WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name EXECUTIVE SECRETARIAT, NSC: COUNTRY FILE

Withdrawer MJD 8/7/2009

File Folder NICARAGUA (12/26/1984)

FOIA S09-251

Box Number 33

83

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
74664	MEMO	GEORGE SHULTZ TO THE PRESIDENT RE WORLD COURT CASE (W/ATTACHED PAPER) ***R 4/25/2017 M259/1***	10	12/26/1984	B1
74665	PAPER	RE COMMUNIST SUBVERSION ***R 4/25/2017 M259/1***	2	ND	B1
74666	MEMO	ROBERT KIMMITT TO ROBERT MCFARLANE RE ICJ CASE ***R 9/20/2017 M259/1***	1	1/11/1985	B1
74667	MEMO	NICHOLAS PLATT TO ROBERT MCFARLANE RE WORLD COURT CASE ***R 6/18/2019 M259/1***	2	1/16/1985	B1
74668	MEMO	CHARLES HILL TO ROBERT MCFARLANE RE WORLD COURT CASE (W/ATTACHED PAPER) ***R 4/25/2017 M259/1***	3	1/3/1985	B1
74669	MEMO	CHARLES HILL TO ROBERT MCFARLANE RE WORLD COURT CASE ***R 4/25/2017 M259/1***	1	12/26/1984	B1

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]
B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

NSC/S PROFILE SECRET/SENSITIVE ID 8409326

RECEIVED 27 DEC 84 15

TO PRESIDENT FROM SHULTZ, G DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

FIELDING, F 28 DEC 84

KEYWORDS: NICARAGUA LEGAL ISSUES

CM

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURES

mm 8/19/04

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 17 JAN 85 STATUS C FILES PA

FOR ACTION		FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

COMMENTS ** NOTE ALL BACKGROUND / SUSPENSE PAPERS FWDED TO KIMMITT ON 14 JAN PER REQUEST **

REF# 8435034 LOG 8408862 8500005 NSCIFID (CB HW)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
	— 1/17	Pres Approved Recom #2		
	C 1/17	Poindexter Sit memo	RB, CN, ST, RK, PT, BP	
Kimmitt	— 1/17	Reed state memo	RB, CN, ST, RK, PT, BP	
Kimmitt	— 1/19	Reed state memo	KS, CN, RB, ST, ME, BP	
Kimmitt	— 1/22	Reed state memo	CN, RB, ST, PT, BP	

DISPATCH HLW. 1/19 W/ATTCH FILE ____ (C)

12/28/84 gph

NSC/S PROFILE ~~SECRET/SENS~~ITIVE ID 8409326

RECEIVED 27 DEC 84 15

TO PRESIDENT FROM SHULTZ, G DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

KEYWORDS: NICARAGUA

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURES MR 87154

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 28 DEC 84 STATUS S FILES PA

FOR ACTION	FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

URGENT

COMMENTS

REF# 8435034 LOG NSCIFID (CB)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
McFarlane	X 12/28	For Decision	01/02	
	1/11	Rcd CIA comments		
	1/11	Rcd POD comments		
	C 1/14	Kimmitt sgd memo		
	1/14	Rcd CIA memo		RB, ON, RK, PT, BP
DISPATCH 1/14	B 1/14	ORIG	W/ATTCH FILE	

NSC/S PROFILE ~~SECRET/~~SENSITIVE ID 8409326

RECEIVED 27 DEC 84 15

TO PRESIDENT FROM SHULTZ, G DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

FIELDING, F 28 DEC 84

3

SUSPENSE

KEYWORDS: NICARAGUA CM

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURE

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 28 DEC 84 STATUS S FILES PA

FOR ACTION		FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

COMMENTS

REF# 8435034 LOG NSCIFID (CB)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
Burghardt S	12/28	Rec'd CIA memo/Add-on		
Menges —	1/4	Need state memo	ON, RIC, PT	
Burghardt —	1/9	Need state memo	ON, RIC, PT	
Burghardt —	1/14	Need CIA memo	ON, RIC, PT	

DISPATCH _____ W/ATTCH FILE _____ (C)

