscribed." (Declaration CX, *International Conferences of American States*, 1st Supp. 1933-1940, p. 309 (Washington, 1940).)

299. In the same connection the following provisions of the Charter of the Organization of American States (amended by the Protocol of Buenos Aires in 1967) are declaratory in character and appear in a Chapter headed "Fundamental rights and duties of States":

#### "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.

#### Article 19

No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind."

In fact, both Costa Rica and Nicaragua are parties to this instrument.

300. In its Judgment in *Nicaragua v. United States*, the Court adverted to certain aspects of the principle relating to the non-use of force which are of particular relevance to the facts on which Nicaragua presently relies. The relevant passages are as follows:

"191. As regards certain particular aspects of the principle in question, it will be necessary to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms. In determining the legal rule which applies to these latter forms, the Court can again draw on the formulations contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV), referred to above). As already observed, the adoption by States of this text affords an indication of their *opinio juris* as to customary international law on the question. Alongside certain descriptions which may refer to aggression, this text includes others which refer only to less grave forms of the use of force. In particular, according to this resolution:

'Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of that right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.'

192. Moreover, in the part of this same resolution devoted to the principle of non-intervention in matters within the national jurisdiction of States, a very similar rule is found:

'Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.'

In the context of the inter-American system, this approach can be traced back at least to 1928 (Convention on the Rights and Duties of States in the Event of Civil Strife, Art. I (1)); it was confirmed by resolution 78 adopted by the General Assembly of the Organization of American States on 21 April 1972. The operative part of this resolution reads as follows:

*'The General Assembly Resolves:*

1. To reiterate solemnly the need for the member states of the Organization to observe strictly the principles of non-intervention and self-determination of peoples as a means of ensuring peaceful coexistence among them and to refrain from committing any direct or indirect act that might constitute a violation of those principles.

2. To reaffirm the obligation of those states to refrain from applying economic, political, or any other type of measures to coerce another state and obtain from it advantages of any kind.

3. Similarly, to reaffirm the obligation of these states to refrain from organizing, supporting, promoting, financing, instigating, or tolerating subversive, terrorist, or armed activities against another state and from intervening in a civil war in another state or in its internal struggles'.  
(*I.C.J. Reports 1986*, pp. 101-102.)

301. In the submission of the Government of Nicaragua the toleration of or acquiescence in the organization of *contras* for their hostile operations against a neighboring State involves a simple or direct responsibility for breach of the

principle of the prohibition of the use of force. As the Court points out in the passages just quoted, such activities constitute a "use of force" and it is submitted that this is so both in terms of customary international law and in terms of Article 2, paragraph 4, of the United Nations Charter.

302. The principle involved here is not concerned with a negligent inability to exercise "due diligence" in the control of activities on the territory of the State. The standard to be applied relates to a positive attitude of toleration of and acquiescence in the activities amounting to an adoption and approbation of the operations concerned. As the Declaration on Principles of International Law concerning Friendly Relations expresses the matter:

"Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." (UN General Assembly resolution 2625 (XX) (24 October 1970).)

(b) *The facts*

303. Nicaragua submits that the evidence establishes that the Government of Costa Rica has tolerated and acquiesced in the hostile activities of *contras* (usually ARDE) against Nicaragua, such operations being mounted and sustained from bases and other facilities on the territory of Costa Rica.

304. The evidence supporting this submission will be presented according to an informal and convenient classification. The general narrative of the covert war, as conducted through the agency of groups on Costa Rican territory with the complicity of the Government of Costa Rica, has been set forth in Part One of the Memorial.

(i) *Public statements, press conferences and press advertisements concerning contra activities and goals*

305. It was common in the years 1982 to 1986 inclusive for the *contra* organizations based in Costa Rica to publicize their policies and plans to mount armed actions against Nicaragua. In 1982 the Government of Nicaragua twice protested to Costa Rica about public statements by *contra* leaders. A Note dated 16 April 1982 complained of statements by Edén Pastora in which he gave clear indications of his plans and expectations involving the use of Costa Rican territory for the organization of *contras* to be used for hostile operations against Nicaragua. (Ann. A, Attachment 1.) Similarly, in a Note dated 4 August 1982 the Government of Nicaragua protested as a result of a press conference given by José Francisco Cardenal in which he claimed responsibility for criminal acts by *contras* based in Honduras involving the killing of fourteen civilians in the Nicaraguan town of San Francisco del Norte. (Ann. A, Attachment 16.)

306. The constant use of Costa Rican territory for incitement to the use of violence against Nicaragua was the subject of a further Note dated 8 January 1983 in which the Government of Nicaragua described the developing pattern of activity in Costa Rica by ARDE. (Ann. A, Attachment 22.) A further Note dated 6 October 1983 complained of the public campaigns inciting violence against the Nicaraguan Government which were being conducted by Pastora and Robelo. (Ann. A, Attachment 75.)

307. On 23 September 1983 an airplane coming from Costa Rican territory attacked the "Nicarao" electric plant and the "Induquinisa" factory and returned to Costa Rica. Responsibility for this operation was claimed by the *contra* leader Edén Pastora in a communiqué issued by ARDE military headquarters in San José. In a Note dated 23 September 1983, Nicaragua protested both the attack and the repeated use of Costa Rican territory for *contra* propaganda and military activities. (Ann. A, Attachment 63. Also see Ann. H, Attachments 32, 34.)

(ii) *A continuing pattern of armed attacks across the border*

308. In the period 1982 to 1986 inclusive, there has been a continuing pattern of armed attacks against Nicaraguan targets from within Costa Rica, after which the *contras* responsible withdrew to positions or bases within Costa Rica. This pattern forms evidence of a concerted campaign and a sustained phenomenon well known to the Costa Rican Government.

309. The persistence and scale of the activity is evident from the succession of Notes from the Government of Nicaragua protesting about specific armed attacks. The pertinent Notes of protest include the following:

- 2 December 1982 (armed attack on town of Cardenas) (Ann. A, Attachment 18).
- 12 April 1983 (hijacking of boat and kidnappings at Tasbapanni) (Ann. A, Attachment 26).
- 16 April 1983 (attack on border post of Fatima de Sarapiquí) (Ann. A, Attachment 28).
- 3 May 1983 (attacks on border posts of La Esperanza and Fátima) (Ann. A, Attachment 38).
- 10 May 1983 (boat hijacking, kidnappings, and attack on border post of Pueblo Nuevo) (Ann. A, Attachment 44).
- 12 May 1983 (attack on border post of El Papaturro) (Ann. A, Attachment 47).
- 25 May 1983 (ambush on Río San Juan) (Ann. A, Attachment 48).
- 3 July 1983 (armed attacks on San Juan del Norte) (Ann. A, Attachment 53).
- 8 September 1983 (air attack on Sandino Airport) (Ann. A, Attachment 58).
- 23 September 1983 (air attacks on power plant and a factory) (Ann. A, Attachment 63).
- 27 September 1983 (attack in sectors of El Naranjo and Las Florcitas) (Ann. A, Attachment 65).
- 28 September 1983 (attack on customs post at Peñas Blancas) (Ann. A, Attachment 67).
- 28 September 1983 (attacks on towns of Cardenas and Sapoá and customs post of Peñas Blancas) (Ann. A, Attachment 68).
- 4 October 1983 (attack on the port of Benjamín Zeledón) (Ann. A, Attachment 74).
- 7 October 1983 (attack on border post of El Naranjo) (Ann. A, Attachment 76).
- 6 November 1983 (attack on border post of Pueblo Nuevo) (Ann. A, Attachment 82).
- 8 November 1983 (attack on Orosi) (Ann. A, Attachment 84).
- 18 November 1983 (attack on town of Cardenas) (Ann. A, Attachment 85).
- 24 January 1984 (armed attack on town of El Castillo) (Ann. A, Attachment 95).

