THE PROPOSED U.S. SECURITY COMMITMENT TO IRAQ: WHAT WILL BE IN IT AND SHOULD IT BE A TREATY?

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JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT

AND THE

SUBCOMMITTEE ON THE MIDDLE EAST AND SOUTH ASIA

OF THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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THE PROPOSED U.S. SECURITY COMMITMENT TO IRAQ: WHAT WILL BE IN IT AND SHOULD IT BE A TREATY?

WEDNESDAY, JANUARY 23, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT
AND SUBCOMMITTEE ON THE MIDDLE EAST AND SOUTH ASIA,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittees met, pursuant to notice, at 10:10 a.m. in Room 2141, Rayburn House Office Building, Hon. William D. Delahunt (chairman of the Subcommittee on International Organizations, Human Rights, and Oversight) presiding.

Mr. DELAHUNT. The joint hearing of the Subcommittee on Oversight and the Subcommittee on the Middle East will come to order. I would like to thank my distinguished colleague, Chairman Ackerman, for agreeing to this joint hearing, and on behalf of myself and my good friend, the ranking member from California, Mr. Rohrabacher, I welcome the gentleman from New York and his distinguished ranking member, Mr. Pence, who I understand is on his way.

I would also note the presence of the gentlelady from Connecticut, Ms. DeLauro, who has introduced legislation dealing with the subject of this hearing, and I ask unanimous consent that she and any other Member attending today's hearing be permitted to act as a member of the subcommittee for the purpose of taking testimony and asking questions. Hearing no objection, so ordered.

The multitude of potential commitments embraced by the so-called "Declaration of Principles" signed by President Bush and Prime Minister al-Maliki on November 22nd of last year have profound consequences for the United States and the American people. This hearing will, in part, examine those proposed commitments and assess whether congressional approval is required in order for them to become legally binding.

However, let me be perfectly clear. The White House should be on notice that, as a prerequisite to any agreement making the kind of commitments enumerated in the Declaration of Principles, Congress must be an integral part of the discussions and negotiations from the beginning.

What we have heard from the administration regarding the process by which the United States would make such momentous com-

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mitments; well, the only comment to date has come from a response to a question at a press conference by General Douglas Lute, the deputy national security adviser for Iraq and Afghanistan. General Lute said that he does not, and these are his words, "anticipate now that these negotiations will lead to the status of a formal treaty, which would then bring us to formal negotiations or formal inputs from the Congress."

I, for one, could not disagree more. Where have we ever entered an agreement to defend a foreign country from external and internal attack that was not a treaty? This could very well implicate our military forces in a full-blown civil war in Iraq.

If a commitment of this magnitude does not rise to the level of a treaty, then it is difficult to imagine what could. Now, I have tremendous respect for General Lute. He and his family have served this country well, and that is why I invited him, as well as other witnesses from the Defense and State Department, to be here today to explain the administration's position, but I am cognizant of the fact that General Lute is a soldier and not an international treaty attorney and that there are others above his pay grade that are responsible for ultimate decisions.

It should be noted for the record that, in addition to General Lute, invitations to this hearing were extended to Eric Edelman, the under secretary of defense for policy; John Bellinger, III, the State Department legal adviser; and Ambassador David Satterfield, the State Department special coordinator for Iraq. All four invitations were declined.

Now, many of us are aware of the propensity of this administration to interpret and expand executive power to a point never contemplated by the Founding Fathers. The voluminous, so-called "signing statements" issued by the White House are testimony to that attitude.

Senator Hagel, our Republican colleague in the other body, has said that, during the runup to vote to authorize the invasion of Iraq, the Bush administration considered Congress to be, and, again, these are his words, "an enemy and a constitutional nuisance."

Well, this is a different Congress. I find it particularly disturbing that the Bush administration has even ignored State Department regulations requiring that, and, again, this is language excerpted from their regulations, "the appropriate congressional leaders and committees are advised of the intention to significant new international agreements, consulted concerning such agreements, and kept informed of developments affecting them, including, especially, where any legislation is considered necessary or desirable for the implementation of a treaty or agreement. These regulations specifically state that when it comes to questions about whether or not an agreement is to be considered a treaty, consultations are to be held with Congress in which . . ." and, again, this is language taken from the State Department regulations, "every practical effort will be made to identify such questions at the earliest possible date so that consultations may be completed in sufficient time to avoid last-minute consideration."

I have inquired of our leadership on this committee and the House leadership, and I can find no evidence that any of this has

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occurred. This is disturbing, for considerable American blood and treasure have been invested in this war, a war that has devastated Iraq, divided America, diminished how we are viewed by the rest of the world, as well as jeopardized our reputation for decency and the rule of law.

If you have any doubts about the war's impact on our economy, check your stock market portfolio.

As I said before, this is a different Congress. Not just the Bush administration, but the Maliki government, must understand that reality and that Congress has a constitutional role to play in international agreements of such a magnitude and that we intend to ensure that our constitutional prerogatives are fully respected.

Furthermore, we are not unaware that many respected experts on Iraq have characterized the Maliki government as dysfunctional and beset by corruption and factionalism.

Our hearing in December elicited testimony that the Maliki government secured the extension of the U.N. mandate, which serves as the legal basis for United States troops to occupy and engage in combat in Iraq, without receiving the consent of the Iraqi Parliament, despite assurances to the contrary.

We encourage the Maliki government to engage the Iraqi Parliament fully in deliberations on the so-called "Declaration of Principles." But we recognize that the Parliament is the only directly elected body in the nascent democracy in Iraq.

Before I introduce our witnesses, let me turn to my ranking member and the chairman and the ranking member of the Middle East Subcommittee, as well as our guest, the gentlelady from Connecticut, and I note that we are joined by a member of the Middle East Subcommittee, Mr. Scott, as well, for any opening remarks they care to make, and the gentlelady from California, who has also joined us, Ms. Woolsey. Mr. Rohrabacher.

Mr. ROHRABACHER. I guess we are surrounded by chairmen today.

Mr. DELAHUNT. This is the chairmen's day.

Mr. ROHRABACHER. I do not want any of you to mistake me with Ron Paul because of the sign here.

Mr. Chairman, welcome back. It is always an interesting and, I might say, pleasant experience for those of us who like to play mental chess, coming to hearings under your leadership. Two months ago, President Bush and Prime Minister al-Maliki signed a document called the "Declaration of Principles for Long-tern Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America," and that pact states that, by July 31st of this year, Iraq and the United States will have an agreement that will detail the relationship between our two countries.

The Declaration of Principles makes it clear that such an agreement will involve a commitment on the part of the United States to defend Iraq against internal or external attack on its security and its democratic government. The question that we will address in today's hearing is, does such an agreement rise to the level of a treaty, which would need the ratification, legally require the ratification, by the United States Senate, as well as the Counsel of

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Representatives in Iraq, or would this simply be a bilateral agreement, and thus solely an executive branch function?

So we are talking about the legal realities, which would mandate certain legal prerequisites in terms of actions taken by the legislative branch versus the executive branch.

Let me note, I will be looking closely at what we are hearing today, in terms of the argumentation, on this specific issue, and I think it is good that you brought this up, and it is something that we need to discuss, especially considering the nature of governance of this particular administration.

Let me just note that I believe that this administration has been arrogant. I am a Republican, and, at times, I am embarrassed by the lack of cooperation that this President and his appointees have had with the legislative branch. I sat in that chair just a few months ago, and the lack of cooperation that we had with various leaders from this administration was overwhelming.

There is a seething resentment by Members of Congress who are Republicans by the fact that this administration has not even cooperated with us, much less with you, who represent another party.

So there are ways of doing things, and there are other ways of doing things, and I think this administration has had its share of arrogance, and it is something that breeds the type of discussions that are necessary today. We have to look with a magnifying glass at what the legal prerequisites are because we do not have a spirit of cooperation.

I cannot tell you how many times we have had to make requests on investigations, over the time period when I was chairman of this subcommittee, and got no cooperation whatsoever and got nothing but roadblocks in the way of those investigations. That does not lead one to have faith in the descriptions that are given to us secondhand and thirdhand, and assurances given to us by senior members of this administration.

However, with that said, let me note that I do reject the notion that Congress has not been involved in the debate over what our Iraq policy should be. There have been numerous votes, numerous hearings, such as this one. In the United States Senate, there was vote after vote that has failed in an attempt by the now majority party in the Senate to remove American military personnel from Iraq.

I would suggest that the minute that it is possible for us to withdraw our troops, meaning that the Iraqi people are capable of defending themselves, we should do so. If there is any suggestion that there is a long-term commitment by the United States to send our military personnel back to Iraq or to do the fighting for the Iraqi people themselves, which is what is happening now, and, hopefully, we are winding that down, and the Iraqi people who believe in a more democratic society will step up, and are stepping up, to handle that responsibility.

But the minute they can do that, we should be out of there, and they should be doing their own fighting, and they should not feel that the United States is on call to send our young people and our treasure, and put the blood of our young people and our treasure at their disposal.

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So with that said, I am very anxious to hear the witnesses today, and I am also jealous of the prerogatives of the legislative branch, as we all should be, because we are here to fulfill the constitutional role that was established by our Founding Fathers and the responsibilities that have, of course, been given to us by the voters of this country to represent their interests.

It is not all in the hands of the President and his appointees. We play a major role, and, as I say, if there had been a better spirit, perhaps examining the legal prerequisites would not be as important a discussion.

So thank you very much for this hearing today, and I look forward to participating fully.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher. Now the chair of the Middle East Subcommittee, Mr. Ackerman of New York.

Mr. ACKERMAN. Thank you, Mr. Chairman. Please do not misinterpret my sliding further away from you as an indication of any disagreement. It appears that the microphones on either side of you have both failed.

I appreciate Mr. Rohrabacher's statement as well. He proves, yet again, that he is an equal-opportunity attack dog.

I think the very fact that this is a joint hearing of both subcommittees is indicative of the fact that this is a very important area of concern to so many Members of Congress. The war in Iraq remains deeply unpopular with most Americans, as a review of any number of recent polls will tell you, or perhaps simply a review of the mail that comes into your office would suggest.

So it strikes me as unwise that the President would want to go ahead and unilaterally commit the United States to a long-term security agreement with Iraq without trying to get the support of either the American people or the people's representatives. But true to form, the President has decided to go it alone on Iraq again, or so one would believe, if you take the President's special deputy national security adviser for Iraq and Afghanistan, General Douglas Lute, at his word, as you point out, Chairman Delahunt.

General Lute made it clear that the White House would be flying solo on this question when he said, "We don't anticipate now that these negotiations will lead to a formal treaty, which would then bring to formal negotiations or formal inputs from the Congress."

I do not think we can dispute General Lute's view that the President certainly has the authority to enter into an executive agreement with the Government of Iraq. Certainly, such agreements are a commonly used tool in American diplomacy, and such agreements are not ordinarily subject to congressional approval unless there are U.S. domestic laws that need to be amended in order for our nation to comply with the agreement.

No, the issue is not a question of legal authority; it is a question of political wisdom and sustainability, and I think the President's preferred course, as expressed by General Lute, is profoundly unwise and unsustainable.

Americans, in vast numbers, want our troops to come home. They are no longer certain, if they ever were, what we are fighting for. But I also think that most Americans, if you ask them, would agree that, even after the United States withdraws its forces from Iraq, we still need a framework for our relations with Iraq from

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that point forward, and I think they would also agree that the President, with less than 12 months left in his term, should not be the sole arbiter of what that future relationship looks like.

It is precisely because a long-term security agreement would be controversial that the President should involve Congress in the deliberations that shape such an agreement. It is my understanding that the State Department regulations even call for consultations with Congress, in deciding what form an international agreement should take, the Department must expressly consider "the preference of the Congress to a particular type of agreement."

The concern by many of us in the Congress is that the Declaration of Principles, signed last November, is so vague that it could cover anything, from consulting with the Government of Iraq about threats it faces to actually deploying United States troops to help Iraq defend itself.

If all we are really talking about is consultation with Iraq's Government in the face of a threat, then maybe an executive agreement is okay, but if the President intends to indefinitely commit United States troops to defend Iraq against future threats, then I believe the approval of Congress of any such agreement is required. Indeed, the American people would accept nothing less.

So I call upon the President to reject General Lute's proposed course and, instead, instruct the State Department to consult with the relevant committees in Congress over the shape of our future relations with Iraq and what the exact nature of any future commitments will be.

Trying to build a democracy in Iraq by ignoring the democratic process at home is ironic and certainly in keeping with the habits of the President to date. But most of all, it is foolish, shortsighted, and perilous. It should not be done, and I suspect that there could, and would, be serious consequences if that is attempted. Thank you, Chairman Delahunt.

Mr. DELAHUNT. Thank you, Chairman Ackerman.

Now, the distinguished ranking member on the Subcommittee on the Middle East, the gentleman from Indiana, Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman. Thank you for calling this joint hearing. I am captured by a sense, though, that today may be a good example of how Congress can be a lagging indicator in American public life.

It seems to me, our discussion today here on Iraq misses the developments in 2007 altogether. It is almost as if the "Anbar Awakening" did not occur. It is as if we had not received preliminary reports of refugees returning home from neighboring countries. It is as if the last several months have not been the safest for U.S. troops in years, or, specifically, the combat-related United States casualties in Iraq were not 83 percent less in December 2007 than they were in December 2006. It is as if the Iraq public does not have the precious breathing space that it lacked 1 year ago. In fact, it is almost as if the surge did not work.

Mr. Chairman, these things did occur. I am not certain that this body has absorbed or appreciated the success story and the improved security situation in Iraq and how dramatically better conditions are.

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Ambassador Ryan Crocker, who we all respect and one not noted for overstatement, told the London Times, on the 19th of January, "We are in an immeasurably better place in January 2008 than in January 2007."

General Ray Odierno, the number two commander of United States forces, said just this last Friday that Iraq's army and police will likely be ready to take over security in all 18 provinces by the end of the year. The day before that, the U.S. military reported that 75 percent of Baghdad is secure, a dramatic increase from 8 percent a year ago, before the surge began.

Despite many predictions to the contrary, the surge succeeded and is succeeding, but one cannot help but feel that good news is no news in certain quarters here on Capitol Hill. I think it is important that we have this hearing today, in the context of what is really happening.

Frankly, contrary to some of the concerns raised about the President's intentions, relative to a treaty or negotiations, I do not view with alarm that the President, back in November, signed a declaration with the Iraq Government pledging that both governments would formally endorse a long-term political or security pact. I do not see this as a blank check.

Fred Kagan, who has testified before our committee, described in the Wall Street Journal last month: "The joint American and Iraq communiqué marks the beginning of normalization of relations between allies in a common fight against al-Qaeda and against Iranian efforts to dominate the Middle East."

Mr. Chairman, in this light, I do not endorse putting the presence of our troops or our national interests in the hands of Iraqi voters, and we do not covet the territory of Iraq any more than we did that of Germany, Japan, the Philippines, Korea, or Bosnia. Because of a successful mission completion, our long-term presence in those countries has been mostly noncontroversial. Our vital national interests are advanced by a successful conclusion to our efforts in Iraq.

A Status of Forces Agreement is the first order of business for our negotiators.

I have one other concern. I am concerned about our dictating the terms of a potential treaty that may or may not be in the works. On its face, such an effort strikes me as something of an usurpation of our authority and not in keeping with Article 1 of the Constitution. Congress does not conduct bilateral relations with other countries under our Constitution.

This is not any fast-track authority we have created here. Article 2, Section 2, Clause 2, grants the President the power to make treaties, subject to ratification by the Senate.

Further, he has the constitutional authority to enter into an executive agreement. Professor Matheson points out this morning that "the Constitution does not give clear guidance as to what form must be used for what type of obligations or commitments."

So are we preemptively demanding or disapproving a treaty in this body when we really have no role in treaties? That is the question I would ask. The administration has not indicated it would seek Senate approval for anything, anyway. Are we attempting an unconstitutional, legislative veto?

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With respect to the gentlelady who is present here today, H.R. 4959, the DeLauro Bill, provides for congressional consultation. It is the language of the bill, "ensuring that the President produce a treaty," that raises all of these questions. Even if it is the sense of Congress, it strikes me as an unconstitutional solution in search of a problem.

So I hope we have this conversation today. I am interested in the testimony. I look forward to the dialogue, but I hope we do it in the context of a widening American success in Iraq, and I hope we also do it within the proper confines of the role of the House of Representatives in the formation and implementation and ratification of treaties, and I yield back.

Mr. DELAHUNT. I thank the gentleman.

Mr. Scott?

Mr. SCOTT. Thank you very much, Mr. Chairman. This is, indeed, a very, very timely hearing, and I certainly want to say, at the outset, that we must not make the same mistakes that we made going into this conflict in Iraq as we attempt to determine how we conclude the matter.

Now, I think it is very important for us to take a look at exactly the breadth and the scope of what the President wants to do by himself, without the consent of Congress, without the involvement of Congress, and I think, when we look at this, I think it will illuminate the breadth and the scope of the arrogance of the President, on one hand, and the direct failure of our responsibility as a Congress if we do not object and insist upon congressional approval.

This is the mission, as contained in the Declaration of Principles, for the security agreement. This is what it says:

> "To support the Iraqi Government in training, equipping, and arming the Iraqi security forces so they can provide security and stability to all Iraqis, support the Iraqi Government in contributing to the international fight against terrorism by confronting terrorists, such as al-Qaeda, its affiliates, other terrorist groups, as well as all other outlaw groups, such as criminal remnants of the former regime, and to provide security, financial assurances to the Iraq Government to deter any external aggression and to ensure the integrity of Iraq's territory."

Now, this is sweeping in its scope. It is soaring in its magnitude, and it requires the Congress of the United States to stand up and affirm its constitutional duties, as outlined in the Constitution. It would be a considerable dereliction of our duties not to require that both houses of this Congress, by majority vote, approve of this agreement before we move forward, or else we will be a standing joke in the public opinion of the people who elected us to office.

This is extraordinary, and I am just proud to be a part of this committee that is taking it upon ourselves to, I think, today strike the first blow, the first blow, for participatory government and democracy, as laid out by Hamilton, by Madison, and by Jay, that was laid out in Article 2 of the Constitution of the United States.

We have a responsibility here, and we dare not shirk from this responsibility today, and I just hope, Mr. Chairman, that we are very strong in what we do and that we send a very loud and a very purposeful message to the White House that this is not his job

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alone. We get out here every other year and run for office to get elected to perform our duties, and now the people of the United States are expecting us to perform it and make sure that before we approve any measure of how we wind this thing down in Iraq, that the Congress, not the President, but the Congress.

One other thing I want to say, Mr. Chairman, why this makes this so timely is the fact that, in all due respect to the President, he is here for 10 more months. We are the charge that the people of this country are looking to to bring the correct conclusion to the matter in Iraq, and we must make the first bold step here this morning, and I commend you for taking the leadership to do so.

Mr. DELAHUNT. Thank you, Mr. Scott, and I am going to ask the gentlelady from California, as a member of the full committee, if she will yield—I will come back to her—to Ms. DeLauro, who, I understand, has a meeting someplace else, but we hope you will return. Ms. DeLauro.

