I thank the distinguished

President pro tempore and the

Chair.

Mr. President, I have sought this

time to register my very strong objection

to cloture on this resolution authorizing

the use of force, which is the

equivalent of a declaration of war. In

my 22 years in the Senate, the only

issue which has been of equal importance

was the authorization for the use

of force in 1991. The motion to invoke

cloture, which is to cut off debate, is

supposed to be done when there is a filibuster.

However, there is no filibuster

present on this issue.

I came to the floor yesterday in an

effort to participate in a colloquy with

Senator LIEBERMAN, the lead proponent

of the bill, and found that all the time

was allotted and all the time was

taken. When no one appeared, we had

about 3 minutes to discuss an issue

which really required 30 minutes or an

hour. I then sought time later in the

afternoon, and all the time was taken.

I then sought time this morning and

find that the only time which is available

is some time after 5 p.m. this

afternoon.

It is customary in the Senate to see

two lights on for a quorum call, but

there have been very few quorum calls

on this resolution—really none—except

when Senators are on their way to the

floor or when there are discussions. So

there has certainly not been any effort

to filibuster. Those who sought time to

come over and discuss important issues

have found that there is no time to do

so.

We now have a series of amendments

lined up with time allocations which

are very brief. To discuss the cloture

resolution itself in 45 minutes is very

limited. To discuss the amendments

which are pending is very difficult.

There is in the bill a change from the

1991 resolution which has an objective

test for the President to use force to

carry out U.N. resolutions, whereas in

the current resolution, it is subjective

as the President sees fit. That is a matter

of great moment which has not

been debated in the Senate.

The resolution has numerous whereas

clauses so that one can read the resolution

to justify the use of force if the

Iraqi Government continues to abuse

its citizens. I would not want to say

the Iraqi Government has not abused

its citizens, but I do not believe anyone

is seriously contending that is the

basis for the President to take the

United States to war. To stop Saddam

Hussein from having weapons of mass

destruction which pose a threat to the

United States, is a reason.

Then there is the issue of regime

change, which is in the whereas clause.

The resolution contains a provision for

U.S. national security interests. I

posed questions to the Senator from

Connecticut yesterday as to whether

regime change was comprehended in

our national security interest. That

has yet to be answered.

The point I am making is that this is

a matter which requires discussion and

analysis. I do not believe it helps the

President of the United States to have

the Senate rush to judgment. It is not

quite a blank check. It is not quite a

knee-jerk reaction, but it is not the

kind of deliberation that ought to

characterize the work of this body. It

would be unfortunate if the Senate

votes for a resolution authorizing the

use of force notwithstanding the questions

which I have raised, although I

said on the floor before that I may well

support the President. However, if we

do so in a context of deliberation and

thoughtfulness when people like Senator

LIEBERMAN, Senator MCCAIN, Senator

WARNER, Senator BIDEN, Senator

JEFFORDS, and other Members, put our

imprimatur on it, it has some significance

in the international arena, providing

it is debated, and providing

there is some lucid discussion on all of

the issues we are confronting.

I noted in the ‘‘Philadelphia Inquirer’’

this week the comment of a

House member: The President has

handcuffed us. I am voting yes on this

resolution because I think ultimately

the box the President has put us in has

forced us to vote in the interests of national

security.

I do not think we ought to vote for

this resolution because we are being

handcuffed. I do not think anyone anywhere

ought to vote for a resolution for

being handcuffed or for being put in a

box.

These are matters which require a lot

of analysis and a lot of debate. The cloture

motion will cut off nongermane

amendments. That is a very tight restriction.

Other amendments ought to

be offered which are very important to

the discussion on this critical matter. I

thank the Senator from West Virginia,

and I yield the floor.

Mr. President, I

thank the distinguished President pro

tempore for yielding me 5 minutes.

I do support his amendment which

has two provisions. First:

I think this provision is necessary,

although customarily you would not

think that you would need a statute to

say the Constitution governs. However,

I have expressed on the floor of the

Senate my concern of the constitutionality

of the delegation of authority

to the President here.

