

CRS Report for Congress

Status of Forces Agreement (SOFA): What Is It, and How Might One Be Utilized In Iraq?

June 16, 2008

R. Chuck Mason
Legislative Attorney
American Law Division



Prepared for Members and
Committees of Congress

Report Documentation Page

*Form Approved
OMB No. 0704-0188*

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

| | | | | | |
|--|------------------------------------|---|-----------------------------|---------------------|---------------------------------|
| 1. REPORT DATE 16 JUN 2008 | 2. REPORT TYPE | 3. DATES COVERED 00-00-2008 to 00-00-2008 | | | |
| 4. TITLE AND SUBTITLE Status of Forces Agreement (SOFA): What Is It, and How Might One Be Utilized In Iraq? | | 5a. CONTRACT NUMBER | | | |
| | | 5b. GRANT NUMBER | | | |
| | | 5c. PROGRAM ELEMENT NUMBER | | | |
| 6. AUTHOR(S) | | 5d. PROJECT NUMBER | | | |
| | | 5e. TASK NUMBER | | | |
| | | 5f. WORK UNIT NUMBER | | | |
| 7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service, The Library of Congress, 101 Independence Ave, SE, Washington, DC, 20540-7500 | | 8. PERFORMING ORGANIZATION REPORT NUMBER | | | |
| 9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) | | 10. SPONSOR/MONITOR'S ACRONYM(S) | | | |
| | | 11. SPONSOR/MONITOR'S REPORT NUMBER(S) | | | |
| 12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited | | | | | |
| 13. SUPPLEMENTARY NOTES | | | | | |
| 14. ABSTRACT | | | | | |
| 15. SUBJECT TERMS | | | | | |
| 16. SECURITY CLASSIFICATION OF: | | | 17. LIMITATION OF ABSTRACT | 18. NUMBER OF PAGES | 19a. NAME OF RESPONSIBLE PERSON |
| a. REPORT unclassified | b. ABSTRACT unclassified | c. THIS PAGE unclassified | Same as Report (SAR) | 35 | |

Status of Forces Agreement (SOFA): What Is It, and How Might One Be Utilized In Iraq?

Summary

The United States has been party to multilateral and bilateral agreements addressing the status of U.S. armed forces while present in a foreign country. These agreements, commonly referred to as Status of Forces Agreements (SOFAs), generally establish the framework under which U.S. military personnel operate in a foreign country, addressing how the domestic laws of the foreign jurisdiction shall be applied toward U.S. personnel while in that country. In light of the “Declaration of Principles,” signed by U.S. President George W. Bush and Iraqi Prime Minister Nouri Kamel Al-Maliki on November 26, 2007, and the possibility that the United States will enter into a SOFA with the Government of Iraq, there is considerable interest in Congress in SOFAs, what they may cover, and how they have been concluded in the past.

Formal requirements concerning form, content, length, or title of a SOFA do not exist. A SOFA may be written for a specific purpose or activity, or it may anticipate a longer-term relationship and provide for maximum flexibility and applicability. It is generally a stand-alone document concluded as an executive agreement. A SOFA may include many provisions, but the most common issue addressed is which country may exercise criminal jurisdiction over U.S. personnel. Other provisions that may be found in a SOFA include, but are not limited to, the wearing of uniforms, taxes and fees, carrying of weapons, use of radio frequencies, licenses, and customs regulations.

SOFAs are often included, along with other types of military agreements, as part of a comprehensive security arrangement with a particular country. A SOFA itself does not constitute a security arrangement; rather, it establishes the rights and privileges of U.S. personnel present in a country in support of the larger security arrangement. SOFAs may be entered based on authority found in previous treaties and congressional actions or as sole executive agreements.

There has been considerable interest in possible future security agreements between the United States and Iraq. The Administration has indicated that it intends to enter into two distinctive agreements. The first is a non-binding security agreement, and the second is a U.S.-Iraq SOFA. The SOFA may be unique from other SOFAs concluded by the United States in that it may contain authorization by the host government — the government of Iraq — for U.S. forces to engage in military operations within Iraq.

The United States is currently party to more than 100 agreements that may be considered SOFAs. A list of current agreements is included at the end of this report categorized in tables according to the underlying source of authority, if any, for each of the SOFAs.

Contents

| | |
|--|----|
| Introduction | 1 |
| Multilateral vs. Bilateral SOFAs | 2 |
| Provisions of Status of Forces Agreements | 4 |
| Civil/Criminal Jurisdiction | 5 |
| Status Determinations | 7 |
| Authority to Fight | 7 |
| Other Provisions Such as Uniforms, Taxes, and Customs | 8 |
| Security Arrangements and SOFAs | 8 |
| Bilateral SOFAs: Historical Practice | 8 |
| Afghanistan | 9 |
| Germany | 11 |
| Japan | 11 |
| South Korea | 13 |
| Philippines | 14 |
| Prospective SOFA with Iraq | 15 |
| Survey of Current Status of Forces Agreements | 17 |
| North Atlantic Treaty Organization: Status of Forces Agreement | 17 |
| North Atlantic Treaty Organization: Partnership for Peace - Status of Forces Agreement | 18 |
| Treaty as Underlying Source of Authority for Status of Forces Agreement | 18 |
| Congressional Action as Underlying Source of Authority for Status of Forces Agreement | 19 |
| Base Lease Agreement Containing Status of Force Agreement Terms | 19 |
| Status of Forces Agreement in Support of Specified Activity/Exercises | 20 |
| Status of Forces Agreement Not in Support of Specified Activity/Exercise and Not Based on Underlying Treaty/Congressional Action | 20 |

List of Tables

| | |
|--|----|
| Table 1. North Atlantic Treaty Organization: Status of Forces Agreement | 21 |
| Table 2. North Atlantic Treaty Organization: Partnership for Peace - Status of Forces Agreement | 23 |
| Table 3. Treaty as Underlying Source of Authority for Status of Forces Agreement | 25 |
| Table 4. Congressional Action as Underlying Source of Authority for Status of Forces Agreement | 26 |
| Table 5. Base Lease Agreement Containing Status of Force Agreement Terms | 26 |

| | |
|---|----|
| Table 6. Status of Forces Agreement in Support of Specified Activity/Exercise | 27 |
| Table 7. Status of Forces Agreement Not in Support of Specified Activity/Exercise and Not Based on Underlying Treaty/Congressional Action | 28 |

Status of Forces Agreement (SOFA): What Is It, and How Might One Be Utilized In Iraq?

Introduction

The United States has been party to multilateral and bilateral agreements addressing the status of U.S. armed forces while present in a foreign country. These agreements, commonly referred to as Status of Forces Agreements (SOFAs), generally establish the framework under which U.S. military personnel operate in a foreign country. In light of the “Declaration of Principles,”¹ signed by U.S. President George W. Bush and Iraqi Prime Minister Nouri Kamel Al-Maliki on November 26, 2007, and the possibility that the United States will enter into a SOFA with the government of Iraq,² there has been considerable interest in Congress in SOFAs, what they may cover, and how they have been concluded in the past.

The United States is currently party to more than 100 agreements that may be considered SOFAs.³ A SOFA as a stand-alone document may not exist with a particular country, but that does not necessarily mean that the status of U.S. personnel in that country has not been addressed. Terms commonly found in SOFAs may be contained in other agreements with a partner country so that a separate SOFA is not always utilized.

A SOFA is an agreement that establishes the framework under which armed forces operate within a foreign country.⁴ The agreement provides for rights and

¹ Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America. The text of this agreement is available at [<http://www.whitehouse.gov/news/releases/2007/11/20071126-11.html>].

² *Hearing of the Subcommittee on the Middle East and South Asia, and the Subcommittee on International Organizations, Human Rights, and Oversight of the House Foreign Affairs Committee; Declaration and Principles: Future U.S. Commitments to Iraq*, March 4, 2008 (statement by Ambassador David M. Satterfield, Senior Advisor to the Secretary and Coordinator for Iraq).

³ TREATIES IN FORCE, A LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES IN FORCE. Prepared by the Department of State for the purpose of providing information on treaties and other international agreements to which the United States is a party and which are carried on the records of the Department of State as being in force as of November 1, 2007. Available at [<http://www.state.gov/s/l/treaty/treaties/2007/index.htm>].

⁴ In any discussion of SOFAs, it must be noted that there are at least 10 agreements that
(continued...)

privileges of covered individuals while in the foreign jurisdiction, addressing how the domestic laws of the foreign jurisdiction shall be applied to U.S. personnel⁵ while in that country. It is important to note that a SOFA is a contract between parties and may be cancelled at the will of either party. SOFAs are peacetime documents and therefore do not address the rules of war, the Laws of Armed Conflict, or the Laws of the Sea. In the event of armed conflict between parties to a SOFA, the terms of the agreement would no longer be applicable.