Ms. DELAURO. Thank you very much, Mr. Chairman, and I want to just say thank you to Chairman Delahunt and to Chairman Ackerman for holding this hearing and, particularly, to Mr. Delahunt for inviting me to participate. I also want to say thank you to my colleagues, who, day in and day out, sit on this committee, for allowing me to participate.

Our relationship with Iraq is undoubtedly one of the most critical issues facing our country today. With approximately 170,000 troops fighting in Iraq and the recent decrease in violence, much of the discussion concerning Iraq has turned to whether the troop surge is working. I welcome the reduction in violence, and I applaud General Petraeus and our troops. They make us proud.

I say to my colleague, Mr. Pence, this is not about the surge. This is about whether or not Congress should have a role. If our troops are to be present in Iraq to 2012, to 2018, that, in fact, is a long-term arrangement. As a matter of fact, the State Department, in Circular 175, does call for consultation with the Congress in cases like these.

I have long questioned our long-term strategy in Iraq. What is it, and how long do we plan on waiting for substantive Iraqi reconciliation?

In June, Defense Secretary Gates said that we would have a "long and enduring presence in Iraq," and he said that we would be borrowing from the Korean model and the security relationship that we have with Japan. He compared our relationship to the ones that we do have with Korea and Japan, two nations with which we have treaties.

In November, the administration finally revealed its strategy when President Bush and Prime Minister al-Maliki agreed to a Declaration of Principles, for a long-term U.S. relationship to be finalized by July 31, 2008, just in the next several months.

I am concerned about the security assurances that our nation plans on providing Iraq, according to this declaration.

Among other things, the declaration claims the parties' intention to negotiate a security arrangement, and I quote, "to support the Iraqi Government in training, equipping, and arming the Iraqi security forces so they can provide security and stability to all Iraqis; support the Iraqi Government in contributing to the international

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fight against terrorism by confronting terrorists, such as al-Qaeda, its affiliates, other terrorist groups, as well as other outlaw groups, such as criminal remnants of the former regime, and to provide security assurances to the Iraqi Government to deter any external aggression, and to ensure the integrity of Iraq's territory." Sweeping commentary.

The declaration appears, in many ways, to adopt the Maliki government's definition of both "external and internal threats," and that concerns me. What are these undefined threats? Would we be obliged to preemptively strike Sunni fighters beyond Iraq's borders, or even strike home-grown armed factions which Maliki's own government deems to be a threat?

After the principles were signed, as has been said already many times this morning, Deputy National Security Adviser for Iraq and Afghanistan Lieutenant General Douglas Lute said he does not anticipate, and I quote, "the status of the formal treaty, which would then bring us to formal negotiations or formal inputs from the Congress."

Because the administration apparently believes Congress should not be involved in the negotiation of this agreement, I recently introduced the Iraq Strategic Agreement Review Act. The bill makes clear that the administration must consult with Congress and expresses a sense that any long-term security, economic and political agreement with Iraq must come in the form of a treaty, following approval from the Senate.

We have been in Iraq for nearly 5 years. I understand that mapping out a future relationship with that country is vital to our national interests in the region. A clear majority of Americans still believe we should bring our troops home as soon as possible, and this Congress has been elected, in large part, out of dissatisfaction with this war.

Congress has a central role to play in formulating any long-term relationship with Iraq. This President simply should not be permitted to unilaterally tie the hands of his successor.

I look forward to hearing our witnesses today and getting their expert opinions on this type of agreement. I thank Mr. Delahunt and Mr. Ackerman for inviting me to this hearing, and I thank the witnesses in advance for sharing their views.

As I must be at a press conference shortly, I do not know if I will be able to hear Mr. Katzman's testimony, but let me just pose this question, and then I will leave my questions with Mr. Delahunt for the other witnesses.

I say to Mr. Katzman, in your testimony, you talked about an August 2007 communiqué signed by the top five political leaders—Shiites, Kurds, and Sunnis—as a springboard for this proposed agreement. Later in your testimony, you go through probable support, or lack thereof, for such an agreement in the Parliament. I count, at least, 100 seats against.

So is it quite possible that the Iraqi Parliament would not be able to muster the seats to approve any treaty or agreement? I anticipate that their Parliament is going through much the same considerations as we are today. What do you think the prospects are of the al-Maliki government ignoring the Parliament, moving forward with this agreement without approval? What would the rami-

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fications of that be among the various sects in Iraq and on the Iraqi street?

I thank the Chair for his indulgence in allowing me to speak before this hearing today, and I thank my colleagues.

Mr. DELAHUNT. Thank you, Ms. DeLauro.

Let me now go to the gentlelady from California, Ms. Woolsey.

Ms. WOOLSEY. Thank you very much, Mr. Chairman, and thank you, Chairman Ackerman, for allowing me, as a member of the full committee, to sit in on this subcommittee joint hearing. It is so important.

You know, the first thing I have to do is respond to the gentleman from Indiana's statement that the surge is working. My response is, "Who said so?" Because I want to know who is measuring how many of our troops are being wounded. Do you read how many are wounded anymore? No. We will soon be able to be reading that 4,000 of our troops have been killed. How many are wounded? How many are mentally damaged?

You know, who is taking account of the number of Iraqis who are dead, who are dying, who are injured? How many millions of Iraqis are refugees and continue to have to leave the regions that they live in, in the country that is theirs?

I do not consider the surge a success until we bring our troops home.

Now, I am not going to pile on about the very idea that the President, without congressional involvement, thinks he can come up with some agreement with any country, particularly Iraq, because it is wrong-minded, we know it, and we will insist that he come and work with us on this. If he has good ideas, the Congress should be glad to incorporate them in any agreement.

Whatever that agreement is, I think it should include the provisions that have been expressed more than once—in fact, 10 separate bills have included provisions that prohibit expressing opposition to the establishment of permanent military bases in Iraq. Five bills have been approved by Congress, in a bipartisan way, and the President has signed them into law. I want to know that they are going to be part of—what do you think?—how they are going to be included in any agreement with the Iraqi Government.

It is proof in the pudding to me that, whatever agreement, it is not going to be upheld, in the first place, because we have done this five times.

So, Mr. Chairman, I am here to listen, I am here to question, and I thank you for letting me.

Mr. DELAHUNT. Thank you, gentlelady.

Would either our colleague from New York, Mr. Crowley, or our colleague from Florida wish to make any remarks? Mr. Crowley?

Mr. CROWLEY. Mr. Chairman, only that it is always good to see you, and thank you for holding this event. At least, one of those statements is accurate and true.

I do look forward to hearing the testimony of Dr. Katzman, and like my colleague, Ms. Woolsey, I am interested in hearing his perspective on these issues later on in the hearing. And no comment from my colleague from Florida. Thank you.

Mr. DELAHUNT. I thank Mr. Crowley, and I interpret your remark directed at me as a concern about February 3rd. That, by the

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way, for those who are unaware, is the day that the New York Giants meet the New England Patriots.

Let me proceed. Our first panel today consists of just one witness, Dr. Ken Katzman of the Congressional Research Service. We do not have to be considered that he is alone on this panel because when it comes to Iraq and United States policy there, he is unique. As Thomas Jefferson said of Alexander Hamilton, he is a host unto himself. So we welcome you, Dr. Katzman, and would you proceed with your opening statement?

STATEMENT OF KENNETH KATZMAN, Ph.D., SPECIALIST IN MIDDLE EAST AFFAIRS, FOREIGN AFFAIRS, DEFENSE AND TRADE DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. KATZMAN. Thank you, Mr. Chairman, and I would like to thank both subcommittees for asking me to appear today. What I am going to try to do is address the part of the title of the hearing, "What will be in it?" In other words, what might be the provisions of this bilateral agreement that is being negotiated? I would ask that my testimony be submitted for the record.

Mr. DELAHUNT. Without objection.

Mr. KATZMAN. Thank you. I would note that my work at CRS is focused on United States policy toward Iraq and Iraqi politics, the insurgency, et cetera. I assert no expertise on the legal matters at issue or the separation-of-powers issues that have been raised, and I will defer on those to the second panel.

What I am going to try to do is discuss what is at issue, what really is at issue, and, as was said, the Declaration of Principles that was signed on November 26th flowed from an August 26th communiqué by five top political leaders of all ethnicities and sects. That was also the day that it flowed from what was called a "unity accord," where these five top leaders were trying to agree to some principles to move forward on political reconciliation, and they did agree to request or to give Maliki the ability to have this Declaration of Principles with the United States on a long-term, strategic, framework agreement.

The framework agreement is intended to replace the current United Nations mandate under which United States-led forces contribute to the security of Iraq. The Iraqi leaders wanted this because Iraq has been under Chapter VII of the United Nations Charter. Chapter IV means, in some sense, their sovereignty was not full because they were under Chapter VII of the U.N. Charter.

The Iraqi leaders want full sovereignty. They want to be out from under the crimes or the bad times, as Ms. Rice said when she visited Iraq, Secretary of State Rice, of Saddam Hussein. They want to be out from under this Chapter VII mandate, so they would like to move to a bilateral relationship but recognizing that they cannot maintain security by themselves for the foreseeable future, as the Defense Minister, al-Ubaydi, who visited last week, has acknowledged.

As I mentioned, Ms. Rice visited Iraq. She broke off from the President's Persian Gulf leg of his trip, and she went to Iraq, side by side with Foreign Minister Hoshyar Zebari. Hoshyar Zebari said that the draft strategic framework agreement that we are negotiating would be submitted to the Iraqi Parliament for approval. So

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it is widely on record that the Iraqi Government will submit this to its Counsel of Representatives, its Parliament, for approval.

I would like to discuss really what is at issue. If this Declaration of Principles of November 26th does, indeed, become a final agreement, and all of the provisions of the declaration are in it, what would it do? What would be in it?

The judgment that the proposed pact will likely be long term is, as I said, based on the provisions pertaining to security. The Declaration of Principles is that the United States would provide security assurances and commitments to Iraq to deter foreign aggression against Iraq that violates its sovereignty and integrity of its waters and air space, and it goes further, to potentially include United States' support for the Iraqi Government against internal threats, and the declaration, in many ways, adopts the Maliki government's definition of what the internal threats are.

According to the declaration, the Iraqi Government is combating terrorist groups, at the forefront of which is al-Qaeda, Saddamists, and all other outlaw groups; it does not name these other outlaw groups.

If a pact is negotiated in line with these principles, U.S. forces could conceivably be committed to combat any armed faction that the Maliki government, or any future government, defines as a threat to its security, without regard to why that armed group is fighting and whether or not the Maliki government has made best efforts to address the sources and causes of that armed opposition.

Among the most significant implications, in my analysis, is the potential for Iraq and the United States to differ on their assessments of external threats to Iraq and for Iraq to, therefore, assume United States support in a dispute with countries that the United States is allied with. Iraq's Kurdish leaders could, for example, try to assert that the United States, under a pact, is committed to confront Turkey over its military actions against the PKK Kurdish guerrillas, who have some safe haven in northern Iraq.

Iraq's Shiite leaders could assert that the United States should act against Sunni Arab governments that are widely reported to be providing funds, arms, and transit to Sunni insurgents and the foreign fighters helping these insurgents. Some of them are close United States allies, Saudi Arabia and Jordan, for example.

There is the potential for the current Iraqi Government, widely considered to be dominated by pro-Iranian, Shiite parties, to try to minimize the extent to which Iran is contributing to any violence inside Iraq.

Another indication that a proposed pact would be a long-term commitment comes from, as I said, Defense Minister Ubaydi, who visited last week and told journalists, and General Dubik testified before the Armed Services Committee just this week, agreeing with these numbers, essentially that Iraq would not be able to secure its internal security until 2012; 2009, at the minimum, but United States officials clearly think it will be the longer term of that range and would not be able to defend against external threats until 2018 to 2020.

I would like to discuss some of the specific stipulations, for example, the mission. The Declaration of Principles stipulates a mission. Now, General Lute, who was mentioned, says that the size and

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shape of a long-term presence would be part of the negotiations, but he denied that any agreement would specify timelines or goals for the United States withdrawal from Iraq. However, the declaration stipulation of the antiterrorism and Iraq security forces training mission will likely color how many troops would be needed under the pact, if the pact is negotiated along the lines of the declaration.

It is difficult to say precisely how many U.S. forces would be required to perform these missions. There are many intangibles. We do not what the level of violence will be, the enemies, the threats, et cetera. In my conversations with defense experts around town, the common thinking puts the range of U.S. troops for these missions at between 50,000 to 100,000. Many experts seemed to be centered on 70,000. Again, not mentioning any names, many of these experts might not want to be held to these estimates, and that is what they are; they are estimates.

The freedom of action for U.S. military forces will be key, as to the provisions of this agreement, particularly, the degree to which United States forces that are in Iraq under the pact must coordinate with or obtain Iraq approval for specific combat operations. Some Iraqi observers say the Iraqi side might likely try to demand, for example, limits on the United States ability to employ air strikes, potentially including the types of aircraft the United States could station in Iraq.

The U.S. negotiating side is, undoubtedly, going to argue for the maximum flexibility for U.S. forces in any bilateral pact in order not to have their hands tied, if they come under threat. It was mentioned, a legal Status of Forces Agreement will certainly be negotiated, but that is a component of this overall pact, referring to whose law U.S. troops are under.

Permanent basing: General Lute said there might be negotiations on permanent base. It was mentioned that several laws from Congress, which were signed, prohibit that; however, many Iraqi officials had said that the Iraqi side is not going to want to allow permanent bases. So that may be an issue that is not confronted in the final agreement because it appears the Iraqi side is leaning against permanent bases.

The Declaration of Principles does not specifically provide how these issues would apply to coalition partners, partner countries. We have about 11,500 partner forces in Iraq right now. How would it apply to them? I think it is reasonable to assume that there believe some provisions in any final pact that would provide for how partner forces are treated.

Again, the agreement has a security component, a political component, and an economic component. There are some points in the political section of the declaration that are of interest, I believe. In other words, the Declaration of Principles said the United States might be committed to support Iraq in defending its democratic system against internal and external threats.

That stipulation could have major implications if there is a political upheaval that leads to the downfall of an elected Iraqi Government. For example, would the United States be required to come restore the elected government? There are many, many permuta-

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tions and implications, depending on how that government fell, if it fell or not.

Point 2 of the political section clearly also is of interest. It states: "The United States would assist Iraq in standing against any attempt to impede, suspend, or violate Iraq's constitution."

The legalities of that could be complicated, but some might argue that this would allow the Iraqi Government the right and responsibility to define who is attempting to impede, suspend, or violate Iraq's constitution and could, therefore, compel the United States to act against activists in Iraq, whose activities or political ideology might not necessarily conflict with United States interests, but they might conflict with the Iraqi Government's definition of who is violating the constitution.

The economic section clearly has some commitments, if implemented, in terms of pact and binding U.S. advisory help in the ministries, U.S. foreign assistance, and there is a provision that even stipulates that the United States would help Iraq formulate investment laws, and it specifically mentions, to facilitate United States investment, among other investment.

Just briefly, I want to discuss in my testimony the Iraqi dynamics of this pact. As was asked in the opening statements, would this pass the Iraqi Parliament? I think that is a very good question. Maliki can pretty much count on the support, in a crunch, of perhaps a little more than half of the Council of Representatives of 275. The Sadr bloc and a related bloc, the Fadilah bloc, have broken with him this year. Many Sunnis certainly would not vote with him, and some secular blocs of former Prime Minister Iyad al-Allawi theoretically would vote against him as well.

So it is not at all certain how the Iraqi Parliament is going to vote on this agreement, and I think, certainly, the maneuvering of some of these blocs is going to determine how these issues are treated in the negotiations on a pact. I have stipulated who is against him, who is with him. It could be very difficult.

It could break down to what is called "nationalist decentralizers." Those in power now tend to favor power for individual regions. Those who tend to be against Maliki support more power for the central government of Baghdad. That is not completely how it breaks down, but, in many cases, it is.

So I think, as an analyst on Iraq, I am going to be looking at how some of the political blocs discuss, or how they react, as various provisions come out in the media during this phase of negotiations, and I think I will stop there. Thank you very much, and I will take your questions.

[The prepared statement of Mr. Katzman follows:]

PREPARED STATEMENT OF KENNETH KATZMAN, PH.D., SPECIALIST IN MIDDLE EAST AFFAIRS, FOREIGN AFFAIRS, DEFENSE AND TRADE DIVISION, CONGRESSIONAL RESEARCH SERVICE

I'd like to thank the Sub-Committee on Human Rights and Oversight and the Sub-Committee on the Middle East and South Asia for asking me to appear today to analyze the proposed provisions and implications of a bilateral security pact that is to be negotiated between the United States and Iraqi governments. I will also discuss possible Iraqi political reaction. In that sense, I will be addressing the first part of the title of the hearing—"What Will Be In It?" I would ask that my testimony be submitted for the record.

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I would note, at the outset, that my official responsibilities at CRS include analysis of U.S. policy toward Iraq, U.S.-Iraq relations, Iraqi politics and the social and human rights situation in Iraq, as well as aspects of the insurgency and the various militias that are operating. I assert no expertise on or official responsibilities for analyzing, in legal terms, the provisions of the Iraqi constitution or the U.S. constitution, or international or military law pertaining to U.S. forces in Iraq.

The issue under discussion today is the announced decision of the Iraqi and the United States governments to work, by July 31, 2008, to forge a long-term bilateral pact that both sides are calling a "strategic framework agreement." The pact is expected to be based on the November 26, 2007 "Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America,"[1] signed by Iraqi Prime Minister Nuri al-Maliki and President Bush by video-conference. That Declaration was, in turn, based on an August 26, 2007 communique signed by five top political leaders in Iraq—Prime Minister Maliki, President of the Kurdistan Regional Government (KRG) Masoud Barzani, President Jalal Talabani, and Talabani's two deputy presidents Adel Abd al-Mahdi of the Supreme Council and Tariq al-Hashimi, the country's highest ranking Sunni official—calling for a long term relationship with the United States built on common interests between Iraq and the United States.

The strategic framework agreement, if agreed, is intended to replace the current U.N.-mandate under which U.S. and U.S.-led forces are responsible for contributing to the security of Iraq. That mandate was specified in U.N. Security Council Resolution 1546 of June 8, 2004. It was most recently renewed by Resolution 1790 (December 18, 2007), with the same provisions as previous mandate extensions (interim reviews by June 15, 2008, and subject to termination if the Iraqi government so requests). These Resolutions were passed under Chapter 7 of the United Nations Charter, and the stated U.S. and Iraqi intention in replacing the U.N. mandate is to restore Iraq to full sovereignty and end the Iraqi sense of international opprobrium and dishonor that Iraqis have felt since Saddam Hussein's invasion of Kuwait first placed Iraq under Chapter 7 U.N. resolutions. The earlier Resolutions primarily demanded Iraq dismantle its weapons of mass destruction and imposed international sanctions on Iraq until it complied. Iraqi leaders' desire to assert full sovereignty and bring an end to an era of U.N. resolutions on Iraq is reportedly a key consideration for negotiating the strategic framework agreement, whether or not any such agreement actually alters the "on-the-ground" operational scope and flexibility of U.S. forces in Iraq.

