INTERNATIONAL COURT OF JUSTICE

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Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)

Judgment of the Court

The following information is communicated to the press by the Registry of the International Court of Justice:

Today, 27 June 1986, the Court delivered its Judgment on the merits in the case concerning Military and Paramilitary Activities in and against Nicaragua brought by Nicaragua against the United States of America.

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The Court was composed for this case as follows:

President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui, Ni, Evensen, Judge ad hoc Colliard.

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Operative...

Operative part of the Court's Judgment

THE COURT

(1) By eleven votes to four,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Oda, Ago, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Ruda, Elias, Sette-Camara and Ni.

(2) By twelve votes to three,

Rejects the justification of collective self-defence maintained by the United States of America in connection with the military and paramilitary activities in and against Nicaragua the subject of this case;

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(3) By twelve votes to three,

Decides that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State;

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(4) By twelve votes to three,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(5) By twelve votes to three,

Decides that the United States of America, by directing or authorizing overflights of Nicaraguan territory, and by the acts imputable to the United States referred to in subparagraph (4) hereof, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to violate the sovereignty of another State;

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(6) By twelve votes to three,

Decides that, by laying mines in the internal or territorial waters of the Republic of Nicaragua during the first months of 1984, the United States of America has acted, against the Republic of Nicaragua, in breach of its obligations under customary international law not to use force against another State, not to intervene in its affairs, not to violate its sovereignty and not to interrupt peaceful maritime commerce;

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(7) By...

(7) By fourteen votes to one,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judge Schwebel.

(8) By fourteen votes to one,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judge Oda.

(9) By fourteen votes to one,

Finds that the United States of America, by producing in 1983 a manual entitled "Operaciones sicológicas en guerra de guerrillas", and disseminating it to contra forces, has encouraged the commission by them of acts contrary to general principles of humanitarian law; but does not find a basis for concluding that any such acts which may have been committed are imputable to the United States of America as acts of the United States of America;

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Schwebel, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judge Oda.

(10) By twelve votes to three,

Decides that the United States of America, by the attacks on Nicaraguan territory referred to in subparagraph (4) hereof, and by declaring a general embargo on trade with Nicaragua on 1 May 1985, has

committed acts calculated to deprive of its object and purpose the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956;

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(11) By twelve votes to three,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(12) By twelve votes to three,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(13) By twelve votes to three,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Ago, Sette-Camara, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judges Oda, Schwebel and Sir Robert Jennings.

(14) By fourteen votes to one,

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

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judge Schwebel.

(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;

IN FAVOUR: President Nagendra Singh; Vice-President de Lacharrière; Judges Lachs, Ruda, Elias, Oda, Ago, Sette-Camara, Sir Robert Jennings, Mbaye, Bedjaoui, Ni and Evensen; Judge ad hoc Colliard;

AGAINST: Judge Schwebel.

(16) Unanimously,

Recalls to both Parties their obligation to seek a solution to their disputes by peaceful means in accordance with international law.

SUMMARY OF THE JUDGMENT

I. Qualités (paras. 1 to 17)

II. Background to the dispute (paras. 18-25)

III. The non-appearance of the Respondent and Article 53 of the Statute (paras. 26-31)

The Court recalls that subsequent to the delivery of its Judgment of 26 November 1984 on the jurisdiction of the Court and the admissibility of Nicaragua's Application, the United States decided not to take part in the present phase of the proceedings. This however does not prevent the Court from giving a decision in the case, but it has to do so while respecting the requirements of Article 53 of the Statute, which provides for the situation when one of the parties does not appear. The Court's jurisdiction being established, it has in accordance with Article 53 to satisfy itself that the claim of the party appearing is well founded in fact and law. In this respect the

Court recalls certain guiding principles brought out in a number of previous cases, one of which excludes any possibility of a judgment automatically in favour of the party appearing. It also observes that it is valuable for the Court to know the views of the non-appearing party, even if those views are expressed in ways not provided for in the Rules of Court. The principle of the equality of the parties has to remain the basic principle, and the Court has to ensure that the party which declines to appear should not be permitted to profit from its absence.

IV. Justiciability of the dispute (paras. 32-35)

The Court considers it appropriate to deal with a preliminary question. It has been suggested that the questions of the use of force and collective self-defence raised in the case fall outside the limits of the kind of questions the Court can deal with, in other words that they are not justiciable. However, in the first place the Parties have not argued that the present dispute is not a "legal dispute" within the meaning of Article 36, paragraph 2, of the Statute, and secondly, the Court considers that the case does not necessarily involve it in evaluation of political or military matters, which would be to overstep proper judicial bounds. Consequently, it is equipped to determine these problems.

V. The significance of the multilateral treaty reservation (paras. 36-56)

The United States declaration of acceptance of the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute contained a reservation excluding from the operation of the declaration

> "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".

In its Judgment of 26 November 1984 the Court found, on the basis of Article 79, paragraph 7, of the Rules of Court, that the objection to jurisdiction based on the reservation raised "a question concerning matters of substance relating to the merits of the case" and that the objection did "not possess, in the circumstances of the case, an exclusively preliminary character". Since it contained both preliminary aspects and other aspects relating to the merits, it had to be dealt with at the stage of the merits.

In order to establish whether its jurisdiction was limited by the effect of the reservation in question, the Court has to ascertain whether any third States, parties to the four multilateral treaties invoked by Nicaragua, and not parties to the proceedings, would be "affected" by the Judgment. Of these treaties, the Court considers it sufficient to examine the position under the United Nations Charter and the Charter of the Organization of American States.

The Court examines the impact of the multilateral treaty reservation on Nicaragua's claim that the United States has used force in breach of the two Charters. The Court examines in particular the case of El Salvador, for whose benefit primarily the United States claims to be exercising the right of collective self-defence which it regards as a justification of its own conduct towards Nicaragua, that right being endorsed by the United Nations Charter (Art. 51) and the OAS Charter (Art. 21). The dispute is to this extent a dispute "arising under" multilateral treaties to which the United States, Nicaragua and El Salvador are Parties. It appears clear to the Court that El Salvador would be "affected" by the Court's decision on the lawfulness of resort by the United States to collective self-defence.

