

**THE EXTENSION OF THE UNITED NATIONS
MANDATE FOR IRAQ: IS THE IRAQI
PARLIAMENT BEING IGNORED?**

HEARING
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL
ORGANIZATIONS, HUMAN RIGHTS, AND OVERSIGHT
OF THE
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WEDNESDAY, DECEMBER 19, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,
HUMAN RIGHTS, AND OVERSIGHT,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 2200, Rayburn House Office Building, Hon. William D. Delahunt (chairman of the subcommittee) presiding.

Mr. DELAHUNT. This hearing of the subcommittee will come to order. Before I make a brief opening statement, it is a pleasure to introduce for his first congressional hearing a new Member of Congress, recently elected from Virginia. He is succeeding our former colleague who passed who was highly regarded and well-respected, Congresswoman Jo Ann Davis, Mr. Rob Wittman.

I am sure Mr. Wittman will carry on in her tradition and make a significant contribution to this committee and to its work and to Congress as a whole. So let me personally welcome you. And let me yield to Mr. Rohrabacher since he is the Ranking Republican on this committee for what I am sure will be a warm welcome.

Mr. ROHRABACHER. Well, this needs to be more than the Bill and Dana show which this turned out to be so often here, so we are very anxious to have you on our subcommittee and active. You will find that we believe that intellectual competition is really an important aspect of democracy, and we try to exemplify that, so welcome aboard.

Mr. DELAHUNT. Welcome aboard. And if you want to make any comments or observations, you are more than welcome.

Mr. WITTMAN. Just very briefly, Chairman Delahunt and members of the committee, it is an honor and privilege to be with you today and have the opportunity to sit in on this hearing. I look forward to working with each and every one of you in the days to come and learning a lot about the foreign affairs of our country.

Mr. DELAHUNT. Well, thank you, and just let me make one correction. It is not Delahunt, it is Delahunt.

Mr. WITTMAN. Delahunt. I am sorry, Delahunt.

Mr. DELAHUNT. It is Irish. It is not French or Italian.

Mr. WITTMAN. My apologies.

Mr. DELAHUNT. My forbearers are very proud of their Irish heritage. Well, again, welcome.

We are joined to my right by a distinguished member of the Congress, Jim McDermott from the State of Washington. He is not a member of this committee, but I would request that he be allowed to sit as a member of this subcommittee. He has been interested in these issues for some time. If there is no objection from Mr. Rohrabacher?

Mr. ROHRABACHER. No objection.

Mr. DELAHUNT. No objection. Welcome, Mr. McDermott.

I am going to make a brief opening statement. We have a distinguished panel in front of us. Today's hearing is entitled, "The Extension of the United Nations Mandate for Iraq: Is the Iraqi Parliament Being Ignored?"

Last night the U.N. Security Council passed a resolution to extend the mandate of the United States-led multinational force in Iraq until December 31, 2008. In a previous letter to the Iraqi executive branch and to the United Nations Security Council, a majority of the Iraqi Parliament denounced as unconstitutional the decision by Prime Minister Maliki to request this extension without the approval of the Parliament.

So as chairman of the subcommittee that has primary jurisdiction regarding issues implicating the United Nations and as one of the two congressional delegates to that international body, and frankly, as a Member of Congress who has observed the expenditure according to the Congressional Research Service of some half a trillion dollars as well as the loss of almost 4,000 Americans and well over 100,000 Iraqi lives since the initial invasion nearly 5 years ago, I must say I found this letter and this issue profoundly disturbing, particularly if at this moment there is this deep division between the Parliament and the executive.

The hope is to witness and observe reconciliation. I would suggest that this is far from reconciliation, but to the contrary, we constantly hear the refrain from the administration that the rule of law must be respected in all countries, and if we are to restore our international credibility, it is critical that those words do not ring hollow.

So today's hearing explores whether there are in fact some serious questions about whether the Iraqi executive branch followed the rule of law in its request for an extension of the United Nations mandate. On October 15, 2005, almost 10 million Iraqis approved a Constitution that paved the way for a new Iraqi Parliament known as the Council of Representatives, and subsequently, 275 members were elected.

The new Constitution confers upon the Parliament the power to approve international treaties and agreements. A majority of the Parliament has now stated that their constitutional prerogatives are being ignored, their constitutional responsibility is being ignored by the executive.

I certainly do not claim to be an expert on the Iraqi Constitution, but I find it difficult to imagine that a request to have foreign troops occupy your sovereign territory would not be considered the sort of an international agreement contemplated by the Iraqi Constitution or for that matter by any Constitution worthy of the name.

In a democracy, the rule of law is not an on-and-off thing to be followed if it is convenient. It is an all-the-time thing to be followed even if it is unpleasant, messy and difficult. We Members of Congress experience that frequently. I remember the year 2000 when the results of an election were disputed where the Supreme Court made a ruling, and Democrats certainly were not clicking their heels over that particular decision, but we respected the Constitution.

In any event, I don't know if the Maliki government has acted in a way that is consistent with the Iraqi Constitution, and that is what our witnesses are here to help us with.

I do know that our own Congress, which as the first branch of government has the constitutional obligation to oversee the actions of our executive branch, it has the duty to raise precisely this sort of issue and bring it to the attention of the American people for their perusal and reflection and analysis.

To further my understanding of the facts in this dispute, I wrote to Secretary Rice on December 5 seeking clarification before the U.N. Security Council acted. However, the Secretary of State has not yet responded to my letter.

We in fact had requested a witness from the Department of State, but unfortunately the individual that could have added to this discussion today was unavailable, I think it is Deputy Secretary Satterfield, who is currently traveling, while we have four witnesses today and all of them have certain expertise in various aspects of the Iraqi political system. Our witnesses will be, in order: Dr. Michael Rubin, a resident scholar at the American Enterprise Institute who advised the Coalition Provisional Authority in Iraq following the United States invasion and was an advisor to Secretary Rumsfeld; Mr. Issam Saliba, senior foreign law specialist at the Law Library of Congress and an expert in legal matters in the Middle East; Dr. Ken Katzman, who has appeared before this committee frequently and could be described as our favorite analyst on Iraq, from the Congressional Research Service; and Mr. Raed Jarrar, the Iraq consultant for the American Friends Service Committee in its program for Iraqi refugees, who has also worked in Iraq on reconstruction issues for the Agency for International Development.

Before formally introducing the witnesses, let me turn to my dear friend from California and ranking member, Dana Rohrabacher, for any comments he may wish to make.

Mr. ROHRABACHER. Thank you very much, Mr. Chairman. I was in Iraq, I guess 3 weeks ago, and I did not spend my time being shown around by our State Department. In fact, they told me I would have to leave after 4 hours or they wouldn't be able to provide me any security.

So I said, "It is okay, I don't really need it." So actually I went and was not shown around by the State Department and our military and had a lot of great conversations and got to know some things I think probably I wouldn't have had time to know if I had only spent 4 hours on the ground.

There is no doubt whether I was in Urbil, but there is no doubt that throughout the whole country, there seems to be a great deal of progress being made in terms of creating a more stable environ-

ment, and I think that we ought to note that and we ought to make sure that we understand that there has been progress made.

Where a year ago things looked incredibly bleak, things may look a little bit better for the cause of democracy today. I have no doubt that is because the United States made a commitment through a strategy which was called the surge strategy that indicated to our enemies and to our friends in Iraq that we had the ability to make such tough decisions.

If people think of us as weaklings, they will not respect any type of decisions that we make. Surprise, surprise. We made a tough decision to go with a surge strategy, which I did support the President's surge strategy, and it seems to have worked to the degree that it is a safer place today than it was before.

Now what we are discussing today is what role the Iraqi people play in making tough decisions and decisions especially about whether there should be an American presence or not. Let me for the record say that I do not support and I don't believe that there is any strategy of the United States Government to have bases in Iraq. I do not believe that is our motive.

Perhaps our witnesses can within their testimony let me know whether or not they agree with that assessment. Does anyone in the world believe that we are in Iraq in order to have a base in Iraq? If they do, they are wrong. The vast majority I will tell you of people who are supporting this cause in the Congress would not go along with any efforts to create permanent military bases in Iraq.

So what is our goal? Saddam Hussein was a vicious dictatorship, and Saddam Hussein murdered hundreds of thousands of his people. Admittedly, the President I think unfortunately used the argument that there were some sort of nuclear weapons being developed in Iraq, and we have not found the evidence of that.

We do know that Saddam Hussein did have weapons of mass destruction in terms of chemical and biological weapons. We know that because he had already used them and which the area that I visited 3 weeks ago in Iraq up in Urbil, the Kurds are very aware that Saddam Hussein had weapons of mass destruction because he used them on the Kurds, killing tens of thousands of them with chemical and biological weapons.

So our goal was to eliminate that brutal dictatorship, and we have succeeded in that. Whether or not now our forces should stay in Iraq in order to maintain or at least maybe secure a certain amount of breathing room for that country so that there is some degree of stability until the democratic institutions that replace Saddam Hussein could take hold, is the question.

What role should the United States play? Today, Mr. Chairman, you bring up the issue as to whether or not the Iraqi people should be making that decision or whether it should be made here. Obviously that decision should be made in Iraq by the Iraqi people, of course, with the concurrence of the United States as long as we agree that we would be willing to send our troops there and sacrifice our people and our treasure for that goal.

What form that takes, that type of, I would say, agreement on the part of the Iraqi people, what form that takes in terms of their procedure I think is not as relevant, Mr. Chairman, as perhaps

people who are more legalistic would suggest. If you take a legalistic approach and try to find whether or not it is the legislative branch or the executive branch or what branch of government in Iraq can have that determination, I think that is a totally irrelevant issue.

Obviously Iraq right now is trying to ease into a situation where its people can feel comfortable with the democratic process that is being established, the democratic alternative to the former Saddam Hussein dictatorship.

So while I would concur totally with the idea that the people of Iraq should have the final say, if the United States decides that it is willing to send troops to Iraq to achieve a certain political objective, well, I would agree absolutely that the people of Iraq have to be part of that decision.

How that decision is made, whether it is constitutional by our definition of their Constitution, is less relevant than whether or not that reflects the will of the people of Iraq. When I was there 3 weeks ago, there is no doubt that in the Kurdish area of Iraq, the northern half where I was visiting, overwhelmingly the people want to make sure that American troops stay there until there is a stability factor that they can count on overwhelmingly.

Now, whether or not that reflects in the southern area, maybe it is overwhelming there, maybe it is not. In the central area where there is a lot of chaos and conflict, I don't know. I would suggest that we not just focus on whether or not it is the Parliament or the executive branch in Iraq that should be making this decision that should reflect what the will of the people is in Iraq. I would suggest there is another alternative, and that alternative is I would support any efforts that would bring about a direct referendum of the people of Iraq in a fair and free election which could be monitored by people on the outside.

It seems to me that would be more reflective and more an accurate way of determining what the will of the people of Iraq is than simply saying, "Are they following their Constitution, because is it the Parliament or the executive branch that makes these decisions?" So I lay that alternative on the table as we begin this discussion and look forward to hearing from our witnesses. Thank you very much, Mr. Chairman.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher. We are going to proceed to hear the witnesses. We are joined by the gentleman from Arizona and a member of the subcommittee, Mr. Flake. I want to acknowledge the arrival of our colleague from California, Maxine Waters, and would ask the ranking member if he would consent to her sitting as a member to inquire of these witnesses on this issue which I know is of consequence to her.

Hearing no objection, so ordered. Welcome, Ms. Waters.

Let me begin by introducing Dr. Rubin. I already have given a limited version of their curriculum vitae, and maybe it is best if we just proceed directly to testimony, so let us begin with Dr. Rubin. Welcome.

**STATEMENT OF MICHAEL RUBIN, PH.D., RESIDENT SCHOLAR,
AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY
RESEARCH**

Mr. RUBIN. Thank you, Mr. Chairman, honorable members. Thank you for this opportunity to testify. As the chairman said, Iraqi Prime Minister Nouri al-Maliki sent a letter to the U.N. Security Council requesting the Council extend the mandate of the U.S.-led multinational forces for 1 year beginning December 31, 2007.

Maliki's actions are perfectly permissible under terms of the Iraqi Constitution. They are also permissible under precedent. The Security Council's November 28, 2006, extension of the mandate of the multinational forces' presence in Iraq until December 31, 2007, was also in response to a request by the Prime Minister.

According to the Iraqi Constitution, it is the job of the Iraqi Council of Representatives, the Iraqi Parliament, to ratify international treaties. This requires a two-thirds margin of support. Then the measure goes to the President to ratify the treaty, although such treaties are considered ratified after 15 days.

None of this is relevant to the case of the Prime Minister's request to extend the multinational forces mandate. The simple fact is that neither Maliki's communiqué nor U.N. Security Council resolutions any more constitute treaties for Iraq than they would for the United States Congress. Despite the fact that this U.N. Security Council resolution doesn't constitute a treaty, the Iraqi Council of Representatives does have a recourse if it disagrees with the Prime Minister's actions.

A no-confidence vote requires only a simple majority. Despite grandstanding among some members of the Parliament, especially among parties more sympathetic to Iran, none have chosen to avail themselves of the constitutional right to a no-confidence vote. I repeat that no one in Parliament has entered a no confidence motion in response to this issue, and that in itself would be the procedural way in which the Iraqi Parliament would handle this constitutional dispute.

While it is tempting in the American political context to second guess the elected Iraqi Government on this matter, there should be little doubt that doing so undermines the nascent Iraqi democracy and is counterproductive to Iraqi security stability and all rule of law. In turn, it will be that security and stability that creates an environment which will ultimately enable a U.S. drawdown.

Indeed, while it is the duty of the U.S. Congress to help make and guide United States foreign policy, micromanagement of the Iraqi political process often backfires. As distinguished members of this committee know, a representative's first duty is to his constituency. The same is true in Iraq. Any Iraqi politician who weighs the vote of the House Foreign Affairs Committee over his own voters will not be an elected politician for long.

For Iraqi politicians striving to do the right thing, the often conflicting messages from the United States do more harm than good. The Iraqi Prime Minister's request to extend the multinational forces mandate for a year is one of those rare actions which serves the interest of the United States, the United Nations and Iraq.

Whatever the long-term U.S. debate about the merits of the surge, United States military strategy has created space to enable

Iraqi political leaders to address political reform and reconciliation. As the U.S. congressional leaders know, hard fought political compromises on even minor issues can take weeks and months. Those involving fundamental constitutional interpretations and reforms take months, if not years. An attempt to stoke bickering between the Iraqi Council and the President over the decision to extend the multinational forces mandate will undermine the very reconciliation process which we have worked so hard to protect.

