

**UNITED NATIONS AND THE SECURITY OF SMALL STATES :  
A CASE STUDY OF NICARAGUA'S COMPLAINT AGAINST  
THE UNITED STATES**

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**ANURAG ASTHANA**

**CENTRE FOR INTERNATIONAL POLITICS,  
ORGANIZATION AND DISARMAMENT  
SCHOOL OF INTERNATIONAL STUDIES  
JAWAHARLAL NEHRU UNIVERSITY  
NEW DELHI—110067, INDIA**

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*A. Asthana*

(ANURAG ASTHANA)

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## INTRODUCTORY NOTE

This dissertation seeks to examine the extent to which member states, particularly the smaller ones can be assured of security and protection against aggression within the framework of the United Nations. It is in this context that the security problems of Nicaragua have been analysed. This study also analyses the diplomatic interactions at the United Nations since the inception of the conflict situation in Nicaragua, particularly after the crisis situation of 1984, and mobilizing by that country of the political and legal processes which the UN framework makes available, and to what degree of success.

The United Nations system represents a framework to prevent threats to the peace and for the suppression of acts of aggression or other breaches of the peace, ensuring territorial integrity and political independence of all states. In contemporary world, it is the potential vulnerability of the small states that is the cause for concern. A small state would never dare to attack a big state, but the converse is not true. But as the Charter prohibits the use of force in international relations and places the security of big and small states alike on an equal footing, it is in this respect that the security of small states is given due importance. Also, the United Nations has evolved the system of accountability for acts of omission and commission in international

relations. This has had a moderating effect on the operation of the "law of the jungle" in the sovereign nation state system, the "law" which permits the big fish to swallow smaller ones. No longer can the big states attack or absorb the small states with impunity as they did till the Second World War. Whenever in recent years has "the law of the jungle" operated against a small state - as for example, in the case of the Bahamas, Grenada, Lesotho, the Seychelles, Vanuatu or Zanzibar - the aggressor state has had to explain and justify its actions to the international community saying that it did what it did in self defence under Article 51 of the Charter, or for some other reason. What is more important, it has felt the need to affirm solemnly that it had no intention of annexing the victim state or that it has not in fact annexed it. This indeed is a far reaching achievement in the sovereign nation-state system and augurs well for the small states in the system.

Almost for the past ten years, Central America has been a serious threat to breach of peace, particularly in the context of the Nicaraguan conflict situation. The problem is of intermittent large scale violence in and around Nicaragua. The whole of Central America is obviously in turmoil. The conflict is between the United States and the Sandinista regime in Nicaragua headed by Daniel Ortega.

Nicaragua is a small country situated in the heart of the Central American isthmus with three million inhabitants and a geographical area less than that of most North American states. For a better part of this century it was ruled by a dictatorial regime backed by the United States, which was thoroughly exploitative in character. A revolution in 1979 brought the present Sandinista regime in power. The new government was seen by the United States as a threat to its security, as well as to that of other states in the region, and has since been trying to dislodge the present Nicaraguan regime. This gave rise to heightened tensions in the region and at one point of time it seemed that the United States would invade Nicaragua. The United Nations General Assembly and Security Council were at that time already seized of the matter. A frightening development came in the spring of 1984 when the Nicaraguan harbours were mined, resulting in damage to ships from Nicaragua, the Netherlands, Panama, Japan and the Soviet Union. This made Nicaragua to institute legal proceedings against the United States at the International Court of Justice, the jurisdiction of which was repudiated by the American government.

Against this backdrop a number of questions would seem pertinent. Why, in spite of all the above safeguards, have tension and conflict continued unabated? What is the genesis of the present conflict situation? What were the circumstances

resulting from the crisis situation<sup>of</sup> the mining of harbours?  
Is Nicaragua a threat to US national security as claimed?  
Is Nicaragua a threat to other Central American states?  
What was the UN response to the appeal by Nicaragua? What  
role does the United Nations play in diffusing a conflict  
situation? What are the issues that the nullification of  
The Hague's verdict by the Reagan administration raises?  
What is the present state of affairs regarding the conflict  
situation?

These and a related set of questions are the subject  
of this study.

The first chapter of the dissertation examines the  
United Nations security system vis-a-vis the small states.  
The next chapter deals with the geography, history, polity  
and economy of Nicaragua in-sofar as it gives a background  
of the present conflict. The third chapter focuses on the  
US reaction after the emergence of the Sandinista regime.  
In the fourth chapter, various efforts made by the UN General  
Assembly and Security Council for the diffusion of the crisis  
are taken up. Also examined in this chapter are the various  
aspects of The Hague's Verdict. The fifth chapter deals with  
the present state of affairs in the conflict. For this, events  
up to the end of March 1988 are reviewed. The sixth and final  
chapter attempts an overall assessment and some concluding  
observations.

## Chapter I

### UNITED NATIONS SECURITY SYSTEM AND SMALL STATES

The term "national security" has long been used by politicians as a rhetorical phrase and by military leaders to describe a policy objective. By national security the modern social scientists mean the ability of a nation to protect its internal values from external threats. The first scholar to define national security explicitly was Walter Lippmann. He stated, "a nation has security when it does not have to sacrifice its interests to avoid war, and is able, if challenged, to maintain them by war".<sup>1</sup> Arnold Wolfers pointed out a simple translation of national interests into "national security interests".<sup>2</sup> In objective sense, it measures the absence of threats to acquired values, and in subjective sense, the absence of fears that such values might be attacked. Wolfers states that Lippmann's definition implies that security rises and falls with the ability of a nation to deter an attack, or to defeat it. This is in accordance with the common usage of the term.<sup>3</sup> Ian Bellany defines security as "a relative freedom from war, coupled with a

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<sup>1</sup>Walter Lippmann, U.S. Foreign Policy, Shield of the Republic (Boston, 1943), p.51.

<sup>2</sup>Arnold Wolfers, "National Security as an Ambiguous Symbol", Political Science Quarterly (London), 67, 1952 pp.481-502.

<sup>3</sup>Arnold Wolfers, Discord and Collaboration: Essays on International Politics (Baltimore, 1962), p.150.



relatively high expectation that defeat will not be a consequence of any war that should occur".<sup>4</sup> Explaining the concept of security as a protection of core values, in the context of small states, Talukder Maniruzzaman states, "by security we mean the protection and preservation of the minimum core values of any nation - political independence and territorial integrity".<sup>5</sup>

Traditionally speaking, security in international relations means immunity, to varying degrees, of a state to threats emanating from outside its boundaries. The concept of security among nations is very complex and open to varying interpretations. It would be appropriate to look at security in an inductive sequence, i.e., security of components leading to that of the whole. Robert Jervis argues that "attempt of one state to achieve security precipitates a feeling of insecurity in other states. All states tend to assume the worst of others and respond accordingly. Their collective action unintentionally generates a spiral of insecurity".<sup>6</sup> The security dilemma is further exacerbated by the inflexible images it generates in the minds of decision makers, both of their own intentions and that of their opposite members.

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<sup>4</sup>Ian Bellamy, "Towards a Theory of International Security", Political Studies (London), 29:1 (1981), p.102.

<sup>5</sup>Talukder Maniruzzaman, "The Security of Small States in the Third World," Canberra Papers on Strategy and Defense No.25 (Canberra, 1982), p.15.

<sup>6</sup>Robert Jervis, The Spiral of International Security (Princeton, 1976), pp.63-76.

Defence and national security pose special problems for small states and territories, though the question is of universal concern and importance. For comparatively small territories that have neither the man power nor the resources to create and maintain a defense system adequate for even token resistance, psychological arrangements are essential for security. At one stage of history, small states tried to remain neutral and non-communicative, hoping that they would be ignored by bigger states. "But the experience of two world wars in this century alone has shown this approach to be unworkable. Since World War II, small states and territories have had to look for other arrangements".<sup>7</sup>

"Small states face two overreaching security threats at present: escalating East-West tension and an increase in the use of military force in the resolution of conflicts".<sup>8</sup> Having contained the development of each other's spheres of influence in Europe and having reached a dangerous stalemate in nuclear deterrence, the "two super powers have translated their conflict into a zero-sum game played out at every corner of the third world".<sup>9</sup> They are no longer interested only in

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<sup>7</sup>Small States and Territories: Status and Problems, A UNITAR Study by J. Rapaport and Others (New York, 1971).

<sup>8</sup>R. Espindola, "Security Dilemmas" in C. Clarke and Others, eds., Politics, Security and Development in Small States (London, 1987).

<sup>9</sup>R. Cassen, ed., Soviet Interests in the Third World (London, 1985).

those countries which have a strategic value because of their geographical position or natural resources. Low-cost operations to destabilize a country or effect a change in its affiliation to a super power are now undertaken, even if the country in question is of little real strategic value. "The object is to make the other super-power blink, force it to stretch its political and military resources away from the main theatres of conflict and acquire additional bargaining pawns".<sup>10</sup>

For indicative purposes, threats to small states can be grouped within four broad categories.<sup>11</sup> These are threats to:

- i) territorial security
- ii) political security
- iii) economic security, and
- iv) technological security.

Threats to territorial security may arise from the actions of a primary power or more powerful neighbours. Other than direct intervention in the form of invasion or occupation of territory, external assistance might be provided to overseas based national dissidents, mercenaries, or internally to guerrilla or secessionist groups.<sup>12</sup> In some instances

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<sup>10</sup>C. Clarke and others, eds., n.8, p.43.

<sup>11</sup>Vulnerability: Small States in the Global Society, Report of a Commonwealth Consultative Group (London, 1985).

<sup>12</sup>R.P. Barriton, "Diplomacy and Security: Dilemmas for Small States" in M.A. Hafiz and Others, eds., Security of Small States (Dacca, 1987).

secessionist or separatist groups have become linked with transitional violence. More generally, transitional violence, in the form of sabotage, assassination, the taking of hostages and the hijacking or destruction of aircraft and ships have intensified and been facilitated by the relative ease of modern transport. The modern state also faces major administrative problems in controlling both its territory and its external policy. In this respect, other threats to territorial security include refugee movements and externally controlled illicit operations like smuggling, drug trafficking arms deals and piracy. Scattered small island states in this respect face recurrent difficulties, which tend to be magnified and exacerbated if the small state is an offshore transit centre close to a major power.<sup>13</sup>

Threats to political security are amongst the commonest forms of threat to small states. The weak nature of many Third World States essentially derives from the lack of legitimate and effective civilian or military institutions.<sup>14</sup> A regime may be threatened from a number of sources such as ethnic disturbances, major domestic cleavages, and internal threats backed by external involvement. Some small states have also become extremely sensitive to external media coverage of internal developments in their country. Moves to limit

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<sup>13</sup>Report of a Commonwealth Consultative Group, n.11.

<sup>14</sup>David Goldsworthy, "Civilian Control of the Military in Black Africa," African Affairs, Vol.80, No.318 (January 1981) pp.26-34.

information may, however, have an opposite effect to that intended by creating heightened uncertainty about a regime and its policies.

In the third area of threats to economic security are included internal, external or transnational actions which adversely affect three main areas: national economic development policies, the international financial position and international trade policies. A fourth aspect of economic insecurity is the effect of periodic major natural disasters and industrial accidents. A key aspect of these problems relates to the dependent nature of small states' economies. Small states need external aid to develop their infrastructure, markets in which to sell their commodity production and foreign investment to introduce a measure of industrialization to their economies. Some even require financial assistance to balance the budgets, and most need help in securing oil supplies. The solution to these problems is mostly in the hands of the developed industrial nations, but their assistance is not free; it requires the allegiance of the small states which, accordingly, become a client of one of the two blocs.<sup>15</sup>

The fourth group of threats - technological - is suggested in order to convey the problems associated with the technological development of a state. Rapid developments in a number of areas

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<sup>15</sup>C. Clarke and others, ed., n.8.

of technology, such as telecommunications and data transfer, has drawn attention to the problem of technological management. Thus technological security is concerned with the ability of the state to evaluate, plan and coordinate both the acquisition and use of appropriate technology for developmental purposes. Rather than the piecemeal acquisition of technology, the concept of technological security places emphasis on developing national capabilities to make strategic analyses of technology.

All states are concerned about their security. However, not all states are able to identify their national values and arrange them into a hierarchy for appropriate identification of their satisfaction levels. Obviously, big states, because of a greater command of the resources available to them, are able to satisfy their national values. It is a different matter for small states. They have less resources and less ability to manipulate local and external conditions to satisfy their national values.<sup>16</sup> As a result, their values are not as much satisfied in quantity and quality as those of the big states. Some of the strategies that small states use for their security include isolation, alliance, submerging to larger entities in order to maintain part of their security, using leverages of geography and population characteristics to advantage, reliance

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<sup>16</sup>M.A. Hafiz and others (eds.) n.12.

on the United Nations, development of excellent leadership, membership in regional systems, non-alignment and the like.<sup>17</sup>

In practice, small states may adopt policies close to one of the above alternatives or indeed a combination of them, depending on their assessment of their security objectives and the resources at their disposal. But, in the final analysis, their security will depend on the political will of other, larger states expressed through assistance, alliance or the action of regional organizations.<sup>18</sup> In a world characterized by East-West conflict, such will is unlikely to exist, and small states are likely to remain pawns in super-power games. Only concerted international action can prevent that conflict from spreading and thereby provide a more secure environment for all members of the international community.

#### The United Nations Charter Provisions

The United Nations, since it was founded in 1945, has gone through many vicissitudes. From a handful of members at its inception, the membership of the world body today has increased to 159, with the admission of the latest member, Brunei. In spite of the many difficulties through which the world body has passed in its long journey from 1945, the continuing validity of the United Nations Organization is recognised

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<sup>17</sup>Ibid.

<sup>18</sup>C. Clarke and others, eds., n.8., p. 43

by all the countries, big and small, weak and powerful.<sup>19</sup> It is to be noted that of the 159 members of the United Nations, thirty three are small states. Of the small states which are not members of the world body, many of them are members of other institutions of the United Nations family.<sup>20</sup>

The United Nations is not a super state or anything resembling a world government. Membership of the United Nations does not simply confer a degree of legitimacy to its member states or other possible material benefits.<sup>21</sup> Its primary purpose is to maintain international peace and security, and to that end, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.<sup>22</sup>

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<sup>19</sup>Waliur Rahman, "The Role of the UN in the Emergence and Security of Small States" in M.A. Hafiz and others (eds.), n.12.

<sup>20</sup>M.S. Rajan, "Small States and the Sovereign Nation-State System", International Studies, (New Delhi).

<sup>21</sup>Sheila Harden, ed., Small is Dangerous - Micro States in a Macro World (London, 1985).

<sup>22</sup>Article 1, para 1 of the U.N. Charter.



Keeping the Peace:

The Charter approach to the problem of maintaining international peace and security is essentially a two fold one. On the one hand, it requires members to "restrain in their international relations from threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations."<sup>23</sup> On the other hand, the Charter requires that "all members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."<sup>24</sup> These two commitments are, in effect, the two complementary aspects of one central commitment, not to use force for the achievement of purely national purposes.

The Charter places upon the Security Council the primary responsibility for the maintenance of international peace and security. This responsibility is made particularly clear with respect to measures to be taken in case of a threat to the peace, breach of the peace, or act of aggression. The Security Council alone is expressly directed to determine the existence of such a condition, and to recommend or decide measures to be taken to restore international peace and security.

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<sup>23</sup>Article 2, para 4.

<sup>24</sup>Article 2, para 3.

Furthermore, the Charter defines in considerable detail what particular measures the Council may take and how it is to take them, although it gives to Council very wide discretion in the evaluation of circumstances, the choice of means and the timing of its actions.<sup>25</sup> Acting under article 39 and Chapter VI of the Charter, it may exercise its powers of peaceful settlement and adjustment, i.e., it may investigate the dispute or situation and make recommendations to the parties regarding the procedures and methods of settlement and adjustment. Under Article 40 it may call upon the parties to comply with provisional measures intended to prevent an aggravation of the situation, without prejudice, however, "to the rights, claims or position of the parties concerned." Under Articles 41 and 42 it may require Members to take such political, economic and military measures as may be necessary to restore international peace and security.

However, before members can be required to take military measures, they must agree to make available on call and "in accordance with a special agreement on arrangements... armed forces, assistance, and facilities, including rights of passage." These agreements are to govern "the number and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided."<sup>26</sup> To enable

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<sup>25</sup>Leland M. Goodrich, The United Nations (New York: 1959), p. 161.

<sup>26</sup>Article 43.

the Council to take urgent military measures, members undertake under the terms of Article 45 to "hold immediately available national airforce contingents for combined international enforcement action" until military arrangements are concluded placing at the Council's disposal sufficient military forces to enable it to exercise its responsibilities under Article 42. The permanent members of the Security Council are to consult with each other with a view to taking such joint action on behalf of the United Nations as may be necessary to maintain international peace and security.<sup>27</sup>

To assist the Security Council in the performance of its military responsibilities, provision is made for a Military Staff Committee, composed of the Chiefs of Staff of the permanent members or their representatives. The committee is made responsible under the Security Council for the strategic direction of armed forces placed at the disposal of the Council. The Security Council is authorized to decide whether measures which it orders shall be taken by all members of the United Nations or by some. Furthermore, members are required to afford mutual assistance in carrying out these measures.

