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THE WHITE HOUSE

WASHINGTON

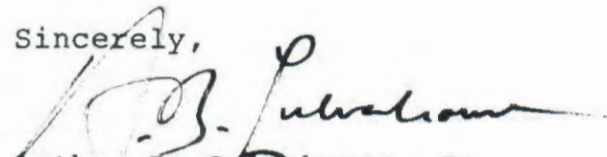
June 10, 1987

Dear Congressman Cheney:

Pursuant to your request, enclosed are certain general material relating to the Boland Amendments collected by this office. We also have prepared certain privileged internal analyses.

Please feel free to let me know if we can be of further assistance.

Sincerely,



Arthur B. Culvahouse, Jr.
Counsel to the President

Enclosures

The Honorable Dick Cheney
United States House of Representatives
225 Cannon House Office Building
Washington, D.C. 20515

"BOLAND AMENDMENTS"

I	II	III	IV	V	VI
<p>Dec. 21, 1982 - Dec. 7, 1983 <u>Ban Against Overthrow</u></p> <p>No funds appropriated under DOD appropriations act used by CIA or DOD to furnish military support to overthrow Nicaraguan Government or to provoke war between Nicaragua and Honduras</p>	<p>Dec. 8, 1983 - Oct 3, 1984 <u>\$24m Limit</u></p> <p>Not more than \$24m of funds available to CIA, DOD or any other agency or entity of U.S. involved in intelligence activities may be expended to support, directly or indirectly, military or para-military operations in Nicaragua</p>	<p>Oct. 3, 1984 - Dec. 19, 1985 <u>No Funds</u></p> <p>No funds available to CIA, DOD or any other agency or entity of U.S. involved in intelligence activities may be expended to support, directly or indirectly, military or para-military operations in Nicaragua</p> <p>No funds available under DOD appropriations act shall be used, directly or indirectly, to influence Congressional action</p>	<p>Aug. 15, 1985 - Mar 31, 1986 <u>(overlap w/III & V) Humanitarian Assistance</u></p> <p>Part III restriction ends and Part V starts December 19, 1985</p> <p>\$27m in "humanitarian" assistance to Nicaraguan democratic resistance; DOD and CIA barred from administering funds. Prohibition as of 10/1/85 on conditioning foreign aid to third country on assistance by that country to Contras [Pell Amendment]</p> <p>Express recognition that USG was authorized to exchange information with FDN 98066</p>	<p>Dec. 19, 1985 - Oct. 16, 1986 <u>Communications & Intelligence</u></p> <p>Funds available to CIA, DOD or any other agency or entity of U.S. involved in intelligence activities may be expended to support military or para-military operations in Nicaragua as authorized--communications equipment and training, and intelligence advice and information</p> <p>Prohibition on conditioning foreign aid to third country on assistance by that country to Contras [Pell Amendment]</p> <p>"Nothing precludes" State Department solicitation of humanitarian assistance for Contras</p>	<p>Oct. 18, 1986 - Sep. 30, 1987 <u>\$100m</u></p> <p>\$100m in assistance appropriated, \$30m humanitarian assistance and \$70m for other purposes.</p> <p>Prohibition on conditioning foreign aid to third country on assistance by that country to Contras [Pell Amendment]</p>

EVENTS:

EVENTS:

EVENTS:

EVENTS:

EVENTS:

EVENTS:

May 84
Saudi Arabia Meetings

Feb 85
Saudi Arabia Meetings

April 85
Honduras Call

Nov 85 Newington Photo Op

Nov 85 Newington Photo Op

Feb, May, Aug 86
U.S. Arms Shipments to Iran/Excess Funds to Luke Resources

Jan-Mar 86 Various Private Donor Photo Ops & Briefings

Spring 86
Brunei Contribution

COMMENTS:*

Restriction limited to CIA and DOD funds appropriated in this act

Restriction on expenditure of "funds"--not on conduct

COMMENTS:*

Limited to CIA, DOD & "other" intelligence agencies. Strong argument that restriction not applicable to NSC.

Restriction on expenditure of "funds"--not on conduct

COMMENTS:*

Limited to CIA, DOD and "other" intelligence agencies. Strong argument that restriction not applicable to NSC.

Restriction on expenditure of "funds"--not on conduct

COMMENTS:*

III or V restraints applicable throughout

COMMENTS:*

Limited to CIA, DOD and "other" intelligence agencies. Strong argument that restriction not applicable to NSC.

"Direct or indirect" language removed.

Solicitation of humanitarian aid by State Department expressly recognized, but statute contains no prohibition on other solicitations by other agencies

Restriction on expenditure of "funds"--not on conduct

COMMENTS:

* Statute does not, by its terms, limit the President's conduct; such an attempt would force strong constitutional challenge.

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BOLAND AMENDMENT PROVISIONS

Summary. This memorandum sets out chronologically the texts and salient limitations of the so-called Boland Amendments, the term commonly used to describe:

1. December 21, 1982 1/ - December 7, 1983 A prohibition against CIA and DOD expenditures toward overthrowing the Nicaraguan Government or provoking a Nicaragua-Honduras war
2. December 8, 1983 - October 3, 1984 \$24 million in assistance
3. October 3, 1984 - December 19, 1985 A prohibition against expenditures toward direct or indirect Contra support by CIA, DOD or "any other agency or entity involved in intelligence activity"
August 15, 1985 - March 31, 1986 \$27 million in humanitarian assistance administered by the State Department
4. December 19, 1985 - October 16, 1986 \$13 million for "communication" and "advice"
5. October 18, 1986 - September 30, 1987 \$100 million in humanitarian and military assistance

The Pre-Boland Backdrop. First Finding. In December 1981, President Reagan signed a National Intelligence Finding establishing U.S. support for the Nicaraguan resistance forces, the so-called Contras. 2/ This policy of covert action was controversial from the start. That month, Representative Edward P. Boland (D-Mass), then Chairman of the House Permanent Select Committee on Intelligence ("HPSCI"), wrote to Director of Central Intelligence William Casey expressing concerns about

the number and tactics of the insurgents to be supported, whether these insurgents would be under U.S. control and the possibility of military clashes between Nicaragua and Honduras. 3/

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1. Dates reflect approval of appropriations acts, not authorization acts.
 2. Report of the President's Special Review Board at C-1, Feb. 26, 1987 ("Tower Rept.").
 3. Cited in the Congressional Quarterly Almanac at 125 (1983) ("CQ").

Congress had recently promulgated § 501 of the National Security Act, 4/ requiring the Executive Branch to keep the intelligence activities "fully and currently informed of all intelligence activities which . . . carried out for or on behalf of, any department, agency or entity of the United States." To some, this afforded inadequate oversight over U.S. covert activities in Nicaragua. Congress moved to limit the activity the Administration could undertake in Nicaragua.

1. December 21, 1982 - December 7, 1983: narrow prohibition

On December 21, 1982, Congress adopted the first Boland Amendment. It provided:

None of the funds provided by this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras. 5/

The 1982 provision established only narrow limitations on the expenditure of funds. Applicable to only certain of the funds of the Central Intelligence Agency ("CIA") and the Department of Defense ("DOD"), it prohibited expenditures by those agencies only insofar as they were conducted "for the purpose of overthrowing" Nicaragua or "provoking a military exchange" between Nicaragua and Honduras.

This Boland Amendment, adopted unanimously by the House, had the support of the Administration. Boland had first introduced it as a classified amendment to the FY 1983 Intelligence Authorization Act, into which it was ultimately incorporated. 6/ On December 8, 1987, he introduced it publicly as an unclassified amendment to the Defense Appropriations Bill (HR 7355), in lieu of a more restrictive version introduced earlier that day by Rep. Tom Harkin (D-Iowa). Harkin's proposal had stated:

4. P.L. 96-450, 50 U.S.C. § 413 Oct. 14, 1980.

5. Section 793 of the FY 1983 DOD Appropriations Act ("DODAA"), contained in the FY 1983 Further Continuing Appropriations Act ("CR") (P.L. 97-377, 96 Stat. 1865 Dec. 21, 1982) (emphasis added throughout unless otherwise stated).

This provision was extended by CR through Nov. 10, 1983 (§ 101(3)(c) of P.L. 98-107, 97 Stat. 735, Oct. 1, 1983); and through Dec. 7, 1983 (§ 101(a) of P.L. 98-151, 97 Stat. 965, Nov. 14, 1983).

6. P.L. 97-269, 96 Stat. 1142, Sept. 27, 1982.

Section 793. None of the funds provided in this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of assisting that group or individual in carrying out military activities in or against Nicaragua. 7/

Boland's proposal retained the precatory provisions of Harkins proposal, but only barred such expenditures "for the purpose of overthrowing the government of Nicaragua or provoking a military exchange between Nicaragua and Honduras." 8/

Boland's proposal immediately was perceived as a means to provide the Administration substantial operating leeway. Senator Chris Dodd (D-Conn) described it in floor debate:

[The Boland Amendment] is limited to the overthrow of the Nicaraguan Government and to support a conflict between Honduras and Nicaragua. . . . I suggest that there are any number of ways of circumventing that prohibition. In effect, it is going to provide a green light for the continued activity that we have seen reported, over and over again, in the last several weeks and months, suggesting that we are already deeply involved in a broadening conflict in Nicaragua. 9/

On December 21, 1982, the day the bill became law, Dodd reiterated his concerns calling the bill "the legislative equivalent of 'blue smoke and mirrors' and we should not have any illusions about it." 10/

2. December 8, 1983 - September 30, 1984: \$24 million in assistance

New disclosures. In spring, 1983, evidence surfaced that the United States was supporting covert operations in Nicaraguan territory. In its April 4 edition, Time reported that the United States and the rebels had established a three-part command structure to disguise U.S. participation in the fighting, the key component of which was an all American "general staff" that comprised "the brains of the insurgency." On April 3, the New York Times reported that the United States had supplied extensive intelligence information, training and plane loads of weapons to

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7. 129 Cong. Rec. H 9148, Dec. 8, 1982.
 8. 129 Cong. Rec. H 9158, Dec. 8, 1982.
 9. 129 Cong. Rec. S 15351, Dec. 18, 1982.
 10. 129 Cong. Rec. S 15899, Dec. 21, 1982.

the rebels. On April 3-5, the Post reported that rebel forces were armed and advised by the United States.

