

THE WAR CONGRESS



SHOULDERING THE RESPONSIBILITIES OF A U.S. GLOBAL ROLE



Eugene B. Kogan



Americans For Democratic Action
Education Fund

The War Congress

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Preface

The terrorist attacks of September 11, 2001 brought massive change in the international strategic landscape. The advent of the war on terrorism calls for a re-examination of the traditional role of the United States Congress in the crafting (i.e., formulation at home and execution abroad) of U.S. foreign policy.

Since September 11, 2001, the Executive Branch has had to adjust quickly to the demands of the new era, defined by the threat of terrorism. Congress, in contrast, has been slower to adjust to the new world. Today, Congress is precariously uninformed about—and, more dangerously, unprepared to provide the necessary input and leadership for—the new role that the United States is forging for itself in the post-September 11 world. The perpetual war into which the United States was thrust on September 11, demands a re-examination of what congressional “war powers” mean. This will enable Congress to be a reliable partner of the Executive Branch in the making of foreign policy. As in the past, this partnership is critical in order for the United States to exercise successfully its world leadership responsibilities and provide for the safety and security of the American people.

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Eugene B. Kogan, March 2005

Washington, D.C.

Executive Summary

After September 11, 2001, Congress projected total unity, which was important for a country wounded deeply, suddenly, and lethally—both physically and psychologically. On September 12, Congress passed a joint resolution declaring September 12 to be the National Day of Unity and Mourning. On September 14, Congress overwhelmingly passed a resolution authorizing President George W. Bush to retaliate against and punish the perpetrators of the terrorist attacks. Since it was determined that the attacks were perpetrated by al Qaeda, and the Taliban regime in Afghanistan harbored al Qaeda, the U.S. unleashed a military campaign against the Taliban on October 7. The Congress strongly supported this war, which was dubbed “Operation Enduring Freedom.”

Days after the attacks of September 11, President Bush privately set his sights on removing Saddam Hussein from power in Iraq. Throughout 2002, Bush advanced various arguments for war in a vigorous campaign to garner public and congressional support. All of the justifications centered on the proposition that in the post-9/11 world a dangerous man such as Saddam Hussein should not be tolerated, lest he decide to pass his weapons of mass destruction (WMD) to terrorists who would have no compunction about murdering tens of thousands of innocent people around the world, particularly in the United States. The President also warned that Saddam could acquire a nuclear weapon, which would allow him to dominate the Middle East.

President Bush initiated the public campaign for a war against Iraq in his 2002 State of the Union address, in which he branded Iraq, along with Iran and North Korea, as the “axis of evil.”¹ During the next nine months, and in numerous forceful addresses, Bush articulated his foreign policy worldview. The Bush Doctrine revolved around three principles. First, the strategic emphasis shifted from preemptive strikes to preventive war. In March 2003, the United States launched a preventive invasion of Iraq, designed *inter alia* to preclude the growing Iraqi threat from becoming imminent at an yet unspecified future time. Second, the United States made no distinction between tyrannical regimes such as Iraq, and terrorists. President Bush called them “different faces of the same evil,”² while Secretary of State Colin Powell warned that “a proven menace like Saddam Hussein in possession of weapons of mass destruction could empower a few terrorists with those weapons to threaten millions of innocent people.”³ Third, since 9/11, the U.S. foreign policy began to be defined by an intense strategic moralism, best enunciated in the opening of the new U.S. National Security Strategy: “The aim of this strategy is to help make the world not just safer but better.”⁴

Since President Bush decided long before the war began in March 2003 that an invasion would be necessary to neutralize the threat posed by Iraq, his Administration’s approach to the evidence of this threat was best characterized as purposeful advocacy. As they campaigned to get the public behind the goal of regime change, President Bush and his senior aides selectively quoted the intelligence available to them, sometimes

altogether omitting pieces of intelligence that did not fit into the case for war. For instance, while the Administration publicly claimed that the Iraq war would reduce the danger of a terrorist attack against the United States, some intelligence analysts privately warned that an invasion would increase the risk of Saddam Hussein cooperating with terrorists in attacking the United States.

Although the Bush Administration unleashed a forceful and effective campaign to sell the war, the information available at the time to the public and Congress showed that Iraq did not pose an immediate threat to the United States, its allies and its interests overseas. Indeed, the Bush Administration rarely claimed that Iraq posed an imminent threat. Rather, President Bush and his aides argued that the existing threat from Iraq was growing and thus had to be addressed urgently. The Administration's arguments were powerful, but largely conjectural, based on the unlikely possibility of Saddam Hussein's cooperation with terrorists and uncertainty about Iraq's nuclear program capability.

During the first half of 2002, while the Administration sought to garner public support for the war, Congress showed little inclination to investigate the issue aggressively, even after it had become clear that the Administration would ask Congress to authorize military action against Iraq in the next several months. After a flurry of hastily convened hearings in the months preceding the vote, Congress voted in October 2002 to authorize President Bush to use military force to address the "continuing threat" posed by Iraq. In passing this anticipatory authorization to use force, Congress relinquished its Constitutional prerogative to decide *if and when* to initiate hostilities against Iraq, and instead ceded that responsibility to President Bush.

This study draws attention to a serious failure of congressional oversight in the run-up to the invasion of Iraq in March 2003 and argues that Congress must start shouldering the responsibilities that stem from America's post-9/11 international role. This report finds congressional oversight over foreign policy-making seriously lacking in scope and quality. In particular, this study identifies two areas where Congress did not live up to its obligations. First, Congress failed in the exercise of its Constitutionally-mandated war powers by abdicating its responsibility to declare war against Iraq. Second, Congress failed to oversee effectively the articulation and execution of the Bush Doctrine.

To address these weaknesses this report makes the following recommendations:

1. Congress should establish and convene a bipartisan Commission on Congress's Role in Foreign Policy-Making.
2. Congress should provide leadership for—and conduct oversight over—both the articulation and the execution of U.S. foreign policy.
3. Congress should reform the committee hearings process.
4. Congress should initiate a review of the Bush Doctrine.

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Abbreviations

BW – Biological Weapons

CIA – Central Intelligence Agency

IAEA – International Atomic Energy Agency

NIE – National Intelligence Estimate

NSC – National Security Council

NSCT – National Strategy for Combating Terrorism

NSCWMD – National Strategy to Combat Weapons of Mass Destruction

NSS – National Security Strategy

SSCI – Senate Select Committee on Intelligence

UNSCR – United Nations Security Council Resolution

WMD – Weapons of Mass Destruction

WPR – War Powers Resolution

Introduction

Accountability is eroded in wartime, and the war on terrorism is not any different, except that it will shape America's world role for the next half a century or more.

The lack of congressional oversight over the Bush Administration's foreign policy can compromise the ability of the United States to build a more secure world. Accountability is eroded in wartime, and the war on terrorism is not any different, except that it will shape America's world role for the next half a century or more. In this critical period in U.S. history, it is important for Congress to exercise its Constitutional responsibility by holding the Executive Branch accountable for its foreign policy decisions.

At a time when the limitations of U.S. power and influence have become all too apparent and the unconventional threats against the United States are increasingly lethal and global, it is important to explore the fundamental sources of this nation's vitality, moral and physical strength and worldwide influence. The project examines Congress's role in foreign policy-making and warns that continued congressional abdication can result in long-term damage to America's ability to win the war on terrorism and to build a more secure world.

In Chapter 1, the traditional disagreements among scholars on how war powers should be shared between the Executive and Legislative branches of government are presented. Chapter 2 treats the terrorist attacks of September 11, 2001 and the response of the Bush Administration and the Congress. Chapter 3 traces the evolution of the Bush Doctrine since September 11 via the public statements of the President and his senior aides. It also describes Congress's initial response to the Bush Doctrine. Chapter 4 presents case studies of the wars in Afghanistan and in Iraq. It details how the Bush Administration arrived at its decision to go to war against Iraq, first in private, and later in public, and how Congress responded to the numerous indications in 2002 that war was approaching. The extent to which Congress was adequately informed about the threat posed by Iraq before the October vote on the use of force resolution is analyzed. In addition, what Congress did with the information it had about the Iraqi threat is examined. Chapter 5 details the evidence garnered in the report. In conclusion, several recommendations for strengthening Congress's role in foreign policy-making are offered.

Overview and Objectives

OVERVIEW

This section of the chapter, presents an overview of the war powers debate through the arguments of two prominent foreign policy scholars, writing in the early 1990s and mid-1980s, respectively.

Michael J. Glennon, currently a Professor of International Law at the Fletcher School of Law and Diplomacy at Tufts University, wrote in the Spring 1991 issue of *Foreign Affairs* that Congress should play a significant role in the formulation and exercise a greater check on the execution of U.S. foreign policy; his argument was three-fold. First, according to Glennon, Congress could provide an important sense of national unity that is beneficial for the outcome of U.S. foreign policy: “The safety and well-being of the U.S. forces engaged in combat are enhanced if adversaries as well as allies understand that the American public is resolutely behind them.” Second, Glennon wrote that Congress brought “diversity of opinion” to the decision to go to war. Third, he maintained that the War Powers Resolution (WPR)* should be revised to strengthen congressional constraints on the powers of the President, so as to improve the process of foreign policy formulation and implementation.⁵

Peter W. Rodman, who serves as the Assistant Secretary of Defense for International Security Affairs in the Bush Administration, held a different view, arguing in the Fall 1985 issue of *The National Interest* that Congress could be an “artificial institutional drag” on the President’s ability to conduct an effective foreign policy. He posited that “A strong Congress can block or constrain; it cannot impose a coherent or vigorous foreign policy of its own.” Rodman assailed the War Powers Resolution as both ineffective and unconstitutional, expressing “the institutional impulse of Congress...to attempt to narrow further the freedom of the President to take the initiative.”⁶

These fundamental disagreements about foreign policy roles of the Executive and the Congress are as relevant today as they were when written more than a decade ago. Indeed, the post-9/11 scholarly disagreements fall along the same lines that shaped the debate between Glennon and Rodman during the Cold War and early post-Cold War years. These disagreements reemerged during the April 17, 2002 meeting of the Subcommittee on the Constitution, Civil Rights and Property Rights of the Senate Judiciary Committee on “Applying the War Powers Resolution to the War on Terrorism.” (This was the only post-September 11 congressional hearing on the issue of war powers.) According to Senator Russell Feingold (D-WI), Chairman

* See full text of WPR (P.L. 93-148, November 7, 1973) in Appendix B (2).

of the Subcommittee, the purpose of the hearing was to address “one of the most important constitutional questions confronting this country as we respond to the atrocities of September 11. . . .the balance of war powers authority under the Constitution as it relates to our fight against terrorism.” Feingold stressed that the WPR recognized Congress to be the “custodian of the authority to declare war” and required regular and meaningful consultations between the Executive and the Legislative branches “both to begin and to sustain our military engagements.” He further noted:

The effectiveness to date of our military campaign to respond to the attacks of September 11 demonstrates that our nation and our military operate at the zenith of moral, political, and military might when acting under Constitutional authority and with a defined democratic mandate.

Feingold stressed that consultation between the President and Congress required by the WPR “increases the moral authority of the United States to act forcefully.”⁷ When Senator Feingold rose to the Senate floor on June 10, 2002, to speak on the same subject, he stated that “constitutional unity presents both a stronger international image of the United States to our friends and foes, and, at the same time, a more comforting image of U.S. power to many of our close allies in the war against terrorism.”⁸

In his statement to the Subcommittee, Senator Strom Thurmond (R-SC) said that “the President has broad constitutional powers to combat terrorism as he sees fit.”⁹ He continued:

The President is best equipped to make crucial and time-sensitive decisions about the deployment of troops based on the latest intelligence information. In addition, the President is the Nation’s leader in setting foreign policy, a process that is often deeply intertwined with decisions relating to the use of military force.

Senator Thurmond also noted that the Congress had already given President Bush “an open-ended mandate to deter future acts of terrorism by passing the use of force resolution [S.J. Res. 23].”¹⁰

In his testimony to the Committee, John Yoo, Deputy Assistant Attorney General in the Office of Legal Counsel of the U.S. Department of Justice, stated that President Bush’s “conduct of the war against terrorism is authorized under the Constitution and consistent with the War Powers Resolution.” He pointed out that the attacks of 9/11 created a state of national emergency¹⁰, which Section 2 of WPR recognized as one of the cases in which the President could use military force without prior consultation with the Congress. Yoo further explained that President Bush drew additional authorization to use force from S.J. Res. 23. Notwithstanding these sources of authority, Yoo noted, “nothing in the text of the Constitution requires the advice and consent of the Senate, or the authorization of Congress, before the President may exercise the executive power and his authority as Commander in Chief.” At the same time, Yoo stated, “When fighting ‘a highly mobile, diffuse enemy that operates largely beyond the reach of our conventional war-fighting techniques,’ extensive congressional discussion will often be a luxury we cannot afford.”¹¹

¹⁰ In fact, the final version of use of force authorization restricted the mandate to those directly responsible for the September 11 attacks. See full text of S.J. Res. 23 (P.L. 107-40, September 18, 2001) in Appendix B (3). This resolution is discussed in detail in Chapter 2.

Yoo's judgment was shared by Douglas Kmiec, Dean of the Columbus School of Law at the Catholic University of America, who pointed out in his prepared statement that "Congress's role is one of material support, not tactical judgment." Kmiec stated that S.J. Res. 23, combined with the President's Constitutional Article II power,[#] gave President Bush "ample and plenary" authority to determine the course of action in the war against terrorism. He further suggested that "Congress oversteps its constitutionally determined role if it uses monetary conditions to usurp or impede the tactical decisions that only the President can make."¹²

In contrast, Alton Frye, Director of the Program on Congress and Foreign Policy at the Council on Foreign Relations, exhorted "a responsible Congress" to participate in the making of the U.S. foreign policy. Frye suggested that there was "an enduring necessity to balance executive potency in military endeavors with the legislative review that provides democratic legitimacy. The challenge is not to enchain the presidency but to harness both branches to common purpose."¹³

OBJECTIVES

War powers specialists disagree on two broad issues. First, what war powers the Constitution delegates to the Congress and to the President, respectively. Second, what the original intent of the framers of the Constitution was. Beyond these important and informative disagreements, a policy-oriented approach to the issue of Congress's role in foreign policy-making is needed. While the nature and scope of the war on terrorism are addressed in greater detail in Chapters 2 and 3, it is important to note at this stage that post-September 11 foreign policy-making has been undertaken largely in the name of the "war on terrorism."¹⁴ Hence, the discussion of congressional war powers in this paper—unlike that in much of the pre-9/11 scholarship—should be understood broadly, as a discussion of the congressional role in foreign policy-making.

The Constitution and the laws (notably, the WPR) governing the distribution of war powers between the Executive and the Legislative branches of government are broad and open to interpretation. The continuing debate, more than two centuries after the adoption of the Constitution, about the meaning of the clauses that divide war powers among the two branches of the national government attests to this fact. Interpretation of the country's founding documents and the laws, such as the WPR, is increasingly important, now that the United States has entered a new strategic environment. Since September 11, 2001 the country has been forced to rethink many of the traditional processes of national governance. The new strategic environment, defined by the war on terrorism, calls for a reexamination of Congress's war powers.

Scholars still dispute whether congressional involvement in foreign policy-making does service to the U.S. national interests. Some, like Rodman, Yoo, Kmiec, and Thurmond, believe that active congressional participation either is entirely unhelpful or simply impossible during the war against terrorism when foreign policy is best crafted by an Executive Branch unfettered by Congress's involvement. Other observers, such as Glennon, Frye, and Feingold, disagree. They contend that Congress's foreign policy role is mandated by the Constitution; some also add that congressional involvement in the foreign policy-making process is necessary to best frame a foreign policy that serves the interests of the American people.

[#] Article 2, Section 2, Clause 1 of the Constitution designates the President to be the Commander in Chief of the United States Armed Forces.

This paper:

- (a) Outlines and analyzes Congress's response to the 9/11 attacks;
- (b) Traces the development of the Bush Doctrine since 9/11 through the Bush Administration's public statements, and analyzes Congress's initial response to the Doctrine;
- (c) Traces the development of the war strategy on Afghanistan; and
- (d) Provides an analysis of Congress's oversight of the war strategy on Iraq.

In this paper, the extent and effectiveness of congressional involvement in the making of U.S. foreign policy from September 11, 2001 (terrorist attacks) until March 2003 (invasion of Iraq) are addressed. The analysis focuses on two specific checks that Congress can exercise over the Executive Branch: the Constitutional power to declare war and congressional hearings. (Other checks include appropriations and threat of impeachment.) Based on the evidence of Congress's success in exercising its oversight responsibilities, conclusions will be drawn about its role in foreign policy-making and recommendations for more effective congressional participation will be presented.

By virtue of Constitutional prerogatives and custom, Congress plays a profoundly important role in shaping the international role of the United States. A better understanding of how Congress contributes to the making of foreign policy is, thus, important if the projection of U.S. power abroad is to achieve its tactical and strategic objectives at the lowest cost to the American people. This is especially important today when the highest national commitment and resolve is required from the U.S. government to effectively prosecute and win the war on terrorism.

In the next chapter, three post-9/11 war powers cases are examined. The first case study is the period after the attacks until the start of Operation Enduring Freedom in Afghanistan in early October 2001. This period provides a critical context for the analysis of post-9/11 executive-legislative interaction. The second case study is the war in Afghanistan, the first post-9/11 war. This case study is brief because the Bush Administration and Congress agreed on the need to eliminate the Taliban regime. Thus, this case study does not present a strong test of war powers. The final case study is the Iraq War, which began in March 2003.

September 11 Attacks and America's Response

The events of September 11, 2001 were a turning point in the modern history of the world. As Thomas H. Kean and Lee H. Hamilton, Chair and Vice-Chair, respectively, of the National Commission on Terrorist Attacks Upon the United States (hereafter, the 9/11 Commission), stated as they released the Commission's final report on July 22, 2004, "On September 11, 2001, 19 men armed with knives, box cutters, mace and pepper spray penetrated the defenses of the most powerful nation in the world. They inflicted unbearable trauma on our people, and turned the international order upside down."¹⁵ September 11, wrote Philip Stephens, a columnist for the British daily *Financial Times*, caused "convulsions in the geopolitical system."¹⁶

UNITY

The attacks elicited an unprecedented show of national unity by people from all walks of life. Congress was no exception. The day after the attacks, Congress held a regular session. That day, both houses passed a resolution condemning the attacks and pledging to expend all the powers of the national government to respond to them. S.J. Res. 22 was passed unanimously by the Senate, 100-0. On the same day, an identical resolution, H.J. Res. 61, was passed unanimously by the House of Representatives, 408-0. Among other things, Congress pledged to "support the determination of the President, *in close consultation with the Congress*, to bring to justice and punish the perpetrators of these attacks as well as their sponsors" (emphasis added). The resolution also declared September 12 to be the National Day of Unity and Mourning.¹⁷ President Bush signed S.J. Res. 22 into law on September 18.

EMERGENCY APPROPRIATIONS—CONGRESS ACTS

On September 12, President Bush wrote to Representative Dennis Hastert (R-IL), the Speaker of the House of Representatives, asking Congress to "immediately pass" an emergency appropriations bill for \$20 billion "to provide resources to address the terrorist attacks on the United States that occurred on September 11, 2001, and the consequences of such attacks." "Passing this supplemental appropriations bill without delay," Bush wrote, "will send a powerful signal of unity to our fellow Americans and to the world."¹⁸

On September 14, Congress considered the bill, H.R. 2888, "2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States," which proposed making available to the President \$20 billion for "disaster recovery activities" and an additional \$20 billion for anti-terrorism measures.

During the discussion, Representative Bill Young (R-FL), Chairman of the Appropriations Committee, echoed the unity of the past couple of days, saying that the Members of the House “debated, argued our [sic] some differences, and worked together as Americans to come up with the right solution.”¹⁹ Right after the 9/11 attacks, the GOP talked about giving President Bush a no-monetary-limits, no-conditions “blank check” to respond to the catastrophe, and Young said at the time: “We think the president needs that flexibility”.²⁰ When he rose to the floor, Representative David R. Obey (D-WI) observed that “This bill provides unprecedented grants of authority to the President, but it does retain reasonable congressional ability to make its own judgments about how this money ought to be spent”.²¹ According to Obey, the President would be able to use \$10 billion of the total amount appropriated by the bill as soon as he signed the measure. An additional \$10 billion would be made available, upon the President’s submission of a plan for its use and the Congress’s review of that plan. To this end, Obey said that he expected that there “will be a respectful relationship between the two branches of government in ironing out any misgivings that Congress might have with respect to any of those plans.” The last \$20 billion provided by H.R. 2888 would be made available to the President, upon the submission of the presidential budget request and appropriate action by Congress.²² The bill was approved unanimously, 422-0, in the House of Representatives. The Senate unanimously passed, 96-0, an identical emergency appropriations bill, S. 1426, on the same day.

THE USE OF FORCE—WITHER UNITY?

The debates in Congress over S.J. Res. 23, the resolution, authorizing President Bush to use force against those responsible for the September 11 attacks, revolved around the breadth of authority the measure granted. The first draft of the resolution as proposed by the Bush Administration would have authorized the President to “deter and preempt any future acts of terrorism against the United States.” Even the watered-down version of the resolution, which eventually passed, gave the President sweeping authority to use “all necessary and appropriate force” against anybody that “he determines planned, authorized, committed, or aided” the 9/11 attacks. S.J. Res. 23 contained no stipulation, requiring the President to consult with Congress as he carried out the measure. Nevertheless, the passage of S.J. Res. 23 sent a powerful signal to the country and to the world that the national government was united in its determination to respond to the 9/11 attacks and, in the long term, to prosecute the war on terrorism.