The Charter system for keeping the peace by enforcement action is, therefore, and which vests great responsibility and power in the Security Council, along with wide discretion in

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<sup>27</sup>Article 106.

the discharge of this responsibility and the use of this power. Clearly, since the Security Council could only take action by agreement of all the permanent members, the system could be operative only against a non-permanent member of the Council, and not against a permanent member or for that matter a non-permanent member backed by a permanent member. It clearly depends for its effectiveness on recognition by the permanent members that they have a common interest in keeping the peace and that they should compromise their differences in order that they might cooperate in furthering this common interest.<sup>28</sup>

In addition to emphasizing the primary responsibility of the Security Council for taking enforcement action, the Charter also lays down the general principle that enforcement action is an exclusive preserve of the United Nations, that no such action can be taken under any regional arrangement or by any regional agency without the consent of the United Nations given through the Security Council.<sup>29</sup> However, there are two exceptions. One is to the effect that "nothing in the present Charter shall impair the inherent right of individual or collective self defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."<sup>30</sup>

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<sup>28</sup>Goodrich, n.25, p.162.

<sup>29</sup>Article 53, para 1.

<sup>30</sup>Article 51.

The other relates explicitly to the requirement of Council authorisation of enforcement action under regional arrangements, or by regional agencies. It provides that the requirement should not apply in the case of "measures against an enemy state, as defined in paragraph 2 of Article 53, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state."

Peaceful Settlement of Adjustment:

The Charter system of peaceful settlement and adjustment consists of duties placed upon Members and of organs and procedures which are intended to aid members in performing their duties and serving the general purposes of the organization.<sup>31</sup>

The Charter states that the first purpose of the United Nations is to maintain international peace & security, and to this end "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."<sup>32</sup> This describes the common purpose of members as well as of the principle organs and may be regarded as a basis element of the Charter system.

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<sup>31</sup>Goodrich, n.25, p.197.

<sup>32</sup>Article 1, para 1.

The Charter places upon the members certain obligations. They "shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered,"<sup>33</sup> More precisely, "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."<sup>34</sup>

If they do not succeed in settling it by these means, "they shall refer it to the Security Council"<sup>35</sup> If a dispute is submitted to the International Court of Justice, whether by specific agreement or in accordance with previous acceptance of the Court's compulsory jurisdiction, member states that are parties undertake to comply with the decision of the Court.<sup>36</sup>

To facilitate the performance by members of their duties under the Charter and to further the general purpose of the organisation to achieve peaceful settlement or adjustment, the Security Council, the General Assembly, the Secretary General and the International Court of Justice are given certain responsibilities and powers.

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<sup>33</sup>Article 2, para 3.

<sup>34</sup>Article 33, para 1.

<sup>35</sup>Article 37, para 1.

<sup>36</sup>Article 94, para 1.

The Security Council has the primary responsibility for the maintenance of peace and security.<sup>37</sup> It may look into any dispute or situation brought before it to determine whether its continuance "is likely to endanger the maintenance of international peace and security,"<sup>38</sup> and if it decides so, it may call upon the parties to settle the dispute by any means of their own choice in accordance with Article 33, recommend appropriate procedures or methods of settlement or adjustment, or, if the parties have submitted the dispute after failing to settle it by means of their own choice, recommend terms of settlement.<sup>39</sup> The Council does not have the power under the Charter to take decisions with respect to the methods or terms of settlement which are legally binding upon the parties. This power is given only to the International Court of Justice.<sup>40</sup>

Though the primary responsibility of maintaining international peace and security rests with the Security Council, the General Assembly may also consider and make recommendations with respect to any dispute or situation brought to its attention. The limitations on the General Assembly in this regard are that it cannot recommend any enforcement action as the

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<sup>37</sup>Article 24.

<sup>38</sup>Article 34.

<sup>39</sup>Articles 33, 36 and 37.

<sup>40</sup>Goodrich, n.25, p.198.

Security Council can and also cannot recommend any measure while the dispute is under consideration of the Council except at the Council's request.<sup>41</sup> Both the Assembly and the Council are free to ask the Court to give an advisory opinion on any legal question that may arise in connection with the consideration of a particular dispute or situation.



The Secretary General is empowered by the Charter to bring to the attention of the Security Council any matter which in his opinion threatens the maintenance of international peace and security.<sup>42</sup> He could also do the same with respect to the General Assembly under the Rules of Procedure of that organ.<sup>43</sup> Any extra authority to deal with the situation may be given to him by a decision of the Council or Assembly or by an agreement of the interested parties.

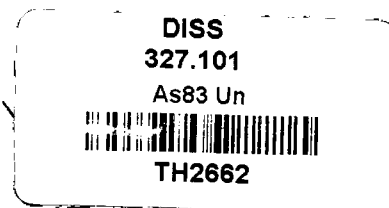
The International Court of Justice is the "principal judicial organ" of the United Nations<sup>44</sup> and as per the Charter is considered particularly appropriate for the settlement of legal disputes. Under its jurisdiction come "all matters specially provided for in the Charter of the United Nations

<sup>41</sup>Article 11, Para 2 and Article 12, para 1.

<sup>42</sup>Article 99.

<sup>43</sup>Rule 13 of "Rules of Procedure of the General Assembly", U.N. DOC. A/3660, 6 September, 1957.

<sup>44</sup>Article 92.



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or in treaties and conventions in force."<sup>45</sup> If the state parties declare in advance that they accept the jurisdiction of the Court,<sup>46</sup> then the Court has, without any special agreement, jurisdiction in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

The Court also has compulsory jurisdiction under other international agreements apart from the Charter. It may also give advisory opinions, at the request of the General Assembly or the Security Council, on legal questions which are aspects of actual disputes or situations being considered by these organs. The decisions of the Court in cases submitted to it by the parties are binding. The solicited opinions, are now- ever, only advisory.

#### Small States and the UN Security System

The organs of the United Nations responsible for the maintenance of international peace and security, together with

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<sup>45</sup>Article 36 of the statute.

<sup>46</sup>Article 36 of the statute.

other appropriate bodies, have tried to make arrangements under which the sovereignty and territorial integrity of small states can be preserved, and, if possible, guaranteed by the United Nations. Discussions in the United Nations have been devoted to devising special machinery to supplement the collective security arrangements envisaged under the Charter. While strict adherence to the principles of the Charter by all member states would obviate any need for special arrangements, the United Nations members have recognised the possibility of non-observance of these principles by some member states and consequently the need for further safeguards.<sup>47</sup>

In particular, the case of certain territories in Southern Africa have given grave concern to the United Nations. It was in regard to the territories in Southern Africa, Botswana, Lesotho and Swaziland that the United Nations was faced with the question of providing an adequate guarantee from external aggression to these states. It was a matter of continuing concern to the United Nations that these territories had been claimed by the minority racist government in the Republic of South Africa. Successive resolutions adopted by the General Assembly before the territories became independent included no concrete step, but the operative paragraph of General Assembly Resolution 1954 (XVIII), of 11 December 1963 stated that "the

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<sup>47</sup>UNITAR Study by J.Rapaport and Others, n.7.

General Assembly solemnly warns the government of the Republic of South Africa that any attempt to annex or encroach upon the territorial integrity of these three territories shall be considered an act of aggression".

As regards South West Africa (Namibia), the General Assembly by its Resolution 2372 (XXII) of 12 June 1968 called upon South Africa to remove all bases and other military installations located in the territory and to refrain from utilizing the territory in any way whatsoever as military base for internal or external purposes. It also declared that the continued foreign occupation by South Africa of the territory of South West Africa constituted a grave threat to international peace and security.

United Nations has examined the situation in the Pacific (Guam, the Trust Territory of the Pacific Islands, Papua New Guinea), in the Carribbean (Bermuda, United States Virgin Islands, Bahamas) in the Indian Ocean (British Indian Ocean Territory) and in the Mediterranean (Gibraltar) and has concluded that strategic military considerations are an important factor in prolonging colonial rule in many parts of the world. While it is contended that the existence of military bases in small territories would adversely affect their march to independence, it is also said that the existence of military bases after independence often serves to bolster security. It must be recognised, however, that in

the event of military confrontation between opposing powers, the small states with military bases might be more vulnerable to outside attack.

Presumably, when small states were admitted to the United Nations it was assumed that they would at least be as secure as other states and there was no recognition of special vulnerability. Indeed, small states have not been the object of more threats than larger units, and it is their potential vulnerability in the contemporary world which is the cause for concern.<sup>48</sup> In theory, the United Nations Charter provides for the military protection of small states as of larger ones. But whereas the latter might hope to put up at least some show of resistance against armed attack until the United Nations can assemble some kind of peacekeeping force, very small states have no hope of doing this and will, therefore, almost certainly be overwhelmed and occupied by the attacker before any effective United Nations action can be organized.<sup>49</sup>

But it is certain that the proliferation of small states has had a moderating effect on the operation of the "law of the jungle" in the sovereign nation-state system, the law which permits the big fish to swallow smaller ones. The

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<sup>48</sup>Neville Linton, "Policy Perspectives" in C. Clarke and Others, eds., n.8.

<sup>49</sup>C.E. Diggins, "The Problems of Small States," The Round Table, July 1985, pp.13-19.

operation of this "law" has been moderated in the post-1945 years by certain factors such as the tremendous expansion in the membership of the international community, the near universal membership of the international organization, the great progress achieved in the development of world public opinion in consequence of the technological advance in communications and news media, the acceptance of the principle of self determination of peoples as an operating norm of international politics, the widespread consciousness of the evils of imperialism and of the domination of the larger states over smaller ones and so on.<sup>50</sup> The cumulative and total effect of these developments is that the big states cannot attack or absorb the smaller states today with impunity as they used to do till the Second World War. Whenever the "law of jungle" has operated in recent years against a small state - as, for example, against the Bahamas, Grenada, Lesotho, the Seychelles, Vanuatu or Zanzibar - the aggressor state has had to explain and justify its action to the international community saying (dishonestly, though) that it did what it did "in self defence" under Article 51 of the Charter or for some other reason. What is more important, it has felt the need to affirm solemnly that it had no intention of annexing the victim state, or that it has not in fact annexed it (as the Soviet Union had annexed the Baltic states in the late 1930s).<sup>51</sup>

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<sup>50</sup> M.S. Rajan, n.20.

<sup>51</sup> Ibid.

The aggressor states have generally withdrawn, or are planning to withdraw from the territory of the victim states and have proclaimed their respect for the principle of self determination of peoples. This is indeed a far reaching achievement of the sovereign nation-state system and augurs well for the small states in the system. It is due to this achievement that some small states feel that they can now afford to dispense with their defence forces. If some other small states still maintain defence forces, they do so only for symbolic or ceremonial reasons. Indeed, most small states do not even perceive any insecurity from external sources to their sovereignty and independence. The international community acknowledges the inherent right of a sovereign state - irrespective of its apparent inability to defend itself by its own armed strength against external attempts to subdue it - to co-exist and function in the sovereign nation-state system as though it did not need any longer its own armed strength for its survival or as though the sovereign nation-state system or the international community would protect or was capable of protecting every state. This is so despite the tragedy of Grenada in 1983. However, with the threat of conquest and absorption by the large states almost disappearing in the post-Second World War era, the threat to small states was become more stable in the sense that it takes the form of economic and cultural subversion.<sup>52</sup>

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<sup>52</sup>Ibid.

It is, therefore, to this fact that small nations do not seem to accord higher priority to the adoption of measures against threats to their territorial integrity, sovereignty and independence from external sources than to their economic development. This is a significant development, one that testifies to the new born confidence of the small states about maintaining their sovereignty and territorial independence without even or with only symbolic armed forces, as well as to the tolerance and understanding of the other states and their willingness to encourage and support the small states in their self-confidence.

## Chapter II

### CONFLICT IN NICARAGUA : BACKGROUND

Nicaragua, with Honduras to the North and Costa Rica to the South, lies in the heart of the Central American isthmus. It has an area of 57,145 square miles and a population of approximately three million people.<sup>1</sup>

Although the country lies in the tropic region, the temperature varies from one region to another. Consequently, three distinct regions are found in Nicaragua: the Carribbean Lowlands, the Central Highlands and the Western Lowlands. The Carribbean Lowlands occupy nearly half of the country's area, having hot and moderate temperature which renders it useful for cultivation, but not for inhabitation. Only eight per cent of the total population lives there. The Central Highlands and Western Lowland regions are considered best for human inhabitation because of moderate temperature and seasonal nature. The Central Highlands is the best region for coffee cultivation because of the availability of rich soil and a temperate climate. The Western Lowlands are used for the cultivation of cotton, sugar and rice.

Ninety six per cent of the population is Mestiza, and the remaining four per cent is Miskito, Rama, Suma Indians

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<sup>1</sup>Nicaragua Information (Managua, n.d.), p.1.



and Criollas. Half of the population is urban and twenty-five per cent of it lives in the capital, Managua.<sup>2</sup>

In spite of its human and natural potential, Nicaragua remains a poor country. Its history shows that the people have experienced long and varied oppressions. In the late 1970s the annual gross national product per capita was only a little over US \$800. Moreover, unequal distribution of wealth makes some people live in poor hutments, eating poorly and having little access to education, health and other public services. This was to be found particularly before the 1979 revolutions.

The colonial history of Nicaragua began in 1523 when it was captured by the Spanish. Most of Nicaraguan territory was covered by dense forests, inhabited by Carib Indians, who resisted Spanish enslavement stubbornly and never allowed complete subjugation. There was persistent fighting between Spain and Britain to exploit Nicaragua. The Indian community living on the Atlantic Coast enjoyed British support during and after the Spanish occupation. The Spanish rule lasted three centuries. In 1821 Nicaragua become independent from Spain. Slavery was abolished in 1824.

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<sup>2</sup>(i) Thomas W. Walker, Nicaragua: The Land of Sandino (Boulder Colorado, 1981), pp.1-2; (ii) Nicaragua Information, n.1, p.3; (iii) Henri Weber, Nicaragua: The Sandinista Revolution (Great Britain, 1981), pp.1-2.

<sup>3</sup>walker, n.2(i), p.3.

The United States was also eager to expand its hegemony over Nicaragua because it saw the possibility of constructing a canal along Nicaragua's southern border, joining the Atlantic and Pacific Coasts. Thomas Monroe, the American President declared by way of Monroe Doctrine that no Western power should have the business of intervening in the American continent.<sup>4</sup> After independence Nicaragua was caught in a civil war situation. There was intense political struggle between two political parties of two cities: the Liberals of Leon and the Conservatives of Granada. It led to a civil war in the mid-1850s. The United States exploited this situation to establish the roots of its empire. In 1855 the American filibuster William Walker made an agreement with the Nicaraguan Liberals to aid them against the Conservatives. In October 1855 he captured the Conservative capital of Granada, with the financial backing of New Accessary Transit Company of the U.S. He get himself duly "elected" President of Nicaragua. His government was immediately recognised by the U.S. English was declared the official language and slavery was reestablished.<sup>5</sup>

This incident scared the other Central American states of the re-introduction of slavery. They got together and

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<sup>4</sup>Weber, n.2 (iii), pp.1-3.

<sup>5</sup>Andrew C.Kimomens, ed., Nicaragua and the United States (U.S.A., 1987), p.7.

entered Nicaragua and scored victory in May 1857 at the port of Rivas.<sup>6</sup>

In 1893, a Liberal revolt brought Jose Santos Zelaya to the Presidency. Zelaya ruled the country for the next sixteen years very severely and brought to Nicaragua relative modernization and prosperity. The Spanish-American war of 1898 gave way to American hegemony outside its borders, especially in the South American Continent. Santos Zelaya's zeal for national integration came into clash with the new interventionary spirit of the United States. He even denied to give sanction for the construction of the canal through the Nicaraguan territory.

Washington gave clear signals that it would like a Conservative overthrow of Zelaya. In 1909, when the revolt finally took place, the U.S., using the execution of two U.S. mercenaries as an excuse, severed diplomatic relations with Nicaragua and sent in its troops to ensure against the defeat of Conservatives. Zelaya was ultimately forced to resign and to spend the rest of his life in exile.<sup>7</sup>

This incident highlights the U.S. interventionary intentions. It was a Roosevelt corollary to the Monroe Doctrine that the United States might exercise an "international police power" in the Western Hemisphere. Of course,

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<sup>6</sup>Weber, n.2 (iii), pp.5-7.

<sup>7</sup>Walker, n.2(i), p.9.

this view completely reversed the meaning of the original doctrine of 1823.<sup>8</sup>

The United States installed Adolfo Diaz in 1909 after the overthrow of Zelaya. The US intervention aimed at not to substitute an effective government for one in a state of collapse, but to replace a nationalist regime. The new regime did not save the country from chaos but plunged it into economic regression and an outbreak of violence that blocked all further development. In 1926, Liberal President Sacasa's adviser H. Ofilio Argirello wrote:

Nicaragua... the past sixteen years has gone back at least half a century. Public schools... throughout the entire country have been closed wholesale.... Money formerly devoted to public instruction is used to subsidize Jesuit and parochial schools.... Concessions of utterly serious character have been given to powerful American concerns, which have merely exploited the natural resources of the country for their own benefit without any benefit whatsoever to Nicaragua.<sup>9</sup>

From 1912 to 1933 Nicaragua remained under direct military occupation of America, except for one year of indirect occupation. In these decades, America continuously tried to install Conservative regimes in Nicaragua. During the first occupation of 1912-1926 it ran the affairs through

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<sup>8</sup>Ibid., pp.10-12.

