NOTE: The "Whereas" clauses were verbatim from the 2003 Bush Iraq War Resolution. The paragraphs that begin with, "KEY ISSUE," represent my commentary.

Analysis of Joint Resolution on Iraq

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October 2, 2002

Whereas in 1990 in response to Iraq's war of aggression against and illegal occupation of Kuwait, the United States forged a coalition of nations to liberate Kuwait and its people in order to defend the national security of the United States and enforce United Nations Security Council resolutions relating to Iraq;

KEY ISSUE: In the Persian Gulf War there was an international coalition. World support was for protecting Kuwait. There is no world support for invading Iraq.

Whereas after the liberation of Kuwait in 1991, Iraq entered into a United Nations sponsored cease-fire agreement pursuant to which Iraq unequivocally agreed, among other things, to eliminate its nuclear, biological, and chemical weapons programs and the means to deliver and develop them, and to end its support for international terrorism;

Whereas the efforts of international weapons inspectors, United States intelligence agencies, and Iraqi defectors led to the discovery that Iraq had large stockpiles of chemical weapons and a large scale biological weapons program, and that Iraq had an advanced nuclear weapons development program that was much closer to producing a nuclear weapon than intelligence reporting had previously indicated;

KEY ISSUE: UN inspection teams identified and destroyed nearly all such weapons. A lead inspector, Scott Ritter, said that he believes that nearly all other weapons not found were destroyed in the Gulf War. Furthermore, according to a published report in the Washington Post, the Central Intelligence Agency has no up to date accurate report on Iraq's WMD capabilities.

Whereas Iraq, in direct and flagrant violation of the cease-fire, attempted to thwart the efforts of weapons inspectors to identify and destroy Iraq's weapons of mass destruction stockpiles and development capabilities, which finally resulted in the withdrawal of inspectors from Iraq on October 31, 1998;

KEY ISSUE: Iraqi deceptions always failed. The inspectors always figured out what Iraq was doing. It was the United States that withdrew from the inspections in 1998. And the United States then launched a cruise missile attack against Iraq 48 hours after the inspectors left. In advance of a military strike, the US continues to thwart (the Administration's word) weapons inspections.

Whereas in 1998 Congress concluded that Iraq's continuing weapons of mass destruction programs threatened vital United States interests and international peace and security, declared Iraq to be in "material and unacceptable breach of its international obligations" and urged the President "to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations" (Public Law 105-235);

Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;

KEY ISSUE: There is no proof that Iraq represents an imminent or immediate threat to the United States. A "continuing" threat does not constitute a sufficient cause for war. The Administration has refused to provide the Congress with credible intelligence that proves that Iraq is a serious threat to the United States and is continuing to possess and develop chemical and biological and nuclear weapons. Furthermore there is no credible intelligence connecting Iraq to Al Qaida and 9/11.

Whereas Iraq persists in violating resolutions of the United Nations Security Council by continuing to engage in brutal repression of its civilian population thereby threatening international peace and security in the region, by refusing to release, repatriate, or account for non-Iraqi citizens wrongfully detained by Iraq, including an American serviceman, and by failing to return property wrongfully seized by Iraq from Kuwait;

KEY ISSUE: This language is so broad that it would allow the President to order an attack against Iraq even when there is no material threat to the United States. Since this resolution authorizes the use of force for all Iraq related violations of the UN Security Council directives, and since the resolution cites Iraq's imprisonment of non-Iraqi prisoners, this resolution would authorize the President to attack Iraq in order to liberate Kuwaiti citizens who may or may not be in Iraqi prisons, even if Iraq met compliance with all requests to destroy any weapons of mass destruction. Though in 2002 at the Arab Summit, Iraq and Kuwait agreed to bilateral negotiations to work out all claims relating to stolen property and prisoners of war. This use-of-force resolution enables the President to commit US troops to recover Kuwaiti property.

Whereas the current Iraqi regime has demonstrated its capability and willingness to use weapons of mass destruction against other nations and its own people;

Whereas the current Iraqi regime has demonstrated its continuing hostility toward, and willingness to attack, the United States, including by attempting in 1993 to assassinate former President Bush and by firing on many thousands of occasions on United States and Coalition Armed Forces engaged in enforcing the resolutions of the United Nations Security Council;

KEY ISSUE: The Iraqi regime has never attacked nor does it have the capability to attack the United States. The "no fly" zone was not the result of a UN Security Council directive. It was illegally imposed by the United States, Great Britain and France and is not specifically sanctioned by any Security Council resolution.

Whereas members of al Qaida, an organization bearing responsibility for attacks on the United States, its citizens, and interests, including the attacks that occurred on September 11, 2001, are known to be in Iraq;

KEY ISSUE: There is no credible intelligence that connects Iraq to the events of 9/11 or to participation in those events by assisting Al Qaida.