NSC/S PROFILE ~~SECRET/~~SENSITIVE ID 8409326

RECEIVED 27 DEC 84 15

TO PRESIDENT FROM SHULTZ, G DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

FIELDING, F 28 DEC 84

4

KEYWORDS: NICARAGUA LEGAL ISSUES

CM

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 02 JAN 85 STATUS X FILES PA

FOR ACTION		FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

COMMENTS

REF# 8435034 LOG 8500005 NSCIFID (CB)

ACTION OFFICER (S)		ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
	X	1/9	Kimmitt Sgd Memo		ME, Pf, Rk
	-	1/9	Pending W/ Kimmitt		
Kimmitt		1/11	Rcd North memo		

DISPATCH _____ W/ATTCH FILE _____ (C)

NSC/S PROFILE ~~SECRET~~/SENSITIVE ID 8409326

RECEIVED 27 DEC 84 15

TO PRESIDENT FROM SHULTZ, G DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

FIELDING, F 28 DEC 84

5

SUSPENSE

KEYWORDS: NICARAGUA LEGAL ISSUES

CM

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURES

8/7/09

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 02 JAN 85 STATUS X FILES PA

FOR ACTION		FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

COMMENTS

REF# 8435034 LOG 8500005 NSCIFID (CB)

ACTION OFFICER (S)		ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
	x	1/9	Kimmitt Sgd Memo		ME, PF, RL
	-	1/9	Pending W/ Kimmitt		

DISPATCH _____ W/ATTCH FILE _____ (C)

NSC/S PROFILE ~~SECRET~~/SENSITIVE ID 8409326

RECEIVED 27 DEC 84 15

TO PRESIDENT FROM SHULTZ, G DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

FIELDING, F 28 DEC 84 6

KEYWORDS: NICARAGUA

SUSPENSE

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 02 JAN 85 STATUS X FILES PA

FOR ACTION		FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

COMMENTS

REF# 8435034 LOG NSCIFID (CB)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
Burghardt	S	12/29 Reed Defense Memo - Add-on		

DISPATCH _____ W/ATTCH FILE _____ (C)

NSC/S PROFILE ~~SECRET/SENSITIVE~~ ID 8409326

RECEIVED 27 DEC 84 15

TO PRESIDENT FROM SHULTZ, G DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

FIELDING, F 28 DEC 84

SUSPENSE 7

KEYWORDS: NICARAGUA LEGAL ISSUES

CM

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 02 JAN 85 STATUS X FILES PA

FOR ACTION		FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

COMMENTS

REF# 8435034 LOG 8500005 NSCIFID (CB)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
-	1/1	Recd Justice Response		
Burghardt S	1/11	For Further Action - Add-on		

DISPATCH _____ W/ATTCH FILE _____ (C)

NSC/S PROFILE ~~SECRET/SENSITIVE~~ ID 8409325

~~CLASSIFIED ENCLOSURE~~

RECEIVED 27 DEC 84 15

TO _____ PRESIDENT

FROM SHULTZ, G

DOCDATE 26 DEC 84

THOMPSON 27 DEC 84

FIELDING, F 28 DEC 84

SUSPENSE → 9326

KEYWORDS: NICARAGUA

CM

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURE(S)

mm 8/7/06

SUBJECT: NICARAGUA WORLD COURT CASE

North Thompson Poindexter

ACTION: PREPARE MEMO FOR MCFARLANE DUE: 28 DEC 84 STATUS S FILES PA

FOR ACTION		FOR CONCURRENCE	FOR INFO
BURGHARDT	NORTH	MENGES	CANNISTRARO

COMMENTS

REF# 8435034 LOG NSCIFID (CB)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO
Burghardt S	12/28	Rec'd CIA memo/Add-on		
Menges	1/4	Need state memo		ON, RIC, PT
Burghardt	1/9	Need state memo		ON, RIC, PT
Burghardt	1/14	Need CIA memo		ON, RIC, PT

DISPATCH _____ W/ATTCH FILE _____ (C)

THE SECRETARY OF STATE

WASHINGTON

9

December 26, 1984

MEMORANDUM FOR: THE PRESIDENT

From: George P. Shultz

Subject: Nicaragua World Court Case

We must decide what position to adopt regarding Nicaragua's pending case against the United States in the International Court of Justice (ICJ).

