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House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (Mr. BARRETT of Nebraska).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
February 24, 1998.

I hereby designate the Honorable BILL BARRETT to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate agrees to the amendment of the House to the bill (S. 927) ''An Act to reauthorize the Sea Grant Program.''

MORNING HOUR DEBATES

The SPEAKER pro tempore. Pursuant to the order of the House of January 21, 1997, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to 30 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to 5 minutes.

The Chair recognizes the gentleman from Colorado (Mr. SKAGGS) for 5 minutes.

WHETHER CONGRESSIONAL AUTHORIZATION OF FORCE IN THE PERSIAN GULF IN 1991 CONTINUES TO AUTHORIZE FORCE IN 1998

Mr. SKAGGS. Mr. Speaker, I think we were all heartened by the developments over the weekend when the Secretary General of the United Nations was able to put together an agreement with Iraq concerning the current crisis there. It is certainly a promising development, and we all hope and pray that it will be the solution to the crisis.

But given Saddam Hussein's history of broken promises, we all will remain skeptical and will wait to be shown that this time it is for real. It is understandable, therefore, that the President has stated that the United States forces currently deployed in the region will stay there for the foreseeable future, and again, given the history of broken promises, it is entirely possible that we may face again soon the question of the use of military force against Iraq.

So, it is important, even though we have this moment to catch our breath, to remind ourselves of Congress' responsibility in this matter. In my opinion, and I think an opinion widely shared, the initiation of military action that is contemplated in Iraq clearly implicates Congress' responsibilities under the war-making clause of section 8, article 1, of the Constitution.

The President's position, as I understand it, has been that he already has sufficient authority in this matter derived, in a way, from the Persian Gulf War resolution that this Congress passed back in 1991. The administration claims that it is appropriate to see that Persian Gulf War resolution as looking forward to the authorization of force not only to implement then existing Security Council resolutions, which at the time of course dealt with getting Iraq out of Kuwait, but also to contemplate future Security Council resolutions, including the one that after the war set up the United Nations commission and the inspection regime that is now at issue in going after Iraq's weapons of mass destruction.

That Security Council resolution, number 687, of course was adopted after the Persian Gulf War, and unlike the ones that preceded the war, did not expressly contemplate or state that member states of the U.N. could use force, or ''all necessary means,'' to use the proper phraseology, to carry out its purposes.

I do not believe those of us who were here in 1991 for the debate before the Persian Gulf War would say that the text of the resolution passed before the Persian Gulf War, and certainly not the debate that preceded passage of the resolution, support the idea that we were then granting authority for some future military action to force compliance with a weapons of mass destruction inspection regime that did not then exist.

Over the weekend we have heard former Secretary of State Baker remind us all that the issue at the time that we went to war in 1991, the mandate at that time, was to get Iraq out of Kuwait.

I have today released a report, a memorandum, done at my request by the Congressional Research Service on this issue. A copy has been sent to all Members' offices. I believe the analysis of these legal, but very important, considerations done by CRS reinforces the argument that this 105th Congress cannot rely on what the 102nd Congress did, and that we need to face up to our current constitutional responsibilities.

The Constitution requires authority from Congress before this country initiates a major military attack for good reasons, both as a check against any precipitous action by a President, but also to be sure that the American people, acting through their representatives in Congress, have been consulted and do consent.

Should we face another major military confrontation with Iraq in the coming weeks or months, Congress must fulfill that responsibility and conduct the kind of debate, the thorough debate we did in 1991. I think we all remember that debate as one of Congress' finest moments, in which we were soberly engaged in a meaningful discussion of a critical issue. It helped to unify the country.

We should welcome a debate and a vote again, as the President should. He needs to know that the country is behind him.

It is troubling to look ahead to circumstances that might arise very quickly in the next weeks or months that might not enable us to have the kind of debate and vote that we should. Therefore, I hope my colleagues will unite in requesting that the leadership proceed while we enjoy this reprieve to have the kind of discussion that is warranted under the Constitution.

Mr. Speaker, I include for the RECORD the memorandum from the Congressional Research Service.

The memorandum is as follows:

CONGRESSIONAL RESEARCH SERVICE,
LIBRARY OF CONGRESS,
Washington, DC, February 23, 1998.

To: Honorable David Skaggs.
From: American Law Division.
Subject: Whether 1991 Congressional Authorization of Force in the Persian Gulf Continues to Authorize Force in 1998.

This memorandum is in response to your request that we briefly evaluate an argument that has been presented in the present debate over use of United States military forces in and over Iraq, namely whether Congress can be said to have authorized in its 1991 enactment the use of U.S. military forces to carry out resolutions of the Security Council of the United Nations adopted subsequent to the conflict in 1991 in the Persian Gulf.

