

U.S. Senate Committee on Foreign Relations
Senator Richard G. Lugar
Opening Statement for Hearing on
Negotiating a Long-term Relationship with Iraq
April 10, 2008

I thank our witnesses for joining us today to discuss the legal framework for our presence in Iraq. Although the issue may seem technical, it is highly consequential, both for U.S. policy and for the welfare of our soldiers and diplomats.

American military and civilian personnel in Iraq – and the other members of the multinational coalition - have worked under a series of Chapter VII United Nations Security Council Resolutions, the latest being UNSCR 1790, adopted on December 18, 2007.

This Chapter VII resolution authorizes the presence of the multinational force in Iraq until December 31, 2008. It notes the requests made by Prime Minister Maliki in his letter of December 10, 2007, which is part of the resolution. Prime Minister Maliki declares that “The Government of Iraq considers this to be its final request to the Security Council for the extension of the mandate... and expects, in the future, that the Security Council will be able to deal with the situation in Iraq without the need for action under Chapter VII of the Charter of the United Nations.”

Chapter VII actions give a United Nations Force internationally recognized authority to use deadly force if necessary without having to ask the permission of the host nation. It is distinguished from Chapter VI missions – such as those in Cyprus and Lebanon -- that require the consent of the host government.

The Multinational Force in Iraq also operates under an order issued by the Coalition Provisional Authority in 2003. CPA Order Number 17, as it is called, ensures that our personnel will not be subject to Iraqi legal proceedings. This protective legal umbrella will expire when the mandate for the multinational force expires at the end of this year.

I lay out these points because they make clear the technical reasons for our hearing today. Our presence in Iraq must be governed by international law or a bilateral agreement, and our military and diplomatic personnel must have appropriate legal protections.

Transitioning to a bilateral agreement can deliver benefits with respect to our relationship with Iraq. Such an agreement would be a tangible expression of Iraqi sovereignty, and it would provide a predictable legal framework for both sides. Negotiations on such an agreement also have the potential to enhance U.S. leverage in our dealings with the Iraqi government.

Last summer, Senator Warner and I proposed an amendment to the Defense Authorization Bill. Among the elements of that amendment was an acknowledgment that the rationalization for the authorization to use force, passed in 2002, is obsolete and in need of revision. Many of the conditions and motives from six years ago no longer exist or are irrelevant to the current situation. The amendment stated an expectation that the President would send to Congress a new rationale for the authorization. Our Amendment also included a requirement that the Administration, “initiate negotiations with the Government of Iraq on a Status of Forces Agreement with a goal to complete work not later than 120 days after enactment of this Act.”

The Administration has told our Committee that there are two agreements being negotiated in parallel. The first is a Status of Forces Agreement, which prescribes how criminal jurisdiction over our troops and claims

against activities by our military personnel will be handled. The second agreement is a Strategic Framework Agreement that addresses broader issues in the U.S.-Iraqi strategic relationship. Clearly, such agreements have the potential to be extremely consequential for the future of American activities in Iraq.

On Tuesday, Ambassador Crocker testified that the agreements being negotiated: “will not establish permanent bases in Iraq, and we anticipate that it will expressly forswear them. The agreement will not specify troop levels, and it will not tie the hands of the next Administration. Our aim is to ensure that the next President arrives in office with the stable foundation upon which to base policy decisions, and that is precisely what this agreement will do. Congress will remain fully informed as these negotiations proceed in the coming weeks and months.”

Although this is reassuring, Congress has legitimate concerns about commitments or understandings that might be made in these agreements. The subjects covered in a Strategic Framework Agreement may directly or indirectly affect how and when American forces would be used in Iraq in the future. We know that Iraq presents an extraordinarily complex environment for U.S. troops, who might be drawn into future scenarios related to ethnic strife, competing militias, internal territorial disputes, terrorist attacks, foreign incursions, or even coup attempts. The complexity of these legal issues is not a reason to avoid talks with the Iraqis. But as these negotiations go forward, it is essential that the Administration be fully transparent about their intentions and the progress of their deliberations.

We are seven months from a presidential election. Even before that, our mission in Iraq may well evolve based on conditions on the ground, Iraqi political developments, and concerns about the strains on the American military. Congress and the American people should be thoroughly apprised of the details of any agreement related to the future of American involvement in Iraq.

I thank the Administration for the briefings that our Committee has received thus far, and I appreciate the testimony that we will hear today.

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