- 28 February 1984 (attacks on border zone of El Naranjo) (Ann. A, Attachment 98).
- 10 April 1984 (armed attacks on border post of San Juan del Norte) (Ann. A, Attachment 100).
- 11 April 1984 (continuing attacks on San Juan del Norte) (Ann. A, Attachment 102).
- 16 April 1984 (further attacks on San Juan del Norte) (Ann. A, Attachment 104).
- 28 April 1984 (invasion of San Juan del Norte) (Ann. A, Attachment 109) (see also *infra*, paras. 318, 319).
- 30 April 1984 (attacks on El Castillo and Cardenas) (Ann. A, Attachments 110 and 111).
- 7 May 1984 (attack on border post of Palo de Arco) (Ann. A, Attachment 116).
- 12 June 1984 (attacks on Machuca and Agua Fresca sector) (Ann. A, Attachment 124) (see also telegram of same date; Ann. A, Attachment 125).
- 30 September 1984 (attack on border post of Peñas Blancas) (Ann. A, Attachment 140).
- 18 October 1984 (attack on border post of San Pancho) (Ann. A, Attachment 149).
- 20 October 1984 (attack on border post of Peñas Blancas) (Ann. A, Attachment 151).
- 31 January 1985 (attack on "La Flor" estate) (Ann. A, Attachment 170).
- 18 February 1985 (attack on border post of Peñas Blancas) (Ann. A, Attachment 175).
- 19 February 1985 (attack on border post of El Naranjo) (Ann. A, Attachment 176).
- 1 March 1985 (attack on customs post of Peñas Blancas) (Ann. A, Attachment 181).
- 16 April 1985 (attack on border post of La Esperanza) (Ann. A, Attachment 184).
- 30 April 1985 (further attack on border post of La Esperanza) (Ann. A, Attachment 186).
- 21 June 1985 (attacks on La Penca sector) (Ann. A, Attachments 193 and 195).
- 2 July 1985 (continuing attacks on La Penca) (Ann. A, Attachment 196).
- 4 July 1985 (further attack on La Penca) (Ann. A, Attachment 198).
- 22 July 1985 (attacks on San Rafael sector) (Ann. A, Attachment 202).
- 31 July 1985 (attacks on Cano Machado and La Penca) (Ann. A, Attachment 204).
- 13 August 1985 (attacks on Colon sector and vicinity of Delta of San Juan River) (Ann. A, Attachment 207).
- 23 August 1985 (attack on border post at Boca de San Carlos, Río San Juan) (Ann. A, Attachment 211).
- 26 August 1985 (further attack on border post at Boca de San Carlos; attack on La Penca sector) (Ann. A, Attachment 212).
- 29 August 1985 (attack on border post of Peñas Blancas) (Ann. A, Attachment 214).
- 6 September 1985 (attack on Nicaraguan post in the Pimienta sector) (Ann. A, Attachment 218).

- 9 September 1985 (various armed attacks on Nicaraguan forces, including attacks on an air force plane and two helicopters) (Ann. A, Attachment 219).
- 17 September 1985 (attack on border post of Pueblo Nuevo) (Ann. A, Attachment 220).
- 28 September 1985 (attacks on three border posts) (Ann. A, Attachment 222).
- 3 October 1985 (attacks on La Penca sector) (Ann. A, Attachment 223).
- 7 October 1985 (attack on border post in San Carlos sector) (Ann. A, Attachment 224).
- 7 October 1985 (attack on Sarapiquí sector) (Ann. A, Attachment 225).
- 8 October 1985 (attack on Nicaragua from Delta sector, Río San Juan (C.R.)) (Ann. A, Attachment 226).
- 19 October 1985 (attack on border post of La Penca) (Ann. A, Attachment 229).
- 24 October 1985 (attack on La Penca sector) (Ann. A, Attachment 232).
- 1 November 1985 (two attacks (on the same day) on border post of Boca de San Carlos) (Ann. A, Attachment 233).
- 15 January 1986 (attack on border post of Sarapiquí) (Ann. A, Attachment 240).
- 17 January 1986 (attack on Nicaraguan helicopters overflying Sarapiquí and Boca de San Carlos sector) (Ann. A, Attachment 241).
- 20 January 1986 (attack on border post of Sarapiquí) (Ann. A, Attachment 242).
- 26 January 1986 (attack on Nicaraguan helicopter at La Penca border post) (Ann. A, Attachment 247).
- 31 January 1986 (attack on Nicaraguan positions in vicinity of Delta del Río San Juan sector by an aircraft coming from Costa Rica) (Ann. A, Attachment 249).
- 19 April 1986 (attack on Nicaraguan forces in border area near San Carlos) (Ann. A, Attachment 255).
- 31 May 1986 (attack on border post of San Juan del Norte) (Ann. A, Attachment 260).
- 6 June 1986 (attack on observation post of Las Conchitas) (Ann. A, Attachment 261).
- 26 August 1986 (attack on border post near El Castillo) (Ann. A, Attachment 265).

310. Indeed, in the period between December 1982 and August 1986 there were hundreds of separate attacks involving the use of assault weapons. (See *supra*, para. 5.) The repeated armed attacks reveal a pattern and, especially in the years 1984 and 1985, a constant campaign with a high incidence of attacks. In the circumstances the only proper inference is that the Costa Rican authorities tolerated and acquiesced in the operations of the *contras*.

(iii) *The character of the forces and weapons used*

311. The attacks described above varied in intensity, but they always took the form of operations by personnel trained in military skills and able to deploy and use a variety of heavy weapons. Those who executed the attacks were, in simple terms, armed forces of the *contra* organizations based in Costa Rica. The weapons regularly used included mortars, rocket launchers and automatic weapons. (See, for example, the Nicaraguan protest Notes dated 10 April 1984, 22 July 1985, and 7 October 1985. Ann. A, Attachments 101, 202, 225.)

312. On a number of occasions the attackers received support from aircraft and helicopters based in Costa Rica. (See the Nicaraguan protest Notes dated 2 December 1982, 28 September 1983, (telegram) 16 April 1984, 12 June 1984. Ann. A, Attachments 18, 67, 104, 124.)

(iv) *Related episodes*

313. The repeated armed attacks were accompanied by related episodes of a kind inevitably associated with the type of operations mounted against Nicaragua. Thus from time to time ARDE infiltrators were captured on Nicaraguan territory. (See the Nicaraguan protest Notes dated 9 May 1983, and 4 July 1983. Ann. A, Attachments 41, 55.) Similarly, illegal trespass by unidentified aircraft was a common phenomenon. (See the Nicaraguan protest Notes dated 9 September 1983, 18 October 1984, 26 July 1985. Ann. A, Attachments 59, 203, 211.) Kidnapping episodes also formed a natural part of the pattern. (See the Nicaraguan protest Notes dated 25 May 1983, 23 January 1984, 13 September 1984, 31 January 1985, 18 February 1985 and 26 April 1986. Ann. A, Attachments 48, 94, 133, 170, 174, 257.)

(v) *The receipt by Costa Rica of repeated complaints concerning contra operations and preparations for attacks*

314. The Government of Nicaragua has repeatedly protested to the Government of Costa Rica about the hostile activities of *contras* based in and operating from the territory of Costa Rica and the relevant Diplomatic Notes are listed paragraph 309. It was sometimes possible to give the Costa Rican authorities precise information of preparations for attack against targets within Nicaragua. (See the Nicaraguan Diplomatic Notes dated 21 October 1983, 22 November 1983, 30 April 1984, 5 October 1984, 15 October 1984, 19 October 1985. Ann. A, Attachments 80, 87, 110, 146, 148, 228.) Representations were also made on this score in meetings of the OAS, the Mixed Commission and the Commission of Supervision and Prevention. (See *supra*, para. 7.)