SOFAs may include many provisions, but the most common issue addressed is which country may exercise criminal jurisdiction over U.S. personnel. The United States has concluded agreements where it maintains exclusive jurisdiction over its personnel, but more often the agreement calls for shared jurisdiction with the receiving country. In general, a SOFA does not authorize specific exercises, activities, or missions. Rather, it provides the framework for legal protections and rights while U.S. personnel are present in a country for agreed upon purposes. A SOFA is not a mutual defense agreement or a security agreement. The existence of a SOFA does not affect or diminish the parties inherent right of self-defense under the law of war.

Multilateral vs. Bilateral SOFAs

With the exception of the multilateral SOFA among the United States and North Atlantic Treaty Organization (NATO) countries, a SOFA is specific to an individual country and is in the form of an executive agreement.⁶ The Department of State and the Department of Defense, working together, identify the need for a SOFA with a particular country and negotiate the terms of the agreement. The NATO SOFA⁷ is the only SOFA that was concluded as part of a treaty.⁸ The Senate approved ratification of the NATO SOFA on March 19, 1970, subject to reservations. The resolution included a statement

⁴ (...continued)

currently are classified documents. The agreements are classified for national security reasons. They are not discussed in this report.

⁵ U.S. personnel may include U.S. armed forces personnel, Department of Defense civilian employees, and/or contractors working for the Department of Defense. The scope of applicability is specifically defined in each agreement.

⁶ For a discussion on the form and content of international agreements under U.S. law, distinguishing between treaties and executive agreements, see CRS Report RL34362, *Congressional Oversight and Related Issues Concerning the Prospective Security Agreement Between the United States and Iraq*, by Michael John Garcia, R. Chuck Mason, and Jennifer K. Elsea.

⁷ 4 U.S.T. 1792; T.I.A.S. 2846; 199 U.N.T.S. 67. Signed at London, June 19, 1951. Entered into force August 23, 1953.

⁸ See, e.g., Agreement under Article VI of the Treaty of Mutual Cooperation and Security Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, 11 U.S.T. 1652, entered into force June 23, 1960 (SOFA in the form of an executive agreement pursuant to a treaty).

that nothing in the Agreement diminishes, abridges, or alters the right of the United States to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security, and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States.⁹

The Senate reservations to the NATO SOFA include four conditions: (1) the criminal jurisdiction provisions contained in Article VII of the agreement do not constitute a precedent for future agreements; (2) when a servicemember is to be tried by authorities in a receiving state, the commanding officer of the U.S. armed forces in that state shall review the laws of the receiving state with reference to the procedural safeguards of the U.S. Constitution; (3) if the commanding officer believes there is danger that the servicemember will not be protected because of the absence or denial of constitutional rights the accused would receive in the United States, the commanding officer shall request that the receiving state waive its jurisdiction; and, (4) a representative of the United States be appointed to attend the trial of any servicemember being tried by the receiving state and act to protect the constitutional rights of the servicemember.¹⁰

The NATO SOFA is a multilateral agreement that has applicability among all the member countries of NATO. As of June 2007, 26 countries, including the United States, have either ratified the agreement or acceded to it by their accession into NATO.¹¹ Additionally, another 24 countries are subject to the NATO SOFA through their participation in the NATO Partnership for Peace (PfP) program.¹² The program consists of bilateral cooperation between individual countries and NATO in order to increase stability, diminish threats to peace and build strengthened security relationships.¹³ The individual countries that participate in the PfP agree to adhere to the terms of the NATO SOFA.¹⁴ Through the NATO SOFA and the NATO PfP, the United States has a common SOFA with approximately 58 countries. Secretary Rice and Secretary Gates stated that the United States has agreements in more than 115 countries around the world.¹⁵ The NATO SOFA and NATO PfP SOFA account for roughly half of the SOFAs to which the United States is party.

⁹ S.Res. of July 15, 1953, Advising and Consenting to Ratification of the NATO SOFA. *See also* 32 C.F.R. § 151.6.

¹⁰ S.Res. of July 15, 1953, Advising and Consenting to Ratification of the NATO SOFA. *See also* 32 C.F.R. § 151.6.

¹¹ *See* [<http://www.state.gov/documents/organization/85630.pdf>].

¹² *See* [<http://www.nato.int/issues/pfp/index.html>].

¹³ *Id.*

¹⁴ *See* [<http://www.nato.int/docu/basicxt/b950619a.htm>].

¹⁵ *What We Need In Iraq*, By Condoleeza Rice and Robert Gates, February 13, 2008, available at [<http://www.washingtonpost.com/wp-dyn/content/article/2008/02/12/AR2008021202001.html>].

Department of Defense Directive 5525.1 provides policy and information specific to SOFAs.¹⁶ The Department of Defense policy is “to protect, to the maximum extent possible, the rights of U.S. personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons.”¹⁷ The directive addresses the Senate reservations to the NATO SOFA by stating even though the reservations accompanying its ratification only apply to NATO member countries where it is applicable, comparable reservations shall be applied to future SOFAs. Specifically, the policy states that “the same procedures for safeguarding the interests of U.S. personnel subject to foreign jurisdiction” be applied when practicable in overseas areas where U.S. forces are stationed.¹⁸

Provisions of Status of Forces Agreements

There are no formal requirements governing the content, detail, and length of a SOFA. A SOFA may address, but is not limited to, criminal and civil jurisdiction, the wearing of uniforms, taxes and fees, carrying of weapons, use of radio frequencies, license requirements, and customs regulations. The United States has concluded SOFAs as short as one page and in excess of 200 pages. For example, the United States and Bangladesh exchanged notes¹⁹ providing for the status of U.S. armed forces in advance of a joint exercise in 1998.²⁰ The agreement is specific to one activity/exercise, consists of 5 clauses, and is contained in one page. The United States and Botswana exchanged notes providing for the status of forces “who may be temporarily present in Botswana in conjunction with exercises, training, humanitarian assistance, or other activities which may be agreed upon by our two governments.”²¹ The agreement is similar in its scope to the agreement with Bangladesh and is contained in one page. In contrast, in documents exceeding 200 pages, the United States and Germany entered into a supplemental agreement to the NATO SOFA,²² as well as additional agreements and exchange of notes related to specific issues.²³

¹⁶ Available at [<http://www.dtic.mil/whs/directives/corres/pdf/552501p.pdf>].

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Diplomatic notes are used for correspondence between the U.S. government and a foreign government. The Secretary of State corresponds with the diplomatic representatives of foreign governments in Washington, DC, and foreign offices or ministries abroad. *See* [<http://foia.state.gov/masterdocs/05fah01/CH0610.pdf>].

²⁰ T.I.A.S. Exchange of notes at Dhaka, August 10 and 24, 1998. Entered into force August 24, 1998. (Providing U.S. armed forces status equivalent to Administrative and Technical Staff of the U.S. Embassy).

²¹ T.I.A.S. Exchange of notes at Gaborone, January 22 and February 13, 2001. Entered into force February 13, 2001. (Providing U.S. forces status equivalent to Administrative and Technical Staff of the U.S. Embassy).

²² 14 U.S.T. 531; T.I.A.S. 5351. Signed at Bonn, August 3, 1959. Entered into force July 1, 1963.

²³ 14 U.S.T. 689; T.I.A.S. 5352; 490 U.N.T.S. 30. Signed at Bonn, August 3, 1959. Entered
(continued...)

Civil/Criminal Jurisdiction. The issue most commonly addressed in a SOFA is the legal protection from prosecution that will be afforded U.S. personnel while present in a foreign country. The agreement establishes which party to the agreement is able to assert criminal and/or civil jurisdiction. In other words, the agreement establishes how the domestic civil and criminal laws are applied to U.S. personnel while serving in a foreign country. The United States has entered agreements where it maintains exclusive jurisdiction, but the more common agreement results in shared jurisdiction between the United States and the signatory country. Exclusive jurisdiction is when the United States retains the right to exercise all criminal and disciplinary jurisdiction for violations of the laws of the foreign nation while the individual is present in that country. Shared jurisdiction occurs when each party to the agreement retains exclusive jurisdiction over certain offenses but also allows the United States to request that the host country waive jurisdiction in favor of the United States exercising criminal and disciplinary jurisdiction. The right to exert jurisdiction over U.S. personnel is not solely limited to when an individual is located on a military installation. It may cover individuals off the installation as well. The right to exert jurisdiction can result in complete immunity from the laws of the receiving country while the individual is present in that country.

Example of Exclusive Jurisdiction. The United States entered into an agreement regarding military exchanges and visits with the Government of Mongolia.²⁴ As part of the agreement, Article X addresses criminal jurisdiction of U.S. personnel located in Mongolia. The language of the agreement provides, “United States military authorities shall have the right to exercise within Mongolia all criminal and disciplinary jurisdiction over United States [p]ersonnel conferred on them by the military laws of the United States. Any criminal offenses against the laws of Mongolia committed by a member of the U.S. forces shall be referred to appropriate United States authorities for investigation and disposition.”²⁵ The agreement allows the government of Mongolia to request the United States to waive its jurisdiction in cases of alleged criminal behavior unrelated to official duty.²⁶ There is no requirement for the United States to waive jurisdiction, only to give “sympathetic consideration” of any such request.²⁷

Example of Shared Jurisdiction. The NATO SOFA, applicable to all member countries, is an example of shared jurisdiction. Article VII provides the jurisdictional framework.²⁸ The SOFA allows for a country not entitled to primary

²³ (...continued)

into force July 1, 1963.

