
Presidential Documents

Title 3—

Presidential Determination No. 2008–9 of January 28, 2008**The President****Waiver of Section 1083 of the National Defense Authorization Act for Fiscal Year 2008****Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and section 1083(d) of the National Defense Authorization Act for Fiscal Year 2008 (the “Act”), I hereby determine that:

- All provisions of section 1083 of the Act, if applied to Iraq or any agency or instrumentality thereof, may affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation.
- The economic security and successful reconstruction of Iraq continue to be top national security priorities of the United States. Section 1083 of the Act threatens those key priorities. If permitted to apply to Iraq, section 1083 would risk the entanglement of substantial Iraqi assets in litigation in the United States—including those of the Development Fund for Iraq, the Central Bank of Iraq, and commercial entities in the United States in which Iraq has an interest. Section 1083 also would expose Iraq to new liability of at least several billion dollars by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq is relying in pending litigation, and by creating a new Federal cause of action backed by the prospect of punitive damages to support claims that may previously have been foreclosed. If permitted to apply to Iraq, section 1083 would have a significant financial impact on Iraq and would result in the redirection of financial resources from the continued reconstruction of Iraq and the harming of Iraq’s stability, contrary to the interests of the United States.
- A waiver of all provisions of section 1083 with respect to Iraq and any agency or instrumentality of Iraq is therefore in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq.
- Iraq continues to be a reliable ally of the United States and a partner in combating acts of international terrorism. The November 26, 2007, Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups, including al-Qaida.

Accordingly, I hereby waive all provisions of section 1083 of the Act with respect to Iraq and any agency or instrumentality thereof.

You are authorized and directed to notify the Congress of this determination and waiver and the accompanying memorandum of justification, incorporated by reference herein, and to arrange for their publication in the **Federal Register**.

A handwritten signature in black ink, appearing to read "George W. Bush", is positioned to the right of the main text block.

THE WHITE HOUSE,
Washington, January 28, 2008.

MEMORANDUM OF JUSTIFICATION FOR WAIVER OF SECTION 1083
OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2008
WITH RESPECT TO IRAQ

Section 1083 of the National Defense Authorization Act for Fiscal Year 2008 (the "Act") amends the Foreign Sovereign Immunities Act, which establishes a framework for lawsuits against foreign countries and their agencies and instrumentalities under U.S. law. Immediately upon enactment, Section 1083 would put at risk substantial Iraqi assets in the United States that are crucial to Iraq's recovery efforts -- including the Development Fund for Iraq, the assets of the Central Bank of Iraq held by the Federal Reserve Bank of New York, and assets of Iraqi agencies or instrumentalities used in commercial transactions in the United States. Section 1083 would also expose Iraq to potential new liability by undoing judgments favorable to Iraq, by foreclosing available defenses on which Iraq has relied, and by creating a new Federal cause of action backed by punitive damages. Any and all provisions of section 1083 may adversely affect Iraq or its agencies or instrumentalities, by exposing Iraq or its agencies or instrumentalities to liability in United States courts and by entangling their assets in litigation. Such burdens would undermine the national security and foreign policy interests of the United States, including by weakening the ability of the democratically-elected government of Iraq to use Iraqi funds to promote political and economic progress and further develop its security forces.

Section 1083(d)(1)-(3) of the Act provides that:

(d) Applicability to Iraq-

(1) APPLICABILITY- The President may waive any provision of this section with respect to Iraq, insofar as that provision may, in the President's determination, affect Iraq or any agency or instrumentality thereof, if the President determines that--

(A) the waiver is in the national security interest of the United States;

(B) the waiver will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq; and
(C) Iraq continues to be a reliable ally of the United States and partner in combating acts of international terrorism.

(2) TEMPORAL SCOPE- The authority under paragraph (1) shall apply--

(A) with respect to a conduct or event occurring before or on the date of the enactment of this Act;

(B) with respect to any conduct or event occurring before or on the date of the exercise of that authority; and

(C) regardless of whether, or the extent to which, the exercise of that authority affects any action filed before, on, or after the date of the exercise of that authority or of the enactment of this Act.

(3) NOTIFICATION TO CONGRESS- A waiver by the President under paragraph (1) shall cease to be effective 30 days after it is made unless the President has notified Congress in writing of the basis for the waiver as determined by the President under paragraph (1).

A waiver of all provisions of section 1083 with respect to Iraq, and all agencies and instrumentalities thereof, is in the national security interest of the United States and will promote the reconstruction of, the consolidation of democracy in, and the relations of the United States with, Iraq. In particular:

- Absent a waiver, section 1083 would have a potentially devastating impact on Iraq's ability to use Iraqi funds to expand and equip the Iraqi Security Forces, which would have serious implications for U.S. troops in the field acting as part of the Multinational Force-Iraq and would harm anti-terrorism and counter-insurgency efforts.
- Application of section 1083 to Iraq or any agency or instrumentality thereof will hurt the interests of the United States by unacceptably interfering with political and economic progress in Iraq that is critically important to bringing U.S. troops home.
- If applied to Iraq or any agency or instrumentality thereof, the provisions of section 1083 would redirect financial

resources from the continued reconstruction of Iraq and would harm Iraq's stability, contrary to the interests of the United States. A waiver will ensure that Iraqi assets of the Central Bank of Iraq, the government and commercial entities in which Iraq has an interest, remain available to maintain macroeconomic stability in Iraq and support private sector development and trade.

- By providing for the maintenance of macroeconomic stability, the waiver of section 1083 will promote the consolidation of democracy in Iraq.
- Absent a waiver of section 1083, Iraq's ability to finance employment alternatives, vocational training, and job placement programs necessary to promote community reintegration and development efforts contributing to counterterrorism efforts would be harmed.
- By ensuring that Iraq and its agencies and instrumentalities are not subject to litigation or liability pursuant to section 1083, waiver of section 1083 will promote the close relationship between the United States and Iraq.

In addition, Iraq continues to be a reliable ally of the United States and partner in combating acts of international terrorism. The November 26, 2007 Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship between the Republic of Iraq and the United States of America confirmed the commitment of the United States and Iraq to build an enduring relationship in the political, diplomatic, economic, and security arenas and to work together to combat all terrorist groups and international terrorism, including al-Qaida. This Declaration reinforced the crucial actions Iraq is taking against terrorists groups, including al-Qaida.