



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148

WASHINGTON, MONDAY, OCTOBER 7, 2002

No. 130

Senate

The Senate met at 11:59 a.m. and was called to order by the Honorable ERNEST F. HOLLINGS, a Senator from the State of South Carolina.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, strength for those who seek You, hope for those who trust You, courage for those who rely on You, peace for those who follow You, wisdom for those who humble themselves before You, and power for those who seek to glorify You, we begin this new week filled with awesome responsibilities and soul-sized issues and confess our need for You. We are irresistibly drawn into Your presence by the magnetism of Your love and by the magnitude of challenges we face. Our desire to know Your will is motivated by Your greater desire to help us. We thank You for the women and men of this Senate. Bless them as they debate the resolution on war with Iraq. Help them maintain a spirit of unity as they press on with honest, open discussion and come to a conclusion which is best for our Nation and the world. You are our Lord and Saviour. Amen

PLEDGE OF ALLEGIANCE

The Honorable ERNEST F. HOLLINGS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 7, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ERNEST F. HOLLINGS, a Senator from the State of South Carolina, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. HOLLINGS thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada, the acting majority leader, is recognized.

SCHEDULE

Mr. REID. Mr. President, under the order that is now before the Senate, the Chair will shortly announce morning business for half an hour on both sides, with the Democrats controlling the first half.

ORDER OF PROCEDURE

As a courtesy to the Senator from Pennsylvania, Mr. SPECTER, we are going to extend the morning business on both sides for an extra 15 minutes, so it will be 45 minutes on both sides, with the first 15 minutes of time of the majority under the control of Senator KENNEDY, and the second half hour under the control of Senator WYDEN. At approximately 12:50, or whenever the minority begins their morning business time, the Senator from Pennsylvania, Mr. SPECTER, will be recognized for the first half hour, and I ask unanimous consent for this time agreement.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, I further say in light of this agreement, morning

business will extend until approximately 1:45, at which time the Senate will resume consideration of S.J. Res. 45, with the time until 4 p.m. equally divided and controlled between the two leaders or their designees, with Senators permitted to speak for up to 15 minutes each.

I hope Senators will recognize they do not have the rest of this month to speak on Iraq. The time is now for Senators to do that. We ask they do so as quickly as possible, and limit their speeches to 15 minutes.

Mr. SPECTER. May I seek a point of clarification. This Senator has 30 minutes starting at 12:50?

Mr. REID. Approximately 12:50.

The majority leader asked me to announce there will be no votes today.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

IRAQ

Mr. KENNEDY. Mr. President, we face no more serious decision in our democracy than whether or not to go to war. The American people deserve to fully understand all of the implications of such a decision.

The question of whether our Nation should attack Iraq is playing out in the context of a more fundamental debate that is only just beginning—an all-important debate about how, when and where in the years ahead our country will use its unsurpassed military might.

On September 20, the administration unveiled its new National Security Strategy. This document addresses the new realities of our age, particularly the proliferation of weapons of mass destruction and terrorist networks armed with the agendas of fanatics. The Strategy claims that these new threats are so novel and so dangerous that we should “not hesitate to act

● This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S10001

alone, if necessary, to exercise our right of self-defense by acting preemptively."

In the discussion over the past few months about Iraq, the administration, often uses the terms "pre-emptive" and "preventive" interchangeably. In the realm of international relations, these two terms have long had very different meanings.

Traditionally, "pre-emptive" action refers to times when states react to an imminent threat of attack. For example, when Egyptian and Syrian forces mobilized on Israel's borders in 1967, the threat was obvious and immediate, and Israel felt justified in preemptively attacking those forces. The global community is generally tolerant of such actions, since no nation should have to suffer a certain first strike before it has the legitimacy to respond.

By contrast, "preventive" military action refers to strikes that target a country before it has developed a capability that could someday become threatening. Preventive attacks have generally been condemned. For example, the 1941 sneak attack on Pearl Harbor was regarded as a preventive strike by Japan, because the Japanese were seeking to block a planned military buildup by the United States in the Pacific.

The coldly premeditated nature of preventive attacks and preventive wars makes them anathema to well-established international principles against aggression. Pearl Harbor has been rightfully recorded in history as an act of dishonorable treachery.

Historically, the United States has condemned the idea of preventive war, because it violates basic international rules against aggression. But at times in our history, preventive war has been seriously advocated as a policy option.