Congress has the authority to declare

war. The authorization for the use of

force is a practical equivalent. What

we are doing is saying the President

may decide when to use that force and,

in effect, decide when the war will

start, or really to make a determination

as to when war is declared. So I

think that it is important to have this

sort of provision, although its importance

is hard to evaluate historically.

The second part of the pending

amendment of the Senator from West

Virginia is:

The language of ‘‘clear threat of imminent,

sudden, and direct attack’’ has

been inserted in place of the language

‘‘the existing threat posed by Iraq.’’

This does call for a more precise determination

of the need for preemptive

action, and I think is sound. Ultimately,

it is not going to detract from

the authority of the President because

the resolution allows the President to

‘‘use all means that he deems to be appropriate,’’

which is very broad authority.

The language of the pending Byrd

amendment is consistent with one of

the earliest articulations of the concept

of self-defense. Secretary of State

Daniel Webster in 1842, referring to

self-defense in an anticipatory sense,

stated that its use be ‘‘confined to

cases in which the necessity of that

self-defense is instant, overwhelming,

and leaving no choice of means and no

moment of deliberation.’’

Hugo Grotius, considered the father

of international law, said in his 1925

treatise that a nation may use self-defense

in anticipation of attack when

there is ‘‘present danger,’’ which is a

broader definition. Grotius further

said:

Elihu Root, a distinguished scholar

on international law, said in 1914 that

international law did not require a nation

to wait to use force in self-defense

‘‘until it is too late to protect itself.’’

I think the language of the pending

amendment offered by the Senator

from West Virginia is helpful in providing

assurance that preemptive force

is really necessary. We know President

Bush said he does not intend to use this

military force unless absolutely necessary

and has already made a determination

that he thinks there is an imminent

threat from Iraq. Some of the

information which has been presented,

partly in closed session, supports the

President’s concern along that line,

but I do think this language is helpful.

Therefore, I support it.

I thank the Chair and yield the floor.

Mr. President, it cannot

be repeated too often in the Chamber

of the Senate, the gravity of the action

which we are about to take. The

House of Representatives has already

considered and passed a similar resolution.

For some time now it has been

apparent the die has been cast.

Of all of the constitutional responsibilities

entrusted to Congress, the authority

and responsibility to declare

war is the most important. This will be

the second most important vote which

I will have cast in the 22 years I have

had the privilege of serving in the Senate.

The other vote was the authorization

for the use of force against Iraq in

1991. Now, the same situation confronts

us because, albeit by 20/20 hindsight, we

did not finish the job in 1991.

The question is: What course of action

would be most likely to avoid violence—

that is, an attack on the United

States or other peaceful countries, or

an attack on Iraq? The most desirable

objective would be to achieve the disarmament

of Iraq in accordance with the

commitments which Iraq made at the

conclusion of the Gulf War: to disarm;

not to produce chemical or biological

weapons, which Iraq has violated; and

not to produce nuclear weapons. Iraq

has been doing its utmost to create nuclear

weapons.

The coalition, which was formed in

1991 by then-President Bush, is the

preferable way to go at the present

time. We know Saddam Hussein is

cruel, repressive, and evil. There are

hardly sufficient adjectives in the lexicon

to adequately describe his vicious

character. That has long since been

recognized and was the point of a resolution

which this Senator introduced

on March 3, 1998, to constitute a war

crimes tribunal and to try Saddam

Hussein as a war criminal because he

had violated the basic laws against humanity.

He had engaged in reprehensible

conduct. That resolution passed

the Senate by a vote of 93 to 0 on

March 13, 1998.

Rather than take time to delineate

all of his acts of barbarism and cruelty,

I ask unanimous consent that a copy of

this resolution be printed in the CONGRESSIONAL

RECORD at the conclusion

of my presentation.

Mr. President, all the

rules have changed since September 11

of last year. We now know that in the

United States, we are no longer invulnerable

to attack by outside powers.

The breadth of the Atlantic and the

Pacific no longer protect us. We

learned a very bitter lesson on September

11 that has to be taken into account

in our current conduct.

