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Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

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MEMORANDUM FOR DANIEL J. BRYANT
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGISLATIVE AFFAIRS

From: John C. Yoo
Deputy Assistant Attorney General

Re: Authorization for Use of Military Force Against Iraq Resolution of 2002

This memorandum confirms the views of the Office of Legal Counsel, expressed to you last week, on H. J. Res. 114, the Authorization for Use of Military Force Against Iraq Resolution of 2002. This resolution authorizes the President to use the United States Armed Forces, "as he determines to be necessary and appropriate," either to "defend the national security of the United States against the continuing threat posed by Iraq," or to "enforce all relevant United Nations Security Council resolutions regarding Iraq." H. J. Res. 114, § 3(a).

We have no constitutional objection to Congress expressing its support for the use of military force against Iraq.[1] Indeed, the Office of Legal Counsel was an active participant in the drafting of and negotiations over H. J. Res. 114. We have long maintained, however, that resolutions such as H. J. Res. 114 are legally unnecessary. *See, e.g., Deployment of United States Armed Forces into Haiti*, 18 Op. O.L.C. 173, 175-76 (1994) ("the President may introduce troops into hostilities or potential hostilities without prior authorization by the Congress"); *Proposed Deployment of United States Armed Forces into Bosnia*, 19 Op. O.L.C. 327, 335 (1995) ("the President has authority, without specific statutory authorization, to introduce troops into hostilities in a substantial range of circumstances"). As Chief Executive and Commander in Chief of the Armed Forces of the United States, the President possesses ample authority under the Constitution to direct the use of military force in defense of the national security of the United States, as we explain in Section I of this memorandum, and as H. J. Res. 114 itself acknowledges when it states that "the President has authority under the Constitution to take

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[1] Congress has expressed its support for the use of military force on a number of occasions throughout U.S. history, including, most recently, in response to the attacks of September 11, 2001. *See* Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001); *see also* Act of May 28, 1798, 1 Stat. 561 (Quasi War with France); Act of Feb. 6, 1802, 2 Stat. 129 (First Barbary War); Act of Jan. 15, 1811, 3 Stat. 471 (East Florida); Act of Feb. 12, 1813, 3 Stat. 472 (West Florida); Act of Mar. 3, 1815, 3 Stat. 230 (Second Barbary War); Act of Mar. 3, 1819, 3 Stat. 510 (African Slave Trade); Joint Resolution of June 2, 1858, 11 Stat. 370 (Paraguay); Joint Resolution of Apr. 20, 1898, 30 Stat. 738 (Spanish-American War); Joint Resolution of Apr. 22, 1914, 38 Stat. 770 (Mexico); Joint Resolution of Jan. 29, 1955, 69 Stat. 7 (Formosa); Joint Resolution of Mar. 9, 1957, 71 Stat. 5 (codified at 22 U.S.C. § 1962) (Middle East); Joint Resolution of Aug. 10, 1964, 78 Stat. 384 (Gulf of Tonkin); Authorization for Use of Military Force Against Iraq Resolution, Pub. L. No. 102-1, 105 Stat. 3 (1991).

action in order to deter and prevent acts of international terrorism against the United States." Moreover, as we detail in Section II, Congress has previously authorized the use of force against Iraq.

It has been our understanding that the President sought this resolution not out of need for legal authority, but in order to demonstrate, to the United Nations and to the current regime in Iraq, that the American people, as represented by both their President and their representatives in both Houses of Congress, fully support taking all action necessary and appropriate to enforce all relevant United Nations Security Council resolutions involving Iraq and to defend the United States against Iraq, including the use of force if necessary. We recognize that, notwithstanding the President's pre-existing constitutional and statutory authorities to use force, there are significant non-legal reasons for the President and Congress jointly to state their renewed commitment, particularly in light of the terrorist attacks of September 11, 2001, to use force if necessary to deal with the threat posed by Iraq to the national security of the United States and to international peace and security in the Persian Gulf region.