<sup>9</sup>Weber, n.2 (iii), p.10.

a series of Conservative presidents - Adolfo Diaz, Smiliano Chamoro and Diego Mannal Chamaro. The US intention of direct intervention was very clear. The United States needed the Conservatives and the Conservaties, who had neither military strength nor the popular backing to maintain themselves in power, needed the United States. Thinking that the Conservatives would run the affairs without American military presence, the United States withdrew its forces in August 1925. Immediately there broke out conflict among the Conservatives. The Liberals seized the opportunity and got into power in 1926. The Conservatives fled to take shelter in Washington.

The United States captured Managua and tried to manipulate the political crisis of Nicaragua. In spite of all US-Conservative efforts, Jose Maria Moncada, the candidate of the Liberal party won that contest. The United States thought it better to live with a Liberal president. For, in the words of one scholar, the U.S. "controlled his regime from a number of points: the American Embassy, the Marines...; the Guardia Nationals with its United States Army Officers, the High Commissioner of Customs, the Director of the Railways; and the National Bank."<sup>10</sup>

America again tried in the 1932 elections to manipulate the situation. But the Liberal candidate Juan B. Sacasa who

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<sup>10</sup> Ralph Lee Woodward, Jr., Central America: A Nation Divided (New York, 1976), p.200.

had led the Liberal uprising of 1926, won the presidential election. The significance of this period does not lie in the presidential election, but in the germination of the Somoza dictatorship, which was to rule Nicaragua for over four decades.

During the second U.S. occupation (1927 to 1933) America continued to intervene politically, economically and militarily despite the resistance of the Liberal presidents. During the first occupation (1912-25) of Nicaragua, America had stationed about 100 marines - called "Legation Guards" by the U.S. During the second occupation the United States organised, trained and armed a new Nicaraguan force, the National Guards, to control the Nicaraguan affairs. American excuse of the first Nicaraguan occupation was to quell a rebellion out of the fight between the Liberals and the Conservatives. Again, the US excuse for the second occupation was the fighting between the Liberals and the Conservatives.

The attitude of the United States was resented by the Nicaraguan people at large, led by Augusto Ceasar Sadino. He fought the US forces to check them out of Nicaragua. When frontal assaults could not serve his purpose, he adopted the tactics of guerrilla warfare. He was supplied information about the government troops by the peasants in the rural

areas.<sup>11</sup> Despite the massive mobilisation of US forces in Nicaragua - some 5,000 marines were sent against Sadino's group in 1930 and 1931 - Sadino was still "as great a threat ...as he had been at any previous point in his career", when the Marines left Nicaragua.<sup>12</sup> After the marines departed, Sadino signed a parliamentary peace agreement with the Liberal government. But early in 1934 when we was going to Managua to negotiate a final agreement, he was ambushed and killed.

### The Somoza Era

The Somoza dictatorship actualized in two stages, one with Anastasio Somoza Garcia assuming control of the US created National Guards in 1933 and then with the taking over of the presidency of Nicaragua, three years later.<sup>13</sup>

Divisions within the Conservative party in 1932 enabled the Liberal Sacasa to assume power. Somoza exploited the weak administrative situation of the country under the Presidency of Sacasa and won the confidence of the US Congress.<sup>14</sup>

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<sup>11</sup>Kimmens, ed., n.5, p.7.

<sup>12</sup>Richard Milet, The Guardianas of the Dynasty: A History of the US created Guardia Nacional de Nicaragua and the Sandino Family (Mary Knoll, New York, 1977), p.32.

<sup>13</sup>George Black, Triumph of the People: The Sandinista Revolution (London, 1981), p.4.

<sup>14</sup>Ibid., p.28.

In 1930 Somoza succeeded in overthrowing the elected President Sacasa and staged an "election" in which he was declared the winner. On 1 January 1937 he got hold of the National Guards and became its Chief and the ruler of Nicaragua.

The Somaza period marked two distinct features which make it unique in Latin America - the forty-two and a half year subjugation of Nicaraguan people was not only distinct in its duration but also in its dynastic character. Nowhere else in the Latin America have dictatorial powers passed successively through the hands of three members of the same family. Secondly, Nicaragua is the only country in Latin America which experienced a real social revolution.

1937-56: Anastasio Somoza Garcia

During his rule of nineteen years, Anastasio Somoza Garcia adopted a three point formula to keep himself in power - maintain the support of the Guards, cultivate the Americans and co-opt important domestic power contenders.<sup>15</sup> To keep the Guards in confidence, Garcia adopted the policy of isolating them from the people and by encouraging them to be corrupt and exploitative. Somoza succeeded in manipulating the American support too. His regime consistently

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<sup>15</sup>Walker, n.2(i), p.27.



backed the US foreign policy. In the 1930s and early 1940s Somoza helped United States against the Axis powers and against the communists thereafter. The US was allowed to establish military bases in Nicaragua during the Second World War and to use the country as a training ground for the CIA-organised counter-revolution against Guatemalan President Jacobo Arleenz in 1954. Somoza, in return, received funds to modernize the National Guards.

The rule of Anastasio Somoza Garcia came to a sudden end in 1956 when on 20 September, a young poet named Rigoberto Lopez Perez sparked bullets into Somoza's corpulent hulk.<sup>16</sup> In a biography of Somoza Garcia's assassin, the Sandinista leader Jose Benito Escobar reflected on the importance of the assassination by making the following points:

First: An incident which would serve as an example to the masses. It was necessary to destroy the myth of tyrant with a successful action which could never be employed by the bourgeoisie as a domagogic weapon.

Second: It put an end to the traditional methods of opposition which the bourgeoisie had imposed on the people; the bourgeoisie having been the class which had until this time headed the fight against the dictatorship in its own way.

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<sup>16</sup>Ibid., p.28

Third: It reaffirmed to the people that the forms of struggle to be employed to attain liberation should be those which correspond to the needs of the people, who should respond to the violence of exploitation with the violence of the popular masses.<sup>17</sup>

Immediately after the death of Anastasio Somoza Garcia, one of his sons, Luis Somoza assumed the Presidency, while the others used the National Guards to suppress the politicians who might have taken steps to impede the dynastic succession. In 1957 Luis was formally "elected" the President of Nicaragua.

#### 1957-1967: Luis Somoza

Luis Somoza adopted a liberal policy in handling Nicaragua. He was convinced that in order to preserve the system and to protect his family's interests he should bring about some reforms in the society. Luis introduced economic reforms in Nicaragua, like public housing and education, social security, agrarian reforms etc. He opened the door for the development of Liberal and other political parties in Nicaragua. In 1959, he got amended the constitution preventing the dynastic rule of his family members after the expiry of his tenure in 1963. The terms of the amendment

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<sup>17</sup>Quoted in Black, n.13, pp.32-33.

were also preserved when Luis ruled the country through puppet presidents, Rene Schick Gutierrez and Lorenzo Guerrero from 1963 to 1967.

The reforms introduced by Luis proved fake. The National Guards remained in authority to harass the people. Job opportunities were availed of by the elite class only. Thus the reforms had little positive impact on the lives of the impoverished majority of Nicaraguans.

There were a number of attempts to overthrow the system through armed revolt. Some of these attempts were made by the surviving members of Sandino's army and a number of operations were carried out by the guerillas of FSLN, the Sandnista National Liberation Front. The FSLN was found in 1962 in the name of Sandino.

On June 1967, after a blatantly rigged election Anastasio Somoza Debayle (who was the commander of the National Guards earlier) became the third member of his family to rule Nicaragua.

#### Anastasio Somoza Debayle's First Term, 1967-1972

Anastasio Debayle relied simply on military power to keep himself in office. The National Guards was the indirect instrument in the hands of America to support the US cause in Nicaragua. In the early 1960s, Somoza was able to double

his military expenditure. By 1963, an annual grant of \$1.6 million enabled the Guards to expand and smash the FSLN's first guerrilla force on the Rio Coco. After the Cuban revolution, Washington updated its old theory of US trained 'Constabularies' and started school in the Canal Zone to train Latin American officers. The establishment by the US of a Southern command at Quarry Heights in the Canal zone provided a link between Central America and the Pentagon. Nicaragua had a special place in the scheme. From 1946 to 1975 Nicaragua received \$23.6 million. From 1950 to 1975, 4,897 National Guards men passed through US military training, the highest figure for any Latin American country. From 1970 to 1975 Nicaragua put 52 graduates through the US Army Infantry and Ranger School, Army Civil Affairs School, Military Police School and Army Command and General Staff schools, again the highest figures for any Latin American country. From 1970 to 1975, 303 Nicaraguan students passed through the schools of America.<sup>18</sup>

The United States used Nicaragua as a base during the Bay of Pigs invasion in 1961. Somoza even provided to the US counter-insurgency troops for use in the Vietnam war.

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<sup>18</sup> NACLA: "The Pentagon's Proteges: U.S. Training Programmes for Foreign Military Personnel", Latin America and Empire Report, Vol.X, no.1, January 1976, quoted in Black, n.13, pp.47-48.

By this time the reputation of the Nicaraguan government was completely tarnished. Its legitimacy and civilian power were evaporating rapidly. According to the provisions of the Constitution, Anastasio was to leave the presidency in 1971. However, he amended the Constitution to stay in office for another one year. In 1971 he made a provision to hand over power to a triumvirate composed of two Liberals and one Conservative. In the transfer of power Somoza retained control of the Guards. The result was that, in 1974, he was 'elected' to another term that was supposed to last till 1981.<sup>19</sup>

Second Presidential Term of Anastasio Somoza Debayle (1972-77)

There was a severe earthquake in 1972, which cost the lives of 10,000 people. Somoza, at this time, because of his illegitimate rule, was bound to allow large scale bungling and squandering of funds by the National Guards, in the name of relief work. It was at this time that open expression of popular discontent against the Somoza regime began to surface.<sup>20</sup> Although the triumvirate was in power when the quake struck, Somoza lost no time in pushing that body aside and proclaimed himself as the head of the National Emergency Committee. The

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<sup>19</sup>Keesing's Contemporary Archives (Bristol), Vol.18 (1971-72), p.24887.

<sup>20</sup>Walker, n.2(i), p.31.

funds given by the Agency for International Development (AID) were used to construct luxurious houses for the National Guards Officers. The homeless people were forced to live in wooden shacks which were hastily constructed after the quake. No attention was paid to construct city's roads, drainage system and public transportation. This forced the people to organize strikes and demonstrations.<sup>21</sup>

At this juncture even the economically elite class in Nicaragua started objecting to the Somoza rule. This elite class was asked to pay for emergency funds. Consequently many people belonging to this class started joining the FSLN and some sections of the business community began giving the FSLN financial support.

The second wave of excesses followed a spectacularly successful guerilla operation in December 1974. In this incident, a unit of FSLN held a group of elite Managua party-goers hostage until the government met a series of demands, including the payments of a large ransom, the publication and broadcast over national radio of a lengthy communique, and the transportation of fourteen FSLN members for treatment.<sup>22</sup> Enraged by this affront, Somoza imposed martial law and deployed

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<sup>21</sup>Keesing's Contemporary Archives, Vol.22 (1975), p.26986.

<sup>22</sup>Ibid.

the National Guards in the country-side to root out the "terrorists". During this operation the National Guards engaged in extensive pillage, arbitrary imprisonment, torture, rape and summary execution of hundreds of peasants.

Catholic missionaries were harassed by the National Guards. These missionaries sent detailed information about the violation of rights to their superiors. Accordingly, Church hierarchy demanded the resignation of Somoza.

All these incidents earned for Somoza considerable international notoriety. His excesses became the subject of hearings of the House of Representatives Subcommittee on International Relations<sup>23</sup> and a lengthy Amnesty International investigation.<sup>24</sup> Somoza was found as the worst human rights violater in the Western Hemisphere.

By 1977 the US administration started putting pressure on Somoza to improve his human rights image. Somoza had by now earned a bad reputation within and outside Nicaragua. Obviously, the guerilla groups gained popularity among the people. The totalitarian policies of the Somoza regime were forcibly implemented by the National Guards, which added fuel

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<sup>23</sup>U.S.Congress, House Committee on International Relations, Sub-Committee on International Organisations, Human Rights in Nicaragua, Guatemala and El-Salvador: Implications for U.S. Policy, Hearings, 8, 9 June 1976 (Washington D.C.).

<sup>24</sup>Findings Summarized in Amnesty International Report 1977 (London), pp.150-53.

to fire. When the frustrated people protested, the country was put under a state of siege.<sup>25</sup>

Economy of Nicaragua During the Somoza Era

On the whole, economy of Nicaragua throughout the Somoza era kept on declining. Some economic analysts have pointed out 5 to 6 year cycles of growth and slump in the Nicaraguan economy: growth from 1950 to 1956 and 1962 to 1967, decline from 1956 to 1962 and from 1967 to 1972. No single spell of growth was capable of resolving the structural crisis of the economy under Somoza, and the brief respites of 1973 to 1974 (the false post-earthquake boom) and 1975-1977 (with the worldwide rise in the prices of cotton) were the only interludes in an otherwise irreversible decline.<sup>26</sup>

Moreover, life expectancy during the mid-1970s was one of the lowest in Latin America. Nearly two thirds of the rural population over 10 years of age was illiterate and a 1973 survey found that three-fifths of the population had a deficient food intake.<sup>27</sup>

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<sup>25</sup>R.Harris and Others, eds., Nicaragua: A Revolution Under Siege (London, 1985), pp.37-38.

<sup>26</sup>Black, n.12, p.66.

<sup>27</sup>Millett, n.11, p.40.



During 1950s the economic growth had reached a new high as the cotton prices had increased. Nicaragua became the major cotton producer and exporter during this period. Industrialization was almost nil till this time. During 1960s and 1970s industrialization began but most of the machinery for industry was imported which cost too much. It also increased Nicaragua's dependence on imported goods and machinery. A study indicates that in 1974, 96 per cent of the inputs used in the manufacture of rubber products, 95 per cent in the electrical appliances industry, 88 per cent of printing and publishing, 85 per cent of metal products and 65 per cent of chemical products were imported.<sup>28</sup>

The negative effects of this kind of industrialization on Nicaragua are recognised in a recent report of the United Nation's Economic Commission for Latin America which notes that "due to the lack of more vertically integrated industrial development, the changes in the composition of imports involved in actually a more vulnerable balance of payment due to the raw materials, part and components and in equipment and machinery".<sup>29</sup>

By the 1970s inflationary pressures from the international market and the country's growing foreign debt

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<sup>28</sup>.

R.Harris and Others, eds., n.25, pp.37-38.

<sup>29</sup>Ibid.

brought its fragile industrial development to a near standstill. Moreover, insurrection, demonstrations and strikes called by the opposition halted further investment. Most of the factories were owned by the Somoza family which were forced to be locked up by the opposition. The Somoza regime and its supporters had amassed an external debt of \$1.65 billion. This amount was equivalent to about \$400 per family and was larger than the entire national income.<sup>30</sup>

The Amnesty International in its report of 1976 suggested that the decree of suspension of domestic and constitutional rights be repealed. All the criminal matters in the military courts be transferred to the civilian courts as provided for in Article 14, Martial Law of 1974, and all press censorship withdrawn. Local military commanders be prosecuted under civil or military law for abuses committed by forces under their command and the direct perpetrators of these acts be prosecuted.<sup>31</sup>

By the last quarter of 1977, the state of siege was lifted due to pressures from within and outside.<sup>32</sup> The reinstatement of the freedom of press enabled the press to present the true picture of the Somoza regime, and newspapers

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<sup>30</sup> Ibid., p.41.

<sup>31</sup> An Amnesty International Report on the Republic of Nicaragua, 10-15 May 1976 (London, 1977), p.39.

<sup>32</sup> Keesing's Contemporary Archives, November 1978-July 1979, p.29805.

such as La Prensa of Pedro Joaquin Chamorow covered in detail the past and present corruption and violation of rights.

The Last Phase of the Somoza Regime and the War of Liberation 1978-79

On 10 January 1978 Joaquin Chamorow was shot dead at a close range by a team of professional assassins.<sup>33</sup> This was a final catalyst for a war that culminated in the complete overthrow of the Somoza regime eighteen months later. This "War of Liberation" in which an externally created dictatorial system<sup>supported</sup> almost exclusively by a foreign trained army was won through the concerted efforts of virtually all major groups and classes in the country. After the assassination of Chamorow, there was an unprecedented general strike led by the Chamber of Commerce and Industry for more than two weeks with 80 to 90 per cent effectiveness.<sup>34</sup>

Somoza refused to quit his post until the expiry of his term in 1981. On one occasion he angrily said, "They will have to kill me first.... I shall never quit power like Fulgencio Batista in Cuba or Perez Jimenez in Venezuela. I'll leave only like Rafeal Leonidas Trujillo of the Dominican Republic... that is, dead".<sup>35</sup> On another occasion he said,

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<sup>33</sup>New York Times, 11 January 1978.

<sup>34</sup>New York Times, 24 January 1978.

<sup>35</sup>"Somoza Rules out Early Departure", Central American Report, Vol.5, No.12, 20 March, 1978, p.95, quoted in Walker, n.2(i), p.36.

