

Hearing of the Subcommittee on International Organizations, Human Rights, and
Oversight

**The Extension of the United Nations Mandate for Iraq: Is the Iraqi Parliament
Being Ignored?**

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Mr. Chairman, Ranking Members, and other distinguished members of the committee, thank you for inviting me to appear before you today.

I want to begin my testimony today with a brief overview of the political and legal frameworks that are important to understanding recent developments in Iraq. According to article 47 of the Iraqi constitution, the federal government consists of the legislative, executive and judicial branches. Articles 48 and 66 specify that the legislative branch consists of the Council of Representatives and the Federation Council, and the Executive branch consists of the President of the Republic and the Council of Ministers.

The Council of Representatives (parliament) consists of 275 members, 4 of whom were killed this year. The Federation Council has not been formed yet, leaving the Iraqi Council of Representatives as the only entity in the government which has been directly elected by the Iraqi people.

The Council of Ministers (cabinet) originally had 40 members, which consisted of the Prime Minister and his two deputies along with 37 ministers. However, this year's wave of resignations reduced the number of active ministers to 20. The Council of the Presidency includes the President of the Republic with his two deputies.

The attached diagram (see Appendix I) shows all of the major groups represented in the Iraqi Council of Representatives. Large circles indicate the original sectarian-based coalitions that Iraqis voted for during the elections. The vertical line in the middle reflects the current political alignment. As you can see, these alignments are not based along sectarian or ethnic divisions.

Parties on the left side of the diagram control the minority within the Council of Representatives, but are the only parties represented in the Executive branch. Parties on the right side of the diagram control a very slight but certain majority in the Council of Representatives, but are not represented in the executive branch (neither in the presidency nor in the cabinet).

Parties in control of the Council of Representatives have a significantly different socio-political agenda than parties in control of the Executive branch. The two branches have been working at cross purposes and on opposing agendas, thus giving the impression that the Iraqi government is at a standstill. Beneath the surface of this standstill the Iraqi government is in a state of constant confrontation. For example, the two branches are trying to promote different types of federal systems to be implemented in Iraq. The Executive branch supports the creation of 3 regional federations that are sectarian and ethnic based, while the legislative branch prefers a federalism that more closely resembles the system in the United States: namely, a geographic, not demographic, federation with one strong central government. Another cause of conflict between the two governmental branches is the issue of the administration of natural resources. The Executive branch passed a new Oil and Gas Law earlier this year, but the law was rejected by the parliament on grounds that it was a threat to the country's territorial integrity, sovereignty, and financial resources.

I appreciate the opportunity you have given me today to testify about another key factor in the conflict between the legislative and executive branches: namely, the issue of renewing the UN mandate for Multi-National Forces for another year. I have been following this matter closely since mid-2006 through the Iraqi local media, the Iraqi government's official statements, and through my direct contact with numerous Iraqi leaders in both the executive and legislative branches.

After the United Nations Security Council suddenly renewed the mandate last year, I called a number of Iraqi MPs who were shocked and angry. Mr. Hasan al-Shammari, a Shia Parliamentarian representing the Al-Fadhila party, said "We had a closed session two days ago, and we were supposed to vote on the mandate in 10 days. I can not believe the mandate was just approved without our knowledge or input." Dr. Hajim al-Hassani, a secular MP and the former speaker of the Parliament, did not even know that the mandate had been renewed when I called him. "If this is true, it is breaking the agreements we had with al-Maliki," he said. Mr. al-Hassani added "We were supposed to have a meeting with the Prime Minister and other top officials in the Parliament during the next couple of weeks to decide what to do with the mandate." Dr. Alaa Makki, a Sunni MP representing the Accord Front requested that I send him a copy of the UN resolution and Al-Maliki's letter since he too was unaware of these unilateral and swift actions at the UN.

The majority of Iraq's legislators viewed last year's UN mandate renewal as unconstitutional. While article 80, section 6 gives the Cabinet the right to "negotiate" and "sign" international agreements and treaties, article 61, section 4 reads: "A law shall regulate the ratification of international treaties and agreements by a two-thirds majority of the members of the Council of Representatives." (See Appendix II for full list of constitution articles on international treaties and agreements)

The Iraqi executive branch argued that while it respects and understands the parliament's exclusive right to ratify international treaties and agreements, the UN mandate does not count as an international treaty or agreement, and therefore does not require parliamentary ratification. The Iraqi legislative branch insisted that renewing the UN mandate falls under article 61, section 4, and that members of the Council of Representatives were given verbal guarantees that they would be consulted before the renewal request letter was sent to the UN.

