

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

Renewing the United Nations Mandate for Iraq:
Plans and Prospects

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Mr. Chairman, Ranking Member, 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 the current 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. 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. 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 Executive Branch have a significantly different sociopolitical agenda than parties in control of the Council of Representatives. 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 last 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 the U.S. military presence in Iraq and the debate over the U.S.-Iraqi agreement.

I have been following this matter closely 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 since November 2007 when President Bush and PM Al-Maliki signed a declaration of principals for the current agreement. The declaration of principles sparked a national public debate in Iraq, both among the public and government officials. The debate inside the Iraqi government has focused on both the political and legal aspects of signing the agreement, but I will focus today on the legal and procedural aspects of it.

Legally, the Iraqi Council of Representatives has not yet issued a law required to regulate the ratification of any international treaties and conventions. Article 61, paragraph IV of the Iraqi Constitution and article 127 of the Iraqi Council of Representatives' bi-laws indicate that "a law shall regulate the ratification of international treaties and agreements by a two-thirds majority of the members of the Council of Representatives". The Iraqi council of representatives has yet to pass this law.

A debate over this required law has been taking place for over a year. For example, the Minister of State for Parliamentary Affairs proposed in session 3 held on the fourteenth of March 2007: "We will propose a law to your council and define three types of treaties: some treaties will require a two-thirds majority in case they related to issues of sovereignty, borders and or any other Strategic issues related to the national interest of the State; other treaties with specified importance will require an absolute majority, and there will be cultural and other treaties that are not important, they will need a simple majority as it exists in the law of treaties". Other members of parliament proposed adopting the old Law of Treaties (No. 111) of 1979 which stipulates that the ratification of international agreements and treaties usually require only a simple majority, but they require a 2/3 majority in cases related to issues of sovereignty and territory.

But despite the request sent by the House Speaker Mahmoud al-Mashhadani at session 20 held on the 30th of October 2007 to Iraq's "Foreign Relations Committee in cooperation with the Legal Committee to enact the Law of International Treaties and Conventions as soon as possible and submit to the Presidency of the House of Representatives," the actual procedures just started this week.

During the last months of debate, there has been one clear understanding of the requirements needed to pass the U.S. Iraqi agreement. I will quote the President of the Iraqi Parliament, Dr. Mahmoud Al-Mashhadani, during an interview he had with al-Arabiya TV on August 31st 2008. Here is Dr. Al-Mashhadani answering a question about the requirements:

Dr. Mahmoud Al-Mashhadani: the Iraqi constitution determines that the House 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 two-thirds majority. So before discussing the treaty we must enact this law by two thirds, and then submit it to the Presidency for ratifying it, and then it will go into effect. As before this law nothing can be done because the parliament is not ready yet, according to the constitution, to ratify this agreement. It can only do so after the enactment of this law. 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.

Dr. Mahmoud Al-Mashhadani: We are constitutionally barred from ratifying any agreements without the enactment of this law and the law has not been enacted so far. After enactment of this law we may introduce the agreement and then it must be ratified by whatever majority is decided by the law: it might be an absolute majority or it might be two-thirds majority for important international agreements and an absolute majority for economic accords. The intention now is that important international agreements will require two-thirds majority, and economic agreements an absolute majority, and perhaps other charters and accords are by simple majority. So, whatever is included in the law and approved by the parliament.

Dr. Mahmoud Al-Mashhadani: the negotiating team is not authorized to make any decision until they go back to Mr. Prime Minister, if he approves it he will send it to the Political Council for National Security, if approved by the Political Council for National Security with two thirds majority, then they can send it to the parliament. The parliament must wait until it enacts the law to ratify international treaties and agreements, then we can submit the US-Iraqi agreement to the parliament after the approval of this law.

Surprisingly, a new argument has been made in the last few weeks that passing the law only requires a simple majority, and does not require the passage of the law indicated in article 61 paragraph IV. Most of the ruling parties in the executive branch are supporting this new argument now.

This Monday, November 18, 2008, the Iraqi executive branch approved the agreement and sent it to the parliament, but Dr. Al-Mashhadani seemed to be following what he has described as the legal requirement rather than accepting the new suggestion that the law require only a simple majority to pass. Forty three members of parliament submitted a law proposal to the parliament presidency, and they were permitted to perform the First Reading in the parliament this Monday. This took place at the same session the First Reading of the U.S. Iraqi agreement took place.

If a simple majority is chosen as a requirement, there is a slim possibility for the agreement to pass, but if the 2/3 majority requirement is kept, the possibilities for the agreement to pass are closer to impossible.

If the agreement was rejected or did not pass during the next 10 days or so, the Iraqi parliament will go on recess for the Islamic Pilgrimage "Al-hajj" until mid December. In that case, it seems like there is only one "plan b" that has been discussed by the Iraqi

leaders, including the Iraqi foreign minister and the Iraqi ambassador to the UN. This Plan B is requesting a renewal of the UN mandate for another year.

While renewal of the UN mandate met strong opposition by the majority of Iraqi members of parliament in the past, their resistance was not to the UN mandate per se. Their opposition was generally based on a rejection of what was viewed as a mechanism to ensure an open-ended mandate to keep the Multi National Forces in Iraq indefinitely. For example, the Majority of Iraq's MPs demanded that the mandate should include a timetable for all MNF troops' withdrawal so that it will become a "reason to end the occupation rather than prolonging it".

This year, the dynamic is different. Many Iraqi groups are now asking for a renewal of the same UN mandate they have been opposing for years, mainly because they see it as a vehicle to oppose the bi-lateral agreement with the U.S. that might prolong the occupation even longer from their point of view. The renewal of the UN mandate is seen now as the lesser of two evils, but not as a strategic goal. Many Iraqi groups in the parliament think it is better to give the parliament more time to debate the agreement rather than just rushing it within the next few weeks. These groups vary in their goals from those who want to wait until the next U.S. administration is in place, such as the secular Iraqi National list led by Dr. Ayad Allawi, or those who think an Iraqi public referendum is a better idea to pass the agreement like the Sunni Accord front, to those who want enough time to consider Iraq's options like the Shiite Al-Fadila party, or those who are against any agreement with the US like Al-Sadr group. Some of these groups might end up changing their position during the next few days if they concluded that the proposed U.S.-Iraqi agreement does fulfill their demands.

If the U.S. Iraqi agreement does not pass within the next 10 days or so, a UN mandate could be requested for one year, with a review after six months. This will keep Iraq's assets protected and give enough time to negotiate a final deal with the next administration.

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

Appendix I

