

**DECLARATION AND PRINCIPLES: FUTURE U.S.
COMMITMENTS TO IRAQ**

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
THE MIDDLE EAST AND SOUTH ASIA

AND THE

SUBCOMMITTEE ON INTERNATIONAL
ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT
OF THE

**COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES**

ONE HUNDRED TENTH CONGRESS

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DECLARATION AND PRINCIPLES: FUTURE U.S. COMMITMENTS TO IRAQ

TUESDAY, MARCH 4, 2008

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

The subcommittees met, pursuant to notice, at 2:12 p.m. in Room 2118, Rayburn House Office Building, Hon. Gary L. Ackerman (chairman of the Subcommittee on Middle East and South Asia) presiding.

Mr. ACKERMAN. The subcommittees will come to order. First I would like to thank our administration witnesses today for fulfilling Secretary Rice's commitment that the Department would provide witnesses to appear before our subcommittees. This is the beginning of what I believe should be intensive and continuous consultations with the Congress on the nature and substance of the agreements to be negotiated between the United States and Iraq as envisioned in the November 26, 2007 Declaration of Principles.

I suspect that the administration is somewhat surprised by the reaction to the declaration here in Congress, and that they probably wish they had drafted the document with a little bit more precision. On their face, the plain meaning of the words in the declaration look to us very much like a commitment for United States forces to defend the Government of Iraq against foreign and domestic threats in perpetuity.

Since the declaration was released, there has been testimony by Secretary Rice and Secretary Gates, an op-ed piece by the two Secretaries in the Washington Post, and there has been a classified briefing before the Foreign Affairs Committee, all designed to tell us what the security agreement to be negotiated won't do. It won't mandate that we continue combat missions. It won't set troop levels. It won't commit the United States to join Iraq in a war against another country or provide other such security commitments, and it won't authorize permanent bases. So far so good.

But it isn't entirely clear yet what the proposed security agreement will do. Secretaries Rice and Gates suggested in their Washington Post piece 2 weeks ago that the agreement will provide appropriate authorities to help the Iraqi Government "fight al-Qaeda, develop its security forces, and stem the flow of lethal weapons and training from Iran."

We are also told that we shouldn't worry so much about this agreement because we have these types of agreement with 115 other nations around the world, covering everything from authority to fight, to delivering the mail. With respect, I think the agreement that both Secretaries are describing is likely to be a little more robust than what would be necessary to ensure that our soldiers get their Christmas greeting cards. And therein lies the problem.

Describing the proposed agreement as merely routine is, I believe, disingenuous at best. There is nothing routine about it or the situation in Iraq. And trying to dampen concerns in Congress by suggesting that the declaration doesn't mean everything that it says suggests that the administration either doesn't understand English or has deliberately misled the Iraqis. Neither interpretation is flattering.

What exactly did Prime Minister al-Maliki think when he signed the document that provided the United States "security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq"? Did he think President Bush was just kidding? Or does he think he and his government actually expect us to help if the neighbors start getting too pushy? And if he does expect help, what does he think that help looks like?

Leading Congress to believe one thing and the Iraqis another is a recipe for political disaster at home and a diplomatic catastrophe abroad. The most likely outcome of such irresponsible behavior is the loss of the last remnants of our national reputation.

And bearing those political costs in mind, let's go back to one of the things that Secretaries Rice and Gates say the agreement won't do. It won't mandate combat missions. That sounds like good news; but based on their essay, it won't prohibit combat missions either. So the administration clearly expects that the United States forces will continue to be engaged in combat in Iraq beyond the expiration of the U.N. mandate later this year, which in turn means the administration will need authority for United States forces to fight, authority for them to take prisoners, and presumably immunity from Iraqi law for our soldiers.

According to a New York Times story from January—and without objection I will put the story in the record; seeing none, so ordered—the Bush administration has drafted such an agreement. It contains broad authority to conduct military operations, guarantees immunity from Iraqi law for United States forces and contractors, and provides the United States with power to detain Iraqi prisoners.

[The information referred to follows:]

U.S. ASKING IRAQ FOR WIDE RIGHTS ON WAR

By THOM SHANKER and STEVEN LEE MYERS
The New York Times, January 25, 2008

WASHINGTON—With its international mandate in Iraq set to expire in 11 months, the Bush administration will insist that the government in Baghdad give the United States broad authority to conduct combat operations and guarantee civilian contractors specific legal protections from Iraqi law, according to administration and military officials.

This emerging American negotiating position faces a potential buzz saw of opposition from Iraq, with its fragmented Parliament, weak central government and deep sensitivities about being seen as a dependent state, according to these officials.

At the same time, the administration faces opposition from Democrats at home, who warn that the agreements that the White House seeks would bind the next president by locking in Mr. Bush's policies and a long-term military presence.

The American negotiating position for a formal military-to-military relationship, one that would replace the current United Nations mandate, is laid out in a draft proposal that was described by White House, Pentagon, State Department and military officials on ground rules of anonymity. It also includes less controversial demands that American troops be immune from Iraqi prosecution, and that they maintain the power to detain Iraqi prisoners.

However, the American quest for protections for civilian contractors is expected to be particularly vexing, because in no other country are contractors working with the American military granted protection from local laws. Some American officials want contractors to have full immunity from Iraqi law, while others envision less sweeping protections. These officials said the negotiations with the Iraqis, expected to begin next month, would also determine whether the American authority to conduct combat operations in the future would be unilateral, as it is now, or whether it would require consultation with the Iraqis or even Iraqi approval.

"These are going to be tough negotiations," said one senior Bush administration official preparing for negotiations with the Iraqis. "They're not supplicants."

Democrats in Congress, as well as the party's two leading presidential contenders, Senators Hillary Rodham Clinton and Barack Obama, have accused the White House of sponsoring negotiations that will set into law a long-term security relationship with Iraq.

But administration officials said that the American proposal specifically did not set future troop levels in Iraq or ask for permanent American bases there. Nor, they said, did it offer a security guarantee defining Washington's specific responsibilities should Iraq come under attack.

Including such long-term commitments in the agreement would turn the accord into a bilateral treaty, one that would require Senate approval. The Bush administration faces the political reality that it cannot count on the two-thirds vote that would be required to approve a treaty with Iraq setting out such a military commitment.

Administration officials are describing their draft proposal in terms of a traditional status-of-forces agreement, an accord that has historically been negotiated by the executive branch and signed by the executive branch without a Senate vote.

"I think it's pretty clear that such an agreement would not talk about force levels," Defense Secretary Robert M. Gates said Thursday. "We have no interest in permanent bases. I think the way to think about the framework agreement is an approach to normalizing the relationship between the United States and Iraq."

While the United States currently has military agreements with more than 80 countries around the world, including Japan, Germany, South Korea and a number of Iraq's neighbors, none of those countries are at war. And none has a population outraged over civilian deaths at the hands of armed American security contractors who are not answerable to Iraqi law.

Democratic critics have complained that the initial announcement about the administration's intention to negotiate an agreement, made Nov. 26, included an American pledge to support Iraq "in defending its democratic system against internal and external threats."

Representative Bill Delahunt, Democrat of Massachusetts, said that what the administration was negotiating amounted to a treaty and should be subjected to Congressional oversight and ultimately ratification.

"Where have we ever had an agreement to defend a foreign country from external attack and internal attack that was not a treaty?" he said Wednesday at a hearing of a foreign affairs subcommittee held to review the matter. "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."

Senator Jim Webb, Democrat of Virginia, who raised concerns in a letter to the White House in December, said the negotiations were an unprecedented step toward making an agreement on status of forces without the overarching security guarantees like those provided in the NATO treaty. He added that the Democratic majority would seek to block any agreements with the Iraqis, unless the administration was clear about its ultimate intentions in Iraq.

"There's no exit strategy, because the administration doesn't have one," Senator Webb said in a telephone interview on Thursday. "By entering this agreement, they avoid a debate and they validate their unspoken strategy."

Over recent days, administration officials acknowledged that the language of the Nov. 26 announcement went too far. The officials said that they were limiting the

scope of the pending negotiations to issues that could be resolved this year, before the Security Council resolution expired.

To that end, administration officials said the draft text was narrowly written to codify what the administration regarded as four essential requirements for the American armed forces to continue the mission in Iraq.

In seeking immunity for contractors, the administration is requesting protections for the 154,000 civilian contractors working for the Defense Department in Iraq; most carry out such duties as driving trucks, preparing meals and the like. The administration says it depends heavily on those contractors, including about 13,000 private security contractors working for the Pentagon.

Under an earlier agreement between the United States and Iraq, those contractors have been exempt from Iraqi law. Justice Department officials have said it is not clear whether any crimes committed by contractors in Iraq, including the role played by Blackwater employees in a September shooting in Baghdad, would be subject to American law, but the administration has taken steps intended to close any loopholes.

In seeking authority to conduct combat operations, the Bush administration is seeking something similar to the current United Nations Security Council resolution, which allows the United States and other coalition forces to operate in Iraq "in support of mutual goals," one Bush administration official said.

The official said the agreement sought by the United States could allow Iraq to "rescind that authority at a later date as the security environment improves and they take over the mission."

In contrast to the contractors, the immunity being sought for American military personnel is a standard part of most recent agreements for basing American forces on foreign soil. Such agreements grant exclusive jurisdiction over American forces to American law, specifically the Uniform Code of Military Justice.

In terms of prisoners, the administration and military would like the Iraqis eventually to take control of all battlefield detainees. But they say that the United States still needs the authority to hold those prisoners, because Baghdad does not yet have the capacity—in personnel, facilities or legal structures—to manage the current detainee population of about 26,000.

Senior administration officials say concerns that the agreement will limit the decisions of the next president are not justified.

"More than 90 percent of this will be a pretty standard status-of-forces agreement," said one senior official involved in drafting the American proposal. "It is not something that will tie the hands of the next president."

The military-to-military aspect of the relationship is to be negotiated by July 31, well ahead of the Dec. 31 expiration date for the United Nations Security Council Resolution that has been the core legal authority for the American-led military mission in Iraq. Diplomats will also negotiate political and economic relations between the two countries.

The draft American text on military-to-military relations, now under discussion at the White House, Pentagon and State Department, is short, running fewer than 15 pages.

"It's not 'War and Peace,' and it doesn't have a lot of hard-to-read legal jargon," said one military officer.

American officials are keenly aware that any agreement must be approved by Iraq's fractured Council of Representatives, where Sunni and Shiite factions feud and even Shiite blocs loyal to competing leaders cannot agree.

Mr. ACKERMAN. If the proposed agreement is as the New York Times describes, that sounds to me much more than a Status of Forces Agreement, and anything but routine. It sounds more like a commitment for continued open-ended combat. And I think it would constitute precisely the type of long-term commitment that should not be entered into during the current administration without the express approval of Congress.

As a matter of constitutional principle, and as a matter of sound foreign policy, and as a matter of plain old common sense, it seems to me that U.S. security commitments, and especially solemn promises to defend another nation, should come in the form of a treaty. Even in instances where we have reserved for ourselves the right to intervene to defend another nation, as we have done repeatedly in Latin America, those interventions were based on a treaty rati-

fied by the Senate, whatever one might think about the treaties themselves.

While some have pointed out to our current operations in Afghanistan as a precedent, the underlying legal authority for our presence there comes from the Congress and from the international community in the form of United Nations mandates, not from a bilateral agreement with the administration of Afghanistan.

So far, what I know about the administration's intentions leads me to the inexorable conclusion that there is quite a lot for us to be concerned about, that Congress does need to be intensely involved in this process, and that this afternoon's hearing, as I noted, is only the beginning of our discussions, and not the end.

The State Department's own rules require it to always ensure "that the utmost care is exercised to avoid any invasion or compromise of the constitutional powers of the President, the Senate, and the Congress as a whole." My thoughts exactly.

[The prepared statement of Mr. Ackerman follows:]

PREPARED STATEMENT OF THE HONORABLE GARY L. ACKERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON THE MIDDLE EAST AND SOUTH ASIA

The subcommittees will come to order. First I'd like to thank our Administration witnesses today for fulfilling Secretary Rice's commitment that the Department would provide witnesses to appear before our subcommittees. This is the beginning of what I believe should be intensive and continuous consultations with the Congress on the nature and substance of the agreements to be negotiated between the United States and Iraq as envisioned in the November 26, 2007 Declaration of Principles.

I suspect that the Bush Administration is somewhat surprised by the reaction to the Declaration here in Congress and that they probably wish they had drafted that document with a little more precision. On their face, the plain meaning of the words in the Declaration look to us very much like a commitment for U.S. forces to defend the government of Iraq against foreign and domestic threats in perpetuity.

Since the Declaration was released there has been testimony by Secretary Rice and Secretary Gates, an op-ed piece by the two secretaries in the *Washington Post* and there has been a classified briefing for the Foreign Affairs Committee all designed to tell us what the security agreement to be negotiated *won't* do: it won't *mandate* that we continue combat missions; it won't *set* troop levels; it won't *commit* the United States to join Iraq in a war against another country or provide other such security commitments; and it won't *authorize* permanent bases. So far so good.

But it isn't entirely clear yet, what the proposed security agreement *will* do. Secretaries Rice and Gates suggested in their *Washington Post* piece two weeks ago that the agreement will provide appropriate authorities to help the Iraqi government "fight al-Qaeda, develop its security forces and stem the flow of lethal weapons and training from Iran." We are also told that we shouldn't worry so much about this agreement because we have these types of agreements with 115 nations around the world covering everything from authority to fight, to delivering mail. With respect, I think the agreement that both secretaries are describing is likely to be a little more robust than what would be necessary to ensure our soldiers get their mail. And therein lies the problem.

Describing the proposed agreement as merely routine is disingenuous at best. There is nothing routine about it or the situation in Iraq. And trying to dampen concerns in Congress by suggesting that the Declaration doesn't mean everything it says, suggests the Administration either doesn't understand English or has deliberately misled the Iraqis. Neither interpretation is flattering.

What exactly did Prime Minister al-Maliki think when he signed a document that provided United States "security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq?" Did he think President Bush was just kidding or does he and his government actually expect us to help if the neighbors start getting too pushy? And if he does expect help what does he think that help looks like? Leading Congress to believe one thing and the Iraqis another, is a recipe for political disaster at home and diplomatic catastrophe abroad. The most likely

outcome of such irresponsible behavior is the loss of the last remnants of our national reputation.

So bearing those potential costs in mind, let's go back to one of the things that Secretaries Rice and Gates say the agreement won't do: it won't mandate combat missions. That sounds like good news but, based on their essay, it won't prohibit combat missions either. So the Administration clearly expects that U.S. forces will continue to be engaged in combat in Iraq beyond the expiration of the U.N. mandate later this year which in turn means the Administration will need authority for U.S. forces to fight, authority for them to take prisoners and presumably immunity from Iraqi law for our soldiers. According to a New York Times story from January, and without objection I will put the story in the record, the Bush Administration has drafted just such an agreement. It contains broad authority to conduct military operations, guarantees immunity from Iraqi law for U.S. forces and contractors and provides the United States with power to detain Iraqi prisoners. If the proposed agreement is as the Times describes that sounds to me like much more than a status of forces agreement and anything but routine. It sounds more like a commitment for continued, open-ended combat and I think it would constitute precisely the type of long-term commitment that should not be entered into during the current Administration without the express approval of the Congress.

As a matter of constitutional principle, as a matter of sound foreign policy and as a matter of plain old common sense, it seems to me that U.S. security commitments and especially solemn promises to defend another nation should come in the form of a treaty. Even in instances where we have reserved for ourselves the right to intervene to defend another nation, as we have done repeatedly in Latin America, those interventions were done based on a treaty ratified by the Senate, whatever one might think about the treaties themselves. While some have pointed to our current operations in Afghanistan as a precedent, the underlying legal authority for our presence there comes from the Congress and from the international community in the form of United Nations mandates, not from a bilateral agreement with the Government of Afghanistan.

So far, what I know about the Administration's intentions leads me to the inextinguishable conclusion that there is quite a lot for us to be concerned about, that Congress does need to be intensely involved in this process, and that this afternoon's hearing, as I noted, is only the beginning of our discussions, not the end. The State Department's own rules require it to always ensure "that the utmost care is exercised to avoid any invasion or compromise of the constitutional powers of the President, the Senate and the Congress as a whole." My thoughts exactly.

Mr. ACKERMAN. Mr. Rohrabacher.

Mr. ROHRABACHER. Thank you, Mr. Chairman. And I would like to thank you and Chairman Delahunt for persisting. This is the fifth hearing about the road ahead for the United States in Iraqi relations. In November 2007, President Bush and Iraqi Prime Minister al-Maliki signed a defense agreement that appeared to commit the United States to a long-term military relationship with Iraq. From what little we know of that agreement, called the Declaration of Principles, it may or may not be something that needs congressional approval. We simply do not have enough information about the agreement that is being negotiated to know if Congress should have a role.

Mr. Chairman, you and Chairman Delahunt have rightfully held hearings to determine the nature of this agreement. And I am pleased that the administration has finally responded to your requests to provide witnesses to discuss this issue. It is unfortunate that the administration ignored invitations to testify at our four previous hearings. And I applaud Chairman Delahunt for bringing this issue up directly with the Secretary of State. Secretary of State Condoleezza Rice, who I deeply respect, was asked by Chairman Delahunt directly, whether or not she would provide witnesses for a hearing on this issue. That was at a full committee hearing on the State Department budget for 2009. And much to her credit, Secretary of State Rice, who I say I deeply respect, immediately re-

plied yes, in the affirmative. And that, no doubt, is why we have finally the joy of having with us representatives of the administration to explain a policy that should not have required such an enormous effort on our part to get us here.

Since the Declaration of Principles agreement was signed, the administration has clarified that the document was not intended to hold the United States to a long-term commitment to Iraq.

When Secretary of Defense Gates testified before the Senate Armed Services Committee last February, he told the panel the Status of Forces Agreement that is being discussed will not contain a commitment to defend Iraq, and neither will any Strategic Framework Agreement. Well, with our eye on the future, we should note that an immediate hasty withdrawal of Americans from Iraq will simply provide the opportunity for evil forces—which I consider evil forces—in that region to fill our vacuum. However, we need to know exactly what is the plan and what we intend to do, what the United States intends to do, and what this administration intends to commit us to do in the future.

You know, in Congress I remember there were some hearings where someone was there and he said you know, I am not just a potted plant, I am here to participate. Well, Congress is not just a potted plant when it comes to helping determine America's long-term policy. And unfortunately, this administration has not shown the cooperative spirit that is necessary for us to succeed as a Nation. And I think they have been undermining their own ability to put forth a policy in Iraq that will work.

And it should not have taken—this is perhaps what we are facing today, what I am saying is precisely the reason why the administration is having trouble. It is not because of this end, it is because it took us so long to get you in those seats to talk to us about this issue. As this complex situation continues in Iraq, I would hope that we have more such discussions and the administration has more witnesses.

I actually agree with the administration on many of its foreign policy goals in Iraq. I have always been in agreement with it. But I have always understood that these decisions as to what policy should be does not rest simply with the President of the United States and the executive branch. George Bush was elected President. He was not elected king. There is too much at stake in this game for one-upmanship or turf battles dealing with Congress and the executive branch.

We are all here at the behest of the American people. And they have a right to know where their government is taking them, and for us to discuss it and figure out if that is the right decision and which way to go. They, like the administration, the American people want an honorable end to the military involvement that we have in Iraq, an honorable end that will not lead to worse consequences in the future. That is what we are all about.

Well, we owe the American people a transparent process to discuss how to reach that end, that honorable end that will not put us in jeopardy in the future. And I am looking forward to hearing what the administration has to say. I lament that it has taken us so long to get this discussion to happen.

And I thank you, Mr. Chairman, and I thank Chairman Delahunt for the effort that he has put into this endeavor. Thank you.

Mr. ACKERMAN. Thank the gentleman from California. I doubly thank him for his being even-handed, not because he agrees with some of the perspective that has been so far expressed, but that he is an equal opportunity administration basher, and has not been reticent to do that regardless of whether the administration was of his party or not, or whether he has been in the Majority or the Minority. And your fairness, whether we all agree or disagree, is duly noted.

Turn next to Chairman Delahunt, whose committee shares with us today the honors of holding this hearing. And let me just say that it is very, very good, and sends a very strong message that our committees can work together on so many of these issues. Chairman Delahunt.

