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## Mr. World Court

*From Central America to the Caucasus, Foley Hoag's Paul Reichler has carved out a unique practice as the giant-slayer of public international law.*

*By Michael D. Goldhaber*

**O**N OCTOBER 17 THE INTERNATIONAL Court of Justice ordered Georgia and Russia to refrain from ethnic cleansing in Russian-occupied Abkhazia and South Ossetia while Georgia's complaint against Russia is being heard. It was the first invocation of the 1965 U.N. Convention on the Elimination of All Forms of Racial Discrimination by the World Court, which usually concerns itself with mundane border disputes.

But it was not the first ICJ case that Foley Hoag's Paul Reichler helped to bring against a present or former superpower. Reichler catapulted to fame in 1984 at age 36, when he launched a suit—on behalf of Nicaragua—against the United States for its paramilitary activities in Central America. As Reichler says, "I'm surely the only lawyer to have sued both the U.S. and Russia in the International Court of Justice." And, he might have added, won. While the World Court enjoined violence on both sides in the Caucasus—and some observers blame Georgia for provoking the confrontation—Georgia sought the injunction, and it is Georgians who most need its protection.

A partner in Foley's Washington, D.C., office, Reichler is counsel in six of the World Court's 15 pending cases. It's an unlikely professional coup for a lawyer who left two law firms in the eighties because of his ties to Nicaragua's successful coup-plotters, and who operates in a field dominated by European barristers and professors. Reichler jokes that if you'd like to practice public international law in Washington, you can either work for him or the

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Office of the Legal Adviser (whose client is the U.S. Department of State)—and he has the more interesting clients. As a description of the legal landscape, this is only a slight exaggeration. As for who has the more interesting clients, that depends on your definition of "interesting."

Reichler's star has long been tied to the Sandinistas. Within weeks of ousting the U.S.-supported Somoza regime in the summer of 1979, junta leader Daniel Ortega asked Arnold & Porter to recover funds allegedly stolen by the Somozas (and later, after the new regime nationalized the mines, to fend off arbitrations). As an associate at the firm, Reichler jumped at the opportunity. He had dreamed of public international law since collecting stamps as a child, he was fluent in Spanish, and—though some historians might regard him as naive—he took Ortega's commitment to social justice at face value. After Reagan's election, Reichler says, a senior Arnold & Porter partner asked him to drop the Sandinistas as a client. Reichler refused, and moved to Powell Goldstein Frazer & Murphy. Three years later, he was forced to hang up his own shingle after the PoGo partnership declined to sue the U.S. on behalf of Nicaragua.

The suit that Reichler hatched—with the help of an all-star team of academics, including his former Harvard Law School



professor Abram Chayes—challenged America’s military support of the contras, the insurgent group seeking to overthrow the Sandinistas. Reichler’s aim was to undermine congressional support for the contras, and, with nimble attention to the headlines, he and his team succeeded. On April 4, 1984, *The Wall Street Journal* broke the news that the U.S. was mining Nicaragua’s harbors. On Friday, April 6, the U.S., in anticipation of the Nicaragua suit, claimed to withdraw immediately from World Court jurisdiction with respect to Central America. “A colossal blunder!” Reichler recalls Chayes telling him on the phone, arguing that such a withdrawal could not take effect for six months. The Nicaragua team re-drafted their petition to highlight the harbor mining and filed it that Monday morning. On May 10 the court unanimously ordered the U.S. to stop mining Nicaragua’s harbors. Two weeks later Congress cut off funding for the contras. That summer, in a highly personal gesture of gratitude, the Sandinistas made a special exception in their ban on foreign adoptions and permitted Reichler to adopt a Nicaraguan baby girl. Meanwhile, the International Court of Justice asserted jurisdiction over the U.S. in spite of America’s purported withdrawal. In a series of 1986 final rulings, the court found the U.S. broadly in violation of customary international law.

It’s a matter of debate whether the Nicaragua case demonstrated the World Court’s effectiveness. The rulings surely strengthened congressional opposition to U.S. policy in Central America, but they didn’t stop the Reaganites from attempting to fund the contras illegally through arm sales to Iran. University of Chicago Law School professor Eric Posner has estimated the compliance rate with World Court judgments at only 61 percent, though ICJ president Rosalyn Higgins counts just five instances where the court has ultimately been defied.

In the 1980s Reichler handled another pair of World Court cases for Nicaragua against its neighbors. But at the end of the decade the Sandinistas fell from power, and Reichler focused his practice on arbitration and litigation for sovereign clients, with only a stray case in The Hague: In 1998 he was retained by Uganda in a World Court border dispute with the Democratic Republic of the Congo (still pending). The next year Reichler and his firm, now a dozen lawyers strong, moved to Foley, where they have continued to build their sovereign practice. Since the move the group’s revenues have approximately tripled, to \$10–15 million.

Reichler credits the resources and discovery expertise of a big firm for giving him an edge over the barristers and academics who handle most public international law cases. But something else has been just as crucial to his success: The Sandinistas came back. Ortega was reelected in 2006, riding a new wave of leftist sentiment in Latin America. Reichler makes no bones about defending his clients’ adherence to social and electoral democracy. That roster in-

cludes Venezuela, which occasionally uses him for disputes arising from nationalization.

The revival of Latin leftists, who have fond memories of The Hague, has also measurably boosted the caseload of the World Court, which saw a grand total of 95 cases in its first 60 years. Since 2006 Reichler has been hired by Nicaragua in border disputes with Costa Rica and Colombia, by Ecuador in a claim against Colombia for aerial spraying of coca plants, and by Uruguay in a claim by Argentina of pulp mill dumping in the River Uruguay. All these cases are moving forward slowly. With Reichler’s visibility at a new high, he was soon drawn into a higher-profile battle in another part of the world: Georgia.

A Georgian team led by McGill University law professor Payam Akhavan filed suit in The Hague four days after the Russian invasion in August. Reichler joined the team soon after, and helped to obtain October’s historic ruling, which ordered a halt to ethnic cleansing. Among other arguments, Russia denied that its forces or surrogates had committed abuses. But the court was evidently persuaded of the need for imminent action by U.N. satellite photos of burned-out ethnic Georgian villages sitting beside untouched Ossetian settlements. Russia’s lead counsel, Alain Pellet of the University of Paris, declined to comment. The parties will be litigating the merits for years.

Bold claims in the World Court are rare, and have their critics. University of Miami law professor Bernard Oxman this year criticized ICJ suits over U.S. capital punishment as an example of zealotry. “What characterizes the zealot,” he said in a March lecture on the future of international law, “is a delight in abruptly pushing back the frontiers of what has been regarded as an appropriate role for international law.” Reichler fits this definition with pride.

The danger is that zealotry will polarize world opinion and provoke a backlash against public international law. Opinion in the Georgia case has certainly been polarized, with the ICJ’s 15 judges dividing 8 to 7 along diplomatic fault lines. It remains to be seen whether the case provokes a reaction in Russia against the world public order.

Reichler has little use for a World Court that does not at least try to deter wrongful wars and ethnic cleansing. Although Russia in 2009 seems less susceptible to World Court pressure than the U.S. Congress circa 1984, Reichler believes that the court’s October order has sped the return of some Georgian refugees and strengthened Georgia’s hand in peace negotiations, while discouraging a new campaign of village destruction. If Russia does start bombing again, Georgia can drag it before the ICJ for renewed humiliation. In the cautious world of The Hague, where six cases count as a flood, a little zealotry may not be a bad thing.

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**T**he Sandinistas’ return to power brought Reichler a stream of new clients, all leftist Latin American governments.