The initial response of Administration officials did not allay congressional concerns. On April 12, then Assistant Secretary of State Thomas Enders indicated to the Foreign Relations Committee that although the rebels were seeking the overthrow of the Nicaraguan government, the U.S. was not. 11/ U.S. aid to the rebels therefore did not violate the Boland prohibitions. Then U.S. Ambassador to Honduras John Negroponte was quoted by a visiting U.S. Congressman to say that the Boland amendment was "a legal triviality" that should not stand in the way of U.S. objectives. 12/

Congress reacted along partisan lines. On April 12, the Senate Select Committee on Intelligence ("SSCI") met with Casey, prompting then Chairman Barry Goldwater (R-Ariz.) to conclude that the Administration "is not violating the letter or the spirit" of the Boland Amendment. Boland, on the other hand, stated his view that "this covert operation is an apparent violation of the amendment." 13/

The President's Response. President Reagan himself responded to press queries on April 14, 1983:

We are not doing anything to try and overthrow the Nicaraguan Government. . . .

Anything that we're doing is aimed at interdicting these supply lines and stopping this effort to overthrow the El Salvador Government. 14/

On April 27, the President addressed a joint session of Congress to outline his program in Central America. The cornerstone was a "verifiable, reciprocal" agreement among Central American countries for the withdrawal of foreign troops, military advisors and foreign support for insurgencies, as well as a ban on the import of offensive weapons. A special envoy with ambassadorial rank would be responsible for bipartisan implementation of these objectives. 15/ Former Senator Richard Stone (R-Fla.) was later named to the post.

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11. Washington Post, April 14, 1983; New York Times, April 14, 1983.
 12. Ibid.
 13. Ibid.
 14. Weekly Comp. of Presidential Papers at 540-541 (1983).
 15. 129 Cong. Rec. H 2414, April 27, 1983.

The Boland-Zablocki Bill. Boland's proposal, not ultimately adopted, was to bar covert aid but provide substantial amounts to be spent for overt aid. On the day of the Presidential address, Boland and Clement Zablocki (D-Wis.) introduced H.R. 2760, which, effective 45 days after adoption, would have prohibited any expenditures by the CIA or any other government agency

for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in or against Nicaragua by any nation, group, organization, movement or individual.

The bill also would have authorized \$30 million in FY 1983 and \$50 million in FY 1984 for "overt" aid to any Central American country.

Congress again was of mixed minds on the legal application of the amendments, past and pending. Boland insisted that the extant covert activities were illegal under then current law, stating "the purpose and the mission of the operation was to overthrow the government in Nicaragua." Rep. Stephen Solarz (D-NY) characterized the proposed Boland Amendment as "the first step" that would "terminate our paramilitary operations in Nicaragua." ^{16/} On the other side of the aisle, Henry Hyde (R-Ill.) said the Boland Amendment was not being violated because the "few little people" the United States was backing in Nicaragua "in no way can overthrow" the Nicaraguan Government.

HPSCI later classified the effective date of the prohibition and deleted the words "or against" to clarify that the agencies could seek to interdict arms running through Nicaragua. HPSCI approved the bill on May 3, by a partisan vote, approval of the House Foreign Affairs Committee ("HFAC"), followed on June 7. ^{17/} The bill was debated in secret session on July 19, and in open session on July 28. ^{18/}

Meanwhile, SSCI, contemporaneously considering the Intelligence Authorization bill, voted 13-2 in closed session on May 6, to enable the CIA to continue its activities in Nicaragua for the remaining five months of fiscal 1983, though it required a new plan from the Administration for the following year. ^{19/}

On November 17, the conferees hammered out a compromise, allocating up to \$24 million for Contra support, to be spent by

16. 129 Cong. Rec. H 5823, July 28, 1983.

17. H. Rept. 98-122 (Pt. I).

18. 129 Cong. Rec. H 5818-5882, July 28, 1983.

19. S. Rept. 98-77, 98th Cong. 1st sess. (1983).

DOD or CIA "or any other agency or entity of the United States involved in intelligence activities." Section 775 of the FY 1984 DODAA (P.L. 98-212, 94 Stat. 1452, Dec. 8, 1983) provided:

During fiscal year 1984, not more than \$24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual. 20/

Second Finding. While the congressional debate ensued, the President, in September 1983, signed a second Nicaragua finding, which authorized "the provision of material support and guidance to the Nicaraguan resistance troops." The objective of this finding was two-fold:

-- inducing the Sandinista Government in Nicaragua to enter into negotiations with its neighbors; and

-- putting pressure on the Sandinistas and their allies to cease provision of arms, training, command and control facilities and sanctuary to leftist guerillas in El Salvador. 21/

3. October 3, 1984 - December 19, 1985: Prohibition on Military Assistance

In FY 1985, Congress implemented two provisions:

(a) in October 1984, a prohibition against expenditures for military support that extended until December 1985; and

(b) in August 1985, \$27 million in humanitarian assistance that extended until March 1986.

20. Section 108 of the FY 1984 Intelligence Authorization Act (P.L. 98-215, 97 Stat. 1475, Dec. 9, 1983) ("IAA") established substantially identical provisions:

During fiscal year 1984, not more than \$24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or directly, military or paramilitary operations in Nicaragua by any nation, group organization, movement or individual.

21. Tower Rept. at C-1.

A. Boland Prohibition. The Boland prohibition that was passed on October 12, 1984 was more encompassing than its 1982 precursor. Specifically, it applied to all FY 1985 funding for the CIA, DOD and intelligence agencies or entities. Section 8066(a) of the FY 1985 DODAA provided:

During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual. 22/

Boland deemed the language comprehensive:

[T]his prohibition applies to all funds available in fiscal year 1985 regardless of any accounting procedures at any agency. It clearly prohibits any expenditure, including those from accounts for salaries and all support costs. The prohibition is so strictly written that it also prohibits transfers of equipment acquired at no cost. 23/

Section 801 of the FY 1985 IAA 24/ adopted language less restrictive than the DOD AA:

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22. Contained in the FY 85 CR (P.L. 98-473, 98 Stat. 1935, Oct. 12, 1984). The initial limitations were implemented by CR effective from October 3-11, 1984. Section 106(c) of P.L. 98-441, 98 Stat. 1700-1701 provided:

No appropriations or funds made available pursuant to this joint resolution to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.

The limitations were extended by continuing appropriations resolutions through Nov. 14, 1985 (§ 101(c) of P.L. 99-103; 90 Stat. 472, Sept. 30, 1985); through Dec. 12, 1985 (P.L. 99-154, 99 Stat. 813, Nov. 14, 1985); through Dec. 16, 1985 (P.L. 99-179, 99 Stat. 1135, Dec. 13, 1985); and through Dec. 19, 1985 (P.L. 99-184, 99 Stat. 1176, Dec. 17, 1985).

23. 130 Cong. Rec. H 11980, Oct. 10, 1984.
24. P.L. 98-618, 98 Stat. 3304, Nov. 8, 1984.

No funds authorized to be appropriated by this Act or by the Intelligence Authorization Act for fiscal year 1984- (Public Law 98-215) may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual, except to the extent provided under the terms and conditions specified by House Joint Resolution 648, making continuing appropriations for fiscal year 1985, and for other purposes, as enacted. 25/

Views within the Administration have differed as to whether § 8066(a) applied to the NSC staff. On the one hand, the Office of Legal Counsel of the Justice Department concluded that it does, the NSC and its staff being an entity "involved in intelligence activity," designated by E.O. 12333 as "the highest" Executive Branch agency responsible for foreign intelligence, and within the plain language of the statute. Not surprisingly, at least some Congressmen have shared this view. (See, eg. letter from then Rep. Michael Barnes, cited in Memorandum, Intelligence Oversight Board ("IOB") to Poindexter, September 12, 1985).

On the other hand, the September 12 memorandum of the IOB advised Poindexter that the statute did not apply to the NSC staff, citing the absence of a specific reference to that entity; Congressional intent as construed from the more restrictive FY 1985 IAA; and the "coordinating" rather than "operational" role of the NSC. Even if the statute does not apply to the NSC staff per se, there remains the question of whether North's salary, which was paid by DOD throughout his tenure on the NSC staff, provided a sufficient nexus between the NSC and DOD funds so that the restriction on DOD would have applied to North. The IOB said that North's activities might have been. That view, however, bears additional scrutiny. 26/

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25. The HPSCI Report to the FY 1985 IAA, while summary in nature, suggests that the ban that was absolute with respect to funds covered by the Act (H. Rept. 98-473(I), 98th Cong. 2d Sess. at 5). The provision, it noted,

would prohibit any funds authorized by the bill being used to support, directly or indirectly, military or paramilitary operations in Nicaragua. The section also has the effect of denying any funds requested for such a purpose in fiscal year 1985.

Moreover, HPSCI rejected, 4-7, an amendment that would have restored funds requested by the Administration for the support of military and paramilitary operations in Nicaragua. Ibid.

