

SECTION RECOMMENDATIONS AND REPORTS

American Bar Association Section of International Law and Practice Report to the House of Delegates

I. THE ARIAS PLAN

RESOLUTION

BE IT RESOLVED, that the American Bar Association:

(1) Supports the efforts that the presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua have undertaken to establish a firm and lasting peace in Central America, as a major step "to advance the rule of law in the world," a purpose that the Association identifies as its own Goal VIII;

(2) Urges the continued commitment to the five Central American presidents to the process of regional dialogue and democratization, including respect for human rights and national sovereignty, as elaborated in the "Procedure for the Establishment of a Strong and Lasting Peace in Central America," also known as the "Arias Plan," signed in Guatemala City on August 7, 1987;

(3) Welcomes the commitment of the United States government to facilitate the process of regional dialogue; and

(4) Strongly urges all interested parties to observe their commitments pursuant to the United Nations Charter and principles of international law to seek the pacific settlement of disputes and to refrain from the use of force in international affairs in the course of the implementation of the Arias Plan.

(5) Endorses the Arias Plan and calls on all interested parties to accept it and work towards its implementation.

REPORT

On August 7, 1987, the presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua met in Guatemala City to sign the "Procedure for the Establishment of a Strong and Lasting Peace in Central America" [hereinafter the "Arias Plan"]. The Arias Plan is an accord on the means by which Central American leaders may peacefully resolve the conflicts in Central America. As a solution agreed upon by the parties to the conflict, the Arias Plan (i) may bring about a peaceful resolution of the conflict in Central America, (ii) is the preferred method of dispute resolution under international law, and (iii) might obviate any need of neighboring countries to exercise the right to individual or collective self-defense.

The Arias Plan Can Bring About a Peaceful Resolution of the Conflict in Central America

The Arias Plan represents a fundamental legal principle of international law: the commitment to peace. See U.N. Charter articles 1, 33. It prescribes specific peaceful approaches to the settlement of the conflict in Central America. First, the Arias Plan calls for each government to issue an amnesty decree with respect to the insurgent forces in that country. Next, the Arias Plan calls for a national reconciliation dialogue whereby each country will begin talks with all unarmed political opposition groups of that country. A national reconciliation commission will be established to oversee this process of dialogue. Third, the countries pledge to carry out authentic democratic and pluralist processes that would allow the free choice by each country of its economic, political and social systems. In this connection, there is to be liberty for the media, and all states of emergency and states of siege must be rescinded. Fourth, free and democratic elections will be held in each country to designate representatives in the municipalities, congresses, legislative assemblies and presidencies of each country and to form a Central American parliament. Each of the aforementioned key Arias Plan provisions qualifies as a peaceful means for the settlement of international disputes, as prescribed by the Charter of the United Nations (the "U.N. Charter"), the Charter of the Organization of American States (the "O.A.S. Charter"), and the Inter-American Treaty of Reciprocal Assistance [hereinafter, the "Rio Treaty"]. Many are in the process of being implemented by the Central American signatories.

In accordance with its intent to further the peaceful settlement of the disputes in Central America, the Arias Plan also prohibits the use of force by one nation against the other. First, each signatory to the Arias Plan agrees not to intervene in the internal affairs of the other countries. Second, each government pledges to carry out all necessary actions to achieve a cease fire within the constitutional framework of that country. Third, each government pledges neither to render nor to permit military or logistical support to insurgent groups fighting against another government and calls on governments outside the region that supply

arms to the various insurgent groups within the region to refrain from doing so.* Finally, under the Arias Plan the signatory governments agree to continued negotiations on arms control agreements.

The Arias Plan Is an Example of the Preferred Method of Dispute Resolution Under International Law

As a legal document, the Arias Plan represents a concrete effort by the Central American leaders to draft and execute a form through which their commitments to regional and international peace can be implemented. International law supports the execution of the Arias Plan and the negotiating and mediation efforts required for its implementation.

The U.N. Charter and the O.A.S. Charter, to which the signatories to the Arias Plan are subject, support the settlement of disputes by instruments such as the Arias Plan. The U.N. Charter provides that:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall . . . seek a solution by negotiation, . . . resort to regional agencies or arrangements, or other peaceful means of their own choice. (U.N. Charter, art. 33, para. 1.) The O.A.S. Charter provides that “[a]ll international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter . . .” O.A.S. Charter, art. 23. The O.A.S. Charter further stipulates direct negotiations and “those [procedures] which the parties to the dispute may especially agree upon at any time” as such peaceful procedures. O.A.S. Charter, art. 24. Similarly, the Rio Treaty, to which the parties to the Arias Plan are also signatories, calls for methods of peaceful settlement of disputes. Rio Treaty, art. 2.

Several agreements entered into to resolve regional conflicts serve as precedents for the Arias Plan. For example, in 1954 Greece, Turkey and Yugoslavia signed the Balkan Pact (also known as the Bled Treaty) agreeing to settle their disputes by peaceful means in conformity with the U.N. Charter. The Arias Plan is also an instrument which follows the prescribed peaceful method to resolve disputes set forth in international conventions, because it is the result of prolonged, direct negotiations among the nations involved and represents a peaceful means of dispute resolution chosen by its signatories. *See* U.N. Charter, art. 33; O.A.S. Charter, art. 23.