Accordingly, last week we recommended to you and to the White House that the President take steps to ensure that his decision to approve H. J. Res. 114 would not be construed in the future as an indication that this resolution was legally necessary. Specifically, we recommended that the President's signing statement include an explicit reservation stating that his signing of the resolution did not reflect any change in his position, and the long-standing position of the Executive Branch, that the President already possesses ample legal authority under the Constitution to order the use of force against Iraq. We further recommended that the President's signing statement expressly state that his signing of H. J. Res. 114 also did not change the established position of the Executive Branch that the War Powers Resolution cannot, consistent with the Constitution, restrict the President's authority as Chief Executive and Commander in Chief to order the use of military force. *See, e.g., Statement on Signing the Resolution Authorizing the Use of Military Force Against Iraq*, 1 Pub. Papers of George Bush 40 (1991) ("my request for congressional support did not, and my signing [Pub. L. No. 102-1] does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution").

I.

As we have explained on numerous occasions, the President has authority under the Constitution to initiate the use of military force to defend the national security of the United States. Article II expressly vests in the President, and not in Congress, the full "executive Power" of the United States. U.S. Const. art. II, § 1, cl. 1. Article II also provides that the President "shall be Commander in Chief of the Army and Navy of the United States." U.S. Const. art. II, § 2, cl. 1. The Framers understood the Commander in Chief Clause as investing the President with the fullest range of power understood at the time of the ratification of the Constitution as belonging to the military commander. Taken together, these two provisions constitute a substantive grant of broad war power to the President.

In addition, the structure of the Constitution demonstrates that any power traditionally understood as pertaining to the executive – which includes the conduct of warfare and the defense of the nation – is vested in the President unless expressly assigned in the Constitution to Congress. Article II, Section 1 makes this clear by stating that the "executive Power shall be vested in a President of the United States of America." U.S. Const. art. II, § 1, cl. 1. That sweeping grant vests in the President an unenumerated "executive Power" and contrasts with the specific enumeration of the powers granted to Congress by the Constitution. *See* U.S. Const. art. I, § 1 (vesting in Congress "[a]ll legislative Powers *herein granted*") (emphasis added). The implications of constitutional text and structure are confirmed by the practical consideration that national security decisions require the unity in purpose and energy in action that characterize the Presidency rather than Congress. Indeed, the textual provisions in Article II, combined with considerations of constitutional structure and the fundamental principles of the separation of powers, *forbid* Congress from interfering with the President's exercise of his core constitutionally assigned duties, absent those "exceptions and qualifications . . . expressed" in the Constitution. *Myers v. United States*, 272 U.S. 52, 139 (1926) (quotations omitted).

There is no expression in the Constitution of any requirement that the President seek authorization from Congress prior to using military force. There is certainly nothing in the text of the Constitution that explicitly requires Congress to consent before the President may exercise his authority as Chief Executive and Commander in Chief to command U.S. military forces. By contrast, Article II expressly states that the President must obtain the advice and consent of the Senate before entering into treaties or appointing ambassadors. U.S. Const. art. II, § 2, cl. 2. Similarly, Article I, Section 10 expressly denies states the power to "engage" in war without congressional authorization, except in case of actual invasion or imminent danger. U.S. Const. art. I, § 10, cl. 3. Moreover, founding documents prior to the U.S. Constitution, such as the South Carolina Constitution of 1778, explicitly prohibited the Executive from commencing war or concluding peace without legislative approval. S.C. Const. art. XXVI (1776), *reprinted in* Francis N. Thorpe, ed., 6 *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* at 3247 (1909). *See also* Articles of Confederation, art. IX, § 6, 1 Stat. 4, 8 (1778) ("The United States, in Congress assembled, shall never engage in a war . . . unless nine States assent to the same."). The framers of the Constitution thus well knew how to constrain the President's power to exercise his authority as Commander in Chief to engage U.S. Armed Forces in hostilities, and decided not to do so.