As to Nicaragua's claim that the United States has intervened in its affairs contrary to the OAS Charter (Art. 18) the Court observes that it is impossible to say that a ruling on the alleged breach of the Charter by the United States would not "affect" El Salvador.

Having thus found that El Salvador would be "affected" by the decision that the Court would have to take on the claims of Nicaragua based on violation of the two Charters by the United States, the Court concludes that the jurisdiction conferred on it by the United States declaration does not permit it to entertain these claims. It makes it clear that the effect of the reservation is confined to barring the applicability of these two multilateral treaties as multilateral treaty law, and has no further impact on the sources of international law which Article 38 of the Statute requires the Court to apply, including customary international law.

VI. Establishment of the facts: evidence and methods employed by the Court (paras. 57-74)

The Court has had to determine the facts relevant to the dispute. The difficulty of its task derived from the marked disagreement between the Parties, the non-appearance of the Respondent, the secrecy surrounding certain conduct, and the fact that the conflict is continuing. On this last point, the Court takes the view, in accordance with the general principles as to the judicial process, that the facts to be taken into account should be those occurring up to the close of the oral proceedings on the merits of the case (end of September 1985).

With regard to the production of evidence, the Court indicates how the requirements of its Statute - in particular Article 53 - and the Rules of Court have to be met in the case, on the basis that the Court has freedom in estimating the value of the various elements of evidence. It has not seen fit to order an enquiry under Article 50 of the Statute. With regard to certain documentary material (press articles and various books), the Court has treated these with caution. It regards them not as evidence capable of proving facts, but as material which can nevertheless contribute to corroborating the existence of a fact and be taken into account to show whether certain

facts are matters of public knowledge. With regard to statements by representatives of States, sometimes at the highest level, the Court takes the view that such statements are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. With regard to the evidence of witnesses presented by Nicaragua - five witnesses gave oral evidence and another a written affidavit - one consequence of the absence of the Respondent was that the evidence of the witnesses was not tested by cross-examination. The Court has not treated as evidence any part of the testimony which was a mere expression of opinion as to the probability or otherwise of the existence of a fact not directly known to the witness. With regard in particular to affidavits and sworn statements made by members of a Government, the Court considers that it can certainly retain such parts of this evidence as may be regarded as contrary to the interests or contentions of the State to which the witness has allegiance; for the rest such evidence has to be treated with great reserve.

The Court is also aware of a publication of the United States State Department entitled "Revolution Beyond Our Borders, Sandinista Intervention in Central America" which was not submitted to the Court in any form or manner contemplated by the Statute and Rules of Court. The Court considers that, in view of the special circumstances of this case, it may, within limits, make use of information in that publication.

VII. The facts imputable to the United States (paras. 75 to 125)

1. The Court examines the allegations of Nicaragua that the mining of Nicaraguan ports or waters was carried out by United States military personnel or persons of the nationality of Latin American countries in the pay of the United States. After examining the facts, the Court finds it established that, on a date in late 1983 or early 1984, the President of the United States authorized a United States Government agency to lay mines in Nicaraguan ports; that in early 1984 mines were laid in or close to the ports of El Bluff, Corinto and Puerto Sandino, either in Nicaraguan internal waters or in its territorial sea or both, by persons in the pay and acting on the instructions of that agency, under the supervision and with the logistic support of United States agents; that neither before the laying of the mines, nor subsequently, did the United States Government issue any public and official warning to international shipping of the existence and location of the mines; and that personal and material injury was caused by the explosion of the mines, which also created risks causing a rise in marine insurance rates.

2. Nicaragua attributes to the direct action of United States personnel, or persons in its pay, operations against oil installations, a naval base, etc., listed in paragraph 81 of the Judgment. The Court finds all these incidents except three, to be

established. Although it is not proved that any United States military personnel took a direct part in the operations, United States agents participated in the planning, direction and support. The imputability to the United States of these attacks appears therefore to the Court to be established.

3. Nicaragua complains of infringement of its air space by United States military aircraft. After indicating the evidence available, the Court finds that the only violations of Nicaraguan air space imputable to the United States on the basis of the evidence are high altitude reconnaissance flights and low altitude flights on 7 to 11 November 1984 causing "sonic booms".

With regard to joint military manoeuvres with Honduras carried out by the United States on Honduran territory near the Honduras/Nicaragua frontier, the Court considers that they may be treated as public knowledge and thus sufficiently established.

4. The Court then examines the genesis, development and activities of the contra force, and the role of the United States in relation to it. According to Nicaragua, the United States "conceived, created and organized a mercenary army, the contra force". On the basis of the available information, the Court is not able to satisfy itself that the Respondent State "created" the contra force in Nicaragua, but holds it established that it largely financed, trained, equipped, armed and organized the FDN, one element of the force.

It is claimed by Nicaragua that the United States Government devised the strategy and directed the tactics of the contra force, and provided direct combat support for its military operations. In the light of the evidence and material available to it, the Court is not satisfied that all the operations launched by the contra force, at every stage of the conflict, reflected strategy and tactics solely devised by the United States. It therefore cannot uphold the contention of Nicaragua on this point. The Court however finds it clear that a number of operations were decided and planned, if not actually by United States advisers, then at least in close collaboration with them, and on the basis of the intelligence and logistic support which the United States was able to offer. It is also established in the Court's view that the support of the United States for the activities of the contras took various forms over the years, such as logistic support, the supply of information on the location and movements of the Sandinista troops, the use of sophisticated methods of communication, etc. The evidence does not however warrant a finding that the United States gave direct combat support, if that is taken to mean direct intervention by United States combat forces.

The Court has to determine whether the relationship of the contras to the United States Government was such that it would be right to equate the contras, for legal purposes, with an organ of the United States Government, or as acting on behalf of that Government.

