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BRIEFING BOOK FOR 16 MARCH SIG MEETING ON CENTRAL AMERICA

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## THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

National Intelligence Officers

16 March 1981

NIO/LA Briefing Paper for 16 March SIG Meeting on Central America

1. This briefing package is directed toward the Nicaragua issue. We will check to see if other Central American issues will be raised, and inform you subsequently.

2. You will probably be asked to present an intelligence briefing. One is presented in Tab 2, based on draft IIM (Tab 5).

3. The way Acting Assistant Secretary Bushnell (ARA) states the issue on Nicaragua (Tab 3):

a. There are good reasons to avoid a public clash with Nicaragua now. CIA analysis would support his judgments on the likely negative effects of a clash.

b. The range of US options depends on whether there is "conclusive" proof that the Government of Nicaragua is currently aiding the insurgents materially.

The usual meaning of "conclusive" (Tab 6) is "irrefutable and certain". In other words, "very persuasive" does not mean "conclusive".

CIA analysts are convinced that the Nicaraguans continue to aid the insurgents. This is based on history, logic, and past-proved practices. But we do not have conclusive proof for current activities, in the form of irrefutable evidence.

Our usual published judgment then is "very persuasive" or "almost certain".

Arguments have been made in past meetings that "conclusive proof", the standard chosen by President Carter, is the wrong standard for President Reagan. I would recommend neutrality on the issue. But I would remind the meeting that our publications and briefings (including Congress) would lead many, if not most, to conclude that material support activities do or almost certainly do continue. (see Tab 4)

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4. From CIA's point of view, Option 4 (Nuanced Determination) is probably the least bad choice.

a. It preserves the integrity of the intelligence calling.

b. It keeps intelligence components out of Presidential-Congressional crossfire.

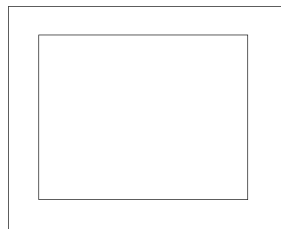
c. It affords the US some time to implement its Salvadoran strategy and to base its Nicaraguan tactics on more deliberate development of a Nicaraguan policy.

5. State may be split, with some in ARA wanting a softer option. S/P and perhaps the Deputy Secretary would prefer a tougher one. Bushnell will straddle.

6. DOD reps could support Option 4, though they too might prefer a tougher option.

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Tab 2

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Tab 3



DEPARTMENT OF STATE

Washington, D.C. 20520

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March 14, 1981

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TO: Participants of SIG/Central America  
FROM: L. Paul Bremer, III, Executive Secretary  
SUBJECT: SIC Meeting: Central America, Monday,  
March 16, 1981

The attached paper on Nicaragua is for discussion at the March 16 SIG to be chaired by Judge Clark with a view to preparing the issue for NSC consideration on Thursday, March 19, 1981.

COPIES TO

- CIA - [Redacted]
- DOD - Frank Carlucci, Deputy Secretary of Defense  
Francis J. West, Assistant Secretary of Defense (ISA) (Attention: Captain Frederick)
- JCS - Lt. General John Pustay (Attention: Brig. General Granger)
- NSC - Richard V. Allen
- VP's OFFICE - Admiral Murphy

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Attachment:

As stated

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GDS 3/14/81



NSC PAPER ON NICARAGUAISSUE

-- How do we proceed with Nicaraguan assistance?

BACKGROUND

There is no hard evidence of arms arriving in El Salvador from Nicaragua since February 1. However, the intelligence agencies believe that support for the Salvadoran insurgents probably continues. Support includes training Salvadorans, operations in third countries, stockpiling, and planning future support. Efforts to activate the airlift from Costa Rica and overland shipments from Honduran stocks are cited. The intelligence agencies are preparing an assessment which will be distributed separately.

KEY CONSIDERATIONS

-- Our actions must accord with the law. If there is conclusive proof that the Government of Nicaragua is currently abetting violence in other countries, a determination must be made. If the evidence is less than conclusive there is discretion to decide whether or not to make a determination depending on the standard of evidence applied.

-- A confrontation with Nicaragua now could be counterproductive. We need time to develop government forces in El Salvador; a formal cut-off of U.S. aid would eliminate the leverage provided by the threat of a cut-off and could lead to accelerated infiltration into El Salvador, even infiltration of combat personnel.

