

108TH CONGRESS
2D SESSION

H. RES. 713

Deploing the misuse of the International Court of Justice by a majority of the United Nations General Assembly for a narrow political purpose, the willingness of the International Court of Justice to acquiesce in an effort likely to undermine its reputation and interfere with a resolution of the Palestinian-Israeli conflict, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 2004

Mr. PENCE (for himself, Ms. BERKLEY, and Ms. ROS-LEHTINEN) submitted the following resolution; which was referred to the Committee on International Relations

RESOLUTION

Deploing the misuse of the International Court of Justice by a majority of the United Nations General Assembly for a narrow political purpose, the willingness of the International Court of Justice to acquiesce in an effort likely to undermine its reputation and interfere with a resolution of the Palestinian-Israeli conflict, and for other purposes.

Whereas terrorist groups have sent suicide bombers, mainly from areas under the control of the Palestinian Authority, to places outside the control of the Palestinian Authority in Israel, the West Bank, and Gaza to murder civilians throughout society, including in buses, cafes, and places of worship, have used snipers to shoot at Israeli

civilians, and have invaded homes and seminaries in order to carry out acts of terrorism;

Whereas Palestinian terrorists have killed more than 1,000 people of a variety of nationalities since September 2000;

Whereas more than 50 United States citizens have been killed and more than 80 United States citizens injured by Palestinian terrorists in Israel, the West Bank, and Gaza since 1993;

Whereas President George W. Bush said in October 2003 regarding Israel's right to self-defense that "Israel must not feel constrained in terms of defending the homeland";

Whereas according to international law as expressly recognized in Article 51 of the United Nations Charter, all nations possess an inherent right to self-defense;

Whereas a security barrier, capable of being modified or removed, is being constructed by Israel in response to an ongoing campaign of terror;

Whereas the security barrier is designed to make it difficult for unauthorized persons to cross the barrier without providing the Israeli authorities sufficient information and time to deal with the persons making the crossing;

Whereas a similar security barrier has been in place in Gaza since 1996 with a great degree of success;

Whereas the security barrier was not built as the result of arbitrary, hasty decisions but rather was and is the subject of lively debate and litigation in Israel, a parliamentary democracy that respects the rule of law, concerning such issues as whether the barrier should be built and what path it should take;

Whereas the United Nations General Assembly adopted Resolution ES-10/14 (December 8, 2003) which requested that the International Court of Justice (ICJ) render an opinion on the legality of the security barrier;

Whereas the United States, Australia, Belgium, Cameroon, Canada, the Czech Republic, the Federated States of Micronesia, France, Germany, Greece, Ireland (for itself and in addition on behalf of the Member States and Acceding States of the European Union), Italy, Japan, the Marshall Islands, the Netherlands, Norway, Palau, the Russian Federation, South Africa, Spain, Sweden, Switzerland, and the United Kingdom submitted objections on various grounds against the ICJ hearing the case;

Whereas the United States believes that both the ICJ and the General Assembly can play important and useful roles in appropriate cases but that inappropriate assertions of their authority can harm their ability to carry out their proper roles;

Whereas the Israeli courts accepted jurisdiction of cases on the security barrier and a June 30, 2004, decision of a panel of the Israeli Supreme Court, headed by its President and sitting as a High Court of Justice, stated that the Government of Israel had not adequately taken into account the interests of Palestinians who asserted they were harmed by the barrier's route and that the route should be altered even if that resulted in greater risks being imposed on Israel;

Whereas the Government of Israel immediately indicated that it would respect the decision of its High Court of Justice and took steps to do so;

Whereas on July 9, 2004, the ICJ said in a non-unanimous, non-binding advisory judgment that Israel’s security barrier, to the degree it was built outside the pre-June 1967 borders, was “illegal” and should be dismantled, and that Article 51 of the United Nations Charter did not apply to Israeli actions in self-defense with respect to violence emanating from the West Bank;

Whereas on July 11, 2004, less than two days after the ICJ’s advisory judgment, Israeli civilians were murdered by Palestinian terrorists;

Whereas the Palestinians, along with other parties and states, may attempt to use the ICJ’s advisory judgment to advance their positions on issues committed to negotiations between the Israelis and Palestinians by advancing resolutions in the General Assembly, the Security Council, or elsewhere calling for the removal of the barrier and for the imposition of sanctions to force Israel to comply with the advisory judgment; and

Whereas the administration of President Bush has reiterated its position that the ICJ should not have agreed to decide a political issue of this nature that should, rather, be resolved through the Roadmap process leading to a negotiated agreement between Israel and the Palestinians: Now, therefore, be it

- 1 *Resolved*, That the House of Representatives—
- 2 (1) condemns the Palestinian leadership for
- 3 failing to carry out its responsibilities under the
- 4 Roadmap and under other obligations it has as-
- 5 sumed, to engage in a sustained fight against ter-
- 6 rorism, to dismantle the terrorist infrastructure, and

1 to bring an end to terrorist attacks directed at
2 Israel;

3 (2) deplores—

4 (A) the misuse of the International Court
5 of Justice (ICJ) by a majority of members of
6 the United Nations General Assembly for the
7 narrow political purpose of advancing the Pales-
8 tinian position on matters Palestinian authori-
9 ties have said should be the subject of negotia-
10 tions between the parties;

11 (B) the ICJ's willingness to acquiesce in
12 efforts that are likely to undermine its reputa-
13 tion and interfere with a resolution of the Pal-
14 estinian-Israeli conflict; and

15 (C) the attempt to infringe upon Israel's
16 right to self defense, including under Article 51
17 of the Charter of the United Nations;

18 (3) commends the President and the Secretary
19 of State for their leadership in marshaling opposi-
20 tion to the misuse of the ICJ in this case;

21 (4) calls on members of the international com-
22 munity to reflect soberly on—

23 (A) the steps taken by the Government of
24 Israel to mitigate the impact of the security
25 barrier on Palestinians, including steps it has

1 taken by order of its High Court of Justice,
2 without being required to do so by the ICJ; and

3 (B) the damage that will be done to the
4 ICJ, to the United Nations, and to individual
5 Israelis and Palestinians, by actions taken
6 under color of the ICJ's advisory judgment that
7 interfere in the Roadmap process and impede
8 efforts to achieve progress toward a negotiated
9 settlement between Israelis and Palestinians;
10 and

11 (5) cautions members of the international com-
12 munity that they risk a strongly negative impact on
13 their relationship with the people and Government of
14 the United States should they use the ICJ's advisory
15 judgment as an excuse to interfere in the Roadmap
16 process and impede efforts to achieve progress to-
17 ward a negotiated settlement.

○