The Court considers that the evidence available to it is insufficient to demonstrate the total dependence of the contras on United States aid. A partial dependency, the exact extent of which the Court cannot establish, may be inferred from the fact that the leaders were selected by the United States, and from other factors such as the organization, training and equipping of the force, planning of operations, the choosing of targets and the operational support provided. There is no clear evidence that the United States actually exercised such a degree of control as to justify treating the contras as acting on its behalf.

5. Having reached the above conclusion, the Court takes the view that the contras remain responsible for their acts, in particular the alleged violations by them of humanitarian law. For the United States to be legally responsible, it would have to be proved that that State had effective control of the operations in the course of which the alleged violations were committed.

6. Nicaragua has complained of certain measures of an economic nature taken against it by the Government of the United States, which it regards as an indirect form of intervention in its internal affairs. Economic aid was suspended in January 1981; and terminated in April 1981, the United States acted to oppose or block loans to Nicaragua by international financial bodies; the sugar import quota from Nicaragua was reduced by 90 percent in September 1983; and a total trade embargo on Nicaragua was declared by an executive order of the President of the United States on 1 May 1985.

VIII. The conduct of Nicaragua (paras. 126-171)

The Court has to ascertain, so far as possible, whether the activities of the United States complained of, claimed to have been the exercise of collective self-defence, may be justified by certain facts attributable to Nicaragua.

1. The United States has contended that Nicaragua was actively supporting armed groups operating in certain of the neighbouring countries, particularly in El Salvador, and specifically in the form of the supply of arms, an accusation which Nicaragua has repudiated. The Court first examines the activity of Nicaragua with regard to El Salvador.

Having examined various evidence, and taking account of a number of concordant indications, many of which were provided by Nicaragua itself, from which the Court can reasonably infer the provision of a certain amount of aid from Nicaraguan territory, the Court concludes that support for the armed opposition in El Salvador from Nicaraguan territory was a fact up to the early months of 1981. Subsequently, evidence of military aid from or through Nicaragua remains very weak, despite the deployment by the United States in the region of extensive

technical monitoring resources. The Court cannot however conclude that no transport of or traffic in arms existed. It merely takes note that the allegations of arms traffic are not solidly established, and has not been able to satisfy itself that any continuing flow on a significant scale took place after the early months of 1981.

Even supposing it were established that military aid was reaching the armed opposition in El Salvador from the territory of Nicaragua, it still remains to be proved that such aid is imputable to the authorities of Nicaragua, which has not sought to conceal the possibility of weapons crossing its territory, but denies that this is the result of any deliberate official policy on its part. Having regard to the circumstances characterizing this part of Central America, the Court considers that it is scarcely possible for Nicaragua's responsibility for arms traffic on its territory to be automatically assumed. The Court considers it more consistent with the probabilities to recognize that an activity of that nature, if on a limited scale, may very well be pursued unknown to the territorial government. In any event the evidence is insufficient to satisfy the Court that the Government of Nicaragua was responsible for any flow of arms at either period.

2. The United States has also accused Nicaragua of being responsible for cross-border military attacks on Honduras and Costa Rica. While not as fully informed on the question as it would wish to be, the Court considers as established the fact that certain trans-border military incursions are imputable to the Government of Nicaragua.

3. The Judgment recalls certain events which occurred at the time of the fall of President Somoza, since reliance has been placed on them by the United States to contend that the present Government of Nicaragua is in violation of certain alleged assurances given by its immediate predecessor. The Judgment refers in particular to the "Plan to secure peace" sent on 12 July 1979 by the "Junta of the Government of National Reconstruction" of Nicaragua to the Secretary-General of the OAS, mentioning, inter alia, its "firm intention to establish full observance of human rights in our country" and "to call the first free elections our country has known in this century". The United States considers that it has a special responsibility regarding the implementation of these commitments.

IX. The applicable law: customary international law (paras. 172-182)

The Court has reached the conclusion (section V, in fine) that it has to apply the multilateral treaty reservation in the United States declaration, the consequential exclusion of multilateral treaties being without prejudice either to other treaties or other sources of law enumerated in Article 38 of the Statute. In order to determine the law actually to be applied to the dispute, it has to ascertain the consequences of the exclusion of the applicability of the multilateral treaties for the definition of the content of the customary international law which remains applicable.

The Court, which has already commented briefly on this subject in the jurisdiction phase (I.C.J. Reports 1984, pp. 424 and 425, para. 73), develops its initial remarks. It does not consider that it can be claimed, as the United States does, that all the customary rules which may be invoked have a content exactly identical to that of the rules contained in the treaties which cannot be applied by virtue of the United States reservation. Even if a treaty norm and a customary norm relevant to the present dispute were to have exactly the same content, this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm of its separate applicability. Consequently, the Court is in no way bound to uphold customary rules only in so far as they differ from the treaty rules which it is prevented by the United States reservation from applying.

In response to an argument of the United States, the Court considers that the divergence between the content of the customary norms and that of the treaty law norms is not such that a judgment confined to the field of customary international law would not be susceptible of compliance or execution by the parties.

X. The content of the applicable law (paras. 183 to 225)

1. Introduction: general observations (paras. 183-186)

The Court has next to consider what are the rules of customary law applicable to the present dispute. For this purpose it has to consider whether a customary rule exists in the opinio juris of States, and satisfy itself that it is confirmed by practice.

2. The prohibition of the use of force, and the right of self-defence (paras. 187 to 201)

The Court finds that both Parties take the view that the principles as to the use of force incorporated in the United Nations Charter correspond, in essentials, to those found in customary international law. They therefore accept a treaty-law obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations (Art. 2, para. 4, of the Charter). The Court has however to be satisfied that there exists in customary law an opinio juris as to the binding character of such abstention. It considers that this opinio juris may be deduced from, inter alia, the attitude of the Parties and of States towards certain General Assembly resolutions, and particularly resolution 2625 (XXV) entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations". Consent to such resolutions is one of the forms of expression of an opinio juris with regard to the principle of non-use of force, regarded as a principle of customary international law, independently of the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter.

