



Security Council

PROVISIONAL

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ENGLISH

PROVISIONAL VERBATIM RECORD OF THE TWO THOUSAND SEVEN HUNDRED AND FIFTEENTH MEETING

Held at Headquarters, New York,
on Tuesday, 21 October 1986, at 10.30 a.m.

President: Mr. AL SHAALI

(United Arab Emirates)

Members: Australia
Bulgaria
China
Congo
Denmark
France
Ghana
Madagascar
Thailand
Trinidad and Tobago
Union of Soviet Socialist Republics
United Kingdom of Great Britain and
Northern Ireland
United States of America
Venezuela

Mr. HOGUE
Mr. TSVETKOV
Mr. LIANG Yufan
Mr. GAYAMA
Mr. BIERRING
Mr. de KEMOULARIA
Mr. GBEHO
Mr. RABETAFIKA
Mr. NIYOMRERKS
Mr. ALLEYNE
Mr. BELONOGOV

Sir John THOMSON
Mr. WALTERS
Mr. AGUILAR

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The meeting was called to order at 11.10 a.m.

TRIBUTE TO THE MEMORY OF PRESIDENT MACHEL

The PRESIDENT (interpretation from Arabic): The international community has learnt with deep regret of the sudden, untimely and tragic death of the President of the People's Republic of Mozambique, His Excellency Mr. Samora Moises Machel. President Machel was an eminent son of Africa, a statesman devoted to the cause of self-determination for all peoples and deeply committed to the purposes and principles of the United Nations. I am sure that I express the feelings of all members of the Council in conveying our deep condolences to the family of President Machel, the families of those who lost their lives with him and the Government and people of Mozambique.

I invite the members of the Security Council to stand and observe a minute of silence.

The members of the Security Council observed a minute of silence.

ADOPTION OF THE AGENDA

The agenda was adopted.

LETTER DATED 17 OCTOBER 1986 FROM THE PERMANENT REPRESENTATIVE OF NICARAGUA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL (S/18415)

The PRESIDENT (interpretation from Arabic): I should like to inform members of the Council that I have received a letter from the representative of Nicaragua requesting to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite Nicaragua to participate in the discussion without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Miguel D'Escoto Brockmann (Nicaragua) took a place at the Council table.

The PRESIDENT (interpretation from Arabic): The Security Council will now begin its consideration of the item on its agenda.

The Security Council is meeting today in response to the request contained in the letter dated 17 October 1986 from the Permanent Representative of Nicaragua to the United Nations addressed to the President of the Security Council, document S/18415.

The first speaker is the Minister for Foreign Affairs of Nicaragua, His Excellency Father Miguel D'Escoto Brockmann. I welcome him and invite him to make his statement.

Mr. D'ESCOTO BROCKMANN (Nicaragua) (interpretation from Spanish): Before beginning my statement, I wish to pay a heartfelt tribute to the memory of Marshal Samora Moises Machel, father of the homeland, national hero and President of the People's Republic of Mozambique, who died in tragic circumstances. His loss fills us with profound regret. Comrade Samora Machel, in addition to being the leader of his homeland's struggle for independence, distinguished himself as a tireless fighter for the freedom, self-determination, independence and unity of the African continent. The cause of non-alignment was enriched and strengthened by his struggle. The people and Government of Nicaragua pay a sincere tribute to that notable fighter. The mourning of Mozambique today is as our own. Its people's pain is shared by all Nicaraguans, who are today fighting for the same causes. We ask Ambassador Dos Santos and the Mozambican Mission to the United Nations to accept our most profound condolences.

I wish to congratulate you, Sir, on your assumption of the presidency of the Security Council for this month. Your country and mine maintain excellent relations. A non-aligned country, the United Arab Emirates shares the tradition

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that entails the greatest respect for international law and order. You personally have distinguished yourself in defence of the principles of non-alignment and of the United Nations Charter. Your excellent diplomatic qualities guarantee just, well-balanced and effective guidance of the work of this important body, which is today considering a question of exceptional importance.

We also express our appreciation to Ambassador Alexander Belonogov of the Soviet Union for the excellent way in which he led the debates in the Council during the month of September.

