

**DEMANDE EN INDICATION
DE MESURES CONSERVATOIRES PRÉSENTÉE
PAR LE GOUVERNEMENT DU NICARAGUA**

**REQUEST FOR THE INDICATION OF
PROVISIONAL MEASURES
SUBMITTED BY THE GOVERNMENT
OF NICARAGUA**

1. I have the honour to place the following matters before you. On 28 July 1986 the Government of Nicaragua filed its Application instituting proceedings against Honduras in the case of *Border and Transborder Armed Actions*. By reference to that Application and in accordance with the provisions of Article 41 of the Statute and Article 73 of the Rules of Court, the Government of Nicaragua requests the Court to indicate the interim measures of protection appropriate in the circumstances resulting from the recent actions of the Honduran Government directed against the armed forces and territorial sovereignty of Nicaragua.

2. As you will recall, by a joint letter dated 13 August 1987 the Agents of Honduras and Nicaragua had requested the postponement of the oral proceedings in this case in the light of the agreement signed by the Presidents of the two Republics on 7 August 1987. This agreement was the result of certain understandings concerning the dismantling of the bases used by the *contra* forces on the territory of Honduras. It was in these particular circumstances that the joint request for a postponement of the calendar of proceedings was presented to the Court.

3. The accession of my Government to this request was a part of a policy of constructive measures aimed at the implementation of the Esquipulas agreements and the restoration of normal conditions in the region.

4. In fact, in spite of the considerable forbearance shown by my Government in face of the deplorable reluctance of the Government of Honduras to fulfil its undertakings, the situation has remained tense and the facilities afforded to the *contra* forces have not been either withdrawn or even curtailed.

5. The request for interim measures of protection is based upon the following considerations:

- (a) The extreme seriousness of the incidents of the period since 16 March involving the resort to force by the armed forces of Honduras (see the incidents of bombing and rocket firing over Nicaraguan territory referred to in the attached protest Notes, which incidents are also matters of public record).
- (b) The fact that these incidents were part of activities intended to give support to the *contra* forces in their operations in and against Nicaragua.
- (c) The evidence of the intention of the Government of Honduras to cooperate with the United States in measures which have no relation to the security of Honduras and in fact present a threat to the security of Nicaragua.
- (d) The absence of any possible justification for the use of armed force on the part of Honduras.
- (e) The intimate connection between the events of which Nicaragua now complains and matrix of facts and legal issues set forth in the Application filed by Nicaragua on the basis of which the Court became seized of the case of *Border and Transborder Armed Actions*.
- (f) The existence of a real need to preserve the rights of Nicaragua pending the determination of the issues raised by the Application.

6. In the submission of my Government if this request is not granted, the risks of escalation of breaches of the peace in the border region, already substantial, would increase. In particular, the Government of Honduras is at

present inclined to collaborate with the United States in its policy of claiming virtue in public forums whilst ignoring the norms of international conduct on the ground. The indication by the Court of measures appropriate to the circumstances would counteract this policy and induce the creation of a monitoring system which would improve conditions in the border region and put certain allegations made against Nicaragua to the test of truth.

7. The involvement of the United States in the present crisis affecting Nicaragua's border region is obvious. At the same time the Court's Order of 10 May 1984 is still in place and it has been neither withdrawn nor modified in accordance with Article 76 of the Rules of Court. Moreover, the Court reiterated certain key aspects of the Order of 10 May 1984 in its Judgment of 27 June 1986 in the case against the United States. Whilst my Government is very concerned about the recent actions of the United States, involving the emplacement of 3,000 combat-ready troops in the vicinity of the border, in all the circumstances it has decided that a further request for measures directed to the United States would lack point.