All three branches have recognized the President's broad constitutional power as the Chief Executive and Commander in Chief to initiate hostilities and to use military force to protect the nation. The Executive Branch, for example, has long interpreted the Commander in Chief power "as extending to the dispatch of armed forces . . . for the purpose of protecting American interests." *Training of British Flying Students in the United States*, 40 Op. Att'y Gen. 58, 62 (1941); *see also Authority to Use United States Military Forces in Somalia*, 16 Op. O.L.C. 6 (1992) (President's role as Commander in Chief and Chief Executive vests him with constitutional authority to order U.S. forces abroad to further national interests). The Supreme Court has likewise held that a major object of the Commander in Chief Clause is "to vest in the President the supreme command over all the military forces, – such supreme and undivided command as would be necessary to the prosecution of a successful war." *United States v. Sweeny*, 157 U.S. 281, 284 (1895). As Commander in Chief, the President "is authorized to

direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy." *Fleming v. Page*, 50 U.S. (9 How.) 603, 615 (1850).[2]

Congress itself recently recognized the President's constitutional authority to use military force when it enacted Pub. L. No. 107-40 by overwhelming margins shortly after the terrorist attacks of September 11, 2001. That law expressly states that "the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States," and H. J. Res. 114 explicitly reaffirms that conclusion. Moreover, Congress has acquiesced in the unilateral use of force by Presidents during the course of numerous armed conflicts. During the previous Administration, for example, our Office concluded that Congress had approved of President Clinton's unilateral decision to use military force in Kosovo, when it enacted Pub. L. No. 106-31, 113 Stat. 57 (May 21, 1999), to provide emergency supplemental appropriations for continued military operations there. *See Authorization for Continuing Hostilities in Kosovo*, 2000 WL 33716980 (O.L.C.).

Indeed, Presidents have relied upon their inherent constitutional powers when they have used force in recent conflicts. For example, President George H.W. Bush launched Operation Desert Storm pursuant to his authority as Commander in Chief. *See Letter to Congressional Leaders on the Persian Gulf Conflict*, 1 Pub. Papers of George Bush 52 (1991). In 1992, President Bush ordered the participation of the United States in the enforcement of the southern no-fly zone in Iraq pursuant to his constitutional authority. *See Letter to Congressional Leaders Reporting on Iraq's Compliance with United Nations Security Council Resolutions*, 2 Pub. Papers of George Bush 1574, 1575 (1992-93). When President Clinton ordered the 1993, 1996, and 1998 missile strikes against Iraq, he likewise pointed to his constitutional authority as Commander in Chief and Chief Executive. *See Letter to Congressional Leaders on the Military Strikes Against Iraq*, 2 Pub. Papers of William Jefferson Clinton 2195, 2196 (1998); Letter from President William J. Clinton, to the Honorable Newt Gingrich, Speaker of the House of Representatives at 2 (Sept. 5, 1996); *Letter to Congressional Leaders on the Strike on Iraqi Intelligence Headquarters*, 1 Pub. Papers of William Jefferson Clinton 940 (1993). And, to take a more recent example, when President Clinton directed the extensive and sustained 1999 air campaign in the Former Republic of Yugoslavia, he relied entirely on his "constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive." *Letter to Congressional Leaders Reporting on Airstrikes against Serbian Targets in the Federal Republic of Yugoslavia (Serbia and Montenegro)*, 1 Pub. Papers of William Jefferson Clinton

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[2] As we have recently explained, various procedural obstacles make it unlikely that a court would reach the question of the President's constitutional power to engage the U.S. Armed Forces in military hostilities, regardless of whether the suit is brought by a Member of Congress or a private citizen. *See* Letter for Honorable Alberto R. Gonzales, Counsel to the President, from John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel (Sept. 10, 2002); *see also Campbell v. Clinton*, 203 F.3d 19 (D.C. Cir.), *cert. denied*, 531 U.S. 815 (2000) (Kosovo); *Holtzman v. Schlesinger*, 484 F.2d 1307 (2d Cir. 1973) (Vietnam); *Luftig v. McNamara*, 373 F.2d 664, 665-66 (D.C. Cir. 1967) (Vietnam); *Ange v. Bush*, 752 F. Supp. 509 (D.D.C. 1990) (Persian Gulf War); *Crockett v. Reagan*, 558 F. Supp. 893 (D.D.C. 1982) (El Salvador); *cf. Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952); *Johnson v. Eisentrager*, 339 U.S. 763, 789 (1950). A federal district court recently dismissed sua sponte a suit filed on August 27, 2002 to enjoin the President from engaging in military action against Iraq absent a declaration of war or other extenuating circumstances on the grounds of lack of standing and the political question doctrine. *See Mahorner v. Bush*, – F. Supp. 2d –, 2002 WL 31084938 (D.D.C. 2002).

