

ОБЪЕДИНЕННЫЕ НАЦИИ

ГЕНЕРАЛЬНАЯ
АССАМБЛЕЯ



СОВЕТ
БЕЗОПАСНОСТИ



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ГЕНЕРАЛЬНАЯ АССАМБЛЕЯ
Сороковая сессия
Пункт 21 повестки дня
ПОЛОЖЕНИЕ В ЦЕНТРАЛЬНОЙ
АМЕРИКЕ: УГРОЗА МЕЖДУНАРОДНОМУ
МИРУ И БЕЗОПАСНОСТИ И МИРНЫЕ
ИНИЦИАТИВЫ

СОВЕТ БЕЗОПАСНОСТИ
Сороковой год

Письмо Постоянного представителя Никарагуа при
Организации Объединенных Наций от 19 ноября
1985 года на имя Генерального секретаря

Имею честь обратиться к Вашему Превосходительству в связи с письмом, направленным на Ваше имя от 6 ноября 1985 года Постоянным представителем Соединенных Штатов Америки при Организации Объединенных Наций послом г-ном Верноном Э. Уолтерсом, в котором содержится просьба распространить в качестве официального документа доклад, озаглавленный "Революция за пределами наших границ: сандинистская интервенция в Центральной Америке" (A/40/858-S/17612).

Будучи не в состоянии привести доказательства мнимой интервенции Никарагуа против какого-либо центральноамериканского государства, Соединенные Штаты сфабриковали доклад, составленный в духе старой политики дезинформации в пропагандистских целях нынешней администрации Соединенных Штатов, которая, пытаясь оправдать свою грязную войну против моей страны и прикрываясь весьма своеобразным толкованием статьи 51 Устава, где речь идет о праве на индивидуальную и коллективную самооборону, тщатся доказать, будто мое правительство несет ответственность за незаконные действия, направленные на подрыв и дестабилизацию режимов в соседних странах. Следует напомнить, что это своевольное толкование права на индивидуальную и коллективную самооборону впервые дала в своем выступлении

12 апреля 1984 года в Американском обществе международного права г-жа Джин Киркпатрик, прежний представитель Соединенных Штатов в этой Организации, толкование, которое заставило бы покраснеть даже самых робких из числа американцев-интернационалистов.

Правительство моей страны серьезно обеспокоено тем, что созданные этой Организацией механизмы используются для распространения памфлета, который, подобно сфабрикованным вашингтонской администрацией предыдущим "белым книгам", лишен какой-либо ценности, ибо в нем излагаются искажающие действительность домыслы, рассчитанные на создание такого мирового общественного мнения, которое позволило бы американским правителям "оправдать" то, что оправдать невозможно: прямую или косвенную, открытую или тайную военную интервенцию одной из самых могущественных стран мира против небольшой страны с территорией 140 000 кв. км и населением около 3 млн. человек, совершаемую с единственной целью - "изменить существующую структуру" сандинистского правительства и, выражаясь на американском жаргоне, заставить его говорить "Uncle" ("Дядюшка"), что означает подчиниться (пресс-конференция президента Рейгана, состоявшаяся 21 февраля 1985 года).

Нас не удивляет, что те, кто преступает закон, пытаются теперь дезинформировать международное сообщество и свой собственный народ. Как отметил несколько недель назад в своем открытом письме представитель штата Массачусетс в конгрессе Соединенных Штатов г-н Эдвард Дж. Марки:

"Можно предполагать, что в ближайшие месяцы мы все чаще будем слышать аргументы от администрации Рейгана, одни и те же аргументы, согласно которым:

- Никарагуа является советским сателлитом, во главе которого стоит тоталитарное правительство, представляющее постоянную угрозу для своих соседей ...
- Сальвадор - это формирующаяся демократия, в которой отмечаются большие достижения в области прав человека ...
- Гондурас нуждается в нашей постоянной военной помощи для оказания противодействия соседней Никарагуа ...
- Коста-Рике необходима армия, для чего она должна отказаться от невоенной структуры, существующей в стране с 1948 года ...

Все эти утверждения являются частью пропагандистской блиц-кампании министерства обороны, ЦРУ и государственного департамента ... и совершенно очевидно, что все эти утверждения лживы".

Со своей стороны, девять членов конгресса Соединенных Штатов, входящих в Национальный комитет за мир в Центральной Америке, подчеркнули в открытом письме:

"Задумайтесь на минуту над такими неприятными мыслями: американские войска ведут тайную войну ... беженцы, лишенные крова, ищут спасения от угнетения и насилия ... сотрудники ЦРУ попирают американские законы и незаконно финансируют военные группы правого толка ... миллионы долларов американских налогоплательщиков разбазариваются на поставки оружия диктаторам ... репутация нашей страны в глазах мировой общественности запятнана".

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Американские сенаторы, конгрессмены, мэры и другие выборные должностные лица федерального правительства, властей штатов и местных органов, светские и религиозные деятели не раз оспаривали достоверность "белых книг". Они, как и все те члены международного сообщества, которые внимательно следят за нашей борьбой за мир, национальный суверенитет и неотъемлемое право на самоопределение, знают, кто нарушает международное право, кто сеет террор и смерть среди гражданского населения нашей страны, кто подготовил руководство для ведения психологических операций в условиях партизанской войны, в котором учат убивать и пытаться ни в чем неповинных людей, знают, кто, следуя политике государственного терроризма, минировал наши порты, совершал нападения на наши экономические объекты, уничтожал урожай, кто установил экономическое и торговое эмбарго против Никарагуа в вопиющее нарушение международных соглашений.

Если американские правители действительно заинтересованы в достижении мира в Центральной Америке, то они могут доказать это, откликнувшись на искреннее предложение президента Никарагуа команданте Даниэля Ортеги Сааведра, выдвинутое в связи с сороковой годовщиной Организации Объединенных Наций:

"Поэтому с этой высокой трибуны Никарагуа призывает правительство Соединенных Штатов неукоснительно соблюдать закрепленные в Уставе нормы мирного сосуществования между государствами, прекратить свою политику агрессии против Никарагуа, показав в эту годовщину Организации, намерено ли оно уважать суверенитет и право малого государства на самоопределение, готово ли оно выполнить предварительное заключение Международного Суда от 10 мая 1984 года и признать юрисдикцию этого органа Организации Объединенных Наций, и готово ли оно прекратить войну против Никарагуа и объявить мир".

Если же Соединенные Штаты действительно располагают доказательствами того, что Никарагуа нарушила принципы, содержащиеся в Уставе Организации Объединенных Наций, и принципы международного права, то почему они не представят эти доказательства в Международный Суд, как это делаем мы, миролюбивые страны, которые уважают международное право?

В качестве доказательства лживости обвинений американского правительства прилагаем текст заявления в Суде одного из тех американцев, которым дороги законность и справедливость, — г-на Дэвида Макмайкла, ранее работавшего по контракту экспертом в Центральном разведывательном управлении, который на протяжении двух лет как раз занимался анализом и оценкой всех доказательств мнимых поставок оружия из Никарагуа в Сальвадор.

Пусть решат международное сообщество и сам американский народ, кто является агрессором, кто нарушает определенные Уставом Организации Объединенных Наций принципы и цели, кто подрывает международный правопорядок, кто пытается дестабилизировать или свергнуть правительства, с которыми поддерживаются дипломатические отношения, — иными словами, кто проводит политику государственного терроризма. Пусть рассудит международное сообщество.

Буду признателен Вашему Превосходительству за распространение настоящей ноты и приложения к ней 1/, на языке оригинала, в качестве официальных документов Генеральной Ассамблеи по пункту 21 повестки дня и Совета Безопасности.

Хавьер ЧАМОРРО МОРА
Посол
Постоянный представитель
Никарагуа при Организации
Объединенных Наций

1/ Текст приложений имеется только на английском языке.

ANNEX I

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING MILITARY AND PARAMILITARY
ACTIVITIES IN AND AGAINST NICARAGUA

(NICARAGUA v. UNITED STATES OF AMERICA)

MEMORIAL OF NICARAGUA

MERITS

30 APRIL 1985

**Section II. The Use of Force by the United States
against Nicaragua Cannot Be Justified
as an Exercise of the Right of Self-
Defense**

- A. The Status of the Justification of Self-
Defense in the Context of Current Admissions
by the United States as to the Purposes and
Objectives of its Policy**
- B. In Any Event, the Justification of Self-
Defense Cannot Be Supported in the
Circumstances of this Case**
 - 1. Legal Justifications for the Use
of Force**
 - 2. The Factual Basis for the Justification
of Self-Defense Is Not Present in this
Case**

**Section II. The Use of Force by the United States
against Nicaragua Cannot Be Justified as an
Exercise of the Right of Self-defense.**

283. The United States has interposed no pleadings in this case formally seeking to justify its actions on grounds of self-defense. However, the Agent and various counsel for the United States, in speeches at the hearings on provisional measures and preliminary questions and in other public statements about the

case, have made reference to the relevance of self-defense to the merits of the case. For a considerable time, the United States also publicly maintained the fiction that the purpose of its armed actions and support of the mercenaries was to interdict traffic in arms allegedly proceeding from Nicaragua to assist rebels fighting against the government of El Salvador.

Occasional remarks by U.S. officials have referred to such interdiction as an exercise of the right of collective self-defense, presumably in association with El Salvador. NYT 4/9/84; WP 4/13/84. In light of the position Nicaragua has taken in this case on the operation of Article 53 of the Statute of the Court (see Chapter II, para. 153, supra), Nicaragua believes it appropriate to address the issue in this Memorial.

284. Before doing so, however, Nicaragua wishes to reaffirm, as sworn by its Foreign Minister, Miguel d'Escoto, in his affidavit in this case (Annex B), that the allegations concerning supply and assistance by Nicaragua to the rebels in El Salvador are untrue. The United States has failed to produce any evidence, before the Court or in any other public forum, to substantiate these allegations. In view of the enormous financial and technical resources available to the U.S. intelligence community, the absence of any evidence is a striking confirmation of Nicaragua's position. The evidence that is available from unofficial sources not only refutes the U.S. charges but goes far to support Nicaragua's assertion that it has not provided military supplies and assistance to the Salvadoran rebels. See Christian Science Monitor 5/2/84; BG 6/10/84; NYT 6/11/84; LAT 6/16/84.

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A. The Status of the Justification of Self-defense in the Context of Current Admissions by the United States as to the Purposes and Objectives of its Policy.

285. Developments since the Court's Judgment of November 26, 1984 have, as a matter of law, removed from this case any possibility of justification on grounds of self-defense. In this period, the United States has repeatedly, unequivocally and on the highest authority acknowledged that its purpose in supporting and directing military and paramilitary activities in and against Nicaragua is to overthrow the government of Nicaragua or to coerce it to change its present structure. Such a purpose is wholly incompatible with any justification on grounds of self-defense.

286. On February 21, 1985, President Reagan was asked whether "a goal of your policy now is to remove the Sandanista government?" He replied: "Well, remove in the sense of its present structure." Official Transcript of News Conference, p. 5, Annex C, Attachment I-14. Again, in the same interview, when asked ". . . aren't you advocating the overthrow of the present government?" he said:

"Not if the present government would turn around and say, all right, if they'd say 'Uncle.' "

Ibid., p. 6. As has been shown, "say 'Uncle'" is an American colloquialism for surrender. See Statement of Facts, para. 14.

287. In the light of these statements, earlier references by U.S. spokesmen and legal representatives to the purpose of arms interdiction or to the justification of self-defense stand revealed as cynical pretexts for a policy of naked and blatant intervention in the affairs of Nicaragua.

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288. In retrospect it can be seen that the references to self-defense were manufactured solely for the purposes of this case. They begin at or about the time the Application was filed. Before that, although there was much talk of arms interdiction, it was not put in the legal category of the justification of self-defense. See Chapter II, supra, paras. 202-203. Since the United States has withdrawn from the case, the references to self-defense have all but ceased.

289. Every development since President Reagan's February press conference serves to confirm and reinforce his admission as to the objectives of U.S. policy. As this Memorial was being written, the U.S. Administration engaged in an all-out campaign to induce the Congress to vote \$14 million for funding the activities of the mercenaries during the current fiscal year. The express premise of this campaign was that without such funding and other forms of U.S. support and involvement, the United States will be powerless to impose its will upon Nicaragua and to force it to comply with U.S. demands. Statements too numerous for citation from both supporters and opponents of the additional funding reflect this basic premise of the funding campaign. E.g., Statement of Facts paras. 133-150.

290. Indeed, the centerpiece of the campaign was the so-called "peace initiative" launched by President Reagan on April 4, 1985. In it, he offered a 60-day cease fire by the guerrillas "in return for an agreement by the Nicaraguan regime to begin a dialogue mediated by the Bishops Conference of the Roman Catholic Church with the goal of restoring democracy through honest

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elections." During that 60-day period, assistance to the mercenaries was to be restricted to non-military items. "If there is no agreement after 60 days of negotiations, I will lift these restrictions, unless both sides ask me not to." Official Transcript of Remarks, p. 2, Annex C, Attachment I-19. It is apparent that this "peace initiative" is a thinly veiled ultimatum. As President Betancur of Colombia said: "It is no longer a peace proposal, but a preparation for war." NYT 4/16/85.

291. It goes without saying that these purposes entirely negate the justification of self-defense. They are diametrically opposed to any conception of self-defense recognized by contemporary international law.

B. In Any Event, the Justification of Self-defense Cannot Be Supported in the Circumstances of this Case.

Art. 51 of the United Nations Charter provides:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to maintain or restore international peace and security."

Self-defense within the meaning of Article 51 is the only justification for the unilateral use of force under the Charter. The use of force by the United States against Nicaragua cannot be so justified. It follows that it cannot be justified at all.

1. Legal Justifications for the Use of Uorce

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292. The prohibition on the use of force in Article 2(4) of the Charter is categorical. The only exception to this prohibition, other than collective measures authorized by the Security Council, is the inherent right of individual or collective self-defense in case of armed attack, preserved under Article 51.⁹

293. The standard formulation is given in Brierly's Law of Nations:

"The broad effect of Article 2(4) is, therefore, that it entirely prohibits the use or threat of armed force against another state except in self-defence or in execution of collective measures authorized by the Council or Assembly."

Brierly, The Law of Nations, 1963, p. 415. This general view of the interacting relationship between Article 2(4) and Article 51 has the overwhelming support of international law publicists around the world. We list here some of the chief sources:

Alfaro, "La Question de la Definition de L'agression," 29 Revue de Droit International (Sottile) (1951), p. 374.

Baxter, "The Legal Consequences of the Unlawful Use of Force under the Charter," 62 American Society of International Law Proceedings (1968) p. 69.

Bentwich and Martin, A Commentary on the Charter of the United Nations, 1956, p. 13.

Bishop, "General Course of Public International Law, 1965," 115 Hague Recueil (1965, II), p. 428.

Briggs, The Law of Nations, 1953, at p. 964.

Brownlie, International Law and the Use of Force

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The one other exception is the provision for the use of force against ex-enemy states in Articles 107 and 53; however, these provisions may be described as a temporary exception which has now lapsed.

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by States, 1963, p. 113.

Chaumont, "Cours General de Droit International Public," 129 Hague Recueil (1970, I), p. 403.

Falk, "The New States and International Legal Order," 118 Hague Recueil (1966, II), p. 47.