Finally, the extension of the U.N. mandate for Iraq addresses a key problem of legitimacy for that world body that should not be dismissed, for while many in the west see the United Nations through the prism of the noble goals of its founding charter, many Iraqis view the U.N. through the prism of the Oil for Food Program corruption and former U.N. Secretary General Kofi Annan's warm relations with Saddam Hussein.

Restoring U.N. credibility in Iraq is an important goal, and this resolution will enable time for political discussion, greater security force training and may allow time for the disarmament, demobilization and reintegration of militiamen.

Mr. Chairman, honorable members, the Iraqi political process is far from perfect, but its best chance for success lies not in second guessing an elected Iraqi Prime Minister's request to the United Nations Security Council but in respecting his very responsible decision to deny populous temptations and focus on the tough reforms ahead.

With regard to a direct referendum of the people, I would submit that is synonymous with a national election which is forthcoming in the Iraqi context. Thank you.

[The prepared statement of Mr. Rubin follows:]

PREPARED STATEMENT OF MICHAEL RUBIN, PH.D., RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH

Mr. Chairman, Honorable Members. Thank you for this opportunity to testify.

On December 10, Iraqi Prime Minister Nouri al-Maliki sent a letter to the UN Security Council requesting that the Council extend the mandate of the U.S.-led Multinational Forces for one year, beginning December 31, 2007.

Maliki's actions are perfectly permissible under terms of the Iraqi Constitution. They are also permissible under precedent: The Security Council's November 28, 2006 extension of the mandate of the Multinational Force's presence in Iraq until December 31, 2007 was also in response to a request by the Iraqi Prime Minister.

Under Article 58 of the Iraqi Constitution, it is the job of the Iraqi Council of Representatives to ratify international treaties. This requires a two-thirds margin of support. Then, according to Article 70, the measure goes to the President to ratify the treaty. Such treaties are considered ratified after 15 days.

None of this is relevant to the case of the Prime Minister's request to extend the Multinational Force's mandate. The simple fact is that neither Maliki's communiqué nor UN Security Council resolutions any more constitute treaties for Iraq than they would for the U.S. Congress.

Despite the indisputable fact that this UN Security Council resolution does not constitute a treaty, the Iraqi Council of Representatives does have recourse if it disagrees with the Prime Minister's actions: A no-confidence vote requires only a simple majority. Despite grandstanding among some members of the parliament, especially among parties more sympathetic to Iran, none have chosen to avail themselves of the constitutional right to a no-confidence vote.

While it is tempting in the American political context to second-guess the elected Iraqi government on this matter, there should be little doubt that doing so undermines the nascent Iraqi democracy and is counterproductive to Iraqi security and stability. In turn, it will be that security and stability that creates an environment which will ultimately enable a U.S. draw down.

Indeed, while it is the duty of the U.S. Congress to help make and guide U.S. foreign policy, micromanagement of the Iraqi political process often backfires. As the distinguished members of this Committee know, a Representative's first duty is to his constituency. The same is true in Iraq: An Iraqi politician who weighs the vote of the House Foreign Affairs Committee over his own voters will not be an elected politician for long. For Iraqi politicians striving to do the right thing, the often conflicting messages received from the United States sometimes do more harm than good.

The Iraqi Prime Minister's request to extend the Multinational Force's mandate for a year is one of those rare actions which serve the interests of the United States, the United Nations, and Iraq.

Whatever the long-term U.S. debate about the merits of the surge, the U.S. military strategy has created space to enable Iraqi political leaders to address political reform and reconciliation. As the U.S. Congressional leaders know, hard-fought political compromises on even minor issues can take weeks and months. Those involving fundamental constitutional interpretations and reforms take months if not years. An attempt to stoke bickering between the Iraqi Council and the President over the decision to extend the Multinational Forces' mandate will undermine the very reconciliation process we have worked so hard to protect.

Finally, the extension of the United Nations mandate for Iraq addresses a key problem of legitimacy for that world body that should not be dismissed. For while many in the West see the United Nations through the prism of the noble goals of its founding charter, many Iraqis view the UN through the prism of Oil-for-Food program corruption and former UN Secretary-General Kofi Annan's warm relations with Saddam Hussein. Restoring UN credibility in Iraq is an important goal, and this resolution will enable time for political discussion, greater security force training and may also allow time for the Disarmament, Demobilization, and Reintegration of militiamen.

Mr. Chairman, Honorable Members. The Iraqi political process is far from perfect. But its best chance for success lies not in second-guessing an elected Iraqi prime minister's request to the United Nations' Security Council, but in respecting his very responsible decision to deny populist temptations and focus on the tough reforms ahead.

Mr. DELAHUNT. Thank you, Dr. Rubin.
Mr. Saliba, welcome.

STATEMENT OF ISSAM MICHAEL SALIBA, ESQ., SENIOR FOREIGN LAW SPECIALIST, MIDDLE EAST AND NORTH AFRICA, LAW LIBRARY OF CONGRESS

Mr. SALIBA. Thank you. Mr. Chairman, the ranking member and members of the committee, I am honored to appear before you to testify on whether the Iraqi Government is under a legal obligation to obtain the approval of the Iraqi Parliament for its request to extend the presence of foreign troops in Iraq.

Based on my reading of the Iraqi Constitution, the answer to this question is in the affirmative. It is a general principle of constitutional law that international treaties and agreements require legislative approval for their validity. Article 73, Section 2 of the Iraqi Constitution subscribes to this principle by providing that the president of the republic may ratify international treaties and agreements only after the approval of Parliament.

The question that may be raised is whether the request of the Iraqi Government to extend the mandate of the multinational forces in Iraq is subject to Article 73. The Iraqi Government seems to think it is not. In the definition of key terms used in their treaty collection, the United Nations assert that the term "international agreement" embraces the widest range of international instruments.

They cite Article 3 of the 1969 Vienna Convention on the law of treaty to affirm that even an oral promise made by the Foreign

Minister of one state to his counterpart of another state constitutes an international agreement.

Under this definition, the request made by the Iraqi Government to extend the mandate of the multinational troops in Iraq and the assent of the U.N. Security Council to adopt a resolution extending such a mandate constitute in my opinion an international agreement subject to the constitutional approval of Parliament.

On June 5, 2007, the Iraqi Parliament passed a resolution calling upon the Iraqi Government to seek the approval of Parliament on any future request relating to the presence of foreign troops in Iraq. The Iraqi Government ignored this resolution and submitted on December 7, 2007, another similar request to which the U.N. Security Council consented yesterday by adopting a new resolution extending the mandate of the multinational forces until December 31, 2008.

The resolution passed by the Iraqi Parliament on June 5 is not a binding law. The nonbinding nature of this resolution, however, does not release the Iraqi Government from its obligation to seek parliamentary approval for its recent request. This is because the government obligation in this regard is based on the Iraqi Constitution rather than the June 5 resolution.

Mr. Chairman, members of the committee, thank you for listening to this summary of my written testimony, and I would be happy to answer any questions you may have.

[The prepared statement of Mr. Saliba follows:]

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?”

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.¹

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.

¹ 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.

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.²

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.³

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, 2007.⁴

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.

² 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).

³ 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>.

⁴ 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/2007/1210econddileter.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.⁵

Some media accounts also quoted Prime Minister al-Maliki as claiming that the Constitution does not refer to the U.N. mandate⁶ 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.⁷

⁵ 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>

⁶ 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>.

⁷ 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.⁸

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.

⁸ 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>.

Mr. DELAHUNT. Thank you, Mr. Saliba.
 Dr. Katzman?
 Mr. KATZMAN. Thank you, sir.
 Mr. DELAHUNT. Please proceed.

**STATEMENT OF KENNETH KATZMAN, PH.D., SPECIALIST IN
 MIDDLE EAST AFFAIRS, FOREIGN AFFAIRS, DEFENSE AND
 TRADE DIVISION, CONGRESSIONAL RESEARCH SERVICE**

Mr. KATZMAN. I would like to thank the subcommittee for asking me to appear on behalf of CRS today. I ask that my statement be submitted for the record. I would note that my responsibilities at CRS include Iraqi politics and United States policy and not necessarily legal interpretations or military law.

What I would like to do today is to discuss I think the reason that this issue is important, and that is the rollover, the extension of the mandate that was approved by the Security Council yesterday is essentially a holding action for 1 year.

On November 26, just a few days ago, Prime Minister Maliki and President Bush signed a declaration of principles to work toward a strategic framework agreement by July 31, 2008, which if signed and agreed to will replace the U.N. mandate in 2008. In other words, there would be this time next year no further extension of the U.N. mandate. It would be replaced by a bilateral agreement between the United States and Iraq.

I would like to discuss with the committee today some of the issues and particularly the Iraqi political issues which are in many the same political issues that were raised in what the previous witnesses discussed, which is the Parliament's insistence that it be consulted on the rollover.

In particular, the June 5 letter that Mr. Saliba mentioned was a product engineered in many ways by the faction of radical cleric Muqtada al-Sadr. Although the June vote on the resolution was not limited to his faction, it was in many ways orchestrated by his faction. There were others who supported it, but in general terms, it was opponents of Prime Minister Maliki who supported that resolution.

This reflects in my view a break between Muqtada Al Sadr and Prime Minister Maliki. They had been allies until the troop surge began. They had been allies because in previous years, Prime Minister Maliki has told the United States do not go after Sadr's militia, the Jaysh al-Mahdi, the JAM, so to speak.

The United States insisted we need to make the policy work, you must allow us to go against Muqtada Al Sadr. Maliki relented. He is now allowing us to go against Sadr's extremist militia, and therefore, Sadr broke with Maliki. To some extent, this vote reflects that break. Let me discuss the issues that will be negotiated for this strategic framework agreement.

Let me just discuss with the subcommittee some of these major issues. The Iraqi Government from my understanding has said that the bilateral agreement that is to be negotiated will be submitted to the Parliament for its approval, so these issues will come up and the Parliament will have a shot at approving or disapproving.

First and foremost, a status of forces agreement—we do not currently have a status of forces agreement with Iraq—which would

discuss the civil and criminal jurisdiction over facilities where United States personnel are based and over U.S. personnel including security contractors.

Second major issue, freedom of action for U.S. military forces, including rules of engagement, status of prisoners. Under the current U.N. mandate, United States forces have the power to arrest and detain Iraqis perceived as threatening and hold them. A key issue in the negotiations will be the degree to which United States forces in Iraq must coordinate or obtain Iraqi approval for specific operations.

The duration of the U.S. agreement, the size and shape, these will all be discussed. General Lute, who is the assistant to the President for Iraq and Afghanistan, in discussing the November 26 agreement said that there would not be any specific timelines or goals for a United States withdrawal from Iraq discussed in these negotiations, but the ultimate agreement might spell out the types of missions that can be performed by the United States in Iraq and how many troops would be needed to perform those missions, such as combat against AQI, al-Qaeda-Iraq, other insurgent groups, training the Iraqi security forces, which by all accounts will not be ready to secure Iraq by themselves until at least 2009, permanent basing.

We discussed the facilities used by United States forces in Iraq do not by most assessments now formally constitute permanent bases, but it is conceivable that they could be made permanent under some agreement to do so. General Lute said that the negotiations would discuss the issue of permanent bases. There is some U.S. legislation that says we cannot spend U.S. funds for permanent bases, but General Lute said this would be an issue. He did not say how it would be decided, but he said it would be discussed.

Related issues: Diplomatic, political and cultural support for Iraq to include efforts to obtain trade agreements, trade preferences, debt forgiveness and United States economic assistance to Iraq. Now, just briefly, how is this going to play out?

In my view, the same issues that went into the Parliament's assertion of authority on the rollover will go into this permanent agreement depending on what is agreed to by July 2008. The battle lines in my view are the same battle lines we have seen over the legislation that has not been passed by the Council of Representatives.

It generally pits those who support a strong central government versus those who support decentralization or federalism, but broader than that, it pits what I call the establishment factions, Maliki and his allies and the Kurds, against antiestablishment factions, Muqtada al-Sadr, the Sunnis and the faction of former Prime Minister Iyad al-Allawi, who also came out against the rollover extension.

I would note most Sunnis oppose a major U.S. presence, both now and they have opposed it because they perceive the U.S. as against them, as responsible for suppressing them on behalf of the Shiite-dominated government. This may explain why they have been against a strong U.S. presence and a lot of U.S. latitude that might be in any agreement.

However, there is an emerging split in the Sunni camp. We now have the awakening movements in Anbar Province and other provinces of Sunnis who are now working with the coalition forces against al-Qaeda-Iraq, and to some extent, the elected Sunnis in the Parliament now have some competition to deal with because the Sunnis of the awakening movements like the United States presence and may want it to continue at a high level, so we have an emerging split.

I have noted already Sadr's break with Maliki, and that is playing out in southern Iraq where we have competition between Sadr's insurgent Shiite forces and the establishment forces of Maliki's Da'wa party and his ally, particularly the Islamic Supreme Council of Iraq, which is highly pro-Iranian.

The block of Iyad al-Allawi openly wants to topple Maliki, that is no secret, and it has been against this rollover. However, Allawi is not against the United States or against a U.S. presence. He has taken the position he has taken because he is against Maliki. So some of these categories are not as neat as we may think.

I have explained on the positive side of the equation those who want more U.S. latitude and more U.S. presence or continued high level U.S. presence. The Da'wa party, his ally, the Supreme Council of Iraq, and the Kurds, as we noted, very pro-American, want the United States to stay. It is very difficult to forecast how these differences will play out.

A lot I believe will depend on what is actually in this agreement that is to be negotiated by July 31, 2008, but my prediction is that the same schisms that we are seeing in the rollover of the mandate that we have seen this year will play out in the July 2008 agreement if it is reached. Thank you.

[The prepared statement of Mr. Katzman follows:]

PREPARED STATEMENT OF KENNETH KATZMAN, PH.D., SPECIALIST IN MIDDLE EAST AFFAIRS, FOREIGN AFFAIRS, DEFENSE AND TRADE DIVISION, CONGRESSIONAL RESEARCH SERVICE

I'd like to thank the Sub-Committee on Human Rights and Oversight for asking me to appear today to analyze the politics of the ongoing relationship between the Iraqi government, including the Council of Representatives (COR), and the U.S.-led coalition that is tasked to contribute to maintaining peace and security in Iraq. I would ask that my testimony be submitted for the record.

I would note, at the outset, that my official responsibilities at CRS include analysis of U.S. policy toward Iraq, Iraqi politics and the social and human rights situation in Iraq, as well as aspects of the insurgency and the various militias that are operating. I assert no expertise on or official responsibilities for analyzing, in legal terms, the provisions of the Iraqi constitution or international or military law pertaining to U.S. forces in Iraq.

