

OPENING STATEMENT OF CHAIRMAN BILL DELAHUNT

at a November 19, 2008, hearing of the Subcommittee on International Organizations, Human Rights, and Oversight of the House Committee on Foreign Affairs titled

Renewing the United Nations Mandate for Iraq: Plans and Prospects

The Subcommittee will come to order. This is the eighth in a series of hearings which the Subcommittee has held on the Bush administration's efforts to consummate what was initially described as a long-term security agreement with the Government of Iraq. I appreciate the involvement of my friend and Ranking Member, the gentleman from California, Mr. Rohrabacher, in this undertaking.

The first hearing was held on December 19, 2007, almost a year ago. Much has changed since then. I would note that the proposed agreement is now called the "Agreement on the withdrawal of United States forces from Iraq." I think it is fair to say that this hearing is most timely – in light of the signing this week of the proposed agreement by representatives of the two executive branches.

We have indeed come a long way since President Bush and Prime Minister al-Maliki signed the so-called Declaration of Principles on a Long-Term Relationship -- which seemed to embrace a broad American security commitment to defend Iraq against external and internal threats.

Now there is a timetable that references specific dates. American combat troops are scheduled to be withdrawn from Iraqi cities by June 30, 2009, and all U.S. forces must be withdrawn from all of Iraq by December 31, 2011.

It is my hope that the hearings that we held contributed to these positive changes – and when I think of the Iraqi Parliamentarians who sat before us in June, urging that a timetable for complete withdrawal be at the core of any security agreement, I believe that my hope has some basis in reality – as we concurred with them.

However, I want to be very clear. I still have serious reservations about this agreement.

For instance, I share the concerns expressed by the Chairman of the Armed Services Committee, our friend and colleague Ike Skelton, who has been quoted as being “deeply troubled” because the agreement contains, as he says, “vague language that will cause misunderstandings and conflict between the United States and Iraq in the future.”

I could go on and on – but a review of the substance of the agreement is in fact not the purpose of this hearing.

And by the way, we must not forget that this agreement has just been provided to Congress – and that there has been no time to conduct the analysis required by such a significant document – one that purports to end a conflict that has had such momentous and tragic consequences for both the Iraqi and American people.

And remember, there has been no meaningful consultation with Congress during the negotiation of this agreement. And the American people have been kept completely in the dark.

Even now the National Security Council has requested that we do not show this document to our witnesses or release it to the public – a public that for over five years has paid so dearly with blood and treasure.

Now that’s incredible – meantime, the Iraqi Government has posted this document on its media website, so that anybody who can read Arabic can take part in the discussion. But this is typical of the Bush administration and its unhealthy and undemocratic obsession with secrecy.

As I said, much has changed in this year – I mean, just yesterday the agreement was effectively endorsed by the government of...Iran. I commend to you this quote from Ayatollah Shahroudi:

“In regards to the agreement, the Iraqi Government has performed well, and we hope that the result will be to the benefit of Islam and the sovereignty of Iraq.”

But in any event, one important thing has not changed: a renewal of the UN Mandate may very well be the only option available to protect our troops.

As we will hear in testimony today, the bilateral security agreement will not become legally valid unless:

1. the Iraqi Parliament enacts by a two-thirds majority -- 184 of its 275 members -- a law governing the ratification of international agreements,
2. the Iraqi parliament then enacts the proposed bilateral security agreement under that ratification law -- which as introduced Monday also requires a two-thirds vote of approval, and
3. the United States Congress enacts a law that approves and implements the security agreement -- and authorizes offensive combat operations by U.S. forces.

The odds of all three happening by December 31 is about zero -- given the administration's insistence that it need not seek congressional approval of the agreement, which embraces combat operations.

So, where will we be on January 1, 2009? In legal limbo, with our troops dependent on an invalid agreement for their immunity from Iraqi prosecution, as they undertake combat missions with no constitutional authority.

If the Mandate goes, the legal authority goes -- a situation that can only endanger our troops and complicate President-elect Obama's plan to undertake a responsible withdrawal.

For months, the Bush administration has been implying that renewal of the UN Mandate is not a viable option. First we heard that Russia would block any renewal. I traveled to New York expressly to discuss that issue with the Russian Ambassador to the United Nations, and he confirmed for me what had been publicly stated by his Foreign Minister: Russia will not stand in the way of a request from Iraq for a renewal of the Mandate.

We no longer hear about Russia -- but now the Administration is saying that a renewal is not possible for another reason-- and I quote from Monday's McClatchy newspaper report about a briefing by an American negotiator:

The senior government official cautioned, however, that “there is no alternative” if the security agreement fails in parliament....The U.S. official said that the Iraqis weren’t interested in renewing (the UN) mandate.

Now that is simply, demonstrably, inaccurate. Iraqi political figures from both the executive branch and the opposition-controlled parliament have stated that if the agreement is not completed in valid form before December 31, they can accept a renewal of the Mandate. Let me read just a few of those statements:

Here is Iraqi Foreign Minister Hoshyar Zebari, on September 11, 2008:

“If such an agreement is not signed – which is a possibility – the alternative would be for the United States to go to the Security Council in agreement with the Iraqi government. We may request that the Security Council resolution be extended for one year...If an extension takes place, it will be a routine one.”