To avoid a repeat of a similar situation in 2007, the Iraqi Council of Representatives took two steps this year.

The first came in April 28th 2007 when 144 members of the parliament – a majority of members in that body – sent a non-binding letter addressing a number of international organizations and leaders including the United Nations Security Council members and the United Nations Secretary General. The letter was covered by the US mainstream media without disclosing its full content, but from my contacts in Baghdad I learned that it included a condemnation of last year's "unconstitutional" renewal, and called for setting a timetable for the US-led coalition to withdraw from Iraq.

The Parliament's second step came when 140 of its members proposed a law that requires the executive branch to receive parliamentary approval before renewing the UN mandate. The resolution proposal was submitted during session 32 held on May 27th 2007 (11:30 am – 2:35 pm). During the session, Mr. Al-Mashhadani, the head of the Iraqi Parliament, refused to allow the vote on the floor, then sent it to the parliament's Legal Committee for review. In session 34 held on June 5th 2007(12:55 pm – 3:35 pm), Mr. Al-Mashhadani held a vote on the resolution, and it received a majority of the votes (85 out of 144). Mr. Al-Mashhadani noted after the passage of this resolution that the cabinet has the choice to appeal or send the resolution to the federal court. According to Article 73, section 3, the President of the Republic assumes the powers "to ratify and issue the laws enacted by the Council of Representatives. Such laws are considered ratified after fifteen days from the date of receipt." The Iraqi Parliament's resolution was neither vetoed nor sent back by the President of the Republic, and it was not even sent to be appealed in the federal court – so according to the Iraqi constitution it is now considered an active and binding law.

Session 36 of the Iraqi parliament held on June 9th 2007 (12:35 pm – 2:47 pm) included a hearing where Mr. Hoshiyar Zebari, the Minister of Foreign affairs was called in for questioning. During the session, the transcripts of which are accessible to the public through the Iraqi parliament's official website parliament.iq, Mr. Omar Khalaf Jawad, an MP from the secular National Iraqi Dialogue Front, and a member of the Parliament's Legal Committee, asked Mr. Zebari: "A few days ago the Iraqi parliament passed a resolution that obligates the cabinet to receive approval from the parliament before renewing the occupation forces' mission. What steps have your ministry, or the Iraqi cabinet as a whole, taken to inform international entities and countries with forces in Iraq about this resolution, so that we will be sure the resolution will be respected and implemented?" Mr. Zebari assured the parliament that their resolution would be considered.

Four months after this hearing, I helped organize and translate an off-the-record meeting via telephone in New York City during the last week of October between most of the Security Council's 15 delegates and a number of Sunni, Shiite, and secular Iraqi MPs. Two unexpected discoveries were made during this meeting.

First, Security Council delegates were informed that the report submitted by the Secretary-General on October 15th, 2007 in accordance to paragraph 6 of resolution 1770, contained some important factual errors. The SG's report states in article 9 that "[t]he Council of Representatives passed a non-binding resolution on 5 June obligating the Cabinet to request Parliament's approval on future extensions of the mandate governing the multinational force in Iraq and to include a timetable for the departure of the force from Iraq." Iraqi MPs assured and explained to the SC delegates that the resolution passed and became a binding law, and that it did not have a request to include a timetable. One of the MPs attending the meeting from Baghdad clarified that, "All that the resolution requests is that the Iraqi parliament be allowed to practice its constitutional rights."

The second and more shocking discovery of the meeting was that the letter from the 144 MPs was never delivered to the Security Council delegations. Some of the Iraqi MPs confirmed that they handed the letter to Mr. Ashraf Jehangir Qazi, the Special Representative of the Secretary-General in charge of the United Nations Assistance Mission in Iraq. Upon following up with him, Mr. Qazi had assured the MPs that he had indeed delivered the letter to the Security Council and the Secretary General.