²⁴ T.I.A.S., Agreement on Military Exchanges and Visits Between The Government of the United States of America and The Government of Mongolia, agreement dated June 26, 1996.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ 4 U.S.T. 1792; T.I.A.S. 2846; 199 U.N.T.S. 67. Article VII:

jurisdiction to request the country with primary jurisdiction waive its right to jurisdiction. There is no requirement for the country to waive jurisdiction, only that

²⁸ (...continued)

1. Subject to the provisions of this Article,

(a) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;

(b) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offenses committed within the territory of the receiving State and punishable by the law of that State.

2. — (a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offenses, including offenses relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

(b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian components and their dependents with respect to offenses, including offenses relating to the security of that State, punishable by its law but not by the law of the sending State.

(c) For the purposes of this paragraph and of paragraph 3 of this Article a security offense against a State shall include

(i) treason against the State;

(ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defense of that State.

3. In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:

(a) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to

(i) offenses solely against the property or security of that State, or offenses solely against the person or property of another member of the force or civilian component of that State or of a dependent;

(ii) offenses arising out of any act or omission in the performance of official duty.

(b) In the case of any other offense the authorities of the receiving State shall have the primary right to exercise jurisdiction.

(c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State.”

it gives “sympathetic consideration” of the request.²⁹ Under the shared jurisdiction framework, each of the respective countries is provided exclusive jurisdiction in specific circumstances, generally when an offense is only punishable by one of the country’s laws.³⁰ In that case, the country whose law has been offended has exclusive jurisdiction over the offender. When the offense violates the laws of both countries, concurrent jurisdiction is present and additional qualifications are used to determine which country will be allowed to assert jurisdiction over the offender.³¹

Status Determinations. While the NATO SOFA provides extensive language establishing jurisdiction, the United States has entered numerous SOFAs that appear to have a very basic rule for determining jurisdiction. Some agreements contain a single sentence stating that U.S. personnel are to be afforded a status equivalent to that accorded to the administrative and technical staff of the U.S. Embassy in that country. The Vienna Convention on Diplomatic Relations of April 18, 1961 establishes classes of personnel, each with varying levels of legal protections.³² Administrative and technical staff receive, among other legal protections, “immunity from the criminal jurisdiction of the receiving State.”³³ Therefore, a SOFA which treats U.S. personnel as administrative and technical staff confers immunity from criminal jurisdiction while in the receiving country.

Authority to Fight. SOFAs do not generally authorize specific military operations or missions by U.S. forces. While SOFAs do not generally provide authority to fight, the inherent right of self-defense is not affected or diminished. U.S. personnel always have a right to defend themselves, if threatened or attacked, and a SOFA does not take away that right.³⁴ Language is often found within the SOFA that defines the scope of applicability of the agreement. For example, the SOFA with Belize expressly applies to U.S. personnel “who may be temporarily in Belize in connection with military exercises and training, counter-drug related activities, United States security assistance programs, or other agreed purposes.”³⁵ The United States had previously entered into two different agreements with Belize related to military training and the provision of defense articles.³⁶ The SOFA itself

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² 23 U.S.T. 3227; T.I.A.S. 7502. Signed April 18, 1961. Entered into force December 13, 1972. For background see, CRS Report RL33147, *Immunities Accorded to Foreign Diplomats, Consular Officers, and Employees of International Organizations Under U.S. Law*, by Michael John Garcia.

³³ *Vienna Convention*, supra note 32, at art. 37(2), citing art. 31(1).

³⁴ See CJCSI 3121.01B, Standing Rules of Engagement for US Forces (U), June 13, 2005. (The SROE is a classified document, but portions are unclassified).

³⁵ T.I.A.S. Exchange of notes at Belize City September 4, 2001 and April 24, 2002. Entered into force April 24, 2002.

³⁶ 34 U.S.T. 23; T.I.A.S. 10334. Exchange of notes at Belize and Belmopan December 8, 1981 and January 15, 1982. Entered into force January 15, 1982. T.I.A.S. 11743; 2202

does not authorize specific operations, exercises, or activities, but provides provisions addressing the legal status and protections of U.S. personnel while in Belize. Under the terms of the agreement, U.S. personnel are provided legal protections as if they were administrative and technical staff of the U.S. Embassy.³⁷

Other Provisions Such as Uniforms, Taxes, and Customs. While understandings regarding the assertion of legal jurisdiction are generally a universal component of a SOFA, more detailed administrative and operational matters may be included as well. A SOFA may address, for example, the wearing of uniforms by armed forces while away from military installations, taxes and fees, carrying of weapons by U.S. personnel, use of radio frequencies, driving license requirements, and customs regulations. A SOFA provides the legal framework for day-to-day operations of U.S. personnel while a foreign country. Most SOFAs are bilateral agreements, therefore they may be tailored to the specific needs of the personnel operating in that country.

Security Arrangements and SOFAs

In support of U.S. foreign policy, the United States has concluded agreements with foreign nations related to security commitments and assurances.³⁸ These agreements may be concluded in various forms including as a collective defense agreement (obligating parties to the agreement to assist in the defense of any party to the agreement in the event of an attack upon it), an agreement containing a consultation requirement (a party to the agreement pledges to take some action in the event the other country's security is threatened), an agreement granting the legal right to military intervention (granting one party the right, but not the duty, to militarily intervene within the territory of another party to defend it against internal or external threats), or other non-binding arrangements (unilateral pledge or policy statement). SOFAs are often included, along with other types of military agreements (i.e., basing, access, and pre-positioning), as part of a comprehensive security arrangement. A SOFA may be based on the authority found in previous treaties, congressional action, or sole executive agreements comprising the security arrangement.

Bilateral SOFAs: Historical Practice

The following sections provide a historical perspective on the inclusion of a SOFA as part of comprehensive bilateral security arrangements by the United States with Afghanistan, Germany, Japan, South Korea, and the Philippines. The

³⁶ (...continued)

U.N.T.S. 141. Exchange of notes at Belize and Belmopan August 6 and 23, 1990. Entered into force August 23, 1990.

³⁷ T.I.A.S. Exchange of notes at Belize City September 4, 2001 and April 24, 2002. Entered into force April 24, 2002.

³⁸ For a discussion on security arrangements, see CRS Report RL34362, *Congressional Oversight and Related Issues Concerning the Prospective Security Agreement Between the United States and Iraq*, by Michael John Garcia, R. Chuck Mason, and Jennifer K. Elsea.

arrangements may include a stand-alone SOFA or other agreements including protections commonly associated with a SOFA.

Afghanistan. The United States and Afghanistan entered into an agreement,³⁹ in 2002, regarding economic grants under the Foreign Assistance Act of 1961,⁴⁰ as amended, as well as for the furnishing of defense articles, defense services and related training, pursuant to the United States International Military and Education Training Program (IMET),⁴¹ from the United States to the Afghanistan Interim Administration.

In 2003, the parties entered into an agreement regarding the status of U.S. military and civilian personnel of the U.S. Department of Defense present in Afghanistan to promote cooperative efforts in response to terrorism, humanitarian and civic assistance, military training and exercises, and other activities.⁴² Such personnel are to be accorded “a status equivalent to that accorded to the administrative and technical staff” of the U.S. Embassy under the Vienna Convention on Diplomatic Relations of 1961.⁴³ Accordingly, U.S. personnel are immune from criminal prosecution by Afghan authorities, and are immune from civil and administrative jurisdiction except with respect to acts performed outside the course of their duties.⁴⁴ In the agreement, the Islamic Transitional Government of Afghanistan⁴⁵ explicitly authorized the U.S. government to exercise criminal jurisdiction over U.S. personnel, and the government of Afghanistan is not permitted to surrender U.S. personnel to the custody of another state, international tribunal, or any other entity without consent of the U.S. government. The agreement does not appear to provide immunity for contract personnel.

The agreement with Afghanistan does not expressly authorize the United States to carry out military operations within Afghanistan, but it recognizes that such

³⁹ Exchange of notes at Kabul April 6 and 13, 2002. Entered into force April 13, 2002. Not printed in *Treaties and Other International Acts Series (T.I.A.S.)*.

⁴⁰ P.L. 87-195, 75 Stat. 424 (September 4, 1961) (An act to “promote the foreign policy, security, and general welfare of the United States by assisting peoples of the world in their efforts toward economic development and internal and external security, and for other purposes.” The act authorizes the President “to furnish military assistance on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States and promote world peace and which is otherwise eligible to receive such assistance ...”).

⁴¹ 22 U.S.C. § 2347 *et seq.*

⁴² T.I.A.S. Exchange of notes September 26 and December 12, 2002 and May 28, 2003. Entered into force May 28, 2003.

⁴³ *Id.*

⁴⁴ Vienna Convention on Diplomatic Relations of April 18, 1961, T.I.A.S. 7502; 23 U.S.T. 3227.

