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U.S.-Iraq Strategic Framework and Status of Forces Agreement: Congressional Response

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U.S.-Iraq Strategic Framework and Status of Forces Agreement: Congressional Response

Summary

On November 26, 2007, President Bush and Iraqi Prime Minister Nouri al Maliki co-signed the Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America, which set out a number of issues concerning, among other things, a security agreement between the United States and Iraq. Since the announcement, the Administration has announced that there will be two agreements negotiated, a Status of Forces Agreement (SOFA) providing the legal basis between the two countries for the continued presence and operation of U.S. armed forces in Iraq once the U.N. Security Council mandate expires on December 31, 2008, and a Strategic Framework agreement (together with the SOFA, the "Iraq Agreements" or "Agreements") to cover the overall bilateral relationship between the two countries.

Several Members of Congress responded with demands that Congress be involved in creating the planned Agreements, from negotiation to implementation, and took action to ensure such involvement. Congress has proposed numerous pieces of legislation that would increase its role in creating these Agreements, from calling for executive-branch consultation and reporting to requiring formal congressional approval. It has also conducted multiple hearings that have concerned the proposed Agreements, receiving clarification on many important issues from Administration officials and experts. This has also equipped Congress with information pertinent to deciding what further action can be taken to involve Congress more in the agreement-making process. Several options remain available to Congress regarding the Iraq Agreements.

This report is divided into two main parts: the first describes in detail the actions taken by Congress thus far in response to the Declaration of Principles and other information concerning the planned Iraq Agreements, consisting of legislative initiatives and congressional hearings; the second provides options for further congressional action concerning Congress's role in the negotiation, execution, and implementation of the Iraq Agreements. This report may not be updated.

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Introduction

On November 26, 2007, President Bush and Iraqi Prime Minister Nouri al Maliki co-signed the Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America ("Declaration of Principles" or, "Declaration"). It highlights issues for inclusion in an upcoming agreement between the two countries that would codify this relationship in "the political, economic, cultural, and security fields."[1] Future talks between the two governments would also address the terms of the continued presence of U.S. forces in Iraq after the termination of the U.N. Security Council resolution currently authorizing the Multinational Force in Iraq (MNF-I). As it stands, the U.N. mandate for the MNF-I to remain in Iraq will expire on December 31, 2008.[2] Since the announcement, the Administration has announced that there will be two agreements negotiated, a Status of Forces Agreement (SOFA) providing the legal basis between the two countries for the continued presence and operation of U.S. armed forces in Iraq,[3] and a Strategic Framework agreement (together with the SOFA, the "Iraq Agreements" or "Agreements") to cover the overall bilateral relationship between the two countries. The Declaration of Principles includes wide-ranging language that presages the two states entering into a U.S.-Iraq security agreement, pursuant to which the United States would make "security assurances and commitments" to Iraq and aid Iraq in defending against external and internal threats.

Upon the announcement of the Declaration's execution in November, Lieutenant General Douglas Lute, Assistant to the President for Iraq and Afghanistan, stated that the planned agreement would cover nearly every aspect of the future U.S.

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[1] The Declaration is available at [http://www.whitehouse.gov/news/releases/2007/11/20071126-11.html], visited June 23, 2008.

[2] For in-depth discussion of Iraq issues, see CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman; CRS Report RL34387, *Operation Iraqi Freedom: Strategies, Approaches, Results, and Issues for Congress*, by Catherine Dale; CRS Report RL33793, *Iraq: Regional Perspectives and U.S. Policy*, by Christopher M. Blanchard, Kenneth Katzman, Carol Migdalovitz, Alfred B. Prados, and Jeremy M. Sharp; CRS Report RL32217, *Iraq and Al Qaeda*, by Kenneth Katzman; and CRS Report RL31833, *Iraq: Reconstruction Assistance*, by Curt Tarnoff.

[3] Discussion of existing U.S. status of forces agreements and the proposed U.S.-Iraq SOFA can be found in CRS Report RL34531, *Status of Forces Agreement (SOFA): What Is It, and How Might One Be Utilized in Iraq?* by R. Chuck Mason.

military role in Iraq, including the overall mission, force levels, and basing arrangements. He explained that the parties intended to conclude the agreement by July 31, 2008, with preliminary negotiations to begin immediately. General Lute explained that U.S. Ambassador to Iraq Ryan Crocker would lead the delegation tasked with negotiation of the agreement, supported by other representatives of the executive branch. In response to a question concerning the possibility of Congress's role in the creation of the agreement, General Lute stated that the Administration did not expect the agreement to rise to the level of a treaty, and that it did not foresee the need for "formal inputs" from the Congress.[4]

Reacting to the Agreements contemplated in the Declaration, several Members of Congress have proposed numerous pieces of legislation designed to encourage or in some cases require the submission of the Iraq Agreements to Congress for formal approval. Some of these bills would require consultation and reporting from the President concerning the progress of negotiation of the Agreements. Congress has also conducted multiple hearings that have either focused on or at least touched on the Iraq Agreements. In these hearings, Congress has heard testimony from Administration officials that has addressed the Administration's plans and important issues concerning the anticipated Agreements, and has received promises from such officials to keep Congress informed on the progress of negotiations. This testimony has equipped Congress with information pertinent to deciding what further action can be taken to involve Congress more in the process of creating the Iraq Agreements.

Congress's response to the Iraq Agreements has illuminated the priority concerns and positions of the various stakeholders involved in the Agreements. Several Members of Congress assert the necessity of congressional involvement in the planned Iraq Agreements, from negotiation to implementation, arguing that the Iraq Agreements, as described in the Declaration of Principles and General Lute's statements, by definition require advice and consent of the Senate as a formal treaty under the Constitution, or congressional approval of the Agreements through normal legislation. Other Members contend that any agreement with Iraq, given the importance of U.S. involvement in Iraq to the Congress and the American people, must be negotiated with meaningful consultation from the Congress, no matter what legal form the agreement takes. Some statements from Members suggest that a U.S.-Iraq agreement, negotiated and executed out of the sight of Congress, might bind the hands of both the next administration and the Congress, and might include a role for U.S. troops in Iraq that exceeds the scope of the 2002 congressional authorization to use force in Iraq.[5] On the other hand, certain Members argue that the President is within his inherent powers and the congressional authorization to use force as he

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[4] General Lute's statements are available at [http://www.whitehouse.gov/news/releases/2007/11/20071126-6.html], visited June 23, 2008.