The major point of contention in the Congress was whether (a) the measure authorized the use of force *strictly* against those undetermined and unnamed entities (states, organizations, persons, etc.) who were involved in some way in the perpetration of the attacks, or (b) the provision “in order to prevent any future acts of international terrorism” gave the President *carte blanche* to pursue any and all entities who might attack the U.S. in the future.

During the brief discussion of the measure in the Senate, Senator John McCain (R-AZ) took a position close to option (b), above, when he spoke of “a long and trying campaign for freedom” and urged Congress to give the President “all necessary means” to vanquish the enemy.²³ Senator John Kerry (D-MA) expressed an opposing view: “This resolution... does not give the President a blanket approval to take military action against others under the guise of fighting international terrorism. It is not an open-ended authorization to use force in circumstances beyond those we face today.”²⁴

The resolution, S.J. Res. 23, “Authorization for Use of Military Force,” authorized the President in Section 2(a)²⁵

to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

The resolution noted in Section 2(b)(1) that “consistent with section 8(a)(1) of the War Powers Resolution,” this section of S.J. Res. 23 “is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.” At the same time, Section 2(b)(2) stated that “Nothing in this resolution supercedes [sic] any requirement of the War Powers Resolution.” S.J. Res. 23 was passed unanimously by the Senate, 98-0.

On its identical version of the resolution, H.J. Res. 64, the House of Representatives was divided along the same lines. Representative Sam Johnson (R-TX) took the expansive position that “the President will, at the appropriate time, use the full force of the United States to stop those who are opposed to freedom and the American way of life.”²⁶ Representative Joseph M. Hoeffel (D-PA) similarly stated that “this grant of authority and this purpose of force is to prevent any future acts of international terrorism against the United States.”²⁷ When he rose to the floor Representative Lamar S. Smith (R-TX) lamented that the resolution was not broad enough, as it only authorized President Bush to retaliate against the perpetrators of the September 11 attacks and not to “punish terrorists whenever it is in the best interests of America to do so.” “This resolution,” Smith continued, “while helpful in some ways, ties the President’s hands and allows only the pursuit of one individual and his followers and supporters.”²⁸ Representative Fortney H. Stark (D-CA), however, expressed concern that Congress was abdicating its Constitutional right to declare war and its responsibility to oversee the actions of the Executive Branch. He argued that the resolution “should contain explicit language ensuring that the President reports to Congress and consults with us in planning and executing a military response.” While indicating his intention to vote affirmatively on the resolution, Stark insisted that “the President make Congress an integral part of our nation’s response to these attacks.”²⁹ His concerns were shared by a few Members of the House, including the one member of Congress who voted against the resolution. Representative Barbara Lee (D-CA) said that she “agonized over this vote” but was “convinced that military action will not prevent further acts of international terrorism.”³⁰ In an interview with the *Los Angeles Times*, she said that the resolution granted a very broad power mandate to President Bush. “I believe Congress has got to be part of the decision-making process.... This resolution...is open-ended. It doesn’t have an exit strategy; it does not have any reporting requirements.”³¹

Just before H.J. Res. 64 was passed, Representative John F. Tierney (D-MA) offered a motion to recommit, adding a reporting and consultation requirement to the resolution. Had it passed with this additional section, the resolution would have required the President to report to Congress at least once a month on the actions taken pursuant to it. The Tierney amendment also reiterated that President Bush was bound by the reporting and consultation requirements of applicable laws, including sections 3 and 4 of the WPR.³² While Section 2(b)(2) of H.J. Res 64 stated that “Nothing in this resolution supercedes [sic] any requirement of the War Powers Resolution,” there was no specific clause, obligating the President to consult with the Congress. (Section 3 of the WPR commits the President to “consult” with the Congress “in every possible instance” when U.S. armed forces are introduced into hostilities, and stipulates that the President is to consult “regularly” with the Congress until U.S. armed forces “are no longer engaged in hostilities or have been removed from such situations.” Section 4 of the WPR provides for situations when armed forces are introduced into hostilities

absent a declaration of war by Congress, in which case the President must provide an initial report to Congress within 48 hours and, if armed forces continue to be engaged in hostilities, the President must report “periodically” but not less often than once every six months.)

Explaining his reasons for proposing this amendment, Representative Tierney warned that passing the resolution in the original form would mean that Congress was “purposely” abdicating its “constitutional obligations and responsibilities.” “It seems unlikely,” he continued, “that this Congress would knowingly deny itself the information that may well be necessary in the future in order to intelligently carry out its work with the President in meeting their *shared* responsibilities in the area of national security” (emphasis added).³³ Representative Henry Hyde (R-IL), however, rose to the floor to protest the “illogical” move to “reimpose and, in one case, tighten the restrictions of the War Powers Resolution, if our larger purpose is to make it easier for the President to respond to terrorism.”³⁴ There was no further debate; Tierney’s motion to recommit was rejected, and H.J. Res. 64 was then passed in its original form, 420-1.

DECLARATION OF WAR

The attacks of September 11 were acts of war against the United States. While it was not yet clear who the perpetrators were, where they came from, and who supported or harbored them, it was clear that they had declared war on the United States.* On that September morning, the United States found itself at war with an undefined enemy. Many Members of Congress used the word “war” in their passionate, angry and patriotic speeches on Capitol Hill on September 12, but those who called for Congress to declare war found themselves in the minority. Senator Mitch McConnell (R-KY) said: “Make no mistake, our country is at war, and this Congress should consider a formal declaration. The world must understand that America will respond with the overwhelming force and conviction that her citizens demand and expect.”³⁵ When he rose to the House floor on September 14 to voice his support for H.J. Res. 64, Representative Jim Kolbe (R-AZ) stated: “This is not a resolution expressing our outrage. It is nothing less than a declaration of war. Success will be measured by eradicating the individuals and the networks of those responsible for this act of war.”³⁶

Yet Congress chose to authorize war, instead of issuing a formal declaration. When asked at a press conference on September 12 whether there had been a discussion in the White House about asking Congress for an official declaration of war, Ari Fleischer, the White House Press Secretary, said: “We are dealing, at least at this point, with nameless, faceless people. And it is a different type of war than it was, say, when you knew the capitol [sic] of the country that attacked you. . . . the President will continue to work with Congress on appropriate language at the appropriate time.”³⁷

In an address to a joint session of Congress on September 20, President Bush described the war on international terrorism: “Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.”** The President pledged to use “every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence, and every necessary weapon of war—to the disruption and to the defeat of the global terror network.” “Our response,” Bush continued,³⁸

* See full text of Osama Bin Laden’s Declaration of War against the United States, February 23, 1998, in Appendix A (2).

** See full text of President George W. Bush’s Address to Joint Session of Congress, September 20, 2001, in Appendix A (3).

involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. ...we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.

At a press conference four days later, President Bush provided a more succinct definition of the new war: “Our war is against terrorism. Those who would conduct terrorist acts against the United States, those who sponsor them, those who harbor them, those who challenge freedom wherever it may exist.”³⁹

THE ROLE OF CONGRESS

In the aftermath of the attacks, Congress played an important role in providing the sense of absolute national unity of purpose. Indeed, the *Christian Science Monitor* wrote on September 19 that “the byword [on Capitol Hill] is not just bipartisanship, where two parties work together, but nonpartisanship—where all work for the common good.”⁴⁰ This sense of national purpose provided a critical foundation for the actions that the United States was to take in the months ahead. In his first radio address to the nation after the attacks, President Bush said that he was “deeply grateful” for “a remarkable unity” of the Congress. “A terrorist attack designed to tear us apart,” Bush said, “has instead bound us together as a nation.”⁴¹

While remaining unequivocally united behind the President in a time of a “grave test of a generation’s fiber,”⁴² Congress sought to guard its Constitutional prerogatives and responsibilities. It succeeded in doing so by ensuring accountability when it required the President to report on the use of emergency September 11 funds. It was much less successful in seeking accountability for the use of force.

The discussion of the use of force resolution provided an opportunity for Congress to reaffirm, in words, its Constitutional war powers prerogatives. During that debate, Members stated that they were “entrusting” or “extending” the war powers to the President. On September 14, for example, Senator Herb Kohl (D-WI) said: “This resolution faithfully and responsibly executes our duty under the Constitution. We have not ceded our power to the President, Congress remains a co-equal branch and a partner with the President in this struggle.”⁴³ Senator Kohl’s Wisconsin colleague, Senator Russell Feingold (D-WI), put it even more forcefully: “Congress owns the war power. But by this resolution, Congress loans it to the President in this emergency.”⁴⁴

All the speeches notwithstanding, since 9/11 Congress failed to articulate how it would, henceforth, carry out its Constitutionally-mandated war duties. As the *Christian Science Monitor* editorial put it: “a thorny issue remains for Congress: how to extend traditional powers to the presidency in a war that seems open-ended?”⁴⁵ The post-9/11 circumstances called for Congress to authorize the use of force against the Taliban, instead of issuing a declaration of war. Said Senator Russell Feingold (D-WI): “it should go without saying that to declare a war, [the President] must identify our adversary.”⁴⁶ President Bush made it clear, however, that the war in Afghanistan was just the beginning of a protracted campaign against terrorism. In this respect, with the exception of one hearing in the Senate Judiciary Committee discussed in Chapter 1, Congress showed little interest in exploring what its new war role was supposed to be. As will become evident in Chapters 3 and 4, respectively, Congress was also weak in overseeing the articulation and execution of the Bush Doctrine.

The Bush Administration, unwilling to shatter the powerful sense of post-9/11 unity, was careful and sensitive in its response to the voices in Congress, claiming that Congress “owned” the war power. When he signed S.J. Res. 23 into law on September 18, President Bush said that Congress acted “wisely, decisively, and in the finest traditions of our country.” The resolution recognizes, Bush continued, “the authority of the President under the Constitution to take action to deter and prevent acts of terrorism against the United States. In signing this resolution, I maintain the longstanding position of the executive branch regarding the President’s constitutional authority to use force, including the Armed Forces of the United States and *regarding the constitutionality of the War Powers Resolution*” (emphasis added).⁴⁷ (Since WPR was passed over President Richard Nixon’s veto in 1973, no President has ever recognized it as Constitutional.)

WAR ON TERRORISM

War on terrorism resembles the Second World War in that the Executive Branch experiences greatly expanded discretion in carrying out its policies. Like the two world wars of the 20th century, this is an all-out, unconditional war to defeat the adversary. Yet, in several respects, war on terrorism is unique: the resulting shape of U.S. foreign policy, the geographic and temporal span, the nature of the enemy, the types of weapons used, and the victory sought. The war on terrorism heralds a long period in U.S. history when war will serve as the central, unifying and defining pillar of U.S. foreign policy. This is a global war with no geographical boundaries, with the whole world as its theater. As the 9/11 Commission report put it, “9/11 has taught us that terrorism against American interests ‘over there’ should be regarded just as we regard terrorism against America ‘over here.’ In this same sense, the American homeland is the planet.”⁴⁸

According to the February 2003 *National Strategy for Combating Terrorism*, the war on terrorism is open-ended; it is a permanent war that is being fought until “Americans and other civilized people around the world can lead their lives free of fear from terrorist attacks.”⁴⁹ The nature of the adversary in this war and the means that the United States will employ to target this enemy are also unique:

The enemy is not one person. It is not a single political regime. Certainly it is not a religion. The enemy is terrorism—premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents. ... We will fight terrorist networks, using every instrument of national power—diplomatic, economic, law enforcement, financial, information, intelligence, and military.

This war is also different from previous wars in the type of victory that the U.S. is seeking: “Progress will come through the persistent accumulation of successes—some seen, some unseen.”⁵⁰

When he described the war against terrorism in his address to Congress on September 20, 2001, President Bush did not ask for sacrifice, as past Presidents have when they summoned the Nation’s resolve to fight potentially lengthy and deadly wars. Bush did say that this war would “not look like the air war above Kosovo two years ago, where no ground troops were used and not a single American was lost in combat.” He continued: “Americans are asking: What is expected of us [in this time of war]? I ask you to live your lives, and hug your children. ... I ask you to be calm and resolute”. Bush also called for “patience, with the delays and inconveniences that may accompany tighter security” and “patience in what will be a long struggle”.⁵¹ This call for sacrifice was quite different from the ones that accompanied past declarations of war.

At the founding of the Republic, when the thirteen colonies declared independence from Great Britain, the signatories of the Declaration of Independence pledged “to each other our Lives, our Fortunes and our sacred Honor.” On February 3, 1917, President Woodrow Wilson, claiming his “unhesitating obedience to what I deem my constitutional duty,” asked Congress for a resolution, declaring that a state of war existed between the United States and Imperial Germany. “There are, it may be many months of fiery trial and sacrifice ahead of us,” Wilson continued,⁵²

But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts, for democracy, for the right of those who submit to authority to have a voice in their own Governments, for the rights and liberties of small nations. . . . To such a task we can dedicate our Eves and our fortunes, every thing that we are and everything that we have, with the pride of those who know that the day has come when America is privileged *to spend her blood and her might* for the principles that gave her birth and happiness and the peace which she has treasured (emphasis added).

When President Franklin Delano Roosevelt spoke to the nation on December 9, 1941, after the bombing of Pearl Harbor, he addressed the issue of sacrifice explicitly: “The casualty lists of these first few days will undoubtedly be large.” “I was about to add that ahead there lies sacrifice for all of us,” he continued. “But it is not correct to use that word. The United States does not consider it a sacrifice to do all one can, to give one’s best to our Nation, when the Nation is fighting for its existence and its future life. It is not a sacrifice for any man, old or young, to be in the Army or the Navy of the United States. Rather is it a privilege.”⁵³

At this writing, the two main events in the war on terrorism have been the war in Afghanistan in 2001 and the war in Iraq, which began in 2003. These wars were products of the foreign policy strategy, commonly known as the Bush Doctrine, that the Bush Administration has articulated since September 11. To assess effectively the extent and effect of congressional involvement in these two wars, it is necessary first to analyze the strategy from which they originated, and to examine the extent to which Congress took part in the formulation of this strategy.

War on Terrorism: Setting the Strategy

Since September 11, 2001, the Bush Administration published seven national strategies to address various aspects of the war on terrorism. These strategies are:

- *National Strategy for Homeland Security*, July 2002;
- *National Money Laundering Strategy*, July 2002;
- *National Security Strategy of the United States of America*, September 2002;
- *National Strategy to Combat Weapons of Mass Destruction*, December 2002;
- *National Strategy for Combating Terrorism*, February 2003;
- *National Strategy for the Physical Protection of Critical Infrastructures and Key Assets*, February 2003;
- *National Strategy to Secure Cyberspace*, February 2003.

Three of these strategies, *National Security Strategy of the United States of America* (NSS), *National Strategy to Combat Weapons of Mass Destruction* (NSCWMD), and *National Strategy for Combating Terrorism* (NSCT), form the foundation for the foreign policy strategy of the Bush Administration, otherwise known as the Bush Doctrine. The doctrine has three main pillars. First, it elevates the option of preemptive self-defense in the strategic thinking, while shifting the emphasis from preemptive action to preventive war. Second, it fuses the threat posed by state tyrannies and international terrorists into one whole. Third, undergirding the first two pillars of the Doctrine is an intensely moralistic belief that the events of September 11 were history's call for America to make the world a better place. These three pillars are clearly articulated in the NSS, and are elaborated in the NSCWMD and NSCT. An examination of the language used in these strategies and the policies that these documents propose sets the stage for the analysis of the U.S. war in Afghanistan and in Iraq in Chapter 4. We begin by considering how the Bush Doctrine evolved since September 11, 2001.⁵⁴

Preemptive elimination of threats and the emphasis on the tyranny-terrorist nexus were clearly evident in the Bush Administration's numerous public pronouncements. Less than two months after he took office, President Bush reportedly said of al Qaeda: "I'm tired of playing defense. I want to play offense. I want to take the fight to the terrorists."⁵⁵ And when he addressed the nation on the evening of September 11, Bush

warned that “We will make no distinction between the terrorists who committed these acts and those who harbor them.”⁵⁶ When he convened a meeting of his national security team, which he called his “war council,” later that evening, Bush stressed his determination “to punish not just the perpetrators of the attacks, but also those who harbored them.”^{57*}

Addressing the joint session of Congress nine days after the attacks, Bush said: “Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists.”⁵⁸ In an address to the United Nations on November 10, 2001, Bush invoked the lessons of the Second World War, saying that “we resolved that the aggressions and ambitions of the wicked must be opposed *early*, decisively, and collectively, *before* they threaten us all” (emphasis added in both instances). Bush also issued a stern warning: “For every regime that sponsors terror, there is a price to be paid. And it will be paid. The allies of terror are equally guilty of murder and equally accountable to justice.”⁵⁹

President Bush’s State of the Union Address on January 29, 2002 was a major development in the articulation of the Bush Doctrine. In the speech, Bush cogently articulated all three pillars of his worldview. He claimed that “we are winning the war on terror,” yet cautioned that “*our* war against terror is only beginning” (emphasis added).⁶⁰ He continued,

Thousands of dangerous killers, schooled in the methods of murder, *often supported by outlaw regimes*, are now spread throughout the world like ticking time bombs, set to go off without warning. ... So long as training camps operate, so long as nations harbor terrorists, freedom is at risk. ... we must prevent *the terrorists and regimes* who seek chemical, biological or nuclear weapons from threatening the United States and the world (emphasis added in both instances).

Bush then singled out North Korea, Iran and Iraq, spending about as much time on Iraq as he did on North Korea and Iran combined:

States like these, *and their terrorist allies*, constitute an axis of evil, arming to threaten the peace of the world. By seeking weapons of mass destruction, these regimes pose a grave and growing danger. *They could provide these arms to terrorists, giving them the means to match their hatred.* ... We will work closely with our coalition to deny *terrorists and their state sponsors* the materials, technology, and expertise to make and deliver weapons of mass destruction. ...

We’ll be deliberate; yet time is not on our side. *I will not wait on events, while dangers gather. I will not stand by, as peril draws closer and closer.* The United States of America will not permit the world’s most dangerous regimes to threaten us with the world’s most destructive weapons (emphasis added in all instances).

Bush concluded the address by saying that “America will always stand firm for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; respect for women; private property; free speech; equal justice; and religious tolerance.”⁶¹

* Quotes are from the *9/11 Commission Report*.

In a speech at the National Defense University two days later, Secretary of Defense Donald H. Rumsfeld took up Bush's point on the need to act on emerging threats, saying that "Defending against terrorism and other emerging 21st century threats may well require that we take the war to the enemy. The best, and in some cases, the only defense, is a good offense."⁶²

The Bush Doctrine was further enunciated in the graduation speech, hailed as a "historic break" with the Cold War security doctrines⁶³, that President Bush delivered at the U.S. Military Academy at West Point on June 1, 2002. In this speech, Bush continued to capitalize on the fused threat of "terrorists and tyrants." Warning that "we face a threat with no precedent" and that "new threats require new thinking," Bush stated that the Cold War doctrines of deterrence and containment had become antiquated and no longer worked against terrorists and dictators, respectively. "Deterrence—the promise of massive retaliation against nations—means nothing against shadowy terrorist networks with no nation or citizens to defend. Containment is not possible when unbalanced dictators with weapons of mass destruction can... secretly provide them to terrorist allies." Warning that his Administration would not "leave the safety of America and the peace of the planet at the mercy of a few mad terrorists and tyrants," Bush concluded, "*If we wait for threats to fully materialize, we will have waited too long.* ... the war on terror will not be won on the defensive. ... In the world we have entered, the only path to safety is the path of action" (emphasis added).⁶⁴

Warning of threats "hidden in caves and growing in laboratories," Bush repeatedly pledged the determination of the United States to confront "regimes that sponsor terror" and "evil and lawless regimes." This determination, in Bush's words, would require "firm moral purpose" because "our enemies are totalitarians, holding a creed of power with no place for human dignity."⁶⁵ Referring to "enemies," as had by then become habitual, Bush made no distinction between the tyrannical regimes and the terrorists themselves. Both had been cast as enemies of freedom.

Vice-President Richard Cheney elaborated the Bush Doctrine in a speech before the National Convention of the Veterans of Foreign Wars on August 26, 2002. Cheney dwelled on the threat posed by Saddam Hussein, echoing Bush's West Point theme that deterrence and containment did not apply in an age when "dictators obtain weapons of mass destruction, and are prepared to share them with terrorists who intend to inflict catastrophic casualties on the United States."⁶⁶ Warning against "wishful thinking or willful blindness," Cheney stated that "deliverable weapons of mass destruction in the hands of a terror network, or a murderous dictator, or the two working together, constitutes [sic] as grave a threat as can be imagined. ... This nation will not live at the mercy of terrorists or terror regimes." In conclusion, Cheney pledged that the United States "can and... will build a safer and better world beyond the war on terror."

The public appearances by senior officials of the Bush Administration laid groundwork for publication of the *National Security Strategy* in September 2002.⁶⁷ The 18-page document was the most succinct enunciation yet of the President's worldview and of his post-September 11 security calculus. In the opening statement by President Bush, the NSS fleshed out the three pillars of U.S. foreign policy. The President pledged to "defend the peace by fighting terrorists and tyrants," to "hold to account nations that are compromised by terror," and to act against "emerging threats... before they are fully formed." Above all, Bush stated, America will seek to "create a balance of power that favors human freedom." The pillars of preemption, fusion of disparate threats of terrorists and tyrants, and what can be termed "strategic moralism," would then be articulated in greater detail in the body of the strategy.