⁴⁵ The transitional government has since been replaced by the fully elected Government of the Islamic Republic of Afghanistan. For information about the political development of Afghanistan since 2001, see CRS Report RS21922, *Afghanistan: Government Formation and Performance*, by Kenneth Katzman.

operations are “ongoing.” Congress authorized the use of military force there (and elsewhere) by joint resolution in 2001, targeting “those nations, organizations, or persons [who] planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001....”⁴⁶ The U.N. Security Council implicitly recognized that the use of force was appropriate in response to the September 11, 2001 terrorist attacks,⁴⁷ and subsequently authorized the deployment of an International Security Assistance Force (ISAF) to Afghanistan.⁴⁸ Subsequent U.N. Security Council resolutions provide a continuing mandate for the ISAF (NATO peacekeeping force),⁴⁹ calling upon it to “work in close consultation with” Operation Enduring Freedom (OEF — the U.S.-led coalition conducting military operations in Afghanistan) in carrying out the mandate.⁵⁰ While there is no explicit U.N. mandate authorizing the OEF, Security Council resolutions appear to provide ample recognition of the legitimacy of its operations, most recently by calling upon the Afghan Government,

with the assistance of the international community, including the International Security Assistance Force and Operation Enduring Freedom coalition, in accordance with their respective designated responsibilities as they evolve, to continue to address the threat to the security and stability of Afghanistan posed by the Taliban, Al-Qaida, other extremist groups and criminal activities....⁵¹

On May 23, 2005, President Hamid Karzai and President Bush issued a “joint declaration” outlining a prospective future agreement between the two countries.⁵² It envisions a role for U.S. military troops in Afghanistan to “help organize, train, equip, and sustain Afghan security forces” until Afghanistan has developed its own capacity, and to “consult with respect to taking appropriate measures in the event that

⁴⁶ P.L. 107-40, 115 Stat. 224 (September 18, 2001). For a discussion on the legislative history of P.L. 107-40 and the scope of authorization for the use of military force, see CRS Report RS22357, *Authorization For Use of Military Force in Response to the 9/11 Attacks (P.L. 107-40): Legislative History*, by Richard F. Grimmett.

⁴⁷ U.N.S.C. Res. 1368 (September 12, 2001) (“Recognizing the inherent right of individual or collective self-defence in accordance with the [UN] Charter,” and expressing its “readiness to take all necessary steps to respond to the terrorist attacks”).

⁴⁸ U.N.S.C. Res. 1386 (December 20, 2001).

⁴⁹ The ISAF has its own status of forces agreement with the Afghan government in the form of an annex to a Military Technical Agreement entitled “Arrangements Regarding the Status of the International Security Assistance Force.” The agreement provides that all ISAF and supporting personnel are subject to the exclusive jurisdiction of their respective national elements for criminal or disciplinary matters, and that such personnel are immune from arrest or detention by Afghan authorities and may not be turned over to any international tribunal or any other entity or State without the express consent of the contributing nation.

⁵⁰ See U.N.S.C. Res. 1776 § 5 (September 19, 2007); U.N.S.C. Res. 1707 § 4 (2007).

⁵¹ U.N.S.C. Res. 1746 § 25 (2007) (U.S. forces currently participate in the International Security Assistance Force and the Operation Enduring Freedom coalition.).

⁵² United States-Afghanistan Declaration. The text of the declaration is available at [http://www.mfa.gov.af/Documents/ImportantDoc/Afghanistan-US%20Joint%20Strategic%20Partnership%20Declaration_En.pdf].

Afghanistan perceives that its territorial integrity, independence, or security is threatened or at risk.” The declaration does not mention the status of U.S. forces in Afghanistan, but a status of forces agreement can be expected to be part of the final arrangement.

Germany. In 1951, prior to Germany becoming a member of NATO, the United States and Germany entered into an agreement⁵³ related to the assurances required under the Mutual Security Act of 1951.⁵⁴ Germany subsequently joined NATO in 1955 and, in the same year, concluded an agreement related to mutual defense assistance,⁵⁵ obligating the United States to provide “such equipment, materials, services, or other assistance as may be agreed” to Germany.⁵⁶

Four years after Germany joined NATO, the countries entered into an agreement implementing the NATO SOFA of 1953.⁵⁷ The agreement provided additional supplemental agreements, beyond those contained in the NATO SOFA, specific to the relationship between the United States and Germany. The implementation and supplemental agreements to the NATO SOFA are in excess of 200 pages and cover the minutiae of day-to-day operations of U.S. forces and personnel in Germany.

Japan. Prior to the current security arrangements between the United States and Japan, the countries, in 1952, concluded a security treaty⁵⁸ and an accompanying administrative agreement.⁵⁹ The administrative agreement covered, among other matters, the jurisdiction of the United States over offenses committed in Japan by members of the U.S. forces, and provided that the United States could waive jurisdiction in favor of Japan. One provision established that the United States retained jurisdiction over offenses committed by a servicemember arising out of any act or omission done in the performance of official duty.

In 1957, a member of the U.S. Army was indicted in the death of a Japanese civilian while participating in a small unit exercise at Camp Weir range area in Japan.⁶⁰ The United States claimed that the act was committed in the performance

⁵³ 3 U.S.T. 4564; T.I.A.S. 2607; 181 U.N.T.S. 45. Exchange of letters at Bonn December 19 and 28, 1951.

⁵⁴ P.L. 82-165, 65 Stat. 373 (October 10, 1951) (An act to promote the foreign policy and provide for the defense and general welfare of the United States by furnishing military assistance in the form of equipment, materials, and services to NATO member countries).

⁵⁵ 6 U.S.T. 5999; T.I.A.S. 3443; 240 U.N.T.S. 47. Signed at Bonn June 30, 1955. Entered into force December 27, 1955.

⁵⁶ *Id.*

⁵⁷ 14 U.S.T. 689; T.I.A.S. 5352; 490 U.N.T.S. 30. Signed at Bonn August 3, 1959. Entered into force July 1, 1963.

⁵⁸ 3 U.S.T. 3329. Signed at San Francisco September 8, 1951. Ratification advised by the Senate March 20, 1952. Entered into force April 28, 1952.

⁵⁹ 3 U.S.T. 3341. Signed at Tokyo February 28, 1952; entered into force April 28, 1952.

⁶⁰ The servicemember had been indicted in the death of a Japanese civilian while
(continued...)

of official duty, but Japan insisted that it was outside the scope of official duty and therefore Japan had primary jurisdiction to try the member. After negotiations, the United States acquiesced and agreed to turn the member over to Japanese authorities. In an attempt to avoid trial in the Japanese Courts, the member sought a writ of habeas corpus in the United States District Court for the District of Columbia.⁶¹ The writ was denied, but the member was granted an injunction against delivery to Japanese authorities to stand trial. The United States appealed the injunction to the U.S. Supreme Court.

In *Wilson v. Girard*,⁶² the Supreme Court first addressed the jurisdictional provisions contained in the administrative agreement. The Court determined that by recommending ratification of the security treaty and subsequently the NATO SOFA, the Senate had approved the administrative agreement and protocol (embodying the NATO provisions) governing jurisdiction to try criminal offenses.⁶³ The Court held that “a sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its border, unless it expressly or impliedly consents to surrender its jurisdiction” and that Japan’s “cession to the United States of jurisdiction to try American military personnel for conduct constituting an offense against the laws of both countries was conditioned” by provisions contained in the protocol calling for “sympathetic consideration to a request from the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.”⁶⁴ The Court concluded that the issue was then whether the Constitution or legislation subsequent to treaty prohibited carrying out of the jurisdictional provisions. The Court found none and stated that “in the absence of such encroachments, the wisdom of the arrangement is exclusively for the determination of the Executive and Legislative Branches.”⁶⁵

The Treaty of Mutual Cooperation and Security Between the United States of America and Japan⁶⁶ was concluded in 1960 and subsequently amended on December 26, 1990.⁶⁷ Under Article VI of the Treaty, the United States is granted “the use by its land, air and naval forces of facilities and areas in Japan” in order to contribute “to

⁶⁰ (...continued)

participating in a small unit exercise at Camp Weir range area in Japan. The member had placed an expended 30-caliber cartridge case in a grenade launcher attached to his rifle and projected the cartridge out of the launcher by firing a blank. The cartridge hit the Japanese woman while she was gathering expended cartridge cases on the range and caused her death.

⁶¹ *Girard v. Wilson*, 152 F. Supp. 21 (D.D.C. 1957). For a brief explanation of the writ of habeas corpus, see CRS Report RS22432, *Federal Habeas Corpus: An Abridged Sketch*, by Charles Doyle.

⁶² 354 U.S. 524 (U.S. 1957).

⁶³ *Id.* at 528.

⁶⁴ *Id.* at 529.

⁶⁵ *Id.* at 530.

⁶⁶ 11 U.S.T. 1632; T.I.A.S. 4509; 373 U.N.T.S. 186. Signed at Washington January 19, 1960. Entered into force June 23, 1960.

