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The Political Influences of Effective Treatymaking in America's Backyard: The Guatemala Peace Plan - A Case Study

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The importance of the Central American region to the United States would appear so obvious as to be unworthy of argument. The physical proximity of the nations of the region to our own borders, and the parlous state of the Mexican economy and political structure combine to draw Washington's attention southward.

Unfortunately, agreement on the centrality of a region to U.S. foreign policy does not produce political consensus on the substance of that policy. In fact, disputes over U.S. policy towards El Salvador and Nicaragua have proved some of the most divisive of the Reagan Administration.

This controversy was not quieted by the signing of the Guatemala Peace Treaty. In fact, this accord may have further complicated the already perplexing task of formulating U.S. policy towards the region. On the one hand, the plan's chief proponent, President Oscar Arias has held out the prospect of political democratization and stabilization for the region. Washington views such developments as both morally desirable and compatible with its national security interests. On the other hand, the plan is remarkably vague as to how this final end is to be achieved. The early stages of the peace plan provide for the negotiation of ceasefires but, while they provide for a cut-off of external assistance to guerrilla forces, make no similar proviso for governments in situ. Under these circumstances, one must ask why governments would grant political concessions to anti-government forces once the main pressure to do so had been removed.

The plan's bias towards existing governments already has caused El Salvador's FMLN forces to reject the plan out of hand. The Sandinista government in Managua has made some preliminary moves towards opening up domestic dissent but then mobilized Sandinista turbas to quash public expressions of dissent with mob violence. Meanwhile, the Sandinista negotiators are refusing to discuss with the contra representatives any plans for the long term democratization of Nicaraguan political life.

Clearly, the achievement of peace in Central America will
prove an exceedingly difficult task. I am sure that we all wish the Guatemala Peace Plan well. If success can be achieved in these most difficult circumstances I, for one, will not cavil.

Foreword by Senator William V. Roth, Jr.*

* Republican, Delaware. Member, Governmental Affairs, Finance, Joint Economic, Joint Committee on Taxation, and Select Committee on Intelligence Committees.
I just don't think that a sheet of paper is going to change Marxists into Democrats.¹

I. Introduction

Senator Holling's position on the likelihood of obtaining an enduring peace in Central America through the creation of a treaty is indicative of this region of the world. Despite this backdrop of doubt, the President of Costa Rica, Oscar Arias Sanchez, is committed to gaining a lasting peace for the area. Along with the leaders of five other Central American countries, Arias-Sanchez spearheaded the drafting and implementation of a treaty designed to facilitate peace in Central America.² This treaty is known as the “Guatemala Peace Plan.”³ Nicaragua, a signatory, as well as other countries, has repeatedly refused to agree to the terms of other treaties composed by the Contadora Group.⁴ The Guatemala Peace Treaty⁵ marks a breakthrough that will affect not only the political and social infrastructures of the signatory states, but also the economic and security interests of the United States as well.

This Comment briefly analyzes the treaties that have been proposed for establishing democracy and laying a foundation for a lasting peace in the Central America region. Among the plans initially reviewed are the Contadora Plan,⁶ the Guatemala Plan and the Reagan-Wright Plan. Next, the goals and objectives of the Reagan Administration and the United States Congress in the region are then outlined. The role of the Contras⁷ to further these goals, and the legal implications of funding the Contras, are examined. The Guatemala Peace Plan is then given in-depth treatment. In particular, the democratization provisions are studied, in light of the Nicaraguan Constitution and the Interior Ministry. Finally, recommendations are made for the drafting of a comprehensive treaty in Central


². The Treaty was signed on April 7, 1987, by the following Presidents: Oscar Arias Sanchez, Costa Rica; Jose Azcano Hoyo, Honduras; Vinicio Cerezo Arevalo, Guatemala; Jose Napoleon Duarte, El Salvador; and Daniel Ortega Saavedra, Nicaragua.

³. See infra App. A for full text.

⁴. SERAFINO, THE CONTADORA INITIATIVE: IMPLICATIONS FOR CONGRESS 1 (Congressional Research Service Issue Brief 85109, 1987) [hereinafter CONTADORA ISSUE BRIEF]. The Contadora process was started in 1983 and five different treaties have been proposed, the most recent one in 1986. Id. at 2.


⁷. The Contras are the military force hired to oppose the Sandinista government.
America, and more specifically, in Nicaragua, that would satisfactorily include within its provisions the interests of all states. This Comment asserts that any peace treaty involving the countries in the United States' backyard will be ineffective unless it comports with the interests of the United States and sufficiently changes the political structure of the Nicaraguan communist government to meet those concerns.

II. An Overview of the Peace Process in Central America: Reaching An Agreement

A. The Contadora Initiative

On August 7, 1987, the presidents of Guatemala, Honduras, El Salvador, Costa Rica, and Nicaragua, signed a regional peace agreement in Guatemala City.8 Signing this peace treaty marked the culmination of several years of negotiations among the Central American governments on various peace initiatives. The peace process, however, began in 1983, when the Contadora Group9 began attempts to negotiate a comprehensive peace agreement among the Central American countries.10 The Contadora Group produced a Document of Objectives listing twenty-one points essential to a lasting peace.11 The objectives included termination of all military hostilities, reduction in foreign advisers, and elimination of support for guerrillas, as well as the end of all dialogue between insurgents and the governments they oppose. These accomplishments were to lead to open, participatory democratic processes.12 In 1986, the Contadora Group presented a revised draft to the Central American countries.13 Under pressure from the United States, an opponent to the draft,14 representatives of Costa Rica, El Salvador, and Honduras rejected the proposed draft.15 The provisions regarding the implementation of

9. Four Latin American countries, Columbia, Mexico, Panama, and Venezuela comprise the Contadora group. See CONTRADORA ISSUE BRIEF, supra note 4, at 1.
10. CONTRADORA ISSUE BRIEF, supra note 4, at 2-3.
13. CONTRADORA ISSUE BRIEF, supra note 4, at 4.
15. CONTRADORA ISSUE BRIEF, supra note 4, at 4. There were indications that Costa Rica and Honduras refused to negotiate so long as Nicaragua still had suits pending against them in the World Court. Id.
democratic rule, the freezing on arms imports, the ending of military maneuvers, the dismantling of foreign military bases, and the verifying of security were considered too vague and thus unacceptable.  
With negotiations at an impasse, other agreements surfaced.

B. The Guatemala Plan

In August 1987, the leaders of Guatemala, Honduras, El Salvador, Costa Rica, and Nicaragua forged an independent agreement.  
Formally entitled the “Procedure for Establishing a Stable Peace in Central America,” the Guatemala Plan includes among its provisions the requirement that cease-fire agreements be concluded to end hostilities in the Central American countries engaged in guerrilla wars.  
In addition, the nations are required to initiate democratic participatory processes, and provide reconciliation schemes to integrate anti-government forces into these processes.  
Moreover, civil liberties, including free elections and free press are to be guaranteed and support for both foreign and domestic military and insurgent guerrilla forces is to be suspended.  
An international commission is responsible to oversee the implementation of and compliance with the plan.

C. Reagan-Wright Plan

Two days before the Central American Presidents signed the Guatemala Plan, the United States proposed a treaty intended to establish peace in Nicaragua. The Reagan-Wright Plan first calls

17. See infra App. A (Guatemala Plan text).
18. See infra App. A at § 2. The provision is entitled “Exhortation for the Cessation of Hostilities,” and reads: “The governments strongly urge the countries in the area that are now undergoing attacks by irregular or insurgent groups to agree to ceasing hostilities.” Id.
19. The plan’s provisions were to take effect on November 7, 1987. Id. at § 11. The November 7 deadline has since been extended. Wash. Post, Nov. 6, 1987, at A30, col. 1.
20. See infra App. A at § 1. The provision is entitled “National Reconciliation.” Reconciliation, as framed by the Guatemala Plan, consists of a process of dialogue with opposing groups, amnesty for opposing groups, and the creation of a National Commission of Reconciliation for verification purposes. Id.
21. Id. at § 4. This provision is entitled “Free Elections,” and states that “[h]aving established the conditions inherent in any democracy, there shall be free, pluralistic and honest elections.” Id.
22. Id. at § 5. The provision is entitled “Cessation of Assistance to Irregular Forces or to Insurrectional Movements,” and provides that “[t]he Governments of the five Central American States shall request” the Governments providing military support to guerrilla forces “to cease such assistance.” Id.
23. Id. at § 10. The provision is entitled “International Commission for Verification and Follow-up,” and states that the Commission “shall be composed of the Secretary Generals of the Organization of American States and the United Nations, and the Ministers of Foreign Affairs of Central America, the Contadora Group and the Support Group.” Id.
24. The Reagan Administration announced the proposal which was jointly developed by Speaker of the House Jim Wright (D-Tex.).
for an immediate cease-fire. If such a cease-fire is effectuated, then the United States must suspend military aid to the U.S.-backed freedom fighter force and the Soviet-bloc military must cease its aid to the Sandinista Government. The Reagan-Wright Plan also establishes a plan of reconciliation and dialogue among Nicaraguan citizens, including amnesty and equal participation in the political processes for the insurgents. A scheme of expanded trade and long-range economic assistance for the democratic governments of Central America, including the Nicaraguan Government if it democratizes, is also provided.