8. In accordance with Article 73, paragraph 2, of the Rules of Court the Government of Nicaragua respectfully requests the Court to indicate the following measures of protection:

- (a) The making of an enquiry either on the basis of the provisions of Article 50 of the Statute of the Court or on the basis of the provisions of Article 66 of the Rules of Court investigating *in situ* the recent incidents in the Bocay region and the causes of such incidents.
- (b) The recommendation by the Court of the creation of a group of observers by the appropriate organ of the United Nations to monitor incidents in the border region.
- (c) The right of Nicaragua to territorial sovereignty should be fully respected by Honduras.
- (d) The duty of the Government of Honduras to observe the principle of non-intervention in the affairs of Nicaragua and, as a consequence, the duty of that Government to terminate its policy of giving refuge and other forms of assistance to the *contra* forces operating from within its territory.

9. In conclusion, my Government has instructed me to convey to the Court the sense of urgency with which this request is necessarily attended.

The Hague, 21 March 1988.

(Signed) Carlos ARGÜELLO G.,
Agent of Nicaragua.

ATTACHMENTS TO THE REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

Managua, March 18th 1988.

To the Right Honorable Carlos López Contreras,
Minister of Foreign Relations of Honduras.

Dear Minister,

Deeply concerned, I address myself to you in order to inform you of the following events:

On March 17th 1988 at 12.00 noon, 2 jets penetrated Nicaraguan airspace from Honduras and launched 5 rockets in the region of Amaka in the border zone between both countries, at the moment when Lieutenant Colonel Javier Carrion, Deputy Chief of the General Staff of the Sandinista Popular Army, was offering a press conference for 31 national and foreign journalists. Such treacherous attack, widely covered by the journalists present at the location of the action, was carried out without any provocation.

That same day, at 16.40 p.m. a jet, also coming from Honduran airspace, attacked the region of San Andres de Bocay in Nicaraguan territory on the border with Honduras with 2 air-to-surface rockets. Soon afterwards, the airplane returned to Honduran airspace.

The Government of Nicaragua presents its most resolute and vigorous protest about these attacks against Nicaraguan territory, which reflect the fact that the Government of Honduras still refuses to conduct its relations with Nicaragua within the framework of international law and the treaties in force. The actions I have referred to are not only extremely grave in themselves but also very dangerous because they occurred at the precise moment when the Government of the United States was spreading an intensive campaign of false accusations against Nicaragua and had sent 3,200 soldiers to the south of Honduras in a manoeuvre intended to create the conditions necessary in order to trigger an interventionist adventure against Nicaragua.

The facts I have referred to, when added to the maintenance of tolerance and support by the Government of Honduras for the military and paramilitary activities carried out by mercenary groups at the service of the North American Government from Honduran soil, are more than sufficient and irrefutable proof not only that Honduras has not fulfilled the Esquipulas Agreements by supporting irregular groups and not preventing the use of its territory as a base of aggression against Nicaragua, but that on the contrary, Honduras shows no signs of any determination to fulfil them in the future.

Once again, the Government of Nicaragua invites the Government of Honduras to heed the legitimate interests of the Honduran people and to accept the presence of the UNO Technical Mission in order to carry out an *in situ* investigation as the basis for the procedure necessary for the disarmament and relocation of mercenary groups presently located at the border between Honduras and Nicaragua.

I take this opportunity to assure Your Excellency of my highest consideration.

Miguel D'ESCOTO BROCKMANN,
Minister of Foreign Affairs.

Managua, Nicaragua, March 19th 1988.

To the Right Honorable Carlos López Contreras,
Minister of Foreign Affairs,
Tegucigalpa, Honduras.

Dear Minister,

I address myself to Your Excellency to give an account of the following acts:

On March 18th between 19.00 and 21.00 p.m., a group of approximately 30 mercenaries, proceeding from Honduran territory, penetrated Nicaraguan soil in the sector of the Valle de Torres, 5 kms north-east of Somotillo, map co-ordinates 4508. This group had a confrontation with a Sandinista Popular Army Unit, leading to the consequent death of a member of our army, José Dimas Rodríguez Ríos, and the wounding of soldiers Anastasio Sánchez Zamora, Javier Velásquez Poveda, Leonidas Adán Rivera Ramos and Osman Sánchez Corrales. On the side of this terrorist group, two mercenaries died. Considerable military equipment of different kinds was seized. The rest of the group fled towards Honduran territory, through the El Coyol route, at map co-ordinates 4708. This infiltration was openly backed by the Honduran army by way of harassment with gunfire against the Sandinista Popular Army Post located at Palo Grande Viejo, half a km west of Somotillo, at map co-ordinates 35-98-4.