The general rule prohibiting force established in customary law allows for certain exceptions. The exception of the right of individual or collective self-defence is also, in the view of States, established in customary law, as is apparent for example from the terms of Article 51 of the United Nations Charter, which refers to an "inherent right", and from the declaration in resolution 2625 (XXV). The Parties, who consider the existence of this right to be established as a matter of customary international law, agree in holding that whether the response to an attack is lawful depends on the observance of the criteria of the necessity and the proportionality of the measures taken in self-defence.

Whether self-defence be individual or collective, it can only be exercised in response to an "armed attack". In the view of the Court, this is to be understood as meaning not merely action by regular armed forces across an international border, but also the sending by a State of armed bands on to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack had it been carried out by regular armed forces. The Court quotes the definition of aggression annexed to General Assembly resolution 3314 (XXIX) as expressing customary law in this respect.

The Court does not believe that the concept of "armed attack" includes assistance to rebels in the form of the provision of weapons or logistical or other support. Furthermore, the Court finds that in customary international law, whether of a general kind or that particular to the inter-American legal system, there is no rule permitting the exercise of collective self-defence in the absence of a request by the State which is a victim of the alleged attack, this being additional to the requirement that the State in question should have declared itself to have been attacked.

3. The principle of non-intervention (paras. 202 to 209)

The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interference. Expressions of an opinio juris of States regarding the existence of this principle are numerous. The Court notes that this principle, stated in its own jurisprudence, has been reflected in numerous declarations and resolutions adopted by international organizations and conferences in which the United States and Nicaragua have participated. The text thereof testifies to the acceptance by the United States and Nicaragua of a customary principle which has universal application. As to the content of the principle in customary law, the Court defines the constitutive elements which appear relevant in this case: a prohibited intervention must be one bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely (for example the choice of a political, economic, social and cultural system, and formulation of foreign policy). Intervention is wrongful when it uses, in regard to such choices, methods of coercion, particularly force, either in the direct form of military action or in the indirect form of support for subversive activities in another State.

With regard to the practice of States, the Court notes that there have been in recent years a number of instances of foreign intervention in one State for the benefit of forces opposed to the government of that State. It concludes that the practice of States does not justify the view that any general right of intervention in support of an opposition within another State exists in contemporary international law; and this is in fact not asserted either by the United States or by Nicaragua.

4. Collective counter-measures in response to conduct not amounting to armed attack (paras. 210 and 211)

The Court then considers the question whether, if one State acts towards another in breach of the principle of non-intervention, a third State may lawfully take action by way of counter-measures which would amount to an intervention in the first State's internal affairs. This would be analogous to the right of self-defence in the case of armed attack, but the act giving rise to the reaction would be less grave, not amounting to armed attack. In the view of the Court, under international law in force today, States do not have a right of "collective" armed response to acts which do not constitute an "armed attack".

5. State sovereignty (paras. 212 to 214)

Turning to the principle of respect for State sovereignty, the Court recalls that the concept of sovereignty, both in treaty-law and in customary international law, extends to the internal waters and territorial sea of every State and to the airspace above its territory. It notes that the laying of mines necessarily affects the sovereignty of the coastal State, and that if the right of access to ports is hindered by the laying of mines by another State, what is infringed is the freedom of communications and of maritime commerce.

6. Humanitarian law (paras. 215 to 220)

The Court observes that the laying of mines in the waters of another State without any warning or notification is not only an unlawful act but also a breach of the principles of humanitarian law underlying the Hague Convention No. VIII of 1907. This consideration leads the Court on to examination of the international humanitarian law applicable to the dispute. Nicaragua has not expressly invoked the provisions of international humanitarian law as such, but has complained of acts committed on its territory which would appear to be breaches thereof. In its submissions it has accused the United States of having killed, wounded and kidnapped citizens of Nicaragua. Since the evidence available is insufficient for the purpose of attributing to the United States the acts committed by the contras, the Court rejects this submission.

The question however remains of the law applicable to the acts of the United States in relation to the activities of the contras. Although Nicaragua has refrained from referring to the four Geneva Conventions of 12 August 1949, to which Nicaragua and the United States are parties, the Court considers that the rules stated in Article 3 which is common to the four Conventions, applying to armed conflicts of a non-international character, should be applied. The United States is under an obligation to "respect" the Conventions and even to "ensure respect" for them, and thus not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3. This obligation derives from the general principles of humanitarian law to which the Conventions merely give specific expression.

7. The 1956 treaty (paras. 221 to 225)

In its Judgment of 26 November 1984, the Court concluded that it had jurisdiction to entertain claims concerning the existence of a dispute between the United States and Nicaragua as to the interpretation or application of a number of articles of the treaty of Friendship, Commerce and Navigation signed at Managua on 21 January 1956. It has to determine the meaning of the various relevant provisions, and in particular of Article XXI, paragraphs 1 (c) and 1 (d), by which the parties reserved the power to derogate from the other provisions.

XI. Application of the law to the facts (paras. 226 to 282)

Having set out the facts of the case and the rules of international law which appear to be in issue as a result of those facts, the Court has now to appraise the facts in relation to the legal rules applicable, and determine whether there are present any circumstances excluding the unlawfulness of particular acts.

1. The prohibition of the use of force and the right of self-defence (paras. 227 to 238)

Appraising the facts first in the light of the principle of the non-use of force, the Court considers that the laying of mines in early 1984 and certain attacks on Nicaraguan ports, oil installations and naval bases, imputable to the United States, constitute infringements of this principle, unless justified by circumstances which exclude their unlawfulness. It also considers that the United States has committed a prima facie violation of the principle by arming and training the contras, unless this can be justified as an exercise of the right of self-defence.

On the other hand, it does not consider that military manoeuvres held by the United States near the Nicaraguan borders, or the supply of funds to the contras, amounts to a use of force.