By 20/20 hindsight, it is apparent that

we should have acted against Osama

bin Laden and al-Qaida long before

September 11. Osama bin Laden was

under indictment for killing Americans

in Mogadishu in 1993. Osama bin Laden

was later indicted for the embassy

bombings in Africa in 1998. We knew

Osama bin Laden was implicated in the

terrorism against the destroyer USS

*Cole*. We knew Osama bin Laden had

carried on a worldwide jihad aimed at

the United States, and we have not yet

determined the full extent of our

knowledge of bin Laden. However, it is

my personal view, having served as

chairman of the Intelligence Committee

of the 104th Congress, that had

we put all of the so-called dots together

on one screen, we would have

had a virtual blueprint as to what al-

Qaida and Osama bin Laden would do.

Now we have the risk as to what to

do about Saddam Hussein and what to

do about Iraq. There is considerable

unrest in the United States today

about whatever course of action we

take.

In a series of town meetings for the

last 3 months, I have had many constituents

say to me: Why does the

United States want to start a war? The

United States has never started a war

in the past. The United States has only

finished wars. Certainly were it not for

the experience on September 11 last

year, I think we would not have considered

preemptive action. However, the

authorities and international law do

contemplate action where there is a

threat—a significant threat.

Hugo Grotius, considered the father

of international law, said in his 1925

book ‘‘The Law of War and Peace’’ that

a nation may use self-defense in anticipation

of attack when there is ‘‘present

danger.’’ He said, ‘‘It is lawful to kill

him who is preparing to kill.’’

There is no doubt that there is

present danger. Is Saddam Hussein preparing

to attack the United States or

other peace-loving nations? There is a

real question as to why he would amass

chemical weapons in great quantity,

biological weapons in great quantity,

delivery systems capable of reaching

the United States, and search for nuclear

weapons which we are not sure of,

but he may be very close.

Another foremost authority on international

law, Elihu Root, said in 1914

that international law did not require

a nation to wait to use force in self-defense

until it is too late to protect

itself.

This is the essential legal backdrop

where we must consider what should be

done. There are a number of alternatives

we can take.

First, we can do nothing—no resolution,

no action—and simply let Saddam

Hussein continue to flout his commitments

made to the United Nations.

However, my view is, after a lot of

careful deliberation, analysis, and

study, that the risk of inaction is

worse than the risk of action. There

are major risks in action.

We have to consider what losses

there will be on United States personnel,

British personnel, or whoever

may join us. We have to consider the

risk to Israel, which is in the neighborhood

of Iraq. Iraq is still at war with

Israel. During the Persian Gulf War in

1991, some 39 Scud missiles were rained

down on Israel. While they have a missile

defense system, it is not adequate

to protect the whole nation. Notwithstanding

that, Prime Minister Sharon

has made public announcements that

he endorses United States military action

against Iraq.

The risks of not doing anything may

subject the United States to a repeat of

September 11, which could be even

more cataclysmic. We continue to

worry about al-Qaida, which has shown

a ruthless disregard for human life and

the most barbaric kind of conduct. The

risks with Saddam Hussein are comparable.

Then how do we approach the matter

to have the best likelihood of producing

the kind of coalition put together

by President Bush in 1991?

President Bush, in 1991, was able to

motivate the Arab world to move

against Saddam Hussein, as well as the

traditional allies.

I gave very careful consideration to

the amendment proposed by the Senator

from Michigan, Mr. LEVIN, where

he proposed that we ought to grant the

President authority to use force, but

only after a United Nations resolution

authorizing the use of force.

The advantage of the Levin amendment

was that we would have multilateral

action, very much like the Gulf

War in 1991. The disadvantage would be

that we would be subject to the veto of

Russia, China, or even France, and that

ultimately the United States would be

ceding a considerable quantum of national

sovereignty if we gave up our

right to decide what course of conduct

we should take, which is in our national

interest.

I carefully considered an amendment

which had been prepared and circulated

by Senator LUGAR and Senator BIDEN.

That resolution emphasized that the

President should exhaust all possible

means for an international coalition.

However, if the President found it impossible

to organize an international

coalition and believed that the interests

of the United States were threatened,

in self-defense the President

could act on his own or in conjunction

with Great Britain. However, the President

would not have to await U.N. action.

It would seem to me the proposal of

Senator BIDEN and Senator LUGAR was

the best idea, and I had agreed to cosponsor

that resolution or an amendment

offered which contained the essence

of that resolution.