I must also inform Your Excellency, that on March 15th of this year, air-planes proceeding from Honduras committed three violations of Nicaraguan airspace, and after their incursion, returned towards Honduran territory. Similar violations of our national airspace took place in similar conditions on March 16th, 17th and 18th, with 4, 10, and 19 air incursions respectively. All this, amounts to a total of 26 violations of Nicaraguan sovereignty. I must emphasize that on various occasions these incursions were accompanied by attacks on our territory.

In face of these repeated, unjustified and treacherous acts of aggression against the Republic of Nicaragua, I convey to you our resolute and vigorous protest. Simultaneously, I wish to inform you that our Agent at the International Court of Justice has been instructed to request immediately that this institution of justice indicate the interim protective measures to be taken in the case concerning *Border and Transborder Armed Actions* initiated by the Republic of Nicaragua.

Such decision constitutes yet another proof that the Government of Nicaragua, faithful to its obligation to seek for peaceful solutions to those situations which threaten international peace, opts for means of settlement of differences to which it is obliged to resort under the agreements contained in the United Nations Charter and the Bogotá Pact. Similar motivations are derived from my country's deep concern for the establishment of a just and

long-lasting peace in the region; a peace that your Government insists on endangering in an unjustified and irresponsible manner.

I take this opportunity to assure Your Excellency of my highest consideration.

Miguel D'ESCOTO BROCKMANN,
Minister of Foreign Affairs.

Managua, Nicaragua, March 19th 1988.

To the Right Honorable Carlos López Contreras,
Minister of Foreign Affairs,
Tegucigalpa, Honduras.

Dear Minister,

Once again I am obliged to address myself to Your Excellency, in order to report the following attacks:

Today, March 19th, between 08.00 and 08.30 a.m., two F5 airplanes originating in Honduran territory flew over the regions of Mukuwas, San Andres de Bocay, Waniwas and Wayawa, located approximately 12 kms inside Nicaraguan territory, and they proceeded to bomb and machine-gun these locations.

Later, between 14.35 and 14.45 p.m., two F5 airplanes again flew over the region of Amara and Bocay located 8 kms inside Nicaraguan territory. They dropped 4 bombs on Sandinista Popular Army positions in these zones. Subsequently, the planes returned to their sanctuary inside Honduran territory.

The Government of Nicaragua vigorously and formally protests in view of this series of aggressions against Nicaraguan territory, to which should be added the illicit bombings, attacks and air raids which I have already denounced in the notes addressed to you yesterday and this morning.

These facts clarify the meaning of the announcement made yesterday by President Azcona, when in a press conference he stated "The nearest available resource we have is the Air Force, and we will use it again in the future, should it be determined that the Sandinistas have not left our territory . . .". In fact, what President Azcona was announcing beforehand, was the bombing of Nicaraguan territory, since there is no indication of any Sandinista "invasion" of Honduran soil. Therefore, in order to fulfil his words, he could only have meant — as indeed happened — that the target would be our national territory.

These new attacks confirm the justice of the action of the Republic of Nicaragua, in requesting for the common benefit of both our peoples, that the International Court of Justice impose an interim protective order in the case introduced by Nicaragua. The Government of Honduras must be convinced that only respect for International Law can provide an effective framework for relations between neighbouring countries.

I take this opportunity to assure Your Excellency of my highest and most distinguished consideration.

Miguel D'ESCOTO BROCKMANN,
Minister of Foreign Affairs.

PRESIDENT DANIEL ORTEGA'S MESSAGE TO THE NICARAGUAN PEOPLE

(Unofficial translation)

Managua, 19 March 1988.

Yesterday, Nicaragua presented our denunciation to the United Nations Security Council. In recent days, we have learned of actions throughout the world rejecting and condemning the aggressive and terrorist policy of the US Government. We have particularly noted, and are hearing more about, the North American peoples' repudiation of this policy. They are demanding the withdrawal of US troops dispatched to Honduras that are threatening our country, our sovereignty, our lives and security.