315. On a number of occasions urgent warnings from Nicaragua were followed by the attack the imminence of which had been the subject of the particular warning. *This depressing sequence is visible in the following Diplomatic Notes:*

- 19 October 1985 (information on mobilization of two groups of mercenaries in particular areas) (Ann. A, Attachment 228).
- 24 October 1985 (protest at the attack which resulted from the mobilization referred to in the previous Note) (Ann. A, Attachment 232).

316. *On this occasion and generally in the months of July, August, September and October of 1985, there was a closely knit series of armed attacks related to protests by Nicaragua and requests that the Costa Rica Government take effective measures to prevent further attacks. There is no evidence that any steps were taken and the constant renewal of the contra attacks points clearly toward a long-maintained policy of co-operation on the part of the responsible organs of the Government of Costa Rica.*

(vi) *Evidence of active co-operation by Costa Rican officials*

317. There is a substantial body of evidence of active co-operation by Costa Rican officials in the campaign of aggression organized and executed by the *contras*. This evidence will be fully recounted in the section on assistance and

complicity. (See *infra*, paras. 326-338.) This evidence is referred to here because it is relevant to the submission that the Respondent State bears direct responsibility for breach of the principle of the prohibition of the use of force.

(vii) *The assault on San Juan del Norte in April 1984*

318. If it were not clear to the Costa Rican authorities already, the situation resulting from playing host to large groups of *contras* was vividly portrayed by the events of April 1984, which culminated in the occupation of the Nicaraguan town of San Juan del Norte by more than 500 armed mercenaries from their bases in Costa Rica. The various stages of this episode were chronicled in a series of Nicaraguan Diplomatic Notes dated 10 April 1984, 11 April 1984, 16 April 1984, and 28 April 1984. (Ann. A, Attachments 101, 102, 104, 109.)

319. The scale of this operation and the general circumstances in which it took place provide strong indications of the approbation of the Costa Rican authorities. The situation developed over a period of many days, and clearly involved an operation aimed at the capture of San Juan del Norte. There is no evidence that the Costa Rican authorities took any measures, much less any effective measures, to prevent the development of this major aggression against Nicaragua. When the occupying force was expelled by Nicaraguan forces the *contras* retreated into Costa Rica. The official response of the Costa Rican Government in face of vigorous Nicaraguan protests (see *supra*, paras. 18, 68) provided no adequate explanation of Costa Rican passivity in face of the invasion and occupation of San Juan del Norte, and none was forthcoming either then or later. (Ann. A, Attachment 106 (Diplomatic Note of Costa Rica).) Costa Rica's sweeping denial of all responsibility for the invasion of San Juan del Norte is impossible to reconcile with the facts of the case. (See *supra*, para. 68.)

(viii) *Submission on the facts*

320. On the basis of the evidence set forth above the Government of Nicaragua submits that it is established that the Costa Rican Government and its agents had tolerated or acquiesced in the organization of ARDE within the territory of Costa Rica and its hostile operations against targets in Nicaragua. In the circumstances, such adoption and approbation of the operations concerned must engage a simple or direct responsibility for breach of the principle of the prohibition of the use of force, as elaborated *supra*, paragraphs 297-302.

2. *Responsibility Consequent upon Assistance to Contras Operating against Nicaragua and Complicity in Their Activities*

(a) *The law*

321. The submission of Nicaragua in the alternative is that the policy of the Costa Rican Government in providing active co-operation and assistance to the *contras operating from its territory results in the existence of State responsibility on the basis of complicity in the acts of persons not formally acting on the State's behalf. The responsibility thus arising would be for breaches of the principle of the prohibition of the use of force, but the precise axis or generator of responsibility is the element of complicity in the acts of persons outside the apparatus of the State.*

322. It has long been recognized both in the doctrine and in practice that a State may be made responsible for the acts of persons who are not attached to the organs of the State. (See, for example, *Répertoire suisse*, Vol. III, *supra*,

pp. 1724-1743; Kiss, III *Répertoire de la pratique française* (Paris, 1965), pp. 579-636; H. Accioly, "Principes généraux de la responsabilité internationale d'après la doctrine et la jurisprudence", 96 *Hague Recueil* (1959-1), pp. 404-407; E. Jiménez de Aréchaga, "International Responsibility", pp. 558-562, in M. Sørensen, *Manual of Public International Law, supra*; Whiteman, 8 *Digest of International Law*, pp. 815-819, 830-835; I. Brownlie, *System of the Law of Nations, State Responsibility*, Part I (Oxford, 1983), p. 159.

323. This principle was adopted by Judge Ago, then Rapporteur of the International Law Commission, in his fourth report. See *Yearbook of the International Law Commission*, 1972, Vol. II, A/CN.4/Ser.A/1972/Add.1, pp. 95-126. Article 11 of the draft proposed by Judge Ago was as follows:

*"Article 11. Conduct of private individuals*

1. The conduct of a private individual or group of individuals, acting in that capacity, is not considered to be an act of the State in international law.

2. However, the rule enunciated in the preceding paragraph is without prejudice to the attribution to the State of any omission on the part of its organs, where the latter ought to have acted to prevent or punish the conduct of the individual or group of individuals and failed to do so." (*Id.*, at 126.)

324. The final version of this Article, as adopted by the Commission in 1975, is as follows:

*"Article 11. Conduct of persons not acting on behalf of the State*

1. The conduct of a person or a group of persons not acting on behalf of the State shall not be considered as an act of the State under international law.

2. Paragraph 1 is without prejudice to the attribution to the State of any other conduct which is related to that of the persons or groups of persons referred to in that paragraph and which is to be considered as an act of the State by virtue of articles 5 to 10." (*Yearbook of the International Law Commission*, 1975, Vol. II, A/CN.4/Ser.A/1975/Add.1, pp. 70-83.)

325. The alteration in the drafting does not appear to indicate any important change in the substance. The essence of the matter is the existence of acts or omissions on the part of the organs of the State which, given the nature of the particular obligation of international law in question, results in a responsibility for a failure to exercise adequate control over the actions of private persons. (See *id.*, p. 71.) In the case of mob violence, the activities of terrorists or the operations of *contras* based within the territory of the State, it has for long been recognized that the territorial sovereign will be responsible for the consequences of activities of which it had either actual knowledge or the means of knowledge. The existence of this type of responsibility will be easier to establish in circumstances in which the territorial sovereign extends co-operation and assistance to the persons or groups in question.

(b) *The facts*

326. To establish the complicity of the Costa Rican Government in the operations of the *contras* against the southern territories of Nicaragua, on grounds of ordinary legal logic, four indicia are relevant:

- (i) the existence of control in the relevant zones or an ability to exercise control;
- (ii) knowledge of the presence of *contras* and of their aims and methods;
- (iii) knowledge of the operations of the *contras* and the consequences of such operations; and
- (iv) the giving of co-operation and active assistance to the *contras* in the execution of their policy of violence directed against Nicaragua.

327. In approaching the evidence of Costa Rican complicity the attention of the Court is respectfully drawn to the statement of the Court in the *Corfu Channel* case (Merits) on the role of indirect evidence in cases in which key facts in issue involve activities within the territory of the respondent State. The pertinent passage in the Judgment is as follows:

“It is clear that knowledge of the minelaying cannot be imputed to the Albanian Government by reason merely of the fact that a minefield discovered in Albanian territorial waters caused the explosions of which the British warships were the victims. It is true, as international practice shows, that a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation. It is also true that that State cannot evade such a request by limiting itself to a reply that it is ignorant of the circumstances of the act and of its authors. The State may, up to a certain point, be bound to supply particulars of the use made by it of the means of information and inquiry at its disposal. But it cannot be concluded from the mere fact of the control exercised by a State over its territory and waters that that State necessarily knew, or ought to have known, of any unlawful act perpetrated therein, nor yet that it necessarily knew, or should have known, the authors. This fact, by itself and apart from other circumstances, neither involves *prima facie* responsibility nor shifts the burden of proof.