And just on Monday, Dr. Omar al-Karbuli, also of a government party, said that a coalition of his party and two others:

"...opposes the passage of the agreement at this time, and supports working towards extending the mission of the US forces through a UN mandate. After the mandate is extended, negotiations on the agreement should be resumed."

And from the opposition, former Interim Prime Minister of Iraq, Dr. Ayad Allawi, who testified before this Subcommittee in July, wrote me a letter on Monday reaffirming his support for “extending the UN mandate for another six months or one year.”

On this topic, I want to note my surprise at a recent remark by Foreign Minister Zebari:

“(I)f the Iraqi government asks for amendments and changes on the resolution, I believe that the United States will use its veto power.”

Excuse me? What is that about? Why would the Iraqi foreign minister anticipate that the United States would veto a renewal of the UN mandate?

Well, maybe this is the answer. Consider this troubling report from the Iraqi government newspaper yesterday:

“The U.S. side stressed the importance of approval before the end of the UN Mandate, indicating that (U.S. negotiator David) Satterfield told the political parties...that in the event that the Iraqi government does not announce the approval of the U.S.-Iraqi agreement, the United States will withdraw its troops and refuse to approve the extension of the mandate when the UN Security Council discusses it.”

If this report is accurate, the Bush administration owes this Congress, the U.S. Armed Forces, and the American people an immediate explanation.

I will introduce our witnesses after Mr. Rohrabacher makes his opening remarks, but let me just say at this point that some of the witnesses today have appeared before this Subcommittee a number of times as we reviewed various aspects of the proposed bilateral security agreement – and they have also given generously of their time and advice to me and the Subcommittee repeatedly throughout this year.

On behalf of myself and Mr. Rohrabacher, I thank you, Professor Hathaway, Professor Matheson, and Mr. Jarrar, for your assistance to the Subcommittee. It is safe to say, and you know this to be true, that we could not have done it without you – frankly, I don't know how you got any other work done this year, given all the time you spent with us.

I now turn to my friend from California for any remarks he wishes to make at this time.

Thank you Dana – let me now briefly introduce our distinguished panel – while noting that their full resumes are available on our webpage along with their prepared statements and the Committee memorandum on this hearing.

Law professor Oona Hathaway has migrated from Yale to Berkeley in the period of that time she has been a witness before this Subcommittee. I am glad for your sake, Oona, that Ms. DeLauro, the gentlelady from New Haven, had another commitment at this time. But seriously, in Professor Hathaway the committee is privileged to have one of the country's leading constitutional scholars and authors.

Our next witness would have been Issam Saliba, foreign law specialist at the Law Library of Congress. Mr. Saliba unfortunately cannot be with us today, but he has submitted a statement, and I ask unanimous consent that it be entered into the record. His statement reaffirms his testimony last December about the need for a 2/3 vote of approval by the Iraqi parliament for the security agreement to take effect.

I would also note for the record that much as we respect Mr. Saliba's work, it is perhaps more important that his position is shared by Dr. Mahmoud Al-Mashhadani, the Speaker of the Iraqi Parliament, who said on August 31, 2008:

“The Iraqi constitution determines that the Council of Representatives must first enact a law to ratify the Law of Treaties and Agreements, and must vote or pass this law through parliament by a two-thirds majority. This law will take a long time to pass due to the two-thirds requirement, so it will not be enacted before the end of this year. We are constitutionally barred from ratifying any agreements without the enactment of this law and the law has not been enacted so far.”

By the way, the ratification law referred to by Speaker Mashhadani was introduced on Monday – and it too sets a 2/3 standard for the approval of security agreements.

Raed Jarrar will follow Ms. Hathaway. Mr. Jarrar, an Iraqi architect, is a consultant on Iraq at the American Friends Service Committee – but that description does not do him justice. I and the Subcommittee staff have found Raed to be impeccably non-partisan and accurate in his access to and his analysis of Iraq's political players, and he was invaluable in arranging the visits to our Subcommittee of three Iraqi parliamentarians earlier this year.

While Raed is an old friend of the Subcommittee, Thomas Donnelly is a new friend whose talents we hope to exploit just as fiercely. Mr. Donnelly is a resident fellow in defense and national security studies at the American Enterprise Institute. He has been writing about or making U.S. military policy for three decades, and is the author of numerous books on the topic. And he recently co-authored a report with Fred Kagan, the godfather of the “surge” strategy in Iraq, on the future of U.S. ground forces. Tom, welcome to our world. I hope by the end of the day you will be glad you came.

Our final witness will, appropriately, be perhaps the nation's leading authority on the operations and precedents of the United Nations Security Council, former State Department acting legal adviser and current George Washington University law professor Michael Matheson. Mr. Matheson always has an advantage when writing or speaking about various UN resolutions on Iraq – because he often wrote them. Mike, I don't know how well your definitive 2006 book on the Security Council is doing on the best-seller list, but I know from experience that it's pretty popular with the Subcommittee staff when they prepare for hearings on the UN – including this one.

Again, thank you all for your time and expertise, and let's get started with Professor Hathaway.

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