TYRANTS AND TERRORISTS: THE NEXUS OF THE TWO “T”s

Lest there be any doubt, the NSS states unequivocally: “We make no distinction between terrorists and those who knowingly harbor or provide aid to them.” The Administration’s primary focus would be on “those terrorist organizations of global reach and any terrorist or state sponsor of terrorism which attempts to gain or use weapons of mass destruction.” The NSS notes that “new deadly challenges have emerged from rogue states and terrorists.” Rogue states, according to the NSS, have several distinguishing characteristics: they have abysmal human rights records, systematically flout international law, seek to acquire WMD for offensive uses, and “hate the United States and everything for which it stands.” The NSS singles out Iraq and North Korea as examples, and warns that “these states’ pursuit of, and global trade in, such weapons has become a looming threat to all nations.”

PREEMPTION/PREVENTIVE WAR

Given the goals of “rogue states and their terrorist clients,” and in order to stop them, the United States

can no longer rely on a reactive posture as we have in the past. The inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit that option. *We cannot let our enemies strike first.* ...The overlap between states that sponsor terror and those that pursue WMD compels us to action. ...

We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries. ...The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking *anticipatory action* to defend ourselves, *even if uncertainty remains as to the time and place of the enemy’s attack.* To forestall or *prevent* such hostile acts by our adversaries, the United States will, if necessary, act preemptively (emphasis added in all instances).

STRATEGIC MORALISM

The first chapter of the NSS, entitled “Overview of America’s International Strategy,” contains an important sentence: “The aim of this strategy is to help make the world not just safer but better.” This idea connects with the discussion of rogue states that “brutalize their own people” and “reject basic human values.”

The NSS was complemented in December 2002 by the release of the *National Strategy to Combat Weapons of Mass Destruction* (NSCWMD).⁶⁸ The new strategy opens with a familiar fusion of tyranny and terrorism: “Weapons of mass destruction (WMD)—nuclear, biological, and chemical—in the possession of hostile states and terrorists represent one of the greatest security challenges facing the United States.” Noting that “some states, including several that have supported and continue to support terrorism, already possess WMD” and that terrorist groups seek to “acquire WMD with the stated purpose of killing large numbers of our people and those of friends and allies,” the NSCWMD arrives at a by-now familiar fused conclusion: “We will not permit the world’s most dangerous regimes and terrorists to threaten us with the world’s most destructive weapons.” Although peppered with references to “hostile states and terrorists” and “proliferant states and

terrorist networks,” NSCWMD is oriented primarily towards states. Most of the discussion is devoted to interdiction, deterrence and defense against, and mitigation of possible attacks by states. NSCWMD also pledges to strengthen international nonproliferation regimes and export controls in order to stem WMD proliferation by hostile states. However, the strategy concludes by reiterating the tyranny-terrorism nexus facing the U.S., warning that “the current and potential future linkages between terrorist groups and state sponsors of terrorism are particularly dangerous and require priority attention.”

The *National Strategy for Combating Terrorism* (NSCT), released in February 2003, struck the familiar notes, stating that it “focuses on identifying and defusing threats, before they reach our borders.”⁶⁹ NSCT further notes: “Some irresponsible governments... may provide terrorists access to WMD. Such actions would be unacceptable to the United States. We are prepared to act decisively to stop terrorists from acquiring WMD or precursors.”

The *Progress Report on the Global War on Terrorism*, released by the White House in September 2003, notes that “Our best defense against terrorists is to root them out wherever they hide—in the Iraq and Afghanistan theaters and throughout the world—and preempt acts of terror by using all the tools of statecraft.”⁷⁰ Demonstrating the tyranny-terrorism nexus, the report boasts that the United States led a coalition to defeat “Saddam Hussein’s regime of terror.”

FORMULATING THE BUSH DOCTRINE: CONGRESS’S ROLE

The various pronouncements by President Bush, especially his speech at West Point, and publication of the NSS, generated a healthy debate both at home and abroad among scholars and commentators about preemptive action. In the words of Marc Trachtenberg of the University of California at Los Angeles, “there is no getting around the fact that the whole tone of American [foreign] policy shifted quite dramatically after September 2001.”⁷¹ William A. Galston, a former Clinton Administration official, wrote that “a global strategy based on the new Bush [preemption] doctrine means the end of the system of international institutions, laws and norms that the United States has worked for more than half a century to build.” “What is at stake,” he concluded, “is nothing less than a fundamental shift in America’s place in the world.”⁷² Bruce Ackerman of Yale University Law School wrote that the “breadth of this doctrine is breathtaking.”⁷³ Looking back, a British foreign affairs commentator wrote eloquently of the preemption doctrine: “The very enunciation of a doctrine that seemed to elevate force above law struck at America’s moral authority.”⁷⁴

A *Washington Post* editorial in late October 2002 defended the Bush Administration’s position as articulated in the NSS in view of the difficulties that the U.S. was facing in dealing with a presumably nuclear-armed North Korea: “the conundrum the administration faces in North Asia demonstrates why it cannot afford to remain passive in the Middle East.”⁷⁵ An editorial in the *Financial Times* argued, conversely, that the strategy can persuade hostile states, such as North Korea, to acquire nuclear weapons in order to deter the United States.⁷⁶ Indeed, as Joseph Nye of Harvard University once put it, “What North Korea shows is that deterrence is working. The only problem is that we are the ones who are being deterred.”⁷⁷

The enunciation of the new strategic doctrine was not lost on the United States allies, especially those in Europe. Their reactions ranged from “concern to alarm to irritation, resentment and anger” as they saw the United States and Europe drifting further apart—not only in capabilities, but also, now, in strategic thinking.⁷⁸

As the *Financial Times* put it, the Europeans saw the new U.S. strategy as “disturbing and radical, almost a throwback to 19th-century imperialism.”⁷⁹ And, opined one foreign policy observer, “the administration developed its policies about preemption and Iraq without readjusting its ideas about allies or coming up with a new strategy for dealing with them that was in line with these new doctrines.”⁸⁰

A steady stream of opinions in the American and foreign media about the new strategic doctrine was matched by a surprisingly scant reaction from Congress. The hearing on the National Security Strategy on November 19, 2003 in the House Armed Services Committee was the only such hearing in Congress. Representative Duncan Hunter (R-CA), the Committee Chairman, remarked that the NSS “makes a clear break” from pre-9/11 realities.⁸¹ In his testimony, Samuel R. Berger, President Clinton’s National Security Advisor, stated that the NSS elevated preemptive military action to “a defining doctrine of American strategic policy.”⁸² The definition and possible tactical applications of preemption were discussed in some detail during the hearing. The other two pillars of the Bush Doctrine—the tyranny-terrorism nexus and strategic moralism—were not addressed. During the hearing, Berger stated that if the NSS put forth the principle that the United States “has a duty to liberate oppressed people around the world. . . [i]t takes humanitarian intervention to a whole new plane.” Berger’s allusion to strategic moralism did not lead to further discussion. Instead, most of the hearing focused on the Iraq war and terrorism, as well as other foreign policy issues, such as Afghanistan, Colombia, Syria and even the Clinton Administration’s policy in Kosovo. The strategic implications of the Bush Doctrine received virtually no attention.⁸³ Congress held no hearings specifically on preemption. The issue came up several times only peripherally in various hearings on terrorism.

The Bush Doctrine elevated preemption to the “organizing principle of American strategic policy at the outset of the 21st century,” Senator Hillary Rodham Clinton (D-NY) declared in October 2003.⁸⁴ Yet, when the subject came up on an *ad hoc* basis during the discussion of other foreign policy issues, the level of discussion rarely crossed the threshold of oversight. In other words, the concept of preemption was rarely seriously questioned, examined and debated. It was certainly never accorded the time and depth of probe, analysis and oversight that “a defining doctrine of American strategic policy” should have commanded.

The Senate Foreign Relations Committee hearing on “What’s Next in the War Against Terrorism” on February 7, 2002, illustrates this trend. That hearing came on the heels of President Bush’s State of the Union Address in which he issued a stern warning: “I will not wait on events, while dangers gather. I will not stand by, as peril draws closer and closer. The United States of America will not permit the world’s most dangerous regimes to threaten us with the world’s most destructive weapons.” According to William Kristol, editor of the *Weekly Standard*, this presidential statement presaged “a fundamental departure from the U.S. policies of the past decade.” As Kristol put it succinctly, “The president has chosen to build a new world, not to rebuild the old one that existed before September 11, 2001.”⁸⁵ Despite Kristol’s exhortation to “openly and seriously” debate the Bush Doctrine, the hearing focused almost exclusively on the possibility of a war against Iraq.

Only rarely did preemption get some significant attention. During a hearing on “Combating Terrorism: A Proliferation of Strategies” of the Subcommittee on National Security, Emerging Threats and International Relations of the House Committee on Government Reform on March 3, 2003, Representative Dennis Kucinich (D-OH) debated the virtue of preemption in the case of the possible Iraq war with Representative Christopher Shays (R-CT). Kucinich argued that the threat from Iraq could not be dealt with preemptively since, in his view, Iraq did not pose a clear and present danger to the United States. Shays countered that Iraq was “within months potentially of getting nuclear weapons” and had to be stopped. He warned that preemption may be required to preclude “a small group of scientists from creating a biological agent that could wipe out humanity

as we know it.” Congressman Shays also stated that preemption was “a huge issue that there has to be lots of debate about.”⁸⁶ That debate has yet to take place.

On the floor of the Senate, several Members mentioned preemption in passing, strictly in the context of the impending war against Iraq. In January 2003, Senator Joseph Biden (D-DE), Ranking Member of the Foreign Relations Committee, mentioned “this cockamamie notion of a new doctrine of preemption which no one understands” as he questioned the Administration’s reasons for war against Iraq.⁸⁷ Earlier in January, Senator Edward M. Kennedy (D-MA) was also reported as saying that the Bush Administration “conflated” the idea of preemptive and preventive action.⁸⁸ In August 2003, Senator Robert C. Byrd (D-WV) questioned preemption, calling it “a doctrine of provocation” that “sent shockwaves throughout the international community.”⁸⁹ And on February 5, 2004, Senator Dianne Feinstein (D-CA) said Congress had to “carefully review the implications of the President’s so-called preemption doctrine.”⁹⁰

While preemption has been investigated negligibly, the strategic shift from preemptive action to preventive war has gotten even less attention. Most Members of Congress simply have overlooked the change of emphasis and continue, at this writing, to talk about the Bush Administration’s policy of “preemption” or “preemptive war” in Iraq. One of the rare exceptions was the following statement made by Senator Russell Feingold (D-WI) on September 26, 2002, during the debate on the congressional authorization to use force against Iraq:⁹¹

What the administration is talking about in Iraq really sounds much more like prevention, and I wonder if they are not using these terms, “preemption” and “prevention” interchangeably. Preemption is knowing that an enemy plans an attack and not waiting to defend oneself. Prevention is believing that another may possibly someday attack, or may desire to attack, and justifying the immediate use of force on those grounds.

War on Terrorism: Executing the Bush Doctrine

PART 1: WAR IN AFGHANISTAN

After the attacks of September 11, there was an overwhelming consensus between the Bush Administration and Congress on the need to eradicate the Taliban regime in Afghanistan, which for years had been a major hub for the al Qaeda terrorist network and a safe haven for Osama bin Laden himself. Already on September 12, some Members of Congress called for action against the Taliban. Senator John McCain (R-AZ) urged the U.S. to demand that the Taliban extradite bin Laden or “be treated as allies of our enemy.”⁹² Senator Orrin Hatch (R-UT) also argued that “his [bin Laden’s] protectors—the Taliban regime of Afghanistan... must be removed from power.”⁹³ Congress etched this determination in stone by passing S.J. Res. 23, which authorized the use of force against the perpetrators of the September 11 attacks.

In his speech to the joint session of Congress on September 20, President Bush issued an ultimatum to the Taliban. He demanded that the regime hand over all al Qaeda leaders and other terrorists, release all imprisoned foreign nationals, protect foreign journalists, diplomats and aid workers, “immediately and permanently” close all terrorist training camps and grant the U.S. “full access” to these camps. “The Taliban must act, and act immediately,” the President said. “They will hand over the terrorists, or they will share in their fate.”⁹⁴

On October 6, President Bush warned that the “Taliban regime has made that nation [Afghanistan] into a sanctuary and training ground for international terrorists—terrorists who have killed innocent citizens of many nations, including our own.”⁹⁵ The next day, the United States and the United Kingdom began military operations against the Taliban regime. In a letter dated October 7 to the President of the United Nations Security Council, U.S. Ambassador to the United Nations John D. Negroponte stated that the United States was exercising “its inherent right of individual and collective self-defence [sic] following armed attacks that were carried out against the United States on 11 September 2001.” Negroponte stated that the U.S. government had “clear and compelling information” that al Qaeda, harbored by the Taliban, played a “central role” in the attacks. He further noted that “We may find that our self-defense requires further actions with respect to other organizations and other States.”⁹⁶

Also on October 7, the President addressed the nation, saying that the “carefully targeted actions are designed to disrupt the use of Afghanistan as a terrorist base of operations, and to attack the military capability of the Taliban regime.” This first phase would give way to a second, which would involve “sustained, comprehensive and relentless operations to drive them [terrorists] out [of “hiding places”] and bring them to justice.”⁹⁷ This point was echoed later in the day by Secretary of Defense Donald H. Rumsfeld who stated that

the aim of the first military phase of the war was “to create conditions for sustained anti-terrorist and humanitarian relief operations.”⁹⁸

On October 9, President Bush wrote to the leaders of the two houses of Congress informing them of the start of military action in Afghanistan. According to the President, the actions were taken “pursuant to my constitutional authority to conduct U.S. foreign relations as Commander in Chief and Chief Executive.” Bush also noted that he was “providing this report as part of my efforts to keep Congress informed, consistent with the War Powers Resolution and Public Law 107-40.”⁹⁹ Ironically, one day before, the President limited to eight the number of Members of Congress who would be able to receive briefings that included classified information. The eight Members of Congress were the four leaders of the House and Senate, and the chairs and ranking Members of the House and Senate Intelligence Committees.¹⁰⁰

The decision, made in the name of protecting “military operational security,” was contained in a memo President Bush circulated among the members of his Cabinet who regularly briefed Congress on national security issues.¹⁰¹ The imposition of new limits was prompted by a story in the *Washington Post* which, drawing on unnamed sources, reported that intelligence officials told lawmakers that there was a “100 percent” possibility that the homeland would be attacked after the U.S. started the bombing of Afghanistan. President Bush forcefully censured the congressional leak, which, according to the *Los Angeles Times*, the White House believed to have come from a CIA briefing to the Senate Intelligence Committee: “I want Congress to hear loud and clear that it is unacceptable to leak classified information when we have troops at risk.”¹⁰²

When asked about the reasoning behind the policy change, White House Press Secretary Ari Fleischer said that “a very sensitive military campaign” was under way and the decision was taken “to save lives.”¹⁰³ “It’s a reflection of the fact that our nation is now at war,” Fleischer said, “and the rules have changed.” As the White House press corps pressed Fleischer further about how the change would affect Congress’s oversight capacity, the following exchanges took place:¹⁰⁴

Q: Isn’t it a huge shift of power to the Executive Branch?

Mr. Fleischer: That’s correct — that’s what the President has decided.

...

Q: Going back to this letter [President Bush’s memo]. Do you think that it could hurt the mission that you’re trying to accomplish right now by closing the circle?

Mr. Fleischer: The President does not think that.

The exchanges illustrate how the Bush Administration viewed congressional involvement as, at best, unnecessary, and, at worst, harmful. When asked whether he thought that the “mission” of prosecuting this phase of the war on terrorism would be adversely affected by the diminished congressional oversight, Ari Fleischer stated that the President did not think so. Many Members of Congress were outraged by the new policy. President Bush “put out a public document telling the world he doesn’t trust the Congress,” said Senator Chuck Hagel (R-NE).¹⁰⁵ Under pressure from Congress, Bush agreed on October 11 to restore access to classified briefings to a wider congressional audience.¹⁰⁶

In his radio address on October 13, the President announced that the first phase of the war in Afghanistan was completed. The U.S. military, Bush stated, has “disrupted the terrorist network inside Afghanistan. We have weakened the Taliban’s military. And we have crippled the Taliban’s air defenses.” But, Bush warned, “This campaign will not be completed in one attack.”¹⁰⁷ The more difficult second phase was then under way and continues to the present day.

PART 2: WAR IN IRAQ

To gain a better understanding of the role that Congress played in sending American men and women into war against Iraq in March 2003, it is useful to assess the evolution of the U.S. Iraq policy from two vantage points. First, it is important to examine the Bush Administration's private view, which, to a large extent, is still shrouded in mystery. Second, it is necessary to understand what Congress knew at the time it decided to authorize military action against Iraq. The following analysis will focus on the actions and statements of the Administration and the Congress between September 11, 2001 and October 11, 2002, the day Congress passed the joint resolution "to authorize the use of United States Armed Forces against Iraq."^{*} Statements by the Administration and Members of Congress and the congressional hearings held after October 11 had no legal bearing on the course that the country was taking. From the moment the votes were cast in Congress, authorizing the use force against Iraq, the decision of war and peace resided solely in President Bush's hands.

SETTING THE SIGHTS ON IRAQ—IN PRIVATE

In 1998, a group of influential conservative intellectuals wrote to President Bill Clinton, arguing that the removal of Saddam Hussein from power in Iraq "now needs to become the aim of American foreign policy."¹⁰⁸ Among the 18 signers were Donald H. Rumsfeld (Secretary of Defense in the Bush Administration), Paul D. Wolfowitz (Deputy Secretary of Defense in the Bush Administration), and Richard L. Armitage (former Deputy Secretary of State in the Bush Administration). Steven R. Weisman wrote in the *New York Times* in March 2003 that while an "aggressive" policy toward Iraq has been on the minds of President Bush's senior advisors since the early months of Bush's presidency, it was only after the events of September 11 that these "anti-Hussein intellectuals" were able to push Iraq to the top of the Administration's foreign policy agenda. According to Weisman, it was also after the terrorist attacks that Bush came to share their concern that Iraq might provide unconventional weapons to terrorists.¹⁰⁹ As he was sitting in the underground White House bunker watching the twin towers collapse on the morning of September 11, Vice President Dick Cheney reportedly remarked to an aide: "As unfathomable as this was, it could have been so much worse if they had weapons of mass destruction."¹¹⁰

In the several days following September 11, Iraq found itself at the top of the U.S. foreign policy agenda, along with Taliban-controlled Afghanistan. In his sobering book, *Against All Enemies*, Richard A. Clarke, former National Coordinator for Counter-terrorism in the Bush Administration, provides a vivid description of the events of that fateful day. In the following passage, he relates the situation he encountered,

* See full text of the Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq (P.L. 107-243, October 16, 2002) in Appendix B (4).

upon returning to the White House on the evening of September 11:¹¹¹

I expected to go back to a round of meetings examining what the next attacks could be, what our vulnerabilities were, what we could do about them in the short term. Instead, I walked into a series of discussions about Iraq. ...I was incredulous that we were talking about something other than getting al Qaeda. Then I realized...that Rumsfeld and Wolfowitz were going to try to take advantage of this national tragedy to promote their agenda about Iraq. Since the beginning of the administration, indeed well before, they had been pressing for a war with Iraq.

According to the *9/11 Commission Report*, during the first meeting of the National Security Council on the evening of the attacks, Bush stated that the United States would punish not only the terrorists but also those who harbored them.¹¹² As noted above, this statement would become one of the main policy premises of the Bush Doctrine. According to the *Report*, Secretary of Defense Rumsfeld urged the participants of that meeting to think broadly about those who harbored the attackers, including Iraq, Afghanistan and Libya. Indeed, when he met with the 9/11 Commission in April 2004, Bush recalled that immediately after the attacks he wondered if Iraq could have played a role in perpetrating them.¹¹³ On September 12, he tasked Richard Clarke and his subordinates to investigate any possible Iraqi ties to the attacks. Following is Clarke's recollection of his exchange with the President:¹¹⁴

Bush: "I want you, as soon as you can, to go back over everything, everything. See if Saddam did this. See if he's linked in any way..."

Clarke: "But, Mr. President, al Qaeda did this."

Bush: "I know, I know, but...see if Saddam was involved. Just look. I want to know of any shred..."

Clarke: "Absolutely, we will look...again. But, you know, we have looked several times for state sponsorship of al Qaeda and not found any real linkages to Iraq. Iran plays a little, as does Pakistan, and Saudi Arabia, Yemen." "Look into Iraq, Saddam," the President said testily and left us."

In response to the President's directive, on September 18, Clarke's office sent a memo to Condoleezza Rice, the National Security Advisor, titled "Survey of Intelligence Information on Any Iraq Involvement in the September 11 Attacks." According to the *9/11 Commission Report*, the memo indicated that there was no "compelling case" that Iraq had "either planned or perpetrated the attacks."^{115*} Speaking on CBS News *60 Minutes*, Clarke indicated that a first draft of this memo was returned by National Security Council Front Office because the document did not find a tie between Iraq and al Qaeda.¹¹⁶ According to the *Report*, both Rice and Steven Hadley, Deputy National Security Advisor, denied Clark's assertion that the memo was returned for that particular reason.¹¹⁷

According to Rice, at the first Camp David meeting on foreign policy after September 11, Deputy Defense Secretary Wolfowitz made the case for striking Iraq during "this round"^{**} of the war on terrorism.¹¹⁸ Secretary of State Colin Powell also remembered Wolfowitz arguing that Iraq was the source of the terrorist problem. According to Powell, Wolfowitz "saw this as one way of using the event as a way to deal with the Iraq problem." Nevertheless, Powell recalled that although President Bush continued to worry about Iraq during the following week, he did not give Wolfowitz's argument "much weight"^{***} and saw Afghanistan as the priority target.¹¹⁹ In an interview with Bob Woodward and Dan Balz of the *Washington Post* on December

* Quotes are from the *9/11 Commission Report*.