BACKGROUND

You will recall that Nicaragua filed suit in April, alleging that the U.S. was engaged in military activities (mining Nicaragua's harbors and supporting the Contras) that Nicaragua argued were in violation of the U.N. Charter and international law. We argued that the Court does not have jurisdiction over this issue and that such matters were political in nature and thus inappropriate for judicial resolution. In late November, the Court decided that it has jurisdiction and competence to hear Nicaragua's claims. This decision appears to be motivated more by politics than law and indicates that the U.S. will have difficulty receiving a fair hearing on the merits.

OPTIONS

We have two basic options, neither of which is appealing. First, we can remain in the case (under protest) and defend to the hilt the legality of our Central American policy. Second, we can withdraw from the case now -- although the case will in any event go forward without us.

Under both options, we are almost certain to lose the case. If we stay and fight, the case should take two years or more. If we leave, we can probably expect a judgment during 1985. Under both options, we will eventually have to decide whether to refuse to comply with any adverse judgment that we see as contrary to vital national interests.

16

Regardless of the option chosen, we should move now to clarify our 1946 acceptance of the ICJ's compulsory jurisdiction so as to explicitly exclude cases of this sort in the future. (The clarification would, for example, exclude all cases involving "hostilities" or "resort to collective self-defense".) Opponents will argue that any clarification now is an admission that the ICJ did indeed have jurisdiction in this case. However, such a clarification would formalize what we have asserted all along -- that the ICJ was never intended to be the arbiter of armed conflicts.

The question remains, however, how best to minimize our losses in a no-win situation in this case. The main pros and cons are as follows:

Option 1: Stay and fight:

Pros

- Avoids a domestic controversy that could complicate chances for Contra funding.

- Confirms traditional U.S. commitment to the rule of law.

- Allows us to present our political case against Nicaragua both inside and outside the courtroom.

- May allow us to mitigate the Court's judgment (i.e., limit an award of damages to Nicaragua and affect the terms of any injunction issued against us).

- Political change in Central America in next two years could favorably affect the case, or perhaps make it moot.

Cons

- Will be hard to make our case because much of our best evidence is sensitive intelligence, and because El Salvador and Honduras have not yet agreed to join us before the Court.

- We may have to defy the Court's judgment after we lose. Having participated on the merits of the case, we may look more like sore losers.

- Might appear contrary to our position that the Court is not the proper place to deal with Nicaragua's accusations.

Option 2: Walk away from the case now (attached is contingency press statement):

Pros

- Would be affirming that we will not participate in proceedings in which a Court judgment might compromise the principle of collective self-defense and our veto in the Security Council.

- Refusing to participate may ultimately be more defensible than if we defied the Court only after we participated and lost.

- Would avoid the difficulties in making our case (e.g., intelligence evidence; participation of El Salvador and Honduras).

- Would be consistent with the clarification of our acceptance of ICJ's compulsory jurisdiction and our position that this type of case involves political questions that are not appropriate for judicial resolution.

Cons

- Domestic controversy would harm our chances for renewed Contra funding.

- Might appear inconsistent with our efforts to get others (Libya, Iran) to respect rule of law.

- Will be construed by many as an admission that our Central American policy violates international law.

- Congressional and media criticism will shift focus onto our conduct rather than Nicaragua's. (The case will proceed without us, with Nicaragua scoring propaganda points against an empty U.S. chair in the courtroom.)

- U.S. will lose opportunity to shape and perhaps lessen scope of adverse result.

DISCUSSION

The strongest immediate consideration is what hurts or helps our Central American policy. From that perspective, walking out now would complicate our efforts to secure Contra funding and raise a new controversy that diverts attention from the real issues in Central America.

The long-term and ultimately more significant issue, however, involves the future of the World Court and the perception of the United States as committed to the rule of law in international affairs.