We here deal with a specific and limited, though important, question. We do not consider what the Constitution, in its authorization to Congress to declare war, requires of Congress and the Executive Branch in the initiation and carrying out of combat with Iraq. We do not consider what restraints the War Powers Resolution imposes on the President's use of force in and over Iraq in the absence of some affirmative pre-action approval by Congress. We do not consider what effect upon the ability of the United States to act, within its constitutional structure, may be derived from United Nations authorization(s). To be sure, these issues are implicated in the response to the question with which we do treat, but it is possible to assess a resolution of this single question without also attempting to venture answers to the other questions.

Following the invasion of Kuwait and its occupation by Iraq, the Security Council adopted Resolution 660, demanding that Iraq withdraw from Kuwait. After adoption of a series of other Resolutions, the Security Council in 1990 adopted Resolution 678, which is considered the United Nation's authorization for the carrying out of the military actions that took place, by which member states were authorized to use ''all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peach and security in the area.''

Although President Bush and his Administration took the public position that no authorization by Congress was necessary, at the last moment the President did seek congressional approval, which was forthcoming by close votes in both the House of Representatives and the Senate. P.L. 102–1, 105 Stat. 3, 50 U.S.C. §1541 note. The Joint Resolution became law January 14, 1991. The pertinent part of the Joint Resolution provided: The President is authorized, subject to subsection (b), 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, 679, 670, 674, and 677. §2(a).

After Iraq's military defeat, the Security Council on April 3, 1991, adopted Resolution 687, setting out conditions to which Iraq had to agree in order for a cease fire to come into effect. Among the obligations, Iraq had to accept the neutralization under international supervision of its chemical, biological, and medium- or long-range missile capabilities. Furthermore, the Resolution stated, the matter was to remain before the Council, which would ''take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area.''

On November 12, 1997, in response to various moves by the Government of Iraq to disavow and to hinder the inspections to which Iraq had agreed as a result of Resolution 687, the Security Council adopted Resolution 1137, condemning Iraq for its actions, demanding adherence to its agreement, and specifically referencing Resolution 687. Resolution 1137 further stated ''the firm intention to take further measures as may be required for the implementation of this resolution.''

One reading of the series of United Nations resolutions from 660 (1990) through 678 (1990) and on to 687 (1990) and 1137 (1997) is that the Security Council has authorized its member states to take enforcement action under Chapter VII of the United Nations Charter against Iraq not only to force Iraq from Kuwait, which has, of course, been achieved, but additionally to require Iraq to comply fully with its obligations to rid itself of its prescribed weapons and to continue to accept UN inspections to assure its compliance with the obligation to destroy the weapons. That is not the only reading, other members of the Security Council being in disagreement with the United States and the United Kingdom on the proper interpretation. Indeed, while Resolution 678 did specifically authorize member states to use ''all necessary means,'' both Resolution 687 and Resolution 1137 appear only to pledge that the Security Council will ''take such further steps'' and ''to take further measures'' without in either Resolution authorizing member states to act.

In any event, the issue is not the correct interpretation of the series of United Nations resolutions; rather, it is what Congress may be understood to have authorized in P.L. 102–1. That is, did Congress authorize only the use of United States military force to drive Iraq from Kuwait? Or, more broadly, did Congress authorize open-endedly the use of United States military forces to achieve whatever goals subsequently adopted Security Council Resolutions may have set out?

Facially, P.L. 102–1 bears little indicia of the broader reading. Its pertinent authorization paragraph, set out above, references the use of force ''pursuant'' to Resolution 678 and the implementation of Resolutions 660–677, which have to do with the unconditional withdrawal of Iraq from Kuwait. As we have noted above, Resolution 678 authorized member states to use ''all necessary means to uphold and implement Resolution 660 (1990) and all subsequent resolutions and to restore international peace and security in the area.'' The phrase ''all subsequent relevant resolutions'' doubtlessly refers to all the Resolutions following 660 and leading up to Resolution 678. While it might be read to include Resolutions adopted subsequently to 678, and the Security Council might interpret it that way as well as its member states, the pertinent point here is what the congressional enactment comprehends.

First, the authorization paragraph specifically references Resolution 678 and expressly states that action pursuant to that Resolution is ''in order to achieve implementation of'' the specifically identified Resolutions from 660 to 677. The express wording of this paragraph appears to target exactly the United Nations goal of ending the Iraqi occupation of Kuwait.

Reference to the purpose clauses, the preamble, of P.L. 102–1, which has no legal force but does declare congressional intention and is relevant to understanding the meaning of the law that Congress has enacted, confirms this reading of the authorization. That is, while the third ''whereas'' clause states the danger to world peace of the existence of Iraq's weapons of mass destruction, the other clauses all relate to the termination of the occupation of Kuwait. It is true that the same ambiguity noted above with respect to the language of Resolution 678 may be discerned in the sixth ''whereas'' clause, because of its referencing of Resolution 678.

