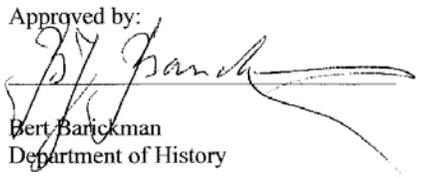


THE BATTLEFIELD OF INTERNATIONAL LAW:
NICARAGUAN RESISTANCE AGAINST UNITED STATES HEGEMONY

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Abstract

This thesis is a study of the way in which developments in international law increased levels of predictability in foreign affairs between the Republic of Nicaragua and the United States of America. The early history of Nicaraguan relations with the United States illustrates the difficulties of predicting American interests and intentions in Latin America without significant developments in international law. Several international agreements will be examined – Clayton-Bulwer Treaty, Hay-Pauncefote Treaty, Bryan-Chamorro Treaty, Organization of American States, and the United Nations – in terms of how each increased the ability of the Nicaraguan government to predict American foreign policy. At the same time, each case will also be analyzed in terms of how the inequitable distribution of power that existed between Nicaragua and the United States affected the results of international in favor of the latter. The presentation will conclude with the United Nations, which represents the most effective solution to mitigating the effects of inequitable distributions of power.

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CHAPTER 1

INTRODUCTION

The early history of foreign relations between the Republic of Nicaragua and the United States of America reveals the importance of international law in achieving a significant level of predictability in foreign affairs. Without signing a treaty with the United States, or gaining membership in an international organization in which the United States was also a member, Nicaragua could not hold the United States accountable for its actions through international law. As a result, American interests and intentions in Central America were extremely difficult to predict, for the Nicaragua government had very little reliable information upon which to refer to. The Monroe Doctrine was the first significant piece of information that provided Nicaragua with an insight into American interests and intentions in Latin America. However, this document itself was unenforceable by any other state except the United States; therefore, the United States government could not be held accountable to this unilateral agreement by another state. However, the establishment of the Clayton-Bulwer Treaty between the United States and Great Britain, which was later replaced by the Hay-Pauncefote Treaty, increased the level of predictability significantly. This bilateral agreement outlined those actions that would be prohibited to both states in Central America; and the Nicaraguan government was fully aware of these limitations to American hegemony. Nevertheless, because the Nicaraguan government was not a signatory to the treaty, it could not hold the United States accountable through international law when the British failed to do so effectively. Even with the establishment of the Bryan-Chamorro Treaty between Nicaragua and the United States, the latter was able to exert its greater political and economic influence over the former, to the extent of determining the application of the treaty on its own. Taking these developments in mind, it is necessary to consider whether

international law is only an extension of the political and economic influence that powerful states already possess. And more importantly, can significant developments in international law, in the form of international organizations, more effectively address the issue of inequitable distributions of power, which has significantly affected the ability of Nicaragua to defend its sovereignty against American hegemony.

The history of Nicaraguan relations with the United States demonstrates the difficulties of establishing predictable foreign policy at the same time that an inequitable distribution of power exists between both states. Treaties increase the level of predictability because they bound the United States to particular parameters of conduct. Participants to a treaty can hold those states that violate the agreement accountable according to international law. The British were in a position to hold the United States accountable for violations of the agreement between them; and this could effectively damage the reputation and credibility of the United States government in the future. However, when the British failed to effectively hold the United States accountable, the Nicaraguan government had very few options because it was not a signatory to the treaty. Even when Nicaragua was able to establish a treaty with the United States, the inequitable distribution of power that existed between both states prevented Nicaragua from effectively holding the United States government accountable for its actions. As a result, the balance of power that existed between both states became the determining factor in the consequences of foreign relations. The overwhelming political and economic influence of the United States limited the options available to the Nicaraguan government. It was only with the formation of the United Nations, and the willingness on the part of the Nicaraguan government to challenge the United States, that the best laid defense for Nicaraguan sovereignty against American hegemony was possible. Thus, even if an inequitable distribution of power exists between two

states, the history of foreign affairs between Nicaragua and the United States suggests that it is possible to achieve high levels of predictability through international law in the form of international organizations like the United Nations.

CHAPTER 2

POWER AND SOVEREIGNTY

Nicaragua achieved its independence as a sovereign state in 1838. A former colonial asset of Spain, the Nicaraguan government did not possess the political and economic means with which to effectively compete with the major powers of the world. Although many countries in Central America effectively achieved their independence, European powers continued to maintain strong economic interests in the region. And a rising power to the north began to spread its influence across the continent with incredible speed: the United States of America. The Nicaraguan government perceived that by utilizing the balance of power that existed between the United States and the various European states, it could effectively curb American interests from encroaching too far into Nicaragua. The early history of foreign relations between the United States and Nicaragua was thus characterized by the attempts of the latter to predict American interests and intentions in the region, and then seek the support of the European power, who still maintained significant interests in Central America. However, the consequences of Nicaraguan foreign policy would be difficult to predict because there were very few pieces of information upon which to comprehend and anticipate the actions of the United States and European powers. Eventually, developments in international law would increase the predictability of American and European interests in Latin America, which would provide more effective tools for the defense of Nicaraguan sovereignty. However, inequitable distributions of power and the failure of the Nicaraguan government to sign a treaty concerning intervention, with either the United States or a European power, severely limited the level of predictability that could be achieved.

The Monroe Doctrine (1823)

Although much of Latin American was able to force off the yoke of colonial dominance throughout the early nineteenth century, many European powers desired to maintain a significant level of influence in the region. Great Britain, the leading industrial and trading power of the world at the time, sought to maintain free trade with the newly independent states of Latin America.¹ Suspecting that Spain and France were conspiring to repossess former Spanish colonial territories, the British Parliament perceived this as a direct threat to British interests in the region. In response, British Foreign Secretary George Canning met with Richard Rush, the U.S. minister in London, in 1823 to discuss the proposition of a joint British-U.S. declaration against the endeavors of Spain and France.² The willingness of both parties to discuss such a proposal is not surprising, considering that thirty years later both governments would codify this agreement in the form of a treaty. However, the United States chose at this time to issue a statement on its own, which was delivered through President James Monroe's annual message to Congress on December 2, 1823.³ Taking into account the fact that the United States issued a unilateral declaration and not a joint-declaration with the British, this suggests that the United States government did not want to be held accountable to the agreement by the British. Had both parties signed the declaration, they would both be bound by the principles therein according to customary international law. Although the agreement was not an official treaty, Great Britain, which was politically and economically more powerful, could exert its influence and compel the United States to abide by the agreement. As a result, the implementation of the agreement would likely be in favor of the British interests.

Arguably, had the United States and Great Britain followed through with the joint-declaration, the Bryan-Chamorro Treaty might not have been necessary. Had both parties been

willing to commit in this form, any details of such an arrangement would have been worked out on an *ad hoc* basis through customary international law. At the time, however, the United States was not strong enough to confront Great Britain and effectively negotiate in favor of its own interests. British interests were very strong in South America; and concessions in favor of the United States that would impede these interests were unlikely to be approved. Ultimately, the United States was the one that chose to forego facing the British from such a disadvantaged position. As a result, the Monroe Doctrine, as President Monroe's declaration came to be known, was a valid option that outlined American intentions to defend Latin America against foreign conquest.

We owe it, therefore, to candor and to the amicable relations existing between the United States and those [European] powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States.⁴

At the same time, because this was a unilateral declaration, and not a treaty with another state, the United States could not be held accountable to the Monroe Doctrine through international law. As Secretary of State John Quincy Adams wrote in his diary concerning a possible joint-

declaration with Great Britain:

By joining with her . . . in her proposed declaration, we give her a substantial and perhaps inconvenient pledge against ourselves, and really obtain nothing in return. Without entering now into the enquiry of the expediency of our annexing Texas or Cuba to our Union, we should at least keep ourselves free to act as emergencies may arise, and not tie ourselves down to any principles which might immediately afterwards be brought against ourselves.⁵

As a result, the Monroe Doctrine served as one of the most flexible tools of American foreign policy in Latin America. The declaration was originally intended to convey American foreign policy in Latin America. The United States could refer to this declaration as justification for defending the principles of Latin American sovereignty against perceived European threats. At the same time, the United States was not obligated by international law to respond to all perceived threats because this was not a formal treaty. And since it was a unilateral declaration, the United States government could not be compelled to abide by the declaration according to customary international law.

Nevertheless, at the time in which the Monroe Doctrine was issued, this declaration was not a very influential document, either to the international community or to policy makers in Washington. While the declaration made the United States unpopular in the eyes of many Europeans, it hardly changed perceptions about the United States' position concerning their foreign affairs in South America.⁶ Many Latin American states were under the perception that the United States, although admired for its political and economic development, could not be trusted to protect their interests.⁷ At the same time, policy-makers in Latin America could not discount the Monroe Doctrine entirely. The importance of the declaration was that it

demonstrated that there were very strong American interests in Latin American, which the United States government was willing to protect against foreign intervention. Although this did not reveal what those interests were or to what extent they were willing to defend them, this was nevertheless an indication that the United States had a vested interest in the integrity of Latin American sovereignty. This presented a very serious problem for policy-makers in Latin America. If the United States could not be held accountable to the Monroe Doctrine according to international law, then the interpretation of that document inevitably belonged entirely to the United States government. What constituted intervention in Latin America by a foreign power depended entirely upon the interpretation of the United States government. And what course of action was deemed proper, and under what conditions, was contingent on what was deemed proper by the United States government. As a result, the Monroe Doctrine, as a unilateral agreement, did not increase predictability in foreign affairs between the United States and Latin America by much.

Over the next twenty years, the Monroe Doctrine remained in relative obscurity, both in the United States and Europe, although the original message remained in the minds of those involved. In 1824, Brazil and Columbia, fearing a perceived threat from the Holy Alliance (Russia, Austria, and Prussia) to intervene in Latin America, sought to codify the Monroe Doctrine through a treaty with the United States. This eventually availed to nothing because the United States government claimed that it could not commit to such an agreement unless it included the British.⁸ This attempt to codify the principle contained within the declaration reiterates an important aspect of international relations: behavior is more difficult to predict outside of international law. The Monroe Doctrine was a declaration of principles, which could be interpreted by other countries to predict American interests and intentions in Latin America.

However, because the United States was not bound by these principles according to a treaty, or in an agreement with another state, they could not be held accountable if others perceived that they were not acting according to the declaration. Nicaragua, like Brazil and Columbia, would learn the importance of international law, in the form of a treaty, as a tool for predicting foreign affairs with the United States.