The U.S. has long been in the forefront of those advocating the extension and strengthening of international law and institutionalized structures of justice, including recourse to the ICJ in appropriate cases. We have ourselves used the Court to good effect in the Iran hostage and Gulf of Maine cases. In addition, we have spoken out firmly in support of the rule of law in speeches, statements, and official declarations to great effect. Many peoples around the world look to us as a source of hope in the commitment to the cause of justice under law.

Ever since the earliest days of the ICJ, a large and legitimate body of American opinion has expressed deep concern that a world court would inevitably encroach upon our national sovereignty and might address political questions that are not appropriate for judicial resolution. The present case, which involves issues of collective security and self-defense, crosses the threshold of what we should accept and amounts to a circumvention of the Security Council and our veto.

Second, there is a serious concern that the U.S. commitment to the rule of law is, in this case, being exploited by those for whom law is not a standard but a tool of political systems which are administered in terms of organized or arbitrary power and to whom our concept of due process and justice mean little or nothing. Indeed, two-thirds of the ICJ judges come from nations that do not accept the Court's compulsory jurisdiction at all, thereby avoiding being held to a process that these judges would hold us to.

Finally, if we were to defy the Court after having participated in the case on the merits and lost, our commitment to the rule of law might suffer even more damage. Also, the Court's conduct in this case suggests that it is becoming increasingly politicized. If so, our action now may serve as a useful warning to the Court and hopefully forestall any such trend. The rule of law would be weakened if the Court were to address political questions that are not appropriate for judicial resolution.

RECOMMENDATION

Given the near certainty that we will not get a fair hearing in this case, we should walk out now and clarify that we will not accept the Court's jurisdiction in any future case of this nature. Any defiance of the ICJ after we had

participated in a full hearing of the issues and lost would be harder to defend than making clear in advance that we regard the entire proceeding as illegitimate. A draft public announcement of our position is attached.

Enclosure - 1
as stated

US Withdrawal from the Proceedings Initiated by Nicaragua in the International Court of Justice

The United States has consistently taken the position that the proceedings initiated by Nicaragua in the International Court of Justice are a misuse of the Court for political purposes and that the Court lacks jurisdiction and competence over such a case. The Court's decision of November 26, 1984, that it has jurisdiction is contrary to law and fact. With great reluctance, the United States has decided not to participate in further proceedings in this case.

US Policy in Central America

United States policy in Central America has been to promote democracy, reform, and freedom; to support economic development; to help provide a security shield against those -- like Nicaragua, Cuba, and the USSR -- who seek to spread tyranny by force; and to support dialogue and negotiation both within and among the countries of the region. In providing a security shield, we have acted in the exercise of the inherent right of collective self-defense, enshrined in the United Nations Charter and the Rio Treaty. We have done so in defense of the vital national security interests of the United States and in support of the peace and security of the hemisphere.

Nicaragua's efforts to portray the conflict in Central America as a bilateral issue between itself and the United States cannot hide the obvious fact that the scope of the problem is far broader. In the security dimension, it involves a wide range of issues: Nicaragua's huge buildup of Soviet arms and Cuban advisers, its cross-border attacks and promotion of insurgency within various nations of the region, and the activities of indigenous opposition groups within Nicaragua. It is also clear that any effort to stop the fighting in the region would be fruitless unless it were part of a comprehensive approach to political settlement, regional security, economic reform and development, and the spread of democracy and human rights.

The Role of the International Court of Justice

The conflict in Central America, therefore, is not a narrow legal dispute; it is an inherently political problem that is not appropriate for judicial resolution. The conflict will be solved only by political and diplomatic means -- not through a judicial tribunal. The International Court of Justice was never intended to resolve ongoing armed conflicts and is

patently unsuited for such a role. Unlike domestic courts, the World Court has jurisdiction only to the extent that nation-states have consented to it. When the United States accepted the Court's compulsory jurisdiction in 1946, it certainly never conceived of such a role for the Court in such controversies. Nicaragua's suit against the United States -- which includes an absurd demand for hundreds of millions of dollars in reparations -- is a blatant misuse of the Court for political and propaganda purposes.