The attitude maintained by the Nicaraguan Government towards Central American Governments and, in particular, towards the Honduran Government is well known.

Nicaragua has a claim against Honduras before the World Court of Justice at The Hague for allowing military, paramilitary, and terrorist activities of US Government mercenary forces to be launched from Honduran territory against the Nicaraguan people. This has been going on for more than seven years. The Honduran Government has been complicit in these criminal activities that have brought about more than 50,000 victims in the Nicaraguan population.

When the Esquipulas accords were signed on 7 August 1987, the President of Honduras, Don José Azcona, asked me to request a postponement of the public presentation of our case before the World Court. He requested this postponement until the second summit meeting of Presidents, set to take place 150 days after the date the accords were signed.

In exchange, President Azcona insisted on his word, his readiness to remove the mercenaries from Honduras. He committed himself to take the corresponding steps in those 150 days to dismantle the camps, radios, communication centres, and logistical bases that the Reagan administration's mercenary forces have in Honduras. In view of the commitment from the Honduran President in that Esquipulas meeting in Guatemala, I accepted the postponement of our case before the World Court. That is to say, I accepted the postponement of the public presentation of the case. In a letter signed by both myself and President Azcona, we communicated this to the World Court. This letter was made public when we informed the world of the Esquipulas II Accords.

This commitment expired two months ago, and still the Honduran Government has not taken a single step in order to comply with the agreement made then. The Honduran Government has not taken a single step to remove the counterrevolutionaries occupying Honduran territory in order to attack Nicaragua. President Azcona has not fulfilled his commitment.

On the contrary, the Honduran Government has refused to receive the Technical Commission of the UN and OAS that was sent by the CIVS in November 1987. They have systematically refused to comply with the commitment made in August 1987 and reaffirmed in January of 1988 to allow on-site inspection. They have said it in words, at the end of 1987 the Honduran Government said they were ready for on-site inspection but when the necessary steps are taken to proceed with inspection, Honduras has not allowed the process to be carried out.

The Honduran Government has refused to demand of the United States Government, who is mainly responsible for all these problems, that they with-

draw their mercenaries from Honduran territory. The Honduran Government has not even dared to denounce that this presence constitutes a violation of the sovereign will of the Honduran people, and the very sovereignty of Honduras. It is an act of intervention by the United States in Honduras. In view of these facts, and taking into account that Honduras is already rejecting the proposal for the commission sent by the UN Secretary-General to go to Honduran territory, Nicaragua has no alternative but to reactivate our case before the World Court.

Nicaragua finds itself in the situation of calling on international legal order, not calling foreign troops as has been imposed on Honduras to lend itself to the escalation of war against Nicaragua, rather, calling on the aid of international law. There is no other alternative for the Nicaraguan Government except to reactivate the legal process against the Honduran Government. This is a legal process, as I explained, that we had agreed to momentarily detain for a period of 150 days from the date on which the Esquipulas Accords were signed.

In light of the complicity and active participation of the Honduran Army in bombings and acts of aggression promoted by the United States Government (who have transferred troops to Honduran territory) and without underestimating the threats of President Don José Azcona to carry out new bombings and ask for more US "support", I am giving the necessary instructions to our representative before the World Court to immediately request interim protective measures from the Court. Our aim will be to request that the Court order a cessation of any military activity that could make relations between Honduras and Nicaragua even more tense and put international peace in jeopardy.

In taking this step within the framework of international laws, Nicaragua is once again defending international legal order. We know that the people of Honduras, our brothers, are not in agreement with this policy that is already affecting the sovereignty of Honduras, that has provoked destabilization in towns along the Honduran border with Nicaragua, where the mercenary camps have been established. And we are sure that the people of Honduras will understand and comprehend this step by our Government of appealing to the World Court. We do so to ensure that the conflict is not aggravated, to ensure that Honduran and Nicaraguan blood will not be shed as a product of those confrontational manœuvres that the United States is now promoting to intervene against the Nicaraguan people.

