

SECRET

6,



Foreign and Commonwealth Office

London SW1A 2AH

30 April 1986

Dear Charles,

Mr.

Prime Minister

This will be tricky. We should obviously do what is right - but no need to shout about it. CDP 30/4 CDP 30/4

US/Nicaragua

The Prime Minister will wish to know that the International Court of Justice (ICJ) is expected to announce its judgement very soon in the US/Nicaragua case. This is likely to lead to controversy. It may be helpful to set out the background and our current thinking.

Nicaragua applied to the ICJ in April 1984 after it had become known that the US was responsible for mining the approaches to Nicaraguan harbours. The Nicaraguans asked the Court to declare unlawful a series of specified covert activities against Nicaragua, to award compensation and to find that the US was under an obligation to end its support for the Contras. The complaint, as fully presented to the Court, covers the period from March 1981, when President Reagan authorised aid to the Contras, to April 1985, when he sought Congressional authority for the renewal of aid to them.

In May 1984, the Court indicated interim measures of protection pending judgement on the merits of the case. In particular, the Court called unanimously for an end to the mining of ports and for both sides to abstain from action which could exacerbate the situation. In November 1984, the Court found (by 11-5, including the British judge) that it did have jurisdiction to try the case on the main issue. The US Government questioned the decision and later announced that it would not participate further in the case. The US subsequently withdrew their acceptance of the Court's jurisdiction, which had stood since 1946. This US action has been widely criticised, including by many US lawyers. The case has nevertheless continued.

It seems likely that the court will make findings of fact and law adverse to the United States on some but not all of the allegations. The US may well reject such adverse findings and may even question the impartiality of the judges. It is highly unlikely that the US Government will heed the

/ICJ

SECRET



SECRET

ICJ and reverse its policy towards Nicaragua. If the US does reject adverse findings by the ICJ, Article 94(2) of the UN Charter gives Nicaragua the right of recourse to the Security Council, which may then recommend measures to give effect to the judgement.

In his minute of 7 December 1984 (enclosed with Sir Geoffrey Howe's minute PM/84/189 of 12 December 1984 to the Prime Minister about Nicaragua) the Attorney General said that "It must be a lynchpin of our international policy that we maintain our adherence to the rules of international law". In the same spirit our support for the US raids on Libya, as legitimate self-defence, has been founded squarely on our respect for international law. Sir Geoffrey Howe believes that it would not be understood either at home or abroad, particularly in the light of events in Libya, if we were to act in such a way as to call this into question. But we must recognise that if, as expected, the ICJ judges against the United States, it will be necessary for us publicly to endorse the court's findings (in general, if not in detail - depending on their exact terms); and that if Nicaragua then has recourse to the Security Council we are likely to be faced with a difficult voting decision.

Against this background the Foreign Secretary believes that it would be prudent to be ready to make the Government's position clear publicly as soon as we have had an opportunity to study the judgement of the Court; and that while we should try to avoid direct criticism of the United States, we should leave no doubt that we remain committed to observing the rule of international law. Sir Geoffrey intends to find an opportunity during the Tokyo Summit of warning Mr Shultz of our approach to the expected ICJ judgement: he will make clear that we will aim to keep as low a profile as possible.

John Curran

R N Culshaw

(R N Culshaw)
Private Secretary

C D Powell Esq
PS/10 Downing Street

SECRET