26. IOB Memorandum, supra, at fn. 5.

Likewise, views may differ as to whether the DODAA reference to "funds available" to the CIA, DOD, and subject agencies or entities should be interpreted to apply to all funds available to CIA or DOD by appropriation or other mechanisms through which CIA and DOD receive funding (as the plain language suggests), or to funds available under that Act. The FY 83 DODAA and FY 85 IAA were explicitly limited to funds covered by those Acts; the 1985 DODAA was not. This may indicate that the omission in the 1985 DODAA was intentional, or it may reflect the views held by some that if a restriction is contained in an appropriations act, it should only be deemed to limit such appropriations.

Anti-Lobbying Provision. Congress made explicit that the funds could not be used for lobbying activity, providing in § 8069 of the DODAA:

None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress. 27/

Congress did signal that supplemental appropriations could become available at a later date. Section 8066(b) provided that the ban would cease to apply if, after February 28, 1985: (1) the President submitted a report to Congress that would, inter alia, "justif[y] the amount and type of such support," and (2) "a joint resolution approving assistance for military and paramilitary operations in Nicaragua is enacted."

CIA Cease and Desist Order. The limitations had immediate impact on CIA activity. To implement § 8066(a), CIA headquarters issued a "cease and desist" order to its field officers:

Field stations are to cease and desist with actions which can be construed to be providing any type of support, whether direct or indirect, to the various entities with whom we dealt under the program. All future contact with those entities are, until further notice, to be solely, repeat solely, for the purpose of collecting positive and counterintelligence information of interest to the United States. 28/

27. This language is similar to the Anti-Lobbying Act, 18 U.S.C. § 1913, which prescribes criminal sanctions on federal officials and employees using appropriated funds "directly or indirectly" "intended or designed to influence" legislation or appropriation by Congress, except through "proper official channels."

28. Tower Rept. at C-1-2.

B. August 15, 1985 - March 31, 1986:
Humanitarian Assistance.

In August 1985, while the § 8066(a) provisions continued in force, Congress passed a new authorization bill and a supplemental appropriation for \$27 million in humanitarian assistance. The impetus for the interim funding was described in the legislation itself as "disturbing trends in Nicaraguan's foreign and domestic policies," including:

President Daniel Ortega's April 1985 trip to the Soviet Union at a time when the Congress signaled its strong disapproval of increasing Nicaraguan-Soviet ties. 29/

Section 722(g) (1) of the ISDCA, 99 Stat. 254, provided:

Effective upon the date of enactment of this Act, there are authorized to be appropriated \$27,000,000 for humanitarian assistance to the Nicaraguan democratic resistance. Such assistance shall be provided to such department or agency of the United States as the President shall designate, except the Central Intelligence Agency or the Department of Defense.

Section 722(g) (5) defined "humanitarian assistance":

As used in this subsection, the term 'humanitarian assistance' means the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death.

Pell Amendment. Key among the additional constraints on executive branch activity were the terms of § 722(d) of the ISDCA (the "Pell amendment"), which provided in part:

The United States shall not enter into any arrangement conditioning, expressly or impliedly, the provision of assistance under this Act or the purchase of defense articles and services under the Arms Export Control Act upon the provision of assistance by a recipient to persons or groups engaging in an insurgency or other act of rebellion against the Government of Nicaragua.

29. § 722(b) (1) (A) of the International Security and Development Assistance Act, P.L. 99-83, 99 Stat. 250, Aug. 8, 1985 ("ISDCA").

The appropriation that followed a week later conformed with the authorization, but contained the proviso that the appropriation would expire on March 31, 1986. The FY 1985 DOD Supp. AA 30/ provided in part:

For an additional amount for humanitarian assistance provided to such department or agency of the United States as the President shall designate, except the Central Intelligence Agency or the Department of Defense, to the Nicaraguan democratic resistance, \$27,000,000 to remain for obligation until March 31, 1986. . . . As used in this paragraph, the term 'Humanitarian assistance' means the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles or material which can be used to inflict serious bodily harm or death.

Exchange of Information. Section 102(b) the DOD Supp. AA also stated that the CIA could "exchange information," not only under this provision but also under the broader ban of § 8066(a):

Nothing in this Act, section 8066(a) of the Department of Defense Appropriations Act, 1985 (as contained in section 101 of Public Law 98-473), or section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) shall be construed to prohibit the United States Government from exchanging information with the Nicaraguan democratic resistance, or the obligation and expenditure, but only for purposes for which they are expressly made available, of the funds appropriated by this chapter under the headings "HUMANITARIAN ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE" and "ASSISTANCE FOR IMPLEMENTATION OF A CONTADORA AGREEMENT."

Arguably, this permitted the CIA, through the "exchange of information," to directly or indirectly support the Contras. But the CIA "cease and desist" order of October 1984 suggests that some elements within the CIA had been reluctant to adopt that interpretation of § 8066(a) prior to passage of the DOD Supp. AA.

Conformity with § 8066(a). Section 102(a) of the FY 85 DOD Supp. AA (99 Stat. 325) made the provisions of 8066(a) expressly applicable to the humanitarian assistance:

The prohibitions contained in section 8066(a) of the Department of Defense Appropriations Act, 1985 (as contained in section 101 of Public Law 98-473) and section 801 of the Intelligence Authorization Act for Fiscal Year 1985 (Public Law 98-618) shall, without limitation as to fiscal year, apply with respect to funds appropriated under

30. P.L. 99-88, 99 Stat. 324-25, Aug. 15, 1985.

this chapter under the headings "HUMANITARIAN ASSISTANCE FOR NICARAGUAN DEMOCRATIC RESISTANCE" and "ASSISTANCE FOR IMPLEMENTATION OF A CONTADORA AGREEMENT."

Legislative History. The texts of the statutes and their legislative history suggest that three key points of compromise were made in order to obtain the funds: (1) that all the funds would be deemed humanitarian assistance; (2) that DOD and CIA would not administer the aid; and (3) that no further expenditures would be made to support the Contras. 31/

Though some in Congress acknowledged the appeal of characterizing the assistance as "humanitarian," there was considerable skepticism as to whether the designation would have real impact. Boland told the House:

[T]here is a new twist to the debate on Contra aid this time around. Now we are being asked in the Michel amendment to approve humanitarian aid.

I gather the attraction of this loosely defined phrase is that it purports to be a policy that supports peace, not war.

But. . .the amounts to be appropriated are by no means insignificant, \$27 million. . . That's more than we spent at that rate when we supplied all of the Contra's needs, military or otherwise.

[A]s we all know, the private groups will continue to provide money for arms and ammunition.

The effect of the Michel amendment, and that private aid, is going to be money for the Contras thatn they have ever received in the past [sic] . . .

To me, Mr. Chairman, this whole concept of humanitarian aid is a fig leaf. 32/

Rep. Durbin (D-Ill.) offered a similar characterization:

The \$27 million sought by the Michel amendment is not humanitarian assistance. It is military assistance which will only serve to prolong the conflict, pain, and suffering of the people of Nicaragua. 33/

31. See CQ Almanac at 61 (1985).

32. 131 Cong. Rec. H 4118, June 12, 1985. See also 131 Cong. Rec. H 4142, June 12, 1985.

33. 131 Cong. Rec. H 4122, June 12, 1985.

Correspondingly, there was extensive debate, but no meeting of minds on whether the humanitarian aid would supersede the prevailing Boland prohibitions. Durbin termed it a repeal:

The Michel amendment specifically repeals the Boland amendment which prohibits the United States from direct or indirect military involvement in Nicaragua. 34/

Rep. McDade (R-Pa.) took the opposite view:

The amendment we are offering does not repeal outright the Boland amendment. That is clear to anybody who reads it. It restates it. 35/

Boland sought successfully to extend the so-called Boland provisions "until the Congress enacts a joint resolution repealing the prohibition." The effect of the Boland provision on humanitarian assistance, he said, would be two-fold:

First of all, it means that none of the funds which are appropriated by the Michel amendment may be provided through any intelligence agency.

. . .

[Second,] we will ensure that the humanitarian assistance provided by the Michel amendment will be the only kind of assistance provided to the Contras until the Congress approves otherwise. . . 36/

4. December 19, 1985 - October 16, 1986: "Communications" and "advice"

On December 4, 1985, Congress authorized expenditures, ultimately totalling \$13 million, to be spent toward purposes specified in a classified annex. 37/ Generally, it authorized provision of:

34. Ibid.

35. Ibid.

36. 131 Cong. Rec H 4142-43, June 12, 1985.

37. §§ 102 and 105 of the FY 1986 IAA (P.L.99-169, 99 Stat. 1002-1003, Dec. 4, 1986). The unclassified provisions are singularly opaque. Section 105(a) of the 1986 IAA provided:

Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal

(Footnote continued)

(a) "communications equipment" and training for the use of such equipment; and

(footnote 37 continued)

37. year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102 . . ."

Section 101 listed the agencies for which funds were authorized for the conduct of intelligence and intelligence activities, a list which included DOD and CIA but not the NSC staff.

Section 102 provided in part:

The amounts to be authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 1986, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany H.R. 2419 of the Ninety-ninth Congress. . . .

Section 105 (b) affirmed that the new provisions posed no bar to continued State Department administration of the humanitarian assistance program and "activities of the Department of State to solicit such humanitarian assistance for the Nicaraguan democratic resistance."

Section 8050 of the FY 1986 DOD AA, incorporated into the final CR for FY 1986 (P.L. 99-190; 99 Stat. 1211, Dec. 19, 1985) incorporated by reference the IAA, including § 105:

"None of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended during fiscal year 1986 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance unless in accordance with the terms and conditions specified by section 105 of the Intelligence Authorization Act (Public Law 99-169) for fiscal year 1986."

These provisions were extended by CR through Oct. 8, 1986 (§ 101(b)(1) of P.L. 99-434, 100 Stat. 1077, Oct. 1, 1986); through Oct. 10, 1986 (§ 101(a)(1) of P.L. 99-464, 100 Stat. 1185, Oct. 9, 1986); through Oct. 15, 1986 (P.L. 99-465, 100 Stat. 1189, Oct. 11, 1986); and through Oct. 16, 1986 (P.L. 99-491, 100 Stat. 1239, Oct. 16, 1986).