I also want to call on the Honduran President, Don José Azcona Hoyo, and the armed forces of Honduras not to lend themselves to these actions that put the security of Honduras and Nicaragua at risk, that put the security and peace of Central America and the world at risk. There is still time to reconsider, reflect, and rectify. I invite President Azcona to receive the commission that the UN Secretary-General, in co-ordination with the OAS Secretary General, is sending to inspect on site Nicaraguan territory that borders Honduras, as well as Honduran territory that borders Nicaragua.

Let the Honduran President and the armed forces of Honduras take the corresponding steps to disarm and dismantle the mercenary camps and bases in Honduras. By doing this, they will be contributing to peace and they will be respecting international legal order. Under these conditions, there would be no need to continue our case in the World Court against the criminal acts of the Honduran Government.

The Central American and international communities recognize that the principal and only responsible party for all these acts is the United States Government. That Government has already been condemned by the World

Court. The World Court has already said that the United States Government must cease its terrorist acts, its aggressions against the Nicaraguan people. And the United States President, if he really wanted to be respectful of international legal order, President Ronald Reagan, if he really wanted to be respectful of the accords signed by the Central American Presidents on 7 August in Guatemala should order the immediate withdrawal of US troops from Honduran territory. But, above all, he should cease his aggressive and terrorist policy against the Nicaraguan people and leave us to continue developing the peace process in Central America. In Nicaragua we are continuing with the national dialogue. We will go forward with the meetings planned for Monday in Sapoá with the mercenary groups to discuss in detail the theme of cease-fire. The United States should also be willing to dialogue, to discuss with Nicaragua. In those discussions we could reach an agreement on security issues.

In these moments brothers, when our people, our nation is once again threatened by the arrogant and aggressive policy of the US Government, we must maintain the alert, the combat mobilization until this situation is surpassed. We thank our brothers and sisters around the world for the demonstrations of solidarity that we have been receiving from all parts of the globe. In particular, we thank the people of the United States who today are being repressed in the streets, are being clubbed by the US police simply because they demand that the United States, that the Reagan Administration stop trying to turn Central America into another Vietnam. The people of the United States want to prevent the massive bloodshed of Central American and North American people.

We extend our recognition and salute to those people, in the United States in particular, who have joined us in the battle we wage today for peace and for a future of friendly relations between our two nations.

LETTER FROM THE AGENT OF NICARAGUA TO THE REGISTRAR
OF THE INTERNATIONAL COURT OF JUSTICE NOTIFYING THE
WITHDRAWAL BY THE GOVERNMENT OF NICARAGUA OF ITS
REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

31 March 1988.

Dear Sir,

I have the honour to refer to the case concerning *Border and Transborder Armed Actions (Nicaragua v. Honduras)*.

I have been instructed by my Government to make the following communication to the Court.

The Deputy Minister of Foreign Affairs of Nicaragua, Dr. José Leon Talavera, was expressly charged with delivering to the Ministry of Foreign Affairs of Honduras, of the letter dated March 28, 1988 that President Ortega addressed to President Azcona, and of which the Court was furnished with a copy.

On occasion of that meeting, Deputy Minister Talavera was given assurances by the Honduran authorities that the troops of the Government of the United States that had recently been sent to that country were being withdrawn. He was also told that due to the Easter celebrations President Azcona was away from his ordinary round of duties and for that reason they requested a prudential period of time to respond to President Ortega's letter.

For the reasons stated above, and particularly in view of the formal assurances given by the Government of Honduras — that have begun to be put into effect — of proceeding to the withdrawal of the troops of the United States that were the principal reason for the urgent request made by Nicaragua to the Court, my Government has given me instructions to withdraw the request of interim measures of protection that had been requested from the Court on March 21 of this year.

With respect to the other considerations in President Ortega's letter, my Government considers it convenient — in view of the explanations given by the Honduran authorities — to await the reply of President Azcona at his return.

Accept, Sir, the assurances of my highest consideration.

(Signed) Carlos ARGÜELLO G.,
Agent of the Republic of Nicaragua.

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