

# POLICY NOTES



The Washington Institute for Near East Policy ■ No. 21 ■ November 2014



## The Iraq Troop-Basing Question and the New Middle East

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**T**HE CRISIS GENERATED by the rise of the Islamic State of Iraq and al-Sham (ISIS) has properly led to an examination of how such a development could shake the very center of the Middle East, where the United States and other actors have played significant roles to preserve the peace and maintain influence for decades. One argument raised repeatedly is that, as ISIS is a reincarnation of the al-Qaeda in Iraq (AQI) movement, the failure of the Obama administration to maintain the U.S. focus on Iraq was a major contributor to ISIS's rise. In particular, the administration's failure to secure a long-term U.S. troop presence in Iraq after 2011 allegedly was the "original sin" that led to the disastrous developments now playing out throughout the region.

As the ambassador to Iraq during the effort to secure a long-term basing agreement, I certainly believed that keeping some troops in Iraq was important, and acknowledge the impact the failure to do so might have had on ISIS's rise. Nevertheless, the situation is more complicated than many critics argue, and thus the debate over ISIS, and the larger issues of the U.S. and Western roles in the Middle East, would benefit from a review of the troop-basing issue. In so doing, it is important to lay out exactly what happened, as a lack of clarity on facts easily leads to facile judgments. But it is also important to consider the whys and what-ifs behind the effort to keep troops in Iraq, and how this whole question fits our approach to war and peace in that violent region.

The 2011 troop-presence negotiations story begins well before the Obama administration. From 2003 onward, the United States and its coalition allies were operating in Iraq under a UN Security Council mandate that gave the United States effective authority over security writ large in that country, including immunity for its own and allied troops carrying out the security mission. That United Nations authorization, renewed every year, was based on specific requests by the Iraqi government to extend the authorization. The Iraqis by 2008, unhappy with their status as a UN ward, declared they would not again so request. The United States and Iraq thus had to negotiate a bilateral agreement by the end of 2008, when the final UN mandate ran out; otherwise the United

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States would have no internationally valid legal authorization to remain in Iraq, or protect its troops with legal immunity.

## GETTING READY TO NEGOTIATE

Based on a general understanding in Washington and Baghdad that Iraq was not ready in 2008 to survive without U.S. troops, the two governments began negotiating in that year what became known as the Status of Forces Agreement (SOFA; official name: Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq). The negotiations were difficult: the Iraqis wanted an end date, eventually the end of 2011, for the agreement's validity and thus the troop presence; they wanted limitations on U.S. forces' operating flexibility; parliamentary approval of any agreement; and they insisted on at least theoretical legal jurisdiction over U.S. forces in marginal cases. The United States would have never obtained an agreement had President George W. Bush, over the objections of some in his administration, not granted all these Iraqi requests and jawboned Iraqi prime minister Nouri al-Maliki, the most difficult of the Iraqi leaders on this issue.

Even while agreeing to an end date, many in the Bush administration assumed that a follow-on, longer-term agreement based on the 2008 SOFA would be possible after 2011. Some of that might have been wishful thinking to justify agreeing to an end date and thus a withdrawal of U.S. forces, but several top officials believe Maliki had implied he would endorse a new agreement. After I arrived as ambassador in mid-2010, Maliki indicated several times that a troop presence beyond 2011 might be possible, but he did not specifically endorse it, and rather left his options open.

Within the U.S. government, meanwhile, plans were shaping up, first, on a huge U.S. embassy presence post-U.S.-military withdrawal (16,000 personnel, \$6 billion annual budget) to continue the intense U.S. engagement in Iraq and, second, mainly within the U.S. Department of Defense, for a possible U.S. residual presence. The Defense Department effort was not formally tasked nor was there any presidential decision to seek a new stationing agreement, but

the military's desires and efforts were well known government-wide. In fact, one reason for U.S. pressure on the Iraqi political system to resolve the governmental crisis after the March 2010 elections and form a new government was to ensure an Iraqi interlocutor with parliamentary support as soon as possible so that the United States could discuss the stationing probability. With a decision needed realistically before the end of October 2011, given lead times to withdraw the final tens of thousands of troops by year's end, every day in 2010 that Iraq went without a government able to discuss such a weighty matter stoked the pressure.

