

INTERNATIONAL COURT OF JUSTICE

DECLARATION OF INTERVENTION

(Article 63 of the Statute)

OF THE REPUBLIC OF EL SALVADOR

filed in the Registry of the Court
on 15 August 1984

CASE CONCERNING MILITARY AND
PARAMILITARY ACTIVITIES IN AND
AGAINST NICARAGUA

(NICARAGUA v. UNITED STATES OF AMERICA)

COUR INTERNATIONALE DE JUSTICE

DÉCLARATION D'INTERVENTION

(article 63 du Statut)

DE LA RÉPUBLIQUE D'EL SALVADOR

enregistrée au Greffe de la Cour
le 15 août 1984

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

(NICARAGUA c. ÉTATS-UNIS D'AMÉRIQUE)

DECLARATION OF INTERVENTION OF THE REPUBLIC OF EL SALVADOR

INTERVENTION PURSUANT TO ARTICLE 63 OF THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

EMBASSY OF EL SALVADOR

15 August 1984.

I. I have the honour to refer to the Application of 9 April 1984 filed by the Republic of Nicaragua against the United States of America.

The Government of Nicaragua, in a malicious and improper fashion, has assured the Court that El Salvador does not consider itself the object of armed attack from Nicaragua. In view of these false allegations, the Republic of El Salvador has no alternative but to participate in the proceedings resulting from Nicaragua's Application of 9 April 1984.

Pursuant to Article 63 of the Statute of the Court and Article 82 of the Rules of Court, the Republic of El Salvador hereby intervenes by right in the current phase of the proceedings resulting from Nicaragua's Application of 9 April 1984. El Salvador makes this intervention for the sole and limited purpose of arguing that this Court does not have jurisdiction over Nicaragua's Application or the claims set forth therein, that for multiple reasons the Court should declare itself unable to proceed concerning such Application and claims, and that such Application and claims are inadmissible.

El Salvador also wishes to participate in order to make it a matter of record that contrary to what Nicaragua has asserted in its allegations in this case, El Salvador considers itself under the pressure of an effective armed attack on the part of Nicaragua and feels threatened in its territorial integrity, in its sovereignty, and in its independence, along with the other Central American countries. This is proved by the protests which Central American countries have made against the Nicaraguan Government. In view of the political use which Nicaragua has attempted to make of the International Court of Justice in its application before the Court, El Salvador comes here to affirm before the International Court of Justice and before the entire world, the aggression of which it is a victim through subversion that is directed by Nicaragua, and that endangers the stability of the entire region.

II. In 1979, each day it became more apparent that the Somoza Government was collapsing and a new force, ostensibly dedicated to reform and progress, would eventually assume power in the brother country of Nicaragua. For that reason, many of us in El Salvador looked with hope at our neighbour Nicaragua during the spring and summer of 1979. When that moment arrived, we, along with many other countries, were very pleased when the Sandinistas promised to the Organization of American States, in July 1979, that their goals for Nicaragua were peaceful and democratic. Indeed, our hopes for a new era of democracy,

progress, reform, and an end to every form of repression in Central America were manifested in the same year when our country also adopted a programme of progress in accordance with popular ideals.

III. However, our hopes and expectations for a new era of peace and progress were frustrated, for very soon it became clear that Nicaragua had deceived its people, Central America, and the democratic world.

In place of peace, the Sandinista Government of Nicaragua opted for aggression. Nicaragua has become converted into an armed camp whose military forces are completely out of proportion to its strict and legitimate security requirements.

Moreover, especially for the Salvadorians, Nicaragua has been converted into a base from which the terrorists seek the overthrow of the popularly elected Government of our nation. They are directed, armed, supplied, and trained by Nicaragua to destroy the economy, create social destabilization, and to keep the people terrorized and under armed attack by subversives directed and headquartered in Nicaragua. Despite all of these interventions by Nicaragua, the Government of El Salvador has not wanted to present any accusation or allegation to any of the jurisdictions to which we have a right to apply because we were seeking, and we continue to seek, a solution of understanding and mutual respect between the two nations, despite the fact that Nicaragua has on many occasions used international fora to attack and denigrate its neighbours, and especially El Salvador.

