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LETTER DATED 30 MARCH 1982 FROM THE PERMANENT REPRESENTATIVE OF NICAGAGUA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

For those who encounter difficulties in connexion with the competence and jurisdiction of the Security Council vis-à-vis the Organization of American States, I have deemed it necessary to make a few reflections on the subject.

We do not overlook the fact that this thesis of alleged priority, although erroneous, may have been advanced in good faith by some countries. Nor do we overlook the fact, however, that other countries, directly involved in acts of aggression against States members of both organizations, invoked the thesis with the object of gaining time for their manoeuvres and the exercise of their unspeakable intentions. But there is a marked difference between this and calling into question the sovereign power of a State Member of the United Nations to have recourse to the Security Council.

At times I believe that it is necessary to wish to be categorically mistaken in order not to derive a clear conclusion from the content of the rules in the framework of which the issue is developing.

The legal provisions, the logic and the hierarchy are clearly identifiable and, if one goes against them, one is inevitably led into the throngs of those who are mistaken. But fortunately, if one is faithful to the meaning and the content of the rules, then one is proved right.

Article 24 of the United Nations Charter provides that:

"1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

"2. In discharging these duties the Security Council shall act in accordance with the Purpose and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

"3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration."

Moreover, according to Article 103 of the United Nations Charter, regional obligations do not prevail over obligations under the United Nations Charter, but instead derive from the United Nations Charter, and therefore imply, not an opportunity of recourse less, but rather an opportunity of recourse more. In cases where regional arrangements derive from Article 52 of the Charter, it is obvious that we are confronted, nor with mutually exclusive rights, but with optional rights that can be exercised without distinction by Member States.

Nicaragua, Madam Chairman and distinguished members of the Council, has come before this august body confident that it has every right to do so under Article 2, paragraph 4, and Articles 34, 35 and 103 of the United Nations Charter. Those who are invoking, inter alia, Article 52, paragraph 2 of the Charter to sustain the unwonted thesis of obligatory prior recourse to the Organization of American States are forgetting paragraph 4 of the same Article, which states:

"This Article in no way impairs the application of Articles 34 and 35."

Articles 34 and 35 state:

"Article 34. The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

"Article 35. 1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly."

But there is more. Let us look at Article 103 of the United Nations Charter, which provides:

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Here there is nothing controversial; from the legal standpoint the precept is absolutely clear. Those who invoke article 23 of the Charter of the Organization of American States overlook article 137 of that Charter, which states conclusively that:

> "None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations."

It is clear that any American State which is a Member of the United Nations, in the event of a situation or a dispute likely to endanger peace, has one of two options: recourse to the Security Council or recourse to the regional agency. The Member State has the right to choose and exercises it fully. If it were otherwise, we would be forced to the distressing conclusion that the American States, because of their decision to join a regional organization, have suffered a diminution of their rights.

It is obvious that the provisions of the Charter concerning regional arrangements and agencies, and the legal commitments entered into by States in order to constitute regional agencies, in no way invalidate the rights of those States to have recourse to the Security Council if they consider that the defence of their rights demands such action or that a situation or a dispute may endanger international peace and security. Were it otherwise, the States members of a regional agency would be placed at the United Nations in a situation of capitis diminutio, which would not only be deplorable but would indisputably be contrary to law.

In the context of the reaffirmation of the unquestionable right of States to elect freely the means for the pacific settlement of their disputes, the General Assembly, in the relevant provisions of resolution 2734 (XXV) on the strengthening of international security:

> "3. Solemnly reaffirms that, in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement, their obligations under the Charter shall prevail;
>
> "12. Invites Member States to do their utmost to enhance by all possible means the authority and effectiveness of the Security Council and of its decisions."

Also, General Assembly resolution 2625 (XXV), on principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, establishes, with respect to the peaceful settlement of international disputes, that:

> "International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means."

Although the delegation of Nicaragua is baffled by the fact that the document circulated in this Council under the symbol S/14927, of 25 March 1982, quotes articles of the Charter of OAS which correspond to the legal provisions of 1948 and overlook the amendments made to that Charter by the Buenos Aires Protocol of 1967, the Nicaraguan delegation will make an effort to view this as a mere oversight with respect to the enumeration of the articles, but at the same time must make it clear that, because of the respect due to this eminent body, great care should be taken over quotations that are used in alleged support of legal arguments now totally abandoned by all the legal theorists.

It is appropriate to quote some of the statements made on this subject by persons whose ability is beyond question, including Dag Hammarskjöld, the late Secretary-General of the United Nations, who in his annual report to the General Assembly of the United Nations (A/C.2663, p. 11) stated that any policy which fully acknowledged the role played by the regional organizations could and must protect the right which the Charter conferred on Member States to be heard by the Organization.