In the early days of the cold war, some U.S. military and civilian experts advocated a preventive war against the Soviet Union. They proposed a devastating first strike to prevent the Soviet Union from developing a threatening nuclear capability. At the time, they said the uniquely destructive power of nuclear weapons required us to rethink traditional international rules.

The first round of that debate ended in 1950, when President Truman ruled out a preventive strike, stating that such actions were not consistent with our American tradition. He said, "You don't 'prevent' anything by war . . . except peace." Instead of a surprise first strike, the nation dedicated itself to the strategy of deterrence and containment, which successfully kept the peace during the long and frequently difficult years of the Cold War.

Arguments for preventive war resurfaced again when the Eisenhower administration took power in 1953, but President Eisenhower and Secretary of State John Foster Dulles soon decided firmly against it. President Eisenhower emphasized that even if we were to win such a war, we would face the vast bur-

dens of occupation and reconstruction that would come with it.

The argument that the United States should take preventive military action, in the absence of an imminent attack, resurfaced in 1962, when we learned that the Soviet Union would soon have the ability to launch missiles from Cuba against our country. Many military officers urged President Kennedy to approve a preventive attack to destroy this capability before it became operational. Robert Kennedy, like Harry Truman, felt that this kind of first strike was not consistent with American values. He said that a proposed surprise first strike against Cuba would be a "Pearl Harbor in reverse."

For 175 years, [he said] we have not been that kind of country.

That view prevailed. A middle ground was found and peace was preserved.

Yet another round of debate followed the Cuban Missile Crisis when American strategists and voices in and out of the administration advocated preventive war against China to forestall its acquisition of nuclear weapons. Many arguments heard today about Iraq were made then about the Chinese communist government: that its leadership was irrational and that it was therefore undeterrable. And once again, those arguments were rejected.

As these earlier cases show, American strategic thinkers have long debated the relative merits of preventive and pre-emptive war. Although nobody would deny our right to preemptively block an imminent attack on our territory, there is disagreement about our right to preventively engage in war.

In each of these cases a way was found to deter other nations, without waging war.

Now, the Bush Administration says we must take pre-emptive action against Iraq. But what the Administration is really calling for is preventive war, which flies in the face of international rules of acceptable behavior.

There is no doubt that Saddam Hussein is a despicable dictator and that he must be disarmed. But the Administration has not made a persuasive case that the threat is so imminent that we should risk going it alone. We should resort to war only as a last resort. If we work through the United Nations for free, unfettered inspections, we strengthen our hand with our allies, our hand against Saddam Hussein and our ability to disarm him.

The Administration's new National Security Strategy states "As a matter of common sense and self-defense, America will act against such emerging threats before they are fully formed."

The circumstances of today's world require us to rethink this concept. The world changed on September 11, and all of us have learned that it can be a drastically more dangerous place. The Bush administration's new National Security Strategy asserts that global realities now legitimize preventive war and make it a strategic necessity.

The document openly contemplates preventive attacks against groups or states, even absent the threat of imminent attack. It legitimizes this kind of first strike option, and it elevates it to the status of a core security doctrine. Disregarding norms of international behavior, the Bush strategy asserts that the United States should be exempt from the rules we expect other nations to obey.

I strongly oppose any such extreme doctrine and I'm sure that many others do as well. Earlier generations of Americans rejected preventive war on the grounds of both morality and practicality, and our generation must do so as well. We can deal with Iraq without resorting to this extreme.

It is impossible to justify any such double standard under international law. Might does not make right. America cannot write its own rules for the modern world. To attempt to do so would be unilateralism run amok. It would antagonize our closest allies, whose support we need to fight terrorism, prevent global warming, and deal with many other dangers that affect all nations and require international cooperation. It would deprive America of the moral legitimacy necessary to promote our values abroad. And it would give other nations—from Russia to India to Pakistan—an excuse to violate fundamental principles of civilized international behavior.

The administration's doctrine is a call for 21st century American imperialism that no other nation can or should accept. It is the antithesis of all that America has worked so hard to achieve in international relations since the end of World War II.

This is not just an academic debate. There are important real world consequences. A shift in our policy toward preventive war would reinforce the perception of America as a "bully" in the Middle East and would fuel anti-American sentiment throughout the Islamic world and beyond.

It would also send a signal to governments the world over that the rules of aggression have changed for them too, which could increase the risk of conflict between countries such as Russia and Georgia, India and Pakistan, and China and Taiwan.

