

**APPLICATION INSTITUTING PROCEEDINGS
SUBMITTED BY THE GOVERNMENT OF
NICARAGUA**

**REQUÊTE INTRODUCTIVE D'INSTANCE
PRÉSENTÉE PAR LE GOUVERNEMENT
DU NICARAGUA**

MINISTERIO DEL EXTERIOR,
MANAGUA,
NICARAGUA.

25 July 1986.

To the Registrar 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:

I have the honour to refer to the provisions of Article XXXI of the Pact of Bogotá and to the Declarations made by the Republic of Nicaragua and by the Republic of Costa Rica respectively, accepting the jurisdiction of the Court as provided for in Article 36, paragraphs 1 and 2, respectively of the Statute of the International Court of Justice and, by virtue of the consent to the jurisdiction based upon those instruments, either jointly or separately, to submit, in accordance with Article 40 of the Statute and Article 38 of the Rules of Court, an Application instituting proceedings in the name of the Republic of Nicaragua against the Republic of Costa Rica on the following grounds:

I. STATEMENT OF FACTS

1. Late in 1981, Nicaragua obtained the first confidential information about the organization of armed bands in Costa Rica with the purpose of carrying out armed attacks against Nicaragua. Immediately after that information was received, a meeting was held on January 12, 1982, between the Nicaraguan Deputy Minister of Interior, Commander Luis Carrión, and the Deputy Minister of Security and Government of Costa Rica, Mr. Harry Whalsteim.

2. On April 15 of that same year, the Nicaraguan *contra* leader Edén Pastora Gómez held a press conference in San José, Costa Rica, in which he announced armed attacks against Nicaragua. This fact caused the Nicaraguan Government to send a diplomatic note to that country, dated April 16. In that note Nicaragua stated: "its concern about the possibility that groups and armed expeditions against Nicaragua be organized in your territory"; recalling also the international obligation of not permitting: "the use of national territory to promote and execute material acts with the purpose of initiating or promoting armed attacks or hostile actions against sovereign States"; requesting information from the Costa Rican Government about: "measures adopted or that will be adopted in order to prevent the use of national territory for the organization and implementation of threats made by the citizen Pastora Gómez".

3. On May 10, 1982, a C-47 aircraft of the Nicaraguan airline (Aeronica) was hijacked and taken to Costa Rica. On May 20 of that same year, a group of deserters from the Nicaraguan army, assassinated the officer in command of the border post of San Juan del Norte, and crossed the border into Costa Rica. In both cases the Government of Nicaragua requested the extradition and capture of the delinquents, but the Costa Rican authorities, in violation of their international obligations, took no action.

4. In an effort to prevent the deterioration of relations, the foreign ministers of both countries, during a meeting held in San José on June 15, 1982, decided to create a Mixed Commission.

5. Despite this positive step, the border incidents continued, and Nicaragua made these facts public in a communiqué dated May 21, 1982, indicating that:

"interests foreign to the good of the Governments of our two nations are bent on provoking conflicts and tensions between Nicaragua and Costa Rica, in order to create the necessary conditions that will justify a foreign military aggression against Nicaragua".

6. During the second meeting of the Mixed Commission in San José, on July 28, 29 and 30 of 1982, the Government of Nicaragua:

"expressed its concern about a series of border events: incursions, violations of our airspace and harassment provoked by elements hostile to the Nicaraguan revolution. Which, of course, does not include the Government of Costa Rica. This concern is addressed so that the Government of Costa Rica takes the necessary measures."

7. Nicaragua considers it appropriate to emphasize that in an effort to prevent an increased deterioration of the situation, and taking into consideration the growing aggressiveness of the United States Government and the growing involvement of Honduras in the illegal policy of force and intervention practised by the Government of the United States, Nicaragua decided at that time not to publish any armed attacks originating from Costa Rican territory, but to use the Mixed Commission for denouncing such attacks. This decision was taken with the agreement of the Costa Rican Government.

8. In spite of this will of Nicaragua, the increase in the armed actions on the border made it necessary for Nicaragua to modify its position in order to protect its national interests which were being damaged by the policy of discreet complaints. Moreover, this change of attitude by the Nicaraguan Government was influenced by the facts that the Costa Rican authorities did not take any specific measures to prevent these attacks, and also that top officials of the Government were collaborating in various ways with the *contras*.

