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Executive Summary

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PRESIDENTIAL AUTHORITY IN THE WAR ON TERRORISM: IRAQ AND BEYOND

JACK SPENCER

The President of the United States has no greater responsibility than protecting the American people from threats, both foreign and domestic. In taking his oath of office, the President swears to “preserve, protect, and defend the Constitution of the United States,” the Preamble of which recognizes providing for the “common defense” as a top priority. Now Congress must make its voice heard on a key issue of national security and bring to a vote support for President George W. Bush’s strategy for pursuing the war on terrorism in the way that he, as commander in chief, deems necessary.

While there has been little argument regarding the use of armed force in Afghanistan to retaliate against an act of aggression, opposition has risen regarding a preemptive strike against Iraq and, in general, to the concept of preemption as a national security tool. However, taking action to prevent a strike against America and its allies is also clearly justifiable because the following principles apply:

Principle #1: The right to self-defense is codified in customary international law and in the Charter of the United Nations.

Principle #2: The right of “anticipatory self-defense” allows for preemptive strikes.

Principle #3: The United States government, alone, has the authority to determine what constitutes a threat to the United States and what should be done about it.

Principle # 4: The President as commander in chief has the authority to use America’s armed forces to “provide for the common defense.”

Learning from the September 11 Attacks. Not only is the President justified in applying preemptive military force to fight the war on terrorism, but not doing so would ignore the lessons learned since the September 11 attacks that must be taken into consideration when future action against terrorists and terrorist states is considered.

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Lesson #1: Deterrence alone is not sufficient to suppress aggression.

Lesson #2: Attacks can occur with little or no warning.

Lesson #3: The use of a weapon of mass destruction (WMD) is reasonably likely.

Lesson #4: A deadly synergy is created when state and non-state actors work together.

Lesson #5: The future envisioned by America's enemies is incompatible with U.S. security.

The Case Against Iraq. When these lessons are applied to Saddam Hussein's Iraq, it is clear that action must be taken now. Iraq poses a direct threat to the United States and its interests and to peace and stability throughout the world. Saddam's hostility to U.S. interests, proven intent to act against those interests, history of WMD acquisition, pursuit of WMD, history of using WMD to achieve foreign policy objectives, and ties to international terrorists all make him uniquely dangerous. The foregoing five lessons apply to Iraq in the following ways:

Applied Lesson #1: Warnings have not deterred Iraq from overtly hostile actions that threaten the United States and its interests.

Applied Lesson #2: Iraq's ongoing development of weapons of mass destruction means that the United States or its interests could be targeted with little or no warning.

Applied Lesson #3: Saddam Hussein's history of using WMD demonstrates the likelihood that he will use them in the future.

Applied Lesson #4: Iraq's aggression and ties to international terrorism comprise a deadly combination that must be confronted.

Applied Lesson #5: Iraq's blatant disregard for its 1991 cease-fire agreement makes it clear that its vision of the future is incompatible with America's security.

Next Steps. Since September 11, 2001, President Bush has shown remarkable leadership, and Congress generally has supported him in his efforts to ensure the security of the nation. It is now time to move beyond efforts to dismantle the terrorist

infrastructure that directly enabled the attacks that claimed the lives of thousands of innocent Americans and to take bold steps to ensure that such horrendous acts do not take place in the future. To this end,

- **The President must remain steadfast in his approach to Iraq.** The President is moving thoughtfully and deliberately, making his case to Congress, America's friends and allies, and the American people. He must convince Congress that only a resolution that gives him ample flexibility to prosecute the war on terrorism effectively will be acceptable.
- **Congress should vote now to show its support for the President.** Congress has a responsibility to bring this critical issue to a vote. U.S. citizens deserve to know where each of their elected representatives stands in supporting the President's use of whatever means he deems necessary to defend the nation from Iraqi weapons of mass destruction.

Conclusion. Now is the time to take decisive action to disarm Saddam Hussein. President Bush began this process with his address to the United Nations General Assembly on September 12. However, if the U.N. balks in addressing Iraq's flouting of more than 16 of its resolutions, the President still has full legal authority, from the U.N. as well as Congress, to take whatever actions may be necessary.