D. Comparison of Guatemala Plan with Reagan-Wright Plan

The two peace treaties differ in scope, timing and the role of external powers. The Guatemala Plan is regional in scope, whereas the Reagan-Wright Plan focuses only on Nicaragua. The Guatemala Plan requires that the cease-fires, the implementation of the democratization processes, and the cut-off of military aid to anti-government forces be accomplished by November 7, 1987. The Reagan-Wright Plan, however, calls for the implementation of these same measures by September 30, 1987. Despite this similarity in timing, the Guatemala Plan does not address the issue of foreign military aid to the governments of Central America. Under the Reagan-Wright Plan, however, United States aid to the freedom fighters, and Soviet-bloc aid to the Sandinista Government must be discontinued.

Although the United States, as well as the Soviet Union and Cuba, were not initially involved in the Contadora process, the Contadora countries recognized that these countries were protagonists in...
the Central American conflict and would have to support any final accord if it were to last. As an example, the Contadora process has stalled, in part because the United States pressured some of the American backed countries—Costa Rica, El Salvador, and Honduras—to find the treaties unacceptable. Even with the current stalemate of the Contadora process and the recognition of legitimate foreign interest in Central American politics, the President of Costa Rica has stated his desire for the countries to work out a peace by themselves. The Guatemala Plan is a realization of this hope. The United States, however, has a legitimate foreign policy interest in the region and Central American countries know that the effectiveness of any treaty depends greatly on United States’ approval.

III. The United States Perspective: Policy Objectives in Nicaragua

A. Historical Background

On July 17, 1979, a broad based coalition forced the resignation of Nicaraguan dictator Anastasio Somoza. Shortly thereafter, the leftist guerrilla army that had organized armed revolts throughout Nicaragua, the Frente Sandinista de Liberacion Nacional (FSLN), established its dominance in the executive junta (ruling party), the cabinet, and the legislative Council of State. On the second anniversary of the revolution, the government, now led by junta member Daniel Ortega, announced the postponement of elections until 1985.

The United States’ initial response to the overthrow of the oppressive Somoza regime in 1979 was to support the new Sandinista Government. The United States provided aid to Nicaragua immediately following the 1979 revolution. During the first eighteen months of Sandinista rule, the United States contributed 118 million

34. Contadora Issue Brief, supra note 4, at 3. The author states: “Contadora countries recognized that all [United States, Soviet Union, and Cuba] were protagonists in the Central American conflicts and would have to support any final accord if it were to last.” Id.
35. Id.
37. Roberts, Reagan Planning to Seek More Aid for the Contras, N.Y. Times, Aug. 14, 1987, at A8, col. 4. See also Address to Congress by President Oscar Arias (Sept. 22, 1987). Referring to the Guatemala Plan, President Arias stated: “With the help of the United States we hope to exchange threats of war for opportunities of peace.” Id.
39. Nicaragua Issue Brief, supra note 38, at 2, 3. Even this early in Sandinista rule the Roman Catholic Church and Amnesty International claimed that the government was moving toward a totalitarian state. Id.
40. Id. at 2.
41. See generally E. Hoyt, supra note 38, at 138.
dollars toward Nicaragua's development efforts. Subsequently, the revolution became more radical and when the Sandinista Government began supporting communist guerrillas in El Salvador in late 1980, all aid was suspended.

B. Goals of the Reagan Administration

Upon taking office in 1981, the Reagan Administration formulated a policy in Central America which rested on the premise that dominance by communists would lead to the elimination of political opposition, the alignment of Nicaragua with the Soviet Union and Cuba, and the spread of communism throughout Central America. The Reagan Administration stated that the expansion of communism was evidenced by the increased amount of Soviet aid, and the ever-increasing repression of civil liberties and dissent.

The Reagan Administration’s policy reflects the view that the Soviet Union must not be permitted to “add a strategic hold on the mainland to their position in Cuba,” primarily because the Administration believes that communism cannot “bring freedom or prosperity to Central America.” According to this Administration, the origins of this regional crisis are “largely the result of internal conflict in Nicaragua, a conflict produced by the Sandinistas' denial of freedom and their relentless efforts to consolidate repressive Marxist-Leninist dictatorship aligned with Cuba and the Soviet-bloc.”

42. OFFICE OF PUBLIC DIPLOMACY FOR LATIN AMERICA AND THE CARIBBEAN, U.S. DEPT’ OF STATE, PUB. NO. 9554, SOVIET BLOCK ASSISTANCE TO CUBA AND NICARAGUA VERSUS U.S. ASSISTANCE TO CENTRAL AMERICA 4 (1987) [hereinafter SOVIET ASSISTANCE DISPATCH]. Within weeks of the Sandinista victory, U.S. aircraft arrived with food and medicine. The United States also supported the flow of $1.6 billion from international financial institutions. Id.

43. Id. at 4. See generally E. HOYT, supra note 38, at 139; NICARAGUA ISSUE BRIEF, supra note 38, at 6. The Carter Administration informally suspended aid in late 1980 when the revolution “radicalized.” Id.

44. NICARAGUA ISSUE BRIEF, supra note 38, at 6.

45. Id. See also SOVIET ASSISTANCE DISPATCH, supra note 42, at 4. In December 1987, Roger Miranda Bengechea, who was a top aide to Defense Minister Humberto Ortega (President Ortega’s brother), defected to the United States, and told American officials that the Soviet Union was preparing to send large amounts of new weaponry to the Nicaraguans. Kinzer, Soviet is Aiding Nicaragua in Buildup Defector Says, N.Y. Times, Dec. 14, 1987, at A1, col. 3. Defense Minister Ortega affirmed the planned buildup. Id.

46. Soviet economic aid totalled $1.83 billion since 1979, and Soviet military aid totalled $1.81 billion since 1980. NICARAGUA ISSUE BRIEF, supra note 38, at 4. The Soviet bloc has supplied nearly all of the Sandinista arsenal, including 12 gunships, 35 helicopters, 110 tanks, and hundreds of missiles. Id. at 5. See also SOVIET ASSISTANCE DISPATCH, supra note 42, at 2. Nicaragua apparently receives more than 90% of its military assistance from the Soviet Union and East European countries. The Soviet supply of military hardware to Nicaragua has increased by 15,000 metric tons since January 1987. Id.

47. Hearings Before the Senate Foreign Relations Comm., 100th Cong., 2d Sess. (Sept. 10, 1987) (statement of Secretary of State George Schultz) [hereinafter Statement of Secretary Schultz].

The United States views Nicaragua as an anomaly and a threatening force in a region that is predominantly based on democratic principles. Thus, the natural solution to the regional crisis caused by Nicaragua, is the democratization of the "odd man out." The President of the United States has stated that he would support Central Americans who are willing to work for, and, if necessary, fight for a democratic nation.

C. Congressional Objectives

Similar to the Reagan Administration, the United States Congress has also expressed the desire that the region be completely democratic. In large part, Congress has followed the recommendations of the National Bipartisan Commission on Central America which encouraged the United States to further democracy by urging a diplomatic settlement in the region that would be "comprehensive and verifiable, using economic assistance as an inducement and the threat of military force as a penalty for failure." The Commission has suggested that such a settlement would be based on the twenty-one objectives accepted by the Central American States at the request of the Contadora Group.

To implement this strategy, Congress has enacted laws that assist in the achievement of democracy in the region. The Contras are the United States force that are used to compel a democratic solution for the region. These broad statutes provide the United States with necessary military assistance if such assistance to the Contras will support peace that is based on the "objectives of democratization."
D. Role of the Contras

Both Congress and the Reagan Administration seek to achieve democracy in Central America, although they have disagreed on the means to accomplish those objectives. From 1981 to 1986, Congress approved $189 million in covert and overt funding for the Contras. There was a cut-off of aid in 1984, followed by an appropriation of $27 million for “non-lethal” purposes and then a resumption of military aid in the fall of 1986. According to the Reagan Administration and the U.S. Congress, the three purposes of the anti-Sandinista guerrillas are: 1) to end Nicaraguan support for anti-government communist Salvadoran guerrillas; and 2) to induce the Sandinista government to institute domestic reforms that would lead to a more pluralistic and democratic Nicaraguan society; and 3) to pressure the Sandinista Government to negotiate agreements that reflect United States concerns, such as the communist expansion in Central America. The Reagan Administration and supporters have stated that the United States-backed anti-Sandinista resistance has caused a serious erosion of the Sandinista support base in the region, and has therefore disrupted the economy. These pressures, they claim, have forced the Sandinistas to make difficult, internal domestic changes. United States supporters of the anti-Sandinista freedom fighters believe that the funding has been important in compelling the Sandinistas to negotiate seriously. These supporters argue that

55. N. SERAFINO, U.S. ASSISTANCE TO NICARAGUAN GUERRILLAS: Issues for the Congress 1-3 (CONGRESSIONAL RESEARCH SERVICE ISSUE BRIEF 84139, 1987) [hereinafter U.S. ASSISTANCE ISSUE BRIEF]. A “contra” is a guerrilla, insurgent, irregular, anti-government force. President Reagan commonly refers to them as “freedom fighters.”

