

U.S. Would Control Profits from Iraqi Oil Exports Under Agreement

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There's been no shortage of controversy surrounding what has been termed the Status of Forces Agreement (SOFA) between the governments of the United States and Iraq. After battling away for most of the year at what the terms of the agreement should be, the text was at last finalized this month.

The terms of the agreement effectively allow the U.S. to continue to control billions of dollars of proceeds from the sale of exported Iraqi oil held in the Federal Reserve Bank of New York. It also contains numerous loopholes that could allow the continuing long-term presence of U.S. military forces and would effectively maintain U.S. jurisdiction over crimes committed by American soldiers.

Iraq's cabinet approved the agreement a week ago with 27 members voting in favor, out of 28 ministers who were present, with nine ministers absent. It is now being debated in the Parliament.

Abdul Qadir al-Obaidi, Iraq's minister of defense, issued a dire warning that without the agreement and continued presence of U.S. forces, "then what happened in the Gulf of Aden will happen in the Arabian Gulf too. Pirates will start in these ports in a way you can't even imagine."

Governments often use fear tactics to push through controversial legislation. Before the U.S. invasion, members of the Congress were told that if they didn't authorize the President to use military force against Iraq, Saddam Hussein might attack the east coast of the United States with biological weapons from unmanned aerial vehicles, for example. More recently, members of Congress were warned that if they did not pass the highly unpopular bill taking taxpayers' dollars to bail out banking and investment corporations, there would be martial law in America.

While painting an imaginary threat to frighten the public into supporting the agreement, Obaidi criticized opponents as being conspiracy theorists. The New York Times [reported](#) today that Obaidi "batted down conspiracy theories about the agreement", theories fueled by "anti-American Shiite cleric Moktada al-Sadr" about "the existence of secret deals for a longer American presence."

And yet Obaidi at the same time seemed to lend credence to the fears of opponents. As the Times noted, without comment on the contradiction, he "held open the possibility that some Americans might be needed after" the deadline of the withdrawal of U.S. troops by the

end of 2011.

The agreement has been protested by large popular demonstrations in the streets of Baghdad. Thousands protested during a rally on Friday against the deal in Firdaus Square, where in 2003 U.S. soldiers toppled a statue of Saddam Hussein in a staged publicity event that has since been [hailed](#) by the mainstream media as “an iconic moment”.

At the rally, demonstrators burned an effigy of President George W. Bush. A man who helped erect the effigy was quoted by the London Times as [saying](#), “Just like Saddam’s statue was brought down, Mr Bush has fallen as well.”

The demonstrations were reportedly organized by Moktada al-Sadr, a highly influential figure whose father was murdered in 1999, most likely by the regime of Saddam Hussein. Following the U.S. invasion of Iraq, he organized a resistance to the occupation consisting of both political and military elements. He commands the al-Mahdi Army, which has threatened to resume armed resistance if the agreement is passed by the Iraqi government.

While the government of Prime Minister Nuri al-Maliki initially claimed it could make an agreement unilaterally with the Bush administration, it has since conceded that the measure must obtain Parliamentary approval.

Under the U.S. Constitution, the agreement would also need to be agreed to by the Senate to have the force of law, but the Bush administration has claimed that no Senate approval is necessary, essentially declaring its intention to violate Article II, Section 2 of the Constitution. This is not the first time the Executive Branch under Bush has declared for itself the power to govern by fiat, and it is likely to continue to be met with little resistance by the complacent U.S. Congress.

The SOFA agreement, which now has the official lengthy title of “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”, while addressing a number of the Iraqi concerns, contains a number of loopholes that would allow, among other things, a U.S. military presence in Iraq beyond the given deadline for withdrawal.

It states in the preamble that both parties recognize the importance of “contributing to world peace and stability, combating terrorism in Iraq”, and “thereby deterring aggression and threats against the sovereignty, security, and territorial integrity of Iraq”. The agreement affirms that cooperation between the two countries “is based on full respect for the sovereignty of each of them in accordance with the purpose and principles of the United Nations Charter”.