The Court has to consider whether the acts which it regards as breaches of the principle may be justified by the exercise of the right of collective self-defence, and has therefore to establish whether the circumstances required are present. For this, it would first have to find that Nicaragua engaged in an armed attack against El Salvador, Honduras or Costa Rica, since only such an attack could justify reliance on the right of self-defence. As regards El Salvador, the Court considers that in customary international law the provision of arms to the opposition in another State does not constitute an armed attack on that State. As regards Honduras and Costa Rica, the Court states that, in the absence of sufficient information as to the transborder incursions into the territory of those two States from Nicaragua, it is difficult to decide whether they amount, singly or collectively, to an armed attack by Nicaragua. The Court finds that neither these incursions nor the alleged supply of arms may be relied on as justifying the exercise of the right of collective self-defence.

Secondly, in order to determine whether the United States was justified in exercising self-defence, the Court has to ascertain whether the circumstances required for the exercise of this right of collective self-defence were present, and therefore considers whether the States in question believed that they were the victims of an armed attack by Nicaragua, and requested the assistance of the United States in the exercise of collective self-defence. The Court has seen no evidence that the conduct of those States was consistent with such a situation.

Finally, appraising the United States activity in relation to the criteria of necessity and proportionality, the Court cannot find that the activities in question were undertaken in the light of necessity, and finds that some of them cannot be regarded as satisfying the criterion of proportionality.

Since the plea of collective self-defence advanced by the United States cannot be upheld, it follows that the United States has violated the principle prohibiting recourse to the threat or use of force by the acts referred to in the first paragraph of this section.

2. The principle of non-intervention (paras. 239 to 245)

The Court finds it clearly established that the United States intended, by its support of the contras, to coerce Nicaragua in respect of matters in which each State is permitted to decide freely, and that the intention of the contras themselves was to overthrow the present Government of Nicaragua. It considers that if one State, with a view to the coercion of another State, supports and assists armed bands in that State whose purpose is to overthrow its government, that amounts to an intervention in its internal affairs, whatever the political objective of the State giving support. It therefore finds that the support given by the United States to the military and paramilitary activities of the contras in Nicaragua, by financial support, training, supply of weapons, intelligence and logistic support, constitutes a clear breach of the principle of non-intervention. Humanitarian aid on the other hand cannot be

regarded as unlawful intervention. With effect from 1 October 1984, the United States Congress has restricted the use of funds to "humanitarian assistance" to the contras. The Court recalls that if the provision of "humanitarian assistance" is to escape condemnation as an intervention in the internal affairs of another State, it must be limited to the purposes hallowed in the practice of the Red Cross, and above all be given without discrimination.

With regard to the form of indirect intervention which Nicaragua sees in the taking of certain action of an economic nature against it by the United States, the Court is unable to regard such action in the present case as a breach of the customary law principle of non-intervention.

3. Collective counter-measures in response to conduct not amounting to armed attack (paras. 246 to 249)

Having found that intervention in the internal affairs of another State does not produce an entitlement to take collective counter-measures involving the use of force, the Court finds that the acts of which Nicaragua is accused, even assuming them to have been established and imputable to that State, could not justify counter-measures taken by a third State, the United States, and particularly could not justify intervention involving the use of force.

4. State sovereignty (paras. 250 to 253)

The Court finds that the assistance to the contras, the direct attacks on Nicaraguan ports, oil installations, etc., the mining operations in Nicaraguan ports, and the acts of intervention involving the use of force referred to in the Judgment, which are already a breach of the principle of non-use of force, are also an infringement of the principle of respect for territorial sovereignty. This principle is also directly infringed by the unauthorized overflight of Nicaraguan territory. These acts cannot be justified by the activities in El Salvador attributed to Nicaragua; assuming that such activities did in fact occur, they do not bring into effect any right belonging to the United States. The Court also concludes that, in the context of the present proceedings, the laying of mines in or near Nicaraguan ports constitutes an infringement, to Nicaragua's detriment, of the freedom of communications and of maritime commerce.

5. Humanitarian law (paras. 254 to 256)

The Court has found the United States responsible for the failure to give notice of the mining of Nicaraguan ports.

It has also found that, under general principles of humanitarian law, the United States was bound to refrain from encouragement of persons or groups engaged in the conflict in Nicaragua to commit

violations of common Article 3 of the four Geneva Conventions of 12 August 1949. The manual on "Psychological Operations in Guerrilla Warfare", for the publication and dissemination of which the United States is responsible, advises certain acts which cannot but be regarded as contrary to that article.

6. Other grounds mentioned in justification of the acts of the United States (paras. 257 to 269)

The United States has linked its support to the contras with alleged breaches by the Government of Nicaragua of certain solemn commitments to the Nicaraguan people, the United States and the OAS. The Court considers whether there is anything in the conduct of Nicaragua which might legally warrant counter-measures by the United States in response to the alleged violations. With reference to the "Plan to secure peace" put forward by the Junta of the Government of National Reconstruction (12 July 1979), the Court is unable to find anything in the documents and communications transmitting the plan from which it can be inferred that any legal undertaking was intended to exist. The Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another on the ground that the latter has opted for some particular ideology or political system. Furthermore the Respondent has not advanced a legal argument based on an alleged new principle of "ideological intervention".

With regard more specifically to alleged violations of human rights relied on by the United States, the Court considers that the use of force by the United States could not be the appropriate method to monitor or ensure respect for such rights, normally provided for in the applicable conventions. With regard to the alleged militarization of Nicaragua, also referred to by the United States to justify its activities, the Court observes that in international law there are no rules, other than such rules as may be accepted by the State concerned, by treaty or otherwise, whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States without exception.

7. The 1956 Treaty (paras. 270 to 282)

The Court turns to the claims of Nicaragua based on the Treaty of Friendship, Commerce and Navigation of 1956, and the claim that the United States has deprived the Treaty of its object and purpose and emptied it of real content. The Court cannot however entertain these claims unless the conduct complained of is not "measures ... necessary to protect the essential security interests" of the United States, since Article XXI of the Treaty provides that the Treaty shall not preclude the application of such measures. With regard to the question what activities of the United States might have been such as to deprive the Treaty of its object and purpose, the Court makes a distinction. It is unable to regard all the acts complained of in that light, but considers that there are certain activities which undermine the whole spirit of the agreement. These are the mining of Nicaraguan ports, the direct attacks on ports, oil installations, etc., and the general trade embargo.