On September 11, 2001, Americans came to a new understanding of the nation's vulnerability and the nature of the threats that now confront the nation. No longer can the United States wait passively while regimes foment terrorism, build weapons of mass destruction, and propagate hatred for America. The war on terrorism may be long and difficult, but the President has the authority and responsibility to use whatever means he deems will be effective to ensure the security of the United States and the American people.

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PRESIDENTIAL AUTHORITY IN THE WAR ON TERRORISM: IRAQ AND BEYOND

JACK SPENCER

The President of the United States has no greater responsibility than protecting the American people from threats, both foreign and domestic. He is vested by the Constitution with the authority and responsibility to accomplish this essential task. In taking his oath of office, the President swears to “preserve, protect, and defend the Constitution of the United States,” the Preamble of which makes providing for the “common defense” a top priority. Congress must now make its voice heard on a key issue of national security and bring to a vote support for President George W. Bush’s strategy for pursuing the war on terrorism in the way that he, as commander in chief, deems necessary.

As the nature of the threats to the United States changes, so must the nation’s approach to its defense. To fulfill his constitutional responsibility, the President must have the flexibility to address these threats as they emerge; and, given the proliferation of weapons of mass destruction by nations hostile to America, in an increasing number of cases, this may require applying military power before the United States or its interests are struck. In situations where the evidence demonstrates overwhelmingly that behavioral trends, capability,

and motives all point to imminent threat, it may be necessary for the President to attack preemptively.

While there has been little argument over the use of armed force in Afghanistan to retaliate against an act of aggression, preemptive action is also clearly justifiable because the following principles apply:

PRINCIPLE #1: The right to self-defense is codified in customary international law and in the charter of the United Nations. The most basic expression of a nation’s sovereignty is action taken in self-defense. Traditional international law recognizes that right,¹ and the United Nations Charter is wholly consistent with it. Article 51 of the U.N. Charter states: “Nothing in the present Charter shall impair the inherent right

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1. For a detailed historical discussion of the power of nations to declare war, see Brien Hallett, *The Lost Art of Declaring War* (Champaign, Ill.: University of Illinois Press, 1998), pp.27-57.

of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”

PRINCIPLE #2: The right of “anticipatory self-defense” allows for preemptive strikes.² The right to self-defense incorporates the principle of anticipatory self-defense, which is particularly salient in the war on terrorism. The reality of international life in the 21st century is that nations or organizations that wish to challenge America or Western powers increasingly are seeking weapons of mass destruction to achieve their political objectives. The only effective response may be to destroy those capabilities before they are used. The tenet of traditional, customary international law that allows for this preventive or preemptive action is “anticipatory self-defense.”

An oft-cited incident that validates the practice of anticipatory self-defense as part of international law occurred in 1837. That year, British forces crossed into American territory to destroy a Canadian ship, anticipating that the ship would be used to support an anti-British insurrection. The British government claimed its actions were necessary for self-defense, and the United States accepted that explanation.³

While there is debate as to whether or not this principle of international law survived the adoption of the U.N. Charter, the fact is that neither the charter nor the actions of member states since the charter came into force outlaw the principle.⁴ Israel has invoked the right of anticipatory self-defense numerous times throughout its history, including incidents in 1956 when it preemptively struck Egypt and in 1967 when it struck Syria, Jordan, and Egypt as those nations were preparing an attack.

The United States has also asserted its right to anticipatory self-defense. A classic example occurred in 1963 when President John Kennedy ordered a blockade of Cuba—a clear act of aggression—during the Cuban missile crisis. Although no shots had been fired, President Kennedy’s preemptive action was imperative for the protection of American security. During the 1980s, President Ronald Reagan invoked this right at least twice: first, in 1983, when he ordered an invasion of Grenada to protect U.S. nationals from potential harm, and again in 1986, when he ordered the bombing of terrorist sites in Libya.