-- A U.S. aid cut-off would weaken private sector and other non-Communist forces within Nicaragua, possibly fatally.

-- We would also like to continue the operation of our Embassy in Nicaragua so that our intelligence assets can be strengthened. We must be concerned with the safety of our people.

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GDS 3/13/37

-- Finally, a confrontation with Nicaragua and even an assistance cutoff will raise an unwanted issue with our European and Latin allies. Mexico, Venezuela and West Germany all strongly urge us to continue our dialogue and assistance to Nicaragua. They either believe there is still hope for a non-communist Nicaragua or want to avoid trouble with their public opinion and leftist groups. We would prefer that it be Nicaraguan actions that show these countries they are wrong.

As the military buildup of Nicaragua's own forces continues, we shall eventually have to react regardless of whether or not Nicaragua is arming others. We cannot permit Nicaragua to become another Cuba, armed to the teeth and potentially intervening in other countries while we continue to provide substantial economic assistance. But it is better -- for our public and worldwide opinion -- to delay our reaction on this point until the buildup is clearer and until we have a more comprehensive Nicaragua strategy.

#### OPTIONS

The interagency group has developed four options to try to deal with all the above considerations.

**IF THE INTELLIGENCE ASSESSMENT DOES NOT PROVIDE CONCLUSIVE PROOF THAT THE GBN IS CURRENTLY ABETTING VIOLENCE, ALL FOUR OPTIONS BELOW ARE AVAILABLE:**

1. Postponement of a Determination on ESP pending additional evidence on support for violence in other countries. Resume limited shipment of PL-480 (\$10 million remains suspended) or possibly development assistance (\$10 million remains suspended.) Neither PL-480 nor development assistance are subject to the statutory determination. Would avoid a confrontation, and provide time to obtain better evidence of Nicaragua's intentions. In the interim, a limited amount of PL-480 (\$3 million) would show our interest in maintaining good relations. Resumption of assistance would be difficult to defend in Congress.

2. Strong Statement, no Determination. A strong public statement would be made indicating that the Government of Nicaragua had supported violence in El Salvador but that such activities were now reduced or stopped. We would further state that, nevertheless,

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assistance would be held in suspense until steps are taken to make this improved performance permanent and that a formal determination would be made if there were a reversal of recent improvements. Some PL-480 (\$3 million) would be made available in about three weeks. If favorable trends continue some development assistance might follow. Repayment of previous loans would not be required and it would not be necessary to use 614 authority to waive repayment or subsequently begin ESF assistance should that be desired after an additional testing period.

**IF THE INTELLIGENCE ASSESSMENT PROVIDES CONCLUSIVE PROOF THAT THE GRN IS CURRENTLY ABETTING VIOLENCE, ONLY THE FOLLOWING TWO OPTIONS ARE AVAILABLE:**

3. Straight Determination. Make a determination that the GRN is involved in terrorism, formally suspend assistance, and call outstanding ESF loans.

Would probably force an immediate confrontation. Does not buy time for our other objectives. Would be popular with some in Congress, but would damage our ability to get wide support for our Salvador policy.

4. Nuanced Determination. A series of steps would be worked out with the Congress and the Nicaraguans in advance of their comprehensive announcement. The elements are:

-- a determination that Nicaragua is involved in abetting violence, worded to concentrate on the past more than the present and to recognize recent improvement;

-- use of provision 614 authority to avoid making previously disbursed ESF funds immediately repayable; this would be presented to Nicaragua as a major concession and to Congress as the price of buying time; a finding that the waiver is important to U.S. national security interests is required as well as prior Congressional consultations.

-- announcement that, if favorable trends continue, PL-480 will be restarted in about three weeks; this is another major carrot for continued Nicaraguan cooperation; the humanitarian aspects would be stressed with Congress;

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announcement that, after a further testing period, development assistance could be again considered.

-- finally, the President would indicate that he would subsequently reexamine the situation to see if what Nicaragua is doing on support for violence and other issues warrants a further 614 determination that it is important to U.S. national security interests to restart ESP assistance.

This option is designed to comply with the law, while winning time for our other objectives by providing assistance in moderate amounts. However, it risks repeal or amendment of section 614 which is a valuable authority in many other contexts if there is serious objections in Congress to its use.