Soon after the Maliki government was finally firmed up in mid-December, I was contacted by a very senior White House official on a troop-presence negotiation. I strongly advocated a U.S. effort to secure a new agreement and keep some troops in the country for reasons of security (training and equipping of Iraqi forces, control of airspace, counterterrorism) and reasons of policy (proof of continued U.S. engagement; to reassure neighbors skeptical of a Shiite-led Iraq). I stressed that obtaining a new agreement would be difficult but thought it worth the effort. (Given the importance not just to the U.S. "legacy" in Iraq but also to that country's future, it was imperative that the United States not decide on its own for no troops, out of fear the Iraqis might say no, but rather give the Iraqi political leadership the choice).

At the end of January 2011, the president met with his National Security Council (NSC) team to formally decide whether to keep troops on, and on the advice of his team he decided to do so and thus seek Iraqi agreement. However, the president at that time was not willing to reveal his decision to Maliki or to the American people. Rather, the U.S. military commander in Iraq, Gen. Lloyd Austin, and I would sound out Iraqi political leaders to "socialize" the idea, without making any commitments or pitch. Meanwhile Washington reviewed options for the size of the residual force and its missions. That review, as described well by Michael Gordon in his book *The Endgame*, took far too long. The military wanted a force initially almost the size of the U.S. contingent in Korea, to ensure decisive response to any contingency. The White House was troubled by the cost (almost \$1 million per year per soldier) and the optics

of a president who had campaigned on getting all troops out of Iraq keeping a large ground force there seemingly in perpetuity, when violence had dropped off remarkably. Another sticking point was whether to go with the (from the Iraqi standpoint) theoretical role for Iraq regarding legal jurisdiction of U.S. military personnel laid out in the 2008 SOFA, or opt for a tougher U.S. line as in other status of forces agreements, as desired by the military's lawyers. The president decided, on my advice and that of others, to go with jurisdiction language marginally advantageous to Iraq, per the 2008 agreement, and by June decided the troop presence would be a maximum of 10,000 (later reduced to 5,000, well below the lowest initial U.S. military recommendation). The focus for the force was on training and advising, using a small contingent of combat troops and special forces, along with logistic and force protection, counterterrorism, intelligence sharing, and a small air-defense mission consisting of a few fighter aircraft. The president informed Maliki in general terms—without specifics on numbers—and authorized an announcement to the public on June 2 that the United States would negotiate a troop-stationing agreement.

### **IRAQIS DECIDE ON THE TROOP QUESTION**

The administration selected Brett McGurk, under my and Gen. Austin's joint supervision, to lead the negotiations with Maliki's national security advisor, Faleh al-Fayyad. McGurk had negotiated the 2008 agreement and was well regarded by Maliki, who in fact often engaged with McGurk, Austin, and me on the negotiations. One reason for this was the political nature. Unlike in 2008, there was no need for detailed discussion of the specific terms of an eventual agreement. As noted earlier, the United States had agreed to "roll over" the jurisdiction and other terms of the 2008 agreement. The Iraqis knew and respected those terms and were satisfied that the United States had loyally adhered to them. The main issue thus was whether Iraq wanted troops at all and, if so, whether they would be subject to legal immunities locked into an agreement blessed by the Iraqi parliament.

Before discussing the course of those negotiations, it may be useful to review the situation in Iraq on the

eve of talks. In contrast to 2008, when the last agreement was negotiated, Iraq was stable, beginning to prosper, and at relative peace. Remnants of the AQI movement operating as terrorist cells could periodically launch multiple bombings, but the annual loss of life was only about two thousand, an appalling figure but much lower than just a few years before. Iran-backed Shiite militias had not disarmed, but they limited their actions to occasionally attacking U.S. personnel and installations. Politically, Iraq appeared fairly stable, having just put together a seemingly inclusive government of Shiite and Sunni Arabs and Kurds, and was benefiting from exports of about two million barrels of oil a day at close to \$90 a barrel. Meanwhile, polls indicated that less than 20 percent of the Iraqi population wanted U.S. troops to remain, and that figure was tilted upward by the high "yes" answer from Kurds, in whose territory the United States had not stationed nor contemplated significant forces. Given the Arab Spring mood in the region, the Iraqi government was hypersensitive to public opinion. In short, we faced a different Iraq, thanks largely to U.S. and Iraqi counterinsurgency success, from that seen in 2008.

Maliki and the leaders of other political parties represented in parliament decided to review the key questions in a series of internal political leadership summits led by President Jalal Talabani. The Iraqis delayed setting up this internal process, and by the end of July the U.S. government imposed an ultimatum on starting the process with a formal request for troops, agreement to obtain parliamentary ratification, and clarity on other security, including Iraqi approval for targeting Shiite militants, or else the offer to keep troops on would be withdrawn. The Iraqis, who had waited half a year for a U.S. green light on keeping troops, grumbled at this but complied with the U.S. demands, albeit a day late (August 2). That was seemingly still not good enough, and the White House spokesman stated on August 4 that no formal troop request had been made by the Iraqis. All-night back-channeling with Washington was then needed to get the process on track again.

By October, the Iraqis had held three sessions chaired by Talabani. However an impasse soon arose. All the parties were willing to contemplate a U.S.

troop presence, with the exception of the Sadrist Trend (holding some 40 of the 325 seats in parliament), but there was violent disagreement over granting legally binding immunities in a deal endorsed by the parliament. Only the Kurdish parties, with some 60 seats, supported that. Maliki, as in 2008, was dodging any position on immunities, and he had about 120 seats loyal to him. Former prime minister Ayad Allawi, the leader of the second largest block, the heavily Sunni Arab Iraqiyah (80-plus seats), declared that his faction would not take any position more pro-American than that of Maliki. Throughout this period, U.S. civilian and military officials up to the vice president maintained close contact with Iraqi political leaders, advocating constantly on the immunities question.

By mid-October, after three such summits, Maliki and Talabani informed the United States that while the parties (excepting the Sadrists) were willing to support a troop-stationing agreement in parliament, they were not willing to include judicial immunities. Based on longstanding U.S. policy on immunities, and on the specific decisions taken by the president and NSC, the administration gave up the stationing effort, announced that decision publicly on October 21, and began concentrating on withdrawing the remaining troops by the December 31 deadline and standing up the huge post-military-presence embassy.

## THE IMMUNITIES QUESTION

Given the importance of judicial immunities in the negotiations, a word on them may be useful. The United States believes for good reason that the will- ingness of the American people to keep their military personnel deployed abroad, as well as the well-being of those personnel, would be at risk if the very coun- tries those personnel are trying to protect had judicial authority, with often primitive and flawed legal sys- tems, over those U.S. personnel often acting in dan- gerous, stressful conditions. Thus the need for judi- cial immunity. This term is a misnomer, as there is no immunity from judicial action—but agreements with allies known typically as status of forces agreements (SOFAs) stipulate that the U.S. military judicial sys- tem, not local authorities and courts, has jurisdiction over U.S. military members even if they violate local laws or act against citizens of the “receiving” country.

The U.S. military, supported by the White House and State Department, over decades has insisted on this standard. Furthermore, as any SOFA must be legally binding, in a democracy, however flawed, such as Iraq, the local legislature—that is, the agency that makes laws, not the executive—must decree any exemptions from its own laws. In dictatorships such as Hosni Mubarak’s Egypt, the United States could rely on executive agreements, as such leaders controlled de jure or de facto the judiciary. That is not the case in democracies, and the Iraqi constitution—and much of the point of America’s whole intervention—was focused on a democratic rule of law system.