⁶⁷ T.I.A.S. 12335.

the security of Japan and maintenance of international peace and security in the Far East[.]”⁶⁸ Article VI provides further that the use of facilities and the status of U.S. armed forces will be governed under a separate agreement,⁶⁹ much like the previous security treaty concluded in 1952.

A SOFA, as called for under Article VI of the Treaty, was concluded as a separate agreement pursuant to and concurrently with the Treaty in 1960.⁷⁰ The SOFA addresses the use of facilities by the U.S. armed forces, as well as the status of U.S. forces in Japan. The agreement has been modified at least four times since the original agreement.⁷¹

South Korea. In 1954 the United States and the Republic of Korea entered into a mutual defense treaty.⁷² As part of the treaty the countries agree to attempt to settle international disputes peacefully, consult whenever the political independence or security of either party is threatened by external armed attack, and that either party would act to meet the common danger in accordance with their respective constitutional processes.⁷³ Article IV of the treaty grants the United States “the right to dispose....land, air and sea forces in and about the territory” of South Korea.⁷⁴ Pursuant to the treaty, specifically Article IV, the countries entered into a SOFA with agreed minutes and an exchange of notes in 1966;⁷⁵ it was subsequently amended January 18, 2001.

In 1968, two years after the SOFA was signed between the countries, a member of the U.S. Army asserted in *Smallwood v. Clifford*⁷⁶ that U.S. authorities did not have legitimate authority, under the jurisdictional provisions contained in the agreement, to release him to the Republic of Korea for trial by a Korean court on charges of murder and arson.⁷⁷ The servicemember asserted that the agreement was

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ 11 U.S.T. 1652; T.I.A.S. 4510; 373 U.N.T.S. 248. Signed at Washington January 19, 1960. Entered into force June 23, 1960.

⁷¹ Agreements concerning new special measures relating to Article XXIV of the agreement of January 19, 1960 (related to costs of maintenance of U.S. forces in Japan and furnishment of rights of way related to facilities used by U.S. forces in Japan), have been signed in 1991, 1995, 2000, and 2006.

⁷² 5 U.S.T. 2368; T.I.A.S. 3097; 238 U.N.T.S. 199. Signed at Washington October 1, 1953. Entered into force November 17, 1954.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 17 U.S.T. 1677; T.I.A.S. 6127; 674 U.N.T.S. 163. Signed at Seoul July 9, 1966. Entered into force February 9, 1967.

⁷⁶ 286 F. Supp. 97 (D.D.C. 1968).

⁷⁷ The servicemember was implicated in the murder of a female Korean national which occurred off post in the Republic of Korea. Pursuant to the provisions of the SOFA, the
(continued...)

not approved in a “constitutionally acceptable manner.”⁷⁸ He maintained that U.S. domestic law requires international agreements pertaining to foreign jurisdiction over U.S. forces stationed abroad be approved “either expressly or impliedly by the [U.S.] Senate.”⁷⁹ The court found that the SOFA resulted in a diminished role for the Republic of Korea in enforcing its own laws and that the United States did not waive jurisdiction over offenses committed within its own territory. Therefore, ratification by the Senate was “clearly unnecessary” because Senate approval would “have no effect on a grant of jurisdiction by the Republic of Korea, [of] which the United States could not rightfully claim.”⁸⁰

Additionally, the servicemember asserted that the Constitution and the Uniform Code of Military Justice (UCMJ)⁸¹ provide the sole methods for trying servicemen abroad and that they can not be changed by an executive agreement.⁸² The court held that the premise is true only when there hasn’t been a violation of the laws of the foreign jurisdiction. When a violation of the foreign jurisdiction’s criminal laws occurs, the primary jurisdiction lies with that nation and the provisions of the UCMJ only apply if the foreign nation expressly or impliedly waived its jurisdiction.⁸³ In support of its decision the court cited the principle, stated in *Wilson*,⁸⁴ that the primary right of jurisdiction belongs to the nation in whose territory the servicemember commits the crime.

Philippines. In 1947 the United States and the Republic of the Philippines entered into an agreement on military assistance.⁸⁵ The agreement was for a term of five years, starting July 4, 1946, and provided that the United States would furnish military assistance to the Philippines for the training and development of armed forces. The agreement further created an advisory group to provide advice and assistance to the Philippines as had been authorized by the U.S. Congress.⁸⁶ The agreement was extended, and amended, for an additional five years in 1953.⁸⁷

⁷⁷ (...continued)

Korean Minister of Justice notified the Commander, United States Forces, Korea, that the Korean Government intended to exercise its primary right of jurisdiction over the servicemember on charges of murder and arson.

⁷⁸ *Clifford*, 286 F. Supp at 99.

⁷⁹ *Id.*

⁸⁰ *Id.* at 100.

⁸¹ 10 U.S.C. § 801 *et seq.*

⁸² *Clifford*, 286 F. Supp. at 101.

⁸³ *Id.*

⁸⁴ *Wilson*, 354 U.S. at 529.

⁸⁵ 61 Stat. 3283; T.I.A.S. 1662. Signed at Manila March 21, 1947. Entered into force March 21, 1947.

⁸⁶ 61 Stat. 3284.

⁸⁷ 4 U.S.T. 1682; T.I.A.S. 2834; 2163 U.N.T.S. 77. Exchange of notes at Manila June 26, 1953. Entered into force July 5, 1953.

A mutual defense treaty was entered into by the United States and the Philippines in 1951.⁸⁸ The treaty publicly declares “their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific Area[.]”⁸⁹ The Treaty does not address or provide for a SOFA.

In 1993, the countries entered into a SOFA.⁹⁰ The agreement was subsequently extended on September 19, 1994, April 28, 1995, and November 29, December 1 and 8, 1995. The countries entered into an agreement regarding the treatment of U.S. armed forces visiting the Philippines in 1998.⁹¹ This agreement was amended on April 11 and 12, 2006. The distinction between this agreement and the SOFA originally entered into in 1993 is that this agreement applies to U.S. armed forces visiting, not stationed in the Philippines. The countries also entered into an agreement regarding the treatment of Republic of Philippines personnel visiting the United States (counterpart agreement).⁹²

The counterpart agreement contains provisions addressing criminal jurisdiction over Philippine personnel while in the United States. The agreement was concluded as an executive agreement and not ratified by the U.S. Senate. Arguably, following the logic of the U.S. District Court for the District of Columbia in *Clifford*, because the agreement arguably diminishes the impact of U.S. jurisdiction, it would need be ratified by the Senate in order to be constitutionally valid. But, the counterpart agreement can be distinguished from the SOFA with the Republic of Korea, and SOFAs with other foreign jurisdictions, in that the U.S. is not fully waiving jurisdiction over offenses committed within U.S. territory. Rather, the agreement states that U.S. authorities will, at the request of the Government of the Philippines, request that the appropriate authorities waive jurisdiction in favor of Philippine authorities.⁹³ However, the U.S. Department of State and Department of Defense retain the ability to determine that U.S. interests require that the United States exercise federal or state jurisdiction over the Philippine personnel.⁹⁴

Prospective SOFA with Iraq

Pursuant to the August 26, 2007 Declaration between President Bush and Prime Minister Al-Maliki, the parties pledged to “begin as soon as possible, with the aim to achieve, before July 31, 2008, agreements between the two governments with

⁸⁸ 3 U.S.T. 3947; T.I.A.S. 2529; 177 U.N.T.S. 133. Signed at Washington August 30, 1951. Entered into force August 27, 1952.

⁸⁹ *Id.*

⁹⁰ T.I.A.S. Exchange of notes at Manila April 2, June 11 and 21, 1993. Entered into force June 21, 1993.

⁹¹ T.I.A.S. Signed at Manila February 10, 1998. Entered into force June 1, 1999.

⁹² T.I.A.S. Signed at Manila October 9, 1998. Entered into force June 1, 1999.

⁹³ *Id.*

⁹⁴ *Id.*

respect to the political, cultural, economic, and security spheres.”⁹⁵ Among other things, the Declaration proclaims the parties’ intention to negotiate a security agreement:

To support the Iraqi government in training, equipping, and arming the Iraqi Security Forces so they can provide security and stability to all Iraqis; support the Iraqi government in contributing to the international fight against terrorism by confronting terrorists such as Al-Qaeda, its affiliates, other terrorist groups, as well as all other outlaw groups, such as criminal remnants of the former regime; and to provide security assurances to the Iraqi Government to deter any external aggression and to ensure the integrity of Iraq’s territory.⁹⁶

The Administration has stated it intends to negotiate two separate security agreements with Iraq. The first agreement, described as a “strategic framework agreement,” would broadly address topics outlined in the Declaration of Principles. On March 4, 2008, Ambassador Satterfield testified during a joint hearing before the Subcommittee on the Middle East and South Asia, and the Subcommittee on International Organizations, Human Rights, and Oversight of the House Foreign Affairs Committee that the Administration does:

not at this stage contemplate it as a legally-binding agreement.... Should that change in the course of the discussions, we will, of course, so inform the Congress and we’ll take appropriate measures in accordance with our constitutional provisions.⁹⁷

The second agreement would presumably constitute a legally-binding SOFA to define the legal status of U.S. forces within Iraq. During his testimony on April 10, 2008, before the Senate Foreign Affairs Committee regarding the similarities and differences between the proposed Iraq SOFA and the SOFAs that the United States has entered with other countries, Ambassador Satterfield stated:

This agreement is similar to the many [SOFAs]...we have across the world, which address such matters as jurisdiction over U.S. forces; the movement of vehicles, vessels, and aircraft; non-taxation of U.S. activities and the ability of U.S. forces to use host-government facilities. The SOFA is also unique in that it also takes into account the particular circumstances and requirements for our forces in Iraq, in particular, by providing for consent by the Government of Iraq

⁹⁵ *Declaration of Principles*, *supra* note 1.

