

INTRODUCTORY NOTE TO RESOLUTION ON THE SITUATION IN NICARAGUA (OAS)
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[July 18, 2018]

On July 18, 2018, the Organization of American States (OAS) adopted a resolution on the crisis situation in Nicaragua, almost thirty-nine years after the date of the triumph of the Nicaraguan Revolution over the dictator Anastasio Somoza.¹ The crisis started three months earlier, on April 18, 2018, unexpectedly, when pro-government groups violently crushed a protest demonstration against reforms to Nicaragua's social security system announced by President Daniel Ortega's wife, Rosario Murillo. The "reforms" increased the contributions to be paid by workers and pensioners and decreased their benefits, in order to shore up the failing social security system, widely seen as a source of discretionary funds abused by previous governments. Corruption was not unique with Ortega. Arnoldo Aleman, for example, a former president of Nicaragua (1997–2002), was convicted in 2003 of money laundering, fraud, embezzlement, and electoral crimes, and sentenced to twenty years in prison.² The demonstrators against the social security reform resented paying for the state's mismanagement of the system. Subsequently, as the demonstrations increased, the protesters equated Ortega with Somoza and called for his departure as they had done for Somoza's. Since April 18, some 400 Nicaraguan demonstrators have been killed and over 2,000 have been injured.

This Introductory Note should be entitled "How to Deal with a Country in Crisis." If the OAS handles the crisis well it may restore peace in Nicaragua; if it handles it poorly, Nicaragua will probably end up like Venezuela, denouncing the American Convention on Human Rights and the OAS Charter.³ Venezuela, whose inhabitants number 24 million, has a population four times the size of Nicaragua's and is a major player in the OAS. The OAS has been able to do little to resolve the current crisis in Venezuela. Nicaragua, in comparison, is a minor player, and should be easy to fix. But how, exactly, does an international organization fix a country in crisis?

Daniel Ortega, one of the leaders of the Sandinista National Liberation Front, formed part of the five-person Junta that assumed power in 1979. In 1984, Ortega won Nicaragua's presidential election with over 60 percent of the vote. The presidential term in Nicaragua is five years. In 1990, Ortega was defeated by Violetta Chamorro, who won 55 percent of the vote, and then he subsequently lost the 1996 and 2001 elections.⁴ In 2006, Ortega won the elections with 38 percent of the vote, for his second term in power. He stood for elections in 2011 and allegedly won with 62 percent of the vote and won again in 2016, allegedly with 72 percent of the vote, for his third and fourth terms, although the legitimacy of the last two elections was widely questioned and criticized.⁵ Rosario Murillo became Ortega's vice president in the 2016 elections and all four branches of government (executive, legislative, judicial, and electoral) are under Ortega's control, as well as the national army and police. Opposition leaders said the 2016 election was flawed, *inter alia*, because Ortega used his power over the courts to do away with constitutional term limits.

As Steve Griner has pointed out: "Term limits fall into three general categories: the complete prohibition of re-election (Mexico); a limit to two consecutive terms of usually four years (Brazil); and the prohibition of consecutive re-election (Chile)."⁶

In Nicaragua the term limits were enshrined in the Constitution:

The following persons may not run for President or Vice President of the Republic: a) Persons who have exercised the full powers of the presidency at any time during the period when the election for the following term is held, nor anyone who has exercised them for two presidential terms. b) The Vice President of the Republic or the one called to replace him if he/she has exercised the full powers of his/her office or that of President in the two months prior to the [presidential] election for the following term.

In 2009, the Nicaraguan Supreme Court, under Ortega's influence, did away with term limits, declaring the above provision of the Constitution "inapplicable" to Ortega and others, rather than declaring the provision establishing the

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term limits “unconstitutional,” as was the case in Honduras.⁷ In 2014, the Nicaraguan Constitution was amended, eliminating the two-term limit for the president as well as the ban on consecutive reelection. This provision was not omitted from the Nicaraguan Constitution until 2014, which makes it clear that the 2011 reelection of Daniel Ortega to a third term violated the Constitution.⁸ Curiously, these respective Supreme Court resolutions rely on international human rights treaties and the right to equality, the right to stand for elections, and the right to be elected as the legal grounds for doing away with term limits. It would be an appropriate time for the Inter-American Court to pronounce itself on the compatibility of term limits with the American Convention on Human Rights.

The OAS human rights commission was permitted to visit Nicaragua in May 2018 and reported that the police were using excessive force against protesters.⁹

The July 18, 2018 OAS resolution called on the government of President Daniel Ortega to “support an electoral calendar” that had been proposed by the Nicaraguan opposition alliance in the most recent dialogue that was set up to find a peaceful solution to the crisis. The opposition proposed that elections be moved forward to March 31, 2019, rather than 2021, when Ortega’s term expires, a proposal that the government has repeatedly rejected. Notably, Ortega advanced the date of Nicaraguan elections in 1990, at the suggestion of Costa Rican President Oscar Arias, as a step toward greater democracy in Nicaragua.¹⁰

On September 12, 2018, a follow-up OAS resolution was adopted in light of the deteriorating situation that effectively reiterated the call for an end to the violence and for early elections.¹¹

It is clear that Ortega has the power to convene huge rallies to demonstrate that he still commands considerable support among the population. At the same time, the also considerable spontaneous uprising against his increasingly autocratic rule, demanding his ouster and nothing short of his ouster, seems to lead to no other possible nonviolent resolution other than early elections. If Ortega genuinely believes that the population supports him, he should be willing to agree to this.

