

THE CASE FOR IGNORING THE WORLD COURT

The International Court of Justice. The very name evokes images of magisterial solemnity--a bench of internationally trusted Solomons resolving the thorny disputes that divide nations. So different is the Court's gritty reality from its lofty image, however, that the Reagan Administration has decided to deny the tribunal, commonly known as the World Court, jurisdiction over United States actions regarding Nicaragua. Though Washington's decision predictably is drawing fire, it is reassuring to those Americans determined to base foreign policy on reality and concerned with preserving their nation's sovereignty.

To start with, no one denies Washington's right to tell the Court to keep its nose out of America's business. The Court's own by-laws unambiguously specify that the Court has jurisdiction only when parties to a dispute grant it such jurisdiction. A defendant state cannot be brought before the international tribunal nor can a default judgment be given against the state unless it has so consented. Indeed, the world's nations typically have told the Court to butt out. Examples:

In 1973, Pakistan tried to take India to the Court for refusing to repatriate Pakistani prisoners captured during the war over East Pakistan's secession; India refused to participate in the proceedings.

That same year, Paris insisted that the Court lacked competence when Australia and New Zealand tried to take France to the Court on charges that its nuclear testing in the South Pacific violated international laws.

Nearly two decades earlier, Moscow ridiculed the notion of appearing before the Court when the U.S. tried on several occasions to press charges that the Soviet Union had violated the law regarding various aircraft incidents. Similarly, Moscow to this date ignores the 1962 Court ruling that the USSR must pay its assessed share of United Nations' costs for the Congo operation. In fact, neither the Soviet Union nor any of its East Bloc satellites have ever accepted the Court's jurisdiction.

It is no wonder that the Court's fifteen judges, elected by the General Assembly and the Security Council, are probably the world's most underworked jurists. Between the Court's founding in 1945 and 1981, it handled a meager 42 contentious cases and gave advisory opinions on an additional 17 cases. And from 1966 to 1981, the Court was given only six new cases and handed down only five advisory opinions. Just one case was filed between 1976 and 1981. On average, since its founding,

the Court has rendered fewer than two judgments per year--a number which has been decreasing.

Those few cases which the Court does hear almost all concern rather tame differences between nations and are a far cry from the kind of conflict typified by Nicaragua's angry charges against the U.S. The bulk of the Court's calendar has been filled by disputes concerning fishing rights, delimitation of continental shelves, minor boundary disputes and such burning questions as whether the World Health Organization has the right to move its regional office out of Alexandria, Egypt.

In short, the World Court, despite its pretensions and grand quarters at The Hague, is a hollow and rather useless institution to which hardly any nation ever turns for settling hardly any dispute. It is a relic of an earlier age whose internationalism and simplistic idealism are now discredited. For this reason alone, the Reagan Administration is wise to deny the Court jurisdiction in the Nicaragua matter.

It is wise also because the case of Nicaragua v. U.S.A. would be turned into a circus by the Sándinista regime and its radical allies in the Third World. It would be foolish for the U.S. to submit itself to public assault from a regime that routinely disregards international law and norms, violates its citizens' human rights, suppresses dissent, imposes censorship and refuses to hold free elections.

There is a more compelling reason for the Administration's action. The World Court now, as at its inception, threatens the very concept of sovereignty upon which the nation-state rests. By what right or for what good reason should a body of international jurists--including one from the Soviet Union, Poland, and Syria--don robes, judge the action of the U.S. and render a decision binding the U.S.? Such a fundamental transfer of sovereignty has been resisted since the American Republic's earliest days--from George Washington's injunction against foreign alliances to the Senate's repudiation of League of Nations membership. Even the NATO treaty, the most solemn declaration of international commitment ever made by the U.S., falls short of automatically binding the U.S. to any action. If America's European allies are attacked, for instance, the U.S. does not automatically find itself at war but merely is obliged to regard that attack as an attack on the U.S.

When the Senate in 1946 ratified U.S. membership in the World Court, it pointedly insisted that an integral part of the ratification was the statement, called the Connally Amendment (named after its sponsor, Thomas Connally of Texas), that the U.S. reserved the right to determine the Court's jurisdiction as it affected the U.S.

The Reagan Administration's refusal to grant jurisdiction to the World Court is simply a reaffirmation of America's two-century old vigorous defense of its sovereignty. It is this reaffirmation of sovereignty and independence from international bodies--at a time when the United Nations, UNESCO and almost every other international organization has been turned into an anti-American and anti-West lynch mob--which deserves the support of Congress and the American people.

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