[5] For analysis of the law of security agreements and congressional oversight of such agreements, see CRS Report RL34362, *Congressional Oversight and Related Issues Concerning the Prospective Security Agreement Between the United States and Iraq*, by Michael John Garcia, R. Chuck Mason, and Jennifer K. Elsea. Analysis of congressional declarations of war and authorizations to use force can be found in CRS Report RL31133, *Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications*, by Jennifer K. Elsea and Richard F. Grimmett.

moves toward completion of the Iraq Agreements, characterizing demands for greater congressional involvement as unnecessary and improper.

At congressional hearings, the U.S. Administration and the Iraqi legislature also have expressed their positions regarding the Iraq Agreements. In answering Congress's concerns, the Administration explains its position in such a way as to reassure Congress of its intentions regarding the content and scope of the Iraq Agreements, while vigorously defending the President's asserted constitutional and legislated right to execute such Agreements without formal congressional approval or a specified congressional role. At a June 4, 2008, hearing before the House Subcommittee on International Organizations, Human Rights, and Oversight, members of the Iraqi Council of Representatives (COR) testified that the COR as a whole believes no U.S.-Iraq agreement is proper at this time because Iraq does not enjoy full sovereignty, and that the COR must approve the Iraq Agreements before they could go into effect, among other statements.

This report is divided into two main parts: the first describes in detail the actions taken by Congress concerning the planned Iraq Agreements, including legislative initiatives and congressional hearings; the second provides a range of options for further congressional action concerning Congress's role in negotiating, executing, and implementing the Iraq Agreements.

Action Taken by Congress Regarding the Iraq Agreements

Congress, in response to the Administration's announcement of its intention to negotiate the Iraq Agreements, has enacted legislation, proposed legislation, and held hearings. The enacted and proposed legislation, designed to ensure a congressional role in the Iraq Agreements, contain combinations of four main types of provisions requiring (1) reports to Congress, (2) consultations with Congress, (3) formal congressional approval, or (4) funding prohibitions. **Table 1** below shows the types of provisions included in each piece of pertinent legislation. Several hearings focused directly on the Iraq Agreements, their contents and scope, issues of congressional involvement, constitutional prerogatives of the President in their execution, and the concerns and views of the Iraqi parliament. Members and witnesses discussed many of the same issues concerning the Iraq Agreements at hearings held that regarded the Defense and Foreign Affairs budgets, as well as hearings on the Administration's report concerning the result of the U.S. troop surge in Iraq.

Enacted Legislation

Funding Prohibition Concerning Legal Status of U.S. Forces in Iraq (P.L. 110-161). Section 612 of the Emergency Supplemental Appropriations Act

for Defense, 2008,[6] provides that no funds may be made available for implementing a U.S.-Iraq agreement that subjects U.S. forces to the jurisdiction of Iraqi courts or punishment under Iraqi law.

Table 1. Major Provisions of Proposed Legislation Regarding the Iraq Agreements

Bill or P.L.	Executive Reporting	Consultation	Approval through Treaty	Approval through Legislation	Approval through Treaty or Legislation	Funding Prohibition
P.L. 110-161						Requirement
S. 2426	Requirement				Sense of Senate	Requirement
H.R. 4959		Requirement	Sense of Congress			Requirement
H.R. 5128				Requirement		Requirement
H.R. 5626		Sense of Congress				Requirement
H.R. 5658	Requirement				Requirement	
H.Res. 1028				Sense of House		
H.Res. 1123						Non-binding Provision[a]

a. Calls for inclusion of a provision requiring Iraq to reimburse all U.S. costs in any U.S.-Iraq security agreement continuing the U.S. presence in Iraq.

Proposed Legislation

Congressional Oversight of Iraq Agreements Act of 2007 (S. 2426). On December 6, 2007, Senator Hillary Clinton introduced the Congressional Oversight of Iraq Agreements Act of 2007. The bill states several findings concerning the possible contents of a U.S.-Iraq security agreement and the constitutional role of Congress in approving international agreements. Section 3 contains the substance of the bill, with three main parts:

- First, section 3(a) requires the "Legal Advisor[7] to the Secretary of State" to submit an unclassified report to Congress explaining the justification, with legal analysis of the constitutional powers asserted

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[6] Division L of P.L. 110-161 (121 Stat. 2455), approved December 26, 2007. Congress has also passed general funding prohibitions with regard to permanent U.S. bases in Iraq (without specifically citing the proposed Iraq Agreements) in six separate laws thus far. See Katzman, CRS Report RL31339, *supra* note 2, p. 14. Several pieces of currently proposed legislation contain similar provisions.

[7] The bill spells the word Advisor with an "o," while the Department of State spells it "Adviser," with an "e."

by the President, for concluding the anticipated Iraq SOFA and Strategic Framework as executive agreements.

- Second, section 3(b) states that it is the sense of the Senate that any U.S.-Iraq agreement including a SOFA that involves "commitments or risks affecting the nation as a whole"[8] and that is not approved as a treaty by the Senate or through legislation by the Congress does not have the force of law.

- Third, section 3(c) bars funding for any such agreement between the United States and Iraq if such Senate or congressional approval is not obtained.

The bill was referred to the Senate Foreign Relations Committee on December 6, 2007, and no further action has been taken.

Iraq Strategic Agreement Review Act of 2008 (H.R. 4959). Representative Rosa L. DeLauro introduced this bill on January 15, 2008. Section 2 of the bill defines the term "long-term security, economic, or political agreement with the Government of Iraq," which is used elsewhere in the legislation, as an agreement that has a term of more than one year, and that includes provisions concerning (1) U.S. bases in Iraq; (2) defense of Iraq's government from internal and external threats; (3) security commitments and assurances to deter foreign aggression against Iraq; (4) the training or equipping of Iraq's security forces; (5) economic, monetary, material and technical commerce and arrangements; or (6) diplomatic and political understandings. Section 3 contains proposed findings, including certain constitutional powers of the President and the Congress concerning the armed forces and international agreements; past examples of security agreements submitted to the Senate as treaties; and recent Administration comments concerning the Declaration of Principles and the execution of new U.S.-Iraq agreements as executive agreements. Sections 4, 5, and 6 of the bill contain the substantive provisions:

- Section 4 contains a consultation requirement that instructs the Secretaries of State and Defense as well as other "necessary" executive officers to commence consultations with certain "congressional committees and leadership"[9] related to "any potential long-term security, economic, or political agreement" with Iraq. Such consultation would require "full and complete transparency" and would continue throughout the negotiation period.