** Presumably, in the words of Dr. Rice. Quoted in the *9/11 Commission Report*.

*** Presumably, in the words of Secretary Powell. Quoted in the *9/11 Commission Report*.

20, 2001, Bush stated that the issue of Iraq was not on the table during the principals' meeting on September 15.¹²⁰ Rice recalled in her testimony to the 9/11 Commission that when Bush called her on September 16, he told her that the focus would be on Afghanistan, but that he still wanted “plans for Iraq”^{*} in case Iraq takes “some action,”^{*} or the Administration determines that it had been involved in the September 11 attacks. At the September 17 NSC meeting, Bush ordered the Defense Department to be ready to deal with Iraq if it acted against the U.S., “with plans to include possibly occupying Iraqi oil fields.”^{121*}

Tommy Franks, head of the U.S. Central Command, told the 9/11 Commission that shortly after the terrorist attacks of September 11 he appealed to President Bush to initiate robust planning for an invasion of Iraq—a request that Bush turned down.¹²² (In an interview with John Keegan, Defense editor of the *London Daily Telegraph* and author of *The Iraq War*, Franks stated that the military planning for a possible invasion of Iraq began in December 2001.¹²³) However, according to a January 2003 article in the *Washington Post* by Glenn Kessler, Bush directed the Pentagon to begin planning military options for a full-scale invasion of Iraq on September 17.¹²⁴ Although the immediate focus of action remained on Afghanistan, the President set sights on Iraq right after the September 11 attacks. Kessler quotes an unnamed State Department official saying that “It [the decision to go to war against Iraq] simply snuck up on us.” According to Kessler, by early November 2001, Wayne Downing, a former counterterrorism chief at the White House, began developing plans to attack Iraq, keeping the Pentagon informed of this activity. Secretary of State Powell, who remained unconvinced of the wisdom of military action, lacking diplomatic groundwork, was quoted by State Department officials, saying “Jeez, what a fixation about Iraq.”¹²⁵

According to Kessler, shortly after the 2002 State of the Union Address, in which Bush branded Iraq, North Korea and Iran as an “axis of evil,” the President secretly signed an intelligence directive, expanding on a previous presidential finding that “directed the CIA to undertake a comprehensive, covert program to topple Hussein, including authority to use lethal force to capture the Iraqi president.” In April 2002, Bush approached Rice, saying that the time had come to figure out “what we are doing about Iraq.” In a rare, unguarded public statement, Bush remarked to a British reporter at the time: “I made up my mind that Saddam needs to go. That’s about all I’m willing to share with you.” The decision to take out Saddam was made by July at the latest, when Richard N. Haass, the Director of Policy Planning at the State Department, and principal foreign policy advisor to Secretary of State Powell, asked Rice whether they should talk about the “pros and cons” of “confronting” Iraq. Kessler reports that Rice replied: “Don’t bother. The president has made a decision.”¹²⁶

MAKING THE CASE FOR WAR TO THE PUBLIC AND TO THE CONGRESS

Speculation about a possible war in Iraq began as early as November 2001. Tim Lynch, director of the Project on Criminal Justice at the Cato Institute, remarked at the time that Bush was wielding “truly breathtaking” power after September 11. “A single individual is going to decide whether the war is expanded to Iraq,” Lynch said.¹²⁷ And while the Administration has failed to make a case that Iraq was somehow linked to the September 11 attacks, by the end of 2001 it devised a powerful argument, that countries that posed a threat before the attacks, posed even a greater threat now, since they *might* team up with terrorists and provide them with weapons of mass destruction.¹²⁸ As President Bush would later say in his speech at West Point, “In defending

* Quotes are from the *9/11 Commission Report*.

the peace, we face a threat with no precedent.” Bush’s “axis of evil” speech in late January 2002 spurred further speculation and public debate. Gene Healy, a senior editor at the Cato Institute, asked in late February, “where is it written that one man, the president, gets to decide whether the United States goes to war with Iraq? . . . Unless and until Congress [authorizes military action against Iraq] President Bush must not take such action.”¹²⁹ Senator Russell Feingold (D-WI) also remarked that “‘absent a clear finding that Iraq participated in, aided or otherwise provided support for’ the attackers, ‘the president is constitutionally required to seek additional authority to embark on a new major military undertaking in Iraq.’”¹³⁰

At a press conference on March 13, 2002, Bush repeatedly stated that “all options are on the table,” including nuclear weapons, to deal with states that threaten to use weapons of mass destruction against the United States or its friends and allies. In particular, Bush verbally confronted Saddam Hussein, saying that “he is a problem, and we’re going to deal with him.” Bush said that he was “truly not that concerned” with Osama bin Laden, the leader of al Qaeda, the group directly responsible for the September 11 attacks. On the other hand, the President said that he was “deeply concerned about Iraq.”¹³¹ According to press reports in mid-July, the White House expressed reservations about participating in the upcoming congressional hearings on Iraq because President Bush had not yet decided *how* to achieve regime change in Iraq. The subsequent hearings of the Senate Foreign Relations Committee and the House International Relations Committee reflected the alarm in Congress that the Administration was moving swiftly toward taking action against Iraq. And while a senior Administration official said that no decision had been made on the matter, Senator Joseph Biden (D-DE), Chairman of the Foreign Relations Committee, remarked that there was “unanimity” in Congress that “If Saddam is still around in five years, we’ve got a problem.”¹³²

According to press reports in August 2002, President Bush’s lawyers advised him that he was not legally bound to seek congressional authorization to invade Iraq. Explained one senior administration official, “We don’t want to be in the legal position of asking Congress to authorize the use of force when the president already has that full authority. We don’t want, in getting a resolution, to have conceded that one was constitutionally necessary.”¹³³ Administration officials argued that President Bush had the authority to use force against Iraq because the Constitution designates him as Commander in Chief of the U.S. Armed Forces. They also cited the 1991 Persian Gulf resolution, which authorized the use of force against Iraq. The resolution included requirements for Saddam Hussein to eliminate his WMD stockpiles, a demand, the Bush Administration asserted, the Iraqi leader had not fulfilled. Michael J. Glennon, professor of international law at the Fletcher School of Law and Diplomacy at Tufts University, disagreed, holding that the authority granted by that resolution “was narrowly circumscribed and was directed at reversing the Iraqi invasion of Kuwait.” The Bush Administration officials conceded at the time that they were concerned about the conditions that a congressional resolution could contain, such as specification that war could only be waged for the purpose of destroying Iraq’s WMD stockpiles.¹³⁴

Eventually, a sense prevailed in the Administration that congressional authorization for war against Iraq was politically necessary, if not legally required. As the *New York Times* stated in an editorial, “When it comes to fighting foreign wars, American presidents have been most successful when they adhered to a set of democratic principles: act with the consent of Congress, fight in alliance with other nations and exhaust diplomatic measures before going to war.”¹³⁵ The *Christian Science Monitor* also weighed in, writing in an editorial that going to war without congressional input “violates the democratic process and would be politically irresponsible.”¹³⁶

Bush first decided to make the case for war in a speech to the United Nations General Assembly on September 12. The *Economist* described the President’s speech as “powerful and well-judged,” laying out the case for confronting Saddam Hussein.¹³⁷ After echoing his numerous earlier public statements by warning of a nexus between “outlaw groups and regimes that accept no law of morality and have no limit to their violent

ambitions,” Bush stated that Iraq employed “capable nuclear scientists and technicians,” retained “physical infrastructure needed to build a nuclear weapon,” and attempted to acquire high-strength aluminum tubes that could be used to enrich uranium for a nuclear device.¹³⁸ Warning that if Saddam Hussein acquired fissile material, Iraq would have the capability to build a nuclear weapon within a year, Bush also noted that Saddam Hussein had numerous meetings with nuclear scientists, “leaving little doubt about his continued appetite for these weapons.” He demanded that the Iraqi regime:

- “immediately and unconditionally forswear, disclose, and remove or destroy all weapons of mass destruction, long-range missiles, and all related material”;
- “immediately end all support for terrorism and act to suppress it”;
- “cease persecution of its civilian population, including Shi’a, Sunnis, Kurds, Turkomans, and others”;
- “release or account for all Gulf War personnel whose fate is still unknown. . . .return the remains of any who are deceased, return stolen property, accept liability for losses resulting from the invasion of Kuwait”; and
- “immediately end all illicit trade outside the oil-for-food program. . . .accept U.N. administration of funds from that program, to ensure that the money is used fairly and promptly for the benefit of the Iraqi people.”

If the regime met all of these requirements, Bush continued, “it could open the prospect of the United Nations helping build a government. . . based on respect for human rights, economic liberty, and internationally supervised elections.” Then Bush echoed the theme of strategic moralism that had become a usual part of his public statements: “Liberty for the Iraqi people is a great moral cause, and a great strategic goal.” Linking Iraq’s WMD threat to the cause of Iraqis’ liberation, Bush stated that “If we fail to act in the face of danger, the people of Iraq will continue to live in brutal submission. . . .If we meet our responsibilities, if we overcome this danger. . . the people of Iraq can shake off their captivity.”

In a background paper for Bush’s U.N. speech, the Administration described the 16 U.N. Security Council resolutions (UNSCR) that Saddam Hussein violated.¹³⁹ It is notable that two of these resolutions, UNSCR 686 and 688 deal exclusively with the issues of prisoners/stolen property and human rights abuses, respectively.

Back in Washington, a week after his speech to the U.N. General Assembly, the President sent Congress a discussion draft of an authorization to use force against Iraq. The draft resolution would authorize the President to “use all means that he determines to be appropriate, including force” to enforce U.N. Security Council resolutions that Saddam Hussein violated and “restore international peace and security in the region.”¹⁴⁰ The draft made no mention of the War Powers Resolution.¹⁴¹ It cited “the high risk that the current Iraqi regime” would use WMD to “launch a surprise attack against the United States or its armed forces,” as well as a possibility that Saddam may slip WMD to terrorists.¹⁴² During a White House press briefing, two senior Administration officials stressed that the President wanted “maximum flexibility” in carrying out the plans and, while there would be negotiation of the final phrasing of the resolution, Bush would insist that he not be required to receive another approval either from Congress or the U.N. before using force.¹⁴³ One Administration official also said that “The president constitutionally has the authority to react to any threat to the United States

and the people” without congressional authorization. One of the officials briefing the reporters also stated that the draft resolution “is not in any way tied or conditioned on what happens in the U.N.”¹⁴⁴

On the other end of Pennsylvania Avenue, however, it became clear that the congressional authorization was directly tied to the diplomatic efforts to disarm Iraq underway at the U.N. Many Members of Congress decided to support the President in order to strengthen his hand in forcing the Iraqi regime to disarm, and thus averting the war. Indeed, after the resolution was passed on October 11, a senior Administration official stated that the resolution “will help us a lot at the United Nations, because the world will now recognize that the United States is speaking with one voice.”¹⁴⁵ And during the debate on the resolution in early October, Senator John Warner (R-VA), stated emphatically that “conflict is the last resort. . . the strength and the resolve that we take now is the best way to avoid that conflict. . . He [Saddam Hussein] has to be convinced that America [sic] and international resolve is real, unshakable and enforceable *if there is to be a peaceful resolution*” (emphasis added).¹⁴⁶ As the *New York Times* aptly put it, “the unspoken goal was to encourage the president—while restraining him.”¹⁴⁷ Several Members of Congress worried that authorizing the President to “restore international peace and security in the region” would give Bush extraordinarily expansive powers, not unlike those that the Congress granted to President Lyndon Johnson by passing the Gulf of Tonkin Resolution in 1964.¹⁴⁸ These considerations aside, “by and large, Republicans and Democrats are prepared to give the benefit of the doubt under these circumstances to the administration,” said Senator Tom Daschle (D-SD), the Senate Majority Leader.¹⁴⁹ (Ironically, days earlier, Senator Daschle had said that Congress did not want to be “a rubber stamp” for the Administration’s policies.¹⁵⁰)

On September 27, the White House submitted another draft resolution to Congress, without the reference to restoring “international peace and security in the region,” but authorizing the President to “defend the national security interests of the United States against the threat posed by Iraq” and enforce the U.N. resolutions that Iraq violated.¹⁵¹ The draft stated that the President would report to Congress on the use of U.S. Armed Forces “prior to such exercise or as soon thereafter as may be feasible.” The draft also included a specific statutory authorization, “consistent with” WPR, and committed the President to reporting to Congress at least every three months on the implementation of the resolution.

Debate on the resolution began on October 2 and continued for nine days. “I don’t want to get a resolution which ties my hands,” Bush said the day before the debate started. The President called for a resolution that “sends a clear signal that the country is determined to disarm Iraq and thereby bring peace to the world.”¹⁵² On October 3, President Bush reached an agreement with the leaders of the House of Representatives on the acceptable version of the use of force authorization. The compromise became possible when Richard A. Gephardt (D-MO), the House Minority Leader, broke ranks with other House Democrats and sided with the President. “This should not be about politics,” Gephardt said, “We have to do what is right for the security of the nation.”¹⁵³ The compromise version of the resolution stipulated that Bush had to report to Congress within 48 hours after force was used—not “as soon thereafter as may be feasible,” per a previous draft. The resolution also required the President to report to Congress every two months on the progress in implementing this measure—not three months, as envisioned in an earlier draft.¹⁵⁴

On October 7, four days before the vote in Congress, Bush addressed the nation on the threat posed by Iraq. He said that Iraq “gathers the most serious dangers of our age in one place” and noted “its history of aggression and its drive toward an arsenal of terror.” The address, which the *Washington Post* called “sober and forceful,”¹⁵⁵ contained the usual litany of warnings of the threat posed by the Iraqi regime. Several points in Bush’s speech deserve particular attention. First, the President continued blending the issue of international terrorism (speaking of threats “that could bring sudden *terror* and suffering to America” [emphasis added])

with domestic “terror” that the Iraqi regime practiced against its own people. Second, speaking of the nexus between terrorists and tyrants, he called them “different faces of the same evil.” Building on this understanding, and adding that Iraq and al Qaeda share the same enemy in the United States, Bush linked everything back to September 11, stating that “those who hate America are willing to crash airplanes into buildings full of innocent people.” Third, Bush stated unequivocally that “regime change in Iraq is the only certain means of removing a great danger to our Nation.” At the end of his speech, Bush called “historic” the impending vote in Congress. “Congress will . . . be sending a message to the dictator in Iraq: that his choice is full compliance—and the time remaining for that choice is limited.”¹⁵⁶

As an interesting indication of the effect of Bush’s rhetoric, the *Washington Post* wrote the next day that the President called Iraq an “immediate” threat to the nation,¹⁵⁷ whereas Bush had in fact called Iraq “a grave threat.” As will be examined in detail in the next section, the Administration only rarely claimed that Iraq posed an imminent threat to the United States. In a speech at Georgetown University on February 5, 2004, CIA Director George Tenet said that before the war the intelligence analysts “never said there was an ‘imminent’ threat [from Iraq]. Rather, they painted an objective assessment for our policymakers of a brutal dictator who was continuing his efforts to deceive and build programs that might constantly surprise us and threaten our interests.”¹⁵⁸

Several amendments were offered to the use of force resolution. In the House of Representatives, Congresswoman Barbara Lee (D-CA) introduced an amendment (defeated 72-355 on October 10), which would have required the U.S. to work through the U.N. and non-military channels to remove the threat of Iraq’s WMD. Congressman John M. Spratt, Jr. (D-SC) proposed an amendment (defeated 155-270 on October 10), which would have allowed the use of force strictly for the purpose of eliminating Iraq’s WMD. In the Senate, Senator Carl Levin (D-MI) introduced an amendment (defeated 24-75 on October 10), which would have authorized the use of force to eliminate Iraq’s WMD pursuant to a new U.N. Security Council Resolution, and required the President to come back to Congress for a re-authorization if the efforts to secure a new disarmament resolution at the U.N. proved unsuccessful. Senator Richard J. Durbin’s (D-IL) amendment (defeated 30-70 on October 9) would have authorized the use of force against an imminent, rather than continuing, threat posed by Iraq. Senator Robert C. Byrd’s (D-WV) amendment (defeated 14-86 on October 10) would have stipulated that the use of force resolution made no additional grant of authority to the President on issues not directly related to the threat posed by Iraq. Byrd’s other amendment (defeated 31-66 on October 9) would have included in the resolution a termination date for the use of force.¹⁵⁹

The text of the final version of the resolution passed by Congress on October 11, 2002, authorized the President to use force against the “continuing threat” posed by Iraq in order to enforce “all relevant” U.N. resolutions. The votes in the House of Representatives and in the Senate were 296 to 133 and 77 to 23, respectively. Senator Hillary Rodham Clinton (D-NY) called the vote “probably the hardest decision I’ve ever had to make.” But, Clinton said, she believed that her vote of support made diplomatic success at the U.N. “more likely and, therefore, war less likely.” Presumably, that was also what Senator Tom Daschle (D-SD), the Majority Leader, meant when he similarly explained his “yes” vote: “I believe it is important for America to speak with one voice at this critical moment.”¹⁶⁰ Senator Edward M. Kennedy (D-MA) was one of the most forceful dissenting voices: “The power to declare war is the most solemn responsibility given to Congress by the Constitution. We must not delegate that responsibility to the president in advance.”¹⁶¹ Once Congress voted on the resolution, the decision on whether the nation would go to war was left solely to President Bush. As Peter Raven-Hansen of the George Washington University Law School put it, “This statutory authorization is the last word on the domestic legal basis for the use of force in Iraq.”¹⁶²

CONGRESS AND THE WAR IN IRAQ

The analysis of Congress's involvement in setting and executing the U.S. strategy toward Iraq centers on the following questions: What did Congress not know, and what did it know? Did the amount and accuracy of the information available to Congress allow it to make an informed judgment about the war? And, most important, what did Congress do with what it knew about the war in Iraq?

WHAT CONGRESS KNEW ABOUT THE IRAQ WAR

To begin, what did Congress clearly not know about the war in Iraq? The Members of Congress were unaware of views that were aired privately in the Bush Administration. They did not know that the endgame for confronting Iraq was decided long before October 2002 (passage of the congressional resolution), let alone March 2003 (the invasion). Whether the decision was made in the early days after September 11, 2001 or in July 2002, the evidence points to President Bush's having decided to use force to end the regime of Saddam Hussein long before he asked Congress for authorization to use force. Many in Congress, in public, and abroad might have suspected that this was the case. As several Senators wrote in 2004, there were "clear indications throughout 2002 that the Bush Administration intended to take military action against Iraq that would bring about a regime change in Baghdad."¹⁶³ Admittedly, writing with 20-20 hindsight in 2004, policymakers see the situation more clearly than they could have in 2002. Still, while the facts became known only after the war, on hearing the Bush Administration's public statements, one did not require a great leap of imagination to conclude that the Administration was selling the war—rather than engaging in a reasoned debate about its pros and cons. If this fact was not lost on newspaper reporters and policymakers abroad, it is hard to believe that the Senators' judgment in 2004 can be attributed solely to 20-20 hindsight.

In October 2002, the *Financial Times* editorialized about the push by the United States to pass a U.N. Security Council Resolution requiring Saddam Hussein to disarm: "there is widespread suspicion [that] Washington wants a new resolution as a procedural device to justify toppling him [Hussein]."¹⁶⁴ Chris Patten, the European Union Commissioner for External Affairs, was also quoted saying, "It was wholly legitimate for President Bush to go to the United Nations [to confront Saddam Hussein]... but that's just not for one day. It's got to be for real."¹⁶⁵ Congress was not alone in being kept in the dark about the Iraq endgame—so were our allies. In a conversation in October 2002, Bush reportedly told French President Jacques Chirac, "If you want to avoid war, vote for a strong [U.N.] resolution."¹⁶⁶ The Bush Administration clearly misled Congress on the Iraq endgame. On several other critical issues—the justifications for war, the immediacy of the threat, and the intelligence—both branches of government equally share the blame.

THE JUSTIFICATIONS FOR WAR

In his speech to the United Nations General Assembly on September 12, 2002, President Bush presented six reasons why Saddam Hussein posed a threat to the United States and to the world: (1) development of WMD, (2) repression of the Iraqi people, (3) support for international terrorism, (4) refusal to account for Gulf War prisoners, (5) refusal to return stolen property, and (6) efforts to circumvent economic sanctions.¹⁶⁷ In this address, Bush stated unequivocally that war could be averted only if Iraq complied on all six counts. Two weeks later, however, Secretary of State Colin Powell said in a testimony before the Senate Foreign Relations Committee that the “operating clause” was the WMD issue: “I think it unlikely that the President would use force if he [Saddam] complied with the weapons of mass destruction conditions.”¹⁶⁸ But the U.S. Constitution designates the President, not the Secretary of State, to be the Commander in Chief of the United States Armed Forces, and the Members of Congress understood well that Bush, not Powell, would make the decisive judgment on the use of force. In any case, President Bush’s charged moralistic rhetoric showed that Secretary Powell was wrong. For instance, Bush did not mince words when he told the U.N. General Assembly on September 12 that liberty for the Iraqi people was “a great moral cause, and a great strategic goal.”¹⁶⁹ For anyone who followed the President’s statements during the preceding several months, this strategic moralism should not have come as a surprise. In the end, President Bush did not explain—and the Members of Congress did not, by any measure, execute meaningful oversight over—whether he was prepared to send Americans into battle in order solely to free the Iraqi people from oppression, or just to recover the stolen property, or merely to force Iraq to account for Gulf War prisoners. In the words of one observer, “The Administration seemed unprepared or unwilling to distinguish between fundamental reasons [for war] and less consequential considerations.”¹⁷⁰

THE IMMEDIACY OF THE THREAT

The thrust of the Bush Administration’s message was that Saddam Hussein posed a grave and growing threat to the United States and the world. Administration officials occasionally described the threat from Iraq as “immediate” or “real and present.” When he testified before the House Armed Services Committee on September 18, 2002, Secretary of Defense Donald Rumsfeld stated that no terrorist state posed a “more immediate threat to the security of our people” than Iraq.¹⁷¹ (Rumsfeld repeated this claim when he testified before the Senate Armed Services Committee the next day.¹⁷²) He also warned that the U.S. had to be concerned about “the immediate threat from [Iraq’s] biological weapons,” and concluded that “any who insist on perfect evidence [of an imminent threat] really are thinking back in the 20th century in a pre-9/11 context.”¹⁷³ Testifying before the Senate Armed Services Committee on September 19, Rumsfeld remarked: “We have connected the dots as much as it is humanly possible—before the fact.”¹⁷⁴ When he testified before the House International Relations Committee the same day, Secretary Powell called Iraq “a real and present danger.”¹⁷⁵

Such pronouncements by Administration officials served more to perpetuate the overall atmosphere of urgency than to actually persuade the public and Congress that the threat from Iraq was imminent. (In fact, some Members of Congress claimed that Iraq posed a “real” or “clear and present” danger. Senator Tim Hutchinson (R-AR) called Iraq a “clear and present danger” during a Senate Armed Services Committee hearing on September 19.¹⁷⁶ And during a hearing of the Senate Foreign Relations Committee on September 26, Senator Joseph Biden (D-DE), Committee Chairman, called Iraq “a real and escalating” threat.¹⁷⁷) If the threat from Iraq had indeed been imminent, there would not have been a public debate, however limited, about

the pros and cons of invasion, and a congressional resolution would not have been necessary to authorize the use of force. The President as Commander in Chief has the authority to preempt an imminent threat to the nation, as well as, to respond to an attack against the United States. This was the authority that President Bush relied upon in responding to the attacks of September 11.