⁹⁶ White House Office of the Press Secretary, *Fact Sheet: U.S.-Iraq Declaration of Principles for Friendship and Cooperation*, November 26, 2007, available at [<http://www.whitehouse.gov/news/releases/2007/11/20071126-1.html>].

⁹⁷ *Hearing of the Subcommittee on the Middle East and South Asia, and the Subcommittee on International Organizations, Human Rights, and Oversight of the House Foreign Affairs Committee; Declaration and Principles: Future U.S. Commitments to Iraq*, March 4, 2008 (statement by Ambassador David M. Satterfield in response to question by Representative William Delahunt) [hereinafter “Satterfield Testimony of March 4”].

to the conduct of military operations. Neither we nor the Iraqis intend for this to be a permanent provision of the SOFA.⁹⁸

The parties' expressed goal is to finalize the agreements before the end of July, 2008. The status of the negotiations are ongoing.⁹⁹

As discussed above, formal requirements concerning the form, content, length, or title of a SOFA do not exist. SOFAs may be written for a specific purpose or activity, or they may anticipate a longer-term relationship and provide for maximum flexibility and applicability. As Ambassador Satterfield stated, the provision providing consent to conduct military operations would be unique to this proposed SOFA. While SOFAs have been concluded with countries where the agreement identifies specific activities and exercises, the agreements themselves do not authorize the activity or exercise. It is unclear if the proposed SOFA will involve consent to specific military operations or be similar to the SOFA with Belize¹⁰⁰ that acknowledges counter-drug activities without specifics. It also remains to be seen if coalition partner countries will conclude SOFAs with Iraq containing provisions consenting to military operations by their forces as well, or if future military operations will be solely by U.S. forces.

Survey of Current Status of Forces Agreements

The charts below provide a list of current agreements according to the underlying source of authority, if any, for each of the SOFAs. Within each category the agreements are arranged alphabetically by partner country. The categories are defined as follows:

North Atlantic Treaty Organization: Status of Forces Agreement.

The NATO SOFA is a multilateral agreement that has applicability among all the member countries of NATO. As of June 2007, 26 countries, including the United States, have either ratified the agreement or acceded to it by their accession into

⁹⁸ *Hearing of the Senate Foreign Relations Committee; Negotiating a Long Term Relationship with Iraq*, April 10, 2008 (statement by Ambassador David M. Satterfield).

⁹⁹ *See, e.g., Iraqis Condemn American Demands*, By Amit R. Paley and Karen DeYoung, June 11, 2008, available at [<http://www.washingtonpost.com/wp-dyn/content/article/2008/06/10/AR2008061003415.html>] (reporting that negotiations continue on the proposed agreements and that some Iraqi officials are opposed to what they characterize as U.S. demands related to base use rights, immunity from prosecution under Iraqi laws for U.S. personnel and contractors, the right for U.S. forces to detain and hold Iraqis without turning them over to the Iraqi judicial system, and the right for U.S. forces to conduct operations without approval from the Iraqi government.) The possible provisions have not been confirmed by U.S. authorities and speculation as to the status of these negotiations is beyond the scope of this report.

¹⁰⁰ T.I.A.S. Exchange of notes at Belize City September 4, 2001 and April 24, 2002. Entered into force April 24, 2002.

NATO.¹⁰¹ The NATO SOFA¹⁰² is the only SOFA that was concluded as part of a treaty.¹⁰³

North Atlantic Treaty Organization: Partnership for Peace - Status of Forces Agreement. There are currently 24 countries, non-members of NATO, subject to the NATO SOFA through their participation in the NATO Partnership for Peace (PfP) program.¹⁰⁴ The program consists of bilateral cooperation between individual countries and NATO in order to increase stability, diminish threats to peace and build strengthened security relationships.¹⁰⁵ The individual countries that participate in PfP agree to adhere to the terms of the NATO SOFA.¹⁰⁶

Treaty as Underlying Source of Authority for Status of Forces Agreement. The United States has concluded SOFAs where the underlying authority for the agreement is a treaty ratified by the U.S. Senate. The United States entered into a SOFA with Japan in 1960¹⁰⁷ under the authority contained in Article VI of the Treaty of Mutual Cooperation and Security¹⁰⁸ previously concluded between the countries. Additionally, the United States entered into a SOFA with Korea in 1967¹⁰⁹ under the authority in Article V of the Mutual Defense Treaty previously concluded between the two countries.¹¹⁰

The United States entered into SOFAs with Australia and the Philippines after concluding treaties with the respective countries. In the case of Australia, the U.S. Senate advised ratification of the ANZUS Pact¹¹¹ in 1952. In 1963, nine years after ratification of the Pact, Australia and the United States entered into an agreement concerning the status of U.S. forces in Australia.¹¹² The United States entered into a SOFA with the Philippines in 1993 after concluding a mutual defense treaty with

¹⁰¹ See [<http://www.state.gov/documents/organization/85630.pdf>].

¹⁰² 4 U.S.T. 1792; T.I.A.S. 2846; 199 U.N.T.S. 67. Signed at London, June 19, 1951. Entered into force August 23, 1953.

¹⁰³ See, e.g., Agreement under Article VI of the Treaty of Mutual Cooperation and Security Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, 11 U.S.T. 1652, entered into force June 23, 1960 (SOFA in the form of an executive agreement subsequent to a treaty).

¹⁰⁴ See [<http://www.nato.int/issues/pfp/index.html>].

¹⁰⁵ *Id.*

¹⁰⁶ See [<http://www.nato.int/docu/basicxt/b950619a.htm>].

¹⁰⁷ 11 U.S.T. 1652.

¹⁰⁸ 11 U.S.T. 1632.

¹⁰⁹ 17 U.S.T. 1677.

¹¹⁰ 5 U.S.T. 2368.

¹¹¹ 3 U.S.T. 3420; T.I.A.S. 2493; 131 U.N.T.S. 83. Signed at San Francisco, September 1, 1951. Entered into force April 29, 1952.

¹¹² 14 U.S.T. 506.

the country in 1952.¹¹³ The agreements with Australia and the Philippines can be distinguished from the agreements with Japan and Korea in that they cite general obligations under the previously concluded treaty, while the agreements with Japan and Korea cite to a specific authority (i.e., Article VI and Article V, respectively) contained in the underlying treaty.

The United States is a party to the Inter-American Treaty of Reciprocal Assistance (Rio Treaty),¹¹⁴ for which the U.S. Senate advised ratification December 8, 1947. The United States then entered into military assistance agreements with Guatemala,¹¹⁵ Haiti,¹¹⁶ and Honduras.¹¹⁷ The agreements cite obligations created under the Rio Treaty and address status of U.S. personnel in each of the countries. The United States expanded on the status protections contained in the military assistance agreements by later concluding SOFAs with each of the countries. In all three, the military assistance agreements were cited as the basis of the new agreement.

Congressional Action as Underlying Source of Authority for Status of Forces Agreement. As previously discussed, Congress approved compacts changing the status of the Marshall Islands, Micronesia, and Palau from former territories and possessions to that of being Freely Associated States (FAS).¹¹⁸ The language of the compacts call for a SOFA to be concluded between the respective parties. The Marshall Islands and Micronesia entered into SOFAs with the United States in 2004.¹¹⁹ Palau entered into a SOFA with United States in 1986.¹²⁰

Base Lease Agreement Containing Status of Force Agreement Terms. In 1941, the United States entered into an agreement with the United Kingdom regarding the lease of naval and air bases in Newfoundland, Bermuda, Jamaica, St. Lucia, Antigua, Trinidad, and British Guiana.¹²¹ The agreement not only

¹¹³ 3 U.S.T. 3947.

¹¹⁴ 62 Stat 1681; T.I.A.S. 1838. Done at Rio de Janeiro, September 2, 1947. Entered into force December 3, 1948.

¹¹⁵ 6 U.S.T. 2107.

¹¹⁶ 6 U.S.T. 3847.

¹¹⁷ 5 U.S.T. 843.

¹¹⁸ Act Approving Compacts of Free Association with the Republic of the Marshall Islands and the Federated States of Micronesia, P.L. 99-239, § 311 (1986). See also Act approving Compact of Free Association between the United States and the Government of Palau, P.L. 99-658, § 352 (1986).

¹¹⁹ T.I.A.S.

¹²⁰ T.I.A.S.