(b) intelligence and counter-intelligence "advice and information" to assist Contra military and paramilitary operations.

The provisions are illuminated only slightly by the classified section of the Joint Explanatory Statement accompanying H. Rep. 99-377, the Conf. Rept. on H.R. 2419: (Cited in unclassified correspondence from Lee Hamilton to Wm. Casey, dated December 4, 1985):

Section 105 does not permit intelligence agencies to engage in activities, including training other than the communications training provided for [sic] pursuant to Section 105, that amount to participation in the planning or execution of military or paramilitary operations in Nicaragua by the Nicaraguan democratic resistance, or to participation in logistics activities integral to such operations.

Conflicting interpretations immediately developed as to whether and, if so, what kind of logistical support or training had been authorized. The differences were illustrated in an exchange of letters between Lee Hamilton, Chairman of the HPSCI, and David Durenberger, his Senate counterpart, which in turn gave rise to differences within the CIA over defining legitimate conduct.

Hamilton apparently took the view that all logistics advice was integral to military and paramilitary operations, and therefore, barred. On December 4, 1986, the date the statute was enacted, he wrote then Director of Central Intelligence William Casey that, based on the aforementioned legislative history,

intelligence personnel are not to act as military advisors to the contras. This certainly includes advising them on logistical operations upon which military or paramilitary operations depend for their effectiveness.

Durenberger disagreed, writing Hamilton the next day to suggest that, "general logistical advice" was permissible, especially when related to humanitarian or communications assistance."

Hamilton's response on December 9 took exception, stating that: (1) the CIA had been barred from participating in the distribution of humanitarian assistance; and (2) logistical advice, even for food distribution, "can well be seen as military advice to the contras."

The Intelligence Oversight Board took a position perhaps more expansive than Durenberger's, advising Poindexter by memorandum of April 8, 1986 that expenditures had been authorized not only for advice, but:

basic military training for the Nicaraguan democratic resistance so long as such training does not amount to the participation in the planning and execution of military or paramilitary operations in Nicaragua.

During this period, North appears to have been actively engaged in providing logistical support to Contra resupply efforts, with the assistance of a secure communications network, the CIA, and a private network he described as including Mssrs. Hakim ("who runs the European operation for our Nicaraguan resistance activity") and Secord, who in November 1985 delayed a Nicaraguan arms shipment when the Israelis could not obtain flight clearance for their shipment of Hawk missiles to Iran. (Tower Rept. at C 8-9; SSCI Rept. at 38-39).

CIA involvement is not comprehensively detailed in either report, but internal memoranda prepared by the CIA General Counsel's office describe CIA support for Contras (the provision of flight vectors and Sandinista anti-aircraft positions) and for "private benefactors" supporting the Contras (resupply drop information supplied on ten occasions from April to September 1986). There is some question within the Agency as to whether the activities are consistent with the statute. The General Counsel's Office has relied on the Durenberger interpretation to conclude that it is. The Inspector General has cited the narrower analysis proffered by Hamilton in questioning the propriety of the support. 38/

5. October 15, 1986 - September 30, 1987: \$100 million for humanitarian and military assistance

On October 18, 1986, Congress authorized the provision of \$100 million in military assistance to the Contras. Section 206 of Title II of the FY 1987 Military Construction Appropriations Act, incorporated in the final CR for FY 1987 (P.L. 99-500, 100 Stat. 1783-299 - 1783-300), provided in part:

(a) (1) The Congress hereby approves the provision of assistance for the Nicaraguan democratic resistance in accordance with the provisions of this title.

(2) There are hereby transferred to the President for the purposes of this section \$100,000,000 of unobligated funds from such accounts for which appropriations were made by the Department of Defense Appropriations Act, 1986 (as contained in Public Law 99-190), as the President shall designate.

. . .

38. Memoranda, W. George Jameson, Associate General Counsel to Deputy Director for Operations, Dec. 5, 1986; Carroll L. Hauver, Inspector General to General Counsel, Jan. 22, 1987.

(c) Funds transferred under subsection (a) shall remain available for the same period of time, but not to exceed September 30, 1987, as such funds would be available under DOD Appropriations Act, 1986 (as contained in P.L. 99-190, but for the enactment of this title).

The funds were to be available in three tranches: (1) not more than 40% upon enactment; (2) not more than 20% after October 15, 1986 and 15 days after a prescribed Presidential report to Congress; and (3) not more than 40% after February 15, 1987 and 15 days after a prescribed Presidential report.

Some of the funds were specifically earmarked:

-- \$30 million may be used only for humanitarian assistance, \$3 million of which is for the Contra human rights program (§ 208, 100 Stat. 1783-3000;

-- \$5 million is for the Southern Opposition Bloc (BOS) and \$5 million may be used only for the Misurasata Indian resistance force (§ 204(d); 100 Stat 1783-298).

Sections 209 and 211 specify the basic purposes to which funds may be spent, subject to limitations set out principally in sections 203, 204 and 216. Section 209(a), 100 Stat. 1783-30, incorporates by reference the terms (and attendant ambiguities) of the predecessor provisions on "communications" and "advice":

Except as otherwise provided in this title, funds transferred under section 6(a) shall be available for the purposes described in section 105(a) of the Intelligence Authorization Act for Fiscal Year 1986, and all the requirements, terms, and conditions of such section and sections 101 and 102 of such Act, section 502 of the National Security Act of 1947, and section 106 of the Supplemental Appropriations Act, 1985 (Public Law 99-88), shall be deemed to have been met for such use of such funds. 39/

Section 211(b)(1), 100 Stat. 1783-302, further provides:

[Until February 15, 1987], assistance to the Nicaraguan democratic resistance under this title shall be limited to the following:

(A) humanitarian assistance (as defined in section 722(g)(5) of the International Security and Development Cooperation Act of 1985);

39. § 209(a); 100 Stat. 1783-300.

(B) logistics advice and assistance;

(C) support for democratic political and diplomatic activities;

(D) training, services, equipment and supplies for radio communications, collection, and utilization of intelligence, logistics, and small-unit skills, tactics and operations; and

(E) equipment and supplies necessary for defense against air attacks.

The key prohibitions imposed on the use of the funds are:

(1) § 203(e); 100 Stat. 1783-297 - 1783-298:

"Notwithstanding any other provision of this title, no member of the United States Armed Forces or employee of any department, agency, or other component of the United States Government may enter Nicaragua to provide military advice, training, or logistical support to paramilitary groups operating inside that country. Nothing in this title shall be construed as authorizing any member or unit of the Armed Forces of the United States to engage in combat against the Government of Nicaragua."

(2) § 204(b); 100 Stat. 1783-298:

No assistance under this title may be provided to any group that retains in its ranks any individual who has been found to engage in --

(1) gross violations of internationally agreed human rights (as defined in section 502B(d)(1) of the Foreign Assistance Act of 1961); or

(2) drug smuggling or significant misuse of public or private funds."

(3) § 216(a), 100 Stat. 1783-307, provides:

United States Government personnel may not provide any training or other service, or otherwise participate directly or indirectly in the provision of any assistance, to the Nicaraguan democratic resistance pursuant to this title within those land areas of Honduras and Costa Rica which are within 20 miles of the border with Nicaragua."

The statute ascribes coordinating and supervisory authority to the Secretary of State:

The Secretary of State (or his designee) shall be responsible for policy guidance, coordination, and supervision of United States Government activities under this title. 40/

40. §207(a); 100 Stat. 1783-300.

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8/85
Before
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Don't record
re: Re!

1 Chairman Fascell: If the Senate wishes to recede, we
2 will be ready to move.

3 Senator Biden: Why don't we recede?

4 Chairman Lugar: Mr. Chairman, let me ask is this the
5 last of these sort of items? I really say that in all
6 seriousness, because they are flying in now and I really do
7 not know what to contemplate next. We will recede, if you
8 will assure us that this is it.

9 Chairman Fascell: Senator, I was following the list and
10 somebody put a hold on this at the beginning of the meeting
11 that is all I can tell you.

12 Senator Mathias: Could we on this one have report
13 language that we are receding because the President has
14 waiver authority which would accomplish the purpose that is
15 needed to be done, and that we will look at the issue, that
16 both Committees will look at the issue in the course of the
17 next few months?

18 Chairman Fascell: That is a restatement of the present
19 law, Howard.

20 Representative Wolpe: There was one part of that that
21 did not quite hear, Senator. Not necessarily assuming that
22 that authority would be exercised, but that he does have it

23 Senator Mathias: But that he has it and therefore we do
24 not see the need for this.

25 Representative Wolpe: That is fine.

1 Chairman Fascell: All right. Without objection.

2 Because of our agreement on the Philippines, we have a
3 technical amendment -- I feel it is purely technical --
4 having to do with the question of authorizing 30-year terms
5 and in the House language we had excepted the Philippines.
6 And, of course, now that they have and the Senate had
7 receded, but because we had given the Philippines FMS there
8 is no reason to except the Philippines.

9 In other words, this is a matter where the Senate had
10 already receded. This authorizes 30-year terms for FMS
11 market rate loans for those countries, except the
12 Philippines. Now that we have given the Philippines FMS, w
13 ought to take the exception out.

14 Am I correct, staff?

15 Mr. Boyer: Yes.

16 Representative Solomon: Yes, you are correct. We are
17 all in agreement.

18 Chairman Fascell: All right. Without objection, then,
19 that will be done.

20 Can we go to the final item?

21 Representative Gilman: I think we need some
22 clarification language on page 156, Mr. Chairman, on
23 prohibitions relating to military or paramilitary operation
24 in Nicaragua.