This must be considered rather Orwellian language, given the fact that the invasion of Iraq was an act of aggression, defined at Nuremberg as “the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole”; and that the invasion was itself a breach of the peace in violation of the U.N. Charter and other applicable international treaties comprising the body of international law, resulting in instability and bringing terrorism to Iraq. It’s also quite meaningless language given some of the actual contents of the agreement itself.

Article 3 of the agreement contains a clause apparently intended to prevent the U.S. from

including Iraqis in its extraordinary renditions programs by barring the U.S. from transferring any non-U.S. persons into or out of the country “unless in accordance with applicable Iraqi laws and regulations, including implementing arrangements as may be agreed to by the Government of Iraq.”

There is thus a loophole that might allow the U.S. to do precisely that, and any such “arrangements” could be interpreted, if the record of the Bush administration is any gauge, to mean approval from the Iraqi President without advice or consent of the Parliament. The U.S. could also, of course, simply violate the agreement and spirit disappeared persons out of the country as it has under the CIA renditions program.

Article 4 states that the U.S. military presence is requested “for the purposes of supporting Iraq in its efforts to maintain security and stability in Iraq”, which is belied by the fact that most Iraqis want the American troop presence to end and consider the continuing occupation to be the most significant causal factor of the violence that, while having ebbed over the past two years, continues to plague the country.

A survey taken last year for the U.S. military, for example, revealed that “Iraqis of all sectarian and ethnic groups believe that the U.S. military invasion is the primary root of the violent differences among them, and see the departure of ‘occupying forces’ as the key to national reconciliation”, as [reported](#) by the Washington Post.

The agreement states that any such operations “shall be fully coordinated with Iraqi authorities” and “overseen by a Joint Military Operations Coordination Committee (JMOCC)”, and that it is “the duty of the United States Forces to respect the laws, customs, and traditions of Iraq and applicable international law.” It then adds that both nations “retain the right to legitimate self defense within Iraq, as defined in applicable international law.”

This itself represents a major loophole because, of course, the right to “self defense” under international law is very broadly interpreted by the U.S. For example, the invasion of Iraq itself was painted by the Bush administration as an act of self defense against a perceived threat and thus, according to the administration, legitimate. As another example, the U.S. continues to bomb Pakistan despite growing protests from both the public and the government. In one incident that is particularly revealing as to the U.S. interpretation of “self-defense” under international law, a U.S. airstrike in June targeted and killed 11 members of the Pakistani Frontier Corp within Pakistan. Despite having killed allied forces within their own borders, the Pentagon described the attack as a “legitimate” act of self-defense.

The agreement sets the date of June 30, 2009 as the deadline for “the withdrawal of combat forces from the cities, villages, and localities.” U.S. forces would then be located on bases within Iraq and would ostensibly only be able to leave those bases on combat operations executed with the full cooperation of the Iraqi government. Use of such bases would be granted to the U.S. for the purpose of the ongoing foreign military presence within Iraq.

The agreement states that its implementation must be “consistent with protecting the natural environment and human health and safety” and that “Each Party shall provide the other with maps and other available information on the location of mine fields and other obstacles that can hamper or jeopardize movement within the territory and waters of Iraq.”

But it’s highly unlikely that the U.S. will engage in efforts to clean up areas contaminated

with depleted uranium (DU), a still radioactive and chemically toxic isotope that is leftover from the process of enriching uranium. The dense metal is used as a weapon for penetrating armor by the U.S. military, but aerosolizes upon impact, and thus presents the risk that DU particles could be spread by the wind or contaminate drinking water. While the Pentagon has denied publicly that DU poses a health risk, it has privately acknowledged in internal documents and studies that inhalation of DU represents a serious health risk and may lead to cancer.

The Pentagon acknowledged after the Gulf War that at least 320 tons of DU remained on the ground from that conflict. Cancer rates in southern Iraq rose significantly after that war, with many Iraqi doctors [attributing](#) the increase to DU, claims that have been dismissed by the Pentagon as “propaganda”. Dr. Doug Rokke, a former US army colonel sent to the Gulf by the Army as a health physicist in 1991 to advise on cleanup procedures involving depleted uranium, [has said](#) that 30 members — nearly a third of his entire team — are now seriously ill, himself included, and that several have since died from cancer.