On the other hand, the fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.” (*I.C.J. Reports 1949*, para. 4, p. 18.)

(i) *The existence of control*

328. There is a presumption that a sovereign State exercises control within its frontiers with certain well-known exceptions, such as the subjection of a part of its territory to belligerent occupation, such exceptions having no relevance in the present case. In any case in face of frequent protests from Nicaragua in face of *contra* actions, the Government of Costa Rica has expressly asserted that it is exercising “absolute” and “effective” control over the frontier zones. (See, for example, Diplomatic Notes of Costa Rica dated 18 April 1984, 24 August 1984, 17 September 1984, 21 September 1984, 1 October 1984, 4 October 1984, 15 October 1985, and 23 January 1986 (Ann. A, Attachments 106, 131, 137, 138, 142, 144, 148, 245).)

(ii) *Knowledge of the presence of the organizations in question*

329. The presence of the *contras* within Costa Rica and their policies towards the Government of Nicaragua were matters of public knowledge throughout the material period; and reference may be made to the public statements and press conferences of *contra* leaders, together with press advertisements concerning *contra* activities and goals. (See Ann. E, Attachments 2, 3, 4.)

(iii) *Knowledge of the operations of the contras*

330. There is a vast range of evidence to the effect that the Government of Costa Rica had extensive knowledge of the operations carried out by the *contras* based in Costa Rica against targets in Nicaragua and the precise consequences of those operations. The evidence of that knowledge takes the following forms.

(A) The long series of diplomatic protests received from Nicaragua

331. Costa Rica received a long series of protests from the Nicaraguan Foreign Ministry relating to particular attacks (see *supra*, para. 309) and on many occasions the Nicaraguan Government gave the Costa Rican authorities precise information about preparations for attacks. (See *supra*, para. 7. Also see Ann. B.)

(B) Statements of Costa Rican Ministers

332. In diplomatic correspondence the Foreign Minister of Costa Rica did not seek to deny the presence of ARDE and its leaders in Costa Rica and, indeed, it was asserted that their status was that of political asylees. (See the Costa Rican Notes dated 10 January 1983, 18 April 1984, Ann. A, Attachments 23, 106.)

(C) Reports and statements of Costa Rican administrative officials

333. In a number of public statements Costa Rican officials have made significant admissions against interest. The evidential weight of such admissions was recognized by the Court in *Nicaragua v. United States*, *supra*, pp. 41, 143. Thus, in January 1982, the Minister of Public Security and Administration, Arnulfo Carmona Benavides, made statements reported in the Costa Rican press in which he confirmed the existence of *contra* camps on the northern border. (See Ann. H, Attachment 2.) The existence and nature of *contra* operations was acknowledged in reports of the Ministry of Public Security of Costa Rica. (See, for example, Ann. D, Attachments 6, 7.)

(D) Public statements by *contra* leaders

334. On several occasions *contra* leaders have made public statements claiming responsibility for particular operations. (See, e.g., *supra*, paras. 36, 39, 55.)

(E) Meetings of the Mixed Commission and the Commission of Supervision and Prevention

335. During meetings of the OAS Investigating Committee the Mixed Commission and, subsequently, of the Commission of Supervision and Prevention, the Nicaraguan representatives gave detailed information concerning *contra* attacks and organization. (See Ann. B, Attachments 1-3.)

(iv) *The general pattern of connected incidents*

336. An important aspect of the evidence is the existence of a coherent pattern of connected incidents, statements of intention by *contra* leaders, and the repeated protests of the Nicaraguan Government over a period of five years.

(v) *Co-operation and assistance given to the contras by Costa Rica*

337. Whilst the policies and conduct of particular Costa Rican officials in face of the covert war against Nicaragua were not always very consistent, there is a significant body of evidence of acts of direct co-operation and assistance on the part of members of the Costa Rican administration. Such acts of positive co-operation went beyond the acquiescence and passivity which were also familiar features of Costa Rican official attitudes.

338. The evidence of direct co-operation and assistance includes the following items:

(A) In a Note dated 28 April 1984 (Ann. A, Attachment 109), Nicaragua gave substantial details of the complicity of senior Costa Rican officials in *contra* military operations. In particular, the Government of Nicaragua pointed out that the invasion of San Juan del Norte would not have been possible had it not been for the long-term collaboration of sectors of the Costa Rican administration. (*Id.*) The annex to the Note refers, *inter alia*, to the role of Vice-Minister Chacon of Costa Rica in providing assistance to the *contras*. (*Id.*)

(B) The readiness of Costa Rican officials in the frontier region to prepare the way for *contra* attacks by evacuating customs and immigration posts on the frontier is pointed out in the Nicaraguan Note dated 3 May 1984. (Ann. A, Attachment 113.) The complicity in these circumstances was that of the Rural Guard. In a further Note dated 7 May 1984 (Ann. A, Attachment 116), the acquiescence of the Rural Guard in face of *contra* operations was again the subject of complaint by Nicaragua.

(C) In April 1985 five foreign mercenaries were captured in Costa Rica. In a series of statements, these mercenaries described the active collaboration received from the security forces of Costa Rica. The details have been set forth *supra*, paragraph 97. The revelations formed the subject of a Nicaraguan protest dated 3 July 1985. (Ann. A, Attachment 197.)

(D) It was not unusual for armed attacks from Costa Rica to take place in the actual vicinity of frontier posts manned by the Costa Rican Civil Guard. See, for example, the Nicaraguan Notes dated 8 October 1985, and 1 November 1985. (Ann. A, Attachments 226, 233.)

(E) The evidence provided by the Joint Congressional Hearings on the Iran-Contra Affair includes unequivocal indications that the President of Costa Rica (President Monge) and other senior officials actively collaborated in the creation of an airbase and related facilities to be used by United States agents for logistical operations in support of *contra* operations within the territory of Nicaragua. (See *supra*, paras. 9, 23, 24, 108, 109, 113, 115.)

(F) The willingness of the Costa Rican authorities to set *contra* personnel at liberty without investigation of their criminal activities when, exceptionally, such persons had been detained by Costa Rican security agents. (See, e.g., *supra*, para. 17.)

(G) The evidence of internal documents of the Ministry of Public Security of Costa Rica to the effect that the existence of *contra* encampments and concentrations were well known to the security agencies of the respondent State. (See *supra*, paras. 10, 11, 48.)

(vi) *Submission on the facts*

339. The evidence set forth above amply justifies the submission that the Government of Costa Rica is responsible on the basis of complicity in the acts of the *contras* established in its territory, as a consequence of the active co-operation and assistance provided by its officials. The existence of such complicity is the foundation of responsibility for breaches of the principle of the prohibition of the use of force.

340. The precise indicia or elements of Costa Rican complicity relevant to responsibility for such breaches and sustained by the evidence are:

- (i) the existence of control — or at the least the means of control — within the relevant areas;
- (ii) knowledge of the presence and purposes of the *contras* within Costa Rica;
- (iii) knowledge of the operations of the *contras* directed against targets in Nicaragua; and
- (iv) the giving of assistance to the *contras* in the execution of their policy of violence directed against Nicaragua.

### 3. *Responsibility Consequent upon Breaches of the Duty to Exercise Due Diligence in the Control of Activities within the Territory of the State*

(a) *The law*

341. In the submission of Nicaragua, general international law contains a principle according to which a State has a duty to use due diligence in order to control sources of injury to other states existing within its territory, and must bear legal responsibility if another State suffers injury as a consequence of breaches of that duty. The duty is dependent upon the existence of knowledge or the means of knowledge of the source of harm.

342. The existence of this duty has been recognized by international tribunals in the decisions in the *Trail Smelter Arbitration, Reports of International Arbitral Awards*, Vol. III (1941), p. 1905; and the *Corfu Channel Case (Merits)*, *supra*, p. 22. In the latter case the Court referred to "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".