The proximate issue under discussion today is the November 26, 2007 "Declaration of Principles,"¹ signed between Iraqi Prime Minister Nuri al-Maliki and President Bush by video-conference, expressing the decisions of both the Iraqi government and the United States to work, by July 31, 2008, to codify a long-term bilateral security arrangement in what both sides are calling a "strategic framework agreement."

The strategic framework agreement, if agreed, is intended to replace the current U.N.-mandate under which U.S. and U.S.-led forces are responsible for contributing to the security of Iraq. That mandate was specified in U.N. Security Council Resolu-

¹Declaration of Principles for a Long-Term Relationship of Cooperation and Friendship Between the Republic of Iraq and the United States of America. <http://www.whitehouse.gov/news/releases/2007/11/print/20071126-11.html>. Press Gaggle (Briefing) by Dana Perino and General Douglas Lute, Assistant to the President for Iraq and Afghanistan. November 26, 2007. <http://biz.yahoo.com/bw/071126/20071126005809.html?.v=1>.

tion 1546 of June 8, 2004, and many of the provisions of the Resolution will no doubt be revisited in the negotiations on the strategic framework agreement. The Resolution:

- Most notably, authorized the U.S.-led coalition to contribute to securing Iraq, a provision interpreted by many observers as giving the coalition responsibility for security. Iraqi forces are “a principal partner” in the U.S.-led coalition, and the relationship between U.S. and Iraqi forces is spelled out in an annexed exchange of letters between the United States and Iraq. The U.S.-led coalition retained the ability to take and hold prisoners.
- Endorsed the U.S. handover of sovereignty to an appointed Iraqi government, an action that was completed on June 28, 2004, and which, as endorsed by the Resolution, ended the state of formal occupation. The Resolution also reaffirmed the responsibilities of the sovereign interim government and endorsed the proposed timetable to produce a fully elected Iraqi government.
- On security issues, which are a main focus of the hearing today, the Resolution reaffirmed the authorization in Resolution 1511 (October 16, 2003) for a multinational force under unified (interpreted as U.S.) command and that the presence of this force is at the request of the (then) incoming Iraqi interim government. The Resolution interpreted the “rights” of the U.S.-led coalition in Iraq as “[having] the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution . . . so that the Iraqi people can implement freely and without intimidation the timetable and program for the political process and benefit from reconstruction and rehabilitation activities.”
- The Resolution stipulated that the security responsibilities of the U.S.-led coalition would include “building the capability of the Iraqi security forces and institutions, through a program of recruitment, training, equipping, mentoring, and monitoring.”
- Regarding the duration of the mandate, the Resolution stipulated that the coalition’s mandate would be reviewed “at the request of the government of Iraq or twelve months from the date of this resolution” (or June 8, 2005); that the mandate would expire (subject to renewal) when a permanent government is sworn in at the end of 2005; and that the mandate would be terminated “if the Iraqi government so requests.” U.N. Security Council Resolution 1637 (November 11, 2005) and Resolution 1723 (November 28, 2006) each extended the coalition military mandate for an additional year (now lasting until at least December 31, 2007), unless an earlier termination was “requested by the Iraqi government.” The renewal resolutions also required review of the mandate on June 15, 2006 and June 15, 2007, respectively, and no adjustments were made at either of those reviews. Some U.S. law also applies. Section 1314 of P.L. 110–28, the FY2007 supplemental, says that the President shall redeploy U.S. forces if asked to officially by Iraq’s government.
- The Resolution deferred the issue of the status of foreign forces (Status of Forces Agreement, SOFA) to an elected Iraqi government. A Status of Forces Agreement stipulates whose authorities and courts deal with infractions by employees of the sending country. U.S. military personnel, as well as contractors, are now immune from Iraqi law under the U.N. mandate and a separate CPA order (Order 17) issued on June 27, 2004, one day before the handover of sovereignty.² P.L. 109–289 (FY2007 DoD appropriations) contains a provision that the Defense Department not agree to allow U.S. forces in Iraq to be subject to Iraqi law. However, a draft law now pending before Iraq’s Council of Representatives would end that immunity for contractors; the law was drafted because of the controversy surrounding the September 2007 incident at Nisoor Square in Baghdad involving the Blackwater USA security company, in which 17 Iraqi civilians died.

Future of the Mandate

On December 10, 2007, with the deadline for the mandate for the U.S.-led coalition set to expire by December 31, 2007—and in line with the November 26 agreement between President Bush and Prime Minister Maliki—the Iraqi government sent the United Nations Security Council a letter supporting another one year extension of the U.N. mandate. This one year extension is, according to U.S. and Iraqi

² http://www.iraqcoalition.org/regulations/20040627_CPAORD_17_Status_of_Coalition_Rev_with_Annex_A.pdf

officials, intended as a “holding action” to keep the mandate in place until a U.S.-Iraq bilateral agreement replaces it.

The December 10 letter appeared to represent a determination by the Maliki government to avoid any COR oversight or involvement in the decision. In April 2007, 144 members of the 275 seat body approved a draft proposal letter circulated by the faction of Shiite Islamist cleric Moqtada Al Sadr, to require the Iraqi government to seek parliamentary approval before asking that the coalition military mandate be extended. The letter, which also asked that a future extension of the mandate include a timetable for U.S.-led forces to withdraw from Iraq, was reportedly handed to the office of the U.N. Assistance Mission in Iraq (UNAMI) but was not formally considered by the U.N. Security Council, according to several accounts. In June 2007, the same voting majority in the COR approved a formal resolution to that effect, and some argue that it became law because Iraq’s President, Jalal Talabani, of the Patriotic Union of Kurdistan (PUK) faction, did not veto it. However, the United Nations referred to the resolution in its October 15, 2007 report as a “non-binding resolution.” In requesting the rollover of the existing U.N. mandate, Maliki argued that there is no requirement for COR approval because the mandate represents a Security Council decision, not a treaty or agreement (which requires two-thirds parliamentary approval). I will defer to other witnesses as to how the Iraqi constitution addresses this dispute.

Although the motion was supported by Sunni and secular groups as discussed further below, it demonstrated the growing power of the Sadr faction, which holds at least 30 seats in the COR, and confirmed the split between Sadr and Maliki. Sadr had supported Maliki’s accession to the Prime Ministership in the May 2006 government formation process—support that helped Maliki overcome the insistence of Maliki’s Da’wa Party superior, Ibrahim al-Jafari, to remain as Prime Minister. Perhaps in return, Maliki had largely shielded Sadr and his Mahdi Army (“Jaysh al-Mahdi” JAM) militia from U.S. combat operations in Baghdad. Much of the sectarian violence in 2006 was attributed to the acts of the JAM against Sunni civilians, including efforts to force them from their homes in mixed neighborhoods in Baghdad. In part because Maliki insisted during 2006 that U.S. forces not work against Sadr and the JAM, U.S. and Iraqi stabilization efforts in Baghdad in 2006 (“Operation Together Forward I and II) were declared to be failures by the U.S. military. As a result, the 2007 U.S. “troop surge” was based partly on a pledge by Maliki that the augmented U.S. force in Baghdad would be able to take action against the JAM without political restrictions. That pledge, in the view of many, contributed to the severing of the alliance between Sadr and Maliki and to Sadr’s related September 2007 withdrawal from the broader Shiite Islamist “United Iraqi Alliance” (UIA). The UIA dominated both the January and December 2005 elections and won 128 seats in the COR in the December election.

It should be noted that not all senior Sunnis insisted on parliamentary approval of the extension of the U.N. mandate. The highest ranking Sunni in the government is deputy President Tariq Al-Hashimi, of the Sunni Consensus Front bloc. He leads the largest party, the Iraqi Islamic Party, within that bloc. Hashimi, who has remained in government despite the pullout of his bloc from government, is trying to play a brokering role in overall Sunni-Shiite political reconciliation in Iraq. He supported the governmental decision to request the extension of the U.N. mandate without conditions.

Issues for the Strategic Framework Agreement

Foreign Minister Hoshiyar Zebari has said the Iraqi government will submit for parliamentary approval a draft strategic framework agreement with the United States. It would be difficult to argue, constitutionally, that such an agreement does not require COR approval as defined in the constitution. Gen. Douglas Lute, Assistant to the President for Iraq and Afghanistan, said in his November 26 press briefing, cited above, that the Administration would likely have dialogue with the U.S. congressional leaders on the framework agreement, but that any agreement would not likely rise to the level of formal treaty that would require Senate ratification. The issues that will likely be controversial in the strategic framework agreement include:

- A Status of Forces agreement. As noted above, the most significant provisions of any SOFA are civil and criminal jurisdiction over the facilities where U.S. personnel will be based, as well as over U.S. personnel, including security contractors. The agreement might also address issues such as entry or exit into Iraq, tax liabilities, postal services, or employment terms for Iraqi nationals working for the U.S. military.

- Freedom of action for U.S. military forces in Iraq, including rules of engagement and status of prisoners taken. Under the current U.N. mandate, U.S. forces have the power to arrest and detain Iraqis perceived as threatening Iraq's security, and to hold them without charge. A key issue in negotiations on the strategic framework agreement will undoubtedly be the degree to which U.S. forces in Iraq must coordinate with or obtain Iraqi approval for specific combat operations.
- U.S. Presence, Duration, and Missions. According to General Douglas Lute, Assistant to the President for Iraq and Afghanistan, in his press briefing on November 26, 2007, the "size and shape" of any long-term U.S. presence would be part of the negotiations on a strategic framework agreement. He denied that any agreement would specify time lines or goals for the withdrawal of U.S. troops from Iraq, but it might spell out the types of missions to be performed by U.S. forces and how many U.S. troops might be required to perform those missions. Among the likely missions to be discussed are continued U.S. combat against Al Qaeda in Iraq (AQ-I) and other insurgent groups, as well as training the growing Iraqi Security Forces (ISF) that, by all accounts, will not be ready to secure Iraq by themselves until at least 2009.
- Permanent Basing. The facilities used by U.S. forces in Iraq do not, by most assessments, formally constitute "permanent bases." Some of these facilities conceivably could be made permanent U.S. bases if there were a U.S.-Iraqi agreement to do so. Gen. Lute said that the negotiations on a 2008 bilateral agreement would discuss the issue of permanent bases. Major facilities that might be considered in the strategic framework agreement include such well-developed facilities as Balad, Tallil, and Al Asad air bases, as well as the arms depot at Taji; all have been built up with U.S. military construction funds in various appropriations.
- Some comments by Iraqi officials suggest that permanent bases might not be included in a long term agreement. On December 12, 2007, Iraqi National Security Adviser Mowaffaq al-Rubai said in a press interview in UAE that "permanent forces or bases for any foreign forces is a red line that cannot be accepted by any nationalist Iraq."³ Some U.S. law might constrain U.S. options on the permanent bases issue, and might therefore further complicate negotiations. The Defense Appropriation for FY2007 (P.L. 109-289); the FY2007 supplemental appropriation, (P.L. 110-28); and the FY2008 Defense Appropriation (P.L. 110-116), and the conference report on a FY2008 defense authorization (H.R. 1585), contain provisions prohibiting the establishment or the use of U.S. funds to establish permanent military installations or bases in Iraq. These provisions comport with Recommendation 22 of the December 2006 "Iraq Study Group" report, which recommends that the President should state that the United States does not seek permanent military bases in Iraq.
- Related Issues. The Administration release on the November 26, 2007 Declaration of Principles, cited above, states that the strategic framework agreement would also include a "political, diplomatic, and cultural" component, and a component dealing with economic affairs, in addition to the security issues likely to be outlined, as discussed above. In the economic section, the Declaration commits the United States to "[Support] the building of Iraq's economic institutions and infrastructure with the provision of financial and technical assistance to train and develop competencies and capacities of vital Iraqi institutions." The section also commits the United States to encourage foreign investment, particularly U.S. investment, into Iraq, to help Iraq obtain debt forgiveness and forgiveness of the compensation payments mandated by U.N. resolutions following the 1991 war to liberate Kuwait, and to support Iraq's efforts to obtain trade preferences and accession to the World Trade Organization.

Politics of a Strategic Framework Agreement

The same political dynamics that colored the reaction in the COR to the Maliki request to renew the U.N. mandate are likely to re-emerge if and when the two countries agree to the broad bilateral strategic agreement under discussion. Some analysts describe the debate over renewing the mandate, and over a new strategic framework, as pitting those favoring a strong central government against those who support "federalism"—or strong powers for sectarian or ethnically-based regions. The "battle lines" of the debate are, in many ways, the same as those that charac-

³ Graff, Peter. "Permanent Bases Rejected by Official." *Washington Times*, December 12, 2007. p. 12.

terize ongoing debates over new national hydrocarbons laws and over a major bloc of amendments to the constitution. In addition, the negotiations on a strategic framework agreement, and depending on how some key issues such as permanent basing are treated in any agreement, are likely to harden the positions of those, inside and outside Iraq, who believe the United States always intended a long-term occupation of Iraq as part of its effort to control Iraq's natural resources.

Generally, Sunni Arabs in the COR, like most Sunnis in Iraq, support a strong central government. Sunni regions have few known major oil or gas deposits and will be dependent indefinitely on the distribution of Iraq's oil revenues by a central government. The Sunnis in the COR consist mainly of the Consensus Front bloc (44 seats) and the National Dialogue Front (11 seats). They have sought parliamentary review of mandate renewal; they are likely to insist on strict conditions governing the U.S. presence in any strategic framework agreement. Some Sunnis outside the COR, including the hardline Muslim Scholars Association (MSA), whose members have been widely accused of ties to the Sunni insurgency, denounced the extension of the current mandate and will likely oppose any U.S.-Iraqi bilateral agreement. Many Sunnis, both within and outside the COR, have viewed U.S. forces as an instrument wielded by the Shiite-dominated government and will want to limit U.S. freedom of action, such as the ability to take prisoners.

On the other hand, there is a growing body of Sunni leaders outside the COR that might look more favorably on an agreement that gives wide latitude to U.S. forces. These Sunnis are associated with the various "Awakening Movements," led mostly by tribal leaders, that began in Al Anbar Province in 2006 and have now spread to other Sunni provinces. These Sunnis are united by opposition to AQ-I and other extreme insurgent movements that have committed abuses against other Sunni Iraqi citizens. These movements have produced about 60,000 Sunni recruits, some of whom are former insurgents, that are now working with U.S. forces to expel AQ-I from their neighborhoods. These Sunnis view U.S. forces as limiting the excesses of the Shiite-dominated government and the ISF, which many Sunnis distrust. However, because these Sunnis are not widely represented in the COR, their role in any review of a strategic framework agreement will likely be limited.

