

**THE MINING OF NICARAGUAN PORTS
AND HARBORS**

STAT

HEARING AND MARKUP
BEFORE THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

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ON

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THE MINING OF NICARAGUAN PORTS AND HARBORS

WEDNESDAY, APRIL 11, 1984

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The committee met at 10:12 a.m., in room 2172, Rayburn House Office Building, Hon. Dante B. Fascell (chairman) presiding.

Chairman FASCELL. The committee will come to order.

We meet this morning to hear Hon. Kenneth W. Dam, Deputy Secretary of State, with regard to issues in Central America that are of current interest regarding the World Court matter, the mining of Nicaraguan ports, and other related policy issues that are of great moment of the Congress and the American people.

Mr. Secretary, we are very pleased to have you here. Since this is a matter that is within the jurisdiction of the Western Hemisphere Affairs Subcommittee, I am asking the distinguished gentleman from Maryland, Mr. Barnes, who is chairman of that subcommittee to take the chair. Mr. Barnes.

Mr. BARNES. Thank you, Mr. Chairman. I have a brief statement as well. I must say that I am concerned that the recent actions of the administration are dragging the good name of the United States through the mud a little bit.

The President has, as was stated by the chairman of the Senate Intelligence Committee in his now public letter to the Director of the Central Intelligence Agency, committed "an act of war" against Nicaragua. And as the chairman of the Senate Intelligence Committee indicated, he did so without consulting the Congress, and certainly without consulting the American people.

He has, as was stated by the Prime Minister of Great Britain yesterday, endangered friendly and neutral shipping with complete disregard for what the United States has always held to be cherished principles of the freedom of the seas. We fought for those principles throughout our Nation's entire history.

The Security Council of the United Nations has voted to condemn this action. The United States had to veto that resolution. Not one nation, not even our closest allies, voted with us.

The U.S. Senate last night voted 84 to 12 to condemn this action. The President's response quoted in this morning's newspapers, I think frankly, showed his contempt for the opinion of the international community for the views of the Congress, for the views of the American people.

The President was quoted this morning as saying, "If it is not binding, I can live with it." In other words, never mind what the Congress votes, never mind what the international community believes, I am going to do whatever I want to do.

Well, now the President has compounded our national embarrassment by asserting the right to remove this aggression from the jurisdiction of the International Court of Justice after the aggression has already been perpetrated.

To give this rather bizarre maneuver a veneer of legality, we managed to file our reservation hours before Nicaragua filed its case with the Court. But that does nothing to change the impression of international opinion that the United States simply cannot defend its actions against Nicaragua before responsible international bodies.

Unfortunately, in my view, that impression is correct, and obviously that is the view of the chairman of the Senate Intelligence Committee.

In a justification which is as bizarre as the act itself, the State Department is now asserting that it sought to remove these matters from the jurisdiction of the Court, because by bringing them before the Court, Nicaragua was undercutting the Contadora process.

I do not know how George Orwell knew that Ronald Reagan was going to be President in 1984, but that justification is truly worthy of Orwell's "Ministry of Truth," whose responsibility, as you know, if you have recently reread the book, is to rewrite history.

First, Nicaragua has a recognized right under the U.N. charter to bring acts of aggression committed against it before the Security Council, before the World Court. Second, you can talk to anyone involved in the Contadora process, and they will tell you privately that the worst obstacle to the success of that process at the moment is the United States, not Nicaragua.

Third, our staff was told on Monday in a briefing that we did not even consult with the Contadora countries, that is the administration did not consult with the Contadora countries before filing its reservation with the Court.

Well, this morning I received a declaration of the four Contadora countries. It has not yet been translated into English, but we have done in the subcommittee a quick translation of it. And I am not going to burden our colleagues with it, but it will be available for Members later.

And I can assure you that it is an expression of the Contadora countries, of their displeasure with the actions of the United States.

I would ask that we place the entire statement of the Contadora Foreign Ministers in the record, if there is no objection to that at this point.

[The document referred to follows:]

"... (The ministers) warned that in recent weeks the regional panorama has shown a worsening situation. The actions of irregular forces have been intensified, receiving supplies and support from communication centers located in territory of neighboring countries, and oriented at the destabilization of governments in the area. Sophisticated armaments have been introduced, new military methods and new forms of attack have also been introduced. Operations are being carried out to

mine ports, which affect the economy, disrupt commerce and work against freedom of navigation.

At the same time, (the ministers) expressed their concern over the increasing presence of foreign troops and advisors, the increase of the arms race, the proliferation of military actions and maneuvers, all of which contribute to intensifying tensions and deepening the existing mistrust.

Therefore, it is indispensable that the countries with links and interests in the region, demonstrate with concrete actions the support they have expressed for Contadora, underlining once again that a conflict of major proportions would have serious repercussions in the countries in the region and would affect the entire continent. . ."

Mr. BARNES. Mr. Secretary, the President keeps saying in his speeches that he has restored respect for the United States in the world. Well, I travel as you do, a great deal, particularly in the Western Hemisphere. And I have not seen that. I have seen concern. I have seen alarm. In some areas, I have seen fear. But I am not seeing increased respect.

I am sorry that the President apparently equates fear with respect. Latin Americans are extremely worried that our policy in Central America is out of control at this point. They are worried that we are ignoring the real problems of the hemisphere because of our fixation with Nicaragua.

They are worried that our once proud support for human rights and for democracy is being reduced at this stage to the level of rhetoric, while we undertake in substance acts of aggression.

Mr. Secretary, when a President and when an administration go astray as this administration very clearly has, it is the responsibility of the Congress to reassert respect for traditional American values in the conduct of American foreign policy.

The President can give all of the speeches that he wants railing against the Congress, but we have a responsibility to continue to carry out our functions until we succeed in those efforts.

I would call upon the ranking Republicans, the ranking minority member, the distinguished gentleman from Michigan, for any opening comments that he might have on this point.

Mr. BROOMFIELD. Well, Mr. Chairman, I did not have any prepared statement to make. I thought that we were here to hear from Ken Dam to give us an update on what is happening in El Salvador and Central America, and not a political statement. I think that one of the problems that we have today is too much politics. We ought to get down to the facts. And I am anxious to hear what the Secretary has to say.

Mr. BARNES. I thank the gentleman. I would just note that the Senate action last night was extremely bipartisan. There is nothing particularly partisan about the concerns that have been raised about this action. The majority of Members of both parties in the Senate led by the Senate leadership last night voted to condemn the action of the administration in this particular instance.

Mr. Secretary, we welcome you to the committee, and we look forward to hearing your comments.

STATEMENT OF HON. KENNETH W. DAM, DEPUTY SECRETARY OF STATE

Mr. DAM. Thank you very much, Mr. Chairman. I would like to devote my comments to the question involving the International

Court of Justice, which as I understand it, is the principal subject here this morning.

Mr. BROOMFIELD. Mr. Chairman, could the speaker be closer to the microphone.

Mr. BARNES. Yes.

Mr. DAM. We will try to remedy that. I will take some of this stuff out and put it over here, so I can get closer to the microphone.

I was saying that I would like to devote my brief comments to the question involving the International Court of Justice, which, as I understood it, when I was invited here was the principal subject for the hearing. Of course, I will be available for questions.

And I want to address the question which you, Mr. Barnes, put before us as to what would have been the effect of not having taken the step that we took, and approach it in that way, since you raise that issue.

Actually, by moving in timely fashion, what the United States has done is to prevent a new Nicaraguan campaign to avoid serious negotiations in the Contadora process. The many political, developmental, and strategic issues raised by the Central American situation, and in particular by Nicaragua's actions, cannot be resolved in piecemeal fashion.

They must be addressed comprehensively, as is happening in the Contadora process, of which Nicaragua is a full participant, and which the United States firmly supports.

Now, regrettably, the record proves beyond a doubt that Nicaragua has repeatedly sought, repeatedly sought, to avoid serious comprehensive dialog with its neighbors.

Until mid-1983, Nicaragua insisted on dealing with key Central American issues only on a bilateral basis, and then only with certain countries—for example, Honduras—and not others—for example, El Salvador.

In fact, in the fall of 1982, Nicaragua even refused to meet with the Costa Rican Foreign Minister, who had been designated by the eight-nation San Jose group to discuss the San Jose Final Act principles with the Nicaraguans.

When their bilateral approach failed, the Nicaraguans this past fall after accepting the Contadora process suddenly attempted to shift the venue of discussion to the United Nations. And I think that we understand what they hope to accomplish through that. Again, to avoid the Contadora process.

And they tried that again this last month through the efforts in the Security Council, which you referred to, Mr. Chairman. In short, Nicaragua is forum shopping. And I think that all lawyers know what that is. This is a familiar tactic, but hardly one conducive to serious negotiations on these wide-ranging issues that we are faced with in Central America.

On learning that Nicaragua was again attempting to undermine the Contadora process, this time by filing a complaint against the United States before the International Court of Justice, we modified our accession to the Court's compulsory jurisdiction to defer, I repeat defer, any litigation of issues involving Central America.

The Secretary of State on April 6 so notified the Secretary General of the United Nations.

We believe that the International Court of Justice is a capable and viable instrument for resolving disputes that are susceptible to judicial resolution. But in the specific circumstances of Central America today, the court is not the right venue.

Had we not acted as we did, Nicaragua's suit would inevitably have split off certain issues from the broader complex of interrelated issues at the Contadora negotiating table.

Our action then has been taken to keep the search for peace where it belongs—in the agreed Contadora process which addresses the legitimate concerns of all concerned.

Now let me talk a little bit about the legal aspects of the notice that was filed last Friday. Our notice of modification took effect upon its delivery last Friday. It has the effect of deferring any litigation for 2 years, and for 2 years only, long enough for the Contadora process to have a reasonable opportunity to conclude successfully. And finally, it applies only to matters involving Central America.

Similar actions have been taken by other countries in the past, among them Australia, India, the United Kingdom and, just a few weeks ago, Israel. In addition, a large number of other countries have not accepted the compulsory jurisdiction of the ICJ at all. Among them are France, Italy, the Federal Republic of Germany, and Spain.

Moreover, the Soviet Union and other Soviet bloc countries, and indeed Cuba, do not accept the jurisdiction of the Court at all, which I think is an important fact to remember.

In the light of that practice by other leading countries, the modification that we have made is limited and temporary. And it does not alter our longstanding support for the Court.

Now let me say a few words about what it is that, as a policy matter, that we would like to see the Nicaraguans do. We would like to see them sever their military and security ties to Cuba and the Soviet bloc; to end support for guerrilla groups in neighboring countries; to fulfill their commitments, the Sandinista commitments, to the Organization of American States, to support democracy; and finally, to reduce Nicaragua's military strength to levels which would restore the military equilibrium in the area.

The Contadora process is the venue which offers the best prospects for political resolution of these issues. These are political issues, diplomatic issues. They have to be resolved in a forum like the Contadora process.

The 21 points in the Contadora document of objectives address these issues. They address these issues, and they meet our own pragmatic tests for what is necessary to bring about a peace that protects the Central American democracies and is consistent with our own interests.

And in fact, the substance of the 21 objectives, which have already been agreed upon, including by Nicaragua, is practically identical with the policy that the President set forth just a year ago before the joint session of Congress.

The problem is that while these objectives have been agreed upon, the Nicaraguans have been trying to avoid fleshing out the commitments, and then agreeing to an enforceable and verifiable system for seeing them come about.

If it were possible, if the Nicaraguans were to take that further step, and the Contadora objectives were to be implemented on a verifiable and enforceable basis, the U.S. objectives with regard to Nicaragua would be met.

Now let me make two final comments. First, Nicaragua's record of intransigence, repression, and aggression has demonstrated that its leaders will not keep their promises unless they conclude that they must. Steady pressure is necessary to induce commitments of this character by the Nicaraguan leaders.

Second, there is a critical difference between Nicaragua's tactics and the approach that we have adopted. We are not shopping for a forum that excludes what we do not want to talk about.

The Contadora objectives are genuinely comprehensive. They take into account Nicaraguan complaints against the United States and Honduras as well as Salvadoran, Costa Rican, and other complaints against Nicaragua.

While the Sandinistas have cynically attempted to narrow the subject for discussion, we have just as consistently sought to ensure that all of the issues are dealt with. That has been and remains to be our goal, a workable and lasting peace built on a foundation of democracy, development, and security for all concerned.

Thank you, Mr. Chairman.

Mr. BARNES. Thank you, Mr. Secretary. Is the United States at war with Nicaragua?

Mr. DAM. No.

JUSTIFICATION OF ADMINISTRATION'S ACTION

Mr. BARNES. I know that you will no doubt not want to answer questions about any alleged covert activity in an open sessions. But, just assuming hypothetically that the United States has been involved in covertly mining harbors of Nicaragua, on what basis would that be justified if we did it, if we are not at war with Nicaragua and if there have been no declaration of war by the Congress or approval of that action by the Congress?

Mr. DAM. Well, the legal issue and, indeed, the political issue has to do with what is the unlawful use of force under the U.N. charter.

