

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: