

## OPENING STATEMENT OF CHAIRMAN BILL DELAHUNT

\*Remarks Prepared For Delivery\*

The Subcommittee on International Organizations, Human Rights, and Oversight will come to order. Today's hearing is titled "Status of Forces Agreements and United Nations Mandates: What Authorities and Protections do they Provide for U.S. Personnel?"

This hearing is the fourth in a series our Subcommittee has held relating to the Administration's plans to negotiate a bilateral agreement between the United States and Iraq. On November 26, 2007, a Declaration of Principles was signed by President Bush and Iraqi Prime Minister Maliki, announcing their intent to negotiate an agreement which would embrace an expansive menu of issues and apparent commitments between the two nations.

A review of that document caused serious concern among members of the public as well as many of us in Congress. For example, the Declaration pledged that the United States would be (and these are the words of the document itself):

- Supporting the Republic of Iraq in defending its democratic system against internal and external threats...
- Providing security assurances and commitments to the Republic of Iraq to deter foreign aggression against Iraq that violates its sovereignty and integrity of its territories, waters, or airspace...
- supporting the Republic of Iraq in its efforts to combat all terrorist groups, at the forefront of which is Al-Qaeda, Saddamists, and all other outlaw groups regardless of affiliation, and destroy their logistical networks and their sources of finance, and defeat and uproot them from Iraq.

What has exacerbated this concern has been the poor record of this Administration on consultation with Congress, particularly in matters involving Iraq. As Senator Chuck Hagel has observed, the Bush Administration "has seen Congress as an enemy and a constitutional nuisance." I can't even estimate the number of times I have quoted Senator Hagel on the Administration's reluctance to work with Congress.

I would also note that my friend and ranking member Mr. Rohrabacher spoke eloquently on the floor of the House just this week on the issue of the lack of cooperation between the branches of government. And I agree in full measure with him that it is time for Congress to assert itself. He has my commitment to support his efforts to secure the consultation and the information from the Administration that we need to fulfill our constitutional obligations.

The Declaration of Principles provides further evidence of the Administration's attitude toward Congress. According to the State Department's own regulations, known as Circular 175, it is the responsibility of the Administration to ensure that:

*...the appropriate congressional leaders and committees are advised of the intention to negotiate significant new international agreements, consulted concerning such agreements, and kept informed of developments affecting them...*

After three months of hearings held by myself and Mr. Rohrabacher at which the Administration declined to attend and testify, and after inquiries to the leadership of this House and this Committee, I can state unequivocally that there was no "advising" of Congress in the preparation of the Declaration of Principles, which clearly demonstrated an "intention to negotiate," and that there has been minimal "consultation" until recently on plans to implement the Declaration through a bilateral agreement or agreements.

And I defy anyone to tell us that the apparent commitments in the Declaration are not "significant" to U.S. national interests. I note that our two Congressional Research Service witnesses recently collaborated on a report that makes that point: "Although these regulations do not define what constitutes a 'significant' agreement, it seems reasonable to assume that the prospective U.S.-Iraqi security arrangement would constitute such a compact..."

Indeed.

It would appear that the New York Times has better access to the Administration's plans than this Committee or Congressional leaders. On January 25<sup>th</sup> the Times reported on the contents of a 15-page draft agreement

prepare by U.S. officials for transmittal to the Iraqi cabinet. This news story came out the very day that this Committee was told by the Administration that it had not yet “put pen to paper” on an agreement.

Clarity and precision in definitions is a predicate to an understanding by Congress and the American people as to what the Administration intends -- particularly when it has been so ambitious in its purported commitments in the Declaration of Principles.

Clarity and precision in definitions is lacking at present. The Administration has equated one of its potential agreements with a typical Status of Forces Agreement, but it is my impression that gaining authority for combat from such an agreement, absent a treaty or UN framework, is extremely rare and perhaps unprecedented. Secretary of State Rice and Secretary of Defense Gates have also referenced another potential accord that they have described as a “framework agreement.” I have looked in vain for a precedent or even a formal definition of such an accord.

Today we will explore the legal implications of SOFAs and UN Mandates with a distinguished panel of lawyers from the American Law Division of the Congressional Research Service and from academic institutions.

In Jennifer Elsea we have CRS’s ranking expert on domestic and international authorizations for the use of force in Iraq, and Chuck Mason is CRS’s authority on Status of Forces Agreements. Both have written extensive legal treatments of these issues. Jennifer and Chuck, thank you for your work in this area, and for being here today.

We also have three professors of note to assist us today:

Professor Laura Dickinson, of the University of Connecticut Law School, is a former State Department official who has become a leading authority and author on the legal status of American private contractors in combat zones overseas.

Following a 28-year career in the State Department Office of the Legal Adviser, Mike Matheson has become a professor at the George Washington University Law School, and somewhat of a resident adviser to this Subcommittee on the ins and outs of international law and State Department

procedure, having already appeared twice before us during our inquiry into the Declaration of Principles.

And we welcome back Professor Ruth Wedgwood of the Johns Hopkins University, who also brings her distinguished legal career in the executive branch -- not to mention her scholarly research -- to bear on our deliberations.

To our three professors, thank you for taking the time to educate us. We will listen as attentively as your students are supposed to.

Let me now turn to my friend and my valued partner in this detailed review of long-term policy toward Iraq, the ranking member Mr. Rohrabacher of California, for his opening remarks.