

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

**CASE CONCERNING MILITARY AND
PARAMILITARY ACTIVITIES IN AND
AGAINST NICARAGUA**

(NICARAGUA *v.* UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION OF PROVISIONAL
MEASURES

ORDER OF 10 MAY 1984

1984

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

**AFFAIRE DES ACTIVITÉS MILITAIRES
ET PARAMILITAIRES AU NICARAGUA
ET CONTRE CELUI-CI**

(NICARAGUA *c.* ÉTATS-UNIS D'AMÉRIQUE)

DEMANDE EN INDICATION DE MESURES
CONSERVATOIRES

ORDONNANCE DU 10 MAI 1984

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(NICARAGUA *v.* UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION OF PROVISIONAL
MEASURES

ORDER

Present : President ELIAS ; Vice-President SETTE-CAMARA ; Judges LACHS, MOROZOV, NAGENDRA SINGH, RUDA, MOSLER, ODA, AGO, EL-KHANI, SCHWEBEL, Sir Robert JENNINGS, DE LACHARRIÈRE, MBAYE, BEDJAoui ; Registrar TORRES BERNÁRDEZ.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court,

Having regard to Articles 73 and 74 of the Rules of Court,

Having regard to the Application by the Republic of Nicaragua filed in the Registry of the Court on 9 April 1984, instituting proceedings against the United States of America in respect of a dispute concerning responsibility for military and paramilitary activities in and against Nicaragua ;

Makes the following Order :

1. Whereas in the above-mentioned Application the Republic of Nicaragua, invoking the declarations of acceptance of the jurisdiction of the

Court deposited by both States under Article 36 of the Statute of the Court, recounts a series of events over the period from March 1981 up to the present day, as a result of which Nicaragua claims to have suffered grievous consequences, and claims 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” ;

and whereas, on the basis of the facts alleged in the Application, it 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” ;

2. Having regard to the request dated 9 April 1984 and filed in the Registry the same day, whereby the Republic of Nicaragua, relying on Article 41 of the Statute of the Court and Articles 73, 74, 75 and 78 of the Rules of Court, urgently requests the Court to indicate the following provisional measures to be in effect while the Court is seized of the case introduced by the above-mentioned Application :

- “– 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” ;

3. Whereas on 9 April 1984, the day on which the Application and request for the indication of provisional measures were received in the Registry, the Government of the United States of America was notified of the filing of the Application and request, in accordance with Article 40, paragraph 2, of the Statute of the Court ;

4. Whereas, pursuant to Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, copies of the Application were transmitted to the Members of the United Nations and to other States entitled to appear before the Court ;

5. Whereas, taking into account that the Court does not include upon the Bench a judge of Nicaraguan nationality, the Agent of the Republic of Nicaragua informed the Court, by a letter dated 17 April 1984, that his Government intended to abstain from exercising the right to choose a judge *ad hoc*, conferred by Article 31, paragraph 2, of the Statute of the Court, in respect of the proceedings relating to the present request for provisional measures, but reserved the right to do so in respect of other proceedings in the present case ;

6. Whereas on 13 April 1984 a letter, dated the same day, was received in the Registry from the Ambassador of the United States of America in The Hague whereby the Government of the United States appointed an Agent for the purposes of the case, and (*inter alia*) indicated its firm conviction that the Court was without jurisdiction to deal with the Application, and was *a fortiori* without jurisdiction to indicate the provisional measures requested by Nicaragua, and requested the Court to remove the case from the list ; and whereas by a further letter dated 23 April 1984 the Agent of the United States of America brought to the notice of the Court information which, in the contention of the United States, established that the instruments relied on by Nicaragua to found jurisdiction could not serve as basis of jurisdiction, and requested the Court to take an “immediate decision which will preclude any further proceedings” on the Application or the request for provisional measures ; and whereas the Court, taking into account the contents of a letter dated 24 April 1984 from the Agent of Nicaragua, decided on 24 April 1984 that it had then no sufficient basis for acceding to that request or the earlier request for removal of the case from the list ;

7. Having heard the oral observations on the request for provisional measures presented at public hearings held on 25 and 27 April 1984 by the following representatives : on behalf of the Republic of Nicaragua : H.E.