The Court also upholds the contention that the mining of the ports is in manifest contradiction with the freedom of navigation and commerce guaranteed by Article XIX of the Treaty. It also concludes that the trade embargo proclaimed on 1 May 1985 is contrary to that article.

The Court therefore finds that the United States is prima facie in breach of an obligation not to deprive the 1956 Treaty of its object and purpose (pacta sunt servanda), and has committed acts in contradiction with the terms of the Treaty. The Court has however to consider whether the exception in Article XXI concerning "measures ... necessary to protect the essential security interests" of a Party may be invoked to justify the acts complained of. After examining the available material, particularly the Executive Order of President Reagan of 1 May 1985, the Court finds that the mining of Nicaraguan ports, and the direct attacks on ports and oil installations, and the general trade embargo of 1 May 1985, cannot be justified as necessary to protect the essential security interests of the United States.

XII. The claim for reparation (paras. 283 to 285)

The Court is requested to adjuge and declare that compensation is due to Nicaragua, the quantum thereof to be fixed subsequently, and to award to Nicaragua the sum of 370.2 million US dollars as an interim award. After satisfying itself that it has jurisdiction to order reparation, the Court considers appropriate the request of Nicaragua for the nature and amount of the reparation to be determined in a subsequent phase of the proceedings. It also considers that there is no provision in the Statute of the Court either specifically empowering it or debarring it from making an interim award of the kind requested. In a case in which one Party is not appearing, the Court should refrain from any unnecessary act which might prove an obstacle to a negotiated settlement. The Court therefore does not consider that it can accede at this stage to this request by Nicaragua.

XIII. The provisional measures (paras. 286 to 289)

After recalling certain passages in its Order of 10 May 1984, the Court concludes that it is incumbent on each Party not to direct its conduct solely by reference to what it believes to be its rights. Particularly is this so in a situation of armed conflict where no reparation can efface the results of conduct which the Court may rule to have been contrary to international law.

XIV. Peaceful settlement of disputes; the Contadora process (paras. 290 to 291)

In the present case the Court has already taken note of the Contadora process, and of the fact that it had been endorsed by the

United Nations Security Council and General Assembly, as well as by Nicaragua and the United States. It recalls to both Parties to the present case the need to co-operate with the Contadora efforts in seeking a definitive and lasting peace in Central America, in accordance with the principle of customary international law that prescribes the peaceful settlement of international disputes, also endorsed by Article 33 of the United Nations Charter.

Annex to Press Communiqué No. 86/8

Summary of the Opinions appended to the Judgment of the Court

Separate Opinion of Judge Nagendra Singh, President

The operative part paragraph 292 (16) of the Judgment adopted unanimously by the Court which enjoins parties to seek a peaceful solution of their disputes in accordance with international law, really rests on the due observance of two basic principles: namely that of non-use of force in inter-State relations and that of non-intervention in the affairs of other States. This in the President view is the main thrust of the Judgment of the Court rendered with utmost sincerity to serve the best interests of the community.

In fact, the cardinal principle of non-use of force in international relations has been the pivotal point of a time-honoured legal philosophy that has evolved particularly after the two world wars of the current century. The Charter provisions as well as the Latin American Treaty System have not only developed the concept but strengthened it to the extent that it would stand on its own, even if the Charter and the Treaty basis were held inapplicable in this case. The obvious explanation is that the original customary aspect which has evolved with the treaty law development has come now to stay and survive as the existing modern concept of international law, whether customary, because of its origins, or "a general principle of international law recognized by civilized nations". The contribution of the Court has been to emphasize the principle of non-use of force as one belonging to the realm of jus cogens and hence as the very cornerstone of the human effort to promote peace in a world torn by strife. Force begets force and aggravates conflicts, embitters relations and endangers peaceful resolution of the dispute.

There is also the key doctrine of non-intervention in the affairs of States which is equally vital for the peace and progress of humanity being essentially needed to promote the healthy existence of the community. The principle of non-intervention is to be treated as a sanctified absolute rule of law.

States must observe both these principles namely that of non-use of force and that of non-intervention in the best interests of peace and order in the community. The Court has rightly held them both as principles of customary international law although sanctified by treaty law, but applicable in this case in the former customary manifestation having been reinvigorated by being further strengthened by the express consent of States particularly the Parties in dispute here. This must indeed have all the weight that law could ever command in any case.

The decision of the Court is in the result of a collegiate exercise reached after prolonged deliberation and a full exchange of views of no less than fifteen Judges who, working according to the Statute and Rules of the Court, have examined the legal arguments and all the evidence before it. In this, as in all other cases, every care has been taken to strictly observe the procedures prescribed and the decision is upheld by a clear majority. What is more, the binding character of the Judgment under the Statute (Art. 59) is made sacrosanct by a provision of the UN Charter (Art. 94): all Members of the United Nations have undertaken an obligation to comply with the Court's decisions addressed to them and to always respect the validity of the Judgment.

Separate...

Separate Opinion of Judge Lachs

Judge Lachs begins by drawing attention to the requirements of the Statute in respect of the personal qualities and diversity of origin that must characterize Members of the Court, and deprecates any aspersion upon their independence.

On the substance of the Judgment he would have preferred more attention to be given to foreign assistance to the opposition forces in El Salvador, and different formulae to have been used in various places.

Judge Lachs returns to some aspects of jurisdiction, considering that insufficient weight had previously been given to the forty years that had elapsed before any public objection had been raised against the validity of Nicaragua's acceptance of the Court's jurisdiction. When that validity had been privately questioned in connection with a case in the mid-1950's, action should have been taken by the United Nations: Nicaragua should have been asked to complete any necessary formalities and, if it failed to do so, would have been removed from the list of States subject to the compulsory jurisdiction of the Court. The United Nations having taken no action, it was legitimate to view the imperfection as cured by acquiescence over a very long period. The jurisdiction of the Court based on the FCN Treaty of 1956 gave no cause for doubt.