Mr. BARNES. I'm talking about U.S. law.

Mr. DAM. I guess you had better ask the question again. I thought I was answering your question.

Mr. BARNES. What is the justification under U.S. law for the administration's action?

Mr. DAM. Let me talk in an abstract sense about covert action then, if that's what you want to discuss.

As part of the reform of the congressional committee system dealing with covert action in the mid-1970's, a problem was faced, and that problem had to do with the fact that covert action, which had been carried on by every administration, certainly since World War II, had had to face many, many committees. Everybody wanted to get into the act.

And, so, Congress forced a reform which involved the creation of Select Committees on Intelligence, and all questions involving covert action were the responsibility of those committees. There

are reporting requirements under which the administration reports to those committees. So, any questions about covert action are dealt with in those committees.

Mr. BARNES. I understand that, but my question is——

Mr. DAM. That is how Congress has handled its own affairs and, of course, there are the special appropriation procedures that you are familiar with.

Mr. BARNES. Are you suggesting, Mr. Secretary, that an administration could engage in a war against another country without any declaration of such by Congress so long as the members of the Select Committees on Intelligence supported that war?

Mr. DAM. I am not suggesting that. I am not suggesting that we are at war with Nicaragua. That was your suggestion.

Mr. BARNES. Is the chairman of the Senate Select Committee on Intelligence correct when he says that the mining of the harbors of another country constitutes an act of war, or is that an incorrect statement on Senator Goldwater's part?

Mr. DAM. I do not believe that that is a correct statement. Now, of course, one of the problems here is that you have internal law on separation of powers and you have the general international legal regime. I thought you were asking me about whether, assuming this had occurred, it was war under international standards. And the real question is, as I started to say, whether or not this kind of activity would be an unlawful use of force under the Charter of the United Nations.

DOCUMENT OF OBJECTIVES—OAS

Mr. BARNES. You mention in your prepared statement that Nicaragua had made certain commitments to the Organization of American States. The United States has also made certain commitments to the OAS.

Mr. DAM. That is right. The commitments are to negotiate out the document of objectives and to implement them on an enforceable and verifiable basis, and that is what we are for.

Mr. BARNES. Does the administration consider itself bound by the treaty we signed as a signatory member of the Organization of American States?

Mr. DAM. I do not know what you are referring to.

Mr. BARNES. Are you familiar with article 18 of the OAS Charter?

Mr. DAM. I do not have it before me.

Mr. BARNES. I will read it.

Mr. DAM. Perhaps you can provide me with a copy.

Mr. BARNES. I will read it, Mr. Secretary.

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.

Are we bound by that commitment that we made to the Organization of American States?

Mr. DAM. That is all part of the U.N. system and article 51 of the U.N. Charter specifically provides for collective self-defense.

Mr. BARNES. I am talking about the treaty, the Charter of the Organization of American States.

Mr. DAM. And I am answering your question, Mr. Chairman.

Mr. BARNES. You are saying that is supervised by the—

Mr. DAM. I am saying it is all part of a single U.N. legal system.

Mr. BARNES. So, we are not bound by that commitment that we made to the OAS not to intervene.

Mr. DAM. Just one moment, please.

The OAS Charter specifically refers to the U.N. Charter and it is all part of the international legal system. You cannot read them—you cannot read the OAS Charter as you are attempting to do, Mr. Chairman, and ignore the U.N. Charter.

Mr. BARNES. I see. If we are mining the harbors of Nicaragua, that is an act of self-defense?

Mr. DAM. Collective self-defense.

Mr. BARNES. I see. Thank you, Mr. Secretary.

The chairman of the full committee is recognized.

PRESIDENTIAL APPROVAL OF MINING

Chairman FASCELL. Mr. Secretary, I am intrigued by a statement in the letter of the chairman of the Senate Intelligence Committee which says that, as of last week, he had no notice as chairman that the harbor was being mined. He found out that, as a matter of fact, the decision had been made in February, and that the written approval of the President was obtained in February.

Now, given your statement about complying with reforms that the Congress enacted with respect to covert operation, how do we maintain the fiction that there has been compliance when the chairman of the Intelligence Committee of the Senate said he did not know anything about it? That is one question.

The second question is, why was it necessary, in this particular case for the CIA to obtain written permission from the President? I do not understand that. If the operation, the entire operation of the Contras itself has already been approved or had met the requirements of the notification of the Congress, why did this action require a separate decision on the part of the Chief Executive? What was different about it as compared to all of the other activities that have been going on in that area which were known.

Mr. DAM. Well, first of all, Mr. Chairman, I would be delighted to review with Senator Goldwater the proceeding before his committee. But I find it difficult to review in open session the classified proceedings of the committee from the Senate, which is the select committee—

Chairman FASCELL. Well, I am just—

Mr. DAM. I am not trying to avoid you.

Chairman FASCELL. No, no.

Mr. DAM. I am saying I have difficulty dealing with that question. I have difficulty dealing with it here under these circumstances.

Chairman FASCELL. I do not want you to justify it. I thought maybe you had a ready answer. If you do not, you do not. I am just reading from his letter that said he did not know about it, period. I assume he is telling the truth. How about the other part of that

question, why was it necessary in this particular case to obtain separate authority from the President? I do not understand that.

Mr. DAM. Well, you are really asking me to confirm things which I do not think I can confirm in open session, but I will respond in a general way, and that is, that the President of the United States follows all intelligence matters very carefully and he is very much involved in oversight of the intelligence community. So, therefore, of course, subjects that would involve—would be potentially controversial or involve an extension of something that was already being done would go to the President.

Chairman FASCELL. Well, until such time as you can become more definitive, or somebody can, in closed session, I am just going to have to assume that this was some kind of activity which required special action on the part of the President that was not encompassed in the ongoing programs of supporting the contras through the CIA.

Mr. DAM. Well, if I could just comment. I do not see why you think it is so surprising that the President would take an interest in our foreign policy.

Chairman FASCELL. No; I am not surprised. I though the process had already been approved by the President. That is all, and I did not understand, and still do not, why it became necessary to get specific approval again unless something was different. But I will find out eventually. It may be a little while, but we will find out, I suppose.

ACCEPTANCE OF WORLD COURT'S DECISION

The other question I have before my time runs out is this: I understood some administration official, and this may just be rumor, has said already that if the World Court, despite the notice of modification submitted by the United States, decides to accept jurisdiction, that we will abide by that decision.

Is that a correct statement of the administration's position?

Mr. DAM. Well, we believe we have a very good legal case on the jurisdiction issue. It will, undoubtedly, be disputed. This was just a situation in which this person, as I understand it, was asked: "Well, suppose you lose that?"

We do not plan to lose that issue, but our general attitude is that we have respect for the Court and we will try to give effect to its judgments generally. In fact, we have just submitted a case which is now being heard by the Court.

Chairman FASCELL. Well, if I may, with the indulgence of my colleagues, just pursue that for one second. Will we accept the decision of the Court on jurisdiction or not?

Mr. DAM. Well, Mr. Chairman, although no final decision has been made on this, I have been assuming, and I am sure it will be the case, that we will appear in court. But we are arguing the jurisdiction of the Court.

Chairman FASCELL. In other words, the United States expects to be in court for the hearing on the question of whether or not the Court has jurisdiction.

Mr. DAM. Certainly that is part of respect for the Court, assuming that Nicaragua challenges this issue.

Chairman FASCELL. Well, aside from that, am I correct that there is a complaint in the World Court?

Mr. DAM. Yes, Nicaragua filed a complaint on Monday.

Chairman FASCELL. Does that complaint charge the United States?

Mr. DAM. Yes.

Chairman FASCELL. Is the United States prepared to argue the question of whether or not the Court has the right of jurisdiction over the parties?

Mr. DAM. Certainly.

Chairman FASCELL. The United States, therefore, intends to be in court for that argument.

Mr. DAM. That is our current thinking.

Chairman FASCELL. I hate to have to extract the position out of the administration which is eminently sensible.

Mr. DAM. My goodness, I am trying to answer your questions, Mr. Chairman.

Chairman FASCELL. Yes, I understand.

Mr. DAM. Am I not answering your questions?

Chairman FASCELL. I am saying I hate to have to do it the hard way. But, anyway, the United States is going to be in court and a preliminary determination has been made that even if the Court rules that it has jurisdiction, notwithstanding the notice of modification, the United States may accept the decision.

Mr. DAM. That is certainly correct, yes.

Mr. BARNES. The gentleman from Michigan, Mr. Broomfield.

Mr. BROOMFIELD. Thank you, Mr. Chairman.

Mr. Secretary, has the mining stopped? Has the mining stopped in the harbors?

Mr. DAM. Well, I do not know how I can answer that question. I would be glad to address that question in executive session, Mr. Broomfield.

ADVERSE IMPACT OF NICARAGUA'S NEIGHBORS

Mr. BROOMFIELD. Well, Mr. Secretary, following up the question of the chairman of the committee, what are the prospects of El Salvador, Honduras, and Costa Rica filing petitions against Nicaragua in the International Court of Justice, or intervening in Nicaragua's suit against the United States in order to get an International Court of Justice ruling calling for Nicaragua to cease its aggression, its subversive intervention against those countries, and to make reparations to those victim countries for any damages resulting from Nicaragua's unlawful conduct?

What I am trying to get across is, Nicaragua does not come into this situation with clean hands; is that not true?

Mr. DAM. That is certainly true.

Mr. BROOMFIELD. Well, what are the prospects of El Salvador, Honduras, and Costa Rica getting involved in this?

Mr. DAM. Well, that is a jurisdictional question. It has to do with the extent to which those countries have accepted the jurisdiction of the Court, because unless they have done so, Nicaragua could claim it does not have to respond. I have not reviewed that situation. I would be glad to provide that information for the record.

[The following information was subsequently submitted:]

In oral argument before the International Court of Justice on April 27 regarding the U.S. jurisdictional objections to the Nicaraguan application, the U.S. Agent, Davis R. Robinson, referred to and submitted as exhibits four documents expressing the concerns of Nicaragua's neighbors over litigation and its potential adverse impact on on-going negotiations. There follow English texts of telexes to the Registrar of the Court from the Governments of Costa Rica and El Salvador; a note from the Government of Honduras to the U.N. Secretary-General, which was also delivered to the Registrar; and an official Guatemalan press communique issued in Guatemala City.

The United States has received from the Government of Costa Rica the text of a communication, which the Government of Costa Rica indicated that it would send to the Registrar of the Court, an English version of which we understand to be as follows:

(Informal translation)

Honorable Sir,

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

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

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

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

1. The "case" presented by the Government of Nicaragua before the Court touches upon only one aspect of a more generalized conflict that involves other countries within the Central American area as well as countries outside the region.

Faced with such conflicts, a group of American nations, within the doctrine of article 33 of the Charter of the United Nations and of article 23 of the Charter of the Organization of American States, created the so-called "Forum of Contadora" in order to seek at a sub-regional level, a solution to such conflicts, since their continuation would constitute a grave threat to the international peace and security of the entire Central American area. Within this forum intense diplomatic negotiations have taken place to resolve the conflicts, not only in their military aspect, but also their causes, which are of a political, social and economic nature both internal and external. This process is very far along and has as participants all the countries of the region, specifically: Colombia, Mexico, Panama, Venezuela, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, and with the support of the international community.

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

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

I. Whatever provisional measure the Court may adopt should entail obligations and commitments by both parties to the dispute.

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

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The United States has received from the Government of El Salvador the text of a communication, which the Government of El Salvador indicated that it would send to the Registrar of the Court, an English version of which we understand to be as follows:

Excellency:

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

The problems besetting the Central American region are many and interrelated. They are political, economic, social, human rights and security issues; some are bilateral and others multilateral; some are legal while many are of a non-legal nature. The Government of El Salvador recalls that the Contadora process in which Nicaragua is a participant was initiated to deal with the entire array of these questions and that it is now engaged actively in its work. The governments of El Salvador and Nicaragua, with the other concerned governments in the region, have endorsed the Contadora process without reservations, as has the Organization of American States. The Government of El Salvador continues to consider the Contadora process as the uniquely appropriate forum, consistent with article 33 of the Charter of the United Nations and article 24 of the Charter of the Organization of American States, in which to seek a realistic, durable, regional peace settlement that would take the manifold legitimate interests of each participating state into full account.

The issues raised by the Government of Nicaragua cannot be divorced from the regional issues under negotiation in the Contadora process. In the view of my government, the complaint by Nicaragua, if considered by the Court, or if the provisional measures were ordered by the Court, would damage prospects for success of multilateral negotiations within the Contadora framework, especially if such measures were applied to only one party to the dispute.

Therefore, my Government requests that the Court take seriously into consideration its views as expressed above, and that the Court take no action with respect to the requested provisional measures which would be contrary to the negotiating process now taking place within the Contadora group for a comprehensive, regional solution in Central America.

Please accept, excellency, assurances of my highest consideration and esteem.