Whereas Iraq continues to aid and harbor other international terrorist organizations, including organizations that threaten the lives and safety of American citizens;

KEY ISSUE: Any connection between Iraq support of terrorist groups in the Middle East, is an argument for focusing great resources on resolving the conflict between Israel and the Palestinians. It is not sufficient reason for the US to launch a unilateral preemptive strike against Iraq.

Whereas the attacks on the United States of September 11, 2001 underscored the gravity of the threat posed by the acquisition of weapons of mass destruction by international terrorist organizations;

KEY ISSUE: There is no connection between Iraq and the events of 9/11.

Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to the United States and its citizens from such an attack, combine to justify action by the United States to defend itself;

KEY ISSUE: There is no credible evidence that Iraq possesses weapons of mass destruction. If Iraq has successfully concealed the production of such weapons since 1998, there is no credible evidence that Iraq has the capability to reach the United States with such weapons. In the 1991 Gulf War, Iraq had a demonstrated capability of biological and chemical weapons, but did not have the willingness to use them against the United States Armed Forces. Congress has not been provided with any credible information, which proves that Iraq has provided international terrorists with weapons of mass destruction.

Whereas United Nations Security Council Resolution 678 authorizes the use of all necessary means to enforce United Nations Security Council Resolution 660 and subsequent relevant resolutions and to compel Iraq to cease certain activities that threaten international peace and security, including the development of weapons of mass destruction and refusal or obstruction of United Nations weapons inspections in violation of United Nations Security Council Resolution 687, repression of its civilian population in violation of United Nations Security Council Resolution 688, and threatening its neighbors or United Nations operations in Iraq in violation of United Nations Security Council Resolution 949;

KEY ISSUE: The UN Charter forbids all member nations, including the United States, from unilaterally enforcing UN resolutions.

Whereas Congress in the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1) has authorized the President "to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677";

KEY ISSUE: The UN Charter forbids all member nations, including the United States, from unilaterally enforcing UN resolutions with military force.

Whereas in December 1991, Congress expressed its sense that it "supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 687 as being consistent with the Authorization of Use of Military Force Against Iraq Resolution (Public Law 102-1)," that Iraq's repression of its civilian population violates United Nations Security Council Resolution 688 and "constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region," and that Congress, "supports the use of all necessary means to achieve the goals of United Nations Security Council Resolution 688";

KEY ISSUE: This clause demonstrates the proper chronology of the international process, and contrasts the current march to war. In 1991, the UN Security Council passed a resolution asking for enforcement of its resolution. Member countries authorized their troops to participate in a UN-led coalition to enforce the UN resolutions. Now the President is asking Congress to authorize a unilateral first strike before the UN Security Council has asked its member states to enforce UN resolutions.

Whereas the Iraq Liberation Act (Public Law 105-338) expressed the sense of Congress that it should be the policy of the United States to support efforts to remove from power the current Iraqi regime and promote the emergence of a democratic government to replace that regime;

KEY ISSUE: This "Sense of Congress" resolution was not binding. Furthermore, while Congress supported democratic means of removing Saddam Hussein it clearly did not endorse the use of force contemplated in this resolution, nor did it endorse assassination as a policy.

Whereas on September 12, 2002, President Bush committed the United States to "work with the United Nations Security Council to meet our common challenge" posed by Iraq and to "work for the necessary resolutions," while also making clear that "the Security Council resolutions will be enforced, and the just demands of peace and security will be met, or action will be unavoidable";

Whereas the United States is determined to prosecute the war on terrorism and Iraq's ongoing support for international terrorist groups combined with its development of weapons of mass destruction in direct violation of its obligations under the 1991 cease-fire and other United Nations Security Council resolutions make clear that it is in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council resolutions be enforced, including through the use of force if necessary;

KEY ISSUE: Unilateral action against Iraq will cost the United States the support of the world community, adversely affecting the war on terrorism. No credible intelligence exists which connects Iraq to the events of 9/11 or to those terrorists who perpetrated 9/11. Under international law, the United States does not have the authority to unilaterally order military action to enforce UN Security Council resolutions.

Whereas Congress has taken steps to pursue vigorously the war on terrorism through the provision of authorities and funding requested by the President to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001 or harbored such persons or organizations;

KEY ISSUE: The Administration has not provided Congress with any proof that Iraq is in any way connected to the events of 9/11.

Whereas the President and Congress are determined to continue to take all appropriate actions against international terrorists and terrorist organizations, including those nations, organizations or persons who planned, authorized, committed or aided the terrorist attacks that occurred on September 11, 2001, or harbored such persons or organizations;

KEY ISSUE: The Administration has not provided Congress with any proof that Iraq is in any way connected to the events of 9/11. Furthermore, there is no credible evidence that Iraq has harbored those who were responsible for planning, authorizing or committing the attacks of 9/11.

