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**HEADLINE:** JOINT HEARING OF THE INTERNATIONAL ORGANIZATIONS, HUMAN RIGHTS AND OVERSIGHT SUBCOMMITTEE AND MIDDLE EAST AND SOUTH ASIA SUBCOMMITTEE OF THE HOUSE FOREIGN AFFAIRS COMMITTEE;  
**SUBJECT:** THE PROPOSED U.S. SECURITY COMMITMENT TO IRAQ: WHAT WILL BE IN IT AND SHOULD IT BE A TREATY?;  
**WITNESSES:** KENNETH KATZMAN, SPECIALIST IN MIDDLE EAST AFFAIRS IN THE FOREIGN AFFAIRS, DEFENSE AND TRADE DIVISION OF THE CONGRESSIONAL RESEARCH SERVICE; MICHAEL MATHESON, VISITING RESEARCH PROFESSOR OF LAW AT THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL; MICHAEL RUBIN, RESIDENT SCHOLAR AT THE AMERICAN ENTERPRISE INSTITUTE AND SENIOR LECTURER AT THE NAVAL POSTGRADUATE SCHOOL'S CENTER FOR CIVIL MILITARY RELATIONS;  
**CHAIR BY:** REPRESENTATIVE WILLIAM DELAHUNT (D-MA);  
**LOCATION:** 2141 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C.

REP. DELAHUNT: (In progress.) Furthermore, we are not unaware that many respected experts on Iraq have characterized the Maliki government as dysfunctional and beset by corruption and factionalism.

Our hearing in December elicited testimony that the Maliki government secured the extension of the U.N. mandate, which serves as the legal basis for U.S. troops to occupy and engage in combat in Iraq without receiving the consent of the Iraqi Parliament, despite assurances to the contrary.

We encourage the Maliki government to engage the Iraqi Parliament fully in deliberations on the so-called declaration of principles. For we recognize that the Parliament is the only directly elected body in the nascent democracy in Iraq.

Before I introduce our witnesses, let me turn to my ranking member and the chairman and the ranking member of the Middle East Subcommittee, as well as our guest, the gentlelady from Connecticut. And I note that we are joined by a member of the Middle East Subcommittee, Mr. Scott, as well for any opening remarks they care to make, and the gentlelady from California, who has also joined us, Ms. Woolsey.

Mr. Rohrabacher.

REP. DANA ROHRABACHER (R-CA): Yes, we are surrounded by chairmen today.

REP. DELAHUNT: This is chairmen's day. (Audio break.)

REP. ROHRABACHER: I'm just going to distance myself from the chairman. (Laughter.)

REP. : The Judiciary Committee chair, not Foreign Affairs Committee.

REP. ROHRABACHER: I don't want any of you to mistake me with Ron Paul because of the

sign here.

Mr. Chairman, welcome back. And it is always an interesting and, I might say, pleasant experience, for those of us who like to play mental chess, coming to hearings under your leadership.

Two months ago -- today, when we're talking, of course, about something that started two months ago when President Bush and Prime Minister al-Maliki signed a document called a Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America.

And that pact states that by July 31st of this year, Iraq and the United States will have an agreement that will detail the relationship between our two countries. The Declaration of Principles makes it clear that such an agreement will involve a commitment on the part of the United States to defend Iraq against internal or external attack on its security and its democratic government.

The question that we will address in today's hearing is, does such an agreement rise to the level of a treaty which would need the ratification -- legally require the ratification -- by the United States Senate, as well as the Council of Representatives in Iraq? Or would this simply be a bilateral agreement and thus solely an executive branch function? So we are talking about the legal realities which would mandate certain legal prerequisites in terms of actions taken by the legislative branch versus the executive branch.

Let me note I will be looking closely at what we're hearing today in terms of the argumentation on this specific issue. And I think it's good that you brought this up and it's something that we need to discuss, especially considering the nature of governance of this particular administration.

Let me just note that I believe that this administration has been arrogant. I am a Republican, and at times I am embarrassed by the lack of cooperation that this president and his appointees have had with the legislative branch.

I sat in that chair just a few months ago, and the lack of cooperation that we had with various leaders from this administration was overwhelming. There is a seething resentment by members of Congress who are Republicans by the fact that this administration has not even cooperated with us, much less with you, who represents another party.

So there are ways of doing things and there are other ways of doing things, and I think this administration has had its share of arrogance. And it's something that breeds the type of discussions that are necessary today. We have to look with a magnifying glass at what the legal prerequisites are, because we don't have a spirit of cooperation.

And I cannot tell you how many times we've had to make requests on investigations over the time period when I was chairman of this subcommittee and got no cooperation whatsoever and got nothing but roadblocks in the way of those investigations. That does not lead one to have faith in the descriptions that are given to us second-hand and third-hand and assurances given to us by senior members of this administration.

However, with that said, let me note that I do reject the notion that Congress has not been involved in the debate over what our Iraq policy should be. There have been numerous votes, numerous hearings such as this one. In the United States Senate there was vote after vote that has

failed in an attempt by now the majority party in the Senate to remove American personnel, military personnel, from Iraq.

I would suggest that the minute that it is possible for us to withdraw our troops, meaning that the Iraqi people are capable of defending themselves, we should do so. And if there is any suggestion that there is a long-term commitment by the United States to send our military personnel back to Iraq or to do the fighting for the Iraqi people themselves, which is what's happening now -- and hopefully we're winding that down and the Iraqi people who believe in a more democratic society will step up and are stepping up to handle that responsibility -- but the minute they can do that, we should be out of there and they should be doing their own fighting and that we should not -- they should not feel that the United States is on call to send our young people and our treasure and put the blood of our young people and our treasure at their disposal.

So, with that said, I am very anxious to hear the witnesses today. And I am also jealous of the prerogatives of the legislative branch, as we all should be, because we are here to fulfill the constitutional role that was established by our founding fathers and the responsibilities that have, of course, been given to us by the voters of this country to represent their interests.

And it is not all in the hands of the president and his appointees. We play a major role. And as I say, if there would have been a better spirit, perhaps examining the legal prerequisites would not be as important a discussion.

So thank you very much for this hearing today, and I look forward to participating fully.

REP. DELAHUNT: Thank you, Mr. Rohrabacher. And now the chair of the Middle East Subcommittee, Mr. Ackerman of New York.

REP. GARY ACKERMAN (D-NY): Thank you, Mr. Chairman.

Please do not misinterpret my sliding further away from you as an indication of any disagreement. It appears that the microphones on either side of you have both failed.

I appreciate Mr. Rohrabacher's statement as well. He proves yet again that he is an equal-opportunity attack dog.

REP. ROHRABACHER: (Laughs.)

REP. ACKERMAN: I think the very fact that this is a joint hearing of both subcommittees is indicative of the fact that this is a very important area of concern to so many members of Congress. The war in Iraq remains deeply unpopular with most Americans, as a review of any number of recent polls will tell you, or perhaps simply a review of the mail that comes into your office would suggest.

So it strikes me as unwise that the president would want to go ahead and unilaterally commit the United States to a long-term security agreement with Iraq without trying to get the support of either the American people or the people's representatives.

But, true to form, the president has decided to go it alone on Iraq again -- or so one would believe if you take the president's special deputy National Security adviser for Iraq and Afghanistan, General Douglas Lute, at his word, as you point out, Chairman Delahunt.

General Lute made it clear that the White House would be flying solo on this question when he said, quote, "We don't anticipate now that these negotiations will lead to a formal treaty which would then (bring ?) to formal negotiations or formal inputs from the Congress," unquote.

I don't think we can dispute General Lute's view that the president certainly has the authority to enter into an executive agreement with the government of Iraq. Certainly such agreements are a commonly used tool in American diplomacy. And such agreements are not ordinarily subject to congressional approval unless there are U.S. domestic laws that need to be amended in order for our nation to comply with the agreement.

No, the issue isn't a question of legal authority; it's a question of political wisdom and sustainability. And I think the president's preferred course, as expressed by General Lute, is profoundly unwise and unsustainable.

Americans in vast numbers want our troops to come home. They're no longer certain, if they ever were, what we are fighting for. But I also think that most Americans, if you ask them, would agree that even after the U.S. withdraws its forces from Iraq, we still need a framework for our relations with Iraq from that point forward. And I think they would also agree that the president, with less than 12 months left in his term, should not be the sole arbiter of what that future relationship looks like.

It is precisely because a long-term security agreement would be controversial that the president should involve Congress in the deliberations that shape such an agreement. It is my understanding that the State Department regulations even call for consultations with Congress, and that deciding what form an international agreement should take, the Department must expressly consider, quote, "the preference of the Congress to a particular type of agreement," unquote.

The concern by many of us in the Congress is that the declaration of principles signed last November is so vague that it could cover anything from consulting with the government of Iraq about threats it faces to actually deploying U.S. troops to help Iraq defend itself.

If all we are really talking about is consultation with Iraq's government in the face of a threat, then maybe an executive agreement is okay. But if the president intends to indefinitely commit U.S. troops to defend Iraq against future threats, then I believe the approval of Congress of any such agreement is required. Indeed, the American people would accept nothing less.

So I call upon the president to reject General Lute's proposed course and instead instruct the Senate -- the State Department -- to consult with the relevant committees in Congress over the shape of our future relations with Iraq and what the exact nature of any future commitments will be.

Trying to build a democracy in Iraq by ignoring the democratic process at home is ironic, and certainly keeping with the habits of the president to date. But most of all, it is foolish, short-sighted, and perilous. It should not be done, and I suspect there could and would be serious consequences if that is attempted.

Thank you, Chairman Delahunt.

REP. DELAHUNT: Thank you, Chairman Ackerman.

Now the distinguished ranking member on the Subcommittee on the Middle East, the gentleman

from Indiana, Mr. Pence.

REP. MIKE PENCE (R-IN): Thank you, Mr. Chairman. Thank you for calling this joint hearing.

I am captured by a sense, though, that today may be a good example of how Congress can be a lagging indicator in American public life. It seems to me our discussion today here on Iraq misses the developments in 2007 altogether. It's almost as if the Anbar awakening didn't occur. It's as if we hadn't received preliminary reports of refugees returning home from neighboring countries, as if the last several months hadn't been the safest for U.S. troops in years -- or specifically the combat-related U.S. casualties in Iraq were not 83 percent less in December '07 than they were in December of 2006. It's as if the Iraq public doesn't have the precious breathing space that it lacked one year ago. In fact, it's almost as if the surge didn't work.

But Mr. Chairman, these things did occur. I'm not certain that this body has observed or appreciated the success story and the improved security situation in Iraq and how dramatically better conditions are. Ambassador Ryan Crocker, who we all respect and one not noted for overstatement, told the London Times on the 19th of January, quote, "We are in an immeasurably better place in January 2008 than in January 2007."

General Ray Odierno, the number two commander of U.S. forces said just this last Friday that Iraq's army and police will be ready to take over security in all 18 provinces by the end of the year. The day before that, the U.S. military reported that 75 percent of Baghdad is secure, a dramatic increase from 8 percent a year ago, before the surge began.

Despite many predictions to the contrary, the surge succeeded and is succeeding. But one can't help but feel that good news is no news in certain quarters here on Capitol Hill. I think it's important that we have this hearing today in the context of what's really happening.

And frankly, contrary to some of the concerns raised about the president's intentions relative to a treaty or negotiations, I don't view with alarm that the president back in November signed a declaration with the Iraqi government pledging that both governments would form and endorse a long-term political or security pact. I don't see this as a blank check.

Fred Kagan has testified before our committee, described in the Wall Street Journal last month, quote, "The joint American and Iraq communiqué marks the beginning of normalization of relations between allies in a common fight against al Qaeda and against Iranian efforts to dominate the Middle East."

Mr. Chairman, in this light, I don't endorse putting the presence of our troops or our national interests in the hands of Iraqi voters. And we don't covet the territory of Iraq any more than we did that of Germany, Japan, the Philippines, Korea, or Bosnia. Because of a successful mission completion, our long-term presence in those countries has been mostly non-controversial. Our vital national interests are advanced by a successful conclusion to our efforts in Iraq. A status of forces agreement is the first order of business for our negotiators.

And I have one other concern. I am concerned about our dictating the terms of a potential treaty, the -- (inaudible) -- not being the worst. On its face, that's an effort that strikes me as something of usurpation of the authority -- of our authority, rather -- and not in keeping with Article I of the Constitution.

Congress does not conduct bilateral relations with other countries, under our Constitution. This

isn't any fast track authority we've created here. Article II, Section 2, Clause II grants the president power to make treaties, subject to ratification by the Senate. Further, he has the constitutional authority to enter into an executive agreement. Professor Matheson points out this morning the, quote, "Constitution does not give clear guidance as to what form must be used for what type of obligations or commitments."

So are we preemptively demanding or disapproving a treaty in this body when we really have no role in treaties, is the question I would ask. The administration has not indicated it would seek Senate approval for anything anyway.

Are we attempting an unconstitutional legislative veto? With respect to the gentlelady who's present here today, H.R. 4959, the DeLauro bill, provides for congressional consultation. The language of the bill, ensuring that the president produce a treaty, raises all these questions that even if it's the sense of Congress, it strikes me as an unconstitutional solution in search of a problem.

So I hope we have this conversation today. I'm interested in the testimony. I look forward to the dialogue, but I hope we do it in the context of a widening American success in Iraq. And I hope we also do it within the proper confines of the role of the House of Representatives in the formulation and implementation and ratification of treaties.

And I yield back.

REP. DELAHUNT: I thank the gentleman.

Mr. Scott.

REP. DAVID SCOTT (D-GA): Thank you very much, Mr. Chairman. This is indeed a very, very timely hearing.