The Security Council is familiar with the efforts made by Nicaragua to normalize its relations with the United States. The Council is aware also that for more than five years the United States has been waging a war of aggression against Nicaragua. Nicaragua has sought to put an end to this war of aggression by all the peaceful means at its disposal: using bilateral initiatives, the good offices of third States and the process of the Contadora and Lima Groups, and by turning to the Security Council, which in 1983 adopted its historic resolution 530 (1983).

Owing to the failure of all those initiatives to halt the United States aggression against our country, Nicaragua was forced to go to the International Court of Justice so that that lofty forum could decide if the United States had the right - as it claimed to have - to organize, finance, arm and direct the systematic slaughter of our people through the terrorist infrastructure of the Central Intelligence Agency (CIA).

Thus, on 9 April 1984, Nicaragua went to the International Court of Justice to file legal proceedings against the United States for its illegal policy of force and intervention against Nicaragua. On 10 May 1984 the International Court handed down provisional measures of protection, pointing out the obligation of the United States to respect Nicaragua's sovereignty, independence and territorial integrity. The failure of the United States to comply is public and notorious.

(Mr. D'Escoto Brockmann, Nicaragua)

Given the United States questioning of the Court's jurisdiction in the case, the Court ruled on 26 November 1984 regarding its own jurisdiction and the admissibility of the suit, establishing its jurisdiction in the case filed by Nicaragua. Finally, on 27 June this year, the Court made public its ruling on the merits of the suit.

The judgement of the International Court of Justice on 27 June 1986 rejected the argument of the United States that its aggressive conduct was permissible according to the right of collective self-defence established under Article 51 of the United Nations Charter. That rejection, which the Court substantiated in a masterly manner, exposed the true nature of the war of aggression waged by the United States Government against Nicaragua.

The Court condemned the United States for its mining of Nicaragua's ports in 1984, the armed attacks on Puerto Sandino, Corinto, the Potosi naval base, the port of San Juan del Sur and on patrol boats in Puerto Sandino, San Juan del Norte and several other armed actions, as well as condemning the trade embargo imposed against Nicaragua - all of them acts which, according to the International Court of Justice, were aimed at depriving the Treaty of Friendship, Commerce and Navigation signed in Managua by the United States and Nicaragua on 21 January 1956, of its object and purpose.

The International Court of Justice also condemned the United States for promoting and encouraging the mercenary forces to commit acts contrary to international humanitarian law - that is, for having promoted terrorist acts. As a result, the Reagan Administration has become the first and only Government in history to receive the shameful honour of being condemned by the International Court of Justice for promoting and encouraging terrorism.

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Lastly, the Court condemned the United States for violations of customary international law prohibiting it from intervening in the affairs of other States, as follows:

"THE COURT ...

"Decides that the United States of America, by training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State". (S/18221, p. 137)

In consequence, the Court

"Decides that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations". (S/18221, p. 140)

Quite apart from the fact that as a Member of the United Nations, signatory of the Charter and, moreover, a permanent member of the Security Council, the United States is obliged to respect, and ensure respect for, the principles and norms of the Charter, it is worthwhile recalling the traditional position of the United States regarding the International Court of Justice. It must be noted, moreover, that that position was maintained without change until the moment Nicaragua filed its charges against the United States.

In 1959 the United States Attorney General summarized his Government's stance with respect to the legal settlement of disputes in the following manner:

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"For more than 50 years our statesmen have advocated an impartial international court to decide disputes between nations. In 1907, Secretary of State Elihu Root, in his instructions to our delegates at the Second Peace Conference at The Hague, said we should develop a permanent tribunal composed of judges who would devote all their time to the trial and decision of international causes by legal methods.

"In 1925, President Coolidge, in his inaugural address, advocated the 'establishment of a tribunal for the administration of evenhanded justice between nation and nation.' As he put it, 'The weight of our enormous influence must be cast upon the side of a reign not of force, but of law and trial, not by battle, but by reason.'

"Every President since the First World War has advocated the submission of international legal disputes to a judicial tribunal."

The United States was one of the first countries to accept the compulsory jurisdiction of the International Court of Justice, as indicated by its having filed its Declaration of Acceptance as early as 26 August 1946, a position it maintained until the current Administration got the United States involved in a dirty and illegal war against Nicaragua. Since the International Court of Justice was established the United States has been the country that has turned to it most in search of international judgements regarding its disputes. When the United States went to the Court recently to air publicly a dispute with Iran, the Attorney General, who represented it, stated:

"... The United States comes here so that this tribunal may demonstrate that international law may not be tossed aside, that the international fabric of civility may not be rent with impunity."

