

# Recent history of the War in Iraq

## From a Legislative Perspective

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### **Introduction**

This paper provides an overview of recent legislative history relating to United States military actions in Iraq, extracted from the congressional record of acts of Congress and the resulting public law.

A great deal of controversy exists around the current military activity by the United States in Iraq. I have observed, in the discourse of this issue, and other political discourse of sensitive issues, that the information presented by the mass media and politicians contains very low information density, and much is unverifiable by observable fact. In reviewing the actual legislative action and vote distribution, we find inconsistencies with what is disseminated by the mass media.

This paper presents a “first principles” approach by looking at the raw facts provided by the congressional record and resulting law, and attempts to focus discussion on actual actions of legislators. It is not meant to imply or suggest other less analytical expressions should be ignored or suppressed.

I sincerely believe there are other people who share my desire for high density information, and may enjoy the analysis which follows. It is for those readers I have published this paper.

### ***Methods***

For this analysis I have searched the congressional record for acts of congress relating the military activities in Iraq, looking for context over the past 20 or so years, using only what is directly in the text of the resolutions and enacted laws. I then examined the voting record and deduced support and opposition only from the ‘nay’ or ‘yea’ vote. I specifically avoided any sources other than the public record. I avoided sources not readily available via internet to anyone reading this paper. I did not look at arguments for or against any act, nor did I try to determine intent or motivation of lawmakers. I looked only at the outcome. I looked for consistent patterns and obvious departures from those patterns. All statements quoted here are from the public record with references given. All sources used in this paper are easily available to anyone with internet access. The methodology was selected to assure that all the facts presented are easily verified by the reader.

The following government web sites were used for gathering information:

<http://thomas.loc.gov>

<http://uscode.house.gov>

<http://www.gpo.gov>

From these sites you can find links to the full text of congressional bills, the history in the record (amendments and votes, etc), and the full text of the resulting laws.

## ***Caveats and Limitations***

This is by no means an attempt at an exhaustive search on any subject. The sources referenced are maintained by United States government, and are provided according to their maintainers as accurate to the best of their ability. The objective was to get as close to basis information as possible using sources available to any reader.

Readers should also consider that in matters of National Security, the law requires a great deal of secrecy. All persons who are given access to classified information are mandated by law to keep such information confidential and prevent disclosure of such information. The law requires anyone in possession of classified information to safeguard the information. Violation of that responsibility is serious crime, in some cases (depending on the nature of the information) punishable by death. This applies to government employees, contractors, members of Congress, Judges, and even the President and his staff. In drafting legislation, executive orders, or any other public disclosure, classified information will be excluded. Both law and procedure provide for exclusion of classified background information from the legislative record. Further understand that the rules for classifying information require that the person or agency that originates the information (documents, reports or observations) is responsible for determining the classification level. So if congress, the President or any other person or agency are provided with classified data on, for example, presence of specific weapons or troops, location and number of forces, or militarily sensitive vulnerabilities, they are prohibited from sharing such information except with other persons known personally to them, known to be authorized ("cleared") to have access to the information, and with a lawfully defined need to know the information. Thus, in matters deemed "National Security", information is frequently available to Congress, the President, their staff, and members of the military which is not available to the general public. We cannot factually determine what may be known or not known by the President, Congress, their staff, our military leaders or our troops. [Reference 13, sec. 793-798].

## ***References***

This section identifies the references used in this analysis.

Amendments to the "War Powers" section of U.S. Code Title 50 (War and National Defense), Chapter 33 (War Powers Resolution).

1. Pub. L. 93-148, Sec. 2, Nov. 7, 1973, [87 Stat. 555, 50 USC CHAPTER 33 - WAR POWERS RESOLUTION
2. Pub. L. 98-119, Oct. 12, 1983, 97 Stat. 805, 'Multinational Force in Lebanon Resolution'
3. Pub. L. 102-1, Jan. 14, 1991, 105 Stat. 3, 'Authorization for Use of Military Force Against Iraq Resolution'
4. Pub. L. 103-160, div. A, title XV, Sec. 1512, Nov. 30, 1993, 107 Stat. 1840, INVOLVEMENT OF ARMED FORCES IN SOMALIA
5. Pub. L. 103-423, Oct. 25, 1994, 108 Stat. 4358, INVOLVEMENT OF ARMED FORCES IN HAITI
6. Public Law 105-338, [22 U.S.C. 2151 note]
7. Public Law 105-235 (August 14, 1998) [112 Stat. 1538],
8. Pub. L. 106-65, div. A, title XII, Sec. 1232, Oct. 5, 1999, INVOLVEMENT OF ARMED FORCES IN HAITI
9. Pub. Law. 107-40, Sept. 18, 2001, 115 Stat. 224, AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST SEPTEMBER 11 TERRORISTS
10. Pub. L. 107-243, Oct. 16, 2002, 116 Stat. 1498, AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ RESOLUTION OF 2002
11. Public Law 102-1 () Authorization for Use of Military Force Against Iraq Resolution
12. Public Law 105-338, Iraq Liberation Act of 1998 [22 U.S.C. 2151 note]