Local populations see the situation differently—as an abdication of a country’s sovereignty under pres- sure from the world’s “last remaining superpower.” However flawed they may find their own judiciary, they resent the United States dismissing it as inad- equate to try American soldiers. While the United States argues that the U.S. military judiciary can be trusted to punish Americans who commit crimes against locals, experience, including in Iraq, argues that convictions by U.S. military tribunals against troops for violating foreign laws and harming locals are rare, and punishments minor. There is thus great hostility toward such “immunities.” Recognizing this, the United States in 2008 had gone further than in almost any other SOFA in granting the Iraqis judi- cary rights to try U.S. soldiers, albeit under legal con- ditions almost certainly impossible to meet. The U.S. military, understandably, was not willing to make fur- ther concessions.

Local sensitivities about immunities, however, mask an even greater problem: for most foreign popu- lations beyond Europe, housing U.S. troops long term is tantamount to an unnatural act, nowhere more so than in the Middle East. It is no accident that the only place where the United States has been able to station ground troops in that region is tiny Kuwait, sandwiched between Iran and Iraq and uniquely appreciative of its liberation by U.S. troops.

## WHY THE IRAQI DECISION?

Despite these attitudes, the Iraqi parliament, however hesitantly, had voted for the SOFA granting immu- nities in 2008. Why then the failure in 2011? Two

factors are relevant. First, as noted before, Iraq by then was much more a going concern, more able to stand on its own feet seemingly, be it with security forces, the economy, or the political process, than in 2008. Thus, there was little perceived need or understanding for a U.S. military presence, as reflected in the dismal polling tallies.

Second, the political system had changed. The Sadrists, bitterly opposed to any U.S. presence, had upped their presence to 40 seats, or 13 percent of the legislature, in 2011. The most pro-American of the Shiite parties, the Islamic Supreme Council of Iraq (ISCI), had lost many of its seats in the 2010 elections. But not only were the Shiite parties more skewed to the anti-American side, the major Sunni party, *Iraqiyah*, opted in contrast to 2008 to remain on the sidelines, vowing to go no further than Maliki did on accommodating the United States. These various changes made impossible a repeat of the effective U.S. strategy in 2008 of first mobilizing every other party leader for the SOFA, thereby threatening Maliki with isolation.

Nevertheless, no result is inevitable, and many have raised questions along four lines about alternative negotiating or policy approaches that might have gained the United States a permanent troop presence: first, the possibility of a different U.S. approach on the key issue of judicial immunity; second, sticks and carrots Washington could have deployed; third, the problems with Maliki and, by extension, the Iranians; fourth, the alleged disinterest, ambivalence, or even sabotage of the negotiating effort by the president and his advisors.

As to judicial immunity, it is true that Maliki hinted at, and Fayyad indicated more explicitly, a willingness to sign an executive document granting immunity. While this balloon was never fully validated or fleshed out, it would likely not have been accepted by Washington. One of the problems with Iraq in 2011 was Maliki's abuse of checks and balances, especially with regard to parliament and the judicial system. To countenance his seizing legislative and judicial powers expressly not granted by the constitution to exempt anyone from the law would represent a clear betrayal of all the United States had fought for in Iraq, particularly as the 2008 agreement required parliamentary approval. At one point, the Iraqis even suggested

that, like the large Soviet military mission in Iraq in the 1980s, the Americans simply eschew any judicial immunities agreement. This is simply not possible for the United States. (While Washington accepted an executive agreement on immunities from the Iraqi government in 2014, it was for an emergency deployment to a country falling apart in full-blown war. The assumption was that under such conditions our troops would not be subject to local judicial pressure. Such conditions did not obtain in 2011.)