When any nation that is overtly hostile to America or its allies is developing weapons of mass destruction, has ties to international terrorist, and intelligence data give reason to believe that there is an intent to attack, the threshold of the United States’ right to invoke a response based on anticipatory self-defense has clearly been passed.

PRINCIPLE #3: The United States government alone has the authority to determine what constitutes a threat to its citizens and what should be done about it. Under the U.S. Constitution, the authority to determine when it is appropriate for the United States to invoke and exercise its right to use military force in its own defense is vested in the President, as commander in chief of the armed forces, and Congress, which has authority to raise and support armies and to declare war. No treaty, including the U.N. Charter, can redistribute this authority or give an international organization veto power over U.S. actions that would otherwise be lawful and fully in accord with the Constitution.⁵

2. For a full legal and historical analysis of anticipatory self-defense, see Lee A. Casey and David B. Rivkin, Jr., “‘Anticipatory’ Self Defense Against Terrorism is Legal,” *Legal Opinion Letter*, Washington Legal Foundation, December 14, 2001, and David B. Rivkin, Jr., and Darin R. Bartram, “The Law on the Road to Baghdad,” *National Review Online*, August 28, 2002.
3. Congressional Research Service, *International Law and the Preemptive Use of Force Against Iraq*, RS21314, September 23, 2002 (updated).
4. *Ibid.*
5. For a complete analysis of the United States’ right to defend itself against aggression see, Brett D. Schaefer, “U.N. Authorization for War With Iraq is Unnecessary,” Heritage Foundation *Executive Memorandum* No. 831, September 5, 2002.

NOTE: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

PRINCIPLE # 4: The President as commander in chief has the authority to use America's armed forces to "provide for the common defense." The Constitution gives Congress the authority to declare war but makes the President commander in chief. Since the birth of the nation, this division of power has given rise to tension between the executive and legislative branches of government regarding who can authorize the use of force.⁶

Debate regarding this matter gave rise to the War Powers Resolution,⁷ which states that the President can use force to protect the nation without congressional authorization for 60 to 90 days. Many, including every President since this resolution came into force in 1973, have regarded the document as unconstitutional. Most, however, agree that the President has the authority to defend America from attack, even in the absence of congressional authorization.⁸ It should be noted that if Congress is truly opposed to any military action authorized by the President, it has the power to defund that mission, making it impossible to carry out.

LEARNING FROM THE SEPTEMBER 11 ATTACKS

The President is justified in applying preemptive military force to fight the war on terrorism. To fail to do so in spite of a threat of imminent attack would be to ignore the lessons learned from September 11 regarding the nature of the threats that face America in the 21st century. Before those attacks, U.S. authorities were aware of Osama bin Laden, his resources, and his hatred for America. They knew that he was a terrorist and that he had attacked America in the past. They were also aware that he was running terrorist training camps in Afghanistan with the blessing of the Taliban

regime.⁹ Despite this information, neither the United States nor the international community took decisive action to address bin Laden's imminent aggression.

In the post-September 11 world, such complacency is not acceptable. A series of lessons can be learned from the September 11 attacks and the initial prosecution of the war on terrorism. These lessons must be taken into consideration when future action against terrorists and terrorist states is contemplated.

LESSON #1: Deterrence alone is not sufficient to suppress aggression.

Both Osama bin Laden and the Taliban could have predicted that the United States would respond to their attacks, yet they acted anyway. Although numerous reports and studies warned of the growing threat of catastrophic terrorism, the United States, for the most part, ignored those warnings. The activities of a worldwide, organized terrorist network were treated instead as criminal behavior.

The conclusion of recent studies¹⁰ has been that the risk of America's being struck with a weapon of mass destruction has increased: In other words, the effectiveness of deterrence has decreased. Such massive acts of terrorism could be perpetrated by an organization acting alone, an organization working with a nation, or a nation acting alone. It would be nearly impossible to deter all of these hostile entities, given that each state and each organization has a different motivation.

LESSON #2: Attacks can occur with little or no warning. The emergence of global communications, advances in technology, and the globalization of terrorism have significantly decreased the time it takes not only for a potential threat

6. Hallett, *The Lost Art of Declaring War*, p. 3.

7. Public Law 93-148, 93rd Congress, H. J. Res. 542, November 7, 1973.

8. Congressional Research Service, *Response to Terrorism: Legal Aspect of the Use of Military Force*, September 13, 2001.