British Seizure of San Juan del Norte (1848)

In 1847, a British warship delivered an ultimatum to Nicaragua demanding that all Nicaraguans in San Juan del Norte vacate the port-town. The British claimed that they were defending the interests of the Miskito king, who had been appointed by the British Parliament.⁹ Although the Nicaraguan government had never accepted the British protectorate over the region of the Miskito coast, it was in no position to prevent the British from implementing their claim. Having no other foreseeable choice but to comply, the Nicaraguans evacuated the port-town and the surrounding areas of the protectorate. The Nicaraguan government recognized that this imposition could not go unchallenged, for the Miskito territory contained a very important asset: the port-town of San Juan del Norte. Nicaragua received \$100,000 in annual income from the customs duties of the port – one of their few sources of revenue.¹⁰ Realizing that Nicaragua alone would not be able to challenge British interests, the Nicaraguan government used the few pieces of information that were available. Nicaraguan policy-makers recognized that they could possibly convince the United States government to intervene, according to the principles of the Monroe Doctrine, if they could provide an incentive to American interests: namely, a canal that incorporated San Juan del Norte.

Since the early sixteenth century, speculation about the construction of a canal linking the

Atlantic and Pacific Oceans – through San Juan del Norte and into Lake Nicaragua – had given rise to several serious considerations for its construction in the early nineteenth century. Although these numerous endeavors had eventually failed for one reason or another, the discovery of gold in California, as well as evident expansionist tendencies (i.e. Mexican-American War of 1846-1848, annexation of Texas in 1845), made the construction of a canal in Nicaragua a lucrative option.¹¹ And this is precisely why the British seized San Juan del Norte in the first place. To the point of view of the Nicaraguan government, American interest to construct a canal in Nicaragua seemed incentive enough for the United States government to intervene on their behalf. Nicaraguan minister of foreign affairs Pablo Buitrago sent a message to U.S. Secretary of State James Buchanan requesting that the United States, as “the natural protector of all the States of the Continent,” assist the sovereign state of Nicaragua against the British occupation.¹² The Nicaraguan government believed that it understood the connection between American foreign policy ideology (Monroe Doctrine) and foreign policy interests (a canal in Nicaragua). In fact, the request was reiterated by Nicaraguan Chief of State José Guerrero, referring specifically to the Polk Administration’s reassurance of the Monroe Doctrine in 1845.¹³ However, Washington failed to respond with a definitive answer, only stating that the United States government would consider their request.¹⁴ There are several reasons why the United States government sent this response. Public opinion in the United States was strongly against the Mexican-American War; and with the coming election in mind, President Polk was seemingly unaware of the circumstances in Nicaragua.¹⁵ These events once again demonstrate that the Monroe Doctrine was not intended as a grand ultimatum against European intervention in the American continents. The United States government wanted to claim Latin America as a sphere of influence; however, it did not want to be bound by its own declaration. Rather, it to

determine what warranted intervention for itself.

The Nicaraguan government made the error of mistaking political position for active intention. One could conclude that this was a result of Nicaraguan naiveté to the realities of the international political system. But it should be made clear that the Nicaraguan government's efforts to predict American reaction to the British occupation of San Juan del Norte was based on the Monroe Doctrine, a declaration that was unenforceable as international law. The declaration did not have the same parameters that are attached to treaties, which have written and agreed upon stipulations for what is permitted and what is not. And because such a unilateral agreement does not include any other states except the one that issued it, no other state could enforce the declaration as customary international law. The Nicaraguan government correctly predicted that the United States was interested in defending Central America against foreign intervention; however, what remained unclear was to what extent American intervention would act on their behalf. The Monroe Doctrine did not reveal the manner in which intervention would be conducted and under what conditions. However, after the territorial dispute over the lands west of the Mississippi had been settled by the Mexican-American War, the United States renewed its interest in an overland passage through Central America. And this would lead to a treaty between the United States and Great Britain that would significantly improve the ability of the Nicaraguan government to predict American interests and intentions in Central America.

Clayton-Bulwer Treaty (1850)

Although the United States government did not respond directly to Nicaragua's request for assistance against the British, President Polk sent Elijah Hise as charge d'affaires for Central America with the mission of assessing the possibilities of friendly relations with the several

states.¹⁶ Hise proceeded to negotiate a treaty with Nicaragua that gave the United States control of San Juan del Norte and Lake Nicaragua for the express purpose of constructing a canal.¹⁷ The treaty (Hise-Selva) also gave the United States the authority to own any transit route perceived as necessary, whether it was through water, road, rail, or any combination of these, as well as acquiring the materials from Nicaragua free of charge. Nicaragua would have to cede all lands deemed necessary for the completion of the canal. And the United States alone would own the rights to the charter for construction and operation of the transit facilities. Most importantly, the treaty gave the United States the right to establish fortifications at the ends and along the sides of the proposed canal, with the discretion to assign as many troops as deemed necessary by the United States. In exchange, the United States government offered Nicaragua what they wanted: the defense of Nicaraguan territory.¹⁸ Hise believed that Nicaragua desperately wanted and needed the protection of the United States; he thought that the Nicaraguan government would even be willing to sacrifice its national sovereignty in exchange for it.¹⁹ However, the United States government chose not to accept the Hise-Selva Treaty because it would have placed it in a direct collision course with Great Britain.²⁰ Nevertheless, the reality was that American citizens continued to pour into Nicaragua; and the continuing pressure for a transit route through the country necessitated that certain arrangements be made with the British.

The necessity to establish a more predictable environment for American and British interest to be exercised in Central America led to the Clayton Bulwer Treaty of 1850. The treaty addressed the specific concern that the British would continue to intervene against American interests in Nicaragua. And the treaty satisfied the British concern that the United States would expand its political and economic influence throughout Central America, which could cut off British trade connections to the region. Neither the British nor the United States desired a direct

military confrontation. The United States lacked the necessary resources with which to confront the military might of Great Britain. And the British Parliament did not desire to commit vast resources to a confrontation when British interests could be satisfied through negotiations.

Article 1 of the Clayton-Bulwer Treaty was extremely important because it specified that neither side could establish fortifications commanding a canal (if and when they are built); and direct occupation or colonization of any Central American state would not be permitted.

The Government of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America...²¹

Control of a canal in Central America meant control over the flow of trade and economic resources for much of the region. As a result, an attempt by either party to “exercise dominion” over a Central American state would be perceived as a threat to the interests of the other. How the parameters of the treaty would be implemented in practice, however, was still to be determined.

The Filibuster War (1854-1857)

On the morning of July 13, 1854, the American warship *Cyane* bombarded San Juan del Norte, effectively destroying the city and millions of dollars in Nicaraguan, American, and European property.²² The attack was a response to the insult committed by Nicaraguan officials

against an American foreign minister, who was placed under house arrest for quarreling with Nicaraguan authorities.²³ However, because this attack occurred in Mosquito territory, this was not a major concern to the Nicaraguan government. In fact, it perceived that the presence of U.S. Marines the year earlier was a sign that the United States was finally going to repel the British. However, when the Marines first arrived in Nicaragua, their orders were only to protect Cornelius Vanderbilt's Transit Company.²⁴ With the destruction of San Juan del Norte and the refusal of the United States to repel the British, the Nicaraguan government recognized that American intervention was unlikely to occur in their favor. Although the destruction of San Juan del Norte was deplored by the international community, the British Parliament, which could legally enforce the conditions of the Clayton-Bulwer Treaty, did not act against the United States. In fact, the British were too invested in the Crimean War at the time to adequately respond to the American incursion.²⁵ Nicaragua was not a signatory to the Clayton-Bulwer Treaty, so they could not legally enforce the agreement as international law. If the British would not enforce the agreement, then this opened the door for American interests into Nicaragua, which could affect the potential for predictability that the treaty represented.

When Nicaragua became embroiled in one of the continuous civil wars between the Conservatives in Granada and the Liberals in Leon, this presented a lucrative opportunity for the implementation of a plan that could circumvent the Clayton-Bulwer Treaty. In order to gain an upper-hand, the Liberals hired William Walker, an ambitious military-colonist, and three hundred other Americans. Although smaller in number, the American's superior arms – and a lot of luck – led to the seizure of Granada by the Liberals, after which the Conservatives surrendered.²⁶ As soon as this was completed, however, Walker took the opportunity and seized the Nicaraguan presidency. Relying on the economic support of Vanderbilt's Transit Company

and the military superiority of their modern weapons, Walker managed to effectively maintain power.²⁷ Eventually, the Nicaraguan Conservatives, supported by Conservative governments in Guatemala, Honduras, and Costa Rica, led an armed coalition that finally removed Walker from power. Walker himself escaped with the assistance of the United States government, which sent the *St. Mary*, under the command of Charles E. Davis, to accept the surrendering American citizens.²⁸ These events demonstrate that the Clayton-Bulwer Treaty did not effectively increase predictability in foreign affairs between Nicaragua and the United States because the British failed to adequately respond to American breaches of the agreement. If Great Britain did not react to American actions as violations of the treaty, then these incursions were, in practice, in accordance with the agreement – or rather, not against it.

Hay-Pauncefote Treaty (1901)

The perils and costs of the Filibuster War demonstrated to the Nicaraguan government that predictability in foreign affairs with the United States was still extremely difficult. The Clayton-Bulwer Treaty evidently proved useless as a tool of international law to counter the filibusters. The Nicaraguan government asked for the aid of foreign powers, thinking that many European states would perceive Walker's incursions and rise to power as a threat to their interests. The British and the French governments did agree to send warships with the intention of stopping any further filibuster attempts into Nicaragua; however, these negotiations stopped short of a treaty between Nicaragua and any European state.²⁹ Just as the United States did not want to be bound by the Monroe Doctrine, the European powers did not desire military intervention to be a condition of an agreement with Nicaragua. The presence of British and French ships guarding Nicaraguan ports had a profound effect, for they prevented Walker from

receiving supplies from the Atlantic coastal region.³⁰ Without a mandate to actively pursue and defeat the filibusters, however, the British and the French could not help the Nicaraguans. For months the Nicaraguan government pressed Washington for a guarantee that the United States government would no longer allow filibuster expeditions into Nicaragua, even offering the United States the authority to send in Marines to guarantee American citizens and property.³¹ These negotiations over the American right to protect transit routes across Nicaragua developed into the Cass-Irissari Treaty. However, the intervention of the American Civil War led to the dismissal of the treaty before either party had signed it. And for the next thirty years Nicaragua would be left in relative peace as the United States engaged in the reconstruction of the country after the war.

However, once the wounds of the country had been healed by the end of the nineteenth century, renewed interests in a passage through Nicaragua rekindled American prospects for a canal. With domestic pressure to construct a canal transit system in the isthmus of Nicaragua, the United States and Great Britain agreed to re-draft the Clayton-Bulwer Treaty.³² This led to the signing of the Hay-Pauncefote Treaty, which effectively superseded the Clayton-Bulwer Treaty of 1850. The new treaty established that the United States alone had the exclusive right to construct the canal in Nicaragua. Once the canal was completed, the United States would have the sole authority over its protection and maintenance, under the condition that it remains a free and open port.