343. No doubt the duty to exercise due diligence is in some respects similar to the type of responsibility which arises from assistance and complicity in relation to armed bands. (See *supra*, Chapter III.) However, the principles are recognized as having a distinct identity in the authorities; and there are certain significant differences. A difference which is relevant for present purposes lies in the fact that the duty to exercise due diligence does not involve such a high standard as in the case of assistance and complicity for, after all, a failure to control, however grievous the consequences, cannot be equated with the higher degree of advertence associated with active co-operation and complicity.

(b) *The facts*

344. The criteria which are pertinent in establishing the existence of a failure to exercise due diligence are to some extent the same as those relevant to responsibility by way of complicity. However, the relevant criteria are restricted to two, as follows:

- A. the existence of control in the relevant zones or at least an ability to exercise control; and

B. knowledge of the presence of the *contras* and of their aims and methods.

345. Indeed, the first of these criteria is essentially *pro forma* since control is assumed to exist over national territory and in any case the duty to exercise due diligence is not conditioned by the *fact* of control but by the *duty* to exercise effective control in the particular circumstances. It is also to be noted that the third "complicity" criterion namely, knowledge of the operations of the *contras*, is not strictly speaking a condition of responsibility for failure to exercise due diligence. However, such knowledge may have a significant evidential role as providing corroboration of the failure to exercise due diligence.

346. From these considerations it must follow that the references to the relevant evidence may be found in the preceding section as follows:

- (i) Knowledge of the presence of the *contras* and of their aims and methods. (See *supra*, paras. 10, 11, 48.)
- (ii) (As corroboration) knowledge of the operations of the *contras*. (*Id.*)

347. The existence of serious and persistent breaches of the duty to exercise due diligence is confirmed by the fact that the many diplomatic protests addressed to Costa Rica by Nicaragua contained requests that the Costa Rican Government should improve the methods of control and vigilance within the border zones. The need for appropriate means of communication and control in the border zone was stressed in a Note dated 2 December 1982. (Ann. A, Attachment 18.) Similar requests were made at frequent intervals in the following four years. (See, for example, the Notes dated 3 July 1983, 6 November 1983, 5 December 1983, 16 April 1984, 28 April 1984, 20 October 1984, 18 February 1985, 21 June 1985, 3 July 1985, 3 October 1985, 20 January 1986, 31 May 1986 and 26 August 1986, Ann. A, Attachments 53, 82, 88, 104, 109, 151, 175, 193, 197, 223, 242, 260, 265.)

(i) *Submission on the facts*

348. On the basis of the foregoing, Nicaragua submits that there is overwhelming proof of persistent breaches of the duty to exercise due diligence beginning in 1982 and continuing since then. There was a duty incumbent on Costa Rica to exercise a level of control and supervision of the national territory appropriate in the circumstances. The incidence and specific content of the duty was determined by the actual incidence of attacks against Nicaragua, and by knowledge of the presence of *contras* and of their aims and methods. The existence of the breaches of the duty for which Costa Rica is responsible is confirmed by the pattern of attacks repeated over a long period, by major episodes like the attack on San Juan del Norte, and by the frequent requests from Nicaragua for the improvement of methods of control and prevention. The breaches receive further confirmation, if such confirmation were necessary, from the evidence of actual knowledge of the operations of the *contras*. (See *supra*, paras. 10, 11, 48.)

### C. Conclusion on the Use of Force

349. On the basis of the evidence available, the respondent State bears legal responsibility in the respect of its toleration of and assistance to those activities of the *contras* based in Costa Rica and operating against Nicaragua (and in some cases operating within its territory) which involved the use of force in the form of armed attacks directed against Nicaraguan targets.

350. These activities constitute serious and persistent breaches of the following legal obligations:

A. the obligation of States under general international law to refrain from the threat or use of force against the territorial integrity and political independence of any State,

B. the same obligation as expressed in Article 2, paragraph 4, of the United Nations Charter,

C. the provisions of Articles 18 and 19 of the Charter of the Organization of American States, which provisions may be regarded both as declaratory of the relevant principles of general international law and as constituting independently valid multilateral treaty obligations.

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## PART FOUR

### BREACHES OF OTHER OBLIGATIONS OF GENERAL INTERNATIONAL LAW

#### CHAPTER VI. BREACHES OF THE OBLIGATION NOT TO VIOLATE THE SOVEREIGNTY OF ANOTHER STATE

##### A. Introduction

A. The Application (para. 21) states that “the policy of assistance to the armed bands of somocistas adopted by Costa Rica . . . constituted breaches of the obligation not to violate the sovereignty of another State”. The issues of responsibility evoked by this formulation will be explored forthwith.

##### B. The Legal Principle

B. The obligation not to violate the sovereignty of another State is well recognized and it will suffice, by way of memorandum only, to set out the relevant passage from the Judgment of the Court in *Nicaragua v. United States*:

“212. The Court should now mention the principle of respect for State sovereignty, which in international law is of course closely linked with the principles of the prohibition of the use of force and of non-intervention. The basic legal concept of State sovereignty in customary international law, expressed in, *inter alia*, Article 2, paragraph 1, of the United Nations Charter, extends to the internal waters and territorial sea of every State and to the air space above its territory. As to superjacent air space, the 1944 Chicago Convention on Civil Aviation (Art. 1) reproduces the established principle of the complete and exclusive sovereignty of a State over the air space above its territory. That convention, in conjunction with the 1958 Geneva Convention on the Territorial Sea, further specifies that the sovereignty of the coastal State extends to the territorial sea and to the air space above it, as does the United Nations Convention on the Law of the Sea adopted on 10 December 1982. The Court has no doubt that these prescriptions of treaty-law merely respond to firmly established and long-standing tenets of customary international law.” (*I.C.J. Reports 1986*, p. 111.)

##### C. The Application of the Legal Principle

C. According to the normal operation of the principles of State responsibility, the respondent State will bear responsibility for the breaches of the obligation not to violate the sovereignty of Nicaragua on three separate bases, that is to say:

- (a) direct responsibility for breaches of the obligation;
- (b) responsibility by way of assistance to the *contras* and complicity in their activities; and
- (c) responsibility consequent upon breaches of a duty to exercise due diligence in the control of activities within the national territory.

D. As the Court had occasion to observe in its Judgment in *Nicaragua v. United States*:

“251. The effects of the principle of respect for territorial sovereignty inevitably overlap with those of the principles of the prohibition of the use of force and of non-intervention. Thus the assistance to the *contras*, as well as the direct attacks on Nicaraguan ports, oil installations, etc., referred to in paragraphs 81 to 86 above, not only amount to an unlawful use of force, but also constitute infringements of the territorial sovereignty of Nicaragua, and incursions into its territorial and internal waters. Similarly, the mining operations in the Nicaraguan ports not only constitute breaches of the principle of the non-use of force, but also affect Nicaragua’s sovereignty over certain maritime expanses. The Court has in fact found that these operations were carried on in Nicaragua’s territorial or internal waters or both (paragraph 80), and accordingly they constitute a violation of Nicaragua’s sovereignty. The principle of respect for territorial sovereignty is also directly infringed by the unauthorized overflight of a State’s territory by aircraft belonging to or under the control of the government of another State.” (*Id.*, p. 128.)

E. It follows that, in terms of the presentation of evidence relating to the three bases of responsibility indicated above, the convenient method of proceeding is to refer to the materials set forth in Part One and also in the previous Chapter of this Memorial, relating to the obligation not to use force. The specific breaches of that obligation there elaborated also constitute violations of the sovereignty of Nicaragua for which the respondent State bears responsibility.

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## CHAPTER VII. BREACHES OF THE OBLIGATION NOT TO KILL, WOUND, OR KIDNAP THE CITIZENS OF OTHER STATES

### A. Introduction

A. In paragraph 22 of the Application Nicaragua formulates the claim that the conduct of Costa Rica “constitutes serious and persistent breaches of the obligation under customary international law not to kill, wound or kidnap the citizens of other States”, and this claim will receive the necessary elaboration in the present section of the Memorial.