Whereas, in the absence of full compliance by Iraq with its resolutions, the United Nations Security Council in Resolution 678 has authorized member states of the United Nations to use all necessary means, after January 15, 1991, to uphold and implement all relevant Security Council resolutions and to restore international peace and security in the area[.]

Thus, the more likely reading of the authorization section of P.L. 102–1 is that Congress specifically authorized the use of United States military forces to drive Iraqi forces from Kuwait. Congress would have taken the reference in Resolution 678 to ''all subsequent relevant resolutions'' to mean those Resolutions that preceded 677, those, that is, referenced by number in 678. Congress further would have understood the reference in Resolution 678 to the use of force ''to restore international peace and security in the Area'' to encompass the restoration of the *status quo ante*, the withdrawal of Iraq from Kuwait. Certainly, there is nothing in the authorization section of P.L. 102–1 that requires or compels a reading that would be in effect an open-ended authorization of the use of United States military forces to achieve any subsequently adopted goals of the United Nations.

Nonetheless, sufficient ambiguity does exist to permit the possible construction of the language of P.L. 102–1 as authorizing United States military force to carry out subsequently-adopted Resolutions setting forth an intention to force Iraq, under threat of military force, to rid itself of prescribed weapons and to permit United Nations inspections to assure that the result has been achieved. It is not clear, as noted above, that the Security Council has adopted any authorization for its member states to use military force to achieve these results, but we pass that question by.

The pertinent question is, given two possible interpretations of congressional meaning, how do we resolve the matter?

Second, one must look at the textual object. Although two meanings are possible, one is more likely to represent the meaning to be ascribed to it by Congress. If, however, after confronting the actual language to be interpreted and finding a likely but not compelled interpretation, how do we then infer or deduce meaning from context and surroundings? One such method, favored by the

courts, including the United States Supreme Court, is under some circumstances to adopt a default means of interpretation. When, for example, the issue arises in the context of a critical or critically important question of constitutional meaning, courts impose a ''clear-statement'' rule under which Congress, or some other entity, will not be understood to have meant to say something having great bearing on its powers or on the Constitution without saying it clearly, perhaps expressly. For example, when the issue is whether by the terms of a statute Congress has waived the sovereign immunity of the United States, the Court will not apply ordinary rules of statutory construction but will require the clearest possible expression of congressional intent; any waiver must be unequivocal. E.g., United States Dept. of Energy v. Ohio, 503 U.S. 607 (1992); Library of Congress v. Shaw, 461 U.S. 273 (1983). Of course, the particular issue with which we deal is highly unlikely to present itself as suitable for judicial resolution, but subsequent Congresses and private parties may resort to such rules of construal.

Congress has been highly protective of its powers in this area, especially of the use of United States military forces abroad, since the great debate in this country with respect to the undeclared war in Indochina, which eventuated in the adoption, over a presidential veto, of the War Powers Resolution. P. L. 93–148, 87 Stat. 555, 50 U.S.C. §§1541–1548. In view of the hesitancy of Congress to act in respect of the Gulf War and of the close votes in both Houses, how likely is it that Congress would have authorized the President to use United States military forces to effectuate a United Nations Resolution or a series of Resolutions that were to be adopted sometime in the future? It is, of course, possible for Congress to authorize something on the basis of an occurrence not yet having resulted. But with respect to the commitment of United States forces abroad? Again, Congress might do so, but ought we to conclude that it did so in 1991 on the basis of contestable language susceptible to more than one interpretation? Might a clear statement of Congress' intent to do so be required before such a construction is adopted?

In short, to conclude that P. L. 102–1 contains authorization for the President to act militarily in 1998 requires the construction of an interpretational edifice buttressed by several assumptions. We must conclude that Congress in 1991 intended to base its authorization of United States military action upon the future promulgation of United Nations policy developed in the context of circumstances unknown or at most highly speculative in 1991. We must conclude that Resolution 687 did authorize member states to act to implement its goals and not merely reserved to the Security Council a future determination of what it might authorize. We must conclude that Resolution 1137 did authorize member states to act to end Iraqi recalcitrance and not merely expressed the aspiration of the Security Council to do something in the future. And we must conclude that Congress in 1991 was so confident of United Nations policy in the future that it would have authorized the future committal of United States military forces to achieve what the Security Council wished to achieve.

We have examined legislation enacted later by Congress in the same year that bears on Operation Desert Storm, in particular P. L. 102–190, 105 Stat. 1290, and P. L. 102–25, 105 Stat. 75, and find nothing bearing on what Congress might have thought it was doing in P. L. 102–1. Certainly, there is nothing in those Acts to be construed as additional authorizations.