56. STORRS, supra note 51, at 20. In 1981, Congress approved $19 million of covert military assistance to anti-Sandinista guerrillas (contras); in 1983, $23 million was appropriated; in 1984, amid reports of mining of Nicaraguan ports and a misuse of funds, aid was suspended; in 1985, $27 million of “non-lethal,” food, medicine, etc., was approved; and in 1986, $100 million in military and non-lethal aid was appropriated. N. SERAFINO, CONTRA AID: 1981-MARCH 1987 at 1-2 (Congressional Research Service Report No. 87-65F, 1987). Despite these amounts, for every dollar of United States aid to the entire Central American region, Nicaragua and Cuba get the equivalent of $10 from the Soviets. SOVIET ASSISTANCE DISPATCH, supra note 42, at 1. On February 3, 1988, the U.S. House of Representatives rejected an Administration backed resolution that would have provided at least $43 million in aid, including $3.6 million in military aid, to the contras over the next four months. LeMoyne, Contra Leaders Assail House Vote; Vow to Press On, N.Y. Times, Feb. 5, 1988, at A1, col. 1.; Brinkley, White House Seeks 36 Million in Aid for Contras, N.Y. Times, Jan. 27, 1988, at A1, col. 6.


58. Id. at 6, 7. The war effort costs the Sandinista Government 40%-50% of the annual budget. Additionally, the Nicaraguan Government claims that the contras’ “economic sabotage” has cost Nicaragua close to $13 billion. Id. at 7.

59. Id.

60. Id. at 8. The Reagan administration argues that “the funding of the anti-Sandinista guerrillas will pressure the Nicaraguan Government to negotiate seriously on matters of concern to the United States.” Id. A contra director recently responded to the February cutoff of aid by Congress, stating: “Soviet and Cuban aid still flows to the Sandinista regime and the democratic resistance must now go to the negotiating table in a very weakened position.” Le-
a fear of invasion by the United States itself, demonstrated by serious support for the freedom fighters, has provided an even greater impetus for Nicaragua to negotiate on terms reflecting United States concerns.\textsuperscript{61}

Opponents of funding argue that continued military aid will provoke a further escalation of conflict in Nicaragua and in Central America that might lead to direct United States military action.\textsuperscript{62} In addition, these opponents argue that the freedom fighters have realized little military success, and moreover, have not established a viable political alternative to Sandinista rule.\textsuperscript{63} The opponents of funding also see economic sanctions, such as trade embargoes and quotas, and a blocking of loans from Western institutions, as the acceptable means to effect change in the region.\textsuperscript{64} The International Court of Justice's holding that the United States' funding of the Contras is violative of international law, lends credence to the opponents call for the termination of aid.\textsuperscript{65}

1. Legal Implications: Nicaragua v. United States.—The legality of the United States' funding of the Contras was recently addressed by the International Court of Justice in Nicaragua v. United States.\textsuperscript{66} Nicaragua petitioned the Court to resolve a dispute over responsibility for military and paramilitary activities in and against Nicaragua. Nicaragua contended that the United States, or agencies thereof, were mining Nicaraguan ports and waters without issuing public and official warning to international shippers.\textsuperscript{67} In addition, Nicaragua complained that United States aircraft were infringing its airspace.\textsuperscript{68} More importantly, Nicaragua claimed that the United States “created” the Contra force, and provided direct combat support for its military operations.\textsuperscript{69} Finally, Nicaragua contended that the United States trade embargo, the blocking of loans to Nicaragua by the United States, and the reduction of sugar import quotas, were economic measures taken against it by the United States to interfere

\textsuperscript{61} Moyne, \textit{supra} note 56 at A1, col. 1.
\textsuperscript{62} Id. at 13.
\textsuperscript{63} Id. at 4. There is some indication that the Contra political situation was bettered by the reconstitution in mid-May of the Nicaraguan Resistance, with Adolfo Calero and Alfonso Robelo being elected to the new directorate. \textit{Id. See also} LeMoyne, \textit{Rebel Leader Says Support is Waning}, \textit{N.Y. Times}, Sept. 7, 1987, at A5, col. 1.
\textsuperscript{65} \textit{U.S. Assistance Issue Brief}, \textit{supra} note 55, at 10.
\textsuperscript{67} Id. at 145.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
in the internal affairs of Nicaragua. 70

In its defense, the United States asserted that Nicaragua was "actively supporting armed groups operating in certain of its neighboring countries," especially in El Salvador, through the supplying of arms. 71 The United States further maintained that Nicaragua was responsible for cross-border military attacks on Honduras and Costa Rica. 72 The United States also argued that Nicaragua had violated its own assurances, made in 1979, that it would observe human rights and call free elections. 73

The Court found no evidence that the United States had provided direct combat support to the Contras. However, there was evidence that United States support for the activities of the Contras had taken various forms over the years, including logistical support, the supplying of information, and loaning of sophisticated communication devices. 74 With respect to Nicaragua, the Court found that the evidence was insufficient to show that the government of Nicaragua was responsible for any flow of arms into other parts of Central America. 75

The international legal principles of the non-use of force and non-intervention were next considered by the Court in light of its factual findings. According to the Court, the laying of mines and attacks on Nicaraguan ports, and the arming and training of the Contras, violated the prohibition on the use of force as set forth in the United Nations Charter. 76 Further, the Court rejected a United States claim that the force was perpetuated in self-defense, stating that there was insufficient evidence to show that Nicaragua was engaged in an armed attack against El Salvador, Honduras, or Costa Rica. 77 Also, according to the Court's reasoning, the support given by the United States to the military and paramilitary activities of the Contras in Nicaragua, through "financial support, training, supply of weapons, intelligence and logistic support," constituted a violation of the law of non-intervention, which gives a sovereign the right to conduct its internal affairs without outside interference. 78

The United States contention that its countermeasures were warranted in response to Nicaragua's 1979 commitments to "secure

70. Id. at 146.
71. Id. at 147.
72. Id.
73. Id. at 147-48.
74. Id. at 146.
75. Id. at 147.
76. Id. at 148-49. See U.N. CHARTER art. 2, para. 4.
78. Id. The Court stated, "it [is] clearly established that the United States intended, by its support of the contras to coerce Nicaragua in respect of matters in which each State is permitted to decide freely . . . ." Id.
peace” by granting human rights and calling for free elections, was rejected by the Court. The Court stated that it could not “contemplate the creation of a new rule opening up a right of intervention by one state against another on the ground that the latter has opted for some particular ideology or political system.” The Court concluded that the United States owed reparations to the government of Nicaragua with the specific figures to be worked out subsequently.

2. Political Causes and Effects of Nicaragua v. United States.—Practically speaking, the result of the Nicaragua decision was that Contra funding was deemed illegal by the International Court of Justice. However, the political ramifications of the Nicaragua decision render the effects unclear.

The importance of the Central American region to the United States is reflected in the United States reaction to the suit brought by Nicaragua. The State Department, upon realizing that the United States was being sued by Nicaragua, notified the Court that it was adding a new reservation on its grants of compulsory jurisdiction to the International Court of Justice. The reservation stated: “[t]he Court’s compulsory jurisdiction shall not apply to the United States with respect to disputes with any Central American state or any dispute arising out of, or related to events in Central America . . . .” The United States refused to recognize the Court’s jurisdiction in these cases because it felt that the Court could not handle cases which involve complex facts that affect America’s global interests.

The Nicaragua situation represents a clash between justice and order as determined by international law, and the United States actions in furtherance of what it perceives as the “national interest.” States are not likely to accept international laws or obligations that hinder the fulfillment of important interests. The “reservation,”

79. Id. at 154.
80. Id. at 155.
82. The United States accepted the compulsory jurisdiction of the World Court in 1946. E. Hoyt, supra note 38, at 141.
83. Id.
84. See generally Franck, supra note 81.
86. W. Levi, supra note 85, at 53. The author states: “as soon as states experience legal commitments as a hindrance in the fulfillment of important national interests, they will seek a release or escape from them.” Id.
which was utilized by the United States to eliminate the effects of Nicaragua's suit, is a mechanism to avoid the constrictions of international obligations. Because the United States policy towards Nicaragua is the containment of communism and the establishment of a democratic form of government in the region, the United States sees these national interests as vitally important to its continued existence as a world power.