Mr. DELAHUNT. Thank you, Chairman Ackerman, and let me just express my gratitude to you for your leadership on many of the complex issues surrounding our involvement in Iraq. And I too am very grateful for the opportunity to share this dais with you at this particular hearing.

And let me also echo your compliments to my ranking member, Mr. Rohrabacher. He is many things, but one thing that can be said of Dana Rohrabacher, he is fair, he is forthright, and we share the same view in terms of the necessity of vigorous oversight. And he is also my friend.

Mr. ACKERMAN. Not to be used in your campaign.

Mr. DELAHUNT. Maybe if I endorse him, we can gain a seat out there somewhere in California.

This hearing is of particular importance. It is not only about the future of the bilateral relationship between Iraq and the United States, but also about the constitutional role of Congress in authorizing the use of American military force overseas. I would submit that it is not only our prerogative but our obligation to ensure that the constitutional responsibility of Congress in the authorization of military force is not further eroded.

The announcement of the Declaration of Principles, with its expansive menu of potentially significant commitments in the economic, political, and security spheres went largely unnoticed in Congress. My own awareness was prompted by the public opposition of a majority of the Iraqi Parliament to the 1-year renewal of the U.N. mandate last December, which, according to legal experts on the Iraq Constitution, should have required a two-thirds vote of approval by the Iraqi Parliament. That approval was never obtained by the Maliki government. This apparent violation of the Iraq Constitution was seemingly ignored by the Security Council and the Bush administration. And it behooves us to remember that the Iraqi Parliament is the only body in Iraq directly elected by the Iraqi people. And it is further interesting to note that the opposition of the Iraqi Parliament was based on the failure to incorporate in the renewal an explicit timetable for the withdrawal of American troops.

In the Declaration of Principles, the Bush administration and the Maliki government have signaled an intention to negotiate a broad

agreement that would replace the U.N. mandate upon its expiration in December of this year. On its face, the declaration would set the stage for American security commitments, commitments that are unprecedented. These would include—and I will quote from the actual language of the declaration—“supporting the Republic of Iraq in defending its democratic system against internal and external threats, and providing security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq.”

In light of the magnitude of these apparent commitments that were being discussed, I found it particularly disturbing that General Lute, for whom I have great respect, and is serving as the President’s Deputy National Security Adviser for Iraq and Afghanistan, had this to say; that such agreements would not require formal negotiations or formal inputs from Congress. Congress, in other words, would be left out of that decision.

In addition, there has been an effort by the administration to equate whatever is negotiated to a typical Status of Forces Agreement, which is nothing more—or fundamentally an agreement that relates to legal immunities for U.S. military personnel and others.

But the Declaration of Principles contemplates something far more expansive than that kind of arrangement. And I would note that Secretaries Rice and Gates in a recent op-ed piece continue to present the Status of Forces Agreements, their acronym being SOFAs, as something they are not, something of much greater consequence. They state that the Status of Force Agreements range from—this is their description—authority to fight, to rules for delivering the mail. The key phrase, I would suggest here, is the authority to fight. And that requires congressional approval.

We have testimony from a hearing that I chaired just last Thursday when testimony from the Congressional Research Service stated that there had been a review of some 70 Status of Forces Agreements achieved by a sole executive agreement, and found not one example of a provision that conferred authority to fight. The overwhelming consensus of scholars who have testified in the previous four hearings before our subcommittees is that the authority to fight is a power to be shared between Congress and the executive.

One of our previous witnesses, Professor Michael Glennon, former counsel to the Senate Foreign Relations Committee, made this point in a letter that he sent me for this hearing. And I would ask that it be made part of the record. Let me quote from his letter: “Under U.S. domestic law, authority for the President to use force, authority to fight in Iraq, must either come from the Constitution or the Congress.” The agreement with Iraq, which apparently will be entered into as a sole executive agreement, therefore could not serve as a source of such authority. And therefore, I reject the position held by the administration that no formal input or approval by the Congress is required.

While the term Strategic Framework Agreement has been alluded to by administration officials, it now appears after reviewing Ambassador Satterfield’s statement that in fact there are two separate and distinct agreements that are being considered. The Ambassador states that the Strategic Framework Agreement will broadly address the topics outlined in the Declaration of Principles,

and that it and the Status of Forces Agreement together will constitute—and again this is the Ambassador’s written testimony—an accord that both affirms Iraqi sovereignty and continues to permit United States and coalition forces to assist in restraining extremists and outside actors who seek power through terror and violence should the United States administration and Iraqi Government deem such operations necessary.

In light of this testimony, I would conclude that our Constitution requires congressional approval of such a so-called Strategic Framework Agreement because such an accord necessarily implicates the authority to fight. And as others have said, the decision to use force overseas, except for limited defensive purposes, requires a collective judgment, a collective judgment of the political branches of the government.

I look forward particularly to the Ambassador’s testimony on this point. And thank you, Mr. Chairman.

Mr. ACKERMAN. Thank you, Chairman Delahunt.

[The information referred to follows:]

THE FLETCHER SCHOOL,
TUFTS UNIVERSITY,
March 1, 2008.

Hon. WILLIAM D. DELAHUNT, *Chairman,*
Subcommittee on International Organizations, Human Rights, and Oversight,
Committee on Foreign Affairs,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your invitation to testify before your Subcommittee on March 5 concerning the proposed U.S. Agreement with Iraq. I regret that I am unable to be present; however, I understand that it may be helpful to express my views in writing and that this letter will be entered in the hearing record.

I have been asked, specifically, whether the proposed Agreement, as outlined in the November 26, 2007 Declaration of Principles, can be construed as authorizing the use of force by the United States in Iraq, and whether the Agreement can lawfully do so.

As you know, the Agreement will, among other things, provide “security assurances and commitments . . . to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, waters, or airspace.” The Agreement would further commit the United States to defend Iraq not simply against foreign aggression but “against internal and external threats,” and would commit the United States to support the Iraqi government in its effort to “defeat and uproot” “all outlaw groups” from Iraq. In a February 13, 2008 opinion piece in the *Washington Post*, Secretary of State Condoleezza Rice and Secretary of Defense Robert Gates appeared to renounce any potential commitment by the United States to use force, but suggested instead that the Agreement might include, in their words, “authority to fight.”

The question whether the Agreement can lawfully confer “authority to fight” on the United States arises in both international law and U.S. domestic law. To summarize my opinion, provisions such as these, if included in the Agreement with Iraq, probably could constitute lawful authority under international law for use of force by the United States in Iraq; however, these provisions could not constitutionally constitute authority under U.S. domestic law for use of force.

Under international law, police activities, enforcement action and other uses of force by one state within the territory of another state are permitted if the government of that state consents. Provisions such as those in question could constitute consent by the government of Iraq for use of force by the United States within the territory of Iraq. Of course, any relevant limitations or restrictions imposed by humanitarian law (concerning, for example, requirements of humane treatment, proportionality, or the need to distinguish between combatants and non-combatants) would apply to any use of force by the United States.

There is authority that a government cannot, under international law, lawfully consent to military intervention by another state if significant areas of its country or substantial parts of its population are under the control of an organized insur-

gency—*i.e.*, if the country is in a civil war. The theory is that principles of self-determination require that the people of a state be permitted to determine their own destiny free from outside interference. According to this theory, intervention in a civil war is impermissible whether that intervention occurs on behalf of the sitting government or on behalf of insurgents—unless another state has intervened unlawfully on behalf of either, in which case “counter-intervention” is permitted on behalf of the other side. These rules have been violated so many times by so many states in so many conflicts, however, that it is in my opinion doubtful whether they now constitute binding international law. As a question of fact it is, moreover, doubtful whether the insurgency in Iraq has risen to a level that would constitute a civil war for international law purposes, although that could of course change over the period within which any Agreement is in force.

Under U.S. domestic law, authority for the President to use force—“authority to fight”—in Iraq must come either from the Constitution or the Congress. The Agreement with Iraq, which apparently will be entered into as a sole executive agreement, therefore could not serve as a source of such authority. The question whether a sole executive agreement can provide authority to use force was put to the State Department during the administration of President Gerald Ford. In connection with the appearance of Secretary of State Henry Kissinger appearance before the Senate Foreign Relations Committee on November 19, 1975, Senator Dick Clark submitted the following written question to the Department of State: “Does any executive agreement authorize the introduction of U.S. armed forces into hostilities, or into situations wherein imminent involvement in hostilities is clearly indicated by the circumstances?” Assistant Secretary of State Robert J. McCloskey responded as follows on March 1, 1976 in a letter to Senator Clark:

The answer is “no.” Under our Constitution, a President may not, by mere executive agreement, confer authority on himself in addition to authority granted by Congress or the Constitution. The existence of an executive agreement with another country does not create additional power. Similarly, no branch of the Government can enlarge its power at the expense of another branch simply by unilaterally asserting enlarged authority. . . .

The State Department’s 1976 conclusion was correct. Authority to use force must come either from the Congress or the Constitution. The President cannot confer such authority upon himself. So obvious is this principle that, when Congress made clear in 1973 in the War Powers Resolution (in section 8(a)(2)) that no treaty may be construed as conferring implied authority to use force, it made no reference to executive agreements. Congress no doubt deemed it unnecessary to affirm that if a treaty approved by two-thirds of the Senate cannot provide such authority, *a fortiori* a sole executive agreement cannot.

Please let me know if I can be of any further assistance.

Sincerely,

MICHAEL J. GLENNON,
Professor of International Law

Mr. ACKERMAN. The chair would ask for unanimous consent of the committee to allow Representative DeLauro, who is not a member of the committee, to sit with the committee as if she were a member of the committee for purposes of this hearing. Seeing no objection, it is so ordered. Ms. DeLauro, would you like to—

Ms. DELAURO. Mr. Chairman, I just want to say thank you to you and to Mr. Delahunt and Mr. Rohrabacher for the opportunity to be here today. I will be very brief in my remarks. And I again thank you—because I do not sit on this committee—that this is an extremely important issue, and where I have looked into it and established legislation around it. And you have been wonderful, Mr. Delahunt has, and yourself, and cordial in allowing me to participate in the discussions.

So I want to also thank Mr. Satterfield for being here today to represent the State Department and Assistant Secretary Long from the Department of Defense. I really am very glad to see the administration is finally beginning to follow through on its commitment to “openness and transparency.”

In particular, I hope today's testimony will shed light on Secretaries Rice and Gates' February 13th op-ed claiming that a Status of Forces Agreement would give the United States "authority to fight." According to the Congressional Research Service, that simply is not true. Status of Forces Agreements are meant instead to provide the framework for legal protections and rights while the U.S. personnel are present in a country for agreed-upon purposes.

Rice and Gates wrote that "nothing will commit the United States to join Iraq in a war against another country or provide other such security commitments." Yet the very next day the Iraqi Foreign Minister said that he was hoping the agreement would bring, a—and I quote again—"continued commitment by the United States Government to stand by the Iraqi Government against foreign threats and against internal threats."

Clearly, this is much more than the typical Status of Forces Agreement. And we should not rush to finalize any agreement of this magnitude just because the Iraqis would prefer not to extend the U.N. mandate, which has been in place nearly 4 years. It is in both our Nations' best interests to persuade the Iraqi people to extend the U.N. mandate. And a future agreement could then be finalized by a new administration and a Congress that will be responsible for implementing it in the years ahead.

I look forward to hearing the witnesses' testimony on these critical issues. And once again I thank Mr. Delahunt and Mr. Ackerman for inviting me to participate in this hearing.

Mr. ACKERMAN. Thank you, Ms. DeLauro.

There being no further members to be recognized, we will turn to our first panel. Ambassador David Satterfield is Senior Adviser to the Secretary of State and Coordinator for Iraq. He has held that position since August 2006. Immediately prior to that, he was Deputy Chief of Mission at the U.S. Embassy in Baghdad. Ambassador Satterfield was Principal Deputy Assistant Secretary in the Bureau of Near Eastern Affairs from June 2001 until June 2004. And before that he served as our Ambassador to Lebanon. A career Foreign Service officer, Ambassador Satterfield has served on the National Security Council staff from 1993 to 1996.

Ambassador Satterfield joined the Foreign Service in 1980, and has served overseas in Jeddah, Tunis, Beirut and Damascus. In addition, he has held various positions in the Bureaus of Near Eastern and South Asian Affairs and Intelligence and Research, and has been director of the executive secretariat staff, recipient of numerous awards for service to our Nation.

Ambassador Satterfield attended the University of Maryland and Georgetown University. Welcome to you, Ambassador.

Mary Beth Long is Assistant Secretary of Defense for International Security Affairs, and has held that position since December of last year. Immediately prior to that, she was Principal Deputy Assistant Secretary in that same office. Ms. Long also served for several years as Deputy Assistant Secretary of Defense for Counternarcotics, and in that capacity oversaw the Department's global counternarcotics efforts.

From 1986 to 1999, Ms. Long worked for the Central Intelligence Agency in the Directorate of Operations on issues ranging from counternarcotics to money laundering to terrorism. In 1996, she

served as the deputy and acting chief for the agency's Haiti task force.

Ms. Long is a graduate of Pennsylvania State University and Washington and Lee University School of Law. Secretary Long, welcome to you as well.

I understand that the Defense Department has no written statement to present, but will make remarks for us on the record. And for the record, let me say it is the intent of the chair to press our witnesses to be specific about the nature of the security commitments we intend to make to Iraq, whether those commitments will be legally binding on the United States, and whether they will be public or secret. With that, Ambassador Satterfield, we will begin with you.

STATEMENT OF THE HONORABLE DAVID SATTERFIELD, SENIOR ADVISER, COORDINATOR FOR IRAQ, U.S. DEPARTMENT OF STATE

Mr. SATTERFIELD. Thank you, Mr. Chairman, Chairman Delahunt, I would ask concurrence to enter my written remarks into the record. I have some brief oral remarks.

Mr. ACKERMAN. Could you pull the microphone a little bit closer?

Mr. SATTERFIELD. Certainly. I would ask for concurrence, please, for my written remarks to be entered into the record. I have some brief opening oral remarks.

Mr. ACKERMAN. Can you pull it closer yet? Or could we turn up the volume?

Mr. SATTERFIELD. Chairman, is this—

Mr. ACKERMAN. Much better.

Mr. SATTERFIELD. Thank you. Chairman Ackerman, Chairman Delahunt, I would ask permission for my written remarks to be entered into the record. I have brief oral remarks to open with.

Mr. ACKERMAN. Without objection.

Mr. SATTERFIELD. Chairman Ackerman, Chairman Delahunt, Congressman Rohrabacher, members of the subcommittees, I appreciate the opportunity to appear before you all today to discuss the United States Government's progress toward developing a basic framework for normalized relations with the Iraqi Government, which would include what is known as a Status of Forces Agreement.

Our overarching goal in Iraq is to help the Iraqi people establish their country as a stable, peaceful, democratic nation with an effective sovereign government that can meet its people's needs, all its people's needs, and play a positive role in the region and in the international community.

There is understandable and vigorous debate about the future presence, role, and composition of United States forces in Iraq. But this administration believes that in pursuit of basic and long-standing U.S. interests that United States forces will need to operate in Iraq beyond the end of this year. The Government of Iraq has expressed its strong desire that the United Nations Chapter VII mandate expire at the end of this year. The United States and the United Nations Security Council support this objective. It is imperative that the United States negotiate with the Government of Iraq an agreement that would provide all necessary legal authori-

ties and protections for our troops to continue to operate in Iraq, an agreement which is in its shape similar in many respects to SOFAs we have across the world, but which will take into account the particular circumstances and requirements for our forces in this country in Iraq.

In addition to a Status of Forces Agreement, we intend to establish a strategic framework for a strong relationship with Iraq, reflecting our shared political, economic, cultural, and security goals and interests. This strategic framework will broadly address the topics outlined in the Declaration of Principles signed by President Bush and Prime Minister Maliki on November 26th, 2007. Both the Status of Forces Agreement and the strategic framework come at the urging of the Iraqi Government and moderate political forces from across the spectrum of Iraq's ethnic, religious, and political communities. Together they seek an accord that both affirms Iraqi sovereignty and will permit the continued assistance of United States and coalition forces in that nation's progress toward full security and peace.

Ambassador Crocker, our Ambassador in Baghdad, will serve as the lead negotiator. The Iraqi side is establishing a broadly representative and technically capable team. Formal negotiations will begin this month, starting with overall contextual or framing briefs to begin in the days ahead.

The Status of Forces Agreement, Mr. Chairman, will set the basic legal parameters for the United States military presence in Iraq, including the appropriate authorities and protections essential for our troops to operate effectively. These provisions are vital for our military. We owe it to our troops in Iraq to obtain for them the protections they have elsewhere in the world. The framework and the Status of Forces Agreement will not tie the hands of the next President, or indeed this President. They will ensure that every policy option remains on the table. The size of the United States presence in Iraq, the missions to be performed by such forces, if forces are present are decisions for this President and for the next President to make. The framework and the Status of Forces Agreement will not include a binding commitment to defend Iraq or any other security commitments that would warrant Senate advise and consent.

I wish to be clear. They will not establish permanent bases in Iraq, nor will they specify in any fashion the number of American forces to be stationed there. In keeping with past practice regarding such agreements, our intent is to conclude the Status of Forces Agreement as an executive agreement rather than a treaty. Congress will be consulted throughout the entire process, as Secretary of Defense Gates and Secretary of State Rice have noted, as negotiations proceed in the coming months. Over a half dozen background briefings by senior administration officials, including my colleague, Assistant Secretary Long, have already been held and Ambassador Crocker and General Petraeus are scheduled to testify before the Congress next month.

As with other negotiations, we will not publicly discuss our negotiating positions, but we will ensure that Members of Congress are kept fully informed.

The United States, Mr. Chairman, has enduring national interests in Iraq. Two thousand and eight is a year of critical transition both for the United States and for the country and people of Iraq. Our primary objective now is to build a sustainable foundation for success. We are committed to doing everything we can to ensure that the situation in Iraq continues to stabilize and that the next administration has maximum flexibility to consider and to adopt its own policies to conditions and circumstances on the ground. This is precisely what an agreement that we seek with Iraq must and will achieve.

Thank you.

Mr. ACKERMAN. Thank you, Ambassador.

[The prepared statement of Mr. Satterfield follows:]

PREPARED STATEMENT OF THE HONORABLE DAVID SATTERFIELD, SENIOR ADVISER,
COORDINATOR FOR IRAQ, U.S. DEPARTMENT OF STATE

Chairman Ackerman, Chairman Delahunt, Congressman Pence, Congressman Rohrabacher, Members of the Subcommittees: Thank you for the opportunity to appear before you today to discuss the U.S. government's progress towards developing a basic framework for normalized relations with the Iraqi government, which would include what is known as a Status of Forces Agreement.

Our overarching goal in Iraq is to help the Iraqi people establish their country as a stable democratic nation, with an effective sovereign government that can meet its people's needs and play a positive role in the international system. Our efforts are now paying off. Not only have Iraq's army and police played an increasing role in dramatically improving security over the past year, but also Iraq's democratically elected government is increasingly providing services for the Iraqi people and building relationships with other nations to combat regional instability. More and more, the Iraqis are taking greater control of their own destiny, and they desire a more normal relationship with the United States.

There is healthy debate about the future presence and composition of U.S. forces in Iraq. However, it is clear that U.S. forces will need to operate in Iraq beyond the end of this year. For nearly five years, the presence in Iraq of the United States and our coalition partners has been authorized by United Nations resolutions. But the Government of Iraq has expressed its strong desire that the UN Chapter VII mandate expire at the end of this year. The U.S. and the UN Security Council support this goal. It is therefore imperative that the United States negotiate with the Iraqi government an agreement that would provide all the legal authorities and protections necessary for our troops to continue to operate in Iraq—an agreement similar to the many status of forces agreements (SOFAs) we have across the world, which would take into account the particular circumstances and requirements for our forces in Iraq.