And I certainly want to say at the outset that we must not make the same mistakes that we made going into this conflict in Iraq as we attempt to determine how we conclude the matter.

Now, I think it's very important for us to take a look at exactly the breadth and the scope of what the president wants to do by himself without the consent of Congress, without the involvement of Congress. And I think when we look at this, I think it will illuminate the breadth and the scope of the arrogance of the president on one hand and the direct failure of our responsibility as a Congress if we do not object and insist upon congressional approval.

This is the mission as contained in the declaration of principle for the security agreement. This is what it says -- to support the Iraqi government in training, equipping and arming the Iraqi security forces so they can provide security and stability to all Iraqis, support the Iraqi government in contributing to the international fight against terrorism by confronting terrorists such as al Qaeda, its affiliates, other terrorist groups, as well as all other outlaw groups such as criminal remnants of the former regime and to provide security, financial assurances to the Iraqi government to deter any external aggression and to ensure the integrity of Iraq's territory.

Now, this is sweeping in its scope. It is soaring in its magnitude. And it requires the Congress of the United States to stand up and affirm its constitutional duties as outlined in the Constitution. It would be a considerable dereliction of our duties not to require that both houses of this Congress, by majority vote, approve of this agreement before we move forward or else we will be a standing

joke in the public opinion of the people who elected us to office. This is extraordinary, and I am just proud to be a part of this committee that is taking it upon ourselves to, I think, today strike the first blow -- the first blow -- for participatory government and democracy as laid out by Hamilton, by Madison and by Jay, that was laid out in Article 2 of the Constitution of the United States. We have a responsibility here, and we dare not shirk from this responsibility today.

And I just hope, Mr. Chairman, that we are very strong in what we do and that we send a very loud and a very purposeful message to the White House that this is not his job alone. We get out here every other year and run for office to get elected to perform our duties. And now the people of the United States is expecting us to perform it and make sure that before we approve any measure of how we wind this thing down in Iraq that the Congress, not the president but the Congress -- and one other thing I want to say -- (inaudible) -- why this makes us so timely is the fact that in all due respect to the president, he's here for 10 more months. We are the charge that the people of this country are looking to to bring the correct conclusion to the matter in Iraq. And we must make the first bold step here this morning. And I commend you for taking the leadership to do so.

REP. DELAHUNT: Well, thank you, Mr. Scott.

And I'm going to ask the gentlelady from California as a member of the full committee if she will yield -- I'll come back to her -- to Ms. DeLauro who I understand has a meeting someplace else, but we hope you return.

Ms. DeLauro.

REP. ROSA DELAURO (D-CT): Thank you very much, Mr. Chairman.

And I want to just say thank you to Chairman Delahunt and Chairman Ackerman for holding this hearing, and particularly to Mr. Delahunt for inviting me to participate.

I also want to say thank you to my colleagues who day in and day out sit on this committee and for allowing me to participate.

Our relationship with Iraq is undoubtedly one of the most critical issues facing our country today. With approximately 170,000 troops fighting in Iraq and the recent decrease in violence, much of the discussion concerning Iraq has turned to whether the troop surge is working. I welcome the reduction in violence, and I applaud General Petraeus and our troops. They make us proud.

And I say to my colleague, Mr. Pence, this is not about the surge. This is about whether or not Congress should have a role. If our troops are to be present in Iraq to 2012, to 2018, that in fact is a long-term arrangement. As a matter of fact, the State Department in Circular 175 does call for consultation with the Congress in cases like these. I have long questioned our long-term strategy in Iraq. What is it? And how long do we plan on waiting for substantive Iraqi reconciliation?

In June, Defense Secretary Gates said that we would have a, quote, "long and enduring presence in Iraq." And he said that we would be borrowing from the Korean model and a security relationship that we have with Japan. He compared our relationship to the one that we do have with Korea and Japan, two nations with which we have treaties. In November, the administration finally revealed its strategy when President Bush and Prime Minister Maliki agreed to a declaration of principles for a long-term U.S. relationship to be finalized by July 31st, 2008 -- just in the next several months.

I am concerned about the security assurances that our nation plans on providing Iraq according to this declaration. Among other things, the declaration proclaims the party's intention to negotiate a security arrangement, and I quote, "to support the Iraqi government in training, equipping and arming the Iraqi security forces so they can provide security and stability to all Iraqis, support the Iraqi government in contributing to the international fight against terrorism by confronting terrorists such as al Qaeda, its affiliates, other terrorist groups as well as other outlaw groups such as criminal remnants of the former regime and to provide security assurances to the Iraqi government to deter any external aggression and to ensure the integrity of Iraq's territory." Sweeping commentary!

The declaration appears, in many ways, to adopt the Maliki government's definition of both external and internal threats, and that concerns me. What are these undefined threats? Will we be obliged to preemptively strike Sunni fighters beyond Iraq's borders or even strike homegrown armed factions Maliki's own government deems to be a threat? After the principles were signed, as has been said already many times this morning, Deputy National Security Adviser for Iraq and Afghanistan Lieutenant General Douglas Lute said he does not anticipate, and I quote, "the status of the formal treaty which would then bring us to formal negotiations or formal inputs from the Congress," end quote.

Because the administration apparently believes Congress should not be involved in the negotiation of this agreement, I recently introduced the Iraq Strategic Agreement Review Act. The bill makes clear that the administration must consult with Congress and expresses a sense that any long-term security, economic and political agreement with Iraq must come in the form of a treaty following approval from the Senate.

We have been in Iraq for nearly five years. I understand that mapping out a future relationship with that country is vital to our national interest in the region. A core majority of Americans still believe we should bring our troops home as soon as possible, and this Congress has been elected, in large part, out of dissatisfaction with this war. Congress has a central role to play in formulating any long-term relationship with Iraq. This president simply should not be permitted to unilaterally tie the hands of his successor.

I look forward to hearing the witnesses today, getting their expert opinions on this type of agreement. I thank Mr. Delahunt and Mr. Ackerman for inviting me to this hearing and I thank the witnesses in advance for sharing their views. As I must be at a press conference shortly, I don't know if I'll be able to hear Mr. Katzman's testimony, but let me just pose this question and then I will leave my questions with Mr. Delahunt for the other witnesses.

And I'll say to Mr. Katzman, in your testimony you talked about an August, 2007 communique signed by the top five political leaders -- Shi'ites, Kurds and Sunnis -- as a springboard for this proposed agreement. Later in your testimony, you go through probable support, or lack thereof, for such an agreement in the Parliament. I count at least 100 seats against. So is it quite possible that the Iraqi Parliament would not be able to muster the seats to approve any treaty or agreement?

I anticipate that their Parliament is going through much the same considerations as we are today. What do you think the prospects are of the al-Maliki government ignoring the Parliament, moving forward this agreement without approval? What would the ramifications of that be among the various sects in Iraq and on the Iraqi street?

I thank the chair and -- for his indulgence in allowing me to speak before this hearing today. And I thank my colleagues.

REP. DELAHUNT: Thank you, Ms. DeLauro.

Let me now go to the gentlelady from California, Ms. Woolsey.

REP. LYNN WOOLSEY (D-CA): Thank you very much, Mr. Chairman, and thank you Chairman Ackerman for allowing me as a member of the full committee to sit in on this subcommittee joint hearing. It is so important.

You know, the first thing I have to do is respond to the gentleman from Indiana's statement that the surge is working. My response is, who said so? Because I want to know who's measuring how many of our troops are being wounded. Do you read how many wounded anymore? No. We're soon to be able to be reading that 4,000 of our troops have been killed, how many are wounded? How many are mentally damaged?

And, you know, who's taking account of the number of Iraqis who are dead, who are dying, who are injured? How many of them -- how many millions of Iraqis are refugees, and continue to have to leave their -- the regions that they live in, the country that is their's? I don't consider the surge a success until we bring our troops home.

Now I'm not going to pile on about the very idea that the president, without Congressional involvement, thinks he can come up with some agreement with any country, particularly Iraq. Because it is wrong-minded, we know it, and we will insist that he come and work with us on this. If he has -- if he has good ideas, the Congress should be glad to incorporate them in any agreement.

But whatever that agreement is, I think it should include the provisions that have been expressed more than once -- in fact, 10 separate bills that have included provisions prohibit -- expressing opp -- and expressing opposition to the establishment of permanent military bases in Iraq. Five bills have been approved by Congress in a bipartisan way, and the president has signed them into law. I want to know that they're going to be part of -- what do you think, how they're going to be included in any agreement with the Iraqi government.

But that needs to be -- come back to us. It's proof in the pudding to me that whatever agreement is not going to be upheld in the first place because we've done this five times. So, Mr. Chairman, I'm here to listen, I'm here to question, and I thank you for letting me.

REP. DELAHUNT: Thank you, gentlelady.

And would either our colleague from New York, Mr. Crowley, or our colleague from Florida wish to make any remarks?

Mr. Crowley.

REP. JOSEPH CROWLEY (D-NY): Mr. Chairman, only that it's always good to see you, and thank you for holding this event.

At least one of those statements is accurate and true. But, I do look forward to hearing the testimony of Dr. Katzman. And like my colleague, Ms. Woolsey, I'm interested in hearing his

perspective on these issues, and we'll weigh in later on in the hearing. And no comment from my colleague from Florida. Thank you.

REP. DELAHUNT: I thank Mr. Crowley. And I interpret your remark directed at me as a concern about February 3rd -- it's the 3rd. That, by the way, for those who are unaware, is the day that the New York Giants beat the New England Patriots. (Laughter.)

REP. CROWLEY: (Off mike.) Can we call it to a vote, Mr. Chairman? (Laughter.)

REP. DELAHUNT: No. (Laughter.)

REP. DELAHUNT: Let me proceed.

Our first panel today consists of just one witness, Dr. Ken Katzman of the Congressional Research Service. We don't have to be concerned that he is alone on this panel because when it comes to Iraq and U.S. policy there, he is unique. As Thomas Jefferson said of Alexander Hamilton, "He is a host unto himself." So we welcome you, Dr. Katzman, and would you proceed with your opening statement.

MR. KATZMAN: Thank you, Mr. Chairman. And I'd like to thank both subcommittees for asking me to appear today. I am going to try to -- what I'm going to try to do is address the part of the title of the hearing, "What Will Be In It?"; In other words, what might be the provisions of this bilateral agreement that's being negotiated? I would ask that my testimony be submitted for the record.

REP. DELAHUNT: Without objection.

MR. KATZMAN: Thank you. I would note that my work at CRS is limited -- is focused on U.S. policy toward Iraq, Iraqi politics, the insurgency, et cetera. I assert no expertise on the legal matters at issue or the separation of powers issues that have been raised, and I'll defer on those to the second panel.

What I'm going to try to do is discuss what will be -- what is at issue, what really is at issue. And as was said, the Declaration of Principles that was signed on November 26th flowed from an August 26th communique by five top political leaders of all ethnicities and sects. That was also the day that was -- it flowed from what was called a "unity accord," where these five top leaders were trying to agree to some principles to move forward on political reconciliation. And they did agree to request or to give Maliki the ability to have this Declaration of Principles with the United States on a long-term strategic framework agreement.

The framework agreement is intended to replace the current United Nations mandate under which U.S.-led forces contribute to the security of Iraq. The Iraqi leaders wanted this because Iraq has been under Chapter 7 of the United Nations Charter, basically sanctions and -- Chapter 7 means, in some sense, their sovereignty was not full because they were under Chapter 7 of the U.N. Charter.

The Iraqi leaders want full sovereignty, they want to be out from under the crimes, or the bad times, as Ms. Rice said when she visited Iraq -- Secretary of State Rice, of Saddam Hussein. They want to be out from under this Chapter 7 mandate. So they would like to move to a bilateral relationship, but recognizing that they cannot maintain security by themselves for the foreseeable future, as the Defense minister, Rubaidi -- al-Rubaidi, who visited last week, has acknowledged.

As I mentioned, Ms. Rice visited Iraq. She broke off from the president's Persian Gulf leg of his trip, and she went to Iraq, she -- side-by-side with Foreign Minister Hoshiyar Zebari. Hoshiyar Zebari said that the draft strategic framework agreement that we're negotiating would be submitted to the Iraqi Parliament for approval. So it is -- it is widely on record that the Iraqi government will submit this to its Council of Representatives, its Parliament for approval.

I would like to discuss really, what's at issue in this: If this Declaration of Principles of November 26th does indeed become a final agreement, and all the provisions of the declaration are in it, what would it do? What would be in it?

The judgment that the proposed pact will likely be long term is, as I said, based on the provisions pertaining to security. The Declaration of Principles is that the United States would provide security assurances and commitments to Iraq to deter foreign aggression against Iraq that violates its sovereignty and integrity of its land and waters and airspace. And it goes further to potentially include United States' support for the Iraqi government against internal threats. And the declaration, in many ways, adopts the Maliki government's definition of what the internal threats are. According to the declaration, the Iraqi government is combating terrorist groups, at the forefront of which is al Qaeda, Sadaamists and all other outlaw groups -- which it does not name these other outlaw groups.

If a pact is negotiated in line with these principles, U.S. forces could conceivably be committed to combat any armed faction that the Maliki government, or any future government, defines as a threat to its security without regard to why that armed group is fighting and whether or not the Maliki government has made best efforts to address the sources and causes of that armed opposition.

