

<b>Forum:</b>	International Court of Justice
<b>Issue:</b>	Military and paramilitary activities in and against Nicaragua (Nicaragua v United States of America) 1984
<b>Chair:</b>	Andy Xu and Sunni Lin

---

## Introduction

Since independence from Spanish and Mexican rule in 1824, Nicaraguan sovereignty has been largely controlled by foreign powers, especially the United States (US), who sees Nicaragua as an economic opportunity. US presence has existed in Nicaragua for more than a century leading up to Nicaragua's 1984 application to the ICJ, with either justified or unjustified military actions straining tensions between the Conservative and Liberal Parties of Nicaragua. US motivations include possible annexation, colonialism, and economic access to Central America straits.

Bilateral relations between Nicaragua and USA have been shaky since the 1850's when William Walker assumed the Nicaraguan presidency and allowed US intervention, sanctioning of slavery, and control inter-oceanic trade route through Nicaraguan territory with Britain without Nicaragua's consent. Nicaragua protested US intervention, and the Liberal Party, under José Santos Zelaya, was able to maintain power until the US installed a puppet government in 1910, once again beginning US control of Nicaragua affairs and instigating the strengthening and prevalence of revolutionary groups and opposition. USA's frequent interventions and backing of certain parties in Nicaraguan government throughout the 1850's and 1997 are concurrent with paramilitary presence in the Central American country.

Nicaragua's current president is Daniel Ortega, leader of the Sandinista National Liberation Front (FSLN). Nicaragua filed an Application instituting proceedings and request for the indication of provisional measures to the ICJ against the USA for the latter's alleged responsibility for military and paramilitary activities in and against Nicaragua on April 9, 1984. Nicaragua's claim that the US's infringes upon its sovereignty and political independence are contested by the US's assertion that the ICJ has no jurisdiction over the case and defense of their "covert activities." The Court ordered provisional measures on May 10, 1984. El Salvador filed a declaration of intervention, maintaining that the case is inadmissible under the ICJ under Article 63. The Court's dismissal of El Salvador's declaration on October 4 entered public hearings from both Nicaragua and the US on the jurisdiction of the Court. On June 27, 1986, the Court delivered its Judgement that the US had violated Nicaragua's

sovereignty and must "cease and to refrain from all acts constituting breaches of its legal obligations" and pay reparations.

However, despite the General Assembly resolution A/RES/41/31 calling on the US to abide by the Order, the US has rejected the Court's ruling and through the Security Council, has not paid the necessary reparations to Nicaragua. In September 1991, Nicaragua informed the Court, *inter alia*, that it did not wish to continue the proceedings. The United States told the Court that it welcomed the discontinuance; on September 26, 1991, the case was removed from the Court's List.

## Definition of Key Terms

### International Court of Justice (ICJ)

The ICJ is the principal judicial organ of the United Nations (UN) established in June 1945 by the UN Charter. Located at the Peace Palace in The Hague and comprising 15 judges elected to 9 year terms of office, its role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

### Sovereignty

Sovereignty refers to the concept by which a nation holds full right and power in governing itself without any interference from outside sources or bodies. Article II of the UN Charter states that the UN is based on the principle of sovereign equality for all its members and that all nations shall refrain in their "use of force against the territorial integrity or political independence of any state." In the context of the Nicaragua versus United States case, the presence of United States' naval mine operations in Nicaraguan ports served as a major point of contention with respect to sovereignty.

### Contras

The Contras were a rebel organization in Nicaragua that was active from 1979 to the late 1990s. They displayed right-wing tendencies and received backing from the US. It is this show of support, among other things, that led to Nicaragua's eventual lawsuit against the US in 1984. According to a report released by Human Rights Watch in 1989, the Contras are alleged to have committed numerous abuses against humanity, including kidnapping and torturing of civilians.

### UN Charter Chapter VII Article LI (51)

This article is among the only pardon of the use of force, as a means of self defense, in the UN Charter, in which the Charter emphasizes on the prohibition of force. Article LI defines the requirements

regarding a nation's exercise of the "self-defense," a significant US justification for military and paramilitary action in Nicaragua. The article states that "Nothing shall impair the inherent right of individual or collective self-defence 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." In other words, a nation may act in self defense, yet should attempt to reconsider or shift their actions once the Security Council has acted collectively on the matter. The key requirement for nations to exercise this right is to have been the victim of an armed attack on part of another nation.