ISSUES FOR THE STRATEGIC FRAMEWORK AGREEMENT

Foreign Minister Hoshyar Zebari—and a wide range of Iraqi leaders—have said the Iraqi government will submit a draft strategic framework agreement with the United States for parliamentary approval. It would be difficult to argue, constitutionally, that such an agreement does not require Council of Representatives (COR, parliament) approval as defined in the Iraqi constitution because, as discussed at the previous hearing on this issue, Article 58 stipulates that the COR must ratify treaties *and agreements* by a two thirds majority. On the other hand, some observers question whether the Iraqi government pledges will be implemented, because Iraqi officials had said they would obtain COR approval for an extension of the U.N. mandate, and they did not do so. As was discussed in the Subcommittee's December hearing on this issue, a majority of COR deputies had expressed their view, in a letter and a resolution, that the request to extend the mandate should be submitted to the COR in line with the Iraqi constitution.

On the U.S. side, Gen. Douglas Lute, Assistant to the President for Iraq and Afghanistan, said in his November 26 press briefing, cited above, that the Administration would likely have dialogue with the U.S. congressional leaders on the framework agreement, but that any agreement would not likely rise to the level of formal treaty that would require Senate ratification. I will leave it to other witnesses at this hearing to address that question.

In the aggregate, the November 26 "Declaration of Principles" sketches out a broad and long term U.S.-Iraq pact that spans not only security issues but includes economic and political, diplomatic, and cultural relations.

I will now address the issues that are likely to be negotiated in the strategic framework agreement.

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[1] Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America. Http://www.whitehouse.gov/news/releases/2007/11/print/20071126–11.html. Press Gaggle (Briefing) by Dana Perino and General Douglas Lute, Assistant to the President for Iraq and Afghanistan. November 26, 2007. Http://biz.yahoo.com/bw/071126/20071126005809.html?.v=1.

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Security Issues. The judgment that the proposed pact will likely be "long term" is based, at least in part, on the provisions in the Declaration of Principles pertaining to security. The Declaration states that the United States will provide "security assurances and commitments to [Iraq] to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, waters, or airspace." The Declaration goes further to potentially include United States support for the Iraqi government against internal threats, and the Declaration appears, in many ways, to adopt the Maliki government's definition of internal threats. According to the Declaration, the Iraqi government is combating "terrorist groups, at the forefront of which is Al Qaeda, Saddamists, and all other outlaw groups." If a pact is negotiated in line with the Declaration, U.S. forces could conceivably be committed to combat any armed faction that the Maliki government defines as a threat to its security, without regard to why that armed group is fighting, and whether or not the Maliki government has made best efforts to address the sources and causes of the armed opposition.

Among the most significant implications is the potential for Iraq and the United States to differ on their assessments of external threats to Iraq, and for Iraq to therefore assume U.S. support in a dispute or even an armed conflict with countries that are now U.S. allies. Iraq's Kurdish leaders could try to assert, for example, that the United States, under the pact, is committed to confront Turkey over its military actions against Kurdish rebel guerrillas (Kurdistan Workers' Party, PKK) who have a degree of safehaven in northern Iraq, which is controlled by the Kurdistan Regional Government (KRG). Iraq's Shiite leaders could assert that the United States should act against Sunni Arab governments that are widely reported to be providing funds, arms, and transit assistance to Sunni insurgents and the foreign fighters helping these insurgents. Some of the cited governments, including Saudi Arabia and Jordan, are close allies of the United States. Syria, which is said to be allowing foreign fighters to enter Iraq, although with some reduction identified by U.S. commanders in recent months, is not an ally of the United States. However, the United States is trying, to some extent, to modify Syria's behavior without direct confrontation and to coax Syria out of its broader alliance with Iran. There is also the potential for the current Iraqi government, widely considered to be dominated by pro-Iranian Shiite Islamist parties, to try to minimize the extent to which Iran is contributing funds and weaponry to violent extremist groups in Iraq, so as to prevent U.S. action against this Iranian interference.

I have not studied various defense arrangements that the United States has with other countries around the world, but I have had extensive discussions with U.S. officials in the Persian Gulf region and Persian Gulf officials about the defense pacts the United States has signed with several of those governments, including Kuwait, Bahrain, UAE, Qatar, and Oman. The texts of these pacts are classified, but, according to these officials, the pacts reportedly do have some provisions for discussing how the United States might assist those governments in a security crisis. However, no one claims that these pacts give the United States any role in assisting incumbent governments in fending off internal challenges. The pacts mostly provide for "status of forces," (see below), U.S. arms sales, training of the Gulf militaries, access to Gulf military facilities, and prepositioning of U.S. military equipment in the Gulf states.

The defense pacts with the Gulf states will likely need to be extended to support any long-term U.S. presence in Iraq. It is under the U.S. defense pact with Kuwait that U.S. troops enter and exit Iraq through Kuwait, which has facilities for training and repairing and storing U.S. military equipment (Camp Arifjan). Air bases in Qatar and UAE are used by U.S. forces to fly support missions in Iraq.

Another indication that a proposed pact with Iraq will likely entail a "long-term" commitment is the assessment of Iraq's current Defense Minister, Abd al-Qadir al-Ubaydi. On a visit to Washington D.C. last week, he told journalists that Iraq will not be able to take full responsibility for its internal security until 2012, and will not be able to defend against external threats until 2018–2020.[2] He previously told the "Independent Commission on the Security Forces of Iraq" (the so-called "Jones Commission," named after Gen. James Jones who led the September 2007 study) that Iraq would be ready to secure itself from external threats by 2018, at the earliest. The steady but slow progress being made in training and equipping the Iraqi Security Forces (ISF)—along with ISF self-sufficiency time-frames roughly similar to those outlined by Ubaydi—were discussed by the U.S. commander of the ISF "train and equip" program, Lt. Gen. James Dubik, in testimony before the House Armed Services Committee on January 17, 2008. Ubaydi's visit to Washington last

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[2] Shanker, Thom. Iraq Defense Minister Sees Need for U.S. Security Help Until 2018. *New York Times*, January 15, 2008.

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week was reportedly to begin the preliminary process of negotiating the bilateral pact; negotiations are to begin in earnest in February 2008.

In addressing security issues, the Declaration mentions two specific missions for U.S. forces that would be in Iraq under the proposed pact: (1) supporting the combating of the groups discussed above, including by destroying their logistical networks, and sources of finance; and (2) supporting Iraq through training, equipping, and arming of the ISF and completing the building of the ISF administrative systems.

In performance of these functions, press accounts and comments by Gen. Lute, referenced above, the following issues would likely be addressed in the negotiations:

- *Overall U.S. Mission.* According to General Douglas Lute, Assistant to the President for Iraq and Afghanistan, in his press briefing on November 26, 2007, the "size and shape" of any long-term U.S. presence would be part of the negotiations on a strategic framework agreement. He denied that any agreement would specify time lines or goals for the withdrawal of U.S. troops from Iraq. However, the Declaration's stipulation of the "anti-terrorism" and ISF training and equipping missions will likely color how many troops would remain in Iraq under the pact. Not stated in the Declaration, but certainly at issue, is the need for U.S. forces to protect the forces performing these other missions, and to protect other U.S. facilities such as the U.S. Embassy. It is difficult to say precisely how many U.S. forces might be required to perform these missions over the long-term, and much depends on intangible and hard-to-predict factors such as the attitudes of the Sunni population toward Al Qaeda-Iraq, and how committed and enthusiastic the ISF are in taking on threats to the Iraqi government. I don't think anyone would want to be too definitive on numbers. However, in conversations with experts on these issues around town, the common thinking seems to be that a range of about 50,000–100,000 U.S. forces, with some experts centered around a figure of 70,000 U.S. forces, would be required for these missions.
- *Scope of Authority*. The freedom of action for U.S. military forces in Iraq, including rules of engagement and status of prisoners taken, will likely be among the most sensitive issues in the negotiations. Under the current U.N. mandate, U.S. forces have broad scope of authority and freedom of action, including the power to arrest and detain Iraqis perceived as threatening Iraq's security, and to hold them without charge. A key issue in negotiations on the strategic framework agreement will undoubtedly be not only this issue but, perhaps more importantly, the degree to which U.S. forces in Iraq must coordinate with or obtain Iraqi approval for specific combat operations. Some Iraqi observers say that the Iraqi side is likely to try to demand, for example, limits on the U.S. ability to employ airstrikes, potentially including the types of aircraft the United States could station in Iraq. U.S. commanders will undoubtedly argue for the maximum flexibility for U.S. forces in any bilateral pact, in order not to have their hands tied when they come under threat.
- *Legal Status of Forces.* A bilateral defense pact with Iraq will apparently include a Status of Forces Agreement (SOFA). The most significant provisions of any SOFA are civil and criminal jurisdiction over the facilities where U.S. personnel will be based, as well as over U.S. personnel, including security contractors. The agreement might also address issues such as entry to or exit from Iraq, tax liabilities, postal services, or employment terms for Iraqi nationals working for the U.S. military. Currently, U.S. military personnel, as well as contractors, are immune from Iraqi law under the U.N. mandate and a separate CPA order (Order 17) issued on June 27, 2004, one day before the handover of sovereignty.[3] P.L. 109–289 (FY2007 DoD appropriations) contains a provision that the Defense Department not agree to allow U.S. forces in Iraq to be subject to Iraqi law. However, a draft law now pending before Iraq's Council of Representatives would end that immunity for contractors; the law was drafted because of the controversy surrounding the September 2007 incident at Nisoor Square in Baghdad involving the Blackwater USA security company, in which 17 Iraqi civilians died.
- *Permanent Basing.* The facilities used by U.S. forces in Iraq do not, by most assessments, formally constitute "permanent bases." Some of these facilities conceivably could be made permanent U.S. bases if there were a U.S.-Iraqi agreement to do so. In his November 26, 2007 briefing, Gen. Lute said that

[3] http://www.iraqcoalition.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf/

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the negotiations on a 2008 bilateral agreement would discuss the issue of permanent bases, although he did not give an indication of a likely outcome on that issue. If there is a decision to seek permanent basing, the major facilities that might be considered are such well-developed facilities as Balad, Tallil, and Al Asad air bases, as well as the arms depot at Taji; all have been built up with U.S. military construction funds in various appropriations.

- Some comments by Iraqi officials suggest that permanent bases might not be included in a long term agreement. On December 12, 2007, Iraqi National Security Adviser Mowaffaq al-Rubai said in a press interview in UAE that "permanent forces or bases for any foreign forces is a red line that cannot be accepted by any nationalist Iraq."[4] In addition, some U.S. law might constrain U.S. options on the permanent bases issue. The Defense Appropriation for FY2007 (P.L. 109–289); the FY2007 supplemental appropriation, (P.L. 110–28); and the FY2008 Defense Appropriation (P.L. 110–116), and the conference report on a FY2008 defense authorization (H.R. 1585), contain provisions prohibiting the establishment or the use of U.S. funds to establish permanent military installations or bases in Iraq. These provisions comport with Recommendation 22 of the December 2006 "Iraq Study Group" report, which recommends that the President should state that the United States does not seek permanent military bases in Iraq.
- *Allies.* The Declaration does not specifically provide for how these issues would apply to U.S. coalition partners, if at all. However, several observers believe that the United States is likely to seek help from willing foreign partners to fulfill long-term security commitments to Iraq and that negotiations would likely have to have provisions made for allied force contributions in Iraq.

Political, Diplomatic, and Cultural Issues. Part one of the Declaration stipulates a range of political and related issues that might be included in any U.S.-Iraq pact. Of the seven points, most appear to commit the United States to relatively normal diplomatic and political activity that the United States might undertake even with countries with which there is no strategic pact. For example, point four of the political section of the Declaration commits the United States to supporting Iraq's effort to "enhance its position in regional and international organizations . . ." Point seven commits the United States to encourage cultural, educational, and scientific exchanges with Iraq.

At least two points in the political section of the Declaration raise broader questions about the degree of potential long-term U.S. involvement in the internal political affairs and structure of Iraq. Point one in that section stipulates that a U.S.-Iraq pact might commit the United States to supporting Iraq "in defending its democratic system against internal and external threats." That stipulation, if included in an eventual pact, could have major implications if political upheaval leads to the downfall of the elected Iraqi government. Some experts believe that there is a significant possibility of such an outcome, even if it is not widely believed the most likely scenario, based on current information. If the elected government were to be forced out by violence, this stipulation could conceivably be interpreted to require the United States to intervene to restore the elected government or to oust a government, even a stable government, that came to power through un-democratic means.

Point two of the political section similarly raises questions about the potential to draw U.S. forces into internal events in Iraq. It states that the United States would assist Iraq in "standing against any attempt to impede, suspend, or violate" Iraq's constitution. While the legalities could be complicated, some might argue that this stipulation would allow the Iraqi government the right and responsibility to define who is attempting to impede, suspend, or violate Iraq's constitution, and could therefore compel the United States to act against activists in Iraq whose activities or political ideology might not necessarily conflict with U.S. interests.

Economic Issues. The Economic section of the Declaration of Principles has a number of provisions that some believe would imply or entail a substantial U.S. financial and political commitment to Iraq. For example, point three of that section of the Declaration commits the United States to "[Support] the building of Iraq's economic institutions and infrastructure with the provision of financial and technical assistance to train and develop competencies and capacities of vital Iraqi institutions." Would this mean a continued high level of State Department, USAID, and contractor involvement in assisting Iraq's ministries?

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[4] Graff, Peter. "Permanent Bases Rejected by Official." *Washington Times*, December 12, 2007. p. 12.

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This section's point five commits the United States to encourage foreign investment, particularly U.S. investment, into Iraq. Iraq still has not enacted national hydrocarbon laws that would spell out the terms for foreign investment in the key energy sector. Some might argue that this point represents a U.S. effort to "tilt the playing field" toward U.S. firms in competitions for energy development and other deals, and implies that the United States might increase its involvement in efforts to shape these laws. On the other hand, some might argue that it is appropriate for the United States to try to facilitate investment by U.S. and U.S. allied firms and to impede investment by potentially negative Iraqi partners such as Iran.

Most of the other points in the Economics section appear to involve mostly U.S. diplomatic support, for example to help Iraq obtain debt forgiveness and forgiveness of the compensation payments mandated by U.N. resolutions following the 1991 war to liberate Kuwait, and to support Iraq's efforts to obtain trade preferences and accession to the World Trade Organization. Point six also commits the United States to assist Iraq in recovering cultural artifacts, properties, and funds spirited out of Iraq just prior to or after the fall of Saddam Hussein's regime.

IRAQI VIEWS OF THE PROPOSED STRATEGIC FRAMEWORK AGREEMENT

The complexities of any U.S.-Iraq pact forged along the lines of the Declaration of Principles would likely expose and possibly widen all the splits that now exist in the Iraqi political structure. Iraqi politics are certain to color the amount of flexibility the Iraqi side has during the negotiations. The Iraqi side of the debate over the pact may well pit those favoring a strong central government against those who support "federalism"—or strong powers for sectarian or ethnically-based regions. The "battle lines" of the debate are, in many ways, the same as those that characterize ongoing debates over new national hydrocarbons laws and over a major bloc of amendments to the constitution. In addition, the negotiations on a strategic framework agreement—and provisions addressing some key issues such as permanent basing—could harden the positions of those, inside and outside Iraq, who believe the United States always intended a long-term occupation of Iraq as part of its effort to control Iraq's natural resources.

Generally, Sunni Arabs in the COR, like most Sunnis in Iraq, support a strong central government. Sunni regions have few known major oil or gas deposits and will be dependent indefinitely on the distribution of Iraq's oil revenues by a central government. The Sunnis in the COR consist mainly of the Consensus Front bloc (44 seats) and the National Dialogue Front (11 seats). They sought parliamentary review of the U.N. mandate renewal; they are likely to insist on strict conditions governing the U.S. presence in any strategic framework agreement. Some Sunnis outside the COR, including the hardline Muslim Scholars Association (MSA), whose members have been widely accused of ties to the Sunni insurgency, denounced the extension of the current U.N. mandate and will likely oppose any U.S.-Iraqi bilateral agreement as providing license for the United States to continue anti-Sunni insurgent operations virtually indefinitely. Many Sunnis, both within and outside the COR, have viewed U.S. forces as an instrument wielded by the Shiite-dominated government and will want to limit U.S. freedom of action, such as the ability to take prisoners.

On the other hand, there is a growing body of Sunni leaders outside the COR that might look more favorably on an agreement that gives wide latitude to U.S. forces. These Sunnis are associated with the various "Awakening Movements," led mostly by tribal leaders, that began in Al Anbar Province in 2006 and have now spread to other Sunni provinces. These Sunnis are united by opposition to AQ–I and other extreme insurgent movements that have committed abuses against other Sunni Iraqi citizens. These movements have produced about 70,000 Sunni recruits, some of whom are former insurgents, that are now working as with U.S. forces as "Concerned Local Citizens" (CLC) to expel AQ–I from their neighborhoods. These Sunnis view U.S. forces as limiting the excesses of the Shiite-dominated government and the ISF, which many Sunnis distrust. However, because these Sunnis are not widely represented in the COR, their role in any review of a strategic framework agreement will likely be limited.

Two important Shiite blocs have sided with the nationalist Sunnis on issues concerning the mandate for U.S. forces—the faction of Moqtad al-Sadr (30 seats in the COR), and another party called the Fadilah (Virtue) Party (15 seats). Both broke with the UIA bloc in 2007, and both generally represent poorer Shiites, although they themselves are in competition in Basra and other cities in southern Iraq. The Sadr faction led the efforts in 2007 to insist that the Maliki government submit the U.N. mandate extension request for COR approval. Many experts attribute the Sadr faction's views to its advocacy of Iraqi nationalism. Many Sadr supporters see U.S.

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troops in Iraq as occupiers rather than liberators. In the view of many Sadr supporters, any SOFA that allowed U.S. forces to remain essentially under U.S. law, and permitted extensive facilities housing U.S. forces would constitute an unacceptable infringement on Iraqi sovereignty. Part of the premise of the Sadr faction's insistence on a timetable for a U.S. withdrawal—and likely opposition to a long term U.S. presence—is its ongoing battle with U.S. forces in Baghdad and elsewhere, as noted above. Sadr's "Mahdi Army" militia (Jaysh al-Mahdi, JAM) is perhaps the largest Shiite militia, with as many as 60,000 fighters throughout Iraq.[5] Sadr might calculate that a U.S. withdrawal from Iraq—or at least a limited mandate to conduct operations against the JAM—would benefit Sadr politically in his competition against other Shiite factions. Fadilah is politically strong in oil-rich Basra Province because many of the security forces (Facilities Protection Service) that protect the oil infrastructure are purportedly loyal to Fadilah. The governor of Basra Province, Mohammad Waili, is a Fadilah member and successfully has resisted efforts by Maliki and Maliki allies to replace him. The purported fears of many Fadilah supporters are that an extensive, long term U.S. presence would help Maliki and its other Shiite allies—mainly the Islamic Supreme Council of Iraq (ISCI)—to gain full and undisputed control of Iraq's oil infrastructure and revenues.