### B. The Legal Principle

B. The relevant cause of action can be expressed as the killing, wounding or kidnapping of the citizens of Nicaragua without lawful justification. The legal bases of such a claim consist of a wealth of jurisprudence of claims commissions and instances of State practice. The Court’s attention is respectfully drawn to the following materials:

- (a) On the extensive practice of claims commissions, see, e.g., Feller, *The Mexican Claims Commissions 1923-1934*, Chapter 7 (1935); J. H. W. Verzijl, *International Law in Historical Perspective*, Vol. VI, pp. 6, 7 ff. (1973).
- (b) For the practice of States, see Whiteman, 8 *Digest of International Law*, pp. 850-906 (1967); *Répertoire suisse de droit international public*, Vol. III, pp. 1710-1722 (1975).
- (c) The views of qualified publicists, including Jiménez de Aréchaga, 159 *Hague Recueil* (1978-I), pp. 267 ff.; Oppenheim, *International Law* (H. Lauterpacht, ed.), Vol. I, 357-364, Vol. II, 941-952, 8th ed. (1955); D. P. O’Connell, *International Law*, 2nd ed. (1970); Jiménez de Aréchaga, in Sørensen (ed.), *Manual of Public International Law*, *supra*, pp. 531, 544-547 (1968); Guggenheim, *Traité de droit international public*, Vol. II, pp. 1-11 (1954); American Law Institute, *Restatement (Second): Foreign Relations Law of the United States*, paras. 164-168 (1956).

C. There can be little doubt that the obligation of customary law not to kill, wound, or kidnap the nationals of other States applies to such persons not only when they are present within the territory of the Respondent State but also when they are outside the territory. This assumption lies behind the claim presented to the British Government by the United States in the Caroline incident. (See R. Y. Jennings, “The Caroline and McLeod Cases”, 32 *American Journal of International Law* 82 (1938).) The application of the duty in respect of aliens outside the territorial jurisdiction is recognized by O’Connell, *International Law*, *supra*, Vol. II, p. 950.

D. The broad application of the duty is evident in the cases relating to the destruction of civil aircraft. It may be that the location of the aircraft at the relevant time is relevant to an issue of excusable error, but there can be no doubt that the duty not to use force against foreign aircraft is not conditioned by the

position of the aircraft inside or outside the territorial airspace of the Respondent State. In such cases the Respondent State is liable for the killing and wounding of the passengers and crew. (See, e.g., Whiteman, 8 *Digest of International Law*, pp. 885-906 (1967).) The same principle appears in the practice of States concerning harm to nationals caused by frontier guards. (See 3 *Italian Yearbook of International Law*, pp. 435-437 (1977).)

E. A further legal consideration relates to the force and relevance of the fundamental norms protecting human rights, which must apply equally to foreign nationals, whether they are harmed within or without the territory of the Respondent State, provided that State is responsible for the death, injury or kidnapping. In the *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain) (Second Phase)*, I.C.J. Reports 1970, p. 3, the Court referred in its Judgment to "obligations *erga omnes*", which included the "principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination". (*Id.*, p. 32.)

F. Of considerable significance is the fact that Whiteman's *Digest, supra*, an official United States publication, includes a series of prescriptions concerning human rights in the section devoted to "State responsibility for injuries to aliens". (See Vol. 8, pp. 697, 904-906.) The prescriptions set forth by Whiteman include the right to life, liberty, and security of the person.

G. In the specific case of unlawful detention of aliens, there is a considerable quantity of material evidencing the application of the international obligation to cases of wrongful detention by agents of the State. (See, for example, Whiteman, *supra*, Vol. 8, pp. 863-885; and the Liechtenstein Application in the *Nottebohm case (Liechtenstein v. Guatemala) (Preliminary Objection)*, I.C.J. Reports 1953, pp. 112-113; and see also *id.* (Second Phase), I.C.J. Reports 1955, pp. 6-7.) In the case concerning *United States Diplomatic and Consular Staff in Tehran*, I.C.J. Reports 1980, pp. 3, 30-31, 32-33, the Court referred to the "obligations under general international law" concerning the treatment of aliens.

H. One final observation on the legal aspects of the claim for the killing, wounding, and kidnapping of Nicaraguan citizens is merited. Such acts must surely fall within the concept of the use of force which is prohibited by the norm of general international law reflected in Article 2 (4) of the United Nations Charter. In this connection it may be noted that the United States Application in the *Tehran* case invoked the provisions of that Article. (See *id.*, pp. 5-6.)

I. The evidence of the breaches of the obligation not to kill, wound or kidnap the citizens of Nicaragua, for which Costa Rica is responsible, is substantially the same as the evidence indicated previously in relation to violations of sovereignty and breaches of the obligation not to resort to the use or threat of force. Consequently, it is not necessary to repeat those indications.

## SUBMISSIONS

J. The Republic of Nicaragua respectfully requests the Court to grant the following relief:

*First:* the Court is requested to adjudge and declare that Costa Rica has violated the obligations of international law indicated in this Memorial, namely:

- (a) the obligation of general international law not to intervene in the affairs of other States, which obligation is also expressed in the law and practice of the United Nations;
- (b) the obligations of non-intervention set forth in Article 18 of the Charter of the Organization of American States;
- (c) the obligation of non-intervention embodied in the Charter of the United Nations;
- (d) the obligations set forth in the Treaty of Amity concluded between the Parties on 21 February 1948 and the Agreement implementing Article IV of the aforesaid instrument, concluded on 9 January 1956;
- (e) the obligations set forth in the Convention on Rights and Duties of States in the Event of Civil Strife, concluded on 20 February 1928;
- (f) the obligation of general international law to refrain from the threat or use of force against the territorial integrity and political independence of any State, which obligation is also expressed in Article 2, paragraph 4, of the United Nations Charter;
- (g) the provisions of Articles 18 and 20 of the Charter of the Organization of American States, which provisions may be regarded as declaratory of the principles of general international law, and which include obligations relating to the use of force;
- (h) the obligation of general international law not to violate the sovereignty of other States; and
- (i) the obligation of general international law not to kill, wound or kidnap the citizens of other States.

*Second:* the Court is requested to state the duty of the Government of Costa Rica to bring the aforesaid violations of international law to an end.

*Third:* the Court is requested to adjudge and declare that, in consequence of the violations of international law indicated in this Memorial, compensation is due to Nicaragua, both on its own behalf and in respect of wrongs inflicted upon its nationals; and the Court is requested further to receive evidence and to determine, in a subsequent phase of the present proceedings, the quantum of damages to be assessed as the compensation due to the Republic of Nicaragua.

K. Accordingly, this copy of the Memorial is certified as original and presented on behalf of the Republic of Nicaragua.

Respectfully submitted,  
Carlos ARGÜELLO GÓMEZ,  
Agent of the Republic of Nicaragua.

10 August 1987.

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## LIST OF ANNEXES<sup>1</sup> TO THE MEMORIAL OF NICARAGUA

### *Annex A. DIPLOMATIC CORRESPONDENCE BETWEEN NICARAGUA AND COSTA RICA*

1

#### Attachments

1. Diplomatic Note of Nicaragua, 16 April 1982
2. Diplomatic Note of Nicaragua, 10 May 1982
3. Diplomatic Note of Nicaragua, 21 May 1982
4. Diplomatic Note of Costa Rica, 22 May 1982
5. Diplomatic Note of Costa Rica, 7 June 1982
6. Diplomatic Note of Costa Rica, 8 June 1982
7. Diplomatic Note of Costa Rica, 8 June 1982
8. Diplomatic Note of Nicaragua, 9 June 1982
9. Diplomatic Note of Costa Rica, 14 June 1982
10. Diplomatic Note of Costa Rica, 16 July 1982
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255. Diplomatic Note of Nicaragua, 19 April 1986
256. Diplomatic Note of Costa Rica, 23 April 1986
257. Diplomatic Note of Nicaragua, 26 April 1986
258. Diplomatic Note of Nicaragua, 26 April 1986-A
259. Diplomatic Note of Nicaragua, 3 May 1986
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276. Diplomatic Note of Nicaragua, 3 June 1987
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280. Diplomatic Note of Nicaragua, 2 July 1987.