The means adopted by the Reagan Administration to achieve these goals is the Contra force. The Contras are viewed as "fighters of freedom" in Central America. As the International Court of Justice in Nicaragua v. United States noted, however, the United States had agreed to a peaceful settlement of disputes under the Contadora negotiations. Thus, the Reagan Administration and Congress have stated that they are desirous of a peaceful settlement. The Guatemala Plan represents an attempt to settle the Central American disputes through a peaceful means. However, under this "peaceful means," one of the Reagan Administration's weapons — the Contras — is eliminated. Thus, the Guatemala Plan must be analyzed to determine if its peaceful means will protect the United States' interests in the region.

IV. The Guatemala Treaty: Its Chance for Success

The United States is not a signatory to the Guatemala Plan, and thus is not bound by its terms. As a "Third State," the United States possesses neither rights nor obligations under the Plan. Therefore, the United States is not bound by the terms of the

88. See supra notes 44-54 and accompanying text.
90. 1985-1986 I.C.J.Y.B. 137, 155 (1986). The Court stated that it had "already taken note of the Contadora process, and of the fact that it had been endorsed by . . . the United States . . . [B]oth Parties [United States and Nicaragua] . . . need to co-operate . . . in seeking a definitive and lasting peace in Central America . . . ." Id. at 155-56.
92. See supra note 37 (Address to Congress by President Oscar Arias).
95. See A. McNair, supra note 94, at 309; I. Brownlie, Principles of Public International Law 601, 619 (1979); T. Elias, The Modern Law of Treaties 59 (1974). This rule is based upon the Roman Law principle pacta tertii nec prosumt, which means that agreements neither impose obligations nor confer rights upon third states. Id.
Guatemala Plan unless it agrees to be so bound. Only if the parties to a treaty intend a specific provision to obligate a third state, will the obligation, if accepted, arise for that State.

In order for the peace process to be successful in the region, the Contadora Group recognized that United States support was crucial. The Contadora Group knew the strategic importance of the area to the United States, and realized that the United States had become a protagonist in the area by expending money and arms in support of the insurgent Contra group. Such realization is evidenced by the Contadora Group's attempt to coordinate its twenty-one objectives with some of the objectives of the United States, in order to induce the United States support. "The U.S. President will not stand idly by and permit a country as near our borders as Nicaragua to become a place from which the Soviet Union and its allies can militarily threaten our friends or our country's national security." The Reagan Administration has stated that it is committed to a peaceful settlement of disputes, so long as it protects the United States concerns in the region.

Within the Reagan-Wright Plan, the United States demonstrates this commitment to a peaceful settlement of disputes by requiring an immediate cease-fire and a plan of dialogue and participation among the citizens of Nicaragua. Concurrently, the Reagan-Wright Plan protects the United States interests by requiring, upon a cease-fire, an end to all foreign military aid to the Contras and to the Sandinista Government. The Reagan Administration has stated that it seeks a peace in Central America that is lasting and enduring, not cosmetic. Given the importance of the region in relation to this goal of a lasting democracy, and the pressure that a world power like the United States could exert on a treaty, the effectiveness of any treaty in Central America necessarily hinges on how well it addresses the concerns of the United States.

The Guatemala Plan calls on the governments of Central America to promote a participatory democratic process involving the
promotion of social justice and respect for human rights. The plan also guarantees political parties the right to participate in decision making. The plan requires freedom of the press, the right of association and public assembly, free elections, and a lifting of any state of emergency. These democratization steps commit the government of Nicaragua to sweeping political changes. The effects of these democratization measures, and the treaty for that matter, will bear most heavily on Nicaragua, for Nicaragua is the only country that had a state of emergency in effect at the time of signing, and is currently repressing some of these basic human rights as a result of internal unrest.

A. Nicaraguan Constitution

On January 9, 1987, a Nicaraguan Constitution was signed into law. On paper, the Sandinista Constitution grants a great deal of civil liberties to its citizens. The list of protected rights is sixty-nine articles long, and includes the right to life, the right to personal freedom, the right to free expression, the right to assembly, the right to strike, the right to privacy, the right to a speedy trial, the right to habeas corpus, and the right to protections against secret arrest and arrest without charges. This comprehensive list of rights, however, does not necessarily mean that these rights are actually enjoyed. Although the constitution states that Nicaragua "is a participatory and

109. See infra App. A at § 1. President Ortega warned opposition parties that they were in danger of going beyond the dissent tolerated by the Sandinista party. LeMoyne, Sandinistas Warn Opposition Not to Push too Far, N.Y. Times, Dec. 17, 1987, at A10, col. 1. Ortega also warned the opposition parties that their political rights could be taken away and their property rights expropriated. Id.
110. See infra App. A at § 3(c). The provision reads, "the Central American Government [sic] that have put into effect a state of exception, siege or emergency, shall lift it and shall put into effect the rule of law with full observance of all constitutional guarantees." Id.
111. See generally supra note 46 (Statement of Secretary Schultz). There has been some form of state of emergency in effect in Nicaragua since 1982. NICARAGUA ISSUE BRIEF, supra note 38, at 4. On January 16, 1988, President Daniel Ortega suspended the state of emergency in Nicaragua, ostensibly as a concession to induce Congress to stop sending aid to the contras. Sciolino, Reagan Will Seek Contra Arms Aid Despite New Move, N.Y. Times, Jan. 18, 1988, at A1, col. 6; LeMoyne, High Stakes in Nicaragua, N.Y. Times, Jan. 18, 1988, at A1, col. 5. Aid was suspended February 3, 1988. See LeMoyne, supra note 56.
112. NICARAGUA ISSUE BRIEF, supra note 38, at 4. OFFICE OF PUBLIC DIPLOMACY FOR LATIN AMERICA AND THE CARIBBEAN, U.S. DEP'T OF STATE, PUB. NO. 9523, THE SANDINISTA CONSTITUTION (1987) [hereinafter SANDINISTA CONST.]. When a treaty seeks to democratize a nation by making internal political changes, it is important to analyze the constitution, a government's framework, to determine if the political structure is capable of guaranteeing a lasting democratic structure. This analysis is especially important in a situation where a treaty legitimizes a government, as the Guatemala Treaty does to the Sandinista government. Id. at 9.
113. SANDINISTA CONST., supra note 112, app. A at arts. 1-69. For a general discussion, see id. at 1-15.
representative government," the provisions of the constitution provide for a contrary result. While some of the language sounds in democratic principles, the Nicaraguan Constitution reveals a state that is still dominated by totalitarianism.

1. **Merging of ruling party with government.**—One of the basic principles of a totalitarian government is the merging of the ruling party with the branches of the state government. The Nicaraguan Constitution provides for four branches of government, the Executive, the Judicial, the Legislature, and the Electoral. All of the branches of government are subject “to the overriding national interest,” thereby relegating the government branches to the ruling party.

a. **Executive Branch.**—The constitution sets forth the duties of the Executive Branch which is dominated by the President of the Republic. The constitution delegates broad powers to the President that help insure his party’s dominance. The functions of the President include the power to enact, in fiscal and administrative matters, legally enforceable executive decrees; the preparation of the budget; the removal and appointment of ministers; the power to declare a state of emergency; the administration of the economy and “determination of socio-economic policies and programs;” and the power to select candidates to the National Assembly (Legislature), the Supreme Court of Justice, the Supreme Electoral Council, and the Controller of the Republic. The President also determines the “number, organization, and jurisdiction” of the government minis-

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114. Id. at app. A art. 7. Article 7 reads: “Nicaragua is a participatory and representative democratic republic.” Id.
115. See L. Schapiro, Totalitarianism 18-20 (1972). The author notes that a common factor of totalitarian societies is “a single mass party usually led by one man, organized hierarchically and either superior to or intertwined with the state bureaucracy . . . .” Id. at 18 (citing C. Friedrich, The Unique Character in Totalitarian Society (1954)). He then lists five other characteristics of a totalitarian state: “an official ideology, to which everyone is supposed to adhere; a near complete monopoly . . . over all means of effective mass communication [and weapons]; . . . a system of physical or psychological terroristic police control;” and central control of the entire economy. Id.
117. Id. at art. 129. Article 129 states that the “branches of government are independent of one another and coordinate harmoniously, subject only to the overriding national interest . . . .” Id. This “national interest” undoubtedly refers to the state, which is controlled by the Sandinistas. Id. at 9.
118. Id. at ch. III, arts. 144-53.
119. Id. at art. 150. Article 150(9) states that one of the functions of the President of the Republic is to “[d]ecree and put into effect the State of Emergency in circumstances defined by the Political Constitution and forward the decree to the National Assembly for ratification within a period of no more than forty-five days.” Article 150(13) states that a function of the President is to “[a]dminister the economy of the country and determine the socio-economic policies and programs.” Article 150(14) states that the President has the power to “[p]ropose slates of three candidates” for the other branches of government. Id.
tries and state institutions.