The bloc of former Prime Minister Iyad al-Allawi opposed the unilateral governmental mandate renewal but, by contrast to some of the other blocs, is not anti-U.S. or anti-U.S. presence. The bloc has 25 seats in the COR. Allawi is considered a staunch opponent of Maliki and he has, by many accounts, been campaigning to organize a vote of no confidence against Maliki. Allawi has tended to support the United States; the opposition of his bloc to the mandate renewal might reflect Allawi's efforts to obstruct Maliki on virtually any issue where Allawi can do so. The bloc pulled out of the cabinet in August 2007, joining the Consensus Front which pulled its ministers out in June 2007 and the Sadr bloc, which pulled out of the cabinet in April 2007. On similar grounds, Allawi's bloc is likely to oppose the U.S.-Iraq pact as an expression of a U.S. commitment to keep Maliki's government in power.

On the other side of the political equation in the COR are the blocs that support the Maliki government. These blocs—including Maliki's Da'wa Party, ISCI, Shiite independents within the UIA bloc (the bloc now has about 83 seats, down from 128 before the Sadr and Fadilah defections) and the two main Kurdish factions—the Patriotic Union of Kurdistan (PUK) and Kurdistan Democratic Party (KDP)—supported the governmental request to extend the U.N. mandate and are likely to support extensive concessions to the United States in any long-term bilateral agreement. Most of these blocs tend to support the concept of federalism, primarily because they consider themselves politically and financially stronger in their regions than as part of a central government. At the same time, together, these blocs are dominant in the central government, and any agreement that keeps U.S. troops in Iraq helps preserve their grip on power. These blocs are not as concerned with the perception that a bilateral agreement, with the limitations likely to be insisted on by the Iraqi government, would erode Iraq's sense of sovereignty and national pride.

On the other hand, there are some divisions among these blocs that could emerge in the strategic framework agreement negotiations and on other issues. ISCI supports a large Shiite region in southern Iraq, whereas the Da'wa Party opposes that concept. In addition, ISCI has a militia, the Badr Brigades, that has burrowed into the ISF, particularly the National Police and other police forces. A bilateral agreement with the United States could therefore benefit ISCI more so than Da'wa, since the U.S. forces would, under such agreement, remain in Iraq to train the ISF and thereby strengthen ISCI. The Da'wa Party does not have a militia force. It should be noted that it is not the stated intent of U.S. policy to benefit any one political faction in the effort to build up the national security forces.

The Kurds already exercise control of their own legal region consisting of Dohuk, Irbil, and Sulaymaniyah Provinces. They are the most supportive of the United States of all the sects and ethnicities in Iraq. The Kurds, like many Shiites, see U.S. forces as having liberated them from Saddam Hussein's tyranny. All available data indicate that the Kurds do not see U.S. troops in Iraq as occupiers, whereas many Shiites, who tend to identify with oppressed Palestinians and with mostly Shiite Iran, which is at odds with the United States, have come to see the United States as occupiers. However, the Kurds view Turkey as an external threat because of Turkish military action against the PKK inside Iraq, and they could potentially accuse the United States of violating a U.S.-Iraq pact if the United States continues, as has been acknowledged by U.S. officials, to provide intelligence to Turkey on PKK activities within Iraq. The United States is providing that assistance to Turkey

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[5] Iraq Study Group Report. December 2006. p. 5.

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in an effort to forestall more dramatic Turkish action such as a large scale ground incursion into northern Iraq.

Mr. DELAHUNT. Yes. Thank you, Dr. Katzman.

It is my understanding that the extension of the U.N. mandate to December 31st of this year was at the request of the Maliki government. Am I accurate on that?

Mr. KATZMAN. Well, Mr. Chairman, the Security Council resolutions that started the mandate gave the Iraqi Government the ability to make that request, and they went forward with the request.

Mr. DELAHUNT. Is there any prohibition that exists currently that would foreclose the extension of that mandate for, say, an additional 3- or 6-month period that you are aware of?

Mr. KATZMAN. To my knowledge, no, because if there is no bilateral pact or any other vehicle that replaces the U.N. mandate, then, theoretically, at the end of this year, the U.N. Security Council would meet to discuss extending the mandate.

Mr. DELAHUNT. I raise the issue in light of the observations by Mr. Scott that this is an administration which has achieved lame-duck status. The focus of the American people, over the course of the next 8 or 9 months, will be on the general elections in November, and the potential for an agreement that would have no input from the next administration, I think, is a very real one.

He raises an interesting concern that, I think, is shared by many on both sides of the aisle. One can hope, but no one can predict what is going to occur on November 6th of this year, in terms of the next administration, but, clearly, if there was an agreement that was reached that was executive only, that required no input from Congress, despite an outpouring, if you will, of objections and criticisms, it could very well bind the United States Government, the next administration, far into the future. Am I making accurate statements here?

Mr. KATZMAN. If a pact along these lines was signed, with these missions stipulated, it could do that, would do that, sure.

Mr. DELAHUNT. I guess what I am suggesting is that there is an option that I am sure will be the subject of debate over the course of the next 8 or 9 months between the respective nominees of the parties with the next President having to deal, in a period of 4 years, with the consequences of a Bush-Cheney agreement. Clearly, there are many who, from the beginning, have expressed their profound concerns about their handling of this war, and now, for its aftermath to be imposed, if you will, on the American people while this particular administration exists from the stage is something, I think, of grave concern.

There has been some discussion about the surge this morning, and it's my understanding that the purpose of the surge was to provide the Iraqi political establishment to work on reconciliation. I do not see where that has occurred, and, in my opening remarks, I noted that Iraq is still beset by factionalism that is severe, that continues to linger, and that any government, particularly the Maliki government, only represents one faction that appears to be in serious conflict with other factions.

Have we had an agreement such as this where it is clear that there has been no movement, politically, and yet here was are entering into an agreement with a government that is rife with prob-

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lems, that represents a particular segment of the political life of a country? Don't we usually wait until those issues have been clarified rather than exposing the United States to unpredictable political changes?

Mr. KATZMAN. Sir, I would say that many of the benchmarks that were set out have not been voted on and signed into law, have not become law. The de-Baathification law was passed. There are mixed reviews of it. The administration, I think, would argue that there has been some local reconciliation.

Some senior Sunnis in the national government are continuing to cooperate, particularly, Tariq al-Hashimi, the Deputy President. The budget has not been passed yet, but they are sharing revenue, roughly.

I think the basic rift in the society has not been healed. In other words, the Sunni Arabs still resent what has happened to them in the overthrow of Saddam and their new under status in the political structure. That basic structure has not been resolved, yes.

Mr. DELAHUNT. But when one looks at that principle, which refers to external and internal threats against the government, how does that get interpreted if, after a draw down, if you will, the level of violence spikes up once more, and we are bound by this agreement?

Mr. KATZMAN. Yes. I think, if the troop surge is reduced, and Secretary Gates has said that he might want to get down to a level of about 100,000 U.S. forces by the end of this year—that has not been decided yet, but there is a decision to get down to about 130,000 by July—if, indeed, these resentments in the society then resurface, and the troop surge maybe has kept a lid on it for now, if, indeed, there is not this fundamental reconciliation, and if the violence spikes up again, it is possible, as I say, that this type of pact would be interpreted by the dominant factions in power at the time and could potentially be used to have the United States go against their opponents, yes, sir.

Mr. DELAHUNT. I consider that an extremely vulnerable position for the United States to be hostage to, if you will.

You indicated that Foreign Minister Zebari has pledged publicly that the Maliki government would submit the draft agreement to the Iraqi Parliament, pursuant to their constitution.

At an earlier hearing, in which you testified and Mr. Rubin testified, my memory is that those same representations were made that the issue of the extension of the U.N. mandate would be submitted to the Parliament. Was it submitted to the Parliament, Mr. Katzman?

Mr. KATZMAN. No, it was not. That was the extension of the mandate.

Mr. DELAHUNT. It was not submitted to the Parliament, and my memory is that there was a letter from a majority, 144 members of the Iraqi Parliament, to the United Nations Security Council. Can you describe for us what the import of that particular letter was?

Mr. KATZMAN. Well, the letter seemed to be, in my analysis, a coalescence of Maliki's opponents in the Parliament who coalesced not only on that issue but on other issues, the oil laws and some other laws. These are factions that basically are against Mr. Maliki

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and his incumbency. Some of them are openly trying to topple Mr. Maliki.

I would say Iyad al-Allawi, the former Prime Minister, is working every day, as we speak right now, to undermine, and possibly unravel, Mr. Maliki's government. They had requested that the U.N. rollover of the mandate be submitted to Parliament. This effort was led by the Sadr faction.

Sadr was Maliki's ally until the troop surge, at which time the United States basically told Mr. Maliki, "We need to go against both Shi'a extremists and Sunni extremists. You must not protect Mr. Sadr's anymore." And Mr. Maliki was presented—essentially, he said, "Okay, I will not go against the United States," and he allowed us to go against Mr. Sadr's militia, the Mahdi Army, and Mr. Sadr broke with Maliki. That letter was part of the repercussions of that break.

Mr. DELAHUNT. But the point is, there were 144 out of 275 members of the Iraqi Parliament that expressed their concern, or their lack of approval, to the U.N. Security Council, and they had been told previously, by the same Foreign Minister, Zebari, that any request for an extension would be submitted to the Iraqi Parliament. They were provided those assurances, but the fact is, it was never submitted.

Mr. KATZMAN. Yes, sir.

Mr. DELAHUNT. And now we are to expect that we can rely on the representations of the same individuals, Mr. Zebari and Mr. Maliki, that they will submit whatever agreement should come out of the discussions and negotiations between the Bush administration and the Maliki government to the Iraqi Parliament.

Mr. KATZMAN. Not that I am an expert on the Iraqi constitution, but I think it would be much more difficult for the Maliki government to argue that this pact would not meet the standards for their Parliament to have to act.

The U.N. rollover was, as we discussed at the last hearing, a little bit more debatable, but this pact; I think it would be very difficult for the Maliki government to argue that it does not meet the threshold for the Parliament to act on it.

Mr. DELAHUNT. Let me go to my ranking member next, Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you very much. Dr. Katzman, in your testimony, I take it that the agreement that got everybody so upset here is something that actually is clearly motivated by an attempt to move away from a government in Iraq that is based on a U.N. mandate. Isn't that what your testimony is?

Mr. KATZMAN. Not necessarily that the government is based on the U.N. mandate but that the United States presence in Iraq——

Mr. ROHRABACHER. Okay. So if that government does not want to rest its security, based on an arrangement with the United States, on a U.N. mandate, this is not something that is irrational for either side to want to have that agreement and to go away from simply having a U.N. mandate. Is that correct? You would think that would be a rational course of action.

Mr. KATZMAN. Yes.

Mr. ROHRABACHER. Okay. So what we have here is that this administration has decided, and the current government in Iraq has

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decided, that that is the best course of action, the way to go, and what we have here is some distress on the part of people who fundamentally do not trust this administration—as I indicated earlier, I think that there is perhaps some basis for not trusting this administration—who are expressing some concerns.

Would you consider that their concerns being expressed justified, or is this just as simple as you put it, just trying to take a step so that they can be free of dependence on a U.N. mandate?

Mr. KATZMAN. I think the concern that I, as an analyst, perhaps, on Iraq, have is that we do have a sectarian difference of opinion in Iraq, and who is to say what is going to be in the final agreement? It could not come out as the Declaration of Principles have stipulated. It could be very different.

What I think some would be concerned about is the degree of latitude that the declaration gave to the incumbent government in power in Iraq, which is a narrow government, to define who the enemy is.

Mr. ROHRABACHER. What I am hearing is that the great concern is that this will bind us in the future. Now, there was a similar situation where the United States, a new administration, a Democratic administration, came in after a Republican administration and wanted to fundamentally alter what seemed to be the policy, as bolstered by agreements, and even treaties, and that was when President Carter came in and decided that it was going to abrogate the mutual defense treaty with Taiwan.

Now, it is my understanding that the Supreme Court decided that, indeed, future Presidents and future Congresses are not bound and that they can, indeed, move in their own direction so that this, what looks like to me to be an irrational fear that we are going to be set in cement forever, is not justified by the status of the legal rights of the President and the legal rights of the Congress, this one or the future Presidents or Congresses. Is that correct?

Mr. KATZMAN. Congressman, I am going to defer that question to the next panel, since that seems to be more of sort of a treaty law issue, if it is okay.

Mr. ROHRABACHER. Yes. It does seem to me that we should not be as concerned, to the point that it is irrational, that we are going to be bound forever by a policy, but we should, instead, be focusing on what the policy should be and whether or not we disagree with that fundamental policy because I do believe that it is very clear that future Presidents and future Congresses can go whatever direction they darned well want to go and that President Bush is positive or negative, as people think that he is, that he is not going to be the dominant force in determining what the policy is of the next administration. We will go our way, whether it is a Democrat or a Republican administration.

Now, about that policy, let me just note that I, for one, would be very opposed to any policy that would try to establish that America will have long-term military installations in Iraq. First, they are not needed because we have got other military installations in the Gulf, where people want us; and, second of all, it sends exactly the wrong message.

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I believe the Iraqi endeavor has been somewhat benevolently motivated, and I know that is something that people on the other side of the aisle do not necessarily agree with. In fact, I think they are trying to find maliciousness in the motives for us going into Iraq. I do not find that at all, and I think that trying to have some sort of an agreement that would give us a right to some long-term military presence in Iraq feeds that paranoia, that, indeed, there are some unspoken, malicious motive behind America's engagement in Iraq.

I believe what we are trying to do here is what we tried to do during the Cold War, and during the Cold War we had to make sure that there were not games by the communists and their allies that would encourage the type of aggression that would lead to a conflict and lead to a great loss of freedom and a disruption of the peace.

In today's world, where radical Islam is a major threat, I believe that what we were basically trying to do in Iraq was to, at least, demonstrate some sort of alternative to radical Islam in the Muslim world. That does not, however, justify us doing all of the fighting and carrying all of the burden, as perhaps we did, and perhaps the American people did, during the Cold War.

My father fought in Korea, and I cannot tell you how many times, over dinner, he told me that had he known that all of the men who were in Korea, who were fighting there against that communist aggression, had they know, or had anyone told them, that there would be American troops stationed in Korea 50 years later, he always said, "We would have told them they were crazy." There would be no American troops in Korea, and that would have been a crazy notion, for Americans to have a military presence in Korea for 50 years.

I think that that deserves a lot of discussion. I think that policy deserves discussion. And I do not believe the American people want us to have a military presence, and if there are people who want us to have a military presence in Iraq for 50 years, let's discuss it.

I do not believe that what we are talking about here is motivated by trying to sneak in a back-door commitment that will require the United States to have this long-term military commitment. I think, just as you state, this is a very rational approach that they are trying to move away from a mandate of the United Nations, which is something that puts us on a totally different footing than if we have a mutual agreement.

Just for the record, I would oppose any mutual agreement that would suggest that the United States should reenter Iraq in the future just because Iraq needs us. The people of Iraq are the ones who have to control their own destiny. The people of Iraq have to stand up, or they will not be free, and they will not have democratic and honest government.

We are giving them a chance to have democratic and honest government now. American blood and treasure is being expended to give them that opportunity, and I believe we can be proud of that. But, in the future, if they are not able to defend their own country, absent of some major invasion from another country, then they are the ones who will have to bear the responsibility and not the people of the United States.

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So, with that said, I thank you for holding this hearing, Mr. Chairman, and I do not find the issue at hand to be as ominous as some of the presentations would have us believe.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher, and now the chair of the Middle East Subcommittee, Mr. Ackerman.

Mr. ACKERMAN. Thank you very much, Chairman Delahunt. My dad fought in World War II. If he were around today, he would still be amazed that we still have troops in Germany. Of course, they are there under different circumstances, and things do happen, things do change, and they are certainly not unwelcome there. It is part of a different overall picture.

Dr. Katzman, traditionally, our first panel would ordinarily be witnesses from the administration, were they willing to participate, and Chairman Delahunt described the attempts to get them here, and they have all declined. So you sit as the first panel, certainly not representing the administration, but, nonetheless, have a great deal of expertise.

Mr. DELAHUNT. Mr. Ackerman, would you yield for a moment?

Mr. ACKERMAN. Surely.

Mr. DELAHUNT. I intend, after this hearing, to sit with you and see whether we can determine a convenient date so that we can reissue those invitations, in the aftermath of this particular hearing, and call upon the administration to fully explain their position and clarify how they intend to proceed. With that, I yield back and thank you.

Mr. ACKERMAN. I would welcome the opportunity, that and any opportunity to sit down and discuss that with you and to issue such an invitation, and perhaps we can invite our ranking members on the other side of the aisle to sit with us as we do that.

Reference was made, before, to our relationship, I believe, by Mr. Rohrabacher, to the situation as it evolved with Taiwan. That was rather unique in its happenstance, as, during that time, Taiwan was, in effect, being decertified by us and the international community of their nationhood, as we replaced them in the U.N. and in our foreign policy with mainland China.

Nonetheless, having been our partner and ally, we had an obligation to deal with them, despite the fact of their soon-to-be sui generis situation, and, in their uniqueness of not being a country, in some of the legal parlance, having a treaty with an entity such as a noncountry was something very, very different, and, therefore, the relationship that governs our policy toward Taiwan developed by, indeed, an act of Congress, which was the Taiwan Relations Act, which we passed into law, and, together with the letters that were exchanged with the PRC, have governed that relationship ever since.

I point that out because I believe it is important to the discussion that we are having today. That relationship and those documents and that law has not been changed, and I think it has led to the stability between the parties in the region to understand what that relationship is, which calls for not the defense of Taiwan, as some misinterpret the reading of that, all sides of all of the oceans and seas involved, but call for providing for the defense of Taiwan and to do all in our power so that they can provide for their own defense.

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I think there is a slight misreading of some of the documents with relationship to Iraq that we are discussing today, as to what our obligations would be, although that is still fuzzy, nonetheless.

I want to take a different path than some of our colleagues, in their view of this, and find myself in the unique position, from this side of the aisle, defending the prerogatives of the administration.

As much as I dislike and detest the fact that the administration tries to usurp the powers and prerogatives of the legislative branch of government, I find it equally offensive if we should try to denude the administration of what their authorities are, and I think that this Congress, legally, and I know that is the purview of the next panel, but, Dr. Katzman, you do have some thoughts and historical references that you can help us with in this, if we were to try to remove the prerogatives that the administration has.

We have no right, under the Constitution, to insist that the administration negotiate a treaty. We can make the arguments, but we have no basis in law to compel that. The administration can have agreements, does have agreements, with other countries, and that is certainly within the rights of the administration, and certainly there are many, many historical references that we could make to that happening, where it has worked very, very successfully.