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The United States has received from the Government of Honduras the text of a note addressed to the Secretary-General of the United Nations, containing observations on the pending request for provisional measures, an English translation of which is as follows:

Tegucigalpa, D.C., April 18, 1984

His Excellency
Javier Perez de Cuellar
Secretary General of the United Nations
New York, New York

Mr. Secretary General:

I have the honor to express to Your Excellency the deep concern of the Government of Honduras regarding the new international-level initiative undertaken by the Government of Nicaragua. The purpose of this initiative is to remove from the jurisdiction of the group seeking a peaceful settlement, the Contadora Group (Colombia, Mexico, Panama, and Venezuela), the discussion of the political, economic, social, and security crisis which is affecting the Central American region and which, because of its complex nature, requires a comprehensive, multilateral solution.

Your Excellency is aware that this crisis is the result of internal conflicts in certain countries of the area, a lack of respect for human rights, economic and social underdevelopment, and, most especially, the arms race and the inordinate build-up of the Nicaraguan Armed Forces. The Government of Nicaragua is engaged in the destabilization of neighboring governments by providing encouragement, financing, training, and logistical and communications assistance to groups of insurgents from other Central American countries with a view to establishing sympathetic governments within those countries.

It was precisely in order to seek a comprehensive solution to the Central American crisis that the Contadora Group proposed direct negotiations between the nations of the region. That proposal was accepted by the Government of Honduras, which, from the start, supported it fully and participated actively in all meetings convened by the Contadora Group.

On April 4, 1983, the Government of Honduras submitted to the Permanent Council of the Organization of American States a draft resolution aimed at restoring peace to the Central American region. On the request of the Contadora Group, submitted to the Permanent Council through the permanent representative of Colombia, Honduras agreed to suspend discussion of its draft resolution so that the direct

negotiations sponsored by this group of OAS member countries would have a chance to achieve positive results. In this respect, His Excellency Bernardo Supulveda, Secretary of Foreign Relations of Mexico, acknowledged at a press conference in Mexico City on April 13, 1983, that the conciliatory attitude of Honduras within the OAS was what had made the fraternal effort of the Contadora Group possible. Referring to the Panama meeting of the Contadora Group ministers, during which this effort was decided upon, the Mexican Foreign Minister said:

"First of all, it was realized that the immediate concern was to ensure that the OAS Permanent Council would not hamper the Foreign Ministers of the Contadora Group in their efforts to find solutions for Central America. This was an urgent issue inasmuch as the OAS Permanent Council was scheduled to consider a draft resolution submitted by Honduras that same Monday afternoon. Fortunately, through a series of conversations we had with other parties concerned, an agreement was reached to postpone consideration of the draft resolution in the OAS Permanent Council, and this relieved the pressure so that the issue could be shifted from the regional forum to the Panama forum--that is to say, to the Foreign Ministers of the Contadora Group. At the same time, it was clear that it would also be necessary to take steps to prevent duplication in the

United Nations system of efforts that had just begun in Panama on the previous Monday."

"The parties concerned welcomed our proposal enthusiastically and decided to ask the OAS Permanent Council to postpone its consideration of the issue. This was the first action taken on the matter," stated Minister Sepulveda, "and as I said before, it freed us by making it possible for us to exercise direct jurisdiction over the problem."

In more than a year of delicate multilateral negotiations, the Contadora Group has had the full support of the Organization of American States (AG RES 675-XIII-0/83) and the United Nations General Assembly (RES 38/10) and Security Council (Resolution 530-1983), as well as the international community in general, regardless of ideological, political, economic, and legal systems.

That is why the Government of Honduras considers it necessary and in the best interests of the nations of the Central American region and of other peace-loving nations for the Contadora Group to continue its efforts to achieve a lasting and stable peace in the region without this process being hampered by some country seeking recourse to other means of peaceful solution.

In accordance with this viewpoint, which is shared by the majority of the Central American countries and by the Contadora

Group, the Government of Honduras wishes to point out the dangers of discussing the Central American crisis in various international forums simultaneously, as the Government of Nicaragua has requested, when direct negotiations are already in progress. This viewpoint has also been corroborated by the fact that United Nations Security Council and General Assembly, and the OAS General Assembly, have sent the Central American issue back to the Contadora Group, to which they give their unconditional support.

Once again the Government of Nicaragua is seeking to flout the Contadora negotiation process by attempting to bring the Central American crisis, essentially a political issue, under the jurisdiction of the International Court of Justice. This is detrimental to the negotiations in progress and fails to recognize the resolutions of the United Nations and the Organization of American States or the full international endorsement that the Contadora peace process has so deservedly received.

Needless to say, the negotiations conducted by the Central American countries within the Contadora Group are expressly authorized by Article 52 of the United Nations Charter and Article 23 of the OAS Charter, which provide for regional settlement of disputes.

The Government of Honduras, without participating or seeking to intervene in any way in the proceedings initiated by Nicaragua against the United States of America in the International Court of Justice, views with concern the possibility that a decision by the Court could affect the security of the people and the State of Honduras, which depends to a large extent on the bilateral and multilateral agreements on international cooperation that are in force, published, and duly registered with the Office of the Secretary General of the United Nations, if such a decision attempted to limit these agreements indirectly and unilaterally and thereby left my country defenseless.

The Government of Honduras also considers that since the Contadora Group unanimously approved the "document of objectives" of September 9, 1983, which encompasses all the problems related to various aspects of the regional crisis, and since negotiations are in progress between the five Central American countries in the three working commissions created for this purpose, these negotiations must continue without disruption by removal of the matter from this jurisdiction.

In view of the reasons stated above and in consideration of Nicaragua's petition that the Court impose precautionary measures in the proceedings initiated by Nicaragua against the United States of America, I respectfully request that Your Excellency transmit with due urgency to the clerk of the

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International Court of Justice the text of this note expressing the Honduran Government's concerns about the impact such measures could have on the negotiations in progress and the international security of the State of Honduras.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Press Release Issued by Guatemalan Ministry of Foreign Affairs
Monday, April 16, 1984

DEPARTMENT OF STATE
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

LS NO.

112640
Spanish
BP/JRP

Guatemala reiterates that the Central American issue should be discussed by the Contadora Group; that any attempt to seek another forum or international body in order to discuss security problems of a political, economic, and social nature has a negative impact on the Contadora process.

Guatemala once again states its endorsement of and support for the positive work of the Contadora Countries, and will spare no effort in seeking formulas to relax the tensions and achieve permanent peace in the region.

AID TO EL SALVADOR

Mr. BROOMFIELD. Mr. Secretary, in view of the action taken last night in the Senate in approving by a vote of 84 to 12 a nonbinding resolution, what is the political situation now? I cannot help but believe that covert aid is down the drain. And according to the Speaker, while the bottom line on aid to El Salvador is \$62 million, he is not even going to bring it up until after the recess and is talking about possibly half that amount.

What is the future of the situation in El Salvador if all of this falls in? In other words, you cannot go ahead and aid the Contras and you may not get the necessary minimum aid for El Salvador. I think we are in a real situation now where I do not know how you can continue.

Mr. DAM. Well, I agree that—just taking the El Salvador situation—unless there is assistance for El Salvador, we could well see the runoff elections disrupted and we could see a very severe deterioration of the security situation in El Salvador.

I think we each have our own opinions on where that would end. But my personal view is that it would be just a question of time before democracy in El Salvador goes down the drain.

Not everyone is happy about the situation, the political situation in El Salvador, but, believe me, it could be a lot worse. And I do not see why people think there would be a better situation if the insurgents were to take control.

Mr. BROOMFIELD. Well, I believe there is no hope that the administration is going to get any covert aid for the Contras. I think that is done. I agree with all the remarks that have been made.

What kind of aid are you going to have to have for El Salvador in view of that? It seems to me that the request for El Salvador would have to go up substantially to offset the amount of weapons and so forth coming in from Nicaragua.

Mr. DAM. That is certainly true and, indeed, the House Select Committee on Intelligence last year recognized that. Now, they had a recommendation which, as you know, the administration could not support that we build a fence around El Salvador. But that does not seem to me to be a very wise idea.

First of all, I do not know how you get the insurgents to move aside to build a fence. But, obviously, it would require a completely different approach to the El Salvador situation.

Mr. BARNES. The gentleman from New York is recognized.

COVERT ACTION

Mr. SOLARZ. Thank you, Mr. Chairman.

Mr. Secretary, do we intend to continue providing support for this effort, to mine Nicaraguan ports?

Mr. DAM. You have got me with the problem of the executive versus open session question. I discussed this question yesterday with Chairman Fascell when we were talking about whether to do this session open or closed, and I pointed out to him that this kind of question would put me in the position of appearing to refuse to answer the questions of the committee.

Now, I am perfectly happy to answer these questions. But I do resent being asked questions that have to do with the covert action and that, obviously, are not appropriate for open session.

Mr. SOLARZ. Mr. Secretary.

Mr. DAM. And you have got the upper hand. You can make me refuse to answer if you would like, as you are doing.

Mr. SOLARZ. Well, Mr. Secretary, this is on the—

Mr. DAM. Just at the outset, I would like to get the ground rules straight, at least with you, Mr. Solarz.

Mr. SOLARZ. Mr. Secretary, this is on the front page of every newspaper in the country, if not the world. Everybody knows it is going on. The question is a very simple one. Do we intend to continue providing support for this kind of activity?

Mr. DAM. I have the same response.

Mr. SOLARZ. Let me ask you this. On the assumption that we have been doing this, it strikes me that the administration has managed to accomplish the difficult feat of uniting our European allies, albeit against us rather than for us.

Insofar as I have determined, you have even managed to facilitate the emergence of a de facto military alliance between Nicaragua and France, which has undertaken to clear these harbors of mines which we helped put there.

Now, in view of the fact—

Mr. DAM. I am not aware of any decision by the French Government to do that.

Mr. SOLARZ. Well, in view of the fact, Mr. Secretary, that this action has been condemned by the Contadora countries, has been condemned by our European allies, has been—

Mr. DAM. Which ones?

Mr. SOLARZ. Has been—by France, I believe, by Britain, by others, what possible—

Mr. DAM. Which ones? I am not aware of that, Mr. Solarz. I do not accept your assumption.

Mr. SOLARZ. My understanding is—

Mr. DAM. There has been an official statement out of Britain, but other than that, I—

Mr. SOLARZ. Was not there a vote yesterday in the Security Council of the United Nations which France supported, which was critical of the United States and what we have been doing?

Mr. DAM. There have been votes critical of the United States in the United Nations; that is correct. I thought you were referring to statements which have been made in the last few days by governments.

Mr. SOLARZ. Well, in view of the facts that there has been pretty close to universal condemnation of what we have been doing down there, not only in the hemisphere, but in Europe, what possible justification is there for this effort to mine the ports of Nicaragua? What are the gains which outweigh the losses which have resulted from it?

Mr. DAM. The policy that we have pursued generally—I am not addressing the mining question—has been to put pressure on the Nicaraguans in order to assure that they will proceed to implement the Contadora 21-point document of objectives. That is our policy.

CONTADORA PROCESS

Mr. SOLARZ. Well, Mr. Secretary, do you believe that the Contadora countries themselves are sincerely committed to the Contadora process?

Mr. DAM. Well, I certainly hope that they are. All of those that participated—all nine who participated in the—

Mr. SOLARZ. I am talking now about Mexico, Venezuela, Panama, and Colombia.

Mr. DAM. I take them at their word, yes.

Mr. SOLARZ. Presumably, they would like to see this process succeed.

Mr. DAM. Yes.

Mr. SOLARZ. If that is the case, how do you justify the fact that we appear to be embarked on actions such as mining the ports in Nicaragua which the Contadora countries themselves have explicitly said are counterproductive and obstruct rather than facilitate progress in the Contadora process?

I thought this administration supported the Contadora process, yet we seem to be taking actions which undermine that process rather than support it.

Mr. DAM. Well, on April 8, four of the Contadora countries issued a statement, which I assume you are referring to, in which they called for a general lowering of the level of violence in the region. That is certainly—and they mentioned the mining—that is certainly something that we can accept. We would like to see it done, negotiated out, and done on a verifiable basis, because you know the Nicaraguan have repeatedly been saying, "Who, us? We are not doing a thing," but gradually—

Mr. SOLARZ. Mr. Secretary.

Mr. DAM [continuing]. They are conceding exactly what they are doing is trying to subvert their neighbors.

Mr. SOLARZ. Mr. Secretary, one final question. You said that you do not believe Nicaragua is serious about the Contadora process. I was down there in January. The Nicaraguan leaders told me that they were prepared for agreements within the framework of the Contadora process that would provide for the withdrawal of all foreign military advisers from the region, the disestablishment of any foreign military bases, the nonintervention of each of the countries in the affairs of the other and for procedures which would verify these assurances. The Contadora process is now proceeding, negotiations are taking place.

Can you let us know very specifically on each of these points, foreign military advisers, foreign military bases, nonintervention, and the like, what are the positions that Nicaragua has taken and to what extent are they unhelpful?