Mr. Carlos Argüello Gómez, Agent ; The Hon. Abram Chayes ; and Professor Ian Brownlie, Q.C., F.B.A. ; on behalf of the United States of America : The Hon. Davis R. Robinson, Agent ; Mr. Daniel W. McGovern, Deputy-Agent ; and Mr. Michael G. Kozak ;

8. Having taken note that the Republic of Nicaragua, at the hearings of 25 April 1984, submitted as follows :

on the question of jurisdiction :

“The Republic of Nicaragua submits : first, that the United States Declaration of 26 August 1946, in its original form, remained in force at the time of the making of the Nicaraguan Application of 9 April 1984.

Secondly, that the jurisdictional factor should be related to the issues of irreparable prejudice and urgency in proceedings concerning interim measures ; and thirdly, that without prejudice to the foregoing, the jurisdictional factor in this case is conducive to the exercise of the power to order interim measures” ;

on the provisional measures :

“Nicaragua therefore submits that the Court should issue an order indicating the following interim measures of protection as specified in our request.

First, 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 . . . then, 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.

Finally, the Court should indicate that the United States should take no action that would have the effect of extending or aggravating the situation pending further consideration of this case by the Court” ;

9. Having taken note that the United States of America, at the hearings of 27 April 1984, submitted as follows :

“The United States believes that the Court . . . lacks jurisdiction *in limine*. The United States raises this lack of jurisdiction as a plea in bar of fundamental importance . . .”

“In sum, under these circumstances the United States submits that this Court should not proceed on Nicaragua’s Application and most certainly should not indicate provisional measures.”

“The United States therefore respectfully reiterates its request to the Court that these proceedings on Nicaragua’s Application and request for the indication of provisional measures be terminated for once and for all” ;

* * *

10. Whereas the Republic of Nicaragua claims to found the jurisdiction of the Court to entertain the present case upon declarations made by the Parties accepting the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute of the Court, namely, on the one hand, a declaration made by the United States of America on 14 August 1946 and deposited with the Secretary-General of the United Nations on 26 August 1946 ; and on the other hand a declaration made by the Republic of Nicaragua on 24 September 1929 recognizing the compulsory jurisdiction of the Permanent Court of International Justice, which, it is claimed, continues in force and is deemed, as between parties to the Statute of the International Court of Justice, to be an acceptance of the compulsory jurisdiction of that Court, by virtue of Article 36, paragraph 5, of its Statute ; and whereas the declaration of Nicaragua is unconditional and without reservations, and without limit of time, while that of the United States of America is subject, *inter alia*, to a proviso that is not to apply to

“(c) disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction” ;

and to a proviso that it “shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate” the declaration ;

11. Whereas on 6 April 1984 the Government of the United States of America deposited with the Secretary-General of the United Nations a declaration referring to the declaration deposited on 26 August 1946 and stating 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” ;

12. Whereas in the letter from its Ambassador at The Hague to the Registrar dated 13 April 1984, the United States Government stated that it was

“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”, and that “a fortiori the Court lacks jurisdiction to indicate the provisional measures requested by the Government of Nicaragua” ;

13. Whereas by the letter dated 23 April 1984, referred to above, the Agent of the United States brought to the notice of the Court information and material which, in the contention of the United States, established that Nicaragua never ratified the Protocol of Signature of the Statute of the Permanent Court of International Justice, and submitted that accordingly

“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” ;

and whereas it was on the basis of that contention that the Government of the United States requested the Court to take “an immediate decision which will preclude any further proceedings on the Application and the claims contained therein”, or on the request for provisional measures ;

14. Whereas by a letter dated 24 April 1984 the Agent of Nicaragua asserted that “Nicaragua ratified in due course the Protocol of Signature of the Statute of the Permanent Court” and added that apart from Nicaragua’s declaration of 1929, “there are in force other treaties which provide this Court jurisdiction over the Application” ; whereas however no specification or citation of such treaties was provided ;

15. Whereas on 24 April 1984 the Court decided that it had then no sufficient basis for acceding to the request of the United States immediately to preclude any further proceedings, or to the request contained in the letter from the United States Agent of 13 April 1984 that the Court should remove the case from the list ;