### **Sandinista National Liberation Front (FSLN)**

The FSLN is a democratic socialist political party in Nicaragua. On June 16, 1979, the Sandinistas overthrew Anastasio Somoza DeBayle, putting an end to the Somoza Dynasty, a family dictatorship that had ruled Nicaragua since 1936. Establishing a military junta government in its place, the Sandinistas dedicated itself to new policies and initiatives, such as mass literacy and the betterment of healthcare. In spite of this, a slew of human rights abuses levied against both its own people and indigenous populations brought Nicaragua, under the FSLN administration, under immense criticism. In 1981, a militia called Contras was created to oust the Sandinista government. It was this militia that the United States Central Intelligence Agency (CIA) dedicated resources and training to. To this day, the FSLN remain an active group in Nicaraguan politics.

### **Paramilitary**

This term may refer to a wide range of organizations based on military forces, particularly related to those formed by a government. It is a semi-militarized force similar to a professional military but not included as part of a state's formal armed forces. Paramilitaries are legal under the law and state of law, in which other parties to a conflict are notified about the paramilitary presence. This term will be a key contention in this ICJ debate, as Nicaragua and the United States will contest its interpretation, usages, or extent.

## **General Overview/Position of Major Parties**

### **Nicaragua**

Nicaragua filed an Application instituting proceedings and a request for the indication of provisional measures against the US's military and paramilitary activities in and against Nicaragua on April 9th, 1984. Nicaragua cited the US's violation of principles of international law, namely the UN Charter and the Charter of the Organization of American States. The basis of accusation lies in the following: more than 10,000 US troops in Nicaragua and spendings of over \$70,000,000 that have cost \$200,000,000 in damage, including civilian deaths, evacuations, and naval mining with the intention of

"overthrow[ing] the Government of Nicaragua." Nicaragua affirms that the US's use of military force constitutes a violation of Nicaraguan sovereignty and political independence in addition to infringing upon the accepted international law nested in the UN Charter that states must not resort to force in relations with other states. More specifically, the US has provided material and logistical support to over 10,000 fighters, most of whom once loyal to former dictator Anastasio Debayle; over 1400 Nicaraguans have died at the hands of these US backed militants; more than 3,000 have been "maimed, wounded, raped, or kidnapped"; 113,000 have faced displacement from their homes. Civil damages to facilities including "farms, schools, and hospitals" have almost exceeded \$200,000,000, and Nicaraguan peaceful trade has been deterred by the US's mining of these ports such as El Bluff and Puerto. Nicaragua affirms the US's unjustified violation of sovereignty and peace with the use of force, seeking that the US immediately ceases and refrains from actions violating international obligations, as well as paying valid reparations in which all Parties agree to.

### United States of America

The United States rejects Nicaragua's application, citing its invalidity under the Court's jurisdiction. The US affirms that Nicaragua has no right to invoke the Court's compulsory jurisdiction because it is inapplicable to Nicaragua itself. The US also justified its actions, presumably under the UN Charter Chapter VII Article LI, that Nicaragua has openly conducted violence against its neighbors that contribute to the "underlying problems of Central America." With justification of self-defense in connection with the military and paramilitary activities in and against Nicaragua, the US argues that "Nicaragua is engaged in an armed attack against its neighbors, carried out not only by supporting armed groups engaged in military and paramilitary activities in and against El Salvador (and on a smaller scale against Costa Rica, Honduras and Guatemala), but also by direct armed incursions across its border into Honduras and Costa Rica. Any military activity by the United States in response was within the exercise of its "inherent right of self-defense." Maintaining that other treaties are supplementable of the ICJ, the US declares that Nicaragua's application foremost cannot be entertained in the ICJ and should be resolved between the countries themselves. Additionally, the US argues because states that would be affected by the court's ruling are not present, hence the Court is lacking in jurisdiction. States involved include El Salvador, Honduras, and Costa Rica. Since Nicaragua has named the US as the only other party to the case, the aforementioned countries lack a say in a decision that will no doubt affect them.

### Timeline of Events

Date	Description of event
------	----------------------

August - September, 1912	First occupations of US forces in Nicaragua marked the beginning of pro-US government and exclusive US-Nicaragua control of the Panama Canal.
1979	The Sandinista (FSLN) movement, strongly opposed by the US and spurring the rise of the Contras, rose to power against the embezzlement of the Somocista dictatorship.
March, 1981	US President Ronald Reagan authorized "covert activities" of a military and paramilitary nature against Nicaragua.
1981 - 1983	An increase in US "army" and budget against Nicaragua, with mercenary forces and finance growing up to 15,000 men and \$50,000,000, were appropriated.
September - October, 1983	Oil storage and pipeline facilities at Puerto Sandino, Benjamin Zeledon, and Coritno were attacked, resulting in the loss of over 1.9 million gallons of fuel and the evacuation of 20,000 residents.
February, 1984	The ports of Corinto, Puerto Sandino, and El Bluff were mined, damaging five foreign commercial vessels and marring Nicaragua's peaceful maritime commerce.
April 9th, 1984	Nicaragua instituted proceedings and a request for the indication of provisional measures against USA in the ICJ with regards to USA's "violation of Nicaragua's sovereignty, territorial integrity and political independence and of the most fundamental and universally accepted principles of international law."
May 10th, 1984	The ICJ Court issued an Order indicating provisional measures, noting Nicaragua's right to sovereignty and political independence and requiring the US to cease and refrain from any action in ports, especially in the laying of mines.
June 27, 1986	The Court issued its Judgement calling on the US's violation of customary international laws and bilateral treaties, requiring the state to immediately "cease and to refrain from all acts constituting breaches of its legal obligations" and make reparations to Nicaragua."
September, 1991	Nicaragua informed the Court that it wished to cease all proceedings; with the US's endorsement, the proposal was entertained and the case removed from the Court's list.