Two important Shiite blocs have sided with the Sunnis on issues concerning the mandate for U.S. forces—the Sadr faction (30 seats) as discussed above, and another party called the Fadilah (Virtue) Party (15 seats). Both broke with the UIA bloc in 2007, and both generally represent poorer Shiites, although they themselves are in competition in Basra and other cities in southern Iraq. The Sadr faction's views on the December 2007 mandate rollover were discussed above, but many experts also attribute the Sadr views to its advocacy of Iraqi nationalism. Many Sadr supporters see U.S. troops in Iraq as occupiers rather than liberators. In the view of many Sadr supporters, a SOFA that allows U.S. forces to remain essentially under U.S. law, and extensive facilities housing U.S. forces would constitute an unacceptable infringement on Iraqi sovereignty. Part of the premise of the Sadr faction's insistence on a timetable for a U.S. withdrawal is its ongoing battle with U.S. forces in Baghdad and elsewhere, as noted above. Sadr's JAM is perhaps the largest Shiite militia, with as many as 60,000 fighters throughout Iraq.⁴ Sadr might calculate that a U.S. withdrawal from Iraq—or at least a limited mandate to conduct operations against the JAM—would benefit Sadr politically in his competition against other Shiite factions. Fadilah is politically strong in oil-rich Basra Province because many of the security forces (Facilities Protection Service) that protect the oil infrastructure are purportedly loyal to Fadilah. The governor of Basra Province, Mohammad Waili, is a Fadilah member and successfully has resisted efforts by Maliki and Maliki allies to replace him. The purported fears of many Fadilah supporters are that an extensive, long term U.S. presence would help Maliki and its other Shiite allies—mainly the Islamic Supreme Council of Iraq (ISCI)—to gain full and undisputed control of Iraq's oil infrastructure and revenues.

The bloc of former Prime Minister Iyad al-Allawi opposes the unilateral governmental mandate renewal but, by contrast to some of the other blocs, is not anti-U.S. or anti-U.S. presence. The bloc has 25 seats in the COR. Allawi is considered a staunch opponent of Maliki and he has, by many accounts, been campaigning to organize a vote of no confidence against Maliki. Allawi has tended to support the United States; the opposition of his bloc to the mandate renewal might reflect Allawi's efforts to obstruct Maliki on virtually any issue where Allawi can do so. The bloc pulled out of the cabinet in August 2007, joining the Consensus Front which pulled its ministers out in June 2007 and the Sadr bloc, which pulled out of the cabinet in April 2007.

⁴Iraq Study Group Report. December 2006. p. 5.

On the other side of the political equation in the COR are the blocs that support the Maliki government. These blocs—including Maliki’s Da’wa Party, ISCI, Shiite independents within the UIA bloc (which now has about 83 seats, down from 128 before the Sadr and Fadilah defections) and the two main Kurdish factions—the Patriotic Union of Kurdistan (PUK) and Kurdistan Democratic Party (KDP)—supported the governmental request to extend the U.N. mandate and are likely to support extensive concessions to the United States in any long-term bilateral agreement. Most of these blocs tend to support the concept of federalism, primarily because they consider themselves politically and financially stronger in their regions than as part of a central government. At the same time, together, these blocs are dominant in the central government, and any agreement that keeps U.S. troops in Iraq helps preserve their grip on power. These blocs are not as concerned with the perception that a bilateral agreement with the United States would erode Iraq’s sense of sovereignty and national pride.

On the other hand, there are some divisions among these blocs that could emerge in the strategic framework agreement negotiations and on other issues. ISCI supports a large Shiite region in southern Iraq, whereas the Da’wa Party opposes that concept. In addition, ISCI has a militia, the Badr Brigades, that has burrowed into the ISF, particularly the National Police and other police forces. A bilateral agreement with the United States could therefore benefit ISCI more so than Da’wa, since the U.S. forces would, under such agreement, presumably remain in Iraq to train the ISF and thereby strengthen ISCI. The Da’wa Party does not have a militia force. It should be noted that it is not the stated intent of U.S. policy to benefit any one political faction in the effort to build up the national security forces.

The Kurds already exercise control of their own legal region consisting of Dohuk, Irbil, and Sulaymaniyah Provinces. They are the most supportive of the United States of all the sects and ethnicities in Iraq. The Kurds, like many Shiites, see U.S. forces as having liberated them from Saddam Hussein’s tyranny. All available data indicate that the Kurds do not see U.S. troops in Iraq as occupiers, whereas many Shiites, who tend to identify with oppressed Palestinians and with mostly Shiite Iran, which is at odds with the United States, have come to see the United States this way.

Mr. DELAHUNT. Thank you, Dr. Katzman.
Mr. Jarrar?

STATEMENT OF MR. RAED JARRAR, IRAQ CONSULTANT, MIDDLE EAST PEACE BUILDING PROGRAM, AMERICAN FRIENDS SERVICE COMMITTEE

Mr. JARRAR. Thank you very much for giving me the chance to testify today. I will start by following up on what Dr. Katzman was speaking about the political split that is going across the ethnic and sectarian factions in Iraq. It seems like during the last year there are Sunnis and Shiites who are mostly represented in the Iraqi legislative branch who have a completely different agenda than the other Sunnis and Shiites and Kurds in the executive branch.

So it doesn’t seem at least when we look at the Iraqi Government itself that it is a Sunni-Shiite issue. It is a more political issue that is putting Sunnis and Shiites and seculars who are nationalists for a strong central government against other Sunnis and Shiites and seculars and Kurds who want to succeed or like to create very loose confederations in Iraq that are sectarian and ethnic-based.

So this political split doesn’t really have a lot of coverage in the United States. When I read the Iraqi newspapers and I read the United States newspapers, it seems like we are speaking about two different countries, two different wars, because from the United States, there is this obviously very much weight put on the sectarian or ethnic tension that is happening in Iraq.

Now the political tension that is happening between the Sunnis and Shiites in the legislative branch against the other Sunnis and

Shiites in the executive branch have caused the Iraqi Government to seem like it is on a standstill on a number of issues, for example, the issue of federalism.

The executive branch is for partitioning Iraq into three major confederations that are Sunnistan and Shiastan and Kurdistan, while the legislative branch is for having a Federal system that is closer to the one adopted in the United States, a geographic, not demographic, Federal system that keeps a strong central government. That is why the Federal issue is still on dispute.

The other issue of dispute is the administrating natural resources. All of us know about the oil law that hasn't passed through the Iraqi legislative branch. The executive branch passed the law in like a couple of days. It is still struggling in the legislative branch for the last I think 11 months now because the legislative branch thinks that this law will weaken the central government and facilitate splitting Iraq into at least three sectarian and ethnic regions. Today I will be putting obviously more stress on the issue of the U.N. mandate, which is a conflict that has been happening for the last year and a half.

Last year the Iraq executive branch promised to include or consult the Iraqi legislative branch before the renewing of the U.N. mandate. Until this moment, there is no constitutional conflict between the two branches. No one is saying that the legislative branch doesn't have the two-third majority approval right to pursue any international treaties.

Now the only difference short of last year is after Mr. al-Maliki requested the renewal last year, the executive branch said we do respect the legislative branch's right to ratify international treaties, but this is not an international treaty. This was the official stand. That is why this year the Iraqi Parliament took the two steps that were mentioned earlier.

The first one was taken as a nonbinding legislative letter signed by 144 Iraqi parliamentarians and sent to a number of international entities. That letter stated very clearly that this is an unconstitutional move according to what we are reading. Now what the Iraqi Parliament did during Sessions 32, 34 and 36 is that it actually passed a binding resolution. All the resolution says is that this U.N. mandate actually does fall under the section that considers it an international treaty.

So just to solve the dispute, they passed this in Session 34 that was held on June 5, and it was sent to the Presidency Branch. Now, according to the Iraqi Constitution, Article 73, 2nd, not 3rd, 2nd, the Iraqi President has 15 days to veto or send back this resolution. He didn't, so the resolution according to the Iraqi law is actually considered as passed. Let me read you a quote from Section 34 when the Iraqi Foreign Minister was actually questioned in the Parliament about this particular resolution. I got this from the public deliberations of the Iraqi Parliament.

Mr. Omar Khalaf Jawad, who is an Iraqi member of Parliament, asked the Foreign Minister, "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 the resolution so that we will be sure that the resolution will be respected and implemented?"

Mr. Zebari, the Foreign Minister, actually assured the Parliament at that time that this resolution will be implemented. Furthermore, Mr. Zebari actually had a public appearance after another session on November 25, which is just a few weeks ago, and it was just 2 weeks before they sent the letter to the U.N. Security Council.

He said, "This will be the last request for troops extension. It will not be represented to the United Nations Security Council prior to its submission to the Iraqi Parliament for deliberation." So it is very clear that the Iraqi executive branch did not ignore or even discuss the issue of the renewal this year. What they did is they assured the Iraqi legislative branch that they will be taken in consideration, and they just bypassed them without going back to them, because I think this happened last year and there wasn't enough objection to the issue.

Until now, we don't have any constitutional conflict regarding the Iraqi parliamentarians' constitutional authority over the treaty that Mr. Bush and Mr. al-Maliki are planning to sign, but unfortunately, a number of indicators show that the executive branch in Iraq might actually continue its policy in bypassing the legislative branch.

Mr. Ali al-Dabbagh, the official spokesperson of the Iraqi cabinet, announced some 3 or 4 days ago that while the Iraqi executive branch is against any permanent bases in Iraq, it sees a very important need for the United States troops to stay in Iraq for at least the next 10 years.

So, I mean, I don't know what the definition of permanent is; maybe it is like it should be affirmed to be considered permanent, but it doesn't seem like the Iraqi executive branch is thinking of scheduling any end of the United States military presence within the next few maybe decades. I think the question is really valid is the Iraqi Parliament being ignored, and what are the consequences of this policy of ignoring the legislative branch?

Many Iraqis in the Parliament and outside it think that this is a very dangerous policy because it makes Iraqis lose their confidence with the rule of law and with any possibilities of reaching to change and getting their sovereignty back through political change. It is a very wrong message to be sent to Iraqis.

There is a very big need to actually broker a political reconciliation between the Iraqi legislative and executive branch. We saw how the United States executive branch was very interested in the case of Lebanon.

We had a very similar executive, legislative conflict in Lebanon about al-Halidi's Court, the international tribune that the United States actually took in consideration what a majority of Lebanese parliamentarians were saying despite the fact that the Lebanese executive branch and even the speaker of the Lebanese Parliament was against it.

So I am saying in the case of Iraq and because it is a very sensitive case that needs international assessment to help that war-torn country to reach the political reconciliation that will end violence, I think shedding more light over this conflict that is hap-

pening and increasing between the two branches would help all parties to end conflict. Thank you.

[The prepared statement of Mr. Jarrar follows:]

PREPARED STATEMENT OF MR. RAED JARRAR, IRAQ CONSULTANT, MIDDLE EAST
PEACE BUILDING PROGRAM, AMERICAN FRIENDS SERVICE COMMITTEE

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 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 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. Hoshyar 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)

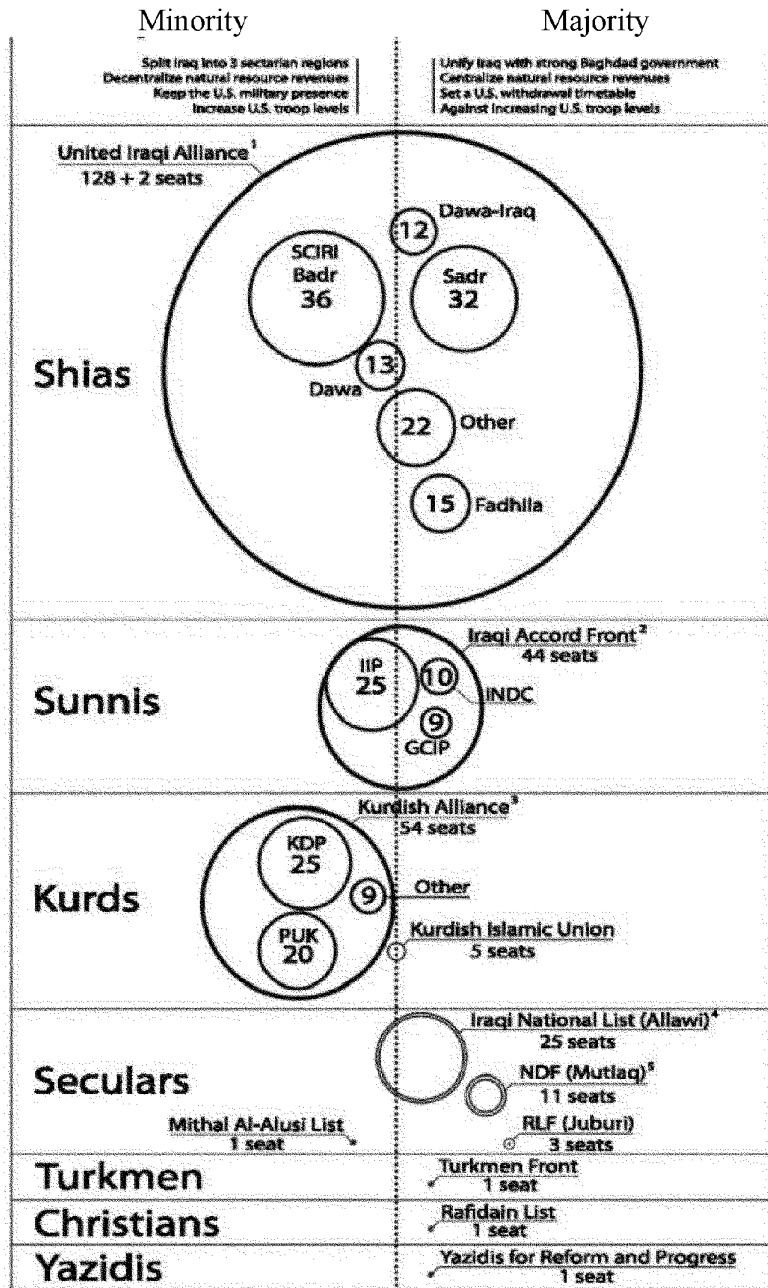
A few weeks after this meeting with the Security Council delegates, Mr. Zebari was called for questioning again on November 25th 2007. He announced that a request for a Multi-National Force (MNF) troop extension in Iraq will be submitted to the Iraqi parliament for consideration. “This will be the last 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]



Mr. DELAHUNT. Thank you, Mr. Jarrar.