Mr. DAM. Well, let me just give you an example of what is unhelpful. At the last meeting, which I think was April 2 and 6, at the working level, they refused to even follow the agenda. Sure, they will sign up for the document of objectives and I am sure they will say the right things to you, Mr. Solarz. But when you get right down to negotiating it out and getting it on a verifiable basis, where are the Nicaraguans?

Mr. BARNES. Before recognizing Mr. Winn, the Chair recognizes the chairman of the committee.

VOTE TO GO INTO EXECUTIVE SESSION

Chairman FASCELL. Mr. Chairman, it is clear that it may be necessary at some time to go into executive session to pursue some of the matters that have been raised in the discussion this morning. Under the rules, that requires a vote.

I wonder if we can quickly take a vote on going into closed session at some time in the future and get that behind us and then proceed with the witness.

Mr. BARNES. Is there a discussion of the chairman's recommendation that we have a vote at this time? If not, a rollcall is required. The chief of staff will call the roll.

Mr. BRADY. Chairman Fascell.

Chairman FASCELL. Aye.

Mr. BRADY. Mr. Hamilton.

[No response.]

Mr. BRADY. Mr. Yatron.

[No response.]

Mr. BRADY. Mr. Solarz.

Mr. SOLARZ. Aye.

Mr. BRADY. Mr. Bonker.

[No response.]

Mr. BRADY. Mr. Studds.

Mr. STUDDS. Aye.

Mr. BRADY. Mr. Ireland.

[No response.]

Mr. BRADY. Mr. Mica.

Mr. MICA. Aye.

Mr. BRADY. Mr. Barnes.

Mr. BARNES. Aye.

Mr. BRADY. Mr. Wolpe.

Mr. WOLPE. Aye.

Mr. BRADY. Mr. Crockett.

Mr. CROCKETT. Aye.

Mr. BRADY. Mr. Gejdenson.

Mr. GEJDENSON. Aye.

Mr. BRADY. Mr. Dymally.

Mr. DYMALLY. Present.

Mr. BRADY. Mr. Lantos.

[No response.]

Mr. BRADY. Mr. Kostmayer.

Mr. KOSTMAYER. AYE.

Mr. BRADY. Mr. Torricelli.

Mr. TORRICELLI. Aye.

Mr. BRADY. Mr. Smith.

[No response.]

Mr. BRADY. Mr. Berman.

[No response.]

Mr. BRADY. Mr. Reid.

Mr. REID. Aye.

Mr. BRADY. Mr. Levine.

[No response.]
Mr. BRADY. Mr. Feighan.
[No response.]
Mr. BRADY. Mr. Weiss.
Mr. WEISS. Aye.
Mr. BRADY. Mr. Ackerman.
Mr. ACKERMAN. Aye.
Mr. BRADY. Mr. Garcia.
[No response.]
Mr. BRADY. Mr. Broomfield.
Mr. BROOMFIELD. Aye.
Mr. BRADY. Mr. Winn.
Mr. WINN. Aye.
Mr. BRADY. Mr. Gilman.
Mr. GILMAN. Aye.
Mr. BRADY. Mr. Lagomarsino.
[No response.]
Mr. BRADY. Mr. Pritchard.
[No response.]
Mr. BRADY. Mr. Leach.
Mr. LEACH. Aye.
Mr. BRADY. Mr. Roth.
[No response.]
Mr. BRADY. Ms. Snowe.
Ms. SNOWE. Aye.
Mr. BRADY. Mr. Hyde.
Mr. HYDE. No.
Mr. BRADY. Mr. Solomon.
[No response.]
Mr. BRADY. Mr. Bereuter.
Mr. BEREUTER. Aye.
Mr. BRADY. Mr. Siljander.
Mr. SILJANDER. Aye.
Mr. BRADY. Mr. Zschau.
Mr. ZSCHAU. Aye.

Mr. BARNES. For the record, the chief of staff will report the vote.

Mr. BRADY. On this vote, there were 21 ayes, 1 no, and 1 present.

Mr. BARNES. We will withhold going to executive session until a motion by Chairman Fascell.

At this time, the Chair recognizes the gentleman from Kansas.

Mr. WINN. Thank you very much, Mr. Chairman. I am glad the chair of the full committee brought up this point, because there is something I do not quite understand that is going on here. We were notified earlier in the week of a closed session, with a briefing by Secretary Dam, and then as of 5:30 last night, it was changed and it became an open session.

In my own opinion, it has become a political football with the opening statement of the chairman of the subcommittee. I am not happy about the way that the whole thing has developed. I think we are on a bad track, but I doubt that I can really find out what I want to know in an open session. And I yield back the balance of my time.

Mr. BARNES. The gentleman from Massachusetts is recognized.

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. Secretary, many of us, perhaps most of us, will go back to our own constituencies this weekend around the country and I can assure you in my own case, at least, and I suspect in others, that the sessions we will have in open forum with our constituents will center heavily around these questions. And we will all be asked "What did you ask the administration?"

I realize you think you have to operate under certain ground-rules; imagine how we feel once we have had our briefings in closed session. We then face the people of this Nation in wide open forums in every town and village and city of the Nation, what the hell are we supposed to say to them?

And I can assure you that there are a great many people in this Nation who would like to be in every one of these seats here today with an opportunity to ask you, on behalf of this administration, some questions.

But I suspect they would boil down to what the hell are you doing. What are you doing with and to our country.

Let me before I make a very brief personal statement ask you a couple of questions.

ACT OF WAR?

Under general international law, is the mining of a harbor within a nation's territorial waters considered an act of war?

Mr. DAM. Under international law, as I understand it, and I do have here the Deputy Legal Adviser of the Department of State, the issue of act of war has largely been superseded, since the U.N. Charter came into effect, by the question as to whether the force that is being used is lawful force, or unlawful force.

And on of the major well-recognized exceptions to the general rule that force should not be used is self-defense, including collective self-defense.

Mr. STUDDS. All right.

Mr. DAM. So, that is where the issue centers.

Mr. STUDDS. Does the United States have a contingency plan for the introduction of U.S. Forces into Nicaragua or anywhere in Central America?

Mr. DAM. Well, there are exercises that will be going on, have been going on at various levels in Honduras. We do have trainers in El Salvador. There are troops stationed in Panama, if you call that part of Central America.

But I would like to address what I think is the thrust of your question by reading from a statement that was made last night by four members of the administration in an effort to clarify—

Mr. STUDDS. If you could be brief; we have all seen the statement. I appreciate your wanting to get it on the record, but if you could be quick.

Mr. DAM. Do you want me to answer the question of—

Mr. STUDDS. Go ahead. I just wanted to have an opportunity to ask some, too.

Mr. DAM. I beg your pardon?

Mr. STUDDS. Go ahead.

Mr. DAM. I am trying to answer the question.

Trying to deal with this problem of these nameless, faceless people who were quoted in the newspapers who say this, that and the other, and so this statement was designed to be categorical answer and it is signed by George Shultz, Secretary of State; William Casey, DCI, Director of Central Intelligence; Caspar Weinberger, Secretary of Defense; and Robert McFarland, Assistant to the President for National Security Policy.

Mr. STUDDS. How long is that statement, Mr. Secretary?

Mr. DAM. Oh, it is two pages, and I do not intend to read any more than the relevant portion.

Mr. STUDDS. I would ask you to be very brief. We have all seen the statement in the paper this morning.

Mr. DAM. It is designed to be an answer with regard to allegations that we are planning for U.S. combat troops to conduct an invasion in Central America.

We state emphatically that we have not considered nor have we developed plans to use U.S. military forces to invade Nicaragua or any other Central American country. Secretary Weinberger made this point in his television appearance on Sunday.

Mr. STUDDS. Mr. Secretary, may I interrupt you? Let me say to you that I consider that an answer to the question and I would ask on your behalf the entire statement appear in the record at this point.

[The aforementioned statement follows:]

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THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release.

April 10, 1984

STATEMENT BY THE PRINCIPAL DEPUTY PRESS SECRETARY

The following statement is concurred in by Secretary of State George Shultz, Secretary of Defense Caspar Weinberger, Director of the Central Intelligence Agency William Casey, and Assistant to the President for National Security Affairs Robert McFarlane:

In recent days a shrill and often confusing debate has developed over our goals, plans, and activities in Central America. Because this debate, much of it uninformed and unattributed, is obscuring the real situation, we believe it in the public interest to set the record straight on our objectives, our policy, and our actions -- on the record.

First, allegations have been made that we are planning for U.S. combat troops to conduct an invasion in Central America. We state emphatically that we have not considered, nor have we developed plans to use U.S. military forces to invade Nicaragua or any other Central American country. Secretary Weinberger made this point in his television appearance on Sunday. Some have chosen to disbelieve him--consciously or unconsciously confusing what they call "invasion" plans with our longstanding obligations under the 1947 Rio Treaty, our treaty obligations to defend the Panama Canal, or military contingency plans for disaster relief, humanitarian assistance, or emergency evacuations. For over a generation, as prudence would dictate, we have maintained and updated plans for these contingencies. We have not, however, planned to use our forces to invade any country in the region.

Second, some have indicated that we are planning to conduct a post-election military enterprise in Central America. This quite simply is not the case. As stated before, we are not planning for such action now nor are we planning for it after our election.

Third, it has been alleged by critics of the Administration that certain activities in the Central American region have not been adequately briefed to appropriate committees of the Congress. To the contrary, all U.S. activities in the Central America region have been fully briefed in detail to the committees of the Congress which exercise jurisdiction in full compliance with the law. Further, last week (April 4) the President sent a letter to the Majority Leader of the Senate, Howard Baker, assuring him that our objectives and goals in the region had not changed--specifically, "the United States does not seek to destabilize or overthrow the Government of Nicaragua."

MORE

Fourth, and perhaps most significantly, the current debate has tended to confuse the improvements that we have helped make in El Salvador with what is really going on in Nicaragua:

- Our policy toward Nicaragua has been consistent in that we have supported the multi-lateral dialogue in what is known as the Contadora process. We have endorsed the 21 Contadora objectives which would require that Nicaragua terminate the export of subversion, reduce the size of its military apparatus, implement its democratic commitments to the OAS, and remove Soviet Bloc and Cuban military personnel.
- Nicaragua's response throughout has been fraudulent and cynical. They have tried to avoid a comprehensive solution for the region by seeking to reduce all diplomacy to bilateral questions. They have tried to bypass regional and hemispheric efforts by making propaganda at the United Nations. Now they have cynically attempted to side-track negotiations by going to the International Court of Justice. A government fanatically dedicated to intervention beyond its borders thus seeks to use an honorable international institution to protect it from its own citizens who are rising up against it. This Administration will not be deceived nor will it play that game. Following the example of other nations, the U.S. has checked this maneuver by a temporary and limited modification of our acceptance of the court's jurisdiction.
- Nicaragua continues to be the source of regional subversion and insurgency. In May 1983, the House Permanent Select Committee on Intelligence, itself, concluded that "the Sandinista Government of Nicaragua is helping train insurgents and is transferring arms and financial support from and through Nicaragua to the insurgents. They are also providing the insurgents bases of operations in Nicaragua. Cuban involvement--especially in providing arms--is also evident."

In El Salvador, on the other hand, we have witnessed an inspiring display of courage and commitment to the democratic process by the people of El Salvador. At the end of last month, these courageous people again braved guerrillas violence and sabotage to vote for their next president.

MORE

The courage and confidence in democracy that the Salvadoran people are demonstrating deserve our admiration and full support. Now more than ever, our backing for the democratic process must go beyond mere words. Recent uninformed comment on these matters has diverted attention from the central issue. The Administration has proposed a long term program based on the recommendations of the National Bipartisan Commission on Central America. We have also presented our case for urgent military assistance to El Salvador. That case is sound and the ongoing Salvadoran election process about to enter a run-off requires our support so that El Salvador can ensure its safe conduct.

It is critical that the American people understand what is at stake in the Central American region. Central America is strategically important to the United States. It not only contains the Panama Canal but sits astride some of the most important sea lanes in the world. Most importantly, it contains millions of people who want to be free and who crave democracy. The recent elections in El Salvador prove that. The real issues are whether we in the United States want to stand by and let a communist government in Nicaragua export violence and terrorism in this hemisphere and whether we will allow the power of the ballot box to be overcome by the power of the gun. There is no doubt that the Soviet Union and Cuba want to see communism spread further in Central America. The question is: Will the United States support those countries that want democracy and are willing to fight for their own freedom?

* * *

Mr. DAM. Certainly, and we go on to explain exactly——

Mr. STUDDS. I understand.

Mr. DAM [continuing]. That that is, in fact, the position.

“LEGAL RIGHTS TO SAFE PASSAGE IN THE SEAS”

Mr. STUDDS. All right. The New York Times of April 9 quoted one of your favorite anonymous administration officials as saying that “any ship entering Nicaraguan waters gives up its legal right under international law to safe passage in the seas.”

Does that view reflect the attitude of this administration?

Mr. DAM. That sentence is not coherent to me.