b. Judicial Branch.—The traditional functions of the Nicaraguan Supreme Court of Justice include the administration of justice and appellate review. Significantly, the right to a jury trial is nowhere guaranteed. More importantly, the President of the Republic selects at least three of the seven justices that sit on the court. Because the Sandinista party is in control of the presidency, the opportunity for abuse in the judicial selection process is inevitable.

c. Legislative Branch — National Assembly.—The constitution further outlines the functions of the legislature, yet indicates that the National Assembly is subordinate to the executive. The functions of the National Assembly, among others, are to draft laws and decrees, officially interpret the law, decree amnesty and pardons, approve the budget, ratify or reject international treaties, and delegate the legislative power to the President when the Assembly is in recess. More specifically, the National Assembly is to “consider” the nation's economic and social development plans and policies. However, these economic and social policies are established by the President; the Legislature is permitted to only “consider” them, not amend or repeal them.

d. Electoral Branch.—The functions of the Electoral Branch, are to organize and conduct the elections, establish a calendar of elections, and make a final count of votes. The Electoral Branch is composed of the “Supreme Electoral Council,” which consists of five members, three of which are nominated by the President. This affords the President and his party, as is the case in judicial nominations, an opportunity to “stack the deck” in their favor.

In sum, the four branches of government are theoretically independent. But the Constitution lacks any checks or balances on abuse.
of power by any one branch. In reality, the Constitution gives almost unbridled power to the executive branch. This grant of power enables the President to dominate all forms of government and the people, thereby quelling any opposition and ensuring that the Constitution is democratic in theory only.

2. Subordination of individual to state.—A hallmark of a totalitarian state is the subordination of the individual to the state, and the concomitant power of the state to take control over economic, political, educational, and social rights and institutions. The Sandinista Constitution reflects the subordination of the individual to the Sandinista State.

3. Individual Rights.—As stated earlier, the Sandinista Constitution purports to grant many democratic rights. However, because the Sandinista party, through the power of the executive, dominates all branches of government, it can restrict the rights and liberties of those who challenge its authority. Most significantly, the constitution affords the President of Nicaragua the greatest opportunity to restrict these rights — the power to declare a state of emergency. The most recent state of emergency, put in place only hours after the signing of the constitution, was justified because of the “external enemy.” There were indications that the state of emergency was implanted in response to the outward discontent by the opposition to the signing of the constitution.

Aside from the state of emergency power of the president, the language of the constitution itself, curtails individual rights. The constitution states that “the rights of each person are limited by the rights of others, the collective security and the just requirements of the common good.” Moreover, citizens only enjoy the ambiguous right to make “constructive criticisms” to the branches of government. No doubt it is the Government that decides what is “constructive.”

The subordination of the individual to the needs of the state is similarly reflected in the constitutional provisions regarding labor, property, and education rights. “Work is a right and social responsi-

132. See supra note 119.
133. Sandinista Const., supra note 112, at 7.
134. Id. In January 1987, four opposition parties challenged President Ortega’s authority to invoke the state of emergency, but Sandinista control of the judiciary ruined their success.
136. Id. at art. 52.
bility . . . [and] labor is the fundamental means to satisfy the needs of society.137 Moreover, agrarian reform "is the fundamental instrument for . . . national development and social progress of Nicaragua."138 Third, private and commercial property "are subject to the overriding interest of the nation . . . ."139 In another revealing article, the goal of education is to prepare Nicaraguans "to assume the tasks of the common interest necessary for the progress of the nation."140 Additionally, the constitution uses traditional totalitarian language in providing that the constitution is meant for "[t]hose who guarantee the happiness of future generations by offering their lives in the struggle against imperialist aggression."141 In short, all of these provisions denounce individual rights in favor of a strong national state.

4. Nicaraguan Ministry of Interior.—Another aspect of a totalitarian government is a secret police force that perpetuates the power of the controlling regime.142 Such a force lies in the Nicaraguan Ministry of Interior (MINT), which is an arm of the government that institutionalizes Sandinista control over Nicaraguan citizens.143 The MINT is used by the Sandinistas as an instrument of political consolidation,144 and is bureaucratically composed of the Directorate General for State Security (DGSE).145 The principal goal of the DGSE is to undercut political opposition.146 Opposition is thwarted by investigations, searches, mass arrests, telephone taps, and mail openings.147 The MINT headquarters the turbas divinas148 that infiltrate and disrupt demonstrations by opposition parties.149 One of the MINT’s units, the Department of Agitation and Propa-
Ganda, manages propaganda, disinformation, and censorship activities.150 The MINT also controls the whole penal system.151 As the Sandinistas are determined to maintain their power they attempt to control the political, social, and economic well being of the Nicaraguan citizenry through the powerful vehicle of the Interior Ministry.

In sum, the Nicaraguan Constitution and the Sandinista’s instrument of political control, the Interior Ministry, indicate that Nicaragua is still a totalitarian state. Thus, the Guatemala Plan seeks to “democratize” this communist state. To determine if the Guatemala Plan can successfully change this basically communist state, and thereby ensure the United States and the rest of the region that Nicaragua is capable of becoming a democracy, other provisions of the Guatemala Plan must be analyzed.

B. Other Provisions of the Guatemala Plan

The Guatemala Plan charges the five signatories to request the governments within the region and outside of the region to cease military, logistic, financial, manpower, and armament assistance to “irregular or insurrectionist movement . . . .”152 Thus, under the terms of the agreement, “irregular” or anti-government forces would no longer receive funds from foreign governments outside of Central America. The United States, therefore, would not be permitted to give to the Contras, an anti-government force, military aid under the terms of the agreement.153 However, the Guatemala Plan is silent on the issue of Soviet-bloc aid to the Sandinista Government.154 The Sandinista Government, therefore, can legally continue to receive the same amount of Soviet military aid under this Plan. One of the roles of the United States-backed Contras is to exert pressure on the Sandinistas to negotiate seriously.155 If the Contra aid is halted, but the Soviet aid continues, the Sandinistas will no longer be pressured

151. Id. at 5.
152. Guatemala Plan, supra note 5, at § 5, see infra App. A.
153. Humanitarian aid, such as food, clothing, medical supplies, could still be provided. See U.S. Assistance Issue Brief, supra note 55, at 5. Although a recent four month aid package was rejected by Congress in February 1988, there are indications that the Contras have sufficient supplies to last for several months. LeMoyne, Contra Leaders Assail House Vote; Vow to Press On, N.Y. Times, Feb. 5, 1988, at A1, col. 1. Congress is expected to approve a humanitarian aid package for the Contras in late February, early March. Id. The Contras have additionally set up a tax deductible fund for aid in the United States. See LeMoyne, N.Y. Times, Feb. 9, 1988, at A10, col. 1. If the Sandinistas do not appear to be complying with the regional treaty, the Contras will ask the United States Administration to again seek aid for them. LeMoyne, Contra Leaders Assail House Vote; Vow to Press On, N.Y. Times, Feb. 5, 1988, at A1, col. 1. See also Brinkley, N.Y. Times, Jan. 27, 1988, at A1, col. 6.
154. The Sandinista military force is the government force, and not an “irregular” or “insurgent” force, so it thereby is not excluded from outside military aid. See Hoffman, Reagan Says Arms Plan Insufficient, Wash. Post, Oct. 8, 1987, at A1, col. 1.
155. See supra notes 55-58 and accompanying text.
by the Contras. Thus, the fact that the Soviet Union is permitted to continue to send military aid to Nicaragua, but the United States would be prevented from funding the Contras, the United States government is naturally opposed to the plan. The Reagan Administration is concerned about Soviet expansionism and the resultant spread of communism; this spread of communism would be facilitated under the terms of the Guatemala Plan, because Nicaragua would be at full military strength, while the Contras would be defenseless.

1. Lack of Sanctions or Enforcement Measures.—The Guatemala Plan contains no sanctions or enforcement mechanisms against any government which does not continue to comply with the terms of the agreement. The plan commits Nicaragua to a series of democratization measures. While the plan provides for the establishment of an “International Commission for Verification and Follow-up” to verify compliance with the terms of the plan, it does not provide for punishments if a party does not comply. The United States desires a lasting democracy in Nicaragua, yet it is unlikely this will happen unless sanctions exist. Nicaragua has agreed to make democratic reforms, but there is no way to ensure that these reforms will be complied with in the future. If punishment measures were taken upon noncompliance, this would give the Sandinistas impetus to reform.