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[8] This is language from the State Department's own Circular 175 regulations concerning requirements for consultation with Congress concerning international agreements. See 11 Foreign Affairs Manual §723.3(1).

[9] This includes the Senate Foreign Relations and Armed Services Committees; the House Foreign Affairs and Armed Services Committees; the Speaker and majority and minority leaders of the House; the majority and minority leader of the Senate; and any other committee, Senator, or Member of the House that requests consultations.

- Section 5 is a non-binding sense-of-Congress provision, which asserts that any U.S.-Iraq agreement falling within the definition provided in the bill must receive advice and consent from the Senate to have the force and effect of law.

- Section 6 prohibits funding the implementation of any such agreement with Iraq unless it is submitted to the Senate for advice and consent as a treaty.

The bill was referred to the House Foreign Affairs and Armed Service Committees on January 15, 2008, and no further action has been taken.

Bill Disapproving Any Agreement Based on the Declaration of Principles Without an Act of Congress (H.R. 5128). Representative Barbara Lee introduced this legislation on January 23, 2008. The bill provides findings concerning congressional opposition to permanent U.S. bases and the Administration's apparent intent to maintain the presence of U.S. forces in Iraq. Section 3 asserts the sense of Congress that any U.S.-Iraq agreement emerging from the Declaration of Principles must be approved by an act of the Iraqi legislature. The two salient provisions for congressional involvement are stated in sections 2 and 4:

- Section 2 states that any formal agreement emerging from the Declaration of Principles will not have the effect and force of law unless it is approved by an Act of Congress.

- Section 4 prohibits the use of funds appropriated or otherwise authorized to the Department of Defense or any other agency to enforce or implement such an agreement without approval through an Act of Congress.

The bill was referred to the House Foreign Affairs and Armed Service Committees on January 23, 2008, and no further action has been taken.

Protect Our Troops and Our Constitution Act of 2008 (H.R. 5626). Representative Bill Delahunt introduced this bill on March 13, 2008. Section 2 of the bill presents proposed findings that seek to show inconsistencies between the far-reaching provisions of the Declaration of Principles and early statements by Bush Administration officials on the one hand, and on the other, later Administration statements that describe a much more limited scope for the Iraq agreements. Section 2(9) states in conclusion, "The inconsistencies between the various statements and pledges ... raise significant questions about the Administration's objectives in seeking new agreements with Iraq."

Section 3 denies the use of any funds appropriated or otherwise authorized to any U.S. agency for the purpose of

- establishing or maintaining any permanent or long-term U.S. military base or facility in Iraq; or

- implementing any agreement consistent with the security commitments contained in the Declaration of Principles, or any agreement that provides U.S. forces with "authority to fight," unless the Senate has provided advice and consent for such agreement as a treaty, or Congress has authorized such agreement through legislation.

Section 4 provides the sense of Congress that

- long-term U.S.-Iraq relations should be decided by the next U.S. administration;

- the next administration should consult fully with Congress, the government of Iraq, Coalition partners, and Iraq's neighbors in determining policy toward Iraq; and

- the Bush Administration should encourage the government of Iraq to request the renewal of the U.N. mandate for Iraq beyond December 31, 2008, in order to ensure the international legal authority for the U.S. presence in Iraq, and the legal immunity for U.S. armed forces.

This bill was referred to the House Foreign Affairs and Armed Services Committees on March 13, 2008, and no further action has been taken.

Sections 1212 and 1220 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (H.R. 5658). Introduced on March 31, 2008, and passed by the House on May 22, 2008, this bill contains certain provisions concerning the Iraq Agreements.[10] Section 1212 requires a report from the President to the House Foreign Affairs and Armed Services Committees, and the Senate Foreign Relations and Armed Services Committees, on each U.S.-Iraq agreement relating to

- the legal status of U.S. military personnel, civilian personnel, and contractor personnel;

- establishment of or access to military bases;

- rules of engagement for U.S. armed forces; and

- any security commitment, arrangement, or assurance that obligates the United States to respond to internal or external threats against Iraq.

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[10] The bill also contains a funding prohibition on permanent or long-term U.S. bases in Iraq in section 1211, similar to those included in other earlier bills that have been signed into law. See *supra* note 6. The Senate defense authorization bill, S. 3001 (110th Cong.), contains an identical funding prohibition for permanent bases in section 2913.

Updates are required whenever further agreements are executed or when an agreement is substantially revised. Section 1212(b) provides a list of 13 matters to be included in such reports:

- limits placed on U.S. combat operations by the government of Iraq, including coordination requirements;
- assessment of whether conditions placed on U.S. combat operations in such agreements are greater than conditions prior to such agreement;
- discussion of legal immunities of U.S. personnel;
- assessment of legal protection of third-country nationals;
- assessment of authority of U.S. and Coalition forces to detain and interrogate prisoners;
- description of any security commitment, arrangement, or assurance to respond to internal or external threats against Iraq, including manner of such commitment's implementation;
- assessment of any requirements for payments to the government of Iraq for use of bases;
- assessment of any requirements for payments for claims of death or damages caused by U.S. personnel;
- assessment of any other provisions that would restrict the performance of U.S. personnel;
- discussion of how the agreement or modification thereof was approved by the government of Iraq, and whether the process was consistent with the Iraq constitution;
- description of arrangements for resolving disputes arising under the agreement;
- discussion of application of the agreement to Coalition partners; and
- description of termination of the agreement by either party.