16. Whereas during the hearings counsel for Nicaragua stated that “the Protocol of Signature of [the Statute of] the Permanent Court was ratified by the relevant organs of the Constitution of Nicaragua” ; whereas counsel

for Nicaragua also drew attention, as relevant to the asserted legal validity of the Nicaraguan declaration of 1929, to its inclusion in the *Yearbook* of the Court, the mention of Nicaragua as a State accepting the compulsory jurisdiction of the Court in the United States official publication *Treaties in Force* and "the standard United Nations Information Book on the International Court", and to the reliance on the 1929 declaration by Honduras in its Application instituting the case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906*, the relevant passage of which reads as follows :

"*Nicaragua* has also declared that she recognized the compulsory jurisdiction of the Permanent Court of International Justice. This declaration was dated 24 September 1929. By a Decree dated 14 February 1935, the Senate of Nicaragua ratified the Statute and the Protocol of the Permanent Court of International Justice. On 11 July 1935, a similar decision was taken by the Chamber of Deputies (*Official Gazette*, Organ of the Government of Nicaragua. Year 39, No. 130, page 1033, and No. 207, page 1674). On 29 November 1939, the Secretary-General of the League of Nations received a telegram signed 'Relaciones', notifying him of the ratification by Nicaragua of the Statute and Protocol of the Court. Having regard to these facts, the declaration of 1929 entered into force and continues to be valid by virtue of Article 36, para. 5, of the Statute of the International Court of Justice." (*I.C.J. Pleadings, Case concerning the Arbitral Award made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Vol. I, 1960, pp. 8-9 (translation)) ;

17. Whereas the Government of the United States of America has brought to the notice of the Court information and material to show that no instrument of ratification of the Protocol of Signature of the Permanent Court of International Justice Statute was ever deposited with the Secretary-General of the League of Nations ; whereas that material includes a telegram, referred to in the last Report of the Permanent Court (*P.C.I.J., Series E, No. 16*, p. 331), received in November 1939 by the Secretariat of the League of Nations from the Foreign Ministry of Nicaragua, announcing the ratification of the Protocol of Signature and indicating that the instrument of ratification was to follow ; the file of the League of Nations Secretariat on the matter, containing the 1939 telegram but showing no receipt of any such instrument, and containing also a letter from the Acting Legal Adviser of the League to the Government of Nicaragua, stating that deposit of the instrument of ratification was necessary "to establish effectively the obligation" ; a letter of 1943 from the United States Ambassador in Managua, recounting that the Foreign Minister of Nicaragua had informed the Ambassador that a 1935 Decree for ratification had never been published in the Nicaraguan official journal *La Gaceta*, as required for its entry into force ; and whereas the Agent of the United States stated that an examination of *La Gaceta* for the period 1943 to 1946 showed no trace of the publication of any such Decree ; whereas the United States,

referring to the mention of the Declaration of Nicaragua in the *Yearbook* of the Court, has drawn attention to the footnote included in that publication from 1955-1956 onwards ; and whereas the United States accordingly contends that Nicaragua either never ratified the Protocol of Signature, or at all events never took the step of depositing an instrument of ratification of the Protocol of Signature prior to the dissolution of the League of Nations on 18 April 1946, that Nicaragua therefore never became a party to the Statute of the Permanent Court, that as a result the 1929 declaration of acceptance of jurisdiction never came into force, and that accordingly Nicaragua cannot be deemed to have accepted the compulsory jurisdiction of this Court under Article 36, paragraph 5, of the Statute of the Court ;

18. Whereas the Court notes that the Declaration in the *Yearbook* was accompanied, respectively, in the volumes for 1947-1948, 1948-1949 and 1949-1950 and in the volumes from 1955-1956 onwards, by the following footnotes :

“Declaration made under Article 36 of the Statute of the Permanent Court of International Justice and deemed to be still in force (Art. 36 (5) of the Statute of the present Court).” (*I.C.J. Yearbook 1947-1948*, p. 39 ; *1948-1949*, p. 37 ; *1949-1950*, p. 41. See also *ibid.*, *1946-1947*, p. 111.)