25 Chairman Fascell: Is this page 156?

1 Representative Gilman: It is page 156 in the
2 side-by-side.

3 Mr. Chairman, there is some vague language here that
4 would restrict any agreement with any other country that may
5 be providing equipment to other people, and we think we need
6 some clarifying language, and I think Senator Lugar has some
7 clarifying language with regard to that item.

8 Senator Pell: I think the language itself is pretty
9 simple. The way it reads and what it says is that no aid
10 dollars will be given to the contras, except for humanitari
11 reasons, unless authorized specifically by the bill, and it
12 prohibits the Administration from entering into agreements
13 with other nations, with those governments that provide any
14 kind of aid to the contras themselves.

15 Representative Gilman: I think the question arises as
16 whether or not this would restrict our giving aid to another
17 nation that may be giving some aid to the contras.

18 Senator Pell: No. Only if it is part of the requireme
19 that they do that. If they do it spontaneously, that is
20 another matter.

21 Representative Lagomarsino: But the point is it can be
22 interpreted in that way, so we are trying to see if we can
23 clarify the language.

24 Chairman Lugar: If the words "in return for" were added
25 after "provide" in line 26, that would probably be

1 clarified? Let me repeat. This is on line 26 of the Pell
2 Amendment. If you put "shall provide in return for
3 assistance".

4 Representative Gilman: I think that would help to
5 clarify it.

6 Senator Pell: But I would like to see the language stand
7 as it is.

8 Representative Barnes: The House already receded to the
9 Senate on this language earlier today.

10 Representative Hyde: But now it is murky.

11 Mr. Christianson: I am Jerry Christianson, the Minority
12 Staff Director. Let me say that this arose from the period
13 when there were lots of reports that the Administration may
14 be seeking other countries to provide assistance to the
15 contras, whether it was Taiwan, South Africa, whatever. And
16 all of those countries happened to be either recipients of
17 U.S. military aid or the purchasers of military equipment.
18 So this was aimed at preventing the Administration from
19 entering into agreements. It has no affect on a foreign
20 government; it only prevents the Administration from going
21 a foreign government and entering into an agreement whereby
22 that government agrees to aid the contras.

23 So in this case, for example, it would not prohibit a
24 country such as Honduras from doing it on its own, if it
25 wanted to. The only thing it prohibits is the Administration

Minority Staff
Director.

1 from going to Honduras and entering into an agreement whereby
2 Honduras provides assistance to the contras. That is all.

3 Senator Biden: Fungibility. Worry about fungibility.

4 Representative Gilman: We are just trying to clarify
5 that provision so we would not run into some questions later
6 on in the event we had a situation such as that.

7 Chairman Fascell: You know, it seems very clear to me it
8 does not prevent aid to a country if the country does it on
9 its own. It just say no agreement can be made by the United
10 States, no understanding can be made by the United States.
11 We do not presume to tell another country what to do on its
12 own.

13 Representative Hyde: May I ask what is the difference
14 between an agreement and an understanding?

15 Chairman Fascell: The same thing as there is between an
16 executive agreement and a treaty.

17 Representative Hyde: Oh.

18 [Laughter.]

19 Mr. Christianson: Or whether you write down and have a
20 formal exchange of notes between two governments, or the
21 Ambassador takes the foreign minister aside and says hey,
22 this is the deal.

23 Representative Hyde: I was just wondering. You know, a
24 casual discussion between not even heads of state or
25 officials of two countries.

1 Mr. Christianson: It does cover informal agreements.

2 Representative Hyde: Well, not an agreement, but just

3 "by the way, we are going to give something to the contras."

4 I think that is the concern, that it might be violative of

5 that. And if we said "in return for", if there were a quid

6 pro quo --

7 ~~Mr. Christianson: But that establishes another test. I~~

8 other words, in addition to having an agreement, then that

9 agreement would also have to have the quid pro quo. That

10 takes it one more step; whereas there could be many cases

11 where an Administration may go to a country and say, "we want

12 to enter into an agreement. Now you are not mentioning any

13 quid pro quo; it is certainly implied and the recipient of

14 that invitation could be very intimidated.

15 But it is not explicit there, so we would not be covered

16 by adding that language, and that is the problem.

17 Representative Lagomarsino: Do you mean under this

18 language we could not ask Great Britain, who is a purchaser

19 of our arms, we could not even discuss their furnishing aid

20 to the contras?

21 Mr. Christianson: We could not enter into an agreement

22 whereby they provide assistance to the contras.

23 Representative Hyde: But we could talk about it, and

24 they could talk about it, as long as there was not an

25 agreement or understanding?

1 Mr. Christianson: If they want to do it on their own,
2 they could do it.

3 Representative Hyde: Do you see the problem with this
4 language, then?

5 Mr. Christianson: But that is basically what it was
6 intended to prevent -- that is, the United States finding
7 another country.

8 Representative Hyde: To lean on?

9 Mr. Christianson: Yes, to lean on, or to do the work
10 that it could not do for itself, that it was restricted by
11 Congress from doing on its own.

12 Chairman Fascell: But "understanding", either formal or
13 informal, has pretty much of a diplomatic definition. I am
14 not sure that conversation is covered. I think an exchange
15 of letters would be. An exchange of notes would do it. But
16 to answer your question, Mr. Hyde, I don't think if they got
17 on the telephone that this could cover it, as long as they
18 did not reach an understanding.

19 Representative Hyde: We could have a little colloquy of
20 this, maybe on the floor.

21 Chairman Fascell: I do not know that I am the person to
22 have the colloquy with, but I am suggesting the possibility
23 Let us go --

24 Representative Gilman: Mr. Chairman, excuse me. This
25 a pretty serious matter.

1 Chairman Fascell: The House has already ceded, Mr.
2 Gilman. It is a question of whether the Senate wants to do
3 something.

4 Representative Gilman: But we will have a further
5 problem developing at a later date and it apparently is a
6 serious issue.

7 Chairman Fascell: With whom?

8 Representative Gilman: With the Administration.

9 Chairman Fascell: Well, man, they sure waited around a
10 long time to get to you.

11 Representative Gilman: Now that may be true.

12 [Laughter.]

13 Chairman Fascell: All right. Go ahead, Ben. I do not
14 want to cut you off.

15 Representative Gilman: Well, what we are trying to do is
16 to avoid a problem a little later on, because it is a serious
17 concern of the Administration, of having to deal with other
18 nations that may be in a position of helping some of the
19 other countries. If we can just develop some language that
20 would restrict that. I thought that "in return for" sounded
21 like a good way of conditioning it.

22 Senator Pell: Well, why could we not have such a
23 statement in the manager's report that would enlarge on the
24 things that could not be done under this provision? I think
25 the staff could work out something that could go in the

1 report language.

2 Representative Barnes: That is the logical answer. It
3 would clarify what is intended.

4 Chairman Fascell: That is all you need, Ben. Let us go
5 along with this.

6 The Senator is a gentleman and a scholar.

7 Representative Solomon: It sounds good to me.

8 Chairman Fascell: All right. Let us proceed to the
9 final item, which is the one that we put over.

10 Senator Biden: Oh, my gosh, Mr. Chairman, your nose is
11 growing. You said 500 items ago that this was the final
12 item.

13 Chairman Fascell: I just want to assure you, Senator,
14 that my nose has been the same size all my life, and it is
15 damn big.

16 [Laughter.]

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complices in some of the most brutal attacks on civilians that have occurred on this continent. We can take a look at report after report by international human rights monitoring groups that view the military activities of the Contras. Unable to gain either military or political advantage, the Contras have been reduced to simply assaulting civilians in the region.

And, make no mistake. American taxpayers' dollars will facilitate these continued attacks. You can call this humanitarian aid, you can try to frame it any way that you like, but clearly what we are trying to do through the Michel amendment is to provide support and sustenance, to allow for the continuation of the Contra war and their attacks on civilians in northern Nicaragua.

Let me read to you about one such instance.

She was on her side, I on the other, about 30 yards away, she was screaming. She was raped by one of the 50 men. There were about 800 Contras there in other areas. The same person later cut her throat.

The Contra responsible for this escaped. American taxpayers ought not to be facilitating the murder and destruction of civilians in northern Nicaragua. It is a policy that does not gain us military or political advantage. It is a policy that has already failed and the response today by Mr. Michel is to continue this very policy, and if it goes on without the addition of the Boland amendment it will provide for America's direct involvement through the

A attempt at what has been clearly demonstrated to be not in America's best interest. Let us not continue on a policy of failure. Let us attempt to regain our position in this hemisphere and try to institute policies that reflect the values of this country and the American people. I urge my colleagues to vote against the Michel amendment.

Mr. McDADE. Mr. Chairman, may I inquire how much time remains?

The CHAIRMAN. The gentleman has 3½ minutes remaining.

Mr. McDADE. Mr. Chairman, I yield myself the remaining time.

(Mr. McDADE. asked and was given permission to revise and extend his remarks.)

Mr. McDADE. Mr. Chairman and my colleagues, we have come to the end of formal debate on an amendment that has been called the Michel amendment, the McCurdy amendment, the McDade amendment, et cetera, et cetera. That is because a lot of people worked on it in this House. I just want to take a second to say I am very grateful to my friend from Oklahoma (Mr. McCURDY), who spent an enormous amount of time on the issue; I am very grateful to my friend, the chairman of the Committee on Foreign Affairs, the distinguished gentleman from Florida (Mr. FASCELL), who worked hard and made many positive contributions.

I do want to congratulate my colleagues on the other side of the aisle for having the graciousness to yield that distinguished chairman 5 minutes of their time so that he might express himself. I want to say that my dear friend, JOHN McCAIN, DAN DANIEL, HAM FRISH, all worked hard, my dear friend BOB MICHEL, DICK CHENEY, because we want to try to present to the House a new initiative, a bipartisan initiative.