Among the most significant implications, in my analysis, is the potential for Iraq and the United States to differ on their assessments of external threats to Iraq, and for Iraq to therefore assume U.S. support in a dispute with countries that the United States is allied with. Iraq's Kurdish leaders could, for example, try to assert that the United States -- under a pact -- is committed to confront Turkey over its military actions against the PKK Kurdish guerillas who have some safe haven in northern Iraq. Iraq's Shi'ite leaders could assert that the United State should act against Sunni- Arab governments that are widely reported to be providing funds, arms and transit to Sunni insurgents and the foreign fighters helping these insurgents. Some of them are United States -- close United States allies -- Saudi Arabia and Jordan, for example. There is the potential for the current Iraqi government, widely considered to be dominated by pro-Iranian Shi'ite parties, to try to minimize the extent to which Iraq is contributing to any violence inside Iraq.

Another indication that a proposed pact would be a long-term commitment comes from, as I said, Defense Minister Ubaydi, who visited last week, and told journalists -- and General Dubik testified before the Armed Services Committee just this week -- agreeing with these numbers. Essentially that Iraq would not be able to secure its internal security until 2012 -- 2009 at the minimum. But the U.S. officials clearly think it will be the longer-term of that range, and would not be able to defend against external threats until 2018 to 2020.

I would like to discuss some of the specific stipulations. For example, the mission: The Declaration of Principles stipulates a mission. Now, General Lute, who was mentioned, says that the size and shape of a long-term presence would be part of the negotiations, but he denied that any agreement would specify timelines or goals for the U.S. withdrawal from Iraq. However, the declaration's stipulation of the anti-terrorism, and Iraq's security forces training mission, will

likely color how many troops would be needed under the pact, if the pact is negotiated along the lines of the declaration.

It is difficult to say precisely how many U.S. forces would be required to perform these missions. There are many intangibles. We don't know what the level of violence will be, the enemies, the threats, et cetera. My conversation with defense experts around town -- the common thinking puts the range of U.S. troops for these missions at between 50,000 to 100,000 with many experts seem to be centered on 70,000. Again, not mentioning any names, many of these experts might not want to be held to these estimates. And that's what they are -- they are estimates.

The freedom of action for U.S. military forces will be key as to the provisions of this agreement. The degree -- particularly the degree to which U.S. forces that are in Iraq under the pact must coordinate with or obtain Iraqi approval for specific combat operations. Some Iraqi observers say the Iraqi side might likely try to demand, for example, limits on the U.S. ability to employ air strikes, potentially including the types of aircraft the United States could station in Iraq.

The U.S. negotiating side is undoubtedly going to argue for the maximum flexibility for U.S. forces in any bilateral pact in order not to have their hands tied if they come under threat. It was mentioned a legal status of forces agreement will certainly be negotiated, but that refers -- that is a component of this overall pact referring to whose law U.S. troops are under.

Permanent basing: General Lute said there might be negotiations on permanent bases. It was mentioned that several laws from Congress, which were signed, prohibit that; however, many Iraqi officials had said the Iraqi side is not going to want to allow permanent bases. So that may be an issue that is not confronted in the final agreement, because it appears the Iraqi side is leaning against "permanent bases", quote-unquote.

The Declaration of Principles does not specifically provide how these issues would apply to coalition partners. Partner countries -- we have about 11,500 partner forces in Iraq right now. How would it apply to them? I think it's reasonable to assume that there will be some provisions in any final pact that would provide for how partner forces are treated.

At least two points in -- again, the agreement has a security component, a political component and an economic component. There are some points in the political section of the declaration that are of interest, I believe. In other words, the U.S. -- the Declaration of Principles said the U.S. might be committed to support Iraq in defending its democratic system against internal and external threats. That stipulation could have major implications if there is a political upheaval that leads to the downfall of an elected Iraqi government. For example, would the United States be required to come restore the elected government? There's many, many permutations and implications, depending on how that government fell or if it fell or not.

Point two of the political section clearly also is of interest. It states the United States would assist Iraq in standing against any attempt to impede, suspend or violate Iraq's constitution. The legalities of that could be complicated, but some might argue that this would allow the Iraqi government the right and responsibility to define who is attempting to impede, suspend or violate Iraq's constitution and could therefore compel the United States to act against activists in Iraq whose activities or political ideology might not necessarily conflict with U.S. interests -- but they might conflict with the Iraqi government's definition of who's violating the constitution.

The economic section clearly has some commitments, if implemented, in terms of the pact in binding U.S. advisory help in the ministries, U.S. foreign assistance. And there is a provision that

even stipulates that the U.S. would help Iraq formulate investment laws. And it specifically mentions to facilitate U.S. investment, among other investment.

To just briefly -- I want to just discuss in my testimony the Iraqi dynamics of this pact. As was asked in the opening statements, would this pass the Iraqi parliament? I think that's a very good question. Maliki can pretty much count on the support, in a crunch, of perhaps a little more than half of the council of representatives of 275.

The Sadr bloc and a related bloc, the Fadullah bloc have broken with him this year. Many Sunnis certainly did not vote with him and some secular blocs of former Prime Minister Iyad Alawi theoretically might -- would vote against him as well. So it's not at all certain how the Iraqi Parliament is going to vote on this agreement and I think, certainly, the maneuvering of some of these blocs is going to determine how these issues are treated in the negotiations on a pact. I've stipulated who's against him, who's with him -- it could be very difficult. It could break down to what's nationalists versus decentralizers. Those in power now tend to favor power for individual regions. Those who tend to be against Maliki support more power for the central government of Baghdad. That's not completely how it breaks down, but in many cases it is.

So I think I'm going to -- as an expert -- as an analyst on Iraq, I'm going to be looking at how some of the political blocs discuss or how they react as various provisions come out in the media -- at various phase of negotiations. And I think I'll stop there.

Thank you very much. I'll take your questions.

REP. DELAHUNT: Yes. Thank you, Dr. Katzman.

It's my understanding that the extension of the mandate to -- the U.N. mandate to December 31st of this year was at the request of the Maliki government. Is that -- am I accurate on that?

MR. KATZMAN: Well, Mr. Chairman, the Security Council resolutions that started the mandate give the Iraq -- gave the Iraqi government the ability to make that request, and they did -- they went forward with the request.

REP. DELAHUNT: Is there any prohibition that exists currently that would foreclose the extension of that mandate for, say, an additional three or six-month period -- that you're aware of?

MR. KATZMAN: No, because -- to my knowledge, no, because the secured -- if there's no bilateral pact or any other vehicle that replaces the U.N. mandate, then theoretically at the end of this year, the U.N. Security Council would meet to discuss extending the mandate and --

REP. DELAHUNT: Because -- I raise the issue in light of the observations by Mr. Scott that this is a -- an administration which has achieved lame duck status. The focus of the American people over the course of the next eight or nine months will be on the general elections in November, and that the potential for an agreement that would have no input from the next administration, I think is a very real one. And he raises an interesting concern that I think is shared by many on both sides of the aisle. No one can predict -- we can hope, but no one can predict what's going to occur on November 6 of this year in terms of an administration -- the next administration.

But clearly if there was an agreement that was reached that was executive-only that required no input from Congress despite a outpouring, if you will, of objections and criticisms, it could very well bind the United States government -- the next administration -- far into the future. Am I -- is

-- am I making accurate statements here?

MR. KATZMAN: If a pact along these lines was signed, it -- with these missions stipulated -- it could -- it would -- it could do that -- would do that, sure.

REP. DELAHUNT: I guess what I'm suggesting is that there is an option that I'm sure will be the subject of debate over the course of the eight -- next eight or nine months between the respective nominees of the parties with a -- with the next president having to deal for -- in a period of four years -- with the consequences of a Bush-Cheney agreement. And clearly there are many who, from the beginning, have expressed their profound concerns about their handling of this war. And now for its aftermath to be imposed, if you will, on the American people while this particular administration exit -- exits from the stage is something, I think, of grave concern.

There has been some discussion about the surge this morning, and it's my understanding that the purpose of the surge was to provide the Iraqi political establishment to work on reconciliation. I don't see where that has occurred. And in my opening remarks, I noted that Iraq is still beset by factionalism that is severe, that continues to linger and that any government -- particularly the Maliki government -- only represents one faction that appears to be in serious conflict with other factions. Have we had an agreement such as this where it's clear that there has been no movement politically, and yet here we are entering an agreement with a government that is rife with problems, that represents a particular segment of the political life of a country? Don't we usually we wait until those issues have been clarified rather than exposing the United States to an unpredictable -- unpredictable political changes?

MR. KATZMAN: Sir, I would say that many of the benchmarks that were set out have not been voted on and signed into law -- have not become law. The de-Ba'athification law was passed and there are mixed reviews of it. The administration, I think, would argue there's been some local reconciliation. It seems some senior Sunnis in the national government are continuing to cooperate, particularly Tariq al-Hashimi, the deputy president. The budget has not been passed yet, but they are sharing revenue roughly.

I think the basic rift in the society has not been healed; in other words, the Sunni Arabs still resent what has happened to them and the overthrow of Saddam, and their new understatus in the political structure. That basic structure has not been resolved, yes.

REP. DELAHUNT: But when one looks at the -- at that principle which refers to external and internal threats against the government, how does that interpreted if, after a drawdown, if you will, the level of violence spikes up once more and we're bound by this agreement?

MR. KATZMAN: Yes.

I think if the troop surge is reduced and if we -- Secretary Gates has said that he might want to get down to a level of about 100,000 U.S. forces by the end of this year. That hasn't been decided yet, but there is a decision to get down to about 130,000 by July.

If indeed these resentments in the society then resurface -- and the troop surge maybe has kept a lid on it for now -- if indeed there is not this fundamental reconciliation and if the violence spikes up again, it is possible, as I say, that the pact -- this type of pact would be interpreted by the dominant factions in power at the time and could potentially be used to have the United States go against their opponents, yes, sir.

REP. DELAHUNT: Well, I consider that an extremely vulnerable position for the United States to be hostage to, if you will.

You indicated that the foreign minister, Zebari, has pledged publicly that the Maliki government would submit the draft agreement to the Iraqi Parliament pursuant to their constitution. At an earlier hearing in which you testified and Mr. Rubin testified, my memory is that those same representations were made that the extension, the issue of the extension of the U.N. mandate, would be submitted to the Parliament. Was it submitted to the Parliament, Mr. Katzman?

MR. KATZMAN: No, it was not. That was the extension of the mandate.

REP. DELAHUNT: It was not submitted to the Parliament. And my memory is that there was a letter from a majority, 144 members, of the Iraqi Parliament to the United Nations Security Council. Can you describe for us what was the import of that particular letter?

MR. KATZMAN: Well, the letter seemed to be, in my analysis, a coalescence of Maliki's opponents in the Parliament, who coalesced not only on that issue but on other issues, the oil laws and some other laws. These are factions that basically are against Mr. Maliki and his incumbency. Some of them are openly trying to topple Mr. Maliki. I would say Iyad Allawi, the former prime minister, is working every day as we speak right now to undermine and possibly unravel Mr. Maliki's government.

They had requested that the U.N. rollover of the mandate be submitted to Parliament. This effort was led by the Sadr faction, who has broken with -- Sadr was Maliki's ally until the troop surge, at which time the United States basically told Mr. Maliki, "We need to go against both Shi'a extremists and Sunni extremists. You must not protect Mr. Sadr's faction anymore."

And Mr. Maliki was presented essentially -- he said, "Okay, I will not go against the United States." And he allowed us to go against Mr. Sadr's militia, the Mahdi Army, and Mr. Sadr broke with Maliki. And that letter was part of the repercussions of that break.

REP. DELAHUNT: But the point is there were 144 out of 275 members of the Iraqi Parliament that expressed their concern or their lack of approval to the U.N. Security Council. And they had been told previously by the same foreign minister, Zebari, that any request for an extension would be submitted to the Iraqi Parliament. They were provided those assurances. But the fact is, it was never submitted.

MR. KATZMAN: Yes, sir.

REP. DELAHUNT: And now we're to expect that we can rely on the representations of the same individual, Mr. Zebari, and Mr. Maliki that they will submit whatever agreement should come out of the discussions and negotiations between the Bush administration and the Maliki government to the Iraqi Parliament.

MR. KATZMAN: Well, of course, not that I'm an expert on the Iraqi constitution, but I think it would be much more difficult for the Maliki government to argue that this pact would not meet the standards for their Parliament to have to act. The U.N. rollover was, as we discussed at the last hearing, a little bit more debatable. But this pact, I think it would be very difficult for the Maliki government to argue that it does not meet the threshold for the Parliament to act on it.

REP. DELAHUNT: Let me go to my ranking member next, Mr. Rohrabacher.

REP. ROHRABACHER: Thank you very much.

Dr. Katzman, in your testimony, I take it that the agreement that got everybody so upset here is something that actually is motivated, clearly motivated by an attempt to move away from a government in Iraq that's based on a U.N. mandate. Isn't that what your testimony is?

MR. KATZMAN: Not necessarily that the government is based on U.N. mandate but that the U.S. presence in Iraq is --

REP. ROHRABACHER: Right.

MR. KATZMAN: Yeah.

REP. ROHRABACHER: Okay. So if we don't -- if that government does not want to rest its security based on an arrangement with the United States on a U.N. mandate, this isn't something that's irrational for either side to want to have that agreement and not -- and to go away from simply having a U.N. mandate. Is that correct? I mean, that's -- you would think that would be a rational course of action.

MR. KATZMAN: Yes.

REP. ROHRABACHER: Okay. So what we have here is that this administration has decided and the current government in Iraq has decided that that's the best course of action, way to go. And what we have here is some distress on the part of people who fundamentally don't trust this administration -- as I indicated earlier, I think that there is perhaps some basis for not trusting this administration -- (laughs) -- but who are expressing some concerns.

And would you consider that their concerns being expressed are justified, or is this just as simple as you put it, just trying to take a step so that they can be free of dependence on a U.N. mandate?