Section 1220 of the bill states that no provision of an agreement containing a security commitment, arrangement, or assurance that obligates the United States to respond to internal or external threats against Iraq will be in force with respect to the

United States unless it is given Senate advice and consent as a treaty or is specifically authorized by an act of Congress.[11]

Resolution Reasserting Congressional Prerogatives in Foreign Policy (H.Res. 1028). On March 6, 2008, Representative Barbara Lee introduced H.Res. 1028, which encourages development of a convention of legislative approval over certain types of international agreements. Preambulary clauses regard the constitutional roles of the President and the Congress in U.S. foreign policy, the nature and scope of status of forces agreements, and the Bush Administration's actions surrounding the Declaration of Principles and the negotiation of the Iraq Agreements. The resolution, framed as the sense of the House, states that three types of international agreements should be approved by an act of Congress:

- any agreement, other than a treaty, entered into by the executive branch which purports to bind the United States to use the armed forces to assist another country, government, or people, either immediately or upon the occurrence of future events;
- any international agreement, other than a treaty, that requires the use of U.S. financial resources; or
- any agreement, other than a treaty, between Iraq and the United States that imposes burdens in excess of those customarily included in status of forces agreements.

The last provision of the resolution explicitly states that, without legislative approval, a status of forces agreement signed by the Administration and the government of Iraq would have no legal effect. The bill was referred to the House Foreign Affairs Committee on March 6, 2008, and no further action has been taken.

Resolution Calling for Iraq to Agree to Pay Costs of Continued U.S. Presence in Provisions of Any Bilateral Agreement with Iraq (H.Res. 1123). H.Res. 1123, introduced by Representative Dana Rohrabacher on April 17, 2008, concerns the costs of the continued U.S. presence in Iraq. The language preceding the resolution notes several figures related to past and future costs of maintaining U.S. forces in Iraq, as well as Iraq's oil reserves and the rising global price for oil. The resolution itself calls on the President to refrain from entering any agreement with Iraq that involves the presence of the U.S. armed forces in Iraq unless

> the agreement includes a provision under which the Republic of Iraq agrees to reimburse the United States for all costs incurred by the United States related to the presence of United States Armed Forces in Iraq after the effective date of the agreement, including the costs of pay and allowances for members of the United States Armed Forces serving in Iraq.

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[11] S. 3001does not contain provisions similar to sections 1212 and 1220. For a side-by-side comparison of Iraq policy provisions in the two draft 2009 defense authorization bills, see CRS Report RL34473, *Defense: FY2009 Authorization and Appropriations*, by Pat Towell and Stephen Daggett.

The bill was referred to the House Committee on Foreign Affairs on April 17, 2008, and no further action has been taken.

Non-legislative Actions: Hearings

Congress has conducted hearings specifically concerning the proposed Iraq Agreements and has considered the issue in several other hearings as well. Certain Members have made their concerns known, and various committees and subcommittees have heard testimony from a number of commentators and Administration officials. Pertinent hearings are listed chronologically below. For each hearing, the summary includes information pertinent to Congress's role in the agreement-making process for the Strategic Framework and SOFA, as well as information that may inform further congressional action regarding the Iraq Agreements. Concerns of Members and opinions of expert witnesses included in these summaries represent all salient issues identified that concern the Iraq Agreements and congressional involvement in their creation. These concerns and opinions are not included as representations of positions held by all or a group of Members and/or witnesses participating in the hearings, nor as indications of any consensus reached by Members or experts during the hearings or otherwise. The summaries also do not purport to include all policy positions of Members concerning the Iraq Agreements, as many Members did not choose to participate actively.

The Extension of the United Nations Mandate for Iraq: Is the Iraqi Parliament Being Ignored?[12] The House Subcommittee on International Organizations, Human Rights, and Oversight held this hearing on December 19, 2007. The hearing dealt primarily with the U.N. Security Council's adoption of Resolution 1790 on December 18, 2007, which extended the U.N. mandate authorizing coalition forces in Iraq for one year from December 31, 2007, until December 31, 2008. Witnesses testified on the ramifications of this extension on political relations and disputes between Prime Minister Nouri al Maliki and the Iraqi Council of Representatives (COR). The hearing also afforded the chance to introduce issues concerning the Declaration of Principles signed by President Bush and Prime Minister al Maliki that set the stage for negotiating the Iraq Agreements. Kenneth Katzman of the Congressional Research Service testified at the hearing, setting out the main issues for negotiation of these Agreements, based on the Declaration and the comments of General Lute:

- in the SOFA, provisions for legal jurisdiction over U.S. personnel (including security contractors) and facilities where they are based, as well as administrative issues such as tax liabilities and postal services;

- freedom of action for U.S. forces in Iraq, including rules of engagement and authority to detain prisoners;

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[12] U.S. Congress, House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, *The Extension of the United Nations Mandate for Iraq: Is the Iraqi Parliament Being Ignored?* 110th Cong., 1st sess., December 19, 2007, H.Hrg. 110-136 (Washington: GPO, 2008).

- troop strength, duration, and scope of mission;
- permanent U.S. bases; and
- political, diplomatic, economic, and cultural issues.

Some committee members expressed concern that statements by General Lute indicated no requirement for congressional approval of the proposed Agreements.

The Proposed U.S. Security Commitment to Iraq: What Will Be in It and Should It Be a Treaty?[13] The House Subcommittee on International Organizations, Human Rights and Oversight and the House Subcommittee on the Middle East and South Asia held this joint hearing on January 23, 2008. At this hearing, some Members questioned the contents of the Declaration of Principles, and the Bush Administration's decision to negotiate agreements pursuant to the Declaration without seeking consultation or approval from Congress. Legal scholars testified concerning possible legal requirements for congressional approval of the Iraq Agreements and opportunities for Congress to increase its role in the negotiation and execution of such Agreements. Committee members voiced the following concerns and assertions, among others:

- the Bush Administration is violating the State Department's Circular 175 regulations[14] concerning congressional consultation on important international agreements, as well as constitutional requirements to involve Congress in the making of such agreements;
- the new agreements will bind a future president to a certain course in Iraq, practically if not legally;
- the decision to negotiate the Iraq Agreements at this time is politically unwise, as a new president may wish to abrogate or alter such Agreements, which could result in weakening of the reputation of the United States as a trustworthy partner in international agreements;
- Congress is left with the power of the purse as its only recourse if it seeks to stop implementation of the Agreements or challenge the President's power to make executive agreements, perhaps precipitating a constitutional crisis; and

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[13] U.S. Congress, House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, and Subcommittee on the Middle East and South Asia, *The Proposed U.S. Security Agreement to Iraq: What Will Be in It and Will It Be a Treaty?* 110th Cong., 2nd sess., January 23, 2008, H.Hrg. 110-151 (Washington: GPO, 2008).

