



Virtually the Entire Dem-Controlled Congress Supports Israel's War Crimes in Gaza

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Posted on January 13, 2009, Printed on January 15, 2009

<http://www.alternet.org/story/119252/>

In a direct challenge to the credibility of Amnesty International, Human Rights Watch, the International Red Cross and other reputable humanitarian organizations, an overwhelming bipartisan majority in both houses of Congress has gone on record supporting President George W. Bush's position that the Israeli armed forces bear no responsibility for the large and growing numbers of civilian casualties from their assault on the Gaza Strip.

As of this writing, at least 400 civilians have been killed by Israeli forces, primarily using U.S.-supplied weaponry.

Shattering hopes that an expanded Democratic congressional majority and a new Democratic administration might lead to a more moderate foreign policy, the resolutions put forward an extreme reinterpretation of international humanitarian law, apparently designed to exonerate nations with superior firepower from any liability for inflicting large-scale civilian casualties.

The Senate resolution, primarily written and sponsored by Senate Majority Leader Harry Reid, D-Nev., passed the Senate by unanimous consent on a voice vote. Among the 33 co-sponsors were such otherwise liberal Democratic senators as Barbara Boxer, Calif.; Richard Durbin, Ill.; Carl Levin, Mich.; Sherrod Brown, Ohio; Barbara Mikulski, Md.; and 2004 presidential nominee John Kerry, Mass.

An even stronger House resolution, sponsored by House Speaker Nancy Pelosi, D-Calif., passed the House by a lopsided 390-5 roll call vote (with 22 members voting "present"). Both resolutions placed the blame for the death and destruction exclusively on the Palestinian side and are being widely interpreted as a rebuke to the international human rights community and the United Nations, which have cited both Hamas *and* the Israeli government for war crimes.

The resolutions favorably quote Secretary of State Condoleezza Rice extensively, as well as Israeli Prime Minister Ehud Olmert, regarding responsibility for civilian deaths and for the causes of the conflict. No one else is cited in the resolutions, indicating who Pelosi, Reid and the resolutions' other sponsors see as the authoritative sources of information on international humanitarian law in the region.

Although some analysts are already referring to the Gaza war as "a final and eloquent testimony to the complete failure of the neoconservative movement in United States foreign policy," Pelosi, Reid and virtually the entire Democratic membership of Congress have decided to ally themselves with this failed ideology of the outgoing Bush administration rather than blaze a new trail of moderation and common sense in anticipation of new leadership in the White House. Indeed, Pelosi's and Reid's strategy in pushing through these resolutions may have been part of an attempt to box in Obama -- to force him to continue Bush's hard-right foreign policy. That is, a policy in which, in the name of the "war on terror," fundamental principles

of international law are deemed to be expendable.

To the Right of Bush

Some of the language in the resolution put forward by Pelosi, Reid and their colleagues even place the Democratic Party to the right of the Bush administration. For example, while the Jan. 8 U.N. Security Council resolution -- which received the endorsement of Rice and other administration officials -- condemns "*all* acts of violence and terror directed against civilians," the congressional resolution only condemns the violence and terror of Hamas.

Indeed, just as the Security Council unanimously passed its resolution stressing "the urgency of and calls for an immediate, durable and fully respected cease-fire, leading to the full withdrawal of Israeli forces from Gaza," Congress immediately weighed in with language apparently designed to prevent one. The Senate and House resolutions called for a cease-fire only on the condition that it "prevents Hamas from retaining or rebuilding the capability to launch rockets and mortars against Israel." Given that most of these rockets and mortars are of a rather crude design that can be made in local machine shops from scrap metal and other easily obtainable materials, and is therefore the kind of capability that can not really be completely eliminated, it appears that this clause would make a cease-fire impossible.

Emboldened by this strong bipartisan support from the legislative branch of its most important ally, Israel rejected the U.N.'s terms for a cease-fire.