Henkin, How Nations Behave, 1979, p. 137.

Jimenez de Arechaga, Derecho Constitucional de las Naciones Unidas, 1958, p. 87.

Kelsen, Principles of International Law, 1966, p. 54.

Lachs, "The Development and General Trends of International Law in Our Time," 169 Hague Recueil (1980, IV), pp. 159, 162.

E. Lauterpacht, "The Legal Irrelevance of the 'State of War,'" 62 American Society of International Law Proceedings (1968), p. 62.

Rousseau, Le Droit des Conflit Armes, 1983, pp. 535-536.

Scelle, "Quelques Reflexions sur L'abolition de la Competence de Guerre," 58 R.G.D.I.P. (1954), p. 5.

Schachter, "The Right of States to Use Armed Force," 82 Michigan Law Review (1984), p. 1620.

Schwebel, "Aggression, Intervention and Self-Defense in Modern International Law," 136 Hague Recueil (1973, II), p. 449.

Wehberg, 78 Hague Recueil (1951, I), p. 70.

294. One further quotation from Sir Humphrey Waldock's authoritative treatment, "The Use of Force in International Law," is appropriate. He says:

"Armed reprisals to obtain satisfaction for an injury or any armed intervention as an instrument of national policy otherwise than for self-defence is illegal under the Charter. . . . Thus the only question is, what is the scope of the exception of self-defense."

81 Hague Recueil (1952, II), p. 493.

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295. The classic case of the use of force "as an instrument of national policy" is the attempt to overthrow the government of another State that is for some reason not acceptable to the acting State, or to force it to change its policies. Whatever may be "the scope of the exception of self-defence" it cannot stretch to cover the use of force for these purposes.

296. Even the minority of publicists who contend that Article 51 does not define or limit the right of self-defense, but simply preserves the pre-existing right, agree that the very concept of self-defense is inconsistent with the use of force against the political independence of another state. Bowett, who is perhaps the leading exponent of this non-restrictive view of Article 51, agrees that the core of the concept is the protection of "essential rights from irreparable harm in circumstances in which alternative means of protection are unavailable" Self-Defence in International Law, 1958, p. 11. In no sense can the use of force by the United States against the political independence of Nicaragua over a four-year period, as shown on the record before the Court, be regarded as the only available means of protecting essential rights from irreparable harm.

297. More frequently, proponents of a non-restrictive view of Article 51 define self-defense with reference to Daniel Webster's famous formulation in the Caroline case: "a government alleging self-defense must show a necessity of self-defense [that is] instant, overwhelming, and leaving no choice of means, and no moment for deliberation."

Higgins, "The Legal Limits to the Use of Force by Sovereign States, United Nations Practice," 37 British

Year Book of International Law (1961), pp. 301-302.

Schachter, "The Right of States to Use Armed Force," 82 Michigan Law Review (1984), pp. 1634-1635.

Schwarzenberger, "The Fundamental Principles of International Law," 87 Hague Recueil (1955,I), pp. 332-333.

Waldock, "The Use of Force in International Law," 81 Hague Recueil (1952,II), pp. 496-498.

298. Here again it is evident that there is not and never has been any threat by Nicaragua to the United States or any other country necessitating an instant, reflexive response. In the Caroline formula there is "no moment for deliberation." But the United States has had more than four years to deliberate about "the choice of means" for its Nicaraguan policy. After first considering the open use of military force to achieve its Central American objectives, the decision was made to organize and launch the mercenaries, then to supplement their efforts with mining of harbors and direct attacks by CIA employees and hired saboteurs against targets inside Nicaragua, ultimately to expand the guerrilla force to 15,000 men, and to engage overall in a policy of intimidation and "perception management." See, e.g., WSJ 3/5/85; NYT 3/30/85; NYT 4/17/85. Over this entire period, the United States has -- in a measured, calculated and deliberate manner -- steadily intensified the application of force against Nicaragua. The Caroline formula can find no application in this case.

2. The Factual Basis for the Justification of Self-defense
Is Not Present in this Case.

299. President Reagan's press statement of February 21, far from announcing a new policy objective, simply marked the

abandonment of the pretense that the United States was recruiting, financing, training, supplying and directing the mercenaries over the past four years for the sole purpose of "interdicting" the alleged flow of arms from Nicaragua to El Salvador. But it had become apparent long before then that the oft-repeated interdiction claim was simply a sham:

--The very first National Security Council document accompanying the plan initially approved by President Reagan in November 1981 included the following statement of purpose:

"Build popular support in Central America and Nicaragua for an opposition front that would be nationalistic, anti-Cuban and anti-Somoza; support the opposition front through formation and training of action teams to collect intelligence and engage in paramilitary and political operations in Nicaragua and elsewhere; work primarily through non-Americans to achieve the foregoing, but in some circumstances CIA might (possibly using U.S. personnel) take unilateral paramilitary action against special Cuban targets." WP
5/8/83.

- The CIA provided military and financial support to Eden Pastora, whose forces were based in Costa Rica -- to the south and far from any potential weapons routes to El Salvador -- and whose stated objective was the overthrow of the Nicaraguan government. LAT 3/3/85.
- The mining of Nicaragua's harbors in February and March of 1984 had purposes other than the interdiction of weapons traffic. Senator David Durenberger, a member of the Senate Intelligence Committee and until recently a strong supporter of aid to the mercenaries, said that the decision to undertake the mining was based on the need to step up actions

against Nicaragua "to some higher level with some specialized activity that would put economic pressure" on the government. Newsday 4/19/84.

- Similarly, the preparation and dissemination in 1983 of a manual giving instructions for attacking and terrorizing civilians and civilian targets was evidently unconnected with the objective of arms interdiction. The manual specifically directs the guerrillas to "kidnap . . . officials of the Sandinista government;" and to "neutralize carefully selected and planned targets" including judges, police, and State Security officials. "Psychological Operations in Guerrilla Warfare," Annex G.
- The many attacks carried out against civilians and a wide range of economic targets, from coffee harvests to oil storage facilities, bear no relation to arms interdiction.

300. The striking discrepancy between the Administration's public words and private deeds is overwhelmingly confirmed by former mercenary leader Edgar Chamorro. The CIA officials, he said, "always told us the objective was to overthrow the government in Managua. . . . They always said the President of the United States wants you to go to Managua." LAT 3/3/85. At the same time, however, these officials warned Chamorro and his fellow leaders never to state publicly that their objective was the overthrow of the Nicaraguan government. LAT 3/3/85.

301. The evidentiary record shows conclusively that self-defense in any guise, whether as defined under Article 51 or otherwise, was simply not a factor in the Administration's

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policy calculations. The support of the guerrillas was conceived from the start as a way of using force to put pressure on or overthrow the government of Nicaragua in furtherance of U.S. national interests, as defined by the Administration. Moreover, from the beginning, U.S. policymakers were aware that use of force for such purposes could not be publicly justified even in conventional political terms, much less as an exercise of self-defense under the norms of international law: thus the use of "covert" action.

302. Even if arms interdiction had been the U.S. purpose, the justification of self-defense under Article 51 cannot be sustained. Article 51 provides that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs" (Emphasis added.) The allegations of weapons supply by Nicaragua to Salvadoran rebels, even if true, would not amount to "an armed attack" under this provision.

303. The plain meaning of this Article limits the exercise of the right of self-defense to situations in which the actor is under armed attack. Henkin confirms this analysis in the following passage:

"Of course, in the abstract, 'an armed attack occurs,' does not have to mean only if an armed attack occurs. But anyone reading the article, as a lawyer or as a layman, would read the article as permitting an exception only if an armed attack occurs. What draftsman or reader would say that a clause which permits self-defense if an armed attack occurs, really permits self-defense whether an armed attack occurs or not?"

304. The restrictive interpretation of Article 51 is

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adhered to by a majority of publicists.

G. Badr, 10 Georgia Journal of International & Comparative Law (1980), p. 6.

Bishop, 115 Hague Recueil, (1965,II), pp. 436-437.

Brownlie, International Law and the Use of Force by States, 1963, p. 278;

Henkin, How Nations Behave, 1979, pp. 141-142.

Jimenez de Arechaga, Derecho Constitucional de las Naciones Unidas, 1958, p. 401.

Kelsen, The Law of the United Nations, 1950, p. 797.

Komarnicki, "La Definition de L'agresseur dans le Droit Internationale Moderne," 75 Hague Recueil (1949,II), p. 84;

Oppenheim, International Law (H. Lauterpacht, ed.) 1952, Vol. II, p. 154.

Skubiszewski, "The Postwar Alliances of Poland and the United Nations Charter," 53 American Journal of International Law (1959), pp. 167, 619-622.

Taoka, The Right of Self-Defense in International Law, 1978, p. 126.

Verdross, 83 Hague Recueil (1953,II), p. 83, p. 14.

Wehberg, 78 Hague Recueil (1951,I), p. 81.

Q. Wright, "The Prevention of Aggression," 50 American Journal of International Law (1956), p. 529.

305. In his Hague lectures, Judge Lachs affirmed both the validity and the importance of this interpretation:

"'Armed attack' must be ascertained; it must be clear that it was launched. With the present means of verification this should present no difficulties, but there must be no shadow of doubt, for practice has demonstrated that false alerts may occur: and they may lead to disaster."

169 Hague Recueil (1980,IV), p. 164. Although Judge Lachs is

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referring specifically to nuclear weapons, the point is equally valid more generally. Any circumvention of the armed attack limitation endangers the peace and security of the international system, at the regional as well as the global level.

306. Perhaps the most striking exemplar of the armed attack limitation on the right of self-defense is to be found in the deliberate refusal of the United States to justify its quarantine of Cuba during the Cuban Missile Crisis in terms of self-defense. Professor Chayes, who was State Department Legal Adviser during the crisis, writes that "the self-defence argument . . . was never officially espoused in the Cuban affair. On the contrary, it was repeatedly and consciously rejected." Chayes, The Cuban Missile Crisis, 1974, p. 63. He further explains that, although part of the reason for the U.S. position was the unwillingness to set a dangerous precedent, the larger "difficulty with the Article 51 argument was that it seemed to trivialize the whole effort at legal justification," precisely because it would have allowed the United States to be judge in its own case. Ibid., p. 63. The ultimate result would be that:

"Whenever a nation believed that interests, which in the heat and pressure of a crisis it is prepared to characterize as vital, were threatened, its use of force in response would become permissible."

Ibid., p. 63.

307. If the United States refused to regard the Soviet provision of missiles to Cuba -- nuclear warheads aimed directly at its territory -- as an armed attack, the actions charged against Nicaragua must fall far below the requirement of Article 51. They do not involve the use of armed forces. Nicaraguan

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troops or other forces under its direction and control are not alleged to be operating outside its borders. It is not even asserted that Nicaragua is "substantially involved" in the rebel operations in El Salvador. All that the United States has alleged -- without producing a shred of proof -- is that Nicaragua has provided some conventional arms to the insurgents.

308. Indeed, such evidence as has been made public supports the Nicaraguan position in this case. David C. MacMichael was a CIA employee who for a period of two years had overall responsibility in the Agency for assessing and analyzing all evidence of arms traffic through Nicaragua. He has stated:

"The whole picture that the Administration has presented of Salvadoran insurgent operations being planned, directed and supplied from Nicaragua is simply not true. . . . The Administration and the CIA have systematically misrepresented Nicaraguan involvement in the supply of arms to Salvadoran guerrillas to justify its efforts to overthrow the Nicaraguan government."

NYT 6/11/84.

309. This assertion has been substantiated by Pentagon officials, and diplomats. In addition, a number of independent investigations conducted by U.S. newspapers have failed to discover any evidence of the alleged arms flows.

Christian Science Monitor 5/2/84; BG 6/10/84; LAT 6/16/84. It is hard to believe that if there were any substantial transfer of arms it could be successfully concealed from all these investigative efforts.

310. Moreover, the justification of self-defense fails because the procedural requirements stipulated in Article 51 for the exercise of the inherent right of self-defense have not been

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complied with. The Article provides that "[m]easures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council" This requirement is not merely a procedural formality, but rather an important additional limitation on the exercise of the right of self-defense. As Waldock explains:

" . . . the exercise of the right of self-defence is made subject to the subsequent judgment and control of the international community. The individual State necessarily decides whether or not to use force in self-defence but the propriety of its decision is a matter for the United Nations."

"The Use of Force in International Law," 81 Hague Recueil (1952,II), p. 495.

311. Pursuant to this conception of the reporting requirement, when the United States dispatched troops to Lebanon in 1958, for example, President Eisenhower announced: "In conformity with the Charter, the United States is reporting the measures taken by it to the Security Council" The United States has never made the slightest effort to fulfill this requirement in the present case.

312. Finally, it is universally agreed that the legitimate exercise of the right of self-defense under both customary law and the Charter is subject to the requirement of proportionality. The application of this requirement to the facts of the present case would necessarily limit U.S. activities to Salvadoran territory. Thus Judge Lachs writes:

"The counter-measures envisaged need not be identical in nature to those against which they are directed . . . but they should be eiusdem generis, are bound to be proportionate. For example, if the attack did not amount to incursion into the territory of another state, the same should be true of the corresponding act

of self-defence.

169 Hague Recueil, (1980, IV), p. 164.

313. Even assuming arguendo the truth of the U.S. allegations of arms shipments to El Salvador, the U.S. response is on a completely different scale. It comprises at least \$70 million of assistance to a mercenary army of 15,000 men operating in and against the territory of Nicaragua, a major commitment of U.S. military resources for logistics and other support, and attacks by air, land and sea against economic targets and the civilian population, resulting in the death or injury of thousands of innocent civilians and millions of dollars of damage. This deliberate application of force at extreme levels of violence and brutality indisputably violates the proportionality requirement, and as such is fundamentally incompatible with the very notion of legitimate self-defense.

Non-Corrigé
Uncorrected

ANNEX II

CR 85/21

Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1985

Public sitting

held on Monday 16 September 1985, at 3 p.m., at the Peace Palace,

President Nagendra Singh presiding

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

VERBATIM RECORD

ANNEE 1985

Audience publique

tenue le lundi 16 septembre 1985, à 15 heures, au palais de la Paix,

sous la présidence de M. Nagendra Singh, Président

en l'affaire des Activités militaires et paramilitaires au Nicaragua
et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)

COMPTE RENDU

/...

Present:

President Nagendra Singh
Vice-President de Lacharrière
Judges Ruda
Elias
Oda
Ago
Sette-Camara
Schwebel
Jennings
Mbaye
Bedjaoui
Ni
Evensen
Judge ad hoc Colliard
Registrar Torres Bernárdez

/...

Présents :

M. Nagendra Singh, Président
M. de Lacharrière, Vice-Président
MM. Ruda
Elias
Oda
Ago
Sette-Camara
Schwebel
sir Robert Jennings
MM. Mbaye
Bedjaoui
Ni
Evensen, Juges
Colliard, Juge ad hoc

M. Torres Bernárdez, Greffier

/...

