

CORRESPONDENCE

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I. THE REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

(Telex)

9 April 1984.

In accordance with Article 40, paragraph 2, of the Statute of the International Court of Justice, I have the honour to inform you that the Government of the Republic of Nicaragua filed in the Registry of the Court today (9 April 1984) an Application Instituting Proceedings against the United States of America, and a request for the indication of interim measures under Article 41 of the Statute and Article 73 of the Rules of Court. The basis for the proceedings is stated to be that "the United States of America is using military force against Nicaragua and intervening in Nicaragua's 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". Details of alleged activities of the United States are given in the Application and an annex thereto. Basing itself upon Article 36 of the Statute and the acceptances by the United States and Nicaragua of Compulsory Jurisdiction under that Article Nicaragua requests the Court to adjudge and declare:

"(a) That the United States, in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Nicaragua, has violated and is violating its express Charter and treaty obligations to Nicaragua and, in particular, its Charter and treaty obligations under

- Article 2 (4) of the United Nations Charter;
- Articles 18 and 20 of the Charter of the Organization of American States;
- Article 8 of the Convention on Rights and Duties of States;
- Article i, third, of the Convention concerning the Duties and Rights of States in the Event of Civil Strife:

(b) That the United States, in breach of its obligation under general and customary international law, has violated and is violating the sovereignty of Nicaragua by

- armed attacks against Nicaragua by air, land and sea;
- incursions into Nicaraguan territorial waters;
- aerial trespass into Nicaraguan airspace;
- efforts by direct and indirect means to coerce and intimidate the Government of Nicaragua.

(c) That the United States, in breach of its obligation under general and customary international law, has used and is using force and the threat of force against Nicaragua.

(d) That the United States, in breach of its obligation under general and customary international law, has intervened and is intervening in the internal affairs of Nicaragua.

(e) That the United States, in breach of its obligation under general and customary international law, has infringed and is infringing the freedom of the high seas and interrupting peaceful maritime commerce.

(f) That the United States, in breach of its obligation under general and customary international law, has killed, wounded and kidnapped and is killing, wounding and kidnapping citizens of Nicaragua.

(g) That, in view of its breaches of the foregoing legal obligations, the United States is under a particular duty to cease and desist immediately;

from all use of force — whether direct or indirect, overt or covert — against Nicaragua, and from all threats of force against Nicaragua;

from all violations of the sovereignty, territorial integrity or political independence of Nicaragua, including all intervention, direct or indirect, in the internal affairs of Nicaragua;

from all support of any kind — including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Nicaragua;

from all efforts to restrict, block or endanger access to or from Nicaraguan ports;

and from all killings, woundings and kidnappings of Nicaraguan citizens.

(h) That the United States has an obligation to pay Nicaragua, in its own right and as *parens patriae* for the citizens of Nicaragua, reparations for damages to person, property and the Nicaraguan economy caused by the foregoing violations of international law in a sum to be determined by the Court. Nicaragua reserves the right to introduce to the Court a precise evaluation of the damages caused by the United States.”

Provisional measures requested are as follows:

“That the United States should immediately cease and desist from providing, directly or indirectly, any support — including training, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary activities in or against Nicaragua.

That the United States should immediately cease and desist from any military or paramilitary activity by its own officials, agents or forces in or against Nicaragua and from any other use or threat of force in its relations with Nicaragua.”

Copies of Application and Request have been transmitted to you by air mail today, and copies delivered to US Embassy, The Hague.

(Signed) Santiago TORRES BERNÁRDEZ.

2. THE REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

9 April 1984.

Confirming my telex of today's date, a copy of which is enclosed, I have the honour to inform Your Excellency that the Government of the Republic of Nicaragua has this day filed in the Registry of the International Court of Justice an Application instituting proceedings against the United States of America. The Government of Nicaragua has also today filed a request for the indication of

provisional measures under Article 41 of the Statute of the Court and Article 73 of the 1978 Rules of Court.

I have the honour to send Your Excellency herewith a certified copy of the Application, with an Annex, and of the request for the indication of provisional measures; I shall in due course transmit to you certified printed copies of the Application in the bilingual (English and French) edition which will be prepared by the Registry. I also enclose a copy of an Affidavit by the Foreign Minister of Nicaragua lodged with the Application and the request.

May I take this opportunity of drawing Your Excellency's attention to Article 40 of the Rules of Court which provides, in paragraph 2, that the respondent, upon receipt of the certified copy of the Application, or as soon as possible thereafter, should inform the Court of the name of its Agent. Paragraph 1 of the same Article provides that Agents shall have an address for service at the seat of the Court to which all communications concerning the case are to be sent.

3. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

(Telex)

9 April 1984.

With reference to Article 40, paragraph 3, of the Statute of the Court I have the honour to inform you that on Monday, 9 April 1984, the Republic of Nicaragua filed in the Registry of the Court (1) an Application instituting proceedings against the United States of America on the grounds that:

“the United States of America is using military force against Nicaragua and intervening in Nicaragua's 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”;

(2) a request for the indication of provisional measures under Article 41 of the Statute and Article 73 of the Rules of Court. The measures requested are as follows:

“That the United States should immediately cease and desist from providing, directly or indirectly, any support — including training, arms, ammunition, supplies, assistance, finances, direction or any other form of support — to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary activities in or against Nicaragua.

That the United States should immediately cease and desist from any military or paramilitary activity by its own officials, agents or forces in or against Nicaragua and from any other use or threat of force in its relations with Nicaragua.”

4. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

9 April 1984.

I have the honour to acknowledge receipt of the Application by the Republic of Nicaragua instituting proceedings against the United States of America,

together with Annex A and an Affidavit by the Foreign Minister of Nicaragua, and the request for the indication of provisional measures in those proceedings, filed in the Registry by you today.

Your appointment as Agent of the Republic of Nicaragua in these proceedings has been duly noted, as has the fact that your address for service, under Article 40, paragraph 1, of the Rules of Court is the Embassy of the Republic of Nicaragua at The Hague.

The Government of the United States of America was immediately informed by telegram of the filing of the Application and request for the indication of provisional measures; in accordance with Articles 38, paragraph 4, and 73, paragraph 2, of the 1978 Rules of Court, certified copies of these documents were immediately transmitted to the Government of the United States of America.

5. THE UNITED NATIONS LEGAL COUNSEL TO THE REGISTRAR

(Telex)

10 April 1984.

Reçu 6 avril déclaration supplémentaire secrétaire d'Etat Etats-Unis d'Amérique en vertu article 36, statut icj ansi conçu:

"I have the honor on behalf of the Government of the United States of America to refer to the declaration of my Government of August 26, 1946, concerning the acceptance by the United States of America of the Compulsory Jurisdiction of the International Court of Justice, and to state that the aforesaid declaration shall not apply to disputes with any Central American State or arising out of or related to events in Central America, any of which disputes shall be settled in such manner as the parties to them may agree.

Notwithstanding the terms of the aforesaid declaration, this proviso shall take effect immediately and shall remain in force for two years, so as to foster the continuing regional dispute settlement process which seeks a negotiated solution to the interrelated political, economic and security problems of Central America."

Déclaration officiellement déposée 6 avril.

6. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

11 April 1984.

With reference to my telex message (haj 0002-04) transmitted to you yesterday, I have the honour to communicate to you herewith a copy of the Application instituting proceedings against the United States of America filed by the Government of the Republic of Nicaragua in the Registry of the Court on 10 April 1984. I also enclose a copy of the French translation of that Application prepared by the Registry. The usual printed bilingual edition is in preparation, and copies will be supplied to you as soon as possible with a view to the notification contemplated by Article 40, paragraph 3, of the Statute of the Court.

I also have the honour to communicate to you herewith a copy of the Request for the indication of provisional measures under Article 41 of the Statute of the Court filed by the Republic of Nicaragua simultaneously with its Application, and a copy of the French translation prepared by the Registry.

7. THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS TO
THE REGISTRAR

13 April 1984.

I wish to acknowledge on behalf of the Government of the United States of America receipt of your letter of April 9, 1984, transmitting (1) a certified copy of an application of the Government of Nicaragua to the Court naming the Government of the United States as respondent, and (2) a certified copy of a request of the Government of Nicaragua for the indication of provisional measures with respect to that application.

In accordance with Article 40 (2) of the Rules of Court, I wish to advise you that the United States designates as its Agent with regard to Nicaragua's application the Honorable Davis R. Robinson, Legal Adviser of the Department of State, and as its Deputy Agent Mr. Daniel W. McGovern, Principal Deputy Legal Adviser, U.S. Department of State. All communications to Mr. Robinson or Mr. McGovern may be addressed to the United States Embassy in The Hague.

In accordance with Article 31 of the Rules of Court, the Agent of the United States is prepared to meet with the President of the Court at the President's convenience to discuss questions of procedure, and would request such a meeting before the scheduling of hearings or other action in the case. As you are aware, Mr. Robinson is presently in The Hague and could meet with the President at a mutually convenient time next week.

The United States is of the firm view that, under the terms of the United States Declaration of August 14, 1946, assenting to jurisdiction of the Court, and its communication of April 6, 1984, the Court lacks jurisdiction to consider the application of the Government of Nicaragua. *A fortiori* the Court lacks jurisdiction to indicate the provisional measures requested by the Government of Nicaragua.

The United States notes that the allegations of the Government of Nicaragua comprise but one facet of a complex of interrelated political, social, economic and security matters that confront the Central American region. Those matters are the subject of a regional diplomatic effort, known as the "Contadora Process", which has been endorsed by the Organization of American States, and in which the Government of Nicaragua participates. This process is strongly supported by the United States as the most appropriate means of resolving this complex of issues, consistent with the United Nations Charter and the Charter of the Organization of American States, in order to achieve a durable peace in the region. The concern of the United States is that bilateral judicial proceedings initiated by Nicaragua would impede this ongoing multilateral diplomatic process. This concern motivated the decision of the United States which was communicated to the Secretary-General on April 6, 1984.

The same concern makes the indication of the provisional measures requested by Nicaragua particularly inappropriate at this time. In the present situation in Central America, the indication of such measures could irreparably prejudice the

interests of a number of States and seriously interfere with the negotiations being conducted pursuant to the Contadora Process.

Finally, the United States notes that the events of which the Government of Nicaragua complains allegedly took place over at least three years. See Annex A to application. These circumstances are inconsistent with an argument that there is urgency to Nicaragua's request for the indication of provisional measures.

For the reasons stated above concerning jurisdictional questions, the United States requests the Court to strike Nicaragua's application from the Court's list of pending matters. Alternatively, the United States considers that the circumstances and the extraordinary character of the measures requested by Nicaragua require an opportunity for written submissions by the parties and, thereafter, an oral hearing on Nicaragua's request for the indication of provisional measures. The Agent of the United States will be prepared to discuss with the President the scheduling of written submissions by the parties and oral proceedings before the Court.

(Signed) L. Paul BREMER, III.

8. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

13 April 1984.

With reference to the Application instituting proceedings filed by the Republic of Nicaragua in the Registry of the Court on 9 April 1984, I have the honour to transmit to you herewith a copy of a letter from the Ambassador in The Hague of the United States of America, dated 13 April 1984 and received in the Registry today.

9. THE REGISTRAR TO THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE
NETHERLANDS

13 April 1984.

I have the honour to acknowledge receipt of the letter of today's date whereby Your Excellency, on behalf of the Government of the United States of America, has *inter alia* advised me of the appointment of Mr. Davis R. Robinson and Mr. Daniel W. McGovern to be respectively the Agent and Deputy Agent of the United States with regard to the application filed in the International Court of Justice on 9 April 1984 by the Government of Nicaragua. I note that communications to them should in this case be transmitted to the United States Embassy in The Hague.

I have communicated copies of your letter to the Court and to the Agent of Nicaragua.

10. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA¹

16 April 1984.

I have the honour to confirm that, as you were informed yesterday evening by the Deputy-Registrar, the President of the International Court of Justice will receive the Agents and Counsel of the United States of America and of Nicaragua, in his Chambers at the Peace Palace on Monday, 16 April 1984, at 12.30.

11. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

16 April 1984.

With reference to the meeting held in the chambers of the President of the Court this morning between the President and the Agents and Counsel for the Parties in the proceedings instituted by Nicaragua against the United States of America I have the honour on the instructions of the President of the Court, to inform Your Excellency that the President wishes by the present letter to convey to both Agents in writing, with a view to its transmittal to their respective Governments, the appeal he then made in exercise of the power conferred on him by Article 74, paragraph 4, of the Rules of Court, namely: "I draw the attention of both Parties to the need to act in such a way as will enable any Order the Court may make on the request for provisional measures to have its appropriate effects."

12. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

17 April 1984.

I have the honour to inform you that the Republic of Nicaragua intends to abstain from exercising its prerogative to choose an *ad hoc* judge in accordance with Art. 31 of the Statute of the Court in respect of the proceedings relating to interim measures of protection as requested by the Republic of Nicaragua on the 9th of April.

The Government of Nicaragua would emphasize that it reserves the right to choose an *ad hoc* judge in respect of other proceedings in the present case subsequent to the making of an order in respect of interim measures; in particular, Nicaragua reserves the right to choose an *ad hoc* judge in any proceedings regarding intervention either in respect to interim measures of protection or in any other proceedings in this case.

(Signed) Carlos ARGÜELLO GÓMEZ.

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

13. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

17 April 1984.

I have the honour to transmit to you herewith a copy of a letter just received from the Agent of Nicaragua in the proceedings instituted by Nicaragua on 9 April 1984 against the United States of America, with reference to the claim by the Government of Nicaragua to exercise the right conferred by Article 31, paragraph 2, of the Statute of the Court to choose a judge *ad hoc* to sit in the case.

14. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA ¹

18 April 1984.

On instructions from the President of the International Court of Justice, I have the honour to inform your Excellency that, pursuant to Article 74, paragraph 3, of the Rules of Court, Wednesday 25 April 1984, at 10 a.m., has been fixed as the date for the opening of a hearing on the request by the Government of Nicaragua for the indication of provisional measures in the proceedings instituted by Nicaragua on 9 April 1984 against the United States of America.

15. THE MINISTER OF FOREIGN AFFAIRS OF EL SALVADOR TO THE REGISTRAR*(Telegram)*

19 April 1984.

Although not a party to the case brought before the Court by the Government of Nicaragua requesting provisional measures related to its complaint against alleged U.S. military activities in the region, the Government of El Salvador wishes to provide the Court with certain information on the circumstances surrounding the complaint by Nicaragua and the whole Central American situation.

The problems besetting the Central American region are many and interrelated. They are political, economic, social, human rights and security issues, some are bilateral and others are multilateral, some are legal while many are of a non-legal nature. The Government of El Salvador recalls that the Contadora Process in which Nicaragua is a participant was initiated to deal with the entire array of these questions and that it is now engaged actively in its work. The Governments of El Salvador and Nicaragua, with the other concerned governments in the region, have endorsed the Contadora Process without reservations, as has the Organization of American States. The Government of El Salvador continues to consider the Contadora Process as the uniquely appropriate form, consistent with Article 33 of the Charter of the United Nations and Article 24 of the Charter of the Organization of American States, in which to seek a realistic,

¹A communication in the same terms was sent to the Agent of the United States of America.

durable, regional peace settlement that would take the manifold legitimate interests of each participating State into full account.

The issues raised by the Government of Nicaragua cannot be divorced from the regional issues under negotiation in the Contadora Process. In the view of my Government, the complaint by Nicaragua, if considered by the Court, or if the provisional measures were ordered by the Court, would damage prospects for success of multilateral negotiations *within* the Contadora framework, especially if such measures were applied to only one party to the dispute. Therefore, my Government requests that the Court take seriously into consideration its views as expressed above, and that the Court take no action with respect to the requested provisional measures which would be contrary to the negotiating process now taking place within the Contadora Group for a comprehensive, regional solution in Central America.

(Signed) Fidel CHAVEZ MENA.

16. THE GOVERNMENT OF COSTA RICA TO THE REGISTRAR

(Telegram)

19 April 1984.

With regard to the case presented before the International Court of Justice by the Government of Nicaragua, the Government of Costa Rica wishes, by this means, to present for the consideration of the Court the following communication:

Costa Rica declares its permanent neutrality in belligerent conflicts which affect other States in a Presidential Proclamation on November 17, 1983. The neutrality of Costa Rica is active, and for this reason fully compatible with the rights of Costa Rica as a member of the United Nations and the Organization of American States in all that relates to the preservation of peace and international security, as well as in relation to those activities conducive to a peaceful solution of disputes between States.

As a perpetually neutral State and a country situated in the Central American region, Costa Rica has a special interest in the peaceful solution of disputes and conflicts which affect this area of the world. For this reason and in pursuit of this interest in peace and international order, the Government of Costa Rica would like to provide its observations concerning the case presented by the Government of Nicaragua against the United States of America and its application for the adoption of provisional measures in conformity with Article 41 of the Statute and Article 73 of the Rules of Court, without these observations being considered as an intervention in the case, in accordance with the doctrine of Article 62 of the Statute of the Court.

Based on the above, the Government of Costa Rica wishes to make the following observations:

1. The "case" presented by the Government of Nicaragua before the Court touches upon only one aspect of a more generalized conflict that involves other countries within the Central American area as well as countries outside the region. Faced with such conflicts, a group of American nations, within the doctrine of Article 33 of the Charter of the Organization of American States, created the

so-called "Forum of Contadora" in order to seek at a sub-regional level, a solution to such conflicts, since their continuation would constitute a grave threat to the international peace and security of the entire Central American area. Within this forum intense diplomatic negotiations have taken place to resolve the conflicts, not only in their military aspect, but also their causes, which are of a political, social and economic nature both internal and external. This process is very far along and has as participants all the countries of the region, specifically: Colombia, Mexico, Panama, Venezuela, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, and with the support of the international community.

2. The Government of Costa Rica is of the opinion that whatever measure which the Court might adopt in the "case" presented for its consideration, taking such measures outside the context of the complete political and military situation that prevails in the Central American region, could become a distorting factor in the difficult equilibrium sought by the Forum of Contadora in a broader framework of solutions and could compromise, if not undertaken with prudence and equity, all possibilities of success for the "Forum of Contadora".

3. Therefore, Costa Rica without pretending to judge in any way the appropriateness of the provisional measures which the Court may decide, expresses the following opinion:

(i) Whatever provisional measure the Court may adopt, should entail obligations and commitments by both parties to the dispute.

(ii) The adoption of any provisional measure whatever its nature, should take into account the existence of the diplomatic effort which is being carried out in the Contadora Group, with the participation of all the countries of the area, and which seeks a solution to the conflicts such as those which have been brought before the Court.

17. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

19 April 1984.

I have the honor to acknowledge receipt of your letter of 18 April 1984, indicating that the Court will open its hearing pursuant to Article 74, paragraph 3, of the Rules of Court on the request of the Government of Nicaragua for the indication of provisional measures on Wednesday, April 25, 1984, at 10.00 a.m.

The United States wishes to repeat its concern that the convocation of the hearing at that early date will not afford it sufficient opportunity, within the meaning of Rule 74 (3), to be fairly "represented" at the hearing since there is manifestly inadequate time to develop fully its presentation of the factual circumstances and of legal argumentation. Despite this concern, I have the honor to inform the Court that the United States intends to appear at the hearing. Such appearance is with full reservation of the rights and defenses of the United States, including, but not limited to, the assertion of the United States that the entire matter is clearly outside of the jurisdiction of this honorable Court. The United States specifically reserves, *inter alia*, the right fully to address in due course the questions which may be raised by Preliminary Objection pursuant to the procedures established under Article 79 of the Rules of Court. The United States appearance is also without prejudice to any other rights that it may have.

(Signed) Davis R. ROBINSON.

18. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

19 April 1984.

I have the honour to acknowledge receipt of the letter of today's date by which you have indicated the position of the United States with regard to its appearance at the hearing to be held as from 10 a.m. on Wednesday 25 April 1984 on the request made by Nicaragua for the indication of provisional measures.

I have transmitted a copy of your letter to the Agent of Nicaragua.

19. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

23 April 1984.

I have the honor to refer to the Application of the Republic of Nicaragua of 9 April 1984 (the "Application"), to its Request of the same date for the indication of provisional measures under Article 41 of the Statute of the Court (the "Request"), and to Article 48 of the Statute of the Court. The United States wishes to bring to the notice of the Court information that the United States has recently received, establishing that Nicaragua has not accepted the compulsory jurisdiction of the Court under Article 36 of the Statute of the Court. Consequently, the Application does not meet the requirements of Article 38 of the Rules of Court, particularly paragraph 2 thereof. The United States respectfully submits, therefore, that an immediate decision should be taken to preclude any further proceedings on the Application and the claims contained therein or on the Request.

In this regard, I have the honor to call attention to the following:

1. The Application refers in its opening paragraph to "... the Declarations made by the Republic of Nicaragua and by the United States of America accepting the jurisdiction of the Court as provided for in Article 36 of the Statute of the International Court of Justice. ..." The Application further states in paragraph 13 thereof that "[b]oth the United States and Nicaragua have accepted the compulsory jurisdiction of the Court under Article 36 of the Statute of the Court". Both the reference and the statement are incorrect. As of the date of the filing of the Application, Nicaragua had not accepted the compulsory jurisdiction of the Court.

2. Nicaragua has not specified in the Application the legal grounds upon which the jurisdiction of the Court is said to be based. In the absence of any other indication, the United States assumes that Nicaragua is seeking to rely upon Article 36, paragraph 5, of the Statute of the Court, which reads:

"Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms."

On 14 September 1929, Nicaragua signed the Protocol of Signature of the Statute of the Permanent Court of International Justice. The Protocol of Signature provided:

"The present Protocol, which has been drawn up in accordance with the

decision taken by the Assembly of the League of Nations on the 13th December, 1920, is subject to ratification. Each Power shall send its ratification to the Secretary-General of the League of Nations; the latter shall take the necessary steps to notify such ratification to the other signatory Powers. The ratification shall be deposited in the archives of the Secretariat of the League of Nations."

But Nicaragua never ratified the Protocol of Signature of the Statute of the Permanent Court. Thus, the declaration which Nicaragua made on 24 September 1929 purporting to accept the Optional Clause never entered into force. As a result, Nicaragua never accepted the compulsory jurisdiction of the Permanent Court. Consequently, Article 36, paragraph 5, of the Statute of the International Court of Justice is inapplicable, and cannot serve as the basis of jurisdiction over the Application and the claims contained therein or over the Request.

3. *The Report of the Permanent Court of International Justice 1929-1930, Series E, No. 6*, at 145-146, lists Nicaragua among the "States having signed [the Optional Clause] without condition as to ratification but not ratified the Protocol of Signature of the Statute". These are described as "States not bound by the Clause". *Idem* at 146. This Report does not include Nicaragua in the list of "States at present bound by the [Optional] Clause". *Idem* at 145. Nicaragua is similarly listed in subsequent issues of the *Reports of the Permanent Court of International Justice*. See, e.g., *Report 1930-1931, Series E, No. 7*, at 159, 161, 457; *Report 1937-1938, Series E, No. 14*, at 59-60. See also, *Collection of Texts Governing the Jurisdiction of the Court, Series D, No. 6*, at 19 (1932).

4. On 29 November 1939, Nicaragua addressed a telegram to the League of Nations stating that an instrument of ratification of the Protocol of Signature of the Statute would follow. See *Sixteenth Report of the Permanent Court of International Justice* (15 June 1939 to 31 December 1945), *Series E, No. 16*, page 331; *International Court of Justice, Yearbook 1982-1983*, page 79, footnote 1. I am informed that the records of the League of Nations in Geneva reveal that no instrument of ratification from Nicaragua was ever received. On 30 November 1939, the Acting Legal Adviser of the League of Nations informed the Government of Nicaragua that the Secretariat of the League of Nations was at the disposal of Nicaragua to facilitate the deposit of such an instrument. (See Annex I hereto, para. 3.) Later, on 16 September 1942, the Acting Legal Adviser (M. Emile Giraud) wrote to the Minister for Foreign Affairs of Nicaragua, drawing attention to Nicaragua's telegram of 29 November 1939 and adding:

"I have never received the instrument of ratification, the deposit of which is necessary to bring Nicaragua's obligation into being."

(See Annex I hereto at para. 5.) Attached to Annex II hereto is a duly authenticated copy of a letter dated 13 May 1943 from the United States Ambassador to Nicaragua to Judge Manley O. Hudson. In that letter, there is further evidence that as of that date, Nicaragua had not ratified the Protocol of Signature and therefore was not bound thereby. Additional confirmation of the non-ratification of the Protocol of Signature by Nicaragua appears in the Twenty-First List of Signatures, Ratifications and Accessions in respect of Agreements and Conventions concluded under the Auspices of the League of Nations, which includes Nicaragua in the list of "Signatures not yet perfected by Ratification". See League of Nations, *Official Journal*, Special Supplement No. 193 (10 July 1944), at pages 37, 42-43. So far as the United States has been able to ascertain, there is no indication that Nicaragua ratified the Protocol of Signature before the Charter of the United Nations entered into force on 24 October 1945, or

before the League of Nations and the Permanent Court of International Justice were dissolved on 18 April 1946. That being so, Nicaragua cannot be deemed to have accepted the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 5, of the Statute of the Court.

5. The United States is further informed that Nicaragua has never deposited with the Secretary-General of the United Nations a declaration accepting the Court's compulsory jurisdiction pursuant to Article 36, paragraph 2, of the Statute of the Court.

6. In the circumstances, the Court is without jurisdiction to entertain the Application of the Government of the Republic of Nicaragua or any part of that Application, and the Request for the indication of provisional measures does not relate to any case properly before the Court. For these reasons and in consideration of Article 48 of the Statute of the Court, the United States respectfully seeks from the Court an immediate decision which will preclude any further proceedings on the Application and the claims contained therein, or on the Request.

7. This letter is without prejudice to any other rights, claims or positions of the United States, whether under the Statute or the Rules of Court or otherwise, including, without limitation, such as may relate to the jurisdiction of the Court or the admissibility of the Application.

ANNEX I

1. Since receipt of the Registrar's letter of 9 April 1984 (#71558), the United States has examined whether Nicaragua accepted the compulsory jurisdiction of the Permanent Court of International Justice. Inquiries in the United Nations Secretariat in New York disclosed that any relevant materials would be located in the League of Nations Archives in Geneva. From inquiries made in Geneva, the following has been established.

2. Nicaragua's telegram of 29 November 1939, referred to in the letter of the Agent of the United States of 23 April 1984, was received in the League of Nations in Geneva on 30 November 1939.

3. On 30 November 1939, the Acting Legal Adviser of the League of Nations wrote a letter to the Nicaraguan Ministry for Foreign Affairs in which, after acknowledging receipt of the telegram of 29 November 1939, he stated:

“En réponse, je m'empresse de vous informer que le service compétent du Secrétariat se tient à la disposition de votre gouvernement pour lui faciliter les formalités relatives au dépôt dudit instrument de ratification.”

There is no reply to that letter in the file of the League of Nations.

4. On 4 August 1942, the late Judge Manley O. Hudson, then in residence at Harvard Law School, wrote to inquire as to the status of Nicaragua's ratification of the Protocol of Signature. On 15 September 1942, the Acting Legal Adviser of the League of Nations, M. Emile Giraud, replied (in part):

“We have not received the ratification necessary to complete the signature of the Court Protocol and at the same time to bring into force the obligations concerning Article 36. But on November 29th, 1939, the Secretary-General was informed by telegram that the Court Protocol was ratified by the

President of the Republic of Nicaragua. We have however never received the instrument of ratification itself, which should have been sent to us. Nicaragua is therefore not bound either by the Protocol or by the Optional Clause."

5. On 16 September 1942, Acting Legal Adviser Giraud sent the following letter to the Minister for Foreign Affairs of Nicaragua:

"Par un télégramme en date du 29 novembre 1939, vous avez bien voulu me faire savoir que le protocole de signature du Statut de la Cour permanente de Justice internationale (du 16 décembre 1920) avait été ratifié par le président de la République de Nicaragua et que l'instrument de ratification serait envoyé au Secrétariat.

Or, je n'ai jamais reçu cet instrument de ratification dont le dépôt est nécessaire pour faire naître effectivement l'obligation. Peut-être cet instrument s'est-il perdu en cours de route.

J'ai tenu à attirer votre attention sur cette question."

6. This letter of 16 September 1942 is the last document contained in the United Nations Library, Geneva, League of Nations Archives, 1933-1946, File No. 3C/17664/1589. This file contains all the materials for the period from 1933 to 1946 relating to Nicaragua's actions in connection with the Protocol of Signature of the Statute of the Permanent Court of International Justice and the Optional Clause.

[When copies of the original documents on file in Geneva are received in The Hague, the Agent of the United States will transmit copies to the Registrar.]

ANNEX II

1. While the inquiries to which Annex I refers were being pursued, the Department of State of the United States Government in Washington, D.C., conducted an examination of its own archives to determine whether they contained any relevant information on the possible acceptance by Nicaragua of the compulsory jurisdiction of the Permanent Court of International Justice. That examination revealed despatch No. 1035 of 13 May 1943 from the United States Ambassador to Nicaragua forwarding to the Department of State a letter of the same date from the Ambassador to Judge Hudson reporting on the results of the Ambassador's inquiries at the Ministry for Foreign Affairs of Nicaragua. That letter from the Ambassador to Judge Hudson reported that the Foreign Minister of Nicaragua had informed the Ambassador that as of that day, "there is no record of the instrument of ratification having been transmitted to Geneva". An authenticated copy of the full text of the despatch and enclosed letter is appended to this Annex II¹.

2. The Department of State has found no further documentation, from any source, relating to this matter.

¹ Not reproduced.

20. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

24 April 1984.

I have the honour to confirm the transmittal made late last night to the Embassy of Nicaragua at The Hague of a copy of a communication received yesterday evening from the Agent of the United States of America in the proceedings instituted by your Government before the International Court of Justice. An additional copy is attached herewith.

21. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

24 April 1984.

I have the honour to refer to the letter dated 23 April 1984 to the Registrar by the Agent of the United States of America in the proceedings relating to the Application of the Republic of Nicaragua of 9 April 1984.

On behalf of the Republic of Nicaragua I wish to state that the matters referred to by the Agent of the United States, are matters, which can only be taken into consideration by the Court in the course of the hearings on the request for interim measures of protection and then only in so far as these matters may be relevant to those proceedings. This view is, of course, in accordance with Article 36 (6) of the Statute of the Court, which provides that in the event of a dispute as to whether the Court has jurisdiction the matter shall be settled by the decision of the Court.

Without conceding in any way the appropriateness of the United States' argument at this point in these proceedings, and furthermore, without prejudice to other arguments that Nicaragua will present at the appropriate time to any objections to the Court's jurisdiction, I would like to state:

1. Nicaragua ratified in due course the Protocol of Signature of the Statute of the Permanent Court.
2. Apart from the 1929 Declaration of Nicaragua accepting without qualification the compulsory jurisdiction of the Permanent Court, which Nicaragua contends to be fully effective, there are in force other treaties which provide this Court jurisdiction over the Application filed by Nicaragua on 9 April 1984.

The Republic of Nicaragua reserves the right to review all pertinent issues of law and fact at the proper time.

22. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

24 April 1984.

I have the honour to transmit to you herewith a copy of a letter, dated 24 April 1984 and received in the Registry today, from the Agent of Nicaragua, in connection with the proceedings instituted by the Republic of Nicaragua on 9 April 1984.

23. LE CHARGÉ D'AFFAIRES DE L'AMBASSADE DU HONDURAS AU GREFFIER

24 avril 1984.

J'ai l'honneur, suivant les instructions reçues de mon gouvernement, de vous adresser ci-joint, copie de la note que le Gouvernement du Honduras vous transmet par l'intermédiaire de Son Excellence le Secrétaire général des Nations Unies.

Je saisis cette occasion pour renouveler à Monsieur le Greffier les assurances de ma plus haute considération.

(Signé) Arias de SAAVEDRA Y MUGUELAR.

(Traduction non officielle)

(Télex)

Tegucigalpa, le 18 avril 1984.

Son Excellence Monsieur Javier Pérez de Cuéllar
Secrétaire général de l'Organisation des Nations Unies
New York, NY, USA

Monsieur le Secrétaire général,

J'ai l'honneur de présenter mes compliments à Votre Excellence à l'occasion de vous exprimer la grave préoccupation du Gouvernement du Honduras au sujet des nouvelles démarches internationales entreprises par le Gouvernement du Nicaragua afin de soustraire à la compétence du moyen de solution pacifique spécial promu par le groupe de Contadora, formé par la Colombie, le Mexique, le Panama et le Venezuela, la solution de la crise politique, économique, sociale et de sécurité qui frappe la région centroaméricaine et dont la nature complexe exige une solution globale et multilatérale.

Il est de la connaissance de Votre Excellence que cette crise est le résultat du débordement des conflits internes de quelques pays de la zone, du manque de respect aux droits de l'homme, du sous-développement économique et social et très spécialement de la course aux armements et de l'accroissement démesuré des forces armées du Gouvernement du Nicaragua, engagé à promouvoir le déséquilibre de gouvernements voisins par l'encouragement, le financement, l'entraînement et la prestation d'assistance logistique et de communications aux groupes insurgés d'autres pays centroaméricains avec le but d'instaurer des gouvernements qui lui soient proches.

C'est précisément pour chercher une solution intégrale à la crise centroaméricaine que le groupe de Contadora proposa une négociation directe entre les Etats de la région, qui fut acceptée par le Gouvernement du Honduras et à laquelle il donna son appui le plus large en participant activement à toutes les réunions convoquées par ce même groupe.

Le Gouvernement du Honduras présenta le 4 avril 1983, au sein du Conseil permanent de l'Organisation des Etats américains, un projet de résolution aux fins de pacification de la zone centroaméricaine. A la demande du groupe de

Contadora, présentée au même Conseil par le représentant permanent de la Colombie. le Honduras accepta la suspension de la discussion dudit projet de résolution afin que les négociations directes promues par ce groupe de pays membres de l'Organisation des Etats américains aient l'opportunité d'aboutir à des résultats positifs.

