

Poorly written blockers

Imperium Anglorum*

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Blockers are a common practice in the World Assembly. It is important, however, to make sure they are written properly and to know how to write them properly.

Some blockers are not actually effective. The ‘classical’ blocker is supposed to reserve some topic to each member nation. The clearest blockers are clauses barring WA action.¹ These clauses are clear and hard to get wrong. That said, they are sometimes less politically astute, as asserting a member nation right ‘feels better’ than stopping WA action.

The example that led me to write this essay is one which no longer has relevance with current law, having been both repealed and superseded: GA 500 ‘International Criminal Protocol’ (repealed). Among other things, the resolution ostensibly:

Reserves to member states the right to determine the legality of capital punishment within their jurisdiction,

The intended interpretation is that the clause would stop a World Assembly ban on capital punishment.^{2,3} To do that, however, it would have needed to reserve *to each member nation* ‘the right to determine the legality of capital punishment’. This is, however, not what the resolution actually says.

At its most basic, this is because of the plural, ‘member nations’, instead of ‘each member nation’. Using the plural allows the plausible interpretation of reserving something to member states as a whole, who collectively, *are* the World Assembly. That plausible interpretation’s existence is

* Delegate for Europe, cyrilparsons.london@gmail.com.

¹ Eg GA 68 ‘National Economic Freedoms’ (‘[requiring] that no commerce be generally restricted by the [World Assembly] unless... the enterprise causes an extreme hazard to national populations’).

² Tinfect, *NationStates* (23 Apr 2019) <https://forum.nationstates.net/viewtopic.php?p=35614578#p35614578> (‘let’s be real, this draft exists to prevent a WA-wide ban on capital punishment’) (capitalisation corrected).

³ In the event, the resolution was unsuccessful: International Criminal Protocol was repealed by GA 533 and replaced by GA 535 ‘Death Penalty Ban’ and GA 545 ‘Military Death Penalty Ban’ which together entirely prohibit the death penalty.

all that is needed for a proposal to escape the contradiction rule.

The contradiction rule's burdens are relatively clear. They are meant for actual contradictions: ones which cannot be avoided. Proposals are legal even if they are 'contradictory', provided that there is a reasonable interpretation of the contradicting resolution where the contradiction does not exist. Here, a proposal could utilise long-standing GA 35 'Charter of Civil Rights' precedent.⁴ Consider a proposal which asserted in its preamble this interpretation:

Interpreting GA 500 'International Criminal Protocol's reservation clause to apply to member states, collectively, and exercising the so reserved authority to determine the legality of capital punishment within the jurisdiction of member states as a whole...

One could object on intentionalist grounds, but what matters is not authorial intent, but rather, the text of the allegedly contradictory resolution. This is especially the case when the author's goals, patent or latent, can differ from the reasons why the Assembly as a whole decided to pass something.⁵ Two good examples of this are GA 17 'WA General Fund' and GA 443 'Preventing the Execution of Innocents' (repealed). GA 17's 'donations' are purposefully 'assessed';⁶ GA 443's paeans to compromise in its preamble hid a policy that made it impossible to carry out the death penalty. So it is here: the World Assembly's reasons for passing GA 500 are varied. Some may have voted on the death penalty ban blocker. Others, however, may have voted on other matters, including protections for pregnant women or regulations on solitary confinement.⁷

The Assembly has a long tradition of textualism: 'the law does what the law says'. Both historically and rationally, interpretation is best seen as not seeking intent, but seeking the meaning of the words in the law.⁸

⁴ *Ethics in International Trade* (2010) 1 IAM 8 (stating that the 'solution would be for the proposal itself to tell us that the legality requirements were met'); *Responsible Armaments Trading* (2014) 1 IAM 25.

⁵ See generally Antonin Scalia and Bryan Garner, *Reading Law* (2012) 369 et seq (discussing problems with legislative history: 'collective intent is pure fiction because dozens if not hundreds of legislators will have their own subjective views on the minutiae of bills they are voting on').