The Government of Nicaragua is represented by:

H.E. Mr. Carlos Argüello Gómez	Ambassador <u>as Agent and Counsel;</u>
Mr. Ian Brownlie, Q.C., F.B.A.	Chichele Professor of Public International Law in the University of Oxford; Fellow of All Souls College, Oxford,
Hon. Abram Chayas	Felix Frankfurter Professor of Law, Harvard Law School; Fellow, American Academy of Arts and Sciences,
Mr. Alain Pellet	Professeur of Law, Université de Paris-Nord,
Mr. Paul S. Reichler	Reichler and Appelbaum, Washington, D.C., <u>as Counsel and Advocates; and</u>
Mr. Augusto Zamora Rodriguez	Legal Adviser to the Ministry of the Exterior, Managua, Nicaragua,
Miss Judith C. Appelbaum	Reichler and Appelbaum, Washington, D.C.,
Mr. David Wippman	Reichler and Appelbaum, Washington, D.C., <u>as Counsel.</u>

/...

Le Gouvernement du Nicaragua est représenté par :

S.Exc. M. Carlos Argüello Gómez	ambassadeur, <u>comme agent et conseil;</u>
M. Ian Brownlie, Q.C., F.B.A.	professeur de droit international public à l'Université d'Oxford, titulaire de la chaire Chichele; <u>Fellow de l'All Souls College, Oxford,</u>
M. Abram Chayes	professeur à la faculté de droit de Harvard, titulaire de la chaire Félix Frankfurter; <u>Fellow de l'American Academy of Arts and Sciences,</u>
M. Alain Pellet	Professeur de droit à l'Université de Paris-Nord,
M. Paul S. Reichler	Reichler and Appelbaum, Washington, D.C., <u>comme conseils et avocats; et</u>
M. Augusto Zamora Rodriguez	Conseiller juridique du ministère de l'Extérieur, Managua, Nicaragua,
Mme Judith C. Appelbaum	Reichler and Appelbaum, Washington, D.C.,
M. David Wippman	Reichler and Appelbaum, Washington, D.C., <u>comme conseils.</u>

The PRESIDENT: Please be seated.

Before proceeding with the hearing I have to announce that Judge Lachs, for reasons which he has disclosed to me, is unable to be present this afternoon.

May I now resume the testimony of Mr. MacMichael, the second witness. I give the floor to the counsel for Nicaragua, Professor Chayes.

Mr. CHAYES: May I ask that Mr. MacMichael be recalled please.

The PRESIDENT: Please summon the witness.

Mr. CHAYES: Mr. MacMichael, before we proceed may I remind you that at the beginning of your testimony you made a solemn declaration upon your honour and conscience, to speak the truth, the whole truth and nothing but the truth, and your testimony today is subject to the same declaration.

Let me recall to the Court that when Commander Carrión came back to the stand last Friday, Mr. MacMichael was testifying about a plan prepared by the CIA for submission to the President of the United States, calling for covert activities against Nicaragua. He identified the plan as the one that was submitted for presidential approval and reported to the House and Senate Intelligence Committees in November 1981. He testified that he had participated in a discussion of the plan within the Central Intelligence Agency in the fall of 1981, and he outlined the general elements of the plan and the ways in which it was anticipated that the Nicaraguan Government would respond. I shall now proceed with this line of questioning.

Mr. MacMichael, you have described the plan in general terms, I would now like to read from a newspaper account in the Washington Post purporting

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to contain excerpts from the actual CIA proposal to the President. It is reprinted in Annex F, submitted with the Memorial (Item 4, pp. 6-7).

The newspaper account reads: "According to highly classified NSC records the initial CIA proposal in November called for 'support and conduct of political and paramilitary operations against the Cuban presence and Cuban Sandinista support structures in Nicaragua and elsewhere in Central America'. The CIA in seeking presidential authorization for the \$19 million paramilitary force emphasized that 'the programme should not be confined to that funding level or to the 500-man force described' the records show. Covert operations under the CIA proposal, according to the NSC records are intended to: 'build popular support in Central America and Nicaragua for an opposition front that would be nationalistic anti-Cuban and anti-Somoza' the quotation continues: 'support for the opposition front through formation and training of action teams to collect intelligence and engage in paramilitary and political operations in Nicaragua and elsewhere' 'Work primarily through non-Americans' to achieve these covert objectives, but in some cases the CIA might take unilateral paramilitary action - possibly using United States personnel - against special Cuban targets."

Q.: To your recollection, does that accurately describe the plan that was discussed at the meeting you attended?

A.: Yes, it does, I do not in all honesty recall the emphasis or any discussion there of the possible unilateral use of United States forces or personnel against Cuban targets, but the rest of it squares very well with my recollection.

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Q.: What was the overall purpose of the plan according to the discussion?

A.: The overall purpose, as I think I stated previously, was to weaken, even destabilize the Nicaraguan Government and thus reduce the menace it allegedly posed to the United States' interests in Central America.

Q.: How was it supposed that the plan would accomplish these objectives?

A.: As I recall, and as I believe I stated the other day, the principal actions to be undertaken were paramilitary which hopefully would provoke cross-border attacks by Nicaraguan forces and thus serve to demonstrate Nicaragua's aggressive nature and possibly call into play the Organization of American States' provisions. It was hoped that the Nicaraguan Government would clamp down on civil liberties within Nicaragua itself, arresting its opposition, demonstrating its allegedly inherent totalitarian nature and thus increase domestic dissent within the country, and further that there would be reaction against United States citizens, particularly against United States diplomatic personnel within Nicaragua and thus serve to demonstrate the hostility of Nicaragua towards the United States.

Q.: In the plan itself, was there any reference to the use of paramilitary forces to interdict a supposed flow of arms from Nicaragua to rebels in El Salvador?

A.: This was the stated purpose of the armed force to be organized. Yes, they were to interdict the alleged flow of arms.

Q.: Did the plan itself, or any supporting documents, refer to any evidence of such an arms flow?

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A.: The plan merely stated in the discussions that such arms flow existed and no supporting documents were presented.

Q.: Was any other evidence of this type discussed at the meeting you attended?

A.: No. It was merely assumed that it went on.

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Q.: You have testified that in Bangkok you examined problems of supplying guerrilla bands in the field with a view to verifying whether such supplies had come from outside sources and, if so, with a view to considering what measures might be taken to interdict those supplies. Is such a study ordinarily conducted as a matter of good professional practice, as a preliminary to deciding on and designing a counter-insurgency arms interdiction programme?

A.: In my experience, I believe that would be the professional practice to determine, as best one could, what was the system one hoped to disrupt, and design a force as part of a counter-insurgency system to do that.

Q.: In our judgment as a professional, is it possible without such an analysis to design an effective programme to interdict arms supply to guerrilla forces?

A.: Well, I do not believe it would be, and I will state that this is what first caused me concern in this matter simply as a result of professional background that these studies and analyses fully describing the arms supply system - other parts of the supply system - for the insurgent forces in El Salvador were not being conducted and that a force was being put into the field for the purpose of disrupting that system without, it appeared to me, the proper analysis behind it.

Q.: And was such an analysis ever undertaken while you were at the Agency?

A.: Not to my knowledge, and I believe I would have known if it had been.

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Q.: Now you stated earlier that the stated purpose of the plan was arms interdiction. In the light of your answers to these last few questions, would you elaborate on what you meant by your earlier characterization of "arms interdiction" as the stated purpose of the plan.

A.: Well, I think you will understand that this was a covert operation, and that in designing any covert operation was built into it - what is known as - plausible denial, that is you set it up so that if you are detected, or if the plan is detected, the operations being uncovered, you have some justification either for denying participation or for making it clear that you had a reason for doing what you were doing. Now, in this case, I believe that part of the justification was the need to convince the intelligence committees of the United States Congress to authorize the plan and approve it and arms interdiction, I think, was a reason that they would approve because as the passage of the Boland amendment the following year demonstrated that such purposes as provoking hostilities between Nicaragua and any of its neighbours, or the de-stabilization of the Nicaraguan Government through this programme were prohibitive purposes.

Q.: To your knowledge was the plan ever put into effect?

A.: Yes it was.

Q.: Can you tell us anything about the CIA involvement in the execution of this plan after it was approved by the President and put into effect?

A.: No, I cannot talk about any operational details.

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Q.: Now, I want to talk about the rest of your employment, not only that but this period too, with the CIA. You were employed by the CIA, the Court will recall, from March 1981 until April 1983; is that correct?

A.: That is correct.

Q.: During that entire period was it part of your responsibility to be familiar with and analyse the intelligence collected by the United States Government on the subject of delivery of arms or other war materials from Nicaragua to rebels in El Salvador?

A.: Yes, it was.

Q.: Now, how did that come about that that was part of your responsibility?

A.: Well, as I testified previously in the structure of the National Intelligence Council and the way in which the analytic group, of which I was part, worked in the Council, as a matter of practice members of the analytic group tended to specialize on one area as I did on the western hemisphere (Latin America, if you will) and as I also said we were responsible as individuals to report to the National Intelligence Council on matters of interest and concern; we were expected to show initiative, to develop subjects independently - we were, after all, a supposedly high level and qualified group - and as the work I was doing involved me first in a review of the special National Intelligence estimate of the nature of the Salvadorian insurgency, the work I did relative to Nicaragua, my awareness of the covert operation ongoing or under way, and the justification of it on the grounds of the arms flow, my concern, as I have expressed was about the proper design of an arms interdiction system which led me as a matter of my professional responsibility, and working with the approval of the National Intelligence officer at large who controlled our actions, to continue to make a close study of intelligence relating to the alleged arms flow from Nicaragua to El Salvador.

Q.: In the course of that work did you have access to original intelligence materials, for example, photographs, records of communications, intercepts, reports of interrogations, and the like?

A.: Yes, I did.

Q.: And did you examine them personally?

A.: Yes I did.

Q.: Did you have access to so-called "finished" intelligence - summaries and reports based on or analysing the original raw material?

A.: Yes, I did.

Q.: Did you have occasion to discuss these issues of arms flow personally in debriefing intelligence officers who were, or had been, operating in the field?

A.: On various occasions, I did that, yes.

Q. Did you ever make a request to see or review any intelligence material pertaining to this subject that was denied?

A.: No.

Q.: So you were familiar with the intelligence information that the United States Government collected with respect to arms or weapons trafficking between Nicaragua and rebels in El Salvador?

A.: Yes, I was.

Q.: All right. I want to direct your attention now to the period of your employment with the Agency; was there any credible evidence that during that period, March 1981 to April 1983, the Government of Nicaragua was sending arms to rebels in El Salvador?

A.: No.

Q.: Was there any substantial evidence that during this period arms were sent from or across Nicaraguan territory to rebels in El Salvador with the approval, authorization, condonation or ratification of the Nicaraguan Government?

A.: No, there is no evidence that would show that.

Q.: Was there any substantial evidence that during the same period, any significant shipments of arms were sent with the advance knowledge of the Government of Nicaragua from or across its territory to rebels in El Salvador?

A.: There is no such substantial evidence, no.

Q.: Was there any substantial evidence that during that period significant quantities of arms went to El Salvador from Nicaragua?

A.: From Nicaragua, that is originating in Nicaragua, no.

Q.: Was there substantial evidence of shipments of arms from other countries in the region to the El Salvador guerrillas?

A.: Yes, there was.

Q.: Could you give us some examples please?

A.: I think the best known of these is the evidence developed on 15 March 1982, when there was a raid on an arms depot in San José, Costa Rica, at which time a considerable quantity of arms, well over a hundred rifles, automatic weapons of various sorts, other ordnance, mines and so forth, were captured there along with a significant number of vehicles - more than half a dozen I believe - that were used to transport these arms, or were designed for transporting them. Documents were captured with the people captured there - a multinational group I would say - which indicated that certainly more than half a dozen shipments of arms had already been made from that depot. The reason I failed to tell you on your previous question, Mr. Chayes, was that it would appear to me that if arms were shipped from San José, Costa Rica, by vehicle, they must have in some way had to get across Nicaragua.

Q.: Now, are you familiar with the different methods and sources of intelligence that the United States employs?

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A.: Yes, I am.

Q.: I am going to ask you a number of questions, based on information publicly available in the press and scholarly publications, about methods and sources of intelligence that are said to be employed by the United States. As to each one, I am going to ask you if you know whether or not that method or source was employed in an effort to obtain evidence of the delivery of arms or other war materials from Nicaragua to rebels in El Salvador. As I said before, I do not want you to say anything in responding to these questions that would involve unauthorized disclosure of information.

Let us begin with satellite photography. Is it a method of intelligence-gathering that was employed in an effort to obtain evidence of arms deliveries from Nicaragua to rebels in El Salvador?

A.: Now I don't recall that satellite photography or surveillance was used specifically for this purpose. I think it was used for gathering information about supposed or suspected shipments of arms and other materials from other places in the world to Nicaragua, but not for the shipment of arms to El Salvador.

Q.: What about aerial photography?

A.: Yes, this was used.

Q.: Were special surveillance aircraft used?

A.: Yes, they were.

Q.: Can you tell us about electronic interception of radio, telephonic and other communications?

A.: Yes, interceptions of radio communications were used.

Q.: There have been reports in the newspapers about a United States radar facility on Tiger Island in the Gulf of Fonseca between Nicaragua and El Salvador. Perhaps you could say how wide that Gulf is?

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A.: I think from the furthest point of Nicaraguan territory to the nearest point of Salvadorian territory there is a stretch of something over 30 kilometres of water. The area is right here.

Q.: If the judges wish to locate it on their maps? Can you say whether there is such a facility on Tiger Island?

A.: I know there was, and I believe there still is there.

Q.: By what agency of the United States Government is it operated?

A.: That facility was manned by the United States Marine Corps.

Q.: Would the CIA have access to the information gathered by this facility?

A.: Oh yes.

Q.: What is the principal function of this facility?

A.: It was a radar facility that was designed to survey air and water traffic in the Gulf and surrounding areas - coastal areas.

Q.: Did United States naval vessels operate in conjunction with the Tiger Island facility?

A.: Yes, this was part of a surveillance, you know the electronic radar surveillance system which gave coverage, not only of the Gulf of Fonseca but for a considerable distance, a very long distance - I do not recall the exact mileage, but it is a very long distance - up and down the Pacific coast of Central America.

Q.: And was this system able to locate and track boats moving through the area?

A.: Yes.

Q.: There have also been published reports about the use of United States Navy SEAL teams on surveillance missions in and around the Gulf of Fonseca. Do you have any knowledge about that?

A.: Yes, the SEAL teams were employed for some time there - yes, they were.

Q.: What is a SEAL team exactly and what do they do in the Gulf of Fonseca?

A.: The acronym stands for sea, air, land. These are very highly trained special operations forces of the United States armed forces. They are naval personnel trained in underwater demolition, parachuting and other techniques. Their major purpose is to conduct a variety of special operations, including reconnaissance and surveillance in coastal waters and near inshore areas. They are capable of carrying out raids, reconnaissance, small boat operations, they are considered really as the most highly trained and best equipped of the United States special operations forces.

Q.: Another source of intelligence information is agents. Did the CIA employ such agents in an effort to obtain evidence of arms deliveries from Nicaragua to rebels in El Salvador?

A.: Yes, it did.

Q.: How about reports from United States diplomatic and military personnel in the area?

A.: Yes, reporting from these sources is all part of the information flow that is going on.

Q.: Were foreign diplomats and military personnel used as sources of intelligence in this effort?

