

105TH CONGRESS
2D SESSION

H. CON. RES. 314

Expressing the sense of the Congress with respect to war crimes against United States military personnel and their families, and in particular to the war crimes committed in El Salvador against United States Army pilots David H. Pickett and Earnest Dawson, Jr.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1998

Mr. BRYANT (for himself, Mr. FAWELL, and Mr. LEWIS of Kentucky) submitted the following concurrent resolution; which was referred to the Committee on International Relations

CONCURRENT RESOLUTION

Expressing the sense of the Congress with respect to war crimes against United States military personnel and their families, and in particular to the war crimes committed in El Salvador against United States Army pilots David H. Pickett and Earnest Dawson, Jr.

Whereas in 1991, David H. Pickett was a lieutenant colonel and Earnest Dawson, Jr., was a private first class in the United States Army;

Whereas on January 2, 1991, David H. Pickett and Earnest Dawson, Jr., along with Chief Warrant Officer Daniel Scott, were on official business when their helicopter was shot down over El Salvador by Marxist guerrillas of the Farabundo Marti National Liberation Front (FMLN);

Whereas in the helicopter crash Daniel Scott died and David H. Pickett and Earnest Dawson, Jr., were wounded;

Whereas David H. Pickett and Earnest Dawson, Jr., were captured and promptly murdered by FMLN guerrillas, including Ferman Hernandez and Serveriano Fuentes;

Whereas after the murders of David H. Pickett and Earnest Dawson, Jr., were investigated by the Federal Bureau of Investigation, the Department of Justice sought and obtained a warrant for the arrest of Ferman Hernandez from the United States District Court in Washington, DC;

Whereas the Department of State directed that Ferman Hernandez be detained if he entered the territory of the United States;

Whereas the United Nations brokered a peace agreement that ended the civil war in El Salvador in January 1992 and resulted in the Government of El Salvador signing a comprehensive peace accord with the FMLN;

Whereas the FMLN surrendered Ferman Hernandez and Serveriano Fuentes to the Government of El Salvador on March 17, 1992;

Whereas Ferman Hernandez and Serveriano Fuentes confessed to the murders of David H. Pickett and Earnest Dawson, Jr., and were detained by Salvadoran authorities;

Whereas a commission of the United Nations found, on April 1, 1993, that David H. Pickett and Earnest Dawson, Jr., while wounded and defenseless, had been executed by Ferman Hernandez, who was acting on the orders of Serveriano Fuentes;

Whereas the commission found that the actions of Ferman Hernandez and Serveriano Fuentes were in violation of international humanitarian law;

Whereas the Government of El Salvador enacted a general amnesty law in May 1993, and released Ferman Hernandez and Serveriano Fuentes in accordance with that law;

Whereas the failure and refusal of the Government of El Salvador to bring Ferman Hernandez and Serveriano Fuentes to trial violates the Geneva Convention and other international agreements to which the Government of El Salvador is a signatory;

Whereas the United States has made diplomatic efforts toward the Government of El Salvador, but has failed to persuade the Government of El Salvador to comply with the Geneva Convention and other international human rights agreements by bringing Ferman Hernandez and Serveriano Fuentes to trial;

Whereas the United States has also failed to obtain from the Government of El Salvador the extradition of Ferman Hernandez and Serveriano Fuentes to the United States;

Whereas the Constitution of El Salvador prohibits the extradition of Ferman Hernandez and Serveriano Fuentes to the United States for trial;

Whereas there has been preliminary legislative action in El Salvador to amend the Constitution to permit extradition under certain circumstances, but further legislative action is necessary to ratify the amendment, and the amendment in its present form is not retroactive and therefore would not apply to Ferman Hernandez and Serveriano Fuentes;

Whereas the inability of the United States to meaningfully address the murder of two members of the United States Armed Forces in this instance raises concerns about the effectiveness of legal protections for the men and women of the United States Armed Forces who serve in foreign lands and for their families;

Whereas the United States has more than 350,000 military personnel deployed in over 120 foreign countries;

Whereas tragic and wrongful acts against United States military personnel may occur in the future, and the United States should not again be unable to obtain redress, as in the case of the deaths of David H. Pickett and Earnest Dawson, Jr.; and

Whereas the 104th Congress enacted the War Crimes Act of 1996, which provided by law for criminal penalties for certain war crimes and for certain grave breaches of the Geneva Convention, and the 105th Congress strengthened and improved those provisions: Now, therefore, be it

1 *Resolved by the House of Representatives (the Senate*
2 *concurring),*

3 **SECTION 1. EXPRESSION OF CONGRESS WITH RESPECT TO**
4 **THE DEATHS OF DAVID H. PICKETT AND EAR-**
5 **NEST DAWSON, JR.**

6 The Congress expresses—

7 (1) sincere appreciation for the military service
8 of Lieutenant Colonel David H. Pickett, Private
9 First Class Earnest Dawson Jr., and Chief Warrant
10 Officer Daniel Scott;

1 (2) deepest sympathy to the families of David
 2 H. Pickett and Earnest Dawson, Jr., for their tragic
 3 and wrongful deaths; and

4 (3) profound regret that the available remedies
 5 have failed to bring Ferman Hernandez and
 6 Serveriano Fuentes to justice and thereby bring clo-
 7 sure to this tragedy.

8 **SEC. 2. SENSE OF THE CONGRESS WITH RESPECT TO WAR**
 9 **CRIMES.**

10 It is the sense of the Congress that—

11 (1) the United States should improve the legal
 12 protections for its military personnel who serve in
 13 foreign lands and the families of such military per-
 14 sonnel;

15 (2) the Government of El Salvador should
 16 amend its Constitution to permit the extradition of
 17 Ferman Hernandez and Serveriano Fuentes to the
 18 United States for trial; and

19 (3) the President of the United States should—

20 (A) make vigorous and continuing efforts
 21 to obtain the extradition of Ferman Hernandez
 22 and Serveriano Fuentes to the United States;

23 (B) initiate changes to the Geneva Conven-
 24 tion and other relevant international agree-
 25 ments that would prevent amnesty from being

1 used to deny redress for grave breaches of the
2 Geneva Convention;

3 (C) initiate other changes to the Geneva
4 Convention and other relevant international
5 agreements as appropriate to ensure and im-
6 prove the legal protections for United States
7 military personnel who serve in foreign lands
8 and the families of such military personnel;

9 (D) examine all status-of-forces agree-
10 ments and similar agreements and obtain revi-
11 sions as appropriate to ensure that the legal
12 protections for United States military personnel
13 will not suffer another failure, as in the case of
14 David H. Pickett and Earnest Dawson, Jr.;

15 (E) encourage other countries to enact
16 laws substantially similar to the War Crimes
17 Act of 1996; and

18 (F) report to the Congress at least annu-
19 ally regarding the actions taken and progress
20 made by the President in connection with the
21 matters set forth in this resolution.

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