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U.N. AUTHORIZATION FOR WAR WITH IRAQ IS UNNECESSARY

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For Americans, openly debating important security issues like the necessity or timing of an invasion of Iraq is healthy. It helps ensure that U.S. foreign policy and military planners are aware of all possible ramifications of various actions and incorporate criticisms in contingency plans.

There is a great difference, however, between a legitimate debate on such concerns as the effects a war would have on the region and dwelling needlessly on settled issues, such as the need to obtain a U.N. Security Council resolution before taking military action in Iraq—a known aggressor that possesses ballistic missiles and pursues weapons of mass destruction (WMD).

French President Jacques Chirac and German Chancellor Gerhard Schroeder are among those who claim that an attack on Iraq would be justified only if the U.N. Security Council approves it. But this assertion is a red herring for several reasons. Specifically:

1. **International law confirms the right to self-defense.** The right to self-defense is codified in customary international law, which recognizes that sovereign nations have the right to defend themselves from attack, and the United Nations Charter, which reflects that law. Article 51 states: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.”

That right to self-defense also incorporates the centuries-old principle of “anticipatory self-

defense” in the face of an imminent threat to national security. In the 16th century, the British applied that principle when they attacked Spanish and Portuguese ports in anticipation of an attack by the Spanish Armada. The United States used it more recently in placing an embargo on Cuba to prevent Soviet deployment of nuclear missiles there.

Iraqi dictator Saddam Hussein has stated publicly his intention to engage in a war against the West, particularly Israel and the United States. He seeks to develop biological, chemical, and nuclear WMD and the ability to deploy them against his enemies. The U.S. government has identified Iraq as an imminent threat, justifying military action in anticipation of an attack.

2. **America does not need U.N. permission to use its armed forces.** Under the U.S. Constitution, the authority to determine when it is appropriate for the United States to invoke and exercise its right to use military force in its own

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defense is vested in the President, as Commander in Chief of the armed forces, and Congress, which has authority to raise and support armies and to declare war. No treaty, including the U.N. Charter, can redistribute this authority or give an international organization a veto over U.S. actions otherwise lawful and fully in accordance with the Constitution.

3. **America has permission to act through existing U.N. Security Council resolutions.** The Security Council has passed nearly 60 resolutions on Iraq and Kuwait since Iraq's invasion of Kuwait in 1990. The most relevant to this issue is Resolution 678, passed on November 29, 1990. It authorizes "member states co-operating with the Government of Kuwait...to use all necessary means" to (1) implement Security Council Resolution 660 and other resolutions calling for the end of Iraq's occupation of Kuwait and withdrawal of Iraqi forces from Kuwaiti territory and (2) "restore international peace and security in the area."

U.S.-led forces in the Persian Gulf War accomplished the first objective swiftly, but the second has never been achieved. U.S. and allied air forces have been in nearly constant conflict with Iraqi forces since Iraq's aggression against Kuwait was repelled. Resolution 678 has not been rescinded or nullified by succeeding resolutions. Its authorization of the use of force against and in Iraq remains in effect. Further, Iraq's refusal to allow U.N. weapons inspectors to fulfill their mandate is a violation of its 1991 cease-fire agreement—a clear indication that peace has never been achieved.

4. **America would be acting in the interests of international peace and security, as all U.N. members pledge to do.** Article 1 of the U.N. Charter states that the paramount purposes of the organization are to "maintain international peace and security," "take effective collective measures for the prevention and removal of threats to the peace," and suppress "acts of aggression or other breaches of the peace." Saddam Hussein is the single greatest threat to stability in the Middle East. He started two wars in the region, continues to support terrorism, and

poses a clear and ongoing threat to the United States and the region. He has shown no compunction about using chemical weapons, either against his own people or during the war with Iran. His willingness to use them in the past illustrates the threat he poses should he gain access to more devastating WMD and the means to convey them to his enemies.

Clearly, those who seek to constrain U.S. military action in Iraq with arguments about the necessity for obtaining yet another Security Council resolution ignore the facts of the issue.

Conclusion. The Administration has the legal authority under international law to take action to protect U.S. interests. U.N. Security Council Resolution 678 authorizing U.N. member states to "use all necessary means" to restore international peace and security to the region remains in force. Those who argue for more weapons inspections are in denial over Iraq's refusal to observe existing resolutions mandating that U.N. inspectors be permitted to operate freely in Iraq. Saddam has frustrated every effort to conduct these inspections in the past, and there is no reason to believe that future inspections will be more successful. His most recent letter to the U.N. states that he wants more discussion before resuming the inspections, which ended four years ago over his intransigent obstruction.

As Representative Tom DeLay (R-TX) stated on August 22, "Until Saddam Hussein's regime topples, our national security will suffer an unwise and unacceptable risk." There is room for legitimate debate over the best means for accomplishing this goal, but the risk Saddam poses to U.S. interests and peace and security in the Middle East is obvious. Options for toppling him deserve the full attention of the Administration, Congress, and America's allies. Specious arguments on the necessity of obtaining U.N. authorization for such action do not serve either U.S. interests or U.N. mandates regarding peace and security. The United States may or may not decide to attack Iraq, but it does not need a new Security Council resolution to do so.

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