On the other hand, our nation cannot, and must not, remain indifferent in the face of this manifest aggression and violent destabilization of the Salvadorian society which oblige the State and the Government to legitimately defend themselves. For that reason we have sought and continue to seek assistance from the United States of America and from other democratic nations of the world ; we need that assistance both to defend ourselves from this foreign aggression that supports subversive terrorism in El Salvador, and to alleviate and repair the economic damage that this conflict had created for us.

IV. The reality is that we are the victims of aggression and armed attack from Nicaragua and have been since at least 1980. Moreover, even before the Sandinistas assumed power in Nicaragua in July 1979, Nicaraguans and Cubans were involved with the subversive groups in El Salvador, and used them for the guerrilla warfare in Nicaragua in order to take and consolidate Sandinista power.

V. Nicaraguan and Cuban officials work directly with Salvadorian guerrillas, through the "Comision Militar", to channel Nicaraguan military support to the Farabundo Marti National Liberation Front (FMLN). The "Comision Militar" is under the control of the Minister of Defence, Humberto Ortega Saavedra, and Sandinista Army Chief of Staff Joaquin Cuadra. The general headquarters of the FMLN near Managua is the command centre which directs guerrilla operations and co-ordinates the logistical support, including the provision of munitions, clothes and money. As our former President, Alvaro Magana, said in a press conference in December 1983 : "... Nicaragua is the launching pad for armed subversion in El Salvador."

VI. The facts concerning the deaths, which occurred in April 1983 in Managua, of the two Salvadorian subversive leaders, Melida Anaya Montes and Cayetano Carpio, confirmed once again the presence of the subversive leadership of the FMLN in Nicaragua, and demonstrated their close ties with the Sandinista leadership. In addition, Nicaragua provides houses and hideouts to the subversives of the FMLN, and communications facilities of the same group are located in northwest Nicaragua. These facilities are used to pass instructions and messages to subversive units in El Salvador.

VII. In addition to the entire terrorist training operation established in Cuba, since mid-1980 the Sandinista National Liberation Front has made available to the Salvadorian guerrillas training sites in Nicaraguan territory. The training includes small-unit tactics, experience with firearms and explosives, etc. These training centres, managed by Cuban and Nicaraguan military personnel, have been identified and located in El Paraiso, Jocote Dulce, Bosques de Jilao, and at Kilometre 14 on the South Highway. The first two locations are situated in the southern suburbs of Managua; the second two are outside the city.

(A) One Salvadorian subversive, who deserted to Honduras in September 1981, reported that he and 12 other personnel went from Nicaragua to Cuba for intensive military training, where over 900 Salvadorians were then receiving training.

(B) Several subversives captured in a raid in Tegucigalpa, Honduras, in November 1981, told Honduran authorities that the Nicaraguan Government had provided them with funds for their travel and with explosives for use in El Salvador.

(C) In March 1983, Honduran security officials surprised a group of Salvadorian subversives travelling across Honduras from El Salvador and on to training camps in Nicaragua, which proves that there are land infiltration routes between Nicaragua and El Salvador.

VIII. A blatant form of Nicaraguan aggression against El Salvador is the Sandinista involvement in supply operations for the FMLN subversives. Although the quantities of arms and supplies, and the routes used, vary, there has been a continuing flow of arms, ammunition, medicines, and clothing from Nicaragua to our country.

(A) Clandestine deliveries of arms and munitions by air and by sea are sent from Cuba to El Salvador by way of Nicaragua, where they are stored pending their final delivery to the Salvadorian subversives. Such warehouses have been specifically identified and located in Managua.