The war against Iraq was preventive, designed to preclude the Iraqi dictator from committing aggression against the United States or, however unlikely, empowering others (e.g., terrorists) to do so at an unspecified point in the future. As the CIA Director George Tenet said in a speech at Georgetown University, the intelligence analysts never claimed that Iraq posed an “imminent” threat. Members of Congress knew this for months before they voted for the use of force resolution. In the resolution, they voted to confront a “continuing” threat from Iraq, implying that the threat in 2002 was no different than it was in, say, 2000. However, it was the urgency with which the Administration moved toward war and certain statements by President Bush and others that created an atmosphere of “imminence.”

THE INTELLIGENCE

THE NATIONAL INTELLIGENCE ESTIMATE

On July 7, 2004, the Senate Select Committee on Intelligence (SSCI) released a comprehensive report on the U.S. pre-war WMD intelligence on Iraq, entitled *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq* (hereafter, the *Senate Intelligence Report*). The *Report* contains a wealth of information about what the Bush Administration and Congress each knew before the war. When juxtaposed with the statements made by the Administration on the threat posed by Iraq's possession of WMD, the possibility of Iraq's acquiring a nuclear weapon and the danger of Iraq's cooperating with terrorist groups, the *Senate Intelligence Report* provides a number of insights for analysis of the congressional role in forging the U.S. pre-war strategy toward Iraq.

On September 9, 2002, Senator Richard Durbin (D-IL) requested the Director of Central Intelligence George Tenet to produce a National Intelligence Estimate (NIE) “assessing the current and projected status—over the next 10 years—of Iraq's weapons of mass destruction capabilities.”¹⁷⁸ Senator Durbin requested that the NIE include an assessment of Iraq's biological, chemical, nuclear and radiological weapons capabilities, as well as information on Iraq's ballistic missiles and other systems that can be used to deliver WMD. The NIE was also to examine the possibility that Iraq could share any of these capabilities with terrorist groups, such as al Qaeda. Senator Durbin's request was echoed on September 10 by Senator Bob Graham (D-FL), SSCI Chairman, and subsequently by other SSCI members.¹⁷⁹ The completed classified NIE was made available to the 17 members of SSCI on October 1, 2002.

To accommodate the needs of Members of Congress not privy to the classified version of the NIE, the CIA released an unclassified version (white paper) on October 4, 2002. In mid-2003, the CIA declassified the key judgments section of the original October 1, 2002 NIE. The extent to which Congress was fully and accurately informed about Iraq's threat to the United States can be measured by juxtaposing the key judgments of the October 4, 2002 white paper with those of the October 1, 2002 classified NIE. This comparison will reveal the extent (if at all) to which most Members of Congress were misinformed about the true nature and extent of the threat posed by Iraq, as assessed by the United States intelligence community.

According to the *Senate Intelligence Report*, key judgments in the white paper lacked caveats such as “we judge” and “we assess,” contained in the classified NIE. As a result, many sentences in the white paper appeared as “statements of fact rather than assessments.”¹⁸⁰ Generally, the *Senate Intelligence Report* concludes, “The key judgments were almost identical in layout and substance in both papers.”¹⁸¹ This conclusion in the *Report* is not accurate; the key judgments in the two versions of the NIE differed substantially in several instances.

- First, the white paper key judgments section did not contain the sub-section of the classified NIE key judgments on Iraq’s possible ties with terrorist groups, in particular with al Qaeda.¹⁸² The slightly altered contents of this sub-section were declassified separately when Senator Bob Graham (D-FL), SSCI Chairman, released a letter, dated October 7, 2002, from the CIA Director George Tenet (see below).¹⁸³
- Second, one key judgment in the white paper surprisingly expressed *less urgency* about Iraq’s nuclear program than did the classified NIE. The white paper stated that “If Baghdad acquires sufficient weapons-grade fissile material from abroad, it could make a nuclear weapon within a year.”¹⁸⁴ The classified NIE put the time frame as “within several months to a year.”¹⁸⁵
- Third, the key judgments of the white paper included a line that did not appear in the key judgments of the classified NIE: “All intelligence experts agree that Iraq is seeking nuclear weapons.”¹⁸⁶
- Fourth, key judgments of the white paper stated that “Iraq has some lethal and incapacitating BW agents and is capable of quickly producing and weaponizing a variety of such agents, including anthrax, for delivery by bombs, missiles, aerial sprayers, and covert operatives, *including potentially against the US Homeland*” (emphasis added).¹⁸⁷ The words in italics did not appear in the key judgments of the classified NIE.¹⁸⁸
- Fifth, the white paper key judgments section asserted that “Iraq maintains a small missile force and several development programs, including for a UAV [unmanned aerial vehicle] that *most analysts believe* probably is intended to deliver biological warfare agents” (emphasis added).¹⁸⁹ The words in italics did not appear in the corresponding section of the classified NIE.

The key judgments in the October 4, 2002 white paper, available to most Members of Congress, were significantly different from those in the October 1, 2002 classified NIE, presented to the SSCI. When compared with the classified NIE key judgments, the white paper key judgments clearly appear (with few exceptions, like #2 above) to inflate the extent of Iraq’s threat and to produce an atmosphere of urgency. Indeed, the *Senate Intelligence Report* concluded that, in presenting the unclassified white paper, the members of the intelligence community “misrepresented their judgments to the public”¹⁹⁰ and, presumably, to the vast majority of the Members of Congress who did not have access to the classified NIE. Nevertheless, while the intelligence presented to the public and most of the Members of Congress was flawed, it shed much light on the immediacy, nature and extent of the threat posed by the regime of Saddam Hussein.

In terms of the threat posed by Saddam Hussein’s regime to the United States, two factors featured prominently in the Bush Administration’s statements: the possibility that Iraq could acquire a nuclear weapon, and the danger that Iraq could pass WMD to terrorist groups. Iraq’s possession of chemical and biological weapons and their means of delivery were important, but not critical elements in the case for attacking Iraq. The United States was clearly not deterred from going to war by the fact that Saddam Hussein possessed

chemical and biological stockpiles. The U.S. also was not deterred by the evidence, which suggested that, if attacked, Saddam Hussein was more likely to conduct WMD attacks against the United States. However, President Bush warned repeatedly that Iraq had to be stopped lest Saddam Hussein acquire a nuclear weapon, which would allow him to dominate the Middle East and blackmail the world. Time and again, Bush also warned that, if Iraq were to pass WMD to terrorists, “the attacks of September the 11th would be a prelude to far greater horrors.”¹⁹¹ Thus, the nuclear weapons issue, along with the possibility of Iraq’s passing WMD to terrorist groups, was central to the case for war.

IRAQ’S NUCLEAR THREAT

The first key judgment of the unclassified white paper version of the NIE contained the principal statement of the threat posed by Iraq: “Baghdad has chemical and biological weapons as well as missiles with ranges in excess of UN restrictions; if left unchecked, it probably will have a nuclear weapon during this decade.” The white paper later elaborated that “Iraq is unlikely to produce indigenously enough weapons-grade material for a deliverable nuclear weapon until the last half of this decade. Baghdad could produce a nuclear weapon within a year if it were able to procure weapons-grade fissile material abroad.”¹⁹² The white paper offered much circumstantial evidence on Iraq’s intent to acquire a nuclear weapon. For example, the white paper noted Iraq’s “aggressive attempts” to acquire high-strength aluminum tubes: “these tubes could be used in a centrifuge [uranium] enrichment program. Most intelligence specialists assess this to be the intended use, but some believe that these tubes are probably intended for conventional weapons programs.”¹⁹³ The exact words used are important. The word “attempts” points to an as-of-yet-unfulfilled desire to acquire the tubes, while “could,” coupled with the assessments of a minority of the intelligence specialists, signifies that tubes, if acquired, are not necessarily destined for a uranium enrichment program.

The second part of the unclassified white paper argument centered on the allegation that Iraq was actively reconstituting its nuclear program. The white paper noted in passing “more than ten years of sanctions and the loss of much of Iraq’s physical nuclear infrastructure under IAEA oversight,” stressing instead “Saddam’s interest in acquiring or developing nuclear weapons.”¹⁹⁴ The unclassified white paper contained a substantial amount of historical information about Saddam Hussein’s nuclear ambitions before and after the Gulf War. It noted,¹⁹⁵

Iraq retains its cadre of nuclear scientists and technicians, its program documentation, and sufficient dual-use manufacturing capabilities to support a reconstituted nuclear weapons program. Iraqi media have reported numerous meetings between Saddam and nuclear scientists over the past two years, signaling Baghdad’s continued interest in reviving a nuclear program.

The acquisition of sufficient fissile material is Iraq’s principal hurdle in developing a nuclear weapon.

Iraq is unlikely to produce indigenously enough weapons-grade material for a deliverable nuclear weapon until the last half of this decade. Baghdad could produce a nuclear weapon within a year if it were able to procure weapons-grade fissile material abroad.

Baghdad may have acquired uranium enrichment capabilities that could shorten substantially the amount of time necessary to make a nuclear weapon.

The only facts substantiating the supposition that Iraq was reconstituting its nuclear program were that Iraq retained its cadre of nuclear technicians, that Saddam Hussein met with nuclear scientists over the past two years and that Iraq acquired aluminum tubes. The conclusion that it signaled “Baghdad’s continued

interest in reviving a nuclear program” remains unsubstantiated.

In summary, on the issue of nuclear weapons, the Administration claimed that *if* Saddam Hussein acquired fissile material, then he *could* develop a nuclear weapon within a year. *Then* he *could* threaten and blackmail the civilized world. First, it was uncertain if and/or when Saddam could get the fissile material. Second, if he did, the U.S. intelligence services would very likely have known about it as they knew in 2002 that he was seeking to acquire aluminum tubes. Had they known that he had acquired this material, they could have made a persuasive case to the world community for further international action, possibly even a preemptive strike against Iraq’s nuclear reactors (like Israel’s June 1981 strike against the Osiraq reactor). The nuclear aspect of the case for war was speculative, based on fear of what could happen if certain conditions were met, rather than what the U.S. government knew was transpiring.

IRAQ’S COOPERATION WITH TERRORIST ORGANIZATIONS

The intelligence assessment on Iraq’s nuclear threat could plausibly have left some doubts in the minds of policymakers about the correct course of action on Iraq. The unclassified letter from CIA Director George Tenet to Senator Graham, however, provided an unequivocal statement of what the intelligence community believed was the extent and the nature of the threat from Iraq’s cooperation with terrorist organizations. In the letter, Tenet wrote:¹⁹⁶

Baghdad for now appears to be drawing a line short of conducting terrorist attacks with conventional or C.B.W. chemical and biological weapons against the United States.

Should Saddam conclude that a U.S.-led attack could no longer be deterred, he probably would become much less constrained in adopting terrorist actions. Such terrorism might involve conventional means, as with Iraq’s unsuccessful attempt at a terrorist offensive in 1991, or C.B.W.

(It is notable that the phrase “terrorist actions” in Tenet’s letter did not appear in the key judgments of the classified NIE. Instead, the NIE stated that “Iraq probably would attempt clandestine attacks against the U.S. Homeland if Baghdad feared an attack that threatened the survival of the regime were imminent or unavoidable, or possibly for revenge.”¹⁹⁷ Tenet’s use of the word “terrorist” blends the difference between Saddam’s tyrannical rule at home and international terrorism and fits into the Bush Administration’s practice of seeing tyranny and terrorism as parts of one whole. The classified version of the NIE said that these “clandestine attacks” would likely be carried out by Iraq’s special forces or intelligence operatives—a statement omitted in Tenet’s letter to Senator Graham.) Tenet wrote to Graham that “Saddam might decide that the extreme step of assisting Islamist terrorists in conducting a W.M.D. attack against the United States would be his last chance to exact vengeance by taking a large number of victims with him.” He also quoted an exchange between Senator Carl Levin (D-MI) and a “senior intelligence witness” during a classified hearing on October 2:¹⁹⁸

Senator Levin Carl Levin [sic], Democrat of Michigan: ...If (Saddam) didn’t feel threatened, did not feel threatened, is it likely that he would initiate an attack using a weapon of mass destruction?

Senior Intelligence Witness: ...My judgment would be that the probability of him initiating an attack...in the foreseeable future, given the conditions we understand now, the likelihood I think would be low.

Senator Levin: If we initiate an attack and he thought he was in extremis or otherwise, what’s the likelihood in response to our attack that he would use chemical or biological weapons?

Senior Intelligence Witness: Pretty high, in my view.

Iraq's possible cooperation with terrorist organizations as a grounds for war was, like the nuclear rationale, based on what we feared *could* happen. Notably, this rationale went directly against available intelligence, indicating that war would make such cooperation more likely.

To sum up, before the Members of Congress voted for the use of force resolution on October 11, they were not, by any standard, provided with a complete and true account of the threat posed by Iraq. The Bush Administration, and, to a large extent, the President himself, consistently were engaged in purposeful advocacy in order to sell the war to Congress and the public—a result that had been decided upon long before the vote in Congress. This advocacy was predicated on a selective presentation of facts and available intelligence.

Nevertheless, bad—and, in this case, selectively presented—intelligence does not in itself lead to loss of lives. Rather, bad political decisions do. While there was significant equivocation on the part of the Bush Administration about the nature and urgency of the Iraqi threat, there was no equivocation in the words of the congressional resolution. On October 11, Congress voted to authorize President Bush to confront a “continuing” threat from Saddam Hussein. Thus, Members of Congress knew well at the time—albeit many now profess ignorance—that Saddam Hussein was not an immediate threat to the United States. Indeed, however flawed and select the intelligence, the evidence available to the Members of Congress in the October 4, 2002 white paper showed that Iraq's nuclear program was of long-term, not immediate concern. Furthermore, the declassified letter from CIA Director Tenet to Senator Graham showed clearly that, contrary to the Administration's arguments, attacking Iraq would increase, rather than decrease the probability that Saddam Hussein would enable terrorists to attack the United States, possibly with WMD.

Breaking ranks with his fellow SSCI members who accused the Bush Administration of misleading the public on the nature and the immediacy of the threat posed by Iraq, Senator Ron Wyden (D-OR) wrote that “the urgency expressed by President Bush and members of his administration was unsupported even by the faulty intelligence [which was available to Members of Congress]. . . . Accurate intelligence information reflecting the marginal threat Saddam posed to the U.S. and its allies was available well before the March 2003 start of the war.” Furthermore, Wyden continued, “In October 2002, when Congress was weighing a resolution to authorize the use of military force to remove Saddam Hussein from power, the United States' intelligence analysis was that he was not a threat to our troops or allies even in the region.”¹⁹⁹

WHAT CONGRESS DID WITH WHAT IT KNEW ABOUT IRAQ

While the debate raged in the media and among scholars about the pros and cons of the forthcoming war, Members of Congress performed minimal outreach to the public. Writing in the *New York Times* in early March, Senator Robert C. Byrd (D-WV) deplored the fact that “in this war on terrorism, Congress, by and large, has been left to learn about major war-related decisions through newspaper articles.”²⁰⁰ On the eve of the Senate vote on the Iraq resolution, Byrd noted with regret that the “sudden appetite for war with Iraq seems to have consumed the Bush administration and Congress.” Warning that “we are at the gravest of moments,” he wrote:²⁰¹

The debate that began in the Senate last week is centered not on the fundamental and monumental questions of whether and why the United States should go to war with Iraq, but rather on the mechanics of how best to wordsmith the president's use-of-force resolution in order to give him virtually unchecked authority to commit the nation's military to an unprovoked attack on a sovereign nation.

Senator John Edwards (D-NC), a member of the SSCI, wrote in the *Washington Post* on September 19 that Saddam Hussein was “a grave and growing threat” and urged Congress to pass the resolution to “make clear to Hussein that he faces a united nation.”²⁰² Whether one agrees with the positions taken by Senators Byrd and Edwards, it is important that these Members of Congress took the time to further public debate on this important public policy issue.

Members of Congress “would not have authorized that war if we knew then what we know now,” said Senator Jay Rockefeller (D-WV) in a public statement upon the release of the *Senate Intelligence Report*.²⁰³ However, in truth, Congress did not authorize war. Rather, by voting for the resolution on Iraq, Congress deferred to the President to make that decision.

The *Senate Intelligence Report* revealed important details about the pre-war atmosphere in Washington. Senators Rockefeller, Levin and Durbin wrote in their “additional views” to the *Report* that the intelligence community officials were asked to analyze the threat posed by Iraq in “the environment of intense pressure. . . when policy officials had already forcefully stated their own conclusions in public.” The Senators also commented on the “highly-pressurized climate wherein senior Administrative officials were making the case for military action against Iraq through public and often definitive pronouncements.” Such “high-profile statements in support of the Administration’s policy of regime change,” they wrote, “were made in advance of any meaningful intelligence analysis and created pressure on the Intelligence Community to conform to the certainty contained in the pronouncements.”²⁰⁴ This conclusion is revealing, since, in writing this, the Senators must have spoken partly from their own experiences. It is difficult to conclude from reading the *Senate Intelligence Report* that intelligence community officials were the only ones affected by the “highly-pressurized climate” in pre-war Washington—so were Members of Congress. Indeed, as Senator Byrd asked on the eve of the vote in the Senate, “Why are we being hounded into action on a resolution that turns over to President Bush the Congress’s Constitutional power to declare war?”²⁰⁵

On October 11, 2002, Congress voted to authorize President Bush to use military force to address the threat posed by Iraq.²⁰⁶ On October 7, on the eve of the vote in Congress, President Bush delivered a major address to the nation on the Iraqi threat. He said: “Approving this resolution does not mean that the military action is imminent or unavoidable. This resolution will tell the United Nations, and all nations, that America speaks with one voice.”²⁰⁷ This spirit of the resolution was reflected in speeches legislators from both parties made prior to the vote. Senator John Warner (R-VA), Chairman of the Armed Services Committee, said passing the authorization was important to convince Saddam Hussein that American and international resolve is “real, unshakable and enforceable if there is to be a peaceful resolution.”²⁰⁸ And Senator Hillary Rodham Clinton (D-NY), said passage of the resolution made diplomatic success at the U.N. “more likely, and, therefore, war less likely.”²⁰⁹

The resolution was not a vote for war because, at the time, the Administration claimed publicly that Bush had not yet made the decision to use force. (Secretary of State Colin Powell said this seven times when he testified before the House of Representatives International Relations Committee on September 19,²¹⁰ and five times in testimony to the Senate Foreign Relations Committee on September 26.²¹¹ Testifying before the House Armed Services Committee on September 18, Secretary of Defense Donald Rumsfeld likewise stated five times that President Bush had not made the decision on the use of force.²¹²) By passing the resolution, Congress on paper authorized the use of force, but in spirit voted for diplomacy, hoping that the resolution would help avoid conflict. The authorization demonstrated the unified resolve of the U.S. government to ensure—by force, as a last resort—that Iraq be disarmed. In his September 19 testimony before the House

International Relations Committee, Secretary Powell unequivocally stated that the proposed authorization “is not a resolution that is a declaration of war, to go to war tomorrow.” The measure, Powell continued, “is an expression of support for what he [President Bush] might have to do if the actions that we are trying to take in the multilateral organization, the United Nations Security Council, are not successful.”²¹³ The congressional action was thus designed to strengthen Secretary Powell’s position as he negotiated passage of the unanimous U.N. Security Council Resolution 1441, which put the pressure of the world community on Iraq to accept international inspections. These inspections, had they been allowed to run their full course, would have demonstrated that Iraq was indeed disarmed.

Despite many public statements to the contrary, President Bush was not interested in just ridding Iraq of WMD. Instead, as was discussed earlier, he was determined to change the Iraqi regime by force since early September 2001. That explains why President Bush did not allow the inspections to run their course, and in early 2003 proceeded with his determination to unseat the Iraqi leader.

After Congress’s anticipatory use of force authorization, President Bush had the authority not only to wage war, but also to declare hostilities with Iraq, which, per Article 1 of the Constitution, is Congress’s responsibility.