□ 1330

Now normally, we would be at the point where we would vote. We have come down to the end of formal debate, and normally the ladies and gentlemen up in the press galleries would be about to watch the lights go on and the bells ring, and we would have a vote. No vote coming, folks, not for a couple more hours.

Strange not to vote right now. I have been here 24 years; I do not ever recall that before. Many things happen in this House. That may have happened before; maybe my memory is faulty; I just do not remember it, and I do not remember a Rules Committee writing a rule that prohibited the inclusion in this amendment formally of a bipartisan sponsor from across the aisle.

I believe that to be unprecedented in the history of the House of Representatives. I do not believe it represents equity. It does represent skill. I do not think it represents equity.

It is customary at this time to thank people in the House and I do, for the quality of the debate. Members on both sides of the aisle have done in general a superb job.

I do have to say I am offended, personally, by comments which were made by my distinguished colleague from Wisconsin, as he was closing debate on that side of the aisle.

What he said was not true and he knows better. I was offended to hear him say that, either those who—

Mr. OBEY. Will the gentleman yield? Is the gentleman saying I am lying?

Mr. McDADE. No; I do not yield.

Those who wrote this amendment either did not know what they were doing or they were prepared to seek a new armed aggression in Central America.

That, Mr. Chairman, is not my 24-year record as a Member, nor is it my intention nor those of my colleagues, on this amendment. Read it. It restates the prohibitions of the Boland amendment; they expire in September. It of-course does not deal with fiscal year 1986 money; we have not got to the fiscal year 1986 authorization or appropriations; it cannot.

I will work with you to carry out the spirit and intent of this amendment. I hope we vote for it in an overwhelming majority.

AMENDMENT OFFERED BY MR. BOLAND TO THE
AMENDMENT OFFERED BY MR. Mc DADE

Mr. BOLAND. Mr. Chairman, I offer an amendment to the amendment.

The amendment was printed in the RECORD on June 5, 1985, pursuant to the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment to the amendment is as follows:

Amendment offered by Mr. BOLAND to the amendment offered by Mr. McDADE. Strike out section 102 and insert in lieu thereof the following:

"Sec. 102.(a) No funds available during any fiscal year to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."

"(b) The prohibition contained in subsection (a) shall continue in effect until the Congress enacts a joint resolution repealing that prohibition."

The CHAIRMAN. Under the rule, the gentleman from Massachusetts (Mr. BOLAND) will be recognized for 30 minutes, and a Member opposed will be recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. BOLAND).

Mr. BOLAND. Mr. Chairman, the Michel amendment now before the House would provide \$27 million in so-called humanitarian aid to the Contras.

In my view, it is difficult to distinguish between logistical support to an armed force in the field, that is receiving arms from other sources, on the one hand, and direct arming of that force, on the other.

But, in its wisdom, the House may approve this amendment.

As I understand it, we will be approving only humanitarian assistance—no military aid.

Further, this assistance cannot be provided through the CIA or the Department of Defense.

In other words, we no longer will pretend that ours is a covert relationship with the Contras.

What does my amendment add to this?

Well, first of all, it adds the so-called Boland prohibition.

That prohibition is now the law.

It prohibits any agency involved in intelligence activities from "obligating or expending funds for the purpose, or which would have the effect, of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual."

That is language that this House has voted, on and adopted, four times in the last several years.

What does this amendment mean in connection with the Michel amendment?

It means, very simply, two things.

First of all, it means that none of the funds which are appropriated by the Michel amendment may be provided, through any intelligence agency,

\$27 million

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We take the intelligence agencies out of this matter entirely.

Now some of you might ask if this is necessary, since the Michel amendment says that the money it would appropriate can't go through CIA or DOD.

The President, under the Michel amendment, can determine the agency which will dispense this aid, but he will be precluded from using an intelligence agency.

But this restriction applies only to the specific sums appropriated by the Michel amendment—not other funds.

And that, Mr. Chairman, brings me to the other principal effect of my amendment.

By extending the Boland prohibition until it is affirmatively repealed by Congress, we will ensure that the humanitarian assistance provided by the Michel amendment will be the only kind of assistance provided to the Contras until the Congress approves otherwise.

Now, that is the impression Members might form by reading the expedited vote procedure in the Michel amendment.

But, in fact, because the present Boland prohibition will expire at the end of this fiscal year, on October 1, the President is free to use CIA contingency funds to renew military funding of the Contras without congressional approval.

I don't think that is something which this House wants to do.

I think the whole thrust of the Michel amendment, is to take account of the sensitivities in this body, and one of those sensitivities is the provision of military aid by the United States to the Contras.

We are not ready to do that yet.

Now, Mr. Chairman, that is what my amendment will do.

What will it not do?

Well, it won't prohibit the provision of the so-called humanitarian assistance in the Michel amendment.

It will only prohibit military aid until we specifically approve it.

Nor will my amendment prohibit use of U.S. military forces pursuant to the War Powers Resolution.

That is something that has been clear since the very inception of this language.

Now, one more point ought to be made, Mr. Chairman.

The Michel amendment permits the exchange of information with the Contras.

What does that mean?

I presume it means intelligence information, advice on how to run the war, and perhaps training.

That's too broad a role, Mr. Chairman.

We've got to limit the CIA's further involvement with the Contras.

I say that because, better than most Members, I know that the CIA is perhaps the finest intelligence service in the world.

Nicaragua has not been its finest hour—principally because large scale

paramilitary covert actions are hard to conduct secretly, or sustain politically, over a long period.

The best thing we could do to help CIA regain public credibility would be to keep it out of the war in Nicaragua.

Now, how does the Boland amendment do that?

It does this by clearing prohibiting CIA military planning, advice or training.

Those are certainly examples of direct support to the Contras.

But, you may say, what about a situation where a large concentration of the Contras—perhaps unarmed or in a sanctuary along the border—is about to be attacked by the Sandinistas in their new Soviet helicopters?

Can't the CIA warn them?

Well, Mr. Chairman, they can.

Now, where do I get that interpretation?

I get it, Mr. Chairman, from the CIA.

They have told the intelligence committee, that it is their interpretation of the present limitation, that it does not prohibit the provision of intelligence—so-called defensive intelligence—to the Contras to prevent a massacre or a holocaust-type situation.

They say they can't provide intelligence to support military activities in the field, but they can provide humanitarian warning of catastrophic attacks.

So, Mr. Chairman, my amendment does permit—as the intelligence community tells us—the provision of intelligence in extraordinary circumstances where the real prospect of a substantial loss of life exists.

That is not precise but the intelligence community tells us that they will inform the intelligence committees of each example in which they have done this and justify it fully.

They say it will be in case-by-case determination and be made in a purely humanitarian vein.

I think that's all that this House should approve.

It does what they say the Michel amendment does—it prohibits military aid until the House and the Senate approve it.

And it keeps the intelligence community completely out of the game, both in this fiscal year and in the next.

I think those are two principles which the House should endorse just at it has on four previous occasions.

Mr. FOLEY, Mr. Chairman, will the gentleman from Massachusetts yield to me?

Mr. BOLAND, I yield to the gentleman from Washington.

Mr. FOLEY, I thank the gentleman from Massachusetts for yielding.

I asked the gentleman from Massachusetts to yield for the purpose of addressing a question to him as author of the Boland amendment and for the purpose of making legislative history and so the Members of the House understand the effect of the Boland amendment.

Is it correct that the effect of the Boland amendment to the Michel amendment would be to deny authority to intelligence agencies of the United States to distribute any "humanitarian" assistance authorized by the Michel amendment?

Mr. BOLAND, Yes.

Mr. FOLEY, But is it also correct that the Boland amendment to the Michel amendment would not in any way restrict the authority of other agencies of the United States, other than intelligence agencies, from distributing any humanitarian assistance if authorized by the Michel amendment?

Mr. BOLAND, Yes.

Mr. FOLEY, And the the gentleman makes this statement as the author of the amendment for the purpose of making legislative history?

Mr. BOLAND, That is true. I appreciate the clarification by the distinguished majority whip.

Mr. CHENEY, Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN, The gentleman from Wyoming [Mr. CHENEY] is recognized for 30 minutes.

Mr. CHENEY, Mr. Chairman, I yield myself 2 minutes.

At the outset, I appreciate the colloquy we have just heard on the other side, but the fact of the matter is that the administration and many of us from this side of the aisle interpret the practical effect of the Boland amendment as being a killer amendment, a killer amendment in the sense that it specifically would require, we believe, the Contras, the Nicaraguan democratic resistance, to lay down their arms, to give up their fight, to cease the struggle against the Communist government of Nicaragua, in order to receive assistance.

The gentleman in the well just ticked off the long list of agencies and departments, the State Department, the CIA, the Defense Department, and all of the others, that his amendment prohibits from handling this action.

I would suggest that there is virtually no agency of the Federal Government equipped to run this program, no agency of the Federal Government that operates internationally that in fact would qualify under the terms of the gentleman's amendment to be able to provide this assistance to the Contras.

I expect to renew this point later on, Mr. Chairman. But the fact of the matter is, and a point for everyone to understand, the practical effect of the Boland amendment is to defeat the purpose of the Michel amendment, to make it virtually impossible for us to carry out the purposes of the program. It is a killer amendment. You cannot vote for Michel and Boland and be consistent. If you want to provide aid and assistance to the Contras, if you want to provide aid and assistance to the Nicaraguan democratic resistance,

Nicaragua Rebels Getting Advice From White House on Operations

N.Y. TIMES: 8-8-85

National Security Council Aides Reportedly Help To Raise Money Too From Private Sources

The following dispatch is based on reporting by Joel Brinkley and Shirley Christian and was written by Mr. Brinkley.