(B) Direct supply flights were made from Nicaragua, for the purpose of supporting the insurgents, during the January 1981 final offensive, which was designed to overthrow the government of our country.

(C) The weapons intercepted in Honduras have been identified as originating from weapons supplied to United States units in Viet Nam. Documents we have captured from subversives operating in our country indicate that they, with the assistance of the Governments of Nicaragua and Cuba, have negotiated arms supply agreements with Viet Nam and other Communist countries, designating Nicaragua as the vehicle and medium for delivery.

A leader of the Armed Forces of National Resistance (FARN), captured by our regular forces in August 1982, stated that the Nicaraguans were delivering to the subversives weapons provided by Viet Nam to Nicaragua, and confirmed other aspects of the support provided by the Sandinista National Liberation Front to the subversives.

(D) We have positive proof of the use of FAL rifles and the munitions manufactured in Venezuela, which were delivered, during the administration of President Carlos Andres Perez, to the Sandinista guerrillas who were fighting against Somoza. All these arms have been passed on by the Sandinista Government to the Salvadorian subversives.

(E) Another subversive commander, captured in Honduras in August 1982, confirmed that Nicaragua is the major supplier of arms and munitions to the insurgents. One of his comrades had personally obtained arms from Nicaragua on five occasions in that same year.

(F) Arms and munitions, including heavy weapons, are also provided to the subversives not only by land, but also by air and by sea from Nicaragua. These weapons and other materiel are brought by sea across the Gulf of Fonseca from Nicaragua to our territory.

The weapons, munitions, and stores are transported by sea in fishing vessels, and by small craft (called cayucos) which are powered by small outboard motors and have limited fuel supplies, which proves conclusively that these supplies do not come from distant ports and that the short range of these vessels does not extend beyond Nicaraguan territory. For this reason, all of the supply points are located on the beaches of south-east El Salvador.

(G) In May of this year, our Armed Forces destroyed a subversive camp which was an important element of the supply route, capturing approximately 30 transport trucks, and maps showing these supply routes.

(H) In late 1983 a United States reporter named Sam Dillon visited a small Nicaraguan port, called La Concha, located about 60 kilometres across the Gulf of Fonseca from El Salvador. Mr. Dillon reported that the residents of the so-called "Fishing Co-operative" had – as traditional smugglers – introduced since 1979 large quantities of weapons into El Salvador, under instructions of the Nicaraguan Government.

(I) Seventy-three per cent of the 214 M-16 rifles captured on 21 July 1984, from FMLN subversives, by the Salvadorian Armed Forces were originally delivered by the United States to Viet Nam. Documentation has recently been prepared showing the routes by which these weapons were transported from Viet Nam to Cuba, from Cuba to Managua, and from Managua to the FMLN, to El Salvador.

(J) The former official of Nicaraguan security, Miguel Bolanos, has stated that small aircraft have been used to transport materiel and armaments from Nicaragua.

(K) The presence of aircraft from Nicaragua increases noticeably before the launching of large-scale subversive operations.

IX. Nicaraguan officials have publicly admitted their direct involvement in waging war on us. Foreign Minister Miguel D'Escoto, when pressed at a meeting of the Foreign Ministers of the Contadora Group in July 1983, by our Foreign Minister, Dr. Fidel Chavez Mena, on the issue of Nicaraguan materiel support for the subversion in El Salvador, shamelessly and openly admitted such support in front of his colleagues of the Contadora Group. That statement, made in those particular circumstances, is significant, inasmuch as the interventionist attitude of the Nicaraguan Government, in its eagerness to export subversion, not only manifests itself in relation to El Salvador, but also has had to do with countries such as Colombia, Costa Rica, Honduras and other Latin American countries, with some of which it has had serious problems. This is because Nicaragua, as Nicaragua has itself recognized officially, has been converted into the centre of exportation of revolution to all of the countries in the area.

