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16	VC/NIC		X		
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Executive Secretary
29 Jan 86
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United States Department of State

Washington, D.C. 20520

Executive Registry

86- 0414 X

January 23, 1986

SUBJECT: Briefing papers on the Sandinista Military Build-up and the International Court of Justice: Nicaragua v. United States

A great deal has been written about the expansion of the Sandinista military, and about the suit brought by Nicaragua against the United States at the World Court (ICJ). The enclosed briefing papers focus on key facts and arguments essential to understanding these issues--for example when the Sandinistas began building up their military forces, relative to the formation of the armed opposition, and how the Sandinistas' support for the Salvadoran guerrillas affects Nicaragua's claims in the World Court.

A more detailed paper, also called The Sandinista Military Build-up, is available from S/LPD, Room 5917, U.S. Department of State, Washington, DC 20520.

Sincerely,

A handwritten signature in dark ink, appearing to read "John D. Blacken".

John D. Blacken
Acting Coordinator of Public Diplomacy for
Latin America and the Caribbean

C-304P-TR

International Court of Justice: Nicaragua v. United States

On October 7, 1985, the United States terminated its acceptance of the "compulsory jurisdiction" of the International Court of Justice (ICJ). Review of the U.S. acceptance of compulsory jurisdiction was prompted by the case brought by Nicaragua alleging illegal military and paramilitary activities against Nicaragua.

Two separate issues, (1) the ICJ's jurisdiction, and (2) evidence of Nicaragua's support for the Salvadoran guerrillas, dominate the ICJ case.

ICJ, or World Court: The ICJ is the judicial organ of the United Nations. The ICJ's jurisdiction derives from the consent of the states involved. States consent (1) by agreeing to limited jurisdiction over particular cases, or (2) by submitting a declaration accepting the Court's "compulsory jurisdiction" over cases concerning itself and other states that also accept compulsory jurisdiction.

- The U.S. accepted compulsory jurisdiction in 1946.
- Apart from the U.S., only 46 of 159 UN member states now accept compulsory jurisdiction.

States may make reservations to their declarations accepting compulsory jurisdiction, specifying any cases, or types of cases, they will not submit to ICJ adjudication.

- Among other things, the U.S. reserved from the ICJ's compulsory jurisdiction "disputes arising under a multilateral treaty unless . . . all parties to the treaty affected by the decision are also parties to the case before the court."
- ICJ jurisdiction under treaties and agreements is not affected by termination of the 1946 declaration.

Nicaragua v. United States: The U.S. contends that the ICJ has no jurisdiction to decide Nicaragua's claims because:

1. Nicaragua never validly accepted the Court's compulsory jurisdiction, and therefore cannot sue or be sued in the ICJ on that basis.
2. Before Nicaragua brought suit, the U.S. modified its acceptance to exclude for a period of 2 years matters related to Central America.
3. Nicaragua's claims affect treaty rights of its neighbors and fall under the "multilateral treaty reservation" in the U.S. declaration of 1946.
4. Nicaragua's claims concern collective security and self-defense matters which the UN Charter assigns to UN political bodies for resolution.

Despite strong evidence in support of these arguments, the ICJ held that it has jurisdiction and that Nicaragua's claims are appropriately settled in the Court.

Sandinista Intervention in El Salvador: The second key issue in the ICJ case is Nicaragua's claim that it "is not engaged, and has not been engaged in" support for the Salvadoran guerrillas. Nicaragua alleges that U.S. support for the Nicaraguan resistance is illegal, and unprovoked because Nicaragua has never acted against its neighbors in any way that would give them or the United States the right to act against Nicaragua in individual or collective self-defense.

Congress, intelligence agencies, the National Bipartisan Commission on Central America and critics of U.S. policy toward Nicaragua have found that, "contrary to the repeated denials of Nicaraguan officials, that country is thoroughly involved in supporting the Salvadoran insurgency." (Press release, March 4, 1982, Congressman Edward P. Boland, Democrat of Massachusetts) The Sandinistas have:

- Smuggled Soviet-bloc arms and transferred weapons in their own inventory to the Salvadoran insurgents.
- Trained Salvadoran guerrillas in military tactics, weapons, communications and explosives, and served as a transit point to guerrilla training camps in Cuba and the Soviet bloc.
- Harbored and advised Salvadoran rebel military leadership.
- Enabled guerrilla radio stations to broadcast from Nicaragua.
- Supported terrorist and subversive activities against neighboring states.