“According to a telegram dated November 29th, 1939, addressed to the League of Nations, Nicaragua had ratified the Protocol of Signature of the Statute of the Permanent Court of International Justice (December 16th, 1920), and the instrument of ratification was to follow. It does not appear, however, that the instrument of ratification was ever received by the League of Nations.” (*I.C.J. Yearbook 1955-1956*, p. 195. See also *ibid.*, *1946-1947*, p. 210) ;

19. Whereas in his oral reply, the Agent of Nicaragua assured the Court that the ratification of the Protocol of Signature of the Statute of the Permanent Court of International Justice was decided, following approval by the President of the Republic of Nicaragua, by the Senate and the Chamber of Deputies in 1935, and the necessary publications effected in *La Gaceta* ; that the statement of the United States Ambassador in Nicaragua in 1943 was wrong, and the opinion of the Ambassador was of no value as to Nicaraguan law ; whereas the Agent also stated that “When the Statute of the [Permanent] Court became a law of Nicaragua, this fact was notified to the Secretary [General] of the League of Nations” in 1939, and referring to the start of the Second World War, he observed that “There are quite obvious reasons why this ratification may not have reached Geneva at the time” ;

20. Whereas on the basis of its contentions set out above the United

States submits that the jurisdictional instrument of the Applicant is lacking entirely, that this is an issue which can and must be addressed immediately by the Court, and that

“Unless Nicaragua can plainly show the Court that it deposited its instrument of ratification to the Protocol of Signature with the League of Nations before April 1946, or that it deposited with the Secretary-General of the United Nations, prior to the filing of its Application on 9 April 1984, a declaration pursuant to Article 36 (2) and (4) of this Court’s Statute, these proceedings must be terminated immediately and the Application and request removed from the Court’s List” ;

21. Whereas the Court undoubtedly possesses, and has in the past exercised, a power summarily to remove a case from the General List in circumstances in which the Applicant – while inviting the State named as Respondent to accept jurisdiction *ad hoc* – itself concedes that there is no subsisting title of jurisdiction ; whereas however in the present case the Applicant has indicated a subsisting title of jurisdiction, namely the United States acceptance of compulsory jurisdiction dated 26 August 1946 ; whereas the question is thus not whether a jurisdictional instrument exists, but whether Nicaragua, having deposited a declaration of acceptance of the jurisdiction of the Permanent Court of International Justice, can claim to be a “State accepting the same obligation” within the meaning of Article 36, paragraph 2, of the Statute, so as to invoke the United States declaration notwithstanding the fact that, as it appears, no instrument of ratification by Nicaragua of the Protocol of Signature of the Statute of the Permanent Court was received by the League of Nations ; whereas the Court considers that where the contentions of the parties disclose a “dispute as to whether the Court has jurisdiction”, in accordance with Article 36, paragraph 6, of the Statute, “the matter shall be settled by the decision of the Court”, that is to say by a judicial decision stating the reasons on which it is based and rendered after fully hearing the parties; whereas therefore the Court is unable to accede to the request of the United States of America summarily to remove the case from the list ;

22. Whereas the United States of America further relies on the declaration deposited on 6 April 1984, and contends that that declaration is a valid suspension or modification of the United States declaration of 26 August 1946, and that since the dispute which the Republic of Nicaragua seeks to bring before the Court by its Application falls squarely within the terms of the exclusion of “disputes with any Central American State or arising out of or related to events in Central America”, for that reason the 1946 declaration is ineffective to confer jurisdiction on the Court to entertain the present case ;

23. Whereas counsel for Nicaragua has drawn attention to the fact that the United States declaration of 1946 was subject to the proviso, noted in paragraph 10 above, that six months’ notice was required to terminate it, and contends that

“First, the principles of the law of treaties apply generally to the modification and termination of declarations of acceptance of jurisdiction under the optional clause. Secondly, a declaration which lays down express conditions for termination or modification cannot be terminated or modified except on those conditions or on some other ground recognized in the law of treaties. Thirdly, the conditions laid down in respect of termination or modification must also be compatible with the Statute of the Court. Fourthly, the United States [declaration] of 6 April [1984] is an invalid attempt to modify or vary the existing United States Declaration which has been neither validly varied nor terminated and thus remains in force. Fifthly, and alternatively, the [declaration] of 6 April [1984] has the effect of terminating the original Declaration but . . . on its express terms that termination can only take effect six months after notice” ;

whereas the reply of the United States is that the period of six months’ notice applies only to termination of the 1946 declaration, and the declaration of 6 April 1984 “did not terminate or purport to terminate the 1946 Declaration” ; that the United States had the right to modify or suspend the operation of its 1946 declaration and “was entitled, before Nicaragua filed its Application, to qualify its 1946 Declaration in any respect, including suspension of the operation of the six-month notice provision” ; that the Nicaraguan declaration of 1929, assuming it had any validity, was “immediately terminable”, and that “in accordance with the principle of reciprocity”, the United States “was, therefore, entitled to introduce a temporal qualification into its declaration with immediate effect” ;