"I'm a hard nut... They elected me for a term and they've got to stand me".<sup>36</sup>

On 5 July twelve opposition members returned from exile to Nicaragua against the wishes of Somoza. They were greeted as heroes by Nicaraguans in huge crowds. On 19 July over 70 per cent of the business answered the Board Opposition Front's (composed of most of Nicaragua's political parties and organisations) call, demanded Somoza's resignation and declared another nation-wide strike that paralysed the country for almost a month.

Somoza tried to convince the Carter Administration of the genuineness of his rule. The uprisings caused the Carter Administration to feel that Somoza might not be able to survive until 1981. This feeling was accompanied by a growing sense of alarm that Nicaragua might turn into "another Cuba".<sup>37</sup> Somoza tried to pacify Washington's fear of communist jerk through his lobbyists in the U.S.

The FSLN went all out to effect a victory. It thought of having a large, well trained and well armed guerrilla force. Accordingly, it recruited and trained young men and women. The students took part in large numbers in this campaign. The

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<sup>36</sup> Washington Post, 23 July 1978.

<sup>37</sup> William Leo Grande, "The Revolution in Nicaragua: Another Cuba", Foreign Affairs (New York), Vol.58, no.1, February 1979, pp.28-50.

force of FSLN reached from a few hundred to several thousands. At the same time, members of the opposition - particularly the twelve - visited many parts of the world to convince the people of the right cause of the Sandinistas. The FSLN, which had earlier been divided into three factions, finally joined under one nine-man directorate and issued a joint programme of action.

In June, barricades were erected throughout Nicaragua and National Guards outposts overcome one by one. In mid-June, a broad based government in exile was announced by the FSLN. The United States tried its best to check this alarming situation. It even requested the OAS (Organisation of American States) to send a peacekeeping military force to Managua, but this demand of the Carter administration was rejected. Ultimately Washington arranged for the departure of Somoza to Miami on 17 July. A day later, the provisional government took the oath of office in a ceremony held in Leon and on 19 July 1979, the FSLN entered Managua and accepted the surrender of most of what was left of the National Guards. Walker says that after the provisional government took office, the enthusiastic crowd tore the statues of Anastasio Garcia and Luis Somoza from their pedestals and dragged the broken pieces triumphantly through the streets.

Chronology

- 1909 Dictator Jose Santos Zelaya overthrown, chaos and instability follow, leading to US financial and military intervention (1912-33).
- 1927 Peace accord among fighting factions provides basis for US occupation and subsequent elections. Augusto Sandino refused to accept peace accord and lead guerrilla force against US marines.
- 1933 Anastasio Somoza Garcia named dictator of new "non-partisan" National Guards. US Marines withdrawn.
- 1934 Sandino assassinated by National Guardsmen, Somoza seizes power.
- 1937 Somoza officially becomes president.
- 1956 Somoza assassinated, son Luis and Anastasio Jr. continue family domination.
- 1961 Sandinista National Liberation Front (FSLN) founded.
- 1967 Anastasio Somoza Debayle elected president.
- 1972 Earthquake devastates Managua: Somoza's mishandling of crisis and of international relief funds, increased antipathy to regime.
1974. Election fraud ensures Somoza's re-election to six year term.

- 1977 Popular unrest intensifies. US suspends credits to Somoza Government through votes at World Bank and Inter American Development Bank.
- 1978 US and OAS fail in mediation attempts; US suspends military aid to Somoza.
- 1979 FSLN supported by other opposition groups overthrow Somoza.

Source: Mark Falioff and Robert Royal ed., The Continuing Crisis: U.S. Policy in Central America and the Carribbean: Thirty Essays by Statesmen, Scholars, Religious Leaders and Journalists (USA: 1987).

### Chapter III

## EMERGENCE OF THE SANDINISTA REGIME AND THE UNITED STATES' REACTION

Since the Sandinistas took power on 19 July 1979, one of the most fundamental problems faced by Nicaragua has been its relationship with the United States. The U.S. Government, on its part, has been confronted with the question of how to deal with the revolutionary regime in Nicaragua.

For a major part of this century Nicaragua has been subject to United States interests, first through direct military intervention and then by way of Somoza's National Guards, which was in effect an army of occupation trained and equipped by the United States. During the 40-year rule of Somoza, Nicaragua was an unconditional ally of the United States as the latter backed the dictatorship. As a result, the foreign policy of Nicaragua was completely aligned with that of the United States.

One of the principal goals of the Nicaraguan revolution was to destroy this relationship. Thus the triumph of the revolution radically altered the ties Nicaragua had earlier with the United States. The United States ceased to be a military, political or ideological ally hereafter. For the Sandinistas, future United States-Nicaragua relations were to be founded on equality, mutual respect and peaceful



co-existence. Tomas Borge, Minister of the Interior and member of the national directorate of the Sandinista National Liberation Front (FSLN), affirmed shortly after the triumph that "we want to be friends, not serfs of the United States".<sup>1</sup>

To the Reagan administration, the revolutionary victory in Nicaragua was a loss for the United States and gain for Soviet Union and Cuba. In its view, it also represented a regional threat because this revolution could spread throughout Central America and jeopardize the security of the United States. As a result, Reagan's electoral platform included a death sentence for the Sandinista revolution:

We deplore the takeover of Nicaragua by the Sandinistas, as well as Marxist attempt to destabilize El-Salvador, Guatemala and Honduras. We do not support US aid to any Marxist government in this Hemisphere and we are against the aid programme of the Carter administration to the government of Nicaragua. However, we will support the efforts of the people of Nicaragua to establish an independent and free government.<sup>2</sup>

#### The CIA (Central Intelligence Agency) War on Nicaragua

The involvement of the CIA began under the former US President Carter which consisted of providing financial assistance to opposition elements within Nicaragua and expanding US intelligence operations. Shortly after taking office,

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<sup>1</sup>Quoted in Manlio Tirado, "The United States and the Sandinista Revolution" in R.Harris and others, eds., Nicaragua: A Revolution Under Siege (London, 1985), p.202.

<sup>2</sup>Quoted in Ibid., p.204.

President Reagan, on 9 March 1981, authorized covert military actions against the government of Nicaragua, that were supposedly designed to interdict Nicaraguan supplies to El-Salvador.<sup>3</sup> During the spring of 1981, the Contras began to receive training at camps run by Cuban exiles outside Miami and in Campa and Okeechobee, Florida, as well as in Honduras and other countries. Contra leaders refused to comment when asked if they were receiving CIA and/or Pentagon support.<sup>4</sup> On December 1, Reagan approved and signed a 10-point covert action plan drawn up by the US National Security Council (NSC), which called for the creation of a 500-man commando force and the expenditure of \$19 million to conduct paramilitary operations against Nicaragua. Here again the primary function of these operations was to interdict the flow of arms from Nicaragua to the opposition movement in El-Salvador.<sup>5</sup>

More open forms of sabotage by the Contras became evident during 1982. In December 1982 the CIA informed Congress that the Contra forces had grown to 4,000.<sup>6</sup> The CIA was attempting to transform the Contras from diverse bands of counter-revolutionaries into a single force. It became apparent that the

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<sup>3</sup>New York Times, 15 February 1982 and 8 April 1983.

<sup>4</sup>New York Times, 17 March 1981 and 2 April 1981.

<sup>5</sup>Washington Post, 10 March 1982 and 16 March 1982, New York Times, 14 March 1982 and 20 April 1983.

<sup>6</sup>Miami Herald, 19 December 1982.

Honduran government was closely cooperating with the CIA in the covert operations against Nicaragua and it was also known that the U.S. Ambassador to Honduras, who was a counter-insurgency expert with experience in Vietnam and Cambodia was in immediate charge of the Contra activities.<sup>7</sup> In an investigation "Newsweek" established that the goal of the Contras was to overthrow the Nicaraguan government and not simply to stop the flow of arms to El Salvador.<sup>8</sup> A public furor developed resulting in the passage by Congress of the Boland-Zablocki bill of 8 December 1982, which prohibited the U.S. from giving aid to paramilitary groups for the purpose of overthrowing the Nicaraguan government or promoting a war between Nicaragua and Honduras.<sup>9</sup>

Nevertheless, covert U.S. aid continued. The Contra operations from Honduras against Nicaragua intensified and a southern front of Contras in Costa Rica also opened up operations against Nicaragua. On 4 May 1983, President Reagan acknowledged publicly that the United States was providing direct assistance to the Contras.<sup>10</sup> The officially authorized United States aid for the counter-revolutionaries and the record of military activities of the Contras are given in Tables 1, 2 and 3 below.

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<sup>7</sup>New York Times, 3 April 1983 and 4 April 1983.

<sup>8</sup>Newsweek, 8 November 1982.

<sup>9</sup>Miami Herald, 9 December 1982.

<sup>10</sup>Washington Post, 5 May 1983.

Table 1

## OFFICIALLY AUTHORISED UNITED STATES AID

Month and year	U.S. \$ millions	Remarks
November 1981	19.95	Approved by the National Security Council for covert operations
December 1982	30.0	
December 1983	24.0	Approved by the U.S. Congress for "direct or indirect support for military actions within Nicaragua."
June 1985	27.0 or 32.0	The House of Representatives and the Senate approve different "Humanitarian" aid package for the Contras.

Source: Nicaragua: The Counter-revolution; Development and Consequences (Managua: Center for International Communication, n.d.), p.13.

Table 2

## THE NUMBER OF CLASHES BETWEEN SANDINISTA AND COUNTER-REVOLUTIONARY FORCES

Year	Number of Clashes
1981	15
1982	78
1983	600
1984	948
1985 first half	710
Total	2351

Source: Nicaragua: The Counterrevolution: Development and Consequences (Managua: Center for International Communication, n.d.), p.8.

Table 3RECORD OF COUNTERREVOLUTIONARY ATTACKS CARRIED  
OUT FROM COSTA RICA AND HONDURAN TERRITORIES

Year	From Costa Rican Territory	From Honduran Territory	Total per year
1980	0	49	49
1981	24	59	83
1982	16	53	69
1983	25	83	108
1984	22	46	68
1985 first half	18	10	28
Total	105	300	405

Source: Nicaragua: The Counterrevolution: Development and Consequences (Managua: Centre for International Communication, n.d.), p.8.

A new CIA strategy of attacks against industrial and transportation targets was also put into operation. On 10 October 1983, an air and sea attack destroyed five oil storage tanks in Carinto. Oil pipelines at Puerto Sandino were also attacked. These attacks were attributed to the Contras with CIA planning and support.<sup>11</sup> In the spring of 1984, Nicaraguan harbours were mined. This operation resulted in damage to ships from Nicaragua, the Netherlands, Panama, Liberia, Japan and the Soviet Union. The Reagan

<sup>11</sup>New York Times, 10 October 1983

administration defended the mining as a form of "self-defence by El Salvador and its allies under international law".<sup>12</sup>

Table 4

ACTIONS AGAINST CIVILIAN AND ECONOMIC TARGETS

Actions	1981	1982	1983	1984	1985 (1st half)	Total
Kidnapping of Civilians	2	20	40	109	61	232
Ambushes of civilian and government vehicles	5	17	78	147	98	345
Sabotage of economic and civilian targets	19	55	199	236	131	640
Murders of civilians	-	4	15	21	11	51
Total	26	96	332	513	301	1268

Source: Nicaragua: The Counterrevolution: Development and Consequences (Managua: Centre for International Communication, n.d.), p.8.

U.S. Military Build-up in the Region

There has been a constant expansion of U.S. military presence in Central America throughout the period of the Reagan administration. The blueprint for the US military build up was laid out in considerable detail in the National Bipartisan Commission on Central America (Kissinger Commission)

<sup>12</sup>New York Times, 9 April 1984.

Report of January 1984.<sup>13</sup> In April 1984 the New York Times reported "The Pentagon is now in a position to assume a combat role in Central America" and cited such indicators as the following:

- In the last year alone the number of US military advisers in El-Salvador and Honduras has multiplied more than ten-fold, from 150 to 1800 (plus 800 on a temporary basis).
- The role of the Pentagon in policymaking has increased.
- Instances of US troops being fired upon in combat situations have increased.
- Personnel attached to the bases being built in Honduras are being used to get around the US Congressional limits on US advisers in El Salvador (e.g. such personnel are used for flying regular reconnaissance missions in tactical support of the Salvadorans).

The transformation of Honduras as a military base for the U.S. began in 1979 after the Sandinista victory in Nicaragua. With Somoza's defeat, the U.S. lost its foremost ally in Central America. Also, there was the danger of the revolution spreading to the whole of Central American region.

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<sup>13</sup>Marlene Dixon, "Reagan's Central American Policy: A New Somoza for Nicaragua" in M.Dixon, ed., On Trial: Reagan's War Against Nicaragua (London, 1985), p.121.

Thus the U.S. needed a new nerve centre for its military operations in Central America. In the words of General E.C. Meyer, the U.S. should "anchor the defence of the Central American region initially in Honduras".<sup>14</sup>

According to one interpretation, Honduras became the linchpin in a Washington conceived "Iron Triangle" (Honduras-El Salvador-Guatemala), with the three countries bound together by coordinated activity of their respective military and paramilitary forces. The key was to prevent "another Nicaragua" in El Salvador and to use Honduras in the US war against Nicaragua. The latter purpose soon became clear as Nicaraguan Contra bases were established in Honduras and Contra attacks against Nicaragua from Honduras were encouraged.<sup>15</sup>

The principal elements in the military build up of Honduras include the following:

- U.S. military assistance grew from \$4 million in 1980 to \$78.5 million in 1984.
- U.S. military personnel stationed in Honduras increased from 26 in 1980 to 2000 as of the spring of 1984, in addition to a fluctuating number of US troops participating in military exercises.<sup>16</sup>

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<sup>14</sup>Washington Post, 20 June 1983

<sup>15</sup>Philip Wheaton, "U.S. Strategies in Central America," in M. Dixon, ed., Revolution and Counterrevolution in Central America (San Francisco, 1983), p.73.

<sup>16</sup>Washington Post, 24 March 1984.



- In the latter part of 1983, U.S. personnel in Honduras included 125 Green Berets, training Salvadoran troops, plus 75 military advisers for training Honduran troops, and 50 Air Force electronic surveillance specialists. As there was no Congressional limits on the numbers of U.S. advisers in Honduras, this circumvents the limits established on the numbers of advisers in El Salvador.<sup>17</sup>
  - The CIA has also played a crucial role in Honduras. As the Contras' operation intensified, the size of the CIA station also increased to about 200 people in 1982.<sup>18</sup>
  - The Command structure for the Contras included the U.S. Ambassador to Honduras, John Negroponte. He headed a team of CIA and U.S. military experts from which orders would flow to the operational level of the Contras, most of whose leaders were former Somoza National Guardsmen.<sup>19</sup>
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<sup>17</sup>New York Times, 21 July 1983 and 23 July 1983.

<sup>18</sup>New York Times, 4 December 1982

<sup>19</sup>Newsweek, 8 November 1982

Table 5

## THE ARMED FORCES OF THE FIVE CENTRAL AMERICAN COUNTRIES

1. The Central American Armies

	Nicara- gua	El Salvador	Honduras	Guate- mala	Costa Rica
<u>Active Forces</u>					
Army	40,000	48,000	21,000	40,000	-
Active Reserves and other forces	20,000	8,500	4,000	11,000	9,500
Total	60,000	56,000	25,500	51,000	9,500

2. Air Force

Aircraft	Nicara- gua	El Salvador	Honduras	Guate- mala	Costa Rica
First Line	0	53	32-50	16	0
Second Line	12	21	7	0	0
Transport & Support	13	14	22	36	8
Helicopters	6-26	46	17	25	6
Training	0	29	19	25	0
Total	31-51	163	97-115	102	14

- Sources:- 1. U.S. Department of Defense, cited in the New York Times, March 30, 1985.
2. Militarization in Central America (Managua: Centre for International Communication, 1986), p.3.

Table 6

## SOVIET MILITARY AID TO NICARAGUA

	<u>\$ Million</u>
1980	6
1981	39
1982	80
1983	133
1984	112
Total	350

Source: Militarization in Central America  
(Managua : Centre for International  
Communication, 1986), p.10.

Table 7MILITARY AID FROM THE "SOVIET BLOC" TO  
NICARAGUA

	<u>\$ Million</u>
1982	253
1983	146
1984	146
Total	745

Source: Militarization in Central America  
(Managua: Centre for International  
Communication, 1986), p.10.