Thank you for the very illuminating testimony from all of our witnesses. Let me suggest to you that we will be calling on you for future hearings because this is clearly a very significant issue that impacts this institution in a very substantial way.

I would just observe that the bypassing of the Iraqi Parliament or the legislative body is not necessarily unknown in the United States. We have observed it. Here it is referred to as signing statements. That is not the subject of today's hearings.

Mr. ROHRBACHER. Yes, it is.

Mr. DELAHUNT. Well, we can make it that. We don't have enough time, Mr. Rohrabacher. I am going to go and cede time. I will save my own questions at the end because I want others to have an opportunity to explore your testimony and pose questions. I would just ask very briefly two questions. The Council of Representatives, the Iraqi Parliament, were directly elected by the people of Iraq. Is that accurate, Dr. Katzman?

Mr. KATZMAN. Yes, it is, sir.

Mr. DELAHUNT. So they were directly elected like those of us sitting on this side of the dais were directly elected by the people?

Mr. KATZMAN. Well, it is a different structure, however. It is a party list structure.

Mr. DELAHUNT. Right.

Mr. KATZMAN. Yes.

Mr. DELAHUNT. Now, in terms of the Council of Ministers, which in our political jargon would be described as the cabinet, are they elected directly by the people? They are not? Dr. Katzman, could you articulate that verbally?

Mr. KATZMAN. The Constitution, and I will defer to Mr. Saliba, gives the largest block in Parliament the right to designate a Prime Minister. The Shiite Islamic block chose Mr. Maliki after some tur-

moil. He then named a cabinet, and it was approved by the Parliament.

Mr. DELAHUNT. Okay. So the cabinet in the constitutional scheme in Iraq is an unelected body. Okay. Just one more question to you, Dr. Katzman. You heard the testimony of Mr. Jarrar regarding the statement by the Foreign Minister, Mr. Zebari, before or to the Iraqi Parliament, and I guess I am paraphrasing, that they would not be bypassed but that the request for the extension of the U.N. mandate would be submitted to the Iraqi Parliament or the Council of Representatives. Are you familiar with that?

Mr. KATZMAN. I am, and I will defer to Mr. Jarrar because I think he reads the Iraqi press much more closely than I do. However, that appearance by Mr. Zebari was almost exactly the same time as Maliki and Bush were signing this declaration about this new agreement, so I read Zebari's comments as referring to the ultimate treaty.

Mr. DELAHUNT. Not by the mandate?

Mr. KATZMAN. That may be a mistake, but maybe Zebari made a mistake. My interpretation was he was referring to the ultimate treaty for July 2008.

Mr. DELAHUNT. Okay. Thank you, Dr. Katzman. With that, let me go to my colleague from the State of Washington, Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. I appreciate all the witnesses here today, and I hope that we can come away from this understanding a little bit more. I am confused about what role the Security Council played in all of this. In the Lebanon example given by Mr. Jarrar, there was a conflict between the Prime Minister and the President, and they didn't want this resolution, but the Parliament had voted for it, so the Security Council passed it.

Did that same discussion go on yesterday when they ran this through? Was there discussion about the fact that the Parliament had said we don't want the extension?

Mr. JARRAR. In fact, no, and it is very surprising because just 3 weeks ago, a little bit more, I went to New York and I translated an off-the-record meeting between the majority of the Security Council delegates and five or six Iraqi parliamentarians on the phone, and they discussed these issues.

They discussed the issue of the letter that was sent and the resolution that was passed, and I think many of the Security Council members have been informed of this despite the fact that a letter that was submitted officially to the U.N. in Baghdad was not delivered to the Security Council before that meeting that happened 3 weeks ago.

So I personally was very surprised that this issue was not even mentioned at all during yesterday and the resolution passed unanimously.

Mr. MCDERMOTT. We have something here called the consent calendar which goes by like lightning on the floor. Is that basically what happened? Was there any debate among the members of the Security Council in public about whether or not they should extend the mandate with the resolution from the House of Delegates or whatever it is called being opposed to it? Was there any discussion?

Mr. JARRAR. I haven't heard of any public discussions about that.

Mr. MCDERMOTT. Mr. Saliba, do you know?

Mr. SALIBA. I am just reading the previous resolution and the draft that was passed yesterday. It doesn't seem that there was any discussion whatsoever within the Security Council about whether the request from the Maliki government needed or not the approval of Parliament or whether there is that somebody would say the Parliament in Iraq is objecting or not. It doesn't seem from reading just the resolution that anything like that happened.

Mr. MCDERMOTT. It seems like the Parliament did their best to correct their error from the year before by creating at least a legal fiction or a legal construction that would say they have made it a treaty, but the Council didn't take any notice of that whatsoever.

Mr. SALIBA. In fact, the letter that is used, it is referred to as the April letter sent by 139, the one I saw signed, it really didn't ask for the involvement of the Parliament itself. What it says, it complains about how the government acted alone, but the essence of their letter was that we want any future decision to include a timetable for the withdrawal of the multinational forces.

In the June 5 resolution passed by Parliament, it was specifically calling upon the Government of Iraq, the Iraqi Government, to consult and get the approval of Parliament before any future request. So it is a little bit different, the letter that they sent to the members of Security Council, and the resolution.

Let me just say here that the reason why the June 5 resolution is not binding is not because the members of the Parliament did not want it to be binding. They were just questioning, "What is the legal status of such a resolution?"

The explanation was, which is the correct one, this resolution, we didn't go through the legislative process like it should go, for example, according to the rules of the Parliament. It should first go to the special committee, the competent committee. The committee has to make a recommendation; the recommendation should go to the President and so forth.

There is nothing in the Constitution of Iraq or the rules like of the Parliament to say that you can just bring something in issue, debate it and vote it on and it becomes a law. So this is why the resolution of the June 5 is not binding, not because of the decision that we want it binding or not on the part of the Parliament.

Mr. JARRAR. I just want to add that if actually that was what happened, I agree with Mr. Saliba. In reality, what happened is that there were 140, and this is the public deliberations of the Parliament, parliamentarians who submitted a proposal for a resolution in Session 32 on May 27. The Speaker of the House deferred that proposal to a legal committee of the House.

So the legal committee actually took its time, it took two sessions, and then they came back on Session 34. They said this can be voted on. Mr. Speaker of the House al-Mashadani actually put the vote on the floor and it got 85 votes out of 144. So it went through all of the legal process, it is binding, it was sent to the presidency for 15 days and it wasn't vetoed by the President, so it took actually all of the process.

In a case that was just submitted just like this on the spot, it will not be binding of course, but this resolution actually took all of the long process of being binding. We shouldn't forget the point

that this resolution is not what we are talking about. This resolution just affirms an existing constitutional article, it is Article 61, 4th, that gives an exclusive authority for the Iraqi executive branch to ratify international treaties.

Of course, the things that happened after this actual meeting including the letter that was sent to the United Nations in April 28, or the communications that happened after that, all of these things prove that the Iraqi Parliament was very sincere, very clear in its communications with the United Nations that this is an unconstitutional issue, that Mr. Prime Minister sent a letter without going back to the Parliament, but it seems that they were ignored.

Mr. MCDERMOTT. I have the feeling that we are closing the barn door after the cow is about a mile down the road, but we are looking at something that is going to happen next year at this time which will be done between the United States and the Iraq Government without the United Nations. Is that correct? Do I understand the situation?

Mr. KATZMAN. That is the intention, that the strategic framework agreement would be agreed by July 31, 2008, and that it would be then presumably ratified by the Parliament in time to replace the U.N. mandate December 2008.

Mr. MCDERMOTT. Is there any ratification required by the United States Congress?

Mr. KATZMAN. General Lute, he gave a press briefing on November 26. He said that it is not the administration's intention that this would rise to the level of a treaty that would require ratification by the Senate. No, sir.

Mr. DELAHUNT. Would the gentleman yield?

Mr. MCDERMOTT. Yes.

Mr. DELAHUNT. In other words, one could interpret General Lute's position to be that confirmation of whatever agreement is struck between the administration and the executive branch in Iraq requires no consultation with the United States Congress?

Mr. KATZMAN. He did not make any reference to what the Iraqis might do.

Mr. DELAHUNT. No, I am talking about ours. In other words, it doesn't rise to the level of a treaty, so therefore, this administration could proceed to execute a bilateral agreement with Iraq on the issues that you enumerated in your testimony without consultation with the United States Congress?

Mr. KATZMAN. He said there would be consultation. He specifically said there would be dialogue with the U.S. Congress.

Mr. DELAHUNT. Dialogue.

Mr. KATZMAN. Dialogue, yes.

Mr. DELAHUNT. Well, that is very reassuring. I yield back to the gentleman. Dialogue.

Mr. MCDERMOTT. I only raise this because we talked about this business about permanence. Now I don't know when they built Cam Ranh Bay Air Force in Vietnam whether they said it was a permanent base or not, but it sure looked like it. We have got five of them in Iraq at this point that are large enough they have bus systems and rental cars and whatever. They do not look like things that we are planning to pick up and take out of there in any time in the near future. Yes?

Mr. KATZMAN. General Lute used the parallel of agreements that we have with certain governments such as the Persian Gulf governments where they allow us to use facilities and some of the facilities such as in Bahrain are very large by now and have permanent structures on them, but they are not in the U.S. term by a legal definition—again, I am not an international lawyer—permanent bases.

We have agreements to use these facilities, we have agreements with the host government and the status of forces and all the other components I referenced, arm sales and use of the facilities, status of forces, training, but they have not been considered treaties. He used that parallel.

Mr. McDERMOTT. So they put a sign up out in front that says this is not a permanent base, Iraqis can look at it and sort of feel like, “God, it looks permanent, but the sign says it isn’t, so it isn’t.” Is that about where we are?

Mr. KATZMAN. Some have said so about some of these facilities, yes, sir.

Mr. McDERMOTT. Thank you. I yield back the balance of my time.

Mr. DELAHUNT. The gentlemen from California, the ranking member, is recognized.

Mr. ROHRABACHER. I would suggest the definition of a permanent U.S. base is not defined by the structures but defined as who is in the base. I mean, if we have bases that we have constructed that happen to be occupied by Iraqi troops 10 years from now, it is not an American base. Cam Ranh Bay certainly is not an American base now. I don’t know whether it was intended to be or not, but it is not an American base.

I find a lot of the discussion as to whether or not approval of a U.N. mandate, whether or not that is constitutionally equal to a treaty to be quite irrelevant. I mean, this is just political gamesmanship as you would find here or in any other democracy.

Unfortunately, democracy and politics go hand in hand. I mean, that is unfortunate, and it happens in an emerging democracy like Iraq and it happens here. You have political face-saving going on here and there. These are the type of things you face. To try to create some sort of analysis that this is ominous that these things are happening is I think way off the mark.

What is important, however, is that is American presence in Iraq consistent with the will of the Iraqi people or is it not? One of the reasons why I would suggest that in the next election that we hold that be put on the ballot as a choice yes or no for the people of Iraq because quite often you will have elections in which important issues actually are skewed by other type of things that are going on.

For example, the issue of illegal immigration in this country, it is evident by every poll I have seen that the overwhelming number of the American people want that solved, yet the elections don’t seem to have motivated this democracy to acting on that problem. It might be good for us to have something on our ballot that would be a referendum on that particular issue.

If indeed what we are talking about is what is the will of the people of Iraq, let us ask them. This idea about whether or not the

legislative branch reflects that and what kind of vote is required for these people, well, let us put it directly to them and then we will understand it.

I happen to believe the Iraqi people given a chance to vote on this issue would be supportive of keeping the American troops in Iraq until a certain degree of stability is achieved. Could we have a yes or no, whether you think that is a proper assessment, that you believe that in the end the Iraqi people would support the presence of United States troops until stability is achieved? Just yes or no. Dr. Rubin?

Mr. RUBIN. Yes.

Mr. ROHRABACHER. Mr. Saliba?

Mr. SALIBA. I cannot say yes and no.

Mr. ROHRABACHER. Okay. And Katzman?

Mr. KATZMAN. Also a cautious yes.

Mr. ROHRABACHER. Okay.

Mr. JARRAR. Of course not.

Mr. ROHRABACHER. No.

Mr. JARRAR. According to the latest poll, more than three-fourths—

Mr. ROHRABACHER. Okay. So we got a yes, we got a no. I will have to say of course because I was there 3 weeks ago clearly, overwhelmingly the Kurdish area would vote yes. Whether or not the Shiite areas would vote yes is kind of, you know, probably they would. Now we find breaks, as was described, in the Sunni community.

It seems to me that there probably would be that, but let us let them decide. I will say that just parliamentary elections do not always elect people who are right on core issues, as I used with the illegal immigration here to describe or to use as an example of how that works here.

Dr. Rubin, you indicated in your testimony that there are other ways that the Parliament, the legislative branch, could actually show what they really believed on this issue if they really wanted to. You said there has been no motion of no confidence by the Parliament which indicates that they really don't believe this, this is face-saving politically for them.

By the way, I might add if the overwhelming members of our Congress wanted to get us out of Iraq right now, there are all kinds of avenues to do it, but this Congress does not choose to do that because they couldn't get the votes for it. There is politics going on here too, and maybe there is politics going on there.

Are there other things rather than just a motion of no confidence that the Parliament could do that would prevent or at least put themselves on record as opposing the extension of the U.N. mandate?

Mr. RUBIN. Sir, even the threat of a no confidence motion would result in the executive reentering negotiations and becoming much more complacent to the Parliament. When the chairman had asked a series of yes and no questions before about direct elections, the Iraqi system is unique in a couple of ways.

First of all, the executive branch serves at the pleasure, if you will, of the legislative branch which has to ratify the final package deal, and it is also interesting that the Prime Minister doesn't get

to appoint his own cabinet. It is all the result of a great deal of horse trading, if you will, in order to win that ratification by the Parliament after the initial elections and the deputies are chosen.

In my own interpretation, the Iraqi National Assembly also has its own difficulties with representation if you will. This isn't a Democrat versus Republican issue. This is a structural issue that of course in the United States and in many other countries politicians, congressmen, representatives, have constituencies. There is always someplace they call home, and those people know who their representative is.

In the Iraqi system, because initially the first election that was done on a national slate, then a provincial slate, what you basically had was a party list system where I forget the exact percentage, but I think it was every 0.4 percent of the vote, one person was taken off the party list and put in Parliament.

What that does is create a phenomena where your political future if you are a politician is not to any constituency, not to the people who elected you but to the party leader who decides where on that list you will be, and what that does is basically empower demigods, ethnic separatists, ethnic nationalists, sectarian nationalists and so forth.