24. Whereas on a request for provisional measures the Court need not, before deciding whether or not to indicate them, finally satisfy itself that it has jurisdiction on the merits of the case, or, as the case may be, that an objection taken to jurisdiction is well-founded, yet it ought not to indicate such measures unless the provisions invoked by the Applicant appear, *prima facie*, to afford a basis on which the jurisdiction of the Court might be founded ;

25. Whereas the Court, having given the matter the fullest consideration compatible with the requirements of urgency imposed by a request for the indication of provisional measures, finds that Nicaragua, as authorized by the second paragraph of Article 36 of the Statute of the Permanent Court of International Justice, made, on 24 September 1929, following its signature of the Protocol to which that Statute was adjoined, an unconditional Declaration recognizing the compulsory jurisdiction of the Permanent Court, in particular without condition as to ratification and without limit of time, but it has not so far been established to the Court’s satisfaction that Nicaragua ever deposited an instrument of ratification of that

Protocol ; whereas however the Court is not convinced, by the arguments so far addressed to it, that the absence of such effective ratification excluded the operation of Article 36, paragraph 5, of the Statute of the present Court, and prevented the transfer to the present Court of the declaration as a result of the consent thereto given by Nicaragua which, having been represented at the San Francisco Conference, signed and ratified the Charter and thereby accepted the Statute in which Article 36, paragraph 5, appears (see *Aerial Incident of 27 July 1955 (Israel v. Bulgaria)*, *I.C.J. Reports 1959*, p. 142; *Temple of Preah Vihear, Preliminary Objections*, *I.C.J. Reports 1961*, p. 17) ;

26. Whereas the Court will not now make any final determination of the question of the present validity or invalidity of the declaration of 24 September 1929, and the question whether or not Nicaragua accordingly was or was not, for the purpose of Article 36, paragraph 2, of the Statute of the Court a "State accepting the same obligation" as the United States of America at the date of filing of the Application, so as to be able to rely on the United States declaration of 26 August 1946, nor of the question whether, as a result of the declaration of 6 April 1984, the present Application is excluded from the scope of the acceptance by the United States of the compulsory jurisdiction of the Court ; whereas however the Court finds that the two declarations do nevertheless appear to afford a basis on which the jurisdiction of the Court might be founded ;

* *

27. Whereas by the terms of Article 41 of the Statute the Court may indicate provisional measures only when it considers that circumstances so require to preserve the rights of either party ;

28. Whereas the circumstances alleged by the Republic of Nicaragua which in its submission require the indication of provisional measures in the present case are stated in the request filed on 9 April 1984 as follows :

- “- The United States is presently engaged in the use of force and the threat of force against Nicaragua through the instrumentality of a mercenary army of more than 10,000 men, recruited, paid, equipped, supplied, trained and directed by the United States, and by means of the direct action of personnel of the Central Intelligence Agency and the U.S. armed forces. The United States has publicly accepted responsibility for these activities.
- These activities have already resulted in the deaths of more than 1,400 Nicaraguans, military and civilian, serious injury to more than 1,700 others, and \$200,000,000 in direct damage to property.
- The object of these activities, as admitted by the President of the United States, senior U.S. officials and members of Congress, is to

overthrow or at least destabilize the Government of Nicaragua.