Obviously, this debate is only just beginning on the administration's new strategy for national security. But the debate is solidly grounded in American values and history.

It will also be a debate among vast numbers of well-meaning Americans who have honest differences of opinion about the best way to use United States military might. The debate will be contentious, but the stakes, in terms of both our national security and our allegiance to our core beliefs, are too high to ignore.

I look forward to working closely with my colleagues in Congress to develop an effective, principled policy that will enable us to protect our national security, and respect the basic

principles that are essential for the world to be at peace.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

(The remarks of Mr. WYDEN and Mr. HATCH pertaining to the introduction of S. 3063 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have sought recognition, as noted, to discuss the pending resolution. At the outset, I commend the President for coming to Congress. Originally the position had been articulated by the White House that congressional authority was not necessary. The President, as Commander in Chief, has the authority under the Constitution to act in cases of emergency. But if there is time for discussion, deliberation, and debate, then in my view it is a matter for the Congress.

Senator HARKIN and I introduced a resolution on July 18 of this year calling for the President to come to Congress before using military force.

When the President made his State of the Union speech and identified the axis of evil as Iran, Iraq, and North Korea, followed by the testimony of Secretary of State Powell that there was no intention to go to war against either North Korea or Iran, it left the obvious inference that war might be in the offing as to Iraq.

I spoke extensively on the subject back on February 13, 2002, raising a number of issues: What was the extent of Saddam Hussein's control over weapons of mass destruction? What would it cost by way of casualties to topple Saddam Hussein? What would be the consequence in Iraq? Who would govern after Saddam was toppled? What would happen in the region, the impact on the Arab world, and the impact on Israel? I believe it is vastly preferable on our resolution to focus on the question of weapons of mass destruction as opposed to the issue of regime change. When we talk about regime change, there is a sense in many other nations that the United States is seeking to exert its will on another sovereign nation. Much as Saddam Hussein deserves to be toppled, when we move away from the focus of containing weapons of mass destruction, it is my view we lose a great deal of our moral authority.

There is no doubt Saddam Hussein has been ruthless in the use of weapons of mass destruction with the use of chemicals on his own people, the Kurds, and in the Iran-Iraq war. There is very substantial evidence Saddam Hussein has storehouses of biological weapons, and there is significant evidence he is moving as fast as he can toward nuclear weapons. So when we talk about self-defense, when we talk about ridding the world of the scourge, that

is a very high moral ground. When we talk about regime change, it raises the concern of many leaders of many nations as to who is next—maybe they are next.

I suggest it is possible to achieve regime change in a way superior to articulating or planning an attack with the view to toppling Saddam Hussein. I believe the way to achieve regime change, consistent with international principles, is to try Saddam Hussein as a war criminal. I introduced a resolution on March 2, 1998, which was passed by the U.S. Senate on March 13, 1998, calling for the creation of a military tribunal, similar to the war crimes tribunal at The Hague, similar to the war crimes tribunal in Rwanda, so that Saddam Hussein could be tried as a war criminal. There is no doubt on the evidence available that Saddam Hussein has committed war crimes. Without going into all of the details set forth in the resolution, I ask unanimous consent that it be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. Herein, there is a very ample statement for the basis for trying Saddam Hussein and trying him successfully as a war criminal. In doing that, we would be following the precedent of trying former Yugoslavian President Milosevic as a war criminal. I have made some seven visits to The Hague and have participated in marshaling U.S. resources from the Department of Justice, also specifically from the FBI, also from the CIA during the 104th Congress back in 1995 and 1996, when I was chairman of the Intelligence Committee; and we now see the head of state, Slobodan Milosevic, on trial.

We had the experience of the war crimes tribunal in Rwanda, which achieved an international precedent in convicting former Prime Minister Jean Kambanda of Rwanda, the first head of state to be convicted. He is now serving a life sentence.

So it is my suggestion that the objective of regime change can be accomplished in accordance with existing international standards, on a multilateral basis, without having other nations in the world saying the superpower United States is trying to throw its weight around. It might take a little longer, but as is evidenced from the proceedings in Rwanda as to the former Prime Minister of Rwanda, and as evidenced from the proceedings of Milosevic, that is an ordinary successful progress of the law. The most difficult issue pending on the resolutions as to the use of force on Iraq, the most difficult issue, in my opinion, is the question of whether the United Nations authorizes the use of force.