The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation or its citizens or subjects, in respect of the conditions or charges of traffic or otherwise. Such conditions and charges

of traffic shall be just and equitable... The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder...³³

What is particularly important about the Hay-Pauncefote Treaty is that there was no explicit mention prohibiting the establishment of fortifications as part of the agreement for American protection of the canal. And this presented an open question that would later cause problems for American interests in Central America. At the same time, the treaty did offer a unique piece of information, which could possibly increase the predictability of American interests and intentions in Nicaragua. The treaty established that only “military police” could be established in Central America to protect the canal. Under the agreement, no state was permitted to commit an act of war or aggression within the canal region inside Nicaragua, effectively declaring the proposed canal as a “neutral zone.” And this was a piece of information that could possibly help the Nicaraguan government to effectively curb American interests in Nicaragua.

Predictability

Early Nicaraguan foreign relations with the United States revealed that effectively predicting American interests and intentions in Central America would be extremely difficult. Without significant developments in international law, the Nicaraguan government had very little information upon which to base predictions of American conduct in the region. That is, there were no treaties or agreements concerning intervention in Latin America. The only document available, the Monroe Doctrine, was a unilateral declaration issued by the United States

government, which was not applicable as international law. The establishment of the Clayton-Bulwer Treaty between the United States and Great Britain established parameters of conduct for relations in Central America; however, because the Nicaragua government was not a signatory to the treaty, it could not hold the United States accountable to the agreement. With little or no other options available through international law, an alternative to American intervention failed to develop. At the same time, the Nicaraguan government perceived that the Hay-Pauncefote Treaty could still be used to predict American interests and intentions in Central America. And Nicaragua continued to pursue other alternatives that could provide a more effective defense against American hegemony in the region.

CHAPTER 3

INTERNAL REVOLUTION

Although international agreements generally increased the level of predictability of international relations in Central America, the overwhelming political and economic influence of the United States limited the extent to which this was achieved. The failure of the Nicaraguan government to establish a treaty with the United States significantly impaired predictability of foreign affairs between both states. As a result, succeeding Nicaraguan governments chose to sacrifice Nicaraguan sovereignty in order to attain that which had not been possible through international law: the ability to predict the conditions and extent of American intervention. Part of the agreement included maintaining a military presence in Nicaragua, which would help to maintain stability in the country and protect American interests. Eventually, this symbiotic relationship would develop into the Bryan-Chamorro Treaty, which established the conditions for a military presence in Nicaragua and the rights to the construction of a canal in the country. However, the inequitable distribution of power that existed between both countries would consistently place Nicaragua at a disadvantage. And the rise of rebel forces within Nicaragua would demonstrate that a significant portion of the Nicaraguan people were unwilling to live under these conditions any longer.

Central American Court of Justice (1902)

Following the signing of the Hay-Pauncefote Treaty between Great Britain and the United States, events in Latin America tested the new balance that had been arranged through this bilateral agreement. In 1902, Honduran troops crossed illegally into Nicaraguan territory, in an alleged attempt to pursue Honduran rebels. The Nicaraguan government, under the

administration of José Santos Zelaya, elected in 1893, did not respond with military reciprocation. Instead, reparations were sought through the Tribunal of Central American Arbitration, which had been established by the Corinto Pact of 1902, for the alleged murder of several Nicaraguan soldiers as a result of this incursion.¹ At the time, the International Conference of American States in Mexico City (1902) was the only other international legal framework in which interstate conflicts such as this could be addressed; however, this forum was limited to treaties and conventions on extradition and protection against anarchy, private and international law codes, and the rights of aliens with compulsory arbitration.² There was no jurisdictional precedent, much less the capacity to enforce a decision according to international law. As a result, the Tribunal of Central American Arbitration represented the only legitimate and readily available alternative to third-party arbitration by the United States within Latin America. It was the only international organization available to Nicaragua with the capacity to implement international law, which directly challenged the United States' self-proclaimed role as the police force and peacekeeper for the region. However, the Tribunal was neglected as a viable option for a resolution, and tensions between Nicaragua and Honduras escalated to the point of war. When Nicaraguan forces effectively defeated the Honduran army at the Battle of Namasigue, the United States sent in ships and the Marines to protect the banana companies operating in the region.³ Although the United States intervened militarily to prevent the complete destruction of the remaining Honduran forces, and established a military cease-fire to end the war, Zelaya perceived these victories as an indication that Nicaragua was strong enough to unify Central America.⁴ The last seventy years since independence had demonstrated to the Nicaraguans that effectively opposing the United States was perilous and extremely difficult.

Nevertheless, the hope that American interests could be curbed remained strong among many of the political elements within the Nicaraguan government, and the general population.

A military solution to the problems of Central American was still a viable option in the eyes of Nicaragua; however, forced unification would lead to the unavoidable confrontation with the interests of the United States. When Zelaya implemented a foreign policy to support the rebel movement in El Salvador, as a means of removing the political resistance to unification within that country, Guatemala and El Salvador enabled preparations to forcefully march through Honduran territory and attack Nicaragua in retaliation.⁵ As a result, Zelaya called for mediation to be conducted by the United States and Mexico, which led to the Central American Peace Conference in Washington (1907). The conference resulted in the signing of nine treaties, the most important of which was the General Treaty of Peace, which made it illegal to intervene within another country's civil war, prohibited the recognition of a government arising out of revolution, and denied political exiles the right to settle in border areas of the country from which they were expelled.⁶ This was a very significant development because it was an indication that the Nicaraguan government, and the other Central American states, recognized the importance of committing to a multilateral agreement to ensure peace in the region – as well as the importance of achieving significant levels of predictability.

The Third International Conference of American States in Rio de Janeiro (1906) had been held only the year before; however, the problem with these conferences was that they were limited primarily to matters of trade and commerce, such as the Convention on Pecuniary Claims and the Convention on Naturalized Citizens.⁷ The importance of the Central American Peace Conference in Washington, however, was that it established the Central American Court of Justice, to which five Central American states pledged to accept its jurisdiction and to submit all

conflicts that could not be resolved through normal negotiations.⁸ The Court of Justice represented the potential for substantially increasing the level of predictability of international relations within the region. When the Court of Justice absolved El Salvador and Guatemala of accusations made against them by Honduras, all parties recognized and abided by the decision of the court.⁹ If this relationship between the consenting states and the Court of Justice could be maintained, predictability in the course of international relations could be greatly increased when a conflict threatens the peace. At this point in time, the Court proved to be an effective alternative to United States intervention because it was much more predictable. The Court of Justice did not possess particular political agendas like the United States, except to provide a forum for arbitration and the peaceful resolution of conflicts. And the five consenting states had agreed to the same parameters of conduct and procedure. As a result, each could more effectively predict how another state would act when a conflict developed because they had all agreed to the same set of parameters for peaceful resolution according to the jurisdiction of the Court of Justice. At the same time, the fact that the United States had not signed the agreement – even though they politically supported it – introduced an unstable element into the equation.

Although the Central American Court of Justice was an important step in the development of greater levels of predictability, the inability to hold the United States accountable to the court's jurisdiction left Nicaragua without the alternative of bringing the United States to the court. When the Nicaraguan government charged the George D. Emery Company, operating within Nicaragua, of failing to abide by the stipulations for logging and imports that had been established pursuant to the agreement, the United States government responded by accusing the Zelaya government of being responsible for the troubles of Central America, and culpable of other crimes against its own people.¹⁰ Although the matter was eventually settled, this would

demonstrate to Nicaragua that any multilateral agreement that did not include the United States could impede significant levels of predictability. When Emiliano Chamorro and Adolfo Díaz led a rebellion against the Zelaya government, American businessmen in Nicaragua began lending financial support to the rebels; a few American citizens even participated in the actual combat against the Nicaraguan government.¹¹ When Lee Roy Cannon and Leonard Groce, two American citizens who participated in the fighting, were arrested and executed by the Nicaraguan government, the United States broke off diplomatic relations, declaring that the Zelaya government had violated the Washington Accords of 1907 concerning the protection of foreign citizens.¹² Although the United States public declared neutrality concerning the conflict between Zelaya and the Nicaraguan insurgents, the United States government continued to supply arms to the rebels.¹³ The prospect of a protracted war against an enemy logistically supported by the United States convinced Zelaya that the only viable option was to resign. His successor, José Madriz, was now faced with the landing of U.S. Marines and the declaration of Bluefields as a “neutral zone,” which effectively cut off supply lines to the Atlantic and prevented the Nicaraguan army from retaking those areas.¹⁴ Fighting a seemingly hopeless battle in which the Nicaraguan government could not bring the United States to the Court of Justice, Madriz resigned his presidency in 1910.

The fall of Zelaya signaled a new direction in Nicaraguan foreign policy that was more reactive to the practicalities of international relations with the United States. The Nicaraguan government was replaced by a military regime under General José Dolores Estrada, who led the rebels in battle against Zelaya. Shortly after the fall of the Zelaya government, Juan José Estrada, who was handed the presidency by his brother, José Dolores Estrada, sought the recognition of the United States government; a tradition that would continue to the end of the Somoza regime in

the 1970s. This foreign policy was based upon the perception that, in order to defend Nicaraguan sovereignty against United States intervention, Nicaragua would have to sacrifice its sovereign right to self-determination. The United States agreed to recognize a new Nicaraguan government on the condition that a Constituent Assembly would be established to elect a president – an agreement that became known as the “Dawson Pact.”¹⁵ Shortly thereafter, the political rivalries that had plagued Nicaragua since independence once again surfaced. In 1911, Luis Mena marched upon Managua; without consulting the United States first, Juan José Estrada promptly arrested him. Because Estrada failed to consult the United States government, this was perceived as a violation of the “Dawson Pact” in Washington.¹⁶ As a result, the United States government refused to intervene on Juan José Estrada’s behalf, and he was forced to resign, leaving Adolfo Díaz in command. These events foreshadowed the difficulties that Nicaragua would experience only two years later. International law is meaningless in practice unless it is enforced. Thus, any bilateral agreement requires that both parties consistently hold the other accountable to the agreed upon parameters, for they are the only ones who can legally enforce the agreement as international law. At the same time, how could Nicaragua uphold its own interpretation of an agreement if the United States was vastly superior in strength? Nicaragua was not in a position, militarily or politically, to challenge the United States through bilateral diplomacy in order to curb attempts to interpret the stipulations of a bilateral agreement according to American interests.