- The activities of the United States are not mere isolated incursions or incidents. They are part of a continuing and organized campaign of unlawful use of force that, from its beginnings in 1981, has steadily expanded – and is continuing to expand – in size, scope and intensity and in the grievous losses of life and property inflicted on Nicaragua and its people.
- These activities are mounting in intensity and destructiveness as this case is filed. In March, 1984, 6,000 U.S.-backed mercenaries initiated the largest assault to date on Nicaraguan territory. Heavy fighting is still taking place, and casualties are high.
- Simultaneously with their assault, the mercenary forces announced that they had mined the Nicaraguan ports of Corinto, Puerto Sandino and El Bluff, as part of an effort to cut off Nicaragua economically from the rest of the world. Five foreign commercial vessels have already been disabled by exploding mines, and many others have cancelled scheduled shipments to and from Nicaragua for fear of the mines. Taken together with the previous bombings of international airports, these new actions represent not only an effort to cut Nicaragua's vital trade and communications with the outside world, but constitute a mortal hazard to third parties engaged in peaceful international commerce and travel.
- As this request is filed, the U.S. Administration is seeking and the Congress is considering \$21,000,000 in additional funding to continue and to further escalate this campaign of military and paramilitary activities against Nicaragua”;

29. Whereas in support of its allegations, the Government of Nicaragua has produced affidavits sworn by its Foreign Minister and its Vice-Minister of the Interior ; a memorandum allegedly addressed to the United States Embassy in Honduras by the “mercenary leaders – the Task Force Commanders of the FDN and MISURAS” ; United States legislative measures ; texts of statements made in public or to the press by the President of the United States and senior officials of the United States administration ; and a large number of reports in newspapers and reviews published in the United States ;

30. Whereas so far as the factual correctness of the allegations made against it is concerned, the Government of the United States of America, in view of its contention that the Court totally lacks jurisdiction in this case, has stated “The United States does not intend to engage in a debate

concerning the facts alleged by Nicaragua, given the absence of jurisdiction", but that "The United States does emphasize that it has admitted no factual allegations of Nicaragua whatsoever" ; whereas however counsel for the United States has alleged that Nicaragua is itself deeply involved in insurgencies in neighbouring countries, in furtherance of its "active promotion for 'revolution without frontiers' throughout Central America", and has been engaged in a continuing traffic in weapons ; that Nicaragua's armed forces have conducted open armed attacks across its borders, as a result of which Honduras and Costa Rica have repeatedly protested ; and that Nicaragua's neighbours have turned to the United States for security assistance, and there has been increased co-operation among those countries in collective self-defence measures ; whereas in reply, the Agent of Nicaragua has contended that neither the United States, nor other States referred to, have made any claim of self-defence, individual or collective ;

31. Whereas the Court has available to it considerable information concerning the facts of the present case, including official statements of United States authorities ; whereas, the Court, in the context of the present proceedings on a request for provisional measures, has in accordance with Article 41 of the Statute to consider the circumstances drawn to its attention as requiring the indication of provisional measures, but cannot make definitive findings of fact, and the right of the respondent State to dispute the facts alleged and to submit arguments in respect of the merits must remain unaffected by the Court's decision ;

32. Whereas the power of the Court to indicate provisional measures under Article 41 of the Statute has as its object to preserve the respective rights of either party pending the decision of the Court ; and whereas the legal rights for the protection of which Nicaragua claims that provisional measures are required are stated by it to be as follows :

- “– the rights of Nicaraguan citizens to life, liberty and security ;
- the right of Nicaragua to be free at all times from the use or threat of force against it by a foreign state ;
- the right of sovereignty of Nicaragua ;
- the right of Nicaragua to conduct its affairs and to determine matters within its domestic jurisdiction without interference or intervention by any foreign state ;
- the right of self-determination of the Nicaraguan people” ;

and whereas furthermore the Republic of Nicaragua claims that the urgent need for the requested measures is shown by the fact that “the lives and property of Nicaraguan citizens, the sovereignty of the State and the health and progress of the economy are all immediately at stake”, that the United States has given no indication that it is willing to “desist from its unlawful actions”, but is seeking the resources to continue and intensify its activities ;

33. Whereas the letter from the United States Ambassador in The Hague dated 13 April 1984 contained also the following passage :

“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.”