Other references

13. Title 18 USC Chapter 37, Espionage And Censorship

## **War Powers**

U.S. Code Title 50, section 33 [reference 1] was enacted in 1973 with the stated purpose “to fulfill the intent of the framers of the constitution” ... “and insure that the collective judgment of both the Congress and the President apply” when military force is employed. In subparagraph (c) it states that the Presidential power to deploy forces be limited to specific prerequisites:

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.

It requires the President to consult with Congress prior to “introducing forces into hostilities” in “every possible instance”, requires regular consultations when forces are deployed, and provides specific reporting requirements. The power to declare war is assigned by the constitution to Congress, thus the first two criteria imply an act from Congress. The last provides for immediate action in response to attack, but such action is not exempted from requirement for consultations and reporting. The definition given for "introduction of United States Armed Forces" is broadly written to include providing advisors, or even observers, to foreign military forces when engaged, or that may become engaged, in hostilities.

On 7/18/1973, the measure passed House in a roll call vote 244-170. On 7/20/1973 it passed the Senate (vote count not given in the source).

Subsequent acts have modified the original act. Prior to 2001, the majority of these modifications are stated to be “specific statutory authorization” for the deployment of U.S. forces. Most reiterate and remain consistent with the consultation and reporting requirements. Examples following this style are 98-119 [reference 2], authorizing forces in Lebanon, and 102-1 which authorizes forces in Iraq in 1991 [reference 3].

The modifications made by public laws 103-160 (1993), 103-423 (1994) and 106-65 (1999) remain consistent in requiring prior consultation with and regular reporting to Congress. These differ slightly from prior acts in that Congress enacted these laws after military force had been deployed by the President, or a prior deployment had been expanded beyond the original scope of an authorization from Congress. For example, P.L. 103-423 asserts that “the President should have sought and welcomed Congressional approval before deploying United States Armed Forces to Haiti;” re-asserting that authority of the President is constrained by congressional oversight.

Recent congressional acts have modified war powers so as to extend powers to the President. Public law 107-40 [reference 9] is a very short resolution, passed in a very short period of time with essentially no opposition (420 to 1 in the house, 98 to 0 in the senate). This act authorizes the president to “use all necessary and appropriate force”. This act contains no conditions or restrictions. This is a marked departure from all prior modifications to U.S. Code Title 50, section 33. The full text as enacted is given in Appendix A.

P.L. 107-40 was introduced and passed by both the house and senate in less than a day (approximately 9 hours). It passed with zero opposing votes in the senate and only 1 opposing vote in the house.

## **Iraq**

In 1991 Congress authorized military force in Iraq with public law 012-1 [reference 3]. This act provides very specific “subject to” limitations on the President’s exercise of this authority, requiring a “determination” be presented to Congress prior. Also specified were specific reporting requirements, including a statement of objectives, consistent with prior acts.

In 1998, Congress enacted Public Law 105-235 concluding that Iraq’s “continuing weapons of mass destruction programs threatened vital United States interests and international peace and security” and urged the President to take appropriate action. The act passed the senate unanimously and the house 407 to 6. The lack of significant opposition suggests the vote did not follow party alignment.

Also in 1998, 105-338 was enacted which calls for removal of the then current regime and replacement with a democratic government. This act passed the house 36 to 38 and

passed the senate by Unanimous Consent. This act lists hostile actions by Iraq from 1980 onward, including amongst the “abuses” use of chemical weapons, violation of the cease fire terms of 1991, an attempt to assassinate a U.S. president, impeding and threatening the safety of U.N. inspectors, and “a pattern of deception and concealment regarding the history of its weapons of mass destruction programs.”

The enactment of P.L. 107-40 assigns broad responsibility to the President, including use of U.S. forces in any nation which “aided” or “harbored” organizations or persons involved with the 2001 attacks. There is no language to exclude deployments anywhere on earth.

In October of 2002 Congress enacted P.L. 107-243 [reference 9] which specifically authorizes and endorses military force in Iraq. In this act, Congress sites specific prior actions and assertions about Iraq as a threat. Specifically asserted is that the presence of “Weapons of Mass Destruction” was well known by the time U.N. inspectors were withdrawn in 1998. The law urges the President 'to take appropriate action,...to bring Iraq into compliance with its international obligations”. The introduction in this act sites several of the previous references to define specific objectives. This act passed 296 to 133 in the house and 77 to 23 in the Senate. Table 1 summarizes vote by party in the house and senate.