**Annex B. MATERIALS OF THE OAS INVESTIGATING COMMITTEE, THE MIXED COMMISSION AND COMMISSION OF SUPERVISION AND PREVENTION**

- Attachment 1. Documents of Mixed Commission
- Attachment 2. Documents of Commission of Supervision and Prevention
- Attachment 3. Annex 9 to Report of the Fact-Finding Committee Established by the OAS Permanent Council to Investigate the Complaint Filed by the Minister of Foreign Affairs of Costa Rica.

**Annex C. RECORDS OF THE GOVERNMENT OF NICARAGUA**

- Attachment 1. Chronology of Selected Acts of Aggression against Nicaragua from Costa Rican Territory, 1982-1986
- Attachment 2. Chronology of Acts of Aggression against Nicaragua from Costa Rican Territory, April-September 1983
- Attachment 3. Chronology of Acts of Aggression against Nicaragua from Costa Rican Territory, January-April 1984
- Attachment 4. Records of Ministry of Interior on *Contra* Bases, Command Centers, and Support in Costa Rica
- Attachment 5. Tables Summarizing *Contra* Activity on Costa Rican Territory
  1. *Contra* Camps in Costa Rica, 1984-1987
  2. *Contra* Airfields in Costa Rica, 1984
  3. Locations of *Contra* Forces on Costa Rican Territory, 1985-1986
- Attachment 6. Ministry of Foreign Affairs Internal Telex, 26 May 1983.

*Annex D. RECORDS OF MINISTRY OF PUBLIC SECURITY OF COSTA RICA*

- Attachment 1. Letter from Lt. Col. Rodrigo Rivera Saborio to Minister of Public Security Angel Edmundo Solano Calderón, 3 August 1983
- Attachment 2. Report from Capt. Antonio Castrillo Medina to Lt. Col. Rivera Saborio, 6 August 1983
- Attachment 3. Letter from Lt. Col. Rivera Saborio to Vice-Minister Johnny Campos, 5 August 1983
- Attachment 4. Report from Sub-Lieutenant Medrano to Lt. Col. Rivera Saborio, 5 August 1983
- Attachment 5. Memorandum from Lt. Col. Carlos Monge Quesada to Minister of Public Security Solano Calderón, 30 August 1983
- Attachment 6. Memorandum [1] from Lt. Col. Mario Araya to Vice-Minister Johnny Campos, 29 August 1983
- Attachment 7. Memorandum [2] from Lt. Col. Mario Araya to Vice-Minister Johnny Campos, 29 August 1983
- Attachment 8. Memorandum from Lt. Col. Carlos Monge Quesada to Minister of Public Security Solano Calderón, 24 February 1984.

*Annex E. PUBLICATIONS OF CONTRA ORGANIZATIONS BASED IN COSTA RICA*

- Attachment 1. "B.O.S. — Opposition Bloc of the South", San José 1985
- Attachment 2. Paid Advertisements in Costa Rican Periodicals

1. *La Nación*, 20 June 1982
2. *La República*, 21 June 1982
3. *La Nación*, 23 September 1982
4. *La Prensa Libre*, 25 September 1982
5. *La Nación*, 25 September 1982
6. *La Nación*, 6 October 1982
7. *La Nación*, 1 December 1982
8. *La Nación*, 5 December 1982
9. *La Nación*, 13 December 1982
10. *La Nación*, 17 December 1982
11. *La Prensa Libre*, 17 December 1982
12. *La República*, 17 December 1982
13. *La Nación*, 19 December 1982
14. *La Nación*, 23 December 1982
15. *La Nación*, 24 December 1982
16. *La Prensa Libre*, 9 January 1984
17. *La República*, 13 June 1985
18. *La Nación*, 2 August 1985
19. *La República*, 26 July 1986
20. *La Nación*, 9 October 1986
21. *La República*, 3 June 1986
22. *La Nación*, 28 February 1985
23. *La Nación*, 14 October 1983
24. *La Prensa Libre*, 15 September 1983

Attachment 3. *Liberación*

1. "'Negro' Chamorro Declares: Unity Has Been Consolidated", 10 July 1986
2. "UNO and BOS Sign Accord", 10 July 1986
3. "19 of July Repudiated", 25 July 1986
4. "War is the Fault of the Sandinistas", 25 July 1986

5. "UNO-FDN Wage 32 Battles in 15 Days", 25 July 1986
6. "UNO-FDN Graduates 1,200 New Combatants", 25 July 1986
7. "Third Meeting of UNO Assembly", 25 October 1986
8. "We Will Continue to Support Our Fighters", 25 October 1986

Attachment 4. *Nicaragua Hoy*

1. "Resistance Responds to the Decision of Congress", 11 May 1985
2. "Members of the Military: Don't Fight; Surrender or Join Us, says Enrique Bermudez", 11 May 1985
3. "Chronology of Activities of the Nicaragua Resistance Regarding the National Dialogue", 11 May 1985
4. "Opposition Unity Is Strengthened", 14 June 1986
5. "Bermudez Emphasizes the Importance of UNO before 1,000 New Graduates of UNO-FDN", 14 June 1986
6. "Ambassador Tambs Visits UNO Offices", 14 June 1986
7. 29 November 1986, pp. 1-3
8. "Document of Democratic Agreement of the Nicaraguan Resistance", 24 January 1987.

Annex F. OFFICIAL DOCUMENTS OF THE UNITED STATES GOVERNMENT

Attachment 1. *Dictionary of International Relations Terms*, Department of State (3rd ed., 1987)

Attachment 2. Report of the President's Special Review Board (Tower Commission Report), 26 February 1987

Attachment 3. Joint Hearings on the Iran-Contra Investigation, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House Select Committee to Investigate Covert Arms Transactions with Iran

1. Testimony of Lewis A. Tambs
2. Testimony of Joe Fernandez ("Tomás Castillo")
  - (a) Exhibit to Testimony of Joe Fernandez ("Tomás Castillo") (Exhibit TC)
3. Testimony of Elliot Abrams
4. Testimony of Robert W. Owen
  - (a) Exhibits to Testimony of Robert W. Owen (Exhibit RWO)
5. Testimony of Vice Admiral John Poindexter
6. Exhibits to Testimony of Oliver L. North (Exhibit OLN)

Attachment 4. "Preliminary Inquiry into the Sales of Arms to Iran and Possible Diversion of Funds to the Nicaraguan Resistance", a Report of the Senate Committee on Intelligence, United States Senate, 2 February 1987

Attachment 5. "'Private Assistance' and the Contras: A Staff Report", Staff of Senator John Kerry, 14 October 1987

Attachment 6. Weekly Intelligence Summary, Defense Intelligence Agency, 16 July 1982.

Annex G. RECORDS OF COURT PROCEEDINGS

Attachment 1. *Criminal Proceeding against Eugene Hasenfus*, Popular Anti-Somoza Tribunal of the First Instance, 16 October 1986 (Testimony of Eugene Hasenfus)

Attachment 2. *John Hull v. Anthony Avirgan and Martha Honey*, First Penal Court of San José, Costa Rica, 3 October 1985 (Record of Testimony and Judgment of the Court)

Attachment 3. *Proceedings for the Extradition of Francisco López Arce and Camilo Martín Walter Hurtado*, Criminal Court of Limón, Costa Rica, 7 October 1982; affirmed, Supreme Court of Costa Rica, 15 October 1982 (Judgment of the Court)

Attachment 4. *Proceedings against Rafael León Blandón for the Homicide of Denis Javier Sandoval M.*, Trial Court of San Carlos, Costa Rica, 7 December 1984 (Report of Fausto Rojas Cordero (Supervisor) and Carlos L. Canabria Porras (Investigator) of the Judicial Investigation Agency of San Carlos; Sworn Statement of Jorge García García; and Statement of Rafael León Blandón).