That is the purview of the administration. We should not be attempting to try to take that away from the President. But the Constitution does provide, does insist, does assert that the administration has the responsibility, and it is in the Constitution, to consult with us, not for us to consult with Dr. Katzman. As brilliant as he is, he cannot substitute for the administration that should be sitting here with us today and has deliberately absented themselves from that process, and that is what has me irked.

But in response to that, we should not say, as it does in the DeLauro bill, that the administration must proceed by law, nor do we have constitutional authority to do that. I think we have to make the compelling arguments that they be here and that they consult with the appropriate committees of the Congress. But to compel them to make this a treaty obligation, rather than take any other foreign policy path, would be equally wrong and as misguided of us to insist upon that as it is for them to insist that we do not exist, in coming to this conclusion. It would be very wrongheaded of the administration to try to do that.

Where I have a slight disagreement with my friend from California, Mr. Rohrabacher, is that I do think it is important that we not whimsically, as we change Congresses, go back on agreements, even though not of a treaty status but of an administration, government-to-government agreement, and look as if we were whimsical in our foreign policy and can change it every 2 years, as the Congress might change.

One of the faults that we have in dealing with the Palestinians, if we shift to yet a different part of the world, is that Hamas refuses to recognize agreements that their previous governments have made with the Israelis. The treaties or agreements or obligations of an international nature, witnessed at very high-profile levels at various places on the globe, including here in Washington,

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do not exist because they then took a majority in their parliamentary elections.

That is what unreliable parties to agreements do, and we, as the United States, should not do that, just based on a whim or a will, or a notion, or a change of parties in control of Congress. There should be a very substantial reason, if that is to be done, and I would not take unseriously the administration negotiating something, as far as a policy agreement with Iraq, because the Democrats, rather than the Republicans, are in control, or whoever next time, and just say, "Well, that does not exist. We are going to pass something else and negotiate something else."

That does not make us a responsible, respectable, reliable partner when it comes to foreign policy, and that is the last thing that we need to do is further upset the credit, whatever that might be, as a residual existing in the world.

Dr. Katzman, there seems to be a question in Iraq, and I do not profess to be an expert in their constitution, but there does seem to be a question, at least, over there, as to whether or not their Parliament has to ratify any agreement. It seems that the Foreign Minister thinks that they would be hard pressed not to allow that to happen. Mr. Maliki thinks that it is not going to happen. I guess the administrations think that they are the only people, in their respective capitals, whether it be here or there.

But it certainly would be unwise, on our part, to get into an agreement that was not supported and understood by the American people, and it would not be sustainable, even though popular at the moment in this country, and I think, on their part, it would probably be equally unwise, as it would be in any other country, to negotiate a long-term relationship that is going to govern their respective existence, as far as who their daddy is, that is not acceptable to the people of that country.

Is there any historical notation that this kind of thing could work, where leaders have agreements that the people on both sides might disagree with?

Mr. KATZMAN. I think my comment on that would be, Maliki has not said he does not believe this should be submitted to the Council of Representatives. My perception is he is on board with going to the Parliament, and Zaberi, the Foreign Minister, reflected that he has not tried to argue that this should not be taken to the Iraqi Parliament.

Mr. ACKERMAN. Is it your understanding that it will or will not pass, if it were brought before their Parliament?

Mr. KATZMAN. If what is negotiated is along the lines of the Declaration of Principles, my judgment, as an Iraq expert, is that it would have tremendous difficulty passing the Council of Representatives, yes, sir.

Mr. ACKERMAN. And if it did not pass, it would not take effect.

Mr. KATZMAN. Correct. Presumably, presumably. I say that because if they submit it to the Parliament, and they have a vote, and it does not pass, I do not see how they would argue that they would just unilaterally begin to implement it.

Mr. ACKERMAN. Which is probably the resistance on the part of Mr. Maliki to submit it, even though he has not said he would not do so.

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Mr. KATZMAN. He resisted the U.N. rollover. He did not present the U.N. mandate rollover last December to the Parliament. There is no indication that he is resisting or, in any way, does not want it submitted. There is a suspicion among some Iraqi factions that disagree with Mr. Maliki that he might try to go around the Parliament, but I have seen no indications that he is planning or scheming to circumvent the Iraqi Parliament on this.

Mr. ACKERMAN. If there was some secretary or deputy or under secretary sitting where you sit right now, I would be one, from this side, who suggested to them that we do not want a failed post-war relationship with the Iraqis, as I am sure no American, Democrat or Republican or whatever, would want, and it would behoove the administration to try to get as many of us on board by trying to listen to what we think might be helpful because they, Mr. Secretary, you, who are not here, are not the font of all wisdom in coming to these kinds of conclusions, and maybe someone else can have a decent notion, whether it be from the Republican or Democratic side of the microphone.

Mr. KATZMAN. Congressman, what I suspect is going to happen, and I may be speculating here, but I suspect that, as these negotiations go forward, both sides will shape the eventual text in such a way that either it will pass the Council of Representatives, or it would be perhaps less controversial than the Declaration of Principles would have us believe that it might be.

In my testimony, I am talking strictly to the Declaration of Principles because that is all we have written down, at this point, but I suspect it is going to be modified in such a way that perhaps it does pass the Council of Representatives.

Mr. ACKERMAN. Well, hopefully, we will have similar discussions with our administration to bring the same kind of democratic process that we expect of the Iraqis, in having discussions between their administration and their Parliament, to come to a conclusion that is acceptable to a majority of the Iraqi people and making as much sense out of it, and if we had that here, we would have a much stronger, more understandable, and more acceptable by the American people that would bridge the gap from administration to administration without everybody jumping to undo what somebody else might have done.

Dr. Katzman, thank you very much.

Mr. DELAHUNT. Thank you, Chairman Ackerman.

Mr. Scott of Georgia.

Mr. SCOTT. Thank you very much, Mr. Chairman. First, I would like to say that I am sorry that the gentleman from California is not here, Mr. Rohrabacher, who made the statement that this is not a back-door attempt for a long-term engagement in Iraq, and I concur with him that it is not a back door. This is coming straight at us through the front door. But make no mistake about it, to do the mission and what is laid out in this agreement, will obligate us to, at the least, and indefinite future.

The thrust of my question is on, I am not arguing what the end product will be; I am arguing the process. If the President of the United States could come to Congress and ask for congressional authority and authorization to commit our resources and troops to invade Iraq, most assuredly, that same principle works to come to

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Congress to determine a Declaration of Agreement as we attempt to determine what we do in the future in Iraq, and that is the rub here, and until that bridge is crossed, we will not be able to cross this ravine in any intelligent manner.

So it is very important that we get this across, that this is a two-way street. I want to thrust my points to you, Mr. Katzman, if you could work with me a little bit here, as to why, very technically and structurally, this has to happen.

First of all, we are talking about a commitment of troops. Whether we like it or not, we are talking about some kind of military presence going forward, if we are going to be there to do, as it says in the mission, to ensure the integrity of Iraq's security, to help the Iraqi Government to deter any external aggression.

The other point about this measure is this is far different than South Korea and, in large measure, even Germany, World War II, for when we deal with Iraq and where we are going with that, we are just not dealing with Iraq, we are dealing with the most volatile region that has a cascading effect, a domino effect. For every action we do, there is a reaction in Iran, and there is a reaction in that whole region.

So this is a very, very serious matter, and I just want to make my point clear here because, in this agreement, the United States will acquire certain obligations under international law and could be in default of those obligations unless there is implementing legislation from here in Congress. So we have no choice in the matter, and that is so puzzling, with the arrogance that I was speaking about earlier of the White House, why would even want to get into this mess in the first place? It would have no sanctions.

The other thing is that this worries me greatly because it is nothing more than an extension of a blank check, and here we have got the President of the United States, as I said before, who has only 10 months left in office, who is not just passing this on to the next President, the next administration, and the next Congress, when we come in in 2009, but he is, in effect, handing a blank check to Maliki. How irresponsible, and, as was pointed out, Maliki could say that the PKK is where we need to go to defend, and we wind ourselves, as you pointed out, attacking Turkey.

We are leaving it up in the hands of this. This is why this is such a very, very serious, serious problem. And I want to get your comments on that point, in terms of the implementing legislation, the obligations that we would be obligated to under international law and the blank check that we are giving to the Maliki government.

Mr. KATZMAN. The legal issues, if it is okay, I am going to have to leave to the second panel, since that is not my expertise.

I think what I have tried to reflect in my testimony is that the Declaration of Principles is really, to my mind, about the Maliki government. It is United States-Iraq relations. It is about our relations with Iraq, but, really, the wording of it is all about the Maliki government and how much power would be given to not only Maliki, but any future government to determine who U.S. troops go after, for example.

It is perfectly conceivable that, in order to get Mr. Sadr's support, and I believe Sadr's support would be crucial to having this pass in the Iraqi Council of Representatives, I think, if Mr. Sadr's

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faction does not support it, I think it will have difficulty in the Council of Representatives.

It is perfectly conceivable that, to gain his support for this, there might have to be some provision that U.S. forces do not chase his Mahdi Militia. That is perfectly conceivable. I am not saying that will be the outcome, but I think it is perfectly reasonable to argue that Mr. Sadr is going to want something in return for voting for a pact like this.

The Sunni Arabs, I think they see from the wording of this, where it refers to Saddamists, et cetera, most Sunni-Iraqi Arabs would say that this is directed against them; this is against them. This is what I am hearing. I talk to Iraqis. Their view is, this is against them. This is what I tried to get across in my testimony, but I will limit my expertise to that, if it is okay.

Mr. DELAHUNT. Thank you, Mr. Scott.

Mr. Costa of California.

Mr. COSTA. Thank you very much, Mr. Chairman. In listening to the comments by my colleagues here, I guess I want to further explore the nature of this proposed agreement, not so much as what is in it or what should be in the treaty but the timeline that was discussed at some length by my colleagues in their questions.

If, in fact, the administration reaches some sort of an agreement. what would be the binding nature, in your view, into the next administration and the next Congress? We have agreements with many countries, and, as was noted here in earlier questions, they change. They change as circumstances change in that part of the world where those agreements are, and they change from administrations to Congresses, and the flexibility in an agreement as to which commitments are kept and which are not kept.

Just as an example, I believe there was some discussion as to whether or not bases are permanent or not permanent. Frankly, I think that is almost a discussion that really does not bear real merit because, frankly, you can call a base "temporary," and it can be temporary for 30 years, you know, determining how you define it.

So I guess I would like you to respond as to your sense as to an agreement that is reached, and if it does not have the imprimatur of the Congress, what are the changes that the next administration or the next Congress could pursue?

Mr. KATZMAN. Sir, if it is okay, I am going to, again, defer that to the next panel, which will deal with the legal issues. But to talk about the timeline, the intention is to have it inked, have a pact agreed to, by July 31, and then, presumably, there would be time for the Iraqi Parliament to review it and ratify it in time for the expiration of the current United Nations mandate, which would be December 31st of this year.

Mr. COSTA. And you believe the Iraqi Parliament could meet such a deadline, based upon their track record?

Mr. KATZMAN. Well, if, as I suspect, there is going to be political consultations in Iraq as it is being negotiated, and if what is agreed to has already been sort of, in many ways, vetted by the major blocs, the major political blocs, it is conceivable that they could act fairly quickly on it.

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Mr. COSTA. Dr. Katzman, how would you rate this priority within the Iraqi Parliament compared to reconstruction, compared to de-Baathification, compared to the implementation of getting revenues out to the provinces? Where does this fit?

Mr. KATZMAN. My analysis would be that this would be a very high priority because many of the political blocs see, in a potential agreement like this, they will be interpreting whether they are going to be the subject or the object of U.S. combat operations, and they will take it very, very seriously, sir.

Mr. COSTA. On that basis, how do you think this plays into the current agreements that are being reached between the U.S. military and the various Sunni parties in Anbar with the Sheiks and this other process—I am trying to think of the term, what we call it now——

Mr. KATZMAN. The Awakening Council of Concerned Local Citizens, yes, sir. Well, that could very well play into it. As we said at the last hearing, Sunni opinion is increasingly divided. If one had asked, a year or 2 ago, How would the Sunnis view it?, one would say they would be united against something like this. Now, it is much less clear because they are. Some of these groups that you mentioned have come into some understanding with the United States.

Mr. COSTA. And reaching sidebar agreements of some kind.

Mr. KATZMAN. Yes, but the issue is those "Awakening Councils" and those movements, tribal movements, are not much represented in the Iraqi Council of Representatives. These are Sunnis who have come forward after the elections. They did not compete in the elections. They did not have party slates. Nobody really representing that group is in the Council of Representatives at this time.

Mr. COSTA. But a group that does have representation in the council, and there was a reference made earlier to it, I think, by Mr. Ackerman, is the Kurds. They, obviously, have their own agenda. I think they are a group that probably, my sense is, has a Plan A, has a Plan B—and who knows?—they may have a Plan C. How does this play into their agenda?

Mr. KATZMAN. The Kurds would almost certainly be as supportive of this as possible because they know they will not be the subject of U.S. combat operations.

Mr. COSTA. And they will not try to leverage it.

Mr. KATZMAN. Well, yes, they might try to leverage it against Turkey or somebody else; that is different. But, yes, they might try to leverage it, but they would be highly supportive of an agreement along these lines.

Mr. COSTA. All right. Thank you very much.

Mr. DELAHUNT. I am just going to wrap up and see if there are any other questions or comments by members before we let you go.

In response to Mr. Costa's observation about Plan A, Plan B, Plan C, it would appear that the only group, institution, if you will, that does not have a plan, because they are in the dark, is the United States Congress. No consultation, no reaching out. You indicated that it is your understanding, Dr. Katzman, that there are conversations going on in Iraq among the various blocs, including blocs in their Parliament, regarding a proposed agreement. It is

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being vetted, and yet the United States Congress sits here without a clue, without a clue.

I guess that is disturbing, particularly, as I indicated, according to, and we will get into this with the next panel, according to their own rules and regulations, there ought to be consultation going on, and we cannot even secure the appearance of appropriate individuals from the administration to educate us and inform us and to consult with us.

Maybe you have some information as to what status is currently, in terms of discussions, negotiations, however you want to describe it, between the Bush administration and the Maliki government. Do you have any information?

Mr. KATZMAN. Nothing really detailed. I mentioned that Defense Minister Ubaydi was here last week. My understanding is that that was sort of laying the groundwork for the beginning of these negotiations, but they will begin in earnest next month.

Mr. DELAHUNT. They will begin in earnest next month, meaning February.

Mr. KATZMAN. I believe so, yes.

Mr. DELAHUNT. So if we are to achieve the goal of July, there are actually 4 or 5 months.

Mr. KATZMAN. That is my understanding, sir, yes.

Mr. DELAHUNT. So 4 or 5 months of discussions between the two executives in an effort to design a blueprint that will, for an indefinite period of time, circumscribe the relationship between the United States and Iraq, without any input or consultation, to date, with the United States Congress, in 5 months.

Mr. KATZMAN. Yes. However, of course, a lot of negotiating went into the Declaration of Principles of November.

Mr. DELAHUNT. So you would describe that as preliminary talk.

Mr. KATZMAN. The political framework. The political framework has been built, yes.

Mr. DELAHUNT. I just want to conclude that I think it is really an important observation or statement that you made. In your written testimony, you make this statement: "U.S. forces could conceivably be committed to combat any armed faction that the Maliki government defines as a threat to its security."

You stated, this agreement is about the Maliki government, and yet my memory is that there are some groups, armed groups, armed factions, that have been affiliated, at different times, with the Maliki government that have been problematic, if you will, to the security in Iraq. Do you have any examples of armed factions that today are allied with the Maliki government but, in the past, have been defined by the administration and others as threats to security? Do you know of any examples?

Mr. KATZMAN. Not really because the Sunni movements that we just talked about were never affiliated with Maliki. They were never supportive of him, at any time.

Mr. DELAHUNT. Mr. Scott?

Mr. SCOTT. Yes. I just have one final question that I wanted to ask.

This is pending before Maliki's government. Their Parliament will have to decide upon this. What if the message goes out, irregardless of whether we are debating the legal requirements of what

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our role in Congress should be, legally, in terms of what the President can do—but certainly there is one thing we can do by the Constitution, and that is appropriate the funds.

It is clear to me, in reading whatever it is, and Maliki will read this very clearly, what impact, or what would be the reaction over there if they have the opinion, coming from what, I think, is a majority opinion of Congress and on both sides of the aisle, I think, to some measure, that Congress will not appropriate the fundings going forward for this? What would be the reaction over there?

Mr. KATZMAN. If this was signed, and Congress did not appropriate funds?

Mr. SCOTT. Well, I am saying they have to vote on this. There is a vote coming up on this agreement with Maliki and the Parliament, and it has to get approval. But if a signal is coming from this country that the Congress, irregardless of what, at this point, the Congress is saying that they are not involved in this. There is not going to be any funding coming forward to fund this agreement.

We do not have to wait on a ruling from the Constitution or legal authorities there; we have got the power of the purse, and this Declaration of Principles requires the allocation of resources and appropriation of funds, and if there is a message going forward here, which, I think, that there is, that Congress is very hesitant to authorize funds for this, what ramifications does that have over there, and also, given the July deadline that we have?

I will tell you this: The American people are not going to stand for this, number one, until there is some reconciliation, and for the very fact that State Department representatives themselves refuse to come before our committee. They should be receiving our comment. That is a bad sign, and I am just saying, from your perspective, what does this read for how will it be interpreted?

Mr. KATZMAN. My analysis would be that if we sign an agreement along these lines with Iraq, and the Council of Representatives ratifies it on their end, but it, for whatever reason, is not either approved here or implemented here, there would be severe repercussions for the Iraqi Government, possibly to include its collapse, although I do not want to speculate. But I think the repercussions for the Iraqi Government would be severe.

Mr. SCOTT. Would it send a signal to them that they could get on the side of making sure beforehand? My point is, if a message is sent loud and clear that there could be some pressure brought for Maliki to this administration that, unfortunately, we are not able to bring to this administration, to involve Congress before we get to that point.

I understand, I think, from the July deadline, something has to happen. Is that correct? We have to have something in place by then to replace the U.N. mandate. Is that correct? Explain the July——

Mr. KATZMAN. The plan is to have an agreement along these lines signed or agreed by July.

Mr. SCOTT. And if not?

Mr. KATZMAN. The U.N. mandate stays until December 31, so that is really the deadline, although it could be renewed. If there is no agreement, either the Iraqis do not ratify it, or if, for whatever reason, it is not agreed here, the U.N. Security Council would

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have the option of meeting and renewing the mandate for another year, or less than a year; or for whatever period of time they want to, they can extend the U.N. mandate.

Mr. DELAHUNT. Thank you, Mr. Scott. Your points are well taken. And thank you, Dr. Katzman, for your customary lessons. We appreciate it.

Let me call forward our second panel. We have two distinguished witnesses: Professor Michael Matheson of the George Washington University Law School and Dr. Michael Rubin of the American Enterprise Institute.

Professor Matheson served for 28 years in the State Department's Office of the Legal Advisor, where he was acting legal adviser for 2 years with the rank of Ambassador. He led efforts within the United States Government to create international criminal tribunals for Yugoslavia and Rwanda and the U.N. Compensation Commission for the Gulf War Compensation.