WASHINGTON, Aug. 7 — Rebels fighting to overthrow the Nicaraguan Government have been receiving direct military advice from White House officials on the National Security Council, senior Administration officials and members of Congress have disclosed.

A senior Administration official said the direction had included advice and "tactical influence" on the rebels' military operations as well as help in raising money from private sources.

The officials and lawmakers said the direct White House involvement in the rebels' operations against Nicaragua began last year after Congress ended United States military aid to the rebels. Congress has since agreed to send the rebels \$27 million in nonmilitary assistance.

Although some members of Congress say they believe the National Security Council operation has flouted the intent of legislation banning direct aid to the rebels, they add that they do not believe it violates United States laws.

"If the President wants to use the N.S.C. to operate a war in Nicaragua, I don't think there's any way we can control it," said Representative George E. Brown Jr., Democrat of California and a member of the House Select Committee on Intelligence. He and other intelligence committee members said they had discussed the operation, "but," Mr. Brown added, "we haven't taken any formal action."

In Contact With the C.I.A.

The operation has been run by a military officer who is a member of the National Security Council. Officials said the officer, who has extensive experience in intelligence work, meets frequently with rebel leaders in Washington and on trips to Central America and briefs President Reagan. He also gives frequent speeches and lectures on the subject of Nicaragua and, when asked, advises people on how they might donate money to the rebel cause.

A senior White House official said today that the officer was "a very important player."

In an interview today, a senior Administration official who has discussed the matter with the officer said he was in frequent contact with the Central Intelligence Agency, the State Department and the Defense Department as part of his work with the Nicaraguan rebels. The rebels, the official said, "are his account."

Private Donations Encouraged

"There's a lot of frustration within the White House," he added, "because they do not believe the N.S.C. is the logical place to manage the program. The staff is too small."

White House officials have been telling members of Congress this week that they are planning to set up a new agency associated with the State Department to administer the \$27 million in renewed, nonmilitary aid to the rebels that Congress approved last week.

Representative Dave McCurdy, Democrat of Oklahoma and a member of the intelligence committee, said White House officials had told him that

the new office would be called the Agency for Humanitarian Assistance. It is unclear who will serve on the new agency's staff, although the White House has assured Mr. McCurdy and others that neither C.I.A. nor Defense Department officials will be included. The legislation authorizing the new aid forbids direct involvement by anyone from those agencies.

Before Congress approved renewed aid, the Administration was forbidden to assist the rebels directly and as a result the White House encouraged private donors in the United States and abroad to give money to the effort. A senior Administration official said the rebels had collected \$20 million in the last year.

Another senior official who has talked with the officer said he played an indirect role in the fund raising.

"He never quite asked anyone for money for the contras," he said, using the name by which the rebels are generally known. "He has given numerous speeches and briefings on the subject. And if in the course of those briefings someone wanted to know how to assist them, as a normal course of his answering questions he has facilitated that."

State Dept. Confusion Reported

The officer would not agree to an interview today. But another senior N.S.C. official said in a recent interview that the National Security Council had taken a leading role in directing the Administration's Nicaragua policy last year because of confusion at the State Department. However, the official did not acknowledge that the office had been directing the rebel forces.

"There was so much fighting over there" at the State Department "that the action items were grabbed up by the N.S.C., mainly the trade embargo and contra aid."

Often in past administrations, covert actions like the aid to the Nicaraguan rebels have been isolated from the White House, giving the President and his staff what came to be known as "plausible deniability" of the programs. But the National Security Council is an Executive Branch agency with offices in the White House and across the street in the Old Executive Office Building.

Still, within the White House the program was not managed as most N.S.C. programs are, a former senior White House official said today.

"It was not handled through the crisis management apparatus," he said.

The former official recalled asking the officer on the N.S.C. a few months ago where the money for the rebels was coming from. "I never got an answer," he said.

Meetings With Rebels Reported

The former official, who has extensive experience in intelligence matters, said the N.S.C. program had not been operated under the specific rules and procedures of the Presidential executive order that covers covert intelligence operations. "They found a way around it," he said.

Officials said the officer on the National Security Council often meets with Adolfo Calero, leader of the Nicaraguan Democratic Force, the largest rebel group, and with Arturo Cruz, another opposition leader.

A Nicaraguan exile leader with close ties to the rebels said the officer was "a very important man" in the continuing efforts to reorganize and better coordi-

nate the operations of the two main rebel groups, the Nicaraguan Democratic Force in Honduras and the Democratic Revolutionary Alliance in Costa Rica. The officer has met with rebel leaders in both countries, officials said.

The officer also attends numerous functions for and about the Nicaraguan resistance in Washington and elsewhere.

'A Worker Bee'

A senior Administration official called the officer "a worker bee," adding that "you know our policy is to support them," referring to the rebels, "and that's his job."

The officer does "whatever is allowed by law," the senior official said. After Congress forbade C.I.A. involvement with the rebels last year, he added, "when the right people can't manage the operation, you have to look for other alternatives."

Another source who has been directly involved in Central America policy decisions over the last several years said that after Congress cut off aid, "then in came a flux of guys with their hearts in the right place, people not in government who were willing to help" by donating money, and all that had to be coordinated.

A senior Administration official involved with Nicaraguan matters said the officer on the N.S.C. had on occasion been advised in advance of proposed rebel attacks and had offered advice and direction.

He cited as an example an attack early last month on the Enrique Campbell Express ferryboat that travels between El Rama and Bluefields in southeastern Nicaragua. The Nicaraguan Government announced after the attack that Sandinista soldiers who had been on the boat had fought back and that four of them had been kidnapped, two had been killed and one had been wounded.

Rebel Buildup Expected

Officials said the officer also had facilitated the supplying of logistical help. Until Congress ended aid to the rebels last year, the C.I.A. had managed almost every aspect of their activities. But when left to their own devices, the rebels "couldn't manage themselves very well," a senior official said. "All of a sudden they had to create logistical supply lines, and they had real problems."

Now that Congress has approved renewed aid to the rebels and the operation is to be moved to a new State Department agency, a senior official said the Administration hoped to build the rebel armies from their present combined strength of about 20,000 "to 35,000 in the next six months."

White House Defends Legality Of NSC Contact With Contras

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By Joanne Omang
Washington Post Staff Writer

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The White House yesterday defended the legality of broad contacts between a member of the National Security Council staff and rebels fighting the Nicaraguan government, and President Reagan promised to work closely with Congress to make sure that the law is respected.

Various current and former government and rebel officials confirmed that a Marine officer on the NSC staff has played a key role in formation and implementation of U.S. policy in Central America over the last three years.

The officer has traveled frequently in the region and became a focal point in the last year for communication between the administration and the counterrevolutionaries, known as contras, who are battling the leftist Sandinista government of Nicaragua. He is considered a forceful advocate for a harder U.S. stance against a perceived spread of Soviet influence in the region.

The New York Times reported yesterday that the officer had exercised "tactical influence" on contra military operations, directed prospective financial donors to the rebels and otherwise helped organize and coordinate their efforts.

The Times said that he assumed more such duties when the Central Intelligence Agency withdrew last year in accordance with legislation passed then and that he was virtually running the contra program.

At the request of White House spokesman Larry Speakes, The Times and The Washington Post have withheld the officer's name. Speakes said last night that the officer and administration officials were concerned about his safety.

Rep. George E. Brown Jr. (D-Calif.), a member of the Permanent Select Committee on Intelligence, said in an interview that he is concerned that the officer's activities may have violated the new legislation banning direct and indirect aid to the contras by any intelligence arm of the government.

"It appears on the surface that the NSC is attempting to circumvent the law," Brown said.

"The intent of Congress was clear that all direct involvement with the contras was to be cut off . . . all intelligence-related matters go through the NSC; the question is whether it's considered an intelligence activity."

"I'm going to ask for very close scrutiny by the intelligence committee and, if there is any evidence, I will ask for hearings," Brown said.

Reagan was questioned about NSC activity as he signed into law the foreign aid authorization bill for two fiscal years, which provides \$27 million in "nonlethal" aid to the contras.

"We're not violating any laws," Reagan said. In a statement later, the president said he would "continue to work with Congress to carry out the program as effectively as possible and take care that the law be faithfully executed."

Administration officials did not deny reports about the substance of the officer's activities but bridled at the suggestion that he runs the contras. One called the charges "a witch hunt" and asserted, "The operation is not being run out of the NSC."

Speakes said, "Contacts have been made from time to time [with the contras] for the purpose of receiving information." He added, "No member of the NSC staff has at any time acted in violation of either the spirit or the letter" of the law.

The officer declined to be interviewed.

Senate Foreign Relations Committee Chairman Richard G. Lugar (R-Ind.) said the NSC was "carrying out the president's policy . . . I knew essentially what the administration was doing, and I approved [of] it."

Edgar Chamorro, a former director of the largest rebel force, the Nicaraguan Democratic Force (FDN), said in an interview that the officer went to FDN headquarters in Honduras in May 1984, just before Congress voted to end direct U.S. aid to the rebels, to reassure them of continued Reagan administration backing.

"They were very sensitive to us saying we knew they would abandon us sooner or later," Chamorro said. "When the CIA withdrew, he was the person that was left over as the main overseer, like a transition . . . We were told it was very important that he was there to tell us we would not be abandoned."

Chamorro said the officer and a CIA agent had assured the rebels that "the planning of the operations would continue very close to the NSC."

Bosco Matamoros, FDN's spokesman here, said the group had contacted the officer with details of its March 3 unity proclamation in San Jose, Costa Rica, and had frequently talked with him and other administration officials about various subjects.

"It's ridiculous to say anyone in Washington conducts our military operations," Matamoros said. "Our tactics are decided by our field commanders."

Senate Select Intelligence Committee Chairman David F. Durenberger (R-Minn.) said he was unaware of any unlawful activity by the officer.