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Legal Considerations

Section 533(f) of the Foreign Assistance Act of 1961, as amended, (text attached) was originally enacted in the Special Central American Assistance Act of 1979. It will expire at the end of FY 81 unless reenacted by the Congress. It requires the President to terminate ESF assistance to Nicaragua and make all outstanding ESF loans due and payable immediately if the President determines "that the Government of Nicaragua ... is aiding, abetting, or supporting acts of violence or terrorism in other countries...." (emphasis added)

The legislative history of the provision indicates that the President has discretion as to the nature and degree of proof to be required. He is without discretion and must make a determination only if there is conclusive evidence that the GRN is providing material support (as opposed to moral or political support) to acts of violence in a foreign country.

The plain language of the statute provides for a determination only where the evidence supports a finding that the GRN is supporting acts of violence at the time the determination is being made. This is consistent with the view that the purpose of the statute is to deter present and future involvement in arms traffic rather than simply to punish Nicaragua for past activities in this area without regard to current GRN actions.

Nevertheless, the President may find the GRN to be supporting violence when the meaning of the statute based on past activities if he considers those activities to evidence a continuing pattern of support for acts of violence. (There is an inherent time lag in intelligence reports and therefore the statute cannot reasonably be interpreted as requiring a determination based on up-to-the-moment data.) On the other hand, if he is not persuaded that the evidence conclusively establishes current GRN support for violence he would not be obligated to make a determination irrespective of the degree of proof of past GRN activities.

Given the judgmental factors necessarily involved in deciding whether or not a determination should be made under this provision, a certain degree of Congressional criticism is likely irrespective of the decision.

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Section 614(a) of the Foreign Assistance Act of 1961, as amended (text attached) is denominated a "Special Authority." It provides the President the important extraordinary flexibility to provide assistance to foreign countries "without regard" to the other provisions of the Act. It has traditionally been used to avoid the application of outdated provisions or the application of statutory restrictions of a general nature to specific circumstances in which they were clearly not intended to apply. For example, Section 614 was utilized to provide assistance to Egypt in reopening the Suez Canal and is currently being used to in effect reprogram funds from Egypt to El Salvador.

Section 614(a) was amended this year to provide the President additional authority to waive statutory restrictions under the Arms Export Control Act. This amendment was obtained on the basis of representations that Section 614(a) authority would be used prudently.

The Congress has also established a requirement for the President to engage in formal consultations with the Congress prior to utilizing this authority. Section 614(a) authority could technically be used to overcome the requirements of Section 533(f) to call outstanding loans to Nicaragua and to resume ESP assistance at some later date. However, it would be extremely difficult to justify so using it to override a recently enacted provision that was clearly intended to produce a specific result in a particular country under specific circumstances. Such a departure from the traditional uses of Section 614(a) would be challenged in the Congress, by those who would like to eliminate or severely restrict the President's broad authority under this section.

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3/13/81 [redacted]

Clearances:ARA [redacted]

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L/ARA: [redacted]

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*Latin American Nicaragua & Cuba subline*

Tab 4



THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

National Intelligence Officers

NFAC-1446-81  
13 March 1981

MEMORANDUM FOR: Acting Director of Central Intelligence  
THROUGH : Acting Deputy Director for National Foreign Assessment  
FROM : National Intelligence Officer for Latin America  
SUBJECT : Interdepartmental Group Meeting on Nicaragua, 11 March 1981

1. Acting Assistant Secretary Bushnell chaired this latest in a series of meetings on US relations with Nicaragua. Also attending: representatives of State/ARA, INR, and S/P; NSC Staff; ISA and JCS; DDO/LA and OPA/LA and NIO/LA.

2. Bushnell attempted to develop support for Option 3 of the attached State paper. "Make a determination that the GRN has been involved in terrorism but waive the provision requiring us to call all outstanding ESF loans. We would announce that the arms trafficking appears to have stopped but that we are seeking further evidence of GRN moves to shut down the pipeline while aid remains suspended. We would inform the GRN in advance 1) that we will provide PL-480 within three weeks and, 2) review the determination within sixty days if the arms conduit remains closed. During the sixty-day period, Nicaraguan ESF will be held in abeyance pending further review of GRN involvement in El Salvador."

