



UNITED STATES SENATE
**REPUBLICAN
POLICY COMMITTEE**

Larry E. Craig, Chairman
Jade West, Staff Director

No. 56

October 3, 2002

S.J. Res. 45 – Further Resolution on Iraq

Calendar No. 618

Introduced September 26, 2002 by Senators Daschle and Lott and placed on the Senate Calendar September 30. Using provisions of Rule XIV, the resolution was not referred to committee.

NOTEWORTHY

- On Tuesday, October 1, Senator Reid filed cloture on the motion to proceed to S.J. Res. 45. A vote on cloture likely will occur following disposition of the conference report on H.R. 2215.
- The text of S.J. Res. 45, introduced by Senators Daschle and Lott, is the first draft of the Iraq resolution circulated by the White House on September 19, 2002. A second White House draft was released on September 26, followed by a third draft on Wednesday, October 2.
- The language of October 2 represents a negotiated compromise between the President, Senator Lott and Representatives Hastert and Gephardt. While Senator Daschle had a role in the initial discussions, he did not sign off on the final agreement. In fact, press reports indicate that Daschle prefers the language in a Biden-Lugar alternative.
- Senators Lieberman, Warner, McCain, and Bayh introduced the language of October 2 in the Senate as S.J. Res. 46 (which today, October 3, was read the second time and will be placed directly on the Senate Calendar). It is likely that this language will be offered as a substitute.
- The House today is marking up virtually the same resolution (H.J. Res. 114). Floor debate is expected to begin on Tuesday, October 8, with a subsequent vote likely occurring on Wednesday or Thursday.
- Neither S.J. Res. 45 nor S.J. Res. 46 makes the potential use of U.S. military force contingent upon the current deliberations of the United Nations Security Council with regard to Iraq.
- Foreign Relations Chairman Biden, joined by Senator Lugar, may offer one or more amendments based on their alternative resolution. This language (yet to be introduced) is expected to be more narrow in scope and rely more heavily on the diplomacy of the United Nations Security Council. Other amendments may be offered.

BACKGROUND

On October 2, President Bush, along with Senator Lott and Representatives Hastert and Gephardt, announced that an agreement had been reached on a resolution authorizing the use of military force against Iraq. This announcement marked the culmination of over two weeks of intense and at times politically charged negotiations between the White House and Congress over specific language in the resolution.

During this time, the White House has actually developed three different draft resolutions on Iraq, the subsequent changes in each reflecting, for the most part, negotiations with bipartisan congressional leadership. The dates these draft resolutions were released by the White House are as follows:

- 1) September 19, the “Further Resolution on Iraq,” (S.J. Res. 45);
- 2) September 26, “Authorization for the Use of Military Force Against Iraq;” and
- 3) October 2, same title as the September 26 draft, (S.J. Res. 46).

S.J. Res. 45 is identical to the White House language of September 19, and was introduced on September 26 by Senators Daschle and Lott with the intention of getting a bill onto the Senate Calendar to serve as a legislative placeholder from which to begin debate on an Iraq resolution.

Specifically, the language of this resolution was viewed by many Senators and Representatives as problematic because of the breadth of authority it gave the President to exercise military force, its inclusion of the Persian Gulf region as a whole in the exercise of such authority, and its failure to acknowledge the need for Congressional oversight and consultation.

In response to criticism of this draft, the White House released an alternative draft on September 26, the “Authorization for the Use of Military Force Against Iraq.” More narrow in scope, this second draft resolution amends the language authorizing the President to use force to defend U.S. national interests: the language which originally read, “threat posed by Iraq, and restore international peace and security in the region” was changed to read, “threat posed by Iraq.”

In addition, the draft of September 26 added a “Determination” clause requiring the President to make known to the Speaker of the House and the President pro tempore of the Senate his determinations for the use of force “prior to such exercise or as soon thereafter as may be feasible.” This section also requires the President to place greater reliance on exhausting diplomatic means to address the threat posed by Iraq before exercising the use of force.

Finally, the draft of September 26 preserves congressional authority by acknowledging the War Powers Resolution requirements and adding a reporting requirement, Section 3, “Reports to Congress.” Under this section, the President must submit reports to Congress at least once every 90 days.

