

INTERNATIONAL COURT OF JUSTICE
MILITARY AND PARAMILITARY ACTIVITIES IN AND AGAINST NICARAGUA
(NICARAGUA v. UNITED STATES OF AMERICA)
MERITS JUDGMENT OF 27 JUNE 1986

190. A further confirmation of the validity as customary international law of the principle of the prohibition of the use of force expressed in Article 2, paragraph 4, of the Charter of the United Nations may be found in the fact that it is frequently referred to in statements by State representatives as being not only a principle of customary international law but also a fundamental or cardinal principle of such law. The International Law Commission, in the course of its work on the codification of the law of treaties, expressed the view that "the law of the Charter concerning the prohibition of the use of force in itself constitutes a conspicuous example of a rule in international law having the character of *jus cogens*"(paragraph (1) of the commentary of the Commission to Article 50 of its draft Articles on the Law of Treaties, ILC Yearbook, 1966-11, p. 247). Nicaragua in its Memorial on the Merits submitted in the present case States that the principle prohibiting the use of force embodied in Article 2, paragraph 4, of the Charter of the United Nations "has come to be recognized as *jus cogens*". The United States, in its Counter-Memorial on the questions of jurisdiction and admissibility, found it material to quote the views of scholars that this principle is a "universal norm", a "universal international law", a "universally recognized principle of international law", and a "principle of *jus cogens*".

263. The finding of the United States Congress also expressed the view that the Nicaraguan Government had taken "significant steps towards establishing a totalitarian Communist dictatorship". However the régime in Nicaragua be defined, adherence by a State to any particular doctrine does not constitute a violation of customary international law ; to hold otherwise would make nonsense of the fundamental principle of State sovereignty. on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State. Consequently, Nicaragua's domestic policy options, even assuming that they correspond to the description given of them by the Congress finding, cannot justify on the legal plane the various actions of the Respondent complained of. The Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another on the ground that the latter has opted for some particular ideology or political system.

267. The Court also notes that Nicaragua is accused by the 1985 finding of the United States Congress of violating human rights. This particular point requires to be studied independently of the question of the existence of a "legal commitment" by Nicaragua towards the Organization of

American States to respect these rights ; the absence of such a commitment would not mean that Nicaragua could with impunity violate human rights. However, where human rights are protected by international conventions, that protection takes the form of such arrangements for monitoring or ensuring respect for human rights as are provided for in the conventions themselves. (...)

268. In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect. With regard to the steps actually taken, the protection of human rights, a strictly humanitarian objective, cannot be compatible with the mining of ports, the destruction of oil installations, or again with the training, arming and equipping of the contras. The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States, and cannot in any event be reconciled with the legal strategy of the respondent State, which is based on the right of collective self-defence.