

PolicyWatch #1417

## Iraqi Politicians Ponder Status of Forces Agreement

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October 27, 2008

After months of rigorous debate, U.S. and Iraqi negotiators submitted a draft Status of Forces Agreement (SOFA) to Iraq's cabinet and political leadership last week. Since then, many Iraqi politicians have publicly expressed reservations, while others have distanced themselves from the draft in an attempt to deflect blame and avoid the electorate's censure in the upcoming provincial elections. Despite the opposition, approving the SOFA is essential not only for maintaining Iraq's fragile security gains, but also for supporting the struggle against regional forces that want to reshape the Middle East to the detriment of U.S. and Iraqi interests.

### Background

The draft agreement aims to regulate the presence of U.S. troops in Iraq after the UN's Chapter VII mandate expires at the end of this year, after which coalition forces in Iraq would be without legal cover. In August 2007, President Bush and Iraqi prime minister Nouri al-Maliki signed a declaration of principles outlining the broader political, economic, cultural, and military spheres, with the goal of having a SOFA signed by July 2008. Failure to establish a legal presence under a SOFA before the end of this year would, according to U.S. Ambassador Ryan Crocker, force U.S. troops to withdraw to their bases and halt all activity, including military operations, logistics, and training. Alternatively, the United States could seek an extension of the UN mandate -- a move Russia supports -- allowing U.S. troops to operate for one additional year under existing terms. Al-Maliki and other senior Iraqi officials, however, have repeatedly voiced their opposition to this approach.

### Negotiating the SOFA

Negotiations got off to a rough start amid reports of excessive U.S. demands, particularly regarding immunity for contractors and control over Iraqi airspace. Opportunistic politicians further complicated the discussions by igniting pro-independence sentiments among the Iraqi population. These politicians were able to stir up opposition to the SOFA because of Iraq's deep sense of nationalism, as well as also the government's failure to counter these arguments in public.

By early September, Iraqi negotiators told al-Maliki there was a deadlock, and that it was time to make tough political decisions. Al-Maliki consequently disbanded the technical team assigned to the negotiations and assembled a group of close political advisors to tackle the more delicate aspects of the agreement; after several iterations, the two parties reached the current submitted version.

### The Draft Agreement

The Arabic daily *Asharq al-Awsat* first published the thirty-one-article draft on October 20. The months-long public debate about sovereignty had obviously made its mark on the draft, since the word appears four times in the first paragraph.

Some of the agreement's key elements include the immediate transfer of control over airspace to Iraq, despite the country's technical inability to manage it, and the withdrawal of U.S. military units from cities by June

2009 and from the country by the end of 2011. The status of U.S. military trainers in Iraqi military units is unclear. Regarding the most contentious issue, immunity, the agreement gives legal jurisdiction to the United States over its personnel when they are inside designated bases and while performing duties off base. Iraq would have jurisdiction over U.S. personnel for off-duty crimes committed outside military bases, as well as full jurisdiction over contractors. Also, the U.S. government would continue to protect certain Iraqi funds from Saddam Hussein-era claims. If Chapter VII of the UN Charter no longer covers Iraq, over \$40 billion from the Development Fund for Iraq, as well as Iraq's oil revenues, could be vulnerable to such claims.

As far as implementation, a joint ministerial level committee would be responsible for issues relating to the execution of the agreement. As such, this committee would form a Joint Military Operations Coordination Committee to manage the military operations in Iraq.

Positions on the agreement varied across the Iraqi political spectrum. Shiite cleric Muqtada al-Sadr -- currently residing in Iran -- called on his followers to organize large demonstrations in opposition to the agreement. And while visiting Tehran last week, Iraq's former prime minister Ibrahim al-Jafari also expressed his deep discontent about the SOFA. Shiite members of the Islamic Supreme Council of Iraq, the largest Shiite group of the United Iraqi Alliance that includes al-Maliki's Dawa party, also expressed reservations. In addition, a number of Sunni politicians were skeptical, despite their constituents' desperate need for U.S. military support. Kurdistan Democratic Party leader Masoud Barzani was the only leader who expressed full support for the agreement.

### **Helping al-Maliki Support the SOFA**

In the meantime, al-Maliki is caught in a political cross fire. Although he recognizes the need for continued U.S. military presence in Iraq, he fears that taking a stand in favor of the SOFA could cost him his political career. Thus far, he has managed to be seen as a tough defender of Iraqi sovereignty who also maintains a working relationship with the U.S. government. But faced with a submitted draft agreement, he now must take ownership of the process and express a clear position.

The United States can help al-Maliki support the SOFA by applying leverage on U.S. "allies" in Iraq's political arena who reportedly acknowledge the need for a SOFA behind closed doors but are not willing to say so publicly. If certain articles were rewritten, these parties could declare a "victory," allowing them to take ownership of the draft and support the SOFA in public. In addition, a further elaboration of Article 12, which covers immunity and identifies who would determine legal jurisdictions, could make the document more agreeable to Iraqis. It would also be helpful to emphasize to Iraqi leaders that the United States has more than eighty SOFAs in place around the world, and that it would embarrass the U.S. administration if Iraq were perceived to have uniquely favorable terms.

This is a critical time for Iraq; its political leaders have to consider Iraq first and make tough decisions regarding their country's future. Failure to do so will severely jeopardize the hard-earned security gains that both Iraqis and Americans have fought bravely to establish. Moreover, without an agreement, Iraq will be vulnerable to regional players that do not have its best interests in mind. The people of Iraq deserve to know the facts from their elected leaders, and a clear address by al-Maliki could provide a chance to clarify the situation and explain the options moving forward. The prime minister's leadership could also encourage others to support the SOFA and rise above narrow partisan and sectarian interests.

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