In addition to a status of forces agreement, we intend to establish a framework for a strong relationship with Iraq, reflecting our shared political, economic, cultural, and security interests. This strategic framework will broadly address the topics outlined in the Declaration of Principles signed by President Bush and Prime Minister Maliki on November 26, 2007. Both the SOFA and the strategic framework, which will build upon the improving security in Iraq and the increased capabilities of the Iraqi government, come at the urging of the Iraqi government and moderate political forces from across the spectrum of Iraq's ethnic, religious and political communities. Together, they seek an accord that both affirms Iraqi sovereignty and continues to permit U.S. and coalition forces to assist in restraining extremists and outside actors who seek power through violence and terror, should the U.S. Administration and Iraqi government deem such operations necessary. Strengthening those moderate political voices is vital to Iraq's long-term stability and regional security. And it is vital to our national security that they succeed.

At present, we and the Iraqis are organizing our negotiating teams and clarifying our positions on key issues. Ambassador Crocker will serve as the lead negotiator and strategist in Baghdad. On the Iraqi side, we are encouraged that they appear to be setting up a broadly representative and technically capable team, and we anticipate that formal negotiations will begin this month. These negotiations will begin with overall "framing" briefs to ensure that we and the Iraqi negotiators have a similar fact-based assessment of the situation before we begin discussing substantive issues.

The status of forces agreement will set the basic legal parameters for the U.S. military presence in Iraq, including the appropriate authorities and protections essential for our troops to operate effectively. These provisions are vital for our military, and we owe it to our troops in Iraq to obtain for them the protections they have elsewhere in the world.

Far from constricting the policy options available to the next president, the SOFA and strategic framework will ensure that every policy option remains on the table. These options include the range of missions that the next administration may wish to pursue, such as helping the Iraqi government fight al Qaida, develop its security forces, and stop the flow of lethal training and aid from Iran. As for the size of the U.S. presence in Iraq, that is a decision for the President—and the next President—to make. The framework and SOFA will not tie the hands of the next President, nor will they include a binding commitment to defend Iraq or any other security commitments that would warrant Senate advice and consent. Also, let me be clear; they will not establish permanent bases in Iraq or specify the number of American troops to be stationed there.

In keeping with past practice regarding such agreements, our intent is to conclude the SOFA as an executive agreement, rather than a treaty subject to Senate approval. Congress will be consulted throughout the entire process as negotiations proceed in the coming months. Background briefings by senior Administration officials have already begun, and Ambassador Ryan Crocker, our lead negotiator, is scheduled to testify before both the House and the Senate in the spring. As with other negotiations, we will not publicly discuss our negotiating positions on key issues. But we will ensure that members of Congress are kept fully informed.

A bilateral security agreement with Iraq has long been noted as a necessary milestone in our relationship by bipartisan commissions and by leading members of Congress from both political parties. The Independent Commission on the Security Forces of Iraq, chaired by General James L. Jones, the former Marine Corps Commandant and NATO Commander, recommended negotiating a bilateral agreement. This echoed a call from a diverse group of senior Senators, including Carl Levin, John Warner, and Richard Lugar. The Baker-Hamilton Iraq Study Group similarly advocated a series of longer-term missions that would require agreement with the Iraqi government.

The United States has enduring national interests in Iraq. 2008 is a year of critical transition, both for the United States and Iraq. Next year will bring new Iraqi national elections and new tests for Iraqi Security Forces who are slated to have assumed the lead in security efforts in all of their country. Our primary objective now is to build a sustainable foundation for success. We are committed to doing everything we can to ensure that the situation in Iraq continues to stabilize and that the next administration has maximum flexibility to adapt its own policies to conditions and circumstances on the ground. This is precisely what an agreement with Iraq must, and will, achieve.

Thank you very much. I look forward to your questions.

Mr. ACKERMAN. Secretary Long.

STATEMENT OF THE HONORABLE MARY BETH LONG, ASSISTANT SECRETARY OF DEFENSE, INTERNATIONAL SECURITY AFFAIRS, U.S. DEPARTMENT OF DEFENSE

Ms. LONG. I don't have a written or prepared statement other than my appreciation for this subcommittee and for you, Mr. Chairman, Mr. Chairman, for the opportunity to be here. It is in the Defense Department's strong interest that this Strategic Framework Agreement, as well as the SOFA be negotiated and concluded with the Government of Iraq, and I look forward to your questions.

Mr. ACKERMAN. Thank you very much.

Ambassador Satterfield, the administration has said, and you said again in your testimony today, that there will be no legally binding security commitment either in a stand-alone security agreement or as part of a broader framework agreement. When I say security commitment, I mean an obligation that the United States respond to an attack on Iraq by using the Armed Forces of the United States, or considering an attack on Iraq as an attack

on the United States. Can you confirm that there will be no such commitment?

Mr. SATTERFIELD. I can so confirm, Mr. Chairman.

Mr. ACKERMAN. In addition to security commitments that have been approved with Senate advice and consent, however, past administrations have often described security arrangements as a pledge by the United States to take some action in the event of a threat to another country's security. An arrangement covers a broader set of commitments, which can be in legally binding or nonlegally binding form. They also cover a wide range of potential actions, from a mere requirement to consult promptly to a more robust obligation for the United States, for example to "take measures it deems appropriate, which may include diplomatic, economic, and military measures."

I understand the administration may offer to enter into such an agreement with Iraq as a way of fulfilling the pledge contained in the Declaration of Principles. Can you confirm that any such arrangement will be public and will not be secret?

Mr. SATTERFIELD. I can, Mr. Chairman.

Mr. ACKERMAN. Can you state whether any such arrangement will be legally binding or will be part of the nonbinding framework agreement that has been discussed in the press? For that matter, will the strategic framework be legally binding?

Mr. SATTERFIELD. Mr. Chairman, at present we contemplate the Status of Forces Agreement to be a legally binding executive agreement in form. With respect to the strategic framework, we do not at this stage contemplate it as a legally binding agreement. Should that change in the course of the discussions, we will of course so inform the Congress, and we will take appropriate measures in accordance with our constitutional provisions. However, that is not our intent as we enter these negotiations.

Mr. ACKERMAN. As you assure us that it is not legally binding, can you assure us that it will be part of a separate agreement and not part of any Status of Forces Agreement?

Mr. SATTERFIELD. We contemplate, Mr. Chairman, as my testimony noted, two separate agreements: A Status of Forces Agreement and a Strategic Framework. They are parallel discussions; they both are associated one with the other in that the Strategic Framework provides, if you will, the context for the Status of Forces Agreement. They are separate, however.

Mr. ACKERMAN. What do you think Mr. Maliki's understanding of the agreement is?

Mr. SATTERFIELD. I believe, Mr. Chairman, that Prime Minister Maliki's understanding of the content of the Declaration of Principles, that his understanding of our intent, of the President's intent as we enter these negotiations on the Strategic Framework is that the United States believes its interests, as well as the interests of Iraq, the region, and the international community are supported by a continued engagement of the United States, military and civilian, in support of the goal of a stable, secure, and peaceful Iraq. He is correct in that understanding.

Mr. ACKERMAN. Let me be a little bit more specific. Is there any way in the world that he thinks that we are going to defend Iraq if Iraq is attacked?

Mr. SATTERFIELD. Mr. Chairman, the Secretary of Defense, the Secretary of State, the President, and the Vice President, in all of their conversations with the Prime Minister and other senior Iraqi officials, have been quite clear on what our intent is in Iraq, what our obligations are in Iraq, and what they are not. I do not believe such a potential misunderstanding exists.

Mr. ACKERMAN. Has this been explicitly explained to him, that if Iraq is attacked that we have no obligation to enter into any combat missions?

Mr. SATTERFIELD. The Secretary of Defense has made very clear exactly those points.

Mr. ACKERMAN. And Mr. Maliki is satisfied with that assurance? Or nonassurance? Or lack of assurance?

Mr. SATTERFIELD. Prime Minister Maliki—

Mr. ACKERMAN. What does he think he is signing?

Mr. SATTERFIELD. Mr. Chairman, Prime Minister Maliki is strongly supportive, as we understand, of the initiation of negotiations about to begin on exactly the basis which I have described to you.

Mr. ACKERMAN. What will happen if Iraq is attacked?

Mr. SATTERFIELD. Mr. Chairman, as would be the case of an attack on any friend and partner of the United States, the administration would have to consider, in consultation with the Congress, what would be the best measures to take in defense of the United States' interests in such an eventuality.

Mr. ACKERMAN. If Iraq is attacked are you stating uncategorically that the administration will take no action until an appropriate course of action is decided in consultation with the Congress?

Mr. SATTERFIELD. Mr. Chairman, the administration will act as any administration would act—

Mr. ACKERMAN. I am afraid of that.

Mr. SATTERFIELD [continuing]. In defense of U.S. interests.

Mr. ACKERMAN. That wasn't my question.

Mr. SATTERFIELD. Mr. Chairman, I can only state that the administration is responsible for the defense of the interests of the United States. It will act in accordance with those interests. But I cannot and will not speculate on hypotheticals.

Mr. ACKERMAN. So it is possible that the administration will not consult with Congress?

Mr. SATTERFIELD. Mr. Chairman, the administration will act in defense of U.S. interests.

Mr. ACKERMAN. Is it within the U.S. interests to consult with the U.S. Congress in the attack of sending our troops to war and putting our sons—

Mr. SATTERFIELD. Mr. Chairman, these are hypothetical scenarios, and I really cannot comment on them.

Mr. ACKERMAN. So is your agreement. It is based upon hypotheticals, is it not?

Mr. SATTERFIELD. Mr. Chairman, the agreements, the Strategic Framework and the Status of Forces Agreements, as we have stated, as the Secretaries of State and Defense have noted on the record, will not contain any form of commitment to either presence of U.S. forces or the missions for such forces, should they be

present. Now, this administration believes as a matter of policy that the continued presence of U.S. forces, the effective presence of such forces will be required beyond the end of this year. But the agreements to be negotiated do not make any such commitment. That is an executive decision.

Mr. ACKERMAN. So the administration is unprepared to commit to consult with Congress should the need for force be necessary?

Mr. SATTERFIELD. Mr. Chairman, the administration, like all administrations, has been willing to consult with the Congress as appropriate. But I cannot comment further on a hypothetical scenario.

Mr. ACKERMAN. So the answer is you cannot commit that the administration will consult with Congress should force be used by—

Mr. SATTERFIELD. The administration will comply fully with all of our constitutional requirements.

Mr. ACKERMAN. And one of them is not consulting with Congress?

Mr. SATTERFIELD. Mr. Chairman, the administration will comply fully with all constitutional procedures.

Mr. ACKERMAN. Is there a constitutional requirement, in your view, that the administration consult with Congress in the commitment of U.S. forces in a battle zone?

Mr. SATTERFIELD. Mr. Chairman, I am not a constitutional lawyer. The administration will comply with all constitutional requirements.

Mr. ACKERMAN. Well, we are here to ask specific questions. This apparently is not your grandmother's SOFA. It seems to me we are taking a path that is fraught with danger. And we are just asking for a comfort level based on the constitutional requirement and the requirements of the State Department that consultation be held with Congress before the commitment of forces. And I just want to know in specific, does the administration intend to comply with that? And you are being very vague in saying that they will do something.

Mr. SATTERFIELD. Mr. Chairman, the administration will fully comply with all of its constitutional requirements.

Mr. ACKERMAN. Is this a constitutional requirement?

Mr. SATTERFIELD. Mr. Chairman, I would defer to constitutional experts on this question.

Mr. ACKERMAN. Is it your understanding—I read a part of your resume, which is very, very impressive, and I know that sometime you might have read the Constitution. I am sure you have read it many times. Is it your contention that the administration has to or does not have to consult with Congress?

It is a very simple question, which is the nexus of the whole hearing. And we can either answer that question of whether or not that is a constitutional requirement in your view, the view of the administration, or it is not. Otherwise everything else is hyperbole. And you have not answered the question. And I think that this Congress, which thinks that it is a partner at least in the act of, as a last resort, sending America's young people into battle, has the responsibility to know if our administration thinks that we are a partner as well.

Mr. SATTERFIELD. And I have said, Mr. Chairman, we will fully comply with all constitutional prerogatives.

Mr. ACKERMAN. And the question is, is that a constitutional requirement? Does this administration think that anything it wants to do that is not in the Constitution or that is in the Constitution can be twisted any which way that they want, to come out with the outcome that they want and ignore what everybody else thinks is a constitutional obligation?

Mr. SATTERFIELD. Certainly not, Mr. Chairman.

Mr. ACKERMAN. So does it think that there is a constitutional requirement to consult with Congress? Certainly—can you—this has never been discussed in the State Department, whether there is a constitutional requirement to consult?

Mr. SATTERFIELD. Mr. Chairman, you have outlined a number of scenarios that are hypothetical.

Mr. ACKERMAN. I will ask you specifically, has the administration discussed this at any level?

Mr. SATTERFIELD. Mr. Chairman, I will respond more formally to that question subsequently to this hearing.

Mr. ACKERMAN. When shall we call that hearing?

Mr. SATTERFIELD. Mr. Chairman, we will provide a response to your specific question.

Mr. ACKERMAN. I don't think that we need to close the hearing, and I don't think we need a secret answer as to whether or not the administration thinks going to war is their responsibility, and not part of a constitutional obligation to consult with the Congress of the United States. There is a basic issue here. If the administration thinks it can become a bunch of renegades and go to war at any time without consulting the Congress of the United States and the duly elected people by just saying it is going to stick to the Constitution, and that is no longer a part of it, this is no longer a sidebar note that the President makes in a document that he is signing. This is already decided by our constitutional founders as to whether or not we share this power. That is not a hypothetical question. It either is or is not.

Mr. SATTERFIELD. Mr. Chairman, your initial hypothetical was if Iraq was attacked would United States forces respond.

Mr. ACKERMAN. I am not asking a hypothetical question. I am asking if this administration believes it is duty-bound and constitutionally required to consult to go to war.

Mr. SATTERFIELD. Again, Mr. Chairman, I am not a constitutional expert. But in the event—

Mr. ACKERMAN. Neither is anybody else apparently that is in your agency.

Mr. SATTERFIELD. Mr. Chairman, in the event of a declaration of war, yes, the administration, any administration, would have to make a request to Congress. In the event of a declaration of war.

Mr. ACKERMAN. Can the administration go to war in Iraq again without a declaration of war?

Mr. SATTERFIELD. Mr. Chairman—

Mr. ACKERMAN. That is the same question.

Mr. SATTERFIELD. I would ask at this point if you would please allow us to respond in a formal fashion to that as a taken question. You have asked a number of questions about various hypothetical

scenarios, ranging from a declaration of war to “an attack on Iraq.” They require a more detailed and considered response than I can give you today.

Mr. ACKERMAN. How much time do you need?

Mr. SATTERFIELD. 24 hours.

Mr. ACKERMAN. We are waiting. Will the staff set the clock? Send out for dinner. Has divine intervention taken place? Have we gotten any messages from anywhere? Would you like us to recess for 24 hours and come back?

Mr. SATTERFIELD. Mr. Chairman, we have offered to provide a response to a variety of scenarios you posed.

Mr. ACKERMAN. I am sorry?

Mr. SATTERFIELD. We will provide a formal response to the variety of hypotheticals that you posed to me.

Mr. ACKERMAN. The Constitution is a document. It is not a hypothetical. This is not a theory that we are discussing. The trouble with the administration is that it thinks that the Constitution is optional. It seems to me that it has already been ratified.

I think if we ask the same question of a school child they would be able to provide an answer other than it is hypothetical. Your proposal that you will respond in 24 hours, I am not sure what you are suggesting.

Mr. SATTERFIELD. Mr. Chairman, you posed a number of successive hypothetical scenarios, again ranging from an attack on Iraq to a declaration of war. You asked what the legal obligation, constitutional obligation of the administration would be in response to the spectrum of events. I am not a constitutional lawyer. We will provide you with a detailed response to this range of hypotheticals.

Mr. ACKERMAN. There is no range of hypotheticals. I asked you a specific question. You thought it was hypothetical because it hasn't happened yet. And I think planning depends on figuring out what our response is to things that haven't happened. And if you want to know what our response should be, if you want to know why this war went bad—as if any war can go good—is because nobody planned, because everything was hypothetical except the faith that the administration had that it was right and it was just going ahead, damn the torpedoes full speed. It is not hypothetical as to what the Constitution requires, and you don't need a team of constitutional experts.

Mr. SATTERFIELD. Mr. Chairman, I am prepared, as is my colleague, to testify fully on the proposed negotiations on the Status of Forces Agreement and a strategic framework. We are prepared to address the legal questions that arise in the context of those two documents.

With respect to the question you have posed on constitutional requirements in the scenarios you have outlined, we will be happy to get back to you with a considered and appropriate response.

Mr. ACKERMAN. In 24 hours?

Mr. SATTERFIELD. Yes, sir.

Mr. ACKERMAN. Nobody in the agency, nobody in the State Department, nobody in the Defense Department suggested what the Constitution might have within its pages—

Mr. SATTERFIELD. Mr. Chairman—

Mr. ACKERMAN [continuing]. So that two distinguished, experienced, well-educated, patriotic, freedom-loving, defense-protecting members of our administration can tell us whether or not Congress has a role in declaring war?

Mr. SATTERFIELD. Mr. Chairman, there are those in the administration who are able to provide a detailed response to those questions. That is not what we came prepared to discuss today.

Mr. ACKERMAN. In your negotiating the memorandum of understanding and the Status of Forces Agreement there were no lawyers involved, or were there?

Mr. SATTERFIELD. Mr. Chairman, in preparation of the initial drafts of the Strategic Framework, as well as the Status of Forces Agreement which we are finalizing now before presentation to the Iraqis, of course, our legal teams from the Departments of Defense and State, and from the multinational forces in Iraq were all engaged.

Mr. ACKERMAN. Did those legal people who were engaged know the requirements of the Constitution?

Mr. SATTERFIELD. Indeed they did, sir. And, Mr. Chairman, it is the view of these legal experts from our agencies that nothing in the content of the Strategic Framework or the Status of Forces Agreement trigger advise and consent constitutional requirements.

Mr. ACKERMAN. But that wasn't the question. It was whether or not we go to war is permissible without consultation and authorization of the Congress.

Mr. SATTERFIELD. Mr. Chairman, the declaration of war, of course, requires such actions.

Mr. ACKERMAN. And you will define a military action as not an act of war by just declaring that it is not a declared war, is that what we are at?

Mr. SATTERFIELD. Mr. Chairman, I am not certain I understand what military actions.

Mr. ACKERMAN. If we are required to use force to deliver the mail and kill people so that the mail can go through seems to be a use of force.

Mr. SATTERFIELD. Mr. Chairman, United States forces, coalition forces in Iraq today use force on a continuous basis. This is nothing new. But with the expiration of the Chapter 7 mandate by the end of this year, a new grant of authorities and an understanding with the Iraqi Government on the ability to continue combat operation, should the President so decide, and associated detainee operations will be required.

Mr. ACKERMAN. Bingo. Your license is expiring. Your moral authority to operate is ending.

Mr. SATTERFIELD. The Chapter 7 mandate will expire as we intend—

Mr. ACKERMAN. That is what we have been leaning pretty heavily on. Where comes the authorization to continue? Who authorizes that?

Mr. SATTERFIELD. Mr. Chairman, there are two effective authorizations. With respect to the Iraqi Government, an Iraqi Government sovereign approval agreement authorization will be required in terms of the necessary combat and associated detainee oper-

ations as well as privileges and immunities for our personnel in Iraq with the expiration of the Chapter 7 mandate.

The other authorization, in the view of the administration, is the continuing applicability beyond the end of the Chapter 7 mandate of the congressional authorization to use force.

Mr. ACKERMAN. So you need congressional authorization, is that what you just said?

Mr. SATTERFIELD. Mr. Chairman, the administration believes that that congressional authorization remains in effect beyond the end of the Chapter 7 mandate.

Mr. ACKERMAN. So it is this administration's belief that you have ongoing authorization in perpetuity, despite the fact that the mission has been accomplished, as long as the Iraqis direct you to stay?

Mr. SATTERFIELD. No, Mr. Chairman.

Mr. ACKERMAN. Who is the authorizing power that you seek?

Mr. SATTERFIELD. Mr. Chairman, the Congress authorized the President to use force in Iraq for two reasons, to enforce U.N. Security Council resolutions and to defend the national security of the United States against the continuing threat posed by Iraq. Now, at the time of the resolution, the Saddam Hussein regime was the primary threat posed by Iraq. But the Congress recognized it was not the only threat; and, in particular, al-Qaeda had a presence in Iraq. The situation in Iraq continues to present a threat to United States national security even after the fall of the Hussein regime——

Mr. ACKERMAN. Have you just redefined our mission?