On this basis, the United States contends that the indication of the provisional measures requested by Nicaragua would be “particularly inappropriate at this time”, explaining that

“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” ;

34. Whereas during the oral proceedings counsel for the United States supplied the Court, by way of background information, with a brief history of recent events in the Central American region, and informed the Court that, in the context of the search for a means of addressing the complex and interrelated problems of Central America,

“through the efforts of the Central American States themselves, other States in the region, the Organization of American States, and the United Nations, a region-wide negotiating process has been initiated and reinforced. This regional process, known as the ‘Contadora process’, has been accepted by all of the parties concerned, including Nicaragua. It has made substantial progress towards the achievement of a comprehensive and enforceable resolution of the multi-faceted problems of Central America” ;

whereas, as the Court was informed, at a conference in October 1982 in San José, Costa Rica, a final Act was adopted formulating proposals for dealing on a comprehensive basis with the problems of instability in the region ; in January 1983 representatives of Mexico, Panama, Colombia and Venezuela met on the island of Contadora in Panama, and these States, the “Contadora group” succeeded in bringing together, in May 1983, the five Central American States, including Nicaragua ; whereas the

process of negotiating commenced in this way is continuing, and has been endorsed by United Nations Security Council resolution 530 of 19 May 1983 and General Assembly resolution 38/10 of 11 November 1983 ;

35. Whereas at the hearings, it was explained that the United States contends that the Court should deny the request for the indication of provisional measures in this case for a number of "compelling reasons" additional to that of lack of jurisdiction, the first being that

"the other States of Central America have stated their view that Nicaragua's request for the indication of provisional measures directly implicates their rights and interests, and that an indication of such measures would interfere with the Contadora negotiations. These other Central American States are indispensable parties in whose absence this Court cannot properly proceed" ;

and in support of this contention, the United States laid before the Court copies, supplied by the Governments concerned, of telegrams addressed to the Registrar of the Court by the Governments of Costa Rica and El Salvador, and of a telex message addressed to the United Nations Secretary-General by the Government of Honduras for transmittal to the Registrar ; these communications, according to the United States, "make it quite clear that Nicaragua's claims are inextricably linked to the rights and interests of those other States" ; whereas it is claimed that the Contadora process "aims at stopping hostilities in all the affected countries through verifiable security arrangements, and at the solution of all the complex and interrelated social, economic and political issues", and that to grant the provisional measures requested, in whole or in part "can only prejudice the ability of the other Central American States to have their grievances, too, satisfied" ; whereas the United States further argued that "Any decision to indicate the interim measures requested, or a decision on the merits, would necessarily affect the rights of States not party to the proceedings" ; and while reference was made in this respect to proviso (c) to the United States declaration of 1946 as a total bar to the claims in this case arising under multilateral conventions, it was contended that the rule as to participation of every "indispensable party" is a general principle ;

36. Whereas the second additional reason advanced by the United States for the Court to deny the measures requested is that

"Contadora itself is a properly instituted regional process seeking to resolve complex and interrelated social, political, and economic issues, as well as security matters underlying the current turmoil in Central America. This Court cannot take cognizance of Nicaragua's Application or indicate the interim measures Nicaragua requests

without detrimentally affecting that process in unpredictable and irremediable ways” ;

and whereas the United States drew attention to Article 52 of the United Nations Charter and Article 23 of the Charter of the Organization of American States, as a result of which, it was argued, Nicaragua is bound by a commitment to regional agencies and arrangements for the pacific settlement of local disputes, which are comprehended by the Contadora process, expressly endorsed by the OAS General Assembly, the United Nations General Assembly, and the United Nations Security Council “as an appropriate regional arrangement for resolving” disputes in the region ; whereas the United States accordingly submits that Nicaragua is under a good faith obligation to negotiate within the Contadora process ;

37. Whereas, lastly, the United States contends that the Court should decline to indicate provisional measures on the ground that Nicaragua’s request, “raising very fundamental questions, . . . strains incidental proceedings beyond any reasonable bounds”, and that

“Nicaragua’s Application appears on its face to request a definitive legal determination regarding an alleged illegal use of armed force in the midst of on-going hostilities. In the circumstances of this case, where the United Nations and the Organization of American States have approved the Contadora process, such questions regarding the use of force during hostilities are more properly committed to resolution by the political organs of the United Nations and of the Organization of American States” ;

whereas the United States observes that “the primary responsibility for the maintenance of international peace and security is assigned by the Charter of the United Nations to the Security Council”, that Chapter VIII of the Charter provides for regional arrangements for the maintenance of international peace and security, and that while all situations involving the threat or use of force “necessarily involve Article 2 (4) and Article 51 of the United Nations Charter or other issues of law or legally significant fact”, nevertheless