[14] See 11 Foreign Affairs Manual §723.4.

- Congress must make clear to the Iraqi government that without congressional support, especially on funding, these Agreements with the Bush Administration will not be implemented.

Although most comments from committee members supported some form of congressional involvement in the agreement-making process with Iraq, certain Members made it clear that they believe the President has the authority to enter into the Iraq Agreements as sole executive agreements and that congressional attempts to limit that power may be unconstitutional.

The legal scholars who participated provided certain separate opinions with regard to the need for congressional approval of the Iraq Agreements, including the following:

- while a "security assurance," such as an agreement to consult with Iraq on its defense in an emergency, could be executed by the President without congressional approval, a "security commitment" obligating the United States to defend Iraq would require a treaty that would need Senate approval;[15]

- an agreement for U.S. bases in Iraq may be executed as an executive agreement, but only if it does not conflict with earlier legislation passed by Congress;

- the Administration should adhere to the State Department's Circular 175 regulations requiring congressional consultations, as the Iraq Agreements represent significant new international agreements; and

- implementation of the Iraq Agreements, even if executed as executive agreements, would still have to work within the parameters of congressional authorizations and appropriations.

Hearings on the FY2009 Defense Budget.[16] The House and Senate Armed Services Committees convened separate hearings concerning the FY2009 budget request of the Department of Defense on February 6, 2008. During the hearings, several Members took the opportunity to ask Secretary Gates about the proposed Iraq Agreements. Under questioning, Secretary Gates did not rule out submitting an agreement with Iraq to the Senate for advice and consent as a treaty, but stated that the decision would be based on the contents of the agreement. He explained that it has been practice to execute status of forces agreements as executive agreements without seeking congressional approval. In his testimony during both

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[15] For discussion concerning the difference between "security commitments" and "security arrangements," see Garcia, Elsea, and Mason, CRS Report RL34362, *supra* note 5, p. 17.

[16] U.S. Congress, Senate Armed Services Committee, hearing to receive testimony on the defense authorization request for Fiscal Year 2009, the Future Years Defense Program, and the Fiscal Year 2009 request for operations in Iraq and Afghanistan, 110th Cong., 2nd sess., February 6, 2008; U.S. Congress, House Armed Services Committee, hearing on FY2009 national defense budget request, 110th Cong., 2nd sess., February 6, 2008.

hearings, Secretary Gates made several important statements concerning the Iraq agreements and the ongoing negotiations, including the following:

- the Iraq Agreements will not contain a U.S. commitment to defend Iraq and the SOFA will not contain a "security component";
- the Declaration of Principles in itself also does not constitute a U.S. security commitment to Iraq;
- the Administration does not want permanent bases in Iraq;
- the SOFA will contain "rules of the road" on how U.S. forces are able to operate after expiration of the U.N. Security Council resolution, including rules on U.S. authority to detain individuals, and legal immunity for U.S. contractors; nothing in any agreement being negotiated with Iraq would bind a future administration; and
- there should be openness and transparency in the negotiation process so that Congress can make informed decisions concerning the Iraq Agreements, and the Senate will be afforded a chance to review the SOFA before it is implemented.

The November 26 Declaration of Principles: Implications for U.N. Resolutions on Iraq and for Congressional Oversight.[17] This hearing took place on February 8, 2008, before the House Subcommittee on International Organizations, Human Rights, and Oversight. Four questions were to be considered: (1) whether a status of forces agreement can authorize U.S. forces to engage in combat in or on behalf of another country; (2) whether an agreement containing a U.S. commitment to defend another country must be submitted for some form of congressional approval; (3) what consultation with Congress is required on the form of the Iraq Agreements and the issues to be negotiated; and (4) what procedures must be followed within the executive to determine the form of the Iraq Agreements and the organization of negotiations. Building on the sentiments of the subcommittee's January 23 hearing, Members made the following statements, among others:

- the authority for U.S. forces to remain in Iraq past the end of the U.N. mandate on December 31, 2008, must be approved by both the Congress and the Iraqi COR; and
- the Declaration of Principles has been used by the Administration to send misleading political signals to both Congress and Iraq.

The expert panel provided extensive testimony on the four questions posed by the subcommittee, including these assertions:

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[17] U.S. Congress, House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, *The November 26 Declaration of Principles: Implications for U.N. Resolutions on Iraq and for Congressional Oversight*, 110th Cong., 2nd sess., February 8, 2008, H.Hrg. 110-152 (Washington: GPO, 2008).

- a commitment to defend another country cannot be included in a status of forces agreement as that term is commonly used;

- the type of security commitment spelled out in the Declaration of Principles would contain a greater obligation for the United States than U.S. mutual defense treaties include, as the commitment involves defending against internal threats and an automatic requirement to use force in Iraq's defense;

- the Declaration itself, however, may not be intended as binding, and likely represents only a statement of shared interests, not a preview of the contents of the actual Iraq Agreements;

- any provisions in the proposed SOFA concerning immunity for security contractors from Iraq's legal process might represent an expansion of recognized presidential prerogatives regarding these types of agreements, although providing for such immunity may be within the President's constitutionally granted powers; and

- because the conditions of the specific 2002 authorization of the use of force against Iraq[18] no longer adhere, the proposed Iraq Agreements represent a new national commitment of the U.S. armed forces and as such require congressional approval.

Hearings on the FY2009 Foreign Affairs Budget.[19] The Senate Foreign Relations Committee and House Foreign Affairs Committee held separate hearings concerning the FY2009 foreign affairs budget on February 13, 2008. During Secretary of State Condoleezza Rice's testimony in the two hearings, she was questioned about the provisions of the proposed Iraq Agreements. She stated the following on the issue:

- the Administration is not seeking permanent bases in Iraq;

- the United States is not taking on an obligation to defend Iraq against its neighbors, or provide any security guarantees;

- the agreements do not contain a "commitment to combat forces" or required U.S. troop levels;

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[18] Congress authorized the use of force in Iraq in order to "defend the national security of the United States against the continuing threat posed by Iraq," and to "enforce all relevant United Nations Security Council resolutions regarding Iraq." Sec. 3(a)(1), (2) of the Authorization for Use of Military Force Against Iraq Resolution, 2002 (P.L. 107-243; 116 Stat. 1501), approved October 16, 2002.