Nicaragua's claim that it does not support the Salvadoran insurgents has been undermined, for example, by:

- Miguel D'Escoto's admission of Nicaragua's support at a July 1983 meeting of the Contadora group.
- Testimony at the ICJ by a witness for Nicaragua that "it could be taken as a fact that at least in late 1980/early 1981, the Nicaraguan Government was involved in the supply of arms to the Salvadoran insurgency," and that the Sandinistas allow guerrilla communications, and command and control activities, to operate from inside Nicaragua.
- Extensive evidence of Nicaraguan intervention in El Salvador, Costa Rica, and Honduras compiled in "Revolution Beyond Our Borders: Sandinista Intervention in Central America," September 1985, U.S. Department of State.
- The apprehension by Honduran authorities on December 7, 1985 of a Soviet-made car en route from Nicaragua to El Salvador carrying 450 pounds of military supplies to the Salvadoran guerrillas. The car was driven by two members of a Costa Rican Marxist party, some of whose members have been trained by the Sandinistas in guerrilla warfare. Inside concealed compartments made for the car in Nicaragua were ammunition, grenades, bomb fuses, medical supplies, \$27,400 in cash, and radios labeled for specific Salvadoran guerrilla commanders, all wrapped in pages of *Barricada*, the Sandinista party newspaper.

Current Position of the U.S.: On January 18, 1985, the U.S. withdrew from further participation in Nicaragua v. U.S., but will continue to participate in ICJ proceedings that are consistent with ICJ functions as defined by the UN Charter, and based on specific agreement of the parties.

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Sandinista Military Build-up

Immediately after the fall of the Somoza dictatorship in 1979, the Sandinistas (FSLN) began building the largest armed forces in the history of Central America. The build-up:

- is unprovoked and far exceeds defensive needs.
- threatens Nicaragua's neighbors, who have been objects of Sandinista aggression since 1979.
- provides unprecedented instrument of force for suppression of domestic opposition.

Origins of Build-up: The "72-Hour Document," presenting the conclusions of a 3-day FSLN strategy session in September 1979, shows the Sandinistas intended to create a large military force loyal to the FSLN party and the "revolution" as defined by the Marxist leadership "vanguard."

- The Sandinistas signed economic assistance and party-to-party agreements with the Soviet Union in March 1980, and, probably, a secret military agreement, as Soviet military supplies began arriving within months of Somoza's fall.
- Thus, the military build-up started a full 2 years before any armed resistance to the Sandinistas existed and at a time when the United States and other countries were providing significant amounts of economic assistance. U.S. alone provided \$118 million in the first 18 months of Sandinista regime.

Dimensions of the Build-up: FSLN troops number 119,000, with 65,000 on active duty, and 54,000 in the reserves and militias.

- 3% of Nicaragua's 2.7 million people are under arms, a ratio of troops to population almost 3 times as high as El Salvador, 4 times as high as Guatemala, and 5 times as high as Honduras. Costa Rica has no army.
- Somoza's National Guard numbered 14,000 men at its height.
- The Sandinistas instituted the first systematic draft in Nicaragua's history for men 18-40 in 1983. In efforts to enforce the draft, the government raids schools and movie theaters, and conscripts seminarians.

External Support: Nicaragua receives personnel and sophisticated equipment from a number of Soviet-bloc and radical governments and groups:

- Cuba sent the first of approximately 3,000 military/security advisers a week after Somoza fell, helped build Punta Huete Airport, capable of accommodating any aircraft in the Soviet arsenal, and advises and trains Salvadoran rebels in Nicaragua.
- The USSR has sent over \$500 million in military aid since 1981, including 300 SA-7 surface-to-air missiles, 5-8 Mi24 and a dozen Mi8 attack helicopters, 100mm Howitzers, military and civilian advisers, communications, and transport equipment.
- Libya supplies SF-260 aircraft and helicopters, pilots, and mechanics.
- Bulgaria began training Sandinistas to fly MiGs in 1980.
- East Germany, PLO, Libya, North Korea, Vietnam, and Czechoslovakia provide equipment, training, and personnel.

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The Honorable William J. Casey
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