Mr. STUDDS. “Any ship entering Nicaraguan waters gives up its legal right to safe passage in those waters.” Is that——

Mr. DAM. In those waters?

Mr. STUDDS. In other words, should all nations be warned that they cannot——

Mr. DAM. All nations——

Mr. STUDDS [continuing]. Expect safe passage?

Mr. DAM. Well, all nations are, in fact, warned and were warned through Lloyd’s of London by the Contras that there was danger there, if that is what you mean. From a legal standpoint that means that they do not have a civil cause of action to recover.

Mr. STUDDS. Let me just say, Mr. Secretary, speaking for myself, once in a while a genuinely fundamental question arises around here which I think goes to the very nature of the United States of America and what it is all about. I suggest to you with all due respect that this administration is in contempt. It is in contempt of the Nation that it purports to lead, it is in contempt of its history. The very first time this Nation went to war was over freedom of the seas with the Barbary pirates, the impressment of seamen by the British. The theme of freedom of the high seas runs throughout all of American history. It is at the core of this Nation from its first decade.

The administration is in contempt of the values of the laws of the Congress and the people of this country. You have squandered the moral capital of the United States.

How would you like to be an ambassador of the United States in a Third World country, and in view of what is in the headlines in every paper in the world today be asked, “Well, then, Mr. Ambassador, what is the difference between United States and the Soviet Union?” That question ought to be incredibly easy and clear and self-answering. And I suggest that the response to it has been hopelessly and inexcusably muddled by the insistence of this administration on behaving precisely as the Soviet Union behaves. You even managed in response to an earlier question to justify, in part, our refusal to recognize the jurisdiction of the World Court on the grounds that the Soviets do not do it either.

Well, so what? I used to think there was a very real difference between the United States and the Soviet Union, and I think that a great many people of this Nation, and I think that it is reflected by the vote in the Senate last night, fundamentally resent and reject the attempt of this administration to blur that difference. It is real and it deserves not to have to be explained.

And my time has expired.

Mr. BARNES. The Chair recognizes the gentleman from New York, Mr. Gilman, for 5 minutes.

THE RIGHT OF SELF-DEFENSE

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Secretary, to what extent do nations have a right, individually or collectively, to self-defense or to counterintervention against a nation which has illegally intervened, overtly or covertly, against another nation by supporting subversive aggression?

In this connection, could not El Salvador, which has been the object of Nicaraguan infiltration of arms and supplies to guerrillas in its territory, claim that the right of self-defense could include proportionate actions in Nicaragua to interrupt the flow of arms and to disrupt Nicaragua's ability to carry out its infiltration and support activities in El Salvador?

Mr. DAM. Well, first of all, the right of self-defense and collective self-defense is specifically recognized in the U.N. Charter.

And, second, yes, El Salvador certainly would have a good claim there. I do not know what the jurisdictional situation is with regard to El Salvador in the World Court, as I indicated before. But putting aside that question, yes.

Of course, does anyone really think that the Nicaraguans, who claim they were not doing it anyway, would obey an order of the World Court?

THE MATTER OF THE IJC

Mr. GILMAN. Well, then, could you explain to us why the administration believes it is better to avoid having the International Court of Justice decide the international law questions involved in the conflict in Central America by entering a temporary reservation to our acceptance of the International Court of Justice compulsory jurisdiction on these issues and to defend our position on the merits and file a countermemorial to bring Nicaragua's illegal conduct before the International Court of Justice?

Mr. DAM. Yes, I can. The fundamental reason is the one that I indicated in my prepared testimony. This is a kind of frolic and detour. This is an attempt by the Nicaraguans to sliver off a few of the questions and put them in another forum as a way of implementing their strategy which apparently is to sign the Document of Objectives, but derail any serious fleshing out of them and then their enforcement and verification.

There are also some other tactical problems gentlemen, in proving one's case. We have completely different societies. We have completely asymmetrical situations.

In the United States, it seems that everything leaks, and that everything is in the Congressional Record, and the Nicaraguans can quote Mr. Studs and other people, to support their case; whereas, we are involved in dealing with a society where nothing is discussed. There are no hearings like this. There is no opportunity to discuss any of these matters, and therefore we are, in order to prove our case, put in a position where we would have to use intelligence information and no doubt compromise sources and methods.

You have to be practical about how this would unfold and I think as one thinks about it carefully, it gives one a little pause about what seems to be an obvious way to approach this.

Mr. GILMAN. But, Mr. Secretary, under the statute of the International Court of Justice, the Court settles by decision disputes over its jurisdiction.

If the Court of Justice should rule against the preliminary objection by our Nation denying the Court's jurisdiction, is it our intention then to proceed to arguments on the merits of the case and abide by the terms of the Court's eventual decision on the merits?

Mr. DAM. Well, I was addressing that before, and I will try to be more explicit about it.

It was sort of a fractured response because there were a number of questions that came in between.

First of all, we think we have a very good case. In fact, we think it is ironclad, so we do not anticipate that that situation would arise.

If it should arise, it is really very difficult at this point in the litigation to foresee exactly how it might arise—at what stage, and so forth.

But our general posture is that we have great respect for the Court—in fact, we have just submitted to the Court, and it is now being argued, a major case involving a boundary with Canada. So, we have every reason and every motivation to accord the decisions of the International Court of Justice full respect.

But I am not going to say what we will do in a hypothetical situation somewhere down the stream. First of all, I am not authorized to make such a commitment on behalf of the United States.

Mr. BEREUTER. Would the gentleman yield on that point?

Mr. GILMAN. Yes, I would be pleased to yield to the gentleman.

Mr. BEREUTER. I just wonder if I might ask Mr. Dam a quick question because we have a vote on right now, but if you cannot answer questions to us in open session regarding our involvement or noninvolvement, for that matter, and how deep it would be, assuming we are involved in this whole issue, how in the world can we go before the World Court and expose classified information.

I presume you are not answering certain questions until closed session because the information is classified. Therefore, who are we to present our classified information into a World Court about a guerrilla activity, which is highly irregular anyway?

It seems rather logical that we proceed in such a manner, just from that standpoint alone.

I just wanted to throw that 2 cents' worth in.

Mr. DAM. That's the practical consideration that I was referring to, part of the practical fact of litigation. Thank you.

Mr. BEREUTER. Thank you for yielding.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. BARNES. The gentleman from Michigan will take the Chair. It is his turn, so he will be asking questions while others of us go vote.

Mr. SOLOMON. Mr. Chairman, point of order.

Down here.

Mr. BARNES. Yes.

Mr. SOLOMON. There is a vote going on, and are we not going to recess? I want to hear what the gentleman from Michigan is going to pose to the witness.

Can't we recess for 5 minutes? I mean, this is highly irregular.

Mr. BARNES. OK. The gentleman objects to the procedure. We will go vote and return.

The gentleman from Michigan had another commitment, but since there is objection, we'll—

Mr. SOLOMON. I am terribly sorry, but I mean—I hope I don't have to object. I hope you will just recess.

Mr. BARNES. We will recess for 10 minutes.

Mr. SOLOMON. Thank you.

[Whereupon, the hearing was recessed, to be resumed in 10 minutes.]

Mr. BARNES. The committee will resume the hearing.

[Pause.]

Mr. BARNES. For the information of our colleagues on the committee, the Chair would announce that the scheduled hearing of the Subcommittee on Western Hemisphere Affairs on this subject will not take place this afternoon. A motion will be made by Chairman Fascell to use that time this afternoon for a closed session.

The Chair recognizes the gentleman from Michigan, Mr. Wolpe.

SENATE VOTE ON MINING OF HARBORS

Mr. WOLPE. Thank you very much, Mr. Chairman.

Mr. Secretary, the thrust of the question I would like to raise with you this morning, following some remarks I would like to make, is essentially where do we go from here?

Where do we go from here? I ask that question in the context of what was really absolutely extraordinary action in the Senate yesterday. Extraordinary because the Senate voted 84 to 12 to reject the mining of the Nicaraguan harbors in which the United States is engaged and because that 84 to 12 vote had counted in the majority the leading Republican Senators joining with the Democratic leadership.

If that is not a repudiation of an administration policy on a bipartisan basis, I do not know what is. There are really two parts to the question of where do we go from here?

One part is, is the administration going to continue to fly in the face of that bipartisan consensus repudiating its policy? Is it going to continue to stand in what is essentially contempt of both the Congress and the American people with respect to the policies that are being pursued in Central America?

That is one question.

The second question is: What can be done by the administration to overcome what I can only describe as an extraordinary credibility gap that has grown in the relationships between the administration and the Congress?

It is important, I think, to understand that that vote in the Senate yesterday was not only a vote in opposition to specific policies that, I think most Members of Congress understand to be illegal under American law and under international law, and therefore contrary to American principles and traditions. It is also a re-

flection of an overwhelming bipartisan view that the actions that we are engaged in are directly counterproductive in terms of the protection of American interests within the region.

I think that vote yesterday, and the vote that would certainly be of the same magnitude if it were to take place in the House, is also a reflection of growing concern about a pattern of deception—and that is the only way it can be described—in the presentations by administration witnesses before congressional committees.

THE "WHITE PAPER"

I want to go back, in terms of laying out what I would argue as a pattern of activity, to the original so-called White Paper that was advanced by former Secretary of State Al Haig, which purported to demonstrate that the central element of the conflict in Central America was that of external activities by the Cubans and the Soviets.

You will recall the Washington Post exposé of that White Paper detailing what was essentially a mix of fabrications and distortions.

That was followed by the Intelligence Committees being surprised to discover that the authorization they had made with respect to activity vis-a-vis Nicaragua, that is to support logistical activity on behalf of a small force of some 500 Contras had grown to 10,000—then 12,000. My understanding is now that we are supporting something like 18,000 Contras. At least, that is the number that appeared this week in the media.

But the committees were surprised, at that point. And then there was congressional action specifically prohibiting the support of activities intended to overthrow the Nicaraguan Government. That was passed unanimously in this body, was passed by both House and Senate and signed into law by the President.

And then the administration resorted to the argument that the Contras were not trying to overthrow the Government, but were simply trying to interdict arms supplies flowing between Nicaragua and El Salvador. That claim was made in the face of public declarations by the Contras of their intention and desire to overthrow the Nicaraguan Government.

Then we discovered that the administration was putting in place a permanent military facility in Honduras. Leading Senators actually took it upon themselves to tour the region to find out what they were not being told by the administration in their briefings before their own committees.

Then developed the Lebanon situation where we had the administration accusing people who were calling for a pullout of the American Marines of "surrender," only to find out that the President had already made the decision to pull the Marines out of Lebanon and that he himself had been acting contrary to the advice of his own military leaders.

And now we have this question of the mining of the harbors. Again, a surprise to the members of the Intelligence Committees who have key jurisdiction and responsibility in this area.

My question to you, Mr. Dam, is not only will the administration undertake a reconsideration of its policy, but also what will the ad-

ministration do to restore credibility in its testimony before committees of the Congress?

Mr. DAM. Well, sir, in my humble opinion, there were so many errors in fact in your question, it is hard to deal with it, if I am to be taken as accepting all of the allegations that you made. In fact, I disagree with virtually all of them.

I would simply want to report to you that, in case you had not heard, that the Senate overwhelmingly voted to support a program in El Salvador; and similarly overwhelmingly voted on the \$21 million for the additional program.

Mr. WOLPE. Based on their lack of knowing what the administration was doing.

Mr. DAM. So the statement that somehow the administration is flying in the face of congressional will is, I think, palpably wrong.

Mr. BARNES. The time of the gentleman has expired. The Chair recognizes the gentleman from Iowa, Mr. Leach.

Oh, before the gentleman proceeds, the Chair would announce that the Secretary has agreed to meet with the committee in closed session at 1:30. So we will go until noon in open session, then break until 1:30.

The gentleman from Iowa is recognized.

LEGALITY OF MINING

Mr. LEACH. Thank you, Mr. Chairman.

Mr. Secretary, recently, there has been a good deal of debate in this country on the necessity of having a bipartisan foreign policy and, frankly, there are some aspects of that which are very attractive. But the flip side is that the administration must accept some bipartisan criticism and this is certainly what Senator Goldwater has articulated.

The only difference I have with Senator Goldwater is the import he places on being informed as head of the Senate Intelligence Committee. I think there is breach there that is serious but it is not the largest issue.

The largest issue we are talking about is the issue of war and peace and whether this Government wants to obey the rule of law.

In this regard, I am incredulous that the administration will not speak openly before Congress on the implications of these issues.

It is not enough simply to say that these activities are accounted for in secret reporting to Congress on covert actions and that they may be funded by the CIA.

The fact is when you are breaking international law, when you are committing acts that have to be considered acts of war, you must come and speak forthrightly before the Congress of the United States.

Mr. DAM. I hope you will be here this afternoon, Mr. Leach.

Mr. LEACH. I certainly will. But I am saying that you have some responsibilities to the American public in this regard that are not trivial.

If Cuba were to mine Miami harbor, I do not think anyone here would consider that not an act of war and I don't think that the public of the United States is well served by disingenuous comments that mask issues of war and peace.