9. James Phillips, "Defusing Terrorism at Ground Zero: Why a New U.S. Policy Is Needed for Afghanistan," Heritage Foundation *Backgrounder* No. 1383, July 12, 2000.

10. See National Commission on Terrorism (Bremer Commission), *Countering the Changing Threat of International Terrorism*, Washington, D.C., 1998, and Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (Gilmore Commission), *Toward a National Strategy for Combating Terrorism*, Washington, D.C., December 2000.

to be identified, but also for that threat to emerge as an act of aggression. In many instances, a specific threat may not be identified until the act of aggression has taken place, rendering preventive measures irrelevant.

In this world of drastically shortened time lines, it is essential that the President have the authority to act decisively, in short order, to defeat aggressors when a preponderance of information points to a threat of imminent attack. For example, although the President did not have information that al-Qaeda operatives were going to commandeer four passenger jets and use them as guided cruise missiles, there was ample evidence that threats to the United States would likely emerge from Afghanistan, where al-Qaeda, an organization responsible for past attacks on America, was present and supported by the Taliban.

LESSON #3: The use of a weapon of mass destruction is reasonably likely. On September 11, Americans were killed on a massive scale. Hostile entities increasingly view weapons of mass destruction (WMD) as political assets. North Korea may have two nuclear weapons;¹¹ Iran has active chemical, biological, and nuclear weapons programs; and Iraq has not only active WMD programs, but also a history of using such weapons. All three countries have ballistic and cruise missile programs.¹²

Even terrorist organizations, such as al-Qaeda, are involved in developing and using WMD, as was evidenced by recently revealed videos in which al-Qaeda was experimenting with chemical weapons on dogs.¹³ Other reports link Osama bin Laden to the pursuit of a nuclear or radiological device.¹⁴ In 1995, terrorists in Japan used sarin gas to kill civilians in a Tokyo subway.

LESSON #4: A deadly synergy is created when hostile state and non-state agents conspire. While hostile states continue to threaten America and its interests, the threat of non-state actors, such as al-Qaeda, is growing. The danger increases when states and non-state actors work together. States have resources—including territory, finances, an international diplomatic presence, and trade—that non-state actors do not have. On the other hand, non-state actors are able to operate globally and can act largely undetected.

The reality of the 21st century is that a state like Iraq can harness its resources to develop a weapon of mass destruction and collude with non-state actors to deliver that weapon. This symbiotic relationship can operate undercover, possibly without the knowledge of the American government. Thus, a state hostile to the United States may appear to be acting within the bounds of normal diplomatic behavior while at the same time covertly supporting aggressive endeavors of its non-state allies.

LESSON #5: The future envisioned by America's enemies is incompatible with U.S. security. Prior to September 11, “soft diplomacy”—including multilateral arms control, aid incentives, and appeals to reason—was the preferred approach in dealing with hostile regimes. Although the ideals of those regimes and those of the West are in direct contrast, there was hope that, eventually, these despots would transform, fall, or simply discontinue their threatening activities. This policy continued as the approach of choice even though it has been demonstrably ineffective: North Korea continues to sell ballistic missiles, Iran continues to support terrorism, and Iraq continues to develop nuclear bombs.

11. Congressional Research Service, *North Korea's Nuclear Weapons Program: U.S. Policy Options*, CRS94-470F, June 1, 1994.

12. “Executive Summary,” *Report of the Commission to Assess the Ballistic Missile Threat to the United States*, published pursuant to Public Law 201, 104th Cong., July 15, 1998.

13. CNN, “Tapes Shed New Light on bin Laden's Network,” at www.cnn.com/2002/US/08/18/terror.tape.main/index.html (September 13, 2002).