When it comes to questions about treaties, I am pleased to say that we have the right man in the right room at the right time. Welcome, Professor.

And our other witness is Dr. Michael Rubin, who previously appeared before our subcommittee last December, and he is an expert on Middle East politics who worked in the Office of the Secretary of Defense, Donald Rumsfeld, from 2002 to 2004, both as the desk officer for Iran and Iraq and as an on-the-ground adviser to the Coalition Provisional Authority in Iraq. Dr. Rubin holds a Ph.D. from Yale and is a senior lecturer at the Naval Post-Graduate School. Dr. Rubin, we welcome you back.

Mr. RUBIN. Thank you.

Mr. DELAHUNT. Why do not we begin with you, and then we will go to Ambassador Matheson?

STATEMENT OF MICHAEL RUBIN, PH.D., RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE, SENIOR LECTURER, CENTER FOR CIVIL MILITARY RELATIONS, NAVAL POST-GRADUATE SCHOOL

Mr. RUBIN. Thank you very much. Chairman Delahunt, Chairman Ackerman, Honorable Members, thank you for this opportunity to testify.

This hearing seeks to determine whether any proposed United States security commitment to Iraq should constitute a treaty. It is an important question, but there is no cut-and-dried answer. Too much depends upon the content of the agreement.

Among the principles outlined by President Bush and Prime Minister Maliki in their Declaration of Principles were provision of security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, water, or air space; support for the Republic of Iraq in its efforts to combat all terrorist groups, consistent with mechanisms and arrangements to be established in the Bilateral Cooperation Agreements and support for the Republic of Iraq in training, equipping, and arming the Iraqi security forces to enable them to protect Iraq and all of its peoples; and completing the building of its administrative systems in accordance with the request of the Iraqi Government.

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On December 18, 2007, the Security Council passed Resolution 1790, which extended the multinational force Iraq mandate until December 31, 2008. Throughout this year, the United States and Iraqi Government will negotiate the details of a security agreement to replace the U.N.'s Chapter VII mandate. The details are crucial to the question at hand but remain unclear. The proposed agreement could take many forms and, indeed, could be a package of multiple agreements, ranging from a Status of Forces Agreement, a so-called "SOFA," to economic-development packages to basing agreements to a formal defense treaty.

SOFAs apportion rights and responsibilities between a host government and are stationed or deployed forces. Typically, they serve to vest the United States with criminal jurisdiction over our forces in a host country. Usually, this entails a commitment to hold our troops and personnel legally responsible for any criminal conduct under the Uniform Code of Military Justice or some such arrangement. Unknown, in the case of Iraq, would be the status of private security contractors.

Many SOFAs also address exemption from inspections and customs duties, travel document requirements, and tax exemptions for the PX. Today, the United States has approximately 100 SOFAs.

Generally, SOFAs constitute agreements rather than treaties. It is a rare occurrence if a SOFA is sent to the Senate for approval. With regard to NATO, Japan, and Korea, security guarantees are covered in separate treaty structures above and beyond the SOFA itself. For example, in 1953, the United States and the Republic of Korea signed a mutual defense treaty, which the Senate ratified in 1954. The Pentagon then negotiated, in 1966, a SOFA, which came into force on February 9, 1967, with an exchange of letters rather than a separate ratification.

To determine whether ratification is necessary, what an agreement is called is less important than its contents. There is a point that an agreement can go so far in obligating the United States to defend another country that the Senate should ratify it. That line is when the obligation to defend another country becomes legally binding under international law. If such language is embedded in an Iraq SOFA, then there is little question that the SOFA should be voted on as a treaty by the United States Senate.

It is possible that the White House will stress that they consider any pact with security guarantee language to be an agreement rather than a treaty and so not legally binding to the extent that a treaty would be. Should the White House try to adhere to this fine line, however, the Iraqi Government would take note and consider the United States commitment ephemeral and perhaps demand a more formal treaty.

Basing agreements are more nebulous and controversial. The differentiation within U.S. discourse between permanent and nonpermanent bases is more political than legal.

For the United States to establish or lease a base in another country often requires an agreement rather than a treaty. Many of these basing agreements, or the renewal agreements, involve political or economic commitments. This has been the case, for example, with the Incirlik Air Base in Turkey. Ankara frequently requests economic incentives.

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During the 2005 renegotiation, the Pentagon sought a blanket agreement in which the United States military would have full use, for the period of the agreement, while some Turkish officials demanded that Ankara be able to approve every flight in order to maintain their leverage over congressional discussions, such as the Armenian genocide resolution and other issues.

Rent was the major subject of the United States-Kyrgyz base renewal talks in 2006, while expansions of facilities to provide better force protection became the issue dominating discussions to expand Camp Lemonier in Djibouti. Sharing of maintenance costs for United States facilities in Japan is the contentious issue in United States-Japanese negotiations.

Sometimes host countries wish to receive security guarantees in exchange for hosting a U.S. base or U.S. forces. Again, whether or not the basing agreement should be subject to Senate ratification depends upon the strength of the guarantee. Such demands for assurances are not always stated up front and often enter the conversation over years or during renewal discussions.

It is not the House Foreign Affairs Committee's duty to preempt negotiations over specific clauses in an agreement not as yet written, but it will become the Senate's duty to ratify the resulting product, should it include security guarantees binding under international law.

It is ironic that the House Foreign Affairs Committee seems more intent on defending the Senate's prerogative than the Senate itself.

As our diplomats and military officials negotiate such an agreement, they will be seeking to underline our commitment to Iraqi stability and that country's success fighting the extremists and terrorists that threaten both Iraqi and United States security. They will seek to preserve our military's maneuverability.

While some critics of the Bush administration's Iraq policy suggest that the United States should confine itself to a limited number of forward operating bases, FOBs, or even redeploy its forces over the horizon into neighboring countries or Iraqi Kurdistan, such a strategy would hamper our ability to respond and protect the United States forces training Iraqi counterparts and providing the space for Iraqi politicians to advance reconciliation efforts.

The insurgency spread when U.S. forces were confined to a handful of FOBs. Part of General Petraeus' and General Odierno's search strategy involved saturating troops throughout their areas of operation. The strategy worked. United States and Iraqi negotiators will not be anxious to roll back success by again concentrating multinational forces to a few FOBs but will, rather, seek to maintain the security regime until political reconciliation can occur.

Any language, however, which would commit United States forces to defend Iraq in the face of an external threat would transform the agreement into a treaty subject to Senate ratification. In such a case, not only would the eyes of Tehran and Damascus be on the United States Senate but also observers in Taipei, Jerusalem, and Seoul, for the United States willingness to support and defend our allies, regardless of where we are in the election cycle,

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is at the heart of our credibility and our relationships not only in Iraq but the world over.

Thank you. I welcome your questions.

[The prepared statement of Mr. Rubin follows:]

PREPARED STATEMENT OF MICHAEL RUBIN, PH.D., RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE, SENIOR LECTURER, CENTER FOR CIVIL MILITARY RELATIONS, NAVAL POSTGRADUATE SCHOOL

Chairman Delahunt, Chairman Ackerman, Honorable Members. Thank you for this opportunity to testify.

This hearing seeks to determine whether any proposed U.S. security commitment to Iraq should constitute a treaty. It is an important question, but there is no cut-and-dry answer: Too much depends upon the content of the agreement.

On November 26, 2007, President George W. Bush and Iraqi Prime Minister Nuri al-Maliki released a "Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America." Among the principles they outlined were:

- Provision of "security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, waters, or airspace."
- Support for "the Republic of Iraq in its efforts to combat all terrorist groups . . . consistent with mechanisms and arrangements to be established in the bilateral cooperation agreements . . ." and
- Support for "the Republic of Iraq in training, equipping, and arming the Iraqi Security Forces to enable them to protect Iraq and all its peoples, and completing the building of its administrative systems, in accordance with the request of the Iraqi government."

On December 7, 2007, Maliki formally requested the extension of the UN Security Council's mandate of the Multi-National Force-Iraq (MNF–I) to the President of the Security Council. On December 18, 2007, the Security Council obliged with passage of Resolution 1790 which extended the MNF–I mandate until December 31, 2008, subject to review by June 15, 2008.

Throughout this year, the U.S. and Iraqi government will negotiate the details of a security agreement to replace the UN's Chapter VII mandate. The details are crucial to the question at hand, but remain unclear. The proposed agreement could take many forms and, indeed, could be a package of multiple agreements, ranging from a Status of Forces Agreement (SOFA) to economic development packages to basing agreements, to a formal defense treaty.

SOFAs apportion rights and responsibilities between a host government and our stationed or deployed forces. Typically, they serve to vest the United States with criminal jurisdiction over our forces in a host country. Usually, this entails a commitment to hold our troops and personnel legally responsible for any criminal conduct under the Uniform Code of Military Justice or some such arrangement. Unknown in the case of Iraq would be the status of private security contractors. Many SOFAs also address exemption from inspections and customs duties, travel document requirements, and tax exemptions for the PX. Today, the United States has approximately 100 SOFAs.

Generally, SOFAs constitute agreements rather than treaties. It is a rare occurrence if a SOFA is sent to the Senate for approval. With regard to NATO, Japan, and Korea, security guarantees are covered in separate treaty structures above and beyond the SOFA itself. For example, in 1953, the United States and the Republic of Korea signed a Mutual Defense Treaty, which the Senate ratified in 1954. The Pentagon then negotiated in 1966 a "Facilities and Areas and the Status of United States Armed Forces in Korea" which came into force on February 9, 1967, with an exchange of letters rather than separate ratification.

To determine whether ratification is necessary, what an agreement is called is less important than its contents. There is a point that an agreement can go so far in obligating the United States to defend another country that the Senate should ratify it. That line is when the obligation to defend another country becomes legally binding under international law. If such language is embedded in an Iraq SOFA, then there is little question that the SOFA should be voted on as a treaty by the U.S. Senate.

It is possible that the White House will stress that they consider any pact with security guarantee language to be an agreement rather than a treaty, and so not legally binding to the extent that a treaty would be. Should the White House try

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to adhere to this fine line, however, the Iraqi government would take note and consider the U.S. commitment ephemeral and perhaps demand a more formal treaty.

Basing agreements are more nebulous and controversial. The differentiation within U.S. discourse between permanent and non-permanent bases is more political than legal. For the United States to establish or lease a base in another country often requires an agreement rather than a treaty. Many of these basing agreements or their renewal agreements involve political and economic commitments. This has been the case, for example, with the Incirlik Air Base in Turkey. Ankara frequently requests economic incentives. During the 2005 renegotiation, the Pentagon sought a "blanket" agreement in which the U.S. military would have full use for the period of the agreement, while some Turkish officials demanded that Ankara be able to approve every flight in order to maintain their leverage over Congressional discussions of the Armenian Genocide Resolution and other issues. Rent was the major subject of U.S.-Kyrgyz base renewal talks in 2006, while expansion of facilities to provide better force protection became the issue dominating discussions to expand Camp Lemonier in Djibouti. Sharing of maintenance costs for U.S. facilities in Japan is the contentious issue in U.S.-Japanese negotiations.

Sometimes host countries wish to receive security guarantees in exchange for hosting a U.S. base or U.S. forces. Again, whether or not the basing agreement should be subject to Senate ratification depends upon the strength of the guarantee. Such demands for assurances are not always stated upfront, and often enter the conversation over years or during renewal discussions.

It is not the House Foreign Affairs Committee's duty to pre-empt negotiations over specific clauses of an agreement not as yet written, but it will become the Senate's duty to ratify the resulting product should it include security guarantees binding under international law. It is ironic that the House Foreign Affairs Committee seems more intent on defending the Senate's prerogative than the Senate itself.

As our diplomats and military officials negotiate such an agreement, they will be seeking to underline our commitment to Iraqi stability and that country's success fighting the extremists and terrorists that threaten both Iraqi and U.S. security. They will seek to preserve our military's maneuverability. While some critics of the Bush administration's Iraq policy suggest that the United States should confine itself to a limited number of forward operating bases or even redeploy its forces "over the horizon" into neighboring countries or Iraqi Kurdistan, such a strategy would hamper our ability to respond and protect the U.S. forces training Iraqi counterparts and providing the space for Iraqi politicians to advance reconciliation efforts. The insurgency spread when U.S. forces were confined to a handful of bases and forward operation bases (FOBs). Part of General Petraeus and General Odierno's "surge" strategy involved saturating troops throughout their areas of operation. The strategy worked. U.S. and Iraqi negotiators will not be anxious to roll back success by again concentrating Multinational Forces to a few FOBs, but will rather seek to maintain the security regime until political reconciliation can occur. Any language, however, which would commit U.S. forces to defend Iraq in the face of an external threat would transform the agreement into a treaty subject to Senate ratification.

In such a case, not only would the eyes of Tehran and Damascus be on the U.S. Senate, but also observers in Taipei, Jerusalem, and Seoul, for the U.S. willingness to support and defend our allies regardless of where we are in the election cycle is at the heart of our credibility and our relationships not only in Iraq, but the world over.

Thank you. I welcome your questions.

Mr. DELAHUNT. Thank you, Dr. Rubin.

We have two votes scheduled, so we are going to defer the testimony from Mr. Matheson upon our return. There are two votes. I would expect that, within a half an hour, we will be back in our seats and look forward to your testimony and look forward to the question-and-answer format, and with that, we will recess.

[Whereupon, at 12:30 p.m., a recess was taken.]

Mr. DELAHUNT. We have returned and will now turn to Mr. Matheson.

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STATEMENT OF MICHAEL J. MATHESON, ESQ., VISITING RESEARCH PROFESSOR OF LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Mr. MATHESON. Thank you very much, Mr. Chairman, both for inviting me to be here today and also for your very kind introduction earlier.

I have submitted a written statement, which I suggest be included in the record, and I will give a brief oral summary of that now.

Mr. DELAHUNT. So ordered.

Mr. MATHESON. I would like to just highlight three questions, which are dealt with in greater detail in my statement.

The first question is, What exactly are these security commitments and security assurances that the declaration says are going to be offered to Iraq? This is a question that has been the subject of a great deal of dialogue between the political branches over the years.

The term "security commitment" has typically been used, at least, in a technical sense, to refer to a binding obligation incurred by the United States to act in the common defense of another state that has been subject to armed attack. And, of course, as we know, such security commitments have been included in a number of collected defense treaties after World War II: The NATO Treaty; the Rio Treaty, which applies to Latin America; Korea, Japan, the Philippines, Australia, and New Zealand.

For example, in the NATO Treaty, it says that parties agree, and I am going to quote here, "that an armed attack against one or more of them shall be considered an attack against them all, and, consequently, they agree that if such an armed attack occurs, each of them will assist the party attacked by taking forthwith such action as it deems necessary, including the use of armed force."

Now, in contrast to this, the term "security assurances," or sometimes the term "security arrangements" is used, has usually been meant to refer to some kind of action short of the commitment of U.S. armed forces to meet a situation in which there is a severe security threat to the other party.

For example, in the 1975 agreement between the United States and Israel, it says that, in the event of a threat to Israel's security, and, again, I will quote, "the United States will consult promptly with the Government of Israel with respect to what support, diplomatic or otherwise, or assistance it can lend in accordance with its constitutional principles."

Now, the declaration for November refers to both security commitments and security assurances. I honestly do not know whether the administration was using those terms in the technical and historic sense that I was describing. It is quite possible that, in the end, the administration may decide that it really does not want to offer a full-fledged security commitment to Iraq, in the sense of a pledge to use United States armed forces, but may opt for some lesser assurance, for example, a simple promise to commit.

We do not know, but, obviously, it is important for the administration to tell the Congress what it contemplates.

Mr. DELAHUNT. That would be welcomed.

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Mr. MATHESON. Yes. The second question is, What form these commitments or assurances should take, and what the role of Congress should be with respect to their conclusion.

The text of the Constitution does not give us clear guidance as to exactly what form various kinds of international commitments must take, whether in the form of a treaty giving advice and consent of the Senate or an agreement approved or authorized by Congress or an agreement done on the basis of the President's own constitutional authority. These are sometimes called "sole executive agreements."

But the regulations at the State Department, the famous Circular 175, do contain a list of factors which are to be taken into account in deciding what form a particular argument should take, and I have listed them in my statement, but among those factors are the degree to which the agreement involves commitments or risks that affect the nation as a whole, whether the agreement can be given effect without legislation, what the past U.S. practice has been with similar agreements, and, finally, the preference of Congress, if any, with respect to the form of the agreement.

If there is any question about what form or procedure such agreement should take, then the regulations say that the matter has to be referred to the Legal Advisers Office at the State Department, and, if necessary, a decision on that is to be made by the secretary of state.

Now, history does give us some guidance as to the form of security assurances and commitments. As we already know, security commitments have always been done with some form of approval by Congress and almost always done in the form of treaties. Certainly, a binding commitment to use United States armed forces in the defense of Iraq, for whatever purpose, would certainly fall in this category.

But there might be more limited security assurances, such as a simple promise to consult, that could be done as executive agreements. Again, we do not know what is intended.

Of course, security agreements and assurances and commitments are probably only going to be a part of a larger group of agreements and commitments that the United States and Iraq will enter into. This is typical of any situation in which U.S. armed forces are present in a foreign country.

For example, there might very well be a status of forces agreement, there might be a military assistance agreement, and there might even be a basing agreement, and whether these steps would require congressional approval or authorization does depend on the specific content of the agreement and its relationship to any existing legislation that may bear on it.

For example, if you had an agreement that granted some kind of exclusion or immunity from the requirements of U.S. law for foreign personnel, that would undoubtedly require either a treaty of congressional action. As we have heard, Congress has recently acted to prohibit the use of U.S. funds for the purpose of military bases to provide a permanent United States presence in Iraq, so if we had an agreement that made such a commitment, presumably some congressional action would be necessary, and so on.

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But even in the case where the President has constitutional authority, on his own, to enter into a commitment as an executive agreement, that does not mean that Congress has no role to play. On the contrary, as you, yourself, pointed out, Mr. Chairman, the State Department Regulations, Circular 175, provides that, in the event that the executive branch intends to negotiate a significant, new international agreement, then the appropriate congressional leaders and committees are to be notified of that intention, and they are to be consulted with respect both to the substance and the form of the proposed agreements.

I think it is pretty obvious that, given the importance of the overall United States-Iraq relationship and the potential importance of the presence of United States forces or not in the future security of Iraq, that, clearly, the Congress needs to be consulted now and informed of what kinds of agreements are contemplated. With this information, it seems to me, that then the committees and the Congress can decide whether action is necessary, and, if so, what?

Thirdly, I just wanted to highlight a few issues concerning the future legal status of Iraq that may be implicated by the terms of the Declaration of Principles. The declaration says that it is the intent to end Iraq's current status under U.N. Security Council resolutions and to return Iraq to the legal status that it had prior to its invasion of Kuwait in August 1990.

Of course, the goal of returning Iraq to normal sovereign status is a desirable one, but I do suggest that consideration should be given as to whether there may be some aspects of the Security Council decisions which might be continued rather than terminated.