Madam President, I ask unanimous

consent that the text of the Biden-

Lugar resolution be printed in the

RECORD at the conclusion of my statement.

When Senator BIDEN

and Senator LUGAR decided not to offer

that amendment, I decided to offer it

myself. I was surprised that the Biden-

Lugar amendment was not offered before

1 o’clock yesterday, which was the

deadline. I worked with the Parliamentarian

to structure a procedure to offer

this as a second-degree amendment,

and for reasons which were detailed in

an earlier speech on the Senate floor, a

unanimous consent agreement, in my

absence, was entered into, and the

pending first-degree amendments, to

which this would have been amended,

were withdrawn.

I do not want to get too much into

the arcane details of our Senate procedure,

but I was foreclosed from offering

that amendment, and I think it is very

unfortunate the Senate did not have an

opportunity to consider the Biden-

Lugar amendment. I am not sanguine

to say it would have been enacted, but,

on a matter of this importance, I felt

very strongly that procedural rules

should not bar the Senate from consideration,

especially when those procedural

rules had been complied with

until, as I say, the unanimous consent

agreement, in my absence, in effect,

pulled the rug out from under me.

I am concerned that the scope of the

present resolution goes a little far in

authorizing the President to use ‘‘all

means that he determines to be appropriate,’’

which is a subjective test, contrasted

with the 1991 authorization

which said the President was authorized

to use force in order to implement

Security Council resolutions. It is too

late in the day to press that distinction,

but I think it is important to

note.

Similarly, I think it is important to

note the potential historical impact of

the pending resolution which, in effect,

delegates to the President the authority

to declare war.

Make no mistake about it, this resolution

for the use of force is the equivalent

of a declaration of war, and Congress

has the authority to declare war.

However, we are saying in effect that

the President may decide at some future

time whether war should be declared.

In an earlier presentation on the Senate

floor, I detailed, to substantial extent,

the considerations and concerns I

had about the constitutionality of that

kind of a delegation of power.

So, in sum, we are faced with a tough

decision for the first time in the history

of this country to use preemptive

action. I commend President Bush for

coming to Congress. Originally he said

he did not need to do so and would not

do so. Later, he modified that, saying

that while he might not have to, he

was coming to Congress. He initially

talked about unilateral action, and

since has worked very hard in the

United Nations.

It may be that the practical effect of

what the President is doing now,

through Secretary of State Colin Powell,

amounts to what was sought in the

Biden-Lugar resolution, and I do believe

the likelihood of getting UN action

is better if we proceed to give the

President the authority to act without

UN support because if we said, as Senator

LEVIN proposed, that his authority

to use force would be conditioned on a

UN resolution, it would be, in effect, an

open invitation to the UN not to act,

knowing the President and the United

States, were limited from acting if the

UN did not, and subjecting our national

interests to China, Russia, or

France’s veto.

So I do believe, of all the alternatives,

giving the President this

power without conditioning it on previous

UN resolutions is the best way to

get the United Nations to act to enforce

the obligations which Iraq has to

the United Nations, running since 1991,

which have been in desperate breach.

So I do intend to vote for the pending

resolution. I supported the amendment

by Senator BYRD to the effect that

nothing in this resolution should be

deemed to impede or affect the constitutional

authority of the Congress

to declare war. Ordinarily you would

not think a statute or a resolution

would jeopardize constitutional authority,

which is paramount, but I am

concerned about the issue of erosion,

and that is why I supported Senator

BYRD in the amendment that nothing

in this resolution should undercut the

authority of Congress to declare war.

On this solemn occasion, when it appears

now highly likely—or perhaps

more accurately, virtually certain—

that this resolution will be enacted by

both the House of Representatives and

the Senate, and that we are on a very

difficult course, it is hoped that the

tremendous power of the United

States, in conjunction with other countries,

will be sufficient to bring Saddam

Hussein to his senses, if he has

any, that he ought to submit to inspections.

If he does not submit to inspections,

then it is confirmation that he,

in fact, has something to hide and

there is something really at risk.

So among the very many complex

considerations, it is my considered

judgment the adoption of this resolution

is the best course for our country.

I yield the floor.