A.: Yes. I should explain this a little bit. This does not mean that such personnel were in the employ of the United States Government or controlled by the Central Intelligence Agency or any other agency of the United States. It is just that in the course of their work, not only Central Intelligence Agency personnel but other United States personnel operating in a foreign country will routinely report on germane

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conversations that they have with their fellows operating in the same country. And I think I should also say, since you use the term intelligence here, that intelligence really has to be considered merely as information that is gathered and handled in a specific way. I think one could say that when reduced to paper intelligence is merely information that has a classification stamp placed on it, and to speak of intelligence is in no way to give a higher reliability to information; and this is what we were talking about, Mr. Chayes, is simply that this information is coming from a variety of sources.

Q.: Were defectors a source of intelligence information in the effort to obtain evidence of arms deliveries?

A.: Oh yes, they were.

/...

Q.: How about prisoners, captured rebels and the others?

A.: These are standard and usual sources of information.

Q.: Captured documents?

A.: Yes, those too.

Q.: Were there any significant sources and methods of intelligence gathering that the United States normally uses that were not employed in its effort to obtain evidence of arms deliveries from Nicaragua to rebels in El Salvador?

A.: No, I would say all usual means were employed.

Q.: Now, I am going to ask you to evaluate, or to turn your attention to, the United States intelligence capability in the area, and my question is this: considering all of the sources and methods of intelligence used by the United States that we have just catalogued, and your knowledge of the extent of their use with respect to Nicaragua, please describe in general terms the nature and scope of United States intelligence capabilities with respect to Nicaragua.

A.: Technically, in so far as I can judge, they were of a very high order. Certainly there were a great number of resources concentrated there in a very small area, so I would have to say that the capabilities of the United States intelligence in the area were very high indeed.

Q.: Can you say from your own knowledge based on your service in the Central Intelligence Agency whether Nicaragua has been a high priority target of United States intelligence-gathering efforts?

A.: I would say that it has been a high priority.

Q.: In your opinion, if the Government of Nicaragua was sending arms to rebels in El Salvador, could it do so without detection by United States intelligence-gathering capabilities?

/...

A.: In any significant manner over this long period of time I do not believe they could have done so.

Q.: And there was in fact no such detection during the period that you served in the Central Intelligence Agency?

A.: No.

Q.: In your opinion, if arms in significant quantities were being sent from Nicaraguan territory to the rebels in El Salvador - with or without the Government's knowledge or consent - could these shipments have been accomplished without detection by United States intelligence capabilities?

A.: If you say in significant quantities over any reasonable period of time, no I do not believe so.

Q.: And there was in fact no such detection during your period of service with the Agency?

A.: No.

Q.: Mr. MacMichael, up to this point we have been talking about the period when you were employed by the CIA - 6 March 1981 to 3 April 1983. Now let me ask you without limit of time: did you see any evidence of arms going to the Salvadoran rebels from Nicaragua at any time?

A.: Yes, I did.

Q.: When was that?

A.: Late 1980 to very early 1981.

Q.: And what were the sources of that evidence?

A.: There were a variety of sources: there was documentary evidence, which I believe was codable, there were - and this is the most important - actual seizures of arms shipments which could be traced to Nicaragua and there were reports by defectors from Nicaragua that corroborated such shipments.

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Q.: Does the evidence establish that the Government of Nicaragua was involved during this period?

A.: No, it does not establish it, but I could not rule it out.

Q.: At that time were arms shipments going to the El Salvadoran insurgents from other countries in the region?

A.: Yes, they were.

Q.: Could you give us examples?

A.: There were shipments at that time which could be traced to Costa Rica; there were shipments at that time that could be traced as having come through or via Panama.

Q.: And did the evidence of arms traffic from Nicaragua, if any, come to an end?

A.: The evidence of the type I have described disappeared. They did not come in any more after very early 1981, February/March at the latest.

Q.: You say at some time, just about the time you got to the Agency, the evidence stopped coming in: did it ever resume?

A.: As I have testified, no.

Q.: Now I direct your attention to the period after you left the CIA in April 1983. Did you follow the public statements by United States officials as to the existence of an arms flow from Nicaragua to rebels in El Salvador?

A.: Yes, I did.

Q.: And how did that happen?

A.: I had developed what you might describe as an interest in the subject and I did not relinquish that interest when I left the employ of the CIA, so I continued to follow it.

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Q.: Have you analysed the purported evidence put forth publicly by the United States Government to support its allegations that such an arms flow exists?

A.: Yes, I have.

Q.: What is your expert opinion of the evidence that the United States has publicly disclosed?

A.: I would describe that evidence as has been publicly disclosed by the United States and various publications and statements by United States officials as very scanty. I would say much of it is unreliable, some of it is suspect and I believe it has been presented in a deliberately misleading fashion on many occasions.

Q.: Could you tell us what you mean by unreliable or suspect?

A.: There are a couple of things which strike me in looking at some of this information. There is a very heavy reliance in the presentation of this information, or its documentation of statements, on press accounts, and especially upon accounts appearing in a foreign press, for example statements made in newspapers in Central America. Part of any covert operation as I hinted at, or even explained, a little earlier incorporates an element of this information. One of the primary means for doing this is the planting of articles in the press, and under some circumstances I think an informed person would suspect that some of the articles cited in support of the United States Government's position as evidence when it refers to press articles, as I say, allows the suspicion - and I said that the information was suspect - that these were articles originally planted by United States intelligence agencies, and for that reason I have some problems accepting them at face value.

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A second aspect of the information presented is a very heavy reliance on defectors or captives, which I cannot certainly impeach directly, but the fact is that some of these statements are made by people who are or have been in the custody of the United States or other foreign governments for considerable periods and still are when they make the statements. As you know, on one famous occasion the United States Government was seriously embarrassed when a captive was brought before an audience in Washington, D.C. - a Mr. Tardencias - to testify to his involvement in the Salvadoran insurgency as a representative of the Nicaraguan Government and recanted the statements he had previously made while under captivity in El Salvador and stated flatly that he only said those things because of the pressures he faced in his captivity. These are reasons why I tend to suspect certain information coming in certain ways.

Q.: Does any of this publicly disclosed material cause you to alter your opinion in any way as to the shipment of arms from Nicaragua to rebels in El Salvador?

A.: No, it does not cause me to alter my opinion.

Q.: The United States has stated that it has evidence that it cannot reveal for fear of compromising sensitive intelligence sources. I am going to ask you some questions to assist in analysing that claim. In this situation - surveillance of supposed arms trade between Nicaragua and the Salvadoran insurgence - would there be particularly sensitive intelligence sources or methods that we would not want to disclose?

A.: I would think the answer to that is yes, obviously.

Q.: What would they be?

A.: The ones that would occur to me particularly would be the protection of the identity of agents, obviously - human sources. One

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would be concerned for cryptographic security and possibly having implanted listening or other surveillance devices in important places one would not wish to reveal information that would cause the discovery of these.

Q.: Perhaps you could tell the Court what you mean by cryptographic security?

A.: In the simplest sense here, is that if you were deriving information because you had broken your opponent's code, you would not wish to refer to particular communications, encoded communications that you had intercepted, which would then tell your opponent that you had broken his code because he would then change his codes, and you would be faced with the task of deciphering another one.

Q.: Let us assume that undercover agents or coded communications intercepts were providing accurate and reliable information concerning large-scale arms shipments from Nicaragua to the rebels in El Salvador. Would there be any way of revealing such evidence publicly without jeopardizing those sources?

A.: In the context of your question, and presuming that these intercepts or sources were providing accurate information over any significant period of time, then you would be able to use this information in order actually to intercept shipments of arms.

Q.: And then you could make public the intercept?

A.: That would be my opinion, yes.

Q.: But there have been no such intercepts?

A.: No there have not.

Q.: Do you have a professional opinion on the United States Government's statements that concern for protection of its sources and

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methods of gathering intelligence prevents it from making public evidence of the alleged Nicaraguan arms traffic?

A.: I simply do not accept that statement at face value, I am very suspicious of it.

Q.: Now to summarize your testimony. You had access to and review, in your professional capacity and as part of your duties for the Central Intelligence Agency between March 1981 and April 1983, of the intelligence information on the subject of arms supply to the Salvadoran rebels, is that correct?

A.: That is correct.

Q.: That includes intelligence information from all the sources of intelligence that we have catalogued earlier in your testimony?

A.: Yes, it does.

Q.: In the intelligence information you reviewed, you found no convincing evidence of the supply of arms to the Salvadoran rebels by the Nicaraguan Government or the complicity of the Nicaraguan Government in such supply?

A.: I did not find any such evidence.

Q.: I would like to ask you, in your capacity as a professional intelligence analyst, does the absence of such evidence have any significance in evaluating the question of Nicaraguan supply of the Salvadoran rebels?

A.: I would say that it casts serious doubt on the proposition that the Nicaraguan Government is so involved.

Q.: Will you state again your overall conclusion as to the existence of arms traffic from Nicaragua to the Salvadoran insurgents?

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A.: I do not believe that such a traffic goes on now or has gone on for the past four years at least, and I believe that the representations of the United States Government to the contrary are designed to justify its policies toward the Nicaraguan Government.

Mr. CHAYES: Thank you. That concludes the direct examination of Mr. MacMichael.

The PRESIDENT: Thank you. Two Judges have asked for the floor in order to put a question. Judge Ni and Judge Schwebel in that order. Judge Ni has the floor, he will ask his question. Would you like to have a copy of the question?

Mr. MACMICHAEL: Yes please.

Judge NI: I have two questions to ask the witness. The first one is, during the examination last Friday you were asked by Mr. Chayes, is "Top Secret" the highest form of the clearance categories in the United States classification system. Your answer was, "Formerly, yes". You did not elaborate whether it was no longer the case now or what the place of top secret is now in the classification system. Can you explain further on this point?

Mr. MACMICHAEL: Your Honour, I must apologize for my poor enunciation. What I intended to say was formally, that is in form, yes that this is the highest classification recognized by the system, but there are means of close-holding and distributing certain intelligence only to selected persons. This is designated by types of letter designations that follow the clearance listing, there are directories that

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handle this and I do apologize for confusing you on the issue. I am sometimes confused myself.

Judge NI: Mr. President, I want to apologize to you. This should be struck from the records because it stands as "formerly" and now you are saying it was "formally"?

A.: Yes, your Honour.

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Q.: My second question is, you were asked last Friday to tell the Court generally the outline of the plan which was discussed at a meeting of the Latin American Affairs Office in the fall of 1981. You made a very succinct statement of the plan, that a covert force of approximately 1500 men was to be organized to carry out military and paramilitary action in Nicaragua. Can you describe it more specifically, such as how this force was to be recruited and what instructions were to be given to the commanders of the force, etc. I believe you have described to some extent, in more detail today, but I wish that these two points, which I raised, as to how were they to be recruited and what instructions were to be given be answered more specifically.

A.: To the best of my recollection, your honour, reference at this meeting was made to existing anti-Sandinista forces who were currently operating in the area and that these groups were to be organized and given supplies and assistance. I do not recall, and I do not believe, that at the meeting to which I referred that I heard anything about the instructions that were to be given to the commanders of those forces. I am sorry I cannot give you any more details than that but that is to the best of my recollection.

Judge SCHWEBEL: Mr. MacMichael, you were not present in Court when the Agent of Nicaragua read out Article 53 of the Court's Statute; it indicates that while the Court can render judgment in the absence of a State party, it cannot render a default judgment. Before deciding in favour of a claim, the Court "must satisfy itself that the claim is well-founded in fact and law", that is to say that if sufficient defence to the claim is not well-founded in fact and law.

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Now I take it that your testimony has been essentially directed to this question of whether there is a dissent to the claim, and you will appreciate that the purpose of the questions I am about to ask you are directed towards that same matter. My first question is this. You stated that you went on active duty with the CIA on 6 March 1981 and left on 3 April 1983, or about that date. Am I correct in assuming that your testimony essentially relates to the period between March 1981 and April 1983, at least insofar as it benefits from official service.

Mr. MacMICHAEL: That is correct, your honour, and I have not had access since I left to classified materials, and I have not sought access to such material.

Q.: Thus, if the Government of Nicaragua had shifted arms to El Salvador before March 1981, for example in 1980 and early 1981, in order to arm the big January offensive of the insurgents in El Salvador, you would not be in a position to know that; is that correct?

A.: I think I have testified, your honour, that I reviewed the immediate past intelligence material at that time, that dealt with that period, and I have stated today that there was credible evidence and that on the basis of my reading of it I could not rule out a finding that the Nicaraguan Government had been involved during that period.

Q.: Would you rule it 'in'?

A.: I prefer to stay with my answer that I could not rule it out, but to answer you as directly as I can my inclination would be more towards ruling 'in' than ruling 'out'.

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Q.: Are you aware, Mr. MacMichael, of the fact that The New York Times of 8 September 1985 published a report of an interview with Professor Chayes and Mr. Reichler, which says that "the lawyers for Nicaragua said that they would acknowledge that the Managua Government supplied weapons to Salvadorian guerrillas for the big January offensive against the United States-backed Government in El Salvador"? And that "Mr. Reichler said that he 'strongly advised' Nicaragua that it should not undertake the court suit if it were still involved in arms traffic to El Salvador "; have you seen that story?

A.: I was not in the United States when that story appeared so I don't recall seeing it.

Q.: Mr. MacMichael, is it correct to characterize Congressman Edward P. Boland, Chairman of the House of Permanent Select Committee on Intelligence, as a leading opponent of United States policy in respect of support of the contras?

A.: I think it would be fair so to characterize him, yes your honour.

Q.: Would he have been briefed by intelligence officials on evidence supporting the United States claim that Nicaragua has been sending arms and lending other support to the insurgents in El Salvador?

A.: Yes, certainly in his capacity as the then Chairman of the House Intelligence Committee he received those briefings.

Q.: Now if your analysis of the force of intelligence collected in the period of your service is correct, how can you explain that Congressman Boland would have stated the following, as he did: "There is ... persuasive evidence that the Sandinista government of Nicaragua is

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helping train insurgents and is transferring arms and financial support from and through Nicaragua to the insurgents. They are further providing the insurgents bases of operations in Nicaragua... What this says is that, contrary to the repeated denials of Nicaraguan officials, that country is thoroughly involved in supporting the Salvadorian insurgency. That support is such as to greatly aid the insurgents in their struggle with government forces in El Salvador." This was the view of Congressman Boland to which he has, as far as I know, adhered to to this day. How do you explain that?

A.: Your honour, this is a very important question and certainly one that I have attempted to deal with myself. I do not like to believe that my powers of judgment are greater than those of Congressman Boland. He has certainly seen the evidence, and it is my belief that the evidence that he saw was essentially the same evidence that I saw. I think, your honour, I can refer you to a criticism that Congressman Boland's committee made on 17 September 1982 of the evidence that had been presented to them on the situation in Central America which I presume included that dealing with Nicaragua and its alleged relationship to an arms flow to El Salvador.

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In a report issued, if I recall correctly, on 17 September 1982 by the House Intelligence Committee's sub-committee on evaluation of intelligence, reference was made to the presentation to that Committee of intelligence on Central America by the Central Intelligence Agency and other spokespersons for the Administration, and it was concluded, amongst other things, but I think this is the most relevant portion of the statement, that those presentations by the Administration seemed designed, and I am quoting here I think very closely, more to present the Administration's position than to illuminate the situation.