Table 8

UNITED STATES AID TO CENTRAL AMERICA

\$ Million

	1980	1981	1982	1983	1984	1985	1986	Total 1980-1986
<u>El Salvador</u>								
Military	6.0	35.5	82.0	81.3	196.5	128.2	132.6	662.1
Economic	57.8	133.6	182.2	231.1	331.1	326.1	350.8	1,592.1
Totals	63.8	149.1	264.2	312.4	527.6	454.4	483.4	2,254.4
<u>Honduras</u>								
Military	4.0	8.9	31.3	37.3	77.5	62.5	88.2	309.7
Economic	51.0	33.9	78.0	101.2	209.0	138.9	157.9	769.9
Totals	55.0	42.8	109.3	138.5	286.5	201.4	246.1	1,079.6
<u>Guatemala</u>								
Military	0.0	0.0	0.0	0.0	0.0	0.3	10.3	10.6
Economic	11.1	16.6	23.9	17.6	33.3	73.8	77.2	253.5
Totals	11.1	16.6	23.9	17.6	33.3	74.1	87.5	264.1
<u>Costa Rica</u>								
Military	0.0	0.3	2.1	2.6	9.2	9.2	2.7	25.8
Economic	14.0	13.3	120.6	212.4	177.9	208.0	187.3	933.5
Totals	14.0	13.3	122.7	215.0	187.1	217.2	190.0	959.3
<u>Totals</u>								
Military	10.0	44.4	115.4	121.2	283.2	200.2	233.8	1,008.2
Economic	133.9	177.4	404.7	562.3	751.3	746.8	773.2	3,549.6
Totals	143.9	221.8	520.1	683.5	1,034.5	947.0	1,007.0	4,557.8

Source: Militarization in Central America (Managua:Centre for International Communication, 1986), p.9.

Military Exercises and Military Construction in Honduras

The period since 1980 also saw an unprecedented build up through military exercises held in Honduras, and military construction.

- The first in the series of maneuvers, called Halcon Vista were held in October 1981; they were primarily naval.
- The "Combined Movement" maneuvers in 1982 were held near the Honduran border with Nicaragua. During the course of this exercise, a permanent base was constructed at Durzuna, 25 miles from Nicaragua.
- The Big Pine I maneuvers in February 1983 near the Honduran-Nicaraguan border involved 4000 Honduran and 1600 US troops. They left behind equipment and facilities for the use of the Contras. According to one study, "the location and nature of US - Honduran joint military exercises in 1982 and 1983 have raised questions as to the intent of these maneuvers. Both maneuvers took place within a few miles of Nicaraguan rebel base, on the Honduran side of the border. The Nicaraguan government alleged that US communication and military equipment transferred to the Mosquitia as part of both 'Combined Movement' and 'Big Pine I' were ultimately destined for the US backed counterrevolutionary forces."<sup>20</sup>

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<sup>20</sup>"United States - Honduran Relation : A Background Briefing Packet", May 1984, Central American Historical Institute, quoted in Dixon, n.13, p.123.

- The biggest and the most multifaceted of the exercises was Big Pine II, held from July 1983 to February 1984. It involved 6000 Honduran and 5000 U.S. Troops. The Big Pine II maneuvers took place in several different locations in Honduras. The purpose was largely to intimidate the Nicaraguan government and could be even to prepare for an invasion of Nicaragua.<sup>21</sup>
- In April - June 1984, the Grenadera maneuvers were held which also provided the occasion for the construction and expansion of two airfields near the Honduran borders with El-Salvador and Nicaragua.
- Another big exercise which lasted from March 1984 to March 1985 was Big Pine III. It involved armored vehicles and navy ships, Honduran Cavalry Regiment, Salvadoran armed forces and equipment and 2000 U.S. troops.<sup>22</sup>

The U.S. also vastly expanded airstrips in both the northern and southern parts of Honduras. It has built roads and radar and communication centres for military use and has also spend \$ 1.50 million for air and naval bases on the Atlantic coast.<sup>23</sup>

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<sup>21</sup>Institute de Investigaciones Socio-Economicas de Honduras (INSEH), "A Permanent U.S. 'Maneuver' See Dixon, ed., n.13, p.101.

<sup>22</sup>Nicaragua: The Counterrevolution; Development and Consequences (Managua: Center for International Communication, n.d.), p.15.

<sup>23</sup>New York Times, 23 July 1983.

The Propoganda War:

The United States, in order to justify the covert and overt military actions against Nicaragua, is also engaged in a persistent war of propoganda against the Nicaraguan government. The propoganda war has two major themes of disinformation: the alleged arms flow to El-Salvador and the image of Nicaragua as an aggressive totalitarian nation.

The Boland-Zablocki bill of December 1982 prohibits the U.S. from providing military equipment, military training or advice or other support for military activities, "for the purpose of overthrowing the government of Nicaragua." In order to get around this legislation, the Reagan administration has claimed that its objective is not to overthrow the Nicaraguan government but only to pressurise it to stop shipping arms to the opposition movement in El-Salvador. But the Reagan administration has so far been unable to prove its case or to produce evidence that such arms shipments are taking place.

In March 1984, U.S. Undersecretary of Defence, Fred Ikle acknowledged that 50 per cent of the arms reaching the Salvadoran resistance come from the United States itself, captured from the Salvadoran army.<sup>24</sup> Furthermore, administration claims about funding the Contras to "pressure" Nicaragua to stop the arms flow are contradicated by the fact that the Contras themselves

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<sup>24</sup>New York Times, 28 March 1984 and 11 April 1984.

have always stated clearly that they had no goals related to El-Salvador, and have never once intercepted an arms shipment to El-Salvador.<sup>25</sup>

The Reagan administration has also tried to project Nicaragua as an aggressive nation which constitutes a powerful threat to the United States of America. Reagan himself has said that Central America has "become the stage for a bold attempt by Soviet Union, Cuba and Nicaragua to install communism by force throughout the Hemisphere." In the same speech Reagan stated that "the Sandinistas are not content to brutalize their own land. They seek to export their terror to every other country in the region." He also said that the Nicaraguan people are under a "communist regime of terror."<sup>26</sup>

However, Nicaragua does not seem to be a totalitarian regime. Its government has the support of a great majority of the people. There is broad representation of the people in the Council of State, elected neighbourhood bodies, labor unions, peasant associations and other popular organizations in many levels of society, and there is complete freedom of religion. Reports from such human rights organizations as

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<sup>25</sup>Eldon Kenworthy, "Central America : Beyond the Credibility Trap," World Policy Journal (New York) Fall 1983, pp.236-42.

<sup>26</sup>New York Times, 10 May 1984.



Amnesty International and Americas watch have given Nicaragua a good human rights record.<sup>27</sup>

The analysis of the tables 5,6,7,8 above shows that Nicaragua is in a disadvantageous position, taking into account its neighbours' armies and powerful air forces as well as the military power of the U.S., which stands behind the forces of Costa Rica, Honduras, El-Salvador and Guatemala.

Thus the campaign of disinformation by the Reagan administration that portrays Nicaragua as an aggressive and totalitarian threat to the United States seems false and is used simply as a justification for U.S. intervention in Nicaragua.

#### Economic Warfare:

From the very beginning the Reagan administration engaged itself in policies of economic aggression as part of its programme of destabilization of the Sandinista government. Under the Carter administration the policy was to extend minimal aid to Nicaragua in order to retain a certain degree of leverage over the policies of the Sandinistas and to prevent them from turning to the socialist bloc for assistance. On 17 October 1980 under the Presidentship of Carter, U.S.A. and Nicaragua signed an agreement of \$ 75,000,000 aid package to Nicaragua

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<sup>27</sup>New York Times, 14 September 1984, Washington Post, 8 September, 1984.

though later on it was suspended by U.S.A. in response to alleged Nicaraguan arms trafficking to El-Salvador in early 1981.<sup>28</sup>

After formally cutting off U.S. aid and food shipments to Nicaragua in April 1981, the Reagan administration began pressurising international agencies not to lend to Nicaragua. It was at that time when Nicaragua was trying to repay the huge Somoza debt. According to New York Times, "some State Department Officials are known to favour a policy of 'strangling' the Sandinista government economically and the financing dissent groups".<sup>29</sup> The justification was to pressurize Nicaragua on the issue of its aid to the Salvadoran guerillas - but in fact the U.S. was funding the Contras, whole goal was the over-throw of the Nicaraguan government.

The Reagan administration pressurised the international banks as well as the U.S. private banks not to extend any credit to Nicaragua. Because of U.S. vetoes the World Bank was unable to provide any assistance to Nicaragua after 1982. A similar pattern was observed at the Inter-American Development Bank.

Trade embargo was used as a major instrument to intervene in and harass Nicaragua. To make things more difficult for the young republic, the U.S. government had in 1981 banned

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<sup>28</sup> Keesings Contemporary Archives (Bristol 1981), p.30975.

<sup>29</sup> New York Times, 2 April 1981.

wheat sales to Nicaragua. In 1983 it slashed its import of Nicaraguan sugar by 90 per cent, before cutting off imports of Nicaraguan cotton and meat. The U.S. administration clearly aimed at a replay of the Chilean situation, hoping to cause chaos and popular discontent, particularly among the middle strata of society in Nicaragua.<sup>30</sup> These measures created a serious shortage of foreign exchange earnings. This hard currency shortage, combined with the restricted access to loans cut devastatingly into Nicaragua's reconstruction programmes.

The refusal of the United States to permit the selling of replacement and spare parts to Nicaragua has rendered inoperative a large percentage of Nicaragua's machinery. This has had serious repercussions in every sector of the economy, including humanitarian sectors like health.

The U.S.A. has also sponsored direct attacks on the economic infrastructure. A few examples of this are the October 1983 attacks on the oil storage tanks at Carinto, attacks on the oil pipelines at Puerto Sandino and the Contra attack on the town of Pantasma, a major coffee growing center (see Table 4 above). The Pantasma action was designed to destroy economic targets related to the coffee harvest, in an

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<sup>30</sup>(i) S. Losev, "The People of Nicaragua Defend their Revolution" International Affairs (Moscow), July-December 1984, p.34.

(ii) James Chace, Endless War : How We Got Involved in Central America and What Can be Done (New York: 1984) pp.68-69.

attempt to reduce Nicaragua's export of coffee, which is essential in obtaining foreign exchange. These attempts were followed by the mining of Nicaragua's harbors in bid to cut the country off from the rest of the world.

### The Illegality of the Trade Embargo

The Reagan administration's trade embargo, an attack on the commercial and economic stability of Nicaragua, is an action that violates a number of international laws, some of them originally proposed by the United States.

#### (a) Violations of GATT (General Agreement on Tariffs and Trade)

One of the basic principles of GATT, an association that regulates commerce among the western countries, is the defence of free trade. The developed countries view it as the principal forum for reaching decisions and practical solutions to the problems on international commerce. It was formed in 1945, at the initiative of the United States.

The embargo violates a number of GATT provisions :

- Article 1 - Most favored nation treatment
- Article 2 - List of concessions
- Article 5 - Freedom of Transit
- Article 9 - General elimination of quantitative restrictions,
- Article 13- Non-discriminatory application of quantitative restrictions.

The embargo also violates part IV. Commerce and Development, which explains the intent of the Ministerial Declaration of November 1982. According to that Declaration, the member nations agreed to abstain from adopting restrictive commercial measures for non-economic reasons, where measures are not compatible with the general agreement.

(b) Violation of the OAS (Organization of American States) Charter

Article 19: This article states that no state may apply or induce coercive economic or political measures in order to force the sovereign will of another state and thereby obtain any type of advantage.

(c) Violation of the United Nations Provisions

Article 32: Charter of Rights and Duties, approved in 1974, which states that no state may use economic, political or any other type of measure or encourage the application of such measures with the goal of coercing another state in order to obtain the subordination of the exercise of that state's sovereign rights.

Article 41: Reserves to the Security Council the power to break economic relations with countries that do not accept its decisions.

Agreement of the Sixth UNCTAD (Conference on Trade and Development). This agreement says that the developed countries should abstain from using restrictive commercial measures,

blockades, embargos or other economic sections, if they are incompatible with the provisions of the Charter of the United Nations and infringe on its commitments.

Diplomatic Pressures to Isolate Nicaragua

The primary U.S. goal at the level of international diplomacy has been to isolate Nicaragua from the countries of Western Europe and the Socialist International (SI) - and then to claim that Nicaragua has become dependent upon the Soviet Union and the socialist bloc.<sup>31</sup> Official U.S. delegations were sent to various governments in Europe and Latin America to accuse the Nicaraguans of supplying arms to the insurgents in El-Salvador. The U.S. Department of State also published a White Paper on Nicaragua with the intention of demonstrating that revolutionary regime in Nicaragua was an intermediary for the supply of Soviet and Cuban arms to the Salvadoran revolutionary groups. It is interesting to note what Piero Gleijeses, an Italian political scientist and former professor at the Foreign Service Institute of the State Department has to say about the White Paper.

"This report looked impressive at first, but soon careful observers began to find serious mistakes and incoherences. In its eagerness to provide devastating evidence the administration manipulated and distorted facts, arriving at conclusions which were unjustified and, at times, contrary to the supporting documents.

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<sup>31</sup>M. Dixon, ed., n.13, p.122.

Suddenly placed on the defensive by unexpected inquiries, the answers given by the State Department were clumsy and not very persuasive. In the face of growing evidence to the contrary, the State Department refused to acknowledge serious errors in the presentation of the White Paper and did not offer any explanation for the report's inconsistencies, save for stating that its conclusions were based on a series of other documents which would be published later.<sup>32</sup>

The U.S. put pressure on other governments, which were not falling in line with the U.S. on the issue of Nicaragua. Other efforts to this effect were also made.

There is no evidence that these policies have succeeded, but neither is there evidence that the U.S. has any plans of abandoning its efforts.

#### Regional Peace Efforts

As early as February 1982, Mexican President Lopez Portillo had presented a peace plan for Central America which proposed that the United States cease its threats and military actions. The plan also called for the ex-National Guardsmen in Honduras to be disbanded and for non-aggression pacts to be signed between Nicaragua and the United States and between Nicaragua and its neighbours.

At the same time Commandante Ortega also put forward a peace plan, the main outlines of which were as follows:

- (i) The signing of agreements of non-aggression and mutual security with Nicaragua's neighbours.

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<sup>32</sup>R.Harris and Others, eds., Nicaragua: A Revolution Under Siege (London, 1985), p.205

Attempts were made by Mexico and Venezuela to bring together Commandante Ortega and President Suazo Cordova of Honduras for discussions to reduce tension between the two countries. In the meeting set up at Caracas, Venezuela, President Suazo Cordova failed to turn up. In October 1982 Washington organized the Forum for Peace and Democracy in San Jose, Costa Rica. This meeting was attended by the Foreign Ministers of Costa Rica, Colombia, Jamaica, El-Salvador and Honduras as well as the Prime Minister of Belize and representatives from the governments of the Dominican Republic and Panama. The purpose of the meeting was to form a bloc of countries which would support U.S. policy in Central America and the Caribbean.

The governments of Mexico, Colombia, Venezuela and Panama acted to prevent Washington from consolidating this bloc. The Foreign Ministers of these countries met on 8 January 1983 at the Panamanian island of Contadora where they agreed on the necessity of eliminating the external factors responsible for aggravating the internal conflicts in the region. They produced a declaration expressing their deep concern over foreign involvement in the conflicts of the Central American region and criticized the inclusion of these conflicts within the context of the global East-West struggle.



They made an urgent appeal to all the countries in the Central American region to enter into negotiations aimed at reducing tension and establishing a basis for a permanent climate of peaceful coexistence and mutual respect. They asserted that all the states were obliged to abstain from using force in their international relations. They also called upon the countries in the region to refrain from taking actions which might aggravate the situation and lead to a generalized conflict in the region. Finally, they called upon the entire Latin American community to join with them in a concerted effort to promote a peaceful resolution to the conflicts in Central America. This group came to be known as 'Contadora Group' and it succeeded in burying Washington's Forum for Peace and Democracy.<sup>33</sup>

During April 1983, the Contadora Group met again. In this meeting a diagnosis of the conflicts of the region was formulated. This diagnosis identified the following problems: the military build up in the region, the black market in arms, the presence of foreign military advisers and other forms of foreign military assistance, actions aimed at destabilising the domestic order of the states in the region, verbal threats of aggression, border incidents, the infringement of human rights and the grave social and economic problems underlying the crisis in the region.<sup>34</sup>

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<sup>33</sup>R.Harris and Others, eds., n.32, p.204.

<sup>34</sup>Ibid.

But as the Contadora efforts to promote a negotiated settlement in the region progressed, the United States increased its military presence in Central America. It also announced and undertook a series of joint military exercises on a large scale.

The Reagan administration has left little doubt that it wants to overthrow the Sandinista regime and a reversal of the revolutionary process. At a televised news conference on 21 February 1985, President Reagan stated boldly that the objective of U.S. policy was to remove the present structure of government in Nicaragua. When asked whether he meant that the United States was seeking the overthrow of the Sandinista government, he replied: "not if the present government would turn around and say 'uncle' to the Nicaraguan rebels."<sup>35</sup>

The draft peace treaty produced at the meeting between the Contadora group and the five Central American governments has so far been agreed to only by Nicaragua. At the April 1985 meeting in Panama, the representatives of the Contadora Group and the Central American States tried to grapple with most of the objections raised by the U.S. and its Central American allies. However, shortly before the meeting, President Reagan released a peace proposal which called for an immediate 60-day cease fire between the Sandinista government and the Contras, during which the local hierarchy of the Catholic Church would mediate

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<sup>35</sup>New York Times, 22 February 1985.

negotiations between the two sides and preparations would be made for holding new elections in which the Contras would participate.<sup>36</sup> As per this proposal, if no agreement was reached by the end of the 60-day period, the U.S. would resume military aid to the Contras. The Nicaragua government immediately rejected the proposal as an ultimatum and described it as "a pistol pointed at our head". Managua reiterated its position favouring direct dialogue with the U.S. government, and called on the Reagan administration to return to the bilateral talks in Manzanillo, Mexico, which were unilaterally suspended by the United States in June 1984.<sup>37</sup>

During the April Contadora meeting, a Permanent Verification and Control Commission was established to monitor the military situation in each Central American country, including the number of troops, armaments and foreign advisers. The Contadora peace plan also proposed an immediate end to the arms race by requiring each country to halt acquisition of military equipment, close down all foreign military bases and remove all foreign military advisers.