14. Natalie Malinarich, “Analysis: Bin Laden's Nuclear Threat,” *BBC News*, October 26, 2001.

On September 11, however, the idea that such hostile regimes and the United States could simultaneously pursue their respective interests lost all credibility. It was clear that America's enemies were willing to use unprovoked violence to achieve their objectives. The United States could no longer postpone acting against terrorists and nations that support them.

THE CASE AGAINST IRAQ

Under Saddam Hussein's rule, Iraq is a direct threat to the United States, its interests, and international peace and stability throughout the world. Although the United States had recognized Saddam as a threat ever since his invasion of Kuwait in 1991, it was never compelled to take decisive action against him. Given what the September 11 attacks revealed about the nature of the threats facing the nation, the United States can no longer afford to wait to take action regarding Iraq.

Saddam Hussein's hostility to U.S. interests, proven intent to act against those interests, WMD acquisition, continued pursuit of WMD, history of using WMD to achieve foreign policy objectives, and ties to international terrorists combine to make him uniquely dangerous to the United States. When his behavior is juxtaposed with the lessons learned through the September 11 attacks, it becomes clear that Saddam poses a threat that must be dealt with immediately. The foregoing five lessons apply to Iraq in the following ways:

APPLIED LESSON #1: Warnings have not deterred Iraq from overtly hostile actions that threaten the United States and its interests. Saddam Hussein, like so many other dictators throughout the world, is a danger to his own people. However, he is different in that he is also a direct and near-term threat to the United States and its interests. A recent video

released by the U.S. Department of Defense showing Iraqi missiles firing on U.S. aircraft enforcing the United Nations no-fly zones over northern and southern Iraq demonstrates Saddam's belligerence.¹⁵ President George W. Bush described the threat aptly when he said,

We can harbor no illusions. Saddam Hussein attacked Iran in 1980 and Kuwait in 1990. He has fired ballistic missiles at Iran, Saudi Arabia, Bahrain and Israel. His regime once ordered the killing of every person between the ages of 15 and 70 in certain Kurdish villages in Northern Iraq. He has gassed many Iranians and 40 Iraqi villages.¹⁶

This aggressive behavior is a clear attempt to dominate the region through intimidation and coercion. However, the most direct threat that Saddam poses to the United States is his WMD activities, coupled with his involvement in international terrorism. Many warnings and obstacles have been put forward to coerce Saddam into behaving in a less aggressive way, yet none have deterred him.

APPLIED LESSON #2: Iraq's ongoing development of weapons of mass destruction means that the United States or its interests could be the targets of an attack with little or no warning.¹⁷ Iraq has a 30-year history of WMD programs. In defiance of U.N. Security Council Resolution 687, Iraq continues to build and develop its biological, chemical, nuclear, and long-range ballistic missile programs. As stated so clearly by President Bush,

Today, Iraq continues to withhold important information about its nuclear program—weapons design, procurement logs, experimental

15. Rowan Scarborough, "U.S. Offers Proof of Iraq Defiance," *The Washington Times*, October 1, 2002, p. A1.

16. President George W. Bush, address on Iraq to opening of the United Nations General Assembly.

17. For descriptions of the current state of Iraq's weapons of mass destruction program and ballistic missile capabilities, see U.S. Central Intelligence Agency, *Unclassified Report to Congress on the Acquisition of Technology Relating to Weapons of Mass Destruction and Advanced Conventional Munitions, 1 January Through 30 June 2001*, January 20, 2002, at http://www.cia.gov/cia/publications/bian/bian_jan_2002.htm#4; U.S. National Intelligence Council, *Foreign Missile Developments and the Ballistic Missile Threat Through 2015*, December 2001, at http://www.cia.gov/nic/pubs/other_products/Unclassifiedballisticmissilefinal.htm; "Executive Summary," *Report of the Commission to Assess the Ballistic Missile Threat to the United States*.

data, an accounting of nuclear materials and documentation of foreign assistance. Iraq employs capable nuclear scientists and technicians. It retains physical infrastructure needed to build a nuclear weapon. Iraq has made several attempts to buy high-strength aluminum tubes used to enrich uranium for a nuclear weapon.¹⁸

