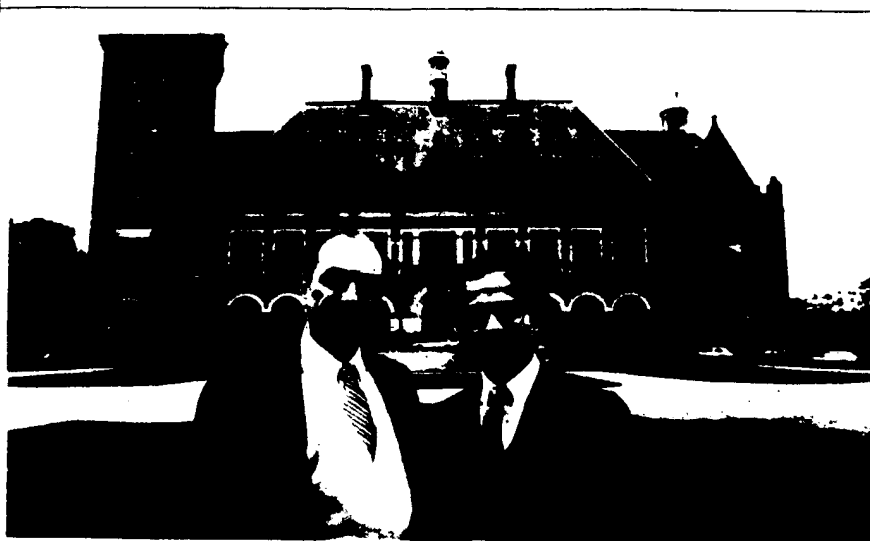


ARTICLE APPEARED  
PAGE 85TIME  
30 September 1985

## Law



Advocates Chayes, left, and Reichler outside the court's headquarters in the Hague

## U.S. Policy Goes on Trial

*At the World Court, two Americans make Nicaragua's case*

In the ornate chamber of the International Court of Justice in the Hague last week, lawyers for Nicaragua charged the U.S. with attempting to overthrow the Sandinista government, using the *contra* rebels as one of its tools. The lawyers made their case in the World Court before an empty row of leather chairs reserved for the American side. The U.S. is boycotting the proceeding: last year the Reagan Administration announced that while it would continue to recognize the court's jurisdiction generally, it would not do so for two years in matters involving events in Central America.

Despite Washington's absence, there were in fact some Americans in the courtroom. Harvard Law Professor Abram Chayes, 63, formerly the chief State Department legal adviser, was serving on the Sandinista courtroom team, which had been assembled by another American, Paul Reichler, 38. Once a student of Chayes', Reichler has handled many legal problems for the Sandinistas.

While American lawyers often represent other nations in U.S. or foreign courts, it is rare for them to do so in an international dispute in which the U.S. is the defendant. "One does not become involved in a suit against one's own country lightly," says Reichler. "If my situation is unique, so are the circumstances in this case." American policy toward Nicaragua, he maintains, "is a violation of the most sacred principles that the U.S. stands for: respect for law and the peaceful resolution of disputes."

When the Sandinistas decided last year to take their case to the World Court, Reichler's first choice for his legal team was Chayes. "I thought about it for a long time," says Chayes, who during the 1962

Cuban missile crisis helped the State Department work out legal arguments supporting the blockade of Cuba. Described by colleagues as brilliant and impassioned, Chayes was drawn to the case partly by the magnitude of the questions it raises. "We are dealing here with the fundamental norms of international law," he explains. "It's not pettifoggery."

In seven days of testimony, during which five witnesses were called, the Nicaraguan legal team, which also includes a Briton, a Frenchman, a Nicaraguan attorney and Managua's Ambassador to the Netherlands, attempted to prove that the *contras* were a creation of the U.S. and would wither away without Washington's funding. In an affidavit, former *Contra* Leader Edgar Chamorro claimed that the rebels were practicing terrorism against civilian populations as a conscious policy. He alleged that the political and military activities of the rebel Nicaraguan Democratic Force, which he left last year, "were directed and controlled by the CIA." Chamorro said that agents hired by the CIA would carry out acts of sabotage, including the mining of Nicaraguan harbors and the bombing of oil facilities, then direct his group to claim the responsibility.

The Reagan Administration has justified its support for the *contras* in part as a way to interdict the flow of Nicaraguan arms to the El Salvador rebels. But one witness, former CIA Analyst David MacMichael, said there had been no evidence of such shipments since the spring of 1981, some six months before the beginning of U.S. support for the *contras*. On the day that MacMichael started his testimony, the U.S. State Department issued a position paper detailing its charge that Nicaragua had

shipped arms to rebels in El Salvador.

Actually, there was a third important American in the courtroom: World Court Judge Stephen Schwebel, an international lawyer who once worked under Chayes at the State Department. Schwebel, the only judge to question Nicaragua's witnesses in depth, expressed skepticism at some of their assertions. In a lengthy debate with MacMichael, for example, Schwebel got the former CIA analyst to concede that it was "plausible" that Cuban arms had been channeled through Nicaragua to El Salvador. In answering a concluding question as to whether MacMichael believed that "it could be taken as fact" that the Nicaraguans supplied arms to the Salvadoran insurgency in late 1980 and early 1981, MacMichael complained that Schwebel was "drawing this from me like a nail out of a block of wood," but admitted, "Yes, that is my opinion."

The court is expected to deliver its opinion before the end of the year. Nicaraguan Ambassador to the Hague Carlos Arguello says he expects the decision to be "a clear declaration that the U.S. has violated international law." The U.S. would almost certainly ignore such a ruling, which could also include the imposition of monetary damages. Despite the frustrations of shadowboxing with absent U.S. advocates, Chayes believes that the court's decision will affect the debate among Americans on Washington's actions in Central America. "If its policy is pronounced in violation of international law," he says, "it would be the first time such judgment has been rendered on the U.S." In a way, argues Chayes, he is doing the same thing in this case that he did at the State Department: "trying to keep the U.S. on the right side of international law." — *By Richard Lacayo. Reported by Joelle Attinger/Boston and B.J. Phillips/The Hague*

Empty seats for the American side  
Shadowboxing in an ornate arena.

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