



Joseph R. Biden, Jr.

UNITED STATES SENATOR - DELAWARE

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For Immediate Release
April 9, 2008

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BIDEN on Negotiating with Iraq: No Long Term Deals

Committee Concludes Two Weeks of Iraq Hearings; BIDEN To Deliver Major Foreign Policy Address Next Week

BIDEN: "With just nine months left on his term, the President is on a course to commit the nation to a new phase of a long war in Iraq, and thereby bind – at least politically and perceptively – his successors to what I believe is a failed policy."

Washington, DC – Chairman of the Senate Foreign Relations Committee **Joseph R. Biden, Jr.** (D-DE) concluded two weeks of hearings on Iraq this morning with testimony from members of the Administration and outside legal experts on the status and substance of the long term security assurances the Administration has started to negotiate with Baghdad. At the hearing, entitled "*Negotiating a Long Term Relationship with Iraq*," committee members heard from the Honorable David Satterfield, Senior Adviser to the Secretary of State and Coordinator for Iraq; the Honorable Mary Beth Long, Assistant Secretary of Defense for International Security Affairs; Joan Donoghue, Principal Deputy Legal Adviser at the Department of State; Professor Michael J. Matheson of the George Washington University Law School; and Professor Michael J. Glennon of the Fletcher School of Law & Diplomacy.

Over the past two weeks, the Senate Foreign Relations Committee heard testimony from Ambassador Ryan Crocker and General David Petraeus, as well as a broad cross section of military, academic and political experts from left, right and center. The focus of the hearings was to examine if the surge did in fact achieve its strategic objective: creating breathing room for the Iraqi leaders to come together politically.

The debate about Iraq will not end today with the conclusion of the hearings. Next week, Sen. Biden will specifically address Iraq and the need to recapture the totality of America's strength during a major foreign policy and national security speech, entitled "2008 and the Stakes for America's Security" at Georgetown University's Gaston Hall on **April 15th at 12 NOON.**

The full text of Sen. Biden's opening statement from this morning's hearing, as prepared for delivery, is below:

"Last November, the President of the United States and Prime Minister Maliki of Iraq signed a 'Declaration of Principles,' which set out a framework for our countries to negotiate, by the end of July of this year, agreements governing cooperation in political, economic and security spheres. Among other things, the Declaration contemplates 'providing security assurances and commitments to the Republic of Iraq to deter foreign

aggression against Iraq' and supporting Iraq 'in its efforts to combat all terrorist groups,' including Al-Qaeda, Saddamists, and 'all other outlaw groups regardless of affiliation.' In other words, all the folks fighting in Iraq and killing each other.

"This sends up not just one, but many red flags with me and many other Americans. We've pledged we're not only going to consult when there is an outside threat, but also when there is an inside threat. We've just witnessed when Mr. Maliki engaged in the use of force against another Shia group in the south, is this an inside threat?

"We will hear today about the two agreements that the Administration is negotiating with Iraq which were anticipated in the November Declaration. On Tuesday, Ambassador Crocker told us that these agreements would set forth the 'vision' – his phrase – of our bilateral relationship with Iraq.

"One agreement is a 'strategic framework agreement' that will include the economic, political and security issues outlined in the Declaration of Principles. The document might be better titled 'What the United States will do for Iraq,' because it consists mostly of a series of promises that flow in one direction – promises by the United States to a sectarian government that has thus far failed to reach the political compromises necessary to have a stable country.

"We're told that the reason why we're not continuing under the UN umbrella is because the Iraqis say they have a sovereign country. But they don't want a Status of Forces Agreement because that flows two ways. The Administration tells us it's not binding, but the Iraqi parliament is going to think it is.

"The second agreement is what Administration officials call a 'standard' Status of Forces Agreement, which will govern the presence of U.S. forces in Iraq, including their entry into the country and the immunities to be granted to them under Iraqi law. Unlike most SOFAs, however, it would permit U.S. forces – for the purposes of Iraqi law – to engage in combat operations and detain insurgents. In other words, to detain people that we think are bad guys. I don't know any of the other nearly 90 Status of Forces Agreements that would allow a U.S. commander to arrest anyone he believes is a bad guy.