[19] U.S. Congress, Senate Foreign Relations Committee, hearing on the Fiscal Year 2009 foreign affairs budget, 110th Cong., 2nd sess., February 13, 2008; U.S. Congress, House Foreign Relations Committee, hearing on the Fiscal Year 2009 international relations budget, 110th Cong., 2nd sess., February 13, 2008.

- the SOFA is intended to allow U.S. forces to operate there in a legal fashion after the U.N. mandate;

- the Administration will consult with Congress as the negotiations progress; and

- the SOFA will not bind the hands of the next president.[20]

Secretary Rice maintained the Administration's position that the proposed SOFA, while tailored to the specific situation in Iraq, still fell under the customary form of a SOFA and therefore could be concluded without congressional approval.

Status of Forces Agreements and U.N. Mandates: What Authorities and Protections Do They Provide to U.S. Personnel?[21] Continuing its series on the future of the U.S. relationship with Iraq, the House Subcommittee on International Organizations, Human Rights, and Oversight held this hearing on February 28, 2008. Focusing on the purpose and scope of SOFAs in general, the hearing produced statements from committee members that Congress needs to play a significant role in reviewing and approving the Iraq SOFA, even if it does not include a commitment to defend Iraq, due to the importance of Iraq to U.S. foreign policy overall. Professor Michael J. Matheson, one of the experts on the hearing panel, suggested that Congress should engage in defining the scope of authority for military operations in Iraq going forward.

Declaration and Principles: Future U.S. Commitments to Iraq.[22] This hearing took place before a joint session of the House Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on the Middle East and South Asia on March 4, 2008. The fourth hearing in a series, it was the first that collected testimony from Administration officials. Ambassador David Satterfield, who leads the negotiations with Iraq, answered numerous questions from Members concerning the Iraq Agreements, making the following statements, among others:

- the Iraq Agreements will not include a binding commitment to defend Iraq or any other security commitment that would warrant Senate advice and consent;

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[20] Secretary Rice's statements concerning the Iraq Agreements mirror those made by Secretary Rice and Secretary of Defense Gates in an op-ed piece that appeared in the Washington Post on the same day. See Condoleezza Rice and Robert Gates, "What We Need Next in Iraq," *Washington Post*, February 13, 2008, p. A19.

[21] U.S. Congress, House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, *Status of Forces Agreements and U.N. Mandates: What Authorities and Protections Do They Provide to U.S. Personnel?* 110th Cong., 2nd sess., February 28, 2008, H.Hrg. 110-153 (Washington: GPO, 2008).

[22] U.S. Congress, House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, and Subcommittee on the Middle East and South Asia, *Declaration and Principles: Future U.S. Commitments to Iraq*, 110th Cong., 2nd sess., March 4, 2008, H.Hrg. 110-162 (Washington: GPO, 2008).

- the Iraq Agreements will not create permanent U.S. bases in Iraq, and will not specify numbers of U.S. troops to be stationed there;

- any arrangement fulfilling the pledges of the Declaration of Principles between the Administration and Iraq will be made public and will not remain secret;

- the Administration does not contemplate the Strategic Framework as a legally binding agreement;

- the Administration has made clear to Prime Minister al Maliki and other Iraqi officials that the Agreements will not include an obligation to enter into combat if Iraq is attacked;

- the Iraq Agreements will not contain a commitment for U.S. forces to remain present in Iraq; and

- the Administration relies on the congressional authority in the 2002 authorization to invade Iraq as the basis for maintaining U.S. forces in Iraq past the end of the U.N. mandate.

When asked whether the Administration would present the Iraq Agreements to Congress for approval, Ambassador Satterfield held to the Administration's position that the Agreements did not need congressional approval, but stated that the Administration would comply with all constitutional requirements. He stated that background briefings had already taken place between the Administration and Members of Congress, and that they would continue, but that the Administration would not publicly disclose its negotiating positions.

International Affairs Budget for Fiscal Year 2009.[23] The House Appropriations Subcommittee on State, Foreign Operations and Related Programs held this hearing on March 12, 2008. Secretary Rice appeared before the subcommittee during this hearing and was asked several questions concerning the Iraq Agreements. She reiterated her comments from earlier hearings, stating that the Administration was not seeking permanent bases, and that the SOFA being negotiated does not set troop levels, and does not make commitments to specific kinds of operations. Answering a question concerning the submission of the Iraq SOFA to Congress for approval, Secretary Rice responded that SOFAs are not submitted to Congress. When pressed on the source of the President's authority to continue the U.S. presence in Iraq, Secretary Rice did not cite the 2002 authorization to invade Iraq or the 2001 authorization to use military force in response to the

[23] U.S. Congress, House Appropriations Committee, Subcommittee on State, Foreign Operations and Related Programs, hearing on Fiscal Year 2009 budget for international affairs, 110th Cong., 2nd sess., March 12, 2008.

September 11 terrorist attacks,[24] instead stating, "the President has the authority, we believe, to continue the operations," without reference to the basis for that authority.

Hearings on the Iraq Report Regarding the U.S. Troop Surge.[25] The Senate Foreign Relations Committee, on April 8, 2008, and the House Foreign Affairs Committee, on April 9, 2008, each held a hearing to discuss the results of the U.S. troop surge in Iraq. Ambassador Ryan Crocker testified before both committees, making several statements and answering questions concerning the Iraq Agreements. While much of his testimony was similar to that of other Administration officials in previous hearings, he did explain the motivation for the Agreements, stating that the principal leaders of Iraq requested a long-term bilateral relationship with the United States in August 2007, and that the Agreements represent to the Iraqis an affirmation of their sovereignty. He also explained that the Agreements do not contain provisions for permanent U.S. bases in Iraq, and that he anticipated the United States would explicitly forswear such bases in the Agreements. As other Administration officials had done, Ambassador Crocker stated the Administration's intention was to conclude the SOFA as a sole executive agreement. He also made comments that indicated the Strategic Framework would not be a legally enforceable international agreement, but merely a political agreement between the Administration and the al Maliki government.