(Mr. D'Escoto Brockmann, Nicaragua)

Even though the situation of the hostages in Teheran was resolved before the Court ruled on the suit filed by the United States against Iran, and although I do not attempt to draw parallels between the two situations, since there are none, it is interesting to examine the official position of the United States Government towards the Court in that case, as maintained by the last two Administrations, including that of President Reagan. Not for one moment was there the slightest question about whether the parties to a dispute before the Court were obliged to abide by its ordinances, rulings and judgements. Thus, in the case to which we are referring, the United States maintained in its brief that:

"... We had in mind that as a Member of the United Nations, Iran has formally undertaken, pursuant to Article 94, paragraph 1, of the United Nations Charter, to comply with the decision of this Court in any case to which Iran might be a party. Accordingly, it was the hope and expectation of the United States that the Government of Iran, in compliance with its formal commitments and obligations, would obey any and all orders and judgements which might be entered by this Court in the course of the present litigation."

This general obligation of the Member States of the United Nations - unqualified and without exception - was reaffirmed under the Reagan Administration, when the State Department issued a public statement on 20 May 1980 that:

"Under the United Nations Charter, Iran is bound to obey the Court's judgement, and the United States urges it to do so, in order that Iran will then be free to pursue its international interests as a law-abiding member of the international community, entitled to the respect and co-operation of all nations."

(Mr. D'Escoto Brockmann, Nicaragua)

Events from 27 June to the present demonstrate that the United States Government remains determined to continue its war of aggression against Nicaragua. On the 5th of this month, a young Nicaraguan patriot doing his military service shot down a United States aircraft near the Costa Rican border. It was piloted by Americans and was carrying a large shipment of arms and military supplies for the contra mercenaries. After the plane crashed, our soldiers captured the only surviving American and recovered important documents demonstrating once again the full responsibility of the United States in the mercenary war. These documents, and the statements of the prisoner, Eugene Hasenfus, have exposed an extensive infrastructure of United States Government air support for the contra mercenaries.

As a United States senator observed a few days ago:

"In the C-123 downed in Nicaragua, a smoking gun was found that clearly points to the White House."

But apart from the degree of official United States Government involvement in the particular case of the C-123 downed in Nicaragua on 5 October, and in order not to anticipate the decision of the judges in the trial now under way, the truth of the matter is that the flight could only have been undertaken in the context of a large-scale campaign of support and encouragement personally directed by President Ronald Reagan, who has canonized the terrorists who bring suffering, destruction and death to the Nicaraguan people.

When Under-Secretary of State Elliot Abrams stated before a Congressional sub-committee on 14 October, that the two Americans who were killed as a result of the downing of the United States plane, as well as the prisoner were: "brave men helping Nicaragua in its struggle for freedom", the Reagan Administration was

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clearly violating the ruling of the International Court of Justice, which orders it not only to immediately cease "training, arming, equipping, financing and supplying the contra-forces", but also orders the United States immediately to stop:

"promoting, supporting and assisting military and paramilitary activities in any other manner"

against Nicaragua.

Thus, when Under-Secretary Abrams denied on 14 October before the Congressional sub-committee that the United States Government was directly or indirectly involved in the case of the C-123, and then proceeded to praise the courage and idealism of those mercenaries, and when he further testified that "Americans are free to back any of the sides in Central America", there can be no doubt that he is promoting and supporting the commission of terrorist acts, for which the United States has already been condemned by the Court.

But, as we all know, it is not only Under-Secretary Elliot Abrams who is in contempt of the Court's decision. President Reagan himself, when he stated publicly "I, too, am a contra," was also encouraging and promoting the activities against Nicaragua that the Court's sentence condemns as illegal and counter to the most basic international obligations of States. When President Reagan was recently asked whether he was in favor of activities by American citizens like Eugene Hasenfus against Nicaragua, and he replied that "we live in a free country where citizens have a great many freedoms," he was, as President of the United States, showing contempt for the International Court of Justice's judgment, for there can be no doubt that his answer gives the green light, promotes and encourages the commission of terrorist acts against Nicaragua. In the name of

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freedom, President Reagan defends terrorism and crime, and encourages American citizens to deprive another people of their liberty.