Although the changes made in the September 26 draft are significant, congressional Democrats still rejected the draft resolution believing that it needed to be narrower still. The ensuing negotiations led to the agreement of October 2. While Senators Lott and Daschle and Representatives Hastert and Gephardt were part of the White House meetings, to date Senator Daschle has not supported this agreement. He has stated that while the resolution is an improvement over the previous draft, he prefers alternative language that has been circulated by Senators Biden and Lugar. According to reports, their alternative is more narrow in scope and possibly makes the use of force contingent upon the actions of the United Nations Security Council.

Senators Lieberman, Warner, McCain, Bayh, McConnell, Domenici, Hutchinson, Landrieu, Allard, Helms and Miller introduced the October 2 agreement in the Senate as S.J. Res. 46 and will likely offer it as a substitute to S.J. Res. 45.

The October 2 agreement (i.e., S.J. Res. 46) is similar to the White House draft of September 26 but, in a concession to Representative Gephardt, includes a new section 2, "Support for United States Diplomatic Efforts." The intent of this section is not to make the use of force contingent upon approval from the United Nations Security Council, but to reaffirm that diplomatic efforts should first be exhausted.

In addition, S.J. Res. 46 changes the "Determination" section to "Presidential Determination" and places a limit on the length of time in which presidential determinations can be made known to congressional leadership: "prior to such exercise or as soon thereafter as may be feasible, *but no later than 48 hours after exercising such authority.*" Language was also included in this section to emphasize that action against Iraq is consistent with, and not contrary to, the war on terrorism.

Finally, S.J. Res. 46 changes the reporting requirements of the second draft. The President is required to submit reports to Congress every 60 days versus every 90 days.

BILL PROVISIONS

1) S.J. Res. 45, "Further Resolution on Iraq" (White House Discussion Draft of September 19):

Note: S.J. Res. 45 grants the President broad authority to use military force against Iraq and in the region without further congressional approval or consultation.

The full text of the resolve clause follows:

SEC. 1. SHORT TITLE.

This joint resolution may be cited as the "Further Resolution on Iraq."

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

The President is authorized to use all means that he determines to be appropriate, including force, in order to enforce the United Nations Security Council Resolutions referenced above, defend the national security interests of the United States against the threat posed by Iraq, and restore international peace and security in the region.

2) S.J. Res. 46 - White House Compromise Resolution of October 2; Introduced in the Senate by Lieberman, Warner, McCain, and Bayh:

Note: S.J. Res. 46 expands upon the findings included in S.J. Res. 45. Given the number and length of these changes, they are not included here.

The full text of the resolve clause follows:

SEC. 1. SHORT TITLE.

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

SEC. 2. SUPPORT FOR UNITED STATES DIPLOMATIC EFFORTS

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

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

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

SEC. 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.

SEC. 4. REPORTS TO CONGRESS

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

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

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

* Section 7 of the Iraq Liberation Act, P.L. 105-338:

ASSISTANCE FOR IRAQ UPON REPLACEMENT OF SADDAM HUSSEIN REGIME. It is the sense of the Congress that once the Saddam Hussein regime is removed from power in Iraq, the United States should support Iraq's transition to democracy by providing immediate and substantial humanitarian assistance to the Iraqi people, by providing democracy transition

assistance to Iraqi parties and movements with democratic goals, and by convening Iraq's foreign creditors to develop a multilateral response to Iraq's foreign debt incurred by Saddam Hussein's regime.

ADMINISTRATION POSITION

While a Statement of Administration Policy (SAP) was not available at press time, it is generally recognized that negotiations with the White House have moved debate beyond S.J. Res. 45 and that this resolution is merely a placeholder for Senate proceedings. Additionally, S.J. Res. 46 represents the compromise resolution agreed to by the White House with Senator Lott and Representatives Hastert and Gephardt and subsequently introduced by Senators Lieberman, Warner, McCain, and Bayh. The House version of this agreement is H.J. Res. 114.

POSSIBLE AMENDMENTS

- Biden/Lugar. May offer language from their alternative resolution that is more narrowly crafted to further limit the use of force against Iraq.
- Levin. Alternative resolution or amendments.

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