Whereas the President has authority under the Constitution to take action in order to deter and prevent acts of international terrorism against the United States, as Congress recognized in the joint resolution on Authorization for Use of Military Force (Public Law 107-40); and **KEY ISSUE:** This resolution was specific to 9/11. It was limited to a response to 9/11.

Whereas it is in the national security of the United States to restore international peace and security to the Persian Gulf region;

KEY ISSUE: If by the "national security interests" of the United States, the Administration means oil, it ought to communicate such to the Congress. A unilateral attack on Iraq by the United States will cause instability and chaos in the region and sow the seeds of future conflicts all over the world.

Now, therefore, be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This joint resolution may be cited as the "Authorization for the Use of Military Force Against Iraq".

SEC. 2. SUPPORT FOR UNITED STATES DIPLOMATIC EFFORTS

The Congress of the United States supports the efforts by the President to-

(a) strictly enforce through the United Nations Security Council all relevant Security Council resolutions applicable to Iraq and encourages him in those efforts; and

(b) obtain prompt and decisive action by the Security Council to ensure that Iraq abandons its strategy of delay, evasion and noncompliance and promptly and strictly complies with all relevant Security Council resolutions.

KEY ISSUE: Congress can and should support this clause. However Section 3 (which follows) undermines the effectiveness of this section. Any peaceful settlement requires Iraq compliance. The totality of this resolution indicates the Administration will wage war against Iraq no matter what. This undermines negotiations.

SEC. 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

AUTHORIZATION. The President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to

(1)defend the national security of the United States against the continuing threat posed by Iraq; and

(2)enforce all relevant United Nations Security Council Resolutions regarding Iraq.

KEY ISSUE: This clause is substantially similar to the authorization that the President originally sought. It gives authority to the President to act prior to and even without a UN resolution, and it authorizes the President to use US troops to enforce UN resolutions even without UN request for it. This is a violation of Chapter VII of the UN Charter, which reserves the ability to authorize force for that purpose to the Security Council, alone.

Under Chapter VII of the Charter of the United Nations, "The Security Council shall determine the existence of any threat to the peace ... and shall make recommendations to maintain or restore international peace and security." (Article 39). Only the Security Council can decide that military force would be necessary, "The Security Council may decide what measures... are to be employed to give effect to its decisions (Article 41) ... [and] it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." (Article 43). Furthermore, the resolution authorizes use of force illegally, since the UN Security Council has not requested it. According to the UN Charter, members of the UN, such as the US, are required to "make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces..." (Article 43, emphasis added). The UN Security Council has not called upon its members to use military force against Iraq at the current time.

Furthermore, changes to the language of the previous use-of-force resolution, drafted by the White House and objected to by many members of Congress, are cosmetic:

In section (1), the word "continuing" was added to "the threat posed by Iraq".

In section (2), the word "relevant" is added to "United Nations Security Council Resolutions" and the words "regarding "Iraq" were added to the end.

While these changes are represented as a compromise or a new material development, the effects of this resolution are largely the same as the previous White House proposal.

The UN resolutions, which could be cited by the President to justify sending US troops to Iraq, go far beyond addressing weapons of mass destruction. These could include, at the President's discretion, such "relevant" resolutions "regarding Iraq" including resolutions to enforce human rights and the recovery of Kuwaiti property.

PRESIDENTIAL DETERMINATION.

In connection with the exercise of the authority granted in subsection (a) to use force the President shall, prior to such exercise or as soon thereafter as may be feasible, but no later than 48 hours after exercising such authority, make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that

(1) reliance by the United States on further diplomatic or other peaceful means alone either (A) will not adequately protect the national security of the United States against the continuing threat posed by Iraq or (B) is not likely to lead to enforcement of all relevant United Nations Security Council resolutions regarding Iraq, and

(2) acting pursuant to this resolution is consistent with the United States and other countries continuing to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations or persons who planned, authorized, committed or aided the terrorists attacks that occurred on September 11, 2001.

(c) WAR POWERS RESOLUTION REQUIREMENTS. -

(1) SPECIFIC STATUTORY AUTHORIZATION. - Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS. - Nothing in this resolution supersedes any requirement of the War Powers Resolution.

SEC. 4. REPORTS TO CONGRESS

(a) The President shall, at least once every 60 days, submit to the Congress a report on matters relevant to this joint resolution, including actions taken pursuant to the exercise of authority granted in section 2 and the status of planning for efforts that are expected to be required after such actions are completed, including those actions described in section 7 of Public Law 105-338 (the Iraq Liberation Act of 1998).

(b) To the extent that the submission of any report described in subsection (a) coincides with the submission of any other report on matters relevant to this joint resolution otherwise required to be submitted to Congress pursuant to the reporting requirements of Public Law 93-148 (the War Powers Resolution), all such reports may be submitted as a single consolidated report to the Congress.

(c) To the extent that the information required by section 3 of Public Law 102-1 is included in the report required by this section, such report shall be considered as meeting the requirements of section 3 of Public Law 102-1.

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