Recent evidence, supported by a wealth of Iraqi government contracts, concludes that Iraq has at least 20 covert facilities where chemical, biological, and nuclear weapons are produced.¹⁹ Moreover, Saddam Hussein continues to seek dual-use infrastructure to conceal his plans to build a robust WMD arsenal. As President Bush noted, recent reports contend that Saddam Hussein has aggressively sought to import thousands of high-strength aluminum tubes that can be reconfigured to enrich uranium, a necessary component for a nuclear device.²⁰

APPLIED LESSON #3: Iraq's history of using WMD demonstrates the likelihood that it will use them in the future.²¹ Iraq is not only actively seeking WMD, but also has a history of using them to achieve military aims. In 1982, Iraq used riot-control agents against Iranian attacks. From that point, Iraq quickly began to use more deadly agents, including mustard gas

in 1983 and tabun in 1984, becoming the first nation to use a nerve agent in a war. The State Department lists 10 incidents of Iraqi chemical attacks between August 1983 and March 1988. All were launched against Iranian and Kurdish populations, resulting in casualty tolls in the tens of thousands.²²

Not only did Saddam Hussein test his biological weapons on animals, especially large mammals, but it is suspected that testing was done on humans as well. Although Iraq's Deputy Prime Minister Tariq Aziz adamantly denies human testing, the United Nations Special Commission, known as UNSCOM, reported that investigative teams discovered two human-size inhalation chambers.²³ Former U.N. weapons inspector Scott Ritter explained the program in detail. In 1995, according to Ritter, live tests of binary biological and chemical weapons were conducted on nearly 50 subjects taken from Abu Ghaib prison.²⁴

APPLIED LESSON #4: Iraq's aggression and ties to international terrorism comprise a deadly combination that must be confronted.²⁵

U.N. Security Council Resolutions 687 and 1373 prohibit Saddam Hussein from supporting terrorism or allowing terrorist cells and organizations to operate within the boundaries of Iraq. Yet Saddam continues to flout these resolutions. When President Bush made his case against Iraq to the U.N. General Assembly, he cited several instances in which Iraq was found

18. President George W. Bush, address on Iraq to opening of the United Nations General Assembly.

19. "A Decade of Deception and Defiance: Saddam Hussein's Defiance of the United Nations," White House Report, September 12, 2002.

20. Michael R. Gordon and Judith Miller, "Threats and Responses: The Iraqis; U.S. Says Hussein Intensifies Quest for A-Bomb Parts," *The New York Times*, September 7, 2002.

21. For a complete overview of Iraq's WMD history, see Baker Spring and Jack Spencer, "In Post-War Iraq, Use Military Forces to Secure Vital U.S. Interests, Not for Nation-Building," Heritage Foundation *Backgrounder* No. 1589, September 25, 2002.

22. U.S. Department of State, *Iraq Weapons of Mass Destruction Programs*, U.S. Government White Paper, February 13, 1998.

23. Laurie Mylroie, "Special Report: Iraq in the Absence of Weapons Inspectors," *Middle East Intelligence Bulletin*, July 1, 2000, at http://www.meib.org/articles/0007_me1.htm.

24. Scott Ritter, *Endgame: Solving the Iraq Problem—Once and For All* (New York: Simon & Schuster, 1999), p. 105.

25. For documentation on Iraq's involvement in terrorism, see U.S. Department of State, *Patterns of Global Terrorism 2001*, May 2002; *Iraq's Weapons of Mass Destruction, The Assessment of the British Government*; testimony of U.S. Secretary of Defense Donald H. Rumsfeld before the House Armed Services Committee regarding Iraq, September 18, 2002; and "Rice on Iraq, War and Politics," *NewsHour with Jim Lehrer*, transcript, September 25, 2002.

to be involved in terrorist acts. According to President Bush,

in violation of Security Council Resolution 1373, Iraq continues to shelter and support terrorist organizations that direct violence against Iran, Israel, and Western governments. Iraqi dissidents abroad are targeted for murder. In 1993, Iraq attempted to assassinate the Emir of Kuwait and a former American President. Iraq's government openly praised the attacks of September the 11th. And al Qaeda terrorists escaped from Afghanistan and are known to be in Iraq.²⁶

