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December 17, 2007 **TB**  
LL File No. 2008-00429

TO: The Honorable William D. Delahunt, Chairman  
Subcommittee on International Organizations, Human Rights, and Oversight  
Committee on Foreign Affairs  
United States House of Representatives

Attention: Elisa Perry

FROM: Dr. Rubens Medina  
Law Librarian of Congress

A handwritten signature in black ink, appearing to read "RM", written over the printed name of Dr. Rubens Medina.

SUBJECT: Hearing before the Subcommittee on "The Extension of the United Nations Mandate  
for Iraq: What is the Role of the Iraqi Parliament?"  
December 19, 2007 Statement of Issam Michael Saliba

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Thank you for the request that the Law Library of Congress participate in the subcommittee hearing on December 19, 2007.

Congressional guidelines on objectivity and non-partisanship require that our staff confine their testimony to technical, professional, and non-advocacy aspects of the matters under consideration, and limit themselves to questions within their fields of expertise. With the understanding that this testimony will be prepared and delivered in accordance with these principles and limitations, I am pleased to authorize the appearance of Issam Michael Saliba.

As requested, we have prepared and attached both Mr. Saliba's written statement and a short biography. Based upon the requirements contained in Chairman Lantos' letter of December 14, 2007, we have supplied you with the appropriate information.

The mission of the Law Library of Congress is to be the legal research arm of the United States Congress. It has been an honor to assist you and we look forward to continue working with you in the future. Should you need further assistance with any other matter pertaining to foreign, comparative, or international law, please contact me by email at [law@loc.gov](mailto:law@loc.gov) or by fax at (202) 609-9264.

Attachments



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Directorate of Legal Research  
LL File No. 2008-00429

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON FOREIGN AFFAIRS**

**SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,  
HUMAN RIGHTS, AND OVERSIGHT**

**WEDNESDAY, DECEMBER 19, 2007  
10 A.M.**

**HEARING:**

**“THE EXTENSION OF THE UNITED NATIONS MANDATE FOR IRAQ: WHAT IS THE  
ROLE OF THE IRAQI PARLIAMENT?”**

**STATEMENT OF ISSAM MICHAEL SALIBA  
*SENIOR FOREIGN LAW SPECIALIST  
LAW LIBRARY OF CONGRESS***

**U.S. HOUSE OF REPRESENTATIVES  
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**HEARING:**

**“THE EXTENSION OF THE UNITED NATIONS MANDATE FOR IRAQ: WHAT IS THE  
ROLE OF THE IRAQI PARLIAMENT?”**

Chairman Delahunt, Ranking Member Rohrabacher, and Distinguished Members of the House Subcommittee,

My name is Issam Saliba. I am the Senior Foreign Law Specialist for the Middle Eastern and North African Arab States at the Law Library of Congress. Prior to my present position I practiced law extensively, both as an attorney and corporate counsel, in a number of countries. I am honored to appear before you to testify on whether the Iraqi Government has the authority to request the continued presence of the multinational forces in Iraq without the consent and approval of the Iraqi Parliament.

Based on an examination of the Iraqi Constitution, surrounding resolutions, and commonly accepted definitions of the meaning of an international agreement, it is my opinion that the Iraqi Government is under a constitutional obligation to seek the Iraqi Parliament’s approval for its request to extend the mandate of the multinational forces in Iraq.

**I. Factual Background**

Last year the United Nations (UN) Security Council adopted Resolution 1723/2006 extending the mandate of the multinational forces in Iraq for a twelve-month period beginning on December 31, 2006.

The UN Security Council noted that it had taken into consideration the two letters attached to its resolution, sent separately by the Prime Minister of Iraq and the U.S. Secretary of State.<sup>1</sup>

The letter sent by the Iraqi Prime Minister, dated November 11, 2006, requested that the U.N. Security Council extend the mandate of the multinational forces in Iraq for a twelve-month period beginning on December 31, 2006.

In her letter dated November 17, 2006, the U.S. Secretary of State informed the U.N. Security Council of her consultations with the Government of Iraq and the willingness of the multinational forces to extend their presence in Iraq.

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<sup>1</sup> Copies of the UN Security Council Resolution 1723 of 2006 and the two letters attached to it are available at [http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm).

The Iraqi Parliament seems to have protested the failure of the Iraqi Government to seek its approval in the extension process. In anticipation of another extension request, a majority of its members sent a letter to the Iraqi Prime Minister, the members of the U.N. Security Council, and others questioning the constitutionality of such requests when they do not have parliamentary approval, and asking for a timetable to be adopted for the withdrawal of the “multinational occupying forces” from Iraq.<sup>2</sup>

Furthermore, on June 5, 2007, the Iraqi Parliament adopted a resolution calling upon the Iraqi Government to seek parliamentary approval on any future extension of the mandate of the multinational forces in Iraq and to include a timetable for their departure.<sup>3</sup>

On December 7 and 10, 2007, respectively, the Iraqi Prime Minister and the U.S. Secretary of State sent letters to the UN Security Council similar in essence to those sent in 2006 requesting the extension of the mandate of the multinational forces for a twelve-month period beginning on December 31, 2007.<sup>4</sup>

## II. Role of Parliament in the Approval of International Treaties and Agreements

It is a general principle of constitutional law that international treaties and agreements require the approval of both the executive and legislative branches of government before they become binding. The new Iraqi Constitution of 2005 subscribes to this principle. The government (Council of Ministers) negotiates such treaties and agreements as indicated in Article 80, Section six. The Parliament approves and sends them to the President of the Republic for final approval; the approval of the President can be implied if he or she does not act within fifteen days from the date of receipt of Parliament’s explicit approval (Article 73, Section 2, of the Constitution).

