

# The Transfer of Sovereignty in Iraq: Prospects for a Security Agreement

by [Michael Eisenstadt \(/experts/michael-eisenstadt\)](/experts/michael-eisenstadt), [Michael Knights \(/experts/michael-knights\)](/experts/michael-knights)

Apr 27, 2004

## ABOUT THE AUTHORS



### [Michael Eisenstadt \(/experts/michael-eisenstadt\)](/experts/michael-eisenstadt)

Michael Eisenstadt is the Kahn Fellow and director of The Washington Institute's Military and Security Studies Program.

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### [Michael Knights \(/experts/michael-knights\)](/experts/michael-knights)

Michael Knights is the Jill and Jay Bernstein Fellow of The Washington Institute, specializing in the military and security affairs of Iraq, Iran, and the Persian Gulf states. He is a co-founder of the Militia Spotlight platform, which offers in-depth analysis of developments related to the Iranian-backed militias in Iraq and Syria.

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## Brief Analysis

In congressional hearings on Iraq last week, legislators repeatedly asked testifying administration officials whether the United States would negotiate a formal security agreement with the post-June 30 Iraqi interim government. The officials explained that following the planned transfer of sovereignty to Iraq, U.S. and coalition forces would operate in accordance with current arrangements or a new UN resolution, pending the conclusion of a formal agreement. This solution has some advantages as the eventual negotiation of a security agreement is liable to be a contentious affair. It also has drawbacks, as the continued presence of coalition forces will almost certainly cause political controversy in Iraq, leading to the imposition of constraints on the coalition's military freedom of action.

## Background

In accordance with the November 15 agreement, which outlined an accelerated timetable for transferring sovereignty to Iraq, the United States was to conclude a security agreement with the Iraqi Governing Council (IGC) by the end of March 2004 in order to formalize the terms of the U.S. or coalition military presence in Iraq. These plans were scrapped due to the objections of Grand Ayatollah Ali Husayn al-Sistani and members of the IGC, who insisted that an agreement be negotiated and signed only by an elected Iraqi government. It is therefore likely that an agreement will again be deferred until after Iraqi elections, currently expected to be held by January 31, 2005.

## Post-June 30

In the meantime, U.S. forces will continue to operate under the authority provided by UN Security Council Resolution (UNSCR) 1511, paragraph 13, which "authorizes a multinational force under unified command to take all necessary

measures to contribute to the maintenance of security and stability in Iraq"; Coalition Provisional Authority (CPA) Order Number 17, which grants coalition forces "immun(ity) from Iraqi Legal Process"; and Article 59 of the Transitional Administrative Law (TAL), which defines the Iraqi armed forces as "a principal partner in the multinational force operating in Iraq under unified command" pursuant to UNSCR 1511. The TAL also states that the Iraqi armed forces will ultimately answer to the prime minister of Iraq. It is not clear how the efforts of UN Special Representative Lakhdar Brahimi might alter this framework. The United States is seeking a new UNSCR about Iraq, but any provision about the status of a multinational force could be a divisive issue in the UN Security Council.

How such an arrangement would work in practice is not clear, since the Iraqi interim government will likely seek to exert control over Iraqi security forces and demand a say in all coalition decisions concerning the use of force. Likewise, with the emergence of domestic politics in Iraq, the role of coalition forces is likely to become a matter of political debate, as they continue to intrude into peoples' lives, impose inconveniences, and cause the death of civilians through accidents and military action. In such an environment, populist politicians and extremists are likely to try to limit the coalition's military freedom of action, and use incidents involving coalition forces as justification for the creation and maintenance of militias to provide security and keep coalition forces from entering 'liberated' neighborhoods. This would further complicate efforts to disarm and demobilize tribal and party militias.

#### The Security Agreement

Once an elected Iraqi government is on its feet, the United States is likely to seek a formal bilateral security agreement covering a variety of matters, as President George W. Bush stated in his news conference on April 13. These might include a Status of Forces Agreement (SOFA) to define the legal status of U.S. military personnel, building on the broad legal immunity of U.S. forces established in CPA Order Number 17. The United States may also negotiate basing access agreements (perhaps for use of Iraqi air bases) and an Acquisition and Cross-Servicing Agreement (ACSA) for the local purchase, for instance, of food, fuel, or transportation.

The negotiation of a security agreement is likely to be a contentious matter, for historical reasons. Under the monarchy (1921-1958), British influence in Iraq was formalized through two treaties of alliance. The first (concluded in 1922), provided for the appointment of British advisors to the Iraqi government. The second (concluded in 1930, shortly before independence), allowed Britain to use the air bases at Shu'aybah and Habbaniya and to station troops there, permitted British forces to transit Iraqi territory, and made Iraq dependent on Britain for weapons and training. Britain's enduring influence and the privileges awarded it under these treaties was a matter of controversy in Iraqi domestic politics and a perennial source of tension between the crown and nationalist politicians. An attempt in 1948 to extend the 1930 treaty another twenty-five years led to widespread riots, the resignation of the cabinet, and the repudiation of the so-called Portsmouth Treaty by the new Iraqi government.

There are cautionary lessons to be learned from elsewhere in the region. In 1964, the signing of a SOFA agreement between the United States and Iran granting legal immunity to U.S. personnel and (unusually) their dependents, produced a harsh anti-American backlash. Incensed, Ayatollah Ruhollah Khomeini condemned the agreement -- acidly noting that the SOFA granted an American dog in Iran more rights than an Iranian citizen -- and attacked the shah and the United States, leading to his exile to Iraq. This was a key event in Khomeini's rise to prominence and power, which he frequently recalled following his return to Iran in 1979, and it is not hard to imagine some Iraqi ayatollah or populist politician likewise using the issue of immunities granted in a standard SOFA to discredit establishment politicians and gain political advantage.

More recently, SOFA agreements have become a source of tension with even friendly and allied governments. The involvement in the past decade of U.S. military personnel in automobile accidents, or criminal acts (e.g., rape or assault) against host country nationals in Japan, South Korea, and the United Arab Emirates, have led to calls for the local prosecution of U.S. personnel, and have stoked anti-American sentiment in these countries. In short, the

United States should expect the path to a security agreement to be difficult and possibly protracted; its signing will not necessarily put an end to problems and controversies.

### The Way Ahead

The U.S. government will do well to downplay the need for such an agreement with the Iraqi interim government. Until Iraq has an elected government, Iraqi leaders will lack the legal or popular legitimacy to make such a decision. Furthermore, the controversial nature of a security agreement could discredit an interim government, and could tempt populist politicians to score political points by opposing such an agreement.

Nonetheless, there are issues that need to be addressed in the near term. CPA Directive Number 17 shields U.S. personnel from prosecution in Iraqi courts, but with the CPA dissolving on June 30, the post-transition status of this agreement -- and other CPA directives -- is unclear. Under these circumstances, the IGC or the Iraqi interim government may need to sign an Article 98 agreement with the United States that would prevent the handing over of U.S. personnel to the International Criminal Court. Failure to sign would preclude the United States from providing assistance via the Defense Department's International Military Education and Training, and Foreign Military Financing programs. The United States will likewise need to ensure that there is clarity about the legal status and rules of engagement of U.S. and foreign private security companies who currently have 2,000 armed employees in Iraq. Finally, a new UNSCR should replicate or expand on the language used in UNSCR 1511 to give coalition forces full authorization under chapter seven of the UN charter to use force in support of the broad mission of restoring stability to Iraq.

Michael Eisenstadt is a senior fellow and Michael Knights the Mendelow defense fellow at The Washington Institute.

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