In the same way that the United States’ support of the Nicaraguan rebels against Zelaya prompted him to resign, General Mena soon found himself facing the inevitable reality that he was facing a government supported by the might of the United States. In 1912 Mena’s forces seized part of a railroad owned by an American company. In response, the United States sent in

three thousand sailors and Marines, supported by eighty warships off the Atlantic Coast, to protect American property and lives – they even repelled a rebel assault in Bluefields.¹⁷ Mena was eventually forced to surrender in the face of such military superiority. Díaz won the election in 1912, and proceeded to initiate a state of martial law in order to prevent any resurgence of rebellion. The United States, according to an agreement with Díaz, maintained a garrison of one hundred Marines in Nicaragua as a demonstrating of support for the newly elected Díaz administration.¹⁸ The new government recognized the importance of United States political recognition and military support, continuing the tradition established by Juan José Estrada when he sacrificed Nicaraguan sovereignty for national security. However, Diaz would take this a step further by merging the interests of the United States and Nicaragua according to a bilateral agreement.

Bryan-Chamorro Treaty (1914)

With the Marine presence in Nicaragua serving as a demonstration of the political recognition and support of the United States government, the Nicaraguan government relied upon American military intervention to resolve internal threats to the government. Any revolutionary elements within the country would have to contend with a Nicaraguan government that was supported by U.S. Marines. The American interest for maintaining such a strong presence in Nicaragua at the time was rooted in the concern that foreign powers would attempt to establish a canal in Nicaragua, which could compete with the recently operational canal in Panama, owned by the United States.¹⁹ Although the United States government did not have any serious intention of construction a canal in Nicaragua, the Nicaraguan government continued to believe that it could somehow use this to barter an agreement with the United States. Perhaps it

could not prevent American military intervention, but it could at least negotiate the conditions under which it would take place. When both sides met at the negotiating table, the result was the drafting and signing of the Bryan-Chamorro Treaty of 1914:

The Government of Nicaragua grants in perpetuity to the Government of the United States, forever free from all taxation or other public charge, the exclusive property rights necessary and convenient for the construction, operation and maintenance of an intervocalic canal by way of the San Juan River and the great Lake of Nicaragua or by way of any route over Nicaraguan territory To enable the Government of the United States to protect the Panama Canal and the propriety rights granted to the Government of the United States by the foregoing article . . . the Government of Nicaragua hereby leases for a term of ninety-nine years to the Government of the United States . . . it being expressly agreed that the territory hereby leased and the naval base which may be maintained under the grant aforesaid shall be subject exclusively to the laws and sovereign authority of the United States.²⁰

The conditions of the treaty reveal several changes in Nicaragua foreign policy that demonstrate the Nicaraguan government's acceptance that the country would not be able to curb American interests through a direct confrontation. The treaty essentially granted the United States the right to exclusively construct a canal and establish a military presence in order to better guarantee Nicaragua's defense. Díaz and succeeding administrations until the fall of Somoza may have been extremely corrupt; however, they exemplified the recognition that acquiescing to American interests was one way of guaranteeing the survival of the Nicaraguan government. At the same time, they did not want to sacrifice so much that they could not effectively control and govern

their own country. These compromises were a means of achieving political survival in the face of internal and external threats. Eventually, the majority of the political elements within the Nicaraguan government, both the Conservatives and the Liberals, would come to accept this symbiotic relationship. And they would discover not only the benefits of protection from the United States, but also discover the risks of aligning themselves through a bilateral agreement in which they were negotiating from a disadvantaged position.

Events shortly after the signing of the treaty would define how this bilateral agreement had changed international relations in Central America. According to the treaty, the Nicaraguan government permitted the United States to establish a naval base in the Gulf of Fonseca. Many Central America states perceived the proposal of an American base in this location as a threat to national security, which prompted Costa Rica and El Salvador to bring the issue to the Central American Court of Justice. The court ruled that, although it could not nullify the Bryan-Chamorro Treaty, it did find that the rights of Costa Rica and El Salvador had been injured.²¹ It therefore instructed the Nicaraguan government to provide compensation and reparations in accordance to international law.²² As established previously, both the prosecuting states and Nicaragua had agreed to the jurisdiction of the court, and to respect and abide by its decisions. And the reason that this is a practical principle of international law is that, if a state reneges on its commitment, the credibility of that state will be damaged. And this may even result in a retaliatory response by those states that perceive this as directly hurting their own interests, whether or not they are a party to the treaty. That is why international law, for the most part, has functioned without international legal entities to enforce agreements between states.

At the same time, this assumes that a participating country does not have more to gain by refusing to cooperate. And this also assumes that there is parity among the parties involved; a

condition without which retaliation would be a futile gesture. That is why the Nicaraguan government, with the full support of the United States, ignored the decision of the Court of Justice. As a result, this effectively undermined the court's jurisdiction in the region; a defeat from which the court would never recover.²² This once again demonstrates the weaknesses of multilateral agreements concerning Nicaragua in which the United States is not a signatory. Even had the United States signed the agreement, however, it was still strong enough to challenge the other parties in the agreement and enforce its own interpretation of the treaty. At the same time, what the United States could not escape in such a situation was the political reciprocation by the international community, which could seriously damage the political credibility of the United States. But as yet no such multilateral agreement had been established, the United States government did not have to face these consequences. The reputation of the Nicaraguan government was damaged by these proceedings; however, the importance of acting according to the instructions of the United States government took precedence over such consequences. As a multilateral agreement, the jurisdiction of the Central American Court of Justice was effective because it increased predictability of international relations in Central America. At the same time, the failure to include the United States as part of this agreement introduced an unstable element that limited the extent to which predictability could be increased.

The United States government was committed to the agreement in the Bryan-Chamorro Treaty; however, maintaining a Marine presence in Nicaragua had become an undesirable and expensive solution to protecting American interests in the region. As a result, the United States began planning with the Nicaraguan government for the creation and maintenance of a National Guard (Guardia Nacional), which would assume the role of the Marines by maintaining peace and stability in the country.²⁴ With the commitment of the Nicaraguan government to defend

American interests within the region, the Guardia Nacional would effectively be under the indirect control of the United States government. However, no sooner had the Guardia Nacional begun its training, and the Marines disembarked, that in 1912 Emiliano Chamorro seized the fortress of La Loma, overlooking Managua, and forced President Carlos José Solórzano and Vice President Juan Bautista Sacasa to resign.²⁵ Then he conspired his way back to the presidency of Nicaragua. This presented a particular problem for United States recognition of the Nicaraguan government, for Chamorro had risen to power unconstitutionally. Although this had not been an issue of much concern in the past, the persistent efforts on the part of the United States to establish democratic principles and procedures in Latin American countries began in earnest with the “Dawson Pact.” It would thus be difficult to defend American efforts to establish democracy in other Latin American countries if they recognized an unconstitutional administration within a country in which the United States had pursued these same democratic reforms. As a result, the United States implemented a policy of “benevolent non-recognition”: It neither recognized the Chamorro government, nor did it publicly interfere on behalf of Sacasa and bring him back to power as the constitutional leader.²⁶

The United States government recognized that it needed to reestablish its dominant presence in Nicaragua by supporting the Chamorro administration in order to maintain its control. U.S. Marines once again entered Bluefields and participated in the suppression of a rebellion, and the establishment of a weapons embargo to prevent rebels from purchasing weapons across the United States border.²⁷ Eventually, Chamorro realized that the rebellion could not be easily suppressed without the help of the United States, so he decided to relinquish his presidency back to Díaz in 1926. In exchange, the United States agreed to recognize the Nicaraguan government. As a result, the United States expanded the “neutral zone” in Bluefields

to include many cities and towns across the Atlantic Coast, denying the rebels a base of supplies.²⁸ U.S. Marines were sent into the region with orders to defend the “neutral zone.” In the face of a protracted and seemingly futile war against a government supported by the United States, the Liberals (Constitutionalists) agreed to end their insurrection if certain conditions were met. The United States agreed to supervise the 1928 presidential elections; the Liberals would be granted appointments in the new government; and the Guardia Nacional would become a non-partisan military organization.²⁹ The Marines, however, would continue to remain on Nicaragua soil.

The international legal mechanisms that were available to Nicaragua at the time were insufficient as a means to defend Nicaraguan sovereignty against United States hegemony. The Fifth International Conference of American States in Santiago de Chile confirmed the existence of a Union of American Republics, which allowed for the election of the chairman by the union, no longer reserved exclusively for an American.³⁰ And this conference also eliminated recognition by the United States as a condition for membership. This second phase of the Pan-American movement was more effective in advancing the interests of the Latin American countries. Numerous other agreements, such as the Treaty to Avoid or Prevent Conflict between American States (Gondra Treaty), and the General Treaty of Inter-American Arbitration, were signed. At the same time, this did not change the reality that the United States still possessed the greatest political and economic influence within the Union of American Republics.³¹ Because the union itself more a coalition of states than an international organization, its enforcement capabilities were very limited. Nevertheless, the United States was unlikely to permit regional organizations too much breathing room, for this could interfere with American foreign policy interests in the region. The Nicaraguan government had joined the League of Nations when it

was formed in 1919; however, because the United States did not participate, the Nicaraguan government was compelled to seek regional solutions. Without many other alternatives, the Nicaragua government had chosen to sacrifice Nicaraguan sovereignty in exchange for greater levels of predictability, which had not been possible through multilateral agreements. However, this nevertheless placed Nicaragua in a position that was subservient to the changing policies of the United States. And this would continue to make predictability of international relations within the region extremely difficult.

Sandino's Army for the Defense of National Sovereignty (1928-1932)

The Nicaraguan government was responsible for sacrificing Nicaraguan sovereignty in exchange for political stability. Although the Bryan-Chamorro Treaty was an extension of this arrangement in the form of international law, the effect was that there was an increased level of predictability. At the same time, the extent to which this was possible was still severely limited because an inequitable distribution of power existed between Nicaragua and the United States. And American influence over Nicaraguan affairs would become a very serious issue as certain portions of the population fought to curb this control. A few elements in the rebellion that rose up against Díaz refused to capitulate to the terms of the peace agreement. When the Espino Negro Act (known in the United States as the Treaty of Tipitapa), the peace treaty between the Nicaraguan government and the rebels, was revealed to exclude any mention of the removal of the U.S. Marines out of Nicaragua, a small number of rebels, led by Augusto Cesar Sandino, continued the struggle against the Nicaraguan government.³² Sandino's forces seized and occupied the American owned mine in San Albino. In response, the United States government sent an ultimatum: surrender or the Marines will be deployed.³³ In a bold and dangerous move,

Sandino instead seized the opportunity and attacked the Marine garrison stationed at Ocotal. Although the attack was of limited success, it served as a demonstration that the United States could not guarantee the security of Nicaragua.³⁴ To the dismay of the United States and the Nicaraguan government, Sandino's insurgency gained support, using the cover of the jungle and the support of rural populations to continue their activities.