Mr. SATTERFIELD. No, Mr. Chairman. This is the view of the administration with respect to the continued——

Mr. ACKERMAN. Let me just understand what you have said. It is the view of the administration that, as long as there is trouble in Iraq, that you have authorization of this Congress to continue there in perpetuity and define trouble as you desire.

Mr. SATTERFIELD. That we have authorization to defend the national security of the United States against the continuing threat posed by Iraq.

Mr. ACKERMAN. I thought that we heard from General Petraeus in a rather well-publicized session that the only reason we were there is to prevent all heck from breaking out and have the Iraqis then become responsible for their own security.

Mr. SATTERFIELD. Mr. Chairman, General Petraeus has outlined repeatedly, as have other senior administration officials, the variety of threats posed in and through Iraq to United States national security interests.

Mr. ACKERMAN. So what you have described is a never-ending process in which our troops can be required to remain there in Iraq in combat for as long as they want.

Mr. SATTERFIELD. Mr. Chairman, what I have stated is that the administration believes it has current authorization——

Mr. ACKERMAN. When does that authority end?

Mr. SATTERFIELD. When there is no longer a threat to the national security of the United States posed by Iraq.

Mr. ACKERMAN. Is Iraq about to attack the United States?

Mr. SATTERFIELD. It is not a question of the State of Iraq itself posing that threat but the threat posed by the situation in Iraq, by elements present in Iraq.

Mr. ACKERMAN. Could you give us a projection of when—and this may be hypothetical—but what you have described seems to me as an unending, never-ending, unable-to-end process for as long as there is a threat in Iraq that you, I would assume, would not deign to describe and quantify as to how it ends or when it subsides.

Mr. SATTERFIELD. Mr. Chairman, we believe the security situation in Iraq in all of its dimensions has significantly improved over the course of the past year. We anticipate it continuing with such improvement; and, as that improvement goes on, the role of the United States, the mission of the United States, the presence of the United States will certainly change in Iraq, both the nature of our combat role, the nature of our role in support of Iraqi forces, and the character of our presence in every respect. But we do contemplate the continued need for that presence beyond the end of this year, yes, sir.

Mr. ACKERMAN. So you are saying it is a very subjective evaluation that the administration has—

Mr. SATTERFIELD. Mr. Chairman—

Mr. ACKERMAN. And that we have given them an open-ended, interpreted by them exclusively, authorization to continue a war that is draining us of our integrity, of our resources, of the blood of our brave young people, of our prestige that so many have died for over the past two and a third centuries, that that can go on, this blood-letting can go on, this demoralizing of our forces can go on, the suffering of our people at home can go on for as long as this administration perceives that there is a threat without ever defining that threat and ever needing to go to Congress or the American people for authorization ever again?

Mr. SATTERFIELD. Mr. Chairman—

Mr. ACKERMAN. Is that your position?

Mr. SATTERFIELD. No, Mr. Chairman. This administration has defined and has stated quite clearly what we believe to be threats to United States national interests, the interests of our friends and allies in the region and around the world by elements present in Iraq and indeed by the situation in Iraq as a whole.

We have also described—

Mr. ACKERMAN. Do those threats exist elsewhere?

Mr. SATTERFIELD. Mr. Chairman, many other threats to U.S. national interests exist elsewhere. We are speaking to the situation today in Iraq.

Mr. ACKERMAN. We are. But I just want to understand your philosophy and where this administration thinks it can go.

Because it seems to me, and maybe others on this committee, I am sure, that there are al-Qaeda types in many other countries that pose a threat to the United States, that the damage and destruction that was done in the United States on September 11 didn't emanate from Iraq but from other places, from other people that came from other countries, countries that still harbor those people in places other than Iraq. Does that mean that this franchise is open-ended and you have the right to do that anywhere in the world without authorization?

Mr. SATTERFIELD. No, sir.

Mr. ACKERMAN. Then why only in Iraq?

Mr. SATTERFIELD. Because Iraq poses a specific case in which we do have authorization provided by the Chapter 7 mandate of the U.N. Security Council—

Mr. ACKERMAN. What authorization do you have?

Mr. SATTERFIELD. Mr. Chairman, at the request of the Iraqi Government, we also have, in the view of the administration, the continuing authorization of the United States Congress to deal with this threat.

Mr. ACKERMAN. You have said two things: "At the request of the Iraqi Government," that means our troops are directed by any government anywhere in the world that requests them and that Congress has authorized you to respond to that threat that you perceive?

Mr. SATTERFIELD. No, Mr. Chairman. What I said was—you asked about the authorities we believe exist in Iraq. There are two such authorities, the Chapter 7 mandate, which is a mandate requested by the Government of Iraq, and the mandate provided by the authorization for use of force provided by the United States Congress.

Mr. ACKERMAN. So it is fair to say that it is the President's exclusive judgment as to when this threat ends?

Mr. SATTERFIELD. The President has made very clear that he will assess the presence, character, and mission of United States forces in Iraq based upon circumstances on the ground.

Mr. ACKERMAN. And that is exclusively his province?

Mr. SATTERFIELD. I will not elaborate further beyond that very clear statement.

Mr. ACKERMAN. Does Congress have a role in making that determination?

Mr. SATTERFIELD. Mr. Chairman, the President's responsibility is to assess the circumstances on the ground in Iraq and determine on the basis of that assessment.

Mr. ACKERMAN. Does he share that responsibility with anybody?

Mr. SATTERFIELD. He shares that responsibility, sir, with his commanders on the ground and with their chain of command.

Mr. ACKERMAN. And not with the American people and their representatives?

Mr. SATTERFIELD. Certainly, Mr. Chairman, the President ultimately answers to the American people and to the U.S. Congress.

Mr. ACKERMAN. I would suggest "ultimately" is coming real close. I would suggest, if that is the attitude of the administration, that you will see fewer and fewer Members willing to fund this war. Because you are describing the pit as bottomless, you are describing the process as unending, you are describing an administration that is stubborn and unbending, and you come here with a point of view that you will answer the questions that you pose to yourself and not the questions that we and the American people have.

Mr. ROHRABACHER. I think my 5 minutes are up.

Mr. ROHRABACHER. Is it 24 hours already? Did you get that paper for us?

Mr. ACKERMAN. The letter is in the mail.

Mr. ROHRABACHER. I admire your patience in a number of arenas, and I think you answered the questions very well today, and I appreciate you being here.

I am sorry it took so long to get you here and to get the administration to come here. And I realize that you have—I realize that you have put yourself through this type of—I don't know if it is an interrogation or not. I don't know if this is an interrogation, but I would say that if you would have come here the very first time it might have been helpful. So—but realizing that the questioning that you faced probably was the same type of questioning that you just went through.

With that said, let me just say that I do disagree with my chairman on a number of issues. I do believe that Congress has had every chance to end the conflict in Iraq if they wanted to. I haven't seen my colleagues moving to cut off all appropriations. Does Congress have the right to cut off appropriations for ongoing military actions?

Mr. SATTERFIELD. Certainly it does.

Mr. ROHRABACHER. I think they do. I think we have, and if the majority of people in Congress want to cut off appropriations, they can cut off appropriations.

Does the War Power Act—let me just note that Chairman Delahunt will be holding a hearing, the first of three hearings, regarding the War Powers Act very shortly; and I would say that the majority of the questions that were just posed to you would be more appropriate at that hearing about what the powers are and where the authority lies in the United States Government in terms of conducting military operations overseas than it was in this specific hearing which was called specifically to find out details about the two agreements that are now being negotiated, the Strategic Framework and the other agreement that we have there, the force structure agreement. You were supposed to answer questions about that today.

Again, at any time that Congress really doesn't want you there, Congress can cut off the funds—anytime. And somebody correct me if I'm wrong, but every year we have to have appropriations, and every year, with one amendment to the appropriations bill saying that no money shall be used in this appropriation for military operations in Iraq, that would have ended it. So Congress has authorized it by not acting and by actually appropriating money that will be used there, as well as Congress has actually had votes on whether we should pull out.

And I would suggest that if we haven't had the votes and you think the votes are there, we should have the votes. Let's do it. But, instead, there is some sort of conspiratorial cloud that seems to be materializing here in this room.

And although I will have to tell you, I don't like the attitude of the administration on a lot of things. In fact, we had to beg you to come here to talk to us, is one of the attitudes I don't like. But in terms of how we got into Iraq, it is very clear; and it is also very clear that Congress still has a lot of authority that it has not exercised.

I am very anxious in the future to go through the hearings with Chairman Delahunt as to his proposals that might enhance the

power of Congress or the American people to ensure that situations like this ongoing conflict don't happen again. But I found your answers to be specific to the questions at hand.

Let me ask you this. What is the population of Iraq?

Mr. SATTERFIELD. It is about 28 million, sir.

Mr. ROHRABACHER. And in terms of the oil reserves in Iraq, what do we think the oil reserves are in Iraq?

Mr. SATTERFIELD. They are among the largest proven reserves in the world. I can't give you a specific barrel figure.

Mr. ROHRABACHER. So we have 28 million people, and we have got perhaps the largest oil reserve in the world.

Mr. SATTERFIELD. Among the largest reserves.

Mr. ROHRABACHER. Perhaps even the largest. We don't know. But it could be the largest. But it is way up there. But we have enormous oil reserves for 28 million people, which is only one-tenth our population, of course.

As you are negotiating these agreements, you have said there won't be any permanent bases, but you have, of course, indicated that—

And, by the way, just so you know, before I go on to the next point, when I say that the Congress still has enormous authority to end the conflict in Iraq if it so chooses, this is the reason why the administration will have to consult with Congress in the future. It has nothing to do with these two agreements that are now being negotiated in Iraq.

But if—whatever happens, whatever this administration or any other administration comes up with, they want to consult with Congress or we will exercise the power of the purse, as we should, which is what the authority's granted to us by the Constitution. As long as you do make sure that—and if they don't consult with us, if this administration or future administrations don't consult, we can exercise our authority without consulting them.

Now, with that said, back to the oil issue. So you have one-tenth of the population and probably in the future, if we are successful, does not mean that the Iraqi people will be potentially one of the richest peoples in the world?

Mr. SATTERFIELD. Congressman, if the Iraqi Government was able to fully exploit through a moderate hydrocarbons law, and the investment that would flow through and with such a law, its hydrocarbon sector, as other states have done, yes, we believe the potential wealth of Iraq from that sector, from a modern agricultural sector and industry would be considerable.

Mr. ROHRABACHER. They could be one of the richest countries in the world. In fact, it is conceivable that they could be richer per person than our own people 10 years from now. If everything goes the right way, they might be richer than the people in the United States and the richest people perhaps in the whole world.

Now here is my question. As we are negotiating these agreements, is part of the agreement that they are going to help pay for the massive expense that we have had in saving them from Saddam Hussein, saving them from radical Islam and perhaps giving them some buffer so they would be safe from different forces in that region?

Mr. SATTERFIELD. Congressman, that is part and parcel of everything we are doing with Iraq, not just these agreements. The concept that Iraq must pay for its own development, that Iraq must fund its own security forces, that Iraq must fully utilize its resources for its own people is absolutely a premise for our policy there; and the 2008 national budget, which was just approved last month, makes a further dramatic step in exactly that direction. And I assure you and assure the Congress that remains a primary focus of the administration in all of our dealings, not just on these agreements, with the Iraqi Government.

Mr. ROHRABACHER. I have to remind the witness that, early on, there was a proposal by my friends on the other side of the aisle that we demand that a certain amount—well, we demand that repayment would be made and that that be part of our effort there, and I think it might have been a tax on oil or something like that, that it be—but that they understand that the money that we spend will be repaid in the end if we are successful in our determination to create a stable society there. And the administration opposed it heavily.

And, in fact, I was one of the few Republicans that sided with my Democratic colleagues to support the contention that, right off the bat, we should tell the people of Iraq we are willing to help, but, if we succeed, you are going to be the richest people in the world. We expect to be paid back. The administration actually opposed that.

So I would hope that there is some tangible thing that I can latch onto that will assure me, maybe perhaps in the form of another resolution—perhaps the chairman would consider a sense of the Congress resolution that these agreements with Iraq include specifically repayment for the money that we have expended for security and freedom of the people of Iraq and the stability of the people of Iraq.

Now, Mr. Chairman, with that, I again would just like to state that I am very pleased with your answers. I think that you were answering specifically to the specific questions. You were not asked to come here to do a general analysis of the Iraq war and the balance of powers in our Government. You were here to brief us specifically on these agreements that are being negotiated, and you have come here and answered questions about those agreements specifically, without hesitation and directly. And I appreciate that and would hope that the administration continues to come here to answer those specific questions.

Mr. SATTERFIELD. Congressman, we are very pleased to pledge to you, as our principals have pledged, to continue these consultations and to continue these briefings during this process.

Mr. ROHRABACHER. The only thing I would say to that, you only have a few more months. It is a little late that that attitude begins to emerge. Frankly, the administration—

One note. I worked in the Reagan White House for 7 years. I remember very clearly that when President Reagan decided we needed military action against Qaddafi in Libya, I remember that day very clearly, and I remember the congressional leaders that were brought into the White House at that time.

This idea that we have to consult because that is the way we can succeed as a people, that was fully understood back in the Reagan years. I am afraid that understanding is not being demonstrated as well in this administration.

So thank you very much.

Mr. ACKERMAN. Thank you, Mr. Rohrabacher.

Before turning to Mr. Delahunt, I would just remind our visitors to try not to make any comments as it is distracting both to witnesses and members who participating in the hearing.

Chairman Delahunt.

Mr. DELAHUNT. Thank you, Chairman Ackerman; and let me remind my friend and colleague from California that I think it was the Deputy Secretary of Defense who told the American people this war would cost American taxpayers practically nothing. Well, here we are heading up toward \$1 trillion. But, be that as it may, I just want to be clear, Ambassador, so it is the current intention of the administration to craft two separate agreements?

Mr. SATTERFIELD. Yes, sir.

Mr. DELAHUNT. So there would be a Status of Forces Agreement that would deal with the more mundane legal issues, delivery of the mail, et cetera.

Mr. SATTERFIELD. Mr. Chairman, the Status of Forces Agreement will provide for authorities and protections for U.S. forces.

Mr. DELAHUNT. Would it provide authority to fight as reported in the op-ed piece by the Secretary?

Mr. SATTERFIELD. Mr. Chairman, that document will indeed provide the necessary authorities for combat operations and associated detainee operations. What it will not do is require, commit or specify such operations. It provides authorities only.

Mr. DELAHUNT. In other words, can you point out to me another Status of Forces Agreement that embraces the authority to fight?

Mr. SATTERFIELD. Mr. Chairman, there are other Status of Forces Agreements in effect around the world which provide very specific authorities, including kinetic authorities.

Mr. DELAHUNT. Kinetic authorities. That is a word I don't understand. Could you expand on that?

Mr. SATTERFIELD. Maritime interdiction, search and seizure, drug interdiction operations that can involve the use of force.

Mr. DELAHUNT. Is there anything comparable in any of the Status of Forces Agreements that would allow the kind of combat conduct or military hostilities envisioned in our experience in Iraq?

Mr. SATTERFIELD. While many Status of Forces Agreements have broad language referring to possible actions, this Status of Forces Agreement will be specific on the scope of combat and associated detainee operations, which does render it different.

Mr. DELAHUNT. So it is different.

Mr. SATTERFIELD. In this respect, yes, sir.

Mr. DELAHUNT. Well, you know, there was testimony earlier this week—or last week, rather—because I posed that question earlier to Charles Mason of the Congressional Research Service. He reviewed some 70 so-called SOFAs and could not find one example of a Status of Forces Agreement that embraced the kind of military operations that we have observed over the course of the past almost 5 years now in Iraq.

Ms. LONG. If I may, the Ambassador has asked me to provide some detail on this.

There are a number of our Status of Forces Agreements that have both classified and unclassified portions. Speaking only to the unclassified portions, there are those—Belize comes to mind, as does Colombia—that talk broadly about support to counter narcotics, support to maritime interdiction, as the Ambassador noted, and support to counterterrorism activities that are broadly noted but not specified.

Mr. DELAHUNT. Yes, Ms. Long, but those do not talk about the initiation of search-and-destroy kind of missions that we know are currently undertaken in Iraq, do they?

Ms. LONG. That's correct, Congressman. And most of them also have a catchphrase which we rely upon broadly, which is other agreed-upon activities, other agreed-upon operations under which the Department normally relies for specific kinds of activities that we don't elaborate.

But you are right. This will be a different kind of situation.

Mr. DELAHUNT. This will be a significantly different breed, if you will, of Status of Forces Agreement; and you don't intend to submit this particular Status of Forces Agreement with its authority to fight to the Congress for its approval.

Ms. LONG. The Secretary of Defense has already testified, and I believe Secretary Rice has reiterated, that it is our intent and our obligation to coordinate with the Members.

Mr. DELAHUNT. I understand. "Coordination" is a lovely word. And I know "consultation" and "notification" are also words that are being used and will be used. But I used the word "authorization." It is the position of this administration that they do not need to come before Congress to receive authorization.

Ms. LONG. That's correct.

Mr. DELAHUNT. I have to tell you I find that—well, I was going to use the word "tenuous." I don't think that it is strong enough. Because if your sole reliance is on the October, 2002, resolution to link the authority to use military force post the expiration of the U.N. mandate, and rely on that particular authorization, it just doesn't connect. The context, I dare say the legislative history, that was a time when there was no al-Qaeda in Iraq. That was a time when the focus of the administration and the U.S. Congress was on Saddam Hussein. I would suggest that it borders on the absurd. Let me go beyond that. It is absurd to make that argument.

Now you express concern about the status of the forces there in conferring on them the requisite immunities from Iraqi law. Is it true that if the U.N. mandate was extended for a short period of time to allow a new administration, a new President, and a new Congress to confer and to collaborate, that according to the U.N. mandate and to current Iraqi law, that being the so-called Order 17, that those immunities and protections for our military forces and others would continue. Is that an accurate statement?

Mr. SATTERFIELD. Mr. Chairman, if the current content of the Chapter 7 resolution were to be extended, it would so extend the provisions in Iraqi law that embody CPA Order 17.

Mr. DELAHUNT. So in other words, our troops would be protected from the reach of Iraqi law and would continue to be under the ju-

risdiction of the United States military. Is that an accurate statement?

Mr. SATTERFIELD. In the case that the current authorities of the Chapter 7 resolution were extended, yes, sir.

Mr. DELAHUNT. We talk about consultation, and the Department of State has a procedure. I think it is described as Circular 175. And in there are references to consultation with Congress. Can you identify for the members of this panel what Members of Congress whom you have consulted with?

Mr. SATTERFIELD. Indeed, Mr. Chairman, we have had seven such consultations in recent weeks. We can provide a list—

Mr. DELAHUNT. When was the first consultation that you had?

Mr. SATTERFIELD. We can provide to you the dates and the members and staff present at those consultations.

Mr. DELAHUNT. You have had seven in the past several weeks, and yet the Declaration of Principles was signed by the Maliki Government and Prime Minister Maliki and President Bush on November 22nd of 2007?

Mr. SATTERFIELD. That was a political understanding which did not trigger those consultations, Mr. Chairman.

Mr. DELAHUNT. Well, did it signify an intent to negotiate?

Mr. SATTERFIELD. It stands on its own ground as a declaration of mutual intent.

Mr. DELAHUNT. To?

Mr. SATTERFIELD. To proceed on a partnership.

Mr. DELAHUNT. To proceed on a partnership to, in other words, have discussions regarding the principles to determine whether there could be a long-term agreement.

Mr. SATTERFIELD. Mr. Chairman, we do not believe that formal consultations as required by the Circ. 175 procedures were required in the case of the Declaration of Principles. They do apply to the documents we are now in the process of discussing, to the Status of Forces Agreement.

Mr. DELAHUNT. Is there currently a draft of the Status of Forces Agreement in existence?

Mr. SATTERFIELD. We are literally, Mr. Chairman, in the process of finalizing that draft internally this week.

Mr. DELAHUNT. But there is a draft?

Mr. SATTERFIELD. There is a draft being worked, yes, sir.

Mr. DELAHUNT. And there has been a draft that has been circulated?

Mr. SATTERFIELD. Of course, sir. We have been working on this for some time.