“That does not mean that this Court can, or should, take cognizance of the legal aspects of those situations in the midst of hostilities, and while the political processes of the United Nations and the OAS are still engaged” ;

38. Whereas the Government of Nicaragua has disputed the relevance of the Contadora process to the present proceedings, explaining that

“While Nicaragua is actively participating in the Contadora process, and will continue to do so, our legal claims against the United

States cannot be resolved, or even addressed, through that process” ;

and Nicaragua further denies that these proceedings could prejudice the legitimate rights of any other States, or disrupt the Contadora process ; whereas the Agent of Nicaragua referred to previous decisions of the Court as establishing the principle that the Court is not required to decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, and that the Court should not decline an essentially judicial task merely because the question before the Court is intertwined with political questions ;

*

39. Whereas in the light of the several considerations set out above, the Court finds that the circumstances require it to indicate provisional measures, as provided by Article 41 of the Statute of the Court, in order to preserve the rights claimed (see *Fisheries Jurisdiction (United Kingdom v. Iceland)*, *Interim Protection, Order of 17 August 1972*, *I.C.J. Reports 1972*, pp. 17-18 ; *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland)*, *Interim Protection, Order of 17 August 1972*, *ibid.*, pp. 35-36) ;

40. Whereas the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the merits themselves, and leaves unaffected the right of the Governments of the United States of America and the Republic of Nicaragua to submit arguments in respect of such jurisdiction or such merits ;

*

41. For these reasons,

THE COURT,

A. Unanimously,

Rejects the request made by the United States of America that the proceedings on the Application filed by the Republic of Nicaragua on 9 April 1984, and on the request filed the same day by the Republic of Nicaragua for the indication of provisional measures, be terminated by the removal of the case from the list ;

B. *Indicates*, pending its final decision in the proceedings instituted on 9 April 1984 by the Republic of Nicaragua against the United States of America, the following provisional measures :

1. Unanimously,

The United States of America should immediately cease and refrain from any action restricting, blocking or endangering access to or from Nicaraguan ports, and, in particular, the laying of mines ;

2. By fourteen votes to one,

The right to sovereignty and to political independence possessed by the Republic of Nicaragua, like any other State of the region or of the world, should be fully respected and should not in any way be jeopardized by any military and paramilitary activities which are prohibited by the principles of international law, in particular the principle that States should refrain in their international relations from the threat or use of force against the territorial integrity or the political independence of any State, and the principle concerning the duty not to intervene in matters within the domestic jurisdiction of a State, principles embodied in the United Nations Charter and the Charter of the Organization of American States.

IN FAVOUR : *President* Elias ; *Vice-President* Sette-Camara ; *Judges* Lachs, Morozov, Nagendra Singh, Ruda, Mosler, Oda, Ago, El-Khani, Sir Robert Jennings, de Lacharrière, Mbaye, Bedjaoui.

AGAINST : *Judge* Schwebel.

3. Unanimously,

The Governments of the United States of America and the Republic of Nicaragua should each of them ensure that no action of any kind is taken which might aggravate or extend the dispute submitted to the Court.

4. Unanimously,

The Governments of the United States of America and the Republic of Nicaragua should each of them ensure that no action is taken which might prejudice the rights of the other Party in respect of the carrying out of whatever decision the Court may render in the case ;

C. Unanimously,

Decides further that, until the Court delivers its final judgment in the present case, it will keep the matters covered by this Order continuously under review ;

D. Unanimously,

Decides that the written proceedings shall first be addressed to the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of the Application ;

And reserves the fixing of the time-limits for the said written proceedings, and the subsequent procedure, for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this tenth day of May, one thousand nine hundred and eighty-four, in four copies, one of which will be placed in the archives of the Court, and the others transmitted respectively to the Government of the United States of America, to the Government of the Republic of Nicaragua, and to the Secretary-General of the United Nations for transmission to the Security Council.

(Signed) T. O. ELIAS,
President.

(Signed) Santiago TORRES BERNÁRDEZ,
Registrar.

Judges MOSLER and Sir Robert JENNINGS append a joint separate opinion to the Order of the Court.

Judge SCHWEBEL appends a dissenting opinion to the Order of the Court.

(Initialled) T.O.E.

(Initialled) S.T.B.