A ce sujet, Son Excellence le ministre mexicain des relations extérieures, Monsieur Bernardo Sepúlveda, a reconnu, dans la conférence de presse tenue dans la capitale de son pays le 13 avril 1983, que l'attitude conciliatoire montrée par le Honduras au sein de l'Organisation des Etats américains a rendu possible les gestions entamées par le groupe de Contadora. Le ministre mexicain, se référant à la réunion tenue à Panama par les ministres qui intègrent le groupe et qui décidèrent leur intervention a dit textuellement :

« On s'avisait dans une première instance que le plus urgent était de s'assurer que le Conseil permanent de l'OEA n'inhibait pas l'action des ministres membres du groupe Contadora dans leur initiative pour trouver des formules de solution en Amérique centrale. Il s'agissait là d'une question urgente, car le Conseil permanent de l'OEA devait examiner un projet de résolution présenté par le Honduras ce même lundi après-midi. Heureusement et grâce à une série de conversations tenues avec d'autres parties intéressées dans cette question, il fut accordé d'ajourner son étude au sein du Conseil permanent, permettant ainsi de transférer la question de la tribune régionale à celle de Panama, c'est-à-dire aux ministres des affaires étrangères du groupe Contadora. En même temps on a compris l'opportunité de faire une démarche auprès des Nations Unies pour qu'elles s'abstiennent de toute action qui doublerait celle qui venait de s'entamer à Panama lundi dernier.

Les parties intéressées ont accueilli avec beaucoup d'intérêt la proposition qu'on leur faisait et elles ont décidé de demander au Conseil permanent de l'OEA l'ajournement de la question. Celle-ci fut la première action prise à ce sujet et qui, je répète — déclara le ministre Sepúlveda — nous laissa libres quant à la capacité d'action pour assumer la juridiction directe sur ce sujet. »

Au cours de plus d'une année de négociations multilatérales délicates, nous avons pu constater l'appui très large reçu par le groupe de Contadora, tant de la part de l'Organisation des Etats américains (AGRés.675-XIII-0/83) comme de l'Assemblée générale (Rés.38/10) et du Conseil de sécurité de l'Organisation des Nations Unies (Rés.530 (1983)) ainsi que de la part de la communauté internationale en général, sans distinction de systèmes idéologiques, politiques, économiques ou juridiques.

C'est pour cette raison que le Gouvernement du Honduras considère nécessaire et du plus grand intérêt pour les Etats de la région centroaméricaine et autres Etats pacifiques, que le groupe de Contadora poursuive ses efforts dans la recherche d'une paix durable et stable pour la région, sans que cette procédure soit exposée à la frustration par le recours qu'un pays pourrait faire à d'autres moyens de règlement pacifique.

D'accord avec cette thèse, partagée par la majorité des pays centroaméricains et par le groupe de Contadora, le Gouvernement du Honduras tient à signaler le danger que supposerait le traitement simultané de la crise centroaméricaine par des différentes instances internationales — comme l'a prétendu le Gouvernement du Nicaragua — lorsque des négociations directes sont déjà en cours. Cette thèse s'est vue confirmée par le renvoi de la question centroaméricaine au groupe de Contadora, avec l'appui inconditionnel du Conseil de sécurité des

Nations Unies, de l'Assemblée générale de cette même organisation et de l'Assemblée générale de l'Organisation des Etats américains.

Le Gouvernement du Nicaragua essaye de nouveau de se jouer du procès de négociation de Contadora en prétendant soumettre la crise centroaméricaine — de nature essentiellement politique — à la connaissance et résolution de la Cour internationale de Justice, au détriment des négociations en cours et en méconnaissant même les résolutions de l'Organisation des Nations Unies, de l'Organisation des Etats américains et l'appui international total qu'a mérité cette voie de pacification.

Il va sans dire que les négociations poursuivies par les pays de l'Amérique centrale dans le cadre de Contadora sont clairement autorisées par l'article 52 de la Charte de l'ONU et par l'article 23 de la Charte de l'OEA, qui favorisent les accords régionaux des différends.

Le Gouvernement du Honduras, sans participer ni prétendre intervenir de quelque manière que ce soit dans la procédure entamée par le Nicaragua contre les Etats-Unis d'Amérique devant la Cour internationale de Justice, observe avec préoccupation la possibilité qu'une éventuelle résolution de la Cour puisse affecter la sécurité du peuple et de l'Etat du Honduras qui dépendent en grande partie des accords bilatéraux et multilatéraux de coopération internationale en vigueur — accords publics et dûment enregistrés au Secrétariat général de l'ONU — si de manière directe et unilatérale on essayait de restreindre ces accords, ce qui aurait pour résultat de laisser mon pays dans une situation sans défense.

Le Gouvernement du Honduras juge aussi, qu'ayant été approuvé à l'unanimité au sein du groupe de Contadora le 9 septembre 1983 le « document d'objectifs » qui comprend la totalité des problèmes que constitue la crise centroaméricaine dans ses diverses manifestations, et que se trouvant en outre en cours les négociations entamées par les cinq pays centroaméricains dans les trois commissions de travail créées à cet effet, il est nécessaire que cette procédure continue sans être perturbée par la soustraction de la matière de sa compétence.

Vu les raisons ci-dessus exposées et vu la demande introduite par le Nicaragua devant la Cour en indication de mesures conservatoires dans la procédure entamée par le Nicaragua contre les Etats-Unis d'Amérique, je prie Votre Excellence de bien vouloir transmettre, avec l'urgence requise par le cas d'espèce, à Monsieur le Greffier de la Cour internationale de Justice, le texte de cette note qui contient les préoccupations du Gouvernement du Honduras sur les effets que ces mesures pourraient avoir sur la négociation en cours ainsi que sur la sécurité internationale de l'Etat du Honduras.

Je saisis cette occasion pour exprimer à Votre Excellence les assurances de ma plus haute considération.

(Signé) Arnulfo PINEDA LOPEZ.

24. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

24 April 1984.

I have the honour to acknowledge receipt of the letter with annexes handed in to the Registry at 7.45 p.m. on Monday 23 April 1984, concerning the proceedings instituted by Nicaragua against the United States of America.

This letter, a copy of which has been transmitted to the Agent of Nicaragua, is under consideration by the Court.

25. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

24 April 1984.

I have the honour to acknowledge receipt of your letter of today's date commenting on the letter received yesterday from the Agent appointed by the United States of America in the proceedings instituted by your Government.

I have transmitted a copy of your letter to the Agent of the United States.

26. THE AMBASSADOR OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

24 April 1984.

I have the honour to refer to the Application of the Republic of Nicaragua of 9 April 1984. On behalf of the Republic of Nicaragua, I wish to inform the Court of the names of the counsel for Nicaragua :

[See I, p. 33.]

27. THE AMBASSADOR OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

24 April 1984.

I have the honour to refer to the Application of the Republic of Nicaragua of 9 April 1984. On behalf of the Republic of Nicaragua I am enclosing two sets of Exhibits I, II, III, IV, V, and VI¹ to which the Republic of Nicaragua will refer in the oral proceedings of 25 April 1984. Please note that Exhibits I and II are Affidavits, the originals of which are included in the materials enclosed herewith. I am having additional copies of Exhibits I-VI produced and will provide them to the Court as soon as possible. I will also provide to the Court as soon as possible Exhibits VII and VIII with sufficient copies thereof.

28. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

24 April 1984.

I have the honour to acknowledge receipt of the letter of 24 April with which you enclosed two sets of Exhibits to which Nicaragua intends to refer at the hearing of 25 April 1984, as also of the two sets themselves, one of which has been transmitted to the Agent of the United States.

¹ See I, pp. 135-213.

29. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA¹

24 April 1984.

I have the honour to draw your attention to the following provisions of Article 71 of the Rules of Court:

“1. A verbatim record shall be made by the Registrar of every hearing, in the official language of the Court which has been used . . .

4. Copies of the transcript shall be circulated to the judges sitting in the case, and to the parties. The latter may, under the supervision of the Court, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the sense and bearing thereof . . .”

The transcript of the oral proceedings opening on Wednesday 25 April 1984 will be circulated to the Parties as follows: the transcript of a hearing held from 10 a.m. to 1 p.m. will be available in the evening of the same day, and that of a hearing held from 3 to 6 p.m. will be available during the morning of the following day.

In order to facilitate any supervision which the Court may feel it proper to exercise, I shall be obliged if you will hand your corrections to my secretary as soon as possible after the circulation of each transcript, and in any event not later than 6 p.m. on the day following such circulation.

30. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

24 April 1984.

I am pleased to provide the Court with the enclosed list of Counsel and others who have assisted the United States in connection with the Application of the Republic of Nicaragua and its Request for the indication of Interim Measures. Arguments shall be presented on behalf of the United States by the Agent, the Deputy Agent and the Special Counsel.

[See I, pp. 33-34.]

31. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

24 April 1984.

I have the honor to acknowledge receipt of your letter number 71621 of 24 April 1984 forwarding a letter of the same date from the Agent of Nicaragua together with one copy of Exhibits I to VI. This letter and these documents were received at approximately 9.15 this evening.

We have noted that the Agent of Nicaragua is reportedly having additional copies of Exhibits I to VI prepared, and we are awaiting copies thereof. We have

¹ A communication in the same terms was sent to the Agent of the United States of America.

also noted that two further exhibits, numbered VII and VIII are to be provided as soon as possible.

In view of the short time between receipt of those documents and the scheduled opening of the hearing at 10.00 tomorrow morning, I must reserve my rights for adequate time to study this voluminous documentation and, if necessary, to file rebuttal affidavits and arguments.

32. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

25 April 1984.

I acknowledge receipt of your letter dated 24 April 1984 which was handed to me today on your behalf.

I have transmitted a copy of your letter to the Agent of Nicaragua.

33. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

25 April 1984.

I have the honour to place on record that at 11.40 a.m. today, during the break in the public sitting in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* I handed to you one copy each of the documents which had then just been deposited by the Agent of Nicaragua in that case, and identified by him as Exhibits VII, VIII, IX, and X¹.

34. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

25 April 1984.

I have the honour to refer to my telex message of 9 April 1984 (haj 0002-04), by which I informed you of the filing by the Republic of Nicaragua of an Application instituting proceedings against the United States of America (case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*), and to my letter of 11 April 1984 with which I sent you (*inter alia*) a copy of that Application. I now have the honour to inform you that I am forwarding to you by pouch but under separate cover (marked "Attention Director, General Legal Division") 160 printed copies of that Application.

I would be grateful if, in accordance with Article 40, paragraph 3, of the Statute of the Court, you would be good enough to inform the Members of the United Nations of the filing of this Application.

¹ See I, pp. 214-253.

35. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

25 April 1984.

I have the honour to enclose documents¹ to which the United States proposes to refer during the oral proceedings in the case brought by the Republic of Nicaragua against the United States of America. I have attached the required certification². Please deliver a set of these materials to the Agent of the Republic of Nicaragua at your earliest convenience.

36. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

27 April 1984.

I have the honor to enclose Exhibit IV³ to which the United States proposes to refer during the oral proceedings in the case brought by the Republic of Nicaragua against the United States of America. I have attached the required certification⁴. Please deliver a set of these materials to the Agent of the Republic of Nicaragua at your earliest convenience.

37. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

27 April 1984.

I have the honour to transmit to Your Excellency herewith a copy of a letter from the Agent of the United States of America, in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, dated 27 April 1984 and received in the Registry this morning, together with a copy of the document referred to therein as Exhibit IV.

38. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

27 April 1984.

I have the honor to refer to the official printed text of the Application Instituting the Proceedings⁵ filed on 9 April 1984 in the case entered into the Court's General List under number 70. In that printed text, the case is entitled "Case concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)".

I regret to have to inform you that the United States regards the title given to

¹ See I, pp. 254-335.

² Not reproduced.

³ See I, pp. 336-358.

⁴ Not reproduced.

⁵ I, pp. 3-24.

the case as prejudicial. Accordingly, I have the honor to request that the title be replaced by one that is neutral.

39. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

28 April 1984.

I have the honour to acknowledge receipt of your letter of 27 April 1984, received in the Registry today, referring to the title of the proceedings instituted by Nicaragua on 9 April 1984, namely the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

On the instructions of the President of the Court, to whom I have submitted your letter, I have first to explain that the titles affixed to cases before the Court, which are purely for purposes of identification, are chosen by the Registrar, with the approval of the President. Such titles are chosen on the basis that they should describe, as neutrally as possible, the nature of the case, which is however necessarily at that stage defined solely by the Application or special agreement.

In your letter you inform me that the United States regards the title set out above as "prejudicial", and requests its replacement by one that is "neutral". You have however not indicated in what specific respect your Government finds the title unsatisfactory from that point of view, or what title would be regarded by your Government as "neutral". If you will be so good as to explain more fully your Government's opinion in this respect, I shall bring the matter further to the attention of the President of the Court.

A copy of your letter and of the present reply is being transmitted for information to the Agent of Nicaragua.

40. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

2 May 1984.

I have the honor to refer to your letter of 28 April regarding the name given to the case brought by Nicaragua against the United States of America.

As you are aware, the United States is of the view that the Court is now in a position to find that a conclusive showing has been made that the Court has no jurisdiction or competence to hear Nicaragua's Application and Request for the indication of interim measures. We took that position both in the letter of 23 April 1984 to the Registrar and in the United States oral presentation to the Court on 27 April 1984.

In keeping with the principle that a "party should not have to give an account of itself on issues of merits before a tribunal which lacks jurisdiction in the matter, or whose jurisdiction has not yet been established" (*Appeal Relating to the Jurisdiction of the ICAO Council, I.C.J. Reports 1972, p. 56*), the United States has abstained from addressing the allegations of fact contained in Nicaragua's Application and request. As noted on 27 April, the abstention of the United States from addressing those allegations does not in any way constitute an admission of any such allegations and is without prejudice to the rights of the United States. (I, p. 115.)

The name assigned to the case appears to suggest that the Court concluded, in advance of any decision with regard to even jurisdictional issues, that military and paramilitary activities have unjustifiably been undertaken in and against Nicaragua. Thus the name of the case appears to give credence to allegations which are unproven, and the truth of which are not properly the subject of adjudication by the Court because of what the United States believes it has conclusively proven to be the manifest lack of any jurisdiction.

We note that in the past, cases have frequently been named on the basis of geographic location (e.g., *North Sea Continental Shelf* cases, *Aegean Sea Continental Shelf* case, etc.). The United States respectfully suggests that a simple denomination of the parties or of the locale of the controversy, such as "Case Concerning an Application of Nicaragua Against the United States of America" would be a neutral and non-judgmental description of the matter.

41. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

4 May 1984.

I have the honour to acknowledge receipt of your letter of 2 May 1984, concerning the name given to the proceedings instituted by the Republic of Nicaragua against the United States of America, which has been laid before the President of the Court, and a copy transmitted to the Agent of Nicaragua.

**42. LE GREFFIER ADJOINT AU CHARGÉ D'AFFAIRES DE L'AMBASSADE DU HONDURAS
AUX PAYS-BAS**

4 mai 1984.

J'ai l'honneur d'accuser réception de la copie de la note adressée par le Gouvernement du Honduras au Secrétaire général de l'Organisation des Nations Unies pour transmission au Greffier de la Cour, copie que vous avez eu l'obligeance de remettre personnellement.

(Signé) Eduardo VALENCIA-OSPINA.

43. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA¹

7 May 1984.

I have the honour to inform you that the Court will make known its decision on your Government's request for provisional measures in the case concerning *Military and Paramilitary Activities in and against Nicaragua* at a public sitting to be held on Thursday 10 May 1984, at 12 noon.

¹A communication in the same terms was sent to the Agent of the United States of America.

44. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

10 May 1984.

I have the honour, in accordance with Article 41, paragraph 2, of the Statute of the Court, to send you herewith an official copy, for transmission to the Security Council of the United Nations, of an Order of today's date by which the International Court of Justice has indicated provisional measures in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

45. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

14 May 1984.

This is to confirm the United States' understanding of the intentions of the Court with respect to the schedule for further proceedings on the Application filed by the Republic of Nicaragua against the United States. The United States understands that the Court intends to establish a schedule whereby Nicaragua would be required to file a memorial within 6 weeks from the date of the Court's indication of provisional measures in this case, and the United States would be provided a further 6 weeks to file a counter-memorial. Although the United States believes a more expedited schedule is justified in the circumstances of this case, it is fully prepared to comply with the wishes of the Court.

It is the further understanding of the United States that the Court will focus during this period on the questions of the jurisdiction of the Court and the admissibility of the Application of the Government of Nicaragua, in accordance with the decision of the Court of May 10, 1984, and that oral proceedings will take place before the end of August of 1984.

46. THE FIRST SECRETARY TO THE AGENT OF THE UNITED STATES OF AMERICA

14 May 1984.

I have the honour to acknowledge receipt with thanks of your letter of today's date concerning the further proceedings in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and to inform you that by an Order dated 14 May 1984, the President of the Court has fixed the following time-limits, pursuant to paragraph 41 (D) of the Order made by the Court on 10 May 1984, for the written proceedings on the question of the jurisdiction of the Court and the admissibility of the Application in that case.

For the Memorial of the Republic of Nicaragua : 30 June 1984.

For the Counter-Memorial of the United States of America : 17 August 1984.

The subsequent procedure, including the date for the opening of oral proceedings on these questions, is reserved for further decision. I enclose two plain copies of the Order: the official sealed copy will be sent to you shortly.

(Signed) C. Poux.

47. THE FIRST SECRETARY TO THE AGENT OF THE REPUBLIC OF NICARAGUA

14 May 1984.

I have the honour to transmit to you herewith for information a copy of a letter, dated 14 May 1984 and received in the Registry today, from the Agent of the United States. In this connection I have the honour further to inform you that by an Order dated 14 May 1984, the President of the Court has fixed the following time-limits, pursuant to paragraph 41 (D) of the Order made by the Court on 10 May 1984, for the written proceedings on the question of the jurisdiction of the Court and the admissibility of the Application in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*:

For the Memorial of the Republic of Nicaragua: 30 June 1984.

For the Counter-Memorial of the United States of America: 17 August 1984.

The subsequent procedure, including the date for the opening of oral proceedings on these questions, is reserved for further decision. I enclose two plain copies of the Order: the official sealed copy will be sent to you shortly.

48. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN¹

15 mai 1984.

Le 9 avril 1984 a été déposée au Greffe de la Cour internationale de Justice une requête² par laquelle la République du Nicaragua a introduit contre les États-Unis d'Amérique une instance en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*.

J'ai l'honneur, à toutes fins utiles, de vous transmettre ci-joint un exemplaire de cette requête.

49. THE DEPUTY-REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

26 June 1984.

I have the honour to acknowledge receipt of the communication dated 25 June 1984 which you handed to the Registrar yesterday, consisting of a "Request of the Republic of Nicaragua concerning Implementation of the Court's Order of 10 May 1984" in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, a "Chronological Account of U.S. 'Covert Activities' in and against Nicaragua since 10 May 1984", a number of attachments thereto (as to which I have of course been in touch with you by telephone to clarify certain points) and an affidavit by the Vice-Minister of the Interior of Nicaragua.

¹ Une communication analogue a été adressée aux autres États admis à ester devant la Cour.

² I, pp. 1-24.

50. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN¹

28 juin 1984.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'ordonnance rendue par la Cour le 10 mai 1984² sur la demande en indication de mesures conservatoires soumise par la République du Nicaragua en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

51. THE AMBASSADOR OF NICARAGUA TO THE NETHERLANDS TO THE REGISTRAR

29 June 1984.

I have the honour to transmit herewith copies of attachments Nos. 4 and 12 of our last submission to the Court.

Please note that pages 9 and 10 are not included since these do not refer to the matter in Court as can be verified in the included index of the text. In any case, I have also requested copies of these pages for the Court's perusal and will transmit them to you as soon as possible.

52. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

30 June 1984.

I have the honour to acknowledge receipt in the Registry today of the Memorial of the Republic of Nicaragua on the questions of the jurisdiction of the Court and the admissibility of the Application in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, together with the copies thereof required by Article 52, paragraph 1, of the Rules of Court. I confirm that this pleading was thus filed within the time-limit fixed therefor by the Order made by the President of the Court on 14 May 1984.

The certified copy of the Memorial is being communicated by me to the Agent of the United States of America, pursuant to Article 43, paragraph 4, of the Statute of the Court and the above-mentioned provision of the Rules of Court.

53. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

30 June 1984.

I have the honour to transmit herewith, pursuant to Article 43, paragraph 4,

¹ Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

² *C.I.J. Recueil 1984*, p. 169.

of the Statute of the Court and Article 52, paragraph 1, of the Rules of Court, a certified copy of the Memorial of the Republic of Nicaragua on the questions of the jurisdiction of the Court and of the admissibility of the Application in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, filed in the Registry today, pursuant to paragraph 41 (D) of the Order made by the Court on 10 May 1984 and to the Order made by the President of the Court on 14 May 1984.

54. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

5 July 1984.

I have the honour to refer to the Memorial of the Republic of Nicaragua on the questions of the jurisdiction of the Court and the admissibility of the Application in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, filed in the Registry on 30 June 1984. As I had the honour to note on that occasion, Annex I, Exhibits B and C are in Spanish, with no translation supplied. In accordance with Article 51, paragraph 3, of the Rules of Court, a translation into English or French should be supplied and certified by the party submitting it as accurate. Also, Annex II, Exhibit D, has been photocopied so that the ends of the lines of print are cut off; it is necessary that the Registry be supplied with complete copies.

May I add that in the text of the Memorial the passages quoted at pages 51, 55-56 and 73-74 appear to be incorrectly transcribed.

55. THE PRESIDENT TO THE AGENT OF THE REPUBLIC OF NICARAGUA

6 July 1984.

On behalf of the Court I wish to acknowledge the receipt of your communication dated 25 June 1984 addressed to the Registrar of the Court and to give the following reply:

1. The Court recalls that in the *Anglo-Iranian Oil Co.* case Britain asked the Security Council to take certain remedial measures against the Iran Oil Company for failure to carry out certain interim measures ordered by the Court. The complaint was not brought to the Court. The Security Council decided that the new request must await the outcome of the proceedings on jurisdiction which were then pending before the Court.

The Court sees no reason to take a different position in regard to your present Request and would suggest that you await the outcome of the pending proceedings on jurisdiction.

2. The Court notes paragraph 9 (c) of your Request concerning the implementation of the Court's Order of 10 May 1984 in which you stated:

“(c) That, until such time as the United States ceases and desists from all activities that do not comply with the Order of 10 May 1984, the facilities of the Court shall not be available to the United States for the purpose of rendering a decision in its favor in any other pending or future case, and the United States shall not be permitted to invoke the Court’s aid in any matter.”

The Court considers that this somewhat unprecedented request is difficult to contemplate for the following reasons:

- (a) that the demand “that the facilities of the Court shall not be available to the United States for the purpose of rendering a decision” is fundamentally unacceptable to the Court since it relates to the rendering of a decision in favour of the United States “in any other pending or future case” including, one would suppose, the Chamber proceedings in the *Gulf of Maine* case; including also any other proceedings before the Court, not excluding its present Request itself or the pending jurisdictional issue; also, any future case that the United States might wish to bring to the Court;
- (b) that the United States “shall not be permitted to invoke the Court’s aid in any matter”, a request that is considered not only unacceptable but also impermissible in that it unduly restricts the Court in the exercise of its normal function as a court; and
- (c) that there is no warrant or authority for the request in this paragraph 9 (c), in neither the Statute of the Court nor the Rules.

3. As regards paragraph 9 (a) and (b), although these demands would seem to come within the ambit of the Order of 10 May 1984, it would seem that they might best be taken along with paragraph 10 of your Request in any further stage of the proceedings dealing with the question of merits of the case, including the issue of compensation.

The Court takes the view that the Government of the United States of America is not unaware that the Court naturally expects it to comply with the Order of 10 May 1984 in strict accordance with its terms.

(Signed) T. O. ELIAS.

56. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

16 July 1984.

I have the honour to refer to the Memorial of the Republic of Nicaragua on the jurisdiction of the Court and the admissibility of the Application in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, filed in the Registry on 30 June 1984. On behalf of the Republic of Nicaragua, I enclose the following items:

1. French translations of the documents attached to Nicaragua’s Memorial as Annex I, Exhibits B and C. (The translations are taken from *I.C.J. Pleadings*, case concerning the *Arbitral Award made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Vol. I, pp. 128-129 (Annexes XXIX and XXX to Memorial of Honduras));
2. A complete photocopy of Annex II, Exhibit D to Nicaragua’s Memorial; and
3. Corrected copies of pages 51, 55-56 and 73-74 of Nicaragua’s Memorial, along with an Errata list concerning these corrections.

57. THE EMBASSY OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

18 July 1984.

Enclosed please find the advance text of a letter to you from Mr. Davis R. Robinson, Agent of the United States of America. The original letter is being transmitted to us and will be sent to you as soon as possible. However, in view of time constraints, we are providing you with this advance copy.

Please feel free to contact me for any further information or assistance.

(Signed) Jamison M. SELBY.

18 July 1984.

Recent enquiries by the United States in connection with the application by Nicaragua have brought to light a letter sent to the late Judge Manley O. Hudson by the former Registrar of the Court, Mr. Julio López-Oliván, dated 2nd September 1955, Court Registry Nos. 22622/19515, 19512, 19521, and a follow-up letter from the former Deputy-Registrar, Mr. Jean Garnier-Coignet, dated 28th September 1955, Court Registry No. 22724, enclosing a letter from Mr. A. Pelt of the League of Nations Archives to Mr. Oliván dated 14th September 1955.

The United States is considering submitting these letters with its Counter-Memorial on Jurisdiction in the case of *Nicaragua v. The United States of America*. However, we have been unable to find a record of the late Judge Hudson's original enquiry to Mr. Oliván which precipitated these letters.

I would be very grateful if you could check the Registry's files for Judge Hudson's initial communication and apprise us of the outcome.

58. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

19 July 1984.

I have the honour to transmit to you herewith a copy of a letter, dated 16 July 1984 and received in the Registry on 17 July 1984, from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, together with copies of the enclosures thereto. With regard to the corrections referred to, to be made to pages 51, 55-56 and 73-74 of the Memorial filed by Nicaragua on 30 June 1984, I have the honour to inform you that the President of the Court has given leave, under Article 52, paragraph 4, of the Rules of Court, for these corrections to be made.

59. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

20 July 1984.

I have the honour to acknowledge receipt of Your Excellency's letter of 16 July 1984, with its enclosures. So far as concerns the corrections to pages 51, 55-56

and 73-74 of the Memorial filed on 30 June 1984, the President of the Court has given leave, pursuant to Article 52, paragraph 4, of the Rules of Court, for those corrections to be made.

With regard to the translations into French of the documents annexed to the Memorial (Annex 1, Exhibits B and C), although I note that these are the translations filed by Honduras in the case concerning the *Arbitral Award made by the King of Spain on 23 December 1906* (reproduced in the Court's Pleadings volumes for that case), I should, however, observe that we are here in the presence of a different case and under Article 51, paragraph 3, of the Rules of Court, a translation of a document annexed to a pleading in a case is required to be certified as accurate by the party submitting it. I should, therefore, be obliged if the translations into French in question were to be certified as accurate by yourself as Agent.

60. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

25 July 1984.

I have the honour to acknowledge receipt of your letter dated 18 July 1984, a copy of which you have transmitted directly to the Agent of Nicaragua, stating that in relation to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* the United States of America is considering submitting with its Counter-Memorial on jurisdiction two letters sent to the late Judge Manley O. Hudson respectively by the former Registrar and Deputy-Registrar of the Court, Mr. López-Oliván and Mr. Garnier-Coignet. Those letters, dated respectively 2 and 28 September 1955, you have identified by their Court Registry numbers. Having learned of them, you ask me to check the Registry's files for Judge Hudson's initial communication and to apprise you of the outcome.

As you must be aware, the texts of the letters in question cannot have been made available by the Registry of the Court, since it is a policy to which we adhere most strictly that correspondence with individuals — including of course that between the Registry and current or former Members of the Court — is not made public; also access to the files preserving it is restricted and, even within the Court, subject to absolute confidentiality. The coming to light, through a source other than the Registry, of certain letters addressed to individuals does not constitute in itself a circumstance allowing me to depart from the Registry's consistent policy just described, a policy whose underlying principle is the protection of both the Court and correspondents. Furthermore, the correspondence in question does not in any way form part of the documentation or correspondence which the Registry is bound to publish pursuant either to the Statute of the Court or to the Rules of Court.

In the light of the above, and after having given your letter the most careful consideration, I have regretfully to inform you that I am in no position to accede to your request.

I am transmitting to the Agent of Nicaragua a copy of this reply.

61. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA¹

1 August 1984.

In connection with the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* I have the honour, on instructions from the President, to inform you that the Agents of both parties will be received by the President in his Chambers on 29 August 1984 at 11 a.m. in order to ascertain their views with regard to the subsequent procedure and, in particular, the date for the opening of the oral proceedings on the questions of the jurisdiction of the Court and the admissibility of the Application.

62. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

3 August 1984.

I have the honour to inform you that the Republic of Nicaragua proposes to exercise the power conferred by Article 31 of the Statute of the Court to choose a judge *ad hoc* in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

The name of the Judge *ad hoc* proposed by the Republic of Nicaragua is Professor Claude-Albert Colliard of French nationality. I enclose brief biographical details² of Professor Colliard.

63. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

3 August 1984.

I have the honour to refer to your letter of July 20, 1984 in which you request that I certify as accurate the translation of certain documents.

Therefore, I hereby certify, as Agent of the Republic of Nicaragua, that the translations into French of the documents annexed to the Memorial (Annex 1, Exhibits B and C) are accurate.

64. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

3 August 1984.

I have the honour to acknowledge receipt of two letters of today's date which Your Excellency has handed to me and of which one notifies your Government's choice of Professor Claude-Albert Colliard to sit as judge *ad hoc* in the case concerning *Military and Paramilitary Activities in and against Nicaragua*

¹ A communication in the same terms was sent to the Agent of the United States of America.

² Not reproduced.

(*Nicaragua v. United States of America*) and is accompanied by his succinct biography, while the other constitutes a requested certification of the translation of certain documents annexed to the Memorial of Nicaragua on the questions of jurisdiction and admissibility. I am transmitting copies of both these letters to the Agent of the United States of America.

In regard to the first-mentioned, the agent of the United States has been informed that any observations that his Government may wish to make should be communicated by 20 August 1984.

65. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

3 August 1984.

I have the honour to transmit to you herewith copies of two letters of today's date which have been handed to me by the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

With the first of these letters the Agent of Nicaragua enclosed a succinct biography of the person chosen by Nicaragua to sit as a judge *ad hoc* in the case, and I likewise send you herewith a copy of that enclosure. In that connection I am to inform you that the Vice-President of the Court, in the exercise of his powers under Article 13, paragraph 3, of the Rules of Court, has fixed 20 August 1984 as the time-limit within which your Government may furnish such observations as it may wish to make pursuant to Article 35, paragraph 3, of the Rules of Court.

66. THE REGISTRAR TO THE AGENT OF EL SALVADOR

15 August 1984.

I have the honour to acknowledge receipt of the document entitled "Intervention Pursuant to Article 63 of the Statute of the International Court of Justice. Case concerning Military and Paramilitary Activities in and Against Nicaragua. Declaration of Intervention of the Republic of El Salvador"¹ which you filed with me today.

I wish also to acknowledge receipt of the document from the President of the Republic of El Salvador whereby you are designated as Agent of El Salvador in the case, together with the affidavit signed by the Acting Minister of Foreign Affairs of the Republic of El Salvador, which you also deposited with me.

67. THE DEPUTY-REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA²

15 August 1984.

I have the honour to transmit herewith to Your Excellency a certified copy of a document dated 15 August 1984 and entitled "Intervention Pursuant to

¹ II, pp. 451-459.

² A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

Article 63 of the Statute of the International Court of Justice. Case concerning Military and Paramilitary Activities in and Against Nicaragua. Declaration of Intervention of the Republic of El Salvador.”

The document is signed by Ambassador Ivo P. Alvarenga who is appointed Agent of the Republic of El Salvador before the International Court of Justice by the President of the Republic of El Salvador.

I am also sending to you a certified copy of an affidavit signed by the Acting Minister of Foreign Affairs of the Republic of El Salvador, which was filed with the above-mentioned declaration.

I have in addition to inform you that, in exercise of his functions under Article 13, paragraph 3, of the Rules of Court, the Vice-President of the Court has fixed Friday 14 September 1984 as the time-limit for the filing by your Government of written observations on the above-mentioned declaration filed by the Government of El Salvador, as provided in Article 83, paragraph 1, of the Rules of Court.

68. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

17 August 1984.

In accordance with the Order of 14 May 1984 issued by the President of the Court relating to the 9 April 1984 Application of Nicaragua against the United States of America, the United States is filing with you today the duly signed original of the United States Counter-Memorial on the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of Nicaragua's Application, together with duly certified Annexes, in three parts. In addition, the Counter-Memorial and its Annexes are accompanied by a certified copy for communication to the Agent of Nicaragua. We are also submitting fifty copies of the Counter-Memorial and Annexes to meet the immediate requirements of the Court, as agreed with the Registry. As stated in our letter to you of 22 July 1984, the United States will submit 125 printed copies of the Counter-Memorial and Annexes as soon as possible¹.

The United States is also depositing today copies of the whole documents which have been referred to in the Counter-Memorial and Annexes. A list is enclosed. Copies of these documents are being provided to the Agent of Nicaragua, as well.

69. THE FIRST SECRETARY TO THE AGENT OF THE REPUBLIC OF NICARAGUA

17 August 1984.

I have the honour to transmit herewith, pursuant to Article 43, paragraph 4, of the Statute of the Court and Article 52, paragraph 1, of the Rules of Court, a certified copy of the Counter-Memorial of the United States of America (together with three volumes of annexes) on the questions of the jurisdiction of the Court and of the admissibility of the Application in the case concerning

¹ II, pp. 1-447.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), filed in the Registry today, pursuant to paragraph 41 (D) of the Order made by the Court on 10 May 1984 and to the Order made by the President of the Court on 14 May 1984.

