

*Backgrounder #36*

## **Overview of the SOFA Negotiations**

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On December 31, 2008, the U.N. mandate for multinational forces will expire, bringing Iraq's future relationship with the United States sharply into focus. In November of 2007, President Bush and Prime Minister Maliki cosigned a "Declaration of Principles" promising to negotiate a status of forces agreement (SOFA). While the United States has negotiated this type of agreement with a variety of countries, the case of Iraq is uniquely complex. The ongoing SOFA negotiations between the U.S. and Iraq have not developed on a traditional bilateral basis. Instead, they have developed as two sets of parallel negotiations. The U.S.-Iraq set of negotiations is formal, seeking to develop long-term ties with the United States as guarantor of Iraqi security and stability. The other set of negotiations, between Iraq and Iran, is informal, and is largely dominated by Iran's ability to influence Iraq.

The Iranian regime is vehemently opposed to any US-Iraq security agreement, as it would prolong the presence of US forces on their border and undermine their interests in Iraq. Consequently, they have impeded the negotiations, both covertly and overtly. Tehran has heavily pressured Maliki to reject the agreement, which it describes as amounting to little more than American neo-colonialism. The Iranians actively promoted this negative perception of the agreement via a widespread propaganda campaign. In May 2008, with the SOFA negotiations well underway, the Iranians escalated their public campaign to undermine the agreement. Iranian media outlets circulated numerous false stories that accused U.S. negotiators of seeking to turn Iraq into an American colony.<sup>1</sup> Rumors were also circulated that prominent Iraqi cleric, Grand Ayatollah Ali al-Sistani, was opposed to the treaty.<sup>2</sup> Given Sistani's popularity in Iraq, his opposition to the treaty would have dealt a serious blow to negotiations. However, the events of recent weeks have proved these rumors false, as Ayatollah Sistani told Prime Minister Maliki that he would support any decision on the agreement made by the Iraqi parliament during a meeting on October 10, 2008.

The Iranian propaganda campaign continued throughout the summer as the negotiations became increasingly contentious. When Prime Minister Maliki visited Iran in June for high-level meetings, the Supreme Leader of Iran, Ayatollah Khamanei, reiterated his staunch opposition to the agreement, in a continued effort to pressure Maliki into rejecting the SOFA.<sup>3</sup> During this visit, Iraq and Iran even agreed to a memorandum of understanding on defense cooperation, in an attempt to further undercut the

U.S.-Iraq negotiations. The Iranian press also sought to inflame fears about the agreement, publishing a false report that the SOFA contained “classified articles that would give the U.S. the right to attack other nations from Iraqi soil.”<sup>4</sup> During this time, Iranian politicians publically denounced the agreement, calling it a humiliation for Iraqi dignity and arguing that Iran should fill the power vacuum in Iraq.<sup>5</sup>

In recent weeks, several key U.S. officials have for the first time publically denounced the Iranian interference with the negotiation. On September 28, U.S. Ambassador to Iraq, Ryan Crocker, accused Iran of trying to block the SOFA negotiations.<sup>6</sup> Weeks later, Multi-National Force-Iraq Commander, General Ray Odierno, went further with his condemnation of Iranian behavior, referencing intelligence reports that suggested Tehran was even attempting to bribe Iraqi officials to reject the agreement.<sup>7</sup> As the deadline for a SOFA agreement approaches, the animosity and accusations will likely increase.

Meanwhile, amidst the competition between U.S. and Iranian interests over the SOFA, Prime Minister Maliki has steadily risen from his precarious political position of early 2008. In recent months, he has sought to consolidate his newfound power at the national level in advance of provincial elections. Earlier this year, Maliki was plagued by perceptions of weakness and inefficacy. Two major political factions, led by the Kurds, were also threatening to engineer a vote of no-confidence.<sup>8</sup> Even after the passage of several key pieces of legislation in February 2008, Maliki’s political capital remained limited. Moreover, pressure from the Iranians with regard to the SOFA was especially acute.<sup>9</sup>