Likewise, at the thirty-sixth session of the General Assembly of the United Nations the distinguished Permanent Representative of Mexico, Ambassador Porfirio Muñoz Ledo correctly stated (A/36/PV.101, pp. 96-97):

> "The first argument is that of regionalism. This is a further example of a harmful trend in the United Nations which in economic matters would refer us to sectoral bodies and the specialized agencies to the detriment of the universal forum, which in political matters, would give competence to regional bodies over and above the universal forum, and which in political life in general would replace multilateral relations by exclusively bilateral relations."

He continued:

> "The regional organization to which I refer was created prior to the existence of the United Nations. It does not practise the principle of universality in its full scope because it has expelled States for ideological reasons, as is the case with Cuba. It does not admit some of the region's States even though they are Members of the United Nations, as is the case with Guyana and now Belize, and there are also other States of the Latin American continent that, for these and other reasons, are not members of the organization, as is the case of Canada."

He further stated:

> "It is made up of countries which belong, here in the United Nations, to different regional groups, and it is characterized by an asymmetry of power within the regional organization."

My country, Madam President and distinguished members of the Council, is a Member of the United Nations and of the Organization of American States on the understanding that the principles of, and the guarantees provided by, the regional system cannot be invoked to deny States direct or immediate access to the United Nations or to withhold from States, even temporarily, the protective action of the organs of the universal community. The legal protections of the two systems should complement each other and cannot replace or exclude each other.

The argument we are advancing is clear and definite. The demarcation lines are precise. It is simply a matter of applying the rules, which provides no scope for subtle questions of legal interpretation. The Government of Nicaragua, we are proud to say, has given proof of its good faith as a member of the American community and has participated with a clear sense of its responsibilities and duties in all the activities of the Organization of American States. It does not underestimate the regional agency. But it has the right to resort to the Security Council when there are reasons justifying this.

This is precisely the case at the present time. Without renouncing the right of self defence if Nicaragua is attacked, my Government is resorting to the Security Council to denounce a situation created in the Central American region by the Government of the United States, which, by seeking to limit the self-determination of my country and others in the region, goes beyond the context of the hemisphere and endangers international peace and security. To put it more clearly and exactly: the Goverment of the United States is trying to conceal its true intentions and to justify its policy of harassment and aggression by deliberately distorting the purposes, character, development and objectives of the Sandinist People's Revolution, which it makes out to be, as suits it, an appendage of Cuba and the Soviet Union, directly involved in the painful and bloody civil war in El Salvador and engaged in a frenzied arms race.

This deliberate inclusion of Nicaragua in the political, diplomatic and military strategy pursued by the Government of the United States is, in the case of Nicaragua at the present time, with a few minor differences, virtually the same as what occurred prior to the invasions of Guatemala, Cuba and the Dominican Republic. A few days before each invasion, the highest spokesmen of the Government of the United States affirmed that their Government had no intention of intervening in, or committing aggression against, those three Latin American countries. In all three cases the invasions occurred; the Government of Guatemala was overthrown, the right to self-determination of the Dominican people was thwarted by the military force of the Marines who landed in their country, and in the case of Cuba, which is exactly what is happening in the case of Nicaragua, mercenaries and followers of an old ally, Sergeant Fulgencio Batista, were trained in United States territory.

To sum up:

(a) The Security Council is a means of protection for all Member States under threat of imminent attack.

(b) Its actions, in accordance with the Charters of the United Nations and the Organization of American States, take precedence over any regional arrangement or agreement.

(c) In fulfilling that responsibility, the Security Council is acting on behalf of Member States; as a mandatory, it can act at the request of one of its mandators.

The decision to bring this situation before the Security Council or before a regional agency is the exclusive and inalienable right of the Member State.

(d) Article 137 of the Charter of the Organization of American States reads as follows:

> "None of the provisions of this Charter shall be construed as impairing the rights and obligations of the Member States under the Charter of the United Nations".

(e) Article 10 of the Inter-American Treaty of Reciprocal Assistance, signed at Rio de Janeiro in 1947, reads as follows:

> "None of the provisions of this Charter shall be construed as impairing the rights and obligations of the High Contracting Parties under the Charter of the United Nations".

My delegation therefore considers it unnecessary to advance further legal arguments as to whether the Security Council is fully competent to be seized of the extremely grave problem which confronts my country because of the permanent threat of an external attack.

In requesting you to circulate this note as a document of the Security Council, I take this opportunity to renew to you the assurances of my highest consideration.

(Signed) Javier CHAMORRO MORA
Ambassador
Permanent Representative
of Nicaragua to the
United Nations
