

**REQUEST FOR THE INDICATION OF
PROVISIONAL MEASURES OF PROTECTION
SUBMITTED BY THE GOVERNMENT OF
NICARAGUA**

**DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES
PRÉSENTÉE PAR LE GOUVERNEMENT
DU NICARAGUA**

MINISTERIO DEL EXTERIOR,
MANAGUA,
NICARAGUA.

To His Excellency the President, to the Judges of the International Court of Justice, the undersigned being duly authorized by the Republic of Nicaragua and being the Ambassador of the Republic of Nicaragua accredited at The Hague:

1. I have the honor to refer to the Application submitted to the Court this day instituting proceedings by Nicaragua against the United States. On behalf of Nicaragua, I request urgently, in accordance with Article 41 of the Statute of this Court and Articles 73, 74, 75 and 78 of the Rules of Court, that the Court indicate provisional measures which ought to be taken forthwith to preserve the rights of Nicaragua pending the determination of the issues raised by the Application.

A. COMPELLING CIRCUMSTANCES REQUIRING INDICATION OF PROVISIONAL MEASURES OF INTERIM PROTECTION

2. The facts set forth in the Application and more fully detailed in the *Chronological Account* attached thereto as Annex A are incorporated by reference in this request. These facts show that:

- The United States is presently engaged in the use of force and the threat of force against Nicaragua through the instrumentality of a mercenary army of more than 10,000 men, recruited, paid, equipped, supplied, trained and directed by the United States, and by means of the direct action of personnel of the Central Intelligence Agency and the US armed forces. The United States has publicly accepted responsibility for these activities.
- These activities have already resulted in the deaths of more than 1,400 Nicaraguans, military and civilian, serious injury to more than 1,700 others, and \$200,000,000 in direct damage to property.
- The object of these activities, as admitted by the President of the United States, senior US officials and members of Congress, is to overthrow or at least destabilize the Government of Nicaragua.
- The activities of the United States are not mere isolated incursions or incidents. They are part of a continuing and organized campaign of unlawful use of force that, from its beginnings in 1981, has steadily expanded — and is continuing to expand — in size, scope and intensity and in the grievous losses of life and property inflicted on Nicaragua and its people.
- These activities are mounting in intensity and destructiveness as this case is filed. In March 1984, 6,000 US-backed mercenaries initiated the largest assault to date on Nicaraguan territory. Heavy fighting is still taking place, and casualties are high.
- Simultaneously with their assault, the mercenary forces announced that they had mined the Nicaraguan ports of Corinto, Puerto Sandino and El Bluff, as part of an effort to cut off Nicaragua economically from the rest of the world. Five foreign commercial vessels have already been disabled by exploding mines, and many others have cancelled scheduled shipments to and from Nicaragua for fear of the mines. Taken together with the previous

bombings of international airports, these new actions represent not only an effort to cut Nicaragua's vital trade and communications with the outside world, but constitute a mortal hazard to third parties engaged in peaceful international commerce and travel.

- As this request is filed, the US Administration is seeking and the Congress is considering \$21,000,000 in additional funding to continue and to further escalate this campaign of military and paramilitary activities against Nicaragua.

3. The United States activities in and against Nicaragua constitute flagrant violations of the most elementary and fundamental principles of international law and of the basic provisions of the United Nations Charter and other treaties prohibiting the use or threat of force in the conduct of international relations.

4. The actions of the United States and the consequences for Nicaragua have persisted despite repeated efforts of the Government of Nicaragua and disinterested third parties to initiate procedures for peaceful settlement of any and all differences between the United States and Nicaragua. The United States has refused, and continues to refuse, to engage in direct dialogue or negotiation with Nicaragua with respect to the subject-matter of this dispute. There is thus no reason to believe that the United States will voluntarily desist from its course of action while this case is pending before the Court.