70. THE DEPUTY-REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

20 August 1984.

I have the honour to acknowledge receipt in the Registry of the Counter-Memorial of the United States of America filed with the Registry on 17 August 1984 on the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of Nicaragua's application, together with duly certified Annexes, in three parts, in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, as well as of the copies thereof required under Article 52, paragraph 1, of the Rules of Court. I confirm that this pleading was thus filed within the time-limit fixed therefor by the Order made by the President of the Court on 14 May 1984 pursuant to paragraph 41D of the Order made by the Court on 10 May 1984.

The certified copy of the Counter-Memorial and its Annexes was communicated on 17 August 1984 to the Agent of Nicaragua, pursuant to Article 43, paragraph 4, of the Statute of the Court and the above-mentioned provision of the Rules of Court. Note has been taken that the United States of America will submit one hundred and twenty-five printed copies of the Counter-Memorial and Annexes as soon as possible.

I have likewise the honour to acknowledge receipt of one set of copies of the whole documents which have been referred to in the Counter-Memorial and Annexes. The Court and the Agent of Nicaragua are being informed that these documents are available to be consulted in the Library of the Court.

71. THE COUNSELOR OF THE EMBASSY OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

7 September 1984.

Mr. Davis Robinson, Agent of the United States, has asked me to deliver the enclosed letter. A signed original will follow shortly.

(Signed) John R. CROOK.

7 September 1984.

I have the honor to refer to the meeting on 29 August 1984 of the President of the Court with the Agents of the United States and Nicaragua, and specifically to the discussion at that meeting concerning the question of the necessity of further written pleadings by the Parties on the question of the jurisdiction of the Court and the admissibility of the Nicaraguan application of 9 April 1984.

During the 29 August meeting, the Agent of Nicaragua stated that, from a "professional point of view", he considered an additional round of written pleadings on the issues of jurisdiction and admissibility to be "preferable". He indicated that nevertheless Nicaragua was not requesting additional written pleadings due to its perceived interest in the scheduling of an early oral hearing. I stated that the United States shared Nicaragua's desire to proceed expeditiously. I also indicated, however, that the United States considered an additional round of written pleadings to be a necessary prerequisite to a fair and orderly judicial process in this phase of the case. I set forth in detail the factors which had led the United States to this conclusion. I respectfully suggested that the Court, in accordance with Article 43 (2) of the Statute and Article 45 (2) of the Rules, might in view of these considerations determine *proprio motu* that a further round of written pleadings was necessary. I also described how the necessity for additional written pleadings could be accommodated with the Parties' mutual desire for expedition.

The President of the Court, as I undertood him, observed that a majority of the Members of the Court were already of the view that additional written proceedings were not necessary on the Court's own motion. The President referred, however, to the right of the United States under Article 45 (2) of the Rules of Court to request further written pleadings.

In the view of the United States, notwithstanding the common interest of both Parties in expedition, further written pleadings are now necessary. Further investigation and research since the oral proceeding in April have revealed a substantial quantity of new evidence as presented by the United States in its Counter-Memorial of 17 August 1984. This new material and the accompanying elaboration of legal argument are relevant to major issues before the Court. The Nicaraguan Memorial of 30 June 1984 did not address or foresee this new factual and legal argumentation. For example, the United States has introduced important new evidence demonstrating that responsible Nicaraguan officials in the 1950s specifically advised the United States that Nicaragua had not accepted the compulsory jurisdiction of this Court. Should Nicaragua wish to contest this evidence by documents available to it, Article 43 (2) of the Statute clearly contemplates that such a contingency shall normally occur as part of the written proceedings.

In the view of the United States, it is not accurate to state, as did the Agent for Nicaragua in the 29 August 1984 meeting, that any failure adequately to develop evidence and arguments in the written proceedings disadvantages only Nicaragua. Summary proceedings may damage the interest of either Party. It is a fundamental principle of all legal systems that evidence must be submitted in support of factual assertions. As we understand Article 43 (2) of the Statute and Article 56 of the Rules, further written pleadings would seem required if Nicaragua intends to present any documentary rebuttal to the new evidence and argumentation presented by the United States in its Counter-Memorial. If Nicaragua does not do so in a reply, then certain United States evidence would stand un rebutted, considerably reducing the complexity of the oral proceedings and the required preparation for them.

Furthermore, the United States cannot fail to point out that in a letter dated 23 April 1984 in advance of the oral proceedings on Nicaragua's request for provisional measures and in the April oral proceedings themselves, the United States raised as a fundamental plea in bar Nicaragua's failure to accede to the compulsory jurisdiction of the Court. When the United States noted that it did not appear that Nicaragua had ever ratified the Protocol of Signature to the Statute of the Permanent Court and that Nicaragua did not qualify under Article 36 of this Court's Statute, the Agent for Nicaragua assured the Court in

a letter dated 24 April 1984 that that Protocol of Signature had been "ratified in due course" by Nicaragua. At the oral proceedings on 27 April 1984, the Agent for Nicaragua suggested that the Instrument of Ratification may have been sent to the League of Nations for deposit:

"It was the year 1939: the start of the Second World War. There are quite obvious reasons why this ratification may not have reached Geneva at the time ..." (I, p. 119.)

Given the summary nature of the April proceedings, the United States was unable to present a full case on this fundamental and unprecedented jurisdictional issue. Importantly, the Court's Order of 10 May 1984 was on the basis of a record containing these Nicaraguan assurances as to significant facts. See, e.g., Order of 10 May, paragraphs 14 and 19.

In its Memorial of 30 June 1984, however, Nicaragua confirmed that it had never even attempted to deposit the Instrument of Ratification to the Protocol of Signature and hence had never ratified the Protocol of Signature under International Law at all. See, e.g., Nicaraguan Memorial of 30 June 1984, paragraphs 6 and 13 and Annex I, page 1. (As discussed in the United States Counter-Memorial of 17 August at paragraph 48 and the notes thereto, it appears that Nicaragua never completed the ratification process even under its own internal law, contrary to what the Nicaraguan Agent asserted during the April oral proceedings. See I, p. 118.)

The record which was before the Court as it formulated its order of 10 May was thus materially inaccurate and incomplete. While this may be explained by the purported urgency of the Nicaraguan request for indication of interim measures and the provisional nature of the findings made in connection therewith, there is no justification for any comparable situation arising at this phase of the case.

As I indicated at the 29 August meeting, a further round of written pleadings need not in our view cause significant delay. Indeed, additional written proceedings could permit a more expeditious and well-structured oral hearing. The United States recalls that the Court has in the past been concerned lest gaps in the parties' written proceedings lead to an unnecessary and otherwise avoidable protraction of the oral proceedings (e.g., see *Fisheries*, Order of 10 January 1951, *I.C.J. Reports 1951*, at p. 9). A further round of written pleadings on the questions of jurisdiction and admissibility could narrow the issues to be addressed at oral argument and thereby permit the Court to render a decision on the basis of a more coherent record. Omission of further written pleadings could result in protraction and interruption of the oral hearing. Such interruption could derive from fundamental considerations of fairness as embodied, for example, in Article 56 (3) of the Rules of Court.

For the foregoing reasons, the United States respectfully submits that a further round of written pleadings on the questions of jurisdiction and admissibility is necessary. To that end, the United States has the honor to request, pursuant to Article 43 (2) of the Statute and Article 45 (2) of the Rules, that the Court direct that there shall be a Reply by the Applicant and a Rejoinder by the Respondent.

72. THE AMBASSADOR OF THE REPUBLIC OF EL SALVADOR TO THE REGISTRAR

10 September 1984.

[See II, pp. 461-462.]

73. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

10 September 1984.

[See II, pp. 465-466.]

74. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA ¹

10 September 1984.

I have the honour to transmit herewith a copy of a letter of today's date which I have just received from the Agent of El Salvador with reference to his Government's declaration of intervention in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

75. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

11 September 1984.

I refer to my letter of 10 September 1984, with which I transmitted to you a copy of a letter dated 7 September 1984 from the Agent of the United States, submitting to the Court certain views of his Government in regard to the procedure to be followed in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. I now have the honour to transmit to Your Excellency herewith a copy of a letter which I have today, on the President's instructions, addressed to the United States Agent in that respect.

76. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

11 September 1984.

I have the honour to acknowledge receipt of your letter dated 7 September 1984, and transmitted to the Registry via the United States Embassy in The Hague on that day, whereby the United States requests, pursuant to Article 43, paragraph 2, of the Statute and Article 45, paragraph 2, of the Rules of Court, that the Court direct that there be a Reply by the Applicant and a Rejoinder by the Respondent on the questions of jurisdiction and admissibility in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

That request, and the contentions in your letter in support thereof, have now been considered by the Members of the Court, and I am directed by the President to inform you that the Court has decided that such further pleadings are not

¹A communication in the same terms was sent to the Agent of the United States of America.

necessary, and that accordingly it should not exercise its power under Article 45, paragraph 2, of the Rules of Court to authorize or direct that they be filed. A date will therefore shortly be fixed for public hearings on the question of which the Court is at present seized.

May I also take this opportunity to correct a misunderstanding which appears to have arisen at the meeting between the President of the Court and the Agents of the Parties held on 29 August 1984. In the course of the discussion, the President expressed his own opinion of the view which might be taken by the Members of the Court on the question of a further exchange of pleadings; he did not state the existence of any such view as a fact, nor could he have done so, inasmuch as the Court had not yet had occasion to consider the matter. Since the third paragraph of your letter embodies a misapprehension on this point, I think it is well to make the position clear.

77. THE REGISTRAR TO THE AGENT OF EL SALVADOR

12 September 1984.

I have the honour to acknowledge receipt of the letter dated 10 September 1984 which Your Excellency handed to me on that date, concerning the declaration of intervention of the Republic of El Salvador, and to confirm that copies of that communication have been transmitted to the Members of the Court and to the Parties in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

78. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE L'AFGHANISTAN¹

14 septembre 1984.

L'article 83, paragraphe 2, du Règlement de la Cour internationale de Justice prévoit que le Greffier de la Cour transmet copie de toute déclaration tendant à intervenir dans une affaire à tous les Etats admis à ester devant la Cour.

En conséquence j'ai l'honneur de vous transmettre ci-joint un exemplaire du texte imprimé bilingue, établi par le Greffe, d'une déclaration d'intervention en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)* déposée le 15 août 1984 par la République d'El Salvador sur la base de l'article 63 du Statut de la Cour.

79. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

14 September 1984.

I have the honor to refer to the meeting that took place on 29 August between the President of the Court and the Agents of the United States and Nicaragua,

¹ Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

and in particular to the discussion at that meeting concerning the scheduling of further proceedings on the questions of jurisdiction and admissibility. I also have the honor to refer to your letter of 11 September concerning the Court's denial of the United States request of 7 September for further written pleadings under Article 43 (2) of the Statute and Article 45 (2) of the Rules of Court, in which you advise that a date "will therefore shortly be fixed for public hearings on the question of which the Court is at present seised".

During the course of the 29 August meeting, called under Article 31 of the Rules of Court, the President of the Court suggested 1 October 1984 as a possible date for an oral hearing on the admissibility of El Salvador's intervention under Article 63 of the Statute of the Court, with commencement of oral proceedings between the United States and Nicaragua on the issues of jurisdiction and admissibility to follow thereafter on 4 October. The President of the Court acknowledged that, in the event that the Salvadoran intervention as of right was admitted, the suggested 4 October date would have to be reconsidered. At that time the Agent of the United States noted his lack of instructions with regard to the suggested schedule.

For the reasons set forth in the written observations of the United States on the question of El Salvador's intervention as of right under Article 63 of the Statute of the Court, submitted this day to the Court, the United States is of the view that the Salvadoran intervention is clearly admissible. Consequently, the United States has offered no objection to that intervention. For like reasons, it is the United States view that, so long as it is consistent with the views of El Salvador and Nicaragua, 1 October would be an appropriate date for an oral hearing on the admissibility of the Salvadoran intervention.

In light of the apparent admissibility of the Salvadoran intervention as of right, however, the United States cannot see how oral proceedings on the questions of the jurisdiction of the Court and the admissibility of the Nicaraguan Application could be fixed to begin on 4 October. Article 86 of the Rules of Court provides that a State whose intervention as of right under Article 63 of the Statute is admitted "shall be furnished with copies of the pleadings" of the Parties to the case, and shall be entitled to submit written observations on the subject matter of its intervention "within a time-limit to be fixed . . .". In his letter of 10 September, the Agent of El Salvador requested a reasonable period of time in which to review the pleadings in order to determine how they bear on El Salvador's construction of the various conventions the meaning of whose provisions are at issue at this phase of the case.

The United States respectfully submits that consideration of the scheduling of further proceedings on the questions of the jurisdiction of the Court and the admissibility of the Nicaraguan Application should be deferred until after such time as a determination has been reached by the Court on the admissibility of the Salvadoran intervention as of right. The Agent of the United States stands ready to meet with the President of the Court and the Agents of Nicaragua and El Salvador at any appropriate time to discuss further the question of the schedule of proceedings in this case.

80. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

14 September 1984.

[See II, pp. 467-471.]

81. THE DEPUTY-REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

15 September 1984.

I have the honour to refer to Your Excellency's letter of 3 August 1984, notifying the Court of the intention of the Government of Nicaragua to choose M. Claude-Albert Colliard as judge *ad hoc* to sit in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and to inform you that no observation on this nomination has been received from the Agent of the United States of America. I have further to inform you, pursuant to Article 35, paragraph 3, of the Rules of Court, that no objection to the appointment appears to the Court itself.

M. Colliard is therefore being informed accordingly and supplied with copies of the existing documents in the case. Subsequent case documentation will be furnished to him *pari passu* with the Members of the Court.

The Agent of the United States is also being informed.¹

82. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA²

15 September 1984.

Further to the Registrar's letter of 11 September 1984 concerning the procedure in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I have the honour to inform you that the President of the Court, in the exercise of his powers under Article 54 of the Rules of Court, has fixed Monday 8 October 1984, at 3 p.m., for the opening of the oral proceedings on the questions of jurisdiction and admissibility in this case. Any decision that the Court might take in connection with the Declaration of Intervention made by El Salvador pursuant to Article 63 of the Statute will be communicated to the Agents of the Parties and to the Agent of El Salvador prior to Monday 8 October 1984.

83. THE DEPUTY-REGISTRAR TO THE AGENT OF EL SALVADOR

15 September 1984.

I have the honour to inform Your Excellency that in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, any decision that the Court might take in connection with the Declaration of Intervention made by Your Excellency's Government pursuant to Article 63 of the Statute will be communicated to Your Excellency and to the Agents of the Parties prior to Monday 8 October 1984, the date fixed by the President of the Court, in the exercise of his powers under Article 54 of the Rules of Court, for the opening of the oral proceedings on the questions of jurisdiction and admissibility in that case.

¹ A communication in the same terms was sent to the Agent of the United States of America.

² A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

84. THE DEPUTY-REGISTRAR TO THE AGENT OF EL SALVADOR

15 September 1984.

Following the expiration of the time-limit fixed on 14 September 1984 for the observations of the Parties on the Declaration of Intervention submitted by Your Excellency's Government on 15 August 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I have the honour to transmit to Your Excellency herewith copies of letters from the Agents of Nicaragua and the United States of America containing the observations of their respective Governments on the Declaration of Intervention of Your Excellency's Government¹.

85. THE AMBASSADOR OF EL SALVADOR TO THE REGISTRAR

Rome, 17 September 1984.

[See II, pp. 472-473.]

86. THE DEPUTY-REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

21 September 1984.

I have the honour to transmit to you herewith a copy of a letter dated 17 September 1984 and received late today from the Agent of El Salvador in relation to the written observations submitted by Nicaragua on his Government's declaration of intervention in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

Copies of that letter have been transmitted to the Members of the Court and to the Agent of the United States of America.

87. THE AMBASSADOR OF EL SALVADOR TO THE REGISTRAR

(Telex)

24 September 1984.

I have the honor to refer to the declaration of intervention of my Government currently under advisement by the Court. You have informed El Salvador that any decision the Court might take in connection with the declaration of intervention will be communicated to the Agents of the Parties and to the Agent of El Salvador prior to Monday, 8 October 1984. You also have informed El Salvador that the President of the Court has fixed Monday, 8 October for the

¹ See Nos. 73 and 80, *supra*.

opening of the oral proceedings on the questions of jurisdiction and admissibility in this case.

1. That date is only two weeks away. No matter when El Salvador's intervention is recorded by the Court — but particularly if that occurs on the eve of the proceedings — it would be difficult in the extreme for El Salvador adequately to prepare. First, El Salvador will need time to analyse the pleadings and annexed documents when intervention is recorded. Second, my country desires a reasonable time within which to submit written observations on the subject matter of the intervention. Finally, El Salvador will need more time than will be possible under the Court's schedule to prepare adequately to present oral statements for the 8 October proceedings.

2. I therefore respectfully request a postponement of the opening of oral proceedings on the jurisdiction and admissibility questions for a reasonable time after El Salvador's receipt of the pleadings.

88. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

28 September 1984.

I have the honor to refer to your letter of 15 September concerning the opening of the oral proceedings on the questions of jurisdiction and admissibility in the case of *Nicaragua v. United States of America*.

Article 53 (2) of the Rules of Court provides:

“The Court may, after ascertaining the views of the parties, decide that copies of the pleadings and documents annexed shall be made accessible to the public on or after the opening of the oral proceedings.”

In this connection, it is the view of the United States that it would be appropriate and consistent with Article 53 (2) for the Court to decide that copies of the pleadings and documents thus far submitted in the present case be made accessible to the public as of the opening of the oral proceedings currently scheduled to begin on October 8, 1984. The United States respectfully requests that the Court so decide.

89. THE COUNSELOR FOR LEGAL AFFAIRS OF THE EMBASSY OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

2 October 1984.

I have been authorized and instructed by Mr. Davis Robinson, Agent of the United States of America, to transmit to you the enclosed letter from Mr. Robinson. The duplicate original signed by Mr. Robinson will be transmitted as soon as it is received.

2 October 1984.

I have the honor to refer to the case between Nicaragua and the United States now pending before the Court.

Please be advised that the United States has designated as a Deputy Agent in the case Mr. Patrick M. Norton, Assistant Legal Adviser at the United States Department of State.

90. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA ¹

5 October 1984.

I have the honour to refer to your letter of 28 September 1984 by which the Government of the United States of America requested the Court to decide that copies of the pleadings and documents so far submitted in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* be made accessible to the public as of the opening of the oral proceedings on 8 October 1984.

Taking into account your Government's request and in conformity with its practice, the Court has decided, pursuant to Article 53, paragraph 2, of the Rules of Court, to make the pleadings and annexed documents in the case accessible to the public with effect from 8 October 1984.

91. THE REGISTRAR TO THE AGENT OF EL SALVADOR ²

5 October 1984.

I have the honour, with reference to the Declaration of Intervention of the Government of the Republic of El Salvador in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* to confirm that the Court on 4 October 1984 made an Order in this connection and to enclose an official copy thereof, which does not include the individual opinions filed by some Members. A certified true copy of the Order, together with those opinions, will be transmitted to Your Excellency subsequently.

92. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

5 October 1984.

I have the honour to acknowledge receipt of a set of copies of documents delivered by Your Excellency to the Registry today. I await the submission of the certified copies thereof, as provided for in Article 56, paragraph 1, of the Rules of Court, in order to consider them as having been duly filed in the Registry.

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

² A communication in the same terms was sent to the Agent of the United States of America and to the Agent of the Republic of Nicaragua.

As mentioned at the meeting held this afternoon between the President and the Agents of the Parties, I am transmitting a copy of the set to the Agent of the United States of America in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

93. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

5 October 1984.

As mentioned at the meeting held this afternoon between the President and the Agents of the Parties in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I have the honour to enclose herewith a set of copies of documents supplied by the Agent of Nicaragua and delivered this evening.

I am calling to the attention of the Agent of Nicaragua the requirement of certified copies of the documents concerned as provided for in Article 56 of the Rules of Court.

94. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

6 October 1984.

I am pleased to provide the Court with the enclosed list of Counsel and others who are assisting the United States in connection with the questions of jurisdiction and admissibility in the case of *Nicaragua v. United States of America*. During the oral proceedings on these questions, argument will be presented on behalf of the United States by the Agent and some or all of the Deputy Agents and Counsel.

[See III, pp. 3-4.]

95. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

8 October 1984.

I have the honour to transmit herewith a certification of the set of documents submitted to the Registry on 5 October 1984, pursuant to Article 56, paragraph 1, of the Rules of Court. An additional document, "Exhibit F", is also included, as a matter of convenience for the Court. As it is part of a readily available public document, it need not be submitted to the other party for consent or to the Court for approval under Article 56.

Twenty additional copies of Nicaragua's Exhibits are also hereby submitted.

96. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

8 October 1984.

I have the honor to refer to your letter received during the evening of 5 October 1984, enclosing a list and copies of exhibits (new documents) that Nicaragua proposes to submit during the oral proceedings on jurisdiction and admissibility commencing on 8 October 1984.

Despite the brief time allowed at this juncture to review these new documents, the United States will not object to their submission under Article 56 of the Rules of Court, while at the same time reserving its position as to their relevance, probity and the accuracy of any translation provided. As noted in your letter of 5 October, we await the receipt of certified copies, presumably in advance of any use of these new documents by Nicaragua in the oral proceedings. Further, the United States is unable to identify certain of these documents (e.g., to whom was the legal opinion of Suzanne Bastid dated 3 August 1956 addressed and where was it located) and in other cases only excerpts from documents are provided (e.g., the legal opinion of Charles Rousseau dated 21 June 1956). The United States assumes that the Court will assure proper identification of all these new documents in advance of their submission as well as the deposit of the whole documents as required under Article 50 of the Rules of Court.

The United States lack of objection to the submission of the new documents is of course subject to the reservation of its rights under Article 56 (3) of the Rules of Court to comment upon these new documents, and to submit documents in support of its comments, either during or after the oral proceedings on jurisdiction and admissibility. Furthermore, the United States will determine following the conclusion of the first round of Nicaragua's oral argument whether the United States will seek to submit any other new documents under the terms of Article 56 of the Rules.

97. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DES PAYS-BAS

8 octobre 1984.

Me référant au paragraphe V des principes généraux de l'accord du 26 juin 1946 entre le Gouvernement des Pays-Bas et la Cour internationale de Justice, j'ai l'honneur de porter à votre connaissance que, à l'audience qui se tiendra le 8 octobre 1984 en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, le Nicaragua sera représenté comme suit :

[Voir III, p. 3.]

98. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA¹

8 October 1984.

I have the honour to draw your attention to the following provisions of Article 71 of the Rules of Court :

¹ A communication in the same terms was sent to the Agent of the United States of America.

"1. A verbatim record shall be made by the Registrar of every hearing, in the official language of the Court which has been used . . .

4. Copies of the transcript shall be circulated to the judges sitting in the case, and to the parties. The latter may, under the supervision of the Court, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the sense and bearing thereof . . ."

The transcript of the oral proceedings opening on Monday, 8 October 1984, will be circulated to the Parties as follows: the transcript of a hearing held from 10 a.m. to 1 p.m. will be available in the evening of the same day, and that of a hearing held from 3 to 6 p.m. will be available during the morning of the following day.

In order to facilitate any supervision which the Court may feel it proper to exercise, I shall be obliged if you will hand your corrections to my secretary as soon as possible after the circulation of each transcript, and in any event not later than 6 p.m. on the day following such circulation.

99. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA¹

9 October 1984.

Further to my letter of 5 October 1984, I have the honour to transmit to you herewith the official sealed copy of the Order made by the Court on 4 October 1984 concerning the Declaration of Intervention of the Government of the Republic of El Salvador in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

100. THE REGISTRAR TO THE AGENT OF EL SALVADOR

9 October 1984.

With reference to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* and further to my letter of 28 September 1984, I have the honour to inform Your Excellency that the Court has now decided to make the pleadings and annexed documents available and accessible to the public in accordance with Article 53 of the Rules.

A set of the pleadings and annexes concerned is accordingly being sent to you forthwith in order to satisfy the request presented by Your Excellency's Government on 10 September 1984.

101. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

13 October 1984.

I have the honor to refer to my letter of 8 October 1984 regarding, *inter alia*,

¹ A communication in the same terms was sent to the Agent of El Salvador and to the Agent of the United States of America.

the submission of new documents by the United States under the terms of Article 56 of the Rules of Court. The United States hereby submits certified¹ copies of such documents, as notified on the list attached to this letter.

In addition the United States will also be referring to other documents that are part of a readily available publication within the meaning of paragraph 4 of Article 56 of the Rules. For the convenience of the Court, however, we are submitting herewith copies of certain of such documents.

LIST OF DOCUMENTS SUBMITTED BY THE UNITED STATES PURSUANT TO
ARTICLE 56 OF THE RULES OF COURT

1. September 7, 1984 Draft "Contadora Act for Peace and Cooperation in Central America (Revised)". Unofficial English Translation of Spanish Original.
2. Joint Communiqué of the Ministerial Meeting of San José, Costa Rica, September 29, 1984, as contained in cable San José 7633.
3. "Exposición del Señor Ministro de Relaciones Exteriores al Honorable Congreso Nacional pidiendo la aprobación de la Carta de las Naciones Unidas, el Estatuto de la Corte Internacional de Justicia y los Acuerdos Provisionales Concertados por los Gobiernos Participantes en la Conferencia de las Naciones Unidas sobre Organización Internacional (Managua, D.N., 2 de Julio de 1945)", in Republica de Nicaragua, *Memoria Presentada al Honorable Congreso Nacional Por el Secretario de Estado en el Despacho de Relaciones Exteriores, 1945.*
(Statement of the Minister of Foreign Relations to the National Congress requesting the approval of the United Nations Charter, the Statute of the International Court of Justice, and the provisional agreements concluded by the governments participating in the United Nations Conference on International Organization" (Managua, July 2, 1945) in Republic of Nicaragua, *Memorial Presented to the National Congress by the Secretary of State in the Office of Foreign Relations, 1945.* (English translation of pp. 139-142 provided.)
4. Letter from Manley O. Hudson to Esteban Mendoza, dated 14 November 1955.
5. Letter from Manley O. Hudson to Esteban Mendoza of 16 December 1955 with attached Aide-Mémoire.
6. Letter from Manley O. Hudson to Esteban Mendoza of 20 December 1955 (without attachment).
7. Letter from Manley O. Hudson to Esteban Mendoza of 16 January 1956.
8. Letter from Esteban Mendoza to Manley O. Hudson of 10 February 1956 (Spanish with English translation of 11 February 1956).
9. Letter from Manley O. Hudson to Esteban Mendoza of 17 February 1956.
10. Letter from Esteban Mendoza to Manley O. Hudson of 2 May 1956 (Spanish and English).
11. Letter from Manley O. Hudson to Esteban Mendoza of 7 May 1956.
12. Letter from Esteban Mendoza to Manley O. Hudson of 26 May 1956 (Spanish and English).
13. Letter from Manley O. Hudson to Esteban Mendoza of 31 May 1956.

¹ Certification not reproduced.

14. Letter from Manley O. Hudson to Esteban Mendoza of 26 June 1956.
15. Letter from Manley O. Hudson to Esteban Mendoza of 23 August 1956.
16. Letter from Jorge Fidel Duron to Manley O. Hudson of 30 April 1957.
17. Letter from Ramon E. Cruz to Manley O. Hudson of 25 June 1957.
18. Telegram from United States Embassy Tegucigalpa to Secretary of State of 19 March 1957.
19. Letter from Whiting Willauer, United States Ambassador to Honduras, to R. R. Rubottom, Acting Assistant Secretary of State for Inter-American Affairs, of 19 March 1957.
20. Memorandum for the Department of State, Office of the Legal Adviser, 10 December 1946, transmitting Memorandum entitled "Reference to International Court of Justice of Disputes Under Trusteeship Agreement for Japanese Mandated Islands", 6 December 1946. (Note: The only available copy of this memorandum is of poor quality and difficult to read, especially at page 4, which contains the material relevant to this case. Therefore, for the convenience of the Court, the United States has included a retyped version of that page.)
21. "President's Power to Give Notice of Termination of US-ROC Mutual Defense Treaty", Memorandum for the Secretary of State from the Legal Adviser, Department of State, 15 December 1978, as reproduced in Treaty Termination, *Hearings before the Committee on Foreign Relations*, United States Senate, Ninety-Sixth Congress, First Session, April 9, 10 and 11, 1979.
22. Statement of Abram Chayes, Harvard University, Cambridge, Massachusetts. Treaty Termination, *Hearings before the Committee on Foreign Relations*, United States Senate, Ninety-Sixth Congress, First Session, April 9, 10 and 11, 1979, pp. 306-312.
23. Questions to and Answers by Abram Chayes, Treaty Termination, *Hearings before the Committee on Foreign Relations*, United States Senate, Ninety-Sixth Congress, First Session, April 9, 10 and 11, 1979, pp. 327-333.
24. Statement of Herbert J. Hansell, Legal Adviser, Department of State, Treaty Termination, *Hearings before the Committee on Foreign Relations*, United States Senate, Ninety-Sixth Congress, First Session, April 9, 10 and 11, 1979, pp. 50-61.
25. Statement of Lawrence A. Hammond, Deputy Assistant Attorney General, Department of Justice, Treaty Termination, *Hearings before the Committee on Foreign Relations*, United States Senate, Ninety-Sixth Congress, First Session, April 9, 10 and 11, 1979, pp. 192-196.
26. Questions to and Answers from the Legal Adviser and the Department of State, Treaty Termination, *Hearings before the Committee on Foreign Relations*, United States Senate, Ninety-Sixth Congress, First Session, April 9, 10 and 11, 1979, pp. 197-208.

102. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

15 October 1984.

I have the honour to transmit to Your Excellency herewith a copy of a letter from the Agent of the United States of America, in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, dated 13 October 1984 and filed in the Registry on 14 October 1984, together with a set of copies of the documents referred to therein.

103. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

15 October 1984.

I have the honour to transmit herewith, for the convenience of the Court, twenty copies of the relevant portions of the treaty lists referred to in the speech of Professor Brownlie of 9 October 1984 and in Exhibit E of the Exhibits of Nicaragua.

104. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

15 October 1984.

I have the honour to transmit herewith to Your Excellency a copy of a list of documents provided by the Agent of the United States of America in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

The documents can be consulted in the Library of the Court.

 13 October 1984.

ADDITIONAL DOCUMENTS PROVIDED BY THE UNITED STATES TO THE
INTERNATIONAL COURT OF JUSTICE FOR ITS CONVENIENCE

- Department of External Affairs (Canada), *Conference Series*, 1945, No. 2, Report on the United Nations Conference on International Organization. Held at San Francisco, 25th April-26th June 1945.
- A Commentary on the Charter of the United Nations, Signed at San Francisco on the 26th June, 1945. Presented by the Secretary of State for Foreign Affairs to Parliament (United Kingdom).
- United Nations Conference on International Organization, Report on the Conference Held at San Francisco — 25 April-26 June 1945 by the Rt. Hon. Peter Fraser, Chairman of the New Zealand Delegation.
- Relatorio da Delegacao do Brasil, a Conferencia das Nacoes Unidas para a Organizacao Internacional — 1946.
- “Exposicion del Señor Ministro de Relaciones Exteriores al Honorable Congreso Nacional pidiendo la aprobacion de la Carta de las Naciones Unidas, el Estatuto de la Corte Internacional de Justicia y los Acuerdos Provisionales Concertados por los Gobiernos Participantes en la Conferencia de las Naciones Unidas sobre Organizacion Internacional (Managua, D.N., 2 de Julio de 1945)”, in Republica de Nicaragua, *Memoria Presentada al Honorable Congreso Nacional por el Secretario de Estado en el Despacho de Relaciones Exteriores*, 1945.

“Statement of the Minister of Foreign Relations to the National Congress Requesting the Approval of the United Nations Charter, the Statute of the International Court of Justice, and the Provisional Agreements Concluded

- by the Governments Participating in the United Nations Conference on International Organization (Managua, July 2, 1945)", in Republic of Nicaragua, *Memorial Presented to the National Congress by the Secretary of State in the Office on Foreign Relations, 1945.*
- Draft Treaty on Central America Is Sent to U.N. Security Council, *Washington Post*, 5 October 1984.
- Costa Rica: Gutierrez Says Contadora Document Needs Changes, *Panama City ACAN*, as Transcribed in Foreign Broadcast Information Service, 4 October 1984.

105. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

17 October 1984.

FINAL SUBMISSIONS OF THE GOVERNMENT OF NICARAGUA PRESENTED TO THE COURT IN ACCORDANCE WITH ARTICLE 60, PARAGRAPH 2, OF THE RULES OF COURT

In accordance with Article 60, paragraph 2, of the Rules of Court, I have the honour to communicate the following final submissions presented on behalf of the Government of Nicaragua:

"Maintaining the arguments and submissions contained in the Memorial presented on 30 June 1984 and also the arguments advanced in the oral hearings on behalf of Nicaragua:

The Government of Nicaragua requests the Court to declare that jurisdiction exists in respect of the Application of Nicaragua filed on 9 April 1984, and that the subject-matter of the Application is admissible in its entirety."

106. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

18 October 1984.

I have the honour to transmit to you herewith a copy of the written text of the Final Submission of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* as communicated by the Agent of Nicaragua on 17 October 1984, at the end of the last statement made at the hearing on Nicaragua's behalf.

107. THE AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

18 October 1984.

Pursuant to Article 60 (2) of the Rules of Court, the United States has attached hereto its final submissions on the issues of jurisdiction and admissibility in the case of *Nicaragua v. United States of America*.

SUBMISSIONS

May it please the Court, on behalf of the United States of America, to adjudge and declare, for each and all of the reasons presented in the oral argument of the United States and in the Counter-Memorial of the United States of 17 August 1984, that the claims set forth in Nicaragua's Application of 9 April 1984 (1) are not within the jurisdiction of the Court and (2) are inadmissible.

108. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

18 October 1984.

I have the honour to transmit to Your Excellency herewith a copy of the written text of the Final Submission of the United States of America in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* as communicated by the Agent of the United States of America on 18 October 1984, at the end of the last statement made at the hearing on behalf of the United States of America.

109. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA¹

19 November 1984.

I have the honour to inform Your Excellency that the Court will sit at 10 a.m. on Monday 26 November 1984 in the Great Hall of Justice at the Peace Palace, The Hague, for the purpose of delivering its judgment on questions of jurisdiction and admissibility in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

110. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN²

19 novembre 1984.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'ordonnance rendue par la Cour le 4 octobre 1984³ sur la déclaration d'intervention de la République d'El Salvador en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

² Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

³ C.I.J. *Recueil* 1984, p. 215.

111. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

26 November 1984.

I have the honour to send you herewith for your information a copy of the edition produced by offset of the Judgment delivered today by the Court on the questions of jurisdiction and admissibility in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. A printed copy will be sent to you as soon as possible, pursuant to Article 95, paragraph 3, of the Rules of Court.

You will recall that with a letter of 10 May 1984 I sent you a copy, for transmission to the Security Council, of the Order made by the Court on that date indicating provisional measures in this case. May I draw your attention in this connection to paragraph 112 of the Judgment of today's date.

112. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA¹

30 November 1984.

Under the authorization of the President of the Court, I have the honour, with reference to the Judgment delivered by the Court on 26 November 1984 on the questions of jurisdiction and admissibility in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, to inform you of the inclusion in the French text of that decision of a sentence whose equivalent had been edited out of the authoritative English text. The sentence in question is marked as deleted in the enclosed page, which I have initialled for the purpose of its insertion in the official copy of the Judgment handed to you, where I would be most grateful if you would ensure that it replaces the corresponding original page. A similar correction is to be effected in the official copy of the Judgment placed in the archives of the Court and in copies of the mimeographed edition.

I have further to inform you that, in consequence of the above deletion, Judge Ago has kindly agreed to that of the final sentence of paragraph 21 of his separate opinion, which consisted of a quotation of the text affected. An initialled copy of the page concerned is also enclosed herewith. In this connection, I take the opportunity of further enclosing, pending the availability of the printed text, a mimeographed translation of Judge Ago's opinion so as to complete for you the English text of the Judgment and opinions.

The printed edition will of course take account of all corrigenda and will be supplied to you immediately upon becoming available.

113. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES D'AFGHANISTAN²

10 décembre 1984.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'arrêt rendu par la Cour le 26 novembre 1984³ sur

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

² Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

³ *C.I.J. Recueil 1984*, p. 392.

les questions de la compétence de la Cour et de la recevabilité de la requête en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*.

Il convient de noter que, pour que l'arrêt soit rapidement disponible, les opinions des juges jointes à celui-ci n'ont été reproduites que dans la langue originale (anglais ou français).

D'autres exemplaires imprimés où figurera la traduction des opinions seront expédiés par la voie ordinaire dès leur sortie de presse.

114. THE COUNSELOR FOR LEGAL AFFAIRS OF THE EMBASSY OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

18 January 1985.

I have been authorized and instructed by Mr. Davis R. Robinson, Agent of the United States of America, to sign and transmit to you the enclosed letter from Mr. Robinson.

18 January 1985.

I have the honor to refer to the case of *Nicaragua v. United States of America*, and in particular to the judgment rendered by the Court on 26 November 1984 on the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of Nicaragua's application.

The United States has given the deepest and most careful consideration to the aforementioned judgment, to the findings reached by the Court, and to the reasons given by the Court in support of those findings. On the basis of that examination, the United States is constrained to conclude that the judgment of the Court was clearly and manifestly erroneous as to both fact and law. The United States remains firmly of the view, for the reasons given in its written and oral pleadings that the Court is without jurisdiction to entertain the dispute, and that the Nicaraguan application of 9 April 1984 is inadmissible. Accordingly, it is my duty to inform you that the United States intends not to participate in any further proceedings in connection with this case, and reserves its rights in respect of any decision by the Court regarding Nicaragua's claims.

115. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

18 January 1985.

I have the honour to transmit herewith a copy of a letter received today in the Registry, from the Agent of the United States of America in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

116. THE REGISTRAR TO THE AGENT OF THE UNITED STATES
OF AMERICA¹

22 January 1985.

I have the honour to transmit to you herewith the official sealed copy of an Order² made today by the President of the Court fixing further time-limits in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

117. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES
D'AFGHANISTAN³

8 février 1985.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire du texte imprimé de l'ordonnance du 22 janvier 1985⁴ par laquelle le Président de la Cour a fixé des délais pour la procédure écrite sur le fond en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*.

D'autres exemplaires seront expédiés ultérieurement par la voie ordinaire.

118. THE REGISTRAR TO THE SECRETARY-GENERAL
OF THE UNITED NATIONS

13 February 1985.

I have the honour to send you herewith a printed copy of the Order made by the President of the Court on 22 January 1985 fixing time-limits for pleadings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

119. THE AGENT OF THE REPUBLIC OF NICARAGUA
TO THE REGISTRAR

3 April 1985.

I have the honor to refer to the application of Nicaragua of 9 April 1984 in

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

² *I.C.J. Reports 1985*, p. 3.

³ Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

⁴ *C.I.J. Recueil 1985*, p. 3.

the case concerning *Military and Paramilitary Activities in and against Nicaragua*, and the Court's Order of 10 May 1984 granting Nicaragua's request for the indication of provisional measures.

In its Order of 10 May 1984, paragraph 41 (c), the Court determined that "until the Court delivers its final judgment in the present case, it will keep the matters covered by this Order continuously under review". Accordingly, Nicaragua has the honor to bring to the Court's attention certain matters in connection with this case that have recently come to light.

On 7 March, two reports were issued in Washington, D.C., concerning the activities of the U.S.-sponsored mercenary forces operating in Nicaragua. Both reports concluded that these forces have engaged and are engaging in extensive abuses of the Nicaraguan civilian population, including: attacks on unarmed civilians including men, women, children and the elderly; pre-meditated acts of brutality such as rape, beatings, mutilation and torture; individual and mass kidnapping of civilians; assaults on economic and social targets such as farms, cooperatives, food storage facilities and health centers, including a particular effort to disrupt the coffee harvest through attacks on coffee cooperatives and ambushes of vehicles carrying volunteer coffee harvesters; and intimidation and kidnapping of civilians who cooperate in government or community programs, and of religious leaders who support the government.

Both of these reports are hereby submitted to the Court for its review. The first report is entitled "Attacks by the Nicaraguan 'contras' on the Civilian Population of Nicaragua, report of a fact-finding mission September 1984-January 1985". It was prepared by a former Assistant Attorney General of the State of New York, Mr. Reed Brody, at the suggestion of Mr. Paul Reichler, one of the advocates for Nicaragua in this case. Mr. Brody spent five months in Nicaragua interviewing victims and eyewitnesses of the mercenary attacks. He obtained 145 sworn affidavits from these eyewitnesses, and his report is drawn directly from their accounts. His objective was to collect "reliable evidence of a kind that would be legally sufficient in a court of law". He received no compensation from any source and paid for his own travel and other expenses.

The second report was issued jointly by the Washington, D.C.-based organizations, the International Human Rights Law Group ("Law Group") and the Washington Office on Latin America ("Wola"), to whom Mr. Brody presented his findings. In order to verify the accuracy of Mr. Brody's report, the law group and Wola jointly sponsored a separate mission to Nicaragua by two prominent attorneys of their own choosing, Professor Michael Glennon of the University of Cincinnati Law School and Mr. Donald Fox, a member of the executive committee of the American Association for the International Commission of Jurists. In their investigation, Messrs. Fox and Glennon interviewed some of Mr. Brody's affiants as well as others. Their report, like Mr. Brody's report, concludes that the evidence shows that the U.S.-supported "mercenaries" are committing serious abuses against Nicaraguan civilians — abuses they term "acts of illegal terroristic violence". They conclude that "any provision of aid to the contras, directly or indirectly, by the government of the United States would render our government responsible for their acts".

In Nicaragua's Memorial on the merits, to be filed 30 April 1985, Nicaragua will discuss the acts committed by the U.S.-sponsored mercenaries and the responsibility of the United States for them. The meantime, Nicaragua wishes to file these reports with the Court in order that it may be immediately informed of their contents.

120. THE REGISTRAR TO THE AGENT OF THE UNITED STATES OF AMERICA

4 April 1985.

I have the honour to transmit to you herewith a copy of a communication dated 3 April 1985, and received in the Registry the same day, from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, together with copies of the enclosures to that communication.

121. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

1 May 1985.

I have the honour to transmit herewith, pursuant to Article 43, paragraph 4, of the Statute of the Court and Article 52, paragraph 1, of the Rules of Court, a certified copy of the Memorial of Nicaragua on the merits of the case concerning *Military and Paramilitary Activities in and against Nicaragua*, filed in the Registry within the time-limit fixed by the President of the Court in an Order dated 22 January 1985, and also of the twelve separate annexes lettered A through L as listed in the Memorial after the table of contents.

122. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

1 May 1985.

I have the honour to acknowledge receipt in the Registry on 29 April 1985 of two signed copies of the Memorial of Nicaragua on the merits of the case concerning *Military and Paramilitary Activities in and against Nicaragua*, together with annexed documents, and also of additional copies as required by the Registry under Article 52, paragraph 1, of the Rules of Court.

Pursuant to Article 43, paragraph 4, of the Statute of the Court, I am communicating one of the signed copies to the Agent of the United States of America, together with a set of the annexes.

123. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA¹

10 June 1985.

I note that no Counter-Memorial on the merits has been filed by the Government of the United States of America in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* within the time-limit fixed therefor by the Order of 22 January 1985, and that no request for any extension of that time-limit has been received. I

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

enclose for your information a copy of a letter which I have today addressed to the Agent of Nicaragua in that respect.

124. THE FIRST SECRETARY TO THE AGENT OF THE REPUBLIC OF NICARAGUA¹

20 June 1985.

Further to the Registrar's letter of 10 June 1985, I have the honour to inform Your Excellency that the President of the Court, in the exercise of his powers under Article 54 of the Rules of Court, has fixed Thursday 12 September 1985, at 10 a.m., for the opening of the oral proceedings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

125. THE EMBASSY OF THE ISLAMIC REPUBLIC OF IRAN TO THE REGISTRY OF THE INTERNATIONAL COURT OF JUSTICE

9 July 1985.

The Embassy of the Islamic Republic of Iran has the honour to bring to the attention of the Registry of the International Court of Justice the following.

Regarding the case *Nicaragua v. United States of America* (Military and Paramilitary Activities in and against Nicaragua) the Embassy would appreciate being informed by the Registry the reasons, that were put forward and accepted by the Court, for the time-limits that were fixed for the written proceedings (30 April 1985 for the Memorial for the Republic of Nicaragua and 31 May 1985 for the Counter-Memorial of the United States of America) to be postponed again.

The information will be forwarded to the Legal Affairs and Treaties Department of the Ministry of Foreign Affairs of the Islamic Republic of Iran.

126. THE REGISTRY TO THE EMBASSY OF THE ISLAMIC REPUBLIC OF IRAN

11 July 1985.

The Registry of the International Court of Justice presents its compliments to the Embassy of the Islamic Republic of Iran in the Netherlands and, with reference to the Embassy's Note No. 1486 of 9 July 1985, has the honour to point out that, contrary to the Embassy's impression, the time-limits fixed by the President of the Court in an Order of 22 January 1985 for the filing of pleadings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* were not extended. Nicaragua filed a Memorial within the time-limit prescribed, whereas the United States filed no Counter-Memorial. Following expiry of the time-limit

¹A communication in the same terms was sent to the Agent of the United States of America.

fixed for the latter pleading, the Court, having regard to its calendar overall, decided that the hearing on the merits would start on 12 September 1985.

127. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

5 September 1985.

Further to the letter addressed to you on 20 June 1985 from one of the First Secretaries of the Court, I have the honour to inform you that the President of the Court, in the exercise of his powers under Article 31 of the Rules of Court, has agreed to receive on 10 September 1985, at a time to be fixed and communicated subsequently, the Agent and Counsel of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* for the purpose of ascertaining their views with regard to questions of procedure in connection with the oral proceedings on the merits scheduled to start on Thursday, 12 September 1985.

128. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

10 September 1985.

I have the honor to refer to the Application of Nicaragua of 9 April 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

In accordance with Article 57 of the Rules of Court, Nicaragua hereby submits the attached list identifying the witnesses it intends to call in the oral proceedings commencing 12 September 1985, and describing in general terms the points to which their evidence will be directed.

WITNESS LIST OF NICARAGUA

1. *Commander Luis Carrión*

Commander Luis Carrión is First Vice Minister of the Interior of the Republic of Nicaragua. Previously he served as Vice Minister of Defense. His address is Ministerio del Interior, Managua, Nicaragua. He is a citizen of Nicaragua.

As First Vice Minister of the Interior, Commander Carrión is responsible for State security. In addition, he has been commissioned by the President of the Republic to oversee all governmental operations, including all military operations, in the principal war zone. In both capacities, he is responsible for monitoring military and paramilitary activities of the United States against the citizens of Nicaragua. Commander Carrión is expected to testify about the military and paramilitary activities, in and against Nicaragua and the involvement of the United States in these activities.

2. *Dr. David C. MacMichael*

Dr. David C. MacMichael is a citizen of the United States. His address is 11442 Orchard Lane, Reston, Virginia. Dr. MacMichael is an expert in intelligence

methods and analysis with particular reference to counter-insurgency and the supply of arms to guerrillas in the field. From March 1981 to April 1983, he was employed by the United States Central Intelligence Agency in the Analytic Group of the National Intelligence Council. Dr. MacMichael is expected to testify concerning: the intelligence sources and methods available to and used by the United States Government for surveillance of Nicaragua for the collection of information concerning alleged arms shipments from Nicaragua to the insurgents in El Salvador; the intelligence collected from those sources and by these methods; and his conclusions, based on the intelligence obtained by the United States Government, as to the existence of any such shipments by or with the complicity of the Government of Nicaragua. Dr. MacMichael will not disclose any information that is classified by the United States Government, or that he is prohibited by United States law or by the terms of his employment contract from disclosing to the public.

3. Professor Michael J. Glennon

Professor Michael J. Glennon is a citizen of the United States. His address is 3455 Cornell Place, Cincinnati, Ohio. Professor Glennon is a Professor of Law at the University of Cincinnati College of Law, and formerly Legal Counsel to the Foreign Relations Committee of the United States Senate (1977-1980). Professor Glennon was co-author of a Report to the International Human Rights Law Group and the Washington Office of Latin America, entitled "Abuses Against Civilians by Counterrevolutionaries Operating in Nicaragua", April 1985. He is expected to testify concerning the nature and scope of the factfinding mission in which he participated in Nicaragua in February 1985, and the findings contained in the report concerning attacks aimed at the civilian population of Nicaragua and the responsibility of the United States for such attacks.

4. Father Jean Loison

Father Jean Loison is a Roman Catholic priest. He is a citizen of France. His address is Hospital de La Trinidad, Departament de Esteli, Nicaragua. Father Loison works as a nurse at the Hospital de La Trinidad, which is located in the principal war zone in Nicaragua. He ministers to persons wounded in attacks in and against Nicaragua by military and paramilitary forces operating under the direction and control of the United States Government. He is expected to testify concerning attacks by those forces in the region where he lives and works.

5. William Huper

William Huper is Minister of Finance of the Republic of Nicaragua. His address is Ministerio de Finanzas, Managua, Nicaragua. He is a citizen of Nicaragua. Prior to his service in the Government of Nicaragua, Mr. Huper was Professor of Economics at the National Autonomous University of Mexico in Mexico City, Mexico, and Professor of History at the National Autonomous University of Nicaragua in León, Nicaragua. He was appointed Vice Minister of Finance in August 1979 and Minister of Finance in January 1985. Mr. Huper is expected to testify concerning certain of the effects of the United States military and paramilitary attacks in and against Nicaragua on Nicaragua's economy.

6. *Edgar Chamorro*

Nicaragua will also present, in the form of a written affidavit, the testimony of Edgar Chamorro, a citizen of Nicaragua whose address is 640 Allendale Road, Key Biscayne, Florida, in the United States. Mr. Chamorro served from 1982 to November 1984 as a member of the "political directorate" of the Nicaraguan Democratic Force ("FDN"), the largest force conducting military and paramilitary activities against Nicaragua under the direction and control of the United States Government. His testimony will describe the nature and extent of United States direction and control of these activities. Mr. Chamorro is unable to appear in person because, as explained in his affidavit, he has been advised by his attorneys that travel outside the United States at the present time could prejudice his pending application for permanent resident status in the United States and result in his exclusion from the United States.

129. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

10 September 1985.

I have the honor to refer to the Application of Nicaragua of 9 April 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

Nicaragua hereby submits to the Court copies of Supplemental Annexes A through G¹ to its Memorial of 30 April 1985 on the Merits, to which reference will be made at the oral proceedings commencing 12 September 1985.

130. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

10 September 1985.

I have the honour to draw your attention to the following provisions of Article 71 of the Rules of Court:

"1. A verbatim record shall be made by the Registrar of every hearing, in the official language of the Court which has been used . . .

4. Copies of the transcript shall be circulated to the judges sitting in the case, and to the parties. The latter may, under the supervision of the Court, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the sense and bearing thereof . . ."

The transcript of the oral proceedings opening on Thursday, 12 September 1985 will be circulated to the Parties as follows: the transcript of a hearing held from 10 a.m. to 1 p.m. will be available in the evening of the same day, and that of a hearing held from 3 to 6 p.m. will be available during the morning of the following day.

In order to facilitate any supervision which the Court may feel it proper to exercise, I shall be obliged if you will hand your corrections to my secretary as soon as possible after the circulation of each transcript, and in any event not later than 6 p.m. on the day following such circulation.

¹ IV, pp. 370-454.

131. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA ¹

11 September 1985.

I have the honour, in connection with the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and with reference to Article 53, paragraph 2, of the Rules of Court, to inform you that, as in previous similar instances, the Court is to take a decision on making accessible to the public, on or after the opening of the oral proceedings, copies of the pleadings and documents annexed. I will not fail to transmit to the Court any views that your Government may express on the subject, prior to the opening of such proceedings.

132. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

11 September 1985.

I have the honour, with reference to the oral proceedings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, to send you herewith a copy of a letter, with annex, dated 10 September 1985 in which the Agent of Nicaragua provides a list of the witnesses he intends to call and describes in general terms the points to which their evidence will be directed.

133. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

11 September 1985.

I have the honour, with reference to the oral proceedings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, to send you a copy of a letter dated 10 September 1985 from the Agent of Nicaragua and also of the documents supplied by him therewith.

134. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

11 September 1985.

I have the honour to acknowledge receipt of Your Excellency's letter of 10 September 1985 on the subject of the witnesses whom you intend to call during the oral proceedings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, as also of the descriptive list attached thereto.

I also acknowledge the receipt of your letter of 10 September 1985 enclosing

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

a list of documents to which it is intended that reference should be made in the course of the hearing, together with twenty-five copies of the documents themselves, presented as "Supplemental Annexes A-G".

I am however to inform you that the Court, having regard to Article 56 of the Rules of Court, authorizes the production of those documents solely within the context of the oral proceedings.

Copies of all the above-mentioned letters, lists and documents have been transmitted to the other Party.

135. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

11 September 1985.

Further to my letter of today's date transmitting to you copies of seven documents submitted by the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, I have the honour to inform you that the Court, having regard to Article 56 of its Rules, has decided to authorize the production of those documents solely in the context of the oral proceedings on the merits.

136. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DES PAYS-BAS

11 septembre 1985.

Me référant à l'alinéa final des principes généraux de l'accord du 24 juin 1946 entre le Gouvernement des Pays-Bas et la Cour internationale de Justice, j'ai l'honneur de porter à votre connaissance que, en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, le Nicaragua désire faire entendre les témoins dont les noms suivent, lors des audiences qui commenceront le 12 septembre 1985 :

[Voir ci-dessus pp. 413-415.]

Je ne manquerai pas de vous faire part de toute modification éventuelle.

137. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DES PAYS-BAS

12 septembre 1985.

Me référant au paragraphe V des principes généraux de l'accord du 26 juin 1946 entre le Gouvernement des Pays-Bas et la Cour internationale de Justice, j'ai l'honneur de porter à votre connaissance que, à l'audience qui se tiendra ce jour en l'affaire relative aux *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, la République du Nicaragua sera représentée comme suit :

[Voir ci-dessus p. 3.]

138. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

12 September 1985.

I have the honour to acknowledge the receipt today of a list, signed by Your Excellency, of the persons representing Nicaragua during the oral proceedings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, and also of a certified original of the affidavit of Mr. Edgar Chamorro, dated 5 September 1985, of which you had provided copies on 10 September.

139. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

12 September 1985.

Further to my letter of 11 September 1985 transmitting copies of documents submitted by Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, I have the honour to inform you that the Agent of Nicaragua has deposited in the Registry a certified original of the affidavit of Mr. Edgar Chamorro, dated 5 September 1985, presented as "Annex G" in the list of the documents concerned.

140. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

12 September 1985.

I have the honour to transmit to you herewith three copies of the provisional verbatim record of the public hearing held today in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

You will similarly be sent three copies of all further verbatim records in the case.

141. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

13 September 1985.

I have the honour to send you herewith a copy of the list provided by the Agent of Nicaragua of the persons representing his Government at the oral proceedings on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

142. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

16 September 1985.

I have the honor to refer to the Application of Nicaragua of 9 April 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

Nicaragua wishes to submit to the Court the document enclosed herewith as Supplemental Annex H to its Memorial of 30 April. It is a copy of a note delivered by the United States Department of State to the Embassy of Nicaragua in Washington on May 1, 1985, giving notice of the United States' intention to terminate the Treaty of Friendship, Commerce and Navigation between the United States and Nicaragua one year from the effective date of the note.

Thirty copies of this document are provided herewith for the Court's convenience.

143. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA¹

16 September 1985.

In connection with the hearing of witnesses in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I have the honour to inform you as follows.

One copy of the transcript of each witness's evidence, prepared in accordance with the provisions of Article 71, paragraph 5, of the Rules of Court, is being made available to the witness as soon as possible after the evidence has been given. The witness is being asked to insert in the transcript corrections of any mistakes that may have occurred and return the signed corrected copy to me within 24 hours, in order to facilitate any supervision that the Court may think it proper to exercise in respect of any corrections made.

144. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

16 September 1985.

I have the honour to acknowledge receipt of Your Excellency's letter of 16 September 1985 enclosing a document presented as Supplemental Annex H to the Memorial on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, as also, previously, of a copy of a newspaper item presented as additional to Annex D. Copies of your letter, and of both the above documents, have been provided to the other Party.

I have, further, to take this opportunity of drawing renewed attention to the Court's decision, recorded in my letter 74610 of 11 September 1985, whereby the production of documents is now authorized solely within the context of the oral proceedings.

145. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

16 September 1985.

With reference to my letters 74608, 74614, 74618 and 74619, of 11 and

¹A communication in the same terms was sent to the Agent of the United States of America.

12 September 1985, I have the honour to enclose a further document, together with a covering letter of today's date, which I have received from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

146. THE REGISTRAR TO MR. MACMICHAEL

17 September 1985.

Article 71, paragraph 5, of the Rules of Court provides:

“Witnesses and experts shall be shown that part of the transcript which relates to the evidence given, or the statements made by them, and may correct it in like manner as the parties.”

You have been furnished with a copy of the transcript of the evidence given by you yesterday as it appears in the verbatim record of the hearing held on that day. I shall be obliged if, after inserting in the transcript of your evidence corrections of any mistakes that may have occurred, you would be good enough to sign it and return it to me within 24 hours, in order to facilitate any supervision that the Court may think it proper to exercise in respect of any corrections made.

147. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

20 September 1985.

FINAL SUBMISSIONS OF THE GOVERNMENT OF NICARAGUA PRESENTED TO THE COURT IN ACCORDANCE WITH ARTICLE 60, PARAGRAPH 2, OF THE RULES OF COURT

In accordance with Article 60, paragraph 2, of the Rules of Court, I have the honour to communicate the following final submissions presented on behalf of the Government of Nicaragua:

“Maintaining the arguments and submissions contained in the Memorial presented on 30 April 1985 and also the arguments advanced in the oral hearings on behalf of Nicaragua:

The Republic of Nicaragua respectfully requests the Court to grant the following relief:

First: the Court is requested to adjudge and declare that the United States has violated the obligations of international law indicated in its Memorial of 30 April 1985, and that in particular respects the United States is in continuing violation of those obligations.

Second: the Court is requested to state in clear terms the obligation which the United States bears to bring to an end the aforesaid breaches of international law.

Third: the Court is requested to adjudge and declare that, in consequence of the violations of international law indicated in its Memorial, compensation is due to Nicaragua, both on its own behalf and in respect of wrongs inflicted upon its nationals; and the Court is requested further to receive evidence and to deter-

mine, in a subsequent phase of the present proceedings, the quantum of damages to be assessed as the compensation due to the Republic of Nicaragua.

Fourth: without prejudice to the foregoing request, the Court is requested to award to the Republic of Nicaragua the sum of 370,200,000 United States dollars, which sum constitutes the minimum valuation of the direct damages, with the exception of damages for killing nationals of Nicaragua, resulting from the violations of international law indicated in the substance of its Memorial.

With reference to the fourth request, the Republic of Nicaragua reserves the right to present evidence and argument, with the purpose of elaborating the minimum (and in that sense provisional) valuation of direct damages and, further, with the purpose of claiming compensation for the killing of nationals of Nicaragua and consequential loss in accordance with the principles of international law in respect of the violations of international law generally, in a subsequent phase of the present proceedings in case the Court accedes to the third request of the Republic of Nicaragua.”

148. THE DEPUTY-REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

24 September 1985.

Pursuant to Article 60, paragraph 2, of the Rules of Court, I have the honour to transmit to you herewith a copy of the final submissions of the Republic of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, received in the Registry of the Court on 23 September 1985.

149. THE DEPUTY-REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

1 October 1985.

I refer to the Registrar's letter of 12 September 1985, concerning the transmission to you of three copies of the provisional verbatim records of the public hearings in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. I now have the honour to transmit to you copies of records numbered CR 85/19, 20, 21, 22, 23, and 25¹, incorporating corrections made by the witnesses called by Nicaragua to the record of their evidence, and corrections by Judge Schwebel to the transcript of questions put by him.

150. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

(Facsimile)

7 October 1985.

Received on 7 October 1985 Termination by the USA of the ICJ Statute. Text reads as follows :

¹ *Supra*, pp. 7-102.

“October 7, 1985

Dear Mr. Secretary General :

I have the honor on behalf of the Government of the United States of America to refer to the declaration of my Government of 26 August 1946, as modified by my note of 6 April 1984, concerning the acceptance by the United States of America of the compulsory jurisdiction of the International Court of Justice, and to state that the aforesaid declaration is hereby terminated, with effect six months from the date hereof.

(Signed) George P. SHULTZ.”

151. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

14 October 1985.

I have the honour to transmit to Your Excellency herewith the text of questions put by Judge Schwebel to the Government of Nicaragua in the context of the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

QUESTIONS OF JUDGE SCHWEBEL FOR NICARAGUA

14 October 1985

The Declaration of Intervention of the Republic of El Salvador filed in the Registry of the Court on 15 August 1984 states, in paragraph VI:

“The facts concerning the deaths, which occurred in April 1983 in Managua, of the two Salvadorian subversive leaders, Melida Anaya Montes and Cayetano Carpio, confirmed once again the presence of the subversive leadership of the FMLN in Nicaragua, and demonstrated their close ties with the Sandinista leadership.” (II, p. 452.)

In view of these allegations, the following questions are asked of the Agent of Nicaragua :

1. Does Nicaragua acknowledge that Melida Anaya Montes and Cayetano Carpio died in Nicaragua? If so, under what circumstances?

2. If Nicaragua acknowledges the deaths of Melida Anaya Montes and Cayetano Carpio in Nicaragua, when and under what circumstances did each of them come to Nicaragua, how long did each of them stay in Nicaragua, did each of them establish residence in Nicaragua, and what were their occupations in

Nicaragua? Were Melida Anaya Montes and Cayetano Carpio connected with the insurgency in El Salvador? Did they occupy or work at or out of a building or headquarters in Nicaragua for Salvadorian insurgents?

3. If Nicaragua acknowledges that Melida Anaya Montes and Cayetano Carpio were present in Nicaragua, can that acknowledgment be reconciled with the apparent position of the Nicaraguan Government (see *supra*, pp. 236-237, 123) that Nicaragua has not permitted the establishment on Nicaraguan territory of leadership of the Salvadorian insurgency?

152. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

14 October 1985.

I have the honour to inform Your Excellency that, for the purpose of its further examination of the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the Court requests the Government of Nicaragua to make available to it the following information and documents:

1. In paragraphs 29, 34 and 78 of the Memorial of Nicaragua on the merits of the case, reference is made to three "presidential findings" made by the President of the United States, the first dated 9 March 1981, the second 1 December 1981, and no date being given for the third, save that it was presented to Committees of the United States Senate and House of Representatives on 20 September 1983. Can the Nicaraguan Government supply the Court with an official text of those "findings", or failing an official text, the most authoritative evidence thereof available?

2. According to a paper entitled "The Mining of Nicaraguan Ports" issued by the Central American Historical Institute, produced by Nicaragua as Attachment 1 in Annex J to the Memorial, the [Nicaraguan] Ministry of Defence issued a communiqué on that subject on 29 March 1984. The Nicaraguan Government is requested to supply the Court with an official text of that communiqué, together with a translation into one of the official languages of the Court.

I avail myself of this opportunity to recall to Your Excellency's attention the fact that certain information to be supplied by witnesses called by the Government of Nicaragua (see *supra*, pp. 27 and 34) has not yet been received, and that certain questions put by Members of the Court (see *supra*, pp. 123, 140-145 and 189) have not yet been fully answered.

153. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

14 October 1985.

I have the honour to inform Your Excellency that, for the purpose of its further examination of the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the Court requests the Government of Nicaragua to make available to it the following information and documents:

1. It is understood that on 12 July 1979 the Provisional Government of National Reconstruction of Nicaragua addressed a letter to the Secretary General of the Organization of American States, transmitting a "Plan to achieve peace". The Nicaraguan Government is requested to supply the Court with a copy of that letter and of its various annexes, with (if appropriate) a translation into one of the official languages of the Court.

2. It is understood that conversations were held in Managua at the end of 1980 between the Nicaraguan Head of State and the Minister for Foreign Affairs and the United States Deputy Assistant Secretary of State for Central American Affairs, on the subject of the aid given, according to the United States Government, to the opponents of the Government of El Salvador. The Nicaraguan Government is requested to supply the Court with copies of any contemporary memoranda or records of those conversations.

3. It is understood that on 20 October 1983 the Government of Nicaragua submitted certain draft documents to the United States Government, relating to problems concerning the relations between the two countries, and possibly with other countries of the region. The Nicaraguan Government is requested to supply the Court with copies of such draft documents, and of the covering letter transmitting them to the United States Government, and any other pertinent documents.

Should the Government of Nicaragua wish any of the documents referred to above to be treated as confidential, being made accessible only to the Members of the Court and to the other Party, no doubt you will so inform me, and I shall seek the further instructions of the Court.

154. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

14 October 1985.

I have the honour to transmit to you herewith copies of two letters which I have today sent to the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, concerning requests by the Court for information and documents. I also enclose a copy of a further letter, also of today's date, by which I transmitted to the Agent of Nicaragua a question put by Judge Schwebel, together with a copy of the text of that question.

155. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

15 October 1985.

I have the honour to refer to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

During the oral hearings on the merits of the case in reference, several questions were asked by the Court, which I now proceed to answer.

In the first place, I refer to the Questions of Judge Schwebel to the Agent of Nicaragua.

While each of these questions was answered by the Agent of Nicaragua in his closing speech on 20 September 1985, in the interest of assisting the Court I shall

indicate here in precisely at what portion of the transcript these questions were answered.

Question at CR 85/24, pages 44-45: This question was answered by the Agent of Nicaragua at CR 85/27, pages 74-75 (see also CR 85/25, p. 15)¹. The Government of Nicaragua has never supplied arms to rebels in El Salvador or condoned the supply of arms by others from Nicaraguan territory. My Government has never permitted the establishment of the leadership of the Salvadoran insurgents in Command centers in Nicaragua. My Government, like the Government of the United States and other governments in Central and South America, has granted entry to leaders of the Salvadoran insurgency from time to time. My Government has never collaborated in the training of Salvadoran insurgents or permitted them to be trained by others in Nicaraguan territory. My Government did not collaborate in the organization of the insurgency in El Salvador. Thus, there is no validity to any argument of "mirror images".

Question No. 1, CR 85/25, page 10: This question was answered by the Agent of Nicaragua at CR 85/27, pages 75-76, and by Professor Chayes at CR 85/24, pages 71-75².

Question No. 2, CR 85/25, page 11: This question was answered by the Agent of Nicaragua at CR 85/27, pages 75-76, and by Professor Chayes at CR 85/24, pages 71-75³.

Question No. 3, CR 85/25, page 11⁴: My Government has no transcript or tape recording of the interview in question and has no knowledge of the existence of any such transcript or tape recording.

Questions No. 4 and 5, CR 85/25, page 11: These questions were answered by the Agent of Nicaragua at CR 85/27, page 75 and by Professor Chayes at CR 85/24, page 71⁵. Nicaragua's counsel have never stated or implied that the Government of Nicaragua supplied arms to rebels in El Salvador or condoned the supply of arms by others from Nicaraguan territory. Any newspaper article purporting to attribute such statements or implications to Nicaragua's counsel is inaccurate.

Question No. 6, CR 85/25, pages 11-13⁶: This does not appear to be a question. It appears to be a series of quotations from materials that were not submitted by the Parties to the Court and do not constitute evidence in this case.

Question No. 7, CR 85/25, page 14: This question was answered by the Agent of Nicaragua at CR 85/27, pages 74-76 and CR 85/25, pages 15-16⁷. It was never the policy of my Government to supply or ship arms to Salvadoran guerrillas. Consequently, it was never the policy of my Government to use the airstrip at Papalonal or any other part of Nicaraguan territory for such purpose. It was also never the policy of my Government to seek to overthrow the Government of El Salvador.