For example, the current Security Council decisions provide for an ongoing deduction from Iraqi oil export revenues of funds to provide compensation to claimants, including American claimants, for loss or damage suffered during the Iraq invasion and occupation of Kuwait, and the question is, Should that now be terminated or modified, or should it be continued?

Likewise, the current Security Council decisions impose various constraints, as you know, upon Iraq's acquisition of items that might assist in a WMD program, and these restrictions do go beyond what Iraq has accepted in terms of treaty commitments about WMD, and so the question is, Should these restrictions continue, or can they be eliminated now?

Security Council resolutions also guaranteed the border between Iraq and Kuwait that was delineated after the first Gulf War, and the question, again, there is, should that now be ended, or should the Security Council's guarantee continue?

I do not really know whether the administration actually intends to eliminate or modify any of these specific actions of the current Security Council regime, but, in light of the language of the declaration, it seems that it would be logical to have a step-by-step policy consideration of whether these particular aspects, and perhaps others, of the Security Council decision should continue or be modified or terminated.

Mr. Chairman, that concludes my oral summary, and, of course, I would be very glad to answer the committee's questions.

[The prepared statement of Mr. Matheson follows:]

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PREPARED STATEMENT OF MICHAEL J. MATHESON, ESQ., VISITING RESEARCH PROFESSOR OF LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

I have been asked to give my thoughts on the proposed "security assurances and commitments" that are referred to in the Declaration of Principles concluded by the U.S. and Iraqi governments on November 26, 2007.[1] I would also like to mention a few other issues concerning the future legal status and obligations of Iraq that are raised by the Declaration, based on my experience in dealing with such matters as a career attorney in the Office of the Legal Adviser in the U.S. State Department.[2]

SECURITY COMMITMENTS

The Declaration calls for bilateral negotiations to achieve a series of agreements between the two countries by July 2008 for the purpose of enhancing cooperation in the political, economic, cultural and security fields. According to the Declaration, this new relationship will take account of a number of principles, including "providing security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, waters, or airspace."

The question of what constitutes a "security commitment" to another country and what form such a commitment should take has been the subject of dialogue between the Executive branch and Congress for decades. In 1969, the Senate adopted the National Commitments Resolution,[3] which asserted that any "promise to assist" a foreign country "by the use of Armed Forces" would be a "national commitment" that could only be given by means of a treaty, statute or concurrent resolution.

The National Defense Authorization Act for Fiscal Year 1991 included a provision requiring the President to submit a report to Congress describing all existing "security arrangements with, or commitments to" other countries.[4] In 1992, President George H.W. Bush submitted a report listing current U.S. security commitments and arrangements.[5] He defined a "security commitment" as "an obligation, binding under international law, of the United States to act in the common defense in the event of an armed attack on that country." He provided a list of current U.S. security commitments, almost all of which were contained in treaties concluded between 1947 and 1960, including the North Atlantic Treaty, the Rio Treaty (with Latin American countries), the Southeast Asia Treaty, and treaties with Australia, New Zealand, the Philippines, South Korea and Japan.[6]

The provisions of these treaties vary somewhat, but each contains language that contemplates the possibility of U.S. armed action in the event of armed attack against one of the treaty parties. For example, Article 5 of the 1949 North Atlantic Treaty says that the Parties agree "that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense . . ., will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."[7] Article V of the 1960 Treaty of Mutual Cooperation and Security between Japan and the United States says that each Party "recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes."[8]

The 1992 Presidential report contrasted such security commitments with "security arrangements"—that is, pledges by the United States to take some action in the event of a threat to the other country's security, typically to consult with that coun-

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[1] *See* www.whitehouse.gov/news/releases/2007/1/20071126–11.

[2] I served in the Legal Adviser's Office for 28 years, retiring in 2000 as the Department's Acting Legal Adviser. Since then, I have taught international law at the George Washington University Law School and at the Johns Hopkins School of Advanced International Studies. I have also served as the American member of the UN International Law Commission.

[3] S.Res. 85, 91st Cong., 1st Sess., June 25, 1969.

[4] Sec. 1457, P.L. 101–510; codified in 50 USC 404c.

[5] *See* Treaties and Other International Agreements: the Role of the United States Senate, a study prepared for the Senate Foreign Relations Committee by the Congressional Research Service, 103d Cong., 1st Sess., November 1993, p. 206–07.

[6] The State Department also maintains a list of "U.S. Collective Defense Arrangements," consisting of these treaties. See www.state.gov/s/l/treaty/collectivedefense.

[7] April 4, 1949; 63 Stat. 2241; TIAS 1964; 34 UNTS 243.

[8] June 23, 1960; 11 UST 1652; TIAS 4510; 373 UNTS 186.

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try—but containing no commitment with respect to the use of U.S. Armed Forces. It listed a number of such arrangements, including those with Israel, Egypt and Pakistan. For example, it cited the 1975 Memorandum of Agreement with Israel, which stated that in the event of a threat to Israel's security or sovereignty, the U.S. would "consult promptly with the Government of Israel with respect to what support, diplomatic or otherwise, or assistance it can lend in accordance with its constitutional practices."[9] Pledges of this sort have also been called "security assurances."

In addition to such "security commitments" and "security assurances," there are a variety of other steps that the United States might take to enhance the security of a friendly country, including providing military assistance, sales of military items and technology, and stationing U.S. forces. Some or all of these steps may be taken in conjunction with security commitments or assurances.

It is not clear from the text of the U.S-Iraq Declaration of Principles which of these various steps the Bush Administration contemplates taking during the next year. The Declaration refers to "security assurances and commitments," but it is not at all clear whether these terms were used in the technical sense described above, and in particular, whether the Administration actually has in mind promising that U.S. forces would be used to counter any armed attack against Iraq. It may well be that, in the end, the Administration will limit itself to a promise of consultation or other steps that would not constitute "security commitments" in the way that term has historically been used.

FORM OF COMMITMENTS

From the point of view of the U.S. Constitutional system, there are essentially three types of international agreements. First are treaties which enter into force after the Senate has given its advice and consent. Second are agreements authorized or approved by act of Congress. Third are agreements based solely on the Constitutional authority of the President as Chief Executive, as Commander-in-Chief, or in exercise of his foreign policy functions; these are sometimes called "sole executive agreements."

The Constitution does not give clear guidance as to what form must be used for what type of obligations or commitments. Instead, the two branches are guided by historical practice and, hopefully, a sense of cooperation and mutual recognition by each of the proper role of the other branch in foreign affairs. The long-standing regulations of the State Department (usually referred to as the "Circular 175 Procedure") set out a list of factors that should be considered in determining which of these alternatives to use in a particular case:

(1) The extent to which the agreement involves commitments or risks affecting the nation as a whole;
(2) Whether the agreement is intended to affect state laws;
(3) Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress;
(4) Past U.S. practice as to similar agreements;
(5) The preference of the Congress as to a particular type of agreement;
(6) The degree of formality desired for an agreement;
(7) The proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirability of concluding a routine or short-term agreement; and
(8) The general international practice as to similar agreements.[10]

The regulations provide that where there is any question as to what procedure to follow, the matter is to be referred to the Legal Adviser's Office of the State Department and other concerned bureaus and, if unresolved, to be referred to the Secretary of State for a decision. The regulations say that consultations on such a question "will be held with congressional leaders and committees as may be appropriate";[11] and that "the appropriate congressional leaders and committees" are to be "advised of the intention to negotiate significant new international agreements, consulted concerning such agreements, and kept informed of developments affecting

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[9] September 1, 1975; 32 UST 2150; TIAS 9828.
[10] 11 FAM (Foreign Affairs Manual) 723.3.
[11] 11 FAM 723.4(c).

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them, especially whether any legislation is considered necessary or desirable for the implementation of the new treaty or agreement." [12]

With respect to security commitments and assurances, the history described above gives useful guidance as to the form these commitments or assurances should take. Security commitments in the technical sense have generally been undertaken by treaty, or at a minimum by act of Congress.[13] Certainly a binding commitment to use armed force in defense of Iraq would call for such action. On the other hand, properly limited security assurances—such as a simple promise to consult—have taken various forms, including sole executive agreements and policy statements, and the President could offer them on the basis of his own Constitutional authority.

Other types of commitments would have to be evaluated within the context of any relevant existing legislation, which might or might not require further Congressional action, depending on the content of the commitments and the applicable statutory restrictions. For example, particular attention would have to be paid to any commitments of U.S. funds, any commitments to provide military assistance or arms sales, any forgiveness of obligations to the United States, and any immunities or exceptions from the application of U.S. law.

But even if a proposed commitment falls within the President's independent Constitutional authority, this does not mean that Congress should play no role in extending such commitments to Iraq. Given the obvious importance of the future U.S.-Iraq relationship and in particular the role of U.S. forces in the future security of Iraq, it would seem at a minimum that the Administration should engage in serious consultation with Congress on both the form and substance of the agreements that will implement the U.S.-Iraq Declaration of Principles. Hopefully that consultation would produce a reasonable degree of consensus on the type of commitments the United States should offer and the manner in which Congress will be involved in their conclusion.

FUTURE LEGAL STATUS OF IRAQ

I would also like to comment on some aspects of the Declaration of Principles that relate to the future legal status of Iraq. The Declaration says that, after a one-year extension of the mandate of the current multinational force, "Iraq's status under Chapter VII and its designation as a threat to international peace and security will end, and Iraq will return to the legal and international standing it enjoyed prior to the issuance of U.N. Security Council Resolution No. 661 (August, 1990). . . ." Iraq has, of course, been subject to a complex system of Security Council resolutions issued after August 1990 under Chapter VII of the UN Charter. While the goal of returning Iraq to normal status as a sovereign nation is worthwhile, I suggest that care be taken not to eliminate any parts of the current Chapter VII regime that might still be in U.S. interests.

For example, Security Council resolutions provide for a continuing deduction of 5% of Iraqi oil export revenues to pay compensation awarded by the UN Compensation Commission to those suffering loss from the Iraqi invasion and occupation of Kuwait (including American claimants).[14] Since considerable amounts remain yet to be paid, the question arises as to whether it would be appropriate to effectively end this process now.

Likewise, Security Council resolutions continue to impose constraints on the acquisition and possession by Iraq of various items related to its previous military programs, including biological, chemical and nuclear materials and long-range missile systems.[15] Iraq has treaty commitments not to acquire some of these items, but not others, and could in the future withdraw from such treaty commitments. Therefore the question arises as to whether the United States would be satisfied to end the more rigorous UN requirements at this time.

Further, the Security Council has guaranteed the boundary demarcation between Iraq and Kuwait that was completed under UN auspices after the 1990–91 Gulf War.[16] Maintaining the integrity of this boundary continues to be important, and so the question arises as to whether the Council's guarantee should be terminated.

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[12] 11 FAM 725.1(5).

[13] Apparently security commitments were given to the Marshall Islands and Micronesia under Compacts of Free Association approved by Congress. See note 4 above at p. 206.

[14] *See* UNSC Res. 1483 (2003).

[15] *See, e.g.*, UNSC Res. 687 (1991), 1483 (2003). In Resolution 1762 (2007), the Council terminated the mandate of the UN Monitoring, Verification and Inspection Commission (UNMOVIC) and the IAEA with respect to overseeing compliance by Iraq, but reaffirmed the applicability of these constraints.

[16] *See* UNSC Res. 833 (1993).

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It is unclear whether the Bush Administration actually intends to dispense with these aspects of the UN regime, but in light of the language of the Declaration of Principles, each of these questions merits attention and a considered policy decision, so as not to result in unintended consequences.

Mr. DELAHUNT. Thank you very much, Mr. Matheson.

Let me go, first, to my colleague, my ranking member, and then I will pose some questions, and it would appear that we can decide whether additional time is necessary.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman.

So I take it, from your testimony of both of our witnesses, that you do not consider the fact that the President is considering an agreement like this to be an ominous move on the part of the administration.

Mr. MATHESON. Well, it is not unusual to consider this kind of issue and to have political objectives, but, of course, this is a process in which your committees and other committees in Congress need to be involved, particularly because——

Mr. ROHRABACHER. Sure. Over and above whether or not we are involved, a move to have this agreement and to try to get a status situation other than having our relationship depend on a United Nations resolution is not an ominous maneuver.

Mr. RUBIN. No, not by itself because that would be a logical, long-term objective of U.S. policy.

Mr. ROHRABACHER. So what we have are some nervous stirrings by people on the other side of the aisle who, naturally, have a distrust of the other party, who refuses to have an open dialogue on exactly what issues will be included in such an agreement, and I can understand the apprehension on the other side of the aisle when we have a lack of direct communication with the administration.

So this would yet be another example of the administration not shooting itself in the foot but shooting itself in the head.

Let me just note that when I worked for Ronald Reagan, and I was in the Reagan administration—I was in the White House for 7 years with Ronald Reagan—on numerous occasions, Ronald Reagan would say, "Never be afraid to talk to anybody. Never be afraid. Always talk to everybody, but be very strong on policy, very tough on principle, but very nice to whoever you are talking to as a person."

I think that this administration is getting its direction from a different type of personality than what I was getting when I worked for Ronald Reagan, and I think I will leave it at that. Thank you, Mr. Chairman.

Mr. DELAHUNT. Well, thank you, Mr. Rohrabacher. I find myself agreeing with much of what you said, and that causes me concern. But let me be serious for moment.

As I noted in my opening remarks, this is a very significant proposal. I do not think anyone would dispute that what the parties are about to undertake is to determine whether there ought to be a bilateral agreement between the United States and Iraq, which is appropriately described as a "significant international agreement."

I do not think anyone would dispute that, and I understand that there are various classifications of international agreements. There

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is an executive, legislative agreement, which implicates both branches. I think, Mr. Matheson, you alluded to the fact that the issue of permanent bases has been addressed by Congress and would require congressional action to change that.

This is a blueprint for the future relationship. My friend from California indicates that there is a level of mistrust between, I dare say, not just the majority but a significant number of the minority in Congress because of the history that has occurred between this administration and this Congress on this particular issue. And yet not only has there only been, on one occasion, public discussion of this issue by General Lute, to whom we have extended an invitation today.

I have had conversations with leadership on the Democratic side, and there has been no effort whatsoever by the administration that I am aware of to consult and to work together toward something that we could all embrace.

This would appear to be in direct contravention of the Department of State's regulations. Maybe you can help us, but is there somewhere in Circular 175 that talks and focuses on the need to consult with Congress, even if it is a sole executive initiative or agreement?

Mr. MATHESON. Yes. Absolutely, and I tried to spell that out in my statement. Circular 175 requires, as you say, for any significant new international agreement that the committees be informed of what is intended and be consulted with respect to form and substance. Obviously, the purpose of this is precisely so that Members of Congress who have a role in, at least, the implementation of these agreements, if not the conclusion of them, understand what is contemplated and are able to make their legitimate inputs.

So, yes, sir, the Circular 175 does clearly contemplate both informing and consulting in advance.

Mr. DELAHUNT. And yet we have heard nothing from the administration.

Now, Dr. Rubin references the concern of the House Foreign Affairs Committee in terms of defending whatever prerogative the Senate might have as it relates to a treaty. I dare say, the Senate is doing, through at least two Democratic candidates—Senators Obama and Clinton are raising this issue to the point where it will be the subject of the Presidential debate, at least, among Democrats in terms of what is this about?

I would hope that the discussion would also be referenced, from this point forward, by Republican candidates because I believe that the American people ought to know where we are going and what this is, in terms of specifics; how it involves us, in terms of our responsibilities; and what is in it for the American people? What is the Iraqi part of the bargain?

I think, Dr. Rubin and yourself and others raised the point, we do not know. I agree, we do not know, but we ought to know. We ought to know. This is, it is true, a legal issue, and, I dare say, there having seven treaties where mutual security commitments, not arrangements, have been embraced. We do not know if this is what you describe as an arrangement or as a commitment, but we ought to know.

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We ought to know, and I think Mr. Scott's observation that the Maliki government should take cognizance of the fact that, at least to this point in time, the United States Congress' not being consulted and not being informed will widen, if you will, and deepen the mistrust that currently exists.

I find it absolutely outrageous that, according to Mr. Katzman, we have the issues being vetted by the Iraqi Parliament, and we are left in the dark. If that is the case, I can assure you that, and time is moving rapidly here. There are 5 months between now and the target date and until the end of the year, when the mandate expires, that there will be resistance, and, I dare say, it will be on both sides of the aisle because we want to be informed.

We want transparency in all of the information, much like in the lead-up to the war where there was, you know, information coming from the Department of Energy, coming from bureaus within the Department of State, that unless you really dug for it, it was not put out there by the administration.

If I were consulted by the administration, I would say, "Come soon and let us know what you are considering. What are these principles, because if you read these principles on their face, they are most expansive. One could interpret that internal and external attacks, in a most expansive manner, which would forever involve us in the quagmire of Iraq."

You know, just for the record purchases, Mr. Matheson, would you explain to us Circular 175. What was the statute that enabled 175 to emerge as a blueprint, if you will, for the Department of State in terms of its consideration of how to approach international agreements?

Mr. MATHESON. Well, Circular 175 is a State Department set of regulations, and it is essentially based on two things. One is that there is certain congressional legislation, in the case of legislation, with respect to the reporting of international agreements to the Congress. But also it implements the role of the Department of State and the secretary of state in the negotiation and conclusion of international agreements.

So, although they are State Department regulations, they do also affect any actions by other agencies to conclude agreements. So it is essentially the State Department's way of having a regular procedure for the orderly conclusion of agreements, which, obviously, involves an appropriate role for the Congress.

Mr. DELAHUNT. I noted that one of the factors to be considered is congressional preference in terms of the form of the agreement. Let me inform you, Mr. Matheson, and you, Dr. Rubin, that nobody in Congress has been informed. I can run through the list of factors to be considered, and there has been no effort by this administration.

So while my friend from California talks about paranoia, I would frame it and speak of it in terms of legitimate concern, having observed this administration, over a period of time, sign with its signing statements and other situations where statutes having ignored, and consultation with Congress has been minimal, at best.

Mr. Scott?

Mr. SCOTT. Thank you very much, Mr. Chairman. I guess—where do I start?

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Do you believe that this requires congressional legislation for the implementing of this treaty, the provisions of the treaty?

Mr. MATHESON. I think what we both said is that it depends entirely on the specific content of the agreement in question and how it relates to existing legislation. There are some things where, I think, congressional action, in one form or another, would clearly be required. We have listed some: A security commitment in the technical sense; some kind of commitment to long-term bases, where Congress has already acted; any kinds of exemptions from U.S. law; and there probably are other examples, and, obviously, the implementation of an agreement would have to work within the contours of existing congressional appropriations and limitations on those appropriations.

So there are a number of ways and respects in which something might require congressional approval. On the other hand, there may be other things which could be done by the President without congressional approval.

Mr. SCOTT. Do you think one of the reasons why they are going the route of avoiding a treaty is to avoid congressional input?

Mr. MATHESON. I could not speculate on that, sir.