Only a week ago, on 14 October, Central Intelligence Agency's terrorist mercenaries attacked a bus carrying 70 civilian passengers in the area of La Gatocada, in the southern part of the Eastern department of Zelaya, murdering three innocent civilians, among them a woman, and wounding 15 and kidnapping 20 others. A week before, on 6 October, contra mercenaries had attacked the El Diamante farm co-operative in Jinotega Department, where they burned down six houses completely and nine others partially. During that attack, they destroyed a school, a health clinic, and a market place, all of them totally civilian installations built by the Nicaraguan Government to benefit the population. The list of similar atrocities perpetrated by CIA mercenaries since 27 June is too long to detail here.

None the less, I have just received information from Managua on the most recent of the atrocities which have taken place up to last night. The most recent of these atrocities, perpetrated yesterday by the terrorists, financed, directed and encouraged by the Reagan Administration is the fact that a bus carrying civilian passengers was blown up by a mine placed by CIA mercenaries on roads used by civilian passengers. In that explosion at least three women and one child were killed. This happened less than 24 hours ago.

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For our purposes, it suffices to point out that it is to finance these kinds of activities that on 18 October the President of the United States, Mr. Ronald Reagan, signed into law \$100 million to continue murdering men, women, children, old and young Nicaraguans: \$100 million for crime; \$100 million for terrorism; \$100 million to destroy schools, hospitals, nurseries, peasant co-operatives; \$100 million to destroy the works constructed through the heroic efforts of a people and the solidarity of the civilized peoples and Governments of the world; \$100 million for shame; \$100 million requested by a Government that offends God and humanity; \$100 million aimed at destroying peace and blocking a peaceful solution, at attacking the underpinnings of the United Nations and the international juridical order.

Almost four months have passed since the International Court of Justice issued its Judgement in the case filed by Nicaragua; four months in which it has been clear that the United States Government has not abided by the Court's Judgement, that it continues to act in clear and open violation of the Judgement - alleging, through minor officials, that the International Court of Justice did not have jurisdiction in the case, assigning itself powers that the United Nations Charter has given no country. The United States is still trying to set itself up as judge, defendant, witness, jury and policeman in its own trial; trying to obtain absolute impunity in its aggression against the weak; trying, in the final analysis, to have power over the life and death of small nations and peoples, upholding beliefs comparable only to those that led humanity to the holocaust of the last world war.

It is therefore worth while at this point to ask: where does this leave the commitment the United States freely and legally entered into when it signed and ratified the United Nations Charter? Because on 26 August 1946 the United States accepted - on the basis of Article 36, paragraph 2 of the Statute - the compulsory

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jurisdiction of the International Court of Justice; that is, it accepted the right of any other country accepting that jurisdiction, in identical or similar terms, to sue the United States and, at the same time, the obligation of the United States to obey and comply with the decisions of the Court resulting from such a suit. No one can seriously believe that the United States was unaware of the meaning and scope of its acceptance of the Court's compulsory jurisdiction, because that would be the same thing as saying it was unaware of the contents of the United Nations Charter and of the Court's Statute, which is part and parcel of the Charter - unless we are to believe that the United States agreed to this international treaty in bad faith.

Moreover, when the United States accepted the Court's jurisdiction in the case filed by Nicaragua, it does so on the basis of Article 36 of the Statute, paragraph 6 of which reads as follows:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court".

That Article establishes the right of every State to challenge the jurisdiction of the Court, but it also establishes that the decision on the matter is the Court's, and the Court's alone. Such a decision is thus not for the States to make. It is therefore quite evident that the United States has no grounds whatsoever for failing to abide by the decision of the International Court of Justice, and that by so doing it is adding a new and grave violation to its countless violations of international law.

Paragraph 3 of Article 2 of our Charter establishes that

"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered".

(Mr. D'Escoto Brockmann, Nicaragua)

We all know that judicial settlement - recourse to the International Court of Justice - is one of the fundamental means of peaceful solution of disputes established in Chapter VI of the United Nations Charter.