Also on Jan. 8, Israeli forces killed two U.N. humanitarian aid workers as they were attempting to provide relief supplies, and the International Red Cross released a strongly worded statement noting that the Israeli military had "failed to meet its obligation under international humanitarian law to care for and evacuate the wounded." The Nobel Prize-winning humanitarian group Doctors Without Borders noted that "Palestinian humanitarian aid and health workers have been killed, and hospitals and ambulances have been bombed."

Congress, however, went on record in the resolutions praising Israel for having "facilitated humanitarian aid to Gaza."

Both resolutions "hold Hamas responsible for breaking the cease-fire," despite the fact that there had been scores of minor violations during the months of the cease-fire by *both* sides and that Israel had launched a major incursion into the Gaza Strip on Nov. 4, 2008, assassinating several Hamas leaders, an action the Israeli press speculated was designed to provoke Hamas into not renewing the cease-fire when it expired the following month. Israel then tightened its siege on Nov. 5, banning even humanitarian aid from coming through. Hamas appeared willing to renew the cease-fire in return for Israel renouncing further such incursions and lifting the siege, but Israel refused.

While these Israeli provocations do not justify Hamas' failure to renew the cease-fire and certainly not Hamas' decision to once again begin firing rockets into civilian-populated areas of Israel -- which is a war crime -- the language of the resolutions gives a very misleading understanding of the events leading up to the war. Ironically, despite blaming Hamas exclusively for not renewing the cease-fire, the resolutions also claim that returning to the terms of that cease-fire agreement "is unacceptable."

Yet these were by no means the most egregious misrepresentations in these Democratic-led congressional initiatives.

Redefining International Humanitarian Law

In perhaps the most dangerous clause of the resolution, the House called "on all nations ... to condemn Hamas for deliberately embedding its fighters, leaders and weapons in private homes, schools, mosques, hospitals and otherwise using Palestinian civilians as human shields."

According to international humanitarian law, however, "human shields" require the deliberate use of civilians as a deterrent to avoid attack on one's troops or military objects. Despite repeated calls to the offices of the resolutions' principal Democratic sponsors, not one of them could provide a single example of this actually occurring during the current wave of fighting. Similar accusations in a 2006 resolution supported by Pelosi, Reid and other Democratic leaders during the five weeks of devastating Israeli attacks on Lebanon that summer were later systematically rebuked in a detailed and meticulously researched [249-page report](#) by Human Rights Watch. (See my article "[The Democrats and the "Human Shields" Myth](#)").

In this resolution, the Democrats appear to be attempting to redefine just what constitutes human shields. Despite this desperate effort to rationalize the large-scale killing of Palestinian civilians by Israeli forces, the fact that a Hamas leader lives in his own private home, attends a neighborhood mosque and seeks admittance in a local hospital does not constitute the use of human shields. Indeed, the vast majority of leaders of most governments and political parties live in private homes in civilian neighborhoods, go to local houses of worship and check in to hospitals when sick or injured, along with ordinary civilians. Furthermore, given that the armed wing of Hamas is a militia rather than a standing army, virtually all of their fighters live in private homes and go to neighborhood mosques and local hospitals, as well.

In short, Pelosi and other congressional leaders appear to be advancing a radical and dangerous reinterpretation of international humanitarian law that would allow virtually any country with superior air power or long-range artillery to get away with war crimes.

Hamas is certainly guilty of less-severe violations of international humanitarian law, such as not taking all necessary steps it should to prevent civilian casualties when it positions fighters and armaments too close to concentrations of civilians. However, this is not the same thing as deliberately using civilians as shields. And, as Human Rights Watch noted, even the presence of armed personnel and weapons near civilian areas "does not release Israel from its obligations to take all feasible precautions to minimize harm to civilians and civilian property during military operations." Furthermore, the nature of urban warfare, particularly in a territory as densely populated as the Gaza Strip, makes the proximity of retreating fighters and their equipment to civilians unavoidable in many cases.