Sandino used this opportunity to present the United States with an ultimatum of his own: the rebellion would not end until all American forces were off Nicaraguan soil.³⁵ With the concern of the coming 1929 election, however, the United States instead increased the troop presence to six thousand and established forty-eight garrisons. The United States government, optimistic that the new Nicaraguan government under José María Moncada could effectively reform the Guardia Nacional, was willing to remove the Marines presence – when the time was right.³⁶ Sandino, however, wanted to send the message to the United States and Moncada that the Marines presence could not be tolerated for another day. The rebel forces began targeting those who asked for protection from the United States, leaving those who did not in peace. The intention of these actions was to provide an incentive against sacrificing self-respect and freedom in exchange for American authoritarianism and the promise of protection.³⁷ Realizing that the Marines were not an effective solution to the insurgency, the United States government, pressured by the costs of the military presence and repeated tactical failures, prepared to withdraw the American forces.³⁸ As a result, the day after the 1932 election, the last U.S. Marine withdrew from Nicaraguan soil. In accordance with his declaration, Sandino met with Juan Bautista Sacasa, the new Nicaraguan president, to negotiate a peace agreement and end the insurgency. However, the potential for significant internal change in favor of a more democratic

Nicaragua was silenced when Sandino, betrayed by Anastasio Somoza García, was assassinated by the Guardia Nacional.³⁹

Nicaragua would continue to be governed according to the symbiotic-relationship that was now dominating Nicaraguan foreign policy with the United States. Using his position as the commander of the Guardia Nacional, Anastasio Somoza García forced Sacasa to resign. After winning the election in 1936, Somoza immediately sought and attained the recognition of the United States government. In return, he offered to bring about democratic conditions in Nicaragua according to the designs of the United States government.⁴⁰ Like the leaders before him, he was willing to sacrifice Nicaraguan sovereignty in exchange for the political support and military protection of the United States. The possibility that he would no longer serve a purpose for the United States government was always a risk, which had ended the careers of many of the presidents before him. However, Nicaraguan history demonstrated that it was a greater, and much more certain, risk to openly oppose the United States. The fall of Zelaya only thirty years before served as a vivid reminder. At the same time, the end of the Second World War witnessed the emergence of significant developments in international law. And the formation of international organizations, such as the Organization of American States and the United Nations, would present Nicaragua with one of the best hopes for effectively curbing United States hegemony in the region.

Inequitable Distribution of Power

The development of multilateral agreements in Latin American provided more effective means of predicting American interests and intentions in Nicaragua. However, due to internal changes within Nicaragua, and the external influence of the United States government, regional

entities such as the Central American Court of Justice failed to provide an alternative to American intervention. The overwhelming factor was that the United States continued to possess greater political and economic influence over Latin America, which inevitably affected those institutions within the region that could help Nicaragua resist American hegemony. The Nicaraguan government was able to bind the United States to the parameters of the Bryan-Chamorro Treaty, which increased the level of predictability. However, this was only accomplished by sacrificing Nicaraguan sovereignty. And because the United States still possessed greater political and economic influence, Nicaragua was at a disadvantage whenever they met at the negotiating table. The case of Nicaragua demonstrates that bilateral agreements between states with a significant difference in the balance of power tend to be implemented in favor of the stronger party. This is part of the reason why, even after the signing of the treaty, the United States was able to utilize the stipulations of the agreement to intervene on behalf of or against the Nicaraguan president. The Pan American movement had resulted in the signing of numerous multilateral agreements; however, the same problem continued to limit the level of predictability that could be achieved: If the United States does not sign the agreement, they cannot be held accountable according to international law. Strong and effective multilateral organizations in the Americas had not developed yet. So even if the United States had signed agreements – or those that they had signed – these organizations, like the Central American Court of Justice or the Union of American Republics, were not strong enough in their construction. At the same time, these developments in international law, although limited to the region, would provide the template for stronger multilateral organizations that would be extremely more effective in providing an effective alternative to United States intervention.

CHAPTER 4

THE BEST LAID DEFENSE

The formation of the United Nations presented one of the most effective means of defending Nicaraguan sovereignty against United States hegemony. This was possible because it provided a forum for the discussion of American intervention and the enforceability of law as supported by the international community. However, the Nicaraguan government was unable to utilize the services provided by the United Nations until the elements which continued to support the symbiotic relationship with the United States government were removed. The relationship between the Anastasio Somoza García administration and the United States continued to be maintained as long as the mutual benefits of this arrangement remained consistent. However, the resurgence of revolutionary elements shook the foundations of this delicate relationship to the point that the United States government turned its back on Somoza. By utilizing its own resources and international organizations such as the Organization of American States, the United States government continued to hold a grip on Nicaragua's destiny as long as its government was supported by and subordinate to the interests of the United States. It was only when the Nicaraguan government was replaced by leaders who rejected United States interference in Nicaraguan internal affairs that international organizations such as the OAS and the United Nations were more effective in responding to this situation, instead of being used to shield American intervention from the interference of the international community.

The Somoza Dynasty (1936-1979)

Anastasio Somoza García continued in the footsteps of his predecessors, adhering to the interests of the United States. And this loyalty was repaid by an equal commitment on the part

of the United States government to politically and economically support the regime. As a result, Anastasio Somoza García could govern the country as he saw fit. For, as long as he was able to maintain a mutually beneficial symbiotic relationship with the United States, by maintaining the semblances of democracy and civil peace, he did not have to fear an act of intervention against him. This helps to explain why in 1948 the country did not plunge into civil war once again when Emiliano Chamorro, leader of the Conservative Party, led a revolt against the Nicaraguan government.¹ Rather than continue in a state of conflict and political turmoil, Anastasio Somoza García made a deal with Chamorro. The results of the 1950 presidential election revealed a landslide victory for Anastasio Somoza García. However, rather than challenge the results or staging a coup, Chamorro and his subordinates promptly took their seats in the Congress, which Anastasio Somoza García had promised to him and his supports in exchange for their complacency. Since this maintained the semblances of a fair and democratic election, and there was no civil upheaval contesting the election, Anastasio Somoza García did not have to fear American intervention. At the same time, the expansion of the international legal framework in the last few years had drastically changed the parameters of international relations. The formation of the Organization of American States as a regional organization for the Americas, and the formation of the United Nations as the single, federated organization for the international community, would play an important part in the course of Nicaraguan history.

Organization of American States (1948)

The establishment of the Organization of American States in 1948 represented one of the first significant opportunities for Nicaragua to resist United States hegemony. That is, Nicaragua had the opportunity to utilize the enforcement capabilities of the OAS to hold the United States

accountable for its actions if they violated the principles agreed upon within the OAS charter. Where the Union of American Republics had failed to present a significant alternative to foreign intervention by the United States in the affairs of Latin American, the Organization of American States bound the United States to the charter and the subsequent resolutions according to international law. The OAS codified and bound consenting American states to customary international law that had already developed as a result of the Pan American movement of the previous decades. As a result, the charter of the OAS outlined the commitment to a unified prevention and mitigation of conflict in the Americas, and the general welfare of the states in the region, which would be promoted and enforced by the organization.² Furthermore, the OAS charter specified that

No state or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal and external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its, political, economic and cultural elements.³

And it was this provision that became the principle issue concerning the actions the United States would take against Nicaragua forty years after the establishment of the OAS.

There was another important aspect of the OAS charter; one that was not to be found even in the United Nations. One of the most important characteristics of the OAS Charter was that it did not include the granting of the veto to any member state. The Latin American countries had not possessed sufficient political weight to prevent the veto from being included in the United Nations charter; however, they were not willing to agree to the establishment of the OAS unless the veto clause was excluded.⁴ As a result, the Organization of American States

presented a significant opportunity for the Nicaraguan Government to more effectively confront the United States through the forum and legal mechanisms of the OAS. Without the veto as an option, the United States would have to contend with Nicaragua and the other OAS members on more equitable terms. However, the potential for defending Nicaraguan interests against United States hegemony would not yet be achieved because the Anastasio Somoza García administration, mindful of the mutually beneficial arrangement that had been established with the United States, sought to utilize international organizations as another medium through which to further solidify this symbiotic relationship.

Nicaraguan delegates repeatedly demonstrated exceedingly favorable responses in support of the United States within the OAS and the United Nations. “Somoza knew that as long as he was the best friend of the United States, and could abide by and even exceed their expectations of him, he did not have to fear that they would intervene against him.”⁵ Because Anastasio Somoza García perceived that he could benefit more by remaining complacent and not challenging the United States through these international organizations, the opportunities that these entities provided were not fulfilled to their potential as tools for the defense of Nicaraguan sovereignty against United States hegemony. The symbiotic relationship that had been established by the administrations following the fall of Zelaya had so far proved sufficient for maintaining the Somoza family in power at this time. However, what Anastasio Somoza García failed to take into account was that he was making the same mistake that his predecessors had made before him: over-confidence in his ability to predict the interests and the intentions of the United States government in Nicaragua. And just like previous Nicaraguan administrations before him, he would soon learn that the symbiotic relationship that he depended upon was a very dangerous arrangement.

At the moment, however, the United States continued to provide for the Anastasio Somoza García administration, intervening on behalf of his interests to remain in power. But problems soon developed that once again redefined the relationship between the United States and Nicaragua. In 1956, responding to public sentiments against the regime, Rigoberto López Pérez shot and killed Anastasio Somoza García in full public view, which resulted in López's own death when Somoza's bodyguards responded to the attack.⁶ The United States recognized that, in order to contain the impact of Somoza's assassination, dynastic succession must immediately be established. As a result, the election of Luis Somoza Debayle in 1957, Anastasio Somoza's eldest son, was intended to serve the purpose of maintaining the symbiotic relationship between the United States and the Nicaraguan government. Although this served to resolve the complications that the assassination of Anastasio Somoza García created, Rigoberto Lopez's sacrifice represented a deviation from the perception the Nicaraguan government had of its own people. The murder of Sandino two decades earlier, although effectively ending significant military operations against the Nicaraguan government, had not eliminated his supporters or the cause he fought for. Lopez's sacrifice was a signal to the Nicaraguan government that the Nicaraguan people believed that the fate of the country should be in the hands of its own people, and not in the hands of a foreign power.