Mr. DELAHUNT. And it was a draft that was leaked to the New York Times. Because I think it was maybe 6 weeks ago that the New York Times reported that there was a 15-page document that was being discussed.

Mr. SATTERFIELD. Mr. Chairman, I can't speak to what documents the New York Times may have had its hands on—

Mr. DELAHUNT. Did you have a chance to read the story, Mr. Ambassador?

Mr. SATTERFIELD. Yes, sir.

Mr. DELAHUNT. Did it sounds familiar to you?

Mr. SATTERFIELD. Mr. Chairman, I am not going to comment on New York Times stories—

Mr. DELAHUNT. I am not asking you to comment on the New York Times story. I am asking you to comment: Was there a draft that has been in existence for several months that has been circulating within the administration?

Mr. SATTERFIELD. Mr. Chairman, there have been many different drafts discussed, rejected, amended, revised, evolved; and I really can't speak to which of those drafts—if any of those drafts in full a New York Times reporter obtained.

Mr. DELAHUNT. But there was no one in the administration that felt that it was necessary at that point in time to consult with appropriate Members of Congress?

Mr. SATTERFIELD. Mr. Chairman, we were still in the process of deciding exactly what content we wanted in this draft, which has yet, as of today, to be prepared in a form that can be presented to the Iraqi Government.

Mr. ROHRABACHER. Would the gentleman yield for one moment?

Mr. DELAHUNT. Of course.

Mr. ROHRABACHER. Just some advice. It might be to your benefit that, when you are going over things and coming up with a final decision of what your position is going to be, to come up to Capitol Hill and maybe bounce the idea off some other elected officials. That might actually help get the situation resolved in a way that both the House and the Senate on one side and the executive branch on the other side can actually implement a policy, instead of waiting until you have made up your final decision and then get your guns going in order to steamroll whatever that position is over any opposition that might exist here on the Hill.

So you might think about that as a future method of operation. But I understand that you are not the one who sets that method of how you are going to determine such issues.

Thank you. I yield back.

Mr. DELAHUNT. Reclaiming my time, and that might have been a good suggestion. I don't think it is the best practice for consultation.

You indicated that you are not familiar with, or you don't rely on, stories printed in the New York Times. Well, I would suggest neither should the United States Congress rely on op-ed pieces done by Secretaries of State and Defense, that there should have been consultation heretofore.

There clearly—I can communicate to you that, in my opinion, there is a canyon of difference between the perspectives of the majority here in Congress and the administration on this particular issue and I believe the overwhelming opinion by constitutional scholars. This is not just about, as I said in my opening remarks, about a bilateral agreement between Iraq and the United States. It is about the role of Congress in making a decision in terms of authorization of military force.

It is applicable whether it is Iraq or Bosnia, or Kosovo, or Pakistan, or anywhere else in this world. This is about this institution, and it is time that Congress recognizes its responsibility. Because we have an obligation to assert—to assert the responsibility that was conferred upon us by the Founding Fathers.

And to suggest that an authorization for military force that was voted on in October 2002 serves as a basis for our continuing authority to wage combat in Iraq post the expiration of the December 30—post the expiration of the U.N. mandate I believe is just not even the thinnest of reeds. I think it holds absolutely no water whatsoever.

I have been working with my colleague from Connecticut, Ms. DeLauro, on legislation that I hope we will have prepared some time this week which would be a sense of Congress that, particularly given the lame-duck status of this administration, that the mandate of the United Nations be extended for the next President, whether it be Senator McCain or Senator Obama or Senator Clinton, to work in a collaborative, consultive way with genuine consultation to determine and chart the future course of the relationship between Iraq and the United States.

You know, for this administration, on its way out the door, to attempt to advocate and argue that this is a—there is some sort of continuing authority pursuant for the presence of our military forces and permitting them to engage in hostile actions in Iraq, I find unbelievable.

With that, I yield back.

Mr. ACKERMAN. If I might just ask one question before going to Ms. DeLauro.

I have no problem with the administration serving as the administration until its final minute in office. That is what it should be doing. But you should be doing that with us as well. We are out the door every 2 years, but that doesn't mean we should abdicate our responsibility. And the difference in perspective is that we might have made a mistake, but that doesn't mean that we are going to keep making it. Other people don't seem to have that attitude. I think we have to talk to each other.

So I would ask you one question. Will you commit to us that you will provide this committee and this Congress with a copy of the Strategic Framework in the SOFA agreement before you run it by the Iraqi Government?

Mr. SATTERFIELD. Mr. Chairman, we will certainly brief on our intentions with respect to that text and the negotiation. But we do not, as a matter of practice, share negotiating texts. That has not been the standard practice of this or any other administration. This is a document that is about to enter negotiation with another government. We will brief, as we have been briefing, staff and members fully on it. We will continue to do so. But I will take your request specifically back to the administration.

Mr. ACKERMAN. Fully briefed is something that some people might deign to quibble with over the years.

We don't want to interfere with the administration's negotiations. That is not our role. That is your prerogative. But I think if we can all set aside the hubris that it is just possible that one Member of Congress might have a good idea here to offer up before you offer it up to the Iraqis, and I would hope that you would think that the American Congress and that the American people are your preferred partner in deciding our place in the world before going off and negotiating it with others. Because if you don't have the full support of the American people and you think that only the admin-

istration can come up with good ideas, then that is a very sorry state of affairs.

We are not the enemy. We have not declared war on the administration. We want to be helpful. We don't want—I don't know of any Democrat that wants our administration to fail in making America as good as its people and restoring our position in the world. We should be your allies in trying to do that, instead of fighting us each and every step of the way. We come to this head-on loggerheads kind of a thing based on lack of information, cooperation, forthrightness, refusing to answer the questions, obscuring the answers, which should not have to be.

Ms. DeLauro.

Ms. DELAURO. Thank you, Mr. Chairman.

Let me try to make a couple of points and ask a couple of questions. The Strategic Framework, is that the same as the Declaration of Principles?

Mr. SATTERFIELD. No, Madam Congresswoman.

Ms. DELAURO. In what way does the Declaration of Principles have with regard to the Strategic Framework?

Mr. SATTERFIELD. It is a broad statement of intent. The strategic framework's content will reflect the topics that were outlined in the Declaration of Principles. They will be elaborated further in many regards. It will not be at variance with the Declaration of Principles, but its content will be different in terms of detail.

Ms. DELAURO. But that Declaration of Principles, quite frankly, you have indicated that it didn't really need to have any consultation by the Congress, but it has been described by many academics and people who study these efforts as going much beyond what other Status of Forces Agreements—it really rose to the level of what would be contained in a treaty.

But I want to get to this question. Should we then just—I mean, it is signed by two heads of state. The President of the United States and the Maliki Government signed the Declaration of Principles. Should we abrogate the Declaration of Principles? Scrap it?

Mr. SATTERFIELD. I don't understand your question, Madam Congresswoman.

Ms. DELAURO. Put it aside?

Because on the security side of the thing it talks about security assurances, commitment to deter foreign aggression against Iraq that violates its sovereignty and integrity of territory's water and air space. Combat all terrorist groups in the forefront of which are al-Qaeda, Saddamists and other outlaw groups. It goes pretty far.

And if, again, given the constitutional reactions or the commentary regarding the breadth, if you will, of the declaration, and it is meant to be a guide, these are very pretty specific items in this document. Why not then—because you have just changed the language. It was a Declaration of Principles up until a few weeks ago.

I will make this statement. There was a movement to go down this road with the U.N. mandate going to be expired at the end of this year, to move by July 31 to put into place a very, very far-reaching agreement beyond the scope of any Status of Forces Agreement that currently has existed.

Now you have been found out. You have been found out. So now we are watching systematic back-pedaling on some of these issues. Thank God. Thank God.

But I am just saying, let's put the Declaration of Principles aside. Let's not regard it since you say it is really not, you know, going to be terribly informative of where you're going to come up with, and say, in fact, this is not what we are about. This is not what we are going to do, and we are going to start afresh with consultation from the Congress in how we move forward in terms of our long-term involvement in Iraq.

Mr. SATTERFIELD. Congresswoman, if I understand your question, do we intend to abrogate the Declaration of Principles? No, we do not. It is an accurate, factual and comprehensive statement of the intent of this administration with respect to a partnership with the Iraqi Government. It is a statement of intent that we intend to carry forward in the content of the Strategic Framework.

The Status of Forces Agreement is a different document. As we have said, it provides authorities. It does not contain commitments.

Ms. DELAURO. Well, I think that you've answered the question in the sense that I think we can look at this Declaration of Principles, which—again, not by myself. I am not a constitutional scholar. I am also not a student of the international agreements, though I have had read quite a bit about them in the last several months. I just say that this has been described as going beyond anything that has been identified as a Status of Forces Agreement and, in fact, that the kind of language in this Declaration of Principles really has risen to the level of a treaty, and you don't want to go down that route to get Senate confirmation of a treaty.

But I think that we can pretty much understand that this Strategic Framework, or whatever you now want to call this document, is going to pretty much look like this Declaration of Principles.

Let me move aside to the Status of Forces Agreement which you do talk about here. And in your testimony you said, within the context of the SOFA, options include a range of missions that the next administration may wish to pursue, such as helping the Iraqi Government fight al-Qaeda, develop its security forces, and stop the flow of lethal training and aid from Iran.

Iran's President, President Mahmoud Ahmadinejad, just wrapped up a 2-day visit to Iraq, the first by an Iranian President since the Islamic Revolution of 1979. During the visit, he pledged \$1 billion in aid, negotiated seven deals pertaining to economic and cultural cooperation and basically said the United States should go home.

Is this what you are afraid of with regard—is this what you are going to set up in your Status of Forces Agreement, lethal training and aid from Iran, which Iraq is apparently very happy to receive assistance on?

Let me further go on here.

The Declaration of Principles signed in November highlights the goals of Iraq's regional economic integration, so this cooperation with Iran presumably would be welcomed, in a sense. At the same time, the United States has tried to encourage the international community to sanction Iran, isolate it from the rest of the world, because of Iran's nuclear program, a subject of great concern to the majority of this body and I assume both of you as well.

But are these two objectives, Iraq's integration into the regional economy and the attempt to economically isolate Iran, at odds with each other in any way in your view? And how does the goal of Iraq's regional economic integration sit with the broader United States policy priorities of seeking to isolate Iran because of its nuclear program?

It seemed to me—and I just watched the TV—there was a very long red carpet laid out for the President and a very close relationship with Iraq and Iran over the last several days. Can you comment about these two pieces, about the economic integration and the isolation of Iran?

Mr. SATTERFIELD. Congresswoman, I certainly can't comment in this session; and a much more detailed set of comments could be provided on the nature of this visit and the relationship between Iran and Iraq in another setting, in a closed setting.

But in this open testimony what I can say is this: The United States has supported and will continue to support constructive, positive relations between Iraq and all of its neighbors, including Iran. But Iran's public declarations, most recently repeated by President Ahmadinejad, that Iran respects the sovereignty of Iraq, wishes to see a stable, secure and peaceful Iraq emerge, are at sharp if not 180 degree variance with the behaviors of Iran with respect to the provision of lethal training, lethal assistance to the most violent, most radical elements inside Iraq that contribute to the destabilization of that country.

It is those behaviors of Iran, not to the fact of constructive or positive relationships between the two countries of Iraq and Iran, that the United States and indeed our Iraqi partners are opposed to.

Ms. DELAURO. Well, our Iraqi partners seem to be very clear about a strong relationship with Iran. They seem to be able to discern between destructive forces and constructive forces and are carrying out a dialogue with Iran to move forward to economic integration. And the United States, under this administration, can't seem to distinguish between destructive and constructive forces and refuses to have any conversation with Iran about the region and to destabilization. And I think it is really—I don't know how you describe—I don't know if you know the details of the \$1 billion in aid or the negotiated deals that were—if you are privy to all of these details.

I yield to my colleague.

Mr. SATTERFIELD. Mr. Chairman, if I could please respond. In fact, the United States, through the agency of our Ambassador in Iraq and his team, have conducted several rounds of direct discussions with the Government of Iran over issues relating to the security of Iraq. We are fully prepared for another such round, as we have been since October of last year. It is the Iranian Government which, on occasion after occasion, has drawn back from agreeing to a date for the next round of such discussions. That offer, in terms of our discussions at a technical level, remains out there.

Ms. DELAURO. Well, I am truly glad to know that those conversations are occurring; and I would hope that they continue to be productive in both sides and that we—in your testimony, you really—stop the flow of lethal training and aid from Iran. It is hard to

know what you are—you make a statement like that, but you didn't make it in your commentary. That you really, in essence, on this issue, kind of really talk out of both sides of your mouth.

Mr. Delahunt.

Mr. DELAHUNT. I would just note, Ambassador, that it would appear that your counterparts in the executive in Iraq have a different impression of the behavior of the Iranians.

Again, this is just current. This is in the aftermath of Ahmadinejad's visit there; and, as Congresswoman DeLauro indicated, he was apparently warmly received.

But here we have Talabani, the President, a Kurd, saying that "Tehran and Baghdad are brotherly nations who share many beliefs and values. Of course, dictators and foreigners"—I don't know if that is an allusion to the United States—"have tried to tarnish and undermine the emotional relationships between the two states."

Prime Minister Maliki says, "I think that the level of trust is very high; and I say, frankly, that the position Iran has taken recently was very helpful in bringing back security and stability."

Zebari, the Foreign Minister, says, "We hope to engage, not fight, them"—referring to the Iranians—that our long-term relationship with the United States; we will reassure them that Iraq will not be a launching pad of the United States to make attacks on Iran.

I mean, this describes a totally different relationship. And I can appreciate there is proximity and history that goes on here. But even in the Declaration of Principles you talk about, you know, actors from outside. Is the inference that we draw, could that be Iran?

Mr. SATTERFIELD. It absolutely is not exclusively so but certainly in a large part is Iran.

Mr. DELAHUNT. Is Iran. Then we would seem to have a real disagreement with the Iraqi Government in terms of the behavior of Iran unless, unless you are suggesting that these officials are just making these statements because of the political dynamic that exists in the Middle East and maybe in Iraq.

Mr. SATTERFIELD. Mr. Chairman, I do not believe we are at difference with the senior officials of Iran on the substance of—

Mr. DELAHUNT. Well, you know what, I haven't heard any American officials making these kinds of observations about Iran and its behavior. So the only explanation then is that there is a significant difference, unless the Iraqis are whispering something to the Bush administration that they are not saying in public. And maybe they are whispering something to the Iranians about our relationship with the Iraqi Government. But somebody isn't being forthcoming.

Mr. SATTERFIELD. Mr. Chairman, we would be very happy to provide you or any member of this committee with a detailed briefing in another setting on this subject.

Mr. DELAHUNT. I understand. You know, I hear a lot of detailed briefings, and I prefer to do it out here in public. And if you can't say it, that is fine. But you know, the American people have earned the right, earned the right to hear what you have to say. Let me just ask a final question, if I can, Mr. Chairman.

Ms. DELAURO. Can I take back my time?

Mr. DELAHUNT. After I finish this one question.

Ms. DELAURO. You go ahead. Just as long as I can reclaim my time.

Mr. DELAHUNT. If you are claiming that the 2002 authorization to fight is still in effect, why does the administration therefore need to incorporate it within the Status of Forces Agreement?

Mr. SATTERFIELD. That is not what we are doing, Mr. Chairman. The Status of Forces Agreement contains grants by the Iraqi Government in a jointly negotiated document—

Mr. DELAHUNT. Okay.

Mr. SATTERFIELD [continuing]. Of operational authorities. It is two sets of authorities.

Mr. DELAHUNT. Okay. So in other words—

Mr. SATTERFIELD. There is no incorporation of this within the Status of Forces Agreement.

Mr. DELAHUNT. I see. So there will be nothing in there of the authority of American military—

Mr. SATTERFIELD. No, Mr. Chairman.

Mr. DELAHUNT [continuing]. To engage in combat.

Mr. SATTERFIELD. There will be no reference to the congressional authorization. It will be effectively an Iraqi-United States understanding on necessary protections, privileges, and authorizations for potential operations.

Mr. DELAHUNT. And it will be the presumption, or the inference, or the conclusion by the administration that they don't need that because of the October 2002 authorization.

Mr. SATTERFIELD. That, with respect—within our system, our constitutional system, that authorization continues to exist.

Mr. DELAHUNT. Fascinating.

Ms. DELAURO. If I can, Mr. Chairman, I just have one more question. The congressional authorization to use force in Iraq refers to several U.N. Security Council resolutions. Iraq wants out of the U.N. mandate at the end of the applicability of these resolutions. So part of the resolution will no longer be applicable. The authorization also refers to Iraq's pursuit of weapons of mass destruction. That will no longer be applicable. The authorization further refers to Iraq's ties to terrorism. Do you believe that Iraq, as defined in the authorization, is the physical space that makes up the country of Iraq, or is it the government? It clearly means the government. You have got the Maliki government. Is the Maliki government pursuing weapons of mass destruction? Is the al-Maliki government supporting terrorist organizations? Is the Maliki government violating U.N. resolutions? Did the al-Maliki government invade Kuwait and use weapons of mass destruction on its own people? No. So, are you essentially saying that we are authorized to use force against the country of Iraq and not the regime?

Mr. SATTERFIELD. Congresswoman, we believe that a threat continues to exist in Iraq. We understand that there will be opportunities—Chairman Delahunt, we understand, will be holding hearings on exactly this topic—and that there will be a very detailed examination of all of these issues. We will be prepared to address these issues there.

Ms. DELAURO. But it harkens back to the authorization and the mandate. And this was part of the authorization, as it had to do with the regime at that time. And unless this regime is engaged

in these same kinds of efforts, we are now talking about a different set of circumstances that are described where?

Mr. SATTERFIELD. Congresswoman, we believe that the resolution remains in effect. And again, a detailed presentation on these issues will certainly be forthcoming.

Ms. DELAURO. I think you pursue these questions, Mr. Chairman, and Mr. Chairman. And so we are not going to get any really straight answers.

Mr. ACKERMAN. Let me thank the panel for their courageous appearance.

Mr. SATTERFIELD. Thank you, Mr. Chairman.

Mr. ACKERMAN. Let me thank you for your commitment to provide us, by 3 o'clock tomorrow, with the answers to the specific questions as to the administration's interpretation of the Constitution after consulting with lawyers or whomever they will consult with. And I will be happy, I will be happy to share the response with other members on—and who have participated with—the committee. We do have another panel, believe it or not, as you recall, of experts.

Chairman Delahunt has an additional question.

Mr. DELAHUNT. If I could just indulge, I, back on January 29th, I asked the State Department to deliver letters of invitation to five members of the Iraqi Council of Representatives who wished to come to Washington to discuss the future, a parliamentary exchange, if you will, which we do on a rather frequent basis. They have had great difficulty in securing visas. First, they were denied entry to the U.S. Embassy unless they brought a U.S. citizen with them. They were told to apply for a visa like anyone off the street. And that would entail a wait, I understand, of some 30 days. Then they were told they need additional information besides a letter signed by myself on congressional stationery in order to authenticate their invitation. Let me say I have made that invitation to them. I want to be very clear about it. I think it is important that members of this legislative body hear and exchange views with members of the Iraqi Parliament.

And, Ambassador, I would hope that a high level of cooperation, given this new spirit that we now seem to be enjoying in terms of notification and consultation, would be reflected in the expediting of those issues.

Mr. SATTERFIELD. Mr. Chairman, I checked on this issue before I came. I understand, your staff has been in constant contact with our staff on this issue, that one visa has been granted, another one of the individuals who you were interested in coming is undecided about whether they wish to come. Three other individuals may have made a decision not to travel. But we remain willing to facilitate this in any way we can.

Mr. DELAHUNT. Thank you, Ambassador. We will explore that. Thank you.

Mr. ACKERMAN. Thank you very much. The panel is excused. Thank you for your participation here.

Mr. ACKERMAN. Our second panel consists of Professor Oona Hathaway, associate professor of law at Yale Law School. Before joining the faculty at Yale, Professor Hathaway served as law clerk for Justice Sandra Day O'Connor and DC Circuit Court Judge Pa-

tricia Wald. Professor Hathaway has been published in the Yale Law Journal, the Chicago Law Review, the Stanford Law Review, the Harvard Law Review. Professor Hathaway also serves as a member of the advisory committee on international law for the legal advisor at the Department of State, and holds degrees from Harvard and Yale Law Schools.

