

objectionable elements relating, in particular, to the Judgment of 27 June of the International Court of Justice, with respect both to the role of the Court and to substance, elements which could not receive unanimous agreement, and, therefore, his delegation had been forced to abstain in the vote on the draft.

The representative of the United States maintained that his delegation had been compelled to vote against the draft resolution because it could not and would not have contributed to the achievement of a peaceful and just settlement of the situation in Central America within the framework

of international law and the Charter of the United Nations. The draft contained no reference to Nicaragua's solemn undertakings; it contained no reference to Nicaragua's own responsibility for the situation in Central America and, by focusing on the 27 June decision of the Court, presented a false picture of that situation as if it were limited to differences between Nicaragua and the United States. He further stated that he had voted against the draft because it would have painted an inaccurate picture of the true situation in Central America.

28. LETTER DATED 17 OCTOBER 1986 FROM THE PERMANENT REPRESENTATIVE OF NICARAGUA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

INITIAL PROCEEDINGS

By a letter¹ dated 17 October 1986, addressed to the President of the Security Council, the representative of Nicaragua requested an emergency meeting of the Council, in accordance with the provisions of Article 94 of the Charter, to consider the "non-compliance" by the United States with the Judgment of the International Court of Justice dated 27 June 1986 concerning *Military and Paramilitary Activities in and against Nicaragua*.

Decision of 28 October 1986 (2718th meeting): rejection of five-Power draft resolution

At the 2715th meeting, on 21 October 1986, the Council included the item in its agenda.² In the course of the discussions the President, with the consent of the Council, invited the representatives of Algeria, Argentina, Cuba, Democratic Yemen, Guatemala, Honduras, India, Iraq, the Islamic Republic of Iran, Mexico, Peru, Spain, the Syrian Arab Republic and Yugoslavia, at their request, to participate in the discussion without the right to vote.³

The question was considered at the 2715th to 2718th meetings, held on 21, 22, 27 and 28 October 1986.

At the 2715th meeting, the representative of Nicaragua stated that, owing to the failure of all initiatives to halt the United States aggression against his country, Nicaragua had been forced to go to the International Court of Justice and file legal proceedings against the United States for its illegal policy of force and intervention against Nicaragua. He reiterated the Court's ruling regarding the United States questioning of the Court's jurisdiction in the case, which stated that the Court rejected the United States' argument that its conduct was permissible according to the right of collective self-defence established under Article 51 of the Charter of the United Nations. Maintaining that the United States had no grounds whatsoever for failing to abide by the decision of the Court and thereby violating international law, he recalled paragraph 3 of Article 2 of the Charter and also noted that judicial settlement and recourse to the International Court of Justice was one of the fundamental means of peaceful solution of disputes established in Chapter VI of the Charter of the United Nations. He further

emphasized that it was of the utmost importance for the Security Council, the United Nations and the entire international community to remind the United States of its obligation in accordance with Article 94 of the Charter to abide by the Court's ruling, to put an end to its war of aggression against Nicaragua and set in motion the negotiating process the Court had suggested in its decision.⁴

The representative of the United States, while stating that the acceptance of the jurisdiction of the Court was a matter of consent and it was not something that happened as a function of membership in the United Nations pursuant to the Charter or the Statute of the International Court of Justice, further noted that the United States did not accept the proposition that they had consented to the jurisdiction of the Court in the case brought by Nicaragua. Consequently, the United States did not believe that the current item brought by Nicaragua under Chapter XIV, Article 94, of the Charter had any merit. There was nothing in Chapter XIV of the Charter that referred to the question of jurisdiction and nothing anywhere in the Charter that could be said to create consent to jurisdiction where none existed.

