

# The U.S.-Iraq Agreement on Maintaining U.S. Troops in Iraq

by Phyllis Bennis - Institute for Policy Studies - 21 October 2008

Despite the recent surge of attention to the U.S.-Iraqi negotiations over an agreement to keep U.S. troops in Iraq for years into the future, the resulting agreement or lack of agreement is likely to have little actual impact on the occupation. The negotiations are being conducted by representatives of President Bush and Prime Minister Maliki - neither of whom actually want the U.S. troops to leave. (Maliki's government would not likely survive the withdrawal of U.S. troops, and Bush remains committed to permanent U.S. control of Iraq, its oil, and its strategic location for U.S. military bases). But both Bush and Maliki face political and electoral pressures to posture as if they do want a timetable for troop withdrawal. As a result, most of the negotiations seem to have focused less on substantive disagreements between the two sides, and more on finding language that disguises the real feature sublimity of continued occupation and U.S. domination, with politically acceptable language extolling Iraqi sovereignty.

The negotiations are officially aimed at producing a bilateral agreement between the U.S. and the U.S. occupation-backed Iraqi government that would set the terms for how U.S. and "coalition" troops would continue to occupy and wage war in Iraq. The urgency surrounding the negotiations is based on the looming expiration of the current United Nations mandate for the so-called "multi-national force" (diplo-speak for the U.S.-led occupation) on December 31, 2008. The goal is to create an agreement between Washington and Baghdad that would replace that mandate. Even the New York Times agrees that if there is no agreement in place after December 31, and the Security Council has not extended the mandate, the U.S. troops occupying Iraq would have no legal basis for their presence; legally, they would have to be pulled back to their bases and quickly withdrawn from the country.

In fact, it is quite unlikely that any new bilateral agreement, or any extension of the UN mandate, will have any real impact on the fighting. The U.S. invaded Iraq illegally; it is unlikely that they would end their occupation because of a technicality like acknowledged illegality. And those forces fighting against the U.S.-led occupation, both the resistance forces targeting the U.S. occupation alone and those extremists also committing terrorist acts against Iraqi civilians, are unlikely to stop fighting because of a new or renewed legal document; they are fighting against a hated foreign occupation, and will likely continue to do so regardless of diplomatic niceties.

It should be noted that so far the actual content of the agreement remains unclear. No version, either Arabic or English, has been released; Arabic drafts have been leaked, and informal English translations are all that are available. So - if the devil is in the details, the devil remains hidden.

## Congress, Parliament and the Agreement

The agreement has not been submitted to Iraq's parliament, as its constitution requires, and has not been submitted to the Senate for ratification, as the U.S. constitution

requires. In fact, on the Iraqi side, even leaders of Maliki's own party have distanced themselves from the agreement, while other political leaders, most notably Shi'a cleric Moqtada al-Sadr (who called a Baghdad protest of tens of thousands over the weekend) oppose it altogether. It appears that secular, nationalist, and Sunni forces remain largely skeptical; Iran opposes the agreement. Only the main Kurdish parties, Washington's closest allies, have apparently endorsed its terms. And most Iraqis, other than Maliki's supporters, are looking to better possibilities from a new post-Bush U.S. president.

The Bush administration has similarly refused to engage Congress, claiming that the agreement is "merely" an ordinary Status of Forces Agreement (SOFA), similar to agreements the U.S. has with Germany or Japan. But of course there is no war being fought by U.S. troops in those countries. In Congress, there is strong opposition to the agreement, but primarily focused on the exclusion of Congressional input and approval, rather than the substance of the terms.

However, if the agreement fails, it would mean official recognition by governments, inter-governmental institutions, and other international diplomatic entities of the illegality of the U.S. occupation. That would constitute a huge advance for global anti-war forces, including here in the U.S. So challenging the legitimacy of any new agreement is a continuing obligation.

#### Withdrawal of U.S. troops: a Time Horizon

Article 25 of the draft agreement describes "withdrawal of U.S. forces from Iraq," and the first paragraph states that "The U.S. forces shall withdraw from Iraqi territories no later than December 31st 2011." Later in the same article there are references to "combat troops" being withdrawn from Iraqi cities and regrouped in U.S. bases by June 2009, but the initial commitment to the December 31, 2011 withdrawal does not specify "combat" troops. It appears this was likely one of the demands of the Iraqi government, aware that the Iraqi parliament, let alone the population, would certainly reject the kind of partial withdrawal, of "combat troops" only, that is being defined as ending the war in U.S. electoral discourse.

But the existence of that text does not indicate a serious U.S. commitment to a timetable for full withdrawal of all troops, even by the end of 2011. Paragraph 5 of the same article explicitly authorizes the Iraqi government to request U.S. forces to remain in Iraq - for "the purposes of training and support of the Iraqi security forces." Such "support" of the U.S.-trained, U.S.-armed, and still U.S.-dependent Iraqi military could in practice mean any military action the Pentagon wants to carry out. Paragraph 5 goes on to say that "the Iraqi government might ask for an extension of paragraph 1 of this article" - an extension of the 2011 withdrawal deadline.