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<sup>36</sup>San Francisco Chronicle, 6 April 1985.

<sup>37</sup>R.Harris and others, eds., n.32,p.245.

<sup>38</sup>Ibid,

Since assuming power the Reagan administration has made an all out effort of dislodging the Sandinista government. It has undertaken an undeclared war against Nicaragua by both directly and indirectly backing the counterrevolutionary elements. However, this undeclared war has failed in several fundamental aspects, as it is based on false assumptions. For example, the United States believes that there is wide spread popular discontent among the people, and the Contras and other right wing elements would be able to turn it into a popular insurrection. But except for Miskito Indians, the Contras have got no popular support. The Reagan administration also thought that the Contras would be able to gain enough territory to establish a provisional government which would then be recognised by the United States and its Central American allies. But the Contras have never been able to hold any portion of the Nicaraguan territory for more than a few days. Finally, the United States has failed in the diplomatic field as its actions have discredited its pretence of seeking a peaceful solution to the conflict, and has lost the initiative to Nicaragua and the Contadora Group.

But on the other hand, the United States has not failed completely. It has had satisfying results from its attempts to distablize Nicaraguan economy. The Contra attacks have caused serious damage to the infrastructure and productive processes of the country. The Nicaraguan government has also been forced

to divert a large amount of country's scarce resources towards defence, from the important economic and social upliftment programmes.

The USA has not played its last card yet-direct US military intervention. But this would only be done when all the other options open to it get exhausted, like using the Honduran army to attack Nicaragua. In the meanwhile, the war threatens to cause an economic recession in Nicaragua from which it may take many years to recover.

## Chapter IV

### CRISIS SITUATION AND THE UNITED NATIONS RESPONSE

The central question in world politics today is the question of peace, and the fundamental purpose of the United Nations system is to maintain international peace and security. The International Court of Justice, which is the principal judicial organ of the United Nations, was established to secure this aim in so far as it can be achieved through law.<sup>1</sup> The present case is of immense importance because the very nature and scope of the Court's role in maintaining world peace and security are in issue, and the decision on the jurisdiction of the Court and the admissibility of Nicaragua's application is of crucial importance because the court clarifies its function within the United Nations system.

On 9 April 1984 the Republic of Nicaragua filed in the Registry of the International Court of Justice an application instituting proceedings against the United States of America in respect of responsibility for military and paramilitary activities in and against Nicaragua.

This action came after the United States, on 4 April 1984, vetoed a draft resolution by which the Security Council would have strongly condemned and called for an immediate end

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<sup>1</sup>Hersch Lauterpacht, "The Development of International Law by the International Court" (1953), p.3. quoted in B.S. Chami, "The International Court and the Maintenance of Peace and Security : The Nicaragua Decision and the United States Response", International and Comparative Law Quarterly, (Washington, D.C.) Vol.35, October 1986, p.960.

to "all threats, attacks and overt and covert hostile acts against the sovereignty, independence and territorial integrity of Nicaragua, in particular the mining of its main ports."

Here, we shall first consider the various measures adopted by the UN General Assembly and Security Council to diffuse the crisis situation created by the mining of Nicaraguan harbours in the spring of 1984. Then we shall take up the proceedings of the ICJ.

The veto came at the end of four Council meetings to discuss Nicaragua's complaint of an "escalation of acts of aggression currently being perpetrated" against it. Thirteen Council members voted in favour of the draft, and one (United Kingdom) abstained. The United States cast the only negative vote.<sup>2</sup>

The United States opposed the text on the ground that it was "unbalanced."

The text, submitted by Nicaragua, referred to the "loss of Nicaraguan lives and injuries to nationals of other countries as well as material damage, serious disruption to its economy and tampering of free navigation and commerce, violating international law. The draft would have had the Council

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<sup>2</sup>U.N. Chronicle, (New York), Vol. XXI, No.5, p.7.

<sup>3</sup>U.N. Doc. S/16463

affirm the right of free navigation and commerce in international waters and call on all states to refrain from any action that would impede the exercise of that right in the "waters of the region."

In addition to reaffirming the right of "Nicaragua and of all countries of the region" to determine their own future free from all foreign interference and intervention, the Council would have called on all states to "refrain from carrying out, supporting or promoting any type of military action against any state of the region as well as any other action that hinders the peace objectives of the Contadora Group."

The Council would have urged the Contadora Group to intensify its peace efforts "on an immediate basis."

Thirty four speakers participated in the debate on 3 March and 2-4 April 1984. A majority expressed grave concern over what they described as acts of aggression against Nicaragua. The mining of Nicaragua's ports was seen by many as a serious threat to freedom of navigation and the right of free access to ports for peaceful trade. Events taking place in Nicaragua's territorial waters were described variously as a "blockade in disguise", "an all out economic blockade," a reckless endangerment of international navigation" and "acts of piracy and international terrorism."<sup>4</sup>

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<sup>4</sup>U.N. Chronicle, n.1, p.8



A number of speakers drew attention to Security Council resolution 530(1983), by which the Council had reaffirmed the right of Nicaragua and all other countries in the area to live in peace and security, free from outside interference, and had supported the efforts of the Contadora Group to find a peaceful solution in the region. The General Assembly had endorsed that position by consensus in November 1983, many pointed out, expressing regret that the tenets of both resolutions have not been upheld.

Speakers also referred to a communique adopted on 15 March 1984 by the Coordinating Bureau of the Movement of Non-Aligned countries.<sup>5</sup> The Non-Aligned had called for an "immediate end to all foreign military maneuvers and activities on Central American territories and coasts, the installation of foreign military basis as well as all threats, attacks and hostile acts against Nicaragua" and had condemned the "reported mining" of Nicaraguan ports, declaring its "firm opposition" to any measure directed towards a blockade of any state of the region.

After 4 April 1984, the Security Council met on 7 September 1984 at Nicaragua's request, to examine what Nicaragua terms "a fresh escalation of aggression" against it.<sup>6</sup> At this meeting Nicaragua said four Nicaraguan school children and a construction worker had been killed in a terrorist attack. Also, a C-47 plane that had entered

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<sup>5</sup>Doc. S/16422

<sup>6</sup>Doc. S/16731

Nicaragua from Honduras had been shot down, resulting in the death of eight mercenaries.

In October 1984 the General Assembly urged the five Central American governments to speed up consultations with the Contadara Group in order to achieve an early signing of the Contadora Act on Peace and Co-operation in Central America.<sup>7</sup>

The Assembly also urged all states, especially those with interests in or ties to the region, to agree to an additional protocol pledging them to refrain from acts that would frustrate the treaty's aims.

The Contadara treaty aimed at restoring peace to Central America through committing its signatories to a suspension of the arms race and to the principle of non-intervention in the internal affairs of other states. In addition, each signatory would agree to promote democratic, pluralistic institutions at home and integration of the economy in the region.<sup>8</sup>

In the Security Council meeting on 7 September 1984, Nicaragua had said<sup>9</sup> that it was prepared to sign the proposed treaty as it was presented to the Central American Governments by the Contadora nations. Four other states stated,<sup>10</sup> however, that further consultations among the five Central American countries and the Contadora nations were necessary.

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<sup>7</sup>U.N. Chronicle, Vol. XXI, No. 11/12, p. 10.

<sup>8</sup>U.N. Chronicle, Vol. XXI, No. 3, p. 9.

<sup>9</sup>Doc. S/16756

<sup>10</sup>Doc. A/39/599

On 26 October 1984, the General Assembly adopted resolution 39/41. The resolution, adopted without a vote, noted with satisfaction the results of the Contadora Group's efforts, and said the proposed treaty "lays the foundations for detente, lasting peace and the promotion of economic and social development" in Central America. The Secretary General was asked to submit a progress report on the resolution's implementation by 15 December 1984.<sup>11</sup>

The measure, sponsored by the four Contadara Group countries - Columbia, Mexico, Panama and Venezuela - was adopted following a two day debate involving 62 speakers. The item entitled "The Situation in Central America : Threats to International Peace and Security and Peace Initiatives" was first discussed by the plenary in 1983.

States also expressed views on a draft resolution introduced by Nicaragua, which was not pressed to a vote. The original text called for the Assembly to welcome Nicaragua's agreement to sign the Contadora Act, and noted with deep concern the conduct of military maneuvers in the territory and waters of Central America with the participation of foreign countries, the establishment of foreign military bases in the region, and the threats, hostile acts and attacks against Nicaragua including the mining of its principal ports.<sup>12</sup>

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<sup>11</sup>U.N. Chronicle, n.6, p.11.

<sup>12</sup>Ibid.

A revised version eliminated mention of man-euvers and bases and support for Nicaragua's agreeing to sign the proposed article, but retained references to threats, hostile acts, attacks and the mining of ports. Both versions called for the immediate cessation of hostile acts against Nicaragua, and reaffirmed the nation's right to sovereignty, territorial integrity and political independence.

Again on 9 November 1984 a meeting of the Security Council was held as Nicaragua had requested the Security Council "to convene as a matter of urgency, for the purpose of considering the very serious situation created by the escalation of acts of aggression the repeated threats and new acts of provocation fostered by the present United States government."<sup>13</sup> Nicaragua told the Security Council that it believed the United States was seeking "to establish an atmosphere in preparation for a direct military attack against our territory." The United States called the claim "totally unfounded."

The Security Council held a series of four meetings, starting on 8 May 1985, following a request by Nicaragua in a letter to the Council President dated 6 May 1985,<sup>14</sup> for an

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<sup>13</sup>Doc. S/16825

<sup>14</sup>Doc. S/17156

urgent meeting to consider "the extremely serious situation which the Central American region is facing at the present time." In the course of the debate considerable discussion centred on the subject of economic sanctions against Nicaragua announced by the United States on 1 May 1985.<sup>15</sup>

The Council acted by adopting - by 15 votes in favour to none against with no abstentions - a resolution proposed by Nicaragua and introduced by India, from which three paragraphs had been deleted due to the veto of the United States. The paragraph by paragraph vote was requested by the United States. Adoption of resolution 562(1985) came on 10 May 1985. It reaffirmed "the inalienable right of Nicaragua and the rest of the states to freely decide on their own political, economic and social systems" without outside interference and called on the United States and Nicaragua to resume the dialogue they had been holding in Manzanillo, Mexico.<sup>16</sup>

Under other provisions of the resolution, the Council reaffirmed its firm support to the Contadora Group and urged it to intensify its peace efforts, which would prosper "only with genuine political support from all interested states." The Council called on all states "to refrain from carrying out, supporting or promoting political, economic or military actions of any kind against any state in the region which might impede the peace objectives of the Contadora Group."

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<sup>15</sup>U.N. Chronicle, Vol.XXII, No.6, p.8.

<sup>16</sup>Ibid.

During December 1985 the Security Council held three meetings to consider Nicaragua's complaint about "the extremely serious situation created by the escalation of acts of aggression, the repeated threats and the new acts of provocation" directed against Nicaragua "by the current United States Administration."<sup>17</sup>

The Council had before it three letters transmitted by the Nicaraguan Charge d' Affairs to the Secretary General.

The first, dated 5 December, from President Daniel Ortega Saavedra to the Secretary General<sup>18</sup> recalled that he had informed the Contadora Group of several considerations with regard to the process of negotiation which was being promoted by the Contadora Group. He also spoke of new developments which entailed an "extremely serious escalation of the mercenary war..."

The second letter, dated 6 December<sup>19</sup> contained protest note from Nicaragua's Acting Foreign Minister to the US Secretary of State decrying the attitude of the United States.

The third letter<sup>20</sup> contained the text of a 6 December protest note from Nicaragua's Acting Foreign Minister to the Honduran Foreign Minister over its being a party to the United States' policy of aggression.

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<sup>17</sup>U.N. Chronicle, Vol.XXIII, No.1, p.7.

<sup>18</sup>Doc. S/17674

<sup>19</sup>Doc. S/17675

<sup>20</sup>Doc. S/17676

Eighteen speakers participated in the debate in meetings held on 10, 11 and 12 December 1985. The series of meetings adjourned without a draft resolution having been tabled.<sup>21</sup>

The General Assembly on 18 December 1985 decided to defer consideration of the situation on Central America until the resumption of its fortieth session in 1986.<sup>22</sup>

We shall now consider the proceedings of the case filed by Nicaragua at the ICJ.

#### The Hague's Verdict

On 9 April 1984 the Republic of Nicaragua filed in the Registry of the International Court of Justice an application instituting proceedings against the United States of America in respect of responsibility for military and paramilitary activities in and against Nicaragua. Nicaragua asserted that the United States was using military force against it and intervening in its internal affairs, in violation of Nicaragua's sovereignty, territorial integrity and political independence, and of the most fundamental and universally accepted principles of international law. It asserted that the United States had created an army of mercenaries and had installed them in more than ten base camps in Honduras along the border with Nicaragua. It was supplying them with arms, ammunition, food and medicines

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<sup>21</sup>UN Chronicle, n.16, p.8.

<sup>22</sup>Ibid., p.10.

and was directing their attacks against human and economic targets inside Nicaragua with the purpose of destabilizing the government of Nicaragua so that ultimately it would be overthrown, or at least made to change those of its domestic and foreign policies that displeased the United States.

The application also stated that both the United States and Nicaragua had accepted the compulsory jurisdiction of the Court under Article 36 of the Statute of the Court. Simultaneously, the Government of Nicaragua, emphasizing "the importance and urgency of the matters raised by this suit, and in order to avoid further loss of life and destruction of property pending a final determination," also filed a request that the court should indicate provisional measures under Article 41 of the Statute of the Court. The provisional measures which Nicaragua requested the Court to indicate asked that the United States should immediately cease and desist from providing any direct or indirect support to any nation, group or individual engaged in or planning to engage in military or paramilitary activities in or against Nicaragua and 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 of threat of force in its relation with Nicaragua.<sup>23</sup>

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<sup>23</sup>International Court of Justice, Communique, No.84/10, 9 April 1984.



In its counter memorial, the United States challenged the admissibility of the application on five separate grounds:

- i) that Nicaragua had failed to bring before the Court parties whose presence and participation was necessary for the rights of those parties to be protected and for adjudication of the issues raised in the application.
- ii) that Nicaragua's allegations that the United States was engaged in the unlawful use of armed force, or in a breach of the peace, as in acts of aggression were a matter which was assigned by the Charter and by practice to the competence of other organs, in particular the UN Security Council.
- iii) that in view of the position of the Court within the UN system, the subject matter of the application was one over which it could not exercise jurisdiction.
- iv) that the judicial function could not deal adequately with situations involving ongoing conflict without overstepping judicial bounds, and
- v) that Nicaragua had failed to exhaust the established process for the resolution of the conflict as required by Article 52 of the Charter.

The Court held public sittings on 25 and 27 April 1984 to hear the oral observations of both parties on the request

for provisional measures. On 10 May 1984 the Court again held a public sitting at which it delivered an order indicating such measures. The operative provisions of the order are as follows:

The Court unanimously rejected the request made by the U.S. that the proceedings on the application filed by the Republic of Nicaragua on 9 April 1984, and on the request filed the same day by the Republic of Nicaragua for the indication of provisional measures be terminated by the removal of the case from the list.

The Court, pending its final decision, demanded the United States to fulfil the provisional protection measures urged by Nicaragua "...to cease and abstain from any action which could in effect restrict, blockade or endanger the entrance or exit from Nicaraguan ports, particularly the placing of mines", and to respect the "Republic of Nicaragua's right to sovereignty and political independence", and to avoid "engagement in military and paramilitary activities which are prohibited by the principles of International Law".<sup>24</sup>

The Court rejected the United States grounds by stating that "...there is no trace, either in the statute or in the practice of international tribunals, of an 'indispensable parties' rule of the kind argued for by the United States".<sup>25</sup>

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<sup>24</sup>ICJ Reports (1984), p.169.

<sup>25</sup>Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), ICJ Judgment dated 10 May 1984 quoted in International Legal Materials, (Washington D.C.), Vol.XXIV, No.1, January 1985, p.60.

As to the contention that Nicaragua had failed to exhaust regional processes, the Court took the view that it did not consider that the Contadora process could be properly regarded as a "regional arrangement" and it was also unable to accept that there was any requirement of prior exhaustion of the regional process as a pre-condition for approaching the Court (para 108).<sup>26</sup>

In accordance with Article 41, paragraph 2 of the Statute of the Court, the Registrar notified the parties and the Security Council of the decision. By an order of 14 May 1984, the President of the Court fixed the following time limits for the filing of pleadings addressed to the questions of jurisdiction and admissibility: 30th June, 1984 for the memorial of Nicaragua, and 17 August 1984 for the counter-memorial of the United States.<sup>27</sup>

On 30 June 1984 Nicaragua presented its memorandum to the Court regarding the question of jurisdiction and the admissibility of the demand based on the declarations of Nicaragua of 24 September 1929 and of the United States of 14 August 1946, and the treaty of Friendship, Commerce and Navigation between the United States and Nicaragua of

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<sup>26</sup>Ibid., p.82.