2. Legitimization of Sandinista Rule.—The Guatemala Plan attempts to secure peace in Central America through an implementation of democratic reforms. In many instances, however, the plan legitimizes the communist political system of Nicaragua under Sandinista rule. The continued allowance of Soviet-bloc aid affirms this conclusion. The Guatemala Plan states that future elections will be held according to the schedules mandated by each country’s respective constitutions. Although the elections will be

156. Statement of Secretary Schultz, supra note 46.
159. The commissions are appointed by the respective governments and there is some concern that Nicaragua has placed Sandinista supporters on them. See N.Y. Times, Aug. 26, 1987, at A3, col. 1.
160. See supra note 54.
162. Guatemala Plan, supra note 5, at § 4, infra App. A.
monitored by international bodies, the provisions still allow the current government's totalitarian laws to dictate.

3. Direct Talks with the Contras/Cease-Fire.—The Guatemala Plan provides for a series of steps toward national reconciliation. The goal is to integrate opposition groups and guerrilla forces into democratic, political processes. The Nicaraguan Government and the Contras recently met face to face and negotiated a temporary cease-fire. The fact that the two sides met and discussed a cease-fire demonstrates the two factions' willingness to abide by that portion of the Guatemala Plan. There is some indication, however, that the Contras agreed to this cease-fire because they felt abandoned by the United States, after three aid packages were defeated in Congress. Humanitarian aid has since been renewed, and will assuredly give the Contras more bargaining power, thus enabling the Contras to press the Sandinista Government to make more fundamental democratic changes. One of the United States' purposes of funding the Contras is to compel the Sandinistas to negotiate seriously. The Guatemala Plan sets out the aspirational framework for cease-fire negotiations. Face to face negotiations are critical to the success of a prolonged cease-fire in Nicaragua, but the negotiations must produce a "democratization" within the spirit of the Guatemala Plan, and within the goals of the United States and the Contras. If the Sandinista Government refuses to make the called for internal political changes, the chances for a lasting cease-fire are bleak, at best.

4. Nicaragua's Intentions — Democracy?—The Guatemala Plan permits the Sandinista Government to continue receiving aid from the Soviet Union. The government's motivation for agreeing to make democratic changes is questionable since it will still receive

163. Id.
164. Id. at § 2. The provision reads, "the governments involved shall initiate a dialogue with all unarmed internal political opposition groups." Id. (emphasis added).
165. Id.
168. See supra note 55, at 5 and accompanying text.
169. See supra note 60.
170. See supra note 154.
the same amount of economic and military aid from the Soviet Union. As a possible explanation, there is some indication that the Soviet Union will not support the Sandinista Government to the same extent as in previous years. Recently, the Soviet Union, which had provided Nicaragua with nearly all the crude oil it consumes, stopped supplying the same amounts of oil. The economy of Nicaragua, in general, has been severely mismanaged and is in a disastrous condition. The United States has exacerbated the situation through economic sanctions, reductions of quotas, and bank loan cut-offs. This economic crisis, further affected by war, may cause Nicaragua to view democracy and the resultant United States support as a way out. This is evidenced by indications that Nicaragua has already implemented some of the reforms called for by the Guatemala Plan.

V. Irreconcilable Differences?: Recommendations for an Effective Central American Treaty

The Guatemala Plan is a good starting point for peace, but is, unfortunately, crippled by a lack of specificity, and an absence of respect for the national concerns of the United States. To be effective, a treaty in this region must define a democracy in a way that ensures a genuineness of political structural change. In this way, the Reagan-Wright Plan offers some solutions.

A. Elimination of all Foreign Military Aid

The Reagan-Wright Plan calls for the suspension of all military aid to the Contras, and simultaneously, the suspension of all military aid from Cuba, the Soviet Union, and all Communist-bloc countries to Nicaragua. The suspension of Soviet military aid, as well as Contra aid, is crucial for the implementation of a lasting democracy.
in Nicaragua. The Reagan-Wright Plan thus represents a better peaceful settlement of disputes predicated on the removal of external military aid.

B. Contingency Plan — Reform Chart

The Reagan-Wright Plan provides that the removal of outside military aid is contingent on the success of Nicaragua in effectuating democratic reforms. Under the plan, the Contras continue to receive military aid until the reforms are implemented, and compliance is required within six weeks. This is an unrealistic timetable, for the reforms that are needed go deep into the political infrastructure of the Sandinista Government. The Sandinistas have had some form of a communist state since 1979, and if they are willing to became a true democracy, they should be given a realistic chance under a realistic timetable.

Ideally, the reforms that are needed should be set out on a one year reform chart. Basic reforms that are somewhat easier to initiate, such as a free press, free speech, free elections, would be charted at the two month period. More difficult changes, such as amnesty and open dialogue would be charted around the four to six month period. Halfway, at the six month period, and contingent on the initiation of the reforms charted before this time, a cease-fire should be negotiated between the Sandinistas and the Contras.

The very definition of a democratic political system requires participation by all parties. The Contras have a stake in the development of Nicaragua, and should be included in its processes leading to development. Up until this six month period, the Contras should remain funded in order to compel the Sandinistas to negotiate seriously and to monitor compliance. After the sixth month passes, and assuming all prior reforms have been initiated, then all United States and Soviet-bloc aid, save humanitarian aid, should be halted. At this six month juncture, the second half of the year’s appropriations less humanitarian aid, should be placed in an escrow account. This will assure the Sandinistas that if they do not comply, the Contras will be re-funded. After each reform that is listed in the

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178. Id. at proposal 6.
179. Id. at proposal 6. The plan was proposed on August 5, 1987, and the requirements were to take place by September 30, 1987.
180. See supra notes 38-39 and accompanying text.
181. The Contras have indicated that the International Red Cross could represent them in negotiations. N.Y. Times, Aug. 10, 1987, at A7, col. 4. Now that the two parties have agreed to negotiate one on one the negotiations must be serious and fundamental, not superficial.
second stage of reforms, i.e., after six months, the escrow account will be incrementally decreased. The funds that are taken from the account should be used to start another account, one that would represent monies to be used for the future joint development of Nicaragua.\footnote{183}

C. Internal-Political Changes

The second stage of the reform chart, six months and on, will seek to reform the political structure of the Sandinista Government.\footnote{184} As the United States is interested in a stable, lasting democracy, in Nicaragua, Nicaragua’s political structure, consequently, must be changed.

The Sandinista Constitution purports to grant individual freedoms and at the same time takes them away. The individual is superseded by the state interest, mainly by the oppressive workings of the Interior Ministry (MINT). It is these internal totalitarian structures that must be changed in order to bring a real democracy to Nicaragua. The Guatemala Plan’s calling for an end to any state of emergencies is insufficient to meet this goal. A treaty in this region must go further, and change a political system that could give a government this power. The second half of the reform chart should deal with these internal political structures. In order for a true guarantee of rights to exist, an amendment of the constitution must be initiated\footnote{185} that would abolish any means of eliminating these rights, and eradicate any tools for political consolidation and suppression.

D. Compliance Measures

One of the Reagan Administration’s greatest concerns regarding this plan, is that the treaty must institute a democracy that is stable and lasting, and not “cosmetic.”\footnote{186} The Guatemala Plan states that reconciliation commissions are responsible for verification and follow-up on the provisions, but does not define their verification powers or guidelines for determining compliance. A treaty must provide properly structured and empowered organizations to verify the
provisions, and also outline the rights and responsibilities of the verification organizations.\textsuperscript{187} A properly constructed verification mechanism would ensure that Nicaragua is not merely promising reform, but is actually committed to democracy. A reform chart that plots out the different reforms and their various proposed target dates would provide an adequate checklist for determining compliance. Independent organizations, such as the Organization of American States\textsuperscript{188} and the International Red Cross,\textsuperscript{189} could ensure that Nicaragua has met all stages, and could provide assistance and guidance in implementing the reforms, amending the constitution and dismantling the pervasive Interior Ministry.

In sum, for any plan to have a realistic chance to bring about peace in Central America, it must establish reforms over a period of time so that a gradual transition from communism to democracy can occur. In order to be effective, a treaty that focuses on the guarantee of fundamental rights and the political structures that grant or deny them, must provide an adequate enforcement mechanism to ensure true democratization.