I am also aware that in May 1983 Mr. Boland's House Committee issued a report to which I believe all the members described, both Democrat and Republican, and I do not know if that is the source from which you drew your statement, but it certainly represents a close approximation of Mr. Boland's statement as you read it to me, in which they found - and I believe the adjective used was "overwhelming" - the evidence that Nicaragua was involved in the supply of arms to the rebels in El Salvador and that without such provision of arms the Salvadoran insurgency would not exist. Naturally, I took that very seriously, because I have the greatest respect for Mr. Boland as I do for the others of that Committee, and I was interested to note as I read that report carefully that it was a report supporting House resolution, I believe the number is 2760, which called for an end to the funding for the contras. The reasoning employed by the Committee in reaching that recommendation was essentially that if the flow of arms from Nicaragua to El Salvador continued at such a high rate over such a period of time as the Administration claimed it did, obviously the contras - if I may use that general term as the force that was being provided - that force was obviously not serving the purpose for

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which it had been funded, and it should therefore be abolished. I do not know, and certainly could not demonstrate, I am sure, at anyone's complete satisfaction that the method employed in reaching that, both the proposition and then the conclusion following it, had something of the nature of a stipulation and it was not, I raise that question with you, your Honour, in what I hope is a response to your question.

Q.: Thank you so much, Mr. MacMichael, and that raises in my mind this question: let us suppose for a moment that your thesis is correct and that the arms flow from Nicaragua to El Salvador in the period of your tenure had substantially or entirely ceased. Let us assume for the moment that there were shipments of arms from Nicaragua to the El Salvador insurgents for the big offensive at the beginning of 1981, that, as Commander Carrión has testified, by the end of 1981 the CIA' support for the contras was in place. You come aboard I think in March 1981 and you are there until 1983, and during at least much of this period the contra operation was being funded actively and was in place, is it not a plausible supposition that far from being ineffective the contras were most effective, and that the very reason why the Nicaraguan Government stopped sending arms, if indeed it did, was because of the pressure of the contras? It could see that it was a counter-productive policy because it had produced United States funding of the contras where United States démarches had produced nothing. Is that plausible?

A.: I think it is plausible, your Honour, and I would go on with my response, if you desired me to do so. It is my proposition indeed, and my opinion if I may say so, that the alleged flow of arms from Nicaragua to the Salvadoran insurgents ceased, that no credible substantial evidence of such an arms flow existed in the time that I was examining

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it, and you propose, if I understand your question, that an explanation for this would be the excellent and effective interdiction and preventive work of this contra force.

Q.: No, if I may make myself a bit clearer, I am not suggesting that the contras were necessarily defective and interdicting arms flows. They may have been somewhat effective, they may have been ineffective, I frankly do not know, but my suggestion of a plausible explanation of the events you have described is that Nicaragua had deceived, that a policy of sending arms to insurgents in El Salvador had a price, and they feared it might have an even greater price, and therefore they stopped sending arms, if indeed they did, on which I take no position. I am just offering a hypothesis.

A.: Thank you. The statement I was going to make there is, assuming that that is correct, it is then very difficult to explain why through the whole period the United States Government continued to maintain that this flow of arms went on, if indeed it had stopped as a result of the Nicaraguan Government's recognition of the perils it faced in continuing to involve itself, or appeared to involve itself. It is indeed strange to me that the United States Government continued to claim it went on.

Q.: I quite agree, if indeed it had stopped. I said that I am speaking in terms of a hypothesis.

To turn to another aspect of these facts, Mr. MacMichael, is it a fact that leaders of the El Salvadoran insurgency are based in Nicaragua and regularly operate without apparent interference from Nicaraguan authorities in Nicaragua?

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A.: I think the response to that question would have to be a qualified yes, in that political leaders and, from time to time, military leaders, of the Salvadoran insurgency have reported credibly to have operated from Nicaragua, that this was referred to frequently by the United States Government as a command and control headquarters, and that such an action could certainly be defined as one unfriendly toward the Government of El Salvador recognized by the United States. I have confined my testimony to the charge of the arms flow. To my knowledge, the United States Government did not justify or attempt to justify its support for this covert force on the grounds that a directing group of the Salvadoran rebels, either habitually or from time to time, made its headquarters in Nicaragua.

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Q.: Thank you. May I ask if you have read the Declaration of Intervention of the Republic of El Salvador filed in this case on 15 August 1984?

A.: I have not.

Q.: May I recall that that Declaration contains detailed accounts of the shipment of arms from Nicaragua to insurgents in El Salvador; maintains that the general headquarters of the Farabundo Martí National Liberation Front is located near Managua; and claims that:

"In addition to the entire terrorist training operation established in Cuba, since mid-1980 the Sandinista National Liberation Front has made available to Salvadorian guerrillas training sites in Nicaraguan territory."

What in particular is your view of this charge of the existence of training sites in Nicaragua?

A.: I have no direct or current knowledge of those, I am not trying to avoid your question, Your Honour, it is just a thing that I have heard charged. I do not want to trivialize this response, but let me say this because it may help to put it in perspective, I have seen aerial photographs, provided through Intelligence systems, of places in Nicaragua identified as FSLN training camps and some places where, for example, white-washed stones are put out with the initials FMLN. I could not help but notice as I took the tram to Delft yesterday that a large wall in Rijswijk is painted with the letters FMLN. As I say I do not wish to trivialize it, but there is, and I accept this fully, I believe, as Nicaragua has stated, there is diplomatic, political and moral support for the FMLN. There is also a considerable Salvadorian population which resides technically as refugees, within Nicaragua. These people are not confined to camps as they are elsewhere in Central America. They live within the economy there, and go about their business

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freely. I am more than willing to believe, as a matter of fact, as a matter of experience, I assume that just as is believed, for example that Irish-Americans, resident in New York City and Boston, occasionally do make the odd lot of arms and other assistance, monetary and otherwise, available to the Irish Republican Army in Ulster, that this Salvadorian population whose sympathies, I assure you from some contact with them, are basically with the FMLN, find means to get support to their brethern in El Salvador. Now whether the Nicaraguan Government should be more diligent in policing the activities of these people is another question, and one to which I cannot meaningfully respond. I hope that in responding, Your Honour, I have not trivialized your question.

Q.: No, not at all, and it is a real question whether or not the Nicaraguan Government is doing what it can to prevent such activities, if that is its policy. But, a second question is: is the policy of the Nicaraguan Government not to prevent, but to assist such activities, which I do not think is the policy of the United States Government, in any event, vis-à-vis insurgent operations in Northern Ireland.

Now, Mr. MacMichael, it was acknowledged in Court last week on behalf of Nicaragua that, before Somoza's overthrow, the Sandinistas had received foreign assistance - arms and training - and that among the States giving such assistance was Cuba. Do you have reason to believe that, whereas Cuba gave such assistance to Sandinistas, it denies such assistance to the insurgents of El Salvador?

A.: Denies, in what sense, Your Honour?

Q.: Refuses to give it, declines to give it, fails to give it.

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A.: I think I have reason to believe that the Cuban Government is supportive of the FMLN.

Q.: If Cuba does give such assistance, not simply moral support, but arms, training and so on, would it not be plausible for it to channel some of that assistance through Nicaragua, to whose Government Cuba has given such massive assistance since the Sandinistas took power?

A.: I would like to answer in this way: first of all, as a general proposition I do not see any reason that the fact that if Cuba provides massive economic support to Nicaragua or any economic support to Nicaragua, it would necessarily follow that it would channel its assistance, if any, to the FMLN through Nicaragua. It might choose, as a matter of reason, to protect its investment in Nicaragua by channelling it in some other place. But, I would say that my opinions about the nature and type of Cuban support to the FMLN would not, and I am trying to use good judgement here in saying this, would not necessarily, or needfully mean that Cuba was going to require, if that is what you intended in your question, that Nicaragua also involved itself directly in its support.

Q.: Thank you. No that was not the purport of my question. The purport of it was this, that since Cuba is sending very large quantities of arms to Nicaragua, while co-operating with the Soviet Union in the sending of such arms, is it not plausible that it would, being an ardent supporter of the rebellion in El Salvador, choose to channel some of those arms through Nicaragua?

A.: I can only say it might. I cannot speak for it. But let me just go a little bit further. I am speaking now of my experience within the CIA, within the Intelligence community, trying to

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deal with these questions and get down to hard evidence, and as I explained to the Court previously, my training has unhappily been as a historian and I have a penchant for re-examining evidence perhaps too closely, I do not know, but the question of assumptions comes up all the time. For example, at one period I recall, when there were a considerable number of messages intercepted, we have talked about intercepts, so I think I can mention this, in which Cuban aircraft, at the time when Cuba was providing a great number of teachers in Nicaragua, had cargoes described as notebooks and pencils, there was an assumption by a certain number of my fellow analysts that these were jargon terms referring to rifles and bullets. Now, that is my feeling about assumptions, it may be that you are absolutely correct, I just cannot draw the assumption clearly myself.

Q.: I am not drawing conclusions either, Mr. MacMichael, I am just asking you would it be plausible?

A.: Plausible, yes.

Q.: Mr. MacMichael, have you heard of Radio Liberacion?

A.: I have heard of Radio Liberacion, yes.

Q.: What is it? Can you tell the Court, please?

A.: It was a predecessor of the basic Radio Venceremos which is used by the FMLN in El Salvador. I believe that at one time a radio broadcast under the title of "Radio Liberacion" was supposed to have originated from Nicaraguan soil.

Q.: Did they in fact originate from Nicaragua, to the best of your knowledge?

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A.: To the best of my knowledge I think I would say yes, that is the information I have.

Q.: Have you heard of an airfield in Nicaragua at Papalonal, or an airstrip?

A.: Yes, I have.

Q.: Are you aware of the fact that the United States Government under the Carter Administration made representations to the Nicaraguan Government about the use of that airfield as a principal staging area for the airlift of arms to insurgents in El Salvador?

A.: Yes, I recall that very well.

Q.: In an interview with the Washington Post published on 30 January 1981, the outgoing Secretary of State, Edmund Muskie, stated that arms and supplies being used in El Salvador's bloody civil war were flown from Nicaragua "certainly with the knowledge and to some extent the help of Nicaraguan authorities". Now as you know the Administration for which Mr. Muskie spoke had given more than \$100 million in aid to the Sandinista Government since it took power.

A.: That is correct.

Q.: More than the United States had given Nicaragua under the Somozas in more than 40 years. Do you think that Mr. Muskie was speaking the truth?

A.: Oh yes, in that case. For example, I spoke earlier under direct questioning from Mr. Chayes regarding information that had existed for that period - late 1980 to very early 1981 - and when I mentioned defectors I had in mind as a matter of fact some persons who testified under interrogation - I should not say testified - but who stated under

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interrogation following their departure from Nicaragua that they had assisted in the operations out of Papalonal in late 1980 and very early 1981, and as I say, I am aware of this; there was also an interception of an aircraft that had departed there - that had crashed or was unable to take off again from El Salvador where it landed - and I think that was in either very early January or late December 1980 and this was the type of evidence to which I referred, which disappeared afterwards.

Q.: I understand you to be saying, Mr. MacMichael, that you believe that it could be taken as a fact that at least in late 1980/early 1981 the Nicaraguan Government was involved in the supply of arms to the Salvadorian insurgency. Is that the conclusion I can draw from your remarks?

A.: I hate to have it appear that you are drawing this from me like a nail out of a block of wood but, yes, that is my opinion.

Q.: Thank you. Now let us turn to 1982 because you referred to an episode a little while ago in that regard, namely, that arms were found in - I believe you said - San José, Costa Rica on 15 March 1982 - rifles, etc., and the multinational group tendering to this arms cache was found. Now as I believe you know, Cuba sent large quantities of arms to the Sandinistas when they were fighting Somoza through, and to, Costa Rica, and the Costa Rican National Assembly made an investigation of that arms traffic and reported that quantities of those arms had been left behind in Costa Rica after the overthrow of Somoza. Do you believe that this arms cache indeed was of Cuban origin, destined for the Sandinistas, and in fact, perhaps with the aid of Costa Rican collaborators, meant to move on to El Salvador now that Somoza had been overthrown and they were not so much needed by the Sandinistas?

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A.: I could allow for the possibility of that, I do not know it and I do not know that the investigation carried out in Costa Rica at that time or the information developed from that arms seizure made any connection with Nicaragua at all. I believe that one or two of the persons of this multinational group, which included a Chilean, an Argentine, several Costa Ricans, some Salvadorians, etc. - that one or two of these was of Nicaraguan nationality.

Q.: Yes, I think that that is correct. Let us turn to 1983, Mr. MacMichael, I think this is also in the period of your service. A United States reporter named Sam Dillon visited a small Nicaraguan port, called La Concha, located about 60 kilometres across the Gulf of Fonseca from El Salvador. In his story in the Washington Post - a newspaper, I might note, which is known for its frequent criticism of the Reagan Administration - which appeared on 21 September 1983, at page A29, he recorded that:

"A radio-equipped warehouse and boat facility, disguised as a fishing co-operative on an island in northwestern Nicaragua, has served for three years as a transshipment point for smuggling arms to El Salvador, numerous residents here say."

Do you think Mr. Dillon reported false information?

A.: No, I would have no quarrel with the information that Mr. Dillon reported, I have read that article. I could comment upon it: I would reply to it more accurately if I had a copy in front of me but if that is not possible I will point out a number of things about it. One that raises a great many questions, as a careful reading of the article will indicate - one of these is raised merely by the headline, but even before I go into that, what I will say is that it always surprise me to some extent when the United States Government, in attempting to make its

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case on this point, so flagrantly delivers as evidence statements in the public press, when one would hope they would have something more substantial to put forward. This is not at all to impeach the Washington Post or Mr. Sam Dillon or newspapers. The headline of course is misleading: because it simply states as a fact that an arms shipment point has been raided. It states that it was raided by forces of the Nicaraguan Democratic Front, the FDN, when subsequent evidence has informed us that it was carried out by agents working directly for the Central Intelligence Agency, that is, so-called unilaterally controlled Latin assets. Reference in this story is also made to the press statement issued by the FDN about this. In my own conversations several months ago with Mr. Edgar Chamorro we talked about this: he pointed out that the press statement, which allegedly came from the FDN, was one that had been prepared within the Central Intelligence Agency and handed to him to present as if it were supposed to have been - and I will make a general observation here, if I may - as if this was supposed to have been a major transshipment point for arms within Nicaragua and going to El Salvador, and had been identified by the competent intelligence authorities of the United States. Given the scepticism that had been raised for some time and the demand for hard evidence, in the form of arms seizures, within the United States to support this case, it seems to me - as it seemed to me when I first became aware of that - that the goal would have been to gain as much presentable evidence in the form of photographs, in the form of tracking boats leaving that place to El Salvador, of seizing arms shipments, of taking prisoners, and so forth. Not to send a force in to destroy the entire facility, leaving behind the following items - if I recall the article correctly - a Nicaraguan army banner - I believe is described there - which if it were a clandestine installation, is a surprising item to have there.

Secondly, a target which had been fired at and shell casings which presumably came from the weapons which had fired at the target, the remains of three long wooden crates, was the entire physical evidence left behind. If this was indeed a super secret facility, it is also puzzling, although it may simply indicate a great deal of confusion within the Nicaraguan Government, that western reporters were allowed free access to this site immediately, that they spoke without hinderance to people living in the area and that there was only present one person described as a shotgun-toting guard, it does not appear to have been a member of the Nicaraguan armed forces. There is a further statement within the article that on , at least, the basis of conversations with local residents, some years previously, shortly after the events of July 1979, that military men not further described came to the area seeking the services of experienced smugglers and the experienced smuggler was named in the article. I cannot unfortunately recall the name now. All this to me raises a great deal of questions - what was this facility? The statements made by people living in the surrounding area, such as "I don't mix in politics but everybody knows" - this is what they said - may, or may not, be valid statements. And I do not want to be in a position, Your Honour, of trying to explain away everything I see, but that is my job, to examine this sort of thing, and say why there are so many questions coming out of this. That is the only response I can make to your bringing this article up at this time.