#### Annex H. COSTA RICAN PRESS REPORTS

##### Attachments

1. *La Prensa Libre*, 12 January 1982
2. *La República*, 12 January 1982
3. *La Nación*, 15 January 1982
4. *La Prensa Libre*, 15 February 1982
5. *La República*, 8 April 1982
6. *La Nación*, 8 April 1982
7. *La República*, 16 April 1982
8. *La Prensa Libre*, 16 April 1982
9. *La Nación*, 17 April 1982
10. *La Prensa Libre*, 17 April 1982
11. *La Prensa Libre*, 13 May 1982
12. *La Nación*, 14 May 1982
13. *La Prensa Libre*, 14 May 1982
14. *La Nación*, 15 May 1982
15. *La República*, 23 May 1982
16. *La Nación*, 1 June 1982
17. *La Nación*, 18 June 1982
18. *La República*, 25 July 1982
19. *La Nación*, 25 July 1982
20. *La República*, 9 September 1982
21. *La Nación*, 19 September 1982
22. *La República*, 7 October 1982
23. *La Prensa Libre*, 3 November 1982
24. *La Prensa Libre*, 3 November 1982
25. *La República*, 4 November 1982
26. *La Prensa Libre*, 4 November 1982
27. *La Prensa Libre*, 5 November 1982
28. *La República*, 5 November 1982
29. *La Nación*, 10 February 1983
30. *La República*, 5 April 1983
31. *La República*, 9 September 1983
32. *La Prensa Libre*, 13 September 1983
33. *La República*, 15 September 1983
34. *La Nación*, 24 September 1983
35. *La Prensa Libre*, 4 October 1983
36. *La República*, 5 October 1983
37. *La Nación*, 31 January 1984
38. *La República*, 31 January 1984
39. *La Nación*, 2 February 1984

40. *La Prensa Libre*, 3 March 1984
41. *La Prensa Libre*, 7 April 1984
42. *La República*, 8 April 1984
43. *La Nación*, 9 April 1984
44. *La República*, 11 April 1984
45. *La Prensa Libre*, 13 April 1984
46. *La Nación*, 16 April 1984
47. *La Prensa Libre*, 18 April 1984
48. *La Nación*, 8 May 1984
49. *La Prensa Libre*, 17 May 1984
50. *El Debate*, 30 May 1984
51. *La Nación*, 31 May 1984
52. *La Nación*, 31 May 1984
53. *La Prensa Libre*, 31 May 1984
54. *La República*, 1 June 1984
55. *La Nación*, 1 June 1984
56. *El Debate*, 1 June 1984
57. *La Nación*, 9 September 1984
58. *La República*, 8 May 1985
59. *La República*, 4 July 1985
60. *La Prensa Libre*, 13 May 1986
61. *La Nación*, 15 May 1986
62. *La Nación*, 4 June 1986
63. *La República*, 23 November 1986
64. *La República*, 16 December 1982
65. *La Nación*, 3 November 1984.

#### Annex I. UNITED STATES AND OTHER FOREIGN PRESS REPORTS

##### Attachments

1. Foreign Broadcast Information Service, 5 January 1982
2. *The Tico Times*, 4 June 1982
3. Foreign Broadcast Information Service, 9 November 1982
4. *The Christian Science Monitor*, 25 May 1983
5. *The Philadelphia Inquirer*, 26 August 1983
6. *The New York Times*, 9 September 1983
7. Foreign Broadcast Information Service, 7 November 1983
8. *Newsweek*, 28 May 1984
9. *The New York Times*, 1 June 1984
10. *The Washington Post*, 1 June 1984
11. *The Washington Post*, 11 September 1984
12. *The New York Times*, 12 September 1984
13. *The Nation*, 3 November 1984
14. *Life*, February 1985
15. The Associated Press, 16 April 1985
16. *The Washington Times*, 19 June 1985
17. *The Washington Times*, 3 July 1985
18. *The New York Times*, 8 July 1985
19. NBC Morning News (Transcript), 17 July 1985
20. NBC Nightly News (Transcript), 25 July 1985
21. *The New York Times*, 25 July 1985
22. *The Tico Times*, 26 July 1985
23. *The Tico Times*, 26 July 1985

24. *The New York Times*, 8 August 1985
25. *The Philadelphia Inquirer*, 15 August 1985
26. *The Tico Times*, 16 August 1985
27. *The Philadelphia Inquirer*, 18 August 1985
28. *The Tico Times*, 30 August 1985
29. *The Philadelphia Inquirer*, 1 September 1985
30. *Common Cause*, September/October 1985
31. *The Tico Times*, 26 March 1986
32. *The Tico Times*, 25 April 1986
33. *The Boston Sunday Globe*, 11 May 1986
34. *The Los Angeles Times*, 17 May 1986
35. *The New York Times*, 30 May 1986
36. The Associated Press, 4 June 1986
37. *The Tico Times*, 6 June 1986
38. *The Tico Times*, 6 June 1986
39. *The Miami Herald*, 17 June 1986
40. West 57th Street (Transcript), CBS Television Network, 25 June 1986
41. *The Tico Times*, 27 June 1986
42. *The Miami Herald*, 29 June 1986
43. *The Boston Sunday Globe*, 20 July 1986
44. *The Washington Times*, 18 August 1986
45. *The New York Times*, 25 September 1986
46. *The Tico Times*, 26 September 1986
47. *The Miami Herald*, 27 September 1986
48. *The Dallas Morning News*, 29 September 1986
49. *The New York Times*, 29 September 1986
50. *The Miami Herald*, 8 October 1986
51. *The Washington Post*, 17 October 1986
52. *The New York Times*, 24 October 1986
53. *The Dallas Morning News*, 24 November 1986
54. *The Miami Herald*, 7 December 1986
55. *The New York Times*, 26 December 1986
56. *The Tico Times*, 16 January 1987
57. *The Sun* (Baltimore), 18 January 1987
58. *The Times* (London), 7 February 1987
59. *The Boston Sunday Globe*, 22 February 1987
60. *The Miami Herald*, 22 February 1987
61. *The Miami Herald*, 1 March 1987
62. Foreign Broadcast Information Service, 13 March 1987
63. *The New York Times*, 3 May 1987
64. *Newsday*, 17 May 1987
65. *The Wall Street Journal*, 21 May 1987
66. Reuters, 14 July 1987
67. *The Boston Globe*, 15 July 1987
68. *The Washington Post*, 23 July 1987.

**Annex J. DOCUMENTS OF UNIDAD NICARAGUENSE OPOSITORA/UNITED NICARAGUAN OPPOSITION (UNO): MINUTES OF MEETINGS AND BUDGETARY DOCUMENTS**

Attachment 1. Budgetary Documents of UNO/Costa Rica

Attachment 2. Letter from Evenor Valdivia, UNO Co-ordinator, to Sr. Carlos Abarca, 25 February 1986

Attachment 3. Minutes of Meeting of UNO Directors, 10 and 11 July 1985

Attachment 4. Minutes of Meeting of UNO Directors, 28 August 1985

Attachment 5. Minutes of Meeting of UNO Directors, 14-16 October 1985

Attachment 6. Minutes of Meeting of UNO Directors, 27 December 1985.

*Annex K.* REPORT OF WITNESS FOR PEACE ON "THE PEACE FLOTILLA ON THE RIO SAN JUAN", AUGUST 1985.

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