Mr. ROHRABACHER. If we are talking about democracy, let me just be very clear, there is all sorts of forms of democracy in the world, you know, a democratic process. What is really important, as I keep stressing, is the will of the Iraqi people and also by the way the will of the American people. I don't believe the American people have any desire for permanent bases in Iraq, and I think there would be a revolt if there were indeed permanent bases.

Mr. DELAHUNT. Well, if my friend would yield, we could put that on a national referendum as well.

Mr. ROHRABACHER. That would be fine with me.

Mr. DELAHUNT. Well, if you start and initiate that process, I will join you. We will put it on a referendum with healthcare. We could try Social Security, we could do the minimum wage, we could do healthcare for children. I mean, we have a lot of stuff that is bottled up here in this Congress that I am confident that polls would suggest—

Mr. ROHRABACHER. In fact, if you would cosponsor a bill with me providing for a national referendum, that would be—

Mr. DELAHUNT. The answer is no.

Mr. ROHRABACHER. That is the answer because every time I brought it up, the Democratic side of this body would oppose it as well as in California, I might add, we have a referendum process, and every time that they have tried to limit it in California it has been the Democratic party that has been trying to limit the referendum process in California.

Mr. DELAHUNT. Now we are making this unnecessarily partisan.

Mr. ROHRABACHER. Now just a couple more points here. The parliamentary signing a letter that was mentioned, you know, here in this Congress we have people who constantly believe in coauthored bills and then when the bill comes to the floor, they end up voting against it, I mean, much less signing letters.

I mean, you have people signing letters. That is no legal consequence. In fact, politically when you see the meaning of a signing

of a letter, it is insignificant when it comes down to actually making policy for the government. We have discussions. Let me note the discussions with the Security Council. What is less important is that there was the debate at the Security Council. What is more important is that there is a public debate going on throughout the world and including the United States on this issue and that people are paying attention to it.

I think that had the situation in Iraq continued to be going down as it was a year ago and not reversed itself, which it seems to be now going in a more positive direction, I think a lot of this would be more relevant because we would have had a stubborn administration insisting that we continue on and playing political games in order to keep us going in a losing effort.

We may be well on a winning effort now because we define winning as the creation of a democratic or somewhat democratic government in Iraq which has then replaced this vicious dictatorship of Saddam Hussein. So all of the intricacies of whether or not the procedures are being followed or not I don't find as significant as perhaps my chairman does, but I just thought I would submit that.

Thank you for your testimony. All of you had some really significant things to say, and I have learned a lot from your testimony. Dr. Katzman again has gone into some great detail of depth that gave us a real good, you know, we peeled a few layers of the onion down and took a look at those things, and thank you all very much for your assessment.

Mr. DELAHUNT. Yes. I would echo at least the final few sentences of my colleague from California. This has been a very good panel. I think you have begun, the four of you, a process of informing and educating Members of Congress, and I think it was very timely. As my colleague, Mr. McDermott, indicated, it would appear that the horse is out of the barn.

But let me pose some questions, and let me get to the issue of the observation by Mr. Rohrabacher about politics and grandstanding and democracy, what have you. I would submit that democracy and Constitutions go hand in hand, and one can offer innovative and creative suggestions like national referenda, but I remember clearly some being extremely excited about the passage of a new Constitution.

I am sure it is not perfect. Much in life is imperfect. I am concerned about the issue. It isn't about intricacies and nuances, and it is much more about respect for the rule of law. This is what the people in Iraq decided. Now was it a free and fair election? There was much media focused in this country about the purple fingerprint. There was a new dawn emerging.

Now it is about intricacies. Gee, I think Constitutions are about checks and balances. I would think that the Iraqi people would welcome checks and balances. They certainly didn't have it in the Saddam Hussein era. Democracy is frustrating, but if we don't respect the provisions of the Constitution, I would submit that what we do is we create a divisiveness that erodes democratic institutions and that does not auger well for reconciliation.

I dare say the purpose of this hearing was to pose the question, was the Iraqi Parliament bypassed? I still don't know. I think it is open to debate, but I am very concerned about the testimony of Mr.

Jarrar that seems to be corroborated to a degree by Dr. Katzman about the Foreign Minister making a commitment that there would be the resolution submitted to the Iraqi Parliament for its review.

Now I am sure there are a lot of groups in the Iraqi Parliament that this administration doesn't like. I can go through every Parliament in the world and there are factions and groups and individuals that I abhor. Mr. Rohrabacher and I might even agree on some of them, but we can't have it both ways, my friends.

He talks about the 144 signatures in a letter. Of course, it has no legal effect. It is not a Dear Colleague. It has got nothing to do with that. Let me go back to Mr. Saliba. Your point is this isn't about a binding or nonbinding sense of the Iraqi Parliament resolution or a Dear Colleague letter. It is about a provision in the Iraqi Constitution that was voted for by the Iraqi people that says treaties and agreements, not just treaties.

I noted Dr. Rubin's written testimony referring to treaties, but we have got to be more expansive because if you review the Vienna Convention on treaties, there is a lot of stuff in there about agreements that it is far more expansive than a formal treaty, but because it gets in the way of what we really want to happen, which is the extension of the mandate, we can poo-poo it.

Dr. Saliba, let me exercise some restraint. Can you go over just carefully again, what does the Iraqi Constitution say regarding treaties and agreements? Define for us, if you will, with your background, what agreements signify in terms of your understanding of the Iraqi Constitution.

Mr. SALIBA. Let me just read from Black's Dictionary about what agreement is because when we think about agreement, we think about a contract, two people sitting signing the piece of paper and so forth. You are correct, Mr. Chairman, agreement is much, much broader than a treaty or a pact or a convention.

Agreement is among other things the act of two or more persons who unite in expressing a mutual and common purpose. This is an agreement. The union of two or more minds in a thing done or to be done is an agreement. A mutual assent to do a thing is an agreement. The agreement doesn't necessarily need to be express even it can be implied from the facts.

This is again implied agreement, implied in facts or implied in law. Implied in facts: One inferred from the act or conduct of the parties instead of being expressed by them in written or spoken words. If we read anything about agreements, especially international agreements, it is very wide open.

This is why the United Nations have published on their Web site something about how the terms are used in their treaty collection. They said that international agreement is very wide in terms of what constitute an agreement, and this is why. They gave the example if a Foreign Minister of one state made a promise, oral promise, to a counterpart of another state, it is an international agreement.

These are not my words; these are the words of the United Nations. So here of course legalistic, but I am an attorney and have to be legalistic, when we are talking about the Government of Iraq requesting from a body like the Security Council to do something

and the body did this something, then there is an international agreement.

Now we shouldn't confuse this agreement with the resolution that the body took because the resolution was the result of the agreement, was the implementation of the agreement. I hope this would satisfy what—

Mr. DELAHUNT. I am going to let you answer, Dr. Rubin, but before you do, because I can see you are anxious there, maybe your background is I know focused on the Middle East, but I am sure you are familiar with democracies all over the world because of your scholarship, but don't the Germans and the French and other western democracies all operate—and, Dr. Katzman, feel free to respond as well, I don't want to leave you out of this—but my understanding is they all have party lists.

Mr. RUBIN. Sir, in some cases, for example, in Australia as well, you have two different conflicting axes if you will. One is first pass the post versus proportional representation and the other is single member constituency or even multiple member constituency to national constituency.

Many places you have some combination of this, and what you tend to have in the Middle East is the larger the constituency, especially when it is done by proportional representation, the less likely it is that any representative will represent any specific town or village. You can have cities, towns and villages in Iraq that have no members in Parliament right now under the current system.

Mr. DELAHUNT. But that is also true elsewhere all over the world.

Mr. RUBIN. No. Iraq is more or less an extreme example.

Mr. DELAHUNT. Let me disagree with you because I can give you example after example in Latin America.

Mr. RUBIN. Well, I think the U.N. would disagree with you if I may, Mr. Delahunt.

Mr. DELAHUNT. The U.N. hardly ever disagrees with me, Dr. Rubin.

Mr. RUBIN. Carina Perelli was quoted in the *Washington Post* before the system was implemented as saying that only 3 percent of Iraqis had a favorable impression of the political parties and of the party list system. This I believe was in the *Washington Post* in May 2004 and should be accessible in Lexis/Nexis.

Mr. DELAHUNT. Well, thank you. Mr. Jarrar?

Mr. JARRAR. I just think it is not respectful enough to the millions of Iraqis who voted, including myself, during the elections because people actually voted for political agendas and for clear demands by all of the different lists. It is true that the lists changed and they split, but I don't think this should be considered a reason to dismiss the Iraqi Parliament or the entire democratic process in Iraq.

Iraqis are very happy with the elections. They hope that they will reach to a democratic state, but the message that is being given to them now is that if your democratic elections produced a body that will ask some political demands that we don't agree on, we are going to dismiss it. This is a very dangerous message that is given to Iraqis, that democracy is optional. If we agree with what they say, we will actually take it in consideration. If we disagree

with what they say, we will just talk to our friends and dismiss the entire elections and the entire democracy process that is still starting there.

Mr. DELAHUNT. Dr. Katzman?

Mr. KATZMAN. I just did want to add one example because we have the example of Afghanistan, which in many ways is parallel to Iraq, both products of the post-September 11 United States military action basically. In Afghanistan, they went with a district-based election because parties in Afghanistan are not popular because they were perceived as linked to—

Mr. DELAHUNT. They are not popular in the United States either, though, Dr. Katzman.

Mr. KATZMAN. I am not making any real point here. I am just pointing out we had two parallel cases, and in one case, we went with one system, and in the Iraq case, we went with—

Mr. DELAHUNT. The point that I am making is that worldwide there is a variety of hybrid, if you will, systems that exist because of popular support. I noticed the arrival of the gentlelady from Texas. However, I see that she is preoccupied now.

Ms. JACKSON LEE. May I just say a word?

Mr. DELAHUNT. You can definitely. I anticipate you will say a word, Congresswoman Sheila Jackson Lee from Texas.

Ms. JACKSON LEE. In fact, Mr. Chairman, I will be very public with my phone call. We are in the judiciary, as you well know, and you are doubly deemed this morning as well with a witness who has been sexually abused in Iraq, raped in fact, and of course has suffered not only the indignity of that rape but indignity of not having justice in our justice system, so I apologize to you on the Subcommittee on Crime.

Let me first of all thank you for this hearing. I think it is vital. I have listened briefly, and so my comments will be if you will surprisingly short because of the other hearing. I wanted to come because I wanted to reinforce with Mr. Saliba and Mr. Jarrar my commitment to the respect of the institution of government, and Parliament in Iraq is an institution of government.

It shocks me many times, and I happen to be a supporter of the U.N., you will hear Americans say that we are sovereign and we are not to be dictated to by the United States. I believe we should be a partner with the United Nations, a participant.

Certainly it shocks me that resolutions can be passed and secured by one element of government and your structure may not be completely the checks and balances under our Constitution and the other body of government raises concerns. I have respect for the Iraqi Parliament. There are differences and disagreements.

I would argue that I would hope that the institutions of government in collaboration in voting and democracy and adhering to the majority would work, but I have respect for the Iraqi Parliament. So let me just quickly say this war has been prolonged too long.

I would like to transition leadership of both the military operations, but also the political operation of which we have been told needs to be in full gear if you will, moving forward for us to be able to stand down.

Mr. Saliba, Mr. Jarrar, could you just quickly, as I am having to depart, say to me what would be the stance that you want the

United States Government to take in this debate about a U.N. resolution, the respect for the Iraqi Parliament? How can we help in essence empower the democratic principles so that we are not standing on the side of a blindsided resolution that was secured by the executive of your government versus in collaboration with the Parliament? Mr. Saliba?

Mr. SALIBA. I would just limit my response to saying that we have a Constitution, we have a political system that was agreed upon whether it is representative or not, whether it has whatever as Mr. Rubin's describing it, but this is what we have. I think unless and until we change that, we have to stick with what we have. This is I think what democracy to me means. Since we have a Constitution, let us apply the Constitution as it is.

Ms. JACKSON LEE. And of course the Constitution gives power to the Parliament to make decisions or to at least be part of the decision of dealing with securing the U.N. resolution. Is that my understanding?

Mr. SALIBA. In my opinion, this specific request that came into place requires the approval of Parliament beforehand. This is not to say that the Security Council cannot act on its own, but in this specific instance, even with the resolution of the United Nations Security Council, it says that this resolution will end if the Government of Iraq asked us to end it.

So here really we are not talking about a sovereign decision made by this body on its own. It is made specifically because of a request from the Iraqi Government. This is where I am saying that in my legal opinion this constitutes an international agreement that requires the Parliament approval. If it was the United Nations Security Council acting alone on its own decision, whatever, without the interference or without the request from the Government of Iraq, then the question would be completely different.

Ms. JACKSON LEE. Yes, sir. Thank you, Mr. Chairman. Mr. Jarrar?

Mr. JARRAR. There is a golden opportunity for the United States Government to start playing the role of a convener for this reconciliation. Unfortunately, until now, the United States Government is seen by the majority of Iraqis as taking sides in an Iraqi/Iraqi conflict.

Some Iraqi observers say that the Iraqi/Iraqi conflict that is happening now is actually similar to what happened in the United States during the U.S. Civil War, those who wanted a central government that is strong, those who wanted to secede. The difference is that in Iraq, we have a superpower with hundreds of thousands of troops and private contractors who are taking sides of this local conflict.

So I think there is a golden opportunity to actually bring all parties of conflict, whether they were represented in the executive or legislative branch, to an open discussion to see how can the U.S. help reconcile instead of helping one side, training one side and funding one side against the other side. This is very achievable. It will be good for all parties and it might end violence in Iraq if the United States role actually was transformed to be more neutral and just to shield a space for Iraqis to dialogue.

Ms. JACKSON LEE. Chairman, let me thank you for your leadership on this issue.

I would like to accept the challenge that the two witnesses, I know other witnesses have spoken, I would like to send an army of diplomats to Iraq, I would like to ensure that the Army that we have diligently working in Iraq is given their honors and their medals and their accolades and we have them come home so that the true reconciliation that has been offered by these two distinguished gentlemen can begin by a series of diplomatic efforts that there can be a true sovereign government that represents the people in a fair and honest and secure way.

I thank the distinguished chairman, and I yield back.

Mr. DELAHUNT. Thank you, Congresswoman. I know that the gentleman from Washington has an additional question. Let me go to Jim McDermott.

Mr. ROHRABACHER. No, please. Absolutely.