Each of the aforementioned Arias Plan provisions is an example of the application of the rule against aggressive force and intervention in international law. The U.N. Charter provides that states “shall refrain in their international relations from the threat or use of force against the territorial integrity or political

*In this connection, the “Reagan-Wright Plan,” announced near the time that the Arias Plan was approved, serves as an example of the willingness of governments outside the region to comply with the basic provisions of the Arias Plan. The Reagan-Wright Plan states:

The United States affirms its support for the right of the Nicaraguan people to peaceful, democratic self-determination, free from outside intervention from any source.

independence of any State . . ." U.N. Charter, art. 2, para. 4. Similarly, the O.A.S. Charter provides:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or 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 or cultural elements. (O.A.S. Charter, art. 18.)

The Arias Plan, by advocating peaceful methods of interaction among the nations and disavowing aggression, is an example of a dispute resolution formula consistent with international law.

Implementation of the Arias Plan May Obviate the Need to Exercise the Right to Self-Defense and Collective Security

The Arias Plan does not limit or alter the existing right of a government or governments to exercise individual or collective self-defense under international law. However, the Arias Plan, if implemented consistent with its terms, would obviate the need to exercise such rights in the current Central American conflict.

Prior to the adoption of the Arias Plan, there may have been some basis for the involvement of other interested parties in the conflict in Central America. See Moore, *The Secret War in Central America and the Future of World Order*, 80 AM. J. INT'L L. 43 (1986). International law establishes an inherent right of individual or collective self-defense, if an armed attack occurs against a Member of the United Nations. U.N. Charter, art. 51; O.A.S. Charter, arts. 21 and 22. Under the Rio Treaty, the American states expressly pledge themselves to regard and combat an attack on one American state as an attack upon them all. Rio Treaty, art. 3. See generally, Claude, *The OAS, the UN, and the United States*, International Conciliation, March 1964, at 3; Rowles, *The United States, the OAS, and the Dilemma of the Undesirable Regime*, 13 GA. J. INT'L & COMP. L. 385 (1983).

The limits of the right of individual or collective self-defense have been the subject of much scholarly debate. See, e.g., D. Bowett, *Self-Defense in International Law* (1958); M. McDougal & J. Feliciano, *Law and Minimum World Public Order* (1961); H. Kelson, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems* (1950); Kunz, *Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations*, 41 AM. J. INT'L L. 872 (1947). It has been argued that support by one state, such as Nicaragua or Honduras, of an insurgency directed against the recognized government of another state represents an indirect armed attack which justifies the use of direct or indirect force by the targeted state against the offending state. Moore, *supra*, at 82. For example, Honduran sanctuary for Nicaraguan antigov-

ernment rebels has been justified as a defensive response to Nicaraguan aid to antigovernment insurgents fighting in El Salvador. See Moore, *supra*; N. Rostow, *Nicaragua and The Law of Self-Defense Revisited*, 11 YALE J. INT'L L. 437 (1986).

However, in the absence of any armed attack against a state individually or collectively, governments are pledged to a policy of non-intervention in the affairs of other governments under international law. See Moore, *supra*, at 108; Rowles, *supra* at 386. Cf., Reisman & McDougal, *Humanitarian Intervention to Protect the Ibos*, in *Humanitarian Intervention and the United Nations* 167-95 (1973); Fairley, *State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box*, 10 GA. J. INT'L & COMP. L. 29 (1980); Lillich, *A United States Policy of Humanitarian Intervention and Intercession in Human Rights and American Foreign Policy* 278, 287-92, 296-98 (1979). The U.N. Charter provides that, except in circumstances envisioned in Chapter VII ("Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"), states may not "intervene in matters which are essentially within the domestic jurisdiction of any State . . ." U.N. Charter, art. 2, sec. 7. The duty of non-intervention obligates United Nations members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State . . ." *Id.* art. 2, sec. 4; see also O.A.S. Charter, art. 18.

If properly implemented, under the Arias Plan there would be no intervention by one country in the affairs of another. Thus, full compliance with the Arias Plan would obviate the need to exercise any right of individual or collective self-defense otherwise legitimate as a response to intervention. As noted above, the five signatories pledge to prevent the use of their territories by insurgents fighting other Central American governments, and neither to render nor to permit military or logistical support to such antigovernment insurgents. The plan further envisions a regional cease-fire between the signatory governments and their respective insurgent groups. Therefore, because under the terms of the Arias Plan, no government in the region is to be engaged in any form of armed attack, direct or indirect, against another, no individual or collective self-defense action should be required or justified.

The Recommendation of the American Bar Association

The American Bar Association recognizes the Arias Plan as a document which embodies the international legal principle of commitment to peace and non-intervention. The American Bar Association further recognizes the Arias Plan as being consistent with its own goal "[to] provide leadership for the development of the rule of law in dispute avoidance and resolution of conflict between nations . . ." Goal VIII, Summary Objective 2, A.B.A., "Summary of Action of the House of Delegates" (August 1983). The American Bar

Association therefore endorses the Arias Plan, and, with its endorsement, calls on all interested parties to accept the Arias Plan and to work towards its implementation.

Respectfully submitted,

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and Practice

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