## UN Involvement, Relevant Resolutions, Treaties and Events

Main UN actions: ICJ and UN Charter. They were invoked by Nicaragua in its Application to the ICJ, the UN Charter provided the basis of the ICJ's ruling of the case in favor of Nicaragua. The Security Council: Through the US's blockage of ICJ rule as a permanent member of the SC, Nicaragua did not receive the necessary reparations as delineated in the Court's 1986 Order. More relevant documents are listed below as reference.

- Nicaraguan Declaration of 1929
- United States declaration of 1946
- Statute of the International Court of Justice
- UN Charter
- Treaty of Friendship, Commerce and Navigation of 1956
- Charter of the Organization of American States
- Judgement of the International Court of Justice of 27 June 1986 concerning military and paramilitary activities in and against Nicaragua: need for immediate compliance, 3 November 1986 (A/RES/41/31)

## Possible Solutions

Judges should familiarize themselves with the relevant treaties and statutes, allowing for an easier evaluation of each country's acts in accordance to international law. Judges should also identify their stances of several key assertions made by each side in the case. One such assertion includes the US's claim that nations must fully accept the Court's authority before being a beneficiary of its rulings. Is this indeed true. Another statement that should be evaluated is the US's claim that it has acted in the interests of other Central American countries under UN Charter Chapter VII Article LI. Also be sure to accurately consider the stances of the US and Nicaragua, which may have been different in the time frame of 1984.

## Bibliography in MLA Format

"Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)." *Latest Developments | Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) | International Court of Justice*, [www.icj-cij.org/en/case/70](http://www.icj-cij.org/en/case/70).

"Chapter VII." *United Nations*, United Nations, [www.un.org/en/sections/un-charter/chapter-vii/](http://www.un.org/en/sections/un-charter/chapter-vii/).

*The Court | International Court of Justice*, [www.icj-cij.org/en/court](http://www.icj-cij.org/en/court).

Leigh, Monroe "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)" *The American Journal of International Law*, Vol. 79, No. 2 (Apr., 1985), pp. 442-446, <https://www.jstor.org/stable/pdf/2201715.pdf>.

"Nicaragua v. USA (1986)." Q Costa Rica, 13 Nov. 2014, [qcostarica.com/nicaragua-v-usa-1986/](http://qcostarica.com/nicaragua-v-usa-1986/).

"Timeline: Nicaragua." [web.stanford.edu/group/arts/nicaragua/discovery\\_eng/timeline/](http://web.stanford.edu/group/arts/nicaragua/discovery_eng/timeline/).

"A Guide to the United States' History of Recognition, Diplomatic, and Consular Relations, by Country, since 1776: Nicaragua." U.S. Department of State, U.S. Department of State, [history.state.gov/countries/nicaragua](http://history.state.gov/countries/nicaragua).

Parker, Franklin D., and Rosendo Arguello. "Nicaragua." Encyclopædia Britannica, Encyclopædia Britannica, Inc., 23 Nov. 2017, [www.britannica.com/place/Nicaragua/Agriculture-forestry-and-fishing](http://www.britannica.com/place/Nicaragua/Agriculture-forestry-and-fishing).

Oea, and Oas. "CHARTER OF THE ORGANIZATION OF AMERICAN STATES (A-41)." OAS - Organization of American States: Democracy for Peace, Security, and Development, 1 Aug. 2009, [www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-41\\_charter\\_OAS.asp](http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp).

"UNTC." United Nations, United Nations, [treaties.un.org/Pages/showDetails.aspx?objid=0800000280139d26](http://treaties.un.org/Pages/showDetails.aspx?objid=0800000280139d26).

"Documents." United Nations, United Nations, [www.un.org/en/documents/index.html](http://www.un.org/en/documents/index.html).

"STATUTE OF THE INTERNATIONAL COURT OF JUSTICE." Statute of the Court | International Court of Justice, [www.icj-cij.org/en/statute](http://www.icj-cij.org/en/statute).