Recognized by the State Department as a state sponsor of terrorism, Iraq is believed to provide shelter to several terrorist groups, including the Mujahedin-e-Khalq Organization (MKO) and several Palestinian-sponsored groups responsible for deadly attacks on Israel. More ominously, Saddam Hussein overtly provides money to relatives of terrorist suicide bombers sympathetic to the Palestinian cause. Through graduated rewards, this program actively encourages these suicide murderers. Reward amounts are linked to the injury sustained by each bomber; dying as a "martyr" receives the greatest reward. Furthermore, testimonies obtained from defected Iraqi military officers describe an elite training facility in Iraq commonly referred to as Salman Pak, where Arabs with terrorist inclinations can receive extensive training.²⁷

APPLIED LESSON #5: Iraq's blatant disregard for its 1991 cease-fire agreement makes it clear that its vision of the future is incompatible with America's security. Saddam Hussein has defied at least 16 Security Council

resolutions, including the terms of the 1991 cease-fire that should have ended hostilities between the U.S.-led United Nations coalition and Iraq.²⁸ Such flagrant violations—including his refusal to comply with weapons inspectors; his continued development of robust biological, chemical, and nuclear weapons programs; and his efforts to rearm Iraq through an elaborate oil-for-arms smuggling ring—pose a grave threat to the United States, its allies, and its interests in the Middle East.

The list of Saddam's systematic violations of Security Council resolutions includes disregarding resolutions that required him to cease the torture and unnecessary imprisonment of opposition groups; to provide for the immediate repatriation of prisoners of war and other political detainees; to cease amassing and destroy all chemical, biological, nuclear, and ballistic missile programs and associated infrastructure; to cease sheltering terrorists and terrorist groups; and to allow for monitoring and inspection to verify Iraqi compliance. He has complied with none of these resolutions.

NEXT STEPS

A year after the terrorist attacks of September 11, the United States remains at war. Indeed, according to Vice President Richard Cheney, "We are still closer to the beginning of this war than to its end."²⁹ Although the Taliban has fallen and al-Qaeda is on the run, the reality is that the United States and its interests abroad remain directly threatened by global terrorism and weapons of mass destruction in the hands of terrorist states.

The next priority in the war on terrorism must be to address the threat posed by Iraq. The domestic and international legal authority for such action is in place.

Congress. Congress has already given its support for the use of force against Saddam Hussein.³⁰ Nevertheless, the President has said that he would

26. President George W. Bush, address on Iraq to opening of the United Nations General Assembly.

27. "A Decade of Deception and Defiance."

28. *Ibid.*

29. Joseph Curl, "Bush Aides Press Case for Pre-Emption," *The Washington Times*, September 11, 2002, p. A1.

30. Public Law 102-1, January 14, 1991.

consult Congress again before committing armed forces against Iraq.³¹ Indeed, the Administration has submitted a draft resolution on the matter.

This consultation, however, is a useful action aimed at consensus-building and not a legal necessity. In 1991, Congress passed the Authorization to Use Force Against Iraq Resolution. This legislation authorized the use of force against Iraq to enforce the Security Council resolution related to Iraq's invasion of Kuwait and specifically cited Saddam Hussein's involvement in weapons of mass destruction as a threat to be addressed. Again in 1998, the Senate passed legislation that urged the President "to take all necessary and appropriate actions to respond to the threat posed by Iraq's refusal to end its weapons of mass destruction programs."³² The threats addressed by these two resolutions remain in place as Saddam continues to develop and amass weapons of mass destruction.

The United Nations. The United Nations has already given its support for the use of whatever means are necessary to enforce its resolutions, but the Secretary General has done nothing to enforce them. The Security Council has passed nearly 60 resolutions on Iraq and Kuwait since Iraq's invasion of Kuwait in 1990. Resolution 678, passed on November 29, 1990, authorizes "member states cooperating with the Government of Kuwait...to use all necessary means" to (1) implement Security Council Resolution 660 and other resolutions calling for the end of Iraq's occupation of Kuwait and the withdrawal of Iraqi forces from Kuwaiti territory and (2) "restore international peace and security in the area."