As one of the foremost supporters of the International Court of Justice, the United States is one of only 43 of 159 member states of the United Nations that have accepted the Court's compulsory jurisdiction at all. Furthermore, the vast majority of these 43 states have attached to their acceptance reservations that substantially limit its scope. Along with the United Kingdom, the United States is one of only two permanent members of the UN Security Council that have accepted that jurisdiction. And of the 16 judges now claiming to sit in judgment on the United States in this case, 11 are from countries that do not accept the Court's compulsory jurisdiction.

Few if any other countries in the world would have appeared at all in a case such as this which they considered to be improperly brought. Nevertheless, out of its traditional respect for the rule of law, the United States has participated fully in the Court's proceedings thus far, to present its view that the Court does not have jurisdiction or competence in this case.

The Decision of November 26

On November 26, 1984, the Court decided -- in spite of the overwhelming evidence before it -- that it does have jurisdiction over Nicaragua's claims and that it will proceed to a full hearing on the merits of these claims.

This decision is erroneous as a matter of law and is based on a misreading and distortion of the evidence and precedent:

-- The Court chose to ignore the irrefutable evidence that Nicaragua itself never accepted the Court's compulsory jurisdiction. Allowing Nicaragua to sue where it could not be sued was a violation of the Court's basic principle of reciprocity, which necessarily underlies our own consent to the Court's compulsory jurisdiction. On this pivotal issue in the

November 26 decision -- decided by a vote of 11-5 -- dissenting judges called the Court's judgment "untenable" and "astonishing" and described the US position as "beyond doubt." We agree.

-- El Salvador sought to participate in the suit to argue that the Court was not the appropriate forum to address the Central American confict. El Salvador declared that it was under armed attack by Nicaragua and, in exercise of its inherent right of self-defense, had requested assistance from the United States. The Court rejected El Salvador's application summarily -- without giving its reasons and without even granting El Salvador a hearing, in violation of El Salvador's right and in disregard of the Court's own rules.

-- The Court's decision is a marked departure from its past, cautious approach to jurisdictional questions. The haste with which the Court proceeded to a judgment on these issues -- noted in several of the separate and dissenting opinions -- only adds to the impression that the Court is determined to find in favor of Nicaragua in this case.

For these reasons, despite our respect for the Court's decisions in other instances, its conduct in this case calls into serious question whether the United States will receive a fair hearing consistent with the law. We are forced to conclude that our continued participation in this case could not be justified.

In addition, much of the evidence that would establish Nicaragua's aggression against its neighbors is of a highly sensitive intelligence character. We will not risk US national security by presenting such sensitive material in public or before a Court that includes two judges from Warsaw Pact nations. This problem only confirms the reality that such issues are not suited for the International Court of Justice.

Longer-Term Implications of the Court's Decision

The Court's decision raises a basic issue of sovereignty. The right of a state to defend itself or to participate in collective self-defense against aggression is an inherent sovereign right that cannot be compromised by an inappropriate proceeding before the World Court.

We are profoundly concerned also about the long-term implications for the Court itself. The decision of November 26

represents an overreaching of the Court's limits, a departure from its tradition of judicial restraint, and a risky venture into treacherous political waters. We have seen in the United Nations, in the last decade or more, how international organizations have become more and more politicized against the interests of the Western democracies. It would be a tragedy if these trends were to infect the International Court of Justice. We hope this will not happen, because a politicized Court would mean the end of the Court as a serious, respected institution. Such a result would do grievous harm to the goal of the rule of law.

These implications compel us to clarify our 1946 acceptance of the Court's compulsory jurisdiction. Important premises on which our initial acceptance was based now appear to be in doubt in this type of case. We are therefore taking steps to clarify our acceptance of the Court's compulsory jurisdiction in order to make explicit what we have understood from the beginning, namely that cases of this nature are not proper for adjudication by the Court.

We will continue to support the International Court of Justice where it acts within its competence -- as, for example, where specific disputes are brought before it by special agreement of the parties. One such example is the recent case between the United States and Canada before a special five-member Chamber of the Court to delimit the maritime boundary in the Gulf of Maine area. Nonetheless, because of our commitment to the rule of law, we must declare our firm conviction that the course on which the Court may now be embarked could do enormous harm to it as an institution and to the cause of international law.