MR. KATZMAN: I think the concern that I, as an analyst, perhaps, on Iraq have is that we do have a sectarian difference of opinion in Iraq. And who's to say what's going to be in the final agreement? It could not come out -- as the Declaration of Principles have stipulated, it could be very different.

What I think some would be concerned about is the degree of latitude that the declaration gave to the incumbent government in power in Iraq, which is a narrow government, to define who the enemy is.

MR. KATZMAN: Yeah. What I'm hearing is that it's a great concern that this will bind us in the future. Now, there was a similar situation where the United States, a new administration, a democratic administration, came in after a Republican administration and wanted to alter, fundamentally alter, what seemed to be the policy, as bolstered by agreements and even treaties. And that was when President Carter came in and decided that it was going to abrogate the mutual defense treaty with Taiwan.

Now, it's my understanding that the Supreme Court decided that indeed future presidents and future Congresses are not bound and that they can indeed move in their own direction, so that this, what looks like to me to be an irrational fear that we are going to be set in cement forever, is not justified by the status of the legal rights of the president and the legal rights of the Congress,

this one or the future presidents or Congresses.

Is that correct?

MR. KATZMAN: Congressman, I'm going to defer that question to the next panel since that seems to be more of a sort of a treaty-law issue.

REP. ROHRBACHER: Okay. Yeah, it does seem to me that we shouldn't be as concerned to the point that it's irrational that we are going to be bound forever by a policy, but we should instead be focusing on what the policy should be and whether or not we disagree with that fundamental policy. Because I do believe that it's very clear that future presidents and future Congresses can go whatever direction they darn well want to go, and that President Bush, as positive or negative as people think that he is, that he is not going to be the dominant force in determining what the policy is of the next administration. We will go our way whether it's a Democrat or a Republican administration.

Now, about that policy, let me just note that I, for one, would be very opposed to any policy that would try to establish that America will have long-term military installations in Iraq. First, they aren't needed, because we've got other military installations in the Gulf where people want us. And second of all, it sends exactly the wrong message. I believe the Iraqi endeavor has been somewhat benevolently motivated. And I know that is something that too many on the other side of the aisle don't necessarily agree with. In fact, I think they're trying to find maliciousness in the motives for us going into Iraq. I don't find that at all. And I think that to try and have some sort of an agreement that would give us a right to some long-term military presence in Iraq feeds that paranoia that indeed there's some unspoken, malicious motive behind America's engagement in Iraq.

I believe what we're trying to do here is what we tried to do during the Cold War. And during the Cold War, we had to make sure that there weren't gains by the communists and their allies that would encourage the type of aggression that would lead to a conflict and lead to great loss of freedom and a disruption of the peace. And in today's world where radical Islam is a major threat, I believe that what we're basically trying to do in Iraq was to at least demonstrate some sort of alternative to radical Islam in the Muslim world. That does not, however, justify us doing all the fighting and carrying all of the burden as perhaps we did and perhaps the American people did during the Cold War.

My father fought in Korea, and I cannot tell you how many times over dinner he told me that had he known that all the men who were in Korea who were fighting there against that communist aggression, had they known or had anyone told them that there would be American troops stationed in Korea 50 years later, he said we would have told them they're crazy, there'd be no American troops in Korea. And that would have been a crazy notion for Americans to have a military presence in Korea for 50 years.

I think that that deserves a lot of discussion. I think that policy deserves discussion. And I don't believe the American people want us to have a military presence. And if there are people that want us to have a military presence in Iraq for 50 years, let's discuss it. I don't believe that what we're talking about here is motivated by trying to sneak in a back-door commitment that will require the United States to have this long-term military commitment. I think it's just as you state, this is a very rational approach that they're trying to move away from a mandate of the United Nations, which is something that puts us on a totally different footing, than if we have a mutual agreement.

Just for the record, I would oppose any mutual agreement that would suggest the United States should reenter Iraq in the future just because Iraq needs us. The people of Iraq are the ones who have to control their own destiny. The people of Iraq have to stand up, or they will not be free, and they will not have democratic and honest government. We are giving them a chance to have democratic and honest government now. American blood and treasure has been expended to give them that opportunity. We can be proud. I believe we can be proud of that. But in the future, if they're not able to become their own country absent of some major invasion from another country, then they're the ones who will have to bear the responsibility and not the people of the United States.

So with that said, I thank you for holding this hearing, Mr. Chairman. And I do not find the issue at hand to be as ominous as some of the presentations would have us believe.

REP. DELAHUNT: Thank you, Mr. Rohrabacher.

Now the chair of the Middle East Subcommittee Mr. Ackerman.

REP. ACKERMAN: Thank you very much, Chairman Delahunt.

My dad fought in World War II. If he were around today, he'd still be amazed that we still have troops in Germany. Of course, they're there under different circumstances, and things do happen, things do change, and they're certainly not unwelcome there. It's part of a different overall picture.

Dr. Katzman, traditionally, our first panel would ordinarily be witnesses from the administration, were they willing to participate, which Chairman Delahunt described the attempts to get them here, and they have all declined. So you sit as the first panel, certainly not representing the administration but nonetheless have a great degree of expertise.

REP. DELAHUNT: Mr. Ackerman, would you just yield for a moment?

REP. ACKERMAN: Surely.

REP. DELAHUNT: I intend after this hearing to sit with you and see whether we can determine a convenient date so that we can reissue those invitations, given in the aftermath of this particular hearing, and call upon the administration to fully explain their position and clarify how they intend to proceed.

With that, I yield back, and thank you.

REP. ACKERMAN: I'd welcome the opportunity at that and any opportunity to sit down and discuss that with you and to issue such an invitation. And perhaps we can invite our ranking members on the other side of the aisle to sit with us as we do that.

Reference was made before to our relationship, I believe by Mr. Rohrabacher, to the situation as it evolved with Taiwan. That was rather unique in its happenstance as during that time, Taiwan was, in effect, being decertified by us and the international community of their nationhood as we replaced them in the U.N. and our foreign policy with mainland China. Nonetheless, having been our partner and ally, we had an obligation to deal with them despite the fact of their soon-to-be suigenerous situation.

And in their uniqueness of not being a country in some of the legal parlance, having a treaty with an entity such as a non-country was something very, very different. And therefore, the relationship that governs our policy towards Taiwan developed, by indeed an act of Congress, which was the Taiwan Relations Act, which was passed into law and together with a series of letters that were exchanged with Taiwan have governed that relationship ever since.

I point that out, because I believe it's important to the discussion that we're having today. And that has not -- that relationship and those documents and that law has not been changed. And I think it has led to the stability between the parties in the region to understand what that relationship is, which calls for not the defense of Taiwan -- as some misinterpret the reading of that on all sides of all of the oceans and seas involved -- but calls for providing for the defense of Taiwan and to do all in our power so that they can provide for their own defense.

And I think there's a slight misreading of some of the documents with relationship to Iran (sic/Iraq) that we're discussing today as to what our obligations would be, although that is still fuzzy nonetheless.

I want to take a different path than some of our colleagues in their view of this and find myself in the unique position from this side of the aisle defending the prerogatives of the administration. As much as I dislike and detest the fact that the administration tries to usurp the powers and the prerogatives of the legislative branch of government, I find it equally offensive if we should try to denude the administration of what their authorities are.

And I think that this Congress, legally -- and I know that's the purview of the next panel, but Dr. Katzman, you do have some thoughts and historical references that you can help us with in this -- if we were to try to remove the prerogatives that the administration has.

We have no right under the Constitution to insist that the administration negotiate a treaty. We can make the arguments, but we have no basis in law to compel that. The administration can have agreements, does have agreements with other countries, and that is certainly within the rights of the administration. And certainly there are many, many historical references that we could make to that happening where it has worked very, very successfully. That's the purview of the administration. We should not be attempting to try to take that away from the president.

But the Constitution does provide, does insist, does assert that the administration has a responsibility -- and it's in the Constitution -- to consult with us, not for us to consult with Dr. Katzman. As brilliant as he is, he cannot substitute for the administration that should be sitting here with us today, and has deliberately absented themselves from that process, and that's what has me irked.

But in response to that, we should not say -- as it does in the DeLauro bill -- that the administration must proceed by law, nor do we have the constitutional authority to do that. I think we have to make the compelling arguments that they be here and that they consult with the appropriate committees of the Congress, but to compel them to make this a treaty obligation, rather than take any other foreign policy path, would be equally wrong and as misguided of us to insist upon that as it is for them to insist that we do not exist in coming to this conclusion. It would be very wrongheaded of the administration to try to do that.

Where I have a slight disagreement with my friend from California, Mr. Rohrabacher, is that I think it's important that we not whimsically -- as we change Congresses -- to go back on

agreements, even though not of a treaty status, but of an administration government-to-government agreement and look as if we were whimsical in our foreign policy and can change it every two years as the Congress might change.

One of the faults that we have in dealing with the Palestinians -- if we shift to yet a different part of the world -- is that the Hamas refuses to recognize agreements that their previous governments have made with the Israelis. The treaties or agreements or obligations of an international nature witnessed at very high profile levels in various places on the globe -- including here in Washington -- do not exist, because they then took a majority in their parliamentary elections. That is what unreliable parties to agreements do and we, as the United States, should not do that just based on a whim, a will or a notion or a change of parties in control of Congress.

There should be a very substantial reason if that is to be done. And I would not take unseriously the administration negotiating something as far as a policy agreement, with Iran (sic/Iraq). And because the Democrats rather than the Republicans are in control -- or whoever next time -- and just say, well, that doesn't exist. We're going to pass something else and negotiate something else. That does not make us a responsible, respectable, reliable partner when it comes to foreign policy. And that's the last thing that we need to do is further upset the faith and credit -- whatever that might be -- as a residual existing in the world.

Dr. Katzman, is there -- there seems to be a question in Iran (sic/Iraq) -- and I don't profess to be an expert in their constitution -- but there does seem to be a question, at least over there, as to whether or not their parliament has to ratify any agreement. It seems that the foreign minister thinks that they'd be hard pressed not to allow that to happen. Mr. Maliki thinks that it's not going to happen. I guess administrations think that they're the only people in their respective capitals -- whether they be here or there.

But it certainly would be unwise on our part to get into a war that was not supported and understood by the American people, and it would not be sustainable -- even though popular at the moment -- in this country. And I think on their part it would probably be equally unwise, as it would be in any other country, to negotiate a long-term relationship that's going to govern their respective existence -- as far as who their daddy is -- that is not acceptable to the people of that country.

Is there any historical notation that this kind of thing can work, where leaders have agreements that the people on both sides might disagree with?

MR. KATZMAN: I think my comment on that would be Maliki has not said he does not believe they shouldn't be submitted to the council of representatives. My perception is he's on board with going to the parliament. And Zebari, the foreign minister, reflected that. He has not tried to argue that this should not be taken to the Iraqi parliament.

REP. ACKERMAN: Is it your understanding that it will or will not pass if it were brought before their parliament?

MR. KATZMAN: If what's negotiated is along the lines of the Declaration of Principles, my judgment as an Iraq expert is it would have tremendous difficulty passing the council of representatives, yes sir.

REP. ACKERMAN: And if it didn't pass, it wouldn't take effect?

MR. KATZMAN: Correct. Presumably -- presumably. I say that because if they submit it to the parliament and they have a vote and it doesn't pass, I don't see how they would argue that they would just unilaterally begin to implement it.

REP. ACKERMAN: Which is probably the resistance on the part of Mr. Maliki to submit it, even though he has not said he would not do so?

MR. KATZMAN: I'm not -- he resisted the U.N. rollover. He did not present the U.N. mandate rollover last December to the Parliament. He has not -- there's no indication that he's resisting or in any way does not want it submitted.

There's a suspicion among some Iraqi factions that disagree with Maliki that he might try to go around the parliament, but I've seen no indications that he's planning or scheming to circumvent the Iraqi parliament on this.

REP. ACKERMAN: If there were some secretary or deputy or undersecretary sitting where you sit right now, I would be one from this side who would suggest to them that we do not want a failed postwar relationship with the Iraqis, as I'm sure no American, Democrat, Republican, whatever, would want.

And it would behoove the administration to try to get as many of us on board by trying to listen to what we think might be helpful, because they -- Mr. Secretary, you, who are not here -- are not the font of all wisdom in coming to these kinds of conclusions. And maybe someone else can have a decent notion, whether it be from the Republican or the Democratic side of the microphone.

MR. KATZMAN: Mr. Congressman, what I suspect is going to happen -- and I may be speculating here -- but I suspect that as these negotiations go forward, both sides will shape the eventual text in such a way that either it will pass the Council of Representatives or it would be perhaps less controversial than the Declaration of Principles would have us believe that it might be.

But in my testimony, I'm talking strictly to the Declaration of Principles, because that's all we have written down at this point. But I suspect it's going to be modified in such a way that perhaps it does pass the Council of Representatives.

REP. ACKERMAN: Well, hopefully we'll have similar discussions with our administration to bring the same kind of democratic process that we expect of the Israelis -- of the Iranians -- in having discussions between their administration and their Parliament to come to a conclusion that's acceptable to a majority of the Iraqi people and making as much sense out of it.

And if we had that here, we would have a much stronger, more understandable and more acceptable by the American people that would bridge the gap from administration to administration without everybody jumping to undo what somebody else might have done.

Dr. Katzman, thank you very much.

REP. DELAHUNT: Thank you, Chairman Ackerman.

Mr. Scott of Georgia.

REP. DAVID SCOTT (D-GA): Thank you very much, Mr. Chairman.