3. Deputy Assistant Secretary Cheek (ARA) said in effect that Nicaraguan support for the insurgents had stopped.

4. CIA made the following points:

a. While in response to US pressure the air flights of arms from Nicaragua appear to have stopped, and we have no direct evidence of other shipments of arms since early February, we still conclude that the Nicaraguans almost certainly continue to support the Salvadoran insurgency.

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- We assume that land and sea deliveries from Nicaragua continue--though probably at a reduced rate from the heavy flow of October-January.
- We have hard evidence of continued more-frequent-than-usual Cuban supply flights to Nicaragua, and persuasive reports of stockpiles of ammo for future delivery to El Salvador.
- We also have persuasive reports on Nicaraguan efforts to find alternative delivery routes and methods to El Salvador from Nicaragua and Costa Rica.
- We believe military training for Salvadoran insurgents within Nicaragua continues.
- We believe that secure passage of insurgents to and from Cuba through Nicaragua continues, including returning guerrilla trainees.

b. In short, our understanding of the strong Nicaraguan motives to aid the insurgents, the hard evidence on past support, and multiple intelligence reports of ongoing and recent activities outweigh the absence of any "smoking guns" over the past few weeks in reaching an intelligence judgment.

5. Deputy Assistant Secretary Stoddard (INR) generally supported this assessment and the DOD representatives said it reflected DIA's views.

6. NIO/LA stressed that while CIA's assessment of the situation would support avoiding an open clash with the Sandinistas at this time, the President should not make public statements on Nicaragua's current role in the Salvadoran insurgency which the intelligence agencies could not support in their briefings to Congress.

7. NIO/LA also recommended that we establish some policy goals for Nicaragua and relate our aid program to these rather than to the fine legal points of past legislation.

8. Comment. Bushnell apparently reported CIA's views to Secretary Haig, who, as a consequence, has requested an Intelligence Community assessment on the issue, for use at the NSC meeting on El Salvador scheduled for 19 March.



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Paragraphs 1-8 are SECRET.

DEPARTMENT OF STATE

Washington, D.C. 20520

for 4:00 p.m. meeting  
on NicaraguaSECRET - Entire TextISSUE

-- How do we proceed with Nicaraguan aid at the end of the thirty-day period?

BACKGROUND

We insisted the Nicaraguan Government (GRN) halt arms trafficking to El Salvador within a reasonable period. The Secretary established an internal thirty-day deadline (to approximately March 15) to assess the GRN reaction.

Our intelligence indicates that shipments through the routes we know about has largely stopped, in part because of U.S. pressure, in part because the pilots fear capture. The Papalonal airstrip appears to be shut down; Radio Liberacion is off the air. The stridency of Sandinista propaganda in support of the Salvadoran insurgents and against the U.S. has diminished. We have virtually no evidence of arms arriving in El Salvador since the January 10 final offensive.

Nonetheless, we know the pro-Cuban elements are looking for other routes and that large amounts of weapons are stockpiled in Nicaragua. We cannot monitor the overland route from Nicaragua through Honduras to El Salvador. We know little or nothing about possible sea routes. Despite our several requests, Nicaraguan leaders have to date refused to provide any verifiable evidence that they are taking measures to stop the traffic. The GRN once before stopped the arms traffic in response to U.S. pressure but resumed a month later. In response to a Nicaraguan request for resumption of PL-480, we asked the GRN once again on March 9 to provide us with concrete evidence of steps taken to halt the traffic.

We suspended all new aid commitments to the GRN several months ago. We are holding up \$15 million in ESF from the \$75 million supplemental. (The terrorism amendment only requires us to suspend ESF, not other forms of economic assistance, in the event of a negative determination on Nicaragua.) We are also holding up \$10 million in PL-480 (\$9.5 million in wheat; \$.5 million in edible oils). We also have suspended approximately \$12.8 million in development assistance. Some assistance in the pipeline to the GRN and aid to Nicaragua's private sector has been proceeding. We are reducing personnel by 20% by March 15.

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GDS 3/10/87 (Cheek, James R.)

We have focused on GRN involvement in arms trafficking in our presentation and public statements on foreign intervention in El Salvador. Regardless of our legal justification in postponing a determination, we can expect Congressional criticism if we resume aid to Nicaragua.