Drafted: S/P:PWRodman
12/26/84:x22372
WANG 0209S

Date(s)	Communist Subversion and Actions	OAS Responses
1951	Under the OAS Carter, OAS member states met in Washington, D.C. as the Fourth Meeting of Consultation to confer on the threat to the peace of the Hemisphere posed by the expansionist policies of international communism, after the invasion of South Korea by North Korea.	Prompt measure were taken by OAS member states to ensure the military defense of the Hemisphere.
1953-1954	Guatemala asserts aggression by others. Ten nations call for Meeting of Consultation over international communism.	OAS Council despatched an investigating committee to Guatemala via Mexico but it was denied access by Guatemala. Before the OAS Meeting of Consultation could be convoked the Government was overthrown.
1959	Panama asked for an OAS meeting of Consultation under Rio Treaty saying its territory had been invaded by forces composed almost entirely of foreign elements and cited reports that 80 to 100 fully armed men had left Cuba destined for Panama.	The OAS appointed an investigating committee and called for aircraft and patrol boats to be put at the disposal of the investigating committee. For example Colombia among others furnished pursuit planes and a frigate. The invading forces unconditionally surrendered, and the Cuban Government promised cooperation. The threat of new landings did not materialize.
1961	Peru alleges Cuban intervention and subversion.	The OAS Council referred Peru's allegation to the OAS Inter-American Peace Committee which submitted a report confirming Cuban subversion. The report was submitted to the OAS Meeting of Consultation in Montevideo, Uruguay.
1962	Colombia alleged that Cuba was a threat to the peace and security of the hemisphere.	The "present" Government of Cuba was excluded from participation in the OAS.

Date(s)	Communist Subversion and Actions	OAS Responses
1962	Installation of nuclear weapons in OAS member state of Cuba by an extra-continental power (the USSR).	OAS authorizes individual and collective measures including force to halt flow of weapons in quarantine of Cuba.
1963-64	Venezuela alleges that Cuba is depositing arms in Venezuela.	The OAS verified the facts as true and sanctions against Cuba were voted.
1967	Allegations of Cuban intervention in Venezuela and Bolivia.	OAS decided to condemn Cuba and to extend sanctions including cutoff of governments sales and credits to Cuba for example.
1974	OAS member states meet in Quito, Ecuador to review changes in political situation since sanctions against Cuba were adopted in 1964.	A two-thirds vote was required to remove sanctions against Cuba and the OAS member states were not able to muster the necessary votes to remove the sanctions--in effect confirming that Cuba had not ceased to be a threat to the peace and security of the Hemisphere.
1975	OAS member states meet in San Jose, Costa Rica once more to review political situation since sanctions were adopted against Cuba in 1964.	While not finding that Cuba had ceased to be a threat to the peace and security of the continent, Freedom of Action was approved to restore normal relations with Cuba and amendments to the Rio Treaty were proposed which when ratified would permit future removal of sanctions by majority rather than two thirds vote.
1980	Guerrillas seize the Dominican Republic Embassy in Bogota and take hostage upwards of seventeen diplomats.	OAS Human Rights Commission sent to the area, the Commission agrees to place observers at trials of political prisoners and the guerrillas abandon the Embassy.

MEMORANDUM

~~SECRET~~

ACTION

~~SECRET~~

NATIONAL SECURITY COUNCIL

9326

74666

21

January 11, 1985

MEMORANDUM FOR ROBERT C. MCFARLANE

FROM: ROBERT M. KIMMITT Bob

SUBJECT: ICJ Case (U)

At Tab I for your signature is a memorandum on the ICJ case. Although I started out where you did supporting immediate withdrawal, I now recommend we proceed in the case with the withdrawal option preserved. This change on my part was occasioned principally by my belief that we can stretch out the litigation in a way to make it a non-issue for most of this year, thus helping us -- or certainly avoiding harm -- on key issues such as Central American and Contra aid. (S)

Note that Secretary Weinberger (Tab B) and CIA (Tab II) agree with this recommendation, as do Fielding and Oglesby. Secretary Shultz (Tab A) and Jeane Kirkpatrick support immediate withdrawal. Justice still has expressed no view, even though State has addressed the questions Justice found "troubling" (Tab III). (U)

RECOMMENDATION

That you sign the memorandum at Tab I. (U)

Approve ✓ Disapprove _____

Burghardt, North, and Thompson concur.