One [estimate](#) puts the amount of DU used in the first couple months of the Iraq war following the March 19, 2003 invasion at 1,100 to 2,200 tons.

It's equally unlikely that the U.S. will make any effort to clean up “dud” cluster munitions that still litter Iraq from both wars. [Estimates](#) from the Gulf War put the number of unexploded submunitions, which effectively become landmines, at more than one million. These weapons continued to kill a decade after the war. According to a Human Rights Watch estimate, in 2001, cluster submunitions caused an average of 30 casualties per month. In its World Report 2004, the group reported that the U.S. and U.K. “dropped nearly 13,000 cluster munitions, containing an estimated 1.8 to 2 million submunitions” in just the first three weeks of combat. Even assuming only a conservative 5% “dud” rate for the weapons (many of which were not bombs but ground-launched munitions with a dud rate of up to 16%), that would translate into 100,000 unexploded munitions.

Another controversial aspect of the SOFA agreement has been the question of jurisdiction for crimes committed by U.S. forces in Iraq. While the U.S. has backed down from its insistence that private Pentagon contractors, such as mercenaries from the infamous Blackwater group, be under U.S. jurisdiction, the final agreement still maintains that U.S. soldiers themselves will primarily be.

The agreement states that “Iraq shall have the primary right to exercise jurisdiction over members of the United States Forces and of the civilian component”, but only for “premeditated felonies” and only “when such crimes are committed outside agreed facilities and areas and outside duty status.” Thus, for Iraq to have jurisdiction, any crimes committed by American soldiers would have to be shown to be “premeditated” and committed while off duty.

Were a soldier to kill an Iraqi civilian, for example, while not on duty, it would have to be shown that he had contemplated the killing in advance and acted with intent to kill. If the soldier therefore claimed that he had been threatened by other Iraqis and discharged his weapon only to deter an assault, and that any collateral damage that resulted was accidental, then the case would fall not under Iraqi, but U.S. jurisdiction.

Moreover, the pact adds that any member of the U.S. armed forces who is found to have committed a premeditated crime while off duty would “be entitled to due process standards

and protections consistent with those available under United States and Iraqi law.” Any such incident would thus still fall under U.S. legal jurisdiction, with only what might perhaps be described as special consideration for Iraqi law — but not full Iraqi legal jurisdiction, as has been misreported by some of the mainstream media.

On top of that, the text adds that “United States Forces authorities shall certify whether an alleged offense arose during duty status”, which essentially gives the U.S. the power to define any service member’s “duty status” at the time of any given incident — yet another loophole that might prevent Iraq from having jurisdiction over crimes committed against its own people by foreign occupying military forces.

The agreement also stipulates that “each Party shall waive the right to claim compensation against the other Party for any damage, loss, or destruction of property, or compensation for injuries or deaths that could happen to members of the force or civilian component of either Party arising out of the performance of their official duties in Iraq.”

In other words, if the U.S. destroys Iraqi property or injures or kills Iraqis, the Iraqi government may not seek any compensation or reparations. Of course, this clause is mostly one-sided since there is no risk of Iraqis destroying the homes of U.S. citizens. Iraq isn’t bombing U.S. cities, towns, and villages, and Iraqis aren’t killing U.S. civilians within their own borders. So this clause may in effect be read as an Iraqi waiver of any right of the government to seek reparations from the U.S. for damages, injuries, or deaths resulting from the continuing foreign military occupation.

There is a recourse for “third party claims” — meaning from Iraqi citizens as opposed to the government — under which the U.S. would “pay just and reasonable compensation” for “meritorious” claims. But the U.S. apparently gets to decide what claims are “meritorious” or not, and all such claims “shall be settled expeditiously in accordance with the laws and regulations of the United States.” In other words, claims of damages, injuries or deaths from Iraqi citizens seeking compensation for actions of the U.S. military would not fall under Iraqi jurisdiction.

The SOFA agreement stipulates that detentions must be carried out only with Iraqi cooperation and that detained individuals must be turned over to Iraqi authorities within 24 hours of their arrest, which represents a shift from the U.S.’s earlier position that it be able to detain Iraqi citizens when and however it chooses.

