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So Why Did the U.S. Flee the World Court?

In his effort to resuscitate the administration's unproven charge that Nicaragua supplies arms to Salvadoran rebels, and to diminish the strength of Nicaragua's suit against the United States in the World Court, Col. Lawrence L. Tracy of the State Department's Office of Latin American Public Diplomacy distorts the testimony presented in that case and misrepresents Nicaragua's legal arguments [Free for All, Dec. 21]. Even an office of "public diplomacy" should exhibit some respect for the truth.

Tracy can be refuted with a single question: If the United States has such an ironclad case against Nicaragua, why did it flee the World Court like a fugitive from justice? If Nicaragua is as terroristically inclined and the United States as innocent of wrongdoing as Tracy says, then surely the United States would prevail in a court of distinguished jurists whose majority comes from countries allied to or friendly with the United States. After all, this is the same court that ruled 15-0 in favor of the United States five years ago when it sued Iran over the taking of American hostages.

Ironically, Tracy's own letter provides the answer to the question, and reveals the glaring weakness in the U.S. case: there is simply no reliable evidence that Nicaragua provides material support to Salvadoran rebels, and Tracy fails to cite any.

For almost five years the administration has been making this charge against Nicaragua; indeed, it is the supposed justification for American armed intervention, via the contras, in that country. As the testimony in the World Court case showed, the United States has spy planes and satellites over Nicaragua 24 hours a day looking for arms shipments, among other things. The most sophisticated electronic surveillance gear is employed to listen in on all radio and telephone communications inside Nicaragua. And

the U.S. Embassy in Managua houses a large CIA contingent.

With all of this intelligence collection going on, it is inconceivable that Nicaragua could pass arms to anyone without detection. And detection would inevitably result in interception of arms shipments—which would constitute real proof of Nicaraguan arms trafficking. Yet despite five years of trying and millions of dollars in manpower and equipment devoted to this effort, there has never been a significant interception of arms emanating from Nicaragua. David MacMichael, a CIA intelligence analyst from April 1981 to April 1983, testified that he saw no reliable evidence whatever of any arms trafficking by the Nicaraguan government during that period.

Nevertheless, it was during the same period that the CIA drew up its covert plan to create the contra army and to destabilize the Nicaraguan government, a plan that President Reagan approved and Congress funded. What is Tracy's response? He cites no actual evidence of Nicaraguan arms trafficking, only the opinions of administration officials and members of Congress that Nicaragua is guilty of this offense.

Tracy does not disclose the information on which these opinions are based. But we do know the source. And experience teaches that the CIA is just as capable of playing dirty tricks on Congress as it is on Nicaragua. One need only recall Sen. Barry Goldwater's angry letter to CIA Director William Casey complaining that the Senate Intelligence Committee was deceived about CIA plans to mine Nicaragua's harbors.

Even if there were proof of Nicaraguan complicity in supplying arms to Salvadoran rebels, it would not justify, under international law, the mining of Nicaragua's harbors or the creation, direction and sustenance of a contra army dedicated to the overthrow of Nicaragua's government. The U.N. and OAS charters expressly prohibit all such uses of force, unless they are necessary in self-defense to repel an armed attack, which is not remotely the case here. In any event, Reagan himself has admitted that the objective of these U.S. actions is to "remove" the Sandinistas from power, to make them "cry uncle," and not merely to stop a supposed traffic in arms. Such an objective has nothing in common with legitimate self-defense.

Tracy completely misrepresents Nicaragua's legal argument when he says that Nicaragua's lawyers have acknowledged that proof of Nicaraguan arms trafficking would defeat Nicaragua's case. All of our briefs and pleadings to the court say precisely the opposite. Tracy obviously did not read these for himself. It is true, as he says, that Nicaragua's lawyers cautioned Nicaragua against filing its World Court suit if it were engaged in arms trafficking. But this advice had nothing to do with the merits of Nicaragua's suit, only with the potential damage to our client's international credibility stemming from U.S. proof that Nicaragua was engaged in such behavior. We can say with some confidence that Nicaragua would not have filed the suit, and risked its credibility, if it had anything to hide in terms of arms trafficking.

Nicaragua's American lawyers did not accept their client's assurance of its innocence at face value. Nor, however, were they willing to accept the administration's charges in the absence of proof. The actions of both countries speak louder than their words. Nicaragua went to the World Court. The United States ran away.

—Paul S. Reichler

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