Attachments

Tab I Memorandum to the President
Tab A Shultz memo
Tab B Weinberger memo
Tab II CIA memo
Tab III State memo re Justice legal conerns

~~SECRET~~

Declassify on: OADR

~~SECRET~~

S/S 8501259 9326 74667

United States Department of State 22

Washington, D.C. 20520

January 16, 1985

SECRET/NODIS

MEMORANDUM TO ROBERT C. MCFARLANE
THE WHITE HOUSE

Subject: Nicaragua World Court Case

In a memorandum to Robert Kimmitt dated 28 December 1984, the CIA made several suggestions for changes in the text of a press release announcing a decision to withdraw from Nicaragua's World Court case, should that option be chosen, and suggested a third option. We would like to respond to these suggestions.

1. We would concur with the CIA's suggested revision "a" to the press release.

Items "b" and "d" appear to be interrelated. In item "b," the CIA proposes to add a sentence at the end of the first full paragraph on page 2 that would indicate the risks to our national security from discussing the case before a court with judges from Warsaw Pact nations -- presumably, at least in part, because of the difficulties arising from our expected inability to use our best intelligence data before the Court. In item "d" the CIA proposes that we delete a paragraph on page 3 specifically discussing these difficulties. We believe that the paragraph on page 3 should be retained because it presents a distinct and valid argument that will be understood by the public. The addition proposed by item "b" is then unnecessary.

In item "c," the CIA proposes that the phrase in the first full paragraph of page 3 "despite our respect for the Court's decision in other instances" be deleted. The phrase was included originally to indicate that we would not intend by this action to undercut the validity of other court decisions in our interest, most notably the recent Gulf of Maine decision. We continue to believe that this caveat to our action is advisable.

~~SECRET~~/NODIS
DECL: OADR

2. The CIA proposes that the United States request the Court to postpone the case for approximately six months in order to consider more fully its ultimate decision. We are quite certain that the Court would simply deny a request for postponement on the ground that during the next six months only Nicaragua, in accordance with the schedule that Nicaragua had itself proposed, would be required to file anything with the Court, and that the United States therefore would have the benefit of at least six months in which to consider its course of action in any event. Therefore, we do not favor asking for such an extension.

However, the design of the CIA's suggestion is essentially consistent with the Secretary's supplemental memorandum to the President of January 3, 1985, presenting a third option to the President by which the United States could reserve its final decision until later in the proceedings, probably for at least 8-10 months until the first United States brief would be due. In the event this third option were chosen despite the Secretary's recommendation, we would seek a briefing schedule that would provide the United States with the greatest opportunity to decide whether to proceed to the merits or not.

Nicholas Platt
Executive Secretary

S/S# 8500130 (9326)

74668 24

DEPARTMENT OF STATE

Washington, D.C. 20520

January 3, 1985

SECRET/NODIS

MEMORANDUM FOR MR. ROBERT C. MCFARLANE
THE WHITE HOUSE

Subject: Nicaragua World Court Case

The attached memorandum, prepared as a result of the SIG meeting held on the afternoon of January 2, supplements the memorandum dated December 26, 1984 sent by the Secretary to the President. The attached memorandum has been reviewed in draft by representatives of Defense, CIA and USUN. Representatives of Justice were invited to attend but declined. The recommendation of the Secretary remains as stated in his memorandum of December 26.

Charles Hill
Executive Secretary

Attachment:
As stated.