I commend the President for his efforts to organize an international coalition. President George Herbert Walker Bush did organize an international coalition in 1991, and prosecuted the

war against Iraq with great success, enlisting the aid of the Arab nations, including Egypt, Syria, and other countries. That is the preferable way to proceed, if it can be accomplished.

The obvious difficulty in conditioning the President's authority to use force on a United Nations resolution is the United States would be subjecting itself to the veto by either China, or Russia, or even France, and we prize our sovereignty very highly—justifiably so. The conundrum, then, is whether we will get that kind of an international coalition that would have the weight of world public opinion, would have the weight of the U.N. behind them.

The difficulties of having the United States act alone would be the precedent that would be set. It could be a reference point for China, for example, looking at Taiwan, where China has made many bellicose warlike statements as to its disagreements with Taiwan. If the United States can act unilaterally, or without United Nations sanction, there would be a potential argument for a country like China proceeding as to Taiwan. There would be a potential argument for a nation like India proceeding as to Pakistan, or vice versa, Pakistan proceeding as to India, which could be a nuclear incident. Both of those countries have nuclear power.

This is a question I believe has to be debated on the floor of the U.S. Senate. I have not made up my mind as to whether it is preferable to condition the use of force on a United Nations resolution, and I am cognizant of the difficulties of giving up sovereignty and being subject to the veto of China, which I don't like at all, or being subject to the veto of Russia, which I don't like at all, or being subject to the veto of France, again something I do not like. But I think we have to recognize when we are authorizing the use of force, and if the President takes the authorization and is not successful going to the U.N. to get a coalition, we will be establishing a precedent that may have ramifications far into the future, at some point in time when the United States may not be the superpower significantly in control of the destiny of the world with our great military power.

I am glad to see the President is moving ahead with an effort to get inspections in the United Nations, and Secretary of State Powell met last Friday with the U.N. inspection chief, who agreed there ought to be broader authority for the U.N. inspection than that which was in place in 1998 when Iraq ousted the U.N. inspectors. Hans Blix supported the position the United States has taken. Yesterday, on a Sunday talk show, the Iraqi Ambassador to the U.N. made a comment to the effect there was no huge problem on having U.N. inspectors come, even to the Presidential compounds.

That is probably a typical Iraqi statement: holding out an offer one day

and revoking it the next. I do believe it is important that we exhaust every possible alternative before resorting to the use of our armed forces, and to have the inspectors go back into Iraq is obviously desirable. We must have the inspectors, though, go into Iraq in a context where there are no holds barred.

In August, Senator SHELBY and I visited the Sudan. The Sudan is now interested in becoming friendly with the United States. Our former colleague, Senator Jack Danforth, has brokered the basic peace treaty which still has to be implemented in many respects. But as a part of the new Sudanese approach, the Government of Sudan has allowed U.S. intelligence personnel to go to Sudanese factories, munitions plants, and laboratories with no announcement or minimal announcement of just an hour, break locks, go in, and conduct inspections. That would be a good model for the inspection of Iraq. If, in fact, the Iraqis will allow unfettered, unlimited inspections, it is conceivable that would solve the problem with respect to the issue of weapons of mass destruction.

Certainly that ought to be pursued to the maximum extent possible. If, and/or when the Iraqis oust the U.N. inspectors or limit the U.N. inspectors, raising again the unmistakable inference that Saddam Hussein has something to hide, then I think there is more reason to resort to force as a last alternative and, in that context, a better chance to get other countries, perhaps countries even in the Arab world, to be supportive of the use of force against Iraq at the present time as they were in the gulf war in 1991.

Extensive consideration has to be given, in my judgment, to the impact on the Arab world. Egyptian President Mubarak has been emphatic in his concern as to what the impact will be there. So we ought to make every effort we can to enlist the aid of as many of the nations in the Arab world as possible.

If Saddam Hussein rebuffs the United Nations, again raising the unmistakable inference that he has something to hide, then I think the chances of getting additional allies there would be improved.

With respect to the situation with Israel, there is, again, grave concern that a war with Iraq will result in Scud missiles being directed toward Israel. Some 39 of those Scud missiles were directed toward Israel during the gulf war. Their missile defense system was not very good. Now we know that Israel has the Arrow system, but still all of Israel is not protected. The Arrow system has not been adequately tested.

In the gulf war in 1991, the Israeli Prime Minister Yitzhak Shamir honored the request of President Bush not to retaliate. It is a different situation at the present time with Israeli Prime Minister Sharon having announced if Israel is attacked, Israel will not sit back again.