459 (1999). In none of these interventions did Congress interfere with or regulate the President's exercise of his Commander-in-Chief powers.

Because the President possesses broad constitutional authority as Chief Executive and Commander in Chief to direct the use of military force against Iraq, congressional authorization is legally unnecessary. Congress has the power to "provide for the common Defence," to "raise and support Armies," to "provide and maintain a Navy," and to appropriate funds to support the military, U.S. Const. art. I, §§ 8-9, to be sure, but it is the President who enjoys the constitutional status of Commander in Chief. As such, the President has full constitutional authority to use all of the military resources provided to him by Congress. Indeed, within the past half century, Presidents have unilaterally initiated military actions in Korea, Vietnam, Grenada, Lebanon, Panama, Somalia, and Kosovo, without congressional authorization.[3]

The Constitution does vest in Congress, and not the President, the power to "declare War." U.S. Const. art. I, § 8, cl. 11. The Constitution nowhere states, however, that Congress has the additional power to "make" or "engage" or "levy" war. By contrast, Article I, Section 10 addresses the power of states to "engage" in war, U.S. Const. art. I, § 10, cl. 3, while Article III describes the offense of treason as the act of "levying war" against the United States, U.S. Const. art. III, § 3, cl. 1. Thus, the constitutional text itself demonstrates that the power to "declare" war was a narrower power than that of engaging, making, or levying war. By placing the power to declare war in Congress, the Constitution did nothing to divest the President of the traditional power of the Commander in Chief and Chief Executive to decide to use force. Congress's ability to restrain the President from using military force arises out of its control over military resources, and not out of its power to declare war.[4]

The Founders did not contemplate that a declaration of war would be legally necessary for the President to use military force. To the contrary, the Founders were intimately familiar with the extensive British practice of engaging in undeclared wars throughout the preceding century. That is not to say that the power to declare war had no meaning whatsoever at the time of the Founding. Rather, Congress's Article I power to declare a legal state of war, and to notify

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[3] The normative role of historical practice in constitutional law, and especially with regard to separation of powers, is well settled. As the Supreme Court has repeatedly recognized, governmental practice plays a highly significant role in establishing the contours of the constitutional separation of powers: "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned . . . may be treated as a gloss on 'executive Power' vested in the President by § 1 of Art. II." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610-11 (1952) (Frankfurter, J., concurring) (quoted in *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981)). Moreover, the role of practice is heightened in dealing with issues affecting foreign affairs and national security. As the Supreme Court has noted, "the decisions of the Court in th[e] area [of foreign affairs] have been rare, episodic, and afford little precedential value for subsequent cases." *Dames & Moore*, 453 U.S. at 661. In particular, the difficulty the courts experience in addressing "the broad range of vitally important day-to-day questions regularly decided by Congress or the Executive" with respect to foreign affairs and national security makes the judiciary "acutely aware of the necessity to rest [judicial] decision[s] on the narrowest possible ground capable of deciding the case." *Id.* at 660-61. Historical practice and the ongoing tradition of Executive Branch constitutional interpretation therefore play an especially important role in this area.

[4] As James Madison explained during the critical state ratification convention in Virginia, "the sword is in the hands of the British King; the purse in the hands of the Parliament. It is so in America, as far as any analogy can exist." 3 Jonathan Elliot, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA, IN 1787, at 393 (1836).

other nations of that status, once had an important effect under the law of nations. And even today, the power to declare war continues to trigger significant domestic statutory powers, such as those established under the Alien Enemy Act of 1798, 50 U.S.C. § 21, and federal surveillance laws, 50 U.S.C. §§ 1811, 1829, 1844. Declarations of war have significant constitutional ramifications as well. *See* U.S. Const. art. I, § 10, cl. 3 (prohibiting states from "lay[ing] any Duty of Tonnage, keep[ing] Troops, or Ships of War" without congressional consent only "in time of Peace"); U.S. Const. amend. III (permitting the quartering of soldiers in private homes "in time of war . . . in a manner to be prescribed by law"); U.S. Const. amend. V (permitting criminal trials without grand jury indictment in cases "arising . . . in the Militia, when in actual service in time of War or public danger"). The power to declare war has seldom been used, however. Although Presidents have deployed the U.S. Armed Forces, by conservative estimates, more than a hundred times in our nation's history,[5] Congress has issued formal declarations in only five wars.[6] This long practice of U.S. engagement in military hostilities without a declaration of war demonstrates that the political branches have interpreted the Constitution just as the Founders did.

