

NICARAGUA v. UNITED STATES (ICJ 1986)

What were the human rights violations in Nicaragua?

Did they reach the level of "gross violations of fundamental human rights"?

Did they shock the conscience of the world?

Were they worse than the violations under the Somoza dictatorship (which the U.S. supported)

What did the United States do?

- * Mined ports
- * Destroyed oil installations
- * Armed and trained the contras

Necessary?

Proportional?

The Nicaragua Case (ICJ 1986)

The Court cites the 1970 Friendly Relations Declaration and the Definition of Aggression as sources of law.

Both of these were resolutions adopted by the General Assembly.

Is it legitimate to utilize them as valid sources of international law?

Case Concerning Military and
Paramilitary Activities in and Against
Nicaragua (Nicaragua v. United
States) (1986--Judgment)

Why did the U.S. refuse to
participate in the merits of the case?

Was this position justified?

What is the effect of the U.S.
refusing to participate in the Court's
deliberations?

Article 53 of ICJ Statute.

DS-18

Facts

How does the ICJ determine facts?

Evidentiary hearing

5 witnesses

Documentary evidence

What were the facts?

Question 7--Can a country intervene to assist rebels in a civil war?

9209

908

Question 8--Can force be used to monitor or enforce human rights?

No, para. 268.

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When is "humanitarian assistance" allowed?

Question 9--Is anticipatory self-defense legitimate?

Question 10--What rights does a government have if another government is providing weapons and logistical support to rebels in a civil war?

The Nicaragua Case (1986)

In light of the Multilateral Treaty Exception to the U.S. Declaration accepting the Court's Jurisdiction, what law did the Court apply?

Customary international law.

Where did the Court find customary international law?

By looking at multilateral treaties.

- * *U.N. Charter*
- * *U.N. Resolutions and Declarations*
- * *The Law of the Sea Convention*

SI 181/187
SI 188/193/195

Sense or nonsense?

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Is the laying of mines an armed
attack?

Yes, para. 213. 91292(6)

Also, the attack on Nicaraguan ports
and installations, para. 227. 91292(4)

What about failing to give notice of
location of mines?

Para. 292(8).

What about the overflights of
Nicaraguan territory?

Para. 292(5).

Dissemination of the guerrilla-
warfare comic book?

Para. 292(9).

Military maneuvers?

Not sufficient to constitute a
threat. Para. 227.

Increased militarization?

No, para. 269.

duration — if they should find that they might be affected by the future decision of the Court. Moreover, these States are also free to resort to the incidental procedures of intervention under Articles 62 and 63 of the Statute, to the second of which El Salvador has already unsuccessfully resorted in the jurisdictional phase of the proceedings, but to which it may revert in the merits phase of the case. There is therefore no question of these States being defenceless against any consequences that may arise out of adjudication by the Court, or of their needing the protection of the multilateral treaty reservation of the United States. . . .

76. At any rate, this is a question concerning matters of substance relating to the merits of the case; obviously the question of what States may be “affected” by the decision on the merits is not in itself a jurisdictional problem. . . . [T]he Court has no choice but to avail itself of Article 79, paragraph 7, of the present Rules of Court, and declare that the objection based on the multilateral treaty reservation of the United States Declaration of Acceptance does not possess . . . an exclusively preliminary character, and that consequently it does not constitute an obstacle for the Court to entertain the proceedings instituted by Nicaragua under the Application of 9 April 1984.

[FCN TREATY]

77. . . . [I]n its Memorial [Nicaragua] invokes also a 1956 Treaty of Friendship, Commerce and Navigation between Nicaragua and the United States as a complementary foundation for the Court’s jurisdiction. . . .

81. Article XXIV, paragraph 2, of the Treaty . . . , signed at Managua on 21 January 1956, reads as follows:

Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means.

The treaty entered into force on 24 May 1958 on exchange of ratifications. . . . The provisions of Article XXIV, paragraph 2, are in terms which are very common in bilateral treaties of amity or of establishment, and the intention of the parties in accepting such clauses is clearly to provide for such a right of unilateral recourse to the Court in the absence of agreement to employ some other pacific means of settlement (cf. *United States Diplomatic and Consular Staff in Tehran*, I.C.J. Reports 1980, p.27, para. 52). . . .

82. Nicaragua in its Memorial submits that the 1956 Treaty has been and was being violated by the military and paramilitary activities of the United States in and against Nicaragua, as described in the Application;

The Nicaragua Case (1986)

What was the substantive claim presented by Nicaragua?

What was its claim that the Court had jurisdiction over the United States?

How did the Court handle the decision by the United States to stop participating?

The Nicaragua Case (1986)

Theories of Jurisdiction

* *The U.S. Declaration of Compulsory Jurisdiction*

** Reciprocity – Was Nicaragua's Declaration Valid?

** Effect of U.S. Withdrawal?

** Multilateral Treaty Reservation? 900 1/3/902 1/3

* *The Friendship-Commerce-Navigation (FCN) Treaty* 9013

Does the Court have jurisdiction over ongoing military conflicts?

** *Iran Hostage Case?*

** *Corfu Channel Case?*

Should the Security Council have exclusive jurisdiction over military conflicts?

Analogy to Political Question Doctrine?

Should El Salvador have been allowed to intervene?

The Nicaragua Case (1986)

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What did Nicaragua accuse the United States of doing?

- * Training, arming, and financing the *contra* military and paramilitary forces to engage in military operations against the government of Nicaragua.

- * Directly attacking oil installations and Naval Bases in Nicaragua.

- * Flying planes over Nicaraguan territory [to harass that Nicaraguan people].

- * Laying mines in the internal or territorial waters of Nicaragua [and failing to warn others of the existence of these mines].

- * Creating and distributing a comic-book manual that encouraged killing civilian officials.

[omit]

**Case Concerning Military and
Paramilitary Activities in and Against
Nicaragua (1986)**

U.S. Central Intelligence Agency distributed a comic book in Spanish explaining that killing civilians in certain circumstances was appropriate.

What law applies?

“fundamental general principles of humanitarian law”-- “elementary considerations of humanity” -- which are reflected in common Article 3 -- whether one considers the conflict international in character, or noninternational.

Did the U.S. action violate international law?

ICJ concluded (14-1) that the U.S. “encouraged the commission...of acts contrary to the general principles of humanitarian law.”