He reiterated that the United States policy towards Nicaragua would continue to be based upon that Government's responsiveness to continuing concerns affecting the national security of the United States and Nicaragua's neighbours: Nicaragua's close military and security ties to Cuba and the Soviet Union and its Warsaw Pact allies; Nicaragua's build-up of military forces in numbers disproportionate to those of its neighbours; Nicaragua's unlawful support for armed subversion and terrorism; Nicaragua's internal repression and finally its refusal to negotiate in good faith for a peaceful solution of the conflict in Central America based upon the comprehensive implementation of the September 1983 Contadora Document of Objectives and, in particular, its refusal to engage in a serious national dialogue with all elements of the Nicaraguan democratic opposition. Convinced that the Sandinistas' behaviour had demonstrated that the Nicaraguan regime would negotiate seriously with the opposition and its neighbours only when under pressure to do so, he stated further that the United States' assistance to the Nicaraguan democratic resistance was the essential element needed to convince the Government of Nicaragua to enter into such negotiations.⁵

¹S/18415.

²S/PV.2715.

³For details, see chap. III of the present *Supplement*.

⁴S/PV.2715, pp. 4-20.

⁵S/PV.2716, pp. 6-9.

The representative of India pointed out that it was the first time that a Government had come to the Security Council, under Article 94 (2) of the Charter of the United Nations, to seek compliance by a Member State with a Judgment of the International Court of Justice. Regretting that the Security Council resolution 562 (1985) had not had the desired positive effect in Central America, he added that the situation there continued to deteriorate, endangering peace and stability in the region. Reiterating the position of the Non-Aligned Movement that States had the inalienable right to choose their political, economic and social system free from outside interference, he stated that it was their conviction that peace in Central America could be brought about only if policies of intervention, interference and intimidation, the threat of use of force and other coercive measures were eschewed and also that the Contadora Group represented an authentic regional initiative for solving the Central American problem by peaceful means.⁶

The representative of Peru emphasized the exceptional importance of the debate in at least three areas: the legal order as a collective expression to regulate international relations; the political order with regard to the abuse of power or its use for purposes of hegemony; the order of the national security of small and medium-sized States which made it their priority to base their national independence and sovereignty on wholehearted respect for the principles of non-interference in the internal affairs of other States. He said that his country was convinced that for the benefit of all, large and small, the Council would find a way to reconcile the heterogeneity of its interests with the unanimous aspiration of humanity for an order founded on peace and law, and would arrive at the necessary agreements to preserve the international legal order which was an essential condition for civilized co-existence.⁷

The representative of Mexico maintained that peace in Central America as a product of dialogue, and not the use of force, was a shared responsibility. He said that the historic problem then facing Central America derived from the extraregional rejection of the political development to which the peoples of the region were clearly entitled. Mexico had no hesitation in describing the authorization of financial aid for Nicaragua's counter-revolution as a historical, political and legal error that could seriously damage the relations between the United States and Latin America. He further reiterated that the Contadora Act contained elements that would have to be taken into account in any negotiated settlement of the crisis. The strength of Contadora and its Support Group lay not only in unity and the harmonious combination of efforts, but also in its authentic representation of the values and principles which should sustain international relations on the American continent.⁸

The representative of Cuba charged that a permanent member of the Security Council was not only encouraging aggression and the forcible overthrow of the Government of a State Member of the United Nations, but was openly using the authority of the State to finance aggression. He stated that the United States policy in Central America, and particularly in Nicaragua, ran counter to Article 1 (2) of the

Charter of the United Nations. It was time for the Council to call for the rule of reason and justice in that afflicted region and to contribute to the creation of conditions to ensure respect for the obligations deriving from treaties and other instruments of international law. He supported Nicaragua's request that the United States abide by Article 94 of the Charter.⁹

The representative of Argentina remained convinced that Contadora offered the only realistic, just means of securing a peaceful, negotiated settlement of Central America's problems, and that the revised Act on Peace and Cooperation in Central America constituted a set of commitments that could bring peace to the region if they were accepted and carried through in good faith by all the parties involved.¹⁰