There are two separate but related issues which must be addressed. The first is the legal issue of whether or not a formal determination that the GRN is supporting violence in a foreign country is required or would be appropriate pursuant to the Special Central American Assistance Act. The second is the basic policy issue of whether or to what extent to resume assistance to Nicaragua. While the legal issue has certain implications for the policy decision, it is not determinative of it. The critical political issue here is not the statutory determination but whether we ultimately come out in favor of or against aid.

#### LEGAL CONSIDERATIONS

Section 236(g) of the Special Central American Assistance Act of 1979 (P.L. 96257) provides that the President shall terminate assistance under that act in the event he determines "that the Government of Nicaragua . . . is aiding, abetting, or supporting acts of violence or terrorism in other countries...." (emphasis added). One of the key issues involved in interpretation and application of this section has been the standard of proof to be applied. A legal memorandum discussing this issue is attached at Tab A. In essence, it concludes that a formal determination is required only if we have conclusive evidence that the GRN is providing material support (as opposed to political support) to foreign terrorists. The previous Administration found the evidence of GRN arms smuggling available to it fell short of the conclusive proof standard. We now have more reliable and detailed evidence that extensive arms trafficking took place during December-January. We are faced with the unique circumstance, however, that such evidence was received only after this Administration had insisted upon and received from the GRN assurances that it would take measures to stop the trafficking. Subsequent reports provide no evidence that these assurances have been violated. The plain language of the statute would provide for a determination only in the event that the President found that the GRN was supporting acts of violence at the time the determination was being made. This would be consistent with the view that Congressional intent was to deter present and future involvement in arms

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traffic rather than simply to punish Nicaragua for past activities in this area without regard to current GRN actions. It is also reasonable to assume, however, that the Congress intended that the President could make such a determination based on past activities if he considered those activities to evidence a continuing pattern of action. (There is an inherent time lag in intelligence reports and therefore the statute cannot reasonably be interpreted as requiring a determination based on up-to-the-moment data). Thus, the President could make a determination if he finds that the past activities of the GRN indicate a pattern of support of acts of violence in El Salvador which is continuing today. On the other hand, if there is no conclusive evidence of current involvement in arms trafficking, he would be under no obligation to make a determination notwithstanding GRN activities in January.

Finally, it should be noted that the fact that we cannot conclusively prove that arms trafficking is not taking place is not legally relevant. The statute requires the President to act only when he has evidence that the Government of Nicaragua is supporting acts of violence. The statute does not require him to prove the negative (which is impossible to do with certainty in any event).

#### OPTIONS

We have essentially five options:

1. Resume assistance to Nicaragua; make no determination.

Although traffic through known routes has stopped, we cannot be sure that arms are not transitting Nicaragua through other routes. The GRN may resume shipments as it has before. The Sandinistas are increasingly repressive. To resume assistance at this point would show premature faith in Sandinista assurances and expose us to domestic criticism for responding weakly to GRN arms trafficking. It might also destroy our credibility with the radicals in the GRN, causing them to conclude that our stern warnings were empty threats and that the terms of the amendment can be bent whenever necessary. On the other hand, with this option, the moderates might point to the advantages of working with rather than confronting the U.S.

2. Make a determination that the GRN is involved in terrorism, formally suspend assistance, and call outstanding ESF loans.

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We are not required to make a determination since, to the best of our knowledge, the GRN is no longer involved in arms trafficking. To do so and impose the full punitive sanctions after the GRN has apparently complied with our request would strengthen the radicals and open up the arms pipeline to El Salvador. We would require several weeks before implementing this option to reduce our staff substantially. A full aid suspension would require moving to stronger measures to stop the arms trafficking. We would mollify elements in the U.S. Congress who are demanding punitive measures against Nicaragua.

3. Make a determination that the GRN has been involved in terrorism but waive the provision requiring us to call all outstanding ESF loans. We would announce that the arms trafficking appears to have stopped but that we are seeking further evidence of GRN moves to shut down the pipeline while aid remains suspended. We would inform the GRN in advance 1) that we will provide PL-480 within three weeks and, 2) review the determination within sixty days if the arms conduit remains closed. During the sixty day period, Nicaraguan ESF will be held in abeyance pending further review of GRN involvement in El Salvador.

We are not legally required to make a determination unless the President finds that the apparent lull in arms smuggling is purely a temporary tactical maneuver and that the overall pattern of GRN support of violence in El Salvador is continuing. But we have already made public the GRN's full-scale involvement in arms trafficking to El Salvador, including the involvement of high-level Sandinista leaders. Congress and the public expect us to take some action against Nicaragua for its support of the Salvadoran insurgents.

