

US-Iraq Agreement Leaked

By [Maya Schenwar](#)

Global Research, September 07, 2008
truthout.org 7 September 2008

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A leaked draft of the US-Iraq status of forces agreement indicates that there is no intent to set a deadline for the withdrawal of “noncombat” troops from Iraq.

A leaked version of last month’s draft of the proposed US-Iraq status of forces agreement (SOFA) suggests that the Iraqi parliament may not be consulted before it is signed, despite Prime Minister Nouri al-Maliki’s promises to do so. The pact would govern the future US presence in Iraq. The draft indicates no intent to set a deadline for withdrawal of “noncombat” troops from Iraq. It also grants immunity from Iraqi law to US military personnel, no matter where they are located.

The draft was translated and provided to Truthout by Raed Jarrar, Iraq consultant for the American Friends Service Committee. It comes after months of assurances from Maliki that the agreement would be sent to parliament. However, the draft SOFA states, “This agreement goes into effect on the day that diplomatic memos confirming all constitutional procedures have been met in both countries are exchanged,” and sets a December 31 deadline for this memo exchange.

Designating a memo exchange between executive branches as the go-ahead to put the plan into action opens up a gaping loophole, making it simple to bypass parliamentary ratification, according to Jarrar. Since the “constitutional procedures” that are to be followed aren’t specified – and Iraq’s laws are not yet set in stone – the Maliki administration’s lawyers could easily interpret a bilateral executive agreement as constitutional. Unlike parliament, the Iraqi executive branch operates out of the US green zone and is backed by the United States.

“I won’t be surprised if someone in the Iraqi executive branch decides that it is enough to read the agreement before the parliament, or ‘consult’ with them, or pass it as a law with simple majority or whatever other tricks they might pull,” Jarrar told Truthout, adding that the December 31 deadline makes the language even more suspect. “How can they make sure all ‘constitutional procedures’ [are completed] before December 31? What will happen if they are not done?”

The prospect of an impending deadline certainly clashes with hopes of parliamentary approval, according to Dr. Mahmoud Al-Mashhadani, head of the Iraqi parliament. In a rare interview with the news agency Al-Arabiya, Al-Mashhadani stressed that parliament could not even consider a SOFA right now, since a law governing procedures on international agreements has not been passed.

“The Iraqi constitution determines that the House of Representatives must first enact a law to ratify the Law of Treaties and Agreements, and must vote or pass this law through

parliament by two-thirds majority," Al-Mashhadani said. "So, before discussing the treaty, we must enact this law by two-thirds."

Al-Mashhadani stated that the Law of Treaties and Agreements would "take a long time to pass," and would "not be enacted before the end of the year."

Therefore, the SOFA draft deadline would not allow the possibility of parliamentary approval before passage.

Iraq's executive branch has a history of circumventing the legislature, according to Foreign Policy in Focus Fellow Erik Leaver: The administration did not consult parliament in 2007 when it agreed on the extension of the UN mandate allowing a continuing US presence in Iraq. However, says Leaver, because parliament has been so publicly vocal in its insistence on being involved in the SOFA process, ignoring the legislature may have heavier consequences this time around.

"I would expect a legal challenge in Iraq - and perhaps the US - if the accord moves forward in an exchange of memos," Leaver told Truthout. "Beyond legal challenges, enormous political pressure would be put upon him, perhaps causing a rise in instability and a certain delay in the scheduled [2008] fall elections in Iraq."

Jarrar suggested that bypassing parliament may even "lead to some groups quitting the political process."

Ahmed Ali, an Iraqi correspondent based in Diyala, told Truthout that the possible circumvention of parliamentary approval reveals the nature of the agreement itself: It runs contrary to the wishes of most Iraqi people and their representatives, who would rather all troops leave the country quickly.

"[The SOFA] is superficial," Ali said. "They are telling Iraqis, 'You have to accept it; you can say no word.'"

Meanwhile, the American people and their representatives are getting a similarly short end of the stick, according to Steve Fox, director of the American Freedom Campaign, a nonpartisan organization that works to combat executive power abuses. Fox notes that, although SOFAs are usually bilateral executive agreements, the US-Iraq pact goes far beyond the bounds of a traditional SOFA, since it grants US military personnel the authority to continue fighting. (Typical SOFA provisions include US military members' banking and postal procedures, legal policies relating to military personnel and the transport of Americans' property into and out of the country.)

"For the past seven years, the president has treated Congress like an inferior branch of government," Fox told Truthout. "This pending agreement with Iraq is just another example. It is clear that the agreement goes beyond the reach of a traditional SOFA and it should be approved by Congress before it goes into effect. But the president has no intention of seeking Congressional approval. In our opinion, Congress should issue a 'signing statement' of its own, declaring the agreement unconstitutional and signaling that it will fund the activities outlined in the agreement at its own discretion."

Timetable for (Partial) Withdrawal

Over the past couple of months, Maliki has firmly advocated a quick, total withdrawal of US troops. Many in Iraq believe that his strong language is intended to sell the SOFA to parliament. However, if parliament is not consulted on the deal, it will likely contain very weak withdrawal guidelines, as outlined in the leaked draft.

The draft states that a deadline will be set to pull out “combat troops,” though the exact date had not been filled in at the time of its release. No timeline is provided for the departure of noncombat troops. Those soldiers would be permitted to linger indefinitely on “installations and areas agreed upon” – the agreement’s lingo for “military bases.”

The “noncombat” designation is notably vague, according to Leaver.

“It doesn’t define what role noncombatant troops would have, nor does it define the potential numbers left behind,” Leaver said, adding that the agreement doesn’t specify what role remaining military contractors would play in a “post-withdrawal” Iraq.

Although its definitions might be murky, the way the agreement’s “withdrawal” plan will be received in Iraq is fairly clear, according to Ali.

“In a word, this arrangement is a new face for the occupation,” Ali said.

Troop Immunity

The SOFA draft grants US troops full immunity from Iraqi law, stating, “The U.S. has exclusive legal jurisdiction over U.S. armed forces members and civilian members inside and outside installations and areas agreed upon.”

Following that clause is a “suggestion” from the Iraqi negotiators, which proposes that US personnel be given immunity “except for intentional crimes and major mistakes.”

“Intentional crimes and major mistakes” are not defined, and according to Jarrar, the “Iraqi suggestions” sprinkled throughout the draft do not hold much water.

“All the Iraqi suggestions show that the Iraqi team doesn’t have much leeway,” Jarrar said.

The generous immunity clause is not standard for SOFAs, according to Joseph Gerson, author of “The Sun Never Sets: Confronting the Network of Foreign Military Bases.” In fact, in countries with more leverage, like Japan and western European nations, US soldiers who commit crimes may well be subject to native law. By seeking blanket immunity for troops in “post-withdrawal” Iraq, the Bush administration is following a treacherous historical pattern.

“Such indemnification is often sought by the Pentagon when new bases are established, and it is as close to a raw practice of imperialism as one can imagine,” Gerson told Truthout.

Leaver notes that the wide-open immunity clause coincides with a high prevalence of US-inflicted civilian casualties in Iraq, leaving victims of those crimes with no recourse.

According to Ali, that’s an untenable loophole.

“The US troops should be tried by Iraqi law,” Ali said. “Every day, they kill people by mistake. Let’s imagine that whole case in the United States, what the result would be – can you?” »

Maya Schenwar is an editor and reporter for Truthout.

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