

has never supplied arms or other material assistance to insurgents in El Salvador or sanctioned the use of its territory for such purpose.”⁹

The contention that it was “of no relevance” to address Nicaragua’s provision of arms to the Salvadoran insurgents for their “final offensive”¹⁰ was a recurrent theme of Nicaragua’s argument before the Court. Its confessional implication remains as clear today as when the argument was made.

The mass of evidence, including admissions by Nicaragua’s officials and its prime witness, cannot be reconciled with the crucial conclusion of the Court that the evidence regarding the flow of arms from Nicaragua to the armed opposition in El Salvador before and after the early months of 1981 was insufficient to satisfy the Court “that the Government of Nicaragua was responsible for any flow of arms at either period.”¹¹ In so concluding, the Court accepted—not literally, but essentially—the truth of the false affidavit of the Nicaraguan foreign minister.

The explosion of an immense arsenal of arms—an arsenal of sophisticated construction, officially acknowledged to belong to the Salvadoran insurgents—in the capital of Nicaragua, along with the discovery of their fifteen other arms depots elsewhere in Nicaragua, ineluctably implicates the Sandinistas. References to Sandinista involvement in the arsenal are contained in the extensive published reports of the explosion, particularly that of the *Washington Post* of July 14, 1993, cited in note 15 of my editorial. The *Post*’s correspondent interviewed officials, investigators, and diplomats, and was enabled to read incriminating documentation found in the arsenal.

PAUL REICHLER’S REJOINDER

Nicaragua did not mislead the Court in any manner. Contrary to what Judge Schwebel writes, Nicaragua did *not* deny that arms were sent to rebels in El Salvador in 1979 and 1980. What its foreign minister and other officials asserted was that there was no government *policy* to supply arms to the rebels during that period and, more to the point, that there were no arms shipments at all *after* January 1981. Commander Luis Carrion, whom Judge Schwebel cites, actually told the Court: “My Government has never had a *policy* of sending arms to opposition forces in Central America. *That does not mean that this did not happen*, especially in the first years after the revolution in 1979 and 1980”¹ Thus, Nicaragua did not argue that it “never” shipped arms to Salvadoran rebels. Its position was that, as of the time it filed its suit against the United States in April 1984, and for more than three years prior, it “has not been engaged” in such practice.² It argued that any arms shipments prior to early 1981 were irrelevant because, as the undisputed evidence showed: (1) after that date Nicaragua did not engage in or allow any further shipments from its territory; and (2) notwithstanding Nicaragua’s abstinence,

⁹ *Id.* at 430.

¹⁰ *Id.* at 123; Diss. Op. Schwebel, J., *supra* note 2, *passim*.

¹¹ 1986 ICJ REP., para. 160.

¹ Verbatim Record, Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), ICJ Doc. CR 1985/17, at 31 (emphasis added).

² See Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 ICJ REP. 14, para. 147 (June 27).

which was confirmed by the testimony of the CIA official responsible for monitoring Nicaragua's activities,³ the United States launched military actions against Nicaragua to overthrow its government, beginning nearly a full year after the arms flows had ceased.

When Nicaragua's Agent, Ambassador Carlos Argüello Gomez, stated that "it is of no relevance to discuss happenings five years ago,"⁴ he was making a *legal* argument that an intermittent and small-scale supply of arms to rebel forces does not constitute an "armed attack" and that Nicaragua's cessation of arms shipments deprived the United States of any legitimate claim to be acting in defense of El Salvador. The Court agreed:

As regards El Salvador, the Court . . . is satisfied that between July 1979 and the early months of 1981, an intermittent flow of arms was routed via the territory of Nicaragua to the armed opposition in that country. . . . As stated above, the Court is unable to consider that, in customary international law, the provision of arms to the opposition in another State constitutes an armed attack on that State. Even at a time when the arms flow was at its peak, and again assuming the participation of the Nicaraguan Government, that would not constitute such armed attack.⁵

In finding that Nicaragua shipped arms to El Salvadoran rebels up to early 1981 but not thereafter, and concluding that even the early arms shipments were not of sufficient scale, character, or timing to constitute an armed attack on El Salvador, the Court renders Judge Schwebel's fraud claim pointless in fact and in law.

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³ See Verbatim Record, *supra* note 1, at 55.

⁴ *Id.* at 146.

⁵ 1986 ICJ REP., para. 230.