It is also important to note that, even if Hamas were using human shields in the legal definition of the term, it still does not absolve Israel from its obligation to avoid civilian casualties. Amnesty International has [noted](#) that the Geneva Conventions make it clear that even if one side is shielding itself behind civilians, such a violation "shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians." Despite claims by some members of Congress to the contrary, Israel's Jan. 6 attack on the U.N. school in Gaza, which killed more than 40 civilians, was still a war crime, even if Israeli forces were being fired upon from the vicinity. (The argument by those defending this atrocity is comparable to claiming that it would be legitimate for a SWAT team, in order to kill

some bank robbers shooting at them, to also kill the bank employees and customers being held hostage since the bad guys were using "human shields.")

Rewriting the U.N. Charter – and the Magna Carta

Pelosi's resolution not only undermines international humanitarian law, it seeks to resurrect a fallacy that has been rejected by Western legal thought since the Magna Carta. In an effort to absolve Israel for the hundreds of civilian casualties it has inflicted with U.S.-supplied weaponry, the House resolution "calls on all nations ... to lay blame both for the breaking of the calm *and for subsequent civilian casualties in Gaza* precisely where blame belongs, that is, on Hamas."

In reality, however wrong -- morally, legally and politically -- Hamas' decision to not renew the cease-fire, it simply does not absolve Israel of its responsibility under international humanitarian law for the far greater civilian deaths its armed forces have inflicted upon the Palestinians in Gaza. Indeed, it has long been a principle of Western jurisprudence that someone who is the proximate cause of a crime cannot claim innocence simply because of the influence of another party. By refuting this nearly 800-year old legal principle, this becomes, literally, a reactionary piece of legislation.

In support of the Israeli invasion of the Gaza Strip, the House also goes on record citing the Israeli invasion as part of Israel's "right to act in self-defense to protect its citizens against Hamas' unceasing aggression, as enshrined in the United Nations Charter." In reality, the U.N. Charter explicitly prohibits nations going to war unless they "first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." Israel -- with strong bipartisan U.S. support -- has refused to even meet with Hamas. Furthermore, while Article 51 does allow countries the right to resist an armed attack, it does not grant any nation the right to engage in such massive and disproportionate warfare against densely packed cities and refugee camps.

Not a Product of AIPAC

It appears that these two resolutions, unlike some similar measures in recent years, were not drafted by the American Israel Public Affairs Committee AIPAC, the influential "pro-Israel" lobby. Nor were they primarily the initiative of right-wing Republican House leaders like Ohio Rep. John Boehner, or his predecessor Texas Rep. Tom DeLay, as were previous resolutions related to the Israel-Palestinian conflict. The lack of Democratic input on such resolutions has been used on a number of occasions in the past by Democratic staff members on Capitol Hill in an effort to excuse congressional Democrats for voting in favor of such initiatives, arguing that they ended up voting for a particular resolution in order to "show support for Israel," but did not necessarily approve of the specific wording of the resolution.

They have no such excuses this time, however, since these resolutions came primarily out of the offices of Pelosi, Reid, and House Foreign Relations Committee Chairman Howard Berman, D-Calif.

There appears to be little popular support for such an unqualified endorsement of Israeli war-making, however, with public opinion -- particularly among Democrats -- largely opposed to the assault on Gaza. And the American Jewish community has never seen so much dissent over Washington's support for Israel's militaristic and

self-defeating policies toward the Palestinians. Despite the myth that it is somehow "political suicide" to oppose such resolutions, every Democrat who failed to vote for a similar 2006 House resolution supporting Israel's attacks on Lebanon and the Gaza Strip was re-elected that November by a bigger margin than they were two years earlier. Furthermore, virtually all of the principal authors and sponsors of this year's resolutions come from safe districts.