The United States engaged in numerous political and economic foreign policy decisions in order to prevent Nicaragua from falling into the hands of revolutionary elements. With the Cuban Revolution in 1959, the United States feared losing another country in the region. In response, the United States government, under the administration of President John F. Kennedy, established the Alliance for Progress in 1961.⁷ The purpose of the program was to demonstrate that "economic progress and social justice can best be achieved by free men working within a

framework of democratic institutions, a way of undercutting the potential for revolutionary movements that challenged U.S. interests.”⁸ In itself, the program was no different than the socio-economic plans the United States had engaged in with countries previously; the Alliance for Progress institutionalized this foreign policy under a single program, which organized the financial hold that the United States already possessed over many Latin American countries. As a result, as long as the Somoza family continued to maintain the semblances of democracy and the pretenses of liberalization, they could continue to dictate Nicaragua’s future to their desires. In fact, the Somoza family was able to benefit their own capital base, for the funds from the Alliance for Progress were used to build roads that contributed to the beef and dairy operations owned by the family.⁹ The Alliance for Progress had been established precisely for the purpose of more effectively exercising political and economic control over Latin American. However, when the United States government realized that these measures had proved ineffective in bringing about the desired social revolution, attention was shifted away from financial assistance and instead focused upon providing counterinsurgency programs.¹⁰ With the establishment of the Central American Defense Council (CONDECA) in 1964, consenting countries received standardized arms and military training, participated in joint training maneuvers, exchanged information concerning subversive operations, received officer training at the U.S. Army School of Americans, and agreed to a mutual defense pact.¹¹ Somoza welcomed this form of assistance, for it contributed to the efficiency of the Guardia Nacional in dealing with subversive Sandinista elements in the country. However, neither the Somoza administration nor the United States government was prepared for the powerful influence that the resurgence of the Sandinista movement would come to have in Nicaragua.

Frente Sandinista de Liberación Nacional (1961)

The prospect of a renewed internal struggle within Nicaragua threatened to weaken the symbiotic relationship between the United States and Nicaragua. And this is something that neither the Luis Somoza administration, nor the United States government, would permit to occur unhindered. The situation became even more desperate, however, when in 1963 a raid committed by the Sandinist Front for National Liberation (FSLN) on a Christmas party succeeded in capturing numerous prominent figures in Nicaraguan politics.¹² The relative tactical victories that the FSLN achieved demonstrated that the revolutionary forces posed a much greater threat than previously perceived. The actions of the FSLN began to rekindle the fire of revolution within the people, many of whom remembered and had participated in Sandino's rebellion more than two decades before. The increase of public opinion within Nicaragua in favor of the FSLN thus threatened to weaken the symbiotic relationship between the Luis Somoza regime and the United States government, for it was becoming increasingly difficult for the United States to ignore the events unfolding within Nicaragua and continue to provide aid to Luis Somoza. And this made it difficult to maintain the uncritical support the United States had demonstrated thus far, for to continue forward with indifference to the cause and actions of the FSLN would jeopardize American credibility as a promoter of democracy. This became even more difficult when Anastasio Somoza Debayle, second son of Anastasio Somoza García, was elected president in 1967, replacing his brother, Luis Somoza Debayle, who, shortly thereafter, died from a massive heart attack. In response to the activities of the FSLN, Anastasio Somoza Debayle instituted a three year state of siege, accompanied by intensive counterinsurgency campaigns against the FSLN throughout Nicaragua.¹³

The favorable response of international entities to the cause of the FSLN demonstrated that a powerful solution to Nicaragua's struggle against United States hegemony could be found abroad. Amnesty International, news media throughout the world, and other organizations began to recognize and publicly admonish the human rights violations being committed by Anastasio Somoza Debayle, which included cases of rape, torture, and the disappearance of peasants.¹⁴ In themselves, none of these international entities had the capacity to enforce international law in order to compel the United States to halt its support of the Anastasio Somoza Debayle regime. At the same time, what these reports did accomplish was to expose the hypocritical position of the United States in light of its commitment to continue its support of the Nicaraguan government. The United States government recognized the damaging effect this had on American reputation and credibility. With little other recourse, the United States publicly recognized Somoza's crimes and sought a resolution with the Nicaraguan government. Anastasio Somoza Debayle struck a deal with the United States, promising to lift the state of siege and peacefully incorporate the conservative opposition for the coming election in 1981, and the United States would continue to provide military aid. Non-profit organizations such as Amnesty International and other influential entities across the world thus played an important role in helping to curb American interests within Nicaragua.

At the same time, because the enforcement mechanisms of the OAS or the United Nations had not been implemented, the victories of Amnesty International and other organizations were short-lived and extremely limited. The reason that Nicaragua was in this stalemate was that the Nicaraguan government was unwilling to challenge the United States through these international organizations, which retained the capacity to compel the United States government to abide by its decisions because the United States was a member state.

Anastasio Somoza Debayle continued to support the United States in the OAS, contributing to the weight of the United States government in preventing any intervention within Nicaragua. And in the United Nations, the United States could implement their veto and prevent resolutions within the Security Council from passing that could benefit the Nicaraguan people in resolving this crisis. The cause for which the FSLN was fighting for was thus to place the Nicaraguan government in the hands of those who were willing to confront the United States through these international organizations, rather than utilizing them for their own aggrandizement by playing the puppet to American foreign policy interests. Unable to lift the state of siege and receive military support from the United States, Anastasio Somoza Debayle continued to rely on the political support of the United States to defend its interest against foreign intervention by the OAS and the United Nations. The United States government continued to issue public statements defending the Nicaraguan government, stating that the Anastasio Somoza Debayle administration had restricted the Guardia Nacional from using inhumane tactics, concentrating only upon the military defeat of the rebels.¹⁵ Nevertheless, regardless of all these efforts, the symbiotic relationship between the United States government and the Nicaraguan government received a serious test from the Organization of American States.

The United States and the Nicaragua were compelled to confront a regional international organization to which it had committed itself to abide by according to international law: the OAS. As stated within the United Nations charter, jurisdiction concerning matters of dispute and conflict between countries is in favor of the regional organization to which the particular states are a party to. It is only when all the options of the regional organization have been exhausted that the matter is submitted to the United Nations, and a case presented to the International Court of Justice. As a result, the developing situation within Nicaragua concerning human rights

violations committed by the Nicaraguan government would have to be submitted first to the Organization of American States. In response to the reports of atrocities committed by the Nicaraguan government, the Venezuelan government put forth the proposition to intervene on behalf of the Nicaraguan people and put an end to these terrible crimes.¹⁶ According to the OAS charter, the organization can compel a member state to engage in or refrain from certain actions by passing a resolution, with stipulations concerning the manner in which this is to be conducted and the consequence of failing to abide by the orders. If the member states perceive that stronger action is necessary, or the target state has failed to respond adequately, the organization can pass a resolution to enable peacekeeping forces to intervene and bring about the conditions for fulfilling the said resolution. This is very similar to the function of the United Nations Security Council. The United States government recognized that intervention by the OAS would interfere with American foreign policy interests in Nicaragua, and diligent attempts were made to prevent the Venezuelan proposal from being passed.¹⁷ Nevertheless, after FSLN forces seized the National Palace in downtown Managua, the United States government realized that an agreement had to be settled between the Nicaraguan government and the revolutionary forces. Without a veto-power within the OAS, the United States could not prevent intervention indefinitely as the situation in Nicaragua worsened. The longer the Somoza regime committed human rights violations, and the wider the conflict spread and presented a threat to neighboring Central American countries, the more likely that the OAS would act through intervention.

As the United States government realized that continuing to support Anastasio Somoza Debayle did not help to resolve the situation, foreign policy toward Nicaragua took a drastic turn. With the intention of preventing the FSLN from assuming power in Nicaragua, the United States sought a consensus of the Latin American countries to the agreement that Somoza needed

to be deposed because there were dangerous “red” elements within the country, and a “peacekeeping” operation through the OAS would be necessary to maintain conditions for peace while a new government was established.¹⁸ The United States government’s betrayal of Anastasio Somoza Debayle demonstrated once against the difficulties of predicting American interests and intentions in Latin America. Because the United States could lose more by continuing to full-heartedly support the Somoza family, the United States government capitulated to the sentiments of the international community, which was demanding an end to the violence and a halt to American intervention in favor of the Somoza regime. The Organization of American States passed a resolution calling for the replacement of the Somoza regime; however, there would be no intervention in the form of a peacekeeping operation, and states would not be allowed to intervene in the internal affairs of Nicaragua as this transition took place.¹⁹ The United States government, under the leadership of President James Carter, recognized that the door was still open for influencing the direction of Nicaraguan internal politics in favor of the establishment of a “constitutional junta” to replace Somoza.²⁰ Although this was a violation of Nicaraguan sovereignty and violated the OAS resolution, “moderate political and bureaucratic opponents” in Nicaragua had already agreed to support the Junta of National Reconstruction.²¹ Even in the face of criticism from the international community, and reports by the ABC network and an OAS human rights commission report, the United States would not rescind its support for the preservation of the Guardia Nacional.²² However, as long as the resources of the OAS had not yet been expended, jurisdiction to address these issues remained in the hands of the regional organization. The United States could effectively curb efforts in the United Nations Security Council to interfere in Nicaragua by implementing its veto. And as long as the Nicaraguan government was in the hands of a polity unwilling to confront the

United States government, regional and international organizations were of limited benefit to the Nicaraguan people.

At this point in Nicaraguan history, the Organization of American States had presented the most effective defense against United State hegemony because it increased the level of predictability more than ever before. The United States government was bound by international law to abide by the principles of the OAS Charter. However, whereas in the past the United States had been able to politically maneuver its own interpretation of the principles of a bilateral agreement in the Bryans-Chamorro Treaty, which involved only Nicaragua, in the OAS, the United States was forced to contend with the majority of the American countries. It was extremely more difficult for the United States to interpret the agreement in its own favor when the other member states could overwhelm their efforts and pass a resolution that the United States government was compelled to abide by according to international law. And the important aspect of this multilateral agreement was that the organization could enforce the views of the majority over that of the United States by passing resolutions, which must be obeyed by the members according to international law. There was no political monopoly held by the United States in the form of a veto. At the same time, the United States still possessed enough economic and political weight in Latin America to be able to significantly influence the actions of the member states within the organization. The United States was still overwhelmingly stronger compared to the Latin American states, whose collective influence was, nevertheless, quite limited. However, it was primarily the fault of the Nicaraguan government, in failing to diligently defend itself, that the OAS was ultimately restrained. The FSLN was not a state entity; as a result, it possessed no representation within the OAS or the United Nations. The goal of the FSLN was thus to retake the Nicaraguan government from the United States' puppet-

administration in Nicaragua: Anastasio Somoza Debayle. When the FSLN finally marched into Managua and established the provincial Government of National Reconstruction, the Sandinistas now had access to the international organizations that could provide the most effective defense against United States hegemony.