Doctor Lawrence Korb is a senior fellow at the Center for American Progress and a senior adviser to the Center for Defense Information. Prior to joining the Center, he was a senior fellow and the director of national security studies at the Council on Foreign Relations. From July 1998 to October 2002, he was the council vice president, director of studies, and the holder of the Maurice Greenberg Chair. Before joining the Council, Dr. Korb served as director of the Center for Public Policy Education; and senior fellow in the Foreign Policy Studies Program at the Brookings Institution; dean of the Graduate School of Public and International Affairs at the University of Pittsburgh; and vice president of corporate operations at the Raytheon Company. Dr. Korb served as an Assistant Secretary of Defense from 1981 to 1985, and served on active duty for 4 years as a Naval fighting officer, and retired from the Naval Reserve with the rank of captain.

Welcome to both of you. Your full statements will be made part of the record. And Professor Hathaway, let us begin with you.

**STATEMENT OF OONA A. HATHAWAY, ESQ., ASSOCIATE
PROFESSOR OF LAW, YALE LAW SCHOOL**

Ms. HATHAWAY. Thank you very much. And thank you to the committee for having me here today. I had prepared some oral remarks, but I have proceeded to tear them up in light of what we recently heard and drafted a few comments. And then I would be happy to receive questions. So I will begin with the basic principle that I had planned to begin with, which I think is worth restating once again, just to remind us all what the guiding principle ought to be in considering the proper scope of an international agreement concluded by the President on his own authority. And that is that the President cannot make an international agreement that exceeds his own constitutional authority. If he acts in absence of a congressional grant, he can only rely on his own independent constitutional powers.

So what does that mean in this case? Here we are presented with two agreements that the administration intends to negotiate with Iraq. The first is a Status of Forces Agreement, which traditionally is extraordinarily limited in scope. Traditionally, Status of Forces Agreements include a negotiation of immunity for military officials and the very mundane, day-to-day events that might be involved in having permanent forces stationed in a host country. What a Status of Forces Agreement would not include is an authority to fight, immunity for private military contractors, any kind of mutual defense guarantee, maritime interdiction, which was mentioned, counternarcotics actions or antiterrorism activities. Those are not part of a standard Status of Forces Agreement. I have read a large majority of the unclassified Status of Forces Agreements and have read extensive materials prepared by scholars about Status of Forces Agreements. And the kind of Status of Forces Agreement

that is proposed by the administration based upon the remarks here today far exceeds a typical Status of Forces Agreement.

Now, a typical Status of Forces Agreement can, and traditionally is, be negotiated by a President on his own authority as a sole executive agreement. But when you add into this agreement these kinds of additional commitments that far exceed a standard Status of Forces Agreement, it is no longer an agreement that can be concluded by the President on his own authority. When it includes, for instance, an authority to fight, it becomes an agreement that really must be submitted to Congress for approval either as a treaty or as a congressional-executive agreement. There is a second agreement that was mentioned today, and that is a Strategic Framework Agreement. From the written remarks, I had been led to believe that this was intended to be a binding agreement. And I am pleased to hear that it is not going to be a binding agreement but instead is going to be a nonbinding agreement.

It had appeared from the remarks that that agreement was—from the written remarks—that Ambassador Satterfield submitted that that agreement was going to include permission for U.S. and coalition forces to assist in restraining extremists and outside actors who seek power through violence and terror. That is a quote from the written remarks submitted by Ambassador Satterfield. I now understand that that seems to be language that is instead going to be in the Status of Forces Agreement, which again I emphasize is not part of a standard Status of Forces Agreement, and therefore would have to be approved by Congress. If in fact the Strategic Framework Agreement is going to be entirely nonbinding, that is, not create any legal obligation on the part of the United States Government, then it is acceptable for that to be concluded as a sole executive agreement, just in the same way that it is acceptable that the Declaration of Principles itself was concluded as a sole executive agreement, though I would agree with Chairman Delahunt's remarks that although the agreement itself legally can be concluded as a sole executive agreement, the agreement that it contemplated far exceeded what the President could do on his own authority, and therefore there should have been consultations with Congress in advance of the issuing of the Declaration of Principles.

Let me end simply by noting a very obvious and simple solution to the problem before this subcommittee, and that is the extension of the U.N. mandate. An extension of the U.N. mandate would deal with both the international law issues that the administration has rightly raised about the legality of retaining troops in Iraq after the expiration of the mandate and would address the issues raised at the hearing today in regard to the House Resolution 114 regarding the authority to continue operating in Iraq as a matter of domestic law. Because a second prong of H. 114 does provide for congressional authorization to carry out Security Council resolutions. And the U.N. mandate is obviously a Security Council resolution. So, therefore, an extension of U.N. mandate would address both of these problems and would give Congress time and the administration time to negotiate a fuller agreement in consultation with Congress and likely negotiated largely by the next administration. So, with that, I end and look forward to your questions.

[The prepared statement of Ms. Hathaway follows:]

PREPARED STATEMENT OF OONA A. HATHAWAY, ESQ., ASSOCIATE PROFESSOR OF LAW,
YALE LAW SCHOOL

I would like to thank the Subcommittee for inviting me to speak today about the proposed U.S. Agreement with Iraq.

I begin with the basic principle from which the rest of my remarks flow: The President cannot make an international agreement that exceeds his own constitutional authority without Congress's assent. As Justice Jackson explained in *Youngstown Sheet & Tube*, when the President acts pursuant to an "express or implied authorization of Congress, his authority is at its maximum."¹ When the President instead "acts in absence of either a constitutional grant or denial of authority, he can only rely upon his own independent powers."² That means that if a President seeks to conclude an agreement on his own he is severely limited in what he can agree to.³

There are two separate proposed bilateral agreements between the United States and Iraq before the Subcommittee today: the proposed Status of Forces Agreement (SOFA) and the proposed Strategic Framework Agreement. Based on the principle articulated above, the first may be concluded as an executive agreement without the consent of Congress (if it is limited to the issues concluded in a typical SOFA). The second, however, cannot. I will conclude with a word about how the United States could address the probable need for international legal authority for the presence of U.S. troops in Iraq past the end of this year if there is no bilateral agreement that substitutes for the United Nations Mandate.

(1) STATUS OF FORCES AGREEMENT

As I stated in my testimony before the Subcommittee on February 8, typical status of forces agreements provide for the protection of United States military personnel who may be subject to foreign jurisdiction, proceedings, or imprisonment.⁴ They generally address issues necessary for day-to-day business, such as entry and exit of personal belongings of personnel, and postal and banking services. They may grant exemption to covered persons from criminal and civil jurisdiction, or from taxation, customs duties, immigration, and similar laws of the foreign jurisdiction. Standard status of forces agreements *do not* include an authorization to fight, immunity for private military contractors, or a mutual defense guarantee. Because they generally have a limited purpose—connected directly to the President's authority as commander-in-chief—all but a small number of the United States' status of forces agreements have been concluded as executive agreements, usually without the express approval of Congress.⁵

¹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring). The full language is as follows: "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty." *Id.* at 635-36.

² *Id.* at 637 ("When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least, as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables, rather than on abstract theories of law."). There is also a third category of presidential authority: When the President "takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." *Id.*

³ See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 303(4) (1987) ("[T]he President, on his own authority, may make an international agreement dealing with any matter that falls within his independent powers under the Constitution.").

⁴ See, e.g., Department of the Army and the Navy, Status of Forces Policies, Procedures, and Information, (15 December 1989) (specifying regulations regarding status of forces policies, procedures and information, and noting that "[t]his regulation provides for the implementation of the Resolution accompanying the Senate's consent to ratify the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA). . . . Although the Senate Resolution applies only to countries in which the NATO SOFA is currently in effect, the same procedures for safeguarding the interests of U.S. personnel subject to foreign jurisdiction will be applied, insofar as practicable, to all foreign countries").

⁵ With the exception of the NATO Status of Forces Agreement, Jun. 19, 1951, 4 U.S.T. 1792, and an agreement entered with Spain prior to Spain's accession to NATO, Agreement in Implementation of the Treaty of Friendship and Cooperation, Jan. 31, 1976, U.S.-Spain, T.I.A.S. No. 8361, both of which are Article II treaties, all other status of forces agreements to which the United States is currently a party are executive agreements. See, e.g., Agreement Concerning

(2) STRATEGIC FRAMEWORK AGREEMENT

I understand from the recent statements of Secretary Rice and Gates and the written testimony of the Administration's representatives today that the Administration is currently planning not only to conclude a Status of Forces Agreement with Iraq, but also to conclude what they are calling a Strategic Framework Agreement. Ambassador Satterfield has indicated in his testimony that the Administration intends to negotiate both a status of forces agreement and a "framework for a strong relationship with Iraq."⁶ Secretary Gates in his testimony before the Senate last month also referred to a "strategic framework agreement" with Iraq. Together with the Status of Forces Agreement, the Strategic Framework Agreement will, Ambassador Satterfield states, "permit U.S. and coalition forces to assist in restraining extremists and outside actors who seek power through violence and terror."⁷ Although the Administration has clearly stated its intent to conclude the Status of Forces Agreement as a sole executive agreement, it has not made clear whether it also intends to conclude the Strategic Framework Agreement as a sole executive agreement.

The Constitution requires that any binding Strategic Framework Agreement of the type that appears to be contemplated by the Administration be approved by Congress, either as an Article II treaty or through legislation passed by both Houses of Congress. That is because an agreement that would provide authority to engage in military action in Iraq would exceed the President's own constitutional authority and thus must be approved by Congress.

Practice concerning similar agreements supports this reading of the constitutional imperatives. The closest analog to the Administration's proposed strategic framework agreement would appear to be agreements between the United States and foreign countries in post-war situations where continuing occupation by American troops was required to maintain ongoing security and stability. The United States entered collective defense treaties with the North Atlantic Treaty Organization,⁸ Japan,⁹ and the Philippines,¹⁰ after World War II. Similarly, the United States entered a treaty with South Korea in the wake of the Korean War.¹¹ All of these agreements were entered as treaties and were thus approved by two-thirds of the

the Status of Members of the United States Armed Forces in the Kingdom of Tonga, July 20, 1992, U.S.-Tonga, K.A.V. No. 3363; Agreement on the Status of United States Personnel, Jan. 22, 1991, U.S.-Isr., 30 I.L.M. 867; Agreement Concerning the Status of United States Forces in Australia with Protocol, May 9, 1963, U.S.-Austl., 14 U.S.T. 506. Many of these executive agreements are concluded, however, pursuant to obligations specified in a prior mutual defense treaty. This is true, for example, of the agreements with Japan and Korea and all the supplementary arrangements to the NATO SOFA. See Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Regarding Facilities and Areas and the Status of United States Armed Forces in Japan with Agreed Minutes, Jan. 19, 1960, U.S.-Japan, 11 U.S.T. 1652; Agreement Under Article IV of the Mutual Defense Treaty of October 1953, Regarding Facilities and Areas and the Status of United States Armed Forces in Korea with Agreed Minutes [Agreed Understandings, Exchange of Letters and Other Implementing Agreements], Jul. 9, 1966, U.S.-Korea, 17 U.S.T. 1677, as terminated by the Agreement Terminating the Agreed Understandings & Exchange of Letters Related to the Agreement of July 9, 1966 Under Article IV of the Mutual Defense Treaty Regarding Facilities and Areas and the Status of United States Armed Forces in Korea, Feb. 1, 1991, U.S.-Korea, T.I.A.S. No. 6127; Supplementary Agreement to the NATO Status of Forces Agreement with Respect to Forces Stationed in the Federal Republic of Germany, Aug. 3, 1959, 1 U.S.T. 531, 481 U.N.T.S. 262.

⁶Testimony of Ambassador David M. Satterfield, before the House Committee on Foreign Affairs, Subcommittee on Middle East and South Asia (March 4, 2008).

⁷Id.

⁸The North Atlantic Treaty, was concluded April 4, 1949, and provided for the creation of a collective defense (parties include United States, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Turkey, and the United Kingdom).

⁹On September 8, 1951, the United States and Japan signed the Mutual Security Treaty, which provided the initial basis for the Japan's security relations with the United States and provided the legal basis for the continued presence of U.S. troops in Japan. It was later superseded by the U.S. and Japan Mutual Defense Assistance Agreement (March 8, 1954), which was in turn superseded by the Treaty of Mutual Cooperation and Security between the United States and Japan (January 19, 1960). All of the agreements were concluded as Article II treaties.

¹⁰Mutual Defense Treaty Between the United States and the Republic of the Philippines (August 30, 1951).

¹¹Mutual Defense Treaty Between the United States and the Republic of Korea (October 1, 1953).

Senate as required under Article II of the U.S. Constitution.¹² In all these cases, the United States also concluded separate status of forces agreements, which were limited in nature and were not independently approved by Congress.

Of these agreements, the 1951 Security Treaty Between the United States and Japan is particularly instructive. That agreement was concluded by the United States and Japan after Japan gained full sovereignty at the end of the allied occupation. Article I of that agreement provided, "Japan grants, and the United States of America accepts, the right, upon the coming into force of the Treaty of Peace and of this Treaty, to dispose United States land, air and sea forces in and about Japan. Such forces may be utilized to contribute to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance given at the express request of the Japanese Government. . . ." As in the case of the proposed strategic framework agreement with Iraq, the treaty did not *require* or *obligate* the United States to use military force nor did it provide any explicit security commitment from the United States to Japan. But the security commitment was implied and understood by the parties to the agreement and hence the agreement was submitted to the Senate for approval as a treaty under Article II.

(3) THE UN MANDATE

The Administration has voiced a very real and legitimate concern about the need for legal authority for the presence of U.S. troops in Iraq past the expiration of the United Nations mandate at the end of this year. This has been cited by Administration officials as a leading reason for the negotiation of a bilateral agreement that would give U.S. troops the authority to fight in Iraq past the end of this year. It is important to note, however, that an extension of the United Nations Mandate would satisfy the same international legal concerns regarding the presence of U.S. troops in Iraq. And an extension would have the added advantage of permitting adequate time for the conclusion of a bilateral agreement between the United States and Iraq that could be submitted to Congress for approval either as an Article II treaty or through legislation approved by both Houses of Congress.

STATEMENT OF LAWRENCE J. KORB, PH.D., SENIOR FELLOW, CENTER FOR AMERICAN PROGRESS

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

It is a very great privilege to be here. Let me briefly say, I have been dealing with this for over 40 years, first when I was deployed to Japan as a Naval officer in '64, and then when I had the privilege of working for President Reagan, and among my responsibilities was installations. This is different from any standard SOFA that I have ever seen. It goes far beyond any of the agreements I have seen either in government or out of government. And I agree with the professor that we ought to extend the U.N. mandate and let the next President, whoever he or she may be, make the decision.

Now, as I understand it, it is the Iraqis that don't want to extend the U.N. resolution because they want to be recognized as a sovereign government. And I can understand that. But the fact of the matter is they want an agreement with us to continue to protect them. They don't want us there as an occupying force. In fact, if you look at all of the polls in Iraq, they want us gone. The government wants us there to protect them. And I remind you that when the Iraqi Defense Minister was in this country a couple of months

¹²The United States is currently party to eight collective defense arrangements in total. Seven have been concluded as treaties (with the North Atlantic Treaty Organization (1949); Australia and New Zealand (1951); Philippine (1951); Southeast Asia (1954); Japan (1960); the Republic of Korea (1953); and the American States (in the "Rio Treaty" of 1947)), and one as a congressional-executive agreement with express congressional approval (with the Republic of the Marshall Islands and the Federated States of Micronesia, embodied in the Compacts of Free Association (1986)).

ago, he said, “We are not going to be ready to take over internal security until 2012 and external maybe until 2020.”

Well, who do they want to do it? They want us to do it. And it seems to me that if in fact that is what they want, we, the American people, and you, their Representatives, should have a say in exactly what our forces do. I think Senator Biden put it pretty well when he noted that this agreement has the potential to mire American troops in an Iraqi civil war indefinitely, especially if a sectarian Iraqi Government determines who qualifies as an outlaw group or a Saddamist. So I think that is the key issue here. They want us there to protect them against, to use the words of our own Constitution, all internal and external threats to their security.

Basically this is not something that we should enter into without full consultation and full congressional agreement on because it does have long-term ramifications. And since I see Congressman Rohrabacher here, I will remind him and the committee that President Reagan, among other things, submitted for congressional authorization our security commitment to the Marshall Islands and Micronesia.

[The prepared statement of Mr. Korb follows:]

PREPARED STATEMENT OF LAWRENCE J. KORB, PH.D., SENIOR FELLOW, CENTER FOR AMERICAN PROGRESS

Congressman Delahunt, ranking member Rohrabacher and distinguished members, I appreciate the opportunity to appear before you to analyze President Bush’s Declaration of Principles with the government of Prime Minister Nouri al-Maliki. I cannot think of any issue more important to our future security and I commend you for holding this hearing.

At the end of 2008, the United Nation’s security mandate authorizing American combat operations will expire. To replace the mandate, President Bush and Iraqi Prime Minister Nouri al-Maliki issued a “Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship” in November of 2007. Based on this declaration, the administration and the Iraqi government plan to issue a bilateral Status of Forces (SOFA) Agreement by the end of July.

As currently worded, the Declaration of Principles is substantially broader in scope than standard Status of Forces Agreements. The fact that the administration does not intend to submit the agreement for Congressional approval is a testament to their own recognition of how the broad the implications of this agreement are and what type of debate it would spark on Capitol Hill and in the country. It is likely the Administration will negotiate and sign an Iraqi SOFA without Congressional authorization as Ambassador Satterfield just indicated.

It is my opinion, and that of every unbiased legal scholar, that the Bush administration must seek and obtain Congressional approval for the Status of Forces Agreement in its current form as outlined in the Declaration of Principles.

STATUS OF FORCES AGREEMENTS

I have been dealing with Status of Forces Agreements for over 40 years. In 1964, I gained a bottom-up perspective when I was deployed to the Marine Corps Air Station in Iwakuni, Japan as a Naval Flight Officer with Patrol Squadron One (VP-1). Twenty years later, as an Assistant Secretary of Defense in the Reagan administration, with responsibility for troops and bases at home and abroad, I gained a top-down perspective.

Status of Forces Agreements do not deal with military operations nor what is referred to as the “authority to fight” or “right to fight”—the authorization to conduct military operations within the receiving country. My understanding then and now is that a SOFA provides the framework for legal protections and rights while U.S. personnel are present in a country for agreed on purposes. Neither while on active duty nor while working in the Pentagon did I ever come across a SOFA that contained the authority, directly or indirectly, to protect a government from all enemies both foreign and domestic.

The SOFA’s with Germany and Japan which govern the roles and responsibilities of our troops in those countries do not oblige the United States to defend those coun-

tries or their government. Those responsibilities are contained in separate treaties which have been obtained Congressional authorization.

The administration is pushing this bilateral Status of Forces Agreement for three principal reasons. First, under the current legal basis for American troops in Iraq (United Nations Security Council Resolution 1790) Iraqi consent for the U.S. troop presence can be withdrawn at any time. Second, the current UN mandate does not address the immunity of US troops or private contractors before Iraqi courts. Third, and most importantly, in its current form, the U.S./Iraqi Declaration of Principles includes language guaranteeing "security assurances and commitments" requiring the United States to defend Iraq "against internal and external threats," and to "support" Iraq's attempts to "defeat and uproot" all "terrorist groups," including "al-Qaeda, Saddamists, and all other outlaw groups," and to "destroy their logistical networks and their sources of finance."

This last provision is particularly troubling. As your Senate colleague, Sen. Joe Biden (D-DE), has noted, the agreement has the potential to mire American troops in an Iraqi civil war indefinitely, especially if a sectarian Iraqi government determines who qualifies as a "Saddamist" or "other outlaw group."

As outlined, the Iraqi/U.S. Status of Forces Agreement would give the United States the "authority to fight." As I mentioned, this is uncharacteristic of a SOFA. As a former witness before this committee, R. Chuck Mason of the Congressional Research Service, noted after examining the details of more than 70 Status of Forces Agreements, "none contain the authority to fight." Nonetheless, as Ambassador Satterfield noted, the White House will seek to sign the SOFA agreement under the auspices of an "executive agreement" which does not require Congressional approval.