First I'd like to say I'm sorry that the gentleman from California is not here, Mr. Rohrabacher, who made the statement that this is not a back-door attempt for a long-term engagement in Iraq. And I concur with him. It is not a back door. This is coming straight to us through the front door. But make no mistake about it -- to do the mission and what is laid out in this agreement will obligate us to, at the least, an indefinite future.

And I think the thrust of my questions is on -- I'm not arguing what the end product will be. I'm arguing the process. If the president of the United States could come to Congress and ask for congressional authority and authorization to commit our resources and troops to invade Iraq, most assuredly that same principle works to come to Congress to determine a declaration of agreement as we attempt to determine what we do in the future in Iraq. And that is the rub here.

And until that bridge is crossed, we will not be able to cross this ravine in any intelligent manner. So it is very important that we get this across, that this is a two-way street. And I want to press my points to you, Mr. Katzman, if you could work with me a little bit here, as to why, very technically and structurally, this has to happen.

First of all, we're talking about a commitment of troops. Whether we like it or not, we're talking about some kind of military presence going forward if we're going to be there to do, as it says in the mission, to ensure the integrity of Iraq's security, to help the Iraqi government to deter any external aggression.

The other point about this measure is this is far different than South Korea, and in large measure even Germany, World War II, because when we deal with Iraq and where we're going with that, we're just not dealing with Iraq. We're dealing with the most volatile region that has a cascading effect, a domino effect. For every action we do, there's a reaction in Iran. There's a reaction in that whole region.

So this is a very, very serious matter. And I just want to make my point clear here, because in this agreement, the United States will acquire certain obligations under international law and could be in default of those obligations unless there is implementing legislation from here in Congress.

So we have no choice in the matter. And that is so puzzling with the arrogance that I was speaking about earlier -- (inaudible) -- not even realize this. Why would we want to get into this mess in the first place? It would have no sanctions.

The other thing is that this worries me greatly, because it is nothing more than an extension of a blank check. And here we've got the president of the United States, as I said before, who has only 10 months left in office. He is not just passing this on to the next president, next administration and next Congress when we come in in 2009, but he's in effect handing a blank check to Maliki.

This is where this president -- how irresponsible. And as was pointed out, we could (wind up ?) -- Maliki could say the PKK is where we need to go to defend, and we'd find ourselves, as you pointed out, attacking Turkey. We're leaving it up in the hands of this -- this is why this is such a very, very serious, serious problem.

And I want to get your comments on that point in terms of the implementing legislation, the obligations that we will be obligated to under international law, and the blank check that we've given to the Maliki government.

MR. KATZMAN: The legal issues, if it's okay, I'm going to have to leave to the second panel, since that's not my expertise. But I think what I tried to reflect in my testimony is the Declaration of Principles is really, to my mind, about the Maliki government.

It's not really -- it's not necessarily -- it is U.S.-Iraq relations. It's about our relations with Iraq. But it really -- the wording of it is all about the Maliki government and how much power would be given to not only Maliki, but any future government, to determine who U.S. troops go after, for example.

It's perfectly conceivable that in order to get Mr. Sadr's support -- and I believe Sadr's support would be crucial to having this pass in the Iraqi Council of Representatives -- I think if Mr. Sadr's faction does not support it, I think it will have difficulty in the Council of Representatives.

It's perfectly conceivable that to gain his support for this, there might have to be some provision that U.S. forces do not chase his Mahdi militia. That's perfectly conceivable. I'm not saying that will be the outcome, but I think it's perfectly reasonable to argue that Mr. Sadr is going to want something in return for voting for a pact like this.

The Sunni Arabs, I think they see from the wording of this, where it refers to Saddamists, et cetera, most Sunni Iraqi Arabs would say that this is directed against them; this is against them.

This is what I'm hearing. I talk to Iraqis. They -- their view is this is against them. And this is what I tried to get across in my testimony, and I -- but I'll limit my expertise to that, if it's okay.

REP. DELAHUNT: Thank you, Mr. Scott.

Mr. Costa of California.

REP. JIM COSTA (D-CA): Thank you very much, Mr. Chairman.

In listening to the comments by my colleagues here, I guess I want to further explore the nature of this proposed agreement, not so much as what's in it or what should be in the treaty, but the timeline that was discussed at some length by my colleagues and their questions. If in fact the administration reaches some sort of an agreement, what is the -- what would be the binding nature, in your view, into the next administration and the next Congress? I mean, we have agreements with many countries and as was noted here in earlier questions, they change. They change as circumstances change in that part of the world where those agreements are and they change from administrations to Congresses, and the flexibility in an agreement as to what is in fact -- which commitments are kept and which are not kept.

I mean, just as an example. We -- I believe there was some discussion as to whether or not bases are permanent or not permanent. I mean, frankly, I think that's almost a discussion that really doesn't bear real merit because, frankly, you can call a base temporary and -- you know, it could be temporary for 30 years, so under the -- you know, determining how you define it. So I guess I would like you to respond as to your nature or your sense is to an agreement that is reached, and if it doesn't have the imprimatur of the Congress, what changes the next administration or the next Congress could pursue.

MR. KATZMAN: Sir, if it's okay, I'm going to again defer that to the next panel, which will deal with the legal issues. But to talk about the timeline, the intention is to have it inked -- have a pact

agreed to by July 31 and then, presumably, there would be time for the Iraqi parliament to ratify - to review it, ratify it in time for the expiration of the current United Nations mandate, which would be December 31st of this year.

REP. COSTA: And you believe the Iraqi Parliament could meet such a deadline based upon their track record?

MR. KATZMAN: Well, if, as I suspect, it's going to be -- there's going to be political consultations in Iraq as it's being negotiated and if what's agreed to has already been sort of in many ways vetted by the major blocs -- the major political blocs -- it's conceivable they could act fairly quickly on it.

REP. COSTA: Dr. Katzman, how would you rate this priority within the Iraqi Parliament compared to reconstruction compared to de- Ba'athification compared to the implementation of getting revenues out to the provinces? I mean, where does this fit?

MR. KATZMAN: My analysis would be that this would be a very high priority because many of the political blocs see in a potential agreement like this. They will be interpreting whether they are going to be the subject or the object of U.S. combat operations and they will take it very, very seriously, sir.

REP. COSTA: On that basis, how do you think this plays into the current agreements that are being reached between the U.S. military and the various Sunni parties in Anbar with the sheiks, and this other process that -- I'm trying to think of the term of what we call it now --

MR. KATZMAN: The Awakening Council.

REP. COSTA: Right, the Awakening Council.

MR. KATZMAN: It's all local citizens, yes.

Well, that could very well play into it. You know, as we said at the last hearing, Sunni opinion is increasingly divided. If one had asked a year or two ago how would the Sunnis view it, one would say they would be united against something like this. Now it's much less clear because they are. Some of them -- these groups that you mention have come into some understanding with the United States --

REP. COSTA: And reaching sidebar agreements of some kind.

MR. KATZMAN: Yes, but the issue is those Awakening Councils and those movements -- tribal movements -- they are not much represented in the Iraqi Council of Representatives. This -- these are Sunnis who have come forward after the elections. They did not compete in the elections. They did not have party slates. So they would not -- the people -- nobody really representing that group is in the Council of Representatives at this time.

REP. COSTA: But a group that does have representation in the council -- and there was reference made earlier to it by -- I think, by Mr. Ackerman -- the Kurds. They obviously have their own agenda and -- as it relates to -- I mean, I think they are a group that probably, my sense is, has a Plan A, has a Plan B, and -- who knows, they may have a Plan C. How does this play into their agenda?

MR. KATZMAN: The Kurds would almost certainly be as supportive of this as possible because they know they will not be the subject of U.S. combat operations.

REP. COSTA: And they won't try to leverage it.

MR. KATZMAN: I -- well, they might -- yeah, they might try to leverage it against Turkey or somebody else. That -- that's different. But they -- yes, they would -- they might try to leverage it. But they would be highly supportive of an agreement along these lines.

REP. COSTA: All right. Thank you very much.

REP. DELAHUNT: I'm just going to wrap up and see if there's any other questions or comments by members before we let you go.

But you know, in response to Mr. Costa's observation about Plan A, Plan B, Plan C, it would appear that the only group -- institution, if you will -- that doesn't have a plan because they're in the dark is the United States Congress. No consultation, no reaching out -- you indicated that it's your understanding, Dr. Katzman, that there are conversations going on in Iraq among the various blocs, including blocs in their Parliament, regarding a proposed agreement, it's being vetted, and yet the United States Congress sits here without a clue. Without a clue. I guess that is disturbing, particularly as I indicated according to -- and we'll get into this with the next panel -- according to their own rules and regulations, there ought to be consultation going on and we can't even secure the appearance of appropriate individuals from the administration to educate us and inform us, and to consult with us.

Can you -- maybe you've heard some -- maybe you have some information as to what the status is currently in terms of discussions, negotiations -- however you want to describe it -- between the Bush administration and the Maliki government. Do you have any information?

MR. KATZMAN: Nothing really detailed. I mentioned that Defense Minister Obeidi was here last week. My understanding is that that was sort of laying the ground work for the beginning of these negotiations. But they'll begin in earnest next month.

REP. DELAHUNT: They'll begin in earnest next month, meaning February.

MR. KATZMAN: I believe so, yes.

REP. DELAHUNT: So if we're to achieve the goal of July, there's actually four or five months.

MR. KATZMAN: That's my understanding, sir. Yeah.

REP. DELAHUNT: So four or five months of discussions between the two executives in a effort to design a blueprint that will, for an indefinite period of time, circumscribe the relationship between the United States and Iraq without any input or consultation to date with the United States Congress. In five months.

MR. KATZMAN: Yes. However, of course, a lot of negotiating went into the declaration of principles of November -- I mean, so --

REP. DELAHUNT: So you would describe that as preliminary talk and --

MR. KATZMAN: The political framework. The political framework has been built, yeah.

REP. ACKERMAN: You know, I just want to conclude because I think it's really an important observation or statement that you made. In your written testimony you make this statement: "U.S. forces could conceivably committed (sic) -- be committed to combat any armed faction that the Maliki government defines as a threat to its security." You stated this agreement is about the Maliki government, and yet my memory is that there are some groups -- armed groups, armed factions -- that have been affiliated at different times with the Maliki government that have been problematic, if you will, to the security in Iraq. Do you have any examples of armed factions that today are allied with the Maliki government but in the past have been defined by the administration and others as threat to security? Do you know of any examples?

MR. KATZMAN: Not really because the Sunni movements that we just talked about were never affiliated with -- they were never supportive of him at any time.

REP. DELAHUNT: Mr. Scott?

REP. SCOTT: I just had one follow -- one final question I wanted to ask. This is pending before Maliki's government -- their Parliament will have to decide upon this. What if the message goes out irregardless of whether -- what we're debating -- we'll debate the legal requirements of what our role in Congress should be legally in terms of what the president can do. But certainly there's one thing we can do by the Constitution -- that is appropriate the funds. It's clear to me in reading whatever it is -- and Maliki will read this very clearly -- what impact or what would be the reaction over there if they have the opinion coming from what I think is a majority opinion of Congress and on both sides of the aisle, I think, to some measure that Congress will not appropriate the fundings going forward for this? What would be the reaction over there?

MR. KATZMAN: If this was signed and Congress did not appropriate funds?

REP. SCOTT: Yeah. Well, I'm saying they have to vote on this -- I mean, there's a vote coming up on this agreement with Maliki and the Parliament. He has to get approval. But if a signal is coming from this country that the Congress irregardless of what at this point? The Congress is saying that they're not involved in this -- I mean, there's not going to be any funding coming forward to fund this agreement. We don't have to wait on a ruling from the Constitution or legal authorities there.

We've got the power of the purse, and this, a declaration of principles, requires the allocation of resources and appropriation of funds, and if there is a message going forward here, which I think that there is, that Congress is very hesitant to authorize funds for this what ramifications does that have over there? And also given the July deadline that we have, because I will tell you this -- the American people are not going to stand for this, number one, until there is some reconciliation, and for the very fact that State Department representatives themselves refuse to come before our committee they should be receiving our comments. That's a bad sign, and I'm just saying that from your perspective what does this read for how will it be interpreted?

MR. KATZMAN: My analysis would be that if they sign an agreement along these lines with Iraq and the council of representatives ratifies it on their end but it for whatever reason is not either approved here or implemented here, there would be severe repercussions for the Iraqi government, possibly to include its -- possibly to include its collapse although I don't want to speculate. But I think the repercussions for the Iraqi government would be severe.

REP. SCOTT: Would it send a signal to them that they could get on the side of making sure beforehand? My point is if a message is sent loud and clear that there could be some pressure brought from Maliki to this administration that unfortunately we're not able to bring to this administration to involve Congress before we get to that point. Because I understand, I think, from your July deadline something has to happen. Is that correct? We have to have something in place by then to replace the U.N. mandate. Is that correct? Explain the July --

MR. KATZMAN: The plan is to have an agreement along these lines signed or agreed by July.

REP. SCOTT: And if not?

MR. KATZMAN: Then it -- the U.N. mandate stays until December 31, so that's really the deadline, although it could be renewed. If there's no agreement -- either the Iraqis don't ratify it or if for whatever reason it's not agreed here -- the U.N. mandate could -- the U.N. Security Council would have the option of meeting and renewing the mandate for another year or less than a year, or whatever period of time they want to. They can extend the U.N. mandate.

REP. SCOTT: Okay.