Section four of Article 61 stipulates that the Parliament shall enact a law by a two-thirds majority vote to regulate the approval of international treaties and agreements. Apparently, no such law has been enacted.

## III. Does the Failure to Enact the Law under Article 61 Dispose of the Constitutional Duty of Parliament to Approve International Treaties and Agreements?

The law regulating the approval of international treaties and agreements is a procedural one, and does not affect the basic constitutional duty of Parliament to approve all international treaties and agreements. In the absence of such a law, each time the Parliament approves an international treaty or agreement the act of approval becomes itself the procedural law for that specific treaty or agreement and requires therefore a two-thirds majority vote.

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<sup>2</sup> Copies of both the Arabic original and the English translation are available respectively at <http://www.globalpolicy.org/security/issues/iraq/document/2007/042007unletterarabic.pdf> and <http://www.globalpolicy.org/security/issues/iraq/document/2007/042007unletterenglish.pdf> (both last visited Dec. 16, 2007).

<sup>3</sup> See minutes of the 34 session of Parliament held on June 5, 2007, in Arabic, available at <http://www.parliament.iq/modules.php?name=News&file=article&sid=735>.

<sup>4</sup> Copies of the two letters, respectively, are available at <http://www.globalpolicy.org/security/issues/iraq/mnfrenewal/2007/1207iraqpmletter.pdf> and <http://www.globalpolicy.org/security/issues/iraq/mnfrenewal/2007/1210condiletter.pdf> (last visited Dec. 16, 2007).

Under no circumstances could the failure of Parliament to enact the procedural law result in discharging it from its constitutional duty to approve international treaties and agreements and send them to the President of the Republic for final action, as reflected in Article 73, section two.

#### **IV. Does the Request to Extend the Mandate of the Multinational Forces Come Under the Definition of International Treaties and Agreements?**

During the discussions leading to the June 5, 2007 Resolution calling upon the Government to seek parliamentary approval for future extension of the mandate of the multinational forces in Iraq, some members of the Iraqi Parliament expressed the view that such extensions are not international treaties or agreements subject to the approval of Parliament.<sup>5</sup>

Some media accounts also quoted Prime Minister al-Maliki as claiming that the Constitution does not refer to the U.N. mandate<sup>6</sup> when addressing international treaties and agreements.

International agreements include, but are not limited to, formal treaties, conventions, protocols, charters, and covenants; they also include instruments of any form by which two or more states and/or international organizations resolve disputes, establish common understanding on contentious issues, or regulate matters of mutual concern.

An article published by the United Nations entitled *Definition of Key terms used in the UN Treaty Collection* cites Art. 3 of the 1969 Vienna Convention on the Law of Treaties to confirm that international agreements also include oral promises such as one made by the Minister of Foreign Affairs of one State to his counterpart of another State. It states the following:

##### Agreements

The term "agreement" can have a generic and a specific meaning. It also has acquired a special meaning in the law of regional economic integration.

- a) Agreement as a generic term: The 1969 Vienna Convention on the Law of Treaties employs the term "international agreement" in its broadest sense. On the one hand, it defines treaties as "international agreements" with certain characteristics. On the other hand, it employs the term "international agreements" for instruments, which do not meet its definition of "treaty". Its Art. 3 refers also to "international agreements not in written form". Although such oral agreements may be rare, they can have the same binding force as treaties, depending on the intention of the parties. An example of an oral agreement might be a promise made by the Minister of Foreign Affairs of one State to his counterpart of another State. The term "international agreement" in its generic sense consequently embraces the widest range of international instruments.<sup>7</sup>

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<sup>5</sup> See minutes of the thirty-fourth session of Parliament held on June 5, 2007, available in Arabic at <http://www.parliament.iq/modules.php?name=News&file=article&sid=735>

<sup>6</sup> See Joshua Holland and Raed Jarrar, *Iraqi Government to UN: 'Don't Extend Mandate for Bush's Occupation*, POLICY.NET, Nov. 9, 2007, available at <http://www.globalpolicy.org/security/issues/iraq/election/2007/1109iraqtoun.htm>.

<sup>7</sup> The UN article, *Definition of key terms used in the UN Treaty Collection*, is available at the United Nations Website, <http://untreaty.un.org/English/guide.asp> (last visited Dec. 16, 2007).

Under the United Nations definition, the request made in the past by the Prime Minister of Iraq, the promise made by the U.S. Secretary of State on behalf of the multinational forces, and the resolution of the UN Security Council to extend the mandate of these forces constitute an international agreement that is subject to parliamentary approval under the Constitution of Iraq. The same applies to the present requests.

#### **V. Does it Matter whether the June 5, 2007 Resolution Is Binding or Not?**

Contrary to some media reports, the resolution adopted by the Parliament on June 5, 2007, is not a binding law. This is what Speaker Mahmoud al-Mashhadani also asserted in response to a question raised during the May 27, 2007 parliamentary session in which the resolution was first debated.<sup>8</sup>

The non-binding nature of that resolution does not, however, affect the necessity of obtaining parliamentary approval for any extension of the mandate of the multinational forces in Iraq. This is because the Government is required to seek such an approval under Section two of Article 73 of the Constitution rather than under the June 5 Resolution. The June 5 Resolution is a reminder to the Government of one of its constitutional obligations.

#### **VI. Conclusion**

Based upon the foregoing, it is my conclusion that the Government of Iraq has a constitutional obligation to seek parliamentary approval with respect to any request submitted to the UN Security Council or the multinational forces to extend their presence in Iraq.

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<sup>8</sup> See minutes of the 32nd session of Parliament held on May 27, 2007, in Arabic, available at <http://www.parliament.iq/modules.php?name=News&file=article&sid=734>.