⁶ Imperium Anglorum, 'Much ado about money' [2015] WA L Rev 3.

⁷ See eg discussion, 'International Criminal Protocol' *The North Pacific* (12 Jul 2020) <https://forum.thenorthpacific.org/topic/9192604/>.

⁸ Scalia and Garner (n 5) 394 (citing Lord Reid in *Black Clawson Int'l Ltd v Papi-*

One objection that I could imagine raised would be that the interpretation given here is ‘absurd’. The absurdity doctrine has a very high burden: ‘the absurdity must consist of a disposition that no reasonable could intend[;] something that may seem odd is not absurd’.⁹ Moreover, ‘the doctrine does not include substantive errors arising from a drafter’s failure to appreciate the effect of certain provision’.¹⁰ Those burdens are not reached here.¹¹

Nor is an objection of novelty relevant. The use of ‘member nations’ in the plural to refer to the World Assembly as a whole – the Assembly being comprised of member nations – is well attested. This interpretation is not novel. A cursory search finds a number of examples.¹²

Writ large, these blocker drafting issues matter. It is not only GA 500 ‘International Criminal Protocol’ which suffers from this problem. For example:

- ‘The decision regarding whether or not to legalise prostitution shall be left to *member nations*... within the confines of international law’. GA 179 ‘Clean Prostitute Act’ (repealed).¹³
- ‘The right of *member nations* to maintain full authority over domestic taxation policies... [is affirmed]’. GA 17 ‘WA General Fund’ s 8.
- ‘Reserves for *member nations* the liberty to legislate on the issue of enfranchisement for individuals under incarceration’. GA 419 ‘Voting Equality For Freed Inmates’ s 3 (repealed).

Yet, going through our resolutions looking for examples, I am happy to report also that many other resolutions do not have this issue. Like the aforementioned GA 68 ‘National Economic Freedoms’ and GA 10 ‘Nuclear Arms Possession Act’ (note 13):

- GA 43 ‘WA Labor Relations Act’ uses ‘reserves to *the respective mem-*

erwerke Waldhof-Aschaffenburg AG [1975] AC 591, 613).

⁹ Ibid 237 (quotation marks and ellipsis omitted).

¹⁰ Ibid 238.

¹¹ Additionally, insofar as the purpose of a blocker is almost always to stop some opposite policy from being enacted, the existence of the blocker is itself a reason to believe that there exist reasonable people who would accept a blocker-defeating interpretation.

¹² Eg GA 535 ‘Death Penalty Ban’ s 3; GA 209 ‘World Assembly Trade Rights’ s 2(d) (repealed); GA 128 ‘On Abortion’ s 7 (repealed).

¹³ It is not as if Flibleites did not know how to write a blocker correctly. GA 10 ‘Nuclear Arms Possession Act’ s 2, for example, ‘preserves the right for *individual nations* to decide if they want to possess nuclear weapons’.

ber nations'.

- GA 128 'On Abortion' s 7 (repealed) also draws a collective-individual distinction in '[insisting] that all member nations retain the ability to legalize abortion. . . within their own jurisdiction or collectively through World Assembly resolution'.
- GA 369 'Reproductive Education Act' uses 'reserves to the *several* member states'.¹⁴
- GA 428 'Ban on Statutory Limitations for Heinous Crimes' s 2 explicitly uses this framing by '[prohibiting] member states, whether acting *individually or collectively* through World Assembly resolution, from applying a statutory limitation to [*inter alia*, war crimes]'.

This also is no historical curiosity. Authors today can make use of these drafting errors; or, otherwise, ensure that those drafting issues do not crop up in their own proposals. Authors should read carefully, for they may discover that no repeal may be needed to re-open an ostensibly closed topic.

¹⁴ 'Several' here meaning 'regarded separately'.