Sandinista Government (1979)

The United States government, under the new administration of President Ronald Reagan in 1981, sought to confront the newly established Sandinista government through the same means that the United States had depended upon to control the various regimes after the fall of Zelaya: through the implementation of economic and political foreign policy. By recanting on the previous administration's promises under President Carter to provide economic aid for Nicaragua, and making accusations that the Nicaraguan government was supporting foreign rebel elements within their country against the Salvadoran government, the United States sought to weaken the Sandinistas' political and economic base.²³ The United States was essentially using many of the economic and political tools that it had used in the past. And by using the same public relations techniques that had been used against the United States' support of the Somoza regime, the intention was to weaken the economic and political base of the Sandinistas. However, even with advanced intelligence capabilities and surveillance technology, the United States government was unable to divulge concrete evidence implicating the Nicaraguan government in the support of Salvadoran rebels.²⁴ If corroborated, this would have demonstrated that the Sandinistas were in violation of the OAS charter prohibiting the support of rebel elements of another state against that country's government. Nevertheless, the Reagan administration utilized these unfounded claims to justify supporting the *contras* in Nicaragua,

counter-revolutionary forces making raids from bases in Honduras and Costa Rica.²⁵ The Reagan administration contributed a total of \$70 million in foreign aid to the Contras; however domestic elements within the United States, in the public and in the government, began to question the disproportionate nature of the goals of this policy to the means that were implemented to achieve them.²⁶ This was largely part of the reason why Congress put an end to President Reagan's contributions to the Contras in 1984, in response to domestic sentiment that disapproved of the President's policies.

The Reagan administration, nevertheless, continued to politically support the efforts of the Contras, proclaiming that they were "freedom fighters" defending the principles of democracy, and that the Nicaraguan government's acquisition of modern weaponry posed a direct threat to the security of the United States and all neighboring countries.²⁷ Assuming that these claims were valid, and the Nicaraguan government was engaged in illegal support of Salvadoran rebels, it is understandable why the United States was able to press forward with their support seemingly unabated, both domestically and abroad, for some time. However, because there had yet to be valid evidence presented, the opportunity was still present to preserve the reputation of the Nicaraguan government and invalidate the actions of the United States. The Inter-American Commission on Human Rights contributed a report which stated that, although the Nicaraguan government had failed to adopt laws guaranteeing and regulating the functioning of political parties and postponing elections until 1985, the reforms that the Sandinistas had achieved were extraordinary.²⁸ The stage was evidently set for the Nicaraguan government to confront the United States and put an end to the intervention that it was now engaged in against Nicaragua. The landslide victory of the FSLN in the 1985 elections could not be attributed to corruption or a "sham" as the United States government would have desired. Instead, the fact

was that public opinion was strongly in favor of this well-organized government that had eliminated the Somoza regime and, so far, had kept its word to bring about revolutionary change in the country.²⁹ Now that the Nicaraguan government was under the leadership of individuals who were willing to confront the United States, developments in international law, which had been neglected by Nicaraguan governments after Zelaya as an effective means against American intervention, were now at the disposal of the Sandinistas after more than eighty years of dynastic rule.

The Nicaraguan government recognized that the country was not militarily strong enough to prevent the United States from aiding the rebels; as a result, the Sandinistas engaged in a defensive campaign through international law to effectively damage the credibility of the United States in its treatment of Nicaragua. Although in 1984 the United States Congress had effectively cut off funds that were being directly contributed to the Contras by the Reagan administration, the United States government continued to provide logistical support to the Nicaraguan rebels through covert-operations that were supplying weapons and training. This issue had already being brought into discussion at the Organization of American States; and regardless of the efforts of numerous members within the organization, there had yet to be an effective response to the United States' covert operations against Nicaragua. However, the situation within Nicaragua had now changed drastically, even though the international legal mechanisms had not. The Sandinista revolutionaries were now in control of the government; and the United States was now supporting the rebel elements within the country against the Nicaraguan government. The international institutions that were available to the Nicaraguans – in the form of the OAS and the United Nations – continued to be available since their inception in 1945. At this point, however, the difference was that the Nicaraguan government was willing

to implement the capabilities of these organizations in its own defense against United States hegemony. The continuation of disputes through the OAS between the United States and Nicaragua – the latter defending its sovereignty against U.S. covert operations, and the former accusing Nicaragua of aiding rebellions against its neighbors – had achieved very little. As a result, the Nicaraguan government made the decision to submit the case to the highest court within the international legal system: the International Court of Justice (ICJ) under the United Nations. The case that resulted proved to be one of the most effective means of curbing United States' hegemony over Nicaragua than any other previous efforts.

The Republic of Nicaragua v. The United States of America (1986)

With the submission of the present conflict between the United States and Nicaragua to the International Court of Justice, there was an unavoidable issue that presented a serious problem: the consent of the United States to the jurisdiction of the Court. The contending matter was that the United States had accepted the jurisdiction of the ICJ; however, merely a day before Nicaragua submitted its case to the Court, the United States government submitted a declaration suspending its acceptance of ICJ jurisdiction for two years. In addition, the United States government also argued that because Nicaragua had never formally accepted the jurisdiction of the ICJ, the country had no legal right to submit the case. The issue of jurisdiction thus became the United States' strongest attempt to avoid the conflict with Nicaragua from becoming an international topic of debate – and jurisdiction. Considering that there was a strong possibility that the United States could lose the case due to the overwhelming evidence implicating the U.S. Government in covert actions against Nicaragua, the principles of international law were not easily avoided.

The United States thus began its political attacks on Nicaragua by attempting to debase its claim of accepting the jurisdiction of the ICJ. The United States government argued that, because the Nicaraguan government had never officially gained membership to the ICJ, and thus had never officially accepted the jurisdiction of the Court according to international law, the country had no basis for admissibility. In itself, the success of this argument could have effectively ended Nicaragua's attempts to resist United States hegemony through the ICJ. However, the Court decided against this argument for three reasons. First, in 1929 the Nicaraguan government issued a declaration accepting the jurisdiction of the Permanent Court of International Justice (a body of the League of Nations), and had not presented a counter-declaration that they did not accept the jurisdiction of the International Court of Justice when this body supersede the previous one. Second, the Nicaragua government had demonstrated it was committed to the ICJ by gaining admission to the United Nations, which the Court was a part of.³⁰ And third, the United Nations was established under the condition that previous declarations accepting the jurisdiction of the Permanent ICJ would transfer to the ICJ unless otherwise declared by corresponding states. As a result, Nicaragua maintained its declaration to accept the jurisdiction of the ICJ based upon the principles of customary international law, which did not require that the Nicaraguan government formally accept the jurisdiction of the ICJ specifically by gaining membership to the court.

The United States government proceeded to justify its own claim that based upon the recent declaration suspending its acceptance of ICJ jurisdiction for two years (presented only a day before the case was submitted by Nicaragua), the United States could not accept admissibility of the case to the court. The United States government's argument was rejected by the court, which stated that the United States was acting against the principles of international

law by submitting the declaration with such short notice. In 1946 the United States government submitted the declaration that accepted the jurisdiction of the International Court of Justice according to the principles of international law concerning treaties, as established by the Geneva Convention.³¹ According to the principles established at the convention, the United States would have had to submit the declaration forfeiting its acceptance of ICJ jurisdiction six months in advance. One of the express purposes of this clause was to prevent states from recanting its declaration accepting ICJ jurisdiction when there was the possibility that the case would result contrary to their favor. If such infractions were allowed to transpire in international law, it would make the point of third party arbitration seemingly pointless. The ICJ had rejected both the argument against the Nicaraguan declaration accepting jurisdiction and the United States government's own defense of its actions to rescind its acceptance. However, the United States government proceeded to refrain from participating in the proceedings of the case, even though it had been accepted by the ICJ. Instead, the United States government used the opportunity to publicly defend its actions against the Nicaraguan government.

The International Court of Justice, nevertheless, continued with the proceedings and presented Nicaragua with its decision. The court rejected the United States' claim that the covert-operations in Nicaragua were efforts of counter-intervention against the Nicaraguan government, which was allegedly supporting revolutionary movements in the neighboring countries of Honduras and El Salvador; and that the only intention of these actions on the part of the United States was to promote and defend the collective security interests of the OAS members.³² The Court found that there had been no corroborating evidence implicating the Nicaragua government in the actions of which they were accused. And the United States, on the other hand, was found guilty of violating international law based upon evidence supporting the

Nicaraguan government's claim that the CIA operatives had planted underwater mines in Nicaraguan waters, in addition to providing training, funding, and support for the Contra rebels. The evidence that was collected by the ICJ clearly implicated the United States government in the accusations against it, and the Court ordered that these operations immediately be halted, the mines removed, and reparations made to Nicaragua. However, even with the overwhelming evidence gathered by the highest court within the international legal structure, the United States continued to refrain from participating in the proceedings, rejected the decision of the Court, and refused to abide by the stipulations that were required to correct the infractions that had been committed against Nicaragua.

It would appear at this point that this case, because the United States refused to participate and abide by the decision of the International Court of Justice, is contrary to the line of thinking that has been argued throughout this essay. And to a certain extent, such a supposition is correct. As a legal solution, the Nicaraguan government was unable to bring about the intended outcome of putting an end to the intervention the United States was currently engaged in, and any future forms of intervention relevant to such a precedent, by compelling the United States government to abide by international law through the ICJ. At the same time, what cannot be forgotten is that the principle argument of this essay is to illustrate how international agreements of law increase predictability, even though they may not always be successful in their designated functions. Were the United States only contending with Nicaragua, or all of the other Latin American states, its decision to interpret international law unilaterally would not have resulted in grievous repercussions because the United States was economically and political more powerful. However, Nicaragua had successfully brought the present conflict with the United States to the attention and jurisdiction of the international community, as represented by the

United Nations through the International Court of Justice. As a result, the decision of the United States to interpret international law unilaterally was in conflict with the ICJ, and thus the United Nations, to which a great majority of the international community had pledged, as members, to support. The apparent dismissal of the ICJ on the part of the United States was thus also in conflict with the majority opinion of the international community, which perceived the actions of the United States as setting a precedent which threatened their potential interests in the ICJ and their participation in the United Nations. The United States, therefore, now faced the reality of being held accountable by the international community because the perception was that a violation of international law had been committed by the United States government. From this point of view, the United States no longer had the same options at its disposal in the same way that was possible with bilateral and multilateral agreements concerning Nicaragua in the past because of a dominating principle: accountability.