While there are no agreed upon legal criteria by which to determine which agreements fall into the category of "executive agreements" (which do not require Congressional approval) and "treaties" or "Congressional-Executive agreements" (which do require Congressional approval) there are several precedents requiring that agreements seeking a "security commitment" obtain Congressional authorization.

- A 1992 report submitted to Congress by President George H.W. Bush, the Executive Branch 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."
- The National Commitments Resolution of 1969 expressed a sense of the Congress that defined a security commitment quite broadly, stating that, among other things, it includes any "promise to assist a foreign country, government, or people by the use of the Armed Forces . . . either immediately or upon the happening of certain events."

Thus, there has been a general agreement that security commitments, which this agreement most certainly is, require Congressional approval.

CONCLUSION

Common sense tells us that the primary reason the Iraqi government wants us to remain is to defend them from internal and external threats. As the Iraqi Defense Minister mentioned during his recent visit to the U.S., the Iraqis themselves will not be able to provide internal security until 2012 and external until 2020. Who will provide it in the interim if not our brave troops?

Why is it necessary to negotiate a SOFA in the midst of a war and a presidential campaign? The answer is that the Government of Iraq has expressed its strong desire that the U.N. Chapter VII mandate expire at the end of 2008. The Iraqi government cannot have it both ways. If it wants to require the U.S. to defend Iraq against internal and external threats and to support Iraq's attempts to uproot and defeat all terrorist groups, including Al-Qaeda, Saddamists, and all other groups, then it must be willing to have this arrangement ratified by the Congress. This is the way our government works. If the Maliki government wants us to respect its sovereignty, it must respect our Constitution.

Why is this administration unwilling to submit this treaty to the Congress? The answer is clear, it knows it will not be ratified because the American people have turned against this mindless, needless, and senseless war and want to withdraw our forces from this quagmire as soon as possible.

Mr. ROHRBACHER. I take note, and I agree with that, and I agree with you. Thank you.

Mr. ACKERMAN. Thank you both very much. I think each of you noted that the Status of Forces Agreement goes far beyond Status

of Forces Agreements with which we are familiar. Does that mean that this proposed Status of Forces Agreement lacks moral authority or legal authority?

Mr. KORB. In my view, it does. I mean, because, if it is not submitted to the Congress, for example, as our treaty with Japan and—

Mr. ACKERMAN. Submitted to the Congress for consultation or as a treaty?

Mr. KORB. It was submitted for congressional approval. My understanding is you can have it ratified by the Senate, by two-thirds, or by both Houses.

Ms. HATHAWAY. Yes, let me simply add to that, if I may, I agree, not only as a moral matter, but as a legal constitutional matter that if the agreement exceeds the powers of the President, the sole executive powers of the President, the President must submit the agreement to Congress. And in this case, the agreement that is contemplated does exceed the President's own independent powers and therefore must be submitted to Congress. And I agree, could be submitted either as a treaty or as a congressional-executive agreement that would be passed by both Houses of Congress.

Mr. ACKERMAN. Could you site us examples of congressional-executive approval agreements?

Ms. HATHAWAY. The Micronesian case is one of them. That is a case where there is a mutual defense treaty that was concluded as a congressional-executive agreement. As a general matter—

Mr. ACKERMAN. There is no mutual defense in any of these documents. Iraq is not committed to come to our defense should we be attacked by Micronesia.

Mr. KORB. My understanding of that agreement is that they weren't going to defend us; we were going to defend them.

Mr. ACKERMAN. Yeah, but I think the term is mutual security agreement. This is not a mutual security agreement. I am trying to find a legal principle that might be violated here.

Ms. HATHAWAY. Well, the example that I cited in my written testimony I think is probably the closest analog to the situation that is presented here, and that is the 1951 agreement with Japan. And in that case, the United States concluded a treaty. It was as a treaty with Japan in a very similar circumstance. It was a circumstance where the United States had invaded the country, had replaced the government, a new government was in place, ready to maintain its own sovereignty. In order to transition to a different kind of relationship with the country, there was a negotiation of a treaty by which the United States received an authority to fight. The language is very similar to the language that is being contemplated here. In Article I of the security treaty between the United States and Japan, it states, "Japan grants, the United States of America accepts, the right, upon coming into force of the Treaty of Peace in this Treaty, to dispose United States land, air and sea forces in and about Japan. Such forces may be utilized to contribute to the maintenance of international peace and security in the Far East and to the security of Japan against armed attack from without, including assistance given at the express request of the Japanese Government to put down large-scale internal riots and . . ."—

Mr. ACKERMAN. We don't need the whole—

Ms. HATHAWAY. Well, I think it is important to get the entirety of the article, and that is all but a couple words of it, because it is a treaty, and it is a treaty that provides the right to the United States to operate in Japan and to fight.

Mr. ACKERMAN. I don't mean to cut you short, but the sui generis nature of that agreement was based on the premise that Japan constitutionally neutered its own ability to defend itself by limiting its defense budget to 1 percent of its Gross National Product.

Ms. HATHAWAY. I agree with you.

Mr. ACKERMAN. And therefore, in doing that, because of the concerns of the aggressive nature of the previous government there, the comfort level of the world had to somehow be met by Japan's agreeing not to have anything that looked like a modern day military. And in order to get them to agree to do that, their question was, "Well, who is going to protect us?" and that is why this elaborate negotiation and rather different looking thing that we have with Japan. But there seems to be no—I would think, if all the world agreed not to have a military and that we would protect them and there was no other army, that would be a no-brainer for us.

Ms. HATHAWAY. My point is simply that the agreement in fact does not provide an explicit guarantee from the United States to come to the aid of Japan, and yet it was concluded as a treaty. That is the point.

Mr. ACKERMAN. That is the strong point.

Ms. HATHAWAY. Yes. Thank you.

Mr. ACKERMAN. And it is an important point.

Mr. KORB. And I might add that the Japanese have gone beyond the 1 percent realistically. And they also, their self-defense force, they keep, you know, extending what that means. I mean, they are a significant military power right now.

Mr. ACKERMAN. Your interpretation of the Constitution, which I assume—I would hope that you don't think is a hypothetical document—does it require the administration to come to Congress to continue what they think is their limitless mandate, as they have described it, to continue if they have military operations or are at war or protecting Iraq?

Mr. KORB. In my view, it does because—

Mr. ACKERMAN. Is this a close call?

Mr. KORB. I don't even think it is close, because as was pointed out before by Congressman DeLauro, that authorization basically had to do with the Saddam Hussein regime. It is gone. After that regime was overturned, we had the Coalition Provision Authority and then the U.N. mandate, and then you had elections. And then you had an Iraqi Government. That is the legal authority now.

In my view, the 2002 authorization was over once you went to Chapter VII under the United Nations. And now, since the Iraqis, remember, want that to end, you are coming up with a new agreement with a new government. And you are making pledges to that government that had nothing to do with the original invasion and occupation of Iraq.

Mr. ACKERMAN. In addition to the answer of Congress has the power of the purse string and can end the conflict by refusing to

fund it in any way, if this matter were brought before the Supreme Court what would happen? Would they duck it? Would they take it up?

Mr. KORB. I will let the law professor answer, but I would say one thing, we have never brought the War Powers Act to the Supreme Court because we are not quite sure what they might decide. Neither side wants to do it. And Congressman Rohrabacher was talking about, when we attacked Libya, under the War Powers Act, the President has to consult with Congress before he used military force. And then, within 90 days, if he continues to use it, he has to get a congressional resolution.

Mr. ACKERMAN. Professor?

Ms. HATHAWAY. Well, in my view, it is the power of Congress to declare war. And therefore, whenever the U.S. Government does engage in war, it is incumbent on the administration to receive approval from Congress for that action. And in fact, the House Resolution 114 is currently the congressional authority under which the action in Iraq is taking place. And that authority, in my view, the strongest argument that that continues to exist is that there is an operating U.N. mandate that is encompassed in prong two of section three, that the President is authorized to use Armed Forces to enforce all relevant United Nations Security Council resolutions regarding Iraq. When the U.N. mandate lapses, then that authorization under that prong will cease to exist unless there is a subsequent Security Council resolution further authorizing action. And that is why I would argue that an extension of that mandate would both be responsive to the need to receive congressional authorization for the continuing war in Iraq and the need to have international legal authority for the continuing war in Iraq.

Mr. ACKERMAN. Congress made authorization to the President in October 2002. Under that authorization, the first thing it says is: The President is authorized to use the Armed Forces as he determines to be necessary in order to—and then it gives a two-pronged limitation—defend the national security of the United States against the continuing threat posed by Iraq, and—a very important word, and—and, two, enforce all relevant United Nations Security Council resolutions regarding Iraq. I believe that there are many extant U.N. resolutions that are still standing at this moment that the President can lay claim to need to enforce and has license to do so under this authorization. But it does say, “and defend the national security of the United States,” a phrase that was used repeatedly by Ambassador Satterfield. This seems to be very wide open language that we granted in this authority for this to be the President’s call and the President’s judgment as he determines to be necessary and appropriate. If he thinks there is a continuing threat from Iraq, and I don’t know that they are suiting up against us, although they could easily make the argument about the snipers, it is not the Government of Iraq or their army, it seems to me that word “and” requires both of them; doesn’t it?

Ms. HATHAWAY. In my view, they are in the alternative. But I think this is a matter for—

Mr. ACKERMAN. You think “and” means “or”? Or do both of these need to exist for the President to continue having authority?

Ms. HATHAWAY. Well, I think that this seems to me like an issue that would be appropriate for Chairman Delahunt's next hearings on this issue of the declaration of war and the powers regarding the declaration of war.

Mr. ACKERMAN. We anxiously await answers 24 hours after your hearing, Bill.

Mr. Rohrabacher.

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

Let me just note that I have in front of me a press release that was issued on November 26th of 2007. So that is way back in November. It is a press release, the Declaration of Principles for long-term relationship of cooperation and friendship between the Republic of Iraq and the United States. Just sort of going through the type of things that are being discussed. And it is just too bad that we put out this press release and that, you know, they are willing to discuss things with Congress through the press and not willing to come up here and discuss it with us personally. And that is, hopefully, with the initiative that Mr. Delahunt showed with Condoleezza Rice in requesting witnesses for this hearing, that perhaps they will pay attention to think it is a little easier if they start consulting with us. About the War Powers Act, War Powers Act is still in effect; is it not? I mean, it was not repealed.

Mr. KORB. That is correct.

Mr. ROHRABACHER. Let me note again for the record, when it came up to repeal the War Powers Act, for whatever reason Republicans tended to support the request to repeal the War Powers Act. And I was one of the few Republicans who voted not to repeal the War Powers Act. I think it makes every sense in the world to have a use of force by the President done in cooperation with the Congress, rather than in opposition to Congress, or in some way not being coordinated that way. Let me note that if we have a treaty that authorizes us to fight, that would be basically an advanced authorization by Congress of the War Powers Act, would it not, if the treaty was then ratified by Congress?

Mr. KORB. In my view, yes. For example, if we were to come to the aid of Japan, if there were an attack, I don't think you would need another declaration.

Mr. ROHRABACHER. Right. So what we have in the War Powers Act is, if we actually have treaties that are ratified by Congress, we do not need then after 90 days to go to an authorization of Congress. And again, the War Powers Act is very specific that uses of military force should be done in consultation with Congress. And I would say, although I have been somewhat disappointed in the quality of the consultation with Congress on this particular issue and some other issues, we have been consulted with about the ongoing war in Iraq. The ongoing war in Iraq is not due to some conspiracy. There is a definite disagreement—now that it has dragged on the way it has—there is a definite disagreement here as to whether it is in America's interests to stay in this conflict. It is not a conspiracy. It is not that we don't have the legal authority to tackle it. Again, to my two expert witnesses here, could not Congress at any time just de-appropriate the money, meaning put restrictions on our appropriations saying that no money would be used for combat operations in Iraq? Could we not do that as a

method of stopping this conflict if we wanted to, forcing the President to withdraw the troops?

Mr. KORB. Theoretically, you could. Practically, it is almost impossible.

Mr. ROHRABACHER. It is not practically; it is whether in principle and in law. And in principle and in law, we can do that.

Ms. HATHAWAY. As a matter of law, absolutely.

Mr. ROHRABACHER. Say that again.

Ms. HATHAWAY. As a matter of law, it is absolutely a power of Congress.

Mr. ROHRABACHER. Absolutely it is. And this idea of we need more hoops to jump through and make sure we have this authority to make sure the President doesn't go off the reservation and get us involved in this long-term thing, we can end it at any time. I remember very well the Vietnam War, and I remember very well the Gulf of Tonkin resolution. The Gulf of Tonkin resolution was passed, and then all the Democrats came out how horrible it is we are staying in this Vietnam War. At any moment, the Democrats could have—at that point, they controlled both Houses of Congress—just not appropriated money to be spent in Vietnam. And the same thing is here in Iraq. If people don't honestly want us to be in Iraq, then we should have—we should make sure that we move to defund it.

And in the process of looking at what our legal, you know, what are the legal prerequisites for the President to utilize his power as commander in chief, I am satisfied that with the War Powers Act, that consulting with Congress, he has a right to act as commander in chief and to deploy American military forces when necessary and that, 90 days later, he needs to come and get some kind of authorization from us. That is in the law, and that is fine.

Whether or not we have reached that stage now of authorization, that is I guess a debatable point. And I think we have, but for sure there are other avenues, rather than the War Powers Act, of how to exercise our authority and exercise, for those who believe that the war is wrong, they have a way of handling this.

Let me see now, we were talking about—

Mr. ACKERMAN. Can I speak?

Mr. ROHRABACHER. Certainly.

Mr. ACKERMAN. The War Powers Act is at best controversial. Whether it is constitutional or not is problematic. And that nobody wants to test it is a surety. I think it is one of those areas where we have predetermined ambiguity is the best American policy, which leaves us more latitude to act in these situations.

Mr. ROHRABACHER. I would love to test it in the Supreme Court.

Mr. ACKERMAN. Right. But it raises a question, if the administration is willing to say that the Constitution is open to interpretation, what is to prevent them to say that an average law is not open to interpretation?

Mr. ROHRABACHER. I will have to pass on that.

Mr. DELAHUNT. Would the gentleman yield?

Mr. ACKERMAN. Rhetorical or not, I think it raises a couple of puzzling concerns, which brings us back to, it is the money, stupid.

Mr. ROHRABACHER. We have control of the purse. And reclaiming my time, I note here we are talking about a strategic framework,

and we are talking about Declaration of Principles, a Status of Forces Agreement. Let me note that what I am suggesting here is that, if indeed these do not require a congressional approval, if it does not, what that really means is that in order for us to deploy forces for any longer than 90 days by the War Powers Act, we must have the Congress authorize that. But if we do have a congressional approval for these items or any of these items, then indeed it might be interpreted as an advance approval by Congress, authorization to use force. And I think it is pretty well laid out here. I think that is an appropriate way for our system to work.

And again, I am a big supporter of the War Powers Act. I believe that we have to give the President leeway to deploy troops in emergency situations. But if they do go on for more than 90 days, we need to make sure that Congress is involved. So with that said, I am very pleased with your testimony. Thanks for reminding me of the Reagan administration and how Ronald Reagan did indeed bring something to have to be ratified by the Congress in a situation like this. And you have clarified a lot of the things that were my thinking on this matter, too.

So, thank you very much, Mr. Chairman. I look forward to Mr. Delahunt's hearings on the War Powers Act and what changes may or may not be necessary. And one last note, I would just have to say, and just this is my last thought for the hearing, I have to tell you there are bad guys in this world. And the Islamic radicals who control Iran are bad guys. And I am sorry, we can always try to say why the United States, we are paranoid, or we are really the bad guys, or we are causing the bad guys to do bad things. No, the Islamofascists who run Iran are bad guys. The Saudis who finance al-Qaeda are bad guys. And we have got to deal with that. And it depends on how much influence we want them to have in that part of the world and/or whether or not, if we know if they dominate that part of the world, we leave ingloriously in retreat from Iraq, what that will mean to the safety in this part of the world. You know, just trying to explain away the Iranian, as I say, Islamofascist regime is not going to make it any different than what it is, which is an evil regime that has financed terrorism, represses their own people, has slaughtered tens of thousands of their own people. And I am not saying we should invade that country at all. But we need to recognize it is a force in that region. And if we walk away, it will be a stronger force in that region. So with that said, I appreciate this hearing, and thank you very much.

Mr. ACKERMAN. The chair will stipulate that the bad guys are the bad guys. The good guys are the good guys. And the reason good guys are the good guys is because they are supposed to stay within the law.

Mr. Delahunt.

Mr. DELAHUNT. Talking about the good guys and the law, I think, Mr. Chairman, the most distinctive aspect of our democracy is that we embrace the rule of law. And we claim that that is the predicate for how our democracy functions. And that is why this is such an important hearing, because what is at stake here, as I said earlier, is just not simply the relationship between the United States and Iraq, but our Constitution. And the gentleman from California is correct, if Congress approves of the Status of Forces

Agreement or the Strategic Framework Agreement or a treaty, then the political branches have spoken in unison. And whatever that decision is, whether it is to stay and authorize combat after the expiration of the U.N. mandate, then it is legal, and it is grounded in the rule of law, particularly the Constitution of the United States.

I really believe that this is one of the most significant issues that this Congress will be dealing with between now and the end of this session. And I think today's hearing was very important, because we now have out on the table, if you will, for the first time some clarification. There are two agreements. It is the position of the administration that Congress has no say. We are not part of whatever they intend to do other than the fig leaf of notification and consultation.

Well, we have seen their commitment to consultation so far, which has been truly nonexistent until the last several weeks, when I daresay, Mr. Chairman, you and I and others in Congress, because of our insistence upon answers and clarification, prompted that consultation. That is nothing more than just a bow. And I have serious reservations as to whether that would have ever occurred if you and I were not sitting in these respective chairs and if in fact we had continued in the minority.

But I think it is very important that we understand, as an institution, we cannot abrogate our constitutional duty. It is Congress that has the power to declare war. This isn't just about the purse. That is reactive. We share the responsibility with the executive to declare war. And by declaring war, there are grades, if you will; let's call it authorization to commit our men and women to combat. That is our responsibility. We cannot abdicate this time that responsibility because we will be doing an injustice to the Founding Fathers who drafted this Constitution centuries ago, that knew that decisions about war ought to be collective and not allowed to vest in a single individual. That is what democracy is about. There is no more serious decision in a democracy than the decision to put our sons and daughters in harm's way for whatever reason. And it is one that has to be done thoughtfully.

Mr. Korb, you indicated that the Iraqis want to see the U.N. mandate expire. I am not sure that that is the case. That is why I would like to hear from some members of the Iraqi Parliament, whose objection to the extension to December 31st of 2008 was predicated on the fact that they wanted a timetable, like many of us here want a timetable. I am inferring that they would have agreed and acceded to an extension if they knew we were going to leave at some point in time. I think it was the chairman that was—or maybe it was Ms. DeLauro that was alluding to the polling data that is as current as last September which produced results that said like 70 percent of the Iraqi people want us to leave. Now, I think to avoid a constitutional crisis, because I daresay that if this administration insists on proceeding in a sole executive agreement to authorize our troops to be there, not under the aegis of a United Nations mandate, but simply relying on that October 2002 resolution, that we will have a constitutional crisis. That there will be a response from citizens. There will be a response that I don't think is necessarily healthy. But it is the executive that is not respecting

the legislative body and its constitutional prerogative and obligation to make this a shared decision. We are not bringing it on. They are saying it is our way or no way at all.

Mr. KORB. I do believe we probably could get the Iraqis to agree to extend the mandate. They do not want to do that for the reason that you talked about, because if you extend the mandate, then they can't get us out, because as long as the U.N. mandate is there, we can stay. And I think you are right, both the Iraqi Parliament and the Iraqi people want us to leave. And in fact, the opinion polls, even those conducted as recently as a month ago by General Petraeus confirm that, once again, that we are viewed by the Iraqis as the cause of the violence. I also believe that if this administration were to submit an agreement based in any way, shape or form on this Declaration of Principles, it would not be approved by the Congress. And I think they know that. Because the American people basically, even though they initially supported the war, no longer do and want us to get out in a reasonably quick time. And they know that this agreement would prevent us from doing that. That is the reason why they are pretending, in my view, that it really is nothing different than any of the other, to quote Secretaries Rice and Gates, the 115 SOFA agreements that we already have.