Emphasizing the need for the most scrupulous compliance with the purposes and principles of the Charter, as well as with all its other provisions, and particularly with principles as fundamental to the international legal order as that of non-intervention in the internal affairs of other States and the peaceful settlement of international disputes, the representative of Venezuela stated that the situation in Central America was a result of prolonged dictatorships, with the inevitable sequels of grave and systematic violations of the whole range of human rights. He stressed the necessity and righteousness of multilateral action, and added that, within that framework, the participation of regional groups in resolving disputes that primarily affected the countries of the region was particularly appropriate.¹¹

Condemning as dangerous, steps by the United States to escalate aggressive activities, and demanding that they be ended, the representative of the Soviet Union stated that it favoured the establishment of a comprehensive system of international security, and wished to see full respect for the right of every people to choose in sovereignty the path and form of its own development. He expressed his country's support for the constructive efforts of the Contadora Group aimed at a political settlement of the situation in Central America through efforts by the Latin Americans themselves, without outside interference of any kind. He believed that the decision of the International Court in the case of the complaint by Nicaragua had to be implemented immediately and fully, and that the Security Council had to state its authoritative opinion on that matter.¹²

The representative of Honduras charged that the Sandinista Government was simply using the Council and the highest judicial organ within the United Nations system for its own political ends, with a clear propagandist intent, to the detriment of the prestige and dignity of the International Court of Justice. He stated that his Government not only disagreed with the use of the Court for propagandistic purposes, but also condemned that attitude because it represented a further stumbling block placed by the Nicaraguan Government in the way of the peace process in Central America. The Governments and peoples of Central America had, with reason, pinned their hopes for peace and security on the Contadora process, but, in resorting to other

⁶Ibid., pp. 16-18.

⁷Ibid., pp. 22 and 26.

⁸Ibid., pp. 33-36.

⁹Ibid., pp. 41 and 42.

¹⁰Ibid., p. 48.

¹¹S/PV. 2717, pp. 4-6.

¹²Ibid., pp. 17-20.

bodies, the Sandinista Government was impeding that process and had gone so far as to damage the prestige of the highest Court in the world, he noted. He emphasized that the sole aim of his statement was to alert the members of the Council to the fact that, by jeopardizing the important peace process in Central America, the Sandinista Government was using the Council as it had attempted to use the International Court of Justice, in order to project an image that did not reflect the facts experienced by its people, who had to a considerable degree declared itself in rebellion against the Government.¹³

The representative of Guatemala stated that, like other countries in Central America, his country too was affected by any problem arising in the region. Citing the problem in Central America as very complex, he called for dialogue, for diplomatic and political negotiations, and for agreements to resolve the question in a comprehensive manner. He reiterated that Guatemala was pursuing a policy of active neutrality, since that was how it could best contribute to the restoration of peace, reconciliation, and the establishment of conditions that would facilitate Central American integration and the development of its peoples. He re-emphasized Guatemala's unconditional support to the Contadora Group and the Support Group.¹⁴

In the course of the 2716th to 2718th meetings, a number of speakers referred to the efforts made by Nicaragua to normalize the situation in the region and many recalled the terms of the Judgment of the International Court of Justice, in particular the part that found that the United States was violating the norms of international law. Appealing for immediate cessation of those activities and for respect for fundamental principles, such as non-interference in the internal affairs of sovereign States and the non-use of force or the threat of the use of force, a number of speakers maintained that it was the obligation of the parties to any dispute to seek a solution by peaceful means as enshrined in Article 2, paragraph 3, of the Charter. All of them agreed on a number of peaceful means that were available to the parties, particularly the need to cooperate with the Contadora Group and the Support Group.¹⁵

At the 2718th meeting, on 28 October 1986, the President drew the attention of the Council members to a draft resolution¹⁶ submitted by the delegations of the Congo, Ghana, Madagascar, Trinidad and Tobago and the United Arab Emirates.