So the whole idea of a deadline is a politically-driven fraud. It is not coincidental that when the Bush administration appeared to give in on the once-rejected idea of a timeline, the actual description was that of a "time horizon" - very beautiful, perhaps, but

you could never get there.

There are similar wiggle-word descriptions of how U.S. troops would have to get approval from the military Iraqi in a joint coordination committee for military operations. As to the detention of Iraqis, U.S. troops are required to hand over detainees to the Iraqi authorities within 24 hours - unless the detention "was based on an Iraqi decision in accordance with Iraqi law."

### Immunity for U.S. Troops & Bases

As to the hot-button issue of immunity vs accountability for U.S. troops committing crimes against Iraqis - immunity largely wins the day. There does seem to be a claim of Iraqi sovereign control over U.S. contractors who commit crimes against civilians - according to Article 12 "Iraq has the primary legal jurisdiction over contractors with the U.S. and their employees." We'll see how Blackwater and other mercenary companies deal with that. But as to U.S. troops, the U.S. maintains "primary legal jurisdiction over U.S. armed forces members and civilian members." Iraq's government can now brag to its people that it will have "primary legal jurisdiction over armed forces members and civilian members in cases of major and intentional crimes" that occur outside of U.S. bases and "while troops are off duty." But how convenient - U.S. troops essentially never leave their bases except for military activities, and several paragraphs later the text gives the U.S. the explicit right to determine whether the troops involved were off-duty or not.

U.S. bases also remain unchallenged. The U.S. is to submit a list of all "installations and areas used by the U.S. forces" for the purpose of "being reviewed and agreed upon by both sides" by June 30, 2009. There are references to the U.S. returning to the Iraqi government military bases "that were constructed, remodeled, or modified under this agreement," but no reference to bases that pre-date the agreement or may not be among the "installations and areas agreed upon."

The text is replete with references to Iraq's sovereignty, respect for the Iraqi constitution and laws, etc. But there is no enforcement capacity and given the unequal balance of power between the two sides, there is little doubt that those references are designed to placate Iraq's overwhelmingly anti-occupation population, and even much of the parliament.

### Oil

The agreement does nothing to end or even curtail U.S. efforts to control Iraqi oil. It states the U.S. will continue its current role in "protection arrangements" for Iraq's oil and gas production "and their revenue." Given Bush's signing statement two weeks ago rejecting Congress' law requiring an end to U.S. efforts to control Iraq's oil, such continuation remains very dangerous.

So what is likely to happen?

It is very unlikely that the Iraqi parliament, veering between skepticism and outright rejection of the agreement, will come to accept it in the next two months. It is certainly possible that Prime Minister Maliki will simply assert, as he has before, that his government does not need parliamentary approval; but with important provincial elections looming in Iraq early in 2009, that is probably a recipe for political suicide.

In the U.S., Bush faces a similar problem. Rejecting claims that their approval is not required, Congress is beginning to react - primarily by demanding a say in the process. Some members are targeting the idea of U.S. forces ever being held accountable in the Iraqi judicial system, despite the clear reality that the text itself provides a myriad of ways to prevent such an occurrence.

There is already a move in Congress, led by Rep. Bill Delahunt, to challenge the legitimacy of the exclusion of Congress from approval of the agreement, but urging the UN Security Council to extend the UN mandate after Dec. 31 instead. This would mean repeating the common tactic of using the UN to provide political, and in this case legal cover for illegal U.S. actions - potentially even for war crimes that may be committed by U.S. troops following illegal orders. If the December 31 expiration of the UN mandate looms closer, and the U.S.- Iraq agreement is not accepted by both sides, and Bush and Maliki fail to win political support for their claim that congressional/ parliamentary approval is not necessary, three possibilities are likely:

- an effort to win Security Council agreement for a short-term extension of the mandate;
- a Bush-Maliki "handshake" agreement to maintain the status quo for three or six months, perhaps longer, the equivalent of Congress' frequent "continuing resolutions" that maintain current funding and activity levels;
- agreement by Congress and the Iraqi Parliament to accept a shorter-term and perhaps stripped-down version of the agreement, essentially endorsing a "handshake" agreement between the governments.

So what do we do?

- We oppose any U.S.-Iraq agreement to maintain the U.S. occupation, whether it's for one month or three years.
- We oppose any such agreement being negotiated or signed without U.S. Congressional and Iraqi parliamentary approval.
- We reject interim measures designed to continue the occupation.
- We stand against any Security Council decision to extend the current mandate authorizing the U.S.-led occupation in Iraq; we call on the United Nations to stand with global civil society in defense of international law and its own Charter, to oppose the continuing occupation of Iraq.
- We believe that the December 31, 2008 expiration of the UN mandate should lead to an immediate recognition of the illegality of the U.S. occupation. That acknowledged illegality should be seen as an opportunity to implement the clear will of the Iraqi people

and a majority of the American people. The result should be immediate steps to return all U.S. troops to their bases, and begin the process of immediate withdrawal of all, not only combat troops, U.S.-paid non- Iraqi contractors, and closure of the U.S. bases.

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