REP. ACKERMAN: Thank you, Mr. Scott. Your points are well taken. And thank you, Dr. Katzman, for your customary lessons and we appreciate it, and let me call forward our second panel. We have two distinguished witnesses -- Professor Michael Matheson of the George Washington University Law School, and Dr. Michael Rubin of the American Enterprise Institute. Professor Matheson served for 28 years in the State Department's Office of the Legal Adviser where he was acting legal adviser for two years with the rank of ambassador. He led efforts within the U.S. government to create the International Criminal Tribunals for Yugoslavia and Rwanda and the U.N. Compensation Commission for the Gulf War compensation. When it comes to questions about treaties, I'm pleased to say that we have the right man in the right room at the right time. Welcome, Professor.

And our other witness is Dr. Michael Rubin, who previously appeared before our subcommittee last December, and he is an expert on Middle East politics who worked in the Office of the Secretary of Defense Donald Rumsfeld from 2002 to 2004, both as a -- as the desk officer for Iran and Iraq and as an on-the-ground adviser to the coalition provisional authority in Iraq. Dr. Rubin holds a Ph.D. from Yale and is a senior lecturer at the Naval Postgraduate School. Dr. Rubin, we welcome you back.

MR. RUBIN: Thank you.

REP. ACKERMAN: And why don't we begin with you and then we'll go to Mr. Matheson -- Ambassador Matheson?

MR. RUBIN: Thank you very much. Chairman Delahunt, Chairman Ackerman, honorable members -- thank you for this opportunity to testify. This hearing seeks to determine whether any proposed U.S. security commitment to Iraq should constitute a treaty. It is an important question but there is no cut and dry answer. Too much depends upon the content of the agreement. Among the principles outlined by President Bush and Prime Minister Maliki in the declaration of principles were provision of security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, water, or airspace; support for the Republic of Iraq in its efforts to combat all terrorist groups consistent with mechanisms and arrangements to be established in the bilateral cooperation agreements; and

support for the Republic of Iraq in training, equipping, and arming Iraqi security forces to enable them to protect Iraq and all its peoples and completing the building of its administrative systems in accordance with the request of the Iraqi government.

On December 18th, 2007 the Security Council passed Resolution 1790 which extended the Multinational Force Iraq mandate until December 31st, 2008. Throughout this year, the U.S. and Iraqi government will negotiate the details of a security agreement to replace the U.N.'s Chapter Seven mandate. The details are crucial to the question at hand but remain unclear. The proposed agreement could take many forms and indeed could be a package of multiple agreements ranging from a status of forces agreement -- a so-called SOFA -- to economic development packages to basing agreements to formal defense treaty.

SOFAs apportion rights and responsibilities between a host government and our stationed or deployed forces. Typically, they serve to vest the United States with criminal jurisdiction over our forces in the host country. Usually this entails commitment to hold our troops and personnel legally responsible for any criminal conduct under the uniform code of military justice or some such arrangement. Unknown in the case of Iraq would be the status of private security contractors. Many SOFAs also address exemption from inspections and customs duties, travel document requirements, and tax exemptions for the PX.

Today, the United States has approximately 100 SOFAs. Generally, SOFAs constitute agreements rather than treaties. It is a rare occurrence if a SOFA is sent to the Senate for approval. With regard to NATO, Japan, and Korea, security guarantees are covered in separate treaty structures above and beyond the SOFA itself. For example, in 1953 the United States and the Republic of Korea signed a mutual defense treaty which the Senate ratified in 1954. The Pentagon then negotiated in 1966 a SOFA which came into force on February 9th, 1967, with an exchange of letters rather than a separate ratification. To determine whether ratification is necessary, what an agreement is called is less important than its contents. There's a point that an agreement can go so far in obligating the United States to defend another country that the Senate should ratify it. That line is when the obligation to defend another country becomes legally binding under international law. If such language is embedded in an Iraq SOFA, then there's little question that the SOFA should be voted on as a treaty by the U.S. Senate.

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 and so not legally binding to the extent a treaty would be. Should the White House try to adhere to this fine line, however, the Iraqi government would take note and consider the U.S. commitment ephemeral and perhaps demand a more formal treaty.

Basing agreements are more nebulous and controversial. The differentiation within U.S. discourse between permanent and nonpermanent bases is more political than legal. (For ?) the United States to establish or lease a base in another country often requires an agreement rather than a treaty. Many of these basing agreements or the renewal agreements involve political or economic commitments.

This has been the case, for example, with the Incirlik Air Base in Turkey. Ankara frequently requests economic incentives. During the 2005 renegotiation, the Pentagon sought a (blanket agreement ?) in which the U.S. military would have full use for the period of the agreement while some Turkish officials demanded that Ankara be able to approve every flight in order to maintain their leverage over congressional discussions of the Armenian genocide resolution and other issues.

Rent was the major subject of the U.S.-Kirghiz base renewal talks in 2006 while expansions of facilities to prevent -- to provide better force protection became the issue dominating discussions to expand Camp Lemonier in Djibouti. Sharing of maintenance costs for U.S. facilities in Japan is the contentious issue in U.S.-Japanese negotiations. Sometimes host countries wish to receive security guarantees in exchange for hosting a U.S. base or U.S. forces. Again, whether or not the basing agreement should be subject to Senate ratification depends upon the strength of the guarantee. Such demands for assurances are not always stated up front and often enter the conversation over years or during renewal discussions.

It is not the House Foreign Affairs Committee's duty to preempt negotiations over specific clauses in the agreement not as yet written, but it will become the Senate's duty to ratify the resulting product should it include security guarantees binding under international law. It is ironic that the House Foreign Affairs Committee seems more intent on defending the Senate's prerogatives than the Senate itself.

As our diplomats and military officials negotiate such an agreement, they will be seeking to underline our commitment to Iraqi stability and that country's success fighting the extremists and terrorists that threaten both Iraqi and U.S. security. They will seek to preserve our military's maneuverability. While some critics of the Bush administration's Iraq policy suggest that the United States should confine itself to a limited number of forward operating bases -- FOBs -- or even redeploy its forces over the horizon into neighboring countries or Iraqi Kurdistan, such a strategy would hamper our ability to respond and protect the U.S. forces training Iraqi counterparts and providing the space for Iraqi politicians to advance reconciliation efforts.

The insurgency spread when U.S. forces were confined to a handful of FOBs. Part of General Petraeus' and General Odierno's surge strategy involved saturating troops throughout their areas of operation. The strategy worked. U.S. and Iraqi negotiators will not be anxious to roll back success by again concentrating multinational forces to a few FOBs but will rather seek to maintain the security regime until political reconciliation can occur. Any language, however, which would commit U.S. forces to defend Iraq in the face of an external threat would transform the agreement into a treaty subject to Senate ratification. In such a case, not only would the eyes of Tehran and Damascus be on the U.S. Senate but also observers in Taipei, Jerusalem, and Seoul. So the U.S. willingness to support and defend our allies regardless of where we are in the election cycle is at the heart of our credibility and our relationships not only in Iraq but the world over. Thank you. I welcome your questions.

REP. DELAHUNT: Thank you, Dr. Rubin, and we have two votes scheduled so we're going to defer the testimony from Mr. Matheson upon our return. There are two votes. I would expect that within a half an hour we'll be back in our seats and look forward to your testimony and look forward to the question and answer -- (inaudible). And with that we'll recess.

(Recess.)

REP. DELAHUNT: (In progress after audio break) -- if you will, of the situation in terms of the so-called "Declaration of Principles."

MR. MATHESON: Thank you very much, Mr. Chairman, both for inviting me to be here today and also for your very kind introduction earlier. I have submitted a written statement, which I suggest be included in the record, and I would give a brief oral summary of that now.

REP. DELAHUNT: So ordered.

MR. MATHESON: I would like to just highlight three questions which are dealt with in greater detail in my statement.

The first question is, what exactly are these security commitments and security assurances that the declaration says are going to be offered to Iraq? This is a question that has been the subject of a great deal of dialogue between the political branches over the years. The term "security commitment" has typically been used, at least in the technical sense, to refer to a binding obligation incurred by the United States to act in the common defense of another state that's been subject to armed attack. And of course as we know, such security commitments have been included in a number of collective defense treaties after World War II: the NATO treaty; the Rio treaty, which applies to Latin America; Korea; Japan; the Philippines; Australia; New Zealand.

For example, in the NATO treaty, it says that parties agree -- and I'm going to quote here -- that "an armed attack against one or more of them shall be considered an attack against them all and consequently they agree that if such an armed attack occurs, each of them will assist the party attacked by taking forthwith such action as it deems necessary, including the use of armed force."

Now, in contrast to this, the term "security assurances" -- or sometimes the term "security arrangements" is used -- has usually been meant to refer to some kind of action short of the commitment of the U.S. armed forces to meet a situation in which there's a severe security threat to the other party. For example, in the 1975 agreement between the U.S. and Israel, it says that in the event of a threat to Israel's security -- and again, I'll quote -- "the United States will consult promptly with the government of Israel with respect to what support, diplomatic or otherwise, or assistance it can lend in accordance with its Constitutional principles."

Now, the declaration from November refers to both security commitments and security assurances. I honestly don't know whether the administration was using those terms in the technical and historic sense that I was describing. It's quite possible that in the end the administration may decide that it really doesn't want to offer a full-fledged security commitment to Iraq in the sense of a pledge to use U.S. armed forces. We may opt for some lesser assurance -- for example, a simple promise to commit. We don't know, but obviously it's important for the administration to tell the Congress what it contemplates.

REP. DELAHUNT: That would be welcome.

MR. MATHESON: Yeah. (Laughs.)

The second question is what form these commitments or assurances should take and what the role of Congress should be with respect to their conclusion. The Constitution -- the text of the Constitution doesn't give us clear guidance as to exactly what form various kinds of international commitments must take, whether in the form of a treaty, giving advice and consent of the Senate, or in agreement approved or authorized by Congress, or an agreement done on the basis of the president's own constitutional authority. These are sometimes called sole executive agreements.

But the regulations at the State Department -- the famous Circular 175 -- do contain a list of factors which are to be taken into account in deciding what form a particular agreement should take. Now, I've listed them in my statement, but among those factors are the degree to which the agreement involves commitments or risks that affect the nation as a whole, whether the agreement can be given effect without legislation, what the past U.S. practice has been with

similar agreements, and finally the preference of Congress, if any, with respect to the form of the agreement. And if there's any question about what form or procedure such agreements should take, then the regulations say that the matter has to be referred to the legal adviser's office at the State Department and if necessary a decision on that is to be made by the secretary of State.

Now, history does give us some guidance as to the form of security assurances and commitments. As we already know, security commitments have always been done with some form of approval by Congress and almost always done in the form of treaties. Certainly a binding commitment to use U.S. armed forces in the defense of Iraq, for whatever purpose, would certainly fall in this category. But there might be more limited security assurances such as a simple promise to consult that could be done as executive agreements -- again, we don't know what is intended.

And of course, security agreements and assurances and commitments are probably only going to be a part of a larger group of agreements and commitments that the U.S. and Iraq will enter into. This is typical of any situation in which U.S. armed forces are present in a foreign country. For example, there might very well be a status of forces agreement; there might be a military assistance agreement; might even be a basing agreement, and whether these steps would require congressional approval or authorization does depend on the specific content of the agreement and its relationship to any existing legislation that may bear on it. For example, if you had an agreement that granted some kind of exclusion or immunity from the requirements of U.S. law for foreign personnel, that would undoubtedly require either a treaty or congressional action. And as we've heard, Congress has recently acted to prohibit the use of U.S. funds for the purpose of military bases to provide a permanent U.S. military presence in Iraq, so if we had an agreement that made such a commitment, presumably some congressional action would be necessary, and so on.

But even in a case where the president has constitutional authority on his own to enter into a commitment as an executive agreement, that doesn't mean that Congress has no role to play. On the contrary, as you yourself have pointed out, Mr. Chairman, the State Department regulations -- Circular 175 -- provides that in the event the executive branch intends to negotiate a significant new international agreement, then the appropriate congressional leaders and committees are to be notified of that intention and they are to be consulted with respect both to the substance and the form of the proposed agreements. And I think it's pretty obvious that given the importance of the overall U.S.-Iraq relationship and the potential importance of the presence of U.S. forces or not in the future security of Iraq that clearly the Congress needs to be consulted now and informed of what kinds of agreements are contemplated. And with this information, it seems to me that then the committees and the Congress can decide whether action is necessary and if so, what.

Thirdly, I just wanted to highlight a few issues concerning the future legal status of Iraq that may be implicated by the terms of the Declaration of Principles. The declaration says that it's the intent to end Iraq's current status under U.N. Security Council resolutions and to return Iraq to the legal status that it had prior to its invasion of Kuwait in August of 1990. And of course, the goal of returning Iraq to normal sovereign status is a desirable one, but I do suggest that consideration should be given as to whether there are maybe some aspects of the Security Council decisions which might be continued rather than terminated. For example, the current Security Council decisions provide for an ongoing deduction from Iraqi oil export revenues of funds to provide compensation to claimants, including American claimants, for loss or damage suffered during the Iraq invasion and occupation of Kuwait. And the question is, should that now be terminated or modified, or should it be continued? Likewise, current Security Council decisions impose various constraints, as you know, upon Iraq's acquisition of items that might assist in a WMD program, and these restrictions do go beyond what Iraq has accepted in terms of treaty commitments about

WMD. And so the question is, should these restrictions continue or can they be eliminated now? Security Council resolutions also guaranteed the border between Iraq and Kuwait that was delineated after the first Gulf War. And the question again there is, should that now be ended or should the Security Council's guarantee continue?

I don't really know whether the administration actually intends to eliminate or modify any of these specific actions of the current Security Council regime, but in light of the language of the declaration, it seems that it would be logical to have a step-by-step policy consideration of whether these particular aspects and perhaps others of the Security Council decisions should continue or be modified or terminated.