ENDNOTES

- 1 The Sandinista Revolution triumphed on July 19, 1979.
- 2 On January 16, 2009, the Nicaraguan Supreme Court overturned Aleman’s twenty-year sentence, reportedly as the result of an alliance with President Daniel Ortega.
- 3 Venezuela denounced the American Convention on Human Rights on September 10, 2012, and the OAS Charter on April 27, 2017. The first denunciation became effective on September 20, 2013; the second will become effective two years after it was declared, in 2019, unless circumstances change.
- 4 In the 1996 elections Ortega lost to Jose Aleman Lacayo (who won by 51 percent) and then in 2001 to Enrique Bolanos Geyer (who won by 56 percent).
- 5 See Maureen Meyer, *Elections in Nicaragua*, ADVOCACY FOR HUMAN RIGHTS IN THE AMERICAS (Nov. 1, 2011), <https://www.wola.org/analysis/elections-in-nicaragua/> (providing information on the 2011 elections); Jonathan Watts, *Nicaragua President Re-elected in Landslide Amid Claims of Rigged Vote*, THE GUARDIAN (Nov. 28, 2017), <https://www.theguardian.com/world/2016/nov/07/nicaragua-president-daniel-ortega-reelected-landslide-vote-rigging> (providing information for the 2016 elections).
- 6 Steven Griner, *Term Limits Can Check Corruption and Promote Political Accountability*, AMERICAS QUARTERLY (Spring 2009).
- 7 Sentencia [S.] No. 504, de las 2:20 p.m., 19 October 2009, Sala de lo Constitucional [Supreme Court of Justice] (Nicar.).
- 8 Cf. the recent election of Juan Orlando Hernandez in Honduras in November 2017. The Honduran Constitution prohibits reelection of the incumbent but a Honduran Supreme Court opinion declared this constitutional provision “unconstitutional.”
- 9 IACHR, *Gross Human Rights Violations in the Context of Social Protests in Nicaragua*, IACHR Doc. OEA/Ser.L/V/II (June 21, 2018).
- 10 Mark A. Uhlig, *Nicaragua Plans Earlier Elections*, N.Y. TIMES (Feb. 14, 1989), <https://www.nytimes.com/1989/02/14/world/nicaragua-plans-earlier-elections.html>.
- 11 OAS, Perm. Council Res. 1108 (2172/18), *Recent Events in Nicaragua*, OAS Res. EA/Ser.G CP/RES. 1108 (2172/18) (Sept. 12, 2018), available at http://www.oas.org/en/media_center/photonews.asp?sCodigo=FNE-94950.

RESOLUTION ON THE SITUATION IN NICARAGUA (OAS)*
[July 18, 2018]

PERMANENT COUNCIL



OEA/Ser.G
CP/RES. 1108 (2172/18)
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CP/RES. 1108 (2172/18)

THE SITUATION IN NICARAGUA

(Adopted by the Permanent Council at its special meeting, held on July 18, 2018)

THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES,

BEARING IN MIND the principles enshrined in the Charter of the Organization of American States, the Inter-American Democratic Charter, and the American Declaration on the Rights and Duties of Man, of which Nicaragua is a State party;

REAFFIRMING declaration AG/DEC. 97 (XLIII-O/18), adopted by the OAS General Assembly on June 5, 2018;

TAKING NOTE of the Central American Integration System's (SICA) "Special Declaration on Nicaragua" of 30 June, 2018; and

NOTING with deep concern the situation confirmed by the Inter-American Commission on Human Rights (IACHR) in the final report on its visit to Nicaragua, from May 17 to 21, 2018, titled "Gross Human Rights Violations in the Context of Social Protests in Nicaragua" and presented to the Permanent Council on June 22 and July 11, 2018,

RESOLVES:

1. To reiterate its vigorous condemnation of and grave concern over all acts of violence, repression, and human rights violations and abuses committed by police, parapolice groups, and others against the people of Nicaragua, as documented by the IACHR; to encourage that steps be taken to identify the individuals responsible, through the corresponding legal procedures; and to demand that parapolice groups be disbanded.

2. To also condemn attacks on the clergy, the harassment of Roman Catholic bishops engaged in the National Dialogue process, and the acts of violence at the National Autonomous University of Nicaragua (UNAN), the headquarters of CARITAS, and against other peaceful protesters.

3. To urge the Government of Nicaragua and all the parties to participate actively and in good faith in the National Dialogue as a mechanism to generate peaceful and sustainable solutions to the situation unfolding in Nicaragua, and for the strengthening of democracy in that country.

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4. To call on the Government of Nicaragua to consider all options to achieve this objective, to collaborate in the effective pursuit of efforts to strengthen democratic institutions in Nicaragua through the implementation of the recommendations of the OAS Electoral Observation Mission, and to support an electoral calendar jointly agreed to in the context of the National Dialogue process.

5. To support the recently established Interdisciplinary Group of Independent Experts (GIEI) to investigate the acts of violence which have been taking place in the country, as documented by the Inter-American Commission on Human Rights (IACHR), as well as the Special Follow-up Mechanism for Nicaragua (MESENI) and the initiative to strengthen democratic institutions advanced by the OAS General Secretariat, and to urge the Government of Nicaragua to provide the conditions necessary to allow these groups to fulfill their duties.

6. To reiterate the willingness of the Permanent Council to collaborate and consider all possible measures and mechanisms it deems appropriate to find a peaceful solution to the situation faced by Nicaragua, as provided for by the Organization's regulations.

7. To invite the IACHR to keep the Permanent Council informed as to the functioning of the mechanisms specifically established by the IACHR to monitor the human rights situation in Nicaragua and the follow-up of the implementation of the recommendations contained in the report of the IACHR.

8. To request the Inter-American Commission on Human Rights (IACHR) and the OAS Department for Electoral Cooperation and Observation (DECO), the United Nations High Commissioner for Human Rights, the OAS Secretary General and the European Union to support the work of the Verification and Security Commission.