II.

In addition to his powers under the Constitution, the President already enjoys statutory authorization to use force against Iraq. On January 14, 1991, shortly before the United States and allied nations began Operation Desert Storm, Congress enacted Pub. L. No. 102-1, 105 Stat. 3, the "Authorization for Use of Military Force Against Iraq Resolution." Subsection 2(a) authorizes 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." U.N. Security Council Resolution 678, in turn, authorizes member states "to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area." The other resolutions listed in Pub. L. No. 102-1 relate to Iraq's military invasion of Kuwait on August 2, 1990 and are identical to the resolutions "recall[ed] and reaffirm[ed]" in Resolution 678.

By authorizing the use of U.S. Armed Forces "pursuant to" Resolution 678, Pub. L. No. 102-1 sanctions not only the employment of the methods approved in that resolution – that is, "all necessary means" – but also the objectives outlined therein – namely, "to uphold and implement . . . *all subsequent relevant* resolutions and to restore international peace and security to the area." S.C. Res. 678 (emphasis added). Two of the most important "subsequent relevant resolutions" respecting "international peace and security" in the Persian Gulf region are U.N. Security Council Resolution 687, which requires, *inter alia*, the inspection and destruction of

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[5] *See, e.g.*, Congressional Research Service, Library of Congress, *Instances of Use of United States Armed Forces Abroad, 1798-1999* (1999).

[6] *See* Act of June 18, 1812, 2 Stat. 755 (1812) (War of 1812); Act of May 13, 1846, 9 Stat. 9 (Mexican-American War); Act of Apr. 25, 1898, 30 Stat. 364 (Spanish-American War); Joint Resolution of Apr. 6, 1917, 40 Stat. 1 (World War I: Germany); Joint Resolution of Dec. 7, 1917, 40 Stat. 429 (World War I: Austria-Hungary); Joint Resolution of Dec. 8, 1941, 55 Stat. 795 (World War II: Japan); Joint Resolution of Dec. 11, 1941, 55 Stat. 796 (World War II: Germany); Joint Resolution of Dec. 11, 1941, 55 Stat. 797 (World War II: Italy); Joint Resolution of June 5, 1942, 56 Stat. 307 (World War II: Bulgaria); Joint Resolution of June 5, 1942, 56 Stat. 307 (World War II: Hungary); Joint Resolution of June 5, 1942, 56 Stat. 307 (World War II: Rumania).

Iraq's program to develop weapons of mass destruction, and U.N. Security Council Resolution 688, which demands that Iraq halt the repression of its civilian population. Should the President determine that the use of force is necessary to implement either resolution, such force would find statutory authorization in Pub. L. No. 102-1.

Congress has demonstrated several times that Pub. L. No. 102-1 remains in effect. First, the same Congress that enacted Pub. L. No. 102-1 twice expressed its sense that Pub. L. No. 102-1 continues to authorize the use of force even after Iraq's withdrawal from Kuwait. Specifically, Section 1095 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 contains a congressional finding that Iraq is violating Resolution 687's requirements relating to its weapons of mass destruction program, and expresses Congress's sense that "the Congress supports the use of all necessary means to achieve the goals of Security Council Resolution 687 as being consistent with the Authorization for Use of Military Force Against Iraq Resolution (Public Law 102-1)." Pub. L. No. 102-190, § 1095, 105 Stat. 1290, 1488 (1991). Section 1096 of that same Act expresses Congress's sense that "Iraq's noncompliance with United Nations Security Resolution 688 constitutes a continuing threat to the peace, security, and stability of the Persian Gulf region . . . and [that] the Congress supports the use of all necessary means to achieve the goals of United Nations Security Resolution 688," which condemns the repression of the Iraqi civilian population, "consistent with all relevant United Nations Security Council Resolutions and . . . Public Law 102-1." 105 Stat. 1489. Second, in 1999 Congress amended Pub. L. No. 102-1 to extend the reporting requirements from every 60 days to every 90 days, thereby indicating that the law continues in effect. *See* Pub. L. No. 106-113, Div. B, § 1000(a)(7), 113 Stat. 1501, 1536 (1999).