If the Security Council did not respond appropriately to this outlaw conduct by the United States, we could see the failure of the means of peaceful settlement of disputes and the imposition of force as a valid element of international relations. It would mean a victory for the law of the jungle over the goals of peace and justice pursued by our Organization. That is why it is of the utmost importance for the Security Council, the United Nations, the entire international community, to remind the United States of its obligation to abide by the Court's ruling, putting an end to its war of aggression against Nicaragua and setting in motion the negotiating process the Court itself suggests in its decision.

In July, when Nicaragua last came before the Security Council owing to the escalation of United States aggression, we did not invoke Article 94 of the Charter, in order to give the United States the benefit of the doubt with respect to the ruling of the Court, in order to keep open the last possibility that it would decide to comply with and do justice to its international obligations. Today it is impossible to keep waiting for a change of heart, and it is on the basis of that reality that we come to ask the Security Council to urge upon the United States the inescapable necessity of fulfilling the sentence of 27 June 1986.

Article 94 of the Charter states clearly and absolutely that

"Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party".

Article 2, paragraph 2 of the same Charter establishes, moreover, that

"All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter".

(Mr. D'Escoto Brockmann, Nicaragua)

It cannot be said, therefore, that there is any reason or pretext that would permit a State to avoid complying with a ruling of the International Court of Justice. The United States is therefore duty-bound to abide fully and immediately with the 27 June 1986 decision, and even more obliged to do so because it has the privilege of being one of the permanent members of the Security Council. For this privilege was given it so that it would act in accordance with the purposes and principles of the Charter - not so that it would consider itself in a position to violate with impunity the commitments it had undertaken and trample under foot the rights of small nations and peoples, drawing on its immense military and economic power.

Nicaragua appears before the Security Council today to ask the Council - in accordance with Article 94 of the Charter - to urge the United States to implement the sentence of the International Court of Justice, which it is obliged to do as a Member of the United Nations and as a State that has accepted the compulsory jurisdiction of the Court.

(Mr. D'Escoto Brockmann, Nicaragua)

There are no sacred cows or inviolable Member of our Organization; the duty to respect the principles and standards of the Charter applies equally to all Members. The future of our Organization would be seriously threatened if the United States is permitted to ignore its obligations under the Charter with impunity, by violating the judgment of the International Court of Justice and continuing the war of aggression it is waging against Nicaragua.

Nicaragua is not requesting sanctions against the United States, even though undoubtedly it would have more than ample justification for so doing. We are simply asking that the Security Council remind the United States that, in accordance with its obligations under the Charter, it must immediately comply with the 27 June 1986 judgement of the International Court of Justice.

Should the Security Council find itself unable to do even this, it would be not just lamentable, but tragic. The only possible explanation for such inaction would be that, as far as the Security Council is concerned, there should indeed be sacred cows and inviolable Members in the United Nations. It would be a denial of the principle of the legal equality of States. This cannot be. We trust that it will not happen.

Today we can strengthen our Organization, we can broaden the path of peace, justice and security in the world or, on the contrary, we can open the door to a world of unending "low-intensity conflicts", genocide disguised as geopolitical experiments, a world in which the weak will die or will find themselves condemned to death and to the most desperate actions in order to escape enslavement at the hands of the powerful. Then the world would have every right to ask: what became of the United Nations and of the goals that inspired its creation?

(Mr. D'Escoto Brockmann, Nicaragua)

It was an act of faith that brought to us to the International Court of Justice, a belief that even small countries still have the possibility of attaining peace through the objective and equal application of justice. Our faith in that possibility was not disappointed by the Court.

With that same faith we appear today before the Security Council, trusting that, in fulfilment of its solemn duty, it will remind the United States that, as a Member State, it must comply with its obligations under the Charter and abide by the judgment of 27 June 1986 of the International Court of Justice.

If the Council does so, our Organization will be that much stronger, and strengthening our Organization means progress in the cause of peace, loftiest aspiration of all humankind.

The PRESIDENT (interpretation from Arabic): I should like to thank the Minister for Foreign Affairs of Nicaragua for his kind words addressed to me.

There are no further speakers inscribed on my list for this meeting. The next meeting of the Security Council to continue the consideration of the item on the agenda will be fixed in consultation with members of the Council.

The meeting rose at 11.55 a.m.