Under that draft, the Council: would recall its resolutions 530 (1983) and 562 (1985) and, being aware under the Charter that each Member undertakes to comply with the decision of the International Court of Justice in any case to which it is a party, would consider that Article 36, paragraph 6, of the Statute of the Court provides that, in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court; would take note of the Judgment of the International Court of Justice of 27 June 1986 in the case of *Military and Para-*

military Activities in and against Nicaragua and consider the events that had taken place in and against Nicaragua after the said Judgment, in particular the continued financing by the United States of military and other activities in and against Nicaragua; emphasizing the obligation of States, under customary international law, not to intervene in the internal affairs of other States, the Council would urgently call for full and immediate compliance with the Judgment of the International Court of Justice of 27 June 1986, in conformity with the relevant provisions of the Charter, and request the Secretary-General to keep the Council informed on the implementation of the resolution.

Before the vote, the representative of the United Kingdom, on a procedural point, observed that the document to be voted on had been circulated in provisional form for the first time only after the Council had convened that afternoon. He stated that, in keeping with the custom of the Council, 24 hours should have been allowed between the circulation of the draft resolution and the voting on it. Nevertheless, he was ready to vote, since there had been a lot of consultation and the provisional text was congruent with documents that he had seen before. However, he hoped that they would in the future have a longer period between the circulation of a document and voting on it.¹⁷

In his statement before the vote, the representative of Thailand stated that the draft resolution, based as it was on Article 94, posed an unresolved dilemma for the Council, which could have been asked to take more appropriate action in pursuit of a peaceful settlement. He would, therefore, abstain on the draft resolution.¹⁸

The representative of the United States maintained that the said draft resolution did not focus on the real issues of the conflict. It took no note of Nicaragua's responsibility for the existing situation in the region; instead, the draft sought to present, in the guise of support for the 27 June decision of the International Court, a one-sided picture of the situation in Central America. It also attempted to portray a false image of the situation as merely a conflict between Nicaragua and the United States.¹⁹

The representative of China maintained that the problems between Central American countries and between Nicaragua and the United States had to be settled through consultations on an equal footing and that the Judgment of the International Court had to be respected by the countries concerned. He would, therefore, proceeding from his position, vote in favour of the draft resolution.²⁰

The Council then proceeded to vote on the draft resolution¹⁶ which received 11 votes to 1, with 3 abstentions, and was not adopted, owing to the negative vote of a permanent member of the Security Council.²¹

In a statement after the vote, the representative of Denmark stated that it was because of Denmark's firm belief in and support for the principles of international justice which the International Court represented that led it to vote in favour of the draft resolution.²² The representative of the United Kingdom maintained that, while it did not chal-

¹³S/PV.2718, pp. 14-17.

¹⁴*Ibid.*, pp. 17-21.

¹⁵S/PV.2716: Iraq, pp. 26 and 27; Yugoslavia, pp. 43-46; S/PV.2727: Algeria, p. 22; Bulgaria, pp. 26-28; Ghana, pp. 36-38; S/PV.2718: Spain, pp. 6 and 7; Congo, pp. 11 and 12; the Syrian Arab Republic, pp. 24-27; Democratic Yemen, pp. 28-32; the Islamic Republic of Iran, pp. 33-37.

¹⁶S/18428.

¹⁷S/PV.2718, pp. 38 and 39.

¹⁸*Ibid.*, p. 43.

¹⁹*Ibid.*, p. 46.

²⁰*Ibid.*, p. 50.

²¹*Ibid.*, p. 51.

²²*Ibid.*, pp. 51 and 52.

lenge the draft resolution on legal grounds, the United Kingdom could not support a draft resolution that failed to take account of the wider political factors and failed to acknowledge that Nicaragua had largely brought its troubles upon itself. That delegation had therefore abstained.²³ The

²³*Ibid.*, p. 52.

representative of France, in explaining France's abstention, stated that the draft resolution contained questionable references to the Judgment of 27 June 1986 by the International Court of Justice, both on matters of substance and on the Court's role.²⁴

²⁴*Ibid.*, p. 53.