The Marxist international intervention has been the subject of statements by numerous political leaders, both those of Nicaragua as well as those of other countries in the Marxist-Leninist revolutionary orbit: thus, the former Prime Minister of Grenada, Maurice Bishop, stated in a speech of 19 July 1980, during a ceremony commemorating the first anniversary of the Sandinista Revolution, that :

“... now we can speak not only about a revolutionary Cuba, not only about a revolutionary Nicaragua, but also about a revolutionary El Salvador, a revolutionary Guatemala, and a revolutionary Honduras”.

Moreover, Fidel Castro said :

“... and we are certain that the Sandinista Revolution will teach us much, just as we are certain that its example will have extraordinary influence in the rest of Latin America”.

On 5 October 1980, in San José, Rafael Cordova, one of the five members of the Sandinista Junta, declared that :

“... if the left wins (in El Salvador), and we can do no less than crave that our Salvadorian comrades will win, Guatemala will fall immediately like a ripe fruit and in Nicaragua the Sandinista revolutionary process will become established”.

X. The most positive proof of Nicaraguan intervention and participation in the subversive process against El Salvador was shown to the world the day of 10 January 1981, when the national radio of Nicaragua, Radio Sandino, was used for an entire day as an instrument of direct support, with harangues, instructions, and, under the pretence of giving the news, events were described before they occurred. This clearly demonstrates Nicaragua's participation in the planning of the offensive.

XI. The damage caused to the economy, to our infrastructure, and to the people of our country is immense and very difficult to calculate. The cost in

human lives is alarming. As a result of the insurgency supported by the Sandinistas, we have approximately half a million persons internally displaced in our country and over 30,000 persons have been killed in the conflict since it was unleashed in 1979. The subversives, aided and abetted by their allies in Nicaragua, have destroyed farms, businesses, bridges, roads, dams, power sources, trains and buses. They have mined our roads in an attempt to disrupt our economy and with the purpose of preventing our citizens from participating effectively in the national elections. The total of the damages produced by the subversion to the Salvadorian economy since 1979 to the end of 1983 has been conservatively estimated to amount to approximately US\$800 million.

XII. Faced with this aggression, we have been called upon to defend ourselves, but our own economic and military capability is not sufficient to face any international apparatus that has unlimited resources at its disposal, and we have, therefore, requested support and assistance from abroad. It is our natural, inherent right under Article 51 of the Charter of the United Nations to have recourse to individual and collective acts of self-defence. It was with this in mind that President Duarte, during a recent visit to the United States and in discussions with United States Congressmen, reiterated the importance of this assistance for our defence from the United States and the democratic nations of the world.

This was also done by the Revolutionary Junta of Government and the Government of President Magana.

XIII. Despite all of the foregoing, the Government of El Salvador has always sought peaceful co-existence with its neighbours. Indeed, President Duarte was prepared to send a high-level delegation, represented by the Deputy Foreign Minister of the Republic, to the recent fifth anniversary celebrations of the popular Sandinista Revolution. This gesture of friendship was responded to by a public statement by the Nicaraguan Chief of State and Co-ordinator of the Sandinista Junta, Daniel Ortega, during a recent interview by German television. He publicly stated that : "... he could meet with President Duarte, but that would not impede the fact of continuing support to the Salvadorian guerrillas". In the face of such a declaration of hostility, the Government had no other alternative but to cancel the visit to the Nicaraguan ceremony. Furthermore, it considers that these statements by Mr. Ortega involve a self-confession of intervention and that they state the official position in that regard of the Government of Nicaragua, inasmuch as they come directly from the Chief of State of Nicaragua.

The Chief of State of Nicaragua himself recognizes and confesses to that country's intervention in the internal affairs of El Salvador.

The Nicaraguan Government never explained or apologized for Ortega's public statement regarding support to the FMLN. And certainly, up to this moment, Nicaragua continues to be the principal source of material assistance to the subversives (munitions, arms, medical supplies, training, etc.) in preparation for the expected general summer offensive, predicted by the very same FMLN.