Judge SCHWEBEL: Thank you so much. I might read out what was said in the Declaration of Intervention of El Salvador on this point, with particular regard to it being a super secret facility of any sophistication.

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"In late 1983 a United States reporter named Sam Dillon visited a small Nicaraguan port, called La Concha, located about 60 kilometres across the Gulf of Fonseca, from El Salvador. Mr. Dillon reported that the residents of the so-called fishing co-operative had, as traditional smugglers, introduced, since 1979, large quantities of weapons into El Salvador under instructions of the Nicaraguan Government."

That is the preception of the Government of El Salvador of these events.

Mr. MacMICHAEL: That is their perception, yes

Judge SCHWEBEL: Mr. MacMichael, the New York Times of 13 July 1984 carried a story of an interview with a former Salvadorian guerilla commander who was captured in Honduras, who stated that virtually all the arms received by rebel units he led came from Nicaragua, and that Salvadorian guerillas have their headquarters in Nicaragua. The name of the former guerilla is Arquimedes Canadas also known as Commander Alejandro Montenegro. Have you any comment on that story?

Mr. MacMICHAEL: Yes, Your Honour, I do. I would like to point out that as in the case of any statement made by a prisoner or defector I am not in any way in a position to directly impeach the statement. I simply want to point out, as I did earlier in my testimony, that a heavy reliance on the sort of testimony of people being held, as in the case of Arquimedes Canadas, better known as Commander Alejandro Montenegro, who, incidentally, is a very successful FMLN commander, - he led an attack on the Ilopango airfield in 1982 and destroyed much of what was then the Salvadorian air force. He was captured in August 1982 in a safe house in Tegucigalpa in Honduras. I was aware of his capture and had access to the results of his initial interrogations. At that time he made no mention of arms. Indeed, I could say certainly that the object of much of his interrogation had to do with his leadership of the raid on the Ilopango airfield; where he received his training, and so forth.

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Q.: Where was that? Where did he receive his training?

A.: He testified that he received it in Cuba. Earlier in 1982 this gentleman had met with western reporters in the field in El Salvador and stated, at that time, that the vast majority of the arms used by his force were arms that were either purchased on the black market or captured in combat in El Salvador. When he made his statements reported in July 1984, almost two years after his capture, during which time he had been in the hands of very skilled interrogators, he told a very different story. Now, which story is correct I am in no way able to judge, and I have testified to a certain point and I am raising questions that will tend to support my point of view, and I am not trying to explain away everything you advance.

Q.: Fair enough. Now you spoke before of that famous incident in which the United States came forward with a defector who was introduced as someone who would testify to Nicaraguan support for the Salvadorian insurgency and, in fact, he did not, and he testified, in fact, that it was not so, and that he was put up to saying so, and so on. Is that correct?

A.: That is true.

Q.: What became of that gentleman may I ask?

A.: He is, to my knowledge, in Nicaragua today.

Q.: I see. He wasn't shot on the spot? He showed no signs of torture? He walked away as a free man? He was in Nicaragua welcomed as a hero. Is that not correct?

A.: I do not know, Your Honour, as to whether he showed any signs of torture. I had no chance to examine him physically. I will accept

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and glory in the fact, as you do to, that people who appear in the custody of the United States Government, in the United States of America, under guarantees given by that government, find those guarantees respected and in his case they were.

Q.: Right, now given his example, do you see any reason why a defector from the Salvadorian insurgency should fear to speak the truth? They can well see that if they come out with a story contrary to that which one would suppose the United States would want them to hear would await them as a hero's welcome in Nicaragua? So why wouldn't they speak the truth?

A.: Well, we haven't referred to any other Nicaraguan captives and or defectors here. The persons about whom we have been talking were, I thought, Salvadorians who had left the FMLN.

Q.: Yes. But as you know there are a large number of such defectors both from Salvadorian and Nicaraguan sources whose testimony is similar to that of the nature I have cited to you. I could go on and on giving you examples like this, but I do not think we can use the time of the Court. My point is simply, that, is not this single example of the treatment of that single captive suggestive of the fact that persons in the custody of the United States need not fear to speak the truth as they know it? Would that not be the lesson you would draw if you were in a similar situation?

A.: I certainly believe that is the case.

Judge SCHWEBEL: Thank you very much Mr. MacMichael. That concludes my questions Mr. President.

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The PRESIDENT: At the moment there are no questions to be put to you. After the coffee break, if there are any questions, I hope you will be available to the Court to answer questions.

Mr. MacMICHAEL: I am, Sir, available to the Court as long as it wants me, Your Honour.

The Court adjourned from 4.40 to 4.55 p.m.

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The PRESIDENT: Please be seated. For the moment there are no further questions for the second witness so we may summon the third witness, that is Professor Glennon.

Mr. ARGUELLO: Yes, Mr. President, the next witness will be Professor Michael Glennon. He will be examined by Mr. Paul Reichler, so I request you to call him please.

Mr. REICHLER: Mr. President, Members of the Court, may it please the Court, my task is to ask the questions of this witness. I would like to ask the witness first if he will please make the solemn declaration.

Mr. GLENNON: I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth.

Q.: Would you please state your full name?

A.: My name is Michael John Glennon.

Q.: Where do you reside?

A.: I live at 3455 Cornell Place, Cincinnati, Ohio

Q.: What is your nationality?

A.: I am a citizen of the United States of America.

Q.: How are you presently employed?

A.: I am an adjunct to professor of law at the New York University Law School and a full professor of law at the University of Cincinnati College of Law.

Q.: When did you become a professor of law?

A.: I became an adjunct professor at the New York University Law School in 1977. I became a professor at the University of Cincinnati College of Law in 1981.

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Q.: When and where did you obtain your law degree?

A.: I was graduated from the University of Minnesota Law School in 1973.

Q.: In your academic work, do you specialize in any particular area or areas of the law?

A.: I teach international law and constitutional law. My speciality is the constitutional aspects of the United States foreign relations power; the specifically the distribution of powers between the President and the Congress in areas such as treaty making and the war power.

Q.: Have you published books or articles or received honours in this area?

A.: I have published a number of articles in these fields. I have also received several honours; in 1981, I coauthored a five-volumed work entitled "United States Foreign Relations Law" with Professor Thomas M. Frank of the New York University Law School. That work was awarded the Certificate of Merit by the American Society of International Law. In spring of this year, 1985, I was awarded the Diack Prize by the American Society of International Law for the best article to appear in the American Journal of International Law over the previous year. The article concerned the war powers resolution and the effectiveness and constitutionality of statutory limitations on the President's war making power.

Q.: Are you active in any professional organizations?

A.: Yes, I am active in the American Society of International Law. I was appointed to a committee of the American Society of International Law to study the jurisdiction of the International Court

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of Justice, specifically whether the United States should modify or terminate its adherence to its declaration accepting ICJ jurisdiction and if so, how constitutionally that is required to be done. I am also a member of a panel of the International Law Association (the American branch) set up to study the use of force in relations amongst States.

Q.: What previous professional employment have you had and what were the time periods?

A.: From 1973 to 1977 I was assistant counsel in the office of the Legislative Council of the United States Senate. From 1977 to 1980, I was the legal counsel to the Committee on Foreign Relations of the United States Senate. From 1980 to 1981, I was associated with a law firm in Washington, D.C. which practised international law, and from 1981 until the present I have been a professor of law at the University of Cincinnati College of Law.

Q.: When you work in the United States Senate Legislative Council's office, what were your responsibilities. The office of the Legislative Council is something of the nature of an in-house law firm. It does legal work for the Senate, senators and Senate committees. I was assigned to the Senate Foreign Relations Committee which had no counsel on its staff at the time and all of its work was given to the office of the Legislative Council and assigned to me. That work included answering the committee's inquiries on matters of international law, constitutional law, statutory interpretation and particularly statutory drafting.

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Q.: What were your responsibilities when you were the legal counsel to the Committee on Foreign Relations of the United States Senate?

A.: While I was the Committee's legal counsel I was responsible as the principal lawyer for the Committee for matters again involving international law, constitutional law and statutory interpretation. I did such things as help set up hearings for the Committee, putting together lists of witnesses, I suggested questions for the senators to ask witnesses, I drafted legislation that the Committee requested concerning matters on which the committee concluded that some new law was necessary, and in general was responsible for answering the Committee's questions on all the matters before it. In addition to my responsibilities as the legal counsel to the full Committee, I was also assigned to the staff of the Committee's Subcommittee on International Operations. The Subcommittee on International Operations was charged expressly with oversight of the State Department. As a member of that subcommittee staff in that capacity I was responsible for determining whether the Department of State was operating within the bounds of the law and in that capacity met regularly with State Department officials and frequently interviewed them with a transcriber present. I reported my findings to the subcommittee and made recommendations concerning how the law needed to be changed in instances where it did.

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Q.: Did you have occasion in the early part of this year to conduct a fact finding mission in Nicaragua?

A.: I did, yes.

Q.: On whose behalf did you conduct this fact finding mission?

A.: The mission was sponsored by the International Human Rights Law Group and the Washington Office on Latin America.

Q.: What is the International Human Rights Law Group?

A.: The International Human Rights Law Group is a private non-profit independent American organization which is comprised of prominent members of the Washington D.C. Bar, the group is active in investigating human rights matters and human rights litigation.

Q.: What is the other sponsoring organization, the Washington Office on Latin America?

A.: The Washington Office on Latin America is also a private non-profit independent American Corporation or organization, which is funded by church groups and foundations including the Ford Foundation. It too is interested in human rights matters specifically in the Central American region.

Q.: What was the purpose of this fact finding mission?

A.: A number of reports had come to the two sponsoring organizations which had alleged serious abuses by the contras of the rights of civilians in Nicaragua. The sponsoring organizations asked us to go to Nicaragua and to determine the validity of these allegations. The sponsoring organizations also asked us to make some assessment of United States responsibility, if any, for these allegations.

Q.: From what sources have the sponsoring organizations received information pertaining to the activities of the contras?

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A.: From a number of sources. They had a rather thick pile of newspaper clippings alleging contra abuses. They also had received about 140 signed sworn affidavits by Mr. Reed Brody, who was an Assistant Attorney General in New York and a member of the New York Bar, who had travelled to Nicaragua, spent four months in Nicaragua and looked extensively into the abuses of the contras. They also had allegations from groups such as Americas Watch and it was the feeling of these two sponsoring organizations that because the Congress was again presented by President Reagan a request to fund the contras, before that decision was made by the Congress, in view of the paucity of evidence concerning the validity of these allegations, some methodical and purposeful investigation needed to take place.

Q.: Who else besides yourself was a member of this delegation?

A.: Mr. Donald T. Fox.

Q.: What were Mr. Fox's qualifications for this work?

A.: Mr. Fox is a senior partner in a New York law firm. He is a member of the International Commission of Jurists and as Vice-President is head of the American Branch. Mr. Fox has also been involved in human rights matters in the past. He conducted an outside investigation of human rights abuses in Guatemala in 1979.

Q.: Did anyone else accompany you on this mission?

A.: Yes, the sponsoring organizations hired an interpreter, Dr. Valerie Miller, who was also accompanied by Helen Sirver from the office of Congressman Sam Gejdenson of Connecticut. Congressman Gejdenson is a member of the Sub-Committee of the House of Foreign Affairs Committee with responsibility for Central America.

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Q.: Did the sponsoring organizations define for you the scope of your mission?

A.: Yes, they did. They asked us first to look into the validity of the allegations that had been presented to them concerning abuses by the contras directed at the civilian population in Nicaragua. They also asked us to make some assessment of the responsibility, if any, of the United States Government for the activities of the contras.

Q.: Who decided on what methodology your delegation would use in conducting its investigation in Nicaragua?

A.: The methodology was determined exclusively by Donald Fox and myself.

Q.: Would you describe to the Court in general terms how you did conduct your inquiries into the activities of the contras and the responsibility, if any, of the United States?

A.: Yes, with respect to the contras we went to Nicaragua. We interviewed about 36 people who were located in the area of northern Nicaragua, along the border of Honduras, where the contras had been active and where a number of the alleged incidents were said to have occurred. In investigating these incidents we visited the towns of Esteli, La Estancia, Condega, Matagalpa and the capital city of Managua of course. With respect to the responsibility of the Department of State, we met with officials from the Department of State in Washington before we left for Nicaragua. While we were in Nicaragua we met in Managua with the United States Ambassador to Nicaragua, Mr. Harry Burgald, and when we returned to Washington we met again with officials of the Department of State.

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Q.: Who determined your itinerary in Nicaragua?

A.: Donald Fox and I determined our itinerary.

Q.: How did you decide on that itinerary?

A.: We asked the recommendations of a number of people before we left including officials of the Department of State, members of different human rights organizations including Americas Watch. We also, once we got to Nicaragua, adjusted our itinerary along the way based on information that we gathered in the interviews.

Q.: Was the Nicaraguan Government involved in any way in planning or approving your itinerary?

A.: Absolutely not.

Q.: Did the Nicaraguan Government participate in or influence your inquiry in any way?

A.: It did not.

Q.: Did you receive any assistance from the Nicaraguan Government in the course of your investigations?

A.: Yes, we did. We determined that it was necessary to interview the captured head of contra intelligence from the Department of Nuevo Segovia who was at the time that we were in Nicaragua incarcerated in the Modello prison in Tipitapa. We requested and received the permission of the Nicaraguan Government to interview this individual in the prison. I might add that we interviewed him by ourselves without any representative of the Government being present. Second, we hired at market rates a car and a driver from the Nicaraguan Government, which we concluded while we were in Washington was the only practical means of getting about the country safely and seeing the people that we needed to see.

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Q.: Who determined which people you would see and interview?

A.: Donald Fox and I determined whom we would see exclusively by ourselves.

Q.: Was the Nicaraguan Government involved in any way in your selection of these people?

A.: Absolutely not. As a matter of fact we discovered at one point that an over-zealous contact person had sought and received the assistance of a local governmental official in locating the person that we wanted to talk to and because of this involvement of the Government we concluded that it would be best to exclude that individual's statement from our report.

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Q.: How did you select the people whom you interviewed in the places you visited in Nicaragua?

A.: We selected the persons to be interviewed in several different ways. First, when we went to the different cities we frequently spoke to the priests who had parishes in those cities and we asked the priests whether any of their parishioners had had any experiences with the contras and, if so, whether these individuals would be credible. Second, we spoke to Americans who were living or had lived in Nicaragua and asked them whom we should talk to: these were frequently members of religious groups, such as witnesses for peace. Third, some of the interviews that we conducted created leads that led to other individuals that we believed we should interview, and finally, a number of people simply came to see us, having heard that we were in town, and having something to tell us.

Q.: Can you generally describe the people whom you interviewed?

A.: Yes, the people that we interviewed came from all walks of life. They were generally aged from about 20 to about 60. They were from a variety of different occupations - truck drivers, bus drivers, telephone technicians, coffee pickers, housewives. Many of them seemed to be Government supporters, some did not; most appeared apolitical; most were devout Catholics.

