

## CORRESPONDENCE

TO THE EDITOR IN CHIEF:

March 1, 1985

We agree with the suggestion in your editorial<sup>1</sup> that the jurisdictional decision of the International Court of Justice in Nicaragua's case against the United States should be carefully considered by American international lawyers. We believe, however, that your editorial does not devote adequate attention to the reasons of the President for discontinuing participation in the case. We also take strong exception to your conclusion that none of the Court's jurisdictional findings is insupportable in fact or law.

The reasons behind the President's decision to participate no further in the case were set out by the Department of State on January 18.<sup>2</sup> Briefly put, the United States considers Nicaragua's claims to present "an inherently political problem that is not appropriate for judicial resolution."<sup>3</sup> Nicaragua alleges, in essence, that there is a "threat to the peace, breach of the peace, or act of aggression"; the United States responds that its policy in Central America is an exercise of the inherent right of self-defense. This is a classic case arising under chapter VII of the United Nations Charter. Authority to make determinations of the points at issue is expressly vested in the Security Council, not the Court, by Articles 39 and 51, respectively. We regret that your editorial treats so lightly issues that go to the heart of the system established under the United Nations Charter.

Any examination of the Court's jurisdictional findings requires close attention to the pleadings and oral argument in the case. We believe that such scrutiny can only lead to the conclusion—contrary to that in your editorial—that the Court's finding of jurisdiction was clearly erroneous. A brief summary of our reasoning in this regard is set forth in the "Observations" on the Court's Judgment, also released by the Department of State on January 18.<sup>4</sup>

We are grateful to the Society for the opportunity to express our views.

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### OBSERVATIONS ON THE INTERNATIONAL COURT OF JUSTICE'S NOVEMBER 26, 1984 JUDGMENT ON JURISDICTION AND ADMISSIBILITY IN THE CASE OF NICARAGUA V. UNITED STATES OF AMERICA

In a decision rendered on November 26, 1984, the International Court of Justice: (1) by a vote of 11–5 (U.S., U.K., FRG, Italian and Japanese

<sup>1</sup> See p. 379 *supra*.

<sup>2</sup> See p. 439 *infra*.

<sup>3</sup> *Id.*

<sup>4</sup> The "Observations" are printed below as an appendix to this letter.