Let me also add that the United States has recently been placed in the awkward position of vetoing a U.N. Security Council resolution. In a 13-to-1 vote with even our closest ally, Great Britain, abstaining on this issue, the United States found itself isolated from the international community.

Last week, the United States also tried to assert that the World Court will not have jurisdiction over this issue for 2 years. And today as a representative of the administration you are refusing to speak forthrightly in open committee session of this Congress on this issue.

Mr. DAM. Mr. Barnes, I really object to this kind of attack. I mean, I have just agreed to come before this committee and answer all of these questions—

Mr. LEACH. Of course, in secret session.

Mr. DAM [continuing]. And then to be attacked for refusing to answer forthrightly. I consider on a personal basis it is objectionable.

Mr. BARNES. Mr. Secretary, you are certainly at liberty to state your reasons, and the administration's reasons for your unwillingness and the administration's unwillingness to address these issues in open session.

In response to the gentleman from Iowa, it is his time. You can object, certainly, forcefully, to his statements and to his questions, and you can state your reasons, but if it is the gentleman's time, the committee has no control over the gentleman's statements.

Mr. DAM. I can see that.

Mr. SOLOMON. Mr. Chairman, I object to that line of questioning, too. It is bad enough that we have got these kinds of leaks coming out whether by Members of Congress or staff, of closed sessions in this committee. It is a crying shame to force a man to answer here.

Mr. BARNES. The gentleman from New York is out of order.

Mr. LEACH. Mr. Chairman, may I have the courtesy of being extended an extra minute?

Mr. BARNES. The gentleman will have additional time.

Mr. LEACH. I appreciate that.

Let me just say, as an observer to this process as well as a Member of this Congress, one is struck by the impression that the foreign policy of the United States is becoming increasingly elitist and perhaps even authoritarian, and that the wagons appear to be drawing tighter and tighter around the White House. Neither the views of this Congress, nor a decent respect for the opinions of mankind, as expressed within the premier international organization that exists in the world, appear to be taken very seriously.

I would just like to probe a subtlety that has been expressed by the Secretary.

DECISION OF THE WORLD COURT

As I understand it, in response to previous questions, you have indicated that it is your belief that the U.S. position will prevail in the World Court and the World Court will not have jurisdiction for a 2-year period.

But, in the event that the World Court asserts jurisdiction, based upon the fact that our only prior reservation has a 6-month, not 1

day, notification provision will the United States accept the jurisdiction of the Court? Second, will the United States accept the determination of the World Court in this issue?

Mr. DAM. Well, I will answer that question for the third time, Mr. Leach.

We believe we have a very good case. We do not really believe there is any possible basis upon which the Court could find that it had jurisdiction.

Certainly, we have great respect for the Court, and we have lots of incentives for complying with the Court's orders. I would anticipate that we would do so, but I am not going to give an ironclad assurance, certainly without authorization from the President to do so, that we will under all circumstances, regardless of what happens, regardless of the context, regardless of the way in which the issue is presented, at all times and in all ways, comply with all orders.

I would assume that we would do so, but you are trying to get an assurance on behalf of the administration. I am simply not in a position to do so. I can tell you our thinking and our attitude on the subject.

Mr. LEACH. Well, the point I would like to stress is that you do represent the administration at this time and what you are saying is that it might or might not accept the Court's jurisdiction, and that it might or might not accept the Court's decision. I find that somewhat—

Mr. DAM. I don't think I am saying that.

Mr. LEACH. You are saying—

Mr. DAM. I don't think that is an accurate summary of what I said.

Mr. LEACH. Well, you are reserving a caveat, are you not?

Let me make one further comment. This Congress and this committee have in advance looked at this issue. We are not simply making a postmortem analysis.

In the Boland-Zablocki bill that came before this committee last year—

Mr. DAM. Right.

Mr. LEACH [continuing]. This committee inserted language about activities that relate to the rule of law. Let me read from the committee report about one of the amendments that was passed, amendment No. 3.

This committee said, in the committee report:

In adopting this amendment, the committee was particularly concerned with ensuring that U.S. assistance provided for interdiction activities in international territory not be used for actions, such as naval blockades, which are not permitted by international laws.

The point I would like to make is that in advance, this committee and this House took a very strong stand on types of activities of this nature, and that the actions of this administration flout very definitively the will of the committee as expressed in a resolution it has passed.

I appreciate the gentleman's time.

Mr. DAM. Is that something that I could respond to? I would like to say that we are not talking about blockades; that is a totally different subject.

Mr. BARNES. The Chair recognizes the gentleman from Connecticut, Mr. Gejdenson.

ACTIONS BY THE ADMINISTRATION

Mr. GEJDENSON. Thank you, Mr. Chairman.

The President has described the government of the Ayatollah Khomeini as an outlaw nation because it has undertaken a policy to overthrow the government of Saddam Hussein of Iraq and apparently the President feels that it is none of Iran's business what kind of government exists in Iraq.

Is that an accurate characterization of the administration's feelings that the Iranians have no right to tell the Iraqis what kind of government they should have in their country?

Mr. DAM. Well, I think that is taking a very tiny part of a very large complex problem. The general—we believe that war ought to be settled. We believe there ought to be a prompt end to it.

Mr. GEJDENSON. And you feel that the President did not go so far as to state that Iran did not have the right to overthrow the Government if Iraq?

Mr. DAM. I am just not aware of his statement to that effect.

Mr. GEJDENSON. Who made a judgment on that?

Mr. DAM. I don't know whether he did or not. I just don't—

Mr. GEJDENSON. I want to say that I think most members of this committee feel that way, I think that that is one of the fundamental problems that we face here as a country that has democratic institutions that have been reflective of the populist will, administrations that in the past have tried to do end runs on the law and have tried to institute policies that run contrary to what our basic beliefs are, run into trouble.

This administration is running into serious trouble. There may be legal maneuvers to do an end run on the World Court, and there may be legal maneuvers to do an end run on the Congress, but I think you are going to find that they will cost us dearly and that they will fail as policy in the final analysis.

THE CORFU CHANNEL CASE

Let me ask you a question about the World Court's decision in the *Corfu Channel* case.

Mr. DAM. Well, could I just object to the notion that we are trying to do an end run on the Congress? What are we doing here?

Mr. GEJDENSON. Why, I think if you take a look at the actions of the administration in support of the Contras in Central America, it seems that only a blind person, or someone who hasn't taken a look at the picture at all, would believe that we are really trying to interdict arms.

If there haven't—

Mr. DAM. You are just making an argument on substance, and, fortunately, that is not how the Congress has voted.

Mr. GEJDENSON. Well, on substance, the Congress has voted that the money used for the Contras should not be used for the overthrow of the Government of—

Mr. DAM. And the President has made it very clear that we are not trying to overthrow the Government of Nicaragua, and said so just last week.

Mr. GEJDENSON. Well, have we had any real successes in interdicting arms? I haven't—I would have thought the administration would have been before this committee with great caches of arms that we—

Mr. DAM. I will be glad to address that in this afternoon's closed session.

Mr. GEJDENSON. Well, I would like to see some.

Let me go back to the *Corfu Channel* case, where the World Court in 1949 held that even though the Albanians had not mined the channel themselves, that they had knowledge of it, and since they had not warned world shippers and other countries, that they were liable for the damages that occurred.

Are we going to find ourselves in that position? Since the United States had previous knowledge of the mining of the Nicaraguan ports, are we going to end up having American taxpayers liable for damage to shippers traveling through those ports?

Mr. DAM. Let me point out two distinctions. First of all, that was an international waterway, straits. We are not talking about straits. And despite Mr. Studds' speech about the high seas in which he waxed so eloquent, we are not talking about the high seas either.

Second, the international shipping community was notified. In fact, the Contras talked about it to everybody who would listen notified Lloyd's of London, and were trying to get people to hear it.

And third, I might point out, one of the questions has to do with whether the force that is used is lawful use of force. If force is used lawfully under international law, then there is not civil penalty.

LEGAL RIGHT TO USE FORCE IN SELF-DEFENSE

Mr. GEJDENSON. Well then, would you say that the Nicaraguans would have a legal right, as my colleague from Iowa indicated, to mine the Gulf of Mexico? Apparently, although it is covert, it is public knowledge that American dollars are being used by an army attacking the Nicaraguan territory. As such, do they have a legal right to use force to protect their territory and mine American harbors?

Mr. DAM. There would be a question as to whether they were lawfully using force. But they would not in any case be permitted to mine international shipping channels.

Mr. GEJDENSON. But you think that they might be able to mine the waters within American territory because of our involvement in Nicaragua, and that that would be a legal action of defense on the part of the Nicaraguans?

Mr. DAM. No; I do not think so, because I do not see how it would in any way be proportionate to or related to any possible claim that they might have even under your set of assumed facts.

Mr. GEJDENSON. Do you think that the Nicaraguans have any legal justification in considering that the Hondurans are involved in an act of war by possibly harboring guerrilla forces and supporting guerrilla forces that attack Nicaraguan territory?

Mr. DAM. No.

Mr. GEJDENSON. Do we not consider it to be under normal international law, an act of war to harbor guerrilla forces to invade another country, that that country then has a legal justification for reacting to those guerrilla bases and supply lines?

Mr. DAM. Whatever it is that you are positing that the Hondurans do, I think it is a question of whether or not there was lawful use of force. Whether they may have done something in self-defense, I do not know. But it is a legal question. I do not assume the answer the way that you do in your question.

Mr. GEJDENSON. But it seems to me that if we use the standards that we use in other parts of the world, that we are heading for trouble, both for the United States and for our friends in Central America. This is a headlong race to escalate the crisis in Central America—to what gain, I am not quite sure. It seems that the only thing that we are doing is fortifying the present government in Nicaragua, and giving them every excuse for the revolution not being able to fulfill its economic and political pledges. From a military perspective we are doomed to failure at tremendous costs.

I think that the administration just does not know how to get out of here. You are hoping at this point that the Congress cuts off the funds. You do not have to try to dig your way out of this one, as we dug our way out of Lebanon.

It is a policy that is locked into an action you took early on, and you do not know where you are going. I will tell you that as for this Member of Congress, I cannot figure out where you are going.

Thank you, Mr. Chairman.

Mr. DAM. Just in case there is any misunderstanding, I think that the administration position in seeking funding is very clear, and it hardly could be clearer.

Mr. BARNES. We will have time for two more members to ask questions before we break. When the committee returns, Chairman Fascell has indicated that those members who have not had an opportunity to ask questions in the open session will be the first ones called upon in the closed session which will convene at 1:30.

The Chair recognizes the gentlelady from Maine.

THE CONTRAS IN NICARAGUA

Ms. SNOWE. Thank you, Mr. Chairman.

Mr. Secretary, as you might note, there is a great deal of frustration. I certainly share the frustrations of many Members of Congress.

First of all, because in discussion of this issue and the debate over our policy in support of the Contras in Nicaragua, we have never really been able to get a straight answer.

In fact, just several weeks ago, I attended a briefing at the White House, at which you were present at the early part of the meeting, where the question was asked, exactly what is the nature of our support of the Contras in Nicaragua? Was it simply to intercept arms shipments to El Salvador? And the question was never answered.

I followed up on that, because I was unclear as to exactly what is our policy. I think that is part of the confusion; that is part of the concern. No one knows what is going to be the next step.

So I am asking you: If it is mining the ports today, what can we expect tomorrow? And I think that Congress does have a responsibility. Each and every one of us here has to respond to our constituency.

First the purpose was the interception of arms shipments. But now the administration has broadened that objective, I gather, from what I read in the newspapers. But a policy has never been enunciated by the administration as to exactly what we are doing in our support of the Contras in Nicaragua.

So I am asking you, what is our policy?

Mr. DAM. Again, we are getting into the problem of what goes in open session and what goes in closed session. If I may, I would be glad to answer this question in more detail in the closed session. But let me answer it in a general way.

I have stated here this morning what our policy objectives with regard to Nicaragua are. With respect to covert action in general, the objectives of covert action tend to be quite specific. Certainly more specific than general U.S. foreign policy.

With regard to the objectives of covert action, that is a question that is discussed in detail with the Intelligence Committees, and certainly all of their questions are fully answered. Now I cannot really go beyond that, except to say that certainly in the House Intelligence Committee, the questions are very penetrating, very good, by excellent members who pursue leads and ask all kinds of questions.

I am not by implication criticizing the Senate, quite the contrary. I am just saying that it is appropriate since we are in the House to speak about the House; that is our forum.

ADMINISTRATION'S POLICY

Ms. SNOWE. Well, I can tell you that there is indeed a big question mark as to what the administration's policy is in Nicaragua by a number of Members, including Republicans. That is the obvious indication of the Senate action of last evening and probably we can expect the same here in the House.

Does the administration view, for example, Congress' authorization of funds for covert activity as open license to take any action the administration deems necessary?

Mr. DAM. Of course not.

Ms. SNOWE. So in other words, your interpretation, the administration's interpretation, of support of covert aid does not fly in the face of congressional will by mining the ports in Nicaragua?