9. On December 1, 1982, a group of *contras* attacked the border village of Cardenas. They were backed by an aircraft that approached from Costa Rica. This village is located at a distance of 5 kilometers from the frontier, in an area where there are several Costa Rican observation posts because it is very near Peñas Blancas which is the most important border crossing point between the two countries and is situated on the Pan-American Highway. This attack lasted nearly five hours and could not possibly have been ignored.

10. From 1982 onwards, the armed attacks against Nicaragua increased in frequency and intensity. The situation has been especially serious in the region of the San Juan river because of geographical factors: on the Nicaraguan side, it is heavily forested and lacks land access, while on the Costa Rican side there is a larger population and many access routes.

11. Since it is not necessary to go into extensive detail and enumeration of the many illegal attacks which originated from Costa Rica, the present intention is to mention only certain recent examples of the types of activities which have given rise to the bringing of this case before the Court:

(i) On September 28, 1983, a numerous *contra* group from Costa Rica attacked the villages of Cardenas, Sapoa and the customs office in Peñas Blancas at 5.10 a.m. The assault was rebuffed and the *contras* returned to Costa Rican territory from where they continued attacking the offices in Peñas Blancas and surrounding areas. That action resulted in the death of three Nicaraguans, the wounding of nine others and the destruction of the customs office.

(ii) On April 6, 1984, a numerous *contra* group initiated armed attacks from Costa Rican territory against the border post of San Juan del Norte on the Caribbean coast of Nicaragua. The attacks continued uninterrupted and on April 16 a *contra* group of more than 500 men attacked the area. On April 28 Nicaragua protested again to Costa Rica, and provided an annex containing detailed information about the *contra* activities in that country. As a result of this incursion a significant number of Nicaraguan citizens were either killed, wounded, or forcibly abducted. The persons abducted were later returned to Nicaragua through our Embassy in Costa Rica. During the time they were in the hands of the Costa Rican authorities, they were the object of threats and inducements on the part of those authorities in order to convince them to desert from the Nicaraguan army and request asylum in Costa Rica.

(iii) On May 7, 1984, a group of about 100 *contras* attacked Palo de Arco (a border post) during which four civilians were murdered, among them two children. A Costa Rican civil guard post known as "El Chachito" is very close to that sector.

(iv) On October 20, 1984, the customs post of Peñas Blancas was again attacked by *contra* forces from Costa Rican territory.

(v) From July 17 until July 22, 1985, *contra* groups located in Costa Rican territory attacked positions of the Nicaraguan army in the region of San Rafael, 20 kilometers east of Boca de San Carlos. This is situated in front of the Costa Rican location known as "Remolinitos". The attack was with mortars, cannons and 50 calibre machine guns. Seven Nicaraguan soldiers were wounded.

(vi) On August 7, 1985, at approximately 7.45 a.m., 47 persons were abducted and taken into Costa Rica. Among them were 29 United States citizens of the Organization Witnesses for Peace. This occurred when they were sailing on the Nicaraguan river San Juan. After their liberation on August 8, they were illegally captured when returning to San Carlos by the Costa Rican Civil Guard.

(vii) On October 30, 1985, the border post of Boca de San Carlos was attacked from Costa Rican territory. On this occasion the *contras* used vehicles for transport in spite of the existence of a Costa Rican civil guard post in that area.

(viii) On January 31, 1986, in the Hotel Ambassador of San José, leaders of the *contra* group known as ARDE held a press conference in which, among other things, they stated their need of fuel in order to continue monitoring the river San Juan — which is Nicaraguan. This operation had been conducted with the active co-operation of the Costa Rican authorities.

(ix) On April 22, 1986, *contra* groups stationed in Costa Rican territory attacked a civilian ship near the sector of the island known as Sombrero de Cuero, situated 37 kilometers south-west of San Carlos. One person was wounded and another missing as a result of this action.

(x) On May 29, 1986, a group of *contras* attacked with mortar fire from Costa Rican territory the border post of San Juan del Norte.