Negotiating a Long-Term Relationship with Iraq.[26] This hearing was held before the Senate Foreign Relations Committee on April 10, 2008. Ambassador David Satterfield appeared before the committee and gave testimony concerning the two proposed Iraq Agreements that was similar to his earlier testimony on March 4, outlined above: no permanent U.S. bases, no requirement for troop levels or the nature of the U.S. mission, no binding commitment to defend Iraq, and no provisions that will limit the policy options of the next president. He repeated the Administration's position that the SOFA would be concluded as an executive agreement rather than a treaty, but that the Administration intended to consult with Congress throughout the process. He explained that the Strategic Framework would not contain legally binding commitments that would trigger Senate advice-and-consent procedures. When questioned about the authority for the U.S. presence in Iraq after the expiration of the U.N. mandate on December 31, 2008, Ambassador Satterfield cited the President's authorities as commander-in-chief as well as the 2002 authorization to invade Iraq and the 2001 authorization to use force after the September 11 terrorist attacks.

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[24] Congress authorized the use of force in response to the September 11, 2001 attacks in the Authorization for Use of Military Force (P.L. 107-40; 115 Stat. 224), approved September 18, 2001.

[25] U.S. Congress, Senate Foreign Relations Committee, *Iraq After the Surge: What Next?* 110th Cong., 2nd sess., April 8, 2008; U.S. Congress, House Foreign Affairs Committee, hearing on the Crocker/Petraeus Iraq Report, 110th Cong., 2nd sess., April 9, 2008.

[26] U.S. Congress, Senate Foreign Relations Committee, hearing on U.S.-Iraq long-term security agreement, 110th Cong., 2nd sess., April 10, 2008.

The Future of U.S.-Iraqi Relations: The Perspective of the Iraqi Parliament.[27] The House Subcommittee on International Organizations, Human Rights, and Oversight held this hearing on June 4, 2008. The subcommittee took testimony from two members of the Iraqi COR, Sheikh Khalaf Al-Ulayyan and Professor Nadeem Al-Jaberi, concerning the continuing U.S. presence in Iraq and the two proposed Iraq Agreements. They asserted that as a whole the COR had several ongoing concerns:

- the Agreements should not be concluded at this time, because Iraq does not enjoy full sovereignty and as such cannot enter any agreement with the United States as an equal party;
- Iraq should not enter into the Agreements until the new U.S. president comes into office;
- any agreement between the al Maliki government and the United States will not be implemented without approval by the COR;
- no provision for permanent U.S. bases in the Iraq Agreements will be acceptable to the Iraqi populace; and
- the presence of U.S. forces in Iraq is no longer needed, and a timetable for withdrawal of U.S. forces is desired.

At the hearing, Chairman Delahunt announced a plan to create a formalized interparliamentary dialogue mechanism between the legislatures of the United States and Iraq that would "allow us to continue these conversations and better inform ourselves, because legislative bodies in a democracy are absolutely essential and particularly in terms of oversight of the executive branches." Professor Al-Jaberi indicated that the COR will pursue this idea.

Possible Further Congressional Action Concerning the Iraq Agreements

Congress has several options for further action to help shape its own involvement in the negotiation and future execution and implementation of the Iraq Agreements. Members of Congress could, among other things, choose to take no further action; continue with hearings on the Iraq Agreements; pass legislation already introduced; or introduce legislation that seeks to further define both the authority of the President concerning the U.S. relationship with Iraq and the role of Congress in the negotiation and implementation of the Iraq Agreements. Many of these options are not mutually exclusive.

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[27] U.S. Congress, House Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, *The Future of U.S.-Iraqi Relations: The Perspective of the Iraqi Parliament*, 110th Cong., 2nd sess., June 4, 2008.

No Further Action. A possible course is for Congress to do nothing more at this point, if it is satisfied with the numerous measures it has taken so far to shed light on the negotiating process and to send a message to the Administration that Congress is monitoring the Administration's actions concerning these Agreements. Two factors support this approach. First, as illustrated above, the hearings conducted by various congressional committees and subcommittees have produced a body of evidence concerning the Agreements, including both the intentions of the Bush Administration and the general sentiment of the Iraqi Council of Representatives. Administration officials are on record with sworn testimony regarding bases, security commitments, troop levels, scope of mission, legal immunity for U.S. forces, and other issues. Congress has received promises that the Administration will keep Congress informed during the negotiation process for the Iraq Agreements, and that the Agreements will be submitted in some form to the Congress before they are implemented. The hearings may have therefore produced a useful result as an investigative device to pin down the Administration's plans regarding the Iraq Agreements.

Second, it is apparent that the negotiations for the Iraq Agreements have not progressed smoothly and that consensus between the government of Iraq and the Bush Administration may not be imminent.[28] Given the overall criticism of the Declaration of Principles and the proposed Iraq Agreements in the hearings held to date, Congress may be satisfied that the Agreements will not go forward to conclusion in the near future. It may be the case that Iraqi and U.S. negotiators will not be able to agree to the terms for a continuing U.S. presence, thus allaying concern in Congress about the Administration's intentions for those Agreements.

On the other hand, Congress may wish to capitalize on some of the information gathered so far by continuing to hold hearings on such an important issue as the future of the U.S.-Iraq relationship and the ongoing U.S. presence in Iraq. As the recent comments from the Iraqi government in the news and from the Iraqi legislature at the hearing on June 4 have illustrated, the political relationship in Iraq between the al Maliki government and the COR, concerning the Iraq Agreements and other issues, remains highly dynamic and contentious. It may be useful to take this information and present it to Administration officials for their comment and explanation.

Pass Legislation Already Introduced. Certain Members of Congress may wish to push forward with passage of one or more of the proposed pieces of legislation introduced in response to the Declaration of Principles and the Administration's comments and actions concerning the Iraq Agreements. The operative provisions of the legislation described above fall into four main categories: executive-branch reporting, consultations with Congress, congressional approval requirements, and funding prohibitions. Each type of provision has perceived

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[28] See, e.g., Alissa J. Rubin, "Iraq Hints at Delay in U.S. Security Deal," *New York Times*, July 3, 2008, p. A6; Alissa J. Rubin, "Talks With U.S. on Security Pact Are at an Impasse, the Iraqi Prime Minister Says," *New York Times*, June 14, 2008, p. A5; Testimony of Kenneth Katzman, in U.S. Congress, *The Future of U.S.-Iraqi Relations: The Perspective of the Iraqi Parliament*, *supra* note 27 (stating that the Iraqi government cannot get the support of the Iraqi parliament without limiting U.S. military flexibility to the point that the United States will find it unacceptable).

benefits and drawbacks. While a reporting requirement is useful for enlightening Congress concerning the Iraq agreements, it does not afford Congress the opportunity to directly shape the agreement-making process. Requirements for consultation between the two branches may provide such an opportunity for Congress, but enforcing such a requirement, and ensuring Congress is truly receiving full consultation, are not easily achieved.