On item two, the United States had few sticks and carrots remaining by 2011. Former secretary of defense Leon Panetta suggests that the United States could have cut its economic aid or arms deliveries. But by that time, very little of such aid remained, and Iraq was awash with oil-export earnings. The U.S. assistance was focused on strengthening the Iraqi military, and on capacity building within the government, police, and civil society. It was in the U.S. interest to have both those programs, and arms deliveries the Iraqis had largely paid for, go well; frankly, in most cases, except the military deliveries, the Iraqis cared little about those programs. Others have argued that the "offering" of only 5,000 troops made the Iraqis feel the game (getting a parliamentary vote) was not worth the candle (such a supposedly small contingent). This is conjecture. No Iraqi official asked me for a larger troop presence than the eventual 5,000 we offered, and the general impression I had was, the fewer the troops the easier to get a parliamentary vote. In fact, the Iraqis were used to our raising and lowering troop numbers based on the situation, notifying them only as an afterthought, and the 2008 agreement did not stipulate a specific number.

Maliki was a problem, but U.S. efforts to find alternatives to him bore no fruit despite eight months of trying after the March 2010 elections. The Iranians were doing all they could to ensure no residual U.S. presence, but their usually ineffectual attacks on American compounds and browbeating of Iraqi politicians had only a limited impact on events. Otherwise, all the parties, except the Sadrists, would not have opted for U.S. troops to stay at all, or later to outpace Iran, over its objections, on oil exports.

The final and most frequently posed question is, could President Obama have played this issue

differently? That is, were his alleged mixed messages on the desirability of an agreement, and his failure to mentor Maliki, responsible for the breakdown? Probably not. While Obama did not do the same weekly hands-on massaging of Maliki that President Bush famously did, he met or spoke with Maliki three times in 2011 and assigned the “Maliki handler” mission to peripatetic Vice President Joe Biden, who did an excellent job. Second, Bush’s degree of engagement was rare for any president, including Bush himself beyond Iraqi and Afghan leaders. Third, nothing could be more misleading than the popular American belief that diplomacy is simply getting to know your counterpart, clearing the air, and removing misunderstandings, a belief that feeds the “Obama should have been a better best buddy” mindset. Good personal relations smooth decisions but cannot replace the cold-blooded calculus of pluses and minuses that someone like Maliki was bred to follow.

The indifference question is more complicated. President Obama and his cabinet-level officials never gave any hint of self-doubt concerning the effort to keep troops. But unfortunately, the same could not be said for White House staffers. They repeatedly, as implied earlier, in late July and early August, seized control of the issue to levy ultimatums on the Iraqis and on us negotiators. In a particularly galling example, right after we had, following Washington instructions, informed Maliki that we would want to keep 5,000 U.S. troops in the country, one White House advisor told the media that the number was 3,500, thereby totally undercutting us. (The difference was that about 1,500 of the 5,000 would not be one-year assignees but rather on long-term temporary duty assignment rotation—an administrative and budgetary difference relevant in Washington but certainly no place else, seemingly hyped by this one White House staffer to demonstrate “how few” troops Obama was willing to leave in Iraq.) While this nitpicking was irritating, appeals to Secretary of State Hillary Clinton and Defense Secretary Panetta, Chairman of the Joint Chiefs of Staff Adm. Mike Mullen, and the other adults in the administration rectified each problem. But the problems did keep coming up, giving us and other observers, including Iraqis, the impression that the White House and perhaps Obama was not

fully on board with the troops-staying issue. It is also true that the classic Obama administration “we can’t want it more than the locals do” instinct was much present in this affair. That attitude, while doubtful generally, is fatal when applied to weak, inherently divided Middle Eastern states under duress.

This all was reinforced by the shift in rhetoric once it was clear in October 2011 that we would not keep troops on. The president repeatedly hammered the theme that in withdrawing troops he was living up to his commitment to “end America’s wars.” (In fact, that had been done in Iraq by President Bush, with a victory, however fragile, in 2008.) The high point here was during the presidential debates with Gov. Mitt Romney in 2012. As Scott Wilson writes in the *Washington Post*, when pressed by Romney, the president incredibly denied ever having tried to keep troops on in Iraq. Ironically, in June 2014, when asked whether he regretted not having kept some troops on, the president accurately stated that this was not his decision but that of the Iraqis. Inconsistencies like this simply encourage commentators to ascribe the worst motives to the president and his administration.