Secondly, the question posed by Judge Ruda.

1. In its Application, Nicaragua requested the Court to adjudge and declare:

“(a) That the United States, in recruiting, training, arming, equipping.

¹ Pp. 123; 236-237; 146, *supra*.

² Pp. 142; 236-237; 136-139, *supra*.

³ *Ibid*.

⁴ P. 143, *supra*.

⁵ Pp. 143; 236-237; 136, *supra*.

⁶ Pp. 143-144, *supra*.

⁷ Pp. 144; 236-237; 146, *supra*.

financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Nicaragua, has violated and is violating its express Charter and treaty obligations to Nicaragua and, in particular, its Charter and treaty obligations under:

Article 8 of the Convention on Rights and Duties of States.

Article I, Third, of the Convention concerning the Duties and Rights of States in the Event of Civil Strife." (Application, para. 26.)

2. In its Memorial on the merits, filed 30 April 1985, and in its oral pleadings, Nicaragua did not refer specifically to its claims under these two conventions, as stated by the Agent of Nicaragua in response to a question from Judge Ruda. However, Nicaragua has not abandoned these claims¹.

3. In its Memorial and oral pleadings, Nicaragua emphasized the long history of U.S. military and political intervention in Latin America and the evolution of a special legal order in the western hemisphere the very purpose of which was to outlaw such intervention by the United States. (Memorial, paras. 324-331 = CR 85/26, pp. 24-26².) This regional legal order established direct obligations of the United States to its Latin American neighbors that have a significance even beyond the universal obligations under the United Nations Charter. Because Nicaragua has been one of the most frequent victims of the U.S. military intervention it was argued, Nicaragua is in real sense a special beneficiary of these obligations. (CR 85/26, p. 26³.)

4. These obligations, now embodied in the Charter of the Organization of American States, have a long juridical history both in the customary and conventional law of the western hemisphere. The famed Calvo Doctrine, enunciated early in the 19th century, although most often cited in cases of diplomatic intervention to collect private debts, was in fact directed against military intervention, as well, *a fortiori*. Other 19th-century jurists, such as Andres Bello, Genaro Estrada and Luis Maria Drago, were equally explicit. (See, e.g., I. Fabela, "Intervention", p. 134, Paris: Pedone 1961 — D. Antokoletz, "Tratado de Derecho Internacional Publico", pp. 53-58, Buenos Aires: La Facultad, 5th ed., 1951.) The history of attempts to deal with the problem by means of positive international law is equally lengthy. It dates back, according to some, to the Treaty of Perpetual Union, League and Confederation of 1828 and the Treaty of Confederation of 1848. (Antokoletz, *op. cit.*, pp. 50-53.)

5. As Nicaragua states in its Memorial and oral pleadings, these efforts came to a head in the series of Pan American conferences of the 1920s and 1930s, in which, step by step, the Latin American States forced the United States to relinquish its claims to a special right to intervene militarily or otherwise in their affairs.

6. Major milestones in this evolution were the Convention on Rights and Duties of States and the Convention concerning the Rights and Duties of States in the Event of Civil Strife, under which Nicaragua claims in this case. It is Nicaragua's belief, however, that the duties and obligations established by these conventions have been subsumed in the OAS Charter, which is the climactic event of the juridical evolution described. Indeed, the language of the OAS Charter owes much to the provisions of the earlier conventions. Further, it is Nicaragua's belief, that the rights and duties contained in these conventions are, at present, principles of customary and general international law. In order not to

¹ See No. 158, *infra*.

² Pp. 184-185, *supra*.

³ P. 185, *supra*.

burden the Court with repetitive material, separate argument directed specifically to the conventions was omitted from Nicaragua's pleadings.

7. For example, Article 8 of the Convention on Rights and Duties of States provides: "no State has the right to intervene in the internal or external affairs of another". Article 11 provides:

"... the territory of a State is inviolable and may not be the object of military occupation nor of other measures of force imposed by another State directly or indirectly or for any motive whatever even temporarily".

These provisions are incorporated substantially verbatim in the OAS Charter, Articles 18 and 20.

8. The subcommittee that considered the draft (chaired by Raymundo Rivas of Colombia) resolved unanimously to include in its report the following definition:

"any act of a State, through diplomatic representation, by armed force, or by any other means involving effective force, with a view to making the State's will dominate the will of another State, and, in general, any maneuver, interference or interposition of any sort, employing such means, either directly or indirectly in the matter of the obligations of another State, whatever its motive, shall be considered as intervention and likewise a violation of international law". (Minutes and antecedents of the Seventh International Conference of American States, 1933.)

9. The Convention on Rights and Duties of States in the Event of Civil Strife was signed at Havana on 20 February 1928 and entered into force for the United States on 21 May 1930. Under the provisions of Article I (3), under which Nicaragua claims, the United States binds itself "to forbid traffic in arms and war materials. Except when intended for the government, ..." It is obvious from this record that the United States not only breached its duty to forbid traffic in weapons and war materials from its territory to the *contras*, but that it was the principal trafficker and has in fact provided them with most of their weapons. Nicaragua, however, believes that the provision simply spells out one species of armed intervention, prohibited under Articles 18, 20 and 21 of the OAS Charter. The United States, on the record before the Court, is also in admitted violation of Article I (1) of the Convention, which requires the parties "to use all means at their disposal to prevent the inhabitants of their territory, nationals or aliens, from participating in, gathering elements, crossing the boundaries or sailing from their territory for the purpose of starting or promoting civil strife". Not only has the United States failed to prevent such actions — it has sent persons, both nationals and aliens, from its territory to conduct military and paramilitary attacks against Nicaragua. It has actively sought to "start" or "promote" civil strife in Nicaragua, where none exists. The *contras*, as the evidence shows, have no indigenous support in Nicaragua and would disappear as an effective force in the absence of the support, direction and control of the United States as was so fully disclosed in the testimony. This lawless effort to foment civil strife has failed dismally, so that *stricto sensu*, the military and paramilitary attacks launched by the United States against Nicaragua do not constitute a case of civil strife. They are essentially the acts of the United States.

I have received a telex communication from Commander Luis Carrión, giving the information requested by Judge Colliard during Commander Carrión's deposition.

Commander Carrión has requested that I should communicate this information to the Court.

The names and nationalities of the vessels are as follows:

"The 1984-1985 and 1985-1986 editions of *Register of Ships* (published by Lloyd's Register of Shipping) lists the following companies as the owners of the foreign ships damaged by CIA mines in Nicaraguan harbors:

1. *Geoponte VI*, Volker Stevin baggermaatschappij Nederland, Oostmaaslaan 71, P.O. Box 2695, 3000 CR Rotterdam, Netherlands.
2. *Los Caribes*, Naviera Multinacional del Caribe S.A., (Namucar) calle 7 y 9 Avenida Segunda, apartado 10095, San José, Costa Rica (Panamanian Company).
3. *Lugansk*, Novorossiysk Shipping Co., Ul Svobody 1, 353900 Novorossiysk, USSR.
4. *Iver Chaser*, Chaser Shipping Corp., Liberian Registration, Iver Bugge (Manager), Storgaten 52, postboks 160, 3251 Larvik, Norway.
5. *Homin*, no listing.
6. *Terushio Maru*, Nagashiki Kisen K.K., 2886, Konoshima-Sotoura, Kasaoka, Okayama Prefecture, 714-2 Japan."

156. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

16 October 1985.

I have the honour to acknowledge receipt with thanks of Your Excellency's letter dated 15 October 1985, and received in the Registry the same day, concerning replies to questions put by Members of the Court during the oral proceedings in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

It is noted that at the foot of page 2 of your letter, and in paragraph 3 on page 3, there are incomplete references to the verbatim records of the hearings: no doubt you will complete these as soon as possible.

157. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

16 October 1985.

I have the honour to transmit to you herewith a copy of a letter dated 15 October 1985, and received in the Registry the same day, from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, concerning replies to questions put by Members of the Court during the oral proceedings in that case.

158. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

18 October 1985.

I have the honour to refer to your letter dated 16 October 1985 in which you note that there are incomplete references to the verbatim record of the hearings in my letter containing replies to questions put by Members of the Court during the oral proceedings in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

In this connection, please note:

Paragraph 2 of the answer to Judge Ruda should read:

“2. In its Memorial on the merits, filed 30 April 1985, and in its oral pleadings, Nicaragua did not refer specifically to its claims under these two conventions. However, Nicaragua has not abandoned these claims.”

From paragraph 3 of the answer to Judge Ruda, two citations are missing. The first reference should be to CR 85/26, pp. 24-26. The second reference should be to CR 85/26, p. 26¹.

159. THE DEPUTY-REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

22 October 1985.

Further to my letter of 16 October 1985, with which I transmitted to you a copy of a letter dated 15 October 1985 from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, I now have the honour to send you herewith a copy of a further letter from the Nicaraguan Agent, dated 18 October 1985, concerning missing references in the previous letter.

160. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

26 November 1985.

I have the honour to transmit to the Court the answers of the Government of Nicaragua to the questions put by Judge Schwebel and transmitted to me as Agent for the Government of Nicaragua, under cover of your letter of 14 October 1985.

ANSWERS TO QUESTION 1

- 1.1. Melida Anaya Montes and Cayetano Carpio died in Nicaragua.
- 1.2. Melida Anaya Montes was the victim of homicide on 6 April 1983; the perpetrators were captured, tried before the Nicaraguan courts, convicted, and sentenced on 10 September 1985. Cayetano Carpio died by suicide on 12 April 1983.

ANSWERS TO QUESTION 2

2.1 Melida Anaya Montes arrived in Nicaragua as a refugee approximately one month before her death; she did not establish residence in Nicaragua and there is no record of her occupation while in Nicaragua. Cayetano Carpio arrived in Nicaragua after Melida Anaya Montes' death in order to attend her funeral; he did not establish residence in Nicaragua and he had no occupation during the few days he was in Nicaragua.

2.2. Melida Anaya Montes and Cayetano Carpio were associated with the insurgency in El Salvador.

2.3. There is not now and there never was a building or headquarters in Nicaragua for Salvadoran insurgents, hence neither Melida Anaya Montes nor Cayetano Carpio occupied or worked at or out of such a building or headquarters.

¹ Pp. 184-185, *supra*.

ANSWER TO QUESTION 3

There is no contradiction between, and hence no need to reconcile, the position of the Nicaraguan Government set forth at CR 85/27, page 75 and CR 85/24, page 44¹ and Nicaragua's answers to Questions 1 and 2. (I must note that Judge Schwebel's reference, in his third question, to CR 85/24, page 44, is actually a reference to his own earlier remarks and not to any position expressed by the Government of Nicaragua.)

As the Government of Nicaragua has consistently stated, it has never supplied arms or other material assistance to insurgents in El Salvador or sanctioned the use of its territory for such purpose, it has never permitted Salvadoran insurgents to establish a headquarters or operations base or command and control facility in Nicaraguan territory and has never permitted its territory to be used for training of Salvadoran insurgents. The Government of Nicaragua has permitted, and continues to permit, Salvadoran refugees whether or not they are associated with the insurgency in that country, to enter Nicaraguan territory and to remain there as long as they obey Nicaraguan laws.

Nicaragua is not the only country that allows Salvadorans who may be associated with the insurgency there to enter its territory; other such countries include France, Spain, Ecuador, Costa Rica, Mexico, Panama and the United States. Indeed, as shown in the attached exchange of correspondence between Mr. Paul S. Reichler, one of Nicaragua's counsel in this case, and Mr. Francisco Altschul, the representative of the Salvadoran insurgency in Washington, D.C., the Salvadoran insurgency maintains formal offices in San José, Costa Rica, and Mexico City, Mexico (their addresses are in Mr. Altschul's letter) and maintains official representatives in Paris, Madrid and Quito in addition to Washington. Beyond this, Dr. Guillermo Ungo, President of the Frente Democrático Revolucionario, resides in Panama. Hector Oqueli, a member of the political/diplomatic commission of the same insurgent organization resides in Mexico. Ruben Zamora, also a member of that commission, is married to a Nicaraguan, and resides in Managua. Dr. Ungo was an invited guest at the inauguration of President Alan Garcia of Peru in 1985, and has traveled widely in South America and Europe, as well as the United States. In fact, Dr. Ungo, Mr. Oqueli and Mr. Zamora have visited the United States regularly since 1981 and have held meetings with members of Congress, given press conferences and interviews and spoken at public gatherings in the United States. Thus, it would appear that senior representatives of the Salvadoran insurgency have spent more time, and undertaken more political activity, in the United States than in Nicaragua.

6 November 1985.

Mr. Francisco Altschul,
P.O. Box 11452,
Cleveland Park Station,
Washington, D.C. 20008.

Dear Mr. Altschul:

I am writing to you in your capacity as representative of the Frente Democrático Revolucionario/Frente Farabundo Martí de Liberación Nacional (FDR/FMLN).

¹ Pp. 237; 123, *supra*.

I would like to know the countries in which the FDR/FMLN maintains offices and representatives, and the addresses of same. I would also like to know the countries where the FDR/FMLN leadership resides, if other than El Salvador, and whether (and, if so, when) such leaders have visited the United States and other countries.

I wish to advise you that I serve as counsel to the Government of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, now pending in the International Court of Justice, and that the information you furnish me, if any, may be submitted to the Court.

(Signed) Paul S. REICHLER.

Mr. Paul S. Reichler,
Reichler & Appelbaum,
888 17th St., NW,
Suite 1101,
Washington, D.C. 20006.

Dear Mr. Reichler:

This is in response to your letter of November 6, 1985.

The following information is public information and you may use it however you like.

The FDR/FMLN maintains offices in Mexico City (Apartado Postal S-660, 06500, Mexico, D.F.) and San José (Apartado Postal 583, Código 1002, San José, Costa Rica). We also have representatives in Paris, Madrid and Quito.

Three of our leaders are now living abroad. They are Dr. Guillermo Ungo, President of the F.D.R., who lives in Panama, and two members of the political/diplomatic commission, Hector Oqueli and Ruben Zamora, who live in Mexico and Nicaragua respectively. Mr. Zamora's wife is a Nicaraguan citizen.

All three of these men have visited the United States regularly since 1981. They have met with members of the Congress, and held press conferences and interviews. They have spoken at universities, to solidarity groups, etc. Dr. Ungo met with the Kissinger Commission in Washington in 1983. Other leaders from El Salvador have also visited the United States, as in November 1984 when Salvador Samayoa and Oscar Aceredo participated in a televised debate held in California and later traveled to Washington.

Our leaders have traveled to many other countries too, especially Dr. Ungo who has been to many South American and European countries. This year he was an invited guest at the inauguration of Alan Garcia as President of Peru.

I hope this answers your questions.

(Signed) Francisco ALTSCHUL.

161. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

26 November 1985.

I have the honour to refer to your letter of 14 October 1985 (No. 74798), communicating to me, as Agent of the Republic of Nicaragua, the Court's

request for additional documents in the case concerning *Military and Paramilitary Activities in and against Nicaragua*. Following is my Government's response.

1. The Court's first request was for the communication of 12 July 1979 from the Provisional Government of National Reconstruction to the Organization of American States, together with the annexes that accompanied such communication.

The communication is enclosed herewith, both in its original Spanish text¹ and in an English translation prepared by the O.A.S.

There were four annexes to the communication, which are listed on the last page of that document. A copy of the first annex, the Resolution of the XVII Meeting of Consultation of Ministers of Foreign Affairs of the O.A.S., is also enclosed herewith¹. Copies of the other three annexes (the proposed Law of Guarantees, Organic Law and Program of the Government of National Reconstruction) could not be located, despite diligent search, either in Nicaragua or at the O.A.S. However, in lieu of these annexes, I am enclosing herewith the final versions of these three measures as they were enacted into law on 20 July 1979 and 21 August 1979². (As enacted, these laws were called programs of the Government, Fundamental Statute of the Republic and Statute Regarding Rights and Guarantees of the Nicaraguan People.)

Because I served as Legal Adviser to the Junta de Gobierno, which wielded executive power during that period, I can affirm to the Court that there were no substantial differences between the proposed laws annexed to the communication to the O.A.S. and the ones enacted into law shortly thereafter.

2. The Court's second request was for contemporary memoranda or records of supposed conversations in Managua at the end of 1980 between the Nicaraguan Head of State and the Minister of Foreign Affairs and the United States Deputy Assistant of State for Central American Affairs, "on the subject of aid given, according to the United States, to the opponents of the Government of El Salvador".

There were no such conversations. Accordingly, there are no documents that fit the Court's description. Nevertheless, my Government has asked me to submit the following documents in an effort to assist the Court:

A. PRESIDENTIAL DETERMINATION NO. 80-26, 12 SEPTEMBER 1980, SIGNED BY
PRESIDENT JIMMY CARTER

In this official determination, President Carter formally certified "on the basis of an evaluation of the available evidence, that the Government of Nicaragua has not cooperated with or harbors any international terrorist organization or is aiding, abetting, or supporting acts of violence or terrorism in other countries". The official press communiqué issued by the Office of the White House Press Secretary (also enclosed herewith) explains that:

"The certification is based upon a careful consideration and evaluation of all the relevant evidence provided by the intelligence community and by our Embassies in the field. It also takes into account the Government of Nicaragua's repeated assurances that it is not involved with international terrorism or supporting violence or terrorism in other countries. Our intelligence agencies as well as our Embassies in Nicaragua and neighboring

¹ Spanish text not reproduced.

² Not reproduced.

countries were fully consulted, and the diverse information and opinions from all sources were carefully weighed . . .”

To the extent that the Court's request reflects an interest in the views of the United States Government at the end of 1980 concerning supposed support by Nicaragua to El Salvadoran opposition forces, the time period and subject-matter specified in your letter of 14 October 1985, my Government trusts that the Court will find the aforementioned documents useful.

B. REPORT OF MEETING BETWEEN THOMAS ENDERS AND COMMANDER OF THE REVOLUTION DANIEL ORTEGA SAAVEDRA, 12 AUGUST 1981

This is an internal report of the Nicaraguan Government relating what transpired at a meeting between Commander Daniel Ortega Saavedra, then the Coordinator of the Junta de Gobierno, and Thomas Enders, then the U.S. Assistant Secretary of State for Interamerican Affairs. The meeting took place in Managua on 12 August 1981, and it covered a number of topics having to do with relations between Nicaragua and the United States. The report is not a public document. However, Nicaragua has no objection if the Court wishes to make it public, and leaves it to the Court to determine how the report should be treated.

It should be noted that the report of the meeting between Commander Ortega and Mr. Enders corroborates and confirms the evidence and testimony already presented to the Court by Nicaragua on the subject of the supposed supplying of arms to El Salvadoran insurgents.

To briefly summarize that testimony and evidence: the Government of Nicaragua has never supplied arms or other war material to El Salvadoran insurgents or authorized the use of Nicaraguan territory for such purpose. This does not mean that persons sympathetic to the insurgents have not, without the approval of the Nicaraguan Government and contrary to its policy, sent small quantities of arms from or through Nicaraguan territory to the insurgents; however, the Nicaraguan Government has acted diligently to prevent and stop such arms trafficking to the best of its ability. The testimony of Mr. David MacMichael, a former C.I.A. official called as a witness by Nicaragua, was that some arms shipments to El Salvadoran insurgents emanated from Nicaraguan territory at the very beginning of 1981, but that these shipments ceased, and did not resume, after March 1981. He saw no evidence of any other shipments between April 1981 and April 1983, when his employment with the C.I.A. ended. Mr. MacMichael testified that the evidence “did not establish” that the Nicaraguan Government was responsible for the arms shipments at the very beginning of 1981, and Nicaraguan Government witnesses have told the Court that the Government had no involvement or responsibility as regards those or any other shipments. (See, e.g., CR 85/21, pp. 13-14, 20-21, 25-26¹.)

At the meeting of 12 August 1981, according to the report, Commander Ortega told Mr. Enders (p. 6) that the Junta de Gobierno (which exercised executive power in Nicaragua from 19 July 1979 to 10 January 1985) and the National Directorate of the Frente Sandinista de Liberacion Nacional (the highest organ of Nicaragua's ruling political party) had decided not to permit any supply of arms from Nicaragua to El Salvadoran insurgents. Commander Ortega also stated (*id.*) that based on information about certain arms shipments provided by the United States Government to the Nicaraguan Government in March

¹ Pp. 51-52, 54-55, 58, *supra*.

1981, the Nicaraguan Government took action immediately to curtail and prevent these activities and they were, in fact, curtailed and prevented.

Mr. Enders acknowledged (p. 3) that the Nicaraguan Government, upon receiving the information from the United States about the arms shipments, took action to stop them and did stop them, in March 1981. This, of course, corroborates Mr. MacMichael's testimony that the arms shipments at the very beginning of 1981 stopped as of March 1981. What is newly provided by the report is that the Nicaraguan Government intervened to stop the arms shipments and did so after evidence of the shipments was furnished to it by the United States Government.

According to the report, Mr. Enders suggested to Commander Ortega that sometime later arms shipments from Nicaraguan territory to El Salvadoran insurgents resumed. The report does not record Mr. Enders as providing any specific information as to date, place, quantity, persons responsible, means of shipment, etc. The report does show, however, that Commander Ortega asked for this information and told Mr. Enders that if the United States Government once again furnished Nicaragua with evidence of arms shipments, the Nicaraguan Government would again take the necessary steps to stop it. "We would ask you to give us reports about that flow to help us control it", Commander Ortega said (p. 6). Mr. Enders refused to provide any further information of this type even though similar information was provided five months earlier, saying (*id.*): "we are not in conditions to provide you intelligence reports, we would compromise our sources and our nations have not arrived at the necessary level to exchange intelligence reports".

It is Nicaragua's position that no information about arms shipments to El Salvadoran insurgents after March 1981 could have been furnished because no such shipments were made. That is confirmed by Mr. MacMichael. Based on his review of all the relevant information and reports collected by the United States Government, Mr. MacMichael testified that there was no evidence of arms shipments after March 1981.

3. The Court's third request was for the draft treaties submitted by the Government of Nicaragua to the Government of the United States on 20 October 1983. Please be advised that Nicaragua submitted these documents to the Court on 25 April 1984, as Nicaragua's Exhibit IX¹ in connection with the hearings on interim measures of protection. No copy of the letter of transmittal to the U.S. Department of State could be located, despite diligent search.

I trust that the foregoing and the enclosed documents constitute a satisfactory response to the Court's requests.

16 July 1979.

Because of the great significance of the matter dealt with, and because the issue was recently considered by the XVII Meeting of Consultation of Ministers of Foreign Affairs within whose jurisdiction it still falls, the Secretary General of the Organization of American States begs to forward to the Representative

¹ I, pp. 217-249.

with his compliments the message he has received from the "Junta of the Government of National Reconstruction" of Nicaragua, the text of which is self-explanatory.

12 July 1979

Mr. Secretary General:

We are pleased to make available to you, and to the ministers of foreign affairs of the Member States of the Organization, the document containing our "plan to secure peace" in our heroic, long-suffering country at the moment when the people of Nicaragua has consolidated its political and military victory over the dictatorship.

We have developed this plan on the basis of the Resolution of the XVII Meeting of Consultation on June 23, 1979, a Resolution that was historic in every sense of the word: It demands the immediate replacement of the genocidal Somoza dictatorship, which is now nearing its end, and backs the installation of a broadly-representative democratic government in our country, such as the one we have formed. While saying that "the solution of the serious problem is exclusively within the jurisdiction of the people of Nicaragua", it appeals to hemispheric solidarity to preserve our people's right to self-determination.

We are presenting to the community of nations of the hemisphere in connection with our "plan to secure peace" the goals that have inspired our government ever since it was formed. They have been set forth in our documents and political declarations, and we wish to ratify some of them here:

I. Our firm intention to establish full observance of human rights in our country in accordance with the United Nations Universal Declaration of the Rights of Man, and the Charter on Human Rights of the OAS. Our observance of human rights has already been made plain by the way the Sandinista National Liberation Front has treated hundreds of prisoners of war. Our government thus invites the Inter-American Commission on Human Rights (CIDH) to visit our country as soon as we are installed in our national territory.

II. Our wish that our installation in Nicaragua come about through a peaceful and orderly transition. The Government of National Reconstruction would take it as a gesture of solidarity if the foreign ministers of the hemisphere were to visit our country, and we hereby extend them a fraternal invitation to do so.

III. Our decision to enforce civil justice in our country and to try those incriminated of crimes against our people according to the regular laws. By their heroic struggle, the people have won themselves the right to let justice prevail for the first time in half a century, and will do so within the framework of the law, without a spirit of vengeance and without indiscriminate reprisals.

IV. Those collaborators with the régime that may wish to leave the country and that are not responsible for the genocide we have suffered or for other serious crimes that demand trial by the civil courts, may do so with all the necessary guarantees, which the Government of National Reconstruction authorizes as of now. The departure of these persons may be supervised by the Inter-American Commission on Human Rights and by the International Red Cross.

V. The plan to call the first free elections our country has known in this century, so that Nicaraguans can elect their representatives to the city

councils and to a constituent assembly, and later elect the country's highest authorities.

Mr. Secretary General, it is now up to the governments of the hemisphere to speak, so that the solidarity with the struggle our people has carried forward to make democracy and justice possible in Nicaragua can become fully effective.

We ask that you transmit the text of this letter to the foreign ministers of the OAS,

Yours most respectfully,

Junta of the Government of National Reconstruction

Violeta de Chamorro — Sergio Ramirez Mercado — Alfonso Robelo Callejas — Daniel Ortega Saavedra — Moises Hassan Morales.

Plan of the Government of National Reconstruction to secure peace.

We began on the basis that while it is true that the solution of the serious problem is exclusively within the jurisdiction of the people of Nicaragua, that hemispheric solidarity that is vital if this plan is to be carried out will come about in fulfillment of the Resolution of the XVII Meeting of Consultation of Ministers of Foreign Affairs of the OAS adopted on June 23, 1979.

The following steps will ensure the immediate and definitive replacement of the *Somoza régime*, which has already been defeated by the heroic fighting people of Nicaragua and their vanguard, the Sandinista National Liberation Front. Rejection of this plan for a political solution would leave the military annihilation of the Somoza régime as the only way out. This could go on for a few more weeks, and would cause unnecessarily many more deaths and much more destruction.

The stages of the plan:

I. Somoza submits his resignation to his Congress. His Congress accepts it and turns power over to the Government of National Reconstruction in recognition of the backing it has received from all sectors of Nicaraguan society.

II. Installation of the Government of National Reconstruction. This government is formed of representatives of all sectors of Nicaraguan politics, and has received the official support of all of them.

III. Immediately following the Government of National Reconstruction's installation inside Nicaragua, the member States of the OAS, particularly those that sponsored or voted in favor of the Resolution, will proceed officially to recognize it as the legitimate government of Nicaragua.

IV. The Government of National Reconstruction will immediately proceed to:

1. Abolish the Somoza constitution.
2. Decree the fundamental statute by which the Government of National Reconstruction will be provisionally governed.
3. Dissolve the National Congress.
4. Order the National Guard to cease hostilities and to return immediately to their barracks, with guarantees that their lives and other rights be respected. Those officers, non-commissioned officers and ranks of the National Guard that wish to do so may join the new national army, or they may return to civilian life. The Sandinista Army will enforce the ceasefire to facilitate compliance with these decisions, standing in place in the positions gained up to the moment the decree is issued.
5. Maintain order using those sectors of the National Guard that have observed the ceasefire and that are appointed to these duties by the Govern-

ment of National Reconstruction. They will work alongside soldiers of the Sandinista Army.

6. Decree the organic law that will govern the institutions of the State.

7. Implement the program of the Government of National Reconstruction.

8. Guarantee the departure from the country of all those soldiers, Somoza officials who wish to leave and who are not involved in serious crimes against the people.

Appendix I — Resolution of the XVII Meeting of Consultation of Ministers of Foreign Affairs of the OAS.

Appendix II — Law of Guarantees.

Appendix III — Organic Law.

Appendix IV — Program of the Government of National Reconstruction.

“Resolution II (approved at the seventh plenary session, held on June 23, 1979):

Whereas: the people of Nicaragua are suffering the horrors of a fierce armed conflict that is causing grave hardships and loss of life, and has thrown the country into a serious political, social, and economic upheaval, the inhumane conduct of the dictatorial régime governing the country, as evidenced by the report of the Inter-American Commission on Human Rights, is the fundamental cause of the dramatic situation faced by the Nicaraguan people and the spirit of solidarity that guides hemisphere relations places an unavoidable obligation on the American countries to exert every effort within their power, to put an end to the bloodshed and to avoid the prolongation of this conflict which is disrupting the peace of the hemisphere.

The seventeenth meeting of consultation of ministers of foreign affairs, declares:

“that the solution of the serious problem is exclusively within the jurisdiction of the people of Nicaragua. That in the view of the seventeenth meeting of consultation of ministers of foreign affairs this solution should be arrived at on the basis of the following:

1. Immediate and definitive replacement of the Somoza régime.
2. Installation in Nicaraguan territory of a democratic government, the composition of which should include the principal representative groups which oppose the Somoza régime and which reflects the free will of the people of Nicaragua.
3. Guarantee of the respect for human rights of all Nicaraguans without exception.
4. The holding of free elections as soon as possible, that will lead to the establishment of a truly democratic government that guarantees peace, freedom, and justice.

Resolves:

1. To urge the member States to take steps that are within their reach to facilitate an enduring and peaceful solution of the Nicaraguan problem on the bases set forth above, scrupulously respecting the principle of non-intervention and abstaining from any action that might be in conflict with the above bases or be incompatible with a peaceful and enduring solution to the problem.

2. To commit their efforts to promote humanitarian assistance to the people of Nicaragua and to contribute to the social and economic recovery of the country.

3. To keep the seventeenth meeting of consultation of ministers of foreign affairs open while the present situation continues."

Résolution II (adoptée à la septième séance plénière tenue le 23 juin 1979):

la dix-septième réunion de consultation des ministres des relations extérieures, considérant :

Que le peuple nicaraguayen connaît actuellement les horreurs d'une cruelle lutte armée qui cause des souffrances immenses, des pertes de vies et a conduit le pays à des convulsions politiques, sociales et économiques; que le comportement inhumain du régime dictatorial qui gouverne le Nicaragua, mis en pleine lumière dans un rapport de la commission interaméricaine des droits de l'homme, est la cause fondamentale de la tragique situation que traverse le peuple nicaraguayen; que l'esprit de solidarité qui inspire les relations continentales impose aux pays américains l'obligation inéluctable d'accomplir tous les efforts qu'ils peuvent pour arrêter l'effusion de sang, et éviter que la prolongation de ce conflit continue de perturber la paix du continent,

déclare :

qu'il appartient exclusivement au peuple nicaraguayen de résoudre ce grave problème;

qu'à son avis cette solution doit reposer sur les bases suivantes :

- 1) remplacement immédiat et définitif du régime de Somoza;
- 2) installation au Nicaragua d'un gouvernement démocratique dont la composition comprenne les principaux groupes de l'opposition au régime de Somoza, et soit librement choisi par le peuple nicaraguayen;
- 3) garantie du respect des droits de l'homme de tous les Nicaraguayens sans exception;
- 4) organisation dans les plus brefs délais d'élections libres conduisant à l'installation d'un gouvernement authentiquement démocratique qui garantisse la paix, la liberté et la justice;

décide :

1. D'inviter instamment les Etats membres à prendre toutes les mesures en leur pouvoir pour faciliter une solution durable et pacifique du problème nicaraguayen dans les conditions susmentionnées en respectant scrupuleusement le principe de la non-intervention et en s'abstenant de toute action incompatible avec lesdites conditions, ainsi qu'avec la solution durable et pacifique du problème.

2. De s'engager à fournir les efforts requis pour fournir l'assistance humanitaire à la population, et pour contribuer au relèvement social et économique du pays.

3. Qu'elle restera en session aussi longtemps que la présente situation se prolongera.

12 September 1980.

MEMORANDUM FOR THE SECRETARY OF STATE

Subject: Certification and Determination under the Foreign Assistance Act of 1961, as Amended Regarding Assistance to Nicaragua

Pursuant to the authority vested in me by the Foreign Assistance Act of 1961, as amended (hereinafter "the Act"), I hereby:

(a) certify, pursuant to section 536 (g) of the Act* and on the basis of an evaluation of the available evidence, that the Government of Nicaragua "has not cooperated with or harbors any international terrorist organization or is aiding, abetting, or supporting acts of violence or terrorism in other countries";

(b) determine, pursuant to section 614 (a) of the Act, that the furnishing of not to exceed \$45,000,000 in assistance to Nicaragua in the fiscal year 1980 from amounts appropriated under Chapter 4 of Part II of the Act for Egypt by the Supplemental Appropriations Act, 1979, is important to the security of the United States; and

(c) authorize the furnishing of such assistance to Nicaragua: *Provided*, That funds available for Egypt under Chapter 4 of Part II of the Act shall be reimbursed, in an amount equivalent to that furnished to Nicaragua hereunder, from funds appropriated for Nicaragua by the Supplemental Appropriations and Rescission Act, 1980, when such funds become available for obligation.

This determination shall be reported to the Congress immediately, and none of the funds provided for herein shall be furnished to Nicaragua until after such report has been made, as required by law.

This determination shall be published in the *Federal Register*.

(Signed) Jimmy CARTER.

12 September 1980.

THE WHITE HOUSE

As required by Section 536 (g) of the Foreign Assistance Act, the President is transmitting to the Congress a certification to release funds for aid to Nicaragua. The specific finding required by the law was that the Government of Nicaragua

*The full text of section 536 (g) provides: "The President shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, certification prior to releasing any assistance to the Government of Nicaragua under this chapter, that the Government of Nicaragua has not cooperated with or harbors any international terrorist organization or is aiding, abetting, or supporting acts of violence or terrorism in other countries. In the event that the President transmits such a certification, but at a later date he determines that the Government of Nicaragua cooperates with or harbors any international terrorist organization or is aiding, abetting, or supporting acts of violence or terrorism in other countries, the President shall terminate assistance to the Government of Nicaragua under this chapter and the outstanding balance of any loan to the Government of Nicaragua, or any of its agencies or instrumentalities, with funds authorized to be appropriated by this chapter shall become immediately due and payable."

has "not cooperated with or harbors any international terrorist organization or is aiding, abetting or supporting acts of violence or terrorism in other countries".