VI. Conclusion

President Reagan has stated that the Guatemala Plan is insufficient because it does not meet the concerns of the United States.\textsuperscript{190} The Central American region is vitally important to the United States interests in restricting Soviet expansion. The major flaw that plagues the Guatemala Plan from the United States' viewpoint is that it would dismantle the Contras while enabling Nicaragua to continue to receive Soviet-bloc military aid. As purported, the goal of the United States is the achievement of a lasting democracy for Nicaragua. A treaty which cannot produce this result is unacceptable. Because, in reality international obligations are at times legitimately superseded by the interests of an outside powerful state, treaties must take foreign national interests into account. To gain a true democracy in Nicaragua, a better treaty effort would need to provide a more realistic timetable, adequate security and compliance measures, and a series of internal reform mechanisms that would change the political structure of the nation. Although Nicaraguan President Ortega has stated that international obligations cannot dictate the way a state is politically organized, by signing the Guatemala Plan, however, he has agreed to democratic political changes. Any pro-

\textsuperscript{187} See U.S. Assistance Brief, supra note 55, at 9.
\textsuperscript{188} Guatemala Plan, supra note 5, at § 10.
\textsuperscript{189} See supra note 181.
posed treaty, to be effective, must not only receive unconditional and wide-based support but also ensure that these changes are actually instituted.

R. Karl Hill
APPENDIX A
TEXT OF AGREEMENTS BY THE PRESIDENTS OF CENTRAL AMERICA
(Un-official Translation)

PREAMBLE

The Presidents of the Republics of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica, meeting in Guatemala City on August 6-7, 1987, encouraged by the farsighted and steadfast desire for peace of the Contadora and the Support Groups, strengthened by the firm support of all the governments and peoples of the world, and their principal international organizations—particularly the European Economic Community and His Holiness John Paul II—based on the Declaration of Esquipulas I, and coming together in Guatemala to discuss the peace plan presented by the Government of Costa Rica, have decided:

To face fully the historic challenge of forging a peaceful future for Central America,
To undertake the commitment to fight for peace and eliminate war,
To make dialogue prevail over violence, and reason over rancor,
To dedicate these efforts for peace to the youth of Central America, whose legitimate aspirations for peace, social justice, freedom and reconciliation have been frustrated for many generations,
To make the Central American Parliament a symbol for the freedom, independence and reconciliation to which Central America aspires.

We ask for respect and assistance from the international community for our efforts,
We have Central American avenues for peace and development, but we need help to make them effective. We ask for an international treatment that will ensure development so that the peace we seek will be lasting,
We repeat firmly that peace and development are inseparable.
We thank President Vinicio Cerezo Arevalo and the noble people of Guatemala for hosting this meeting,
The generosity of the President and the people of Guatemala were decisive elements in creating the climate in which the peace agreements were adopted.

PROCEDURE FOR ESTABLISHING FIRM AND LASTING PEACE IN CENTRAL AMERICA

The governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, determined to achieve the objectives and to develop the principles established in the Charter of the United Nations, the Charter of the Organization of American States, the Document of Objectives, the Message of Caraballeda for Peace, Security and Democracy in Central America, the Declaration of Guatemala, the Communiqué of Punta del Este, the Message of Panama, the Declaration of Esquipulas, and the draft Contadora Act for Peace and Cooperation in Central America of June 6, 1986, have agreed on the following procedure to establish firm and lasting peace in Central America.

1. NATIONAL RECONCILIATION

A. Dialogue

To undertake on an urgent basis, in those cases where deep divisions have occurred in society, actions for national reconciliation that will permit the participation of the people, with full guarantees in genuine democratic political processes, on the basis of justice freedom and democracy, and to that end, to establish mechanisms that will make dialogue with opposing groups possible under the law.

For this purpose, the governments involved shall initiate a dialogue with all unarmed internal political opposition groups and with those that have availed themselves of amnesty.

B. Amnesty

In each Central American country, except those where the International Commission for Verification and Follow-up determines that it is not necessary, decrees for amnesty shall be
issued that will establish all of the provisions to ensure inviolability of life, freedom in all of its forms, material property and safety of the persons to whom those decrees are applicable. Simultaneously with the issuance of the amnesty decrees, the irregular forces of the country concerned shall release all prisoners under their control.

C. National Commission of Reconciliation

To verify compliance with the commitments that the five Central American Governments undertake by signing this document, regarding amnesty, cease-fire, democratization and free elections, a National Commission of Reconciliation shall be established that will have the duties of verifying the actual carrying out of the national reconciliation process, and the unrestricted respect for all the civil and political rights of Central American citizens that are guaranteed in this document.

The National Commission of Reconciliation shall be composed of a principal and alternate delegate representing the Executive Branch, a principal and alternate delegate suggested by the Episcopal Conference and selected by the Government from a panel of three bishops to be submitted within fifteen days after receipt of the formal invitation. This invitation shall be issued by the governments within five working days following the signature of this document. The same procedure using a panel of three shall be employed to select a principal and alternative representative of the legally-registered political opposition parties. The panel of three shall be submitted by the same deadline mentioned above. Each Central American Government shall also select as a member of that committee an outstanding citizen and an alternate for him who are not members either of the government or of the government's party. The decision or decree establishing the National Commission shall be reported immediately to the other Central American governments.

2. EXHORTATION FOR THE CESSATION OF HOSTILITIES

The governments strongly urge the countries in the area that are now undergoing attacks by irregular or insurgent groups to agree to ceasing hostilities. The governments of those countries undertake to carry out all actions required to achieve an effective cease-fire under the constitutional framework.

3. DEMOCRATIZATION

The governments commit themselves to promote an authentic participatory and pluralistic democratic process involving promotion of social justice, respect for human rights, sovereignty, territorial integrity of the States, and the right of all nations to determine freely and without outside interference of any kind their economic, political and social models, and they shall take in a verifiable manner measures that are conducive to the establishment, and where necessary, the improvement of democratic, representative and pluralistic systems that guarantee the organization of political parties and effective participation of the people in decision-making and that ensure free access of different currents of opinion to honest periodic elections, based on the full observance of the rights of citizens.

In order to verify the good faith in the carrying out of this process of democratization, it shall be understood that:

A. There shall be freedom of the press, radio and television. This complete freedom shall include opening and keeping in operation mass media communications for all ideological groups and operating those media without subjecting them to prior censorship.

B. There shall be total pluralism of political parties. In this regard, political groups shall have full access to the mass media, shall enjoy fully the right of association and the right of public assembly in the unrestricted exercise of oral, written and televised publicity, as well as freedom of movement for the members of political parties in their efforts to proselytize.

C. In addition, the Central American Government that have put in effect a state of exception, siege or emergency, shall lift it and shall put into effect the rule of law with full observance of all constitutional guarantees.

4. FREE ELECTIONS

Having established the conditions inherent in any democracy, there shall be free, pluralis-
tic and honest elections.

As a joint expression of the Central American countries to find reconciliation and lasting peace for their peoples, elections shall be held to select members of the Central American Parliament, whose establishment was proposed by the “Declaration of Esquipulas” of May 25, 1986.

For the above purposes, the Presidents expressed their resolve to proceed in organizing this Parliament, for which purpose the Preparatory Commission of the Central American Parliament shall conclude its deliberations and submit to the Central American Presidents the respective Draft Treaty within 150 days.

These elections shall be held simultaneously in all the countries of Central America in the first half of 1988 on a date that shall be agreed upon at the proper time by the Presidents of the Central American States. The elections shall be monitored by the appropriate electoral bodies, and the governments concerned commit themselves to extend invitations to the Organization of American States, the United Nations, and the Governments of third states to send observers who shall verify that the electoral processes have been carried out in accordance with the strictest rules of equal access for all political parties to the social communication media, and to ample facilities to hold public meetings and to conduct any other kind of proselytizing propaganda.

So that the elections for members of the Central American Parliament are held within the period indicated in this section, the constituent treaty shall be submitted to the five countries for approval or ratification.

After the elections for the Central American Parliament are held, there shall take place in each country, with international observers and the same guarantees, within the deadlines set and the schedules that shall be proposed under the current political constitutions, equally free and democratic elections to select people’s representatives in the municipalities, congresses and legislative assemblies, and the Presidency of the Republic.

5. CESSATION OF ASSISTANCE TO IRREGULAR FORCES OR TO INSURRECTIONAL MOVEMENTS

The Governments of the five Central American States shall request the Government in the region and the governments outside the region that overtly, or covertly provide assistance, be it military, logistic, financial, propagandist, in manpower, armament, munitions, and equipment to irregular forces or insurrectionist movements, to cease such assistance, as an indispensable element for achieving stable and durable peace in the region.

Not included in the foregoing is assistance for repatriation, or in its place, relocation and the assistance necessary for the return to normal life of those persons who were members of such groups or forces. In addition, irregular forces and insurgent groups operating in Central American shall be requested to to refrain from receiving such assistance, for the sake of an authentic Latin American spirit. These requests shall be made pursuant to the provisions of the Document of Objectives regarding the elimination of the traffic in arms, whether within the region or from outside the region, intended for persons, organizations or groups that attempt to destabilize the governments of the Central American countries.