Mr. SCOTT. General Lute, who was speaking for the White House; that question was put to him: Is the purpose of avoiding the treaty avoiding congressional input? And General Lute responded and said, "No. As I said, we have about 100 agreements similar to the one envisioned for the U.S. and Iraq already in place, and the vast majority of those are below the level of treaty."

Now, that was very cute and misleading language on the part of General Lute and the White House, and that is why we have to look at this with a very jaundiced eye in terms of the motivation of this administration.

Legal analysis notes that all seven of the current U.S. agreements that provide for military action in defense of external threats have risen to the level of a treaty. Now, the mission says clearly here. It says: "To provide security assurances to the Iraqi Government to deter any external aggression."

That, in and of itself, connotates to me the grounds to follow those seven that we have had before, and this will rise to that. It could very well rise to other actions of military action to determine the internal threats.

This mission and this Declaration of Principles is so broad in its scope and its dimension that, clearly, one can see a need here. So it begs the question as to why is it, and is it in the best interests for a President, who was the architect of getting us into Iraq, to be the sole arbiter, from the United States' point of view, in negotiations, to continue this war and set the ground rules for it; which will commit troops, which will commit more appropriations, which, obviously, has a role for Congress, from our standpoint, from the Senate's standpoint, and the treaty that clearly is applicable here, external threats and aggression, if we were to do that, particularly given the pattern of all the others?

So I am trying to get at a clear answer here, because you all are the legal experts on this, so that we get some kind of parameters of how we move forward. That is why I want you to comment on

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that point of these others that fit into external threats all require treaties. Why not this one?

My other point is that, without implementing legislation, without the assurance of that, we stand in a way of not being able to fulfill our obligations under international law because, in effect, we could be in default of those obligations to Iraq unless implementing legislation is enacted to secure it.

So, on two levels, I am speaking here: The treaty, as well as implementing legislation to carry out the other obligations that we have.

Thirdly, if you could just shed some light on the double-mindedness here in the speaking of the White House and their clear effort to undermine or bypass congressional input.

Mr. MATHESON. On the first question about the extent to which these references in the joint declaration are dealing with external threats to Iraq should lead us to assume that it would have to be in the form of a treaty, as how these collective-security treaties were.

Unfortunately, my answer has to be, I do not know, because I do not know exactly what is contemplated. If it really were contemplated that the U.S. would incur an obligation to use United States armed forces to defend Iraq against either external or internal threats, then my answer would be yes.

If what is involved here is simply an overall objective to do various things that might help Iraq in dealing with external threats but not rising to that level, maybe the answer would be no, but it depends exactly on what is involved, and we do not know that yet.

With respect to your question about implementation of obligations, you are absolutely right that, in negotiating an agreement, particularly an executive agreement, you have to always be careful that you already have the necessary congressional authorization and appropriations to carry out the agreement; otherwise, you may be left stranded, not being able to carry out your obligations toward your treaty partner.

Whether that is going to be the case, again, we do not know because we do not know the specifics. But if, in fact, it is contemplated that there be an executive agreement, for which the authority is not available, you would have to condition the agreement on getting such authority or getting such appropriations. You cannot simply go out there and make commitments that you do not have authority for.

With respect to White House motives, I really do not know. I cannot comment on that.

Mr. RUBIN. I do not have much substantively to add. I would reiterate that it would be a mistake to conflate the Declaration of Principles for the agreement that will be negotiated with the final result of that negotiation.

When it comes to the issue of bypassing congressional consultation, I would hope, certainly, that consultations will begin as negotiations on this agreement or treaty, or whatever final form it takes, also begin. While I do have the floor, in the spirit of the chairman's consistent comments about the informational nature of these hearings, I would just like to argue that not only are the deadlines incumbent in the negotiations of this agreement going to

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be on the radar screen over the next year, but the Kirkuk issue will now occur in June 2008 unless that is extended, a large, wild card in the situation in Iraq, and the requirements for our commitments there are whether or not we go to provincial elections inside Iraq.

If there was a move toward provincial elections, it would likely require at least a short-term increase of troop levels to secure those elections.

And then, lastly, while we have talked, in the opening statements, about the impact which any such agreement or treaty would have, given the transition that we have between administrations over the course of this time. It should also be noted that, by December 2009, there will have to be additional elections for the Iraqi National Assembly as well. Thank you.

Mr. MATHESON. May I add just one point? That is, if I were advising the administration today, I would advise that they get to the stage of consultation as quickly as possible, not only to satisfy the legitimate role of Congress but also because failing to do so may raise apprehensions about what the administration intends and may, in fact, not turn out to be the case.

For all we know, the administration may have in mind something more modest, an obligation to consult, a limited status of forces agreements that simply exempt U.S. military personnel from foreign law, or some similar steps. But until the administration is able to tell you what it has in mind, naturally, you will worry about the broader implications of, as you say, the very broad language of the declaration.

Mr. SCOTT. Which brings us to the other concern, the political equation that we face right now, and what is timely to do? In fact, we do not really have to do this broad scope.

This is a very, very live-wire, political issue. It is not just a live wire within candidates or politicians. It is a very serious live wire in the hearts and the minds and the souls of the American people. There is a high level of distrust. We can say what we want to say here politically, from one political branch to the other, about distrust and mistrust, but what we are faced with here is the mistrust and the distrust that the American people have. That has been borne out.

So what is it, legally, from your perspective, at the end of the day, given this discussion? What is the legal perspective, from a standpoint of what Congress can do, at this point, to do two things: One, make sure that the President does not, and cannot, act to commit us into the future in terms of an investment in Iraq without congressional sanction or approval?

Mr. MATHESON. The very first thing that you need to do is somehow to get the attention of the administration and to get them to inform you and consult with you as to what exactly is intended. When you know that, then you are in a much better position to make the kind of decision you are describing. It may be that Congress will find it does not need to use its strong weapons, or it may find that it does need to. Obviously, the Congress has the appropriation power, which can be a powerful tool but needs to be used judiciously.

So before you are able to make a decision as to whether you need to use that weapon, you need to know exactly what is involved.

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So I would think, number one, you need information, and you need consultation.

Mr. SCOTT. Which brings us to the point, and my final point, as to why the quandary, and why this administration looks so bad, in our requests to get the information, in our requests to have them come before our committee. They have refused to do so, so that our only option, it seems to me, is the purse strings, and we failed to do this before, and many of us, very reluctantly, even when we vote because we have troops in harm's way in terms of the combatants' role in Iraq today.

But I am feeling mighty confident that there is a will in this Congress to hold up any appropriations of funding for this Declaration of Principles to move forward, and I think that that, to me, is probably the only tool that we have, and I am mighty afraid that the sooner we play it, the better, because I do not believe that we will get the attention of the administration until we use a big, bully bat, and that may be it.

Mr. RUBIN. What I would add is that while I would certainly hope that consultations would occur once the negotiations begin. If the intent of various Members of Congress is to be as fully apprised of the situation with the negotiations as possible, it would also behoove Members of Congress to travel to Baghdad to speak directly to Ambassador Crocker, who will, presumably, be the point man on some of these negotiations.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. DELAHUNT. I thank the gentleman for his insightful questions. I dare say, it could be much more productive, in terms of Dr. Rubin's last suggestion, and I am contemplating extending an invitation to a broad section of members of the Iraqi Parliament to come here to Washington and have a dialogue, again, on a bipartisan basis, with Members of Congress so that we can become fully informed and so that there is no misunderstanding about the implications of any agreement that is consummated.

I think that is absolutely essential. I have already taken preliminary steps along those lines.

Dr. Rubin, you indicate, as soon as negotiations begin. Well, again, according to Dr. Katzman, those conversations that we can describe as preliminary have already occurred in terms of the agreement as it related to the Declaration of Principles.

We heard, again, from Dr. Katzman about the conversations, hopefully, with sufficient information, going on in Baghdad among Iraqis. We have heard so many different stories from members of this administration regarding Iraq that proved to be inaccurate, and I use the word, I think, kindly, that there is a rationale for the mistrust that exists. It does.

You heard earlier the ranking member of this subcommittee express the same mistrust and unease with the actions of this particular administration.

Now, at CRS, Michael Garcia put out a 16-page memorandum on his understanding of the legal nuances, if you will, and the role of Congress and the role of the executive in agreements like this.

It is my position that I want to avoid a constitutional crisis or confrontation, but I see it brewing. I see it happening unless this administration sends to this Congress its representatives to inform

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this committee and other relevant committees and the American people, in full measure, what they are about. This cannot be done in any way that is not transparent. It is simply too important.

Almost 4,000 American military personnel have died. Hundreds of billions of dollars have been expended. For what? That is what a majority of the American people are asking, and they have a right to be informed as to where we go from here, and we do not know, and their representatives in Congress are not being consulted and are being left in the dark.

You know, I alluded to the memorandum prepared by Attorney Garcia. He makes a statement—let me read it to you, Dr. Matheson, and ask for your opinion. He opines: "When Congress opposes an agreement, and the President's constitutional authority to enter the agreement is ambiguous, it is unclear if, or under what circumstances, a court would recognize such an agreement as controlling."

Do you agree with that statement?

Mr. MATHESON. Well, of course, it is always unclear how a court will react when there is an issue between the two branches, so it is hard to say yes or no to that, but obviously——

Mr. DELAHUNT. So you would agree that it lacks clarity. But here we are, finding ourselves potentially heading in that direction because I am confident that this Congress will insist upon being fully informed. It has been raised in Presidential debates, and silence is still the response of the administration. There have been ongoing conversations; otherwise, the Declaration of Principles would not have been promulgated.

That is occurring, and, according to Circular 175, the State Department's rules and regulations, they, the State Department, recognizes the need to consult on a regular basis with Congress in the case of international agreements, and they are failing to do it.

How can we trust this administration in a matter of such significance and import when they ignore their own rules and regulations? Now, I am not suggesting it is the career personnel in the Department of State that is doing it, but we know that they are taking orders and direction from a higher pay grade.

That is my concern. That is the fear that I have. At a particularly critical time, what is the message that we are sending to the Iraqi Government? I hope, at least, that today's hearing sends a message directly from the United States Congress to the Iraqi Government and the Iraqi Parliament that we have a constitutional responsibility in terms of any significant international agreement that implicates, particularly, the use of American military forces potentially in a civil war in Iraq. The American people want out; they do not want to be stuck in that quagmire or return. We have had enough. Mr. Scott.

Mr. SCOTT. If I may follow up with a question and just "amen" exactly everything that you have said. There is absolutely no way that this Congress is going to allow this kind of agreement to go forward with a commitment, an unlimited commitment, a blank-check commitment. Even you, yourself, said that this verbiage, this wordage, in here is up to interpretation.

Once you sign an agreement like this, you are liable and held to it under international law. So it would be highly irresponsible, on

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our parts, and especially to allow this to take place with an administration that wants to do this when, in 6 months, they are out of Dodge. They are out of town. So that is not going to happen.

Let me ask you this—I have one for you, Dr. Rubin, but for you, Mr. Matheson, I believe you worked in the State Department. Is that correct?

Mr. MATHESON. Yes.

Mr. SCOTT. And you were legal adviser in the State Department. Is that correct?

Mr. MATHESON. I was legal adviser, yes.

Mr. SCOTT. How long ago was that?

Mr. MATHESON. I left as acting legal adviser in 2000. I was acting legal adviser for about 2 years. I was an attorney in the State Department for about 28 years.

Mr. SCOTT. Okay. So you have got some pretty good experience here. So let me ask you this. If you were there today, and if you were legal adviser in the State Department, and this kind of Declaration of Principles was put to you, would you recommend that it be submitted to the Senate as a treaty, or would you recommend that it be submitted to the Congress as an agreement requiring legislation by both houses, or would you just say, "Executive branch, you go and do it," as the case is apparently being done now?

Mr. MATHESON. The first step would be to determine exactly what is intended, and you cannot tell, from the general language of the declaration, exactly what is going to happen.

So my role, as legal adviser, would be to say, "Look, we have got to get more specific here. What do you mean by a security commitment? Do you really mean that? I doubt it. But tell me exactly what it is you would promise to Iraq in terms of security. What do you have in mind, in terms of the status of forces? Would that be within these parameters or not?"

I would go down the entire list and encourage policymakers to focus and make decisions and then come to Congress, and it may be that, at the end of that process, there would be a lot less uncertainty and a lot less disagreement between the two branches as to what is contemplated.

So, in answer to your question, until we get to the end of that process, I do not know what form the agreements would have to take because it does depend on the content.

Mr. SCOTT. But my question was, if you were handed this as the end product, not where there is negotiation; they just said, "Hey, Legal Adviser, you are the person." And it says training. It is specific: Training, which means money, manpower, resources, some type of military operation, equipping and arming—those are pretty specific things—the Iraqi security forces so that they can provide—that is a commitment—security and stability. That is taking it on our shoulders.

I do not see where that is much different than what we are doing right now to all, all Iraqis, and not only that; dealing with contributing to the international fight against terrorism, to confront the terrorists of al-Qaeda, its affiliates, other terrorist groups, as well as other outlaw groups.

This is very specific and handed to you. And criminal regiments of the former regime—precisely what we are doing right there now.

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In order to do this, it seems to me, requires some kind of military operation, and then to provide not just security but security assurances. That is money. That is how you secure it. You cannot secure it without putting the money and the muscle and the commitment of the American taxpayers' dollars to that. To deter any external aggression.

I am saying to you, if this is handed to you—I am not going to put words in your mouth, but I would think, if you had no choice, if you had the choice of these three things: Get it to the Senate to be ratified as a treaty or get it to the Congress to get approved by enacting the legislation and approval necessary or by both houses of Congress or, Mr. President, and you have got 6 or 7 months left in office, you go ahead and do this on your own, and to hell with Congress, and yet committing all of this to them.

You have got no choice. You are the legal adviser. You are the lawyer. What do you say?

Mr. MATHESON. Well, actually, what I would say would be slightly different. I would say, "That document cannot be the final product. It does not express clearly what the obligations of the United States will be. It has vague terms like 'security commitments' and 'assurances' that may be fine for a statement of political objectives, but it cannot be the final product. You need to go back, and I will help you do it, but you need to go back and go through each of these items, determine exactly what you want to promise, and then decide whether that is within your existing authority, and, if not, you have to go back to Congress and get it."

Mr. SCOTT. Yes. I was finally hoping that you would finally say the magic words. Not finally, but would you not say, "Mr. President, you need to go and sit down with the Congress, who has to appropriate the funds. You need to go and sit down with Congress, who has the authority to set treaties."? Would not you say that?

Mr. MATHESON. Sure. Absolutely.

Mr. SCOTT. Thank you.

Mr. DELAHUNT. I will tell you what I find somewhat disconcerting is that if this administration should act or embrace whatever document as exclusively within their constitutional authority and describe it as a sole executive agreement, and the new administration comes in, and others have said, "Well, we can just ignore it, we can abrogate it, et cetera," tell me if I am incorrect.

There still are consequences, in terms of our international obligations, and it clearly—I think we heard from Dr. Katzman—would have a serious, very serious, backlash, if you will, from the Iraqi Government and other actors because of our failure to follow through on commitments made by the Bush-Cheney administration.

That is why this is so important. I believe that this issue, this singular issue, is the most important issue that this committee will deal with, in fact, that this Congress may deal with, between now and the Presidential election in November.

Dr. Rubin, you look like you want to say something.

Mr. RUBIN. I will say a little bit. It seems that there is a danger, while interesting to discuss, in wallowing in an unlikely hypothetical.

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First of all, when it comes to the transition between administrations, I would certainly hope that whoever the candidate turns out to be, the next President turns out to be, that they will consult also with the Ambassador in Iraq, Ryan Crocker, or whoever comes after him, and also General Petraeus, to determine their Iraqi policy and gear that Iraqi policy toward events on the ground in Iraq at that time.

If you compare where we are right now to where we were last year, it is a world of difference.

I would also argue——

Mr. DELAHUNT. Dr. Rubin——

Mr. RUBIN. Sir, there is absolutely no dispute that if we make a security commitment, under international law, to insert our troops, under certain conditions in Iraq, that needs to be ratified by the Senate as a treaty.

Mr. DELAHUNT. And I do not disagree with you, in terms of whoever the next President is, to, obviously, consult and listen to, whether it is General Petraeus or Ambassador Crocker, or whomever their successors may be. But I guess what I am saying is here we have the reality of 2008, with a new election coming.

We have State Department rules, regulations, guidance, if you will, and yet we have this administration that is just simply ignoring them. Maybe the next administration will just simply ignore, I think, to its peril, advice and counsel from all quarters. But I guess this is what happens when, as Governor Huckabee said, you have a foreign policy that is characterized by arrogance. That is the only explanation, arrogance.

Mr. RUBIN. At the same time, sir, I would argue, based on the questions posed by Mr. Scott, that there would be a very dangerous precedent, given that we train, we arm, and we equip antiterrorist forces in the Philippines, in the Horn of Africa, and elsewhere, if every time we undergo that sort of training, that it needs to be considered a treaty by the United States Congress.

Now, I do not disagree with you at all that there should be consultation. Consultation does not hurt; it helps a great deal, and I would share the opinion of Mr. Rohrabacher that this administration could have done a much better job with regard to some of the consultations. But while understanding that Iraq is a political hot button, it is also necessary to keep an eye on precedent and recognize that this is not only going to be a situation with regard to Iraq, but it is going to affect our military, diplomatic, economic, informational policies around the world, and it is also going to be seen by our allies.

If we are seen to cut Iraq off, that is going to be seen in Jerusalem, in Israel; in Tapei, Taiwan.

Mr. DELAHUNT. I do not, again, disagree with your respect for precedent, but we have seen arrogance, again, and this is the most recent example. I serve on the Judiciary Committee that sits in this room, and there have been multiple examples of this administration disagreeing with precedent, in terms of the Department of Justice, as best exemplified by the resignation of Mr. Kolmey, Mr. Goldsmith, and by others over an issue involving NSA and surveillance and what have you.

Mr. RUBIN. But this issue is about Iraq, I thought.

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Mr. DELAHUNT. It is about Iraq, but my point is, if there is a precedent that is consistent, in terms of the behavior of this administration, it is the fact that they do not respect precedent; they just make it up as they go along, and that is why I think that we have to be particularly attentive to what is occurring, in terms of these negotiations.

Mr. RUBIN. But we should not rewrite what constitutes a treaty, sir.

Mr. DELAHUNT. I am not even suggesting that.

Mr. RUBIN. Okay.

Mr. DELAHUNT. As Dr. Matheson has indicated, and as others have put forth in their own testimony, there are various forms in which Congress plays a role. Executive-legislative agreements, I dare say, make up the bulk of our international agreements, working together. But we have an administration that, as Senator Hagel said, considers Congress as an adversary and as a constitutional nuisance.

Gentlemen, thank you so much for your testimony. We are adjourned.

[Whereupon, at 2:05 p.m., the subcommittees were adjourned.]

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THE PROPOSED U.S. SECURITY COMMITMENT TO IRAQ: WHAT WILL BE IN IT AND SHOULD IT BE A TREATY?

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AND THE

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OF THE

COMMITTEE ON FOREIGN AFFAIRS HOUSE OF REPRESENTATIVES

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