	HOUSE		SENATE	
	Yeas	Nays	Yeas	Nays
REPUBLICAN	215	6	48	1
DEMOCRATIC	81	126	29	21
INDEPENDENT		1		1
<b>TOTALS</b>	<b>296</b>	<b>133</b>	<b>77</b>	<b>23</b>

**Table 1: Vote by Party, Public Law 107-243**

The determination of Congress that the Hussein regime was a threat and should be removed was expressed explicitly in 1998 [reference 12] which calls for 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”.

## Conclusions

Popular assertions that the current military actions in Iraq lack specific objectives and defined exit criteria contradict PL 107-243 which states specific objectives, explicitly and by reference to other existing enacted laws. Explicitly stated objectives include removal of the Hussein regime and replacement with a democratic form of government.

Popular assertions that the current military action in Iraq is “illegal” contradict the actual legislative record. Congress has both generally and specifically authorized use of U.S.

forces. The original war power act [reference 1] enacted in 1973 specifically authorizes deployment of forces in response to an attack. The war powers extension 107-40 declares the events of September 11, 2001 as attacks upon the United States, and authorizes deployment of forces in any nation which aided or harbored organizations or persons involved with those attacks. Finally in 2002 is specific statutory authorization for use of forces in Iraq. Even if the broad powers granted by 107-40 were discounted, the declaration of the September 11 events as “an attack” satisfies the prerequisite of the original 1973 law.

Popular assertions which characterize the current military action in Iraq as “Bush’s war” or otherwise suggest that the President has acted without approval, direction or cooperation from Congress are not supported by the legislative record. Congress enacted several laws which identify the need for military action, removal of the then-current regime, and promotion of a democratic government prior to Bush’s term of office, and continued to through the period of this analysis. The legislative history shows a clear direction from Congress. The voting record shows no significant opposition to initiating, extending or funding military action in Iraq, and where modest opposition has been registered it does not consistently follow party lines.

The first significant congressional opposition is the house vote on P.L. 107-243, in which more than half the house democrats registered “nay” votes. More than half the senate democrats voted to approve (“yea”), ensuring passage. It is interesting to note that in the house at that time the democrat representatives who did vote did not have the votes to carry the house, while in the senate, a concurrence of the democrats who showed up (a democratic party-line vote) would have defeated the bill. In fact senate democrats supported the measure.

The enactment of Pub. L. 107-40 is a departure from existing public laws which had modified war powers, and explicitly expands the power of the President to deploy troops (“appropriate force”) without further authorizations from Congress. It also lacks the explicit reporting requirements of prior forms. This is inconsistent with prior acts modifying this chapter, and inconsistent with the requirements for Congressional responsibility defined in the Constitution.

I feel this last point should be considered as the most significant observation of this analysis. That this measure was enacted unanimously by the Senate and House should be deeply considered. The scope of the law and the rapidity with which it was enacted should raise many (including constitutional) concerns. Subsequent speeches by some legislatures suggesting they oppose military action in Iraq are in most cases inconsistent with the individual and party voting record. Also note that Congress has the power to again modify the war powers and restore prior constraints, yet to date no measures have been introduced in the house or senate to do so.

## **Background of the Author**

I make no claims to be a legal expert, am not formally trained in law, nor am I a legal scholar. My expertise is in technology. I am educated in science and engineering. My

experience includes rigorous analysis of complex systems as well as writing technical standards and specifications. I read the law at “face value” and believe this is the way our constitutional framers intended. I believe that if the literate person can not understand the law, then the law is improperly written.

Politically, I believe strongly in the Constitution as written and find my views are not represented by either dominant political party. My technical orientation, inquisitive nature and tendency to look to “first principles” and work forward when trying to understand concepts, no doubt contributes to my belief that the Constitution should be strictly and literally followed, respected, and all law should clearly, obviously and unambiguously comply with the limitations placed on government by the Constitution.

## **Appendix A: Sept 18, 2001 Extension of War Powers**

AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST SEPTEMBER 11  
TERRORISTS

Pub. L. 107-40, Sept. 18, 2001, 115 Stat. 224, provided that:  
"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'.

"SEC. 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 [50 U.S.C. 1547(a) (1)], 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 [50 U.S.C. 1544(b)].

"(2) Applicability of other requirements. - Nothing in this resolution supercedes any requirement of the War Powers Resolution [50 U.S.C. 1541 et seq]."