Judge Lachs also deals with the question of the justiciability of the case: the close relationship between legal and political disputes, as between law and politics. International law today covers such wide areas of international relations that only very few domains - for instance, the problem of disarmament, or others, specifically excluded by States - are not justiciable. He specifically instances the case concerning United States Diplomatic and Consular Staff in Tehran.

Referring to the Court's refusal to grant a hearing to El Salvador at the jurisdictional stage, Judge Lachs states that he has come to view it as a judicial error which does not, however, justify any unrelated conclusions.

The broad confrontation between the Parties should, in Judge Lachs's view, be settled within the framework of the Contadora Plan, in co-operation with all States of the region. The area, torn by conflicts, suffering from under-development for a long time, requires a new approach based on equal consideration of the interests of all concerned in the spirit of good-neighbourly relations.

Separate Opinion of Judge Ruda

The separate Opinion of Judge Ruda deals with four subjects. In the first place, Judge Ruda does not accept the reservation expressed by the United States in the letter dated 18 January 1985 "in respect of any decision by the Court regarding Nicaragua's claims". In Judge Ruda's view, pursuant to Article 94, paragraph 1, of the Charter of the United Nations, the Member States of the United Nations have formally accepted the obligation to comply with the Court's decisions.

The second part of the Opinion refers to the Vandenberg Amendment. Judge Ruda voted against the application of the Amendment, for the reasons stated in the separate Opinion which he submitted in 1984.

In...

In the third part, Judge Ruda deals with the question of self-defence. He explains that his conclusions are the same as those reached by the Court, but in his view it is not necessary to enter into all the factual details, because assistance to rebels is not per se a pretext for self-defence from the legal point of view.

The fourth part is devoted to the reasons why Judge Ruda, despite having voted in 1984 against the Treaty of Friendship, Commerce and Navigation as a basis of the Court's jurisdiction, believes he is bound to vote on the substantive issues submitted to the Court on this subject.

Separate Opinion of Judge Elias

Judge Elias considers that, following the Court's Judgment in the jurisdictional phase, the multilateral treaty reservation attached to the United States declaration accepting jurisdiction under the Optional Clause was left in abeyance and had no further relevance unless El Salvador, Honduras or Costa Rica intervened in the phase on merits and reparation. For the Court to have applied it was therefore incorrect and tantamount to invoking a power to revise its decision on jurisdiction and admissibility on behalf of non-parties to the case.

Separate Opinion of Judge Ago

While subscribing to the Judgment as a whole and approving in particular the position adopted by the Court concerning the United States' multilateral treaty reservation, Judge Ago remains hesitant about certain points. For example, he feels that the Court made a somewhat too hasty finding as to the quasi-identity of substance between customary international law and the law enshrined in certain major multilateral treaties of universal character, and was also somewhat too ready to see the endorsement of certain principles by UN and OAS resolutions as proof of the presence of those principles in the opinio juris of members of the international community. Judge Ago also feels obliged to draw attention to what he views as some partially contradictory aspects of the Court's assessment of the factual and legal situation. He further considers that some passages of the Judgment show a paucity of legal reasoning to support the Court's conclusions as to the imputability of certain acts to the Respondent qua acts giving rise to international responsibility, and would have preferred to see the Court include a more explicit confirmation of its case-law on this subject.

Separate...

Separate Opinion of Judge Sette-Camara

Judge Sette-Camara fully concurs with the Judgment because he firmly believes that "the non-use of force as well as non-intervention - the latter as a corollary of equality of States and self-determination - are not only cardinal principles of customary international law but could in addition be recognized as peremptory rules of customary international law which impose obligations on all States". His separate opinion deals only with subparagraph (1) of the operative part, against which he has voted. He maintains that the multilateral treaty reservation, appended to the United States 1946 Declaration of Acceptance of the Jurisdiction of the Court according to Article 36, paragraph 2, of the Statute, cannot be applied to the present case, since none of the decisions taken in the operative part can in any way "affect" third States, and in particular El Salvador. The case is between Nicaragua and the United States and the binding force of the Court's decision is confined to these two Parties. Judge Sette-Camara recognizes the right of any State making Declarations of Acceptance to append to them whatever reservations it deems fit. However, he contends that the Court is free, and indeed bound, to interpret those reservations. He regrets that the application of the multilateral treaty reservation debarred the Court from resting the Judgment on the provisions of the Charter of the United Nations and the Charter of the Organization of American States, and forced it to resort only to principles of customary international law and the bilateral Treaty of Friendship, Commerce and Navigation of 1956. He submits that the law applied by the Judgment would be clearer and more precise if the Court had resorted to the specific provisions of the relevant multilateral conventions.

Separate Opinion of Judge Ni

Judge Ni's primary concern, as expressed in his separate opinion, is with respect to the "multilateral treaty reservation" invoked by the United States. In his view, any acceptance of its applicability entailed (1) the exclusion of the Court from exercising jurisdiction insofar as Nicaragua's claims were based on the multilateral treaties in question, and (2) the preclusion, if the case was on other grounds still in the Court for adjudication of the merits, of the application of such multilateral treaties. In the instant case, however, the United States, while invoking the multilateral treaty reservation to challenge the exercise of jurisdiction by the Court, had in the meantime persistently claimed that the multilateral treaties, which constitute the very basis of its reservation, should alone be applied to the case in dispute. That claim amounted in effect to a negation of its own reservation and, taking into account all the relevant circumstances, ought to have been considered as a waiver of the multilateral treaty reservation. Such being the case, Judge Ni differed from the majority of the Court in that he considered that the rules contained in multilateral treaties, as well as customary international law, should, where appropriate, have been applied to the case.

Dissenting...

Dissenting Opinion of Judge Oda

Judge Oda agrees with the Court's recognition of the applicability of the multilateral treaty proviso attached to the United States' 1946 declaration but considers that, having thus decided that the dispute had arisen under a multilateral treaty, it should have ceased to entertain the application of Nicaragua on the basis of that declaration. The Court had been wrong to interpret the exclusion of the dispute by that proviso as merely placing restrictions upon the sources of law to which it was entitled to refer.

