

The Heritage Foundation **Background**

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A WORLD COURT DECISION ALLOWS THE U.N. TO IMPOSE LAWS ON THE U.S.

(Updating Executive Memorandum No. 50, "The Case for Ignoring the World Court," April 12, 1984.)

The International Court of Justice, commonly known as the World Court, last June ruled in favor of Nicaragua in the case of Nicaragua v. United States. This was the case brought by Nicaragua in reaction to U.S. support for the Nicaraguan freedom fighters and attempts to interdict the flow of weapons to Marxist guerrillas in El Salvador. The United States exercised its treaty rights, as many countries have done, and refused to participate in the case. As expected, the Court's proceedings and decision were a major propaganda triumph for Nicaragua's communist regime, whose own record of lawlessness and treaty violations the Court all but ignored.

One particular aspect of the World Court's ruling could do even more damage to U.S. legal and political interests than the Court's eager acceptance of the Nicaraguan Sandinista regime's claims. Referring to resolutions of the U.N. General Assembly, paragraph 188 of the Court's majority opinion states:

The effect of consent to the text of such resolutions cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the set of rules themselves. It would therefore seem apparent that the attitude referred to expresses an opinio juris respecting such rule (or set of rules), to be thenceforth treated separately from the provisions, especially those of an institutional kind, to which it is subject on the treaty-law plane of the Charter.

Though the statement's wording is obtuse legalese, the meaning is clear and disquieting: U.N. General Assembly resolutions are a legitimate source of customary international law and thus legally bind those nations supporting such resolutions. The practical and theoretical implications of this are disastrous for the United States. The reason is that U.S. delegates at the U.N. often reluctantly vote for resolutions that the U.S. generally may support, but which contain elements that are at variance with U.S. policy. In these situations, the U.S. usually accompanies its vote with a careful verbal explanation, disassociating itself from objectionable parts of the resolution and any possible legal effects. In the past, the World Court has given great weight to such explanations of votes as evidence of the actual practice and attitudes of states. With last June's decision, however, it apparently is useless for the U.S. or any other nation to disassociate itself with particular aspects of resolutions. This means that the U.S. must support fully every aspect of every resolution for which it votes--or risk being accused of "violating international law."

The theoretical implications of the Court's position are no less disturbing. As jurist Julius Stone writes in Israel and Palestine: Assault on the Law of Nations: "The basic general rule as to the legal effect of General Assembly resolutions is that stated by Sir Hersch Lauterpacht, concurring in the South West Africa Voting Procedure Advisory Opinion of 1955. He there observed that, save where otherwise provided,... 'decisions of the General Assembly..are not legally binding upon the Members of the United Nations.'" This long had been the position of the World Court, a position strongly supported by the U.N. Charter, which gives authority to make binding recommendations only to the Security Council, where the U.S. has a veto.

The U.S. and most other U.N. member states similarly have rejected consistently the notion that the General Assembly has any law-making authority. In 1974, for example, when the U.N. Legal Committee considered a resolution suggesting that the World Court take into account General Assembly resolutions in its judgments, an avalanche of criticism from Western, Third World, and communist states attacked the proposal. Yet these considerations seem to matter little to the present majority on the World Court. As a result, the U.S. might find itself legally bound by General Assembly measures to: support government coercion of the press, when it votes for resolutions implying that the mass media should help combat racial discrimination; acknowledge Israeli "aggression" and "racism" when it votes for the numerous resolutions that implicitly or indirectly criticize Israel; and to underwrite massive resource transfers from industrial to developing nations (called economic "rights"), when it votes for resolutions containing elements of the New International Economic Order.

To prevent this, the Reagan Administration must make it clear that the U.S. rejects the World Court's position. Accordingly:

1) The Reagan Administration formally should notify U.N. Secretary-General Javier Perez de Cuellar and World Court President Nagendra Singh that the U.S. does not accept the proposition that the General Assembly has any legislative powers beyond certain "housekeeping" resolutions. The Reagan Administration also should stress to U.S. negotiators repeatedly that all aspects of a U.N. resolution must conform fully to U.S. policy to gain U.S. support.

2) The U.S. Congress should consider expressing, in a "sense of the Congress" resolution, its own rejection of the World Court's new ruling and affirm that no international body can legislate for the U.S.

If the World Court continues to uphold this view in its rulings, or refuses to elaborate on this question, the U.S. may be forced to conclude that it must limit its participation at the U.N. to those U.N. fora where it does not implicitly risk committing itself to unacceptable language. What the World Court is telling the U.S. is that America's positions and votes at the U.N. are serious business.

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