## TROOP PRESENCE AND THE RISE OF ISIS

The final question is, would a residual force have prevented the 2014 catastrophe in Iraq generated by ISIS—which renamed itself the Islamic State (IS) earlier this year. There is no clear answer, but certainly we would have had better “eyes on” concerning the situation, more tracking of ISIS’s precursor, AQI, and a better-trained Iraqi army. (That army was not destined to melt away, and did so nowhere other than in Mosul and Tikrit in June. In the other major front, Anbar province, troops stayed and fought over many months, and where defeated it was due to poor leadership, tactical and intelligence failures, and logistics breakdowns, exactly the sorts of things U.S. advisors could rectify.) More hypothetically, keeping forces in Iraq would have secured Washington’s attention in a way an embassy alone never could, particularly if a threat like ISIS emerged that endangered those forces.

But the most far-reaching criticism is that we would have had a different Iraq, and a different Maliki, had we kept troops on. With U.S. forces in

“overwatch” of the political system, Maliki supposedly would not have begun persecuting Sunni Arab political figures, would have been more accommodating to the Sunni *sabwa* (awakening) forces, would have cooperated with the Kurds and not purged the army’s leadership of good generals. And absent these errors, ISIS would not have gained a foothold among the disaffected Sunnis. This is hogwash. Maliki evinced many of these tendencies even when we had 50,000 or more troops present, such as when his forces killed a number of Iranian Mujahedin-e Khalq (MEK) personnel at Camp Ashraf in spring 2011, or forced an unnecessary recount of the 2010 election results. And Iraq’s sectarian problems go far beyond Maliki to cover almost the entire Iraqi ethnic-religious spectrum, with the Sunni Arab opposition grounded in the 2003 loss of power to the Shiite Arab and Kurdish majority an irredeemable grievance. Furthermore, the 2008 SOFA, and thus any new agreement based on it, stipulated that “all...military operations that are carried out pursuant to this Agreement shall be conducted with the agreement of the Government of Iraq. Such operations shall be fully coordinated with Iraqi authorities.” In short, the U.S. military would have had no authority in any new SOFA based on that text to exercise a *droit de regard* over the Iraqi constitution and political-judicial affairs.

The mindset behind this criticism, one that has characterized much of our engagement in Iraq, Afghanistan, and other Muslim-majority states, is that by our very efforts and values, our presence and example, we can shape foreign leaders and whole societies

to our will. This mindset frequently seizes on our military as the perfect agent for such social engineering. But the hard-earned lesson of the last few decades in the greater Middle East is that the U.S. military when given specific military missions—liberate Kuwait, keep Iran from blocking Gulf oil exports—succeeds. When, as in Iraq, Afghanistan, Lebanon, and Somalia, it is given a thinly disguised nation-building agenda, it often ultimately fails.

## CONCLUSION

Stationing troops in volatile areas such as the Middle East not instinctively pro-American always poses two very different problems: such stationing is a very hard sell with governments and especially populations—and often the American public; yet our policymakers often see such deployments not so much as a response to a military problem but rather a panacea for underlying historical, cultural, and religious crises. The Bush administration and many critics of Obama’s Iraq troop decisions missed this second point. But sometimes there are military problems that need a military answer. That was the case in Iraq from 2011 to 2014, but the Obama administration arguably downplayed that point. A small presence—which could have been quickly augmented—almost certainly would have produced a somewhat better-prepared Iraqi army, an al-Qaeda under greater pressure, and a quicker U.S. response once al-Qaeda/ISIS launched its offensive. These two lessons—the value of the military for some problems, coupled with its inability to solve all dilemmas—must inform our decisions about Afghanistan, Iraq, and Syria in the coming months and years.