According to Louis Fisher, senior specialist in separation of powers at the Congressional Research Service of the Library of Congress, Congress can authorize hostilities either by an authorization to use force or by an official declaration of war.²¹⁴ Three well-known examples of congressional authorizations are: the Gulf of Tonkin Resolution of August 7, 1964, the Authorization for Use of Military Force Against Iraq Resolution of January 12, 1991, and the Authorization for Use of Military Force of September 14, 2001.

In 1964, after U.S. ships in the Gulf of Tonkin reported they were fired upon by the North Vietnamese, Congress passed the measure, which came to be known as the Gulf of Tonkin Resolution, authorizing President Lyndon Johnson “to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.”²¹⁵ In 1991, Congress authorized President George H. W. Bush to use force in order to enforce U.N. Security Council Resolution 678 and expel Iraqi forces from Kuwait.²¹⁶ And in 2001, in response to the September 11 attacks against the United States, Congress passed a resolution, authorizing President Bush to use force “against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks.”²¹⁷ In all three cases, the Congress was authorizing the prompt use of the United States Armed Forces.

This was not the case in October 2002, when Congress issued an anticipatory authorization to use force, relinquishing its Constitutional prerogative to decide *if and when* to initiate hostilities against Iraq, and instead ceding that responsibility to President Bush. As a result, the President was left with unprecedented authority not only to wage war—as envisioned by Article 2 of the U.S. Constitution—but also with the “decisive judgment”²¹⁸ to declare hostilities between the United States and Iraq, which, per Article 1, is Congress’s responsibility.

Evidence and Recommendations

The monumental congressional abdication comes during a turning point in modern U.S. history.

Since September 11, 2001, we have witnessed a serious failure of congressional oversight. The significant congressional abdication comes during a formative period in U.S. history and has the danger of seriously undermining the ability of the United States to effectively prosecute and win the war on terrorism.

EVIDENCE

WAR POWERS

In the realm of war powers, Congress abdicated its Constitutionally-mandated responsibility to decide whether U.S. Armed Forces would be engaged in hostilities against Iraq, leaving this decision to President Bush by passing an anticipatory authorization for the President to use force. Despite the President's references to regime change throughout 2002, Congress allowed itself to be misled by the Administration's frequent assurances that Bush had made no decision to use force. In the end, it was right for Congress to demonstrate the nation's resolve to disarm Iraq and threaten the use of force. It was unnecessary and contrary to Constitutional principles, however, to allow the President to decide whether and when to use force.

OVERSIGHT

“With few exceptions, Congress has abdicated oversight responsibility altogether.”²¹⁹ This observation by Representative Henry Waxman (D-CA), Ranking Member of the House Committee on Government Reform, aptly summarizes the evidence presented in this study. Oversight of the formulation of the Bush Doctrine was virtually nonexistent. The *National Security Strategy* was not “hatched” inside the Administration, as one observer would have it.²²⁰ Rather, it was developed over a period of at least nine months during which Congress did little to investigate the fundamental policy issues involved—issues that were being debated in the media both at home and abroad. Oversight of the impending Iraq War was also seriously flawed, failing primarily in two respects.

LACK OF SUSTAINED OVERSIGHT

The Congress held 21 open, public hearings on Iraq during 2002 before the vote on the use of force resolution on October 11.

In the Senate,

- the Foreign Relations Committee held three hearings on July 31, two hearings on August 1, and three hearings on September 25 and 26;
- the Armed Services Committee held one hearing specifically on WMD in Iraq on February 27, followed by three hearings on September 19, 23 and 25;
- the Governmental Affairs Committee held one hearing on March 1.

In the House of Representatives,

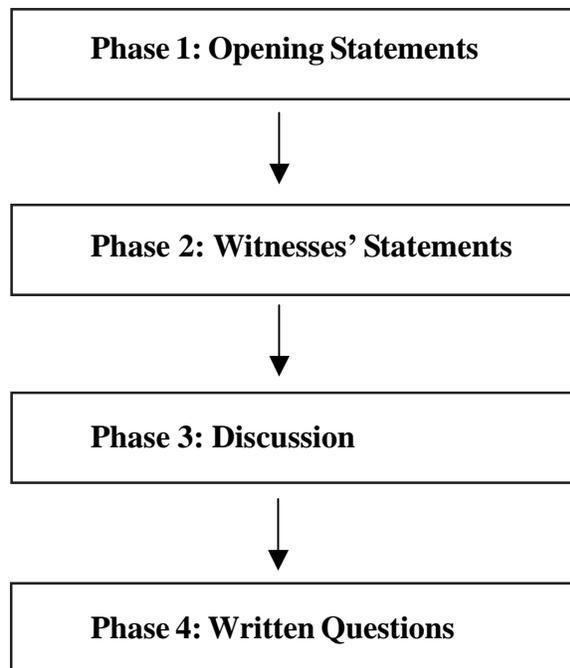
- the International Relations Committee held two hearings on September 19;
- the Armed Services Committee held five hearings on September 10, 18, 19, 25, and on October 2;
- the Committee on Governmental Reform held one hearing on an Israeli perspective on the Iraq War on September 12.

Of the 21 congressional hearings on Iraq, 14 were convened in the one and a half months preceding the vote on the use of force resolution. Members of Congress would later complain about the “rushed” vote on the resolution. While the Bush Administration can be faulted for creating an atmosphere of urgency for the war, Congress itself was partly responsible for the pressurized atmosphere in which the deliberation on the vote took place. After all, Congress had nine months in which to hold hearings on Iraq and engage in due deliberation. In this, it failed.

POOR QUALITY OF OVERSIGHT

The public hearings on Iraq revealed a serious erosion of robust congressional oversight. [Figure 1](#) shows the structure of a typical congressional hearing. In [Phase 1](#), the members of the committee receiving the testimony, make opening remarks, in which they discuss the purpose of the hearing and oftentimes pose preliminary questions to witnesses. In [Phase 2](#), the witnesses testify, usually summarizing their prepared statements, which are submitted in full for the hearing record. During the discussion in [Phase 3](#) the committee members can ask a witnesses to answer questions, which they did not discuss in detail in their testimonies. Since each member’s time is strictly limited, in [Phase 4](#), committee members can submit written questions for the witnesses to answer for the hearing record.

Figure 1. Structure of a Public Congressional Hearing



Hearings offer extensive opportunity for the committee members to fulfill their oversight responsibilities by asking questions, examining policies and gaining the perspectives of experts and Administration officials. Unfortunately, as follows from [Table 1](#) (see next page), Members of Congress often fail to carry out effectively these responsibilities. This failure of oversight was starkly evident during hearings on Iraq in 2002.

As follows from [Table 1](#), by and large, the hearings were not strategic; they investigated short-term and tactical aspects of policies, neglecting broader strategic implications. For instance, the possible effect of a war against Iraq on the relations between the United States and its major allies received the least attention of all the issues discussed. Instead, the discussion focused on tactical issues, such as under what circumstances a preemptive strike could be appropriate, and what could be considered a “smoking gun” to justify attacking Iraq.

With few exceptions, the oversight conducted in hearings was passive, with meetings rarely crossing the threshold of information gathering. The witnesses’ reasoning was rarely questioned, but simply taken for granted; issues were not examined in detail, but accepted as they were presented. All in all, Congress demonstrated a lack of sustained, critical and interested engagement with important policy issues.

The fundamental purpose of a congressional hearing is to get questions answered and to inform the public. Many Iraq hearings failed in this primordial respect: Members of Congress raised numerous questions in their opening statements (see [Figure 1](#)), but oftentimes neither followed through on them during the discussion period, nor asked the witnesses to respond in writing. Another commonplace failure of oversight was the committee members’ failure to prevent witnesses from evading the questions posed to them. For example, during the hearing on the *National Security Strategy* in the House Armed Services Committee, Congressman Ike Skelton (D-MO), the Ranking Member, asked Sandy Berger an important strategic question about the possible effect of a U.S. preemptive strike on America’s credibility with its allies. Berger’s response was that in cases such as Iraq, where imminence of threat was not as clear as in other instances, it was

Table 1. Issues Discussed at Public Congressional Hearings on Iraq**The Threat**

Issue #	Description	Value	Additional Comments
1	Inspections	2.1	
2	Diplomacy – role of the United Nations	1.5	
3	When Iraq is most dangerous–action vs. inaction	1.3	
4	Iraq’s nuclear capability	1.2	
5	Iraq’s WMD capability	1.2	
6	Nexus of Iraq and terrorists	1.2	
7	Imminence of the Iraqi threat/urgency of action	0.9	
8	Saddam’s personality	0.9	
9	Iraq’s conventional capability	0.8	Estimates ranged from 25% to 30% of the Gulf War levels
10	Other aspects of Iraq’s threat (human rights, etc.)	0.5	
11	Sanctions	0.5	

The War

12	Importance of coalition/allied cooperation	1.4	
13	Possibility of Iraqi attack on Israel	0.8	
14	Number of U.S. troops required for war	0.6	Estimates ranged from 30,000 to 250,000
15	Projected U.S. casualties	0.4	Estimates ranged from 100 to 10,000
16	U.S. military preparedness for war	0.4	

The Day After

17	Post-war reconstruction plan	1.0	
18	Liberation	0.9	
19	Cost of nation-building	0.7	Estimates ranged from \$16 billion to \$200 billion
20	Iraq’s history, culture, society and politics	0.7	
21	Length of U.S. stay in Iraq	0.7	Estimates ranged from 5 to 20 years
22	Number of U.S. troops required for nation-building	0.5	Estimates ranged from 5,000 to 75,000
23	WMD: new Iraqi government’s strategic outlook	0.5	

The Strategy

24	Impact of Iraq war on the war against terrorism	1.6	
25	Justifications for war: regime change, WMD, etc.	1.4	
26	War powers and congressional authorization for war	1.3	
27	Precedent for preemptive use of force/preventive war	1.2	
28	Containment/deterrence vs. regime change	1.0	
29	Iraq war and the radicalization of the world	0.8	
30	Strategic priorities: Iraq vs. Iran, North Korea, Syria?	0.7	
31	Iraq’s long-term regional threat	0.6	
32	Iraq war and the possibility of destabilization of the region	0.5	
33	Impact of Iraq war on relations with allies	0.3	Germany, Pakistan mentioned
34	Iraq war and possibility of increased proliferation	0.3	

Legend

Value: 3 (examined in detail) – 2 (examined superficially) – 1 (mentioned, but not examined) – 0 (not mentioned).
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Source: author’s research.

Table 1 – Methodology

Table 1 shows the quality of pre-war congressional oversight on 34 issues during 21 open hearings on Iraq in 2002. The hearings were convened in the U.S. Senate by the Armed Services, Foreign Relations, and Governmental Affairs Committees, and in the U.S. House of Representatives by the Armed Services, International Relations, and Governmental Reform Committees.

The table illustrates the level of detail with which the congressional committees examined each issue. The quality of oversight on individual issues was given grade “3” if the issue was meaningfully addressed throughout the hearing. Grade “2” was given if the issue was addressed in a perfunctory manner (e.g., if the witnesses were not actively challenged to substantiate their views, and if their assumptions were not questioned). Grade “1” was given to issues that were simply mentioned (including during opening statements by committee members). Grade “0” was given to issues that never came up in the discussion. The “values” presented in the table represent a mean of the grades received.

The issues in the table are divided into four categories (the threat, the war, the day after, and the strategy) and are listed within each category by “value” from the highest to the lowest.

important to secure allied support for the post-war period. Although Berger did not address the core of Skelton’s question, the Congressman thanked him and moved on to the next witness.²²¹

Oversight in many hearings was rambling, with questioners directing the discussion into areas that were entirely unrelated to the purpose of the hearing. A brief exchange between the chair and a member during a hearing on terrorism illustrates this problem:

Chair. This has been a fascinating panel, and the questions asked. I feel in some way like I’m losing track of the original effort of our committee.

Member. All esoteric.

This exchange is neither unrepresentative nor out of context. Many hearings feature “fascinating” panels that provide interesting insights into a variety of issues that fall under Congress’s purview. But hearings should also serve their defined purpose. Administration officials and non-governmental experts are often called to report to congressional committees on issues on which Congress requires information or wants to explore in greater detail in order to effectively oversee the actions of the Administration. That purpose must be maintained if Congress is to address the important short- and long-term aspects of the policy in question, and if Congress is to effectively carry out its oversight responsibilities.

ANALYSIS

The ability of the United States to exercise its international leadership responsibilities will be weakened unless Congress lives up to its Constitutional responsibilities. Congress must perform its critical role in the system of checks and balances, bringing badly needed accountability to foreign policy-making. As the British daily *Guardian* correctly observed in an editorial, the *9/11 Commission Report* “exposed gaping holes in the apparatus of [U.S.] government whose primary duty is to protect its citizens.”²²² While Members of Congress were quick to embrace the recommendations of the *Report*, they downplayed the criticism that the Commission

directed at Congress. The *Report* noted “Congress’s slowness and inadequacy in treating the issue of terrorism in the years before 9/11” and stated that, over the years, “the entire executive branch needed help from Congress in addressing the questions of counter-terrorism strategy and policy, looking past day-to-day concerns.”

The *Report* calls for “a strong, stable, and capable congressional committee structure to give America’s national intelligence agencies oversight, support, and leadership.”²²³ Providing “oversight, support and leadership” is a tall order. Congress as a whole must rise to it not only to oversee the intelligence services, but also to fulfill its responsibilities as a co-equal branch of the national government.

Congress does not and cannot claim to be the President’s full-fledged partner as the United States responds to emergencies, acts to respond to a sudden attack, or acts to preempt an imminent attack. Even the staunchest supporters of the War Powers Resolution recognize that the President has “the immediate flexibility” to introduce U.S. Armed Forces into hostilities in these extraordinary situations.²²⁴ Likewise, even the staunchest supporters of the President’s prerogative to respond untethered and forcefully to terrorism in the aftermath of the September 11 attacks stressed that the authority was provided to the President only for an initial, immediate response to the attacks. For instance, during the debate on September 14, 2001 on the \$40-billion emergency supplemental to respond to the terrorist attacks, Representative Bill Young (R-FL), Chairman of the Appropriations Committee, said that the measure gave President Bush “tremendous leeway in how to use these funds for the *immediate response* to whatever the attack was or will be” (emphasis added).²²⁵

Absent extraordinary situations, it is Congress’s duty (a) to be involved (informed and consulted by the President) in the decision to send U.S. Armed Forces into hostilities, and (b) to authorize the use of force. Once troops had been dispatched, it is Congress’s role (1) to provide funding so that the troops have the equipment they need to carry out the mission successfully, (2) to serve as a watchdog over the Executive Branch by overseeing the execution of the policy, and (3) to sustain the domestic consensus if the policy is executed well.

It is in the President’s interest to keep Congress abreast of the progress of the implementation of foreign policy. Absent a major violation of the public trust, it is unlikely that Congress will cut funding for the policy outright. If the President continually fails to provide Congress with adequate information about the execution of policies abroad, however, individual Members of Congress will publicly voice their concerns, thus chipping away at public support for the policy.²²⁶

Congress’s consultation requirements are both necessary and reasonable. According to Senator Russell Feingold (D-WI), presidential consultations with Congress “need not and should not provide Congress with what would be somehow a meddlesome and unacceptably dangerous role in determining *tactical aspects*” of a policy. The consultations should, nevertheless, “assist Congress in its continuing responsibility to evaluate and make ongoing decisions about the *broad objectives* of an unfolding military operation” (emphasis added in both instances).²²⁷ Or, in the words of Senator Richard Lugar (R-IN), Chairman of the Foreign Relations Committee, “Congress does not have to agree with the President’s policies, but our differences of opinion must be focused on improving our chances of success.”²²⁸

RECOMMENDATIONS

Recommendation: The Congress should establish and convene a bipartisan Commission on Congress's Role in Foreign Policy-Making

The Commission should be charged with addressing broad implications of Congress's role in sustaining the new, complex global responsibilities that the United States has taken on since September 11, 2001. In particular, the Commission should examine the issue of war powers in view of the October 2002 Constitutional debacle over Iraq, and recommend how Congress's traditional Constitutional mechanisms of wartime checks and balances should be adapted to the vaguely defined and indefinite war on terrorism.

Recommendation: Congress should provide leadership for—and conduct oversight over—both the articulation and the execution of U.S. foreign policy

Congress and the Executive are envisioned by the Constitution to be co-equal branches of government. It is imperative that Congress reassume the responsibilities of providing the overall policy direction for the country—the direction in which the President, as Commander in Chief, will lead the Nation.

Recommendation: Congress should reform the committee hearings process

The committee hearings must become more effective oversight tools. This will require leadership from the committee chairs to ensure that oversight remains focused on issues directly related to the subject of the hearing. Congress should also regularly conduct mandatory oversight workshops for all Members of Congress.

Recommendation: Congress should initiate a review of the Bush Doctrine

No other body is better positioned to evaluate the Bush Doctrine than the U.S. Congress. In addition to gaining the perspective of U.S. international affairs specialists and Administration officials, the oversight committees should solicit the testimony of specialists and government officials from U.S. major allies in order to gain a better understanding of the effect of U.S. policies around the world.

Conclusion

More effective foreign policy input from the U.S. Congress is essential for America's success in the war against terrorism and for our broader interests in international relations.

U.S. power is vital but insufficient to build a secure world order. This apparent contradiction is critical to understanding the structure of the post-9/11 international environment. The utility of conventional U.S. power is limited in addressing the challenges of terrorism and transnational threats, heralded so tragically by the events of September 11, 2001. The war in Iraq is the most recent demonstration, however, that America fails to recognize its limitations. The overwhelmingly superior conventional capabilities made it easy for the U.S. and the U.K. to topple Saddam Hussein. The lack of alternative sources of power and legitimacy, however, is making it difficult for the coalition to prevent Iraq from becoming a breeding ground for terrorists who are willing to travel distances in order to bring death and destruction to innocent people around the world.

More effective foreign policy input from the United States Congress is essential for America's success in the war against terrorism and for America's broader interests in international relations. Robust national leadership—which includes effective Congressional participation in foreign policy-making—is a prerequisite for strong U.S. international leadership. Restoring due accountability to the process of foreign policy-making—formulation at home and execution abroad—will enhance the odds that the resulting projection of U.S. power will serve America's interests at the lowest cost to the American people. Such accountability is important for U.S. national leadership that is commensurate with our global responsibilities, and that maximizes our chances of victory in the war for a more secure world.

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APPENDIX A: Declarations of War

1. Official Declarations of War by Congress

War	Against	Declaration	Vote
War of 1812	Great Britain	Senate: June 17, 1812	19-13
		House: June 4, 1812	79-49
Mexico	Mexico	Senate: May 12, 1846	40-2
		House: May 11, 1846	174-14
Spain	Spain	Senate: April 25, 1898	By voice
		House: April 25, 1898	By voice
World War I	Germany	Senate: April 4, 1917	82-6
		House: April 6, 1917	373-50
World War I	Austria-Hungary	Senate: Dec. 7, 1917	74-0
		House: Dec. 7, 1917	365-1
World War II	Japan	Senate: Dec. 8, 1941	82-0
		House: Dec. 8, 1941	388-1
World War II	Germany	Senate: Dec. 11, 1941	88-0
		House: Dec. 11, 1941	393-0
World War II	Italy	Senate: Dec. 11, 1941	90-0
		House: Dec. 11, 1941	399-0
World War II	Bulgaria	Senate: June 4, 1942	73-0
		House: June 3, 1942	357-0
World War II	Hungary	Senate: June 4, 1942	73-0
		House: June 3, 1942	360-0
World War II	Romania	Senate: June 4, 1942	73-0
		House: June 3, 1942	361-0

Source: *USA Today*, October 8, 2002, p. 5A; *Congressional Quarterly's Guide to Congress*, 5th Edition, 2000; Senate Library.

2. Osama bin Laden's Declaration of War against the United States (Jihad Against Jews and Crusaders – *World Islamic Front Statement*), February 23, 1998

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Shaykh Usamah Bin-Muhammad Bin-Ladin  
Ayman al-Zawahiri, amir of the Jihad Group in Egypt  
Abu-Yasir Rifa'i Ahmad Taha, Egyptian Islamic Group  
Shaykh Mir Hamzah, secretary of the Jamiat-ul-Ulema-e-Pakistan  
Fazlur Rahman, amir of the Jihad Movement in Bangladesh

Praise be to Allah, who revealed the Book, controls the clouds, defeats factionalism, and says in His Book: "But when the forbidden months are past, then fight and slay the pagans wherever ye find them, seize them, beleaguer them, and lie in wait for them in every stratagem (of war)"; and peace be upon our Prophet, Muhammad Bin-' Abdallah, who said: I have been sent with the sword between my hands to ensure that no one but Allah is worshipped, Allah who put my livelihood under the shadow of my spear and who inflicts humiliation and scorn on those who disobey my orders.

The Arabian Peninsula has never — since Allah made it flat, created its desert, and encircled it with seas — been stormed by any forces like the crusader armies spreading in it like locusts, eating its riches and wiping out its plantations. All this is happening at a time in which nations are attacking Muslims like people fighting over a plate of food. In the light of the grave situation and the lack of support, we and you are obliged to discuss current events, and we should all agree on how to settle the matter.

No one argues today about three facts that are known to everyone; we will list them, in order to remind everyone:

First, for over seven years the United States has been occupying the lands of Islam in the holiest of places, the Arabian Peninsula, plundering its riches, dictating to its rulers, humiliating its people, terrorizing its neighbors, and turning its bases in the Peninsula into a spearhead through which to fight the neighboring Muslim peoples.

If some people have in the past argued about the fact of the occupation, all the people of the Peninsula have now acknowledged it. The best proof of this is the Americans' continuing aggression against the Iraqi people using the Peninsula as a staging post, even though all its rulers are against their territories being used to that end, but they are helpless.