With regard to passage of legislation containing a requirement that one or more of the Iraq Agreements be submitted to Congress for approval, it can be expected that the Administration will argue that the President has the constitutional authority within Article II, apart from any need for congressional input, to conclude the Iraq Agreements as sole executive agreements. Any such legislation may face a veto, and could precipitate a constitutional confrontation concerning the respective powers of the legislature and the executive in determining the form of international agreements under U.S. law. As an alternative to requiring congressional approval outright, provisions prohibiting the use of funds to implement the Iraq Agreements, while significant, would not present the same constitutional problems, as they fall squarely within Congress's appropriations power. Some may question, however, whether it is in the interest of the Congress to cut off funds for the Iraq Agreements: as such a measure may be viewed by some to compromise U.S. interests as a whole in Iraq and create new problems for the success of U.S. foreign policy in the Middle East.

New Legislation to Define Presidential Authority. As recounted above, Administration officials have at certain points cited the 2002 congressional authorization of the invasion of Iraq, and the 2001 authorization to use force in response to the September 11 terrorist attacks, as important sources of the President's authority to enter into the Iraq Agreements. The proposed Iraq Agreements could be viewed as defining the parameters of the continued authorization for deployment of U.S. forces in Iraq, those forces' legal status, and their ability to use force. Congress might consider legislation, therefore, delineating the President's authority to conclude the Iraq Agreements by adding specific Iraq-Agreement language to the existing use-of-force authorizations.[29]

Amendments to the 2002 authorization of the use of force have already been introduced; for example, legislation was proposed prior to the signing of the Declaration of Principles that would set time restrictions on the authorization to use force in Iraq.[30] New amendatory language directly regarding the Iraq Agreements could include certain directives to the President that would redefine the authorization to use force and therefore shape the contents of any such Agreements. Such directives could include consultation and reporting requirements similar to legislation already proposed, but could also contain specific limitations on any provisions

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[29] For legal analysis concerning the possible repeal of the recent authorizations to use force and other methods of limiting military authorization in Iraq, see CRS Report RL33837, *Congressional Authority to Limit U.S. Military Operations in Iraq*, by Jennifer K. Elsea, Michael John Garcia, and Thomas J. Nicola.

[30] See H.R. 645 (110th Cong.), section 3. Other bills contain provisions repealing the 2002 authorization to use force in Iraq. See, e.g., H.R. 413 (110th Cong.); H.R. 1292 (110th Cong.).

related to security commitments, U.S. troop levels, scope of mission for U.S. forces, bases, and other important issues.

Similarly, Congress could choose to consider legislation that specifically authorizes the President to conclude the Agreements with the government of Iraq based on the terms of the Declaration of Principles, effectively transforming what would be a sole executive agreement into a congressional-executive agreement.[31] This option would allow Congress to insert conditions into its approval that could shape the substance and implementation of the Iraq Agreements. There is precedent for this type of action: in 1975, the Ford Administration executed an agreement with Israel and Egypt in support of the Sinai II Agreements between those two countries, and subsequently notified Congress under the Case-Zablocki Act.[32] Congress demanded a role in the agreement and, after negotiation with the Ford Administration, passed a joint resolution that contained various conditions on its approval of the agreement.[33] These provisions defined some of the parameters of the U.S. involvement in the Sinai II Agreements, including a key provision to remove U.S. technicians from work on an early warning system between Egypt and Israel under certain circumstances.

New Legislation to Further Define the Role of Congress. Congress may wish to codify a specific role for itself in the negotiation or implementation of the Iraq Agreements, creating a joint congressional-executive decision-making mechanism. This may include mandating the direct inclusion of Members of Congress in the negotiation process of the Iraq Agreements, similar to provisions of the Trade Act of 1974 that include Congress in various aspects of trade-agreement negotiations.[34] It may also entail creating a cross-branch monitoring body tasked with reviewing the implementation of the Iraq Agreements. An example of this sort of implementation-review mechanism is the Commission on Security and Cooperation in Europe, created by Congress to monitor the implementation of the Final Act of the Conference on Security and Cooperation in Europe ("Helsinki Final Act").[35] Instead of strictly approving or disapproving the President's actions concerning the proposed Iraq Agreements, legislative provisions such as these would position Congress as a partner in the agreement process, either in negotiations or implementation.

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[31] For an explanation of the different types of international agreements under U.S. law, see Garcia, Mason, and Elsea, CRS Report RL34362, *supra* note 5, p. 9.

[32] The Case-Zablocki Act requires that all executive agreements be submitted to Congress within 60 days of their entry into force. The President must report any agreements not reported within the time frame, explaining the reasons for the delay. The Act also requires the Secretary of State to submit a list of proposed agreements and extensions or amendments to existing agreements that have not yet entered into force, which (1) have not been published in official compilations and (2) the United States has signed or in some other manner finalized in the preceding calendar year. 1 U.S.C. § 112b.

[33] P.L. 94-110 (H.J.Res. 683; 89 Stat. 572), approved October 13, 1975.

[34] See 19 U.S.C. § 2211.

[35] P.L. 94-304 (90 Stat. 661), approved June 3, 1976.

Codifying a role for Congress in this manner, however, would raise issues related to Congress's constitutional powers in foreign policy. Article I, Section 8 of the Constitution describes the scope of congressional powers. In addition to the power to declare war, this section also lists the powers, among others, to raise and support armies; to provide and maintain a navy; to make rules to regulate such forces; to provide for organizing, arming, and disciplining the militia, and governing such militia employed in the service of the United States; and to make rules concerning captures on land and water. These powers have been noted in some of the proposed legislation reacting to the proposed Iraq Agreements.[36] Some of these powers may be implicated in the terms and provisions of the Agreements, and therefore might create conflict between the two branches concerning the proper apportionment of constitutional power regarding war and foreign policy.

[36] See H.Res. 1028 (110th Cong.) (introductory language, fourth "Whereas" clause).