In late March 2008, Maliki launched a massive security operation in Basra that aimed to reclaim government control over the lucrative port city from the Shi’a militias. Maliki’s impulsive actions surprised many, including Coalition commanders, who were given very short notice of the operation.<sup>10</sup> Despite a shaky first week of operations, the Basra security offensive was largely successful in reasserting government control; this success was the result of the arrival of seasoned Iraqi reinforcements and Coalition enablers that were hastily dispatched to stabilize the situation.<sup>11</sup> Yet, the Basra offensive and the subsequent operations against Shi’a militias in Sadr City and al-Amarah enhanced Maliki’s image as a strong, national political leader. Since that time, Maliki has seized upon his improved stature and has sought to consolidate political power. The SOFA negotiations presented him a desirable venue in which to do so.

During the summer of 2008, Prime Minister Maliki adopted an increasingly tough bargaining posture over the SOFA negotiations. He sought many concessions from U.S. negotiators over sensitive issues such as troop immunity and for the first time he demanded an explicit withdrawal timetable.<sup>12</sup> Citing the success and performance of the Iraqi Security Forces during the spring offensives, Maliki and his advisers argued that U.S. troops are no longer necessary to assist in security<sup>13</sup>—a claim disputed by many Iraqi military officials. In an effort to politically posture in advance of provincial elections, Maliki has adopted an increasingly nationalistic tone with regard to the SOFA and the U.S. presence in Iraq.

Maliki’s ascendance directly conflicts with the agendas of other Iraqi political factions, most notably, rival Shi’a party, the Islamic Supreme Council of Iraq (ISCI), and the parties of the Kurdish bloc. In late August, Maliki replaced the Kurdish-dominated Iraqi negotiating team with a group of his closest advisers, in an effort to further consolidate his control over the negotiations.<sup>14</sup> This reshuffle came at a

time when Maliki was also involved in a standoff with the Kurds over the presence of their militias in northern Diyala Province.<sup>15</sup> Additionally, Maliki's relationship with ISCI is increasingly tense. In an effort to expand his party's constituency in southern Iraq ahead of provincial elections, Maliki has reached out to a number of tribes from the southern provinces.<sup>16</sup> To do so, he has sponsored the creation of Tribal Support Councils—government-backed tribal security groups—across the south.<sup>17</sup> These outreach efforts put him in direct competition with ISCI for future control of the southern provincial governments. ISCI currently controls most of the southern provincial governments and security forces and perceives the Tribal Support Councils as a direct affront to their control.<sup>18</sup> The tensions between ISCI and Dawa, Maliki's political party, will likely only increase as provincial elections approach and Iraqi politicians debate the passage of the SOFA.

By late August 2008, the SOFA talks stalled, as the holy month of Ramadan began and as U.S. negotiators returned to the United States. During this pause, Iranian rhetoric against the SOFA continued, with statements by Iranian President Ahmadinejad and the Iranian Foreign Ministry Spokesman.<sup>19</sup> Iraqi politicians also held a number of meetings with high-level U.S. and Iranian officials. Iraqi President Talabani met with President Bush at the White House in mid-September.<sup>20</sup> Days later, Maliki met with U.S. Secretary of Defense Robert Gates.<sup>21</sup> By September 22, it was announced that top negotiators, Brett McGurk from the U.S. National Security Council and Ambassador David Satterfield from the State Department were expected to return to Baghdad to respond to the latest draft proposals on troop immunity.<sup>22</sup> Since their return in late September, the negotiations have taken on a new sense of urgency.

A series of important meetings in the weeks since their return suggested that negotiators were close to reaching a final draft of the agreement. On October 3, U.S. Deputy Secretary of State John Negroponte arrived in Iraq on an unannounced visit and held meetings with Iraqi political leaders.<sup>23</sup> Concurrently, Iraqi President Jalal Talabani held a series of similar security discussions with General Odierno, Ambassadors Crocker and Satterfield, and Kurdish Regional Government President Massoud Barzani.<sup>24</sup> Maliki visited Grand Ayatollah Sistani in Najaf on October 10 to discuss the SOFA.<sup>25</sup> Maliki's meeting with the top Iraqi Shi'a cleric, whose approval is essential for the agreement's viability, further suggested that the negotiations were in their final stages.