Q.: Who actually conducted the interviews?

A.: Donald Fox and I conducted all the interviews ourselves. Normally we conducted the interviews together, although occasionally in the interests of time we split up and conducted the interviews separately.

Q.: Where were the interviews conducted?

A.: Generally the interviews were conducted in the houses, or more accurately, the huts of the people that we were interviewing.

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Q.: Did any representative of the Nicaraguan Government participate in any of these interviews?

A.: No.

Q.: How did you determine the veracity of the persons you interviewed?

A.: In several ways. We cross-examined people quite closely. We asked probing questions, we compared notes afterwards on our assessments of their demeanour and credibility, we asked the individuals if there were other witnesses to the events they described, and if it was possible we interviewed those persons. Finally we cross-checked their stories where possible against whatever documentary sources were available.

Q.: Did you rely on any statements that were not first-hand accounts?

A.: We did not. We accepted only first-hand accounts and sought generally to adhere to the standards of American evidence which precludes the admission of hearsay evidence.

Q.: Were there any witnesses whose veracity you doubted?

A.: Yes, there were two witnesses whose veracity we doubted. One was a middle-aged man who seemed to recall events in amazing detail. His story was plausible, but we thought to be safe we should probably exclude it. Second, an 18-year-old girl described events in terms that we thought were exaggerated, and we therefore excluded her statement from our report as well.

Q.: So a report of your fact-finding mission was prepared?

A.: That is correct.

Q.: Who prepared the report?

A.: Donald Fox and I.

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Q.: Was the report ever published?

A.: Yes, the report was published in April 1985 by our two sponsors.

Q.: And does your report have a title?

A.: Yes, it does.

Q.: Would you read it to us?

A.: The title is "Report of Donald T. Fox, Esquire, and Michael J. Glennon, to the International Human Rights Law Group in the Washington Office on Latin America concerning Abuses against Civilians by Counter-revolutionaries operating in Nicaragua, April 1985".

Q.: Since the report is already in evidence in this case at Annex I to Nicaragua's Memorial of 30 April 1985, I would like to ask you if you could very briefly recall for the Court your findings and conclusions as to the activities of the contras?

A.: With respect to the contras, our conclusions were as follows. We found that there is substantial credible evidence that the contras are engaged with some frequency in acts of terroristic violence directed at Nicaraguan civilians. These are individuals who have no connection with the war effort - persons with no economic, political or military significance. These are individuals who are not caught in the cross-fire between Government and contra forces, but rather individuals who are deliberately targeted by the contras for acts of terror. We found that the contras do in addition target economic institutions such as coffee processing plants, lumber-yards, radio stations and the like, but we found, as I say, that there is substantial credible evidence that the contras with some frequency direct terroristic violence at Nicaraguan civilians.

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Q.: You said that the contras engage in terroristic violence, in acts of terror. Can you tell the Court what you mean by terror?

A.: I use the term "terror" in the same sense in which it is used in the United States law, and I refer the Court's attention to Public Law 98533, which was enacted only this year. It defines an act of terrorism as an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws, and appears to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by assassination or kidnapping. We found that those are precisely the kinds of activities in which the contras deliberately engage.

Q.: I know that your report makes reference to a number of incidents of what you have defined as acts of terror. Could you give the Court some very brief examples to illustrate what you mean?

A.: Yes, I would like to read for the Court the statements that we took from three individuals. These statements were made in their own words.

The first is María-Julia Ortiz, aged 28, whom we interviewed in Jalapa on 25 February 1985. "It was 24 October 1984 at Pied de la Cuesta, where I lived at the time. The contras came about 4.30 a.m. They banged on the door and said 'Get up you rabid dog'. My husband did not want to open the door. They broke it down with the butts of their rifles. My husband said 'I am ill'. The contras said 'That's not what we're asking you. If you don't get up we're going to throw a grenade in your house.' He was frightened. He knew what they were going to do to him because they had broken down the door. He had run into the other

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room. They hit him on the neck with a gun, knocking him unconscious. Then they took him into the corridor and tied him up. Then, while he was lying on the ground, they hit him on the eye. My children could see what was happening. I have three - four with the one now because I am pregnant. Then they took bayonets and slit his throat. I saw all of this from under the bed. After they slit his throat they said 'Where is this guy's wife?' While he lay there bleeding to death, my little girl said 'What's happening to daddy?' The contra then grabbed me and said 'Come with us', and tried to pull me from the children. When I resisted they hit me and I fell unconscious. When I woke up on my cot the contras were going through our belongings, taking what they wanted. When they finished, a contra who had been giving instructions from outside asked those inside 'Did you do what you were supposed to do?'

We asked this woman why her husband had been killed. She did not know. "He never got involved in anything", she said, "he was a carpenter. He was not in adult education or anything like that." We asked whether he was a communist. "I don't know what they are", she said, "I am a Catholic. We went to mass every Sunday together."

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Second is the statement of Maria Ramirez Mateo whom we interviewed in La Estancia, "I live in the co-operative Augusto Cesar Sandino, in Quilali in the municipality of Nueva Segovia. It's about three to four hours from here. On December 18, 1983 at about 9 o'clock in the morning, I was feeding my children, all six. I rounded them up when I heard shots. We took our kids to a shelter, I couldn't get all the other kids out. One woman was at the river washing and her two kids were killed. The contras killed them in their house. My mother was taking care of them and she was hit in the arm. The contras shot up the whole village and all the houses. They were inside one of the houses. The contras took a girl of about 15. They grabbed the 15 year old girl. The contras were shouting slogans - you rabid dogs, why are you running away?'. The girl was a militia, they grabbed her and took away her gun. She was in a special area that had been dug up. She was on one side and I was on the other side, about 30 yards away. She was screaming. She was raped by one of 50 men. There were about 800 contras there, in other areas. The same person then cut her throat with the bayonet that he had in his hand. When I saw her throat cut, I decided I should run away because they would do the same to me. I left for another co-operative. They shot at us but we went down into a gully and escaped. As we did, they began burning houses. About 17 of the 23 houses were burned. Twelve militia were killed, and two little girls. Among the 12 were my two brothers and my father. I remember it as if it happened yesterday. I have only one brother left. My brothers left their wives and children - 3 and 4 children - and they are now orphans. One feels great gratitude when people come and visit us, I want to thank you."

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The next person whose statement I will read to the Court is that of Gustavo Adolpho Palaciss Reyes who is 25 years old. We interviewed him in La Estancia on 27 February 1985: "I am a day labourer. On 26 December 1984 we were in Sompopera. We were on the road about 6 o'clock in the morning in a Ford pick-up truck, a private pick-up truck. In it were my mother, wife and three family members of my wife's family. None had guns. We heard machinegun fire. We stopped. It continued for 15 to 20 minutes. It was aimed at the truck. We couldn't see who it was. We all ducked down. When the shooting stopped, they came up to the vehicle. They had a badge on their uniforms that said 'FDN', the uniforms were blue. There were 50-80 men. They saw we were six women and four men. They said nothing, they just looked at the bodies. Six had been killed. Of the wounded, one later died. They said nothing. Then they left. My mother and my wife were killed. After the actions of these freedom fighters we got out of the vehicle and found a farm worker to get help. The car had no markings on it. It was a private vehicle of transportation. I just want to say that all this is a product of the help the United States Administration is giving to the contras. I am not a communist, I am a catholic. I hope these words will do something back in the United States. We just want to live in peace."

Q.: What conclusions did you draw about the extent or frequency of acts of terror by the contras?

A.: We concluded that acts of terror occur with some frequency, that they are not isolated incidents. In the period of about one week that we were in Nicaragua, we heard related to us incidents involving 16 murders, 3 cases of torture, 44 kidnappings and one rape. We had the distinct sense that had we stayed longer and sought further evidence, we

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could have gathered substantial further evidence with little difficulty. In addition, it appeared reasonable to infer that the contras were operating pursuant to a command structure. The contras moved about the countryside frequently in groups of up to several hundred. The individuals who committed acts of terror against civilians were not acting, it seemed to us, as free agents, they were not acting beyond the course and scope of their duties; rather they appeared to be acting pursuant to direction and supervision. Finally, we interviewed a cross-sample of the individuals who had given statements to other investigators, such as Mr. Reid Brody, and those statements checked out, from which we thought it reasonable to infer that, had we interviewed others of the individuals who also had been interviewed by these persons, those statements would likely have checked out. Consequently, our finding was that acts of terror are not isolated incidents but rather occur with some frequency.

Q.: In your interviews with officials of the State Department and with United States Ambassador Harry Bergald in Managua, did you inquire whether the United States Government had ever conducted its own investigation of the contras activities?

A.: Yes we did and we were told that no such investigation had ever been conducted.

Q.: Did you find out why not?

A.: Yes we did. One of the individuals from the Department of State with whom we spoke, a high-ranking State Department official, spoke with us on the condition that his name should not be made public, he asked us not to identify him. He was quite candid with us, I think. He said that the intelligence community had not been tasked to look into

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these activities, which is to say that the Central Intelligence Agency and other American intelligence services had not been affirmatively directed to undertake to assess the validity of any or all of the allegations that we were referring to.

Q.: Did this senior official tell you anything about the posture or position of the United States Government with respect to these activities?

A.: Yes, he summarized the position of the United States Government quite pithily. He said that the United States Government maintained a posture of "intentional ignorance" - those are his exact words.

Q.: Notwithstanding that posture, did you nevertheless in your meetings with State Department officials in Washington and with United States Ambassador Harry Burgold in Managua find that the United States was in fact aware of acts of terrorism committed by the contras?

A.: Yes, we found that the United States, specifically State Department officials, were aware of acts of terrorism by the contras. This same high ranking State Department official told us that it was clear that the level of atrocities was enormous. Those words "enormous" and "atrocities" were his words.

Q.: From this do you conclude anything about the responsibility of the United States Government for these acts?

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A.: Yes, I conclude that the United States Government is responsible for these acts; if the United States Government provides assistance to the conquerors knowing full well what acts the conquerors will perform, my conclusion is that the United States Government is responsible; it is like giving a loaded pistol to a person whom you know intends to commit murder.

Mr. REICHLER: Mr. President, that concludes my questioning of the witness; the witness, of course, remains at the disposition of the Court. Thank you.

The PRESIDENT: Thank you. Judge Schwebel has some questions to ask. He has the floor.

Judge SCHWEBEL: Mr. Glennon, I take it that in Nicaragua you are free to travel where you please and speak to whomever you wish. Is that correct?

Mr. GLENNON: That is correct, your honour.

Q.: Did you speak to figures who have been critical of Sandinistas, such as the Roman Catholic Cardinal?

A.: We did.

Q.: Did your group investigate alleged violation of human rights by the Sandinistas such as the forced relocation of the Miskito Indians, the assassination by State security officials of opposition officials, notably Jorge Salazar, and the murder of Somoza's supporters who had been taken prisoner?

A.: Justice Schwebel, we asked those persons we interviewed regularly whether they were aware of human rights violations by the Government of Nicaragua and we received no statement that would not constitute heresay concerning human rights abuses by the Sandinista Government. I would like to say that our sponsors defined the scope of our mission for us; they indicated to us that our primary focus

was to be on human rights abuses by the contras and both Donald Fox and I believed that that focus was justified for several reasons. First, a number of groups including the Department of State in Americas Watch, had already studied human rights violations by the Government of Nicaragua; there was a fair amount of literature that already existed on that point. Second, the United States Government was not considering at the time giving assistance to the Government of Nicaragua; the President had requested the Congress again to fund the contras, and the question was - this question that our sponsors asked us to look into - was responsibility of the United States by virtue of that funding. So I thought that our focus on violations by the contras was entirely justified.

Q.: Wouldn't it be fair to say, Mr. Glennon, that you were not tasked, to use the word you used before, to investigate human rights violations of the Sandinistas?

A.: Well, no, our sponsors did tell us to find out what we could about human rights violations by the Sandinistas but it was not the principal purpose of our visit.

Q.: May I ask, Mr. Glennon, did you interview officials of the Permanent Commission on Human Rights - I refer now not to the Commission set-up in mid-1980 by the Nicaraguan Government, but to the Commission which was founded in 1977 and which I understand has a distinguished record of protest of alleged violations of human rights, both by the Somoza régime and the Sandinistas Government?

A.: Yes, we did.

Q.: Now, I understand that you impute the United States' responsibility for violations of humanitarian law by the contras?

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A.: That is right. I view the United States as responsible for the acts that are being carried out by the contras.

Q.: You referred to news reports about the kidnapping of the daughter of President Duarte of El Salvador after the murder of one of her guards; it was reported that she was pulled away by the hair. Presumably, you have also heard reports of the policy of the insurgents in El Salvador of kidnapping, or assassinating mayors of cities, some 20 of whom have indeed been kidnapped; and there have also been indications of murder of prisoners by El Salvador insurgents - not early in the insurgency but later - and, of course, there is the attack on United States Marines and Salvadorian citizens at an outdoor café which has been referred to in these hearings. Now a leading figure of the insurgents at El Salvador, Mr. Ruben Zamora, is quoted in the International Herald Tribune of September 14/15 on page 3, as denying any knowledge of who had carried out the kidnapping of the Duarte daughter; a denial, incidentally, which he issued from Managua. But, as far as I know, there is no dispute about the attribution of these others actions to El Salvadorian insurgents. Now let us put aside for the time being the question of what is, or has been, the policy or practice of the Nicaraguan Government in regard to support of the insurgency in El Salvador; and let us assume, for the purpose of this question, two facts. First, that the leadership of the El Salvadorian insurgents operates from Nicaragua; and second, that arms have been shipped through Nicaragua to Salvadorian insurgents. If these facts are assumed, wouldn't it follow that Nicaragua is responsible for the violations of humanitarian law to which I have referred ?

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A.: I really do not feel confident to answer that question. I have no specific firsthand knowledge of events in El Salvador; the knowledge that I possess, which has brought me here to the Court, is as a result of a visit to Nicaragua and I would be glad to answer any questions you may have about information we found in Nicaragua, but I really do not feel confident to answer questions about El Salvador.

Q.: Well, I guess I am questioning you in your capacity as a professor of law, and assuming -as I am sure is the correct assumption -that you have knowledge of the principles of imputability, and I am asking you not to speak of the facts of what has occurred in El Salvador: I recognize that is not within the focus of your mission. But I am rather asking you on the assumption of certain facts, would it follow that Nicaragua's aiding - and that is the assumption - of the insurgents in El Salvador, is responsible for their violation of human rights? Would that follow?

A.: Justice Schwebel, we did not look into, we did not study, we did not analyse issues of State responsibility and imputability as part of our mission. Ours was a fact-finding mission and I really would prefer not to comment beyond that.

Q.: May I ask how you can conclude, if you have not considered questions of imputability, that the United States is responsible for violations of human rights by the contras?

A.: Because the sponsors of our mission asked us to study moral imputability as well as legal imputability. We set out Article 3 of the 1949 Geneva Convention in our report, but as you can see from our report we did not get into the legal issues. I stand fully behind my conclusion that the United States is responsible for the actions of the contras and I think we meant that primarily in a moral sense, but as I say our mission was directed to finding facts and I am convinced

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Q.: Thank you so much.

The PRESIDENT: If there are no further questions then we could perhaps rise now and have the next witness first thing tomorrow morning. Would that suit you or would you like to start the fourth witness now?