Where the case of *Nicaragua v. United States* failed to bring about the intended legal effects that would force the United States to capitulate, the United States government was nevertheless compelled to retract on many of the foreign policies that had been implemented against Nicaragua. In effect, even though the United States officially refused to recognize the admissibility of the case and the decision of the Court, the actions United States government placed it in a very delicate political situation with the international community. Many legal experts throughout the world voiced the opinion that this was another indication that the United States was gradually rescinding on its commitment to the international institutions it helped set up after World War II.³³ European states politically criticized the United States for attempting to isolate Latin America from political and economic assistance abroad.³⁴ And with the revelation of evidence discrediting the claims of the United States government that Nicaragua was

undemocratic and antagonist against its neighbors, the Spanish government publicly condemned the actions of the United States and declared its support for the Sandinista government.³⁵ The detonation of a mine, which damaged a Soviet oil tanker, in Nicaraguan waters contributed to sentiments against the United States, for the mining of international waters was illegal under international law, which supported the right to safe passage.³⁶ The political consequences of *Nicaragua v. United States*, therefore, were substantially more significant in curbing American interests in Nicaraguan than the results of the case would have led many to predict based on the results of the case.

The Reagan administration, determined to stand by its policies concerning Nicaragua, was nevertheless compelled to abide by the decisions of the Congress, which was extremely sensitive to the political criticism received by the international community that resulted from the case. The Nicaraguan government, by bringing the case to the ICJ, was able to reveal evidence to the American public and members of Congress who as yet remained unaware of the actions being committed by the Reagan administration.³⁷ In addition, when it was revealed that the Contras were engaged in very violent tactics against Nicaraguan civilians, this discredited the United States government's position of continuing to support such methods by the rebels.³⁸ The Nicaraguan government had made it clear to the international community that sincere efforts were being made to continue to democratically develop the country; however, the militant actions of the Contras, which were supported by the United States, made it extremely difficult to effectively hold elections. The discrediting of the United States government would thus no longer be tolerated by the Congress, which was no longer willing to appropriate funds for the Contras or permit the Reagan administration from engaging in covert-operations against the Nicaraguan government.³⁹ The fears of many members in Congress, when the Reagan

administration was about to inaugurate the policies against Nicaragua, seemed to be fulfilled when the United States' role in the mining of Nicaraguan harbors came under attack from American allies and both parties in Congress.⁴⁰

The effect of these domestic and foreign pressures upon the Reagan administration compelled the United States government to significantly alter its foreign policy with Nicaragua. The United States government was forced to seek options other than the ones that had previously been exercised, for the United States Congress would not appease President Reagan's requests for more funding for the Contras. Attempts were made to arrange for third-parties to provide funding for the Contras and Nicaragua; and Honduras and El Salvador continued to provide aid to the Contras, in large part due to assistance from the United States. However, this was to a much more limited extent, for the United States could no longer provide the military training and direct flow of funding for the Contras that had been possible previously. The mines in the Nicaraguan waters had been removed, for the ICJ ruling that this was a violation of maritime international law for safe passage of all vessels, which was afterwards confirmed by the United Nations General Assembly, was something that the United States could find no justification. The problem of funding the Contras became a serious problem for the plans of the Reagan administration. And even though the prospect of cocaine production and transportation was a solution, whether or not the claims that the United States government engaged in operations supporting coca trade by the rebels were true, this does not change the fact that this was a sign of desperation due to a lack of options. The Nicaraguan government had presented the evidence and made its case at the International Court of Justice, which exposed the actions of the United States to the world. By employing the fact-finding facilities of the United Nations, and presenting the findings for the international community to be made aware of, the Nicaraguan

government helped bring about the conditions in which the United States government was no longer in a position to deny their actions as they had in the past. It were unable to prevent Nicaragua from defend itself as a sovereign state in the same way that other more powerful states could do so for themselves through the ICJ. The case that was brought by Nicaragua against the United States dealt a serious blow to United States hegemony in Nicaragua, and by inference to the rest of Latin American, for the United States government recognized that they could no longer hide behind the mantle of their sphere of influence in Latin America in the same way as before.

Treaties and International Organizations

The failure of the International Court of Justice to enforce its decision, according to international law, does not rescind the importance of *Nicaragua v. United States* to the greater trend of predictability. The United States may have publicly declined to accept the jurisdiction and the decision of the Court in this case; however, the Reagan administration was nevertheless compelled to capitulate to the political pressures of Congress and the international community. In previous bilateral agreements concerning Nicaragua in which the United States was a signatory, the United States government was only contending with a single state. Be it the Nicaraguan government with the Bryans-Chamorro Treaty, or the British Parliament in the Clayton-Bulwer Treaty, accountability depended upon the ability and commitment of the other participant to enforce the term of the agreement on an equitable level. If the other party was unwilling or incapable of supporting their own interpretation of international law according to the agreement, the United States could interpret the treaty according to American interests. The Organization of American States, as a multilateral entity, had fallen susceptible to these same

constraints because the United States, complimented by the unwillingness of the Nicaraguan government under the Somoza dynasty to cooperate against American intervention, was able to exert significant economic and political influence over the Latin American countries.

In *Nicaragua v. United States*, the United States government once again construed international law concerning the ICJ according to American foreign policy designs. Within the United Nations, however, the United States did not possess the same overwhelming influence over the international community that was possible over Latin America. As a result, the United States government was held accountable when its actions were perceived as a violation of international law by the international community of member states. Violations of international law are seldom addressed through military intervention, except in the enforcement missions that have been sanctioned by the United Nations Security Council in Korea, Yugoslavia, Iraq, and Burundi. The retaliation against the United States was thus limited to political reprisals by influential countries in the international community. As a result of these reactions, however, the United States government was compelled to confront the accountability of its actions by member states that possessed the legal jurisdiction and political interests to reciprocate according to international law. If the United States were to commit further infractions of international law, the international community of member states would be willing and able to hold the United States accountable. And this increased the ability of the Nicaraguan government to more effectively predict American interests and intentions in the Nicaragua because violations of international law, when enforced by the United Nations, were likely to be perceived as infractions against the commitment the member states made to the organization. And if Nicaragua could rely on the international community to react to such violations, then this creates

a level of predictability that can lead to more effective Nicaraguan foreign policy with the United States government.

CHAPTER 5

CONCLUSION

The consequences of international law, within the context of foreign relations between the United States and Nicaragua, are one example of the way in which interstate agreements are affected by inequalities in the balance of power. The Nicaraguan government repeatedly experienced difficulty pursuing its own interests through international agreements in which the United States was a signatory. Nicaragua was not a part of the Clayton-Bulwer Treaty of 1850 – later replaced by the Hay-Pauncefote Treaty of 1902 – which meant that the United States government could only be held accountable to the agreement by the participating British Parliament. When the United States actually signed an international agreement with Nicaragua – the Bryan-Chamorro Treaty of 1912 – the relatively weaker political and economic influence of the latter prevented an effective resistance to containing the interests of the former from determining the interpretation of the agreement. Even when Nicaragua engaged in multilateral agreement with the United States, in the form of the Organization of American States, the combined Latin American countries were not collectively strong enough to mitigate the hegemonic dispositions of the United States. It was only through the United Nations that the Nicaraguan government was able to effectively curb American interests in Nicaragua. The United States government was unable to ignore the overwhelming political and economic influence of the international community, which perceived its actions concerning the issues addressed in *Nicaragua v. United States*, and the decision to rescind jurisdictional approval of the World Court, as a violation of international law. As a result, the inequitable distribution of power between the United States and Nicaragua was no longer the determinative factor in the interpretation of the agreement according to international law.

These observations suggest that inequitable distributions of wealth are a significant factor in the conduct of states according to interstate treaties, in which the parameters of the agreement itself are more or less equitable. That is, acting within the context of balanced terms of agreement, a stronger state within a treaty is able to exercise a decidedly greater advantage over the weaker state or states that are also a party to the treaty, interpreting the parameters of the agreement to its advantage. This is what an examination of foreign relations between Nicaragua and the United States has revealed. To what extent this conclusion applies to other examples of interstate relations requires further research. The case may be that other countries, within and without Latin America, were relatively more or less successful than Nicaragua in pursuing their own interests against a stronger state or states through international law. And the reasons for their successes and failures may or may not be the results of similar domestic and foreign factors as the history of foreign relations between Nicaragua and the United States demonstrated. Expanding upon the principles that have been examined within this study, to include other examples of states acting according to international agreements can reveal to what extent inequitable distributions of power can explain the difficulty of underdeveloped and developing countries to pursue their own interests according to international law. If the results of these studies corroborate the findings and conclusion provided in this study, this can lend credence to the argument that developed countries continue to exercise hegemonic control over underdeveloped and developed countries, which is exercised through international law. And, as the experiences of Nicaragua demonstrate, the establishment of organizations such as the United Nations may be the best solution to this problem.

ENDNOTES

Chapter 2. Power and Sovereignty

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9. Ibid, 18.
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14. Ibid, 19.
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21. *Clayton-Bulwer Treaty*, in *Latin America and the United States: A Documentary History*, ed. Robert H. Holden and Eric Zolov (New York: Oxford University Press, 2000), 25.
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32. *Hay-Pauncefote Treaty*, in *Latin America and the United States: A Documentary History*, ed. Robert H. Holden and Eric Zolov (New York: Oxford University Press, 2000), 83.
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Chapter 3. Internal Revolution

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2. O. Carlos Stoetzer, *The Organization of American States* (Westport: Praeger, 1993), 15-16.
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7. Stoetzer, *The Organization of American States*, 16.
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13. Ibid, 148.
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16. Ibid, 155.
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19. *Bryans-Chamorro Treaty*, in *Latin America and the United States: A Documentary History*, ed. Robert H. Holden and Eric Zolov (New York: Oxford University Press, 2000), 113.
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21. Bermann, *Under the Big Stick*, 169.
22. Ibid.
23. Ibid, 170.
24. Ibid, 178.
25. Ibid, 181.
26. Ibid, 185.
27. Ibid.
28. Ibid.
29. Ibid, 195.
30. Stoetzer, *The Organization of American States*, 19.
31. Ibid, 18.
32. Bermann, *Under the Bid Stick*, 198.
33. Ibid.
34. Ibid, 198-199.
35. Ibid, 203-205.
36. Ibid, 208-209.
37. Ibid, 209-210.
38. Ibid, 214.
39. Ibid, 217.
40. Ibid, 227.

Chapter 4. The Best Laid Defense

1. Karl Bermann, *Under the Big Stick: Nicaragua and the United States since 1848* (Boston: South End Press, 1986), 229.
2. O. Carlos Stoetzer, *The Organization of American States* (Westport: Praeger, 1993), 33.
3. Ibid, 35.
4. Ibid, 37.
5. Berman, *Under the Big Stick*, 242
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8. Ibid, 246.
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10. Ibid, 250.
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31. Ibid, 43.
32. International Court of Justice, "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)"; available from <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=66&case=70&code=nus&p3=90>. Internet; accessed 25 October 2007.
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