By October 15, negotiators reportedly had reached a final draft agreement and submitted it to the Iraqi National Security Council for review.<sup>26</sup> The council includes the Iraqi President and Prime Minister, along with the most senior political and military leaders. Despite reports that "political leaders from most parties withheld their support for the text,"<sup>27</sup> the draft was submitted to the Iraqi Cabinet the following day.<sup>i</sup> Lawmakers in Washington were also briefed on the draft's contents during this time and the SOFA negotiations appeared all but complete. Still, parties on both sides remained cautious about the deal, given the difficulty of the negotiations. This caution was merited as further opposition to the agreement soon arose.

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<sup>i</sup> The Iraqi Cabinet is a body that includes the Presidency Council and the Council of Ministers.

On October 21, during a six-hour Iraqi Cabinet meeting, the Iraqi Ministers of Defense, Interior, and Planning reiterated their support for the agreement.<sup>28</sup> Yet others, including members of ISCI, opposed the draft on various grounds. It is difficult to tell to what degree ISCI's resistance to the SOFA is legitimate and to what degree it stems from a desire to isolate Maliki for domestic political purposes; given the growing tensions between ISCI and Dawa, the latter seems more likely. Still, following the meeting, the Cabinet announced it had decided to seek amendments on the draft before it is presented to the Iraqi Parliament.<sup>29</sup> The Iraqis want to sharpen the language of the 2011 withdrawal date, which currently leaves room for conditions-based extension requests.<sup>30</sup> They are also demanding further jurisdiction over U.S. troops that are accused of serious crimes committed while off-base and off-duty.<sup>31</sup>

U.S. officials are extremely reluctant to alter the draft and contend that the agreement already satisfactorily addresses these concerns. Separate statements by Secretary Gates and Admiral Mullen reiterated their concerns over the time constraints for reaching an agreement and the serious consequences for failing to do so.<sup>32</sup> Without an agreement, U.S. forces will withdraw to their bases and cease all operations in Iraq on January 1, 2009.

As the deadline approaches, options remain limited if a SOFA is not ratified by the Iraqi Parliament. A renewal of the UN mandate is possible; however, its passage is not assured. Many have speculated that Russia, one of the five permanent UN Security Council members, would veto the request. Recently, Russia's Foreign Minister told reporters that Russia would support a renewal of the U.N. mandate if the Iraqi government requests to do so.<sup>33</sup> Still, it is difficult to determine the significance of this announcement and whether Iraqi officials would even seek a renewal.

As the SOFA negotiations have progressed from their beginnings in the autumn of 2007, they have become increasingly politically charged as major powers vie for dominance. These struggles have played out in venues other than the official SOFA negotiations, unofficial parallel negotiations between peripheral powers and covert actions by regional powers aimed at either weakening Iraqi resolve or altering Iraqi perceptions of the SOFA have had a great impact on the trajectory of negotiations. Maliki has used the opportunity to enhance his position in advance of provincial elections, Iran has sought to undermine Iraqi confidence in the SOFA in order to establish regional dominance in the absence of US forces, and the Kurdish block has sought to exploit SOFA negotiations in return for unrelated political concessions from the Government of Iraq. Throughout these negotiations, most of which are happening behind the scenes, the US has been pursuing its public negotiations in a position of relative weakness – upcoming US elections and unwillingness by US politicians to tie the hands of a future administration limiting the current administration's options. Despite the advances seen over the last four months, given the SOFA's faltering steps over the last year, it is likely that any agreement reached will come in the eleventh hour.

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<sup>1</sup> "US laying foundation for Iraq colonization," *Press TV*, Iran, May 11, 2008; "Iran Sharpens Tone with Iraqi leaders," *The Associated Press*, May 14, 2008; "Iran warns against US-Iraq deal," *Al-Alam News*, Iran, May 24, 2008; "US bribing Iraqi MPs to sign deal," *Press TV*, Iran, May 29, 2008.