Judge Oda further believes that, to the extent that the Nicaraguan claims presupposed the Court's jurisdiction under declarations made pursuant to Article 36 (2) of the Statute, which refers to "legal disputes", they should have been declared non-justiciable, since the dispute was not "legal" within the meaning and intention of that clause or, even if it were, it was not one that the Court could properly entertain: as a political dispute, it was more suitable for resolution by other organs and procedures. Moreover, the facts the Court could elicit by examining the evidence in the absence of the Respondent fell far short of what was needed to show a complete picture.

Judge Oda thus considers that, in so far as the Court could properly entertain the case, it could do so on the basis of Article 36 (1) of the Statute, where the term "all matters specially provided for in... treaties... in force" gave no such grounds for questioning the "legal" nature of the dispute. The Court could therefore legitimately examine any breach of the concrete terms of the 1956 Treaty of Friendship, Commerce and Navigation. In Judge Oda's view, the mining of the Nicaraguan ports had constituted such a breach, for which the United States had incurred responsibility.

Judge Oda emphasizes that his negative votes on many counts of the Judgment must not be interpreted as implying that he is opposed to the rules of law concerning the use of force or intervention, of whose violation the United States has been accused, but are merely a logical consequence of his convictions on the subject of jurisdiction under Article 36 (2) of the Statute.

Finally, Judge Oda regrets that the Court has been needlessly precipitate in giving its views on collective self-defence in its first Judgment to broach that subject.

Dissenting...

Dissenting Opinion of Judge Schwebel

Judge Schwebel dissented from the Court's Judgment on factual and legal grounds. He agreed with the Court in its holdings against the United States for its failure to make known the existence and location of mines laid by it and its causing publication of a manual advocating acts in violation of the law of war. But Judge Schwebel concluded that the United States essentially acted lawfully in exerting armed pressures against Nicaragua, both directly and through its support of the contras, because Nicaragua's prior and sustained support of armed insurgency in El Salvador was tantamount to an armed attack upon El Salvador against which the United States could react in collective self-defence in El Salvador's support.

Judge Schwebel found that, since 1979, Nicaragua had assisted and persisted in providing large-scale, vital assistance to the insurgents in El Salvador. The delictual acts of Nicaragua had not been confined to providing the Salvadoran rebels with large quantities of arms, munitions and supplies, which of themselves arguably might be seen as not tantamount to armed attack. Nicaragua had also joined with the Salvadoran rebels in the organization, planning and training for their acts of insurgency, and had provided them with command-and-control facilities, bases, communications and sanctuary which enabled the leadership of the Salvadoran rebels to operate from Nicaraguan territory. That scale of assistance, in Judge Schwebel's view, was legally tantamount to an armed attack. Not only was El Salvador entitled to defend itself against that armed attack; it had called upon the United States to assist it in the exercise of collective self-defence. The United States was entitled to do so, through measures overt or covert. Those measures could be exerted not only in El Salvador but against Nicaragua on its own territory.

In Judge Schwebel's view, the Court's conclusion that the Nicaraguan Government was not "responsible for any flow of arms" to the Salvadoran insurgents was not sustained by "judicial or judicious" considerations. The Court had "excluded, discounted and excused the unanswerable evidence of Nicaragua's major and maintained intervention in the Salvadoran insurgency". Nicaragua's intervention in El Salvador in support of the Salvadoran insurgents was, Judge Schwebel held, admitted by the President of Nicaragua, affirmed by Nicaragua's leading witness in the case, and confirmed by a "cornucopia of corroboration".

Even if, contrary to his view, Nicaragua's actions in support of the Salvadoran insurgency were not viewed as tantamount to an armed attack, Judge Schwebel concluded that they undeniably constituted unlawful intervention. But the Court, "remarkably enough", while finding the United States responsible for intervention in Nicaragua, failed to recognize Nicaragua's prior and continuing intervention in El Salvador.

For United States measures in collective self-defence to be lawful, they must be necessary and proportionate. In Judge Schwebel's view, it was doubtful whether the question of necessity in this case was justiciable, because the facts were so indeterminate, depending as they did on whether measures not involving the use of force could succeed in terminating Nicaragua's intervention in El Salvador. But it could reasonably be held that the necessity of those measures was indicated by "persistent Nicaraguan failure to cease armed subversion of El Salvador".

Judge...

Judge Schwebel held that "the actions of the United States are strikingly proportionate. The Salvadoran rebels, vitally supported by Nicaragua, conduct a rebellion in El Salvador; in collective self-defence, the United States symmetrically supports rebels who conduct a rebellion in Nicaragua. The rebels in El Salvador pervasively attack economic targets of importance in El Salvador; the United States selectively attacks economic targets of military importance" in Nicaragua.

Judge Schwebel maintained that, in contemporary international law, the State which first intervenes with the use of force in another State - as by substantial involvement in the sending of irregulars onto its territory - is, prima facie, the aggressor. Nicaragua's status as prima facie aggressor can only be confirmed upon examination of the facts. "Moreover", Judge Schwebel concluded, "Nicaragua has compounded its delictual behaviour by pressing false testimony on the Court in a deliberate effort to conceal it. Accordingly, on both grounds, Nicaragua does not come before the Court with clean hands. Judgment in its favour is thus unwarranted, and would be unwarranted even if it should be concluded - as it should not be - that the responsive actions of the United States were unnecessary or disproportionate."

Dissenting Opinion of Judge Sir Robert Jennings

Judge Sir Robert Jennings agreed with the Court that the United States multilateral treaty reservation is valid and must be respected. He was unable to accept the Court's decision that it could, nevertheless, exercise jurisdiction over the case by applying customary law in lieu of the relevant multilateral treaties. Accordingly, whilst able to vote in favour of certain of the Court's findings, he felt compelled to vote against its decisions on the use of force, on intervention, and on the question of self-defence, because in his view the Court was lacking jurisdiction to decide those matters.