In our opinion there are two levels of jurisdictional competence to settle conflicts of an international nature ; one is eminently political and the other is legal or juridical.

XIV. Nicaragua has availed itself in this case of the second of the systems. Nicaragua bases its jurisdictional claim on Article 36 of the Statute of the Court

in the introduction of its Application, paragraph 13. Nicaragua founds its principal claim against the United States on supposed violations of the Charter of the United Nations, the Charter of the Organization of American States, the Convention on Rights and Duties of States, and the Convention Relative to the Duties and Rights of States in the Event of Civil Strife. The pretension of Nicaragua is that the United States is involved in the use of armed force against Nicaragua in violation of pertinent provisions of those multilateral treaties or conventions.

Assuming *arguendo* the supposed validity of Nicaragua's jurisdictional allegation, El Salvador also is a party to the Statute of the International Court, having become so when it signed and ratified its participation in the Charter of the United Nations. El Salvador became a member of the Charter on the same date. It became a member of the Organization of American States and ratified that Convention on 16 June 1950. It became a member of the Convention Relative to the Duties and Rights of States in the Event of Civil Strife and ratified it on 25 April 1936. It ratified the Convention on Rights and Duties of States on 25 April 1936. Therefore, El Salvador is party to all the multilateral conventions on which Nicaragua alleges the jurisdictional basis of its substantive claims.

These treaties give to El Salvador equally the right to demand that Nicaragua cease in its overt intervention in our internal affairs, and El Salvador considers, and this is a reason for intervening in the case of *Nicaragua v. the United States*, that all these multilateral treaties and conventions constitute the lawful mechanisms for the resolution of conflicts, having priority over the assumption of jurisdiction by the International Court of Justice. This position has been maintained by the Republic of El Salvador on other occasions, accepting the jurisdiction of the Organization of American States, for example, in the conflict which we had with Honduras in 1969. On that occasion there was a resolution and El Salvador respected that resolution. The spirit of that acceptance, which involved a manifestation of our jurisdictional reservation with respect to the Court at The Hague, was precisely to respect the jurisdictional supremacy of multilateral conventions.

In the opinion of El Salvador, therefore, it is not possible for the Court to adjudicate Nicaragua's claims against the United States without determining the legitimacy or the legality of any armed action in which Nicaragua claims the United States has engaged and, hence, without determining the rights of El Salvador and the United States to engage in collective actions of legitimate defence. Nicaragua's claims against the United States are directly interrelated with El Salvador's claims against Nicaragua.

Moreover, the Application of Nicaragua is inadmissible inasmuch as it is based on a fallacy, which is to say that El Salvador is not being affected by Nicaragua's actions in exporting subversion.

Any case against the United States based on the aid provided by that nation at El Salvador's express request, in order to exercise the legitimate act of self-defence, cannot be carried out without involving some adjudication, acknowledgment, or attribution of the rights which any nation has under Article 51 of the United Nations Charter to act collectively in legitimate defence. This makes inadmissible jurisdictional action by the Court in the absence of the participation of Central America and specifically El Salvador, in whose absence the Court lacks jurisdiction.

Finally, El Salvador points to the fact that it has entered a reservation concerning acceptance of the Court's jurisdiction, with specific reference to disputes

relating to facts or situations involving hostilities, armed conflicts, individual or collective acts of legitimate defence, resistance to aggression, fulfilment of obligations imposed by international organizations, and other similar acts, measures, or situations in which El Salvador is, has been, or might be an involved party.

The other instance or level of jurisdiction to which we have made reference is the political one.

XV. The current world situation suggests that, in addition to bilateral disputes, multinational conflicts have arisen which traditional juridical mechanisms are inadequate to resolve, and new means of multilateral political dialogue are being sought that would consider political, military, economic, and international factors as well as legal factors. This can be said of the conflicts in Asia Minor ; it applies more acutely to those between various nations of the Middle East ; and it is specifically true of the Central American conflict.