The certification is based upon a careful consideration and evaluation of all the relevant evidence provided by the intelligence community and by our Embassies in the field. It also takes into account the Government of Nicaragua's repeated assurances that it is not involved with international terrorism or supporting violence or terrorism in other countries. Our intelligence agencies as well as our Embassies in Nicaragua and neighboring countries were fully consulted, and the diverse information and opinions from all sources were carefully weighed. The conclusion was that the available evidence permits the President to make the certification required by Section 536 (g) of the Act.

This certification to the Congress permits the Administration to proceed with disbursement of economic assistance urgently required to further U.S. national interests in this critical area. The Administration does not intend to abandon the vital Central American region to Cuba and its radical Marxist allies. To the contrary, the assistance made available by the President's certification will enable us to give effective support to those moderate and democratic Nicaraguans who are struggling to preserve individual freedoms, political pluralism, the democratic process and a strong, free enterprise participation in their economy. Sixty per cent of the total \$75 million in assistance will go to the private sector in Nicaragua.

* * *

REPORTE DE REUNION ENTRE THOMAS ENDERS Y EL COMANDANTE DE LA
REVOLUCION DANIEL ORTEGA SAAVEDRA

Agosto 12, 1981

Enders: Muchas gracias por la acogida que se me ha dado, así como usted Comandante, como el Canciller y sus colegas; así como ustedes consideran a su Revolución irreversible, nosotros también la consideramos así. Nosotros no compartimos muchas ideas políticas y sociales, reconocemos sí que la derrota de Somoza es un hecho consumado y lo consideramos como tal y además como un hecho necesario.

Hablando con sus colegas y con la Junta de Gobierno hemos identificado tres problemas principales y otros menores; dos de ellos han sido elevados por Estados Unidos y uno por sus colegas.

Los tres problemas principales son los siguientes:

- 1.— El continuo flujo de armas, municiones y otro tipo de apoyo militar a El Salvador.
- 2.— El rápido desenvolvimiento del poder militar en Nicaragua, que de continuar sería una amenaza para sus vecinos, que podría dar como resultado una conflagración general de la cual Estados Unidos no podría sustraerse.
- 3.— Temor de que los Estados Unidos están haciendo gestiones para desestabilizar la Revolución y atacarla.

En las pláticas de ayer no pretendo haber llegado a un acuerdo; la pregunta que me hago: que si vale la pena hacer los esfuerzos necesarios para resolver estos problemas y programar una serie de pasos para resolverlos?

Estimo que debo detenerme en este punto pues sus colegas ya le habrán informado sobre las conversaciones de ayer.

D.O.S.: Vemos con optimismo su presencia en nuestro país; y así como la Revolución es una realidad, los Estados Unidos son también una enorme realidad.

La situación que vive el área, estamos claros que es muy difícil, muy crítica y la Revolución Nicaraguense está interesada en ser un elemento estabilizador en el área. ¿Cómo lograr ese objetivo...? Usted señalaba tres puntos en cuanto a problemas claves que ven los Estados Unidos y la Revolución Nicaraguense; cuando hablamos de la desestabilización de la Revolución Nicaraguense no nos referimos solamente al hecho propio de nuestro país, sino que también nos referimos a la actividad que de fuera a la Revolución Nicaraguense, los Estados Unidos ejercen directa o indirectamente en el área centroamericana.

Los campamentos de los guardias nacionales en territorio de Estados Unidos alientan las acciones contrarrevolucionarias en el resto del área en contra de Nicaragua, y esto tiene significado concreto en Nicaragua, hemós tenido más de 100 muertos; un cambio de actitud de Estados Unidos conllevaría un cambio de actitud de los gobiernos de Centro América para con Nicaragua.

La preocupación expuesta por usted en cuanto a El Salvador. A nosotros a también nos preocupa, por el mayor comprometimiento que tienen los Estados Unidos en El Salvador, sobre todo en el orden militar; Estados Unidos lo que ha hecho es fortalecer la posición de los sectores más conservadores de El Salvador; y existen contradicciones entre las Fuerzas Armadas, los empresarios y la Junta Salvadoreña; ahí no se ha fortalecido la Junta, sino la posición más conservadora, que hacen resistencia a la solución política. Agregamos a esto, la presencia de 20 asesores norteamericanos en Honduras.

Todo esto, a un país como el nuestro, que se siente incomprendido por los Estados Unidos, nos obliga a buscar mecanismos de defensa. Por eso consideramos de mucha trascendencia su venida a Nicaragua.

Somos revolucionarios, no estamos de acuerdo que se den actitudes de los Estados Unidos agresivas e imperialistas; no estamos de acuerdo que nos quieran invadir, que nos hayan invadido, que nos corten los créditos; pero buscamos sí una mejor relación con Estados Unidos, a cambio de que nos dejen hacer nuestra Revolución; no queremos entrar a una carrera armamentista, pero las condiciones nos han obligado a hacerlo, sostenemos una posición de no-alineamiento, queremos sostener esa posición; no queremos convertirnos en una amenaza para lo que los Estados Unidos llaman "seguridad hemisférica"; pero para poder sobrevivir, esta Revolución tiene que buscar el respaldo de donde venga.

Queremos mantener el equilibrio de relación con países de diferentes características ideológicas, pero las decisiones que se toman en los Estados Unidos son determinantes para nosotros; tenemos toda la disposición a buscar nosotros y ustedes, respuestas concretas y es necesario continuar este diálogo a todos los niveles que sea posible, para poder tener algo concreto y las relaciones que todos estamos deseando.

Enders: Quiero hacer un par de anotaciones y algunas propuestas concretas: Sobre El Salvador: nosotros no deseamos la restauración de un orden conservador en El Salvador, a menos que sea a través de elecciones libres. Nos preocupa la Reforma Agraria y nos interesa que se lleve hasta su fin. En todas mis

declaraciones he tratado de manifestar eso. Creo que no obstante las dificultades, la Reforma Agraria puede seguir adelante. La fase segunda de dicha Reforma, que tiene que ver con las plantaciones de café de tamaño mediano tal vez debería ser postergada. Es necesario el progreso social en El Salvador.

No objetamos su política de no-alineamiento, tenemos relaciones con gran cantidad de países que practican esa política.

Yo siento que estamos en un gancho de camino, yo quisiera explorar conjuntamente con usted la manera en que nuestras relaciones futuras podrían desenvolverse. Quiero someterle algunas ideas que habría que hacer: *Por su parte*: que tomen las medidas necesarias para que el flujo de armas a El Salvador se detenga nuevamente *como en Marzo de este año*. No pretendemos inmiscuirnos en la decisión de cómo o con qué se debe lograr ese objetivo, pero podemos hacer un monitoreo.

Nos gustaría que se atendiera el problema de la carrera armamentista en Centro América. Sobre esto, hay dos puntos importantes:

- a) — competencias de tener cada quien un mayor número de personas enlistadas en el ejército o en las milicias y
- b) — de competencia para ver quién tiene equipo más moderno, tanques escorpiones en Honduras y T-55 en Nicaragua.

Nosotros podemos sugerir algunos métodos de componer esto; pero creemos que cada país puede resolver esto, el número de soldados y de armas que cada uno debe tener.

Tengo además un problema que puede ser muy importante, pues involucra a los Sindicatos de los Estados Unidos que apoyan el programa de Reforma Agraria en El Salvador. El Instituto Americano de Sindicatos Libres tiene una oficina aquí, y ahorita tiene una controversia, y es importante que eso no perjudique nuestras relaciones.

Por nuestra parte:

- 1.— Con respecto a la inseguridad de Nicaragua sobre posibles acciones de Estados Unidos en contra de Nicaragua, hago notar que ambos países son signatarios del TIAR, que en su primer artículo dice: "Que obliga a los países a no tomar recurso a las amenazas de uso de las fuerzas". Podría ser interesante el investigar la posibilidad de reafirmar en forma bilateral o a través de otros mecanismos, este Tratado de Río de Janeiro.
- 2.— Debe poderse estudiar un poco más el problema de los exiliados políticos nicaraguenses en Estados Unidos. Nosotros no tenemos el recurso legal para enjuiciarlos por participar en ejercicios militares, además nadie los ve allá como una amenaza real en contra de ustedes, pero es evidente que ustedes si los ven como una amenaza política, el problema sería ver cómo nosotros podríamos dar respuestas a este tema.
- 3.— Cuando suspendimos nuestra asistencia económica, dijimos que podría restablecerse si Nicaragua paraba el flujo de armas al Salvador y aunque la situación de los Estados Unidos ha cambiado, ese ofrecimiento sigue en pie.

Yo creo que en forma casi inmediata podríamos investigar la ayuda alimentaria y para el desarrollo; y posteriormente, cuando los países de la región se pongan de acuerdo, nosotros responderíamos a esa propuesta regional. También creo sería interesante la posibilidad de asistencia técnica a través de jóvenes técnicos que vengan con el Cuerpo de Paz.

Lo que yo propongo es lo siguiente:

- 1.— Que nos tomemos las próximas seis semanas, es decir, hasta finales de Septiembre, para ver si estas proposiciones pueden ser elaboradas.

- 2.— En el interín, nos comprometemos a bajar un poco la retórica y esperamos que ustedes hagan lo mismo.
- 3.— Nosotros iríamos presentando a ustedes las proposiciones y esperaríamos de parte de ustedes las proposiciones que tengan a bien presentarnos.
- 4.— Esperaríamos que los próximas dos semanas ustedes tendrían la oportunidad de estudiar sobre nuestra primera propuesta.
- 5.— En este tiempo nosotros esperaríamos que se tomen las medidas para detener el flujo de armas al Salvador, yo propongo regresar a Nicaragua a fines de Septiembre para revisar el programa que se ha hecho y ver si las condiciones están listas para irse a un nivel más alto.

Insisto que nosotros consideramos que estamos en un "gancho de camino" y si no tomamos estas medidas no vamos a lograr distensionar la situación. Creo que no es necesario explicar en detalle la alternativa pero quiero decir dos ideas: solamente hay dos cosas que a nosotros nos pueden involucrar militarmente en esta región: 1)— que se resista a esta idea de hacer todo lo posible para detener el flujo de armas al Salvador. 2)— que la carrera armamentista en Centro América se desarrolle hasta tal punto que algunos de sus vecinos en Centro América nos inviten a nosotros amparados en el TIAR. No tenemos nada que ganar en esta eventualidad, el costo sería demasiado grande, pero si se nos empuja, la presente Administración Americana está en condiciones de tomar una decisión en esa situación.

¿Cómo le gustaría a usted que procediéramos ...? ¿Debemos continuar explicando las ideas que expresé ...?

D.O.S.: Nosotros también hemos contemplado las dos alternativas que usted expone y también hemos vista la encrucijada, nosotros tenemos la decisión de defender esta revolución por las fuerzas de las armas, aún cuando se nos aplaste y llevar la guerra a toda Centro América si eso sucede; estamos conscientes del poder militar de Estados Unidos, pero en ese aspecto somos románticos; pero no suicidas y no queremos ese tipo de solución. La propuesta que usted trae considero que está dentro de un marco racional.

Hay algo que es importante y que se le hace difícil a los políticos norteamericanos de entender y es: el proceso de cambio en América Latina. Los Estados Unidos están viendo a Nicaragua como el elemento determinante que puede provocar una respuesta racional o no de parte de los Estados Unidos. Pienso que los Estados Unidos consideran que es el comportamiento de Nicaragua lo que determina que la reacción de Estados Unidos sea racional o irracional, y el problema es la falta de comprensión de parte de los Estados Unidos; porque la responsabilidad fundamental no es solamente el comportamiento de Nicaragua, sino el comportamiento de los Estados Unidos lo que determina nuestro comportamiento. Nicaragua, históricamente ha sido afectada por los Estados Unidos aún cuando no existía la Unión Soviética.

Tenemos un prejuicio histórico hacia los Estados Unidos, saliendo de los Estados Unidos una serie de actitudes que nos hacen temer agresiones de parte de ellos, eso nos hace buscar todos los mecanismos de defensa. A nosotros nos interesa que triunfe la guerrilla en El Salvador y en Guatemala cuando vemos que no hay una voluntad positiva de los Estados Unidos hacia nosotros. Por eso el peso mayor de esto lo tiene la política de los Estados Unidos. Esta situación no va a estar determinada por el comportamiento de Nicaragua, sino que va a depender del comportamiento de los Estados Unidos. Me pare que es necesario hacer un esfuerzo para explorar esas vías que usted denuncia.

Una cosa importante, por ejemplo, sería que ustedes ayudaran a través de su influencia para que se produzca la reunión de Canciller de Centro América y

después la reunión de los Jefes de Estado, de todos los Cancilleres y de todos los Jefes de Estado sin excepción y ahí podría mos ir tocando estos puntos e ir bajando la tensión.

Nosotros estamos dispuesto a hacer todos los esfuerzos posibles para lograr un entendimiento con los Estados Unidos, pero eso va a estar determinado por la actitud de los Estados Unidos. Nosotros nos sentimos inseguros, pues hoy estamos hablando con el Sr. Enders, pero un señor embajador de los Estados Unidos en Colombia dijo otra cosa, y la Sra. Kirkpatrick habla por otro lado, etc. Necesitamos un canal responsable de comunicación, necesitamos seriedad en las declaraciones y un canal consistente y que pos de confianza.

Sería muy positiva su venida en Septiembre y eso nos compromete a dar pasos prácticos. Si los Estados Unidos, por ejemplo, pueden actuar en contra de los campos de ex-guardias nacionales en su territorio, bajaría la presión de la carrera armamentista en Nicaragua. Los ex-guardias nacionales actúan en sus campamentos porque los Estados Unidos lo permiten, pues si fuesen guerrilleros guatemaltecos los que estuviesen allí, serían reprimidos inmediatamente. Nosotros mismos fuimos reprimidos en Estados Unidos por el FBI y sabemos de lo difícil que es actuar cuando no hay disposición política de parte de los Estados Unidos; lo más importante pues es la comprensión que los Estados Unidos tengan de toda esta problemática. Ya ve por ejemplo se va Pezzullo y nosotros no sabemos si va a ver o no va a ver nuevo embajador.

Enders: Hay un nuevo y valioso embajador para Nicaragua.

D.O.S.: También en Washington es necesario tener un buen canal de comunicación.

Enders: Ustedes tienen un muy buen embajador.

En relación al asunto de la responsabilidad, no pretendemos achacarles a ustedes la responsabilidad de la situación imperante; yo comprendo que un revolución que recientemente ha triunfado-, se verá en la necesidad de armarse para defenderse y proteger a otros movimientos revolucionarios afines y por supuesto mas ventajosos que la lucha se de en otros países y no en el de ustedes. El problema es que esta forma de proceder o este comportamiento no se convierta en un reto para los Estados Unidos que éste tenga que responder, y esto es un círculo infernal del que hay que salirse. La propuestas que quisiera hacer tendrían que estar diseñadas a lograr evadir este problema, creo que si hemos de proceder, tenemos que bajar la retórica y proveérnos de un canal sólido de comunicación.

Yo le propongo que para el mundo sólo digan que nos hemos encontrado para no traten de caracterizar estas reuniones y solo hablemos del progreso en nuestras próximas reuniones.

Insisto en la importancia de que el flujo de armas al Salvador sea detenido, ya que si no, yo no podría sugerir a mi Gobierno que siguiéramos el curso de lo que hemos conversado. Yo puedo estar seguro que haremos esfuerzos inmensos para explorar las ideas que les he expuesto y las proposiciones que ustedes hacen.

D.O.S.: Sobre el flujo de armas al Salvador, hay que aclarar que en la medida en que hemos tenido informe de parte de ustedes se ha tratado de parar; quiero aclararle sin embargo que existe aquí gran simpatía de colaborar con el pueblo salvadoreño, incluso de parte de miembros de nuestras fuerzas armadas, sin embargo de parte de nuestra Junta de Gobierno y la Dirección Nacional existe la decisión de que no hay que permitir este tipo de actividades. Nosotros les pediríamos que nos de informes acerca de ese flujo para ayudarnos a nosotros a controlarlo.

Enders: Ustedes lo han logrado hacer antes y creo que lo pueden lograr ahora ;

no estamos en condiciones de proporcionar a ustedes informes de Inteligencia pues comprometeríamos a nuestras fuentes y nuestras naciones no han llegado al nivel necesario para intercambiar informes de Inteligencia.

Quiero reafirmar de que nosotros somos personas serias, que nos ponemos condiciones imposibles o un juego diabólico en el que ustedes no pueden ganar.

D.O.S. : En Marzo ustedes nos trasladaron informes, que fueron importantes para detener el flujo. . .

162. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

26 November 1985.

I have the honour to refer to your letter of 14 October 1985 (No. 74797), communicating to me, as Agent of the Republic of Nicaragua, the Court's request for additional documents in the case concerning *Military and Paramilitary Activities in and against Nicaragua*. Following is my Government's response.

1. The Court's first request was for the official texts of the Presidential Findings made by President Ronald Reagan on 9 March 1981, 1 December 1981 and 20 September 1983 concerning "covert activities" against Nicaragua by the Central Intelligence Agency and other official organs of the United States Government; in the absence of the official texts of the Presidential Findings, the Court requested "the most authoritative evidence thereof available".

The Government of Nicaragua is unable, for obvious reasons, to supply the Court with the official texts of these Presidential Findings. The Presidential Findings are highly classified, official documents of the United States Government. They are not publicly available, and access to them even within the United States Government is severely restricted. The Government of Nicaragua has never obtained — or sought to obtain — these or any other classified U.S. documents.

Nevertheless, by diligent examination of publicly available sources and materials Nicaragua was able to obtain authoritative and irrefutable evidence of the existence of these three Presidential Findings and their contents. All such evidence has already been submitted to the Court. To assist the Court, I will summarize this evidence herein.

To begin with, United States law provides that "covert activities" by United States intelligence agencies may only be undertaken in foreign countries when the President makes a formal finding that such activities are important to the United States' national security (22 *United States Code* (2422)); the finding must be communicated to the intelligence committees of the Senate and House of Representatives (50 *United States Code* (413)). The Presidential Finding is different from the President's actual authorization for the "covert activities" to take place. The authorization is normally contained in a National Security Decision Directive, which spells out the authorized activities and their objectives; this document is not necessarily disclosed to the Congressional Intelligence Committees. The Presidential Finding is the President's formal communication to these committees. In practice, it may or may not contain a complete and accurate description of the covert activities, their objectives and their justification; this depends on whether the President wishes to make a full or a partial disclosure to the committees regarding the activities he has authorized.

A. THE PRESIDENTIAL FINDING OF 9 MARCH 1981

The most authoritative source of the existence of this finding is an internal document of the United States National Security Council, prepared in April 1982, entitled "U.S. Policy in Central America and Cuba Through F.Y. [Fiscal year] '84, Summary Paper". The document was obtained by the *New York Times*, which published it on April 7, 1983. The document, as published in the *Times*, was submitted by Nicaragua to the Court as Annex C, Attachment III-1, to its Memorial of 30 April 1985. In relevant part, the document states:

"Immediate steps are needed to implement an arms interdiction program in Guatemala as provided by the 9 March 1981 Presidential Finding on Central America. Decision: that the Central Intelligence Agency's authority under the 9 March 1981 Presidential Finding be increased from \$19.5 million to \$22.0 million in order that an expanded program in Guatemala be initiated this fiscal year. These funds should be obtained, if possible, from the C.I.A.'s Reserve for Contingencies."

Members of the Intelligence Committees of the Senate and House of Representatives cited the Presidential Finding of 9 March 1981 in the course of interviews with the *Washington Post*, reported on 8 May 1983, in which they traced the history of United States covert activities in and against Nicaragua up to that time. The Congressional sources advised the *Post* that:

"In early March, 1981, within six weeks of Reagan's inauguration, CIA Director [William] Casey brought the intelligence committees a presidential 'finding' that secret operations in Central America were important to United States national security . . .

The initial Reagan administration program was outlined to the committees in very general terms, centering on the protection of the Salvadoran government from the communist-supported insurgency there. Casey also portrayed the program as resulting from inquiries from neighboring countries, such as Honduras and Costa Rica, about help against the spread of revolution." (Annex F, No. 36, p. 68 (*Washington Post*, May 8, 1983). See also Annex F, No. 191, p. 293 (*Wall Street Journal*, March 5, 1985), which refers to "a March 1981 decision [that] authorized the agency [CIA] to develop a broad political-action effort in Latin America".)

The Presidential Finding of 9 March 1981 did *not* authorize or initiate the C.I.A.-directed campaign of military and paramilitary attacks in and against Nicaragua. That campaign was not authorized by President Reagan until November 1981, and the Presidential Finding on it was not issued until 1 December 1980. The 9 March 1981 Presidential Finding did, however, authorize the C.I.A. to engage in political activity against the Nicaraguan Government. Accordingly, subsequent to this finding the C.I.A. made contact and began to work with organizations of Nicaraguan exiles in Miami, and with the various armed bands of former members of the Guardia Nacional who were carrying out isolated acts of brigandry from small base camps in Honduras near the Nicaraguan border. (Supplemental Annex G, paras. 6-8.) The C.I.A. succeeded in unifying these diverse elements into a single political/military organization, the Nicaraguan Democratic Force, which came into existence in August 1981. (*Id.*) As attested by Mr. Edgar Chamorro, who became a leading official of the organization, the charter of the organization was drafted by the C.I.A., the name was chosen by the C.I.A., and all of the directors were either named or approved by the C.I.A. (*Id.*)

B. THE PRESIDENTIAL FINDING OF 1 DECEMBER 1981

The Presidential Finding of 1 December 1981 followed by a few days President Reagan's formal authorization of a C.I.A.-directed campaign to foster insurgency against the Nicaraguan Government and to conduct military and paramilitary activities in and against Nicaragua. President Reagan's formal authorization was given by means of National Security Decision Directive 17, which adopted a plan prepared by the C.I.A. and submitted to the President on 16 November 1981 at a meeting of the National Security Council. The C.I.A. plan itself was subsequently obtained by the *Washington Post* and the *New York Times*, which published excerpts from it. One of these published accounts describes and quotes from the C.I.A. plan as follows:

"The covert action proposal was developed by the CIA and first presented in detail to President Reagan by CIA Director William J. Casey at the Nov. 16 [1981] meeting of the National Security Council . . .

According to highly classified NSC records, the initial CIA proposal in November called for 'support and conduct of political and paramilitary operations against the Cuban presence and Cuban-Sandinista support structure in Nicaragua and elsewhere in Central America'. The CIA, in seeking presidential authorization for the \$19 million paramilitary force, emphasized that 'the program should not be confined to that funding level or to the 500-man force described', the records show.

Covert operations under the CIA proposal, according to the NSC records, are intended to:

'Build popular support in Central America and Nicaragua for an opposition front that would be nationalistic, anti-Cuban and anti-Somoza.'

'Support the opposition front through formation and training of action teams to collect intelligence and engage in paramilitary and political operations in Nicaragua and elsewhere.'

'Work primarily through non-Americans' to achieve these Covert objectives, but in some cases the CIA might 'take unilateral paramilitary action — possibly using U.S. personnel — against special Cuban targets.'

After the initial presentation, the CIA proposal was turned over to the national security planning group, a subcommittee of the NSC, as a draft 'presidential finding' which states the need for specific covert operations under national security statutes, no funds can be expended for covert actions 'until the president finds that each such operation is important to the national security of the United States.'" (Annex F, No. 4, pp. 6-7 (*Washington Post*, March 10, 1982). See also Annex F, No. 3, pp. 3-5 (*Washington Post*, February 14, 1982); Annex F, No. 6, p. 9 (*New York Times*, March 11, 1982); Annex F, No. 23, pp. 46-49 (*Washington Post*, April 3, 1983).)

The existence and content of the C.I.A. plan, and the fact of its adoption by President Reagan in November 1981, were confirmed by Mr. David MacMichael, a former C.I.A. official called as a witness by Nicaragua at the oral hearings on the merits:

"Q.: Now, as part of your official duties at that time in 1981, were you advised of a plan prepared for submission to the President of the United States calling for covert activities against Nicaragua?

A.: Yes, I was.

Q.: Can you tell us when and how you were advised of the plan?

A. : The plan was discussed at a meeting of the Latin American Affairs Office which I attended in my capacity as a member of the analytic group early in the Fall of 1981.

Q. : When you say Latin American Affairs Office, is that the Latin American Affairs Office of the Central Intelligence Agency?

A. : Yes, it is.

Q. : Do you know if the President ultimately approved this plan?

A. : Yes he did.

Q. : Was that the plan submitted to the House and Senate Intelligence Committees in November 1981?

A. : Yes it was.

Q. : You say you first heard of this plan at a meeting in the Latin American Affairs Office of the Agency in the Fall of 1981, could you tell us generally the outline of the plan as discussed in that meeting?

A. : Well, as discussed the general premise of the plan was that Nicaragua was considered a menace to the security of the Central American region and that a covert force of approximately 1,500 men was to be organized to carry out military and paramilitary actions in Nicaragua." (P. 44, *supra*.)

Mr. MacMichael continued :

Q. : Mr. MacMichael, you have described the plan in general terms, I would now like to read from a newspaper account in the *Washington Post* purporting to contain excerpts from the actual CIA proposal to the President. It is reprinted in Annex F, submitted with the Memorial (Item 4, pp. 6-7).

The newspaper account reads: 'According to highly classified NSC records the initial CIA proposal in November called for "support and conduct of political and paramilitary operations against the Cuban presence and Cuban Sandinista support structures in Nicaragua and elsewhere in Central America". The CIA in seeking presidential authorization for the \$19 million paramilitary force emphasized that "the programme should not be confined to that funding level or to the 500-man force described" the records show. Covert operations under the CIA proposal, according to the NSC records are intended to: "build popular support in Central America and Nicaragua for an opposition front that would be nationalistic anti-Cuban and anti-Somoza" the quotation continues: "support for the opposition front through formation and training of action teams to collect intelligence and engage in paramilitary and political operations in Nicaragua and elsewhere", "Work primarily through non-Americans" to achieve these covert objectives, but in some cases the CIA might take unilateral paramilitary action — possibly using United States personnel — against special Cuban targets.'

To your recollection, does that accurately describe the plan that was discussed at the meeting you attended?

A. : Yes, it does, I do not in all honesty recall the emphasis or any discussion there of the possible unilateral use of United States forces or personnel against Cuban targets, but the rest of it squares very well with my recollection." (Pp. 49-50, *supra*.)

The Presidential Finding on activities called for in the C.I.A.'s plan and authorized by President Reagan was made and sent to the Congressional intelligence committees on 1 December 1981. This is confirmed by the public statement of U.S. Representative Edward P. Boland, who was then Chairman of the Intelligence Committee of the House of Representatives:

"This committee has fulfilled its responsibility to this House. When the first finding was made and sent to this committee on December 1, 1981, it was the kind of a finding that required, demanded, that this committee have updates on that finding." (Annex E, Attachment 10 (130 *Cong. Rec.* H2918, April 12, 1984).)

An official Report of the Intelligence Committee of the House of Representatives, dated 13 May 1983, confirms the timing of the Presidential Finding and its content:

"From the Committee's first briefing, in December, 1981, on the program to support anti-Sandinista insurgency, serious concerns were expressed by members of the Committee. These concerns went to the number and tactics of the insurgents to be supported, whether these insurgents would be under U.S. control and the possibility of military clashes between Nicaragua and Honduras." (Annex E, Attachment 1 (Report of the U.S. House of Representatives Permanent Select Committee on Intelligence, 98th Congress, 1st Session, Rept. No. 98-122, Part I, p. 7 (May 13, 1983).)

Finally, newspaper accounts derived from official sources have also confirmed the 1 December 1981 finding. For example, the *New York Times* of 14 March 1982, which obtained a copy of the Presidential Finding, reported that:

"One of the items made available [to the *Times*] was a document signed by President Reagan on Dec. 1, 1981, asserting the need for a covert intelligence operation in the region. By law, the President has to sign such a document, called a finding, for all covert actions.

The document grants the CIA a broad authorization to support and conduct political and paramilitary operations against Cubans and Cuban supply lines in Nicaragua and elsewhere in Central America. It further authorizes the CIA to work with other governments." (Annex F, No. 8, p. 11 (*New York Times*, March 14, 1982).)

Other newspaper accounts of the Presidential Finding of 1 December 1981, based on official sources, are part of the record of this case as: Annex F, No. 36, page 69 (*Washington Post*, May 8, 1983); Annex F, No. 13, page 23 (*Newsweek*, November 8, 1982); Annex F, No. 187, pages 282-283 (*Los Angeles Times*, March 3, 1985).

C. THE PRESIDENTIAL FINDING OF 20 SEPTEMBER 1983

On 6 May 1983, the Senate Intelligence Committee voted to authorize and fund continued covert paramilitary action in Nicaragua during the next fiscal year, beginning 1 October 1983, only upon formulation of a new Presidential Finding. Senator Barry Goldwater, the Committee's Chairman, confirmed this in later Senate debates:

"On May 6, 1983, the Intelligence Committee voted 13 to 2 to authorize and fund a covert paramilitary action program directed against the Sandinista régime subject to certain conditions stipulated by the committee. The Committee placed all funds requested by the President for fiscal year 1984 into the reserve for contingencies for the purpose of supporting a redirected, redefined covert paramilitary action program based upon formulation of a new Presidential finding ...

Some of my colleagues may recall that at the time we asked the president to come up with a new program on the whole of Central America before

September 30, 1983." (Annex E, Attachment 6 (130 *Cong. Rec.* S3766, April 4, 1984).)

Senator Goldwater also confirmed this in a 27 June 1983 letter to the Director of the Congressional Research Service. (Annex E, Attachment 2 (Letter from Senator Goldwater to Mr. Gilbert Gude, Director, Congressional Research Service, The Library of Congress, June 27, 1983, with attachment).)

In July 1983, senior administration officials and Congressional sources confirmed that the administration had begun preparing the new finding, which called for expanded paramilitary action in Nicaragua. (Annex F, No. 43, pp. 81-83 (*Washington Post*, July 27, 1983); Annex F, No. 42, pp. 79-80 (*New York Times*, July 25, 1983).)

Senator Goldwater later informed his Senate colleagues that on 20 September 1983 the new finding had been submitted to the Senate Intelligence Committee, and the Committee met on that date to consider it. He said:

"The committee subsequently met on September 20, 1983, to consider the new Presidential finding on Nicaragua. Witnesses at the hearing included Secretary of State Shultz, the Director of Central Intelligence, Casey, and the Assistant Chairman of the Joint Chiefs of Staff. The committee met again on September 21; and, after careful consideration, the committee agreed overwhelmingly to approve the covert paramilitary action program for Nicaragua." (Annex E, Attachment 6 (130 *Cong. Rec.* S3766, April 4, 1984).)

Congressional sources had also confirmed the committee's September 20 meeting on the new finding to the *Wall Street Journal*, which reported on 21 September 1983 that:

"The Reagan administration sketched out a revised blueprint for covert activities in Nicaragua that appears likely to win the backing of the Senate Intelligence Committee.

Secretary of State George Shultz and Central Intelligence Agency Director William Casey yesterday appeared at a closed committee session to deliver the new plan, known as an intelligence 'finding'.

Congressional sources said the finding expands the administration's originally stated goals of the Nicaraguan operation, although the expansion doesn't go as far as some administration officials had wanted.

The new finding, the sources said, declares that the U.S. intends to support insurgents opposed to Nicaragua's leftist government until Nicaragua quits backing revolutionary movements elsewhere in Central America. This goal is broader than the one the Reagan administration originally stated two years ago, when it said it would support Nicaraguan insurgents because they could help cut off arms flowing from Nicaragua to leftist rebels in El Salvador.

But the CIA has been considering expanding its official goals even further, in the new finding. Officials had considered declaring that the Nicaraguan operation is intended to force fundamental changes in the overall policies of the Nicaraguan government." (Annex F, No. 47, p. 88 (*Wall Street Journal*, September 21, 1983).)

Representative Edward P. Boland, Chairman of the House Intelligence Committee, described the Presidential Finding of 20 September 1983 during a debate in the House of Representatives on 20 October 1983:

"[T]he administration has reformulated its position on the war in

Nicaragua in a new Presidential finding. The finding authorizes the continuation of the present program. The scope of activities which are authorized is very broad, and in no way limited to arms interdiction. It includes keeping the military pressure on the Sandinistas. Its bottom line is the continuation of the war.

The finding makes no mention of overthrowing the Government of Nicaragua, although it is the stated purpose of the Contras. And the administration is offering no guarantees.

The new finding, then, is one more effort to defend the secret war in the Congress. While the finding contains more detail, it contains no new ideas or policies. It is a compendium of the symmetry arguments you heard and rejected in July. Make no mistake about it, military victory is the administration's bottom line. The statement of Under Secretary of Defense for Policy, Fred Ikle, on September 12, before the Baltimore Council on Foreign Affairs, clearly shows that there is a feeling in this administration that the Sandinistas must be defeated on the battlefield before the problems of Central America can be solved." (Annex E, Attachment 5 (129 Cong. Rec. H8390, October 20, 1983).)

Similarly, Representative Lee Hamilton, also a member (and now Chairman) of the House Intelligence Committee, said:

"I think the most significant developments that have occurred since we met in July are two: One, we have a new finding submitted by the administration which considerably expands the purposes of that operation; and two, the war has in fact expanded." (Annex E, Attachment 5 (129 Cong. Rec. H8416, October 20, 1983).)

2. The Court's second request was for the official text of the communiqué issued by the Nicaraguan Ministry of Defence on 29 March 1984 pertaining to the mining of Nicaraguan ports. The original Spanish text¹ of the communiqué, as well as an English translation, are enclosed herewith.

I trust that the foregoing and the enclosed documents constitute a satisfactory response to the Court's requests.