Second, despite the great devastation inflicted on the Iraqi people by the crusader-Zionist alliance, and despite the huge number of those killed, which has exceeded 1 million... despite all this, the Americans are once again [sic-ebk] trying to repeat the horrific massacres, as though they are not content with the protracted blockade imposed after the ferocious war or the fragmentation and devastation. So here they come to annihilate what is left of this people and to humiliate their Muslim neighbors.

Third, if the Americans' aims behind these wars are religious and economic, the aim is also to serve the Jews' petty state and divert attention from its occupation of Jerusalem and murder of Muslims there. The best proof of this is their eagerness to destroy Iraq, the strongest neighboring Arab state, and their endeavor to fragment all the states of the region such as Iraq, Saudi Arabia, Egypt, and Sudan into paper statelets and through their disunion and weakness to guarantee Israel's survival and the continuation of the brutal crusade occupation of the Peninsula.

All these crimes and sins committed by the Americans are a clear declaration of war on Allah, his messenger, and Muslims. And ulema have throughout Islamic history unanimously agreed that the jihad is an individual duty if the enemy destroys the Muslim countries. This was revealed by Imam Bin-Qadamah in "Al-Mughni," Imam al-Kisa'i in "Al-Bada'i," al-Qurtubi in his interpretation, and the shaykh of al-Islam in his

books, where he said: “As for the fighting to repulse [an enemy], it is aimed at defending sanctity and religion, and it is a duty as agreed [by the ulema]. Nothing is more sacred than belief except repulsing an enemy who is attacking religion and life.” On that basis, and in compliance with Allah’s order, we issue the following fatwa to all Muslims:

The ruling to kill the Americans and their allies — civilians and military — is an individual duty for every Muslim who can do it in any country in which it is possible to do it, in order to liberate the al-Aqsa Mosque and the holy mosque [Mecca] from their grip, and in order for their armies to move out of all the lands of Islam, defeated and unable to threaten any Muslim. This is in accordance with the words of Almighty Allah, “and fight the pagans all together as they fight you all together,” and “fight them until there is no more tumult or oppression, and there prevail justice and faith in Allah.”

This is in addition to the words of Almighty Allah: “And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)? — women and children, whose cry is: ‘Our Lord, rescue us from this town, whose people are oppressors; and raise for us from thee one who will help!’”

We — with Allah’s help — call on every Muslim who believes in Allah and wishes to be rewarded to comply with Allah’s order to kill the Americans and plunder their money wherever and whenever they find it. We also call on Muslim ulema, leaders, youths, and soldiers to launch the raid on Satan’s U.S. troops and the devil’s supporters allying with them, and to displace those who are behind them so that they may learn a lesson.

Almighty Allah said: “O ye who believe, give your response to Allah and His Apostle, when He calleth you to that which will give you life. And know that Allah cometh between a man and his heart, and that it is He to whom ye shall all be gathered.”

Almighty Allah also says: “O ye who believe, what is the matter with you, that when ye are asked to go forth in the cause of Allah, ye cling so heavily to the earth! Do ye prefer the life of this world to the hereafter? But little is the comfort of this life, as compared with the hereafter. Unless ye go forth, He will punish you with a grievous penalty, and put others in your place; but Him ye would not harm in the least. For Allah hath power over all things.”

Almighty Allah also says: “So lose no heart, nor fall into despair. For ye must gain mastery if ye are true in faith.” ♦

*Source:* Federation of American Scientists, available at [www.fas.org/irp/world/para/docs/980223-fatwa.htm](http://www.fas.org/irp/world/para/docs/980223-fatwa.htm) (accessed January 15, 2005). Originally published as “World Islamic Front’s Statement Urging Jihad,” *Al Quds al Arabi*, February 23, 1998.

### 3. President George W. Bush's Address to Joint Session of Congress, September 20, 2001

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Mr. Speaker, Mr. President Pro Tempore, members of Congress, and fellow Americans:

In the normal course of events, Presidents come to this chamber to report on the state of the Union. Tonight, no such report is needed. It has already been delivered by the American people.

We have seen it in the courage of passengers, who rushed terrorists to save others on the ground — passengers like an exceptional man named Todd Beamer. And would you please help me to welcome his wife, Lisa Beamer, here tonight.

We have seen the state of our Union in the endurance of rescuers, working past exhaustion. We have seen the unfurling of flags, the lighting of candles, the giving of blood, the saying of prayers — in English, Hebrew, and Arabic. We have seen the decency of a loving and giving people who have made the grief of strangers their own.

My fellow citizens, for the last nine days, the entire world has seen for itself the state of our Union — and it is strong.

Tonight we are a country awakened to danger and called to defend freedom. Our grief has turned to anger, and anger to resolution. Whether we bring our enemies to justice, or bring justice to our enemies, justice will be done.

I thank the Congress for its leadership at such an important time. All of America was touched on the evening of the tragedy to see Republicans and Democrats joined together on the steps of this Capitol, singing “God Bless America.” And you did more than sing; you acted, by delivering \$40 billion to rebuild our communities and meet the needs of our military.

Speaker Hastert, Minority Leader Gephardt, Majority Leader Daschle and Senator Lott, I thank you for your friendship, for your leadership and for your service to our country.

And on behalf of the American people, I thank the world for its outpouring of support. America will never forget the sounds of our National Anthem playing at Buckingham Palace, on the streets of Paris, and at Berlin's Brandenburg Gate.

We will not forget South Korean children gathering to pray outside our embassy in Seoul, or the prayers of sympathy offered at a mosque in Cairo. We will not forget moments of silence and days of mourning in Australia and Africa and Latin America.

Nor will we forget the citizens of 80 other nations who died with our own: dozens of Pakistanis; more than 130 Israelis; more than 250 citizens of India; men and women from El Salvador, Iran, Mexico and Japan; and hundreds of British citizens. America has no truer friend than Great Britain. Once again, we are joined together in a great cause — so honored the British Prime Minister has crossed an ocean to show his unity of purpose with America. Thank you for coming, friend.

On September the 11th, enemies of freedom committed an act of war against our country. Americans have known wars — but for the past 136 years, they have been wars on foreign soil, except for one Sunday in 1941. Americans have known the casualties of war — but not at the center of a great city on a peaceful morning. Americans have known surprise attacks — but never before on thousands of civilians. All of this was brought upon us in a single day — and night fell on a different world, a world where freedom itself is under attack.

Americans have many questions tonight. Americans are asking: Who attacked our country? The evidence we have gathered all points to a collection of loosely affiliated terrorist organizations known as al Qaeda. They are the same murderers indicted for bombing American embassies in Tanzania and Kenya, and responsible for bombing the USS Cole.

Al Qaeda is to terror what the mafia is to crime. But its goal is not making money; its goal is remaking

the world — and imposing its radical beliefs on people everywhere.

The terrorists practice a fringe form of Islamic extremism that has been rejected by Muslim scholars and the vast majority of Muslim clerics — a fringe movement that perverts the peaceful teachings of Islam. The terrorists' directive commands them to kill Christians and Jews, to kill all Americans, and make no distinction among military and civilians, including women and children.

This group and its leader — a person named Osama bin Laden — are linked to many other organizations in different countries, including the Egyptian Islamic Jihad and the Islamic Movement of Uzbekistan. There are thousands of these terrorists in more than 60 countries. They are recruited from their own nations and neighborhoods and brought to camps in places like Afghanistan, where they are trained in the tactics of terror. They are sent back to their homes or sent to hide in countries around the world to plot evil and destruction.

The leadership of al Qaeda has great influence in Afghanistan and supports the Taliban regime in controlling most of that country. In Afghanistan, we see al Qaeda's vision for the world.

Afghanistan's people have been brutalized — many are starving and many have fled. Women are not allowed to attend school. You can be jailed for owning a television. Religion can be practiced only as their leaders dictate. A man can be jailed in Afghanistan if his beard is not long enough.

The United States respects the people of Afghanistan — after all, we are currently its largest source of humanitarian aid — but we condemn the Taliban regime. It is not only repressing its own people, it is threatening people everywhere by sponsoring and sheltering and supplying terrorists. By aiding and abetting murder, the Taliban regime is committing murder.

And tonight, the United States of America makes the following demands on the Taliban: Deliver to United States authorities all the leaders of al Qaeda who hide in your land. Release all foreign nationals, including American citizens, you have unjustly imprisoned. Protect foreign journalists, diplomats and aid workers in your country. Close immediately and permanently every terrorist training camp in Afghanistan, and hand over every terrorist, and every person in their support structure, to appropriate authorities. Give the United States full access to terrorist training camps, so we can make sure they are no longer operating.

These demands are not open to negotiation or discussion. The Taliban must act, and act immediately. They will hand over the terrorists, or they will share in their fate.

I also want to speak tonight directly to Muslims throughout the world. We respect your faith. It's practiced freely by many millions of Americans, and by millions more in countries that America counts as friends. Its teachings are good and peaceful, and those who commit evil in the name of Allah blaspheme the name of Allah. The terrorists are traitors to their own faith, trying, in effect, to hijack Islam itself. The enemy of America is not our many Muslim friends; it is not our many Arab friends. Our enemy is a radical network of terrorists, and every government that supports them.

Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.

Americans are asking, why do they hate us? They hate what we see right here in this chamber — a democratically elected government. Their leaders are self-appointed. They hate our freedoms — our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other.

They want to overthrow existing governments in many Muslim countries, such as Egypt, Saudi Arabia, and Jordan. They want to drive Israel out of the Middle East. They want to drive Christians and Jews out of vast regions of Asia and Africa.

These terrorists kill not merely to end lives, but to disrupt and end a way of life. With every atrocity, they hope that America grows fearful, retreating from the world and forsaking our friends. They stand against us, because we stand in their way.

We are not deceived by their pretenses to piety. We have seen their kind before. They are the heirs

of all the murderous ideologies of the 20th century. By sacrificing human life to serve their radical visions — by abandoning every value except the will to power — they follow in the path of fascism, and Nazism, and totalitarianism. And they will follow that path all the way, to where it ends: in history's unmarked grave of discarded lies.

Americans are asking: How will we fight and win this war? We will direct every resource at our command — every means of diplomacy, every tool of intelligence, every instrument of law enforcement, every financial influence, and every necessary weapon of war — to the disruption and to the defeat of the global terror network.

This war will not be like the war against Iraq a decade ago, with a decisive liberation of territory and a swift conclusion. It will not look like the air war above Kosovo two years ago, where no ground troops were used and not a single American was lost in combat.

Our response involves far more than instant retaliation and isolated strikes. Americans should not expect one battle, but a lengthy campaign, unlike any other we have ever seen. It may include dramatic strikes, visible on TV, and covert operations, secret even in success. We will starve terrorists of funding, turn them one against another, drive them from place to place, until there is no refuge or no rest. And we will pursue nations that provide aid or safe haven to terrorism. Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists. From this day forward, any nation that continues to harbor or support terrorism will be regarded by the United States as a hostile regime.

Our nation has been put on notice: We are not immune from attack. We will take defensive measures against terrorism to protect Americans. Today, dozens of federal departments and agencies, as well as state and local governments, have responsibilities affecting homeland security. These efforts must be coordinated at the highest level. So tonight I announce the creation of a Cabinet-level position reporting directly to me — the Office of Homeland Security.

And tonight I also announce a distinguished American to lead this effort, to strengthen American security: a military veteran, an effective governor, a true patriot, a trusted friend — Pennsylvania's Tom Ridge. He will lead, oversee and coordinate a comprehensive national strategy to safeguard our country against terrorism, and respond to any attacks that may come.

These measures are essential. But the only way to defeat terrorism as a threat to our way of life is to stop it, eliminate it, and destroy it where it grows.

Many will be involved in this effort, from FBI agents to intelligence operatives to the reservists we have called to active duty. All deserve our thanks, and all have our prayers. And tonight, a few miles from the damaged Pentagon, I have a message for our military: Be ready. I've called the Armed Forces to alert, and there is a reason. The hour is coming when America will act, and you will make us proud.

This is not, however, just America's fight. And what is at stake is not just America's freedom. This is the world's fight. This is civilization's fight. This is the fight of all who believe in progress and pluralism, tolerance and freedom.

We ask every nation to join us. We will ask, and we will need, the help of police forces, intelligence services, and banking systems around the world. The United States is grateful that many nations and many international organizations have already responded — with sympathy and with support. Nations from Latin America, to Asia, to Africa, to Europe, to the Islamic world. Perhaps the NATO Charter reflects best the attitude of the world: An attack on one is an attack on all.

The civilized world is rallying to America's side. They understand that if this terror goes unpunished, their own cities, their own citizens may be next. Terror, unanswered, can not only bring down buildings, it can threaten the stability of legitimate governments. And you know what — we're not going to allow it.

Americans are asking: What is expected of us? I ask you to live your lives, and hug your children. I know many citizens have fears tonight, and I ask you to be calm and resolute, even in the face of a continuing threat.

I ask you to uphold the values of America, and remember why so many have come here. We are in a fight for our principles, and our first responsibility is to live by them. No one should be singled out for unfair treatment or unkind words because of their ethnic background or religious faith.

I ask you to continue to support the victims of this tragedy with your contributions. Those who want to give can go to a central source of information, libertyunites.org, to find the names of groups providing direct help in New York, Pennsylvania, and Virginia.

The thousands of FBI agents who are now at work in this investigation may need your cooperation, and I ask you to give it.

I ask for your patience, with the delays and inconveniences that may accompany tighter security; and for your patience in what will be a long struggle.

I ask your continued participation and confidence in the American economy. Terrorists attacked a symbol of American prosperity. They did not touch its source. America is successful because of the hard work, and creativity, and enterprise of our people. These were the true strengths of our economy before September 11th, and they are our strengths today.

And, finally, please continue praying for the victims of terror and their families, for those in uniform, and for our great country. Prayer has comforted us in sorrow, and will help strengthen us for the journey ahead.

Tonight I thank my fellow Americans for what you have already done and for what you will do. And ladies and gentlemen of the Congress, I thank you, their representatives, for what you have already done and for what we will do together.

Tonight, we face new and sudden national challenges. We will come together to improve air safety, to dramatically expand the number of air marshals on domestic flights, and take new measures to prevent hijacking. We will come together to promote stability and keep our airlines flying, with direct assistance during this emergency.

We will come together to give law enforcement the additional tools it needs to track down terror here at home. We will come together to strengthen our intelligence capabilities to know the plans of terrorists before they act, and find them before they strike.

We will come together to take active steps that strengthen America's economy, and put our people back to work.

Tonight we welcome two leaders who embody the extraordinary spirit of all New Yorkers: Governor George Pataki, and Mayor Rudolph Giuliani. As a symbol of America's resolve, my administration will work with Congress, and these two leaders, to show the world that we will rebuild New York City.

After all that has just passed — all the lives taken, and all the possibilities and hopes that died with them — it is natural to wonder if America's future is one of fear. Some speak of an age of terror. I know there are struggles ahead, and dangers to face. But this country will define our times, not be defined by them. As long as the United States of America is determined and strong, this will not be an age of terror; this will be an age of liberty, here and across the world.

Great harm has been done to us. We have suffered great loss. And in our grief and anger we have found our mission and our moment. Freedom and fear are at war. The advance of human freedom — the great achievement of our time, and the great hope of every time — now depends on us. Our nation — this generation — will lift a dark threat of violence from our people and our future. We will rally the world to this cause by our efforts, by our courage. We will not tire, we will not falter, and we will not fail.

It is my hope that in the months and years ahead, life will return almost to normal. We'll go back to our lives and routines, and that is good. Even grief recedes with time and grace. But our resolve must not pass. Each of us will remember what happened that day, and to whom it happened. We'll remember the moment the news came — where we were and what we were doing. Some will remember an image of a fire, or a story of rescue. Some will carry memories of a face and a voice gone forever.

And I will carry this: It is the police shield of a man named George Howard, who died at the World Trade Center trying to save others. It was given to me by his mom, Arlene, as a proud memorial to her son. This is my reminder of lives that ended, and a task that does not end.

I will not forget this wound to our country or those who inflicted it. I will not yield; I will not rest; I will not relent in waging this struggle for freedom and security for the American people.

The course of this conflict is not known, yet its outcome is certain. Freedom and fear, justice and cruelty, have always been at war, and we know that God is not neutral between them.

Fellow citizens, we'll meet violence with patient justice — assured of the rightness of our cause, and confident of the victories to come. In all that lies before us, may God grant us wisdom, and may He watch over the United States of America.

Thank you. ♦

Source: Weekly Compilation of Presidential Documents, 37: 1347-1351 (September 20, 2001).

APPENDIX B: Congressional Resolutions

1. Congressional Resolutions to Use Force

Country/Region	Authorization	Vote
Taiwan	Senate: January 28, 1955	85-3
	House: January 25, 1955	410-3
Middle East	Senate: March 5, 1957	72-19
	House: March 7, 1957	350-60
Cuba	Senate: September 20, 1962	86-1
	House: September 26, 1962	384-7
Germany	Senate: October 10, 1962	By voice
	House: October 5, 1962	312-0
Vietnam	Senate: August 7, 1964	88-2
	House: August 7, 1964	416-0
Iraq	Senate: January 12, 1991	52-47
	House: January 12, 1991	250-183
Afghanistan	Senate: September 14, 2001	98-0
	House: September 14, 2001	420-1
Iraq	Senate: October 11, 2002	77-23
	House: October 11, 2002	296-133

Source: *USA Today*, October 8, 2002, p. 5A; *Congressional Quarterly's Guide to Congress*, 5th Edition, 2000; Senate Library; author's research.

2. War Powers Resolution, P.L. 93-148, November 7, 1973

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### Joint Resolution

*Concerning the War Powers of Congress and the President.*

*Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE**

This joint resolution may be cited as the “War Powers Resolution”.

#### **SECTION 2. PURPOSE AND POLICY**

(a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgement of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

#### **SECTION 3. CONSULTATION**

The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situation where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

#### **SECTION 4. REPORTING**

(a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation; the President shall submit within 48 hours to the Speaker of the House of Representatives

and to the President pro tempore of the Senate a report, in writing, setting forth—

- (A) the circumstances necessitating the introduction of United States Armed Forces;
- (B) the constitutional and legislative authority under which such introduction took place; and
- (C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

#### **SECTION 5. CONGRESSIONAL ACTION**

(a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

#### **SECTION 6. CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL**

(a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations,

not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

## **SECTION 7. CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION**

(a) Any concurrent resolution introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such

reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

## **SECTION 8. INTERPRETATION OF JOINT RESOLUTION**

(a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred—

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term “introduction of United States Armed Forces” includes the assignment of member of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution—

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provision of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

## **SECTION 9. SEPARABILITY CLAUSE**

If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

## **SECTION 10. EFFECTIVE DATE**

This joint resolution shall take effect on the date of its enactment. ♦

*Source:* 87 Stat. 555-560 (1973).

### **3. Authorization for Use of Military Force, P.L. 107-40, September 18, 2001**

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Joint Resolution

To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States.

Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and

Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This joint resolution may be cited as the “Authorization for Use of Military Force”.

SECTION 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES

(a) **IN GENERAL-** That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

(b) **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 supercedes [sic] any requirement of the War Powers Resolution. ♦

Source: 115 Stat. 224-225 (2001).

4. Joint Resolution to Authorize the Use of United States Armed Forces Against Iraq, P.L. 107-243, October 16, 2002

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##### **Joint Resolution**

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;

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;

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;

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;

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;

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;

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;

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

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;

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;

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;

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";

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";

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;

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;

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;

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;

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

Whereas it is in the national security [interest-ebk] of the United States to restore international peace and security to the Persian Gulf region;

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

### **SECTION 1. SHORT TITLE**

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

### **SECTION 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.

### **SECTION 3. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES**

(a) **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.

(b) **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 there after 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.

**SECTION 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. ♦

*Source:* 116 Stat. 1498-1502 (2002).

# Notes

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## Executive Summary

<sup>1</sup> The White House, “President Delivers State of the Union Address,” *Weekly Compilation of Presidential Documents*, 38: 135 (January 29, 2002).

<sup>2</sup> *Ibid.*, “President Bush Outlines Iraqi Threat,” *Weekly Compilation of Presidential Documents*, 38: 1718 (October 7, 2002).

<sup>3</sup> Senate Committee on Foreign Relations, *Next Steps in Iraq*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 26, 2002, p. 113.

<sup>4</sup> The White House, *National Security Strategy of the United States of America*, September 2002, available at <http://purl.access.gpo.gov/GPO/LPS22467> (accessed January 15, 2005).

## Chapter 1: Overview and Objectives

<sup>5</sup> Michael J. Glennon, “War and the Constitution,” *Foreign Affairs*, Spring 1991, p. 88, 99-101.

<sup>6</sup> Peter W. Rodman, “The Imperial Congress,” *The National Interest*, Fall 1985, p. 28, 33.

<sup>7</sup> Senate Subcommittee on the Constitution, Committee on the Judiciary, *Applying the War Powers Resolution to the War on Terrorism*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 17, 2002, pp. 1-3 (Washington, D.C.: U.S. Government Printing Office, 2003).

<sup>8</sup> *Congressional Record*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 10, 2002, 148, S5280 (Washington, D.C.: U.S. Government Printing Office, 2002).

<sup>9</sup> Senate Subcommittee on the Constitution, Committee on the Judiciary, *Applying the War Powers Resolution to the War on Terrorism*, pp. 97-98.

<sup>10</sup> On September 14, 2001, President Bush issued Proclamation 7463 “Declaration of National Emergency by Reason of Certain Terrorist Attacks”. See, *Weekly Compilation of Presidential Documents*, 37: 1310-1311 (September 14, 2001).

<sup>11</sup> Senate Subcommittee on the Constitution, Committee on the Judiciary, *Applying the War Powers Resolution to the War on Terrorism*, pp. 8-10.