The practice of the Executive Branch, in which Congress has acquiesced, further demonstrates that Pub. L. No. 102-1 continues to be in effect and to provide supplemental statutory authority for the President to implement applicable Security Council Resolutions, including Resolutions 678, 687, and 688. Consistent with the reporting requirement in section 3 of Pub. L. No. 102-1, President Bush and his two predecessors have written to Congress at regular intervals to report on the status of efforts to secure Iraqi compliance with the applicable Security Council resolutions. This practice has gone unchallenged by Congress. Moreover, President George H.W. Bush and President Clinton authorized the use of force on several occasions under Pub. L. No. 102-1. For example, in January 1991, shortly after ordering U.S. Armed Forces to commence Operation Desert Storm , President George H.W. Bush reported to Congress that such operations were "contemplated by" Pub. L. No. 102-1. *See Letter to Congressional Leaders on the Persian Gulf Conflict*, 1 Pub. Papers of George Bush 52 (1991). Shortly thereafter, President Bush reported to Congress that he had ordered the 1992 participation of the United States in the enforcement of the southern no-fly zone in Iraq "consistent with" Pub. L. No. 102-1. *See Letter to Congressional Leaders Reporting on Iraq's Compliance with United Nations Security Council Resolutions*, 2 Pub. Papers of George Bush 1574, 1575 (1992-93). In September 1996, President Clinton reported to Congress that he had ordered U.S. cruise missile strikes "consonant with" Pub. L. No. 102-1 and section 1096 of the 1992-93 Defense Authorization Act. *See* Letter from President William J. Clinton, to the Honorable Newt Gingrich, Speaker of the House of Representatives 1 (Sept. 5, 1996). And in 1998, President Clinton directed missile and aircraft strikes against Iraq "under" Pub. L. No. 102-1. *See Letter to Congressional Leaders on the Military Strikes Against Iraq*, 2 Pub. Papers

of William Jefferson Clinton 2195, 2196 (1998). Congress has acquiesced in each of these uses of force.

In addition, Pub. L. No. 105-235, a Joint Resolution finding that Iraq "is in unacceptable and material breach of its international obligations," and "urg[ing]" President Clinton "to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance," arguably expresses Congress's support for the President to direct military action against Iraq. Pub. L. No. 105-235, 112 Stat. 1538, 1538, 1541 (1998). The resolution contains multiple "whereas" clauses detailing almost two dozen Security Council findings of Iraqi violations of its WMD obligations and concluding that "Iraq's continuing weapons of mass destruction programs threaten vital United States interests and international peace and security." 112 Stat. 1540. Although the Joint Resolution does not specifically authorize the use of force, and cautions that any action taken must comply with the Constitution and relevant laws, insofar as the President determines that directing military action against Iraq is "appropriate . . . to bring Iraq into compliance with its international obligations," and consistent with the Constitution and relevant U.S. law, Congress has expressed its support for such action. 112 Stat. 1541.

Military action against Iraq might also be authorized, under certain circumstances, pursuant to Pub. L. No. 107-40, the "Authorization for Use of Military Force" enacted shortly after the terrorist attacks of September 11, 2001. Pub. L. No. 107-40 authorizes the President to use "all necessary and appropriate force" against those nations, organizations or persons whom "*he determines* planned, authorized, committed, or aided the [September 11] terrorist attacks . . . 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." 115 Stat. 224 (emphasis added). Were the President to order military action against Iraq because, in his judgment, Iraq provided assistance to the perpetrators of the September 11 attacks, he also would be acting with prior statutory authorization pursuant to Pub. L. No. 107-40.