¹²¹ 55 Stat. 1560; Executive Agreement Series 235 (The agreement titled “Leasing of Naval and Air Bases,” establishes that the bases and facilities are to be leased to the United States for a period of ninety-nine years, free from all rent and charges. A typical lease includes an agreement by a lessor to turn over specifically-described premises to the exclusive possession of the lessee for a definite period of time and for consideration/rent. In the

described the physical location being leased, but provided for status of U.S. personnel present in the leased location. The lease agreement, while not a stand-alone SOFA, served the purpose of a SOFA in the specified locations. The United States and the United Kingdom concluded additional lease agreements in the 1950s, '60s and '70s that contained status protection provisions in the leased locations.

Status of Forces Agreement in Support of Specified Activity/Exercises. The United States has entered into SOFAs with countries in support of specific activities or exercises. Generally, these agreements are entered in order to support a joint military exercise or a humanitarian initiative. The SOFA will contain language limiting the scope of the agreement to the specific activity, but sometimes language is present expanding the agreement to cover other activities as agreed upon by the two countries. The agreements are not based upon a treaty or congressional action; rather, they are sole executive agreements.

For example, the African Crisis Response Initiative (ACRI) was a bilateral training program introduced by the Clinton Administration in 1997. The United States entered into SOFAs with many African countries specifically addressing the ACRI. Each of the SOFAs contained language limiting the agreements to U.S. personnel temporarily in the country in connection with ACRI activities or other activities as agreed upon by the countries. While the agreement may have been entered as a result of the ACRI, language allowing for other activities, as agreed between the two countries, allows for the SOFA remain in force even though the ACRI does not currently exist.

Status of Forces Agreement Not in Support of Specified Activity/Exercise and Not Based on Underlying Treaty/Congressional Action. The last group of SOFAs discussed are agreements entered as sole executive agreements without a specified activity or exercise. These agreements contain broad language of applicability. Some of the agreements apply to U.S. personnel “present” in a country, others apply to U.S. personnel “temporarily present” in a country. In addition to time limitations, most of the agreements contain language which attempts to frame the scope of activities. The activities described may be as broad as “official duties” or specific to a particular class of activities (i.e., humanitarian, exercises, and/or training).

¹²¹ (...continued)

present case, the agreement called for a lease without consideration/rent, therefore it could be asserted that a use agreement rather than a lease was created.).

Table 1. North Atlantic Treaty Organization: Status of Forces Agreement

| NATO Member Country | Agreements Supplementing or in Addition to the NATO SOFA |
|------------------------------|--|
| Belgium | |
| Bulgaria | 2001: Agreement concerning overflight, transit through, and presence in the territory of the Republic of Bulgaria of U.S. forces, personnel, and contractors in support of Operation Enduring Freedom (Agreement concluded prior to Bulgaria joining NATO) |
| Canada | 1953: Agreement relating to the application of the NATO status of forces agreement to U.S. forces in Canada, including those at the leased bases in Newfoundland and Goose Bay, Labrador except for certain arrangements under the leased bases agreement |
| Czech Republic | |
| Denmark | 1956: Agreement relating to the status of personnel of the U.S. Military Assistance Advisory Group and of the personnel of the offshore procurement program |
| Estonia | |
| France | |
| Germany, Federal Republic of | 1963: Agreements implementing the NATO status of forces agreement of August 3, 1959 |
| Greece | 1956: Agreement concerning the status of U.S. forces in Greece |
| Hungary | 1997: Agreement concerning activities of U.S. forces in the territory of the Republic of Hungary |
| Iceland | 1951: Annex on status of U.S. personnel and property |

CRS-22

| NATO Member Country | Agreements Supplementing or in Addition to the NATO SOFA |
|---------------------|--|
| Italy | |
| Latvia | |
| Lithuania | |
| Luxembourg | |
| Netherlands | 1954: Agreement relating to the stationing of U.S. armed forces in the Netherlands |
| Norway | 1954: Agreement concerning the status of military assistance advisory group under paragraph 1(a) of the NATO status of forces agreement |
| Poland | |
| Portugal | |
| Romania | 2002: Agreement regarding the status of U.S. forces in Romania (Agreement concluded prior to Romania joining NATO) |
| Slovak Republic | |
| Slovenia | 2003: Agreement concerning the overflight and transit through the territory and airspace of Slovenia by U.S. aircraft, vehicles and personnel for purposes of supporting security, transition and reconstruction operations in Iraq (Agreement concluded prior to Slovenia joining NATO) |
| Spain | 1988: Defense cooperation agreement |
| Turkey | 1954: Agreement relating to implementation of the North Atlantic Treaty Status of Forces Agreement |
| United Kingdom | 1941: First in series of numerous agreements, some predating NATO, related to defense containing status of forces terms |

Table 2. North Atlantic Treaty Organization: Partnership for Peace - Status of Forces Agreement

| NATO PfP Member Country | Agreements Supplementing or in Addition to the NATO PfP SOFA |
|-------------------------|---|
| Albania | 1995: Agreement concerning the status of U.S. military personnel and civilian employees of the DOD who may be present in Albania in connection with Search and Rescue (SAREX) joint military exercise. 2004: Supplementary agreement to “Agreement among member countries of the North Atlantic Treaty and other participating states in the Partnership for Peace regarding the status of their forces” on the status of the forces of the U.S. in Republic of Albania |
| Armenia | |
| Austria | |
| Azerbaijan | |
| Belarus | |
| Bosnia-Herzegovina | 2005: Agreement on status protections and access to and use of facilities and areas in Bosnia and Herzegovina |
| Croatia | 2006: Memorandum of understanding concerning the use of airspace, ranges, airports, seaports, and training facilities by U.S. forces in Europe |
| Finland | |
| Georgia | |
| Ireland | |
| Kazakhstan | |

CRS-24

| NATO PfP Member Country | Agreements Supplementing or in Addition to the NATO PfP SOFA |
|-------------------------|--|
| Kyrgyz Republic | 2001: Present in Kyrgyzstan in connection with cooperative efforts in response to terrorism, humanitarian assistance, and other agreed activities |
| Macedonia | |
| Malta | |
| Moldova | |
| Montenegro | 2007: Agreement on status protections and access to and use of military infrastructure in Montenegro |
| Russian Federation | |
| Serbia | 2006: SOFA (Concluded prior to joining NATO PfP program) |
| Sweden | |
| Switzerland | |
| Tajikistan | 2001: Agreement regarding status of U.S. military personnel and civilian personnel of DOD present in Tajikistan in connection with cooperative efforts in response to terrorism, humanitarian assistance and other agreed activities |
| Turkmenistan | |
| Ukraine | |
| Uzbekistan | |

Table 3. Treaty as Underlying Source of Authority for Status of Forces Agreement

| Country | Year | Treaty/Agreement | Applicability Language |
|-------------|------|--|---|
| Australia | 1963 | Agreement concerning the status of U.S. forces in Australia (14 U.S.T. 506), cites ANZUS Pact (3 U.S.T. 3420) | |
| Guatemala | 2005 | Agreement regarding the status of U.S. personnel (T.I.A.S.), cites military assistance agreement (6 U.S.T. 2107), cites Rio Treaty (62 Stat 1681) | Temporarily present in Guatemala |
| Haiti | 1995 | Agreement regarding status of U.S. military and civilian employees of DOD (NP), cites military assistance agreement (6 U.S.T. 3847), cites Rio Treaty (62 Stat 1681) | Temporarily present in Haiti in connection with official duties |
| Honduras | 1982 | Agreement relating to privileges and immunities for U.S. armed forces (35 U.S.T. 3884), cites military assistance agreement (5 U.S.T. 843), cites Rio Treaty (62 Stat 1681) | Temporarily present in Honduras for the purpose of participating in military exercises, or for other temporary purposes, authorized by the government of Honduras |
| Japan | 1960 | Agreement under Article VI of the Treaty of Mutual Cooperation and security (11 U.S.T. 1652), cites Treaty of Mutual Cooperation and security (11 U.S.T. 1632) | |
| Korea | 1967 | Agreement under Article V of the Mutual Defense Treaty regarding facilities and areas and the status of U.S. armed forces in Korea (17 U.S.T. 1677), cites Mutual Defense Treaty (5 U.S.T. 2368) | |
| Philippines | 1993 | Agreement regarding the status of U.S. military and civilian personnel (T.I.A.S.), cites Mutual Defense Treaty (3 U.S.T. 3947) | |

Table 4. Congressional Action as Underlying Source of Authority for Status of Forces Agreement

| Country | Year | Source |
|------------------|------|---|
| Marshall Islands | 2004 | Compact of Free Association (P.L. 99-239) |
| Micronesia | 2004 | Compact of Free Association (P.L. 99-239) |
| Palau | 1986 | Compact of Free Association (P.L. 99-658) |

