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A Matter of Self-Defense

The core of the United Nations Charter is Article 24, which enjoins all member states to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." This prohibition on the use of force was never intended to stand on its own, but was to be seen in the context of the entire Charter. In particular, as stated in Article 51, it was not intended to "impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

... The structure of the U.N. Charter was accepted by its member states on the expectation of the effective functioning of collective peacekeeping measures. However, this vision was never realized. Instead of a world order operating according to the principles and procedures of the U.N. Charter, there emerged in the aftermath of the Second World War two contending orders.

The first was an order dominated by the Soviet Union, committed to and engaged in a process of continuing expansion through the use of violence.

The second was a Western, democratic order, comprised of the Western, democratic states and committed to the defense and the promotion of democratic values. ...

The dilemma created by the clash of these two orders, these two ways of conceiving and acting in relationship to law, has occupied a very great deal of intellectual and political attention ever since.

The dilemma was incisively stated by George Kennan in an early essay entitled, "Diplomacy in the Modern World," in which he wrote: "The American concept of world law ignores those means of international offense, those means of the projection of power and coercion over other peoples which bypass institutional forms entirely or even exploit them against themselves. Such things as ideological attacks, intimidation, penetration and disguised seizure of the institutional paraphernalia of national sovereignty. It

ignores, in other words," Kennan continued, "the device of the puppet state and the set of techniques by which states can be converted into puppets with no formal violation of, or challenge to, the outward attributes of their sovereignty and their independence."

... It is in this context that we must view the case of Nicaragua and its own insistence today in the world on protection under Article 24. At the same time that it is engaged in the continu-

ing, determined, armed attack against its neighbors, the government of Nicaragua has openly proclaimed its commitment to what is called "revolutionary internationalism."

"This revolution goes beyond our borders," declared Interior Minister Thomas Borge in a speech delivered on the second anniversary of the revolution. "Our revolution was always internationalist."

... By late 1979, at a time when the Carter administration was providing Nicaragua with large amounts of economic assistance, the Sandinistas had already initiated the build-up of a military machine vastly superior to that of any other country in the region. ...

In June 1980, the Sandinistas invited the Salvadoran guerrillas to set up command and control headquarters in the Managua area, and Nicaragua and Cuba began at that time their full-scale support of El Salvador's FMLN, including the training and provision of arms and supplies. ...

In 1980 and 1981, Nicaragua and Cuba engaged in massive airlifts of arms and supplies to El Salvador's guerrillas from Papalona Airfield in Nicaragua, with the objective of preparing the guerrillas for a large-scale January 1981 offensive. ...

In early 1981, the Sandinistas began aggressively to violate Costa Rica's treaty rights to use

the San Juan River. ... In 1982, the Nicaraguan government initiated activities designed to destabilize and intimidate the Costa Rican government. On July 4, 1982, for example, Nicaraguan agents were directly involved in the bombing of the offices of a Costa Rican airline in San Jose.

In June 1983, the Sandinistas infiltrated into Honduras a 100-man guerrilla force trained in Cuba and Nicaragua as a first step toward destabilizing the Honduran government. ...

In December 1983, a group of some 2,000 Miskito Indians fled their concentration camps—and it is not too much to call them that—at Franciscoferpe, Nicaragua, and took refuge in Honduras at the Morocón refugee camp. The Nicaraguan government strafed the refugees from airplanes. ...

As of this time, there is not a scintilla of evidence to suggest that any of the Nicaraguan activities in support of armed attack against its neighbors, especially El Salvador, have ceased.

The supplies from Nicaragua for the Salvadoran insurgency arrive by air, by sea and by land. They arrive by small planes, such as Cessnas, which land on dirt roads and fields and off-load their arms. Small boats and dugout canoes are used to ferry arms from Punta Cosinqina in Nicaragua across the Gulf of Fonseca to El Salvador and further up the coast. Larger quantities of weapons and supplies load and leave from Nicaragua's now famous west coast ports on ocean-going vessels. ...

Last May 13, the House Permanent Select Committee on Intelligence issued a report, which concluded: "the Sandinistas have stepped up their support for insurgency in Honduras, and the Cuban-Nicaraguan aid for insur-

gence constitutes a clear picture of active promotion for revolution without frontiers throughout Central America by Cuba and Nicaragua." ... The House committee said, "The intelligence supporting these judgments provided to the committee is convincing."

Just last week, a Democratic member of the Senate Intelligence Committee stated that it was the committee's judgment that "Nicaragua's involvement in the affairs of El Salvador, and to a lesser degree its other neighbors, continues."

... In response to a declaration by the armed opposition that they were prepared to lay down arms if they could participate in a peaceful political competition for power and help settle Nicaragua's political question through the ballot box, the government of Nicaragua announced that such opponents would not be permitted to participate under any circumstances and would instead be tried in absentia as criminals. The government of El Salvador took exactly the opposite position and actually invited the armed opposition to participate in the election on condition only that they lay down their arms and agree to peaceful political competition.

It seems perfectly clear, therefore, that to portray Nicaragua as a victim in the current situation is a complete Orwellian inversion of what is actually happening in Central America. There can be no question by reasonable persons that Nicaragua is engaged in a continuing, determined, armed attack against its neighbors, and that under the charter of the United Nations, if not according to the laws of the class struggle, those neighbors have the right of individual or collective self-defense. ...

As we confront the clear and present dangers in the contemporary world, we must recognize that the belief that the U.N. Charter's principles of individual and collective self-defense require less than reciprocity is simply not tenable.

The writer is U.S. ambassador to the United Nations. The article is excerpted from an address before the American Society of International Law.