<sup>27</sup>ICJ Reports (1984), p.209.

21 January 1956. On 15 August 1984, two days before the expiration of the time limit allowed for the filing of pleadings relating to jurisdiction and admissibility, the Republic of El Salvador filed a declaration of intervention on the case under the terms of Article 63 of the Statute. In its declaration the Government of El Salvador stated that the purpose of its intervention was to enable it to maintain that the Court had no jurisdiction to entertain Nicaragua's application. On 17 August 1984 the United States presented its memorandum to the Court without challenging the juridical basis of the allegations by Nicaragua, limiting itself to accusing Nicaragua of participating in armed attacks against its neighbours.

Having regard to the written observations on that declaration submitted by the parties in accordance with Article 83 of the rules of Court, on 4 October 1984 the Court pronounced its position<sup>28</sup> in brief and forceful terms on the declaration of El Salvador deciding "not to grant an audience" to that declaration considering it to be "inadmissible".

In submitting that the International Court should not, in view of its place within the UN System, exercise jurisdiction over the subject matter of the application, the United

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<sup>28</sup>Ibid., p.215.

States had put forward the following interrelated arguments. First, the application asked the court to determine that the activities complained of constituted a threat to the <sup>e</sup>peace, a breach of the peace, or an aggression - a matter which was assigned by the Charter to the political organs of the United Nations. Second, it was the Security Council which had under Article 24 of the Charter the "primary responsibility for the maintenance of international peace and security" and it was seized of the matter at that stage. Third, the application amounted to an appeal to the Court from an unfavourable consideration in the Security Council as a draft resolution presented by Nicaragua on 4 April 1984 had failed to secure the requisite majority. Fourth, in order to arrive at any determination of the application, the Court would have to decide the claims of the United States and other countries with respect to the exercise of the right of self-defence under Article 51 of the Charter, which only provides a role in this respect for the Security Council. And lastly, the subject matter concerned ongoing hostilities and in this regard the Charter did not recognize the possibility of settlement by judicial as opposed to political means. The Court did not find any of these arguments persuasive.<sup>29</sup>

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<sup>29</sup>Herbert W. Briggs, "Nicaragua vs. United States; Jurisdiction and Admissibility" (1985) 79 American Journal of International Law (Washington), pp.373-74.

The Court, in its judgement, said that under Article 24 of the Charter the Security Council had only primary, and not exclusive responsibility for the maintenance of international force and security.<sup>30</sup>

Significantly, the Court went further and clarified the relationship of the Security Council with the General Assembly and the Court in its exercise of primary responsibility.<sup>31</sup> It observed that :

"While in Article 12 there is a provision for a clear demarcation of functions between the General Assembly and the Security Council, in respect of any dispute or situation, that the former should not make any recommendation with regard to that dispute or situation unless the Security Council so requires, there is no similar provision anywhere in the Charter with respect to the Security Council and the Court. The Council has functions of a political nature assigned to it, whereas the Court exercises purely judicial functions. Both organs can therefore perform their separate but complimentary functions with respect to the same events (para 95)<sup>32</sup>.

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<sup>30</sup> I.L.M., n.24, p.80.

<sup>31</sup> See B.S. Chimni, n.1, p.962.

<sup>32</sup> I.L.M., n.24, p.81.

It therefore concluded that the fact that a matter was before the Security Council did not prevent it from being dealt with by the court and that "both proceedings could be pursued pari passu" (para 93). This line of reasoning was in complete conformity with the Court's decision in the United States Diplomatic and Consular Staff in Tehran case<sup>33</sup> which it cited with approval.

The Court further stressed the common and yet distinct functions of the Security Council and the Court. The Court rejected the US submission that the proceedings were in effect an appeal to the Court from an adverse decision of the council. It pointed out that :

The Court is not asked to say that the Security Council was wrong in its decision or that there was anything inconsistent with law in the way in which the members of the Council employed their right to vote. The Court is asked to pass judgment on certain legal aspects of a situation which has also been considered by the Security Council, a procedure which is entirely consonant with its position as the principal judicial organ of the United Nations (para 98).<sup>34</sup>

While thus stressing the distinct role of the Court, the decision has clearly pointed out that the Court had never shied away from the case brought before it merely because it had political implications or because it involved serious elements of the use of power (para 96). It relied here on

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<sup>33</sup> (1980) I.C.J. Rep. 1, Quoted in Chimni, n.1, p.963.

<sup>34</sup> I.L.M., n.24, p.81.

the Corfu Channel<sup>35</sup> case where the Court had been concerned with questions of force and intervention, matters in issue in the present case. The Court noted that the plea of the inherent right of self defence under Article 51 also involved a "legal dimension" and could be pronounced upon by it (para 98).<sup>36</sup>

The Court rejected the US contention that the existing dispute was about an ongoing armed conflict. The Court held that the dispute was one "requiring an indeed demanding the peaceful settlement of disputes between the two states. Hence, it was properly brought before the principal judicial organ of the Organisation for Peaceful Settlement (para 94).<sup>37</sup> Furthermore, in paragraph 101 of the judgement the Court said that it would not be transgressing judicial bounds. Since it is the litigant seeking to establish a fact who bears the burden of proving it; and, in many cases where evidence may not be forthcoming, a submission may in the judgement be rejected as unproved, but is not to be ruled out as inadmissible in limine on the basis of an anticipated lack of proof" (para 101).<sup>38</sup>

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<sup>35</sup>See Chinn, n.1, p.963.

<sup>36</sup>I.L.M., n.24, p.81.

<sup>37</sup>Ibid., p.80.

<sup>38</sup>Ibid., p.82.



The Court delivered its judgement on 26 November 1984 and on 18 January 1985 the Agent of the United States made it known that, notwithstanding the judgement of 26 November 1984, in the view of the United States the Court is without jurisdiction to entertain the dispute and that accordingly it would not participate in further proceedings in the case. Eventually it withdraw its accession to the compulsory jurisdiction of the Court.<sup>39</sup> This decision seems to be to a great extent influenced by the Court's decision to assume jurisdiction in the Nicaragua case. On 22 January, 1985, the Agent of Nicaragua informed the President that his government maintained its application and availed itself of the rights provided for in Article 53 of the Statute whenever one of the parties does not appear before the Court or fails to defend its case.

By an order dated 22 January 1985,<sup>40</sup> the President fixed time limits for the filing of pleadings on the merits. On 30 April 1985 Nicaragua presented its written plea on the substance of the demand, with the probatory documentation of its accusations against the United States included in 12 annexes. Among other documents and official declarations of the American government, the CIA manuals "Psychological Operations in Guerrilla Warfare" and the "Manual for Freedom

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<sup>39</sup>International Herald Tribune, 8 October 1985.

<sup>40</sup>ICJ Reports (1985), p.3.

Fighters" and detailed reports on the mining of ports were included. In addition, the documentation detailed the norms and principles of international law violated by the United States. No counter-memorial was filed by the Government of the United States within the time limit allotted to it, which expired on 31 May 1985, and no extension of such time limit was requested by that government.

Between 12 and 20 September 1985, the Court held nine public sittings during which speeches were made on behalf of Nicaragua. Five witnesses called by Nicaragua gave evidence before the Court. They were:

Commander of the Revolution, Luis Carrion Cruz, whose testimony concentrated on demonstrating the direct involvement of the United States in the direction, organization and military support to the counterrevolutionary groups.

Minister of Finance, William Hupper, who described the economic damages sustained by Nicaragua due to American aggression.

David McMichael, former agent in the CIA station in Honduras and the person in charge of investigating the alleged arms traffic from Nicaragua to El Salvador who testified to the non-existence of evidence to that effect.

Jean Laisson, a French priest, who described the atrocities committed by the mercenary groups against the Nicaraguan population.

The United States was not represented at the hearings. On 27 June 1986, the Court delivered its judgement at a public sitting.<sup>41</sup>

### The Court

(1) By eleven votes to four,

Decided that, in adjudicating the dispute brought before it by the Application filed by the Republic of Nicaragua on 9 April, 1984, the Court is required to apply the "multilateral treaty reservation" contained in proviso (c) to the declaration of acceptance of jurisdiction made under Article 36, paragraph 2, of the Statute of the Court by the Government of the United States of America deposited on 26 August 1946.

(2) By twelve votes to three,

Rejected the justification of collective self defence maintained by the United States in connection with military and paramilitary activities in and against Nicaragua.

(3) By twelve votes to three,

Decided that the United States of America, by training arming, equipping, financing and supplying the Contra forces or otherwise encouraging, supporting and aiding military and

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<sup>41</sup>I.C.J. Reports (1986), p.14.

paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another state.

(4) By twelve votes to three,

Decided that the United States by certain attacks on Nicaraguan territory in 1983-84, namely, attacks on Puerto Sandino on 13 September and 14 October 1983; an attack on Carinto on 10 October 1983; an attack on Potosi Naval Base on 4/5 January 1984; an attack on San Juan Del Sur on 7 March 1984; attacks on patrol boats at Puerto Sandino on 28 and 30 March 1984; and an attack on San Juan Del Norte on 9 April 1984; and further by those acts of intervention referred to in subparagraph (3) above, which involved the use of force, had acted, against the Republic of Nicaragua in breach of its obligation under customary international law not to use force against another state.

(5) By twelve votes to three,

Decided that the United States by directing or authorizing overflights of Nicaraguan territory, and by the acts referred to in subparagraph (4) above, had acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to violate the sovereignty of another state.

(6) By twelve votes to three,

Decided that by laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the US had acted against Nicaragua, in breach of its obligations under customary international law not to use force against another state, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful mari-time commerce.

(7) By fourteen votes to one,

By the acts referred to in subparagraph (6) above, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Nicaragua, signed at Managua on 21 January 1956.

(8) By fourteen votes to one,

Decided that the United States of America, by failing to make known the existence and location of the mines laid by it, referred to in subparagraph (6) above, has acted in breach of its obligations under customary international law in this respect.

(9) By fourteen votes to one,

Found that the United States of America, by producing in 1983 a manual entitled "Operaciones sicologicas en gurrea de guerrillas", and disseminating it to Contra forces, has

encouraged the commission by them of acts contrary to general principles of humanitarian law. However, the Court did not find any basis for concluding that any such acts which may have been committed are imputable to the United States of America as acts of the United States of America.

(10) By twelve votes to three,

Decided that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) above, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has committed acts calculated to deprive of its object and purpose the Treaty of Friendship, Commerce and Navigation between the Parties, signed at Managua on 21 January 1956.

(11) By twelve votes to three,

Decided that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) above and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has acted in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the parties, signed at Managua on 21 January 1956.

(12) By twelve votes to three,

Decided that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations.

(13) By twelve votes to three,

Decided that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under customary international law enumerated above.

(14) By fourteen votes to one,

Decided that the United States of America is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of the Treaty of Friendship, Commerce and Navigation between the Parties, signed at Managua on 21 January 1956.

(15) By fourteen votes to one,

Decided that the form and amount of such reparation, failing agreement between the Parties, will be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

(16) Unanimously,

Reminded to both Parties their obligation to seek a solution to their dispute by peaceful means in accordance with international law."

The US Disregard for the Ruling of the International Court of Justice : A Dangerous Precedent

The United States was not only a founding member of the United Nations, but was one of the first countries to accept the obligatory jurisdiction of the Court. Between 1950 and 1984, the United States has presented cases before the Court on thirteen occasions. It has filed claims against the Soviet Union, Hungary, Czechoslovakia, Bulgaria and Iran, the last one in 1979. It has been filed against by France, Italy, Switzerland and Nicaragua and went to trial with Canada by mutual agreement in 1981.

This data gives us a measure not only of the importance which the United States has given historically to the International Court, but also of the magnitude of the decision of the present American government to ignore the International Court, withdrawing halfway through the suit filed by Nicaragua, in an unprecedented position in the United Nations judicial system. All of that due to the fact that the International Court ruled against the United States on the section referring to the jurisdiction of the Court to hear the Nicaraguan demand.

This attitude on the part of United States sets a dangerous precedent in international law. The U.S. is not only pushing aside international law, but is also denying the basic mechanisms upon which the operation of the Court depends. Among them:



- connected with the dispute over whether the Court has jurisdiction to hear a case, only the International Court itself can decide on its competence
- the fulfilment of the sentences of the Court are obligatory i.e., the states are without exception under obligation to carry out the rulings of that tribunal
- the rulings of the Court are definitive and without appeal.

On withdrawing from the trial, it seems that the United States has implicitly accepted its guilt. The sentence of the International Court of Justice also shows the recognition of the fact that there is no 'civil war' or "fratricidal confrontation" in Nicaragua but rather a foreign intervention in the internal affairs of a sovereign nation.

The refusal of the United States to accept the verdict is a consequence of its policy of domination which it has tried to implement throughout the history of Latin America, first by way of Monroe Doctrine and then with the Roosevelt Corollary added to it. Jacobo Arbenz in Guatemala in 1954, the Dominican Republic in 1961, Salvador Allende in Chile in 1972, Maurice Bishop in Grenada in 1983, to mention only a few cases of recent governments overthrown or countries attacked for trying to propose or initiate their own independent projects would also have been ignored as parties to a dispute by the United States.

Nevertheless, what is critical in the present situation in Nicaragua's case is that now the United States does not maintain even the most minimum appearance of legality for its actions. The fact that the Congress of this country openly discusses the financing and the necessary means to overthrow the government in the name of "freedom and democracy;" the fact that it ignores, invalidates and disqualifies the judgement of the highest tribunal of justice on the world not only affects the rights of the Nicaraguan people - it is an attitude which at this time when the danger of nuclear war looms large over humanity, represents a danger not only for the international legal order, but also for world peace.

## Chapter V

### THE CONTINUING STALEMATE

Even after the International Court of Justice judgement that the United States should cease and desist from military and paramilitary activities in and against Nicaragua and should pay reparations to it, matters have not been resolved. There has been a deadlock in the situation since June 1986 when the ICJ judgements was pronounced. In spite of many efforts made by the General Assembly, Security Council and the Contadora and Support Groups, there has been a stalemate in the matter.

During five meetings in early July 1986, the Security Council considered a complaint by Nicaragua regarding what was termed "the escalation of the United States government's policy of aggression against Nicaragua, which threatens international peace and security".<sup>1</sup>

Thirdly four speakers participated in debate on 1, 2 and 3 July 1986. The Council adjourned without a draft resolution being tabled.

On 31 July 1986, a draft resolution by which the Security Council would have made an "urgent and solemn call" for full compliance with the judgement of the International Court of Justice of 27 June 1986 in the case of "military and

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<sup>1</sup>U.N.Chronicle (New York), Vol.XXIII, No.5, pp.79-81.

paramilitary activities in and against Nicaragua" was not adopted by the Council because of the negative vote cast by the United States.

The vote in the Security Council was eleven in favour to one against (United States), with three abstentions (France, Thailand, United Kingdom). Voting for the draft were Australia, Bulgaria, China, Congo, Denmark, Ghana, Madagascar, Trinidad and Tobago, USSR, United Arab Emirates and Venezuela.<sup>2</sup>

The text<sup>3</sup> put forward by Congo, Ghana, Madagascar, Trinidad and Tobago and United Arab Emirates - would have had the Council reaffirm the Court's role as "the principle judicial organ of the United Nations and a means for peaceful solution of disputes in the interest of international peace and security". The Council would have recalled "the obligation of all states to seek a solution to their disputes by peaceful means in accordance with international law".

The Council would have also called on all states to refrain from carrying out, supporting or promoting political, economic or military actions of any kind against any state of the region that might impede the peace objectives of the Contadora Group.

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<sup>2</sup>Ibid., pp.83-85.

<sup>3</sup>UN Doc. S/18250.

The vote came after five Council meetings held on 29, 30 and 31 July 1986 at the request of Nicaragua to consider "the dispute between the United States of America and Nicaragua, which was the subject of the judgement of the International Court of Justice of 27 June 1986... and which threatens international peace and security".<sup>4</sup>

Again, on 28 October 1986, a draft resolution by which the Security Council would have urgently called for "full and immediate compliance" with the 27 June 1986 judgement of the ICJ was vetoed by United States.

The vote was 11 in favour to one against (United States), with 3 abstentions (France, Thailand, United Kingdom). Voting for the draft were Australia, Bulgaria, China, Congo, Denmark, Ghana, Madagascar, Trinidad and Tobago, USSR, United Arab Emirates and Venezuela.<sup>5</sup>

The text<sup>6</sup> was put forward by Congo, Ghana, Madagascar, Trinidad and Tobago and United Arab Emirates.

The Council, which met on 21, 22, 27 and 28 October 1986, had convened at the request of Nicaragua, which had asked for an emergency Council meeting "in accordance with the provisions of Article 94" of the United Nations Charter.

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<sup>4</sup>Doc.S/18230.

<sup>5</sup>U.N. Chronicle, Vol.XXIV, No.1, p.62.

<sup>6</sup>Doc.S/18428

Article 94 of the Charter states that each member state of the United Nations undertakes to comply with the decision of the the International Court "in any case to which he is a party". If any party to a case fails to perform the obligations incumbent upon it under a Court judgement, the other party "may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgement".