29 March 1984.

COMMUNIQUÉ NR 30

In response to the maneuvers of disinformation that the CIA and its agents have tried to spread that the explosive devices that have exploded in our ports are supposedly of artesanal manufacture and were placed by counter-revolutionary elements:

The Ministry of Defense reports:

1. That after the investigations carried out as a result of explosions caused by explosive devices on the merchant ship *Geopontes VI* on 1 March 1984, *Los Caribes* on 7 March 1984, *El Lugansk* on 23 March 1984, *El Inderchaser* on

¹ Spanish text not reproduced.

28 March 1984, it is concluded that said explosive devices are mines of high sophistication, of industrial manufacture, emanating from the arsenals of the army of the United States and they are being placed by specialists of the CIA, by means of utilization of modern surface and underwater naval technique.

Managua.

Directorate of Public and External Relations of the Ministry of Defense.

163. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

6 December 1985.

I have the honour to send you herewith copies of the replies given by the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* to questions put by Judge Schwebel as also certain information and documents requested by the Court following the hearing on the merits.

All these texts were handed to me by the Agent of Nicaragua on 26 November 1985, except for the enclosures mentioned at the foot of the first page of his letter No. 85-495, which I received from him yesterday.

164. THE MINISTER OF FOREIGN AFFAIRS A.I. OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

11 April 1986.

We refer to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, in order to inform the Court of the following facts.

Nicaragua's Agent and Counsel in the case in reference, H.E. Ambassador Carlos Argüello G., has been seriously threatened by representatives of the Government of the United States, both in the United States itself and in the Netherlands. These facts are described in a Memorandum sent by the Agent to the Minister of Foreign Affairs of which we annex a copy.

We consider these facts to be extremely serious because their purpose is to intimidate the participants in this case in order to influence or tarnish the cause of justice. Furthermore, the threats and illicit and immoral offers made to the Agent of Nicaragua, clearly indicate that Nicaragua's representatives, Counsel and Advocates, are in danger, directly or indirectly, from the Government of the United States.

The Government of Nicaragua requests that the Court take the necessary steps in order to insure the independent exercise of the duties of Nicaragua's Agent, Counsel and Advocates in accordance with Section 3 of Article 42 of the Statute of the Court.

Nicaragua understands that these steps include among others, the giving notice of these matters to the country of the seat of the Court, and making recommendations to be forwarded to the Secretary-General of the United Nations.

For its part, the Government of Nicaragua is taking all the measures it has available in order to safeguard the personal security and well being of the Agent and of his family.

Nicaragua has communicated to the Government of the United States, a note of protest for these immoral and criminal acts that jeopardize the cause of justice and endanger the life itself of human beings.

Furthermore, Nicaragua has given instructions that these matters be communicated to the Secretary-General of the United Nations, and also to the Government of the Netherlands, since Nicaragua's Agent is also Ambassador before that Government.

(Signed) Victor Hugo TINOCO.

24 de Marzo de 1986.

MEMORANDUM

Para : Padre Miguel D'Escoto
Ministro del Exterior

De : Carlos Argüello G.
Agente de Nicaragua ante la Corte Internacional de Justicia

Asunto : Denuncia

A finales del mes de Agosto de 1985, viajé de Nicaragua a los Estados Unidos con el propósito de reunirme con los abogados norteamericanos que forman parte del equipo legal de Nicaragua en el juicio contra los Estados Unidos ante la Corte Internacional.

En ese viaje aproveché la oportunidad de un fin de semana para visitar a mi hermano Federico Argüello quien reside en la ciudad de Miami.

Estando en esa ciudad fui abordado por individuos que se identificaron como empleados de la F.B.I. Uno de ellos me mostró una placa que lo identificaba como el Sr. Miranda, agente de la F.B.I.

Se meseñaló que la F.B.I. era una institución diferente a la C.I.A. y que por tanto yo no estaba tratando con la C.I.A.

El Sr. Miranda me indicó que sabían que mi hermano vivía en Miami pero que no me preocupara por su bienestar ó el de mis familiares en Estados Unidos. Me preguntó si necesitaba algo en los Estados Unidos pues él podría conseguirlo. En fin, que él podría conseguirme lo que yo deseara.

En la conversación el Sr. Miranda me manifestó el vivo interés que tenían altos funcionarios en Washington de hablar conmigo sobre el juicio ante la Corte Internacional. Asimismo, que al más alto nivel en el Consejo de Seguridad Nacional, deseaban hablar conmigo sobre la situación en mi país.

En las circunstancias del caso acepté, para fecha a fijarse en el futuro, una reunión con las personas que decía deseaban hablar conmigo.

En los meses siguientes, recibí varias llamadas telefónicas tratando de fijar fecha y lugar para una posterior reunión. Estas llamadas procedían aparentemente desde Miami y la invitación era para reunirme con el Sr. Miranda y otras personas.

La certeza sobre la proveniencia y verdadero sentido de la situación antes descrita quedó claramente establecido con los siguientes acontecimientos.

A mediados de enero de este año, econtrándome en un almuerzo en la ciudad de La Haya con la Srta. Nikki L. Hansen, Oficial Comercial con rango de

Segundo Secretario de la Embajada de los Estados Unidos en Holanda, ella me hizo entrega de una carta que me dijo debía leer y luego devolverle con repuesta.

En la carta, escrita en español, se hacía referencia a mi anterior reunión en el mes de agosto en Miami, reiteraba el interés que ellos tenían de reunirse conmigo pues podría ser muy provechoso y agregaba que no debía preocuparme por mis familiares en Estados Unidos.

En vista de las amenazas e insinuaciones de la carta, acepté la reunión demandada. Se fijó que ésta sería en la propia casa de la Srta. Hansen situada en La Haya en Bazarstraat 34, y me dió su teléfono privado en esa que es el número 654046.

Esta reunión tuvo lugar unos días después. Al presentarme a la cita me encontré que mi interlocutor era el Sr. Lawrence M. Wright, Primer Secretario de la Embajada de los Estados Unidos en Holanda.

El Sr. Wright me repitió fundamentalmente el mensaje del Sr. Miranda en Miami.

Me habló del interés en Washington por reunirse conmigo y tratar asuntos relacionados con el juicio ante la Corte Internacional de Justicia. Esta demanda era acompañada de las ya repetidas amenazas contra mis familiares en Estados Unidos y particularmente en contra de mi hermano, junto con los ofrecimientos de que podía conseguirme lo que yo deseara.

Esta entrevista con un alto funcionario de la Embajada de los Estados Unidos, acreditado ante el Reino de los Países Bajos y cuya identidad no era, por tanto, independientemente conocida, no dejaba duda que las amenazas y ofertas inmorales provenían del propio Gobierno de los Estados Unidos, es decir, de nuestra contraparte en el juicio ante la Corte Internacional de Justicia.

Lo delicado de la situación, tanto a nivel de riesgo personal y de mis familiares, así como por el evidente interés en crear condiciones para un eventual desprestigio del cualquier fallo emitido por la Corte Internacional, me llevó a tratar de ganar tiempo aceptando una futura reunión fuera de La Haya, en fecha a determinarse con posterioridad y en la cual se pretendía estarían las personas que en Washington querían hablar conmigo.

Desde esa fecha, hasta mi regreso a Nicaragua en marzo, recibí diferentes mensajes, tanto del Sr. Wright como de la Srta. Hansen, urgiendo una siguiente reunión. Todos estos llamados los posponía alegando distintos inconvenientes para lograr tiempo de regresar a Nicaragua en forma normal y sin levantar sospechas previas.

Estos últimos desarrollos aquí descritos, ponen en evidencia un claro interés del Gobierno de los Estados Unidos de influir ó de desprestigiar cualquier fallo de la Corte Internacional de Justicia, por medio de la amenaza y el chantaje.

Los pongo en su conocimiento para que el Gobierno de Nicaragua tome las medidas del caso.

165. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

11 April 1986.

I refer to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* in order to forward to the Court a letter sent by the Minister of Foreign Affairs a.i. of Nicaragua in which he describes a very delicate situation.

I take advantage of this note in order to request an interview with the President of the Court for next Monday, April 21.

166. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

18 April 1986.

I have the honour to transmit to you herewith copies of the following documents, all of which were handed to me today by the Counsellor of the Embassy of Nicaragua :

- (1) a letter dated 11 April 1986 addressed to me by the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua* ;
- (2) a letter, likewise dated 11 April 1986, addressed to me by the Acting Minister for Foreign Affairs of Nicaragua and transmitted under cover of the Agent's letter ;
- (3) a memorandum dated 24 March 1986 of which a copy was enclosed with the letter of the Acting Minister and which was addressed by the Agent to the Minister for Foreign Affairs of Nicaragua.

167. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

21 April 1986.

I have the honour to acknowledge receipt of the following communications, which were handed to me at 12.30 p.m. on Friday 18 April 1986 by the Counsellor of the Embassy of Nicaragua in The Hague :

- (1) a letter dated 11 April 1986 which you have addressed to me and which transmits
- (2) a letter from the Acting Minister for Foreign Affairs of Nicaragua, likewise dated 11 April 1986 and addressed to me, to which is annexed
- (3) a copy of a memorandum dated 24 March 1986 which you addressed to the Minister for Foreign Affairs of Nicaragua.

A copy of each of these documents has been supplied to the other Party in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

I am further to inform you that, having considered your request, the President of the Court is prepared to receive you at 3.30 p.m. today, Monday 21 April.

168. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF THE NETHERLANDS

22 April 1986.

With reference to the exchange of letters dated 26 June 1946 between the Government of the Netherlands and the International Court of Justice, constituting an agreement in respect of the privileges, immunities and facilities necessary for the functioning of the Court, I have the honour, with the concurrence of the

President of the Court, to transmit for the consideration of Your Excellency copies of the following communications, all of which were handed to me on Friday 18 April 1986 on behalf of the Agent of Nicaragua before the Court in the pending case concerning *Military and Paramilitary Activities in and against Nicaragua*:

- (1) a letter dated 11 April 1986 and addressed to me by the Agent in question;
- (2) a letter of the same date, transmitted by the first, and addressed to me by the Minister for Foreign Affairs a.i. of Nicaragua; to this is annexed —
- (3) a memorandum dated 26 March 1986 and addressed by the Agent to the Minister for Foreign Affairs of Nicaragua.

In transmitting these communications, I venture to draw attention to Article 42 of the Statute of the Court, paragraph 3 of which provides that "The agents, counsel and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties", to General Assembly resolution 90 (I) of 11 December 1946, recommending in paragraph 5 (a) (i) that such agents, counsel and advocates "should be accorded, during the period of their missions ... the privileges and immunities provided for in Article IV, sections 11, 12 and 13 of the Convention on the privileges and immunities of the United Nations under the conditions of Article IV, Section 15, of that Convention" (*q.v.*) and, more specifically, point V of the General Principles established by the above-mentioned exchange of letters, whereby in particular "the agents, counsel and advocates of the parties" to cases before the Court "shall be accorded such privileges, immunities and facilities for residence and travel as may be required for the independent exercise of their functions".

For your information I should mention that copies of the three documents concerned have been communicated to the United States of America, the other Party in the case, in accordance with the usual practice.

169. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

22 April 1986.

I have the honour to inform Your Excellency that, following your interview of 21 April 1986 with the President of the Court, I transmitted to the Minister for Foreign Affairs of the Netherlands copies of the three communications handed to me on your behalf on 18 April.

The documents in question were sent to the Minister under cover of a letter of today's date, a copy of which I have the honour to enclose.

170. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

23 April 1986.

With reference to my transmission to you on 18 April 1986 of documents handed to me that day on behalf of the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, I have the honour to transmit to you herewith a copy of a letter which I addressed yesterday 22 April to the Minister for Foreign Affairs of the Netherlands together with copies of the same documents.

171. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

(Facsimile)

5 May 1986.

This is to inform you that the Permanent Representative of Nicaragua has brought a letter of the acting foreign minister of Nicaragua to Secretary of State Shultz to the attention of the Secretary-General. The letter to the Secretary of State Shultz complains about alleged acts of threat, intimidation and coercion against the Agent of Nicaragua before the Court both on the territory of the United States and by US agents in the Netherlands. The request was to circulate the letter as an official document of the 40th Session of the General Assembly under Agenda Item 21 and of the Security Council. Please find in the attachment the copy of the respective documents.

(Signed) Carl-August FLEISCHHAUER.

Letter Dated 30 April 1986 from the Permanent Representative of Nicaragua to the United Nations Addressed to the Secretary-General

I have the honour to transmit to you herewith the text of the communication dated 22 April 1986 addressed to His Excellency Mr. George Shultz, Secretary of State of the United States of America, by His Excellency Víctor Hugo Tinoco, Acting Minister for Foreign Affairs of the Republic of Nicaragua.

“His Excellency Mr. George Shultz
Secretary of State of the United States of America

Sir:

I am writing to you with reference to the serious acts of intimidation, coercion, threats and attempted bribery that various officials of the United States Government have sought to commit against Dr. Carlos Argüello, Agent and Counsel of Nicaragua in the proceedings instituted by the Government of Nicaragua against the Government of the United States of America before the International Court of Justice in respect of military and paramilitary activities in and against Nicaragua.

These acts, which involve threats to the family of our Agent, were committed by individuals who identified themselves to Dr. Argüello as FBI agents, during a family visit he made to Miami. Similarly, Dr. Argüello, who also acts as Ambassador of Nicaragua to the Netherlands, was approached in that country, for the same purposes, by officials of the United States Embassy in the Netherlands, specifically by Mr. Lawrence M. Wright and Miss Nikki L. Hansen, First Secretary and Commercial Officer respectively of that diplomatic mission.

The Government of Nicaragua wishes to lodge a strong formal protest against these acts, which are intended to intimidate the persons designated by Nicaragua to handle our case against the United States before the Court, and to influence and discredit the cause of justice, represented in this great

world tribunal established by the peoples of the United Nations. These acts show very clearly that the representatives of Nicaragua, counsel and advocates before the International Court of Justice, are being threatened, directly or indirectly, by the United States Government.

The Government of Nicaragua has informed the International Court of Justice of the situation, requesting that all necessary steps be taken to ensure that the agents, counsels and advocates of Nicaragua perform their functions independently in accordance with Article 42, paragraph 3, of the Statute of the Court.

In view of these immoral and illegal acts aimed at altering, by means of threats, blackmail and the offering of bribes, the course of the proceedings instituted by Nicaragua before the Court, the Government of Nicaragua urges the United States Government to cease these acts, which are incompatible with morality, international law and the conduct which States should observe in their relations with each other and in the institutions established by the nations in order to ensure that law and justice prevail, over force, threats and blackmail without interference of any kind. Similarly, the Government of Nicaragua holds the United States Administration responsible for any eventual attacks on the lives or physical and moral integrity of the Agent of Nicaragua and his family.

Accept, Sir, the assurances of my highest consideration.

(Signed) Victor Hugo TINOCO,
Acting Minister for Foreign Affairs."

I should be grateful if you would have this letter circulated as an official document of the fortieth session of the General Assembly, under agenda item 21, and of the Security Council.

(Signed) Nora ASTORGA,
Ambassador,
Permanent Representative.

*Lettre datée du 30 avril 1986, adressée au Secrétaire général
par le représentant permanent du Nicaragua auprès de l'Organisation
des Nations Unies*

J'ai l'honneur de vous transmettre le texte de la communication datée du 22 avril 1986 que M. Victor Hugo Tinoco, vice-ministre des relations extérieures de la République du Nicaragua, a adressée à M. George Shultz, secrétaire d'Etat des Etats-Unis d'Amérique.

« S. Exc. M. George Shultz
Secrétaire d'Etat des Etats-Unis d'Amérique

Monsieur le Secrétaire d'Etat,

J'ai l'honneur de me référer aux graves actes d'intimidation et de coercition, aux menaces et aux tentatives de corruption dont se sont rendus responsables

divers fonctionnaires du Gouvernement des Etats-Unis à l'encontre de M. Carlos Argüello, représentant et conseiller du Nicaragua, en ce qui concerne la plainte déposée par le Gouvernement nicaraguayen contre le Gouvernement des Etats-Unis d'Amérique devant la Cour internationale de Justice au sujet des activités militaires et paramilitaires menées contre le Nicaragua.

Des individus, qui se sont présentés à M. Argüello comme agents du FBI, ont menacé sa famille alors qu'elle se rendait à Miami. De même, M. Argüello, qui remplit aussi les fonctions d'ambassadeur du Nicaragua aux Pays-Bas, a été abordé dans le même but, dans ce pays, par des fonctionnaires de l'ambassade des Etats-Unis aux Pays-Bas; il s'agissait de M. Lawrence M. Wright et de M^{lle} Nikki L. Hansen, respectivement premier secrétaire et attaché commercial de la mission diplomatique américaine.

Le Gouvernement nicaraguayen s'élève formellement et énergiquement contre ces actes destinés à intimider les personnes désignées par le Nicaragua pour suivre la procédure qu'il a engagée contre votre pays devant la Cour, et à influencer et discréditer le cours de la justice, qu'incarne ce haut tribunal universel créé par les peuples des Nations Unies. Ces actes prouvent de toute évidence que les représentants du Nicaragua, ses conseils et ses avocats devant la Cour internationale de Justice sont menacés, directement ou indirectement, par le Gouvernement des Etats-Unis.

Le Gouvernement nicaraguayen a informé la Cour de ces faits, et lui a demandé d'adopter toutes les mesures nécessaires pour garantir l'exercice indépendant des fonctions des agents, conseils et avocats du Nicaragua, conformément au paragraphe 3 de l'article 42 du Statut de la Cour.

Le Gouvernement nicaraguayen, devant ces actes immoraux et illégaux destinés à fausser, par la menace, le chantage et l'offre de pots-de-vin, la procédure qu'il a engagée devant la Cour, lance un appel énergique au Gouvernement des Etats-Unis pour qu'il mette un terme à ces actes contraires à la morale, au droit international et aux règles de conduite que doivent observer les Etats dans leurs relations entre eux et avec les institutions que les nations ont mises en place pour que prévalent, sans ingérence d'aucune sorte, le droit et la justice contre la force, la menace et le chantage. Le Gouvernement nicaraguayen tiendra aussi le Gouvernement des Etats-Unis pour responsable des éventuels attentats contre la vie ou l'intégrité physique et morale dont le représentant du Nicaragua et sa famille pourraient être victimes.

Veuillez agréer, Monsieur le Secrétaire d'Etat, les assurances de ma considération.

(Signé) Victor Hugo TINOCO,
vice-ministre des relations extérieures."

Je vous serais obligé de bien vouloir faire distribuer le texte de la présente lettre comme document officiel de l'Assemblée générale, au titre du point 21 de l'ordre du jour de sa quarantième session, et du Conseil de sécurité.

L'ambassadrice,
représentante permanente,
(Signé) Nora ASTORGA.

172. THE AMBASSADOR OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS TO THE PRESIDENT

9 May 1986.

I refer to the letter of the Registrar dated April 18, transmitting copies of communications from the Government of Nicaragua alleging that agents or employees of the United States had threatened Ambassador Carlos Argüello Gómez, Nicaragua's Agent before the Court. The United States Government has carefully looked into these allegations.

I have been authorized to state categorically that no agent or employee of the United States Government has in any way threatened Ambassador Argüello or his relatives.

173. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

9 May 1986.

I have the honour to transmit to Your Excellency herewith a copy of a letter of today's date which the Ambassador of the United States of America to the Netherlands has addressed to the President of the Court.

Another copy is being sent to the Minister for Foreign Affairs of the Netherlands.

174. THE MINISTER FOR FOREIGN AFFAIRS OF THE NETHERLANDS TO THE REGISTRAR

4 June 1986.

Complaint by Nicaraguan Agent

I herewith acknowledge receipt of your letter of 22 April 1986, No. 75880, on the subject referred to above. Careful consideration has been given to the issues involved.

On the basis of the documentation transmitted by you and after enquiry, I conclude that no cause exists for further action on the part of the Government of the Netherlands.

(Signed) HANS VAN DEN BROEK.

175. THE LEGAL COUNSEL OF THE UNITED NATIONS TO THE REGISTRAR

(Facsimile)

10 June 1986.

Please find herein facsimiled letter dated 5 June 1986 from the United States Mission transmitting a Note from the United States Embassy in Managua

addressed to the Ministry of Exterior of the Republic of Nicaragua. The Note is a reply to a letter sent by the Nicaraguan acting minister for foreign affairs to the Secretary of State which was issued as a UN document A/40/1110-S/18044, copies of which were sent to you on 5 May 1986.

5 June 1986.

Dr. Carl-August Fleischhauer
Under Secretary-General
The Legal Counsel
The United Nations
United Nations, New York 10017.

Dear Dr. Fleischhauer:

As you will recall, the Permanent Representative of Nicaragua circulated as a United Nations Document a letter sent by the Acting Minister for Foreign Affairs to Secretary of State Shultz (UN doc. A/40/1110, S/18044).

The United States has responded to that letter by a Note from the Embassy of the United States of America in Managua, Nicaragua, addressed to the Ministry of Exterior of the Republic of Nicaragua. A copy of the note is attached for your information.

(Signed) Robert ROSENSTOCK,
Adviser, Legal Affairs.

NOTE DATED MAY 15, 1986, FROM THE EMBASSY OF THE UNITED STATES OF
AMERICA IN MANAGUA, NICARAGUA, ADDRESSED TO THE MINISTRY OF EXTERIOR
OF THE REPUBLIC OF NICARAGUA

The Embassy of the United States of America presents its compliments to the Ministry of Exterior of the Republic of Nicaragua and has the honor to refer to the Ministry's Note No. 017 dated April 22, 1986. That Note alleged that the United States had threatened Nicaragua's Ambassador to the Netherlands and agent before the International Court of Justice, Carlos Argüello Gómez.

The Government of the United States considers this allegation a calculated effort to influence improperly the deliberations in which the International Court of Justice is currently engaged. The Embassy states categorically, on behalf of the United States Government, that no agent or employee of the United States Government has in any way threatened Ambassador Argüello or his relatives.

The Embassy is constrained to note that neither the Ministry's note nor the three documents provided by Nicaragua to the International Court of Justice on April 18 provide or assert any evidence supporting the allegation that there had been such a threat. It appears from those documents that the Ministry is basing its allegations solely on an alleged statement by employees of the United States

that Ambassador Argüello "did not have to worry about the well-being of his brother or that of his other relatives in the United States".

The Embassy must note that this alleged statement, which the Ministry attempts to characterize as a "threat", pales in comparison with the ominous conclusion to the Ministry's note that "the Government of Nicaragua holds the United States Administration responsible for any eventual attacks on the lives or physical and moral integrity of the Agent of Nicaragua and his family". The Ministry can be assured that no threat to the lives or physical and moral integrity of Ambassador Argüello or his family has been or will at any time be presented by the Government of the United States, its agents or employees.

It is of equal interest that, by the Government of Nicaragua's own account of the documents provided to the Court, the alleged contacts between employees of the United States and Ambassador Argüello were not reported to Managua or, apparently, to any of your country's leaders on their frequent travels to Western Europe, for over seven months after their alleged instigation. Nor, to our knowledge, were any "threats" brought to the attention of the authorities of the Netherlands during that period. It is evident, at a minimum, that Ambassador Argüello did not during that period consider himself to be under any threat either to his life or physical or moral integrity. The Embassy can only speculate as to the motivations which induced him, or the Government of Nicaragua, to publicize these allegations at this time.

The Embassy urges the Ministry to take appropriate steps to provide the same wide distribution to its communications to the International Court of Justice as it has to Note 017, in order that the Nicaraguan public and others to whom that Note has been made available may be fully aware of the inadequate and conclusory nature of the evidence supporting its assertion that the United States has threatened Ambassador Argüello and his family.

176. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA ¹

12 June 1986.

I have the honour to inform you that the Court will hold a public sitting at the Peace Palace at 9.30 a.m. on Friday 27 June 1986 for the purpose of delivering its Judgment on the Merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

177. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

27 June 1986.

I have the honour to transmit to you herewith an official signed copy of the Judgment delivered by the Court today on the merits of the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

The printed edition of the Judgment, which will be issued as soon as possible, will, in addition to the original texts of the separate and dissenting opinions included in the present official copy, contain a translation of each opinion into French or English as the case may be.

178. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

27 June 1986.

I have the honour to send you herewith, pursuant to Article 95, paragraph 3, of the Rules of Court, 3 copies of the text produced by offset from typescript, of the Judgment delivered today by the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. A printed copy will be sent to you as soon as available.

179. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTRANGÈRES DE L'AFGHANISTAN¹

4 juillet 1986.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire de l'arrêt rendu par la Cour le 27 juin 1986² en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*.

Il convient de noter que, pour que l'arrêt soit rapidement disponible, les opinions des juges jointes à celui-ci n'ont été reproduites que dans la langue originale (anglais ou français).

D'autres exemplaires imprimés où figurera la traduction des opinions seront expédiés par la voie ordinaire dès leur sortie de presse.

180. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA³

13 July 1986.

I have the honour to transmit to Your Excellency herewith a formal memorandum under the seal of the Court, correcting a clerical error in the French text of the Judgment delivered on 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. This memorandum should be attached to or kept with the sealed copy of that Judgment transmitted to the Government of Nicaragua.

¹Une communication analogue a été adressée aux autres Etats admis à ester devant la Cour.

²*C.I.J. Recueil 1986*, p. 14.

³A communication in the same terms was sent to the Agent of the United States of America.

16 juillet 1986.

MÉ MORANDUM

La correction ci-après d'une erreur matérielle dans le texte français de l'arrêt du 27 juin 1986, en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci*, est autorisée :

Première page, troisième alinéa du sommaire, et page 15, lignes 7 et 20 du paragraphe 33, lire "différend d'ordre juridique" au lieu de "différend juridique"; page 15, lignes 3 et 5 du paragraphe 33, et page 16, ligne 15 de cette page, lire "différends d'ordre juridique" au lieu de "différends juridiques".

181. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

7 May 1987.

I have the honour to transmit to you herewith a formal memorandum under the seal of the Court, correcting certain clerical errors in the official text of the Judgment delivered on 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*. This memorandum should be attached to or kept with the sealed copy of that Judgment transmitted to your Government.

I also enclose an erratum slip relating to the printed version of the Judgment. This, you will observe, notes also a correction to the French translation of a dissenting opinion.

(Signed) Eduardo VALENCIA-OSPINA.

182. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA¹

7 May 1987.

I have the honour to transmit to you herewith a formal memorandum under the seal of the Court, correcting certain clerical errors in the official text of the Judgment delivered on 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*. This memorandum should be attached to or kept with the sealed copy of that Judgment transmitted to your Government.

I also enclose an erratum slip relating to the printed version of the Judgment. This, you will observe, notes also a correction to the French translation of a dissenting opinion.

¹A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

183. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE DEPUTY-REGISTRAR

7 September 1987.

I have the honor to refer to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

In the judgment of June 27, 1986, on the merits of this case, the Court decided that the United States is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua both by the breaches of obligations under customary international law enumerated in the judgment, as by the breaches of the Treaty of Friendship, Commerce and Navigation between the parties signed at Managua on 21 January 1956.

In the operative provisions of the judgment, the Court :

“(15) by fourteen votes to one,

Decides 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.”

Prior to the Court's decision, the United States had communicated to the Court by a letter dated 18 January 1985, that: "... the United States intends not to participate (*sic*) in any further proceedings in connection with this case ...”.

This clear statement of position by the United States to the Court leaves no room for doubt that the decision of that Government did not refer to the procedures then in course, but to "any further proceedings".

Nicaragua is not aware of the Court having received any further communication from the United States that could indicate any change of its decision on this case.

Nonetheless, in accordance with the decision of the Court, Nicaragua sent a communication to the United States on July 1986 expressing its willingness to discuss the matter of reparation.

The reply of the United States was negative.

Nicaragua sent a second communication on May 12, 1987, to the United States reiterating its willingness to meet in order to try to reach an agreement on the amount of reparation it was owed.

The reply of the United States leaves no room for doubt that the United States is not willing to reach an agreement with Nicaragua¹.

This situation further evinces that the United States has not changed the decision communicated to the Court in the letter cited above.

For purposes of procedure, Nicaragua would recall that in the final submissions it made in the merits phase of this case, it pleaded:

“Third: ... the Court is requested further to receive evidence and to determine, in a subsequent phase of the present proceedings, the quantum of damages to be assessed as the compensation due to the Republic of Nicaragua.”

The Court accepted the request of Nicaragua, and very clearly stated in paragraph 284 of the judgment:

“The Court considers appropriate the request of Nicaragua for the nature

¹ A copy of the letter of May 12, 1987, as modified by note of June 20, 1987, is included with an English translation. The reply of the United States of August 1, 1987, is also included.

and amount of the reparation due to it to be determined in a subsequent phase of the proceedings. While a certain amount of evidence has been provided, for example, in the testimony of the Nicaraguan Minister of Finance, of pecuniary loss sustained, this was based upon contentions as to the responsibility of the United States which were more far reaching than the conclusions at which the Court has been able to arrive. The opportunity should be afforded Nicaragua to demonstrate and prove exactly what injury was suffered as a result of each action of the United States which the Court has found contrary to international law. Nor should it be overlooked that, while the United States has chosen not to appear or participate in the present phase of the proceedings, Article 53 of the Statute does not debar it from appearing to present its arguments on the question of reparation if it so wishes. On the contrary, the principle of the equality of the parties requires that it be given that opportunity."

Nicaragua considers that this case still remains squarely within Article 53 of the Statute as invoked by Nicaragua in the merits phase of these proceedings and that, therefore, this Article is still in operation.

At the same time, Nicaragua wishes to take the opportunity afforded by the Court, in the paragraph cited, in order to satisfy the Court that the nature and amount of the reparation it claims is well founded in fact and law.

For this reason, Nicaragua wishes to initiate the next phase of the proceedings and, therefore, requests that the Court or the President if the Court is not sitting, to make the necessary orders for the conduction of the case and in particular the time-limit within which Nicaragua should file its pleading.

As to the non-appearing party, the position of Nicaragua is that if the United States does not communicate that it has changed its intention "not to participate in any further proceedings in connection with this case", it should be accorded the same treatment as in the previous phase on the merits. That is, the United States should be given a short time-period in which to file a counter-memorial with the proviso that it could be extended if it so requested.

This position of Nicaragua does not pretend to debar the United States from appearing, in accordance with the Statute and Rules of Court, to present its arguments on the question of reparation if it so wishes. Quite the contrary, Nicaragua would welcome the appearance of the United States Government as an indication of its decision to comply with its international commitments.

184. THE DEPUTY-REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

16 September 1987.

I have the honour to transmit to you herewith a copy of a letter dated 7 September 1987 which I have today received from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

In view of the fact that in this letter the Applicant invokes the Court's Judgment of 27 June 1986 for the purpose of initiating a further phase in the above case, and having regard to Article 48 of the Statute and Articles 31, 40 and 44 of the Rules of Court, I am to advise you that the Agents of the Parties are expected to hold themselves in readiness for a meeting with the President of

the Court at which each will have the opportunity to state the views of his Government. You will be informed in due course of the date of this meeting.

Meanwhile, it would be appreciated if, without prejudice to any views that may be expressed on behalf of your Government at such meeting, you would be so good as to provide me with an early acknowledgment of this communication.

(Signed) Bernard NOBLE.

185. THE DEPUTY-REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

16 September 1987.

I have the honour to draw to the attention of Your Excellency a letter which I have today addressed to the Deputy-Agent of the United States of America in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Mr. Patrick M. Norton.

A copy of that communication is enclosed, together with a copy of the letter from the Agent of Nicaragua transmitted therewith.

Though the withdrawal of the Hon. Davis R. Robinson as Agent in these proceedings has never formed the subject of any notification, the Registry has for practical reasons addressed all case documents to Mr. Norton since Mr. Robinson ceased, on 1 May 1985, to be the Legal Adviser to the Department of State. Having regard to Article 40 of the Rules of Court and bearing in mind the future communications to be made, I would be most grateful if at this juncture you could inform me of your views on the subject.

186. THE DEPUTY-REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

16 September 1987.

I have the honour to acknowledge receipt of a letter dated 7 September 1987, and delivered in the Registry today, in which Your Excellency invokes the Court's Judgment of 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* for the purpose of initiating further proceedings in regard to your Government's claim to reparation.

Copies of your communication were sent without delay to the Government of the United States, which has been advised that it will be informed in due course of the date fixed for the meeting to be held in accordance with Article 31 of the Rules of Court. The Registry will of course not fail to notify you likewise.

I beg further to take this opportunity of seeking clarification of a few details in regard to your enclosures. The first enclosure is described in your footnote as "the letter of May 12, 1987, as modified by note of June 20, 1987", whereas the United States Embassy, in the second enclosure, refers to two "notes" of these dates and the first enclosure itself appears to be a photocopy of a self-contained and unrevised letter bearing the sole date of 12 May 1987. Secondly, it is not evident whether the second enclosure is a photocopy of an original or of a transcription, and a blemish has obscured a few words in the third paragraph.

In view of the interest of these documents at the threshold of the further proceedings, I venture to suggest that it is particularly important that these questions be elucidated.

A copy of this letter will be communicated to the Government of the United States.

187. THE REGISTRAR TO THE SECRETARY OF STATE OF THE UNITED STATES OF AMERICA

26 October 1987.

I have the honour to refer to the letter which the Deputy-Registrar addressed to Your Excellency on 16 September 1987, with which was forwarded to you a copy of a letter dated 7 September 1987 received from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and a copy of a letter sent by the Deputy-Registrar to Mr. Patrick M. Norton, Deputy-Agent of the United States of America in that case. I now have the honour to inform Your Excellency that the President of the Court requests the Agents of the Parties to meet him on Tuesday 17 November 1987 at 10 a.m. at the Peace Palace in order that he may ascertain the views of the Parties on questions of procedure, in accordance with Article 31 of the Rules of Court. Without prejudice to the provisions of the Statute and Rules regarding the appointment of an Agent, I am instructed to inform you that should the Government of the United States of America wish to be otherwise represented at that meeting, the person designated will be welcome to attend.

188. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA ¹

26 October 1987.

I have the honour to refer to the letter which the Deputy-Registrar addressed to Your Excellency on 16 September 1987, acknowledging receipt of your letter of 7 September 1987 concerning the Judgment of 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, in which the Deputy-Registrar referred to a meeting to be held under Article 31 of the Rules of Court. I now have the honour to inform Your Excellency that the President of the Court requests the Agents of the Parties to meet him on Tuesday 17 November 1987 at 10 a.m. at the Peace Palace in order that he may ascertain the views of the Parties on questions of procedure, in accordance with that Article.