When former National Security Adviser Brent Scowcroft published a very erudite op-ed piece in the Wall Street Journal in August, he raised the grave concern that with Israeli nuclear power, there could be an Armageddon in the Mideast. Former National Security Adviser Brent Scowcroft was advising caution; that we ought not proceed without exhausting every other alternative.

A similar position was taken by former Secretary of State James Baker in an op-ed piece, again in August, in the New York Times urging that inspections be pursued as a way of possibly avoiding a war.

DELEGATION OF CONGRESSIONAL AUTHORITY

Mr. SPECTER. Mr. President, one other issue is of concern to me, and that is the question of delegation of congressional authority to the President. The constitutional mandate—and I spoke to this subject last Thursday and will not repeat a good bit of what I said—but the doctrine of separation of powers precludes the Congress from delegating its core constitutional authority to the executive branch.

I had occasion to study that subject in some detail on the question of the delegation of congressional authority on base-closing commissions. There is a substantial body of authority on the limitations of the delegation of congressional authority.

In an extensive treatise by Professor Francis Wormuth, professor of political science at the University of Utah, and Professor Edwin Firmage, professor of law at the University of Utah, the historical doctrines were reviewed leading to a conclusion that the Congress may not delegate the authority to engage in war.

If we authorize the President to use whatever force is necessary, that contemplates future action. While no one is going to go to court to challenge the President's authority, that is of some concern, at least to this Senator.

I discount the argument of those who say that regime change of Saddam Hussein is motivated by the failure to finish the job in 1991 or Saddam's efforts to assassinate President Bush, the elder. While it is true that Vice President CHENEY and Secretary of State Powell were principal participants as Secretary of Defense and as Chairman of the Joint Chiefs of Staff on the decision not to march to Baghdad in 1991, their experience benefits the United States in this current situation.

I further discount the argument that President George W. Bush seeks to correct any mistakes of his father or that it is a personal matter, as some have argued, from his comment: The guy tried to kill my dad. I am not unaware of the psychologist's contentions that motives are frequently mixed and hard to sort out, but I do think our Nation is fortunate to have the leadership of President Bush, Vice President CHE-

NEY, and Secretary Powell at this perilous time.

I have been briefed by administration officials on a number of occasions, and I am looking forward to another briefing tomorrow by National Security Adviser Condoleezza Rice and CIA Director George Tenet.

There is substantial information about the weapons of mass destruction which Saddam Hussein has available, but I am interested in knowing with greater precision, to the extent that the administration can release it, the situation with regard to Saddam's efforts to develop nuclear weapons.

In evaluating the time when preemptive action may be used, Secretary of State Daniel Webster, in dealing with the so-called Caroline incident, in 1837, when British troops attacked and sank an American ship, then-Secretary of State Webster made a point that an intrusion into the territory of another State can be justified as an act of self-defense only in those:

Cases in which the necessity of that self-defense is instant, overwhelming and leaves no choice of means and no moment of deliberation.

It is very relevant, on an evaluation of meeting that goal, as to just where Iraq stands on the weapons of mass destruction. In previous briefings, I have sought the administration plan as to what will be done after Saddam Hussein is toppled, and I think that is an area where a great deal more thought needs to be given. The situation in Iraq would obviously be contentious, with disputes between the Sunnis and the Shi'ites, with the interests of the Kurds in an independent state, and it means a very long-term commitment by the United States.

We know the problems we have in Afghanistan. Iraq has to defray some of the costs, but what happens after Saddam Hussein is toppled has yet to be answered in real detail.

On the issue of a battle plan, perhaps that is too much for the administration to tell the Congress, but as a Senator representing 12 million Pennsylvanians, in a country of 280 million Americans, I think we ought to have some idea as to how we are going to proceed and what the casualties may be.

All of this is to say there are many questions and many issues to be considered. The predictions are numerous that the Congress of the United States will pass a resolution authorizing the use of force by an overwhelming majority. I am not prepared to disagree with that. And on a proper showing of the imminence of problems with Saddam Hussein and on a proper showing that this is the last recourse, my vote may well be cast with the administration as well. But I am interested in hearing debate on the floor of the Senate as to the relative merits of requiring U.N. multilateral action as a condition for the use of force, contrasted with U.S. unilateral action.

If we require U.N. multilateral action, we do subject ourselves to the