Table 5. Base Lease Agreement Containing Status of Force Agreement Terms

| Country | Year | Source | Applicability Language |
|---------------------------------|-----------|--|--|
| Antigua and Barbuda | 1941/1977 | U.K. - lease agreement (55 Stat. 1560) | 1941: Agreement pertains to naval and air bases leased to U.S. 1977: Agreement on defense areas and facilities (29 U.S.T. 4183) |
| Bahamas | 1941/1950 | U.K. - lease agreement (55 Stat. 1560) | Numerous agreements pertaining to facilities and personnel |
| U.K. - Ascension Island | 1956 | Cites agreement between U.K./U.S. (1 U.S.T. 545) | Extension of the Bahamas Long Range Proving Ground |
| U.K. - Bermuda | 1941/1950 | U.K. - lease agreement (55 Stat 1560) | Agreements pertain to naval and air bases leased to U.S. |
| U.K. - Diego Garcia | 1966 | | Indian Ocean islands for defense (18 U.S.T. 28) |
| U.K. - Turks and Caicos Islands | 1979 | | Defense area agreement (32 U.S.T. 429) |

Table 6. Status of Forces Agreement in Support of Specified Activity/Exercise

| Country | Year | Applicability Language |
|---------------|-----------|---|
| Benin | 1998 | Temporarily present in Benin in connection with ACRI and other activities as may be agreed upon by the two governments |
| Cote D'Ivoire | 1998 | Temporarily present in Cote d'Ivoire in connection with ACRI and other activities as may be agreed upon by the two countries |
| Ethiopia | 1994 | Present in Ethiopia in connection with "Nectar Bend 94," scheduled for 1 June, 1994 through 7 July, 1994, future exercises, and otherwise in respect to their official duties |
| Gabon | 1999 | Temporarily present in Gabon in connection with "Gabon 2000" and other activities |
| Ghana | 1998/2000 | 1998: Temporarily present in Ghana in connection with ACRI and other activities as may be agreed upon by two governments 2000: Additional agreement, separate from ACRI, addressing individuals temporarily present in Ghana in connection with humanitarian relief operations in Southern Africa |
| Madagascar | 2000 | Temporarily present in Madagascar in connection with current humanitarian relief operations and other activities as may be agreed upon the two governments |
| Malawi | 1997 | Temporarily present in the Republic of Malawi in connection with the ACRI Mobile Training Team visit and other activities related to ACRI as may be agreed upon by two governments |
| Mali | 1997 | Temporarily present in Mali in connection with ACRI Mobile Training Team visit and other activities as may be agreed upon up two governments |
| Nepal | 2000 | Temporarily present in the Kingdom of Nepal in connection with the Multi-Platoon Training Event |
| Nigeria | 2000 | Temporarily present in Nigeria in connection with upcoming military training and other activities as may be agreed upon by two governments |
| Peru | 1995 | Certain U.S. personnel who may serve for a period of less than ninety days at the ground-based radar site at Yurimajuas, and at other locations as agreed by the Peruvian Air Force |
| Rwanda | 2005 | Present in Rwanda in connection with the military airlift of Rwandan military forces in support of operations in Darfur and future mutually agreed activities |

Table 7. Status of Forces Agreement Not in Support of Specified Activity/Exercise and Not Based on Underlying Treaty/Congressional Action

| Country | Year | Applicability Language |
|-----------------------------------|---------------------|--|
| Afghanistan | 2002 | May be present in Afghanistan in connection with cooperative efforts in response to terrorism, humanitarian and civic assistance, military training and exercises, and other activities |
| Bahrain | 1971/1975/1977/1991 | 1971: Agreement for the Deployment in Bahrain of the United States Middle East Force (22 U.S.T. 2184) - modified by 1975 agreement for the Deployment in Bahrain of the United States Middle East Force (26 U.S.T. 3027) and 1977 agreement on the Status of Administrative Support Unit Personnel (28 U.S.T. 5312) 1991: Agreement concerning the deployment of United States forces (T.I.A.S. 12236) |
| Bangladesh | 1998 | Agreement regarding the status of U.S. forces visiting Bangladesh |
| Belize | 2001 | Temporarily present in Belize in connection with military exercises and training, counter-drug related activities, United States security assistance programs, or other agreed upon purposes |
| Botswana | 2001 | Temporarily present in Botswana for the purpose of carrying out exercises, training, humanitarian assistance, or other activities which may be agreed upon by both governments |
| Brunei | 1994 | MOU on defense cooperation (military training, military exercises, exchange of personnel, exchange of information) |
| Cambodia | 1996 | Temporarily present in Cambodia in connection with military assistance activities and other official duties |
| Chad | 1987/1998/2005 | 1987: Text classified 1998: Agreement regarding individuals temporarily present in Chad in connection with official duties relating to humanitarian demining activities 2005: Agreement regarding status of personnel of the U.S. in Chad |
| Congo, Democratic Republic of the | 1994 | May be present in Zaire in connection with humanitarian efforts |
| Costa Rica | 1983 | Agreement relating to privileges and immunities for United States personnel providing assistance to the drought stricken provinces in northern Costa Rica |
| Djibouti | 2001 | Status of forces agreement with related note |

| Country | Year | Applicability Language |
|--------------------|-----------|--|
| Dominican Republic | 1988 | U.S. personnel not members of the U.S. Diplomatic Mission present in Dominican Republic for a period less than six months in connection with their official duties |
| Egypt | 1981 | While in the Arab Republic of Egypt, in connection with assistance and training programs, defense industrial cooperation, or such other matters as may from time to time be agreed |
| El Salvador | 2007 | Personnel and contractors who may be temporarily present in El Salvador in connection with ship visits, training, exercises, humanitarian activities and other activities as mutually agreed |
| Grenada | 1984/1993 | 1984: SOFA 1993: Additional agreement concerning temporary assignment in Grenada in connection with exercises or activities approved by both governments in accordance with usual procedures |
| Guinea | 2002 | Temporarily present in the Republic of Guinea in connection with training exercises, humanitarian relief operations, and other activities as may be agreed upon by the two governments |
| Guyana | 2000 | Temporarily present in Guyana in connection with military exercises and training, counter-drug related activities, U.S. security assistance programs, or other agreed purposes |
| Israel | 1994 | U.S. personnel sent to Israel for ship and aircraft visits, military exercises and other mutually agreed military activities; recognizing that any decision regarding the sending of U.S. personnel to Israel will be the subject of separate arrangements between the parties |
| Jordan | 1996 | Present in Jordan in connection with their official duties |
| Kenya | 1980 | Text classified |
| Kuwait | 1991 | Text classified |
| Liberia | 2005 | Temporarily present in Liberia |
| Malaysia | 1990 | Text classified |
| Maldives | 2004 | Agreement regarding military and DOD civilian personnel |
| Mongolia | 1998 | Agreement on military exchanges and visits, with annex |
| Mozambique | 2000 | Temporarily present in Mozambique in connection with humanitarian relief operations |

| Country | Year | Applicability Language |
|-----------------------|-------------|--|
| Nicaragua | 1998 | Present in connection with the disaster relief/assistance effort and mutually agreed follow-on activities |
| Oman | 1980 | Text classified |
| Panama | 2001 | Temporarily present in Panama |
| Papua New Guinea | 1989 | Temporarily present in Papua New Guinea in connection with their official duties (disaster relief, humanitarian and civic assistance activities) from time to time as authorized by the Government of Papua New Guinea |
| Paraguay | 2005 | Temporarily present in Paraguay |
| Qatar | 1992 | Text classified |
| Saint Kitts and Nevis | 1987 | Present in connection with their official duties |
| Saint Lucia | 2000 | Present in St. Lucia in connection with military exercises and training, counter-drug related activities, U.S. security assistance programs, or other agreed peaceful purposes |
| Saudi Arabia | 1972 | Agreement to govern the status, duties, administration and conduct of the United States Military Training Mission, to be known as the United States Military Assistance Advisory Group, to Saudi Arabia |
| Senegal | 2001 | Temporarily present in Senegal in connection with training, humanitarian relief operations, exercises and other agreed purposes |
| Singapore | 1990 | Memorandum of Understanding between U.S. and Singapore regarding U.S. use of facilities in Singapore |
| Solomon Islands | 1991 | Temporarily present in Solomon Islands in connection with their official duties from time to time as authorized by the Government of Solomon Islands |
| Somalia | 1990 | Text classified |
| South Africa | 1999 | Present in the Republic of South Africa in connection with mutually agreed exercises and activities |
| Sri Lanka | 1995 | Present in Sri Lanka for exercises or other official duties |
| Sudan | 1981 | Present in Sudan in connection with their official duties |
| Suriname | 2005 | Temporarily present in the Republic of Suriname |

| Country | Year | Applicability Language |
|----------------------|------|--|
| Timor-Leste | 2002 | Present in the Democratic Republic of Timor-Leste in connection with humanitarian and civic assistance, ship visits, military training and exercises and other agreed activities |
| Tonga | 1992 | Temporarily present in Tonga, as authorized by Tonga, in connection with their official duties |
| Uganda | 1994 | Temporarily present in Uganda in connection with their official duties |
| United Arab Emirates | 1994 | Text classified |
| Western Samoa | 1990 | Present in Western Samoa in connection with their official duties, as authorized by the Government of Western Samoa |