He said the officer had apparently moved from providing facts and implementing policy to "letting his feelings influence where he's going to put his time and effort in production of facts and implementation of policy."

The officer and a fellow NSC staff member had briefed committee members on Nicaragua, and the officer backed up national security affairs adviser Robert C. McFarlane in lobbying on Capitol Hill to push a contra aid bill through the Senate last spring, Durenberger said. He called the officer "McFarlane's boy."

Retired Army major general John K. Singlaub, who coordinates a large number of private efforts to aid the contras, told Associated Press in June 1984 that the officer had advised him on fund-raising for the rebels.

Singlaub said he now tells the officer, "This is what I'm going to do. If it's a dumb idea, send me a signal," and added that he had never received such a signal.

Dec. 21, 1982-
Dec. 7, 1983
(Ban ag. overthrow)

\$ 793 of the FY 1983
DODAA (P.O. 97-377, 96
Stat. 1865; Dec. 21,
1982):

None of the funds provided by this Act may be used by the Central Intelligence Agency or the Department of Defense to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras.

Dec. 8, 1983-
Oct. 3, 1984
(\$24 million)

\$ 775 of the FY 1984
DODAA (P.L. 98-212; 94
Stat. 1952, Dec. 8,
1983):

During fiscal year 1984, not more than \$24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

\$ 108 of the FY 1984
IAA (P.L. 98-215, 97
Stat. 1475, Dec. 9,
1983):

During fiscal year 1984, not more than \$24,000,000 of the funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involve in intelligence activities may be obligated or expended for the purpose of which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.

BOLAND AMENDMENT PROVISIONS

Oct. 3, 1984- (by CR)
Dec. 19, 1985
("Absolute" ban)

\$ 8066(a) of the FY
1985 DODAA (P.L.
98-473; 98 Stat. 1935,
Oct. 12, 1984):

During fiscal year 1985, no funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual.

\$ 801 of the FY 1985
IAA (P.L. 98-618, 98
Stat. 3304, Nov. 8,
1984):

No funds authorized to be appropriated by this Act or by the Intelligence Authorization Act for fiscal year 1984 (Public Law 98-215) may be obligated or expended for the purpose or which would have the effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement, or individual, except to the extent provided under the terms and conditions specified by House Joint Resolution 648, making continuing appropriations for fiscal year 1985, and for other purposes, as enacted.

\$ 8069 of the FY 1985 DODAA: None of the funds by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislative appropriation matters pending before the Congress.

Aug. 15, 1985
Mar. 31, 1986
(Humanitarian)

\$ 722(g) (1) of
Int'l Sec. & I
Coop. Act; (P.
99-83, 99 Stat.
Aug. 8, 1985):

Effective upon date of enactment of this Act, there is authorized to be appropriated \$27,000,000 for humanitarian assistance to the National Endowment for Democracy. Such assistance may be provided to any department or agency of the United States, as the President may designate, except the Central Intelligence Agency or the Department of Defense.

\$ 722(d) of the

The United States arrangement contemplated by this Act or the Act upon the part of the recipient to prevent an insurgency or rebellion against the Government.

\$ 102(b) of the

Nothing in this Act [DODAA] shall be construed to require the United States Government to furnish information with respect to resistance, or to support, or to provide, but only are expressly mentioned, appropriated by

\$ 102(a) of the
Stat. 325):

The prohibition of 8066(a) [of the limitation as to respect to funds chapter

The Pell Amendment

Adopted in August 1985, the Pell Amendment to the International Security and Development Act of 1985, P.L. 99-83) prohibited the U.S. Government from entering into any arrangement conditioning the provision of U.S. aid upon the provision of assistance by the recipient government to the Contras.

The Pell Amendment itself is an acknowledgment that third countries, in consultation with the U.S. Government, were and would in the future provide aid to the Contras. Congress merely wanted to insure that there be no formal bilateral diplomatic agreement or understanding conditioning U.S. aid on such aid to the Contras.

During the House-Senate Conference, Representative Gilman asked, "whether or not this would restrict our giving aid to another nation that may be giving aid to the Contras themselves."

Senator Pell responded:

No. Only if it is part of the requirement that they do that. If they do it spontaneously, that is another matter.

Representative Fascell noted:

You know, it seems very clear to me it does not prevent aid to a country if this country does it on its own. It just says no agreement can be made by the United States. We do not presume to tell another country what to do on its own.

Representative Hyde asked whether the U.S. could talk about a foreign country's providing aid, as long as there was not an agreement or understanding.

Representative Fascell responded:

But "understanding" either formal or informal, has pretty much of a diplomatic definition. I am not sure that conversation is covered. I think an exchange of letters would be. An exchange of notes would do it. But to answer your question, Mr. Hyde, I don't think if they got on the telephone that this could cover it, as long as they did not reach an understanding.

TALKING POINTS

- There were five different Boland Amendments in four years (December 1982 through October 1986).
- Under these Boland Amendments, Congress authorized more than \$60 million over those four years, sometimes for military and related aid, sometimes for humanitarian aid, sometimes for both.
- In October 1986, Congress authorized \$100 million for humanitarian and military aid to the Contras.
- From October 3, 1984, to December 19, 1985, the Boland Amendment prohibited DoD, CIA, "or any other agency or entity of the U.S. involved in intelligence activities" from spending money to support, directly or indirectly, the Contras. At best, it is unclear whether the NSC is an "intelligence agency" subject to the prohibition on spending funds. The lawyers cannot agree, and Congress did not make it clear.
- No Boland Amendment or any other law prohibits the President from discussing foreign policy issues, or contributions to the Nicaraguan resistance, with leaders of foreign governments. That law restricts defense and intelligence agency spending, not conduct.

Senator Rudman is quoted in the New York Times (5/13/87):

I can find no lawyer of any constitutional law background who would claim that the President of the United States could be precluded by any amendment of the Congress from dealing with foreign countries in any way he wishes.

- No Boland Amendment or any other law prohibits private citizens from contributing money to the Contras.
 - Such a proposal was introduced in the House, but never got out of Committee.
 - Congressman Boland said on the House floor on June 12, 1985:

[The Contras] continue their military operations in Nicaragua and, they have increased their numbers.

They have done this with funds provided by private groups, mostly from the United States.

Those funds have helped purchase weapons, ammunition, food, clothing, medicine--everything the Contras have needed to maintain themselves as an army in the field.

....
As we all know, the private groups will continue to provide money for arms and ammunition.

7. Q. Are you saying that the test of the President's involvement in the matter is legality--in other words--the President is not aware of anything illegal therefore nothing is wrong with it?

A. No. What we are saying very simply is that there seems to be a great deal of confusion about the Boland Amendment, how many amendments there were, what they prohibited, what they authorized, when they were in effect, and who they affected.

There were five "Boland Amendments" in four years. All were related to the power of Congress to control the Federal purse and prohibited or limited certain expenditures; none contained any language which limited the Constitutional and historical power of the President to set foreign policy.

Boland I (12/21/82 - 12/7/83) prohibited DOD and CIA from using appropriated funds to supply military assistance "for the purpose of overthrowing the Government of Nicaragua or provoking a military exchange between Nicaragua and Honduras."

Boland II (12/8/83 - 10/3/84) authorized up to \$24 million to be used to support, directly and indirectly, military activities in Nicaragua by the Contras.

Boland III (10/3/84 - 12/19/85), in an about face, prohibited any funds available to the CIA, DOD, "or any other agency or entity of the U.S. involved in intelligence activities" from being spent to support, directly or indirectly, military activities in Nicaragua by the Contras.

Boland IV (8/15/85 - 3/31/86) authorized \$27 million to be spent for "humanitarian assistance" to the Contras.

Boland V (12/19/85 - 10/16/86) authorized \$13 million to be used for (1) the purchase of and training in the operation of "communications equipment," and (2) intelligence and counter-intelligence "advice and information" to assist the Contras' military and para-military operations.

Finally, on October 18, 1986, Congress authorized \$100 million in military and humanitarian assistance to the Contras. This authorization will be in effect until the end of the current fiscal year, 9/30/87.

While Congress, from time to time, limited certain intelligence agencies from spending money to assist the Contras in various ways, Congress never passed any law which purported to restrict the Constitutional powers of the President in conducting this country's foreign policy or in conducting this country's international relations. To have done so would, of course, have raised the most serious Constitutional issues.

Likewise, Congress never sought to prohibit or limit the ability of private citizens, private groups or foreign nations to aid the Contras. In fact, Congress was very much aware of the fact that private individuals and groups, both from the United States and from elsewhere had been and would keep contributing aid to the Contras.

As Congressman Boland himself stated on June 12, 1985 on the floor of the U.S. House of Representatives,

[The Contras] continue their military operations in Nicaragua and, they have increased their numbers.

They have done this with funds provided by private groups, mostly from the United States.

Those funds have helped purchase weapons, ammunition, food, clothing, medicine--everything the Contras have needed to maintain themselves as an army in the field.

But, is [humanitarian assistance] a policy of restraint by the U.S. Government? Does this really hold back anything?

Hardly, in light of the fact that, as we all know, the private groups will continue to provide money for arms and ammunition.

To me, Mr. Chairman, this whole concept of humanitarian aid is a fig leaf.

[Congressional Record, June 12, 1985, H4118.]

Likewise, Congress had the opportunity to speak clearly and unequivocally and make it illegal for any U.S. citizen or any person within the United States to furnish any money, goods or services with the intent of assisting the Contras' military operations. Congressman Levine introduced such a bill, H.R. 1569, on March 19, 1985. Neither that nor any similar legislation was even considered by the House of Representatives, much less enacted into law.

And yet, there is so much confusion about the "Boland Amendment" that it seems that there is a belief that Congress had outlawed all aid for all time by anyone in the world to the Contras. It is about time that someone set the record straight.