B. THE CONSEQUENCES SOUGHT TO BE AVOIDED BY PROVISIONAL MEASURES

5. The overriding objective of this request is to prevent further loss of life in Nicaragua. The continuance of the situation that is the subject of the present request will expose thousands of human beings to the possibility of serious harm, and some of them to the certainty of bodily injury and death. The principal provisional measures to be indicated, as stated below, are that the United States desist from further aid and assistance of any kind to the mercenary forces and from any military or paramilitary activity by its own officials or forces against Nicaragua. Such measures would be effective in preventing the anticipated harm, since, as the United States administration has itself recently acknowledged, the mercenaries' attacks would dry up without further infusion of US aid. The provisional measures to be indicated are thus compelled by fundamental humanitarian concerns.

6. The stated objective of the United States activity is the overthrow of the Government of Nicaragua. The United States has not abandoned this objective, as its most recent request for additional funding demonstrates. Obviously, if the United States were to be successful in achieving its stated objective, the consequences would be irreparable. It would prevent the vindication of the rights asserted by Nicaragua in this case if the Court should decide in Nicaragua's favor, since the Court could not act to reinstate the present government.

7. Nicaragua is a developing country, struggling against severe economic pressures to maintain the stability of its economy and to improve the life of its people. Apart from the direct damage to property, the Government of Nicaragua is forced to divert substantial resources, amounting to a significant proportion of the gross national product, from constructive economic and social purposes to the defense of its people and territory against the continuing attacks. In the absence of protective measures, this diversion of resources will continue with cumulative effect. The pace of economic development depends on coordination and timing, and the process is exponential. Therefore, these losses cannot be compensated fully by the payment of monetary reparations should the Court

ultimately decide in Nicaragua's favor. Moreover, for Nicaraguans who grow up without education or health services, what is lost can never be recovered.

8. The legal rights to be protected by the indication of provisional measures are:

- the rights of Nicaraguan citizens to life, liberty and security;
- the right of Nicaragua to be free at all times from the use or threat of force against it by a foreign State;
- the right of sovereignty of Nicaragua;
- the right of Nicaragua to conduct its affairs and to determine matters within its domestic jurisdiction without interference or intervention by any foreign State;
- the right of self-determination of the Nicaraguan people.

C. THE URGENCY OF THE REQUEST

9. The foregoing recitals sufficiently indicate the urgent need for the requested measures. The lives and property of Nicaraguan citizens, the sovereignty of the State and the health and progress of the economy are all immediately at stake. The United States has given no indication that it is willing to desist from its unlawful actions. On the contrary, it has continued to assert both its objective of overthrowing or destabilizing the Nicaraguan government and its "right" to do so. At this very moment, it is seeking the resources to continue and intensify its activities. The situation has already resulted in a dangerous level of tension, not only between the United States and Nicaragua, but between Nicaragua and Honduras and other Central American neighbors that could have serious implications for international peace and security. It is clear that, in the absence of an indication of provisional measures, the disputes will be aggravated and extended. The gravest consequences cannot be excluded.

D. MEASURES REQUESTED

10. Accordingly, Nicaragua respectfully requests that the Court indicate the following provisional measures to be in effect while the Court is seized of this case:

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

11. In view of the gravity of the current situation caused by the actions taken and threatened by the United States, Nicaragua further respectfully requests that the Court set a hearing on this Request at the earliest possible date.

9 April 1984.

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

**ORAL ARGUMENTS ON THE REQUEST
FOR THE INDICATION
OF PROVISIONAL MEASURES**

MINUTES OF THE PUBLIC SITTINGS

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

**PLAIDOIRIES RELATIVES À LA DEMANDE
EN INDICATION
DE MESURES CONSERVATOIRES**

PROCÈS-VERBAUX DES AUDIENCES PUBLIQUES

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

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

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

Also present:

For the Government of Nicaragua:

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

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

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

Mr. Augusto Zamora Rodriguez,

Mr. Paul S. Reichler,

Miss Judith C. Appelbaum,

Mr. Paul W. Kahn, *as Counsel*.

For the Government of the United States of America:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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