<sup>2</sup> "Al-Sistani not to allow US-Iraq Agreement 'as long as he is alive'", *Al-Alam News*, Iran, May 25, 2008; "Iraqi MP denies Sistani calls for armed resistance," *KUNA*, May 24, 2008

<sup>3</sup> "US Forces must quit Iraq, Khamanei tells PM," *Agence France Presse*, June 9, 2008.

<sup>4</sup> "Iraq SOFA allows future wars," *Press TV*, Iran, June 11, 2008.

<sup>5</sup> "Iran: Regional countries should help Iraq," *The Associated Press*, August 15, 2008; "US Security agreement to humiliate Iraq nation dignity: speaker," Islamic Republic News Agency, Iran, September 1, 2008; "Iraq's national sovereignty is important to Iran: Qashqavi," Iran Students Correspondence Association, Iran, September 15, 2008.

<sup>6</sup> John Daniszewski, "US ambassador appeals for patience," *The Associated Press*, September 28, 2008.

<sup>7</sup> Ernesto Londono, "Iran Interfering with U.S.-Iraq Security Pact, General Says," *The Washington Post*, October 13, 2008.

<sup>8</sup> For more information on this time, see Marisa Cochrane, "The Battle for Basra," Iraq Report 9, Institute for the Study of War, June 23, 2008, p. 6-7.

<sup>9</sup> Marisa Cochrane, "The Battle for Basra," Iraq Report 9, Institute for the Study of War, June 23, 2008, p. 6-7.

<sup>10</sup> For more information on this time, see Marisa Cochrane, "The Battle for Basra," Iraq Report 9, Institute for the Study of War, June 23, 2008, p. 8-10.

<sup>11</sup> For more information on this time, see Marisa Cochrane, "The Battle for Basra," Iraq Report 9, Institute for the Study of War, June 23, 2008, p. 9-10.

<sup>12</sup> Lourdes Garcia-Navarro, "Iraqis Consider Alternative Deal for U.S. Presence," Weekend Edition, *National Public Radio*, July 6, 2008; "Maliki's Praise for Obama: Iraqi Leader Stirs Up US Campaign," *Der Spiegel*, July 20, 2008; Peter Grier, "Iraq urges 2011 deadline for U.S. troop withdrawal," *The Christian Science Monitor*, August 27, 2008; Johnathan Steele, "Maliki drops the Mask," *The Guardian*, September 5, 2008.

<sup>13</sup> Lourdes Garcia-Navarro, "Iraqis Consider Alternative Deal for U.S. Presence," Weekend Edition, *National Public Radio*, July 6, 2008.

<sup>14</sup> <http://www.alsharqiya.com/print.asp?fname=mainstory\2008\08\600.htm>. Translated from Arabic; Ned Parker, "Agreement on U.S. withdrawal from Iraq said to be in peril as Maliki ousts negotiators," *Los Angeles Times*, August 31, 2008.

<sup>15</sup> Claire Russo, "The Maliki Government Confronts Diyala," Backgrounder #34, Institute for the Study of War, September 23, 2008.

<sup>16</sup> Scarborough, Rowan, "Tribe helps al-Maliki win control of south," *Washington Times*, May, 23, 2008; "PM announces formation of 17 tribal councils in Missan," *Aswat al-Iraq*, June, 23, 2008; "Wassit province refuses to establish support councils," *Aswat al-Iraq*, September 24, 2008; "Tribal chieftain announces opening 20 Supports Councils offices in Thi-Qar," *Aswat al-Iraq*, October 1, 2008; "Thi-Qar governor slams govt's plan of installing support councils," *Aswat al-Iraq*, October 3, 2008. "Wassit province refuses to establish support councils," *Aswat al-Iraq*, September 24, 2008;

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- <sup>26</sup> Salam Faraj, "Top Iraqi leaders to discuss US-Iraq security pact," *Agence France Presse*, October 19, 2008.
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- <sup>29</sup> "Iraq cabinet seeks changes to U.S. troop pact," *Reuters*, October 21, 2008.
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