The General Assembly on 3 November 1986 urgently called for full and immediate compliance with the 27 June judgement of the Court. Resolution 41/31 was adopted by a recorded vote of 94 in favour to 3 against (El Salvador, Israel, United States) with 47 abstentions.<sup>7</sup>

The Assembly took that action, having considered, it said, the events that had taken place since the judgement was rendered, "in particular, the continued financing by the United States of military and other activities in and against Nicaragua". The Secretary-General was requested to keep the Assembly informed on implementation of the resolution.

The draft was considered under a new item proposed by Nicaragua entitled "judgement of the International Court of Justice of 27 June 1986 concerning military and paramilitary

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<sup>7</sup>Ibid., p.63.

activities in and against Nicaragua: need for immediate compliance". Acting on the recommendation of its General Committee, the Assembly had agreed on 31 October 1986 without a vote to include the question in its agenda.

On 30 October 1986, the General Committee had recommended inclusion of the item without a vote, after rejecting by a vote of 10 to 9, with 6 abstentions, a United States motion to merge it with the existing agenda item on the situation in Central America.

The General Assembly on 18 November 1986 asked the Contadora Group and Support Group to persevere in their valuable efforts to achieve peace in Central America, and urged all states to continue to give them their "resolute support".<sup>8</sup>

The Assembly made its appeal in adopting without a vote resolution 41/37 on the situation on Central America.

The Assembly reaffirmed its conviction that a global, comprehensive and negotiated solution of the conflict in Central America required that all states fully respect the principles of international laws enshrined in the United Nations Charter. Also, it expressed the conviction that the people of Latin America wished to achieve peace, development and justice without outside interference, agreeing that the

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<sup>8</sup>U.N.Chronicle, n.5, pp.59-61.

worsening of the crisis in Central America could create serious tensions and conflicts throughout the continent.

The resolution was sponsored by the Contadora Group (Colombia, Mexico, Panama and Venezuela) and its Support Group (Argentina, Brazil, Peru and Uruguay).

In a joint declaration<sup>9</sup> entitled "Peace is still possible in Central America," issued on 1 October 1986, these countries had said that Latin America did not wish any Central American state to threaten the stability or security of other states. The governments directly or indirectly involved in the conflict had the primary responsibility for preventing war. "War cannot be avoided if the protagonists want war. This war, however, is still not inevitable", the Contadora and Support Group declared.

The Assembly also reviewed the most recent draft of the "Contadora Act on Peace and Cooperation in Central America" that was contained in a report of the Secretary General on the situation in Central America<sup>10</sup>, that was considered at a Security Council meeting in July 1986. The text - intended to be the basis for a negotiated settlement to the problems in the region - contained measures for

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<sup>9</sup>Doc.A/41/662

<sup>10</sup>Doc.A/40/1136



far-reaching co-operation in political, security, economic and social affairs.

The Secretary General said that the Contadora Group, with the backing of the Support Group had served as a "means of restraint" and had helped to avoid an overall deterioration of the situation in the region. The problems of Central America could be resolved only by peaceful means, in accordance with Charter principles, the Secretary General added.

The three versions of the Contadora Act, he went on, had developed the basic elements on which comprehensive settlement of the Central American conflict should be based. Those elements were the need for a Latin American solution to the region's problems, which should be removed from the arena of East-West conflict; the establishment of genuinely pluralistic democratic systems, and respect for the human rights of all citizens; the rights of all nations to self determination, which means the right of all nations to choose freely and without outside interference their own forms of government and their own political, economic and social systems; the need to carry out far reaching economic and social reforms, the prohibition of the use of a nation's territory as a base for attacks on another country or for the provision of military or logistical support to irregular forces or subversive groups; and the cessation of support by any state within or outside

the region to irregular forces or subversive groups operating in any country of the region.

The Secretary General appealed urgently both to the countries of the region and to those with interest in the region to begin without delay observing and implementing fully and simultaneously those basic elements and to act in accordance with international law. Unjust socio-economic structures were at the root of the region's current political crisis, the Secretary General said.

On 10 December 1986 the Security Council considered a complaint by Nicaragua about the "serious incidents occurring at present in the Central American region which endanger international peace and security".<sup>11</sup>

Nicaragua, Honduras and the United States made statements. The Council adjourned without a draft resolution having been tabled.

In a meeting held in December 1986 the four Foreign Ministers of the Contadora Group organized a peace initiative asking for the participation of representatives of its support Group and the Secretary Generals of both the United Nations and the Organization of American States.<sup>12</sup>

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<sup>11</sup>U.N.Chronicle, n.5, p.64.

<sup>12</sup>U.N.Chronicle, Vol.XXIV, No.2, p.8.

The Secretary-General of the United Nations participated in a four day peace mission to the Central American region from 18 to 21 January 1987. He again appealed to the five governments of Central America to join together to seek political solution to the problems that divide them.<sup>13</sup>

He also urged all the other states, above all those with ties to and interests in the region, to facilitate a negotiated solution to the crisis and to join forces to establish a coordinated plan of large-scale economic assistance "for Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua".

In a 12 February 1987 report<sup>14</sup> on the trip, the Secretary General stated: "The countries of the isthmus, which have common ethnic, cultural and linguistic roots and a combined population of not more than 25 million, must overcome their differences, however serious they may appear, for they pale by comparison with what historically has been their common enemy, underdevelopment".

Overcoming underdevelopment, he said, "would be the best way to guarantee a just and lasting peace in Central America and also to dispel any security concerns which third parties might have".

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<sup>13</sup>Ibid.

<sup>14</sup>Doc.S/18686



As a follow up to the January mission, on 17 February 1987, Costa Rica reported<sup>15</sup> to the Secretary-General on a proposal put forward by its President at a meeting with the Presidents of El Salvador, Guatemala and Honduras in San Jose, Costa Rica, on 15 February 1987. The measures set forth in the proposal were to be considered at a further meeting of the Central American Presidents at Esquipulas, Guatemala, within 90 days.

"Peace in the Americas can be maintained only through independence for each of the nations concerned, political and economic co-operation among the peoples of the Americas, exercise of the broadest freedoms, the functioning of stable democratic regimes, fulfilment of the basic requirements of the populations concerned and progressive disarmament", the Presidents stated in the document. "The time for peace has come", they said, setting out a 10-part proposal, which they urged Nicaragua to accept within two weeks.

The 10 parts dealt with: national reconciliation, including amnesty and dialogue; a cease-fire, to be simultaneous with the launching of a dialogue between the warring parties; democratization; free elections; suspension of military aid from Governments outside the region; non-use of territory to attack other States; weapons reduction;

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<sup>15</sup>Doc.A/42/130

national and international supervision, including a creation of a Followup Committee, and support and facilities to supervisory bodies; evaluation of progress towards peace; and democracy and freedom for peace and peace for development.

Nicaragua on 23 February 1987 informed the Secretary General<sup>16</sup> that it had indicated its readiness to engage in dialogue with the Central American leaders "without exception" as an essential condition for arriving at firm agreements to guarantee that "peace is brought to the region", and in that same spirit had insisted on resumption of the bilateral dialogue with the United States in order to conclude treaties to guarantee a framework of security and mutual respect.

Nicaragua agreed that the Costa Rican peace plan should be incorporated into the Contadora negotiating process, so that it would be on a par with other proposals made, including that of Nicaragua. Nicaragua was ready to resume within the next 90 days, it said, the dialogue launched at Esquipulas in May 1986. It stipulated that the inseparable elements in the quest for peace in the region were: cessation of "the terrorist policy of the United States"; unconditional dialogue between the United States and Nicaragua; dialogue without exclusion between the Central American leaders; effective backing for the Contadora peace efforts; and strengthening of democracy on the basis of

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<sup>16</sup>Doc.A/42/129.

self-determination, independence and political pluralism on the part of the Central American Governments.

On 13 March 1987 the Ministers for Foreign Affairs of the Contadora and Support Groups, in consultation with those of Panama and Venezuela, at the Third Meeting of the Council of Ministers of the Latin American Integration Association, in Montevideo, Uruguay, issued a press communique<sup>17</sup> stating that the January peace mission had made it possible to identify the different positions, the difficulties standing in the way of negotiation and the prospects offered by the complex regional panorama.

They hoped "a genuine will to negotiate" would emerge at the Esquipulas summit, and welcomed the "emergence of new peace initiatives embodying fundamental elements of the Contadora process, which meant a contribution to peace to the extent that they were able to respond in a balanced way to the essential and legitimate interests of the different parties".

The forty-second General Assembly in its first political action, expressed its "firmest support" for the Guatemala Agreement for the establishment of peace in Central America. The Guatemala Agreement, an initiative of President Oscar Areas Sanchez of Costa Rica who won the 1987 Nobel Peace

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<sup>17</sup>Doc.A/42/184.

Prize for his effort, "is the outcome of the decision by the Central Americans to take up fully the historical challenge of forging a peaceful destiny for Central America", the Assembly said. The Presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua - who signed the Agreements on 7 August 1987 - were called on to continue their efforts to achieve a firm and lasting peace in the region.<sup>18</sup>

These sentiments were expressed by resolution 42/1 adopted on 7 October 1987, without a vote, urging the international community to increase technical, economic and financial assistance to the Central American countries. The Secretary General was asked to prepare a special plan of economic action and co-operation for the region in support of the ongoing peace process, to be submitted to the General Assembly by 30 April 1988.<sup>19</sup>

In the text, the Assembly stated its conviction that the peoples of Central America "wish to achieve peace, reconciliation, development and justice without outside interference, in accordance with their own decision and their own historical experience, and without sacrificing the principles of self-determination and non-intervention".

A team of UN experts devised a wide ranging economic plan of action for Central America, containing innovative

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<sup>18</sup>U.N.Chronicle, Vol.XXV, No.1, pp.54-55.

<sup>19</sup>Ibid.

approaches to problems of debt and refugees. The General Assembly in its resolution 42/1 had asked that such a plan be prepared.

The team was headed by Augusto Ramirez-Ocampo, Special Representative of the Secretary General for Latin America. It consulted with governments of the region, international organizations and potential donor governments.

The European Economic Community pledged to provide special emergency aid in food, and strengthen programmes for voluntary repatriation and relocation of refugees and displaced persons.<sup>20</sup>

On 26 February 1988, Ministers for Foreign Affairs of the Contadora and Support Groups, meeting in Cartagena de Indias, Colombia, reaffirmed their readiness to participate in continuing negotiations on outstanding security matters.

The Central American Presidents, at a 15-16 January 1988 summit meeting in San Jose, Costa Rica, had, in a formal declaration, reaffirmed their determination to comply with the 7 August 1987 Guatemala Agreement.

The Agreement - entitled "Procedure for the Establishment of a Firm and Lasting Peace in Central America" - calls for national reconciliation, dialogue and amnesty, an end to

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<sup>20</sup>UN Chronicle, Vol. XXV, No. 2, p. 58.



hostilities, democratization, free elections, termination of aid to "irregular forces and insurrectionist movements", non use of territory to attack other states, negotiations on security, verification and control and limitation of weapons, and assistance for refugees and displaced persons. An International Verification and Follow-up Commission was created on 22 August 1987, composed of Foreign Ministers of the five Central American countries and eight Contadora and Support Group countries, as well as Secretaries General of the UN and OAS or their representatives.

The body met frequently and toured the region in early January 1988 producing a 100 page document - not made public.

Commission members met from 11 to 13 January 1988 in Panama city and completed their report which was submitted to the Central American Presidents.

The Presidents subsequently decided that the Executive Committee, composed of the Foreign Minister of the five Central American countries, should undertake the task of verifying, monitoring and following up the Guatemalan Agreement.<sup>21</sup>

But inspite of all these arrangements, tension again mounted towards the middle of March 1988. Nicaragua requested the Security Council to consider what it called a "serious situation created by the escalation of threats and aggression"

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<sup>21</sup>Ibid.

against it by the United States decision to send American troops to Honduras.<sup>22</sup>

The Security Council met on 18 and 22 March 1988. Nicaragua told the Council it was not the first time the United States had created an "artificial crisis" in its attempt to justify the continuation and extension of its "warlike policy" in Central America. The United States wanted both to ensure its direct military involvement in the Central American conflict and "abort" the Guatemala peace agreement, more specifically efforts to achieve a cease-fire in the area. Honduras should live up to the Guatemala Agreement by immediately dismantling Contra bases on its soil and disarming and expelling those mercenaries.

Honduras charged that Nicaragua had attacked Honduras and was responsible for the worsening of tension in Central America. Nicaragua, it said, had involved some 1,500 Sandinista forces, using artillery and air power. The United States had responded to Honduras' request for effective and immediate assistance, sending 3,500 troops to Honduras to carry out "readiness exercises". They would remain until Sandinista troops withdrew from Honduras, and would see action only if Honduras so requested.<sup>23</sup>

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<sup>22</sup>Ibid., p.59.

<sup>23</sup>Ibid.

The United States said Nicaragua had launched a major military incursion into Honduras. Responding to an explicit Honduran request, United States had made a measured response to show American support for Honduras. As American troops would not be deployed to an area of ongoing hostilities, they did not constitute either a threat or use of force against Nicaragua.

The Council after hearing 10 speakers, adjourned without a draft resolution having been tabled.<sup>24</sup>

The above events show that inspite of efforts by the UN General Assembly and Security Council and the Contadora and Support Groups, no acceptable solution is yet in sight. There is too much difference of opinion which has resulted in a deadlock in the situation. Also, the involvement of a veto-wielding power in the dispute makes it impossible for the United Nations to take coercive measures.

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<sup>24</sup>Ibid.

## Chapter VI

### CONCLUDING OBSERVATIONS

From the analysis presented in the preceding pages, it is clear that the United Nations security system leaves much to be desired. The Charter envisages a centralized mechanism of peace enforcement, the functioning of which is dependent on a nucleus of Great Power agreement. Such an arrangement represents a declaration that the United Nations would not attempt to enforce its collective coercive measures if they were opposed by any major (veto-wielding) power. A coercive measure, even though represented by the combined military strength of a majority of member states directed, for instance, against the Soviet Union or the United States or any power aided and abetted by them, would be a major war and not a device for preventing such a war. It may appear to be a realistic view, but it also amounts to a security system where the big powers get away with impunity from violation of the Charter and commitment of breach of the peace or act of aggression while only the smaller powers could be disciplined.

The reality of interstate relations today is that a large number of countries do not have necessary resources and essential attributes of state, both in terms of their defence and development. There are such mighty states as the USA and

the USSR on the one hand, and such states as Maldives and Seychelles on the other. The United Nations cannot evenly alter the international distribution of power. Nor can it provide protection to the weak against the determined action of the strong. However, over the years, the United Nations has built up a formidable mechanism of parliamentary and diplomatic devices which could be used to mobilise and maximise the forces which in a given situation favour a just and peaceful solution.

It is in this context that the political processes of the United Nations which represent a struggle among member states to seek approval, or prevent disapproval of their respective actions and policies and to seek disapproval of the position taken by their rivals gain importance. No government could take lightly the political advantages and disadvantages accruing from the decisions and recommendations of the United Nations.

Closely related to this process of collective legitimization is the concept of international accountability of sovereign states for their acts of omission and commission. This system calls upon the states to stand up and be accounted for on questions of violations of the accepted norms of international behaviour. It is this system which forces the all-mighty United States to explain its engagement

in military and paramilitary activities in and against Nicaragua. And it is this very system by which Nicaragua has been able to protect its territorial integrity against the United States. It seems that only the continuous debates in the Security Council and the resolutions adopted on Nicaragua's complaint against the United States have obliged the United States to exercise some restraint.

Some inferences could be drawn from the verdict of the International Court of Justice.

The conflict in Nicaragua is a product of the direct military and financial help provided to the counter-revolutionaries by the United States. If the American government does not deliver funds to the Contras, they would be largely unable to persist in their attempts to overthrow the Nicaraguan government.

In order to reach a negotiated solution to the conflict, a bilateral dialogue should be established between Nicaragua and the United States. US insistence that Nicaragua hold talks with the counterrevolutionaries is an attempt to give legitimacy to the Contras. The Contras have not qualified as legal combatants under international law, and are entitled to be treated as common criminals. The United States is the appropriate party to be negotiating with the Sandinistas.

A strong case could even be made by Nicaragua of arming itself by stating that it is subjected to systematic military and paramilitary attacks directed by the most powerful nation on the American continent.

Nicaragua has not only been victim of military attacks but also to a policy of destruction of economic objectives, which has considerably damaged the development of the country. That the Hague judgement recognizes the obligation of the United States to make reparations to Nicaragua for damages to its economy and possibilities for economic growth, proves that the United States is responsible to a great extent for the economic difficulties from which Nicaragua suffers.

The various charges levelled by the United States against Nicaragua of posing a threat to the U.S. national security and to that of other states in the region seem to be mere excuses for militarizing Honduras.

By withdrawing from the trial, it seems that the United States had implicitly accepted its guilt. The attitude of the US towards the International Court of Justice sets a dangerous precedent. The US is not only pushing aside international law but is also denying the basic mechanism on which the operation of the Court depends.

From the above analysis it is clear that the political and legal processes of the United Nations made use of by Nicaragua have neither helped to diffuse the conflict situation nor an acceptable solution is in sight. However, the interest generated by the United Nations discussions and debates has helped to influence public opinion. If the United States has so far not opted for use of brute force, the UN factor has been one consideration.



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