But I do believe, based upon my conversations with the Iraqis, that they did not want it extended for that reason. And the Iraqi Parliamentarians that you are trying to get to come up here have also complained that they weren't consulted on these Declaration of Principles either. And that is a parliamentary form of government.

Mr. DELAHUNT. Well, again, I mentioned it, I don't know if you were here, but you know, what drew my attention to this issue was that initially there was a letter signed by 144 members of the Iraqi Parliament—their Parliament consists of some 275 members—that was forwarded to the Secretary General of the U.N. and to Secretary Rice, indicating that they wanted a timetable for withdrawal; otherwise, they objected. The Maliki government just simply ignored them. I mean, if we are talking about in the Declaration of Principles defending the Constitution and democracy in Iraq, let's take note of that particular example, which contradicts this rhetoric that we read and hear that is embraced in the Declaration of Principles. I want to get back to the rather fascinating testimony today of the good Ambassador, Ambassador Satterfield, where it is now clear that they recognize that upon the expiration of the United Nations mandate, there is no authority remaining for United States troops to engage in hostilities in Iraq. Is that your understanding, Professor Hathaway?

Ms. HATHAWAY. I would agree with that, though what I understood from Ambassador Satterfield's remarks is that when the U.N. mandate expires, there will be no authorization as a matter of international law for the United States to remain in Iraq. My understanding is that the administration's position is that House Resolution 114 would still operate, but under the first prong, so that as a matter of domestic law there would be an authorization for the operation in Iraq. But you are absolutely right that as a matter of international law there would be no—

Mr. DELAHUNT. Let me direct your attention to, you know, the 114. If one examines the language of 114, it talks about defending the national security of the United States against a continuing threat posed by Iraq. One has to put into context the conditions and the facts and the realities at the time that that was passed. That was directed exclusively against Saddam Hussein.

We heard much about weapons of mass destruction, links to al-Qaeda, all of which proved to be unfounded. I would submit that that first prong no longer exists because Iraq is no longer a threat to the United States. It is no longer a continuing threat.

Saddam has been deposed, and we now find an entirely different set of conditions and one, in a review of the legislative history of the debate and the vote, it was predicated on a different reality than what is being suggested by the administration at this point in time.

My position is there is no basis for their authority to remain in Iraq and engage in combat unless—and this is fine, and this is a decision for them to make—unless they return to Congress and seek authorization from Congress for the use of force.

Ms. HATHAWAY. I would agree that if they return to Congress and seek authorization that would certainly satisfy the necessary requirements. If they sought and received an extension of the U.N. mandate, that would certainly satisfy the necessary requirements.

There is a very serious question as to whether, without those, there could be said to be continuing operation of House Resolution 114; and I will note here that Ambassador Satterfield—I don't know if intentionally—but stated in discussing House Resolution 114 that there continues to be a threat “in Iraq.” But, of course, the language says a threat posed “by Iraq”; and the two strike me as quite different.

Mr. DELAHUNT. I think that reading that you just related to us I think is the linchpin. And I think it is such a reach, if you will, to interpret that first prong of that resolution to serve as a basis for continuing presence is false. And that is why they, I think, have made no effort to consult, that I suspect that they were hopeful that these issues would not be raised and that Congress would just simply accede to a sole executive agreement. But it is just such a horrible precedent if Congress does not join the issue and seek a resolution.

And I believe, here we are, in a Presidential year, where the likely nominees will either be Senator McCain or his two Democratic colleagues; and the American people deserve from them how they would handle the future bilateral relationship, not something that requires congressional approval, and yet this administration wants to do it as it slips out the door and simply do it by fiat, if you will.

It is just not healthy for our democratic system; and at long last I think we have outed, as Congresswoman DeLauro said, what the real intentions are. Let's have the debate.

Any final comments from any of you?

Mr. KORB. I think their intention basically is to pass off this war to the next administration. We have seen them say that they are going to delay, once we get back to the pre-surge levels this summer—

Mr. DELAHUNT. Dr. Korb, that is fine. The next administration might have a different idea in terms of the limitations and the boundaries of the use of American force in Iraq in terms of time, in terms of mission. Let the next administration come to Congress and can figure out what those parameters are, not this administration. They got us into this quagmire.

Mr. KORB. I agree with you.

And in my second part of it I was going to say and then also set the terms for the use of those, forcing the next administration putting them in a very difficult position, if they wanted to make the changes.

Ms. HATHAWAY. I have just two concluding points if I may.

The first is that I think you are absolutely right, that it is an extraordinarily dangerous precedent to allow the administration to define the Status of Forces Agreement to include an authority to fight. Because that is unprecedented and that does involve the commitment of United States troops to engage in military activity in Iraq, and that kind of commitment is one that ought to be made in consultation with Congress.

Second, I would like to just mention that there is legislation, as you may know, that will likely be proposed tomorrow by the Progressive Caucus that aims to cabin the authority of the President and make explicit that any agreement that exceeds the typical Status of Forces Agreement would have to be submitted to Congress for approval. And I think that that legislation, or something like that, is certainly well advised in making clear the constitutional right of Congress to participate in those decisions.

Mr. ACKERMAN. Thank you.

Just a few closing comments as I thank you both for being very helpful.

It seems clear to me that this administration is going to keep doing what this administration wants to do, regardless of anything, until somebody stops them. It seems to me that it is also the hope of this Congress, based on past experiences, that we are hoping for the administration to pull the plug on itself. That is not going to happen. It appears that this administration is looking for any excuse to pursue the program that it wants to pursue, ignore the things that it want to ignore, whether it be American people, public will, the Congress of the United States, precedents that we have established throughout history, the law of the Constitution, and to find excuses to get around each and every one of them by just reinterpreting everything as they see fit.

The distinction that you have just made, the difference between the threat in Iraq and the threat from Iraq, is blurred deliberately by the administration because they just read that, that if there is a threat in Iraq, it is a threat to our national security; and the President has a continuing mandate from the Congress to proceed as he will if he perceives it to be a threat against the United States, and he interprets that as he will.

The fact that there was no al-Qaeda in Iraq prior to our entrance into the country is something that escapes them. Al-Qaeda in Iraq is there. They therefore seize on that as a threat within Iraq and from Iraq and therefore necessitates their being there because they

don't want to leave, and indeed they want to leave this as a problem to the next administration.

The vagueness of the laws that we are dealing with seem to be in constant play, perpetual motion, every time we reach one of these unfortunate scenarios. And this is not entirely the administration's fault. Blame lies here in Congress as well.

Just recalling history, George Washington sent letters back to the Continental Congress begging for money to be able to continue the war, and they had decisions to make as to whether or not they wanted to throw in the towel or fund the war. And thankfully, gratefully, history indicates that they hung in there long enough for him to miraculously prove that his skill and the skill of the fighting spirit of the soon-to-be American people would prevail.

Commander in Chief George Bush is certainly not General of the Army George Washington. But neither is the Congress of the United States as decisive, although deeply introspective, as was the Continental Congress.

But indeed we have the ability to do this. And regardless of how the President interprets the law, if there is no money to pay the troops, Mr. General Commander in Chief, those boys are coming home, and this thing can be ended.

It lies on our doorstep as well as the administration's. And what the will of the Congress is, whether or not they want to hang in there and miraculously pull this off under great dynamic leadership that has some new enlightened perspective on how to get this thing done, this thing is going to continue to be dragged out.

I think the Congress is almost relieved that this administration is coming to its natural conclusion, because we don't want to make the decision. We are looking to the leadership of the next President of the United States, whoever that might be, to give us some sense of direction.

If we were as determined as some of the members of this committee are, as a collective whole in the Congress, we could do this.

Of course, there is always a possibility of a runaway President saying, the Congress doesn't know what it is doing, I still have the authority, and directs the Secretary of the Treasury to keep issuing the checks and send them on over to the defense people and keep on doing this. But we will deal with that if we have to deal with that. But that would be a completely runaway administration, and I don't think they would dare do anything like that.

So there is a decisive way to end this thing and get around all the vagaries that we have been struggling with historically which may never change, and that is to use the clear and decisive tools that are available to us at any given time and to cut off the spending. And some of us have made that decision to do that and have acted accordingly. But there is not a majority of us.

But I think the administration hurts their own case in coming here to this committee and before the American people today with the attitude that they have, that they don't know what the Constitution says. They had better talk to somebody. Because they didn't consider it on deciding these life-and-death policies that have us engaged in a war on the other side of the world. It is incredible that they expect us to believe that, and it is more even more in-

credible that we don't believe it and still accept it and go along our merry way.

We have a responsibility to be decisive and to try to convince our colleagues as to what the correct action is to do now and not wait for enlightened leadership to come upon us by way of the next election. Because that is going to take a while. And whether or not American young men and women are killed and maimed or Iraqi innocent people are killed and maimed or guilty people or bad people or any people, we can pull the plug on this thing anytime we want. And rather than just blame the administration—which we must do and will continue to do. There is no question about it. Politics will have its way, and we have the right to do that, and we have the responsibility to do that.

I think we have to be a little bit more introspective, also; and we have to step up the action around this part of town.

Mr. Delahunt.

Mr. DELAHUNT. Mr. Chairman, you know what is interesting is when we look at the expiration of the U.N. mandate we are talking December 31, 2008. A new President gets sworn in 20 days later. I think that, in and of itself, is a rationale. Because for deferring, if you will, any agreement—and I appreciate the words you said, and I concur—I think—unfortunately, I think that Congress as an institution has suffered from a lack of courage. But this is just too important.

And I would hope that in Iraq people of good will there are—and I am sure they are—cognizant of the dynamic here in this country and that the American people, working with Members on both sides of the aisle, reach a decision that, if we could agree in a way to extend the mandate for just a short period of time, for 90 days—I will just throw that out—that this debate would not allow encroachment by the executive on the Congress' constitutional obligation but would become part of the debate in the Presidential campaign, in the part of those of us who are running for reelection and for the U.S. Senate, so that we have a good, healthy, respectful debate on where do we go from this point on.

Mr. ACKERMAN. Final word, I think, despite the feelings that we might have listening to the testimony and trying to elicit answers on whether the Constitution is still in effect in America, and receive little assurances, I am just as concerned about what we are doing on the international stage and with the Iraqis in particular in raising the expectations, based on what they have been told is going to happen, to give them things on which to rely upon that there is no reliance by an administration that is singing one song over here and not showing the flip side of the album to them and making them believe that the music is very, very different.

They have to make decisions that are going to determine their survival based on hopes and assumptions that they think we made, by people who can say words that seem to have a meaning and really no intent behind it.

I thank both of the witnesses. You have done us a great service and you have been very, very helpful. Thank you.

The committee stands adjourned.

[Whereupon, at 5:18 p.m., the subcommittee was adjourned.]

A P P E N D I X



MATERIAL SUBMITTED FOR THE HEARING RECORD



United States Department of State

Washington, D.C. 20520
MAR 05 2008

Dear Mr. Chairman:

Please find enclosed the answer to the question taken by Ambassador David M. Satterfield at the March 4, 2008 hearing.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey T. Bergner".

Jeffrey T. Bergner
Assistant Secretary
Legislative Affairs

Enclosure:
As stated.

The Honorable
Gary Ackerman, Chairman,
Subcommittee on the Middle East and South Asia,
Committee on Foreign Affairs,
House of Representatives.

4 March 2008

Ambassador David M. Satterfield

Chairman Ackerman: Does the Administration believe it has the constitutional authority to continue combat operations in Iraq beyond the end of this year absent explicit additional authorization from the Congress?

Ambassador Satterfield: Yes. The United States remains actively engaged in our efforts to assist the Iraqi people in their transition to a working democracy that will be a source of stability in the region and that will not pose a threat to the national security of the United States or to our allies. Whether or not the authorization for the Multi-National Force in Iraq in United Nations Security Council Resolution (UNSCR) 1790 (2007) is extended, the U.S. military has the authority to continue its mission beyond the end of this year under the laws passed by Congress and the President's authority as Commander in Chief under the Constitution. Congress expressly authorized the use of force to "defend the national security of the United States against the continuing threat posed by Iraq" as well as to enforce all relevant UNSCRs concerning Iraq. Pub.L. 107-243 (Oct. 16, 2002). Congress also has authorized the President to use all necessary and appropriate force against nations, organizations, or persons involved in the

September 11, 2001 attacks on the United States, “in order to prevent any future acts of international terrorism against the United States” by those same entities. Pub.L. 107-40 (Sept. 18, 2001). On March 18, 2003, when the President made the determinations required by Pub.L. 107-243, he determined that the military operations in Iraq were “consistent with the United States and other countries continuing to take the necessary actions against international terrorists and terrorist organizations, including those nations, organizations, or persons who planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.” In addition, Congress has repeatedly provided funding for the Iraq war, both in regular appropriations cycles and in supplemental appropriations.

WRITTEN RESPONSE FROM THE HONORABLE MARY BETH LONG, ASSISTANT SECRETARY OF DEFENSE, INTERNATIONAL SECURITY AFFAIRS, U.S. DEPARTMENT OF DEFENSE, TO QUESTION SUBMITTED FOR THE RECORD BY THE HONORABLE JOE WILSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

ON ESTABLISHING A TROOP PRESENCE IN KURDISTAN

Question:

President Bush and Prime Minister Malaki signed a joint "Declaration of Principles" that establishes common principles to frame the U.S. relationship with Iraq in the future. This declaration was the first step toward bilateral relations between the two countries and the foundation on which Iraq and the United States have begun negotiating formal arrangements, including a Status of Forces Agreement, that will govern that relationship. We understand that military planners at CENTCOM, MNF-I and the Joint Staff are preparing staff recommendations and courses of action for the eventual drawn down of U.S. forces in Iraq and repositioning of remaining forces as part of a longer-term continuing presence in Iraq. Given the stability of the Kurdistan region of Iraq, its strategic location sharing borders with Turkey, Syria and Iran, and the Kurds' historic friendship and cooperation with the United States, would you agree that establishing a U.S. troop presence there makes sense as we plan on how best to achieve our long-term security objectives for Iraq and the Middle East?

Response:

Although the United States enjoys a positive relationship with the Iraqi Kurdish region, it is premature to discuss locations for a longer-term continuing presence in Iraq. A U.S. decision to maintain a presence anywhere in Iraq would require Iraqi agreement, and decisions about locations or force levels would be made on the basis of commanders' recommendations. If the United States and Iraq determine that some form of long-term U.S. presence is in the interest of both nations, I expect military planners would weigh all realistic options, including the options of a presence in the Kurdish region.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you, Mr. Chairman, for convening today's important hearing. As the White House has emphasized, the "Declaration of Principles" between the United States and Iraq will "frame our future relationship." I believe it is extremely important that we maintain a precedent of congressional involvement and oversight of the process of reaching a final agreement that will outline our ongoing involvement in Iraqi "political, cultural, economic, and security spheres." I would like to take this opportunity to welcome our distinguished witnesses: the Honorable David Satterfield, Senior Adviser and Coordinator for Iraq, U.S. Department of State; the Honorable Mary Beth Long, Assistant Secretary of Defense, International Security Affairs, U.S. Department of Defense; Oona A. Hathaway, Associate Professor of Law, Yale Law School; and Dr. Lawrence J. Korb, Senior Fellow, Center for American Progress. I look forward to your informative testimony.

Mr. Chairman, as this subcommittee is aware, the United Nations Security Council voted on December 17, 2007 to extend the UN Mandate authorizing U.S. troop presence in Iraq until December 31, 2008. I believe it is extremely important that we look to the future of U.S.-Iraqi relations, as we work to bring our U.S. soldiers home. The governments of Iraq and the United States announced their intention to forge a "strategic framework agreement," a long-term, bilateral pact, to be completed by July 31, 2008. This negotiated agreement is to be based on the "Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America," signed November 26, 2007, by Iraqi Prime Minister Nuri al-Maliki and President Bush. Under the terms of this Declaration of Principles, the "strategic framework agreement" will replace the UN mandate, now set to expire at the end of 2008, and it will terminate other obligations, placed on Iraq by the UN Security Council since 1990.

Under the Declaration of Principles, the parties will negotiate a security agreement, under which the United States will support the Iraqi government and Security Forces in providing security and stability and fighting al-Qaeda and other terrorist groups. The Declaration of Principles envisions an agreement setting forth a wide-ranging set of commitments, which will cover issues including politics, economics, and security. However, it is not clear whether this agreement will take the form of a treaty, or some other type of international compact.

Mr. Chairman, the Declaration of Principles contains provisions for ongoing U.S. security commitment, which seem to imply the U.S. will remain engaged in combat operations, on behalf of the Iraqi government, against both foreign and internal adversaries. The length of these security commitments is not clear, and I welcome any insight our witnesses may be able to offer on this important question. General Douglas Lute, President Bush's special Deputy National Security Advisor for Iraq and Afghanistan, has stated that the issue of permanent U.S. bases on Iraqi soil will be one of the issues that must be negotiated between the two nations. According to reports, the draft proposal crafted by the Bush Administration does not call for the establishment of permanent U.S. military bases in Iraq. I strongly urge this Congress to work to ensure that the Administration sticks to this policy.

Mr. Chairman, there are currently 174,000 foreign troops currently operating under this mandate, the overwhelming majority of which (93%) are U.S. forces. The Iraqi Parliament has expressed concerns about an open-ended extension of the UN mandate. In April 2007, a majority signed a letter stated that, according to the Iraqi constitution, a request for an extension of the UN mandate must be approved by at least 2/3rds of the parliament. Two months later, the Iraqi Parliament passed legislation supporting the letter, which also stated that any request for an extension must include a timetable for the withdrawal of foreign forces.

This Congress will not, as the previous Republican Congress did, continue to rubber stamp what we believe to be an ill-conceived war. As we continue to receive reports on the situation in Iraq, it is important that we continue to look forward, to the future of Iraq beyond a U.S. military occupation. Even should the UN mandate be extended, it is still absolutely vital that the United States begin the process of withdrawing combat forces from Iraq.

Our nation has already paid a heavy price in Iraq. Over 3810 American soldiers have died. In addition, more than 27,660 have been wounded in the Iraq war since it began in March 2003. Last November, the American people clearly stated that they did not want to see an endless conflict in Iraq; they went to the polls and elected a new, Democratic Congress to lead our nation out of Iraq. I am proud to be a member of the Congressional class that listens and adheres to the will of the American people, as we did when both houses of Congress approved Iraq Supplemental bills that instituted a timetable for U.S. withdrawal. We need a new direction, because we owe our brave, fighting men and women so much more. Washington made a mistake in going to war. It is time for politicians to admit that mistake and fix it before any more lives are lost.

Mr. Chairman, the Declaration of Principles envisions a strategic agreement ultimately intended to replace the United Nations mandate, which is currently providing the authority for United States and allied troops in Iraq. According to media reports, the Bush Administration's draft proposal for this security agreement would give the United States broad authority to conduct military operations in Iraq, while also including provisions giving U.S. forces immunity from Iraqi law and the power to detain Iraqi citizens. Both the Secretary of State, Condoleezza Rice, and the Secretary of Defense, Robert Gates, have indicated that the prospective security agreement would not obligate the United States to militarily defend Iraq in the event of a threat to Iraqi security.

Mr. Chairman, if future U.S. commitments to Iraq take the form of a treaty, they will require ratification by two-thirds of the Senate. Congress could also play a role if these future commitments take the form of a congressional-executive agreement, requiring the enactment of implementing legislation. However, there is the possibility that this administration will instead issue an executive order, requiring no congressional action. General Lute has already indicated that current negotiations are not likely to lead to a formal treaty. This is contrary to precedent, as all seven current U.S. agreements providing for military action in defense of external threats, such as NATO, have risen to the level of a treaty. Further, none of these treaties commits the United States to defend a government from internal threats.

Mr. Chairman, like my colleagues on this Committee, I am extremely concerned about the direction of U.S. policy in Iraq, and the future of U.S. commitments. I am worried about the Administration's apparent desire to circumvent congressional approval and oversight, as well as the still-open question of the establishment of permanent U.S. bases in Iraq. I hope that today's hearing will provide some insight into the direction of U.S. policy and negotiations.

Thank you, Mr. Chairman. I yield back the balance of my time.