I enclose for your information a copy of a letter which I have today addressed to the United States Secretary of State in this connection.

¹ A communication in the same terms was sent to the Deputy-Agent of the United States of America.

189. THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA TO THE REGISTRAR

13 November 1987.

I have the honor to refer to your letter of 26 October 1987 concerning the scheduling of further pleadings in the case of *Nicaragua v. United States of America*.

The United States remains of the view, for the reasons given in its written and oral pleadings at the jurisdictional phase of the aforementioned case and as set forth in our letter to the Court of 18 January 1985, that the Court is without jurisdiction to entertain the dispute, and that the Nicaraguan Application of 9 April 1984 is inadmissible. Accordingly, I wish to inform you that the United States Government will not be represented at the meeting scheduled for 17 November 1987.

190. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

17 November 1987.

I have the honour to transmit to Your Excellency herewith a copy of a letter from the Deputy-Agent of the United States of America, dated 13 November 1987 and received in the Registry yesterday.

191. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA¹

18 November 1987.

Further to my letter of yesterday's date, I have the honour to inform you that by an Order adopted today, the sealed copy of which is enclosed, the Court decided to fix the following time-limits for pleadings on the question of the form and amount of reparation to be made in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*:

for the Memorial of Nicaragua: 29 March 1988

for the Counter-Memorial of the United States: 29 July 1988.

192. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA²

21 December 1987.

I have the honour to send you herewith printed copies of the Order³ made by

¹A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

²A communication in the same terms was sent to the Agent of the United States of America.

³See *I.C.J. Reports 1987*, p. 188.

the Court on 18 November 1987 fixing time-limits for pleadings on the question of the form and amount of reparation to be made in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

193. THE REGISTRAR TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

21 December 1987.

I have the honour to send you herewith printed copies of the Order made by the Court on 18 November 1987 fixing time-limits for pleadings on the question of the form and amount of reparation to be made in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

194. LE GREFFIER AU MINISTRE DES AFFAIRES ÉTANGÈRES D'AFGHANISTAN¹

21 décembre 1987.

Le Greffier de la Cour internationale de Justice a l'honneur de transmettre, sous ce pli, un exemplaire du texte imprimé de l'ordonnance du 18 novembre 1987² par laquelle la Cour a fixé des délais pour la procédure écrite sur la question des formes et du montant de la réparation due en l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*.

195. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

29 March 1988.

I have the honour to certify, pursuant to Articles 50, paragraph 1, and 51, paragraph 2, of the Rules of Court, that the documents reproduced as annexes to the Memorial on Compensation filed today by the Republic of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* are true copies of the original documents, and that the translations of Spanish original texts included among those annexes are accurate.

196. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

29 March 1988.

I have the honour to refer to the Order made by the Court on 18 November

¹ Une communication analogue a été adressée aux autres États admis à ester devant la Cour.

² *C.I.J. Recueil 1987*, p. 188.

1987 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and to inform you that the Memorial of Nicaragua, on the question of the form and amount of reparation to be made in the case, contemplated by that Order was filed in the Registry today, within the time-limit fixed by the Order. I have the honour further to transmit to you herewith a copy of the Memorial signed by the Agent of Nicaragua, constituting the certified copy required by Article 52, paragraph 1, of the Rules of Court, and a copy of a certificate supplied by the Agent to comply with Articles 50, paragraph 1, and 51, paragraph 2, of the Rules of Court.

197. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

30 March 1988.

I have the honour to acknowledge receipt of the Memorial on Compensation in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, filed by the Government of Nicaragua yesterday, within the time-limit fixed by the Court's Order of 18 November 1987, together with a further signed copy for transmission to the other Party and 125 plain copies.

I have the honour further to acknowledge receipt of the documents described on the list enclosed, which I understand have been deposited by the Government of Nicaragua in the Registry pursuant to Article 50, paragraph 2, of the Rules of Court.

LIST OF MATERIALS DEPOSITED WITH THE COURT

1. United Nations Economic Commission for Latin America and the Caribbean (ECLAC), Annual Reports on Nicaragua.

1.1	1987
1.2	1986
1.3	1985
1.4	1984
1.5	1983
1.6	1982
1.7	1981
1.8	1980

2. Interamerican Development Bank (IDB), *Informe Economico Nicaragua* (1983).

3. U.S. Congress, Report of the Congressional Committee on, *The Iran-Contra Affair* (November 1987).

4. U.S. Presidency, Report of the President's Special Review Board, "*Tower Commission Report*" (February 26, 1987).

5. Dossier, *Pratique du Conseil de sécurité des Nations Unies en matière d'évaluation de dommages*.

198. THE DEPUTY-REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

1 August 1988.

I have the honour to inform Your Excellency that the time-limit of 29 July 1988 fixed by the Court's Order of 18 November 1987 for the filing by the United States of America of a Counter-Memorial on the question of the form and amount of reparation to be made in the case concerning *Military and Paramilitary Activities in and against Nicaragua* has elapsed without the receipt of such pleading in the Registry.

199. THE DEPUTY-REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

1 August 1988.

I have the honour to enclose a copy of a letter which I have today addressed to the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.

200. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA¹

14 June 1989.

I have the honour to inform you that, pursuant to Article 31 of the Rules of Court, the President of the Court will hold a meeting with the Agents of the Parties in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* on Thursday 13 July 1989 at 11.00 a.m., to discuss the further procedure in the case.

201. THE AMBASSADOR OF THE UNITED STATES OF AMERICA IN THE HAGUE TO THE REGISTRAR

11 July 1989.

I have the honor to transmit the enclosed letter in response to your letter of 14 June 1989 concerning further procedure in the case Nicaragua brought against the U.S. in 1984.

(Signed) C. Howard WILKINS.

¹ A communication in the same terms was sent to the Agent of the Republic of Nicaragua.

I have the honor to refer to your letter of 14 June 1989 concerning further procedure in the case Nicaragua brought against the United States of America in 1984.

The United States remains of the view, for the reasons given in its written and oral pleadings at the jurisdictional phase of the aforementioned case and as set forth in its letter to the Court of 18 January 1985, that the Court is without jurisdiction to entertain the dispute, and that the Nicaraguan Application of 9 April 1984 is inadmissible.

Furthermore, the United States notes that the Government of Nicaragua had recourse to the procedure set out in Article 94 (2) of the United Nations Charter on two occasions in connection with this case on July 31, 1986, and on October 28, 1986. The Security Council declined to give effect to Nicaragua's requests.

In recent months considerable progress has been made to bring the crisis in Central America to a peaceful conclusion in accordance with the Esquipulas II Accords. Further proceedings in the subject case will continue to complicate those ongoing efforts and will tend to interfere with the acceptance of constructive, practical steps by the parties.

Accordingly, I must inform you that the United States Government will not be represented at the meeting scheduled for 13 July 1989.

(Signed) Abraham D. SOFAER.

202. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

1 February 1990.

I have the honour to refer to the Memorial on Compensation filed by the Government of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and to invite Your Excellency's attention to the following queries.

In paragraph 99 of the Memorial there appears to be an arithmetical error. The claimed total "Physical Damages to Capital" in the table on page 9 of Annex I.2b is US\$195.8 million; deducting the US\$4.5 million for 1980/81 leaves US\$191.3 million. If the figure in the same table for "Damage to Goods" (1982-1987) of US\$25.8 million is added to this, the total is US\$217.1 million. Deduction of the US\$6.6 million for the "Specific attacks" leaves US\$210.5 million; but the net figure in paragraph 99 for "Physical Damages" is given as US\$210.4 million. Is this an error, or is there another explanation?

On pages 111-112¹, paragraph 287, reference is made to a World Bank publication entitled "Nicaragua — The Challenge of Reconstruction", stated to have been deposited with the Court. I am however unable to trace that this publication was so deposited, and should be grateful if you could make a copy available. It might also be useful if at the same time you would supply a copy of the publication mentioned on page 112² (para. 289) of the Memorial, entitled "Economic Policy Guidelines 1983-1988".

In line 3 of paragraph 344 of the Memorial, should the reference to Annex I.2 be to Annex IV.2?

Annex IV.4 to the Memorial appears to be incomplete (both in Spanish and in English). It announces the inclusion of "alternative scenarios for the period

¹ P. 304, *supra*.

² *Ibid*.

1988-1990", but only gives the first of these; and it refers to "Tables 1 to 11 of the Appendix I", which are not included. Can a complete copy of the document be supplied, please?

In Annex III.8, page 8, calculations of losses on meat exports are stated to be based on 37 per cent of the total value of exported meat, but the notes to table No. 5 on the following page refer to 47 per cent of total sales. Is this an error, and if so which is the correct figure?

There are some arithmetical discrepancies between the totals given in Annex VI.1, table 1, and the figures given for the same items in the first part of table 2 in Annex VI.2; and the "Net Present Value" of "Total Loss of Economic Development Potential" in that table appears to sum to 4,102.40 horizontally and 4,102.50 vertically. This is probably the effect of rounding off the calculations to the nearest 0.1 million, but the figures should perhaps be verified.

May I also remind Your Excellency of the points brought to your attention by my letter of 28 June 1989?

203. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

5 March 1990.

I have the honour to inform you that on 2 March 1990 the President of the Court received the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and made the following statement to him:

"The Court has taken note of the question raised in the Memorial of Nicaragua on Compensation in this case, paragraph 459, whether Nicaragua could be given some indications by the Court 'as to the particular issues of law on which the deliberations of the Court were likely to focus or issues of fact which the Court wishes to explore or to explore further'. In this connection, Nicaragua has drawn attention to the provisions of Articles 61 and 62 of the Rules of Court. Nicaragua went on in its Memorial to observe that 'an indication sufficiently in advance of the opening of the oral hearings would be of particular assistance' to it.

The Court has given careful consideration to this question, and has come to the conclusion that at the present stage of the proceedings it would not be appropriate for it to exercise such powers as the Rules confer upon it in this respect. At the hearings, it is to be expected that either the Court or individual Members of it will make full use of the power to put questions to the Agents, counsel and advocates of Nicaragua."

**204. LE SECRÉTAIRE DE L'ASSEMBLÉE NATIONALE DE LA RÉPUBLIQUE DU NICARAGUA
AU GREFFIER**

Managua, 10 de abril de 1990.

Tengo el honor de dirigirme a Usted para remitirle "ley de proteccion de los derechos de Nicaragua en el marco de la corte internacional de justicia"¹,

¹ Spanish text not reproduced.

aprobada por la Asamblea Nacional de la República de Nicaragua, en Sesión Plenaria el cinco de abril del corriente año.

Consideramos que es de gran importancia esta ley para el pueblo nicaraguense, en los actuales momentos en que está pendiente la ejecución de la sentencia de la Corte Internacional de Justicia de la Haya, para asegurar su cumplimiento a cabalidad.

Por este medio, le solicitamos su amable gestión para que el órgano parlamentario que Usted tan dignamente preside, conozca y apoye esta ley trascendental aprobada por nuestra Asamblea Nacional.

(Signed) Rafael SOLIS CERDA.

(Translation)

ACT No. 92

THE PRESIDENT OF THE REPUBLIC OF NICARAGUA

Makes it known to the people of Nicaragua that:

THE NATIONAL ASSEMBLY OF THE REPUBLIC OF NICARAGUA

WHEREAS:

I

The Republic of Nicaragua has been the target of military and paramilitary activities encouraged, financed, organized, directed and executed by the United States of America.

II

In order to defend itself against those unlawful activities, Nicaragua referred the matter to the International Court of Justice in its capacity of the highest judicial organ at international level, which, in its historic Judgment of 27 June 1986, found in favour of Nicaragua's arguments and decided that the United States of America was under an obligation to make reparation to it for all injury caused by the military and paramilitary activities condemned by that illustrious judicial body.

III

The Government of the Republic is fundamentally obligated to defend the rights of Nicaragua, particularly in relation to the obtaining of whatever sufficient reparation the International Court of Justice may define — a reparation which constitutes an inalienable heritage of all Nicaraguans who have been, in one way or another, the victims of the unlawful policies condemned by the International Court of Justice.

IV

That reparation should be used for the reconstruction of Nicaragua and to give to war victims such assistance as will enable them to live with dignity, to solve the problems arising from the injury they have sustained and to guarantee a future to their children and to other family members.

V

Since that reparation is the national heritage of Nicaragua, it may not be the subject of any alienation or secret negotiation, nor may it be of an amount lower than that claimed by Nicaragua or that which may be determined by the International Court of Justice in due course;

And as the International Court of Justice, the principal judicial organ of the United Nations, plays a very important part in the efforts made to establish peace and international security, and provides an essential means of attaining the peaceful settlement of disputes between States.

The assembly has, in the exercise of its powers,

PASSED

The

*ACT PROTECTING THE RIGHTS OF NICARAGUA WITHIN THE
FRAMEWORK OF THE INTERNATIONAL COURT OF JUSTICE*

of which the tenor is as follows:

- Art. 1: The Government of Nicaragua, relying upon Articles 1, 3, 4 and 92 of the Constitution of the Republic of Nicaragua, shall continue the proceedings brought against the United States of America before the International Court of Justice, until the delivery of the definitive judgment which that illustrious judicial body is to give in respect of the form and amount of reparation to be made by the United States to Nicaragua in accordance with the Judgment of 27 June 1986, including the execution of that Judgment before the competent tribunals.
- Art. 2: The Government shall be able to desist from that action if the United States agrees to make voluntary reparation to Nicaragua, to an extent which shall not in any event be less than the sum claimed by Nicaragua in its Memorial of 29 March 1988, expressed in terms of the equivalent in value on the date of effective payment. The decision to desist should, in any event, be implemented through the medium of a treaty to be approved by the National Assembly.
- Art. 3: The reparation payable by the United States to Nicaragua is the inalienable heritage of all Nicaraguans and shall be used to compensate injuries occasioned by the war, to compensate victims and members of their families; to bring about the material development of the country, to promote the struggle against an inherited situation of backwardness and subordination; to improve the living conditions of the people; and to bring about an increasingly fairer distribution of wealth, in accordance with the provisions of Articles 56, 62, 63, 64 and 98 of the Political Constitution of the Nation.
- Art. 4: *The rights to which Nicaragua has laid claim before the International*

Court of Justice together constitute the inalienable heritage of all Nicaraguans, so that any acts effected and agreements entered into by officials of the Government, which may have the effect of reducing the amount of reparation or which may, by any means, lead to an abandonment of the claim to that reparation or to its non-payment, shall be considered to be prejudicial to Nicaragua's right to economic and social development and, for that reason, to be automatically null and void.

Art. 5: With a view to ensuring an optimal defence of Nicaragua's interests, and the continuation of the judicial proceedings until such time as they are officially terminated, the President of the Republic shall appoint our country's Agent and Co-Agent to the International Court of Justice; they must be qualified persons with a perfect knowledge of the Court's case-law and experienced in dealing with it.

Art. 6: Special funds shall be assigned to the pursuit of those proceedings.

The Executive Power, through the intermediary of the Finance Ministry, shall make an allocation to the corresponding Chapter of the General Budget of the Republic for 1990 and to future budgets, by means of provisions in the Finance Act for each year.

The Foreign Affairs Commission of the National Assembly is, in accordance with the General Statute and Rules of Procedure of that Assembly, authorized to monitor the proceedings in the case and, in co-ordination with the Executive Power, to keep the General Assembly informed of developments.

Art. 7: The present Act is mandatory; it shall enter into force on the date of its publication in any organ of social communication, without prejudice to its subsequent publication in the official journal, *La Gaceta*.

Done in the Assembly Hall of the National Assembly, on 5 May in the year 1990. "YEAR OF PEACE AND RECONSTRUCTION."

Carlos NUÑEZ TELLEZ,
President of the National Assembly.

Rafael SOLIS CERDA,
Secretary of the National Assembly.

We accordingly give this Act the status of the law of the land, and order its publication and implementation. Managua, 6 April in the year 1990. "YEAR OF PEACE AND RECONSTRUCTION."

Daniel ORTEGA SAAVEDRA,
President of the Republic.

205. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA ¹

15 June 1990.

I have the honour to inform Your Excellency that the President of the Court

¹ Spanish text not reproduced.

wishes to ascertain, pursuant to Article 31 of the Rules of Court, the views of the Parties to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* on the date to be fixed for the opening of the oral proceedings on the question of reparation. The case has been ready for hearing, in accordance with Article 54, paragraph 1, of the Rules of Court, since the expiration of the time-limit fixed for the United States Counter-Memorial on that question; and the outstanding question, raised by Nicaragua, of possible action under Articles 61 and 62 of the Rules of Court was dealt with by the Court's decision communicated to you on 2 March 1990.

There being no longer any special circumstances related to other cases, as contemplated by Article 54, paragraph 2, of the Rules of Court, which would have to be taken into account, the President considers that oral proceedings should open in October of the current year; he wishes however to hear any observations that the Parties may wish to offer before fixing a date.

The President will therefore hold a meeting with the Agents or other representatives of the Parties at 10.30 a.m. on Friday 22 June 1990.

206. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

20 June 1990.

I have the honour to refer to your letter of 15 June 1990 in which you inform me that the President of the Court wishes to ascertain the views of the Parties on the date to be fixed for the opening of the oral proceedings on the question of reparation in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

Your letter further informs us that the President considers that oral proceedings should open in October of the current year, but that the President wishes to hear any observations of the Parties before fixing a date.

In relation to this matter, it might be useful to refer to our last meeting of 14 June 1990 in which we had occasion to discuss several different issues Nicaragua has before the Court.

On that occasion, I indicated that the new Government of Nicaragua is carefully studying the different matters it has pending before the Court. That the instant case is very complex and that this, added to the many difficult tasks facing the Government, are special circumstances that would make it extremely inconvenient for it to take a decision on what procedure to follow in this case during the coming months. I further indicated that I would send a letter confirming Nicaragua's position on this matter.

I hasten to fulfill this last before the meeting of 22 June 1990 in the hope that it will be useful to the President on that occasion.

207. THE REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

21 June 1990.

I have the honour to transmit herewith copy of a letter dated 20 June 1990 received today in the Registry from the Agent of Nicaragua in the case concerning

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America).

208. THE AMBASSADOR OF NICARAGUA TO THE NETHERLANDS TO THE REGISTRAR

24 July 1990.

I have the honour to inform the Court that my accreditation as Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands — which dates back to February 1984 — will come to an end as of 15 August 1990.

Nonetheless, I will continue to act as Agent of the Republic of Nicaragua in the three cases presently pending before the Court; that is, the cases concerning

- *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*
- *Border and Transborder Armed Actions (Nicaragua v. Honduras)*
- *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Application to Intervene.

The Mission of the Republic of Nicaragua before the Court will continue to have its office in Zoutmanstraat 53 E, Den Haag. For the purposes of Article 40 (1) of the Rules of Court this should continue to be the address to which all communications relating to the above cases should be sent.

In the exercise of my duties as Agent in the cases mentioned, I will continue to reside with my family and service staff for an indefinite period in The Hague in my present address: Zijdelaan 25, Den Haag. For this reason, I request that notice be taken of this fact in granting me the privileges and immunities necessary to the independent exercise of my duties.

209. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF THE NETHERLANDS

31 July 1990.

I have the honour to transmit to Your Excellency herewith a copy of a letter dated 24 July 1990 from His Excellency Mr. Carlos Argüello Gómez, Ambassador of Nicaragua to the Netherlands, and Agent of his Government before the Court in the cases concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Border and Transborder Armed Actions (Nicaragua v. Honduras)* and *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras) (Application for Permission to Intervene)*.

Pursuant to paragraph V of the General Principles agreed by exchange of letters on 26 June 1946 between the President of the Court and the Minister for Foreign Affairs of the Netherlands, concerning the privileges, immunities and facilities necessary for the exercise by the Court of its functions, may I draw Your Excellency's attention in particular to the last paragraph of Mr. Argüello's letter. Bearing in mind the excellent relations that have always existed between the Court and the Government of the Netherlands, I am confident that there will be no difficulty in continuing to extend to the Agent of Nicaragua the privileges, immunities and facilities appropriate to his position and functions.

210. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

13 September 1990.

I have the honour to refer to the letter of 24 July 1990 in which I informed the Court that my accreditation as Ambassador of the Republic of Nicaragua to the Kingdom of the Netherlands was shortly coming to an end, but that I would continue to act as Agent of the Republic of Nicaragua in the three cases presently pending; that is, the cases concerning

- *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*
- *Border and Transborder Armed Actions (Nicaragua v. Honduras)*
- *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Application to Intervene.

The letter explained that, as Agent, I would continue to reside and have an address for communications at the seat of the Court. This arrangement avoids what the Permanent Court of International Justice has already seen as a difficulty of a practical order that would result in having Agents residing very far from The Hague. (*P.C.I.J., Series E, No. 3*, pp. 205-206.)

The fact of residing in The Hague during the period of my Mission — without in the future enjoying the privileges and immunities proper to an Ambassador accredited to the Kingdom of the Netherlands — makes it imperative that I have a clear understanding of the precise extent of the privileges and immunities to be extended to me by the Netherlands Government pursuant to Article 42 of the Statute of the Court and the 1946 Exchange of Letters between the Government of the Netherlands and the Court.

Since I will be going to Nicaragua for consultations in relation to my duties as Agent within the next 2 or 3 weeks, it is a matter of very practical and urgent need for my Government to know what these privileges and immunities (and facilities) signify *in concreto*.

May I therefore request you, inasmuch as it is the Court which is party to the 1946 Exchange of Letters, to be so good as to approach the Netherlands Ministry of Foreign Affairs to ask them to state the nature and extent of the privileges and immunities they propose to extend to me as Agent of my Government before the Court.

The urgency of knowing precisely the status accorded to the Agent and to the Mission of Nicaragua before the Court in the host country, has prompted me to anticipate some indications of the understanding we have gathered from the documents regulating this matter.

Article 42 (3) of the Statute is clear in indicating that Agents are (1) representatives of States and, (2) that they enjoy privileges and immunities, in all cases *ex officio*, without the need of recourse to the umbrella of the diplomatic accreditation to the Netherlands.

Nonetheless, the extent of the privileges is not entirely apparent. If we compare the wording of Article 42 (3) of the Statute with the kindred disposition of Article 105 (2) of the Charter, we could conclude that the extent of the privileges and immunities of an Agent are more comprehensive than those of the other Representatives of the Members of the United Nations: Article 42 (3) of the Statute does not contain the explicit wording of Article 105 (2) of the Charter limiting the enjoyment of privileges and immunities to those necessary for the exercise of their functions in connection with the Organization.

The letter from the President of the Court to the Minister for Foreign Affairs of the Netherlands of 26 June 1946 contains the General Principles that would

govern the subject under discussion. With relation to the status of Agents, the governing principle is that they "shall be accorded such privileges, immunities and facilities for residence and travel as may be required for the independent exercise of their functions". This principle clarifies that the privileges, immunities (and facilities) are applicable to the residence and travel requirements as well as to the exercise of the functions of an Agent.

Finally, General Assembly resolution 90 (1) of 11 December 1946 recommends that the privileges and immunities of Agents be the same as those enjoyed by other Representatives of Members of the United Nations based on Article 105 (2) of the Charter and the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 which regulates the matter. Ambassador Rosenne — in the 2nd edition of his *The Law and Practice of the International Court*, page 219 — found "of interest to note that the Rapporteur of Subcommittee 2 of the Sixth Committee which dealt with this question" and that crystallized into Resolution 90 (I) of 11 December 1946 was precisely the representative of the Government host of the Court.

The Netherlands deposited its instrument of accession to the Convention on the Privileges and Immunities of the United Nations on 19 April 1948, that is, more than a year after the date of Resolution 90 (1) of 11 December 1946 which had recommended that Agents be accorded the same privileges and immunities as other representatives of Member States are accorded in the Convention in reference. Therefore, it would also be of interest to note whether on occasion of the deposit of the accession — or in any moment prior to this deposit — the Netherlands made any reference to this Recommendation of the General Assembly which, in the words of Ambassador Rosenne, "partake of the nature of 'understandings' as to the purport of the agreement" reached between the President of the Court and the Minister of Foreign Affairs of the Netherlands.

211. THE REGISTRAR TO THE MINISTER FOR FOREIGN AFFAIRS OF THE NETHERLANDS

17 September 1990.

I have the honour to refer to my letter of 31 July 1990, with which I transmitted to Your Excellency a copy of a letter dated 24 July 1990 from His Excellency Mr. Carlos Argüello Gómez, Agent of the Republic of Nicaragua in three cases before the Court. I have now received a further letter from Mr. Argüello on the subject of the privileges and immunities to be enjoyed by him in the Netherlands by reason of his status as Agent, and in that letter he requests me to approach the Netherlands Ministry of Foreign Affairs on the matter.

I therefore have the honour to transmit to you a copy of Mr. Argüello's letter, and to express the hope that you will be able to assist in this matter by stating, in accordance with his request, the nature and extent of the privileges and immunities which the Government of the Netherlands proposes to extend to him as Agent of the Republic of Nicaragua before the Court.

212. THE MINISTRY OF FOREIGN AFFAIRS OF THE NETHERLANDS TO THE REGISTRAR

19 October 1990.

The Ministry of Foreign Affairs presents its compliments to the Registrar of the International Court of Justice and with reference to the latter's letter of

17 September 1990 and the attached letter of Mr. C. Argüello Gómez, Agent of the Republic of Nicaragua to the Court, has the honour to inform the Registrar as follows.

On the basis of the exchange of Notes between the President of the International Court of Justice and the Minister for Foreign Affairs of the Kingdom of the Netherlands of 26 June 1946, concerning the Privileges and Immunities of the International Court of Justice, of the UN General Assembly Resolution 90 (I) of 11 December 1946 and of the UN Convention on the privileges and immunities of the United Nations of 13 February 1946, an Agent of a State Party to a dispute pending before the Court shall enjoy the following privileges, immunities and facilities:

- a. Immunity from personal arrest or detention and from seizure of his personal baggage, and, in respect of words spoken or written and all acts done by him in his capacity as agent, immunity from legal process of every kind;
- b. Inviolability of all papers and documents;
- c. The right to use codes and to receive papers or correspondence by courier or in sealed bags;
- d. Exemption in respect of himself and his dependents from immigration restrictions, aliens registration or national service obligations in the Netherlands in the exercise of his functions;
- e. The same facilities in respect of currency or exchange restriction as are accorded to representatives of foreign governments on temporary official missions;
- f. The same immunities and facilities in respect of his personal baggage as are accorded to diplomatic envoys;
- g. In order to secure for the agent complete freedom of speech and independence in the discharge of his duties, the immunity from legal process in respect of words spoken or written and all acts done by him in discharging his duties shall continue to be accorded, notwithstanding that he is no longer Agent in a case pending before the Court;
- h. Where the incidence of any form of taxation depends upon residence, periods during which the Agent is present in the Netherlands for the discharge of his duties shall not be considered as periods of residence.
- i. An agent before the Court, the members of his family forming part of his household and personal service staff shall have neither a right to claim exemption from customs duties on goods imported (otherwise than as part of his personal baggage) or from excise duties or sales taxes (BTW) in the Netherlands.
- j. An Agent shall be given, together with the members of his family forming part of the household, the same repatriation facilities in time of international crises as diplomatic envoys are given under the Vienna Convention on Diplomatic Relations adopted on 18 April 1961.
- k. Privileges and immunities are accorded to the Agent not for personal benefit but in order to safeguard the independent exercise of his functions in connection with the Court. Consequently the Netherlands Government would stress its opinion that a State Party to a dispute pending before the Court not only has the right but is under a duty to waive the immunity of its Agent in any case where the Court so recommends and in the opinion of the State Party the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

With respect to the special case of Mr. C. Argüello Gómez, Agent of the Republic of Nicaragua in three cases before the Court, who has decided to have his residence in the Kingdom of the Netherlands, the following shall further be applicable:

- a. The private residence shall be inviolable;
- b. Paragraph h. above will not be applicable. However, if his remuneration as Agent is subject to tax in the Republic of Nicaragua, the Netherlands will grant exemption of income tax to avoid double taxation.

Finally, the Ministry would like to stress that the institution of a permanent mission to the Court of States parties to a dispute before the Court is unknown.

213. THE REGISTRAR TO THE MINISTRY OF FOREIGN AFFAIRS OF THE NETHERLANDS

26 October 1990.

The Registrar of the International Court of Justice presents his compliments to the Ministry of Foreign Affairs of the Kingdom of the Netherlands, and has the honour to acknowledge receipt of the Ministry's Note of 19 October 1990, under reference Protocol Department No. DKP-VI/ISN-42891. Due note has been taken of the enumeration of the privileges, immunities and facilities which, in the view of the Ministry, are those to be enjoyed by an agent representing a State before the Court on the basis of the Exchange of Letters of 26 June 1946 between the President of the Court and the Netherlands Minister for Foreign Affairs, United Nations General Assembly resolution 90 (I) of 11 December 1946, and the Convention of 13 February 1946 on the Privileges and Immunities of the United Nations. It is also noted that it is proposed that certain variations in this enumeration shall apply in the particular case of His Excellency Mr. Carlos Argüello Gómez, Agent of Nicaragua.

The Registrar understands the purpose of the Ministry's Note to be for the guidance of Mr. Argüello Gómez, to whom the Registrar is transmitting a copy thereof, and not to invite the Court to consider the interpretation of paragraph V of the General Principles of the Exchange of Letters of 26 June 1946, with a view to agreeing with the Government of the Netherlands the precise scope of the obligation undertaken by that Government in subscribing to that paragraph of the General Principles, either in general, or in the specific case of Mr. Argüello Gómez. Accordingly, the Registrar expresses no view on that matter, but desires to place on record that the rights of the Court in this respect must remain entirely reserved.

214. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

26 October 1990.

Further to my letter of 17 September 1990, I have the honour to transmit to Your Excellency herewith a copy of a Note dated 19 October 1990 received from the Netherlands Ministry of Foreign Affairs on the subject of the privileges, immunities and facilities enjoyed by Agents representing States before the Court, together with a copy of my reply of today's date.

215. THE AGENT OF THE REPUBLIC OF NICARAGUA TO THE REGISTRAR

12 September 1991.

I refer to the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*.

Taking into consideration that the Government of Nicaragua and the Government of the United States of America have reached agreements aimed at enhancing Nicaragua's economic, commercial and technical development to the maximum extent possible, the Government of Nicaragua has decided to renounce all further right of action based on the case in reference and, hence, that it does not wish to go on with the proceedings.

It is my duty, therefore, to request that the Court make an Order officially recording the discontinuance of these proceedings and directing the removal of the case from the list.

216. THE DEPUTY-REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

12 September 1991.

I have the honour to acknowledge the receipt of a letter dated 12 September 1991 whereby the Government of Nicaragua has informed the Court of its decision to renounce all further right of action based on the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* and stated its wish not to go on with the proceedings.

I take note further that in this letter you have requested that an Order be made recording the discontinuance of the proceedings and directing the removal of the case from the list.

I shall not fail to inform you in due time of such action as may consequently be taken in accordance with Article 89 of the Rules of Court.

217. THE DEPUTY-REGISTRAR TO THE DEPUTY-AGENT OF THE UNITED STATES OF AMERICA

12 September 1991.

I have the honour to transmit to you herewith a copy of a letter of today's date from the Agent of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, by which the Agent states the intention of the Government of Nicaragua not to go on with the proceedings, and requests that an Order be made officially recording the discontinuance of the proceedings, and the removal of the case from the list.

In accordance with Article 89, paragraphs 2 and 3, of the Rules of Court, the President of the Court has fixed 25 September 1991 as the time-limit within which the United States may state whether it opposes the discontinuance of the proceedings.

218. THE DEPUTY-REGISTRAR TO THE LEGAL ADVISER OF THE UNITED STATES
DEPARTMENT OF STATE

(Facsimile)

12 September 1991.

I have the honour to transmit to you for information a copy of a letter I have today addressed to Mr. Patrick M. Norton, Deputy-Agent of the United States in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and a copy of the enclosure to that letter (letter of today's date from the Agent of Nicaragua).

219. THE DEPUTY-REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA

12 September 1991.

Further to my letter of today's date, I have the honour to inform you that the Government of the United States of America, to whom I have sent a copy of your letter, also of this date, expressing your Government's wish to discontinue the proceedings brought against the United States in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, has been at the same time informed that the President of the Court, acting in accordance with paragraphs 2 and 3 of Article 89 of the Rules of Court, has fixed 25 September 1991 as the time-limit within which it may state whether it opposes the discontinuance in question.

220. THE LEGAL ADVISER OF THE UNITED STATES DEPARTMENT OF STATE TO THE
REGISTRAR

25 September 1991.

On behalf of the Government of the United States, I have the honor to refer to your letter of September 12, 1991, concerning a letter from the Agent of Nicaragua in the case of *Nicaragua v. United States of America* informing the Court that the Government of Nicaragua does not wish to go on with these proceedings and providing the United States with an opportunity to state whether it opposes the discontinuance of the proceedings.

Taking into account the agreement of the United States and Nicaragua to take steps to enhance their friendship and mutual cooperation, including the renunciation by Nicaragua of all further right of action based on the aforementioned case, the United States welcomes the Nicaraguan request for discontinuance of the proceedings.

The United States takes this action without prejudice to its longstanding view that the Court is without jurisdiction to entertain the dispute and that the Nicaraguan Application of April 9, 1984, is inadmissible.

(Signed) Edwin D. WILLIAMSON.

221. THE REGISTRAR TO THE AGENT OF THE REPUBLIC OF NICARAGUA ¹

30 September 1991.

I now have the honour to transmit to Your Excellency herewith the sealed copy for the Government of Nicaragua of the Order of 26 September 1991 ² by which the President placed on record the discontinuance by the Republic of Nicaragua of the proceedings in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, and directed the removal of the case from the list.

¹A communication in the same terms was sent to the Legal Adviser of the United States Department of State.

²*I.C.J. Reports 1991*, p. 47.