The day after our meeting with the Security Council delegates, the Iraqi MPs electronically scanned and emailed this letter to the Security Council delegates. The letter states very clearly that “the Iraqi Cabinet has unilaterally requested a renewal of the UN mandate keeping the occupation troops (MNF) in Iraq,” and that “such a request issued by the Iraqi Cabinet without the Iraqi Parliament's approval is unconstitutional.” It adds: “the Iraqi parliament, as the elected representatives of the Iraqi people, has the exclusive right to approve and ratify international treaties and agreements including those signed with the United Nations Security Council.” In addition, the letter demands a “timetable for the withdrawal of the occupation forces (MNF) from our beloved Iraq.” (see Appendix III for translation of the full text of letter)

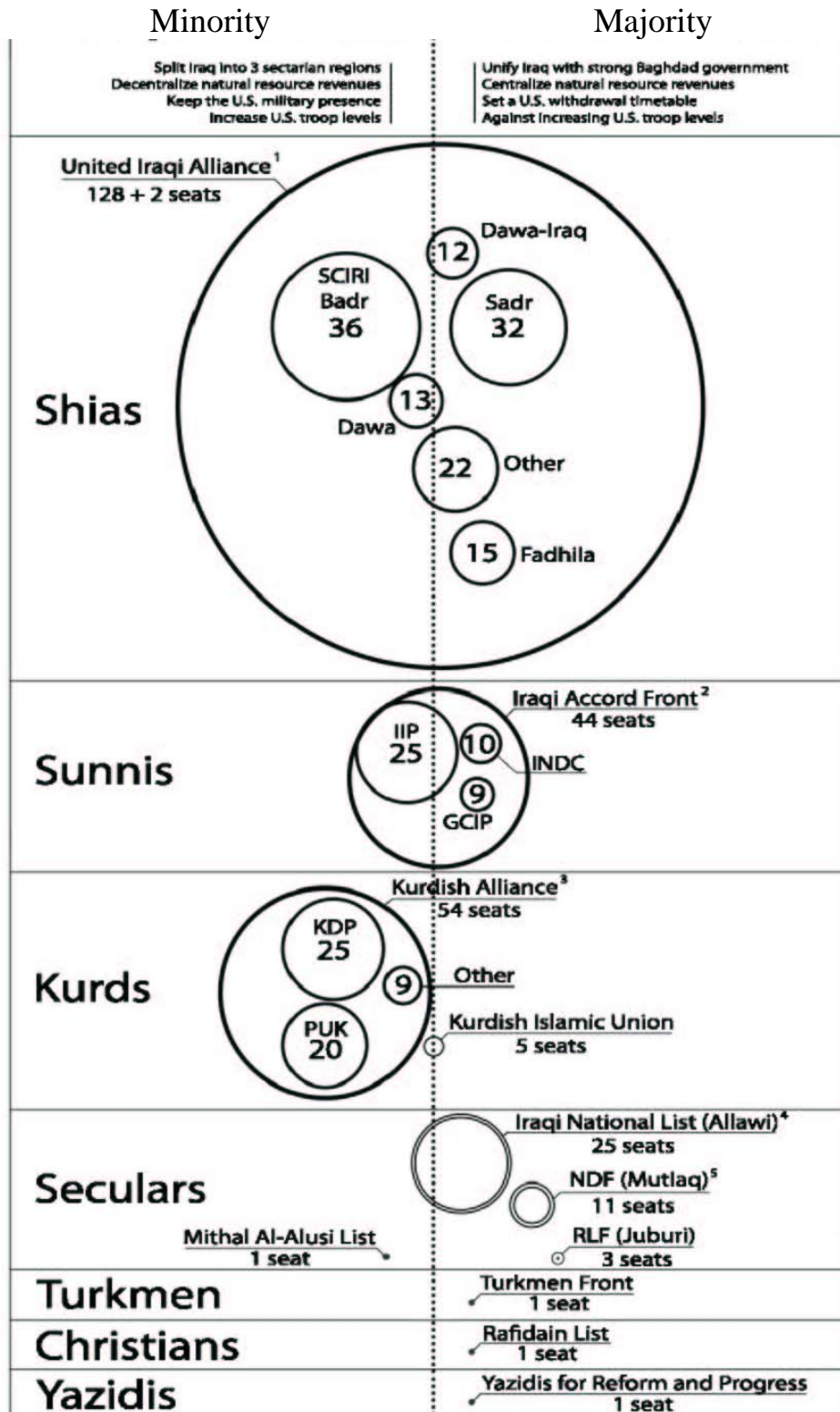
A few weeks after this meeting with the Security Council delegates, Mr. Zebari was called for questioning again on November 25th 2007. He announced that a request for a Multi-National Force (MNF) troop extension in Iraq will be submitted to the Iraqi parliament for consideration. "This will be the last request for troop extension. It will not be presented to the UN Security Council prior to its submission to the Iraqi parliament for deliberation," the minister said in statements to the press ahead of that day's parliamentary session. Zebari, alongside Vice President Adel Abdul Mahdi, were invited to attend the parliamentary session during which the principles of friendship and cooperation between Iraq and the United States were discussed. According to Zebari, the declaration did not indicate an approval of the troop extension. "The request for troop extension will be submitted to the parliament later," the minister said, providing no further details of the date set for the deliberation.