The most commonly reported statement in the agreement, reflected in many headlines, is that which reads, “All the United States Forces shall withdraw from all Iraqi territory no later than December 31, 2011.”

In addition, “All United States combat forces shall withdraw from Iraqi cities, villages, and localities no later than the time at which Iraqi Security Forces assume full responsibility for security in an Iraqi province, provided that such withdrawal is completed no later than June 30, 2009.”

The agreement also states, “The United States recognizes the sovereign right of the Government of Iraq to request the departure of the United States Forces from Iraq at any time.” (Notice it doesn’t recognize the sovereign right of the People of Iraq, who overwhelmingly want the U.S. forces gone and whose government is seen by many as a puppet regime for colluding with the U.S. in arranging for its occupying forces to remain. Of

course, Iraqis who recognize this have fallen prey to “conspiracy theories” — at least according to the Iraq’s minister of defense.)

In return, the U.S. does offer a few incentives for the Iraqi government. It pledges, for example, to “Support Iraq to obtain forgiveness of international debt resulting from the policies of the former regime”, which the U.S. supported throughout the 1980s.

The agreement also states: “Recognizing and understanding Iraq’s concern with claims based on actions perpetrated by the former regime, the President of the United States has exercised his authority to protect from United States judicial process the Development Fund for Iraq and certain other property in which Iraq has an interest. The United States shall remain fully and actively engaged with the Government of Iraq with respect to continuation of such protections and with respect to such claims.

“Consistent with a letter from the President of the United States to be sent to the Prime Minister of Iraq, the United States remains committed to assist Iraq in connection with its request that the UN Security Council extend the protections and other arrangements established in Resolution 1483 (2003) and Resolution 1546 (2003) [sic] for petroleum, petroleum products, and natural gas originating in Iraq, proceeds and obligations from sale thereof, and the Development Fund for Iraq.”

Resolution 1483 noted “the establishment of the Development Fund for Iraq to be held by the Central Bank of Iraq” and that funds “shall be disbursed at the direction of the [Coalition Provisional] Authority”.

The Coalition Provisional Authority (CPA), then headed up under Paul Bremer, proceeded to establish the [Development Fund for Iraq](#) (DFI) in an account at the Federal Reserve Bank of New York. To get around the terms of 1483, the DFI was [held on the books](#) of the Central Bank of Iraq and a portion of the fund located in Baghdad. But the U.S. nevertheless remained in control of the money and held most of it in New York.

The fund consists of assets seized from Iraq under the regime of Saddam Hussein as well as proceeds from the export of Iraqi oil.

While 1483 stipulates that these funds should be used “to assist the people of Iraq in the reconstruction and development of their economy and to facilitate assistance by the broader donor community”, the system has been plagued with charges of corruption and lack of accountability, with billions of dollars reportedly unaccounted for. Billions more have been paid out to corporations contracted by the Pentagon for ostensible reconstruction. One such corporation has been Halliburton. Vice President Dick Cheney was CEO of Halliburton from 1995 until 2000.

A further resolution on June 8, 2004, Resolution 1446, stated that “upon dissolution of the Coalition Provisional Authority, the funds in the Development Fund for Iraq shall be disbursed solely at the direction of the Government of Iraq”, but that proceeds from export sales of oil and natural gas would continue to be deposited in the fund.

As a January 2004 [report](#) from the Federal Reserve Bank of New York noted, in March 2003, “President Bush issued an executive order directing the transfer of funds controlled by the Iraqi government and its financial and oil institutions to the U.S. Treasury.” The Federal Reserve Bank then created a “Special Purpose Account” for the funds on behalf of the

Treasury.

According to a Congressional Research Service [report](#) from October, about \$10 billion is currently still being held in the Federal Reserve Bank of New York, accounting for a third of Iraq's total reserves of foreign currency and gold.

If the agreement is approved by the Iraqi Parliament, it will thus effectively acquiesce to continued control over these proceeds from the export of Iraqi oil by the U.S., with merely a recognition of Iraqi "concern" over this money and a veil of Iraqi control over only the disbursement of the money for reconstruction and development. This aspect of the proposed pact has received little — if any — attention in U.S. mainstream media reports that have focused instead on the date set for withdrawal.

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