Mr. DAM. I am sorry, would you ask the question again? I am not sure that I got all of the implications.

Ms. SNOWE. Is it your interpretation of the administration's position that when the Congress provides covert aid, that Congress supports mining the ports in Nicaragua?

Mr. DAM. I have not said that. What I have said is that there is a system which the Congress has set up which we are trying to follow.

Ms. SNOWE. The question then that I am getting at is this: If Congress provides funds for covert aid, and I just asked the question, does that mean that the administration can take any action it deems necessary, and you said yes.

Mr. DAM. I said no.

Mr. BEREUTER. Would the gentlelady yield?

Ms. SNOWE. Yes.

Mr. BEREUTER. Am I correct in assuming that one of the policies of the administration is to interdict arms, is that correct, yes or no?

Mr. DAM. Certainly, that is one of our policies.

Mr. BEREUTER. The second question, are these reliable sources that I read in the front page of all of today's papers from the administration correct in saying that there are massive arms shipments coming through the ports of Nicaragua?

Mr. DAM. There are certainly very substantial shipments, yes.

Mr. BEREUTER. So would you consider the mining then helping to interdict arms to some degree?

Mr. DAM. I am not going to talk about mining. But let me just say in a general way, the weapons have to get into Nicaragua.

Mr. BEREUTER. One more question, is there really—

Ms. SNOWE. Could I get back my time?

Mr. BEREUTER. Is there any difference between using grenades, or M-16's, or mines? I am not certain that I see the difference.

Mr. BARNES. The gentlelady had reclaimed her time.

Ms. SNOWE. So that gets back to my original question.

If that is the case, then Congress has every reason to be concerned in providing additional funds in support of the administration's policy in Nicaragua, because we do not know what to expect?

Mr. DAM. Is that a question?

Ms. SNOWE. Yes.

Mr. DAM. We have a system. We are seeking, as you know, \$21 million. We have testified, I have testified, many members of the administration have testified on this score. There was extensive debate in the Senate, and the vote was overwhelming, overwhelming. Now you have an opportunity for a vote in the House.

But to suggest that somehow we are flying in the face of the will of the Congress, I think is just political argument. It has nothing to do with our—

Ms. SNOWE. Why do you say that? That is what I am not clear on. Why do you say that it does not fly in the face of congressional will?

Mr. DAM. I beg your pardon.

Ms. SNOWE. Why do you say that?

Mr. DAM. Because first of all, Congress voted—

Ms. SNOWE. Because I am not clear.

Mr. DAM. Congress voted last fall its support.

Ms. SNOWE. Exactly.

Mr. DAM. Yes. And there is now a proposal before the House, if conferees are ever appointed, to have a vote in the House on this subject. I do not see why people are protesting about the opportunity to vote on the subject.

Mr. BARNES. The time of the gentlelady has expired.

Ms. SNOWE. Well, can I just get this clear, because I do not think that it is clear. I asked you the original question about congressional support of covert activity.

Mr. DAM. Yes.

Ms. SNOWE. OK.

Mr. DAM. There is support for intelligence activity in the Congress.

Ms. SNOWE. So does that mean that the administration interprets that as supporting mining of the ports? Because are you now saying that your action does not fly in the face of congressional will.

Mr. DAM. As I have explained, I will be glad to talk about intelligence matters this afternoon. But so far as the general proposition is concerned, no, the administration does not believe that simply because money is appropriated, that anything goes.

We have a system by which we relate to the Intelligence Committees which the Congress itself has established. We are just trying to follow the rules.

Mr. BARNES. The time of the gentlelady have expired. The Chair recognizes the gentleman from New York, Mr. Weiss.

Mr. WEISS. Thank you very much, Mr. Chairman.

Without wanting to repeat statements or testimony already gone over, let me just identify myself with the statements expressed by the gentleman from Massachusetts, Mr. Studds, and the gentleman from Iowa, Mr. Leach.

Just as a prefatory comment, we engage in discussions in these sessions in very formal language. It is very difficult for us really to comment as it is without seeming to breach the language of diplomacy that we all engage in in these sessions.

Let me say for myself, Mr. Secretary, that I find that your testimony is such a conglomeration of distortions and evasions that it borders on your not telling the truth, even though every specific line that you give may in fact be factual.

Mr. DAM. Thank you very much.

Mr. WEISS. You are very welcome. Let me ask a couple of specifics based on your testimony in your opening statement. You had said that there were, I think, three or four specifics that we would expect of the Nicaraguan Government before we would be satisfied.

The first one you mentioned was that they would have to break off economic and military relations with Cuba and the Soviet Union.

Is that an accurate statement or restatement of your position?

Mr. DAM. Let me get the exact formulation.

Mr. WEISS. Please.

Mr. DAM. Because the exact formulation is important. This is a policy statement. This has nothing to do with conditions related to covert action.

Mr. WEISS. Just restate it for me.

Mr. DAM. That if they sever their military and security ties to Cuba and the Soviet bloc—we have not referred to economic and not to diplomatic ties.

Mr. WEISS. OK. And unless and until they do that, what is our policy?

Mr. DAM. Unless and until they do that, we do not think that they are complying with the document of objectives that they have signed. We would continue to seek implementation—

Mr. WEISS. Mr. Dam—

DOCUMENT OF OBJECTIVES

Mr. DAM. I answer the question. Of the document of objectives.

Mr. WEISS. The document of objectives at the time of successful replacement of the Somoza Government?

Mr. DAM. No; this is the negotiated document of objectives arrived at in the Contadora process last September, I believe, the 21 objectives.

Mr. WEISS. Well, that is a process that is moving forward. You are saying that as far as the Nicaraguan Government is concerned, they have to meet those objectives right now, or the United States feels free to harass or worse, is that what you are saying?

Mr. DAM. No; I did not say that. I said that we have policy objectives. I did not say anything about covert action. You were quoting from what I said in my statement. I am trying to explain it. That is our policy objective, to see Nicaragua sever its military and security ties to Cuba and the Soviet Union.

Perhaps you feel differently. Perhaps you would like to see them reinforced. But our objective is to see them severed. That is very simple and straightforward.

Mr. WEISS. What I would like to understand is what justification the United States of America has to tell any other sovereign nation as to what kind of military or security ties it will have to any other nation. Let me go on to my next question.

Mr. DAM. Because we are trying to seek a regional solution to the problems of Central America. And that is sort of fundamental, it seems to me.

Mr. WEISS. Well, it may be fundamental to you. Let me ask the next question.

Mr. DAM. We are not asking them to align themselves with us. We are asking them to not be military allies of Cuba and the Soviet Union.

Mr. WEISS. OK.

Mr. DAM. Now, that seems to me to be a reasonable foreign policy position. In fact, I would be very surprised if there were very many people who believe that they should be allies of the Soviet Union and Cuba.

Mr. WEISS. Mr. Secretary, it seems to me that if you live in a world of sovereign nations, that we are very hard put as one sovereign nation to determine for other sovereign nations who their friends and allies will be, militarily or otherwise. But let me go on to my next question.

Was mining in self-defense?

You had said in your statement that the mining—this is a hypothetical legal statement—mining or actions such as mining are justified by the charter of the United Nations on the basis of self-defense. I am paraphrasing, but I assume that that is the position.

Mr. DAM. Collective self-defense—

Mr. WEISS. OK.

Mr. DAM [continuing]. Is a ground for the use of force.

Mr. WEISS. Mr. Dam, in my limited time, I would like to use it myself rather than have you restate the obvious. I assume that that self-defense then presupposes there to be either a participation by the nation that is defending itself or a request by that nation of some of its friends or allies to provide additional defense.

Now are you telling us that in the instance of the mining of the ports and harbors of Nicaragua, that we are assuming that we are defending some other country, or that some other country has, in fact, asked us to undertake the particular action by way of defending them?

Mr. DAM. Well, certainly, our efforts to defend El Salvador have been supported by the Congress and are well known. With regard to other countries, we are certainly concerned about their security. And I would be glad to answer that question more specifically in the closed session this afternoon.

Mr. WEISS. Would you, as a general proposition, acknowledge that since we are not the parties at war with Nicaragua, that since we are not defending ourselves, that there has to be the defense of some other country involved in order for us to justify the mining?

Mr. DAM. I am sorry, I did not get the question part.

Mr. BARNES. Would the gentleman from New York yield to the gentleman from Florida to put a question on the record before the meeting is over?

Mr. WEISS. Of course, I will.

TRAINING OF NICARAGUANS IN FLORIDA

Mr. SMITH. Thank you. I appreciate the gentleman yielding.

Mr. Dam, there have been published reports in the newspapers that approximately 2,000 and possibly more Nicaraguans or others have been trained in Florida and equipped, and sent to Nicaragua. I would like you to have information this afternoon about that. I intend to pursue the line. And I am giving you whatever notice there is between now and the time we come back at the closed briefing. But I would like very much to have information with reference to that as it is violation of both Federal and the State of Florida law. Thank you.

Mr. BARNES. The time of the gentleman from New York has expired. The committee will reconvene in closed session at 1:30. Chairman Fascell has indicated that after the closed session, the committee will go into open session to take up House Concurrent Resolution 290, which deals with this matter.

[Whereupon, at 12:04, the committee recessed, to reconvene at 1:30 p.m. in closed session.]

MARKUP SESSION

The committee met, in open markup session in room 2172, Rayburn House Office Building, Hon. Dante B. Fascell (chairman) presiding.

Chairman FASCELL. The committee will come to order.

We meet this afternoon to consider House Concurrent Resolution 290, a resolution expressing the sense of the Congress that no ap-

propriated funds shall be used for the purpose of mining the ports or the territorial waters of Nicaragua.¹

The bill is a straightforward expression of congressional disapproval of the so-called covert laying of mines in Nicaraguan ports and territorial waters, introduced by our colleague, Mr. Barnes, the chairman of the Western Hemisphere Affairs Subcommittee, and it is so short that it is easily understood.

We have heard from the administration. I think all of us understand the difficulty involved here on the question of the decision with respect to modifying U.S. accession to the jurisdiction of the International Court of Justice, and also on matters which could not be discussed in open session.

Mr. BROOMFIELD. Mr. Chairman.

Chairman FASCELL. Mr. Broomfield.

Mr. BROOMFIELD. Could I ask a parliamentary question?

Chairman FASCELL. Certainly.

Mr. BROOMFIELD. I wonder if the chairman would explain to those of us on the minority side what our rights are under the procedure.

It is my understanding that it is your desire anyway not only to consider this resolution today but to go to the Rules Committee tonight to have it considered on the floor tomorrow. I would like to know what is the rush in getting this through? It is just a non-binding resolution. What is the rush in getting it through Congress tomorrow? The points have been made. The administration has spoken. Do we have any time to file minority report?

Chairman FASCELL. I will say to my colleague that it is a question properly raised. I won't presume to speak for all the members of the committee, but I will speak for myself, and say that I think it is important for the Congress, one way or another, to express its opinion on matters now which have been the focal point of a tremendous amount of interest in this country and abroad. I have had many Members of Congress express to me their desire to vote on this matter in the House before the Easter recess in view of the fact that the other body has acted expeditiously.

Additionally, it would not be appropriate for us, since we are on the eve of Easter recess, to go back to our districts without having had a vote on this issue in the House itself, and since that only leaves us tomorrow, it is absolutely essential, in order to get the House to act on the resolution and get the expression of the House on this matter, to go to the Rules Committee in order to get on the floor tomorrow. That is all this involves.

That means, of course, that in order to do this we are going to take some unusual procedures, such as going to the Rules Committee, and not filing a report.

For those who are opposed to this resolution, the debate will have to be carried out on the House floor.

Mr. BROOMFIELD. Mr. Chairman, I am not opposed to the resolution you have before us. It is just that I can't understand the unusual rush in getting this through, other than it must be for political reasons. I think it is unfortunate that this matter is being put into that arena.

¹ The text of House Concurrent Resolution 290 appears in app. 2.

We have already been told by the administration that there is not any mining going on at the present time. They have got the message at the White House, and certainly the vote in the Senate, 84 to 12 was very convincing.

It seems to me that it won't hurt to delay this until after we come back from the recess.

I indicate again that I am not opposed to what you have in the resolution, a nonbinding resolution. I just can't understand the urgency in getting this through at this time.

Chairman FASCELL. I will say to my colleague that I respect his opinion and his feelings, both in a personal sense and in a political sense, but I am here to tell you that the other body has acted. Members of this committee have had a chance to stand up and be counted on this issue, and a great many Members of the House want the opportunity to vote yes or no on this matter whether the mining continues or whether the administration has gotten the message, and they want to do it before the Easter recess, because this is a matter of such importance that they want to be registered on this issue.

That is the justification for this expedited procedure. It may not satisfy you, but that is the reason we are moving as rapidly as we have. We have been in session on this issue all day. Everyone, I think, has pretty much made up his mind on what he wants to do.

Yes, I will agree with the minority that in the normal course of events, we would like to have had the time to give the minority the full right to write whatever it wants in terms of disagreement with the majority position of this issue.

