

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

**APPLICATION INSTITUTING
PROCEEDINGS SUBMITTED BY THE
GOVERNMENT OF 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 Honduras 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 Honduras on the following grounds:

I. STATEMENT OF FACTS

1. The Somoza Régime was overthrown by revolutionary forces in July 1979, and a new Government was installed in Nicaragua.

2. Members of the military and paramilitary forces of the deposed government fled to neighbouring countries. Many of these ex-national guardsmen sought refuge in Honduras from whence they launched armed attacks against the territory of Nicaragua.

3. At first, these armed attacks consisted of sporadic forays into Nicaraguan territory with the object of rustling cattle and pillaging peasant communities.

4. In the course of 1980, the attacks became more frequent and acquired a more political and military objective. Government installations were destroyed and military patrols ambushed. At the time Nicaragua was in the midst of a literacy campaign that involved hundreds of thousands of people, mostly young students. They became targets of the armed bands and many were murdered or kidnapped.

5. All of these activities were reported to the Honduran Government by means of diplomatic notes immediately.

6. In 1981, the character and the composition of the armed bands started to change. They were better equipped and trained; their organization became more of a military nature and the size of the armed bands increased. It was becoming apparent to the Nicaraguan Government that they could not operate with such freedom without the complicity or at least the indifference of the Honduran authorities.

7. On April 19, 1981, Nicaraguan border patrols captured two members of the Honduran armed forces inside Nicaraguan territory. They confessed that the purpose of their mission was to gather intelligence information to be used by the armed bands attacking Nicaragua.

8. These activities were the object of strong protest notes by the Nicaraguan Government to the Honduran authorities.

9. On May 13, 1981, the Head of State of Nicaragua met with the President of Honduras in the border post of El Guasaule. At that meeting the Honduran authorities made commitments to help stop the armed incursions into Nicaragua made both by the somocista armed bands and by elements of the Honduran army.

10. Unfortunately, the commitments made in the meeting of Heads of State were ignored by the Honduran authorities.

11. By the end of 1981 and the beginning of 1982, the armed attacks increased to such an extent in the Nicaraguan territory bordering Honduras that much of the civilian population in that area had to be evacuated.

12. This situation led the Nicaraguan Government to request an urgent meeting of the Security Council of the United Nations on April 1982. On that occasion the United States vetoed a resolution concerning questions of principle.

13. Since 1982 to the present, the attacks from Honduras have consistently increased. The armed bands, that generally became known as the *contra* forces, are openly based in Honduran territory and have increased in size to more than 15,000 men.

14. Public statements by Honduran authorities at the highest level confirm that the *contra* forces operate with the knowledge and assistance of the Honduran Government.

15. President José Azcona Hoyo of Honduras stated in a press conference in April 1986, that the Government of Honduras could withdraw the *contras* from Honduran territory and that they had "the capacity of doing it immediately".

16. The President of the Honduran Congress has publicly acknowledged that the *contras* are based on Honduran territory and that this is done in order to back the struggle against the "Marxist-Leninists of Nicaragua".

17. The *contra* forces operate in such an open fashion in Honduras and in such numbers, that the ex-Rector of the National University of Honduras, Dr. Arturo Jorge Reina, has stated that in Honduras "there are three armies: the Honduran, the United States army, and the army of the Nicaraguan *contras*".

18. United States government officials, among them the Secretary of Defense, have made public statements to the effect that the *contra* forces operate inside Honduras with the Honduran authorities' knowledge and tolerance.

19. Apart from aiding and abetting the *contras*, the Honduran military forces have directly participated in military attacks on Nicaragua and have given vital intelligence and logistical support to the *contras*. Some examples of these acts are:

- April 4, 1982: three squadrons of the Honduran army from the military company stationed in the border area of "El Guasaule" in full army uniform penetrated Nicaraguan territory in the area of "La Ceiba", situated 5 kilometres west of Somitillo, and proceeded to kidnap 21 peasants from that sector. The peasants were taken to the Honduran city of Choluteca.
- June 5, 1983: in the sector called "El Porvenir", situated 16 kilometres northeast of Jalapa, Nicaragua, a force of about 600 *contras* penetrated Nicaraguan territory with protective cover fire of cannon and mortar from the Honduran army. Members of the Honduran army took part with

the *contra* force in the incursion into Nicaraguan territory. Twenty Nicaraguans lost their lives in this operation.

- October 3, 1983: the Nicaraguan army downed a military airplane that was transporting military supplies to the *contras* in the sector of “Los Cedros”, 25 kilometres north of the Rio Blanco, inside Nicaragua. The aircraft was a Douglas DC-3C that had taken off from the airstrip “El Aguacate”, in Catacamas, Department of Olancho, in Honduras. The aircraft was piloted by ex-army officers of the Somoza guardia nacional. Three of them were captured, and confessed the assistance given by the Honduran army.
- February 3, 1984: four aircraft of the Push and Pull type approached from Honduran territory and attacked a military unit of the Nicaraguan army in the sector of Manzanillo. Department of Chinandega. The airplanes withdrew after the attack into Honduran territory.
- April 18, 1985: three combat planes of the Honduran airforce attacked and sank a Nicaraguan coast guard boat 10 miles southwest of Cape Gracias a Dios in Nicaragua’s sovereign and jurisdictional waters. This attack left one dead and one missing.
- March 14, 1986: three detachments of *contras* of approximately 60 men each, made an incursion into Nicaraguan territory in the sector of the border pass of La Fraternidad, located on the Pan-American highway. The attack was against the Nicaraguan customs house. The Honduran army gave support fire to the attack with mortars and rifles.

20. The Honduran Government has also used the threat of force against Nicaragua not only in words but also in facts. Since 1981 they have constructed military airports, naval bases and other military infrastructure along the border with Nicaragua, and have continuously held manoeuvres with the United States Army with the express object of intimidating Nicaragua.

II. LEGAL GROUNDS ON WHICH THE CLAIM IS BASED

21. On the basis of the above statement of facts, Nicaragua claims that Honduras 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 claims are as follows.

1. Breaches of the Charter of the United Nations

22. 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. The conduct of Honduras (as described above) involves both the use of force and the threat of force. In particular both the direct attacks by elements of the Honduran armed forces and the assistance provided to the somocista armed bands in their attacks on the territory of Nicaragua and its civilian population constitute the use of force against Nicaragua. In addition, the Government of Honduras by means of military manoeuvres and associated activities in conjunction with the armed forces of the United States has used the threat of force against Nicaragua.

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

23. The acts of Honduras (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 Honduras 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.

24. The acts of Honduras 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)*

25. The acts of Honduras (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 Honduras 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*

26. A significant element in the conduct of Honduras 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 Honduras 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 Honduras to overthrow the Government of Nicaragua.

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

27. The policy of assistance to the armed bands of somocistas adopted by Honduras 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 Honduras constitute serious breaches of this same obligation.

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

28. The direct attacks carried out against Nicaragua by the armed forces of Honduras (as described above) constitute breaches of the obligation not to violate the sovereignty of another State. Moreover, certain attacks have involved the brutal kidnapping of Nicaraguan citizens by Honduran armed forces, as, for example, during the incursion by Honduran forces on April 4, 1982.

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

29. The conduct of Honduras (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

30. 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 Honduras 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 Honduras bears legal responsibility;
- (b) that Honduras 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 Honduras 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.

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

32. 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.