SECRET/NODIS

MEMORANDUM

SUPPLEMENT TO THE MEMORANDUM OF DECEMBER 26 FROM THE SECRETARY OF STATE TO THE PRESIDENT ON THE NICARAGUA WORLD COURT CASE

In addition to the two options set forth in the memorandum dated December 26, 1984, a third option would be to remain in the case without deciding, for the time being, whether we ultimately would withdraw from the proceedings or stay in to address the merits of Nicaragua's allegations. We would continually assess our position, seeking to assure that we have a fair opportunity to consider fully all of our options and sufficient time to prepare and present our case on the merits if we were to decide to so proceed. Under this option we could ask the Court for more time before deciding, and would consider how the pace and timing of further proceedings, including various procedural steps, would serve U.S. interests. (For example, we might initiate carefully formulated steps before the Court to seek to clarify its probable course of conduct in the case.) We would obviously inform the Congress and other important audiences about the World Court, the state of its compulsory jurisdiction, and its conduct of this particular case. On the basis of the schedule that we could expect the Court to set, it is unlikely that the United States would be required to take any position on the merits for at least 8 to 10 months.

OPTION 3: REMAIN IN THE CASE WHILE ASSESSING AT EACH STEP WHETHER TO PROCEED FURTHER

PROS

-- Would have many of the advantages set forward under Option 1 while the period of assessment continued, including possibly avoiding at least for the time being a domestic controversy that could complicate chances for Contra funding.

-- Would preserve our options, at least in the near term, during the period of assessment.

-- Would permit greater opportunity to consider the best means of clarifying our acceptance of the Court's compulsory jurisdiction for future cases.

SECRET/NODIS
DECL: OADR

-- Would enable us to ascertain the views of El Salvador and Honduras and to assess our position in the event one or both of them decided to come before the Court.

CONS

-- Will be increasingly difficult as time passes not to stay and fight on the merits because of Congressional or other pressures that may limit the options available to us.

-- Uncertainty with regard to our plans in the case could distract attention from the Contadora process and our overall policy in Central America.

-- Any renewed Contra funding would be for a limited period and a subsequent decision regarding the case could affect the chance for further renewals.

-- Despite our best efforts, the Court's schedule will not be under our control and will determine the timing of our own final decision.

NSC/S PROFILE ~~SECRET~~ ID 8409325

RECEIVED 26 DEC 84 19

TO MCFARLANE FROM HILL, C DOCDATE 26 DEC 84

27

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ENCLOSURES

MR 8/17/94

KEYWORDS: NICARAGUA LEGAL ISSUES

SUBJECT: NICARAGUA WORLD COURT CASE

ACTION: FOR INFORMATION DUE: STATUS C FILES PA

FOR ACTION FOR CONCURRENCE FOR INFO

BURGHARDT

COMMENTS

REF# 8435001 LOG NSCIFID (JW JW)

ACTION OFFICER (S)	ASSIGNED	ACTION REQUIRED	DUE	COPIES TO

DISPATCH _____ W/ATTCH FILE _____ (C)

28

9325

National Security Council
The White House

System # _____

Package # _____

84 DEC 26 P7:08

28

	SEQUENCE TO	HAS SEEN	DISPOSITION
Paul Thompson			
Bob Kimmitt			
John Poindexter			
Tom Shull			
Wilma Hall			
Bud McFarlane			
Bob Kimmitt			
NSC Secretariat			
Situation Room			

I = Information A = Action R = Retain D = Dispatch N = No further Action

cc: VP Meese Baker Deaver Other _____

COMMENTS Should be seen by: _____
(Date/Time)

Staff to Burghardt for info

8435001

United States Department of State

Washington, D.C. 20520

29

December 26, 1984

~~SECRET~~

MEMORANDUM FOR MR. ROBERT C. MCFARLANE
THE WHITE HOUSE

Subject: Nicaragua World Court Case

The State Department will soon send a memorandum to the President containing our recommendation on what position the U.S. should adopt regarding Nicaragua's pending case against the U.S. in the International Court of Justice. Other agencies may have comments on the proposed position. We assume that the NSC will coordinate comments (if any) from other relevant agencies in connection with this important issue requiring a prompt presidential decision.

Charles Hill
Executive Secretary

~~SECRET~~
DECL: OADR