Suffice it to say that if we get a rule, both sides will have an opportunity to express their feelings on the subject, procedurally and substantively, when we get to the floor. Otherwise, in my judgment, we will look very foolish if this is put off for 2 weeks.

Is there any other discussion? The clerk will report the resolution

Mr. BRADY [reading]:

House Concurrent Resolution 290, concurrent resolution expressing the sense of the Congress that no appropriated funds shall be used for the purpose of mining the ports or territorial waters of Nicaragua.

Chairman FASCELL. The sponsor of the resolution, Mr. Barnes, is recognized for 5 minutes in support of his resolution.

Mr. BARNES. Thank you, Mr. Chairman.

I urge an aye vote.

Chairman FASCELL. Is there any further discussion?

Mr. SOLOMON. Mr. Chairman.

Chairman FASCELL. Mr. Solomon is recognized for 5 minutes.

Mr. SOLOMON. Mr. Chairman, I am not surprised that Mr. Barnes only had three words to say. He had enough to say earlier when the session was open, when all the political rhetoric was flowing, but I want to take some exception with some of the things that he had to say.

Chairman Barnes, in his opening partisan statement said, among other things, that in his travels abroad he found no respect for our President. That is funny. I have traveled abroad in the same areas, and it is strange that I would find just the opposite—a great deal of

respect for our President Ronald Reagan, especially compared to what we have had in the past under other Democratic and Republican Presidents.

I think that the crux of this resolution can be explained by a recent questionnaire that I just received back from over 20,000 of my constituents, in which I asked the question, "Is President Reagan doing a good job?" You know, 71 percent of those people said yes.

Then I asked a second question: "Is Congress as a whole doing a good job?" and do you know what the answer was? Seventy percent said no. They said no because they don't think that we ought to be participating in the kind of political gimmickry that we are involved in today.

I would hope that the resolution would be defeated.

Mr. GEJDENSON. Move the resolution.

Chairman FASCELL. Any further discussion? All those in favor of the resolution, signify by saying "aye." All those opposed, "no."

Mr. STUDDS. Mr. Chairman, I ask for a recorded vote.

Chairman FASCELL. A recorded vote is demanded. All those in favor of taking this vote by a rollcall raise your right hand.

Evidently a sufficient number. The clerk will call the roll.

Mr. BRADY. Chairman Fascell.

Chairman FASCELL. Aye.

Mr. BRADY. Mr. Hamilton.

[No response.]

Mr. BRADY. Mr. Yatron.

Mr. YATRON. Aye.

Mr. BRADY. Mr. Solarz.

Mr. SOLARZ. Aye.

Mr. BRADY. Mr. Bonker.

Mr. BONKER. Aye.

Mr. BRADY. Mr. Studds.

Mr. STUDDS. Aye.

Mr. Brady. Mr. Ireland.

Mr. Ireland. Aye.

Mr. BRADY. Mr. Mica.

[No response.]

Mr. BRADY. Mr. Barnes.

Mr. BARNES. Aye.

Mr. BRADY. Mr. Wolpe.

Mr. WOLPE. Aye.

Mr. BRADY. Mr. Crockett.

Mr. CROCKETT. Aye.

Mr. BRADY. Mr. Gejdenson.

Mr. GEJDENSON. Aye.

Mr. BRADY. Mr. Dymally.

[No response.]

Mr. BRADY. Mr. Lantos.

[No response.]

Mr. BRADY. Mr. Kostmayer.

Mr. KOSTMAYER. Aye.

Mr. BRADY. Mr. Torricelli.

Mr. TORRICELLI. Aye.

Mr. BRADY. Mr. Smith.

Mr. SMITH. Aye.
Mr. BRADY. Mr. Berman.
Mr. BERMAN. Aye.
Mr. BRADY. Mr. Reid.
[No response.]
Mr. BRADY. Mr. Levine.
Mr. LEVINE. Aye.
Mr. BRADY. Mr. Feighan.
Mr. FEIGHAN. Aye.
Mr. BRADY. Mr. Weiss.
Mr. WEISS. Aye.
Mr. BRADY. Mr. Ackerman.
[No response.]
Mr. BRADY. Mr. Garcia.
[No response.]
Mr. BRADY. Mr. Broomfield.
Mr. BROOMFIELD. Aye.
Mr. BRADY. Mr. Winn.
Mr. WINN. Aye.
Mr. BRADY. Mr. Gilman.
Mr. GILMAN. Aye.
Mr. BRADY. Mr. Lagomarsino.
[No response.]
Mr. BRADY. Mr. Pritchard.
[No response.]
Mr. BRADY. Mr. Leach.
Mr. LEACH. Aye.
Mr. BRADY. Mr. Roth.
[No response.]
Mr. BRADY. Ms. Snowe.
Ms. SNOWE. Aye.
Mr. BRADY. Mr. Hyde.
[No response.]
Mr. BRADY. Mr. Solomon.
Mr. SOLOMON. No.
Mr. BRADY. Mr. Bereuter.
[No response.]
Mr. BRADY. Mr. Siljander.
[No response.]
Mr. BRADY. Mr. Zschau.
Mr. ZSCHAU. Aye.

Chairman FASCELL. A unanimous-consent request by the gentleman from Michigan.

Mr. BROOMFIELD. Mr. Chairman, I would like to have the time left open for other members to vote on this, whatever time you would suggest in view of the Rules Committee and so forth.

Chairman FASCELL. Until such time as we go to the Rules Committee, I have no objection, Mr. Broomfield.

The request is that the roll be left open to allow other members to vote, and we will close it off prior to the time we go to the Rules Committee, if there is no objection.

Mr. SOLARZ. When are you going to Rules?

Chairman FASCELL. We are trying to find out. The last I heard was 5 o'clock, but it will be 5:15 or 5:30. We are checking on it right now.

Is there any objection to the request?

Hearing none, it is so ordered. We will see you at the Rules Committee.

[Whereupon, at 4:50 p.m., the committee was adjourned.]

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APPENDIX 1

STATEMENT SUBMITTED BY THE DEPARTMENT OF STATE REGARDING THE NOTIFICATION TO THE SECRETARY GENERAL OF THE UNITED NATIONS OF A TEMPORARY AND LIMITED MODIFICATION OF THE SCOPE OF THE U.S. ACCEPTANCE OF THE COMPULSORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE IN THE HAGUE

The United States has notified the Secretary General of the United Nations of a temporary and limited modification of the scope of the U.S. acceptance of the compulsory jurisdiction of the International Court of Justice in the Hague. The notification, effective April 6, provides that the Court's compulsory jurisdiction shall not apply to the United States with respect to disputes with any Central American state or any dispute arising out of or related to events in Central America, for a period of two years.

Similar action has been taken by a number of countries in the past, among them Australia, India and the United Kingdom. In addition, a large number of countries have not accepted the compulsory jurisdiction of the ICJ at all -- France, Italy, the Federal Republic of Germany, Spain, the Soviet Union and other communist countries, to name only a few. Many other countries have accepted ICJ jurisdiction, but with many more reservations than the United States. The United States has long been active in its support for the Court, and its readiness to make full use of the Court in the Iran Hostages case and the now-pending Gulf of Maine case clearly demonstrate this longstanding commitment.

This step has been taken to preclude the Court's being misused to divert attention from the real issues in the region

and to disrupt the ongoing regional peace process by protracted litigation of claims and counterclaims. We believe that, as evidenced by their appeal to the United Nations Security Council, recent Nicaraguan behavior has shown a lack of serious interest in addressing regional issues or the Contadora discussions. We do not wish to see the Court abused as a forum for furthering a propaganda campaign. The parties to the Contadora process can determine for themselves in what respect they wish to submit regional issues to adjudication or other forms of dispute resolution.

The regional peace process, while slow, has achieved notable successes. In agreeing to the 21 objectives last September, the parties set forth an agreed framework for continuing and completing their efforts to achieve a comprehensive regional peace dealing with the interrelated political, security, social and economic problems of the region. This work has recently entered a stage involving issues of both technical and political difficulty. While this is the point at which the greatest attention and commitment to that work is required, Nicaragua is regrettably considering action to attempt to divert attention from its failure to address those issues seriously by staging propaganda spectacles in other fora. By our action we served notice that we do not intend to cooperate with this plan, or to permit the Court to be misused in that manner.

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TEXT OF SECRETARY OF STATE'S NOTE TO U.N. SECRETARY GENERAL
PEREZ DE CUELLAR, DELIVERED APRIL 6, 1984.

Excellency:

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

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

[signed] George P. Shultz
Secretary of State of the United States of America.

UNITED STATES OF AMERICA

26 VIII 46.

I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of 2 August 1946 of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning—

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to—

- (a) disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or
- (b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or
- (c) disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

Done at Washington this fourteenth day of August 1946.

(Signed) Harry S. TRUMAN.

INTERNATIONAL COURT OF JUSTICE

Statute of the International Court of Justice annexed to the Charter of the United Nations. All Members of the United Nations are *ipso facto* parties to the Statute (article 93, UN Charter).
59 Stat. 1055; TS 993; 3 Bevans 1153.

In addition, the following countries not members of the UN have become parties to the Statute pursuant to resolutions adopted by the General Assembly:
Liechtenstein (51 UNTS 115)¹
San Marino (186 UNTS 295)
Switzerland (17 UNTS 111)

Countries which have accepted the compulsory jurisdiction of the International Court of Justice under article 36 of the Statute of the Court (59 Stat. 1055; TS 993):

Australia¹
Austria¹
Barbados¹
Belgium¹
Botswana¹
Canada¹
Colombia¹
Costa Rica
Denmark¹
Dominican Rep.¹
Egypt¹
El Salvador¹
Finland¹
Gambia, The¹
Haiti
Honduras¹
India¹
Israel¹
Japan¹
Kampuchea¹
Kenya¹
Liberia¹
Liechtenstein¹
Luxembourg¹
Malawi¹
Malta
Mauritius¹
Mexico¹
Netherlands¹
New Zealand¹
Nicaragua
Nigeria
Norway¹
Pakistan¹
Panama¹
Philippines¹
Portugal¹
Somalia¹
Sudan¹
Swaziland¹
Sweden¹
Switzerland¹
Togo¹
Uganda¹
United Kingdom¹
United States¹ ²
Uruguay

NOTES:

¹ With conditions.

² Declaration signed by the President August 14, 1946 (61 Stat. 1218; TIAS 1598; 4 Bevans 140; 1 UNTS 9).

Examples of Modification of Acceptance of Compulsory
Jurisdiction to Avoid Adjudication

1. INDIA (1956) To avoid an application by Portugal concerning rights of passage over Indian territory, India modified one reservation from "disputes with regard to questions which by international law fall exclusively within the jurisdiction of India" to "matters which are essentially within the domestic jurisdiction of India as determined by the Government of India." [1955-56] I.C.J. Yearbook at 186-87; [1953-54] I.C.J. Yearbook at 216 (former reservation); Waldock, Decline of the Optional Clause, 32 Brit. Y.B. Int'l L. 244, 268 (1955-56).

2. UNITED KINGDOM (1955). In October 1955 the U.K. terminated a declaration issued five months previously and substituted a new one containing a new reservation excluding "disputes in respect of which arbitral or judicial proceedings are taking, or have taken, place, with any State which, at the date of the commencement of the proceedings, has not itself accepted the compulsory jurisdiction of the [ICJ]." This was in response to the breakdown of an arbitration with Saudi Arabia due to Saudi bribery of potential witnesses. [1955-56] I.C.J. Yearbook at 185; Waldock, supra, at 268.

3. AUSTRALIA (1954). In 1954, to avoid a Japanese application to the ICJ on rights to pearl fisheries off the Australian coast, Australia submitted a new declaration excluding "disputes arising out of or concerning jurisdiction or rights claimed or exercised by Australia . . . in respect of the continental shelf of Australia; . . . in respect of the natural resources of the sea-bed and subsoil of that continental shelf, including the products of sedentary fisheries; or in respect of Australian waters . . . being jurisdiction or rights claimed or exercised in respect of those waters . . . , except a dispute in relation to which the parties have first agreed upon a modus vivendi pending the final decision of the Court on the dispute." [1953-54] I.C.J. Yearbook at 210; Waldock, supra, at 267-68.

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APPENDIX 2

98TH CONGRESS
2D SESSION

H. CON. RES. 290

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 1984

Mr. BARNES submitted the following concurrent resolution; which was referred to jointly to the Committees on Foreign Affairs and Intelligence

CONCURRENT RESOLUTION

Expressing the sense of the Congress that no appropriated funds shall be used for the purpose of mining the ports or territorial waters of Nicaragua.

- 1 Resolved by the House of Representatives (the Senate
- 2 concurring), That it ^{is} the sense of the Congress that no funds
- 3 heretofore or hereafter appropriated in any Act of Congress
- 4 shall be obligated or expended for the purpose of planning,
- 5 directing, executing, or supporting the mining of the ports
- 6 or territorial waters of Nicaragua.

○