The GRN will react negatively to a determination. But the Nicaraguan reaction would be mollified by the strong likelihood of resumed PL-480 within three weeks and the possibility of \$15 million in much-needed balance of payments support within sixty days. We would instruct Ambassador Pezzullo to urge the GRN to restrain its public reaction.

4. Postpone a decision on the terrorism certification pending additional evidence on the arms trafficking, while resuming limited shipments of PL-480.

If we postpone a decision on the determination, we can better monitor the GRN's involvement in arms trafficking for several weeks. We have just asked for additional evidence

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that the Nicaraguans are taking verifiable steps to shut down the traffic. (We gave the GRN a reasonable period to stop the traffic rather than thirty days.) In the interim, we could move ahead with a limited amount of PL-480 (\$2-3 million) to show our interest in maintaining good relations with Nicaragua without increasing our aid exposure significantly. If we decided to move ahead immediately, PL-480 might be available within five or six weeks to alleviate partially the upcoming Nicaraguan wheat shortage.

We could not pursue this option for more than several weeks. The Secretary has referred to the thirty-day period in a press conference, and the public and Congress expect a decision to be made at that time. This option also had the disadvantage of prolonging the uncertainty that has grown up regarding the future of our relations with the Sandinista Government.

5. Postpone a Decision

This option would give us additional time to assess the GRN's willingness to halt the traffic, but, after the Secretary's statement, many expect a resolution of our Nicaraguan policy within a shorter period. We would not have to consult with Congress on a resumption of assumption until our evidence on the arms trafficking has improved.

This option runs the risk of stringing the Nicaraguans along without any positive signs from the U.S, especially since the GRN has taken steps to shut down the traffic.

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3/10/81

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Tab 5



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**con-clu-sive** kən'klʌsɪv, [ēv also -tʃ] or [əv\ ad] [L. *con-*  
*clusivus*, fr. L. *conclusus* 1. -ivus -ive] : belonging to a close or  
 termination: as **a** : forming an end or termination **b** : putting  
 an end to debate or question esp. by reason of irrefutability  
 : involving a conclusion or decision : DECISIVE, FINAL (<  
 evidence) (a ~ presumption)  
**syn** DECISIVE, DETERMINATIVE, DEFINITIVE: applied most fre-  
 quently to evidence or reasoning. **CONCLUSIVE** means so irre-  
 futable as to end all uncertainty or question (a very persuasive  
 if not a *conclusive* argument — John Marshall) (the wisdom of  
 the new rule was so manifest that it was accepted as a *conclusive*  
 precedent — Frederick Pollock) (the evidence in the two  
 poems which makes it *conclusive* that one is derived from the  
 other — Amy Lowell) Applied to events or influences, **CON-**  
**CLUSIVE** indicates that which settles controversy or ends uncertainty  
 (my words had been *conclusive*. At least they had put an end to  
 the discussion — Jack London) (he acted that brief period as  
 commander-in-chief, but took no *conclusive* steps towards set-  
 tling the various problems confronting him — Stanley Pargel-  
 lis) **DETERMINATIVE** applies to decisions, causes, or influences  
 serving to establish a fixed character or definite goal (an ap-  
 peal covering similar merchandise is pending . . . which will  
 be *determinative* of this issue — *U.S. Treasury Decisions*)  
**DEFINITIVE**, opposed to *tentative* or *provisional*, applies to some-  
 thing final, something obviating further dispute, investigation,  
 or doubt (it is not my purpose to try to offer any *definitive*  
 answers to the questions involved . . . Publishing is now in a  
 very problematical state — J.T. Farrell) (he is ineffably happy  
 over the triumph of his principles and the *definitive* acceptance  
 of his political philosophy — C.G. Bowers)

Webster's Third New International  
 Dictionary (Unabridged)

Tab 7

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OPA/LA

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16 March 1981

Current Arms Flow to Salvadoran Insurgents

Although we have no confirmed evidence of arms shipments from Nicaragua to El Salvador since early February, we do have several indications that small scale, intermittent arms shipments are probably continuing, while planning proceeds for possible larger deliveries. Arms presently cached in Honduras probably came from Nicaraguan stocks.

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