
The Costa Rica Case

First Fidelity: the IMF's enforcer

by Susan Welsh

Considering the thuggery which First Fidelity Bank of New Jersey uses against its own clients, it is not surprising to discover that it operates internationally as a mafia "enforcer" for the International Monetary Fund (IMF).

When the government of Costa Rica declared a debt moratorium in 1981, Fidelity Union Trust Co., the predecessor of First Fidelity, went to bat for the IMF, demanding that the debt be paid—in opposition to the stated policy of the President of the United States and the House of Representatives. The agent for the consortium of 39 affected banks, Allied Bank International, filed a lawsuit against three Costa Rican banks; it was dismissed by New York's Southern District court. The court argued that a judgment in favor of the creditors would force the Costa Rican banks to violate the directives of their own government, and would thereby place the judicial branch of the U.S. government in conflict with policies of central importance to a friendly, sovereign foreign government, risking embarrassment to the foreign relations of the United States.

Thirty-eight of the 39 banks accepted this ruling, and proceeded to work out orderly refinancing plans. Only Fidelity Union Trust refused, appealing the lawsuit to the U.S. Second Circuit Court of Appeals. On April 23, 1984, the appeals court upheld the lower court's ruling, declaring that when a country defaults on a loan granted to it by the United States, further aid is barred *unless* the President advises Congress that "assistance to such country is in the national interest." In the current case, "President Reagan and the Congress reacted sympathetically to Costa Rica's financial crisis and its default on Foreign Assistance Act loans." The President advised that "continuation of U.S. assistance to Costa Rica is consistent with the commitment of this administration and in Congress to help Costa Rica regain economic viability. We therefore regard such assistance, which is designed to help the Government with financial and management reforms and with needed credit to the private sector, as vital and in the national interest. We are hopeful that bilateral debt restructuring will be completed within the next several months."

The House of Representatives expressed "full support for the Republic of Costa Rica and its democratic institutions as

that country responds to the current economic crisis." The court concluded: "Because the decree and resolutions of the Costa Rican government that resulted in appellees' default were consistent with the law and policy of the United States, their validity should be recognized in United States courts."

The court argued that Costa Rica was not repudiating its debts, but merely deferring payments "while it attempted in good faith to renegotiate its obligation." Further, "Costa Rica's prohibition of payment of its external debts is analogous to the reorganization of a business pursuant to Chapter 11 of our Bankruptcy Code. . . . Under Chapter 11, all collection actions against a business filing an application for reorganization are automatically stayed to allow the business to prepare an acceptable plan for the reorganization of its debts."

The Justice Department intervenes

The implications of this ruling were startling indeed, for it opened the door to a global renegotiation of the Third World debt, through treaty arrangements between sovereign states—the opposite of the IMF's approach. Such a reorganization would shatter the political power of the financial oligarchy. The bankers scrambled to recoup their losses. The *Wall Street Journal* quoted a New York banking lawyer, "This is the kind of thing that gives banks the shivers." John Warden, of the Eastern Establishment's top law firm Sullivan and Cromwell, declared that the court's reference to the goals of U.S. foreign policy as a basis for its decision was not "an appropriate decision for a court to make." The *New York Times* reported in horror that "in a little-noticed decision this week, a panel of the United States Court of Appeals for the Second Circuit appears to have given debt-ridden developing countries much the same legal protection from commercial bank creditors that is now afforded to troubled domestic corporations under Chapter 11 of the Bankruptcy Code."

With all of Wall Street mobilized on behalf of Fidelity Union Trust, the Justice Department suddenly leapt into the fray, petitioning, along with the plaintiff bank, for a rehearing. In the second appeal, the court reversed its position 180°, in a despicable statement dated March 18, 1985. Reporting that the Justice Department had intervened to "correct" the court's "mistaken" opinion that Costa Rica's actions were supported by the U.S. government, the court continued: "The Justice Department brief gave the following explanation of our government's support for the debt resolution procedure that operates through the auspices of the International Monetary Fund. Guided by the IMF, this long established approach encourages the cooperative adjustment of international debt problems. . . . Costa Rica's attempted unilateral restructuring of private obligations, the United States contends, was inconsistent with this system of international cooperation and negotiation and thus inconsistent with United States policy. . . . In light of the government's elucidation of its position, we believe that our earlier interpretation of United States policy was wrong."