Mr. GOMEZ: No, I think that is a very good suggestion, Mr. President; we will present our other witnesses tomorrow.

The PRESIDENT: Well, the hearings will commence at 10 a.m. and conclude at 11.45 a.m. and then we will have another session in the afternoon at 3.15 to 6 p.m. I hope this will enable you to finish the remaining witnesses.

Mr. GOMEZ: Yes, that will be fine.

The Court rose at 5.45 p.m.

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ANNEX III

Edward J. Markey

Washington, D.C.

My Dear Friend,

What starts wars?

If you could stand with me on the floor of the House of Representatives these days, it wouldn't take you long to answer that question.

You would see any number of misguided members of Congress blindly following the lead of a President hellbent on finding military solutions to Central America's political problems.

Moreover, you would see our great country being manipulated by right-wing ideologues, whose ultimate hope is that American boys will kill and die in Nicaragua and El Salvador to fulfill their fantasies.

Worst of all, you would hear the word "invasion" used more and more often -- especially in the private cloakrooms off the House floor -- regarding future U.S. actions in Central America.

One by one, the hard-earned restrictions, which we who lived through the Vietnam era fought for in Congress, have been repealed. The Boland Amendment, which restricted military involvement in backing the vicious "contra" terrorists, is the most obvious example.

Now, the decision is up to you and me. Whether we go to war or not will be decided on the floor of the Congress in the next few months ... and in the Congress we fight to elect in 1986.

That's why my colleagues joined me, in 1983, in founding the National Committee for Peace in Central America. Our purpose ... one which I hope you share ... is to promote a peaceful solution to the conflict in Central America, rather than expanding both the war and the United States involvement in it.

To accomplish this, we will need your help.

You can expect, in the next few months, to hear more and more of the same arguments coming from the Reagan Administration. According to them ...

- Nicaragua is a Soviet satellite, led by a totalitarian government that is a daily threat to its neighbors ...
- El Salvador is a growing democracy, with vast advances being made in human rights ...
- Guatemala is on the road to civilian rule, and U.S. aid

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is vital in maintaining democratic advances ...

- Honduras needs our endless military assistance in resisting neighboring Nicaragua ...
- Costa Rica must have an army, abandoning the non-military structure that country has enjoyed since 1948 ...

Each of these assumptions is being sold as part of a Defense Department, C.I.A., and State Department propaganda blitz ... and each of these assumptions is demonstrably false. They are part of a carefully orchestrated campaign to convince you, as well as your Congressional representatives, that our country must continue an escalating military involvement in the region.

What would happen if we could provide current members of Congress with the truth ... and elect a more enlightened Congress in 1986? What if they knew ...

- That Nicaragua, a desperately impoverished nation, is suffering barbaric torture and death at the hands of mercenaries paid for with our tax dollars, and the support of private U.S. right-wing organizations ... and is being driven by the Reagan strategy into the hands of the Soviet Union ... or anyone else who will help them ...
- That El Salvador's military, far from being "reformed" or "controlled" by President Duarte, is still conducting death squads ... now augmented by machine gun and bombing campaigns against helpless civilians ...
- That Guatemala continues to be the scene of a genocidal extermination campaign by the military against that nation's large Indian population ... and that the military is so corrupt they have virtually bankrupt the nation ...
- That Honduras has been transformed from a poor but peaceful nation into a U.S. military base ... without any benefit to its citizens ...
- That Costa Rica, far from being threatened by Nicaragua, is another scene of C.I.A., right-wing mercenary, and international terrorist conspiracies ...

Make no mistake ... you and I are paying for all this deception.

During the Reagan presidency, military aid has exceeded \$1 billion in Central America ... compared to the previous 35 years, in which a total of just \$137 million was sent.

Nor is money the only thing our disastrous policy in Central America is costing us. Members of the National Committee for Peace in Central America who have been in contact with democratic states from the Rio Bravo to Tierra del Fuego have found

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universal opposition to the Reagan Administration's policies. Even our closest European allies are adamantly opposed to our course of action.

The members and supporters of the National Committee for Peace in Central America believe criticism of our misguided policy does not weaken our nation. Rather, we believe it can serve to refine, correct, and strengthen our national course.

"To criticize one's country," said Senator Fulbright, one of the leading opponents of the Vietnam war, "is to do it a service and pay it a compliment. It is a service because it may spur the country to do better than it is doing; it is a compliment because it evidences a belief that the country can do better than it is doing."

Those of us who lived through Vietnam learned that determined people can bring a nation to its senses.

I am asking you to be one of those people.

I am asking you to stand up and support the National Committee for Peace in Central America before our sons and brothers start arriving home in those flag-draped coffins.

Right now, we are barely able, in Congress, to hold the President and his war-prone administration at bay.

But in terms of electoral politics, November, 1986 is tomorrow!

A shift of only three seats in the U.S. Senate would deprive the Reagan Administration of its majority. A change of fewer than a dozen key seats would have a similar, pro-peace effect in the House of Representatives.

In the last election, 75% of the candidates backed by the National Committee for Peace in Central America won their races.

Your support is vital in assuring a similar outcome in 1986. But meanwhile, there's another way you can help.

We can, perhaps, hold the line against the Reagan Administration's military adventurism if Congressional leaders continue to hear from concerned citizens like you. Please take the time today to sign the enclosed petition to Senator Lugar, Chairman of the Senate Foreign Relations Committee. I can tell you from my own experience, we in Congress count this kind of mail and take it into consideration when making critical decisions.

Then, please return the petition with the most generous donation you can afford to the National Committee for Peace in Central America headquarters. We will deliver the petitions

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directly to Senator Lugar, and will earmark your contribution to be used to support those Congressional candidates who favor peaceful solutions to social issues. And equally important, it will be used to defeat those candidates who see an expanded war as the only solution.

In dozens of Congressional and Senate districts all over the country, decisions are being made now about who will run in 1986. I can tell you that by the time you start reading about distant "contests" for nominations, a vast majority of the decisions will already have been made.

We at the National Committee for Peace in Central America are already active in identifying candidates who will vote to reverse the dangerous pro-war tendency in Congress. With your support, we can ...

- Conduct effective polling, now, to find out those races where our early involvement can make a difference ...
- Begin media training of candidates and their staffs, so that Central America is dealt with prominently and well ...
- Start electoral operations like phone banks and canvassing, which must begin early if they are to be effective in elections.

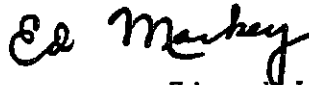
The Republicans will spend \$30 million or more in 1986 to keep their power ... and to be in a position to carry out military threats.

Your \$35, \$50, \$100, or \$500 or more will be multiplied many times over through our effective targeting of key Senate and House races ... we don't need millions to win!

If you agree that this is a time to heal wounds in Central America, not open new ones ... that we have better things to send to impoverished, desperate people than helicopter gunships and saturation bombing raids ... then I urge you to join me now.

Send the most generous donation you can to the National Committee for Peace in Central America ... and you can be a partner in changing history.

Very sincerely yours,



Congressman Edward J. Markey

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P.S. I urge you not to set this letter aside with the intention of contributing later. Replacing just a few members of Congress is a work which must be done early to be effective. Please send your petition and the most generous contribution you can afford, payable to PEACE IN CENTRAL AMERICA.

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ANNEX IV

National Committee for
PEACE IN CENTRAL AMERICA

advisory board

Hon. Edward J. Markey Chairman	
Hon. Barbara Boxer	Hon. Tom Harkin
Hon. Ronald Dellums	Hon. Marcy Kaptur
Hon. Robert Garcia	Hon. Peter Rodino
Hon. Henry Gonzalez	Hon. Patricia Schroeder

Dear Friend:

Please consider for a minute these painful images:

American troops fighting a secret war ... homeless refugees fleeing oppression and violence ... CIA operatives flouting American law and illegally funding right wing military groups ... millions of tax dollars squandered on arms for dictators ... disgrace for our country in world opinion.

I know they sound like images from Vietnam at the time of Richard Nixon's second inauguration. But in fact, they are from today's newspapers — the day of Ronald Reagan's second inauguration — and they come from Central America.

And they were the same in 1983, shortly before the U.S. invasion of Grenada when several members of Congress, including myself — formed the National Committee for Peace in Central America. Our goals: to bring U.S. involvement in the conflict in Central America under control and prevent the use of American combat troops in the region.

It seems now that our work is even more important than ever before:

- * American troop strength in Honduras has doubled since early November; we have paratrooped men within 20 miles of the tense Honduras-Nicaragua border.
- * Survivors of killed members of the secret 160th Task Force of the 101st Airborne Division have disclosed that the unit has flown special missions in Central America — possibly even ferrying CIA-backed guerillas from Honduras to Nicaragua — in violation of American law.
- * The Administration, voicing concern over Russian involvement in Central America, "leaked" reports of MIG shipments to Nicaragua (planes that in fact did not exist) as a pretext for further aid to the contras.

The father of one of the men who died in the 160th Task Force operation described his son's involvement in the Central American war: "The politicians deny we're involved down there, but he was down there doing it."

According to the widow of one unit member, U.S. troops on these secret missions were told that if they were grounded or captured, "they were on their own." The 160th accounted for one-half of all of the Air Force's casualties last year — and they are not alone.

While we were invading Grenada over concern about its new military airport, thousands of American troops worked to build six such installations in Honduras. We have stockpiled ammunition, rockets, and bombs near the Nicaraguan border while practicing mock invasions of that country — something Ronald Reagan

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calls a U.S. "training mission."

Already fighting in the region is the 10,000 person army trained and equipped by the CIA — with your tax dollars — to battle the government of Nicaragua. It is estimated that these guerillas have done \$200 million in damage to the impoverished villages and countrysides which are their battle fields.

It is for these right wing troops that the CIA produced its controversial "assassination manuals."

One suggested the hiring of professional criminals to commit "selected acts of violence." It spoke of the need to "neutralize" government officials, and even assassinate some of the guerillas' own leaders to create martyrs for their cause.

Another was a "comic book manual" with pictures showing how to overthrow a government by slashing tires and telephone wires, spreading false rumors, pouring dirt in gas tanks, smashing windows, and producing shortages by turning stock animals loose. Its tactics ran the gamut from clogging public toilets to building molotov cocktails.

These terror manuals were a clear and direct violation of the U.S. law which prohibits the CIA from acting to overthrow the government of Nicaragua. And President Reagan has refused to dismiss the authors of these illegal manuals from the CIA — though he promised to do so during the campaign.

These law-breaking CIA agents remain at work for our government — possibly continuing in their illegal efforts which will only draw us further and further into the Central American war.

We have already provided arms being used by the right-wing "Death Squads" of El Salvador. These "Death Squads" roam the countryside, killing any suspected of dissent — they even murdered the Archbishop of San Salvador, a champion of the people's campaign for reform and justice.

Government troops using American weapons have killed a dozen priests and hundreds of church workers. The casualty total in the Civil War in this small country exceeds 40,000 already. And the violence continues.

Children, first and foremost, are the war's victims. They must flee as refugees — food supplies and family life destroyed by the ravages of conflict. And do they have any hope of education, or a better tomorrow? No, the only future most will know is poverty, despair, oppression — and more violence.

Many of them will become soldiers or guerillas in the conflict. Brothers and sisters as young as 14 are found in armies or guerilla bands ... or even worse ... found dead due to one of the thousands of military skirmishes these lands have seen.

The terror has had its financial cost too. The U.S. has given almost \$400 million in aid to the El Salvador army since Ronald Reagan became President. Reagan now is asking Congress for \$200 million more in army assistance for next year alone.

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And for months President Reagan has resisted the recommendation of his own Commission on Central America (the Kissinger Commission) which suggested that further aid payments be linked to progress on human rights. Indeed, Ronald Reagan vetoed a bill passed by the Democratic House and the Republican Senate which would have imposed such restrictions on U.S. tax dollars.

With the money we are spending to send arms to Central America, we could feed more than half of the starving people in Ethiopia. With these funds, we could save 5,000,000 children around the world who die each year due to a lack of immunization — and have enough left over to save another 7,000,000 from diarrheal dehydration, the leading cause of death in children on this planet.

Unfortunately, Ronald Reagan's approach in Central America is no surprise. It was Ronald Reagan who said of Vietnam that "we could pave the whole country and put parking stripes on it and still be home for Christmas."

It was President Reagan whose "illegal mining of Nicaraguan harbors was recently held to be a violation of international law by the World Court. And it was his deputy Secretary of Defense who stated that "we have to use military means" in Central America to seek a military "victory."

I know that the people of this country think otherwise. Polls taken late last year show that by a three-to-one margin the people oppose an invasion to overthrow the Nicaraguan government. Even during the height of Reagan charges that Soviet planes were in Nicaragua, polls showed that most Americans opposed a U.S. air strike against that country.

The Pentagon is counting on apathy and ignorance to sustain its lawless policies. They hope to focus public debate on the Communist threat to the region, and ignore the problems of poverty, misery, and internal repression.

In countries on both sides of the conflict — in countries both pro and anti-American — there is hunger, human rights violations, and censorship. Throughout the region, the innocent orphans of war show the ravages of conflict.

And in our country there is an urgent need to educate our people and the Congress. To elect men and women to office who support a peaceful solution to the crisis in Central America — leaders who will stand up to Reagan, the CIA, and the Pentagon, and demand an immediate change in U.S. foreign policy.

That is the main purpose of the National Committee for Peace in Central America.

Our accomplishments so far? You be the judge:

- * We have proposed a new law to prohibit the introduction of U.S. combat troops into Central America without the prior, public consent of the Congress.
- * In the 1984 elections, we contributed funds and campaign support to candidates around the country. We won in 11 of our 15 races — an impressive track record for a new group like ours. These candidates are all proven leaders for the cause of peace in Central America, and will make a great difference in Washington.
- * Over the past two years, we have reached almost a half million Americans

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with information about the Reagan policies toward Central America. As a result, thousands of new activists have contributed funds, support, and involvement to our cause.

Now, we must expand our political and organizing efforts — and to do so, we need your help. I am writing to you today to ask you to join us as a Participating Member.

You will receive special reports, direct from Washington, about our progress in Congress. You will be polled on your views about strategies and policies for our movement. We will ask your advice on which candidates to support, and which races we will be involved in.

And you will be asked to join in our direct action efforts such as the enclosed constituent post card campaign to Congress.

I urge you to support the National Committee for Peace in Central America: the only political committee working on this vital issue with a direct link to key members of Congress.

I urge you to join today. Many waited to get involved in the movement to stop the Vietnam War — and the Gulf of Tonkin Resolution passed without dissent. Thousands of young people paid with their lives for our indecision and mistakes then ... let us resolve not to make the same mistake again.

Later is not soon enough. Already, thousands have died, Congress has appropriated millions of weapons and ammunition, secret missions have been flown, CIA-guerillas are waging war in Nicaragua, and progressive reforms are flickering out.

We can wait no longer. Central America is not waiting — nor is Ronald Reagan.

Sincerely,

Ed Markey
Congressman Ed Markey

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P.S. Participating Members who send us \$35 or more will receive a copy of the CIA-produced "assassination manual" distributed to the anti-Nicaragua guerillas. The National Committee has reproduced this special collection of excerpts from the "comic book for killers" so that people in this country can see just how backward U.S. policy in Central America has become.