Mr. MCDERMOTT. Mr. Chairman, I am sitting here listening to this and the President has said that this is a war that will be handed off to the next administration, but it seems like what, I mean, everybody is saying that the surge has worked and now we have peace. It is hard for me to understand why the Maliki government wants to keep our people there.

Then I thought to myself, I remember one of the benchmarks that we set up here in the Congress that we would withdraw only when there had been an oil law passed. Could you give us a clue as to the oil law? Does that follow the same path of this resolution that we have heard? I mean, where is it? What has happened to it?

There was also talk about some constitutional amendments, about separation into separate states. People are suggesting it should be broken into three pieces. Where is all that political turmoil at the moment? Mr. Jarrar or Mr. Katzman or whomever?

Mr. JARRAR. Unlike the articles that we cited today in the Constitution regarding the authorities of the legislative and executive branches that are very clear and not disputed, there are some articles that are disputed: The articles regarding which type of federalism will be adopted, the articles regarding how to administrate natural resources and other related articles. That is why there is still a committee called the Constitution Rewriting Committee. It is still functioning until now. Three days ago they actually asked for another year extension of their work, so these points are not clear.

Regarding the oil law, the oil law actually was blocked by the Iraqi Parliament because the Iraqi Parliament viewed the law as a threat to the country's territorial integrity because—

Mr. MCDERMOTT. Let me just stop you. Didn't I read in the paper that at least in Kurdistan they had signed some agreements with some French oil companies or some Russians? So is the executive aspect of the Iraqi Government ignoring the blocking of the action by the Parliament itself?

Mr. JARRAR. Yes, indeed. In fact, the official copy of the oil law that I helped, I brought from a contact in the Green Zone, had the actual cabinet resolution regarding submitting the oil law to the legislative branch.

That resolution had an Article 5 officially and publicly asking that if the Iraqi Parliament didn't pass this oil law before May 31 that both the executive branch and the Kurdistan regional government will have the right to go ahead and sign their own oil agreements without waiting for the central government's legislative branch to approve it.

It is a very unconstitutional article that was passed actually, and they are acting on that specific article. The Kurdistan oil ministry and the central government's oil ministry are planning or started already to sign oil laws despite the fact that the Iraqi legislative branch blocked the law, and the Iraqi legislative branch took the issue to the Supreme Court and the Supreme Court ruled in favor of the legislative branch.

So in that case, we don't have any ambiguity. I think it is very clear that the executive branch and the central government and the executive branch outside the central government and the Kurdistan regional government are actually breaking the Iraqi laws and Constitution by signing these oil deals.

Mr. KATZMAN. I would just add that if we are looking at the Iraqi Constitution, we have to realize that a lot of things in there have not really been followed as the Constitution lays out. The Constitutional Review Commission, which was referred to, it is in the Constitution that they were to complete their work 4 months after enactment of the Constitution.

There was to be a referendum on Kirkuk by 10 days from now under the Constitution. There was to be an upper body to the Parliament formed under the Constitution. So there is a lot to the Iraqi Constitution that is not being followed. Basically the framework is we still have, I would argue, a country that is basically still under U.S. tutelage, however we want to define that, it is still evolving and I pointed out the political difficulties. This is a society that was and many would argue still is either in a civil war or could again be in more of a state of civil war. So I think we have a very unsettled political system that we are dealing with here.

Mr. MCDERMOTT. You have a comment, Mr. Rubin?

Mr. RUBIN. No. I would agree.

Mr. MCDERMOTT. It sounds to me like what you are saying is that we have a situation in Iraq that the United States is running but in fact is trying to cover with a fig leaf of some kind of Constitution which is used when it seems useful and ignored when it doesn't seem useful. I mean, the questions keep coming in my mind from my own legislative experience.

How are they distributing the revenue from the oil? Is it per capita to each province or does the legislature do anything about it or is it the oil ministry that just puts it in an envelope and sends it out to the governors to deal with? How does this work?

Mr. KATZMAN. They have not passed yet a final formula, an agreement to share the oil revenues, but they are according to the administration allocating it on a relatively equitable basis.

Mr. MCDERMOTT. A relatively?

Mr. KATZMAN. Equitable.

Mr. MCDERMOTT. Equitable.

Mr. KATZMAN. Relatively, yes.

Mr. MCDERMOTT. But nobody knows.

Mr. RUBIN. Well, with regard to the Kurdish oil laws that were signed separately and largely illegal, no disagreement on that. I talked to some of the people involved in negotiating them and in many ways, it gets a little bit worse in that a certain proportion of the oil revenue will go to certain political parties and certain political personalities rather than being distributed more broadly to the people. That is the case in the north. I am not talking about the central government right now.

Mr. McDERMOTT. Well, that is kind of like a tribal chieftain-like arrangement where the chief gets the money and distributes it to the members of the tribe as he or she sees fit. Is that what you are describing?

Mr. RUBIN. I wouldn't describe it quite like that, but, yes, it is a rather faulty system.

Mr. McDERMOTT. Some slippage I guess. Yes, Mr. Saliba?

Mr. SALIBA. Let me just, because of the legality of this, there is a problem in Iraq right now and this is not clear in the Constitution whether the regimes, which the Kurdistan is one, can pass laws independent from the central government on certain issues.

The central government in Iraq, meaning the Ministry of Oil, is of the position that whatever the Kurdistan wants to do in passing oil laws has to be compatible with whatever the central government has passed. The central government has not passed a law. The Kurdistan region went ahead and said we passed our own law because we have the right to pass it.

There is a real legal question about who has the authority to do what. What the Federal Government does and what the Kurdistan Government can do in terms of the oil resources, it is not clear. The Constitution also is not clear on this issue.

Mr. RUBIN. It actually goes in the case of the Kurdish laws in at least one example a little bit beyond that because in at least one of the oil contracts, the Kurdish regional government was offering contracts for areas that aren't yet under Kurdistan regional government control.

Mr. McDERMOTT. I yield back the rest of my time.

Mr. DELAHUNT. Dana?

Mr. ROHRABACHER. One question for the panel. Constitutionally, the President of the United States does not have to seek legislative approval for agreements to follow U.N. mandates. Is that correct?

Mr. RUBIN. That is correct, sir.

Mr. ROHRABACHER. Okay. How many other western democracies are there, if you could tell me which ones they are, that require a legislative action for approval of agreements to follow U.N. mandates? What other countries require legislative action for approval to follow a U.N. mandate? Can you name me a couple of countries that do that?

Mr. SALIBA. I am not sure whether we are talking about the—

Mr. ROHRABACHER. Well, let us see what the question is. Mr. Katzman, do you have any?

Mr. KATZMAN. I don't know. I am sorry.

Mr. ROHRABACHER. I don't believe there are any, but I would be very happy to find out if there are any other western democracies at all that say that if their executive government agrees to follow

a U.N. mandate, that means that they have to have legislative action in order to approve that.

Now, whether or not that is in the Iraqi Constitution, let me just note that the United States Government for, I believe, 8 years after our revolution, after we eliminated King George, had a thing called the Articles of Confederation. It took us a while to evolve into a government that actually functioned. Some of the things that we did during that time period was take care of things that didn't work in the Articles of Confederation, and we actually drew up a new and stronger Constitution. Perhaps that may be what is happening in Iraq now is that the Articles of Confederation of Iraq aren't working right now.

That is no reason to suggest that number one, the U.S. is calling all the shots and that we are trying to dominate that country and that we don't believe in democracy. The fact is if the Iraqi people do not want us there, we should not be there. The fact is that if the United States Congress doesn't want us in Iraq, we won't be in Iraq.

There are all kinds of things this United States Congress could do to force the President of the United States right now to begin immediate withdrawal from our troops. We are not doing it because that is not the will of the American people. The American people, if it was, the U.S. Congress would act.

The fact is there are some people who believe that they represent what it is, but the fact is that we have gone through several elections now, and not all the members of the United States Congress have been replaced on this issue.

And again, to the subject here, we can talk about intricacies, we can talk about is there an inconsistency here and try to nitpick what is going on. It comes down to some fundamentals. Do the Iraqi people want us to immediately withdraw our troops? If they do, we should do it, we should leave. I don't believe that is the case. We could determine that perhaps by a referendum directing with the people.

Obviously from what everybody has been saying now, the current system of government there is dysfunctional, but it is evolving just as the Articles of Confederation were dysfunctional in our early democracy, which is not to say that it wasn't a democracy.

Mr. Chairman, I would appreciate if people do not make hand gestures to me while I am talking.

Mr. DELAHUNT. There are some, how shall I say, some familiar faces in this particular audience. I am very pleased with the lack of hand signals and signs, and I would respectfully request that we listen. This has been a very good hearing.

Mr. ROHRABACHER. It is only a matter of courtesy.

Mr. DELAHUNT. It is a question of courtesy. It is good, and we are learning a lot.

Mr. ROHRABACHER. Yes. We are talking about a matter of courtesy. One, people do not interrupt and interfere with other people's right to communicate and expect that their rights should be respected unless we respect other people's rights as well.

Now, in terms of the oil agreement and the other things that have not been acted upon, again, look to our early history and you will find example after example after example where people were

trying to reach an agreement and they couldn't, and that is why they changed to a U.S. Constitution.

There will be an evolution of democratic government in Iraq. If it wasn't for the United States' intervention in Iraq, there would be no evolution in any direction. You would have had a brutal dictatorship still continuing to murder their people by the tens of thousands. So have we made progress? The answer is yes. Is there a situation coming now where there is enough stability that Americans can begin withdrawing our troops? I think the answer to that is yes as well. Should we have permanent bases? Any hint of that I think would go down in flames before this democratic body, and, I might add, the U.S. Congress would act on that.

We would say there would be an action that would take place just as we have not acted and used our prerogatives to demand an immediate withdrawal of all of our troops. So this has been a very illuminating hearing.

Mr. DELAHUNT. I want to thank the ranking member, and I particularly want to thank him for his declaration that there will be no permanent bases in Iraq. Let me proceed to ask some more questions. I am looking at the clock, and we haven't had votes yet, and we are at the end and this is just too good to conclude.

The representation by the Foreign Minister Zebari that the framework agreement, the bilateral agreement between the United States and the Iraqi Government would be submitted to the Iraqi Parliament, is that a statement that has been made in a public venue? Mr. Jarrar?

Mr. JARRAR. There was more than one statement in fact by Mr. Zebari and other leaders of the Iraqi cabinet that ensured the Iraqi Parliament that this agreement will be sent to the Parliament before any approval. The problem is that this sounds exactly like the other assurances that were given before the U.N. mandate, and that is why there is this situation of like the Iraqi public opinion is being skeptical about these issues.

In fact, one of the materials that I included in my testimony that went on the record was the front page of *Az-Zaman* newspaper. It is an Arabic newspaper. It is the equivalent of the *New York Times* maybe in the U.S., like the second or first in circulation. The headline of the day of the signature of the agreement between Mr. Maliki and Mr. Bush, it read "Bush and al-Maliki Agree on Principles to Leave Permanent Military Bases in Iraq."

So it doesn't seem like the Iraqi public opinion actually thinks that Mr. Maliki is going to go through the constitutional process. It seems like there is this expectation that yet another illegal and unconstitutional step will be taken on behalf of the executive branch by signing an executive agreement, which is I think according to my reading half or more than half of the agreements that the United States Government has with other countries for basing agreements.

SOFAs (Status of Forces Agreement) are actually executive agreements that didn't go through the legislative branch. So there are some concerns about the Bush-Maliki agreement. In fact, even the bigger concern about the U.N. mandate is linked particularly to this issue. It is not really just about the U.N. mandate, per se. I am sure that many Iraqis would have loved to see some real con-

ditions attached to the mandate, but I think the major issue is how to speak about the permanent bases agreements that is anticipated to happen very much soon.

Mr. DELAHUNT. Well, as I am listening to you, and I believe I would have the support of the ranking member, but I think it would be important for us to consider not a hearing but a briefing and invite the Iraqi Ambassador to come before this subcommittee so that we can be very clear at least among Members of Congress that the Iraqi Parliament on this occasion, because it is of such importance in terms of the future of Iraq and our relationship, that the Iraqi Parliament will not be bypassed.

I think maybe this is a contribution that we can make. Again, as I indicated, there has been by a number of prominent Republicans a real concern about the lack of consultation for the past 7 or 8 years prior to and after the invasion of Iraq. I think it is important because I do believe that in many respects, a legislative body is a more accurate reflection of the popular will and where the people of a nation are.

If we are to build upon the stirrings if you will of democracy, I think it is absolutely essential that the Iraqi Parliament play an appropriate role according to their Constitution. I think that we should as parliamentarians, as members of this body, assist in that.

I said earlier to a staffer, I have not on a single occasion, and I don't want this to sound accusatory, but we have never had here in the United States a meeting face to face between a significant number and a cross-section of members of the Iraqi Parliament and members of the United States Congress. That ought to happen to assert the legislative role in the future of both countries.

You had a comment, Dr. Katzman?

Mr. KATZMAN. You know, obviously CRS doesn't comment necessarily on congressional suggestions.

Mr. DELAHUNT. If you do, we won't tell them.

Mr. KATZMAN. I would just say that the future of the United States/Iraq relationship is so complicated that inevitably I would not personally be surprised if the Iraqi Parliament would be unable to really act before the next mandate expires in December 31, 2008. If we do complete the agreement with Iraq by July 2008, that gives 6 months. It may very well take them longer. I think what you are suggesting is to start thinking about this agreement and what is in it and how it gets reviewed and the process.

Mr. DELAHUNT. Right.

Mr. KATZMAN. I would say that is useful.

Mr. DELAHUNT. Dr. Rubin? Mr. Jarrar?

Mr. RUBIN. One overriding comment I would have, the more democracy, the more transparency, the better, except what the House Foreign Affairs subcommittee seems to be suggesting is to impose on the Iraqi Parliament one of the most expansive definitions of agreement, which as Mr. Rohrabacher has pointed out, other countries do not subscribe to.

I would argue that perhaps the only thing which you can get the Iraqi Parliament in agreement about is that none of them have ever heard of Black's Dictionary, and that regard, what the question here, and it highlights actually—

Mr. DELAHUNT. I can assure you, Dr. Rubin, that most members of the U.S. Congress if posed a question relative to Black's Dictionary would stare into the space and have a similar reaction. "What are you guys talking about?" There is one to my left over here. He is not usually to my left, but in terms of geography right now, he is to my left.

Mr. RUBIN. This raises an inconsistency which came up a little bit before that with regard to the issue about whether the United States Congress would ratify the new agreement with Iraq, the future agreement with Iraq, that we are talking about the United States interpreting the law one way and the Iraqi Parliament interpreting the definition of agreement another way to have different mechanisms kick in.