In this sense El Salvador states that in its view everyone has acknowledged that the Central American phenomenon has moved beyond the scope of simple bilateral treatment and has become a regional issue entailing the participation of multilateral interests. In this case it is clear that competent bodies such as the United Nations Security Council and General Assembly and the Thirteenth Meeting of Foreign Ministers of the Organization of American States have had to defer to a new instrument of good offices.

(A) It is in line with this concept that four Western Hemisphere countries – Mexico, Colombia, Venezuela and Panama – took an initiative and created the instrument to deal with this crisis, which, as is well known, is called the Contadora process. The five Central American countries – Guatemala, Honduras, Costa Rica, El Salvador and Nicaragua – have accepted that political initiative to settle the conflicts of the Central American crisis, which, it must not be overlooked, involves other countries such as Cuba, Russia and the United States itself.

(B) It should be recalled that all parties of this group have accepted the 21 points of Contadora and the other structural documents of the process, in which is contemplated a solution by political consensus of each and every one of the claims presented by Nicaragua before the International Court of Justice, as well as the claims of the other Central American nations against Nicaragua. This argument would suffice to deem jurisdictional action by the Court inappropriate, for it would fundamentally undermine the negotiations currently being carried out within the Contadora process.

This process has been specifically endorsed by the Security Council of the United Nations and by the Organization of American States, and has thus far enjoyed public support from practically all of the nations of the world, to such an extent that next September a meeting will be held of the four Contadora countries, the five Central American countries, and the ten foreign ministers representing the European Economic Community, as well as Spain and Portugal, within the general context of the framework established by Contadora.

(C) El Salvador considers that it would be very harmful and inappropriate for the Court to consider the Nicaraguan Application, for to do so would entail transferring the forum from the political forum, which is one of understanding

and tolerance, to the forum of legal confrontation, which has other mechanisms and other means of solution.

(D) It would also set a precedent on the basis of which all other nations participating in the Central American conflict would have to resort to that coerced judicial jurisdiction which would give rise to multiple litigation with ramifications which go beyond strictly juridical frameworks.

XVI. In this intervention, presented by El Salvador on the basis of Article 63 of the Statute of the Court and Article 82 of the Rules of Court, El Salvador places on record its valid points of view regarding the interventionist attitude of Nicaragua and regarding the Court's lack of jurisdiction over this case and its inadmissibility. El Salvador reserves its other rights under the Statute of the Court and the Rules of Court to make its views known and to assert its interests, including the right to file written pleadings in support of El Salvador's intervention in this case.

In the name and on behalf of
the State of El Salvador,

(Signed) Ivo P. ALVARENGA,

Ambassador Extraordinary and Plenipotentiary,
Agent to the International Court of Justice.

AFFIDAVIT

MINISTRY OF FOREIGN RELATIONS
EL SALVADOR

I, Ricardo Acevedo Peralta, declare and certify the following :

1. I am Acting Minister of Foreign Affairs of the Republic of El Salvador. My official duties include participation in international matters which may affect El Salvador. My responsibilities also concern the conduct of relations between El Salvador and other countries, including the United States of America and the Republic of Nicaragua.

2. The statements in our Declaration relative to the proceeding pending before this Honourable Court between Nicaragua and the United States of America are true to the best of my knowledge. In the performance of my functions, I have followed closely events related to the referenced case through documents obtained through official channels.

3. The facts relative to the complaints against Nicaragua I deem to be true, based upon official information from our ministries and organizations dealing with defence. Therefore I affirm that the facts contained in our Declaration are true to my best understanding.

(Signed) Ricardo ACEVEDO PERALTA,
Acting Minister of Foreign Affairs
of the Republic of El Salvador.

I certify that the above is a true and accurate translation of the affidavit executed in Spanish by Acting Foreign Minister Acevedo.

(Signed) Ivo P. ALVARENGA,
Agent of the Republic of El Salvador.