Mr. Chairman, that concludes my oral summary. And of course, I'd be very glad to answer the committee's questions.

REP. DELAHUNT: Well, thank you very much, Mr. Matheson.

Let me go first to my colleague, my ranking member, and then I'll pose some questions. And it would appear that we can decide whether additional time is necessary for us.

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

So I take it from your testimony of both of our witnesses, that you don't consider the fact that the president is considering an agreement like this to be an ominous move on the part of the administration?

MR. MATHESON: Well, it's not unusual to consider this kind of issue and to have political objectives. But of course, this is a process in which your committees and other committees in Congress need to be involved --

REP. ROHRABACHER: Sure, but --

MR. MATHESON: Particularly because --

REP. ROHRABACHER: I mean, over and above the -- whether or not we're involved, but a move to have a this agreement, and to try to get a status situation -- other than having our relationship depend on a United Nations resolution -- is not an ominous maneuver?

MR. MATHESON: No. Not by itself, because that would be a logical long-term objective of U.S. policy.

MR. RUBIN: No.

REP. ROHRABACHER: So what we have are some nervous stirrings by people on the other side of the aisle, who naturally have a distrust for a president of the other party who refuses have an open dialogue on exactly what issues will be included in such an agreement. And I can understand the apprehension on the other side of the aisle when we have a lack of direct communication with the administration. So this would yet be another example of the administration not shooting itself in the foot, but shooting itself in the head.

Let me just note that -- when I worked for Ronald Reagan and I was in the Reagan administration -- I was in the White House for seven years with Ronald Reagan -- on numerous occasions

Ronald Reagan would say, never be afraid to talk to anybody. Never be afraid -- always talk to everybody, but be very strong on policy, very tough on principle, but very nice to whoever you're talking to as a person. I think that this administration is getting its direction from a different type of personality than I was getting when I worked for Ronald Reagan. And I think I'll leave it at that.

Thank you, Mr. Chairman.

REP. DELAHUNT: Well, thank you, Mr. Rohrabacher.

I find myself agreeing with much of what you said. And that causes me concern. (Laughter.)

But let me be serious for a moment. As I noted in my opening remarks, this is a very significant proposal. I don't think anyone would dispute that what the parties are about to undertake is to determine whether there ought to be a bilateral agreement between the United States and Iraq, which is appropriately described as a significant international agreement. I don't think anyone would dispute that.

And I understand that there are various classifications of international agreements as an executive legislative agreement, which implicates both branches. I think, Mr. Matheson, you alluded to the fact that the issue of permanent bases has been addressed by Congress and would require congressional action to change that.

This is a blueprint for the future relationship. My friend from California indicates that there is a level of mistrust between I daresay not just the majority, but a significant number of the minority in Congress, because of the history that has occurred between this administration and this Congress on this particular issue. And yet, not only has there only been, on one occasion, public discussion of this issue by General Lute, we've extended an invitation today. I've had conversation with leadership on the Democratic side, and there has been no effort whatsoever by the administration -- that I'm aware of -- to consult and to work together towards something we could all embrace. And this would appear to be in direct contravention of the Department of State's regulations.

Maybe you can help us, but is there somewhere in Circular 175 that talks and focuses on the need to consult with Congress, even if it's a sole executive initiative or agreement?

MR. MATHESON: Yes, absolutely.

And I tried to spell that out in my statement. But Circular 175 requires, as you say, for any significant new international agreement that the committees be informed of what's intended, be consulted with respect to form and substance. And obviously, the purpose of this is precisely so that members of Congress, who have a role in at least the implementation of these agreements -- if not the conclusion of them -- understand what is contemplated and are able to make their legitimate inputs.

So yes, sir. The Circular 175 does clearly contemplate both informing and consulting in advance.

REP. DELAHUNT: And yet we have heard nothing from the administration.

Now, Dr. Rubin references the concern of the House Foreign Affairs Committee in terms of, you know, defending whatever prerogative the Senate might have as it relates to a treaty. I daresay the

Senate is doing, through at least two Democratic candidates -- Senators Obama and Clinton are raising this issue to the point where it will be the subject of the presidential debate, at least among Democrats, in terms of what is this about?

I would hope that the discussion would also be referenced, from this point forward, by Republican candidates, because I believe that the American people ought to know where we're going and what this is in terms of specifics, how it involves us in terms of our responsibilities and what's in it for the American people. What is the Iraqi part of the bargain?

I think Dr. Rubin and yourself and others raise the point: We don't know. I agree. We don't know, but we ought to know. We ought to know! This is -- it's true -- a legal issue. And I daresay, there have been seven treaties where mutual security commitments -- not arrangements -- have been embraced. We don't know if this is what you describe as an arrangement or as a commitment, but we ought to know! We ought to know.

And I think, Mr. Scott's observation that the Maliki government should take cognizance of the fact that, at least to this point in time, the United States Congress is not being consulted and not being informed, will widen, if you will, and deepen the mistrust that currently exists -- that currently exists.

I find it absolutely outrageous that, according to Mr. Katzman, we have the issues being vetted by the Iraqi parliament, and we are left in the dark. If that's the case, I can assure you that -- and time is moving rapidly here; there's five months between now and the target date and until the end of the year when the mandate expires -- that there will be resistance.

And I daresay it'll be on both sides of the aisle, because we want to be informed. We want transparency in all of the information. Much like in the lead-up to the war where there was, you know, information coming from the Department of Energy, coming from bureaus within the Department of State that, unless you really dug for it, it wasn't put out there by the administration.

Well, if I were consulted by the administration, I would say come soon and let us know what you're considering, what do these principles -- because if you read these principles, on the face they are most expansive. One could interpret that internal and external attacks in a most expansive manner which would forever involve us in the quagmire of Iraq.

You know, just for the record purposes, we -- Mr. Matheson, would you explain to us Circular 175? What was the statute that enabled 175 to emerge as a blueprint, if you will, for the Department of State in terms of its consideration of how to approach international agreements?

MR. MATHESON: Well, Circular 175 is a State Department set of regulations, and it's essentially based on two things. One is that there are -- you know, there's certain congressional legislation, the Case-Zablocki legislation, with respect to the reporting of international agreements to the Congress. But also, it implements the role of the Department of State and the secretary of State in the negotiation and conclusion of international agreements.

And so although they are State Department regulations, they do also affect any actions by other agencies to conclude agreements. So it is essentially the State Department's way of having a regular procedure for the orderly conclusion of agreements, which obviously involves an appropriate role for the Congress.

REP. DELAHUNT: I noted that one of the factors to be considered is congressional preference in

terms of the form of the agreement. Let me inform you, Mr. Matheson and you, Dr. Rubin, that nobody in Congress has been informed. I can run through the list of factors to be considered, and there has been no effort by this administration.

So while my friend from California talks about paranoia, I talk -- I would frame it and speak of it in terms of legitimate concern, having observed this administration over a period of time signing statements and other situations where statutes have been ignored and consultation with Congress has been minimal, at best.

Mr. Scott.

REP. SCOTT: Yes, thank you very much. Thank you very much, Mr. Chairman. I guess -- where do I start?

Do you believe that this requires congressional legislation for the implementing of this treaty, the provisions of the treaty?

MR. MATHESON: I think what we both have said is it depends entirely on the specific content of the agreement in question and how it relates to existing legislation. There are some things that we're acting -- congressional action in one form or another would clearly be required. We've listed some -- a security commitment in the technical sense, some kind of commitment to long-term bases where Congress has already acted, any kind of exemptions from U.S. law. And there probably are other examples and obviously the implementation of an agreement would have to work within the contours of existing congressional appropriations and limitations on those appropriations.

So there are a number of ways and respects in which something might require congressional approval. On the other hand, there may be other things which could be done by the president without congressional approval.

REP. SCOTT: Do you think one of the reasons why they're going the route of avoiding a treaty is to avoid congressional input?

MR. MATHESON: I couldn't speculate on that, sir.

REP. SCOTT: General Lute, who was speaking for the White House, that question was put to him. Is the purpose of avoiding a treaty avoiding congressional input? And General Lute responded and said no, as I said, we have about 100 agreements similar to the one envisioned for the U.S. and Iraq already in place, and the vast majority of those are below the level of treaty.

And that was very cute and misleading language on the part of General Lute and the White House. And that's why we have to look at this with a very jaundiced eye in terms of the motivation of this administration. Legal analysis notes that all seven of the current U.S. agreements that provide for military action in defense of external threats have risen to the level of a treaty.

Now, the mission says clearly here, it says to provide security assurances to the Iraqi government to deter any external aggression. That in and of itself (connotes ?) to me the grounds to follow those seven that we've had before, and this would rise to that. It could very well arise to other actions of military action to determine the internal threats.

This mission and this declaration of principle is so broad in its scope and its dimension that clearly one can see a need here. So it begs the question as to why is it, and is it in the best interest for a president who was the architect of getting us into Iraq, to be the sole arbiter from the United States' point of view, in negotiations, to continue this war and set the ground rules for it which will commit troops, which will commit more appropriations, which obviously has a role for Congress, from our standpoint -- from the Senate's standpoint in the treaty that clearly is applicable here, external threats and aggression, if we're to do that -- particularly (pattern ?) all the others.

So, you know, I'm trying to get at a clear answer here, because you all are the legal experts on this. So to get some kind of parameters of how we move forward. My other point is -- and that's why I want you to comment on that point of these others that fit into external threats all require treaties -- why not this one?

My other point is that without implementing legislation, without the assurance of that, we stand in a way of not being able to fulfill our obligations under international -- under international law. Because, in effect, we could be in default of those obligations to Iraq, unless implementing legislation is enacted to secure it.

So on two levels I'm speaking here, the treaty as well as implementing legislation to carry out the other obligations that we have.

And then, thirdly, if you could just shed some light on the double-mindedness here in the speaking of the White House and their clearly effort to undermine or bypass congressional input.

MR. RUBIN: Do you want to start, or should I?

MR. MATHESON: It doesn't matter to me.

MR. RUBIN: Okay, let me start.

Well, on the first question about the extent to which these references in the joint declaration dealing with external threats to Iraq should lead us to assume that it would have to be in the form of a treaty, as these collective security treaties work.

Unfortunately, my answer has to be I don't know, because I don't know exactly what's contemplated. If it really were contemplated that the U.S. would incur an obligation to use U.S. armed forces to defend Iraq against either external or internal threats, then my answer would be yes.

If what's involved here is simply an overall objective to do various things that might help Iraq in dealing with external threats but not rising to that level, maybe the answer would be no. But it depends exactly on what's involved, and we don't know that yet.

With respect to your question about implementation of obligations, you're absolutely right. But in negotiating agreement, particularly an executive agreement, you have always to be careful that you already have the necessary congressional authorization and appropriations to carry out the agreement. Otherwise you may be left stranded not being able to carry out your obligations toward your treaty partner.

And whether that is going to be the case, again, we don't know, because we don't know the

specifics. But if, in fact, it's contemplated that there be an executive agreement for which the authority is not available, you would have to condition the agreement on getting such authority or getting such appropriations. You can't simply go out there and make commitments that you don't have authority for.

With respect to White House motives, I really don't know. I can't comment on that.

MR. MATHESON: I don't have much substantively to add. I would argue that -- or I'd reiterate that it would be a mistake to conflate the Declaration of Principles for the agreement that will be negotiated with the final result of that negotiation. When it comes to the issue of bypassing congressional consultation, I would hope certainly that consultations will begin as negotiations on this agreement or treaty, or whatever final form it takes, also begin.

And while I do have the floor, in the spirit of the chairman's consistent comments about the informational nature of these hearings, I would just like to argue that not only are the deadlines incumbent in the negotiations of this agreement going to be on the radar screen over the next year, but the Kirkuk issue will now occur in June of 2008 unless that's extended.

A large wild card in the situation in Iraq and the requirements for our commitments there are whether or not we go to provincial elections inside Iraq. If there was a move towards provincial elections, it would likely require at least a short-term increase of troop levels to secure those elections.

And then, lastly, while we've talked in the opening statements about the impact which any such agreement or treaty would have, given the transition that we have between administrations over the course of this time, it should also be noted that by December 2009, there will have to be additional elections for the Iraqi National Assembly as well.

Thank you.

MR. RUBIN: May I add just one point? And that is, if I were advising the administration today, I would advise that they get to the stage of consultation as quickly as possible, not only to satisfy the legitimate role of Congress, but also because failing to do so may raise apprehensions about what the administration intends that may, in fact, not turn out to be the case.

I mean, for all we know, the administration may have in mind something more modest -- an obligation to consult, a limited status- of-forces agreement that simply exempts U.S. military personnel from foreign law, or some similar steps. But until the administration is able to tell you what it has in mind, naturally you will worry about the broader implications of, as you say, the very broad language of the declaration.

REP. SCOTT: Which brings us to the other concern, the political equation that we face right now. And what is timely to do? In fact, we don't really have to do this broad scope. And this is a very, very live-wire political issue. It's not just a live wire within candidates or politicians. It is a very serious live wire in the hearts and the minds and the souls of the American people.

There is a high level of distrust. We can say what we want to say here politically from one political branch to the other about distrust and mistrust. But what we're faced with here is the mistrust and the distrust that the American people have that has been beared out.

So what is it legally -- from your perspective, at the end of the day, given this discussion, what is

the legal perspective from the standpoint of what Congress can do at this point to do two things? One, make sure that the president does not and cannot act to commit us into the future in terms of an investment in Iraq without congressional sanction or approval.