Mr. DELAHUNT. We are at this point in time looking prospectively in talking about the agreement that is purportedly being discussed between Iraq and the Bush administration.

Mr. RUBIN. I agree, but what we are doing is——

Mr. DELAHUNT. We thought we would encourage a little bit.

Mr. RUBIN. In that very agreement, what we have is an inconsistency where the Iraqis were talking about interpreting with a very expansive definition of what agreement should mean under Iraqi law. We are imposing a U.N. definition. We are not doing the same thing with us, and that is going to lead to trouble. Now that doesn't mean that inconsistency can't be reconciled.

Mr. DELAHUNT. However, under the United States Constitution, the word "treaty" is used and of course under the provision of the Iraqi Constitution, "treaty" and "agreements." I would suggest that one could draw the inference that for whatever reason, they wanted a more expansive interpretation of international understandings. Again, I know you are familiar with the Vienna Convention on treaties, and the language is very expansive from the U.N. in terms of its definition of agreements.

Mr. RUBIN. It is very expansive from the U.N.'s definition of agreement, but there is nothing——

Mr. DELAHUNT. And it would appear to be from the Iraq perspective.

Mr. RUBIN. No, sir. This is where I would disagree with you because there were quite open and public discussions, wordsmithing word by word with regard to the Iraqi Constitution, and there does not appear——

Mr. DELAHUNT. And 144 members of their Parliament seem to agree with the more expansive definition.

Mr. RUBIN. If they agreed with the more expansive definition—first of all, the letter doesn't suggest that they agreed with the more expansive definition. The letter was centered around a specific issue, which was regard to perhaps some——

Mr. DELAHUNT. The extension of the U.N. mandate.

Mr. RUBIN. No, sir. It was with regard to the U.N. mandate but not with regard to setting a precedent as to the nature of what agreement meant. If they fully disagreed with this, they have every mechanism in their power to knock the government which they think is breaking the law out of power except they were for it before they were against it.

What they say to their constituents and what they do as lawyers when they consider the various episodes is important. The reason I hesitated before when the question was asked as a yes or no question whether Iraqis would want an immediate withdrawal of United States forces, if you ask a question, do you like occupation, in Iraq and in every other country, the answer will be no.

When you ask a poll question just like that, do you favor the immediate withdrawal of U.S. forces, the answer is yes; however, when you ask a poll question—and folks have done this, for example, the National Democratic Institute and the International Republic Institute—and ask Iraqis to rank their priorities, what one has is establishment of security, the functioning of basic services as being ranked much higher in the order of priorities than the immediate withdrawal.

This is in the nature of any post-autocratic state, how the nature of the poll question is asked.

Mr. DELAHUNT. Well, I would presume it is the nature of any nation state, whether it be Democratic or authoritarian, give me a good job and make sure that my personal safety is protected. You indicated polling questions. I remember Mr. Jarrar was going to reference a recent poll in Iraq about presumably Iraqi attitudes. I don't know if he has information available to him, but I would be interested in hearing that.

Mr. JARRAR. I do in fact. The latest poll that I read was conducted by ABC and BBC and a Japanese broadcasting corporation. That poll showed, like many others, in fact numerous polls that were conducted in the last 4 years, that the vast majority of Iraqis think that the United States presence is making things more complicated and that a U.S. withdrawal will make the situation better. In fact, 79 percent of Iraqis according to that poll has that.

Mr. DELAHUNT. Does that include the Kurdish population?

Mr. JARRAR. I think, yes, that was an inclusive poll, as I remember. The point that I think should be made is that the debate in Iraq is a little bit different than the debate in the United States in regards to the withdrawal issue. It seems like the Iraqi side is more pragmatic about it.

No one is asking for an immediate withdrawal, but there is a majority of people who are asking for starting negotiations to reach to a complete withdrawal. So I think the word "immediate" versus the word "complete"—

Mr. ROHRABACHER. There is no disagreement on that here either.

Mr. JARRAR. Yes.

Mr. ROHRABACHER. That is our goal, too.

Mr. RUBIN. Indeed, that is what the status of forces agreement is about.

Mr. ROHRABACHER. Sure.

Mr. JARRAR. I think the majority of Iraqis are asking to start negotiating some type of a timetable that will end all of the United States presence in Iraq on the short-term. We are not speaking about decades. I think they are speaking about some few years. For the record, I just want to object on the unfair assumption that Iraqi parliamentarians are less educated or illiterate because they are Iraqis. In fact, there are many of them who have Ph.D.s and are very specialized in international law. I am sure that they know

definitions of agreements and more than the definition of agreement.

Mr. RUBIN. They are actually very public and also very private but well-known in the newspapers, including *Az-Zaman*, which by the way is edited by the former editor of the Ba'ath party paper, but the point being in the discussions among Iraqi parliamentarians, and we need to give them the benefit of the doubt and not impose definitions upon them, they discuss these issues, and the discussions seem to suggest an understanding of treaty and agreement which is different than the House Foreign Affairs Committee wishes to impose on them.

Mr. DELAHUNT. No. I mean, you are making a statement that is inaccurate. This is not a question of attempting to impose; this is a question of eliciting testimony to clarify what Iraqi parliamentarians understand in terms of the extension of the U.N. mandate and whether that falls within the definition of treaties and agreements, which you feel—

Mr. RUBIN. The U.N. definition, which you are adopting.

Mr. DELAHUNT. No, no, no. It falls under the Iraqi Constitution what agreements refer to. Am I misstated? Just a second. See what Mr. Jarrar says.

Mr. SALIBA, do you agree with me?

Mr. SALIBA. I fully agree with you, Mr. Chairman, and I want to make a point.

Mr. DELAHUNT. I don't want to impose, I want just to find out. I can't impose. Others would impose, but not me.

Mr. JARRAR. There are three articles in the Iraqi Constitution that have the word "international treaties and agreement," 61, 73 and 80, and the three of them are very, very clear about the issue. For example, ratification of international treaties and agreements should happen by two-third majority of members of the Council of Representatives.

I think like all of the witnesses and even the Iraqi experts and the Iraqis and the legislative and executive branch are not arguing whether the Iraqi Parliament has a right for international treaties and agreements or not. I think the only point of conflict that happened through the United Nations renewal is that the executive branch claimed that the U.N. mandate is not a treaty or an agreement. That was dealt with legally through passing a binding resolution on June 5 that became a law on June 20 just to deal with this particular technicality. I don't think there is any constitutional ambiguity in that regard.

Mr. DELAHUNT. Okay. I mean to go back. I mean, I am just reading the letter signed by 144. There are 275 members of the Iraqi Parliament. Now I am not very good at math, but my arithmetic is really solid, and I know 144 is a majority, right?

Mr. JARRAR. It is more than 138, which is a majority.

Mr. DELAHUNT. Okay. So this is the letter that they signed, because the request, referring to the request to the U.N. Security Council, by the Iraqi Government to the Security Council regarding the extension of the presence of occupation multinational forces without conferring with the Iraqi Parliament is a constitutional violation.

At least these 144 interpreted the term “agreements,” I would dare say, under their Constitution, not the United Nations, as a much more expansive view than maybe you or Dr. Rubin or even maybe myself—

Mr. RUBIN. Or the Iraqi Court.

Mr. DELAHUNT. Or the Iraqi Court.

Mr. RUBIN. If it would go to that.

Mr. DELAHUNT. Okay. Dr. Waters?

Ms. WATERS. Yes?

Mr. DELAHUNT. Do you have any questions?

Ms. WATERS. I do. First of all, Mr. Chairman, I want to thank you for inviting me to participate here today and for all the work that you have done on the question of our occupation in Iraq.

While I am intrigued by the way that you have framed this hearing and the questions that you are raising about the fact that the Iraqi Parliament was not consulted or allowed to take a vote, and it may be in violation of their Constitution as this mandate has been requested to be extended by Prime Minister al-Maliki, I am really more focused on what is happening with Muqtada al-Sadr and what it means for him to kind of go under the radar at the time of the surge and what it means for him to—we know that he is absolutely opposed to the occupation, and we know that he did have a good relationship with al-Maliki at one point, so much so that when the President of the United States visited, he was able to delay the meeting with the President by the Prime Minister and then now wanting to understand what he is doing.

Is he preparing himself to take over? Has he expanded the military that he controls? Is he being supported by Iran? While we are all agreeing with the sound bytes that we are being given about how well the surge is doing and how we have basically created all of this security, is this the lull before the storm? What is going on, and should we be concerned about it? Mr. Katzman?

Mr. KATZMAN. Thank you. Yes. I raised some of this in my testimony. We are definitely seeing substantial Shiite on Shiite violence. To explain, basically Muqtada al-Sadr’s faction did not compete in the January 2005 elections that elected provincial councils; therefore, his faction is underrepresented in all the provincial councils in southern Iraq.

Meanwhile, he does not have much representation, but his popularity has grown, and he is trying, in my opinion, my analysis, to exert influence commensurate with his true popularity even though he is underrepresented on these councils, and therefore, none of the governors of the southern provinces are in his hands.

He is basically trying to topple or in some way create governorships and provincial leaderships that are more favorable to his faction, and that is leading to violence between him primarily and the mainstream Shiite faction, the Islamic Supreme Council of Iraq, which is very much in the government and has a testy relationship with Maliki but basically is his ally at this point.

Ms. WATERS. So where is that going to take us? I mean, where does it lead to?

Mr. KATZMAN. Well, I agree with you that he is hungry for more power, he does want to be in a leadership role in determining outcomes and he wants to be seen as the protector of the Shiite major-

ity in Iraq. I am not sure whether he has pretenses to ultimate leadership in Iraq, that is not clear, but at the very least he wants substantially more influence over decisions than he now has.

Ms. WATERS. I think there were some numbers that we were given at one point that his militia was about, what, 50,000 in number? Has it grown?

Mr. KATZMAN. Fifty to 60,000. It remains steady roughly by all estimates, 50,000 to 60,000, yes.

Ms. WATERS. And he has access to weapons? His own avenue for acquisition of weapons, be it Iran or other places where he could be getting it? Does he have that kind of power?

Mr. KATZMAN. He is widely believed to be receiving weaponry from Iran, yes, ma'am.

Ms. WATERS. So while I am interested certainly in the chairman's pursuit of the constitutional rights of the Parliament, I guess what I am questioning myself about is whether or not it matters as much if in fact there is impending further civil war that perhaps would be led by Muqtada al-Sadr.

Mr. KATZMAN. This is very possible. His militia is widely attributed. A lot of the sectarian cleansing that we have seen in Baghdad neighborhoods is widely attributed to his Jaysh al-Mahdi militia, yes.

Ms. WATERS. Just one other thing. Since he has been described the way that you are describing him in his quest for power, et cetera, we know for sure that he is adamantly opposed to the occupation?

Mr. KATZMAN. That is something I would say is not clear. I think he has used the term "occupation" to rally his followers and his flock and show that he is a nationalist. However, I do believe that if the United States were to suddenly agree not to perform any combat against his militia, his rhetoric would—I believe "occupation" is really his way of expressing that U.S. forces are against him. That is my analysis.

Ms. WATERS. But isn't that consistent with what the Parliament is saying? "We feel as if your presence here is occupation, we would like to see you go home."

Mr. KATZMAN. Most of the factions that are against the U.S. presence feel that the United States forces that entered Iraq and are in Iraq are against them, yes.

Ms. WATERS. Could we simply say that the Parliament and Muqtada al-Sadr's perspective are the same and that portends more potential power for him if he is aligned with the thinking of the Parliament about the United States presence?

Mr. KATZMAN. There is potential for him to attract more support among Sunnis and others who are against the U.S. presence, but we are also, as I said, seeing a countertrend among many Sunnis who now are not opposing our presence because we have now signed ceasefire agreements with them, and they now see us as in some ways supporting them.

Ms. WATERS. Thank you. Thank you very much.

Mr. DELAHUNT. Mr. Rohrabacher?

Mr. ROHRABACHER. Well, thank you very much, Mr. Chairman. I think this has been a very insightful and somewhat proactive hearing today. I think it has reaffirmed my belief that a democracy

is something that reflects the will of the people. I know that Iraq is going through its own evolution toward trying to find out what type of laws will work in Iraq.

Certainly I think that in the future, if it is not thrown out by the Iraqi court when it goes to the court, this provision that we spent so much time looking at today will be discarded once they get down to amending and shaping their Constitution as things evolve in that country.

Again, what is most important is whether or not the will of the people is being followed. The purple fingers did not mean we have got a document now. The purple fingers meant that for the first time the people of Iraq had a chance to vote directly on something and had a chance to participate in controlling their own destiny.

We want them to be able to control their own destiny. If their determination is that Americans should start taking their troops out right now and as quickly as possible, then that is what we should do, frankly. I don't believe that is what they want. As I say, my recent visit there showed me, at least in the northern part of the country, the overwhelming majority did not want that. I would believe that now we see indications in other parts of the country that is the case.

Now that does not mean we should in any way make our position permanent. I would join with the chairman—and I have voted on this issue. I don't remember what context the votes were in, but I think we voted on whether there should be permanent bases. I know I voted against having any permanent bases.

Ms. WATERS. We adopted that on two occasions.

Mr. ROHRABACHER. The bottom line is the United States Congress has the power to prevent any military permanent bases from being established there just like we have the power to begin immediate withdrawal if that is what people really feel is the right course of action. We have got that power. The Congress isn't doing it because that is not what we perceive as the general will of the people right now.

I would finally suggest that we are going to find there will be a level of security in which Americans will withdraw from Iraq. We may be approaching that now. I happen to believe that with the success of the surge and some of the other political things that are going on we should begin a responsible withdrawal, and I would think that many of my Democratic colleagues, we may disagree on how fast that ought to happen, but I think that we may see that we have reached that point. A lot depends on what is going on and what we have done today.

I agree with you, Mr. Chairman, a face-to-face interaction with Iraqi parliamentarians would be a good idea. So there are some things we can work on, and I would be willing to work with you and thank you very much for this hearing.

Mr. DELAHUNT. Thank you, Mr. Rohrabacher.

Mr. Jarrar, you heard my suggestion. Knowing of your relationship, the fact that you are an Iraqi, we could task you with exploring the possibility of having a number of Iraqi parliamentarians come here and sit around, possibly in this very room, and discuss first the bilateral agreement and then where do we go from here. I think it would prove to be very positive because it is important

that we inform each other. Because sometimes the realities are far different from what the understanding is on both sides.

With that, we adjourn. Again, thank you so much.

[Whereupon, at 12:35 p.m., the subcommittee was adjourned.]

