The International Human Rights Implications of the ICJ Decision in Nicaragua v United States

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Introduction
The ruling of the International Court of Justice in Military and Paramilitary Activities in and Against Nicaragua (Merits) must surely be the judgment of the decade. A government of a small country dragged a superpower before the highest international judicial forum and charged it with a number of serious transgressions of international law. The facts of the dispute, the on-going military situation, the intensified media campaign by both sides and the final challenge of the United States to the court's authority all contributed to the gravity and drama of the moment. As Richard Falk put it, "[n]ever in its history as an institution has the World Court been, at once, so prominent and embattled." The judgment dealt with a number of vital topical issues and no doubt scholars and students will mine the rich veins of obiter dicta for decades.

This paper is intended to assess the contribution of the case to the international law of human rights. The Court made a number of observations on three issues that have a direct impact on human rights: (1) the right of a state to be master in its own house and determine its internal social, economic and political systems; (2) the use of force by a state to restore human rights in another; and (3) the relationship between customary international law and treaty law in the field of human rights. In connection with the second point, I will cast a brief retrospective glance at the role of Tanzania in overthrowing the murderous regime of Idi Amin. That was one occasion that did not excite much scholarly attention, let alone criticism. However, in the fullness of time, it has come to be appreciated that there is something incongruent about deploying military force to restore human rights in another country and success is the exception. I am hoping that this brief excursus will illustrate and further buttress the correctness of the ICJ's position in Nicaragua v U.S. (Merits).

Background
On 9 April 1984, the Republic of Nicaragua instituted proceedings in the International Court of Justice against the United States of America in respect of responsibility for military and paramilitary activities in and against Nicaragua. Specifically, Nicaragua complained that the United States, "in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding and directing military and paramilitary actions in and Nicaragua" was in breach of her international obligations arising from: the UN Charter, the Charter of the Organization of American States and the Convention on Rights and Duties of States in the Event of Civil Strife. The United States

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was further accused of violating general and customary international law by
attacking Nicaragua by air, land and sea; incursions into the latter's territorial
sea; violating her airspace; seeking to coerce or intimidate Nicaragua; interven-
ing in her internal affairs; infringing the freedom of the high seas and inter-
rupting peaceful maritime commerce and killing, wounding and kidnapping citi-
zens of Nicaragua.5

Nicaragua prayed that the Court order the United States to cease and desist
from all the activities complained about “including the provision of training,
arms, ammunition, finances, supplies, assistance, direction or any other form
of support - to any nation, group, organization, movement or individual en-
gaged or planning to engage in military or paramilitary actions in or against Ni-
caragua”.6 The relief sought also included a declaration that the United States
violated her international legal obligation in relation to the conduct complained
about and there existed an obligation immediately to bring to an end all con-
tinuing breaches. The Court was also requested to rule that “the United States
[had] an obligation to pay Nicaragua, in its own right and as parens patriae for
the citizens of Nicaragua, reparations for damages to person, property and the
Nicaraguan economy caused by the foregoing violations of international law in
a sum to be determined by the Court.”7

Before the case was heard on the merits, the Court had to consider and rule
on two preliminary issues. On 10 May 1984, the same day the case was filed,
Nicaragua entered a plea for provisional measures under Article 41 of the Sta-
tute of the International Court of Justice. The Court ordered both parties to
refrain from actions that would prejudice the rights of the adversary pending
the final outcome of the case.8 The second issue was the hurdle of jurisdiction
and admissibility that Nicaragua had to clear. On 26 November 1986, the Court
rejected American objections and ruled that it had jurisdiction to entertain the
case and that the case was in fact admissible 9 The Reagan administration re-
acted strongly and swiftly. The US withdrew from further proceedings in con-
nection with the case.10 For yet another time in its history, the International
Court of Justice found itself without an opposing party in a contentious case.11
Ironically, the other time it had occurred this decade, in the Hostages Case,12
the United States was involved as the lonely party in court.

The decision of the Court on the Merits was handed down on 27 June 1986.
In its judgment, the Court ruled that the United States had violated a number
of basic rules of customary international law and the terms of the 1956 United
States-Nicaragua Treaty of Friendship, Commerce and Navigation.13 For the
most part, the Court relied on customary international law because of the mul-
tilateral treaty reservation (the Vandenberg Amendment) lodged by the United
States when it accepted the Court's compulsory jurisdiction in 1946.14 This
then makes the decision an important milestone in the progressive development
and restatement of customary international law.15 It is not forgotten, of course,
that a decision of the Court only binds the parties to the case.16

The state master in its own house
One of the grounds on which the United States sought to justify its actions was
the alleged breaches of commitments made by the Nicaraguan Sandinista
Government to the Organization of American States, the United States itself