MR. RUBIN: The very first thing that you need to do is somehow to get the attention of the administration and to get them to inform you and consult with you as to what exactly is intended. When you know that, then you're in much better position to make the kind of decision you're describing. It may be that Congress will find it doesn't need to use its strong weapons, or it may find it does need to.

Obviously the Congress has the appropriation power, which it can be a powerful tool, but needs to be used judiciously. And so before you're able to make a decision as to whether you need to use that weapon, you need to know exactly what's involved. So I would think, number one, you need information and you need consultation.

REP. SCOTT: Which brings us to the point of my final point as to why the quandary and why this administration looks so bad. In our request to get the information and our request to have them come before our committee, they have refused to do so, so that our only option, it seems to me, is the purse strings. And we failed to do this before, and many of us very reluctantly even when we vote, because we have troops in harm's way in terms of the combatants' role in Iraq today.

But I am feeling very confident that there is a will in this Congress to hold up any appropriations of funding for this Declaration of Principles to move forward. And I think that that, to me, is probably the only tool that we have. And I'm (mighty afraid ?) that the sooner we play it, the better, because I do not believe that we will get the attention of the administration until we use a good bully bat, and that may be it. Would you agree?

MR. MATHESON: What I would add is I will certainly hope that consultations would occur once the negotiations begin, if the intent of various members of Congress is to be as fully apprised of the situation with the negotiations as possible. It would also behoove members of Congress to travel to Baghdad to speak directly to Ambassador Crocker, who will presumably be the point man on some of these negotiations.

REP. SCOTT: Thank you, Mr. Chairman.

REP. DELAHUNT: I thank the gentleman for his insightful questions.

I dare say it could be much more productive in terms of Dr. Rubin's last suggestion. And I am contemplating extending an invitation to a broad section of members of the Iraqi Parliament to come here to Washington and have a dialogue, again, on a bipartisan basis, with members of Congress so that, A, we can become fully informed, and so that there is no misunderstanding about the implications of any agreement that is consummated. I think that's absolutely essential. I've already taken preliminary steps along those lines.

Dr. Rubin, you indicated as soon as negotiations begin. Well, again, according to Dr. Katzman, those conversations that we can describe as preliminary have already occurred in terms of the agreement as it related to the Declaration of Principles.

We heard, again, from Dr. Katzman about the conversations, hopefully with sufficient information, going on in Baghdad among Iraqis. We heard so many different stories from

members of this administration regarding Iraq that proved to be inaccurate -- and I use that word, I think, kindly -- that there is a rationale for the mistrust that exists. It does. You heard earlier the ranking member of this subcommittee express the same mistrust and unease with the actions of this particular administration.

Now, the CRS, Dr. Garcia, put out a 16-page memorandum on his understanding of the legal nuances, if you will, and the role of Congress and the role of the executive in agreements like this. I think it's -- at least it's my position I want to avoid a constitutional crisis or confrontation. But I see it brewing. I see it happening unless this administration sends to this Congress its representatives to inform this committee and other relevant committees and the American people in full measure what they are about.

This cannot be done in any way that is not transparent. It is simply too important. Almost 4,000 American military personnel have died. Hundreds of billions of dollars have been expended. For what? That's what a majority of the American people are asking, and they have a right to be informed as to where we go from here. And we don't know. And their representatives in Congress are not being consulted and are being left in the dark.

You know, I alluded to the memorandum prepared by attorney Garcia. And he makes this statement, and let me read it to you, Dr. Matheson, and ask for your opinion. But he opines, "When Congress opposes an agreement and the president's constitutional authority to enter the agreement is ambiguous, it's unclear if or under what circumstances a court would recognize such an agreement as controlling."

Do you agree with that statement?

MR. MATHESON: Well, the question -- it's always unclear how a court will react when there's an issue between the two branches.

So it's hard, you know, to say yes or no to that, but obviously --

REP. DELAHUNT: So you would agree that it lacks clarity. But here we are finding ourselves potentially heading in that direction because I'm confident that this Congress will insist upon being fully informed. It has been raised in presidential debates, and silence is still the response of the administration. There have been ongoing conversations, otherwise the Declaration of Principles would not have been promulgated. That is occurring, and according to Circular 175, the State Department's rules and regulations -- they -- the State Department recognizes the need to consult on a regular basis with Congress in the case of international agreements, and they're failing to do it.

How can we trust this administration in a matter of such significance and import when they ignore their own rules and regulations? I'm not suggesting it's the career personnel in the Department of State that's doing it, but we know that they're taking orders and direction from a higher pay grade. That's my concern. That's the fear that I have. And at a particularly critical time, what's the message that we're sending to the Iraqi government? I hope at least that today's hearing sends a message directly from the United States Congress to the Iraqi government and the Iraqi parliament that we have a constitutional responsibility in terms of any significant international agreement that implicates particularly the use of American military forces potentially in a civil war in Iraq.

The American people want out. They don't want to be stuck in that quagmire or return. We've had

enough.

Mr. Scott:

REP. SCOTT: Yeah. If I may follow up with a question, and just amen exactly everything that you have said. There's absolutely no way that this Congress is going to allow this kind of agreement to go forward with the commitment -- an unlimited commitment, a blank check commitment. You yourself said this verbiage, this wordage in here is up to interpretation. Once you sign an agreement like this you are liable and held to it under international law, so it would be highly irresponsible on our part and especially to allow this to take place with an administration that wants to do this in six months. They're out of Dodge -- they're out of town. So that's not going to happen.

So let me ask you this -- I have one for you, Dr. Rubin -- but for you, Mr. Matheson, I believe you worked in the State Department. Is that correct?

MR. MATHESON: Yes.

REP. SCOTT: And you were a legal adviser in the State Department. Is that correct?

MR. MATHESON: I was acting legal adviser, yes.

REP. SCOTT: How long ago was that?

MR. MATHESON: I left as acting legal adviser in 2000. I was acting legal adviser for about two years, and I was an attorney in the State Department for about 28 years.

REP. SCOTT: Okay. So you've got some pretty good experience here. So let me ask you this: If you were there today and if you were legal adviser in the State Department and this kind of Declaration of Principle was put to you, would you recommend that this be -- that it be submitted to the Senate as a treaty or would you recommend that it be submitted to the Congress as an agreement requiring legislation by both houses, or would you just say, "Executive branch, you go and do it," as the case is apparently being done now?

MR. MATHESON: The first step would be to determine exactly what is intended, and you can't tell from the general language of the declaration exactly what is going to happen. So my role as legal adviser would be to say, "Look, we've got to get more specific here. What do you mean by 'security commitment'? Do you really mean that? I doubt it, but tell me exactly what it is you would promise to Iraq in terms of security. What do you have in mind in terms of the status of forces? Would that be within these parameters or not?" And I would go down the entire list and encourage policymakers to focus and make decisions and then come to Congress. And it may be at the end of that process that there would be a lot less uncertainty and a lot less disagreement between the two branches as to what's contemplated.

REP. SCOTT: But --

MR. MATHESON: If I may answer your question, until we get to the end of that process, I don't know what form the agreements would have to take because it does depend on the content.

REP. SCOTT: But my question was, if you were handed this as the end product -- not where there's any negotiation. This -- just said, "Hey, here it is, Legal Adviser. You're the person." And

it says "training" -- it's specific -- training, which means money, manpower, resources, some type of military operation, equipping and arming -- those are pretty specific things -- "the Iraqi security forces so that they can provide" -- that's a commitment -- "security and stability" -- that's taking it on our shoulders. I don't see where that's much different than what we're doing right now to all Iraqis. And not only that, "dealing with contributing to the international fight against terrorism, to confront the terrorists of al Qaeda, its affiliates, other terrorist groups, as well as other outlaw groups." This is very specific and handed to you -- "and criminal regiments of the former regime" -- precisely what we're doing right there now. In order to do this, seems to me, requires some kind of military operation. And then to provide not just security but "security assurances." That's money. That's how you secure it. You can't secure it without putting the money and the muscle and the commitment of American taxpayers' dollars to that -- "to deter any external aggression."

I'm saying to you, if this is handed to you, wouldn't -- I'm not going to put words in your mouth, but I would think if you had no choice or you had the choice of these three things -- get it to the Senate to be ratified as a treaty or get it to the Congress to get approved by an act in the legislation and approval necessary or -- by both houses of Congress, or, Mr. President -- and you've got six or seven months left in office -- you go ahead and do this on your own, and to hell with Congress, and yet committing all of this to them. You've got no choice. You're the legal adviser. You're the lawyer. What do you say?

MR. MATHESON: Well, actually what I would say would be slightly different. I would say, "That document cannot be the final product. It does not express clearly what the obligations of the United States will be. It has vague terms like 'security commitments and assurances' that may be fine for a statement of political objectives, but it can't be the final product. You need to go back, and I'll help you do it, but you need to go back and go through each of these items, determine exactly what you want to promise, and then decide whether that's within your existing authority. And if not, you have to go back to Congress and get it."

REP. SCOTT: Yes. I was finally hoping that you would finally say the magic words. Not finally, but wouldn't you say, "Mr. President, you need to go and sit down with the Congress, who has to appropriate the funds -- you need to go and sit down with Congress, who has the authority to set treaties." Would not you say that?

MR. MATHESON: Sure. Absolutely.

REP. SCOTT: Thank you.

REP. DELAHUNT: I'll tell you what I find somewhat disconcerting is that if this administration should act or embrace whatever document as within their -- exclusively within their constitutional authority and describe it as a sole executive agreement and the new administration comes in -- and others have said, "Well, we can just ignore it; we can abrogate it," et cetera -- tell me if I'm incorrect: There still are consequences in terms of our international obligations.

And it clearly -- I think we heard from Dr. Katzman -- would have a serious -- very serious backlash, if you will, from the Iraqi government and other actors because of our failure to follow through on commitments made by the Bush-Cheney administration. That's why this is so important.

MR. MATHESON: Yes.

REP. DELAHUNT: I believe that this issue -- this singular issue is the most important issue that this committee will deal with -- in fact, that Congress may deal with -- between now and the presidential election in November.

Dr. Rubin, you look like you want to say something.

MR. RUBIN: I'll say a little bit. It seems that there's a danger in -- while interesting to discuss -- in wallowing in an unlikely hypothetical. First of all, when it comes to the transition between administrations, I would certainly hope that whoever the candidate turns out to be -- the next president turns out to be, that they will consult also with the ambassador in Iraq -- Ryan Crocker or whoever comes after him -- and also General Petraeus, to determine their Iraqi policy and gear that Iraqi policy towards events on the ground in Iraq at that time. If you compare where we are right now to where we were last year, it's a world of difference.

I would also argue --

REP. DELAHUNT: Dr. Rubin --

MR. RUBIN: Sir, there's absolutely no dispute that if we make a security commitment under international law to insert our troops under certain conditions in Iraq, that needs to be ratified by the Senate as a treaty.

REP. DELAHUNT: And I don't disagree with you in terms of whoever the next president is, to obviously consult and listen to, whether it's General Petraeus or Ambassador Crocker or whomever their successors may be. But I guess what I'm saying is, here we have the reality of 2008 with a new election coming, we have State Department rules, regulations, guidance, if you will, and yet we have this administration that's just simply ignoring them. Maybe the next administration will just simply ignore, I think to its peril, advice and counsel from all quarters. But I guess this is what happens when, as Governor Huckabee said, you have a foreign policy that's characterized by arrogance. That's the only explanation -- arrogance.

MR. RUBIN: At the same time, sir, I would argue, based on the questions posed by Mr. Scott, that there would be a very dangerous precedent given that we train, we arm and we equip antiterrorist forces in the Philippines, in the Horn of Africa and elsewhere, if every time we undergo that sort of training that it needs to be considered a treaty by the U.S. Congress.

Now, I don't disagree with you at all that there should be consultation. Consultation does not hurt. It helps a great deal. And I would share the opinion of Mr. Rohrabacher that this administration could have done a much better job with regard to some of the consultations. But while understanding that Iraq is a political hot button, it's also necessary to keep an eye on precedent and recognize that this isn't only going to be a situation with regard to Iraq but it's going to affect our military, diplomatic, economic, informational policies around the world, and it's also going to be seen by our allies -- if we are seen to cut Iraq off, that's going to be seen in Jerusalem, in Israel, in Taipei, Taiwan.

REP. DELAHUNT: Well, I don't, again, disagree with your respect for precedent, but we've seen again -- this is the most recent example, but I serve on the Judiciary Committee that sits in this room, and there have been multiple examples of this administration disagreeing with precedent in terms of the Department of Justice, as best exemplified by the resignation of Mr. Kolme (sp), by Mr. Goldsmith and by others over, you know, an issue involving NSA and surveillance and what have you.

MR. RUBIN: But this issue is about Iraq, I thought.

REP. DELAHUNT: It is about Iraq.

MR. RUBIN: Okay.

REP. DELAHUNT: But my point is, if there is a precedent that is consistent in terms of the behavior of this administration, it's the fact that they do not respect precedent. They just make it up as they go along, and that's why I think that we have to be particularly attentive to what is occurring in terms of these negotiations.

MR. RUBIN: But we shouldn't rewrite what constitutes a treaty, sir.

REP. DELAHUNT: I'm not -- I'm not even suggesting that.

MR. RUBIN: Okay.

REP. DELAHUNT: As Dr. Matheson has indicated and as other have put forth in their own testimony, there are various forms in which Congress plays a role -- executive-legislative agreements I daresay make up the bulk of our international agreements, working together. But we have an administration that, as Senator Hagel said, considers Congress as an adversary and as a constitutional nuisance.

Gentlemen, thank you so much for your testimony. We're adjourned.

MR. RUBIN: Thank you.

MR. MATHESON: Thank you.