In the end, it is for the Congress to determine what the 102d Congress meant in adopting the joint resolution that became P. L. 102–1. How, if Congress' interpretation is different from that of the President, Congress is to give effect to its determination presents another question altogether.

JOHNNY H. KILLIAN,
Senior Specialist, American Constitutional Law.

TRIBUTE TO GOLD MEDAL WINNING U.S. WOMEN'S OLYMPIC HOCKEY TEAM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from Minnesota (Mr. RAMSTAD) is recognized during morning hour debates for 5 minutes.

Mr. RAMSTAD. Mr. Speaker, America's two newest sports heroes are the pride of every American. I rise today to pay tribute to a group of talented, hard-working women who have written a new chapter in America's glorious Olympic history, the U.S. women's Olympic hockey team.

Minnesota is the birthplace of hockey in America, Mr. Speaker, and the first ever gold medal in women's Olympic hockey was won by a spirited, never-give-up American team that included two Minnesotans. Jenny Schmidgall of Edina, Minnesota, and Alana Blahoski of St. Paul, Minnesota, along with 21 other members of the U.S. women's team, brought home the gold from the 18th Olympic winter games in Nagano, Japan. The American women's team won all six of its games.

Mr. Speaker, what a marvelous Olympic tournament it was, and what a remarkable team won the gold medal. As a proud Minnesotan and a patriotic American, my heart burst when Jenny Schmidgall was awarded her gold medal and spontaneously blurted out our national anthem. Our hearts as Americans burst in pride when our women's hockey team, every single member, raised their hands to the sky in saying our national anthem with all the strength left in their souls.

Mr. Speaker, after losing to Canada four times in the world championship since 1990, the U.S. women's Olympic hockey team defeated Canada 3 to 1 last week to claim the gold medal. It was the second time the Americans had defeated their fiercest rival in four days. It was also the first U.S. hockey gold medal since the 1980 miracle on ice at Lake Placid.

Mr. Speaker, great joy swept over Minnesota as the U.S. women held hands, waved American flags, and accepted their well-earned gold medals. As her parents, Dwayne and Terri Schmidgall of Edina, would be quick to tell you, Jenny Schmidgall had prepared long and hard for her moment in the land of the rising sun. Jenny graduated from Edina High School, in the heart of our Third Congressional District, this past spring, and will be skating for the University of Minnesota next year.

In fact, that is the reason Jenny's picture did not make the Wheaties box, because she is still an amateur, and NCAA rules are about as arcane as some of the rules around here, and she was not allowed to be pictured.

But anyway, when Jenny skated at Edina's Lewis Park, she was known as little Gretzky. She grew up learning the game at Lewis Park at Edina while following her hockey playing dad onto the ice.

There was magic in the air at the Big Hat arena in Nagano the day of the gold medal game. Jenny's parents got to the game and learned that their seats were not with the rest of the parents down below in the lower bowl but, rather, in the upper deck away from the rest of the parents of the women's team.

But all that changes when Wayne Gretzky, the great one himself, tapped Dwayne Schmidgall on the shoulder, and seeing Schmidgall's Team U.S.A. jackets and asked if she had somebody playing in the game. Gretzky told them, by the way, he hoped their team would win and left when the score was one to nothing in favor of the Americans.

In this first Olympic women's tournament, Jenny Schmidgall scored two goals and had three assists. She also helped set up the first U.S. goal in the gold medal game. As her mother Terri said, holding back tears, and I am quoting now, ''When you know all the hard work that went into this and see them this way, it's really something.''

Mr. Speaker, it is really something. All the women on Team U.S.A. have stories to tell, stories like Jenny Schmidgall's. They all followed others onto the ice at an early age and often met with resistance when they tried to join in the boys' games. But showing great American ethic that makes our nation shine, these women would not take no for an answer. They practiced. They persevered. Last week, they realized their dream. They brought home the gold.

Mr. Speaker, one sign held up above the U.S. team's bench in Nagano said it all: ''U.S. Women, the Real Dream Team.'' Now the women of the 1998 U.S. Olympic ice hockey team are stirring new dreams in the hearts and minds of girls throughout America. They stirred our passion over the past fortnight halfway around the world, and they will live in our hearts forever.

Congratulations to Jenny, to Alana, and to the other 21 members of the U.S. women's ice hockey team as well as your wonderful coaches, managers, trainers, and other officials. You have made America proud.

PUERTO RICO'S CENTENNIAL ANNIVERSARY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 21, 1997, the gentleman from Puerto Rico (Mr. ROMERO-BARCELÓ) is recognized during morning hour debates for 5 minutes.

Mr. ROMERO-BARCELÓ. Mr. Speaker, 1998 is a centennial year. We think