(xi) On June 1, 1986, a group of approximately 15 persons, wearing the uniform of the Guardia Civil of Costa Rica, attacked from Costa Rican territory the observation post of Las Conchitas which is situated 10 kilometers south-west of Peñas Blancas.

12. Against the background of attacks which have been described, the attitude of the Government of Nicaragua has been to try as much as possible to avoid confrontations with the Costa Rican Government. To this effect, efforts towards a peaceful solution were made by means of direct bilateral conversations which resulted at that time in the creation of the Mixed

Commission: the Contadora Group helped to create a Commission for Prevention and Supervision; and, with the good offices of France, two rounds of negotiations were held in Paris in October 1984, with the purpose of creating a neutral zone between the two countries under international supervision.

13. All these efforts failed because of the position adopted by the Costa Rican authorities of not taking any specific measures against the activities of the *contras* inside Costa Rican territory.

II. LEGAL GROUNDS ON WHICH THE CLAIM IS BASED

14. On the basis of the above statement of facts, Nicaragua claims that Costa Rica has incurred legal responsibility for the breach of major obligations arising under the United Nations Charter and other multilateral treaties, and also from the breach of certain well-established obligations of customary international law. The particular legal grounds on which Nicaragua bases its claim are as follows.

1. *Breaches of the Charter of the United Nations*

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 somocista 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.

2. *Breaches of the Charter of the Organization of American States*

16. The acts of Costa Rica (as described above) constitute serious and persistent violations of the provisions of Article 18 of the Charter of the Organization of American States, according to which Costa Rica is under the obligation not to intervene directly or indirectly for any reason whatsoever in the internal or external affairs of Nicaragua, whether by armed force or by any other form of interference or attempted threat against the personality of Nicaragua or against its political, economic or cultural elements.

17. The acts of Costa Rica also involve serious and persistent violations of the provisions of Article 20 of the Charter of the Organization of American States, according to which the territory of Nicaragua is inviolable and must not be subjected to military occupation or other forcible measures, directly or indirectly, on any grounds whatever.

3. *Breaches of the American Treaty for the Peaceful Settlement [of Disputes] (Pact of Bogotá)*

18. The acts of Costa Rica (as described above) constitute further serious and persistent violations of the provisions of Article I of the American Treaty for the Peaceful Settlement of Disputes ("Pact of Bogotá"), according to which Costa Rica is under an obligation to abstain from the threat or use of force, or any coercion, as a means of settling disputes.

4. Breaches of the Obligation of Customary International Law not to Intervene in the Affairs of Another State

19. A significant element in the conduct of Costa Rica in the relevant period (as described above) has been the pattern of assistance to and toleration of the violent actions of armed bands of somocistas operating against Nicaragua from bases within Honduras. The conduct of Costa Rica in this respect involves serious and persistent violations of the well-established obligation of customary international law not to intervene in the affairs of Nicaragua. The serious character of the violations is enhanced by the publicly proclaimed objective of the *contras* and their supporters in Costa Rica to overthrow the Government of Nicaragua.

5. Breaches of the Obligation of Customary International Law not to Use Force against Another State

20. The policy of assistance to the armed bands of somocistas 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.

6. Breaches of the Obligation of Customary International Law not to Violate the Sovereignty of Another State

21. The policy of assistance to the armed bands of somocista adopted by Costa Rica (as described above) constitutes breaches of the obligation not to violate the sovereignty of another State.

7. Breaches of the Obligation of Customary International Law not to Kill, Wound or Kidnap the Citizens of Other States

22. The conduct of Costa Rica (as described above) constitutes serious and persistent breaches of the obligation under customary international law not to kill, wound or kidnap the citizens of other States.

III. THE NATURE OF THE CLAIM

23. On the basis of the foregoing statement of facts and considerations of law, Nicaragua, reserving the right to supplement or to amend this Application and subject to the presentation to the Court of the relevant evidence and legal argument, requests the Court to adjudge and declare as follows:

- (a) that the acts and omissions of Costa Rica in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Costa Rica bears legal responsibility;
- (b) that Costa Rica is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;
- (c) that Costa Rica is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions.

24. Nicaragua reserves the right to present a request that the Court indicate interim measures of protection.

25. The Government of Nicaragua has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Embassy of the Republic of Nicaragua, The Hague, Wattstraat 19.

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