In the Persian Gulf War, U.S.-led forces accomplished the first objective swiftly; the second, however, has never been achieved. U.S. and allied air forces have been in nearly constant conflict with Iraqi forces since Iraq's aggression against Kuwait was repelled. Resolution 678 has not been rescinded or nullified by succeeding resolutions. Its

authorization of the use of force against Iraq remains in effect. Furthermore, Iraq's refusal to allow U.N. weapons inspectors to fulfill their mandate is a violation of its 1991 cease-fire agreement—a clear indication that peace has never been achieved.³³

Since September 11, 2001, President Bush has shown remarkable leadership, and Congress generally has supported his efforts to ensure the security of the nation. The time has now come to move beyond attacking the terrorist infrastructure that executed last year's attacks and to begin taking steps to prevent a future attack. To do this:

- **The President must remain steadfast in his approach to Iraq.** The President has taken the right approach in his policy on Iraq. He is moving thoughtfully and deliberately, making his case to Congress, America's friends and allies, and the American people. By addressing the U.N. General Assembly on September 12, 2002, and providing that body with a plan for enforcing its own resolutions, he has given the U.N. an opportunity to fulfill its responsibility to promote peace and stability.

However, by making it clear that if the United Nations does not take action, the United States will, President Bush underscored America's right to self-defense. Furthermore, he has submitted a draft resolution to the U.S. Congress that would allow him to take whatever action he deems necessary to prosecute the war on terrorism in Iraq. As he urged in his speech, the President now must insist that the Security Council act responsibly by voting on a resolution that holds Iraq accountable for its commitments.³⁴ The President must make it clear to Congress that only a resolution that gives him ample flexibility to prosecute the war on terrorism will be acceptable.

31. Mike Allen and Karen DeYoung, "Bush to Seek Hill Approval on Iraq War," *The Washington Post*, September 5, 2002, p. A1.

32. Senate Concurrent Resolution 71, "Condemning Iraq's Threat to International Peace and Security," January 28, 1998.

33. Brett D. Schaefer, "U.N. Authorization for War With Iraq Is Unnecessary," Heritage Foundation *Executive Memorandum* No. 831, September 5, 2002.

34. For a full analysis of what the United Nations resolution should include to be effective, see Brett D. Schaefer and Baker Spring, "Bush Is Right on Iraq: The Issue Is Compliance, Not Inspections," Heritage Foundation *Backgrounder* No. 1592, September 19, 2002.

- **Congress should vote now to show its support for the President.** Congress owes the American people a public debate and vote on the application of military force in Iraq. American citizens deserve to know where each of their elected representatives stands on this life-and-death issue.

To wait until the United Nations votes on a resolution, as some have suggested, would be cowardly. The leaders of both the House and Senate must bear in mind that they have a responsibility to defend America from threats, both foreign and domestic, and that this responsibility is theirs regardless of what any international body believes. For the sake of the nation, Congress should immediately begin to debate and vote on supporting the President in the use of whatever means he deems necessary to defend America from Iraqi weapons of mass destruction.

CONCLUSION

Now is the time to take decisive action against Saddam Hussein. The President began this process with his address to the United Nations General Assembly on September 12. However, if the U.N.

balks at taking action to address Saddam's violation of its resolutions, the President still has full legal authority, both from the United Nations and from the United States Congress, to take whatever actions may be necessary. Both bodies have already documented their support for the United States to take all necessary action to enforce existing U.N. Security Council resolutions. While a new resolution and a congressional vote might add political momentum to the effort to eliminate the threat posed by Saddam Hussein, neither is legally necessary for the President to use military force.

On September 11, 2001, America came to a new awareness of its own vulnerability and the nature of the threats that now face the nation. No longer can the United States wait passively while hostile regimes foment terrorism, build weapons of mass destruction, and propagate hatred for America. The war on terrorism will be long and difficult, but the President has the authority to prosecute this just war and the responsibility to do so, using whatever means are at his disposal.

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