29. LETTER DATED 13 NOVEMBER 1986 FROM THE PERMANENT REPRESENTATIVE OF CHAD TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

By a letter¹ dated 13 November 1986 addressed to the President of the Security Council, the representative of Chad transmitted the text of a memorandum of the same date and requested the convening of an urgent meeting of the Security Council to consider the serious situation then prevailing in his country, the northern part of which had been occupied by the neighbouring Libyan Arab Jamahiriya. He further said that, in addition to the occupation, in the northern region, of 550,000 sq km, the perpetual interference in the internal and external affairs of the Republic of Chad, and the repeated acts of aggression, destabilization and terrorism in his country, the Tripoli regime had of late further escalated the war by embarking on a systematic and collective massacre of the innocent civilian populations in the occupied zone. It was further stated, in the memorandum annexed to the letter, that the Libyan military occupation of northern Chad had begun in 1972 with the Aouzou Strip, a region covering 114,000 sq km, and that it had since been steadily expanded until, in August 1983, it had extended over 550,000 sq km, stretching over the entire Prefecture of Borkou-Ennedi-Tibesti, after an unprecedented military offensive by air and land. The memorandum also asserted that, since August 1983, the Libyan Arab Jamahiriya had been reinforcing its military presence daily by constructing airfields capable of accommodating all types of military equipment and by installing sophisticated communication and defence systems while, simultaneously, the "Libyanization" of northern Chad, including the organization of deportation of women and children, had begun with the stamping out of all traces of Chadian identity and the imposition of Arabic to replace French, of the Green Book as the only political philosophy and of the Libyan dinar as the only currency. The memorandum concluded that the genocidal crimes that were being perpetrated by the Libyan occupier against the defenceless civilian populations had led the Government of the Republic of Chad to bring the situation before the international community so that it could assume its responsibilities by exercising pressure on the Libyan regime in order to induce it to withdraw its occupation troops from Chadian territory without delay.

At its 2721st meeting, on 18 November 1986, the Security Council included in its agenda the item entitled "Letter dated 13 November 1986 from the Permanent Representative of Chad to the United Nations addressed to the

President of the Security Council", and considered the item at the same meeting.² The Council decided to extend invitations, at their request, to the representatives of Chad, Egypt, the Libyan Arab Jamahiriya and Zaire to participate, without vote, in the discussion of the item.³

At the same meeting, the representative of Chad said that his Government had felt obliged to seize the Council, once again, of the extremely serious situation resulting from the occupation of a large part of Chad by the Libyan Arab Jamahiriya in flagrant violation of law and international custom. He said that what was at stake was the survival of a segment of the Chadian population, its natural heritage, sovereignty, independence and its territorial integrity, resulting from the Libyan Arab Jamahiriya's occupation of Chadian territory, and its systematic massacre and genocide of the Chadian people in the Borkou-Ennedi-Tibesti region. He appealed to the Security Council to help take up the challenge in conformity with the principles of the Charter of the United Nations and the charter of the Organization of African Unity (OAU), and to bring about the immediate withdrawal of the Libyan occupation troops from Chad and to ensure that Libya ended the genocide it had been carrying out in the territory.⁴

The representative of the People's Republic of the Congo said that the Chadian conflict could be resolved under the auspices of OAU and that a competent body which had been established to deal with the problem had held several meetings on the question. He stated that the non-aligned countries also supported the efforts of OAU to bring about national reconciliation in Chad and to establish, without foreign interference, lasting peace and respect for Chad's territorial integrity and independence. Stating that the conflict in Chad lent itself to a regional initiative within the framework of OAU, he called upon the Security Council, in conformity with the relevant provisions of the Charter of the United Nations, to take due account of the need for OAU to find a solution to the Chadian problem and to encourage the regional organization in its initiatives and efforts aimed at achieving national reconciliation in order to enable Chad to regain peace, national unity and territorial integrity.⁵

²For the adoption of the agenda, see S/PV.2721, p. 2.

³For details on invitations, see chap. III of the present *Supplement*.

⁴S/PV.2721, pp. 3-9.

⁵*Ibid.*, pp. 11-13. For the discussions on the principles contained in Chapter VIII of the Charter, see chap. XII of the present *Supplement*.

¹S/18456, annex.