<sup>12</sup> *Ibid.*, p. 25.

<sup>13</sup> *Ibid.*, p. 32, 37.

<sup>14</sup> Not all of “war on terrorism” policies fall under the heading of foreign policy. Many policies are domestic in nature. Indeed, as one scholar observes, “the campaign against terrorism is a comprehensive one that collapses foreign and domestic policies into a seamless whole in a way and on a scale as never before.” See, Nancy Kassop, “The War Power and Its Limits,” *Presidential Studies Quarterly*, September 2003, p. 527. This report will focus specifically on the foreign policy side of the “war on terrorism.”

## Chapter 2: September 11 Attacks and America’s Response

<sup>15</sup> Thomas H. Kean and Lee H. Hamilton, “Public Statement [–] Release of 9/11 Commission Report,” July 22, 2004, available at [www.9-11commission.gov/report/911Report\\_Statement.pdf](http://www.9-11commission.gov/report/911Report_Statement.pdf) (accessed August 30, 2004). The National Commission on Terrorist Attacks Upon the United States, *Final Report of the National Commission on Terrorist Attacks Upon the United States*, July 22, 2004, available at [www.9-11commission.gov/report/911Report.pdf](http://www.9-11commission.gov/report/911Report.pdf) (accessed August 30, 2004).

<sup>16</sup> Philip Stephens, “Nations Are United in Uncertainty,” *Financial Times*, January 21, 2004, p. 2.

<sup>17</sup> *Congressional Record*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., September 12, 2001, 147, S9284.

<sup>18</sup> The White House, “Text of a Letter from the President to the Speaker of the House of Representatives,” *Weekly Compilation of Presidential Documents*, 37: 1304 (September 12, 2001).

<sup>19</sup> *Congressional Record*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2001, 147, H5620.

<sup>20</sup> Daniel J. Parks, “Quiet Tension Over Spending,” *Congressional Quarterly*, September 15, 2001, p. 2130.

<sup>21</sup> *Congressional Record*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2001, 147, H5621. Several Members of

Congress agreed with Obey on this point. For example, Harold Rogers (R-KY) noted in his floor speech that the bill gave the President “extraordinary authority” (H5624), and Bill Young himself conceded in a later remark that the President has “tremendous leeway in how to use these funds for *the immediate response* to whatever the attack was or will be” (emphasis added). “The Congress will play a very important constitutional role,” Young continued, “in whatever that effort might be; but, yes, the President does have the ability to use those funds for that purpose” (H5628).

<sup>22</sup> Ibid., H5621.

<sup>23</sup> Ibid., S9417.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., S9421.

<sup>26</sup> Ibid., H5645.

<sup>27</sup> Ibid., H5640.

<sup>28</sup> Ibid., H5654.

<sup>29</sup> Ibid., H5678.

<sup>30</sup> Ibid., H5642-H5643.

<sup>31</sup> Marc Cooper, “Los Angeles Interview; Rep. Barbara Lee: Rowing Against the Tide,” *Los Angeles Times*, September 23, 2001, p. M.4.

<sup>32</sup> *Congressional Record*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2001, 147, H5681.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid., H5682.

<sup>35</sup> Ibid., September 12, 2001, 147, S9325.

<sup>36</sup> Ibid., September 14, 2001, 147, H5645.

<sup>37</sup> The White House, Press Briefing by Ari Fleischer, September 12, 2001, available at [www.whitehouse.gov/news/releases/2001/09/20010912-8.html](http://www.whitehouse.gov/news/releases/2001/09/20010912-8.html) (accessed August 30, 2004).

<sup>38</sup> Ibid., “Address to a Joint Session of Congress and the American People,” *Weekly Compilation of Presidential Documents*, 37: 1348-1349 (September 20, 2001).

<sup>39</sup> Ibid., “President Freezes Terrorists’ Assets,” *Weekly Compilation of Presidential Documents*, 37: 1365 (September 24, 2001).

<sup>40</sup> Gail Russell Chaddock, “Congress Rallies ‘Round the Flag, but Division Lurks While Legislative Agenda Shifted Radically Last Tuesday, Lawmakers Don’t See Role as Simply Nodding to President,” *Christian Science Monitor*, September 19, 2001, p. 2.

<sup>41</sup> The White House, “Radio Address of the President to the Nation,” *Weekly Compilation of Presidential Documents*, 37: 1321 (September 15, 2001).

<sup>42</sup> Robert B. Zoellick, “Countering Terror with Trade,” *Washington Post*, September 20, 2001, p. A 35.

<sup>43</sup> *Congressional Record*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2001, 147, S9414.

<sup>44</sup> Ibid., S9418-S9419.

<sup>45</sup> “Balances on Blank Checks,” *Christian Science Monitor*, Editorial, November 8, 2001, p. 10.

<sup>46</sup> *Congressional Record*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., September 14, 2001, 147, S9418.

<sup>47</sup> The White House, “President Signs Authorization for Use of Military Force Bill,” *Weekly Compilation of Presidential Documents*, 37: 1333-1334 (September 18, 2001).

<sup>48</sup> *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 362.

<sup>49</sup> The White House, *National Strategy for Combating Terrorism*, February 2003, available at <http://purl.access.gpo.gov/GPO/LPS47951> (accessed January 15, 2005).

<sup>50</sup> Ibid. And as Nancy Kassop points out, “Unlike previous wars that ended with a definitive peace agreement or treaty or surrender, the war against terrorism is not likely to correspond to such definable finality.” See, Kassop, *op. cit.*, p. 510.

<sup>51</sup> The White House, “Address to a Joint Session of Congress and the American People,” pp. 1349-1350.

<sup>52</sup> Russell D. Buhite, ed., *Calls to Arms: Presidential Speeches, Messages, and Declarations of War* (Wilmington, DE: SR Books, 2003), p. 149, 154.

<sup>53</sup> Samuel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt*, 1941 vol. (New York: Harper & Brothers Publishers, 1950), p. 524, 527.

### Chapter 3: War on Terrorism: Setting the Strategy

<sup>54</sup> The Bush Doctrine has deep roots in neo-conservative American thinking and scholarship. For the purposes of this study, however, I will concentrate on the immediate effects of the attacks of 9/11 on President Bush's worldview. For a good discussion of the development of neo-conservative thought and worldview, see Stephan Halper and Jonathan Clarke, *America Alone: Neo-Conservatives and the Global Order* (Cambridge: Cambridge University Press, 2004), and James Mann, *The Rise of the Vulcans: The History of Bush's War Cabinet* (New York: Viking Press, 2004).

<sup>55</sup> Barton Gellman, "A Strategy's Cautious Evolution: Before Sept. 11, the Bush Anti-Terror Effort Was Mostly Ambition," *Washington Post*, January 20, 2002, p. A1. Quoted in the *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 202.

<sup>56</sup> The White House, "Statement by the President in His Address to the Nation," *Weekly Compilation of Presidential Documents*, 37: 1301 (September 11, 2001).

<sup>57</sup> *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 330.

<sup>58</sup> The White House, "Address to a Joint Session of Congress and the American People," p. 1349.

<sup>59</sup> *Ibid.*, "President Bush Speaks to the United Nations," *Weekly Compilation of Presidential Documents*, 37: 1638-1639 (November 10, 2001).

<sup>60</sup> It is important to note the use of the word "our" to characterize the war against terrorism. In saying that "we are winning the war on terror", Bush also stated: "The men and women of our Armed Forces have delivered a message now clear to every enemy of the United States: Even 7,000 miles away, across oceans and continents, on mountaintops and in caves — you will not escape *the justice of this nation*" (added emphasis). See, The White House, "President Delivers State of the Union Address," *Weekly Compilation of Presidential Documents*, 38: 134 (January 29, 2002). Bush's emphasis on the fact that this is an American struggle against the threat of international terrorism is baffling, especially given the fact that in his war message on September 20, he stated that "This is not...just America's fight. And what is at stake is not just America's freedom. This is the world's fight. This is civilization's fight. This is the fight of all those who believe in progress and pluralism, tolerance and freedom." See, The White House, "Address to a Joint Session of Congress and the American People," p. 1349.

<sup>61</sup> *Ibid.*, "President Delivers State of the Union Address," *Weekly Compilation of Presidential Documents*, 38: 134-135, 138 (January 29, 2002).

<sup>62</sup> Donald H. Rumsfeld, "'21st Century Transformation' of U.S. Armed Forces," speech at the National Defense University, January 31, 2002, available at [www.defenselink.mil/speeches/2002/s20020131-secdef.html](http://www.defenselink.mil/speeches/2002/s20020131-secdef.html) (accessed August 30, 2004).

<sup>63</sup> Richard Wolffe, "The Bush Doctrine," *Financial Times*, June 21, 2002, p. 18.

<sup>64</sup> The White House, "President Bush Delivers Graduation Speech at West Point," *Weekly Compilation of Presidential Documents*, 38: 945-946 (June 1, 2002).

<sup>65</sup> *Ibid.*, pp. 946-947. Here Bush echoes President Woodrow Wilson's 1917 address to Congress asking to declare war against Imperial Germany. In response to Germany's declaration of unrestricted submarine warfare, Wilson stated that Germany's conduct was equivalent to "throwing to the winds all scruples of humanity or of respect for the understandings that were supposed to underlie the intercourse of the world. ...The wrongs against which we now array ourselves are no common wrongs; they cut to the very roots of human life." See, *Ibid.*, p. 148, 149.

<sup>66</sup> Richard B. Cheney, "Dangers and Opportunities: The Case for Iraqi Regime Change," *National Review Online*, August 27, 2002, available at [www.nationalreview.com/document/document082702.asp](http://www.nationalreview.com/document/document082702.asp) (accessed August 30, 2004).

<sup>67</sup> The White House, *National Security Strategy of the United States of America*.

<sup>68</sup> *Ibid.*, *National Strategy to Combat Weapons of Mass Destruction*, December 2002, available at <http://purl.access.gpo.gov/GPO/LPS24899> (accessed January 15, 2005).

<sup>69</sup> *Ibid.*, *National Strategy for Combating Terrorism*.

<sup>70</sup> *Ibid.*, *Progress Report on the Global War on Terrorism*, September 2003, available at [www.whitehouse.gov/homeland/progress/](http://www.whitehouse.gov/homeland/progress/) (accessed August 30, 2004).

- <sup>71</sup> Marc Trachtenberg, "The Bush Strategy in Historical Perspective," July 30, 2003, unpublished manuscript, Department of Political Science, University of California at Los Angeles, on file with author.
- <sup>72</sup> William A. Galston, "Why a First Strike Will Surely Backfire," *Washington Post*, June 16, 2002, p. B01.
- <sup>73</sup> Bruce Ackerman, "But What's the Legal Case for Preemption," *Washington Post*, August 18, 2002, p.B02.
- <sup>74</sup> Philip Stephens, "Why Iraq Was the War to End All Preventative Wars," *Financial Times*, February 4, 2004, p. 17.
- <sup>75</sup> "North Korea and Iraq," *Washington Post*, Editorial, October 27, 2002, p. B. 6.
- <sup>76</sup> "Korean Dangers: Pyongyang's Proliferation Is More Dangerous Than Iraq's," *Financial Times*, Editorial, February 5, 2003, p. 16.
- <sup>77</sup> Michael Dobbs, "N. Korea Tests Bush's Policy of Preemption; Strategy Seems to Target Weaker Nations," *Washington Post*, January 6, 2003, p. A. 01.
- <sup>78</sup> Glenn Frankel, "New U.S. Doctrine Worries Europeans," *Washington Post*, September 30, 2002, p. A 01.
- <sup>79</sup> "Bush Sallies Forth: The US President Learns to 'Do' Foreign Policy," *Financial Times*, Editorial, June 7, 2003, p. 12.
- <sup>80</sup> James Mann, "Bush Wanted His Doctrine and the Allies, Too," *Washington Post*, March 16, 2003, p.B.01.
- <sup>81</sup> House of Representatives Committee on Armed Services, *U.S. National Security Strategy*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., November 19, 2003, available at [www.lexis-nexis.com](http://www.lexis-nexis.com) (accessed January 15, 2005).
- <sup>82</sup> *Ibid.*
- <sup>83</sup> *Ibid.*
- <sup>84</sup> *Congressional Record*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., November 25, 2003, 149, S15962.
- <sup>85</sup> Senate Committee on Foreign Relations, *What's Next in the War on Terrorism*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 7, 2002, p. 20, 23.
- <sup>86</sup> House of Representatives Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, *Combating Terrorism: A proliferation of Strategies*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., March 3, 2003, pp. 48-49, 161, 177.
- <sup>87</sup> *Congressional Record*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., January 28, 2003, 149, S1509.
- <sup>88</sup> Stephen Fidler, "Terrorism: Facing up to a New Kind of War," *Financial Times*, January 23, 2003, p. 2.
- <sup>89</sup> *Congressional Record*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., August 1, 2003, 149, S10886.
- <sup>90</sup> *Ibid.*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 5, 2004, 150, S612. Ironically, this was the first anniversary of Secretary of State Colin L. Powell's presentation to the U.N. Security Council, in which he made the Bush Administration's case for a preemptive (essentially, preventive) war against Iraq.
- <sup>91</sup> *Ibid.*, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 26, 2002, 148, S9413.

## **Chapter 4: Executing the Strategy**

### **Part 1: War in Afghanistan**

- <sup>92</sup> *Congressional Record*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., September 12, 2001, 147, S9303.
- <sup>93</sup> *Ibid.*, S9323.
- <sup>94</sup> The White House, "Address to a Joint Session of Congress and the American People," p. 1348.
- <sup>95</sup> *Ibid.*, "Radio Address of the President to the Nation," *Weekly Compilation of Presidential Documents*, 37: 1430 (October 6, 2001).
- <sup>96</sup> United States Mission to the United Nations, "Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council," on file at the Library of Congress, Washington, D.C. (S/2001/946, deposited November 14, 2001).
- <sup>97</sup> The White House, "Presidential Address to the Nation," *Weekly Compilation of Presidential Documents*, 37: 1432 (October 7, 2001).
- <sup>98</sup> Department of Defense, "Rumsfeld and Myers Briefing on Enduring Freedom," October 7, 2001, available at [www.dod.gov/transcripts/2001/t10072001\\_t1007sd.html](http://www.dod.gov/transcripts/2001/t10072001_t1007sd.html) (accessed August 30, 2004).
- <sup>99</sup> The White House, "President's Letter to Congress on American Response to Terrorism," *Weekly Compilation of Presidential Documents*, 37: 1447-1448 (October 9, 2001).
- <sup>100</sup> Dave Boyer, "Bush's Curbs on Classified Briefings Irk Congress," *Washington Times*, p. A.1.

<sup>101</sup> Ibid.

<sup>102</sup> James Gerstenzang, "U.S. Strikes Back; Congress Chided for Leaks; Secrecy: Bush Plans to Give Classified Briefings to Just Eight Members. Those out of the Loop Cite Their Right to Know," *Los Angeles Times*, October 10, 2001, p. A.1. Todd S. Purdum and Alison Mitchell, "Bush, Angered by Leaks, Duels with Congress," *New York Times*, October 10, 2001, p. A.1.

<sup>103</sup> Press Briefing by Ari Fleischer, October 9, 2001, available at [www.whitehouse.gov/news/releases/2001/10/20011009-1.html#Limit-Congress](http://www.whitehouse.gov/news/releases/2001/10/20011009-1.html#Limit-Congress) (accessed August 30, 2004).

<sup>104</sup> Ibid.

<sup>105</sup> Dana Milbank, "In War, It's Power to the President," *Washington Post*, November 20, 2001, p. A. 01.

<sup>106</sup> Todd S. Purdum, "Bush Lifts Some Restrictions on Classified Information," *New York Times*, October 11, 2001, p. B.11.

<sup>107</sup> The White House, "Radio Address of the President to the Nation," *Weekly Compilation of Presidential Documents*, 37: 1475 (October 13, 2001).

#### **Chapter 4, Part 2: War in Iraq**

<sup>108</sup> Steven R. Weisman, "Pre-emption: Idea with a Lineage Whose Time Has Come," *New York Times*, March 23, 2003, p. B.1.

<sup>109</sup> Ibid.

<sup>110</sup> Glenn Kessler, "U.S. Decision on Iraq Has Puzzling Past," *Washington Post*, January 12, 2003, p. A01.

<sup>111</sup> Richard A. Clarke, *Against All Enemies: Inside America's War on Terror* (New York: Free Press, 2004), p. 30.

<sup>112</sup> *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 330.

<sup>113</sup> Ibid., p. 334.

<sup>114</sup> Clarke, p. 32.

<sup>115</sup> *Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 334.

<sup>116</sup> "Clarke's Take on Terror," CBSnews.com, March 21, 2004, available at [www.cbsnews.com/stories/2004/03/19/60minutes/main607356.shtml](http://www.cbsnews.com/stories/2004/03/19/60minutes/main607356.shtml) (accessed August 30, 2004). Quoted in the *Final Report of the National Commission on Terrorist Attacks Upon the United States*, note 62 (chapter 10), p. 559.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid., p. 335.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid., p. 336.

<sup>123</sup> John Keegan, *The Iraq War* (New York: Alfred A. Knopf, 2004), p. 234.

<sup>124</sup> Kessler, "U.S. Decision on Iraq Has Puzzling Past."

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Milbank, "In War, It's Power to the President."

<sup>128</sup> David E. Sanger, "As the Battlefield Changes, So Does the War Itself," *New York Times*, December 23, 2001, p. 4.3.

<sup>129</sup> Gene Healy, "War with Iraq: Who Decides?," February 26, 2004, available at [www.cato.org/dailys/02-26-02.html](http://www.cato.org/dailys/02-26-02.html) (accessed August 30, 2004).

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<sup>131</sup> Dana Milbank and Mike Allen, "U.S. Will Take Action against Iraq, Bush Says," *Washington Post*, March 14, 2002, p. A. 01.

<sup>132</sup> James Dao, "Call in Congress for Full Airing of Iraq Policy," *New York Times*, July 18, 2002, p. A. 1.

<sup>133</sup> Mike Allen and Juliet Eilperin, "Bush Aides Say Iraq War Needs No Hill Vote," *Washington Post*, August 26, 2002, p. A. 01.

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<sup>135</sup> "Steps Before War," *New York Times*, Editorial, August 11, 2002, p. 4.12.

- <sup>136</sup> “Sharing the War Burden,” *Christian Science Monitor*, Editorial, August 28, 2002, p. 08.
- <sup>137</sup> “Mr Bush Lays out His Case,” *Economist*, September 14, 2002.
- <sup>138</sup> The White House, “Remarks by the President in Address to the United Nations General Assembly,” *Weekly Compilation of Presidential Documents*, 38: 1531-1533 (September 12, 2002).
- <sup>139</sup> *Ibid.*, *A Decade of Deception and Defiance: Saddam Hussein’s Defiance of the United Nations*, September 12, 2002, available at <http://purl.access.gpo.gov/GPO/LPS22165> (accessed January 15, 2005).
- <sup>140</sup> Mike Allen and Charles Lane, “Resolution Likened to ‘64 Vietnam Measure,” *Washington Post*, September 20, 2002, p. A. 20.
- <sup>141</sup> *Ibid.*
- <sup>142</sup> Karen DeYoung and Jim VandeHei, “Bush Delivers Iraq Resolution,” *Washington Post*, September 20, 2002, p. A. 01.
- <sup>143</sup> Allen and Lane, “Resolution Likened to ‘64 Vietnam Measure.”
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- <sup>145</sup> Glenn Kessler, “A Muscular First Step,” *Washington Post*, October 11, 2002, p. A. 01.
- <sup>146</sup> John W. Warner, “The War Debate,” *Los Angeles Times*, October 9, 2002, p. B. 15.
- <sup>147</sup> Christopher Marquis, “Lawmakers Quibble over the Words of War,” *New York Times*, September 26, 2002, p. A. 17.
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- <sup>149</sup> Marquis.
- <sup>150</sup> DeYoung and VandeHei, “Bush Delivers Iraq Resolution.”
- <sup>151</sup> “Authorization for War: What the White House Would Like Congress to Say,” *New York Times*, September 27, 2002, p. A. 18.
- <sup>152</sup> “Bush Rejects Hill Limits on Resolution Allowing War,” *Washington Post*, October 2, 2002, p. A. 01.
- <sup>153</sup> Elisabeth Bumiller and Alison Mitchell, “Bush Strikes Deal for House Backing on Action in Iraq,” *New York Times*, October 3, 2002, p. A1.
- <sup>154</sup> *Ibid.*
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- <sup>160</sup> Alison Mitchell and Carl Hulse, “Congress Authorizes Bush to Use Force against Iraq, Creating a Broad Mandate,” *New York Times*, October 11, 2002, p. A.1.

- <sup>161</sup> Jim VandeHei and Juliet Eilperin, "Congress Passes Iraq Resolution," *Washington Post*, October 11, 2002, p. A. 01.
- <sup>162</sup> Neil A. Lewis, "Congress Lets Slip the Dogs of War," *New York Times*, October 13, 2002, p. 4.5.
- <sup>163</sup> Senate Select Committee on Intelligence, "Additional Views of Vice Chairman John D. Rockefeller IV, Senator Carl Levin and Senator Richard Durbin," *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, p. 450, available at <http://intelligence.senate.gov/iraqreport2.pdf> (accessed August 30, 2004).
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- <sup>176</sup> Senate Committee on Armed Services, *U.S. Policy on Iraq*, p. 46.
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- <sup>178</sup> "Additional Views of Senator Richard Durbin," *Report on the U.S. Intelligence Community's Prewar Intelligence Assessments on Iraq*, p. 503.
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## **Chapter 5: Evidence and Recommendations**

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