6. NON-USE OF TERRITORY FOR AGGRESSION AGAINST OTHER STATES

The five countries signing this document reiterate their commitment to deny the use of their own territory to, and not to provide or permit logistic military support for persons, organizations or groups that seek to destabilize the governments of the Central American countries.

7. NEGOTIATION OF MATTERS OF SECURITY, VERIFICATION AND LIMITATIONS OF ARMAMENTS

The Governments of the five Central American States with the participation of the Contadora Group, in the exercise of its role as mediator, shall continue negotiations on points still pending of agreement regarding matters of security, verification and control in the Draft Act of Contadora for Peace and Cooperation in Central America.

These negotiations shall also cover measures for the disarmament of the irregular forces
that are ready to avail themselves of the amnesty decrees.

8. REFUGEES AND DISPLACED PERSONS

The Central American Governments commit themselves to provide urgent relief to the flows of refugees or displaced persons that the regional crisis has brought about, by furnishing protection and assistance particularly in areas of health, education, employment and security, and to facilitate their repatriation, resettlement or relocation, provided that it is voluntary and is requested individually.

They also commit themselves to seek assistance from the international community for Central American refugees and displaced persons, both directly under bilateral or multilateral agreements, and through the United Nations High Commissioner for Refugees (UNHCR) and other agencies and organizations.

9. COOPERATION, DEMOCRACY AND FREEDOM FOR PEACE AND DEVELOPMENT

In the climate of freedom that democracy ensures, the Central American countries shall take decisions to accelerate development in order to achieve societies that are more egalitarian and free from poverty.

Consolidation of democracy involves the establishment of an economy of well-being and an economic and social democracy. To achieve these objectives, the governments shall jointly make arrangements to obtain special economic assistance from the international community.

10. INTERNATIONAL FOLLOW-UP AND VERIFICATION

A. International Commission for Verification and Follow-up

An International Commission for Verification and Follow-up shall be established composed of the Secretary Generals, or their representatives, of the Organization of American States and the United Nations, and the Ministers of Foreign Affairs of Central America, the Contadora Group and the Support Group. This Commission shall have the duty of verification and follow-up on compliance with the commitments set forth in this document.

B. Support for and Facilities of the Mechanisms for Reconciliation and for Verification and Follow-up

In order to strengthen the actions of the International Commission for Verification and Follow-up, the Governments of the five Central American States shall issue declarations supporting its work. These declarations may be endorsed by any countries interested in promoting the cause of freedom, democracy and peace in Central America.

The five governments shall provide all the facilities needed for proper performance of the duties of verification and follow-up by the National Commission of Reconciliation of each country and the International Commission for Verification and Follow-up.

11. SCHEDULE OF EXECUTION OF AGREEMENTS

Within a period of fifteen days from the signature of this document, the Ministers of Foreign Affairs of Central America shall meet as an Executive Commission to establish regulations, promote and make viable the implementation of the commitments contained in this document, and to organize the working committees so that, beginning on that date, the processes that will lead to compliance with the commitments contracted shall be initiated within the stipulated deadlines, by means of consultations, negotiations and any other mechanisms deemed necessary.

Within ninety days following the signature of this document, the commitments relating to amnesty, cease-fire, democratization, cessation of aid to irregular forces or to insurrectional movements, and the non-use of territory for aggression against other states, as defined in this document, shall enter into force simultaneously and publicly.

Within one hundred and twenty days following signature of this document, the International Commission for Verification and Follow-up shall review the progress made in complying with the agreements set forth in this document.

Within one hundred and fifty days, the five Central American presidents shall meet and
shall receive a report from the International Commission for Verification and Follow-up and shall make the pertinent decisions.

FINAL PROVISIONS

The points contained in this document comprise an harmonious and indivisible whole. The signing of the document involves the obligation, accepted in good faith, of complying simultaneously with the agreements entered into within the stipulated deadlines.

The Presidents of the five States of Central America, with the political will to respond to our peoples' desires for peace, sign this document in the City of Guatemala, on the seventh day of the month of August, nineteen hundred and eighty-seven.

OSCAR ARIAS SANCHEZ
President of the Republic of Costa Rica

JOSE NAPOLEON DUARTE
Presidente de the Republic of El Salvador

VINICIO CEREZO AREVALO
President of the Republic of Guatemala

JOSE AZCONA HOYO
President of the Republic of Honduras

DANIEL ORTEGA SAAVEDRA
President of the Republic of Nicaragua

APPENDIX B

THE WRIGHT/REAGAN PEACE PLAN

[The Wright/Reagan Peace Plan, also known as the bipartisan peace plan, was a diplomatic initiative developed jointly by Speaker of the House Jim Wright (D-TX) and President Ronald Reagan.]

Recognizing that the Central American Presidents are about to meet to discuss the issues involved and seek a peaceful solution to the problems in Central America, the United States desires to make known its views on certain of the basic elements that need to be included.

With respect to Nicaragua, the United States has three legitimate concerns for the well-being of the hemisphere:

1. That there be no Soviet, Cuban, or Communist Bloc bases established in Nicaragua that pose a threat to the United States and the other democratic governments in the hemisphere.

2. That Nicaragua pose no military threat to its neighbor countries nor provide a staging ground for subversion or destabilization of duly elected governments in the hemisphere.

3. That the Nicaraguan Government respect the basic human rights of its people, including political rights guaranteed in the Nicaraguan Constitution and pledges made to the OAS [Organization of American States]—free speech, free press, religious liberty, and a regularly established system of free, orderly elections.

Beyond this, the United States has no right to influence or determine the identity of the political leaders of Nicaragua nor the social and economic system of the country. These are matters wholly within the right of the Nicaraguan people. The United States affirms its support for the right of the Nicaraguan people to peaceful, democratic self-determination, free from outside intervention from any source.

In order to bring an immediate end to hostilities and begin a process of reconciliation, we propose the following:

1. An immediate cease-fire in place, on terms acceptable to the parties involved, subject to verification by the OAS or an international group of observers should be negotiated as soon as possible. When the cease-fire is in place, the United States will immediately suspend all military aid to the Contras, and, simultaneously, Nicaragua will stop receiving military aid from Cuba, the Soviet Union, and the Communist Bloc countries. Humanitarian aid can be supplied to both groups. The emergency law will be immediately suspended, and all civil rights and liberties will be restored. An agreed, independent multi-party electoral commission will be established to assure regular elections open to free participation by all. A timetable and procedures for all elections, including those to be supervised and guaranteed by an agreed interna-
tional body, such as the OAS, will be established within 60 days.

2. The withdrawal of foreign military personnel and advisers from Nicaragua and its immediate neighbors that are in excess of the normal and legitimate needs of the region will be subject to negotiations among the countries of the region. The United States will suspend combat maneuvers in Honduras as a demonstration of good faith when the cease-fire is in place.

3. After the cease-fire is in place, negotiations among the Governments of the United States, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua shall begin on reductions in standing armies in the region, withdrawal of foreign military personnel, restoration of regional military balance, security guarantees against outside support for insurgent forces, and verification and enforcement provisions. As part of this negotiation process, the United States shall enter into discussions with the governments of the region—including the Government of Nicaragua—concerning security issues. A regional agreement on security issues shall be negotiated within 60 days, unless this period is extended by mutual agreement. The OAS shall be invited to be signatory to and guarantor of this agreement.

4. A plan of national reconciliation and dialogue among citizens of Nicaragua, including amnesty for former combatants and equal rights to participation in the political process. There shall be a plan of demobilization of both Sandinista and Resistance forces. In accordance with the implementation of this plan, the United States simultaneously shall cease all resupply of Resistance forces. Both the Government of Nicaragua and the Government of the United States shall encourage and support the reintegration of demobilized forces into Nicaraguan civil and political society on terms guaranteeing their safety. Nicaragua shall at this time become eligible for existing and prospective U.S. assistance programs.

5. A plan of expanded trade and long-range economic assistance for the democratic governments of Central America in which Nicaragua might participate. By the process of democratization and compliance with regional nonaggression agreements, Nicaragua would qualify for participation in the Caribbean Basin Initiative, and the United States will lift its economic embargo.

6. The negotiating process shall commence immediately and be completed by September 30, 1987. If the Nicaraguan Resistance, or forces under its command, should refuse to engage in this negotiating process, willfully obstruct its progress, or violate its terms, the United States shall immediately suspend all assistance to the Resistance. If because of actions taken by the Nicaraguan Government or the forces under its command, the negotiating process should not proceed, or its terms, conditions, and deadlines should not be met, the parties to these undertakings would be free to pursue such actions as they deem necessary to protect their national interest.