One of major reasons these Democrats support such right-wing legislation is not because AIPAC is all-powerful, but because there is so little pressure in the other direction to counter it. For example, MoveOn, Democracy for America, Council for a Livable World, and other "progressive" political organizations that endorse candidates for national office continue to back Democrats who support dangerous militaristic policies in the Middle East. (Ironically, if Democrats Nita Lowey, N.Y.; Robert Wexler, Fla.; John Hall, N.Y.; Henry Waxman, D-Calif.; Sheila Jackson-Lee, Texas; Carolyn Maloney, N.Y.; Edward Markey, Mass.; and other co-sponsors of the House bill were running for the Israeli Knesset instead of the U.S. House of Representatives, their positions on human rights and international law in regard to the Israeli-Palestinian conflict would put them on that legislature's right wing.)

Since the next congressional election is nearly two years away, it is too early to tell whether the growing opposition within the progressive community to U.S. support for the large-scale Israeli attacks against Palestinian civilians will be sufficient to deny those who defend Israeli war crimes the endorsements of progressive groups in the 2010 campaign. Given that like-minded organizations in previous decades denied their support for Democratic hawks who defended human rights abuses by U.S.-backed governments in Central America, Southeast Asia, Southern Africa and other conflict regions, it should be possible.

The problem is that there is still a fair amount of anti-Arab racism, which seems to take the perspective that the human rights of Palestinians somehow don't count. It's telling, for example, that Pelosi, the chief sponsor of the House resolution, has been praised by progressive publications for her "consistent support for human rights." Similarly, the late Foreign Relations Committee chairman, Rep. Tom Lantos, D-Calif., also an outspoken defender of Israeli human rights abuses, was repeatedly re-elected to chair the ironically named congressional Human Rights Caucus and was eulogized in a number of progressive periodicals following his death last year as Congress' "leading defender of human rights." (See my article [Lantos' Tarnished Legacy](#).)

Israel would not be able to get away with its ongoing attacks against Palestinian civilians were it not for the support of the Bush administration. The Bush administration would not be able to get away with supporting these atrocities were it not being backed by the Democratic-controlled Congress, including many of its otherwise more liberal members. And the overwhelming support by congressional Democrats of Bush's stance would not be possible were it not for the continued acquiescence of the progressive community to these Democrats' embrace of his right-wing militaristic agenda in the Mideast.

Peace between Israel and Palestine may not be possible until progressive activists stop seeing members of Congress who support such resolutions as powerless victims of some mythical cabal of wealthy Jews and instead hold them just as accountable for their actions as those who took comparable right-wing positions regarding Central America or East Timor in previous years, or those who embrace such policies regarding Iraq and Iran today. Instead of protesting in front of Israeli consulates, demonstrators will need to focus their protests more on congressional

offices, as well as engage in more disruptive tactics, such as sit-ins and other forms of nonviolent direct action. It may require withholding campaign contributions, supporting progressive challengers in primary races and threatening to back Green or other third-party challengers in the general election.

There are signs this may be possible. The past couple of weeks have witnessed an unprecedented outpouring of concern on the plight of the Palestinians of the Gaza Strip. In addition, while the corporate media is as biased in support of U.S. client states as ever, much of the widely read independent news/opinion Web sites -- which are increasingly important in shaping public opinion -- have had a fair amount of critical coverage. This could be significant in that the more the conflict is addressed in terms of human rights and international law, and the less it is addressed in terms of Israel versus Palestine, the less likely the debate will be dominated by those with rigid ideological agendas.

This should also help make it easier to recognize how U.S. policy is not just bad for the Palestinians, but ultimately bad for Israel as well, as Israeli militarism goaded on by U.S. politicians from Bush to Pelosi has left the Jewish state increasingly isolated in the world and has greatly contributed to the growing ranks of Islamic extremists, such as those drawn to Hamas.

And, should Barack Obama -- who has refused to join the chorus of other Democratic leaders in backing the Israeli invasion -- decide as president to finally apply some "tough love" towards Israel in the face of a hostile Congress, he is going to need the American people to back him up.

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