Unfortunately, and despite the many meetings and letters exchanged between the parliament and the Security Council, this issue was not given the consideration it deserves.

In light of these events, it should come as no surprise that the Iraqi public opinion is now highly suspicious of the executive branch and skeptical of its promises, specifically that no permanent foreign military bases will be established in Iraq. Az-Zaman, one of the two papers with highest circulation in Iraq, had this front page headline on November 27th 2007 commenting on the Bush-Maliki Agreement: “Bush and Al-Maliki agree on principles to leave permanent military bases in Iraq”. (See Appendix IV for original)

Once again, thank you for allowing me this opportunity to share information about current internal dynamics of the Iraqi government. I would be happy to address any questions you might have.

Appendix I
 The Iraqi Parliament: A political map
 By Raed Jarrar



Appendix II
Articles in the Iraqi Constitution regarding “international treaties and agreements”

Article 61:

The Council of Representatives specializes in the following:

Fourth: A law shall regulate the ratification of international treaties and agreements by a two-thirds majority of the members of the Council of Representatives.:

Article 73:

The President of the Republic shall assume the following powers:

B. To ratify international treaties and agreements after the approval by the Council of Representatives. Such international treaties and agreements are considered ratified after fifteen days from the date of receipt.

Article 80:

The Cabinet shall exercise the following powers:

Sixth: To negotiate and sign international agreements and treaties or designate any person to do so.

Appendix III
Letter from Iraqi Parliamentarians concerning the MNF Renewal:
April 2007

[original in Arabic, translation into English by Raed Jarrar]
[undated but apparently completed on April 28, 2007]

[Text begins:]

In the name of God, Most Gracious, Most Merciful

To: the Presidency of the Iraqi Council of Representatives, the Iraqi Cabinet, the United Nations Secretary General, members of the UN Security Council, the Secretary General of the Arab League, the Presidency of the Organization of the Islamic Conference, and the Presidency of the European Union.

Subject: Timetable for withdrawal of the occupation forces
(multinational forces [MNF]) from Iraq

WHEREAS, the UN Security Council will soon review the MNF mandate on June 15th 2007

WHEREAS, the Iraqi Cabinet has unilaterally requested a renewal of the UN mandate keeping the occupation troops (MNF) in Iraq

WHEREAS, such a request issued by the Iraqi Cabinet without the Iraqi Parliament's approval is unconstitutional

WHEREAS, the Iraqi parliament, as the elected representatives of the Iraqi people, has the exclusive right to approve and ratify international treaties and agreements including those signed with the United Nations Security Council

WHEREAS, the Iraqi people have expressed their will by demonstrating in marches demanding an end to the occupation by setting a timetable for withdrawal

THEREFORE, we the Iraqi members of parliament signing below demand a timetable for the withdrawal of the occupation forces (MNF) from our beloved Iraq.

[Text ends]

[This text is followed by the names and signatures of 144 Iraqi Members of Parliament. Some signatories have also made comments in a space provided for that purpose. The signatories are an absolute majority of the parliament, which has 275 seats. The letter with signatures comprises six pages of which five have been obtained by GPF. The UN Secretary General's UNAMI report of October 15 affirms a total of 144 signatures]

