



CENTER FOR ARMS CONTROL AND NON-PROLIFERATION

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A Permanent Presence? Dangers of a Long-Term U.S. Security Commitment to Iraq January-February 2008

Background

On November 26, 2007, President George Bush and Iraqi Prime Minister Nouri al Maliki released a “Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America.” This Declaration laid the groundwork for the Iraqi and the U.S. governments to forge a long-term bilateral pact – a draft of which is expected by July 31, 2008 – that both sides are calling a “strategic framework agreement.” This strategic framework agreement is meant to replace the current U.N. Chapter VII mandate under which U.S. and U.S.-led forces are responsible for contributing to the security of Iraq. The proposed agreement could take many forms and could be a package of multiple agreements, ranging from a Status of Forces Agreement (SOFA) to economic development packages to basing agreements to a formal defense treaty.

Generally, SOFAs constitute agreements rather than treaties. It is a rare occurrence if a SOFA is sent to the Senate for advice and consent. There is a point, however, that an agreement can go so far in obligating the United States to defend another country that the Senate should provide its advice and consent. That line is when the obligation to defend another country becomes legally binding under international law. In 1969, the Senate adopted the National Commitments Resolution, which asserted that any “promise to assist” a foreign country “by the use of Armed Forces” would be a “national commitment” that could only be given by means of a treaty, statute or concurrent resolution. Certainly a binding commitment for the United States to use armed force in defense of Iraq would call for such action by the Senate.

On the other hand, properly limited security assurances – such as a simple promise to consult – have taken various forms, including executive agreements and policy statements, and the President could offer them on the basis of his own Constitutional authority. It is possible that the White House will stress that they consider any pact with security guarantee language to be an agreement rather than a treaty.

Dangers

U.S. forces might be required to combat any armed faction that the Iraqi government deems a threat.

The November 2007 Declaration states that the United States will provide “security assurances and commitments to [Iraq] to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, waters, or airspace.” The Declaration also states that the Iraqi government is combating “terrorist groups, at the forefront of which is Al Qaeda, Saddamists, and all other outlaw groups.” This language might be interpreted as requiring U.S. support for the Iraqi government against both external and internal security threats without regard for whether or

not the Iraqi government has made efforts to address the sources and causes of the threat, or whether or not the threat is pursuing a legitimate grievance against the Iraqi government.

Iraqi leaders might try to use U.S. armed forces against external threats to advance their own sectarian interests.

U.S. forces might be drawn into an internal dispute over what exactly constitutes a proper security threat to Iraq. For example, Iraqi Kurds might argue that the United States is required to confront Turkey over its military actions against the Kurdistan Workers' Party (PKK) in northern Iraq. Or, Iraqi Shiites might assert that the United States is required to confront Sunni Arab governments that are accused of arming and abetting Sunni insurgents entering Iraq.

The United States might be required to be significantly involved in the internal political affairs and structure of Iraq for a prolonged period of time.

The November 2007 Declaration states that the United States will support Iraq "in defending its democratic system against internal and external threats." If the elected Iraqi government were to be forced out by violence, this language might be interpreted to require the United States to intervene to restore the elected government or to oust a government – even a stable government – that came to power through un-democratic means.

The United States might be required to act against reformers and civil society in Iraq.

The November 2007 Declaration asserts that the United States would assist Iraq in "standing against any attempt to impede, suspend, or violate" Iraq's constitution. This provision might grant the Iraqi government the right and responsibility to define who is attempting to impede, suspend, or violate Iraq's constitution, and could therefore require the United States to act against activists in Iraq whose activities or political ideology might not necessarily conflict with U.S. interests. This could mean that the United States is compelled to curtail activities in Iraq that are core U.S. values, such as promoting human rights, improving government transparency, and building democratic institutions.

In order to win his support for the pact, the United States might not be able to fight back against Moqtada al Sadr's Mahdi Army.

Any permanent agreement negotiated between the United States and Iraq will likely require approval by Iraq's Council of Representatives (COR). Article 58 of the Iraqi constitution stipulates that the COR must ratify treaties and agreements by a two-thirds majority. Moqtada al Sadr's faction, which holds 30 seats in the COR, led the efforts in 2007 to insist that the Maliki government submit the U.N. mandate extension request for COR approval. Sadr also controls the "Mahdi Army" militia (Jaysh al-Mahdi, JAM), which is perhaps the largest Shiite militia with as many as 60,000 fighters throughout Iraq. It is conceivable that to gain Sadr's support for the final agreement, there might have to be some provision that U.S. forces do not attack against his Mahdi Army, even if it is engaged in violent destabilizing action.

Sources

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