"In February, Secretaries Rice and Gates made clear that despite the unambiguous reference to 'security commitments' in the Declaration, these agreements would not include a legally binding security commitment to defend Iraq if attacked or to support the government against other militia groups. I welcome that clarification.

"But it obscures a critical point: the likelihood that the United States will promise some response if Iraq is threatened or attacked. Often called a security assurance or security arrangement – it will likely create a perception in Iraq that the United States will come to Iraq's rescue if it is threatened or attacked. The next president may not want to do that. The next president may not have a piece of that 'vision.'

"It also ignores the rather startling pledge in the Declaration to support the Iraqi government in its battle with 'all other outlaw groups' – I assume that means any group at odds with the prime minister as the government – a potentially expansive commitment to take sides in Iraq's civil war.

"A key question before this Committee is whether either agreement should be approved by Congress, either as a treaty approved by two-thirds of the Senate or as a congressional-executive agreement approved by both houses of Congress.

"It is a fact that security arrangements with several countries have been made without explicit congressional or Senate approval. But not all security arrangements are created equal. Our present military commitment in Iraq and the context in which this arrangement would be concluded are important factors in evaluating whether Congressional approval is required. Moreover, past practice is not a reason to bypass the Congress, nor can it

answer the question of the President's authority, as the Supreme Court reminded us when it struck down dozens of statutes providing for the legislative veto in the landmark case of *INS v. Chadha*.

“This Committee has long been concerned with the unilateral efforts of the Executive Branch to bind the nation. In 1967, the Committee held a series of hearings that led to Senate approval of the National Commitments Resolution, which states that a national commitment by the United States can only result ‘from affirmative action taken by the executive and legislative branches of the United States by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment.’

“In its report on the resolution, the Committee expressed concern that ‘some foreign engagements, such as our bases agreement with Spain, form a kind of quasi-commitment, unspecified as to their exact import but, like buds in springtime, ready under the right climatic conditions, to burst into full bloom...[i]n practice the very fact of our physical presence in Spain constitutes a quasi-commitment to the defense of the Franco regime, possibly even against internal disruptions.’

“In 1970, a special subcommittee of this Committee engaged in a study of security agreements and commitments abroad. It described a practice of ‘creeping commitment,’ and observed that ‘Overseas bases, the presence of elements of United States armed forces, joint planning, joint exercises, or extensive military assistance programs represent to host governments more valid assurances of United States commitment than any treaty or executive agreement.’

“The Constitution gives Congress the power to authorize the use of force, the power to raise and support the military, and the power of the purse; and it gives the Senate the power to approve treaties. The President, as Commander-in-Chief and chief diplomat, can direct forces in war, once authorized, and negotiate and sign treaties. This division of power was intentional, and among other things was designed to prevent one person from making national commitments that could result in taking the country to war.

“I have often stated that no foreign policy can be sustained without the informed consent of the American people. Five years ago, President Bush went to war in Iraq without gaining that consent. He did so by overstating the intelligence, and by understating the difficulty, cost and duration of the mission.

“With just nine months left on his term, the President is on a course to commit the nation to a new phase of a long war in Iraq, and thereby bind – at least politically and perceptively – his successors to what I believe is a failed policy. Once again, he appears poised to do so without the informed consent of the American people – by rushing to conclude long-term agreements with Iraq without adequate public debate, and without a voice for the people's representatives in Congress.

“Instead of giving us a strategy to end the war without leaving chaos behind, in my perspective, the President has made it clear he intends to pass on the problem to his successor, and, by these agreements, to make it harder for his successor to change course.

“The President may have the power to initiate these talks, but it is a mistake for him to do so. The situation in Iraq can hardly be described as normal, and the government in Baghdad is far from established or reliable, even in the eyes of the Iraqi people. This is a shaky edifice for building a long-term relationship.

“Instead, the President should devote his energies to working with Iraq and its neighbors on a diplomatic surge – to help develop a lasting political settlement that will provide the foundation for a stable Iraq, and he should defer discussion of such long-term agreements to his successor. But if the President persists on this course, the Congress will insist on a role in approving or disapproving these agreements.

“I believe that the president would be better off himself, for the Iraqi people, and for the American people, if he negotiated a straightforward Status of Forces Agreement.”

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